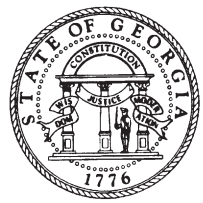
OFFICIAL CODE OF GEORGIA ANNOTATED

With Provision for Subsequent Pocket Parts

Prepared by

The Code Revision Commission
The Office of Legislative Counsel
and
The Editorial Staff of LexisNexis®



Published Under Authority of the State of Georgia

Volume 37A

2024 Edition

Title 48. Revenue and Taxation
(Chapters 9 through 18)

Including Acts of the 2024 Session of the General Assembly of Georgia
and Annotations taken from the Georgia Reports
and the Georgia Appeals Reports

LexisNexis®
Miamisburg, Ohio
2024

ISBN 978-1-66339-104-9
505582

(Pub. 41805)

THE STATE OF GEORGIA

OFFICE OF SECRETARY OF STATE

I, Brad Raffensperger, Secretary of State of the State of Georgia, do hereby certify that

the statutory portion of the Official Code of Georgia Annotated contained in this volume is a true and correct copy of such material as enacted by the General Assembly of Georgia; all as the same appear on file and record in this office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of my office, at the Capitol, in the City of Atlanta, this 3rd day of June, in the year of our Lord Two Thousand and Twenty-Four and of the Independence of the United States of America the Two Hundred and Forty-Eighth.

Brad Raffensperger

Brad Raffensperger, Secretary of State

Preface

This volume, along with the 2024 edition of Volume 37, cumulates and replaces the 2021 edition of Volume 37 of the Official Code of Georgia Annotated, as supplemented by the 2023 Cumulative Supplement. The 2021 Volume 37 and its 2023 Supplement may be recycled or, if so desired, retained for historical purposes.

This volume contains all laws specifically codified in Title 48 (Chapters 9 through 18) by the General Assembly through the 2024 Regular and Extraordinary Sessions. This volume also contains case annotations reflecting decisions posted to LexisNexis® through May 19, 2024. These annotations will appear in the following traditional reporter sources: Georgia Supreme Court Opinions; Georgia Appeals Court Opinions; Southeastern Reporter, Second Series; Supreme Court Reporter; Federal Reporter, Third Series; Federal Supplement, Second Series; Federal Rules Decisions; and Bankruptcy Reporter.

Additionally, LexisNexis® has prepared annotations and references to Attorney General Opinions, law reviews, and other research sources that we hope will be beneficial as you utilize this product. A complete listing of those sources is as follows: Official and Unofficial Attorney General Opinions; Opinions of the Judicial Qualifications Commission; Advisory Opinions of the State Disciplinary Board of the State Bar; Formal Advisory Opinions of the State Disciplinary Board of the State Bar, issued by the Supreme Court of Georgia; Emory Law Journal; Georgia Law Review; Georgia State University Law Review; John Marshall Law Review; Mercer Law Review; Georgia State Bar Journal; American Law Reports; American Jurisprudence 2d; American Jurisprudence Pleading and Practice; American Jurisprudence Proof of Facts; American Jurisprudence Trials; Corpus Juris Secundum; and Uniform Laws Annotated. Also included, where appropriate, are cross references to the Official Code of Georgia Annotated and the Official Compilation of the Rules and Regulations of the State of Georgia.

This volume retains amendment notes and effective date notes for Acts passed during the 2022, 2023, and 2024 Regular and Extraordinary Sessions of the General Assembly. In order to determine the changes which were made or the effective date applied to a Code section by an Act passed prior to the 2022 Session of the General Assembly, the user should consult the Georgia Laws.

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User's Guide

In order to assist both the legal profession and the layperson in obtaining the maximum benefit from the Official Code of Georgia Annotated, a User's Guide containing comments and information on the many features found within the Code has been included in Volume 1 of the Official Code of Georgia Annotated.

Table of Titles

Title 1. General Provisions.
2. Agriculture.
3. Alcoholic Beverages.
4. Animals.
5. Appeal and Error.
6. Aviation.
7. Banking and Finance.
8. Buildings and Housing.
9. Civil Practice.
10. Commerce and Trade.
11. Commercial Code.
12. Conservation and Natural Resources.
13. Contracts.
14. Corporations, Partnerships, and Associations.
15. Courts.
16. Crimes and Offenses.
17. Criminal Procedure.
18. Debtor and Creditor.
19. Domestic Relations.
20. Education.
21. Elections.
22. Eminent Domain.
23. Equity.
24. Evidence.
25. Fire Protection and Safety.
26. Food, Drugs, and Cosmetics.
27. Game and Fish.
28. General Assembly.
29. Guardian and Ward.

30. Handicapped Persons.
31. Health.
32. Highways, Bridges, and Ferries.
33. Insurance.
34. Labor and Industrial Relations.
35. Law Enforcement Officers and Agencies.
36. Local Government.
37. Mental Health.
38. Military, Emergency Management, and Veterans Affairs.
39. Minors.
40. Motor Vehicles and Traffic.
41. Nuisances.
42. Penal Institutions.
43. Professions and Businesses.
44. Property.
45. Public Officers and Employees.
46. Public Utilities and Public Transportation.
47. Retirement and Pensions.
48. Revenue and Taxation.
49. Social Services.
50. State Government.
51. Torts.
52. Waters of the State, Ports, and Watercraft.
53. Wills, Trusts, and Administration of Estates.

In Addition, This Publication Includes

Constitution of the United States
Constitution of the State of Georgia
Tables of Comparative Sections
Table of Acts
Index to Local and Special Laws

Index to General Laws of Local Application
General Index

Table of Contents

VOLUME 36

Title 48

Revenue and Taxation

CHAPTER PAGE

1. General Provisions, 48-1-1 through 48-1-10
2. State Administrative Organization, Administration, and Enforcement, 48-2-1 through 48-2-115
3. Tax Executions, 48-3-1 through 48-3-44
4. Tax Sales, 48-4-1 through 48-4-112
5. Ad Valorem Taxation of Property, 48-5-1 through 48-5-607

5A. Special Assessment of Forest Land Conservation Use Property, 48-5A-1 through 48-5A-6

5B. Moratorium Period for Valuation Increases in Property, 48-5B-1. [Repealed]

5C. Title Ad Valorem Tax on Motor Vehicles (TAVT), 48-5C-1

6. Taxation of Intangibles, 48-6-1 through 48-6-98

VOLUME 37

7. Income Taxes, 48-7-1 through 48-7-170

7A. Low-income Tax Credit, 48-7A-1 through 48-7A-3

8. Sales and Use Taxes, 48-8-1 through 48-8-278

VOLUME 37A

9. Motor Fuel and Road Taxes, 48-9-1 through 48-9-46 5

10. Motor Vehicle License Fees and Plates, 48-10-1 through 48-10-16. [Reserved] 70

11. Taxes on Tobacco and Vaping Products, 48-11-1 through 48-11-30 71

12. Estate Tax, 48-12-1 123

CHAPTER PAGE
13. Specific, Business, and Occupation Taxes, 48-13-1 through 48-13-144 128
14. Grants and Special Revenue Disbursements, 48-14-1 through 48-14-4 268
15. Excise Tax on Marijuana and Controlled Substances, 48-15-1 through 48-15-11 277
16. Tax Amnesty Program, 48-16-1 through 48-16-12 281
16A. Property Tax Amnesty Program, 48-16A-1 through 48-16A-10 289
17. Redesignated, 48-17-1 through 48-17-17 296
18. Certified Capital Companies, 48-18-1 through 48-18-9. [Repealed] 297
Index to Title 48 299

TITLE 48

REVENUE AND TAXATION

VOLUME 36

Chap.

1. General Provisions, 48-1-1 through 48-1-10.
2. State Administrative Organization, Administration, and Enforcement, 48-2-1 through 48-2-115.
3. Tax Executions, 48-3-1 through 48-3-44.
4. Tax Sales, 48-4-1 through 48-4-112.
5. Ad Valorem Taxation of Property, 48-5-1 through 48-5-607.
5A. Special Assessment of Forest Land Conservation Use Property, 48-5A-1 through 48-5A-6.
5B. Moratorium Period for Valuation Increases in Property, 48-5B-1 [Repealed].
5C. Title Ad Valorem Tax on Motor Vehicles (TAVT), 48-5C-1 through 48-5C-1.
6. Taxation of Intangibles, 48-6-1 through 48-6-98.

VOLUME 37

7. Income Taxes, 48-7-1 through 48-7-170.
7A. Low-income Tax Credit, 48-7A-1 through 48-7A-3.
8. Sales and Use Taxes, 48-8-1 through 48-8-278.

VOLUME 37A

9. Motor Fuel and Road Taxes, 48-9-1 through 48-9-46.
10. Motor Vehicle License Fees and Plates, 48-10-1 through 48-10-16. [Reserved].
11. Taxes on Tobacco and Vaping Products, 48-11-1 through 48-11-30.
12. Estate Tax, 48-12-1 through 48-12-1.
13. Specific, Business, and Occupation Taxes, 48-13-1 through 48-13-144.

14. Grants and Special Revenue Disbursements, 48-14-1 through 48-14-4.

15. Excise Tax on Marijuana and Controlled Substances, 48-15-1 through 48-15-11.

16. Tax Amnesty Program, 48-16-1 through 48-16-12.

16A. Property Tax Amnesty Program, 48-16A-1 through 48-16A-10.

17. Redesignated, 48-17-1 through 48-17-17.

18. Certified Capital Companies, 48-18-1 through 48-18-9 [Repealed].

Editor's notes.

Ga. L. 1978, p. 309, et seq., enacted a recodification of the revenue laws for the state. Section 1 of the Act provides that the intent of the General Assembly was to provide for a general recodification of revenue laws, to omit obsolete and duplicative provisions, to make uniform administrative provisions where uniformity was possible without major substantive change, and to use simple understandable English in the revenue laws. The section further provides that it was not the intent of the General Assembly to make any substantive change in the revenue laws of this state as the laws existed prior to January 1, 1980, except as expressly provided in the reenactment.

Law reviews.

For article surveying taxpayers' remedies in Georgia, see 1 Ga. B. J. 19 (1939).

For article discussing application of the principle that he who would have equity must do equity to taxpayer's suits, see 7 Ga. St. B.J. 305 (1971).

For article discussing taxation of foreign businesses in Georgia, see 27 Mercer L. Rev. 629 (1976).

For article surveying provisions of the Public Revenue Code, former Code 1933, T. 92 (see this title), see 14 Ga. St. B. J. 156 (1978).

For article, "A Practical Guide to State Tax Practice," see 15 Ga. St. B. J. 74 (1978).

For article surveying judicial decisions affecting Georgia's state and local taxation laws, decided under the prior Public Revenue Code, Code 1933, Title 92 (see this title), see 31 Mercer L. Rev. 217 (1979).

For article discussing ad valorem taxation and interest in real property in Georgia, prior to the enactment of the Georgia Public Revenue Code, T. 48, see 31 Mercer L. Rev. 293 (1979).

For article, "Reflections on the Revenue Act of 1978 and Future Tax Policy," see 13 Ga. L. Rev. 687 (1979).

For annual survey on state and local taxation, see 36 Mercer L. Rev. 307 (1984).

For article surveying state and local tax law, see 37 Mercer L. Rev. 361 (1985).

For annual survey of state and local taxation, see 40 Mercer L. Rev. 357 (1988).

For annual survey of state and local taxation, see 42 Mercer L. Rev. 421 (1990).

For article, "Revenue and Taxation: Sales and Use Taxes," see 29 Ga. St. U.L. Rev. 112 (2012).

For article, "Simplexity: Plain Language and the Tax Law," see 66 Emory L.J. 189 (2017).

For article, "The Offshore Tax Enforcement Dragnet," see 67 Emory L.J. 655 (2018).

For article, "America's (D)evolving Childcare Tax Laws," see 53 Ga. L. Rev. 1093 (2019).

For article, "Taxation of Settlement Payments," see 25 Ga. St. B.J. 19 (Oct. 2019).

For article, "Borrowing from Millennials to Pay Boomers: Can Tax Policy Create

Sustainable Intergenerational Equity," see 36 Ga. St. U.L. Rev. 799 (2020).

For note, "Pay Toll with Coins: Looking Back on FBAR Penalties and Prosecutions to Inform the Future of Cryptocurrency Taxation," see 55 Ga. L. Rev. 359 (2020).

For article with annual survey on state and local taxation, see 73 Mercer L. Rev. 231 (2021).

For article, "SB 6: The Review, Creation, and Extension of Georgia Tax Credits and Deductions," see 38 Ga. St. U.L. Rev. 167 (2021).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Ga. L. 1929, p. 58 and former Code 1933, T. 92, which was subsequently repealed but was succeeded by provisions in this title, are included in the annotations for this title.

Revenue laws to be construed in favor of taxpayer. — Revenue laws are neither remedial statutes nor laws founded upon any permanent public policy, and are not, therefore, to be liberally construed. Hence, whenever there is a just doubt, that doubt should absolve the taxpayer from the burden. Mystyle Hosiery Shops, Inc. v. Harrison, 171 Ga. 430, 155 S.E. 765, 1930 Ga. LEXIS 374 (1930) (decided under Ga. L. 1929, p. 58).

Effect upon local laws. — The 1978 Georgia Public Revenue Code, Ga. L. 1978, p. 309, did not repeal by implication a local Act authorizing a city and county to contract for a consolidated board of tax assessors, and a later statute repealing the local Act was not void. Chatham County v. Hussey, 267 Ga. 895, 485 S.E.2d 753.

Revenue laws require strict construction. — Statutes which impose restrictions upon trade or common occupations, and which levy an excise or tax upon those trades or occupations, must be construed strictly. Mystyle Hosiery Shops, Inc. v. Harrison, 171 Ga. 430, 155 S.E. 765, 1930 Ga. LEXIS 374 (1930) (decided under Ga. L. 1929, p. 58).

Revenue laws are not to be extended by implication. — Statutes levying duties or taxes upon subjects or citizens are to be construed most strongly against the government, and in favor of their subjects or citizens, and their provisions are not to be extended, by implication, beyond the clear import of the language used. Mystyle Hosiery Shops, Inc. v. Harrison, 171 Ga. 430, 155 S.E. 765, 1930 Ga. LEXIS 374 (1930) (decided under Ga. L. 1929, p. 58).

When taxpayer's remedies do not expressly include action at law, such action does not lie. — When the General Assembly authorizes a tax for governmental purposes and provides an adequate remedy for the tax's collection by administrative officers, the necessary intent is that the collection of the tax is exclusively confined to that administrative department of the government, and when the statute undertakes to provide remedies for the collection of taxes, and those given do not embrace an action at law, a common-law action for the recovery of taxes as a debt will not lie. Kirk v. Bray, 181 Ga. 814, 184 S.E. 733, 1936 Ga. LEXIS 443 (1936) (decided under former Code 1933, T. 92).

Court of equity has no power to foreclose lien and order sale. — Power to levy and collect taxes is exclusively a legislative function, and unless authorized by statute, a court of equity is without power to foreclose a lien for taxes and order a sale of the property. No such power having been conferred by statute on a court of equity in this state, a court errs in decreeing that land be sold by the sheriff for the payment of state and county taxes. Kirk v. Bray, 181 Ga. 814, 184 S.E. 733, 1936 Ga. LEXIS 443 (1936) (decided under former Code 1933, T. 92).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions,

opinions under former Code 1933, T. 92, which was subsequently repealed but was succeeded by provisions in this title, are included in the annotations for this title.

Transaction must have object other than tax evasion. — While ordinarily motive is not controlling in a transaction planned for tax avoidance purposes, the rule is subject to an exception. There must be some authentic object other than the defeat of a tax. 1962 Ga. Op. Att'y Gen. 558 (decided under former Code 1933, T. 92).

RESEARCH REFERENCES

ALR.

Validity of statutory classifications based on population — tax statutes, 98 A.L.R.3d 1083.

CHAPTER 9

MOTOR FUEL AND ROAD TAXES

Article 1

Motor Fuel Tax

Sec.

48-9-1. Short title.

48-9-2. (Effective until January 1, 2026.) Definitions.

48-9-2. (Effective January 1, 2026.) Definitions.

48-9-3. (Effective until January 1, 2026.) Levy of excise tax; motor fuels not commonly sold or measured by gallon; rates; prohibition of tax imposed by political subdivisions; exceptions; exemptions.

48-9-3. (Effective January 1, 2026.) Levy of excise tax; rate; taxation of motor fuels not commonly sold or measured by gallon; rate; prohibition of tax on motor fuel by political subdivisions; exception; exempted sales.

48-9-4. Distributor's license required; validity and nonassignability; application procedure; fee; bond; release and discharge of surety.

48-9-5. Distributor's license optional for compressed petroleum gas or special fuel with both highway and nonhighway uses; resellers of fuel oils, compressed petroleum gas, or special fuel.

48-9-6. Licensing of sellers and consumers of aviation gasoline as aviation gasoline dealers; application; contents; filing fee; validity and nonassignability of license.

48-9-7. Discontinuance, sale, or transfer of distributor's operations; notice to commissioner; payment of taxes concurrent with discontinuance, sale, or transfer; failure to give notice.

Sec.

48-9-8. (Effective until January 1, 2026.) Tax reports from distributors; quarterly or annual; payments; business records of distributors, resellers, and retailers; inspection; dyed fuel oil notices.

48-9-8. (Effective January 1, 2026.) Tax reports from distributors; quarterly or annual; payments; business records of distributors, resellers, and retailers; inspection; dyed fuel oil notices.

48-9-9. (Effective until January 1, 2026.) Reports of motor fuel deliveries; persons required to report; procedure; restrictions on delivery; reports of unlicensed purchasers.

48-9-9. (Effective January 1, 2026.) Reports of motor fuel deliveries; persons required to report; procedure; restrictions on delivery; reports of unlicensed purchasers.

48-9-10. Refunds of motor fuel taxes; refund permits generally; refunds to persons using gasoline for agricultural purposes; amounts and interest.

48-9-10.1. Refunds of sales and use taxes to credit card issuers.

48-9-11. Falsely swearing on application for refund of gasoline tax under Code Section 48-9-10; penalty.

48-9-12. (Effective until January 1, 2026.) Powers of commissioner; notice of license cancellation; retention of bonds; public inspection of records; estimated assessments; time extensions; list of licensed distributors.

48-9-12. (Effective January 1, 2026.) Powers of commissioner; no-

Sec.
tice of license cancellation; retention of bonds; public inspection of records; estimated assessments; time extensions; list of licensed distributors.
48-9-13. Assessments of deficiencies; time limits for returns; false or fraudulent return; failure to return; filing of statement by sheriff, receiver, or other officer upon sale of distributor's property.
48-9-14. [Reserved] Second motor fuel tax; rate; exemptions; applicability of Article 1 of Chapter 8 of this title.
48-9-15. Officers required to assist in enforcing article; powers.
48-9-16. Penalties and interest; untimely return; failure to pay; false or fraudulent returns; failure to file returns; dyed fuel oil violations.
48-9-17. Violations of article; penalties.
48-9-18. Operation without distributor's license; assessment of penalty in lieu of taxes.
48-9-19. Cooperative agreements with other states.
48-9-20. [Repealed] Temporary exemption of motor fuels from state sales and use tax, excise tax, and second motor fuel tax.

Article 2

Road Tax on Motor Carriers

48-9-30. Definitions.
48-9-31. Road tax on motor carriers; rate; basis of calculation; additional tax.
48-9-32. Payment of road tax; time; calculation on amount of motor fuel used in state; formula.
48-9-33. Reports of motor carriers; time; exemption.
48-9-34. Joint reports by passenger motor carriers; basis of calculation of taxes due; liability; contents of reports; credits and refunds.
Sec.
48-9-35. Credit against road tax for payment of motor fuel tax; evidence of payments; subsequent application of credit exceeding amount of road tax; limit.
48-9-36. Refunds to motor carriers; minimum credit refundable; applications; procedure; bond; audit of applicant's records; procedure for issuance of refunds; interest.
48-9-37. Lessee and lessor of motor vehicles as motor carriers; determination of status; primary liability; effect of failure to discharge liability.
48-9-38. Requirement of motor vehicle registration card and identification marker; validity; renewal; fee; temporary authorizations; temporary permits; fee.
48-9-39. Violation of Code Section 48-9-38; penalty.
48-9-40. Keeping and preservation of records; inspection; estimate of amount of road tax due; prima-facie evidence; burden of proof; multi-jurisdictional, cooperative audits.
48-9-41. Assessment of deficiencies; time limits; timely report; false or fraudulent report; no report; procedures for collection.
48-9-42. Secretary of State as agent of nonresident motor carriers for service of process or notice.
48-9-43. Assistance by Department of Public Safety in administration and enforcement of article; powers.
48-9-44. Powers of revenue agents in enforcement of article.
48-9-45. Violation of registration provisions; untimely reports; failure to pay; penalties; interest; other punitive measures.
48-9-46. Making false statement for purpose of obtaining credit,

Sec.
refund, or reduction of liability for tax imposed by article; willful failure to file report; penalty.

Cross references.

Use of motor fuel taxes for public road purposes, Ga. Const. 1983, Art. III, Sec. IX, Para. VI.

Federal funds for public roads, and as to State Public Transportation Fund, § 32-5-1 et seq.

Licensing of self-service motor fuel dispensing pumps by counties and municipalities, § 36-60-1.

Examinations by state auditor of books, records, and accounts of persons required to pay occupational tax as distributors of motor fuels, § 50-6-5.

Administrative rules and regulations.

Motor Fuel Tax, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Motor Fuel and Road Taxes, Rule 560-9-1-.01 et seq.

Road Tax on Motor Carriers, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Motor Fuel and Road Taxes, Rule 560-9-2-.01 et seq.

Forms for Motor Fuel and Carrier Taxes, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Motor Fuel and Road Taxes, Rule 560-9-3-.01 et seq.

Powers and Procedures for Enforcement of Fuel Tax and License Tag Laws, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of State Department of Transportation, Enforcement of the Provisions in Code Section 32-6-29, O.C.G.A. Relating to Criminal Violations, Rule 672-4-.05.

ARTICLE 1

MOTOR FUEL TAX

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, Ch. 92-14, prior to amendment by Ga. L. 1978, p. 186, § 1, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section.

Nature of tax. — Motor fuel tax laws, found in former Code 1933, Ch. 92-14 and Ga. L. 1968, p. 360 showed that the motor fuel taxes were of the nature of a road use tax. This is true because the funds collected must be used to construct and maintain the highways. 1963-65 Ga. Op. Att'y Gen. 92 (decided under former Code 1933, Ch. 92-14).

Construction of "use". — Word "use" as applied to motor fuel and as employed in former Code 1933, Ch. 92-14 meant to consume by combustion in a motor or for cleaning purposes or other uses that either consume it or at least render it unsuitable for future use as fuel for a motor. The word "use" as applied to motor fuel does not embrace storage and withdrawal. Thompson v. Eastern Air Lines, 200 Ga. 216, 39 S.E.2d 225, 1946 Ga. LEXIS 439 (1946) (decided under former Code 1933, Ch. 92-14).

Any transfer of possession made by a distributor to a dealer in the course of distributing motor fuel was a taxable event under former Code 1933, Ch. 92-14. 1971 Op. Att'y Gen. No. 71-134 (decided under former Code 1933, Ch. 92-14).

County health department was not exempt from payment of taxes on gasoline imposed by former Code 1933, Ch. 92-14. 1969 Op. Att'y Gen. No. 69-513 (decided under former Code 1933, Ch. 92-14).

Representative from a foreign country was not exempt from former Code 1933, Ch. 92-14 or Ga. L. 1951, p.

360. 1962 Ga. Op. Att'y Gen. 514 (decided under former Code 1933, Ch. 92-14).

Most favored nation clause of treaty with Belgium exempts Belgian officials from motor fuel taxes. — Exemption of officials does not extend to consular employees, and the exemption would not apply to the officers in the absence of a treaty. 1970 Op. Att'y Gen. No. U70-233 (decided under former Code 1933, Ch. 92-14).

RESEARCH REFERENCES

ALR.

State or political subdivision as subject to license or sales tax, 60 A.L.R. 878; 67 A.L.R. 1310; 159 A.L.R. 365.

Constitutionality and construction of gasoline inspection and tax statutes, 84 A.L.R. 839; 111 A.L.R. 185.

Constitutionality of retroactive statute imposing excise, license, or privilege tax, 146 A.L.R. 1011.

Deductibility of other taxes or fees in computing excise or license taxes, 148 A.L.R. 263; 174 A.L.R. 1263.

Municipality as subject to state license or excise taxes, 159 A.L.R. 365.

48-9-1. Short title.

This article shall be known and may be cited as the "Motor Fuel Tax Law."

History.

Code 1933, § 92-1401, enacted by Ga. L. 1978, p. 186, § 1; Code 1933, § 91A-5001, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 102.

RESEARCH REFERENCES

Am. Jur. 2d.

71 Am. Jur. 2d, State and Local Taxation, § 495 et seq.

48-9-2. (Effective until January 1, 2026.) Definitions.

As used in this article, the term:

(.1) "Agricultural field use" means the use of motor fuel of a type other than gasoline by vehicles licensed under paragraph (.1) of Code Section 40-2-150. Such term shall include the incidental movement over a highway as well as all off-road operations.

(1) "Aviation gasoline" means gasoline that is designed and sold for use solely for aviation purposes in aircraft engines.

(2) "Aviation gasoline dealer" means any person who sells or consumes aviation gasoline for aviation purposes only.

(3) "Compressed petroleum gas" means all liquid petroleum products composed of propane, propylene, butanes, butylenes, or any mixture thereof as determined by test method ASTMD-216370, Natural Gas Processors Association Liquefied Petroleum Specifications, 1970 revision.

(4) "Consumer distributor" means any person who has both highway and nonhighway use of motor fuel of a type other than gasoline and who elects to become licensed as a distributor to obtain the exemption allowed by this article.

(5) "Distributor" means every person other than the United States or any of its agencies who:

(A) Produces, refines, prepares, distills, manufactures, blends, or compounds motor fuel in this state;

(B) Makes the first sale in this state of any motor fuel imported into this state after the motor fuel has been received in this state;

(C) Consumes or uses in this state any motor fuel imported into this state before the motor fuel has been received by any other person in this state;

(D) Purchases motor fuel for export from this state;

(E) Consumes or uses motor fuel of a type other than gasoline for both highway and nonhighway use and who elects to become licensed as a distributor to obtain the exemption allowed by this article;

(F) Sells motor fuel of a type other than gasoline to consumers who have no highway use of such fuel and who elects to become licensed as a distributor to obtain the exemptions allowed by this article; or

(G) Imports motor fuel into this state for production, refining, preparation, distilling, manufacturing, blending, compounding, consumption, or use within this state.

(5.1) "Dyed fuel oils" means any fuel oil dyed pursuant to regulations issued by either the United States Environmental Protection Agency or the Internal Revenue Service.

(5.2) "Export and import" means:

(A) When motor fuels are sold for export and delivered across the boundaries of this state by or for the seller, such action is presumed to be an export from the place of origin and an import into the destination state or country by the seller; and

(B) When motor fuels are purchased for export and transported across the boundaries of this state by or for the purchaser, such action is presumed to be an export from the place of origin and an import into the destination state or country by the purchaser.

(6) "Fuel oils" means all liquid petroleum products including, but not limited to, kerosene, but does not mean gasoline, compressed petroleum gas, or special fuel.

(7) "Gasoline" means all products commonly or commercially known or sold as gasoline.

(8) "Highway use" means:

(A) The consumption or use of motor fuel other than gasoline in or upon a motor vehicle which is operated on the public highways;

(B) The placing of motor fuel other than gasoline in the running tank or power cells of a motor vehicle designed for use and used on the public highways; or

(C) The use of motor fuel other than gasoline in the construction, reconstruction, maintenance, or repair of public highways.

(8.1) "Loading rack" means that part of a terminal facility by which motor fuels are physically removed from the terminal facility into transport tank trucks, marine vessels, or rail cars.

(9) "Motor fuel" means any source of energy that can be used for propulsion of motor vehicles on the public highways including, but not limited to:

(A) Gasoline;

(B) Fuel oils;

(C) Compressed petroleum gas; and

(D) Special fuel.

(10) "Motor vehicle" means:

(A) Every self-propelled vehicle designed for operation or required to be licensed for operation upon the public highways; and

(B) Any other machine or mechanical contrivance using motor fuel to the extent that the machine or contrivance is operated upon the public highways.

(11) "Public highway" means every way or place of whatever nature generally open to the use of the public as a matter of right for the purpose of vehicular travel even though such way or place may never have been so open or may be temporarily closed for the purpose of construction, reconstruction, maintenance, or repair.

(12) "Purchase" means any acquisition of ownership.

(13) "Received," in addition to its ordinary meaning, means:

(A) Motor fuel produced, refined, prepared, distilled, manufactured, blended, or compounded within this state; or

(B) Motor fuel imported into the territorial boundaries of this state which is held for sale or use or is stored in any receptacle which has withdrawal facilities for sale or use in this state.

(14) "Sale" means any exchange, gift, consignment, bailment, or any other accounted for or unaccounted for disposition.

(15) "Special fuel" means all sources of energy other than gasoline, fuel oils, or compressed petroleum gas.

(15.1) "Terminal" means a motor fuel storage and distribution facility that is supplied by pipeline or marine vessel and from which motor fuels may be removed by either a loading rack or user pipeline. However, the term does not include any facility at which petroleum blend stocks and additives are used to manufacture products other than motor fuel and from which no motor fuel is removed.

(16) "Transport tank truck" means any tank truck used to transport motor fuel in bulk quantities.

History.

Code 1933, § 92-1402, enacted by Ga. L. 1978, p. 186, § 1; Code 1933, § 91A-5002, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 102; Ga. L. 1990, p. 799, § 1; Ga. L. 1993, p. 1502, §§ 1-3; Ga. L. 1995, p. 359, § 1; Ga. L. 1998, p. 1580, § 1; Ga. L. 2002, p. 1074, § 5.

Delayed effective date.

Code Section 48-9-2 is set out twice in this Code. This version is effective until January 1, 2026. For version effective January 1, 2026, see the following version.

Editor's notes.

Ga. L. 2002, p. 1074, § 8, not codified by the General Assembly, provides that: "This Act shall not abate any prosecution, punishment, penalty, administrative proceedings or remedies, or civil action related to any violation of law committed prior to the effective date of this Act." This Act became effective July 1, 2002.

JUDICIAL DECISIONS

Automobile manufacturer could not be exporter of motor fuel since the sale of the manufacturer's automobiles — and of the motor fuel within the automobiles — took place within the state. Ford Motor Co. v. Collins, 257 Ga. 310, 357 S.E.2d 567, 1987 Ga. LEXIS 810 (1987).

Clearing and grading for road construction is highway use. — Fuel used by machinery engaged in the clearing and grading processes necessary for the construction of a public highway within a right of way is motor fuel used for the purpose of construction of public highways within the meaning of "highway use." Green Constr. of Ind., Inc. v. State, 123 Ga. App. 422, 181 S.E.2d 389, 1971 Ga. App. LEXIS 1248 (1971).

OPINIONS OF THE ATTORNEY GENERAL

So-called "economy" gasolines are taxed in the same manner as other grades of gasoline and the fact that they are sold at a lower rate to a consumer would not affect the eligibility for refund of the tax when other refund conditions are met. 1962 Ga. Op. Att'y Gen. 518.

Transfer from bulk tank to retail tank by one operating both is not a sale. — Transfer of gasoline from a bulk plant tank to a retail tank, when the distributor is operating both businesses, is not a disposition within the definition of "sale" and, hence, the tax accrues when the gasoline is sold from the distributor's retail tank to a purchaser. 1960-61 Ga. Op. Att'y Gen. 536.

Meaning of "or any other accounted for or unaccounted for disposition" in definition of "sale". — When the General Assembly added the phrase "or any other accounted for or unaccounted for disposition" the legislature meant to include in the definition of the taxable

event any delivery made by the distributor to a dealer in the course of distributing gasoline. 1960-61 Ga. Op. Att'y Gen. 533.

RESEARCH REFERENCES

C.J.S.

39A C.J.S., Highways, §§ 1, 3. 53 C.J.S., Licenses, §§ 5, 55, 103. 60 C.J.S., Motor Vehicles, §§ 1 et seq., 65.

ALR.

What constitutes a sale "at retail" within federal retailers' excise tax statute (26 USC (IRC 1954) chap 31), 93 A.L.R.2d 1120.

What constitutes manufacturing and who is a manufacturer under tax laws, 17 A.L.R.3d 7.

48-9-2. (Effective January 1, 2026.) Definitions.

As used in this article, the term:

(.1) "Agricultural field use" means the use of motor fuel of a type other than gasoline by vehicles licensed under paragraph (.1) of Code Section 40-2-150. Such term shall include the incidental movement over a highway as well as all off-road operations.

(1) "Aviation gasoline" means gasoline that is designed and sold for use solely for aviation purposes in aircraft engines.

(2) "Aviation gasoline dealer" means any person who sells or consumes aviation gasoline for aviation purposes only.

(3) "Compressed petroleum gas" means all liquid petroleum products composed of propane, propylene, butanes, butylenes, or any mixture thereof as determined by test method ASTMD-216370, Natural Gas Processors Association Liquefied Petroleum Specifications, 1970 revision.

(4) "Consumer distributor" means any person who has both highway and nonhighway use of motor fuel of a type other than gasoline and who elects to become licensed as a distributor to obtain the exemption allowed by this article.

(5) "Distributor" means every person other than the United States or any of its agencies who:

(A) Produces, refines, prepares, distills, manufactures, blends, or compounds motor fuel of a type other than electricity in this state;

(B) Makes the first sale in this state of any motor fuel imported into this state after the motor fuel has been received in this state;

(C) Consumes or uses in this state any motor fuel imported into this state before the motor fuel has been received by any other person in this state;

(D) Purchases motor fuel for export from this state;

(E) Consumes or uses motor fuel of a type other than gasoline or electricity for both highway and nonhighway use and who elects to become licensed as a distributor to obtain the exemption allowed by this article;

(F) Sells motor fuel of a type other than gasoline or electricity to consumers who have no highway use of such fuel and who elects to become licensed as a distributor to obtain the exemptions allowed by this article;

(G) Consumes, uses, or sells electricity as a motor fuel through an electric vehicle charging station for both highway and nonhighway use;

(H) Consumes, uses, or sells hydrogen through electrolysis, reforming, or another method for the purpose of powering a vehicle; or

(I) Imports motor fuel into this state for production, refining, preparation, distilling, manufacturing, blending, compounding, consumption, or use within this state.

(5.1) "Dyed fuel oils" means any fuel oil dyed pursuant to regulations issued by either the United States Environmental Protection Agency or the Internal Revenue Service.

(5.2) "Electric vehicle charging station" shall have the same meaning as set forth in Code Section 10-1-220.

(5.3) "Export and import' means:

(A) When motor fuels are sold for export and delivered across the boundaries of this state by or for the seller, such action is presumed to be an export from the place of origin and an import into the destination state or country by the seller; and

(B) When motor fuels are purchased for export and transported across the boundaries of this state by or for the purchaser, such action is presumed to be an export from the place of origin and an import into the destination state or country by the purchaser.

(6) "Fuel oils" means all liquid petroleum products including, but not limited to, kerosene, but does not mean gasoline, compressed petroleum gas, or special fuel.

(7) "Gasoline" means all products commonly or commercially known or sold as gasoline.

(8) "Highway use" means:

(A) The consumption or use of motor fuel other than gasoline in or upon a motor vehicle which is operated on the public highways;

(B) The placing of motor fuel other than gasoline in the running tank or power cells of a motor vehicle designed for use and used on the public highways; or

(C) The use of motor fuel other than gasoline in the construction, reconstruction, maintenance, or repair of public highways.

(8.1) "Loading rack" means that part of a terminal facility by which motor fuels are physically removed from the terminal facility into transport tank trucks, marine vessels, or rail cars.

(9) "Motor fuel" means any source of energy that can be used for propulsion of motor vehicles on the public highways including, but not limited to:

(A) Gasoline;

(B) Fuel oils;

(C) Compressed petroleum gas; and

(D) Special fuel.

(10) "Motor vehicle" means:

(A) Every self-propelled vehicle designed for operation or required to be licensed for operation upon the public highways; and

(B) Any other machine or mechanical contrivance using motor fuel to the extent that the machine or contrivance is operated upon the public highways.

(11) "Public highway" means every way or place of whatever nature generally open to the use of the public as a matter of right for the purpose of vehicular travel even though such way or place may never have been so open or may be temporarily closed for the purpose of construction, reconstruction, maintenance, or repair.

(12) "Purchase" means any acquisition of ownership.

(13) "Received," in addition to its ordinary meaning, means:

(A) Motor fuel produced, refined, prepared, distilled, manufactured, blended, or compounded within this state; or

(B) Motor fuel imported into the territorial boundaries of this state which is held for sale or use or is stored in any receptacle which has withdrawal facilities for sale or use in this state.

(14) "Sale" means any exchange, gift, consignment, bailment, or any other accounted for or unaccounted for disposition.

(15) "Special fuel" means all sources of energy other than gasoline, fuel oils, or compressed petroleum gas.

(15.1) "Terminal" means a motor fuel storage and distribution facility that is supplied by pipeline or marine vessel and from which motor fuels may be removed by either a loading rack or user pipeline. However, the term does not include any facility at which petroleum blend stocks and additives are used to manufacture products other than motor fuel and from which no motor fuel is removed.

(16) "Transport tank truck" means any tank truck used to transport motor fuel in bulk quantities.

History.

Code 1933, § 92-1402, enacted by Ga. L. 1978, p. 186, § 1; Code 1933, § 91A-5002, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 102; Ga. L. 1990, p. 799, § 1; Ga. L. 1993, p. 1502, §§ 1-3; Ga. L. 1995, p. 359, § 1; Ga. L. 1998, p. 1580, § 1; Ga. L. 2002, p. 1074, § 5; Ga. L. 2023, p. 376, § 3-1/SB 146, effective January 1, 2026; Ga. L. 2024, p. 752, § 7/HB 516, effective July 1, 2024.

Delayed effective date.

Code Section 48-9-2 is set out twice in this Code. This version is effective January 1, 2026. For version effective until January 1, 2026, see the preceding version.

Amendments.

The 2023 amendment, effective January 1, 2025, in paragraph (5), inserted "of a type other than electricity" in subparagraph (5)(A), inserted "or electricity" in subparagraphs (5)(E) and (5)(F), deleted "or" at the end of subparagraph (5)(F), added subparagraphs (5)(G) and (5)(H), and redesignated former subparagraph (5)(G) as present subparagraph (5)(I); added paragraph (5.2), and redesignated former paragraph (5.2) as present paragraph (5.3). See Editor's notes for subsequent amendment.

Editor's notes.

Ga. L. 2024, p. 752, § 7/HB 516, not codified by the General Assembly, amended Ga. L. 2023, p. 376/SB 146 by revising subsection (b) of Section 5-1 to read as follows: "(b) Part II of this Act, which provides for the regulatory authority of the Department of Agriculture, and Part III of this Act, relating to revenue and taxation, shall become effective on January 1, 2026."

48-9-3. (Effective until January 1, 2026.) Levy of excise tax; motor fuels not commonly sold or measured by gallon; rates; prohibition of tax imposed by political subdivisions; exceptions; exemptions.

(a)(1) An excise tax is imposed at the rate of 26¢ per gallon on distributors who sell or use motor fuel, other than diesel fuel, within this state. An excise tax is imposed at the rate of 29¢ per gallon on distributors who sell or use diesel fuel within this state. It is the intention of the General Assembly that the legal incidence of the tax be imposed upon the distributor.

(1.1)(A) Beginning on July 1, 2016, and annually thereafter, the amount of this excise tax per gallon on distributors shall be automatically adjusted on an annual basis in accordance with this paragraph.

(B) Using 2014 as a base year, the department shall determine the average miles per gallon of all new vehicles registered in this

state pursuant to Code Section 48-5C-1 using the average of combined miles per gallon published in the United States Department of Energy Fuel Economy Guide. Beginning on July 1, 2016, and each year thereafter, the department shall calculate the average miles per gallon of all new vehicles registered in this state in the previous year. The excise tax rate shall be multiplied by the percentage increase or decrease in fuel efficiency from the previous year, and the resulting increase or decrease shall be added to the excise tax rate to determine the preliminary excise tax rate.

(C) Once the preliminary excise tax rate is established, it shall be multiplied by the annual percentage of increase or decrease in the Consumer Price Index. The resulting calculation shall be added to the preliminary excise tax rate, and the result of such calculation shall be the new excise tax rate for motor fuels for the next calendar year. The Consumer Price Index shall no longer be used after July 1, 2025.

(2) In the event any motor fuels which are not commonly sold or measured by the gallon are used in any motor vehicles on the public highways of this state, the commissioner may assess, levy, and collect a tax upon such fuels, under such regulations as the commissioner may promulgate, in accordance with and measured by the nearest power potential equivalent to that of one gallon of regular grade gasoline. Any determination by the commissioner of the power potential equivalent of such motor fuels shall be prima-facie correct. Upon each such quantity of such fuels used upon the public highways of this state, a tax at the same rate per gallon imposed on motor fuel under paragraph (1) of this subsection shall be assessed and collected.

(3) No county, municipality, or other political subdivision of this state shall levy any fee, license, or other excise tax on a gallonage basis upon the sale, purchase, storage, receipt, distribution, use, consumption, or other disposition of motor fuel. Nothing contained in this article shall be construed to prevent a county, municipality, or other political subdivision of this state from levying license fees or taxes upon any business selling motor fuel.

(4)(A) For purposes of this subsection, and notwithstanding the provisions of paragraph (2) of this subsection and any provision contained in the National Bureau of Standards Handbook or any other national standard that may be adopted by law or regulation, the gallon equivalent of compressed natural gas shall be not less than 110,000 British thermal units and the gallon equivalent of liquefied natural gas shall not be less than 6.06 pounds.

(B) As used in this paragraph, the term:

(i) "Compressed natural gas" means a mixture of hydrocarbon gases and vapors, consisting principally of methane in gaseous form, that has been compressed for use as a motor fuel.

(ii) "Liquefied natural gas" means methane or natural gas in the form of a cryogenic or refrigerated liquid for use as a motor fuel.

(b) No tax is imposed by this article upon or with respect to the following sales by duly licensed distributors:

(1) Bulk sales to a duly licensed distributor;

(2) Sales of motor fuel for export from this state when exempted by any provisions of the Constitutions of the United States or this state;

(3) Sales of motor fuel to a licensed distributor for export from this state;

(4) Sales of motor fuel to the United States for the exclusive use of the United States when the motor fuel is purchased and paid for by the United States;

(5) Sales of aviation gasoline to a duly licensed aviation gasoline dealer, except for 1¢ per gallon of the tax imposed by paragraph (1) of subsection (a) of this Code section;

(6) Bulk sales of compressed petroleum gas or special fuel to a duly licensed consumer distributor;

(7)(A) Sales of compressed petroleum gas or special fuel to a consumer who has no highway use of the fuel at the time of the sale and does not resell the fuel. Consumers of compressed petroleum gas or special fuel who have both highway and nonhighway use of the fuel and resellers of such fuel must be licensed as distributors in order for sales of the fuel to be tax exempt. Each type of motor fuel is to be considered separately under this exemption.

(B)(i) In instances where a sale of compressed petroleum gas has been made to an ultimate consumer who has both highway and nonhighway use of that type of motor fuel and no tax has been paid by the distributor on the sale, the consumer shall become licensed as a consumer distributor of that type of motor fuel. After the consumer is licensed as a consumer distributor and if it is demonstrated to the satisfaction of the commissioner that the motor fuel purchased prior to the licensee's becoming licensed as a consumer distributor was used for nonhighway purposes, such sales shall be exempt from the tax imposed by this article; provided, however, that, if at the time of demon-

stration the ultimate consumer does not have both highway and nonhighway use of such fuel but it can be demonstrated by the distributor to the satisfaction of the commissioner that the motor fuel was used for nonhighway purposes, the sales shall be exempt from the tax imposed by this article; and

(ii)(I) Any special fuel sold by a distributor to a purchaser who has a storage receptacle which has a connection to a withdrawal outlet that may be used for highway use, as defined in paragraph (8) of Code Section 48-9-2, is not exempt from the motor fuel and road taxes imposed by this article unless: (1) the purchaser is at the time of sale a valid licensed distributor of that type of motor fuel, or (2) an exemption certificate has been obtained from the purchaser on forms furnished by the Department of Revenue showing that the purchaser has no highway use of such fuels and is not a reseller of such fuels. Each exemption certificate shall be valid for a period of not more than three years and shall be kept by the distributor as one of the records specified in Code Section 48-9-8. It shall be the responsibility of the purchaser to notify the distributor when the purchaser is no longer qualified for the nonhighway exemption. All applicable taxes must be charged the purchaser until the purchaser is granted a valid distributor's license for that type of motor fuel.

(II) Any such purchaser granted an exemption under subdivision (I) of this division who falsely claims the exemption or fails to rescind the purchaser's exemption certificate to the distributor in writing when he or she is no longer eligible for the exemption shall be deemed a distributor for purposes of taxation and is subject to all provisions of this article relating to distributors. This division in no way shall restrict the option of the purchaser to become licensed as a distributor. If the distributor sells special fuel to a purchaser who has a storage receptacle which has a connection to a withdrawal outlet that may be used for highway use, as defined in paragraph (8) of Code Section 48-9-2, and the purchaser is not a valid licensed distributor and has not executed a valid signed exemption certificate, the taxes imposed by this article are due from the distributor and not the purchaser on all sales of that type of fuel to that purchaser;

(8) Sales of fuel oils, compressed petroleum gas, or special fuel directly to an ultimate consumer to be used for heating purposes only. The delivery of fuel oils, compressed petroleum gas, or special fuel directly to an ultimate consumer to be used for heating purposes only

shall be made directly into the storage receptacle of the heating unit of the consumer by the licensed distributor. To qualify for this exemption, sales must be delivered into storage receptacles that are not equipped with any secondary withdrawal outlets for the motor fuel;

(9) Sales of dyed fuel oils to a consumer for other than highway use as defined in paragraph (8) of Code Section 48-9-2;

(10)(A) During the period of July 1, 2012, through June 30, 2015, sales of motor fuel, as defined in paragraph (9) of Code Section 48-9-2, for public mass transit vehicles which are owned by public transportation systems which receive or are eligible to receive funds pursuant to 49 U.S.C. Sections 5307 and 5311 for which passenger fares are routinely charged and which vehicles are used exclusively for revenue generating purposes which motor fuel sales occur at bulk purchase facilities approved by the department.

(B) During the period of July 1, 2012, through June 30, 2015, sales of motor fuel, as defined in paragraph (9) of Code Section 48-9-2, for vehicles operated by a public campus transportation system, provided that such system has a policy which provides for free transfer of passengers from the public transportation system operated by the jurisdiction in which the campus is located; makes the general public aware of such free transfer policy; and receives no state or federal funding to assist in the operation of such public campus transportation system and which motor fuel sales occur at bulk purchase facilities approved by the department.

(C) For purposes of this paragraph, the term "vehicle" or "vehicles" means buses, vans, minibuses, or other vehicles which have the capacity to transport seven or more passengers;

(11) For the period of time beginning July 1, 2013, and ending June 30, 2015, sales of motor fuel to public school systems in this state for the exclusive use of the school system in operating school buses when the motor fuel is purchased and paid for by the school system; or

(12) For the period of time beginning on March 18, 2022, and ending at the last moment of May 31, 2022, all sales of motor fuel.

(c) Fuel oils, compressed petroleum gas, or special fuel used by a duly licensed distributor for nonhighway purposes is exempt from the tax imposed by this article.

(d) No export from this state shall be recognized as being exempt from tax under paragraphs (2) and (3) of subsection (b) of this Code

section unless the exporter informs the seller and the terminal operator of the intention to export and causes to be set out the minimum information specified in subsection (e) of Code Section 48-9-17 on the bill of lading or equivalent documentation under which the motor fuel is transported. In the event that the motor fuel is delivered to any point other than that which is set out on the bill of lading or equivalent documentation, the legal incidence of the tax shall continue to be imposed exclusively upon the exporter who caused the export documentation to be issued and no exemption shall be recognized until suitable proof of exportation has been provided to the commissioner.

History.

Code 1933, § 92-1403, enacted by Ga. L. 1978, p. 186, § 1; Code 1933, § 91A-5003, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 102; Ga. L. 1979, p. 1274, §§ 1, 3; Ga. L. 1980, p. 10, § 30; Ga. L. 1985, p. 1644, § 1; Ga. L. 1986, p. 10, § 48; Ga. L. 1993, p. 811, § 2; Ga. L. 1993, p. 1502, § 4; Ga. L. 1994, p. 569, § 1; Ga. L. 1995, p. 10, § 48; Ga. L. 1995, p. 359, § 2; Ga. L. 2004, p. 425, § 2; Ga. L. 2005, p. 60, § 48/HB 95; Ga. L. 2005, p. 505, § 1/HB 384; Ga. L. 2006, p. 523, § 1/HB 1244; Ga. L. 2008, p. 889, § 2/HB 1035; Ga. L. 2010, p. 813, § 2/HB 1393; Ga. L. 2012, p. 1348, § 1/HB 743; Ga. L. 2013, p. 786, § 1/HB 211; Ga. L. 2013, p. 869, § 1/HB 371; Ga. L. 2015, p. 236, § 5-13/HB 170; Ga. L. 2018, p. 152, § 3/HB 150; Ga. L. 2020, p. 371, § 8/HB 1098; Ga. L. 2020, p. 685, § 6/HB 511; Ga. L. 2022, p. 20, § 1/HB 304, p. 20, § 1/HB 304.

Delayed effective date.

Code Section 48-9-3 is set out twice in this Code. This version is effective until January 1, 2026. For version effective January 1, 2026, see the following version.

Amendments.

The 2022 amendment, effective March 18, 2022, deleted "or" from the end of paragraph (b)(10), substituted "; or" for a period at the end of paragraph (b)(11), and added (b)(12).

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1985, "is exempt" was substituted for "are exempt" in subsection (c).

Pursuant to Code Section 28-9-5, in 1986, a hyphen was inserted in "prima facie" in the second sentence of paragraph (a)(2) and "ultimate" was substituted for "utlimate" in the second sentence of division (b)(7)(B)(i).

Pursuant to Code Section 28-9-5, in 2022, "March 18, 2022" was substituted for "the effective date of this paragraph" in paragraph (b)(12).

Editor's notes.

Ga. L. 2015, p. 236, § 9-1(b)/HB 170, not codified by the General Assembly, provides that: "Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by the passage of this Act and shall continue to be governed by the provisions of Title 48 of the Official Code of Georgia Annotated as it existed immediately prior to the effective date of this Act." This Act became effective July 1, 2015.

Ga. L. 2015, p. 236, § 8-1/HB 170, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Transportation Funding Act of 2015.'"

Ga. L. 2015, p. 236, § 8-2/HB 170, not codified by the General Assembly, provides that: "It is the intention of the General Assembly, subject to appropriations and other constitutional obligations of this state, that year to year revenue increases be prioritized to fund education, transportation, and health care in this state."

Law reviews.

For article, "Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government," see 28 Georgia St. U.L. Rev. 217 (2011).

For article on the 2015 amendment of this Code section, see 32 Georgia St. U.L. Rev. 261 (2015).

JUDICIAL DECISIONS

Section is constitutional. Road Bldrs., Inc. v. Hawes, 228 Ga. 608, 187 S.E.2d 287, 1972 Ga. LEXIS 862 (1972).

Classification for taxation of distributors of motor fuels is not arbitrary, unreasonable, or unnatural because the classification seeks to place in the same class and tax under one head distributors of motor fuel engaged in business as an occupation and for profit, and a political subdivision of the state not engaged in business, which uses such fuels for a purely governmental purpose. Wright v. Fulton County, 169 Ga. 354, 150 S.E. 262, 1929 Ga. LEXIS 356 (1929).

Intent and purpose. — It is manifest from the terms of this section that the General Assembly did not intend to impose motor fuel tax on fuels if those fuels were neither sold for use nor used in the propulsion of motor vehicles on the public highways. The scheme of former Code 1933, Ch. 92-14 afforded to the distributor, the dealer, and the ultimate consumer the means of ascertaining the taxability or nontaxability of such motor fuels, the means of reporting the sales and paying the tax, or claiming the exemption, and when the exemption is drawn in question, of proving the exemption. Undercofler v. Standard Oil Co., 111 Ga. App. 592, 142 S.E.2d 298, 1965 Ga. App. LEXIS 1033 (1965).

Local sales and use taxes separate and distinct and not motor fuel taxes. — Trial court did not err in dismissing the plaintiffs' complaint that local sales and use taxes on motor fuels were not allocated to the maintenance and construction of public roads and bridges as the Motor Fuel Provision revealed that motor fuel taxes were limited to per-gallon taxes on distributors of motor fuel, and did not include sales and use taxes imposed on retail sales of motor fuels because the local sales and use taxes authorized by Ga. L. 2015, pp. 236, 241-264, §§ 5-8 (HB 170) were separate and distinct from the taxes on distributors and were not "motor fuel taxes" as that term was used in the Motor Fuel Provision; and, as a result, the defendants had no duty to appropriate for public roads an amount of revenue equal to the proceeds from local sales and use taxes. Ga. Motor Trucking Ass'n v. Georgia Dep't of Revenue, 301 Ga. 354, 801 S.E.2d 9, 2017 Ga. LEXIS 457 (2017).

Consumer may personally acquire a distributor's license. — This serves to release the dealer from responsibility for the payment of motor fuel taxes while at the same time assuring the consumer that the consumer need pay taxes only on that portion of fuel relegated to highway uses. Scott v. Blackmon, 132 Ga. App. 578, 208 S.E.2d 589, 1974 Ga. App. LEXIS 1748 (1974).

Tax assessments are made when one has the potential for highway use, that is, whether one owns or operates a vehicle capable of highway use at the time of the sale. Scott v. Blackmon, 132 Ga. App. 578, 208 S.E.2d 589, 1974 Ga. App. LEXIS 1748 (1974).

Tax not part of retail sales price for sales and use tax purposes. — Tax imposed by this section is upon the incident of the sale to the consumer and should not be included as a part of the retail sales price for calculating the sales and use tax. State v. Thoni Oil Magic Benzol Gas Stations, Inc., 121 Ga. App. 454, 174 S.E.2d 224, 1970 Ga. App. LEXIS 1252, aff'd, 226 Ga. 883, 178 S.E.2d 173, 1970 Ga. LEXIS 724 (1970).

Municipal tax based on storage capacity violates section. — Under the provision prohibiting municipalities from the levy of any fee, license, privilege, or excise tax or taxes upon the sale, purchase, storage, receipt, distribution, use, consumption, or other disposition of motor fuel, but not proscribing the levying by municipalities of reasonable license fees or taxes upon the business of selling motor fuel, a license and tax ordinance imposing graduated taxes on gasoline stations having storage capacities within various limits is void, since, although clothed in the language of merely imposing a tax on the gasoline storage capacity of filling stations, its necessary effect was to tax the storage of the fuel itself; and consequently to impose a prohibited additional tax on the

commodity itself. Southern Oil Stores, Inc. v. City of Macon, 188 Ga. 544, 4 S.E.2d 243, 1939 Ga. LEXIS 578 (1939).

Exemption of instrumentalities of United States government. — Federal Land Bank and other corporations composing the Farm Credit Administration of Columbia are instrumentalities of the United States government, within the meaning of this section, and by the express terms of this section no tax is levied in respect to sale of gasoline made to them. An action for injunction brought by such corporations against the commissioner states a cause of action, and should not have been dismissed on demurrer (now motion to dismiss). Federal Land Bank v. Forrester, 192 Ga. 446, 15 S.E.2d 517, 1941 Ga. LEXIS 484 (1941).

OPINIONS OF THE ATTORNEY GENERAL

American National Red Cross was not liable for the second motor fuel tax on its purchases of motor fuel because it was a federal instrumentality for purposes of immunity from state taxation; and former Code 1933, § 92-1420 imposing the tax adopted the exemption of the original Motor Fuel Tax Act under former Code 1933, § 92-1403 for sales of motor fuel to the United States. 1980 Op. Att'y Gen. No. 80-28.

So-called "economy" gasolines are taxed in the same manner as other grades of gasoline and the fact that those gasolines are sold at a lower rate to the consumer would not affect the eligibility for refund of the tax when other refund conditions are met. 1962 Ga. Op. Att'y Gen. 518.

No exemption for motor fuel purchased with funds appropriated by the federal government for use of the Georgia National Guard since the fuel is not paid for by the United States. 1963-65 Ga. Op. Att'y Gen. 92.

Municipalities are not exempt from the tax on motor fuel. 1950-51 Ga. Op. Att'y Gen. 188.

Municipal corporation is not exempt from payment of the motor fuel tax. 1945-47 Ga. Op. Att'y Gen. 583.

Proof by aviation gasoline distributors of refund claims. — Refunds may be made to the distributor when satisfactory proof submitted by the distributor that aviation gasoline for which refund is claimed was sold to the ultimate consumer. Such refunds may be refused when the accounting records of the distributor are not maintained in such manner as will readily permit verification of claims for refund by the commissioner's field auditors. 1962 Ga. Op. Att'y Gen. 492.

RESEARCH REFERENCES

Am. Jur. 2d.

71 Am. Jur. 2d, State and Local Taxation, §§ 23 et seq., 33 et seq., 501 et seq.

C.J.S.

53 C.J.S., Licenses, §§ 5, 56, 57.

ALR.

Municipal tax imposed upon or measured by sales of gasoline of one conducting business within city limits as payable in respect of sales or deliveries beyond city limits, 106 A.L.R. 1332.

Validity of privilege tax as applied to contractor performing contract with federal government, 114 A.L.R. 347.

Tax exemptions and the contract clause, 173 A.L.R. 15.

Legislative power to exempt from taxation property, purposes, or uses additional to those specified in Constitution, 61 A.L.R.2d 1031.

What constitutes a sale "at retail" within federal retailers' excise tax statute (26 USC (IRC 1954) chap 31), 93 A.L.R.2d 1120.

48-9-3. (Effective January 1, 2026.) Levy of excise tax; rate; taxation of motor fuels not commonly sold or measured by gallon; rate; prohibition of tax on motor fuel by political subdivisions; exception; exempted sales.

(a)(1) An excise tax is imposed at the rate of 26¢ per gallon on distributors who sell or use motor fuel, other than diesel fuel, within this state. An excise tax is imposed at the rate of 29¢ per gallon on distributors who sell or use diesel fuel within this state. It is the intention of the General Assembly that the legal incidence of the tax be imposed upon the distributor.

(1.1)(A) Beginning on July 1, 2016, and annually thereafter, the amount of this excise tax per gallon on distributors shall be automatically adjusted on an annual basis in accordance with this paragraph.

(B) Using 2014 as a base year, the department shall determine the average miles per gallon of all new vehicles registered in this state pursuant to Code Section 48-5C-1 using the average of combined miles per gallon published in the United States Department of Energy Fuel Economy Guide. Beginning on July 1, 2016, and each year thereafter, the department shall calculate the average miles per gallon of all new vehicles registered in this state in the previous year. The excise tax rate shall be multiplied by the percentage increase or decrease in fuel efficiency from the previous year, and the resulting increase or decrease shall be added to the excise tax rate to determine the preliminary excise tax rate.

(C) Once the preliminary excise tax rate is established, it shall be multiplied by the annual percentage of increase or decrease in the Consumer Price Index. The resulting calculation shall be added to the preliminary excise tax rate, and the result of such calculation shall be the new excise tax rate for motor fuels for the next calendar year.

(2) In the event any motor fuels which are not commonly sold or measured by the gallon or which are not otherwise provided for by this Code section are used in any motor vehicles on the public highways of this state, the commissioner may assess, levy, and collect a tax upon such fuels, under such regulations as the commissioner may promulgate, in accordance with and measured by the nearest power potential equivalent to that of one gallon of regular grade gasoline. Any determination by the commissioner of the power potential equivalent of such motor fuels shall be prima-facie correct. Upon each such quantity of such fuels used upon the public highways of this state, a tax at the same rate per gallon imposed on motor fuel

under paragraph (1) of this subsection shall be assessed and collected.

(3) No county, municipality, or other political subdivision of this state shall levy any fee, license, or other excise tax on a gallonage or gallonage equivalent basis upon the sale, purchase, storage, receipt, distribution, use, consumption, or other disposition of motor fuel. Nothing contained in this article shall be construed to prevent a county, municipality, or other political subdivision of this state from levying license fees or taxes upon any business selling motor fuel.

(4)(A) For purposes of this subsection, and notwithstanding any provision contained in the National Bureau of Standards Handbook or any other national standard that may be adopted by law or regulation, the gallon equivalent of:

(i) Compressed natural gas shall be not less than 110,000 British thermal units;

(ii) Electricity shall be not more than 11 kilowatt-hours;

(iii) Hydrogen shall be not less than 2.2 pounds; and

(iv) Liquefied natural gas shall not be less than 6.06 pounds.

(B) As used in this paragraph, the term:

(i) "Compressed natural gas" means a mixture of hydrocarbon gases and vapors, consisting principally of methane in gaseous form, that has been compressed for use as a motor fuel.

(ii) "Electricity" means electricity for use as a motor fuel.

(iii) "Liquefied natural gas" means methane or natural gas in the form of a cryogenic or refrigerated liquid for use as a motor fuel.

(b) No tax is imposed by this article upon or with respect to the following sales by duly licensed distributors:

(1) Bulk sales to a duly licensed distributor;

(2) Sales of motor fuel for export from this state when exempted by any provisions of the Constitutions of the United States or this state;

(3) Sales of motor fuel to a licensed distributor for export from this state;

(4) Sales of motor fuel to the United States for the exclusive use of the United States when the motor fuel is purchased and paid for by the United States;

(5) Sales of aviation gasoline to a duly licensed aviation gasoline

dealer, except for 1¢ per gallon of the tax imposed by paragraph (1) of subsection (a) of this Code section;

(6) Bulk sales of compressed petroleum gas or special fuel to a duly licensed consumer distributor;

(7)(A) Sales of compressed petroleum gas or special fuel to a consumer who has no highway use of the fuel at the time of the sale and does not resell the fuel. Consumers of compressed petroleum gas or special fuel who have both highway and nonhighway use of the fuel and resellers of such fuel must be licensed as distributors in order for sales of the fuel to be tax exempt. Each type of motor fuel is to be considered separately under this exemption.

(B)(i) In instances where a sale of compressed petroleum gas has been made to an ultimate consumer who has both highway and nonhighway use of that type of motor fuel and no tax has been paid by the distributor on the sale, the consumer shall become licensed as a consumer distributor of that type of motor fuel. After the consumer is licensed as a consumer distributor and if it is demonstrated to the satisfaction of the commissioner that the motor fuel purchased prior to the licensee's becoming licensed as a consumer distributor was used for nonhighway purposes, such sales shall be exempt from the tax imposed by this article; provided, however, that, if at the time of demonstration the ultimate consumer does not have both highway and nonhighway use of such fuel but it can be demonstrated by the distributor to the satisfaction of the commissioner that the motor fuel was used for nonhighway purposes, the sales shall be exempt from the tax imposed by this article; and

(ii)(I) Any special fuel sold by a distributor to a purchaser who has a storage receptacle which has a connection to a withdrawal outlet that may be used for highway use, as defined in paragraph (8) of Code Section 48-9-2, and any special fuel delivered from an electric vehicle charging station, is not exempt from the motor fuel and road taxes imposed by this article unless: (1) the purchaser is at the time of sale a valid licensed distributor of that type of motor fuel, or (2) an exemption certificate has been obtained on forms furnished by the Department of Revenue showing that there is no highway use of such fuels and the person obtaining such fuel is not a reseller of such fuels. Each exemption certificate shall be valid for a period of not more than three years and shall be kept by the distributor as one of the records specified in Code Section 48-9-8. It shall be the responsibility of the purchaser to notify the distributor when the purchaser is no longer qualified for

the nonhighway exemption. All applicable taxes must be charged the purchaser until the purchaser is granted a valid distributor's license for that type of motor fuel.

(II) Any such purchaser granted an exemption under subdivision (I) of this division who falsely claims the exemption or fails to rescind the purchaser's exemption certificate to the distributor in writing when he or she is no longer eligible for the exemption shall be deemed a distributor for purposes of taxation and is subject to all provisions of this article relating to distributors. This division in no way shall restrict the option of the purchaser to become licensed as a distributor. If the distributor sells special fuel to a purchaser who has a storage receptacle which has a connection to a withdrawal outlet that may be used for highway use, as defined in paragraph (8) of Code Section 48-9-2, and the purchaser is not a valid licensed distributor and has not executed a valid signed exemption certificate, the taxes imposed by this article are due from the distributor and not the purchaser on all sales of that type of fuel to that purchaser;

(8) Sales of fuel oils, compressed petroleum gas, or special fuel directly to an ultimate consumer to be used for heating purposes only. The delivery of fuel oils, compressed petroleum gas, or special fuel directly to an ultimate consumer to be used for heating purposes only shall be made directly into the storage receptacle of the heating unit of the consumer by the licensed distributor. To qualify for this exemption, sales must be delivered into storage receptacles that are not equipped with any secondary withdrawal outlets for the motor fuel;

(9) Sales of dyed fuel oils to a consumer for other than highway use as defined in paragraph (8) of Code Section 48-9-2;

(10)(A) During the period of July 1, 2012, through June 30, 2015, sales of motor fuel, as defined in paragraph (9) of Code Section 48-9-2, for public mass transit vehicles which are owned by public transportation systems which receive or are eligible to receive funds pursuant to 49 U.S.C. Sections 5307 and 5311 for which passenger fares are routinely charged and which vehicles are used exclusively for revenue generating purposes which motor fuel sales occur at bulk purchase facilities approved by the department.

(B) During the period of July 1, 2012, through June 30, 2015, sales of motor fuel, as defined in paragraph (9) of Code Section 48-9-2, for vehicles operated by a public campus transportation

system, provided that such system has a policy which provides for free transfer of passengers from the public transportation system operated by the jurisdiction in which the campus is located; makes the general public aware of such free transfer policy; and receives no state or federal funding to assist in the operation of such public campus transportation system and which motor fuel sales occur at bulk purchase facilities approved by the department.

(C) For purposes of this paragraph, the term "vehicle" or "vehicles" means buses, vans, minibuses, or other vehicles which have the capacity to transport seven or more passengers;

(11) For the period of time beginning July 1, 2013, and ending June 30, 2015, sales of motor fuel to public school systems in this state for the exclusive use of the school system in operating school buses when the motor fuel is purchased and paid for by the school system; or

(12) For the period of time beginning on March 18, 2022, and ending at the last moment of May 31, 2022, all sales of motor fuel.

(c) Fuel oils, compressed petroleum gas, or special fuel used by a duly licensed distributor for nonhighway purposes is exempt from the tax imposed by this article.

(c.1) No tax is imposed by this article upon or with respect to electricity or hydrogen sold for uses other than as a motor fuel.

(d) No export from this state shall be recognized as being exempt from tax under paragraphs (2) and (3) of subsection (b) of this Code section unless the exporter informs the seller and the terminal operator of the intention to export and causes to be set out the minimum information specified in subsection (e) of Code Section 48-9-17 on the bill of lading or equivalent documentation under which the motor fuel is transported. In the event that the motor fuel is delivered to any point other than that which is set out on the bill of lading or equivalent documentation, the legal incidence of the tax shall continue to be imposed exclusively upon the exporter who caused the export documentation to be issued and no exemption shall be recognized until suitable proof of exportation has been provided to the commissioner.

History.

Code 1933, § 92-1403, enacted by Ga. L. 1978, p. 186, § 1; Code 1933, § 91A-5003, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 102; Ga. L. 1979, p. 1274, §§ 1, 3; Ga. L. 1980, p. 10, § 30; Ga. L. 1985, p. 1644, § 1; Ga. L. 1986, p. 10, § 48; Ga. L. 1993, p. 811, § 2; Ga. L. 1993, p. 1502, § 4; Ga. L. 1994, p. 569, § 1; Ga. L. 1995, p. 10, § 48; Ga. L. 1995, p. 359, § 2; Ga. L. 2004, p. 425, § 2; Ga. L. 2005, p. 60, § 48/HB 95; Ga. L. 2005, p. 505, § 1/HB 384; Ga. L. 2006, p. 523, § 1/HB 1244; Ga. L. 2008, p. 889, § 2/HB 1035; Ga. L. 2010, p. 813, § 2/HB 1393; Ga. L. 2012, p. 1348, § 1/HB 743; Ga. L. 2013, p. 786, § 1/HB 211; Ga. L. 2013, p. 869, § 1/HB 371; Ga. L. 2015, p. 236, § 5-

13/HB 170; Ga. L. 2018, p. 152, § 3/HB 150; Ga. L. 2020, p. 371, § 8/HB 1098; Ga. L. 2020, p. 685, § 6/HB 511; Ga. L. 2022, p. 20, § 1/HB 304, p. 20, § 1/HB 304; Ga. L. 2023, p. 376, § 3-2/SB 146, effective January 1, 2026; Ga. L. 2024, p. 752, § 7/HB 516, effective July 1, 2024.

Delayed effective date.

Code Section 48-9-3 is set out twice in this Code. This version is effective January 1, 2026. For version effective until January 1, 2026, see the preceding version.

Amendments.

The 2023 amendment, effective January 1, 2025, in subsection (a), deleted the last sentence in subparagraph (a)(1.1)(C), which read: "The Consumer Price Index shall no longer be used after July 1, 2025.", inserted "or which are not otherwise provided for by this Code section" in the first sentence in paragraph (a)(2), inserted "or gallonage equivalent" in the first sentence in paragraph (a)(3), rewrote subparagraph (a)(4)(A), which read: "For purposes of this subsection, and notwithstanding the provisions of paragraph (2) of this subsection and any provision contained in the National Bureau of Standards Handbook or any other national standard that may be adopted by law or regulation, the gallon equivalent of compressed natural gas shall be not less than 110,000 British thermal units and the gallon equivalent of liquefied natural gas shall not be less than 6.06 pounds.", and, in subparagraph (a)(4)(B), added division (a)(4)(B)(ii) and redesignated former division (a)(4)(B)(ii) as division (a)(4)(B)(iii); in subdivision (b)(7)(B)(ii)(I), inserted "and any special fuel delivered from an electric vehicle charging station," following "Code Section 48-9-2,", deleted "from the purchaser" following "has been obtained", substituted "showing that there is no highway" for "showing that the purchaser has no highway", and inserted "the person obtaining such fuel" near the end of the first sentence; and added subsection (c.1). See Editor's notes for subsequent amendment.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2023, "Liquefied" was substituted for "Liquified" in division (a)(4)(A)(iv).

Editor's notes.

Ga. L. 2024, p. 752, § 7/HB 516, not codified by the General Assembly, amended Ga. L. 2023, p. 376/SB 146 by revising subsection (b) of Section 5-1 to read as follows: "(b) Part II of this Act, which provides for the regulatory authority of the Department of Agriculture, and Part III of this Act, relating to revenue and taxation, shall become effective on January 1, 2026."

48-9-4. Distributor's license required; validity and nonassignability; application procedure; fee; bond; release and discharge of surety.

(a) It is unlawful for any person to act as a distributor unless the person holds an uncanceled distributor's license issued by the commissioner. Any license issued under this article shall indicate the type of motor fuel the distributor is licensed to distribute. The license issued by the commissioner under this article is not assignable and is valid only for the distributor to whom issued. The license shall remain in force until canceled by the commissioner. Any distributor who holds a valid license on January 1, 1980, shall not be required to obtain a new license under this article.

(b)(1) To obtain a license, every distributor shall file with the commissioner an application under oath and in such form as required by the commissioner.

(2) The application shall contain, but not be limited to, the following information:

(A) The name of the legal entity;

(B) The trade name of the legal entity;

(C) The location or locations, with street address, of all principal office or business locations of the legal entity within and outside this state; and

(D) The name and address of the owner or owners of the legal entity or, in the case of a corporation, trust, or association, the principal officers of the corporation, trust, or association.

(3) Upon filing of the application, a filing fee of $10.00 shall be paid to the commissioner.

(c)(1) Concurrent with the filing of an application for a license, a surety bond shall be filed with the commissioner:

(A) In an amount of three times the average monthly motor fuel taxes due during the preceding 12 months and in no case shall the bond be in an amount of less than $1,000.00 or more than $150,000.00;

(B) With a surety company approved by the commissioner;

(C) Upon which the distributor shall be the principal obligor and the state shall be the obligee; and

(D) Conditioned upon the timely filing of true reports and payments by the distributor to the commissioner of all motor fuel taxes together with all penalties and interest imposed by this article and upon faithful compliance with all provisions of this article.

(2) Every bond shall be continuous. Each year shall constitute a separate obligation in the amount of taxes, penalty, and interest imposed or levied by this state while the bond is in force.

(3) Any surety may be released and discharged from all liability to the state occurring on a bond filed as provided in this subsection after the expiration of 60 days from the date upon which the surety lodges with the commissioner a written request to be released and discharged. The request shall not relieve, release, or discharge a surety from any tax, penalty, or interest accrued before the expiration of the 60 day period.

(4) The commissioner shall promptly notify the distributor in writing of the surety request for release from the bond and unless the distributor files a new bond with an approved surety within the 60

day period the commissioner shall cancel the license of the distributor.

(5) In the event that the surety for the distributor has become unacceptable in the opinion of the commissioner, the commissioner may require the distributor to file a new bond with an acceptable surety in the same amount and for the same period of time. Upon failure by the distributor to comply within 30 days, the commissioner shall cancel the license of the distributor. If acceptable surety is furnished, the commissioner shall cancel the bond that was unacceptable and substitute the new bond.

(6) In the discretion of the commissioner, in lieu of a bond executed by a surety, a distributor may furnish his bond not so executed if the distributor concurrently deposits and pledges with the commissioner direct obligations of the United States, bonds guaranteed by the United States, bonds of this state, bonds of any public authority created by the General Assembly, or bonds issued pursuant to Article 3 of Chapter 82 of Title 36, in an amount equal to three times the full amount of the bond or bonds otherwise required by this Code section.

(7) In lieu of a surety bond or a bond under paragraph (6) of this subsection, a distributor may, at the discretion of the commissioner, furnish an irrevocable letter of credit. Such letter of credit shall be:

(A) In an amount equal to three times the full amount of the surety bond or surety bonds otherwise required by this Code section;

(B) Issued by a financial institution approved by the commissioner; and

(C) Conditioned upon the timely filing of true reports and payments by the distributor to the commissioner of all motor fuel taxes together with all penalties and interest imposed by this article and upon faithful compliance with all provisions of this article.

History.

Code 1933, § 92-1405, enacted by Ga. L. 1978, p. 186, § 1; Code 1933, §§ 91A-5005, 91A-5006, enacted by Ga. L. 1978, p. 309, § 2; Code 1933, § 91A-5004, enacted by Ga. L. 1979, p. 5, § 102; Ga. L. 1980, p. 10, § 31; Ga. L. 1990, p. 799, § 2.

OPINIONS OF THE ATTORNEY GENERAL

Licensing of state agencies as distributors. — State agency may be required to become licensed as a motor fuel distributor when the agency makes taxable use of a portion of fuel purchased. 1960-61 Ga. Op. Att'y Gen. 534.

RESEARCH REFERENCES

C.J.S.
53 C.J.S., Licenses, §§ 8 et seq., 56 et seq.
ALR.
Right to enjoin business competitor from unlicensed or otherwise illegal acts or practices, 90 A.L.R.2d 7.

48-9-5. Distributor's license optional for compressed petroleum gas or special fuel with both highway and nonhighway uses; resellers of fuel oils, compressed petroleum gas, or special fuel.

(a) Any person who has both highway and nonhighway use of compressed petroleum gas or special fuel may elect to become licensed as a distributor of that type of motor fuel. The distributor shall be qualified to purchase motor fuel of that type exempt from the taxes imposed by this article only after becoming licensed; provided, however, that no license shall be required from a person whose only nonhighway use is of dyed fuel oils. The distributor shall be subject to this article.

(b) Any person who resells fuel oils, compressed petroleum gas, or special fuel may elect to become licensed as a distributor of that type of motor fuel. The distributor shall be qualified to purchase motor fuel of that type exempt from the taxes imposed by this article. The distributor shall be subject to this article.

History.
Code 1933, § 92-1406, enacted by Ga. L. 1978, p. 186, § 1; Code 1933, § 91A-5003, enacted by Ga. L. 1978, p. 309, § 2; Code 1933, § 91A-5005, enacted by Ga. L. 1979, p. 5, § 102; Ga. L. 1995, p. 359, § 3; Ga. L. 2004, p. 425, § 3.

RESEARCH REFERENCES

ALR.
What constitutes manufacturing and who is a manufacturer under tax laws, 17 A.L.R.3d 7.

48-9-6. Licensing of sellers and consumers of aviation gasoline as aviation gasoline dealers; application; contents; filing fee; validity and nonassignability of license.

(a) Sellers or consumers of aviation gasoline shall be eligible to become licensed as aviation gasoline dealers. To obtain an aviation gasoline dealer license, the person shall pay a $10.00 fee to and shall file with the commissioner an application as prescribed by the commissioner.

(b) The application required by subsection (a) of this Code section shall include, but not be limited to, the following information:

(1) Name of the legal entity;

(2) Trade name of the legal entity;

(3) The location or locations, with street address, of all principal office or business locations of the legal entity within or outside this state; and

(4) The name and address of the owner or owners of the legal entity or, in the case of a corporation, trust, or association, the principal officers of the corporation, trust, or association.

(c) The license issued by the commissioner under this Code section is not assignable and is valid only for the person to whom the license is issued. The license shall remain in force until canceled by the commissioner. Any aviation gasoline dealer who holds a valid license on January 1, 1980, shall not be required to obtain a new license under this Code section.

History.
Code 1933, § 92-1407, enacted by Ga. L. 1978, p. 186, § 1; Code 1933, § 91A-5005, enacted by Ga. L. 1978, p. 309, § 2; Code 1933, § 91A-5006, enacted by Ga. L. 1979, p. 5, § 102.

RESEARCH REFERENCES

C.J.S.
53 C.J.S., Licenses, §§ 8 et seq., 50, 52, 58, 59, 101.

48-9-7. Discontinuance, sale, or transfer of distributor's operations; notice to commissioner; payment of taxes concurrent with discontinuance, sale, or transfer; failure to give notice.

(a) When any distributor ceases his operations or has a change in legal entity, the distributor shall notify the commissioner in writing at least ten days prior to the discontinuance, sale, or transfer of the operations. The notice shall give the date of discontinuance, sale, or transfer and shall give the name of the entity acquiring the operations. All taxes, penalties, and interest due and payable under this article shall be paid concurrently with the discontinuance, sale, or transfer of the operations.

(b) Failure to give the notice required by this Code section shall make the purchaser or transferee liable to the state for all taxes, penalties, and interest due, but only to the extent of the value of the assets acquired from the distributor.

History.
Code 1933, § 92-1408, enacted by Ga. L. 1978, p. 186, § 1; Code 1933, § 91A-5016, enacted by Ga. L. 1978, p. 309, § 2; Code 1933, § 91A-5007, enacted by Ga. L. 1979, p. 5, § 102.

48-9-8. (Effective until January 1, 2026.) Tax reports from distributors; quarterly or annual; payments; business records of distributors, resellers, and retailers; inspection; dyed fuel oil notices.

(a) For the purpose of determining the amount of tax imposed by paragraph (1) of subsection (a) of Code Section 48-9-3, each distributor shall file electronically with the commissioner by the twentieth day of each calendar month a report for the preceding month's activities. By regulation, the commissioner may prescribe the manner by which such reports are electronically filed and may permit distributors having a quarterly or annual tax not in excess of amounts set by the commissioner to file quarterly or annual reports.

(b) At the time of submitting the report required by subsection (a) of this Code section, the distributor shall pay to the commissioner the tax imposed by paragraph (1) of subsection (a) of Code Section 48-9-3 on all gasoline, fuel oils, compressed petroleum gas, special fuel, and aviation gasoline sold or used in this state during the preceding calendar month, less an allowance of 1 percent of the tax as compensation to cover losses and expenses incurred in reporting the tax to the state. The allowance shall not be deductible unless the report and payment of tax are made on or before the twentieth day of the month as required by this article.

(c)(1) Each distributor and each aviation gasoline dealer licensed by the commissioner shall keep such records as the commissioner shall require for the effective administration of this article and for the reporting and justification of the amount of tax liability. The records shall include, but are not limited to, all motor fuel received, sold, delivered, or used within this state and all motor fuel exported from this state for a period of three years. Invoices, bills of lading, and other papers shall be maintained in an auditable manner to support the reports filed with the commissioner. When an exemption from the taxes imposed by this article has been taken by the distributor, the records and papers of the distributor must account for the motor fuel and the exemption from the taxes imposed.

(2) All other persons receiving motor fuel in bulk quantities for sale, distribution, use, or consumption and not specifically covered by this article shall maintain and keep records of motor fuel received and all invoices, bills of lading, and other records required by the commissioner for a period of three years.

(3) Every person who sells motor fuel at retail shall make the sales through pumps equipped with meters or totalizers. Every person making sales must maintain for a period of three years records of gallons received and sold to account for all motor fuel.

(4) The commissioner or his authorized agents shall have the

right during regular business hours to inspect the books and records of any distributor, aviation gasoline dealer, or any other person who receives, sells, uses, or consumes motor fuel. The commissioner or his agents may inspect the books and records of any person who the commissioner may believe has information that could be necessary to the enforcement of any revenue law of this state.

(5) Every person who sells or delivers dyed fuel oil shall put on the face of the delivery document or invoice, or both if both are used, a notice that the product is dyed and is not for highway use. The commissioner may by regulation provide that any notice conforming to regulations promulgated by either the United States Environmental Protection Agency or Internal Revenue Service will be sufficient notice for purposes of this Code section.

History.

Code 1933, § 92-1409, enacted by Ga. L. 1978, p. 186, § 1; Code 1933, §§ 91A-5007, 91A-5013, 91A-5014, enacted by Ga. L. 1978, p. 309, § 2; Code 1933, § 91A-5008, enacted by Ga. L. 1979, p. 5, § 102; Ga. L. 1980, p. 10, §§ 32, 33; Ga. L. 1990, p. 799, § 3; Ga. L. 1995, p. 359, § 4; Ga. L. 2004, p. 425, § 4; Ga. L. 2005, p. 159, § 25/HB 488; Ga. L. 2019, p. 932, § 1/SB 127.

Delayed effective date.

Code Section 48-9-8 is set out twice in this Code. This version is effective until January 1, 2026. For version effective January 1, 2026, see the following version.

Editor's notes.

Ga. L. 2005, p. 159, § 1/HB 488, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2005.'"

Ga. L. 2019, p. 932, § 2/SB 127, not codified by the General Assembly, provides, in part, that this Act shall be applicable to returns filed on or after July 1, 2019.

RESEARCH REFERENCES

Am. Jur. 2d.

71 Am. Jur. 2d, State and Local Taxation, §§ 508, 510.

48-9-8. (Effective January 1, 2026.) Tax reports from distributors; quarterly or annual; payments; business records of distributors, resellers, and retailers; inspection; dyed fuel oil notices.

(a) For the purpose of determining the amount of tax imposed by paragraph (1) of subsection (a) of Code Section 48-9-3, each distributor shall file electronically with the commissioner by the twentieth day of each calendar month a report for the preceding month's activities. By regulation, the commissioner may prescribe the manner by which such reports are electronically filed and may permit distributors having a quarterly or annual tax not in excess of amounts set by the commissioner to file quarterly or annual reports.

(b) At the time of submitting the report required by subsection (a) of

this Code section, the distributor shall pay to the commissioner the tax imposed by paragraph (1) of subsection (a) of Code Section 48-9-3 on all gasoline, fuel oils, compressed petroleum gas, special fuel, and aviation gasoline sold or used in this state during the preceding calendar month, less an allowance of 1 percent of the tax as compensation to cover losses and expenses incurred in reporting the tax to the state. The allowance shall not be deductible unless the report and payment of tax are made on or before the twentieth day of the month as required by this article.

(c)(1) Each distributor and each aviation gasoline dealer licensed by the commissioner shall keep such records as the commissioner shall require for the effective administration of this article and for the reporting and justification of the amount of tax liability. The records shall include, but are not limited to, all motor fuel received, sold, delivered, or used within this state and all motor fuel exported from this state for a period of three years. Invoices, bills of lading, and other papers shall be maintained in an auditable manner to support the reports filed with the commissioner. When an exemption from the taxes imposed by this article has been taken by the distributor, the records and papers of the distributor must account for the motor fuel and the exemption from the taxes imposed.

(2) All other persons receiving motor fuel in bulk quantities for sale, distribution, use, or consumption and not specifically covered by this article shall maintain and keep records of motor fuel received and all invoices, bills of lading, and other records required by the commissioner for a period of three years.

(3) Every person who sells motor fuel at retail shall make the sales through pumps or systems equipped with meters or totalizers. Every person making sales shall maintain for a period of three years records of gallons or gallon equivalents received and sold to account for all motor fuel.

(4) The commissioner or his authorized agents shall have the right during regular business hours to inspect the books and records of any distributor, aviation gasoline dealer, or any other person who receives, sells, uses, or consumes motor fuel. The commissioner or his agents may inspect the books and records of any person who the commissioner may believe has information that could be necessary to the enforcement of any revenue law of this state.

(5) Every person who sells or delivers dyed fuel oil shall put on the face of the delivery document or invoice, or both if both are used, a notice that the product is dyed and is not for highway use. The commissioner may by regulation provide that any notice conforming to regulations promulgated by either the United States Environmental Protection Agency or Internal Revenue Service will be sufficient notice for purposes of this Code section.

History.

Code 1933, § 92-1409, enacted by Ga. L. 1978, p. 186, § 1; Code 1933, §§ 91A-5007, 91A-5013, 91A-5014, enacted by Ga. L. 1978, p. 309, § 2; Code 1933, § 91A-5008, enacted by Ga. L. 1979, p. 5, § 102; Ga. L. 1980, p. 10, §§ 32, 33; Ga. L. 1990, p. 799, § 3; Ga. L. 1995, p. 359, § 4; Ga. L. 2004, p. 425, § 4; Ga. L. 2005, p. 159, § 25/HB 488; Ga. L. 2019, p. 932, § 1/SB 127; Ga. L. 2023, p. 376, § 3-3/SB 146, effective January 1, 2026; Ga. L. 2024, p. 752, § 7/HB 516, effective July 1, 2024.

Delayed effective date.

Code Section 48-9-8 is set out twice in this Code. This version is effective January 1, 2026. For version effective until January 1, 2026, see the preceding version.

Amendments.

The 2023 amendment, effective January 1, 2025, in paragraph (c)(3), inserted "or systems" following "through pumps" in the first sentence, and, in the second sentence, substituted "sales shall" for "sales must" and inserted "or gallon equivalents" following "records of gallons". See Editor's notes for subsequent amendment.

Editor's notes.

Ga. L. 2024, p. 752, § 7/HB 516, not codified by the General Assembly, amended Ga. L. 2023, p. 376/SB 146 by revising subsection (b) of Section 5-1 to read as follows: "(b) Part II of this Act, which provides for the regulatory authority of the Department of Agriculture, and Part III of this Act, relating to revenue and taxation, shall become effective on January 1, 2026."

48-9-9. (Effective until January 1, 2026.) Reports of motor fuel deliveries; persons required to report; procedure; restrictions on delivery; reports of unlicensed purchasers.

(a)(1) A report of all deliveries of motor fuel shall be made to the commissioner by:

(A) Each of the following companies and carriers transporting motor fuel either in interstate or in intrastate commerce to points within this state:

(i) Every railroad company;

(ii) Every street, suburban, or interurban railroad company;

(iii) Every pipeline company;

(iv) Every water transportation company;

(v) Every common or contract carrier; and

(vi) Every operator of a terminal;

(B) Every person transporting motor fuel by whatever manner to a point in this state from any point outside this state; and

(C) Every person transporting motor fuel from a point in this state to a point outside this state.

(2) Each report required by this subsection shall be:

(A) Made under oath on forms prescribed by the commissioner; and

(B) Filed by the twentieth day of each calendar month to cover the preceding calendar month's activities.

(b) The commissioner shall assign a tank registration number to each person transporting motor fuel over the public highways or navigable waters of this state and shall furnish a separate tank identification card for each transport tank truck or vessel operated within this state. The registration number shall be displayed continuously and conspicuously on the truck, tank, or vessel operated by persons transporting motor fuel. The identification card issued for each such truck or vessel shall be available for inspection by the commissioner's agents and shall remain with the truck or vessel when transporting motor fuel on the public highways or navigable waters of this state. Tank identification cards are not transferable and are valid only for the transport tank truck or vessel for which issued.

(c) No person shall transport motor fuel in this state except in a transport tank truck or vessel which is visibly marked on each side and on the rear with the words "Motor Fuel," "Flammable," or other indication of the type of product being transported suitable to the commissioner or other regulatory agencies, together with the name and address of the owner of the transport tank truck or vessel and the tank registration number. This subsection shall not apply to vehicles or vessels transporting motor fuel contained in their running tanks and used solely for their propulsion or to vehicles or vessels transporting not more than five gallons of motor fuel for emergency purposes.

(d)(1) Every person transporting motor fuel over the public highways or navigable waters of this state shall have in such person's possession an invoice, bill of sale, or other document which identifies:

(A) The true name and address of the person from whom the motor fuel was received;

(B) The number of gallons originally received;

(C) The true name and address of every person who has received any part of the fuel;

(D) The number of gallons delivered to such persons; and

(E) The city or county and state of destination as represented to the transporter by the person who arranged the transportation.

(2) Failure to produce such invoice, bill of sale, or other document when demanded or failure of a document produced upon demand to meet the requirements of this Code section shall be prima-facie evidence of a violation of this article.

(3) The transporter shall leave a copy of the invoice, bill of lading, or other documentation with each person who receives the fuel into bulk storage for resale.

(e) Delivery of motor fuel from a transport tank truck or vessel directly into the fuel tank of any motor vehicle in this state is prohibited except in cases of emergency.

(f) Every person purchasing or otherwise acquiring motor fuel in bulk quantities for sale, use, or other disposition in this state who is not required to be licensed as a distributor by this article may be required to file by the twentieth day of each calendar month a report on forms prescribed by the commissioner to account for all such motor fuel acquired during the preceding calendar month. Every operator of a terminal who receives motor fuel in bulk for storage shall include on a report to the commissioner the names of all persons who are storing fuel in the terminal and the quantity received, stored, and delivered during the month on behalf of each such account. The report shall specify what portion of the deliveries recorded for each account were within the terminal to others and what portion was removed from the terminal facility via the loading rack. The report shall identify the city or county and state of destination of the deliveries as reflected on the bills of lading issued by the terminal operator.

History.

Code 1933, § 92-1410, enacted by Ga. L. 1978, p. 186, § 1; Code 1933, §§ 91A-5010, 91A-5011, 91A-5012, enacted by Ga. L. 1978, p. 309, § 2; Code 1933, § 91A-5009, enacted by Ga. L. 1979, p. 5, § 102; Ga. L. 1981, p. 1019, § 1; Ga. L. 1981, p. 1857, § 42; Ga. L. 1993, p. 1502, §§ 5, 6; Ga. L. 2007, p. 309, § 12/HB 219; Ga. L. 2017, p. 774, § 48/HB 323.

Delayed effective date.

Code Section 48-9-9 is set out twice in this Code. This version is effective until January 1, 2026. For version effective January 1, 2026, see the following version.

Cross references.

Regulation of size, weight, and other characteristics of motor vehicles operated on highways of state, § 32-6-20 et seq.

Regulation of motor carriers generally, § 40-1-50 et seq.

48-9-9. (Effective January 1, 2026.) Reports of motor fuel deliveries; persons required to report; procedure; restrictions on delivery; reports of unlicensed purchasers.

(a)(1) A report of all deliveries of motor fuel other than special fuel of a type other than electricity shall be made to the commissioner by:

(A) Each of the following companies and carriers transporting motor fuel either in interstate or in intrastate commerce to points within this state:

(i) Every railroad company;

(ii) Every street, suburban, or interurban railroad company;

(iii) Every pipeline company;

(iv) Every water transportation company;

(v) Every common or contract carrier; and

(vi) Every operator of a terminal;

(B) Every person transporting motor fuel by whatever manner to a point in this state from any point outside this state; and

(C) Every person transporting motor fuel from a point in this state to a point outside this state.

(2) Each report required by this subsection shall be:

(A) Made under oath on forms prescribed by the commissioner; and

(B) Filed by the twentieth day of each calendar month to cover the preceding calendar month's activities.

(b) The commissioner shall assign a tank registration number to each person transporting motor fuel over the public highways or navigable waters of this state and shall furnish a separate tank identification card for each transport tank truck or vessel operated within this state. The registration number shall be displayed continuously and conspicuously on the truck, tank, or vessel operated by persons transporting motor fuel. The identification card issued for each such truck or vessel shall be available for inspection by the commissioner's agents and shall remain with the truck or vessel when transporting motor fuel on the public highways or navigable waters of this state. Tank identification cards are not transferable and are valid only for the transport tank truck or vessel for which issued.

(c) No person shall transport motor fuel over the public highways or navigable waters of this state except in a transport tank truck or vessel which is visibly marked on each side and on the rear with the words "Motor Fuel," "Flammable," or other indication of the type of product being transported suitable to the commissioner or other regulatory agencies, together with the name and address of the owner of the transport tank truck or vessel and the tank registration number. This subsection shall not apply to vehicles or vessels transporting motor fuel contained in their running tanks and used solely for their propulsion or to vehicles or vessels transporting not more than five gallons of motor fuel for emergency purposes.

(d)(1) Every person transporting motor fuel over the public highways or navigable waters of this state shall have in such person's possession an invoice, bill of sale, or other document which identifies:

(A) The true name and address of the person from whom the motor fuel was received;

(B) The number of gallons originally received;

(C) The true name and address of every person who has received any part of the fuel;

(D) The number of gallons delivered to such persons; and

(E) The city or county and state of destination as represented to the transporter by the person who arranged the transportation.

(2) Failure to produce such invoice, bill of sale, or other document when demanded or failure of a document produced upon demand to meet the requirements of this Code section shall be prima-facie evidence of a violation of this article.

(3) The transporter shall leave a copy of the invoice, bill of lading, or other documentation with each person who receives the fuel into bulk storage for resale.

(e) Delivery of motor fuel from a transport tank truck or vessel directly into the fuel tank of any motor vehicle in this state is prohibited except in cases of emergency.

(f) Every person purchasing or otherwise acquiring motor fuel in bulk quantities for sale, use, or other disposition in this state who is not required to be licensed as a distributor by this article may be required to file by the twentieth day of each calendar month a report on forms prescribed by the commissioner to account for all such motor fuel acquired during the preceding calendar month. Every operator of a terminal who receives motor fuel in bulk for storage shall include on a report to the commissioner the names of all persons who are storing fuel in the terminal and the quantity received, stored, and delivered during the month on behalf of each such account. The report shall specify what portion of the deliveries recorded for each account were within the terminal to others and what portion was removed from the terminal facility via the loading rack. The report shall identify the city or county and state of destination of the deliveries as reflected on the bills of lading issued by the terminal operator.

History.

Code 1933, § 92-1410, enacted by Ga. L. 1978, p. 186, § 1; Code 1933, §§ 91A-5010, 91A-5011, 91A-5012, enacted by Ga. L. 1978, p. 309, § 2; Code 1933, § 91A-5009, enacted by Ga. L. 1979, p. 5, § 102; Ga. L. 1981, p. 1019, § 1; Ga. L. 1981, p. 1857, § 42; Ga. L. 1993, p. 1502, §§ 5, 6; Ga. L. 2007, p. 309, § 12/HB 219; Ga. L. 2017, p. 774, § 48/HB 323; Ga. L. 2023, p. 376, § 3-4/SB 146, effective January 1, 2026; Ga. L. 2024, p. 752, § 7/HB 516, effective July 1, 2024.

Delayed effective date.

Code Section 48-9-9 is set out twice in this Code. This version is effective January 1, 2026. For version effective until January 1, 2026, see the preceding version.

Amendments.

The 2023 amendment, effective January 1, 2025, inserted "other than special fuel of a type other than electricity" in the beginning of paragraph (a)(1), and in subsection (c), substituted "No person shall transport motor fuel over the public highways or navigable waters of this state" for "No person shall transport motor fuel in this state" at the beginning of the first sentence. See Editor's notes for subsequent amendment.

Editor's notes.

Ga. L. 2024, p. 752, § 7/HB 516, not codified by the General Assembly, amended Ga. L. 2023, p. 376/SB 146 by revising subsection (b) of Section 5-1 to read as follows: "(b) Part II of this Act,

which provides for the regulatory authority of the Department of Agriculture, and Part III of this Act, relating to revenue and taxation, shall become effective on January 1, 2026."

48-9-10. Refunds of motor fuel taxes; refund permits generally; refunds to persons using gasoline for agricultural purposes; amounts and interest.

(a)(1) Retail dealers and persons using gasoline for agricultural purposes are entitled to a refund of motor fuel taxes as provided by this Code section. The right to receive any refund shall not be assignable and any assignment shall be void and of no effect. No payment shall be made by the commissioner to any person other than the original person entitled to the refund. To enable the commissioner to make the refunds as authorized by this Code section, the Office of the State Treasurer, under warrants drawn by the Governor, shall remit to the commissioner from funds appropriated by law an amount equivalent to the refunds. Before the Governor issues a warrant for the funds, he shall require the commissioner to certify the name of each applicant and the amount to which each applicant is entitled.

(2) In order for any person to be eligible for the refund provided by this Code section, the person must obtain a refund permit issued by the commissioner. The permit application shall state the information required by the commissioner to establish the right of the person to obtain a refund. In order to receive the refund, the applicant shall file with the commissioner a claim as prescribed by the commissioner and shall attach invoices to show proof of purchase, payment of tax, and total accountability of the motor fuel handled, consumed, or sold. Invoices submitted for proof of purchase shall contain no alterations or corrections of the name or dates originally shown on the invoice. No invoice that bears a date falling within a period of time covered by a previously paid refund claim shall be accepted to support the refund claim.

(3) Businesses engaged in the sale and field application of fertilizers, crop protection chemicals, and poultry litter which operate vehicles licensed for agricultural field use as defined in paragraph (.1) of Code Section 48-9-2 are entitled to a refund of motor fuel taxes paid on purchases of diesel fuel. The commissioner shall prescribe a simplified method of filing the proper records of taxable diesel fuel purchases used exclusively for agricultural field use vehicles which shall serve as the basis for the refund. The refund shall be computed by multiplying the total annual volume of taxable diesel fuel purchases used exclusively for agricultural field use vehicles, times the combined total of the current state motor fuel tax and the second motor fuel tax, with the resulting product further multiplied by a factor of .90. The commissioner shall adopt such additional rules and

regulations as may be necessary to provide for the proper administration of this paragraph.

(b)(1) Every person who purchases gasoline in quantities of 25 gallons or more, when the gasoline is used in operating farm tractors and other equipment used for the production of agricultural crops on land owned or leased by such person, shall be entitled to a refund of all of the taxes imposed on gasoline by paragraph (1) of subsection (a) of Code Section 48-9-3 except 1¢ per gallon, subject to the rules and regulations adopted by the commissioner. All applications for refunds must be filed with the commissioner within 18 months from the date of purchase of the gasoline on which the refund is claimed.

(2) Every person who purchases fuel oils, except those dyed fuel oils as defined in Code Section 48-9-2, in quantities of 25 gallons or more, when the fuel oils are used in operating equipment used for nonhighway purposes, shall be entitled to a refund of all of the taxes imposed on fuel oils by paragraph (1) of subsection (a) of Code Section 48-9-3 except that no interest shall be paid. All applications for refunds must be filed with the commissioner within 18 months from the date of purchase of the fuel oils on which the refund is claimed.

(c) Every person who purchases motor fuel in bulk quantities and sells the motor fuel at retail shall be entitled to a refund of 2 percent of the first 5 1/2¢ per gallon of the motor fuel taxes as compensation to cover losses for evaporation, shrinkage, and spillage. A licensed distributor of a type of motor fuel is not entitled to this refund on fuel for which the distributor holds a license. All applications for refunds must be filed with the commissioner within six months from the date of purchase of the motor fuel on which the refund is claimed. Separate claims shall be made to reflect the operations of each retail location at which motor fuel is sold at retail if more than one retail location is operated by the applicant.

(d) Refunds claimed and paid pursuant to this Code section shall not bear interest.

History.

Code 1933, § 92-1411, enacted by Ga. L. 1978, p. 186, § 1; Code 1933, §§ 91A-5007, 91A-5018, enacted by Ga. L. 1978, p. 309, § 2; Code 1933, § 91A-5010, enacted by Ga. L. 1979, p. 5, § 102; Ga. L. 1980, p. 10, § 34; Ga. L. 1982, p. 3, § 48; Ga. L. 1990, p. 799, § 4; Ga. L. 1992, p. 2095, § 1; Ga. L. 1993, p. 1402, § 18; Ga. L. 1998, p. 1580, § 2; Ga. L. 2004, p. 425, § 5; Ga. L. 2010, p. 863, § 2/SB 296.

Law reviews.

For note as to the voluntary payment doctrine in Georgia, see 16 Ga. L. Rev. 893 (1982).

JUDICIAL DECISIONS

Refunds are to be made to taxpayers. — Retailer, like the distributor, of gasoline is not a taxpayer in the capacity of collecting the motor fuel

taxes and turning the taxes over to the commissioner. Maynard v. Thrasher, 77 Ga. App. 316, 48 S.E.2d 473 (1948) (decided under former Code 1933, § 92-1407, prior to amendment by Ga. L. 1978, p. 186, § 1).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, §§ 92-1403 and 92-1407, prior to amendment by Ga. L. 1978, p. 186, § 1, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section.

Who qualifies as a retailer. — Gasoline supplier, selling at tank wagon price, when the station premises are leased to a lessee-dealer and the gasoline is consigned to the dealer, would not be considered a retailer so as to qualify for the 2 percent refund. 1963-65 Ga. Op. Att'y Gen. 268 (decided under former Code 1933, § 92-1407, prior to amendment by Ga. L. 1978, p. 186, § 1).

Tax refund for gasoline used for agricultural purposes. — In order to qualify for the refund, the claimant must be using the gasoline in the operation of tractors or other farm equipment which is used exclusively for agricultural purposes and farm operations. Therefore, to be entitled to a refund, the claimant must be engaged in agriculture, that is, tilling the soil for the production of "crops" as that term was defined at common law. These crops must be of the type which owe the crops' existence to the cultivation of the land by the yearly labor of people. Perennial trees, bushes, and grasses do not qualify. 1963-65 Ga. Op. Att'y Gen. 191 (decided under former Code 1933, § 92-1403, prior to amendment by Ga. L. 1978, p. 186, § 1).

As to livestock and poultry, the eligibility for gasoline tax refund should be limited to where the actual production thereof was a part of a bona fide farm operation. In other words, if cattle were placed in a pen and no use of the land was made to grow any part of the feed nor any part of the land used for the purpose of grazing, then the cattle production would not be a farm operation and, therefore, not eligible for a gasoline tax refund. But when livestock is produced as a bona fide part of the farm operation, when the production of the land and the agricultural pursuit is marketed or used through the means of livestock, the person should be entitled to the refund and not be penalized and denied a refund because of livestock production. 1962 Ga. Op. Att'y Gen. 8 (decided under former Code 1933, § 92-1403, prior to amendment by Ga. L. 1978, p. 186, § 1).

Person engaged in the production of poultry is farming within the language of this section, and in the event the person otherwise fulfills the terms and conditions prescribed by the statute, the person would be entitled to a gasoline tax refund. 1962 Ga. Op. Att'y Gen. 16 (decided under former Code 1933, § 92-1403, prior to amendment by Ga. L. 1978, p. 186, § 1).

When a person takes another's poultry and another's feed and in effect sells services in caring for and feeding the poultry, when no part of the acreage is used to produce any feed or grazing for the poultry produced, the person should not be entitled to the refund, but when a person owns acreage that is used for the production of the feed, or to provide grazing for the poultry, that person should not be denied the refund. 1962 Ga. Op. Att'y Gen. 18 (decided under former Code 1933, § 92-1403, prior to amendment by Ga. L. 1978, p. 186, § 1).

Nurseries. — As to nurseries, a refund should be allowed to the extent that the gasoline is used in the production of nursery products that is in truth and in fact a farm operation. 1962 Ga. Op. Att'y Gen. 8; 1962 Ga. Op. Att'y Gen. 516 (decided under former Code 1933, § 92-1403, prior to Ga. L. 1978, p. 186, § 1).

Foreign farm operators also entitled to refund. — Foreign farm operator otherwise qualifying for gasoline tax refund for gasolines purchased for farm use would not be denied a refund simply because the operator is not a resident of this state. 1962 Ga. Op. Att'y Gen. 518 (decided under former Code 1933, § 92-1403, prior to amendment by Ga. L. 1978, p. 186, § 1).

Tractors used for plowing firebreaks. — Turpentine company which utilizes tractors for the purpose of plowing firebreaks is not entitled to a vendee's tax refund permit for the gasoline used in such tractors. 1952-53 Ga. Op. Att'y Gen. 460 (decided under former Code 1933, § 92-1403, prior to amendment by Ga. L. 1978, p. 186, § 1).

RESEARCH REFERENCES

C.J.S.

53 C.J.S., Licenses, § 112 et seq.

ALR.

Right to interest on tax refund or credit, 112 A.L.R. 1183; 88 A.L.R.2d 823.

Retrospective operation of statute enlarging or shortening period for claim of tax refund, 163 A.L.R. 778.

When right to refund of state or local taxes accrues, within statute limiting time for applying for refund, 46 A.L.R.2d 1350.

Right to interest on tax refund or credit in absence of specific controlling statute, 88 A.L.R.2d 823.

Validity and applicability of statutory time limit concerning taxpayer's claim for state tax refund, 1 A.L.R.6th 1.

48-9-10.1. Refunds of sales and use taxes to credit card issuers.

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

(1) "Credit card issuer" means the party that extends credit, through the issuance of a credit card, to the qualified governmental tax-exempt entity that purchases "motor fuel" for "highway use" as those terms are defined under Code Section 48-9-2 for a qualified governmental tax-exempt entity's exclusive use.

(2) "Qualified governmental tax-exempt entity" means a government entity that is exempt from sales and use tax under Chapter 8 of this title, or other provision of general law.

(b) In the event that a sale of motor fuel for highway use is made to a qualified governmental tax-exempt entity by means of a credit card issued by a credit card issuer to the qualified governmental tax-exempt entity when such credit card issuer invoices and bills such qualified governmental tax-exempt entity net of the applicable taxes, such credit card issuer may obtain a refund for the sales and use taxes paid on such sales.

(c) In order for a credit card issuer to be eligible to claim a refund of sales and use taxes provided under this Code section, the credit card issuer must be registered with the Internal Revenue Service under

Section 4101 of the Internal Revenue Code as a credit card issuer; establish that it has not collected the tax from the qualified governmental tax-exempt entity that purchased the motor fuel; establish that it repaid the amount of the tax to the dealer in full with all applicable taxes included; and has obtained the written consent of the dealer for the allowance of the credit or refund or has otherwise made arrangements which directly or indirectly provide the dealer with reimbursement of the tax.

(d) Refunds of sales and use tax pursuant to this Code section shall be made without interest.

(e) The commissioner is authorized to promulgate rules and regulations deemed necessary in order to administer and effectuate this Code section.

History.
Code 1981, § 48-9-10.1, enacted by Ga. L. 2009, p. 813, § 2/HB 441; Ga. L. 2013, p. 141, § 48/HB 79.

48-9-11. Falsely swearing on application for refund of gasoline tax under Code Section 48-9-10; penalty.

(a) It shall be unlawful for any person falsely to swear to a refund application, information statement, or any sworn statement made in connection with the procurement of a refund of gasoline tax under Code Section 48-9-10 when such person knows that any statement contained in the statement or application is false.

(b) Any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor.

History.
Ga. L. 1946, p. 19, § 1; Code 1933, § 91A-9944, enacted by Ga. L. 1978, p. 309, § 2.

Cross references.
False swearing generally, § 16-10-71.

RESEARCH REFERENCES

C.J.S.
70 C.J.S., Perjury, §§ 2, 3, 5 et seq.

48-9-12. (Effective until January 1, 2026.) Powers of commissioner; notice of license cancellation; retention of bonds; public inspection of records; estimated assessments; time extensions; list of licensed distributors.

(a) In addition to his other duties and responsibilities to administer this article, the commissioner is empowered and authorized to do, but is not limited to, the following:

(1) Deny or cancel any distributor's or aviation gasoline dealer's license if the commissioner is of the opinion that the license application is not filed in good faith or is filed by some person as a subterfuge for any other person;

(2) Cancel any distributor's or aviation gasoline dealer's license for failure to comply with any provision of this article or with rules and regulations adopted by the commissioner;

(3) Cancel a license upon receipt of a written request from any distributor or aviation gasoline dealer licensed under this article to cancel the license issued to the distributor or aviation gasoline dealer. The distributor or aviation gasoline dealer shall surrender to the commissioner the license certificate issued;

(4) Cancel the license of a distributor if, upon investigation or information obtained from the distributor's monthly report, the commissioner ascertains that any distributor to whom a license has been issued is no longer engaged in the receipt, use, or sale of motor fuel and has not been so engaged for a period of six months, or no longer qualifies as a distributor under this article. Written notice of the cancellation shall be mailed to the last known address of the distributor, in which event the license certificate previously issued to the distributor shall be surrendered to the commissioner;

(5) Reinstate a canceled license when information is provided at a hearing or otherwise within 30 days of cancellation which satisfies the commissioner that the license should be reinstated;

(6) Decline to approve a refund payment until the applicant has complied with the laws of this state if in the opinion of the commissioner the refund application filed by an applicant contains a false statement or if the applicant is indebted to the state;

(7) Suspend the right of the refund privilege of a person for a term of not more than 12 months if the commissioner concludes that any retail dealer, any person using gasoline for agricultural purposes, or any foreign government official has willfully violated this article or has willfully failed to comply with the rules and regulations adopted by the commissioner for the administration of this article;

(8) Waive the bond and the report required of a licensed distributor of fuel oils, compressed petroleum gas, or special fuel if the distributor has no taxable sales of the fuel and his receipts do not exceed 12,000 gallons per year and with respect to such distributors waive requirements for record keeping on sales that do not exceed 25 gallons in one transaction;

(9) Enter into agreements with appropriate authorities of other jurisdictions having statutes similar to this article for the cooperative

audit of any taxpayer's reports and refunds. In performing the audits or parts of audits, the officers and employees of other jurisdictions shall be deemed authorized agents of the commissioner for the agreed upon purpose; and

(10) Appoint revenue agents for the enforcement of this article. The appointed agents shall have all powers of a police officer of this state when engaged in the enforcement of this article.

(b) The commissioner shall notify the distributor or aviation gasoline dealer in writing of any cancellation of a license as provided in subsection (a) of this Code section by certified mail or statutory overnight delivery to the last known address of the distributor or aviation gasoline dealer appearing in the files of the commissioner.

(c) In the event that the license of any distributor is canceled by the commissioner under the authority of this article, the commissioner shall hold the bonds of the distributor for a period of three years against any liabilities of the distributor. In no event shall any bonds surrendered remove any liability.

(d) The commissioner shall make the motor fuel tax records available for inspection by the public at reasonable times. The commissioner may charge a fee for special requests of prepared information based on the cost to prepare the information.

(e) When any distributor neglects or refuses to file the required reports or fails to maintain auditable records that account for tax exemptions taken on motor fuel as required by this article or files an incorrect or fraudulent report, the commissioner or his authorized agents shall determine from the best information available the number of gallons of motor fuel to be taxed. The commissioner shall impose the tax, penalty, and interest due. Estimates by the commissioner or his authorized agents shall be prima-facie evidence of the claim of the state and the burden of proof to establish the accountability of motor fuel shall be on the distributor to show that the assessment is incorrect and contrary to law.

(f) Before the expiration of the time prescribed by this article for assessments and refunds of taxes, the commissioner or his delegates may enter into an agreement in writing with the taxpayer to extend such time. The period so agreed upon may be extended by subsequent agreements made in writing before the expiration of the period previously agreed upon.

(g) The commissioner shall prepare and furnish to each known selling licensed distributor a list showing the name and address of each licensed distributor of motor fuels as of the beginning of each fiscal year and shall thereafter during each year supplement the list monthly.

History.
Code 1933, § 92-1413, enacted by Ga. L. 1978, p. 186, § 1; Code 1933, §§ 91A-5003, 91A-5005, 91A-5006, 91A-5007, 91A-5008, 91A-5009, 91A-5017, 91A-5019, 91A-5020, enacted by Ga. L. 1978, p. 309, § 2; Code 1933, § 91A-5011, enacted by Ga. L. 1979, p. 5, § 102; Ga. L. 1985, p. 1644, § 2; Ga. L. 1992, p. 6, § 48; Ga. L. 2000, p. 1589, § 3.

Delayed effective date.
Code Section 48-9-12 is set out twice in this Code. This version is effective until January 1, 2026. For version effective January 1, 2026, see the following version.

Editor's notes.
Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that that Act shall apply with respect to notices delivered on or after July 1, 2000.

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 92-1418, prior to amendment by Ga. L. 1978, p. 186, § 1, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

Commissioner has reasonable discretion to waive penalties and interest. 1948-49 Ga. Op. Att'y Gen. 681 (decided under former Code 1933, § 92-1418 prior to amendment by Ga. L. 1978, p. 186, § 1).

RESEARCH REFERENCES

C.J.S.
53 C.J.S., Licenses, § 13 et seq.

48-9-12. (Effective January 1, 2026.) Powers of commissioner; notice of license cancellation; retention of bonds; public inspection of records; estimated assessments; time extensions; list of licensed distributors.

(a) In addition to his other duties and responsibilities to administer this article, the commissioner is empowered and authorized to do, but is not limited to, the following:

(1) Deny or cancel any distributor's or aviation gasoline dealer's license if the commissioner is of the opinion that the license application is not filed in good faith or is filed by some person as a subterfuge for any other person;

(2) Cancel any distributor's or aviation gasoline dealer's license for failure to comply with any provision of this article or with rules and regulations adopted by the commissioner;

(3) Cancel a license upon receipt of a written request from any distributor or aviation gasoline dealer licensed under this article to cancel the license issued to the distributor or aviation gasoline dealer. The distributor or aviation gasoline dealer shall surrender to the commissioner the license certificate issued;

(4) Cancel the license of a distributor if, upon investigation or

information obtained from the distributor's monthly report, the commissioner ascertains that any distributor to whom a license has been issued is no longer engaged in the receipt, use, or sale of motor fuel and has not been so engaged for a period of six months, or no longer qualifies as a distributor under this article. Written notice of the cancellation shall be mailed to the last known address of the distributor, in which event the license certificate previously issued to the distributor shall be surrendered to the commissioner;

(5) Reinstate a canceled license when information is provided at a hearing or otherwise within 30 days of cancellation which satisfies the commissioner that the license should be reinstated;

(6) Decline to approve a refund payment until the applicant has complied with the laws of this state if in the opinion of the commissioner the refund application filed by an applicant contains a false statement or if the applicant is indebted to the state;

(7) Suspend the right of the refund privilege of a person for a term of not more than 12 months if the commissioner concludes that any retail dealer, any person using gasoline for agricultural purposes, or any foreign government official has willfully violated this article or has willfully failed to comply with the rules and regulations adopted by the commissioner for the administration of this article;

(8) Waive the bond and the report required of a licensed distributor of fuel oils, compressed petroleum gas, or special fuel if the distributor has no taxable sales of the fuel and his receipts do not exceed 12,000 gallons per year and with respect to such distributors waive requirements for record keeping on sales that do not exceed 25 gallons in one transaction;

(9) Enter into agreements with appropriate authorities of other jurisdictions having statutes similar to this article for the cooperative audit of any taxpayer's reports and refunds. In performing the audits or parts of audits, the officers and employees of other jurisdictions shall be deemed authorized agents of the commissioner for the agreed upon purpose; and

(10) Appoint revenue agents for the enforcement of this article. The appointed agents shall have all powers of a police officer of this state when engaged in the enforcement of this article.

(b) The commissioner shall notify the distributor or aviation gasoline dealer in writing of any cancellation of a license as provided in subsection (a) of this Code section by certified mail or statutory overnight delivery to the last known address of the distributor or aviation gasoline dealer appearing in the files of the commissioner.

(c) In the event that the license of any distributor is canceled by the commissioner under the authority of this article, the commissioner

shall hold the bonds of the distributor for a period of three years against any liabilities of the distributor. In no event shall any bonds surrendered remove any liability.

(d) The commissioner shall make the motor fuel tax records available for inspection by the public at reasonable times. The commissioner may charge a fee for special requests of prepared information based on the cost to prepare the information.

(e) When any distributor neglects or refuses to file the required reports or fails to maintain auditable records that account for tax exemptions taken on motor fuel as required by this article or files an incorrect or fraudulent report, the commissioner or his authorized agents shall determine from the best information available the number of gallons or gallon equivalents of motor fuel to be taxed. The commissioner shall impose the tax, penalty, and interest due. Estimates by the commissioner or his authorized agents shall be prima-facie evidence of the claim of the state and the burden of proof to establish the accountability of motor fuel shall be on the distributor to show that the assessment is incorrect and contrary to law.

(f) Before the expiration of the time prescribed by this article for assessments and refunds of taxes, the commissioner or his delegates may enter into an agreement in writing with the taxpayer to extend such time. The period so agreed upon may be extended by subsequent agreements made in writing before the expiration of the period previously agreed upon.

(g) The commissioner shall prepare and furnish to each known selling licensed distributor a list showing the name and address of each licensed distributor of motor fuels as of the beginning of each fiscal year and shall thereafter during each year supplement the list monthly.

History.

Code 1933, § 92-1413, enacted by Ga. L. 1978, p. 186, § 1; Code 1933, §§ 91A-5003, 91A-5005, 91A-5006, 91A-5007, 91A-5008, 91A-5009, 91A-5017, 91A-5019, 91A-5020, enacted by Ga. L. 1978, p. 309, § 2; Code 1933, § 91A-5011, enacted by Ga. L. 1979, p. 5, § 102; Ga. L. 1985, p. 1644, § 2; Ga. L. 1992, p. 6, § 48; Ga. L. 2000, p. 1589, § 3; Ga. L. 2023, p. 376, § 3-5/SB 146, effective January 1, 2026; Ga. L. 2024, p. 752, § 7/HB 516, effective July 1, 2024.

Delayed effective date.

Code Section 48-9-12 is set out twice in this Code. This version is effective January 1, 2026. For version effective until January 1, 2026, see the preceding version.

Amendments.

The 2023 amendment, effective January 1, 2025, inserted "or gallon equivalents" near the end of the first sentence of subsection (e). See Editor's notes for subsequent amendment.

Editor's notes.

Ga. L. 2024, p. 752, § 7/HB 516, not codified by the General Assembly, amended Ga. L. 2023, p. 376/SB 146 by revising subsection (b) of Section 5-1 to read as follows: "(b) Part II of this Act, which provides for the regulatory authority of the Department of Agriculture, and Part III of this Act,

relating to revenue and taxation, shall become effective on January 1, 2026."

48-9-13. Assessments of deficiencies; time limits for returns; false or fraudulent return; failure to return; filing of statement by sheriff, receiver, or other officer upon sale of distributor's property.

(a)(1) Except as otherwise provided in paragraph (2) of this subsection, any assessment for taxes due under this article shall be made within the time limits specified in Code Section 48-2-49.

(2) If the distributor has filed a report under this article which contains fraudulent statements or omissions of material facts the effect of which makes the taxpayer's report a fraudulent representation, the commissioner may reopen the tax period and make any additional assessment of taxes due at any time within seven years from the last date on which the report could have been timely filed by the taxpayer.

(b) At the time of advertising for sale the property or franchise of any person who is a distributor, any sheriff, receiver, assignee, master, or other officer shall file with the commissioner a statement containing the following information:

(1) Name or names of the plaintiff or party at whose instance or upon whose account the sale is made;

(2) Name of the person whose property or franchise is to be sold;

(3) The time and place of sale; and

(4) The nature and location of the property.

History.

Code 1933, § 92-1414, enacted by Ga. L. 1978, p. 186, § 1; Code 1933, §§ 91A-5015, 91A-5017, enacted by Ga. L. 1978, p. 309, § 2; Code 1933, § 91A-5012, enacted by Ga. L. 1979, p. 5, § 102; Ga. L. 1985, p. 1350, § 4.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 92-1418, prior to amendment by Ga. L. 1978, p. 186, § 1, which was subsequently repealed but was succeeded by provisions of this Code section, are included in the annotations for this Code section.

Priority of lien of prior judgment creditor. — Lien which the state has under this section upon the property of a distributor for excise taxes collected by the distributor on the sale or use of motor fuel or kerosene does not have priority over the lien of a judgment creditor when the rights of such creditor attached prior to the time the commissioner files notice of the state's lien in the office of the superior court. Royal Indem. Co. v. Mayor of Savannah, 209 Ga. 383, 73 S.E.2d 205,

1952 Ga. LEXIS 529 (1952) (decided under former Code 1933, § 92-1418, prior to amendment by Ga. L. 1978, p. 186, § 1).

No greater rights than state acquired by distributor's surety upon subrogation. — When a surety upon the distributor's bond to the state becomes subrogated to the rights of the state by payment of such taxes to the state, the surety takes the position of the state and acquires no greater rights with respect thereto than the state has at the time the surety became subrogated. Royal Indem. Co. v. Mayor of Savannah, 209 Ga. 383, 73 S.E.2d 205, 1952 Ga. LEXIS 529 (1952) (decided under former Code 1933, § 92-1418, prior to amendment by Ga. L. 1978, p. 186, § 1).

RESEARCH REFERENCES

Am. Jur. 2d.
71 Am. Jur. 2d, State and Local Taxation, § 508.

C.J.S.
53 C.J.S., Licenses, § 106.

ALR.
Construction and application of statute prohibiting or restricting reassessment after assessment and payment of taxes, 85 A.L.R. 107.

48-9-14. [Reserved] Second motor fuel tax; rate; exemptions; applicability of Article 1 of Chapter 8 of this title.

History.
Repealed and reserved by Ga. L. 2015, p. 236, § 5-14/HB 170, effective July 1, 2015.

Law reviews.
For article on the 2015 repeal of this Code section, see 32 Georgia St. U.L. Rev. 261 (2015).

48-9-15. Officers required to assist in enforcing article; powers.

The commissioner of public safety, each sheriff, and each peace officer shall assist in enforcing this article. Each officer shall have the powers necessary for the enforcement and administration of this article including the power to make arrests, serve process, and appear in court.

History.
Code 1933, § 92-1416, enacted by Ga. L. 1978, p. 186, § 1; Code 1933, § 91A-5020, enacted by Ga. L. 1978, p. 309, § 2; Code 1933, § 91A-5014, enacted by Ga. L. 1979, p. 5, § 102.

48-9-16. Penalties and interest; untimely return; failure to pay; false or fraudulent returns; failure to file returns; dyed fuel oil violations.

(a) When any distributor or other person required to file a report as provided by this article fails to file the report within the time prescribed, he shall be subject to a penalty of $50.00 for each such failure.

(b) When any distributor fails to pay the tax or any part of the tax due under Code Section 48-9-3, the distributor shall be subject to a penalty of 10 percent of the amount of unpaid taxes due.

(c) In the case of a false or fraudulent return or of a failure to file a return, a specific penalty of 50 percent of the tax due shall be assessed.

(d) When any distributor fails to pay the tax or any part of the tax

due under Code Section 48-9-3, the distributor shall pay interest on the unpaid tax at the rate specified in Code Section 48-2-40 from the time the tax became due until paid.

(e) When any person:

(1) Sells or delivers any dyed fuel oil when such person knows or has reason to know that the fuel will be consumed in a highway use; or

(2) Consumes any dyed fuel oil for a highway use when such consumer knows or has reason to know that the fuel oil was dyed,

such person shall be subject to a penalty of $1,000.00 or $10.00 per gallon of dyed fuel oil involved in such sale, delivery, or consumption, whichever amount is greater, and such amount shall be multiplied by the number of prior penalties imposed on such violator under this subsection, and the resulting product shall be the penalty to be imposed.

(f) When any person sells or delivers any dyed fuel oil without the notices required under paragraph (5) of subsection (c) of Code Section 48-9-8, such person shall be subject to a penalty which shall be the greater of the following:

(1) One hundred dollars per month for each month or part of a month in which such sale or delivery occurred; or

(2) One dollar per gallon of dyed fuel oil involved in such sale or delivery.

Upon a showing of no highway use and reasonable cause, at the commissioner's discretion the penalty under this subsection may be reduced to 10 percent of the amount which ordinarily would have been due or payment of the tax may be accepted in lieu of such penalty.

History.

Code 1933, § 92-1415, enacted by Ga. L. 1978, p. 186, § 1; Code 1933, § 91A-5007, enacted by Ga. L. 1978, p. 309, § 2; Code 1933, § 91A-5013, enacted by Ga. L. 1979, p. 5, § 102; Ga. L. 1980, p. 10, § 35; Ga. L. 1980, p. 1759, § 2; Ga. L. 1995, p. 359, § 5; Ga. L. 2002, p. 415, § 48; Ga. L. 2003, p. 355, § 7; Ga. L. 2003, p. 665, § 17; Ga. L. 2009, p. 8, § 48/SB 46; Ga. L. 2017, p. 774, § 48/HB 323.

Editor's notes.

Ga. L. 2003, p. 665, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2003.'"

Law reviews.

For note on the 2003 amendment to this Code section, see 20 Ga. St. U.L. Rev. 233 (2003).

For article, "Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General

Assembly, Insurance, Local Government, Public Utilities, and State Government," see 28 Georgia St. U.L. Rev. 217 (2011).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 92-1407, prior to amendment by Ga. L. 1978, p. 186, § 1, which was subsequently repealed but was succeeded by provisions of this Code section, are included in the annotations for this Code section.

This section is self-executing. 1963-65 Ga. Op. Att'y Gen. 25 (decided under former Code 1933, § 92-1407, prior to amendment by Ga. L. 1978, p. 186, § 1).

Section does not, either directly or indirectly, provide that the penalty and interest become a part of the tax. 1948-49 Ga. Op. Att'y Gen. 681 (decided under former Code 1933, § 92-1407, prior to amendment by Ga. L. 1978, p. 186, § 1).

RESEARCH REFERENCES

ALR.

Liability to penalty imposed for failure to pay tax of one who in good faith contested its validity, 96 A.L.R. 925; 147 A.L.R. 142.

Penalty for nonpayment of taxes when due as affected by lack of notice to taxpayer, 102 A.L.R. 405.

Doubt as to liability for, or as to person to whom to pay, tax, as affecting liability for penalties and interest, 137 A.L.R. 306.

Recovery of cumulative statutory penalties, 71 A.L.R.2d 986.

48-9-17. Violations of article; penalties.

(a)(1) With respect to this article, it shall be unlawful for any person to:

(A) Refuse or neglect to make any required statement, report, or return;

(B) Knowingly make, or aid or assist any other person in making, a false statement in a return or report to the commissioner;

(C) Knowingly collect or attempt to collect or cause to be paid to him or to any other person either directly or indirectly any refund of the tax without being entitled to the refund;

(D) Fail to remit the tax to the state;

(E) Engage in business in this state as a distributor without being licensed as required; or

(F) Sell, import, or use any motor fuel which was purchased by such person from any person other than a duly licensed distributor and upon which the tax imposed and not exempted by law has not been paid.

(2) Any person who violates paragraph (1) of this subsection shall

be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than $1,000.00 nor more than $10,000.00 or by imprisonment for a term of not less than 30 days nor more than 12 months, or both. Each day or part of a day during which any person engages in business as a distributor without being the holder of an uncanceled license shall constitute a separate offense under this subsection.

(b)(1) It shall be unlawful for any person to purchase tax-exempt motor fuel from a licensed distributor for nonhighway use and to use or permit the motor fuel to be used for highway purposes.

(2) Any person who violates paragraph (1) of this subsection shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than $1,000.00 nor more than $10,000.00 or by imprisonment for not less than 30 days nor more than 12 months, or both.

(c)(1) It shall be unlawful for any person not required by this article to be licensed as a distributor of motor fuel but who is required to file reports as provided by this article willfully to fail to file the report by the twentieth day of the succeeding month for its activities or willfully to fail to remit in the monthly reports the data required by the commissioner for proper administration of this article.

(2) Any person who violates paragraph (1) of this subsection shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than $100.00 for the first offense and not less than $1,000.00 for each subsequent offense.

(d)(1) It shall be unlawful for any person to violate any provision of this article, including, but not limited to, record keeping, or to fail to do any other act required by this article.

(2) Any person who violates paragraph (1) of this subsection shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than $1,000.00 or by imprisonment for not more than 12 months, or both.

(e)(1) It shall be unlawful for any person to import or export motor fuels across the boundaries of this state without a bill of lading from the terminal of origin or equivalent documentation setting out, in addition to the information required by subsection (d) of Code Section 48-9-9, at least the location of the terminal of origin and state or country of destination. The form, procedure, acceptable equivalent documentation, and any additional information shall be set out in rules and regulations as adopted by the commissioner.

(2) Any person who violates paragraph (1) of this subsection shall be guilty of a misdemeanor.

(f)(1) It shall be unlawful for any retail dealer, distributor, or bulk user in this state knowingly to accept delivery of motor fuel that is not accompanied by a bill of lading, invoice, or other shipping document, as specified in paragraph (3) of subsection (d) of Code Section 48-9-9, issued by the terminal operator which sets out on its face Georgia as the state of destination.

(2) Any person who violates paragraph (1) of this subsection shall be guilty of a misdemeanor and become jointly liable with the distributor of the motor fuels for the taxes due under this article.

(3) In the event the shipment of motor fuel did not originate from a terminal whose operator is obligated to set out this information, the commissioner is authorized to adopt by rules or regulations equivalent documentation requirements. The commissioner is further authorized to adopt rules and regulations setting out procedures to amend such documentation should the shipment have to be diverted from its original destination.

History.
Code 1933, § 92-1418, enacted by Ga. L. 1978, p. 186, § 1; Code 1933, § 91A-9918, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 111; Ga. L. 1993, p. 1502, § 7.

48-9-18. Operation without distributor's license; assessment of penalty in lieu of taxes.

If any person required by this article to hold an uncanceled distributor's license engages in business in this state as a distributor without such a license, thereby incurring a tax liability under this article which, but for the fact that such person was unlicensed, would not have been incurred, the commissioner may in his discretion waive such tax liability, including any applicable penalties and interest thereon, and assess in lieu thereof a penalty under this Code section. Such penalty shall be equal to 10 percent of the tax liability which, but for the fact that such person was unlicensed, would not have been incurred, but shall not be less than $100.00 for each monthly tax period involved. No taxes shall be waived under this Code section where the commissioner determines that such person failed to become properly licensed prior to operating as a distributor in this state, that such person knew or should have known of the requirement that he be licensed prior to so operating, and that such person failed to remit to the state such taxes under this article as are due from licensed distributors.

History.
Code 1981, § 48-9-18, enacted by Ga. L. 1990, p. 799, § 5.

48-9-19. Cooperative agreements with other states.

(a) The commissioner may enter into cooperative agreements with other states for exchange of information in administering the tax imposed by this article. No agreement, arrangement, declaration, or amendment to an agreement shall be effective until stated in writing and approved by the commissioner.

(b) An agreement may provide for determining the base state for motor carriers; records requirements; audit procedures; exchange of information; persons eligible for tax licensing; defining qualified motor vehicles; determining if bonding is required; specifying reporting requirements and periods, including defining uniform penalty and interest rates for late reporting; determining methods for collecting and forwarding of gasoline or other motor fuel taxes and penalties to another jurisdiction; and such other provisions as will facilitate the administration of the agreement.

(c) The commissioner may, as required by the terms of an agreement, forward to officials of another state any information in the department's possession relative to the use of gasoline or other motor fuels by any motor carrier. The commissioner may disclose to officials of another state the location of offices, motor vehicles, and other real and personal property of motor carriers.

(d) An agreement may provide for each state to audit the records of motor carriers based in that state to determine if the gasoline or other motor fuel taxes due each state are properly reported and paid. Each state shall forward the findings of the audits performed on motor carriers based in that state to each state in which the motor carrier has taxable use of gasoline or other motor fuels. For motor carriers not based in this state who have taxable use of gasoline or other motor fuels in this state, the commissioner may utilize the audit findings received from another state as the basis upon which to propose assessments of gasoline or other motor fuel taxes against the motor carrier as though the audit had been conducted by the commissioner. Penalties and interest shall be assessed at the rates provided in the agreement.

(e) No agreement entered into pursuant to this Code section may preclude the department from auditing the records of any motor carrier covered by this chapter.

(f) Any assessment or order made under this Code section shall be governed by all provisions of this title applicable to assessments and orders under this chapter generally, except to the extent that different treatment is specifically required by this Code section or any agreement entered into pursuant to the authority of this Code section.

(g) If the commissioner enters into any agreement under the authority of this Code section and the provisions set forth in the agreement are

in conflict with any provision of any rule or regulation promulgated by the commissioner, the provisions of such agreement shall prevail.

History.
Code 1981, § 48-9-19, enacted by Ga. L. 1990, p. 799, § 5.

48-9-20. [Repealed] Temporary exemption of motor fuels from state sales and use tax, excise tax, and second motor fuel tax.

History.
Code 1981, § 48-9-20, enacted by Ga. L. 2005, p. ES 3, § 2/HB 1EX; repealed by Ga. L. 2005, p. ES 3, § 2/HB 1EX, effective October 1, 2005.

ARTICLE 2

ROAD TAX ON MOTOR CARRIERS

Cross references.
Motor carriers generally, § 40-1-50 et seq.

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under Ga. L. 1937, p. 167, which was subsequently repealed but was succeeded by provisions in this article, are included in the annotations for this article.

Nature of tax. — Motor fuel tax laws found in former Code 1933, Ch. 92-14 and Ga. L. 1968, p. 360 showed that the motor fuel taxes are of the nature of a road use tax. This was true because the funds collected must be used to construct and maintain the highways. 1963-65 Ga. Op. Att'y Gen. 92 (decided under Ga. L. 1937, p. 167).

RESEARCH REFERENCES

ALR.
Constitutionality of statutes or ordinances for taxation of common carriers by automobile, 75 A.L.R. 13.

Constitutionality of retroactive statute imposing excise, license, or privilege tax, 146 A.L.R. 1011.

48-9-30. Definitions.

As used in this article, the term:

(1) "Motor carrier" means any person who operates or causes to be operated any motor vehicle, as defined in this Code section, on any highway in this state.

(2) "Motor fuel" means any liquid, regardless of its composition or properties, used to propel a motor vehicle.

(3) "Motor vehicle" means any passenger vehicle that has seats for

more than 20 passengers in addition to the driver and any vehicle or combination of vehicles used, designed, or maintained for transportation of property and having two axles and a gross vehicle weight exceeding 26,000 pounds or having three or more axles regardless of weight. The term "motor vehicle" does not mean:

(A) School buses;

(B) Vehicles operated by the state, any political subdivision of the state, or the United States; or

(C) Transit buses operated exclusively within this state.

(4) "Operations" means operation of any motor vehicle, whether loaded or empty, whether or not for compensation, and whether owned by or leased to the motor carrier who operates it or causes it to be operated.

History. Ga. L. 1968, p. 360, § 1; Code 1933, § 91A-5101, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 103; Ga. L. 1981, p. 1857, § 43; Ga. L. 1992, p. 2095, § 2.

RESEARCH REFERENCES

C.J.S.
60 C.J.S., Motor Vehicles, § 1 et seq.

48-9-31. Road tax on motor carriers; rate; basis of calculation; additional tax.

A road tax for the privilege of using the streets and highways of this state is imposed upon every motor carrier. The tax shall be equivalent to the taxes imposed by Article 1 of this chapter and shall be calculated on the amount of motor fuel used by the motor carrier in its operations within this state. Except as credit for certain taxes as provided in this article, the tax imposed on motor carriers by this Code section is in addition to taxes imposed on motor carriers by any other law.

History. Ga. L. 1968, p. 360, § 2; Code 1933, § 91A-5102, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1980, p. 10, § 36.

RESEARCH REFERENCES

C.J.S.
40 C.J.S., Highways, § 457 et seq.

48-9-32. Payment of road tax; time; calculation on amount of motor fuel used in state; formula.

For the purposes of making payment of taxes and filing reports pursuant to this article, the year is divided into four quarters of three

consecutive months each. The first quarter of the year shall consist of the months of January, February, and March. The road tax shall be paid by each motor carrier to the commissioner on or before the last day of the month immediately following the quarter with respect to which tax liability under this article accrues and shall be calculated upon the amount of motor fuel used by the motor carrier in its operations within this state during the quarter ending on the last day of the preceding month. The amount of motor fuel used in the operations of any motor carrier within this state shall be the proportion of the total amount of motor fuel used in its entire operations within and outside this state which the total number of miles traveled within this state bears to the total number of miles traveled within and outside this state.

History. Ga. L. 1968, p. 360, § 3; Code 1933, § 91A-5103, enacted by Ga. L. 1978, p. 309, § 2.

RESEARCH REFERENCES

C.J.S.
40 C.J.S., Highways, § 464.

48-9-33. Reports of motor carriers; time; exemption.

Every motor carrier subject to the road tax imposed by this article shall make to the commissioner on or before the last day of April, July, October, and January such reports of its operations during the quarter of the year ending on the last day of the preceding month as the commissioner requires. The commissioner may by regulation permit motor carriers having an annual road tax not in excess of an amount set by the commissioner to file annual reports. The commissioner by regulation may exempt from the reporting requirements of this Code section motor carriers all of whose operations are within this state.

History. Ga. L. 1968, p. 360, § 6; Code 1933, § 91A-5106, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1990, p. 799, § 6.

48-9-34. Joint reports by passenger motor carriers; basis of calculation of taxes due; liability; contents of reports; credits and refunds.

(a) Two or more motor carriers regularly engaged in the transportation of passengers on through buses and on through tickets in pool service, at their option and with the consent of the commissioner, may make joint reports of their entire operations in this state. The road taxes imposed by this article shall be calculated on the basis of the joint reports as though the motor carriers were a single motor carrier. The motor carriers making the reports shall be jointly and severally liable for the taxes.

(b) Joint reports authorized by this Code section shall show the total number of miles traveled in this state and the total number of gallons of motor fuel purchased in this state by the reporting motor carriers. Credits or refunds to which the motor carriers are entitled shall not be allowed as credits or refunds to any other motor carrier. Motor carriers filing joint reports, however, shall permit all motor carriers engaged in this state in pool operations with them to join in filing joint reports.

History. Ga. L. 1968, p. 360, § 8; Code 1933, § 91A-5108, enacted by Ga. L. 1978, p. 309, § 2.

48-9-35. Credit against road tax for payment of motor fuel tax; evidence of payments; subsequent application of credit exceeding amount of road tax; limit.

Every motor carrier subject to the road tax shall be entitled to a credit on the tax equivalent to the amount of motor fuel tax imposed by Article 1 of this chapter on all motor fuel purchased by the motor carrier during the quarter within this state for use in operations either within or outside this state when the motor fuel tax imposed by this state has been paid by the motor carrier. Evidence of the payments of the motor fuel tax in the form required by the commissioner shall be furnished by each motor carrier claiming the credit allowed. When the amount of the credit to which any motor carrier is entitled for any quarter exceeds the amount of the road tax for which the carrier is liable for same quarter, the excess may be allowed pursuant to regulations promulgated by the commissioner as a credit on the road tax for which the motor carrier would be otherwise liable for the subsequent quarter or quarters. Allowed credits may be carried forward and utilized no later than the succeeding two calendar years.

History. Ga. L. 1968, p. 360, § 4; Code 1933, § 91A-5104, enacted by Ga. L. 1978, p. 309, § 2.

48-9-36. Refunds to motor carriers; minimum credit refundable; applications; procedure; bond; audit of applicant's records; procedure for issuance of refunds; interest.

(a) Any motor carrier which accrues credits in excess of 2,000 gallons in any quarter under Code Section 48-9-35 shall be entitled to a refund of the credits subject to the conditions set forth in this Code section.

(b) All applications for refunds must be filed with the commissioner within 180 days from the end of any quarter in which credits are accumulated. Applications shall be in the form prescribed by the commissioner, shall be sworn to, and shall be supported by evidence satisfactory to the commissioner.

(c) Any motor carrier entitled to a refund may give a bond in an

amount of not less than $1,000.00 payable to the state and conditioned that the motor carrier will pay all road taxes due and to become due under this article. As long as the bond remains in force, the commissioner may issue refunds to the motor carrier in the amounts appearing to be due on applications without first auditing the records of the motor carrier. The bond shall be in the form and with such surety as required by the commissioner.

(d) The commissioner shall not issue refunds in excess of the amount of the bond or bonds except after audit of the applicant's records. Except as otherwise provided by the commissioner, sufficient records must be produced in this state for audit.

(e) To enable the commissioner to make the refunds authorized by this Code section, the Office of the State Treasurer, under warrants drawn by the Governor, shall remit to the commissioner, from funds appropriated by law for that purpose, an amount equivalent to the refunds. Before the Governor issues a warrant for this purpose, he shall require that the commissioner certify the name of each applicant and the amount to which he is entitled. The refunds provided by this Code section shall be nonassignable.

(f) Refunds claimed and paid pursuant to this Code section shall bear no interest.

History.
Ga. L. 1968, p. 360, § 5; Ga. L. 1971, p. 684, § 1; Code 1933, § 91A-5105, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 104; Ga. L. 1982, p. 3, § 48; Ga. L. 1993, p. 1402, § 18; Ga. L. 2010, p. 863, § 2/SB 296.

Law reviews.
For note as to the voluntary payment doctrine in Georgia, see 16 Ga. L. Rev. 893 (1982).

RESEARCH REFERENCES

C.J.S.
53 C.J.S., Licenses, § 112 et seq.

ALR.
Retrospective operation of statute enlarging or shortening period for claim of tax refund, 163 A.L.R. 778.

When right to refund of state or local taxes accrues, within statute limiting time for applying for refund, 46 A.L.R.2d 1350.

48-9-37. Lessee and lessor of motor vehicles as motor carriers; determination of status; primary liability; effect of failure to discharge liability.

(a) The lessee of a motor vehicle, but not the lessor of a motor vehicle, shall be deemed a motor carrier for the purposes of this article unless otherwise specifically provided in this Code section.

(b) A lessor of motor vehicles may be deemed a motor carrier with

respect to motor vehicles leased to others by him and with respect to motor fuel consumed by the motor vehicles when the lessor supplies or pays for the motor fuel consumed by the motor vehicles or makes rental or other charges calculated to include the cost of the motor fuel. The commissioner shall provide by rules and regulations for the presentation to other motor carriers and to the general public of satisfactory evidence and identification of the motor carrier status. Any lessee motor carrier may exclude from his reports pursuant to this article motor vehicles of which he is the lessee when the motor vehicles have been leased from a lessor who is a motor carrier pursuant to this Code section.

(c) Subsections (a) and (b) of this Code section shall govern primary liability of lessors and lessees of motor vehicles pursuant to this article. If a lessor or lessee who is primarily liable fails in whole or in part to discharge this liability, the failing party or other lessor or lessee party to the transaction shall be jointly and severally responsible and liable for compliance with this article and for the payment of any tax due pursuant to this article. The aggregate amount of any taxes collected by the state pursuant to this article, however, shall not exceed the total amount of tax due on the account of the transaction in question together with any costs and penalties imposed.

History. Ga. L. 1968, p. 360, § 7; Code 1933, § 91A-5107, enacted by Ga. L. 1978, p. 309, § 2.

RESEARCH REFERENCES

ALR.
Construction and effect of motor vehicle leasing contracts, 43 A.L.R.3d 1283.

48-9-38. Requirement of motor vehicle registration card and identification marker; validity; renewal; fee; temporary authorizations; temporary permits; fee.

(a) Unless otherwise excluded from the scope of this article, no motor carrier shall operate or cause to be operated in this state any motor vehicle unless and until he has:

(1) Registered with the commissioner and secured a motor carrier registration card. A duplicate of the registration card shall be carried in each motor vehicle at all times in this state; and

(2) Secured from the commissioner an identification marker for each motor vehicle. The identification marker shall be attached or affixed to the motor vehicle in the place and manner prescribed by the commissioner so that the marker is clearly displayed at all times.

(b) Registration cards and identification markers shall be issued on

an annual basis as of January 1 of each year and shall be valid until the next succeeding December 31. The commissioner, in his discretion, may authorize renewal of registration cards and identification markers without the necessity of issuing new cards and markers. All registration cards and identification markers issued by the commissioner shall remain the property of the state and may be recalled for any violation of this article or of the regulations promulgated under this article. The commissioner shall not issue a registration card or an identification marker to any motor carrier who has outstanding motor carrier, motor fuel, sales, or income tax liabilities or other penalties or fees owed to the Department of Transportation of this state unless the liabilities are being appealed as provided by law.

(c) Prior to the issuance of each identification marker, a fee of $3.00 shall be paid to the commissioner. Upon application for identification markers by a motor carrier, the applicant shall declare the type of fuel used in vehicles for which identification markers are to be issued and any other information that the commissioner may require for the effective administration of this article.

(d) The commissioner may authorize a motor vehicle to be operated in an emergency without a registration card and identification marker for a period not in excess of 30 days. The authorization shall be granted by letter or facsimile message.

(e) A motor carrier may obtain a temporary permit which shall be good for one motor vehicle for a period of ten consecutive days beginning and ending on the dates specified on the face of the permit. Temporary permits are to be obtained by motor carriers having only infrequent trips into and through this state. The fee for the permit shall be $16.00 and no reports shall be required from such motor carriers. Temporary permits shall be issued in lieu of annual registration required under this article. A temporary permit shall be carried in the vehicle for which it was issued at all times when the vehicle is in this state. The commissioner may issue a temporary permit by facsimile message or letter.

History.
Ga. L. 1968, p. 360, § 9; Code 1933, § 91A-5109, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1978, p. 1609, § 1; Ga. L. 1979, p. 5, § 105; Ga. L. 1981, p. 1857, § 44; Ga. L. 1992, p. 2095, § 3.

48-9-39. Violation of Code Section 48-9-38; penalty.

(a) It shall be unlawful for any person to operate or cause to be operated on any highway in this state any motor vehicle that does not carry the registration card required by Code Section 48-9-38 or any motor vehicle that does not display in the manner prescribed by the

commissioner the identification marker that Code Section 48-9-38 requires to be displayed.

(b) Any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than $50.00 nor more than $200.00. Each day's operation in violation of this Code section shall constitute a separate offense.

History. Ga. L. 1968, p. 360, § 18; Code 1933, § 91A-9920, enacted by Ga. L. 1978, p. 309, § 2.

RESEARCH REFERENCES

C.J.S.
60A C.J.S., Motor Vehicles, § 812.

48-9-40. Keeping and preservation of records; inspection; estimate of amount of road tax due; prima-facie evidence; burden of proof; multi-jurisdictional, cooperative audits.

(a) Every motor carrier shall keep such records as may be necessary for the effective administration of this article and for the reporting and justification of the amount of tax liability pursuant to this article. All such records shall be kept in the form required by the commissioner and shall be safely preserved for a period of three years in such a manner as to ensure their security and availability for inspection by the commissioner or his authorized agents. Upon application in writing after an audit of the motor carrier's records has been made, the commissioner may consent to the destruction of the records within the three-year period.

(b) The commissioner and his authorized agents and representatives may inspect during regular business hours the books and records of any motor carrier subject to the road tax imposed by this article.

(c) Whenever any motor carrier neglects or refuses to file any report or neglects or refuses to keep records as prescribed by this article, the commissioner, using the best information available, shall estimate, determine, and fix the amount of taxes and penalties payable by the motor carrier under this article. In any action or proceeding under this Code section, any assessment by the commissioner shall constitute prima-facie evidence of the claim of the state. The burden of proof shall be upon the motor carrier to show that the assessment was incorrect or contrary to law.

(d) The commissioner may enter into agreements with the appropriate authorities of other jurisdictions having statutes similar to this

article for the cooperative audit of motor carriers' reports and returns. In performing any such audit or part of an audit, the officers and employees of the other jurisdiction or jurisdictions shall be deemed authorized agents of this state for such purpose.

History.
Ga. L. 1968, p. 360, § 10; Code 1933, § 91A-5110, enacted by Ga. L. 1978, p. 309, § 2.

48-9-41. Assessment of deficiencies; time limits; timely report; false or fraudulent report; no report; procedures for collection.

(a)(1) When any motor carrier is in default in the payment of any road taxes due under this article, the commissioner shall assess the road taxes due in the manner provided by law. Except as otherwise provided in paragraph (2) of this subsection, any assessment for road taxes due under this article shall be made within the time limits specified in Code Section 48-2-49.

(2) When the motor carrier has filed a report under this article which contains fraudulent statements or omissions of material facts, the effect of which is to make the taxpayer's report a fraudulent representation, the commissioner may reopen the tax period and make any additional assessment of taxes due at any time within seven years from the last date on which the report could have been timely filed by the taxpayer.

(b) The commissioner shall collect any deficiencies and road taxes due under this article by levy, garnishment, attachment, or action or by any other provision of law for collection of delinquent state taxes.

History.
Ga. L. 1968, p. 360, § 11; Ga. L. 1972, p. 834, § 1; Code 1933, § 91A-5111, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1985, p. 1350, § 5.

RESEARCH REFERENCES

C.J.S.
40 C.J.S., Highways, §§ 462, 463.
ALR.
Construction and application of statute prohibiting or restricting reassessment after assessment and payment of taxes, 85 A.L.R. 107.

48-9-42. Secretary of State as agent of nonresident motor carriers for service of process or notice.

The acceptance by a nonresident motor carrier of the rights and privileges conferred by law permitting the operation of motor vehicles on the public highways of this state, as evidenced by the operation of a motor vehicle by the nonresident either personally or through an agent or employee on the public highways of this state, or by the operation by

the nonresident either personally or through an agent or employee of a motor vehicle on the public highways of this state other than as so permitted or regulated, shall be deemed equivalent to the appointment by the nonresident motor carrier of the Secretary of State or his successor in office as his agent for service of process or notice in any action, assessment proceedings, or other proceeding against him or his personal representative arising out of or by reason of any provision of this article relating to the motor vehicle or relating to the liability for road tax with respect to operation of the motor vehicle on the highways of this state. The acceptance or operation shall be an acknowledgment by the nonresident motor carrier of his agreement that any such process against or notice to him or his personal representative shall be of the same legal force and validity as if the process or notice were served on him personally or on his personal representative.

History. Ga. L. 1968, p. 360, § 13; Code 1933, § 91A-5113, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1982, p. 3, § 48.

RESEARCH REFERENCES

C.J.S.
72 C.J.S., Process, § 76.

48-9-43. Assistance by Department of Public Safety in administration and enforcement of article; powers.

The commissioner of public safety shall utilize the personnel of the Department of Public Safety as necessary to assist in enforcing this article. The officers of the Department of Public Safety shall have the powers of peace officers including, but not limited to, the powers of making arrests, serving process, and appearing in court in all matters relating to the administration and enforcement of this article.

History. Ga. L. 1968, p. 360, § 14; Code 1933, § 91A-5114, enacted by Ga. L. 1978, p. 309, § 2.

48-9-44. Powers of revenue agents in enforcement of article.

Each person appointed by the commissioner as a special agent or enforcement officer of the department shall have all the powers of a police officer of this state when engaged in the enforcement of this article.

History. Ga. L. 1972, p. 381, § 1; Code 1933, § 91A-5115, enacted by Ga. L. 1978, p. 309, § 2.

48-9-45. Violation of registration provisions; untimely reports; failure to pay; penalties; interest; other punitive measures.

(a) Whenever any motor carrier operates a motor vehicle in violation of the registration provisions of this article, the motor carrier shall be subject to a penalty of $145.00 for each motor vehicle in violation.

(b) Whenever any motor carrier required to file a report as provided by this article fails to file the report within the time prescribed, he or she shall be subject to a penalty of $25.00 for each failure to file.

(c) Whenever any motor carrier fails to pay the road taxes or any part of the road taxes due pursuant to this article, the motor carrier shall be subject to a penalty of $10.00 or 10 percent of the amount of the unpaid tax due, whichever is greater, and to interest on the unpaid tax at the rate specified in Code Section 48-2-40 from the time the road tax became due until the tax is paid.

(d) Any penalties and interest imposed by this Code section shall be assessed and collected by the commissioner in the manner provided by law. In addition to imposing penalties and interest, the commissioner may suspend or revoke any certificate, permit, or other evidence of right issued by the commissioner and held by the motor carrier found to be in default.

History.
Ga. L. 1968, p. 360, § 12; Code 1933, § 91A-5112, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1980, p. 1759, § 3; Ga. L. 2022, p. 293, § 1/HB 1089.

Amendments.
The 2022 amendment, effective July 1, 2022, substituted "$145.00" for "$25.00" in subsection (a); and inserted "or she" in subsection (b).

48-9-46. Making false statement for purpose of obtaining credit, refund, or reduction of liability for tax imposed by article; willful failure to file report; penalty.

(a) It shall be unlawful for any person willfully and knowingly to make a false statement orally or in writing or in the form of a receipt for the sale of motor fuel for the purpose of obtaining or attempting to obtain or assisting any other person to obtain or attempt to obtain a credit, refund, or reduction of liability for taxes under this article.

(b) It shall be unlawful for any person required by this article to make a report willfully to fail to make such report at the time required by law.

(c) Any person who violates subsection (a) or subsection (b) of this Code section shall be guilty of a misdemeanor.

History.
Ga. L. 1968, p. 360, § 17; Code 1933, § 91A-9919, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1983, p. 1834, § 12.

CHAPTER 10

MOTOR VEHICLE LICENSE FEES AND PLATES

Sec.
48-10-1 through 48-10-16. [Redesignated].

Editor's notes.
This chapter, which formerly consisted of Code Sections 48-10-1 through 48-10-16, was redesignated as Article 7 of Chapter 2 of Title 40 by Ga. L. 2002, p. 1074, §§ 1 and 2.

48-10-1 through 48-10-16.

Reserved. Redesignated by Ga. L. 2002, p 1074, § 1, effective July 1, 2002.

Editor's notes.
Code Section 48-10-5, concerning transfers of annual license fees, licenses, and plates, etc. which was repealed by Ga. L. 1997, p. 419, § 39, effective May 1, 1997, and which was based on Ga. L. 1937-38, Ex. Sess. p. 259, § 4; Ga. L. 1970, p. 281, § 1; Code 1933, § 91A-5305, enacted by Ga. L. 1978, p. 309, § 2, was stricken and not redesignated by Ga. L. 2002, p. 1074, § 1.

Code Section 48-10-11, concerning the prohibition of operation of two-axle trailers of four or more wheels without certain brakes, which was repealed by Ga. L. 2000, p. 809, § 3, effective July 1, 2000, and which was based on Ga. L. 1937-38, Ex. Sess. p. 259, § 9A; Code 1933, § 91A-5311, enacted by Ga. L. 1978, p. 309, § 2, was stricken and not redesignated by Ga. L. 2002, p. 1074, § 1.

CHAPTER 11

TAXES ON TOBACCO AND VAPING PRODUCTS

Sec.
48-11-1. Definitions.
48-11-2. (Effective until January 1, 2025.) Excise tax imposed; rates for tobacco and vaping products; exemptions; collection and payment; tax separately identified.
48-11-2. (Effective January 1, 2025.) Excise tax imposed; rates for tobacco and vaping products; exemptions; collection and payment; tax separately identified.
48-11-3. Collection of tax via stamps; sale at discount to distributors; alternate method of collection of tax; prohibition of sale or exchange of stamps; redemptions.
48-11-4. Licensing of persons engaged in tobacco and vaping business; initial and annual fees; suspension and revocation; vending machines; bond by distributor; duties; licensing of promotional activities.
48-11-4.1. Sale of vapor products to persons not licensed as manufacturer, importer, distributor, or dealer by any means other than in-person sale prohibited; identification requirement; penalties for violation.
48-11-4.2. Requirements for sales and deliveries of tobacco products, alternative nicotine products, or vapor products; powers of special agents or enforcement officers; rules and regulations; penalties for violations.
48-11-5. Licensing of nonresident distributors; use of stamps or metering machine; bond; examination of records; applicability of chapter to nonresident distributors; shipment reports.
48-11-6. Suspension, refusal of renewal, and revocation of licenses; notice; hearings; appeals; effect on other activities regulated by commissioner.
48-11-7. Execution of bonds by distributor; surety.
48-11-8. Prohibition of sale or possession of unstamped tobacco or vaping products; distributors to affix stamps or otherwise pay tax; payment of tax only once; reports.
48-11-9. Seizure as contraband of unstamped tobacco or vapor products; exceptions; sale at public auction; procedure; disposition of proceeds; hearing; bond; contraband vending machines.
48-11-10. Monthly reports of licensed distributors; other reporting requirements authorized.
48-11-11. Records of distributors and dealers; stock examination; inspection by commissioner and agents; inspection of records of transportation companies, carriers, and warehouses.
48-11-12. Assessment of deficiencies and penalties for incorrect reports, nonpayment of tax, or purchase of insufficient stamps; assumption of illegal sale absent evidence to contrary; penalty for deficiency due to fraud.
48-11-13. Tax on persons having tobacco or vaping products on which tax under Code Section 48-11-2 not paid; rate; exemptions.
48-11-14. Registration, reports, and tax payments of persons acquiring tobacco or vaping products subject to tax un-

Sec.
der Code Section 48-11-13; assessment for failure to file accurate report; hearing; penalties.
48-11-15. Procedure for refund of taxes on affixed stamps and tobacco or vaping products unfit for sale, use, or consumption and destroyed or exported.
48-11-16. Purchase of tax stamps on account by distributors with permit; cancellation of permit without notice for failure or refusal to comply with Code section; payment of outstanding liability.
48-11-17. Amount of unpaid tax as lien against property of violators; seizure and sale; recording of lien.
48-11-18. Hearings for persons aggrieved by commissioner; initiation of hearings; procedures; evidence; appeals; bond; grounds for not sustaining commissioner's action; costs.
48-11-19. Powers and duties of special agents and enforcement officers of department; bond; duties following arrests; retention of weapon and badge upon retirement.
48-11-20. Venue as to violations of chapter; commissioner's certificate as prima-facie evidence.
48-11-21. Jurisdiction of superior courts of criminal violations of chapter.
48-11-22. Transportation of unstamped tobacco or vaping products; requirement of invoices or delivery tickets; contents; confiscation and disposition absent invoice or ticket; penalty; applicability.
48-11-23. Transporting tobacco or vaping products in violation of Code Section 48-11-22; penalty.
48-11-23.1. Additional requirements on the sale of tobacco or vaping products; seizure and forfeiture of contraband; revocation of licenses.
48-11-24. Penalties for possession of unstamped tobacco or vaping products; penalty for operation of unlicensed business or activity; procedure for enforcement and collection of penalties; costs and expenses.
48-11-25. Violations of chapter; penalties.
48-11-26. Failure to file report or filing false report required by chapter; penalty.
48-11-27. False entries on invoices or records pursuant to chapter; penalty.
48-11-28. Possession, use, manufacture, or other unlawful activities involving counterfeited stamps or tampering with metering machine pursuant to chapter; penalty.
48-11-29. [Reserved] Swearing and testifying falsely with respect to matters governed by chapter; penalty.
48-11-30. Penalty for sale or possession of counterfeit cigarettes.

Cross references.

Procedural enhancements to the Master Settlement Agreement, § 10-13A-1 et seq.

Required marking of cigarettes, § 25-14-5.

Examination by state auditor of books, records, and accounts of persons required to pay tax upon retail sales price of cigars and cigarettes, § 50-6-5.

Administrative rules and regulations.

Dealer Provisions, Official Compilation of the Rules and Regulations of the State

of Georgia, Rules of Department of Revenue, Alcohol and Tobacco Tax Division, Rule 560-8-2-.01 et seq.

Distributor Provisions, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Alcohol and Tobacco Tax Division, Rule 560-8-3-.01 et seq.

Manufacturer/Importer Provisions, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Alcohol and Tobacco Tax Division, Rule 560-8-4-.01 et seq.

Vending Machines, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Alcohol and Tobacco Tax Division, Rule 560-8-5-.01 et seq.

Administrative Hearings, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Alcohol and Tobacco Tax Division, Rule 560-8-6-.01 et seq.

Reporting - Administrative Forms, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Alcohol and Tobacco Tax Division, Administrative Forms, Rule 560-8-7-.02.

Law reviews.

For note on the 2003 amendments to various Code sections throughout this chapter, see 20 Georgia St. U.L. Rev. 233 (2003).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, Ch. 92-22, which was subsequently repealed but was succeeded by provisions in this chapter, are included in the annotations for this chapter.

What transactions and persons liable. — Former Code 1933, Ch. 92-22 as it stood provided for the imposition of an excise tax liability upon each separate transaction and event in the process of distribution and consumption. The distributor was required initially to advance or pay the tax which in due course was collected from the ultimate purchaser or consumer. The ultimate purchaser or consumer was the taxpayer. In re Jim Clay Tobacco Co., 355 F. Supp. 274, 1973 U.S. Dist. LEXIS 14769 (N.D. Ga. 1973) (decided under former Code 1933, § 92-22).

When distributor's liability fixed. — Under former Code 1933, Ch. 92-22, taken as a whole, the liability of the distributor was fixed and absolute the moment the distributor came into the possession of cigarettes for the first time. In re Jim Clay Tobacco Co., 355 F. Supp. 274, 1973 U.S. Dist. LEXIS 14769 (N.D. Ga. 1973) (decided under former Code 1933, Ch. 92-22).

RESEARCH REFERENCES

ALR.

Tax on cigarettes or tobacco, or dealers therein, as violating requirement of uniformity or equality in taxation, 62 A.L.R. 105.

Constitutionality of retroactive statute imposing excise, license, or privilege tax, 146 A.L.R. 1011.

Deductibility of other taxes or fees in computing excise or license taxes, 148 A.L.R. 263; 174 A.L.R. 1263.

Validity, construction, and application of state statutes forbidding possession, transportation, or sale of unstamped or unlicensed cigarettes or other tobacco products, 46 A.L.R.3d 1342.

48-11-1. Definitions.

As used in this chapter, the term:

(1) "Alternative nicotine product" means any material that con-

tains nicotine, but does not contain tobacco leaf, and is intended for human consumption, whether such material is chewed, absorbed, dissolved, or ingested by any other means. Such term shall include, but shall not be limited to, nicotine gel, pouches, or gum or dissolvable nicotine strips, sticks, lozenges, or pellets. Such term shall not include little cigars, cigars, cigarettes, loose or smokeless tobacco, consumable vapor products, or any product regulated as a drug or therapeutic device by the United States Food and Drug Administration under Chapter V of the Federal Food, Drug, and Cosmetic Act.

(2) "Alternative nicotine product dealer" means any person located within the borders of this state who sells or distributes alternative nicotine products to a consumer in this state.

(3) "Alternative nicotine product distributor" means any person who:

(A) Maintains a warehouse, warehouse personnel, and salespersons who regularly contact and call on alternative nicotine product dealers; and

(B) Is engaged in the business of:

(i) Importing alternative nicotine products into this state or purchasing alternative nicotine products from other alternative nicotine product manufacturers or alternative nicotine product distributors; and

(ii) Selling the alternative nicotine products to alternative nicotine product dealers in this state for resale but is not in the business of selling the alternative nicotine products directly to the ultimate consumers of the alternative nicotine products.

(4) "Alternative nicotine product importer" means any person who imports into or who brokers within the United States, either directly or indirectly, finished alternative nicotine products for sale or distribution.

(5) "Alternative nicotine product manufacturer" means any person who manufactures, fabricates, assembles, processes, or labels finished alternative nicotine products.

(6) "Cigar" means any roll for smoking made wholly or in part of tobacco when the cover of the roll is also tobacco. Such term shall include a little cigar.

(7) "Cigar dealer" means any person located within the borders of this state who sells or distributes cigars to a consumer in this state.

(8) "Cigar distributor" means any person, whether located within or outside the borders of this state, other than a cigar dealer, who

sells or distributes cigars within or into the boundaries of this state and who:

(A) Maintains a warehouse, warehouse personnel, and salespersons who regularly contact and call on cigar dealers; and

(B) Is engaged in the business of:

(i) Importing cigars into this state or purchasing cigars from other cigar manufacturers or cigar distributors; and

(ii) Selling the cigars to cigar dealers in this state for resale but is not in the business of selling the cigars directly to the ultimate consumer of the cigars.

(9) "Cigar importer" means any person who imports into or who brokers within the United States, either directly or indirectly, a finished cigar for sale or distribution.

(10) "Cigar manufacturer" means any person who manufactures, fabricates, assembles, processes, or labels a finished cigar.

(11) "Cigarette" means any roll or stick for smoking made wholly or in part of tobacco when the cover of the roll is paper or any substance other than tobacco or when the stick is heated in a device without combustion.

(12) "Cigarette dealer" means any person located within the borders of this state who sells or distributes cigarettes to a consumer in this state.

(13) "Cigarette distributor" means any person, whether located within or outside the borders of this state, other than a cigarette dealer, who sells or distributes cigarettes within or into the boundaries of this state and who:

(A) Maintains a warehouse, warehouse personnel, and salespersons who regularly contact and call on cigarette dealers; and

(B) Is engaged in the business of:

(i) Importing cigarettes into this state or purchasing cigarettes from other cigarette manufacturers or cigarette distributors; and

(ii) Selling the cigarettes to cigarette dealers in this state for resale but is not in the business of selling the cigarettes directly to the ultimate consumer of the cigarettes.

Such term shall not include any cigarette manufacturer, export warehouse proprietor, or cigarette importer with a valid permit under 26 U.S.C. Section 5712, if such person sells or distributes cigarettes in this state only to cigarette distributors who hold valid and current

licenses under Code Section 48-11-4 or to an export warehouse proprietor or another cigarette manufacturer with a valid permit under 26 U.S.C. Section 5712.

(14) "Cigarette importer" means any person who imports into or who brokers within the United States, either directly or indirectly, a finished cigarette for sale or distribution.

(15) "Cigarette manufacturer" means any person who manufactures, fabricates, assembles, processes, or labels a finished cigarette.

(16) "Closed system" means any disposable container which is prefilled and sealed by the manufacturer, not easily refillable or intended or designed to be refillable, and intended or used to dispense consumable vapor products by way of a vapor device that is intended or designed to be reused.

(17) "Consumable vapor product" means any liquid solution, whether it contains nicotine or not, that is intended to be heated into an aerosol state and inhaled by an individual. Such term shall include, but shall not be limited to, e-liquid, e-juice, vape juice, and cartridges that are prefilled with such a solution. Such term shall not include any alternative nicotine product, cigar, cigarette, loose or smokeless tobacco, perfume, potpourri, essential oil, or product regulated as a drug or therapeutic device by the United States Food and Drug Administration under Chapter V of the Federal Food, Drug, and Cosmetic Act.

(18) "Counterfeit cigarette" means cigarettes that are manufactured, fabricated, assembled, processed, packaged, or labeled by any person other than the trademark owner of a cigarette brand or the owner's designated agent.

(19) "Dealer" means any person who is a cigar dealer, a cigarette dealer, a loose or smokeless tobacco dealer, an alternative nicotine product dealer, or a vapor product dealer.

(20) "Distributor" means any person who is a cigar distributor, a cigarette distributor, a loose or smokeless tobacco distributor, an alternative nicotine product distributor, or a vapor product distributor.

(21) "Electronic means" means internet enabled technology and digital media, including, but not limited to, websites and consumer applications accessible through computers, smartphones, or other electronic devices.

(22) "Employee" means an individual who is a full-time or part-time employee or independent contractor of a licensed dealer and who is at least 21 years of age.

(23) "First transaction" means the first sale, receipt, purchase, possession, consumption, handling, distribution, or use of cigars, cigarettes, loose or smokeless tobacco, alternative nicotine products, or vapor products within this state.

(24) "Licensed dealer" means a dealer that maintains a valid license issued pursuant to this chapter with respect to tobacco products, alternative nicotine products, vapor products, or a combination thereof.

(25) "Little cigar" means any cigar weighing not more than three pounds per thousand.

(26) "Loose or smokeless tobacco" means granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff or snuff flour; cavendish; plug and twist tobacco; fine-cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings, and sweepings of tobacco; other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking; and any tobacco product intended for human consumption that is not otherwise defined by this chapter. Such term shall not include alternative nicotine products, consumable vapor products, cigarettes, cigars, or tobacco purchased for the manufacture of cigarettes or cigars by cigarette manufacturers or cigar manufacturers.

(27) "Loose or smokeless tobacco dealer" means any person located within the borders of this state who sells or distributes loose or smokeless tobacco to a consumer in this state.

(28) "Loose or smokeless tobacco distributor" means any person who:

(A) Maintains a warehouse, warehouse personnel, and salespersons who regularly contact and call on loose or smokeless tobacco dealers; and

(B) Is engaged in the business of:

(i) Importing loose or smokeless tobacco into this state or purchasing loose or smokeless tobacco from other loose or smokeless tobacco manufacturers or loose or smokeless tobacco distributors; and

(ii) Selling the loose or smokeless tobacco to loose or smokeless tobacco dealers in this state for resale but is not in the business of selling the loose or smokeless tobacco directly to the ultimate consumer of the loose or smokeless tobacco.

(29) "Loose or smokeless tobacco importer" means any person who imports into or who brokers within the United States, either directly

or indirectly, finished loose or smokeless tobacco for sale or distribution.

(30) "Loose or smokeless tobacco manufacturer" means any person who manufactures, fabricates, assembles, processes, or labels finished loose or smokeless tobacco.

(31) Reserved.

(32) "Open system" means any method or manner used to contain a consumable vapor product that is not a closed system.

(33) "Proper identification" means any document issued by a governmental agency containing a description of the person or such person's photograph, or both, and giving such person's date of birth and that includes, without being limited to, a passport, military identification card, driver's license, or identification card authorized under Code Sections 40-5-100 through 40-5-104.

(34) "Related machinery" means any item, device, conveyance, or vessel of any kind or character used in manufacturing, packaging, labeling, stamping, transporting, distributing, selling, or possessing counterfeit cigarettes.

(35) "Sale" means any sale, transfer, exchange, theft, barter, gift, or offer for sale and distribution in any manner or by any means whatever.

(36) "Stamp" means any impression, device, stamp, label, or print manufactured, printed, made, or affixed as prescribed by the commissioner.

(37) "Third party" means any person registered to do business in this state that has a contractual relationship with at least one licensed dealer. Such term shall include such person's employees and independent contractors.

(38) "Tobacco product" means any cigar, cigarette, or loose or smokeless tobacco.

(39) "Vapor device" means any system or device developed or intended to deliver a consumable vapor product to an individual who inhales from the device. Such term shall include, but not be limited to, an electronic nicotine delivery system, an electronic cigarette, electronic cigar, electronic pipe, vape pen, vape tool, or electronic hookah. Such term shall not include a fragrance or essential oil diffuser, an air freshener, or any product regulated as a drug or device by the United States Food and Drug Administration under Chapter V of the Federal Food, Drug, and Cosmetic Act.

(40) "Vapor product" means any consumable vapor product or vapor device.

(41) "Vapor product dealer" means any person located within the borders of this state who sells or distributes vapor products to a consumer in this state.

(42) "Vapor product distributor" means any person who:

(A) Maintains a warehouse, warehouse personnel, and salespersons who regularly contact and call on vapor product dealers; and

(B) Is engaged in the business of:

(i) Importing vapor products into this state or purchasing vapor products from other vapor product manufacturers or vapor product distributors; and

(ii) Selling the vapor products to vapor product dealers in this state for resale but is not in the business of selling the vapor products directly to the ultimate consumers of the vapor products.

(43) "Vapor product importer" means any person who imports into or who brokers within the United States, either directly or indirectly, finished vapor products for sale or distribution.

(44) "Vapor product manufacturer" means any person who manufactures, fabricates, assembles, processes, or labels finished vapor products.

(45) "Vending machine" means any coin-in-the-slot device or other automated device that accepts payment and is used for the automatic merchandising of cigars, cigarettes, or loose or smokeless tobacco.

History.

Ga. L. 1955, p. 268, § 2; Ga. L. 1960, p. 125, § 1; Ga. L. 1967, p. 563, § 1; Code 1933, § 91A-5501, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2003, p. 665, § 18; Ga. L. 2004, p. 384, § 1; Ga. L. 2005, p. 60, § 48/HB 95; Ga. L. 2012, p. 831, § 1/HB 1071; Ga. L. 2020, p. 257, § 2/SB 375.

Editor's notes.

Ga. L. 2003, p. 665, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2003.'"

JUDICIAL DECISIONS

Tax not included in cost or price for sales or use tax purposes. — State cigarette tax is not an element of the "cost of the property sold" and is not, therefore, included in "gross sales" and "sales price" upon which the sales and use tax imposed under Ga. L. 1951, p. 360 (see O.C.G.A. T. 48, C. 8, A. 1) is calculated. Blackmon v. Coastal Serv., Inc., 125 Ga. App. 28, 186 S.E.2d 441, 1971 Ga. App. LEXIS 727 (1971), aff'd, 229 Ga. 471, 192 S.E.2d 372, 1972 Ga. LEXIS 654 (1972).

OPINIONS OF THE ATTORNEY GENERAL

Cigarettes must be stamped even though stolen or lost. — Ga. L. 1955, p. 268, § 13 (see now O.C.G.A. § 48-11-12) read in conjunction with Ga. L. 1955, p. 268, § 2 (see now O.C.G.A. § 48-11-1) requires that cigarettes be stamped even though the cigarettes are stolen or lost. 1963-65 Ga. Op. Att'y Gen. 779.

RESEARCH REFERENCES

Am. Jur. 2d.
71 Am. Jur. 2d, State and Local Taxation, §§ 496, 498.
C.J.S.
53 C.J.S., Licenses, § 55.
ALR.
What constitutes a sale "at retail" within federal retailers' excise tax statute (26 USC (IRC 1954) chap. 31), 93 A.L.R.2d 1120.
What constitutes manufacturing and who is a manufacturer under tax laws, 17 A.L.R.3d 7.

48-11-2. (Effective until January 1, 2025.) Excise tax imposed; rates for tobacco and vaping products; exemptions; collection and payment; tax separately identified.

(a) An excise tax, in addition to all other taxes of every kind imposed by law, is imposed upon the sale, receipt, purchase, possession, consumption, handling, distribution, or use of cigars, cigarettes, loose or smokeless tobacco, alternative nicotine products, and vapor products in this state at the following rates:

(1) Little cigars: two and one-half mills each;

(2) All cigars other than little cigars: 23 percent of the wholesale cost price, exclusive of any trade, cash, or other discounts or any promotion, advertising, display, or similar allowances;

(3) Cigarettes: 37¢ per pack of 20 cigarettes and a like rate, pro rata, for other size packages;

(4) Loose or smokeless tobacco: 10 percent of the wholesale cost price, exclusive of any trade, cash, or other discounts or any promotion, advertising, display, or similar allowances;

(5) Consumable vapor products in a closed system: 5¢ per fluid milliliter;

(6) Consumable vapor products in an open system: 7 percent of the wholesale cost price, exclusive of any trade, cash, or other discounts or any promotion, advertising, display, or similar allowances; and

(7) Vapor devices that contain any consumable vapor product at the time of sale and which are not designed or intended to be reused or refilled: 7 percent of the wholesale cost price, exclusive of any

trade, cash, or other discounts or any promotion, advertising, display, or similar allowances.

(b) When the retail selling price is referred to in this chapter as the basis for computing the tax, it is intended to mean the ordinary retail selling price of the article to the consumer before adding the amount of the tax.

(c) The taxes imposed by this chapter are levied on the purchase or use of cigars, cigarettes, or loose or smokeless tobacco by the state or any department, institution, or agency of the state and by the political subdivisions of the state and their departments, institutions, and agencies. The taxes imposed by this chapter are not imposed on cigars, cigarettes, or loose or smokeless tobacco purchased exclusively for use by the patients at the Georgia War Veterans Home and the Georgia War Veterans Nursing Home.

(d) The taxes imposed by this chapter are not levied on cigars, cigarettes, loose or smokeless tobacco, alternative nicotine products, or vapor products, the purchase or use of which this state is prohibited from taxing under the Constitution or statutes of the United States.

(e) The taxes imposed by this chapter shall be advanced and paid by the dealer or distributor licensed pursuant to this chapter to the commissioner for deposit and distribution as provided in this chapter upon the first transaction within this state, whether or not the transaction involves the ultimate purchaser or consumer. The licensed dealer or distributor shall collect the tax on the first transaction within this state from the purchaser or consumer, and the purchaser or consumer shall pay the tax to the dealer or distributor. The dealer or distributor shall be responsible for the collection of the tax and the payment of the tax to the commissioner. Whenever cigars, cigarettes, loose or smokeless tobacco, alternative nicotine products, or vapor products are shipped from outside this state to anyone other than a distributor, the person receiving the cigars, cigarettes, loose or smokeless tobacco, alternative nicotine products, or vapor products shall be deemed to be a distributor and shall be responsible for the tax on the cigars, cigarettes, loose or smokeless tobacco, alternative nicotine products, or vapor products and the payment of the tax to the commissioner. No tobacco products, alternative nicotine products, or vapor products shall be received in, sold in, or shipped into this state unless lawfully obtained from a person licensed pursuant to this chapter or from an importer with a valid permit issued pursuant to 26 U.S.C. Section 5712.

(f) The amount of taxes advanced and paid to the state as provided in this Code section shall be added to and collected as a part of the sales price of the cigars, cigarettes, loose or smokeless tobacco, alternative nicotine products, or vapor products sold or distributed. The amount of

the tax shall be stated separately from the price of the cigars, cigarettes, loose or smokeless tobacco, alternative nicotine products, or vapor products.

(g) The cigars, cigarettes, loose or smokeless tobacco, alternative nicotine products, and vapor products tax imposed shall be collected only once upon the same cigars, cigarettes, loose or smokeless tobacco, alternative nicotine products, or vapor products.

History.

Ga. L. 1955, p. 268, § 3; Ga. L. 1955, Ex. Sess., p. 48, § 1; Ga. L. 1964, p. 50, § 1; Ga. L. 1967, p. 563, §§ 2-4; Ga. L. 1971, p. 36, §§ 1, 2; Ga. L. 1971, p. 346, § 1; Code 1933, § 91A-5502, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1983, p. 1834, § 13; Ga. L. 1986, p. 468, § 1; Ga. L. 2003, p. 665, § 19; Ga. L. 2012, p. 831, § 2/HB 1071; Ga. L. 2020, p. 257, § 2/SB 375.

Delayed effective date.

Code Section 48-11-2 is set out twice in this Code. This version is effective until January 1, 2025. For version effective January 1, 2025, see the following version.

Editor's notes.

Ga. L. 1986, p. 468, § 2, not codified by the General Assembly, provided that that Act would become effective July 1, 1986, and would apply to taxable events and transactions occurring on or after that date.

Ga. L. 2003, p. 665, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2003.'"

Law reviews.

For article, "Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government," see 28 Georgia St. U.L. Rev. 217 (2011).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under Ga. L. 1937, p. 83, § 1, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

Tax does not violate commerce clause. — Cigarette tax laid not upon the privilege of receiving cigarettes in this state, but levied upon the privilege of retaining, keeping, holding, or possessing cigarettes for personal use, after the cigarettes have been received, acquired, or brought into this state, is not violative of the commerce clause, U.S. Const., Art. I, Sec. 8, Cl. 3. Head v. Cigarette Sales Co., 188 Ga. 452, 4 S.E.2d 203, 1939 Ga. LEXIS 570 (1939) (decided under Ga. L. 1937, p. 83, § 1).

Tax is an excise tax, not ad valorem, and not unconstitutional for nonuniformity. — Tax imposed upon every person who received by means in this state, and who held or possessed for his or her own personal use in this state, or for the use of any member of their family, cigarettes which had been stamped as required, is an excise upon the privilege of holding or possessing such cigarettes for personal use, and not a direct or ad valorem tax upon such articles, and accordingly, does not violate Ga. Const. 1877, Art. VII, Sec. II, Para. I because it was not uniform with an ad valorem tax levied by the state upon tangible property. Head v. Cigarette Sales Co., 188 Ga. 452, 4 S.E.2d 203, 1939 Ga. LEXIS 570 (1939) (decided under Ga. L. 1937, p. 83, § 1).

Different treatment of those holding stamped or unstamped cigarettes constitutional. — State does not create an unreasonable classification in violation of the uniformity clause, Ga. Const. 1877, Art. VII, Sec. II, Para. I, in levying a tax upon persons who hold or possess for personal use unstamped

cigarettes, while exempting those who hold or possess cigarettes for such purpose which have been stamped by a dealer as required by law. Head v. Cigarette Sales Co., 188 Ga. 452, 4 S.E.2d 203, 1939 Ga. LEXIS 570 (1939) (decided under Ga. L. 1937, p. 83, § 1).

Tax is not part of cost of property sold for sales and use tax purposes. — If the imposition of taxes, such as those on cigarettes, falls upon the consumer or the incident of the sale by the retailer to the consumer they are not included as part of the retail sale price for calculating the sales and use tax. If, however, the tax is imposed at a time prior to the point of retail sale or other consumer transaction, it is an element of the cost of the property sold and must be included as part of the retail sale price for purposes of calculating the sales and use tax imposed by Ga. L. 1951, p. 360 (see § 48-8-1 et seq.). The state cigarette tax is not an element of the "cost of the property sold" and is not, therefore, included in "gross sales" and "sales price" upon which the sales and use tax is calculated. Blackmon v. Coastal Serv., Inc., 125 Ga. App. 28, 186 S.E.2d 441, 1971 Ga. App. LEXIS 727 (1971), aff'd, 229 Ga. 471, 192 S.E.2d 372, 1972 Ga. LEXIS 654 (1972).

Tax collected once, but imposed on every step in distribution and consumption. — Cigar and cigarette tax is an excise tax, to be collected only once, but nevertheless imposed upon each separate transaction and event in the process of distribution and consumption. In re Jim Clay Tobacco Co., 355 F. Supp. 274, 1973 U.S. Dist. LEXIS 14769 (N.D. Ga. 1973).

Cigar and cigarette tax is levied against the distributor. In re Jim Clay Tobacco Co., 355 F. Supp. 274, 1973 U.S. Dist. LEXIS 14769 (N.D. Ga. 1973).

There is no substantial independent significance in the distinction between the words "distributor" and "taxpayer." In re Jim Clay Tobacco Co., 355 F. Supp. 274, 1973 U.S. Dist. LEXIS 14769 (N.D. Ga. 1973).

Inability to collect from vendees does not absolve the distributor of the burden to pay the excise tax imposed by this section although the state, in the state's discretion, may pursue whatever entity appears most likely to yield results. In re Jim Clay Tobacco Co., 355 F. Supp. 274, 1973 U.S. Dist. LEXIS 14769 (N.D. Ga. 1973).

Under this section, there is no doubt that the distributor's liability is absolute, without regard to whether or not the distributor is able to pass on the economic burden to retail distributors and the ultimate retail consumers. If the cigarettes are destroyed in a fire before the ultimate retail sale, while in the hands of a retail distributor, or if the retail distributor becomes a bankrupt, the distributor's obligation is nevertheless fixed. In re Jim Clay Tobacco Co., 355 F. Supp. 274, 1973 U.S. Dist. LEXIS 14769 (N.D. Ga. 1973).

OPINIONS OF THE ATTORNEY GENERAL

Department is not authorized to permit the National Guard to purchase or sell cigarettes or cigars without the payment of the tobacco tax. 1963-65 Ga. Op. Att'y Gen. 242.

RESEARCH REFERENCES

Am. Jur. 2d.

71 Am. Jur. 2d, State and Local Taxation, §§ 23, 24, 496, 498.

C.J.S.

53 C.J.S., Licenses, § 55.

ALR.

Deductibility of other taxes or fees in computing excise or license taxes, 174 A.L.R. 1263.

What constitutes a sale "at retail" within federal retailers' excise tax statute (26 USC (IRC 1954) chap 31), 93 A.L.R.2d 1120.

48-11-2. (Effective January 1, 2025.) Excise tax imposed; rates for tobacco and vaping products; exemptions; collection and payment; tax separately identified.

(a) An excise tax, in addition to all other taxes of every kind imposed by law, is imposed upon the sale, receipt, purchase, possession, consumption, handling, distribution, or use of cigars, cigarettes, loose or smokeless tobacco, alternative nicotine products, and vapor products in this state at the following rates:

(1) Little cigars: two and one-half mills each;

(2) All cigars other than little cigars: 23 percent of the wholesale cost price, exclusive of any trade, cash, or other discounts or any promotion, advertising, display, or similar allowances;

(3) Cigarettes: 37¢ per pack of 20 cigarettes and a like rate, pro rata, for other size packages;

(4) Loose or smokeless tobacco: 10 percent of the wholesale cost price, exclusive of any trade, cash, or other discounts or any promotion, advertising, display, or similar allowances;

(5) Consumable vapor products in a closed system: 5¢ per fluid milliliter;

(6) Consumable vapor products in an open system: 7 percent of the wholesale cost price, exclusive of any trade, cash, or other discounts or any promotion, advertising, display, or similar allowances; and

(7) Vapor devices that contain any consumable vapor product at the time of sale and which are not designed or intended to be reused or refilled: 7 percent of the wholesale cost price, exclusive of any trade, cash, or other discounts or any promotion, advertising, display, or similar allowances.

(b) When the retail selling price is referred to in this chapter as the basis for computing the tax, it is intended to mean the ordinary retail selling price of the article to the consumer before adding the amount of the tax.

(c)(1) The taxes imposed by this chapter are levied on the purchase or use of cigars, cigarettes, or loose or smokeless tobacco by the state or any department, institution, or agency of the state and by the political subdivisions of the state and their departments, institutions, and agencies.

(2) (Reserved effective December 31, 2029.) The taxes imposed by this chapter are not imposed on cigars, cigarettes, or loose or smokeless tobacco purchased exclusively for use by the patients at

the Georgia War Veterans Home and the Georgia War Veterans Nursing Home. This paragraph shall stand repealed and reserved on December 31, 2029.

(d) The taxes imposed by this chapter are not levied on cigars, cigarettes, loose or smokeless tobacco, alternative nicotine products, or vapor products, the purchase or use of which this state is prohibited from taxing under the Constitution or statutes of the United States.

(e) The taxes imposed by this chapter shall be advanced and paid by the dealer or distributor licensed pursuant to this chapter to the commissioner for deposit and distribution as provided in this chapter upon the first transaction within this state, whether or not the transaction involves the ultimate purchaser or consumer. The licensed dealer or distributor shall collect the tax on the first transaction within this state from the purchaser or consumer, and the purchaser or consumer shall pay the tax to the dealer or distributor. The dealer or distributor shall be responsible for the collection of the tax and the payment of the tax to the commissioner. Whenever cigars, cigarettes, loose or smokeless tobacco, alternative nicotine products, or vapor products are shipped from outside this state to anyone other than a distributor, the person receiving the cigars, cigarettes, loose or smokeless tobacco, alternative nicotine products, or vapor products shall be deemed to be a distributor and shall be responsible for the tax on the cigars, cigarettes, loose or smokeless tobacco, alternative nicotine products, or vapor products and the payment of the tax to the commissioner. No tobacco products, alternative nicotine products, or vapor products shall be received in, sold in, or shipped into this state unless lawfully obtained from a person licensed pursuant to this chapter or from an importer with a valid permit issued pursuant to 26 U.S.C. Section 5712.

(f) The amount of taxes advanced and paid to the state as provided in this Code section shall be added to and collected as a part of the sales price of the cigars, cigarettes, loose or smokeless tobacco, alternative nicotine products, or vapor products sold or distributed. The amount of the tax shall be stated separately from the price of the cigars, cigarettes, loose or smokeless tobacco, alternative nicotine products, or vapor products.

(g) The cigars, cigarettes, loose or smokeless tobacco, alternative nicotine products, and vapor products tax imposed shall be collected only once upon the same cigars, cigarettes, loose or smokeless tobacco, alternative nicotine products, or vapor products.

History.
Ga. L. 1955, p. 268, § 3; Ga. L. 1955, Ex. Sess., p. 48, § 1; Ga. L. 1964, p. 50, § 1; Ga. L. 1967, p. 563, §§ 2-4; Ga. L. 1971, p. 36, §§ 1, 2; Ga. L. 1971, p. 346, § 1; Code 1933, § 91A-5502, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1983, p. 1834, § 13; Ga. L. 1986, p. 468, § 1; Ga. L. 2003, p. 665,

§ 19; Ga. L. 2012, p. 831, § 2/HB 1071; Ga. L. 2020, p. 257, § 2/SB 375; Ga. L. 2024, p. 794, § 3-5/HB 1181, effective January 1, 2025.

Delayed effective date.

Code Section 48-11-2 is set out twice in this Code. This version is effective January 1, 2025. For version effective until January 1, 2025, see the preceding version.

Amendments.

The 2024 amendment, effective January 1, 2025, designated the existing provisions of subsection (c) as paragraphs (c)(1) and (c)(2) and added the last sentence in (c)(2).

48-11-3. Collection of tax via stamps; sale at discount to distributors; alternate method of collection of tax; prohibition of sale or exchange of stamps; redemptions.

(a) Except as otherwise provided in this Code section, the taxes imposed by Code Section 48-11-2 shall be collected and paid through the use of stamps. The commissioner shall secure stamps of such design and materials as the commissioner deems appropriate to protect the revenue and shall sell the stamps to licensed distributors at a discount of not less than 2 percent and not more than 8 percent of the value of the stamps. The exact percentage of the discount shall be based on brackets according to the volume of cigars, cigarettes, loose or smokeless tobacco, alternative nicotine products, and vapor products handled by the distributor pursuant to regulations promulgated by the commissioner. The commissioner shall prescribe by regulation the condition, method, and manner in which stamps are to be affixed to containers of cigars, cigarettes, loose or smokeless tobacco, alternative nicotine products, and vapor products.

(b) The commissioner may prescribe by regulation an alternate method, in lieu of the sale of stamps, of collecting and paying the tax imposed upon cigars and little cigars. The commissioner may also prescribe by regulation an alternate method, in lieu of the sale of stamps, of collecting and paying the tax imposed on loose or smokeless tobacco, alternative nicotine products, or vapor products. Any such regulations shall be promulgated so that use of the alternate method will result in the same revenue to the state as the state would realize through the sale of stamps to the distributors.

(c) No distributor shall sell or exchange with another distributor any stamps issued pursuant to this chapter. The commissioner is authorized to redeem at cost price any stamps presented for redemption by a licensed distributor when the commissioner determines from physical inspection that no cigars, cigarettes, loose or smokeless tobacco, alternative nicotine products, or vapor products have been sold by the distributor under pretense of the tax imposed by this chapter having been paid through use of the stamps.

History.

Ga. L. 1955, p. 268, § 4; Ga. L. 1955, Ex. Sess., p. 48, § 1A; Ga. L. 1960, p. 125, § 2; Ga. L. 1964, p. 50, § 2; Ga. L. 1967, p. 563,

§ 5; Code 1933, § 91A-5503, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2003, p. 665, § 20; Ga. L. 2020, p. 257, § 2/SB 375.

Editor's notes.

Ga. L. 2003, p. 665, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2003.'"

JUDICIAL DECISIONS

Purpose of using stamps for collection. — Use of stamps, affixed to each pack of cigarettes affords every party in the chain of distribution a ready method of determining the exact amount of the tax paid by the distributor and which in turn is passed on to the ultimate retail consumer. In re Jim Clay Tobacco Co., 355 F. Supp. 274, 1973 U.S. Dist. LEXIS 14769 (N.D. Ga. 1973).

RESEARCH REFERENCES

Am. Jur. 2d.

71 Am. Jur. 2d, State and Local Taxation, §§ 496, 498, 516 et seq.

48-11-4. Licensing of persons engaged in tobacco and vaping business; initial and annual fees; suspension and revocation; vending machines; bond by distributor; duties; licensing of promotional activities.

(a) No person shall engage in or conduct the business of manufacturing, importing, brokering, purchasing, selling, consigning, vending, dealing in, shipping, receiving, or distributing cigars, cigarettes, loose or smokeless tobacco, alternative nicotine products, or vapor products in this state without first obtaining a license from the commissioner.

(a.1) The commissioner may require a separate license for each business activity and product for which a license is required under this chapter. Alternatively, the commissioner may issue a single license allowing the license holder to act as dealer, distributor, importer, or manufacturer, or a combination thereof as to cigars, cigarettes, loose or smokeless tobacco, alternative nicotine products, or vapor products, or any combination thereof, at a location; provided, however, that the total licensing fee paid for the location shall be the same, whether the commissioner requires multiple licenses or issues a single license except for an additional $10.00 fee upon first issuance and each annual renewal of any manufacturer's, importer's, distributor's, or dealer's license for vapor products; provided, further, that the commissioner may permit or limit the business or activities of a license holder as to any product or products for which a license is required under this chapter without issuing a new license or requiring a new application.

(a.2) The commissioner shall maintain at all times information for each location for which any license has been issued under this chapter whether the license holder is authorized to engage in business as a

dealer, distributor, importer, or manufacturer, or a combination thereof, and whether cigars, cigarettes, loose or smokeless tobacco, alternative nicotine products, or vapor products, or any combination thereof, have been authorized at such location.

(b) All licenses shall be issued by the commissioner, who shall make rules and regulations with respect to applications for and issuance of the licenses and for other purposes of enforcing this chapter. The commissioner may refuse to issue any license under this chapter when the commissioner has reasonable cause to believe that the applicant has willfully withheld information requested of the applicant or required by the regulations to be provided or reported or when the commissioner has reasonable cause to believe that the information submitted in any application or report is false or misleading and is not given in good faith.

(c)(1) The annual renewal fee for a manufacturer's, importer's, distributor's, or dealer's license shall be $10.00 except for an additional $10.00 fee per year for those licenses that include vapor products. There shall also be a first-year registration fee of $250.00 for a person commencing business as a manufacturer, importer, or distributor, provided that there shall be only a first-year registration fee of $10.00 upon first issuance of each manufacturer's, importer's, distributor's, or dealer's license for vapor products to a person that currently holds such a license for tobacco products. All renewal applications shall be filed at least 30 days in advance of the expiration date shown on the license.

(2) Each license, except a dealer's license, shall begin on July 1 and end on June 30 of the next succeeding year. The prescribed fee shall accompany every application for a license and shall apply for any portion of the annual period.

(3) Each dealer's license shall be valid for 12 months beginning on the date of issue for the initial license, and the first day of the month of issue for subsequent licenses, and shall expire on the last day of the month preceding the month in which the initial license was issued. Any dealer licensed under the provisions of this Code section who is also licensed under Chapter 2 of Title 3 to sell alcoholic beverages may, upon written request to the commissioner, arrange to have both licenses renewed on the same date each year. Any dealer who follows the proper procedure for a renewal of his or her license, including filing the application for renewal at least 30 days in advance of the expiration date of his or her existing license, shall be allowed to continue operating as a dealer under the existing license until the commissioner has issued the new license or denied the application for renewal.

(4) Each manufacturer's, importer's, distributor's, or dealer's li-

cense shall be subject to suspension or revocation for violation of any of the provisions of this chapter or of the rules and regulations made pursuant to this chapter or Chapters 13 and 13A of Title 10 or of the rules and regulations made pursuant to those chapters. A separate license shall be required for each place of business. No person shall hold a distributor's license and a dealer's license at the same time.

(5) Any licensed dealer may apply for a special event tobacco permit for off-premise sales of cigars, cigarettes, or loose or smokeless tobacco for a special event at a temporary location offsite from the licensed location. Such permit may be authorized for a period of one day but not more than ten days. The special event tobacco permit shall include the specific address for the event or temporary location and the dates for the period that the permit will be in effect. The fee for a special event tobacco permit shall not exceed $10.00. All such permits shall be issued by the commissioner, who shall make rules and regulations with respect to applications for and issuance of special event tobacco permits. Such rules and regulations shall conform to the rules and regulations that apply to retail sales by licensed dealers, including, but not limited to, rules and regulations intended to limit access to tobacco products for minors.

(d) The commissioner may make rules and regulations governing the sale of cigars, cigarettes, loose or smokeless tobacco, and other tobacco products in vending machines. The commissioner shall require annually a special registration of each vending machine for any operation in this state and charge a license fee for the registration in the amount of $10.00 for each machine. The annual registration shall indicate the location of the vending machine. No vending machine shall be purchased or transported into this state for use in this state when the vending machine is not so designed as to permit inspection without opening the machine for the purpose of determining that all cigars, cigarettes, loose or smokeless tobacco, and other tobacco products contained in the machine bear the tax stamp required under this chapter.

(e) The manufacturer's, importer's, distributor's, or dealer's license shall be exhibited in the place of business for which it is issued in the manner prescribed by the commissioner. The commissioner shall require each licensed distributor to file with the commissioner a bond in an amount of not less than $1,000.00 to guarantee the proper performance of the distributor's duties and the discharge of the distributor's liabilities under this chapter. The bond shall run concurrently with the distributor's license but shall remain in full force and effect for a period of one year after the expiration or revocation of the distributor's license unless the commissioner certifies that all obligations due the state arising under this chapter have been paid.

(f) The jurisdiction of the commissioner in the administration of this chapter shall extend to every person using or consuming cigars, cigarettes, loose or smokeless tobacco, alternative nicotine products, or vapor products in this state and to every person dealing in cigars, cigarettes, loose or smokeless tobacco, alternative nicotine products, or vapor products in any way for business purposes and maintaining a place of business in this state. For the purpose of this chapter, the maintaining of an office, store, plant, warehouse, stock of goods, or regular sales or promotional activity, whether carried on automatically or by salespersons or other representatives, shall constitute, among other activities, the maintaining of a place of business. For the purpose of enforcement of this chapter and the rules and regulations promulgated under this chapter, notwithstanding any other provision of law, the commissioner or his or her duly appointed hearing officer is granted authority to conduct hearings which shall at all times be exercised in conformity with rules and regulations promulgated by the commissioner and consistent with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(g) The commissioner may provide for the licensing of promotional activities, not including the sale of cigars, cigarettes, or loose or smokeless tobacco, carried on by the manufacturer. The fee for any such license shall be $10.00 annually.

History.

Ga. L. 1955, p. 268, § 5; Ga. L. 1960, p. 125, § 3; Code 1933, § 91A-5504, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1980, p. 10, § 37; Ga. L. 1993, p. 343, § 6; Ga. L. 2003, p. 665, § 21; Ga. L. 2004, p. 384, § 2; Ga. L. 2005, p. 60, § 48/HB 95; Ga. L. 2012, p. 831, § 3/HB 1071; Ga. L. 2013, p. 141, § 48/HB 79; Ga. L. 2015, p. 932, § 1/HB 312; Ga. L. 2016, p. 528, § 4/HB 899; Ga. L. 2017, p. 774, § 48/HB 323; Ga. L. 2020, p. 257, § 2/SB 375; Ga. L. 2020, p. 473, § 1/SB 144; Ga. L. 2021, p. 922, § 48/HB 497.

Editor's notes.

Ga. L. 2003, p. 665, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2003.'"

RESEARCH REFERENCES

Am. Jur. 2d.

51 Am. Jur. 2d, Licenses and Permits, §§ 9, 10, 42.

C.J.S.

53 C.J.S., Licenses, §§ 1 et seq., 57, 58.

ALR.

Validity, construction, and application of statutes or ordinances prohibiting or regulating automatic vending machines, 111 A.L.R. 755; 151 A.L.R. 1195.

What constitutes manufacturing and who is a manufacturer under tax laws, 17 A.L.R.3d 7.

48-11-4.1. Sale of vapor products to persons not licensed as manufacturer, importer, distributor, or dealer by any means other than in-person sale prohibited; identification requirement; penalties for violation.

(a) Except as expressly provided in Code Section 48-11-4.2, it shall be unlawful to sell vapor products to any person who is not a licensed manufacturer, importer, distributor, or dealer of vapor products pursuant to Code Section 48-11-4 by any means other than an in-person, face-to-face sale.

(b) A seller of a vapor product shall request proper identification from each person attempting to purchase a vapor product which shows that such person is at least 21 years of age. Each person attempting to purchase a vapor product shall provide proper identification to the seller at the time of such purchase.

(c) A violation of any provision of this Code section shall be punished as for a misdemeanor as provided in Code Section 16-1-10 and shall result in the probation, suspension, or revocation by the commissioner of all licenses issued to the seller pursuant to Code Section 48-11-4.

History.
Code 1981, § 48-11-4.1, enacted by Ga. L. 2020, p. 257, § 2/SB 375.

48-11-4.2. Requirements for sales and deliveries of tobacco products, alternative nicotine products, or vapor products; powers of special agents or enforcement officers; rules and regulations; penalties for violations.

(a) Any licensed dealer may deliver to an address designated by an individual making a purchase of tobacco products, alternative nicotine products, or vapor products lawfully sold to and purchased by such individual for personal use and not for resale, subject to the following terms and conditions:

(1) The individual making the purchase shall, prior to ordering and purchasing tobacco products, alternative nicotine products, or vapor products for delivery, establish an account maintained by the licensed dealer that shall be available for inspection by the department;

(2) The licensed dealer or the employee shall process all payments made by the individual making the purchase from the licensed dealer;

(3) The licensed dealer, employee, or third party shall assemble, package, and fulfill each order at the licensed premises of the licensed

dealer. Once any tobacco product, alternative nicotine product, or vapor product that is part of an order leaves the licensed premises of the licensed dealer, such product shall remain in the possession of the licensed dealer, the employee, or the third party who is to make the delivery and shall not be transferred to any other person until the time of delivery;

(4) The delivery shall be made by the licensed dealer, employee, or third party who:

(A) Is at least 21 years of age;

(B) Has a valid Georgia driver's license;

(C) Has undergone within the last 12 months a background check that includes a local and national criminal history and driving record and:

(i) Has not had more than three moving violations in the prior three-year period;

(ii) Has not had a major traffic violation, as such term is defined in Code Section 40-5-142, in the prior three-year period;

(iii) Has not been convicted within the past seven years of driving under the influence of drugs or alcohol;

(iv) Has not been convicted at any time of fraud, a sexual offense, the use of a motor vehicle to commit a felony, a crime involving property damage, a crime involving theft, a crime involving an act of violence, or a crime involving an act of terror; and

(v) Does not have a match on the National Sex Offender Registry data base;

(D) Shall not possess or handle as part of or during the delivery forms of compensation that are used to purchase or transact the sale of tobacco products, alternative nicotine products, or vapor products; and

(E) Does not receive compensation based upon whether an attempted delivery results in a completed transaction;

(5) The delivery shall be made by the licensed dealer, employee, or third party to an individual who is at least 21 years of age and presents proper identification verifying the age of such individual;

(6) At the time of the delivery, the licensed dealer, employee, or third party shall verify the identity and age of the individual accepting delivery by validating the proper identification of the

individual accepting delivery and obtaining his or her signature on a written or electronic acknowledgment of receipt of the order and certification of legal age to purchase tobacco products, alternative nicotine products, or vapor products. The licensed dealer, employee, or third party shall scan or otherwise verify the proper identification of the individual accepting delivery and shall retain a record of such individual's name and date of birth that shall be available for inspection upon request for a minimum of three years;

(7) The licensed dealer, employee, or third party conducting the delivery shall not make the delivery if:

(A) No individual is at the address to accept delivery; or

(B) The individual attempting to accept the delivery:

(i) Is less than 21 years of age;

(ii) Fails to produce proper identification verifying his or her age; or

(iii) Fails to provide a signature that matches such proper identification;

(8) All deliveries shall be inspected at the time of delivery by the individual accepting such delivery. The transaction shall be deemed complete upon acceptance of the delivery of the tobacco products, alternative nicotine products, or vapor products, and all sales shall be final; and

(9) No delivery shall knowingly be made to any address or to any property that is part of:

(A) Any public or private elementary or secondary school, including without limitation any dormitory, housing, or common space located on the campus thereof;

(B) Any prison, reformatory, or other correctional facility;

(C) Any addiction or substance abuse facility; or

(D) Any locker, mailbox, package shipping location, or similar service or storage facility or business.

(b) A licensed dealer may use electronic means to market, receive, and process orders placed by individuals who are at least 21 years of age for tobacco products, alternative nicotine products, or vapor products it is licensed to sell, provided that any such orders shall be delivered in accordance with subsection (a) of this Code section.

(c) A licensed dealer may market, receive, and process orders for tobacco products, alternative nicotine products, or vapor products it is licensed to sell placed by individuals who are at least 21 years of age

using electronic means owned, operated, or maintained by a third party, provided that any such order shall be delivered in accordance with subsection (a) of this Code section and that:

(1) The licensed dealer shall maintain control and responsibility over the sales transaction and the transfer of the physical possession of tobacco products, alternative nicotine products, or vapor products to the employee or third party conducting the delivery;

(2) The licensed dealer shall retain discretion to elect whether to accept and complete an order or to reject an order;

(3) The transaction shall take place between the individual placing the order and the licensed dealer and the licensed dealer shall appear as the merchant of record at the time of purchase and at the time of receipt of the delivery;

(4) Any credit or debit card information provided by the individual placing the order to a third party for the purpose of the transaction with the licensed dealer shall be automatically directed to the licensed dealer;

(5) The licensed dealer who accepts the order shall receive the payment that is made by the individual making the purchase with such licensed dealer; and

(6) The delivery of tobacco products, alternative nicotine products, or vapor products to the individual who placed the order shall be made by the licensed dealer, employee, or third party as provided for in paragraphs (4) through (9) of subsection (a) of this Code section.

(d) Persons appointed by the commissioner as special agents or enforcement officers of the department shall, in addition to the powers and duties provided for in this chapter, have the power to inspect, without a warrant, in a lawful manner any premises of the licensed dealer or any vehicle being used by the licensed dealer, employee, or third party to make a delivery under this Code section for the purpose of:

(1) Determining if any provision of this Code section or any rule or regulation promulgated under its authority is being violated; or

(2) Securing evidence as may be needed for an administrative proceedings action, as provided in this Code section or any other provision of this chapter.

(e) The commissioner shall be authorized to promulgate and enforce such rules and regulations as he or she may deem necessary to carry out or effectuate the provisions of this Code section, including, but not limited to, rules and regulations governing the training of individuals making deliveries.

(f) In addition to the commissioner's power to suspend, revoke, or cancel licenses issued pursuant to this chapter, upon a violation of any provision of this Code section or any rule or regulation promulgated thereunder, the commissioner shall have the power to impose a fine not to exceed $500.00 for each violation and may suspend for up to 30 days for each violation the authorization provided by this Code section for the licensed dealer to deliver tobacco products, alternative nicotine products, or vapor products or to use an employee or third party to deliver such products. Any violation committed by an employee or a third party shall be attributed to and deemed to be an act taken by the licensed dealer for purposes of this Code section. A licensed dealer, employee, and third party may each be fined for the same violation. Nothing in this subsection shall be construed to allow the commissioner to suspend or terminate the authorization of a licensed dealer to sell tobacco products, alternative nicotine products, or vapor products on the licensed premises as a result of a violation of this Code section by a third party.

(g) The penalties provided for in this Code section shall be in addition to any criminal penalties that may otherwise be provided by law.

History.
Code 1981, § 48-11-4.2, enacted by Ga. L. 2020, p. 257, § 2/SB 375.
Code Commission notes.
Pursuant to Code Section 28-9-5, in 2020, "subsection" was substituted for "paragraph" near the beginning of the last sentence of subsection (f).

48-11-5. Licensing of nonresident distributors; use of stamps or metering machine; bond; examination of records; applicability of chapter to nonresident distributors; shipment reports.

(a)(1) If the commissioner finds that the collection of the tax imposed by this chapter would be facilitated by such action, the commissioner may authorize any person residing or located outside this state who is engaged in the business of manufacturing cigars, cigarettes, loose or smokeless tobacco, alternative nicotine products, or vapor products or any person residing or located outside this state who ships cigars, cigarettes, loose or smokeless tobacco, alternative nicotine products, or vapor products into this state for sale to licensed dealers in this state to be licensed as a distributor and, after the person complies with the commissioner's requirements, to affix or cause to be affixed the stamps required by this chapter on behalf of the purchasers of the cigars, cigarettes, loose or smokeless tobacco, alternative nicotine products, or vapor products who would otherwise be taxable for the cigars, cigarettes, loose or smokeless tobacco, alternative nicotine products, and vapor products. The commissioner may sell tax stamps

to an authorized person or may authorize the use of a metering machine by the person as provided in Code Section 48-11-3.

(2) The commissioner shall require a bond of a nonresident distributor satisfactory to the commissioner and in an amount of not less than $1,000.00, conditioned upon the payment of the tax and compliance with any other requirements specified by the commissioner. As a condition of authorization as provided in this Code section, a nonresident distributor shall agree to submit the distributor's books, accounts, and records for examination by the commissioner or the commissioner's duly authorized agent during reasonable business hours and shall appoint in writing an agent who resides in this state for the purpose of service. Service upon an agent shall be sufficient service upon the nonresident distributor and made by leaving a duly attested copy of the process with the agent. When legal process against any nonresident distributor is served upon the agent, the agent shall notify the nonresident distributor in the manner specified in Code Section 40-12-2.

(3) Upon the grant of authorization as provided in this subsection and except as may otherwise be determined by the commissioner, a nonresident distributor shall become a licensed distributor within the meaning of this chapter and shall be subject to all provisions of this chapter applicable to licensed distributors.

(b) Every nonresident manufacturer, importer, or distributor of cigars, cigarettes, loose or smokeless tobacco, alternative nicotine products, or vapor products making shipments of cigars, cigarettes, loose or smokeless tobacco, alternative nicotine products, or vapor products by common carrier or otherwise for their own account or for the account of others to distributors or dealers of cigars, cigarettes, loose or smokeless tobacco, alternative nicotine products, or vapor products located within this state shall make reports of the shipments when and as required by rules and regulations of the commissioner.

History.

Ga. L. 1955, p. 268, § 6; Ga. L. 1960, p. 125, § 4; Code 1933, § 91A-5505, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1982, p. 3, § 48; Ga. L. 2003, p. 665, § 22; Ga. L. 2004, p. 384, § 3; Ga. L. 2017, p. 774, § 48/HB 323; Ga. L. 2020, p. 257, § 2/SB 375.

Editor's notes.

Ga. L. 2003, p. 665, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2003.'"

RESEARCH REFERENCES

Am. Jur. 2d.
51 Am. Jur. 2d, Licenses and Permits, §§ 31, 42.

C.J.S.
53 C.J.S., Licenses, § 67 et seq.

48-11-6. Suspension, refusal of renewal, and revocation of licenses; notice; hearings; appeals; effect on other activities regulated by commissioner.

The commissioner may suspend or refuse to renew a license issued to any person under this chapter for violation of any provision of this chapter or Chapters 13 and 13A of Title 10 or of the rules and regulations made pursuant to those chapters. After notice and opportunity for hearing, the commissioner may revoke a license issued to any person under this chapter for violation of any provision of this chapter or of any rule or regulation of the commissioner made pursuant to this chapter or Chapters 13 and 13A of Title 10 or of the rules and regulations made pursuant to those chapters. Any person aggrieved by the suspension of or refusal to renew his or her license may apply to the commissioner for a hearing as provided in subsection (a) of Code Section 48-11-18; and any person aggrieved by the action of the commissioner in revoking or refusing to renew his or her license after hearing may further appeal to the courts as provided in subsection (b) of Code Section 48-11-18. No legal proceedings or other action by the commissioner shall be barred or abated by the suspension, revocation, or expiration of any license issued under this chapter.

History.
Ga. L. 1955, p. 268, § 7; Code 1933, § 91A-5506, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2016, p. 528, § 5/HB 899; Ga. L. 2020, p. 257, § 2/SB 375.

Editor's notes.
Ga. L. 2020, p. 257, § 2/SB 375, reenacted this Code section without change.

RESEARCH REFERENCES

Am. Jur. 2d.
51 Am. Jur. 2d, Licenses and Permits, § 56 et seq.

C.J.S.
53 C.J.S., Licenses, § 80 et seq.

48-11-7. Execution of bonds by distributor; surety.

Each bond required to be filed pursuant to this chapter shall be executed by the distributor as principal and, as surety, by a corporation authorized to engage in business as a surety company in this state.

History.
Ga. L. 1955, p. 268, § 8; Code 1933, § 91A-5507, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2020, p. 257, § 2/SB 375.

Editor's notes.
Ga. L. 2020, p. 257, § 2/SB 375, reenacted this Code section without change.

RESEARCH REFERENCES

C.J.S.
53 C.J.S., Licenses, § 67 et seq.

48-11-8. Prohibition of sale or possession of unstamped tobacco or vaping products; distributors to affix stamps or otherwise pay tax; payment of tax only once; reports.

(a)(1) No person shall sell, offer for sale, or possess with intent to sell any cigarettes in this state when the cigarette container does not bear the tax stamps required by Code Section 48-11-3.

(2) No person shall sell, offer for sale, or possess with intent to sell in this state any cigars or little cigars, alternative nicotine products, or vapor products upon which the tax has not been paid under the alternate method of collecting the taxes provided in Code Section 48-11-3 or which do not bear tax stamps.

(3) No person shall sell, offer for sale, or possess with intent to sell any loose or smokeless tobacco in this state when the loose or smokeless tobacco container does not bear the tax stamps required by Code Section 48-11-3 or upon which the tax has not been paid under the alternate method of collecting the tax provided under Code Section 48-11-3.

(4) No person shall sell, offer for sale, or possess with intent to sell cigarettes as prohibited by Code Section 10-13A-5.

(b) Each distributor at the location for which such distributor's license is issued and in the manner specified by the commissioner shall affix the stamps required by this Code section to each individual package of cigarettes sold or distributed by such distributor, except as prohibited by Code Section 10-13A-5. Each distributor shall comply with the commissioner's regulations for the payment of the tax on cigars, loose or smokeless tobacco, alternative nicotine products, or vapor products as provided in Code Section 48-11-3 or shall affix to each container of cigars or loose or smokeless tobacco sold by such distributor or from which such distributor sells cigars or loose or smokeless tobacco the stamps required by this chapter. The stamps may be affixed or the tax under the alternate method may be paid by a distributor at any time before the cigars, cigarettes, loose or smokeless tobacco, alternative nicotine products, or vapor products are transferred out of such distributor's possession.

(c) It is the intent of this chapter that the tax imposed by this chapter be paid only once and that, if the distributor acquires stamped cigarettes, tax-paid cigars, stamped cigars, stamped loose or smokeless tobacco, tax-paid loose or smokeless tobacco, tax-paid alternative nico-

tine products, or tax-paid vapor products, such distributor is not required to affix additional stamps or provide other evidence of payment of the tax.

(d) Every dealer who comes into possession of cigars, cigarettes, or loose or smokeless tobacco not bearing proper tax stamps or other evidence of the tax imposed by this chapter shall report the cigars, cigarettes, loose or smokeless tobacco, alternative nicotine products, or vapor products to the commissioner prior to displaying, selling, using, or otherwise disposing of the cigars, cigarettes, loose or smokeless tobacco, alternative nicotine products, and vapor products. After a report, the commissioner shall authorize a licensed distributor to affix the proper stamps to the cigars, cigarettes, loose or smokeless tobacco, alternative nicotine products, or vapor products or, in the case of cigars, loose or smokeless tobacco, alternative nicotine products, or vapor products, authorize the dealer to remit the tax by the alternate method promulgated by the commissioner in accordance with Code Section 48-11-3. A licensed distributor shall affix the stamps or comply with the alternate regulations when presented a permit for such action issued by the commissioner. A licensed distributor shall stamp cigarettes or comply with the alternate method provided in this chapter with respect to cigars, loose or smokeless tobacco, alternative nicotine products, or vapor products, other than such distributor's own, only when authorized by the permit issued by the commissioner.

(e) No wholesale or retail distributor or wholesale or retail dealer shall accept deliveries of unstamped cigarettes or loose or smokeless tobacco or nontax-paid cigars, nontax-paid loose or smokeless tobacco, nontax-paid alternative nicotine products, or nontax-paid vapor products which are shipped to such distributor or acquired by such distributor at any place within this state except as authorized and provided in this Code section. All cigars, cigarettes, loose or smokeless tobacco, alternative nicotine products, and vapor products shall be examined by the distributor or dealer on receipt, and the distributor shall immediately report the cigars, cigarettes, loose or smokeless tobacco, alternative nicotine products, or vapor products to the commissioner as provided in subsection (d) of this Code section.

(f) The commissioner may prescribe the charges which may be made by a distributor to any person for the services of the distributor as provided in this chapter in affixing the tax stamps to each individual package of cigarettes, loose or smokeless tobacco, alternative nicotine products, or vapor products and may prescribe the charges which may be made by a distributor in complying with the commissioner's alternate regulations for the collection of the tax on cigars and little cigars or loose or smokeless tobacco.

(g) This Code section shall not apply to unstamped cigars, little cigars, loose or smokeless tobacco, alternative nicotine products, or

vapor products upon which the tax has been paid in accordance with the alternate regulations promulgated by the commissioner under Code Section 48-11-3.

History.

Ga. L. 1955, p. 268, § 9; Ga. L. 1960, p. 125, §§ 5, 6; Ga. L. 1967, p. 563, § 6; Ga. L. 1969, p. 710, § 1; Code 1933, § 91A-5508, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2003, p. 665, § 23; Ga. L. 2003, p. 829, § 2; Ga. L. 2017, p. 774, § 48/HB 323; Ga. L. 2020, p. 257, § 2/SB 375.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2003, paragraph (a)(3) as added by Ga. L. 2003, p. 829, § 2 was redesignated as paragraph (a)(4), and "or her" and "or she" was deleted wherever added in subsection (b).

Editor's notes.

Ga. L. 2003, p. 665, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2003.'"

Law reviews.

For note on the 2003 amendment to this Code section, see 20 Georgia St. U.L. Rev. 51 (2003).

RESEARCH REFERENCES

Am. Jur. 2d.

71 Am. Jur. 2d, State and Local Taxation, §§ 496, 498.

48-11-9. Seizure as contraband of unstamped tobacco or vapor products; exceptions; sale at public auction; procedure; disposition of proceeds; hearing; bond; contraband vending machines.

(a)(1) Any cigars, cigarettes, loose or smokeless tobacco, alternative nicotine products, or vapor products found at any place in this state without stamps affixed to them as required by this chapter and any cigarettes in violation of subsection (c) of Code Section 10-13A-9 are declared to be contraband articles and may be seized by the commissioner, the commissioner's agents or employees, or any peace officer of this state when directed by the commissioner to do so.

(2) Paragraph (1) of this subsection shall not apply when:

(A) The tax has been paid on the unstamped cigars and little cigars, loose or smokeless tobacco, alternative nicotine products, or vapor products in accordance with the commissioner's regulations promulgated pursuant to Code Section 48-11-3;

(B) The cigars, cigarettes, loose or smokeless tobacco, alternative nicotine products, or vapor products are in the possession of a licensed distributor;

(C) The cigars, cigarettes, loose or smokeless tobacco, alternative nicotine products, or vapor products are in course of transit from outside this state and are consigned to a licensed distributor;

(D) The cigars, cigarettes, loose or smokeless tobacco, alternative nicotine products, or vapor products are in the possession of a transporter who is in compliance with Code Section 48-11-22; or

(E) The cigars, cigarettes, loose or smokeless tobacco, alternative nicotine products, or vapor products are in the possession of a registered taxpayer as defined in Code Section 48-11-14 and the time for making the report required by Code Section 48-11-14 has not expired.

(3) This subsection shall not be construed to require the commissioner to confiscate unstamped or nontax-paid cigars, cigarettes, loose or smokeless tobacco, alternative nicotine products, and vapor products or other property when the commissioner has reason to believe that the owner of the cigars, cigarettes, loose or smokeless tobacco, alternative nicotine products, vapor products, or other property is not willfully or intentionally evading the tax imposed by this chapter.

(b) Any cigars, cigarettes, loose or smokeless tobacco, alternative nicotine products, vapor products, or other property seized pursuant to this chapter may be offered for sale by the commissioner, at the commissioner's discretion, at public auction to the highest bidder after advertisement as provided in this Code section. The commissioner shall deliver to the Office of the State Treasurer the proceeds of any sale made under this Code section. Before delivering any cigars, cigarettes, loose or smokeless tobacco, alternative nicotine products, or vapor products sold to a purchaser at the sale, the commissioner shall require the purchaser to affix to the packages the amount of stamps required by this chapter or to comply with the commissioner's alternate method. The seizure and sale of any cigars, cigarettes, loose or smokeless tobacco, or other property pursuant to this chapter shall not relieve any person from a fine, imprisonment, or other penalty for violation of this chapter.

(c) When any cigars, cigarettes, loose or smokeless tobacco, alternative nicotine products, vapor products, or other property has been seized pursuant to this chapter, the commissioner, at the commissioner's discretion, may advertise it for sale in a newspaper published or having a circulation in the place in which the seizure occurred, at least five days before the sale. Any person claiming an interest in the cigars, cigarettes, loose or smokeless tobacco, alternative nicotine products, vapor products, or other property may make written application to the commissioner for a hearing. The application shall state the person's interest in the cigars, cigarettes, loose or smokeless tobacco, alternative nicotine products, vapor products, or other property and such person's reasons why the cigars, cigarettes, loose or smokeless tobacco, alternative nicotine products, vapor products, or other property should not be

forfeited. Further proceedings on the application for hearing shall be taken as provided in subsection (a) of Code Section 48-11-18. No sale of any cigars, cigarettes, loose or smokeless tobacco, alternative nicotine products, vapor products, or other property seized pursuant to this chapter shall be made while an application for a hearing is pending before the commissioner. The pendency of an appeal under subsection (b) of Code Section 48-11-18 shall not prevent the sale unless the appellant posts a satisfactory bond with surety in an amount double the estimated value of the cigars, cigarettes, loose or smokeless tobacco, alternative nicotine products, vapor products, or other property and conditioned upon the successful termination of the appeal.

(d) Any vending machine containing or dispensing any cigarettes or loose or smokeless tobacco which does not bear the tax stamps required under this chapter or containing or dispensing any cigars or loose or smokeless tobacco upon which the tax has not been paid either through the purchase of stamps or the alternate procedure provided by the commissioner as required under this chapter shall be a contraband article. The commissioner may seize any such machine and deal with it in the same manner as provided by law for the seizure and sale of unstamped cigarettes or loose or smokeless tobacco and nontax-paid cigars or loose or smokeless tobacco.

History.

Ga. L. 1955, p. 268, § 10; Ga. L. 1960, p. 125, § 7; Ga. L. 1967, p. 563, §§ 7, 8; Ga. L. 1969, p. 710, § 2; Code 1933, § 91A-5509, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1982, p. 3, § 48; Ga. L. 1993, p. 1402, § 18; Ga. L. 2002, p. 415, § 48; Ga. L. 2003, p. 665, § 24; Ga. L. 2003, p. 829, § 3; Ga. L. 2010, p. 863, § 2/SB 296; Ga. L. 2016, p. 528, § 6/HB 899; Ga. L. 2017, p. 774, § 48/HB 323; Ga. L. 2020, p. 257, § 2/SB 375.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2003, "or her" as added by Ga. L. 2003, p. 829, § 3 was deleted in paragraph (a)(1).

Editor's notes.

Ga. L. 2003, p. 665, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2003.'"

Administrative rules and regulations.

Loose Tobacco, Smokeless Tobacco, Cigar, or Cigarette Vending Machines, Vending Machines, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Alcohol and Tobacco Tax Division, Vending Machines, Rule 560-8-5-.02.

Law reviews.

For note on the 2003 amendment to this Code section, see 20 Georgia St. U.L. Rev. 51 (2003).

RESEARCH REFERENCES

Am. Jur. 2d.

71 Am. Jur. 2d, State and Local Taxation, §§ 496, 498.

C.J.S.

79 C.J.S., Searches and Seizures, §§ 1 et seq., 128 et seq., 217 et seq.

48-11-10. Monthly reports of licensed distributors; other reporting requirements authorized.

(a) Every licensed distributor shall file with the commissioner, on or before the tenth day of each month, a report in the form prescribed by the commissioner disclosing:

(1) The quantity of cigars, cigarettes, loose or smokeless tobacco, alternative nicotine products, or vapor products on hand on the first and last days of the calendar month immediately preceding the month in which the report is filed;

(2) Information required by the commissioner concerning the amount of stamps purchased, used, and on hand during the report period; and

(3) Information otherwise required by the commissioner for the report period.

(b) The commissioner may require other reports as the commissioner deems necessary for the proper administration of this chapter, including, but not limited to, reports from common carriers and warehousemen with respect to cigars, cigarettes, loose or smokeless tobacco, alternative nicotine products, and vapor products delivered to or stored at any point in this state.

(c) Any person who fails to file any report when due shall forfeit as a penalty for each day after the due date until the report is filed the sum of $25.00, to be collected in the manner provided in subsection (c) of Code Section 48-11-24 for the collection of penalties.

History.
Ga. L. 1955, p. 268, § 11; Ga. L. 1967, p. 563, § 9; Ga. L. 1969, p. 710, § 3; Code 1933, § 91A-5510, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2003, p. 665, § 25; Ga. L. 2012, p. 831, § 4/HB 1071; Ga. L. 2020, p. 257, § 2/SB 375.

Editor's notes.
Ga. L. 2003, p. 665, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2003.'"

RESEARCH REFERENCES

C.J.S.
53 C.J.S., Licenses, § 135 et seq.

48-11-11. Records of distributors and dealers; stock examination; inspection by commissioner and agents; inspection of records of transportation companies, carriers, and warehouses.

(a) Each distributor and each dealer shall keep complete and accurate records of all cigars, cigarettes, loose or smokeless tobacco, alter-

native nicotine products, and vapor products manufactured, produced, purchased, and sold. The original records or a complete and legible photocopy or electronic image shall be safely preserved for three years in an appropriate manner to ensure permanency and accessibility for inspection by the commissioner and the commissioner's authorized agents. The commissioner and the commissioner's authorized agents may examine the books, papers, and records of any distributor or dealer in this state for the purpose of determining whether the tax imposed by this chapter has been fully paid and, for the purpose of determining whether the provisions of this chapter are properly observed, may investigate and examine the stock of cigars, cigarettes, loose or smokeless tobacco, alternative nicotine products, or vapor products in or upon any premises, including, but not limited to, public and private warehouses where the cigars, cigarettes, loose or smokeless tobacco, alternative nicotine products, or vapor products are possessed, stored, or sold. Invoices sufficient to cover current inventory at a licensed location shall be maintained at such licensed location and made available for immediate inspection. All other records may be kept at a locality other than the licensed location and shall be provided for inspection within two business days after receipt of notification from the commissioner or an authorized agent of the commissioner to make such records available.

(b) The commissioner and his or her authorized agents may examine the books, papers, and records of any transportation company, any common, contract, or private carrier, and any public or private warehouse for the purpose of determining whether the provisions of this chapter are properly observed.

History.

Ga. L. 1955, p. 268, § 12; Code 1933, § 91A-5511, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2003, p. 665, § 26; Ga. L. 2012, p. 831, § 5/HB 1071; Ga. L. 2017, p. 774, § 48/HB 323; Ga. L. 2020, p. 257, § 2/SB 375.

Editor's notes.

Ga. L. 2003, p. 665, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2003.'"

48-11-12. Assessment of deficiencies and penalties for incorrect reports, nonpayment of tax, or purchase of insufficient stamps; assumption of illegal sale absent evidence to contrary; penalty for deficiency due to fraud.

(a)(1) The commissioner shall assess a deficiency and may assess a penalty of 10 percent of the deficiency if, after an examination of the invoices, books, and records of a licensed distributor or dealer or of any other information obtained by the commissioner or the commissioner's authorized agents, the commissioner determines that:

(A) The report of the licensed distributor or dealer is incorrect;

(B) The licensed distributor or dealer has not paid the tax in accordance with the alternate regulations promulgated by the commissioner under Code Section 48-11-3; or

(C) The licensed distributor or dealer has not purchased sufficient stamps to cover such licensed distributor's or dealer's receipts for sales or other disposition of unstamped cigarettes or loose or smokeless tobacco and nontax-paid cigars, nontax-paid loose or smokeless tobacco, nontax-paid alternative nicotine products, or nontax-paid vapor products.

(2) In any case where a licensed distributor or dealer cannot produce evidence of sufficient stamps purchased or other payment of the tax to cover the receipt of unstamped cigarettes or loose or smokeless tobacco or nontax-paid cigars, nontax-paid loose or smokeless tobacco, nontax-paid alternative nicotine products, or nontax-paid vapor products, it shall be assumed that the cigars, cigarettes, and loose or smokeless tobacco were sold without having either the proper stamps affixed or the tax paid on unstamped cigars or loose or smokeless tobacco.

(b) If the commissioner determines that the deficiency or any part of the deficiency is due to a fraudulent intent to evade the tax, a penalty of 50 percent of the deficiency shall be added to the amount due.

History.

Ga. L. 1955, p. 268, § 13; Ga. L. 1967, p. 563, § 10; Code 1933, § 91A-5512, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2003, p. 665, § 27; Ga. L. 2009, p. 8, § 48/SB 46; Ga. L. 2017, p. 774, § 48/HB 323; Ga. L. 2020, p. 257, § 2/SB 375.

Editor's notes.

Ga. L. 2003, p. 665, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2003.'"

JUDICIAL DECISIONS

Inability to collect from vendees does not absolve the distributor of the burden to pay the excise tax imposed on cigars and cigarettes by Ga. L. 1955, p. 268; although the state, in the state's discretion, may pursue whatever entity appears most likely to yield results. In re Jim Clay Tobacco Co., 355 F. Supp. 274, 1973 U.S. Dist. LEXIS 14769 (N.D. Ga. 1973).

OPINIONS OF THE ATTORNEY GENERAL

Cigarettes must be stamped even though stolen or lost. — Ga. L. 1955, p. 268, § 13 (see now O.C.G.A. § 48-11-12) read in conjunction with Ga. L. 1955, p. 268, § 2 (see now O.C.G.A. § 48-11-1) requires that cigarettes be stamped even though the cigarettes are stolen or lost. 1963-65 Ga. Op. Att'y Gen. 779.

RESEARCH REFERENCES

C.J.S.
53 C.J.S., Licenses, § 135 et seq.

48-11-13. Tax on persons having tobacco or vaping products on which tax under Code Section 48-11-2 not paid; rate; exemptions.

(a) There is imposed a tax on every person for the privilege of using, consuming, or storing cigars, cigarettes, loose or smokeless tobacco, alternative nicotine products, and vapor products in this state on which the tax imposed by Code Section 48-11-2 has not been paid. The tax shall be measured by and graduated in accordance with the volume of cigars, cigarettes, loose or smokeless tobacco, alternative nicotine products, and vapor products used, consumed, or stored as set forth in Code Section 48-11-2.

(b) This Code section shall not apply to:

(1) Cigars, cigarettes, loose or smokeless tobacco, alternative nicotine products, or vapor products in the hands of a licensed distributor or dealer;

(2) Cigars, cigarettes, loose or smokeless tobacco, alternative nicotine products, or vapor products in the possession of a common carrier complying with Code Section 48-11-22 or delivery being made pursuant to Code Section 48-11-4.2;

(3) Cigars, cigarettes, loose or smokeless tobacco, alternative nicotine products, or vapor products stored in a public warehouse;

(4) Cigarettes or little cigars in an amount not exceeding 200 cigarettes or little cigars which have been brought into this state on the person;

(5) Cigars in an amount not exceeding 20 cigars which have been brought into this state on the person;

(6) Loose or smokeless tobacco in an amount not exceeding six containers which has been brought into this state on the person;

(7) Alternative nicotine products in an amount not exceeding six containers which have been brought into this state on the person;

(8) Consumable vapor products in an amount not exceeding 50 milliliters which have been brought into this state on the person; or

(9) Up to five vapor devices which have been brought into this state on the person.

History.
Ga. L. 1955, p. 268, § 14; Code 1933, § 91A-5513, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2003, p. 665, § 28; Ga. L. 2012, p. 831, § 6/HB 1071; Ga. L. 2017, p. 774, § 48/HB 323; Ga. L. 2020, p. 257, § 2/SB 375.

Editor's notes.
Ga. L. 2003, p. 665, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2003.'"

48-11-14. Registration, reports, and tax payments of persons acquiring tobacco or vaping products subject to tax under Code Section 48-11-13; assessment for failure to file accurate report; hearing; penalties.

(a) Before any person acquires cigars, cigarettes, loose or smokeless tobacco, alternative nicotine products, or vapor products subject to the tax imposed by Code Section 48-11-13, such person shall register with the commissioner as a responsible taxpayer subject to the obligation of maintaining records and making reports in the form prescribed by the commissioner. The report shall be made on or before the tenth day of the month following the month in which the cigars, cigarettes, loose or smokeless tobacco, alternative nicotine products, or vapor products were acquired and shall be accompanied by the amount of tax due.

(b) If any person subject to the tax imposed by Code Section 48-11-13 fails to make the required report or makes an incorrect report, the commissioner shall assess the correct amount of tax due from that person from the best information available to him or her. A copy of the assessment shall be furnished the person by registered or certified mail or statutory overnight delivery, return receipt requested, or by personal service. Any person aggrieved by any assessment pursuant to this Code section may request a hearing in the manner provided in subsection (a) of Code Section 48-11-18.

(c) Every person subject to the tax imposed by Code Section 48-11-13 who fails to register with the commissioner as a responsible taxpayer, who fails to make a report within the time specified, or who fails to remit the tax within the time specified may be required to pay a penalty of not less than $25.00 nor more than $250.00 in addition to the tax and any other penalties imposed by law and found due by the commissioner. The commissioner may proceed to collect the tax and penalty in the manner provided in subsection (c) of Code Section 48-11-24.

(d) Except as otherwise provided in this Code section, the sanctions and penalties set forth in Code Sections 48-11-15, 48-11-17, 48-11-18, and 48-11-20 through 48-11-24 and in Code Sections 48-7-2 and 48-13-38 shall be imposed where applicable for any violations of this chapter by consumers.

History.

Ga. L. 1955, p. 268, §§ 15, 17, 18; Ga. L. 1969, p. 710, § 4; Code 1933, §§ 91A-5514, 91A-5515, 91A-5516, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1993, p. 1292, § 5; Ga. L. 2000, p. 1589, § 3; Ga. L. 2002, p. 1074, § 5; Ga. L. 2003, p. 665, § 29; Ga. L. 2017, p. 774, § 48/HB 323; Ga. L. 2020, p. 257, § 2/SB 375.

Editor's notes.

Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that that Act shall apply with respect to notices delivered on or after July 1, 2000.

Ga. L. 2002, p. 1074, § 8, not codified by the General Assembly, provides that: "this Act shall not abate any prosecution, punishment, penalty, administrative proceedings or remedies, or civil action related to any violation of law committed prior to the effective date of this Act." This Act became effective July 1, 2002.

Ga. L. 2003, p. 665, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2003.'"

JUDICIAL DECISIONS

Inability to collect from vendees does not absolve the distributor of the burden to pay the excise tax imposed on cigars and cigarettes by state statutes; although the state, in the state's discretion, may pursue whatever entity appears most likely to yield results. In re Jim Clay Tobacco Co., 355 F. Supp. 274, 1973 U.S. Dist. LEXIS 14769 (N.D. Ga. 1973).

RESEARCH REFERENCES

C.J.S.

53 C.J.S., Licenses, § 135 et seq.

ALR.

Liability for license fee or occupation tax of one who has conducted business without required license or payment, 5 A.L.R. 1312; 107 A.L.R. 652.

48-11-15. Procedure for refund of taxes on affixed stamps and tobacco or vaping products unfit for sale, use, or consumption and destroyed or exported.

The Office of the State Treasurer is authorized to pay, on the order of the commissioner, claims for refunds of cigar, cigarette, loose or smokeless tobacco, alternative nicotine product, or vapor product taxes found by the commissioner or the courts to be due any distributor, dealer, or taxpayer. The commissioner, upon proof satisfactory to the commissioner and in accordance with regulations promulgated by the commissioner, shall refund the cost price of stamps affixed to any package of cigars, cigarettes, or loose or smokeless tobacco or shall refund the tax paid on cigars, loose or smokeless tobacco, alternative nicotine products, or vapor products under the alternate method when the cigars, cigarettes, loose or smokeless tobacco, alternative nicotine products, or vapor products have become unfit for use, consumption, or sale and have been destroyed or shipped out of this state.

History.

Ga. L. 1955, p. 268, § 21; Ga. L. 1964, p. 50, § 3; Ga. L. 1967, p. 563, § 11; Code 1933, § 91A-5518, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1982, p. 3, § 48; Ga. L. 1993, p. 1402, § 18; Ga. L. 2003, p. 665,

§ 30; Ga. L. 2010, p. 863, § 2/SB 296; Ga. L. 2017, p. 774, § 48/HB 323; Ga. L. 2020, p. 257, § 2/SB 375.

Editor's notes.

Ga. L. 2003, p. 665, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2003.'"

Law reviews.

For note as to the voluntary payment doctrine in Georgia, see 16 Ga. L. Rev. 893 (1982).

RESEARCH REFERENCES

C.J.S.

53 C.J.S., Licenses, § 72.

ALR.

Right to interest on tax refund or credit, 112 A.L.R. 1183; 88 A.L.R.2d 823.

When right to refund of state or local taxes accrues, within statute limiting time for applying for refund, 46 A.L.R.2d 1350.

48-11-16. Purchase of tax stamps on account by distributors with permit; cancellation of permit without notice for failure or refusal to comply with Code section; payment of outstanding liability.

(a) The commissioner may permit licensed distributors to purchase tax stamps from the department on account. Permits may be granted only to licensed distributors who post bonds with the commissioner in amounts sufficient in the opinion of the commissioner to secure payment for stamps delivered on account. Tax stamps purchased by licensed distributors shall be paid for in full on or before the twentieth day of the month next succeeding the purchase. The bond provided in this Code section shall be secured by cash which shall bear no interest, by negotiable securities approved by the Office of the State Treasurer, or by a surety bond executed by a surety company licensed to do business in this state and approved by the commissioner.

(b) The commissioner may cancel without notice any permit issued under this Code section if the licensed distributor fails or refuses to comply with the requirements of this Code section or with the rules and regulations adopted under authority of this Code section.

(c) On or before June 30 of each fiscal year, the licensed distributor shall pay in its entirety any liability for the purchase of tax stamps due at that time.

History.

Ga. L. 1970, p. 146, § 1; Code 1933, § 91A-5525, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1982, p. 3, § 48; Ga. L. 1993, p. 1402, § 18; Ga. L. 2010, p. 863, § 2/SB 296; Ga. L. 2020, p. 257, § 2/SB 375.

48-11-17. Amount of unpaid tax as lien against property of violators; seizure and sale; recording of lien.

The amount of any unpaid tax shall be a lien against the property of

any distributor or dealer who sells cigars, cigarettes, loose or smokeless tobacco, alternative nicotine products, or vapor products without collecting the tax and against the property of any person using or consuming cigars, cigarettes, loose or smokeless tobacco, alternative nicotine products, or vapor products without proper stamps affixed to the cigars, cigarettes, loose or smokeless tobacco, alternative nicotine products, or vapor products or without the tax paid on the cigars, loose or smokeless tobacco, alternative nicotine products, or vapor products as otherwise provided in this chapter. The commissioner or the commissioner's authorized agents are authorized to seize the property of a delinquent distributor, dealer, or taxpayer and sell it as provided by law to satisfy the claim for taxes due under this chapter; or the commissioner may record the commissioner's lien specifying and describing the property against which the lien is effective, and the lien shall be good as against any other person until the claim for taxes is satisfied.

History.
Ga. L. 1955, p. 268, § 24; Ga. L. 1964, p. 50, § 4; Ga. L. 1967, p. 563, § 15; Code 1933, § 91A-5523, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2003, p. 665, § 31; Ga. L. 2020, p. 257, § 2/SB 375.

Cross references.
Liens generally, § 44-14-320 et seq.

Editor's notes.
Ga. L. 2003, p. 665, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2003.'"

RESEARCH REFERENCES

C.J.S.
53 C.J.S., Licenses, § 104.

48-11-18. Hearings for persons aggrieved by commissioner; initiation of hearings; procedures; evidence; appeals; bond; grounds for not sustaining commissioner's action; costs.

(a) Any person aggrieved by any action of the commissioner or the commissioner's authorized agent may apply to the commissioner, in writing within ten days after the notice of the action is delivered or mailed to the commissioner, for a hearing. The application shall set forth the reasons why the hearing should be granted and the manner of relief sought. The commissioner shall notify the applicant of the time and place fixed for the hearing. After the hearing, the commissioner may make an order as may appear to the commissioner to be just and lawful and shall furnish a copy of the order to the applicant. The commissioner at any time by notice in writing may order a hearing on the commissioner's own initiative and require the taxpayer or any other person whom the commissioner believes to be in possession of information concerning any manufacture, importation, use, consumption, stor-

age, or sale of cigars, cigarettes, loose or smokeless tobacco, alternative nicotine products, or vapor products which have escaped taxation to appear before the commissioner or the commissioner's duly authorized agent with any specific books of account, papers, or other documents for examination under oath relative to the information.

(b) Any person aggrieved because of any final action or decision of the commissioner, after hearing, may appeal from the decision to the superior court of the county in which the appellant resides. The appeal shall be returnable at the same time and shall be served and returned in the same manner as required in the case of a summons in a civil action. The authority issuing the citation shall take from the appellant a bond of recognizance to the state, with surety, conditioned to prosecute the appeal and to effect and comply with the orders and decrees of the court. The action of the commissioner shall be sustained unless the court finds that the commissioner misinterpreted this chapter or that there is no evidence to support the commissioner's action. If the commissioner's action is not sustained, the court may grant equitable relief to the appellant. Upon all appeals which are denied, costs may be taxed against the appellant at the discretion of the court. No costs of any appeal shall be taxed against the state.

History.
Ga. L. 1955, p. 268, §§ 19, 20; Code 1933, § 91A-5517, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2003, p. 665, § 32; Ga. L. 2012, p. 831, § 7/HB 1071; Ga. L. 2020, p. 257, § 2/SB 375.

Editor's notes.
Ga. L. 2003, p. 665, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2003.'"

JUDICIAL DECISIONS

Appeal procedure. — Trial court properly dismissed a tobacco retailer's appeal of a decision of the Georgia Tax Tribunal that the retailer owed unpaid taxes as the general intention behind the creation of the Tribunal did not permit the court to ignore the plain language of O.C.G.A. § 48-11-18 concerning the designated appellate forum available to tobacco tax payers. Moosa Co. LLC v. Dep't of Revenue, 353 Ga. App. 429, 838 S.E.2d 108, 2020 Ga. App. LEXIS 14 (2020), cert. denied, No. S20C0816, 2020 Ga. LEXIS 679 (Ga. Aug. 24, 2020).

RESEARCH REFERENCES

C.J.S.
53 C.J.S., Licenses, § 109 et seq.

48-11-19. Powers and duties of special agents and enforcement officers of department; bond; duties following arrests; retention of weapon and badge upon retirement.

(a) Each person appointed by the commissioner as a special agent or enforcement officer of the department for the enforcement of the laws of

this state with respect to the manufacture, transportation, distribution, sale, possession, and taxation of cigars, cigarettes, little cigars, loose or smokeless tobacco, alternative nicotine products, and vapor products shall have the authority throughout this state to:

(1) Obtain and execute warrants for arrest of persons charged with violations of such laws;

(2) Obtain and execute search warrants in the enforcement of such laws;

(3) Arrest without warrant any person violating such laws in the officer's presence or within such officer's immediate knowledge when there is likely to be a failure of enforcement of such laws for want of a judicial officer to issue a warrant;

(4) Make investigations in the enforcement of such laws and, in connection with such investigations, to go upon any property outside buildings, whether posted or otherwise, in the performance of such officer's duties;

(5) Seize and take possession of all property which is declared contraband under such laws; and

(6) Carry firearms while performing such officer's duties.

(b) Each special agent or enforcement officer shall file with the commissioner a public official's bond in the amount of $1,000.00, the cost of the bond to be borne by the department. Nothing in this chapter shall be construed to relieve agents and officers, after making an arrest, from the duties imposed generally to obtain a warrant promptly and to return arrested persons without undue delay before a person authorized to examine, commit, or receive bail as required by general law.

(c) After a special agent or enforcement officer has accumulated 25 years of service with the department, upon leaving the department under honorable conditions, such special agent or enforcement officer shall be entitled as part of such officer's compensation to retain his or her weapon and badge pursuant to regulations promulgated by the commissioner.

(d) As used in this subsection, the term "disability" means a disability that prevents an individual from working as a law enforcement officer. When a special agent or enforcement officer leaves the department as a result of a disability arising in the line of duty, such special agent or enforcement officer shall be entitled as part of such officer's compensation to retain his or her weapon and badge in accordance with regulations promulgated by the commissioner.

History. Ga. L. 1967, p. 577, § 1; Code 1933, § 91A-5524, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1996, p. 1074, § 2; Ga. L.

2003, p. 665, § 33; Ga. L. 2004, p. 1058, § 5; Ga. L. 2005, p. 60, § 48/HB 95; Ga. L. 2017, p. 774, § 48/HB 323; Ga. L. 2020, p. 257, § 2/SB 375.

Cross references.

Powers and duties of agents of Georgia Bureau of Investigation relating to enforcement of laws pertaining to manufacture, transportation of cigars, cigarettes, or little cigars, § 35-3-8.

Editor's notes.

Ga. L. 2003, p. 665, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2003.'"

48-11-20. Venue as to violations of chapter; commissioner's certificate as prima-facie evidence.

The failure to do any act required by this chapter shall be deemed an act committed in part at the office of the commissioner in Atlanta. The certificate of the commissioner to the effect that any act required by this chapter has not been done shall be prima-facie evidence that the act has not been done.

History.

Ga. L. 1955, p. 268, § 23; Code 1933, § 91A-5521, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2020, p. 257, § 2/SB 375.

Editor's notes.

Ga. L. 2020, p. 257, § 2/SB 375, reenacted this Code section without change.

Law reviews.

For note discussing problems with venue in Georgia, and proposing statutory revisions to improve the resolution of venue questions, see 9 Ga. St. B.J. 254 (1972).

48-11-21. Jurisdiction of superior courts of criminal violations of chapter.

The superior courts of this state shall have jurisdiction of offenses against this chapter which are punishable by fine or imprisonment, or both.

History.

Ga. L. 1955, p. 268, § 23; Code 1933, § 91A-5522, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2020, p. 257, § 2/SB 375.

48-11-22. Transportation of unstamped tobacco or vaping products; requirement of invoices or delivery tickets; contents; confiscation and disposition absent invoice or ticket; penalty; applicability.

(a) Every person who transports upon the public highways, roads, and streets of this state cigars, cigarettes, loose or smokeless tobacco, alternative nicotine products, or vapor products not stamped or on which tax has not been paid in accordance with the alternate regulations provided by the commissioner under Code Section 48-11-3 shall have in such person's actual possession invoices or delivery tickets for the cigars, cigarettes, loose or smokeless tobacco, alternative nicotine products, and vapor products which show the true name and address of the consignor or seller, the true name of the consignee or purchaser, the

quantity and brands of the cigars, cigarettes, loose or smokeless tobacco, alternative nicotine products, or vapor products transported, and the name and address of the person who has assumed or shall assume the payment of the tax at the point of ultimate destination. In the absence of the invoices or delivery tickets, the cigars, cigarettes, loose or smokeless tobacco, alternative nicotine products, or vapor products being transported and the vehicles in which the cigars, cigarettes, loose or smokeless tobacco, alternative nicotine products, or vapor products are being transported shall be confiscated and disposed of as provided in Code Section 48-11-9; and the transporter may be liable for a penalty of not more than $50.00 for each individual carton of little cigars or cigarettes, $50.00 for each individual box of cigars, $50.00 for each individual container of loose or smokeless tobacco being transported by such person, and $50.00 for each individual container of alternative nicotine products, each vapor device, or each 5 milliliters of consumable vapor products. The penalty shall be recovered as provided in subsection (c) of Code Section 48-11-24.

(b) This Code section shall apply only to the transportation of more than 200 cigarettes, more than 200 little cigars, more than 20 cigars, more than six containers of loose or smokeless tobacco, more than six containers of alternative nicotine products, more than five vapor devices, or more than 50 milliliters of consumable vapor products.

History.
Ga. L. 1955, p. 268, § 22; Ga. L. 1967, p. 563, § 12; Code 1933, § 91A-5519, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2003, p. 665, § 34; Ga. L. 2012, p. 831, § 8/HB 1071; Ga. L. 2020, p. 257, § 2/SB 375.

Editor's notes.
Ga. L. 2003, p. 665, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2003.'"

48-11-23. Transporting tobacco or vaping products in violation of Code Section 48-11-22; penalty.

(a) It shall be unlawful for any person, with the intent to evade the tax imposed by this chapter, to transport cigars, cigarettes, loose or smokeless tobacco, alternative nicotine products, or vapor products in violation of Code Section 48-11-22.

(b) Any person who violates Code Section 48-11-22, with the intent to evade the tax imposed by this chapter, shall, upon conviction, be subject to the following punishments:

(1) If such person is transporting more than 20 but fewer than 60 cigars, more than 200 but fewer than 600 cigarettes or little cigars, more than six but fewer than 18 containers of loose or smokeless tobacco, more than six but fewer than 18 containers of alternative nicotine products, more than five vapor devices but fewer than 20

vapor devices, or more than 50 milliliters but fewer than 200 milliliters of consumable vapor products, such person shall be guilty of a misdemeanor;

(2) If such person is transporting 60 or more but fewer than 200 cigars, 600 or more but fewer than 2,000 cigarettes or little cigars, 18 or more but fewer than 60 containers of loose or smokeless tobacco, 18 or more but fewer than 60 containers of alternative nicotine products, 20 or more but fewer than 60 vapor devices, or 200 milliliters or more but fewer than 600 milliliters of consumable vapor products, such person shall be guilty of a misdemeanor of a high and aggravated nature; or

(3) If such person is transporting 200 or more cigars, 2,000 or more cigarettes or little cigars, 60 or more containers of loose or smokeless tobacco, 60 or more containers of alternative nicotine products, 60 or more vapor devices, or 600 milliliters or more of consumable vapor products, such person shall be guilty of a felony and, upon conviction thereof, shall be imprisoned for not less than three years nor more than ten years.

History.
Ga. L. 1969, p. 710, § 5; Code 1933, § 91A-9926, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2003, p. 665, § 35; Ga. L. 2012, p. 831, § 9/HB 1071; Ga. L. 2020, p. 257, § 2/SB 375.

Editor's notes.
Ga. L. 2003, p. 665, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2003.'"

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting required. — Offenses arising from a violation of O.C.G.A. § 48-11-23(b)(1) and (b)(2), given the graduated nature of the offenses, appear to be offenses for which fingerprinting is required. 2018 Op. Att'y Gen. No. 18-3.

RESEARCH REFERENCES

Am. Jur. 2d.
71 Am. Jur. 2d, State and Local Taxation, §§ 496, 498.

48-11-23.1. Additional requirements on the sale of tobacco or vaping products; seizure and forfeiture of contraband; revocation of licenses.

(a) As used in this Code section, the term "package" means a pack, carton, or container of any kind in which cigarettes, loose or smokeless tobacco, alternative nicotine products, or vapor products are offered for sale, sold, or otherwise distributed, or intended for distribution, to consumers.

(b) No tax stamp may be affixed to, or made upon, any package of

cigarettes, loose or smokeless tobacco, alternative nicotine products, or vapor products if:

(1) The package differs in any respect with the requirements of the federal Cigarette Labeling and Advertising Act, 15 U.S.C. Section 1331, et seq., or those requirements established by the United States Food and Drug Administration, for the placement of labels, warnings, or any other information upon a package of cigarettes, loose or smokeless tobacco, alternative nicotine products, or vapor products that are to be sold within the United States;

(2) The package is labeled "For Export Only," "U.S. Tax Exempt," "For Use Outside U.S.," or similar wording indicating that the manufacturer did not intend that the product be sold in the United States;

(3) The package, or a package containing individually stamped packages, has been altered by adding or deleting the wording, labels, or warnings described in paragraph (1) or (2) of this subsection;

(4) The package has been imported into the United States after January 1, 2000, in violation of 26 U.S.C. Section 5754;

(5) The package in any way violates federal trademark or copyright laws; or

(6) The package in any way violates Code Section 10-13A-5.

(c) Any person who sells or holds for sale a cigarette, loose or smokeless tobacco, alternative nicotine product, or vapor product package to which is affixed a tax stamp in violation of subsection (b) of this Code section shall be guilty of a misdemeanor.

(d) Notwithstanding any other provision of law, the commissioner may revoke any license issued under this chapter to any person who sells or holds for sale a cigarette, loose or smokeless tobacco, alternative nicotine product, or vapor product package to which is affixed a tax stamp in violation of subsection (b) of this Code section.

(e) Notwithstanding any other provision of law, the commissioner may seize and destroy or sell to the manufacturer, only for export, packages that do not comply with subsection (b) of this Code section.

(f) A violation of subsection (b) of this Code section shall constitute an unfair and deceptive act or practice under Part 2 of Article 15 of Chapter 1 of Title 10, the "Fair Business Practices Act of 1975."

History.

Code 1981, § 48-11-23.1, enacted by Ga. L. 1999, p. 156, § 1; Ga. L. 2003, p. 665, § 36; Ga. L. 2003, p. 829, § 4; Ga. L. 2017, p. 774, § 48/HB 323; Ga. L. 2020, p. 257, § 2/SB 375.

Editor's notes.

Ga. L. 2003, p. 665, § 1, not codified by

the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2003.'"

Ga. L. 2017, p. 774, § 48(60)/HB 323, which amended this Code section, purported to amend paragraphs (a)(1) and (a)(4) but actually amended paragraphs (b)(1) and (b)(4).

U.S. Code.

Section 5754 of Title 26 U.S.C., referred to in this Code section, concerns the restriction on importation of previously exported tobacco products.

Law reviews.

For note on the 2003 amendment to this Code section, see 20 Georgia St. U.L. Rev. 51 (2003).

OPINIONS OF THE ATTORNEY GENERAL

Fingerprintable offenses. — Violation of O.C.G.A. § 48-11-23.1 is not designated as an offense for which fingerprinting is required. 1999 Op. Att'y Gen. No. 99-17.

48-11-24. Penalties for possession of unstamped tobacco or vaping products; penalty for operation of unlicensed business or activity; procedure for enforcement and collection of penalties; costs and expenses.

(a) Any person who possesses unstamped cigarettes or nontax-paid cigars, little cigars, loose or smokeless tobacco, alternative nicotine products, or vapor products in violation of this chapter shall be liable for a penalty of not more than $50.00 for each individual carton of unstamped cigarettes and $50.00 for each individual nontax-paid carton of little cigars, box of cigars, or container of loose or smokeless tobacco, alternative nicotine products, or vapor products in his or her possession.

(b) Any person who engages in any business or activity for which a license is required by this chapter without first having obtained a license to do so or any person who continues to engage in or conduct the business after the person's license has been revoked or during a suspension of the license shall be guilty of a misdemeanor of a high and aggravated nature and, upon conviction thereof, shall be subject to imprisonment for up to 12 months, a fine of not more than $5,000.00, or both. Each day that the business is engaged in or conducted shall be deemed a separate offense.

(c) Proceedings to enforce and collect the penalties provided by this chapter shall be brought by and in the name of the commissioner. With respect to offenses committed within the territorial jurisdiction of the court, each superior court shall have jurisdiction to enforce and collect the penalty. The costs recoverable in any such proceeding shall be recovered by the commissioner in the event of judgment in the commissioner's favor. If the judgment is for the defendant, it shall be without costs against the commissioner. All expenses incident to the recovery of any penalty pursuant to this Code section shall be paid in the same

manner as any other expense incident to the administration of this chapter.

History.
Ga. L. 1955, p. 268, § 23; Ga. L. 1967, p. 563, § 13; Code 1933, § 91A-5520, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2003, p. 665, § 37; Ga. L. 2012, p. 831, § 10/HB 1071; Ga. L. 2020, p. 257, § 2/SB 375.

Editor's notes.
Ga. L. 2003, p. 665, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2003.'"

RESEARCH REFERENCES

Am. Jur. 2d.
51 Am. Jur. 2d, Licenses and Permits, § 56 et seq.

C.J.S.
53 C.J.S., Licenses, § 135 et seq.

48-11-25. Violations of chapter; penalties.

(a)(1) It shall be unlawful for any person, with the intent to evade the tax imposed by this chapter, to possess unstamped cigarettes or loose or smokeless tobacco or nontax-paid cigars, loose or smokeless tobacco, alternative nicotine products, or vapor products.

(2) Any person who violates paragraph (1) of this subsection shall be guilty of a misdemeanor.

(b)(1) It shall be unlawful for any person, with the intent to evade the tax imposed by this chapter, to:

(A) Sell cigarettes or loose or smokeless tobacco without the stamps required by this chapter being affixed to the cigarettes or loose or smokeless tobacco; or

(B) Sell cigars, loose or smokeless tobacco, alternative nicotine products, or vapor products without the stamp or stamps required by this chapter or without the tax being paid on the cigars, loose or smokeless tobacco, alternative nicotine products, or vapor products in accordance with the alternate method.

(2) Any person who violates paragraph (1) of this subsection shall be guilty of a felony and, upon conviction thereof, shall be imprisoned for not less than one year nor more than ten years.

History.
Ga. L. 1955, p. 268, § 23; Ga. L. 1967, p. 563, § 14; Ga. L. 1969, p. 710, §§ 6, 7; Code 1933, § 91A-9921, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2003, p. 665, § 38; Ga. L. 2020, p. 257, § 2/SB 375.

Editor's notes.
Ga. L. 2003, p. 665, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2003.'"

RESEARCH REFERENCES

Am. Jur. 2d.
71 Am. Jur. 2d, State and Local Taxation, §§ 469, 498, 517.

C.J.S.
53 C.J.S., Licenses, § 128.

48-11-26. Failure to file report or filing false report required by chapter; penalty.

(a) With respect to this chapter, it shall be unlawful for any person, with the intent to defraud the state or evade the payment of any tax, penalty, or interest or any part of a payment when due, to:

(1) Willfully fail or refuse to file any report or statement required to be filed pursuant to this chapter or by the commissioner's rules and regulations; or

(2) Aid or abet another in the filing with the commissioner of any false or fraudulent report or statement.

(b) Any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor of a high and aggravated nature and, upon conviction thereof, shall be subject to a fine of not more than $1,000.00 for each separate offense.

History.
Ga. L. 1955, p. 268, § 23; Code 1933, § 91A-9922, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2012, p. 831, § 11/HB 1071; Ga. L. 2020, p. 257, § 2/SB 375.

RESEARCH REFERENCES

C.J.S.
37 C.J.S., Fraud, §§ 12 et seq., 115, 123 et seq. 85 C.J.S., Taxation, §§ 1763 et seq., 1852 et seq., 2062 et seq.

48-11-27. False entries on invoices or records pursuant to chapter; penalty.

(a) It shall be unlawful for any person to:

(1) Make a false entry upon any invoices or any record relating to the purchase, possession, or sale of cigars, cigarettes, loose or smokeless tobacco, alternative nicotine products, or vapor products; or

(2) With intent to evade any tax imposed by this chapter, present any false entry upon any such invoice or record for the inspection of the commissioner or the commissioner's authorized agents.

(b) Any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than $250.00 for each separate offense.

History.
Ga. L. 1955, p. 268, § 23; Code 1933, § 91A-9923, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2003, p. 665, § 39; Ga. L. 2020, p. 257, § 2/SB 375.
Editor's notes.
Ga. L. 2003, p. 665, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2003.'"

RESEARCH REFERENCES

C.J.S.
53 C.J.S., Licenses, § 128.

48-11-28. Possession, use, manufacture, or other unlawful activities involving counterfeited stamps or tampering with metering machine pursuant to chapter; penalty.

(a) With respect to this chapter, it shall be unlawful for any person to:

(1) Fraudulently make, utter, forge, or counterfeit any stamp prescribed by the commissioner;

(2) Cause or procure a violation of paragraph (1) of this subsection to be done;

(3) Willfully utter, publish, pass, or render as true any false, altered, forged, or counterfeited stamp;

(4) Knowingly possess any false, altered, forged, or counterfeited stamp;

(5) For the purpose of evading the tax imposed, use more than once any stamp required by this chapter; or

(6) Tamper with or cause to be tampered with any metering machine authorized to be used.

(b) Any person who violates subsection (a) of this Code section shall be guilty of a felony and, upon conviction thereof, shall be imprisoned for not less than three years nor more than ten years.

History.
Ga. L. 1955, p. 268, § 23; Code 1933, § 91A-9924, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2012, p. 831, § 12/HB 1071; Ga. L. 2020, p. 257, § 2/SB 375.

RESEARCH REFERENCES

Am. Jur. 2d.
71 Am. Jur. 2d, State and Local Taxation, §§ 496, 498.

48-11-29. [Reserved] Swearing and testifying falsely with respect to matters governed by chapter; penalty.

History.
Repealed by Ga. L. 2012, p. 831, § 13/HB 1071, effective January 1, 2013.

48-11-30. Penalty for sale or possession of counterfeit cigarettes.

(a) Notwithstanding any other provision of law, the sale or possession for sale of counterfeit cigarettes by any person shall result in the seizure of the product and related machinery by the commissioner or his or her authorized agents and any law enforcement agency at the direction of the commissioner and shall be punishable as follows:

(1) A first violation with a total quantity of less than two cartons of cigarettes shall be punishable by a fine of $1,000.00 or five times the retail value of the cigarettes involved, whichever is greater, or imprisonment not to exceed five years, or both the fine and imprisonment;

(2) A subsequent violation with a total quantity of less than two cartons of cigarettes shall be punishable by a fine of $5,000.00 or five times the retail value of the cigarettes involved, whichever is greater, or imprisonment not to exceed five years, or both the fine and imprisonment;

(3) A first violation with a total quantity of two cartons of cigarettes or more shall be punishable by a fine of $2,000.00 or five times the retail value of the cigarettes involved, whichever is greater, or imprisonment not to exceed five years, or both the fine and imprisonment; and

(4) A subsequent violation with a quantity of two cartons of cigarettes or more shall be punishable by a fine of $50,000.00 or five times the retail value of the cigarettes involved, whichever is greater, or imprisonment not to exceed five years, or both the fine and imprisonment.

(b) An act committed by or on behalf of a licensed cigarette manufacturer, cigarette importer, cigarette distributor, or cigarette dealer in violation of paragraph (2) or (4) of subsection (a) of this Code section shall also result in the revocation of the license by the department pursuant to Code Section 48-11-6.

(c) Any counterfeit cigarette seized by or at the direction of the commissioner shall be destroyed by the commissioner or his or her designee. Any related machinery seized by or at the direction of the

commissioner may be sold by the commissioner at public auction in accordance with the requirements of Code Section 48-11-9.

History.

Code 1981, § 48-11-30, enacted by Ga. L. 2004, p. 384, § 4; Ga. L. 2009, p. 8, § 48/SB 46; Ga. L. 2020, p. 257, § 2/SB 375.

CHAPTER 12

ESTATE TAX

Sec.
48-12-1. Elimination of estate taxes and returns; prior taxable years not applicable.

Cross references.

Probate, § 53-5-1 et seq.

Editor's notes.

Ga. L. 2014, p. 762, § 1/HB 658, effective April 28, 2014, repealed the Code sections formerly codified at this chapter and enacted the current chapter. The former chapter consisted of Code Sections 48-12-1, 48-12-1.1, 48-12-2 through 48-12-6, relating to estate tax, and was based on Ga. L. 1925, p. 63, §§ 1, 3, 4; Ga. L. 1926, Ex. Sess., p. 15, § 1; Ga. L. 1927, p. 103, § 1; Ga. L. 1931, p. 7, § 15; Code 1933, § 92-3401a, enacted by Ga. L. 1941, p. 221, § 1; §§ 92-3401, 92-3403, 92-3404, § 92-3402, enacted by Ga. L. 1961, p. 455, § 1; Ga. L. 1960, p. 835, § 1; Ga. L. 1976, p. 624, §§ 1-2; § 92-3404.1, enacted by Ga. L. 1976, p. 624, §§ 3, 4; §§ 91A-5702 through 91A-5706, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1980, p. 10, §§ 38, 39; Ga. L. 1987, p. 191, § 8; Code 1981, § 48-12-1.1, enacted by Ga. L. 2005, p. 159, § 26/HB 488.

Administrative rules and regulations.

Estates, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Income Tax Division, Substantive Regulations, Rule 560-7-3-.12.

Law reviews.

For article, "Probate and Tax Checklist for Estates in Georgia," see 23 Ga. St. B.J. 140 (1987).

RESEARCH REFERENCES

Am. Jur. 2d.

72 Am. Jur. 2d, State and Local Taxation, § 710.

Am. Jur. Proof of Facts.

Surcharge of Executor for Nonpayment of Estate's Tax Liabilities, 26 POF2d 663.

C.J.S.

85 C.J.S., Taxation, § 1857 et seq.

U.L.A.

Uniform Act on Interstate Arbitration of Death Taxes, § 1 et seq.

Uniform Act on Interstate Compromise of Death Taxes, § 1 et seq.

ALR.

Time as of which value of property is to be computed for purpose of estimating inheritance tax, 13 A.L.R. 127; 86 A.L.R. 1030; 160 A.L.R. 1059.

Inheritance or succession tax on property covered by power of appointment, 18 A.L.R. 1470; 23 A.L.R. 738; 64 A.L.R. 740; 124 A.L.R. 653; 141 A.L.R. 954; 150 A.L.R. 730; 174 A.L.R. 635.

Retrospective operation of succession tax, 26 A.L.R. 1461; 66 A.L.R. 404; 109 A.L.R. 858; 114 A.L.R. 518.

Tombstone and funeral expenses as deductible items in computation of inheritance or succession tax, 28 A.L.R. 671; 83 A.L.R. 931.

Income during administration as part of value of estate on which succession tax is to be computed, 32 A.L.R. 850.

Succession or estate tax in its application to dower and statutory allowances, 37 A.L.R. 541; 105 A.L.R. 380; 122 A.L.R. 181.

Constitutionality of discrimination in succession tax based on relationship or amount of estate, 39 A.L.R. 504.

Applicability of succession tax law to antenuptial contract, 44 A.L.R. 1475.

When transfer deemed to take effect in possession or enjoyment at or after death within Inheritance Tax Law, 49 A.L.R. 864; 67 A.L.R. 1247; 100 A.L.R. 1244; 121 A.L.R. 359; 155 A.L.R. 850; 167 A.L.R. 438.

Power to impose tax on estate in respect to property transferred in contemplation of death or by a conveyance intended to

take effect in possession or enjoyment at death, 52 A.L.R. 1091.

Exemption of government securities from succession or inheritance tax, 55 A.L.R. 867.

Construction and effect of provisions in succession tax law for deduction on account of property received by decedent from estate of another decedent, 57 A.L.R. 1099; 114 A.L.R. 1306.

Life insurance as affecting transfer or succession tax, 63 A.L.R. 394; 92 A.L.R. 943; 118 A.L.R. 324; 150 A.L.R. 1268.

Questions arising under state legislation to take advantage of provisions of Federal Revenue Act allowing credits on account of inheritance, legacy, or succession taxes paid to state, 63 A.L.R. 1096; 147 A.L.R. 467.

Subsequent developments as authorizing increase of amount of succession tax fixed by taxing authorities, 64 A.L.R. 1281.

Succession tax at domicile of debtor or corporation as to credits or corporate stock belonging to estate of nonresident, 65 A.L.R. 1008; 72 A.L.R. 1310; 77 A.L.R. 1411; 139 A.L.R. 1458.

Situs for property taxation as between different states or countries, of personal property, or interests therein, held by trustees, executors, or administrators, 67 A.L.R. 393; 127 A.L.R. 379; 172 A.L.R. 341.

Doctrine as to possibility of issue extinct as affecting property rights or taxation, 67 A.L.R. 538; 146 A.L.R. 794; 98 A.L.R.2d 1285.

Community property as subject of succession tax, 69 A.L.R. 780.

Reciprocity provisions of succession tax laws, 69 A.L.R. 949; 139 A.L.R. 1062.

Gift or trust for benefit of employees of corporation or business as within exemption or deduction provisions of succession tax or income tax law, 71 A.L.R. 870.

When transfer deemed to be one in contemplation of death within the meaning of the Inheritance Tax Law, 75 A.L.R. 544; 120 A.L.R. 170; 148 A.L.R. 1051.

Succession tax in respect of interest or right incident to an executory contract for the sale of land in a state other than that of the vendor's domicile, 78 A.L.R. 793.

Succession tax at domicile of decedent as to personal property located elsewhere, or the obligations of nonresidents or foreign corporations, 86 A.L.R. 741.

Succession tax in state or country in which personal property (or evidence thereof) belonging to the estate of a nonresident decedent is found, 86 A.L.R. 760.

Deductibility in computing state income tax of amount paid or payable in respect of succession, inheritance, or estate tax, 108 A.L.R. 1401.

Succession, estate, or gift tax in respect of or as affected by conveyance or transfer restoring to original owner property transferred by him to defraud or delay creditors, 108 A.L.R. 1508.

Discrimination in succession or estate tax statute between estates closed and those not closed at date of its passage of effective operation, 109 A.L.R. 737.

Deduction of indebtedness of insolvent estate in computing estate or inheritance tax in respect of assets exempt from debts, 110 A.L.R. 1255.

Deductibility in computing estate or succession tax of decedent's liability as surety, guarantor, or endorser, 113 A.L.R. 368.

Deductibility in computation of succession, inheritance, or estate tax of debt secured by mortgage upon real estate situated outside of jurisdiction, 113 A.L.R. 389.

Burden of estate or succession tax in respect of inter vivos gift or trust, 115 A.L.R. 916; 15 A.L.R.2d 1216.

Burden, as between corpus and income, of inheritance, estate, or succession tax, 117 A.L.R. 121.

Legacy or devise to or for benefit of municipality as subject to payment of inheritance, succession, or estate taxes, 120 A.L.R. 1388.

Diverse adjudications, actual or potential, by courts of different states, as to domicile of decedent as regards taxation, administration, or distribution of estates, 121 A.L.R. 1200.

Pendency of administration on the estate of a decedent at time of death of beneficiary as affecting inheritance or succession tax in respect of the latter's estate, 122 A.L.R. 935.

Validity and construction of statute or ordinance providing for relief of poor persons from taxes, 123 A.L.R. 597.

Personal liability of executor, administrator, or trustee for succession tax, 128 A.L.R. 123.

Aggregation of two or more transfers or gifts to same person, in computing inheritance, succession, or estate tax, 136 A.L.R. 340.

Computation and burden of estate tax as affected by a residuary bequest to a religious, educational, or charitable institution, 140 A.L.R. 833.

Gift tax, 141 A.L.R. 452.

Construction and application of statutory provisions taxing legatees, heirs, or trust beneficiaries on income distributable or distributed to them, 141 A.L.R. 1055.

Succession, inheritance, or estate tax in respect of decedent's interest in partnership, 144 A.L.R. 1134.

Questions arising under state legislation to take advantage of provisions of Federal Revenue Act allowing credits on account of inheritance, legacy, or succession taxes paid to state, 147 A.L.R. 467.

Discretion, provided for in will, as to making of charitable bequest, or as to its amount, as affecting its exemption or deduction for purposes of estate, succession, or inheritance tax, 149 A.L.R. 1333.

Meaning and application of word "representation" within inheritance, succession, or estate tax law, 156 A.L.R. 404.

Inheritance, succession, or estate tax in respect of bond or other obligation purchased by decedent but payable either absolutely, or in a specified event, to a third person, 156 A.L.R. 559.

Entire corpus or only value of reserved interest as taxable, under provision of estate or inheritance tax law relating to transfers intended to take effect at death, 159 A.L.R. 233.

Classification for purposes of inheritance or succession or estate tax of one who takes by virtue of lapsed legacy statute, 168 A.L.R. 271.

Rights and remedies of executor or administrator as regards estate or succession tax paid or payable by him on property not passing under will or coming into his possession, 1 A.L.R.2d 978.

Succession or estate tax as affecting or as affected by estate by entirety or other joint estate with right of survivorship, 1 A.L.R.2d 1101.

Illegitimate child as "lineal descendant" and "child" within the provisions of inheritance, succession, or estate tax statutes respecting exemption and tax rates, 3 A.L.R.2d 166.

Time as of which rate of tax applicable to transfer in contemplation of death, or to take effect on death, is determined, 5 A.L.R.2d 1065.

Valuation of property for purposes of estate, succession, or gift tax as affected by contract or bylaw specifying price at which property may or must be sold, purchased, or offered, 5 A.L.R.2d 1122.

Transfer in trust divesting donor of all interest and control, but withholding ultimate distribution until his death, as subject to estate or inheritance tax, 6 A.L.R.2d 223.

Liability of life insurer which pays proceeds of policy direct to beneficiary, for the portion of estate or succession tax attributable to such proceeds, 10 A.L.R.2d 657.

Inheritance, succession, or estate tax on property covered by power of appointment as affected by location of property, or residence of parties, outside the taxing state or country, 19 A.L.R.2d 1415.

Valuation of corporate stock for purposes of succession, inheritance, or estate tax, as affected by quantity involved, 23 A.L.R.2d 775.

Death or divorce of blood relative as affecting relationship by affinity for purposes of inheritance, succession, or estate tax, 26 A.L.R.2d 271.

Deductibility of attorney's fees, as administrative expenses and the like, in computing succession or estate tax, 30 A.L.R.2d 1108.

Succession, estate, or inheritance tax as affected by compromise of will contest, 36 A.L.R.2d 917.

Construction and effect of provisions of will relied upon as affecting the burden of taxation, 37 A.L.R.2d 7; 70 A.L.R.3d 630.

Taxability of trustor's estate for retention of power to designate persons who shall possess or enjoy, 39 A.L.R.2d 461.

State inheritance, estate, or succession tax on United States savings bonds, 39 A.L.R.2d 698.

Deduction of exemption as affecting rate and computation of inheritance, taxes, 40 A.L.R.2d 630.

Statutory provision that specified fund or property shall be "exempt from taxation," "exempt from any tax," or the like, as exempting such property from estate or succession taxes, 47 A.L.R.2d 999.

Children of adopted child, or adopted children of natural child, as "lineal descendants" within provisions of inheritance, succession, or estate tax statutes respecting exemption and tax rates, 51 A.L.R.2d 854.

Applicability of dead man statute to proceedings to determine liability for succession, estate, or inheritance tax, 66 A.L.R.2d 714.

Succession and estate tax: construction of statute or regulation exempting gifts to foreign charitable, educational, or religious body on reciprocal basis, 12 A.L.R.3d 918.

Inter vivos settlement of disputed claim as consideration within statutes excepting transfers for consideration from estate, succession, or inheritance tax, 13 A.L.R.3d 657.

Renunciation of inheritance, devise, or legacy as affecting state inheritance, estate, or succession tax, 27 A.L.R.3d 1354.

Construction and effect of Uniform Gifts to Minors Act, 50 A.L.R.3d 528.

Deduction of federal gift tax in computing state inheritance tax, 56 A.L.R.3d 1322.

Valuation of corporate stock for purposes of state gift, inheritance, or estate tax, as affected by predetermined price in buy-out or first-option agreement among stockholders or with corporation, 58 A.L.R.3d 1104.

Surviving spouse taking elective share as chargeable with estate or inheritance tax, 67 A.L.R.3d 199.

Liability of income beneficiary of trust for proportionate share of estate or inheritance tax in absence of specific direction in statute, will, or other instrument, 67 A.L.R.3d 273.

Construction and effect of will provisions expressly relating to the burden of estate or inheritance taxes, 69 A.L.R.3d 122.

Construction and application of statutes apportioning or prorating estate taxes, 71 A.L.R.3d 247.

Remedies and practice under estate tax apportionment statutes, 71 A.L.R.3d 371.

Modern status of law as to equitable adoption or adoption by estoppel, 97 A.L.R.3d 347.

Valuation of closely held stock for federal estate tax purposes under sec. 2031(b) of Internal Revenue Code of 1954 (26 USCS sec. 2031(b)), and implementing regulations, 22 A.L.R. Fed 31.

48-12-1. Elimination of estate taxes and returns; prior taxable years not applicable.

(a) On and after July 1, 2014, there shall be no estate taxes levied by the state and no estate tax returns shall be required by the state.

(b) Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by the enactment of this Code section and shall continue to be governed by the provisions of general law as it existed immediately prior to July 1, 2014.

(c) This Code section shall not abate any prosecution, punishment, penalty, administrative proceeding or remedy, or civil action related to any violation of law committed prior to July 1, 2014.

History.
Code 1981, § 48-12-1, enacted by Ga. L. 2014, p. 762, § 1/HB 658.

RESEARCH REFERENCES

C.J.S.

85 C.J.S., Taxation, § 1857 et seq.

ALR.

Judgment in suit to recover overpayment of estate or succession tax as res judicata, 118 A.L.R. 1065.

CHAPTER 13

SPECIFIC, BUSINESS, AND OCCUPATION TAXES

Article 1

General Provisions

Sec.

48-13-1. [Reserved] "In towns or cities" defined.

48-13-2. Prohibition of export tax on state products.

48-13-3. Prohibition of capitation tax; exception.

48-13-4. Prohibition of tax on activities involving air commerce; exceptions.

48-13-5. Definitions.

48-13-6. Levy of occupation tax by counties and municipalities on businesses and practitioners of professions and occupations; hearing on tax increase.

48-13-7. Levy of occupation tax by localities on persons with no location or office in state; superseding of local law; tax payable to only one local government; exemption.

48-13-8. Imposition of regulatory fees by counties and municipalities on businesses and practitioners of professions and occupations; classification based on location within or without corporate limits prohibited.

48-13-9. Limitation on authority of local government to impose regulatory fee; examples of individuals and entities which may and may not be subject to fees; methods for determining fees.

48-13-9.1. Civil action; attorney's fees.

48-13-10. Determining amount of occupation tax; criteria for classification of businesses and practitioners; administrative fee; exemptions or reduction in fees for economic development; election of tax by practitioner.

Sec.

48-13-10.1. [Repealed] Restriction on authority of counties and municipalities to impose business license fee or occupational tax on wrecker services.

48-13-11. Prohibited criteria or methods in determining amount of occupation tax.

48-13-12. Classification rules for businesses or practitioners with more than one type of service or product.

48-13-13. Prohibitions on occupation tax levies by local governments.

48-13-14. Levy on business or practitioner with location or office in more than one jurisdiction; allocating gross receipts; limits on levies using criteria for taxation.

48-13-15. Confidentiality of information provided by business or practitioner; violation; when disclosure allowed.

48-13-16. Excluded businesses or practitioners; other laws on occupation taxes or registration fees of local governments not repealed.

48-13-17. Levy of license, occupation, or professional tax by counties and municipalities upon real estate brokers.

48-13-18. Municipal occupational tax on businesses, trades, and professions licensed by or registered with state.

48-13-19. Limitation on levy of employment taxes by municipalities; exception.

48-13-20. Time for payment of fees and taxes.

48-13-20.1. Localities levying occupation tax or regulatory fee to collect certain information from taxpayers; electronic submission of information.

Sec.
48-13-21. Penalty for failure to pay tax or fee; time; amount; interest and administrative fees; exemption for certain military service.
48-13-22. Amount of tax due from businesses commenced on or after July 1.
48-13-23. Duty to post state licenses in places of business by persons subject to any special or occupational tax.
48-13-24. Census governing amount of tax or license fee to be paid.
48-13-25. Effect of entry of nulla bona on right of defaulting taxpayer to collect fees for services rendered after entry; effect of taxpayer's payment in full of delinquent tax, on such right.
48-13-26. Issuance of executions against delinquent taxpayers; criminal liability unaffected.
48-13-27. Ordinances and resolutions to be in compliance with amended article.
48-13-28. Disposition of increase in occupation tax revenue; public hearings.
48-13-29. Compliance by counties and municipalities with provisions; electronic or mail application process; payment of fees; establishment of system of permitting not required; plans or specifications by mail.

Article 2

Nonresident Contractors

48-13-30. "Contractor" defined.
48-13-31. Registration of nonresident contractors; minimum contract price; reports with respect to liability; registration fees; disposition.
48-13-32. Bonds; procedure; condition precedent to commencing work; amount; blanket or master bonds; amount; registration of completed contracts; fee.
48-13-33. Injunction to prevent execution of contract pending compliance with registration and bond requirements; procedure.
48-13-34. Release of bonds; completion of contract and certification from Commissioner of Labor; automatic release.
48-13-35. Appointment of Secretary of State by nonresident contractor as agent for service of process; time; effect on validity of process as to contractor.
48-13-36. Actions; venue; service and return of summons; procedure; record book kept by Secretary of State; contents.
48-13-37. Preclusion of right to bring action for payment on contract by contractor in violation of article.
48-13-38. Violations of article; penalty.

Article 3

Excise Tax on Rooms, Lodgings, and Accommodations

48-13-50. Purpose.
48-13-50.1. Creation of special districts.
48-13-50.2. Definitions.
48-13-50.3. Additional nightly tax levied on public accommodations; collection and remittance by innkeepers; exemptions; use of funds from additional taxes; provisions for termination.
48-13-50.4. Obligation of marketplace innkeepers to collect and remit taxes; conditions; audits; liability; exceptions.
48-13-51. County and municipal levies on public accommodations charges for promotion of tourism, conventions, and trade shows.
48-13-52. Allowance of percentage of tax collected as deduction to person reporting and paying

Sec.
tax; effect of delinquent payments; rate.
48-13-53. Procedures.
48-13-53.1. Innkeepers; selling or quitting business; withholding of purchase money by purchaser; liability of purchaser for failure to withhold purchase money.
48-13-53.2. Tax returns and remittances.
48-13-53.3. Taxes; extensions and returns; failure of innkeeper to make return and pay required tax.
48-13-53.4. Records and books.
48-13-53.5. Assessments.
48-13-53.6. Unpaid tax.
48-13-54. Lodge operated under jurisdiction of Department of Natural Resources or other state authority; collection and remittance of tax; use of funds.
48-13-55. Facility operated by charitable trust or functionally related business; license fees; limitation on or applicability of tax levies.
48-13-56. Annual report to Department of Community Affairs.
48-13-56.1. Hotel Motel Tax Performance Review Board; composition; appointments; investigations of complaints; expenses of members.
48-13-57. Applicable provisions from Chapter 2 of this title; waiving interest and penalties; limitation for assessment of taxes.
48-13-58. Penalties added to tax for failure to pay.
48-13-58.1. Criminal penalties for failure to make return or pay taxes.
48-13-59. Failure to collect taxes; punishment.
48-13-60. Unlawful returns; punishment.
48-13-61. Failure to furnish return; punishment.
48-13-62. Failure to keep and open records; punishment.
Sec.
48-13-63. Other violations; punishment.

Article 4

Corporate Net Worth Tax

48-13-70. Definition.
48-13-71. Organizations and companies exempt from corporate net worth tax.
48-13-72. Imposition of annual corporate net worth tax on all corporations doing business or owning property in state.
48-13-73. Amount of corporate net worth tax; amount for taxable period less than six months.
48-13-74. Determination of net worth of corporation; determination by commissioner absent disclosure of true net worth on corporation's books or return.
48-13-75. Apportionment of net worth of foreign corporation; determination of receipts derived from business in state; fixing value of capital stock; methods.
48-13-76. Corporate net worth tax due on first day of tax period; determination of annual tax period; determination of first tax period.
48-13-77. Corporate net worth tax return and payment; procedure; combining net worth tax return with state income tax return.
48-13-78. Period for payment of tax; effect.
48-13-79. Penalties; failure to file timely; extensions; failure to pay timely; interest.

Article 5

Excise Taxes on Rental Motor Vehicles

48-13-90. Legislative purpose and intent.
48-13-91. Definitions.
48-13-92. Special districts.
48-13-93. Levy and collection of excise

Sec.
taxes upon motor vehicle rental charges; expenditure of taxes; purpose.
48-13-94. Reimbursement for persons collecting tax.
48-13-95. Local powers and procedures.
48-13-96. Auditor's report.
48-13-97. Cash and credit rental charges to be reported on either cash or accrual basis of accounting.

Article 6

Excise Tax On Sale Or Use Of Energy

48-13-110. Definitions.
48-13-111. Creation of special districts.
48-13-112. Levy and collection of excise tax on sale or use of energy.
48-13-113. Notice of meeting to determine levy.
48-13-114. Adoption of ordinance levying excise tax within special district.
48-13-115. Nonparticipation of county within special district to enter into intergovernmental agreement.
48-13-116. Imposition of excise tax; effective date; limitations.
48-13-117. Procedures for payment, collection, and assessment; refund claims; contingent contract or arrangement for assessment of liability prohibited.
48-13-118. Separate revenue schedule required.
48-13-119. Transmittal of returns and remission of taxes due; form of returns; estimated tax liability.
48-13-120. Extension of time for making returns; penalties and interest; failure to make return.
Sec.
48-13-121. Keeping and preservation of records, exemption certificates, and books of account; records to be open to examination; audits and examinations.
48-13-122. Authority to waive penalties.
48-13-123. Failure to make returns or pay full amount of tax; penalties and interest.
48-13-124. Willful failure to collect tax; misdemeanor; punishment.
48-13-125. False or fraudulent return; penalty.
48-13-126. Failure or refusal to furnish return; punishment.
48-13-127. Willful failure to keep records or open records to inspection; punishment.
48-13-128. Violation of article; punishment.

Article 7

Taxation of Consumer Fireworks

48-13-130. Definitions.
48-13-131. Excise tax imposed; rate of taxation; establishment of Fireworks Trust Fund.
48-13-132. Civil penalty for violations.
48-13-133. Promulgation of rules and regulations.

Article 8

Excise Tax on For-Hire Ground Transportation

48-13-140. Definitions.
48-13-141. Excise tax on for-hire ground transport; Georgia Transit Trust Fund established; annual adjustment.
48-13-142. Penalty for violations.
48-13-143. Quarterly reporting requirement.
48-13-144. Rules and regulations.

RESEARCH REFERENCES

ALR.

Liability for license fee or occupation tax of one who has conducted business without required license or payment, 5 A.L.R. 1312; 107 A.L.R. 652.

Validity of privilege or occupation tax on business of severing natural resources from soil, 32 A.L.R. 827; 52 A.L.R. 187; 60 A.L.R. 101.

Power to lay privilege tax on occupation or business of selling or manufacturing product which is itself exempt from tax, 56 A.L.R. 498.

Rights as between dealer or manufacturer and taxing authorities in respect of taxes and license fees illegally received or collected, 93 A.L.R. 1485; 119 A.L.R. 542.

Constitutionality of statute regulating or imposing tax or license fee upon newspapers or magazines, 110 A.L.R. 327.

Intoxicating liquor business as subject to a tax imposed generally on occupations or business, 117 A.L.R. 686.

Reasonableness of fee required of places where food is served for consumption upon the premises, and basis for fixing amount, 117 A.L.R. 1319.

Occupation or license tax upon business or activities that are in violation of law, 118 A.L.R. 827.

Constitutionality of retroactive statute imposing excise, license, or privilege tax, 146 A.L.R. 1011.

Deductibility of other taxes or fees in computing excise or license taxes, 148 A.L.R. 263; 174 A.L.R. 1263.

Validity, construction, and application of statutes or ordinances prohibiting or regulating automatic vending machines, 151 A.L.R. 1195.

Payment of taxes to prevent closing of, or interference with, business as involuntary so as to permit recovery, 80 A.L.R.2d 1040.

Single or isolated transactions as falling within provisions of commercial or occupational licensing requirements, 93 A.L.R.2d 90.

Validity and construction of license tax or fee, or business privilege or occupational tax, on persons renting or leasing out real estate, 93 A.L.R.2d 1136.

Exemption of agricultural activities or occupations from business or occupation license or tax, 38 A.L.R.4th 1074.

Validity of state or municipal tax or license fee upon occupation of practicing law, 50 A.L.R.4th 467.

ARTICLE 1

GENERAL PROVISIONS

Cross references.

Annual occupational license taxes on distillers, brewers, wineries, retail dealers of distilled spirits, beer, wine, or other alcoholic products, §§ 3-4-20, 3-5-20, 3-6-20.

Editor's notes.

Ga. L. 1995, p. 419, § 2, not codified by the General Assembly, provides if a local government repeals, amends, or revises its ordinance or resolution relating to occupation taxes or regulatory fees during the tax year 1995, such a local government is authorized but not required to allow by ordinance or resolution businesses and practitioners of professions and occupations to pay for the tax year 1995 the lesser of: (1) Taxes and fees computed in accordance with the ordinance or resolution which was in effect on January 1, 1995; or (2) Taxes and fees computed in accordance with the ordinance or resolution which became effective after April 11, 1995, but before January 1, 1996.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, Ch. 92-3, which was subsequently repealed

but was succeeded by provisions in this article, are included in the annotations for this article.

Reasonableness of occupation tax. — Reasonableness of an occupation tax is not dependent upon the amount of business conducted or on the profit received by a particular individual but is determined by the conditions in the municipality as a whole as justifying the tax upon the business or occupation in question. National Linen Serv. Corp. v. City of Gainesville, 181 Ga. 397, 182 S.E. 610, 1935 Ga. LEXIS 99 (1935) (decided under former Code 1933, Ch. 92-3).

48-13-1. [Reserved] "In towns or cities" defined.

History.
Ga. L. 1927, p. 56, § 15; Code 1933, § 92-301; Ga. L. 1935, p. 11, § 2; Code 1933, § 91A-6009, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1995, p. 419, § 1; repealed by Ga. L. 1999, p. 749, § 1, effective July 1, 1999.

Editor's notes.
Ga. L. 1999, p. 749, § 1 repealed and reserved this Code section, effective July 1, 1999.

48-13-2. Prohibition of export tax on state products.

No export tax shall be imposed upon any item manufactured or produced in this state and shipped by the manufacturer or producer for sale outside the state.

History.
Ga. L. 1960, p. 806, § 1; Code 1933, § 91A-6001, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1995, p. 419, § 1.

RESEARCH REFERENCES

Am. Jur. 2d.
71 Am. Jur. 2d, State and Local Taxation, § 148.

ALR.
What constitutes manufacturing and who is a manufacturer under tax laws, 17 A.L.R.3d 7.

48-13-3. Prohibition of capitation tax; exception.

No county, municipality, or district shall levy or collect any capitation tax whatever, except street tax.

History.
Laws 1842, Cobb's 1851 Digest, p. 1074.; Code 1863, § 739; Code 1868, § 806; Ga. L. 1869, p. 162, § 1; Ga. L. 1870, p. 432, § 1; Code 1873, § 809; Code 1882, § 809; Civil Code 1895, § 775; Civil Code 1910, § 1015; Code 1933, § 92-109; Code 1933, § 91A-6002, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1980, p. 10, § 40; Ga. L. 1995, p. 419, § 1.

Cross references.
Exemption from street tax for members of organized militia, § 38-2-276.

JUDICIAL DECISIONS

Taxes upon professions and occupations of skill are not violative of the law. Burch v. Mayor of Savannah, 42 Ga. 596, 1871 Ga. LEXIS 108 (1871).

RESEARCH REFERENCES

Am. Jur. 2d.
71 Am. Jur. 2d, State and Local Taxation, § 106.

C.J.S.
85 C.J.S., Taxation, § 2129 et seq.

48-13-4. Prohibition of tax on activities involving air commerce; exceptions.

(a) It shall be unlawful for the state or any county, municipality, airport authority, district, or other political subdivision to levy or collect a tax, fee, head charge, or other charge, directly or indirectly, on:

(1) Persons traveling in air commerce, whether on regularly scheduled commercial airlines, chartered air flights, or in privately owned civil aircraft;

(2) The carriage of persons traveling in air commerce; or

(3) The sale of air transportation or on the gross receipts derived from air transportation.

(b) This Code section shall not be construed to prohibit the state or any county, municipality, airport authority, district, or other political subdivision:

(1) From levying or collecting any property, income, franchise, sale, use, or other tax otherwise authorized by law; or

(2) Which owns or operates an airport from levying or collecting reasonable rental charges, landing fees, license fees, permit fees, and other service charges for the use of airport facilities and related facilities from aircraft owners, operators, persons selling or providing goods or services to the owners or operators or to the public, and others, when otherwise allowed by law.

History.
Ga. L. 1973, p. 483, § 1; Code 1933, § 91A-6003, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1995, p. 419, § 1.

48-13-5. Definitions.

As used in this article, the term:

(1) "Administrative fee" means a component of an occupation tax which approximates the reasonable cost of handling and processing the occupation tax.

(1.1)(A) Except as otherwise provided in subparagraph (B) of this paragraph, "employee" means an individual whose work is performed under the direction and supervision of the employer and whose employer withholds FICA, federal income tax, or state income tax from such individual's compensation or whose em-

ployer issues to such individual for purposes of documenting compensation a form I.R.S. W-2 but not a form I.R.S. 1099.

(B) An individual who performs work under the direction and supervision of one business or practitioner in accordance with the terms of a contract or agreement with another business which recruits such individual is an employee of the business or practitioner which issues to such individual for purposes of documenting compensation a form I.R.S. W-2.

(2)(A) "Gross receipts" means total revenue of the business or practitioner for the period, including without being limited to the following:

(i) Total income without deduction for the cost of goods sold or expenses incurred;

(ii) Gain from trading in stocks, bonds, capital assets, or instruments of indebtedness;

(iii) Proceeds from commissions on the sale of property, goods, or services;

(iv) Proceeds from fees charged for services rendered; and

(v) Proceeds from rent, interest, royalty, or dividend income.

(B) Gross receipts shall not include the following:

(i) Sales, use, or excise taxes;

(ii) Sales returns, allowances, and discounts;

(iii) Interorganizational sales or transfers between or among the units of a parent-subsidiary controlled group of corporations, as defined by 26 U.S.C. Section 1563(a)(1), between or among the units of a brother-sister controlled group of corporations, as defined by 26 U.S.C. Section 1563(a)(2), between or among a parent corporation, wholly owned subsidiaries of such parent corporation, and any corporation in which such parent corporation or one or more of its wholly owned subsidiaries owns stock possessing at least 30 percent of the total value of shares of all classes of stock of such partially owned corporation, or between or among wholly owned partnerships or other wholly owned entities;

(iv) Payments made to a subcontractor or an independent agent for services which contributed to the gross receipts in issue;

(v) Governmental and foundation grants, charitable contributions, or the interest income derived from such funds,

received by a nonprofit organization which employs salaried practitioners otherwise covered by this chapter, if such funds constitute 80 percent or more of the organization's receipts; and

(vi) Proceeds from sales of goods or services which are delivered to or received by customers who are outside the state at the time of delivery or receipt.

(3) "Location or office" shall include any structure or vehicle where a business, profession, or occupation is conducted, but shall not include a temporary or construction work site which serves a single customer or project or a vehicle used for sales or delivery by a business or practitioner of a profession or occupation which has a location or office. The renter's or lessee's location which is the site of personal property which is rented or leased from another does not constitute a location or office for the personal property's owner, lessor, or the agent of the owner or lessor. The site of real property which is rented or leased to another does not constitute a location or office for the real property's owner, lessor, or the agent of the owner or lessor unless the real property's owner, lessor, or the agent of the owner or lessor, in addition to showing the property to prospective lessees or tenants and performing maintenance or repair of the property, otherwise conducts the business of renting or leasing the real property at such site or otherwise conducts any other business, profession, or occupation at such site.

(4) "Occupation tax" means a tax levied on persons, partnerships, corporations, or other entities for engaging in an occupation, profession, or business and enacted by a local government as a revenue-raising ordinance or resolution.

(5) "Practitioners of professions and occupations" shall not include a practitioner who is an employee of a business, if the business pays an occupation tax.

(6) "Regulatory fees" means payments, whether designated as license fees, permit fees, or by another name, which are required by a local government as an exercise of its police power and as a part of or as an aid to regulation of an occupation, profession, or business. The amount of a regulatory fee shall approximate the reasonable cost of the actual regulatory activity performed by the local government. A regulatory fee may not include an administrative fee or registration fee. No local government is authorized to require any administrative fee, registration fee, or fee by any other name in connection with a regulatory fee, except an occupation tax, as defined in paragraph (4) of this Code section. Regulatory fees do not include development impact fees as defined by paragraph (8) of Code Section 36-71-2 or other costs or conditions of zoning or land development.

History.

Code 1981, § 48-13-5, enacted by Ga. L. 1993, p. 1292, § 7; Ga. L. 1995, p. 419, § 1; Ga. L. 1999, p. 749, § 2; Ga. L. 2003, p. 596, § 1.

JUDICIAL DECISIONS

City responsible for occupation tax. — In a declaration suit, a city was properly determined not to be a local authority as that term is used in O.C.G.A. § 48-13-13(5) and, thus, was subject to the levy of occupation taxes by another municipality for the city's proprietary operations at the city's airport, which was in the other municipality's city limits, because the terms local authority and municipality were not the same under the statute. City of Atlanta v. City of College Park, 292 Ga. 741, 741 S.E.2d 147, 2013 Ga. LEXIS 316 (2013).

Temporary work site exception. — Trial court erred in ruling that the exhibitors did not fall under the "temporary work site" as the exhibitors occupied a temporary work site for two days during the town's fair and were not automatically invited back. Because that exception applied, the town was not authorized to levy an occupation tax on the exhibitors under O.C.G.A. § 48-13-6(b). Cotton Pickin' Fairs, Inc. v. Town of Gay, 346 Ga. App. 327, 816 S.E.2d 160, 2018 Ga. App. LEXIS 372 (2018).

48-13-6. Levy of occupation tax by counties and municipalities on businesses and practitioners of professions and occupations; hearing on tax increase.

(a) Except as to those businesses and practitioners of professions and occupations excluded by subsection (a) of Code Section 48-13-16 and except as to those persons excluded by Code Section 43-12-1, the governing authority of each county is authorized but not required to provide by local ordinance or resolution for the levy, assessment, and collection of occupation tax on those businesses and practitioners of professions and occupations with one or more locations or offices in the unincorporated part of the county and to provide for the punishment of violation of such a local ordinance or resolution. The governing authority of each county is authorized to classify businesses and practitioners of professions and occupations and to assess different taxes on different classes of businesses and practitioners. The governing authority of each county is authorized to provide by local ordinance or resolution for requiring information from businesses and practitioners of professions and occupations doing business in the unincorporated part of the county regarding the site of any location or office and payment of occupation taxes or regulatory fees to other local governments and to provide for the punishment for violation of such a local ordinance or resolution. This article supersedes any provision of local law authorizing such taxes.

(b) Except as to those businesses and practitioners of professions and occupations excluded by subsection (a) of Code Section 48-13-16 and except as to those persons excluded by Code Section 43-12-1, the

governing authority of each municipal corporation is authorized but not required to provide by local ordinance or resolution for the levy, assessment, and collection of occupation tax on those businesses and practitioners of professions and occupations which have one or more locations or offices within the corporate limits and to provide for the punishment of violation of such a local ordinance or resolution. The governing authority of each municipal corporation is authorized to classify businesses and practitioners of professions and occupations and to assess different taxes on different classes of businesses and practitioners. The governing authority of each municipal corporation is authorized to provide by local ordinance or resolution for requiring information from businesses and practitioners of professions and occupations doing business within the corporate limits regarding the site of any location or office and payment of occupation taxes or regulatory fees to other local governments and to provide for the punishment for violation of such a local ordinance or resolution. This article supersedes any provision of local law or city charter authorizing such taxes.

(c) After April 11, 1995, any local government shall conduct at least one public hearing before adopting any ordinance or resolution regarding the occupation tax.

History.

Code 1981, § 48-13-6, enacted by Ga. L. 1993, p. 1292, § 7; Ga. L. 1994, p. 366, § 1; Ga. L. 1995, p. 419, § 1; Ga. L. 1996, p. 1268, § 2.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1995, "April 11, 1995" was substituted for "the effective date of this Act" in subsection (c).

Editor's notes.

Ga. L. 1993, p. 1292, § 7, effective January 1, 1995, renumbered former Code Section 48-13-6 as present Code Section 48-13-17.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under Ga. L. 1953, Jan.-Feb. Sess., p. 207, and former Code Section 48-13-5, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section.

Unconstitutional regulation of practice of law. — Occupational tax ordinance levied on professionals and requiring registration and a fee payment at the beginning of each year prior to the transaction of business operated as an unconstitutional precondition on the practice of law. Sexton v. City of Jonesboro, 267 Ga. 571, 481 S.E.2d 818, 1997 Ga. LEXIS 88 (1997).

Individually-licensed CPA in CPA firm subject to revenue ordinance. — When a licensed certified public accountant is employed full-time by a firm of CPAs and is listed in the telephone directory as a CPA and employs business letterhead or business cards of a firm of certified public accountants, then such a person is practicing public accounting for the purposes of a revenue ordinance imposed pursuant to this section which applied to persons who practice the profession of public accounting. Anything to the contrary in City of Atlanta v. Day,

159 Ga. App. 476, 283 S.E.2d 692 (1981) is disapproved. Mayor of Savannah v. Canady, 255 Ga. 23, 334 S.E.2d 693, 1985 Ga. LEXIS 871 (1985) (decided under former Code Section 48-13-5).

"Public accounting" interpreted. — Statutory term "public accounting" must be interpreted to encompass the performance of any or all of those activities within the specialized competence of persons who are licensed by the state as certified public accountants, even if those persons are performing work which could be done by persons who are not certified public accountants. City of Atlanta v. Daley, 257 Ga. 674, 362 S.E.2d 348, 1987 Ga. LEXIS 1018 (1987) (decided under former Code Section 48-13-5).

"Public" interpreted. — Statutory modifier "public" (in "public accounting") refers to the profession itself, and not to the specific duties of a single practitioner — whether those duties are performed on behalf of the public generally, or exclusively for a single employer. City of Atlanta v. Daley, 257 Ga. 674, 362 S.E.2d 348, 1987 Ga. LEXIS 1018 (1987) (decided under former Code Section 48-13-5).

Maintenance of "principal office". — Statutory language limiting assessment of occupational tax to a person who "maintains his principal office" in the taxing municipality evinces no implied intent to tax only those who are responsible for the overall business and who determine the fee to be charged for the professional service. City of Atlanta v. Shrader, 185 Ga. App. 691, 365 S.E.2d 449, 1988 Ga. App. LEXIS 267 (1988) (decided under former Code Section 48-13-5).

Licensed embalmers and funeral directors who performed embalming tasks and directed funerals while in the employ of a funeral home "maintained an office" in Atlanta within the meaning of this Code section, even though they did not own or have any interest in the premises of the business and did not take the tax into consideration when determining the charges for services. City of Atlanta v. Shrader, 185 Ga. App. 691, 365 S.E.2d 449, 1988 Ga. App. LEXIS 267 (1988) (decided under former Code Section 48-13-5).

Municipal corporations may not tax absent plain and unmistakable authority from state. — Municipal corporations can levy no tax, general or special, upon the inhabitants of the municipality, or upon property therein, unless the power to do so be plainly and unmistakably granted by the state, and the burden is upon every political subdivision of the state which demands taxes from the people to show authority to exercise it in the manner in which it has been imposed by a valid law of this state. City of Atlanta v. Gower, 216 Ga. 368, 116 S.E.2d 738, 1960 Ga. LEXIS 474 (1960) (decided under Ga. L. 1953, Jan.-Feb. Sess., p. 207).

Authority to collect occupation tax. — First city lacked authority to collect an occupation tax on professional or business activities within a second city's limits because the first city did not identify any constitutional provision or general law that authorized the first city to levy, assess, and collect an occupation tax on businesses and practitioners that were not located in that city's limits, and to the extent an agreement between the cities purported to vest in the first city the authority to collect an occupation tax on businesses located within the second city's limits, the contract was unenforceable; a contract between municipalities, however, is not a general law. City of Atlanta v. City of College Park, 311 Ga. App. 62, 715 S.E.2d 158, 2011 Ga. App. LEXIS 548 (2011), aff'd, 292 Ga. 741, 741 S.E.2d 147, 2013 Ga. LEXIS 316 (2013).

Occupation tax may show a relation to the income of the taxpayer although not itself an income tax. Coolidge v. Mayor of Savannah, 128 Ga. App. 704, 197 S.E.2d 773, 1973 Ga. App. LEXIS 1586 (1973) (decided under Ga. L. 1953, Jan.-Feb. Sess., p. 207).

Exhibitors argument on occupational tax. — Exhibitors had standing to argue an occupational tax could not be levied against the exhibitors because the town sought money damages directly from the exhibitors. Cotton

Pickin' Fairs, Inc. v. Town of Gay, 346 Ga. App. 327, 816 S.E.2d 160, 2018 Ga. App. LEXIS 372 (2018).

Ordinance imposing tax exceeding limits is ultra vires and void. — General tax ordinance, as amended, of the City of Atlanta, approved March 23, 1960, insofar as the ordinance purports to tax professions licensed by the state in excess of the amount authorized is ultra vires and void. City of Atlanta v. Gower, 216 Ga. 368, 116 S.E.2d 738, 1960 Ga. LEXIS 474 (1960) (decided under Ga. L. 1953, Jan.-Feb. Sess., p. 207).

Taxability requirements. — This section, which permits a municipality to tax certain professions, contains two conditions: (1) the person taxed must be a practitioner of the profession taxed; and (2) such person must maintain an office for the practice of the profession and the principal office must lie within the municipality levying the tax. City of Atlanta v. Georgia Soc'y of Professional Eng'rs, 220 Ga. 62, 137 S.E.2d 41, 1964 Ga. LEXIS 448 (1964) (decided under Ga. L. 1953, Jan.-Feb. Sess., p. 207).

Municipality is not precluded from levying a tax on attorneys because of the license fee paid to the State Bar of Georgia. Brown v. City of Atlanta, 221 Ga. 121, 143 S.E.2d 388, 1965 Ga. LEXIS 396 (1965) (decided under Ga. L. 1953, Jan.-Feb. Sess., p. 207).

When attorney is furnished office by an employer as part of the attorney's compensation, the office is nonetheless a principal office and meets the requirements of this section. Holden v. Bartlett, 127 Ga. App. 15, 192 S.E.2d 392, 1972 Ga. App. LEXIS 761 (1972) (decided under Ga. L. 1953, Jan.-Feb. Sess., p. 207).

Taxation of engineers and architects. — City cannot tax engineers and architects pursuant to this section who, although they hold certificates of registration, work as employees in firms in which the principals who are responsible for the final design decisions also hold certificates. City of Atlanta v. Georgia Soc'y of Professional Eng'rs, 220 Ga. 62, 137 S.E.2d 41, 1964 Ga. LEXIS 448 (1964) (decided under Ga. L. 1953, Jan.-Feb. Sess., p. 207).

Authority of municipality to collect tax. — Because a second city provided by local ordinance for the levy, assessment, and collection of an occupation tax on businesses and practitioners operating within that city's limits, the second city had the general authority to collect such a tax under O.C.G.A. § 48-13-6(b), and only the second city was authorized to levy, assess, and collect an occupation tax from businesses and practitioners at the airport that were located within the second city's limits to the extent consistent with Ga. Const. 1983, Art. IX, Sec. IV, Para. I, O.C.G.A. § 48-13-6(b), other applicable statutes, and that city's own charter, ordinances, and regulations; Atlanta, Ga., Charter, § 7-105(f) is ineffective to the extent it purports to divest College Park, Georgia of the authority to levy, assess, and collect an occupation tax on those businesses and practitioners operating at the airport and within the city limits of College Park. City of Atlanta v. City of College Park, 311 Ga. App. 62, 715 S.E.2d 158, 2011 Ga. App. LEXIS 548 (2011), aff'd, 292 Ga. 741, 741 S.E.2d 147, 2013 Ga. LEXIS 316 (2013).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under Ga. L. 1953, Jan.-Feb. Sess., p. 207, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

Construction with other provisions as to lawyers. — Ga. L. 1963, p. 70, § 1 should not be construed as repealing by implication so much of this section as relates to lawyers. 1963-65 Ga. Op. Att'y Gen. 381 (decided under Ga. L. 1953, Jan.-Feb. Sess., p. 207).

Form of business as affecting taxability. — Law permits a levy upon individuals, whether the individuals practice as sole proprietors or as members of firms. There are, however, highly individual conditions under which the levy could not be made upon employees of firms. 1971 Op. Att'y Gen. No. U71-20

(decided under Ga. L. 1953, Jan.-Feb. Sess., p. 207).

Classification of professions for tax purposes. — Municipality may classify professions for the purpose of levying a license, occupational, or professional tax, provided the classification is reasonable and related to the objective for which it is made. There must be uniformity within the classes. 1970 Op. Att'y Gen. No. U70-74 (decided under Ga. L. 1953, Jan.-Feb. Sess., p. 207).

Tax may be imposed on persons in part-time service. — When a local government imposes a tax on professional activities, it may impose such tax upon those engaged in part-time service, as well as upon those engaged in full-time employment. 1970 Op. Att'y Gen. No. U70-67 (decided under Ga. L. 1953, Jan.-Feb. Sess., p. 207).

Counties and municipalities can legally add penalties for failure to pay the license taxes levied when due. 1957 Ga. Op. Att'y Gen. 307 (decided under Ga. L. 1953, Jan.-Feb. Sess., p. 207).

Tax on attorneys not a license to practice. — Municipalities may levy professional taxes upon attorneys. Such a professional tax is not to be confused with a license to practice since a municipal license fee as a condition precedent to practice has been held invalid. 1972 Op. Att'y Gen. No. U72-48 (decided under Ga. L. 1953, Jan.-Feb. Sess., p. 207).

Pest control business may be taxed wherever business carried on. — Person, business, or company engaged in the pest control business, not being specifically exempt by law, may legally be required to pay a license fee not only in the county where its principal office is located, but also in any county or city in which its business is carried on. 1952-53 Ga. Op. Att'y Gen. 380 (decided under Ga. L. 1953, Jan.-Feb. Sess., p. 207).

RESEARCH REFERENCES

C.J.S.

53 C.J.S., Licenses, § 16 et seq.

ALR.

Validity of state or municipal tax or license fee upon occupation of practicing law, 50 A.L.R.4th 467.

48-13-7. Levy of occupation tax by localities on persons with no location or office in state; superseding of local law; tax payable to only one local government; exemption.

(a) The governing authority of each county is authorized to provide by local ordinance or resolution for the levy, assessment, and collection of occupation tax on those businesses and practitioners of professions and occupations with no location or office in the state in accordance with this Code section and to provide for the punishment of violation of such a local ordinance or resolution if the business or practitioner:

(1) Has one or more employees or agents who exert substantial efforts within the unincorporated part of the county for the purpose of soliciting business or serving customers or clients; or

(2) Owns personal or real property which generates income and which is located in the unincorporated part of the county.

(b) The governing authority of each municipal corporation is authorized to provide by local ordinance or resolution for the levy, assessment, and collection of occupation tax on those businesses and practi-

tioners of professions and occupations with no location or office in the state in accordance with this Code section and to provide for the punishment of violation of such a local ordinance or resolution if the business or practitioner:

(1) Has one or more employees or agents who exert substantial efforts within the corporate limits for the purpose of soliciting business or serving customers or clients; or

(2) Owns personal or real property which generates income and which is located in the corporate limits.

(c) This article supersedes any provisions of local law or city charter authorizing such taxes.

(d) Local governments levying occupation tax according to this Code section shall comply with Code Sections 48-13-10 through 48-13-13, except that: gross receipts of a business or practitioner for purposes of this Code section shall include only those gross receipts reasonably attributable to sales or services in this state; employees shall include only those employees engaged in substantial efforts within this state; and nation-wide profitability ratios shall apply only to types of business transacted within this state.

(e) Businesses and practitioners subject to this Code section shall be required to pay occupation tax to only one local government in this state, the local government for the municipal corporation or county in which the largest dollar volume of business is done or service is performed by the individual business or practitioner.

(f) If a business or practitioner subject to this Code section provides to the local government in this state which is authorized to levy occupation tax on such business or practitioner proof of payment of a local business or occupation tax in another state which purports to tax the business's or practitioner's sales or services in this state, the business or practitioner shall be exempt from local occupation tax in this state.

History.

Code 1981, § 48-13-7, enacted by Ga. L. 1993, p. 1292, § 7; Ga. L. 1995, p. 419, § 1.

Editor's notes.

Ga. L. 1993, p. 1292, § 7, effective January 1, 1995, renumbered former Code Section § 48-13-7 as present Code Section 48-13-18.

JUDICIAL DECISIONS

City's occupation tax used same combination of criteria for all taxpayers. — Taxpayer claimed a city's occupation tax did not classify different companies by the same "combination of criteria" as required by O.C.G.A. § 48-13-10(a) as some businesses paid taxes based on the businesses' gross

receipts, while others paid based on the number of the businesses' employees. This claim failed as § 48-13-10(a)(1) and (a)(3) provided that an occupation tax could be calculated using both the number of employees and gross receipts, and the occupation tax was calculated in the same manner for every company. GMC v. City of Doraville, 284 Ga. 689, 670 S.E.2d 787, 2008 Ga. LEXIS 1020 (2008).

48-13-8. Imposition of regulatory fees by counties and municipalities on businesses and practitioners of professions and occupations; classification based on location within or without corporate limits prohibited.

(a) Except as to those persons excluded by Code Section 43-12-1, the governing authority of each county is authorized but not required to provide by local ordinance or resolution for the imposition and collection of regulatory fees on businesses and practitioners of professions and occupations doing business in the unincorporated part of the county and to provide for the punishment of violation of such a local ordinance or resolution. Classifying businesses and practitioners of professions and occupations according to whether such businesses and practitioners have a location within the unincorporated part of the county and imposing and collecting differential regulatory fees on the basis of such a classification is prohibited. This article supersedes any provision of local law authorizing such regulatory fees.

(b) Except as to those persons excluded by Code Section 43-12-1, the governing authority of each municipal corporation is authorized but not required to provide by local ordinance or resolution for the imposition and collection of regulatory fees on businesses and practitioners of professions and occupations doing business within the corporate limits and to provide for the punishment of violation of such a local ordinance or resolution. Classifying businesses and practitioners of professions and occupations according to whether such businesses and practitioners have a location within the corporate limits and imposing and collecting differential regulatory fees on the basis of such a classification is prohibited. This article supersedes any provision of local law or city charter authorizing such fees.

History.

Code 1981, § 48-13-8, enacted by Ga. L. 1993, p. 1292, § 7; Ga. L. 1995, p. 419, § 1; Ga. L. 1996, p. 1268, § 2.

Editor's notes.

Ga. L. 1993, p. 1292, § 7, effective January 1, 1995, renumbered former Code Section 48-13-8 as present Code Section 48-13-19.

48-13-9. Limitation on authority of local government to impose regulatory fee; examples of individuals and entities which may and may not be subject to fees; methods for determining fees.

(a) A local government is authorized to require a business or practitioner of a profession or occupation to pay a regulatory fee only if the local government customarily performs investigation or inspection of such businesses or practitioners of such profession or occupation as protection of the public health, safety, or welfare or in the course of enforcing a state or local building, health, or safety code, but no local government is authorized to use regulatory fees as a means of raising revenue for general purposes, provided that the amount of a regulatory fee shall approximate the reasonable cost of the actual regulatory activity performed by the local government and the proceeds of such regulatory fee shall be used to fund such regulatory activity and not the general operations of the local government, and further provided that the local government shall not be required to establish separate accounts for such proceeds.

(b) Examples of businesses or practitioners of professions or occupations which may be subject to regulatory fees of local governments include, but are expressly not limited to, the following:

(1) Building and construction contractors, subcontractors, and workers;

(2) Carnivals;

(3) Taxicab and limousine operators;

(4) Tattoo artists;

(5) Stables;

(6) Reserved;

(7) Scrap metal processors;

(8) Pawnbrokers;

(9) Food service establishments;

(10) Dealers in precious metals;

(11) Reserved;

(12) Peddlers;

(13) Parking lots;

(14) Nursing homes, assisted living communities, and personal care homes;

(15) Newspaper vending boxes;

(16) Modeling agencies;

(17) Massage parlors;

(18) Landfills;

(19) Auto and motorcycle racing;

(20) Boarding houses;

(21) Businesses which provide appearance bonds;

(22) Boxing and wrestling promoters;

(23) Hotels and motels;

(24) Hypnotists;

(25) Handwriting analysts;

(26) Health clubs, gyms, and spas;

(27) Fortunetellers;

(28) Garbage collectors;

(29) Escort services;

(30) Burglar and fire alarm installers; and

(31) Locksmiths.

(c) Examples of businesses and practitioners of professions and occupations which local governments are not authorized to subject to regulatory fees include, but are expressly not limited to, the following:

(1) Lawyers;

(2) Physicians licensed under Chapter 34 of Title 43;

(3) Osteopaths licensed under Chapter 34 of Title 43;

(4) Chiropractors;

(5) Podiatrists;

(6) Dentists;

(7) Optometrists;

(8) Psychologists;

(9) Veterinarians;

(10) Landscape architects;

(11) Land surveyors;

(12) Practitioners of physiotherapy;

(13) Public accountants;

(13.1) Registered investment advisors;

(14) Embalmers;

(15) Funeral directors;

(16) Civil, mechanical, hydraulic, or electrical engineers;

(17) Architects;

(18) Marriage and family therapists, social workers, and professional counselors;

(19) Dealers of motor vehicles, as defined in paragraph (1) of Code Section 10-1-622;

(20) Owners or operators of bona fide coin operated amusement machines, as defined in Code Section 50-27-70, and owners or operators of businesses where bona fide coin operated amusement machines are available for commercial use and play by the public, provided that such amusement machines have affixed current stickers showing payment of annual permit fees, in accordance with Code Section 50-27-78;

(21) Merchants or dealers as defined in Code Section 48-5-354 as to their deliveries to businesses and practitioners of professions and occupations in areas zoned for commercial use;

(22) Shooting galleries and firearm ranges;

(23) Firearms dealers; and

(24) Any other business, profession, or occupation for which state licensure or registration is required by state law, unless the state law regulating such business, profession, or occupation specifically allows for regulation by local governments.

(d) This Code section shall not be construed to repeal other general laws which allow or require regulation of businesses, occupations, or professions by local governments.

(e) For each business, profession, or occupation, local governments are authorized to determine the amount of a regulatory fee imposed in accordance with this article only by one of the following methods:

(1) A flat fee for each business or practitioner of a profession or occupation doing business in the jurisdiction as authorized by Code Section 48-13-8;

(2) A flat fee for each type of permit or inspection requested;

(3) An hourly rate determined by the hourly wage or salary, including employee benefits, of the person or persons assigned to investigate or inspect multiplied by the number of hours estimated for the investigation or inspection to be performed;

(4) An hourly rate as determined by paragraph (3) of this subsection with the addition of other expenses reasonably related to such regulatory activity, such as administrative and travel expenses, multiplied by the number of hours estimated for the investigation or inspection to be performed; or

(5) For construction projects that are classified as new construction or for extensive renovation projects, the number of square feet of construction or the number of square feet of construction to be served by the system to be installed, in conjunction with the International Code Council or by similar data, and in conjunction with and limited by the hourly rate described in paragraph (3) or (4) of this subsection. As used in this paragraph, the term "extensive renovation project" means a project valued at $75,000.00 or more to renovate an existing structure.

History.

Code 1981, § 48-13-9, enacted by Ga. L. 1993, p. 1292, § 7; Ga. L. 1995, p. 419, § 1; Ga. L. 1999, p. 749, § 3; Ga. L. 2006, p. 544, § 2/HB 304; Ga. L. 2011, p. 227, § 28/SB 178; Ga. L. 2013, p. 37, § 2-3/HB 487; Ga. L. 2024, p. 661, § 1/HB 461, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, in subsection (a), substituted a comma for a semicolon following "purposes" and added "and the proceeds of such regulatory fee shall be used to fund such regulatory activity and not the general operations of the local government, and further provided that the local government shall not be required to establish separate accounts for such proceeds" at the end; substituted "Reserved" for "Shooting galleries and firearm ranges" in paragraph (b)(6); substituted "Reserved" for "Firearms dealers" in paragraph (b)(11); added paragraphs (c)(13.1), (c)(22), and (c)(23); deleted "and" from the end of paragraph (c)(21); redesignated former paragraph (c)(22) as paragraph (c)(24); added "or" at the end of paragraph (e)(4); in paragraph (e)(5), inserted "or for extensive renovation projects" near the beginning, deleted "and limited by the building valuation data, as established from time to time by" preceding "the International Code Council", deleted "; or" from the end, and added the second sentence; and, deleted paragraph (e)(6), which read: "For construction projects that are classified as renovation and all other construction projects other than those classified as new construction, the cost of the project in conjunction with and limited by the building valuation data that conforms with the principles and methods established from time to time by the International Code Council or by similar data, and in conjunction with and limited by the hourly rate described in paragraph (3) or (4) of this subsection."

Editor's notes.

Ga. L. 1993, p. 1292, § 8, provided for the repeal of former Code Section 48-13-9, relating to county license fees for carnivals and other itinerant shows, effective January 1, 1995. That Code section was based on Ga. L. 1955, Ex. Sess., p. 17, § 1; Code 1933, § 91A-6005, enacted by Ga. L. 1978, p. 309, § 2.

Ga. L. 2013, p. 37, § 3-1/HB 487, not codified by the General Assembly, provides, in part, that: "(b) If any section of this Act is determined to be unconstitutional by a final decision of an

appellate court of competent jurisdiction or by the trial court of competent jurisdiction if no appeal is made, with the exception of subsection (g) of Code Section 50-27-78 and Section 2-1 of this Act, this Act shall stand repealed by operation of law.

"(c) This Act is not intended to and shall not be construed to affect the legality of the repair, transport, possession, or use of otherwise prohibited gambling devices on maritime vessels within the jurisdiction of the State of Georgia. To the extent that such repair, transport, possession, or use was lawful prior to the enactment of this Act, it shall not be made illegal by this Act; and to the extent that such repair, transport, possession, or use was prohibited prior to the enactment of this Act, it shall remain prohibited." As of May 2024, no such finding has been issued.

JUDICIAL DECISIONS

Unconstitutional regulation of practice of law. — Occupational tax ordinance levied on professionals and requiring registration and a fee payment at the beginning of each year prior to the transaction of business operated as an unconstitutional precondition on the practice of law. Sexton v. City of Jonesboro, 267 Ga. 571, 481 S.E.2d 818, 1997 Ga. LEXIS 88 (1997).

Annual renewal charge on Certificates of Public Necessity and Convenience held by taxicab drivers and companies is a regulatory fee, not a tax, and the charge is lawful because the city is authorized to regulate the business of operating taxicabs and vehicles for hire in which the certificates are used. Hadley v. City of Atlanta, 232 Ga. App. 871, 502 S.E.2d 784.

Ordinance imposing an occupational tax. — Provisions in a city ordinance allowing the city to inspect an attorney's financial records and to issue an execution to recover unpaid taxes due constituted neither a precondition to the practice of law nor an attempt to regulate such practice because the city's right to review the financial records did not require the production of material protected by attorney-client privilege and gross revenue statements were specifically protected from disclosure. Moss v. City of Dunwoody, 293 Ga. 858, 750 S.E.2d 326, 2013 Ga. LEXIS 868 (2013).

Excessive fees. — Fact that the county had increased the county's fees for building permits and other real estate development fees when the county had accumulated a two million dollar surplus from those fees was evidence that the fees may have exceeded the reasonable cost of the county's regulatory activity, and summary judgment for the county was reversed in a case alleging a violation of O.C.G.A. § 48-13-9. Home Builders Ass'n of Savannah v. Chatham County, 276 Ga. 243, 577 S.E.2d 564, 2003 Ga. LEXIS 170 (2003).

48-13-9.1. Civil action; attorney's fees.

A civil action to enforce the limitation on regulatory fees set out in Code Section 48-13-9 may be filed after the exhaustion of administrative remedies. The prevailing party in such an action shall be awarded reasonable attorney's fees.

History.
Code 1981, § 48-13-9.1, enacted by Ga. L. 2002, p. 979, § 4A.

48-13-10. Determining amount of occupation tax; criteria for classification of businesses and practitioners; administrative fee; exemptions or reduction in fees for economic development; election of tax by practitioner.

(a) In determining the amount of occupation tax to be levied on an individual business or practitioner, local governments shall classify all businesses or practitioners by the same criterion or combination of criteria. To assure uniformity, each and every business and practitioner shall be classified by the same criterion or combination of criteria. The criteria used for classification shall be one or more than one of the following criteria:

(1) The number of employees of the business or practitioner as computed on a full-time position basis or full-time position equivalent basis, provided that for the purposes of this computation an employee who works 40 hours or more weekly shall be considered a full-time employee and that the average weekly hours of employees who work less than 40 hours weekly shall be added and such sum shall be divided by 40 to produce full-time position equivalents;

(2) Profitability ratio for the type of business, profession, or occupation as measured by nation-wide averages derived from statistics, classifications, or other information published by the United States Office of Management and Budget, the United States Internal Revenue Service, or successor agencies of the United States;

(3) Gross receipts of the business or practitioner in combination with the profitability ratio for the type of business, profession, or occupation as measured by nation-wide averages derived from statistics, classifications, or other information published by the United States Office of Management and Budget, the United States Internal Revenue Service, or successor agencies of the United States; or

(4) A flat fee classification which is applied uniformly to all businesses and practitioners of professions and occupations, so that each business or practitioner pays the same amount of tax for each office or location.

(b) Local governments which classify businesses and practitioners by the criterion described in paragraph (3) of subsection (a) of this Code section are authorized but not required to limit the geographic area in which gross receipts shall be taxed to that local government's jurisdiction.

(c) Local governments which classify by the criteria described in paragraph (2) or (3) of subsection (a) of this Code section shall rank the businesses and practitioners according to the profitability ratio described in paragraph (2) of subsection (a) of this Code section. After such

ranking, the local government shall establish profitability classifications which do not overlap before setting one or more rates of taxation for each classification. Such local governments are not authorized to apply to any classification a rate of taxation greater than the rate applied to another classification which includes a business or practitioner with a higher profitability ratio, except that local governments are authorized but not required to apply different rates of taxation within the same profitability classification by dollar range of gross receipts. Local governments using such different rates of taxation within the same profitability classification shall use the same dollar ranges of gross receipts for each profitability classification and shall not apply to any business or practitioner a rate of taxation greater than the rate applied to the same dollar range of gross receipts in another classification which includes a business or practitioner with a higher profitability ratio.

(d) Local governments which classify by the criterion described in paragraph (1) of subsection (a) of this Code section are authorized but not required to adopt more than one rate of taxation per employee.

(e) The occupation tax may include an administrative fee.

(f)(1) Notwithstanding any other provision of this article, local governments may by ordinance or resolution provide for an exemption or reduction in occupation tax or a credit against occupation tax owed to one or more types of businesses or practitioners of occupations or professions as part of a plan for economic development or attracting, encouraging, or maintaining selected types of businesses or practitioners of selected occupations or professions. Such exemptions or reductions in occupation tax shall not be arbitrary or capricious.

(2) Exemptions or reductions in occupation tax pursuant to paragraph (1) of this subsection may include but shall not be limited to the following:

(A) Absolute dollar amount limitations on the total amount of tax, either by criterion or combination of criteria used for classification or for businesses and practitioners, provided that a jurisdiction which provides an absolute dollar amount limitation on the total amount of tax shall levy and collect such maximum tax only once on each business entity or practitioner even if a business or practitioner has more than one office or location within the jurisdiction;

(B) Tax credits for the retention or creation of jobs, or for jobs of a specific description, including but not limited to entry level jobs or jobs with compensation of a specified range;

(C) Tax credits for other taxes paid to the local government, including but not limited to ad valorem taxes;

(D) A tax exemption or a lower rate of taxation for sales to customers outside the jurisdiction of the local government;

(E) A credit or rebate to businesses or practitioners who paid occupation taxes in the previous year;

(F) A limitation on the dollar or percentage amount of increase in tax from a base year to a subsequent year, provided that the limitation is made applicable to new businesses or practitioners by imputing the gross receipts, profitability ratio, or number of employees of the subsequent year to the base year in calculating tax for the base year, tax for the subsequent year, and the increase in tax; and

(G) A credit or reduction as an adjustment for seasonal fluctuations in the number of employees, other fluctuations in the number of employees, increases or decreases in the number of employees, or temporary employees.

(g) Practitioners of professions and occupations who are listed in paragraphs (1) through (18) of subsection (c) of Code Section 48-13-9 shall elect as their entire occupation tax one of the following:

(1) The occupation tax resulting from application of the other provisions of this article; or

(2) A fee to be set by the local government, not to exceed $400.00 per practitioner who is licensed to provide the service, such tax to be paid at that practitioner's office or location; provided, however, that a practitioner paying according to this paragraph shall not be required to provide information to the local government relating to the gross receipts of the business or practitioner.

(h) Notwithstanding any other provision in this article, any local government levying an occupation tax is authorized to request payment of such occupation tax from and accept payment from a partnership, corporation, or other business entity composed of practitioners subject to the election set out in subsection (g) of this Code section for each such practitioner.

History.

Code 1981, § 48-13-10, enacted by Ga. L. 1993, p. 1292, § 7; Ga. L. 1995, p. 419, § 1; Ga. L. 1999, p. 749, § 4.

Editor's notes.

Ga. L. 1993, p. 1292, § 8, provided for the repeal of former Code Section 48-13-10, relating to unlawful operation of an itinerant show without a license, effective January 1, 1995. That Code section was based on Ga. L. 1955, Ex. Sess., p. 17, § 2; Code 1933, § 91A-9928, enacted by Ga. L. 1978, p. 309, § 2.

JUDICIAL DECISIONS

City's occupation tax used same combination of criteria for all taxpayers. — Taxpayer claimed a city's occupation tax did not classify different companies by the same "combination of criteria" as required by O.C.G.A. § 48-13-10(a) as some businesses paid taxes based on the businesses' gross receipts, while others paid based on the number of employees. This claim failed as § 48-13-10(a)(1) and (a)(3) provided that an occupation tax could be calculated using both the number of employees and gross receipts, and the occupation tax was calculated in the same manner for every company. GMC v. City of Doraville, 284 Ga. 689, 670 S.E.2d 787, 2008 Ga. LEXIS 1020 (2008).

Ordinance imposing an occupational tax on attorneys. — City ordinance imposing an occupational tax on attorneys who maintain an office and practice law in the city did not violate constitutional equal protection because the tax was paid for a variety of city services that benefited all citizens within the city, including attorneys, it was reasonable for the city to require attorneys with offices inside city limits to help pay for city services from which the attorneys benefit, and all attorneys subject to the ordinance were taxed uniformly. Moss v. City of Dunwoody, 293 Ga. 858, 750 S.E.2d 326, 2013 Ga. LEXIS 868 (2013).

City ordinance imposing an occupational tax on attorneys who maintained an office and practiced law in the city did not operate as an unconstitutional precondition on the practice of law nor was it an improper attempt to regulate the practice of law in violation of O.C.G.A. § 15-19-30 because the ordinance did not authorize the city to withhold a certificate from any attorney who failed to comply with the ordinance and attorneys were clearly exempted from regulatory treatment under the ordinance. Moss v. City of Dunwoody, 293 Ga. 858, 750 S.E.2d 326, 2013 Ga. LEXIS 868 (2013).

Ordinance requiring financial disclosure of attorney's records. — Provisions in a city ordinance allowing the city to inspect an attorney's financial records and to issue an execution to recover unpaid taxes due constituted neither a precondition to the practice of law nor an attempt to regulate such practice because the city's right to review the financial records did not require the production of material protected by attorney-client privilege and gross revenue statements were specifically protected from disclosure. Moss v. City of Dunwoody, 293 Ga. 858, 750 S.E.2d 326, 2013 Ga. LEXIS 868 (2013).

48-13-10.1. [Repealed] Restriction on authority of counties and municipalities to impose business license fee or occupational tax on wrecker services.

History.
Ga. L. 1981, p. 654, §§ 1-3; repealed by Ga. L. 1993, p. 1292, § 8, effective January 1, 1995.

48-13-11. Prohibited criteria or methods in determining amount of occupation tax.

In determining the amount of occupation tax to be levied on an individual business or practitioner, local governments shall not use the following criteria or methods:

(1) Dividing a business into its constituent parts and imposing a separate occupation tax on each part or portion of the business, except that businesses or practitioners with more than one type of

activity or product shall be taxed in accordance with Code Section 48-13-12;

(2) The size or square footage of the space occupied by the business or practitioner; or

(3) Any criterion other than those described in Code Section 48-13-10.

History.
Code 1981, § 48-13-11, enacted by Ga. L. 1993, p. 1292, § 7; Ga. L. 1995, p. 419, § 1.
Editor's notes.
Ga. L. 1993, p. 1292, § 9, effective January 1, 1995, renumbered former Code Section 48-13-11 as present Code Section 48-13-20.

48-13-12. Classification rules for businesses or practitioners with more than one type of service or product.

For businesses or practitioners with more than one type of service or product, the following classification rules shall apply:

(1) Local governments which do not use the criterion described in paragraph (3) of subsection (a) of Code Section 48-13-10 shall classify the business or practitioner for occupation tax purposes according to the dominant service or product, unless such local governments use only the criterion described in paragraph (4) of subsection (a) of Code Section 48-13-10; and

(2) Local governments which use the criterion described in paragraph (3) of subsection (a) of Code Section 48-13-10 shall set out in their local ordinances or resolutions for occupation taxes whether the local government will:

(A) Classify the entire gross receipts by dominant service or product; or

(B) Apportion the gross receipts by category of service or product in proportion to the gross receipts generated by each service or product, taxing each portion of the gross receipts according to the profitability ratio for that particular type of business and adding the tax for all portions to arrive at the total occupation tax.

History.
Code 1981, § 48-13-12, enacted by Ga. L. 1993, p. 1292, § 7; Ga. L. 1995, p. 419, § 1.
Editor's notes.
Ga. L. 1993, p. 1292, § 9, effective January 1, 1995, renumbered former Code Section 48-13-12 as present Code Section 48-13-21.

48-13-13. Prohibitions on occupation tax levies by local governments.

Local governments are not authorized to:

(1) Require a business or practitioner to pay more than one occupation tax for each office or location, except that businesses or practitioners with multiple services or products shall be taxed in accordance with Code Section 48-13-12;

(2) Levy occupation tax on more than 100 percent of the total gross receipts of the business or practitioner, when occupation taxes of all local governments are added together;

(3) Levy occupation tax on any practitioner whose office is maintained by and who is employed in practice exclusively by the United States, the state, a municipality or county of the state, or instrumentalities of the United States, the state, or a municipality or county of the state;

(4) Require the payment of a fee by whatever name in any amount by a business or practitioner for the cost of ascertaining whether such a business or practitioner has paid occupation tax to another local government; or

(5) Levy any occupation tax, regulatory fee, or administrative fee on any state or local authority, nonprofit organization, or vendor operating under a contract with a tax-exempt agricultural fair, as that term is defined in Code Section 2-2-8.

History.

Code 1981, § 48-13-13, enacted by Ga. L. 1993, p. 1292, § 7; Ga. L. 1995, p. 419, § 1; Ga. L. 1996, p. 1268, § 3; Ga. L. 1997, p. 143, § 48.

Editor's notes.

Ga. L. 1993, p. 1292, § 9, effective January 1, 1995, renumbered former Code Section 48-13-13 as present Code Section 48-13-22.

JUDICIAL DECISIONS

Local authority explained. — In enacting O.C.G.A. § 48-13-13, the General Assembly did not intend the term "local authority" in O.C.G.A. § 48-13-13(5) to refer to a local government corporation, that is, a municipality or a county, but only to a local authority in the narrower sense, and therefore, § 48-13-13(5) does not prohibit one municipality from levying, assessing, and collecting an occupation tax from another municipality that conducts proprietary (nongovernmental) revenue-generating activities within the geographical corporate limits of the first municipality; use of the phrase "local authority" shows that the General Assembly views a local government, that is, a county or municipality, and a local authority as distinct categories, and a "local authority" means an agency created by one or more local governments to carry out certain discrete governmental functions for a local purpose. City of Atlanta v. City of College Park, 311 Ga. App. 62, 715 S.E.2d 158, 2011 Ga. App. LEXIS 548 (2011), aff'd, 292 Ga. 741, 741 S.E.2d 147, 2013 Ga. LEXIS 316 (2013).

City was not a local authority. — Trial court erred in determining that a

first city was a local authority that was statutorily exempt from liability to a second city for any occupation tax for the first city's proprietary business operations because the first city was not a local authority within the meaning of O.C.G.A. § 48-13-13(5), such that the second city was prohibited from taxing the first city; in enacting O.C.G.A. § 48-13-13, the General Assembly did not intend the term "local authority" in § 48-13-13(5) to refer to a local government corporation, that is, a municipality or a county, but only to a local authority in the narrower sense, and therefore, § 48-13-13(5) does not prohibit one municipality from levying, assessing, and collecting an occupation tax from another municipality that conducts proprietary (nongovernmental) revenue-generating activities within the geographical corporate limits of the first municipality. City of Atlanta v. City of College Park, 311 Ga. App. 62, 715 S.E.2d 158, 2011 Ga. App. LEXIS 548 (2011), aff'd, 292 Ga. 741, 741 S.E.2d 147, 2013 Ga. LEXIS 316 (2013).

In a declaration suit, a city was properly determined not to be a local authority as that term is used in O.C.G.A. § 48-13-13(5) and, thus, was subject to the levy of occupation taxes by another municipality for the city's proprietary operations at the city's airport, which was in the other municipality's city limits, because the terms local authority and municipality were not the same under the statute. City of Atlanta v. City of College Park, 292 Ga. 741, 741 S.E.2d 147, 2013 Ga. LEXIS 316 (2013).

48-13-14. Levy on business or practitioner with location or office in more than one jurisdiction; allocating gross receipts; limits on levies using criteria for taxation.

(a) In levying occupation tax upon a business or practitioner with a location or office situated in more than one jurisdiction, including businesses or practitioners with one or more locations or offices in Georgia and one or more locations outside the state, local governments which use the criterion described in paragraph (3) of subsection (a) of Code Section 48-13-10 shall allocate the gross receipts as defined in paragraph (2) of Code Section 48-13-5 of the business or practitioner for occupation tax purposes in accordance with one of the following methods:

(1) Where the business or practitioner can reasonably allocate the dollar amount of gross receipts of the business or practitioner to one or more of the locations or offices on the basis of product manufactured in that location or office or the sales or other services provided in that location or office, each local government is authorized to tax the gross receipts generated by the location or office within the jurisdiction of the local government; or

(2) Where the business or practitioner cannot reasonably allocate the dollar amount of gross receipts among multiple locations or offices, the business or practitioner shall divide the gross receipts reported to all local governments in this state by the number of locations or offices of the business or practitioner which contributed to the gross receipts reported to any local government in this state, and shall allocate an equal percentage of such gross receipts of the business or practitioner to each location or office.

(b) In no instance shall the sum of the portions of the total gross receipts of a business or practitioner taxed by all local governments exceed 100 percent of the total gross receipts of the business or practitioner.

(c) In the event of a dispute between the business or practitioner and the local government as to the allocation under this Code section, the business or practitioner shall have the burden of proof as to the reasonableness of this allocation.

(d) Upon request, businesses or practitioners with a location or office situated in more than one jurisdiction shall provide to any local government authorized to levy an occupation tax upon such business or practitioner the following:

(1) Financial information necessary to allocate the gross receipts of the business or practitioner; and

(2) Information relating to the allocation of the business's or practitioner's gross receipts by other local governments.

(e) When more than one local government levies occupation tax on a business or practitioner which has locations encompassed by more than one local government and the local governments use different criteria for taxation in accordance with subsection (a) of Code Section 48-13-10, local governments which use the criterion described in paragraph (3) of subsection (a) of Code Section 48-13-10 are not authorized to tax any greater proportion of the gross receipts than authorized by subsection (a) of this Code section, and local governments which use the number of employees as a criterion for taxation are authorized to tax the number of employees who are employed within the local government's geographic jurisdiction. In the case of an employee who works for the same business or practitioner in more than one municipal corporation or county, the municipal corporation or county in which the employee works for the longest period of time within the calendar year shall be authorized to count the individual as an employee who is employed within the local government's geographic jurisdiction for purposes of occupation tax.

History.
Code 1981, § 48-13-14, enacted by Ga. L. 1993, p. 1292, § 7; Ga. L. 1995, p. 419, § 1; Ga. L. 1999, p. 749, § 5.

Editor's notes.
Ga. L. 1993, p. 1292, § 9, effective January 1, 1995, renumbered former Code Section 48-13-14 as present Code Section 48-13-23.

48-13-15. Confidentiality of information provided by business or practitioner; violation; when disclosure allowed.

(a) Except as provided in subsection (c) of this Code section, infor-

mation on gross receipts received by a business or practitioner of an occupation or profession provided to a local government for the purpose of determining the amount of occupation tax for the business or practitioner is confidential and exempt from inspection or disclosure under Article 4 of Chapter 18 of Title 50.

(b) Violation of the confidentiality provision of subsection (a) of this Code section shall be unlawful and upon conviction shall be punished as a misdemeanor.

(c) Information on gross receipts received by a business or practitioner of an occupation or profession provided to a local government for the purpose of determining the amount of occupation tax for the business or practitioner may be disclosed to the governing authority of another local government for occupation tax purposes or pursuant to court order or for the purpose of collection of occupation tax or prosecution for failure or refusal to pay occupation tax.

(d) In the event a taxpayer completes one or more forms in order to comply with a local government's ordinance or resolution imposing either an occupation tax or a regulatory fee and any such form fails to disclose the social security number or the appropriate federal or state taxpayer identification number, or other identification numbers, if required by the local government, such omission shall be reported in a timely manner to the state revenue commissioner.

History.

Code 1981, § 48-13-15, enacted by Ga. L. 1993, p. 1292, § 7; Ga. L. 1995, p. 419, § 1; Ga. L. 1999, p. 749, § 6.

Editor's notes.

Ga. L. 1993, p. 1292, § 9, effective January 1, 1995, renumbered former Code Section 48-13-15 as present Code Section 48-13-24.

JUDICIAL DECISIONS

Ordinance allowing inspection of attorney's financial records. — Provisions in a city ordinance allowing the city to inspect an attorney's financial records and to issue an execution to recover unpaid taxes due constituted neither a precondition to the practice of law nor an attempt to regulate such practice because the city's right to review the financial records did not require the production of material protected by attorney-client privilege and gross revenue statements were specifically protected from disclosure. Moss v. City of Dunwoody, 293 Ga. 858, 750 S.E.2d 326, 2013 Ga. LEXIS 868 (2013).

RESEARCH REFERENCES

ALR.

Recovery of damages under § 7431(c)(1)(B) of Internal Revenue Code (26 USCA § 7431(c)(1)(B)) based on improper release of confidential tax return information, 154 A.L.R. Fed. 537.

48-13-16. Excluded businesses or practitioners; other laws on occupation taxes or registration fees of local governments not repealed.

(a) The following businesses or practitioners shall be excluded from occupation tax, registration fees, or regulatory fees under the provisions of this article but shall be subject to taxation and regulation as otherwise provided by general law and municipal charters:

(1) Those businesses regulated by the Public Service Commission and the Department of Public Safety;

(2) Those electrical service businesses organized under Chapter 3 of Title 46; and

(3) Any farm operation for the production from or on the land of agricultural products, but not including any agribusiness.

(b) This article shall not be construed to repeal other provisions of general law relating to local governments' occupation tax, registration fees, or regulatory fees for businesses or practitioners of professions or occupations.

History.
Code 1981, § 48-13-16, enacted by Ga. L. 1993, p. 1292, § 7; Ga. L. 1994, p. 366, § 2; Ga. L. 1995, p. 419, § 1; Ga. L. 2012, p. 580, § 24/HB 865; Ga. L. 2013, p. 141, § 48/HB 79.

Editor's notes.
Ga. L. 1993, p. 1292, § 9, effective January 1, 1995, renumbered former Code Section 48-13-16 as present Code Section 48-13-25.

JUDICIAL DECISIONS

Authority and municipality do not have same meaning. — In a declaration suit, a city was properly determined not to be a local authority as that term is used in O.C.G.A. § 48-13-13(5) and, thus, was subject to the levy of occupation taxes by another municipality for the city's proprietary operations at the city's airport, which was in the other municipality's city limits, because the terms local authority and municipality were not the same under the statute. City of Atlanta v. City of College Park, 292 Ga. 741, 741 S.E.2d 147, 2013 Ga. LEXIS 316 (2013).

48-13-17. Levy of license, occupation, or professional tax by counties and municipalities upon real estate brokers.

(a) No county or municipal corporation shall levy or collect any fixed amount license, occupation, or professional tax upon real estate brokers, except at the place where any such real estate broker shall maintain a principal or branch office. The license, occupation, or professional tax shall permit the broker and the broker's affiliated associate brokers and salespersons to engage in all of the brokerage activities described in Code Section 43-40-1 without further licensing or

taxing other than the state licenses issued pursuant to Chapter 40 of Title 43. No additional license, occupation, or professional tax shall be required of the broker's affiliated associate brokers or salespersons; provided, however, that, subject to the limitations of subsection (b) of this Code section, a municipality or county which levies a general occupation or business license tax on a gross receipts basis shall have the power to levy and collect an occupation, license, or professional tax upon real estate brokers transacting business within the boundaries of the taxing jurisdiction, which tax shall be based upon gross receipts derived from transactions with respect to property located within the boundaries of the taxing jurisdiction.

(b) A municipal corporation may impose an occupation, license, or professional tax upon real estate brokers based upon gross receipts only for real estate transactions with respect to property located within its corporate limits and a county governing authority may impose such a tax based upon gross receipts only for real estate transactions with respect to property located in the unincorporated area of the county.

History.
Code 1933, § 84-1425, enacted by Ga. L. 1977, p. 344, § 1; Ga. L. 1990, p. 644, § 1; Code 1981, § 48-13-6; Code 1981, § 48-13-17, as redesignated by Ga. L. 1993, p. 1292, § 7; Ga. L. 1995, p. 419, § 1.

48-13-18. Municipal occupational tax on businesses, trades, and professions licensed by or registered with state.

(a) When otherwise authorized by law to levy occupation taxes on businesses, trades, and professions, a municipality shall be permitted to levy the taxes on businesses, trades, and professions which are licensed by or registered with the state. This Code section shall not be construed to repeal any express limitations on such municipal authority contained in general law.

(b) Nothing contained in this Code section shall be construed to authorize the municipal licensing or taxation of businesses, trades, or occupations operating motor vehicles required to be registered with the Department of Public Safety of this state.

History.
Code 1933, § 91A-6015, enacted by Ga. L. 1980, p. 1175, § 1; Code 1981, § 48-13-7; Code 1981, § 48-13-18, as redesignated by Ga. L. 1993, p. 1292, § 7; Ga. L. 1995, p. 419, § 1; Ga. L. 2012, p. 580, § 25/HB 865.

48-13-19. Limitation on levy of employment taxes by municipalities; exception.

(a) Except as may be authorized by general law, no municipality may levy any tax upon an individual for the privilege of working within or being employed within the limits of the municipality.

(b) Nothing contained in this Code section shall be construed to prohibit a municipality, when otherwise authorized, from levying any form of tax being levied by any municipality in this state on January 1, 1980.

History.
Code 1933, § 91A-6014, enacted by Ga. L. 1980, p. 1298, § 1; Code 1981, § 48-13-8; Code 1981, § 48-13-19, as redesignated by Ga. L. 1993, p. 1292, § 7; Ga. L. 1995, p. 419, § 1.

RESEARCH REFERENCES

ALR.
Eligibility for relief from federal employment taxes under § 530 of Internal Revenue Code (26 USCA § 3401 note), 149 A.L.R. Fed. 627.

48-13-20. Time for payment of fees and taxes.

(a) All occupation taxes authorized by this chapter, except as otherwise specifically provided, shall be due and payable annually within 30 days following January 1, or such other date specified in the local government ordinance imposing the taxes. In the event that any person commences business on any date after the date specified in this Code section or in the local government ordinance imposing the tax, the tax shall be due and payable 30 days following the commencement of the business.

(b) Regulatory fees authorized by this chapter shall be paid before commencing business or the practice of a profession or occupation as a condition precedent for transacting business, or practicing a profession or occupation.

(c) Regulatory fees may be paid after commencing business or the practice of a profession or occupation when:

(1) The work done or services provided are necessary for the health, comfort, or safety of one or more individuals or protection of property. This paragraph shall apply to, but not be limited to, the repair, service, or installation of heating, ventilation, and air conditioning equipment or systems;

(2) The work done or services provided have no adverse effect on any other person;

(3) Regulatory fees are tendered to the local government within two business days after commencing business or the practice of a profession or occupation and any and all required inspections are made in order to ensure compliance with applicable codes; and

(4) The work is commenced or the services are provided within 24 hours of receiving the request for such work or service and it is not

possible for the person conducting the work or providing the service to obtain a permit prior to commencing due to the hours of operation of the local government's offices.

History.
Ga. L. 1935, p. 11, § 21; Code 1933, § 91A-6007, enacted by Ga. L. 1978, p. 309, § 2; Code 1981, § 48-13-11; Code 1981, § 48-13-20, as redesignated by Ga. L. 1993, p. 1292, § 9; Ga. L. 1995, p. 419, § 1; Ga. L. 1999, p. 749, § 7; Ga. L. 2006, p. 544, § 3/HB 304.

48-13-20.1. Localities levying occupation tax or regulatory fee to collect certain information from taxpayers; electronic submission of information.

(a) The provisions of this Code section shall apply only in a municipality or county levying an occupation tax or regulatory fee under this article and shall apply only upon the adoption of a resolution of such governing authority consenting to the applicability of this Code section.

(b) Following the adoption of the resolution provided for in subsection (a) of this Code section, any person who performs any business, occupation, or profession and who is subject to an occupation tax or regulatory fee under this article shall be subject to the requirements of this Code section. Such person shall provide to the municipality or county levying an occupation tax or regulatory fee under this article, at the time such occupation tax or regulatory fee is due and payable, the information required under subsection (c) of this Code section. Such municipality or county shall provide written notice to such person that such information, or the refusal to provide such information, shall be provided to the department. The failure or refusal of such person to provide such information shall not toll or extend the time of payment established for such occupation tax or regulatory fee under Code Section 48-13-20.

(c) The following information shall be requested from such person by such municipality or county:

(1) The legal name of such business and any associated trade names;

(2) The mailing address of such business and the actual physical address of each location of such business if different than the mailing address; and

(3) The sales and use tax identification number assigned to such business by the department if such business is required to have such number pursuant to Article 1 of Chapter 8 of this title.

(d) Within 30 days of the time of payment of such occupation tax or regulatory fee under Code Section 48-13-20, the municipality or county collecting the occupation tax or regulatory fee and the information

authorized under subsection (c) of this Code section from such person shall submit electronically to the department the information received from such person under subsection (c) of this Code section. Such municipality or county shall also submit any applicable North American Industry Classification System Code number or numbers electronically to the department.

(e) The department shall establish and maintain an appropriate website or electronic portal for the submission by municipalities and counties of the information required by this Code section.

(f) The commissioner shall promulgate any rules and regulations necessary to implement and administer this Code section.

History.
Code 1981, § 48-13-20.1, enacted by Ga. L. 2010, p. 804, § 1/HB 1093.

48-13-21. Penalty for failure to pay tax or fee; time; amount; interest and administrative fees; exemption for certain military service.

(a) Except as otherwise provided in subsection (c) of this Code section, should any special, occupation, or sales tax or license fee imposed by this chapter remain due and unpaid for 90 days from the due date of the tax or fee, the person liable for the tax or fee shall be subject to and shall pay a penalty of 10 percent of the tax or fee due.

(b) Except as otherwise provided in subsection (c) of this Code section, local governments are authorized to provide in their ordinances for interest on delinquent occupation taxes, regulatory fees, and administrative fees at a rate not to exceed 1.5 percent per month.

(c) No taxpayer shall be liable for any penalty or interest pursuant to subsections (a) and (b) of this Code section if:

(1) The default giving rise to such penalty or interest resulted from a taxpayer's military service in the armed forces of the United States in an area designated by the President of the United States by executive order as a combat zone and was not due to gross or willful neglect or disregard of the law or of regulations or instructions issued pursuant to the law; and

(2) The taxpayer provides proof of such military service and makes full payment of taxes due, not including penalties and interest, within 60 days of such taxpayer's return from such military service.

History.
Ga. L. 1931, Ex. Sess., p. 76, § 6; Code 1933, § 92-2105; Ga. L. 1935, p. 11, § 16; Code 1933, § 91A-6011, enacted by Ga. L.

1978, p. 309, § 2; Code 1981, § 48-13-12; Code 1981, § 48-13-21, as redesignated by Ga. L. 1993, p. 1292, § 9; Ga. L. 1995, p. 419, § 1; Ga. L. 2018, p. 317, § 1/HB 840.

48-13-22. Amount of tax due from businesses commenced on or after July 1.

When any person commences business on or after July 1 in any year, the business or occupation tax for the remaining portion of the year shall be 50 percent of the tax imposed for the entire year, except that (1) local governments which tax according to the criterion described in paragraph (3) of subsection (a) of Code Section 48-13-10 are authorized to levy their customary rate on the gross receipts of the business or practitioner from the commencement of the business; (2) the administrative fee authorized as a component of an occupation tax by subsection (e) of Code Section 48-13-10 shall not be reduced; and (3) a practitioner of a profession or occupation who elects as his or her occupation tax the amount described in paragraph (2) of subsection (g) of Code Section 48-13-10 shall receive no reduction in such amount.

History.
Ga. L. 1935, p. 11, § 20; Code 1933, § 91A-6008, enacted by Ga. L. 1978, p. 309, § 2; Code 1981, § 48-13-13; Code 1981, § 48-13-22, as redesignated by Ga. L. 1993, p. 1292, § 9; Ga. L. 1995, p. 419, § 1; Ga. L. 1999, p. 749, § 7.

48-13-23. Duty to post state licenses in places of business by persons subject to any special or occupational tax.

Each person subject to any special or occupation tax who is also licensed by the state shall post the state license in a conspicuous place in the licensee's place of business and shall keep the license there at all times while the license remains valid.

History.
Ga. L. 1924, p. 183, § 2; Code 1933, § 92-302; Code 1933, § 91A-6006, enacted by Ga. L. 1978, p. 309, § 2; Code 1981, § 48-13-14; Code 1981, § 48-13-23, as redesignated by Ga. L. 1993, p. 1292, § 9; Ga. L. 1995, p. 419, § 1.

48-13-24. Census governing amount of tax or license fee to be paid.

In any provision of this chapter where population controls the amount of tax or license fee to be paid, the most recent United States decennial census shall govern.

History.
Ga. L. 1927, p. 56, § 15; Code 1933, § 92-301; Ga. L. 1935, p. 11, § 2; Code 1933, § 91A-6009, enacted by Ga. L. 1978, p. 309, § 2; Code 1981, § 48-13-15; Code 1981, § 48-13-24, as redesignated by Ga. L. 1993, p. 1292, § 9; Ga. L. 1995, p. 419, § 1.

48-13-25. Effect of entry of nulla bona on right of defaulting taxpayer to collect fees for services rendered after entry; effect of taxpayer's payment in full of delinquent tax, on such right.

When a nulla bona entry has been entered by proper authority upon an execution issued by the tax collector or tax commissioner against any person defaulting on a special tax, the person against whom the entry is made shall not be allowed or entitled to have or collect any fees or charges whatever for services rendered after the entry of the nulla bona. If, at any time after the entry of nulla bona has been made, the person against whom the execution issues pays the tax in full together with all interest and costs accrued on the tax, the person may collect any fees and charges due him or her as though he or she had never defaulted in the payment of the tax.

History.
Ga. L. 1896, p. 37, § 3; Civil Code 1910, § 1157; Code 1933, § 92-2109; Code 1933, § 91A-6013, enacted by Ga. L. 1978, p. 309, § 2; Code 1981, § 48-13-16; Code 1981, § 48-13-25, as redesignated by Ga. L. 1993, p. 1292, § 9; Ga. L. 1995, p. 419, § 1.

48-13-26. Issuance of executions against delinquent taxpayers; criminal liability unaffected.

In addition to the other remedies available to the state, counties, and municipalities for the collection of special taxes, occupation taxes, and regulatory fees due the state, counties, and municipalities from persons subject to the tax or fee who fail or refuse to pay the tax or fee, the officer charged with the collection of the tax or fee shall issue executions against the delinquent taxpayers for any or all of the following: the amount of the taxes or fees due when the taxes or fees become due; any penalty imposed by subsection (a) of Code Section 48-13-21; and any interest imposed by the local ordinance in accordance with subsection (b) of Code Section 48-13-21. The court of competent jurisdiction for the enforcement of ordinances of the local government which has levied the tax or imposed the fee may, if authorized by the local ordinance, impose a civil fine for failure to pay the occupation tax or regulatory fee. Such a civil fine shall not exceed $500.00 and may be enforced by the contempt power of the court.

History.
Ga. L. 1903, p. 17, §§ 1, 2; Civil Code 1910, §§ 1152, 1153; Code 1933, §§ 92-2107, 92-2108; Ga. L. 1935, p. 11, § 21; Code 1933, § 91A-6012, enacted by Ga. L. 1978, p. 309, § 2; Code 1981, § 48-13-17; Ga. L. 1990, p. 644, § 2; Code 1981, § 48-13-26, as redesignated by Ga. L. 1993, p. 1292, § 9; Ga. L. 1995, p. 419, § 1; Ga. L. 1999, p. 749, § 7.

48-13-27. Ordinances and resolutions to be in compliance with amended article.

(a) The governing authority of any county or municipal corporation which enacted an ordinance or resolution relating to occupation taxes or regulatory fees pursuant to the provisions of this article and other general law effective January 1, 1995, which ordinance or resolution is in effect on April 11, 1995, shall enact an ordinance or resolution in compliance with the provisions of this article, on or after April 11, 1995.

(b) Subsection (a) of this Code section shall not impair the right of any county or municipal corporation:

(1) To determine the content of such an ordinance or resolution relating to occupation taxes or regulatory fees, provided that such ordinance or resolution complies with general law; and

(2) To elect not to impose occupation taxes or regulatory fees.

History.
Code 1981, § 48-13-27, enacted by Ga. L. 1995, p. 419, § 1; Ga. L. 2002, p. 415, § 48.

48-13-28. Disposition of increase in occupation tax revenue; public hearings.

In any year when revenue from occupation taxes is greater than revenue from occupation taxes for the preceding year for a local government, the local government shall hold one or more public hearings as a part of the process of determining how to use the additional revenue.

History.
Code 1981, § 48-13-28, enacted by Ga. L. 1995, p. 419, § 1.

48-13-29. Compliance by counties and municipalities with provisions; electronic or mail application process; payment of fees; establishment of system of permitting not required; plans or specifications by mail.

(a) Every county and municipality that requires a permit for the installation, replacement, or improvement of heating, ventilation, air-conditioning, plumbing, or electrical equipment or systems within a building or structure within its jurisdiction shall ensure that the permit process of such county or municipality conforms to the provisions of this Code section.

(b) In addition to applying in person for a heating, ventilation, air-conditioning, plumbing, or electrical permit, every county and municipality subject to this Code section shall provide a method by

which an applicant can apply for a heating, ventilation, air-conditioning, plumbing, or electrical permit by mail or through electronic media without having to apply in person. Acceptable electronic media includes, but is not limited to, facsimile transmission. E-mail and Internet websites also may be used at the discretion of the county or municipality. Once the application is received, the county or municipality may approve or disapprove the permit according to the rules, regulations, and ordinances of the county or municipality. A county or municipality may require the applicant to appear in person when such applicant applies for a permit for the first time with such county or municipality. Applications sent by mail shall include payment by check or money order for any fees, unless the amount of such fees is not available from the county or municipality. Applicants using the mail to make applications shall bear the responsibility of any delays in the county or municipality receiving such applications.

(c) In addition to paying by cash any fees for the issuance of a heating, ventilation, air-conditioning, plumbing, or electrical permit, every county and municipality subject to this Code section may provide for the payment of such fees through the use of one or more of the following methods and may add an additional fee, not to exceed the actual cost to the county or municipality, for the cost of providing for and processing such payments:

(1) By use of a check;

(2) By use of a money order;

(3) By use of a major credit card;

(4) By use of a bank draft or wire transfer;

(5) By the establishment of an account by the applicant with the county or municipality which the county or municipality can debit for the payment of the fees; or

(6) By the establishment of a delayed or deferred payment method, to be established by a written policy of the county or municipality, by which the applicant can mail or deliver payment for the fees within a reasonable period of time.

(d) If an applicant's payment of the fee is dishonored by the financial institution on which it is drawn, the county or municipality shall notify the applicant and give the applicant a reasonable period of time, which shall be not less than three business days after receiving notice, to pay the fee, including any interest and penalties, and any additional fees or charges incurred by the county or municipality as a result of the dishonor. If the applicant does not pay the fee within the specified period of time, the county or municipality may invalidate the permit and assess fines and other penalties on the applicant. Such invalidation

shall result in the permit being a total nullity and may subject the applicant to all penalties for failure to have a proper permit for the construction, renovation, installation, replacement, or improvement of the building or structure. In addition, if an applicant's payment of the delayed or deferred permit fees is dishonored, the county or municipality may revoke or suspend the applicant's authority to utilize such payment method in future applications.

(e) Nothing in this Code section shall require any county or municipality to establish a system of permits for the construction, renovation, installation, replacement, or improvement of a building or structure.

(f) Nothing in this Code section shall require any county or municipality to accept plans or specifications by mail or electronic means. If a county or municipality chooses to accept plans or specifications by mail or electronic means, the county or municipality may specify the format in which such plans or specifications shall be submitted. Failure to submit such plans or specifications in the format required by the county or municipality shall be a basis for rejecting such plans or specifications by the county or municipality.

History.
Code 1981, § 48-13-29, enacted by Ga. L. 2004, p. 772, § 1; Ga. L. 2005, p. 60, § 48/HB 95; Ga. L. 2017, p. 774, § 48/HB 323.

ARTICLE 2

NONRESIDENT CONTRACTORS

Law reviews.
For note on the 1989 amendment to this article, see 6 Georgia St. U.L. Rev. 319 (1989).

For article, "Owner Defenses Under Georgia's Lien Statute," see 26 Ga. St. B. J. 76 (1989).

For article on construction law, see 42 Mercer L. Rev. 25 (1990).

JUDICIAL DECISIONS

Constitutionality. — O.C.G.A. § 48-13-30 et seq. was not violative of Ga. Const. 1976, Art. I, Sec. I, Para. IX as the same attack might lie logically against innumerable provisions of law which define the rights of litigants. Gorrell v. Fowler, 248 Ga. 801, 286 S.E.2d 13, 1982 Ga. LEXIS 1085 (1982).

Principal purpose of O.C.G.A. § 48-13-30 et seq. is to require that bond be posted to ensure payment of unemployment contributions which are the responsibility of the contractor. Manifestly, the article is not designed to discriminate against nonresident contractors, but to bring nonresident contractors into a parity with resident contractors relative to compliance with an important obligation under O.C.G.A. § 48-13-30 et seq. Gorrell v. Fowler, 248 Ga. 801, 286 S.E.2d 13, 1982 Ga. LEXIS 1085 (1982).

O.C.G.A. § 48-13-30 et seq. is applicable to an action in quantum meruit. Gorrell v. Fowler, 248 Ga. 801, 286 S.E.2d 13, 1982 Ga. LEXIS 1085 (1982).

Finding of nonresidency held correct. — When contractor stated under oath that maintenance of home, office,

business records, and reporting requirements occurred in Tennessee, the trial court's factual determination as to nonresidency is correct and does not raise a jury issue. Gorrell v. Fowler, 248 Ga. 801, 286 S.E.2d 13, 1982 Ga. LEXIS 1085 (1982).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Ga. L. 1961, p. 480, which was subsequently repealed but was succeeded by provisions in this article, are included in the annotations for this article.

Intent. — Ga. L. 1961, p. 480 is intended to provide an additional means of collecting taxes due the state and is to be in addition to existing methods. 1960-61 Ga. Op. Att'y Gen. 545 (decided under former Ga. L. 1961, p. 480).

Construction with other bond requirements. — Minimum requirements of the bond called for in Ga. L. 1961, p. 480 do not meet the minimum requirements of Ga. L. 1955, p. 389, and a qualifying subcontractor should, therefore, post both bonds. 1960-61 Ga. Op. Att'y Gen. 545 (decided under former Ga. L. 1961, p. 480).

RESEARCH REFERENCES

ALR.

Validity of privilege tax as applied to contractor performing contract with federal government, 97 A.L.R. 1257; 114 A.L.R. 347.

48-13-30. "Contractor" defined.

As used in this article, the term "contractor" means any person engaged in the business of constructing, altering, repairing, dismantling, or demolishing buildings, roads, bridges, viaducts, sewers, water and gas mains, streets, disposal plants, water filters, tanks and towers, airports, dams, water wells, pipelines, and every other type of structure, project, development, or improvement coming within the definition of real property or personal property including, but not limited to, constructing, altering, or repairing of property to be held either for sale or rental, and all subcontractors so engaged.

History.

Ga. L. 1961, p. 480, § 1; Code 1933, § 91A-6101, enacted by Ga. L. 1978, p. 309, § 2.

JUDICIAL DECISIONS

When registration required. — If the corporation in question were a foreign supplier of equipment to be installed by others, the corporation would not have to register; but, if the corporation also installed the equipment in any wise, it would be liable to and subject to the nonresident contractor's provisions. American Hosp. Supply Corp. v. Starline Mfg. Corp., 171 Ga. App. 790, 320 S.E.2d 857, 1984 Ga. App. LEXIS 2339 (1984).

Construction of a telecommunications line fits within the definition of contracting activities under O.C.G.A. § 48-13-30. Clover Cable of Ohio, Inc. v. Heywood, 260 Ga. 341, 392 S.E.2d 855, 1990 Ga. LEXIS 266 (1990).

Subcontractor's exempt status from the sales and use tax provisions of O.C.G.A. § 48-8-63 did not confer upon the subcontractor an automatic exemption from compliance with O.C.G.A.

T. 48, C. 13, A. 2. Adams v. PPT, Inc., 191 Ga. App. 729, 382 S.E.2d 732, 1989 Ga. App. LEXIS 781 (1989).

Provider of services not exempted. — In defining the term "contractor", O.C.G.A. § 48-13-30 does not exempt a provider of services. Adams v. PPT, Inc., 191 Ga. App. 729, 382 S.E.2d 732, 1989 Ga. App. LEXIS 781 (1989).

Substantial compliance by contractor. — When a nonresident contractor did not comply with O.C.G.A. § 48-13-30 et seq. prior to beginning the contractor's work but, as part of the contractor's contract with Department of Transportation (DOT), signed performance and payment bonds for 100 percent of the amount of the contract that expressly covered the payment of all state and local taxes and, prior to completion of the project, completed all steps to comply with the article, the contractor substantially complied with the article, thus, the trial court did not err in denying the DOT's motion to dismiss the contractor's action for additional compensation. DOT v. Moseman Constr. Co., 260 Ga. 369, 393 S.E.2d 258, 1990 Ga. LEXIS 284 (1990).

Burden of proving defense of noncompliance. — Noncompliance with the Nonresident Contractors Act, O.C.G.A. § 48-13-30 et seq., is an affirmative defense asserted by the owner and, although it need not be pled, the owner has the burden of proving the elements of the defense the owner asserts. Underground Festival, Inc. v. McAfee Eng'r Co., 214 Ga. App. 243, 447 S.E.2d 683, 1994 Ga. App. LEXIS 849 (1994), cert. denied, No. S94C1816, 1994 Ga. LEXIS 1181 (Ga. Dec. 2, 1994).

Dismissal of action not required. — Failure of business to comply with Georgia Nonresident Contractors Act, O.C.G.A. § 48-13-30 et seq., did not require dismissal of action against a corporation; the fraud claims at issue arose out of a proposed merger agreement and did not depend upon a contract to perform work in Georgia or upon the recovery of payment for performance under the contract. Infrasource, Inc. v. Hahn Yalena Corp., 272 Ga. App. 703, 613 S.E.2d 144, 2005 Ga. App. LEXIS 287 (2005), cert. denied, No. S05C1304, 2005 Ga. LEXIS 605 (Ga. Sept. 19, 2005).

RESEARCH REFERENCES

C.J.S.

56 C.J.S., Mechanics' Liens, §§ 82, 87 et seq.

48-13-31. Registration of nonresident contractors; minimum contract price; reports with respect to liability; registration fees; disposition.

Each nonresident contractor desiring to engage in the business of contracting in this state shall register with the commissioner for each contract when the total contract price or compensation to be received amounts to more than $10,000.00 and shall report to the commissioner as provided by rule with respect to the tax liability of the contractor pursuant to the business including, but not limited to, liability under Chapter 8 of Title 34. The commissioner shall charge a fee for the registration in the amount of $10.00 for each contract. All fees received by the commissioner shall be deposited on Monday of each week with the Office of the State Treasurer.

History.

Ga. L. 1961, p. 480, § 2; Ga. L. 1972, p. 492, § 1; Code 1933, § 91A-6102, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1982, p. 3, § 48; Ga. L. 1993, p. 1402, § 18; Ga. L. 2010, p. 863, § 2/SB 296.

Law reviews.

For article discussing legal aspects of investments and trade in Georgia by foreign business enterprises, see 27 Mercer L. Rev. 629 (1976).

JUDICIAL DECISIONS

When registration required. — If the corporation in question were a foreign supplier of equipment to be installed by others, the corporation would not have to register; but, if the corporation also installed the equipment in any wise, the corporation would be liable to and subject to the nonresident contractor's provisions. American Hosp. Supply Corp. v. Starline Mfg. Corp., 171 Ga. App. 790, 320 S.E.2d 857, 1984 Ga. App. LEXIS 2339 (1984).

Written contract not necessary. — Failure of parties to reduce a contract to writing does not exempt a contract from the requirements of O.C.G.A. § 48-13-31. Clover Cable of Ohio, Inc. v. Heywood, 260 Ga. 341, 392 S.E.2d 855, 1990 Ga. LEXIS 266 (1990).

Residence not determined by domicile. — Issue of a contractor's residency was one of residence and not domicile. If the legislature wanted a contractor's domicile to determine liability under the Nonresident Contractors Act, O.C.G.A. § 48-13-30 et seq., the legislature would have used that word or defined "residence" as meaning "domicile." ADC Constr. Co. v. Hall, 191 Ga. App. 33, 381 S.E.2d 76, 1989 Ga. App. LEXIS 469 (1989).

48-13-32. Bonds; procedure; condition precedent to commencing work; amount; blanket or master bonds; amount; registration of completed contracts; fee.

(a) Before entering into the performance of any contract the total price of which or the total compensation to be received by the contractor from which amounts to more than $10,000.00, the contractor shall execute and file with the commissioner a good and valid bond with a surety company authorized to do business in this state or with sufficient sureties to be approved by the commissioner, conditioned that all taxes which may accrue to the state and to the political subdivisions of the state on account of the execution and performance of the contract will be paid on demand, including, but not limited to, contributions due under Chapter 8 of Title 34.

(b) The execution and filing of the bond required by subsection (a) of this Code section shall be a condition precedent to commencing work on any contract in this state.

(c)(1) Every bond required by this Code section shall be in an amount equal to 10 percent of the contract price or of the compensation to be received by the contractor pursuant to the contract.

(2)(A) The commissioner may permit or require a contractor to file a blanket or master bond conditioned as provided in subsection (a) of this Code section and in a sum determined proper by the commissioner when:

(i) The contractor is engaged in a continuing service under multiple contracts or is performing services under a contract on a contingent or unit basis, and the contract price or compensation cannot be determined until after the performance of the contract; or

(ii) The commissioner finds that registration of a contract before commencement of work under the contract is impracticable for any reason.

(B) No bond pursuant to this paragraph shall be in an amount of less than $10,000.00 with respect to all contracts to be performed during the current calendar year.

(C) On or before March 1 in each year, the contractor shall report and register all contracts of $10,000.00 or more completed during the previous calendar year and shall pay the registration fee of $10.00 for each contract.

History.

Ga. L. 1961, p. 480, § 3; Code 1933, § 91A-6103, enacted by Ga. L. 1978, p. 309, § 2.

Administrative rules and regulations.

Contractors, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Sales and Use Tax Division, Substantive Rules and Regulations, Rule 560-12-2-.26.

Foreign or Non-Resident Contractors and Subcontractors, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Sales and Use Tax Division, Substantive Rules and Regulations, Rule 560-12-2-.43.

Law reviews.

For article discussing legal aspects of investments and trade in Georgia by foreign business enterprises, see 27 Mercer L. Rev. 629 (1976).

JUDICIAL DECISIONS

Residency is a mixed question of fact and law, which is generally appropriate for the jury. Lenox Hotel Co. v. Charter Bldrs., Inc., 717 F. Supp. 1558, 1989 U.S. Dist. LEXIS 8236 (N.D. Ga. 1989).

Foreign corporation may be resident contractor. — Foreign corporation is not synonymous and cannot be equated with a nonresident corporation. Therefore, simply because a contractor may be considered a foreign corporation because the foreign corporation was incorporated in Texas does not preclude a finding that the foreign corporation is a resident contractor. Lenox Hotel Co. v. Charter Bldrs., Inc., 717 F. Supp. 1558, 1989 U.S. Dist. LEXIS 8236 (N.D. Ga. 1989).

Late registration. — Late registration and payment of all taxes and revenues due the state and the state's political subdivisions constitutes substantial compliance with the requirements of the Nonresident Contractors Act, O.C.G.A. § 48-13-30 et seq., thus removing the bar to maintenance of an action on the contract. Clover Cable of Ohio, Inc. v. Heywood, 260 Ga. 341, 392 S.E.2d 855, 1990 Ga. LEXIS 266 (1990); Fuller Enters. v. Hardin Constr. Group, Inc., 206 Ga. App. 8, 424 S.E.2d 311, 1992 Ga. App. LEXIS 1554 (1992); Underground Festival, Inc. v. McAfee Eng'r Co., 214 Ga. App. 243, 447 S.E.2d 683, 1994 Ga. App. LEXIS 849 (1994), cert. denied, No. S94C1816, 1994 Ga. LEXIS 1181 (Ga. Dec. 2, 1994).

Payment of taxes without registration. — Payment of accrued

state and local taxes was not "substantial compliance" with the Nonresident Contractors Act, O.C.G.A. § 48-13-30 et seq., absent registration of a construction contract with the commissioner. Fuller Enters. v. Hardin Constr. Group, Inc., 206 Ga. App. 8, 424 S.E.2d 311, 1992 Ga. App. LEXIS 1554 (1992).

RESEARCH REFERENCES

C.J.S.

11 C.J.S., Bonds, § 7 et seq.

ALR.

Validity of statute or ordinance which requires liability or indemnity insurance or bond as condition of license for conducting business or profession, 120 A.L.R. 950.

Building contractor's liability, upon bond or other agreement to indemnify owner, for injury or death of third persons resulting from owner's negligence, 27 A.L.R.3d 663.

What constitutes "public work" within statute relating to contractor's bond, 48 A.L.R.4th 1170.

48-13-33. Injunction to prevent execution of contract pending compliance with registration and bond requirements; procedure.

Each person failing to register as required by this article or failing to execute the required bond before beginning the performance of any contract shall be denied the right to perform the contract until he complies with registration and bond requirements. The county attorney of any county in which the contract is to be performed, the Attorney General, when requested by the Commissioner of Labor, or the attorney for the commissioner, when requested by the commissioner, may proceed by injunction to prevent any activity in the performance of the contract until the registration is made and the bond is executed and filed. A temporary injunction enjoining the execution of any such contract shall be granted without notice by any judge authorized by law to grant injunctions.

History.

Ga. L. 1961, p. 480, § 3; Code 1933, § 91A-6104, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1985, p. 708, § 18.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1985, "Commissioner of Labor" was substituted for "Commissioner of the Department of Labor" in the second sentence.

48-13-34. Release of bonds; completion of contract and certification from Commissioner of Labor; automatic release.

No bond required under this article shall be released until the contract for which the bond is given has been fully performed and until the commissioner obtains a written release from the Commissioner of Labor certifying that all contributions and interest due from the principal on the bond under Chapter 8 of Title 34 have been paid in full. Bonds shall be released automatically two years after written notifica-

tion of the completion of the contract is received by the commissioner unless a court proceeding has been instituted against the contractor.

History.
Ga. L. 1961, p. 480, § 7; Ga. L. 1972, p. 492, § 2; Code 1933, § 91A-6108, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1985, p. 708, § 19.
Code Commission notes.
Pursuant to Code Section 28-9-5, in 1985, "Commissioner of Labor" was substituted for "Commissioner of the Department of Labor" in the first sentence.

RESEARCH REFERENCES

C.J.S.
11 C.J.S., Bonds, § 55 et seq.

48-13-35. Appointment of Secretary of State by nonresident contractor as agent for service of process; time; effect on validity of process as to contractor.

At the time a contractor registers with the commissioner, the contractor shall make an appointment in writing of the Secretary of State or his successor in office to be his true and lawful agent upon whom may be served all lawful process in any action or proceeding against the nonresident contractor for state and local taxes arising out of any contract executed or being executed in this state. The appointment shall be evidence of the contractor's agreement that any process against him which is served on the Secretary of State shall be of the same legal force and validity as if served upon him personally within the state.

History.
Ga. L. 1961, p. 480, § 4; Code 1933, § 91A-6105, enacted by Ga. L. 1978, p. 309, § 2.

RESEARCH REFERENCES

C.J.S.
72 C.J.S., Process, § 76.

48-13-36. Actions; venue; service and return of summons; procedure; record book kept by Secretary of State; contents.

An action against any contractor pursuant to this article may be brought by the attorney for the commissioner or by the Attorney General on behalf of the Department of Labor, in Fulton County or in any county in which any work under the contract is performed. The summons shall be directed to the Secretary of State and shall require the defendant to answer by a certain day, not less than 30 days nor more than 60 days from the date of the issuance of the summons. The summons shall be forwarded immediately by the clerk of the court to

the Secretary of State who shall immediately forward a copy of the summons to the contractor at the address given by the contractor. After forwarding the summons, the Secretary of State shall make return of the summons to the court in which the summons was issued. The return shall show the date of receipt of the summons by the Secretary of State, the date of forwarding the copy of the summons, and the name and address of the person to whom the Secretary of State forwarded the copy of the summons. The return shall be under the hand and seal of the office of the Secretary of State and shall have the same force and effect as a due and sufficient return made by the sheriff on process directed to him. The Secretary of State shall keep a suitable record book in which he shall docket every action commenced as provided in this Code section against any contractor. The record book shall show the court in which the action is brought, the title of the case, the time when the action is commenced, and the date and manner of service.

History.
Ga. L. 1961, p. 480, § 5; Code 1933, § 91A-6106, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1985, p. 708, § 20.

Law reviews.
For note discussing problems with venue in Georgia, and proposing statutory revisions to improve the resolution of venue questions, see 9 Ga. St. B.J. 254 (1972).

RESEARCH REFERENCES

C.J.S.
72 C.J.S., Process, § 76. 81A C.J.S., States, § 139.

48-13-37. Preclusion of right to bring action for payment on contract by contractor in violation of article.

No contractor who fails to register with the commissioner as required by this article or who fails to comply with any provision of this article shall be entitled to maintain an action to recover payment for performance on the contract in the courts of this state.

History.
Ga. L. 1961, p. 480, § 6; Code 1933, § 91A-6107, enacted by Ga. L. 1978, p. 309, § 2.

JUDICIAL DECISIONS

Compliance with O.C.G.A. § 48-13-30 et seq. is a condition precedent to filing suit on the contract in Georgia; however, the bar imposed by O.C.G.A. § 48-13-37 is a matter that is properly raised as a plea in abatement and not a proper subject for summary judgment. Rehco Corp. v. California Pizza Kitchen, Inc., 192 Ga. App. 92, 383 S.E.2d 643, 1989 Ga. App. LEXIS 867 (1989).

Failure to register contract. — Payment of accrued state and local taxes was not "substantial compliance" with Nonresident Contractors Act, O.C.G.A. § 48-13-30 et seq., absent registration of construction contract with commissioner.

Fuller Enters. v. Hardin Constr. Group, Inc., 206 Ga. App. 8, 424 S.E.2d 311, 1992 Ga. App. LEXIS 1554 (1992).

Defense that contractor has not complied with section need not be specially pled. — When the contractor has not complied with the provisions of O.C.G.A. § 48-13-37, the defense of the contractor's lack of capacity to maintain the suit may be asserted at trial without being specially pled under O.C.G.A. § 9-11-9. Gorrell v. Fowler, 248 Ga. 801, 286 S.E.2d 13, 1982 Ga. LEXIS 1085 (1982).

O.C.G.A. § 48-13-37 is a forum-closing sanction that closes the courts of Georgia to the offender until such time, if ever, when the offender can substantially comply with the provisions of O.C.G.A. § 48-13-30 et seq. Adams v. PPT, Inc., 191 Ga. App. 729, 382 S.E.2d 732, 1989 Ga. App. LEXIS 781 (1989).

Dismissal, rather than summary judgment, is appropriate sanction. — Once the trial court determined that the plaintiff was required to comply with O.C.G.A. § 48-13-30 et seq. and had not done so, the court lacked subject matter jurisdiction, and the appropriate action was to enter an involuntary dismissal, rather than a summary judgment. Adams v. PPT, Inc., 191 Ga. App. 729, 382 S.E.2d 732, 1989 Ga. App. LEXIS 781 (1989).

Dismissal without prejudice not adjudication on merits. — Dismissal under O.C.G.A. § 48-13-37 is one of the few involuntary dismissals which does not act as an adjudication on the merits. Taco Bell Corp. v. Calson Corp., 190 Ga. App. 481, 379 S.E.2d 6, 1989 Ga. App. LEXIS 275 (1989); Clover Cable of Ohio, Inc. v. Heywood, 260 Ga. 341, 392 S.E.2d 855, 1990 Ga. LEXIS 266 (1990); Fuller Enters. v. Hardin Constr. Group, Inc., 206 Ga. App. 8, 424 S.E.2d 311, 1992 Ga. App. LEXIS 1554 (1992).

Dismissal is for lack of subject matter jurisdiction. — Despite the involuntary nature of a dismissal based on O.C.G.A. § 48-13-37, such a dismissal is in the nature of a dismissal for lack of subject matter jurisdiction and not on the merits. Rehco Corp. v. California Pizza Kitchen, Inc., 192 Ga. App. 92, 383 S.E.2d 643, 1989 Ga. App. LEXIS 867 (1989).

Dismissal of action not required. — Failure of business to comply with Georgia Nonresident Contractors Act, O.C.G.A. § 48-13-30 et seq., did not require dismissal of action against a corporation; the fraud claims at issue arose out of a proposed merger agreement and did not depend upon a contract to perform work in Georgia or upon the recovery of payment for performance under the contract. Infrasource, Inc. v. Hahn Yalena Corp., 272 Ga. App. 703, 613 S.E.2d 144, 2005 Ga. App. LEXIS 287 (2005), cert. denied, No. S05C1304, 2005 Ga. LEXIS 605 (Ga. Sept. 19, 2005).

Recovery of payment for performance on subcontract. — By its action against the city under former O.C.G.A. § 36-82-102, the appellee sought to recover payment due it for work it had performed under its subcontract; therefore, the action sought to recover payment for performance on the contract within the meaning of O.C.G.A. § 48-13-37 and the action was therefore precluded. Mayor of City of Savannah v. Norman J. Bass Constr. Co., 264 Ga. 16, 441 S.E.2d 63, 1994 Ga. LEXIS 131 (1994).

48-13-38. Violations of article; penalty.

(a) It shall be unlawful for any person:

(1) Before beginning the performance of any contract, to fail to register as required by this article;

(2) Before beginning the performance of any contract, to fail to execute the bond required by this article; and

(3) To violate any other provision of this article.

(b) Any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor.

History.
Ga. L. 1961, p. 480, § 8; Code 1933, § 91A-9929, enacted by Ga. L. 1978, p. 309, § 2.

ARTICLE 3

EXCISE TAX ON ROOMS, LODGINGS, AND ACCOMMODATIONS

Administrative rules and regulations.
Rules for hotel motel tax reporting and hotel motel tax performance review board, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Community Affairs, Office of Coordinated Planing, Subject 110-3-3.

RESEARCH REFERENCES

ALR.
Tax on hotel-motel room occupancy, 58 A.L.R.4th 274.

48-13-50. Purpose.

It is declared to be the purpose and intent of the General Assembly that:

(1) Each county and municipality in this state shall be authorized to levy certain excise taxes as hereinafter provided in this article; and

(2) Funds be made available for the purposes of promoting, attracting, stimulating, and developing conventions and tourism in the counties and municipalities and for the provision of other local government services.

History.
Ga. L. 1975, p. 1002, § 1; Code 1933, § 91A-6201, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1989, p. 1, § 1; Ga. L. 1990, p. 1134, § 1.

Law reviews.
For article, "Online Travel Companies Find Issues with Hotels Extremely Taxing: Georgia's Hotel-Motel Occupancy Excise Tax and Expedia, Inc. v. City of Columbus, T.J. Evans," see 61 Mercer L. Rev. 1263 (2010).

JUDICIAL DECISIONS

Collection of taxes. — Although online travel companies were not operators of hotels, the companies actually collected excise taxes from hotel guests, and thus the companies were required to remit those taxes to applicable Georgia cities and counties pursuant to O.C.G.A. §§ 48-13-50 and 48-13-51. City of Rome v. Hotels.com, LP, No. 4:05-CV-249-HLM, 2006 U.S. Dist. LEXIS 56369 (N.D. Ga. May 8, 2006), dismissed, 555 F. Supp. 3d 1314, 2021 U.S. Dist. LEXIS 250106 (N.D. Ga. 2021).

In a city's action wherein the city filed a complaint seeking a declaratory judgment, injunctive relief, and other equitable remedies against an online travel company, the trial court did not err by

requiring the company to collect tax payment obligations under the Enabling Statute, O.C.G.A. § 48-13-50 et seq., and a city's ordinance via a permanent injunction. The company had contracted with the city to collect such taxes from the customers and was not an innkeeper; thus, the company was required to remit the taxes to the city. Expedia, Inc. v. City of Columbus, 285 Ga. 684, 681 S.E.2d 122, 2009 Ga. LEXIS 315 (2009).

In a city's action to recover unpaid occupancy taxes from several online travel companies pursuant to O.C.G.A. § 48-13-50 et seq., summary judgment for the companies was proper on the city's conversion claim because the city failed to show that the money sought comprised a specific, separate, identifiable fund that belonged to it. City of Atlanta v. Hotels.com, L.P., 332 Ga. App. 888, 775 S.E.2d 276, 2015 Ga. App. LEXIS 423 (2015), cert. denied, No. S15C1762, 2015 Ga. LEXIS 701 (Ga. Oct. 5, 2015).

Determination as to whether tax applied to online travel company had to be determined first. — Trial court erred by dismissing a city's declaratory judgment action against several online travel companies for lack of subject matter jurisdiction, and the appellate court erred by affirming the dismissal as the issue of whether the city's ordinance allowing the city to collect a hotel occupancy tax from the online travel companies was a contested issue in the matter that neither lower court had determined. The legal question of whether the ordinance even applied to the online travel companies had to be determined before the city was required to submit to the administrative process set forth within the ordinance and the enabling statutes, O.C.G.A. § 48-13-50 et seq. City of Atlanta v. Hotels.com, L.P., 285 Ga. 231, 674 S.E.2d 898, 2009 Ga. LEXIS 96 (2009).

Constructive trust. — In a city's action to recover unpaid occupancy taxes from several online travel companies pursuant to O.C.G.A. § 48-13-50 et seq., summary judgment for the companies was proper on the city's breach of constructive trust claim under O.C.G.A. § 53-12-132(a) because, under the law of the case, O.C.G.A. § 9-11-60(h), that claim had been rejected by the trial court and affirmed in a prior appeal. City of Atlanta v. Hotels.com, L.P., 332 Ga. App. 888, 775 S.E.2d 276, 2015 Ga. App. LEXIS 423 (2015), cert. denied, No. S15C1762, 2015 Ga. LEXIS 701 (Ga. Oct. 5, 2015).

OPINIONS OF THE ATTORNEY GENERAL

Imposition of tax by county and city. — "Hotel-Motel Tax" may not be imposed by both a county and a city within the boundaries of the city. 1993 Op. Att'y Gen. No. U93-12.

RESEARCH REFERENCES

Am. Jur. 2d.
71 Am. Jur. 2d, State and Local Taxation, §§ 23, 24.

C.J.S.
84 C.J.S., Taxation, § 494 et seq. 85 C.J.S., Taxation, § 2069.

48-13-50.1. Creation of special districts.

Pursuant to the authority granted by Article IX, Section II, Paragraph VI of the Constitution of this state, there are created within this state 159 special districts. One such district shall exist within the geographical boundaries of each county, and the territory of each such district shall include all of the territory within the county except territory located within the boundaries of any municipality which

imposes an excise tax on charges to the public for rooms, lodgings, and accommodations under this article.

History.
Code 1981, § 48-13-50.1, enacted by Ga. L. 1989, p. 1, § 1; Ga. L. 1990, p. 1134, § 1.

Law reviews.
For annual survey of local government law, see 58 Mercer L. Rev. 267 (2006).

JUDICIAL DECISIONS

Constitutionality. — O.C.G.A. § 48-13-50.1 does not violate the special district provisions contained in Ga. Const. 1983, Art. IX, Sec. II, Para. VI. Youngblood v. State, 259 Ga. 864, 388 S.E.2d 671, 1990 Ga. LEXIS 53 (1990).

48-13-50.2. Definitions.

As used in this article, the term:

(1) "Destination marketing organization" means a private sector nonprofit organization or other private entity which is exempt from federal income tax under Section 501(c)(6) of the Internal Revenue Code of 1986 that is supported by the tax under this article, government budget allocations, private membership, or any combination thereof and the primary responsibilities of which are to encourage travelers to visit their destinations, encourage meetings and expositions in the area, and provide visitor assistance and support as needed.

(2) "Innkeeper" means:

(A) Any person that furnishes for value to the public any room or rooms, lodgings, or accommodations in a county or municipality and that is licensed by, or required to pay business or occupation taxes to, such municipality or county for operating a hotel, motel, inn, lodge, tourist camp, tourist cabin, campground, or any other place in which room or rooms, lodgings, or accommodations are regularly furnished for value; or

(B) A dealer as defined in subparagraph (M.3) of paragraph (8) of Code Section 48-8-2 that is required to collect and remit the tax imposed by Article 1 of Chapter 8 of this title for acting as a marketplace facilitator as such term is defined in paragraph (18.1) of Code Section 48-8-2 for facilitating the furnishing for value to the public any room or rooms, lodgings, or accommodations on behalf of another person.

(2.1) "Marketplace innkeeper" means an innkeeper as defined in subparagraph (B) of paragraph (2) of this Code section.

(3) "Private sector nonprofit organization" means a chamber of commerce, a convention and visitors bureau, a regional travel asso-

ciation, or any other private group organized for similar purposes which is exempt from federal income tax under Section 501(c)(6) of the Internal Revenue Code of 1986; provided, however, that a county or municipality which has prior to April 1, 1990, contracted for a required expenditure under this Code section with a private group which is exempt from federal income tax under provisions of Section 501(c) of the Internal Revenue Code other than Section 501(c)(6) may continue to contract for required expenditures with such a private group.

(4) "Promoting tourism, conventions, and trade shows" means planning, conducting, or participating in programs of information and publicity designed to attract or advertise tourism, conventions, or trade shows.

(5) "State authority" means an authority created by state law which serves a state-wide function, including, but not limited to, the Geo. L. Smith II Georgia World Congress Center Authority, but shall not mean an authority created for support of a local government or a local purpose or function and shall not include authorities such as area planning and development commissions and any organizational entities they may create, regional commissions and any organizational entities they may create, or local water and sewer authorities.

(6) "Tourism product development" means the expenditure of funds for the creation or expansion of physical attractions which are available and open to the public and which improve destination appeal to visitors, support visitors' experience, and are used by visitors. Such expenditures may include capital costs and operating expenses. Tourism product development may include:

(A) Lodging for the public for no longer than 30 consecutive days to the same customer;

(B) Overnight or short-term sites for recreational vehicles, trailers, campers, or tents;

(C) Meeting, convention, exhibit, and public assembly facilities;

(D) Sports stadiums, arenas, and complexes;

(E) Golf courses associated with a resort development that are open to the general public on a contract or fee basis;

(F) Racing facilities, including dragstrips, motorcycle racetracks, and auto or stock car racetracks or speedways;

(G) Amusement centers, amusement parks, theme parks, or amusement piers;

(H) Hunting preserves, trapping preserves, or fishing preserves or lakes;

(I) Visitor information and welcome centers;

(J) Wayfinding signage;

(K) Permanent, nonmigrating carnivals or fairs;

(L) Airplanes, helicopters, buses, vans, or boats for excursions or sightseeing;

(M) Boat rentals, boat party fishing services, rowboat or canoe rentals, horse shows, natural wonder attractions, picnic grounds, river-rafting services, scenic railroads for amusement, aerial tramways, rodeos, water slides, or wave pools;

(N) Museums, planetariums, art galleries, botanical gardens, aquariums, or zoological gardens;

(O) Parks, trails, and other recreational facilities; or

(P) Performing arts facilities.

History.

Code 1981, § 48-13-50.2, enacted by Ga. L. 2000, p. 1325, § 1; Ga. L. 2008, p. 1032, § 1/HB 1168; Ga. L. 2009, p. 8, § 48/SB 46; Ga. L. 2021, p. 86, § 1/HB 317.

Editor's notes.

Ga. L. 2021, p. 86, § 5/HB 317, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2021, and shall apply to each incidence of the furnishing for value to the public any room or rooms, lodgings, or accommodations occurring on or after July 1, 2021; provided, however, that the provisions of Section 2 of this Act shall not be applicable to any rental or lease for value to the public of any room or rooms, lodgings, or accommodations which are not hotel or motel rooms for which a reservation was made and any payment or deposit was tendered prior to July 1, 2021."

48-13-50.3. Additional nightly tax levied on public accommodations; collection and remittance by innkeepers; exemptions; use of funds from additional taxes; provisions for termination.

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

(1) "Extended stay rental" means providing for value to the public a hotel or motel room for longer than 30 consecutive days to the same customer.

(2) "Transit" means regular, continuing shared-ride or shared-use surface transportation services that are made available by or funded by a public entity or quasi-public entity and are open to the general public or open to a segment of the general public defined by age, disability, or low income. Such term includes services or systems operated by or under contract with the state, a state agency or

authority, a local government, a community improvement district, or any other similar entity of this state and all accompanying infrastructure and services necessary to provide access to these modes of transportation. Such term excludes charter or sightseeing services; school bus services; courtesy shuttle and intrafacility or terminal services; limousine carriers; and ride share network services, transportation referral services, and taxi services as such terms are defined in Chapter 1 of Title 40 and which are not paid for by a public entity.

(3) "Transit projects" means and includes purposes to establish, enhance, operate, and maintain, or improve access to transit, including the issuance of grants for the provision of transit, the issuance of general obligation debt and other multiyear obligations to finance such projects, the financing of operations and maintenance of such projects once constructed, and the contracted purchase of transit from providers without direct capital investment.

(4) "Transportation purposes" means activities incident to providing and maintaining an adequate system of public roads and bridges in this state and for grants to counties for road construction and maintenance.

(b)(1) On and after July 1, 2021, an excise tax of $5.00 per night shall be levied upon the rental or lease of any room, lodging, or accommodation by an innkeeper.

(2) Taxes levied pursuant to this Code section shall be collected by the innkeeper from the customer at the time the customer pays for its rental or lease of any room, lodging, or accommodation. Any innkeeper collecting such taxes shall remit the amounts collected to the department on a monthly basis.

(3) Extended stay rentals shall be exempt from the tax levied by this Code section.

(4) Lodging or accommodations that do not provide physical shelter shall be exempt from the tax levied by this Code section.

(c) The commissioner shall promulgate and make available forms for the use of innkeepers to assist in compliance with this Code section. The commissioner shall promulgate rules and regulations as necessary to implement and administer the provisions of this Code section.

(d) It is the intention of the General Assembly, subject to appropriations, that the fees collected pursuant to subsection (b) of this Code section shall be made available and used exclusively for transportation purposes in this state with up to 10 percent of the fees collected to be appropriated for transit projects.

(e) Reserved.

(f) Notwithstanding any other law to the contrary, if at any time the amount collected under this Code section is ever not appropriated for two consecutive or nonconsecutive fiscal years to transportation purposes with up to 10 percent of such fees collected appropriated for transit projects, as determined by the House Budget and Research Office and the Senate Budget and Evaluation Office, then the amount collected shall be reduced by 50 percent. Upon the conclusion of a third fiscal year in which an amount is not so appropriated, this Code section shall stand repealed and reserved and such fees shall cease to be collected, on the date the appropriations Act for such fiscal year becomes effective. Such budget offices shall certify any such lack of appropriation to the Code Revision Commission for purposes of updating the Code in accordance with this subsection.

History.

Code 1981, § 48-13-50.3, enacted by Ga. L. 2015, p. 236, § 5-15/HB 170; Ga. L. 2015, p. 1443, § 3/HB 106; Ga. L. 2020, p. 903, § 3-2/HB 105; Ga. L. 2021, p. 86, § 2/HB 317; Ga. L. 2021, p. 480, § 8/HB 588; Ga. L. 2021, p. 761, § 17/HB 511; Ga. L. 2022, p. 352, § 48/HB 1428; Ga. L. 2023, p. 730, § 7(16)/HB 475, effective July 1, 2023.

Amendments.

The 2022 amendment, effective May 2, 2022, part of an Act to revise, modernize, and correct the Code, redesignated the text of former paragraph (a)(2) as present paragraph (a)(3) and redesignated the text of former paragraph (a)(3) as present paragraph (a)(2); redesignated subsection (e) as "Reserved"; and in subsection (f), deleted "subsection (e) of this Code section or" following "Notwithstanding".

The 2023 amendment, effective July 1, 2023, part of an Act to revise, modernize, and correct the Code, redesignated paragraph (a)(3) as paragraph (a)(4) and paragraph (a)(4) as paragraph (a)(3) to place the paragraphs in alphabetical order.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2015, the enactment of this Code section by Ga. L. 2015, p. 236, § 5-15/HB 170, was treated as impliedly repealed and superseded by Ga. L. 2015, p. 1443, § 3/HB 106, due to irreconcilable conflict.

Editor's notes.

Ga. L. 2015, p. 236, § 8-1/HB 170, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Transportation Funding Act of 2015.'"

Ga. L. 2015, p. 236, § 8-2/HB 170, not codified by the General Assembly, provides that: "It is the intention of the General Assembly, subject to appropriations and other constitutional obligations of this state, that year to year revenue increases be prioritized to fund education, transportation, and health care in this state."

Ga. L. 2015, p. 236, § 9-1(b)/HB 170, not codified by the General Assembly, provides that: "Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by the passage of this Act and shall continue to be governed by the provisions of Title 48 of the Official Code of Georgia Annotated as it existed immediately prior to the effective date of this Act." This Act became effective July 1, 2015.

Funds were appropriated in accordance with this Code section in 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, and 2024.

Ga. L. 2021, p. 86, § 5/HB 317, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2021, and shall apply to each incidence of the furnishing for value to the public any room or rooms, lodgings, or accommodations occurring on or after July 1, 2021; provided, however, that the provisions of Section 2 of this Act shall not be applicable to any rental or lease for value to the public of any room or rooms,

lodgings, or accommodations which are not hotel or motel rooms for which a reservation was made and any payment or deposit was tendered prior to July 1, 2021."

Administrative rules and regulations.

State Hotel-Motel Fee, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Fees and Excise Taxes, Rule 560-13-2-.01 et seq.

Law reviews.

For article on the 2015 enactment of this Code section, see 32 Georgia St. U.L. Rev. 261 (2015).

48-13-50.4. Obligation of marketplace innkeepers to collect and remit taxes; conditions; audits; liability; exceptions.

(a) A marketplace innkeeper shall constitute the innkeeper with respect to the transactions taxable pursuant to this article that it facilitates on behalf of another person. All taxes levied or imposed by this article on transactions facilitated by a marketplace innkeeper shall be paid by the purchaser to the marketplace innkeeper.

(b) The marketplace innkeeper shall remit all taxes in the manners provided in this article and, when received by the taxing authority, such taxes shall be credited against the taxes imposed by this article on the furnishing for value to the public any room or rooms, lodgings, or accommodations.

(c) Each marketplace innkeeper shall be liable for the full amount of taxes levied or imposed by this article on its transactions or the amount of tax collected by such marketplace innkeeper from all purchasers on all such transactions, whichever is greater.

(d) A transaction that is not taxable to the purchaser shall not be taxable to the marketplace innkeeper. Taxes collected and remitted by a marketplace innkeeper pursuant to this article shall be subject to the credit otherwise granted by this article for like taxes previously paid in another state.

(e) This Code section shall not be construed to require a duplication in the payment of any tax.

(f) A person shall not be obligated to collect and remit or be liable for the taxes levied or imposed by this article on any transaction for which its marketplace innkeeper is obligated and liable.

(g) The taxing authority shall only audit the marketplace innkeeper for sales made by it on behalf of another person except to the extent the marketplace innkeeper seeks relief through subsection (h) of this Code section.

(h) A marketplace innkeeper is relieved of liability for failure to collect and remit the correct amount of tax imposed by this article to the extent that the marketplace innkeeper demonstrates to the satisfaction of the taxing authority that the error was due to insufficient or incorrect

information given to the marketplace innkeeper by the person on whose behalf the sale was facilitated and the marketplace innkeeper made a reasonable effort to obtain correct and sufficient information from such person; provided, however, that this subsection shall not apply if the marketplace innkeeper and such person are related members as defined in Code Section 48-7-28.3. If a marketplace innkeeper is relieved of liability under this subsection, the person on whose behalf the sale was facilitated shall be solely liable for the amount of uncollected tax.

(i) A person that is a franchisor as such term is defined by 16 C.F.R. 436.1 shall not be a marketplace innkeeper with respect to any innkeeper as defined in subparagraph (A) of paragraph (2) of Code Section 48-13-50.2 that is its franchisee, as such term is defined by 16 C.F.R. 436.1, and that would otherwise be a marketplace innkeeper of such franchisor, provided that:

(1) In the prior calendar year, such franchisor and all of its franchisees combined made annual gross sales in the United States of at least $500 million in aggregate;

(2) Such franchisee maintains a valid certificate of registration as required by Code Section 48-8-59; and

(3) Such franchisee and franchisor maintain a valid contract providing that the franchisee will collect and remit all applicable taxes and fees that the franchisor would otherwise be required to collect and remit as a marketplace innkeeper for such franchisee.

History.

Code 1981, § 48-13-50.4, enacted by Ga. L. 2021, p. 86, § 3/HB 317.

Editor's notes.

Ga. L. 2021, p. 86, § 5/HB 317, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2021, and shall apply to each incidence of the furnishing for value to the public any room or rooms, lodgings, or accommodations occurring on or after July 1, 2021; provided, however, that the provisions of Section 2 of this Act shall not be applicable to any rental or lease for value to the public of any room or rooms, lodgings, or accommodations which are not hotel or motel rooms for which a reservation was made and any payment or deposit was tendered prior to July 1, 2021."

48-13-51. County and municipal levies on public accommodations charges for promotion of tourism, conventions, and trade shows.

(a)(1)(A)(i) The governing authority of each municipality in this state may levy and collect an excise tax upon the furnishing for value to the public of any room or rooms, lodgings, or accommodations facilitated or furnished by an innkeeper.

(ii) Within the territorial limits of the special district located within the county, each county in this state may levy and

collect an excise tax upon the furnishing for value to the public of any room or rooms, lodgings, or accommodations facilitated or furnished by an innkeeper.

(iii) The provisions of this Code section shall control over the provisions of any local ordinance or resolution to the contrary enacted pursuant to Code Section 48-13-53 and in effect prior to July 1, 1998, or enacted pursuant to this article and in effect prior to July 1, 2021. Any such ordinance shall not be deemed repealed by this Code section but shall be administered in conformity with this Code section.

(B)(i) The excise tax shall be imposed on the innkeeper and shall apply to the furnishing for value of any room, lodging, or accommodation. Every person or entity subject to a tax levied as provided in this Code section shall, except as provided in this Code section, be liable for the tax at the applicable rate on the lodging charges actually collected or, if the amount of taxes collected from the guest is in excess of the total amount that should have been collected, the total amount actually collected must be remitted.

(ii) Any tax levied as provided in this Code section is also imposed upon every person or entity who is a guest and who receives a room, lodging, or accommodation that is subject to the tax levied under this Code section. Every such guest subject to the tax levied under this Code section shall pay the tax to the innkeeper providing or facilitating the room, lodging, or accommodation. The tax shall be a debt of the person obtaining the room, lodging, or accommodation to the innkeeper providing or facilitating such room, lodging, or accommodation until it is paid and shall be recoverable at law by the innkeeper providing or facilitating such room, lodging, or accommodation in the same manner as authorized for the recovery of other debts. The innkeeper collecting the tax from the guest shall remit the tax to the governing authority imposing the tax, and the tax remitted shall be a credit against the tax imposed by division (i) of this subparagraph on the innkeeper providing or facilitating the room, lodging, or accommodation.

(C) Reserved.

(D) Except as provided in paragraphs (2.1), (2.2), (3), (3.1), (3.2), (3.3), (3.4), (3.5), (3.7), (4), (4.1), (4.2), (4.3), (4.4), (4.5), (4.6), (4.7), (5), (5.1), (5.2), and (5.3) of this subsection, no tax levied pursuant to this Code section shall be levied or collected at a rate exceeding 3 percent of the charge to the public for the furnishings.

(2) A county or municipality levying a tax as provided in paragraph (1) of this subsection shall in each fiscal year beginning on or

after July 1, 1987, expend for the purpose of promoting tourism, conventions, and trade shows a percentage of the total taxes collected under this Code section which is not less than the percentage of such tax collections expended for such purposes during the immediately preceding fiscal year. In addition, if during such immediately preceding fiscal year any portion of such tax receipts was expended for such purposes through a grant to or a contract or contracts with the state, a department of state government, a state authority, or a private sector nonprofit organization, then in each fiscal year beginning on or after July 1, 1987, at least the same percentage shall be expended through a contract or contracts with one or more such entities for the purpose of promoting tourism, conventions, and trade shows. The expenditure requirements of this paragraph shall cease to apply to a county or municipality which levies a tax at a rate in excess of 3 percent, as authorized under paragraphs (2.1), (2.2), (3), (3.1), (3.2), (3.3), (3.4), (3.5), (3.7), (4), (4.1), (4.2), (4.3), (4.4), (4.5), (4.6), (4.7), (5), (5.1), (5.2), and (5.3) of this subsection; and in such case the expenditure requirements of such paragraph of this subsection pursuant to which such tax is levied shall apply instead.

(2.1)(A) Notwithstanding the provisions of paragraph (1) of this subsection, a county (within the territorial limits of the special district located within the county) and municipalities within such a county in which county or municipality community auditorium or theater facilities owned and operated by a municipality have been renovated which renovations are completed substantially on or before July 1, 1995, and which county and municipalities have not previously levied a 6 percent tax under paragraph (4) of this subsection may levy a tax under this Code section at a rate of 5 percent.

(B) A county or municipality levying a tax pursuant to this paragraph shall expend (in each fiscal year during which the tax is collected under this paragraph) an amount equal to the amount by which the total taxes collected under this Code section exceed the taxes which would be collected at a rate of 3 percent for the purpose of general recreation. Amounts so expended shall be expended only through a contract or contracts with a recreation authority created by local Act of the General Assembly.

(2.2)(A) Notwithstanding any other provision of this Code section to the contrary, as used in this paragraph, the term:

(i) "Charitable trust" shall have the meaning given such term in subsection (d) of Code Section 48-13-55.

(ii) "Development authority" means a development authority created pursuant to Chapter 62 of Title 36, the "Development Authorities Law."

(iii) "Facility" or "facilities" means any of the buildings, structures, and facilities described in division (ii) of subparagraph (D) of this paragraph.

(iv) "Functionally related business" shall have the meaning given such term in subsection (d) of Code Section 48-13-55.

(v) "Fund" or "funding" shall include the cost and expense of all things necessary for the construction and operation of a facility or facilities, including, but not limited to, the study, operation, marketing, acquisition, construction, financing (including the payment of principal of and interest on any obligation of a development authority to finance such facility or facilities or refund any obligation of a development authority previously issued to finance such facility or facilities), development, extension, enlargement, or improvement of land, waters, property, streets, highways, buildings, structures, equipment, or facilities and the repayment of any obligation incurred in connection therewith.

(vi) "Obligation" means bonds, notes, or any instrument creating an obligation to pay or reserve moneys, having an initial term of not more than 35 years.

(vii) "Related entity" means, with respect to a charitable trust, a functionally related business of such charitable trust, or any for profit or not for profit entity owned by or under common ownership with such charitable trust or owned by or under common ownership with a functionally related business of such charitable trust or otherwise affiliated with such charitable trust in a manner approved by the development authority.

(B) Notwithstanding the provisions of paragraph (1) of this subsection, a county (within the territorial limits of the special district located within the county) or any municipality within such county in which is located, in either case, a convention and conference center which is at least 50,000 square feet in size and is owned in fee simple by a development authority and leased by such development authority to a charitable trust or a related entity thereof, and in which county or municipality there exists a private sector nonprofit organization which, on or before December 31, 2005, entered into a contract or a memorandum of understanding with the county or municipality and the aforementioned charitable trust pursuant to Code Section 48-13-55 relating to the expenditure of the proceeds of the tax collected under this Code section, may levy a tax under this Code section at a rate of 5 percent.

(C) The proceeds of the taxes collected under this paragraph shall be expended pursuant to a contract or a memorandum of understanding between the county or municipality, the private sector nonprofit organization, and the charitable trust, and such proceeds may be expended by or for the benefit of the county or municipality, the private sector nonprofit organization, or the charitable trust and related entities thereof for the purposes described in subparagraph (D) of this paragraph, provided that the expenditure of the proceeds of the tax levied on a charitable trust or a functionally related business thereof shall meet the requirements of Code Section 48-13-55.

(D) The proceeds of the taxes collected under this paragraph may be expended for any or all of the following purposes:

(i) Promoting tourism, conventions, and trade shows;

(ii) Promoting, attracting, stimulating, and developing conventions and tourism pursuant to Code Section 48-13-55; or

(iii) Funding, supporting, acquiring, constructing, renovating, improving, and equipping buildings, structures, infrastructure, and facilities which have the effect of promoting, attracting, stimulating, and developing conventions and tourism, including, but not limited to, a hotel facility and infrastructure and utility projects, provided that during any period during which there remains outstanding any obligation issued to fund a facility as contemplated by this paragraph, secured in whole or in part by a pledge of a tax authorized under this Code section, the powers of the county or municipality to impose and distribute the tax imposed by this paragraph shall not be diminished or impaired by the state and no county or municipality levying the tax imposed by this paragraph shall cease to levy the tax in any manner that will impair the interest and rights of the holder of any such obligation. This proviso shall be for the benefit of the holder of any such obligation and, upon the issuance of any such obligation by a development authority, shall constitute a contract with the holder of such obligation.

(3) Notwithstanding the provisions of paragraph (1) of this subsection, a county (within the territorial limits of the special district located within the county) or municipality may levy a tax under this Code section at a rate of 5 percent. A county or municipality levying a tax pursuant to this paragraph shall expend (in each fiscal year during which the tax is collected under this paragraph) an amount equal to the amount by which the total taxes collected under this Code section exceed the taxes which would be collected at a rate of 3 percent for the purpose of:

(A) Promoting tourism, conventions, and trade shows;

(B) Supporting a facility owned or operated by a state authority for convention and trade show purposes or any other similar or related purposes;

(C) Supporting a facility owned or operated by a local government or local authority for convention and trade show purposes or any other similar or related purposes, if a written agreement to provide such support was in effect on January 1, 1987, and if such facility is substantially completed and in operation prior to July 1, 1987;

(D) Supporting a facility owned or operated by a local government or local authority for convention and trade show purposes or any other similar or related purposes if construction of such facility is funded or was funded prior to July 1, 1990, in whole or in part by a grant of state funds or is funded on or after July 1, 1990, in whole or substantially by an appropriation of state funds;

(E) Supporting a facility owned by a local government or local authority for convention and trade show purposes and any other similar or related purposes if construction of such facility is substantially funded or was substantially funded on or after February 28, 1985, by a special county 1 percent sales and use tax authorized by Article 3 of Chapter 8 of this title, as amended, and if such facility was substantially completed and in operation prior to December 31, 1993; or

(F) For some combination of such purposes.

Amounts so expended shall be expended only through a contract or contracts with the state, a department of state government, a state authority, a convention and visitors bureau authority created by local Act of the General Assembly for a municipality, or a private sector nonprofit organization, or through a contract or contracts with some combination of such entities, except that amounts expended for purposes of subparagraphs (C) and (D) of this paragraph may be so expended in any otherwise lawful manner.

(3.1) Notwithstanding any other provision of this subsection, a county (within the territorial limits of the special district located within the county) and the municipalities within a county in which a trade and convention center authority has been created by intergovernmental contract between a county and one or more municipalities located therein, and which trade and convention center authority is in existence on or before March 21, 1988, and which trade and convention center authority has not constructed or operated any facility before March 21, 1988, may levy a tax under this Code section

at a rate of 6 percent. A county or municipality levying a tax pursuant to this paragraph shall expend (in each fiscal year during which the tax is collected under this paragraph) an amount equal to at least 62 1/2 percent of the total taxes collected at the rate of 6 percent for the purpose of:

(A) Promoting tourism, conventions, and trade shows;

(B) Funding, supporting, acquiring, constructing, renovating, improving, and equipping buildings, structures, and facilities, including, but not limited to, a trade and convention center, exhibit hall, conference center, performing arts center, accommodations facilities including food service, or any combination thereof, for convention, trade show, athletic, musical, theatrical, cultural, civic, and performing arts purposes and other events and activities for similar and related purposes, acquiring the necessary property therefor, both real and personal, and funding all expenses incident thereto, and supporting, maintaining, and promoting such facilities owned, operated, or leased by or to the local trade and convention center authority; or

(C) For some combination of such purposes;

provided, however, that at least 50 percent of the total taxes collected at the rate of 6 percent shall be expended for the purposes specified in subparagraph (B) of this paragraph. Amounts so expended shall be expended only through a contract or contracts with the state, a department of state government, a state authority, a convention and visitors bureau authority created by local Act of the General Assembly for a municipality, a local building authority created by local constitutional amendment, and a trade and convention center authority created by intergovernmental contract between a county and one or more municipalities located therein, or a private sector nonprofit organization or through a contract or contracts with some combination of such entities. The aggregate amount of all excise taxes imposed under this paragraph and all sales and use taxes, and other taxes imposed by a county or municipality, or both, shall not exceed 13 percent. Any tax levied pursuant to this paragraph shall terminate not later than December 31, 2029, provided that during any period during which there remains outstanding any obligation issued to fund a facility as contemplated by this paragraph, secured in whole or in part by a pledge of a tax authorized under this Code section, the powers of the counties and municipalities to impose and distribute the tax imposed by this paragraph shall not be diminished or impaired by the state and no county or municipality levying the tax imposed by this paragraph shall cease to levy the tax in any manner that will impair the interests and rights of the holder of any such obligation. This proviso shall be for the benefit of the holder of any

such obligation and, upon the issuance of any such obligation by a building authority created by local constitutional amendment, shall constitute a contract with the holder of such obligation. Notwithstanding any other provision of this Code section to the contrary, as used in this paragraph, the term "fund" or "funding" shall include the cost and expense of all things deemed necessary by a building authority created by local constitutional amendment for the construction and operation of a facility or facilities, including, but not limited to, the study, operation, marketing, acquisition, construction, financing, including the payment of principal and interest on any obligation of the building authority created by local constitutional amendment and any obligation of the building authority created by local constitutional amendment to refund any prior obligation of the building authority created by local constitutional amendment, development, extension, enlargement, or improvement of land, waters, property, streets, highways, buildings, structures, equipment, or facilities and the repayment of any obligation incurred by an authority in connection therewith; "obligation" shall include bonds, notes, or any instrument creating an obligation to pay or reserve moneys and having an initial term of not more than 37 years; and "facility" or "facilities" means any of the buildings, structures, and facilities described in subparagraph (B) of this paragraph and any associated parking areas or improvements originally owned or operated incident to the ownership or operation of such facility used for any purpose or purposes specified in subparagraph (B) of this paragraph by a building authority created by local constitutional amendment.

(3.2) Notwithstanding the provisions of paragraph (1) of this subsection, a county (within the territorial limits of the special district located within the county) and the municipalities within a county in which a trade and convention center facility is substantially funded by a special county 1 percent sales and use tax authorized by Article 3 of Chapter 8 of this title, as amended, which tax was levied prior to January 1, 1994, and is substantially funded by a state grant or grants authorized on or before January 1, 1996, may levy a tax under this Code section at a rate of 6 percent. A county or municipality levying a tax pursuant to this paragraph shall expend (in each fiscal year during which the tax is collected under this paragraph) an amount equal to 33 1/3 percent of the total taxes collected at the rate of 6 percent for the purpose of promoting tourism, conventions, and trade shows under a contract with a private sector nonprofit organization. In addition to the amounts required to be expended by this paragraph, a county or municipality levying a tax pursuant to this paragraph shall further expend (in each fiscal year during which the tax is collected under this paragraph) an amount equal to 16 2/3 percent of the total taxes collected at the rate of 6 percent for the

purpose of either marketing or operating trade and convention facilities. Marketing and operating expenditures may include a preopening marketing program for such a facility and an escrow account accrued prior to opening such facility to cover operating expenses to be incurred after the opening of such a facility. In the event such facility is not constructed, collected funds may be used for any lawful purpose relating to tourism by the county or municipality levying a tax pursuant to this paragraph.

(3.3) Notwithstanding the provisions of paragraph (1) of this subsection, a county (within the territorial limits of the special district located within the county) and the municipalities within a county in which a trade and convention center facility is substantially funded by a special county 1 percent sales and use tax authorized by Article 3 of Chapter 8 of this title, as amended, which tax was levied prior to January 1, 1994, and which facility was completed and in operation prior to December 31, 1994, and which county and municipalities have not previously levied a 6 percent tax under paragraph (4) of this subsection, may levy a tax under this Code section at a rate of 6 percent. A county or municipality levying a tax pursuant to this paragraph shall expend for the purpose of promoting tourism, conventions, and trade shows in each fiscal year during which the tax is collected under this paragraph an amount which is equal to (A) an amount which is not less than the amount which would have been spent if the tax rate had not been increased to 6 percent and if the same percentage of tax collections expended for such purposes during the immediately preceding fiscal year were expended for such purposes during the current fiscal year plus (B) an amount equal to 16 2/3 percent of the total taxes collected at the rate of 6 percent.

(3.4) Notwithstanding the provisions of paragraph (1) of this subsection, a county (within the territorial limits of the special district located within the county) or municipality may levy a tax under this Code section at a rate of 6 percent. A county or municipality levying a tax pursuant to this paragraph shall expend (in each fiscal year during which the tax is collected under this paragraph) an amount equal to the amount by which the total taxes collected under this Code section exceed the taxes which would be collected at a rate of 3 percent for the purpose of:

(A) Promoting tourism, conventions, and trade shows;

(B) Supporting a facility owned or operated by a state authority for convention and trade show purposes or any other similar or related purposes;

(C) Supporting a facility owned or operated by a local government or local authority for convention and trade show purposes or

any other similar or related purposes, if a written agreement to provide such support was in effect on January 1, 1987, and if such facility is substantially completed and in operation prior to July 1, 1987;

(D) Supporting a facility owned or operated by a local government or local authority for convention and trade show purposes or any other similar or related purposes if construction of such facility is funded or was funded prior to July 1, 1990, in whole or in part by a grant of state funds or is funded on or after July 1, 1990, in whole or substantially by an appropriation of state funds;

(E) Supporting a facility owned by a local government or local authority for convention and trade show purposes and any other similar or related purposes if construction of such facility is substantially funded or was substantially funded on or after February 28, 1985, by a special county 1 percent sales and use tax authorized by Article 3 of Chapter 8 of this title, as amended, and if such facility was substantially completed and in operation prior to December 31, 1993; or

(F) For some combination of such purposes.

Amounts so expended shall be expended only through a contract or contracts with the state, a department of state government, a state authority, a convention and visitors bureau authority created by local Act of the General Assembly for a municipality, or a private sector nonprofit organization, or through a contract or contracts with some combination of such entities, except that amounts expended for the purposes specified in subparagraphs (C) and (D) of this paragraph may be so expended in any otherwise lawful manner. In addition to the amounts otherwise required to be expended under this paragraph, a county or municipality levying a tax pursuant to this paragraph shall further expend (in each fiscal year during which the tax is collected under this paragraph) an amount equal to 16 2/3 percent of the total taxes collected at the rate of 6 percent for promoting tourism, conventions, and trade shows. Amounts so expended shall be expended only through a contract or contracts with the state, a department of state government, a state authority, a convention and visitors bureau authority created by local Act of the General Assembly for a municipality, or a private sector nonprofit organization, or through a contract or contracts with some combination of such entities.

(3.5) Notwithstanding the provisions of paragraph (1) of this subsection, a local consolidated government (within the territorial limits of the special district located within the county the boundary of which is conterminous with that of such local consolidated govern-

ment) may levy a tax under this Code section at a rate of 6 percent. A local consolidated government levying a tax pursuant to this paragraph shall expend (in each fiscal year during which the tax is collected under this paragraph) an amount equal to the amount by which the total taxes collected under this Code section exceed the taxes which would be collected at a rate of 3 percent for the purpose of promoting tourism, conventions, and trade shows through a contract with a private sector nonprofit organization. In addition to the amounts thus required to be expended, a local consolidated government levying a tax pursuant to this paragraph shall further expend (in each fiscal year during which the tax is collected under this paragraph) an amount equal to 16 2/3 percent of the total taxes collected at the rate of 6 percent for the purpose of supporting a civic center owned and operated by the local consolidated government.

(3.6) Reserved.

(3.7)(A) Notwithstanding any other provision of this subsection, a county (within the territorial limits of the special district located within the county) or municipality may levy a tax under this Code section at a rate of 6 percent. A county or municipality levying a tax pursuant to this paragraph shall expend (in each fiscal year during which the tax is collected under this paragraph) an amount equal to the amount by which the total taxes collected under this Code section exceed the taxes which would be collected at a rate of 3 percent for the purpose of:

(i) Promoting tourism, conventions, and trade shows;

(ii) Supporting a facility owned or operated by a state authority for convention and trade show purposes or any other similar or related purposes;

(iii) Supporting a facility owned or operated by a local government or local authority for convention and trade show purposes or any other similar or related purposes, if a written agreement to provide such support was in effect on January 1, 1987, and if such facility is substantially completed and in operation prior to July 1, 1987;

(iv) Supporting a facility owned or operated by a local government or local authority for convention and trade show purposes or any other similar or related purposes if construction of such facility is funded or was funded prior to July 1, 1990, in whole or in part by a grant of state funds or is funded on or after July 1, 1990, in whole or substantially by an appropriation of state funds;

(v) Supporting a facility owned by a local government or local authority for convention and trade show purposes and any

other similar or related purposes if construction of such facility is substantially funded or was substantially funded on or after February 28, 1985, by a special county 1 percent sales and use tax authorized by Article 3 of Chapter 8 of this title, as amended, and if such facility was substantially completed and in operation prior to December 31, 1993; or

(vi) For some combination of such purposes.

(B) Amounts expended pursuant to subparagraph (A) of this paragraph shall be expended only through a contract or contracts with the state, a department of state government, a state authority, a convention and visitors bureau authority created by local Act of the General Assembly for a municipality, or a private sector nonprofit organization, or through a contract or contracts with some combination of such entities, except that amounts expended pursuant to division (iii) or (iv) of subparagraph (A) of this paragraph may be so expended in any otherwise lawful manner.

(3.8)(A) Notwithstanding any other provision of this subsection, a county (within the territorial limits of the special district located within the county) or municipality may levy a tax under this Code section at a rate of 8 percent if there is located in such county or municipality an international horse park which was used in Olympic Games competition and which was in operation prior to January 1, 1999. A county or municipality levying a tax pursuant to this paragraph shall expend (in each fiscal year during which the tax is collected under this paragraph) an amount equal to the amount by which the total taxes collected under this Code section exceed the taxes which would be collected at a rate of 4 percent for the purpose of:

(i) Promoting tourism, conventions, and trade shows; or

(ii) Supporting a publicly owned facility operated for convention and trade show purposes or any other similar or related purposes.

(B) Amounts expended pursuant to subparagraph (A) of this paragraph shall be expended only through a contract or contracts with the state, a department of state government, a state authority, a convention and visitors bureau authority created by local Act of the General Assembly for a municipality, or a private sector nonprofit organization, or through a contract or contracts with some combination of such entities.

(C) In addition to the other amounts required to be expended under this paragraph, a county or municipality levying a tax pursuant to this paragraph shall further expend (in each fiscal

year during which the tax is collected under this paragraph) an amount equal to 16 2/3 percent of the total taxes collected at the rate of 8 percent for the purpose of constructing, developing, supporting, and operating a nature center, nature park, wetlands education center, or nature museum for educational and recreational purposes or any other similar purposes. Amounts which are expended to meet the 16 2/3 percent expenditure requirement of this subparagraph shall not be subject to the provisions of subparagraph (B) of this paragraph requiring expenditure through a contract or contracts with certain entities.

(4) Notwithstanding any other provision of this subsection, a county (within the territorial limits of the special district located within the county) or municipality may levy a tax under this Code section at a rate of 6 percent. A county or municipality levying a tax pursuant to this paragraph shall expend (in each fiscal year during which the tax is collected under this paragraph) an amount equal to at least 43 1/3 percent of the total taxes collected at the rate of 6 percent for the purpose of: (A) promoting tourism, conventions, and trade shows; (B) supporting a facility owned or operated by a state authority for convention and trade show purposes or any other similar or related purposes; (C) supporting a facility owned or operated by a local authority or local government for convention and trade show purposes or any other similar or related purposes, if a written agreement to provide such support was in effect on January 1, 1987, and if such facility is substantially completed and in operation prior to July 1, 1987; (D) supporting a facility owned or operated by a local government or local authority for convention and trade show purposes or any other similar or related purposes if construction of such facility is funded or was funded prior to July 1, 1990, in whole or in part by a grant of state funds or is funded on or after July 1, 1990, in whole or substantially by an appropriation of state funds; (E) supporting a facility owned by a local government or local authority for convention and trade show purposes and any other similar or related purposes if construction of such facility is substantially funded or was substantially funded on or after February 28, 1985, by a special county 1 percent sales and use tax authorized by Article 3 of Chapter 8 of this title, as amended, and such facility was substantially completed and in operation prior to December 31, 1993; or (F) for some combination of such purposes. Amounts so expended shall be expended only through a contract or contracts with the state, a department of state government, a state authority, a convention and visitors bureau authority created by local Act of the General Assembly for a municipality, or a private sector nonprofit organization, or through a contract or contracts with some combination of such entities, except that amounts expended for purposes (C) and (D)

may be so expended in any otherwise lawful manner. In addition to the amounts required to be expended above, a county or municipality levying a tax pursuant to this paragraph shall further expend (in each fiscal year during which the tax is collected under this paragraph) an amount equal to at least 1 percent of the total taxes collected at the rate of 6 percent for the purpose of supporting a museum of aviation and aviation hall of fame or an amount equal to at least 16 2/3 percent of the total taxes collected at the rate of 6 percent for the purpose of: (A) construction or expansion of either: (i) a facility owned or operated by a state authority for convention and trade show purposes or any other similar or related purposes; (ii) a facility owned or operated by a local authority or local government for convention and trade show purposes or any other similar or related purposes, if such support is provided to a governmental entity with which the county or municipality levying the tax had in effect on January 1, 1987, a contractual agreement concerning governmental support of a convention and trade show facility; (iii) a facility owned or operated for convention and trade show purposes, visitor welcome center purposes, or any other similar or related purposes by a convention and visitors bureau authority created by local Act of the General Assembly for a municipality; (iv) a facility owned or operated for convention and trade show purposes or any other similar or related purposes by a coliseum and exhibit hall authority created by local Act of the General Assembly for a county and one or more municipalities therein; (v) a facility owned by a local government or local authority for convention and trade show purposes and any other similar or related purposes if construction of such facility is substantially funded or was substantially funded on or after February 28, 1985, by a special county 1 percent sales and use tax authorized by Article 3 of Chapter 8 of this title, as amended, and such facility was substantially completed and in operation prior to December 31, 1993; (vi) a system of bicycle or pedestrian trails or walkways or both connecting a historic district within the levying county or municipality and surrounding areas (and with respect to this purpose (vi) construction and expansion shall include acquisition and development), if not later than December 1, 1993, the county or municipality has adopted ordinances, resolutions, or contracts which: (I) designate such historic district; (II) obligate the county or municipality to provide funds to promote tourism to a historic district owners and business association which qualifies as a private sector nonprofit organization under Section 501(c)(6) of the Internal Revenue Code; (III) provide a "comprehensive plan" as provided for in Chapters 70 and 71 of Title 36; (IV) provide a transportation plan as a component of such comprehensive plan; and (V) provide a recreation plan which is designed to identify recreation needs through the year 2000 and which includes provisions for such system of trails or walkways or

both; provided that the authority to expend funds for such system of trails or walkways or both shall expire when all capital costs of the initial acquisition, construction, and development of such system as identified in the relevant plan have been paid and in no event later than July 1, 2002. Amounts so expended to meet such 16 2/3 percent expenditure requirement shall not be subject to the foregoing provisions of this paragraph requiring expenditure through a contract or contracts with certain entities; or (vii) a system of bicycle or pedestrian greenways, trails, walkways, or any combination thereof connecting a downtown historic or business district within the levying county or municipality and surrounding areas (and with respect to this purpose (vii) construction and expansion shall include acquisition and development), if not later than December 1, 2000, the county or municipality has adopted ordinances, resolutions, or contracts which: (I) designate such historic or downtown business district; (II) obligate the county or municipality to provide funds to promote tourism to a downtown business district owners and business association or chamber of commerce which qualifies as a private sector nonprofit organization under Section 501(c)(6) of the Internal Revenue Code; (III) provide a "comprehensive plan" as provided for in Chapters 70 and 71 of Title 36; (IV) provide a transportation plan as a component of such comprehensive plan; and (V) provide a recreation plan as a component of such comprehensive plan which includes provisions for such system of trails or walkways or both; provided that the authority to expend funds for such system of trails or walkways or both shall expire when all capital costs of the initial acquisition, construction, and development of such system as identified in the relevant plan have been paid and in no event later than July 1, 2025; or (B) promoting tourism, conventions, and trade shows. Amounts so expended to meet such 16 2/3 percent expenditure requirement shall not be subject to the foregoing provisions of this paragraph requiring expenditure through a contract or contracts with certain entities.

(4.1) Notwithstanding any other provision of this subsection, a county (within the territorial limits of the special district located within the county) or municipality within a county in which a coliseum authority has been created by local Act of the General Assembly and which authority is in existence on or before July 1, 1963, for the purpose of owning or operating a facility, may levy a tax under this Code section at a rate of 7 percent. A county or municipality levying a tax pursuant to this paragraph shall expend (in each fiscal year during which the tax is collected under this paragraph) an amount equal to at least 62 1/2 percent of the total taxes collected at the rate of 7 percent for the purpose of:

(A) Promoting tourism, conventions, and trade shows;

(B) Funding and supporting a facility owned or operated by such coliseum authority; or

(C) For some combination of such purposes.

Amounts so expended shall be expended only through a contract or contracts with the state, a department of state government, a state authority, a convention and visitors bureau authority created by local Act of the General Assembly for a municipality, a local coliseum authority, or a private sector nonprofit organization, or through a contract or contracts with some combination of such entities, except that amounts expended for the purpose of subparagraph (B) of this paragraph may be so expended in any otherwise lawful manner without the necessity of a contract. The aggregate amount of all excise taxes imposed under this paragraph and all sales and use taxes, and other taxes imposed by a county or municipality, or both, shall not exceed 12 percent. Any tax levied pursuant to this paragraph shall terminate not later than December 31, 2028, provided that during any period during which there remains outstanding any obligation which is incurred prior to January 1, 1995, issued to fund a facility as contemplated by this paragraph, and secured in whole or in part by a pledge of a tax authorized under this Code section, the powers of the counties and municipalities to impose and distribute the tax imposed by this paragraph shall not be diminished or impaired by the state and no county or municipality levying the tax imposed by this paragraph shall cease to levy the tax in any manner that will impair the interest and rights of the holders of any such obligation. This proviso shall be for the benefit of the holder of any such obligation and, upon the issuance of any such obligation by a coliseum and exhibit hall authority, shall constitute a contract with the holder of such obligations. Notwithstanding any other provision of this Code section to the contrary, as used in this paragraph, the term "fund" and "funding" shall include the cost and expense of all things deemed necessary by a local coliseum authority for the construction, renovation, and operation of a facility, including, but not limited to, the study, operation, marketing, acquisition, construction, finance, development, extension, enlargement, or improvement of land, waters, property, streets, highways, buildings, structures, equipment, or facilities, and the repayment of any obligation incurred by a local coliseum authority in connection therewith; "obligation" shall include bonds, notes, or any instrument creating an obligation to pay or reserve moneys incurred prior to January 1, 1995, and having an initial term of not more than 30 years; and "facility" means a coliseum or other facility and any associated parking areas or improvements originally owned or operated incident to the ownership or operation of a facility used for convention and trade show purposes or amusement purposes, educational purposes, or a combination

thereof and for fairs, expositions, or exhibitions in connection therewith by a local coliseum authority.

(4.2) Notwithstanding the provisions of paragraph (1) of this subsection, a local consolidated government (within the territorial limits of the special district located within the county the boundary of which is conterminous with that of such local consolidated government) may levy a tax under this Code section at a rate of 7 percent. A local consolidated government levying a tax pursuant to this paragraph shall expend (in each fiscal year during which the tax is collected under this paragraph) an amount equal to the amount by which the total taxes collected under this Code section exceed the taxes which would be collected at a rate of 3 percent as follows: an amount equal to 28.58 of the total taxes collected at the rate of 7 percent for the purpose of promoting tourism, conventions, and trade shows through a contract with a private sector nonprofit organization, an authority created by local Act of the General Assembly, or through a contract or contracts with any combination of such entities; an amount equal to 14.29 percent of the total taxes collected at the rate of 7 percent for the purpose of supporting a civic center owned or operated, or both, by the local consolidated government; and an amount equal to 14.29 percent of the total taxes collected at the rate of 7 percent for the purpose of maintaining and operating a performing arts facility.

(4.3) Notwithstanding the provisions of paragraph (1) of this subsection, a county (within the territorial limits of the special district located within the county) or municipality may levy a tax under this Code section at a rate of 7 percent. A county or municipality levying a tax pursuant to this paragraph shall expend (in each fiscal year during which the tax is collected under this paragraph) amounts as follows: an amount equal to 28.58 percent of the total taxes collected at the rate of 7 percent for the purpose of promoting tourism, conventions, and trade shows which amount shall be expended only through a contract or contracts with the state, a department of state government, a state authority, an authority created by local Act of the General Assembly, or a private sector nonprofit organization, or through a contract or contracts with some combination of such entities; and an amount equal to 28.58 percent of the total taxes collected at the rate of 7 percent for the purpose of supporting a conference and convention center facility or similar facility owned or operated by an authority created by local Act of the General Assembly for convention and conference center purposes or any other similar or related purposes, if a written agreement to provide such support was in effect on or prior to July 1, 1997, and if such conference and convention center facility or similar facility is substantially completed and in operation prior to December 31, 2001,

which amounts shall be expended only through a contract or contracts with the state or an authority created by local Act of the General Assembly.

(4.4) Notwithstanding the provisions of paragraph (1) of this subsection, a county (within the territorial limits of the special district located within the county) and municipalities within a county in which community auditorium or theater facilities owned and operated by the municipality or by a local authority created by local Act of the General Assembly for such purpose have been renovated which renovations are completed substantially on or before January 1, 2000, may levy a tax under this Code section at a rate of 7 percent. A county or municipality levying a tax pursuant to this paragraph shall expend (in each fiscal year during which the tax is collected under this paragraph) an amount equal to 28.58 percent of the total taxes collected at the rate of 7 percent for the purpose of promoting tourism, conventions, and trade shows under a contract with a private sector nonprofit organization and an amount equal to 28.58 percent of the total taxes collected at the rate of 7 percent for the purpose of either marketing or operating community auditorium or theater facilities or a community convention or trade center of which the theater or auditorium is a part. Marketing and operating expenditures may include a preopening marketing program for such facilities and an escrow account accrued prior to opening such facilities to cover operating expenses to be incurred after the opening of such facilities.

(4.5) Notwithstanding the provisions of paragraph (1) of this subsection, a county (within the territorial limits of the special district located within the county) or municipality may levy a tax under this Code section at a rate of 7 percent. A county or municipality levying a tax pursuant to this paragraph shall expend (in each fiscal year during which the tax is collected under this paragraph) amounts as follows:

(A) An amount equal to 28.58 percent of the total taxes collected at the rate of 7 percent for the purpose of:

(i) Promoting tourism, conventions, and trade shows;

(ii) Supporting a facility owned or operated by a state authority for convention and trade show purposes or any other similar or related purposes;

(iii) Supporting a facility owned or operated by a local government or local authority for convention and trade show purposes or any other similar or related purposes; or

(iv) For some combination of such purposes.

Amounts so expended shall be expended only through a contract or contracts with the state, a department of state government, a state authority, a convention and visitors bureau authority created by local Act of the General Assembly for a municipality, or a private sector nonprofit organization, or through a contract or contracts with some combination of such entities, except that amounts expended for the purpose of division (iii) of this subparagraph may be so expended in any otherwise lawful manner; and

(B) An amount equal to 28.58 percent of the total taxes collected at the rate of 7 percent for the purpose of operating, maintaining, and marketing of a conference center facility.

(4.6)(A) Notwithstanding any other provision of this subsection, a county (within the territorial limits of the special district located within the county) or municipality within a county in which a convention center authority has been created by local Act of the General Assembly and which authority is in existence on or before July 1, 2001, for the purpose of owning or operating a facility may levy a tax under this Code section at a rate of 5 percent. A county or municipality levying a tax pursuant to this paragraph shall expend (in each fiscal year during which the tax is collected under this paragraph) an amount equal to at least 40 percent of the total taxes collected at the rate of 5 percent for the purpose of:

(i) Promoting tourism, conventions, and trade shows;

(ii) Funding and supporting a facility owned or operated by such convention and visitors authority; or

(iii) For some combination of such purposes.

Amounts so expended shall be expended only through a contract or contracts with the state, a department of state government, a state authority, a convention center authority created by local Act of the General Assembly for a municipality, or a private sector nonprofit organization, or through a contract or contracts with some combination of such entities, except that amounts expended for the purpose of division (ii) of this subparagraph may be so expended in any otherwise lawful manner without the necessity of a contract. Any tax levied pursuant to this paragraph shall terminate not later than December 31, 2037, provided that during any period during which there remains outstanding any obligation issued to fund a facility as contemplated by this paragraph, and secured in whole or in part by a pledge of a tax authorized under this Code section, the powers of the counties and municipalities to impose and distribute the tax imposed by this paragraph shall not be diminished or impaired by the state, and no county or municipality levying the tax imposed by this paragraph shall cease to levy the tax in any

manner that will impair the interest and rights of the holders of any such obligation. This proviso shall be for the benefit of the holder of any such obligation and, upon the issuance of any such obligation by a convention center authority, shall constitute a contract with the holder of such obligations. Notwithstanding any other provision of this Code section to the contrary, as used in this paragraph, the terms "fund" and "funding" shall include the cost and expense of all things deemed necessary by a local convention center authority for the construction, renovation, and operation of a facility, including, but not limited to, the study, operation, marketing, acquisition, construction, finance, development, extension, enlargement, or improvement of land, waters, property, streets, highways, buildings, structures, equipment, or facilities, and the repayment of any obligation incurred by a local convention center authority in connection therewith; "obligation" shall include bonds, notes, or any instrument creating an obligation to pay or reserve moneys and having an initial term of not more than 37 years; and "facility" means a convention center or other facility and any associated parking areas or improvements originally owned or operated incident to the ownership or operation of a facility used for convention and trade show purposes or amusement purposes, educational purposes, or a combination thereof and for fairs, expositions, or exhibitions in connection therewith by a local convention center authority.

(B) Notwithstanding any other provision of this subparagraph, a municipality located within a standard metropolitan statistical area recognized by the United States Department of Commerce, Bureau of the Census, which is levying a tax at a rate of 5 percent pursuant to paragraph (3) of this subsection on or before January 1, 1999, and in which an interstate highway is located, shall, on and after April 28, 1999, be authorized to levy and collect a tax under this Code section at a rate of 6 percent. A municipality levying a tax pursuant to this subparagraph shall expend, in each fiscal year during which the tax is collected under this subparagraph, an amount equal to the amount by which the total taxes collected under this subparagraph exceed the taxes which would have been collected at the rate of 5 percent for the purpose of dispensing information about the qualities of such municipality and promoting business in the municipality and to acquire for such use a building located in an area of high density retail businesses within the limits of such municipality. During any period during which there remains outstanding any obligation issued to fund a facility as contemplated by this subparagraph, and secured in whole or in part by a pledge of a tax authorized under this Code section, the powers of the counties and munici-

palities to impose and distribute the tax imposed by this subparagraph shall not be diminished or impaired by the state, and no county or municipality levying the tax imposed by this subparagraph shall cease to levy the tax in any manner that will impair the interest and rights of the holders of any such obligation. This proviso shall be for the benefit of the holder of any such obligation and, upon the issuance of any such obligation by a convention center authority, shall constitute a contract with the holder of such obligations.

(4.7) Notwithstanding the provisions of paragraph (1) of this subsection, a county (within the territorial limits of the special district located within the county) and the municipalities within a county in which a trade and convention center facility is substantially funded by a special county 1 percent sales and use tax authorized by Article 3 of Chapter 8 of this title, as amended, which tax was levied prior to January 1, 1994, and is substantially funded by a state grant or grants authorized on or before January 1, 1996, may levy a tax under this Code section at a rate of 7 percent. A county or municipality levying a tax pursuant to this paragraph shall expend (in each fiscal year during which the tax is collected under this paragraph) an amount equal to 28.6 percent of the total taxes collected at the rate of 7 percent for the purpose of promoting tourism, conventions, and trade shows under a contract with a private sector nonprofit organization. In addition to the other amounts required to be expended under this paragraph, a county or municipality levying a tax pursuant to this paragraph shall further expend (in each fiscal year during which the tax is collected under this paragraph) an amount equal to 14.3 percent of the total taxes collected at the rate of 7 percent for the purpose of either marketing or operating trade and convention facilities which are managed or operated by the Savannah Convention Center. Marketing and operating expenditures may include a preopening marketing program for such a facility and an escrow account accrued prior to opening such facility to cover operating expenses to be incurred after the opening of such a facility. In the event such facility is not constructed, such 14.3 percent may be used for any lawful purpose relating to tourism by the county or municipality levying a tax pursuant to this paragraph. In addition to the amounts required to be expended under this paragraph, a county or municipality levying a tax pursuant to this paragraph shall further expend (in each fiscal year during which the tax is collected under this paragraph) an amount equal to 14.3 percent of the total taxes collected at the rate of 7 percent for the purpose of planning, constructing, marketing, or operating an attraction honoring the inventor of the cotton gin. Marketing and operating expenditures may include a preopening marketing program for such facility and an

escrow account accrued prior to opening such facility to cover operating expenses to be incurred after the opening of such facility. In the event such facility is not constructed, such 14.3 percent may be used for any lawful purpose relating to tourism by the county or municipality levying a tax pursuant to this paragraph.

(5)(A)(i) Notwithstanding any other provision of this subsection, a county (within the territorial limits of the special district located within the county) or municipality is authorized to levy a tax under this Code section at a rate of 7 percent. A county or municipality levying a tax pursuant to this paragraph shall expend an amount equal to at least 51.4 percent of the total taxes collected prior to July 1, 1990, at the rate of 7 percent and an amount equal to at least 32.14 percent of the total taxes collected on or after July 1, 1990, at the rate of 7 percent for the purpose of:

(I) Promoting tourism, conventions, and trade shows;

(II) Supporting a facility owned or operated by a state authority for convention and trade show purposes or any other similar or related purposes;

(III) Supporting a facility owned or operated by a local authority or local government for convention and trade show purposes or any other similar or related purposes, if a written agreement to provide such support was in effect on January 1, 1987, and if such facility is substantially completed and in operation prior to July 1, 1987;

(IV) Supporting a facility owned or operated by a local government or local authority for convention and trade show purposes or any other similar or related purposes if construction of such facility is funded or was funded in whole or in part by a grant of state funds; or

(V) For some combination of such purposes.

Amounts so expended shall be expended only through a contract or contracts with the state, a department of state government, a state authority, or a private sector nonprofit organization, or through a contract or contracts with some combination of such entities, except that amounts expended for those purposes specified in subdivisions (III) and (IV) of this division may be so expended in any otherwise lawful manner.

(ii) In addition to the amounts required to be expended under division (i) of this subparagraph, a county or municipality levying a tax pursuant to this paragraph shall further expend (in each fiscal year during which the tax is collected

under this paragraph) an amount equal to 14.3 percent of the total taxes collected prior to July 1, 1990, at the rate of 7 percent and an amount equal to 39.3 percent of the total taxes collected on or after July 1, 1990, at the rate of 7 percent toward funding a multipurpose domed stadium facility. Amounts so expended shall be expended only through a contract originally with the state, a department or agency of the state, or a state authority, or through a contract or contracts with some combination of the above. Any tax levied pursuant to this paragraph shall terminate not later than December 31, 2020, unless extended as provided in subparagraph (B) of this paragraph, provided that during any period during which there remains outstanding any obligation which is incurred prior to January 1, 1991, issued to fund a multipurpose domed stadium as contemplated by this paragraph, and secured in whole or in part by a pledge of a tax authorized under this Code section, or any such obligation which is incurred to refund such an obligation incurred before January 1, 1991, the powers of the counties and municipalities to impose and distribute the tax imposed by this paragraph shall not be diminished or impaired by the state and no county or municipality levying the tax imposed by this paragraph shall cease to levy the tax in any manner that will impair the interest and rights of the holders of any such obligation. This proviso shall be for the benefit of the holder of any such obligation and, upon the issuance of any such obligation by an authority of the state, shall constitute a contract with the holder of such obligations.

(B) Notwithstanding the termination date stated in division (ii) of subparagraph (A) of this paragraph, notwithstanding paragraph (6) of this subsection, and notwithstanding subsection (b) of this Code section, a tax levied under this paragraph may be extended by resolution of the levying county or municipality and continue to be collected through December 31, 2050, if a state authority certifies that:

(i) The same portion of the proceeds will be used to fund a successor facility to the multipurpose domed facility as is currently required to fund the multipurpose domed facility under division (ii) of subparagraph (A) of this paragraph;

(ii) Such successor facility will be located on property owned by the state authority; and

(iii) The state authority has entered into a contract with a national football league team for use of the successor facility by the national football league team through the end of the new extended period of the tax collection.

During the extended period of collection provided for in this subparagraph, the county or municipality levying the tax shall continue to comply with the expenditure requirements of division (i) of subparagraph (A) of this paragraph. During the extended period of collection, the county or municipality shall further expend (in each fiscal year during which the tax is collected during the extended period of collection) an amount equal to 39.3 percent of the total taxes collected at the rate of 7 percent toward funding the successor facility certified by the state authority. Amounts so expended shall be expended only through a contract with the certifying state authority. Any tax levied pursuant to this paragraph shall terminate not later than December 31, 2050, provided that during any period during which there remains outstanding any obligation which is incurred to fund the successor facility certified by the state authority, and secured in whole or in part by a pledge of a tax authorized under this Code section, or any such obligation which is incurred to refund such an obligation, the powers of the counties and municipalities to impose and distribute the tax imposed by this paragraph shall not be diminished or impaired by the state and no county or municipality levying the tax imposed by this paragraph shall cease to levy the tax in any manner that will impair the interest and rights of the holders of any such obligation. This proviso shall be for the benefit of the holder of any such obligation and, upon the issuance of any such obligation by an authority of the state, shall constitute a contract with the holder of such obligations.

(C) Notwithstanding any provision of the law to the contrary, and subject to the limitations contained in this subparagraph, a municipality levying a tax a percentage of which is dedicated to financing a multipurpose domed stadium pursuant to division (ii) of subparagraph (A) of this paragraph shall be further authorized to expend in each fiscal year during which the tax is collected under this paragraph an amount equal to 39.3 percent of the total taxes collected at the rate of 7 percent toward funding any of the purposes permitted for tourism product development contained in paragraph (6) of Code Section 48-13-50.2. Any funding pursuant to this paragraph shall not commence until the municipality has terminated its obligations under division (ii) of subparagraph (A) of this paragraph and so long as there remains outstanding any obligation which is incurred prior to January 1, 1991, issued to fund a multipurpose domed stadium as contemplated by this paragraph, and secured in whole or in part by a pledge of a tax authorized under this Code section, or any such obligation which is incurred to refund such an obligation incurred before January 1, 1991.

(5.1) Notwithstanding any other provision of this subsection, a county (within the territorial limits of the special district located within the county) and the municipalities within a county in which a coliseum and exhibit hall authority has been created by local Act of the General Assembly for a county and one or more municipalities therein, and which local coliseum and exhibit hall authority is in existence on or before January 1, 1991, and which local coliseum and exhibit hall authority has not constructed or operated any facility before January 1, 1991, may levy a tax under this Code section at a rate of 8 percent. A county or municipality levying a tax pursuant to this paragraph shall expend (in each fiscal year during which the tax is collected under this paragraph) an amount equal to at least 62 1/2 percent of the total taxes collected at the rate of 8 percent for the purpose of:

(A) Promoting tourism, conventions, and trade shows;

(B) Funding, supporting, acquiring, constructing, renovating, improving, and equipping buildings, structures, and facilities, including, but not limited to, a coliseum, exhibit hall, conference center, performing arts center, or any combination thereof, for convention, trade show, athletic, musical, theatrical, cultural, civic, and performing arts purposes and other events and activities for similar and related purposes, acquiring the necessary property therefor, both real and personal, and funding all expenses incident thereto, and supporting, maintaining, and promoting such facilities owned, operated, or leased by or to the local coliseum and exhibit hall authority or a downtown development authority; or

(C) For some combination of such purposes;

provided, however, that at least 50 percent of the total taxes collected at the rate of 8 percent shall be expended for the purposes specified in subparagraph (B) of this paragraph. Amounts so expended shall be expended only through a contract or contracts with the state, a department of state government, a state authority, a convention and visitors bureau authority created by local Act of the General Assembly for a municipality, a local coliseum and exhibit hall authority, a downtown development authority, or a private sector nonprofit organization, or through a contract or contracts with some combination of such entities. The aggregate amount of all excise taxes imposed under this paragraph and all sales and use taxes, and other taxes imposed by a county or municipality, or both, shall not exceed 13 percent; provided, however, that any sales tax for educational purposes which is imposed pursuant to Article VIII, Section VI, Paragraph IV of the Constitution shall not be included in calculating such limitation. Any tax levied pursuant to this paragraph shall

terminate not later than December 31, 2053, provided that during any period during which there remains outstanding any obligation issued to fund a facility as contemplated by this paragraph, secured in whole or in part by a pledge of a tax authorized under this Code section, the powers of the counties and municipalities to impose and distribute the tax imposed by this paragraph shall not be diminished or impaired by the state and no county or municipality levying the tax imposed by this paragraph shall cease to levy the tax in any manner that will impair the interests and rights of the holder of any such obligation. This proviso shall be for the benefit of the holder of any such obligation and, upon the issuance of any such obligation by a local coliseum and exhibit hall authority or a downtown development authority, shall constitute a contract with the holder of such obligation. Notwithstanding any other provision of this Code section to the contrary, as used in this paragraph, the term "fund" or "funding" shall include the cost and expense of all things deemed necessary by a local coliseum and exhibit hall authority or a downtown development authority for the construction and operation of a facility or facilities, including, but not limited to, the study, operation, marketing, acquisition, construction, financing, including the payment of principal and interest on any obligation of the local coliseum and exhibit hall authority or the downtown development authority and any obligation of the local coliseum and exhibit hall authority or the downtown development authority to refund any prior obligation of the local coliseum and exhibit hall authority or the downtown development authority, development, extension, enlargement, or improvement of land, waters, property, streets, highways, buildings, structures, equipment, or facilities and the repayment of any obligation incurred by an authority in connection therewith; "obligation" shall include bonds, notes, or any instrument creating an obligation to pay or reserve moneys and having an initial term of not more than 37 years; "facility" or "facilities" means any of the buildings, structures, and facilities described in subparagraph (B) of this paragraph and any associated parking areas or improvements originally owned or operated incident to the ownership or operation of such facility used for any purpose or purposes specified in subparagraph (B) of this paragraph by a local coliseum and exhibit hall authority or a downtown development authority; and "downtown development authority" means a downtown development authority created by local Act of the General Assembly for a municipality pursuant to a local constitutional amendment.

(5.2)(A) Notwithstanding the provisions of paragraph (1) of this subsection, a county (within the territorial limits of the special district located within the county) and municipalities within a county in which community auditorium or theater facilities

owned and operated by the municipality have been renovated which renovations are completed substantially on or before July 1, 1995, and which county and municipalities have not previously levied a 6 percent tax under paragraph (4) of this subsection may levy a tax under this Code section at a rate of 8 percent.

(B) A county or municipality levying a tax pursuant to this paragraph shall expend (in each fiscal year during which the tax is collected under this paragraph) an amount equal to 33 1/3 percent of the total taxes collected at the rate of 8 percent under this subparagraph for the purpose of promoting tourism, conventions, and trade shows under a contract with a private sector nonprofit organization.

(C) In addition to the amounts required to be expended pursuant to subparagraph (B) of this paragraph, a county or municipality levying a tax pursuant to this paragraph shall further expend (in each fiscal year during which the tax is collected under this paragraph) an amount equal to 16 2/3 percent of the total taxes collected at the rate of 8 percent for the purpose of either marketing or operating community auditorium or theater facilities or a community convention or trade center of which the theater or auditorium is a part. Marketing and operating expenditures may include a preopening marketing program for such facilities and an escrow account accrued prior to opening such facilities to cover operating expenses to be incurred after the opening of such facilities.

(D) In addition to the amounts required to be expended pursuant to subparagraphs (B) and (C) of this paragraph, a county or municipality levying a tax pursuant to this paragraph shall further expend (in each fiscal year during which the tax is collected under this paragraph) an amount equal to 33 1/3 percent of the total taxes collected at the rate of 8 percent for general recreation purposes. Amounts so expended shall be expended only through a contract or contracts with a recreation authority created by local Act of the General Assembly.

(5.3)(A) Notwithstanding the provisions of paragraph (1) of this subsection, a county (within the territorial limits of the special district located within the county) and municipalities within such a county in which a convention and visitor's bureau authority has been created by local Act of the General Assembly which was in existence on July 1, 2005, and which authority is established specifically by such local Act as a permissible, but not exclusive, entity for the transfer of hotel and motel tax funds by the taxing entities of the county for which such authority was created may levy a tax under this Code section at a rate of 5 percent.

(B) The provisions of paragraph (2) of this subsection relating to expenditures shall apply to this paragraph; provided, however, that a county or municipality levying a tax pursuant to this paragraph shall be authorized, but not required, to expend funds through a convention and visitor's bureau authority created by local Act of the General Assembly.

(6) Following the termination of a tax under paragraph (2.1), (2.2), (3.1), (3.2), (3.3), (3.4), (3.5), (3.7), (4.1), (4.2), (4.3), (4.4), (4.5), (4.6), (4.7), (5), (5.1), (5.2), or (5.3) of this subsection, any county or municipality which has levied a tax pursuant to paragraph (2.1), (2.2), (3.1), (3.2), (3.3), (3.4), (3.5), (3.7), (4.1), (4.2), (4.3), (4.4), (4.5), (4.6), (4.7), (5), (5.1), (5.2), or (5.3) of this subsection shall levy any future taxes under this Code section in a manner authorized by subsection (b) of this Code section.

(7) As used in this subsection, the term:

(A) "Fund" and "funding" mean the cost and expense of all things deemed necessary by a state authority for the construction and operation of a multipurpose domed stadium and a successor facility to such multipurpose domed stadium, including, but not limited to, the study, operation, marketing, acquisition, construction, finance, development, extension, enlargement, or improvement of land, waters, property, streets, highways, buildings, structures, equipment, or facilities, and the repayment of any obligation incurred by an authority in connection therewith.

(B) "Obligation" means bonds, notes, or any instrument creating an obligation to pay or reserve moneys and having an initial term of not more than 30 years.

(C) "Multipurpose domed stadium facility" means a multipurpose domed stadium facility and any associated parking areas or improvements originally owned or operated incident to the ownership or operation of a facility used for convention and trade show purposes by the state, a department or agency of the state, a state authority, or a combination thereof.

(8) Reserved.

(9)(A) A county or municipality imposing a tax under paragraph (1), (2), (2.1), (2.2), (3), (3.1), (3.2), (3.3), (3.4), (3.5), (3.7), (4), (4.1), (4.2), (4.3), (4.4), (4.5), (4.6), (4.7), (5), (5.1), (5.2), or (5.3) of this subsection shall, prior to the imposition of the tax (if the tax is imposed on or after July 1, 1990) and prior to each fiscal year thereafter in which the tax is imposed, adopt a budget plan specifying how the proceeds of the tax shall be expended. Prior to the adoption of such budget plan, the county or municipality shall

obtain from the authorized entity with which it proposes to contract to meet the expenditure requirements of this Code section a budget for expenditures to be made by such organization; and such budget shall be made a part of the county or municipal budget plan.

(B)(i) The determination as to whether a county or municipality has complied with the expenditure requirements of paragraph (2), (2.1), (2.2), (3), (3.1), (3.2), (3.3), (3.4), (3.5), (3.7), (4), (4.1), (4.2), (4.3), (4.4), (4.5), (4.6), (4.7), (5), (5.1), (5.2), or (5.3) of this subsection shall be made for each fiscal year beginning on or after July 1, 1987, and, as of the end of each fiscal year, shall be prominently reflected in the audit required under Code Section 36-81-7 and shall disclose:

(I) The amount of funds expended or contractually committed for expenditure as provided in paragraph (2), (2.1), (2.2), (3), (3.1), (3.2), (3.3), (3.4), (3.5), (3.7), (4), (4.1), (4.2), (4.3), (4.4), (4.5), (4.6), (4.7), (5), (5.1), (5.2), or (5.3) of this subsection, whichever is applicable, during the fiscal year;

(II) The amount of tax receipts under this Code section during such fiscal year; and

(III) Expenditures as a percentage of tax receipts.

(ii) A county or municipality contractually expending funds to meet the expenditure requirements of paragraph (2), (2.1), (2.2), (3), (3.1), (3.2), (3.3), (3.4), (3.5), (3.7), (4), (4.1), (4.2), (4.3), (4.4), (4.5), (4.6), (4.7), (5), (5.1), (5.2), or (5.3) of this subsection shall require the contracting party to provide audit verification that the contracting party makes use of such funds in conformity with the requirements of this subsection. If the audit required by Code Section 36-81-7 identifies noncompliance with the applicable expenditure requirements of this Code section, such noncompliance shall be reported in accordance with paragraph (2) of subsection (c) of Code Section 36-81-7. The state auditor shall report all instances of noncompliance with this subparagraph noted in the audit report to the Department of Community Affairs upon completion of the report review required by paragraph (2) of subsection (d) of Code Section 36-81-7. The state auditor shall furnish a copy of all documents submitted by the local government or the local government's auditor pertaining to noncompliance with this subparagraph to the Department of Revenue. The Department of Community Affairs shall submit a copy of such documents to the performance review board.

(10) Nothing in this article shall be construed to limit the power of a county or municipality to expend more than the required amounts,

or all, of the total taxes collected under this Code section for the purposes described in paragraph (2), (2.1), (2.2), (3), (3.1), (3.2), (3.3), (3.4), (3.5), (3.7), (4), (4.1), (4.2), (4.3), (4.4), (4.5), (4.6), (4.7), (5), (5.1), (5.2), or (5.3) of this subsection.

(b)(1) Except as provided in paragraphs (2) and (3) of subsection (a) of this Code section, any new excise taxes which are first levied pursuant to this Code section after July 1, 2008, or any new excise tax which is first levied following the termination of a previous levy pursuant to this Code section after July 1, 2008, shall be levied pursuant to this subsection.

(2) The governing authority of each municipality in this state may levy an excise tax pursuant to this subsection at a rate not to exceed 8 percent of the charge for the furnishing for value to the public of any room or rooms, lodgings, or accommodations furnished or facilitated by an innkeeper.

(3) Within the territorial limits of the special district located within the county, each county in this state may levy an excise tax pursuant to this subsection at a rate not to exceed 8 percent of the charge for the furnishing for value to the public of any room or rooms, lodgings, or accommodations furnished or facilitated by an innkeeper.

(4) The levy of an excise tax pursuant to this subsection shall be conditioned upon the county or municipality adopting a resolution which specifies the subsequent tax rate, identifies the projects or tourism product development purposes, and specifies the allocation of proceeds and, subsequent to such resolution, the enactment of a local Act by the General Assembly.

(5) In accordance with the terms of the resolution adopted by the county or municipality, the local Act of the General Assembly shall provide that:

(A) In each fiscal year during which a tax is collected under paragraph (2) or (3) of this subsection, an amount equal to not less than 50 percent of the total amount of taxes collected that exceed the amount of taxes that would be collected at the rate of 5 percent shall be expended for promoting tourism, conventions, and trade shows by the destination marketing organization designated by the county or municipality levying the tax; and

(B) The remaining amount of taxes collected that exceed the amount of taxes that would be collected at the rate of 5 percent which are not otherwise expended under subparagraph (A) of this paragraph shall be expended for tourism product development.

(6) A county or municipality levying a tax pursuant to this subsection shall expend an amount equal to the amount of total taxes

collected under this subsection which would have been collected at a rate of 5 percent in accordance with the provisions of paragraph (3) of subsection (a) of this Code section.

(7)(A) Any municipality which is levying an excise tax under paragraph (5) of subsection (a) of this Code section, so long as any obligation as described in division (a)(5)(A)(ii) or subparagraph (a)(5)(B) of this Code section remains outstanding, shall leave such excise tax in effect at the rate of 7 percent and may levy up to an additional 1 percent excise tax under this paragraph so long as the combined rate does not exceed 8 percent.

(B)(i) Such additional excise tax shall not be deemed to violate the provisions of subsection (d) of this Code section.

(ii) Such additional excise tax shall not count toward or be subject to the 14 percent rate limitations of subsection (c.1) of Code Section 48-8-6 and subsection (d) of Code Section 48-8-201.

(C) Any taxes collected in excess of 7 percent shall be expended by the municipality for the promotion of conventions and trade-shows by a not for profit destination marketing organization located within the municipality and in existence and operation on January 1, 2011, through a contract or contracts with the state, a department of state government, or a state authority. At least 80 percent of such tax amounts shall be segregated by the destination marketing organization and used in securing major conventions at facilities containing at least 1.3 million square feet of floor space used for convention hall purposes and events at facilities containing at least 70,000 seats used for major events under the control of a state authority, and amounts so segregated may be held by the destination marketing organization and expended in fiscal years subsequent to the fiscal year in which the taxes were collected.

(D) Any municipal levy of any additional excise tax under this paragraph must be approved by local Act and shall also comply with the resolution requirements contained in paragraph (4) of this subsection in regard to the additional excise tax levied under this paragraph only. The local Act of the General Assembly shall provide that the first 7 percent in excise tax levied under the authority of paragraph (5) of subsection (a) of this Code section shall continue to be levied under that paragraph and all amounts collected thereunder shall be expended as required therein and that the additional amounts collected under the provisions of this paragraph shall be expended as required in this paragraph.

(b.1) As an alternative to the provisions of subsection (b) of this Code section, any county (within the territorial limits of the special district

located within the county) and any municipality which is levying a tax under this Code section at the rate of 6 percent under paragraph (3.4) or (4) of subsection (a) of this Code section shall be authorized to levy a tax under this Code section at the rate of 7 percent in the manner provided in this subsection. Both the county and municipality shall adopt a resolution which shall specify that an amount equal to the total amount of taxes collected under such levy at a rate of 6 percent shall continue to be expended as it was expended pursuant to either paragraph (3.4) or (4) of subsection (a) of this Code section, as applicable, and such resolution shall specify the manner of expenditure of funds for an amount equal to the total amount of taxes collected under such levy that exceeds the amount that would be collected at the rate of 6 percent for any tourism, convention, or trade show purposes, tourism product development purposes, or any combination thereof. Each resolution shall be required to be ratified by a local Act of the General Assembly. Only when both such local Acts have become law, the governing authority of the county and municipality shall be authorized to levy an excise tax pursuant to this subsection at the rate of 7 percent of the charge for the furnishing for value to the public of any room or rooms, lodgings, or accommodations furnished or facilitated by an innkeeper.

(c) Nothing in this article shall be construed to impair, or authorize or require the impairment of, any existing contract or contractual rights.

(d) At no time shall a county or municipality levy simultaneously more than one tax under this article.

(e)(1) Except as otherwise provided in paragraph (2) of this subsection, for any excise tax levied pursuant to subsection (b) of this Code section, a county or municipality imposing a tax under this article shall, prior to the imposition of the tax or changing the rate of the levy of the tax and prior to each fiscal year thereafter in which the tax is imposed, adopt a budget plan specifying how the proceeds of such tax are to be expended. Prior to the adoption of such budget plan, the county or municipality shall obtain from the destination marketing organization or state authority with which it proposes to contract to meet the expenditure requirements of this paragraph a budget plan for expenditures to be made by such organization. Such destination marketing organization or state authority expenditure budget plan shall be made a part of the county or municipal budget plan.

(2) This paragraph shall apply to a county or municipality which is levying the tax under subsection (a) of this Code section on January 1, 2008, and is expending the proceeds of the tax through a contract or contracts with an authorized entity or entities other than a destination marketing organization. In the event such county or

municipality ceases such levy in order to levy an excise tax under subsection (b) of this Code section, it may continue to expend the proceeds of the tax through a contract or contracts with the same entity or entities other than a destination marketing organization if, prior to each fiscal year in which the tax is imposed, the county or municipality adopts a budget plan specifying how the proceeds of such tax are to be expended. Prior to the adoption of such budget plan, such county or municipality shall obtain from such entity or entities with which it proposes to contract to meet the expenditure requirements of this paragraph a budget plan for expenditures to be made by such entity or entities. The budget plan of such entity or entities shall be made a part of the county or municipal budget plan.

(f) A county or municipality expending funds of the tax levied under subsection (b) of this Code section pursuant to a contract shall require the destination marketing organization or state authority to provide audit verification that such destination marketing organization or state authority makes use of such funds in conformity with the requirements of this subsection. If the audit required by Code Section 36-81-7 identifies noncompliance with the applicable expenditure requirements of this Code section, such noncompliance shall be reported in accordance with paragraph (2) of subsection (c) of Code Section 36-81-7. The state auditor shall report all instances of noncompliance with this subsection noted in the audit report to the Department of Community Affairs upon completion of the report review required by paragraph (2) of subsection (d) of Code Section 36-81-7. The state auditor shall furnish a copy of all documents submitted by the local government or the local government's auditor pertaining to noncompliance with this subsection to the Department of Community Affairs. The Department of Community Affairs shall submit a copy of such documents to the performance review board.

(g)(1) Any action by a local governing authority to impose or change the rate of the tax authorized under this article shall become effective no sooner than the first day of the second month following its action by the local governing authority.

(2) In the case of a county or municipality which has adopted an ordinance ceasing the levy under the applicable paragraph of subsection (a) of this Code section in order to levy an excise tax under subsection (b) of this Code section, such levy under subsection (b) of this Code section shall become effective no sooner than the first day of the second month following its action by the local governing authority.

(h) The tax authorized by this article shall not apply to:

(1) Charges made for any rooms, lodgings, or accommodations provided to any persons who certify that they are staying in such

room, lodging, or accommodation as a result of the destruction of their home or residence by fire or other casualty;

(2) The use of meeting rooms and other such facilities or any rooms, lodgings, or accommodations provided without charge;

(3) Any rooms, lodgings, or accommodations furnished for a period of one or more days for use by Georgia state or local governmental officials or employees when traveling on official business. Notwithstanding the availability of any other means of identifying the person as a state or local government official or employee, whenever a person pays for any rooms, lodgings, or accommodations with a state or local government credit or debit card, such rooms, lodgings, or accommodations shall be deemed to have been furnished for use by a Georgia state or local government official or employee traveling on official business for purposes of the exemption provided by this paragraph. For purpose of the exemption provided under this paragraph, a local government official or employee shall include officials or employees of counties, municipalities, consolidated governments, or county or independent school districts; or

(4) Charges made for continuous use of any rooms, lodgings, or accommodations after the first 30 days of continuous occupancy.

(i) No tax under this article may be levied or collected by a county outside the territorial limits of the special district located within the county.

(j) Any requirement that a tax under this article be expended in the fiscal year in which it is collected shall be satisfied so long as fiscal year expenditures conform with the budget plan required in either paragraph (9) of subsection (a) or subsection (e) of this Code section.

(k)(1) Any local governing authority levying the tax authorized under this article which has collected more than $500,000.00 in taxes per year in any of the three preceding fiscal years shall not alter or change the designated private sector nonprofit organization engaged to promote tourism, conventions, and trade shows for such local government unless and until the governing authority and the destination marketing organization for such local government agree to such alteration or change or such alteration or change is approved as provided for in paragraph (2) of this subsection.

(2) If the governing authority and the destination marketing organization are unable to reach an agreement as to altering or changing the designated private sector nonprofit organization engaged to promote tourism, conventions, and trade shows, such proposed alterations or changes shall then be moved to the Hotel Motel Tax Performance Review Board, as established pursuant to

Code Section 48-13-56.1, which shall meet as needed for approval or rejection based on the eligibility of the new proposed private sector nonprofit organization, as defined by Code Section 48-13-50.2.

History.

Ga. L. 1975, p. 1002, §§ 2, 3; Code 1933, § 91A-6202, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1983, p. 639, § 1; Ga. L. 1987, p. 635, § 1; Ga. L. 1988, p. 1866, § 1; Ga. L. 1989, p. 1, § 1; Ga. L. 1989, p. 62, § 13; Ga. L. 1990, p. 1134, § 1; Ga. L. 1991, p. 292, §§ 1-5; Ga. L. 1992, p. 3035, §§ 1-4; Ga. L. 1993, p. 442, § 1; Ga. L. 1993, p. 995, §§ 3, 4; Ga. L. 1994, p. 793, § 1; Ga. L. 1995, p. 10, § 48; Ga. L. 1995, p. 578, §§ 1-4; Ga. L. 1996, p. 1407, §§ 1-5; Ga. L. 1997, p. 930, §§ 1-4; Ga. L. 1997, p. 959, §§ 1-4; Ga. L. 1997, p. 1417, §§ 1-4; Ga. L. 1998, p. 19, § 1; Ga. L. 1998, p. 894, §§ 1-4; Ga. L. 1999, p. 81, § 48; Ga. L. 1999, p. 663, § 1; Ga. L. 1999, p. 769, §§ 1-4; Ga. L. 2000, p. 214, §§ 1-8; Ga. L. 2000, p. 1303, § 1; Ga. L. 2000, p. 1325, § 1A; Ga. L. 2000, p. 1364, §§ 1-4; Ga. L. 2001, p. 1191, §§ 1-4; Ga. L. 2002, p. 979, §§ 1-4; Ga. L. 2004, p. 403, § 1; Ga. L. 2005, p. 532, § 1/HB 505; Ga. L. 2005, p. 1523, §§ 1-6/HB 374; Ga. L. 2006, p. 667, §§ 1-4/HB 1030; Ga. L. 2007, p. 47, § 48/SB 103; Ga. L. 2008, p. 181, § 23/HB 1216; Ga. L. 2008, p. 887, §§ 1, 2/HB 302; Ga. L. 2008, p. 1032, §§ 2-9, 12/HB 1168; Ga. L. 2009, p. 8, § 48/SB 46; Ga. L. 2010, p. 809, §§ 1, 2, 3/HB 903; Ga. L. 2011, p. 517, § 1/HB 382; Ga. L. 2013, p. 141, § 48/HB 79; Ga. L. 2016, p. 279, § 1/HB 408; Ga. L. 2017, p. 774, § 48/HB 323; Ga. L. 2018, p. 198, § 1/HB 658; Ga. L. 2020, p. 493, § 48/SB 429; Ga. L. 2021, p. 86, § 4/HB 317; Ga. L. 2021, p. 922, § 48/HB 497; Ga. L. 2023, p. 57, § 1/SB 127, effective April 25, 2023.

Amendments.

The 2023 amendment, effective April 25, 2023, added subsection (k).

Cross references.

Local government authority to enter into certain one year or less contracts, § 36-60-14.

Regulation of operation of hotels, inns, and similar entities generally, § 43-21-1 et seq.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1996, "(a)(3.1)," was transferred to follow "(a)(3)," to maintain numerical order.

Pursuant to Code Section 28-9-5, in 1997, paragraph (4.2) of subsection (a) as added by Ga. L. 1997, p. 959, § 2 was redesignated as paragraph (4.3) of subsection (a), and paragraphs (4.2) and (4.3) of subsection (a) as added by Ga. L. 1997, p. 1417, § 2 were redesignated as paragraphs (4.4) and (4.5) of subsection (a), respectively. The internal references in subsection (a) were changed to reflect these redesignations.

Pursuant to Code Section 28-9-5, in 1999, "April 28, 1999" was substituted for "the effective date of this Act" in subparagraph (a)(4.6)(B).

Pursuant to Code Section 28-9-5, in 2001, "(3)" was deleted following "under this paragraph" in the second sentence of paragraph (a)(3.4).

The amendment of this Code section by Ga. L. 2008, p. 181, § 23, irreconcilably conflicted with and was treated as superseded by Ga. L. 2008, p. 1032, § 5. See County of Butts v. Strahan, 151 Ga. 417 (1921).

Pursuant to Code Section 28-9-5, in 2008, the subparagraph (C) designation in subparagraph (a)(1)(C) and the paragraph (8) designation in paragraph (a)(8) were inserted; in division (a)(3.8)(A)(ii), a period was substituted for a semicolon at the end; in paragraph (a)(4), parentheses were added around "III" and "IV"; and in subparagraph (a)(7)(A), quotation marks were inserted following "Fund".

Pursuant to Code Section 28-9-5, in 2019, "Savannah Convention Center" was substituted for "Georgia International and Maritime Trade Center Authority" at the end of the second sentence of paragraph (a)(4.7).

Editor's notes.

Ga. L. 1989, p. 62, § 14, not codified by the General Assembly, provides: "In the event that any other Act of the 1989 General Assembly amends Article 3 of Chapter 13 of Title 48 of the Official Code of Georgia Annotated, it is the intention of the General Assembly that the provisions of such other Act control over the

provisions of this Act, except that it is the intention of the General Assembly that the increase in the rate of state sales and use taxation provided for in this Act shall not operate to decrease the maximum rate of taxes which may be imposed by local governments under said article as now existing or as it may be amended; and for this limited purpose, the provisions of this Act and particularly of this statement of intent shall control over the provisions of such other Act, notwithstanding any limitation on maximum aggregate amounts of taxation which may be contained in such other Act."

Ga. L. 1996, p. 1407, § 3 amended paragraph (a)(5.1) by adding the proviso at the end of the fourth sentence. This proviso became effective upon ratification of House Resolution 728 (Ga. L. 1996, p. 1668) at the November 1996 election.

Ga. L. 2021, p. 86, § 5/HB 317, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2021, and shall apply to each incidence of the furnishing for value to the public any room or rooms, lodgings, or accommodations occurring on or after July 1, 2021; provided, however, that the provisions of Section 2 of this Act shall not be applicable to any rental or lease for value to the public of any room or rooms, lodgings, or accommodations which are not hotel or motel rooms for which a reservation was made and any payment or deposit was tendered prior to July 1, 2021."

Law reviews.

For annual survey of state and local taxation, see 42 Mercer L. Rev. 421 (1990).

For annual survey of law on administrative law, see 62 Mercer L. Rev. 1 (2010).

JUDICIAL DECISIONS

Constitutionality. — O.C.G.A. § 48-13-50 et seq. does not violate the uniformity requirements of the state constitution and due process and equal protection guarantees of the state and federal constitutions, nor does the statute impermissibly burden interstate commerce. Youngblood v. State, 259 Ga. 864, 388 S.E.2d 671, 1990 Ga. LEXIS 53 (1990).

O.C.G.A. § 48-13-51(a)(5) merely makes clear that once the courts have validated a bond issue and the bonds have been issued, the state cannot impair the contract between the issuer and the bondholder. The statute does not violate the Abridged Powers Clause contained in Ga. Const. 1983, Art. III, Sec. VI, Para. III. Youngblood v. State, 259 Ga. 864, 388 S.E.2d 671, 1990 Ga. LEXIS 53 (1990).

"Stadium Funding Agreement" for construction of a domed facility, entered into by a city, a county, and a stadium authority, was authorized by the intergovernmental contracts clause of Ga. Const. 1983, Art. IX, Sec. III, Para. I, and therefore did not violate the special district debt clause of Ga. Const. 1983, Art. IX, Sec. V, Para. II. Youngblood v. State, 259 Ga. 864, 388 S.E.2d 671, 1990 Ga. LEXIS 53 (1990).

O.C.G.A. § 48-13-51(a)(5)(B) was not unconstitutional under the Uniformity Clause, Ga. Const. 1983, Art. III, Sec. VI, Para. IV(a), but was a proper exception to the general law of § 48-13-51(a)(1)(D), which imposed a 3 percent cap on hotel/motel taxes, in that the statute applied uniformly on all taxing authorities within the scope of the statute's provisions, and because the classification made by the statute was not arbitrary or unreasonable. Cottrell v. Atlanta Dev. Auth., 297 Ga. 1, 770 S.E.2d 616, 2015 Ga. LEXIS 179 (2015).

Collection of taxes. — Although online travel companies were not operators of hotels, the companies actually collected excise taxes from hotel guests, and thus the companies were required to remit those taxes to applicable Georgia cities and counties pursuant to O.C.G.A. §§ 48-13-50 and 48-13-51. City of Rome v. Hotels.com, LP, No. 4:05-CV-249-HLM, 2006 U.S. Dist. LEXIS 56369 (N.D. Ga. May 8, 2006), dismissed, 555 F. Supp. 3d 1314, 2021 U.S. Dist. LEXIS 250106 (N.D. Ga. 2021).

In a city's action wherein the city filed a complaint seeking a declaratory judgment, injunctive relief, and other equi-

table remedies against an online travel company, the trial court did not err by requiring the company to collect tax payment obligations under the Enabling Statute, O.C.G.A. § 48-13-50 et seq., and a city's ordinance via a permanent injunction. The company had contracted with the city to collect such taxes from the customers and was not an innkeeper; thus, the company was required to remit the taxes to the city. Expedia, Inc. v. City of Columbus, 285 Ga. 684, 681 S.E.2d 122, 2009 Ga. LEXIS 315 (2009).

Trial court did not err under O.C.G.A. § 48-13-51(a)(1)(B)(I) when the court determined that the rent for occupying a hotel room in a city was the room rate paid by a consumer, rather than the negotiated wholesale rate between an online travel company and a hotel, because the retail room rate was the taxable amount or rent under a city's ordinance. City of Atlanta v. Hotels.com, 289 Ga. 323, 710 S.E.2d 766, 2011 Ga. LEXIS 386 (2011).

Determination as to whether tax applied to online travel companies had to be determined first. — Trial court erred by dismissing a city's declaratory judgment action against several online travel companies for lack of subject matter jurisdiction, and the appellate court erred by affirming the dismissal as the issue of whether the city's ordinance allowing the city to collect a hotel occupancy tax from the online travel companies was a contested issue in the matter that neither lower court had determined. The legal question of whether the ordinance even applied to the online travel companies had to be determined before the city was required to submit to the administrative process set forth within the ordinance and the enabling statutes, O.C.G.A. § 48-13-50 et seq. City of Atlanta v. Hotels.com, L.P., 285 Ga. 231, 674 S.E.2d 898, 2009 Ga. LEXIS 96 (2009).

Tax proceeds were revenue to pay for bonds. — Hotel/Motel tax funding agreement for a stadium project worked with a bond proceeds funding agreement to ensure that the stadium's tax proceeds were expended consistent with O.C.G.A. § 48-13-51(a)(5)(B), and there was no requirement that the development authority own the stadium for the tax proceeds to be considered as part of the revenue to pay for the bonds: under O.C.G.A. § 36-82-61(3), "revenue" included revenues arising out of or in connection with the operation or ownership of the stadium. Cottrell v. Atlanta Dev. Auth., 297 Ga. 1, 770 S.E.2d 616, 2015 Ga. LEXIS 179 (2015).

RESEARCH REFERENCES

Am. Jur. 2d.

71 Am. Jur. 2d, State and Local Taxation, § 88 et seq.

C.J.S.

20 C.J.S., Counties, §§ 369 et seq., 382 et seq.

ALR.

Deductibility of other taxes or fees in computing excise or license taxes, 174 A.L.R. 1263.

What constitutes a sale "at retail" within federal retailers' excise tax statute (26 USC (IRC 1954) chap 31), 93 A.L.R.2d 1120.

Obligation of online travel companies to collect and remit hotel occupancy taxes, 61 A.L.R. 6th 387.

48-13-52. Allowance of percentage of tax collected as deduction to person reporting and paying tax; effect of delinquent payments; rate.

Each person collecting the tax authorized by this article shall be allowed a percentage of the tax due and accounted for and shall be reimbursed in the form of a deduction in submitting, reporting, and paying the amount due if the amount due is not delinquent at the time

of payment. The rate of the deduction shall be 3 percent of the amount due, but only if the amount due was not delinquent at the time of payment.

History.
Ga. L. 1975, p. 1002, § 5; Code 1933, § 91A-6204, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1989, p. 1, § 1; Ga. L. 1990, p. 1134, § 1; Ga. L. 1992, p. 815, § 5.

RESEARCH REFERENCES

C.J.S.
20 C.J.S., Counties, § 382 et seq.

48-13-53. Procedures.

Except as otherwise specifically provided in this article, the rate of taxation, the manner of imposition, payment, and collection of the tax, and all other procedures related to the tax shall be as provided by each county and municipality electing to exercise the powers conferred by this article.

History.
Ga. L. 1975, p. 1002, § 4; Code 1933, § 91A-6203, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1989, p. 1, § 1; Ga. L. 1990, p. 1134, § 1; Ga. L. 1998, p. 894, § 5; Ga. L. 2000, p. 1325, § 2.

JUDICIAL DECISIONS

Determination as to whether tax applied to online travel company had to be determined first. — Trial court erred by dismissing a city's declaratory judgment action against several online travel companies for lack of subject matter jurisdiction, and the appellate court erred by affirming the dismissal as the issue of whether the city's ordinance allowing the city to collect a hotel occupancy tax from the online travel companies was a contested issue in the matter that neither lower court had determined. The legal question of whether the ordinance even applied to the online travel companies had to be determined before the city was required to submit to the administrative process set forth within the ordinance and the enabling statutes, O.C.G.A. § 48-13-50 et seq. City of Atlanta v. Hotels.com, L.P., 285 Ga. 231, 674 S.E.2d 898, 2009 Ga. LEXIS 96 (2009).

48-13-53.1. Innkeepers; selling or quitting business; withholding of purchase money by purchaser; liability of purchaser for failure to withhold purchase money.

If any innkeeper liable for any tax, interest, or penalty imposed by this article sells his or her business or quits the business, he or she shall make a final return and payment within 15 days after the date of selling or quitting the business. The innkeeper's successor or assigns, if any, shall withhold a sufficient amount of the purchase money to cover the amount of the taxes, interest, and penalties due under this article and unpaid until the former owner produces either a receipt from the

governing authority imposing the tax showing that the taxes, interest, and penalties due under this article have been paid or a certificate from the governing authority imposing the tax stating that no tax, interest, or penalty is due under this article. If the purchaser of a business fails to withhold the purchase money as required by this Code section, he or she shall be personally liable for the payment of any taxes, interest, and penalties accruing under this article and unpaid by any former owner or assignor. The personal liability of the purchaser in such a case shall not exceed the amount of the total purchase money, but the property being transferred shall in all cases be subject to the full amount of the tax lien arising from the delinquencies of the former owner. Paid executions may be transferred and enforced as otherwise provided by law.

History.
Code 1981, § 48-13-53.1, enacted by Ga. L. 2000, p. 1325, § 3.

48-13-53.2. Tax returns and remittances.

(a) Each innkeeper, on or before the twentieth day of each month, shall transmit returns and remit taxes due to any applicable governing authority imposing a tax under this article showing the gross charges taxable under this article during the preceding calendar month. The governing authority imposing the tax may provide by resolution or ordinance for quarterly or annual returns. The returns required by this subsection shall be made upon forms prescribed, prepared, and furnished by the governing authority imposing the tax.

(b) As used in this subsection, the term "estimated tax liability" means an innkeeper's tax liability under this article, adjusted to account for any subsequent change in the rate of tax imposed under this article or any substantial change in circumstances due to damage to the premises, based on his or her average monthly payments for the last fiscal year. If the estimated tax liability of an innkeeper for any taxable period exceeds $2,500.00, the innkeeper shall file a return and remit to the governing authority imposing the tax not less than 50 percent of the estimated tax liability for the taxable period on or before the twentieth day of the period. The amount of the payment of the estimated tax liability shall be credited against the amount to be due on the return required under subsection (a) of this Code section. This subsection shall not apply to any innkeeper unless during the previous fiscal year the innkeeper's monthly payments exceeded $2,500.00 per month for three consecutive months or more.

History.
Code 1981, § 48-13-53.2, enacted by Ga. L. 2000, p. 1325, § 3.

JUDICIAL DECISIONS

On line travel company not innkeeper and payment of taxes responsibility of company. — In a city's action wherein the city filed a complaint seeking a declaratory judgment, injunctive relief, and other equitable remedies against an online travel company, the trial court did not err by requiring the company to collect tax payment obligations under the Enabling Statute, O.C.G.A. § 48-13-50 et seq., and a city's ordinance via a permanent injunction. The company had contracted with the city to collect such taxes from the customers and was not an innkeeper; thus, the company was required to remit the taxes to the city. Expedia, Inc. v. City of Columbus, 285 Ga. 684, 681 S.E.2d 122, 2009 Ga. LEXIS 315 (2009).

48-13-53.3. Taxes; extensions and returns; failure of innkeeper to make return and pay required tax.

(a)(1) The governing authority imposing a tax under this article may, for good cause, extend the time for making any returns required under this article for not more than 30 days.

(2) No extension granted pursuant to paragraph (1) of this subsection shall be valid unless granted in writing upon written application, and then the extension shall only be valid for a period, as appropriate, of not more than 12 consecutive months or four consecutive calendar quarters.

(3) Upon the grant of any extension authorized by this subsection, the innkeeper shall remit to the governing authority imposing a tax under this article on or before the date the tax would otherwise become due without the grant of the extension an amount which equals not less than 100 percent of the innkeeper's payment for the corresponding period of the preceding tax year.

(4) No interest or penalty shall be charged by reason of the granting of an extension pursuant to this subsection during the first ten days of each extension period. Thereafter, interest shall be collected upon the unpaid balance of the innkeeper's liability at the rate specified in Code Section 48-2-40.

(b) In the event any innkeeper fails to make a return and pay the tax as provided by this article or makes a grossly incorrect return or a return that is false or fraudulent, the governing authority imposing a tax under this article shall make an estimate for the taxable period of taxable charges of the innkeeper. Based upon its estimate, the governing authority shall assess and collect the taxes, interest, and penalties, as accrued, on the basis of the assessments.

History.
Code 1981, § 48-13-53.3, enacted by Ga. L. 2000, p. 1325, § 3.

JUDICIAL DECISIONS

Necessity to follow procedures before filing suit to collect tax. — Municipalities failed to exhaust administrative remedies prior to litigation to recover excise taxes from Internet travel agencies which arranged accommodation for their customers since the procedures of O.C.G.A. § 48-13-53.3(b) were not optional, and the municipalities were required to estimate, assess, and attempt to collect the excise taxes from the travel agencies before pursuing litigation. City of Rome v. Hotels.com, L.P., No. 4:05-CV-249-HLM, 2007 U.S. Dist. LEXIS 98522 (N.D. Ga. May 10, 2007).

48-13-53.4. Records and books.

(a) Each innkeeper required to make a return and pay any tax under this article shall keep and preserve:

(1) Suitable records of the charges taxable under this article; and

(2) Other books of account which are necessary to determine the amount of tax due.

(b) All books, invoices, and other records required by this Code section to be kept shall be open to examination at all reasonable hours by the governing authority imposing a tax under this article.

History.
Code 1981, § 48-13-53.4, enacted by Ga. L. 2000, p. 1325, § 3; Ga. L. 2001, p. 984, § 19.

Law reviews.
For note on the 2001 amendment to this Code section, see 18 Georgia St. U.L. Rev. 294 (2001).

48-13-53.5. Assessments.

Any assessment of an innkeeper pursuant to this article by the governing authority imposing a tax under this article shall be deemed prima facie correct.

History.
Code 1981, § 48-13-53.5, enacted by Ga. L. 2000, p. 1325, § 3.

48-13-53.6. Unpaid tax.

The tax imposed by this article shall become delinquent for each month after the twentieth day of each succeeding month during which it remains unpaid.

History.
Code 1981, § 48-13-53.6, enacted by Ga. L. 2000, p. 1325, § 3.

48-13-54. Lodge operated under jurisdiction of Department of Natural Resources or other state authority; collection and remittance of tax; use of funds.

Any state park operated under the jurisdiction of the Department of Natural Resources, or a state authority that is administratively attached to the Department of Natural Resources, which state park or authority regularly furnishes for value lodge rooms as well as meals and conference or meeting facilities or has a minimum of 20 cabins and which rooms, facilities, or cabins located in a county or municipality levying a tax under this article shall, as provided in this Code section, agree to collect and remit to the county or municipality within whose taxing jurisdiction the facility is located amounts which are equal to, or partially equal to, the amounts which would be collected and remitted to the county or municipality under the tax levied by the county or municipality under Code Section 48-13-51 if such rooms, facilities, or cabins were privately operated. The sums so collected and remitted shall only be expended for development, promotion, and advertising of such rooms, facilities, or cabins from which the money was collected and remitted or for similar purposes of promoting, advertising, stimulating, and developing conventions and tourism in the county or municipality in which such rooms, facilities, or cabins of the state park or state authority are located so long as said promotion or advertising prominently features the state park or state authority rooms, facilities, or cabins.

History.

Code 1981, § 48-13-54, enacted by Ga. L. 1990, p. 1134, § 1; Ga. L. 1991, p. 292, § 6; Ga. L. 2008, p. 1032, § 10/HB 1168.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1990, a subsection (a) designation was deleted from the beginning of the Code section since there is no subsection (b).

48-13-55. Facility operated by charitable trust or functionally related business; license fees; limitation on or applicability of tax levies.

(a) A charitable trust, or a functionally related business of a charitable trust, which regularly furnishes for value rooms, lodgings, or accommodations shall be subject to local licensure by, or required to pay a business or occupation tax to, a county or municipality only to the extent provided in this Code section. Further, such a charitable trust, or such a functionally related business of a charitable trust, shall be subject to taxes levied under Code Section 48-13-51 only to the extent provided in this Code section.

(b) Any license fee of any type, whether a flat fee or based on gross receipts, charged by a county or municipality to a charitable trust, or to

a functionally related business of a charitable trust or any affiliated activity, shall not exceed $200.00 per year.

(c) Any tax levied by a county or municipality under Code Section 48-13-51 shall apply to a charitable trust, or a functionally related business of a charitable trust, only if the levy and collection of the tax is approved in advance in writing by the Board of Natural Resources. The Board of Natural Resources may revoke its approval at will. Amounts collected and remitted under the authority of this Code section shall be expended solely for promoting, attracting, stimulating, and developing conventions and tourism. The expenditure of the funds shall only be made under a written agreement between the charitable trust or its functionally related business and the local government. The agreement governing the expenditure of the funds must be approved in writing by the Board of Natural Resources before any taxes are collected and remitted and before any funds are spent.

(d) For purposes of this Code section, the term "charitable trust" means any trust or other entity covered by Article 9 or 10 of Chapter 12 of Title 53. For purposes of this Code section, the term "functionally related business" means a business entity, whether or not incorporated, which is owned by such a charitable trust and which constitutes a functionally related business within the meaning of Section 4942(j)(4) of the federal Internal Revenue Code.

(e) This Code section (rather than conflicting provisions in Code Section 48-13-51) shall govern the licenses and license fees of, and the levy, collection, and expenditure of the taxes authorized by this article as applied to, a charitable trust or a functionally related business of a charitable trust.

History. Code 1981, § 48-13-55, enacted by Ga. L. 1990, p. 1134, § 1; Ga. L. 1991, p. 810, § 8; Ga. L. 2010, p. 579, § 17/SB 131.

48-13-56. Annual report to Department of Community Affairs.

Each county or municipality imposing a tax as authorized by this article shall, as a condition of continuing authorization to impose the tax, annually file with the Department of Community Affairs a report specifying the rate of taxation and amounts collected and expended pursuant to this article. Such report shall include the schedules specified under subparagraph (b)(1)(B) of Code Section 36-81-8 and shall be filed in such form and at such times as may be specified by rule of the Department of Community Affairs.

History. Code 1981, § 48-13-56, enacted by Ga. L. 1990, p. 1134, § 1; Ga. L. 2004, p. 403, § 2.

48-13-56.1. Hotel Motel Tax Performance Review Board; composition; appointments; investigations of complaints; expenses of members.

(a)(1) There is created the Hotel Motel Tax Performance Review Board which shall consist of 11 members.

(2) The commissioner of community affairs shall appoint five persons to serve as members of the performance review board as follows:

(A) A designee of the commissioner;

(B) A representative of the private sector tourism industry who shall be an innkeeper;

(C) A representative of municipal government;

(D) A representative of county government; and

(E) A representative of a destination marketing organization.

(3) The Governor shall appoint one member of the board.

(4) The Speaker of the House of Representatives shall appoint one member of the board.

(5) The Lieutenant Governor shall appoint one member of the board.

(6) The state auditor shall appoint one member of the board.

(7) The commissioner of economic development shall appoint one member of the board.

(8) The state revenue commissioner shall appoint one member of the board.

(b)(1) The member of the board who is appointed under subparagraph (a)(2)(A) of this Code section shall serve for a term of office of five years. Members of the board who are appointed under subparagraphs (a)(2)(B), (a)(2)(C), (a)(2)(D), and (a)(2)(E) of this Code section shall serve for terms of office of three years each. Members of the board who are appointed under paragraphs (3), (4), and (5) of subsection (a) of this Code section shall serve for terms of office of three years each. Members of the board who are appointed under paragraphs (6), (7), and (8) of subsection (a) of this Code section shall serve for terms of office of five years each. Members of the board shall serve for the terms of office specified in this subsection and until their respective successors are appointed and qualified. Members of the board may be reappointed to the board upon the expiration of their terms of office if they otherwise continue to meet the qualifications for such office.

(2) If a vacancy occurs in the membership of the board, the appropriate appointing entity shall appoint a successor for the

remainder of the unexpired term and until a successor is appointed and qualified.

(c) It shall be the duty of the performance review board to make a thorough and complete investigation of any complaint with respect to all actions of a county, municipality, or any other entity regarding its expenditure of funds received from a tax under this article and such county's, municipality's, or other entity's compliance with state law and regulations. Complaints may be received from taxpayers, local governments, innkeepers, or private sector nonprofit organizations. All complaints shall be received by the department by June 1 in order to be heard the following year. The performance review board shall meet annually from September 1 through December 1. The department shall send a notice to all interested parties of the meeting place and time. The performance review board shall issue a written report of its findings which shall include such evaluations, judgments, and recommendations as it deems appropriate.

(d) The findings of the report of the review board under subsection (c) of this Code section shall be transmitted to the commissioner of community affairs within 60 calendar days of hearing the complaint. The commissioner of community affairs shall have 30 calendar days to review the findings of the performance review board. If the commissioner of community affairs determines that remedial action is necessary, the subject of the complaint shall be issued a notice by certified mail, return receipt requested, or statutory overnight delivery and shall be given a period of 90 calendar days to take the necessary remedial action with respect to such findings. In the event that such remedial action does not occur within the specified period, the commissioner of community affairs shall immediately notify the state revenue commissioner, and the state revenue commissioner shall be authorized to take appropriate action to enforce compliance with such remedial action, up to and including termination of the tax.

(e) The commissioner of community affairs shall promulgate such rules and regulations as may be necessary for the administration of this Code section.

(f) Each member of the board shall receive the same per diem expense allowance as that received by members of the General Assembly for each day a committee member is in attendance at a meeting of the committee, plus reimbursement for actual transportation costs incurred while traveling by public carrier or the mileage allowance authorized for certain state officials and employees for the use of a personal automobile in connection with such attendance. Such allowance and reimbursement shall be paid in lieu of any other per diem, allowance, or remuneration and shall be paid from funds appropriated to the Department of Community Affairs.

History.
Code 1981, § 48-13-56.1, enacted by Ga. L. 2004, p. 403, § 3; Ga. L. 2005, p. 60, § 48/HB 95; Ga. L. 2005, p. 532, § 2/HB 505; Ga. L. 2008, p. 1032, § 11/HB 1168.
Cross references.
Annual local government finances reports and local independent authority indebtedness reports, § 36-81-8.

Code Commission notes.
Pursuant to Code Section 28-9-5, in 2004, "economic development" was substituted for "industry, trade, and tourism" in paragraph (a)(7) and "state revenue commissioner" was substituted for "commissioner of revenue" in paragraph (a)(8).

48-13-57. Applicable provisions from Chapter 2 of this title; waiving interest and penalties; limitation for assessment of taxes.

The provisions of Code Section 48-2-41, relating to authority to waive interest on unpaid taxes; Code Section 48-2-43, relating to authority to waive penalties; and Code Section 48-2-49, relating to periods of limitation for assessment of taxes imposed by this title, shall apply to taxes imposed by any local governing authority pursuant to this article, provided that the local governing authority shall stand in lieu of the commissioner, and the county or municipality shall stand in lieu of the state for purposes of this Code section.

History.
Code 1981, § 48-13-57, enacted by Ga. L. 2000, p. 1325, § 4.

48-13-58. Penalties added to tax for failure to pay.

(a) When any innkeeper fails to make any return or to pay the full amount of the tax required by this article, there shall be imposed, in addition to other penalties provided by law, a penalty to be added to the tax in the amount of 5 percent or $5.00, whichever is greater, if the failure is for not more than 30 days and an additional 5 percent or $5.00, whichever is greater, for each additional 30 days or fraction of 30 days during which the failure continues. The penalty for any single violation shall not exceed 25 percent or $25.00 in the aggregate, whichever is greater. If the failure is due to providential cause shown to the satisfaction of the governing authority imposing a tax under this article in affidavit form attached to the return and remittance is made within ten days of due date, the return may be accepted exclusive of penalties and interest. In the case of a false or fraudulent return or of a failure to file a return where willful intent exists to defraud the governing authority of any tax due under this article, a penalty of 50 percent of the tax due shall be assessed.

(b) All civil penalties and interest added to any tax imposed under this article and collected by a county or municipality shall be included as revenue derived from such tax for purposes of the expenditure

requirements imposed on such county or municipality as provided by this article.

History.
Code 1981, § 48-13-58, enacted by Ga. L. 2000, p. 1325, § 4.

JUDICIAL DECISIONS

Determination as to whether tax applied to online travel had to be determined first. — Trial court erred by dismissing a city's declaratory judgment action against several online travel companies for lack of subject matter jurisdiction, and the appellate court erred by affirming the dismissal as the issue of whether the city's ordinance allowing the city to collect a hotel occupancy tax from the online travel companies was a contested issue in the matter that neither lower court had determined. The legal question of whether the ordinance even applied to the online travel companies had to be determined before the city was required to submit to the administrative process set forth within the ordinance and the enabling statutes, O.C.G.A. § 48-13-50 et seq. City of Atlanta v. Hotels.com, L.P., 285 Ga. 231, 674 S.E.2d 898, 2009 Ga. LEXIS 96 (2009).

48-13-58.1. Criminal penalties for failure to make return or pay taxes.

(a) It shall be unlawful for any innkeeper to fail to make a return and pay the taxes due under this article to any applicable governing authority imposing a tax under this article.

(b)(1) If the tax liability is $10,000.00 or less, any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor.

(2) If the tax liability is more than $10,000.00, any person who violates subsection (a) of this Code section shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one year nor more than ten years.

History.
Code 1981, § 48-13-58.1, enacted by Ga. L. 2002, p. 523, § 1.
Editor's notes.
Ga. L. 2002, p. 523, § 2, not codified by the General Assembly, provides that this Code section is applicable with respect to offenses committed on or after July 1, 2002. Prior law shall continue to apply with respect to any offense committed prior to July 1, 2002.

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting not required. — Offense resulting from a violation of O.C.G.A. § 48-13-58.1(b)(1) does not require fingerprinting. 2002 Op. Att'y Gen. No. 2002-7.

48-13-59. Failure to collect taxes; punishment.

(a) It shall be unlawful for any innkeeper to fail, neglect, or refuse to collect the tax provided in this article, either by himself or herself or through his or her agents or employees.

(b) In addition to the penalty of being liable for and paying the tax himself or herself, any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than $100.00 or imprisonment in the county jail for not more than three months, or both.

History.
Code 1981, § 48-13-59, enacted by Ga. L. 2000, p. 1325, § 4.

JUDICIAL DECISIONS

Determination as to whether tax applied to online travel company had to be determined first. — Trial court erred by dismissing a city's declaratory judgment action against several online travel companies for lack of subject matter jurisdiction, and the appellate court erred by affirming the dismissal as the issue of whether the city's ordinance allowing the city to collect a hotel occupancy tax from the online travel companies was a contested issue in the matter that neither lower court had determined. The legal question of whether the ordinance even applied to the online travel companies had to be determined before the city was required to submit to the administrative process set forth within the ordinance and the enabling statutes, O.C.G.A. § 48-13-50 et seq. City of Atlanta v. Hotels.com, L.P., 285 Ga. 231, 674 S.E.2d 898, 2009 Ga. LEXIS 96 (2009).

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting of offenders not required. — Violation of O.C.G.A. § 48-13-59 is not an offense designated as one that requires fingerprinting. 2000 Op. Att'y Gen. No. 2000-11.

RESEARCH REFERENCES

ALR.
Obligation of online travel companies to collect and remit hotel occupancy taxes, 61 A.L.R. 6th 387.

48-13-60. Unlawful returns; punishment.

(a) It shall be unlawful for any innkeeper required by this article to make, render, sign, or verify any return to make a false or fraudulent return with intent to evade the tax levied by this article.

(b) Any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than $100.00 nor more than $300.00 or

confinement in the county jail for not less than 30 days nor more than three months, or both fine and confinement.

History.
Code 1981, § 48-13-60, enacted by Ga. L. 2000, p. 1325, § 4.

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting of offenders required. — Violation of O.C.G.A. § 48-13-60 is an offense designated as one that requires fingerprinting. 2000 Op. Att'y Gen. No. 2000-11.

48-13-61. Failure to furnish return; punishment.

(a) It shall be unlawful for any innkeeper subject to this article to fail or refuse to furnish any return required to be made by this article or to fail or refuse to furnish a supplemental return or other data required by the governing authority imposing a tax under this article.

(b) Any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor.

History.
Code 1981, § 48-13-61, enacted by Ga. L. 2000, p. 1325, § 4.

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting of offenders not required. — Violation of O.C.G.A. § 48-13-61 is not an offense designated as one that requires fingerprinting. 2000 Op. Att'y Gen. No. 2000-11.

48-13-62. Failure to keep and open records; punishment.

(a) It shall be unlawful for any innkeeper subject to this article to fail to keep records or to fail to open the records to inspection as required by law.

(b) Any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor.

History.
Code 1981, § 48-13-62, enacted by Ga. L. 2000, p. 1325, § 4.

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting of offenders not required. — Violation of O.C.G.A. § 48-13-62 is not an offense designated as one that requires fingerprinting. 2000 Op. Att'y Gen. No. 2000-11.

48-13-63. Other violations; punishment.

(a) It shall be unlawful for any innkeeper to violate any other provision of this article for which punishment is not otherwise provided.

(b) Any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor.

History.
Code 1981, § 48-13-63, enacted by Ga. L. 2000, p. 1325, § 4.

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting of offenders not required. — Violation of O.C.G.A. § 48-13-63 is not an offense designated as one that requires fingerprinting. 2000 Op. Att'y Gen. No. 2000-11.

ARTICLE 4

CORPORATE NET WORTH TAX

Law reviews.
For article, "Primary Tax Incentives for Industrial Investment in the Southeastern United States," see 25 Emory L.J. 789 (1976).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, Ch. 92-24, which was subsequently repealed but was succeeded by provisions in this article, are included in the annotations for this article.

For example of cooperative marketing corporation which is exempt from franchise and license taxes, except for $10.00 annual license tax, see 1962 Ga. Op. Att'y Gen. 512 (decided under former Code 1933, § 92-24).

RESEARCH REFERENCES

ALR.
Doctrine of unity of use for purposes of taxation as applied to manufacturing or industrial concerns, 27 A.L.R. 906.

Tax on corporations as affected by fact that corporation is not actually engaged in or carrying on business for which it was incorporated, 124 A.L.R. 1109.

Liability of corporation which has previously paid franchise fee or tax on authorized or issued stock, for additional fee or tax on later increase after intermediate reduction, 16 A.L.R.2d 1090.

48-13-70. Definition.

As used in this article, the term "corporation" includes, but is not limited to, associations, professional associations organized pursuant to Chapter 10 of Title 14, and insurance companies.

History.
Ga. L. 1931, Ex. Sess., p. 24, § 2; Ga. L. 1931, p. 7, § 85; Code 1933, § 92-3002; Ga. L. 1962, p. 454, § 1; Code 1933, § 91A-6301, enacted by Ga. L. 1978, p. 309, § 2.

Law reviews.
For article, "Post-Creation Checklist for Georgia Business Entities," see 9 Ga. St. B. J. 24 (2004).

RESEARCH REFERENCES

ALR.
Meaning of association or joint stock company within statutes taxing associations or joint stock companies as corporations ("Massachusetts" or business trusts), 108 A.L.R. 340; 144 A.L.R. 1050; 166 A.L.R. 1461.

48-13-71. Organizations and companies exempt from corporate net worth tax.

The following are exempt from the payment of the tax imposed by this article:

(1) Those organizations not organized for pecuniary gain or profit;

(2) Insurance companies which are separately taxed; and

(3) Those corporations having a net worth, including capital stock, paid-in surplus, and earned surplus, of no more than $100,000.00.

History.
Code 1933, § 92-2406, enacted by Ga. L. 1975, p. 147, § 1; Code 1933, § 92-2406.1, enacted by Ga. L. 1975, p. 147, § 2; Ga. L. 1976, p. 405, §§ 7, 8; Code 1933, § 92-2405, enacted by Ga. L. 1976, p. 1580, § 5; Code 1933, § 91A-6303, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1983, p. 1350, § 13; Ga. L. 2017, p. 637, § 2-1/SB 133.

Editor's notes.
Ga. L. 1983, p. 1350, § 15, effective January 1, 1984, provides that, should subsection (e) of § 48-6-93 or paragraph (b)(11) of § 48-7-21 be declared invalid or unconstitutional, it is the intent of the General Assembly that the entire Act be held invalid and that the method of taxation affected by the Act revert to the method in effect prior to January 1, 1984.

Ga. L. 2017, p. 637, § 3-1(b)/SB 133, not codified by the General Assembly, provides, in part, that this Act shall be applicable to all taxable years beginning on or after January 1, 2018.

Law reviews.
For article, "Why Captives, Lord, What Have They Ever Done?: The Georgia Captive Insurance Company Act," see 26 Ga. St. B. J. 119 (1990).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Ga. L. 1952, p. 371, § 1, which was subsequently

repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

Taxation of association all of whose shareholders are exempt, nonprofit organizations. — Association engaged in the business of owning and operating a building which the association maintains, operates, keeps in repair, and rents to tenants and the income from which the association distributes among the association's shareholders, all of which are labor unions which are nontaxable and nonprofit organizations, which under the association's charter had as the association's objects pecuniary gain to the stockholders advancement of their social, ethical, and economical well-being and interests and promotion of the cause of organized labor was not entitled to the exemption under the former version of this section as a corporation not organized for pecuniary gain or profit. Atlanta Labor Temple Ass'n v. Williams, 98 Ga. App. 179, 105 S.E.2d 406, 1958 Ga. App. LEXIS 538 (1958) (decided under former Ga. L. 1952, p. 371, § 1).

Organization of a corporation for nonprofit purposes is controlling in determining liability. — Purpose for which a corporation was organized, and not the question of whether it does in fact make a profit, or seek to make a profit, must control in a determination of tax liability. Atlanta Labor Temple Ass'n v. Williams, 98 Ga. App. 179, 105 S.E.2d 406, 1958 Ga. App. LEXIS 538 (1958) (decided under former Ga. L. 1952, p. 371, § 1).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Ga. L. 1952, p. 371, § 1, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

Foreign corporation organized under the laws of another state, territory, or nation, not for pecuniary gain or profit, is exempt. 1952-53 Ga. Op. Att'y Gen. 183 (decided under former Ga. L. 1952, p. 371, § 1).

Credit bureau incorporated under the laws of this state for the purpose of collecting accounts for the bureau's members is not exempt as a corporation not organized for pecuniary gain or profit. 1952-53 Ga. Op. Att'y Gen. 433 (decided under former Ga. L. 1952, p. 371, § 1).

State and federal credit unions are exempt under present laws from the corporate net worth tax. 1965-66 Op. Att'y Gen. No. 66-92 (decided under former Ga. L. 1952, p. 371, § 1).

Taxation of holding companies. — Though state banks and trust companies are exempt from corporation occupation tax, holding company holding and owning real property used by bank and trust company is not exempt. 1962 Ga. Op. Att'y Gen. 493 (decided under former Ga. L. 1952, p. 371, § 1).

No refund on liquidation or merger. — Corporation that liquidates or merges with another corporation during a taxable year is not entitled to a refund of a pro rata part of the corporate net worth tax. 1969 Op. Att'y Gen. No. 69-481 (decided under former Ga. L. 1952, p. 371, § 1).

RESEARCH REFERENCES

Am. Jur. 2d.

71 Am. Jur. 2d, State and Local Taxation, § 237 et seq.

C.J.S.

85 C.J.S., Taxation, § 1772et seq.

ALR.

Applicability of state license tax law to property or business of individual on land owned by federal government, 46 A.L.R. 224.

Discrimination in state taxation of national banks or national bank shares, 59 A.L.R. 10; 81 A.L.R. 502; 87 A.L.R. 846.

Exemption of charitable organization from taxation or special assessment, 108 A.L.R. 284.

Hospital as within tax exemption provision not specifically naming hospitals, 144 A.L.R. 1483.

48-13-72. Imposition of annual corporate net worth tax on all corporations doing business or owning property in state.

In addition to all other taxes imposed by law, there is imposed an annual corporate net worth tax on all corporations incorporated under the laws of this state, all domesticated foreign corporations, and all corporations incorporated or organized under the laws of any other state, territory, or nation doing business or owning property in this state for the privilege of carrying on a business within this state in the corporate form, except as otherwise provided in Code Section 48-13-71.

History.

Ga. L. 1929, p. 84, § 1; Ga. L. 1931, Ex. Sess., p. 76, § 1; Code 1933, § 92-2401; Ga. L. 1935, p. 11, § 2; Ga. L. 1941, p. 204, § 1; Ga. L. 1951, p. 157, § 5a; Ga. L. 1952, p. 371, § 1; Code 1933, § 92-2401, enacted by Ga. L. 1976, p. 1580, § 1; Code 1933, § 91A-6302, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 107; Ga. L. 2017, p. 637, § 2-2/SB 133.

Editor's notes.

Ga. L. 2017, p. 637, § 3-1(b)/SB 133, not codified by the General Assembly, provides, in part, that this Act shall be applicable to all taxable years beginning on or after January 1, 2018.

Law reviews.

For article, "Foreign Corporations in Georgia," see 10 Ga. St. B.J. 243 (1973).

JUDICIAL DECISIONS

"Doing business" standard comports with due process. — Phrase "doing business" in former Code 1933, §§ 92-2401 and 92-3113 (see now O.C.G.A. §§ 48-7-31 and 48-13-72 et seq.), which means any activity or transactions for the purpose of financial profit or gain, does not violate the due process requirement of either U.S. Const., amend. 14 or Ga. Const. 1976, Art. I, Sec. I, Para. I (see now Ga. Const. 1983, Art. I, Sec. I, Para. I). Chattanooga Glass Co. v. Strickland, 244 Ga. 603, 261 S.E.2d 599, 1979 Ga. LEXIS 1342 (1979).

"Doing business" means any activity or transaction for the purpose of financial profit or gain. Chattanooga Glass Co. v. Strickland, 244 Ga. 603, 261 S.E.2d 599, 1979 Ga. LEXIS 1342 (1979).

OPINIONS OF THE ATTORNEY GENERAL

Tax imposed by this section is not a tax on doing business but is an annual tax on the privilege of being incorporated. 1957 Ga. Op. Att'y Gen. 282.

Liability for the tax first attaches on the date of incorporation. — Fact that a corporation does nothing further is not material, and should not be, since the mere preemption of a corporate name is a benefit flowing from incorporation even when nothing further is done. Moreover, since the statute provides a minimum tax of $10.00 the fact that no capitalization takes place and no money is paid into the corporation is also ineffective to deny liability for the $10.00 minimum tax. 1957 Ga. Op. Att'y Gen. 282.

Georgia corporation is taxable, even though the corporation is not doing business. 1954-56 Ga. Op. Att'y Gen. 703.

Doing business and owning of property in state not required for taxation. — Corporation organized under Georgia law is liable for the corporate net worth tax even though the corporation is doing no business in this state and owns no property herein. Such a corporation would be subject to the tax based on the corporation's entire net worth. 1967 Op. Att'y Gen. No. 67-199.

No refund upon liquidation or merger. — Corporation that liquidates or merges with another corporation during a taxable year is not entitled to a refund of a pro rata part of the annual corporate net worth tax. 1969 Op. Att'y Gen. No. 69-481.

Taxation of holding companies. — Though state banks and trust companies are exempt from corporation net worth tax, a holding company holding and owning real property used by a bank and trust company is not exempt. 1962 Ga. Op. Att'y Gen. 493.

RESEARCH REFERENCES

Am. Jur. 2d.

71 Am. Jur. 2d, State and Local Taxation, § 159 et seq.

ALR.

Stock contemplated by statute imposing tax upon, or measuring it by, capital stock, 89 A.L.R. 858; 153 A.L.R. 693.

48-13-73. Amount of corporate net worth tax; amount for taxable period less than six months.

(a) The tax imposed by this article shall be based upon corporate net worth according to the following table:

Corporations with Net Worth Including Issued Capital Stock, Paid-in Surplus, and Earned Surplus	Amount of Tax
Over $100,000.00 and not exceeding $150,000.00	$ 125.00
Over $150,000.00 and not exceeding $200,000.00	150.00
Over $200,000.00 and not exceeding $300,000.00	200.00
Over $300,000.00 and not exceeding $500,000.00	250.00
Over $500,000.00 and not exceeding $750,000.00	300.00
Over $750,000.00 and not exceeding $1,000,000.00	500.00
Over $1,000,000.00 and not exceeding $2,000,000.00	750.00
Over $2,000,000.00 and not exceeding $4,000,000.00	1,000.00
Over $4,000,000.00 and not exceeding $6,000,000.00	1,250.00
Over $6,000,000.00 and not exceeding $8,000,000.00	1,500.00

Over $8,000,000.00 and not exceeding $10,000,000.00	1,750.00
Over $10,000,000.00 and not exceeding $12,000,000.00 ...	2,000.00
Over $12,000,000.00 and not exceeding $14,000,000.00 ...	2,500.00
Over $14,000,000.00 and not exceeding $16,000,000.00 ...	3,000.00
Over $16,000,000.00 and not exceeding $18,000,000.00 ...	3,500.00
Over $18,000,000.00 and not exceeding $20,000,000.00 ...	4,000.00
Over $20,000,000.00 and not exceeding $22,000,000.00 ...	4,500.00
Over $22,000,000.00	5,000.00

(b) With respect to any corporation coming into existence or becoming subject to the tax for the first time for an initial taxable period of less than six months, the tax imposed for such period shall be 50 percent of the tax imposed by this article for an entire year.

History.

Ga. L. 1929, p. 84, § 1; Ga. L. 1931, Ex. Sess. p. 76, § 1; Code 1933, §§ 92-2401, 92-2403; Ga. L. 1935, p. 11, § 2; Ga. L. 1941, p. 204, § 1; Ga. L. 1951, p. 157, § 5a; Ga. L. 1952, p. 371, § 1; Ga. L. 1953, Jan.-Feb. Sess., p. 290, § 6; Ga. L. 1953, Jan.-Feb. Sess., p. 295, § 1; Code 1933, § 92-2401, enacted by Ga. L. 1976, p. 1580, § 1; Code 1933, § 91A-6304, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 108; Ga. L. 2017, p. 637, § 2-3/SB 133.

Editor's notes.

Ga. L. 2017, p. 637, § 3-1(b)/SB 133, not codified by the General Assembly, provides, in part, that this Act shall be applicable to all taxable years beginning on or after January 1, 2018.

OPINIONS OF THE ATTORNEY GENERAL

Corporation must pay a minimum tax of $10.00, even though the corporation has a negative net worth. 1954-56 Ga. Op. Att'y Gen. 706.

No refund on liquidation or merger. — Corporation that liquidates or merges with another corporation during a taxable year is not entitled to a refund of a pro rata part of the annual corporate license or occupation tax. 1969 Op. Att'y Gen. No. 69-481.

RESEARCH REFERENCES

Am. Jur. 2d.

71 Am. Jur. 2d, State and Local Taxation, §§ 164 et seq., 171 et seq.

48-13-74. Determination of net worth of corporation; determination by commissioner absent disclosure of true net worth on corporation's books or return.

For the purpose of ascertaining the corporate net worth tax imposed by this article, the net worth of the corporation shall be presumed to be the net worth as disclosed on the corporation's books and as reflected on the return required to be filed annually by the corporation. In the event the commissioner ascertains that the books of any corporation reporting under this article or the return filed for any corporation reporting under this article, as provided in Code Section 48-13-77, does not disclose the true net worth of the corporation, the net worth of the corporation shall have the value fixed by the commissioner from any information obtained by the commissioner from any source.

History.

Ga. L. 1929, p. 84, § 1; Ga. L. 1931, Ex. Sess., p. 76, § 1; Code 1933, § 92-2401; Ga. L. 1935, p. 11, § 2; Ga. L. 1951, p. 157, § 5a; Ga. L. 1952, p. 371, § 1; Code 1933, § 92-2401, enacted by Ga. L. 1976, p. 1580, § 1; Code 1933, § 91A-6305, enacted by Ga. L. 1978, p. 309, § 2.

Law reviews.

For article discussing recordation of unrealized appreciation and the assessment of corporate franchise tax, see 25 Ga. B. J. 152 (1962).

JUDICIAL DECISIONS

Term "net worth" is the difference between assets and liabilities. Oxford v. Macon Tel. Publishing Co., 104 Ga. App. 788, 123 S.E.2d 277, 1961 Ga. App. LEXIS 802 (1961).

"Net worth" and "true net worth" not limited to issued capital stock, paid-in surplus, and earned surplus. — Measure of this tax shall be the true net worth of the corporation and the particular expression "including issued capital stock, paid-in surplus and earned surplus" following the words "net worth" in no way limits the meaning of the term "net worth" or "true net worth" as found in other parts of former Code 1933, Ch. 92-24. Oxford v. Macon Tel. Publishing Co., 104 Ga. App. 788, 123 S.E.2d 277, 1961 Ga. App. LEXIS 802 (1961).

Increase in valuation, known as "revaluation surplus," is part of the net assets or net worth of a corporation, and is included in the true net worth of the corporation as part of the measure of the corporate franchise tax imposed by this section when such "revaluation surplus" is included in the regular balance sheets of the corporation. Oxford v. Macon Tel. Publishing Co., 104 Ga. App. 788, 123 S.E.2d 277, 1961 Ga. App. LEXIS 802 (1961).

RESEARCH REFERENCES

ALR.

Transactions between affiliated corporations as basis of "bad debt" deduction in computing income tax or corporate franchise tax, 128 A.L.R. 1251.

Inclusion of investments in stock of other corporations in fixing base for taxation of corporation, 11 A.L.R.2d 323.

48-13-75. Apportionment of net worth of foreign corporation; determination of receipts derived from business in state; fixing value of capital stock; methods.

(a) For the purpose of ascertaining the corporate net worth tax imposed on a foreign corporation subject to the tax, the corporation shall be deemed to have employed in this state that proportion of its entire outstanding issued capital stock and surplus which its assets in this state and the gross receipts of business done in this state bear to all of its assets and the total gross receipts of business done by the corporation. Receipts shall be deemed to have been derived from business done within this state only if received from products shipped to customers in this state or delivered within this state to customers. In determining gross receipts within this state, receipts from sales negotiated or effected through offices of the taxpayer outside the state and delivered from storage from within the state to customers outside the state shall be excluded. Capital stock having no nominal or par value shall be deemed to have the value fixed for the stock by the commissioner from the information contained in the return to be filed by the corporation as provided in Code Section 48-13-77 and from any other information available to the commissioner.

(b) The commissioner may provide by regulation for an alternate method for apportionment of the net worth of a foreign corporation to this state when the formula set forth in subsection (a) of this Code section does not accurately reflect the volume of business done in this state in relation to the total volume of business done by the foreign corporation.

History.

Ga. L. 1929, p. 84, § 1; Ga. L. 1931, Ex. Sess., p. 76, § 1; Code 1933, § 92-2401; Ga. L. 1935, p. 11, § 2; Ga. L. 1951, p. 157, § 5a; Ga. L. 1952, p. 371, § 1; Code 1933, § 92-2401, enacted by Ga. L. 1976, p. 1580, § 1; Code 1933, § 91A-6306, enacted by Ga. L. 1978, p. 309, § 2.

Law reviews.

For article, "Foreign Corporations in Georgia," see 10 Ga. St. B.J. 243 (1973).

For article discussing taxation of foreign businesses in Georgia, see 27 Mercer L. Rev. 629 (1976).

RESEARCH REFERENCES

Am. Jur. 2d.

71 Am. Jur. 2d, State and Local Taxation, § 175 et seq.

C.J.S.

85 C.J.S., Taxation, § 1774.

ALR.

Stock in another corporation owned by foreign corporation as included in the property which measures the privilege tax payable by latter, 49 A.L.R. 1296.

Constitutionality of excise or franchise tax on foreign corporation as affected by inclusion or exclusion of intangible measuring or computing tax, 131 A.L.R. 940.

What constitutes a sale "at retail" within federal retailers' excise tax statute

(26 USC (IRC 1954) chap 31), 93 A.L.R.2d 1120.

48-13-76. Corporate net worth tax due on first day of tax period; determination of annual tax period; determination of first tax period.

(a) The corporate net worth tax imposed shall be due on the first day of the tax period. The annual tax period shall be the same as the annual tax period adopted by the corporation for state income tax purposes as provided by law. If a corporation does not return income taxes to this state, the tax period shall begin on January 1 and end on December 31 of each calendar year.

(b) The first tax period of a corporation coming into existence or otherwise becoming subject to the tax for the first time shall begin on the date of incorporation or of first becoming subject to the tax and shall end on the day immediately preceding the beginning of the regular annual tax period provided in subsection (a) of this Code section.

History.

Ga. L. 1929, p. 84, § 1; Ga. L. 1931, Ex. Sess., p. 76, § 1; Code 1933, § 92-2401; Ga. L. 1935, p. 11, § 2; Ga. L. 1951, p. 157, § 5a; Ga. L. 1952, p. 371, § 1; Ga. L. 1957, p. 107, § 1; Ga. L. 1965, p. 344, § 1; Ga. L. 1976, p. 1580, § 1; Code 1933, § 91A-6307, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 109.

48-13-77. Corporate net worth tax return and payment; procedure; combining net worth tax return with state income tax return.

Each corporation other than Georgia Subchapter "S" corporations subject to the tax imposed by this article shall file a return and pay the tax due on the fifteenth day of the fourth calendar month following the beginning of its tax period. Each Georgia Subchapter "S" corporation subject to the tax imposed by this article shall file a return and pay the tax due on the fifteenth day of the third calendar month following the beginning of its tax period. The commissioner may authorize combining the return required by this Code section with the state income tax return required by law. The return shall be signed and sworn to by an officer of the corporation and shall be forwarded to the commissioner.

History.

Code 1933, § 92-2402, enacted by Ga. L. 1976, p. 1580, § 2; Code 1933, § 91A-6308, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1989, p. 1118, § 1; Ga. L. 2016, p. 1, § 6/HB 742.

Editor's notes.

Ga. L. 1989, p. 1118, § 3, not codified by the General Assembly, provides that the amendments to this Code section by that Act shall apply to tax years beginning on and after January 1, 1989.

Ga. L. 2016, p. 1, § 8/HB 742, not codified by the General Assembly, provides, in part, that Sections 2, 3, 6, and 7 of this Act shall be applicable to all taxable years beginning on or after January 1, 2016.

RESEARCH REFERENCES

C.J.S.
85 C.J.S., Taxation § 1872 et seq.

48-13-78. Period for payment of tax; effect.

For corporations other than Georgia Subchapter "S" corporations, the tax imposed by this article shall be paid to the commissioner on or before the fifteenth day of the fourth calendar month beginning with the first calendar month of the tax period. For Georgia Subchapter "S" corporations, the tax imposed by this article shall be paid to the commissioner on or before the fifteenth day of the third calendar month beginning with the first calendar month of the tax period. Except as otherwise provided by law, the payment of the tax shall authorize the corporation to exercise the privilege provided in Code Section 48-13-72 in any county of this state. The payment of this tax shall not be construed to relieve a corporation or its agents of any other license or occupation tax.

History.
Ga. L. 1927, p. 56, § 6; Ga. L. 1929, p. 84, § 2; Ga. L. 1931, Ex. Sess., p. 76, § 1; Code 1933, § 92-2404; Ga. L. 1935, p. 11, § 2; Ga. L. 1953, Jan.-Feb. Sess., p. 285, § 1; Ga. L. 1971, p. 662, §§ 1, 2; Ga. L. 1972, p. 491, § 1; Code 1933, § 92-2403, enacted by Ga. L. 1976, p. 1580, § 3; Code 1933, § 91A-6309, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1989, p. 1118, § 2; Ga. L. 2016, p. 1, § 7/HB 742.

Editor's notes.
Ga. L. 1989, p. 1118, § 3, not codified by the General Assembly, provides that the amendments to this Code section by the Act shall apply to tax years beginning on and after January 1, 1989.

Ga. L. 2016, p. 1, § 8/HB 742, not codified by the General Assembly, provides, in part, that Sections 2, 3, 6, and 7 of this Act shall be applicable to all taxable years beginning on or after January 1, 2016.

48-13-79. Penalties; failure to file timely; extensions; failure to pay timely; interest.

(a) Each corporation subject to this article which fails to file timely the returns required by this article shall become liable for a penalty of 10 percent of the tax. The penalty shall be collected in the same manner as the tax is collected. The commissioner shall have the authority to extend the time for filing the return when good cause for the extension is shown.

(b) Should the tax imposed by this article remain unpaid after the date prescribed for payment, the delinquent corporation liable for the tax shall be subject to and shall pay, in addition to other penalties incurred, a penalty of 10 percent of the tax for failure to pay the tax when due.

(c) Any tax imposed by this article which remains unpaid after the

date prescribed for payment shall bear interest at the rate specified in Code Section 48-2-40 until paid. The interest shall be in addition to all other penalties prescribed by law and shall be collected in the same manner as the tax imposed by this article.

History.
Ga. L. 1935, p. 11, § 2; Ga. L. 1953, Jan.-Feb. Sess., p. 290, §§ 3, 4; Ga. L. 1947, p. 107, §§ 3, 4; Code 1933, § 92-2404, enacted by Ga. L. 1976, p. 1580, § 4; Code 1933, § 91A-6310, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1980, p. 10, § 41.

RESEARCH REFERENCES

C.J.S.
85 C.J.S., Taxation, § 1772 et seq.

ARTICLE 5

EXCISE TAXES ON RENTAL MOTOR VEHICLES

48-13-90. Legislative purpose and intent.

It is declared to be the purpose and intent of the General Assembly that:

(1) Each county and municipality in this state shall be authorized to levy certain excise taxes as provided in this article; and

(2) Funds derived from such tax shall be made available for the purpose of promoting industry, trade, commerce, and tourism; for the provision of convention, trade, sports, and recreational facilities; and for public safety purposes.

History.
Code 1981, § 48-13-90, enacted by Ga. L. 1996, p. 1639, § 1.

48-13-91. Definitions.

As used in this article, the term:

(1) "Rental charge" means the total value received by a rental motor vehicle concern for the rental or lease for 31 or fewer consecutive days of a rental motor vehicle, including the total cash and nonmonetary consideration for the rental or lease including, but not limited to, charges based on time or mileage and charges for insurance coverage or collision damage waiver but excluding all charges for motor fuel taxes or sales taxes.

(2) "Rental motor vehicle" means a motor vehicle designed to carry ten or fewer passengers and used primarily for the transportation of persons that is rented or leased without a driver regardless of whether such vehicle is licensed in this state.

(3) "Rental motor vehicle concern" means a person or legal entity which owns or leases five or more rental motor vehicles and which regularly rents or leases such vehicles to the public for value.

History.
Code 1981, § 48-13-91, enacted by Ga. L. 1996, p. 1639, § 1.

48-13-92. Special districts.

Pursuant to the authority granted by Article IX, Section II, Paragraph VI of the Constitution of this state, there are created within this state 159 special districts. One such district shall exist within the geographical boundaries of each county, and the territory of each district shall include all of the territory within the county except territory located within the boundaries of any municipality that imposes an excise tax on charges to the public for the rental or lease of rental motor vehicles under this article.

History.
Code 1981, § 48-13-92, enacted by Ga. L. 1996, p. 1639, § 1.

48-13-93. Levy and collection of excise taxes upon motor vehicle rental charges; expenditure of taxes; purpose.

(a)(1) The governing authority of each municipality in this state may levy and collect an excise tax upon the rental charge collected by a rental motor vehicle concern when such charge constitutes a taxable event for purposes of sales and use tax under Article 1 of Chapter 8 of this title. Within the territorial limits of the special district located within the county, each county in this state may levy and collect an excise tax upon the rental charge collected by a rental motor vehicle concern when such charge constitutes a taxable event for purposes of sales and use tax under Article 1 of Chapter 8 of this title. The tax levied pursuant to this article shall be levied or collected at the rate of 3 percent of the rental charges. The tax levied pursuant to this article shall be imposed only at the time when and place where a customer pays sales tax with respect to the rental charge. The customer who pays a rental charge that is subject to a tax levied as provided in this article shall be liable for the tax. The tax shall be paid by the customer to the rental motor vehicle concern. The tax shall be a debt of the customer to the rental motor vehicle concern until it is paid and shall be recoverable at law in the same manner as authorized for the recovery of other debts. The rental motor vehicle concern collecting the tax shall remit the tax to the governing authority imposing the tax, and the tax remitted shall be a credit against the tax imposed on the rental motor vehicle concern. Every

rental motor vehicle concern subject to a tax levied as provided in this article shall be liable for the tax at the applicable rate on the charges actually collected or the amount of taxes collected from the customers whichever is greater.

(2) A county or municipality levying an excise tax as provided in paragraph (1) of this subsection shall only levy such tax by ordinance which shall specify with particularity the authorized projects or purposes, or both, for which proceeds of the tax are to be expended and shall apply in each fiscal year during which the tax is collected such tax proceeds for the purpose of:

(A) Promoting industry, trade, commerce, and tourism;

(B) Capital outlay projects consisting of the construction of convention, trade, sports, and recreational facilities, or public safety facilities, including the acquiring, constructing, renovating, improving, and equipping of parking facilities, pedestrian walkways, plazas, connections, and other public improvements associated with such convention, trade, sports, and recreational facilities or public safety facilities or the retirement of debt issued with respect to such capital outlay projects; and

(C) Maintenance and operation expenses or security and public safety expenses associated with capital outlay projects funded pursuant to subparagraph (B) of this paragraph.

(3) Amounts collected pursuant to this article may be expended pursuant to a contract or contracts with a county, municipality, development authority, downtown development authority, urban redevelopment authority, recreation authority, or any combination of two or more of such entities. Nothing in this article shall be construed to limit the formation of intergovernmental contracts pursuant to the authority granted by Article IX, Section III, Paragraph I of the Constitution of this state to accomplish the purposes described in paragraph (2) of this subsection including the construction and maintenance of facilities located outside the special district within which the excise tax is levied and collected and which benefit the special district.

(4) Any tax levied pursuant to this article shall terminate not later than December 31, 2047. Following the termination of the tax, any county or municipality which has levied a tax pursuant to this article shall not thereafter be again authorized to levy a tax under this article.

(5) No tax shall be imposed under this article on the rental charge associated with the rental or lease of a rental motor vehicle if either:

(A) The customer picks up the rental motor vehicle outside this state and returns it in this state; or

(B) The customer picks up the rental motor vehicle in this state and returns it outside this state.

(6) Nothing in this Code section shall be construed to impair, or authorize or require the impairment of, any existing contract or contractual rights.

(7) Any action by a local governing authority to impose the tax authorized under this Code section shall become effective no sooner than the first day of the month following the month of its adoption by the local governing authority.

(b) No tax under this article may be levied or collected by a county outside the territorial limits of the special district located within the county.

History.
Code 1981, § 48-13-93, enacted by Ga. L. 1996, p. 1639, § 1; Ga. L. 2016, p. 772, § 2/HB 937.

48-13-94. Reimbursement for persons collecting tax.

Each person collecting the tax authorized by this article shall be allowed a percentage of the tax due and accounted for and shall be reimbursed in the form of a deduction in submitting, reporting, and paying the amount due if the amount due is not delinquent at the time of payment. The rate of deduction shall be 3 percent of the amount due but only if the amount due was not delinquent at the time of payment.

History.
Code 1981, § 48-13-94, enacted by Ga. L. 1996, p. 1639, § 1.

48-13-95. Local powers and procedures.

The manner of imposition, payment, and collection of the tax and all other procedures related to the tax shall be as provided by each county and municipality electing to exercise the powers conferred by this article.

History.
Code 1981, § 48-13-95, enacted by Ga. L. 1996, p. 1639, § 1.

48-13-96. Auditor's report.

As a part of the audit report required under Code Section 36-81-7, the auditor shall include, in a separate schedule, a report of the revenues and expenditures pertaining to the tax under this article.

History.
Code 1981, § 48-13-96, enacted by Ga. L. 1996, p. 1639, § 1.

48-13-97. Cash and credit rental charges to be reported on either cash or accrual basis of accounting.

(a) Any person collecting the tax under this article having both cash and credit rental charges may report the rental charges on either the cash or accrual basis of accounting. Each election of a basis of accounting shall be made on the first return filed on or after July 1, 1998, and, once made, the election shall be irrevocable unless the commissioner grants written permission for a change. Permission for a change in the basis of accounting shall be granted only upon written application and under rules and regulations promulgated by the commissioner.

(b) Any person reporting on a cash basis of accounting shall include in each return all cash rental charges made during the period covered by the return and all collections made in any period on credit rental charges of prior periods and shall pay the tax on the rental charges at the time of filing the return.

(c) Any person reporting on the accrual basis of accounting shall be allowed a deduction for bad debts under rules and regulations of the commissioner on the same basis that bad debts are allowed as a deduction on state income tax returns.

History.
Code 1981, § 48-13-97, enacted by Ga. L. 1998, p. 598, § 1.

ARTICLE 6

EXCISE TAX ON SALE OR USE OF ENERGY

Editor's notes.
Ga. L. 2012, p. 257, § 7-1(h)/HB 386, not codified by the General Assembly, provides: "Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by the passage of this Act and shall continue to be governed by the provisions of general law as it existed immediately prior to the effective date of the relevant portion of this Act."

Ga. L. 2012, p. 257, § 7-1(i)/HB 386, not codified by the General Assembly, provides: "This Act shall not abate any prosecution, punishment, penalty, administrative proceedings or remedies, or civil action related to any violation of law committed prior to the effective date of the relevant portion of this Act."

Ga. L. 2012, p. 257, § 7-2/HB 386, not codified by the General Assembly, provides for severability.

Law reviews.
For article on the 2012 enactment of this article, see 29 Georgia St. U.L. Rev. 112 (2012).

48-13-110. Definitions.

As used in this article, the term:

(1) "Dealer" means any person who sells energy at retail, offers to sell energy at retail, or has in his or her possession any energy for sale at retail.

(2) "Energy" has the same meaning as in Code Section 48-8-3.2.

(3) "Local sales and use tax" means any of the following:

(A) The county special purpose local option sales and use tax under Part 1 of Article 3 of Chapter 8 of this title;

(B) The joint county and municipal sales and use tax under Article 2 of Chapter 8 of this title;

(C) The homestead option sales and use tax under Article 2A of Chapter 8 of this title;

(D) The tax levied for purposes of a metropolitan area system of public transportation, as authorized by the amendment to the Constitution set out at Ga. L. 1964, p. 1008; the continuation of such amendment under Article XI, Section I, Paragraph IV(d) of the Constitution; and the laws enacted pursuant to such constitutional amendment; or

(E) The water and sewer projects and costs tax pursuant to Article 4 of Chapter 8 of this title.

(4) "Purchaser" means any person who purchases energy and who would have been liable for sales and use tax on such energy but for the exemption provided for in Code Section 48-8-3.2.

History. Code 1981, § 48-13-110, enacted by Ga. L. 2012, p. 257, § 5-4/HB 386; Ga. L. 2013, p. 787, § 1/HB 250.

48-13-111. Creation of special districts.

Pursuant to the authority granted by Article IX, Section II, Paragraph VI of the Constitution, there are created within this state 159 special districts. One such district shall exist within the geographical boundaries of each county, and the territory of each district shall include all of the territory within the county except territory located within the boundaries of any municipality that imposes an excise tax on energy under this article.

History. Code 1981, § 48-13-111, enacted by Ga. L. 2012, p. 257, § 5-4/HB 386.

48-13-112. Levy and collection of excise tax on sale or use of energy.

(a)(1) Within the territorial limits of the special district located

within the county, each county in this state may levy and collect an excise tax upon the sale or use of energy when such sale or use would have constituted a taxable event for purposes of sales and use tax under Article 1 of Chapter 8 of this title but for the exemption in Code Section 48-8-3.2.

(2) The governing authority of each municipality in this state may, subject to the conditions of Code Section 48-13-115, levy and collect an excise tax upon the sale or use of energy when such sale or use would have constituted a taxable event for purposes of sales and use tax under Article 1 of Chapter 8 of this title but for the exemption in Code Section 48-8-3.2.

(3) The excise tax levied pursuant to this article shall be phased in over a four-year period as follows:

(A) For the period commencing January 1, 2013, and concluding at the last moment of December 31, 2013, such excise tax shall be at a rate equivalent to 25 percent of the total amount of local sales and use tax in effect in such special district that would be collected on the sale, use, storage, or consumption of energy but for the exemption in Code Section 48-8-3.2;

(B) For the period commencing January 1, 2014, and concluding at the last moment of December 31, 2014, such excise tax shall be at a rate equivalent to 50 percent of the total amount of local sales and use tax in effect in such special district that would be collected on the sale, use, storage, or consumption of energy but for the exemption in Code Section 48-8-3.2;

(C) For the period commencing January 1, 2015, and concluding at the last moment of December 31, 2015, such excise tax shall be at a rate equivalent to 75 percent of the total amount of local sales and use tax in effect in such special district that would be collected on the sale, use, storage, or consumption of energy but for the exemption in Code Section 48-8-3.2; and

(D) On or after January 1, 2016, such excise tax shall be at a rate equivalent to 100 percent of the total amount of local sales and use tax in effect in such special district that would be collected on the sale, use, storage, or consumption of energy but for the exemption in Code Section 48-8-3.2.

(b) Any county or municipality which imposes the excise tax under this article during the phase-in period provided for in this Code section shall levy such excise tax at the amount provided for under the applicable year of the phase in. Any county or municipality which imposes such excise tax on or after January 1, 2016, shall impose it at the rate specified under subparagraph (a)(3)(D) of this Code section.

(c)(1) The excise tax authorized by this article shall be imposed only at the time that sales and use tax on the sale or use of such energy would have been due and payable under Code Section 48-8-30 but for the exemption in Code Section 48-8-3.2. The excise tax shall be due and payable in the same manner as would be otherwise required under Article 1 of Chapter 8 of this title except as otherwise provided under this article. The excise tax shall be a debt of the purchaser of energy until it is paid and shall be recoverable at law in the same manner as authorized for the recovery of other debts. The dealer collecting the excise tax shall remit the excise tax to the governing authority imposing the excise tax. Every dealer required to collect the excise tax levied as provided in this article shall be liable for the excise tax at the applicable rate on the charges for energy actually collected or the amount of excise taxes collected from the purchasers of energy, whichever is greater.

(2) Dealers shall be allowed a percentage of the amount of tax due and accounted for and shall be reimbursed in the form of a deduction in submitting, reporting, and paying the amount due if such amount is not delinquent at the time of payment. The rate of deduction shall be 3 percent of the amount due of the first $3,000.00 of the combined total amount of all excise tax computed on a monthly basis and due to each governmental authority imposing the tax and a deduction of one-half of 1 percent of the portion exceeding $3,000.00 of the combined total amount of all excise tax computed on a monthly basis and due to each governmental authority imposing the tax, but only if the amount due was not delinquent at the time of payment to the local government enacting such excise tax in accordance with Code Section 48-13-119.

(d) A county or municipality levying an excise tax as provided in this subsection shall only levy such excise tax initially by ordinance and at the equivalent rate as determined under paragraph (3) of subsection (a) of this Code section. Following such initial imposition, on or after January 1, 2016, the rate of the tax under this article shall be controlled by the maximum amount of local sales and use tax in effect in the special district, but in no event more than 2 percent; however, this 2 percent limitation shall not apply in a municipality that levies a water and sewer projects and costs tax pursuant to Article 4 of Chapter 8 of this title, in which case there shall be a 3 percent limitation. In the event the total rate of local sales and use taxes in effect in the special district decreases from 2 percent to 1 percent, the rate of the excise tax under this article shall likewise be reduced at the same time such local sales and use tax rate reduction becomes effective. In the event the total rate of local sales and use taxes in effect in the special district increases from 1 percent to 2 percent, the rate of the excise tax under this article shall likewise be increased at the same time such local sales and use tax rate increase becomes effective.

(e) An excise tax under this article shall not be levied or collected by a county or municipality outside the territorial limits of the special district located within the county.

(f) An excise tax authorized under this article shall not apply to the sale or use of energy used for and in the construction of a competitive project of regional significance under paragraph (93) of Code Section 48-8-3 during the construction of such project within the time period specified under such paragraph (93).

History. Code 1981, § 48-13-112, enacted by Ga. L. 2012, p. 257, § 5-4/HB 386; Ga. L. 2013, p. 787, § 2/HB 250.

48-13-113. Notice of meeting to determine levy.

Prior to the adoption of the ordinance levying an excise tax authorized under this article, the county governing authority within a special district shall meet and confer with each of the municipalities within the special district. Any county that desires to have an excise tax authorized under this article levied within the special district shall deliver or mail a written notice to the mayor or chief elected official in each municipality located within the special district. If the governing authority of such county does not deliver or mail such notice within 30 days of the date of the written request of the mayor or chief elected official of a municipality within the special district, then such mayor or chief elected official shall deliver or mail a written notice to the mayor or chief elected official in each municipality located within the special district and to the county governing authority. Such notice shall contain the date, time, place, and purpose of a meeting at which the governing authorities of the county and of each municipality are to discuss whether or not the excise tax should be levied within the special district. The notice shall be delivered or mailed at least ten days prior to the date of the meeting. The meeting shall be held at least 30 days prior to the adoption of any ordinance levying an excise tax authorized under this article.

History. Code 1981, § 48-13-113, enacted by Ga. L. 2012, p. 257, § 5-4/HB 386; Ga. L. 2013, p. 787, § 3/HB 250.

48-13-114. Adoption of ordinance levying excise tax within special district.

(a)(1) Following the meeting required under Code Section 48-13-113, the governing authority of the county within the special district shall enter into an intergovernmental agreement with the governing authority of each municipality wishing to participate in such excise tax that provides for the distribution of the proceeds as provided in subsection (c) of this Code section. Following the execution of such

agreement, the governing authority of such county shall be authorized to adopt an ordinance levying the excise tax.

(2) If a municipality elects not to participate in such excise tax by not signing such agreement, then such municipality shall not receive any proceeds from the excise tax. In such event, any proportionate share that would have been distributed to such municipality under an applicable local sales and use tax as provided in subsection (c) of this Code section shall instead be distributed to the general fund of the county.

(b) The excise tax proceeds shall be allocated and distributed by the county governing authority at the end of each calendar month. Of such excise tax proceeds, an amount equal to 1 percent of the proceeds collected by the county shall be paid into the general fund of the county to defray the costs of collection and administration. The remainder of the proceeds shall be distributed in accordance with the intergovernmental agreement as provided in subsection (c) of this Code section.

(c) The excise tax proceeds shall be allocated and distributed by the county governing authority within 30 days following the end of each calendar month in the manner provided in this subsection. Such proceeds shall not be subject to any use or expenditure requirements provided for under any of the local sales and use taxes but shall be authorized to be expended in the same manner as otherwise would have been required under such local sales and use taxes or may be expended for any lawful purpose. Of such excise tax proceeds:

(1) If two such local sales and use taxes are in effect in the special district, an amount equal to one-half of the proceeds of the excise tax shall be distributed to the county general fund and the general fund of each participating municipality located in such county according to the same proportionate share as specified under the distribution provisions of the first local sales and use tax and an amount equal to one-half of the proceeds of the excise tax shall be distributed to the county general fund and the general fund of each participating municipality located in such county according to the same proportionate share as specified under the distribution provisions of the second local sales and use tax; or

(2) If only one such local sales and use tax is in effect in the special district, then the proceeds of the excise tax shall be distributed to the county general fund and the general fund of each participating municipality located in such county according to the same proportionate share as specified under the distribution provisions of the local sales and use tax.

History.
Code 1981, § 48-13-114, enacted by Ga. L. 2012, p. 257, § 5-4/HB 386.

48-13-115. Nonparticipation of county within special district to enter into intergovernmental agreement.

(a)(1) Within 30 days following the meeting required under Code Section 48-13-113, if the governing authority of the county within the special district fails or refuses to enter into an intergovernmental agreement with the governing authority of each municipality wishing to participate in such excise tax, then the governing authority of each municipality wishing to levy the excise tax shall be authorized to adopt an ordinance levying the excise tax within the corporate limits of such municipality. If a county elects not to participate in such excise tax by not signing such agreement, then the county shall not receive any proceeds from the excise tax. The proceeds of such excise tax shall be deposited in the general fund of each municipality.

(2) If, subsequent to the levy of an excise tax by a municipality under paragraph (1) of this subsection, a county determines to commence proceedings for the imposition of the excise tax authorized under this article, then proceedings for such imposition shall commence in the same manner as otherwise provided under Code Section 48-13-113. Except as to a municipality that levies a water and sewer projects and costs tax pursuant to Article 4 of Chapter 8 of this title, if a county complies with the requirements of this article and enacts an ordinance imposing the excise tax, the excise tax levied by such municipality shall cease on the day immediately prior to the day the new tax levied by the county commences. If such municipality elects not to participate, its current excise tax authorized under this article shall terminate on the date the county's tax levy becomes effective, and it shall not receive any proceeds under the county levy.

(b)(1) If a municipality located within a special district where the excise tax is imposed by the county is not participating in such excise tax and is not receiving proceeds of that excise tax, the governing authority of that nonparticipating municipality may give written notice to the governing authority of the county and the governing authority of each participating municipality within the special district of its decision to opt in to the existing intergovernmental agreement. Within 60 days of the date of such notice, an amended intergovernmental agreement shall be executed by the governing authority of the municipality exercising such opt in and the governing authorities of the county and each currently participating municipality.

(2) When an amended intergovernmental agreement is executed pursuant to paragraph (1) of this subsection, the revised distribution

of proceeds thereunder shall not become effective until the first day of the next succeeding calendar quarter which begins more than 80 days after the execution date of such amended intergovernmental agreement. The distribution of proceeds of the excise tax shall continue under the prior intergovernmental agreement until the date provided for in this paragraph.

History.
Code 1981, § 48-13-115, enacted by Ga. L. 2012, p. 257, § 5-4/HB 386; Ga. L. 2012, p. 954, § 4/SB 332; Ga. L. 2013, p. 787, § 4/HB 250.

Code Commission notes.
Pursuant to Code Section 28-9-3, in 2012, the enactment of this Code section by Ga. L. 2012, p. 257, § 5-4/HB 386, was treated as impliedly repealed and superseded by Ga. L. 2012, p. 954, § 4/SB 332, due to irreconcilable conflict. See County of Butts v. Strahan, 151 Ga. 417 (1921); Keener v. McDougall, 232 Ga. 273 (1974).

48-13-116. Imposition of excise tax; effective date; limitations.

(a)(1) Except as otherwise provided in Code Section 48-13-115, an excise tax authorized by this article shall become effective on the first day of the next succeeding calendar quarter which begins more than 80 days after the adoption date of an ordinance levying the excise tax.

(2) If services are regularly billed on a monthly basis, however, the excise tax shall become effective with respect to and the tax shall apply to services billed on or after the effective date specified in paragraph (1) of this subsection.

(b) The excise tax shall cease to be imposed on the first day of the next succeeding calendar quarter which begins more than 80 days after the adoption date of an ordinance terminating the excise tax.

(c) At no time shall more than a single 2 percent excise tax under this article be imposed within a special district or a municipality, except that in the event a municipality levies a water and sewer projects and costs tax pursuant to Article 4 of Chapter 8 of this title, a single 3 percent excise tax may be imposed within such municipality.

(d) Following the termination of an excise tax under this article, the governing authority of a county within a special district or the mayor or chief elected official of a municipality in the special district in which an excise tax authorized by this article is in effect may initiate proceedings for the reimposition of a tax under this article in the same manner as provided in this article for the initial imposition of such tax.

History.
Code 1981, § 48-13-116, enacted by Ga. L. 2012, p. 257, § 5-4/HB 386; Ga. L. 2012, p. 954, § 5/SB 332; Ga. L. 2013, p. 787, § 5/HB 250.

Code Commission notes.
Pursuant to Code Section 28-9-3, in 2012, the enactment of this Code section by Ga. L. 2012, p. 257, § 5-4/HB 386, was treated as impliedly repealed and

superseded by Ga. L. 2012, p. 954, § 5/SB 332, due to irreconcilable conflict. See County of Butts v. Strahan, 151 Ga. 417 (1921); Keener v. McDougall, 232 Ga. 273 (1974).

48-13-117. Procedures for payment, collection, and assessment; refund claims; contingent contract or arrangement for assessment of liability prohibited.

(a) Except as otherwise provided in this Code section, the manner of payment and collection of the excise tax and all other procedures related to the tax, including, but not limited to, periodic auditing of dealers collecting and remitting the excise tax authorized under this article, shall be as provided by each county and municipality electing to exercise the powers conferred by this article.

(b)(1) The amount of the excise tax authorized by this article shall be assessed upon either the dealer or the purchaser within three years after the time that sales and use tax on the sale or use of such energy would have been due and payable under Code Section 48-8-30 but for the exemption in Code Section 48-8-3.2, except as otherwise provided in this Code section.

(2) In the case of a dealer or purchaser who knowingly and willfully evades all or any portion of the excise tax imposed by this article, the amount of such excise tax evaded may be assessed at any time upon such dealer or such purchaser, as the case may be.

(c) No action without assessment shall be brought against either the dealer or the purchaser for the collection of any excise tax authorized by this article after the expiration of the period for assessment.

(d)(1) A claim for refund of the excise tax levied pursuant to this article erroneously or illegally assessed and collected may be made by the dealer or the purchaser at any time within three years after the date of the payment of the excise tax to the governing authority. In making any such claim for refund, the procedures provided in Code Section 48-5-380 shall apply.

(2) If a claim for refund of taxes paid for any taxable period is filed within the last six months of the period during which the county or municipality imposing the tax may assess the amount of taxes, the assessment period is extended for a period of six months beginning on the day the claim for refund is filed.

(e) Where, before the expiration of the time prescribed in this Code section for the assessment of the excise tax authorized by this article, both an authorized representative of the governing authority and the dealer or purchaser have consented in writing to its assessment after such time, the excise tax may be assessed at any time prior to the

expiration of the agreed upon period. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the previously agreed upon period. The governing authority is authorized in any such agreement to extend similarly the period within which a claim for refund may be filed.

(f) In determining the liability of any dealer or purchaser for the excise tax, the governing authority imposing such tax may not employ or otherwise hire an agent who is compensated in whole or in part by such governing authority for services rendered on a contingent basis or any other basis related to the amount of tax, interest, or penalty assessed against or collected from the dealer or purchaser. Any such contract or arrangement, if made or entered into, is void and unenforceable.

History.
Code 1981, § 48-13-117, enacted by Ga. L. 2012, p. 257, § 5-4/HB 386; Ga. L. 2013, p. 787, § 6/HB 250.

48-13-118. Separate revenue schedule required.

As a part of the audit report required under Code Section 36-81-7, the auditor shall include, in a separate schedule, a report of the revenues pertaining to the excise tax under this article.

History.
Code 1981, § 48-13-118, enacted by Ga. L. 2012, p. 257, § 5-4/HB 386.

48-13-119. Transmittal of returns and remission of taxes due; form of returns; estimated tax liability.

(a) Each dealer, on or before the twentieth day of each month, shall transmit returns and remit taxes due to any applicable governing authority imposing a tax authorized under this article showing the gross charges for energy taxable under the ordinance enacted pursuant to this article during the preceding calendar month. The governing authority imposing the tax may provide by resolution or ordinance for quarterly or annual returns. The returns required by this subsection shall be made upon forms prescribed, prepared, and furnished by the governing authority imposing the tax.

(b) As used in this subsection, the term "estimated tax liability" means a dealer's tax liability under the ordinance enacted pursuant to this article, adjusted to account for any subsequent change in the rate of tax authorized to be imposed under this article. If the estimated tax liability of a dealer for any taxable period exceeds $2,500.00, the dealer shall file a return and remit to the governing authority imposing the tax not less than 50 percent of the estimated tax liability for the taxable period on or before the twentieth day of the period. The amount of the

payment of the estimated tax liability shall be credited against the amount to be due on the return required under subsection (a) of this Code section. This subsection shall not apply to any dealer unless during the previous fiscal year the dealer's monthly payments exceeded $2,500.00 per month for three consecutive months or more.

History.
Code 1981, § 48-13-119, enacted by Ga. L. 2013, p. 787, § 7/HB 250.

48-13-120. Extension of time for making returns; penalties and interest; failure to make return.

(a)(1) The governing authority imposing a tax authorized under this article may, for good cause, extend the time for making any returns required under this article for not more than 30 days.

(2) No extension granted pursuant to paragraph (1) of this subsection shall be valid unless granted in writing upon written application, and then the extension shall only be valid for a period, as appropriate, of not more than 12 consecutive months or four consecutive calendar quarters.

(3) Upon the granting of any extension authorized by this subsection, the dealer shall remit to the governing authority imposing a tax authorized under this article on or before the date the tax would otherwise become due without the extension an amount which equals not less than 100 percent of the dealer's payment for the corresponding period of the preceding tax year.

(4) No interest or penalty shall be charged by reason of the granting of an extension pursuant to this subsection during the first ten days of each extension period. Thereafter, interest shall be collected upon the unpaid balance of the dealer's liability at the rate specified in Code Section 48-2-40.

(b) In the event any dealer fails to make a return and pay the tax as provided by this article or makes a grossly incorrect return or a return that is false or fraudulent, the governing authority imposing a tax authorized under this article shall make an estimate for the taxable period of taxable charges of the dealer. Based upon its estimate, the governing authority shall assess and collect the taxes, interest, and penalties, as accrued, on the basis of the assessments against the dealer and such assessment may be assessed against the dealer at any time.

History.
Code 1981, § 48-13-120, enacted by Ga. L. 2013, p. 787, § 7/HB 250.

48-13-121. Keeping and preservation of records, exemption certificates, and books of account; records to be open to examination; audits and examinations.

(a) Each dealer required to make a return and collect and remit any tax authorized under this article shall keep and preserve:

(1) Suitable records of the energy charges taxable under this article;

(2) Any exemption certificates received by the dealer; and

(3) Other books of account which are necessary to determine the amount of tax due.

(b) All books, invoices, exemption certificates, and other records required by this Code section to be kept shall be open to examination at all reasonable hours by the governing authority imposing a tax authorized under this article.

(c) Any audit or examination by a governing authority imposing a tax authorized under this article of the books and records of a dealer for the purpose of ascertaining the proper amount of tax due shall be based primarily upon any sales tax audit report of the dealer, any other tax audit report of the dealer, or any return created pursuant to Code Section 48-13-119 within the time periods described in subsection (b) of Code Section 48-13-117 or of subsection (b) of Code Section 48-13-120. Any information secured by the local governing authority incident to any such audit or examination shall be confidential and privileged to the same extent as provided in Code Section 48-2-15 for tax information secured by the commissioner.

History.
Code 1981, § 48-13-121, enacted by Ga. L. 2013, p. 787, § 7/HB 250.

48-13-122. Authority to waive penalties.

The provisions of Code Section 48-2-41, relating to authority to waive interest on unpaid taxes, and Code Section 48-2-43, relating to authority to waive penalties, shall apply to taxes imposed by any local governing authority pursuant to this article, provided that the local governing authority shall stand in lieu of the commissioner, and the county or municipality shall stand in lieu of the state for purposes of this Code section.

History.
Code 1981, § 48-13-122, enacted by Ga. L. 2013, p. 787, § 7/HB 250.

48-13-123. Failure to make returns or pay full amount of tax; penalties and interest.

(a) When any dealer fails to make any return or to pay the full amount of the tax required by an ordinance authorized by this article, there shall be imposed, in addition to other penalties provided by law, a penalty to be added to the tax in the amount of 5 percent or $5.00, whichever is greater, if the failure is for not more than 30 days and an additional 5 percent or $5.00, whichever is greater, for each additional 30 days or fraction of 30 days during which the failure continues. The penalty for any single violation shall not exceed 25 percent or $25.00 in the aggregate, whichever is greater. If the failure is due to providential cause shown to the satisfaction of the governing authority imposing a tax authorized under this article in affidavit form attached to the return and remittance is made within ten days of due date, the return may be accepted exclusive of penalties and interest. In the case of a false or fraudulent return or of a failure to file a return where willful intent exists to defraud the governing authority of any tax due under an ordinance authorized by this article, a penalty of 50 percent of the tax due shall be assessed.

(b) All civil penalties and interest added to any tax imposed under an ordinance authorized by this article and collected by a county or municipality shall be included as revenue derived from such tax for purposes of the expenditure requirements imposed on such county or municipality as provided by this article.

History.
Code 1981, § 48-13-123, enacted by Ga. L. 2013, p. 787, § 7/HB 250.

48-13-124. Willful failure to collect tax; misdemeanor; punishment.

(a) It shall be unlawful for any dealer to knowingly and willfully fail, neglect, or refuse to collect the tax provided in this article, either by himself or herself or through his or her agents or employees.

(b) In addition to the penalty of being liable for and paying the tax himself or herself, any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor of a high and aggravated nature and, upon conviction thereof, shall be punished by a fine of not more than $5,000.00 or imprisonment for not more than one year, or both. Upon the second or subsequent conviction of a person who violates subsection (a) of this Code section, the person shall be guilty of a felony and shall be punished by a fine of not more than $10,000.00 or imprisonment for not more than five years, or both.

History.
Code 1981, § 48-13-124, enacted by Ga. L. 2013, p. 787, § 7/HB 250.

48-13-125. False or fraudulent return; penalty.

(a) It shall be unlawful for any dealer required by this article to knowingly and willfully make, render, sign, or verify any return to make a false or fraudulent return with intent to evade the tax levied by this article.

(b) Any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor of a high and aggravated nature and, upon conviction thereof, shall be punished by a fine of not more than $5,000.00 or imprisonment for not more than one year, or both. Upon the second or subsequent conviction of a person who violates subsection (a) of this Code section, the person shall be guilty of a felony and shall be punished by a fine of not more than $10,000.00 or imprisonment for not more than five years, or both.

History.
Code 1981, § 48-13-125, enacted by Ga. L. 2013, p. 787, § 7/HB 250.

48-13-126. Failure or refusal to furnish return; punishment.

(a) It shall be unlawful for any dealer subject to this article to knowingly and willfully fail or refuse to furnish any return required to be made by this article or to fail or refuse to furnish a supplemental return or other data required by the governing authority of the county or municipality pursuant to any provision of this article.

(b) Any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor of a high and aggravated nature and, upon conviction thereof, shall be punished by a fine of not more than $5,000.00 or imprisonment for not more than one year, or both. Upon the second or subsequent conviction of a person who violates subsection (a) of this Code section, the person shall be guilty of a felony and shall be punished by a fine of not more than $10,000.00 or imprisonment for not more than five years, or both.

History.
Code 1981, § 48-13-126, enacted by Ga. L. 2013, p. 787, § 7/HB 250.

48-13-127. Willful failure to keep records or open records to inspection; punishment.

(a) It shall be unlawful for any dealer subject to this article to

knowingly and willfully fail to keep records or to fail to open the records to inspection as required by law.

(b) Any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor of a high and aggravated nature and, upon conviction thereof, shall be punished by a fine of not more than $5,000.00 or imprisonment for not more than one year, or both. Upon the second or subsequent conviction of a person who violates subsection (a) of this Code section, the person shall be guilty of a felony and shall be punished by a fine of not more than $10,000.00 or imprisonment for not more than five years, or both.

History.
Code 1981, § 48-13-127, enacted by Ga. L. 2013, p. 787, § 7/HB 250.

48-13-128. Violation of article; punishment.

(a) It shall be unlawful for any dealer to violate any other provision of this article for which punishment is not otherwise provided.

(b) Any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor.

History.
Code 1981, § 48-13-128, enacted by Ga. L. 2013, p. 787, § 7/HB 250.

ARTICLE 7

TAXATION OF CONSUMER FIREWORKS

Administrative rules and regulations. Fireworks Excise Tax, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Fees and Excise Taxes, Rule 560-13-1-.01 et seq.

RESEARCH REFERENCES

Am. Jur. 2d.
31A Am. Jur. 2d, Explosions and Explosives, § 12 et seq.

C.J.S.
35 C.J.S., Explosives, § 1 et seq.

48-13-130. Definitions.

As used in this article, the term:

(1) "Consumer fireworks" shall have the same meaning as provided for in Code Section 25-10-1.

(2) "Seller" means the person who is issued a license pursuant to Code Section 25-10-5.1.

History.
Code 1981, § 48-13-130, enacted by Ga. L. 2015, p. 274, § 9/HB 110.

48-13-131. Excise tax imposed; rate of taxation; establishment of Fireworks Trust Fund.

(a) An excise tax, in addition to all other taxes of every kind imposed by law, is imposed upon the sale of consumer fireworks and any items provided for in paragraph (2) of subsection (b) of Code Section 25-10-1 in this state at a rate of 5 percent per item sold.

(b)(1)(A) There shall be established a Fireworks Trust Fund as a separate fund in the state treasury. The commissioner shall be the trustee of the fund.

(B) The state treasurer shall invest the money held in the Fireworks Trust Fund in the same manner in which state funds are invested as authorized by the State Depository Board pursuant to Article 3 of Chapter 17 of Title 50. Interest earned by the money held in the trust fund shall be accounted for separately and shall be credited to the trust fund to be disbursed as other moneys in the trust fund.

(2) Under the authority granted and subject to the conditions imposed by Article III, Section IX, Paragraph VI(r) of the Constitution of Georgia, for the period beginning on July 1, 2022, and ending on June 30, 2032, all of the money collected pursuant to subsection (a) of this Code section shall be annually appropriated to the Fireworks Trust Fund established by paragraph (1) of this subsection and such funds shall not lapse as otherwise required by Article III, Section IX, Paragraph IV(c) of the Constitution of Georgia. Each annual appropriation shall be made through the General Appropriations Act and shall include all of the money collected from such source during the most recently completed fiscal year.

(3) All of the money appropriated to the Fireworks Trust Fund pursuant to paragraph (2) of this subsection shall be dedicated for use and expended as follows:

(A) The amount of 55 percent shall be provided to the Georgia Trauma Care Network Commission for purposes provided for under Code Section 31-11-102;

(B) The amount of 40 percent shall be provided to the Georgia Firefighter Standards and Training Council to be exclusively used for the implementation of a grant program to improve the equipping and training of firefighters and to improve the rating of fire departments in this state by the Insurance Services Office; and

(C) The amount of 5 percent shall be provided to local governments to be used solely for public safety purposes consisting of the operation of 9-1-1 systems under Part 4 of Article 2 of Chapter 5 of Title 46. The commissioner shall include such amount as a part of the 9-1-1 distribution made on or before October 15 of each year to such local governments.

(4) The commissioner shall prepare an accounting of the funds expended pursuant to this subsection during the most recently completed fiscal year to be provided to the Office of Planning and Budget, the House Budget and Research Office, and the Senate Budget and Evaluation Office by January 1 of each year.

(c) The excise tax imposed by this article shall be paid by the seller and due and payable in the same manner as would be otherwise required under Article 1 of Chapter 8 of this title.

History.
Code 1981, § 48-13-131, enacted by Ga. L. 2015, p. 274, § 9/HB 110; Ga. L. 2021, p. 761, § 18/HB 511.

Editor's notes.
The constitutional amendment (Ga. L. 2016, p. 272, § 2/SB 350) which added subsection (b) and redesignated former subsection (b) as present subsection (c) was ratified at the general election held November 8, 2016.

Ga. L. 2021, p. 761, § 23/HB 511, not codified by the General Assembly, provides: "In accordance with the requirements of Article III, Section IX, Paragraph VI(r) of the Constitution of Georgia, this Act shall not become law unless it receives the requisite two-thirds' majority vote in both the Senate and the House of Representatives and the amount of the funds dedicated by this Act do not equal or exceed 1 percent of the previous fiscal year's state revenues subject to appropriations."

48-13-132. Civil penalty for violations.

A seller who knowingly and willfully violates the requirements of this article shall be assessed a civil penalty of not more than $10,000.00 in addition to the amount of tax due.

History.
Code 1981, § 48-13-132, enacted by Ga. L. 2015, p. 274, § 9/HB 110.

48-13-133. Promulgation of rules and regulations.

The department is authorized to adopt rules and regulations necessary for the enforcement and implementation of the provisions of this Code section.

History.
Code 1981, § 48-13-133, enacted by Ga. L. 2015, p. 274, § 9/HB 110.

ARTICLE 8

EXCISE TAX ON FOR-HIRE GROUND TRANSPORTATION

Editor's notes.

Ga. L. 2020, p. 903, § 4-1/HB 105, not codified by the General Assembly, provides that this article applies to sales of transportation on or after April 1, 2020.

Ga. L. 2020, p. 903, § 4-1/HB 105, approved by the Governor August 5, 2020, provided that the enactment of this article is effective April 1, 2020. See Op. Att'y Gen. No. 76-76 for construction of effective date provisions that precede the date of approval by the Governor.

Law reviews.

For article, "Commercial Transportation," see 74 Mercer L. Rev. 51 (2022).

RESEARCH REFERENCES

Am. Jur. 2d.

13 Am. Jur. 2d, Carriers, § 1 et seq.

48-13-140. Definitions.

As used in this article, the term:

(1) "For-hire ground transport service provider" means a limousine carrier, ride share network service, taxi service, and transportation referral service as such terms are defined in Code Section 40-1-190.

(2) "For-hire ground transport trip" means any request for a journey by passenger vehicle as such term is defined in Code Section 40-8-76.1 provided by a for-hire ground transport service provider for which an individual is charged a fee, whether such journey was completed or not.

(3) "Shared for-hire ground transport trip" means any for-hire ground transport trip in which an individual has been matched with another individual by a for-hire ground transport service provider for purposes of such journey.

(4) "Transit" means regular, continuing shared-ride or shared-use surface transportation services that are made available by or funded by a public entity or quasi-public entity and are open to the general public or open to a segment of the general public defined by age, disability, or low income. Such term includes services or systems operated by or under contract with the state, a state agency or authority, a local government, a community improvement district, or any other similar entity of this state and all accompanying infrastructure and services necessary to provide access to these modes of transportation. Such term excludes charter or sightseeing services; school bus services; courtesy shuttle and intrafacility or terminal services; limousine carriers; and ride share network services, transportation referral services, and taxi services as such terms are

defined in Chapter 1 of Title 40 and which are not paid for by a public entity.

(5) "Transit projects" means a capital project to establish, enhance, maintain, or improve transit.

(6) "Transit provider" means the Department of Transportation, the Atlanta-region Transit Link "ATL" Authority, or a system providing transit or a jurisdiction operating such a system that receives federal transit formula funding.

History.
Code 1981, § 48-13-140, enacted by Ga. L. 2020, p. 903, § 2-2/HB 105.

48-13-141. Excise tax on for-hire ground transport; Georgia Transit Trust Fund established; annual adjustment.

(a) On and after April 1, 2020, an excise tax in the amount of 50¢ shall be levied upon any for-hire ground transport trip and 25¢ upon any shared for-hire ground transport trip. Such excise tax shall be collected and remitted by the for-hire ground transport service provider itself and not the vehicle driver. Such excise tax shall be administered, collected, and due and payable in the same manner as would otherwise be required by the tax imposed under Article 1 of Chapter 8 of this title.

(a.1)(1)(A) There shall be established a Georgia Transit Trust Fund as a separate fund in the state treasury. The commissioner of transportation shall be the trustee of the fund.

(B) The state treasurer shall invest the money held in the Georgia Transit Trust Fund in the same manner in which state funds are invested as authorized by the State Depository Board pursuant to Article 3 of Chapter 17 of Title 50. Interest earned by the money held in the trust fund shall be accounted for separately and shall be credited to the trust fund to be disbursed as other moneys in the trust fund.

(2) Under the authority granted and subject to the conditions imposed by Article III, Section IX, Paragraph VI(r) of the Constitution of Georgia, for the period beginning on July 1, 2022, and ending on June 30, 2032, all of the money collected pursuant to subsection (a) of this Code section shall be annually appropriated to the Georgia Transit Trust Fund established by paragraph (1) of this subsection and such funds shall not lapse as otherwise required by Article III, Section IX, Paragraph IV(c) of the Constitution of Georgia. Each annual appropriation shall be made through the General Appropriations Act and shall include all of the money collected from such source during the most recently completed fiscal year.

(3) All of the money appropriated to the Georgia Transit Trust Fund pursuant to paragraph (2) of this subsection shall be dedicated for use by one or more transit providers on transit projects.

(4) The commissioner of transportation shall prepare an accounting of the funds expended pursuant to this subsection during the most recently completed fiscal year to be provided to the Office of Planning and Budget, the House Budget and Research Office, and the Senate Budget and Evaluation Office by January 1 of each year.

(b) The department shall annually adjust the amount of the excise tax levied pursuant to subsection (a) of this Code section to reflect the effect of annual inflation or deflation for the cost of living that consumers in this state experienced on average during the immediately preceding calendar year in accordance with rules and regulations. Such rules and regulations may use for this purpose the Consumer Price Index for All Urban Consumers rate published by the Bureau of Labor Statistics of the United States Department of Labor or any other similar index established by the federal government, if the department determines that such federal index reflects the effect of inflation and deflation for the cost of living that consumers in this state experienced on average during the preceding calendar year.

History.
Code 1981, § 48-13-141, enacted by Ga. L. 2020, p. 903, § 2-2/HB 105; Ga. L. 2021, p. 761, § 19/HB 511.

Code Commission notes.
Pursuant to Code Section 28-9-5, in 2021, a second paragraph (a.1)(3) was redesignated as paragraph (a.1)(4).

Editor's notes.
Ga. L. 2021, p. 761, § 23/HB 511, not codified by the General Assembly, provides: "In accordance with the requirements of Article III, Section IX, Paragraph VI(r) of the Constitution of Georgia, this Act shall not become law unless it receives the requisite two-thirds' majority vote in both the Senate and the House of Representatives and the amount of the funds dedicated by this Act do not equal or exceed 1 percent of the previous fiscal year's state revenues subject to appropriations."

48-13-142. Penalty for violations.

Any for-hire ground transport service provider that knowingly and willfully violates the requirements of this article shall be assessed a civil penalty of not more than $10,000.00 in addition to the amount of tax due.

History.
Code 1981, § 48-13-142, enacted by Ga. L. 2020, p. 903, § 2-2/HB 105.

48-13-143. Quarterly reporting requirement.

Each for-hire ground transport service provider shall submit a quarterly report that identifies the number of for-hire ground transport trips provided by county of origin and destination to the department,

the Atlanta-region Transit Link "ATL" Authority, and the Department of Transportation. All such reports shall be treated as confidential and shall not be subject to Article 4 of Chapter 18 of Title 50, relating to open records.

History.
Code 1981, § 48-13-143, enacted by Ga. L. 2020, p. 903, § 2-2/HB 105.

48-13-144. Rules and regulations.

The department is authorized to adopt rules and regulations necessary for the enforcement and implementation of the provisions of this article.

History.
Code 1981, § 48-13-144, enacted by Ga. L. 2020, p. 903, § 2-2/HB 105.

CHAPTER 14

GRANTS AND SPECIAL REVENUE DISBURSEMENTS

Sec.
48-14-1. Grants to counties containing more than 20,000 acres of state-owned land not subject to taxation; limit on amount of grants; evaluation and assessment; procedure for billing State Forestry Commission.
48-14-2. Tennessee Valley Authority (TVA); payments made by the TVA.
48-14-3. Distribution of funds appropriated to counties for public road construction and maintenance; submission of annual county audits; unexpended funds; payment; minimum annual amount.
48-14-4. Annual grant to counties with 20,000 or more acres of unimproved real estate owned by Department of Natural Resources.

48-14-1. Grants to counties containing more than 20,000 acres of state-owned land not subject to taxation; limit on amount of grants; evaluation and assessment; procedure for billing State Forestry Commission.

(a) Each county in which is located land belonging to the state which consists of 20,000 acres and from which the county receives no tax revenue may receive from the State Forestry Commission a grant of funds for such land. The amount of funds to be granted may not exceed the amount the county would have received were the land subject to taxation during the applicable time period based on property evaluation and millage assessment.

(b) Immediately upon an evaluation of the property involved and a determination of the millage assessment for the property, the county tax official for the county involved shall bill the State Forestry Commission for the proper amount as determined under this Code section. The county tax official shall send the bill to the State Forestry Commission at the same time as the county tax bills are sent to the property owners of the county who are subject to county taxation.

History.
Ga. L. 1963, p. 166, §§ 1, 2; Code 1933, § 91A-7001, enacted by Ga. L. 1978, p. 309, § 2.

Cross references.
Georgia Outdoor Stewardship Act, § 12-6A-1 et seq.

48-14-2. Tennessee Valley Authority (TVA); payments made by the TVA.

(a) As used in this Code section, the term "TVA" means the Tennessee Valley Authority.

(b) Payments made by the TVA to the state and any of its political subdivisions under 16 U.S.C.A. Section 831(l), as amended, shall be apportioned among the political subdivisions in which property owned by the TVA is located on the basis of the percentage of loss of taxes to each to be determined as provided in this Code section. The payments made for each fiscal year by the TVA shall be distributed by the commissioner among counties and municipalities in which the TVA had power property including, but not limited to, reservoir land allocated to power purposes, at the end of the preceding fiscal year, in such manner that the sum of such payments plus the total amount of payments for the same fiscal year made by the TVA directly to counties of the state shall be apportioned among the counties and municipalities in the same ratio that the book value of the TVA's power property in each county and in each municipality, respectively, bore as of the end of the preceding fiscal year to the total amount of the book value of the TVA's power properties in all counties within the state, plus the book value of the TVA's power properties located in all municipalities within the state. The apportionment shall be subject to any adjustments necessary to meet the conditions set forth in subsections (c) and (d) of this Code section. The amount distributed by the commissioner under this Code section to any county or municipality in which is located an independent school district shall be divided between the county or municipal government and the county or municipal school system based upon the ratio that the tax rate for the previous tax year for each bears to the total rate for both for the previous tax year.

(c) All payments in lieu of taxes made by the TVA directly to any county for any fiscal year shall be retained by the county. The direct payment shall be deducted from the amount finally apportioned to the county under subsection (b) of this Code section before distribution of the balance, if any, of the county's payment share for the particular fiscal year from the state.

(d) If the initially apportioned payment share of any county for a fiscal year is less than the amount of payment made directly to the county by the TVA under 16 U.S.C.A. Section 831(l), the amount due the county shall be increased to conform to the requirements of 16 U.S.C.A. Section 831(l), and the previously apportioned shares of all other counties and municipalities shall be reduced pro rata so that the total of the reductions shall equal the total of increases necessary to meet the minimum payment requirements of this Code section.

History.
Ga. L. 1972, p. 923, §§ 1-3; Code 1933, § 91A-7002, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1982, p. 3, § 48.

RESEARCH REFERENCES

C.J.S.
81A C.J.S., States, § 241 et seq.

48-14-3. Distribution of funds appropriated to counties for public road construction and maintenance; submission of annual county audits; unexpended funds; payment; minimum annual amount.

(a) The funds made available by appropriations of the General Assembly for distribution to the counties to be used exclusively for the construction and maintenance of the public roads shall be distributed by the Office of the State Treasurer before the tenth day of each month to each county fiscal officer. The amounts distributable each month shall be one-twelfth of the amounts provided for each county in the following table:

County	Amount
Appling	$ 38,074.69
Atkinson	27,609.69
Bacon*	*21,562.95
Baker	22,251.20
Baldwin	18,840.71
Banks*	*20,573.60
Barrow	24,217.62
Bartow*	*36,861.04
Ben Hill	25,016.48
Berrien	39,448.11
Bibb	23,108.44
Bleckley*	*17,998.86
Brantley	28,135.09
Brooks*	*38,865.35
Bryan	28,423.90
Bulloch*	*64,465.57
Burke*	*75,000.00
Butts	18,462.78
Calhoun	21,406.25
Camden	26,030.40
Candler*	*24,844.41
Carroll	50,097.45
Catoosa	16,941.89
Charlton	32,113.99
Chatham	27,001.32
Chattahoochee	11,783.12
Chattooga*	*22,453.99
Cherokee*	*40,216.23

Clarke	13,500.66
Clay	13,973.83
Clayton	19,101.87
Clinch	44,766.64
Cobb*	*35,917.78
Coffee	39,841.39
Colquitt*	*43,774.21
Columbia*	*24,709.22
Cook*	*18,720.87
Coweta*	*37,690.62
Crawford	24,574.03
Crisp*	*33,241.61
Dade	18,690.15
Dawson	27,833.97
Decatur*	*43,918.62
DeKalb*	*44,573.07
Dodge	42,198.01
Dooly*	*42,342.42
Dougherty	23,102.29
Douglas*	*21,612.13
Early	31,656.19
Echols	26,310.00
Effingham*	*51,077.60
Elbert*	*33,014.24
Emanuel*	*60,964.97
Evans	18,094.08
Fannin*	*19,885.36
Fayette	23,805.90
Floyd*	*34,243.25
Forsyth*	*23,615.40
Franklin	30,900.35
Fulton*	*75,000.00
Gilmer*	*27,572.82
Glascock	13,257.93
Glynn	24,798.32
Gordon*	*26,509.72
Grady	45,755.99
Greene*	*29,895.63
Gwinnett*	*46,250.67
Habersham	28,125.86
Hall	37,592.30
Hancock*	*31,047.83
Haralson*	*29,520.79
Harris	37,254.32
Hart*	*28,669.70
Heard*	*26,617.25

Henry*	*32,246.12
Houston	26,949.09
Irwin*	*22,583.03
Jackson	29,102.93
Jasper	37,595.37
Jeff Davis*	*25,071.77
Jefferson*	*57,867.87
Jenkins*	*22,524.65
Johnson	23,197.54
Jones	27,327.01
Lamar*	*17,190.76
Lanier	31,063.20
Laurens*	*64,652.00
Lee*	*28,869.20
Liberty	36,990.10
Lincoln	21,609.04
Long	19,292.36
Lowndes	46,859.02
Lumpkin	22,868.78
McDuffie*	*23,947.23
McIntosh	17,857.49
Macon	48,727.38
Madison*	*29,914.07
Marion*	*23,332.74
Meriwether	43,393.22
Miller*	*17,267.58
Mitchell	48,825.44
Monroe	39,758.43
Montgomery*	*23,179.10
Morgan*	*30,387.24
Murray*	*20,075.85
Muscogee	27,078.13
Newton	35,290.98
Oconee	17,820.62
Oglethorpe*	*28,556.04
Paulding*	*32,301.42
Peach	15,049.21
Pickens	28,205.75
Pierce	23,108.43
Pike*	*18,398.25
Polk	22,318.80
Pulaski	19,621.12
Putnam*	*26,248.55
Quitman	10,741.53
Rabun	20,321.66
Randolph*	*21,738.09

Richmond*	*38,043.96
Rockdale	18,213.91
Schley	16,932.66
Screven*	*60,547.13
Seminole*	*19,393.75
Spalding*	*21,950.09
Stephens*	*20,109.65
Stewart	20,051.27
Sumter*	*38,590.89
Talbot	31,284.41
Taliaferro	15,122.95
Tattnall*	*37,315.77
Taylor	32,104.78
Telfair	45,104.61
Terrell	22,899.50
Thomas	54,850.65
Tift*	*25,382.10
Toombs*	*34,163.37
Towns	16,170.68
Treutlen	23,154.52
Troup	32,952.79
Turner*	*24,466.49
Twiggs*	*28,918.57
Union	19,396.83
Upson*	*22,893.36
Walker	35,764.15
Walton*	*30,774.37
Ware	42,609.73
Warren	28,371.66
Washington*	*60,362.76
Wayne*	*32,949.72
Webster	15,325.74
Wheeler	26,162.52
White	17,537.95
Whitfield*	*23,028.55
Wilcox	32,157.02
Wilkes*	*25,809.18
Wilkinson*	*27,443.76
Worth*	*42,265.60
TOTAL	$4,810,846.70

*Counties with this symbol have increased amounts to figures shown in order to bring them to the average of 14.13 percent.

(b)(1) The governing authority of each county shall submit to the state auditor a copy of its regular annual audit not later than 180 days after the end of the fiscal year for which the audit was made. If

an extension of time is granted to a county for the filing of the audit required by Code Section 36-81-7 or the correction of deficiencies in such an audit, then the same extension of time shall apply for purposes of this paragraph. The state auditor shall compare the amount of funds distributed to each county in the year of the audit against the amount of funds expended by the county in that year for the purposes authorized by this Code section. In the event the state auditor determines that the amount so expended in any year is less than the amount distributed, he shall certify the amount of the difference to the Office of the State Treasurer, which shall deduct and withhold the certified amount from the next funds to be distributed to the underexpending county under this Code section. In the event a county expending less than the amount distributed to it certifies at the time of the submission of its audit or within a reasonable time thereafter that it is accumulating the unexpended funds for a specified allowable purpose and submits proof of the deposit or investment of the funds, the county shall be deemed to have complied with this subsection, except that the amount of the unexpended funds shall be added to the amount of funds distributed to the county in the next succeeding year or years for the purpose of making the comparison and determination provided in this Code section. Upon the request of the Governor or the commissioner of transportation, the state auditor may audit the books and records of each county to verify the accuracy of the audits filed with him and to ensure that the expenditure of the funds has been made for the purposes intended.

(2) The procedure provided in this subsection shall apply to any grants to counties under any provision of law from motor fuel tax funds.

(3) The Secretary of State shall mail a copy of this subsection to the chairman and the clerk of the governing authority of each county.

(c) The Office of the State Treasurer shall pay to each county the amount provided in this Code section in 12 equal monthly installments. The amount necessary to make each monthly payment to the proper officials of the various counties is appropriated for the purpose and made a special and continuing appropriation.

(d) If the Office of Planning and Budget fails to make available for any quarter of a fiscal year a sum sufficient to pay in full the appropriation provided in subsection (c) of this Code section, the distribution of funds to the counties for that quarter shall be on the basis existing prior to January 1, 1979. No county shall receive less than $17,500.00.

History. Ga. L. 1923, p. 41, § 2; Ga. L. 1925, p. 66, § 1; Code 1933, § 92-1410; Code 1933, § 92-1404, enacted by Ga. L. 1937, p. 167,

§ 1; Ga. L. 1937-38, Ex. Sess., p. 258, § 1; Ga. L. 1945, p. 316, § 1; Ga. L. 1949, Ex. Sess., p. 19, § 3; Ga. L. 1966, p. 203, § 1; Ga. L. 1969, p. 845, § 1; Code 1933, § 92-1404, enacted by Ga. L. 1978, p. 186, § 1; Code 1933, § 91A-7003, enacted by Ga. L. 1979, p. 5, § 110; Ga. L. 1982, p. 3, § 48; Ga. L. 1984, p. 818, § 7; Ga. L. 1985, p. 149, § 48; Ga. L. 1992, p. 6, § 48; Ga. L. 1993, p. 1402, § 18; Ga. L. 2010, p. 863, § 2/SB 296.

Cross references.

For further provisions regarding grants by state to counties for public road purposes, see § 36-17-20 et seq.

OPINIONS OF THE ATTORNEY GENERAL

Restriction on use of funds generally. — Funds received by counties under this section must be used for purposes which have as their sole and only function the construction and maintenance of public roads. 1967 Op. Att'y Gen. No. 67-116.

Funds are limited to the direct cost involved in the construction or maintenance of public roads. To be a legitimate and legal expenditure, the item must be traceable directly to such construction and maintenance, and must be an item that is customarily associated with the construction and maintenance of roads. 1965-66 Op. Att'y Gen. No. 66-116.

Administrative expenses chargeable against these funds. — Only administrative expense that can be charged against these funds are items customarily and usually associated with the construction and maintenance of roads and have as their sole or exclusive function the construction and maintenance of public roads. 1965-66 Op. Att'y Gen. No. 66-188.

Purchase of construction and maintenance equipment under this section is proper, provided the primary function of such equipment is for construction and maintenance of roads. For example, these funds may not be expended for the purchase of a tractor since it would appear that the primary purpose of a tractor would not be for road maintenance or construction, but this rationale would not apply to bulldozers and motor graders. 1967 Op. Att'y Gen. No. 67-116.

Illegal to use funds for county farm even though farm houses prisoners who perform road construction. — County may not use the state grant funds for the upkeep and operation of a county farm although prisoners are kept there who are used as laborers on road construction and maintenance. 1967 Op. Att'y Gen. No. 67-116.

Presumption that counties have annual audits made. — State treasurer (now director of the Office of Treasury and Fiscal Services) is justified in relying upon the legal presumption that public officers are performing the duties imposed upon the officers by law, and unless the treasurer is informed or becomes aware of facts to the contrary, the treasurer can legitimately assume that each county is having a regular annual audit made inasmuch as such an obligation is imposed by law on each and every county of this state and the treasurer is justified in continuing to make distributions to the respective counties until notified otherwise. 1965-66 Op. Att'y Gen. No. 66-116.

RESEARCH REFERENCES

C.J.S.

81A C.J.S., States, § 241 et seq.

48-14-4. Annual grant to counties with 20,000 or more acres of unimproved real estate owned by Department of Natural Resources.

(a) As used in this Code section, the term "department" means the Department of Natural Resources.

(b) Each county in which is located 20,000 acres or more of unimproved real property belonging to the state and under the custody or control of the department, in which such state owned property exceeds 10 percent of the taxable real property in the county, and in which such property represents 10 percent or more of the assessed tax digest of the county may receive from the department an annual grant as provided in this Code section.

(c) For each county eligible to receive a grant pursuant to subsection (b) of this Code section, the department shall calculate the approximate value of public services which the county provides the department each year; provided, however, that such sum shall not exceed the amount the county would charge any other landowner for such services. The department shall request funds in its annual operating budget each year to reimburse all eligible counties for the provision of such services. In the event the amount appropriated in any year is less than the amount requested, each eligible county shall receive a pro rata share based on the estimated value of services provided.

(d) The department is directed to make an annual calculation of the amount of unimproved state owned real property under its custody or control and determine which counties are eligible for a grant pursuant to subsection (b) of this Code section. The first such determination shall be completed not later than December 31, 1993, and each subsequent determination shall be made not later than December 31 of each year. The department is further directed to calculate the approximate value of public services provided by each eligible county as provided in subsection (c) of this Code section.

(e) No county shall be authorized to receive a grant of funds pursuant to both this Code section and Code Section 48-14-1.

History.
Code 1981, § 48-14-4, enacted by Ga. L. 1993, p. 1071, § 1.

CHAPTER 15

EXCISE TAX ON MARIJUANA AND CONTROLLED SUBSTANCES

Sec.		Sec.	
48-15-1.	No immunity from criminal prosecution; unlawful use of marijuana or controlled substances not authorized.	48-15-8.	Enforcement and administration of chapter.
		48-15-9.	Assessment and collection of tax.
48-15-2.	Definitions.	48-15-10.	Confidentiality of information obtained under chapter; penalty for violation; publication of statistics authorized.
48-15-3.	Imposition of tax.		
48-15-4.	Exemption.		
48-15-5.	Calculation of tax.		
48-15-6.	Tax rates.		
48-15-7.	Time of payment of tax; report forms.	48-15-11.	Forfeiture law not superseded by chapter.

Law reviews.
For article, "Taxing Marijuana: Earmarking Tax Revenue from Legalized Marijuana," see 33 Georgia St. U.L. Rev. 659 (2017).

48-15-1. No immunity from criminal prosecution; unlawful use of marijuana or controlled substances not authorized.

No provision of this chapter shall in any manner provide any immunity for any person from criminal prosecution pursuant to the laws of this state and no provision of this chapter shall in any manner be deemed to authorize the unlawful use, possession, consumption, storage, transfer, or distribution of marijuana or controlled substances.

History.
Code 1981, § 48-15-1, enacted by Ga. L. 1990, p. 1231, § 1.

48-15-2. Definitions.

As used in this chapter, the term:

(1) "Commissioner" means the state revenue commissioner.

(2) "Controlled substance" shall have the same meaning as defined in paragraph (4) of Code Section 16-13-21 and shall mean any drug, substance, or immediate precursor, whether real or counterfeit, that is held, possessed, transported, transferred, sold, or offered for sale in violation of the laws of this state.

(3) "Marijuana" shall have the same meaning as defined in paragraph (16) of Code Section 16-13-21 and shall mean any marijuana, whether real or counterfeit, that is held, possessed,

transported, transferred, sold, or offered for sale in violation of the laws of this state.

History.
Code 1981, § 48-15-2, enacted by Ga. L. 1990, p. 1231, § 1.

48-15-3. Imposition of tax.

(a) There is imposed, in addition to all other applicable taxes, a state excise tax upon each use, possession, consumption, storage, or transfer of marijuana or any controlled substance.

(b) The tax imposed by this Code section shall apply regardless of whether the substance exists in solid, liquid, or gaseous form and regardless of the degree of purity of the substance. Each person who uses, possesses, consumes, stores, or transfers a substance identified in this Code section shall be liable for the tax imposed by this Code section.

History.
Code 1981, § 48-15-3, enacted by Ga. L. 1990, p. 1231, § 1.

RESEARCH REFERENCES

ALR.
Validity, construction, and application of state laws imposing tax or license fee on possession, sale, or the like, of illegal narcotics, 12 A.L.R.5th 89.

48-15-4. Exemption.

Nothing in this chapter shall require persons who are lawfully in possession of marijuana or a controlled substance under a valid medical prescription or a licensed pharmacist or medical practitioner licensed to dispense marijuana or any controlled substance to pay the tax required under this chapter when such person, pharmacist, or practitioner is lawfully using, possessing, consuming, storing, or transferring such marijuana or controlled substance.

History.
Code 1981, § 48-15-4, enacted by Ga. L. 1990, p. 1231, § 1.

48-15-5. Calculation of tax.

For the purpose of calculating the tax under Code Section 48-15-6, a quantity of marijuana or other controlled substance in the person's possession shall be measured by the weight of the substance whether pure or impure or dilute, or by dosage units when the substance is not

sold by weight. A quantity of a controlled substance is dilute if it consists of a detectable quantity of pure controlled substance and any excipients or fillers.

History.
Code 1981, § 48-15-5, enacted by Ga. L. 1990, p. 1231, § 1.

48-15-6. Tax rates.

A tax is imposed on marijuana and controlled substances as defined in Code Section 48-15-2 at the following rates:

(1) On each gram of marijuana, or each portion of a gram, $3.50;

(2) On each gram of controlled substance, or portion of a gram, $200.00; and

(3) On each ten dosage units of a controlled substance that is not sold by weight, or portion thereof, $400.00.

History.
Code 1981, § 48-15-6, enacted by Ga. L. 1990, p. 1231, § 1.

48-15-7. Time of payment of tax; report forms.

The tax imposed by Code Section 48-15-3 shall be due and payable at the time of each use, possession, consumption, storage, or transfer; however, each person liable to pay the tax may report and remit the amount of tax which is due, using report forms prepared by the commissioner, no later than the twentieth day of the calendar month following the month in which the tax liability is incurred. The reporting procedure provided for in this Code section shall not prevent the commissioner from earlier assessing or collecting, prior to receiving the report or remittance, any taxes which have become due.

History.
Code 1981, § 48-15-7, enacted by Ga. L. 1990, p. 1231, § 1.

48-15-8. Enforcement and administration of chapter.

This chapter shall be enforced and administered by the commissioner, and the commissioner is authorized to adopt all forms and all reasonable rules and regulations which the commissioner deems necessary to enforce and administer this chapter.

History.
Code 1981, § 48-15-8, enacted by Ga. L. 1990, p. 1231, § 1.

48-15-9. Assessment and collection of tax.

The commissioner is authorized to issue assessments, including jeopardy assessments, to issue tax executions, and to collect the tax imposed under this chapter in the same manner and to the same extent as provided in this title for any other state tax assessed and collected by the commissioner.

History.
Code 1981, § 48-15-9, enacted by Ga. L. 1990, p. 1231, § 1.

48-15-10. Confidentiality of information obtained under chapter; penalty for violation; publication of statistics authorized.

(a) Notwithstanding any law to the contrary, neither the commissioner nor a public employee may reveal facts contained in a report or return required by this chapter or any information obtained from a person under this chapter; nor can any information contained in such a report or return or obtained from such person be used against the person in any criminal proceeding, unless independently obtained, except in connection with a proceeding involving taxes due under this chapter from the person making the return.

(b) Any person violating this Code section shall be guilty of a misdemeanor of a high and aggravated nature.

(c) This Code section shall not prohibit the commissioner from publishing statistics that do not disclose the identity of such persons or the contents of particular returns or reports.

History.
Code 1981, § 48-15-10, enacted by Ga. L. 1990, p. 1231, § 1.

48-15-11. Forfeiture law not superseded by chapter.

Notwithstanding any provision of this chapter to the contrary, no provision of this chapter shall be deemed to supersede the provisions of Code Section 16-13-49 with respect to forfeitures and the vesting of forfeited property, money, or currency.

History.
Code 1981, § 48-15-11, enacted by Ga. L. 1990, p. 1231, § 1; Ga. L. 1991, p. 94, § 48.

CHAPTER 16

TAX AMNESTY PROGRAM

Sec.		Sec.	
48-16-1.	Legislative findings, declarations, and intent.		funded or credited overpayments.
48-16-2.	Short title.	48-16-8.	Regulations, forms and instructions, and other actions necessary to implement chapter; publicity of program.
48-16-3.	Definitions.	48-16-9.	Accounting and reporting of funds collected under amnesty program; disposition of funds.
48-16-4.	Tax amnesty program; waiver of penalties; duration and applicability of program; forms.	48-16-10.	Imposition of cost of collection fee after amnesty period expires.
48-16-5.	Applicability; effect of audit, assessment, bill, notice, demand for payment, or proceeding; installment agreements; deficiency assessment after amnesty ends.	48-16-11.	Contracts with debt collection agencies or attorneys to collect delinquent taxes, penalties, and interest.
48-16-6.	Amnesty eligibility; effect of pending criminal investigation; interest or penalties paid prior to amnesty request.	48-16-12.	Willful failure to make return; false returns; willful failure to pay taxes; failure to obey a subpoena or order.
48-16-7.	Interest on installment agreements; interest on re-		

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1992, Chapter 16 of Title 48, as enacted by Ga. L. 1992, p. 1521, § 3, was redesignated as Chapter 17 of Title 48, since Ga. L. 1992, p. 1249, § 1, also enacted a Chapter 16 of Title 48.

48-16-1. Legislative findings, declarations, and intent.

The General Assembly finds and declares that a public purpose is served by the waiver of tax penalties and criminal prosecution in return for the immediate reporting and payment of previously underreported, unreported, or unpaid tax liabilities. The General Assembly further finds and declares that the benefits gained through this program include, among other things, increased collection of certain currently owed taxes, permanently bringing into the tax system taxpayers who have been evading payment of taxes and providing an opportunity for taxpayers to satisfy tax obligations before stepped-up tax enforcement programs take effect. It is the intention of the General Assembly in enacting this chapter that the tax amnesty program provided under this chapter be a one-time occurrence which shall not be repeated in the future because taxpayers' expectations of any future amnesty programs could have a counterproductive effect on compliance under this chapter.

History.
Code 1981, § 48-16-1, enacted by Ga. L. 1992, p. 1249, § 1; Ga. L. 1993, p. 91, § 48.

48-16-2. Short title.

This chapter shall be known and may be cited as the "Tax Amnesty Program Act."

History.
Code 1981, § 48-16-2, enacted by Ga. L. 1992, p. 1249, § 1.

48-16-3. Definitions.

As used in this chapter, the term:

(1) "Accounts receivable" means an amount of state tax, penalty, or interest which has been recorded as due and entered in the account records or any ledger maintained in the department, or which a taxpayer should reasonably expect to become due as a direct or indirect result of any pending or completed audit or investigation, which a taxpayer knows is being conducted by any federal, state, or local taxing authority.

(2) "Final, due, and owing" means an assessment which has become final and is owed to the state due to either the expiration of the taxpayer's appeal rights or, in the case of an assessment which has been appealed, either pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," or pursuant to Code Section 48-2-59, the rendition of the final order by the commissioner or by any court of this state. Assessments that have been appealed shall be final, due, and owing 15 days after the last unappealed or unappealable order sustaining the assessment or any part thereof has become final. Assessments that have not been appealed shall be final, due, and owing 30 days after service of notice of assessment pursuant to Code Section 48-2-45.

(3) "Taxpayer" means any individual, partnership, joint venture, association, corporation, receiver, trustee, guardian, executor, administrator, fiduciary, or any other entity of any kind subject to any tax set forth in this title or any person required to collect any such tax under this title.

History.
Code 1981, § 48-16-3, enacted by Ga. L. 1992, p. 1249, § 1.

48-16-4. Tax amnesty program; waiver of penalties; duration and applicability of program; forms.

(a) The commissioner shall develop and administer a one-time tax amnesty program as provided in this chapter. The commissioner shall, upon the voluntary return and remission of taxes and interest owed by any taxpayer, waive all penalties that are assessed or subject to being assessed for outstanding liabilities for taxable periods ending or transactions occurring on or before December 31, 1990. The commissioner shall provide by regulation as necessary for the administration of this amnesty program and shall further provide for necessary forms for the filing of amnesty applications and returns.

(b) Notwithstanding the provisions of any other law to the contrary, the tax amnesty program shall begin by October 31, 1992, and shall be completed no later than December 31, 1992, and shall apply to all taxpayers owing taxes, penalties, or interest administered by the commissioner under the provisions of this title, except that the tax amnesty shall not apply to any property tax levied or administered by the commissioner pursuant to Chapters 5 and 6 of this title. The program shall apply to tax liabilities for taxable periods ending or transactions occurring on or before December 31, 1990. Amnesty tax return forms shall be in a form prescribed by the commissioner.

History.
Code 1981, § 48-16-4, enacted by Ga. L. 1992, p. 1249, § 1.

48-16-5. Applicability; effect of audit, assessment, bill, notice, demand for payment, or proceeding; installment agreements; deficiency assessment after amnesty ends.

(a) The provisions of this chapter shall apply to any eligible taxpayer who files an application for amnesty within the time prescribed by the commissioner and does the following:

(1) Files such returns as may be required by the commissioner for all years or tax reporting periods as stated on the application for which returns have not previously been filed and files such returns as may be required by the commissioner for all years or tax reporting periods for which returns were filed but the tax liability was underreported;

(2) Pays in full the taxes due for the periods and taxes applied for at the time the application or amnesty tax returns are filed within the amnesty period and pays with the taxes the amount of interest due and pays the amount of any additional tax and interest owed as may be determined by the commissioner within 30 days of notification by the commissioner; and

(3) The commissioner may, in his discretion, impose by regulation, the further condition that, in addition to the requirements set forth in paragraphs (1) and (2) of this subsection, the requirement that any eligible taxpayer also pay in full within the amnesty period all taxes previously assessed by the commissioner that are final, due, and owing at the time the application or amnesty tax returns are filed and pays with the taxes the amount of interest due and pays within 30 days of notification by the commissioner the amount of any additional interest owed.

(b) An eligible taxpayer may participate in the amnesty program whether or not the taxpayer is under audit, notwithstanding the fact that the amount due is included in a proposed assessment or an assessment, bill, notice, or demand for payment issued by the commissioner, and without regard to whether the amount due is subject to a pending administrative or judicial proceeding. An eligible taxpayer may participate in the amnesty program to the extent of the uncontested portion of any assessed liability. However, participation in the program shall be conditioned upon the taxpayer's agreement that the right to protest or initiate an administrative or judicial proceeding or to claim any refund of moneys paid under the program is barred with respect to the amounts paid with the application or amnesty return.

(c) The commissioner may enter into an installment payment agreement in cases of severe hardship in lieu of the complete payment required under subsection (a) of this Code section. In such cases, 25 percent of the amount due shall be paid with the application or amnesty return with the balance to be paid in monthly installments not less than 25 percent of the original amount nor to exceed three months following the expiration of the amnesty period. Failure of the taxpayer to make timely payments shall void the terms of the amnesty program. All such agreements and payments shall include interest due and accruing during the installment agreement.

(d) If, following the termination of the tax amnesty period, the commissioner issues a deficiency assessment based upon information independent of that shown on a return filed pursuant to subsection (a) of this Code section, the commissioner shall have the authority to impose penalties and criminal action may be brought where authorized by law only with respect to the difference between the amount shown on the amnesty tax return and the correct amount of tax due. The imposition of penalties or criminal action shall not invalidate any waiver granted under Code Section 48-16-6.

History.
Code 1981, § 48-16-5, enacted by Ga. L. 1992, p. 1249, § 1.

48-16-6. Amnesty eligibility; effect of pending criminal investigation; interest or penalties paid prior to amnesty request.

(a) Amnesty shall be granted for any taxpayer who meets the requirements of Code Section 48-16-5 in accordance with the following:

(1) For taxes which are owed as a result of the nonreporting or underreporting of tax liabilities or the nonpayment of any accounts receivable owed by an eligible taxpayer, the state shall waive criminal prosecution and all civil penalties which may be assessed under any provision of this title for the taxable years or periods for which tax amnesty is requested; and

(2) With the exception of instances in which the taxpayer and commissioner enter into an installment payment agreement authorized under subsection (c) of Code Section 48-16-5, the failure to pay all taxes and interest as shown on the taxpayer's amnesty tax return shall invalidate any amnesty granted pursuant to this chapter.

(b) This chapter shall not apply to any taxpayer who is on notice, written or otherwise, of a criminal investigation being conducted by an agency of the state or any political subdivision thereof or the United States, nor shall this chapter apply to any taxpayer who is the subject of any criminal litigation which is pending on the date of the taxpayer's application in any court of this state or the United States for nonpayment, delinquency, evasion, or fraud in relation to any federal taxes or to any of the taxes to which this amnesty program is applicable.

(c) No refund or credit shall be granted for any interest or penalty paid prior to the time the taxpayer requests amnesty pursuant to Code Section 48-16-5.

(d) Unless the commissioner in his own discretion redetermines the amount of taxes and interest due, no refund or credit shall be granted for any taxes or interest paid under the amnesty program.

History.
Code 1981, § 48-16-6, enacted by Ga. L. 1992, p. 1249, § 1.

48-16-7. Interest on installment agreements; interest on refunded or credited overpayments.

(a) All installment agreements authorized under subsection (c) of Code Section 48-16-5 shall bear interest on the outstanding amount of tax due during the installment period at the rate prescribed under Code Section 48-2-40.

(b) Notwithstanding the provisions of this title, if any overpayment

of tax under this chapter is refunded or credited within 180 days after the return is filed, no interest shall be allowed.

History.
Code 1981, § 48-16-7, enacted by Ga. L. 1992, p. 1249, § 1.

48-16-8. Regulations, forms and instructions, and other actions necessary to implement chapter; publicity of program.

The commissioner shall promulgate administrative regulations as necessary, issue forms and instructions, and take all actions necessary to implement the provisions of this chapter. The commissioner shall publicize the tax amnesty program in order to maximize the public awareness of and participation in the program. The commissioner may, for the purpose of publicizing the tax amnesty program, contract with any advertising agency within or outside this state.

History.
Code 1981, § 48-16-8, enacted by Ga. L. 1992, p. 1249, § 1.

48-16-9. Accounting and reporting of funds collected under amnesty program; disposition of funds.

For purposes of accounting for the revenues received pursuant to this chapter, the commissioner shall maintain an accounting and reporting of funds collected under the amnesty program. All funds collected shall be remitted to the general fund of the state treasury.

History.
Code 1981, § 48-16-9, enacted by Ga. L. 1992, p. 1249, § 1.

48-16-10. Imposition of cost of collection fee after amnesty period expires.

(a) In addition to all other penalties provided under this chapter or any other law, the commissioner may by regulation impose after the expiration of the tax amnesty period a cost of collection fee of 20 percent of any deficiency assessed for any taxable period ending or transactions occurring after December 31, 1990. This fee shall be in addition to all other applicable penalties, fees, or costs. The commissioner shall have the right to waive any collection fee when it is demonstrated that any deficiency of the taxpayer was not due to negligence, intentional disregard of administrative rules and regulations, or fraud.

(b) In addition to all other penalties provided under this chapter or any other law, the commissioner may pursuant to regulation impose after the expiration of the tax amnesty period a cost of collection fee of

50 percent of any deficiency assessed after the amnesty period for taxable periods ending or transactions occurring on or before December 31, 1990, regardless of when due. This fee shall be in addition to all other applicable penalties, fees, or costs. The commissioner shall have the right to waive any collection fee when it is demonstrated that any deficiency of the taxpayer was not due to negligence, intentional disregard of administrative rules and regulations, or fraud.

(c) The provisions of subsections (a) and (b) of this Code section shall not apply to any account which has been protested pursuant to Code Section 48-2-46 as of the expiration of the amnesty period and which does not become final, due, and owing, or to any account on which the taxpayer is remitting timely payments under a payment agreement negotiated with the commissioner prior to or during the amnesty period.

(d) The fee levied under subsections (a) and (b) of this Code section shall not apply to taxes paid pursuant to the terms of the amnesty program.

History.
Code 1981, § 48-16-10, enacted by Ga. L. 1992, p. 1249, § 1; Ga. L. 1996, p. 682, § 1; Ga. L. 2013, p. 636, § 3/HB 359.
Administrative rules and regulations.
Collection Fees, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Administrative Unit, Collections, Rule 560-1-2-.02.

48-16-11. Contracts with debt collection agencies or attorneys to collect delinquent taxes, penalties, and interest.

The commissioner may, for the purpose of collecting any delinquent taxes due from a taxpayer, contract with any debt collection agency or attorney doing business within or outside this state for the collection of such delinquent taxes, including penalties and interest thereon.

History.
Code 1981, § 48-16-11, enacted by Ga. L. 1992, p. 1249, § 1.

48-16-12. Willful failure to make return; false returns; willful failure to pay taxes; failure to obey a subpoena or order.

(a) As used in this Code section, the term "return" means and includes any return, declaration, or form prescribed by the commissioner with respect to the taxes covered by the amnesty program.

(b) In addition to all other penalties provided under this chapter and any other law, any person who willfully fails to make a return or willfully makes a false return or conspires to do so, or who willfully fails

to pay taxes owing, withheld, or collected, with intent to evade payment of the tax owed or the amount withheld or collected, or any part thereof, or who conspires to do so shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than three years or by a fine of not more than $5,000.00, or both.

(c) Any person who fails to obey a subpoena or order of the commissioner issued pursuant to Code Section 48-2-8 for purposes of enforcing this chapter shall be guilty of a misdemeanor and, upon conviction thereof, shall for the first offense be fined not less than $25.00 and not more than $100.00 or imprisoned in the county jail for not more than three months, or both. For any subsequent offense such person shall, upon conviction thereof, be punished by imprisonment for not more than one year or by a fine of not more than $1,000.00, or both.

History.
Code 1981, § 48-16-12, enacted by Ga. L. 1992, p. 1249, § 1; Ga. L. 1993, p. 91, § 48.

CHAPTER 16A

PROPERTY TAX AMNESTY PROGRAM

Sec.		Sec.	
48-16A-1.	Legislative findings, declarations, and intent.	48-16A-6.	Taxpayers eligible for amnesty.
48-16A-2.	Short title.	48-16A-7.	Interest on installment agreements or refunded or credited overpayments.
48-16A-3.	Definitions.	48-16A-8.	Publicizing of program.
48-16A-4.	Development and administration of program; waiver of penalties; duration of program; forms.	48-16A-9.	Accounting and reporting of collections.
48-16A-5.	Requirements for participation in program by eligible taxpayers.	48-16A-10.	Cost of collection fee.

RESEARCH REFERENCES

Am. Jur. 2d.
72 Am. Jur. 2d, State and Local Taxation, § 687 et seq.

48-16A-1. Legislative findings, declarations, and intent.

The General Assembly finds and declares that a public purpose is served by the waiver of tax penalties and criminal prosecution in return for the immediate reporting and payment of previously underreturned, unreturned, or unpaid state and local ad valorem tax liabilities. The General Assembly further finds and declares that the benefits gained through this program include, among other things, increased collection of certain currently owed state and local ad valorem taxes, permanently bringing into the state and local tax system taxpayers who have been evading payment of local taxes and providing an opportunity for taxpayers to satisfy state and local ad valorem tax obligations before stepped-up local tax enforcement programs take effect. It is the intention of the General Assembly in enacting this chapter that the property tax amnesty program provided under this chapter be a one-time occurrence which shall not be repeated in the future because taxpayers' expectations of any future property tax amnesty programs could have a counterproductive effect on compliance under this chapter.

History.
Code 1981, § 48-16A-1, enacted by Ga. L. 1994, p. 428, § 3.

48-16A-2. Short title.

This chapter shall be known and may be cited as the "Property Tax Amnesty Program Act."

History.
Code 1981, § 48-16A-2, enacted by Ga. L. 1994, p. 428, § 3.

48-16A-3. Definitions.

As used in this chapter, the term:

(1) "Ad valorem tax" or "property tax" means any state or local ad valorem tax levied by any taxing jurisdiction.

(2) "Administering governing authority" means the county governing authority in the case of state, county, and school ad valorem tax or the municipal governing authority in the case of municipal or independent school system ad valorem tax.

(3) "Delinquent taxes" means an amount of ad valorem property tax, penalty, or interest which has been recorded as due and entered in the account records or any ledger maintained in the office of the local collection official, or which a taxpayer should reasonably expect to become due as a direct or indirect result of any pending or completed audit or assessment, which a taxpayer knows is being conducted by any state or local assessing authority.

(4) "Final, due, and owing" means an assessment and ad valorem tax amount which has become final and is owed to the taxing jurisdiction due to either the expiration of the taxpayer's appeal rights or the rendition of a final determination of assessed value based upon an appeal.

(5) "Governing authority" means that official or group of officials responsible for the governing of a taxing jurisdiction.

(6) "Local collection official" means that local official responsible for the collection of ad valorem taxes.

(7) "Taxing jurisdiction" means the state or any district within which a county or municipality, a county, independent, or area school system, or a consolidated city-county government or other political subdivision of the state exercises the power to levy or causes to be levied any ad valorem taxes to carry out its purposes.

(8) "Taxpayer" means any individual, partnership, joint venture, association, corporation, receiver, trustee, guardian, executor, administrator, fiduciary, or any other entity of any kind subject to any ad valorem tax.

History.
Code 1981, § 48-16A-3, enacted by Ga. L. 1994, p. 428, § 3.

48-16A-4. Development and administration of program; waiver of penalties; duration of program; forms.

(a) Upon the adoption of a resolution or ordinance by the governing authority of each local taxing jurisdiction for which a local collection official collects delinquent taxes indicating that governing authority's desire to participate in the property tax amnesty program, the administering governing authority shall be authorized to develop and administer a one-time property tax amnesty program as provided in this chapter. The county governing authority shall be authorized to include the state's delinquent tax in the property tax amnesty program. Such administering governing authority shall be authorized to waive, in whole or in part, all penalties or interest or both with respect to outstanding ad valorem tax liabilities for all tax years ending or transactions occurring on or before December 31, 1993. The terms and conditions of such waiver shall be specified in the resolution or ordinance adopted by such administering governing authority and may include a delegation of authority to the local collecting official of the authority to make such waiver, in whole or in part, on a case-by-case basis. The administering governing authority shall provide for the necessary forms for the filing of property tax amnesty applications and returns.

(b) The local collection official shall, upon the voluntary filing of a return to the official responsible for the receiving of property tax returns and the remission of ad valorem taxes owed by any taxpayer, if required, waive all penalties and interest that are assessed or subject to being assessed for outstanding ad valorem tax liabilities for all tax years ending or transactions occurring on or before December 31, 1993. Such waiver shall be in accordance with the terms of the resolution or ordinance of the administering governing authority.

(c) Any property tax amnesty program conducted under the authority of this chapter shall begin by October 31, 1994, and shall be completed no later than December 31, 1994, and shall apply to all taxpayers owing ad valorem taxes, penalties, or interest. The program shall apply to outstanding ad valorem tax liabilities for all tax years ending on or before December 31, 1993. Property tax amnesty tax return forms shall be in a form prescribed by the administering governing authority.

History.
Code 1981, § 48-16A-4, enacted by Ga. L. 1994, p. 428, § 3; Ga. L. 1995, p. 10, § 48.

48-16A-5. Requirements for participation in program by eligible taxpayers.

(a) The provisions of this chapter shall apply to any eligible taxpayer who files an application for property tax amnesty within the time prescribed by the administering governing authority and does the following:

(1) Files such returns as may be required by the local official responsible for receiving returns for all tax years as stated on the application for which returns have not previously been filed and files such returns as may be required by the local official responsible for receiving returns for all tax years for which returns were filed but on which the value of the taxpayer's property was understated;

(2) Pays in full the ad valorem taxes and, if required, pays in full the interest due, for the periods applied for at the time of the application and pays the amount of any additional ad valorem tax and, if required, interest owed, as may be determined from any additional returns by the local collection official within 30 days of notification by such local collection official; and

(3) The administering governing authority may by local resolution or ordinance impose the further condition that, in addition to the requirements set forth in paragraphs (1) and (2) of this subsection, the requirement that any eligible taxpayer also pay in full within the property tax amnesty period all ad valorem taxes and, if required, penalties and interest previously levied and assessed that are final, due, and owing at the time the application or property tax amnesty tax returns are filed.

(b) An eligible taxpayer may participate in the property tax amnesty program whether or not the taxpayer is under audit, notwithstanding the fact that the amount due is based upon a proposed assessment or an assessment and without regard to whether the amount due is subject to a pending administrative or judicial proceeding. An eligible taxpayer may participate in the property tax amnesty program to the extent of the uncontested portion of any assessed ad valorem tax liability. However, participation in the program shall be conditioned upon the taxpayer's agreement that the right to protest or initiate an administrative or judicial proceeding or to claim any refund of moneys paid under the program is barred with respect to the amounts paid with the application or property tax amnesty return.

(c) The local collection official may enter into an installment payment agreement in cases of severe hardship in lieu of the complete payment required under subsection (a) of this Code section. In such cases, 25 percent of the amount due shall be paid with the application

or property tax amnesty return with the balance to be paid in monthly installments not less than 25 percent of the original amount nor to exceed three months following the expiration of the property tax amnesty period. Failure of the taxpayer to make timely payments shall void the terms of the property tax amnesty program. All such agreements and payments shall, if required, include interest due and accruing during the installment agreement.

(d) If, following the termination of the property tax amnesty period, additional taxes are determined to be due from the taxpayer based upon information independent of that shown on a return filed pursuant to subsection (a) of this Code section, the local collection official shall have the authority to impose penalties only with respect to the difference between the amount shown on the property tax amnesty tax return and the correct amount of tax due. The imposition of penalties shall not invalidate any waiver granted under Code Section 48-16A-6.

History.
Code 1981, § 48-16A-5, enacted by Ga. L. 1994, p. 428, § 3.

48-16A-6. Taxpayers eligible for amnesty.

(a) Property tax amnesty shall be granted for any taxpayer who meets the requirements of Code Section 48-16A-5 in accordance with the following:

(1) For ad valorem taxes which are owed as a result of the nonreturning or underreturning of any ad valorem tax liabilities or the nonpayment of any delinquent ad valorem taxes owed by an eligible taxpayer, the local collection official shall waive criminal prosecution and all civil penalties which may be assessed under any provision of law for the taxable years or periods for which property tax amnesty is requested; and

(2) With the exception of instances in which the taxpayer and local collection official enter into an installment payment agreement authorized under subsection (c) of Code Section 48-16A-5, the failure to pay all taxes and, if required, interest as shown on the taxpayer's property tax amnesty tax return shall invalidate any property tax amnesty granted pursuant to this chapter.

(b) This chapter shall not apply to any taxpayer who is on notice, written or otherwise, of a criminal investigation being conducted by an agency of the state or any political subdivision thereof, nor shall this chapter apply to any taxpayer who is the subject of any criminal litigation which is pending on the date of the taxpayer's application in any court of this state for nonpayment, delinquency, evasion, or fraud in

relation to any of the ad valorem taxes to which this property tax amnesty program is applicable.

(c) No refund or credit shall be granted for any interest or penalty paid prior to the time the taxpayer requests amnesty pursuant to Code Section 48-16A-5.

(d) Unless the local collection official in the discretion of such local collection official redetermines the amount of taxes and interest due, no refund or credit shall be granted for any taxes or interest paid under the property tax amnesty program.

History.
Code 1981, § 48-16A-6, enacted by Ga. L. 1994, p. 428, § 3.

48-16A-7. Interest on installment agreements or refunded or credited overpayments.

(a) All installment agreements authorized under subsection (c) of Code Section 48-16A-5 shall, if required, bear interest on the outstanding amount of tax due during the installment period at the rate prescribed under Code Section 48-2-40.

(b) Notwithstanding any other provisions of this title, if any overpayment of ad valorem tax under this chapter is refunded or credited within 180 days after the return is filed, no interest shall be allowed.

History.
Code 1981, § 48-16A-7, enacted by Ga. L. 1994, p. 428, § 3.

48-16A-8. Publicizing of program.

The administering governing authority shall publicize the property tax amnesty program in order to maximize the public awareness of and participation in the program. The administering governing authority may, for the purpose of publicizing the property tax amnesty program, contract with any advertising agency within or outside this state.

History.
Code 1981, § 48-16A-8, enacted by Ga. L. 1994, p. 428, § 3.

48-16A-9. Accounting and reporting of collections.

For purposes of accounting for the revenues received pursuant to this chapter, the local collection official shall maintain an accounting and reporting of funds collected under the property tax amnesty program.

History.
Code 1981, § 48-16A-9, enacted by Ga. L. 1994, p. 428, § 3.

48-16A-10. Cost of collection fee.

(a) In addition to all other penalties provided under this chapter or any other law, the administering governing authority may by ordinance or resolution impose after the expiration of the property tax amnesty period a cost of collection fee of 50 percent of any deficiency levied after the property tax amnesty period for taxable periods ending on or before December 31, 1993, regardless of when due. This fee shall be in addition to all other applicable penalties, fees, or costs. The local collection official shall have the right to waive any collection fee when it is demonstrated that any deficiency of the taxpayer was not due to negligence, intentional disregard of local ordinances or resolutions, or fraud.

(b) The provisions of subsection (a) of this Code section shall not apply to any account which is under appeal as of the expiration of the property tax amnesty period and which does not become final, due, and owing, or to any account on which the taxpayer is remitting timely payments under a payment agreement negotiated with the local collection official prior to or during the property tax amnesty period.

(c) The fee levied under subsection (a) of this Code section shall not apply to taxes paid pursuant to the terms of the property tax amnesty program.

History.
Code 1981, § 48-16A-10, enacted by Ga. L. 1994, p. 428, § 3.

CHAPTER 17

REDESIGNATED

Sec.
48-17-1 through 48-17-17. Redesignated.

Editor's notes.
Ga. L. 2013, p. 37, § 1-2/HB 487, effective April 10, 2013, redesignated the former provisions of this chapter, relating to coin operated amusement machines, as Article 3 of Chapter 27 of Title 50, and reserved the former chapter designation.

48-17-1 through 48-17-17.

Redesignated as Article 3 of Chapter 27 of Title 50 by Ga. L. 2013, p. 37, § 1-1/HB 487, effective April 10, 2013.

Editor's notes.
Ga. L. 2013, p. 37, § 1-1/HB 487, effective April 10, 2013, redesignated former Code Sections 48-17-1 through 48-17-17 as Code Sections 50-27-70 through 50-27-86.

Ga. L. 2018, p. 1112, § 17(3)/SB 365, part of an Act to revise, modernize, and correct the Code, repealed the reservation of this Code section, effective May 8, 2018.

CHAPTER 18

CERTIFIED CAPITAL COMPANIES

Sec.
48-18-1 through 48-18-9. [Repealed].

48-18-1 through 48-18-9. [Repealed].

History.
Code 1981, §§ 48-18-1 through 48-18-9, enacted by Ga. L. 2002, p. 954, § 4; Ga. L. 2003, p. 665, §§ 40, 41; repealed by Ga. L. 2004, p. 431, § 2, effective May 13, 2004.

Index

A

ABANDONMENT.
Income taxes.
Refund for overpayment of withheld taxes, §48-7-112.

ACADEMIES.
Property tax exemption, §48-5-41.

ACCOUNTANTS.
Fees.
Regulatory fees imposed by counties or municipalities.
Civil action to enforce, §48-13-9.1.
Examples of businesses not subject to, §48-13-9.
Regulatory fees imposed by counties or municipalities.
Civil action to enforce, §48-13-9.1.
Examples of businesses not subject to, §48-13-9.

ACCOUNTS AND ACCOUNTING.
Aged persons.
Homestead tax deferral for individuals 62 or older.
Deposits of prepayments into special escrow account, §48-5-79.
Restrictions on distributions from account, §48-5-79.
County tax collectors.
Annual accounting reports, §48-5-154.
Removal or suspension for failing to account or defaulting, §48-5-155.
Final settlements, §48-5-150.
Failure to make, §48-5-152.
Issuance of executions, §48-5-201.
Interest on unpaid taxes collected, §48-5-150.
Record books, §48-5-138.
Rendering account of official actions, §48-5-140.
County tax commissioners.
Annual accounting reports, §48-5-154.
Failure to account or default, §48-5-155.
Release of surety from future liability, §48-5-156.
Removal or suspension, §48-5-155.
Final settlements, §48-5-150.
Failure to make, §48-5-152.
Issuance of executions against, §48-5-201.

ACCOUNTS AND ACCOUNTING —Cont'd
County tax commissioners —Cont'd
Final settlements —Cont'd
Period for, §48-5-153.
Interest on unpaid taxes, §48-5-150.
Record books, §48-5-138.
Rendering account of official actions, §48-5-140.
Homestead tax deferral for individuals 62 or older.
Deposits of prepayments into special escrow account, §48-5-79.
Restrictions on distributions from account, §48-5-79.
Income taxes.
Annual accounting periods, §48-7-33.
Employers required to deduct and withhold taxes.
Special accounting for employers failure, §48-7-109.1.
Property taxes.
Amnesty program, §48-16A-9.
Homestead tax deferral for individuals 62 or older.
Deposits of prepayments in special escrow account, §48-5-79.
Sales and use taxes.
Reporting cash and credit sales, §48-8-45.
Tax amnesty program.
Funds collected under program, §48-16-9.
Property taxes, §48-16A-9.

ACHIEVING A BETTER LIFE EXPERIENCE (ABLE) ACCOUNTS.
Income tax.
Withdrawals not included in taxable income, §48-7-27.

ACTIONS.
Contractors.
Nonresident contractors, §48-13-36.
Appointment of secretary of state as agent for service of process, §48-13-35.
Violations of article.
Preclusion of right of action for payment on contract, §48-13-37.

ACTIONS —Cont'd
County property taxes.
County board of tax assessors.
Public record information used in assessment, appraisal or setting fair market value.
Enforcement of taxpayer access, §48-5-306.
Refunds, §48-5-380.
County tax and license fee refunds, §48-5-380.
County tax collectors.
Collector's bond, §48-5-124.
Correctness of accounting reports, §48-5-154.
County tax commissioners.
Commissioner's bond, §48-5-124.
Correctness of accounting reports, §48-5-154.
County tax receivers.
Receiver's bond, §48-5-102.
Income taxes.
Collection of tax out of assets of dissolved corporation, §48-7-83.
Restraint of assessment or collection, §48-7-84.
Intangible recording tax.
Failure to pay bars action on indebtedness, §48-6-77.
Refund of protested amount, §48-6-76.
Municipal property taxes.
Refunds, §48-5-380.
Municipal tax and license fee refund, §48-5-380.
Property taxes.
Acquisition of jurisdiction by superior courts.
Payment and distribution of property taxes at issue, §48-5-29.
Refunds.
Counties and municipalities, §48-5-380.
Real estate transfer tax.
Refunds, §48-6-7.
Refund of county or municipality tax or license fee, §48-5-380.
Sales and use taxes.
Bringing action raising issue of taxability, §48-8-41.
Nonresident dealers engaging in business, §48-8-65.
Over-collected sales or use tax, §48-8-72.

ACTIONS —Cont'd
Taxation.
Delinquent taxpayers.
Financial institution reporting on delinquent taxpayers.
Commissioner authority to institute civil proceeding to enforce, §48-2-63.
Enforcement of chapter or collection of taxes.
Compromise settlements, §48-2-60.
Refunds, §48-2-35.
State tax executions.
Actions for collection of tax.
Tolling or suspension of execution, §48-3-42.
Online information management system, unlawful use, §48-3-43.
Tax return preparers.
Injunction, §48-2-62.
Tobacco and alternative nicotine products taxes.
Enforcement and collection of penalties, §48-11-24.

ADMINISTRATIVE PROCEDURE.
Income taxes.
Setoff debt collection.
Applicability to hearing procedure of act, §48-7-165.
Setoff debt collection.
Income tax refunds.
Applicability of act to hearing procedure, §48-7-165.

ADMISSIONS.
Income taxes.
Employers required to deduct and withhold taxes.
Voluntary compliance not admission of doing business in state, §48-7-110.

ADULT DAY CARE.
Income taxes.
Credits for qualified caregiving expenses, §48-7-29.2.

AD VALOREM TAXATION OF PROPERTY.
Airline companies.
General provisions, §§48-5-540 to 48-5-546.
County taxation.
State loans to counties, §§48-5-330, 48-5-331.
Tax collectors, §§48-5-121 to 48-5-165.
Tax receivers, §§48-5-101 to 48-5-109.

AD VALOREM TAXATION OF PROPERTY —Cont'd
Foreclosures.
Ad valorem tax foreclosure, §§48-4-75 to 48-4-81.
Franchise tax, §§48-5-420 to 48-5-425.
Heavy-duty equipment, §§48-5-505 to 48-5-509.
Construction equipment owned by nonresidents, §§48-5-500, 48-5-501.
Homestead exemption.
Exemption from property taxes generally, §§48-5-40 to 48-5-56.
Homestead tax deferral for individuals 62 or older, §§48-5-70 to 48-5-84.
Intangible recording tax, §§48-6-60 to 48-6-77.
Mobile homes.
General provisions, §§48-5-440 to 48-5-451, 48-5-490 to 48-5-495.
Motor vehicles.
General provisions, §§48-5-440 to 48-5-478.4.
Municipal property taxes, §§48-5-350 to 48-5-361.
Public utilities.
General provisions, §§48-5-510 to 48-5-524.
Real estate transfer tax, §§48-6-1 to 48-6-10.
School taxes.
General provisions, §§48-5-400 to 48-5-405.
Tax executions.
Ad valorem taxes of less than $1.
Statute of limitations, §48-3-21.1.
Timber, §48-5-7.5.

AD VALOREM TAXES OF LESS THAN $1.
Tax executions.
Statute of limitations, §48-3-21.1.

ADVERTISING.
County tax collectors.
Additional cost of execution, §48-5-137.1.
County tax commissioners.
Additional cost of execution, §48-5-137.1.
Property tax amnesty program, §48-16A-8.
Property tax homestead exemptions.
Opt-out by local governing authority.
Statewide exemption (contingently effective 1/1/2025), §48-5-44.2.

ADVERTISING —Cont'd
Sales and use taxes.
Dealers advertising assumption of payment of tax prohibited, §48-8-36.
Violations of section, §48-8-37.
Taxation.
Judicial sales, §48-2-55.

AEROSPACE.
High-impact aerospace defense projects.
Income tax credits.
Businesses with existing manufacturing facilities, §48-7-40.25.
Conditions for taking credits, §48-7-40.24.
New jobs credits, §§48-7-40.17, 48-7-40.24.

AFFIDAVITS.
Aged persons.
Homestead exemption from ad valorem taxation, §48-5-47.
Contraband.
Tax forfeitures.
Affidavit to test legality, §48-2-83.
County property taxes.
Illegality to execution against person holding county money, §48-5-239.
County tax collectors.
Illegality of execution against, §48-5-203.
Qualifications to seek office, §48-5-210.
County tax commissioners.
Illegality of execution against, §48-5-203.
Qualifications to seek office, §48-5-210.
County tax receivers.
Qualifications to seek office, §48-5-210.
Donation of real property to be used for conservation purposes.
Income tax credit.
Appraisal of donation required for certification, §48-7-29.12.
Heavy-duty equipment ad valorem taxation.
Affidavit of illegality to assessment, §48-5-508.
Homestead exemption from ad valorem taxation.
Individuals 65 or older, §48-5-47.
Unremarried surviving spouse of peace officer or firefighter killed in line of duty, §48-5-48.4.

AFFIDAVITS —Cont'd
Income taxes.
Alternative fuel heavy and medium duty vehicles, credit for purchase, §48-7-29.19.
False or fraudulent affidavits.
Assisting, counseling, etc., in filing, §48-7-3.
Intangible recording tax.
Long-term note secured by real estate.
Filing new or modified note secured by previously recorded instrument, §48-6-62.
Mobile home ad valorem taxation.
Affidavit of illegality to assessments, §48-5-450.
Motor vehicle ad valorem taxation.
Affidavit of illegality to assessments, §48-5-450.
Property taxes.
Heavy-duty equipment ad valorem taxation.
Affidavit of illegality to assessment, §48-5-508.
Homestead exemption.
Individuals 65 or older, §48-5-47.
Unremarried surviving spouse of peace officer or firefighter killed in line of duty, §48-5-48.4.
Motor vehicle and mobile home ad valorem taxation.
Affidavit of illegality to assessments, §48-5-450.
Timber.
Qualified timberland property.
Certification as qualified timberland property, §48-5-604.
Taxation.
Contraband articles.
Affidavit to test legality of forfeiture, §48-2-83.
Judicial and investigative powers of commissioner.
Power to take, §48-2-8.
Tax executions.
Execution for collection of money due state.
Affidavit of illegality, §48-3-1.

AGE.
County boards of tax assessors.
Qualifications for members, §48-5-291.
County tax officials.
Qualifications for office, §48-5-210.

AGED PERSONS.
Definitions.
Homestead tax deferral for individuals 62 or older, §48-5-71.
Homestead exemption from ad valorem taxation, §§48-5-47, 48-5-47.1, 48-5-48.3.
Exemption from educational taxes for individuals 62 or older, §48-5-52.
Falsification of information, §48-5-53.
Homestead tax deferral for individuals 62 or older, §§48-5-70 to 48-5-84.
Alternative to tax deferral authorized, §48-5-72.1.
Appeal of penalties imposed for filing incorrect information, §48-5-84.
Appeals to board of equalization, §48-5-74.
Applicability of deferral.
Taxes on assessed value of $50,000 or less, §48-5-72.
Application, §48-5-74.
Alternative to tax deferral, §48-5-72.1.
Filing, §48-5-72.
Approval of application, §48-5-74.
Change in ownership or use, §48-5-77.
Compliance with alternative to tax deferral.
Burden on applicant, §48-5-72.1.
Compliance with requirements of part.
Burden on applicant, §48-5-72.
Construction of part, §48-5-83.
Deeds to secure debt.
Payment by holder, §48-5-81.
Prohibition of clauses preventing applications for deferrals, §48-5-82.
Definitions, §48-5-71.
Delinquent deferred taxes, §48-5-78.
Disapproval of application, §48-5-74.
Distribution of deferred taxes and interest payments, §48-5-80.
Restrictions on distributions from escrow account, §48-5-79.
Escrow accounts.
Deposit of prepayments into, §48-5-79.
Restrictions on distributions, §48-5-79.
Filing of incorrect information.
Penalties, §48-5-84.
Foreclosure.
Payment by holder of deed to secure debt or mortgagee, §48-5-81.

AGED PERSONS —Cont'd
Homestead tax deferral for individuals 62 or older —Cont'd
Generally, §48-5-72.
Grant of deferral.
Limitations, §48-5-73.
Hearings on appeal to board of equalization, §48-5-74.
Insurance.
Proof of fire and extended coverage, §48-5-74.
Failure to maintain insurance, §48-5-78.
Interest on amount of deferred taxes, §48-5-75.
Distribution of interest payments, §48-5-80.
Lien, §48-5-76.
Notice of interest outstanding, §48-5-77.
Partial payments applied to accrued interest, §48-5-79.
Payment, §48-5-78.
Prepayment of accrued interest, §48-5-79.
Lien on deferred taxes and interest, §48-5-76.
Report on outstanding liens, §48-5-78.
Unsatisfied liens in excess of 85 percent of homestead's value, §48-5-78.
Limitations on grant of deferral, §48-5-73.
Mortgagees.
Payments by, §48-5-81.
Mortgages.
Prohibition of clauses preventing applications for deferral, §48-5-82.
Notice of application disapproval, §48-5-74.
Notice of sum of deferred taxes and interest outstanding, §48-5-77.
Notice of unsatisfied liens, §48-5-78.
Oath.
Application for deferral, §48-5-74.
Payment of deferred taxes, §48-5-78.
Application of partial payments to accrued interest, §48-5-79.
Distribution, §48-5-80.

AGED PERSONS —Cont'd
Homestead tax deferral for individuals 62 or older —Cont'd
Payment of deferred taxes —Cont'd
Holders of deeds to secure debt or mortgagees, §48-5-81.
Partial payments, §48-5-79.
Prepayment, §48-5-79.
Records, §48-5-80.
Penalties for willfully filing incorrect information, §48-5-84.
Prepayment of deferred taxes and accrued interest, §48-5-79.
Records of property and amount of payment, §48-5-80.
Report on outstanding liens, §48-5-78.
Short title.
Tax deferral for the elderly act, §48-5-70.
Sum of deferred taxes.
Notification to property owner, §48-5-77.
Tax deferral for the elderly act.
Short title, §48-5-70.
Time for filing application, §48-5-72.
Alternative to tax deferral, §48-5-72.1.
Time of accrual of interest on deferred taxes, §48-5-75.
Year's support.
Effect on lien for deferred taxes, §48-5-76.
Medical assistance for aged.
Setoff debt collection.
Income tax refunds generally, §§48-7-160 to 48-7-170.
Property taxes.
Homes for the aged.
Exemption of nonprofit homes, §48-5-41.
Homestead exemption, §§48-5-47, 48-5-47.1, 48-5-48.3.
Exemption from educational taxes of individuals 62 or older, §48-5-52.
Falsification of information, §48-5-53.
Homestead tax deferral for individuals 62 or older.
Generally, §§48-5-70 to 48-5-84.
Reports.
Homestead tax deferral for individuals 62 or older, §48-5-78.

AGRICULTURE.
Commodities.
Sales and use taxes.
Exemption of agricultural commodities.
Commodities not sold as finished product to ultimate consumer, §48-8-5.
Equipment.
Motor vehicle ad valorem taxation.
Self-propelled farm equipment as sub-class of property, §48-5-504.
Farm vehicles.
Motor vehicle ad valorem taxation.
Self-propelled farm equipment as sub-class of property, §48-5-504.
Funds.
Georgia agricultural trust fund, §48-8-3.3.
Income taxes.
Estimated income tax by individuals.
Installment payments by farmers, §48-7-116.
Time for filing by farmers, §48-7-115.
Exemption of agricultural or horticultural organizations, §48-7-25.
Hurricane Michael disaster relief for agricultural losses.
Taxable income, §48-7-27.
Motor fuel taxes.
Refunds to persons using gasoline for agricultural purposes, §48-9-10.
False swearing on applications, §48-9-11.
Municipal property taxes.
Exemption of agricultural products raised in state, §48-5-356.
Property taxes.
Exemption for farm products, §§48-5-41, 48-5-41.1.
Municipal property taxes.
Exemption of agricultural products raised in state, §48-5-356.
Tangible real property devoted to bona fide agricultural purposes, §48-5-7.1.
Assessment, §48-5-7.
Preferential ad valorem property tax assessment, §48-5-7.1.
Defined, §48-5-7.1.

AGRICULTURE —Cont'd
Sales and use taxes.
Transit special purpose local option sales and use tax.
Exemptions from local tax.
Additional exemptions.
Fuel used by off-road heavy-duty equipment, off-road farm or agricultural equipment or locomotives, §48-8-269.52.
Taxation.
Income taxes.
Estimated income tax by individuals.
Installment payments by farmers, §48-7-116.
Time for filing by farmers, §48-7-115.
Motor fuel taxes.
Refunds to persons using gasoline for agricultural purposes, §48-9-10.
False swearing on applications, §48-9-11.
Property taxes.
Exemption for farm products, §§48-5-41, 48-5-41.1.
Municipal property taxes.
Exemption of agricultural products raised in state, §48-5-356.
Tangible real property devoted to bona fide agricultural purposes, §§48-5-7, 48-5-7.1.
Sales and use taxes.
Exemption of agricultural commodities.
Commodities not sold as finished product to ultimate consumer, §48-8-5.
Nonapplicability of use tax to products used by producer, §48-8-4.

AGRITOURISM.
Georgia tourism development act, §§48-8-270 to 48-8-277.
Property taxes.
Bona fide conservation use property.
Agritourism business not considered breach of covenant, §48-5-7.4.

AIR COMMERCE.
Prohibition of tax on persons traveling in, §48-13-4.

AIRCRAFT.
Ad valorem taxation.
Aircraft owned by dealer and held in inventory.
Exemption, §48-5-504.20.
Contraband.
Taxation.
Contraband articles used in violations of title, §§48-2-82 to 48-2-84.
Dealers.
Ad valorem taxation.
Exemption of aircraft owned by dealer and held in inventory, §48-5-504.20.
Property taxes.
Aircraft owned by dealer and held in inventory.
Exemption from ad valorem taxes, §48-5-504.20.
Sales and use taxes.
Exemption, §48-8-3.
Prepaid state taxes.
Temporary suspension of collection as it relates to motor fuels and aviation gasoline.
Ratification of governor's executive order, §48-8-17.
Special district mass transportation sales and use tax.
Exemptions beyond general sales tax exemptions.
Jet fuel, §48-8-269.
Transit special purpose local option sales and use tax.
Exemptions from local tax.
Additional exemptions.
Jet fuel, §48-8-269.52.
Taxation.
Contraband articles used in violations of title, §§48-2-82 to 48-2-84.

AIRLINE AD VALOREM TAXATION, §§48-5-540 to 48-5-546.
Apportionment among tax jurisdictions based on plane hours, §48-5-543.
Levy and collection of tax upon apportioned valuation, §48-5-544.
Assessments.
Valuation of aircraft, §48-5-543.
Same manner as other personal property, §48-5-542.

AIRLINE AD VALOREM TAXATION —Cont'd
Assessments —Cont'd
Valuation of aircraft —Cont'd
Submission of proposed valuations to state board of equalization, §48-5-545.
Collection of tax upon apportioned valuation by local tax jurisdiction, §48-5-544.
Definitions, §48-5-540.
Exclusivity of article, §48-5-546.
Flight equipment.
Returns, §48-5-541.
Review, §48-5-542.
Submission of proposed valuations to state board of equalization, §48-5-545.
Levy of tax upon apportioned valuation by local tax jurisdiction, §48-5-544.
Penalty for failure to make return.
Flight equipment, §48-5-541.
Procedure in article exclusive, §48-5-546.
Returns.
Flight equipment, §48-5-541.
Review, §48-5-542.
State board of equalization.
Submission of proposed valuations for flight equipment and aircraft to, §48-5-545.
Valuation of aircraft, §48-5-543.
Levy and collection of tax upon apportioned valuation, §48-5-544.
Same manner as other personal property, §48-5-542.
Submission of proposed valuations to state board of equalization, §48-5-545.

AIRLINES.
Ad valorem taxation, §§48-5-540 to 48-5-546.
Air commerce.
Prohibition of tax on persons traveling in, §48-13-4.
Income taxes.
Allocation and apportionment of income, §48-7-31.
Sales and use taxes.
Food and beverage sales to qualified airlines, §48-8-3.
Jet fuel purchases.
Exemptions, §48-8-3.5.

AIRLINES —Cont'd
Sales and use taxes —Cont'd
Jet fuel purchases —Cont'd
Joint sales and use tax.
Counties and municipalities, §48-8-82.
Special district mass transportation sales and use tax.
Exemptions beyond general sales tax exemptions, §48-8-269.
Suspension of collection by governor, §48-8-19.

AIR POLLUTION.
Property tax exemption.
Elimination or reduction property, §48-5-41.
Sales and use taxes.
Exemption of sale of machinery and equipment for use in combating, §48-8-3.

AIRPORTS.
Authorities.
Tax on persons traveling in air commerce.
Prohibition, §48-13-4.
Contractors.
Nonresident contractors, §§48-13-30 to 48-13-38.
Nonresident contractors, §§48-13-30 to 48-13-38.

ALIENS.
Income tax deduction as business expense.
Wages or remuneration paid individuals.
Disallowed unless individual authorized employee, §48-7-21.1.

ALLEYS.
Property taxes.
Municipal taxes.
Assessments for certain improvements.
Executions for collection, §48-5-358.

ALL-TERRAIN VEHICLES.
Motor vehicle ad valorem taxation.
Watercraft and all-terrain vehicles owned by dealer and held in inventory.
Exempt from taxation for limited time, §48-5-504.40.

ALTERNATIVE FUEL.
Sales of property used in constructing production facilities.
Sales and use tax exemptions, §48-8-3.

ALTERNATIVE FUELED VEHICLES.
Income tax credit for purchase of heavy and medium duty vehicles, §§48-7-29.18, 48-7-29.19.

ALTERNATIVE NICOTINE PRODUCTS.
Taxes.
Tobacco and alternative nicotine products taxes, §§48-11-1 to 48-11-30.

AMATEUR SPORTS ASSOCIATIONS.
Income tax exemption, §48-7-25.

AMERICAN LEGION.
Property tax exemption, §48-5-41.
Motor vehicle, §48-5-478.4.

AMNESTY.
Tax amnesty program, §§48-16-1 to 48-16-12.

ANATOMICAL GIFTS.
Income tax deductions for organ donation expenses, §48-7-27.
Organ procurement organizations.
Sales and use taxes, exemptions, §48-8-3.

ANIMALS.
Property tax exemption.
Domestic animals, §48-5-42.
Taxation.
Property tax exemption.
Domestic animals, §48-5-42.

ANTHROPOLOGICAL OBJECTS OR ARTIFACTS.
Museums.
Sales and use taxes, §48-8-3.

ANTIPOLLUTION EQUIPMENT.
Tax exemptions.
Ad valorem taxation of property, §48-5-41.
Sales and use taxes, §48-8-3.

APPEALS.
Aged persons.
Homestead tax deferral for individuals 62 or older.
Disapproval of application, §48-5-74.

APPEALS —Cont'd
Aged persons —Cont'd
Homestead tax deferral for individuals 62 or older —Cont'd
Imposition of penalties, §48-5-84.
County tax collectors.
Issues formed on affidavit of illegality to execution against, §48-5-203.
County tax commissioners.
Issues formed on affidavit of illegality to execution against, §48-5-203.
Homestead exemption from ad valorem taxation.
Determination of eligibility, §48-5-49.
Homestead tax deferral for individuals 62 or older.
Disapproval of application, §48-5-74.
Imposition of penalties, §48-5-84.
Income taxes.
Setoff debt collection, §§48-7-165, 48-7-165.1.
Mobile home ad valorem taxation.
Assessment of mobile home, §48-5-450.
Motor vehicle ad valorem taxation.
Appeals of fair market value, §48-5C-1.
Assessment of motor vehicle, §48-5-450.
Property taxes.
Approval of tax digest when assessments on appeal, §48-5-304.
Challenge of commissioner's proposed assessment, §48-2-18.
Changing real property values established by appeal in prior year, §48-5-299.
Conditional approval of county tax digest, §48-5-348.
Conservation use easements.
Covenant, breach, §48-5-7.4.
County boards of equalization.
Appeals to superior court.
Taxpayer or board of tax assessors appeals, §48-5-311.
Assessments of boards of tax assessors, §48-5-311.
Appraisals from appraiser classified by real estate commission and real estate appraisers board.
Consideration on appeal, §48-5-311.
Consolidation of appeals, §48-5-311.
Final determination, time for communication, §48-5-311.

APPEALS —Cont'd
Property taxes —Cont'd
County boards of equalization —Cont'd
Assessments of boards of tax assessors —Cont'd
Hearing officers, appeals to, §48-5-311.
Large number of appeals, extension of time to process appeal, §48-5-311.
Sales ratio study.
Consideration on appeal, §48-5-311.
Settlement conference, effect of nonparticipation (contingently effective 1/1/2025), §48-5-311.
Unforeseen circumstances, extension of time to process appeal, §48-5-311.
Hearing officers, appeal to, §48-5-311.
County boards of tax assessors.
Assessments by boards, §48-5-311.
Removal from office on petition of freeholders, §48-5-296.
Current use assessments, §48-5-7.4.
Determination of county entitled to return and payment, §48-5-17.
Disapproval of county tax digest.
Appeal to superior court, §48-5-349.3.
Procedure for appeal to department of revenue, §48-5-349.2.
Equalization of assessments.
Chief appraiser to attend and provide information at appeal hearing, §48-5-266.
Examination of county tax digest.
Striking properties illegally appearing on digest, §48-5-342.
Homestead exemption.
Determination of eligibility, §48-5-49.
Homestead tax deferral for individuals 62 or older.
Disapproval of application, §48-5-74.
Imposition of penalties, §48-5-84.
Motor vehicle and mobile home ad valorem taxation.
Assessments, §48-5-450.
Public utility ad valorem taxation.
Railroad equipment company assessments, §48-5-519.
Temporary collection of taxes pending appeal of disapproval of digest, §48-5-310.

APPEALS —Cont'd
Property taxes —Cont'd
Timber.
Qualified timberland property, §§48-5-605, 48-5-606.
Public utility ad valorem taxation.
Railroad equipment company assessments, §48-5-519.
Railroads.
Public utility ad valorem taxation.
Assessments of railroad equipment companies, §48-5-519.
Setoff debt collection.
Income tax refunds, §§48-7-165, 48-7-165.1.
Taxation.
Orders, rulings or findings of commissioner, §48-2-59.
Tobacco and alternative nicotine products taxes.
Persons aggrieved by action or decision of commissioner after hearing, §48-11-18.
Suspension, refusal of renewal and revocation of licenses, §48-11-6.

APPEARANCES.
Failure to appear.
Tax executions.
Petition to reduce execution to judgment.
Failure of respondent to appear, §§48-3-16, 48-3-17.
Tax executions.
Petition to reduce execution to judgment.
Appearance of respondent.
Effect on grace period before final judgment, §48-3-17.
Failure of respondent to appear, §48-3-16.
Effect on grace period before final judgment, §48-3-17.

APPELLATE PRACTICE, SUPERIOR AND STATE COURTS.
Property taxes.
Decisions of county boards of equalization, §48-5-311.

APPRAISALS.
County property taxes.
Equalization of assessments.
Appraisal staffs, §§48-5-262 to 48-5-268.

APPRAISALS —Cont'd
Donation of real property to be used for conservation purposes.
Income tax credit.
Appraisal of donation required for certification, §48-7-29.12.
Property taxes.
Equalization of assessments.
Appraisal staffs, §§48-5-262 to 48-5-268.
Timber.
Qualified timberland property.
Fair market value.
Appeals of determinations, §48-5-605.
Determination, §48-5-601.
Manual for appraisals, §48-5-602.

APPROPRIATIONS.
Highways, roads and streets.
County road construction and maintenance.
Distribution of funds appropriated to counties, §48-14-3.

AQUARIUMS.
Sales and use tax exemptions.
Renovation or expansion of certain aquarium.
Tangible personal property, §48-8-3.

ARBITRATION.
County property taxes.
Approval of tax digest when assessments in arbitration, §48-5-304.
Equalized school property tax digest, §48-5-274.
Property taxes.
Disputes as to valuation.
Nonbinding arbitration, §48-5-311.
School taxes.
Equalized adjusted school property tax digest, §48-5-274.

ARCHITECTS.
Fees.
Regulatory fees imposed by counties or municipalities.
Civil action to enforce, §48-13-9.1.
Example of businesses not subject to, §48-13-9.
Regulatory fees imposed by counties or municipalities.
Civil action to enforce, §48-13-9.1.
Example of businesses not subject to, §48-13-9.

ARREST.
Motor carriers road tax.
Powers of department of public safety in administering and enforcing article, §48-9-43.
Tobacco and alternative nicotine products taxes.
Powers of special agents and enforcement officers, §48-11-19.

ARTIFACTS.
Museums where displayed.
Tax exemptions, §48-8-3.

ARTIFICIAL GAS.
Industrial materials.
Sales and use taxes defined.
Artificial gas not included, §48-8-3.
Retail sales.
Defined, §48-8-2.

ARTIFICIAL LIMBS.
Taxation, §48-8-3.

ASSESSMENTS.
Airline ad valorem taxation.
Valuation of aircraft, §48-5-543.
Same manner as other personal property, §48-5-542.
Submission of proposed valuations to state board of equalization, §48-5-545.
Commercial vehicle ad valorem taxation, §48-5-442.1.
Energy tax.
Assessment of dealer or purchaser.
Collection and payment procedures, §48-13-117.
Failure to file return or submit payment, §48-13-120.
Time for assessments, §48-13-117.
Excise tax on marijuana and controlled substances, §48-15-9.
Franchise tax.
Ascertainment of valuations of special franchises, §48-5-423.
Special franchises exercised in more than one county, municipality or school district, §48-5-424.
Income taxes.
Abatement of overassessment.
Employer required to deduct and withhold tax, §48-7-113.
Change or correction of net income.
Additional tax due, §48-7-82.
Employer's liability.
Employers required to withhold and deduct taxes, §48-7-108.

ASSESSMENTS —Cont'd
Income taxes —Cont'd
Interest on taxes not timely paid, §48-7-81.
Periods of limitation, §48-7-82.
Protests of proposed assessment.
Employers required to deduct and withhold taxes, §48-7-108.
Restraining assessments.
No action for purposes of under chapter, §48-7-84.
Mobile home ad valorem taxation.
Assessment level, §48-5-443.
Contesting, §48-5-450.
Uniform evaluation prepared and distributed annually, §48-5-442.
Motor carriers road tax.
Deficiencies, §48-9-41.
Estimation of amount of road tax due, §48-9-40.
Reopening of tax period and additional assessment, §48-9-41.
Motor fuel taxes, §48-9-13.
Operation without distributor's license.
Assessment of penalty in lieu of taxes, §48-9-18.
Motor vehicle ad valorem taxation.
Assessment level, §48-5-443.
Contesting, §48-5-450.
Dealers for retail sale.
Dealer's assessed value, §48-5-472.
Uniform evaluation prepared and distributed annually, §48-5-442.
Property taxes.
County taxes.
Appeals from assessments by county board of tax assessors, §48-5-311.
County board of tax assessors.
General provisions, §§48-5-290 to 48-5-314.
County boards of equalization.
Powers and duties, §48-5-311.
Equalization of assessments.
General provisions, §§48-5-260 to 48-5-275.
State loans for programs to evaluate and equalize assessments, §§48-5-330, 48-5-331.
Examination of county tax digest.
Generally, §§48-5-340 to 48-5-349.5.
State loans to evaluate and equalize assessments, §48-5-330.
Capital fund for loans, §48-5-331.

ASSESSMENTS —Cont'd
Property taxes —Cont'd
Municipal taxes.
Basis for fair market value, §48-5-353.
Determination of fair market value, §48-5-352.
Equalization of assessments.
General provisions, §§48-5-260 to 48-5-275.
Frontage owned by state or subdivisions abutting streets or sidewalks.
Treated as owned by individuals for assessment for improvements, §48-5-357.
Public utility ad valorem taxation.
Railroad companies for purposes of county and municipal taxation, §48-5-521.
Railroad company rolling stock and other personal property, §48-5-520.
Railroad equipment companies, §48-5-519.
Sales and use taxes.
Failure to file or false or fraudulent returns, §48-8-55.
Invoices not reflecting true or actual cost price, §48-8-52.
Time for, §48-8-64.
School taxes.
Equalization of assessments, §§48-5-260 to 48-5-275.
Public utility property subject to school tax, §48-5-402.
Tax amnesty program.
Deficiency assessment after amnesty period ends, §48-16-5.
Effect of assessment, §48-16-5.
Tobacco and alternative nicotine products taxes.
Acquisition of cigars or cigarettes for which tax not paid.
Failure to make required reports or incorrect reports, §48-11-14.
Deficiency, §48-11-12.

ASSIGNMENTS.
Income taxes.
Assignees operating property or business of corporation.
Returns, §48-7-51.
Intangible recording tax, §48-6-65.
Tax avoidance.
Effect of actions, §48-2-61.

ASSIGNMENTS FOR BENEFIT OF CREDITORS.
Sales and use taxes.
Accrual basis of accounting.
Deduction of bad debts, §48-8-45.

ATHLETICS.
Amateur sports associations.
Income tax exemption, §48-7-25.
Income taxes.
Exemption.
Amateur sports organizations and professional football leagues, §48-7-25.
Sales and use taxes.
General provisions, §§48-8-1 to 48-8-78.

ATTACHMENT.
Motor carriers road tax.
Collection of deficiencies and road taxes due, §48-9-41.
Taxation.
Property of delinquent taxpayer, §48-2-55.
Tax executions.
State tax executions.
Attachment to real property in county filed, §48-3-42.

ATTORNEY GENERAL.
Contractors.
Nonresident contractors.
Actions against, §48-13-36.
Injunction pending compliance with registration and bond requirements, §48-13-33.
Intangible recording tax.
Actions for refunds of protested amount.
Representation of state defendants, §48-6-76.
Nonresident contractors.
Actions against, §48-13-36.
Injunction pending compliance with registration and bond requirements, §48-13-33.
Real estate transfer tax.
Action for refund upon denial of claim.
Representation of state defendants, §48-6-7.
Sales and use taxes.
Action raising issue of taxability.
Copy of initial pleading to attorney general, §48-8-41.
Special county one percent tax.
Jurisdiction to enforce provisions, §48-8-124.

ATTORNEY GENERAL —Cont'd
Taxation.
Compromise and settlement.
Enforcement of collection of taxes.
Approval of attorney general, §48-2-60.
Legal advice and assistance to commissioner, §48-2-9.
Sales and use taxes.
Action raising issue of taxability.
Copy of initial pleading to attorney general, §48-8-41.
State board of equalization.
Member of board, §48-2-18.
State tax executions.
Online information management system, unlawful use, §48-3-43.

ATTORNEY-IN-FACT.
Nonresident.
Sale and use taxes, §48-8-65.

ATTORNEYS.
Fees.
Regulatory fees imposed by counties or municipalities.
Civil action to enforce, §48-13-9.1.
Examples of businesses not subject to, §48-13-9.
Tax amnesty program.
Contracts with attorneys to collect delinquent taxes, penalties and interest, §48-16-11.

ATTORNEYS' FEES.
County property taxes.
County board of tax assessors.
Public record information used in assessment, appraisal or setting fair market value.
Enforcement of taxpayer access, §48-5-306.

AUCTIONS.
Sales and use taxes.
Collection of taxes due.
Sale at public auction of securities for, §48-8-57.
Taxation.
Judicial sales, §48-2-55.

AUDITS.
County tax collectors.
Cashbook, §48-5-138.
County tax commissioners.
Cashbook, §48-5-138.
Energy tax.
Dealers' records, §48-13-121.

AUDITS —Cont'd
Hotels and other lodging places.
Excise tax on rooms, lodging and accommodations.
Marketplace innkeepers.
Responsibilities as to tax, §48-13-50.4.
Income taxes.
Film, gaming, video or digital production in state, tax credits, §48-7-40.26.
Rural hospital organizations providing services to underserved areas.
Qualified rural hospital organization expenses, tax credit.
Contributions for expenses, credit for individuals, §48-7-29.20 (Repealed 12/31/2029).
State returns.
Examination of federal income tax returns, §48-7-59.
Property taxes.
Timber.
Qualified timberland property.
Certification as qualified timberland property, §48-5-604.
Sales and use taxes.
Exemptions.
Agricultural equipment and machinery, §48-8-3.3.
Marketplace facilitators and sellers, §48-8-30.
Transit special purpose local option sales and use tax.
Exclusive use of proceeds for transit projects.
Enforcement, §48-8-269.57.
Water and sewer projects and costs (MOST).
Audit of tax imposed, §48-8-212.
Tax amnesty program.
Effect of audit, §48-16-5.

AUTHORITIES.
Coliseum authorities.
Sales and use tax exemption, §48-8-3.
Land bank authorities.
Sales under tax executions.
General provisions, §§48-4-60 to 48-4-65.

AUTOMOBILE OR MOTORCYCLE RACING.
Occupation tax or regulatory fee levied by local government.
Civil action to enforce, §48-13-9.1.

AUTOMOBILE OR MOTORCYCLE RACING —Cont'd
Occupation tax or regulatory fee levied by local government —Cont'd
Example of business subject to, §48-13-9.

AUTOMOBILES.
Motor vehicle ad valorem taxation, §§48-5-440 to 48-5-478.4.

AVIATION.
Airports.
Taxation of property, §48-5-15.1.
Fuel.
Sales and use taxes.
Exemptions for sale or use of jet fuel, §48-8-3.5.
Joint sales and use tax.
Counties and municipalities, §48-8-82.
Special district mass transportation sales and use tax.
Exemptions beyond general sales tax exemptions, §48-8-269.
Suspension of collection by governor, §48-8-19.
High-impact aerospace defense projects.
Income tax credits.
Businesses with existing manufacturing facilities, §48-7-40.25.
Conditions for taking credits, §48-7-40.24.
New jobs credits, §§48-7-40.17, 48-7-40.24.

AVIATION GASOLINE.
Motor fuel taxes.
General provisions, §§48-9-1 to 48-9-19.

B

BACK TO SCHOOL.
Sales tax exemptions, back to school, §48-8-3.

BAD FAITH.
Ad valorem taxation of property.
Annual accounting reports, §48-5-154.
Failure to collect taxes, §48-5-157.
Intangible recording tax.
Failure to pay tax, §48-6-77.

BAIT.
Crab bait tax exemption, §48-8-3.

BALLOTS.
Homestead option sales and use tax.
Voter referenda, §§48-8-103, 48-8-106.
Sales and use taxes.
Special district mass transportation sales and use tax.
Metropolitan county special districts.
Levy of tax.
Referendum, §48-8-269.9.
Metropolitan municipal special districts.
Levy of tax.
Referendum, §48-8-269.24.

BANKRUPTCY AND INSOLVENCY.
Income taxes.
Trustees operating property or business of corporation.
Returns, §48-7-51.

BANKS AND TRUST COMPANIES.
Business license tax for depository financial institutions.
Local tax, §48-6-93.
License tax for depository financial institutions.
Local business license tax, §48-6-93.
National banks.
Taxation of moneyed capital competing with, §48-6-94.
Occupation tax on depository financial institutions.
Special state occupation tax, §48-6-95.
Taxation.
Delinquent taxpayers.
Financial institution reporting on delinquent taxpayers, §48-2-63.
Moneyed capital competing with national banks, §48-6-94.
Occupation tax, §48-6-95.

BASEBALL GAMES.
Major sporting events.
Sales tax exemptions for ticket sales to certain nonrecurring events, §48-8-3.
Ticket taxes, §48-8-2.

BASKETBALL GAMES.
Major sporting events.
Sales tax exemptions for ticket sales to certain nonrecurring events, §48-8-3.

BEVERAGES.
Sales and use tax.
Airlines.
Exemption of sales of beverages to qualified airlines, §48-8-3.
Joint sales and use tax.
Counties and municipalities, §48-8-82.
Special county one percent sales and use tax, §48-8-110.1.

BIBLES.
Sales and use taxes.
Exemption, §48-8-3.

BIDS AND BIDDING.
Taxation.
Judicial sales, minimum bid price, §48-2-55.

BILLS OF SALE.
Tax executions.
Sales under tax executions.
Validity, §48-4-6.

BIOMASS MATERIALS.
Income tax credits for clean energy property, §48-7-29.14.
Sales and use tax exemption.
Materials used in production of energy, §48-8-3.

BLACK PERSONS.
Small businesses.
Income taxes, deduction for payments to classified subcontractors.
Minority, women, or veteran owned businesses, §48-7-38.

BLOOD BANKS.
Sales and use taxes.
Exemption, §48-8-3.

BLOOD GLUCOSE LEVEL MEASURING STRIPS.
Sales and use taxes.
Exemption, §48-8-3.

BOARDING HOUSES.
Occupation tax or regulatory fee levied by local government.
Civil action to enforce, §48-13-9.1.
Example of business subject to, §48-13-9.

BOARDS.
County board of tax assessors.
General provisions, §§48-5-290 to 48-5-314.

BOARDS —Cont'd
Hotel motel tax performance review board, §48-13-56.1.
Property taxes.
County board of tax assessors.
General provisions, §§48-5-290 to 48-5-314.
State board of equalization, §48-2-18.
Taxation.
County board of tax assessors.
General provisions, §§48-5-290 to 48-5-314.
State board of equalization, §48-2-18.

BOATS AND OTHER WATERCRAFT.
Contraband.
Taxation.
Contraband articles used in violations of title, §§48-2-82 to 48-2-84.
Motor vehicle ad valorem taxation.
Watercraft owned by dealer and held in inventory.
Exempt from taxation for limited time, §48-5-504.40.
Property taxes.
Motor vehicle ad valorem taxation.
Watercraft owned by dealer and held in inventory.
Exempt from taxation for limited time, §48-5-504.40.
Repairs.
Sales and use taxes.
Maximum amount of sales and use tax on boat maintenance, refitting or repair, §48-8-3.4.
Sales and use taxes.
Exemptions, §48-8-3.
Maximum amount of sales and use tax on boat maintenance, refitting or repair, §48-8-3.4.
Taxation.
Contraband articles used in violations of title, §§48-2-82 to 48-2-84.
Motor vehicle ad valorem taxation.
Watercraft owned by dealer and held in inventory.
Exempt from taxation for limited time, §48-5-504.40.

BONA FIDE PURCHASERS.
Income tax liens.
When liens attach to interests of bona fide purchasers, §48-2-56.

BOND ISSUES.
Sales and use taxes.
Coliseum capital outlay projects, special purpose local option sales tax.
Election on imposition of tax including question of issuance of debt, §48-8-147.
Maximum amount, §48-8-148.
Requirements and limitations, §48-8-157.
Special county one percent sales and use tax.
Election on issuance of general obligation debt, §48-8-111.
Issuance of general obligation debt, §48-8-121.
Modification of projects approved by referendum, §48-8-123.
Special district mass transportation sales and use tax.
General obligation debt.
Ballot to include question, §48-8-263.
Determining that net proceeds sufficient to meet obligation, §48-8-269.5.
Metropolitan county special districts.
Levy of tax.
General obligation debt, restrictions on incurring, §48-8-269.20.
Intergovernmental agreement and resolution provisions regarding general obligation debt, §48-8-269.20.
Transit special purpose local option sales and use tax.
Counties not within nonattainment areas, procedures to impose tax.
Constitutional authority, §48-8-269.44.
Statutory provisions applicable to general obligation debt, §48-8-269.44.
Counties within nonattainment areas, procedures to impose tax.
Constitutional authority, §48-8-269.46.
Statutory provisions applicable to general obligation debt, §48-8-269.46.
Validation of general obligation debt, §48-8-269.57.

BOND ISSUES —Cont'd
Sales tax for educational purposes.
Issuance of general obligation debt, §48-8-142.
Stone Mountain Memorial Association.
Special county one percent sales and use tax.
Election on issuance of general obligation debt, §48-8-111.
Issuance of general obligation debt, §48-8-121.
Modification of projects approved by referendum, §48-8-123.

BONDS, SURETY.
Contractors.
Nonresident contractors, §48-13-32.
Failure to execute bond required, §48-13-38.
Injunction pending compliance with requirements, §48-13-33.
Release, §48-13-34.
Sales and use taxes.
General or prime contractors furnishing tangible personal property and services, §48-8-63.
County tax collectors, §48-5-122.
Approval, filing and recording, §48-5-123.
Collection before bond given, §48-5-125.
Failure to account for default.
Surety's right to demand release from future liability, §48-5-156.
Liability, §48-5-124.
New bond.
Release of surety from future liability for failure to account, §48-5-156.
Temporary appointee where collector fails to give satisfactory bond, §48-5-126.
County tax commissioners, §48-5-122.
Approval, filing and recording, §48-5-123.
Collection before bond given, §48-5-125.
Failure to account for default.
Surety's right to demand release from future liability, §48-5-156.
Liability, §48-5-124.
New bond.
Release of surety for failure to account, §48-5-156.

BONDS, SURETY —Cont'd
County tax commissioners —Cont'd
Temporary appointee where commissioner fails to give satisfactory bond, §48-5-126.
County tax receivers, §48-5-101.
Action on bond, §48-5-102.
Liability of receivers and sureties, §48-5-102.
Heavy-duty equipment ad valorem taxation.
Contesting tax assessment, §48-5-508.
High-technology data centers.
Sales and use tax exemptions.
Equipment incorporated or used in centers, §48-8-3.
Intangible recording tax.
Bond for title in absence of security deed, §48-6-68.
Mobile home ad valorem taxation.
Contesting tax assessments, §48-5-450.
Motor carriers' road tax.
Carriers entitled to refund, §48-9-36.
Motor fuel taxes.
Distributors, §48-9-4.
Retention by state revenue commissioner upon cancellation, §48-9-12.
Motor vehicle ad valorem taxation.
Contesting tax assessments, §48-5-450.
Property taxes.
Heavy-duty equipment ad valorem taxation.
Contesting tax assessment, §48-5-508.
Jeopardy assessments, §48-2-51.
Motor vehicle and mobile home ad valorem taxation.
Contesting tax assessments, §48-5-450.
Sales and use taxes.
Chronically delinquent or defaulting dealers, §48-8-57.
Contractors furnishing tangible personal property and services.
Bond by general or prime contractor, §48-8-63.
State revenue commissioner, §48-2-2.
Deputy state revenue commissioner, §48-2-5.
Taxation.
Appeals of orders, rulings or findings of commissioner, §48-2-59.
Jeopardy assessments, §48-2-51.

BONDS, SURETY —Cont'd
Tax executions.
Interposition of claims, §48-3-24.
Tobacco and alternative nicotine products taxes.
Appeals of actions or decisions of commissioner, §48-11-18.
Distributors.
Execution of bonds by distributors, §48-11-7.
Licensed distributors, §48-11-4.
Nonresident distributors, §48-11-5.
Purchase of stamps on account, §48-11-16.
Sale of unstamped cigarettes or nontax-paid cigars, §48-11-9.
Special agents or enforcement officers, §48-11-19.

BOUNDARIES.
Energy, excise tax on sale or use.
Special districts, boundaries, §48-13-111.
Special district option sales and use tax (contingently effective 1/1/2025).
Boundaries of special districts, §48-8-109.30.

BOXING AND WRESTLING.
Promoters.
Occupation tax or regulatory fee levied by local government.
Civil action to enforce, §48-13-9.1.
Example of business subject to, §48-13-9.

BREAD AND FLOUR.
Municipal property tax exemptions, §48-5-355.

BRIDGES.
Contractors.
Nonresident contractors.
General provisions, §§48-13-30 to 48-13-38.
Nonresident contractors.
General provisions, §§48-13-30 to 48-13-38.
Toll bridges.
Public utility ad valorem taxation.
General provisions, §§48-5-510 to 48-5-524.
Special franchises.
Taxation generally, §§48-5-420 to 48-5-425.

BROADBAND COMMUNICATIONS.
Corporations.
Income taxes.
Adjustments to taxable income, §48-7-21.

BROWNFIELDS.
Property taxes.
Assessment, §48-5-7.
Preferential assessment, §48-5-7.6.
Fair market value, §48-5-2.

BUILDINGS AND HOUSING.
Contractors.
Nonresident contractors.
General provisions, §§48-13-30 to 48-13-38.
Joint county and municipal sales and use tax.
Building and construction materials.
Sold or used under contract entered into prior to approval of levy, §48-8-94.
Nonresident contractors.
General provisions, §§48-13-30 to 48-13-38.
Sales and use taxes.
Joint county and municipal sales and use tax.
Building and construction materials.
Sold or used under contract entered into prior to approval of tax levy, §48-8-94.
Special county one percent sales and use tax.
Building and construction materials.
Inapplicability of tax to certain sales or uses, §48-8-118.
Taxation.
Income tax.
Credits, §48-7-29.6.
Joint county and municipal sales and use tax.
Building and construction materials.
Sold or used under contract entered into prior to approval of tax levy, §48-8-94.
Special county one percent sales and use tax.
Building and construction materials.
Inapplicability of tax to certain sales or uses, §48-8-118.

BULLION.
Sales and use taxes.
Exemption, §48-8-3.

BURDEN OF PROOF.
Aged persons.
Homestead tax deferral for individuals 62 or older.
Compliance with alternative to tax deferral, §48-5-72.1.
Compliance with part, §48-5-72.
County property taxes.
Arbitration of disputes as to valuation, §48-5-311.
Temporary collection of taxes pending approval or appeal of disapproval of digest, §48-5-310.
Homestead tax deferral for individuals 62 or older.
Compliance with alternative to tax deferral, §48-5-72.1.
Compliance with part, §48-5-72.
Motor carriers road tax.
Assessment based on estimation of amount of road tax due, §48-9-40.
Property taxes.
Arbitration of disputes as to valuation, §48-5-311.
Temporary collection of taxes pending approval or appeal of disapproval of digest, §48-5-310.
Sales and use taxes.
Taxability, §48-8-38.

BURGLAR AND FIRE ALARM INSTALLERS.
Occupation tax or regulatory fee levied by local government.
Civil action to enforce, §48-13-9.1.
Example of business subject to, §48-13-9.

BUSES.
Religious groups.
Motor vehicle ad valorem taxation exemptions, §48-5-470.2.

BUSINESS AND OCCUPATIONAL TAXES.
Privilege taxes.
License, occupation or professional taxes, §§48-13-2 to 48-13-29.

BUSINESS CORPORATIONS.
Headquarters.
Income tax credits, headquarters in state, §48-7-40.18.
New quality jobs.
Income tax credits, §48-7-40.17.

BUSINESSES.
Business and occupation taxes.
Privilege taxes.
License, occupation or professional taxes, §§48-13-2 to 48-13-29.
Occupation tax generally, §§48-13-2 to 48-13-29.
Privilege taxes.
License, occupation or professional taxes, §§48-13-2 to 48-13-29.

BUTANE.
Motor fuel tax law.
General provisions, §§48-9-1 to 48-9-19.

BUTYLENE.
Motor fuel tax law.
General provisions, §§48-9-1 to 48-9-19.

C

CABINS.
Excise tax on rooms, lodgings and accommodations.
County and municipal levies on public accommodations.
Tourist cabins, §48-13-51.
Lodges operated under jurisdiction of department of natural resources.
Collection and remittance, §48-13-54.
State sales and use tax.
Retail sale or sale at retail.
Sale or charges for tourist cabin included in definition, §48-8-2.

CAMPS.
Tourist camps.
Excise tax on rooms, lodgings and accommodations.
County and municipal levies, §48-13-51.
State sales and use tax definitions.
Retail sale or sale at retail, §48-8-2.

CANALS.
Public utility ad valorem taxation.
General provisions, §§48-5-510 to 48-5-524.
Special franchises.
Taxation generally, §§48-5-420 to 48-5-425.

CANCELLATION.
Motor fuel tax.
Notice of cancellation of license, §48-9-12.

CANCELLATION —Cont'd
Motor vehicle ad valorem taxation.
Cancellation of registration.
Effect on tax liability, §48-5-451.
Sales under tax executions.
Redemption of property sold for taxes.
Tender of redemption price before action to cancel tax deed, §48-4-47.
Tobacco and alternative nicotine products taxes.
Purchase of tax stamps on account.
Cancellation of permit for failure to comply with provisions, §48-11-16.

CAPITATION TAX.
Prohibition, §48-13-3.

CARETAKERS.
Income taxes.
Credits for qualified caregiving expenses, §48-7-29.2.

CARNIVALS.
Occupation taxes or regulatory fees levied by local governments.
Civil action to enforce, §48-13-9.1.
Example of business subject to, §48-13-9.

CARPET SAMPLES.
Sales and use taxes.
Fair market value, §48-8-39.

CARRIERS.
Motor carriers' road tax.
General provisions, §§48-9-30 to 48-9-46.
Motor fuel taxes.
Reports of motor fuel deliveries, §48-9-9.
Reports.
Motor fuel taxes.
Deliveries of motor fuel, §48-9-9.
Sales and use taxes.
Railroads.
Freight and logistics projects.
Dedication of certain proceeds for freight and logistics projects, §48-8-78.

CARRY-OVER DEDUCTIONS FOR LOSSES.
Taxation of corporations, §48-7-21.

CARS.
Motor vehicle ad valorem taxation, §§48-5-440 to 48-5-478.4.

CAR-WHEEL MILEAGE.
Taxation of railroad equipment companies doing business in state, §48-5-519.

CATALOG SALES.
Sales and use taxes.
General provisions, §§48-8-1 to 48-8-78.

CATALOGUES.
Sales and use tax exemptions.
Paper stock manufactured in state into catalogues delivered outside state, §48-8-3.

CATTLE.
Ad valorem tax exemption.
Brood cow, §48-5-40.
Municipal taxation of agricultural products and livestock raised in state.
Exemption from, §48-5-356.

CEILING ON LOCAL SALES AND USE TAXES, §48-8-6.

CELL PHONES.
Sales and use taxes.
Taxing jurisdiction for mobile telecommunications services, §48-8-13.

CELL TOWERS.
Property taxes.
Forest land conservation use property.
Leasing part of property for cell phone transmission tower not considered breach of covenant, §48-5-7.7.

CEMETERIES.
Income taxes on cemetery companies.
Exempt organizations, §48-7-25.
Property tax exemption of places of burial, §48-5-41.

CENSUS.
Occupation tax or license amount levied by county or municipality.
Census governing, §48-13-24.

CESTUI QUE USES.
Homestead exemptions to properties with multiple title holders and property held by administrators, executors or trustees, §48-5-54.

CHAMBER OF COMMERCE.
County and municipal levies on public accommodation charges.
Promotion of tourism, conventions or trade shows.
Private sector nonprofit corporation.
Defined, §48-13-51.
Income taxes.
Exempt organizations, §48-7-25.

CHARITABLE TRUSTS.
Excise tax on rooms, lodgings and accommodations.
Limitation on or applicability of tax levies, §48-13-55.
Income taxes.
Exempt organizations.
Charitable remainder trusts, §48-7-25.
License fees, business or occupation tax.
Trust furnishing rooms, lodgings or accommodations, §48-13-55.
Licenses.
Furnishing rooms, lodgings or accommodations.
Subject to local licensure, §48-13-55.
Taxation.
Excise tax on rooms, lodgings and accommodations.
Limitation on or applicability of tax levies, §48-13-55.

CHARITIES.
Income taxes.
Exempt organizations, §48-7-25.
Partnerships.
Disallowance of charitable contributions, §48-7-23.
Partnerships.
Income taxes.
Disallowance of charitable contributions, §48-7-23.
Property tax exemptions.
Buildings and maximum acreage of real estate, §48-5-41.
Real property held for single-family homes financed by charity, §48-5-41.
Sales and use taxes.
Exemption, §48-8-3.
Noncommercial written materials or mailings of 501(c)(3) organizations, §48-8-3.

CHARTER SCHOOLS.
Sales and use taxes.
Educational purposes sales tax.
Charter school as capital overlay project, §48-8-144.

CHECKS.
County property taxes.
Receipt by commissioners or collectors in payment of taxes, §48-5-146.
Liability for unpaid checks, §48-5-146.
County tax collectors.
Instructing taxpayers.
Checks made payable to county tax office, §48-5-165.
Payment of tax by check.
Receipt not required to be given by collector, §48-5-127.
Receipt of checks in payment of taxes, §48-5-146.
Liability for unpaid checks, §48-5-146.
County tax commissioners.
Instructing taxpayers.
Checks made payable to county tax office, §48-5-165.
Payment of tax by check.
Receipt not required to be given, §48-5-127.
Receipt of checks in payment of taxes, §48-5-146.
Liability for unpaid checks, §48-5-146.
Dishonor and notice of dishonor.
Receipt of checks by county tax commissioner, §48-5-146.
Income taxes.
Refund checks for overpayments of withheld taxes, §48-7-112.
Taxation.
Forms of payment, §48-2-32.
Penalty when check not paid when presented, §48-2-32.

CHILD CARE.
Income tax credit.
Qualified child and dependent care expenses, §48-7-29.10.
Tax credits.
Employer provided child care, §48-7-40.6.

CHILD SUPPORT.
Recovery act.
Setoff debt collection.
Income tax refunds generally, §§48-7-160 to 48-7-170.

CHIROPRACTORS.
Fees.
Regulatory fees imposed by counties or municipalities.
Civil action to enforce, §48-13-9.1.
Examples of businesses not subject to, §48-13-9.
Regulatory fees imposed by counties or municipalities.
Civil action to enforce, §48-13-9.1.
Examples of businesses not subject to, §48-13-9.

CHURCHES.
Property tax exemption of places of religious worship, §48-5-41.
Sales and use tax exemptions.
Noncommercial written materials or mailings of 501(c)(3) organizations, §48-8-3.

CIGARS AND CIGARETTES.
Taxes.
General provisions, §§48-11-1 to 48-11-30.

CITATIONS.
County tax collectors.
Default, negligence or bad faith in accounting reports, §48-5-154.
County tax commissioners.
Default, negligence or bad faith in accounting reports, §48-5-154.

CITIES.
Conservation use property.
Forest land conservation use property.
Conservation use assessment.
Assistance grants to make up revenue reduction, §§48-5A-1 to 48-5A-6.
Forest land conservation use property.
Conservation use assessment.
Assistance grants to make up revenue reduction, §§48-5A-1 to 48-5A-6.
Property taxes, §§48-5-350 to 48-5-361.

CITIZENSHIP.
Property taxes.
Homestead exemption from ad valorem taxation.
Disabled veterans, extension.
Requirement of citizenship, §48-5-48.

CIVIC LEAGUES OR ORGANIZATIONS.
Income taxes.
Exempt organizations, §48-7-25.

CLAIMS.
County property taxes.
Refunds, §48-5-380.
Income taxes.
False or fraudulent claims.
Assisting, counseling, etc., in filing, §48-7-3.
Refunds for overpayment of withheld taxes.
Employer refunds, §§48-7-112, 48-7-113.
Intangible recording tax.
Refund of protested amount, §48-6-76.
Motor fuel taxes.
Refunds, §48-9-10.
False swearing on applications, §48-9-11.
Municipal property taxes.
Refunds, §48-5-380.
Property taxes.
Refunds.
Counties and municipalities, §48-5-380.
Real estate transfer tax.
Refunds, §48-6-7.
Sales and use taxes.
Refund of tax credit by retired dealer.
Return of property sold to dealer by purchaser, §48-8-58.
Taxation.
Refunds, §48-2-35.
Tax executions.
Interposition of claims, §48-3-24.
Tobacco and alternative nicotine products taxes.
Refunds, §48-11-15.

CLASS ACTIONS.
Sales and use taxes.
Marketplace facilitators and sellers.
Prohibition on class action against facilitator, §48-8-30.

CLEAN ENERGY PROPERTY.
Income tax credit, §48-7-29.14.

CLINICS.
Nonprofit health centers.
Sales and use tax exemptions, §48-8-3.

CLOTHING.
Property tax exemption.
Exempt personalty generally, §48-5-42.
Sales and use taxes.
Exemption for specific sales, §48-8-3.

CLUBS.
Income taxes.
Exempt organizations, §48-7-25.

COAST GUARD.
Public revenue code.
Member of the armed forces defined, §48-1-2.

COIN-IN-THE-SLOT DEVICE.
Tobacco and alternative nicotine products taxes.
Vending machine defined, §48-11-1.

COIN-OPERATED AMUSEMENT MACHINES.
Sales and use taxes.
Exemptions, §48-8-3.

COIN-OPERATED MACHINES.
Sales and use taxes.
Exemptions, §48-8-3.

COINS.
Sales and use taxes.
Exemptions, §48-8-3.

COLISEUMS.
Authorities.
Sales and use tax exemption, §48-8-3.
Coliseum capital outlay projects, special purpose local option sales tax, §§48-8-145 to 48-8-157.
County and municipal levies on public accommodation charges.
Promotion of tourism, conventions and trade shows, §48-13-51.
Special county one percent sales and use tax.
Procedure for imposition, §48-8-111.

COLLECTION AGENCIES.
Tax amnesty program.
Delinquent tax collection, contracts for, §48-16-11.
Unemployment compensation.
Tax amnesty program.
Services for debt collection, §48-16-11.

COLLUSION.
Homestead exemption fraud,
§48-5-51.

COMMERCE AND TRADE.
Business and occupation taxes.
Privilege taxes.
License, occupation or professional taxes, §§48-13-2 to 48-13-29.
Privilege taxes.
License, occupation or professional taxes, §§48-13-2 to 48-13-29.

COMMERCIAL MOTOR VEHICLES.
Income tax credit for purchase of alternative fuel heavy and medium duty vehicles,
§§48-7-29.18, 48-7-29.19.

COMMERCIAL PAPER.
County tax collectors.
Instructing taxpayers.
Negotiable instruments made payable to county tax office, §48-5-165.
Payment of tax by check, money order or other instrument.
Receipt not required to be given, §48-5-127.
County tax commissioners.
Instructing taxpayers.
Negotiable instruments made payable to county tax office, §48-5-165.
Payment of tax by check, money order or other instrument.
Receipt not required to be given, §48-5-127.

COMMERCIAL VEHICLE AD VALOREM TAXATION,
§48-5-442.1.

COMMINGLED FUNDS.
Special county one percent sales and use tax.
Proceeds not to be commingled with other funds, §48-8-121.

COMMINGLED GOODS.
Sales and use taxes.
Effect of sales from commingled goods.
Certificate given for portion of goods, §48-8-40.

COMMODITIES.
Sales and use taxes.
Exemption of agricultural commodities.
Commodities not sold as finished product to ultimate consumer, §48-8-5.
Taxation.
Sales and use taxes.
Exemption of agricultural commodities.
Commodities not sold as finished product to ultimate consumer, §48-8-5.

COMMON CARRIERS.
Franchise tax.
General provisions, §§48-5-420 to 48-5-425.
Motor carriers' road tax.
General provisions, §§48-9-30 to 48-9-46.
Motor fuel taxes.
Report of motor fuel deliveries, §48-9-9.
Reports.
Motor fuel taxes.
Motor fuel deliveries, §48-9-9.
Sales and use taxes.
Railroads.
Freight and logistics projects.
Dedication of certain proceeds for freight and logistics projects, §48-8-78.
Special franchises.
Taxation generally, §§48-5-420 to 48-5-425.
Taxation.
Forfeitures of contraband articles, §48-2-82.
Franchise tax.
Special franchises generally, §§48-5-420 to 48-5-425.
Tobacco and alternative nicotine products taxes.
Authority to require reports from, §48-11-10.
Examination of records, §48-11-11.

COMMON LAW.
Tax collectors.
Collection of executions, §48-5-131.

COMMON SCHOOLS.
Levy and collection of tax from municipalities, §48-5-405.

COMMON STOCK.
Income taxes.
Deduction for payment to classified subcontractors, §48-7-38.

COMMUNITY AFFAIRS.
Contracts.
Department of community affairs.
Georgia tourism development act.
Authority to contract, §48-8-275.
Department of community affairs.
Excise tax on rooms, lodgings or accommodations.
Counties or municipalities imposing tax to report to, §48-13-56.
Georgia tourism development act.
Authority to contract, §48-8-275.

COMMUNITY HEALTH, DEPARTMENT OF.
Setoff debt collection.
Income tax refunds.
General provisions, §§48-7-160 to 48-7-170.

COMPETITIVE PROJECT OF REGIONAL SIGNIFICANCE.
Excise tax on sale or use of energy.
Exemption from energy tax for construction of project, §48-13-112.
Sales and use tax exemption, §48-8-3.

COMPLAINTS.
Hotels and other lodging places.
Hotel motel tax performance review board.
Investigations expenditure of funds by localities, §48-13-56.1.

COMPRESSED NATURAL GAS.
Motor fuel taxes.
Taxation of fuels not sold or measured by gallon, §48-9-3.

COMPRESSED PETROLEUM GAS.
Motor fuel tax law.
General provisions, §§48-9-1 to 48-9-19.

COMPROMISE AND SETTLEMENT.
County property taxes.
Appeals of decisions of county boards of equalization.
Settlement conference, effect of nonparticipation (contingently effective 1/1/2025), §48-5-311.

COMPROMISE AND SETTLEMENT —Cont'd
Taxation, §48-2-60.
State revenue commissioner.
Settlement or compromise of tax assessments.
Authority, procedures, development, record required, offer in compromise, application fee, §48-2-18.1.
State tax executions.
Consideration of offers to compromise by commissioner.
Tolling or suspension of execution, §48-3-42.

COMPUTERS AND OTHER ELECTRONIC DEVICES.
County property taxes.
Equalization of assessments.
Data processing systems generally, §48-5-270.
Equipment.
Sales and use taxes.
Exemptions, §48-8-3.
High-technology data centers.
Sales and use tax exemptions.
Equipment incorporated or used in centers, §48-8-3.
Sales and use taxes.
Exemption for specific sales, §48-8-3.

CONDUCTORS.
Contraband articles in violation of tax or revenue laws.
Seizure and disposition.
Vessels, vehicles, aircraft, etc., where conductor consenting party or privy, §48-2-82.

CONFIDENTIALITY OF INFORMATION.
Controlled substances.
Excise tax on marijuana and controlled substances, §48-15-10.
County property taxes.
Records of county board of tax assessors, §48-5-314.
Income taxes, §48-7-60.
Apportionment of corporate income.
Agreement establishing allocation and apportionment, §48-7-31.1.
Inapplicability of code section to income taxation, §48-2-15.
Setoff debt collection exemption, §48-7-170.
Unlawful divulging, §48-7-61.

CONFIDENTIALITY OF INFORMATION —Cont'd
Motor fuel tax.
Inapplicability of section to information, records and reports required, §48-2-15.
Occupational tax amount.
Information provided local government for determining, §48-13-15.
Privilege taxes.
Information provided local government for purposes of determining occupation tax amount, §48-13-15.
Property taxes.
County boards of tax assessors.
Subpoenas.
Exempt documents, §48-5-300.
Setoff debt collection.
Income tax refunds.
Exemption, §48-7-170.
Taxation, §48-2-15.
Collection of taxes.
Disclosure of return information, §48-2-6.1.
County boards of tax assessors taxpayers' records, §48-5-314.
Delinquent taxpayers.
Financial institution reporting on delinquent taxpayers.
Duties of financial institution to maintain confidentiality, §48-2-63.
Disclosure of confidential taxpayer information.
Written authorization by taxpayer, §48-2-15.1.
Exchange of tax information, §48-2-16.
Rulings issued by commissioner.
Guidelines and procedures, §48-2-15.2.

CONFISCATION.
Tobacco and alternative nicotine products taxes.
Transportation of unstamped cigarettes and nontax-paid cigars.
Absence of invoices or delivery tickets, §48-11-22.

CONFLICTS OF INTEREST.
Counties.
Tax executions.
Prohibitions on purchasing and financial interests in property.
Employees of county, §48-4-23.

CONFLICTS OF INTEREST —Cont'd
County property taxes.
County boards of equalization.
Disqualification of members, §48-5-311.
Land banks.
Board of directors or employees, §48-4-111.
Tax executions.
Employees of county.
Prohibitions on purchasing and financial interests in property, §48-4-23.

CONFLICTS OF LAW.
Sales and use taxes.
Streamlined sales and use tax agreement.
Effect upon law of state, §48-8-163.
Water and sewer projects and costs.
Impact on other taxes, §48-8-211.

CONSERVATION AND NATURAL RESOURCES.
Donation of real property to be used for conservation purposes.
Income tax credit, §48-7-29.12.
Income tax credit.
Donation of real property to be used for conservation purposes, §48-7-29.12.

CONSERVATION TAX CREDITS.
Water conservation facilities.
Manufacturing facility income tax credits, §48-7-40.10.

CONSERVATION USE PROPERTY.
Property taxes, assessment, §48-5-7.
Bona fide conservation use property defined, §48-5-7.4.
Current use assessment, §48-5-7.4.
Current use value, §48-5-2.
Family owned farm entity.
Rules applicable, §48-5-7.4.
Forest land conservation use property, §48-5-7.7.
Conservation use assessment, §48-5-7.7.
Grants to local governments to make up revenue reduction, §§48-5A-1 to 48-5A-6.
Grants to local governments to make up revenue reduction, §§48-5A-1 to 48-5A-6.
Qualification for current use assessment, §48-5-7.4.

CONSERVATION USE PROPERTY —Cont'd
Property taxes, assessment —Cont'd
Table of values.
Establishment, rules and regulations, §48-5-271.

CONSIDERATION.
Real estate transfer tax.
Actual consideration of real and personal property conveyed to be shown on form, §48-6-4.
Exemption of certain instruments.
Consideration required to be shown, §48-6-2.

CONSPIRACIES.
Tax amnesty program.
Willful failure to make return or false return, §48-16-12.

CONSTABLES.
County property taxes.
Periodic payment to proper officials of money collected, §48-5-141.
Property taxes.
Periodic payment to proper county officials of money collected, §48-5-141.
Taxation.
Collection of taxes and prosecution of violators.
Duties, §48-2-81.

CONSTRUCTIVE NOTICE.
Real estate transfer tax.
Recording certificate with deed, §48-6-4.

CONSUMER FIREWORKS.
Taxation, §§48-13-130 to 48-13-133.

CONSUMPTION TAX ON TANGIBLE PERSONAL PROPERTY.
Sales and use taxes.
General provisions, §§48-8-1 to 48-8-78.

CONTACT LENSES.
Sales and use taxes.
Exemption, §48-8-3.

CONTEMPT.
County boards of tax assessors.
Failure to obey board's subpoenas, §48-5-300.
Property taxes.
County boards of tax assessors.
Failure to obey board's subpoenas, §48-5-300.

CONTINGENT FEES.
Department of revenue employees, §48-2-6.
Energy tax.
Contingent fee arrangements in support of collection procedures.
Prohibited, §48-13-117.

CONTINUING EDUCATION.
County appraisers, §48-5-268.
County tax collectors, §48-5-126.1.
National guard members or reservists.
Exemptions from continuing education requirements while on active duty, §48-7-6.
Property taxes, local officials and staff, §48-5-13.

CONTRABAND.
Affidavits.
Tax forfeitures.
Affidavit to test legality, §48-2-83.
Forfeitures.
Tax seizures of contraband articles, §48-2-82.
Affidavit to test legality, §48-2-83.
Notice.
Tax seizures, §48-2-82.
Taxation.
Disposition or destruction of articles, §48-2-82.
Forfeitures, §48-2-82.
Affidavit to test legality, §48-2-83.
Possession or transportation of contraband, §48-2-84.
Seizure without warrant, §48-2-82.
Tobacco and alternative nicotine products taxes.
Counterfeit cigarettes.
Sale or possession of contraband, §48-11-30.
Package cigarette sales.
Unlawful affixing of tax stamp, §48-11-23.1.
Powers of special agents and enforcement officers to seize and take possession, §48-11-19.
Seizure of unstamped cigars and cigarettes or nontax-paid cigars, §48-11-9.

CONTRACT CARRIERS.
Motor carriers road tax.
General provisions, §§48-9-30 to 48-9-46.

CONTRACT CARRIERS —Cont'd
Tobacco and alternative nicotine products taxes.
Examination of records, §48-11-11.

CONTRACTORS.
Actions.
Nonresident contractors, §48-13-36.
Appointment of secretary of state as agent for service of process, §48-13-35.
Violations of article.
Preclusion of right of action for payment on contract, §48-13-37.
Attorney general.
Nonresident contractors.
Actions against, §48-13-36.
Injunction pending compliance with registration and bond requirements, §48-13-33.
Bonds, surety.
Nonresident contractors, §48-13-32.
Failure to execute bond required, §48-13-38.
Injunction pending compliance with requirements, §48-13-33.
Release, §48-13-34.
Sales and use taxes.
General or prime contractors furnishing tangible personal property and services, §48-8-63.
Classified subcontractors.
Income tax deduction for payments to, §48-7-38.
County attorneys.
Nonresident contractors.
Injunction pending compliance with registration and bond requirements, §48-13-33.
Definitions.
Nonresident contractors, §48-13-30.
Fees.
Nonresident contractors.
Registration, §48-13-31.
Completed contract, §48-13-32.
Income taxes.
Classified subcontractors.
Deduction for payments to, §48-7-38.
Injunctions.
Nonresident contractors.
Noncompliance with registration and bond requirements, §48-13-33.

CONTRACTORS —Cont'd
Nonresident contractors, §§48-13-30 to 48-13-38.
Actions, §48-13-36.
Contractors in violation of article.
Preclusion of right to bring action, §48-13-37.
Service of process on secretary of state, §48-13-35.
Bond.
Amount, §48-13-32.
Blanket or master bond, §48-13-32.
Condition precedent to commencing work, §48-13-32.
Failure to execute, §48-13-38.
Injunction.
Pending compliance with requirements, §48-13-33.
Release, §48-13-34.
Required, §48-13-32.
Completed contracts.
Registration, §48-13-32.
Condition precedent to commencing work.
Bond, §48-13-32.
Contractor defined, §48-13-30.
Fees.
Registration, §48-13-31.
Completed contracts, §48-13-32.
Injunctions.
Noncompliance with registration and bond requirements, §48-13-33.
Record book of docketed actions.
Secretary of state to keep, §48-13-36.
Registration.
Completed contracts, §48-13-32.
Failure to register, §48-13-38.
Fees, §48-13-31.
Completed contracts, §48-13-32.
Injunction.
Pending compliance with requirements, §48-13-33.
Minimum contract price, §48-13-31.
Required, §48-13-31.
Service of process on secretary of state as agent, §48-13-35.
Release of bonds, §48-13-34.
Reports.
Tax liability, §48-13-31.
Service of process.
Appointment of secretary of state as agent, §48-13-35.
Manner of service, §48-13-36.

CONTRACTORS —Cont'd
Nonresident contractors —Cont'd
Venue of actions against contractor, §48-13-36.
Violations of article, §48-13-38.
Preclusion of right to bring action for payment on contract, §48-13-37.
Occupation tax or regulatory fee levied by local government.
Civil action to enforce, §48-13-9.1.
Example of business subject to, §48-13-9.
Records.
Nonresident contractors.
Record book of actions docketed to be kept by secretary of state, §48-13-36.
Registration.
Nonresident contractors, §48-13-31.
Completed contracts, §48-13-32.
Failure to register, §48-13-38.
Injunction pending compliance with requirements, §48-13-33.
Releases.
Nonresident contractors.
Bonds, §48-13-34.
Sales and use taxes.
Contractors furnishing tangible personal property and services, §48-8-63.
Government contractors.
Overhead materials used by, §48-8-3.
Secretary of state.
Nonresident contractors.
Appointment as agent for service of process, §48-13-35.
Record book of docketed actions kept by secretary, §48-13-36.
Service of process.
Nonresident contractors.
Appointment of secretary of state as agent for service, §48-13-35.
Service and return of summons, §48-13-36.
Subcontractors.
Classified subcontractors.
Income tax deduction for payments to, §48-7-38.
Sales and use taxes.
Contractors furnishing tangible personal property and services.
Withholding of payments due subcontractor, §48-8-63.

CONTRACTORS —Cont'd
Superior courts.
Nonresident contractors.
Actions against, §48-13-36.
Taxation.
Sales and use taxes.
Furnishing tangible personal property and services, §48-8-63.
Overhead materials.
Government contractor's sales and use tax exemption, §48-8-3.
Tax collections, §48-2-6.
Venue.
Nonresident contractors.
Actions against, §48-13-36.

CONTRACTS.
County property taxes.
County boards of tax assessors.
Employment contracts with persons to assist board, §48-5-298.
Equalization of assessments.
Formation of joint county property appraisal staff, §48-5-265.
Institutions of higher education to provide courses of instruction to appraisers, §48-5-268.
Persons to render advice or assistance, §48-5-265.
Sharing appraisal staff, §48-5-265.
County tax collectors.
Lock box system, §48-5-147.
County tax commissioners.
Use of lock box system, §48-5-147.
Municipal property taxes.
Contracts with tax commissioners to assess and collect municipal taxes and prepare tax digest, §48-5-359.1.
Property taxes.
County board of tax assessors.
Employment contracts with persons to assist board, §48-5-298.
Equalization of assessments.
Formation of joint county property appraisal staff, §48-5-265.
Institutions of higher education to provide training courses to appraisers, §48-5-268.
Persons to render advice or assistance, §48-5-265.
Sharing appraisal staff members, §48-5-265.

CONTRACTS —Cont'd
Property taxes —Cont'd
Municipal property taxes.
Contracts with county tax commissioners to assess and collect municipal taxes, §48-5-359.1.
Prepayment.
Taxpayer agreements with local governments for prepayment of taxes, §48-5-31.1.
Sales and use taxes.
Special district transportation sales and use tax.
Department of transportation projects, §48-8-249.

CONTROLLED SUBSTANCES.
Taxation.
Excise tax on marijuana and controlled substances, §§48-15-1 to 48-15-11.

CONVENTIONS.
Excise tax on rooms, lodgings and accommodations.
General provisions, §§48-13-50 to 48-13-63.

CONVERSION.
Taxation.
Unlawful conversion of funds collected for benefit of state, §48-1-5.
Theft by conversion.
Taxation.
Unlawful conversion of funds collected for benefit of state, §48-1-5.

CONVEYANCES.
Intangible recording tax.
General provisions, §§48-6-60 to 48-6-77.
Real estate transfer tax.
General provisions, §§48-6-1 to 48-6-10.
Taxation.
Intangible recording tax.
General provisions, §§48-6-60 to 48-6-77.

CONVEYANCES TO SECURE DEBT.
Homestead tax deferral for individuals 62 or over.
Payment by holder, §48-5-81.

COOPERATIVE HOSPITAL SERVICE ORGANIZATIONS.
Income taxes.
Exempt organizations, §48-7-25.

COPYRIGHTS.
Public revenue code.
Intangible personal property defined, §48-1-2.
Real estate transfer tax.
Exemption of certain instruments, deeds or writings, §48-6-2.

CORPORATE NET WORTH TAX, §§48-13-70 to 48-13-79.
Absent disclosure of true net worth on corporate books or return.
Determination by state revenue commissioner, §48-13-74.
Additional tax imposed on corporations, §48-13-72.
Amount of tax, §48-13-73.
Annual tax period determination, §48-13-76.
Apportionment of net worth of foreign corporation, §48-13-75.
Combining return with state income tax return, §48-13-77.
Corporation defined, §48-13-70.
Determination of annual tax period, §48-13-76.
Determination of first tax period, §48-13-76.
Determination of net worth, §48-13-74.
Apportionment of net worth of foreign corporation, §48-13-75.
Due date, §48-13-76.
Exemptions, §48-13-71.
First tax period determination, §48-13-76.
Foreign corporations.
Apportionment of net worth, §48-13-75.
Imposition of tax, §48-13-72.
Income taxes.
Combining net worth.
Tax return with state income tax return, §48-13-77.
Insurance companies.
Exemption of companies separately taxed, §48-13-71.
Interest.
Penalties, §48-13-79.
Payment of tax, §48-13-77.
Due date, §48-13-76.
Effect, §48-13-78.
Failure to pay timely, §48-13-79.
Period for payment, §48-13-78.
Penalties, §48-13-79.

CORPORATE NET WORTH TAX —Cont'd
Returns, §48-13-77.
Extension of time for filing, §48-13-79.
Failure to file timely, §48-13-79.
Table of amount of tax, §48-13-73.
Taxable period less than six months.
Amount of tax, §48-13-73.
Time.
Payment of tax, §48-13-77.
Failure to pay timely, §48-13-79.
Period for payment of tax, §48-13-78.
Returns, §48-13-77.
Extension of time for filing, §48-13-79.
Failure to file timely, §48-13-79.

CORPORATIONS.
Corporate net worth tax, §§48-13-70 to 48-13-79.
Dissolution.
Income taxes.
Action for collection of tax out of assets of dissolved corporation, §48-7-83.
Dividends.
Income taxes.
Adjustments, §48-7-21.
Returns of information concerning dividend payments, §48-7-52.
Foreign corporations.
Corporate net worth tax.
General provisions, §§48-13-70 to 48-13-79.
Income taxes.
Taxation of corporations generally, §48-7-21.
Taxation.
Venue for actions for refunds, §48-2-35.
Venue for appeals from orders, rulings or findings of commissioner, §48-2-59.
Tax executions against, §48-3-2.
Income taxes, §48-7-21.
Affiliated groups, §48-7-21.
Allocation of income.
Application for permission to use other method, §48-7-35.
Applicability of tax imposed to entire net income, §48-7-31.
Apportionment of income, §48-7-31.
Agreement establishing allocation and apportionment.
Confidentiality of taxpayer information, §48-7-31.1.

CORPORATIONS —Cont'd
Income taxes —Cont'd
Apportionment of income —Cont'd
Agreement establishing allocation and apportionment —Cont'd
Criteria for evaluation of proposals, §48-7-31.1.
Public inspection of agreement or contract, §48-7-31.1.
Significant beneficial economic effect, §48-7-31.1.
Three factor formula, §48-7-31.
Combining net worth tax return with state income tax return, §48-13-77.
Credit card data processing and related services.
Apportionment of income, §48-7-31.
Deductions for payments to classified subcontractors, §48-7-38.
Dissolved corporations.
Action for collection of tax out of assets, §48-7-83.
Distorting taxable income, §48-7-58.
Estimated income tax, §48-7-117.
Credits, §48-7-121.
Defined, §48-7-117.
Failure to pay, §§48-7-120, 48-7-126.
Willful failure to pay, §48-7-127.
Installment payments, §48-7-119.
Overpayments.
Credit or refund, §48-7-121.
Refunds.
Overpayments, §48-7-121.
Underpayment, §48-7-120.
Exempt corporations and organizations, §48-7-25.
Local income taxes.
Prohibition, §48-7-140.
Railroad and public service corporations, §48-7-32.
Returns, §48-7-51.
Information concerning dividend payments, §48-7-52.
Returns based upon books of account, §48-7-34.
Wages or remuneration paid individuals.
Deduction as business expense.
Applicability to business entities, §48-7-21.1.
Withholding tax on distributions, §48-7-129.
Net worth tax, §§48-13-70 to 48-13-79.

CORPORATIONS —Cont'd
Nonresidents.
Income taxes.
Withholding tax on distributions, §48-7-129.
Notice.
Income taxes.
Rejection of application for permission to use other method of allocation, §48-7-35.
Oaths.
Income taxes.
Returns of information concerning dividend payments, §48-7-52.
Property taxes.
Federal corporations and agencies, §48-5-4.
Liability of property not affected by corporate character, §48-5-3.
Subchapter S corporation shareholders.
Income taxes.
Adjustment to federal gross income.
Nonrecognition of S corporations by another state, §48-7-27.
Subchapter S elections.
Income taxes, §48-7-21.
Taxation.
Corporate net worth tax, §§48-13-70 to 48-13-79.
Personal liability of officers or employees for tax delinquency, §48-2-52.
Tax executions.
Executions against foreign corporations, §48-3-2.

COST OF LIVING ADJUSTMENTS.
Tax collectors and tax commissioners salaries, §48-5-183.

COSTS.
Collection of money owed to state.
Income tax refund setoff debt collection, §§48-7-160 to 48-7-170.
County property taxes.
County board of tax assessors.
Public record information used in assessment, appraisal or setting fair market value.
Enforcement of taxpayer access, §48-5-306.

COSTS —Cont'd
County tax collectors.
Advertising as additional cost of execution, §48-5-137.1.
Income tax refund setoff debt collection, §§48-7-160 to 48-7-170.
Intangible recording tax.
Actions for refunds of protested amount, §48-6-76.
Property taxes.
Proceedings to determine county entitled to return and payment, §48-5-17.
Tax amnesty program.
Cost of collection fee.
Imposition after amnesty period expires, §48-16-10.
Taxation.
Appeals of orders, rulings or findings of commissioner.
Final judgments adverse to taxpayer, §48-2-59.
Subpoenas issued by commissioner, costs of service, §48-2-8.
Tobacco and alternative nicotine products taxes.
Appeals from action or decision of commissioner, §48-11-18.
Enforcement and collection of penalties, §48-11-24.

COUNTERFEITING.
Tobacco and alternative nicotine products taxes.
Stamps, §48-11-28.

COUNTIES.
Air commerce.
Prohibition of tax on persons traveling in, §48-13-4.
Airline ad valorem taxation.
General provisions, §§48-5-540 to 48-5-546.
Appropriations.
Road construction and maintenance.
Distribution of funds appropriated to counties, §48-14-3.
Authorities.
Land bank authorities.
Sales under tax executions, §§48-4-60 to 48-4-65.
Business taxes.
Privilege taxes generally, §§48-13-2 to 48-13-29.

COUNTIES —Cont'd
Capitation tax.
Prohibition, §48-13-3.
Conservation use property.
Forest land conservation use property.
Conservation use assessment.
Assistance grants to make up revenue reduction, §§48-5A-1 to 48-5A-6.
Consolidated government coliseum project sales tax.
Coliseum capital outlay projects, special purpose local option sales tax, §§48-8-145 to 48-8-157.
Consolidation of counties and municipalities.
Taxation of property in consolidated governments, §48-8-96.
Conventions.
Excise tax on rooms, lodgings and accommodations, §§48-13-50 to 48-13-63.
County attorneys.
Contractors.
Nonresident contractors.
Injunction pending compliance with registration and bond requirements, §48-13-33.
County board of tax assessors, §§48-5-290 to 48-5-314.
County tax collectors, §§48-5-121 to 48-5-165.
County tax receivers, §§48-5-101 to 48-5-109.
Delinquent tax officials, §§48-5-200 to 48-5-205.
Equalization of assessments, §§48-5-260 to 48-5-275.
Examination of county tax digests, §§48-5-340 to 48-5-349.5.
Excise taxes.
Energy, sale or use of, §§48-13-110 to 48-13-128.
Hotels and other lodging places.
Excise tax on rooms, lodgings and accommodations, §§48-13-50 to 48-13-63.
Forest land conservation use property.
Conservation use assessment.
Assistance grants to make up revenue reduction, §§48-5A-1 to 48-5A-6.

COUNTIES —Cont'd
Grants of state funds.
Counties containing more than 20,000 acres of state-owned land not subject to taxation.
Grants from state forestry commission, §48-14-1.
Limitation, §48-14-4.
Natural resources department as land owner.
Annual grant to counties, §48-14-4.
Heavy-duty equipment ad valorem taxation, §§48-5-505 to 48-5-509.
Construction equipment owned by nonresidents, §§48-5-500, 48-5-501.
Highways, roads and streets.
Road construction and maintenance.
Distribution of funds appropriated to counties, §48-14-3.
Hotels and other lodging places.
Excise tax on rooms, lodgings and accommodations.
General provisions, §§48-13-50 to 48-13-63.
Income taxes.
Local income taxes.
Prohibition, §48-7-140.
Land bank authorities.
Sales under tax executions.
General provisions, §§48-4-60 to 48-4-65.
Land banks.
Sales under tax executions.
General provisions, §§48-4-100 to 48-4-112.
License taxes.
Privilege taxes generally, §§48-13-2 to 48-13-29.
Local income taxes.
Prohibition, §48-7-140.
Mobile home ad valorem taxation.
General provisions, §§48-5-440 to 48-5-451, 48-5-490 to 48-5-495.
Motor fuel taxes.
Prohibition of tax on motor fuels, §48-9-3.
Motor vehicle ad valorem taxation.
General provisions, §§48-5-440 to 48-5-478.4.
Occupation taxes.
Privilege taxes generally, §§48-13-2 to 48-13-29.
Officers.
Tax officials.
Delinquent tax officials, §§48-5-200 to 48-5-205.

COUNTIES —Cont'd
Officers —Cont'd
Tax officials —Cont'd
Tax collectors, §§48-5-121 to 48-5-165.
Tax receivers, §§48-5-101 to 48-5-109.
Privilege taxes.
General provisions, §§48-13-2 to 48-13-29.
Property taxes.
Airline ad valorem taxation.
General provisions, §§48-5-540 to 48-5-546.
County board of tax assessors.
General provisions, §§48-5-290 to 48-5-314.
Equalization of assessments.
General provisions, §§48-5-260 to 48-5-275.
Examination of county tax digest, §§48-5-340 to 48-5-349.5.
Forest land conservation use property.
Conservation use assessment.
Assistance grants to make up revenue reduction, §§48-5A-1 to 48-5A-6.
General provisions, §§48-5-220 to 48-5-243.
Heavy-duty equipment ad valorem taxation, §§48-5-505 to 48-5-509.
Construction equipment owned by nonresidents, §§48-5-500, 48-5-501.
Mobile home ad valorem taxation.
General provisions, §§48-5-440 to 48-5-451, 48-5-490 to 48-5-495.
Motor vehicle ad valorem taxation.
General provisions, §§48-5-440 to 48-5-478.4.
Public utility ad valorem taxation.
General provisions, §§48-5-510 to 48-5-524.
School taxes.
General provisions, §§48-5-400 to 48-5-405.
State loans to counties, §§48-5-330, 48-5-331.
Public lands.
Grants to counties containing more than 20,000 acres of state-owned land not subject to taxation, §48-14-1.
Limitation, §48-14-4.
Public utility ad valorem taxation.
General provisions, §§48-5-510 to 48-5-524.
COUNTIES —Cont'd
Railroad companies.
Public utility ad valorem taxation.
Method of assessment for county taxation purposes, §48-5-521.
Real estate transfer tax.
General provisions, §§48-6-1 to 48-6-10.
Real property.
Natural resources department as landowner.
Grant to counties, §48-14-4.
Sales and use taxes.
Exemptions, §48-8-3.
Joint county and municipal tax (LOST), §§48-8-80 to 48-8-97.
Local option sales tax.
Coliseum capital outlay projects, special purpose local option sales tax, §§48-8-145 to 48-8-157.
Joint county and municipal tax (LOST), §§48-8-80 to 48-8-97.
Local sales and use taxes.
Ceiling on, §48-8-6.
Prohibition against imposing tax on sales or services included in article, §48-8-6.
Refund claims of local significance, §48-2-35.
Special county one percent tax, §§48-8-110 to 48-8-124.
Streamlined sales and use tax agreement, §§48-8-160 to 48-8-167.
Transit special purpose local option sales and use tax, §§48-8-269.40 to 48-8-269.58.
State forestry commission.
Grants to counties containing more than 20,000 acres of state-owned lands subject to taxation, §48-14-1.
Limitation, §48-14-4.
State loans to counties, §§48-5-330, 48-5-331.
State-owned land.
Grants, §48-14-4.
Not subject to taxation.
Grants to counties containing more than 20,000 acres, §48-14-1.
Limitation, §48-14-4.
Taxation.
Air commerce.
Prohibition of tax on persons traveling in, §48-13-4.

COUNTIES —Cont'd
Taxation —Cont'd
Airline ad valorem taxation.
General provisions, §§48-5-540 to 48-5-546.
Capitation tax.
Prohibition, §48-13-3.
County board of tax assessors, §§48-5-290 to 48-5-314.
County property taxes, §§48-5-220 to 48-5-243.
Energy sale or use, §§48-13-110 to 48-13-128.
Equalization of assessments, §§48-5-260 to 48-5-275.
Examination of county digest, §§48-5-340 to 48-5-349.5.
Forest land conservation use property.
Conservation use assessment.
Assistance grants to make up revenue reduction, §§48-5A-1 to 48-5A-6.
Heavy-duty equipment, §§48-5-505 to 48-5-509.
Construction equipment owned by nonresidents, §§48-5-500, 48-5-501.
Hotels and other lodging places.
Excise tax on rooms, lodgings and accommodations, §§48-13-50 to 48-13-63.
Income taxes.
Local income tax prohibition, §48-7-140.
Mobile home ad valorem taxation.
General provisions, §§48-5-440 to 48-5-451, 48-5-490 to 48-5-495.
Motor fuel taxes.
Prohibition of tax on motor fuel by political subdivisions, §48-9-3.
Motor vehicle ad valorem taxation.
General provisions, §§48-5-440 to 48-5-478.4.
Privilege taxes.
General provisions, §§48-13-2 to 48-13-29.
Property located at airport, §48-5-15.1.
Public utility ad valorem taxation.
General provisions, §§48-5-510 to 48-5-524.
Real estate transfer tax.
General provisions, §§48-6-1 to 48-6-10.

COUNTIES —Cont'd
Taxation —Cont'd
Sales and use taxes.
Joint county and municipal tax (LOST).
General provisions, §§48-8-80 to 48-8-97.
Local option sales tax.
Coliseum capital outlay projects, special purpose local option sales tax, §§48-8-145 to 48-8-157.
Joint county and municipal tax (LOST).
General provisions, §§48-8-80 to 48-8-97.
Local sales and use taxes.
Ceiling on, §48-8-6.
Prohibition against imposing tax on sales or services included in article, §48-8-6.
Special county one percent tax.
General provisions, §§48-8-110 to 48-8-124.
School taxes.
General provisions, §§48-5-400 to 48-5-405.
State loans to counties, §§48-5-330, 48-5-331.
TVA.
Apportionment of payments to in lieu of taxes, §48-14-2.
Tax executions.
Sales under tax executions.
Land bank authorities, §§48-4-60 to 48-4-65.
Land banks, §§48-4-100 to 48-4-112.
Purchases by counties, §§48-4-20 to 48-4-23.
Authority to purchase personal property, §48-4-22.
Authority to purchase real property, §48-4-20.
Disposition of unredeemed property, §48-4-21.
Employees of county.
Prohibitions on purchasing and financial interests in property, §48-4-23.
Form of bill of sale for personal property, §48-4-22.
Redemption, §48-4-21.
Tax officials.
Delinquent tax officials.
General provisions, §§48-5-200 to 48-5-205.

COUNTIES —Cont'd
Tax officials —Cont'd
Tax collectors, §§48-5-121 to 48-5-165.
Tax receivers, §§48-5-101 to 48-5-109.
Tennessee Valley Authority.
Apportionment of payments to in lieu of taxes, §48-14-2.
Tourism.
Excise tax on rooms, lodgings and accommodations.
General provisions, §§48-13-50 to 48-13-63.
Georgia tourism development act, §§48-8-270 to 48-8-277.
Trade shows.
Excise tax on rooms, lodgings and accommodations.
General provisions, §§48-13-50 to 48-13-63.
TVA.
Apportionment of payments to.
In lieu of taxes, §48-14-2.

COUNTY APPRAISERS.
Continuing education, §48-5-268.

COUNTY PROPERTY TAXES, §§48-5-220 to 48-5-243.
Actions.
Refunds, §48-5-380.
Affidavits.
Illegality to execution against person holding county money, §48-5-239.
Appeals.
Approval of tax digest when assessments on appeal, §48-5-304.
Changing real property values established by appeal in prior year, §48-5-299.
Conditional approval of county tax digest, §48-5-348.
County boards of equalization.
Appeals from assessments by county board of tax assessors, §48-5-311.
County boards of tax assessors.
Removal from office on petition of freeholders, §48-5-296.
Disapproval of county tax digest.
Appeal to superior court, §48-5-349.3.
Procedure for appeal to department of revenue, §48-5-349.2.
Equalization of assessments.
Chief appraiser to attend and provide information at appeal hearing, §48-5-266.

COUNTY PROPERTY TAXES —Cont'd
Appeals —Cont'd
Notice of appeal, §48-5-311.
Right to appeal, time limits, further information.
Assessment notices to contain, §48-5-306.
Temporary collection of taxes pending appeal of disapproval of digest, §48-5-310.
Applicability of article to persons borrowing or pretending to borrow county money, §48-5-240.
Appraisal staffs, §§48-5-262 to 48-5-268.
Arbitration.
Approval of tax digest when assessments in arbitration, §48-5-304.
Disputes as to valuation.
Nonbinding arbitration, §48-5-311.
Assessments.
Annual notice of current assessment, §48-5-306.
Appeals from assessments by county board of tax assessors, §48-5-311.
County board of tax assessors, §§48-5-290 to 48-5-314.
County boards of equalization.
Powers and duties, §48-5-311.
Equalization of assessments.
Generally, §§48-5-260 to 48-5-275.
State loans for programs to evaluate and equalize assessments, §§48-5-330, 48-5-331.
Examination of county tax digest.
Generally, §§48-5-340 to 48-5-349.5.
Forest land conservation use property.
Conservation use assessment.
Assistance grants to make up revenue reduction, §§48-5A-1 to 48-5A-6.
New assessment, notice, §48-5-306.
Preferential assessments.
Brochures or other publications describing, §48-5-306.1.
State loans to evaluate and equalize assessments, §48-5-330.
Capital fund for loans, §48-5-331.
Borrowing county money.
Applicability of article to persons borrowing or pretending to borrow, §48-5-240.
Brochure describing exemptions and preferential assessments, §48-5-306.1.

COUNTY PROPERTY TAXES —Cont'd
Burden of proof.
Arbitration of disputes as to valuation, §48-5-311.
Temporary collection of taxes pending approval or appeal of disapproval of digest, §48-5-310.
Changes made in taxpayer's return.
Methods of giving notice, §48-5-306.
Checks.
Receipt by commissioners or collectors in payment of taxes, §48-5-146.
Liability for unpaid checks, §48-5-146.
Claims for refund, §48-5-380.
Clerk of superior court.
Oversight over boards of equalization, §48-5-311.
Collection of taxes, §48-5-233.
Enforcement, §48-5-234.
Erroneous or illegal collection, §48-5-380.
Confidentiality of information.
Records of county board of tax assessors, §48-5-314.
Conservation use property.
Forest land conservation use property.
Conservation use assessment.
Assistance grants to make up revenue reduction, §§48-5A-1 to 48-5A-6.
Constables.
Periodic payment to proper officials of money collected, §48-5-141.
Contracting with municipality to collect taxes and prepare digest, §48-5-359.1.
County board of tax assessors, §§48-5-290 to 48-5-314.
Appeals of assessments.
Approval of tax digest, §48-5-304.
Appeals of removal from office on petition of freeholders, §48-5-296.
Applicability of part, §48-5-313.
Counties electing members of board, §48-5-309.
Appointment of members, §48-5-290.
Appraisal cycle (contingently effective 1/1/2025), §48-5-264.
Approval of tax digest.
Assessments in arbitration or on appeal, §48-5-304.
Temporary collection of taxes pending, §48-5-310.

COUNTY PROPERTY TAXES —Cont'd
County board of tax assessors —Cont'd
Approved appraisal courses.
Qualifications for members, §48-5-291.
Reasonable expenses allowed for attendance, §48-5-294.
Arbitration of assessments.
Approval of tax digest, §48-5-304.
Arbitration of disputes as to valuation.
Burden of proof, §48-5-311.
Ascertainment of taxable property, §48-5-299.
Chairman.
Selection, §48-5-298.
Changes made in taxpayer's return.
Notice, §48-5-306.
Changing real property values established by appeal in prior year, §48-5-299.
Chief appraiser, designation, §48-5-264.
Compensation, §48-5-294.
Confidentiality of taxpayer records, §48-5-314.
Contempt.
Failure to obey subpoena, §48-5-300.
Correction of mistakes in digest, §48-5-303.
Effect of part on laws granting additional authority to board, §48-5-308.
Election of members.
Applicability of part to counties electing members, §48-5-309.
Employment contracts with persons to assist board, §48-5-298.
Equalization of assessments.
Designation of chief appraiser, §48-5-264.
Established, §48-5-290.
Expenses, §48-5-294.
Employees engaged to assist board, §48-5-298.
Fees.
Service of papers, §48-5-307.
First meeting, §48-5-297.
Forms.
Notice of changes made in taxpayer's return, §48-5-306.
Petition for temporary collection pending approval of digest, §48-5-310.

COUNTY PROPERTY TAXES
—Cont'd
County board of tax assessors
—Cont'd
Hearings.
Removal from office, §48-5-295.
Temporary collection of taxes pending approval of digest, §48-5-310.
Holding other offices.
Ineligibility, §48-5-292.
Ineligibility to hold other offices, §48-5-292.
Investigations.
Independent performance review board, §48-5-295.2.
Performance review board, §48-5-295.1.
Investigations of value of property for which taxes not paid, §48-5-299.
Laws granting additional authority to boards.
Effect of part on, §48-5-308.
Meetings, §48-5-297.
Mistakes in digest.
Correction, §48-5-303.
Municipalities with boundaries in more than one county, §48-5-299.
Nepotism prohibited, §48-5-290.
Notice of current assessment and changes made in taxpayer's return, §48-5-306.
Notification of correction of mistake in digest, §48-5-303.
Number of members, §48-5-290.
Oath of office, §48-5-293.
Penalty for knowingly and willingly furnishing confidential information, §48-5-314.
Penalty for unreturnable property, §48-5-299.
Performance review board, §48-5-295.1.
Independent performance review board, §48-5-295.2.
Petition for temporary collection pending approval of tax digest, §48-5-310.
Petition of freeholders.
Removal from office, §48-5-296.
Property not in digest.
Valuation, §48-5-305.
Public record information used in assessment, appraisal or setting fair market value.
Enforcement of taxpayer access, §48-5-306.

COUNTY PROPERTY TAXES
—Cont'd
County board of tax assessors
—Cont'd
Qualifications, §48-5-291.
Removal, §48-5-295.
Petition of freeholders, §48-5-296.
Returns.
Board to receive tax returns, §48-5-299.1.
Notice of changes made in taxpayer's return, §48-5-306.
Time for completion of revision and assessment, §48-5-302.
Time for presentation by tax receiver or tax commissioner, §48-5-301.
Secretary.
Selection, §48-5-298.
State treasurer.
Withholding grants appropriated until tax digest submitted to state revenue commissioner, §48-5-304.
County boards of equalization.
Alternate members, §48-5-311.
Appeal administrators.
Budget unit.
Separate and distinct budget unit, §48-5-311.
Defined, §48-5-311.
Duties, §48-5-311.
Appeals from assessments by county board of tax assessors, §48-5-311.
Appraisals from appraiser classified by real estate commission and real estate appraisers board.
Consideration on appeal, §48-5-311.
Consolidation of appeals, §48-5-311.
Disqualification of board members, §48-5-311.
Final determination, time for communication, §48-5-311.
Hearing officers, appeals to, §48-5-311.
Large number of appeals, extension of time to process appeal, §48-5-311.
Sales ratio study.
Consideration on appeal, §48-5-311.
Settlement conference, effect of nonparticipation (contingently effective 1/1/2025), §48-5-311.

COUNTY PROPERTY TAXES —Cont'd
County boards of equalization —Cont'd
Appeals from assessments by county board of tax assessors —Cont'd
Unforeseen circumstances, extension of time to process appeal, §48-5-311.
Appeals to superior court.
Taxpayer or board of tax assessors appeals, §48-5-311.
Application to become member or alternate, §48-5-311.
Appointment, §48-5-311.
Clerk of superior court, oversight authority, §48-5-311.
Compensation, §48-5-311.
Complaints.
Official actions.
Appeal administrator duties, §48-5-311.
Conflicts of interest.
Disqualification of members, §48-5-311.
Disqualification of members, §48-5-311.
Duties and powers, §48-5-311.
Education or instruction of members, §48-5-311.
Established, §48-5-311.
Interviews.
Recording of interviews or hearings, §48-5-311.
Taxpayer right to interview, §48-5-311.
Oaths, §48-5-311.
Qualifications, §48-5-311.
Reduction in taxes causing need for refund, §48-5-311.
Regional boards for multiple counties, §48-5-311.
Removal of members, §48-5-311.
Terms, §48-5-311.
Training of members, §48-5-311.
Vacancies, §48-5-311.
County tax officials.
Delinquent tax officials, §§48-5-200 to 48-5-205.
Credit, §48-5-241.
Definitions, §48-5-341.
Examination of county tax digest, §48-5-341.
Delinquent tax officials, §§48-5-200 to 48-5-205.
Affidavit of illegality to execution, §48-5-203.

COUNTY PROPERTY TAXES —Cont'd
Delinquent tax officials —Cont'd
Appeals on issues formed on affidavit of illegality, §48-5-203.
Commissions of defaulting tax officials.
Authority to vacate, §48-5-204.
Damages for delay upon trial of issue formed on affidavit of illegality, §48-5-203.
Debts owed to state by tax officials.
Issuance of execution or other legal process against, §48-5-200.
Direction to sheriffs of executions against tax officials, §48-5-202.
Failure to settle accounts.
Issuance of executions against tax collectors or tax commissioners, §48-5-201.
Final settlements.
Issuance of executions against tax collectors or tax commissioners.
Failure to settle accounts, §48-5-201.
Incomplete or improper digests, §48-5-205.
Officials indebted in any way to state.
Issuance of execution or other legal process against, §48-5-200.
Property bound by executions, §48-5-202.
Sale of property under executions, §48-5-202.
Superior courts.
Trial of issues formed on affidavit of illegality, §48-5-203.
Suspension of collection, §48-5-202.
Tax digests.
Failure to complete or improper digests, §48-5-205.
Vacancies created by defaulting tax officials.
Filling, §48-5-204.
Disputes as to valuation.
Arbitration.
Nonbinding arbitration, §48-5-311.
Enforcement of collection and payment, §48-5-234.
Equalization of assessments, §§48-5-260 to 48-5-275.
Administration of part.
Classification of counties, §48-5-261.
Appeals of assessments.
Chief appraiser to attend, §48-5-266.
Applicability of part, §48-5-275.

COUNTY PROPERTY TAXES —Cont'd
Equalization of assessments —Cont'd
Appraisal staffs, §§48-5-262 to 48-5-268.
Chief appraiser.
Attendance and providing of information at appeal hearing, §48-5-266.
Designation and duties, §48-5-264.
Right to inspect property, §48-5-264.1.
Submission of assessment list with supporting information, §48-5-266.
Composition, §48-5-262.
Continuing education for experienced appraisers, §48-5-268.
Joint county property appraisal staffs, §48-5-265.
Payment by state for minimum staff of appraisers, §48-5-267.
Qualifications, duties and compensation, §48-5-263.
Salary supplements by state for qualified appraisers, §48-5-267.
Sharing appraisal staff, §48-5-265.
Tangible personal property.
Conferring responsibility on members for appraising, §48-5-268.
Training courses for new appraisers, §48-5-268.
Arbitration of disputes concerning equalized school property tax digest, §48-5-274.
Average ratio of assessed value to true value determined, §48-5-274.
Chief appraiser.
Attendance and providing of information at appeal hearing, §48-5-266.
Designation and duties, §48-5-264.
Inspection of property, §48-5-264.1.
Submission of assessment list with supporting information, §48-5-266.
Classification of counties, §48-5-261.
Compensation of appraisers, §48-5-263.
Composition of appraisal staff, §48-5-262.
Conservation use property.
Limits on change in current use value, §48-5-269.

COUNTY PROPERTY TAXES —Cont'd
Equalization of assessments —Cont'd
Conservation use property —Cont'd
Rules and regulations applying to evaluation, §48-5-269.
Continuing education for experienced appraisers, §48-5-268.
Contracts.
Formation of joint county property appraisal staffs, §48-5-265.
Institutions of higher education to provide courses of instruction to appraisal staffs, §48-5-268.
Persons to render advice or assistance, §48-5-265.
Sharing appraisal staff, §48-5-265.
Counties to submit tax rate to state revenue commissioner, §48-5-273.
County board of tax assessors.
Generally, §§48-5-290 to 48-5-314.
County boards of tax equalization, §48-5-311.
Data processing.
Authority to purchase, develop and improve, §48-5-270.
Definitions, §48-5-274.
Duties of appraisers.
Chief appraiser, §48-5-264.
Electronic data processing systems.
Authority to purchase, develop and improve, §48-5-270.
Environmentally sensitive properties.
Valuation, §48-5-269.
Examination of county tax digest, §§48-5-340 to 48-5-349.5.
Hearings on appeals of assessments.
Chief appraiser to attend, §48-5-266.
Incorporated and unincorporated areas of counties.
Applicability of part, §48-5-275.
Inspection of property.
Chief appraiser, §48-5-264.1.
Identification supplied to occupant, §48-5-264.1.
Intent of part, §48-5-260.
Joint county property appraisal staffs.
Formation, §48-5-265.
Notice that equalized adjusted school property tax digest questioned, §48-5-274.
Persons to render advice or assistance.
Contracts with, §48-5-265.
Purpose of part, §48-5-260.
Qualifications of appraisers, §48-5-263.

COUNTY PROPERTY TAXES —Cont'd
Equalization of assessments —Cont'd
Rate of taxes.
Counties to submit to state revenue commissioner, §48-5-273.
Rules and regulations.
Uniform books, records, forms and manuals, §48-5-269.
Salary supplements by state for qualified appraisers, §48-5-267.
School property tax digest.
Establishment of equalized adjusted digest, §48-5-274.
State auditor.
Equalized adjusted school property tax digest.
Duties, §48-5-274.
State loans to counties for programs, §§48-5-330, 48-5-331.
Tangible personal property.
Adoption and requirement of uniform procedural manual, §48-5-269.1.
Conferring responsibility on member of appraisal staff for appraising, §48-5-268.
Tax digest.
Equalized adjusted school property tax digest, §48-5-274.
Training courses for new appraisers, §48-5-268.
Uniform books, records, forms and manuals.
Promulgation of rules and regulations, §48-5-269.
Uniform procedural manual for appraising tangible personal property.
Adoption and requirement of use, §48-5-269.1.
Erroneous collection, §48-5-380.
Examination of county tax digest, §§48-5-340 to 48-5-349.5.
Appeals from conditional approvals, §48-5-348.
Appeals to department of revenue, §48-5-349.2.
Appeals to superior court, §48-5-349.3.
Approval of digest, §48-5-343.
Conditional approval, §48-5-344.
Appeals, §48-5-348.
Subsequent digests, §48-5-346.
Assessment for deviation from proper assessment ratio, §48-5-345.

COUNTY PROPERTY TAXES —Cont'd
Examination of county tax digest —Cont'd
Compliance with decisions of appeals board or court.
Correction of deficiencies, §48-5-349.4.
Conditional approval of digest, §48-5-344.
Subsequent digests, §48-5-346.
Conditional disapproval of digest.
Appeals, §48-5-348.
Correction of deficiencies.
Compliance with decisions of appeals board or court, §48-5-349.4.
Criteria for approval of digest, §48-5-343.
Definitions, §48-5-341.
Deviation from proper assessment ratio, §48-5-345.
Digest evaluation cycles.
Defined, §48-5-341.
Establishment, §48-5-342.1.
Digest review year.
Defined, §48-5-341.
Disapproval of digest.
Appeals.
To department of revenue, §48-5-349.2.
To superior court, §48-5-349.3.
Grants by state.
Conditional approval of digest.
Withholding upon conditional approval, §48-5-346.
Hearings on appeals from conditional approvals, §48-5-348.
Hearings on appeals to department of revenue, §48-5-349.2.
Intent of article, §48-5-340.
Notice of appeal to department of revenue, §48-5-349.2.
Notice of conditional approval of digest, §48-5-344.
Order authorizing use, §48-5-345.
Petition for refund of taxes illegally collected or paid (contingently effective 1/1/2026), §48-5-342.
Purposes of article, §48-5-340.
Purposes of examination, §48-5-342.
Receipt for digest and order authorizing use, §48-5-345.
Reports concerning implementation of article, §48-5-349.5.

COUNTY PROPERTY TAXES —Cont'd
Examination of county tax digest —Cont'd
State board of equalization.
Examination and final approval, §48-2-18.
State revenue commissioner to examine, §48-5-342.
Striking properties illegally appearing on digest, §48-5-342.
Subsequent digests.
Conditional approval, §48-5-346.
Superior courts.
Appeals to, §48-5-349.3.
Time for review, §48-5-342.1.
Uniformity requirements for approval, §48-5-343.
Executions.
Delinquent tax officials.
Issuance against generally, §§48-5-200 to 48-5-205.
Persons holding county money, §48-5-238.
Affidavit of illegality by person against whom execution issues, §48-5-239.
Applicability of article to persons borrowing county money, §48-5-240.
Exemptions.
Brochures or other publications describing, §48-5-306.1.
Exemptions from property taxes generally, §§48-5-40 to 48-5-56.
Fees.
Service of papers, §48-5-307.
Forest land conservation use property.
Conservation use assessment.
Assistance grants to make up revenue reduction, §§48-5A-1 to 48-5A-6.
Forms.
Notice of changes made in taxpayer's return, §48-5-306.
Temporary collection of taxes pending approval or appeal of disapproval of digest, §48-5-310.
Funds.
Reserve fund, §48-5-381.
Hearings.
Appeals from assessments by county board of tax assessors, §48-5-311.
Clerk of superior court, oversight authority, §48-5-311.

COUNTY PROPERTY TAXES —Cont'd
Hearings —Cont'd
Conditional approval of county tax digest, §48-5-348.
County boards of tax assessors.
Removal from office, §48-5-295.
Disapproval of county tax digest.
Appeal to department of revenue, §48-5-349.2.
Temporary collection of taxes pending approval or appeal of disapproval of digest, §48-5-310.
Heavy-duty equipment ad valorem taxation, §§48-5-505 to 48-5-509.
Construction equipment owned by nonresidents, §§48-5-500, 48-5-501.
Homestead exemption.
Exemptions from property taxes generally, §§48-5-40 to 48-5-56.
Homestead tax deferral for individuals 62 or older, §§48-5-70 to 48-5-84.
Illegal collection, §48-5-380.
Interest.
Unpaid taxes, §48-5-148.
Alternative provisions, §48-5-150.
Waiver.
Military service in combat zone as cause of default, §48-5-243.
Intergovernmental agreements.
Regional county boards of equalization for multiple counties, §48-5-311.
Investments.
Reserve fund, §48-5-381.
Jury trial.
Affidavit of illegality by person against whom execution issues, §48-5-239.
Appeals from decisions of county boards of equalization, §48-5-311.
Liens.
Unpaid checks or money orders, §48-5-146.
Limitation of actions.
Refunds, §48-5-380.
Loans.
State loans to counties.
Programs to evaluate and equalize assessments, §48-5-330.
Capital fund for loans, §48-5-331.
Lock box system.
Use for mailed tax returns and payments, §48-5-147.
Mobile home ad valorem taxation.
General provisions, §§48-5-440 to 48-5-451, 48-5-490 to 48-5-495.

COUNTY PROPERTY TAXES —Cont'd
Money orders.
Receipt by commissioners or collectors in payment of taxes, §48-5-146.
Liability for unpaid money orders, §48-5-146.
Motor vehicle ad valorem taxation.
General provisions, §§48-5-440 to 48-5-478.4.
Municipal property taxes.
Contracting with municipality to collect taxes and prepare digest, §48-5-359.1.
Notice.
Appeals from assessments by county board of tax assessors, §48-5-311.
Hearings, §48-5-311.
Appeals from decisions of county boards of equalization, §48-5-311.
Assessment notices, §48-5-306.
Changes made in taxpayer's return, §48-5-306.
Conditional approval of tax digest, §48-5-344.
Correction of mistakes in tax digest, §48-5-303.
Disapproval of tax digest.
Appeal to department of revenue, §48-5-349.2.
Refund approval or disapproval, §48-5-380.
Overpayment.
Erroneous or illegal collection, §48-5-380.
Oversight authority of clerk of superior court, §48-5-311.
Paying over of county taxes by tax officials, §48-5-233.
Payment of taxes.
Checks or money orders, §48-5-146.
Enforcement, §48-5-234.
Unpaid taxes, §48-5-148.
Alternative provisions, §48-5-150.
Forms of payment, §48-5-9.1.
Overpayments.
Refund or credit, §§48-5-241, 48-5-380.
Property lying in more than one county, §48-5-237.
Unpaid taxes.
Interest, §48-5-148.
Alternative provisions, §48-5-150.
Waiver of penalties due, §48-5-242.
Use of lock box system, §48-5-147.

COUNTY PROPERTY TAXES —Cont'd
Penalties.
Confidentiality of records of county board of tax assessors.
Knowingly and willfully furnishing confidential information, §48-5-314.
Unpaid checks or money orders, §48-5-146.
Unreturned property, §48-5-299.
Waiver, §48-5-242.
Military service in combat zone as cause of default, §48-5-243.
Persons holding county money.
Executions against, §48-5-238.
Petitions.
County boards of tax assessors.
Removal from office on petition of freeholders, §48-5-296.
Temporary collection of taxes pending approval or appeal of disapproval of digest, §48-5-310.
Property lying in more than one county, §48-5-237.
Property taxes generally, §§48-5-1 to 48-5-56.
Purposes, §48-5-220.
Railroad companies.
Public utility ad valorem taxation.
Method of assessment for county taxation purposes, §48-5-521.
Reduction in taxes causing need for refund.
Interest, §48-5-311.
Refunds, §§48-5-241, 48-5-380.
Examination of county tax digest.
Petition for refund of taxes illegally collected or paid (contingently effective 1/1/2026), §48-5-342.
Striking properties illegally appearing on digest, §48-5-342.
Reports.
Examination of county tax digest.
Annual report concerning implementation of article, §48-5-349.5.
Reserve funds, §48-5-381.
Returns.
Board of assessors to receive tax returns, §48-5-299.1.
Changes in taxpayer's return.
Notice, §48-5-306.
Time for completion of revision and assessments of, §48-5-302.

COUNTY PROPERTY TAXES —Cont'd
Returns —Cont'd
Time for presentation by tax receiver or tax commissioner, §48-5-301.
Unreturnable property.
Assessments against, §48-5-299.
Use of lock box system for mailed returns, §48-5-147.
Service of papers, §48-5-307.
Settlement.
Appeals of decisions of county boards of equalization.
Settlement conference, effect of nonparticipation (contingently effective 1/1/2025), §48-5-311.
Sheriffs.
Delinquent tax officials.
Direction to sheriffs of executions against, §48-5-202.
Periodic payment to proper officials of money collected, §48-5-141.
State loans to counties, §§48-5-330, 48-5-331.
Superior courts.
Appeals of decisions of county boards of equalization, §48-5-311.
County boards of tax assessors.
Removal from office, §48-5-295.
Disapproval of county tax digest.
Appeals to, §48-5-349.3.
Execution against person holding county money.
Affidavit of illegality by person against whom execution issues, §48-5-239.
Power and jurisdiction to punish for contempt, §48-5-300.
Refunds, §48-5-380.
Removal from office, §48-5-295.
Petition of freeholders, §48-5-296.
Temporary collection of taxes pending approval of digest, §48-5-310.
Tax digest.
Approval and disapproval.
Examination generally, §§48-5-340 to 48-5-349.5.
County board of tax assessors.
Approval of tax digest.
Assessments in arbitration or on appeal, §48-5-304.
Temporary collection of taxes pending approval, §48-5-310.
Correction of mistakes in digest, §48-5-303.

COUNTY PROPERTY TAXES —Cont'd
Tax digest —Cont'd
County board of tax assessors —Cont'd
Submission of completed digest to state revenue commissioner, §48-5-302.
Temporary collection of taxes pending approval, §48-5-310.
Valuation of property not in digest, §48-5-305.
Delinquent tax officials.
Failure to complete or improper digests, §48-5-205.
Effect of collection of taxes before filing with state revenue commissioner, §48-5-135.
Entry of returns in digests, §48-5-108.
Equalized adjusted school property tax digest, §48-5-274.
Examination of county tax digests, §§48-5-340 to 48-5-349.5.
Extension of time to complete.
Extension of time to tax officials, §48-5-134.
Making and furnishing digests.
Time and manner, §48-5-106.
Standing timber assessments, §48-5-7.5.
Tax executions.
Delinquent tax officials.
Issuance of executions against generally, §§48-5-200 to 48-5-205.
Persons holding county money, §48-5-238.
Affidavit of illegality by person against whom execution issues, §48-5-239.
Applicability of article to persons borrowing county money, §48-5-240.
Temporary collection pending approval or disapproval of digest, §48-5-310.
Temporary collection of taxes pending approval or appeal of disapproval of digest, §48-5-310.
Training and education of local officials and staff, §48-5-13.
Unpaid taxes.
Interest, §48-5-148.
Alternative provisions, §48-5-150.
Unreturnable property.
Assessments against, §48-5-299.

COUNTY PROPERTY TAXES —Cont'd
Valuation disputes.
Arbitration.
Nonbinding arbitration, §48-5-311.
Valuation of property not in digest, §48-5-305.

COUNTY TAX COLLECTORS, §§48-5-121 to 48-5-165.
Accounts and accounting.
Annual accounting reports, §48-5-154.
Removal or suspension for failing to account or defaulting, §48-5-155.
Final settlements, §48-5-150.
Failure to make, §48-5-152.
Issuance of executions against for failure to settle, §48-5-201.
Interest on unpaid taxes collected, §48-5-150.
Record books, §48-5-138.
Rendering account of official actions, §48-5-140.
Actions.
Collector's bond, §48-5-124.
Correctness of accounting reports, §48-5-154.
Advertising.
Additional cost of execution, §48-5-137.1.
Affidavits.
Illegality to execution against, §48-5-203.
Qualifications to seek office, §48-5-210.
Age requirement, §48-5-210.
Appeals.
Issues formed on affidavit of illegality to execution against, §48-5-203.
Assessment of county property taxes.
Unreturned property.
Collection of penalty, §48-5-299.
Audits.
Cashbook, §48-5-138.
Bonds, surety, §48-5-122.
Approval, filing and recording, §48-5-123.
Collection before bond given, §48-5-125.
Failure to account for default.
Surety's right to demand release from future liability, §48-5-156.
Liability, §48-5-124.
New bond.
Release of surety from future liability for failure to account, §48-5-156.

COUNTY TAX COLLECTORS —Cont'd
Bonds, surety —Cont'd
Temporary appointee where collector fails to give satisfactory bond, §48-5-126.
Cashbook to be kept by collectors, §48-5-138.
Failure to keep, §48-5-139.
Inspection by grand jury, §48-5-161.
Checks.
Instructing taxpayers.
Checks made payable to county tax office, §48-5-165.
Payment of tax by check.
Receipt not required to be given by collector, §48-5-127.
Receipt of checks in payment of taxes, §48-5-146.
Liability for unpaid checks, §48-5-146.
Chief deputy.
Appointment and duties, §48-5-212.
Citations.
Default, negligence or bad faith in accounting reports, §48-5-154.
Commercial vehicle ad valorem taxation, §48-5-442.1.
Commissions.
Allowance by governing authority of county, §48-5-236.
Collection of county school taxes, §48-5-404.
Collector on salary, §48-5-180.
Deductions of default and insolvent lists for net amount of digests, §48-5-181.
Forfeiture for failure to make final settlement, §48-5-150.
Failure to make final settlement within period allowed, §48-5-153.
Forfeiture for violations in issuing executions, §48-5-162.
Intangible recording tax, §48-6-73.
Motor vehicle and mobile home ad valorem taxation, §48-5-447.
Outgoing collectors.
Distribution, §48-5-164.
Payment of commissions to tax receivers, §48-5-182.
Rate, §48-5-180.
Continuing education, §48-5-126.1.
Contracts.
Lock box system, §48-5-147.

COUNTY TAX COLLECTORS —Cont'd
Costs.
Advertising as additional cost of execution, §48-5-137.1.
Credit of county taxes.
Authority, §48-5-241.
Damages.
Delay upon trial of issuance formed on affidavit of illegality of execution, §48-5-203.
Debts owed to state.
Issuance of process against collector, §48-5-200.
Default in accounting for collections.
Citations, §48-5-154.
Release of surety from future liability, §48-5-156.
Removal or suspension, §48-5-155.
Defined, §48-1-2.
Delinquent tax officials.
General provisions, §§48-5-200 to 48-5-205.
Disbursements from cashbook.
Recording, §48-5-138.
Dockets.
Execution docket, §48-5-161.
Duties, §48-5-127.
Chief deputy, §48-5-212.
Enforcement of collection, §48-2-81.
Instruction of taxpayers that negotiable instruments made payable to county tax office, §48-5-165.
Transfer from outgoing to incoming collectors, §48-5-128.
Elections, §48-5-210.
Special elections.
Vacancies in office, §48-5-211.
Evidence.
Record book or transcript of record book, §48-5-138.
Exchange of tax information, §48-2-16.
Executions, §48-3-3.
Advertising as additional cost, §48-5-137.1.
Collection, §48-5-161.
Insolvent lists, §48-5-131.
Delinquent tax officials.
Issuance against generally, §§48-5-200 to 48-5-205.
Execution docket, §48-5-161.

COUNTY TAX COLLECTORS —Cont'd
Executions —Cont'd
Failure to collect taxes.
Transfer of executions to collector or surety held liable for failure, §48-5-157.
Garnishments, §48-3-12.
Immediate payment or bond.
Demanding where person or property may leave jurisdiction or property's value may be prejudiced, §48-3-3.1.
Inspection by grand jury, §48-5-161.
Issuance, §48-5-161.
Penalties for violations by collectors, §48-5-162.
Levy administration fee, §48-5-161.
Petition to reduce execution to judgment, §§48-3-13 to 48-3-17.
Powers as ex officio sheriffs, §48-5-137.
Reissuance before allowance of insolvent lists, §48-5-129.
Sales under tax executions, §§48-4-1 to 48-4-65.
Selection of property to be levied, §48-3-4.
Failure to collect taxes.
Nonliability, §48-5-158.
Transfer of executions to collector or surety held liable for failure, §48-5-157.
Subrogation upon payment, §48-5-157.
False swearing.
False reports of taxes collected, §48-5-159.
Fees.
Levy administration fee, §48-5-161.
Felony convictions or conviction of offense involving moral turpitude.
Ineligibility to office, §48-5-210.
Final settlements, §48-5-150.
Failure to make, §48-5-152.
Issuance of executions against for failure to settle, §48-5-201.
Period for, §48-5-153.
Forfeitures.
Collecting or attempting to collect tax before filing digest with state revenue commissioner, §48-5-135.
Failure to make final settlement, §48-5-150.
Failure to make within period allowed, §48-5-153.

COUNTY TAX COLLECTORS —Cont'd
Forfeitures —Cont'd
Violations in issuing executions, §48-5-162.
Garnishment.
Tax executions.
Issuance, §48-3-12.
Grand jury.
Inspection of execution docket and cashbook, §48-5-161.
Hearings.
Removal or suspension for failing to account or defaulting, §48-5-155.
Homestead tax deferral for individuals 62 or older.
General provisions, §§48-5-70 to 48-5-84.
Immediate payment or bond.
Demanding where person or property may leave jurisdiction or property's value may be prejudiced, §48-3-3.1.
Incoming tax collector.
Transfer of duties to, §48-5-128.
Insolvent lists.
Allocation of tax on, §48-5-130.
Allowance, §48-5-129.
Collection of executions, §48-5-131.
Contents, §48-5-130.
Crediting tax collectors with, §48-5-133.
Disposition, §48-5-132.
Retention of copy by governing authority, §48-5-131.
Interest.
Collection of interest on unpaid taxes, §48-5-150.
Failure to collect interest, §48-5-152.
Payments to state and county, §48-5-151.
Record of interest collected from delinquent or defaulting taxpayer, §48-5-148.
Report of interest collected from delinquent or defaulting taxpayers, §48-5-150.
Jeopardy assessments.
Immediate payment or bond.
Demanding where person or property may leave jurisdiction or property's value may be prejudiced, §48-3-3.1.
Liability for county taxes for default or improper conduct, §48-5-235.

COUNTY TAX COLLECTORS —Cont'd
Liens.
Unpaid checks or money orders, §48-5-146.
Limitation of actions.
Actions brought on correctness of accounting reports, §48-5-154.
Lock box system, §48-5-147.
Malpractice in office.
Failure to collect interest and make reports and settlements, §48-5-152.
Refusal to render account of official actions, §48-5-140.
Mobile home ad valorem taxation.
Collection of taxes, §48-5-445.
Compensation for collecting, §48-5-447.
Remittance of taxes collected, §48-5-446.
Uniform evaluation prepared and distributed annually to, §48-5-442.
Money orders.
Instructing taxpayers.
Negotiable instruments made payable to county tax office, §48-5-165.
Payment of tax by money order.
Receipt not required to be given by collector, §48-5-127.
Receipt of money orders in payment of taxes, §48-5-146.
Motor vehicle ad valorem taxation.
Agents for state revenue commissioners.
Accepting applications for registration and collection of taxes, §48-5-475.
Collection of taxes, §48-5-445.
Commercial vehicle taxation, §48-5-442.1.
Compensation for collecting, §48-5-447.
Remittance of taxes collected, §48-5-446.
Uniform evaluation of motor vehicles prepared and distributed annually to, §48-5-442.
Motor vehicle registration.
Agents for state revenue commissioners.
Accepting applications for registration, §48-5-475.
Municipal property taxes.
Contracts to assess and collect municipal taxes and prepare tax digest, §48-5-359.1.

COUNTY TAX COLLECTORS —Cont'd
Neglect of duties, §48-5-145.
Negotiable instruments.
Instructing taxpayers.
Negotiable instruments made payable to county tax office, §48-5-165.
Payment of tax by check, money order or other instrument.
Receipt not required to be given, §48-5-127.
Nonliability for failure to collect taxes, §48-5-158.
Notice.
Correction of mistake in tax digest.
Tax commissioner to notify tax collector, §48-5-303.
Issuance of execution, §48-3-3.
Oaths, §48-5-121.
Collection before oath taken, §48-5-125.
Weekly report of taxes collected, §48-5-142.
Official collection and paying over of county taxes, §48-5-233.
Outgoing collectors.
Commissions.
Distribution, §48-5-164.
Duties of successor collectors as to performing uncompleted duties, §48-5-164.
Liability, §48-5-164.
Transfer of duties from, §48-5-128.
Payment of money collected by.
Paying over of county taxes, §48-5-233.
Periodic payment to proper officials, §48-5-141.
Payment of taxes.
Checks or money orders, §48-5-146.
Receipts not required, §48-5-127.
Extension of time, §48-5-134.
Overpayments.
Refund or credit authority, §48-5-241.
Property lying in more than one county, §48-5-237.
Unpaid taxes.
Reports, §48-5-153.
Use of lock box system, §48-5-147.
Payments of interest to state and county, §48-5-151.
Penalties.
Collection of penalty for unreturned property, §48-5-299.

COUNTY TAX COLLECTORS —Cont'd
Penalties —Cont'd
Issuance of executions.
Violations, §48-5-162.
Unpaid checks or money orders, §48-5-146.
Periodic payment to proper officials of money collected by, §48-5-141.
Prepayment of property taxes.
Taxpayer agreements with local government to prepay taxes, §48-5-31.1.
Property taxes generally, §§48-5-1 to 48-5-56.
Qualifications for office, §48-5-210.
Receipts for payment of taxes.
Payment by check, money order or other instrument, §48-5-127.
Recordation.
Bond, §48-5-123.
Records.
Cashbook, §48-5-138.
Failure to keep, §48-5-139.
Inspection by grand jury, §48-5-161.
Interest collected from delinquent or defaulting taxpayers, §48-5-148.
Refund of county taxes.
Authority, §48-5-241.
Releases.
Failure to account for default.
Surety's right to demand release from future liability, §48-5-156.
Remittance of state taxes to state revenue commissioner.
Monthly remittance, §48-5-143.
Removal from office.
Failing to account or defaulting, §48-5-155.
Failure to collect interest and make reports and settlements, §48-5-152.
Failure to comply with training requirements, §48-5-126.1.
Neglect of duties, §48-5-145.
Refusal to render account of official actions, §48-5-140.
Rendering account of official actions, §48-5-140.
Reports.
Amount of taxes collected, §48-5-150.
Amount of taxes remaining unpaid on tax digest, §48-5-150.
Annual accounting reports, §48-5-154.
Removal or suspension for failing to account or defaulting, §48-5-155.

COUNTY TAX COLLECTORS —Cont'd
Reports —Cont'd
Failure to make reports, §48-5-152.
False reports of taxes collected, §48-5-159.
Forms furnished by state revenue commissioner, §48-5-144.
Interest collected from delinquent or defaulting taxpayers, §48-5-150.
Unpaid taxes, §48-5-153.
Weekly reports of taxes collected, §48-5-142.
Salaries, §48-5-183.
Commissions where collector on salary, §48-5-180.
Sales for purpose of collecting taxes due state and county.
Advertising as additional cost of execution, §48-5-137.1.
Powers as ex officio sheriffs, §48-5-137.
Sales under tax executions.
General provisions, §§48-4-1 to 48-4-65.
School taxes.
Collection of taxes, §48-5-404.
Sheriffs.
Ex officio sheriffs, §48-5-137.
Subrogation.
Liability for failure to collect taxes.
Payment by collectors or sureties, §48-5-157.
Successor collectors.
Duties as to performing uncompleted duties of outgoing collectors, §48-5-164.
Suspension from office.
Failing to account or defaulting, §48-5-155.
Tax digest.
Copy of revised and corrected digest furnished collector, §48-5-106.
Correction of mistake.
Notification to collector, §48-5-303.
Effect of collection before filing with state revenue commissioner, §48-5-135.
Extension of time to complete, §48-5-134.
Failure to complete or improper digests, §48-5-205.
Tax executions, §48-3-3.
Advertising as additional cost, §48-5-137.1.
Collection, §48-5-161.
Executions on insolvent lists, §48-5-131.

COUNTY TAX COLLECTORS —Cont'd
Tax executions —Cont'd
Delinquent tax officials.
Issuance of execution against generally, §§48-5-200 to 48-5-205.
Execution docket, §48-5-161.
Failure to collect taxes.
Transfer of executions to collector or surety held liable for failure, §48-5-157.
Garnishments, §48-3-12.
Immediate payment or bond.
Demanding where person or property may leave jurisdiction or property's value may be prejudiced, §48-3-3.1.
Inspection by grand jury, §48-5-161.
Issuance, §48-5-161.
Penalties for violations by collectors, §48-5-162.
Levy administration fee, §48-5-161.
Petition to reduce execution to judgment, §§48-3-13 to 48-3-17.
Powers as ex officio sheriffs, §48-5-137.
Reissuance of execution before allowance of insolvent lists, §48-5-129.
Sales under tax executions, §§48-4-1 to 48-4-65.
Selection of property to be levied, §48-3-4.
Temporary appointees.
Failure to give satisfactory bond by tax collectors, §48-5-126.
Time.
Final settlements, §48-5-153.
Training classes, §48-5-126.1.
Unpaid taxes.
Reports, §48-5-153.
Vacancies in office.
Created by defaulting tax collectors, §48-5-204.
Interim and emergency filling, §48-5-211.
Violations of tax laws.
Duty to prosecute, §48-2-81.

COUNTY TAX COMMISSIONERS.
Accounts and accounting.
Annual accounting reports, §48-5-154.
Release of surety from future liability for failure to account, §48-5-156.

COUNTY TAX COMMISSIONERS —Cont'd
Accounts and accounting —Cont'd
Annual accounting reports —Cont'd
Removal or suspension for failing to account or defaulting, §48-5-155.
Final settlements, §48-5-150.
Failure to make, §48-5-152.
Issuance of executions against for failure to settle, §48-5-201.
Period for, §48-5-153.
Interest on unpaid taxes, §48-5-150.
Record books, §48-5-138.
Rendering account of official actions, §48-5-140.
Actions.
Commissioner's bond, §48-5-124.
Correctness of accounting reports, §48-5-154.
Advertising.
Additional cost of execution, §48-5-137.1.
Affidavits.
Illegality of execution against, §48-5-203.
Qualifications to seek office, §48-5-210.
Age requirement, §48-5-210.
Appeals.
Issues formed on affidavit of illegality to execution against, §48-5-203.
Audits.
Cashbook, §48-5-138.
Bonds, surety, §48-5-122.
Approval, filing and recording, §48-5-123.
Collection before bond given, §48-5-125.
Failure to account or default.
Surety's right to demand release from future liability, §48-5-156.
Liability, §48-5-124.
New bond.
Release of surety for failure to account, §48-5-156.
Temporary appointee where commissioner fails to give satisfactory bond, §48-5-126.
Cashbook to be kept by commissioners, §48-5-138.
Failure to keep, §48-5-139.
Inspection by grand jury, §48-5-161.
Checks.
Instructing taxpayers.
Checks made payable to county tax office, §48-5-165.

COUNTY TAX COMMISSIONERS —Cont'd
Checks —Cont'd
Payment of tax by check.
Receipt not required to be given, §48-5-127.
Receipt of checks in payment of taxes, §48-5-146.
Liability for unpaid checks, §48-5-146.
Chief deputy.
Appointment and duties, §48-5-212.
Certain counties, §48-5-128.1.
Assumption of duties upon death, resignation, etc., of commissioner, §48-5-212.
Succession to office, §48-5-128.1.
Vacancies in office, §48-5-128.1.
Citations.
Default, negligence or bad faith in accounting reports, §48-5-154.
Commercial vehicle ad valorem taxation, §48-5-442.1.
Commissions.
Allowance by governing authority of county, §48-5-236.
Collection of county school taxes, §48-5-404.
Commissioner on salary, §48-5-180.
Deductions of default and insolvent lists for net amount of digests, §48-5-181.
Forfeiture for failure to make final settlement, §48-5-150.
Failure to make final settlement within period allowed, §48-5-153.
Forfeiture for incomplete or improper digests, §48-5-205.
Forfeiture for violations in issuing executions, §48-5-162.
Intangible recording tax, §48-6-73.
Motor vehicle and mobile home ad valorem taxation, §48-5-447.
Motor vehicle licenses and plates.
Fee for sale or transfer, §48-5-180.
Outgoing commissioners.
Distribution, §48-5-164.
Payment of commissions to tax receivers, §48-5-182.
Rate, §48-5-180.
Compensation, deferred.
Deferred compensation plan for eligible tax commissioners, §48-5-184.

COUNTY TAX COMMISSIONERS —Cont'd
Contracts.
Use of lock box system, §48-5-147.
Costs.
Advertising as additional cost of execution, §48-5-137.1.
Credit of county taxes.
Authority, §48-5-241.
Damages.
Delay upon trial of issuance formed on affidavit of illegality of execution, §48-5-203.
Death.
Assumption of duties by chief deputy, §48-5-212.
Debts owed to state.
Issuance of process against commissioner, §48-5-200.
Default in accounting for collections.
Citations, §48-5-154.
Release of surety from future liability, §48-5-156.
Removal or suspension, §48-5-155.
Deferred compensation plan for eligible tax commissioners, §48-5-184.
Defined, §48-1-2.
Delinquent tax officials.
General provisions, §§48-5-200 to 48-5-205.
Disbursements from cashbook.
Recording, §48-5-138.
Dockets.
Execution docket, §48-5-161.
Duties.
Chief deputy, §48-5-212.
Assumption of duties upon death, resignation, etc., §48-5-212.
Enforcement of collection, §48-2-81.
Instructing taxpayers.
Negotiable instruments made payable to county tax office, §48-5-165.
Transfer from outgoing to incoming commissioner, §48-5-128.
Elections, §48-5-210.
Special elections.
Death, resignation, incapacity, etc., of commissioner, §48-5-212.
Vacancies in office, §48-5-211.
Electronic billing, §48-3-3.
Notices of taxes due, §48-5-148.
Evidence.
Record book or transcript of record book, §48-5-138.

COUNTY TAX COMMISSIONERS —Cont'd
Exchange of tax information, §48-2-16.
Executions, §48-3-3.
Advertising as additional cost of execution, §48-5-137.1.
Collection, §48-5-161.
Executions on insolvent lists, §48-5-131.
Delinquent tax officials.
Issuance of execution against generally, §§48-5-200 to 48-5-205.
Failure to collect taxes.
Transfer of executions to commissioner or surety held liable, §48-5-157.
Garnishments, §48-3-12.
Immediate payment or bond.
Demanding where person or property may leave jurisdiction or property's value may be prejudiced, §48-3-3.1.
Inspection by grand jury, §48-5-161.
Issuance.
Penalties for violations by commissioners, §48-5-162.
Levy administration fee, §48-5-161.
Petition to reduce execution to judgment, §§48-3-13 to 48-3-17.
Powers as ex officio sheriffs, §48-5-137.
Reissuance of execution before allowance of insolvent lists, §48-5-129.
Sales under tax executions, §§48-4-1 to 48-4-65.
Selection of property to be levied, §48-3-4.
Exempted property.
Return and collection of taxes on property unlawfully exempted, §48-5-21.
Failure to have property returned and collection of taxes, §48-5-22.
Expenses.
Allowance, §48-5-183.1.
Failure to collect taxes.
Nonliability, §48-5-158.
Transfer of executions to commissioner or surety held liable, §48-5-157.
Subrogation upon payment, §48-5-157.
False swearing.
False reports of taxes collected, §48-5-159.

COUNTY TAX COMMISSIONERS —Cont'd
Fees.
Levy administration fee, §48-5-161.
Sale or transfer of motor vehicle license and plates, §48-5-180.
Felony convictions or conviction of offense involving moral turpitude.
Ineligibility to office, §48-5-210.
Final settlements, §48-5-150.
Failure to make, §48-5-152.
Issuance of executions against for failure to settle, §48-5-201.
Period for, §48-5-153.
Forfeitures.
Collection of taxes before filing digest with state revenue commissioner, §48-5-135.
Failure to make final settlement, §48-5-150.
Failure to make final settlement within period allowed, §48-5-153.
Incomplete or improper tax digests, §48-5-205.
Violations in issuing executions, §48-5-162.
Forms furnished by state revenue commissioner, §48-5-105.
Uniform tangible personal property tax forms, §48-5-105.1.
Garnishment.
Tax executions.
Issuance, §48-3-12.
Grand jury.
Inspection of execution docket and cashbook, §48-5-161.
Hearings.
Removal or suspension for failing to account or defaulting, §48-5-155.
Homestead exemptions.
Filing application with, §48-5-45.
Procedure for application, §48-5-46.
Homestead tax deferral for individuals 62 or older.
General provisions, §§48-5-70 to 48-5-84.
Immediate payment or bond.
Demanding where person or property may leave jurisdiction or property's value may be prejudiced, §48-3-3.1.
Incapacity.
Assumption of duties by chief deputy, §48-5-212.

COUNTY TAX COMMISSIONERS —Cont'd
Incoming tax commissioner.
Transfer of duties to, §48-5-128.
Insolvent lists.
Allocation of tax on, §48-5-130.
Allowance, §48-5-129.
Collection of executions, §48-5-131.
Contents, §48-5-130.
Crediting tax commissioners with, §48-5-133.
Disposition, §48-5-132.
Retention of copy by governing authority, §48-5-131.
Interest.
Collection of interest on unpaid taxes, §48-5-150.
Failure to collect, §48-5-152.
Payments to state and county, §48-5-151.
Record of interest collected from delinquent or defaulting taxpayer, §48-5-148.
Report of interest collected from delinquent or defaulting taxpayers, §48-5-150.
Jeopardy assessments.
Immediate payment or bond.
Demanding where person or property may leave jurisdiction or property's value may be prejudiced, §48-3-3.1.
Liability for taxes for default or improper conduct, §48-5-235.
Liens.
Unpaid checks or money orders, §48-5-146.
Limitation of actions.
Correctness of accounting reports, §48-5-154.
Lock box system, §48-5-147.
Malpractice in office.
Failure to collect interest and make reports and settlements, §48-5-152.
Refusal to render account of official actions, §48-5-140.
Mistake in county tax digest.
Correction, §48-5-303.
Mobile home ad valorem taxation.
Collection of taxes, §48-5-445.
Compensation for collecting, §48-5-447.
Remittance of taxes collected, §48-5-446.
Uniform evaluation prepared and distributed annually to, §48-5-442.

COUNTY TAX COMMISSIONERS —Cont'd
Money orders.
Instructing taxpayers.
Money orders made payable to county tax office, §48-5-165.
Payment of tax by money order.
Receipt not required to be given, §48-5-127.
Receipt of money orders in payment of taxes, §48-5-146.
Liability for unpaid money orders, §48-5-146.
Motor vehicle ad valorem taxation.
Agents for state revenue commissioner.
Accepting applications for registration and collecting taxes, §48-5-475.
Collection of taxes, §48-5-445.
Commercial vehicles, §48-5-442.1.
Compensation for collecting, §48-5-447.
Remittance of taxes collected, §48-5-446.
Uniform evaluation of motor vehicles prepared and distributed annually to, §48-5-442.
Motor vehicle licenses and plates.
Fee for sale or transfer, §48-5-180.
Motor vehicle registration.
Agents for state revenue commissioner.
Accepting applications for registration, §48-5-475.
Municipal property taxes.
Contracts to assess and collect municipal taxes and prepare tax digest, §48-5-359.1.
Neglect of duties, §48-5-145.
Negotiable instruments.
Instructing taxpayers.
Negotiable instruments made payable to county tax office, §48-5-165.
Payment of tax by check, money order or other instrument.
Receipt not required to be given, §48-5-127.
Nonliability for failure to collect taxes, §48-5-158.
Notice.
Issuance of execution, §48-3-3.
Mistake in digest.
Correction, §48-5-303.
Neglect of duties, §48-5-145.

COUNTY TAX COMMISSIONERS —Cont'd
Oaths.
Collection before oath taken, §48-5-125.
Weekly report of taxes collected, §48-5-142.
Office expenses of commissioners.
Allowance, §48-5-183.1.
Outgoing commissioners.
Distribution of commissions, §48-5-164.
Duties of successor commissioners as to performing uncompleted duties, §48-5-164.
Liability, §48-5-164.
Transfer of duties from, §48-5-128.
Payment of money collected.
Periodic payment to proper officials, §48-5-141.
Payment of taxes.
Check or money orders, §48-5-146.
Receipts not required, §48-5-127.
Extension of time, §48-5-134.
Property lying in more than one county, §48-5-237.
Unpaid taxes.
Reports, §48-5-153.
Use of lock box system, §48-5-147.
Payments of interest to state and county, §48-5-151.
Penalties.
Issuance of executions.
Violations, §48-5-162.
Unpaid checks or money orders, §48-5-146.
Periodic payment to proper officials of money collected, §48-5-141.
Prepayment of property taxes.
Taxpayer agreements with local government to prepay taxes, §48-5-31.1.
Property taxes generally, §§48-5-1 to 48-5-56.
Qualifications for office, §48-5-210.
Receipts for payment of taxes.
Payment by check, money order or other instrument, §48-5-127.
Recordation.
Bond, §48-5-124.
Records.
Cashbook, §48-5-138.
Failure to keep, §48-5-139.
Inspection by grand jury, §48-5-161.
Interest collected from delinquent or defaulting taxpayers, §48-5-148.

COUNTY TAX COMMISSIONERS —Cont'd
Refund of county taxes.
Authority, §48-5-241.
Refusal to receive returns, §48-5-104.
Releases.
Failure to account for default.
Surety's right to demand release from future liability, §48-5-156.
Remittance of state taxes to state revenue commissioner.
Monthly remittance, §48-5-143.
Removal from office.
Failing to account or defaulting, §48-5-155.
Failure to collect interest and make reports and settlements, §48-5-152.
Failure to comply with training requirements, §48-5-126.1.
Incomplete or improper digests, §48-5-205.
Neglect of duties, §48-5-145.
Refusal to render account of official actions, §48-5-140.
Rendering account of official actions, §48-5-140.
Reports.
Amount of taxes collected, §48-5-150.
Amount of taxes remaining unpaid, §48-5-150.
Annual accounting reports, §48-5-154.
Removal or suspension for failing to account or defaulting, §48-5-155.
Failure to make report, §48-5-152.
False reports of taxes collected, §48-5-159.
Forms furnished by state revenue commissioner, §48-5-144.
Interest collected from delinquent or defaulting taxpayers, §48-5-150.
Unpaid taxes, §48-5-153.
Weekly reports of taxes collected, §48-5-142.
Resignation.
Assumption of duties by chief deputy, §48-5-212.
Returns.
All property returned by taxpayers to commissioner, §48-5-10.
Entry in tax digests, §48-5-108.
Forms furnished by state revenue commissioner, §48-5-105.
Uniform tangible personal property tax forms, §48-5-105.1.

COUNTY TAX COMMISSIONERS —Cont'd
Returns —Cont'd
Property unlawfully exempted, §48-5-21.
Failure to have returned for taxation, §48-5-22.
Refusal to receive, §48-5-104.
Time for presentation to county board of tax assessors, §48-5-301.
Salaries, §48-5-183.
Commissions where commissioner on salary, §48-5-180.
Sales for purposes of collecting taxes due state and county.
Advertising as additional cost, §48-5-137.1.
Powers as ex officio sheriffs, §48-5-137.
Sales under tax executions.
General provisions, §§48-4-1 to 48-4-65.
School taxes.
Collection of taxes, §48-5-404.
Sheriffs.
Ex officio sheriffs, §48-5-137.
Statistical information.
Accumulation, §48-5-109.
Subrogation.
Failure to collect taxes.
Transfer of executions to commissioner or surety held liable.
Payment of taxes, §48-5-157.
Succession to office of tax commissioner.
Chief deputy appointed in certain counties, §48-5-128.1.
Successor commissioners.
Duties as to performing uncompleted duties of outgoing commissioners, §48-5-164.
Superior courts.
Affidavit of illegality to execution against collector.
Trial in and deposition by superior court, §48-5-203.
Suspension from office.
Failing to account or defaulting, §48-5-155.
Tangible personal property inventory exemption.
Filing of application with commissioner, §48-5-48.1.
Timeliness of filing, §48-5-48.7.
Tax digests.
Correction of mistake made by tax commissioner, §48-5-303.

COUNTY TAX COMMISSIONERS —Cont'd
Tax digests —Cont'd
Effect of collection before filing digest with state revenue commissioner, §48-5-135.
Entry of returns in digests, §48-5-108.
Extension of time to complete, §48-5-134.
Failure to complete or improper digests, §48-5-205.
Time and manner of making and furnishing, §48-5-106.
Tax executions, §48-3-3.
Advertising as additional cost of execution, §48-5-137.1.
Collection, §48-5-161.
Executions on insolvent lists, §48-5-131.
Delinquent tax officials.
Issuance of execution against generally, §§48-5-200 to 48-5-205.
Failure to collect taxes.
Transfer of executions to commissioner or surety held liable, §48-5-157.
Garnishments, §48-3-12.
Immediate payment or bond.
Demanding where person or property may leave jurisdiction or property's value may be prejudiced, §48-3-3.1.
Inspection by grand jury, §48-5-161.
Issuance.
Penalties for violations by commissioners, §48-5-162.
Levy administration fee, §48-5-161.
Obstructing or hindering.
Criminal offense, §48-3-27.
Petition to reduce execution to judgment, §§48-3-13 to 48-3-17.
Powers as ex officio sheriffs, §48-5-137.
Reissuance of execution before allowance of insolvent lists, §48-5-129.
Sales under tax executions, §§48-4-1 to 48-4-65.
Selection of property to be levied, §48-3-4.
Tax receivers.
General provisions, §§48-5-101 to 48-5-109.
Temporary appointees.
Failure of commissioner to give satisfactory bond, §48-5-126.
COUNTY TAX COMMISSIONERS —Cont'd
Time.
Final settlements, §48-5-153.
Presentation of returns to county board of tax assessors, §48-5-301.
Training classes, §48-5-126.1.
Unpaid taxes.
Reports, §48-5-153.
Vacancies in office.
Created by defaulting tax commissioners, §48-5-204.
Interim and emergency filling, §48-5-211.
Violations of tax laws.
Duties to prosecute violators, §48-2-81.
COUNTY TAX RECEIVERS, §§48-5-101 to 48-5-109.
Actions.
Receiver's bond, §48-5-102.
Affidavits.
Qualifications to seek office, §48-5-210.
Age requirement, §48-5-210.
Bonds, surety, §48-5-101.
Action on bond, §48-5-102.
Liability of receivers and sureties, §48-5-102.
Chief deputy.
Appointment and duties, §48-5-212.
Commissions.
Deductions of default and insolvent lists for net amount of digests, §48-5-181.
Forfeiture for failure to complete or improper digests, §48-5-205.
Payment of commissions to tax receivers, §48-5-182.
Rate, §48-5-180.
Receiver on salary, §48-5-180.
Debts owed to state.
Issuance of process against receivers, §48-5-200.
Defined, §48-1-2.
Delinquent tax officials.
General provisions, §§48-5-200 to 48-5-205.
Duties, §48-5-103.
Chief deputy, §48-5-212.
Elections, §48-5-210.
Special elections.
Vacancies in office, §48-5-211.
Exchange of tax information, §48-2-16.

COUNTY TAX RECEIVERS —Cont'd
Felony convictions or conviction of offense involving moral turpitude.
Ineligibility for office, §48-5-210.
Forfeitures.
Incomplete or improper digests, §48-5-205.
Form of oath, §48-5-101.
Forms furnished by commissioner, §48-5-105.
Uniform tangible personal property tax forms, §48-5-105.1.
Homestead tax deferral for individuals 62 or older.
General provisions, §§48-5-70 to 48-5-84.
Liability of receivers and sureties, §48-5-102.
Municipal property taxes.
Contracts to assess and collect municipal taxes and prepare tax digest, §48-5-359.1.
Oaths, §48-5-101.
Payment of taxes.
Extension of time, §48-5-134.
Property taxes generally, §§48-5-1 to 48-5-56.
Qualifications for office, §48-5-210.
Refusal to receive return, §48-5-104.
Removal from office.
Incomplete or improper digests, §48-5-205.
Returns.
Duties, §48-5-103.
Entry in tax digests, §48-5-108.
Forms furnished by commissioner, §48-5-105.
Uniform tangible personal property tax forms, §48-5-105.1.
Refusal to receive, §48-5-104.
Time for presentation to county board of tax assessors, §48-5-301.
Salaries.
Commissions where receiver on salary, §48-5-180.
Statistical information.
Accumulation, §48-5-109.
Tax digests.
Duties, §48-5-103.
Entry of returns in, §48-5-108.
Extension of time to complete, §48-5-134.
Failure to complete or improper digests, §48-5-205.

COUNTY TAX RECEIVERS —Cont'd
Tax digests —Cont'd
Time and manner of making and furnishing, §48-5-106.
Time.
Making and furnishing tax digest, §48-5-106.
Presentation of returns to county board of tax assessors, §48-5-301.
Vacancies in office.
Created by defaulting tax receivers, §48-5-204.
Interim and emergency filling, §48-5-211.

COUNTY TREASURERS.
Stationery.
Submission of completed digest to state revenue commissioner, §48-5-302.
Subpoenas.
Power to issue, §48-5-300.
Term of office, §48-5-295.
Vacancies in office.
Valuation of property not in digest, §48-5-305.

COURTS.
Administrative office of the courts.
Income tax setoff debt collection.
Administrative collection assistance fee imposed on debts submitted by office, §48-7-163.
Generally, §§48-7-160 to 48-7-170.
Hearing on debt due to court, §48-7-165.1.
Submission of debts through office, §48-7-162.1.
Transfer of funds after finalization of setoff, §48-7-166.
Income tax refund setoff debt collection, §§48-7-160 to 48-7-170.

COVENANTS.
Property taxes.
Agricultural purposes.
Real property devoted to.
Preferential assessment, §48-5-7.1.
Conservation use property, §48-5-7.4.
Forest land conservation use property, §48-5-7.7.
Residential transitional property, §48-5-7.4.

COWS.
Ad valorem taxation of property.
Tax exemption.
Production defined as applied to brood cow, §48-5-40.

CREDIT CARDS.
Income tax on corporations.
Credit card data processing and related services provided.
Apportionment of income, §48-7-31.
Motor fuel taxes.
Refunds to credit card issuers, §48-9-10.1.

CREDIT UNIONS.
Income taxes.
Exempt organizations, §48-7-25.
Taxation, §48-6-97.
Delinquent taxpayers.
Financial institution reporting on delinquent taxpayers, §48-2-63.
Income taxes.
Exempt organizations, §48-7-25.

CRIMINAL BACKGROUND CHECKS.
Taxation.
Contractors.
Tax collections, §48-2-6.
Department of revenue.
Employees and prospective employees, §48-2-6.
State revenue commissioner.
Collection of taxes.
Contractors, §48-2-6.

CRIMINAL LAW AND PROCEDURE.
Contractors.
Nonresident contractors.
Violations of article, §48-13-38.
County tax collectors.
Collection before bond given and oath taken, §48-5-125.
Failure to keep cashbook, §48-5-139.
False reports of taxes collected, §48-5-159.
County tax commissioners.
Collection before bond given and oath taken, §48-5-125.
Failure to keep cashbook, §48-5-139.
False reports of taxes collected, §48-5-159.
Refusal to receive returns, §48-5-104.
County tax receivers.
Refusal to receive returns, §48-5-104.
Drugs.
Excise tax on marijuana and controlled substances.
Violation of confidentiality of information requirement, §48-15-10.

CRIMINAL LAW AND PROCEDURE —Cont'd
Energy tax.
Dealers.
Violation of provisions, punishment not specified, §48-13-128.
Fraudulent or otherwise false returns, §48-13-125.
Recordkeeping.
Failure to keep records or make available for inspection, §48-13-127.
Returns.
Failure to make or furnish, §48-13-126.
Willful failure to collect tax, §48-13-124.
Excise tax on marijuana and controlled substances.
Violation of confidentiality requirement, §48-15-10.
False swearing.
County tax collectors and tax commissioners.
False reports of taxes collected, §48-5-159.
Homestead exemption from ad valorem taxation.
Exemption from educational taxes of individuals 62 or older.
Falsification of information, §48-5-53.
Homestead exemption.
Exemption from educational taxes of individuals 62 or older.
Falsification of information, §48-5-53.
Fraudulent claims, §48-5-51.
Solicitation of fee to file application for another, §48-5-45.
Income taxes.
Current income tax payment.
Estimated tax.
Willful failure to pay, §48-7-127.
Corporations, §48-7-127.
Evading or defeating tax.
Attempts, §48-7-127.
Exemption certificates.
False certificates, §48-7-127.
Notice of delinquency.
Violations, §48-7-127.
Notice of special accounting.
Failure to comply, §48-7-127.
Returns.
Willful failure to file, §48-7-127.

CRIMINAL LAW AND PROCEDURE —Cont'd
Income taxes —Cont'd
Current income tax payment —Cont'd
Withholding taxes.
False receipts or failure to furnish receipt, §48-7-127.
Willful failure to withhold or pay over, §48-7-127.
Disregard of rules and regulations in preparing return, §48-7-4.
Evasion of income tax, §48-7-5.
Failure of person to pay tax, file return, keep records, etc., §48-7-2.
False or fraudulent returns, affidavits, claims, etc.
Assisting, counseling, etc., in filing, §48-7-3.
Unlawful divulging of confidential information, §48-7-61.
Intangible recording tax.
Failure to show correct amount and due date on instrument encumbering or conveying real estate, §48-6-67.
Mobile home ad valorem taxation.
Failure to attach and display decal, §48-5-493.
Motor carriers' road tax.
Failure to file reports, §48-9-46.
False statements for purposes of obtaining credit, refund, etc., §48-9-46.
Violation of requirement of motor vehicle registration cards and identification markers, §48-9-39.
Motor fuel taxes.
False swearing on application for refund, §48-9-11.
Violations of article, §48-9-17.
Nonresident contractors.
Violations of article, §48-13-38.
Obstructing or hindering.
Levying officers, §48-3-27.
Occupational tax.
Confidentiality of information violations, §48-13-15.
Property taxes.
Homestead exemption.
Exemption from educational taxes of individuals 62 or older.
Falsification of information, §48-5-53.
Fraudulent claims, §48-5-51.
Solicitation of fee to file application for another, §48-5-45.

CRIMINAL LAW AND PROCEDURE —Cont'd
Property taxes —Cont'd
Unlawfully exempted property.
Failure to have returned for taxation and to collect taxes on, §48-5-22.
Real estate transfer tax.
Evasion of tax, §48-6-10.
Failure to collect, account for and pay over tax, §48-6-9.
Sales and use taxes.
Advertising by dealers of assumption of payment of tax, §48-8-37.
Dealer's certificate of registration.
Engaging in business as seller without, §48-8-60.
Failure, neglect or refusal of dealers to collect, §48-8-7.
Failure by dealer to furnish return, §48-8-9.
Failure by dealer to keep or allow inspection of records, §48-8-10.
Failure of wholesalers or jobbers to keep and allow inspection of records, §48-8-54.
False or fraudulent returns by dealers, §48-8-8.
Final return and payment upon sale of or quitting business.
Violations of code section, §48-8-48.
Frivolous refund claim, §48-2-35.1.
Notice to persons holding credits of or owing debts to delinquent dealers.
Violations of code section, §48-8-48.
Refusal by transportation companies to allow examination of books and records, §48-8-12.
Violations of other provisions of article, §48-8-11.
Tax amnesty program.
Subpoena or order of commissioner.
Failure to obey, §48-16-12.
Willful failure to make return or false return, §48-16-12.
Taxation generally.
Contraband.
Possession or transportation, §48-2-84.
Duties or functions of commissioner or department.
Unlawful exercise by unauthorized person, §48-1-4.
Failure to give official receipt for payment of taxes, §48-2-34.

CRIMINAL LAW AND PROCEDURE —Cont'd
Taxation generally —Cont'd
Omissions knowingly and intentionally made, §48-1-6.
Revenue stamps.
Unlawful activities, §48-2-84.
Tax evasion, §48-1-6.
Fraudulent use of exemption certificate, §48-1-7.
Theft by conversion.
Unlawful conversion of funds collected for benefit of state, §48-1-5.
Unlawful filing of false documents, §48-1-6.
Tax executions.
Obstructing levying officers, §48-3-27.
Unlawful transfers, §48-3-19.
Tobacco and alternative nicotine products taxes.
Counterfeit cigarettes.
Sale or possession of contraband, §48-11-30.
Failure to file report or filing false report, §48-11-26.
False entries on invoices or records, §48-11-27.
Fraudulently making, uttering, forging or counterfeiting stamps, §48-11-28.
Jurisdiction of superior courts of criminal violations, §48-11-21.
Package cigarette sales.
Unlawful affixing of tax stamps, §48-11-23.1.
Transportation of unstamped cigarettes and nontax-paid cigars.
Violations of requirements, §48-11-23.
Vapor products, prohibited sales, §48-11-4.1.
Venue as to violations of chapter, §48-11-20.
Violations of chapter generally, §48-11-25.
Vapor products.
Prohibited sales, §48-11-4.1.

CUSTODIANS.
Real estate transfer tax.
Exemption of deed of assent or distribution by, §48-6-2.

D

DAMAGES.
County tax collectors.
Delay upon trial of issuance formed on affidavit of illegality of execution, §48-5-203.
County tax commissioners.
Delay upon trial of issuance formed on affidavit of illegality of execution, §48-5-203.

DAMS.
Contractors.
Nonresident contractors.
General provisions, §§48-13-30 to 48-13-38.
Nonresident contractors.
General provisions, §§48-13-30 to 48-13-38.

DANCE HALLS.
Sales and use taxes.
Definition of retail sale, §48-8-2.

DATA PROCESSING.
County property taxes.
Equalization of assessments, §48-5-270.

DAUGHTERS OF THE AMERICAN REVOLUTION.
Sales and use taxes.
Exemption, §48-8-3.

DEALERS.
Aviation gasoline dealers.
Motor fuel taxes.
General provisions, §§48-9-1 to 48-9-19.
Motor fuel taxes.
General provisions, §§48-9-1 to 48-9-19.
Municipal property taxes.
Exemption of certain dealers, §48-5-354.

DEATH.
County tax commissioners.
Assumption of duties by chief deputy, §48-5-212.
Income taxes.
Computation of income and expenses of taxpayer dying during taxable year, §48-7-33.

DEATH TAXES.
Estate tax eliminated, §48-12-1.

DECALS.
Mobile home ad valorem taxation.
Failure to attach and display.
Generally, §48-5-493.
Issuance of decals.
Evidence of issuance of location and permit, §48-5-492.
Moving or transporting home without decal, §48-5-493.
Tax appraisers.
Duty to inspect homes to determine if decals have been attached, §§48-5-127, 48-5-263.
Motor home ad valorem taxation.
Issuance of decals.
Where purchaser is nonresident of county of seller, §48-5-495.

DECEDENTS' ESTATES.
Estate tax eliminated, §48-12-1.
Income taxes.
Estimated income tax by individuals.
Applicability to estates and trusts, §48-7-114.
Periods of limitation for assessment of taxes, §48-7-82.
Real estate transfer tax.
Exemptions of deeds of assent or distribution, §48-6-2.
Taxation.
Income taxes.
Periods of limitation for assessment of taxes, §48-7-82.

DECLARATORY JUDGMENTS.
Sales and use taxes.
Dealers.
Delivery electronically or physically of property for use, consumption, etc, in state.
Imposition and rate of tax, §48-8-30.

DEEDS.
Quitclaim deeds.
Sales under tax executions.
Redemption, §48-4-44.
Real estate transfer tax.
General provisions, §§48-6-1 to 48-6-10.
Sales under tax executions.
Redemption.
Quitclaim deeds, §48-4-44.
Validity, §48-4-6.
Tax executions.
Sales under tax executions.
Redemption.
Quitclaim deeds, §48-4-44.

DEEDS —Cont'd
Tax executions —Cont'd
Sales under tax executions —Cont'd
Validity, §48-4-6.

DEFERRED COMPENSATION.
County tax commissioners.
Eligible county tax commissioners.
Deferred compensation plan for eligible tax commissioners, §48-5-184.

DEFINED TERMS.
Absent municipality minimum percentage.
Special district mass transportation sales and use tax, §48-8-262.
Absent municipality ratio.
Special district mass transportation sales and use tax, §48-8-262.
Accessibility features.
Income taxes, §48-7-29.1.
Account.
Financial institution reporting on delinquent taxpayers, §48-2-63.
Accounts receivable.
Tax amnesty program, §48-16-3.
Active duty.
Income taxes, §48-7-29.9.
Active duty for training.
Income taxes, §48-7-29.9.
Adjusted base year assessed value.
Homestead exemptions, property taxes.
Statewide exemption (contingently effective 1/1/2025), §48-5-44.2.
Adjusted base year value.
Homestead exemptions, property taxes.
Municipal corporation located in multiple counties, exemption for residents, §48-5-44.1.
Administering and governing authority.
Property tax amnesty program, §48-16A-3.
Administrative adjustment request.
Income taxes, partnership returns, §48-7-53.
Administrative fee.
Occupation taxes, §48-13-5.
Administrative office of the courts.
Income taxes, §48-7-161.
Ad valorem taxes.
Homestead exemptions, §48-5-47.1.
Statewide exemption (contingently effective 1/1/2025), §48-5-44.2.

DEFINED TERMS —Cont'd
Ad valorem taxes —Cont'd
Homestead exemptions —Cont'd
Unremarried surviving spouse of peace officer or firefighter killed in line of duty, §48-5-48.4.
Homestead exemptions, property taxes.
Municipal corporation located in multiple counties, exemption for residents, §48-5-44.1.
Property tax amnesty program, §48-16A-3.
Property tax increase, §48-5-32.1.
Ad valorem taxes for county purposes.
Homestead option sales and use tax, §48-8-101.
Advanced practice registered nurse students.
Income tax credit for preceptor rotations, §48-7-29.22 (Repealed 12/31/2026).
Advertising and promotional direct mail.
Special sales and use tax, §48-8-77.
Affected state.
Revenue and taxation, facilitating business rapid response to state declared disasters, §48-2-100.
Affiliate.
Entertainment industry investment act, §48-7-40.26.
Entertainment industry postproduction investment act, §48-7-40.26A.
Income tax credits for certain business enterprises, §48-7-40.24.
Property tax freeport exemption, §48-5-48.2.
Sales and use taxes, §48-8-2.
Affiliated entity.
Assignment of corporate income tax credits, §48-7-42.
Income tax credit for purchase of alternative fuel heavy and medium duty vehicles, §48-7-29.18.
Sales and use taxes, §48-8-50.
Agencies.
Georgia public revenue code, §48-1-2.
Agent.
Streamlined sales and use tax agreement, §48-8-161.
DEFINED TERMS —Cont'd
Aging foster children.
Income tax credit for contributions to foster child support organizations, §48-7-29.24.
Aging-out program.
Income tax credit for contributions to foster child support organizations, §48-7-29.24.
Agreement.
Georgia tourism development act, §48-8-271.
Public revenue code, §48-4-60.
Streamlined sales and use tax agreement, §48-8-161.
Agricultural equipment.
Property tax, qualified farm products and harvested agricultural products exemption, §48-5-41.1.
Agricultural field use.
Motor fuel tax law, §48-9-2.
Agricultural machinery and equipment.
Sales and use tax exemptions, §48-8-3.3.
Agricultural operations.
Sales and use tax exemptions.
Agricultural machinery and equipment, §48-8-3.3.
Agricultural production inputs.
Sales and use tax exemptions.
Agricultural machinery and equipment, §48-8-3.3.
Agricultural products.
Sales and use tax exemptions.
Agricultural machinery and equipment, §48-8-3.3.
Agritourism.
Property taxes, bona fide conservation use property, §48-5-7.4.
Aircraft.
Georgia public revenue code, §48-1-2.
Property taxes, §48-5-16.
Airline company.
Georgia public revenue code, §48-1-2.
Allowable credit.
Qualified investment tax credit, §48-7-40.30.
All-terrain vehicle.
Property taxes, vehicles held in inventory for resale, §48-5-504.40.
Alternative fuel.
Income taxes.
Credit for purchase of alternative fuel heavy and medium duty vehicles, §48-7-29.18.

DEFINED TERMS —Cont'd
Alternative fuel —Cont'd
Income taxes —Cont'd
Credits for alternative fueled vehicles, §48-7-40.16.
Alternative fuel facility.
Sales and use tax exemptions, §48-8-3.
Alternative fuel heavy-duty vehicle.
Income tax credit for purchase of alternative fuel heavy and medium duty vehicles, §48-7-29.18.
Alternative fuel medium-duty vehicle.
Income tax credit for purchase of alternative fuel heavy and medium duty vehicles, §48-7-29.18.
Alternative nicotine product.
Tobacco and alternative nicotine products taxes, §48-11-1.
Alternative nicotine product dealer.
Tobacco and alternative nicotine products taxes, §48-11-1.
Alternative nicotine product distributor.
Tobacco and alternative nicotine products taxes, §48-11-1.
Alternative nicotine product importer.
Tobacco and alternative nicotine products taxes, §48-11-1.
Alternative nicotine product manufacturer.
Tobacco and alternative nicotine products taxes, §48-11-1.
Animal.
Sales and use tax exemptions, §48-8-3.3.
Annual sales and use tax.
Georgia tourism development act, §48-8-271.
Antique or hobby or special interest motor vehicle.
Ad valorem taxation, §48-5-440.
Any down payment.
Motor vehicle ad valorem taxation, §48-5C-1.
Appeal administrators.
County boards of equalization, creation, §48-5-311.
Applicable rollback.
Special assessment of forest land conservation use property, §48-5A-1.

DEFINED TERMS —Cont'd
Applicant.
Ad valorem taxation of property exemptions, §48-5-40.
Approved company.
Georgia tourism development act, §48-8-271.
Approved costs.
Georgia tourism development act, §48-8-271.
Approved retraining.
Tax credits, §48-7-40.5.
Approved tourism attraction.
Georgia tourism development act, §48-8-271.
Arm's length, bona fide sale.
Ad valorem taxation of property, §48-5-2.
Assessment bias.
Ad valorem taxation of property, §48-5-341.
Assessment progressivity.
Ad valorem taxation of property, §48-5-341.
Assessment ratio.
Ad valorem taxation of property, §48-5-341.
Equalization of tax assessments, §48-5-274.
Assessment regressivity.
Ad valorem taxation of property, §48-5-341.
Assessment variance.
Ad valorem taxation of property, §48-5-341.
Assignee.
Sales and use taxes, §48-8-45.
Association taxable as a corporation.
Income taxes, §48-7-28.4.
Audited partnership.
Income taxes, partnership returns, §48-7-53.
Authority.
Income tax credit for clean energy property, §48-7-29.14.
Sales and use taxes, transit special purpose local option sales and use tax, §48-8-269.40.
State tax executions, §48-3-40.
Authorized employee.
Income tax.
Compensation paid by taxpayer disallowed as business expense, §48-7-21.1.

DEFINED TERMS —Cont'd
Average wage.
Tax credits for new quality jobs, §48-7-40.17.
Aviation gasoline.
Motor fuel tax law, §48-9-2.
Aviation gasoline dealer.
Motor fuel tax law, §48-9-2.
Bad debt.
Sales and use taxes, §48-8-45.
Bank.
Income tax, corporations, §48-7-21.
Taxation of depository institutions, §48-6-90.
Base amount.
Tax credit for qualified research expenses, §48-7-40.12.
Base investment.
Entertainment industry investment act, §48-7-40.26.
Base year.
Homestead exemptions, §48-5-47.1.
Base year assessed value.
Homestead exemptions.
Statewide exemption (contingently effective 1/1/2025), §48-5-44.2.
Base year exportation volume.
Tax credits for cigarette exports, §48-7-40.20.
Base year port traffic.
Tax credits for certain business enterprises, §§48-7-40.15, 48-7-40.15A.
Basic pilot program.
Income tax.
Compensation paid by taxpayer disallowed as business expense, §48-7-21.1.
Biomass material.
Sales and use taxes, exemption, §48-8-3.
Boat.
Property taxes, §48-5-16.
Sales and use taxes, maximum amount for boat maintenance, refitting or repair, §48-8-3.4.
Bona fide conservation use property.
Ad valorem taxation of property, §48-5-7.4.
Bona fide production of trees.
Property taxes, qualified timberland property, §48-5-600.
Bona fide residential transitional property.
Ad valorem taxation of property, §48-5-7.4.

DEFINED TERMS —Cont'd
Broadcasting.
Business enterprise tax credits, §§48-7-40, 48-7-40.1.
Tax credit for leased or purchased vehicle used to transport employees (repealed 12/31/2029), §48-7-40.22.
Tax credit for qualified business expansion, §48-7-40.21.
Tax credit for qualified research expenses, §48-7-40.12.
Tax credits for certain business enterprises, §48-7-40.15.
Brownfield property.
Property tax assessments, §48-5-7.6.
Building and construction materials.
Equalized homestead option sales tax, §48-8-109.9.
Joint county and municipal sales and use tax, §48-8-94.
Revised homestead option sales tax, §48-8-109.23.
Sales and use taxes, §48-8-200.
Special district transportation sales and use tax, §48-8-249.
Business.
Income taxes, §48-7-100.
Sales and use taxes, §48-8-2.
Business enterprises.
Income taxes.
Credits for leased or purchased vehicle used to transport employees (repealed 12/31/2029), §48-7-40.22.
Tax credit for qualified education expenses, §48-7-29.16.
Tax credits for certain business enterprises, §§48-7-40, 48-7-40.1, 48-7-40.15, 48-7-40.15A, 48-7-40.24, 48-7-40.25.
Qualified research expenses, §48-7-40.12.
Tax credits for cigarette exports, §48-7-40.20.
Business property.
Income tax credit for clean energy property, §48-7-29.14.
Calendar quarter.
Income taxes, §48-7-100.
Capital outlay projects.
Special county one percent sales and use taxes, §§48-8-110, 48-8-111.
Captive real estate investment trust.
Income taxes, §48-7-28.4.

DEFINED TERMS —Cont'd
Certified appraisal.
County boards of equalization, nonbinding arbitration, §48-5-311.
Certified automated system.
Streamlined sales and use tax agreement, §48-8-161.
Certified entities.
Income taxes, revitalization zone tax credits (repealed 12/31/2029), §48-7-40.32.
Certified investors.
Income taxes, revitalization zone tax credits (repealed 12/31/2029), §48-7-40.32.
Certified rehabilitation.
Income tax credit for rehabilitation of historic homes, §48-7-29.8.
Certified service provider.
Streamlined sales and use tax agreement, §48-8-161.
Certified structure.
Income tax credit for rehabilitation of historic homes, §48-7-29.8.
Certified tax digest.
Property tax increase, §48-5-32.1.
Change in homestead value.
Homestead exemptions, property taxes.
Municipal corporation located in multiple counties, exemption for residents, §48-5-44.1.
Charitable trust.
Excise tax on rooms, lodgings and accommodations, §48-13-51.
Chief executive officer.
Ad valorem taxation of public utility, §48-5-510.
Cigar.
Tobacco and alternative nicotine products taxes, §48-11-1.
Cigar dealer.
Tobacco and alternative nicotine products taxes, §48-11-1.
Cigar distributor.
Tobacco and alternative nicotine products taxes, §48-11-1.
Cigarette.
Tobacco and alternative nicotine products taxes, §48-11-1.
Cigarette dealer.
Tobacco and alternative nicotine products taxes, §48-11-1.
Cigarette distributor.
Tobacco and alternative nicotine products taxes, §48-11-1.

DEFINED TERMS —Cont'd
Cigarette importer.
Tobacco and alternative nicotine products taxes, §48-11-1.
Cigarette manufacturer.
Tobacco and alternative nicotine products taxes, §48-11-1.
Cigar importer.
Tobacco and alternative nicotine products taxes, §48-11-1.
Cigar manufacturer.
Tobacco and alternative nicotine products taxes, §48-11-1.
Civil rights museum.
Sales and use tax exemption, §48-8-3.
Claimant agency.
Income taxes, §48-7-161.
Classified subcontractor.
Income taxes.
Deduction for payments to classified subcontractors, §48-7-38.
Class III railroads.
Income tax credits, §48-7-40.34.
Class of property.
Ad valorem taxation of property, §48-5-341.
Clean energy property.
Income tax credit for clean energy property, §48-7-29.14.
Clean fueled vehicle.
Income tax credit for low emission vehicles, §48-7-40.16.
Closed system.
Tobacco and alternative nicotine products taxes, §48-11-1.
Clothing.
Sales tax exemptions, back to school, §48-8-3.
Clothing accessories or equipment.
Sales tax exemptions, back to school, §48-8-3.
Coliseum capital outlay project.
Special purpose local option sales tax, §48-8-145.
Collecting officer.
Intangible recording tax, §48-6-60.
Commission.
Special district transportation sales and use tax, §48-8-242.
Community based faculty preceptor.
Income tax credit for preceptor rotations, §48-7-29.22 (Repealed 12/31/2026).
Competitive project.
Business enterprise tax credits, §48-7-40.

DEFINED TERMS —Cont'd
Composite return.
Income taxes, §48-7-129.
Comprehensive income tax treaty.
Income taxes, §48-7-28.3.
Compressed natural gas.
Motor fuel tax, gallon equivalent, §48-9-3.
Compressed petroleum gas.
Motor fuel tax law, §48-9-2.
Computer.
Sales tax exemptions, back to school, §48-8-3.
Computer equipment.
Sales and use tax exemptions, §48-8-3.
Computer software.
Sales tax exemptions, back to school, §48-8-3.
Taxation, §48-1-8.
Conservation easements.
Income tax credit for donation of land, §48-7-29.12.
Conservation purpose.
Income tax credit for donation of land, §48-7-29.12.
Consolidated government.
Land banks, §48-4-102.
Construction purposes.
Heavy-duty equipment ad valorem taxation, §48-5-500.
Consumable supplies.
Sales and use tax exemptions.
Equipment used for manufacturing tangible personal property, or sale, use, storage or consumption of industrial materials or packaging supplies, §48-8-3.2.
Consumable vapor product.
Tobacco and alternative nicotine products taxes, §48-11-1.
Consumer distributor.
Motor fuel tax law, §48-9-2.
Consumer fireworks.
Taxation of consumer fireworks, §48-13-130.
Contiguous.
Forest land protection act of 2008, §48-5-7.7.
Property taxes, qualified timberland property, §48-5-600.
Contraband article.
Georgia public revenue code, §48-1-2.
Contractor, §48-13-30.
Controlled substance.
Excise tax on marijuana and controlled substances, §48-15-2.

DEFINED TERMS —Cont'd
Conventionally fueled vehicles.
Income taxes.
Credits for alternative fueled vehicles, §48-7-40.16.
Converted vehicles.
Income taxes.
Credits for alternative fueled vehicles, §48-7-40.16.
Corporate partners.
Income taxes, partnership returns, §48-7-53.
Corporation.
Corporate net worth tax, §48-13-70.
Income taxes, §§48-7-1, 48-7-28.3, 48-7-100.
Cost of operation.
Child care tax credits, §48-7-40.6.
Cost of project.
Special district transportation sales and use tax, §48-8-242.
Cost of retraining.
Tax credits, §48-7-40.5.
Cost price.
Sales and use taxes, §48-8-2.
Costs.
Energy and water conservation equipment tax credit, §48-7-40.29.
Tax executions, §48-5-161.
Counterfeit cigarette.
Tobacco and alternative nicotine products taxes, §48-11-1.
County.
Sales and use taxes, transit special purpose local option sales and use tax, §48-8-269.40.
Special district transportation sales and use tax, §48-8-242.
County civil service system.
County appraisal staffs, §48-5-262.
County millage rate.
Special assessment of forest land conservation use property, §48-5A-1.
County-wide project.
Special county one percent sales and use taxes, §48-8-110.
Court.
Income taxes, §48-7-161.
Credit.
Income tax credits for qualified investments, §§48-7-40.27, 48-7-40.28.
Credit card data processing and related services.
Income taxes on corporations, §48-7-31.

DEFINED TERMS —Cont'd
Credit card issuer.
Motor fuel taxes, §48-9-10.1.
Current use value.
Ad valorem taxation of property, §48-5-2.
Customer.
Income taxes on corporations, §48-7-31.
Dealer.
Excise tax on sale or use of energy, §48-13-110.
Farm equipment, classification for ad valorem taxation, §48-5-504.
Heavy-duty equipment ad valorem taxation, §48-5-505.
Property taxes, watercraft and all-terrain vehicles held in inventory for resale, §48-5-504.40.
Sales and use taxes, §§48-8-2, 48-8-200.
Transit special purpose local option sales and use tax, §48-8-269.40.
Special district transportation sales and use tax, §48-8-242.
Tobacco and alternative nicotine products taxes, §48-11-1.
Debt.
Income taxes, §48-7-161.
Debtor.
Income taxes, §48-7-161.
Declared state of disaster or emergency.
Revenue and taxation, facilitating business rapid response to state declared disasters, §48-2-100.
Deficiency.
Income taxes, §48-7-1.
Delinquent taxes.
Property tax amnesty program, §48-16A-3.
Delinquent taxpayer.
Financial institution reporting on delinquent taxpayers, §48-2-63.
State tax executions, §48-3-40.
Tax executions, §48-3-19.
Dentist.
Physician tax credits, §48-7-29.26 (Repealed 12/31/2029).
Dependent.
Income taxes, §§48-7-26, 48-7A-2.
Dependent exemption.
Income taxes, §48-7-100.
Depository financial institution.
Income tax, corporations, §48-7-21.

DEFINED TERMS —Cont'd
Depository financial institution —Cont'd
Taxation, §48-6-90.
Deputy commissioner.
Georgia public revenue code, §48-1-2.
Destination marketing organization.
Excise taxes on hotels and other lodging places, §48-13-50.2.
Destined for shipment to a final destination outside this state.
Property tax freeport exemption, §48-5-48.2.
Developer.
Ad valorem taxation of property, §48-5-31.
Development.
Ad valorem taxation of property, §48-5-31.
Development authority.
Excise tax on rooms, lodgings and accommodations, §48-13-51.
Dietary supplement.
Sales and use taxes, §48-8-2.
Digest evaluation cycle.
Ad valorem taxation of property, §48-5-341.
Digest review year.
Ad valorem taxation of property, §48-5-341.
Digital audio-visual works.
Sales and use taxes, §48-8-2.
Digital audio works.
Sales and use taxes, §48-8-2.
Digital broadcast equipment.
Sales and use tax exemption, §48-8-3.
Digital code.
Sales and use taxes, §48-8-2.
Digital signature.
Returnable property oaths, §48-5-19.
Direct partners.
Income taxes, partnership returns, §48-7-53.
Direct payment permit.
Sales and use taxes, §48-8-49.1.
Disabled first responders.
Income tax deductions, §48-7-27.
Motor vehicle ad valorem taxation (repealed 12/31/2029), §48-5C-1.
Disabled veteran.
Ad valorem taxation of property, §48-5-48.
Income tax deduction for disability compensation, §48-7-27.
Motor vehicle ad valorem taxation, disabled veterans constitutional exemption, §48-5-478.

DEFINED TERMS —Cont'd
Disaster area.
Property tax relief for buildings in disaster area, §48-5-33.
Timber industry, tax relief for losses caused by Hurricane Michael, §48-7-40.36.
Disaster or emergency period.
Revenue and taxation, facilitating business rapid response to state declared disasters, §48-2-100.
Disregard.
Sales and use taxes, expedited refunds, §48-2-35.1.
Distribution credited.
Income taxes, §48-7-100.
Distribution paid.
Income taxes, §48-7-100.
Distributor.
Motor fuel tax law, §48-9-2.
Tobacco and alternative nicotine products taxes, §48-11-1.
Dividend.
Income taxes, §48-7-1.
Dividends paid deduction.
Income taxes, §48-7-28.4.
Division.
Income tax credit for contributions to foster child support organizations, §48-7-29.24.
Doing business in this state.
Income taxes, §48-7-100.
Domestic.
Georgia public revenue code, §48-1-2.
Donated property.
Income tax credit for donation of land, §48-7-29.12.
Driver educational motor vehicle.
Ad valorem taxation of motor vehicles and mobile homes, §48-5-440.
Due diligence.
Tax executions, §48-3-19.
Economic incentive.
Georgia forest product fairness act, §48-1-10.
Electing partnerships.
Income tax, partnerships, §48-7-23.
Electing subchapter S corporation.
Income tax, subchapter S corporations, §48-7-21.
Electricity.
Motor fuel tax, gallon equivalent, §48-9-3.
Electric vehicle charging stations.
Motor fuel tax law, §48-9-2.

DEFINED TERMS —Cont'd
Electronic funds transfer.
Taxation, §48-2-32.
Electronic means.
Tobacco and alternative nicotine products taxes, §48-11-1.
Electronic transmission.
Public utility ad valorem taxation, §48-5-511.
Eligible brownfield costs.
Property tax assessments, §48-5-7.6.
Eligible businesses.
Income taxes, revitalization zone tax credits (repealed 12/31/2029), §48-7-40.32.
Eligible county tax commissioner.
Deferred compensation plan for eligible tax commissioners, §48-5-184.
Eligible damaged tax parcel.
Property tax relief for buildings in disaster area, §48-5-33.
Eligible destroyed tax parcel.
Property tax relief for buildings in disaster area, §48-5-33.
Eligible donor.
Income tax credit for donation of land, §48-7-29.12.
Eligible full-time employee.
Job tax credit by business enterprises, §48-7-40.24.
Eligible itemizer.
Income tax, itemized deductions, §48-7-27.1.
Eligible property.
Sales tax exemptions, back to school, §48-8-3.
Eligible single-family residence.
Income tax credits, §48-7-29.17.
Eligible student.
Income tax credit for qualified education expenses, §48-7-29.16.
Eligible tax parcel.
Property tax relief for buildings in disaster area, §48-5-33.
Eligible telework expenses.
Teleworking tax credit allowed employers, §48-7-29.11.
Eligible timber property.
Timber industry, tax relief for losses caused by Hurricane Michael, §48-7-40.36.
Employees.
Income taxes, §48-7-100.
Tax credits, §48-7-40.5.

DEFINED TERMS —Cont'd
Employees —Cont'd
Tobacco and alternative nicotine products taxes, §48-11-1.
Employer.
Child care tax credits, §48-7-40.6.
Income tax credit for employing qualified parolees, §48-7-40.31.
Income taxes, §48-7-100.
Tax credits, §48-7-40.5.
Teleworking tax credit allowed employers, §48-7-29.11.
Employer provided.
Child care tax credits, §48-7-40.6.
Tax credits generally, §48-7-40.5.
Employer sponsored.
Child care tax credits, §48-7-40.6.
Tax credits generally, §48-7-40.5.
End user.
Sales and use taxes, §48-8-2.
Energy.
Excise tax on sale or use of energy, §48-13-110.
Sales and use tax exemptions.
Equipment used for manufacturing tangible personal property, or sale, use, storage or consumption of industrial materials or packaging supplies, §48-8-3.2.
Energy efficient buildings.
Income tax credit for clean energy property, §48-7-29.14.
Energy efficient equipment.
Energy and water conservation equipment tax credit, §48-7-40.29.
Energy Star qualified product.
Sales and use taxes, exemption, §48-8-3.
Energy used in agriculture.
Sales and use tax exemptions.
Agricultural machinery and equipment, §48-8-3.3.
Enhanced ZIP code.
Sales and use taxes, §48-8-13.
Equalization amount.
Homestead option sales and use taxes, §48-8-104.
Equalization millage.
Homestead option sales and use taxes, §48-8-104.
DEFINED TERMS —Cont'd
Equipment.
Sales and use tax exemptions.
Equipment used for manufacturing tangible personal property, or sale, use, storage or consumption of industrial materials or packaging supplies, §48-8-3.2.
Establishment.
Business enterprise tax credits for PPE manufacturers, §48-7-40.1A.
Income tax credits, job tax credits for manufacturers of medical equipment and supplies and manufacturers of pharmaceuticals and medicines, §48-7-40.1B.
Estimated roll-back rate.
Ad valorem taxation of property (contingently effective 1/1/2025), §48-5-2.
Estimated tax.
Estimated income tax by corporations, §48-7-117.
Estimated income tax by individuals, §48-7-114.
Estimated tax liability.
Energy tax, dealer returns, §48-13-119.
Events.
Sales and use taxes, maximum amount for boat maintenance, refitting or repair, §48-8-3.4.
Excessive amount.
Sales and use taxes, expedited refunds, §48-2-35.1.
Execution.
State tax executions, §48-3-40.
Tax executions, §48-3-19.
Exemption start date.
High-technology data centers, sales and use tax exemptions, §48-8-3.
Exempt partners.
Income taxes, partnership returns, §48-7-53.
Existing business enterprise.
Tax credits, §48-7-40.
Existing municipality.
Homestead option sales and use tax, §48-8-101.
Expansion.
Georgia tourism development act, §48-8-271.

DEFINED TERMS —Cont'd
Export and import.
Motor fuel tax, §48-9-2.
Exportation.
Tax credits for cigarette exports, §48-7-40.20.
Extended stay rentals.
Excise tax on rooms, lodging and accommodations, additional tax imposed by innkeeper with proceeds used for transportation purposes, §48-13-50.3.
Extensive renovation project.
Regulatory fees imposed by counties or municipalities, §48-13-9.
Facility.
Excise tax on rooms, lodgings and accommodations, §48-13-51.
Fair market value.
Income tax credit for donation of land, §48-7-29.12.
Fair market value of property.
Ad valorem taxation of property, §48-5-2.
Fair market value of qualified timberland property.
Ad valorem taxation of property, §48-5-2.
Fair market value of the motor vehicle.
Motor vehicle ad valorem taxation, §48-5C-1.
Family owned farm entity.
Property tax, qualified farm products and harvested agricultural products exemption, §48-5-41.1.
Family owned qualified farm products producer.
Motor vehicle ad valorem taxation, §48-5-444.
Property tax, qualified farm products and harvested agricultural products exemption, §48-5-41.1.
Farm equipment.
Classification for ad valorem taxation, §48-5-504.
Farm labor housing.
Property taxes, bona fide conservation use property, §48-5-7.4.
Property taxes, forest land conservation use property, §48-5-7.7.
Farm products.
Property tax, qualified farm products and harvested agricultural products exemption, §48-5-41.1.

DEFINED TERMS —Cont'd
Federal adjustments.
Income taxes, partnership returns, §48-7-53.
Federal housing tax credit.
Housing tax credits, §48-7-29.6.
Federally licensed commercial or public radio or television broadcast equipment.
Sales and use tax exemption, §48-8-3.
Federal partnership representative.
Income taxes, partnership returns, §48-7-53.
Fee.
Sales and use taxes, §48-8-13.
FIBS.
Sales and use taxes, §48-8-13.
Fiduciary.
Georgia public revenue code, §48-1-2.
Fiduciary partners.
Income taxes, partnership returns, §48-7-53.
File properly.
Property tax freeport exemption, §48-5-48.5.
Film producer.
Sales and use tax exemption, §48-8-3.
Film production company.
Sales and use tax exemption, §48-8-3.
Final, due and owing.
Property tax amnesty program, §48-16A-3.
Tax amnesty program generally, §48-16-3.
Final determination date.
Income taxes, partnership returns, §48-7-53.
Final federal adjustment.
Income taxes, partnership returns, §48-7-53.
Final return.
Credit of estimated income tax payment, §48-7-121.
Financial institutions.
Taxation, financial institution reporting on delinquent taxpayers, §48-2-63.
Fine art.
Sales and use taxes, exemptions for fine arts performance or exhibition, §48-8-3.
Finished goods.
Property tax.
Freeport exemption, §§48-5-48.2, 48-5-48.6.

DEFINED TERMS —Cont'd
First transaction.
Tobacco and alternative nicotine products taxes, §48-11-1.
Fiscal authority.
Special assessment of forest land conservation use property, §48-5A-1.
Fiscal year.
Income taxes, §48-7-1.
Fixtures.
Sales and use tax exemptions.
Equipment used for manufacturing tangible personal property, or sale, use, storage or consumption of industrial materials or packaging supplies, §48-8-3.2.
Floor covering samples.
Sales and use tax, fair market value, §48-8-39.
Force majeure.
Income tax credit for business enterprises, §§48-7-40.24, 48-7-40.25.
Foreign.
Georgia public revenue code, §48-1-2.
Foreign merchandise in transit.
Ad valorem taxation of property, §48-5-2.
Property tax freeport exemption, §48-5-48.2.
Foreign nation.
Income taxes, §48-7-28.3.
Forest land conservation use property.
Forest land protection act of 2008, §48-5-7.7.
Special assessment of forest land conservation use property, §48-5A-1.
Forest land conservation use value.
Ad valorem taxation of property, §48-5-2.
Special assessment of forest land conservation use property, §48-5A-1.
Forest land conservation value.
Ad valorem taxation of property, §48-5-2.
Forest land fair market value.
Ad valorem taxation of property, §48-5-2.
Special assessment of forest land conservation use property, §48-5A-1.

DEFINED TERMS —Cont'd
For-hire charter bus or motor coach.
Motor vehicle ad valorem taxation, §48-5C-1.
For-hire ground transport service provider.
Excise taxes, §48-13-140.
For-hire ground transport trip.
Excise taxes, §48-13-140.
Foster child support organization.
Income tax credit for contributions to foster child support organizations, §48-7-29.24.
Freight and logistics projects.
Sales and use taxes, dedication of certain revenues, §48-8-78.
Frivolously filed.
Sales and use taxes, expedited refunds, §48-2-35.1.
Fuel oils.
Motor fuel tax law, §48-9-2.
Fulfillment centers.
Property tax freeport exemption, §48-5-48.2.
Full-time employee.
Income tax credit for business enterprises, §48-7-40.25.
Full-time employee job.
Income tax credit for business enterprises, §§48-7-40.24, 48-7-40.25.
Full-time equivalent.
Income taxes, revitalization zone tax credits (repealed 12/31/2029), §48-7-40.32.
Full-time job.
Income tax credit for business enterprises, §§48-7-40.24, 48-7-40.25.
Income tax credit for employing qualified parolees, §48-7-40.31.
Functionally located.
Property taxes, §48-5-16.
Functionally related business.
Excise tax on rooms, lodgings and accommodations, §48-13-51.
Funding.
Excise tax on rooms, lodgings and accommodations, §48-13-51.
Funds.
Excise tax on rooms, lodgings and accommodations, §48-13-51.
Game platforms.
Entertainment industry investment act, §48-7-40.26.

DEFINED TERMS —Cont'd
Game sequels.
Entertainment industry investment act, §48-7-40.26.
Gasoline.
Motor fuel tax law, §48-9-2.
Georgia affiliated group.
Income tax, corporations, §48-7-21.
Georgia consolidated return.
Income tax, corporations, §48-7-21.
Georgia fleet mileage ratio.
Commercial vehicle ad valorem taxation, §48-5-442.1.
Georgia gross receipts.
Taxation of depository institutions, §48-6-95.
Georgia income tax.
Income taxes, partnership returns, §48-7-53.
Governing authority.
Property tax amnesty program, §48-16A-3.
Property tax relief for buildings in disaster area, §48-5-33.
Government.
Special district transportation sales and use tax, §48-8-242.
Government contractor.
Sales and use tax exemption, §48-8-3.
Gross capital cost.
Commercial vehicle ad valorem taxation, §48-5-442.1.
Gross household income.
Tax deferral for the elderly act, §48-5-71.
Gross receipts.
Occupation taxes, §48-13-5.
Taxation of depository institutions, §48-6-95.
Gross receipts factor.
Income taxes on corporations, §48-7-31.
Gross sales.
Sales and use taxes, §48-8-2.
Hand sanitizer.
Business enterprise tax credits for PPE manufacturers, §48-7-40.1A.
Harvested agricultural products.
Property tax, qualified farm products and harvested agricultural products exemption, §48-5-41.1.
Headquarters.
Qualified investment tax credit, §48-7-40.30.
Tax credits for business headquarters, §48-7-40.18.

DEFINED TERMS —Cont'd
Headquarters —Cont'd
Tax credits for leased or purchased vehicle used to transport employees (repealed 12/31/2029), §48-7-40.22.
Heavy-duty equipment motor vehicle.
Ad valorem taxation, §48-5-505.
High-impact aerospace defense projects.
Income tax credits, businesses with existing manufacturing facilities, §48-7-40.25.
High-technology data center customers.
High-technology data centers, sales and use tax exemptions, §48-8-3.
High-technology data center equipment.
High-technology data centers, sales and use tax exemptions, §48-8-3.
High-technology data center minimum investment threshold.
High-technology data centers, sales and use tax exemptions, §48-8-3.
High-technology data centers.
Sales and use tax exemptions, §48-8-3.
Highway use.
Motor fuel tax law, §48-9-2.
Historic home.
Income tax credit for rehabilitation of historic homes, §48-7-29.8.
Home for the aged.
Ad valorem taxation of property exemptions, §48-5-40.
Home service provider.
Sales and use taxes, §48-8-13.
Homestead.
Ad valorem taxation of property exemptions, §48-5-40.
Statewide exemption (contingently effective 1/1/2025), §48-5-44.2.
Homestead exemption for senior citizens, §48-5-48.3.
Homestead exemption for unremarried surviving spouse of peace officer or firefighter killed in line of duty, §48-5-48.4.
Homestead exemptions, property taxes.
Municipal corporation located in multiple counties, exemption for residents, §48-5-44.1.
Homestead option sales and use tax, §48-8-101.

DEFINED TERMS —Cont'd
Homestead —Cont'd
Individuals 62 or older with annual incomes not exceeding $30,000, §48-5-47.1.
Homestead exemption.
Tax deferral for the elderly act, §48-5-71.
Hospital.
Ad valorem taxation of property exemptions, §48-5-40.
Hospitals not operated for purpose of private or corporate profit or income.
Ad valorem taxation of property exemptions, §48-5-40.
Household.
Ad valorem taxation of property, §48-5-71.
Illegal drug.
Georgia public revenue code, §48-2-51.
Immediate family member.
Motor vehicle ad valorem taxation, §48-5C-1.
Income.
Homestead exemptions, §48-5-47.1.
Income tax day, §48-7-1.
Income tax liability for a taxable year.
Credit of estimated income tax payment, §48-7-121.
Incorporated county millage rate.
Homestead option sales and use taxes, §48-8-104.
Incremental sales and use tax.
Georgia tourism development act, §48-8-271.
Incremental sales and use tax refunds.
Georgia tourism development act, §48-8-271.
Indirect partners.
Income taxes, partnership returns, §48-7-53.
Individual.
Georgia public revenue code, §48-1-2.
Individual partners.
Income taxes, partnership returns, §48-7-53.
Industrial materials.
Sales and use tax exemptions.
Equipment used for manufacturing tangible personal property, or sale, use, storage or consumption of industrial materials or packaging supplies, §48-8-3.2.

DEFINED TERMS —Cont'd
Ineligible costs.
Property tax assessments, §48-5-7.6.
Infeasible.
Sales and use taxes, §48-8-123.
Inflation rate.
Homestead exemptions, property taxes.
Statewide exemption (contingently effective 1/1/2025), §48-5-44.2.
Infrastructure.
Revenue and taxation, facilitating business rapid response to state declared disasters, §48-2-100.
Initial production.
Property tax, qualified farm products and harvested agricultural products exemption, §48-5-41.1.
Initial registration period.
Ad valorem taxation, §48-5-440.
Innkeeper.
Excise taxes on hotels and other lodging places, §48-13-50.2.
Installation.
Income tax credit for clean energy property, §48-7-29.14.
Institutions of purely public charity.
Ad valorem taxation of property exemptions, §48-5-40.
Instrument.
Intangible recording tax, §48-6-60.
Intangible expenses and costs.
Income taxes, §48-7-28.3.
Intangible personal property.
Georgia public revenue code, §48-1-2.
Intangible property.
Income taxes, §48-7-28.3.
Interested party.
Ad valorem tax foreclosure, §48-4-77.
Interest expenses and costs.
Income taxes, §48-7-28.3.
Intergovernmental agreement.
Sales and use taxes.
Transit special purpose local option sales and use tax, §48-8-269.40.
Special county one percent sales and use taxes, §48-8-110.
Special district mass transportation sales and use tax, §48-8-260.
Intergovernmental contract.
Land banks, §48-4-102.
Internal revenue code.
Georgia public revenue code, §48-1-2.
Internal revenue service.
Georgia public revenue code, §48-1-2.

DEFINED TERMS —Cont'd
Internal revenue service —Cont'd
Income taxes, partnership returns, §48-7-53.
Internet access service.
Sales and use taxes, §48-8-2.
Investment requirement.
Income tax credit for business enterprises, §48-7-40.25.
IRS.
Georgia public revenue code, §48-1-2.
Jet fuel.
Sales and use taxes, §48-8-2.
Job creation requirement.
Income tax credit for business enterprises, §48-7-40.24.
Job maintenance requirement.
Income tax credit for business enterprises, §§48-7-40.24, 48-7-40.25.
Job requirement.
Income tax credit for business enterprises, §48-7-40.25.
Labor services.
Income tax.
Compensation paid by taxpayer disallowed as business expense, §48-7-21.1.
Land bank, §48-4-102.
Land bank authorities, §48-4-60.
Land bank member, §48-4-102.
Landmark historic property.
Ad valorem taxation of property, §48-5-7.3.
LARP factor.
Special district transportation sales and use tax, §48-8-242.
Last known address of the delinquent taxpayer.
State tax executions, §48-3-40.
Law enforcement foundation.
Tax credits for contributions to law enforcement foundations, §48-7-29.25.
Lease or rental.
Sales and use taxes, §48-8-2.
Lease-purchase agreement.
Property tax, qualified farm products and harvested agricultural products exemption, §48-5-41.1.
Level two county-wide project.
Special county one percent sales and use taxes, §48-8-110.
Levying authority.
Property taxes, §48-5-32.
DEFINED TERMS —Cont'd
Levying authority —Cont'd
Property tax increase, §48-5-32.1.
Licensed dealer.
Tobacco and alternative nicotine products taxes, §48-11-1.
Lighting retrofit project.
Income tax credit for clean energy property, §48-7-29.14.
Liquefied natural gas.
Motor fuel tax, gallon equivalent, §48-9-3.
Little cigar.
Tobacco and alternative nicotine products taxes, §48-11-1.
Loading rack.
Motor fuel tax, §48-9-2.
Loaner vehicle.
Motor vehicle ad valorem taxation, §48-5C-1.
Local board of education.
Ad valorem taxation of property, §48-5-31.
Local charter school.
Educational purposes sales tax, §48-8-144.
Local collection official.
Property tax amnesty program, §48-16A-3.
Local emergency management director.
Property tax relief for buildings in disaster area, §48-5-33.
Local government.
Ad valorem taxation of property, §48-5-31.
Income taxes, revitalization zone tax credits (repealed 12/31/2029), §48-7-40.32.
Special district transportation sales and use tax, §48-8-242.
Local law enforcement unit.
Tax credits for contributions to law enforcement foundations, §48-7-29.25.
Local sales and use tax.
Excise tax on sale or use of energy, §48-13-110.
Georgia tourism development act, §48-8-271.
Sales and use tax exemptions, §48-8-3.
Equipment used for manufacturing tangible personal property, or sale, use, storage or consumption of industrial materials or packaging supplies, §48-8-3.2.

DEFINED TERMS —Cont'd
Local sales and use tax —Cont'd
Sales and use tax exemptions —Cont'd
Qualified job training organizations, sales of property and services to organization, §48-8-3.
Local taxing authority.
Property tax assessments, §48-5-7.6.
Local tax officials and staff.
Courses of instruction, §48-5-13.
Location or office.
Occupation taxes, §48-13-5.
Long-term note secured by real estate.
Intangible recording tax, §48-6-60.
Loose or smokeless tobacco.
Tobacco and alternative nicotine products taxes, §48-11-1.
Loose or smokeless tobacco dealer.
Tobacco and alternative nicotine products taxes, §48-11-1.
Loose or smokeless tobacco distributor.
Tobacco and alternative nicotine products taxes, §48-11-1.
Loose or smokeless tobacco importer.
Tobacco and alternative nicotine products taxes, §48-11-1.
Loose or smokeless tobacco manufacturer.
Tobacco and alternative nicotine products taxes, §48-11-1.
Low-emission vehicle.
Income taxes.
Credits for alternative fueled vehicles, §48-7-40.16.
Lowest base year value.
Homestead exemptions, property taxes.
Municipal corporation located in multiple counties, exemption for residents, §48-5-44.1.
Low-speed vehicle.
Income taxes.
Credits for alternative fueled vehicles, §48-7-40.16.
Machinery.
Sales and use tax exemptions.
Equipment used for manufacturing tangible personal property, or sale, use, storage or consumption of industrial materials or packaging supplies, §48-8-3.2.
DEFINED TERMS —Cont'd
Machinery and equipment.
Manufacturing and telecommunications facility tax credits, §§48-7-40.7 to 48-7-40.9.
Water conservation facility tax credit, §48-7-40.10.
Machinery clothing.
Sales and use tax exemptions.
Equipment used for manufacturing tangible personal property, or sale, use, storage or consumption of industrial materials or packaging supplies, §48-8-3.2.
Major sporting event.
Sales tax exemptions for ticket sales to certain nonrecurring events, §48-8-3.
Manufacture.
Income taxes on corporations, §48-7-31.
Manufacture of tangible personal property.
Sales and use tax exemptions.
Equipment used for manufacturing tangible personal property, or sale, use, storage or consumption of industrial materials or packaging supplies, §48-8-3.2.
Manufacturers.
Sales and use tax exemptions.
Equipment used for manufacturing tangible personal property, or sale, use, storage or consumption of industrial materials or packaging supplies, §48-8-3.2.
Manufacturing plant.
Sales and use tax exemptions.
Equipment used for manufacturing tangible personal property, or sale, use, storage or consumption of industrial materials or packaging supplies, §48-8-3.2.
Marijuana.
Excise tax on marijuana and controlled substances, §48-15-2.
Marital exemption.
Income taxes, §48-7-100.
Marketplace facilitator.
Sales and use taxes, §48-8-2.
Marketplace innkeeper.
Excise taxes on hotels and other lodging places, §48-13-50.2.

DEFINED TERMS —Cont'd
Marketplace seller.
Sales and use taxes, §48-8-2.
Mass transportation.
Special district mass transportation sales and use tax, §48-8-260.
Measures of central tendency.
Equalization of tax assessments, §48-5-274.
Median income.
Housing tax credit, §48-7-29.6.
Medical equipment and supplies.
Income tax credits, job tax credits for manufacturers of certain materials, §48-7-40.1B.
Medical students.
Income tax credit for preceptor rotations, §48-7-29.22 (Repealed 12/31/2026).
Member of the armed forces.
Georgia public revenue code, §48-1-2.
Members.
Income taxes, §48-7-100.
Metropolitan planning organization.
Special district transportation sales and use tax, §48-8-242.
Mill.
Property tax increase, §48-5-32.1.
Millage.
Property tax increase, §48-5-32.1.
Millage equivalent.
Property tax increase, §48-5-32.1.
Millage rate.
Property tax increase, §48-5-32.1.
Mobile homes.
Ad valorem taxation, §48-5-440.
Mobile telecommunications service.
Sales and use taxes, §48-8-13.
Model 1 seller.
Streamlined sales and use tax agreement, §48-8-161.
Model 2 seller.
Streamlined sales and use tax agreement, §48-8-161.
Model 3 seller.
Streamlined sales and use tax agreement, §48-8-161.
Model 4 seller.
Streamlined sales and use tax agreement, §48-8-161.
Motor carrier.
Road tax on motor carriers, §48-9-30.
Motor fuel.
Motor fuel tax law, §48-9-2.
Road tax on motor carriers, §48-9-30.

DEFINED TERMS —Cont'd
Motor vehicle.
Ad valorem taxation, §48-5-440.
Income taxes.
Credits for alternative fueled vehicles, §48-7-40.16.
Motor fuel tax law, §48-9-2.
Road tax on motor carriers, §48-9-30.
Multimarket commercial distribution.
Entertainment industry investment act, §48-7-40.26.
Entertainment industry postproduction investment act, §48-7-40.26A.
Multipurpose domed stadium facility.
Excise tax on rooms, lodgings and accommodations, §48-13-51.
Municipal centerline mile ratio.
Special district mass transportation sales and use tax, §48-8-262.
Municipal corporations.
Special district transportation sales and use tax, §48-8-242.
Municipality.
Georgia public revenue code, §48-1-2.
Sales and use taxes, §48-8-200.
Municipal millage rate.
Special assessment of forest land conservation use property, §48-5A-1.
Municipal population ratio.
Special district mass transportation sales and use tax, §48-8-262.
National infantry museum and heritage park facility.
Sales and use taxes, exemption, §48-8-3.
Negligence.
Sales and use taxes, expedited refunds, §48-2-35.1.
Net assessed value.
Property tax increase, §48-5-32.1.
Net homestead digest.
Homestead option sales and use taxes, §48-8-104.
Net income tax liability.
Qualified investment tax credit, §48-7-40.30.
New commercial vehicle.
Income tax credit for purchase of alternative fuel heavy and medium duty vehicles, §48-7-29.18.

DEFINED TERMS —Cont'd
New expanded qualified municipality.
Sales and use tax.
Joint county and municipal tax, §48-8-89.1.
New full-time employee job.
Business enterprise tax credits, §§48-7-40, 48-7-40.1.
New owners.
Taxation, executions by tax collectors and commissioners, §48-3-3.
New qualified municipality.
Sales and use tax.
Joint county and municipal tax, §48-8-89.1.
New quality job.
High-technology data centers, sales and use tax exemptions, §48-8-3.
Tax credits, §48-7-40.17.
Nonattainment area.
Sales and use taxes.
Transit special purpose local option sales and use tax, §48-8-269.40.
Nonprofit hospitals.
Ad valorem taxation of property exemptions, §48-5-40.
Nonrecurring.
Sales tax exemptions for ticket sales to certain nonrecurring events, §48-8-3.
Nonresident.
Income taxes, §§48-7-1, 48-7-100.
Nonresident of the state of Georgia.
Income taxes, §48-7-128.
Nonresident partners.
Income taxes, partnership returns, §48-7-53.
Nonresident subcontractors.
Sales and use tax.
Payment by contractors furnishing tangible personal property and services, §48-8-63.
Nontaxable nonresident.
Income taxes, §48-7-1.
Number of dependent exemptions claimed.
Income taxes, §48-7-100.
Nurse practitioner core clerkship.
Income tax deductions, §48-7-27.
Obligation.
Excise tax on rooms, lodgings and accommodations, §48-13-51.
Occupation tax, §48-13-5.
Occupied primarily as a dwelling.
Ad valorem taxation of property exemptions, §48-5-40.

DEFINED TERMS —Cont'd
Office.
Income taxes, §48-7-100.
Taxation of depository institutions, §48-6-93.
Open system.
Tobacco and alternative nicotine products taxes, §48-11-1.
Operated.
Ad valorem taxation of airline company property, §48-5-540.
Operating.
Ad valorem taxation of airline company property, §48-5-540.
Operations.
Ad valorem taxation of airline company property, §48-5-540.
Road tax on motor carriers, §48-9-30.
Other credits allowed by law.
Credit of estimated income tax payment, §48-7-121.
Other digital goods.
Sales and use taxes, §48-8-2.
Other direct mail.
Special sales and use tax, §48-8-77.
Out-of-state business.
Revenue and taxation, facilitating business rapid response to state declared disasters, §48-2-100.
Out-of-state employee.
Revenue and taxation, facilitating business rapid response to state declared disasters, §48-2-100.
Overhead materials.
Sales and use tax exemption, §48-8-3.
Owners.
Ad valorem taxation, §48-5-440.
Owners of record.
Taxation, executions by tax collectors and commissioners, §48-3-3.
Owning property or doing business in this state.
Income taxes, §48-7-1.
Package.
Tobacco and alternative nicotine products taxes, §48-11-23.1.
Packaging operation.
Sales and use tax exemptions.
Equipment used for manufacturing tangible personal property, or sale, use, storage or consumption of industrial materials or packaging supplies, §48-8-3.2.

DEFINED TERMS —Cont'd
Packaging supplies.
Sales and use tax exemptions.
Equipment used for manufacturing tangible personal property, or sale, use, storage or consumption of industrial materials or packaging supplies, §48-8-3.2.
Paid.
Income taxes, §48-7-1.
Participating employee.
Teleworking tax credit allowed employers, §48-7-29.11.
Parties.
Public revenue code, §48-4-60.
Partner.
Income taxes, §48-7-53.
Partnership level audit.
Income taxes, partnership returns, §48-7-53.
Partnerships.
Income taxes, §48-7-53.
Passenger car.
Motor vehicle ad valorem taxation, §48-5-444.
Pass-through entity.
Income taxes, partnership returns, §48-7-53.
Qualified investment tax credit, §48-7-40.30.
Payroll maintenance requirement.
Income tax credit for business enterprises, §48-7-40.24.
Payroll period.
Income taxes, §48-7-100.
Payroll requirement.
Income tax credit for business enterprises, §48-7-40.24.
Periodic payments.
Income taxes, §48-7-100.
Person.
Georgia public revenue code, §48-1-2.
Streamlined sales and use tax agreement, §48-8-161.
Personal property.
Georgia public revenue code, §48-1-2.
Personal protective equipment.
Business enterprise tax credits for PPE manufacturers, §48-7-40.1A.
Personal protective equipment manufacturer.
Business enterprise tax credits for PPE manufacturers, §48-7-40.1A.
Personal representative.
Georgia public revenue code, §48-1-2.
DEFINED TERMS —Cont'd
Pertinent business factors.
Ad valorem taxation of public utility, §48-5-510.
Pertinent mileage factors.
Ad valorem taxation of public utility, §48-5-510.
Pharmaceutical and medicine manufacturers.
Income tax credits, job tax credits for manufacturers of certain materials, §48-7-40.1B.
Physician.
Physician tax credits, §48-7-29.26 (Repealed 12/31/2029).
Physician assistant core clerkship.
Income tax deductions, §48-7-27.
Physician assistant students.
Income tax credit for preceptor rotations, §48-7-29.22 (Repealed 12/31/2026).
Place of primary use.
Sales and use taxes, §48-8-13.
Plane hours.
Ad valorem taxation of property, §48-5-540.
Political subdivision designees.
Sales and use tax.
Refund claims of local significance, §48-2-35.
Port facility.
Tax credits for certain business enterprises, §48-7-40.15.
Port traffic.
Tax credits for certain business enterprises, §§48-7-40.15, 48-7-40.15A.
Postproduction companies.
Entertainment industry postproduction investment act, §48-7-40.26A.
PPE.
Business enterprise tax credits for PPE manufacturers, §48-7-40.1A.
PPE manufacturer.
Business enterprise tax credits for PPE manufacturers, §48-7-40.1A.
Practitioners of professions and occupations.
Taxation, §48-13-5.
Preceptorship rotations.
Income tax credit for preceptor rotations, §48-7-29.22 (Repealed 12/31/2026).

DEFINED TERMS —Cont'd
Preceptorship training.
Income tax credit for preceptor rotations, §48-7-29.22 (Repealed 12/31/2026).
Premises of the employer.
Child care tax credits, §48-7-40.6.
Prepaid local tax.
Sales and use taxes, §48-8-2.
Prereleased interactive games.
Entertainment industry investment act, §48-7-40.26.
Previous adjusted base year.
Homestead exemptions, property taxes.
Municipal corporation located in multiple counties, exemption for residents, §48-5-44.1.
Prewritten computer software.
Sales tax exemptions, back to school, §48-8-3.
Primarily fueled by an alternative fuel.
Income tax credit for purchase of alternative fuel heavy and medium duty vehicles, §48-7-29.18.
Primary home base.
Property taxes, §48-5-16.
Private sector nonprofit organization.
Excise taxes on hotels and other lodging places, §48-13-50.2.
Producer.
Property tax, qualified farm products and harvested agricultural products exemption, §48-5-41.1.
Product.
Special sales and use tax, §48-8-77.
Tax credits for certain business enterprises, §§48-7-40.15, 48-7-40.15A.
Production.
Ad valorem taxation of property exemptions, §48-5-40.
Production company.
Entertainment industry investment act, §48-7-40.26.
Production equipment.
Sales and use tax exemption, §48-8-3.
Production expenditures.
Entertainment industry investment act, §48-7-40.26.
Production services.
Sales and use tax exemption, §48-8-3.

DEFINED TERMS —Cont'd
Products or services.
Manufacturing and telecommunications facility tax credits, §§48-7-40.2 to 48-7-40.4, 48-7-40.7 to 48-7-40.9.
Professional service.
Qualified investment tax credit, §48-7-40.30.
Program of public improvement.
Ad valorem taxation of property, §48-5-31.
Project cost.
Coliseum capital outlay projects, special purpose local option sales tax, §48-8-145.
Projects.
Georgia tourism development act, §48-8-271.
Housing tax credit, §48-7-29.6.
Special district transportation sales and use tax, §48-8-242.
Promoting conventions.
Excise taxes on hotels and other lodging places, §48-13-50.2.
Promoting tourism.
Excise taxes on hotels and other lodging places, §48-13-50.2.
Promoting trade shows.
Excise taxes on hotels and other lodging places, §48-13-50.2.
Proper identification.
Tobacco and alternative nicotine products taxes, §48-11-1.
Property.
Public revenue code, §48-4-60.
Property tax.
Amnesty program, §48-16A-3.
Property tax increase, §48-5-32.1.
Public highway.
Motor fuel tax law, §48-9-2.
Public utility.
Georgia public revenue code, §48-1-2.
Purchase.
Motor fuel tax law, §48-9-2.
Purchasers.
Excise tax on sale or use of energy, §48-13-110.
Qualified agricultural producer.
Sales and use tax exemptions.
Agricultural machinery and equipment, §48-8-3.3.
Qualified business.
Qualified investment tax credit, §48-7-40.30.

DEFINED TERMS —Cont'd
Qualified business expansion.
Tax credit for qualified business expansion, §48-7-40.21.
Qualified caregiving expenses.
Income tax credits, §48-7-29.2.
Qualified child care property.
Child care tax credits, §48-7-40.6.
Qualified consolidated government.
Coliseum capital outlay projects, special purpose local option sales tax, §48-8-145.
Qualified contributions.
Income tax credit for contributions to foster child support organizations, §48-7-29.24.
Tax credits for contributions to law enforcement foundations, §48-7-29.25.
Qualified donation.
Income tax credit for donation of land to be used for conservation purposes, §48-7-29.12.
Qualified education donations.
Income tax credits for qualified education donations, §48-7-29.21 (Repealed 12/31/2029).
Qualified education expenses.
Income tax credit for qualified education expenses, §48-7-29.16.
Qualified equipment.
Energy and water conservation equipment tax credit, §48-7-40.29.
Qualified expenditures.
Income tax credit for contributions to foster child support organizations, §48-7-29.24.
Tax credits for contributions to law enforcement foundations, §48-7-29.25.
Qualified farm products.
Property tax, qualified farm products and harvested agricultural products exemption, §48-5-41.1.
Qualified food banks.
Sales and use tax exemption for sale of food, etc, to qualified food bank, §48-8-3.
Qualified foster child.
Income tax credit for adoption of foster child, §48-7-29.15.
Qualified Georgia project.
Housing tax credit, §48-7-29.6.
Qualified Georgia promotion.
Entertainment industry investment act, §48-7-40.26.

DEFINED TERMS —Cont'd
Qualified governmental tax-exempt entity.
Motor fuel taxes, §48-9-10.1.
Qualified health insurance.
Income tax credit for qualified health insurance expenses, §48-7-29.13.
Qualified health insurance expense.
Income tax credit for qualified health insurance expenses, §48-7-29.13.
Qualified interactive entertainment production company.
Entertainment industry investment act, §48-7-40.26.
Qualified investment.
Income tax credits for qualified investments, §§48-7-40.27, 48-7-40.28.
Qualified investment tax credit, §48-7-40.30.
Qualified investment property.
Manufacturing and telecommunications facility tax credits, §§48-7-40.2 to 48-7-40.4, 48-7-40.7 to 48-7-40.9.
Tax credits for certain business enterprises, §§48-7-40.15, 48-7-40.24, 48-7-40.25.
Tax credits for new quality jobs, §48-7-40.17.
Qualified investment property requirement.
Tax credits for certain business enterprises, §48-7-40.24.
Tax credits for new quality jobs, §48-7-40.17.
Qualified investor.
Qualified investment tax credit, §48-7-40.30.
Qualified job training organizations.
Sales tax exemptions for sales of property and services to organization, §48-8-3.
Qualified law enforcement foundation.
Tax credits for contributions to law enforcement foundations, §48-7-29.25.
Qualified life insurance.
Income taxes, §48-7-29.9.
Qualified municipality.
Homestead option sales and use tax, §48-8-101.
Sales and use taxes, §48-8-80.
Transit special purpose local option sales and use tax, §48-8-269.40.

DEFINED TERMS —Cont'd
Qualified municipality —Cont'd
Special county one percent sales and use taxes, §48-8-110.
Special district mass transportation sales and use tax, §48-8-260.
Qualified nonprofit agency.
Sales and use tax exemptions, §48-8-3.
Qualified organization.
Income tax credit for contributions to foster child support organizations, §48-7-29.24.
Qualified owner.
Forest land protection act of 2008, §48-5-7.7.
Property taxes, qualified timberland property, §48-5-600.
Qualified parolees.
Income tax credit for employing qualified parolees, §48-7-40.31.
Qualified postproduction activities.
Entertainment industry postproduction investment act, §48-7-40.26A.
Qualified postproduction expenditures.
Entertainment industry postproduction investment act, §48-7-40.26A.
Qualified production activities.
Entertainment industry investment act, §48-7-40.26.
Sales and use tax exemption, §48-8-3.
Qualified productions.
Entertainment industry postproduction investment act, §48-7-40.26A.
Qualified project.
Income tax credit for business enterprises, §§48-7-40.24, 48-7-40.25.
Tax credits for new quality jobs, §48-7-40.17.
Qualified property.
Forest land protection act of 2008, §48-5-7.7.
Qualified railroad track maintenance expenditures.
Income tax credits for class III railroads, §48-7-40.34.
Qualified rehabilitation expenditure.
Income tax credits.
Rehabilitation of historic homes, §48-7-29.8.
Revitalization zone tax credits (repealed 12/31/2029), §48-7-40.32.

DEFINED TERMS —Cont'd
Qualified research expenses.
Tax credits, §48-7-40.12.
Qualified rural hospital organization expense.
Income tax credit for contributions to rural hospital organizations, §48-7-29.20 (Repealed 12/31/2029).
Qualified school or program.
Income tax credit for qualified education expenses, §48-7-29.16.
Qualified subordinated debt.
Qualified investment tax credit, §48-7-40.30.
Qualified taxpayer.
Income taxes, §§48-7-20.1, 48-7-20.2.
Sales and use taxes, §48-8-49.1.
Qualified timberland property.
Property taxes, qualified timberland property, §48-5-600.
Qualified water conservation facility.
Sales and use of tax exemptions, §48-8-3.
Shipped from ground-water usage tax credit, §48-7-40.11.
Qualified water conservation investment.
Tax credits, §48-7-40.10.
Qualifying airline.
Sales and use tax exemption, §48-8-3.
Qualifying purpose.
Forest land protection act of 2008, §48-5-7.7.
Raw forest product.
Georgia forest product fairness act, §48-1-10.
Raw materials.
Property tax.
Freeport exemption, §48-5-48.2.
Real estate investment trusts.
Income taxes, §48-7-28.4.
Reallocation adjustment.
Income taxes, partnership returns, §48-7-53.
Real property.
Land banks, §48-4-102.
Sales and use tax exemptions.
Equipment used for manufacturing tangible personal property, or sale, use, storage or consumption of industrial materials or packaging supplies, §48-8-3.2.
Reasonable basis.
Sales and use taxes, expedited refunds, §48-2-35.1.

DEFINED TERMS —Cont'd
Recapture amount.
Child care tax credits, §48-7-40.6.
Recapture event.
Child care tax credits, §48-7-40.6.
Recapture percentage.
Child care tax credits, §48-7-40.6.
Recapture period.
Income tax credit for business enterprises, §§48-7-40.24, 48-7-40.25.
Recapture year.
Child care tax credits, §48-7-40.6.
Received.
Income taxes, §48-7-1.
Motor fuel tax law, §48-9-2.
Recipient.
Income tax credits for qualified education donations, §48-7-29.21 (Repealed 12/31/2029).
Recommending authority.
Property taxes, §48-5-32.
Property tax increase, §48-5-32.1.
Recovered materials.
Manufacturing and telecommunications facility tax credits, §§48-7-40.2 to 48-7-40.4.
Recycling.
Manufacturing and telecommunications facility tax credits, §§48-7-40.2 to 48-7-40.4.
Recycling machinery and equipment.
Manufacturing and telecommunications facility tax credits, §§48-7-40.2 to 48-7-40.4.
Manufacturing facility tax credits.
Tier three and four counties, §48-7-40.4.
Recycling manufacturing facility.
Manufacturing and telecommunications facility tax credits, §§48-7-40.2 to 48-7-40.4.
Redemption amount.
Ad valorem tax foreclosure, §48-4-77.
Referral from a SOURCE Case Management Provider.
Sales and use taxes, §48-8-2.
Refund.
Income taxes.
Setoff debt collection, §48-7-161.
Refund claims of local significance.
Sales and use tax, §48-2-35.
Regional transit plan.
Sales and use taxes.
Transit special purpose local option sales and use tax, §48-8-269.40.

DEFINED TERMS —Cont'd
Regional transportation roundtable.
Special district transportation sales and use tax, §48-8-242.
Registered.
Qualified investment tax credit, §48-7-40.30.
Registered business.
Revenue and taxation, facilitating business rapid response to state declared disasters, §48-2-100.
Registration.
Qualified investment tax credit, §48-7-40.30.
Registration period.
Ad valorem taxation, §48-5-440.
Regulatory fees.
Occupation taxes, §48-13-5.
Related machinery.
Tobacco and alternative nicotine products taxes, §48-11-1.
Related member.
Income taxes, §48-7-28.3.
Related person.
Income tax credit for donation of land, §48-7-29.12.
Income taxes, §48-7-28.3.
Renewable biomass qualified facility.
Income tax credit for clean energy property, §48-7-29.14.
Renewed state tax execution, §48-3-40.
Renovation.
Georgia tourism development act, §48-8-271.
Rental charge.
Motor vehicle ad valorem taxation, §48-5C-1.
Rental motor vehicle excise tax, §48-13-91.
Rental motor vehicle.
Excise tax, §48-13-91.
Motor vehicle ad valorem taxation, §48-5C-1.
Rental motor vehicle concern.
Excise tax, §48-13-91.
Motor vehicle ad valorem taxation, §48-5C-1.
Repair or replacement part.
Sales and use tax exemptions.
Equipment used for manufacturing tangible personal property, or sale, use, storage or consumption of industrial materials or packaging supplies, §48-8-3.2.

DEFINED TERMS —Cont'd
Research fund.
Income tax credits for qualified investments, §§48-7-40.27, 48-7-40.28.
Resident.
Entertainment industry investment act, §48-7-40.26.
Income taxes, §48-7-1.
Resident partners.
Income taxes, partnership returns, §48-7-53.
Retailers.
Sales and use taxes, §48-8-2.
Retail sale.
Sales and use taxes, §48-8-2.
Return.
Tax amnesty program, §48-16-12.
Return allowance.
Sales and use taxes, §48-8-58.
Return information.
Taxation, §48-2-6.1.
Reviewed year.
Income taxes, partnership returns, §48-7-53.
Revitalization zones.
Income taxes, revitalization zone tax credits (repealed 12/31/2029), §48-7-40.32.
Roll-back rate.
Property tax increase, §48-5-32.1.
Roundtable.
Special district transportation sales and use tax, §48-8-242.
Rural county.
Manufacturing and telecommunications facility tax credits, §§48-7-40.2, 48-7-40.3.
Physician tax credits, §§48-7-29, 48-7-29.26 (Repealed 12/31/2029).
Tax credits for new quality jobs, §48-7-40.17.
Rural health care professional.
Physician tax credits, §48-7-29.26 (Repealed 12/31/2029).
Rural hospital.
Physician tax credits, §48-7-29.
Rural hospital organization.
Income tax credit for contributions to rural hospital organizations, §48-7-29.20 (Repealed 12/31/2029).
Rural physician.
Physician tax credits, §48-7-29.
Sale.
Income taxes on corporations, §48-7-31.

DEFINED TERMS —Cont'd
Sale —Cont'd
Motor fuel tax law, §48-9-2.
Sales and use taxes, §48-8-2.
Tobacco and alternative nicotine products taxes, §48-11-1.
Sale at retail.
Sales and use taxes, §48-8-2.
Sales and use taxes.
Agricultural commodities, §48-8-5.
Sales and use tax refunds.
Georgia tourism development act, §48-8-271.
Sales price.
Sales and use taxes, §48-8-2.
Sales tax.
Streamlined sales and use tax agreement, §48-8-161.
Savings and loan association.
Income tax, corporations, §48-7-21.
Taxation of depository institutions, §48-6-90.
School art supplies.
Sales tax exemptions, back to school, §48-8-3.
School computer supplies.
Sales tax exemptions, back to school, §48-8-3.
School district.
Ad valorem taxation of property, §48-5-31.
Land banks, §48-4-102.
School instructional materials.
Sales tax exemptions, back to school, §48-8-3.
School millage rate.
Special assessment of forest land conservation use property, §48-5A-1.
School supplies.
Sales tax exemptions, back to school, §48-8-3.
School tax.
Ad valorem taxation of property, §48-5-31.
Security instrument.
Intangible recording tax, §48-6-60.
Seller.
Streamlined sales and use tax agreement, §48-8-161.
Taxation of consumer fireworks, §48-13-130.
Senior citizen.
Homestead exemption for senior citizens, §48-5-48.3.

DEFINED TERMS —Cont'd
Senior citizen —Cont'd
Homestead exemptions for individuals 62 or older with annual incomes not exceeding $30,000, §48-5-47.1.
Shared for-hire ground transport trip.
Excise taxes, §48-13-140.
Shipped from ground-water usage.
Tax credits, §48-7-40.11.
Short-term note secured by real estate.
Intangible recording tax, §48-6-60.
Single exemption.
Income taxes, §48-7-100.
SOURCE Case Management Provider.
Sales and use taxes, §48-8-2.
Special franchise, §48-5-420.
Special fuel.
Motor fuel tax law, §48-9-2.
Specific or occupation tax.
Privilege taxes, liens for, §48-2-56.
Specified digital products.
Sales and use taxes, §48-8-2.
Specimen tree.
Ad valorem taxation of property, §48-5-7.2.
Stamp.
Tobacco and alternative nicotine products taxes, §48-11-1.
State.
Special district transportation sales and use tax, §48-8-242.
Streamlined sales and use tax agreement, §48-8-161.
State agency.
Sales and use taxes, §48-8-14.
State authorities.
Excise taxes on hotels and other lodging places, §48-13-50.2.
State certified production.
Entertainment industry investment act, §48-7-40.26.
State chartered special school.
Educational purposes sales tax, §48-8-144.
State contract.
Income taxes, §48-7-38.
State millage rate.
Special assessment of forest land conservation use property, §48-5A-1.
State partnership audits.
Income taxes, partnership returns, §48-7-53.
DEFINED TERMS —Cont'd
State revenue commissioner.
Excise tax on marijuana and controlled substances, §48-15-2.
State tax execution, §48-3-40.
Statewide transportation improvement program.
Special district transportation sales and use tax, §48-8-242.
Stock in trade of a fulfillment center.
Property tax freeport exemption, §48-5-48.2.
Stock in trade of a retailer.
Property tax freeport exemption, §48-5-48.2.
Storage.
Sales and use taxes, §48-8-2.
Student scholarship organization.
Income tax credit for qualified education expenses, §48-7-29.16.
Subchapter S corporations.
Income tax, subchapter S corporations, §48-7-21.
Substantial property change.
Homestead exemptions, property taxes.
Statewide exemption (contingently effective 1/1/2025), §48-5-44.2.
Substantial purpose.
Sales and use tax exemptions.
Equipment used for manufacturing tangible personal property, or sale, use, storage or consumption of industrial materials or packaging supplies, §48-8-3.2.
Substantial rehabilitation.
Income tax credit for rehabilitation of historic homes, §48-7-29.8.
Substantial valuation misstatement.
Income tax credit for donation of land, §48-7-29.12.
Tangible personal property.
Georgia public revenue code, §48-1-2.
Sales and use taxes, §48-8-2.
Tangible real property which is devoted to bona fide agricultural purposes.
Ad valorem taxation of property, §48-5-7.1.
Target area.
Income tax credit for rehabilitation of historic homes, §48-7-29.8.
Taxable base.
Property tax assessments, §48-5-7.6.

DEFINED TERMS —Cont'd
Taxable income sourced to this state.
Income taxes, §48-7-129.
Taxable nonresident.
Income taxes, §48-7-1.
Taxable year.
Income taxes, §48-7-1.
Tax collector.
Georgia public revenue code, §48-1-2.
Tax commissioner.
Georgia public revenue code, §48-1-2.
Tax-delinquent property.
Public revenue code, §48-4-60.
Taxing jurisdiction.
Property tax amnesty program, §48-16A-3.
Property taxes, §48-5-32.
Property tax increase, §48-5-32.1.
Sales and use taxes, §48-8-13.
Tax official.
Tax deferral for the elderly act, §48-5-71.
Taxpayer.
Georgia public revenue code, §48-1-2.
Income tax credit for purchase of alternative fuel heavy and medium duty vehicles, §48-7-29.18.
Income tax credit for qualified health insurance expenses, §48-7-29.13.
Income taxes, §48-7-29.1.
Property tax amnesty program, §48-16A-3.
Sales and use taxes, §§48-2-35, 48-2-35.1.
Tax amnesty program, §48-16-3.
Tax credits for new quality jobs, §48-7-40.17.
Tax receiver.
Georgia public revenue code, §48-1-2.
Tax return preparer, §48-2-62.
Tax savings.
Property tax assessments, §48-5-7.6.
Telework.
Teleworking tax credit allowed employers, §48-7-29.11.
Telework agreement.
Teleworking tax credit allowed employers, §48-7-29.11.
Telework assessment.
Teleworking tax credit allowed employers, §48-7-29.11.
Terminal.
Motor fuel tax, §48-9-2.

DEFINED TERMS —Cont'd
Third party.
Tobacco and alternative nicotine products taxes, §48-11-1.
Tier.
Tax credits for leased or purchased vehicle used to transport employees (repealed 12/31/2029), §48-7-40.22.
Tiered partners.
Income taxes, partnership returns, §48-7-53.
Timber.
Timber industry, tax relief for losses caused by Hurricane Michael, §48-7-40.36.
Timber casualty loss.
Timber industry, tax relief for losses caused by Hurricane Michael, §48-7-40.36.
Timber equipment.
Property tax exemption, §48-5-41.3.
Timberland property.
Property taxes, qualified timberland property, §48-5-600.
Timber producer.
Property tax exemption, §48-5-41.3.
Timber products.
Property tax exemption, §48-5-41.3.
Tobacco.
Sales and use taxes, §48-8-2.
Tobacco product.
Tobacco and alternative nicotine products taxes, §48-11-1.
Total aggregate payroll.
Entertainment industry investment act, §48-7-40.26.
Entertainment industry postproduction investment act, §48-7-40.26A.
Total homestead digest.
Homestead option sales and use taxes, §48-8-104.
Total net assessed value added by reassessments.
Property tax increase, §48-5-32.1.
Total raw material cost.
Sales and use tax, §48-8-39.
Tourism attraction.
Georgia tourism development act, §48-8-271.
Tourism attraction project.
Georgia tourism development act, §48-8-271.
Tourism product development.
Excise taxes on hotels and other lodging places, §48-13-50.2.

DEFINED TERMS —Cont'd
Trade-in value.
Motor vehicle ad valorem taxation, §48-5C-1.
Transferee.
Tax executions, §48-3-19.
Transferor.
Tax executions, §48-3-19.
Transferred electronically.
Sales and use taxes, §48-8-2.
Transit.
Excise taxes on for-hire ground transportation, §48-13-140.
Excise tax on rooms, lodging and accommodations, additional tax imposed by innkeeper with proceeds used for transportation purposes, §48-13-50.3.
Sales and use taxes.
Transit special purpose local option sales and use tax, §48-8-269.40.
Transit projects.
Excise taxes on for-hire ground transportation, §48-13-140.
Excise tax on rooms, lodging and accommodations, additional tax imposed by innkeeper with proceeds used for transportation purposes, §48-13-50.3.
Sales and use taxes.
Transit special purpose local option sales and use tax, §48-8-269.40.
Transit provider.
Excise taxes on for-hire ground transportation, §48-13-140.
Transportation improvement program.
Special district transportation sales and use tax, §48-8-242.
Transportation purposes.
Excise tax on rooms, lodging and accommodations, additional tax imposed by innkeeper with proceeds used for transportation purposes, §48-13-50.3.
Special district mass transportation sales and use tax, §48-8-260.
Transport tank truck.
Motor fuel tax law, §48-9-2.
Truck.
Motor vehicle ad valorem taxation, §48-5-444.
TVA.
Grants and special revenue disbursements, §48-14-2.

DEFINED TERMS —Cont'd
Underpayment.
Income taxes, §48-7-86.
Understatement of liability.
Tax return preparers, §48-2-62.
Unincorporated county millage rate.
Homestead option sales and use taxes, §48-8-104.
Unrelated business income.
Income taxes, partnership returns, §48-7-53.
Urban transit system.
Sales and use taxes, §48-8-3.
Use.
Sales and use taxes, §48-8-2.
Used in or for the construction.
Sales and use tax exemption, §48-8-3.
Use tax, §48-8-2.
Streamlined sales and use tax agreement, §48-8-161.
Valid business purpose.
Income taxes, §48-7-28.3.
Vapor device.
Tobacco and alternative nicotine products taxes, §48-11-1.
Vapor product.
Tobacco and alternative nicotine products taxes, §48-11-1.
Vapor product dealer.
Tobacco and alternative nicotine products taxes, §48-11-1.
Vapor product distributor.
Tobacco and alternative nicotine products taxes, §48-11-1.
Vapor product importer.
Tobacco and alternative nicotine products taxes, §48-11-1.
Vapor product manufacturer.
Tobacco and alternative nicotine products taxes, §48-11-1.
Vending machine.
Tobacco and alternative nicotine products taxes, §48-11-1.
Vertical service.
Sales and use taxes, §48-8-2.
Veterans organization.
Motor vehicle ad valorem taxation, §48-5-478.4.
Property tax exemption, §48-5-41.
Voice mail service.
Sales and use taxes, §48-8-2.
Wages.
Current income tax payment, §48-7-100.
Water and sewer projects and costs.
Sales and use taxes, §48-8-200.

DEFINED TERMS —Cont'd
Water conservation.
Sales and use tax exemption, §48-8-3.
Tax credit or facilities and investment property, §48-7-40.10.
Water conservation facility.
Tax credits, §48-7-40.10.
Watercraft.
Property taxes, §48-5-504.40.
Water efficient equipment.
Energy and water conservation equipment tax credit, §48-7-40.29.
WaterSense product.
Sales and use taxes, exemption, §48-8-3.
Withholding agent.
Income taxes, §48-7-100.
Withholding partners.
Income taxes, partnership returns, §48-7-53.
Withholding start-date.
Job tax credit for business enterprises, §48-7-40.24.
Wood residuals.
Income tax credit for clean energy property, §48-7-29.14.
Wraparound services.
Income tax credit for contributions to foster child support organizations, §48-7-29.24.
Zero emission vehicle.
Income tax credit for low emission vehicles, §48-7-40.16.
Zoological institution.
Sales and use tax exemption, §48-8-3.

DEMURRAGE CHARGES.
Sales and use taxes.
Exemptions, §48-8-3.

DENTISTS.
County regulatory fees.
Business not subject to, §48-13-9.
Civil action to enforce, §48-13-9.1.
Fees.
County regulatory fees.
Business not subject to, §48-13-9.
Civil action to enforce, §48-13-9.1.
Income tax credits.
Rural health care professionals, §48-7-29.26 (Repealed 12/31/2029).
Municipal regulatory fees.
Business not subject to, §48-13-9.
Civil action to enforce, §48-13-9.1.
Regulatory fees imposed by counties or municipalities.
Civil action to enforce, §48-13-9.1.

DENTISTS —Cont'd
Regulatory fees imposed by counties or municipalities —Cont'd
Example of businesses not subject to, §48-13-9.
Rural health care professionals.
Income tax credits, §48-7-29.26 (Repealed 12/31/2029).

DEPENDENT CARE.
Income tax credit.
Qualified child and dependent care expenses, §48-7-29.10.

DEPOTS.
Special franchises.
Defined, §48-5-420.

DEPRECIATION.
Income tax.
Computation of nonresident's entire net income, §48-7-30.
Computation of taxable net income, §48-7-27.
Confidentiality of tax information, §48-7-60.
Property placed in service in prior tax years, §48-7-39.
Taxpayer records of county.
Confidentiality of depreciation schedules, §48-5-314.

DEPUTIES.
County officers.
Property tax commissioner.
Chief deputy tax commissioner, §48-5-128.1.
Intangible recording tax.
Certification of payment of tax by deputy, §48-6-62.
Property tax collectors.
Assessment of standing timber.
Signature on certification that tax has been paid, §48-5-7.5.
Deputies acting as ex officio sheriffs, §48-5-137.
Expenses of deputy, §48-5-183.
Property tax commissioner.
Application for homestead exemption.
Administration of oath by deputy, §48-5-46.
Application for homestead tax deferral.
Administration of oath by deputy, §48-5-74.
Assessment of standing timber.
Signature on certification that tax has been paid, §48-5-7.5.

DEPUTIES —Cont'd
Property tax commissioner —Cont'd
County officials.
Chief deputy tax commissioner, §48-5-128.1.
Deputies acting as ex officio sheriffs, §48-5-137.
Expenses of deputy, §48-5-183.
Property tax receiver.
Application for homestead exemption.
Administration of oath by deputy, §48-5-46.
Application for homestead tax deferral.
Administration of oath by deputy, §48-5-74.
Chief deputy tax receiver, §48-5-212.
Sales and use taxes.
Inspection of records by deputies, §48-8-53.
Secretary of state.
Nonresident dealers engaging in business.
Actions which may be taken by secretary's deputies, §48-8-65.
Secretary of state.
Sales and use taxes.
Nonresident dealers engaging in business.
Actions which may be taken by secretary's deputies, §48-8-65.
State revenue commissioner.
Office of deputy, §48-2-5.
Power of deputy commissioner to issue a fieri facias, §48-2-37.
Tax executions.
Deputies acting for commissioner, §48-3-18.
Superior courts.
Clerks of court.
Real estate transfer tax.
Payment to deputy, §48-6-4.
Taxation.
Executions.
Acting for named officers, §48-3-18.

DESCENDANTS.
Estate tax eliminated, §48-12-1.

DESTITUTE PERSONS.
Income taxes.
Food and other necessaries credit.
General provisions, §§48-7A-2, 48-7A-3.

DEVELOPMENT AUTHORITIES.
Municipal property taxes.
Power to levy and collect tax to provide funds for, §48-5-350.

DIESEL FUEL.
Sales and use taxes.
Exemption, §48-8-3.

DIGITAL BROADCAST EQUIPMENT.
Sales and use tax exemption, §48-8-3.

DIGITAL GOODS, PRODUCTS, CODES, ETC.
Sales and use taxes.
Imposition of tax on digital goods, specified digital products, other digital goods or digital codes, §48-8-30.
Definitions relevant to digital items, §48-8-2.
Sale for resale, conditions, §48-8-38.

DISABLED AMERICAN WAR VETERANS.
Income tax deductions.
Disability compensation, certain disabled veterans, §48-7-27.
Motor vehicle ad valorem tax exemption, §48-5-478.4.

DISABLED PERSONS.
First responders.
Income taxes.
Deductions.
Indemnification payments, §48-7-27.
Motor vehicle ad valorem taxation.
Exemptions for disabled first responders (repealed 12/31/2029), §48-5C-1.
Income taxes.
First responders.
Deductions.
Indemnification payments, §48-7-27.
Job training organizations.
Sales and use tax exemptions.
Qualified job training organizations, sales of property and services to organization, §48-8-3.
Motor vehicle ad valorem taxation.
Disabled first responders.
Exemptions (repealed 12/31/2029), §48-5C-1.
Disabled veterans constitutional exemption, §48-5-478.
Exemption of vehicles used for transporting handicapped or disabled students, §48-5-470.1.

DISABLED PERSONS —Cont'd
Veterans.
Disabled veterans.
Income tax deductions.
Disability compensation, certain disabled veterans, §48-7-27.
Motor vehicle ad valorem taxation.
Constitutional exemption, §48-5-478.
Homestead exemption from ad valorem taxation.
Extension by qualified disabled veterans, §48-5-48.

DISASTERS.
Food and beverages donated for disaster relief.
Sales and use tax exemptions, §48-8-3.
Hurricane Michael.
Timber industry, tax relief for losses caused by Hurricane Michael, §48-7-40.36.
Out-of-state businesses.
Facilitating business rapid response to state declared disasters, §48-2-100.
Property tax relief for damaged or destroyed buildings in disaster area, §48-5-33.
Relief assistance.
Tax credits, §48-7-29.4.
Revenue and taxation.
Facilitating business rapid response to state declared disasters, §48-2-100.
Sales and use tax exemptions.
Food and beverages donated for disaster relief, §48-8-3.

DISCLAIMERS.
Income tax payment.
Withholding exemption status, §48-7-102.

DISCONTINUANCE.
Business operations.
Jeopardy assessments or revenue and taxation, §48-2-51.
Motor vehicle distributor's operations.
Duties with respect to motor fuel taxes, §48-9-7.
Sales and use taxes.
Referendum election to decide discontinuing imposition of tax, §48-8-92.

DISCOUNTING CIGARETTE TAX STAMPS, §48-11-3.

DISHONOR AND NOTICE OF DISHONOR.
Checks.
Receipt of checks by county tax commissioner, §48-5-146.
Money orders.
Receipt of money orders by county tax commissioner, §48-5-146.

DISMANTLING.
Contractors.
Nonresident contractor taxation.
Definition of contractor, §48-13-30.

DISSOLUTION.
Land banks, §48-4-111.

DISTRICTS.
Air commerce.
Prohibition of tax on persons traveling in, §48-13-4.
Capitation tax.
Prohibition, §48-13-3.
Hotels and other lodging places.
Excise tax on rooms, lodgings and accommodations.
Special districts generally, §§48-13-50 to 48-13-63.
Joint county and municipal sales and use tax (LOST).
Special districts generally, §§48-8-80 to 48-8-97.
Local option sales tax.
Joint county and municipal sales and use tax (LOST).
Special districts generally, §§48-8-80 to 48-8-97.
Sales and use taxes.
Mass transportation.
Special district mass transportation sales and use tax.
Generally, §§48-8-260 to 48-8-269.6.
Metropolitan county special districts, §§48-8-269.7 to 48-8-269.21.
Metropolitan municipality special districts, §§48-8-269.22 to 48-8-269.36.
Transit special purpose local option sales and use tax, §§48-8-269.40 to 48-8-269.58.
Transportation.
Special district transportation sales and use tax, §§48-8-240 to 48-8-256.

DISTRICTS —Cont'd
Special districts.
Excise tax on rooms, lodgings and accommodations.
General provisions, §§48-13-50 to 48-13-63.
Joint county and municipal sales and use tax (LOST).
General provisions, §§48-8-80 to 48-8-97.
Taxation.
Air commerce.
Prohibition of tax on persons traveling in, §48-13-4.
Capitation tax.
Prohibition, §48-13-3.
Excise tax on rooms, lodgings and accommodations.
Special districts, §§48-13-50 to 48-13-63.
Joint county and municipal sales and use tax (LOST), §§48-8-80 to 48-8-97.

DIVIDENDS.
Corporations.
Income taxes.
Adjustments, §48-7-21.
Returns of information concerning payments, §48-7-52.

DIVORCE.
Motor vehicle ad valorem taxation.
Transfers occasioned by divorce decree, §48-5C-1.
Real estate transfer tax.
Exemptions of transfers between husband and wife in connection with divorce, §48-6-2.

DOCKETS.
County tax collectors and tax commissioners.
Execution docket, §48-5-161.
Tax executions.
County tax collectors and commissioners to keep execution docket, §48-5-161.

DONATIONS.
Conservation purposes.
Real property donated to be used for conservation purposes.
Income tax credit, §48-7-29.12.
Income tax credit.
Real property donated to be used for conservation purposes, §48-7-29.12.

DONATIONS —Cont'd
Land conservation.
Real property donated to be used for conservation purposes.
Income tax credit, §48-7-29.12.

DOWNED TREES.
Timber industry, tax relief for losses caused by Hurricane Michael, §48-7-40.36.

DRUGS.
Confidentiality of information.
Excise tax on marijuana and controlled substances, §48-15-10.
Controlled substances.
Confidentiality of information.
Excise tax on marijuana and controlled substances, §48-15-10.
Excise tax on marijuana and controlled substances, §§48-15-1 to 48-15-11.
Prescriptions.
Excise tax on marijuana and controlled substances.
Exemption of persons lawfully in possession under valid prescription, §48-15-4.
Definitions.
Excise tax on marijuana and controlled substances, §48-15-2.
Excise tax on marijuana and controlled substances, §§48-15-1 to 48-15-11.
Additional to all other applicable taxes, §48-15-3.
Administration of chapter, §48-15-8.
Assessments, §48-15-9.
Calculation of tax, §48-15-5.
Rates, §48-15-6.
Collection of tax, §48-15-9.
Confidentiality of information obtained under chapter, §48-15-10.
Definitions, §48-15-2.
Enforcement of chapter, §48-15-8.
Exemptions, §48-15-4.
Forfeiture law.
Not suspended by chapter, §48-15-11.
Immunity from criminal prosecution.
No immunity, §48-15-1.
Imposition of tax, §48-15-3.
Lawful possession of marijuana or controlled substance.
Exemption of persons, §48-15-4.

DRUGS —Cont'd
Excise tax on marijuana and controlled substances —Cont'd
Payment of tax.
Time, §48-15-7.
Rate of tax, §48-15-6.
Calculation, §48-15-5.
Statistics.
Publication authorized, §48-15-10.
Tax executions, §48-15-9.
Time of payment, §48-15-7.
Unlawful use of marijuana or controlled substances not authorized, §48-15-1.
Weight of substance.
Calculation of tax, §48-15-5.
Tax rates, §48-15-6.
Forfeitures.
Excise tax on marijuana and controlled substances.
Forfeiture law not superseded by chapter, §48-15-11.
Marijuana.
Confidentiality of information.
Excise tax on marijuana and controlled substances, §48-15-10.
Excise tax on marijuana and controlled substances, §§48-15-1 to 48-15-11.
Pharmacists and pharmacies.
Excise tax on marijuana and controlled substances.
Exemption of licensed pharmacists, §48-15-4.
Physicians and surgeons.
Excise tax on marijuana and controlled substances.
Exemption of licensed medical practitioner, §48-15-4.
Prescriptions.
Excise tax on marijuana and controlled substances.
Exemption of persons lawfully in possession under valid prescription, §48-15-4.
Sales and use taxes.
Exemption of prescription drug, §48-8-3.
Sales and use taxes.
Exemption of prescription drugs, §48-8-3.
Taxation.
Excise tax on marijuana and controlled substances, §§48-15-1 to 48-15-11.

DRUGS —Cont'd
Taxation —Cont'd
Jeopardy assessments.
Possession, sale or distribution of illegal drug, §48-2-51.

DUPLEX UNITS.
Property taxes.
Tax exemptions.
Occupied primarily as a dwelling defined.
Limitation on number of exemptions that may be claimed, §48-5-40.

DYED FUEL OILS.
Sales and use tax exemption.
Ratification of executive order, §48-8-16.

E

E-CIGARETTES.
Taxes.
Tobacco and alternative nicotine products taxes, §§48-11-1 to 48-11-30.

ECONOMIC DEVELOPMENT.
Georgia tourism development act, §§48-8-270 to 48-8-277.
Tourism.
Georgia tourism development act, §§48-8-270 to 48-8-277.

EDUCATION.
Taxation.
School taxes generally, §§48-5-400 to 48-5-405.

ELECTIONS.
Ballots.
Forms.
Joint county and municipal sales and use tax, §48-8-85.
Discontinuing imposition, §48-8-92.
Special county one percent sales and use tax.
Imposition of tax, §48-8-111.
Homestead option sales and use taxes, §§48-8-103, 48-8-106.
Joint county and municipal sales and use tax, §48-8-85.
Discontinuing imposition, §48-8-92.
Special county one percent sales and use tax.
Imposition of tax, §48-8-111.

ELECTIONS —Cont'd
County tax collectors, §48-5-210.
Special elections.
Vacancies in office, §48-5-211.
County tax commissioners, §48-5-210.
Death, resignation, incapacity or inability.
Special elections, §48-5-212.
Vacancies in office, §48-5-211.
County tax receivers, §48-5-210.
Special elections.
Vacancies in office, §48-5-211.
Forms.
Joint county and municipal sales and use tax.
Ballots.
Discontinuing imposition, §48-8-92.
Referendum ballots, §48-8-85.
Special county one percent sales and use tax.
Ballot on question of imposition, §48-8-111.
Freeport exemption.
Level 1.
Property taxes, §48-5-48.2.
Level 2.
Property taxes, §48-5-48.6.
Joint county and municipal sales and use tax.
Referendum elections, §48-8-85.
Discontinuing imposition, §48-8-92.
Notice.
Joint county and municipal sales and use tax.
Referendum election to decide discontinuing imposition.
Publication of notice, §48-8-92.
Referendum election to decide imposition of tax.
Publication of notice, §48-8-85.
Special county one percent sales and use tax, §48-8-111.
Promissory notes.
Special county one percent sales and use tax.
Issuance of general obligation debt, §48-8-111.
Property taxes.
Level 1 freeport exemption, §48-5-48.2.
Level 2 freeport exemption, §48-5-48.6.
Publication.
Joint county and municipal sales and use tax.
Referendum election to decide discontinuing imposition, §48-8-92.

ELECTIONS —Cont'd
Publication —Cont'd
Joint county and municipal sales and use tax —Cont'd
Referendum election to decide imposition of tax, §48-8-85.
Special county one percent tax.
Notice of election, §48-8-111.
Sales and use taxes.
Coliseum capital outlay projects, special purpose local option sales tax.
Resolution or ordinance, election on, §48-8-147.
Equalized homestead option sales tax.
Election on whether to impose tax.
Ballot format, §48-8-109.4.
Duties of election superintendent, §48-8-109.4.
Notice to election superintendent, §48-8-109.4.
Homestead option sales and use taxes, §§48-8-103, 48-8-106.
Revised homestead option sales tax, §48-8-109.16.
Election on discontinuance of tax, §48-8-109.21.
Petition to call for election, §48-8-109.18.
Joint county and municipal sales and use tax.
Referendum elections, §48-8-85.
Discontinuing imposition, §48-8-92.
Revised homestead option sales tax, §48-8-109.16.
Election on discontinuance of tax, §48-8-109.21.
Petition to call for election, §48-8-109.18.
Special county one percent sales and use tax, §48-8-111.
Water and sewer projects and costs.
Approval of referendum by voters, §48-8-201.
Special county one percent sales and use tax, §48-8-111.
Special elections and primaries.
County tax officials.
Death, resignation, incapacity, etc., of county tax commissioners, §48-5-212.
Vacancies in office of tax receiver, collector or commissioner, §48-5-211.

ELECTIONS —Cont'd
Taxation.
Joint county and municipal sales and use tax, §48-8-85.
Discontinuing imposition, §48-8-92.
Special county one percent sales and use tax, §48-8-111.

ELECTRICITY.
Sales and use taxes.
Exemption, §48-8-3.

ELECTRIC VEHICLE CHARGING STATIONS.
Income tax credits for electric vehicle chargers purchased or leased by businesses, §48-7-40.16.
Motor fuel taxes.
Taxation of fuels not sold or measured by gallon, §48-9-3.

ELECTRIC VEHICLES.
Chargers.
Income tax credits for electric vehicle chargers purchased or leased by businesses, §48-7-40.16.
Income tax credit for purchase of alternative fuel heavy and medium duty vehicles, §§48-7-29.18, 48-7-29.19.

ELECTRONIC CIGARETTES.
Taxes.
Tobacco and alternative nicotine products taxes, §§48-11-1 to 48-11-30.

ELECTRONIC FILING.
Income tax returns.
Nonindividual taxpayers, §48-7-54.
Tax executions.
State tax executions electronically transmitted, §48-3-42.

ELECTRONIC FUNDS TRANSFERS.
Taxes.
Payment by, §48-2-32.

ELECTRONIC TRANSACTIONS.
Oaths.
Returnable property, §48-5-19.

ELECTRONIC TRANSMISSION.
Tax executions.
State tax executions electronically transmitted, §48-3-42.

ELEEMOSYNARY ORGANIZATIONS.
Sales and use tax exemptions.
Noncommercial written materials or mailings of 501(c)(3) organizations, §48-8-3.

EMERGENCIES.
Business corporations.
Revenue and taxation.
Facilitating business rapid response to state declared disasters, §48-2-100.
Out-of-state businesses.
Facilitating business rapid response to state declared disasters, §48-2-100.
Property tax relief for damaged or destroyed buildings in disaster area, §48-5-33.
Revenue and taxation.
Facilitating business rapid response to state declared disasters, §48-2-100.

EMERGENCY COMMUNICATIONS AUTHORITY.
Collection and disbursement of charges remitted to authority.
Contracting with revenue department.
Confidentiality of information, §48-2-15.

EMERGENCY MEDICAL SERVICES.
Disabled first responders.
Motor vehicle ad valorem taxation.
Exemptions for disabled first responders (repealed 12/31/2029), §48-5C-1.
Motor vehicles.
Disabled first responders.
Motor vehicle ad valorem tax exemptions (repealed 12/31/2029), §48-5C-1.

EMERGENCY MEDICAL TECHNICIANS.
Disabled first responders.
Income taxes.
Deductions.
Indemnification payments, §48-7-27.
Motor vehicle ad valorem taxation.
Exemptions for disabled first responders (repealed 12/31/2029), §48-5C-1.

EMERGENCY MEDICAL TECHNICIANS —Cont'd
Income taxes.
Disabled first responders.
Deductions.
Indemnification payments, §48-7-27.
Motor vehicle ad valorem taxation.
Disabled first responders.
Exemptions for disabled first responders (repealed 12/31/2029), §48-5C-1.

EMINENT DOMAIN.
Franchise tax.
General provisions, §§48-5-420 to 48-5-425.
Land banks, §48-4-107.
Sales under tax executions.
Land banks, §48-4-107.
Special franchises.
Taxation generally, §§48-5-420 to 48-5-425.

EMPLOYMENT TAXES.
Limitation on levy by municipalities, §48-13-19.

ENCUMBRANCES.
Intangible recording tax.
General provisions, §§48-6-60 to 48-6-77.
Recordation.
Intangible recording tax.
General provisions, §§48-6-60 to 48-6-77.
Taxation.
Intangible recording tax.
General provisions, §§48-6-60 to 48-6-77.

ENERGY STAR QUALIFIED PRODUCTS.
Sales and use taxes.
Exemption, §48-8-3.

ENERGY TAX.
Excise tax on sale or use of energy, §§48-13-110 to 48-13-128.
Assessment of dealer or purchaser.
Collection and payment procedures, §48-13-117.
Failure to file return or submit payment, §48-13-120.
Audit of dealers' records, §48-13-121.

ENERGY TAX —Cont'd
Excise tax on sale or use of energy —Cont'd
Collection and payment procedures, §48-13-117.
Dealers, collection of tax.
Reimbursement of dealer, §48-13-112.
Willful failure to collect, §48-13-124.
Competitive project of regional significance.
Exemption from energy tax for construction of project, §48-13-112.
Contingent fee arrangements in support of collection procedures.
Prohibited, §48-13-117.
County meeting with and notice to municipalities within special district, §48-13-113.
Dealers.
Collection of tax.
Reimbursement of dealer, §48-13-112.
Willful failure to collect, §48-13-124.
Fraudulent or otherwise false returns, §48-13-125.
Penalties and interest for failure to file return or make payment, §48-13-123.
Recordkeeping, §48-13-121.
Failure to keep or make available, §48-13-127.
Remitting taxes collected, §48-13-119.
Returns, §48-13-119.
Failure to file, §48-13-120.
Criminal enforcement, §48-13-126.
Fraudulent or otherwise false returns, §48-13-125.
Violation of provisions, punishment not specified, §48-13-128.
Definitions, §48-13-110.
Effective date of tax, §48-13-116.
Fraudulent or otherwise false returns, §48-13-125.
Interest.
Failure to pay or make return, §§48-13-120, 48-13-123.
Waiver, §48-13-122.

ENERGY TAX —Cont'd
Excise tax on sale or use of energy —Cont'd
Intergovernmental agreement with municipality, §48-13-114.
County election not to participate, §48-13-115.
Levy of tax, §48-13-112.
County commencement of proceedings to impose tax after initial nonparticipation, §48-13-115.
Effective date of tax, §48-13-116.
Reimposition following termination, §48-13-116.
Local sales and use tax.
Effect of amount imposed, §48-13-112.
Effect on distribution of proceeds, §48-13-114.
Maximum amount to be imposed, §48-13-116.
Notice to municipalities within special district, §48-13-113.
Ordinance levying tax, adoption, §48-13-114.
Penalties.
Failure to pay or make return, §§48-13-120, 48-13-123.
Waiver, §48-13-122.
Phase-in period, §48-13-112.
Proceeds, allocation and distribution, §48-13-114.
County election not to participate in intergovernmental agreement, §48-13-115.
Recordkeeping, §48-13-121.
Failure to keep or make available, §48-13-127.
Refunds.
Time to claim refund, §48-13-117.
Reimposition following termination, §48-13-116.
Remitting taxes collected, §48-13-119.
Returns, §48-13-119.
Extension of time, §48-13-120.
Failure to file, §48-13-120.
Criminal enforcement, §48-13-126.
Penalty and interest, §48-13-123.
Fraudulent or otherwise false returns, §48-13-125.
Revenue reporting by auditor, separate schedule, §48-13-118.
Special districts, boundaries, §48-13-111.
ENERGY TAX —Cont'd
Excise tax on sale or use of energy —Cont'd
Termination of tax, §48-13-116.
When tax imposed, and when due and payable, §48-13-112.
Willful failure to collect, §48-13-124.
Sales and use tax.
Special district mass transportation sales and use tax.
Exemptions beyond general sales tax exemptions.
Manufacturing or processing of goods for resale, sale or use of energy, §48-8-269.

ENGINEERS.
Fees.
Regulatory fees imposed by counties or municipalities.
Civil action to enforce, §48-13-9.1.
Example of businesses not subject to, §48-13-9.
Regulatory fees imposed by counties or municipalities.
Civil action to enforce, §48-13-9.1.
Example of businesses not subject to, §48-13-9.

ENTERTAINMENT INDUSTRY INVESTMENT ACT, §48-7-40.26.

ENTERTAINMENT INDUSTRY POSTPRODUCTION INVESTMENT ACT, §48-7-40.26A.

EQUALIZATION OF ASSESSMENTS.
County property taxes.
County boards of tax equalization, §48-5-311.
General provisions, §§48-5-260 to 48-5-275.

EQUALIZED HOMESTEAD OPTION SALES TAX ACT OF 2015.
Generally, §§48-8-109.1 to 48-8-109.10.
Short title, §48-8-109.1.

ERROR IN COLLECTION OF TAX.
County and municipal taxes and license fees, §48-5-380.

ESCORT SERVICES.
Occupation tax or regulatory fee levied by local government.
Civil action to enforce, §48-13-9.1.
Example of business subject to, §48-13-9.

ESCROW ACCOUNTS.
Homestead tax deferral for individuals 62 or older.
Deposit of prepayments into special escrow account, §48-5-79.
Restrictions on distributions from account, §48-5-79.
Income taxes.
Setoff debt collection.
Deposit of transfer funds into escrow account, §48-7-164.
Transfer from account to credit of debtor's account of debt due, §48-7-166.
Intangible recording tax.
Deposit of protested tax in special escrow fund, §48-6-76.
Setoff debt collection.
Income tax refunds.
Deposit of transfer funds into escrow account, §48-7-164.
Transfer from escrow account to credit of debtor's account of debt due, §48-7-166.

ESTATES.
Income taxes.
Deduction in lieu of personal exemption, §48-7-26.
Fiduciaries or beneficiaries, §48-7-22.
Individual tax rate.
Applicability to estates, §48-7-20.
Persons required to file returns, §48-7-50.
Taxation.
Estate tax eliminated, §48-12-1.
Income taxes.
Fiduciaries and beneficiaries, §48-7-22.
Individual income taxation.
Applicability to estates and trusts, §48-7-20.

ESTATE TAX.
Eliminated, §48-12-1.

EVIDENCE.
County tax collectors.
Record book or transcript of record book, §48-5-138.
County tax commissioners.
Record book or transcript of record book, §48-5-138.
Real estate transfer tax.
Payment of tax, §48-6-4.
Taxation.
Compelled production, §48-2-53.

EVIDENCE —Cont'd
Taxation —Cont'd
Confidential information generally.
Evidence before state or federal courts, §48-2-15.
Tobacco and alternative nicotine products taxes.
Certificate of commissioner.
Prima facie evidence, §48-11-20.

EXCISE TAXES.
Consumer fireworks.
Taxation of consumer fireworks, §§48-13-130 to 48-13-133.
Energy, sale or use, §§48-13-110 to 48-13-128.
Assessment of dealer or purchaser.
Collection and payment procedures, §48-13-117.
Failure to file return or submit payment, §48-13-120.
Audit of dealers' records, §48-13-121.
Collection and payment procedures, §48-13-117.
Dealers, collection of tax.
Reimbursement of dealer, §48-13-112.
Willful failure to collect, §48-13-124.
Competitive project of regional significance.
Exemption from energy tax for construction of project, §48-13-112.
Contingent fee arrangements in support of collection procedures.
Prohibited, §48-13-117.
County meeting with and notice to municipalities within special district, §48-13-113.
Dealers.
Collection of tax.
Reimbursement of dealer, §48-13-112.
Willful failure to collect, §48-13-124.
Fraudulent or otherwise false returns, §48-13-125.
Penalties and interest for failure to file return or make payment, §48-13-123.
Recordkeeping, §48-13-121.
Failure to keep or make available, §48-13-127.
Remitting taxes collected, §48-13-119.

EXCISE TAXES —Cont'd
Energy, sale or use —Cont'd
Dealers —Cont'd
Returns, §48-13-119.
Failure to file, §48-13-120.
Criminal enforcement, §48-13-126.
Fraudulent or otherwise false returns, §48-13-125.
Violation of provisions, punishment not specified, §48-13-128.
Definitions, §48-13-110.
Effective date of tax, §48-13-116.
Fraudulent or otherwise false returns, §48-13-125.
Interest.
Failure to pay or make return, §§48-13-120, 48-13-123.
Waiver, §48-13-122.
Intergovernmental agreement with municipality, §48-13-114.
County election not to participate, §48-13-115.
Levy of tax, §48-13-112.
County commencement of proceedings to impose tax after initial nonparticipation, §48-13-115.
Effective date of tax, §48-13-116.
Reimposition following termination, §48-13-116.
Local sales and use tax.
Effect of amount imposed, §48-13-112.
Effect on distribution of proceeds, §48-13-114.
Maximum amount to be imposed, §48-13-116.
Notice to municipalities within special district, §48-13-113.
Ordinance levying tax, adoption, §48-13-114.
Penalties.
Failure to pay or make return, §§48-13-120, 48-13-123.
Waiver, §48-13-122.
Phase-in period, §48-13-112.
Proceeds, allocation and distribution, §48-13-114.
County election not to participate in intergovernmental agreement, §48-13-115.
Recordkeeping, §48-13-121.
Failure to keep or make available, §48-13-127.

EXCISE TAXES —Cont'd
Energy, sale or use —Cont'd
Refunds.
Time to claim refund, §48-13-117.
Reimposition following termination, §48-13-116.
Remitting taxes collected, §48-13-119.
Returns, §48-13-119.
Extension of time, §48-13-120.
Failure to file, §48-13-120.
Criminal enforcement, §48-13-126.
Penalty and interest, §48-13-123.
Fraudulent or otherwise false returns, §48-13-125.
Revenue reporting by auditor, separate schedule, §48-13-118.
Special districts, boundaries, §48-13-111.
Termination of tax, §48-13-116.
When tax imposed, and when due and payable, §48-13-112.
Willful failure to collect, §48-13-124.
Fireworks.
Taxation of consumer fireworks, §§48-13-130 to 48-13-133.
For-hire ground transportation, §§48-13-140 to 48-13-144.
Annual rate adjustment, §48-13-141.
Cessation of levy, §48-13-141.
Collection and payment, §48-13-141.
Definitions, §48-13-140.
Failure to collect and remit, §48-13-142.
Georgia transit trust fund, §48-13-141.
Levy of tax, §48-13-141.
Reporting requirements, §48-13-143.
Rulemaking to implement provisions, §48-13-144.
Use of proceeds, §48-13-141.
Hotel/motel tax.
Excise tax on rooms, lodgings and accommodations.
General provisions, §§48-13-50 to 48-13-63.
Marijuana and controlled substances, §§48-15-1 to 48-15-11.
Motor fuel taxes.
General provisions, §§48-9-1 to 48-9-19.
Rental motor vehicles, §§48-13-90 to 48-13-97.
Auditor's report, §48-13-96.
Collection of excised taxes, §48-13-93.
Definition, §48-13-91.
Expenditure of taxes, §48-13-93.

EXCISE TAXES —Cont'd
Rental motor vehicles —Cont'd
Legislative intent, §48-13-90.
Levy of excised taxes, §48-13-93.
Local powers and procedures, §48-13-95.
Reimbursement for persons collecting tax, §48-13-94.
Special districts.
Creation, §48-13-92.
Sales and use taxes.
Tax levied in addition to excise taxes, §48-8-30.
Tobacco and alternative nicotine products taxes.
General provisions, §§48-11-1 to 48-11-30.

EXECUTIONS.
County property taxes.
Persons holding county money, §48-5-238.
Affidavit of illegality by person against whom execution issues, §48-5-239.
Applicability of article to persons borrowing county money, §48-5-240.
County tax collectors, §48-3-3.
Advertising as additional cost, §48-5-137.1.
Collection, §48-5-161.
Collection of executions on insolvent lists, §48-5-131.
Delinquent tax officials.
Issuance against generally, §§48-5-200 to 48-5-205.
Execution docket, §48-5-161.
Failure to collect taxes.
Transfer of executions to collector or surety held liable for failure, §48-5-157.
Immediate payment or bond.
Demanding where person or property may leave jurisdiction or property's value may be prejudiced, §48-3-3.1.
Inspection by grand jury, §48-5-161.
Issuance, §48-5-161.
Garnishments, §48-3-12.
Penalties for violations by collectors, §48-5-162.
Levy administration fee, §48-5-161.
Petition to reduce execution to judgment, §§48-3-13 to 48-3-17.
Powers as ex officio sheriffs, §48-5-137.

EXECUTIONS —Cont'd
County tax collectors —Cont'd
Reissuance before allowance of insolvent lists, §48-5-129.
Sales under sales tax executions, §§48-4-1 to 48-4-65.
Selection of property to be levied, §48-3-4.
County tax commissioners, §48-3-3.
Advertising as additional cost of execution, §48-5-137.1.
Collection, §48-5-161.
Collection of executions on insolvent lists, §48-5-131.
Delinquent tax officials.
Issuance of execution against generally, §§48-5-200 to 48-5-205.
Failure to collect taxes.
Transfer of executions to commissioner or surety held liable, §48-5-157.
Immediate payment or bond.
Demanding where person or property may leave jurisdiction or property's value may be prejudiced, §48-3-3.1.
Inspection by grand jury, §48-5-161.
Issuance.
Garnishments, §48-3-12.
Penalties for violations by commissioners, §48-5-162.
Levy administration fee, §48-5-161.
Petition to reduce execution to judgment, §§48-3-13 to 48-3-17.
Powers as ex officio sheriffs, §48-5-137.
Reissuance of execution before allowance of insolvent lists, §48-5-129.
Sales under tax executions, §§48-4-1 to 48-4-65.
Selection of property to be levied, §48-3-4.
County tax receivers.
Delinquent tax officials.
General provisions, §§48-5-200 to 48-5-205.
Delinquent tax officials.
Issuance of executions against generally, §§48-5-200 to 48-5-205.
Excise tax on marijuana and controlled substances.
Issuance of tax executions, §48-15-9.
Income taxes.
Collection, §48-7-82.

EXECUTIONS —Cont'd
Motor carriers road tax.
Levy to collect deficiencies and road taxes due, §48-9-41.
Municipal property taxes.
Paving streets, laying sewers or other improvements.
Collection of assessments, §48-5-358.
Sale of property for taxes due municipality, §48-5-359.
Privilege taxes.
Issuance against delinquent taxpayer, §48-13-26.
Property taxes.
Delinquent tax payments in certain counties, §48-5-24.
Public utility ad valorem taxation.
Failure to file returns, §48-5-512.
Failure to make return and pay tax.
Railroad equipment companies, §48-5-519.
Sales.
Delinquent tax officials.
Proceedings in selling property under execution, §48-5-202.
Sales and use taxes.
Issuance of fi. fa. for collection of delinquent taxes, §48-8-56.
Sales under tax executions.
General provisions, §§48-4-1 to 48-4-65.
Tax executions.
General provisions, §§48-3-1 to 48-3-44.
Power of commissioner to levy upon property and rights to property.
Neglect or refusal by taxpayer to pay, §48-2-55.
Privilege taxes.
Issuance against delinquent taxpayer, §48-13-26.
Sales under tax executions.
General provisions, §§48-4-1 to 48-4-65.
Transfer.
Tax executions, §48-3-19.
Interest, §48-3-20.

EXEMPTIONS FROM TAXATION.
Property taxes generally, §§48-5-40 to 48-5-56.

EXPORTS.
Property taxes.
Foreign merchandise in transit.
Acquisition of situs, §48-5-5.

EXPORTS —Cont'd
Property taxes —Cont'd
Foreign merchandise in transit —Cont'd
Defined, §48-5-2.
Freeport exemption.
Level 1, §§48-5-48.1, 48-5-48.2.
Timeliness of filings, §48-5-48.7.
Sales and use taxes.
Exemption, §48-8-3.
State products.
Prohibition of export tax, §48-13-2.
Taxation.
Prohibition of export tax on state products, §48-13-2.

EXTENDED STAY RENTALS.
Excise tax on rooms, lodging and accommodations.
Additional tax imposed by innkeeper, proceeds used for transportation purposes.
Exception for extended stay rentals, §48-13-50.3.

EYEGLASSES.
Corrective glasses.
Ad valorem taxation.
Constitutional exemption for certain disabled veterans, §48-5-478.
Sales and use taxes.
Exemption, §48-8-3.

F

FACILITATING BUSINESS RAPID RESPONSE TO STATE DECLARED DISASTERS ACT OF 2014, §48-2-100.

FAILURE TO APPEAR.
Tax executions.
Petition to reduce execution to judgment.
Failure of respondent to appear, §§48-3-16, 48-3-17.

FALSE SWEARING.
Motor fuel tax refund, §48-9-11.
Oaths.
Return of taxable property, §48-5-19.

FAMILY CAREGIVER SUPPORT.
Income taxes.
Credits for qualified caregiving expenses, §48-7-29.2.

FAMILY CAREGIVER SUPPORT —Cont'd
Respite care service.
Income taxes.
Credits for qualified caregiving expenses, §48-7-29.2.

FAMILY FARMS.
Conservation use property, §48-5-7.4.
Current use value, §48-5-2.
Family owned farm entities.
Defined, §48-5-41.1.
Property tax.
Exemption of qualified farm products and harvested agricultural products, §48-5-41.1.
Property taxes.
Family owned farm entities.
Exemption of qualified farm products and harvested agricultural products, §48-5-41.1.
Tax assessments, §48-5-7.1.

FARM LABOR CAMPS.
Property taxes.
Bona fide conservation use property.
Farm labor housing, use of property for, not considered breach of covenant, §48-5-7.4.
Forest land conservation use property.
Farm labor housing, use of property for, not considered breach of covenant, §48-5-7.7.

FARM USE VEHICLES.
Motor vehicle ad valorem taxation.
Self-propelled farm equipment as sub-class of property, §48-5-504.

FARM WEDDINGS.
Property taxes.
Bona fide conservation use property.
Farm weddings not considered breach of covenant, §48-5-7.4.

FEDERAL HOUSING TAX CREDIT.
Claiming state tax credit, §48-7-29.6.

FEDERAL RETAILERS EXCISE TAX.
Sales and use taxes.
Exemptions, §48-8-3.

FEES.
Accountants.
Regulatory fees imposed by counties or municipalities.
Civil action to enforce, §48-13-9.1.

FEES —Cont'd
Accountants —Cont'd
Regulatory fees imposed by counties or municipalities —Cont'd
Examples of businesses not subject to, §48-13-9.
Architects.
Regulatory fees imposed by counties or municipalities.
Civil action to enforce, §48-13-9.1.
Example of businesses not subject to, §48-13-9.
Chiropractors.
Regulatory fees imposed by counties or municipalities.
Civil action to enforce, §48-13-9.1.
Examples of businesses not subject to, §48-13-9.
Contractors.
Nonresident contractors.
Registration, §48-13-31.
Completed contract, §48-13-32.
County property taxes.
Service of papers, §48-5-307.
County tax collectors.
Levy administration fee, §48-5-161.
County tax commissioners.
Levy administration fee, §48-5-161.
Sale or transfer of motor vehicle license and plates, §48-5-180.
Engineers.
Regulatory fees imposed by counties or municipalities.
Civil action to enforce, §48-13-9.1.
Example of businesses not subject to, §48-13-9.
Income tax setoff debt collection.
Administrative office of the courts.
Administrative collection assistance fee imposed on debts submitted by, §48-7-163.
Marriage and family therapists.
Regulatory fees imposed by counties or municipalities.
Civil action to enforce, §48-13-9.1.
Examples of businesses not subject to, §48-13-9.
Motor carriers road tax.
Motor vehicle registration cards and identification markers, §48-9-38.
Motor fuel taxes.
Aviation gasoline dealers' licenses, §48-9-6.
Distributors' licenses, §48-9-4.
Nonresident contractors.
Registration, §48-13-31.
Completed contracts, §48-13-32.

FEES —Cont'd
Optometrists.
Regulatory fees imposed by counties or municipalities.
Civil action to enforce, §48-13-9.1.
Examples of businesses not subject to, §48-13-9.
Podiatry.
Regulatory fees imposed by counties or municipalities.
Civil action to enforce, §48-13-9.1.
Examples of businesses not subject to, §48-13-9.
Property taxes.
Service of papers by county boards of tax assessors, §48-5-307.
Real estate transfer tax.
Collection of tax by clerks of superior courts, §48-6-5.
Social workers.
Regulatory fees imposed by counties or municipalities.
Civil action to enforce, §48-13-9.1.
Examples of businesses not subject to, §48-13-9.
Tax amnesty program.
Cost of collection fee.
Imposition after amnesty period expires, §48-16-10.
Taxation.
Settlement or compromise of tax assessments.
Offer in settlement, application fee, §48-2-18.1.
Tobacco and alternative nicotine products taxes.
Dealer and distributor licenses, §48-11-4.
Licensing of promotional activity, §48-11-4.
Registration of vending machines, §48-11-4.

FELONIES.
Energy tax.
Fraudulent or otherwise false returns, §48-13-125.
Recordkeeping.
Failure to keep records or make available for inspection, §48-13-127.
Returns.
Failure to make or furnish, §48-13-126.
Willful failure to collect, §48-13-124.

FELONIES —Cont'd
Income taxes.
Evasion of income tax, §48-7-5.
Tax amnesty program.
Willful failure to make return or false return, §48-16-12.
Taxation.
Contraband.
Possession or transportation, §48-2-84.
Revenue stamps.
Unlawful activities, §48-2-84.
Tobacco and alternative nicotine products taxes.
Counterfeit cigarettes.
Sale or possession of contraband, §48-11-30.
Fraudulently making, uttering, forging or counterfeiting stamps, §48-11-28.
Selling unstamped cigarettes and cigars or nontax-paid cigars, §48-11-25.
Transportation of unstamped cigarettes and nontax-paid cigars.
Violations of sections, §48-11-23.

FERTILIZERS.
Property tax exemption, §48-5-43.

FETAL HEARTBEAT LAW (ABORTION).
Detectable human heartbeat.
Income tax.
Dependents.
Unborn child with detectable heartbeat qualifies as dependent minor, §48-7-26.

FIDUCIARIES.
Income taxes, §48-7-22.
Estimated income tax by individuals.
Applicability to fiduciaries, §48-7-114.
Real estate transfer tax.
Exemption of instrument transferring real estate to, §48-6-2.
Taxation.
Income taxes, §48-7-22.

FIERI FACIAS.
Real estate transfer tax.
Exemption of deed returning property sold at tax sale back to defendant, §48-6-2.
Sales and use taxes.
Delinquent taxes, §48-8-56.

FIERI FACIAS —Cont'd
Tax executions.
General provisions, §§48-3-1 to 48-3-44.
Sales under tax executions, §§48-4-1 to 48-4-65.

FILM.
Income tax credits.
Film, gaming, video or digital production in state, §48-7-40.26.
Postproduction expenditures, §48-7-40.26A.

FILM PRODUCERS OR PRODUCTION COMPANIES.
Sales and use tax exemption, §48-8-3.

FINANCIAL INSTITUTIONS.
Banks.
Defined, §48-6-90.
Business license tax.
Local business license tax for depository financial institutions, §48-6-93.
Depository financial institution.
Defined, §48-6-90.
Income taxes.
Local business license tax for depository financial institutions.
Credit against any state corporate income tax, §48-6-93.
License tax.
Local business license tax for depository financial institutions, §48-6-93.
Occupation tax.
Special state occupation tax on depository financial institutions, §48-6-95.
Office.
Defined, §48-6-93.
Taxation of depository institutions, §§48-6-90 to 48-6-98.
Business corporations.
Institutions subject to state and local taxation as, §48-6-90.1.
Business license tax.
Local business license tax, §48-6-93.
Consolidated returns.
Exemptions, credits and deductions.
Filing consolidated returns with parent organization, §48-6-96.
Credit for filing consolidated return with parent organization, §48-6-96.

FINANCIAL INSTITUTIONS —Cont'd
Taxation of depository institutions —Cont'd
Credits.
Local business license tax credit against state corporate income tax, §48-6-93.
Credit unions, §48-6-97.
Deductions for filing consolidated return with parent organization, §48-6-96.
Domestic international banking facilities, §48-6-91.
Equal taxation.
Legislative intent, §48-6-98.
Exemptions for filing consolidated return with parent company, §48-6-96.
Georgia gross receipts.
Defined, §48-6-95.
Gross receipts.
Defined, §48-6-95.
Local business license tax based on, §48-6-93.
Income tax credit.
Local business license tax credit against state corporate income tax, §48-6-93.
Interim special tax limitation for savings and loan associations, §48-6-98.
International banking facilities.
Exemption of domestic international banking facilities, §48-6-91.
Local business license tax, §48-6-93.
Moneyed capital competing with national banks, §48-6-94.
Occupation tax.
Special state occupation tax on, §48-6-95.
Office defined, §48-6-93.
Rate of tax.
Local business license tax.
Based on gross receipts, §48-6-93.
Savings and loan associations.
Interim special tax limitation, §48-6-98.
Subject to state and local taxation as business corporation, §48-6-90.1.
Tax delinquents.
Financial institution reporting on delinquent taxpayers, §48-2-63.

FINE ARTS.
Sales and use taxes, exemptions.
Admission charges for fine arts performance or exhibition in nonprofit facility or museum of cultural significance, §48-8-3.

FINES.
Energy tax.
Fraudulent or otherwise false returns, §48-13-125.
Recordkeeping.
Failure to keep records or make available for inspection, §48-13-127.
Returns.
Failure to make or furnish, §48-13-126.
Willful failure to collect, §48-13-124.
Excise tax on for-hire ground transportation.
Failure to collect and remit, §48-13-142.
Fireworks.
Taxation of consumer fireworks.
Fine or civil penalty in addition to tax due, §48-13-132.
Income taxes.
Current income tax payment.
Returns.
Annual and final returns.
Late returns, §48-7-106.
Statements of wages paid and taxes withheld.
Late statements, §48-7-105.
Disregard of rules and regulations in preparing return, §48-7-4.
Evasion of income tax, §48-7-5.
False or fraudulent returns, affidavits, claims, etc.
Assisting, counseling, etc., in filing, §48-7-3.
Mobile home ad valorem taxation.
Failure to attach and display decal, §48-5-493.
Motor carriers road tax.
Violation of requirement of motor vehicle registration cards and identification markers, §48-9-39.
Motor fuel taxes.
Violations of article, §48-9-17.
Sales and use taxes.
Advertising by dealers of assumption of payment of tax, §48-8-37.
Failure, neglect or refusal of dealers to collect, §48-8-7.

FINES —Cont'd
Sales and use taxes —Cont'd
False or fraudulent returns by dealers, §48-8-8.
Frivolous refund claim, §48-2-35.1.
Tax amnesty program.
Subpoena or order of commissioner.
Failure to obey, §48-16-12.
Willful failure to make return or false return, §48-16-12.
Taxation.
Contraband.
Possession or transportation, §48-2-84.
Delinquent taxpayers.
Financial institution reporting on delinquent taxpayers.
Failure to report, §48-2-63.
False information provided, §48-2-63.
Hotels and other lodging places.
Excise tax on rooms, lodging and accommodations.
False or fraudulent returns, §48-13-60.
Revenue stamps.
Unlawful activities, §48-2-84.
Tax return preparers.
Understatement of liability, §48-2-62.
Tobacco and alternative nicotine products taxes.
Dealers and distributors.
Delivery sales, violations, §48-11-4.2.
False entries on invoices or records, §48-11-27.

FINGERPRINTS.
Taxation.
Contractors.
Tax collections, §48-2-6.
Department of revenue.
Employees and prospective employees, §48-2-6.
State revenue commissioner.
Collection of taxes.
Contractors, §48-2-6.

FIREARM RANGES.
Occupation tax or regulatory fee levied by local government.
Civil action to enforce, §48-13-9.1.
Example of business subject to, §48-13-9.

FIREARMS DEALERS.
Occupation tax or regulatory fee levied by local government.
Civil action to enforce, §48-13-9.1.

FIREARMS DEALERS —Cont'd
Occupation tax or regulatory fee levied by local government —Cont'd
Example of business subject to, §48-13-9.

FIRE DEPARTMENTS.
Income taxes.
Insurance coverage provided for firefighters.
Deductibility of premium payments, §48-7-27.
Payments to firefighters not taxed, §48-7-27.
Insurance.
Coverage provided by department for firefighters.
Income tax deductions, §48-7-27.

FIREFIGHTERS.
Death or disability in line of duty.
Homestead exemption.
Exemption for unremarried surviving spouse of firefighter killed in line of duty, §48-5-48.4.
Disabled first responders.
Income taxes.
Deductions.
Indemnification payments, §48-7-27.
Motor vehicle ad valorem taxation.
Exemptions for disabled first responders (repealed 12/31/2029), §48-5C-1.
Homestead exemption.
Ad valorem taxes.
Exemption for unremarried surviving spouse of firefighter killed in line of duty, §48-5-48.4.
Income taxes.
Disabled first responders.
Deductions.
Indemnification payments, §48-7-27.
Killed or disabled in line of duty.
Homestead exemption.
Exemption for unremarried surviving spouse of firefighter killed in line of duty, §48-5-48.4.
Motor vehicle ad valorem taxation.
Disabled first responders, exemptions (repealed 12/31/2029), §48-5C-1.
Property taxes.
Homestead exemption for unremarried surviving spouse of firefighter killed in line of duty, §48-5-48.4.

FIREWORKS.
Consumer fireworks.
Taxation, §§48-13-130 to 48-13-133.
Sales.
Taxation of consumer fireworks.
Payment by seller, §48-13-131.
Sellers.
Defined, §48-13-130.
Taxation of consumer fireworks, §§48-13-130 to 48-13-133.
Consumer fireworks.
Defined, §48-13-130.
Definitions, §48-13-130.
Enforcement of provisions.
Fine or civil penalty in addition to tax due, §48-13-132.
Rulemaking to enforce, §48-13-133.
Fireworks trust fund, §48-13-131.
Imposition of excise tax on sale of consumer fireworks, §48-13-131.
Payment by seller, §48-13-131.
Proceeds.
Distribution and uses, §48-13-131.
Rate, §48-13-131.
Rulemaking to implement tax, §48-13-133.
Sellers.
Defined, §48-13-130.

FISCAL YEAR.
Income taxes.
Fiscal year defined, §48-7-1.
Payment of taxes.
Fiscal year basis.
Time and place of payment, §48-7-80.

FISHING.
Income taxes.
Estimated income tax by individuals.
Installment payments by fishermen, §48-7-116.
Time for filing by fishermen, §48-7-115.
Taxation.
Income taxes.
Estimated income tax by individuals.
Installment payments by fishermen, §48-7-116.
Time for filing by fishermen, §48-7-115.

FLOOR COVERINGS.
Sales and use taxes.
Fair market value, §48-8-39.

FOOD.
Income taxes.
Food and other necessaries credit, §§48-7A-2, 48-7A-3.
Joint sales and use tax.
Counties and municipalities, §48-8-82.
Sales and use taxes.
Airlines.
Exemption of sales of food to qualified airlines, §48-8-3.
Food banks.
Exemption for sale of food and food ingredients to qualified food bank, §48-8-3.
Joint taxes.
Counties and municipalities, §48-8-82.
Special county one percent sales and use tax, §48-8-110.1.
Take-out food exemption, §48-8-3.
Transit special purpose local option sales and use tax.
Applicability of tax to sale of food and food ingredients, §48-8-269.52.
Taxation.
Income taxes.
Food and other necessaries credit, §§48-7A-2, 48-7A-3.

FOOD BANKS.
Sales and use taxes, exemptions.
Sale of food and food ingredients to qualified food bank, §48-8-3.

FOOD SERVICE ESTABLISHMENTS.
Occupation tax or regulatory fee levied by local government.
Civil action to enforce, §48-13-9.1.
Example of business subject to, §48-13-9.

FOOD STAMPS.
Income taxes.
Food and other necessaries credit.
Applicability to food stamp recipients, §48-7A-3.
Sales and use taxes.
Exemptions, §48-8-3.

FOOTBALL GAMES.
Major sporting events.
Sales tax exemptions for ticket sales to certain nonrecurring events, §48-8-3.

FORECLOSURES.
Ad valorem tax foreclosures.
Bids.
Sale procedure, §48-4-81.
Death of interested party, §48-4-79.
Definitions, §48-4-77.
Findings of legislature, §48-4-75.
Identification of delinquent property, §48-4-78.
In rem tax foreclosure, §48-4-76.
Legislative findings, §48-4-75.
Local governments.
Judicial in rem tax foreclosures, §48-4-76.
Notice to interested party, §48-4-78.
Orders, §48-4-79.
Payment of redemption amount, §48-4-80.
Petition for tax foreclosure.
Contents, §48-4-78.
Filing, §48-4-78.
Form, §48-4-78.
Judicial hearing, §48-4-79.
Priority of claim, §48-4-79.
Redemption of property, §48-4-80.
Right of, §48-4-81.
Report of sale, §48-4-81.
Right of redemption, §48-4-81.
Sale procedures, §48-4-81.
Tax deed.
Execution, §48-4-81.
Forms.
Sales under tax executions.
Notice of foreclosure, §48-4-46.
Homestead tax deferral for individuals 62 or older.
Payment by holder of deed to secure debt of mortgagee.
Effect on right to foreclose, §48-5-81.
Notice.
Sales under tax executions.
Foreclosure of right to redeem.
Land bank authorities, §48-4-65.
Right to redeem, §48-4-45.
Form, §48-4-46.
Property taxes.
Homestead tax deferral for individuals 62 or older.
Payment by holder of deed to secure debt or mortgagee, §48-5-81.
Real estate transfer tax.
Exemption of deeds, §48-6-2.
Real property.
Ad valorem tax foreclosures, §§48-4-75 to 48-4-81.

FORECLOSURES —Cont'd
Tax executions.
Sales under tax executions.
Foreclosure of right to redeem, §48-4-45.
Form of notice, §48-4-46.
Land bank authorities, §§48-4-64, 48-4-65.
Notice, §48-4-45.
Persons entitled to notice, §48-4-45.
Service of notice, §48-4-46.
Tender of redemption price before action to cancel deed, §48-4-47.
Waiver of notice, §48-4-46.
Land banks.
Filing petition of foreclosure, §48-4-112.
Generally, §§48-4-100 to 48-4-112.
Transfer tax.
Exemption of deeds, §48-6-2.

FOREIGN CORPORATIONS.
Corporate net worth tax, §48-13-75.
General provisions, §§48-13-70 to 48-13-79.
Income taxes.
Taxation of corporations generally, §48-7-21.
Public utility ad valorem taxation.
Failure to file return and pay tax.
Revocation of permit to do business in state, §48-5-513.
Taxation.
Venue for actions for refunds, §48-2-35.
Venue for appeals from orders, rulings or findings of commissioner, §48-2-59.
Tax executions.
Executions against, §48-3-2.

FOREIGN LIMITED LIABILITY COMPANIES.
Income taxes.
Withholding tax on distributions, §48-7-129.

FOREST LAND CONSERVATION USE PROPERTY.
Conservation use assessment, §48-5-7.7.
Local assistance grants to make up revenue reduction, §§48-5A-1 to 48-5A-6.
Administration, §48-5A-4.
Costs.
Retention of funds for administrative costs, §48-5A-5.
Allotment, §48-5A-3.
Amount of grants, §48-5A-3.
Amount of revenue reduction.
Notification, §48-5A-3.
Appropriation of funds, §48-5A-2.
Calculation of revenue reduction, §48-5A-3.
Definitions, §48-5A-1.
Rules and regulations, §48-5A-4.
Value of local assistance grants.
Increases over time, §48-5A-6.
Table of values, rules and regulations, §48-5-271.

FOREST LAND PROTECTION ACT OF 2008, §48-5-7.7.
Local assistance grants.
Revenue reduction, §§48-5A-1 to 48-5A-6.

FOREST PRODUCT FAIRNESS ACT, §48-1-10.

FOREST RESOURCES.
Conservation use assessment, §48-5-7.7.
Local assistance grants to make up revenue reduction, §§48-5A-1 to 48-5A-6.
Table of values, rules and regulations, §48-5-271.
Income taxes.
Timber industry, tax relief for losses caused by Hurricane Michael, §48-7-40.36.

FOREST RESOURCES —Cont'd
State forestry commission.
Counties containing more than 20,000 acres of state-owned land not subject to taxation.
Grants by commission, §48-14-1.
Limitation, §48-14-4.
Grants.
Counties containing more than 20,000 acres of state-owned land not subject to taxation, §48-14-1.
Limitation, §48-14-4.

FORESTRY.
Conservation use property.
Conservation use assessment, §48-5-7.7.
Property taxes, §48-5-7.4.
Forest land conservation use property.
Conservation use assessment, §48-5-7.7.
Property taxes.
Conservation use property, §48-5-7.4.
Tax incentives for users of raw forest products.
Georgia forest product fairness act, §48-1-10.

FORFEITURES.
Contraband.
Tax seizures of contraband articles, §48-2-82.
Affidavit to test legality, §48-2-83.
Controlled substances.
Excise tax on marijuana and controlled substances.
Forfeiture law not superseded by chapter, §48-15-11.
County tax collectors.
Collecting or attempting to collect tax before filing digest with state revenue commissioner, §48-5-135.
Failure to collect interest and make reports and settlements.
Failure to make final settlement within period allowed, §48-5-153.
Failure to make final settlement, §48-5-150.
Violations in issuing executions, §48-5-162.
County tax commissioners.
Collection of taxes before filing digest with state revenue commissioner, §48-5-135.

FORFEITURES —Cont'd
County tax commissioners —Cont'd
Failure to collect interest and make reports and settlements.
Failure to make final settlement within period allowed, §48-5-153.
Failure to make final settlement, §48-5-150.
Incomplete or improper tax digests, §48-5-205.
Violations in issuing executions, §48-5-162.
County tax receivers.
Incomplete or improper digests, §48-5-205.
Income taxes.
Refund due by reason of change or correction of net income.
Failure to give notice, §48-7-82.
Public utility ad valorem taxation.
Failure to file return and pay tax.
Charter forfeiture, §48-5-513.
Taxation.
Contraband articles, §48-2-82.
Affidavit to test legality, §48-2-83.

FORGERY.
Tobacco and alternative nicotine products taxes.
Stamps, §48-11-28.

FORMS.
County property taxes.
Notice of changes made in taxpayer's return, §48-5-306.
Temporary collection of taxes pending approval or appeal of disapproval of digest, §48-5-310.
Elections.
Joint county and municipal sales and use tax.
Ballots.
Discontinuing imposition, §48-8-92.
Referendum ballots, §48-8-85.
Special county one percent sales and use tax.
Ballot on question of imposition, §48-8-111.
Foreclosures.
Sales under tax executions.
Notice of foreclosure, §48-4-46.
Homestead exemption notice to accompany real property tax bill, §48-5-56.

FORMS —Cont'd
Referendum.
Joint county and municipal sales and use tax.
Discontinuance of imposition.
Ballots, §48-8-92.
Imposition of tax.
Ballots, §48-8-85.
Sales under tax executions.
Purchases by counties.
Bill of sale for personal property, §48-4-22.
Taxation.
Amnesty program for property taxes, §48-16A-4.
Prior to January 1, 1980.
Continuation of use and effect, §48-1-3.
Water and sewer projects and costs.
Special elections.
Form of ballot, §48-8-202.

FORTUNETELLERS.
Occupation tax or regulatory fee levied by local government.
Civil action to enforce, §48-13-9.1.
Example of business subject to, §48-13-9.

FOSTER CARE.
Aging-out programs.
Income tax credits for contributions to foster child support organizations, §48-7-29.24.
Income tax credits.
Adoption of foster child, §48-7-29.15.
Foster child support organizations, contributions to, §48-7-29.24.

FRANCHISES.
Hotels and other lodging places.
Excise tax on rooms, lodging and accommodations.
Marketplace innkeepers.
Franchisor not considered marketplace innkeeper as to innkeepers, §48-13-50.4.
Special franchises.
Taxation generally, §§48-5-420 to 48-5-425.
Taxation.
Special franchises generally, §§48-5-420 to 48-5-425.

FRANCHISE TAX.
Ascertainment of valuations of special franchises, §48-5-423.
Special franchises exercised in more than one county, municipality or school district, §48-5-424.
Certified copy of authorization of franchise.
Effect of filing, §48-5-422.
Collection of tax, §48-5-423.
Special franchises exercised in more than one county, municipality or school district, §48-5-424.
Deductions from special franchise tax due county, municipality or school district, §48-5-425.
Enumeration of special franchises, §48-5-420.
Taxation of unenumerated franchises, §48-5-421.
Gross receipts tax.
Deductions from special franchise tax due, §48-5-425.
Income taxes.
Deductions from special franchise tax due, §48-5-425.
Levy of tax, §48-5-423.
Oaths.
Returns, §48-5-422.
Occupation tax or charge.
Deductions from special franchise tax due, §48-5-425.
Privilege taxes.
Deductions from special franchise tax due, §48-5-425.
Rate, §48-5-423.
Returns, §48-5-422.
Special franchises exercised in more than one county, municipality or school district, §48-5-424.
Special franchise.
Defined, §48-5-420.
Special franchises exercised in more than one county, municipality or school district.
Returns, §48-5-424.
Time.
Returns, §48-5-422.
Unenumerated franchises, §48-5-421.

FRANCHISE TAX —Cont'd
Valuations of special franchises.
Ascertainment, §48-5-423.
Special franchises exercised in more than one county, municipality or school district, §48-5-424.

FRATERNAL ORGANIZATIONS.
Income taxes.
Exempt organizations, §48-7-25.

FRAUD AND DECEIT.
Energy tax.
Fraudulent or otherwise false returns, §48-13-125.
Homestead exemption from ad valorem taxation.
Fraudulent claims, §48-5-51.
Income taxes.
False or fraudulent returns, affidavits, claims, etc.
Assisting, counseling, etc., in filing, §48-7-3.
Underpayment of tax, §48-7-86.
Motor carriers road tax.
Fraudulent reports, §48-9-41.
Motor fuel taxes.
False or fraudulent reports, §48-9-16.
Distributors, §48-9-13.
Property taxes.
Homestead exemption.
Fraudulent claims, §48-5-51.
Sales and use taxes.
False or fraudulent returns, §48-8-8.
Penalties in addition to other penalties, §48-8-66.
Taxation.
Exemption certificates.
Fraudulent use to evade taxes, §48-1-7.
False or fraudulent statements, §48-1-6.
Tobacco and alternative nicotine products taxes.
Deficiency due to fraudulent intent to evade tax, §48-11-12.
False or fraudulent reports, §48-11-26.
Stamps, §48-11-28.

FREEPORT LAW.
Level 1, §§48-5-48.1, 48-5-48.2.
Timeliness of filings, §48-5-48.7.
Level 2, §§48-5-48.5, 48-5-48.6.
Timeliness of filings, §48-5-48.7.

FREEPORT PROPERTY TAX EXEMPTION.
Level 1, §§48-5-48.1, 48-5-48.2.
Timeliness of filings, §48-5-48.7.

FREEPORT PROPERTY TAX EXEMPTION —Cont'd
Level 2, §§48-5-48.5, 48-5-48.6.
Timeliness of filings, §48-5-48.7.

FRONTAGE.
Highways, roads and streets, §48-5-357.

FUEL OILS.
Motor fuel tax law.
General provisions, §§48-9-1 to 48-9-19.
Sales and use tax on dyed fuel oils.
Suspension of collection of tax.
Ratification of executive order, §48-8-16.

FUELS.
Motor fuel tax law.
General provisions, §§48-9-1 to 48-9-19.
Sales and use taxes.
Railroads.
Freight and logistics projects.
Dedication of certain proceeds for freight and logistics projects, §48-8-78.
Taxation.
Motor fuel tax law.
General provisions, §§48-9-1 to 48-9-19.
Sales and use taxes.
Motor fuel, §48-8-3.1.
Credit or refund for sales tax where prepaid state or local tax imposed, §48-8-30.
Imposition of prepaid local tax, §48-8-82.
Special county one percent sales and use tax.
Applicability to sales of motor fuel, §48-8-110.1.

FUNDS.
Agriculture.
Georgia agricultural trust fund, §48-8-3.3.
County property taxes.
Reserve fund, §48-5-381.
Excise taxes.
For-hire ground transportation.
Georgia transit trust fund, §48-13-141.
Fireworks trust fund, §48-13-131.
Georgia agricultural trust fund, §48-8-3.3.

FUNDS —Cont'd
Georgia transit trust fund, §48-13-141.
Municipal property taxes.
Reserve fund, §48-5-381.
Property taxes.
Reserve funds of counties and municipalities, §48-5-381.
Transit trust fund, §48-13-141.

FUNERAL DIRECTORS AND EMBALMERS.
Regulatory fees imposed by counties or municipalities.
Civil action to enforce, §48-13-9.1.
Examples of businesses not subject to, §48-13-9.

FURNITURE.
Property tax exemption.
Household furniture and furnishings, §48-5-42.

G

GALLONAGE.
Motor fuel tax law.
Levy of excise tax, §48-9-3.

GAMING INDUSTRY PRODUCTION.
Income tax credits.
Film, gaming, video or digital production in state, §48-7-40.26.
Postproduction expenditures, §48-7-40.26A.

GARBAGE COLLECTORS.
Occupation tax or regulatory fees levied by local government.
Civil action to enforce, §48-13-9.1.
Example of business subject to, §48-13-9.

GARNISHMENT.
County tax collectors.
Tax executions.
Issuance, §48-3-12.
County tax commissioners.
Tax executions.
Issuance, §48-3-12.
Motor carriers' road tax.
Collection of deficiencies and road taxes due, §48-9-41.
Municipal property taxes.
Against persons holding property of defendant owing municipal taxes, §48-5-360.

GARNISHMENT —Cont'd
Service of process.
Municipal property taxes.
Issuance and service of summons of garnishment, §48-5-360.
Taxation.
Collection of tax, §48-2-55.
Tax executions.
Issuance by tax collectors and commissioners, §48-3-12.

GAS.
Heating residences.
Sales and use tax relief.
Natural gas sold and delivered for residential heating, §48-8-15.
Residential heating.
Sales and use tax relief.
Natural gas sold and delivered for residential heating, §48-8-15.
Sales and use taxes.
Exemptions, §48-8-3.
Tax relief.
Natural gas sold and delivered for residential heating, §48-8-15.

GASEOUS.
Excise tax on marijuana and controlled substances.
Applicability of tax to substance in gaseous form, §48-15-3.

GASOLINE.
Motor fuel tax law.
General provisions, §§48-9-1 to 48-9-19.
Taxation.
Motor fuel tax law.
General provisions, §§48-9-1 to 48-9-19.

GASOLINE TAX.
Motor fuel tax law.
General provisions, §§48-9-1 to 48-9-19.

GEORGIA ENTERTAINMENT INDUSTRY INVESTMENT ACT, §48-7-40.26.

GEORGIA ENTERTAINMENT INDUSTRY POSTPRODUCTION INVESTMENT ACT, §48-7-40.26A.

GEORGIA FOREST LAND PROTECTION ACT OF 2008, §48-5-7.7.
Local assistance grants.
Revenue reduction, §§48-5A-1 to 48-5A-6.

GEORGIA FOREST PRODUCT FAIRNESS ACT, §48-1-10.

GEORGIA HOUSING TAX CREDIT.
Claiming, §48-7-29.6.

GEORGIA LAND BANK ACT.
General provisions.
Sales under tax executions, §§48-4-100 to 48-4-112.
Short title, §48-4-100.

GEORGIA NATIONAL GUARD FOUNDATION.
Contributions, income tax refund, §48-7-62.

GEORGIA PUBLIC REVENUE CODE.
Short title, §48-1-1.

GEORGIA STATE SOCIETY OF THE DAUGHTERS OF THE AMERICAN REVOLUTION.
Sales and use taxes.
Exemption, §48-8-3.

GEORGIA TOURISM DEVELOPMENT ACT.
General provisions, §§48-8-270 to 48-8-277.
Short title, §48-8-270.

GEOTHERMAL HEAT PUMP SYSTEMS.
Income tax credits for clean energy property, §48-7-29.14.

GIFTS.
Conservation purposes.
Income tax credit.
Donation of real property to be used for conservation purposes, §48-7-29.12.
Income tax credit.
Donation of real property to be used for conservation purposes, §48-7-29.12.
Land conservation.
Income tax credit.
Donation of real property to be used for conservation purposes, §48-7-29.12.
Real estate transfer tax.
Deeds of gift exempt, §48-6-2.
Real property donated for conservation purposes.
Income tax credit, §48-7-29.12.
Tax avoidance.
Effect, §48-2-61.

GIVING THE GIFT OF LIFE ACT.
Income tax deductions for organ donation expenses, §48-7-27.

GOLD.
Sales and use taxes.
Exemption, §48-8-3.

GOOD FAITH.
Agriculture.
Property taxes.
Tangible real property devoted to bona fide agricultural purposes, §48-5-7.1.
Aviation gasoline dealers.
Motor fuels taxes.
Disciplinary action against licensees, §48-9-12.
Checks.
County property taxes.
Dishonor of checks in payment of taxes, §48-5-146.
Taxation.
Dishonor of check or money order, §48-2-32.
Executions.
Property taxes.
Delinquent tax payments in certain counties, §48-5-24.
Greenbelt law.
Ad valorem taxation of property.
Conservation use property, §48-5-7.4.
Tangible real property devoted to agricultural purposes, §48-5-7.1.
Income taxes.
Periods of limitation for assessment of taxes, §48-7-82.
Motor fuels taxes.
Aviation gasoline dealers.
Disciplinary action against licensees, §48-9-12.
Property taxes.
Agriculture.
Tangible real property devoted to bona fide agricultural purposes, §48-5-7.1.
County property taxes.
Receipt of checks in payment of taxes.
Dishonor, §48-5-146.
Executions.
Delinquent tax payments in certain counties, §48-5-24.
Greenbelt law.
Conservation use property, §48-5-7.4.

GOOD FAITH —Cont'd
Property taxes —Cont'd
Greenbelt law —Cont'd
Tangible real property devoted to agricultural purposes, §48-5-7.1.
Sales and use taxes.
Certificate that property purchased for resale, §48-8-38.
Imposition of tax.
Burden of proof on seller as to taxability, §48-8-30.
Taxation.
Checks.
Dishonor of check or money order, §48-2-32.
Tobacco and alternative nicotine products taxes.
Distributors.
Grounds for refusal to issue license, §48-11-4.

GOVERNOR.
Appointments.
State revenue commissioner, §48-2-2.
Georgia tourism development act.
Approved company.
Successor company, transfer of rights and obligations, §48-8-277.
General provisions, §§48-8-270 to 48-8-277.
Tourism attraction agreements.
Approval by governor, §48-8-275.
State revenue commissioner.
Appointment, §48-2-2.

GRACE PERIODS.
Income taxes.
Collection of taxes.
Grace period following notice and demand, §48-7-81.
Tax executions.
Petition to reduce execution to judgment.
Grace period before final judgment, §48-3-17.

GRAMS.
Controlled substances.
Excise tax.
Calculation of tax rates, §48-15-6.
Marijuana.
Excise tax.
Calculation of tax rates, §48-15-6.

GRAND JURY.
County property taxes.
County boards of equalization.
Complaints against members.
Investigation of complaints, §48-5-311.
County tax collectors.
Inspection of execution docket and cashbook, §48-5-161.
County tax commissioners.
Inspection of execution docket and cashbook, §48-5-161.

GRANDPARENTS.
County board of tax assessors.
Noneligibility of certain individuals.
Grandfather or grandfather by marriage, §48-5-290.

GRANTEES.
Foreclosures.
Tax executions.
Tender of redemption price before action to cancel tax deed, §48-4-47.
Tax executions.
Foreclosures.
Tender of redemption price before action to cancel tax deed, §48-4-47.
Sales under tax executions.
Ripening of tax deed by prescription, §48-4-48.

GRANTORS.
Greenbelt law.
Ad valorem taxation of property.
Conservation use property, §48-5-7.4.
Tangible real property devoted to agricultural purposes, §48-5-7.1.
Mortgages.
Tax executions.
Lists of security deeds or mortgages, §48-3-9.
Property taxes.
Bona fide conservation use property, §48-5-7.4.
Tangible property.
Assessment of agricultural property, §48-5-7.1.
Tax executions.
Mortgages.
Lists of security deeds or mortgages, §48-3-9.

GRANTS.
Counties.
Counties containing more than 20,000 acres of state-owned land not subject to taxation.
Grants from state forestry commission, §48-14-1.
Limitation, §48-14-4.
County tax digest.
Conditional approval of subsequent digests.
Withholding of state grants from counties, §48-5-346.
Forestland, §48-14-1.
Limitation, §48-14-4.
Land banks.
Funding sources, §48-4-110.

GREENBELT LAW.
Ad valorem taxation of property, §§48-5-7.1 to 48-5-7.6.
Agricultural purposes.
Tangible real property devoted to, §48-5-7.1.
Conservation use property, §48-5-7.4.
Current use value, §48-5-2.
Forest land conservation use property, §48-5-7.7.
Local assistance grants to make up revenue reduction, §§48-5A-1 to 48-5A-6.
Table of values.
Establishment, rules and regulations, §48-5-271.
Historic property.
Certification as rehabilitated historic property.
Preferential assessment, §48-5-7.2.
Landmark historic property, §48-5-7.3.
Timber.
Standing timber, §48-5-7.5.

GROSS RECEIPTS TAXES.
Occupation tax generally, §§48-13-2 to 48-13-29.

GROUND WATER.
Manufacturing facilities.
Shift from use of.
Tax credits, §48-7-40.11.
Shift from use of.
Tax credits for manufacturing facilities, §48-7-40.11.

GUANO.
Municipal property tax exemption, §48-5-355.

GUARDIANS.
Real estate transfer tax.
Exemption of deed of assent or distribution by, §48-6-2.

GYMS.
Occupation tax or regulatory fee levied by local government.
Civil action to enforce, §48-13-9.1.
Example of business subject to, §48-13-9.

H

HABITUAL OFFENDERS.
Tobacco and alternative nicotine products taxes.
Counterfeit cigarettes.
Enhanced penalties for sale or possession, §48-11-30.

HAND SANITIZER.
Business enterprise tax credits for PPE manufacturers, §48-7-40.1A.

HANDWRITING ANALYSTS.
Occupation tax or regulatory fee levied by local government.
Civil action to enforce, §48-13-9.1.
Example of business subject to, §48-13-9.

HEADQUARTERS.
Income tax credits, §48-7-40.18.

HEALTH CLUBS.
Occupation tax or regulatory fee levied by local government.
Civil action to enforce, §48-13-9.1.
Example of business subject to, §48-13-9.

HEALTH SAVINGS ACCOUNTS.
Income taxes.
Credit for qualified health insurance expenses, §48-7-29.13.
Premiums not included in taxable income, §48-7-27.

HEALTH SPAS.
Occupation tax or regulatory fee levied by local government.
Civil action to enforce, §48-13-9.1.
Example of business subject to, §48-13-9.

HEARING AIDS.
Sales and use taxes.
Exemptions, §48-8-3.

HEARINGS.
County property taxes.
Appeals from assessments by county board of tax assessors, §48-5-311.
Conditional approval of county tax digest, §48-5-348.
County boards of tax assessors.
Removal from office, §48-5-295.
Disapproval of county tax digest.
Appeal to department of revenue, §48-5-349.2.
Temporary collection of taxes pending approval or appeal of disapproval of digest, §48-5-310.
County tax collectors.
Removal or suspension for failing to account or defaulting, §48-5-155.
County tax commissioners.
Removal or suspension for failing to account or defaulting, §48-5-155.
Foreclosures.
Ad valorem taxes, §48-4-79.
Homestead tax deferral for individuals 62 or over.
Appeals to board of equalization, §48-5-74.
Income taxes.
Setoff debt collection.
Opportunity for hearing, §48-7-164.
Procedure generally, §§48-7-165, 48-7-165.1.
Occupation tax levies by counties or municipalities, §48-13-6.
Property taxes.
Ad valorem tax foreclosures, §48-4-79.
Certification as landmark historic property for preferential assessment.
Persons aggrieved or adversely affected by order or action, §48-5-7.3.
Certification as rehabilitated historic property for preferential assessment.
Persons aggrieved or adversely affected by order or action, §48-5-7.2.
Conditional approval of county tax digest, §48-5-348.
County boards of tax assessors.
Removal from office, §48-5-295.
Disapproval of county tax digest.
Appeal to department of revenue, §48-5-349.2.

HEARINGS —Cont'd
Property taxes —Cont'd
Homestead exemptions.
Opt-out by local governing authority.
Statewide exemption (contingently effective 1/1/2025), §48-5-44.2.
Temporary collection of taxes pending approval or appeal of disapproval of digest, §48-5-310.
Sales and use taxes.
Revocation or suspension of certificate of registration, §48-8-62.
Setoff debt collection.
Income tax refunds.
Opportunity for hearings, §48-7-164.
Procedure, §§48-7-165, 48-7-165.1.
Taxation.
Judicial and investigative powers of commissioner, §48-2-8.
Refunds, §48-2-35.
Tobacco and alternative nicotine products taxes.
Acquisition of cigars and cigarettes for which tax not paid.
Assessment for failure to file or filing incorrect report, §48-11-14.
Initiation by commissioner, §48-11-18.
Procedure where aggrieved by action of commissioner, §48-11-18.
Sale of unstamped cigarettes or nontax-paid cigars, §48-11-9.
Suspension, refusal of renewal and revocation of licenses, §48-11-6.

HEARTBEAT LAW (ABORTION).
Detectable human heartbeat.
Income tax.
Dependents.
Unborn child with detectable heartbeat qualifies as dependent minor, §48-7-26.

HEATING FUELS.
Sales and use tax relief.
Gas and propane sold and delivered for residential heating, §48-8-15.

HEAVY EQUIPMENT.
Ad valorem taxation, §§48-5-500 to 48-5-509.
Applicability of provisions, §48-5-506.
Construction equipment owned by nonresidents, §§48-5-500, 48-5-501.
Definitions, §48-5-500.
Equipment subject to taxation, §48-5-501.

HEAVY EQUIPMENT —Cont'd
Ad valorem taxation —Cont'd
Contesting assessment, §48-5-508.
Dealer purchases for resale, §48-5-507.
Dealers, applicability of provisions, §48-5-506.
Dealer's inventory.
Rental of heavy equipment, effect, §48-5-507.1.
Definitions, §§48-5-500, 48-5-505.
Generally, §48-5-507.
Notice of sales, §48-5-507.
Rental of heavy equipment.
Effect on dealer's inventory, §48-5-507.1.
Rules and regulations, §48-5-509.
Sales and use taxes.
Transit special purpose local option sales and use tax.
Exemptions from local tax.
Additional exemptions.
Fuel used by off-road heavy-duty equipment, off-road farm or agricultural equipment or locomotives, §48-8-269.52.

HIGH DEDUCTIBLE HEALTH PLANS.
Income taxes.
Credit for qualified health insurance expenses, §48-7-29.13.
Premiums not included in taxable income, §48-7-27.

HIGHER EDUCATION SAVINGS PLANS.
Withdrawals.
Income tax consequences, §48-7-30.

HIGH SCHOOL DIPLOMA OR HIGH SCHOOL EQUIVALENCY (HSE).
County boards of tax assessors.
Qualifications of members, §48-5-291.
County tax receivers, collectors, etc.
Qualifications, §48-5-210.

HIGH-TECHNOLOGY DATA CENTERS.
Sales and use tax exemptions.
Equipment incorporated or used in centers, §48-8-3.

HIGHWAYS, ROADS AND STREETS.
Appropriations.
County road construction and maintenance.
Distribution of funds appropriated to counties, §48-14-3.

HIGHWAYS, ROADS AND STREETS —Cont'd
Construction contracts.
Congestion mitigation.
Projects.
Public-private transportation projects.
Not considered special franchises, §48-5-421.1.
Property tax exemption for certain, §48-5-41.
Contractors.
Nonresident contractors.
General provisions, §§48-13-30 to 48-13-38.
County road systems.
Distribution of funds appropriated to for road construction and maintenance, §48-14-3.
Franchise tax.
General provisions, §§48-5-420 to 48-5-425.
Motor carriers' road tax.
General provisions, §§48-9-30 to 48-9-46.
Motor fuel taxes.
General provisions, §§48-9-1 to 48-9-19.
Municipal property taxes.
Executions for collection of assessments for paving streets, §48-5-358.
Frontage owned by state or subdivision abutting streets and sidewalks.
Treated as owned by individuals for purposes of assessment for improvements, §48-5-357.
Nonresident contractors.
General provisions, §§48-13-30 to 48-13-38.
Property taxes.
Executions for collection of assessments for paving streets, §48-5-358.
Franchise tax.
General provisions, §§48-5-420 to 48-5-425.
Municipal property taxes.
Frontage owned by state or subdivisions abutting.
Treated as owned by individuals for purposes of assessment for improvements, §48-5-357.
Road tax on motor carriers.
General provisions, §§48-9-30 to 48-9-46.

HIGHWAYS, ROADS AND STREETS —Cont'd
Special franchises.
Taxation generally, §§48-5-420 to 48-5-425.
Taxation.
Franchise tax.
General provisions, §§48-5-420 to 48-5-425.
Motor fuel taxes.
General provisions, §§48-9-1 to 48-9-19.
Road tax on motor carriers.
General provisions, §§48-9-30 to 48-9-46.
Telephone and telegraph companies.
Lines and facilities.
Construction, maintenance, operation along roads and highways.
Power, approval of local government, §48-5-1.
Toll roads.
Public utility ad valorem taxation.
General provisions, §§48-5-510 to 48-5-524.
Special franchises.
Taxation generally, §§48-5-420 to 48-5-425.

HISTORIC AREAS.
Income tax credits.
Rehabilitation of historic homes and structures, §48-7-29.8.
Property taxes.
Fair market value, §48-5-2.
Landmark historic property.
Assessment.
Preferential assessment, §48-5-7.3.
Assessment of tangible property, §48-5-7.
Defined, §48-5-7.3.
Fair market value, §48-5-2.
Rehabilitated historic property.
Assessment of tangible property, §48-5-7.
Certification for purposes of preferential assessment, §48-5-7.2.
Defined, §48-5-7.2.
Fair market value, §48-5-2.

HISTORIC PRESERVATION.
Income tax credits.
Rehabilitation of historic homes and structures, §48-7-29.8.

HISTORIC PRESERVATION —Cont'd
Tourism.
Georgia tourism development act, §§48-8-270 to 48-8-277.

HISTORIC PROPERTIES.
Income tax credits.
Rehabilitation of historic homes and structures, §48-7-29.8.

HOLIDAYS AND OBSERVANCES.
Taxation.
Date for payment or filing on holiday, §48-2-39.

HOLY BIBLE.
Sales and use taxes.
Exemption, §48-8-3.

HOME HEALTH AGENCIES.
Income taxes.
Credits for qualified caregiving expenses, §48-7-29.2.

HOMEMAKER SERVICES.
Income taxes.
Credits for qualified caregiving expenses, §48-7-29.2.

HOMES FOR THE AGED.
Property tax exemption of nonprofit homes, §48-5-41.

HOMES FOR THE MENTALLY HANDICAPPED.
Property tax exemption for nonprofit homes, §48-5-41.

HOMESTEAD EXEMPTIONS.
Property taxes, §48-5-44.
Administrators, executors or trustees.
Application of exemptions to properties held by, §48-5-54.
Affidavits.
Applications of individuals 65 or older, §48-5-47.
Unremarried surviving spouse of peace officer or firefighter killed in line of duty, §48-5-48.4.
Aged persons.
Applications of individuals 65 or older, §§48-5-47, 48-5-47.1, 48-5-48.3.
Exemption from educational taxes for individuals 62 or older, §48-5-52.
Falsification of information, §48-5-53.
Annual incomes not exceeding $30,000, §48-5-47.1.
Procedure, §48-5-46.

HOMESTEAD EXEMPTIONS —Cont'd
Property taxes —Cont'd
Annual incomes not exceeding $30,000 —Cont'd
Solicitation of fee to file for another, §48-5-45.
Appeal from determination of eligibility, §48-5-49.
Application, §48-5-45.
Individuals 65 or older, §§48-5-47, 48-5-47.1, 48-5-48.3.
Approval of correctness of value, exemption and difference, §48-5-50.
Claim and return of constitutional or local law exemptions, §48-5-51.
Defined, §48-5-40.
Determination of eligibility, §48-5-49.
Disabled veterans.
Defined, §48-5-48.
Homestead extension by qualified disabled veterans, §48-5-48.
Educational taxes.
Exemption for individuals 62 or older, §48-5-52.
Falsification of information, §48-5-53.
Fraudulent claims, §48-5-51.
Limits, §48-5-44.
Multiple titleholders.
Application of exemptions to properties with, §48-5-54.
Municipal corporation located in multiple counties.
Residents, exemptions for, §48-5-44.1.
Notice of exemption to accompany bill for real property taxes, §48-5-56.
Oath, §48-5-46.
Rural housing program.
Effect of participation, §48-5-44.
Solicitation of fee to file application for another, §48-5-45.
Statewide exemption (contingently effective 1/1/2025), §48-5-44.2.
Surviving spouses of peace officers or firefighters killed in line of duty.
Exemption for unremarried surviving spouses, §48-5-48.4.
Surviving spouses of US servicemembers.
Exemption from ad valorem taxation for unremarried surviving spouses, §48-5-52.1.
Value credited with exemption, §48-5-50.

HOMESTEAD EXEMPTIONS —Cont'd
Property taxes —Cont'd
Veterans.
Homestead extension by qualified disabled veterans, §48-5-48.

HOMESTEAD OPTION SALES AND USE TAX ACT.
Equalized homestead option sales tax act of 2015.
Generally, §§48-8-109.1 to 48-8-109.10.
Short title, §48-8-109.1.
Revised homestead option sales tax act of 2020.
Generally, §§48-8-109.15 to 48-8-109.24.
Short title, §48-8-109.15.
Short title, §48-8-100.

HOMESTEAD TAX DEFERRAL FOR AGED PERSONS.
General provisions, §§48-5-70 to 48-5-84.

HORSES.
Property taxes.
Bona fide conservation use property.
Equestrian events not considered breach of covenant, §48-5-7.4.

HOSPITAL FINANCING AUTHORITY.
Sales and use taxes.
Exemptions, §48-8-3.

HOSPITALS.
Income taxes.
Exemption of cooperative hospital service organizations, §48-7-25.
Rural hospital organizations providing services to underserved areas.
Qualified rural hospital organization expenses, tax credit.
Contributions for expenses, credit for individuals, §48-7-29.20 (Repealed 12/31/2029).
Nonprofit hospitals.
Property tax exemption, §48-5-41.
Property tax exemption.
Nonprofit hospitals, §48-5-41.
Rural hospital organizations providing services to underserved areas.
Qualified rural hospital organization expenses, income tax credit.
Contributions for expenses, credit for individuals, §48-7-29.20 (Repealed 12/31/2029).

HOSPITALS —Cont'd
Sales and use taxes.
Exemption of nonprofit general or mental hospital, §48-8-3.
Taxation.
Nonprofit hospitals.
Property tax exemption, §48-5-41.

HOTEL/MOTEL TAX.
Excise tax on rooms, lodging and accommodations, §§48-13-50 to 48-13-63.

HOTELS AND OTHER LODGING PLACES.
Excise tax on rooms, lodging and accommodations, §§48-13-50 to 48-13-63.
Additional nightly tax imposed by innkeeper, proceeds used for transportation purposes, §48-13-50.3.
Amount, §48-13-50.3.
Collection and remission by innkeeper, §48-13-50.3.
Definitions, §48-13-50.3.
Exclusive use of proceeds for transportation purposes, §48-13-50.3.
Consequence of failure to appropriate proceeds, §48-13-50.3.
Exemptions, §48-13-50.3.
Imposition, §48-13-50.3.
Rulemaking to implement, §48-13-50.3.
Applicability of tax provisions, §48-13-57.
Assessments, §48-13-53.5.
Books and records, §48-13-53.4.
Charges for promotion of tourism, conventions and trade shows.
Levies on public accommodations, §48-13-51.
Charitable trusts or functionally related businesses operating facilities.
License fees, business or occupation tax, §48-13-55.
Limitation on or applicability of tax levies, §48-13-55.
Collection of tax.
Deduction of percentage collected to person reporting and paying, §48-13-52.
Failure to collect, §48-13-59.

HOTELS AND OTHER LODGING PLACES —Cont'd
Excise tax on rooms, lodging and accommodations —Cont'd
Collection of tax —Cont'd
Marketplace innkeepers.
Responsibilities as to tax, §48-13-50.4.
Procedures, §48-13-53.
Correctness of assessments, §48-13-53.5.
Creation of special districts, §48-13-50.1.
Criminal penalties.
Failure to pay, §48-13-58.1.
Deductions.
Percentage of tax collected as deduction to person reporting and paying, §48-13-52.
Definitions, §48-13-50.2.
Delinquent taxes, §48-13-53.6.
Department of natural resources.
Lodges operated under jurisdiction.
Collection and remittance, §48-13-54.
Estimated tax liability.
Defined, §48-13-53.2.
Extensions, §48-13-53.3.
Failure to pay, §48-13-58.
Criminal penalties, §48-13-58.1.
False or fraudulent returns, §48-13-60.
Hotel motel tax performance review board.
Creation and composition, §48-13-56.1.
Imposition of tax.
Procedures, §48-13-53.
Innkeepers selling business, §48-13-53.1.
Intent of general assembly, §48-13-50.
Levies on public accommodations, §48-13-51.
Lodges operated under jurisdiction of department of natural resources.
Collection and remittance of tax, §48-13-54.
Marketplace innkeepers.
Defined, §48-13-50.2.
Franchisor not considered marketplace innkeeper as to innkeepers, §48-13-50.4.
Responsibilities as to tax, §48-13-50.4.
Payment of tax.
Procedures, §48-13-53.

HOTELS AND OTHER LODGING PLACES —Cont'd
Excise tax on rooms, lodging and accommodations —Cont'd
Penalties.
Failure to collect, §48-13-59.
Failure to pay, §48-13-58.
Procedure for imposition, payment, collection, etc., §48-13-53.
Purchaser of business.
Personal liability, §48-13-53.1.
Purposes, §48-13-50.
Rate of tax, §48-13-51.
Records and books, §48-13-53.4.
Failure to keep, §48-13-62.
Remission of taxes due, §48-13-53.2.
Marketplace innkeepers.
Responsibilities as to tax, §48-13-50.4.
Reports to department of community affairs, §48-13-56.
Returns.
Extension of time, §48-13-53.3.
Failure to furnish, §48-13-61.
Failure to pay, §48-13-58.
False or fraudulent returns.
Punishment, §48-13-60.
Forms, §48-13-53.2.
Selling of business, §48-13-53.1.
Special districts.
Creation, §48-13-50.1.
Tax provisions applicable, §48-13-57.
Unpaid taxes, §48-13-53.6.
Violations, §48-13-63.
Hotel/motel tax.
Excise tax on rooms, lodging and accommodations, §§48-13-50 to 48-13-63.
Hotel motel tax performance review board.
Creation and composition, §48-13-56.1.
Occupation tax or regulatory fee levied by local government.
Civil action to enforce, §48-13-9.1.
Example of business subject to, §48-13-9.
Reports.
Excise tax on rooms, lodgings or accommodations.
Report to department of community affairs, §48-13-56.
Sales and use taxes.
General provisions, §§48-8-1 to 48-8-78.

HOTELS AND OTHER LODGING PLACES —Cont'd
Taxation.
Hotel/motel tax.
Excise tax on rooms, lodging and accommodations, §§48-13-50 to 48-13-63.
Tourism.
Excise tax on rooms, lodging and accommodations.
Charges for promotion of tourism, conventions and trade shows.
Levies on public accommodations, §48-13-51.
Georgia tourism development act, §§48-8-270 to 48-8-277.

HOUSING.
Sales and use taxes.
Exemptions, §48-8-3.

HOUSING AND FINANCE AUTHORITY.
Sales and use taxes.
Exemptions, §48-8-3.

HOUSING TAX CREDIT.
Claiming, §48-7-29.6.

HUMAN SERVICES.
Department of human services.
Income taxes.
Setoff debt collection.
General provisions, §§48-7-160 to 48-7-170.
Setoff debt collection.
Income tax refunds.
Generally, §§48-7-160 to 48-7-170.

HUNGER RELIEF.
Sales and use taxes.
Exemptions for food and beverages donated for hunger relief, §48-8-3.

HURRICANES.
Income taxes.
Hurricane Michael disaster relief for agricultural losses.
Taxable income, §48-7-27.
Timber industry, relief for losses caused by Hurricane Michael, §48-7-40.36.

HUSBAND AND WIFE.
Real estate transfer tax.
Exemptions of transfers in connection with divorce case, §48-6-2.

HYDROGEN VEHICLES.
Income tax credit for purchase of alternative fuel heavy and medium duty vehicles, §§48-7-29.18, 48-7-29.19.
Motor fuel taxes.
Taxation of fuels not sold or measured by gallon, §48-9-3.

HYPNOTISTS.
Occupation tax or regulatory fee levied by local government.
Civil action to enforce, §48-13-9.1.
Example of business subject to, §48-13-9.

I

IDENTIFICATION CARDS.
Motor fuel taxes.
Trucks, tanks or vessels transporting motor fuels, §48-9-9.

ILLEGAL COLLECTION OF TAX.
County and municipal taxes and license fees, §48-5-380.

IMMEDIATE PRECURSOR.
Drug schedules.
Controlled substance defined, §48-15-2.

IMMIGRATION.
Income tax deduction as business expense.
Wages or remuneration paid individuals.
Disallowed unless individual authorized employee, §48-7-21.1.

IMPORTS.
Property taxes.
Foreign merchandise in transit.
Acquisition of situs, §48-5-5.
Defined, §48-5-2.
Freeport exemption.
Level 1, §§48-5-48.1, 48-5-48.2.
Timeliness of filings, §48-5-48.7.
Sales and use taxes.
Certificate of registration by importing dealers, §48-8-61.
Invoices not reflecting true or actual cost price, §48-8-52.
Payment of tax on, §48-8-34.

IMPROVEMENTS.
Municipal property taxes.
Executions for collection of assessments, §48-5-358.

IMPROVEMENTS —Cont'd
Municipal property taxes —Cont'd
Street or sidewalk improvements.
Frontage owned by state or subdivisions abutting streets or sidewalks.
Treated as owned by individuals for assessment, §48-5-357.

INCOME TAXES, §§48-7-1 to 48-7-170.
Abandonment.
Refund for overpayment of withheld taxes, §48-7-112.
Accessibility features retrofitting.
Credits, §48-7-29.1.
Accounting.
Annual accounting periods, §48-7-33.
Employers required to deduct and withhold taxes.
Special accounting for employers failure, §48-7-109.1.
Achieving a better life experience (ABLE) accounts.
Withdrawals not included in taxable income, §48-7-27.
Actions.
Collection of tax out of assets of dissolved corporation, §48-7-83.
Restraint of assessment or collection, §48-7-84.
Activities distorting true net income, §48-7-58.
Administrative procedure.
Setoff debt collection.
Applicability to hearing procedure of act, §48-7-165.
Admissions.
Employers required to deduct and withhold taxes.
Voluntary compliance not admission of doing business in state, §48-7-110.
Advanced practice registered nurse students.
Credits.
Preceptorship rotations, nursing and medical, §48-7-29.22 (Repealed 12/31/2026).
Affidavits.
Alternative fuel heavy and medium duty vehicles, credit for purchase, §48-7-29.19.
False or fraudulent affidavits.
Assisting, counseling, etc., in filing, §48-7-3.

INCOME TAXES —Cont'd
Agricultural or horticultural organizations.
Exempt organizations, §48-7-25.
Airlines.
Allocation and apportionment of income, §48-7-31.
Alternative fuel heavy and medium duty vehicles, credit for purchase, §§48-7-29.18, 48-7-29.19.
Amateur sports associations.
Exempt organizations, §48-7-25.
Appeals.
Setoff debt collection, §§48-7-165, 48-7-165.1.
Armed forces members dying on active duty.
Taxes due from, §48-7-37.
Armed forces members' returns.
Extensions for filing, §48-7-56.
Tolling of time limits for filing, §48-7-36.
Assessments.
Abatement of overassessment.
Employer required to deduct and withhold tax, §48-7-113.
Change or correction of net income.
Additional tax due, §48-7-82.
Employer's liability.
Employers required to withhold and deduct taxes, §48-7-108.
Interest on taxes not timely paid, §48-7-81.
Periods of limitation, §48-7-82.
Protests of proposed assessment.
Employers required to deduct and withhold taxes, §48-7-108.
Restraining assessments.
No action for purposes of under chapter, §48-7-84.
Assignees.
Operating property or business of corporation.
Returns, §48-7-51.
Audit of state returns.
Examination of federal income tax returns, §48-7-59.
Bankruptcy.
Trustees operating property or business of corporation.
Returns, §48-7-51.
Business enterprise tax credits.
Existing manufacturing facilities.
Calculating credit, §48-7-40.25.
Job tax credit.
Conditions for taking, §48-7-40.24.

INCOME TAXES —Cont'd
Business enterprise tax credits —Cont'd
Labor force expansion in less developed areas, §§48-7-40, 48-7-40.1.
Calculation of new full-time jobs, §48-7-40.14.
Counting new jobs on calendar year basis, one time election, §48-7-40.23.
Medical equipment and supplies manufacturers, additional credit, §48-7-40.1B.
Pharmaceutical and medicine manufacturers, additional credit, §48-7-40.1B.
PPE manufacturers, additional credit, §48-7-40.1A.
Port traffic increases, §48-7-40.15.
Additional job tax credit, §48-7-40.15A.
Business expense deduction.
Wages and remuneration for labor services.
Disallowed unless individual receiving compensation authorized employee, §48-7-21.1.
Caregiving expenses.
Credits.
Qualified caregiving expenses, §48-7-29.2.
Cemetery companies.
Exempt organizations, §48-7-25.
Chambers of commerce.
Exempt organizations, §48-7-25.
Change or correction of net income, §48-7-82.
Partnership returns, §48-7-53.
Repayment of income taxed in prior year, §48-7-28.1.
Charitable remainder trust.
Exempt organizations, §48-7-25.
Charities.
Exempt organizations, §48-7-25.
Partnerships.
Disallowance of charitable contributions, §48-7-23.
Checks.
Refund checks for overpayments of withheld taxes, §48-7-112.
Child and dependent care.
Credit against tax imposed, §48-7-29.10.
Employer provided child care, credit, §48-7-40.6.

INCOME TAXES —Cont'd
Cigarettes.
Credits for manufacturers who export to foreign countries, §48-7-40.20.
Civic leagues or organizations.
Exempt organizations, §48-7-25.
Claims.
False or fraudulent claims.
Assisting, counseling, etc., in filing, §48-7-3.
Refunds for overpayment of withheld taxes.
Employee refund, §48-7-112.
Employer refunds, §48-7-113.
Classified subcontractors.
Deduction for payments to, §48-7-38.
Clean energy property.
Tax credit, §48-7-29.14.
Clubs.
Exempt organizations, §48-7-25.
Collection of taxes.
Change or correction in net income.
Additional tax due, §48-7-82.
Current income tax payment, §§48-7-100 to 48-7-129.
Dissolved corporations.
Action for collection out of assets, §48-7-83.
Execution, §48-7-82.
Failure to supply information or exhibit books or records for purposes of, §48-7-2.
Interest on taxes not timely paid, §48-7-81.
Restraining collection.
No action for purposes of, §48-7-84.
Computation.
Accounting periods.
Annual accounting periods for computing net income, §48-7-33.
Distortion of true net income, §48-7-58.
Estates or trusts.
Net income, §48-7-22.
Failure to supply information or exhibit books or records for purposes of, §48-7-2.
Individual tax rate tables, §48-7-20.
Partnerships.
Net income, §48-7-23.
Railroad and public service corporation net income.
Business within and outside state, §48-7-32.

INCOME TAXES —Cont'd
Computation —Cont'd
Taxable net income, §48-7-27.
Interest expenses and costs from transactions with related members, §48-7-28.3.
Real estate investment trusts.
Disallowance of expenses paid to, §48-7-28.4.
Confidentiality of information, §48-7-60.
Inapplicability of code section to income taxation, §48-2-15.
Setoff debt collection exemption, §48-7-170.
Unlawful divulging, §48-7-61.
Contractors.
Classified subcontractors.
Deduction for payments to, §48-7-38.
Cooperative hospital service organizations.
Exempt organizations, §48-7-25.
Corporate net worth tax.
Combining net worth.
Tax return with state income tax return, §48-13-77.
Corporations, §48-7-21.
Allocation of income.
Application for permission to use other method, §48-7-35.
Applicability of tax imposed to entire net income, §48-7-31.
Apportionment of income, §48-7-31.
Agreement establishing allocation and apportionment.
Conditions for, §48-7-31.1.
Three factor formula, §48-7-31.
Assignment of credits, §48-7-42.
Combining net worth tax return with state income tax return, §48-13-77.
Credit card data processing and related services.
Apportionment of income, §48-7-31.
Deductions for payments to classified subcontractors, §48-7-38.
Dissolved corporations.
Action for collection of tax out of assets, §48-7-83.
Distorting taxable income, §48-7-58.
Electronic filing for nonindividual taxpayers, §48-7-54.
Estimated income tax, §48-7-117.
Credits, §48-7-121.
Defined, §48-7-117.

INCOME TAXES —Cont'd
Corporations —Cont'd
Estimated income tax —Cont'd
Failure to pay, §§48-7-120, 48-7-126.
Willful failure to pay, §48-7-127.
Installment payments, §48-7-119.
Interest on refunds, §48-7-121.
Overpayments.
Credit or refund, §48-7-121.
Underpayment, §48-7-120.
Exempt corporations and organizations, §48-7-25.
Gross receipts factor.
Apportionment of income, §48-7-31.
Investment income.
Not subject to apportionment, §48-7-31.
Payroll factor.
Apportionment of income, §48-7-31.
Property factor.
Apportionment of income, §48-7-31.
Railroad and public service corporations, §48-7-32.
Returns, §48-7-51.
Information concerning dividend payments, §48-7-52.
Returns based upon books of account, §48-7-34.
Sale, merger, acquisition or bankruptcy of taxpayer.
Successor transferees, eligibility for credits, §48-7-42.
Subchapter S corporation shareholders.
Adjustment to federal adjusted gross income.
Nonrecognition of S corporations by another state, §48-7-27.
Counties as less developed areas.
Tax credits for business enterprises.
Expanding labor forces, §§48-7-40, 48-7-40.1.
Calculation of new full-time jobs, §48-7-40.14.
Credits.
Accounting periods, §48-7-33.
Alternative fuel heavy and medium duty vehicles, purchase, §§48-7-29.18, 48-7-29.19.
Assignment of corporate income tax credit, §48-7-42.
Business enterprises.
Existing manufacturing facilities.
Calculating credit, §48-7-40.25.
Job tax credit.
Conditions for taking, §48-7-40.24.

INCOME TAXES —Cont'd
Credits —Cont'd
Business enterprises —Cont'd
Labor force expansion in less developed areas, §§48-7-40, 48-7-40.1.
Calculation of new full-time jobs, §48-7-40.14.
Counting new jobs on calendar year basis, one time election, §48-7-40.23.
Medical equipment and supplies manufacturers, additional credit, §48-7-40.1B.
Pharmaceutical and medicine manufacturers, additional credit, §48-7-40.1B.
PPE manufacturers, additional credit, §48-7-40.1A.
Caregiving expenses, §48-7-29.2.
Child and dependent care, §48-7-29.10.
Child care provided by employer, §48-7-40.6.
Cigarettes.
Manufacturers who export to foreign countries, §48-7-40.20.
Clean energy property, §48-7-29.14.
Disaster assistance funds, §48-7-29.4.
Education.
Qualified donations, §48-7-29.21 (Repealed 12/31/2029).
Qualified expenses, §48-7-29.16.
Teacher recruitment and retention program participants, §48-7-29.23.
Electric vehicle chargers purchased or leased by businesses, §48-7-40.16.
Employer social security credits, §48-7-28.2.
Energy and water conservation.
Qualified equipment reducing business and domestic energy or water usage, §48-7-40.29.
Estimated income tax by individuals, §48-7-121.
Failure by taxpayer to claim or list credits.
No interest paid on refunds due to, §48-2-35.
Film, gaming, video or digital production in state, §48-7-40.26.
Postproduction expenditures, §48-7-40.26A.
Food and other necessaries, §§48-7A-2, 48-7A-3.
Claim against tax liability, §48-7A-3.

INCOME TAXES —Cont'd
Credits —Cont'd
Food and other necessaries —Cont'd
Dependent.
Defined, §48-7A-2.
Food stamp recipient.
Applicability, §48-7A-3.
Period for filing, §48-7A-3.
Persons entitled to claim credit, §48-7A-3.
Schedule, §48-7A-3.
Foster child, adoption of, §48-7-29.15.
Foster child support organizations, contributions to, §48-7-29.24.
Fractional parts of dollar disregarded, §48-7-123.
Headquarters, §48-7-40.18.
Health insurance expenses under high deductible health plan, §48-7-29.13.
Historic homes and structures, rehabilitation, §48-7-29.8.
Housing tax credit, §48-7-29.6.
Itemized deductions.
Eligible itemizers, §48-7-27.1.
Job credits.
Business enterprises expanding labor forces in less developed areas, §§48-7-40, 48-7-40.1.
Calculation of new full-time jobs, §48-7-40.14.
Conditions for taking, §48-7-40.24.
Counting new jobs on calendar year basis.
One time election, §48-7-40.23.
Existing manufacturing facilities.
Calculating credit, §48-7-40.25.
Port traffic increases, §§48-7-40.15, 48-7-40.15A.
Land conservation.
Donation of real property to be used for, §48-7-29.12.
Law enforcement foundations, contributions to, §48-7-29.25.
Leased or purchased vehicle used to transport employees (repealed 12/31/2029), §48-7-40.22.
Life insurance premiums for national guard and air national guard members, §48-7-29.9.
Low emission or zero emission vehicles, §48-7-40.16.
Manufacturing facilities.
Ground-water usage.
Shift from, §48-7-40.11.

INCOME TAXES —Cont'd
Credits —Cont'd
Manufacturing facilities —Cont'd
Rural counties.
Tier one counties, §48-7-40.2.
Tier two counties, §48-7-40.3.
Tier one counties, §48-7-40.2.
Optional tax credits, §48-7-40.7.
Tier two counties, §48-7-40.3.
Optional tax credits, §48-7-40.8.
Tier three counties, §48-7-40.4.
Optional tax credits, §48-7-40.9.
Tier four counties, §48-7-40.4.
Optional tax credits, §48-7-40.9.
Water conservation facilities, §48-7-40.10.
Monetary credit for state income tax, §48-7-29.7.
National guard and air national guard members.
Qualified life insurance premiums for guard members, §48-7-29.9.
New quality jobs, §48-7-40.17.
Parolees.
Full-time jobs for qualified parolees, eligibility of employer for credit, §48-7-40.31.
Port traffic increases, §48-7-40.15.
Additional job tax credit, §48-7-40.15A.
Preceptorship rotations, nursing and medical, §48-7-29.22 (Repealed 12/31/2026).
Qualified business expansion.
Existing business enterprises, §48-7-40.21.
Qualified caregiving expenses, §48-7-29.2.
Qualified investments, §§48-7-40.27, 48-7-40.30.
Limitations, §48-7-40.28.
Qualified life insurance premiums for national guard and air national guard members, §48-7-29.9.
Railroads.
Class III railroads, §48-7-40.34.
Repayment of income taxed in prior year, §48-7-28.1.
Research expenses, §48-7-40.12.
Resident individuals with business, investment property or employment in another state, §48-7-28.
Retraining programs provided by employer, §48-7-40.5.

INCOME TAXES —Cont'd
Credits —Cont'd
Retrofitting single-family homes with accessibility features, §48-7-29.1.
Revitalization zone tax credits (repealed 12/31/2029), §48-7-40.32.
Rural healthcare professionals.
Individual income tax credits, §48-7-29.26 (Repealed 12/31/2029).
Rural hospital organizations providing services to underserved areas.
Qualified rural hospital organization expenses, tax credit.
Contributions for expenses, credit for individuals, §48-7-29.20 (Repealed 12/31/2029).
Sale, merger, acquisition or bankruptcy of taxpayer.
Successor transferees, eligibility for credits, §48-7-42.
Single family residence.
Purchase of one eligible single-family residence, §48-7-29.17.
Tax benefits, §48-7-28.1.
Teachers.
Recruitment and retention program.
Participants in program, §48-7-29.23.
Telecommunications facilities.
Rural counties.
Tier one counties, §48-7-40.2.
Tier two counties, §48-7-40.3.
Tier one counties, §48-7-40.2.
Optional tax credits, §48-7-40.7.
Tier two counties, §48-7-40.3.
Optional tax credits, §48-7-40.8.
Tier three and four counties, §48-7-40.4.
Optional tax credits, §48-7-40.9.
Teleworking tax credit.
Employers allowed, §48-7-29.11.
Timber industry, relief for losses caused by Hurricane Michael, §48-7-40.36.
Withholding and other payments, §§48-7-20, 48-7-112.
Overpayments, §48-7-112.
Employer credits, §48-7-113.
Year in which paid or accrued or paid or incurred.
Taken for, §48-7-33.
Credit unions.
Exempt organizations, §48-7-25.

INCOME TAXES —Cont'd
Current income tax payment, §§48-7-100 to 48-7-129.
Abandonment of refund, §48-7-112.
Abatement of overassessment, §48-7-113.
Accounting for withheld taxes.
Special accounting when employer fails to deduct, withhold, etc., §48-7-109.1.
Failure to comply with notice of special accounting, §48-7-127.
Admission that employer doing business within state.
Employer's voluntary compliance with requirements not admission, §48-7-110.
Annual and final returns, §48-7-106.
Application of article of short taxable years, §48-7-125.
Assessable interest, §48-7-126.
Interest on refunds.
Estimated tax overpayment, §48-7-121.
Assessments.
Abatement of overassessment, §48-7-113.
Employer's liability, §48-7-108.
Penalties and interest, §48-7-126.
Protests, §48-7-108.
Attempt to evade or defeat tax, §48-7-127.
Check issued for refund.
Abandoned if not claimed in accordance with instructions, §48-7-112.
Failure to present for payment within time period, §48-7-112.
Collection at source.
Withholding, §48-7-101.
Collection of employer's liability, §48-7-108.
Corporations.
Estimated tax, §48-7-117.
Failure to pay, §48-7-126.
Willful failure, §48-7-127.
Installment payments, §48-7-119.
Credit allowance.
Disregard of fractional parts of dollar, §48-7-123.
Credit for amount deducted or withheld, §48-7-112.
Limitations, §48-7-112.
Overpayments, §48-7-112.
Credit of estimated tax payment, §48-7-121.

INCOME TAXES —Cont'd
Current income tax payment —Cont'd
Credits for overpayments.
Employers, §48-7-113.
Defeat of tax.
Attempts, §48-7-127.
Definitions, §48-7-100.
Estimated tax, §§48-7-114, 48-7-117.
Dependent exemption.
Withholding exemption allowance, §48-7-101.
Distributions.
Withholding tax, §48-7-129.
Employees' liability.
Payment of tax required to be deducted and withheld, §48-7-108.
Effect of employee's payment of tax not deducted and withheld, §48-7-109.
Special accounting for failure to deduct, withhold, etc., §48-7-109.1.
Resulting from employer's failure to withhold, §48-7-109.
Estimated tax.
Corporations, §48-7-117.
Failure to pay, §48-7-126.
Willful failure, §48-7-127.
Installment payments, §48-7-119.
Credit of payment, §48-7-121.
Defined, §48-7-114.
Failure to pay, §48-7-120.
Willful failure, §48-7-127.
Individuals, §48-7-114.
Installment payments, §48-7-116.
Time for filing, §48-7-115.
Underpayments, §48-7-120.
Willful failure to pay, §48-7-127.
Evasion of tax.
Attempts, §48-7-127.
Exemptions.
Estimated tax by individual, §48-7-114.
False certificate, §48-7-127.
Withholding allowance, §48-7-101.
Withholding exemptions certificates, §48-7-102.
Withholding rules and regulations, §48-7-102.1.
Withholding status, §48-7-102.
Failure to supply information, §48-7-127.
False exemption certificate, §48-7-127.

INCOME TAXES —Cont'd
Current income tax payment —Cont'd
Farmers.
Installment payments of estimated tax by individuals, §48-7-116.
Time for filing estimated tax by individuals, §48-7-115.
Fiduciaries.
Estimated tax by individuals, §48-7-114.
Fishermen.
Installment payments of estimated tax by individuals, §48-7-116.
Time for filing estimated tax by individuals, §48-7-115.
Fractional parts of dollar.
Disregarded in allowance of credits or refunds, §48-7-123.
Fraudulent withholding receipt, §48-7-126.
Incorrect withholdings or payments.
Period adjustments, §48-7-104.
Individuals.
Estimated tax, §§48-7-114 to 48-7-117.
Generally, §48-7-114.
Installment payments, §48-7-116.
Time for filing, §48-7-115.
Installment payments.
Estimated tax by corporations, §48-7-119.
Estimated tax by individuals, §48-7-116.
Interest.
Amount refunded as overpayments, §48-7-112.
Jeopardy returns, §48-7-103.
Jurisdiction for purposes of collecting amounts withheld.
Effect of employer's voluntary compliance with requirements, §48-7-110.
Marital exemption.
Withholding exemption allowance, §48-7-101.
Withholding status, §48-7-102.
Married persons.
Filing jointly.
Wages subject to withholding, §48-7-101.
Filing separate return.
Wages subject to withholding, §48-7-101.
Monthly returns, §48-7-103.

INCOME TAXES —Cont'd
Current income tax payment —Cont'd
Nondeductibility to employer of tax deducted and withheld, §48-7-122.
Notice of employer's delinquency in payment of tax, §48-7-108.
Violation of notice, §48-7-127.
Notice of failure to deduct and withhold.
Failure to comply with notice of special accounting, §48-7-127.
Notice to employer for failure to deduct, withhold, etc., §48-7-109.1.
Overpayments.
Estimated tax.
Credit or refund, §48-7-121.
Refunds, §48-7-112.
Employer refunds, §48-7-113.
Limitations, §48-7-112.
Penalties assessable, §48-7-126.
Period adjustments for incorrect withholdings or payments, §48-7-104.
Property sales and transfers.
Withholding, §48-7-128.
Protests of proposed assessment, §48-7-108.
Quarterly returns, §48-7-103.
Reciprocal arrangements for relief of taxpayers, §48-7-124.
Records of employers, §48-7-111.
Refunds.
Disregard of fractional parts of dollar, §48-7-123.
One-time refund for 2021 individual income taxpayers, §48-7-20.1.
One-time refund for 2022 individual income taxpayers, §48-7-20.2.
Overpayment, §48-7-112.
Employer refunds, §48-7-113.
Estimated tax, §48-7-121.
Limitations, §48-7-112.
Setoffs, §48-7-112.
Returns.
Annual and final returns, §48-7-106.
Assessable penalties and interest for failure to file, §48-7-126.
Employer's liability for amount on face of return, §48-7-108.
Estimated tax.
Individuals, §48-7-114.
Failure to file.
Willful failure, §48-7-127.
Filing, §48-7-107.

INCOME TAXES —Cont'd
Current income tax payment —Cont'd
Returns —Cont'd
Furnishing of required forms, §48-7-107.
Jeopardy returns, §48-7-103.
Monthly returns, §48-7-103.
Quarterly returns, §48-7-103.
Sale of business, §48-7-106.
Signatures.
Persons authorized to sign, §48-7-107.
Time.
Annual and final returns, §48-7-106.
Verification, §48-7-107.
Willful failure to file, §48-7-127.
Rules and regulations.
Withholding exemptions, §48-7-102.1.
Sale of business.
Return to be filed upon, §48-7-106.
Withholding unpaid withholding taxes from purchase prices, §48-7-106.
Setoffs of refunds, §48-7-112.
Short taxable years.
Application of article to, §48-7-125.
Filing estimated tax by individuals, §48-7-115.
Single exemption.
Withholding exemption allowance, §48-7-101.
Withholding status, §48-7-102.
Single persons.
Wages subject to withholding, §48-7-101.
Statement of wages paid and taxes withheld, §48-7-105.
Attachment of copies to return, §48-7-106.
Tax evasion.
Attempts to evade or defeat tax, §48-7-127.
Time.
Annual and final returns, §48-7-106.
Filing estimated tax by individuals, §48-7-115.
Statements of wages paid and taxes withheld, §48-7-105.
Underpayments.
Estimated tax, §48-7-120.
Withholding.
Approval of other plans, §48-7-101.

INCOME TAXES —Cont'd
Current income tax payment —Cont'd
Withholding —Cont'd
Assessable penalties and interest for failure to withhold, §48-7-126.
Credit, §48-7-112.
Distributions, §48-7-129.
From pension or annuity fund, §48-7-101.
Employees incurring no income tax liability, §48-7-101.
Employee's liability.
Resulting from employer's failure to withhold, §48-7-109.
Employer's liability, §48-7-108.
Effect of employee's payment of tax not deducted and withheld, §48-7-109.
Exemption allowance, §48-7-101.
Certificate, §48-7-102.
Rules and regulations, §48-7-102.1.
Failure to pay over withheld tax.
Willful failure, §48-7-127.
Failure to withhold tax.
Willful failure, §48-7-127.
False withholding receipts, §48-7-127.
Included and excluded wages, §48-7-101.
Incorrect withholdings of payments.
Period adjustments, §48-7-104.
Less than correct amount of tax withheld, §48-7-104.
More than correct amount of tax withheld, §48-7-104.
Nondeductibility to employer of tax deducted and withheld, §48-7-122.
Overpayment, §48-7-112.
Pension or annuity fund.
Distributions from, §48-7-101.
Personal property sales, §48-7-128.
Quarterly, monthly and jeopardy returns, §48-7-103.
Real property and related tangible personal property.
Sale or transfers, §48-7-128.
Real property sales, §48-7-128.
Receipts.
False withholding receipts or failure to furnish, §48-7-127.
Records of employers, §48-7-111.
Refunds.
Overpayments, §48-7-112.

INCOME TAXES —Cont'd
Current income tax payment —Cont'd
Withholding —Cont'd
Requirement, §48-7-101.
Retirement benefits of federal annuitants, §48-7-100.1.
Sale of business.
Unpaid withholding taxes from purchase prices, §48-7-106.
Sales of real property and related tangible personal property, §48-7-128.
Special accounting when employer fails to deduct, withhold, etc., §48-7-109.1.
Failure to comply with notice of special accounting, §48-7-127.
Statements of wages paid and taxes withheld, §48-7-105.
Attachment of copy to return, §48-7-106.
Tangible personal property sales, §48-7-128.
Unusual cases, §48-7-101.
Wages subject to, §48-7-101.
Willful failure to withhold, §48-7-127.
Zero exemption.
Withholding exemption status, §48-7-102.
Death of armed forces members on active duty.
Taxes due, §48-7-37.
Death of taxpayer during taxable year.
Computation of income and expenses, §48-7-33.
Decedents' estates.
Periods of limitation for assessment of taxes, §48-7-82.
Deductions.
Accounting periods, §48-7-33.
Business expenses.
Wages and remuneration for labor services.
Disallowed unless individual receiving compensation authorized employee, §48-7-21.1.
Classified subcontractors.
Payments to, §48-7-38.
Computation of taxable net income.
Of individuals, §48-7-27.
Corporations.
Adjustment, §48-7-21.

INCOME TAXES —Cont'd
Deductions —Cont'd
Disabled first responders, indemnification payments, §48-7-27.
Disabled veterans, disability compensation, §48-7-27.
Fire departments.
Insurance coverage provided for firefighters.
Deductibility of premium payments, §48-7-27.
Payments to firefighters not taxed, §48-7-27.
Itemized deductions, §48-7-27.
Eligible itemizers.
Tax credits, §48-7-27.1.
Limited liability company members.
Adjustment to federal gross income.
Entity's income taxed in another state, §48-7-27.
Nonresidents, §48-7-30.
Partners.
Adjustment to federal gross income by partner.
Entity taxed by another state, §48-7-27.
Personal exemptions, §48-7-26.
Resident individuals with established business, investment property or employment in another state, §48-7-28.
Retirement income of individuals, exclusion amount, §48-7-27.
Standard deduction, amount, §48-7-27.
Subchapter S corporation shareholders.
Adjustment to federal gross income.
Nonrecognition of S corporations by another state, §48-7-27.
Wages and remuneration for labor services.
Business expense deduction.
Disallowed unless individual receiving compensation authorized employee, §48-7-21.1.
Year in which paid or accrued or paid or incurred.
Taken for, §48-7-33.
Definitions, §48-7-1.
Authorized employee.
Compensation disallowed as business expense, §48-7-21.1.
Business and domestic energy or water conservation, §48-7-40.29.

INCOME TAXES —Cont'd
Definitions —Cont'd
Business enterprises, §§48-7-40, 48-7-40.1, 48-7-40.15, 48-7-40.15A, 48-7-40.24, 48-7-40.25.
Business headquarters, §48-7-40.18.
Child care provided by employer.
Tax credits, §48-7-40.6.
Cigarette manufacturers who export to foreign countries, §48-7-40.20.
Composite return, §48-7-129.
Current income tax payment, §48-7-100.
Estimated tax, §§48-7-114, 48-7-117.
Deductions for payments to classified subcontractors, §48-7-38.
Dependent, §§48-7-26, 48-7A-2.
Donation of real property to be used for conservation purposes, §48-7-29.12.
Estimated income tax by corporation, §48-7-117.
Estimated income tax by individuals, §48-7-114.
Film, gaming, video or digital production in state, §48-7-40.26.
Postproduction expenditures, §48-7-40.26A.
Housing tax credit, §48-7-29.6.
Job tax credits.
Business enterprises, §§48-7-40.24, 48-7-40.25.
Manufacturing facility tax credits.
Tier one counties, §48-7-40.2.
Tier two counties, §48-7-40.3.
Tier three counties, §48-7-40.4.
Tier four counties, §48-7-40.4.
Nonresident of Georgia, §48-7-128.
Partnership.
Partnership returns, §48-7-53.
Retraining programs provided by employer, §48-7-40.5.
Setoff debt collection, §48-7-161.
Telecommunications facility tax credits.
Tier one counties, §48-7-40.2.
Tier two counties, §48-7-40.3.
Tier three counties, §48-7-40.4.
Tier four counties, §48-7-40.4.
Teleworking tax credit, §48-7-29.11.
Underpayment, §48-7-86.
Dependent exemption.
Withholding from wages of employees.
Withholding exemption allowance, §48-7-101.

INCOME TAXES —Cont'd
Depreciation.
Property placed in service in prior tax years, §48-7-39.
Disaster assistance funds.
Credits, §48-7-29.4.
Disclosure of information.
Furnishing to local authorities, §48-7-60.
Furnishing to nonofficials, §48-7-60.
Unlawful disclosure of confidential information, §48-7-61.
Distorting true net income, §48-7-58.
Dividends.
Corporations.
Adjustments, §48-7-21.
Returns of information concerning payments, §48-7-52.
Education donations.
Credit for qualified education donations, §48-7-29.21 (Repealed 12/31/2029).
Education expenses.
Credit for qualified expenses, §48-7-29.16.
Electric vehicle chargers.
Credits for electric vehicle chargers purchased or leased by businesses, §48-7-40.16.
Electronic filing for nonindividual taxpayers, §48-7-54.
Employer social security credits, §48-7-28.2.
Energy and water conservation.
Credits.
Qualified equipment reducing business and domestic energy or water usage, §48-7-40.29.
Escrow.
Setoff debt collection.
Deposit of transfer funds into escrow account, §48-7-164.
Transfer from account to credit of debtor's account of debt due, §48-7-166.
Estates.
Deduction in lieu of personal exemption, §48-7-26.
Fiduciaries or beneficiaries, §48-7-22.
Individual tax rate.
Applicability to estates, §48-7-20.
Persons required to file returns, §48-7-50.
Estimated tax.
Corporations, §48-7-117.
Credits, §48-7-121.

INCOME TAXES —Cont'd
Estimated tax —Cont'd
Corporations —Cont'd
Defined, §48-7-117.
Failure to pay, §§48-7-120, 48-7-126.
Willful failure, §48-7-127.
Installment payments, §48-7-119.
Interest on refunds, §48-7-121.
Overpayments.
Credits or refunds, §48-7-121.
Underpayment, §48-7-120.
Willful failure to pay, §48-7-127.
Individuals.
Applicability to fiduciaries, §48-7-114.
Credits, §48-7-121.
Defined, §48-7-114.
Exemptions, §48-7-114.
Failure to pay, §48-7-120.
Willful failure, §48-7-127.
Farmers.
Installment payments by, §48-7-116.
Time for filing, §48-7-115.
Fishermen.
Installment payments by, §48-7-116.
Time for filing, §48-7-115.
Installment payments, §48-7-116.
Overpayments.
Credits or refunds, §48-7-121.
Refunds.
Overpayments, §48-7-121.
Requirement, §48-7-114.
Short taxable years.
Time for filing, §48-7-115.
Time for filing, §48-7-115.
Underpayments, §48-7-120.
Willful failure to pay, §48-7-127.
Returns, §48-7-56.
Evading or defeating tax, §48-7-5.
Employers required to deduct and withhold tax.
Attempts to evade or defeat tax imposed by article, §48-7-127.
Examinations.
Federal income tax returns, §48-7-59.
Executions.
Collection, §48-7-82.
Exemptions.
Corporations and organizations, §48-7-25.
Dependent exemption.
Withholding exemption allowance, §48-7-101.

INCOME TAXES —Cont'd
Exemptions —Cont'd
Estimated income tax by individuals, §48-7-114.
Land banks, §48-4-108.
Marital exemption.
Withholding exemption allowance, §48-7-101.
Withholding exemption status, §48-7-102.
Personal exemptions, §48-7-26.
Procedure for obtaining exempt status.
Corporations and organizations, §48-7-25.
Proration of exemption of persons moving into or out of state, §48-7-85.
Revocation of exempt status.
Corporations and organizations, §48-7-25.
Single exemption.
Withholding exemption allowance, §48-7-101.
Withholding exemption status, §48-7-102.
Withholding from wages of employees.
Changes in withholding exemption status, §48-7-102.
Rules and regulations, §48-7-102.1.
Withholding exemption allowance, §48-7-101.
Withholding exemption certificate, §48-7-102.
False certificate, §48-7-127.
Withholding exemption status, §48-7-102.
Zero exemption.
Withholding exemption status, §48-7-102.
False or fraudulent returns, affidavits, claims, etc.
Assisting, counseling, etc., in filing, §48-7-3.
Farmers.
Estimated income tax by individuals.
Installment payments by, §48-7-116.
Time for filing, §48-7-115.
Fiduciaries, §48-7-22.
Estimated income tax by individuals.
Applicability to fiduciaries, §48-7-114.
Film, gaming, video or digital production in state.
Postproduction expenditures.
Tax credits, §48-7-40.26.
INCOME TAXES —Cont'd
Film, gaming, video or digital production in state —Cont'd
Tax credits, §48-7-40.26.
Financial institutions.
Local business license tax for depository financial institutions.
Credit against any state corporate income tax, §48-6-93.
Fire departments.
Insurance coverage provided for firefighters.
Deductibility of premium payments, §48-7-27.
Payments to firefighters not taxed, §48-7-27.
Fishermen.
Estimated income tax by individuals.
Installment payments by, §48-7-116.
Time for filing, §48-7-115.
Food and other necessaries.
Credit, §§48-7A-2, 48-7A-3.
Claim against tax liability, §48-7A-3.
Dependent.
Defined, §48-7A-2.
Food stamp recipients.
Applicability, §48-7A-3.
Period for filing, §48-7A-3.
Persons entitled, §48-7A-3.
Schedules, §48-7A-3.
Food stamps.
Food and other necessaries credit.
Applicability to food stamp recipients, §48-7A-3.
Foreign corporations.
Taxation of corporations generally, §48-7-21.
Forfeitures.
Refund due by reason of change or correction of net income.
Failure to give notice, §48-7-82.
Form 1099 withholding and reporting, §48-7-101.
Foster child.
Adoption.
Credit, §48-7-29.15.
Contributions to foster child support organizations.
Credit, §48-7-29.24.
Franchise tax.
Deductions from special franchise tax due, §48-5-425.
Fraternal societies.
Exempt organizations, §48-7-25.

INCOME TAXES —Cont'd
Fraud.
Returns, affidavits, claims, etc.
Assisting, counseling, etc., in filing, §48-7-3.
Underpayment of tax, §48-7-86.
Gains.
Corporations.
Adjustments, §48-7-21.
Georgia National Guard Foundation.
Contributions through tax returns, §§48-7-58, 48-7-62.
Gross income.
Accounting periods, §48-7-33.
Head of household.
Computation of taxable net income, §48-7-27.
Individual tax rate table, §48-7-20.
Headquarters.
Credit, §48-7-40.18.
Health insurance.
High deductible health plans and health savings accounts.
Credit for qualified health insurance expenses, §48-7-29.13.
Premiums not included in taxable income, §48-7-27.
Hearings.
Setoff debt collection.
Opportunity for hearing, §48-7-164.
Procedure generally, §§48-7-165, 48-7-165.1.
Higher education expenses.
Contributions to savings trust account.
Not included in taxable income, §48-7-27.
Qualified withdrawals from savings trust account.
Not subject to state income taxes, §48-7-27.
Higher education savings plans.
Withdrawals.
Income tax consequences, §48-7-30.
High-impact aerospace defense projects.
Credits for businesses with existing manufacturing facilities, §48-7-40.25.
Conditions for taking credits, §48-7-40.24.
New jobs credits, §§48-7-40.17, 48-7-40.24.
Historic homes and structures, rehabilitation.
Credits, §48-7-29.8.

INCOME TAXES —Cont'd
Hospitals.
Exemption of cooperative hospital service organizations, §48-7-25.
Rural hospital organizations providing services to underserved areas.
Qualified rural hospital organization expenses, tax credit.
Contributions for expenses, credit for individuals, §48-7-29.20 (Repealed 12/31/2029).
Housing tax.
Credit, §48-7-29.6.
Hurricane Michael.
Timber industry, relief for losses caused by Hurricane Michael, §48-7-40.36.
Hurricane Michael disaster relief for agricultural losses.
Taxable income, §48-7-27.
Individuals.
Computation of taxable net income, §48-7-27.
Estimated tax.
Applicability to fiduciaries, §48-7-114.
Credits, §48-7-121.
Defined, §48-7-114.
Exemptions, §48-7-114.
Failure to pay, §48-7-120.
Willful failure, §48-7-127.
Farmers.
Installment payments by, §48-7-116.
Time for filing, §48-7-115.
Fishermen.
Installment payments by, §48-7-116.
Time for filing, §48-7-115.
Installment payments, §48-7-116.
Overpayments.
Credits or refunds, §48-7-121.
Refunds.
Overpayments, §48-7-121.
Requirement, §48-7-114.
Short taxable years.
Time for filing, §48-7-115.
Time for filing, §48-7-115.
Underpayments, §48-7-120.
Willful failure to pay, §48-7-127.
Personal exemptions, §48-7-26.
Tax rate, §48-7-20.
Injunctions.
Restraint of assessment or collection.
No action for purposes of under chapter, §48-7-84.

INCOME TAXES —Cont'd
Installment payments.
Estimated tax by corporations, §48-7-119.
Estimated tax by individuals, §48-7-116.
Insurance companies, §48-7-21.
Action for collection out of assets of dissolved corporation, §48-7-83.
Applicability of tax imposed to entire net income, §48-7-31.
Apportionment of income, §48-7-31.
Distorting taxable income, §48-7-58.
Exemption of companies paying state tax upon premium income, §48-7-25.
Returns, §48-7-51.
Returns based upon books of account, §48-7-34.
Intangible recording tax.
Exclusiveness of tax imposed on long-term and short-term notes secured by real estate.
Section not construed as income tax exemption, §48-6-64.
Interest.
Current income tax payment.
Assessable penalties and interest, §48-7-126.
Failure by taxpayer to claim or list credits.
No interest paid on refunds due to, §48-2-35.
Refunds for overpayments of withheld taxes, §48-7-112.
Taxes not timely paid, §48-7-81.
Itemized deductions, §48-7-27.
Eligible itemizers.
Tax credits, §48-7-27.1.
Jobs created.
New quality jobs.
Credit, §48-7-40.17.
Qualified business expansion.
Credits to existing business enterprises, §48-7-40.21.
Job tax credit.
Calculation of new full-time jobs, §48-7-40.14.
Conditions for taking, §48-7-40.24.
Counting new jobs on calendar year basis.
One time election, §48-7-40.23.
Designation of counties as less developed areas.
Tax credits for business enterprises.
Expanding labor force, §§48-7-40, 48-7-40.1.

INCOME TAXES —Cont'd
Job tax credit —Cont'd
Designation of counties as less developed areas —Cont'd
Tax credits for business enterprises —Cont'd
Medical equipment and supplies manufacturers, additional credit, §48-7-40.1B.
Pharmaceutical and medicine manufacturers, additional credit, §48-7-40.1B.
PPE manufacturers, additional credit, §48-7-40.1A.
Existing manufacturing facilities.
Calculating credit, §48-7-40.25.
Port traffic increases, §§48-7-40.15, 48-7-40.15A.
Labor unions.
Exemption of labor organizations, §48-7-25.
Land banks.
Exemptions, §48-4-108.
Land conservation.
Donation of real property to be used for.
Credit allowed, §48-7-29.12.
Law enforcement foundations.
Tax credits for contributions to foundations, §48-7-29.25.
Leased or purchased vehicle used to transport employees.
Credits (repealed 12/31/2029), §48-7-40.22.
Less developed areas of counties.
Designation.
Tax credits for business enterprises.
Expanding labor forces, §§48-7-40, 48-7-40.1, 48-7-40.14.
Liens, §48-2-56.
Life insurance premiums.
National guard and air national guard members.
Credits, §48-7-29.9.
Limitation of actions.
Periods of limitation for assessment of taxes, §48-7-82.
Revocation of exempt status, §48-7-25.
Limited liability company members.
Adjustment to federal gross income.
Entity's income taxed in another state, §48-7-27.
Local income taxes.
Prohibition, §48-7-140.
Losses.
Corporations.
Adjustment, §48-7-21.

INCOME TAXES —Cont'd
Losses —Cont'd
Net operating loss.
Taxable net income.
Computation, §48-7-27.
Low emission or zero emission vehicles.
Credits, §48-7-40.16.
Manufacturing facility tax credits.
Ground-water usage.
Shift from, §48-7-40.11.
Tier one counties, §48-7-40.2.
Optional tax credits, §48-7-40.7.
Tier two counties, §48-7-40.3.
Optional tax credits, §48-7-40.8.
Tier three counties, §48-7-40.4.
Optional tax credits, §48-7-40.9.
Tier four counties, §48-7-40.4.
Optional tax credits, §48-7-40.9.
Water conservation facilities, §48-7-40.10.
Marital exemption.
Withholding of wages of employees.
Withholding exemption allowance, §48-7-101.
Withholding exemption status, §48-7-102.
Married persons filing joint return.
Computation of taxable net income, §48-7-27.
Individual tax rate table, §48-7-20.
Withholding from wages of employees.
Wages subject to withholding, §48-7-101.
Married persons filing separate returns.
Computation of taxable net income, §48-7-27.
Individual tax rate table, §48-7-20.
Withholding from wages of employees.
Wages subject to withholding, §48-7-101.
Medical equipment and supplies.
Business enterprise tax credits.
Labor force expansion in less developed areas.
Additional credit, §48-7-40.1B.
Medical students.
Credits.
Preceptorship rotations, nursing and medical, §48-7-29.22 (Repealed 12/31/2026).
Minority, women, or veteran owned businesses.
Deduction for payments to classified subcontractors, §48-7-38.

INCOME TAXES —Cont'd
Monetary credit for state income tax liability, §48-7-29.7.
Motor vehicles.
Alternative fuel heavy and medium duty vehicles, credit for purchase, §§48-7-29.18, 48-7-29.19.
Credit for leased or purchased vehicle used to transport employees (repealed 12/31/2029), §48-7-40.22.
Low emission or zero emission vehicles tax credit, §48-7-40.16.
National guard and air national guard members.
Qualified life insurance premiums for guard members.
Credits, §48-7-29.9.
Net income.
Change or correction of net income, §48-7-82.
Partnership returns, §48-7-53.
Repayment of income taxed in prior year, §48-7-28.1.
New quality jobs.
Credit, §48-7-40.17.
Nonresidents.
Allocation of income.
Application for permission to use other method, §48-7-35.
Estimated income tax by individuals.
Requirement of estimated tax, §48-7-114.
Fiduciaries, §48-7-22.
Net income derived from activities within state, §48-7-30.
Partnerships.
Nonresident members of resident partnership, §48-7-24.
Resident members of nonresident partnership, §48-7-24.
Persons required to file returns, §48-7-50.
Returns based upon books of account, §48-7-34.
Notice.
Corporations or nonresidents.
Rejection of application for permission to use other method of allocation, §48-7-35.
Delinquency of employer required to deduct and withhold tax, §48-7-108.
Violation of notice, §48-7-127.
Nonpayment after notice and demand, §48-7-86.

INCOME TAXES —Cont'd
Notice —Cont'd
Payment of interest on taxes not timely paid, §48-7-81.
Refund due by reason of change or correction of net income, §48-7-82.
Setoff debt collection.
Finalization of setoff, §48-7-166.
Notification of taxpayers, §48-7-164.
Special accounting where employer fails to deduct, withhold, etc., taxes, §48-7-109.1.
Failure to comply with notice of special accounting, §48-7-127.
Nurses.
Advanced practice registered nurse students.
Credits.
Preceptorship rotations, nursing and medical, §48-7-29.22 (Repealed 12/31/2026).
Oaths.
Partnership returns, §48-7-53.
Returns by corporations of information concerning dividend payments, §48-7-52.
Organ donations.
Deduction for expenses, §48-7-27.
Overpayments.
Change or correction of net income, §48-7-82.
Estimated income tax by corporations.
Credits or refunds, §48-7-121.
Estimated income tax by individuals.
Credits or refunds, §48-7-121.
Withholding of wages of employees.
Credits and refunds, §48-7-112.
Employer refunds and credits, §48-7-113.
Partnerships, §48-7-23.
Adjustment to federal gross income by partner.
Entity taxed by another state, §48-7-27.
Deductions for payments to classified subcontractors, §48-7-38.
Electronic filing for nonindividual taxpayers, §48-7-54.
Nonresident members of resident partnership, §48-7-24.
Resident members of nonresident partnership, §48-7-24.
Returns, §48-7-53.
Administrative adjustment requests, §48-7-53.

INCOME TAXES —Cont'd
Partnerships —Cont'd
Returns —Cont'd
Final federal adjustments.
Reporting, §48-7-53.
Pass-through entities, adjustments, §48-7-53.
State partnership audit, adjustments resulting, §48-7-53.
Payment of taxes.
Calendar year basis.
Time and place of payments, §48-7-80.
Current income tax payment generally, §§48-7-100 to 48-7-129.
Failure to pay, §§48-7-2, 48-7-86.
Fiscal year basis.
Time and place of payment, §48-7-80.
Installment payments.
Estimated tax by corporations, §48-7-119.
Estimated tax by individuals, §48-7-116.
Interest on taxes not timely paid, §48-7-81.
Nonpayment after notice and demand, §48-7-86.
Overpayment.
Change or correction of net income, §48-7-82.
Penalty for failure to pay or underpayment, §48-7-86.
Place of payment.
Calendar or fiscal year basis, §48-7-80.
Time of payment.
Calendar or fiscal year basis, §48-7-80.
Interest on taxes not timely paid, §48-7-81.
Underpayments, §48-7-86.
Estimated income tax, §48-7-120.
Fractional parts of dollar disregarded, §48-7-123.
Penalties.
Current income tax payment.
Assessable penalties and interest, §48-7-126.
Returns.
Annual and final returns.
Late returns, §48-7-106.
Statement of wages paid and taxes withheld.
Late statements, §48-7-105.

INCOME TAXES —Cont'd
Penalties —Cont'd
Failure to file timely return, §48-7-57.
Failure to pay estimated income tax, §48-7-120.
Failure to pay or underpayment of tax, §48-7-86.
Frivolous returns, §48-7-57.1.
Nonpayment after notice and demand, §48-7-86.
Returns impeding administration of tax laws, §48-7-57.1.
Pensions.
Exempt organizations.
Qualified pensions, profit-sharing and stock bonus plans, §48-7-25.
Person moving into or out of state.
Proration of tax, §48-7-85.
Pharmaceutical and medicine manufacturers.
Business enterprise tax credits.
Labor force expansion in less developed areas.
Additional credit, §48-7-40.1B.
Physician assistant students.
Credits.
Preceptorship rotations, nursing and medical, §48-7-29.22 (Repealed 12/31/2026).
Physicians and surgeons.
Medical students.
Credits.
Preceptorship rotations, nursing and medical, §48-7-29.22 (Repealed 12/31/2026).
Tax credits for rural physicians, §§48-7-29, 48-7-29.26 (Repealed 12/31/2029).
PPE manufacturers.
Business enterprise tax credits.
Labor force expansion in less developed areas, §48-7-40.1A.
Preparation of federal or state returns.
False or fraudulent returns.
Assisting, counseling, etc, §48-7-3.
Intentional disregard of rules and regulations, §48-7-4.
Priorities.
Liens, §48-2-56.
Setoff debt collection.
Department over claimant agencies for collection, §48-7-168.
Professional football leagues.
Exempt organizations, §48-7-25.
INCOME TAXES —Cont'd
Profit-sharing plans.
Exempt organizations.
Qualified profit-sharing plans, §48-7-25.
Property placed in service in prior tax years.
Depreciation, §48-7-39.
Proration of tax.
Person moving into or out of state, §48-7-85.
Public officers and employees.
Unlawful divulging of confidential information.
Dismissal from office, §48-7-61.
Public service corporations, §48-7-32.
Qualified business expansion.
Credits.
Existing business enterprises, §48-7-40.21.
Qualified investment credits, §§48-7-40.27, 48-7-40.30.
Limitations, §48-7-40.28.
Qualified research expense tax credit, §48-7-40.12.
Railroads, §48-7-32.
Rate.
Delay of prospective changes in rates, §48-7-20.
Fiduciaries, §48-7-22.
Individuals, §48-7-20.
Real estate investment trusts.
Taxable net income.
Adjustments to taxes.
Expenses paid to certain real estate investment trusts, §48-7-28.4.
Receivers.
Operating property or business of corporation.
Returns, §48-7-51.
Reciprocity, §48-7-28.
Arrangements for relief of taxpayers, §48-7-124.
Records.
Confidential information, §48-7-60.
Unlawful divulging, §48-7-61.
Employers required to deduct and withhold taxes, §48-7-111.
Failure to keep, §48-7-2.
False or fraudulent documents.
Assisting, counseling, etc., in filing, §48-7-3.
Recoupment.
Change or correction of net income.
Overpayment, §48-7-82.

INCOME TAXES —Cont'd
Refunds.
Estimated income tax by corporations.
Overpayments, §48-7-121.
Estimated income tax by individuals.
Overpayments, §48-7-121.
Fractional parts of dollar disregarded, §48-7-123.
Interest.
Failure by taxpayer to claim or list credits.
No interest paid, §48-2-35.
One-time refund for 2021 individual income taxpayers, §48-7-20.1.
One-time refund for 2022 individual income taxpayers, §48-7-20.2.
Setoff debt collection.
Generally, §§48-7-160 to 48-7-170.
Withholding of wages of employees.
Overpayments, §48-7-112.
Religion.
Exempt organizations, §48-7-25.
Repayment of income taxed in prior year.
Tax benefits, §48-7-28.1.
Research expense tax credit, §48-7-40.12.
Retirement and pensions.
Exclusions from taxable net income computations, §48-7-27.
Qualified pension plans.
Exempt organizations, §48-7-25.
Withholding of federal annuitants, §48-7-100.1.
Retraining programs provided by employer.
Tax credits, §48-7-40.5.
Returns.
Armed forces members.
Extensions for filing, §48-7-56.
Audits.
Examination of federal income tax returns, §48-7-59.
Corporations, §48-7-51.
Based upon books of account, §48-7-34.
Combining net worth tax return with state income tax return, §48-13-77.
Consolidated returns of two or more corporations, §48-7-51.
Information concerning dividend payments, §48-7-52.
Receivers, trustees and assignees, §48-7-51.

INCOME TAXES —Cont'd
Returns —Cont'd
Electronic filing for nonindividual taxpayers, §48-7-54.
Employers required to deduct and withhold taxes.
Persons authorized to sign, §48-7-107.
Estimated returns, §48-7-56.
Examination of federal income tax returns, §48-7-59.
Failure to file, §48-7-2.
Employer required to deduct and withhold tax, §48-7-126.
Failure to file timely return, §48-7-57.
False or fraudulent returns.
Assisting, counseling, etc., in filing, §48-7-3.
Federal tax returns.
Examination of returns, §48-7-59.
Filing of copies, §48-7-50.
Filing.
Copies of federal tax returns, §48-7-50.
Employers required to deduct and withhold taxes, §48-7-107.
Failure to file.
Employer required to deduct and withhold tax, §48-7-126.
Failure to file timely return, §48-7-57.
Frivolous returns or returns with desire to impede administration of laws, §48-7-57.1.
Penalties.
Failure to file timely return, §48-7-57.
Filing frivolous returns, §48-7-57.1.
Filing return impeding administration of laws, §48-7-57.1.
Persons required to file, §48-7-50.
Time and place, §48-7-56.
Frivolous return, §48-7-57.1.
Impeding administration of tax laws, §48-7-57.1.
Intentional disregard of rules and regulations in preparing, §48-7-4.
Jeopardy returns.
Employers required to withhold taxes, §48-7-103.
Monthly returns.
Employers required to withhold taxes, §48-7-103.

INCOME TAXES —Cont'd
Returns —Cont'd
Nonresidents.
Based upon books of account, §48-7-34.
Partnerships, §48-7-53.
Penalties.
Failure to file timely return, §48-7-57.
Filing frivolous return, §48-7-57.1.
Impeding administration of laws, §48-7-57.1.
Persons required to file, §48-7-50.
Place of filing, §48-7-56.
Preparation.
Assisting, counseling, etc., false or fraudulent returns, §48-7-3.
Intentional disregard of rules and regulations, §48-7-4.
Quarterly returns.
Employers required to withhold taxes, §48-7-103.
Sale of business.
Filed upon sale of business, §48-7-106.
Tentative returns, §48-7-56.
Time of filing, §48-7-56.
Extensions, §48-7-56.
Penalty for failure to file timely return, §48-7-57.
Verification.
Employers required to deduct and withhold taxes, §48-7-107.
Withholding of wages of employees.
Annual and final returns, §48-7-106.
Employer's liability for amount due on face of return, §48-7-108.
Failure to file.
Employer return or pay tax, §48-7-126.
Willful failure, §48-7-127.
Filing, signing and verification, §48-7-107.
Quarterly, monthly and jeopardy returns, §48-7-103.
Sale of business, §48-7-106.
Revitalization zones.
Tax credits (repealed 12/31/2029), §48-7-40.32.
Rules and regulations.
Returns, §48-7-103.
Setoff debt collection, §48-7-169.
Withholding exemption, §48-7-102.1.
Rural healthcare professionals.
Individual income tax credits, §48-7-29.26 (Repealed 12/31/2029).

INCOME TAXES —Cont'd
Rural hospital organizations providing services to underserved areas.
Qualified rural hospital organization expenses, tax credit.
Contributions for expenses, credit for individuals, §48-7-29.20 (Repealed 12/31/2029).
Sale of business.
Returns.
Filed upon sale of business, §48-7-106.
Withholding of wages of employees.
Withholding unpaid withholding taxes, §48-7-106.
Sales and use taxes.
General provisions, §§48-8-1 to 48-8-78.
Savings trust account contributions.
Higher education expenses.
Not included in taxable income, §48-7-27.
Savings trust account withdrawals.
Higher education expenses.
Not subject to state income taxes, §48-7-27.
Setoff debt collection, §§48-7-160 to 48-7-170.
Adjustments of incorrect debt, §48-7-165.
Administrative office of the courts.
Administrative collection assistance fee imposed on debts submitted by office, §48-7-163.
Defined, §48-7-161.
Hearing on debt due to court, §48-7-165.1.
Submission of debts through, §48-7-162.1.
Transfer of funds after finalization of setoff, §48-7-166.
Administrative procedure act.
Hearing procedure, §48-7-165.
Appeals from actions taken at hearing, §§48-7-165, 48-7-165.1.
Certification of debts, §48-7-164.
Collection by setoff.
Priority of department over claimant agency, §48-7-168.
Collection remedy additional, §48-7-162.
Confidentiality exemption, §48-7-170.
Construction of article, §48-7-160.
Cost incurred in setting off debts.
Borne by claimant agency, §48-7-164.

INCOME TAXES —Cont'd
Setoff debt collection —Cont'd
Definitions, §48-7-161.
Disclosure of necessary information to claimant agencies, §48-7-170.
Nondisclosure by employees or prior employees of agencies, §48-7-170.
Distribution of setoff funds among claimants, §48-7-165.
Effect of setoff on refund, §48-7-167.
Escrow account.
Transferred funds deposited in, §48-7-164.
Transfer to credit of debtor's account of debt due, §48-7-166.
Final determination of debt due, §48-7-166.
Hearings.
Opportunity for hearings, §48-7-164.
Procedure, §§48-7-165, 48-7-165.1.
Identification of debtors, §48-7-165.
Minimum debt, §48-7-163.
Notice of finalization of setoff, §48-7-166.
Notification of taxpayers, §48-7-164.
Priority of department over claimant agencies for collection, §48-7-168.
Procedure.
Generally, §48-7-164.
Hearings, §§48-7-165, 48-7-165.1.
Purposes of article, §48-7-160.
Refund setoff deemed granted, §48-7-167.
Remedy in addition to and not in substitution for other remedies, §48-7-162.
Request for setoff, §48-7-163.
Rules and regulations, §48-7-169.
Transfer of funds to claimant agency, §48-7-164.
Setoffs.
Refunds for overpayments of withheld taxes, §48-7-112.
Short taxable years.
Estimated income tax by individuals.
Time for filing, §48-7-115.
Signatures.
Returns.
Employers required to deduct and withhold taxes.
Persons authorized to sign, §48-7-107.
Single exemption.
Withholding of wages of employees.
Withholding exemption allowance, §§48-7-101, 48-7-102.
INCOME TAXES —Cont'd
Single-family residence.
Credit for purchase of one eligible single-family residence, §48-7-29.17.
Single person.
Computation of taxable net income, §48-7-27.
Individual tax rate, §48-7-20.
Withholding from wages of employees.
Wages subject to withholding, §48-7-101.
Small businesses.
Minority, women, or veteran owned businesses.
Deduction for payments to classified subcontractors, §48-7-38.
Social security.
Employer social security credits, §48-7-28.2.
Standard deduction, amount, §48-7-27.
Stem cell research.
Contributions through tax returns, §48-7-63.
Stock bonus plans.
Exempt organizations.
Qualified stock bonus plans, §48-7-25.
Subchapter S corporations.
Distributions.
Withholding, §48-7-129.
Elections, §48-7-21.
Shareholders.
Adjustment to federal adjusted gross income.
Nonrecognition of S corporations by another state, §48-7-27.
Subcontractors.
Deduction for payments to classified subcontractors, §48-7-38.
Tables.
Individual tax rate, §48-7-20.
Taxable net income.
Activities distorting true net income, §48-7-58.
Annual accounting periods for computing, §48-7-33.
Change or correction of net income, §48-7-82.
Computation, §48-7-27.
Interest expenses and costs from transactions with related members, §48-7-28.3.
Real estate investment trusts.
Disallowance of expenses paid to, §48-7-28.4.

INCOME TAXES —Cont'd
Taxable net income —Cont'd
Estates or trusts, §48-7-22.
Individual tax rate, §48-7-20.
Nonresidents.
Net income derived from activities within state, §48-7-30.
Railroad and public service corporations, §48-7-32.
Repayment of income taxed in prior year, §48-7-28.1.
Taxable year consisting of 52-53 weeks, §48-7-33.
Estates.
Determination of taxable year, §48-7-22.
Partnerships.
Determination of taxable year, §48-7-22.
Tax benefits, §48-7-28.1.
Tax evasion, §48-7-5.
Employers required to deduct and withhold tax.
Attempts by any persons to evade or defeat tax imposed by article, §48-7-127.
Tax executions.
Collection by execution, §48-7-82.
Teachers.
Recruitment and retention program.
Income tax credit for program participants, §48-7-29.23.
Technical college system of Georgia foundation.
Contributions through tax returns, §48-7-64.
Telecommunications facility tax credits.
Tier one counties, §48-7-40.2.
Optional tax credits, §48-7-40.7.
Tier two counties, §48-7-40.3.
Optional tax credits, §48-7-40.8.
Tier three counties, §48-7-40.4.
Optional tax credits, §48-7-40.9.
Tier four counties, §48-7-40.4.
Optional tax credits, §48-7-40.9.
Telephone or telegraph businesses.
Taxation of public service corporations, §48-7-32.
Teleworking tax credit.
Employers allowed, §48-7-29.11.
Timber industry, relief for losses caused by Hurricane Michael, §48-7-40.36.

INCOME TAXES —Cont'd
Time.
Armed forces service or service in support of armed forces.
Tolling of time limits for filing, §48-7-36.
Corporations' and nonresidents' returns.
Based upon books of account. Application, §48-7-34.
Filing returns, §48-7-56.
Penalty for failure to file timely return, §48-7-57.
Payment of taxes.
Calendar or fiscal year basis, §48-7-80.
Statements of wages paid and taxes withheld, §48-7-105.
Trustees.
Bankruptcy.
Operating property or business of corporation.
Returns, §48-7-51.
Trusts.
Charitable remainder trust.
Exempt organizations, §48-7-25.
Deduction in lieu of personal exemption, §48-7-26.
Fiduciaries or beneficiaries, §48-7-22.
Individual tax rate.
Applicability to trusts, §48-7-20.
Persons required to file returns, §48-7-50.
Tuition for higher education.
Savings trust account contributions and withdrawals.
Not taxable, §48-7-27.
Underpayments, §48-7-86.
Estimated income tax by corporations, §48-7-120.
Estimated income tax by individuals, §48-7-120.
Fractional parts of dollar disregarded, §48-7-123.
Universities and colleges.
Savings trust account contributions and withdrawals for education expenses.
Not taxable, §48-7-27.
Unrelated business income.
Tax imposed on exempt organizations for, §48-7-25.
Veterans, disability compensation.
Deductions for certain disabled veterans, §48-7-27.

INCOME TAXES —Cont'd
Veterans organizations.
Exempt organizations, §48-7-25.
Wages and remuneration for labor services.
Business expense deduction.
Disallowed unless individual receiving compensation authorized employee, §48-7-21.1.
Water conservation investment property.
Manufacturing facilities, §48-7-40.10.
Withholding from employee's wages.
Abandonment of claim for refund, §48-7-112.
Accounting where employer fails to deduct, withhold, etc., §48-7-109.1.
Special accounting.
Failure to comply with notice, §48-7-127.
Adjustments for incorrect withholdings, §48-7-104.
Admission by employer of doing business in state.
Voluntary compliance not admission, §48-7-110.
Approval of other employer plans, §48-7-101.
Checks for refunds, §48-7-112.
Compliance with article.
Effect of voluntary compliance, §48-7-110.
Credits, §48-7-112.
Credit for withholding and other payments, §48-7-20.
Overpayment, §48-7-112.
Employer credits, §48-7-113.
Dependent exemption.
Withholding exemption allowance, §48-7-101.
Distributions from pension or annuity fund, §48-7-101.
Electronic filing requirements, failure to follow, §48-2-44.1.
Employees incurring no income tax liability, §48-7-101.
Employer's liability, §48-7-108.
Effect where employee pays tax not deducted and withheld, §48-7-109.
Violation of notice of delinquency, §48-7-108.
Evasion of tax, §48-7-127.
Exemptions.
Changes in withholding exemption status, §48-7-102.

INCOME TAXES —Cont'd
Withholding from employee's wages —Cont'd
Exemptions —Cont'd
Rules and regulations, §48-7-102.1.
Withholding exemption allowance, §48-7-101.
Withholding exemption certificate, §48-7-102.
False certificate, §48-7-127.
Withholding exemption status, §48-7-102.
Failure to withhold or to pay over tax, §§48-7-126, 48-7-127.
Effect as to employer's liability where employee pays, §48-7-109.
Effect of employee's liability resulting from employer's failure, §48-7-109.
Special accounting, §48-7-109.1.
Failure to comply with notice of special accounting, §48-7-127.
Willful failure, §48-7-127.
False withholding receipts, §48-7-127.
Form 1099 withholding and reporting, §48-7-101.
Fraudulent withholding receipt, §48-7-126.
Included and excluded wages, §48-7-101.
Incorrect withholdings or payments.
Period adjustments, §48-7-104.
Interest assessable, §48-7-126.
Jurisdiction for purposes of collecting amounts withheld.
Voluntary compliance with requirements, §48-7-110.
Less than correct amount of tax withheld.
Period adjustments, §48-7-104.
Marital exemption.
Withholding exemption allowance, §48-7-101.
Withholding exemption status, §48-7-102.
Married persons filing joint return.
Wages subject to withholding, §48-7-101.
Married persons filing separate return.
Wages subject to withholding, §48-7-101.
More than correct amount of tax withheld.
Period adjustments, §48-7-104.
Nondeductibility to employer of tax deducted and withheld, §48-7-122.

INCOME TAXES —Cont'd
Withholding from employee's wages —Cont'd
Over collection.
Period adjustments, §48-7-104.
Overpayments.
Credits and refunds, §48-7-112.
Employer refunds and credits, §48-7-113.
Penalties assessable, §48-7-126.
Protest of proposed assessment, §48-7-108.
Receipts.
False withholding receipts or failure to furnish receipts, §48-7-127.
Fraudulent withholding receipt, §48-7-126.
Records of employers, §48-7-111.
Refunds.
Overpayments, §48-7-112.
Abandonment of claims, §48-7-112.
Checks for refunds, §48-7-112.
Employer refunds, §48-7-113.
Requirement, §48-7-101.
Returns.
Annual and final returns, §48-7-106.
Employer's liability for amount due on face of return, §48-7-108.
Failure to file.
Failure to file employer return or pay tax, §48-7-126.
Willful failure, §48-7-127.
Filing, signing and verification, §48-7-107.
Quarterly, monthly and jeopardy returns, §48-7-103.
Sale of business, §48-7-106.
Rules and regulations.
Withholding exemptions, §48-7-102.1.
Sale of business.
Withholding unpaid withholding taxes, §48-7-106.
Setoffs.
Refunds, §48-7-112.
Single exemption.
Withholding exemption allowance, §48-7-101.
Withholding exemption status, §48-7-102.
Single persons.
Wages subject to withholding, §48-7-101.

INCOME TAXES —Cont'd
Withholding from employee's wages —Cont'd
Special accounting where employer fails to deduct, withhold, etc., §48-7-109.1.
Failure to comply with notice of special accounting, §48-7-127.
Statements of wages paid and withheld, §48-7-105.
Attachment of copies to return, §48-7-106.
Tax evasion, §48-7-127.
Under collection.
Period adjustments, §48-7-104.
Unusual cases, §48-7-101.
Voluntary compliance with requirements of article.
Effect, §48-7-110.
Wages subject to withholding, §48-7-101.
Willful failure to pay over withheld tax, §48-7-127.
Willful failure to withhold tax, §48-7-127.
Zero exemption.
Withholding exemption status, §48-7-102.

INCOME WITHHOLDING.
Income tax.
Current income tax payment, §§48-7-100 to 48-7-129.
Statements of wages paid and withheld, §48-7-105.

INDIGENT PERSONS.
Income taxes.
Food and other necessaries credit.
General provisions, §§48-7A-2, 48-7A-3.

INFORMANTS.
Taxes, §48-2-81.

INJUNCTIONS.
Contractors.
Nonresident contractors.
Noncompliance with registration and bond requirements, §48-13-33.
Income taxes.
Restraint of assessment or collection.
No action for purposes of under chapter, §48-7-84.
Nonresident contractors.
Noncompliance with registration and bond requirements, §48-13-33.

INJUNCTIONS —Cont'd
Sales and use taxes.
Special county one percent tax.
Jurisdiction to enforce provisions, §48-8-124.
Tax return preparers, §48-2-62.

INNKEEPERS.
Excise tax on rooms, lodgings and accommodations.
General provisions, §§48-13-50 to 48-13-63.

INNS.
Excise tax on rooms, lodging and accommodations, §§48-13-50 to 48-13-63.
Sales and use taxes.
General provisions, §§48-8-1 to 48-8-78.

INSPECTIONS.
County property taxes.
Equalization of assessments.
Right of chief appraiser to inspect property, §48-5-264.1.
Motor carriers road tax.
Records, §48-9-40.
Motor fuel taxes.
Books and records of distributors, aviation gasoline dealers or other persons, §48-9-8.
Sales and use taxes.
Records of wholesalers and jobbers, §§48-8-53, 48-8-54.

INSULIN.
Sales and use taxes.
Exemption, §48-8-3.

INSURANCE.
Fire departments.
Coverage provided by department for firefighters.
Income tax deductions, §48-7-27.
Homestead tax deferral for individuals 62 or older.
Fire and extended coverage, §§48-5-74, 48-5-78.
Property taxes.
Homestead tax deferral for individuals 62 or older.
Proof of fire and extended coverage, §48-5-74.

INSURANCE COMPANIES.
Corporate net worth tax.
Exemption of companies separately taxed, §48-13-71.

INSURANCE COMPANIES —Cont'd
Income taxes.
Apportionment of income, §48-7-31.
Exemption of companies paying state tax upon premium income, §48-7-25.
Taxation of corporations generally, §48-7-21.
Action for collection out of assets of dissolved corporation, §48-7-83.
Applicability of tax imposed to entire net income, §48-7-31.
Distorting taxable income, §48-7-58.
Returns, §48-7-51.
Returns based upon books of account, §48-7-34.
Taxes.
Corporate net worth tax.
Exemption of companies separately taxed, §48-13-71.
Income taxes.
Distorting taxable income, §48-7-58.
Exemption of companies paying tax upon premium income, §48-7-25.
Taxation of corporations generally, §48-7-21.
Returns, §48-7-51.

INTANGIBLE RECORDING TAX, §§48-6-60 to 48-6-77.
Actions.
Failure to pay bars action on indebtedness, §48-6-77.
Refund of protested amount, §48-6-76.
Affidavits.
Long-term note secured by real estate.
Filing new or modified note secured by previously recorded instrument, §48-6-62.
Amount of tax.
Long-term note secured by real estate.
Maximum amount, §48-6-61.
Showing correct amount on instruments encumbering or conveying real estate, §48-6-66.
Violation of code section, §48-6-67.
Assignment of instrument, §48-6-65.
Attorney general.
Actions for refunds of protested amount.
Representation of state defendants, §48-6-76.
Bond for title in absence of security deed, §48-6-68.
Recording and tax, §48-6-68.

INTANGIBLE RECORDING TAX —Cont'd
Certification of payment of tax.
Long-term note secured by real estate, §48-6-62.
Claim for refund of protested amount, §48-6-76.
Collecting officers.
Collection of tax.
Procedures in absence of collecting officer, §48-6-75.
Commissions, §48-6-73.
Defined, §48-6-60.
Long-term note secured by real estate.
Certification of payment, §48-6-62.
Collection and distribution of revenues, §48-6-72.
Collection of tax, §48-6-61.
Procedure when tax protested, §48-6-76.
Property located in more than one county.
Recording, payment and certification, §48-6-69.
Reports, §48-6-73.
Collection of tax.
Failure to collect by collecting officer.
Breach of duty, §48-6-73.
Long-term note secured by real property, §48-6-72.
Procedure in absence of collecting officer, §48-6-75.
Costs.
Actions for refunds of protested amount, §48-6-76.
Definitions, §48-6-60.
Determination of whether tax payable, §48-6-71.
Distribution of revenues, §48-6-74.
Failure to distribute by collecting officer.
Breach of duty, §48-6-73.
Long-term note secured by real property, §48-6-72.
Property located outside state and secured by instrument held by resident, §48-6-70.
Reports by collecting officer, §48-6-73.
Due date.
Showing on instrument encumbering or conveying real estate, §48-6-66.
Violation of code section, §48-6-67.
Escrow.
Deposit of protested tax in special escrow fund, §48-6-76.
INTANGIBLE RECORDING TAX —Cont'd
Exclusiveness of article, §48-6-64.
Exemptions.
Amount of note refinanced, §48-6-65.
Extension of instrument, §48-6-65.
Income taxes.
Exclusiveness of tax imposed on long-term and short-term notes secured by real estate.
Section not construed as income tax exemption, §48-6-64.
Interest.
Judgments in actions for refunds of protested amount, §48-6-76.
Judgments.
Actions for refunds of protested amount, §48-6-76.
Limitation of actions.
Actions for refunds of protested amount, §48-6-76.
Long-term note secured by real estate.
Certification of payment of tax, §48-6-62.
Collection and distribution of revenues, §48-6-72.
Exemption of amount of refinancing note, §48-6-65.
Filing instruments securing, §48-6-61.
Imposition of tax, §48-6-61.
Maximum amount of tax.
Long-term note secured by real estate, §48-6-61.
Modification of instrument, §48-6-65.
Nonpayment of tax in reliance of determination by state revenue commissioner, §48-6-71.
Nonresidents.
Real property within and outside state secured by instrument held by, §48-6-69.
Notice.
Long-term note secured by real estate.
Nonpayment of tax, §48-6-62.
Parties.
Actions for refunds of protested amount, §48-6-76.
Payment of tax.
Certification.
Long-term note secured by real estate, §48-6-62.
Determination of whether tax payable, §48-6-71.

INTANGIBLE RECORDING TAX —Cont'd
Payment of tax —Cont'd
Due date.
Showing on instrument encumbering or conveying real estate, §48-6-66.
Violation of code section, §48-6-67.
Failure to pay bars action on indebtedness, §48-6-77.
Long-term note secured by real estate.
Certification, §48-6-62.
Payment under protest, §48-6-76.
Penalty for failure to pay, §48-6-77.
Property located in more than one county, §48-6-69.
Property located outside state and secured by instrument held by resident, §48-6-70.
Proportionate amount, §48-6-69.
Penalties.
Failure to pay tax, §48-6-77.
Property located in more than one county.
Distribution of revenues, §48-6-74.
Recording, payment and certification, §48-6-69.
Property outside state and secured by instrument held by resident.
Filing and payment of tax, §48-6-70.
Property within and outside state secured by instrument held by nonresident, §48-6-69.
Protesting intangible recording tax, §48-6-76.
Rate of tax.
Long-term note secured by real estate, §48-6-61.
Records.
Determination of whether tax payable.
Public record, §48-6-71.
Refinancing notes.
Exemption for amount, §48-6-65.
Refunds.
Claim for refund of protested amount, §48-6-76.
Renewal of instrument, §48-6-65.
Reports.
Collecting officers, §48-6-73.
Superior courts.
Actions for refunds of protested amount, §48-6-76.
Time.
Filing claim for refund of protested amount, §48-6-76.

INTELLECTUAL AND OTHER DEVELOPMENTAL DISABILITIES.
Property tax exemption.
Nonprofit homes for the mentally handicapped, §48-5-41.

INTEREST.
Aged persons.
Homestead tax deferral for individuals 62 or older, §§48-5-75 to 48-5-80.
Distribution of interest payment, §48-5-80.
Notification of interest outstanding, §48-5-77.
Partial payment applied to accrued interest, §48-5-79.
Payment of interest, §48-5-78.
Prepayment of accrued interest, §48-5-79.
Prior lien, §48-5-76.
Rate on amount of deferred taxes, §48-5-75.
Time of accrual of interest, §48-5-75.
Corporate net worth tax.
Penalties, §48-13-79.
County property taxes, §§48-5-148 to 48-5-150.
Reduction in taxes causing need for refund, §48-5-311.
Unpaid taxes, §48-5-148.
Alternative provisions, §48-5-150.
Waiver of interest.
Military service in combat zone as cause of default, §48-5-243.
County tax collectors.
Collection of interest on unpaid taxes, §48-5-150.
Failure to collect interest, §48-5-152.
Payments to state and county, §48-5-151.
Record of interest collected from delinquent or defaulting taxpayer, §48-5-148.
Report of interest collected from delinquent or defaulting taxpayers, §48-5-150.
County tax commissioners.
Collection of interest on unpaid taxes, §48-5-150.
Failure to collect, §48-5-152.
Payments to state and county, §48-5-151.
Record of interest collected from delinquent or defaulting taxpayer, §48-5-148.

INTEREST —Cont'd
County tax commissioners —Cont'd
Report of interest collected from delinquent or defaulting taxpayers, §48-5-150.
Energy tax.
Excise tax on sale or use of energy.
Failure to file return or make payment, §§48-13-120, 48-13-123.
Waiver of penalty or interest, §48-13-122.
Homestead tax deferral for individuals 62 or older, §§48-5-75 to 48-5-80.
Distribution of interest payments, §48-5-80.
Notification of interest outstanding, §48-5-77.
Partial payments applied to accrued interest, §48-5-79.
Payment of interest generally, §48-5-78.
Prepayment, §48-5-79.
Prior lien, §48-5-76.
Rate on amount of deferred taxes, §48-5-75.
Time of accrual of interest, §48-5-75.
Income taxes.
Current income tax payment.
Assessable penalties and interest, §48-7-126.
Failure by taxpayer to claim or list credits.
No interest paid on refunds due to, §48-2-35.
Refunds for overpayments of withheld taxes, §48-7-112.
Taxes not timely paid, §48-7-81.
Intangible recording tax.
Judgments in actions for refunds of protested amount, §48-6-76.
Motor carriers' road tax.
Assessment and collection on penalty, §48-9-45.
Motor fuel taxes.
Penalties and interest, §48-9-16.
Property taxes.
Amnesty program, §48-16A-7.
Deficiency assessments, §48-2-48.
Delinquent tax payments in certain counties, §48-5-24.
Homestead tax deferral for individuals 62 or older, §§48-5-75 to 48-5-80.
New purchasers of property, exemptions, §48-3-3.

INTEREST —Cont'd
Property taxes —Cont'd
Unpaid taxes, §48-5-148.
Alternative provisions, §48-5-150.
Willful failure to pay ad valorem tax, §48-2-44.
Sales and use taxes.
Extension of time for making returns, §48-8-51.
Tax amnesty program, §§48-16-6, 48-16-7.
Collection of delinquent interest.
Contracts with debt collection agencies or attorneys, §48-16-11.
Property tax amnesty program, §48-16A-7.
Taxes generally.
Deferred taxes, §48-2-38.
Deficiency assessments, §48-2-48.
Failure to file return or pay revenue held in trust for state, §48-2-44.
New purchasers of property, exemptions, §48-3-3.
Past due taxes, §48-2-40.
Waiver on unpaid taxes, §48-2-41.
Refunds, §48-2-35.
Tax executions, §48-3-8.
Transferred executions, §48-3-20.

INTERNET.
Access services.
Sales and use taxes.
Exemptions, §48-8-3.
Property tax increases.
Publication by posting on levying authority website, §48-5-32.
Tax executions.
State tax executions.
Information management system, availability of information, §48-3-43.
Tobacco and alternative nicotine products taxes.
Delivery sales, §48-11-4.2.

INTERPLEADER.
Tax executions.
Excess funds distribution, §48-4-5.

INTERPRETATION AND CONSTRUCTION.
Airline ad valorem taxation.
Exclusivity of article, §48-5-546.
County boards of tax assessors.
Applicability of part, §48-5-313.
Counties electing board members, §48-5-309.

INTERPRETATION AND CONSTRUCTION —Cont'd
County boards of tax assessors —Cont'd
Laws granting additional authority to boards.
Effect of part on, §48-5-308.
County property taxes.
Equalization of assessments.
Applicability of part, §48-5-275.
Homestead tax deferral for individuals 62 or over, §48-5-83.
Income taxes.
Setoff debt collection, §48-7-160.
Intangible recording tax.
Exclusiveness of tax, §48-6-64.
Municipal property taxes.
Applicability to counties, §48-5-361.
Public revenue code.
Forms and filings prior to January 1, 1980.
Continuation, §48-1-3.
Sales and use taxes.
Special county one percent sales and use tax.
Consolidated government.
Application of article to, §48-8-111.1.
Tax deferral for the elderly act, §48-5-83.

INTERSTATE COMMERCE.
Air commerce.
Prohibition of tax on persons traveling in, §48-13-4.
Freeport exemption.
Level 1.
Property taxes, §§48-5-48.1, 48-5-48.2.
Timeliness of filings, §48-5-48.7.
Property taxes.
Foreign merchandise in transit.
Acquisition of situs, §48-5-5.
Defined, §48-5-5.
Freeport exemption.
Level 1, §§48-5-48.1, 48-5-48.2.
Timeliness of filings, §48-5-48.7.

INTERVENTION.
County property taxes.
Temporary collection of taxes pending approval or appeal of disapproval of digest, §48-5-310.
Property taxes.
Temporary collection of taxes pending approval or appeal of disapproval of digest, §48-5-310.

INVENTORIES.
Land banks, §48-4-109.
Motor vehicle ad valorem taxation.
Dealers for retail sale.
Returns of dealers' inventory, §48-5-472.
Property tax exemption.
Freeport exemption.
Level 1, §§48-5-48.1, 48-5-48.2.
Timeliness of filings, §48-5-48.7.
Level 2, §§48-5-48.5, 48-5-48.6.
Timeliness of filings, §48-5-48.7.
Personal property constituting business inventory, §48-5-41.2.

INVESTIGATIONS.
Hotels and other lodging places.
Hotel motel tax performance review board.
Expenditure of funds by localities, §48-13-56.1.
Taxation.
Powers of commissioner, §48-2-8.
Tobacco and alternative nicotine products taxes.
Powers of special agents and enforcement officers, §48-11-19.
Stock of cigars and cigarettes, §48-11-11.

INVESTMENT ADVISERS.
Regulatory fees imposed by counties or municipalities.
Examples of businesses not subject to, §48-13-9.

INVESTMENTS.
County property taxes.
Reserve fund, §48-5-381.
High-technology data centers.
Sales and use tax exemptions.
Minimum investment threshold, §48-8-3.
Income taxes.
Qualified investment tax credits, §§48-7-40.27, 48-7-40.30.
Limitations, §48-7-40.28.
Municipal property taxes.
Reserve fund, §48-5-381.
Property taxes.
Reserve funds of counties and municipalities, §48-5-381.

INVOICES.
Tobacco and alternative nicotine products taxes.
Contents, §48-11-22.

INVOICES —Cont'd
Tobacco and alternative nicotine products taxes —Cont'd
False entries.
Penalty, §48-11-27.

IRRIGATION.
Sales and use taxes.
Exemptions.
Sale of electricity for irrigation, §48-8-3.

J

JEOPARDY ASSESSMENTS.
Tax executions.
Immediate payment or bond where person or property may leave jurisdiction or property's value may be prejudiced, §48-3-3.1.

JET FUEL.
Sales and use taxes.
Exemptions, §48-8-3.5.
Joint sales and use tax.
Counties and municipalities, §48-8-82.
Special district mass transportation sales and use tax.
Exemptions beyond general sales tax exemptions, §48-8-269.
Suspension of collection by governor, §48-8-19.

JOBBERS.
Sales and use taxes.
Duty to keep records, §48-8-53.
Failure to keep records and allow inspections, §48-8-54.

JOB TRAINING ORGANIZATIONS.
Sales and use tax exemptions.
Qualified job training organizations, sales of property and services to organization, §48-8-3.

JOINT COUNTY AND MUNICIPAL SALES AND USE TAX (LOST).
General provisions, §§48-8-80 to 48-8-97.
Special districts generally, §§48-8-80 to 48-8-97.

JOINT TENANTS.
Real estate transfer tax.
Exemption of deed or instrument effecting division of property among, §48-6-2.

JUDGMENTS.
Intangible recording tax.
Actions for refunds of protested amount, §48-6-76.
Tax executions.
Petition for judgment, §§48-3-13 to 48-3-17.

JUDICIAL SALES.
Liens.
Effect on state tax lien, §48-2-57.
Taxation.
Effect on state tax lien, §48-2-57.
Power of commissioner or authorized representative, §48-2-55.
Tax executions.
Sales under tax executions.
General provisions, §§48-4-1 to 48-4-65.

JURISDICTION.
Sales and use taxes.
Special county one percent tax.
Jurisdiction to enforce provisions, §48-8-124.
Superior courts.
Property taxes.
Acquisition of jurisdiction in property tax litigation.
Payment and distribution of property taxes at issue, §48-5-29.
Taxation.
Appeals of orders, rulings or findings of commissioner, §48-2-59.
Compelling production of evidence, §48-2-53.
Tobacco and alternative nicotine products taxes.
Criminal violations of chapter, §48-11-21.
Enforcement and collection of penalties, §48-11-24.
Tax executions.
Jurisdictional scope of tax executions, §48-3-5.
Tobacco and alternative nicotine products taxes.
State revenue commissioner, §48-11-4.
Superior courts.
Criminal violations of chapter, §48-11-21.
Enforcement and collection of penalties, §48-11-24.

JURY AND JURY TRIAL.
County property taxes.
Affidavit of illegality by person against whom execution issues.
Jury trial, §48-5-239.
Appeals from decisions of county boards of equalization.
Jury trial, §48-5-311.
Tax executions.
Petition to reduce execution to judgment.
Demand to jury trial, §48-3-15.

K

KEROSENE.
Motor fuel tax law.
General provisions, §§48-9-1 to 48-9-19.

L

LABOR AND INDUSTRIAL RELATIONS.
Commissioner of labor.
Contractors.
Nonresident contractors.
General provisions, §§48-13-30 to 48-13-38.
Nonresident contractors.
General provisions, §§48-13-30 to 48-13-38.
Department of labor.
Income taxes.
Setoff debt collection, §§48-7-160 to 48-7-170.
Setoff debt collection.
Income tax refunds generally, §§48-7-160 to 48-7-170.
Income taxes.
Assignment of corporate income tax credit, §48-7-42.
Child care, employer provided.
Tax credits, §48-7-40.6.
Manufacturing and telecommunications facilities.
Tax credits, §§48-7-40.2 to 48-7-40.4, 48-7-40.7 to 48-7-40.9.
Retraining programs, employer provided.
Tax credits, §48-7-40.5.
Manual laborers.
Property tax exemption.
Tools and implements, §48-5-42.

LABOR AND INDUSTRIAL RELATIONS —Cont'd
Taxation.
Child care, employer provided.
Tax credits, §48-7-40.6.
Manufacturing and telecommunications facilities.
Income tax credits, §§48-7-40.2 to 48-7-40.4, 48-7-40.7 to 48-7-40.9.
Retraining programs, employer provided.
Tax credits, §48-7-40.5.

LABOR UNIONS.
Income taxes.
Exemption of labor organizations, §48-7-25.

LAND BANK AUTHORITIES.
Sales under tax executions.
General provisions, §§48-4-60 to 48-4-65.

LAND BANKS.
Sales under tax executions.
General provisions, §§48-4-100 to 48-4-112.

LAND CONSERVATION.
Donation of land to be used for.
Income tax credit, §48-7-29.12.
Income taxes.
Donation of land to be used for conservation purposes.
Income tax credit, §48-7-29.12.

LANDFILLS.
Occupation tax or regulatory fee levied by local government.
Civil action to enforce, §48-13-9.1.
Example of business subject to, §48-13-9.

LANDSCAPE ARCHITECTS.
Fees.
Regulatory fees imposed by counties or municipalities.
Civil action to enforce, §48-13-9.1.
Examples of businesses not subject to, §48-13-9.

LAW ENFORCEMENT AGENCIES.
Tax credits for contributions to law enforcement foundations.
Limitations, §48-7-29.25.

LAW ENFORCEMENT FOUNDATIONS.
Tax credits for contributions to foundations.
Limitations, §48-7-29.25.

LAW ENFORCEMENT OFFICERS.
Disabled first responders.
Income taxes.
Deductions, indemnification payments, §48-7-27.
Motor vehicle ad valorem taxation.
Exemptions for disabled first responders (repealed 12/31/2029), §48-5C-1.
Homestead exemption.
Exemption for unremarried spouse of peace officer killed in line of duty, §48-5-48.4.
Income taxes.
Disabled first responders.
Deductions.
Indemnification payments, §48-7-27.
Motor fuel taxes.
Enforcement of article by peace officers, §48-9-15.
Motor vehicle ad valorem taxation.
Disabled first responders.
Exemptions for disabled first responders (repealed 12/31/2029), §48-5C-1.
Property taxes.
Homestead exemption.
Exemption for unremarried spouse of peace officer killed in line of duty, §48-5-48.4.

LEASES.
Personal property.
Tangible personal property.
Sales and use taxes.
General provisions, §§48-8-1 to 48-8-78.
Real estate transfer tax.
Exemption, §48-6-2.
Tangible personal property.
Sales and use taxes.
General provisions, §§48-8-1 to 48-8-78.

LEGAL ORGANS.
Ad valorem taxes.
Rate, §48-5-32.
Reserve funds.
Proposed transfers, §48-5-381.
Sales.
Special 1% tax.
Referendums, §48-8-92.
Sales taxes.
Discontinuing local tax.
Referendums, §48-8-92.

LEGAL ORGANS —Cont'd
Sales taxes —Cont'd
Local referendums, §48-8-85.

LEVEL 1 FREEPORT EXEMPTION.
Property taxes, §§48-5-48.1, 48-5-48.2.
Timeliness of filings, §48-5-48.7.

LEVEL 2 FREEPORT EXEMPTION.
Property taxes, §§48-5-48.5, 48-5-48.6.
Timeliness of filings, §48-5-48.7.

LIABILITY.
Motor carriers road tax, §48-9-37.
Revenue and taxation.
Avoiding payment of taxes.
Effect of actions taken to avoid payment, §48-2-61.
Commissioner.
Personal liability for intentional acts of misconduct, §48-2-2.
Taxation.
Avoidance, §48-2-61.
Commissioner's intentional acts, §48-2-2.

LIBRARIES.
Property tax exemption, §48-5-41.
Sales and use taxes.
Exemptions, §48-8-3.
Taxation.
Property tax exemption, §48-5-41.
Sales and use tax exemptions, §48-8-3.

LICENSES.
Charitable trusts.
Furnishing rooms, lodgings or accommodations.
Subject to local licensure, §48-13-55.
Militia.
Extensions for national guard members and reservists on active duty, §48-7-6.
Motor fuel taxes.
Aviation gasoline dealers.
Denial or cancellation, §48-9-12.
Licensing of sellers and consumers of aviation gasoline as, §48-9-6.
Distributors, §48-9-4.
Denial or cancellation, §48-9-12.
Engaging in business without, §48-9-17.
Assessment of penalty in lieu of taxes, §48-9-18.
Highway and nonhighway use of fuel oil, compressed petroleum gas or special fuel, §48-9-5.

LICENSES —Cont'd
National guard.
Extensions for national guard members and reservists on active duty, §48-7-6.
Nonresidents.
Tobacco and alternative nicotine products taxes.
Nonresident distributors, §48-11-5.
Tobacco and alternative nicotine products taxes.
Dealers and distributors, §48-11-4.
Nonresident distributors, §48-11-5.
Operation of unlicensed business or activities, §48-11-24.
Suspension, refusal of renewal and revocation, §48-11-6.
Promotional activities, §48-11-4.

LICENSE TAXES.
Charitable trusts.
Furnishing rooms, lodgings or accommodations, §48-13-55.
Erroneous or illegal collection, §48-5-380.
Financial institutions.
Local business license tax for depository financial institutions, §48-6-93.
Privilege taxes generally, §§48-13-2 to 48-13-29.
Refunds.
Erroneous or illegal collection, §48-5-380.
Sales and use taxes.
Tax levied in addition to license taxes, §48-8-30.

LIENS.
Aged persons.
Homestead tax deferral for individuals 62 or older.
Deferred taxes and interest constitute prior lien, §48-5-76.
Unsatisfied liens in excess of 85 percent of value, §48-5-78.
County property taxes.
Unpaid checks or money orders, §48-5-146.
County tax collectors.
Unpaid checks or money orders, §48-5-146.
County tax commissioners.
Unpaid checks or money orders, §48-5-146.

LIENS —Cont'd
Homestead tax deferral for individuals 62 or older.
Deferral taxes and interest constitute prior lien, §48-5-76.
Unsatisfied liens in excess of 85 percent of value, §48-5-78.
Income taxes, §48-2-56.
Intangible recording tax.
General provisions, §§48-6-60 to 48-6-77.
Judicial sales.
Effect on state tax lien, §48-2-57.
Land banks.
Extinguishment of liens or claims for taxes, §48-4-112.
Motor fuel taxes.
Priorities, §48-2-56.
Priorities.
Tax liens, §48-2-56.
Privilege taxes, §48-2-56.
Property taxes, §48-2-56.
Bona fide conservation use property and residential transitional property.
Penalties and interest for breach of covenant, §48-5-7.4.
Certification as landmark historic property for preferential assessment.
Difference between preferential assessment and tax otherwise assessed, §48-5-7.3.
Certification as rehabilitated historic property for preferential assessments.
Taxes and interest deferred, §48-5-7.2.
Homestead tax deferral for individuals 62 or older.
Deferral taxes and interest constitute prior lien, §48-5-76.
Unsatisfied liens in excess of 85 percent of value, §48-5-78.
Priorities, §48-2-56.
Tangible real property devoted to agricultural purposes.
Preferential assessment.
Penalties and interest imposed under section, §48-5-7.1.
Recordation.
Intangible recording tax.
General provisions, §§48-6-60 to 48-6-77.
Tobacco and alternative nicotine products taxes, §48-11-17.

LIENS —Cont'd
Tax liens, §48-2-56.
Intangible recording tax.
General provisions, §§48-6-60 to 48-6-77.
Judicial sales effect on state tax lien, §48-2-57.
Land banks.
Extinguishment of liens or claims for taxes, §48-4-112.
Priorities, §48-2-56.
Release of property subject to state tax lien, §48-2-58.
Tobacco and alternative nicotine products taxes.
Amount of unpaid tax, §48-11-17.
Tobacco and alternative nicotine products taxes.
Amount of unpaid tax, §48-11-17.

LIFE ESTATES.
Property taxes.
Liability of life tenants, §48-5-9.

LIFE INSURANCE.
National guard members.
Qualified life insurance premiums for national guard and air national guard members.
Income tax credits, §48-7-29.9.

LIMITATION OF ACTIONS.
County and municipal taxes or license fees, §48-5-380.
County tax and license fee collection.
Erroneous collection, §48-5-380.
County tax collectors.
Actions brought on correctness of accounting reports, §48-5-154.
County tax commissioners.
Correctness of accounting reports, §48-5-154.
County tax or license fee refunds, §48-5-380.
Energy tax.
Assessments.
Time for assessments, §48-13-117.
Refunds.
Time to claim refund, §48-13-117.
Erroneous collection of taxes.
County or municipal taxes and license fees, §48-5-380.

LIMITATION OF ACTIONS —Cont'd
Illegal collection of tax.
County and municipal taxes and license fees, §48-5-380.
Income taxes.
Periods of limitation for assessment of taxes, §48-7-82.
Revocation of exempt status, §48-7-25.
Intangible recording tax.
Actions for refunds of protested amount, §48-6-76.
Municipal corporations.
Erroneous collection of taxes and license fees, §48-5-380.
Municipal tax or license fee refunds, §48-5-380.
Property taxes.
Assessment of taxes, §48-2-49.
Personal property.
Assessment of tax imposed.
Time period, extension, §48-5-300.1.
Refunds from counties and municipalities, §48-5-380.
Real estate transfer tax.
Action for refund upon denial of claim, §48-6-7.
Refund of tax.
County and municipal taxes and license fees, §48-5-380.
Taxation.
Assessment of taxes, §48-2-49.
Refunds, §48-2-35.
Tax executions, §§48-3-21 to 48-3-23.1.
Administrative discharge of debts or obligations.
Commissioner to develop standards, §48-3-23.1.
Enforcement of executions for ad valorem taxes of less than $1, §48-3-21.1.
Nulla bona.
Tolling of statute of limitations, §48-3-23.
Real property ad valorem taxes due in amount of less than $5.00, §48-3-21.
State tax executions.
Time for filing, §48-3-42.
Statutory limitations applicable to tax executions, §48-3-22.

LIMITATION OF ACTIONS —Cont'd
Tax refunds.
County and municipal taxes or license fees, §48-5-380.

LIMITED LIABILITY COMPANIES.
Income tax.
Adjustment to federal gross income by members.
Entity taxed by another state, §48-7-27.
Credits.
Education, qualified expenses.
Members, §48-7-29.16.
Taxation.
Delinquent taxes.
Personal liability of members, managers, or employees, §48-2-52.

LIMITED LIABILITY PARTNERSHIPS.
Taxation.
Delinquent taxes.
Personal liability of partners or employees, §48-2-52.

LIMOUSINE CARRIERS.
Excise tax on for-hire ground transportation, §§48-13-140 to 48-13-144.
Sales and use tax exemptions.
Fares for vehicles operated under for-hire master license, §48-8-3.

LIQUEFIED NATURAL GAS.
Motor fuel taxes.
Taxation of fuels not sold or measured by gallon, §48-9-3.

LIQUEFIED PETROLEUM GAS.
Sales and use taxes.
Exemptions, §48-8-3.

LIQUID NICOTINE.
Taxes.
Tobacco and alternative nicotine products taxes, §§48-11-1 to 48-11-30.

LITTLE CIGARS.
Tobacco and alternative nicotine products taxes.
Definitions, §48-11-1.
Possession of unstamped tobacco products, penalties, §48-11-24.
Rate of tax, §48-11-2.
Tax on persons having cigars or cigarettes on which tax not paid.
Applicability to little cigars, §48-11-13.

LITTLE CIGARS —Cont'd
Tobacco and alternative nicotine products taxes —Cont'd
Transportation of unstamped tobacco products.
Applicability to little cigars, §48-11-22.
Violations, §48-11-23.

LIVESTOCK.
Municipal property taxes.
Exemption of livestock raised in state, §48-5-356.
Property taxes.
Municipal property taxes.
Exemption of livestock raised in state, §48-5-356.
Sales and use taxes.
Agricultural commodities.
Exemption of commodities not sold as finished product to ultimate consumer, §48-8-5.
Nonapplicability to livestock and livestock products used by farmer, §48-8-4.
Taxation.
Sales and use taxes.
Exemption of agricultural commodities.
Commodities not sold as finished product to ultimate consumer, §48-8-5.
Nonapplicability of use tax to livestock and livestock products used by producer, §48-8-4.

LOANS.
County property taxes.
State loans to counties, §§48-5-330, 48-5-331.
Programs to evaluate and equalize assessments, §48-5-330.
Capital fund for loans, §48-5-331.
Land banks.
Funding sources, §48-4-110.
Loans, limitation of powers, §48-4-106.

LOCAL GOVERNMENT.
Ad valorem taxation.
Property taxes.
Heavy-duty equipment ad valorem taxation, §§48-5-505 to 48-5-509.
Construction equipment owned by nonresidents, §§48-5-500, 48-5-501.

LOCAL GOVERNMENT —Cont'd
Ad valorem taxation —Cont'd
Property taxes —Cont'd
Mobile home ad valorem taxation.
General provisions, §§48-5-440 to 48-5-451, 48-5-490 to 48-5-495.
Air commerce.
Prohibition of tax on persons traveling in, §48-13-4.
Airline ad valorem taxation.
General provisions, §§48-5-540 to 48-5-546.
Business taxes.
Privilege taxes generally, §§48-13-2 to 48-13-29.
Capitation tax.
Prohibition, §48-13-3.
Conservation use property.
Forest land conservation use property.
Conservation use assessment.
Assistance grants to make up revenue reduction, §§48-5A-1 to 48-5A-6.
Consolidated government coliseum project sales tax.
Coliseum capital outlay projects, special purpose local option sales tax, §§48-8-145 to 48-8-157.
Conventions.
Excise tax on rooms, lodgings and accommodations.
General provisions, §§48-13-50 to 48-13-63.
Credit unions.
Taxation, §48-6-97.
Excise taxes.
Rooms, lodgings and accommodations.
General provisions, §§48-13-50 to 48-13-63.
Financial institutions.
Taxation of credit unions, §48-6-97.
Forest land conservation use property.
Conservation use assessment.
Assistance grants to make up revenue reduction, §§48-5A-1 to 48-5A-6.
Heavy-duty equipment.
Ad valorem taxation, §§48-5-505 to 48-5-509.
Construction equipment owned by nonresidents, §§48-5-500, 48-5-501.

LOCAL GOVERNMENT —Cont'd
Hotels and other lodging places.
Excise tax on rooms, lodgings and accommodations, §§48-13-50 to 48-13-63.
Income taxes.
Local income tax prohibition, §48-7-140.
License taxes.
Privilege taxes generally, §§48-13-2 to 48-13-29.
Local income taxes.
Prohibition, §48-7-140.
Mobile home ad valorem taxation.
General provisions, §§48-5-440 to 48-5-451, 48-5-490 to 48-5-495.
Motor fuel taxes.
Prohibition of tax on motor fuels, §48-9-3.
Motor vehicle ad valorem taxation.
General provisions, §§48-5-440 to 48-5-478.4.
Municipal property taxes.
General provisions, §§48-5-350 to 48-5-361.
Occupation taxes.
Privilege taxes generally, §§48-13-2 to 48-13-29.
Privilege taxes.
General provisions, §§48-13-2 to 48-13-29.
Property taxes.
Airline ad valorem taxation.
General provisions, §§48-5-540 to 48-5-546.
County board of tax assessors.
General provisions, §§48-5-290 to 48-5-314.
County taxation generally, §§48-5-220 to 48-5-243.
Delinquent tax officials.
General provisions, §§48-5-200 to 48-5-205.
Equalization of assessments.
General provisions, §§48-5-260 to 48-5-275.
Examination of county tax digest, §§48-5-340 to 48-5-349.5.
Exemptions generally, §§48-5-40 to 48-5-56.
Forest land conservation use property.
Conservation use assessment.
Assistance grants to make up revenue reduction, §§48-5A-1 to 48-5A-6.

LOCAL GOVERNMENT —Cont'd
Property taxes —Cont'd
General provisions, §§48-5-1 to 48-5-56.
Heavy-duty equipment ad valorem taxation, §§48-5-505 to 48-5-509.
Construction equipment owned by nonresidents, §§48-5-500, 48-5-501.
Homestead tax deferral for individuals 62 or older, §§48-5-70 to 48-5-84.
Mobile home ad valorem taxation, §§48-5-440 to 48-5-451, 48-5-490 to 48-5-495.
Motor vehicle ad valorem taxation.
General provisions, §§48-5-440 to 48-5-478.4.
Municipal taxation, §§48-5-350 to 48-5-361.
Public utility ad valorem taxation.
General provisions, §§48-5-510 to 48-5-524.
School taxes.
General provisions, §§48-5-400 to 48-5-405.
State loans to counties, §§48-5-330, 48-5-331.
Tax collectors.
General provisions, §§48-5-121 to 48-5-165.
Tax receivers.
General provisions, §§48-5-101 to 48-5-109.
Public utilities.
Ad valorem taxation.
General provisions, §§48-5-510 to 48-5-524.
Real estate transfer tax.
General provisions, §§48-6-1 to 48-6-10.
Sales and use taxes.
Ceiling on local taxes, §48-8-6.
Coliseum capital outlay projects, special purpose local option sales tax, §§48-8-145 to 48-8-157.
Joint county and municipal tax (LOST).
General provisions, §§48-8-80 to 48-8-97.
Prohibition against imposing tax on sales or services included in article, §48-8-6.
Special county one percent tax.
General provisions, §§48-8-110 to 48-8-124.

LOCAL GOVERNMENT —Cont'd
Sales and use taxes —Cont'd
Streamlined sales and use tax agreement, §§48-8-160 to 48-8-167.
School taxes.
General provisions, §§48-5-400 to 48-5-405.
Taxation.
Air commerce.
Prohibition of tax on persons traveling in, §48-13-4.
Airline ad valorem taxation.
General provisions, §§48-5-540 to 48-5-546.
Capitation tax.
Prohibition, §48-13-3.
Financial institutions.
Credit unions, §48-6-97.
Forest land conservation use property.
Conservation use assessment.
Assistance grants to make up revenue reduction, §§48-5A-1 to 48-5A-6.
Heavy-duty equipment ad valorem taxation, §§48-5-505 to 48-5-509.
Construction equipment owned by nonresidents, §§48-5-500, 48-5-501.
Hotels and other lodging places.
Excise tax on rooms, lodgings and accommodations, §§48-13-50 to 48-13-63.
Income taxes.
Local income tax prohibition, §48-7-140.
Mobile home ad valorem taxation.
General provisions, §§48-5-440 to 48-5-451, 48-5-490 to 48-5-495.
Motor fuel tax.
Prohibition, §48-9-3.
Motor vehicle ad valorem taxation.
General provisions, §§48-5-440 to 48-5-478.4.
Privilege taxes.
General provisions, §§48-13-2 to 48-13-29.
Property taxes.
Airline ad valorem taxation.
General provisions, §§48-5-540 to 48-5-546.
County board of tax assessors.
General provisions, §§48-5-290 to 48-5-314.
County taxation generally, §§48-5-220 to 48-5-243.

LOCAL GOVERNMENT —Cont'd
Taxation —Cont'd
Property taxes —Cont'd
Delinquent tax officials.
General provisions, §§48-5-200 to 48-5-205.
Equalization of assessments.
General provisions, §§48-5-260 to 48-5-275.
Examination of county tax digest, §§48-5-340 to 48-5-349.5.
Exemptions generally, §§48-5-40 to 48-5-56.
General provisions, §§48-5-1 to 48-5-56.
Heavy-duty equipment ad valorem taxation, §§48-5-505 to 48-5-509.
Construction equipment owned by nonresidents, §§48-5-500, 48-5-501.
Homestead tax deferral for individuals 62 or older, §§48-5-70 to 48-5-84.
Mobile home ad valorem taxation, §§48-5-440 to 48-5-451, 48-5-490 to 48-5-495.
Motor vehicle ad valorem taxation.
General provisions, §§48-5-440 to 48-5-478.4.
Municipal taxation, §§48-5-350 to 48-5-361.
Public utility ad valorem taxation.
General provisions, §§48-5-510 to 48-5-524.
School taxes.
General provisions, §§48-5-400 to 48-5-405.
State loans to counties, §§48-5-330, 48-5-331.
Tax collectors.
General provisions, §§48-5-121 to 48-5-165.
Tax receivers.
General provisions, §§48-5-101 to 48-5-109.
Public utility ad valorem taxation.
General provisions, §§48-5-510 to 48-5-524.
Real estate transfer tax.
General provisions, §§48-6-1 to 48-6-10.
Sales and use taxes.
Ceiling on local sales and use taxes, §48-8-6.

LOCAL GOVERNMENT —Cont'd
Taxation —Cont'd
Sales and use taxes —Cont'd
Coliseum capital outlay projects, special purpose local option sales tax, §§48-8-145 to 48-8-157.
Joint county and municipal tax (LOST).
General provisions, §§48-8-80 to 48-8-97.
Prohibition against imposing tax on sales or services included in article, §48-8-6.
Special county one percent tax.
General provisions, §§48-8-110 to 48-8-124.
TVA.
Apportionment of payments to political subdivisions in lieu of taxes, §48-14-2.
Tennessee Valley Authority.
Apportionment of payments to political subdivisions in lieu of taxes, §48-14-2.
Tourism.
Excise tax on rooms, lodgings and accommodations.
General provisions, §§48-13-50 to 48-13-63.
Georgia tourism development act, §§48-8-270 to 48-8-277.
Trade shows.
Excise tax on rooms, lodgings and accommodations.
General provisions, §§48-13-50 to 48-13-63.
TVA.
Apportionment of payments to political subdivisions in lieu of taxes, §48-14-2.

LOCK BOX SYSTEM, §48-5-147.

LOCKSMITHS.
Occupation tax or regulatory fee levied by local government.
Civil action to enforce, §48-13-9.1.
Example of business subject to, §48-13-9.

LODGING PLACES.
Excise tax on rooms, lodgings and accommodations.
General provisions, §§48-13-50 to 48-13-63.

LODGING PLACES —Cont'd
Sales and use taxes.
General provisions, §§48-8-1 to 48-8-78.

LONG-TERM NOTES SECURED BY REAL ESTATE.
Intangible recording tax.
General provisions, §§48-6-60 to 48-6-77.

LOOSE TOBACCO.
Tobacco and alternative nicotine products taxes, §§48-11-1 to 48-11-30.

LOTTERIES.
Proceeds.
Income tax, §§48-7-20, 48-7-30.
Sales and use taxes.
Exemptions, §48-8-3.

LOW EMISSION VEHICLES.
Tax credit, §48-7-40.16.

LOW-SPEED VEHICLES.
Income taxes.
Credits for alternative fueled vehicles, §48-7-40.16.

M

MACHINERY.
Sales and use taxes.
Exemptions, §48-8-3.
Agricultural equipment and machinery, §48-8-3.3.
Equipment used for manufacturing tangible personal property, or sale, use, storage or consumption of industrial materials, packaging supplies or energy, §48-8-3.2.
Payment by furnisher of machinery, §48-8-63.

MAILBOX RULE.
Tax payments, §48-5-148.

MALPRACTICE.
County tax collectors and tax commissioners.
Failure to collect interest and make reports and settlements.
Malpractice in office, §48-5-152.
Refusal to render account of official actions.
Malpractice in office, §48-5-140.

MANUFACTURED HOMES.
Sales and use tax exemptions, §48-8-3.

MANUFACTURERS.
Medical equipment and supplies.
Income tax credits, §48-7-40.1B.
Pharmaceuticals and medicines.
Income tax credits, §48-7-40.1B.

MARIJUANA.
Excise tax on marijuana and controlled substances, §§48-15-1 to 48-15-11.

MARKETPLACE FACILITATORS AND SELLERS.
Sales and use taxes.
Collection and payment of taxes, §48-8-30.
Definitions, §48-8-2.
Liability for taxes, §48-8-30.

MARRIAGE AND FAMILY THERAPISTS.
Fees.
Regulatory fees imposed by counties or municipalities.
Civil action to enforce, §48-13-9.1.
Examples of businesses not subject to, §48-13-9.

MASSAGE PARLORS.
Occupation tax or regulatory fee levied by local government.
Civil action to enforce, §48-13-9.1.
Example of business subject to, §48-13-9.

MASS TRANSPORTATION.
Sales and use taxes.
Special district mass transportation sales and use tax.
Generally, §§48-8-260 to 48-8-269.6.
Metropolitan county special districts, §§48-8-269.7 to 48-8-269.21.
Metropolitan municipality special districts, §§48-8-269.22 to 48-8-269.36.
Transit special purpose local option sales and use tax, §§48-8-269.40 to 48-8-269.58.

MASTERS.
Motor fuel taxes.
Sale of distributor's property.
Filing of statement, §48-9-13.

MAYOR.
Land bank authorities.
Board.
Appointments by mayor of party city, §48-4-62.

MEAT.
Municipal property taxes.
Exemption of certain goods purchased in carloads for distribution among several purchasers, §48-5-355.

MEDAL OF HONOR.
Motor vehicle ad valorem tax exemption, §48-5-478.3.

MEDICAID.
Setoff debt collection.
Income tax refunds generally, §§48-7-160 to 48-7-170.

MEDICINE.
Manufacturers of medical equipment and supplies.
Income tax credits, §48-7-40.1B.
Manufacturers of pharmaceuticals and medicines.
Income tax credits, §48-7-40.1B.

MEMORANDA.
Credit memos.
Property sold returned to dealer by purchaser.
Credit for taxes imposed with respect to return allowance, §48-8-58.

MENTAL HEALTH.
Patient cost of care act.
Setoff debt collection.
Income tax refunds generally, §§48-7-160 to 48-7-170.
Property tax exemption.
Nonprofit homes for the mentally handicapped, §48-5-41.

MERCHANTS.
Municipal property taxes.
Exemptions, §48-5-354.

METERS.
Tobacco and alternative nicotine products taxes.
Metering machine.
Authorized use, §48-11-5.
Tampering with, §48-11-28.

MIGRANT FARM WORKERS.
Property taxes.
Bona fide conservation use property.
Farm labor housing, use of property for, not considered breach of covenant, §48-5-7.4.
Forest land conservation use property.
Farm labor housing, use of property for, not considered breach of covenant, §48-5-7.7.

MILITARY AFFAIRS.
County property taxes.
Penalties and interest, waiver.
Military service in combat zone as cause of default, §48-5-243.
Homestead exemptions.
Surviving spouses of US service members.
Ad valorem property taxes, §48-5-52.1.
Income taxes.
Armed forces members dying on active duty.
Taxes due, §48-7-37.
Armed forces members' returns.
Extensions for filing, §48-7-56.
Credits.
Qualified life insurance premiums for national guard and air national guard members, §48-7-29.9.
Tolling of time limits for filings by reason of war related service, §48-7-36.
Medal of Honor recipients.
Motor vehicle ad valorem tax exemption, §48-5-478.3.
Prisoners of war.
Motor vehicle ad valorem taxation exemption, §48-5-478.1.
Privilege taxes.
Occupation tax, levy by counties and municipalities.
Penalty for failure to pay.
Combat zone service, no liability for penalty or interest, §48-13-21.
Property taxes.
Special assessment.
Military personnel serving abroad.
Application, filing, extension, §48-5-30.

MILITARY AFFAIRS —Cont'd
Purple Heart.
Motor vehicle ad valorem tax exemption, §48-5-478.2.
Taxation.
Income taxes.
Armed forces members dying on active duty.
Taxes due, §48-7-37.
Armed forces members' returns.
Extension for filing, §48-7-56.
War related service.
Tolling of time limits for filing, §48-7-36.
Veterans' organizations.
Motor vehicle ad valorem tax exemption, §48-5-478.4.
Property tax exemption, §48-5-41.

MILITIA.
Air national guard.
Qualified life insurance premiums for guard members.
Income tax credit, §48-7-29.9.
Income taxes.
Contributions to Georgia National Guard Foundation, §48-7-58.
Qualified life insurance premiums for national guard and air national guard.
Credits, §48-7-29.9.
Insurance.
Life insurance.
Qualified life insurance premiums for national guard and air national guard members.
Income tax credits, §48-7-29.9.
Licenses or registrations.
Extension for national guard members and reservists on active duty, §48-7-6.
Life insurance.
Qualified life insurance premiums for national guard and air national guard members.
Income tax credits, §48-7-29.9.

MILLAGE RATES.
Property tax increase, §48-5-32.1.
Sales and use taxes.
Joint county and municipal tax.
Adjustment for ad valorem taxation of tangible personal property, §48-8-91.

MINORITIES.
Small businesses.
Income taxes, deduction for payments to classified subcontractors.
Minority, women, or veteran owned businesses, §48-7-38.

MINORITY, WOMEN AND VETERAN OWNED BUSINESS ENTERPRISE DEVELOPMENT.
Income taxes, deduction for payments to classified subcontractors.
Minority, women, or veteran owned businesses, §48-7-38.

MISDEMEANORS.
Contractors.
Nonresident contractors.
Violations of article, §48-13-38.
Controlled substances.
Excise tax on marijuana and controlled substances.
Violation of confidentiality requirements, §48-15-10.
County tax collectors.
Collection before bond given and oath taken, §48-5-125.
Failure to keep cashbook, §48-5-139.
County tax commissioners.
Collection before bond given and oath taken, §48-5-125.
Failure to keep cashbook, §48-5-139.
Refusal to receive returns, §48-5-104.
County tax receivers.
Refusal to receive returns, §48-5-104.
Energy tax.
Dealers.
Violation of provisions, punishment not specified, §48-13-128.
Fraudulent or otherwise false returns, §48-13-125.
Recordkeeping.
Failure to keep records or make available for inspection, §48-13-127.
Returns.
Failure to make or furnish, §48-13-126.
Willful failure to collect tax, §48-13-124.
Excise tax on marijuana and controlled substances.
Violation of confidentiality requirements, §48-15-10.

MISDEMEANORS —Cont'd
Fraud.
Homestead exemption from ad valorem taxation.
Fraudulent claims, §48-5-51.
High and aggravated nature.
Energy tax.
Fraudulent or otherwise false returns, §48-13-125.
Recordkeeping.
Failure to keep records or make available for inspection, §48-13-127.
Returns.
Failure to make or furnish, §48-13-126.
Willful failure to collect, §48-13-124.
Marijuana and controlled substance excise tax.
Confidentiality of information violations, §48-15-10.
Homestead exemption.
Property taxes.
Fraudulent claims, §48-5-51.
Solicitation of fee to file application for another, §48-5-45.
Hotels and other transient lodging places.
Taxation.
Excise tax on rooms, lodging and accommodations, §§48-13-60 to 48-13-63.
Income taxes.
Current income tax payment.
Estimated tax.
Willful failure to pay, §48-7-127.
Corporations, §48-7-127.
Evading or defeating tax.
Attempts, §48-7-127.
Exemption certificates.
False certificates, §48-7-127.
Notice of delinquency.
Violations, §48-7-127.
Notice of special accounting.
Failure to comply, §48-7-127.
Returns.
Willful failure to file, §48-7-127.
Withholding tax.
False receipts or failure to furnish receipt, §48-7-127.
Willful failure to pay over, §48-7-127.
Willful failure to withhold, §48-7-127.
Disregard of rules and regulations in preparing return, §48-7-4.

MISDEMEANORS —Cont'd
Income taxes —Cont'd
Failure of person to pay tax, file return, keep records, etc., §48-7-2.
False or fraudulent returns, affidavits, claims, etc.
Assisting, counseling, etc., in filing, §48-7-3.
Unlawful divulging of confidential information, §48-7-61.
Intangible recording tax.
Failure to show correct amount and due date on instrument encumbering or conveying real estate, §48-6-67.
Mobile home ad valorem taxation.
Failure to attach and display decal, §48-5-493.
Motor carriers road tax.
Failure to file report, §48-9-46.
False statements for purposes of obtaining credit, refund, etc., §48-9-46.
Violation of requirement of motor vehicle registration cards and identification markers, §48-9-39.
Motor fuel taxes.
False swearing on application for refund, §48-9-11.
Violations of article, §48-9-17.
Nonresident contractors.
Violations of article, §48-13-38.
Occupation tax.
Confidentiality violations, §48-13-15.
Property taxes.
Homestead exemption.
Fraudulent claims, §48-5-51.
Solicitation of fee to file application for another, §48-5-45.
Unlawfully exempted property.
Failure to have returned for taxation and to collect taxes on, §48-5-22.
Real estate transfer tax.
Evasion of tax, §48-6-10.
Failure to collect, account for and pay over tax, §48-6-9.
Sales and use taxes.
Advertising by dealers of assumption of payment of tax, §48-8-37.
Dealer's certificate of registration.
Engaging in business as seller without, §48-8-60.
Failure, neglect or refusal of dealers to collect, §48-8-7.

MISDEMEANORS —Cont'd
Sales and use taxes —Cont'd
Failure by dealer to furnish return, §48-8-9.
Failure by dealer to keep or allow inspection of records, §48-8-10.
Failure of wholesalers or jobbers to keep and allow inspection of records, §48-8-54.
False or fraudulent returns by dealers, §48-8-8.
Final return and payment upon sale of or quitting business.
Violations of code section, §48-8-48.
Frivolous refund claim, §48-2-35.1.
Notice to persons holding credits of or owing debts to delinquent dealers.
Violations of code section, §48-8-48.
Refusal by transportation companies to allow examination of books and records, §48-8-12.
Violations of other provisions of article, §48-8-11.
Tax amnesty program.
Subpoena or order of commissioner.
Failure to obey, §48-16-12.
Taxation.
Duties or functions of representative of commissioner or department.
Unlawful exercise by unauthorized person, §48-1-4.
Failure to give official receipt for payment of taxes, §48-2-34.
Hotels and other lodging places.
Excise tax on rooms, lodging and accommodations.
Failure to furnish return, §48-13-61.
Failure to keep and open records, §48-13-62.
False or fraudulent returns, §48-13-60.
Violations generally, §48-13-63.
Omissions knowingly and intentionally made, §48-1-6.
Tax evasion, §48-1-6.
Fraudulent use of exemption certificate, §48-1-7.
Unlawful filing of false documents, §48-1-6.
Tax executions.
Obstructing levying officers, §48-3-27.
Unlawful transfers, §48-3-19.
Tobacco and alternative nicotine products taxes.
Failure to file report or filing false report, §48-11-26.

MISDEMEANORS —Cont'd
Tobacco and alternative nicotine products taxes —Cont'd
False entries on invoices or records, §48-11-27.
Package cigarette sales.
Unlawful affixing of tax stamp, §48-11-23.1.
Possession of unstamped cigarettes or nontax-paid cigars with intent to evade tax, §48-11-25.
Transportation of unstamped cigarettes and nontax-paid cigars.
Violations of sections, §48-11-23.
Vapor products, prohibited sales, §48-11-4.1.
Vapor products.
Prohibited sales, §48-11-4.1.

MISTAKE.
County boards of tax assessors.
Correction of mistakes in tax digest, §48-5-303.

MOBILE HOME AD VALOREM TAXATION, §§48-5-440 to 48-5-451, 48-5-490 to 48-5-495.
Additional help and equipment.
Discretion of county governing authorities to expend funds for, §48-5-449.
Affidavit of illegality to assessments, §48-5-450.
Appeals of tax assessments, §48-5-450.
Assessments.
Assessment level, §48-5-443.
Contesting, §48-5-450.
Uniform evaluation prepared and distributed annually, §48-5-442.
Bonds, surety.
Contesting tax assessments, §48-5-450.
Classification of mobile homes.
Separate and distinct class of tangible property, §48-5-441.
Collection of taxes, §48-5-445.
Compensation of tax officials for collecting, §48-5-447.
Procedure in taxing county different from county of purchaser's residence, §48-5-495.
Remittance of taxes collected, §48-5-446.
Contesting tax assessments, §48-5-450.
County tax collectors.
Collection of taxes, §48-5-445.

MOBILE HOME AD VALOREM TAXATION —Cont'd
County tax collectors —Cont'd
Compensation for collecting, §48-5-447.
Remittance of taxes collected, §48-5-446.
Uniform evaluation prepared and distributed annually to, §48-5-442.
County tax commissioners.
Collection of taxes, §48-5-445.
Compensation for collecting, §48-5-447.
Remittance of taxes collected, §48-5-446.
Uniform evaluation prepared and distributed annually to, §48-5-442.
Decals.
Failure to attach and display, §48-5-493.
Issuance.
Evidence of issuance of location permit, §48-5-492.
Where purchaser is nonresident of county of seller, §48-5-495.
Moving or transporting mobile home without, §48-5-493.
Tax appraisers.
Duty to inspect homes to determine if decals have been attached, §§48-5-127, 48-5-263.
Definitions, §48-5-440.
Evaluation of mobile homes.
Uniform evaluation prepared and distributed annually to tax collectors and tax commissioners, §48-5-442.
Exclusivity of procedures prescribed, §48-5-441.
Failure to attach and display decals, §48-5-493.
January 1.
Mobile homes owned on January 1, subject to taxation, §48-5-490.
Location permits.
Application and issuance upon payment of taxes due, §48-5-494.
Collection procedure when taxing county differs from county of purchaser's residence, §48-5-495.
Decals, §48-5-492.
Failure to attach and display, §48-5-493.
Moving or transporting mobile home without, §48-5-493.
Issuance, §48-5-492.
Mobile homes not subject to taxation, §48-5-492.

MOBILE HOME AD VALOREM TAXATION —Cont'd
Mobile homes not subject to taxation.
Issuance of location permits, §48-5-492.
Mobile homes owned on January 1 subject to taxation, §48-5-490.
Moving and transporting mobile home without decal, §48-5-493.
Payment of tax.
Application and issuance of location permits, §48-5-494.
Failure to pay, §48-5-451.
Penalty for failure to make return or pay tax, §48-5-451.
Rate of tax, §48-5-443.
Remittance of taxes collected, §48-5-446.
Returns, §48-5-494.
Failure to make return, §48-5-451.
Place of return, §48-5-444.
Separate and distinct class of tangible property.
Classification of mobile homes, §48-5-441.
Superior courts.
Contesting tax assessments, §48-5-450.
Tax digest.
Value of returned mobile homes included in, §48-5-448.
Taxing county different from county of purchaser's residence.
Collection procedure, §48-5-495.
Time.
Remittance of taxes collected to tax authority, §48-5-446.
Returns and payments in certain counties, §48-5-494.
Value of mobile homes included in tax digest, §48-5-448.

MOBILE HOMES.
Ad valorem taxation.
General provisions, §§48-5-440 to 48-5-451, 48-5-490 to 48-5-495.
Definitions.
Ad valorem taxation, §48-5-440.
Property taxes.
General provisions, §§48-5-440 to 48-5-451, 48-5-490 to 48-5-495.
Taxation.
Ad valorem taxation.
General provisions, §§48-5-440 to 48-5-451, 48-5-490 to 48-5-495.

MOBILE TELEPHONES.
Sales and use taxes.
Taxing jurisdiction for mobile telecommunications services, §48-8-13.

MODELING AGENCIES.
Occupation tax or regulatory fee levied by local government.
Civil action to enforce, §48-13-9.1.
Example of business subject to, §48-13-9.

MONEY.
Sales and use taxes.
Exemptions, §48-8-3.

MONEY MARKET MUTUAL FUNDS.
Taxation.
Delinquent taxpayers.
Financial institution reporting on delinquent taxpayers, §48-2-63.

MONEY ORDERS.
County property taxes.
Receipt by commissioners or collectors in payment of taxes, §48-5-146.
Liability for unpaid money orders, §48-5-146.
County tax collectors.
Instructing taxpayers.
Negotiable instruments made payable to county tax office, §48-5-165.
Payment of tax by money order.
Receipt not required to be given by collector, §48-5-127.
Receipt of money orders in payment of taxes, §48-5-146.
County tax commissioners.
Instructing taxpayers.
Money orders made payable to county tax office, §48-5-165.
Payment of tax by money order.
Receipt not required to be given, §48-5-127.
Receipt of money orders in payment of taxes, §48-5-146.
Liability for unpaid money orders, §48-5-146.
Taxation.
Forms of payment, §48-2-32.
Penalty when money order not paid when presented, §48-2-32.

MORAL TURPITUDE.
Conviction of offense involving moral turpitude.
County tax officials.
Ineligibility to office, §48-5-210.

MORTGAGES.
Aged persons.
Homestead tax deferral for individuals 62 or older.
Payment by holder of deed to secure debt or mortgagee, §48-5-81.
Prohibition of clauses preventing applications for deferral, §48-5-82.
Homestead tax deferral for individual 62 or older.
Payment by holder of deed to secure debt or mortgagee, §48-5-81.
Prohibition of clauses preventing applications for deferral, §48-5-82.
Intangible recording tax.
General provisions, §§48-6-60 to 48-6-77.
Property taxes.
Homestead tax deferral for individuals 62 or older.
Payments by mortgagee, §48-5-81.
Prohibition of clauses preventing applications for deferral, §48-5-82.
Recordation.
Intangible recording tax.
General provisions, §§48-6-60 to 48-6-77.
Taxation.
Intangible recording tax.
General provisions, §§48-6-60 to 48-6-77.
Tax avoidance.
Effect of actions to avoid payment, §48-2-61.
Tax executions.
Lists of security deeds and mortgages, §48-3-9.
Notice of levy to owner of security deed or mortgage, §48-3-9.
Forms, §48-3-10.

MOTELS.
Excise tax on rooms, lodgings and accommodations.
General provisions, §§48-13-50 to 48-13-63.

MOTELS —Cont'd
Occupation tax or regulatory fee levied by local government.
Civil action to enforce, §48-13-9.1.
Example of business subject to, §48-13-9.

MOTION PICTURES.
Income tax credits.
Film, gaming, video or digital production in state, §48-7-40.26.
Postproduction expenditures, §48-7-40.26A.
Sales and use taxes.
Exemption of rental to persons charging admission to see, §48-8-3.

MOTOR CARRIERS.
Commercial vehicle ad valorem taxation, §48-5-442.1.
Motor fuel taxes.
Reports of motor fuel deliveries, §48-9-9.
Reports.
Motor fuel taxes.
Deliveries of motor fuel, §48-9-9.
Road tax on motor carriers.
General provisions, §§48-9-30 to 48-9-46.
Taxation.
Road tax on motor carriers.
General provisions, §§48-9-30 to 48-9-46.

MOTOR CARRIERS' ROAD TAX, §§48-9-30 to 48-9-46.
Additional tax imposed on motor carriers, §48-9-31.
Administration of article.
Assistance by department of public safety, §48-9-43.
Amount of motor fuel used in state.
Calculations, §48-9-32.
Arrests.
Powers of department, §48-9-43.
Assessments.
Deficiencies, §48-9-41.
Estimation of amount of road tax due, §48-9-40.
Reopening of tax period and additional assessment, §48-9-41.
Attachments.
Collection of deficiencies and road taxes due, §48-9-41.
Bonds, surety.
Carriers entitled to refund, §48-9-36.

MOTOR CARRIERS' ROAD TAX —Cont'd
Burden of proof.
Assessment based on estimation of amount of road tax due, §48-9-40.
Calculation of tax.
Amount of motor fuel used in state, §48-9-32.
Basis, §48-9-31.
Passenger motor carriers filing joint reports, §48-9-34.
Credits.
Against road tax for payment of motor fuel tax, §48-9-35.
False statements for purposes of obtaining, §48-9-46.
Passenger motor carriers filing joint reports, §48-9-34.
Refunds, §48-9-36.
Default in payment, §48-9-41.
Deficiency assessments, §48-9-41.
Definitions, §48-9-30.
Enforcement of article.
Assistance by department of public safety, §48-9-43.
Powers of revenue agents, §48-9-44.
Estimation of amount of road tax due, §48-9-40.
Executions.
Levy to collect deficiencies and road taxes due, §48-9-41.
False statements for purposes of obtaining credit, refunds, etc., §48-9-46.
Fees.
Motor vehicle registration cards and identification markers, §48-9-38.
Fraud.
Fraudulent reports, §48-9-41.
Garnishment.
Collection of deficiencies and road taxes due, §48-9-41.
Imposition of tax, §48-9-31.
Inspections.
Records, §48-9-40.
Interest.
Assessment and collection on penalty, §48-9-45.
Refunds bear no interest, §48-9-36.
Lessee and lessor of motor vehicles deemed motor carriers, §48-9-37.
Motor fuel taxes.
Credit against road tax for payment of motor fuel tax, §48-9-35.

MOTOR CARRIERS' ROAD TAX —Cont'd
Motor vehicle leases.
Lessee and lessor of motor vehicles deemed motor carriers, §48-9-37.
Primary liability, §48-9-37.
Motor vehicle registration cards and identification markers.
Requirement, §48-9-38.
Violation of code section, §48-9-39.
Nonresidents.
Secretary as agent for service of process or notice, §48-9-42.
Notice.
Secretary of state as agent of nonresident motor carriers, §48-9-42.
Passenger motor carriers.
Joint reports, §48-9-34.
Payment of tax, §48-9-32.
Deficiency assessments, §48-9-41.
Penalties, §48-9-45.
Permits.
Temporary permits, §48-9-38.
Presumptions.
Estimation of amount of road tax due, §48-9-40.
Rate of tax, §48-9-31.
Records.
Keeping and preservation, §48-9-40.
Reduction of liability.
False statements, §48-9-46.
Refunds, §48-9-36.
False statements for purposes of obtaining, §48-9-46.
Passenger motor carriers filing joint reports, §48-9-34.
Registration cards and identification markers for motor vehicles.
Requirement, §48-9-38.
Violation of code section, §48-9-39.
Reopening of tax period.
Fraudulent reports, §48-9-41.
Reports, §48-9-33.
Failure to make, §48-9-46.
Fraudulent reports, §48-9-41.
Joint reports by passenger motor carriers, §48-9-34.
Revenue agents.
Powers and enforcement of article, §48-9-44.
Secretary of state.
Agent of nonresident motor carriers for service of process or notice, §48-9-42.

MOTOR CARRIERS' ROAD TAX —Cont'd
Service of process.
Powers of department of public safety in administering and enforcing article, §48-9-43.
Secretary of state as agent of nonresident motor carriers, §48-9-42.
Tax executions.
Levy to collect deficiencies and road taxes due, §48-9-41.
Temporary permits, §48-9-38.
Time.
Applications for refunds, §48-9-36.
Payment of tax, §48-9-32.
Reports, §48-9-33.

MOTOR FUELS.
Sales and use taxes.
Special district option sales and use tax.
Applicability of tax imposed, §48-8-109.31.
Transit special purpose local option sales and use tax.
Exemptions from local tax.
Additional exemptions, §48-8-269.52.
Taxation.
Motor fuel tax, §§48-9-1 to 48-9-19.
Sales and use taxes.
Credit or refund for sales tax where prepaid state or local tax imposed, §48-8-30.
Educational purposes sales tax.
Rate of tax on motor fuels, §48-8-141.
Homestead option sales and use taxes.
Special districts.
Rate of sales tax, §48-8-102.
Imposition of prepaid local tax, §48-8-82.
Prepaid state taxes.
Temporary suspension of collection as it relates to motor fuels and aviation gasoline.
Ratification of governor's executive order, §48-8-17.
Rate, §48-8-82.
Special county one percent sales and use tax.
Applicability to motor fuel sales, §48-8-110.1.

MOTOR FUELS —Cont'd
Taxation —Cont'd
Sales and use taxes —Cont'd
Special district mass transportation sales and use tax.
Exemptions beyond general sales tax exemptions.
Locomotives, §48-8-269.
Off-road agricultural equipment, §48-8-269.
Off-road heavy duty equipment, §48-8-269.
Water and sewer projects and costs.
Rate of tax, §48-8-201.

MOTOR FUEL TAXES, §§48-9-1 to 48-9-19.
Agriculture.
Refunds to persons using gasoline for agricultural purposes, §48-9-10.
False swearing on applications, §48-9-11.
Assessments, §48-9-13.
Operation without distributor's license.
Assessment of penalty in lieu of taxes, §48-9-18.
Automatic rate adjustments, §48-9-3.
Aviation gasoline dealers.
Licenses.
Denial or cancellation, §48-9-12.
Licensing sellers and consumers of aviation gasoline as, §48-9-6.
Records, §48-9-8.
Bonds, surety.
Distributors, §48-9-4.
Retention by state revenue commissioner upon cancellation, §48-9-12.
Carriers.
Reports of motor fuel deliveries, §48-9-9.
Claim for refund, §48-9-10.
False swearing on applications, §48-9-11.
Commissioner of public safety.
Enforcement of article, §48-9-15.
Compressed natural gas.
Taxation of fuels not sold or measured by gallon, §48-9-3.
Confidentiality of information.
Inapplicability of section to information, records and reports required, §48-2-15.
Cooperative agreements with other states, §48-9-19.

MOTOR FUEL TAXES —Cont'd
Counties.
Prohibition of tax on motor fuels, §48-9-3.
Dealers.
Licensing of sellers and consumers of aviation gasoline as, §48-9-6.
Retail dealers.
Refunds, §48-9-10.
Deficiencies.
Assessments, §48-9-13.
Definitions, §48-9-2.
Deliveries of motor fuel.
Reports, §48-9-9.
Discontinuance of distributor's operations, §48-9-7.
Distributors.
Assessment of deficiencies, §48-9-13.
Bond, §48-9-4.
Retention upon cancellation of license, §48-9-12.
Discontinuance, sale or transfer of operations, §48-9-7.
Electronic filing requirements, failure to follow, §48-2-44.1.
Exempted sales by licensed distributors, §48-9-3.
False or fraudulent reports, §48-9-13.
Highway and nonhighway use of fuel oil, compressed petroleum gas or special fuel.
Licensing as distributors, §48-9-5.
Licenses, §48-9-4.
Denial or cancellation, §48-9-12.
Engaging in business without, §48-9-17.
Assessment of penalty in lieu of taxes, §48-9-18.
Highway and nonhighway use of fuel oil, compressed petroleum gas or special fuel, §48-9-5.
Procedure, §48-9-4.
Requirement, §48-9-4.
Validity and nonassignability, §48-9-4.
List of licensed distributors, §48-9-12.
Payment of tax, §48-9-8.
Penalties and interest, §48-9-16.
Records, §48-9-8.
Reports, §48-9-8.
Sale of distributor's property, §48-9-13.
Electric vehicle charging stations.
Taxation of fuels not sold or measured by gallon, §48-9-3.
Electronic filing requirements, failure to follow, §48-2-44.1.

MOTOR FUEL TAXES —Cont'd
Enforcement of article.
Officers required to assist, §48-9-15.
Estimation by commissioner of number of gallons of motor fuel to be taxed, §48-9-12.
Exchange of information.
Cooperative agreements with other states, §48-9-19.
Exemptions.
Motor fuel used for non-highway purposes, §48-9-3.
Purchase of tax-exempt motor fuel and permitting to be used for highway purposes, §48-9-17.
Sales by licensed distributors, §48-9-3.
School buses, fuel paid for by school system, §48-9-3.
False or fraudulent reports, §48-9-16.
False swearing on application for refund, §48-9-11.
Fees.
Aviation gasoline dealers' licenses, §48-9-6.
Distributors' licenses, §48-9-4.
Fraud.
False or fraudulent reports, §48-9-16.
Distributors, §48-9-13.
Hydrogen vehicles.
Taxation of fuels not sold or measured by gallon, §48-9-3.
Identification cards.
Trucks, tanks or vessels transporting motor fuels, §48-9-9.
Inspections.
Books and records of distributors, aviation gasoline dealers or other persons, §48-9-8.
Levy of excise tax, §48-9-3.
Licenses.
Aviation gasoline dealers.
Denial or cancellation, §48-9-12.
Licensing of sellers and consumers of aviation gasoline as, §48-9-6.
Distributors, §48-9-4.
Denial or cancellation, §48-9-12.
Engaging in business without, §48-9-17.
Assessment of penalty in lieu of taxes, §48-9-18.
Highway and nonhighway use of fuel oil, compressed petroleum gas or special fuel, §48-9-5.
Liens.
Priorities, §48-2-56.

MOTOR FUEL TAXES —Cont'd
Liquefied natural gas.
Taxation of fuels not sold or measured by gallon, §48-9-3.
Local government.
Prohibition of tax on motor fuels, §48-9-3.
Masters.
Sale of distributor's property.
Filing of statement, §48-9-13.
Motor common carriers.
Reports of fuel deliveries, §48-9-9.
Motor fuels not commonly sold or measured by gallon, §48-9-3.
Motor fuel tax law.
Short title, §48-9-1.
Motor fuel used for non-highway purposes.
Exemptions, §48-9-3.
Municipal corporations.
Prohibition of tax on motor fuels, §48-9-3.
Notice.
Cancellation of distributors or aviation gasoline dealers' licenses, §48-9-12.
Discontinuance, sale or transfer of distributor's operations, §48-9-7.
Distributor's bond.
Surety's request for release, §48-9-4.
Payment of tax.
Distributors, §48-9-8.
Failure to pay, §48-9-16.
Peace officers.
Enforcement of article, §48-9-15.
Penalties and interest, §48-9-16.
Penalty in lieu of taxes.
Operation without distributor's license, §48-9-18.
Permits.
Refund permit, §48-9-10.
Pipeline companies.
Reports of motor fuel deliveries, §48-9-9.
Political subdivisions.
Prohibition of tax on motor fuels, §48-9-3.
Powers of state revenue commissioner, §48-9-12.
Presumptions.
Estimation by commissioner of number of gallons of motor fuel to be taxed, §48-9-12.
Priorities.
Liens, §48-2-56.

MOTOR FUEL TAXES —Cont'd
Railroads.
Reports of motor fuel deliveries, §48-9-9.
Rate of tax, §48-9-3.
Receivers.
Sale of distributor's property.
Filing of statement, §48-9-13.
Records.
Distributors and aviation gasoline dealers, §48-9-8.
Failure to keep required records, §48-9-17.
Inspection, §§48-9-8, 48-9-12.
Resellers and retailers, §48-9-8.
Refunds, §48-9-10.
Collecting refund without being entitled, §48-9-17.
Credit card issuers, §48-9-10.1.
False swearing on application, §48-9-11.
Registration.
Tank registration number to persons transporting motor fuels, §48-9-9.
Releases.
Distributor's bond.
Sureties request for release, §48-9-4.
Reports.
Distributors tax reports, §48-9-8.
False or fraudulent reports, §§48-9-13, 48-9-16.
Failure to file, §48-9-16.
Persons required to file but not licensed as distributors, §48-9-17.
False or fraudulent reports, §§48-9-13, 48-9-16.
Motor fuel deliveries, §48-9-9.
Resellers.
Records, §48-9-8.
Retailers.
Records, §48-9-8.
Refunds to retail dealers, §48-9-10.
False swearing on application, §48-9-11.
Sale of distributor's operations, §48-9-7.
Sale of distributor's property, §48-9-13.
Sales and use tax.
Exemptions, §48-8-3.

MOTOR FUEL TAXES —Cont'd
Sales and use tax —Cont'd
Special district mass transportation sales and use tax.
Exemptions beyond general sales tax exemptions, §48-8-269.
Fuel used for propulsion of vehicles on highways, §48-8-269.
Sheriffs.
Enforcement of article, §48-9-15.
Sale of distributor's property.
Filing of statement, §48-9-13.
Short title.
Motor fuel tax law, §48-9-1.
Tank registration numbers.
Persons transporting motor fuels, §48-9-9.
Time.
Agreements for extension of time, §48-9-12.
Transfer of distributor's operations, §48-9-7.
Transporters of motor fuels.
Markings on tanks, §48-9-9.
Reports of deliveries, §48-9-9.
Required documents, §48-9-9.
Tank registration number and identification card, §48-9-9.
Violations of article, §48-9-17.
Water transportation companies.
Reports of deliveries of motor fuel, §48-9-9.

MOTOR FUEL TAX LAW.
General provisions, §§48-9-1 to 48-9-19.
Short title, §48-9-1.

MOTOR VEHICLE AD VALOREM TAXATION, §§48-5-440 to 48-5-478.4.
Additional help and equipment.
Discretion of county governing authorities to expend funds for, §48-5-449.
Affidavit of illegality of assessment, §48-5-450.
Aircraft owned by dealer and held in inventory.
Separate classification, inapplicability of procedures, §48-5-504.20.

MOTOR VEHICLE AD VALOREM TAXATION —Cont'd
All-terrain vehicles owned by dealer and held in inventory.
Exempt from taxation for limited time, §48-5-504.40.
Alternative ad valorem tax on motor vehicles, §48-5C-1.
Antique, hobby or special interest motor vehicles.
Certification, §48-5-473.
Defined, §48-5-440.
Fair market value, §48-5-442.
Appeals of fair market value, §48-5C-1.
Appeals of tax assessments, §48-5-450.
Armed forces nonresident members, §48-5-471.
Assessments.
Contesting, §48-5-450.
Dealers for retail sale.
Dealer's assessed value, §48-5-472.
Fair market value on motor vehicles, §48-5C-1.
Level of assessment, §48-5-443.
Uniform evaluation prepared and distributed annually, §48-5-442.
Bonds, surety.
Contesting tax assessments, §48-5-450.
Cancellation of registration.
Effect on tax liability, §48-5-451.
Classification of motor vehicles.
Aircraft owned by dealer and held in inventory, §48-5-504.20.
Farm equipment.
Self-propelled equipment as separate sub-class of vehicle, §48-5-504.
Separate and distinct class of tangible property, §§48-5-441, 48-5-441.1.
Collection of taxes, §48-5-445.
Compensation of tax officials for collecting, §48-5-447.
Procedure of taxing county different from county of purchaser's residence, §48-5-476.
Remittance of taxes collected, §48-5-446.
Contesting tax assessments, §48-5-450.
County tax collectors.
Agents for state revenue commissioner.
Accepting applications for registration and collecting taxes, §48-5-475.

MOTOR VEHICLE AD VALOREM TAXATION —Cont'd
County tax collectors —Cont'd
Collection of taxes, §48-5-445.
Compensation for collecting, §48-5-447.
Remittance of taxes collected, §48-5-446.
Uniform evaluation of motor vehicles prepared and distributed annually to, §48-5-442.
County tax commissioners.
Agents for state revenue commissioner.
Accepting applications for registration and collecting taxes, §48-5-475.
Collection of taxes, §48-5-445.
Compensation for collecting, §48-5-447.
Remittance of taxes collected, §48-5-446.
Uniform evaluation of motor vehicles prepared and distributed annually to, §48-5-442.
Dealers for retail sale.
Taxation of vehicles owned and held by, §48-5-472.
Separate subclassification, taxed on transfer, §48-5-473.
Death of owner, effect.
Fair market value on motor vehicles, §48-5C-1.
Definitions, §48-5-440.
Disabled first responders.
Exemptions.
Fair market value on motor vehicles (repealed 12/31/2029), §48-5C-1.
Disabled veterans.
Constitutional exemption, §48-5-478.
Proof of continuing eligibility, §48-5-478.
Distribution of proceeds, §48-5C-1.
Divorce.
Transfers occasioned by divorce decree, §48-5C-1.
Driver education vehicles.
Exemptions, §48-5-470.
Evaluation of motor vehicles.
Uniform evaluation prepared and distributed annually to tax collectors and tax commissioners, §48-5-442.
Exclusivity of procedures prescribed, §48-5-441.
Exemptions.
Disabled first responders.
Fair market value on motor vehicles (repealed 12/31/2029), §48-5C-1.

MOTOR VEHICLE AD VALOREM TAXATION —Cont'd
Exemptions —Cont'd
Disabled veterans.
Constitutional exemption, §48-5-478.
Proof of continuing eligibility, §48-5-478.
Driver education vehicles, §48-5-470.
Fair market value on motor vehicles, §48-5C-1.
Medal of Honor recipients, §48-5-478.3.
Prisoners of war, §48-5-478.1.
Purple heart veterans, §48-5-478.2.
Vans and buses owned by religious groups, §48-5-470.2.
Vehicles used for transporting handicapped or disabled students, §48-5-470.1.
Veterans' organizations, §48-5-478.4.
Fair market value on motor vehicles, §48-5C-1.
Farm equipment.
Self-propelled equipment as sub-class of property, §48-5-504.
For-hire charter bus or motor coach, §48-5C-1.
Handicapped or disabled students.
Exemption of vehicles used for transporting to or from educational institutions, §48-5-470.1.
Inventories.
Dealers for retail sale.
Returns of dealers' inventory, §48-5-472.
January 1.
Motor vehicles owned on subject to taxation, §48-5-471.
Medal of Honor exemption, §48-5-478.3.
Motor vehicle dealers.
Taxation of vehicles owned and held by dealers for retail sale, §48-5-472.
Vehicles in transit, §48-5-472.
Motor vehicles owned on January 1 subject to taxation, §48-5-471.
Nonresident members of armed forces, §48-5-471.
Older vehicles.
Fair market value, §48-5C-1.
Payment of tax.
At time of registration, §48-5-473.

MOTOR VEHICLE AD VALOREM TAXATION —Cont'd
Payment of tax —Cont'd
Dealers for retail sale.
Time for payment, §48-5-472.
Failure to make payment, §48-5-451.
Prior to purchasing license plate on vehicle not subject to taxation.
Article not construed to require, §48-5-477.
Penalty for failure to make return or pay tax, §48-5-451.
Prisoner of war exemption, §48-5-478.1.
Purple heart exemption, §48-5-478.2.
Rate of tax, §48-5-443.
Dealers for retail sale.
Determination, §48-5-472.
Fair market value on motor vehicles, §48-5C-1.
Refunds.
Dealer application for refund on behalf of purchaser, §48-5C-1.
Registration and license plates.
Application constitutes return, §48-5-474.
Application for and issuance of plates upon payment of taxes due, §48-5-473.
Collection procedure of taxing county different from county of purchaser's residence, §48-5-476.
Payment of tax prior to purchasing license plate on vehicle not subject to taxation.
Article construed not to require, §48-5-477.
Tax collectors and tax commissioners.
Agents for state revenue commissioner.
Accepting applications for registration and collecting taxes, §48-5-475.
Remittance of taxes collected, §48-5-446.
Returns, §48-5-473.
Application for registration and purchase of license plate constitutes, §48-5-474.
Dealers for retail sale.
Dealers' inventory, §48-5-472.
Failure to make return, §48-5-451.
Place of return, §48-5-444.

MOTOR VEHICLE AD VALOREM TAXATION —Cont'd
Sales and use tax.
Special district mass transportation sales and use tax.
Exemptions beyond general sales tax exemptions.
Purchase or lease of motor vehicle, §48-8-269.
Transit special purpose local option sales and use tax.
Exemptions.
Additional local exemptions.
Purchase or lease of motor vehicle, §48-8-269.52.
Separate and distinct class of tangible property.
Classification of motor vehicles, §§48-5-441, 48-5-441.1.
Farm equipment, self-propelled, §48-5-504.
Superior courts.
Contesting tax assessments, §48-5-450.
Tax digest.
Value of returned motor vehicles included in, §48-5-448.
Time.
Dealers for retail sale.
Payment of tax, §48-5-472.
Remittance of taxes collected to tax authority, §48-5-446.
Transfer of vehicle.
Fair market value on motor vehicles, §48-5C-1.
Value of returned motor vehicles included in tax digest, §48-5-448.
Veterans.
Disabled veterans' constitutional exemption, §48-5-478.
Proof of continuing eligibility, §48-5-478.
Veterans' organization exemption, §48-5-478.4.
Watercraft owned by dealer and held in inventory.
Exempt from taxation for limited time, §48-5-504.40.

MOTOR VEHICLE DEALERS.
Fees.
Regulatory fees imposed by counties or municipalities.
Civil action to enforce, §48-13-9.1.
Example of businesses not subject to, §48-13-9.

MOTOR VEHICLE DEALERS —Cont'd
Motor vehicle ad valorem taxation.
Taxation of vehicles owned and held by dealers for retail sale, §48-5-472.
Vehicles in transit, §48-5-472.

MOTOR VEHICLE LEASES.
Motor carriers road tax.
Lessee and lessor of motor vehicles deemed motor carriers, §48-9-37.
Primary liability, §48-9-37.
Taxation.
Road tax on motor carriers.
Lessee and lessor of motor vehicles deemed motor carriers, §48-9-37.

MOTOR VEHICLES.
Ad valorem taxation.
General provisions, §§48-5-440 to 48-5-478.4.
Alternative fueled vehicles.
Income tax credit for purchase of heavy and medium duty vehicles, §§48-7-29.18, 48-7-29.19.
Certificates of title.
State revenue commissioner.
Modernization and improvement of titling functions, §48-2-19.
Commercial motor vehicles.
Income tax credit for purchase of alternative fuel heavy and medium duty vehicles, §§48-7-29.18, 48-7-29.19.
Contraband.
Taxation.
Contraband articles used in violations of title, §§48-2-82 to 48-2-84.
County tax commissioners.
Commission from fee for sale or transfer of motor vehicle license and plates, §48-5-180.
Definitions.
Ad valorem taxation, §48-5-440.
Electric vehicles.
Income tax credit for purchase of alternative fuel heavy and medium duty vehicles, §§48-7-29.18, 48-7-29.19.
Excise tax.
Rental vehicles, §§48-13-90 to 48-13-97.

MOTOR VEHICLES —Cont'd
Fees.
Registration.
Road tax on motor carriers.
Registration cards and identification markers, §48-9-38.
Income taxes.
Credit for purchase of alternative fuel heavy and medium duty vehicles, §§48-7-29.18, 48-7-29.19.
Low emission or zero emission vehicles tax credit, §48-7-40.16.
Low emission or zero emission vehicles.
Tax credit, §48-7-40.16.
Motor fuel taxes.
General provisions, §§48-9-1 to 48-9-19.
Property taxes.
General provisions, §§48-5-440 to 48-5-478.4.
Registration.
Application.
Agents for state revenue commissioner for accepting.
County tax collectors and tax commissioners, §48-5-474.
Cancellation, voluntary.
Motor vehicle ad valorem taxation.
Effect on tax liability of cancellation of registration, §48-5-451.
Fees.
Road tax on motor carriers.
Registration cards and identification markers, §48-9-38.
Motor carriers road tax.
Requirement of motor vehicle registration cards and identification markers for carriers, §48-9-38.
Violations of code section, §48-9-39.
Road tax on motor carriers.
Requirement of motor vehicle registration cards and identification markers for carriers, §48-9-38.
Violations of code section, §48-9-39.
State revenue commissioner.
Modernization and improvement of licensing and registration functions, §48-2-19.

MOTOR VEHICLES —Cont'd
Rental vehicles.
Excise tax, §§48-13-90 to 48-13-97.
Sales and use taxes.
Exemptions, §48-8-3.
Taxation.
Ad valorem taxation.
General provisions, §§48-5-440 to 48-5-478.4.
Contraband articles used in violations of title, §§48-2-82 to 48-2-84.
Motor fuel taxes, §§48-9-1 to 48-9-19.
Rental vehicles.
Excise tax, §§48-13-90 to 48-13-97.
Sales and use tax.
Exemptions, §48-8-3.
State revenue commissioner.
Modernization and improvement of licensing, registration, valuation and titling functions, §48-2-19.

MUNICIPAL CORPORATIONS.
Ad valorem taxation of property, §§48-5-350 to 48-5-361.
Air commerce.
Prohibition of tax on persons traveling in, §48-13-4.
Airline ad valorem taxation.
General provisions, §§48-5-540 to 48-5-546.
Authorities.
Land bank authorities.
Sales under tax executions, §§48-4-60 to 48-4-65.
Business taxes.
Privilege taxes generally, §§48-13-2 to 48-13-29.
Capitation tax.
Prohibition, §48-13-3.
Conservation use property.
Forest land conservation use property.
Conservation use assessment.
Assistance grants to make up revenue reduction, §§48-5A-1 to 48-5A-6.
Consolidation of municipal and county governments.
Taxation of property in consolidated governments, §48-8-96.
Conventions.
Excise tax on rooms, lodgings and accommodations.
General provisions, §§48-13-50 to 48-13-63.

MUNICIPAL CORPORATIONS —Cont'd
Counties.
Multiple counties, municipal corporation located in.
Property taxes.
Homestead exemptions for residents, §48-5-44.1.
Employment taxes levied by municipalities.
Limitation on, §48-13-19.
Excise taxes.
Energy, sale or use of, §§48-13-110 to 48-13-128.
Rooms, lodgings and accommodations.
General provisions, §§48-13-50 to 48-13-63.
Forest land conservation use property.
Conservation use assessment.
Assistance grants to make up revenue reduction, §§48-5A-1 to 48-5A-6.
Heavy-duty equipment ad valorem taxation, §§48-5-505 to 48-5-509.
Construction equipment owned by nonresidents, §§48-5-500, 48-5-501.
Highways, roads and streets.
Municipal property taxes, §§48-5-357, 48-5-358.
Hotels and other lodging places.
Excise tax on rooms, lodgings and accommodations, §§48-13-50 to 48-13-63.
Income taxes.
Local income tax prohibition, §48-7-140.
Independent school systems.
Levy and collection of school taxes, §48-5-405.
Land bank authorities.
Sales under tax executions, §§48-4-60 to 48-4-65.
Land banks.
Sales under tax executions, §§48-4-100 to 48-4-112.
License taxes.
Privilege taxes generally, §§48-13-2 to 48-13-29.
Local income taxes.
Prohibition, §48-7-140.
Mobile home ad valorem taxation.
General provisions, §§48-5-440 to 48-5-451, 48-5-490 to 48-5-495.

MUNICIPAL CORPORATIONS —Cont'd
Motor fuel taxes.
Prohibition of tax on motor fuels, §48-9-3.
Motor vehicle ad valorem taxation.
General provisions, §§48-5-440 to 48-5-478.4.
Occupation taxes.
Privilege taxes generally, §§48-13-2 to 48-13-29.
Privilege taxes.
General provisions, §§48-13-2 to 48-13-29.
Property taxes.
Airline ad valorem taxation.
General provisions, §§48-5-540 to 48-5-546.
Forest land conservation use property.
Conservation use assessment.
Assistance grants to make up revenue reduction, §§48-5A-1 to 48-5A-6.
General provisions, §§48-5-350 to 48-5-361.
Heavy-duty equipment ad valorem taxation, §§48-5-505 to 48-5-509.
Construction equipment owned by nonresidents, §§48-5-500, 48-5-501.
Mobile home ad valorem taxation.
General provisions, §§48-5-440 to 48-5-451, 48-5-490 to 48-5-495.
Motor vehicle ad valorem taxation.
General provisions, §§48-5-440 to 48-5-478.4.
Public utility ad valorem taxation.
General provisions, §§48-5-510 to 48-5-524.
School taxes.
Levy and collection of tax for independent school systems, §48-5-405.
Public utility ad valorem taxation.
General provisions, §§48-5-510 to 48-5-524.
Railroad companies.
Public utility ad valorem taxation.
Method of assessment for municipal taxation purposes, §48-5-521.
Real estate transfer tax.
General provisions, §§48-6-1 to 48-6-10.
Sales and use taxes.
Exemptions, §48-8-3.

MUNICIPAL CORPORATIONS —Cont'd
Sales and use taxes —Cont'd
Homestead option sales and use taxes.
Capital outlay funding, distributions for, §48-8-104.
Equal distribution among municipalities, §48-8-101.1.
Waiver of equalization, §48-8-104.
Joint county and municipal tax (LOST), §§48-8-80 to 48-8-97.
Local sales and use taxes.
Ceiling on, §48-8-6.
Prohibition against imposing tax on sales or services included in article, §48-8-6.
Refund claims of local significance, §48-2-35.
Streamlined sales and use tax agreement, §§48-8-160 to 48-8-167.
Sales under tax executions.
Land banking authorities, §§48-4-60 to 48-4-65.
Land banks, §§48-4-100 to 48-4-112.
Schools and education.
Independent school systems.
Levy and collection of school taxes, §48-5-405.
School taxes.
Levy and collection of tax for independent school system, §48-5-405.
Taxation.
Air commerce.
Prohibition of tax on persons traveling in, §48-13-4.
Airline ad valorem taxation.
General provisions, §§48-5-540 to 48-5-546.
Capitation tax.
Prohibition, §48-13-3.
Employment taxes levied by municipalities.
Limitation on, §48-13-19.
Energy, sale or use, §§48-13-110 to 48-13-128.
Forest land conservation use property.
Conservation use assessment.
Assistance grants to make up revenue reduction, §§48-5A-1 to 48-5A-6.
Heavy-duty equipment ad valorem taxation, §§48-5-505 to 48-5-509.
Construction equipment owned by nonresidents, §§48-5-500, 48-5-501.

MUNICIPAL CORPORATIONS —Cont'd
Taxation —Cont'd
Hotels and other lodging places.
Excise tax on rooms, lodgings and accommodations, §§48-13-50 to 48-13-63.
Income taxes.
Local income tax prohibition, §48-7-140.
Mobile home ad valorem taxation.
General provisions, §§48-5-440 to 48-5-451, 48-5-490 to 48-5-495.
Motor fuel taxes.
Prohibition of tax on motor fuel by political subdivisions, §48-9-3.
Motor vehicle ad valorem taxation.
General provisions, §§48-5-440 to 48-5-478.4.
Privilege taxes.
General provisions, §§48-13-2 to 48-13-29.
Property taxes.
Airline ad valorem taxation.
General provisions, §§48-5-540 to 48-5-546.
General provisions, §§48-5-350 to 48-5-361.
Heavy-duty ad valorem taxation, §§48-5-505 to 48-5-509.
Construction equipment owned by nonresidents, §§48-5-500, 48-5-501.
Mobile home ad valorem taxation.
General provisions, §§48-5-440 to 48-5-451, 48-5-490 to 48-5-495.
Motor vehicle ad valorem taxation.
General provisions, §§48-5-440 to 48-5-478.4.
Public utility ad valorem taxation.
General provisions, §§48-5-510 to 48-5-524.
Public utility ad valorem taxation.
General provisions, §§48-5-510 to 48-5-524.
Real estate transfer tax.
General provisions, §§48-6-1 to 48-6-10.
Sales and use taxes.
Homestead option sales and use taxes.
Capital outlay funding, distributions for, §48-8-104.

MUNICIPAL CORPORATIONS —Cont'd
Taxation —Cont'd
Sales and use taxes —Cont'd
Homestead option sales and use taxes —Cont'd
Equal distribution among municipalities, §48-8-101.1.
Waiver of equalization, §48-8-104.
Joint county and municipal tax (LOST).
General provisions, §§48-8-80 to 48-8-97.
Local sales and use taxes.
Ceiling on, §48-8-6.
Prohibition against imposing tax on sales or services included in article, §48-8-6.
School taxes.
Levy and collection for independent school systems, §48-5-405.
TVA.
Apportionment of payments to in lieu of taxes, §48-14-2.
Tax executions.
Sales under tax executions.
Land bank authorities, §§48-4-60 to 48-4-65.
Land banks, §§48-4-100 to 48-4-112.
Tennessee valley authority.
Apportionment of payments to in lieu of taxes, §48-14-2.
Tourism.
Excise tax on rooms, lodgings and accommodations.
General provisions, §§48-13-50 to 48-13-63.
Georgia tourism development act, §§48-8-270 to 48-8-277.
Trade shows.
Excise tax on rooms, lodgings and accommodations.
General provisions, §§48-13-50 to 48-13-63.
TVA.
Apportionment of payments to in lieu of taxes, §48-14-2.

MUNICIPAL PROPERTY TAXES, §§48-5-350 to 48-5-361.
Actions.
Tax refunds, §48-5-380.
Agricultural products raised in state.
Exemption, §48-5-356.

MUNICIPAL PROPERTY TAXES —Cont'd
Amount of tax, §48-5-350.
Applicability of article to counties, §48-5-361.
Assessments.
Basis for fair market value, §48-5-353.
Determination of fair market value, §48-5-352.
Equalization of assessments.
General provisions, §§48-5-260 to 48-5-275.
Forest land conservation use property.
Conservation use assessment.
Assistance grants to make up revenue reduction, §§48-5A-1 to 48-5A-6.
Frontage owned by state or subdivisions abutting streets or sidewalks.
Treated as owned by individuals for assessment for improvements, §48-5-357.
Basis for fair market value of property, §48-5-353.
Claims for refunds, §48-5-380.
Collection of taxes.
Contracts to assess and collect municipal taxes and prepare tax digest.
Counties, §48-5-359.1.
Erroneous or illegal collection, §48-5-380.
Conservation use property.
Forest land conservation use property.
Conservation use assessment.
Assistance grants to make up revenue reduction, §§48-5A-1 to 48-5A-6.
County tax collectors.
Contracts to assess and collect municipal taxes and prepare tax digest, §48-5-359.1.
County tax commissioners.
Contracts to assess and collect municipal taxes and prepare tax digest, §48-5-359.1.
County tax receivers.
Contracts to assess and collect municipal taxes and prepare tax digest, §48-5-359.1.
Dealers.
Exemption of certain dealers, §48-5-354.

MUNICIPAL PROPERTY TAXES —Cont'd
Deeds under sale for municipal taxes.
Recitals.
Prima-facie evidence of facts, §48-5-359.
Determination of fair market value, §48-5-352.
Counties to furnish information, §48-5-352.
Development authorities.
Power to levy and collect tax to provide funds for, §48-5-350.
Equalization of assessments, §§48-5-260 to 48-5-275.
Erroneous collection, §48-5-380.
Executions.
Paving streets, laying sewers or other improvements.
Collection of assessments, §48-5-358.
Sale of property for taxes due municipality, §48-5-359.
Exemptions.
Agricultural products and livestock raised in state, §48-5-356.
Certain salesmen and merchants, §48-5-354.
Goods purchased in carload lots for distribution among several purchasers, §48-5-355.
Property taxes generally, §§48-5-40 to 48-5-56.
Fair market value.
Basis for, §48-5-353.
Determination for taxation purposes, §48-5-352.
Forest land conservation use property.
Conservation use assessment.
Assistance grants to make up revenue reduction, §§48-5A-1 to 48-5A-6.
Funds.
Reserve fund, §48-5-381.
Garnishment.
Against persons holding property of defendant owing municipal taxes, §48-5-360.
Goods purchased in carload lots for distribution among several purchasers.
Exemption, §48-5-355.
Homestead exemptions.
Exemptions from property taxes generally, §§48-5-40 to 48-5-56.

MUNICIPAL PROPERTY TAXES —Cont'd
Homestead tax deferral for individuals 62 or older, §§48-5-70 to 48-5-84.
Illegal collection, §48-5-380.
Improvements to streets or sidewalks.
Frontage owned by state or subdivisions abutting streets or sidewalks.
Treated as owned by individuals for purpose of assessment, §48-5-357.
Investments.
Reserve fund, §48-5-381.
Limitation of actions.
Refunds, §48-5-380.
Limitation on amount of tax, §48-5-350.
Livestock raised in state.
Exemption, §48-5-356.
Merchants.
Exemption of certain merchants, §48-5-354.
Notice.
Refund approval or disapproval, §48-5-380.
Overpayment.
Erroneous or illegal collection, §48-5-380.
Payment of taxes.
Forms of payment, §48-5-9.1.
Overpayment.
Refund or credit, §48-5-380.
Power of municipalities to levy and collect taxes.
Benefits under teacher retirement system, §48-5-351.
Funds from municipal development authorities, §48-5-350.
Property taxes generally, §§48-5-1 to 48-5-56.
Purchase and sale by municipality of property at tax sale, §48-5-359.
Railroad companies.
Public utility ad valorem taxation.
Method of assessment for municipal taxation purposes, §48-5-521.
Refunds, §48-5-380.
Reserve fund, §48-5-381.
Sales at public auctions.
Executions for collection of assessments for paving streets, laying sewers, etc., §48-5-358.

MUNICIPAL PROPERTY TAXES —Cont'd
Sales of property for taxes due municipality, §48-5-359.
School tax for independent school systems.
Levy and collection on municipality, §48-5-405.
Service of summons of garnishment, §48-5-360.
Sewers and drains.
Executions for collection of assessments for laying, §48-5-358.
Statute of limitations.
Refunds, §48-5-380.
Streets and sidewalks.
Executions for collection of assessments for paving streets, §48-5-358.
Frontage owned by state or subdivisions abutting streets or sidewalks.
Treated as owned by individuals for purpose of assessment for improvements, §48-5-357.
Superior courts.
Refunds, §48-5-380.
Tax executions.
Paving streets, laying sewers or other improvements.
Collection of assessments, §48-5-358.
Sale of property for taxes due municipality, §48-5-359.
Teachers retirement system.
Power to levy and collect taxes to pay benefits under, §48-5-351.
Title acquired by municipality at tax sale, §48-5-359.
Training and education of local officials and staff, §48-5-13.
Traveling salesmen.
Exemption, §48-5-354.

MUSEUMS.
Civil rights museums.
Sales and use tax exemption, §48-8-3.
Sales and use tax exemptions.
Admission charges for fine arts performance or exhibition in nonprofit facility or museum of cultural significance, §48-8-3.
Property used in construction of museum, §48-8-3.
Use of objects of art and anthropological, archeological, etc., objects or artifacts, §48-8-3.

N

NATIONAL GUARD.
Georgia national guard foundation.
Contributions, income tax refund, §48-7-62.
Income taxes.
Qualified life insurance premiums for national guard and air national guard members.
Credits, §48-7-29.9.
Licenses or registrations.
Extension for national guard members and reservists on active duty, §48-7-6.

NATURAL GAS.
Compressed natural gas.
Motor fuel taxes.
Taxation of fuels not sold or measured by gallon, §48-9-3.
Heating residences.
Sales and use tax relief.
Natural gas sold and delivered for residential heating, time period, §48-8-15.
Liquefied natural gas.
Motor fuel taxes.
Taxation of fuels not sold or measured by gallon, §48-9-3.
Sales and use tax relief.
Natural gas sold and delivered for residential heating, time period, §48-8-15.
Vehicles.
Income tax credit for purchase of alternative fuel heavy and medium duty vehicles, §§48-7-29.18, 48-7-29.19.

NATURAL GAS VEHICLES.
Income tax credit for purchase of alternative fuel heavy and medium duty vehicles, §§48-7-29.18, 48-7-29.19.

NATURAL RESOURCES.
Department of natural resources.
Brownfields, property tax assessments.
Review of costs for preferential assessment, §48-5-7.6.
County grants, §48-14-4.
Excise tax on rooms, lodgings and accommodations.
Lodges operated under jurisdiction of department.
Collection and remittance of tax, §48-13-54.

NATURAL RESOURCES —Cont'd
Department of natural resources —Cont'd
Lodges operated under jurisdiction of department.
Excise tax on rooms, lodgings and accommodations.
Collection and remittance of tax, §48-13-54.

NECESSARIES.
Income taxes.
Food and other necessaries credit, §§48-7A-2, 48-7A-3.

NEEDY PERSONS.
Income taxes.
Food and other necessaries credit, §§48-7A-2, 48-7A-3.

NEGLIGENCE.
Ordinary care or diligence.
Property taxes.
Liability of tax collector, tax commissioner, etc., §48-5-158.

NEWSPAPERS.
Sales and use taxes.
Record of projects on which tax proceeds used.
Newspaper publication of report of records, §48-8-122.

NEWSPAPER VENDING BOXES.
Occupation tax or regulatory fee levied by local government.
Civil action to enforce, §48-13-9.1.
Example of business subject to, §48-13-9.

NICOTINE PRODUCTS.
Taxes.
Tobacco and alternative nicotine products taxes, §§48-11-1 to 48-11-30.

NONAPPEARANCE.
Tax executions.
Petition to reduce execution to judgment.
Failure of respondent to appear, §§48-3-16, 48-3-17.

NONDISCLOSURE.
Income taxes.
Setoff debt collection.
Disclosure of necessary information to claimant agencies.
Nondisclosure by employees or prior employees of agencies, §48-7-170.

NONPROFIT CORPORATIONS.
Sales and use tax exemptions.
Noncommercial written materials or mailings of 501(c)(3) organizations, §48-8-3.

NONPROFIT HEALTH CENTERS.
Sales and use tax exemptions, §48-8-3.

NONRESIDENTS.
Bonds, surety.
Tobacco and alternative nicotine products taxes.
Nonresident distributors, §48-11-5.
Contractors.
General provisions, §§48-13-30 to 48-13-38.
Income taxes.
Allocation of income.
Application for permission to use other method, §48-7-35.
Estimated income tax by individuals.
Requirement of estimated tax, §48-7-114.
Fiduciaries, §48-7-22.
Net income derived from activities within state, §48-7-30.
Partnerships.
Nonresident members of resident partnership, §48-7-24.
Resident members of nonresident partnership, §48-7-24.
Persons required to file returns, §48-7-50.
Returns based upon books of account, §48-7-34.
Intangible recording tax.
Real property within and outside state secured by instrument held by, §48-6-69.
Licenses.
Tobacco and alternative nicotine products taxes.
Nonresident distributors, §48-11-5.
Motor carriers road tax.
Secretary as agent for service of process or notice, §48-9-42.
Notice.
Income taxes.
Rejection of application for permission to use other method of allocation, §48-7-35.
Motor carriers road tax.
Secretary of state as agent of nonresident motor carriers, §48-9-42.

NONRESIDENTS —Cont'd
Partnerships.
Income taxes.
Nonresident members of resident partnership, §48-7-24.
Resident members of nonresident partnership, §48-7-24.
Property taxes.
Liability of nonresidents and property, §48-5-14.
Liability of property not affected by nonresident status of owner, §48-5-3.
Situs of returns, §48-5-12.
Sales and use taxes.
Engaging in business by nonresident dealer.
Appointment of secretary of state as attorney in fact for service of process, §48-8-65.
Circumstances and events constituting engaging in business, §48-8-65.
Perfection of service of process against, §48-8-65.
Liability of purchasers at retail outside of state, §48-8-30.
Service of process.
Motor carriers road tax.
Secretary of state as agent of nonresident motor carriers, §48-9-42.
Sales and use taxes.
Nonresident dealer engaging in business.
Appointment of secretary of state as attorney in fact for service, §48-8-65.
Perfection of service of process against, §48-8-65.
Tobacco and alternative nicotine products taxes.
Service on agent of nonresident distributors, §48-11-5.
Taxation.
Income taxes.
Estimated income tax by individuals.
Requirement of estimated tax, §48-7-114.
Venue for actions for refunds, §48-2-35.
Venue for appeals from orders, rulings or findings of commissioner, §48-2-59.

NONRESIDENTS —Cont'd
Tax executions.
Petition to reduce execution to judgment, §48-3-14.
Tobacco and alternative nicotine products taxes.
Bond of nonresident distributors, §48-11-5.
Licensing of nonresident distributors, §48-11-5.
Reports of shipments by nonresident distributors, §48-11-5.
Service on agent of nonresident distributors, §48-11-5.
Stamps or metering machines.
Authorized use by nonresident distributors, §48-11-5.
Venue.
Actions against nonresident contractors, §48-13-36.

NOTES.
Sales and use taxes.
Special county one percent sales and use tax.
Election on issuance of general obligation debt, §48-8-111.
Issuance of general obligation debt, §48-8-121.
Modification of projects approved by referendum, §48-8-123.
Special county one percent sales and use tax.
Election on issuance of general obligation debt, §48-8-111.
Issuance of general obligation debt, §48-8-121.
Taxation.
Special county one percent sales and use tax.
Election on issuance of general obligation debt, §48-8-111.
Issuance of general obligation debt, §48-8-111.

NOTICE.
Aged persons.
Homestead tax deferral for individuals 62 or older.
Annual notification to property owner, §48-5-77.
Disapproval of application, §48-5-74.
Unsatisfied lien, §48-5-78.
Arbitration.
Property taxes.
Disputes as to valuation, §48-5-311.

NOTICE —Cont'd
Contraband.
Tax seizures, §48-2-82.
County property taxes.
Appeals from assessments by county board of tax assessors, §48-5-311.
Hearings, §48-5-311.
Appeals from decisions of county boards of equalization, §48-5-311.
Assessment notices, §48-5-306.
Changes made in taxpayer's return, §48-5-306.
Conditional approval of tax digest, §48-5-344.
Correction of mistakes in tax digest, §48-5-303.
Disapproval of tax digest.
Appeal to department of revenue, §48-5-349.2.
Refund approval or disapproval, §48-5-380.
County tax collectors.
Correction of mistake in tax digest.
Tax commissioner to notify tax collector, §48-5-303.
Issuance of execution, §48-3-3.
Neglect of duties, §48-5-145.
County tax commissioners.
Issuance of execution, §48-3-3.
Mistake in digest.
Correction, §48-5-303.
Neglect of duties, §48-5-145.
County tax or license fee refund approval or disapproval, §48-5-380.
Elections.
Joint county and municipal sales and use tax.
Referendum election to decide discontinuing imposition.
Publication of notice, §48-8-92.
Referendum election to decide imposition of tax.
Publication of notice, §48-8-85.
Special county one percent sales and use tax, §48-8-111.
Energy, excise tax on sale or use of.
County meeting with and notice to municipalities within special district, §48-13-113.
Foreclosures.
Ad valorem tax foreclosures, §48-4-78.
Sales under tax executions.
Foreclosure of right to redeem.
Land bank authorities, §48-4-65.

NOTICE —Cont'd
Foreclosures —Cont'd
Sales under tax executions —Cont'd
Right to redeem, §48-4-45.
Form, §48-4-46.
Heavy-duty equipment ad valorem taxation.
Sale of equipment, §48-5-507.
Homestead tax deferral for individuals 62 or older.
Annual notification to property owner, §48-5-77.
Disapproval of application, §48-5-74.
Unsatisfied liens, §48-5-78.
Income taxes.
Corporations or nonresidents.
Rejection of application for permission to use other method of allocation, §48-7-35.
Delinquency of employers required to deduct and withhold tax, §48-7-108.
Violation of notice, §48-7-127.
Nonpayment after notice and demand, §48-7-86.
Payment of interest on taxes not timely paid, §48-7-81.
Refund due by reason of change or correction of net income, §48-7-82.
Setoff debt collection.
Finalization of setoff, §48-7-166.
Notification of taxpayers, §48-7-164.
Special accounting where employer fails to deduct, withhold, etc., taxes, §48-7-109.1.
Failure to comply with notice of special accounting, §48-7-127.
Intangible recording tax.
Long-term note secured by real estate.
Nonpayment of tax, §48-6-62.
Joint county and municipal sales and use tax.
Referendum election to decide discontinuing imposition.
Publication of notice, §48-8-92.
Land banks.
Ad valorem tax executions against multiple tracts of property.
Assignment, transfer or sale to land bank, §48-4-112.
Motor carriers road tax.
Secretary of state as agent of nonresident motor carriers, §48-9-42.

NOTICE —Cont'd
Motor fuel taxes.
Cancellation of distributors or aviation gasoline dealers' licenses, §48-9-12.
Discontinuance, sale or transfer of distributor's operations, §48-9-7.
Distributor's bond.
Sureties request for release, §48-9-4.
Municipal property taxes.
Refund approval or disapproval, §48-5-380.
Municipal tax or license fee refund.
Approval or disapproval, §48-5-380.
Nonresidents.
Income taxes.
Rejection of application for permission to use other method of allocation, §48-7-35.
Motor carriers road tax.
Secretary of state as agent of nonresident motor carriers, §48-9-42.
Property taxes.
Appeals, county property taxes, §48-5-311.
Arbitration of disputes as to valuation, §48-5-311.
Assessments, county taxes, §48-5-306.
Changes made in taxpayer's return, §48-5-306.
Disapproval of tax digest.
Appeal to department of revenue, §48-5-349.2.
Final assessments, §48-2-18.
Form and contents of bill (contingently effective 1/1/2025), §48-5-34.
Heavy-duty equipment ad valorem taxation.
Sale of equipment, §48-5-507.
Homestead exemption notice to accompany real property tax bill, §48-5-56.
Homestead exemption opt-out advertisement.
Statewide exemption (contingently effective 1/1/2025), §48-5-44.2.
Homestead tax deferral for individuals 62 or older.
Annual notification to property owner, §48-5-77.
Disapproval of application, §48-5-74.
Unsatisfied liens, §48-5-78.
Level 1 freeport exemption.
Ineligibility for exemption, §48-5-48.1.
Timeliness of filings, §48-5-48.7.
NOTICE —Cont'd
Property taxes —Cont'd
Level 2 freeport exemption.
Notice of renewal, §48-5-48.5.
Timeliness of filings, §48-5-48.7.
Proposed assessments, §48-2-18.
Publication of tax rate, §48-5-32.
Refund approval or disapproval.
County and municipal taxes, §48-5-380.
Right to file returns, §48-5-264.1.
Service of notice of assessment, §48-2-45.
Referendum.
Joint county and municipal sales and use tax.
Notice of referendum to decide discontinuing imposition, §48-8-92.
Republication of notice, §48-8-85.
Sales and use taxes.
Bond by chronically delinquent or defaulting dealers, §48-8-57.
Coliseum capital outlay projects, special purpose local option sales tax.
Election on imposition of tax, §48-8-147.
Failure to file or false or fraudulent returns.
Appearance before state revenue commissioner, §48-8-55.
Joint county and municipal sales and use tax.
Existence of qualified municipality, §48-8-89.1.
Imposition of tax, §48-8-85.
Referendum election to decide discontinuing imposition.
Publication of notice, §48-8-92.
Referendum election to decide imposition of tax.
Publication of notice, §48-8-85.
Persons holding credits of or owing debts to delinquent dealers, §48-8-47.
Violations of code section, §48-8-48.
Revocation or suspension of certificate of registration, §48-8-62.
Sale at public auction of securities for collection of taxes due, §48-8-57.
Special county one percent sales and use tax.
Election on question of imposition, §48-8-111.

NOTICE —Cont'd
Sales and use taxes —Cont'd
Special county one percent sales and use tax —Cont'd
Election superintendent, §48-8-111.
Special district mass transportation sales and use tax.
Qualified municipalities to be notified of desire to levy tax, §48-8-262.
Water and sewer projects and costs.
Resolution of municipal governing authority, §48-8-201.
Secretary of state.
Motor carriers' road tax.
Agent of nonresident motor carriers, §48-9-42.
Setoff debt collection.
Income tax refunds.
Finalization of setoff, §48-7-166.
Notification of taxpayers, §48-7-164.
Tax amnesty program.
Effect of notices, §48-16-5.
Notice of criminal investigation or pending criminal litigation, §48-16-6.
Taxation.
Action to collect unpaid taxes, §48-2-54.
Jeopardy assessments.
Possession, sale or distribution of illegal drug.
Amount of tax and penalty, §48-2-51.
Judicial sales, §48-2-55.
Land banks.
Ad valorem tax executions against multiple tracts of property.
Assignment, transfer or sale to land bank, §48-4-112.
Seizure of contraband article, §48-2-82.
Service of notice of assessment, §48-2-45.
Tax executions.
Issuance by tax collectors and commissioners, §48-3-3.
Owners of security deeds or mortgages, §48-3-9.
Form, §48-3-10.
Petition to reduce execution to judgment.
Nonresidents, §48-3-14.
Publication of information regarding execution, §48-3-29.

NOTICE —Cont'd
Tax executions —Cont'd
Sales under tax executions, §48-4-1.
Excess funds, §48-4-5.
Foreclosure of right to redeem, §48-4-45.
Form, §48-4-46.
Land bank authorities, §48-4-65.
Unreturned property, §48-4-2.
State tax executions.
Released executions, notice to taxpayer, §48-3-44.
Transfers, §48-3-19.
Tobacco and alternative nicotine products taxes.
Acquisition of cigars and cigarettes for which tax not paid.
Assessment for failure to file reports or filing incorrect report, §48-11-14.
Hearings, §48-11-18.
Suspension, refusal of renewal and revocation of licenses, §48-11-6.

NOTICE OF APPEAL.
Property tax assessments, §48-5-349.2.

NULLA BONA.
Privilege taxes.
Effect of entry on right of defaulting taxpayer to collect fees for services rendered after entry, §48-13-25.
Tax executions, §48-3-23.

NURSES.
Advanced practice registered nurses.
Students.
Income tax credits.
Preceptorship rotations, nursing and medical, §48-7-29.22 (Repealed 12/31/2026).
Students.
Advanced practice registered nurse students.
Income tax credits.
Preceptorship rotations, nursing and medical, §48-7-29.22 (Repealed 12/31/2026).

NURSING HOMES.
Occupation tax or regulatory fee levied by local government.
Civil action to enforce, §48-13-9.1.
Example of business subject to, §48-13-9.

NURSING HOMES —Cont'd
Property tax exemption.
Nonprofit homes for the aged, §48-5-41.
Sales and use taxes.
Exemption of nonprofit licensed nursing home, §48-8-3.

O

OATHS.
Aged persons.
Homestead tax deferral for individuals 62 or older.
Application, §48-5-74.
Corporations.
Income taxes.
Returns of information concerning dividend payments, §48-7-52.
County boards of equalization, §48-5-311.
County boards of tax assessors, §48-5-293.
County tax collectors, §48-5-121.
Collection before oath taken, §48-5-125.
Weekly report of taxes collected, §48-5-142.
County tax commissioners.
Collection before oath taken, §48-5-125.
Weekly report of taxes collected, §48-5-142.
County tax receivers, §48-5-101.
False swearing.
County tax reports, §48-5-159.
Motor fuel tax refund, §48-9-11.
Franchise tax.
Returns, §48-5-422.
Homestead exemption.
Property taxes, §48-5-46.
Homestead tax deferral for individuals 62 or older.
Application, §48-5-74.
Income taxes.
Partnership returns, §48-7-53.
Returns by corporations of information concerning dividend payments, §48-7-52.
Partnerships.
Income taxes.
Returns, §48-7-53.
Property taxes.
Homestead exemption, §48-5-46.

OATHS —Cont'd
Property taxes —Cont'd
Homestead tax deferral for individuals 62 or older.
Application, §48-5-74.
Persons making returns, §48-5-19.
Public utility ad valorem taxation.
Returns, §48-5-511.
Taxation.
Administration of oaths by commissioner and officers or employees of department, §48-2-13.
County tax reports, §48-5-159.
Deputy state revenue commissioner, §48-2-5.
Executions.
Interposition of claims, §48-3-24.
Issuance of alias tax execution, §48-3-7.
False swearing.
Motor fuel for agricultural use, §48-9-11.
Judicial and investigative powers of commissioner.
Administration of oaths, §48-2-8.
State revenue commissioner, §48-2-2.

OCCUPATION TAX, §§48-13-2 to 48-13-29.

OFF-ROAD VEHICLES.
All-terrain vehicles.
Motor vehicle ad valorem taxation.
Watercraft and all-terrain vehicles owned by dealer and held in inventory.
Exempt from taxation for limited time, §48-5-504.40.
Sales and use taxes.
Transit special purpose local option sales and use tax.
Exemptions from local tax.
Additional exemptions.
Fuel used by off-road heavy-duty equipment, off-road farm or agricultural equipment or locomotives, §48-8-269.52.

OPTOMETRISTS.
Fees.
Regulatory fees imposed by counties or municipalities.
Civil action to enforce, §48-13-9.1.
Examples of businesses not subject to, §48-13-9.

ORDINANCES.
Energy, excise tax on sale or use.
Adoption of ordinance levying tax, §48-13-114.
Sales and use taxes.
Coliseum capital outlay projects, special purpose local option sales tax, §48-8-147.
Use of proceeds, requirements specified, §48-8-157.
Special county one percent tax, §48-8-111.
Consolidated government, §48-8-111.1.
Modification of projects approved by referendum, §48-8-123.
Special county one percent sales and use tax, §48-8-111.
Consolidated government, §48-8-111.1.
Taxation.
Sales under tax executions.
Land banks, contents of ordinance creating, §48-4-103.
Special county one percent sales and use tax, §48-8-111.
Consolidated government, §48-8-111.1.

ORGAN DONATIONS.
Income tax deductions, §48-7-27.

ORGANS.
Legal organs.
Ad valorem taxes.
Rate, §48-5-32.
Reserve funds.
Proposed transfers, §48-5-381.
Sales taxes.
Discontinuing local tax.
Referendums, §48-8-92.
Local referendums, §48-8-85.
Special 1% tax.
Referendums, §48-8-92.

ORPHAN HOMES.
Sales and use taxes.
Exemption, §48-8-3.

OVERPAYMENTS.
Corporations.
Income taxes.
Estimated income tax.
Credit or refund, §48-7-121.
County and municipal taxes and license fees, §48-5-380.

OVERPAYMENTS —Cont'd
County property taxes.
Refund or credit, §48-5-241.
Income taxes.
Change or correction of net income, §48-7-82.
Checks.
Refund checks for overpayment of withheld taxes, §48-7-112.
Corporations.
Estimated income tax.
Credit or refund, §48-7-121.
Credits.
Withholding and other payments, §§48-7-112, 48-7-113.
Current income tax payment.
Refunds, §§48-7-112, 48-7-113.
Estimated tax, §48-7-121.
Recoupment.
Change or correction of net income, §48-7-82.
Tax amnesty program.
Interest on refunded or credited overpayment, §48-16-7.

OXYGEN.
Sales and use taxes.
Exemptions, §48-8-3.

P

PAPER.
Tax executions.
Secretary of state.
Relieved from mailing papers to respondent, §48-3-18.

PARDONS AND PAROLES.
Income taxes.
Credits.
Parolees.
Full-time jobs for qualified parolees, eligibility of employer for credit, §48-7-40.31.

PARENT-TEACHER ORGANIZATIONS.
Sales and use taxes.
Exemptions, §48-8-3.

PARKING FACILITIES.
Occupation tax or regulatory fee levied by local government.
Civil action to enforce, §48-13-9.1.

PARKING FACILITIES —Cont'd
Occupation tax or regulatory fee levied by local government —Cont'd
Example of business subject to, §48-13-9.

PARKS AND RECREATION.
State parks and recreational areas.
Excise tax on rooms, lodgings and accommodations.
Lodges operated under jurisdiction of department of natural resources, §48-13-54.
Lodges operated under jurisdiction of department of natural resources.
Excise tax on rooms, lodgings and accommodations, §48-13-54.

PARTIES.
Intangible recording tax.
Actions for refunds of protested amount, §48-6-76.
Property taxes.
Determination of county entitled to return and payment, §48-5-17.

PARTNERSHIPS.
Charities.
Income taxes.
Disallowance of charitable contributions, §48-7-23.
Distributive shares.
Income taxes.
Individual returns of distributive shares, §48-7-23.
Nonresident members of resident partnership, §48-7-24.
Resident members of nonresident partnership, §48-7-24.
Withholding tax, §48-7-129.
Income taxes, §48-7-23.
Adjustment to federal gross income by partner.
Entity taxed by another state, §48-7-27.
Credits.
Education, qualified expenses.
Partners, §48-7-29.16.
Deductions for payments to classified subcontractors, §48-7-38.
Nonresident members of resident partnership, §48-7-24.
Resident members of nonresident partnership, §48-7-24.
Returns, §48-7-53.
Administrative adjustment requests, §48-7-53.

PARTNERSHIPS —Cont'd
Income taxes —Cont'd
Returns —Cont'd
Final federal adjustments.
Reporting, §48-7-53.
Pass-through entities, adjustments, §48-7-53.
State partnership audit, adjustments resulting, §48-7-53.
Withholding tax on distributions, §48-7-129.
Nonresidents.
Income taxes.
Nonresident members of resident partnership, §48-7-24.
Resident members of nonresident partnership, §48-7-24.
Withholding tax on distributions, §48-7-129.
Oaths.
Income taxes.
Returns, §48-7-53.
Taxation.
Income taxes, §48-7-23.
Deductions for payments to classified subcontractors, §48-7-38.
Nonresident members of resident partnership, §48-7-24.
Resident members of nonresident partnership, §48-7-24.
Returns, §48-7-53.
Withholding tax on distributions, §48-7-129.

PAST DUE ACCOUNTS.
Taxes, §48-2-40.
Actions to collect, §48-2-54.
New purchasers of property, exemptions, §48-3-3.
Waivers, §48-2-41.

PAWNBROKERS.
Occupation tax or regulatory fee levied by local government.
Civil action to enforce, §48-13-9.1.
Example of business subject to, §48-13-9.

PAYMENT IN FULL.
Income tax.
Installment payments, §48-7-116.
Sales and use taxes.
Dealers.
Penalties, §48-8-66.
Taxation.
County board of tax assessors.
Duty to value property, §48-5-299.

PAYMENT IN FULL —Cont'd
Taxation —Cont'd
County board of tax assessors —Cont'd
Power to assess fair market value, §48-5-305.
Installments on tangible property, §48-5-23.
Interest rate determinations, §48-5-24.
Nonresident contractors.
Bond released, §48-13-34.

PEDDLERS AND ITINERANT TRADERS.
Occupation tax or regulatory fee levied by local government.
Civil action to enforce, §48-13-9.1.
Example of business subject to, §48-13-9.

PENALTIES.
Aged persons.
Homestead tax deferral for individuals 62 or older.
Willfully filing incorrect information, §48-5-84.
Airline ad valorem taxation.
Failure to file flight equipment returns, §48-5-541.
Corporate net worth tax, §48-13-79.
County property taxes.
Confidentiality of records of county board of tax assessors.
Knowingly and willfully furnishing confidential information, §48-5-314.
Unpaid checks or money orders, §48-5-146.
Unreturned property, §48-5-299.
Waiver of penalty.
Military service in combat zone as cause of default, §48-5-243.
County tax collectors.
Collection of penalty for unreturned property, §48-5-299.
Issuance of executions.
Violations, §48-5-162.
Unpaid checks or money orders, §48-5-146.
County tax commissioners.
Issuance of executions.
Violations, §48-5-162.
Unpaid checks or money orders, §48-5-146.
Energy tax.
Excise tax on sale or use of energy.
Failure to file return or make payment, §§48-13-120, 48-13-123.

PENALTIES —Cont'd
Energy tax —Cont'd
Excise tax on sale or use of energy —Cont'd
Waiver of penalty or interest, §48-13-122.
Fireworks.
Taxation of consumer fireworks.
Fine or civil penalty in addition to tax due, §48-13-132.
Homestead tax deferral for individuals 62 or older.
Willfully filing incorrect information, §48-5-84.
Income taxes.
Current income tax payment.
Assessable penalties and interest, §48-7-126.
Distributions.
Withholding tax, §48-7-129.
Property sales and transfers.
Withholdings, §48-7-128.
Returns.
Annual and final returns.
Late returns, §48-7-106.
Statements of wages paid and taxes withheld.
Late statements, §48-7-105.
Failure to file timely return, §48-7-57.
Failure to pay estimated income tax, §48-7-120.
Failure to pay or underpayment of tax, §48-7-86.
Frivolous returns, §48-7-57.1.
Nonpayment after notice and demand, §48-7-86.
Returns impeding administration of tax laws, §48-7-57.1.
Intangible recording tax.
Failure to pay tax, §48-6-77.
Mobile home ad valorem taxation.
Failure to make return or pay tax, §48-5-451.
Motor carriers road tax, §48-9-45.
Motor fuel taxes, §48-9-16.
Operation without distributor's license.
Assessment of penalty in lieu of taxes, §48-9-18.
Motor vehicle ad valorem taxation.
Failure to make return or pay tax, §48-5-451.
Public utility ad valorem taxation.
Failure to file return and pay tax, §48-5-513.

PENALTIES —Cont'd
Sales and use taxes.
Failure to file return or make payment in full, §48-8-66.
Taxes.
Check or money order tendered in payment not paid when presented, §48-2-32.
Failure to file return or pay revenue held in trust for state, §48-2-44.
Hotels and other lodging places.
Excise tax on rooms, lodging and accommodations.
False or fraudulent returns, §48-13-60.
Income taxes.
Current income tax payment.
Assessable penalties and interest, §48-7-126.
Distributions.
Withholding tax, §48-7-129.
Property sales and transfers.
Withholdings, §48-7-128.
Failure to file timely return, §48-7-57.
Failure to pay estimated income tax, §48-7-120.
Failure to pay or underpayment of tax, §48-7-86.
Frivolous returns, §48-7-57.1.
Nonpayment after notice and demand, §48-7-86.
Returns impeding administration of tax laws, §48-7-57.1.
Nature of penalties, §48-2-42.
Property taxes.
Airline ad valorem taxation.
Failure to file flight equipment returns, §48-5-541.
Amnesty program.
Waiver of penalties, §48-16A-4.
Bona fide conservation use property and residential transitional property.
Breach of covenants, §48-5-7.4.
County taxes.
Waiver of penalties due on unpaid taxes, §48-5-242.
Delinquent tax payments in certain counties, §48-5-24.
Failure to return taxable property, §48-5-20.
Homestead tax deferral for individuals 62 or older.
Willfully filing incorrect information, §48-5-84.

PENALTIES —Cont'd
Taxes —Cont'd
Property taxes —Cont'd
New purchasers of property, exemptions, §48-3-3.
Public utility ad valorem taxation.
Failure to file return and pay tax, §48-5-513.
Standing timber assessments.
Failure to make timely reports or disclosures, §48-5-7.5.
Tangible real property devoted to agricultural purposes.
Preferential assessment.
Breach of covenant entered into by taxpayers, §48-5-7.1.
Willful failure to pay ad valorem tax, §48-2-44.
Refund of penalty, §48-2-60.
Waiver, §48-2-43.
Tobacco and alternative nicotine products taxes.
Acquisition of cigars and cigarettes for which tax not paid.
Failure to register or make required reports, §48-11-14.
Deficiency assessments, §48-11-12.
Failure to file required reports, §48-11-10.
Operation of unlicensed business or activity, §48-11-24.
Possession of unstamped cigarettes or nontax-paid cigars, §48-11-24.
Transportation of unstamped cigarettes and nontax-paid cigars.
Violations of requirements, §48-11-22.

PERMITS.
Motor carriers.
Road tax.
Temporary permits, §48-9-38.
Motor fuel taxes.
Refund permit, §48-9-10.
Tobacco and alternative nicotine products taxes.
Purchase of stamps on account, §48-11-16.

PERSONAL PROPERTY.
Executions.
Tax executions.
General provisions, §§48-3-1 to 48-3-44.
Sales under tax executions, §§48-4-1 to 48-4-65.

PERSONAL PROPERTY —Cont'd
Leases.
Tangible personal property.
Sales and use taxes.
General provisions, §§48-8-1 to 48-8-78.
Property taxes.
General provisions, §§48-5-1 to 48-5-56.
Railroads.
Taxation, §48-5-520.
Sales and use taxes.
Tangible personal property.
General provisions, §§48-8-1 to 48-8-78.
Intent of article with respect to taxation, §48-8-1.
Special district transportation sales and use tax.
Outside geographical area, §48-8-253.
Sales under tax executions.
General provisions, §§48-4-1 to 48-4-65.
Tangible personal property.
Sales and use taxes.
General provisions, §§48-8-1 to 48-8-78.
Intent of article with respect to taxation of, §48-8-1.
Taxation.
Property taxes.
General provisions, §§48-5-1 to 48-5-56.
Sales and use taxes.
General provisions, §§48-8-1 to 48-8-78.
Intent of article with respect to taxation of, §48-8-1.
Tax executions.
General provisions, §§48-3-1 to 48-3-44.
Sales under tax executions, §§48-4-1 to 48-4-65.

PERSONAL PROTECTIVE EQUIPMENT.
Business enterprise tax credits for PPE manufacturers, §48-7-40.1A.

PERSONS WITH DISABILITIES.
Motor vehicle ad valorem taxation.
Disabled veterans constitutional exemption, §48-5-478.
Proof of continuing eligibility, §48-5-478.

PERSONS WITH DISABILITIES —Cont'd
Motor vehicle ad valorem taxation —Cont'd
Exemption of vehicles used for transporting handicapped or disabled students, §48-5-470.1.
Veterans.
Disabled veterans.
Income tax deductions.
Disability compensation, certain disabled veterans, §48-7-27.
Motor vehicle ad valorem taxation.
Constitutional exemption, §48-5-478.
Proof of continuing eligibility, §48-5-478.
Homestead exemption from ad valorem taxation.
Extension by qualified disabled veterans, §48-5-48.

PETITIONS.
County property taxes.
County boards of tax assessors.
Removal from office on petition of freeholders, §48-5-296.
Examination of county tax digest.
Petition for refund of taxes illegally collected or paid (contingently effective 1/1/2026), §48-5-342.
Temporary collection of taxes pending approval or appeal of disapproval of digest, §48-5-310.
Property taxes.
Certification as rehabilitated historic property for preferential assessment.
Persons aggrieved or adversely affected by order or action, §48-5-7.2.
County boards of tax assessors.
Removal from office on petition of freeholders, §48-5-296.
Determination of county entitled to return and payment, §48-5-17.
Protests, §48-2-46.
Sales and use taxes.
Revised homestead option sales tax.
Election on adoption of revised provisions.
Petition to call for election, §48-8-109.18.

PETITIONS —Cont'd
Tax executions.
Petitions to reduce execution to judgment.
Failure of respondent to appear, §48-3-16.
Grace period before judgment, §48-3-17.
Jury trials, §48-3-15.
Local taxes remaining unsatisfied, §48-3-13.
Nonresidents, §48-3-14.
Procedures, §48-3-13.
Nonresidents, §48-3-14.
Respondent failing to appear, §48-3-16.
State taxes remaining unsatisfied, §48-3-13.
Tax foreclosures, §§48-4-78, 48-4-79.
Tax protests, §48-2-46.

PETROLEUM PRODUCTS.
Motor fuel tax law.
General provisions, §§48-9-1 to 48-9-19.
Taxation.
Motor fuel tax law.
General provisions, §§48-9-1 to 48-9-19.

PHARMACEUTICAL SUPPLIES.
Manufacturers of pharmaceuticals and medicines.
Income tax credits, §48-7-40.1B.

PHARMACISTS AND PHARMACIES.
Manufacturers of pharmaceuticals and medicines.
Income tax credits, §48-7-40.1B.
Prescriptions.
Sales and use taxes.
Exemption of prescription drugs, §48-8-3.
Sales and use taxes.
Exemption of prescription drugs, §48-8-3.

PHYSICIAN ASSISTANTS.
Income tax credits.
Students.
Preceptorship rotations, nursing and medical, §48-7-29.22 (Repealed 12/31/2026).
Students.
Income tax credits.
Preceptorship rotations, nursing and medical, §48-7-29.22 (Repealed 12/31/2026).

PHYSICIANS AND SURGEONS.
Controlled substances.
Excise tax on marijuana and controlled substances.
Exemption of licensed medical practitioner, §48-15-4.
Income tax credits.
Medical students.
Preceptorship rotations, nursing and medical, §48-7-29.22 (Repealed 12/31/2026).
Rural physicians, §§48-7-29, 48-7-29.26 (Repealed 12/31/2029).
Medical students.
Income tax credits.
Preceptorship rotations, nursing and medical, §48-7-29.22 (Repealed 12/31/2026).
Regulatory fees imposed by counties and municipalities.
Civil action to enforce, §48-13-9.1.
Example of businesses not subject to, §48-13-9.
Tax credits for rural physicians, §§48-7-29, 48-7-29.26 (Repealed 12/31/2029).

PHYSIOTHERAPISTS.
Regulatory fees imposed by counties or municipalities.
Civil action to enforce, §48-13-9.1.
Examples of businesses not subject to, §48-13-9.

PIPELINES.
Contractors.
Nonresident contractors.
General provisions, §§48-13-30 to 48-13-38.
Motor fuel taxes.
Reports of motor fuel deliveries.
By pipeline companies, §48-9-9.
Nonresident contractors.
General provisions, §§48-13-30 to 48-13-38.
Reports.
Motor fuel taxes.
Deliveries of motor fuel, §48-9-9.

PLATINUM.
Sales and use taxes.
Exemption, §48-8-3.

PLEADINGS.
Sales and use taxes.
Action raising issue of taxability.
Copy of initial pleading to attorney general, §48-8-41.

PODIATRY.
Fees.
Regulatory fees imposed by counties or municipalities.
Civil action to enforce, §48-13-9.1.
Examples of businesses not subject to, §48-13-9.

POLITICAL SUBDIVISIONS.
Air commerce.
Prohibition of tax on persons traveling in, §48-13-4.
Airline ad valorem taxation.
General provisions, §§48-5-540 to 48-5-546.
Business taxes.
Privilege taxes generally, §§48-13-2 to 48-13-29.
Capitation tax.
Prohibition, §48-13-3.
Consolidated government coliseum project sales tax.
Coliseum capital outlay projects, special purpose local option sales tax, §§48-8-145 to 48-8-157.
County property taxes.
County board of tax assessors.
General provisions, §§48-5-290 to 48-5-314.
Delinquent tax officials.
General provisions, §§48-5-200 to 48-5-205.
Equalization of assessments.
General provisions, §§48-5-260 to 48-5-275.
Examination of county tax digest.
General provisions, §§48-5-340 to 48-5-349.5.
General provisions, §§48-5-220 to 48-5-243.
State loans to counties, §§48-5-330, 48-5-331.
County tax officials.
Delinquent tax officials.
General provisions, §§48-5-200 to 48-5-205.
Tax collectors.
General provisions, §§48-5-121 to 48-5-165.
Tax receivers.
General provisions, §§48-5-101 to 48-5-109.
Credit unions.
Taxation by local governments.
Generally, §48-6-97.

POLITICAL SUBDIVISIONS —Cont'd
Excise taxes.
Rooms, lodgings and accommodations.
General provisions, §§48-13-50 to 48-13-63.
Heavy-duty equipment ad valorem taxation, §§48-5-505 to 48-5-509.
Construction equipment owned by nonresidents, §§48-5-500, 48-5-501.
Hotels and other lodging places.
Excise tax on rooms, lodgings and accommodations, §§48-13-50 to 48-13-63.
License taxes.
Privilege taxes generally, §§48-13-2 to 48-13-29.
Mobile home ad valorem taxation.
General provisions, §§48-5-440 to 48-5-451, 48-5-490 to 48-5-495.
Motor fuel taxes.
Prohibition of tax on motor fuels, §48-9-3.
Motor vehicle ad valorem taxation.
General provisions, §§48-5-440 to 48-5-478.4.
Municipal property taxes.
General provisions, §§48-5-350 to 48-5-361.
Occupation taxes.
Privilege taxes generally, §§48-13-2 to 48-13-29.
Privilege taxes.
General provisions, §§48-13-2 to 48-13-29.
Property taxes.
Airline ad valorem taxation.
General provisions, §§48-5-540 to 48-5-546.
County board of tax assessors.
General provisions, §§48-5-290 to 48-5-314.
County taxation generally, §§48-5-220 to 48-5-243.
Delinquent tax officials.
General provisions, §§48-5-200 to 48-5-205.
Equalization of assessments.
General provisions, §§48-5-260 to 48-5-275.
Examination of county tax digest.
General provisions, §§48-5-340 to 48-5-349.5.
Exemptions generally, §§48-5-40 to 48-5-56.

POLITICAL SUBDIVISIONS —Cont'd
Property taxes —Cont'd
General provisions, §§48-5-1 to 48-5-56.
Heavy-duty equipment ad valorem taxation, §§48-5-505 to 48-5-509.
Construction equipment owned by nonresidents, §§48-5-500, 48-5-501.
Homestead tax deferral for individuals 62 or older, §§48-5-70 to 48-5-84.
Mobile home ad valorem taxation.
General provisions, §§48-5-440 to 48-5-451, 48-5-490 to 48-5-495.
Motor vehicle ad valorem taxation.
General provisions, §§48-5-440 to 48-5-478.4.
Municipal taxation generally, §§48-5-350 to 48-5-361.
Public utility ad valorem taxation.
General provisions, §§48-5-510 to 48-5-524.
School taxes generally, §§48-5-400 to 48-5-405.
State loans to counties, §§48-5-330, 48-5-331.
Tax collectors.
General provisions, §§48-5-121 to 48-5-165.
Tax receivers.
General provisions, §§48-5-101 to 48-5-109.
Public utility ad valorem taxation.
General provisions, §§48-5-510 to 48-5-524.
Real estate transfer tax.
General provisions, §§48-6-1 to 48-6-10.
Sales and use taxes.
Ceiling on local sales and use taxes, §48-8-6.
Coliseum capital outlay projects, special purpose local option sales tax, §§48-8-145 to 48-8-157.
Joint county and municipal tax (LOST).
General provisions, §§48-8-80 to 48-8-97.
Prohibition against imposing tax on sales and services included in article, §48-8-6.
Special county one percent tax.
General provisions, §§48-8-110 to 48-8-124.
School taxation.
General provisions, §§48-5-400 to 48-5-405.

POLITICAL SUBDIVISIONS —Cont'd
Taxation.
Air commerce.
Prohibition of tax on persons traveling in, §48-13-4.
Airline ad valorem taxation.
General provisions, §§48-5-540 to 48-5-546.
Capitation tax.
Prohibition, §48-13-3.
County board of tax assessors.
General provisions, §§48-5-290 to 48-5-314.
County property taxes generally, §§48-5-220 to 48-5-243.
County tax officials.
Tax collectors generally, §§48-5-121 to 48-5-165.
Tax receivers generally, §§48-5-101 to 48-5-109.
Delinquent tax officials.
General provisions, §§48-5-200 to 48-5-205.
Equalization of assessments.
General provisions, §§48-5-260 to 48-5-275.
Examination of county tax digest.
General provisions, §§48-5-340 to 48-5-349.5.
Financial institutions.
Credit unions.
State and local government taxation generally, §48-6-97.
Heavy-duty equipment ad valorem taxation, §§48-5-505 to 48-5-509.
Construction equipment owned by nonresidents, §§48-5-500, 48-5-501.
Homestead tax deferral for individuals 62 or older, §§48-5-70 to 48-5-84.
Hotels and other lodging places.
Excise tax on rooms, lodgings and accommodations, §§48-13-50 to 48-13-63.
Mobile home ad valorem taxation.
General provisions, §§48-5-440 to 48-5-451, 48-5-490 to 48-5-495.
Motor fuel taxes.
Prohibition of tax on motor fuel, §48-9-3.
Motor vehicle ad valorem taxation.
General provisions, §§48-5-440 to 48-5-478.4.
Municipal property taxes generally, §§48-5-350 to 48-5-361.

POLITICAL SUBDIVISIONS —Cont'd
Taxation —Cont'd
Privilege taxes.
General provisions, §§48-13-2 to 48-13-29.
Property taxes.
Generally, §§48-5-1 to 48-5-56.
Property tax exemptions generally, §§48-5-40 to 48-5-56.
Public utility ad valorem taxation.
General provisions, §§48-5-510 to 48-5-524.
Real estate transfer tax.
General provisions, §§48-6-1 to 48-6-10.
Sales and use taxes.
Ceiling on local sales and use taxes, §48-8-6.
Coliseum capital outlay projects, special purpose local option sales tax, §§48-8-145 to 48-8-157.
Joint county and municipal tax (LOST).
General provisions, §§48-8-80 to 48-8-97.
Prohibition against imposing tax on sales or services included in article, §48-8-6.
Special county one percent tax.
General provisions, §§48-8-110 to 48-8-124.
School taxes generally, §§48-5-400 to 48-5-405.
TVA.
Apportionment of payments to political subdivisions in lieu of taxes, §48-14-2.
Tennessee valley authority.
Apportionment of payments to political subdivisions in lieu of taxes, §48-14-2.
TVA.
Apportionment of payments to political subdivisions in lieu of taxes, §48-14-2.

POOR PERSONS.
Income taxes.
Food and other necessaries credit.
General provisions, §§48-7A-2, 48-7A-3.

POSTMARKS.
Tax payments, §48-5-148.

POULTRY.
Diseases.
Sales and use taxes.
Exemption.
Nonprofit organizations providing poultry diagnostic and disease monitoring services, sales to, §48-8-3.
Sales and use taxes.
Exemption.
Commodities not sold as finished product to ultimate consumer, §48-8-5.
Nonprofit organizations providing poultry diagnostic and disease monitoring services, sales to, §48-8-3.
Nonapplicability of use tax to poultry and poultry products by farmer, §48-8-4.
Taxation.
Sales and use taxes.
Exemption of agricultural commodities.
Commodities not sold as finished product to ultimate consumer, §48-8-5.
Nonapplicability of use tax to poultry and poultry products used by producer, §48-8-4.

POWERS OF APPOINTMENT.
Real estate transfer tax.
Exemption of deed or instrument carrying out exercise of, §48-6-2.

PPE.
Business enterprise tax credits for PPE manufacturers, §48-7-40.1A.

PRECIOUS METAL AND GEM DEALERS.
Occupation tax or regulatory fee levied by local government.
Civil action to enforce, §48-13-9.1.
Example of business subject to, §48-13-9.

PRECURSORS.
Drug schedules.
Controlled substance defined, §48-15-2.

PREFERENCES.
Property taxes.
Agricultural property.
Tangible real property devoted to bona fide agricultural purposes, §48-5-7.1.

PREFERENCES —Cont'd
Property taxes —Cont'd
Brownfields.
Preferential assessment, §48-5-7.6.
Certification as rehabilitated historic property for preferential assessment, §48-5-7.2.
Landmark historic property.
Preferential assessment, §48-5-7.3.

PREPAYMENT.
Aged persons' tax deferrals.
Prepayment of accrued interest, §48-5-79.
Developers, §48-5-31.
Taxpayer agreements with local governments for prepayment of property taxes, §48-5-31.1.

PRESCRIPTION.
Sales under tax executions.
Ripening of tax deed title by, §48-4-48.

PRESCRIPTIONS.
Controlled substances.
Excise tax on controlled substances and marijuana.
Exemption of persons lawfully in possession under valid prescription, §48-15-4.
Exemption of persons lawfully in possession under valid prescription, §48-15-4.
Sales and use taxes.
Exemption of prescription drugs, §48-8-3.

PRESUMPTIONS.
Motor carriers road tax.
Estimation of amount of road tax due, §48-9-40.
Motor fuel taxes.
Estimation by commissioner of number of gallons of motor fuel to be taxed, §48-9-12.
Sales and use taxes.
Assessment for failure to file false or fraudulent returns, §48-8-55.
Estimated tax upon failure to make return and pay tax, §48-8-51.
ZIP codes designations.
Due diligence to ascertain nine-digit ZIP code, §48-8-70.

PRINTING.
Property taxes.
Foreign merchandise in transit.
Exemptions for acquisition of situs, §48-5-5.

PRIORITIES.
Income taxes.
Liens, §48-2-56.
Setoff debt collection.
Department over claimant agencies for collection, §48-7-168.
Liens.
Tax liens, §48-2-56.
Motor fuel taxes.
Liens, §48-2-56.
Property taxes, §48-5-28.
Liens, §48-2-56.
Setoff debt collection.
Income tax refunds.
Department over claimant agencies for collection, §48-7-168.
Taxation.
Liens for taxes, §48-2-56.

PRISONERS OF WAR.
Motor vehicle ad valorem taxation exemption, §48-5-478.1.

PRISONS AND PRISONERS.
Job training organizations.
Sales and use tax exemptions.
Qualified job training organizations, sales of property and services to organization, §48-8-3.
Release of prisoners.
Job training organizations.
Sales and use tax exemptions.
Qualified job training organizations, sales of property and services to organization, §48-8-3.

PRISON TERMS.
Energy tax.
Fraudulent or otherwise false returns, §48-13-125.
Recordkeeping.
Failure to keep records or make available for inspection, §48-13-127.
Returns.
Failure to make or furnish, §48-13-126.
Willful failure to collect, §48-13-124.
Income taxes.
Disregard of rules and regulations in preparing return, §48-7-4.
Evasion of income tax, §48-7-5.
False or fraudulent returns, affidavits, claims, etc.
Assisting, counseling, etc., in filing, §48-7-3.

PRISON TERMS —Cont'd
Mobile home ad valorem taxation.
Moving or transporting mobile home without decal, §48-5-493.
Motor fuel taxes.
Violations of article, §48-9-17.
Sales and use taxes.
Advertising by dealers of assumption of payment of tax, §48-8-37.
Failure, neglect or refusal of dealers to collect, §48-8-7.
False or fraudulent returns by dealers, §48-8-8.
Tax amnesty program.
Subpoena or order of commissioner.
Failure to obey, §48-16-12.
Willful failure to make return or false return, §48-16-12.
Taxation.
Contraband.
Possession or transportation, §48-2-84.
Revenue stamps.
Unlawful activities, §48-2-84.
Tobacco and alternative nicotine products taxes.
Counterfeit cigarettes.
Sale or possession of contraband, §48-11-30.
Fraudulently making, uttering, forging or counterfeiting stamps, §48-11-28.
Selling unstamped cigars and cigarettes or nontax-paid cigars, §48-11-25.
Transportation of unstamped cigarettes and nontax-paid cigars, §48-11-23.

PRIVATE COLLEGES AND UNIVERSITIES.
Sales and use taxes.
Exemption, §48-8-3.

PRIVATE DEGREE-GRANTING INSTITUTIONS.
Sales and use tax.
Exemption, §48-8-3.

PRIVATE SCHOOLS.
Sales and use taxes.
Exemptions, §48-8-3.

PRIVILEGES AND PRIVILEGED COMMUNICATIONS.
Taxation.
Confidential information generally, §48-2-15.

PRIVILEGE TAXES, §§48-13-2 to 48-13-29.
Air commerce.
Prohibition of tax on persons traveling in, §48-13-4.
Amended article.
Ordinances and resolutions to be in compliance, §48-13-27.
Capitation tax.
Prohibition, §48-13-3.
Census governing amount of tax or license fee, §48-13-24.
Charitable trusts furnishing rooms, lodgings or accommodations, §48-5-380.
License fees, business or occupation tax, etc., §48-13-55.
Contractors.
Nonresident contractors.
General provisions, §§48-13-30 to 48-13-38.
Corporate net worth tax, §§48-13-70 to 48-13-79.
Criminal liability unaffected, §48-13-26.
Delinquent taxes.
Effect of taxpayer's payment in full, §48-13-25.
Employment taxes levied by municipalities, §48-13-19.
Excise tax on rooms, lodgings and accommodations, §§48-13-50 to 48-13-63.
Executions issued against delinquent taxpayers, §48-13-26.
Export tax.
Prohibited on state products, §48-13-2.
Financial institutions.
Special state occupation tax on depository financial institutions, §48-6-95.
Franchise tax.
Deductions from special franchise tax due, §48-5-425.
Generally, §§48-5-420 to 48-5-425.
Hotels and other lodging places.
Excise tax on rooms, lodgings and accommodations, §§48-13-50 to 48-13-63.
July 1, businesses commenced on or after.
Amount of fee or tax due, §48-13-22.
License, occupation or professional taxes.
Levy by counties and municipalities.
Erroneous or illegal collection, §48-5-380.

PRIVILEGE TAXES —Cont'd
License, occupation or professional taxes —Cont'd
Levy by counties and municipalities —Cont'd
Overpayment, §48-5-380.
Refunds, §48-5-380.
Licenses posted in places of business by persons subject to special or occupation tax, §48-13-23.
Liens, §48-2-56.
Military service.
Occupation tax, levy by counties and municipalities.
Penalty for failure to pay.
Combat zone service, no liability for penalty or interest, §48-13-21.
Motor carriers' road tax.
General provisions, §§48-9-30 to 48-9-46.
Nonresident contractors, §§48-13-30 to 48-13-38.
Nulla bona entry.
Effect on right of defaulting taxpayer to collect fees for services rendered after entry, §48-13-25.
Occupation tax, levy by counties and municipalities.
Administrative fee included in tax, §48-13-10.
Allocating gross receipts, methods, §48-13-14.
Amount, prohibited criteria or methods in determining, §48-13-11.
Authorization to provide by local ordinance or resolution for levy, assessment and collection, §48-13-6.
Businesses commenced on or after July 1.
Amount of fee or tax due, §48-13-22.
Businesses or practitioners with more than one type of service or product.
Classification rules, §48-13-12.
Census governing amount of tax, §48-13-24.
Classification of businesses and practitioners of professions and occupations.
Governing authority of county or municipality authorizes, §48-13-6.
PRIVILEGE TAXES —Cont'd
Occupation tax, levy by counties and municipalities —Cont'd
Classification rules for business or practitioner with more than one type of service or product, §48-13-12.
Confidentiality of information provided by business or practitioner, §48-13-15.
Cost of processing payment of fees, §48-13-29.
Criminal liability unaffected, §48-13-26.
Criteria for classification, §48-13-10.
Definitions, §48-13-5.
Delayed or deferred payment of fees, §48-13-29.
Delinquent taxes, payment in full.
Effect of taxpayer's payment, §48-13-25.
Delinquent taxpayers, issuance of execution against, §48-13-26.
Disclosure of information provided by business or practitioner, §48-13-15.
Dishonored check for payment of fees.
Grace period for actual payment, §48-13-29.
Disposition of increase, §48-13-28.
Economic development, exemption or reduction in fees, §48-13-10.
Election as to occupation tax or regulatory fee by practitioners of professions and occupations, §48-13-10.
Electronic or mail application process, §48-13-29.
Excluded businesses or practitioners, §48-13-16.
Exemption for payers of local occupation tax out of state, §48-13-7.
Foreign businesses and practitioners of professions and occupations with no location or office within state.
Authorization of county or municipality to levy, assess and collect tax, §48-13-37.
Governmental entity maintaining practitioner's office or practitioner employed in practice exclusively for.
Prohibited levies, §48-13-13.

PRIVILEGE TAXES —Cont'd
Occupation tax, levy by counties and municipalities —Cont'd
Information requested from persons subject to tax.
Required to furnish, electronic submission, §48-13-20.1.
License posted in place of business by persons subject to tax, §48-13-23.
Local laws or city charters superseded by article, §48-13-7.
Location or office in more than one jurisdiction, §48-13-14.
Municipal imposition of tax on state licensed businesses, trades and professions, §48-13-18.
No location or office in state, §48-13-7.
Nulla bona entry.
Effect on right of defaulting taxpayer to collect fees for services rendered, §48-13-25.
Other laws on occupation taxes not repealed, §48-13-16.
Payable to only one local government, §48-13-7.
Paying more than one occupation tax prohibited, §48-13-13.
Penalty for failure to pay, §48-13-21.
Posting state licenses in places of business by persons subject to special or occupational tax, §48-13-23.
Prohibited criteria or methods in determining amount, §48-13-11.
Prohibitions on occupation tax levies, §48-13-13.
Public hearing before adopting ordinance or resolution, §48-13-6.
Public hearings on increase, §48-13-28.
Real estate brokers, §48-13-17.
State licensed businesses, trades and professions, §48-13-18.
State licenses posted in places of business by persons subject to tax, §48-13-23.
Time for payment, §48-13-20.
Ordinances and resolutions.
Compliance required with amended article, §48-13-27.
Penalty for failure to pay tax or fee, §48-13-21.
Priorities.
Liens, §48-2-56.
Real estate brokers.
Levy of license, occupation or professional tax by counties and municipalities upon, §48-13-17.

PRIVILEGE TAXES —Cont'd
Regulatory fees, imposition by counties and municipalities.
Authorization to provide by ordinance or resolution for imposition and collection, §48-13-8.
Businesses commenced on or after July 1.
Amount of fee or tax due, §48-13-22.
Census governing amount, §48-13-24.
Civil action to enforce, §48-13-9.1.
Construction projects.
Methods of determining amount, §48-13-9.
Criminal liability unaffected, §48-13-26.
Delinquent taxpayers, issuance of execution against, §48-13-26.
Delinquent taxpayer's payment in full.
Effect, §48-13-25.
Election by practitioner as to occupation tax or regulatory fee, §48-13-10.
Examples of businesses and practitioners of professions and occupations not subject to fees, §48-13-9.
Examples of businesses or practitioners of professions or occupations subject to fees, §48-13-9.
Excluded businesses or practitioners, §48-13-16.
Execution issued against delinquent taxpayers, §48-13-26.
Flat fee.
Methods of determining amount, §48-13-9.
Hourly rate.
Methods of determining amount, §48-13-9.
Information requested from persons subject to tax.
Required to furnish, electronic submission, §48-13-20.1.
Limitation on authority to impose, §48-13-9.
Local laws or city charters superseded by article, §48-13-8.
Methods of determining amount, §48-13-9.
Nulla bona entry.
Effect on right of defaulting taxpayer to collect fees after entry, §48-13-25.

PRIVILEGE TAXES —Cont'd
Regulatory fees, imposition by counties and municipalities —Cont'd
Other laws on regulatory fees not repealed, §48-13-16.
Penalty for failure to pay, §48-13-21.
Time for payment, §48-13-20.
Road tax on motor carriers.
General provisions, §§48-9-30 to 48-9-46.
Sales and use taxes.
Tax levied in addition to privilege taxes, §48-8-30.
Time for payment of fees and taxes, §48-13-20.

PROBATE COURTS.
County tax officials.
Vacancies in office of tax receiver, collector or commissioner.
Interim and emergency filling by judge, §48-5-211.
Judge acting as receiver, collector or commissioner, §48-5-211.
Judges.
County tax officials.
Interim and emergency filling of vacancies in office by judge, §48-5-211.
Judge acting as receiver, collector or commissioner upon vacancy in office, §48-5-211.

PROFESSIONAL COUNSELORS.
Regulatory fees imposed by counties or municipalities.
Civil action to enforce, §48-13-9.1.
Examples of businesses not subject to, §48-13-9.

PROFESSIONAL FOOTBALL LEAGUES.
Income taxes.
Exempt organizations, §48-7-25.

PROFESSIONAL TAXES.
Privilege taxes generally, §§48-13-2 to 48-13-29.

PROFESSIONS AND BUSINESSES.
Business and occupation taxes.
Privilege taxes.
License, occupation or professional taxes, §§48-13-2 to 48-13-29.
Occupation tax generally, §§48-13-2 to 48-13-29.

PROFESSIONS AND BUSINESSES —Cont'd
Privilege taxes.
License, occupation or professional taxes, §§48-13-2 to 48-13-29.

PROFIT-SHARING PLANS.
Income taxes.
Exempt organizations.
Qualified profit-sharing plans, §48-7-25.

PROMISSORY NOTES.
Elections.
Special county one percent sales and use tax.
Issuance of general obligation debt, §48-8-111.
Sales and use taxes.
Sales tax for educational purposes.
Issuance of general obligation debt, §48-8-142.
Special county one percent sales and use tax.
Issuance of general obligation debt, §48-8-121.
Election on, §48-8-111.
Sales tax for educational purposes.
Issuance of general obligation debt, §48-8-142.
Special county one percent sales and use tax.
Issuance of general obligation debt, §48-8-121.
Election on, §48-8-111.
Modification of projects approved by referendum, §48-8-123.
Taxation.
Special county one percent sales and use tax.
Issuance of general obligation debt, §48-8-111.
Election on, §48-8-111.

PROPANE.
Motor fuel tax law.
General provisions, §§48-9-1 to 48-9-19.
Sales and use tax relief.
Propane sold and delivered for residential heating, §48-8-15.

PROPERTY.
Appeals.
County boards of tax assessors.
Removal from office on petition of freeholders, §48-5-296.

PROPERTY INSURANCE.
Homestead tax deferral for individuals 62 or over.
Fire insurance and extended coverage, §§48-5-74, 48-5-78.

PROPERTY TAXES, §§48-5-1 to 48-5-56.
Accounts and accounting.
Amnesty program, §48-16A-9.
Homestead tax deferral for individuals 62 or older.
Deposits of prepayments in special escrow account, §48-5-79.
Actions.
Acquisition of jurisdiction by superior courts.
Payment and distribution of property taxes at issue, §48-5-29.
Refunds.
Counties and municipalities, §48-5-380.
Affidavits.
Heavy-duty equipment ad valorem taxation.
Affidavit of illegality to assessment, §48-5-508.
Homestead exemption.
Applications of individuals 65 or older, §48-5-47.
Unremarried surviving spouse of peace officer or firefighter killed in line of duty, §48-5-48.4.
Motor vehicle and mobile home ad valorem taxation.
Affidavit of illegality to assessments, §48-5-450.
Timber.
Qualified timberland property.
Certification as qualified timberland property, §48-5-604.
Aged persons.
Homes for the aged.
Exemption of nonprofit homes, §48-5-41.
Homestead exemption, §§48-5-47, 48-5-47.1, 48-5-48.3.
Exemption from educational taxes of individuals 62 or older, §48-5-52.
Falsification of information, §48-5-53.
Senior citizens, §48-5-48.3.

PROPERTY TAXES —Cont'd
Aged persons —Cont'd
Homestead tax deferral for individuals 62 or older, §§48-5-70 to 48-5-84.
Agriculture.
Exemption of agricultural products, §§48-5-41, 48-5-41.1.
Municipal property taxes.
Exemption of agricultural products raised in state, §48-5-356.
Tangible real property devoted to bona fide agricultural purposes, §48-5-7.1.
Assessment, §48-5-7.
Preferential ad valorem property tax assessment, §48-5-7.1.
Defined, §48-5-7.1.
Aircraft owned by dealer and held in inventory.
Exemption, §48-5-504.20.
Airline ad valorem taxation.
General provisions, §§48-5-540 to 48-5-546.
Airports.
Situs for taxation of property, §48-5-15.1.
All-terrain vehicles.
Ownership by dealer and held in inventory.
Exempted for limited time, §48-5-504.40.
Amnesty program, §§48-16A-1 to 48-16A-10.
Administration of program, §48-16A-4.
Citation of provisions, §48-16A-2.
Collections.
Accounting, §48-16A-9.
Costs, §48-16A-10.
Reports, §48-16A-9.
Defined terms, §48-16A-3.
Development of program, §48-16A-4.
Duration of program, §48-16A-4.
Eligibility, §48-16A-6.
Forms, §48-16A-4.
Interest, §48-16A-7.
Legislative findings, §48-16A-1.
Participation requirements, §48-16A-5.
Publicizing program, §48-16A-8.
Waiver of penalties, §48-16A-4.
Appeals.
Challenge of commissioner's proposed assessment, §48-2-18.
Changing real property values established by appeal in prior year, §48-5-299.

PROPERTY TAXES —Cont'd
Appeals —Cont'd
Conditional approval of county tax digest, §48-5-348.
County boards of equalization.
Assessments of boards of tax assessors, §48-5-311.
Determination of county entitled to return and payment, §48-5-17.
Disapproval of county tax digest.
Appeal to superior court, §48-5-349.3.
Procedure for appeal to department of revenue, §48-5-349.2.
Equalization of assessments.
Chief appraiser to attend and provide information at appeal hearing, §48-5-266.
Hearing officer, appeals to, §48-5-311.
Homestead exemption.
Determination of eligibility, §48-5-49.
Homestead tax deferral for individuals 62 or older.
Disapproval of application, §48-5-74.
Imposition of penalties, §48-5-84.
Motor vehicle and mobile home ad valorem taxation.
Assessments, §48-5-450.
Public utility ad valorem taxation.
Railroad equipment company assessments, §48-5-519.
Temporary collection of taxes pending appeal of disapproval of digest, §48-5-310.
Arbitration of disputes as to valuation.
County property taxes.
Nonbinding arbitration, §48-5-311.
Assessments.
Agricultural property.
Tangible real property devoted to bona fide agricultural purposes, §48-5-7.1.
Airline ad valorem taxation.
Submission of proposed valuations to state board of equalization, §48-5-545.
Valuation of aircraft, §§48-5-542, 48-5-543.
Airports.
Situs for taxation of property, §48-5-15.1.
Appeals.
Challenge to commissioner's proposed assessment, §48-2-18.

PROPERTY TAXES —Cont'd
Assessments —Cont'd
Bona fide conservation use property.
Current use assessment, §48-5-7.4.
Current use value, §48-5-2.
Family owned farm entity, rules applicable, §48-5-7.4.
Forest land conservation use property, §48-5-7.7.
Table of values.
Establishment, rules and regulations, §48-5-271.
Bona fide residential transitional property.
Current use assessment, §48-5-7.4.
Current use value, §48-5-2.
Brownfield property, §48-5-7.
Fair market value, §48-5-2.
Preferential assessment, §48-5-7.6.
Certifications, §48-2-50.
Challenge to commissioner's proposed assessment.
Appeals filed in superior court of Fulton county, §48-2-18.
Conservation use assessment.
Forest land conservation use property, §48-5-7.7.
Conservation use property.
Current use assessment, §48-5-7.4.
Current use value, §48-5-2.
Forest land conservation use property, §48-5-7.7.
Table of value.
Establishment, rules and regulations, §48-5-271.
Corrected tax bill for taxpayers receiving interim bill pending assessment, §48-2-18.
County board of tax assessors.
General provisions, §§48-5-290 to 48-5-314.
Current use assessment.
Bona fide conservation use property, §48-5-7.4.
Residential transitional property, §48-5-7.4.
Current use value, §48-5-2.
Default.
Assessment for former years in which person in default, §48-5-27.
Deficiency assessments, §48-2-48.
Disputes as to valuation.
Submission to arbitration, §48-5-311.
Equalization of assessments.
General provisions, §§48-5-260 to 48-5-275.

PROPERTY TAXES —Cont'd
Assessments —Cont'd
Fair market value.
Defined, determining, §48-5-2.
Family owned farm entity.
Rules applicable for conservation use property, §48-5-7.4.
Final assessments, §48-2-47.
Forest land conservation use property.
Conservation use assessment, §48-5-7.7.
Table of values, §48-5-271.
Going business.
Fair market value.
Determining, §48-5-2.
Historic property.
Fair market value, §48-5-2.
Landmark historic property.
Fair market value, §48-5-2.
Preferential assessment, §48-5-7.3.
Rehabilitated historic property, §48-5-7.2.
Fair market value, §48-5-2.
Interim tax bill pending notice of proposed assessment, §48-2-18.
Jeopardy assessments, §48-2-51.
Landmark historic property.
Preferential assessment, §48-5-7.3.
Military service personnel serving abroad.
Special assessment, application, filing, extension on, §48-5-30.
Municipal property taxes.
Determination and basis for fair market value, §§48-5-352, 48-5-353.
Notice of proposed and final assessments, §48-2-18.
Periods of limitation, §48-2-49.
Personal property.
Time period for assessment of tax imposed, extension, §48-5-300.1.
Petitions.
Protests, §48-2-46.
Preferential assessment.
Brochures or other publications describing, §48-5-306.1.
Brownfield property, §48-5-7.6.
Landmark historic property, §48-5-7.3.
Rehabilitated historic property, §48-5-7.2.
Tangible real property devoted to agricultural purposes, §48-5-7.1.
Protests, §48-2-46.

PROPERTY TAXES —Cont'd
Assessments —Cont'd
Public utility ad valorem taxation.
Railroad company assessments for purposes of county and municipal taxation, §48-5-521.
Railroad equipment companies, §48-5-519.
Rolling stock and other personal property of railroad companies, §48-5-520.
Real property.
Fair market value.
Determining, §48-5-2.
Rehabilitated historic property.
Certification for preferential assessment, §48-5-7.2.
Residential transitional property.
Current use assessment, §48-5-7.4.
Current use value, §48-5-2.
Review, §48-2-50.
School taxes.
Public utility property subject to school tax, §48-5-402.
Service of notice of assessment, §48-2-45.
Standing timber, §48-5-7.5.
Tangible property, §48-5-7.
Bona fide conservation use property.
Current use assessment, §48-5-7.4.
Bona fide residential transitional property, §48-5-7.4.
Brownfield property, §48-5-7.
Preferential assessment, §48-5-7.6.
Landmark historic property.
Preferential assessment, §48-5-7.3.
Rehabilitated historic property.
Preferential assessment, §48-5-7.2.
Standing timber, §48-5-7.5.
Tangible real property devoted to agricultural purposes, §48-5-7.1.
Timber, §48-5-7.5.
Fair market value, §48-5-2.
Billings.
Form and contents of bill (contingently effective 1/1/2025), §48-5-34.
Homestead exemption notice to accompany real property tax bill, §48-5-56.
Board of tax assessors.
County board of tax assessors, §§48-5-290 to 48-5-314.

PROPERTY TAXES —Cont'd
Boats and other watercraft.
Watercraft owned by dealer and held in inventory.
Exempted for limited time, §48-5-504.40.
Bonds, surety.
Heavy-duty equipment ad valorem taxation.
Contesting tax assessments, §48-5-508.
Jeopardy assessments, §48-2-51.
Motor vehicle and mobile home ad valorem taxation.
Contesting tax assessments, §48-5-450.
Brownfields.
Fair market value of brownfield property, §48-5-2.
Tangible property assessments, §48-5-7.
Preferential assessment, §48-5-7.6.
Burden of proof.
Temporary collection of taxes pending approval or appeal of disapproval of digest, §48-5-310.
Business enterprises.
Return of tangible personal property in county where business conducted, §48-5-16.
Claims for refunds.
Counties and municipalities, §48-5-380.
Classes of subjects of taxation.
Timber.
Qualified timberland property.
Classification as separate and distinct class of tangible property, §48-5-600.1.
Collection of taxes.
Determination of county entitled to return and payment.
Collection pending determination, §48-5-17.
Erroneous or illegal collection, §48-5-380.
Former years, §48-5-27.
Installments.
Tangible property, §48-5-23.
Jeopardy assessments, §48-2-51.
Tangible property.
Installments, §48-5-23.
Unlawfully exempted property, §48-5-21.
Failure to have returned for taxation and to collect taxes on, §48-5-22.

PROPERTY TAXES —Cont'd
Conservation use property.
Assessment, §48-5-7.
Bona fide conservation use property defined, §48-5-7.4.
Current use assessment, §48-5-7.4.
Current use value, §§48-5-2, 48-5-7.4.
Family owned farm entity, rules applicable, §48-5-7.4.
Forest land conservation use property.
Conservation use assessment, §48-5-7.7.
Local assistance grants to make up revenue reduction, §§48-5A-1 to 48-5A-6.
Table of values.
Establishment, rules and regulations, §48-5-271.
Constables.
Periodic payment to proper county officials of money collected, §48-5-141.
Contempt.
County boards of tax assessors.
Failure to obey board's subpoenas, §48-5-300.
Continuing education and training for local officials and staff, §48-5-13.
Corporations.
Federal corporations and agencies, §48-5-4.
Liability of property not affected by corporate character, §48-5-3.
Corrected tax bill for taxpayer receiving interim bill pending notice of proposed assessments, §48-2-18.
Costs.
Proceedings to determine county entitled to return and payment, §48-5-17.
County boards of equalization, §48-5-311.
County taxation.
County board of tax assessors, §§48-5-290 to 48-5-314.
Equalization of assessments, §§48-5-260 to 48-5-275.
Examination of county tax digest, §§48-5-340 to 48-5-349.5.
General provisions, §§48-5-220 to 48-5-243.
State loans to counties, §§48-5-330, 48-5-331.

PROPERTY TAXES —Cont'd
Covenants.
Bona fide conservation use property, §48-5-7.4.
Bona fide residential transitional property, §48-5-7.4.
Forest land conservation use property, §48-5-7.7.
Tangible real property devoted to agricultural purposes.
Preferential assessment, §48-5-7.1.
Current use value.
Defined, §48-5-2.
Defaulting taxpayers.
Collection of taxes for former years, §48-5-27.
Definitions, §48-5-2.
Airline ad valorem taxation, §48-5-540.
Amnesty program, §48-16A-3.
Bona fide conservation use property, §48-5-7.4.
Examination of county tax digest, §48-5-341.
Exemptions, §48-5-40.
Disabled veteran, §48-5-48.
Freeport exemption, §§48-5-48.2, 48-5-48.5.
Landmark historic property, §48-5-7.3.
Personal property.
Return of tangible personal property in county where business conducted, §48-5-16.
Prepayment by developer, §48-5-31.
Publication of ad valorem tax rate, §48-5-32.
Public utility ad valorem taxation, §48-5-510.
Rehabilitated historic property, §48-5-7.2.
Specimen tree, §48-5-7.2.
Tangible real property which is devoted to bona fide agricultural purposes, §48-5-7.1.
Tax deferral for the elderly act, §48-5-71.
Delinquent tax officials, §§48-5-200 to 48-5-205.
Delinquent tax payments.
Certain counties, §48-5-24.
Determination of county entitled to return and payment, §48-5-17.
Developers.
Prepayment, §48-5-31.
Definitions, §48-5-31.
Digests of proposed assessments.
Examination of county tax digests, §§48-5-340 to 48-5-349.5.

PROPERTY TAXES —Cont'd
Digests of proposed assessments —Cont'd
State board of equalization.
Examination and final approval, §48-2-18.
Disabled veterans.
Motor vehicle ad valorem taxation.
Constitutional exemption, §48-5-478.
Proof of continuing eligibility, §48-5-478.
Disaster area, damaged or destroyed buildings.
Temporary tax relief, §48-5-33.
Election by locality as to form of payment, §48-5-9.1.
Elections.
Freeport exemption.
Level 1, §48-5-48.2.
Level 2, §48-5-48.6.
Erroneous collection, §48-5-380.
Examination of county tax digests.
General provisions, §§48-5-340 to 48-5-349.5.
Executions.
Delinquent tax payments in certain counties, §48-5-24.
Sales under tax executions, §§48-4-1 to 48-4-65.
Tax executions generally, §§48-3-1 to 48-3-44.
Exemptions, §§48-5-40 to 48-5-56.
Academies.
Incorporated academies, §48-5-41.
Aged persons.
Homestead, §§48-5-47, 48-5-47.1, 48-5-48.3.
Exemption from educational taxes of individuals 62 or older, §48-5-52.
Falsification of information required, §48-5-53.
Nonprofit homes for the aged, §48-5-41.
Agricultural products, §§48-5-41, 48-5-41.1.
Aircraft owned by dealer and held in inventory.
Exemption, §48-5-504.20.
Air pollution eliminating or reduction property, §48-5-41.
All-terrain vehicles.
Ownership by dealer and held in inventory.
Exempted for limited time, §48-5-504.40.

PROPERTY TAXES —Cont'd
Exemptions —Cont'd
Animals.
Domestic animals, §48-5-42.
Appeals.
Determinations of eligibility for homestead exemption, §48-5-49.
Boats and other watercraft.
Watercraft owned by dealer and held in inventory.
Exempted for limited time, §48-5-504.40.
Brochures or other publications describing, §48-5-306.1.
Cemeteries, §48-5-41.
Charities.
Institutions of purely public charity, §48-5-41.
Real property held for single-family homes financed by charity, §48-5-41.
Churches.
Places of religious worship, §48-5-41.
Clothing and effects, §48-5-42.
Colleges, §48-5-41.
Constitutional exemptions.
Continuation, §48-5-55.
Continuation of constitutional exemptions, §48-5-55.
Definitions, §48-5-40.
Disabled veteran, §48-5-48.
Freeport exemption, §§48-5-48.2, 48-5-48.5.
Domestic animals, §48-5-42.
Election.
Freeport exemption.
Level 1, §48-5-48.2.
Level 2, §48-5-48.6.
Executors and administrators.
Application for homestead exemption to properties held by, §48-5-54.
Farm products, §§48-5-41, 48-5-41.1.
Fertilizers, §48-5-43.
Forms.
Notice of homestead exemption accompanying bill for real property taxes, §48-5-56.
Fraternal benefit exemptions, §48-5-41.
Freeport exemption.
Level 1, §§48-5-48.1, 48-5-48.2.
Timeliness of filings, §48-5-48.7.
Level 2, §§48-5-48.5, 48-5-48.6.
Timeliness of filings, §48-5-48.7.

PROPERTY TAXES —Cont'd
Exemptions —Cont'd
Fulfillment centers, stock in trade.
Freeport exemption.
Level 1, §§48-5-48.1, 48-5-48.2.
Timeliness of filings, §48-5-48.7.
Furniture and furnishings of households, §48-5-42.
Homes for mentally handicapped.
Nonprofit homes, §48-5-41.
Homes for the aged.
Nonprofit homes, §48-5-41.
Homestead, §48-5-44.
Administrators, executors or trustees.
Application for exemption when properties held by, §48-5-54.
Aged persons, §§48-5-47, 48-5-47.1, 48-5-48.3.
Applications of individual 65 or older, §§48-5-47, 48-5-47.1, 48-5-48.3.
Exemption from educational taxes of individuals 62 or older, §48-5-52.
Falsification of information required, §48-5-53.
Application, §48-5-45.
Individual 65 or older, §§48-5-47, 48-5-47.1, 48-5-48.3.
Procedure, §48-5-46.
Properties held by administrators, executors or trustees, §48-5-54.
Properties with multiple titleholders, §48-5-54.
Solicitation of fee to file application for another, §48-5-45.
Statewide exemption (contingently effective 1/1/2025), §48-5-44.2.
Approval of correctness of value, exemption and difference, §48-5-50.
Constitutional amendments creating claim and return of exemptions, §48-5-50.1.
Determination of eligibility, §48-5-49.
Disabled veterans.
Extension by qualified disabled veteran, §48-5-48.
Educational taxes.
Exemption of individuals 62 or older, §48-5-52.
Falsification of information required, §48-5-53.

PROPERTY TAXES —Cont'd
Exemptions —Cont'd
Homestead —Cont'd
Fraudulent claims, §48-5-51.
Limits, §48-5-44.
Local laws creating claim and return of exemptions, §48-5-50.1.
Multiple titleholders.
Application for exemption when properties held by, §48-5-54.
Municipal corporation located in multiple counties.
Residents, exemptions for, §48-5-44.1.
Notice of exemption to accompany bill for taxes on real property, §48-5-56.
Oath, §48-5-46.
Opt-out by local governing authority.
Statewide exemption (contingently effective 1/1/2025), §48-5-44.2.
Participation in rural housing programs, §48-5-44.
Renewal, §48-5-45.
Statewide exemption (contingently effective 1/1/2025), §48-5-44.2.
Senior citizens, §§48-5-47, 48-5-47.1, 48-5-48.3.
Solicitation of fee to file application for another, §48-5-45.
Statewide exemption (contingently effective 1/1/2025), §48-5-44.2.
Surviving spouses of peace officers or firefighters killed in line of duty.
Exemptions for unremarried surviving spouses, §48-5-48.4.
Surviving spouses of US service members.
Exemptions for state, county, municipal and school purposes, §48-5-52.1.
Value credited with exemption, §48-5-50.
Veterans.
Extension by qualified disabled veteran, §48-5-48.
Hospitals.
Nonprofit hospitals, §48-5-41.
Household furniture, furnishings, equipment, etc., §48-5-42.
Inventories.
Freeport exemption.
Level 1, §§48-5-48.1, 48-5-48.2.
Timeliness of filings, §48-5-48.7.

PROPERTY TAXES —Cont'd
Exemptions —Cont'd
Inventories —Cont'd
Freeport exemption —Cont'd
Level 2, §48-5-48.5.
Timeliness of filings, §48-5-48.7.
Personal property constituting business inventory, §48-5-41.2.
Land banks, §48-4-108.
Level 1 freeport exemption, §§48-5-48.1, 48-5-48.2.
Timeliness of filings, §48-5-48.7.
Level 2 freeport exemption, §§48-5-48.5, 48-5-48.6.
Timeliness of filings, §48-5-48.7.
Libraries, §48-5-41.
Manual laborers.
Tools and implements of trade, §48-5-42.
Mentally handicapped.
Nonprofit homes for, §48-5-41.
Motor vehicle ad valorem taxation.
Disabled veterans constitutional exemption, §48-5-478.
Proof of continuing eligibility, §48-5-478.
Driver educational motor vehicles, §48-5-470.
Handicapped or disabled students.
Vehicles used for transporting to or from educational institutions, §48-5-470.1.
Prisoners of war, §48-5-478.1.
Multiple titleholders.
Application of homestead exemption to properties with, §48-5-54.
Municipal property taxes.
Agricultural products and livestock raised in state, §48-5-356.
Certain salesmen and merchants, §48-5-354.
Goods purchased in carload lots.
Distribution among several purchasers, §48-5-355.
Notice of homestead exemption to accompany bill for real property taxes, §48-5-56.
Personal property.
Business inventory personal property, §48-5-41.2.
Exempt personalty generally, §48-5-42.
Freeport exemption.
Level 1, §§48-5-48.1, 48-5-48.2.
Timeliness of filings, §48-5-48.7.

PROPERTY TAXES —Cont'd
Exemptions —Cont'd
Personal property —Cont'd
Freeport exemption —Cont'd
Level 2, §§48-5-48.5, 48-5-48.6.
Timeliness of filings, §48-5-48.7.
Threshold valuation of property subject to tax, §48-5-42.1.
Public-private transportation projects, §48-5-41.
Projects not considered special franchises, §48-5-421.1.
Public property, §48-5-41.
Referendum.
Freeport exemption.
Level 1, §48-5-48.2.
Level 2, §48-5-48.6.
Religion.
Places of religious worship, §48-5-41.
Property owned by religious groups and used for single-family residences, §48-5-41.
Rural housing programs.
Effect of participation on homestead exemption, §48-5-44.
Seminaries, §48-5-41.
Stock in trade of a fulfillment center.
Freeport exemption.
Level 1, §§48-5-48.1, 48-5-48.2.
Timeliness of filings, §48-5-48.7.
Surviving spouses of peace officers or firefighters killed in line of duty.
Homestead.
Exemptions for unremarried surviving spouses, §48-5-48.4.
Surviving spouses of US service members.
Homestead.
Exemptions from state, county, municipal and school purposes, §48-5-52.1.
Tangible personal property.
Freeport exemption.
Level 1, §§48-5-48.1, 48-5-48.2.
Timeliness of filings, §48-5-48.7.
Level 2, §§48-5-48.5, 48-5-48.6.
Timeliness of filings, §48-5-48.7.
Inventory, §48-5-41.2.
Threshold valuation of property subject to tax, §48-5-42.1.
Timber equipment, §48-5-41.3.
Tools and implements of trade of manual laborers, §48-5-42.
Transportation projects, public-private, §48-5-41.
Projects not considered special franchises, §48-5-421.1.

PROPERTY TAXES —Cont'd
Exemptions —Cont'd
Universities and colleges, §48-5-41.
Unlawfully exempted property.
Return and collection of taxes, §48-5-21.
Failure to have returned for taxation and to collect taxes on, §48-5-22.
Veterans organizations, §48-5-41.
Watercraft owned by dealer and held in inventory.
Exempted for limited time, §48-5-504.40.
Water pollution eliminating or reduction property, §48-5-41.
Exports.
Foreign merchandise in transit.
Acquisition of situs, §48-5-5.
Defined, §48-5-2.
Freeport exemption.
Level 1, §§48-5-48.1, 48-5-48.2.
Timeliness of filings, §48-5-48.7.
Fair market value.
Assessment of tangible property, §48-5-7.
Certification of rehabilitated historic property for preferential assessment, §48-5-7.2.
Defined, determining, §48-5-2.
Municipal property taxes.
Determination and basis, §§48-5-352, 48-5-353.
Return of property at, §48-5-6.
Timber.
Qualified timberland property.
Determination of fair market value, §48-5-601.
Federal corporations and agencies, §48-5-4.
Fees.
Service of papers by county boards of tax assessors, §48-5-307.
Foreclosures.
Ad valorem tax foreclosures, §§48-4-75 to 48-4-81.
Fair market value.
Factor in determining, §48-5-2.
Homestead tax deferral for individuals 62 or older.
Payment by holder of deed to secure debt or mortgagee, §48-5-81.
Foreign merchandise in transit.
Acquisition of situs, §48-5-5.
Defined, §48-5-2.

PROPERTY TAXES —Cont'd
Forest land conservation use property.
Assessment, §48-5-7.
Conservation use assessment, §48-5-7.7.
Local assistance grants to make revenue reduction, §§48-5A-1 to 48-5A-6.
Administration, §48-5A-4.
Retention of funds for administrative costs, §48-5A-5.
Allotment, §48-5A-3.
Amount of grant, §48-5A-3.
Amount of revenue reduction.
Notification, §48-5A-3.
Appropriation of funds, §48-5A-2.
Calculation of revenue reduction, §48-5A-3.
Definitions, §48-5A-1.
Rules and regulations, §48-5A-4.
Value of local assistance grants.
Increases over time, §48-5A-6.
Table of values, §48-5-271.
Forms.
Amnesty program, §48-16A-4.
Homestead exemption notice to accompany real property tax bill, §48-5-56.
Notice of changes made in taxpayer's return, §48-5-306.
Oath of person making return, §48-5-19.
Temporary collection of taxes pending approval or appeal of disapproval of digest.
Petition, §48-5-310.
Uniform tangible personal property tax forms.
Adoption by state revenue commissioner, §48-5-105.1.
Forms of payment, §48-5-9.1.
Franchise tax.
Special franchises generally, §§48-5-420 to 48-5-425.
Funds.
Reserve funds of counties and municipalities, §48-5-381.
Going business.
Fair market value.
Determining, §48-5-2.

PROPERTY TAXES —Cont'd
Hearings.
Certification as landmark historic property for preferential assessment.
Persons aggrieved or adversely affected by order or action, §48-5-7.3.
Certification as rehabilitated historic property for preferential assessment.
Persons aggrieved or adversely affected by order or action, §48-5-7.2.
Conditional approval of county tax digest, §48-5-348.
County boards of tax assessors.
Removal from office, §48-5-295.
Disapproval of county tax digest.
Appeal to department of revenue, §48-5-349.2.
Temporary collection of taxes pending approval or appeal of disapproval of digest, §48-5-310.
Heavy-duty equipment ad valorem taxation, §§48-5-505 to 48-5-509.
Construction equipment owned by nonresidents, §§48-5-500, 48-5-501.
Historic property.
Fair market value, §48-5-2.
Landmark historic property.
Assessment.
Preferential assessment, §48-5-7.3.
Tangible property, §48-5-7.
Defined, §48-5-7.3.
Fair market value, §48-5-2.
Rehabilitated historic property.
Assessment of tangible property, §48-5-7.
Certification for purposes of preferential assessment, §48-5-7.2.
Defined, §48-5-7.2.
Fair market value, §48-5-2.
Homestead tax deferral for individuals 62 or older, §§48-5-70 to 48-5-84.
Illegal collection, §48-5-380.
Imports.
Foreign merchandise in transit.
Acquisition of situs, §48-5-5.

PROPERTY TAXES —Cont'd
Imports —Cont'd
Foreign merchandise in transit —Cont'd
Defined, §48-5-2.
Freeport exemption.
Level 1, §§48-5-48.1, 48-5-48.2.
Timeliness of filings, §48-5-48.7.
Increase in millage rate, §48-5-32.1.
Industrial projects.
Prepayment by developer, §48-5-31.
Definitions, §48-5-31.
Inspections.
Equalization of assessments.
Right of chief appraiser to inspect property, §48-5-264.1.
Installments.
Collection and payment of taxes on tangible property, §48-5-23.
Delinquent tax payments, §48-5-24.
Insurance.
Homestead tax deferral for individuals 62 or older.
Proof of fire and extended coverage, §48-5-74.
Intangible recording tax, §§48-6-60 to 48-6-77.
Interest.
Amnesty program, §48-16A-7.
Deficiency assessments, §48-2-48.
Delinquent tax payments in certain counties, §48-5-24.
New purchasers of property, exemptions, §48-3-3.
Unpaid taxes, §48-5-148.
Alternative provisions, §48-5-150.
Willful failure to pay ad valorem tax, §48-2-44.
Interim tax bill pending notice of proposed assessments, §48-2-18.
Interstate commerce.
Foreign merchandise in transit.
Acquisition of situs, §48-5-5.
Defined, §48-5-5.
Freeport exemption.
Level 1, §§48-5-48.1, 48-5-48.2.
Timeliness of filings, §48-5-48.7.
Investments.
Reserve funds of counties and municipalities, §48-5-381.
Jeopardy assessments, §48-2-51.
Jurisdiction in ad valorem property tax litigation.
Acquisition by superior court.
Payment and distribution of property taxes at issue, §48-5-29.

PROPERTY TAXES —Cont'd
Land banks.
Exemptions, §48-4-108.
Legislative intent, §48-5-1.
Liability of persons, §48-5-9.
Nonresidents, §48-5-14.
Liens, §48-2-56.
Bona fide conservation use property and residential transitional property.
Penalties and interest for breach of covenant, §48-5-7.4.
Certification as landmark historic property for preferential assessment.
Difference between preferential assessment and tax otherwise assessed, §48-5-7.3.
Certification as rehabilitated historic property for preferential assessments.
Taxes and interest deferred, §48-5-7.2.
Homestead tax deferral for individuals 62 or older.
Deferral taxes and interest constitute prior lien, §48-5-76.
Unsatisfied liens in excess of 85 percent of value, §48-5-78.
Priorities, §48-2-56.
Tangible real property devoted to agricultural purposes.
Preferential assessment.
Penalties and interest imposed under section, §48-5-7.1.
Life estates.
Liability of life tenants, §48-5-9.
Limitation of actions.
Assessment of taxes, §48-2-49.
Claims for refunds.
Counties and municipalities, §48-5-380.
Personal property.
Assessment of tax imposed.
Time period, extension, §48-5-300.1.
Livestock.
Municipal property taxes.
Exemption of livestock raised in state, §48-5-356.
Local officials and staff, training and continuing education courses, §48-5-13.
Lock box system.
Use for mailed tax returns and payments, §48-5-147.

PROPERTY TAXES —Cont'd
Military personnel serving abroad.
Special assessment.
Application, filing, extension, §48-5-30.
Millage rate increase, §48-5-32.1.
Mobile homes.
General provisions, §§48-5-440 to 48-5-451, 48-5-490 to 48-5-495.
Mortgages and deeds of trust.
Homestead tax deferral for individuals 62 or older.
Payments by mortgagee, §48-5-81.
Prohibition of clauses preventing applications for deferral, §48-5-82.
Motor vehicles.
General provisions, §§48-5-440 to 48-5-478.4.
Municipal property taxes, §§48-5-350 to 48-5-361.
Nonresidents.
Liability of nonresidents and property, §48-5-14.
Liability of property not affected by nonresident status of owner, §48-5-3.
Situs of returns, §48-5-12.
Notice.
Arbitration of disputes as to valuation, county taxes, §48-5-311.
Changes made in taxpayer's return, §48-5-306.
Conditional approval of tax digest, §48-5-344.
County property tax assessment notices, §48-5-306.
Disapproval of tax digest.
Appeal to department of revenue, §48-5-349.2.
Final assessments, §48-2-18.
Form and contents of bill (contingently effective 1/1/2025), §48-5-34.
Heavy-duty equipment ad valorem taxation.
Sale of equipment, §48-5-507.
Homestead exemption notice to accompany real property tax bill, §48-5-56.
Homestead exemption opt-out advertisement.
Statewide exemption (contingently effective 1/1/2025), §48-5-44.2.
Homestead tax deferral for individuals 62 or older.
Annual notification to property owner, §48-5-77.

PROPERTY TAXES —Cont'd
Notice —Cont'd
Homestead tax deferral for individuals 62 or older —Cont'd
Disapproval of application, §48-5-74.
Unsatisfied liens, §48-5-78.
Level 1 freeport exemption.
Ineligibility for exemption, §48-5-48.1.
Timeliness of filings, §48-5-48.7.
Level 2 freeport exemption.
Notice of renewal, §48-5-48.5.
Timeliness of filings, §48-5-48.7.
Property tax increase, §48-5-32.1.
Proposed assessments, §48-2-18.
Publication of tax rate, §48-5-32.
Refund approval or disapproval.
Counties and municipalities, §48-5-380.
Right to file returns, §48-5-264.1.
Service of notice of assessment, §48-2-45.
Oaths.
Homestead exemption, §48-5-46.
Homestead tax deferral for individuals 62 or older.
Application, §48-5-74.
Persons making returns, §48-5-19.
Overpayment.
Erroneous or illegal collection, §48-5-380.
Owners of property.
Liable if owner known, §48-5-9.
Parties.
Determination of county entitled to return and payment, §48-5-17.
Payment of taxes.
Acquisition of jurisdiction by superior courts in litigation.
Payment and distribution of property taxes at issue, §48-5-29.
Billings.
Form and contents of bill (contingently effective 1/1/2025), §48-5-34.
Homestead exemption notice to accompany real property tax bill, §48-5-56.
County in which returns made, §48-5-24.
Delinquent tax payments in certain counties, §48-5-24.
Determination of county entitled to payment, §48-5-17.

PROPERTY TAXES —Cont'd
Payment of taxes —Cont'd
Developers.
Prepayment, §48-5-31.
Forms of payment, §48-5-9.1.
Installments.
Delinquent tax payments, §48-5-24.
Tangible property, §48-5-23.
Interest.
Unpaid taxes.
Alternative provisions, §48-5-150.
Lock box system.
Use, §48-5-147.
Overpayment.
Refunds or credits, §48-5-380.
Penalty and interest on willful failure to pay, §48-2-44.
New purchasers of property, exemptions, §48-3-3.
Prepayment.
Developers, §48-5-31.
Taxpayer agreements with local governments for prepayment of taxes, §48-5-31.1.
Proceedings to determine county entitled, §48-5-17.
Proportionate payments.
Owners and persons with interest in or on property, §48-5-25.
Real property.
Owners or transferees, §48-5-26.
Refunds.
Counties and municipalities, §48-5-380.
Tangible property.
Installments, §48-5-23.
Unpaid taxes.
Interest, §48-5-148.
Alternative provisions, §48-5-150.
Penalties.
Airline ad valorem taxation.
Failure to file flight equipment returns, §48-5-541.
Amnesty program.
Waiver of penalties, §48-16A-4.
Bona fide conservation use property and residential transitional property.
Breach of covenants, §48-5-7.4.
Delinquent tax payments in certain counties, §48-5-24.
Failure to return taxable property, §48-5-20.
Homestead tax deferral for individuals 62 or older.
Willfully filing incorrect information, §48-5-84.
PROPERTY TAXES —Cont'd
Penalties —Cont'd
New purchasers of property, exemptions, §48-3-3.
Public utility ad valorem taxation.
Failure to file return and pay tax, §48-5-513.
Standing timber assessments.
Failure to make timely reports or disclosures, §48-5-7.5.
Tangible real property devoted to agricultural purposes.
Preferential assessment.
Breach of covenant entered into by taxpayers, §48-5-7.1.
Willful failure to pay ad valorem tax, §48-2-44.
Personal property.
Airports.
Situs for taxation of property, §48-5-15.1.
Assessment of amount of tax imposed.
Time period, extension, §48-5-300.1.
Definitions.
Return of tangible personal property in county where business conducted, §48-5-16.
Refunds.
Claim for filed, extension of assessment period, §48-5-300.1.
Return of tangible personal property in county where business conducted, §48-5-16.
Uniform tangible personal property tax forms.
Adoption by state revenue commissioner, §48-5-105.1.
Persons liable, §48-5-9.
Nonresidents, §48-5-14.
Petitions.
Certification as rehabilitated historic property for preferential assessment.
Persons aggrieved or adversely affected by order or action, §48-5-7.2.
County boards of tax assessors.
Removal from office on petition of freeholders, §48-5-296.
Determination of county entitled to return and payment, §48-5-17.
Protests, §48-2-46.
Preferences.
Agricultural property.
Tangible real property devoted to bona fide agricultural purposes, §48-5-7.1.

PROPERTY TAXES —Cont'd
Preferences —Cont'd
Brownfield property.
Preferential assessment, §48-5-7.6.
Certification as rehabilitated historic property for preferential assessment, §48-5-7.2.
Landmark historic property.
Preferential assessment, §48-5-7.3.
Prepayment.
Developers, §48-5-31.
Taxpayer agreements with local governments for prepayment of taxes, §48-5-31.1.
Priorities.
Liens, §48-2-56.
Taxes over other claims, §48-5-28.
Property returnable, §48-5-10.
Fair market value, §48-5-6.
Property taxable, §48-5-3.
Proportionate payments.
Owners and persons with interest in or on property, §48-5-25.
Protests.
Procedures, §48-2-46.
Publication.
Amnesty program, §48-16A-8.
Tax rate, §48-5-32.
Public-private transportation projects.
Exemption, §48-5-41.
Projects not considered special franchises, §48-5-421.1.
Public utility ad valorem taxation.
General provisions, §§48-5-510 to 48-5-524.
Purpose of tax laws, §48-5-1.
Qualified timberland property, §§48-5-600 to 48-5-607.
Railroads.
Public utility ad valorem taxation.
Assessment for county and municipal taxation purposes, §48-5-521.
Railroad equipment companies, §48-5-519.
Rolling stock and other personal property, §48-5-520.
Rate of tax.
Publication, §48-5-32.
Real estate transfer tax, §§48-6-1 to 48-6-10.
Real property.
Assessment, §48-5-7.
Agricultural property, §48-5-7.1.

PROPERTY TAXES —Cont'd
Real property —Cont'd
Assessment —Cont'd
Brownfield property, §48-5-7.
Preferential assessment, §48-5-7.6.
Conservation use property, §48-5-7.4.
Table of values, §48-5-271.
Current use value, §48-5-2.
Fair market value.
Determining, §48-5-2.
Family owned farm entity.
Rules applicable for conservation use property, §48-5-7.4.
Landmark historic property, §48-5-7.3.
Rehabilitated historic property, §48-5-7.2.
Residential transitional property, §48-5-7.4.
Certification of assessed taxable value, §48-5-32.1.
Fair market value.
Determining, §48-5-2.
Forest land conservation use property.
Conservation use assessment, §48-5-7.7.
Local assistance grants to make up revenue reduction, §§48-5A-1 to 48-5A-6.
Table of values, §48-5-271.
Millage rate increase, §48-5-32.1.
Notice of property tax increase, §48-5-32.1.
Payment of taxes.
Owners or transferees, §48-5-26.
Returns of taxable real property, §48-5-15.
Records.
Homestead tax deferral for individuals 62 or older, §48-5-80.
Referendum.
Exemptions.
Freeport exemption.
Level 1, §48-5-48.2.
Level 2, §48-5-48.6.
Refunds.
Counties and municipalities, §48-5-380.
Disabled veterans homestead exemption.
Final determination of disability containing retroactive period of eligibility, §48-5-48.
Personal property.
Claim for filed, extension of assessment period, §48-5-300.1.

PROPERTY TAXES —Cont'd
Releases.
Payment of taxes on real property by owners or transferees, §48-5-26.
Proportionate payments of property taxes.
Owners and persons with interest in or on property, §48-5-25.
Relief from taxes.
Disaster area, damaged or destroyed buildings, §48-5-33.
Reports.
Amnesty program, §48-16A-9.
Bona fide conservation use property and residential transitional property.
Fiscal impact of assessment, §48-5-7.4.
Inspection report, §48-5-7.4.
Examination of county tax digest.
Annual report concerning implementation of article, §48-5-349.5.
Homestead tax deferral for individuals 62 or older.
Owner's annual report on outstanding liens, §48-5-78.
Publication of tax rate, §48-5-32.
Standing timber assessments, §48-5-7.5.
Tangible real property devoted to agricultural purposes.
Fiscal impact of preferential assessment provided by section, §48-5-7.1.
Reserve funds of counties and municipalities, §48-5-381.
Residential transitional property.
Assessment of tangible property, §48-5-7.4.
Bona fide residential transitional property.
Defined, §48-5-7.4.
Current use value, §48-5-2.
Residents.
Situs for returns, §48-5-11.
Returnable property, §48-5-10.
Aviation, §48-5-15.1.
Business enterprises.
Tangible personal property in county where business conducted, §48-5-16.
Determination of county entitled to return, §48-5-17.
Failure to return taxable property, §48-5-20.

PROPERTY TAXES —Cont'd
Returnable property —Cont'd
Fair market value, §48-5-6.
Former years for which person in default, §48-5-27.
Oaths of persons making returns, §48-5-19.
Digital signature, §48-5-19.
Personal property.
Tangible personal property in county where business conducted, §48-5-16.
Proceedings to determine county entitled to return, §48-5-17.
Real property, §48-5-15.
Situs for returns by residents, §48-5-11.
Situs of returns by nonresidents, §48-5-12.
Tangible personal property in county where business conducted, §48-5-16.
Time for making return, §48-5-18.
Unlawfully exempted property, §48-5-21.
Failure to have returned for taxation and to collect taxes on, §48-5-22.
Returns.
Lock box system.
Use for mailed returns, §48-5-147.
Notice of right to file, §48-5-264.1.
Salaries.
Equalization of assessments.
Appraisers.
State salary supplements for qualified appraisers, §48-5-267.
Sales.
Municipal property taxes.
Sale of property for taxes due municipality, §48-5-359.
Sale under execution for collection of assessments for improvements, §48-5-358.
Sales under tax executions.
General provisions, §§48-4-1 to 48-4-65.
School taxes.
General provisions, §§48-5-400 to 48-5-405.
Security deeds.
Superiority of security deeds, §48-5-28.
Service of process.
County boards of tax assessors.
Service of papers, §48-5-307.

PROPERTY TAXES —Cont'd
Service of process —Cont'd
Notice of assessment, §48-2-45.
Sheriffs.
Delinquent tax officials.
Direction to sheriffs of executions against, §48-5-202.
Periodic payment to proper county officials of money collected, §48-5-141.
Situs of returns.
Nonresidents, §48-5-12.
Residents, §48-5-11.
Special franchises generally, §§48-5-420 to 48-5-425.
Specific property liable if owner not known, §48-5-9.
State board of equalization.
Airline ad valorem taxation.
Submission of proposed valuations to, §48-5-545.
Duties, §48-2-18.
Established, §48-2-18.
State loans to counties, §§48-5-330, 48-5-331.
Statute of limitations.
Claims for refunds.
Counties and municipalities, §48-5-380.
Personal property.
Assessment of tax imposed.
Time period, extension, §48-5-300.1.
Subpoenas.
County boards of tax assessors.
Power to issue, §48-5-300.
Superior courts.
Acquisition of jurisdiction in litigation.
Payment and distribution of property taxes at issue, §48-5-29.
Appeals of decisions of county boards of equalization, §48-5-311.
Challenge to commissioner's proposed assessment.
Appeal filed in superior court of Fulton county, §48-2-18.
County boards of tax assessors.
Removal from office, §48-5-295.
Determination of county entitled to return and payment, §48-5-17.
Disapproval of county tax digest.
Appeals to, §48-5-349.3.
Homestead tax deferral for individuals 62 or older.
Appeals of decisions disapproving application, §48-5-74.

PROPERTY TAXES —Cont'd
Superior courts —Cont'd
Motor vehicle and mobile home ad valorem taxation.
Contesting tax assessments, §48-5-450.
School taxes.
Contesting taxability of property.
Public utility property subject to school tax, §48-5-402.
Temporary collection of taxes pending approval or appeal of disapproval of digest, §48-5-310.
Supreme court.
Appeals of proceedings determining county entitled to return and payment, §48-5-17.
Tangible property.
Assessment, §48-5-7.
Agricultural property, §48-5-7.1.
Brownfield property, §48-5-7.
Preferential assessment, §48-5-7.6.
Conservation use property, §48-5-7.4.
Landmark historic property, §48-5-7.3.
Rehabilitated historic property, §48-5-7.2.
Residential transitional property, §48-5-7.4.
Standing timber, §48-5-7.5.
Aviation.
Situs for taxation of property, §48-5-15.1.
Installments.
Collection and payment, §48-5-23.
Personal property.
Return in county where business conducted, §48-5-16.
Uniform tangible personal property tax forms.
Adoption by state revenue commissioner, §48-5-105.1.
Taxable property, §48-5-3.
Tax collectors.
General provisions, §§48-5-121 to 48-5-165.
Tax digests.
Equalized adjusted school property tax digest, §48-5-274.
Examination of county tax digest, §§48-5-340 to 48-5-349.5.
Tax executions.
Delinquent tax payments in certain counties, §48-5-24.

PROPERTY TAXES —Cont'd
Tax executions —Cont'd
General provisions, §§48-3-1 to 48-3-44.
Sales under tax executions, §§48-4-1 to 48-4-65.
Tax receivers.
General provisions, §§48-5-101 to 48-5-109.
Timber.
Assessment of standing timber, §48-5-7.5.
Fair market value, §48-5-2.
Qualified timberland property, §§48-5-600 to 48-5-607.
Appeals, §§48-5-605, 48-5-606.
Appraisals.
Complete parameters for appraisal.
Appeals, §48-5-606.
Fair market value determinations, §48-5-601.
Appeals, §48-5-605.
Manual for appraisals, §48-5-602.
Assessment, §48-5-7.
Certification as qualified owner, §48-5-603.
Appeals, §48-5-605.
Certification as qualified timberland property, §48-5-604.
Appeals, §48-5-605.
Classification as separate and distinct class of tangible property, §48-5-600.1.
Contiguous tracts.
Division of tract by boundary, roadway, railroad track, etc.
Election of owner to declare tract as contiguous, §48-5-600.
Criteria for qualification, §48-5-604.
Definitions, §48-5-600.
Fair market value.
Determination, §48-5-601.
Appeal of complete parameters for appraisal, §48-5-606.
Appeals, §48-5-605.
Complete parameters for appraisal, §48-5-602.
Manual for appraisals, §48-5-602.
Forms.
Prescribing forms to implement provisions, §48-5-607.
Owner.
Certification as qualified owner, §48-5-603.

PROPERTY TAXES —Cont'd
Timber —Cont'd
Qualified timberland property —Cont'd
Rulemaking to implement provisions, §48-5-607.
Time.
Homestead tax deferral for individuals 62 or older.
Accrual of interest, §48-5-75.
Filing application, §48-5-72.
Alternative to tax deferral, §48-5-72.1.
Making tax return, §48-5-18.
Prepayment by developers.
Time of effect of prepayment agreements, §48-5-31.
Training of local officials and staff, §48-5-13.
Transitional developing areas.
Assessment of tangible property, §48-5-7.4.
Current use assessment for bona fide residential transitional property, §48-5-7.4.
Current use value, §48-5-2.
Bona fide residential transitional property.
Defined, §48-5-7.4.
Tangible real property located in.
Assessment of tangible property, §48-5-7.
Transportation projects.
Public-private transportation projects.
Exemption for certain, §48-5-41.
Not considered special franchises, §48-5-421.1.
United States.
Federal corporations and agencies, §48-5-4.
Universities and colleges.
Equalization of assessments.
Contracts to provide instruction courses to appraisers, §48-5-268.
Exemption, §48-5-41.
Unpaid taxes.
Interest, §48-5-148.
Alternative provisions, §48-5-150.
Venue.
Challenge to commissioner's proposed assessment.
Appeals filed in superior court of Fulton county, §48-2-18.
Proceedings to determine county entitled to return and payment, §48-5-17.

PROPERTY TAXES —Cont'd
Venue —Cont'd
School taxes.
Contesting taxability of property.
Public utility property subject to school tax, §48-5-402.
Veterans.
Disabled veterans homestead exemption.
Extension by qualified disabled veteran, §48-5-48.
Exemption from ad valorem property taxes, §48-5-41.
Motor vehicle ad valorem taxation.
Disabled veterans constitutional exemption, §48-5-478.
Proof of continuing eligibility, §48-5-478.
Watercraft owned by dealer and held in inventory.
Exempted for limited time, §48-5-504.40.

PROPYLENE.
Motor fuel tax law.
General provisions, §§48-9-1 to 48-9-19.

PROSTHETIC APPLIANCES.
Taxation, §48-8-3.

PROTEST.
Taxation.
Procedure, §48-2-46.

PSYCHOLOGISTS.
Fees.
Regulatory fees imposed by counties or municipalities.
Civil action to enforce, §48-13-9.1.
Examples of businesses not subject to, §48-13-9.

PUBLICATION.
Elections.
Joint county and municipal sales and use tax.
Referendum election to decide discontinuing imposition, §48-8-92.
Referendum election to decide imposition of tax, §48-8-85.
Special county one percent tax.
Notice of election, §48-8-111.
Joint county and municipal sales and use tax.
Referendum election to decide discontinuing imposition, §48-8-92.

PUBLICATION —Cont'd
Joint county and municipal sales and use tax —Cont'd
Referendum election to decide imposition to tax, §48-8-85.
Property taxes.
Homestead exemption opt-out advertisement.
Statewide exemption (contingently effective 1/1/2025), §48-5-44.2.
Tax rate, §48-5-32.
Referendum.
Joint county and municipal sales and use tax.
Discontinuance of imposition of tax, §48-8-92.
Referendum election to decide imposition of tax, §48-8-85.
Sales and use taxes.
Coliseum capital outlay projects, special purpose local option sales tax.
Election on imposition of tax, §48-8-147.
Joint county and municipal sales and use tax.
Referendum election on question of imposition of tax, §48-8-85.
Referendum election to decide discontinuing imposition, §48-8-92.
Special county one percent tax.
Election on question of imposition, §48-8-111.
Special district option sales and use tax.
Election on referendum, procedures, §48-8-109.32.
Transit special purpose local option sales and use tax.
Reports to public.
Newspaper reports to public, §48-8-269.58.
Special county one percent tax.
Election on question of imposition, §48-8-111.
Tax executions.
Petition to reduce execution to judgment.
Procedures for nonresident, §48-3-14.
Public information regarding execution, §48-3-29.
Tobacco and alternative nicotine products taxes.
Notice of sale of unstamped cigarettes or nontax-paid cigars, §48-11-9.

PUBLIC EDUCATION INNOVATION FUND FOUNDATION.
Defined, §48-7-29.21 (Repealed 12/31/2029).
Income tax credits for qualified education donations to foundation, §48-7-29.21 (Repealed 12/31/2029).

PUBLIC OFFICERS AND EMPLOYEES.
Discharge, dismissal or termination.
Income taxes.
Unlawful divulging of confidential information, §48-7-61.
Income taxes.
Unlawful divulging of confidential information.
Dismissal from office, §48-7-61.

PUBLIC PROPERTY.
Property tax exemption, §48-5-41.
Taxation.
Property tax exemption, §48-5-41.

PUBLIC REVENUE CODE.
Short title, §48-1-1.

PUBLIC SAFETY.
Commissioner of public safety.
Motor carriers' road tax.
Assistance in administration and enforcement of article, §48-9-43.
Motor fuel taxes.
Enforcement of article, §48-9-15.
Department of public safety.
Motor carriers' road tax.
Assistance in administration and enforcement of article, §48-9-43.

PUBLIC TRANSPORTATION.
Motor carriers' road tax.
General provisions, §§48-9-30 to 48-9-46.

PUBLIC UTILITIES.
Ad valorem taxation.
General provisions, §§48-5-510 to 48-5-524.
Franchise tax.
Special franchises generally, §§48-5-420 to 48-5-425.
Income taxes, §48-7-32.
Motor carriers' road tax.
General provisions, §§48-9-30 to 48-9-46.
Property taxes.
Public utility ad valorem taxation.
General provisions, §§48-5-510 to 48-5-524.

PUBLIC UTILITIES —Cont'd
Property taxes —Cont'd
Special franchises generally, §§48-5-420 to 48-5-425.
School taxes.
Contesting taxability of property, §48-5-402.
Property in school districts subject to school tax, §48-5-402.
Returns of fair market value of property, §48-5-402.
Special franchises.
Taxation generally, §§48-5-420 to 48-5-425.
Taxation.
Ad valorem taxation.
General provisions, §§48-5-510 to 48-5-524.
Franchise tax.
Special franchises generally, §§48-5-420 to 48-5-425.
Venue for actions for refunds, §48-2-35.
Venue for appeals from orders, rulings or findings of commissioner, §48-2-59.

PUBLIC UTILITY AD VALOREM TAXATION, §§48-5-510 to 48-5-524.
Appeals.
Railroad equipment company assessments, §48-5-519.
Apportionment to more than one tax jurisdiction, §48-5-511.
Assessments.
Railroad companies for purposes of county and municipal taxation, §48-5-521.
Railroad company rolling stock and other personal property, §48-5-520.
Railroad equipment companies, §48-5-519.
Collection of tax.
Taxation of railroad equipment companies, §48-5-519.
Definitions, §48-5-510.
Executions.
Failure to file returns, §48-5-512.
Failure to make return and pay tax.
Railroad equipment companies, §48-5-519.
Fair market value.
Apportionment to more than one tax jurisdiction, §48-5-511.
Return of value at, §48-5-511.

PUBLIC UTILITY AD VALOREM TAXATION —Cont'd
Foreign corporations.
Failure to file return and pay tax.
Revocation of permit to do business in state, §48-5-513.
Forfeitures.
Failure to file return and pay tax.
Charter forfeiture, §48-5-513.
Oaths.
Returns, §48-5-511.
Payment of tax.
Penalty for failure to pay, §48-5-513.
Penalty for failure to file return and pay tax, §48-5-513.
Railroad companies assessment for purposes of county and municipal taxation, §48-5-521.
Railroad company rolling stock and other personal property.
Taxation of companies doing business in state, §48-5-520.
Railroad equipment companies.
Taxation of companies doing business in state, §48-5-519.
Railroad company operating railroad not railroad equipment company, §48-5-519.
Records.
Availability for public inspection, §48-5-515.
Remittance of tax.
Taxation of railroad equipment companies, §48-5-519.
Reports.
Annual report by state revenue commissioner, §48-5-524.
Returns, §48-5-511.
Availability for public inspection, §48-5-515.
Execution for failure to file, §48-5-512.
Railroad equipment companies, §48-5-519.
Penalty for failure to file, §48-5-513.
Railroad equipment companies, §48-5-519.
Rolling stock and other personal property of railroad companies.
Taxation, §48-5-520.
Superior courts.
Railroad equipment companies.
Appeals of assessments, §48-5-519.
Tax executions.
Failure to file returns, §48-5-512.
Failure to make return and pay tax.
Railroad equipment companies, §48-5-519.

PUBLIC UTILITY AD VALOREM TAXATION —Cont'd
Venue.
Appeals by railroad equipment companies of assessments, §48-5-519.

PURPLE HEART.
Motor vehicle ad valorem tax exemption, §48-5-478.2.

Q

QUALIFIED TIMBERLAND PROPERTY.
Property taxes, §§48-5-600 to 48-5-607.

QUARTERLY TAXES.
Income taxes, §48-7-103.

QUITCLAIM DEEDS.
Sales under tax executions.
Redemption, §48-4-44.

R

RACETRACKS.
Regulatory fees imposed by counties or municipalities.
Civil action to enforce, §48-13-9.1.
Example of business subject to, §48-13-9.

RACIAL MINORITIES.
Small businesses.
Income taxes, deduction for payments to classified subcontractors.
Minority, women, or veteran owned businesses, §48-7-38.

RACING.
Automobile or motorcycle racing.
Occupation tax or regulatory fee levied by local government.
Civil action to enforce, §48-13-9.1.
Example of business subject to, §48-13-9.

RAILROADS.
Appeals.
Public utility ad valorem taxation.
Assessments of railroad equipment companies, §48-5-519.
Class III railroads.
Income tax credits, §48-7-40.34.
County taxation purposes.
Method of assessment of property of railroad companies for, §48-5-521.

RAILROADS —Cont'd
Equipment companies.
Taxation of companies doing business in state, §48-5-519.
Franchise tax.
General provisions, §§48-5-420 to 48-5-425.
Income taxes, §48-7-32.
Credits.
Class III railroads, §48-7-40.34.
Motor fuel taxes.
Reports of motor fuel deliveries, §48-9-9.
Municipal taxation purposes.
Method of assessment of property of railroad companies for, §48-5-521.
Personal property.
Taxation, §48-5-520.
Property taxes.
Franchise tax.
General provisions, §§48-5-420 to 48-5-425.
Public utility ad valorem taxation.
Assessment for county and municipal taxation purposes, §48-5-521.
General provisions, §§48-5-510 to 48-5-524.
Railroad equipment companies, §48-5-519.
Rolling stock and other personal property, §48-5-520.
Public utility ad valorem taxation.
Assessment for county and municipal taxation purposes, §48-5-521.
General provisions, §§48-5-510 to 48-5-524.
Railroad equipment companies, §48-5-519.
Rolling stock and other personal property, §48-5-520.
Reports.
Motor fuel taxes.
Deliveries of motor fuel, §48-9-9.
Sales and use taxes.
Exemptions, §48-8-3.
Freight and logistics projects.
Dedication of certain proceeds for freight and logistics projects, §48-8-78.

RAILROADS —Cont'd
Sales and use taxes —Cont'd
Transit special purpose local option sales and use tax.
Exemptions from local tax.
Additional exemptions.
Fuel used by off-road heavy-duty equipment, off-road farm or agricultural equipment or locomotives, §48-8-269.52.
School taxes.
Railroad equipment companies.
Collection of school taxes, §48-5-402.
Special franchises.
Taxation generally, §§48-5-420 to 48-5-425.
Street, suburban and interurban railroads.
Sales and use taxes.
Exemption of urban transit system, §48-8-3.
Taxation.
Exemption of certain railroad companies.
Sales and use taxes, §48-8-3.
Taxation.
Assessment of property for purposes of county and municipal taxation, §48-5-521.
Equipment companies doing business in state, §48-5-519.
Franchise tax.
Special franchises generally, §§48-5-420 to 48-5-425.
Property taxes.
Public utility ad valorem taxation.
Assessment for county and municipal taxation purposes, §48-5-521.
Railroad equipment companies, §48-5-519.
Rolling stock and other personal property, §48-5-520.
Public utility ad valorem taxation.
Assessment for county and municipal taxation purposes, §48-5-521.
General provisions, §§48-5-510 to 48-5-524.

RAILROADS —Cont'd
Taxation —Cont'd
Public utility ad valorem taxation —Cont'd
Railroad equipment companies, §48-5-520.
Rolling stock and other personal property, §48-5-520.
Rolling stock and other personal property, §48-5-520.
Sales and use taxes.
Exemptions, §48-8-3.
School taxes.
Railroad equipment companies.
Collection of school taxes, §48-5-402.
Street, suburban and interurban railroads.
Exemption for certain railroad companies.
Sales and use taxes, §48-8-3.

REAL ESTATE BROKERS AND SALESPERSONS.
Licenses.
Occupation or professional tax, levy by counties and municipalities, §48-13-17.
Privilege taxes.
Levy of license, occupation or professional tax by counties and municipalities, §48-13-17.
Taxation.
County or municipal license, occupational or professional taxes.
Levy, §48-13-17.

REAL ESTATE TRANSFER TAX, §§48-6-1 to 48-6-10.
Action for refund, §48-6-7.
Amount to be paid.
Basis of determining, §48-6-4.
Apportionment among state, municipalities and counties, §48-6-8.
Attorney general.
Action for refund upon denial of claim.
Representation of state defendants, §48-6-7.
Certification of payment, §48-6-4.
Claims for refunds, §48-6-7.
Collection of tax.
Clerks of superior courts as agents of state revenue commissioner, §48-6-5.
Failure to collect, §48-6-9.

REAL ESTATE TRANSFER TAX —Cont'd
Consideration.
Actual consideration of real and personal property conveyed to be shown on form, §48-6-4.
Exemption of certain instruments.
Consideration required to be shown, §48-6-2.
Counties.
Apportionment among state and local governments, §48-6-8.
Custodians.
Exemption of deeds of assent or distribution by, §48-6-2.
Decedents' estates.
Exemptions of deeds of assent or distribution, §48-6-2.
Distribution among state, municipalities and counties, §48-6-8.
Report of distribution, §48-6-6.
Divorce.
Exemptions of transfers between husband and wife in connection with divorce, §48-6-2.
Evasion of tax, §48-6-10.
Evidence.
Payment of tax, §48-6-4.
Executors and administrators.
Exemption of deeds of assent or distribution by, §48-6-2.
Exemptions, §48-6-2.
Consideration of transfer required to be shown, §48-6-2.
Failure to collect, account for and pay over tax, §48-6-9.
Fees.
Collection of tax by clerks of superior courts, §48-6-5.
Fiduciaries.
Exemption of instrument transferring real estate to, §48-6-2.
Fieri facias.
Exemption of deed returning property sold at tax sale back to defendant, §48-6-2.
Filing of deeds, instruments or other writings.
Payment of tax prerequisite, §48-6-4.
Foreclosures.
Exemption of deed issued in lieu of foreclosure, §48-6-2.
Gifts.
Deeds of gift exempt, §48-6-2.

REAL ESTATE TRANSFER TAX —Cont'd
Guardian and ward.
Exemption of deed of assent or distribution by, §48-6-2.
Husband and wife.
Exemptions of transfers in connection with divorce case, §48-6-2.
Imposition of tax, §48-6-1.
Joint tenants and tenants in common.
Exemption of deed or instrument effecting division of property among, §48-6-2.
Leases.
Exemption, §48-6-2.
Limitation of actions.
Action for refund upon denial of claim, §48-6-7.
Municipalities.
Apportionment among state and local governments, §48-6-8.
Payment of tax.
Certification, §48-6-4.
Determining amount to be paid, §48-6-4.
Evidence, §48-6-4.
Failure to pay, §48-6-9.
Persons required to pay, §48-6-3.
Prerequisite to filing deed, instrument or other writing, §48-6-4.
Proportionate amount, §48-6-4.
Refunds of erroneously or illegally collected tax, §48-6-7.
Persons required to pay, §48-6-3.
Power of appointment.
Exemption of deed or instrument carrying out exercise of, §48-6-2.
Proportionate tax.
Basis of determining, §48-6-4.
Rate of tax, §48-6-1.
Recordation.
Certification of payment recorded with deed, §48-6-4.
Payment of tax prerequisite, §48-6-4.
Refunds.
Erroneously or illegally collected tax, §48-6-7.
Reports.
Distribution of taxes, §48-6-6.
State of Georgia.
Apportionment among local and state governments, §48-6-8.

REAL ESTATE TRANSFER TAX —Cont'd
Superior courts.
Action for refund upon denial of claim, §48-6-7.
Clerks.
Agents of state revenue commissioner for collecting tax, §48-6-5.
Fees for collecting tax, §48-6-5.
Tax evasion, §48-6-10.
Transfers subject to tax, §48-6-1.
Trusts and trustees.
Exemption of deed of assent or distribution by trustee, §48-6-2.

REAL PROPERTY.
Donation of property to be used for conservation purposes.
Income tax credit, §48-7-29.12.
Estate tax eliminated, §48-12-1.
Fair market value.
Determining for tax purposes, §48-5-2.
Income tax credit.
Land conservation.
Donation of property to be used for, §48-7-29.12.
Intangible recording tax.
General provisions, §§48-6-60 to 48-6-77.
Property taxes.
General provisions, §§48-5-1 to 48-5-56.
Real estate transfer tax.
General provisions, §§48-6-1 to 48-6-10.
Sales.
Sales under tax executions, §§48-4-1 to 48-4-65.
Taxation.
Intangible recording tax.
General provisions, §§48-6-60 to 48-6-77.
Property taxes.
General provisions, §§48-5-1 to 48-5-56.
Real estate transfer tax.
General provisions, §§48-6-1 to 48-6-10.
Tax executions.
General provisions, §§48-3-1 to 48-3-44.
Sales under tax executions.
General provisions, §§48-4-1 to 48-4-65.

RECEIVERS.
Income taxes.
Operating property or business of corporation.
Returns, §48-7-51.
Motor fuel taxes.
Sale of distributor's property.
Filing of statement, §48-9-13.

RECIPROCITY.
Foreign tax decrees.
Effect in Georgia, §48-2-80.
Income taxes, §48-7-28.
Arrangements for relief of taxpayers, §48-7-124.
Sales and use taxes.
Credit for tax when like tax paid in another state.
No credit absent reciprocity, §48-8-42.
Taxation.
Judicial enforcement of taxes imposed by other states, §48-2-80.

RECORDATION.
County tax collectors.
Bond, §48-5-123.
County tax commissioners.
Bond, §48-5-124.
Intangible recording tax.
General provisions, §§48-6-60 to 48-6-77.
Liens.
Intangible recording tax.
General provisions, §§48-6-60 to 48-6-77.
Tobacco and alternative nicotine products taxes, §48-11-17.
Quitclaim deeds.
Sales under tax executions, §48-4-44.
Real estate transfer tax.
Certification of payment recorded with deed, §48-6-4.
Payment of tax prerequisite, §48-6-4.
Taxation.
Intangible recording tax.
General provisions, §§48-6-60 to 48-6-77.
Tax executions.
Sales under tax executions.
Quitclaim deeds, §48-4-44.
Tobacco and alternative nicotine products taxes.
Liens on amount of unpaid tax, §48-11-17.

RECORDS.
Aged persons.
Homestead tax deferral for individuals 62 or older, §48-5-80.
Contractors.
Nonresident contractors.
Record book of actions docketed to be kept by secretary of state, §48-13-36.
Corporations.
Apportionment of income.
Agreement establishing allocation and apportionment, §48-7-31.1.
County tax collectors.
Cashbook, §48-5-138.
Failure to keep, §48-5-139.
Inspection by grand jury, §48-5-161.
Interest collected from delinquent or defaulting taxpayers, §48-5-148.
County tax commissioners.
Cashbook, §48-5-138.
Failure to keep, §48-5-139.
Inspection by grand jury, §48-5-161.
Interest collected from delinquent or defaulting taxpayers, §48-5-148.
Energy tax.
Excise tax on sale or use of energy.
Dealer recordkeeping, §48-13-121.
Failure to keep or make available, §48-13-127.
Homestead tax deferral for individuals 62 or older, §48-5-80.
Hotels and other lodging places.
Excise tax on rooms, lodging and accommodations.
Returns, §48-13-53.4.
Income taxes.
Confidential information, §48-7-60.
Unlawful divulging, §48-7-61.
Employers required to deduct and withhold taxes, §48-7-111.
Failure to keep, §48-7-2.
False or fraudulent documents.
Assisting, counseling, etc., in filing, §48-7-3.
Intangible recording tax.
Determination of whether tax payable.
Public record, §48-6-71.
Motor carriers road tax.
Keeping and preservation, §48-9-40.
Motor fuel taxes.
Distributors and aviation gasoline dealers, §48-9-8.
Failure to keep required records, §48-9-17.

RECORDS —Cont'd
Motor fuel taxes —Cont'd
Inspection, §48-9-8.
Inspection by public, §48-9-12.
Resellers and retailers, §48-9-8.
Nonresident contractors.
Record book of docketed actions kept by secretary of state, §48-13-36.
Property taxes.
Homestead tax deferral for individuals 62 or older, §48-5-80.
Public utility ad valorem taxation.
Availability for public inspection, §48-5-515.
Sales and use taxes.
Coliseum capital outlay projects, special purpose local option sales tax, §48-8-157.
Dealer's duty to keep, §48-8-52.
Duty of wholesalers and jobbers to keep, §48-8-53.
Failure to keep or allow inspection, §48-8-54.
Failure to keep or allow inspection, §48-8-10.
Projects on which tax proceeds used, §48-8-122.
Refusal by transportation companies to allow examination, §48-8-12.
Special district mass transportation sales and use tax, §48-8-269.5.
Transit special purpose local option sales and use tax.
Exclusive use of proceeds for transit projects.
Enforcement, §48-8-269.57.
Taxation.
Extension of time for returns, §48-2-36.
Settlement or compromise of tax assessments.
State revenue commissioner to keep, §48-2-18.1.
Tobacco and alternative nicotine products taxes.
Distributors and dealers, §48-11-11.
Examination of transportation company, carriers and warehouse records, §48-11-11.
False entries, §48-11-27.
Nonresident distributors, §48-11-5.
Retention period, §48-11-11.

RECOUPMENT.
Income taxes.
Change or correction of net income.
Overpayment, §48-7-82.

REDEMPTION.
Ad valorem tax foreclosures, §48-4-80.
Sales under tax executions.
General provisions, §§48-4-1 to 48-4-65.
Tax executions.
Sales under tax executions, §§48-4-40 to 48-4-48.

REENTRY CITIZENS.
Job training organizations.
Sales and use tax exemptions.
Qualified job training organizations, sales of property and services to organization, §48-8-3.

REFERENDUM.
Forms.
Joint county and municipal sales and use tax.
Discontinuance of imposition.
Ballots, §48-8-92.
Imposition of tax.
Ballots, §48-8-85.
Freeport exemption.
Level 1.
Property taxes, §48-5-48.2.
Level 2.
Property taxes, §48-5-48.6.
Homestead option sales and use taxes, §§48-8-103, 48-8-106.
Joint county and municipal sales and use tax, §48-8-85.
Discontinuance of imposition, §48-8-92.
Notice.
Joint county and municipal sales and use tax.
Notice of referendum to decide discontinuing imposition, §48-8-92.
Republication of notice, §48-8-85.
Property taxes.
Freeport exemption.
Level 1, §48-5-48.2.
Level 2, §48-5-48.6.
Publication.
Joint county and municipal sales and use tax.
Discontinuance of imposition of tax, §48-8-92.

REFERENDUM —Cont'd
Publication —Cont'd
Joint county and municipal sales and use tax —Cont'd
Referendum election to decide imposition of tax, §48-8-85.
Sales and use taxes.
Equalized homestead option sales tax.
Discontinuation of equalized homestead option sales tax, §48-8-109.7.
Suspension of other taxation in favor of imposition of equalized homestead option tax, §48-8-109.2.
Joint county and municipal sales and use tax, §48-8-85.
Discontinuing imposition, §48-8-92.
Joint county and municipal tax.
Consolidated county and municipality governments.
Levy of tax by consolidated government, §48-8-97.
Special district mass transportation sales and use tax.
Metropolitan county special districts.
Levy of tax, §48-8-269.9.
Metropolitan municipal special districts.
Levy of tax, §48-8-269.24.
Referendum on imposition of tax, §48-8-262.
Form of ballot, §48-8-263.
Timing, §48-8-264.1.
Transit special purpose local option sales and use tax.
Counties not within nonattainment areas, procedures to impose tax.
Referendum on tax.
Ballot language, §48-8-269.44.
Conduct of election, §48-8-269.44.
Meeting among counties and qualified municipalities to discuss projects to include in referendum, §48-8-269.43.
Notice of referendum, §48-8-269.43.
Resubmission to voters upon failure of measure, §48-8-269.44.
Counties within nonattainment areas, procedures to impose tax.
Ballot form, §48-8-269.46.
REFERENDUM —Cont'd
Sales and use taxes —Cont'd
Transit special purpose local option sales and use tax —Cont'd
Counties within nonattainment areas, procedures to impose tax —Cont'd
Notice of intent, §48-8-269.45.
Resolution for referendum, §48-8-269.45.
Referendum on tax.
Determination as to whether referendum on transportation tax previously held, §48-8-269.42.
Water and sewer projects and costs.
Approval of referendum by voters, §48-8-201.
Taxation.
Joint county and municipal sales and use tax, §48-8-85.
Discontinuing imposition, §48-8-92.

REFINANCING.
Notes.
Long-term notes secured by real estate, §48-6-65.

REFUNDS.
County property taxes, §§48-5-241, 48-5-380.
Examination of county tax digest.
Petition for refund of taxes illegally collected or paid (contingently effective 1/1/2026), §48-5-342.
Striking properties illegally appearing on digest, §48-5-342.
Energy tax.
Time to claim refund, §48-13-117.
Real estate transfer tax.
Erroneously or illegally collected tax, §48-6-7.
Sales and use taxes.
Election for payment of refund over time period, §48-2-35.
Erroneous or illegally assessed payments, §§48-2-35, 48-2-35.1.
Expedited refunds, §48-2-35.1.
Frivolous claim for refund, §48-2-35.1.
Local significance, refund claims, §48-2-35.
Purchaser entitled to purchase without paying tax.
Certificate or exemption determination letter not obtained prior to purchase, §48-2-35.1.

REFUNDS —Cont'd
Sales and use taxes —Cont'd
Return of property sold to dealer by purchaser.
Claim for refund of tax credit by retired dealer, §48-8-58.
Taxation, §§48-2-35, 48-2-60.
County and municipal taxes and license fees, §48-5-380.
Disabled veterans homestead exemption.
Final determination of disability containing retroactive period of eligibility, §48-5-48.
Extension of time, §48-2-36.
Local significance, refund claims, §48-2-35.
One-time refund for 2021 individual income taxpayers, §48-7-20.1.
One-time refund for 2022 individual income taxpayers, §48-7-20.2.
Tobacco and alternative nicotine products taxes.
Claims for refund, §48-11-15.

REGISTRATION.
Contractors.
Nonresident contractors, §48-13-31.
Completed contracts, §48-13-32.
Failure to register, §48-13-38.
Injunction pending compliance with requirements, §48-13-33.
Fees.
Nonresident contractors, §48-13-31.
Completed contracts, §48-13-32.
Militia.
License or registration extensions for national guard members or reservists on active duty, §48-7-6.
Motor fuel taxes.
Tank registration number to persons transporting motor fuels, §48-9-9.
National guard.
License or registration extensions for national guard members or reservists on active duty, §48-7-6.
Nonresident contractors, §48-13-31.
Completed contracts, §48-13-32.
Failure to register, §48-13-38.
Injunction pending compliance with requirements, §48-13-33.
Sales and use taxes.
Dealer's certificate of registration, §48-8-59.
Engaging in business as seller without certificate, §48-8-60.

REGISTRATION —Cont'd
Sales and use taxes —Cont'd
Dealer's certificate of registration —Cont'd
Importing dealers, §48-8-61.
Revocation or suspension, §48-8-62.
Taxation.
Motor fuel taxes.
Tank registration number to persons transporting motor fuels, §48-9-9.
Sales and use taxes.
Dealer's certificate of registration, §§48-8-59 to 48-8-62.
Tobacco and alternative nicotine products taxes.
Persons acquiring cigars and cigarettes for which tax not paid, §48-11-14.
Vending machines, §48-11-4.
Vending machines.
Tobacco and alternative nicotine products taxes, §48-11-4.

REGULATORY FEES.
Levy by counties and municipalities on businesses and professions and occupations.
Generally, §§48-13-2 to 48-13-29.

RELEASES.
Contractors.
Nonresident contractors.
Bonds, §48-13-34.
County tax collectors.
Failure to account for default.
Surety's right to demand release from future liability, §48-5-156.
County tax commissioners.
Failure to account for default.
Surety's right to demand release from future liability, §48-5-156.
Motor fuel taxes.
Distributor's bond.
Sureties request for release, §48-9-4.
Nonresident contractors.
Bonds, §48-13-34.
Property taxes.
Payment of taxes on real property by owners or transferees, §48-5-26.
Proportionate payments of property taxes.
Owners and persons with interest in or on property, §48-5-25.
Taxation.
Property subject to state tax lien, §48-2-58.

RELIGION.
Buses.
Motor vehicle ad valorem taxation exemptions, §48-5-470.2.
Income taxes.
Exempt organizations, §48-7-25.
Property tax exemption.
Places of religious worship, §48-5-41.
Property owned by religious groups used for single-family residences, §48-5-41.
Sales and use taxes.
Exemption, §48-8-3.
Noncommercial written materials or mailings of 501(c)(3) organizations, §48-8-3.
Taxation.
Income taxes.
Exempt organizations, §48-7-25.
Property tax exemption.
Places of religious worship, §48-5-41.
Property owned by religious groups used for single-family residences, §48-5-41.
Sales and use tax exemptions, §48-8-3.
Vans.
Motor vehicle ad valorem taxation exemptions, §48-5-470.2.

RENTAL VEHICLES.
Excise taxes, §§48-13-90 to 48-13-97.
Accounting.
Cash or accrual basis.
Cash and credit rental charges, §48-13-97.
Auditor's report, §48-13-96.
Cash and credit rental charges.
Reported on either cash or accrual basis of accounting, §48-13-97.
Collection of excise tax, §48-13-93.
Definition, §48-13-91.
Expenditure of taxes, §48-13-93.
Legislative intent, §48-13-90.
Levy of excise tax, §48-13-93.
Local powers and procedures, §48-13-95.
Reimbursement for persons collecting tax, §48-13-94.
Special district, §48-13-92.

REPAIRS.
Boats and other watercraft.
Sales and use taxes.
Maximum amount of sales and use tax on boat maintenance, refitting or repair, §48-8-3.4.

REPLEVIN.
Tax executions.
Notice action seeking replevin to lie, §48-3-26.

REPORTS.
Aged persons.
Homestead tax deferral for individuals 62 or older.
Owner's annual report on outstanding liens, §48-5-78.
Carriers.
Motor fuel taxes.
Deliveries of motor fuel, §48-9-9.
Common carriers.
Motor fuel taxes.
Motor fuel deliveries, §48-9-9.
Contract carriers.
Motor fuel taxes.
Motor fuel deliveries, §48-9-9.
County board of tax assessors.
Performance review board.
Evaluation of tax assessors board, §48-5-295.1.
Independent performance review board, §48-5-295.2.
County property taxes.
Examination of county tax digest.
Annual report concerning implementation of article, §48-5-349.5.
County tax collectors, §§48-5-142 to 48-5-159.
Amount of taxes collected, §48-5-150.
Amount of taxes remaining unpaid on tax digest, §48-5-150.
Annual accounting reports, §48-5-154.
Removal or suspension for failing to account or defaulting, §48-5-155.
Failure to make reports, §48-5-152.
False reports of taxes collected, §48-5-159.
Forms furnished by state revenue commissioner, §48-5-144.
Interest collected from delinquent or defaulting taxpayers, §48-5-150.
Unpaid taxes, §48-5-153.
Weekly reports of taxes collected, §48-5-142.
County tax commissioners, §§48-5-142 to 48-5-159.
Amount of taxes collected, §48-5-150.
Amount of taxes remaining unpaid, §48-5-150.
Annual accounting reports, §48-5-154.
Removal or suspension for failing to account or defaulting, §48-5-155.

REPORTS —Cont'd
County tax commissioners —Cont'd
Failure to make report, §48-5-152.
False reports of taxes collected, §48-5-159.
Forms furnished by state revenue commissioner, §48-5-144.
Interest collected from delinquent or defaulting taxpayers, §48-5-150.
Unpaid taxes, §48-5-153.
Weekly reports of taxes collected, §48-5-142.
Excise tax on for-hire ground transportation, §48-13-143.
High-technology data centers.
Sales and use tax exemptions.
Equipment incorporated or used in centers, §48-8-3.
Homestead tax deferral for individuals 62 or older.
Owner's annual report on outstanding liens, §48-5-78.
Hotels and other lodging places.
Excise tax on rooms, lodgings or accommodations.
Report to department of community affairs, §48-13-56.
Income tax credits.
Job tax credits taken by business enterprises, §48-7-40.24.
Railroads.
Class III railroads, §48-7-40.34.
Intangible recording tax.
Collecting officers, §48-6-73.
Local government.
Budgets and audits.
Annual audit reports.
Motor vehicle rental excise tax, §48-13-96.
Motor carriers' road tax, §48-9-33.
Failure to make, §48-9-46.
Fraudulent reports, §48-9-41.
Motor common carriers.
Motor fuel taxes.
Deliveries of motor fuel, §48-9-9.
Motor contract carriers.
Motor fuel taxes.
Deliveries of motor fuel, §48-9-9.
Motor fuel taxes.
Distributors.
False or fraudulent reports, §48-9-13.
Tax reports, §48-9-8.
Failure to file, §48-9-16.
Persons required to file but not licensed as distributors, §48-9-17.

REPORTS —Cont'd
Motor fuel taxes —Cont'd
False or fraudulent reports, §48-9-16.
Motor fuel deliveries, §48-9-9.
Pipelines.
Motor fuel taxes.
Deliveries of motor fuel, §48-9-9.
Property taxes.
Ad valorem tax foreclosures, §48-4-81.
Amnesty program, §48-16A-9.
Bona fide conservation use property and residential transitional property.
Fiscal impact of assessment, §48-5-7.4.
Inspection report, §48-5-7.4.
Examination of county tax digest.
Annual report concerning implementation of article, §48-5-349.5.
Homestead tax deferral for individuals 62 or older.
Owner's annual report on outstanding liens, §48-5-78.
Publication of tax rate, §48-5-32.
Standing timber assessments, §48-5-7.5.
Tangible real property devoted to agricultural purposes.
Fiscal impact of preferential assessment provided by section, §48-5-7.1.
Public utility ad valorem taxation.
Annual report by state revenue commissioner, §48-5-524.
Railroads.
Motor fuel taxes.
Deliveries of motor fuel, §48-9-9.
Real estate transfer tax.
Distribution of taxes, §48-6-6.
Sales and use taxes.
Agricultural equipment and machinery.
Exemptions, §48-8-3.3.
Cash and credit sales, §48-8-45.
Records of projects on which tax proceeds used.
Newspaper publication of report of records, §48-8-122.
Special district mass transportation sales and use tax.
Use of proceeds and costs of transportation purposes undertaken, §48-8-269.6.

REPORTS —Cont'd
Sales and use taxes —Cont'd
Transit special purpose local option sales and use tax.
Newspaper reports to public, §48-8-269.58.
State revenue commissioner.
Annual report to governor and general assembly, §48-2-7.
Tax amnesty program.
Accounting and reporting of funds collected under program, §48-16-9.
Property tax amnesty program, §48-16A-9.
Tobacco and alternative nicotine products taxes.
Acquisition of cigars and cigarettes for which tax not paid, §48-11-14.
Common carriers and warehousemen.
Authority to require reports from, §48-11-10.
Failure to file, §§48-11-10, 48-11-26.
False or fraudulent reports, §48-11-26.
Monthly reports of licensed distributors, §48-11-10.
Nonresident distributors.
Shipments, §48-11-5.
Unstamped cigarettes and nontax-paid cigars, §48-11-8.

RESEARCH.
Income taxes.
Credit for qualified research expenses, §48-7-40.12.
Stem cells.
Contributions through income tax returns, §48-7-63.
Taxation.
Access to department information for research purposes, §48-2-15.

RESIDENCE.
Property taxes.
Homestead exemption from ad valorem taxation.
Disabled veterans, extension.
Requirement of residence, §48-5-48.

RETAILERS.
Stock in trade of retailer.
Tax exemptions, §48-5-48.2.

RETIREMENT AND PENSIONS.
Income taxes.
Qualified pension plans.
Exempt organizations, §48-7-25.

RETIREMENT AND PENSIONS —Cont'd
Income taxes —Cont'd
Withholding of federal annuitants, §48-7-100.1.
Taxation.
Withholdings of federal annuitants, §48-7-100.1.
Withholding taxes of federal annuitants, §48-7-100.1.

REVENUE AND TAXATION.
Action or proceeding for enforcement of chapter.
Compromise settlements, §48-2-60.
Actions for refunds, §48-2-35.
Actions to collect unpaid taxes, §48-2-54.
Ad valorem taxation of property.
Ad valorem taxation of airline companies, §§48-5-540 to 48-5-546.
Ad valorem taxation of public utilities, §§48-5-510 to 48-5-524.
County taxation, §§48-5-220 to 48-5-243.
County tax officials and administration.
Compensation, §§48-5-180 to 48-5-184.
County tax officials generally, §§48-5-210 to 48-5-212.
Delinquent tax officials, §§48-5-200 to 48-5-205.
Tax collectors, §§48-5-121 to 48-5-165.
Tax receivers, §§48-5-101 to 48-5-109.
Examination of county tax digests, §§48-5-340 to 48-5-349.5.
Franchises, §§48-5-420 to 48-5-425.
General provisions, §§48-5-1 to 48-5-56.
Heavy-duty equipment ad valorem taxation, §§48-5-505 to 48-5-509.
Construction equipment owned by nonresidents, §§48-5-500, 48-5-501.
Miscellaneous local administrative provisions, §§48-5-380, 48-5-381.
Mobile home ad valorem taxation, §§48-5-440 to 48-5-451, 48-5-490 to 48-5-495.
Motor vehicle ad valorem taxation, §§48-5-440 to 48-5-478.4.
Municipal taxation, §§48-5-350 to 48-5-361.

REVENUE AND TAXATION —Cont'd
Ad valorem taxation of property —Cont'd
Property tax exemptions and deferral.
Tax deferral, §§48-5-70 to 48-5-84.
Tax exemptions, §§48-5-40 to 48-5-56.
Qualified timberland property, §§48-5-600 to 48-5-607.
School taxation, §§48-5-400 to 48-5-405.
Uniform property tax administration and equalization.
County board of tax assessors, §§48-5-290 to 48-5-314.
Equalization of assessments, §§48-5-260 to 48-5-275.
State loans to counties, §§48-5-330, 48-5-331.
Advertising.
Judicial sales, §48-2-55.
Affidavits.
Contraband articles.
Test.
Affidavit to test legality of forfeiture, §48-2-83.
Judicial and investigative powers of commissioner.
Power to take, §48-2-8.
Aged persons.
Property taxes.
Homestead tax deferral for individuals 62 or older, §§48-5-70 to 48-5-84.
Agriculture.
Income taxes.
Estimated income tax by individuals.
Time for filing by farmers, §48-7-115.
Estimated tax by individuals.
Installment payments by farmers, §48-7-116.
Motor fuel taxes.
Refunds to persons using gasoline for agricultural purposes, §48-9-10.
False swearing on applications, §48-9-11.
Property tax exemption for agricultural products, §§48-5-41, 48-5-41.1.

REVENUE AND TAXATION —Cont'd
Agriculture —Cont'd
Sales and use taxes.
Exemption of agricultural commodities.
Commodities not sold as finished product to ultimate consumer, §48-8-5.
Nonapplicability of use tax to products used by producer, §48-8-4.
Air commerce.
Prohibition of tax on persons traveling in, §48-13-4.
Aircraft.
Contraband articles used in violations of title, §§48-2-82 to 48-2-84.
Airline ad valorem taxation.
General provisions, §§48-5-540 to 48-5-546.
Air pollution eliminating or reducing property.
Property tax exemption, §48-5-41.
Animals.
Property tax exemption.
Domestic animals, §48-5-42.
Appeals.
Orders, rulings or findings of commissioner, §48-2-59.
Armed forces members dying on active duty.
Income taxes due, §48-7-37.
Armed forces service or service in support of armed forces.
Income taxes.
Tolling of time limits for filing, §48-7-36.
Assessments.
Certifications, §48-2-50.
Deficiency assessments, §48-2-48.
Equalization of assessments.
General provisions, §§48-5-260 to 48-5-275.
Final assessments, §48-2-47.
Jeopardy assessments, §48-2-51.
Protests, §48-2-46.
Review, §48-2-50.
Service of notice, §48-2-45.
Attachment.
Property of delinquent taxpayer, §48-2-55.
Banks and trust companies.
Moneyed capital competing with national banks, §48-6-94.

REVENUE AND TAXATION —Cont'd
Beverages.
Special county one percent sales and use tax.
Applicability to beverage sales, §48-8-110.1.
Boards.
County board of tax assessors.
General provisions, §§48-5-290 to 48-5-314.
County boards of equalization, §48-5-311.
Bond issues.
Sales tax for educational purposes.
Issuance of general obligation debt, §48-8-142.
Special county one percent sales and use tax.
Election on issuance of general obligation debt, §48-8-111.
Issuance of general obligation debt, §48-8-121.
Bonds, surety.
Appeals of orders, rulings or findings of commissioner, §48-2-59.
Jeopardy assessments, §48-2-51.
Building and construction materials.
Joint county and municipal sales and use tax.
Materials sold or used under contract entered into prior to approval of tax levy, §48-8-94.
Buildings.
Joint county and municipal sales and use tax.
Building and construction materials.
Sold or used under contract entered into prior to approval of tax levy, §48-8-94.
Special county one percent sales and use tax.
Building and construction materials.
Inapplicability of tax to certain sales or uses, §48-8-118.
Business taxes.
Privilege taxes generally, §§48-13-2 to 48-13-29.
Capitation tax.
Prohibition, §48-13-3.
Charitable trusts.
Excise tax on rooms, lodgings and accommodations.
Limitation on or applicability of tax levies, §48-13-55.
REVENUE AND TAXATION —Cont'd
Checks.
Forms of payment, §48-13-32.
Penalty when check not paid when presented, §48-2-32.
Claims for refunds, §48-2-35.
Coliseum capital outlay projects, special purpose local option sales tax, §§48-8-145 to 48-8-157.
Collection of taxes.
Action to collect unpaid taxes, §48-2-54.
Contractors employed by department, §48-2-6.
Disclosure of return information, §§48-2-6.1, 48-2-15.
Duties of law enforcement officers and tax officials to enforce, §48-2-81.
Enforcement.
Duties of law enforcement officers and tax officials, §48-2-81.
Extension of time, §48-2-36.
Garnishment, §48-2-55.
Jeopardy assessments, §48-2-51.
Setoffs of federal refund claims against tax liability to state.
Fees charged to taxpayer's account, §48-2-54.1.
State revenue commissioner.
Collection of certain local taxes, §48-2-10.
Committee.
Judicial enforcement of taxes imposed by other states, §48-2-80.
Commodities.
Sales and use taxes.
Exemption of agricultural commodities.
Commodities not sold as finished product to ultimate consumer, §48-8-5.
Common carriers.
Forfeitures of contraband articles, §48-2-82.
Franchise tax.
Special franchises generally, §§48-5-420 to 48-5-425.
Compromise and settlement, §48-2-60.
Computer software.
Defined, §48-1-8.
Status for taxation, §48-1-8.
Confidentiality of information, §§48-2-6.1, 48-2-15.
Rulings issued by commissioner.
Guidelines and procedures, §48-2-15.2.

REVENUE AND TAXATION —Cont'd
Constables.
Collection of taxes and prosecution of violators.
Duties, §48-2-81.
Construction.
Special county one percent sales and use tax.
Building and construction materials.
Inapplicability of tax to certain sales or uses, §48-8-118.
Contraband.
Disposition or destruction of articles, §48-2-82.
Forfeitures, §48-2-82.
Affidavit to test legality, §48-2-83.
Possession or transportation of contraband, §48-2-84.
Seizure without warrant, §48-2-82.
Contractors.
Nonresident contractors, §§48-13-30 to 48-13-38.
Controlled substances.
Excise tax on marijuana and controlled substances, §§48-15-1 to 48-15-11.
Jeopardy assessments.
Possession, sale or distribution of illegal drug, §48-2-51.
Conversion of funds collected for benefit of state.
Unlawful conversion, §48-1-5.
Corporate net worth tax, §§48-13-70 to 48-13-79.
Corporations.
Income taxes.
Combining net worth tax return with state income tax return, §48-13-77.
Deductions for payments to classified subcontractors, §48-7-38.
Dissolved corporations.
Action for collection of tax out of assets, §48-7-83.
Distorting taxable income, §48-7-58.
Returns, §48-7-51.
Personal liability of officers or employees for tax delinquency, §48-2-52.
Costs.
Appeals of orders, rulings or findings of commissioner.
Final judgments adverse to taxpayer, §48-2-59.

REVENUE AND TAXATION —Cont'd
Counties.
Motor fuel taxes.
Prohibition of tax on motor fuel by political subdivisions, §48-9-3.
TVA.
Apportionment of payments to in lieu of taxes, §48-14-2.
County property taxes.
County board of tax assessors.
General provisions, §§48-5-290 to 48-5-314.
Delinquent tax officials.
General provisions, §§48-5-200 to 48-5-205.
Equalization of assessments.
General provisions, §§48-5-260 to 48-5-275.
Examination of county tax digest.
General provisions, §§48-5-340 to 48-5-349.5.
General provisions, §§48-5-220 to 48-5-243.
State loans to counties, §§48-5-330, 48-5-331.
County tax officials.
Delinquent tax officials.
General provisions, §§48-5-200 to 48-5-205.
Tax collectors.
General provisions, §§48-5-121 to 48-5-165.
Tax receivers.
General provisions, §§48-5-101 to 48-5-109.
Credit unions, §48-6-97.
Income taxes.
Exempt organizations, §48-7-25.
Criminal background checks.
Collection of taxes.
Contractors employed by department, §48-2-6.
Department of revenue.
Employees and prospective employees, §48-2-6.
Decedents' estates.
Income taxes.
Periods of limitation for assessment of taxes, §48-7-82.
Deferred taxes.
Interest on, §48-2-38.
Definitions, §48-1-2.
Corporation.
Corporate net worth tax, §48-13-70.
Excise tax on marijuana and controlled substances, §48-15-2.

REVENUE AND TAXATION —Cont'd
Definitions —Cont'd
Illegal drug, §48-2-51.
Income taxes, §48-7-1.
Business enterprises, §§48-7-40, 48-7-40.1.
Deduction for payments to classified subcontractors, §48-7-38.
Dependent, §48-7A-2.
Estimated income tax.
Individuals and corporations, §§48-7-114, 48-7-117.
Partner.
Partnership returns, §48-7-53.
Partnership.
Partnership returns, §48-7-53.
Setoff debt collection, §48-7-161.
Underpayment, §48-7-86.
Intangible recording tax, §48-6-60.
Motor fuel tax, §48-9-30.
Road tax on motor carriers, §48-9-30.
Sales and use taxes, §48-8-2.
Urban transit system, §48-8-3.
Tobacco and alternative nicotine products taxes, §48-11-1.
Delinquent tax officials.
General provisions, §§48-5-200 to 48-5-205.
Delinquent taxpayers.
Action to collect unpaid taxes, §48-2-54.
Attachment of property, §48-2-55.
Corporations.
Personal liability of officers or employees, §48-2-52.
Financial institution reporting on delinquent taxpayers, §48-2-63.
Interest on past due taxes, §48-2-40.
New purchasers of property, exemptions, §48-3-3.
Waiver, §48-2-41.
Limited liability companies.
Personal liability of members, managers, or employees, §48-2-52.
Limited liability partnerships.
Personal liability of partners or employees, §48-2-52.
Preparation of delinquent returns, §48-2-37.
Tax executions.
General provisions, §§48-3-1 to 48-3-44.
Sales under tax executions, §§48-4-1 to 48-4-65.

REVENUE AND TAXATION —Cont'd
Department of revenue.
Administration of revenue laws, §48-2-1.
Created, §48-2-1.
Delinquent taxpayers.
Financial institution reporting on delinquent taxpayers, §48-2-63.
Directed by state revenue commissioner, §48-2-1.
Duties, §48-2-1.
Unlawful exercise by unauthorized person, §48-1-4.
Employees.
Employment and compensation, §48-2-6.
Enforcement of revenue laws, §48-2-1.
Income tax credits.
Rural hospital organizations providing services to underserved areas.
Qualified rural hospital organization expenses, tax credit.
Information posted on department website, §48-7-29.20 (Repealed 12/31/2029).
Oaths.
Administration by officers or employees, §48-2-13.
Office of department, §48-2-1.
Organization, §48-2-6.
Unauthorized exercise by unauthorized person of duties or functions, §48-1-4.
Disasters.
Facilitating business rapid response to state declared disasters, §48-2-100.
Disclosure of return information, §§48-2-6.1, 48-2-15.
Districts.
Air commerce.
Prohibition, §48-13-4.
Capitation tax.
Prohibition, §48-13-3.
Excise tax on rooms, lodgings and accommodations.
General provisions, §§48-13-50 to 48-13-63.
Joint county and municipal sales and use tax (LOST).
Special districts generally, §§48-8-80 to 48-8-97.

REVENUE AND TAXATION —Cont'd
Drugs.
Excise tax on marijuana and controlled substances, §§48-15-1 to 48-15-11.
Jeopardy assessments.
Possession, sale or distribution of illegal drug, §48-2-51.
Elections.
Joint county and municipal sales and use tax, §48-8-85.
Discontinuing imposition, §48-8-92.
Special county one percent sales and use tax, §48-8-111.
Electronic transmission of documents.
Electronic filing requirements, failure to follow, §48-2-44.1.
Electronic funds transfer.
Defined, §48-2-32.
Refunds, claims, §48-2-35.
Rules and regulations, §48-2-32.
Employment taxes levied by municipalities.
Limitation on, §48-13-19.
Equalization of assessments.
General provisions, §§48-5-260 to 48-5-275.
Estates.
Income taxes.
Fiduciaries and beneficiaries, §48-7-22.
Individual income taxation.
Applicability to estates and trusts, §48-7-20.
Estate tax eliminated, §48-12-1.
Evasion of taxes, §48-1-6.
Effect of actions taken to avoid payment, §48-2-61.
Fraudulent use of exemption certificate, §48-1-7.
Income taxes, §48-7-5.
Current income tax payment.
Attempts to evade or defeat tax imposed by article, §48-7-127.
Real estate transfer tax, §48-6-10.
Tobacco and alternative nicotine products taxes.
Deficiency due to fraudulent intent to evade, §48-11-12.
Evidence.
Compelled production, §48-2-53.
Confidential information generally.
Evidence before state or federal courts, §48-2-15.

REVENUE AND TAXATION —Cont'd
Exchange of tax information, §48-2-16.
Excise taxes.
Energy, sale or use of, §§48-13-110 to 48-13-128.
Hotels and other transient lodging places.
Excise tax on rooms, lodging and accommodations, §§48-13-50 to 48-13-63.
Marijuana and controlled substances, §§48-15-1 to 48-15-11.
Motor fuel taxes.
General provisions, §§48-9-1 to 48-9-19.
Tobacco and alternative nicotine products taxes.
General provisions, §§48-11-1 to 48-11-30.
Executions.
General provisions, §§48-3-1 to 48-3-44.
Neglect or refusal by taxpayer to pay, §48-2-55.
Sales under tax executions, §§48-4-1 to 48-4-65.
Exemptions from taxation.
Certificates.
Fraudulent use to evade taxes, §48-1-7.
Corporate net worth tax, §48-13-71.
Evasion of taxes.
Fraudulent use of exemption certificate, §48-1-7.
Fraudulent use of exemption certificate, §48-1-7.
Income taxes.
Protection of exemptions of persons moving into or out of state, §48-7-85.
Motor fuel taxes.
Motor fuel use for non-highway purposes, §48-9-3.
Purchase of tax-exempt motor fuel and permitting to be used for highway purposes, §48-9-17.
Sales by licensed distributors, §48-9-3.
Property taxes, §§48-5-40 to 48-5-56.
Sales and use taxes, §48-8-3.
Agricultural commodities not sold as finished product to ultimate consumer, §48-8-5.
Agricultural equipment and machinery, §48-8-3.3.

REVENUE AND TAXATION —Cont'd
Exemptions from taxation —Cont'd
Sales and use taxes —Cont'd
Agricultural products, poultry and livestock.
Nonapplicability of use tax to products used by producer, §48-8-4.
Contractors furnishing tangible personal property and services.
Property unconsumed in use, §48-8-63.
Equipment used for manufacturing tangible personal property, or sale, use, storage or consumption of industrial materials, packaging supplies or energy, §48-8-3.2.
Motor fuels, §48-8-3.1.
Tax evasion.
Fraudulent use of exemption certificate, §48-1-7.
Tobacco and alternative nicotine products taxes, §48-11-2.
Tax on persons having cigar and cigarettes on which tax not paid, §48-11-13.
Exports.
Prohibition of export tax on state products, §48-13-2.
False or fraudulent statements, §48-1-6.
Fertilizers.
Property tax exemption, §48-5-43.
Fiduciaries.
Income taxes, §48-7-22.
Filings.
Prior to January 1, 1980.
Continuation of effect of filings, §48-1-3.
Fireworks.
Taxation of consumer fireworks, §§48-13-130 to 48-13-133.
Fishing.
Income taxes.
Estimated income tax by individuals.
Installment payments by fisherman, §48-7-116.
Time for filing by fishermen, §48-7-115.
Food.
Income taxes.
Food and other necessaries credit, §§48-7A-2, 48-7A-3.

REVENUE AND TAXATION —Cont'd
Food —Cont'd
Special county one percent sales and use tax.
Applicability to sales of food, §48-8-110.1.
Foreign corporations.
Corporate net worth tax, §48-13-75.
Venue for actions for refunds, §48-2-35.
Venue for appeals from orders, rulings or findings of commissioner, §48-2-59.
Forfeitures.
Contraband articles, §48-2-82.
Affidavit to test legality, §48-2-83.
Form 1099-K filing required by IRS.
Electronic copy to be filed with commissioner, §48-2-32.
Forms.
Prior to January 1, 1980.
Continuation of use and effect, §48-1-3.
Franchise tax.
General provisions, §§48-5-420 to 48-5-425.
Fraud.
Exemption certificates.
Fraudulent use to evade taxes, §48-1-7.
False or fraudulent statements, §48-1-6.
Fuels.
Motor fuel tax law.
General provisions, §§48-9-1 to 48-9-19.
Sales and use taxes.
Motor fuels, §48-8-3.1.
Credit or refund for sales tax where prepaid state or local tax imposed, §48-8-30.
Imposition of prepaid local tax, §48-8-82.
Rate, §48-8-82.
Special county one percent sales and use tax.
Applicability to sales of motor fuel, §48-8-110.1.
Garnishment.
Collection of tax, §48-2-55.
Georgia tax tribunal (contingently repealed 7/1/2026).
Property taxes.
Timber.
Qualified timberland property, §§48-5-605, 48-5-606.

REVENUE AND TAXATION —Cont'd
Georgia tax tribunal (contingently repealed 7/1/2026) —Cont'd
Questions of law determined by tax tribunal.
Appeals and payments of taxes admittedly owed, §48-2-59.
Assessments and equalization issues, §48-2-18.
Refunds, §48-2-35.
Gifts to avoid payment of taxes.
Effect, §48-2-61.
Hearings.
Judicial and investigative powers of commissioner, §48-2-8.
Refunds, §48-2-35.
Heavy-duty equipment ad valorem taxation, §§48-5-505 to 48-5-509.
Construction equipment owned by nonresidents, §§48-5-500, 48-5-501.
Highways, roads and streets.
Franchise tax.
General provisions, §§48-5-420 to 48-5-425.
Holidays.
Date for payment or filing on holiday, §48-2-39.
Hospitals.
Nonprofit hospitals.
Property tax exemption, §48-5-41.
Hotels and other transient lodging places.
Excise tax on rooms, lodging and accommodations, §§48-13-50 to 48-13-63.
Income taxes.
Current income tax payment, §§48-7-100 to 48-7-129.
General provisions, §§48-7-1 to 48-7-6.
Imposition, rate, computation, exemptions, §§48-7-20 to 48-7-42.
Local income tax prohibition, §48-7-140.
Payment, deficiencies, assessment, and collection, §§48-7-80 to 48-7-86.
Returns and furnishing of information, §§48-7-50 to 48-7-64.
Setoff debt collection, §§48-7-160 to 48-7-170.
Informants.
Payment of portion of fines to, §48-2-81.
Intangible recording tax, §§48-6-60 to 48-6-77.

REVENUE AND TAXATION —Cont'd
Intangibles, real estate transfer tax.
General provisions, §§48-6-1 to 48-6-10.
Interest.
Deferred taxes, §48-2-38.
Deficiency assessments, §48-2-48.
Failure to file return or pay revenue held in trust for state, §48-2-44.
Past due taxes, §48-2-40.
New purchasers of property, exemptions, §48-3-3.
Waiver on unpaid taxes, §48-2-41.
Refunds, §48-2-35.
Investigations.
Powers of commissioner, §48-2-8.
Jeopardy assessments, §48-2-51.
Joint county and municipal sales and use tax (LOST).
General provisions, §§48-8-80 to 48-8-97.
Judicial sales.
Effect on state tax lien, §48-2-57.
Power of commissioner or authorized representative, §48-2-55.
Sales under tax executions.
General provisions, §§48-4-1 to 48-4-65.
Land banks.
Sales under tax executions, §§48-4-100 to 48-4-112.
Lawful money of the United States.
Currency in which taxes to be paid, §48-2-31.
Levy upon property or rights to property.
Neglect or refusal to pay taxes, §48-2-55.
Tax executions.
General provisions, §§48-3-1 to 48-3-44.
Sales under tax executions, §§48-4-1 to 48-4-65.
Libraries.
Property tax exemption, §48-5-41.
License tax.
Financial institutions.
Local business license tax for depository financial institutions, §48-6-93.
Privilege taxes generally, §§48-13-2 to 48-13-29.
Liens for taxes, §48-2-56.
Judicial sales effect on state tax lien, §48-2-57.

REVENUE AND TAXATION —Cont'd
Liens for taxes —Cont'd
Priority, §48-2-56.
Release of property subject to state tax lien, §48-2-58.
Tobacco and alternative nicotine products taxes.
Amount of unpaid tax, §48-11-17.
Limitation of actions.
Assessment of taxes, §48-2-49.
Refunds, §48-2-35.
Limited liability companies.
Delinquent taxes.
Personal liability of members, managers, or employees, §48-2-52.
Limited liability partnerships.
Delinquent taxes.
Personal liability of partners or employees, §48-2-52.
Livestock.
Sales and use taxes.
Exemption of agricultural commodities.
Commodities not sold as finished product to ultimate consumer, §48-8-5.
Nonapplicability of use tax to livestock and livestock products used by producer, §48-8-4.
Local government.
Motor fuel taxes.
Prohibition of tax on motor fuel by political subdivisions, §48-9-3.
TVA.
Apportionment of payments to political subdivisions in lieu of taxes, §48-14-2.
Local income taxes.
Prohibition, §48-7-140.
Manual laborers.
Property tax exemption for tools, §48-5-42.
Marijuana.
Excise tax on marijuana and controlled substances, §§48-15-1 to 48-15-11.
Mobile home ad valorem taxation.
General provisions, §§48-5-440 to 48-5-451, 48-5-490 to 48-5-495.
Money orders.
Forms of payment, §48-2-32.
Penalty when money order not paid when presented, §48-2-32.
Mortgages to avoid payment of taxes.
Effect, §48-2-61.

REVENUE AND TAXATION —Cont'd
Motor carriers' road tax.
General provisions, §§48-9-30 to 48-9-46.
Motor fuels.
General provisions, §§48-9-1 to 48-9-19.
Sales and use taxes, §48-8-3.1.
Credit or refund for sales tax where prepaid state or local tax imposed, §48-8-30.
Imposition of prepaid local tax, §48-8-82.
Rate of tax, §48-8-82.
Special county one percent sales and use tax.
Applicability to motor fuel sales, §48-8-110.1.
Motor vehicle ad valorem taxation.
General provisions, §§48-5-440 to 48-5-478.4.
Motor vehicle leases.
Road tax on motor carriers.
Lessee and lessor of motor vehicles deemed motor carriers, §48-9-37.
Motor vehicles.
Contraband articles used in violations of title, §§48-2-82 to 48-2-84.
Municipal property taxes.
General provisions, §§48-5-350 to 48-5-361.
Necessaries.
Income taxes.
Food and other necessaries credit, §§48-7A-2, 48-7A-3.
Nonresident contractors, §§48-13-30 to 48-13-38.
Nonresidents.
Income taxes.
Estimated income tax by individuals.
Requirement of estimated tax, §48-7-114.
Venue for actions for refunds, §48-2-35.
Venue for appeals from orders, rulings or findings of commissioner, §48-2-59.
Notes.
Special county one percent sales and use tax.
Election on issuance of general obligation debt, §48-8-111.
Issuance of general obligation debt, §48-8-111.

REVENUE AND TAXATION —Cont'd
Notice.
Action to collect unpaid taxes, §48-2-54.
Jeopardy assessments.
Possession, sale or distribution of illegal drug.
Amount of tax and penalty, §48-2-51.
Judicial sales, §48-2-55.
Seizure of contraband articles, §48-2-82.
Service of notice of assessment, §48-2-45.
Nursing homes.
Property tax exemption.
Nonprofit homes for the aged, §48-5-41.
Oaths.
Administration of oaths by commissioner and officers or employees of department, §48-2-13.
Deputy state revenue commissioner, §48-2-5.
Judicial and investigative powers of commissioner.
Administration of oaths, §48-2-8.
State revenue commissioner, §48-2-2.
Occupation tax.
Charitable trust.
Furnishing rooms, lodging or accommodations, §48-13-55.
Depository financial institutions.
Special state occupation tax on, §48-6-95.
Privilege taxes generally, §§48-13-2 to 48-13-29.
Omissions knowingly and intentionally made, §48-1-6.
Ordinances.
Special county one percent sales and use tax, §48-8-111.
Consolidated government, §48-8-111.1.
Modification of projects approved by referendum, §48-8-123.
Out-of-state businesses.
Facilitating business rapid response to state declared disasters, §48-2-100.
Partnerships.
Income taxes, §48-7-23.
Nonresident members of resident partnership, §48-7-24.

REVENUE AND TAXATION —Cont'd
Partnerships —Cont'd
Income taxes —Cont'd
Resident members of nonresident partnership, §48-7-24.
Returns, §48-7-53.
Past due taxes.
Action to collect unpaid taxes, §48-2-54.
Interest, §48-2-40.
New purchasers of property, exemptions, §48-3-3.
Waiver, §48-2-41.
Payment of taxes.
Action to collect unpaid taxes, §48-2-54.
Appeals from orders, rulings or findings of commissioner.
Taxes admittedly owned.
Payment as condition for appeal, §48-2-59.
Avoiding payment of taxes.
Effect of actions taken, §48-2-61.
Corporations.
Personal liability of officers or employees, §48-2-52.
Currency in which taxes to be paid, §48-2-31.
Deferred taxes.
Interest, §48-2-38.
Due date, §48-2-38.
Date for payment or filing on holiday, §48-2-39.
Extension of time for payment, §48-2-36.
Failure to pay revenue held in trust for state.
Penalty and interest, §48-2-44.
Forms of payment, §48-2-32.
Holidays, Saturdays or Sundays.
Date for payment or filing on, §48-2-39.
Levy upon property or rights to property.
Neglect or refusal to pay taxes, §48-2-55.
Limited liability companies.
Personal liability of members, managers, or employees, §48-2-52.
Limited liability partnerships.
Personal liability of partners or employees, §48-2-52.
Past due taxes.
Action to collect unpaid taxes, §48-2-54.

REVENUE AND TAXATION —Cont'd
Payment of taxes —Cont'd
Past due taxes —Cont'd
Interest, §48-2-40.
New purchasers of property, exemptions, §48-3-3.
Waiver, §48-2-41.
Penalty and interest for failure to pay revenue held in trust for state, §48-2-44.
Penalty when check or money order not paid when presented, §48-2-32.
Personal debt of person required to pay, §48-2-55.
Receipts, §48-2-33.
Failure to give official receipt, §48-2-34.
Refunds, §48-2-35.
Remittances, §48-2-30.
To state treasurer, §48-2-17.
Penalties.
Check or money order tendered in payment not paid when presented, §48-2-32.
Electronic filing requirements, failure to follow, §48-2-44.1.
Failure to file return or pay revenue held in trust for state, §48-2-44.
Nature of penalties, §48-2-42.
New purchasers of property, exemptions, §48-3-3.
Refund of penalty, §48-2-60.
Tax return preparers, §48-2-62.
Waiver, §48-2-43.
Personal debt of person required to pay, §48-2-55.
Personal property.
Sales and use taxes.
General provisions, §§48-8-1 to 48-8-78.
Petitions.
Protests, §48-2-46.
Political subdivisions.
Motor fuel taxes.
Prohibition of tax on motor fuel, §48-9-3.
TVA.
Apportionment of payments to political subdivisions in lieu of taxes, §48-14-2.

REVENUE AND TAXATION —Cont'd
Poultry.
Sales and use taxes.
Exemption of agricultural commodities.
Commodities not sold as finished product to ultimate consumer, §48-8-5.
Nonapplicability of use tax to poultry and poultry products used by producer, §48-8-4.
Preparers.
Penalties, §48-2-62.
Priorities.
Liens for taxes, §48-2-56.
Privileged communications.
Confidential information generally, §48-2-15.
Disclosure of return information, §48-2-6.1.
Privilege taxes.
Franchise tax.
General provisions, §§48-5-420 to 48-5-425.
General provisions, §§48-13-2 to 48-13-29.
Road tax on motor carriers.
General provisions, §§48-9-30 to 48-9-46.
Professional taxes.
Privilege taxes generally, §§48-13-2 to 48-13-29.
Promissory notes.
Special county one percent sales and use tax.
Election on issuance of general obligation debt, §48-8-111.
Property taxes.
Ad valorem tax foreclosures, §§48-4-75 to 48-4-81.
Aged persons.
Homestead tax deferral for individuals 62 or older, §§48-5-70 to 48-5-84.
Airline ad valorem taxation.
General provisions, §§48-5-540 to 48-5-546.
County board of tax assessors.
General provisions, §§48-5-290 to 48-5-314.
County taxation generally, §§48-5-220 to 48-5-243.

REVENUE AND TAXATION —Cont'd
Property taxes —Cont'd
Delinquent tax officials.
General provisions, §§48-5-200 to 48-5-205.
Equalization of assessments.
General provisions, §§48-5-260 to 48-5-275.
Examination of county tax digest.
General provisions, §§48-5-340 to 48-5-349.5.
Exemptions generally, §§48-5-40 to 48-5-56.
Franchise tax.
General provisions, §§48-5-420 to 48-5-425.
General provisions, §§48-5-1 to 48-5-56.
Heavy-duty equipment ad valorem taxation, §§48-5-505 to 48-5-509.
Construction equipment owned by nonresidents, §§48-5-500, 48-5-501.
Homestead tax deferral for individuals 62 or older, §§48-5-70 to 48-5-84.
Mobile homes.
General provisions, §§48-5-440 to 48-5-451, 48-5-490 to 48-5-495.
Motor vehicles.
General provisions, §§48-5-440 to 48-5-478.4.
Municipal corporations, §§48-5-350 to 48-5-361.
Municipal taxation generally, §§48-5-350 to 48-5-361.
Public utility ad valorem taxation.
General provisions, §§48-5-510 to 48-5-524.
Real estate transfer tax.
General provisions, §§48-6-1 to 48-6-10.
School taxation.
General provisions, §§48-5-400 to 48-5-405.
Special franchises.
General provisions, §§48-5-420 to 48-5-425.
State loans to counties, §§48-5-330, 48-5-331.
Tax collectors.
General provisions, §§48-5-121 to 48-5-165.
Tax receivers.
General provisions, §§48-5-101 to 48-5-109.

REVENUE AND TAXATION —Cont'd
Protests.
Procedures, §48-2-46.
Public property.
Property tax exemption, §48-5-41.
Public utilities.
General provisions, §§48-5-510 to 48-5-524.
Venue for actions for refunds, §48-2-35.
Venue for appeals from orders, rulings or findings of commissioner, §48-2-59.
Railroads.
Assessment of property for purposes of county and municipal taxation, §48-5-521.
Equipment companies doing business in state, §48-5-519.
Franchise tax.
Special franchises generally, §§48-5-420 to 48-5-425.
Property taxes.
Public utility ad valorem taxation.
Assessment for county and municipal taxation purposes, §48-5-521.
Railroad equipment companies, §48-5-519.
Rolling stock and other personal property, §48-5-520.
Public utility ad valorem taxation.
Assessment for county and municipal taxation purposes, §48-5-521.
General provisions, §§48-5-510 to 48-5-524.
Railroad equipment companies, §48-5-520.
Rolling stock and other personal property, §48-5-520.
Rolling stock and other personal property, §48-5-520.
Sales and use taxes.
Exemptions, §48-8-3.
School taxes.
Railroad equipment companies.
Collection of school taxes, §48-5-402.
Street, suburban and interurban railroads.
Exemption for certain railroad companies.
Sales and use tax, §48-8-3.
Real estate transfer tax, §§48-6-1 to 48-6-10.

REVENUE AND TAXATION —Cont'd
Receipts for taxes, §48-2-33.
Failure to give official receipt, §48-2-34.
Reciprocity.
Judicial enforcement of taxes imposed by other states, §48-2-80.
Records.
Extension of time for returns, §48-2-36.
Redemption.
Sales under tax executions.
General provisions, §§48-4-1 to 48-4-65.
Referendum.
Joint county and municipal sales and use tax, §48-8-85.
Discontinuing imposition, §48-8-92.
Refunds, §48-2-35.
Extension of time, §48-2-36.
Local significance, refund claims, §48-2-35.
Penalty refund, §48-2-60.
Releases.
Property subject to state tax lien, §48-2-58.
Religion.
Income taxes.
Exempt organizations, §48-7-25.
Property tax exemption.
Places of religious worship, §48-5-41.
Property owned by religious groups used for single-family residences, §48-5-41.
Sales and use tax exemptions, §48-8-3.
Remittances, §48-2-30.
Returns.
Delinquent returns.
Preparation, §48-2-37.
Disclosure of return information, §§48-2-6.1, 48-2-15.
Electronic filing requirements, failure to follow, §48-2-44.1.
Extension of time, §48-2-36.
Failure to file.
Penalty and interest, §48-2-44.
Penalty and interest on failure to file, §48-2-44.
New purchasers of property, exemptions, §48-3-3.
Tax return preparers, penalties, §48-2-62.
Revenue stamps.
Unlawful activities as to, §48-2-84.
Road tax on motor carriers.
General provisions, §§48-9-30 to 48-9-46.

REVENUE AND TAXATION —Cont'd
Rules and regulations.
Powers of commissioner, §48-2-12.
Guidelines and procedures for rulings issued by commissioner, §48-2-15.2.
Rulings issued by commissioner.
Guidelines and procedures for submission, issuance or denial of rulings, §48-2-15.2.
Sales and use taxes.
Coliseum capital outlay projects, special purpose local option sales tax, §§48-8-145 to 48-8-157.
County sales and use taxes, §§48-8-110 to 48-8-144.
County special purpose local option sales tax (SPLOST), §§48-8-110 to 48-8-124.
Sales tax for educational purposes (ESPLOST), §§48-8-140 to 48-8-144.
Georgia tourism development, §§48-8-270 to 48-8-277.
Homestead option sales and use tax (HOST).
Equalized homestead option sales tax, §§48-8-109.1 to 48-8-109.10.
Revised homestead option sales tax, §§48-8-109.15 to 48-8-109.24.
Joint county and municipal sales and use tax (LOST), §§48-8-80 to 48-8-97.
Qualified consolidated government.
Coliseum capital outlay projects, special purpose local option sales tax, §§48-8-145 to 48-8-157.
Special county one percent sales and use tax, §§48-8-110 to 48-8-124.
Special district mass transportation sales and use tax, §§48-8-260 to 48-8-269.36.
Generally, §§48-8-260 to 48-8-269.6.
Metropolitan county special districts, §§48-8-269.7 to 48-8-269.21.
Metropolitan municipality special districts, §§48-8-269.22 to 48-8-269.36.
Special district option sales and use tax (contingently effective 1/1/2025), §§48-8-109.30 to 48-8-109.42.

REVENUE AND TAXATION —Cont'd
Sales and use taxes —Cont'd
Special district transportation sales and use tax (TSPLOST), §§48-8-240 to 48-8-256.
Election, imposition and procedures, §§48-8-244 to 48-8-256.
Generally, §§48-8-241 to 48-8-243.
State sales and use tax.
General provisions, §§48-8-1 to 48-8-19.
Imposition, rate, collection and assessment, §§48-8-30 to 48-8-67.
Transit special purpose local option sales and use tax, §§48-8-269.40 to 48-8-269.58.
Uniform sales and use tax administration, §§48-8-160 to 48-8-167.
Water and sewer projects and costs tax (MOST), §§48-8-200 to 48-8-212.
Sales to avoid payment of taxes.
Effect, §48-2-61.
Sales under tax executions.
General provisions, §§48-4-1 to 48-4-65.
Land banks, §§48-4-100 to 48-4-112.
Saturdays.
Date for payment or filing on Saturday, §48-2-39.
Savings and loan associations.
Taxation of depository financial institutions.
Interim special tax limitation for, §48-6-98.
School taxes, §§48-5-400 to 48-5-405.
Security clearances.
Access to tax information by persons other than employees, §48-2-15.
Seizures of contraband articles, §48-2-82.
Service of notice of assessment, §48-2-45.
Service of summons of garnishment, §48-2-55.
Setoffs.
Federal refund claims against tax liability to state.
Fees charged to taxpayer's account, §48-2-54.1.
Income taxes.
Setoff debt collection.
General provisions, §§48-7-160 to 48-7-170.

REVENUE AND TAXATION —Cont'd
Setoffs —Cont'd
Unpaid taxes against refund, §48-2-35.
Sheriffs.
Collection of taxes and prosecution of violators.
Duties, §48-2-81.
Short title.
Georgia public revenue code, §48-1-1.
Special county one percent sales and use tax.
General provisions, §§48-8-110 to 48-8-124.
Special districts.
Excise tax on rooms, lodgings and accommodations.
General provisions, §§48-13-50 to 48-13-63.
Joint county and municipal sales and use tax (LOST).
General provisions, §§48-8-80 to 48-8-97.
Special franchises generally, §§48-5-420 to 48-5-425.
Stamps.
Revenue stamps.
Unlawful activities, §48-2-84.
State administrative organization.
Administration, §§48-2-30 to 48-2-63.
Enforcement, §§48-2-80 to 48-2-84.
Generally, §§48-2-1 to 48-2-19.
State board of equalization.
Digest of proposed assessments.
Examination and final approval, §48-2-18.
Duties, §48-2-18.
Established, §48-2-18.
State revenue commissioner.
Chairman and administrative officer, §48-2-18.
State revenue commissioner.
Actions of judicial proceedings to collect delinquent state taxes, cause property not listed to be assessed, etc.
Powers in tax proceedings, §48-2-9.
Airline ad valorem taxation.
General provisions, §§48-5-540 to 48-5-546.
Appointment, §48-2-2.
Attorney general.
Legal advice and assistance to, §48-2-9.
Bond, §48-2-2.
Certifications by commissioner or officers or employees, §48-2-13.

REVENUE AND TAXATION —Cont'd
State revenue commissioner —Cont'd
Collection of taxes.
Certain local taxes, §48-2-10.
Contractors, §48-2-6.
Disclosure of return information, §§48-2-6.1, 48-2-15.
Confidential information, §48-2-15.
Creation of office, §48-2-2.
Delegation of certain duties, §48-2-11.
Department of revenue.
Employees.
Authority to employ and compensate, §48-2-6.
Establishment of units within department, §48-2-6.
Under direction of commissioner, §48-2-1.
Deputy state revenue commissioner.
Appointment by commissioner, §48-2-5.
Authority, §48-2-5.
Bond, §48-2-5.
Creation of office, §48-2-5.
Force and effect of actions, §48-2-5.
Oath, §48-2-5.
Salary, §48-2-5.
Duties, §48-2-7.
Delegation of certain duties, §48-2-11.
Unlawful exercise by unauthorized person, §48-1-4.
Elective office.
Eligibility for, §48-2-4.
Eligibility for elective office, §48-2-4.
Exchange of tax information, §48-2-16.
Excise tax on marijuana and controlled substances.
General provisions, §§48-15-1 to 48-15-11.
Expenses, §48-2-2.
Governor.
Appointment of commissioner, §48-2-2.
Heavy-duty equipment ad valorem taxation, §§48-5-505 to 48-5-509.
Construction equipment owned by nonresidents, §§48-5-500, 48-5-501.
Income taxes.
General provisions, §§48-7-100 to 48-7-170.
Intentional acts or misconduct.
Personal liability, §48-2-2.
Investigative powers, §48-2-8.

REVENUE AND TAXATION —Cont'd
State revenue commissioner —Cont'd
Joint county and municipal sales and use tax (LOST).
General provisions, §§48-8-80 to 48-8-97.
Judicial powers, §48-2-8.
Local taxes.
Collection of certain local taxes, §48-2-10.
Mobile home ad valorem taxation, §§48-5-440 to 48-5-451, 48-5-490 to 48-5-495.
Motor carriers' road tax.
General provisions, §§48-9-30 to 48-9-46.
Motor fuel taxes.
General provisions, §§48-9-1 to 48-9-19.
Motor vehicle ad valorem taxation.
General provisions, §§48-5-440 to 48-5-478.4.
Motor vehicle licensing, registration, valuation and titling functions.
Modernization and improvement, §48-2-19.
Oath, §48-2-2.
Administration of oaths.
By commissioner and officers or employees, §48-2-13.
Office of commissioner.
Location, §48-2-1.
Personal liability, §48-2-2.
Powers, §48-2-7.
Collection of certain local taxes, §48-2-10.
Judicial and investigative powers, §48-2-8.
Rules and regulations, §48-2-12.
Tax proceedings, §48-2-9.
Property taxes.
Delinquent officials.
General provisions, §§48-5-200 to 48-5-205.
Examination of county tax digest, §§48-5-340 to 48-5-349.5.
Exemptions generally, §§48-5-40 to 48-5-56.
General provisions, §§48-5-1 to 48-5-56.
Homestead tax deferral for individuals 62 or older, §§48-5-70 to 48-5-84.
Tax collectors.
General provisions, §§48-5-121 to 48-5-165.

REVENUE AND TAXATION —Cont'd
State revenue commissioner —Cont'd
Property taxes —Cont'd
Tax receivers.
General provisions, §§48-5-101 to 48-5-109.
Public utility ad valorem taxation.
General provisions, §§48-5-510 to 48-5-524.
Records.
Settlement or compromise of tax assessments, §48-2-18.1.
Report.
Annual report to governor and general assembly, §48-2-7.
Road tax on motor carriers.
General provisions, §§48-9-30 to 48-9-46.
Rules and regulations, §48-2-12.
Salary, §48-2-2.
Sales and use taxes.
Joint county and municipal sales and use tax (LOST).
General provisions, §§48-8-80 to 48-8-97.
Transit special purpose local option sales and use tax.
Rulemaking to implement provisions, §48-8-269.55.
Seal, §48-2-14.
Settlement or compromise of tax assessments.
Authority, procedures, development, record required, offer in compromise, application fee, §48-2-18.1.
State board of equalization.
Chair and administrative officer, §48-2-18.
Tax executions.
General provisions, §§48-3-1 to 48-3-44.
Sales under tax executions, §§48-4-1 to 48-4-65.
Tobacco and alternative nicotine products taxes.
General provisions, §§48-11-1 to 48-11-30.
Unauthorized exercise by unauthorized person of duties or functions, §48-1-4.
State treasurer.
Payment to, §48-2-17.
Subpoenas.
Judicial and investigative powers of commissioner, §48-2-8.
REVENUE AND TAXATION —Cont'd
Sundays.
Date for payment or filing on Sunday, §48-2-39.
Superior courts.
Actions for refunds, §48-2-35.
Appeals of orders, rulings or findings of commissioner, §48-2-59.
Compelling production of evidence, §48-2-53.
Tax amnesty program, §§48-16-1 to 48-16-12.
Tax credits, §§48-7A-2, 48-7A-3.
Tax delinquent property.
Tax executions.
General provisions, §§48-3-1 to 48-3-44.
Sales under tax executions, §§48-4-1 to 48-4-65.
Tax evasion, §48-1-6.
Effect of actions taken to avoid payment of taxes, §48-2-61.
Fraudulent use of exemption certificate, §48-1-7.
Income taxes, §48-7-5.
Current income tax payment.
Attempts to evade or defeat tax imposed by article, §48-7-127.
Real estate transfer tax, §48-6-10.
Tobacco and alternative nicotine products taxes.
Deficiency due to fraudulent intent to evade, §48-11-12.
Taxpayer bill of rights, §48-1-9.
Tax receivers.
General provisions, §§48-5-101 to 48-5-109.
Tax return preparers.
Penalties, §48-2-62.
Telegraphs.
Franchise tax.
Special franchises generally, §§48-5-420 to 48-5-425.
Income taxes.
Taxation of public service corporations, §48-7-32.
Public utility ad valorem taxation generally, §§48-5-510 to 48-5-524.
Telephones.
Franchise tax.
Special franchises generally, §§48-5-420 to 48-5-425.
Income taxes.
Taxation of public service corporations, §48-7-32.

REVENUE AND TAXATION —Cont'd
Telephones —Cont'd
Public utility ad valorem taxation generally, §§48-5-510 to 48-5-524.
Temporary residence.
Facilitating business rapid response to state declared disasters, §48-2-100.
Tennessee Valley Authority.
Apportionment of payments to state and political subdivisions in lieu of taxes, §48-14-2.
Theft by conversion.
Unlawful conversion of funds collected for benefit of state, §48-1-5.
Time.
Assessment of taxes, §48-2-49.
Due date for payment of taxes, §48-2-38.
Date for payment or filing on holiday, §48-2-39.
Returns.
Extension, §48-2-36.
Tobacco and alternative nicotine products taxes, §§48-11-1 to 48-11-30.
Tools and implements of trade of manual laborers.
Property tax exemption, §48-5-42.
Trusts and trustees.
Income taxes.
Beneficiaries and fiduciaries of trusts, §48-7-22.
Deduction in lieu of personal exemption, §48-7-26.
Individual tax rate.
Applicability to estates and trusts, §48-7-20.
Persons required to file returns, §48-7-50.
Trustee in bankruptcy.
Operating property or business of corporation.
Returns, §48-7-51.
Property taxes.
Homestead exemption.
Application to property held by trustee, §48-5-54.
TVA.
Apportionment of payments to state and political subdivisions in lieu of taxes, §48-14-2.
Understatement of liability.
Penalties for tax return preparers, §48-2-62.

REVENUE AND TAXATION —Cont'd
Universities and colleges.
Property tax exemption, §48-5-41.
Unpaid taxes.
Action to collect, §48-2-54.
Vehicles.
Ad valorem tax, §§48-5-440 to 48-5-478.4.
Contraband articles used in violations of title, §§48-2-82 to 48-2-84.
Leases.
Road tax on leased carriers, §48-9-37.
Venue.
Actions for refunds, §48-2-35.
Appeals of orders, rulings or findings of commissioner, §48-2-59.
Judicial sales, §48-2-55.
Vessels.
Contraband articles.
Used in violation of title, §§48-2-82 to 48-2-84.
Violation of tax laws.
Duties of law enforcement officers and tax officials to prosecute, §48-2-81.
Waiver of interest on unpaid taxes, §48-2-41.
Waiver of penalties, §48-2-43.
Water pollution eliminating or reducing property.
Property tax exemption, §48-5-41.
Witnesses.
Judicial and investigative powers of commissioner, §48-2-8.

REVENUE SHARING.
Grants and special revenue disbursements, §§48-14-1 to 48-14-4.

REVISED HOMESTEAD OPTION SALES TAX ACT OF 2020.
Generally, §§48-8-109.15 to 48-8-109.24.
Short title, §48-8-109.15.

REVITALIZATION ZONES.
Income tax credits (repealed 12/31/2029), §48-7-40.32.

RIDE-SHARING.
Network services.
Sales and use tax exemptions.
Fares for vehicles operated under for-hire master license, §48-8-3.
Ride share networks and transportation referral services.
Excise tax on for-hire ground transportation, §§48-13-140 to 48-13-144.

RIGHT OF ENTRY.
Timber.
Income tax relief for timber industry losses caused by Hurricane Michael.
Access to timber property, §48-7-40.36.

RIPENING OF TITLE.
Real property.
Prescription, §48-4-48.

ROAD TAX ON MOTOR CARRIERS, §§48-9-30 to 48-9-46.

RODEOS.
Property taxes.
Bona fide conservation use property.
Equestrian events not considered breach of covenant, §48-5-7.4.

RULES AND REGULATIONS.
County property taxes.
Equalization of assessments.
Uniform books, records, forms and manuals, §48-5-269.
Heavy-duty equipment ad valorem taxation, §48-5-509.
Income taxes.
Returns, §48-7-103.
Setoff debt collection, §48-7-169.
Withholding exemption, §48-7-102.1.
Sales and use taxes.
Coliseum capital outlay projects, special purpose local option sales tax, §48-8-155.
Joint county and municipal sales and use tax, §48-8-95.
Special county one percent sales and use tax, §48-8-119.
Special district option sales and use tax, §48-8-109.40.
Setoff debt collection.
Income tax refund, §48-7-169.
Taxation.
Powers of commissioner, §48-2-12.
Guidelines and procedures for rulings issued by commissioner, §48-2-15.2.
State tax executions.
Online information management system, §48-3-43.
Tax amnesty program, §48-16-8.

S

SALARIES.
County property taxes.
Equalization of assessments.
Appraisers.
State salary supplements for qualified appraisers, §48-5-267.
County tax collectors, §48-5-183.
Commissions where collector on salary, §48-5-180.
County tax receivers.
Commissions where receiver on salary, §48-5-180.
State revenue commissioner, §48-2-2.
Deputy state revenue commissioner, §48-2-5.

SALES.
County tax collectors and tax commissioners.
Sales for purposes of collecting taxes due state and county.
Advertising as additional cost of execution, §48-5-137.1.
Powers as ex officio sheriffs, §48-5-137.
Executions.
Delinquent tax officials.
Proceedings in selling property under execution, §48-5-202.
Tax executions.
Sales under tax executions, §§48-4-1 to 48-4-65.
Motor fuel taxes.
General provisions, §§48-9-1 to 48-9-19.
Municipal property taxes.
Sales of property for taxes due municipalities, §48-5-359.
Sales to collect assessments for improvements, §48-5-358.
Property taxes.
Municipal property taxes.
Sale of property for taxes due municipality, §48-5-359.
Sale under execution for collection of assessments for improvements, §48-5-358.
Real property.
Sales under tax executions, §§48-4-1 to 48-4-65.

SALES —Cont'd
Sales and use taxes.
General provisions, §§48-8-1 to 48-8-78.
Taxation.
Avoidance of taxes.
Effect of actions taken to avoid payment, §48-2-61.
Motor fuel taxes.
General provisions, §§48-9-1 to 48-9-19.
Sales and use taxes.
General provisions, §§48-8-1 to 48-8-78.
Sales under tax executions.
General provisions, §§48-4-1 to 48-4-65.
Tobacco and alternative nicotine products taxes.
General provisions, §§48-11-1 to 48-11-30.

SALES AND USE TAXES, §§48-8-1 to 48-8-78.
Abandoned property.
Unidentifiable tax proceeds.
Distribution, §48-8-67.
Accounts and accounting.
Reporting cash and credit sales, §48-8-45.
Accrual basis of accounting.
Deduction of bad debts, §48-8-45.
Action raising issue of taxability, §48-8-41.
Actions against nonresident dealers, §48-8-65.
Actions for over-collected sales or use tax, §48-8-72.
Advertising by dealer of assumption of payment of tax, §48-8-36.
Violations of section, §48-8-37.
Affiliates related to in-state dealers.
Dealer defined, §48-8-2.
Agricultural commodities.
Exemption of commodities not sold as finished product to ultimate consumer, §48-8-5.
Agricultural equipment and machinery.
Exemptions, §48-8-3.3.
Agricultural products.
Nonapplicability of use tax to products used by farmer and family members, §48-8-4.
Aircraft.
Exemptions, §48-8-3.

SALES AND USE TAXES —Cont'd
Aircraft —Cont'd
Prepaid state taxes.
Temporary suspension of collection as it relates to motor fuels and aviation gasoline.
Ratification of governor's executive order, §48-8-17.
Special district mass transportation sales and use tax.
Exemptions beyond general sales tax exemptions.
Jet fuel, §48-8-269.
Airlines.
Food and beverage sales to qualified airlines, §48-8-3.
Jet fuel purchases.
Exemptions, §48-8-3.5.
Air pollution.
Exemption of sale of machinery and equipment for use in combating, §48-8-3.
Alternative fuel.
Exemption of property sold for construction of production facilities, §48-8-3.
Amount of tax.
Debt owed by purchaser to dealer, §48-8-35.
Aquariums.
Exemptions.
Renovation or expansion of certain aquarium.
Tangible personal property, §48-8-3.
Assessments.
Failure to file or false or fraudulent returns, §48-8-55.
Invoices not reflecting true or actual cost price, §48-8-52.
Time for, §48-8-64.
Assignments for benefit of creditors.
Accrual basis of accounting.
Deduction of bad debts, §48-8-45.
Attorney general.
Action raising issue of taxability.
Copy of initial pleading to attorney general, §48-8-41.
Authorities.
Coliseum authorities.
Exemptions, §48-8-3.
Aviation.
Exemption for jet fuel purchases, §48-8-3.5.
Suspension of collection of taxes on jet fuel, §48-8-19.

SALES AND USE TAXES —Cont'd
Bad debts.
Deduction under accrual basis of accounting, §48-8-45.
Beverages.
Airlines.
Exemption of food and beverage sales to qualified airlines, §48-8-3.
Joint sales and use tax, §48-8-82.
Special county sales and use tax, §48-8-110.1.
Bibles.
Exemptions, §48-8-3.
Biomass material utilized in production of energy.
Defined, exemption, §48-8-3.
Blood banks.
Exemptions, §48-8-3.
Blood glucose level measuring strips.
Exemptions, §48-8-3.
Boats and other watercraft.
Exemptions, §48-8-3.
Maximum amount of sales and use tax on boat maintenance, refitting or repair, §48-8-3.4.
Bonds, surety.
Chronically delinquent or defaulting dealers, §48-8-57.
Contractors furnishing tangible personal property and services.
Bond by general or prime contractor, §48-8-63.
Bullion.
Exemptions, §48-8-3.
Burden of proof on seller as to taxability, §48-8-38.
Carpet samples.
Fair market value, §48-8-39.
Cash and credit sales.
Reporting sales on either cash or accrual basis of accounting, §48-8-45.
Catalogs.
Purchases from printed catalogs, §48-8-69.
Certificate that property purchased for resale, §48-8-38.
Effect of sales from commingled goods when certificate given for portion of goods, §48-8-40.
Effect of use other than retention, demonstration or display, §48-8-39.

SALES AND USE TAXES —Cont'd
Charities.
Exemptions, §48-8-3.
Noncommercial written materials or mailings of 501(c)(3) organizations, §48-8-3.
Churches.
Exemptions.
Noncommercial written materials or mailings of 501(c)(3) organizations, §48-8-3.
Civil rights museums.
Exemptions, §48-8-3.
Claim for refund of tax credit by retired dealer.
Return of property sold to dealer by purchaser, §48-8-58.
Clinics.
Nonprofit health centers.
Exemptions, §48-8-3.
Clothing.
Exemption for specific sales, §48-8-3.
Coins.
Exemptions, §48-8-3.
Coliseum authorities.
Exemptions, §48-8-3.
Coliseum capital outlay projects, special purpose local option sales tax, §§48-8-145 to 48-8-157.
Additional nature of tax, §48-8-156.
Administration of tax, §48-8-149.
Rulemaking to implement provisions, §48-8-155.
Audits, §48-8-157.
Authority for levy of tax, §48-8-146.
Bond issues.
Election on imposition of tax including question of issuance of debt, §48-8-147.
Maximum amount, §48-8-148.
Requirements and limitations, §48-8-157.
Building and construction materials purchased under contract advertised prior to approval of tax, exemption, §48-8-154.
Cessation of imposition, §48-8-148.
Collection of tax, §48-8-149.
Disbursement of proceeds, §48-8-151.
Credit for taxes paid on same property in other jurisdiction, §48-8-152.
Definitions, §48-8-145.
Disbursement of proceeds, §48-8-151.
Use of proceeds, §48-8-157.

SALES AND USE TAXES —Cont'd
Coliseum capital outlay projects, special purpose local option sales tax —Cont'd
Effective date of imposition, §48-8-148.
Election on imposition of tax, §48-8-147.
Exemptions.
Building and construction materials purchased under contract advertised prior to approval of tax, §48-8-154.
Property ordered and delivered outside geographical area of qualified consolidated government, §48-8-153.
Imposition of tax, §48-8-148.
Information to be specified on tax returns, §48-8-150.
Motor fuels, taxes on, §48-8-146.
Ordinance for imposition of tax, §48-8-147.
Use of proceeds, requirements specified, §48-8-157.
Property ordered and delivered outside geographical area of qualified consolidated government, §48-8-153.
Rate of tax, §48-8-146.
Recordkeeping requirements, §48-8-157.
Renewal or reauthorization prohibited, §48-8-148.
Resolution for imposition of tax, §48-8-147.
Use of proceeds, requirements specified, §48-8-157.
Returns.
Information to be specified, §48-8-150.
Rulemaking to implement provisions, §48-8-155.
Supplemental nature of tax, §48-8-156.
Use of proceeds, §48-8-157.
Collection of tax, §48-8-30.
Addition to sale price or charge, §48-8-35.
Advertising by dealer of assumption of payment of tax, §48-8-36.
Violations of code section, §48-8-37.
Compensation of dealers for reporting and paying tax, §48-8-50.
Dealers as agent of state, §48-8-33.
Debt from purchaser or consumer to dealer until paid, §48-8-35.

SALES AND USE TAXES —Cont'd
Collection of tax —Cont'd
Delinquent taxes.
Issuance of fi. fa. for collection, §48-8-56.
Disposition of taxes collected in excess of 4 percent, §48-8-43.
Failure, neglect or refusal of dealers to collect, §48-8-7.
Liability of dealer, §48-8-35.
Nongovernmental vendors.
State contracts with vendors, restrictions on, §48-8-14.
Failure to collect at new rate.
Immunity from liability, §48-8-68.
From purchaser at time of sale, §48-8-34.
Invoices not reflecting true or actual cost price, §48-8-52.
Joint county and municipal tax.
By state revenue commissioner, §48-8-87.
Price brackets.
Designation, §48-8-31.
Retail sales price and cost price collectable from dealers, §48-8-32.
Return of property sold to dealer by purchaser.
Credit for tax collected from purchaser, §48-8-58.
Sale at public auction of securities for collection of taxes due, §48-8-57.
Special county one percent tax, §48-8-113.
Special district mass transportation sales and use tax, §48-8-265.
Rulemaking to implement provisions, §48-8-269.3.
Tokens.
Use prohibited, §48-8-31.
Use, consumption, distribution or storage.
Equivalent to sale at retail, §48-8-34.
Commingled goods.
Certificate that property purchased for resale given for portion of goods.
Effect of sales from commingled goods, §48-8-40.
Commodities.
Exemption of agricultural commodities.
Commodities not sold as finished product to ultimate consumer, §48-8-5.

SALES AND USE TAXES —Cont'd
Compensation of dealers for reporting and paying tax, §48-8-50.
Joint county and municipal tax, §48-8-87.
Special county one percent tax, §48-8-113.
Competitive project of regional significance.
Exemptions, §48-8-3.
Computer equipment.
Exemptions, §48-8-3.
Computer software.
Streamlined sales and use tax agreement.
Certified automated system, §48-8-77.1.
Consolidated government coliseum project sales tax.
Coliseum capital outlay projects, special purpose local option sales tax, §§48-8-145 to 48-8-157.
Contact lenses.
Exemptions, §48-8-3.
Contractors furnishing tangible personal property and services, §48-8-63.
Cost price.
Invoices not reflecting true or actual cost price, §48-8-52.
Rate tax collectable from dealers, §48-8-32.
Counties.
Ceiling on local taxes, §48-8-6.
Coliseum capital outlay projects, special purpose local option sales tax, §§48-8-145 to 48-8-157.
Exemptions, §48-8-3.
Joint county and municipal tax (LOST).
Generally, §§48-8-80 to 48-8-97.
Refund claims of local significance, §48-2-35.
Sales or services included in article.
Prohibition against imposing tax on, §48-8-6.
Special county one percent tax.
Generally, §§48-8-110 to 48-8-124.
Transit special purpose local option sales and use tax, §§48-8-269.40 to 48-8-269.58.

SALES AND USE TAXES —Cont'd
Credits.
Coliseum capital outlay projects, special purpose local option sales tax.
Credit for taxes paid on same property in other jurisdiction, §48-8-152.
Joint county and municipal tax.
Tax paid by purchaser in another tax jurisdiction, §48-8-90.
Like tax paid in another state, §48-8-42.
Return of property sold to dealer by purchaser, §48-8-58.
Revised homestead option sales tax.
Credit against similar taxes on same property, §48-8-109.20.
Special county one percent tax, §48-8-116.
Transit special purpose local option sales and use tax.
Taxes paid for same property in other taxing jurisdiction, §48-8-269.53.
Currency.
Exemptions, §48-8-3.
Daughters of the American Revolution.
Exemptions, §48-8-3.
Dealers.
Agent of state for collection, §48-8-33.
Defined, §48-8-2.
Delivery electronically or physically of property for use, consumption, etc, in state.
Defined as dealer, §48-8-2.
Imposition and rate of tax, §48-8-30.
Transit special purpose local option sales and use tax.
Definition of dealers, §48-8-269.40.
Deductions.
Bad debts under accrual basis of accounting, §48-8-45.
Joint county and municipal tax.
Dealer's deduction in submitting, reporting and paying amount due, §48-8-87.
Return of property sold to dealer by purchaser.
Dealer's deduction in submitting, reporting and paying, §48-8-113.

SALES AND USE TAXES —Cont'd
Deductions —Cont'd
Return of property sold to dealer by purchaser —Cont'd
Deduction of return allowance, §48-8-58.
Defaulting dealers.
Furnishing of bond by chronically defaulting dealers, §48-8-57.
Definitions, §48-8-2.
Agricultural commodity, §48-8-5.
Biomass material, §48-8-3.
Building and construction materials, §48-8-254.
Joint county and municipal sales and use tax, §48-8-94.
Computer equipment, §48-8-3.
Local sales and use tax, §48-8-3.
Qualified municipality.
Joint county and municipal tax, §48-8-80.
Return allowance, §48-8-58.
Special county one percent tax, §48-8-110.
Special district transportation sales and use tax, §§48-8-242, 48-8-254.
Streamlined sales and use tax agreement, §48-8-161.
Urban transit system, §48-8-3.
Delinquent dealers.
Furnishing of bond by chronically delinquent dealers, §48-8-57.
Notice to persons holding credits of or owing debts to, §48-8-47.
Violation of code section, §48-8-48.
Delinquent taxpayers.
Issuance of fi. fa. for collection, §48-8-56.
Period of delinquency of unpaid taxes, §48-8-56.
Diesel fuel.
Exemptions, §48-8-3.
Digital broadcast equipment.
Exemptions, §48-8-3.
Digital goods, specified digital products, other digital goods or digital codes.
Definitions relevant to digital items, §48-8-2.
Imposition of tax, §48-8-30.
Sale for resale, conditions, §48-8-38.
Direct pay permit program, §48-8-49.1.
Disaster relief.
Food and beverages donated for disaster relief, §48-8-3.

SALES AND USE TAXES —Cont'd
Disposition of taxes collected in excess of 4 percent, §48-8-43.
Drugs.
Exemption of prescription drugs, §48-8-3.
Duplication of tax prohibited, §48-8-34.
Dyed fuel oils.
Suspension on collection of tax.
Ratification of executive order, §48-8-16.
Educational purposes sales tax, §§48-8-140 to 48-8-144.
Alternative distribution formula.
Amendment during time tax imposed, prohibition, §48-8-143.
Bonds, issuance, §48-8-142.
Charter school as capital overlay project, §48-8-144.
Distribution, §48-8-143.
Imposition of tax, §48-8-141.
Legislative intent, §48-8-140.
Resolution to impose tax, §48-8-142.
Elections.
Coliseum capital outlay projects, special purpose local option sales tax, §48-8-147.
Water and sewer projects and costs.
Approval of referendum by voters, §48-8-201.
Electricity.
Irrigation systems.
Exemptions, §48-8-3.
Electronic filing requirements, failure to follow, §48-2-44.1.
Energy efficient products.
Exemptions, §48-8-3.
Energy Star qualified product.
Exemptions, §48-8-3.
Equalized homestead option sales tax, §§48-8-109.1 to 48-8-109.10.
Administration of tax, §48-8-109.5.
Rulemaking for administration and collection enforcement, §48-8-109.10.
Building and construction materials.
Exemptions, §48-8-109.9.
Calculations of taxes due, §48-8-109.6.
Collection of tax, §48-8-109.5.
Rulemaking for administration and collection enforcement, §48-8-109.10.
Credits for other taxes paid allowed against equalized homestead option sales tax, §48-8-109.6.

SALES AND USE TAXES —Cont'd
Equalized homestead option sales tax —Cont'd
Discontinuation of equalized homestead option sales tax.
Referendum, §48-8-109.7.
Election on whether to impose tax.
Ballot format, §48-8-109.4.
Duties of election superintendent, §48-8-109.4.
Notice to election superintendent, §48-8-109.4.
Imposition of tax on sales outside of jurisdiction.
When prohibited, §48-8-109.8.
Out-of-jurisdiction sales.
Imposition of tax on sales outside of jurisdiction.
When prohibited, §48-8-109.8.
Proceeds of tax.
Disbursement, §48-8-109.5.
Rulemaking for administration and collection enforcement, §48-8-109.10.
Short title, §48-8-109.1.
Special districts for local services and related taxes.
Applicability of tax, §48-8-109.3.
Creation, §48-8-109.3.
Suspension of other taxation in favor of imposition of equalized homestead option tax.
Referendum, §48-8-109.2.
Equipment.
Exemptions, §48-8-3.
Equipment used for manufacturing tangible personal property, or sale, use, storage or consumption of industrial materials, packaging supplies or energy.
Exemptions, §48-8-3.2.
Manufacturing and agricultural operations at single place of business.
Agricultural equipment and machinery or manufacturing operation exemption.
Choosing one but not both, §48-8-3.3.
Transit special purpose local option sales and use tax.
Exemptions.
Additional local exemptions.
Energy used in manufacturing or processing of goods for resale, §48-8-269.52.

SALES AND USE TAXES —Cont'd
Erroneous data.
Establishing rate of tax, §§48-8-71, 48-8-73.
Erroneous date provided by state.
Purchaser relieved from liability.
Reliance by seller on, §48-8-75.
Erroneous or illegally assessed payments.
Claim for refund, §48-2-35.1.
ESPLOST.
Educational purposes sales tax, §§48-8-140 to 48-8-144.
Estimated tax liability.
Payment of tax.
Failure to pay tax, §48-8-51.
Returns, §48-8-49.
Failure to make grossly inaccurate or false or fraudulent returns, §48-8-51.
Evasion of tax.
Filing false or fraudulent returns by dealers, §48-8-8.
Examinations.
Records of dealers, §48-8-52.
Excise taxes.
Tax levied in addition to excise taxes, §48-8-30.
Executions.
Issuance of fi. fa. for collection of delinquent taxes, §48-8-56.
Executive orders.
Ratification.
Dyed fuel oils, §48-8-16.
Jet fuel, suspension of collection taxes, §48-8-19.
Pharmaceuticals distributed without cost.
Tax exemption for, §48-8-18.
Exemptions, §48-8-3.
Admission charges for fine arts performance or exhibition in nonprofit facility or museum of cultural significance, §48-8-3.
Agricultural commodities.
Not sold as finished product to ultimate consumer, §48-8-5.
Agricultural equipment and machinery, §48-8-3.3.
Agricultural products, poultry and livestock.
Nonapplicability of use tax used by producer, §48-8-4.

SALES AND USE TAXES —Cont'd
Exemptions —Cont'd
Aquariums.
Renovation or expansion of certain aquarium.
Tangible personal property, §48-8-3.
Charities.
Noncommercial written materials or mailings of 501(c)(3) organizations, §48-8-3.
Churches.
Noncommercial written materials or mailings of 501(c)(3) organizations, §48-8-3.
Clinics.
Nonprofit health centers, §48-8-3.
Coliseum capital outlay projects, special purpose local option sales tax.
Building and construction materials purchased under contract advertised prior to approval of tax, §48-8-154.
Property ordered and delivered outside geographical area of qualified consolidated government, §48-8-153.
Computer software, §48-8-3.
Contractors furnishing tangible personal property and services.
Property unconsumed in use, §48-8-63.
Dyed fuel oil sales.
Ratification of executive order, §48-8-16.
Electronic claim of exemption, §48-8-38.
Equalized homestead option sales tax.
Building and construction materials, §48-8-109.9.
Equipment used for manufacturing tangible personal property, or sale, use, storage or consumption of industrial materials, packaging supplies or energy, §48-8-3.2.
Fine arts performance or exhibition at certain locations, §48-8-3.
High-technology data centers.
Equipment incorporated or used in centers, §48-8-3.
Internet access service, §48-8-3.
Limousine carriers.
Fares for vehicles operated under for-hire master license, §48-8-3.

SALES AND USE TAXES —Cont'd
Exemptions —Cont'd
Manufactured homes, §48-8-3.
Motor fuels, §48-8-3.1.
Museums.
Property used in construction of museums, §48-8-3.
Nonprofit health centers, §48-8-3.
Pharmaceuticals distributed without cost.
Ratification of executive order, §48-8-18.
Poultry.
Nonprofit organizations providing poultry diagnostic and disease monitoring services, sales to, §48-8-3.
Proof of claimed exception, §48-8-38.
Refund to purchaser entitled to exemption.
Certificate or exemption determination letter not obtained prior to purchase, §48-2-35.1.
Ride-sharing.
Network services.
Fares for vehicles operated under for-hire master license, §48-8-3.
Seller with recurring business relationship.
Blanket exemption certificate from purchaser, §48-8-38.
Special district mass transportation sales and use tax.
Exemptions beyond general sales tax exemptions, §48-8-269.
Take-out food exemption, §48-8-3.
Taxicabs.
Fares for vehicles operated under for-hire master license, §48-8-3.
Theater located within facility containing art museum, symphonic hall and theater.
Renovation or expansion, property used, §48-8-3.
Transit special purpose local option sales and use tax.
Applicability of state exemptions, §48-8-269.52.
Vehicles for hire.
Fares for vehicles operated under for-hire master license, §48-8-3.
Volunteer health clinics, §48-8-3.
Water or sewer service authorities created by local enactment.
Sales to authority, §48-8-3.

SALES AND USE TAXES —Cont'd
Expedited refunds, §48-2-35.1.
Exports.
Exemptions, §48-8-3.
Eyeglasses.
Exemptions, §48-8-3.
Failure, neglect or refusal of dealers to collect, §48-8-7.
Nongovernmental vendors.
State contracts with vendors, restrictions on, §48-8-14.
Failure by dealer to furnish return, §48-8-9.
Failure by dealer to keep or allow inspection of records, §48-8-10.
False or fraudulent returns, §48-8-8.
Penalties in addition to other penalties, §48-8-66.
Federal retailers' excise tax.
Exemptions, §48-8-3.
Fieri facias.
Delinquent taxes, §48-8-56.
Film producers or film production companies.
Exemptions, §48-8-3.
Fine arts.
Exemptions.
Admission charges for fine arts performance or exhibition in nonprofit facility or museum of cultural significance, §48-8-3.
Floor covering samples.
Fair market value, §48-8-39.
Food.
Airlines.
Exemption of food and beverage sales to qualified airlines, §48-8-3.
Disaster relief, hunger relief.
Food and beverages donated for, §48-8-3.
Joint sales and use tax, §48-8-82.
Special county one percent tax, §48-8-110.1.
Take-out food exemption, §48-8-3.
Food banks.
Exemption for sale of food and food ingredients to qualified food bank, §48-8-3.
Food stamps.
Exemptions, §48-8-3.
Footwear.
Exemption for specific sales, §48-8-3.
Foreign governments.
Exemptions, §48-8-3.

SALES AND USE TAXES —Cont'd
Franchisers and franchisees.
Collection and payment of taxes, §48-8-30.
Fraud.
False or fraudulent returns, §48-8-8.
Penalties in addition to other penalties, §48-8-66.
Freight and logistics projects.
Dedication of certain proceeds for freight and logistics projects, §48-8-78.
Fuels.
Jet fuel.
Airline purchases.
Exemptions, §48-8-3.5.
Motor fuels, §48-8-3.1.
Credit or refund for sales tax where prepaid state or local tax imposed, §48-8-30.
Imposition of prepaid local tax, §48-8-82.
Rate, §48-8-82.
Special county one percent sales and use tax.
Applicability to sales of motor fuel, §48-8-110.1.
Gas.
Exemptions, §48-8-3.
Georgia tourism development act.
Tourism attraction agreements.
Sales and use tax refund, §§48-8-273, 48-8-276.
Gold bullion.
Exemptions, §48-8-3.
Gross proceeds from rentals or leases.
Dealer's returns, §48-8-49.
Gross proceeds of sales and purchases.
Dealer's returns, §48-8-49.
Gross sales defined, §48-8-2.
Hearing aids.
Exemptions, §48-8-3.
Hearings.
Bond by chronically delinquent or defaulting dealers, §48-8-57.
Revocation or suspension of certificate of registration, §48-8-62.
Heating of residences.
Propane and natural gas sold and delivered for residential heating.
Tax relief, time period, §48-8-15.
High-technology data centers.
Equipment incorporated or used in centers.
Exemptions, §48-8-3.

SALES AND USE TAXES —Cont'd
Holy Bible.
Exemptions, §48-8-3.
Homestead option sales and use taxes, §§48-8-100 to 48-8-109.
Administered and collected by commissioner, §48-8-104.
Building materials taxation, §48-8-108.
Capital outlay projects, funding, §48-8-104.
Construction materials taxation, §48-8-108.
Credit of tax on same property, §48-8-105.
Definitions, §48-8-101.
Disbursement of proceeds, §48-8-104.
Equal distribution among counties and municipalities, §48-8-101.1.
Discontinuance of tax.
Submission to voters, §48-8-106.
Equal distribution among counties and municipalities, §48-8-101.1.
Equalized homestead option sales tax, §§48-8-109.1 to 48-8-109.10.
Administration of tax, §48-8-109.5.
Rulemaking for administration and collection enforcement, §48-8-109.10.
Building and construction materials.
Exemptions, §48-8-109.9.
Calculations of taxes due, §48-8-109.6.
Collection of tax, §48-8-109.5.
Rulemaking for administration and collection enforcement, §48-8-109.10.
Credits for other taxes paid allowed against equalized homestead option sales tax, §48-8-109.6.
Discontinuation of equalized homestead option sales tax.
Referendum, §48-8-109.7.
Election on whether to impose tax.
Ballot format, §48-8-109.4.
Duties of election superintendent, §48-8-109.4.
Notice to election superintendent, §48-8-109.4.
Imposition of tax on sales outside of jurisdiction.
When prohibited, §48-8-109.8.
Out-of-jurisdiction sales.
Imposition of tax on sales outside of jurisdiction.
When prohibited, §48-8-109.8.

SALES AND USE TAXES —Cont'd
Homestead option sales and use taxes —Cont'd
Equalized homestead option sales tax —Cont'd
Proceeds of tax.
Disbursement, §48-8-109.5.
Rulemaking for administration and collection enforcement, §48-8-109.10.
Short title, §48-8-109.1.
Special districts for local services and related taxes.
Applicability of tax, §48-8-109.3.
Creation, §48-8-109.3.
Suspension of other taxation in favor of imposition of equalized homestead option tax.
Referendum, §48-8-109.2.
Property ordered by and delivered to purchaser outside district.
Exemptions, §48-8-107.
Regulations, §48-8-109.
Revised homestead option sales tax, §§48-8-109.15 to 48-8-109.24.
Administration of provisions, §48-8-109.19.
Adoption of resolutions, §48-8-109.18.
Building and construction materials, exemption, §48-8-109.23.
Collection of taxes, §48-8-109.19.
Credit against similar taxes on same property, §48-8-109.20.
Deductions from ad valorem taxes due to application of proceeds, §48-8-109.19.
Disposition of proceeds, §48-8-109.19.
Election on adoption of revised provisions, §48-8-109.16.
Petition to call for election, §48-8-109.18.
Election on discontinuance of tax, §48-8-109.21.
Levy and rate of tax, §48-8-109.17.
Property ordered and delivered outside special district in which tax imposed, §48-8-109.22.
Returns, §48-8-109.19.
Rulemaking to implement provisions, §48-8-109.24.
Short title, §48-8-109.15.
Special districts.
Creation, §48-8-109.17.

SALES AND USE TAXES —Cont'd
Homestead option sales and use taxes —Cont'd
Rules, §48-8-109.
Short title, §48-8-100.
Special districts, §48-8-102.
Motor fuels.
Rate of sales tax, §48-8-102.
Services within, funding, §48-8-104.
Tax levies, §48-8-102.
Tax credits, §48-8-105.
Tax exemption, §48-8-107.
Title of provisions, §48-8-100.
Voter referendums, §48-8-103.
Hospital financing authority.
Exemptions, §48-8-3.
Hospitals.
Exemption of nonprofit general or mental hospital, §48-8-3.
HOST (Homestead option sales and use taxes), §§48-8-100 to 48-8-109.
Housing finance authority.
Exemptions, §48-8-3.
Hunger relief.
Exemptions for food and beverages donated for hunger relief, §48-8-3.
Imports.
Certificate of registration by importing dealers, §48-8-61.
Invoices not reflecting true or actual cost price, §48-8-52.
Payment of tax on, §48-8-34.
Imposition of tax, §48-8-30.
Action raising issue of taxability, §48-8-41.
Addition of tax to sale price or charge, §48-8-35.
Burden of proof on seller as to taxability, §48-8-38.
Joint county and municipal tax.
Authorization, §48-8-82.
Condition precedent following first year of imposition, §48-8-91.
Beverages, §48-8-82.
Building and construction materials.
Sold or used under contract prior to approval, §48-8-94.
Food, §48-8-82.
Motor fuels, imposed as prepaid local tax, §48-8-82.
Rate, §48-8-82.
Property ordered by and delivered to purchaser outside special district.
Nonimposition of tax, §48-8-93.

SALES AND USE TAXES —Cont'd
Imposition of tax —Cont'd
Joint county and municipal tax —Cont'd
Referendum election, §48-8-85.
Discontinuing imposition, §48-8-92.
Resolution by governing authorities, §48-8-84.
Adoption in special districts, §48-8-86.
Special county one percent tax.
Authorization, §48-8-110.1.
Consolidated government, §48-8-111.1.
Effective date, §48-8-112.
Effect of other local sales and use taxes, §48-8-120.
Procedure, §48-8-111.
Reimposition, §48-8-112.
Time for assessment, §48-8-64.
Inspections.
Records of wholesalers and jobbers, §48-8-53.
Failure to keep and allow inspections, §48-8-54.
Insulin.
Exemptions, §48-8-3.
Intent of article.
With respect to taxation of tangible personal property and services, §48-8-1.
Interest.
Extension of time for making returns, §48-8-51.
Internet access services.
Exemptions, §48-8-3.
Invoices not reflecting true or actual cost price.
Assessment and collection of tax on true cost price, §48-8-52.
Irrigation systems.
Electricity sold for.
Exemptions, §48-8-3.
Jet fuel.
Airline purchases of.
Exemptions, §48-8-3.5.
Suspension of collection of taxes on jet fuel, §48-8-19.
Jobbers.
Duty to keep records, §48-8-53.
Failure to keep and allow inspections, §48-8-54.

SALES AND USE TAXES —Cont'd
Job training organizations.
Exemptions for qualified job training organizations, sales of property and services to organization, §48-8-3.
Joint county and municipal tax (LOST), §§48-8-80 to 48-8-97.
Administration of tax, §48-8-87.
Authorization to impose joint tax, §48-8-82.
Condition precedent following first year of imposition, §48-8-91.
Beverages, §48-8-82.
Bills of ad valorem.
Taxpayers.
Adjustment of millage rate for ad valorem taxation, §48-8-91.
Building and construction materials.
Defined, §48-8-94.
Taxability of materials sold or used under contract prior to approval of tax levy, §48-8-94.
Certificate specifying percentage of proceeds for each political subdivision, §48-8-89.
New certificate for additional qualified municipalities, §48-8-89.1.
Certifying additional qualified municipalities, §48-8-89.1.
Collection of tax.
By state revenue commissioner, §48-8-87.
Compensation of dealers for reporting and paying tax, §48-8-87.
Condition precedent to authority to impose tax.
Following first year of imposition, §48-8-91.
Consolidated county and municipality governments.
Levy of tax by consolidated government, §48-8-97.
Creation of special districts, §48-8-81.
Credit.
Tax paid by purchaser in another tax jurisdiction, §48-8-90.
Deductions.
Dealer's deduction in submitting, reporting and paying amount due, §48-8-87.
Delivery of property to purchaser outside special district.
Nonimposition of tax, §48-8-93.

SALES AND USE TAXES —Cont'd
Joint county and municipal tax (LOST) —Cont'd
Discontinuing imposition.
Referendum election, §48-8-92.
Distribution of proceeds, §48-8-89.
Certifying additional qualified municipalities, §48-8-89.1.
Qualified municipalities for which receipt of portion of net tax not specified, §48-8-89.3.
Qualified municipality ceasing to be qualified, §48-8-89.2.
Elections.
Discontinuing imposition, §48-8-92.
Referendum to decide imposition of tax, §48-8-85.
Food, §48-8-82.
Off-premises food sales.
Exemptions, §48-8-3.
Imposition of tax.
Authorization, §48-8-82.
Condition precedent following first year of imposition, §48-8-91.
Beverages, §48-8-82.
Building and construction materials.
Sold or used under contract entered into prior to approval, §48-8-94.
Food, §48-8-82.
Motor fuel, imposition as prepaid local tax, §48-8-82.
Property ordered by and delivered to purchaser outside special district.
Nonimposition of tax, §48-8-93.
Referendum election, §48-8-85.
Discontinuing imposition, §48-8-92.
Resolution by governing authorities, §48-8-84.
Special districts, §48-8-86.
Information required on returns, §48-8-88.
Levy of tax in certain special districts, §§48-8-83, 48-8-83.1, 48-8-89.3.
Millage rate.
Adjustment for ad valorem taxation of tangible personal property, §48-8-91.
Motor fuels.
Imposed as prepaid local tax, §48-8-82.
Rate, §48-8-82.
New expanded qualified municipality, §48-8-89.1.

SALES AND USE TAXES —Cont'd
Joint county and municipal tax (LOST) —Cont'd
New qualified municipality, §48-8-89.1.
Notice.
Imposition of tax, §48-8-85.
Qualified municipalities existence, §48-8-89.1.
Payment of tax.
Credit of tax paid by purchaser in another tax jurisdiction, §48-8-90.
Procedure for determining percentage to be distributed to governing authorities, §48-8-89.
Property ordered by and delivered to purchaser outside special district.
Nonimposition of tax on property, §48-8-93.
Purchasers paying tax in another tax jurisdiction.
Credit of tax paid, §48-8-90.
Qualified municipalities.
Certifying additional municipalities, §48-8-89.1.
Defined, §48-8-80.
Distribution of proceeds for which receipt of portion of net tax not specified, §48-8-89.3.
Distribution of proceeds upon ceasing to be qualified, §48-8-89.2.
Rate of tax.
Consolidated county and municipality governments.
Levy of tax by consolidated government, §48-8-97.
Millage rate adjustment for ad valorem taxation of tangible personal property, §48-8-91.
Referendum elections, §48-8-85.
Consolidated county and municipality governments.
Levy of tax by consolidated government, §48-8-97.
Discontinuing imposition, §48-8-92.
Resolution by governing authorities imposing tax.
Adoption, §48-8-86.
Consolidated county and municipality governments.
Levy of tax by consolidated government, §48-8-97.
Special districts, §48-8-84.
Returns.
Required information, §48-8-88.

SALES AND USE TAXES —Cont'd
Joint county and municipal tax (LOST) —Cont'd
Rules and regulations, §48-8-95.
Services regularly billed on monthly basis.
Effective date of adoption of resolution imposing tax, §48-8-86.
Special districts.
Creation, §48-8-81.
Levy of tax in, §§48-8-83, 48-8-83.1, 48-8-89.3.
Referendum election to decide imposition of tax, §48-8-85.
Resolution by governing authorities imposing tax, §48-8-84.
Adoption, §48-8-86.
Taxation of property in consolidated governments, §48-8-96.
Time.
Referendum election to decide imposition of tax, §48-8-85.
Resolution by governing authorities in special districts imposing tax, §48-8-84.
Adoption, §48-8-86.
Use of proceeds, §48-8-89.
Liability of dealer for failure to collect, §48-8-35.
Libraries.
Exemptions, §48-8-3.
License taxes.
Tax levied in addition to license taxes, §48-8-30.
Like tax paid in another state.
Credit, §48-8-42.
Limousine carriers.
Fares for vehicles operated under for-hire master license.
Exemptions, §48-8-3.
Liquefied petroleum gas.
Exemptions, §48-8-3.
Livestock.
Agricultural commodities.
Exemption of commodities not sold as finished product to ultimate consumer, §48-8-5.
Nonapplicability to livestock and livestock products used by farmer, §48-8-4.
Local government.
Ceiling on local tax, §48-8-6.
Coliseum capital outlay projects, special purpose local option sales tax, §§48-8-145 to 48-8-157.

SALES AND USE TAXES —Cont'd
Local government —Cont'd
Joint county and municipal tax (LOST).
Generally, §§48-8-80 to 48-8-97.
Sales or services included in article.
Prohibition against imposing tax on, §48-8-6.
Special county one percent tax.
Generally, §§48-8-110 to 48-8-124.
Local option sales tax.
Joint county and municipal tax (LOST), §§48-8-80 to 48-8-97.
Transit special purpose local option sales and use tax, §§48-8-269.40 to 48-8-269.58.
Lottery tickets.
Exemptions, §48-8-3.
Machinery.
Clean room construction.
Exemptions, §48-8-3.
Exemptions, §48-8-3.
Payment by furnisher of machinery, §48-8-63.
Repair and replacement parts.
Exemptions, §48-8-3.
Transit special purpose local option sales and use tax.
Exemptions.
Additional local exemptions.
Energy used in manufacturing or processing of goods for resale, §48-8-269.52.
Major sporting events.
Exemptions for ticket sales to certain nonrecurring events, §48-8-3.
Manufactured homes.
Exemptions, §48-8-3.
Manufacturing and agricultural operations at single place of business.
Agricultural equipment and machinery or manufacturing operation exemption.
Choosing one but not both, §48-8-3.3.
Manufacturing or processing goods for resale.
Energy, sale or use.
Special district mass transportation sales and use tax.
Exemptions beyond general sales tax exemptions, §48-8-269.
Marketplace facilitators and sellers.
Collection and payment of taxes, §48-8-30.

SALES AND USE TAXES —Cont'd
Marketplace facilitators and sellers —Cont'd
Definitions, §48-8-2.
Liability for taxes, §48-8-30.
Mass transportation.
Special district mass transportation sales and use tax.
Generally, §§48-8-260 to 48-8-269.6.
Metropolitan county special districts, §§48-8-269.7 to 48-8-269.21.
Metropolitan municipality special districts, §§48-8-269.22 to 48-8-269.36.
Transit special purpose local option sales and use tax, §§48-8-269.40 to 48-8-269.58.
Metropolitan county special districts, §§48-8-269.7 to 48-8-269.21.
Metropolitan municipality special districts, §§48-8-269.22 to 48-8-269.36.
Mobile telephones.
Taxing jurisdiction for mobile telecommunications services, §48-8-13.
Motion pictures.
Exemption of rental to persons charging admission to see, §48-8-3.
Motor fuels, §48-8-3.1.
Credit or refund for sales tax where prepaid state or local tax imposed, §48-8-30.
Educational purposes sales tax.
Rate of tax on motor fuels, §48-8-141.
Exemptions, §48-8-3.
Homestead option sales and use taxes.
Special districts.
Rate of sales tax, §48-8-102.
Imposition of prepaid local tax, §48-8-82.
Rate, §48-8-82.
Prepaid state taxes.
Temporary suspension of collection as it relates to motor fuels and aviation gasoline.
Ratification of governor's executive order, §48-8-17.
Special county one percent sales and use tax.
Applicability to motor fuel sales, §48-8-110.1.

SALES AND USE TAXES —Cont'd
Motor fuels —Cont'd
Special district mass transportation sales and use tax.
Exemptions beyond general sales tax exemptions.
Locomotives, §48-8-269.
Off-road agricultural equipment, §48-8-269.
Off-road heavy duty equipment, §48-8-269.
Special district option sales and use tax.
Applicability of tax imposed, §48-8-109.31.
Water and sewer projects and costs.
Rate of tax, §48-8-201.
Motor fuel taxes.
Special district mass transportation sales and use tax.
Exemptions beyond general sales tax exemptions, §48-8-269.
Fuel used for propulsion of vehicles on highways, §48-8-269.
Motor vehicles.
Ad valorem taxation.
Special district mass transportation sales and use tax.
Exemptions beyond general sales tax exemptions.
Purchase or lease of motor vehicle, §48-8-269.
Exemptions, §48-8-3.
Municipal corporations.
Ceiling on local taxes, §48-8-6.
Exemptions, §48-8-3.
Joint county and municipal tax (LOST).
Generally, §§48-8-80 to 48-8-97.
Refund claims of local significance, §48-2-35.
Sales or services included in article.
Prohibition against imposing tax on, §48-8-6.
Museums.
Exemptions.
Admission charges for fine arts performance or exhibition in nonprofit facility or museum of cultural significance, §48-8-3.
Property used in construction of museums, §48-8-3.
Use of objects of art and anthropological, archeological, etc., objects or artifacts, §48-8-3.
SALES AND USE TAXES —Cont'd
Nongovernmental vendors.
Failure, neglect or refusal of nongovernmental vendors to collect.
State contracts with vendors, restrictions on, §48-8-14.
Nonprofit health centers.
Exemptions, §48-8-3.
Nonresidents.
Engaging in business by nonresident dealer.
Appointment of secretary of state as attorney in fact for service of process, §48-8-65.
Circumstances and events constituting engaging in business, §48-8-65.
Perfection of service of process against, §48-8-65.
Liability of purchasers at retail outside of state, §48-8-30.
Notice.
Bond by chronically delinquent or defaulting dealers, §48-8-57.
Failure to file or filing false or fraudulent returns.
Appearance before state revenue commissioner, §48-8-55.
Joint county and municipal sales and use tax.
Existence of qualified municipality, §48-8-89.1.
Imposition of tax, §48-8-85.
Referendum election to decide discontinuing imposition.
Publication of notice, §48-8-92.
Referendum election to decide imposition of tax.
Publication of notice, §48-8-85.
Persons holding credits of or owing debts to delinquent dealers, §48-8-47.
Violations, §48-8-48.
Revocation or suspension of certificate of registration, §48-8-62.
Sale at public auction of securities for collection of taxes due, §48-8-57.
Special county one percent sales and use tax.
Election on question of imposition, §48-8-111.
Election superintendent, §48-8-111.
Water and sewer projects and costs.
Resolution of municipal governing authority, §48-8-201.

SALES AND USE TAXES —Cont'd
Nursing homes.
Exemption of nonprofit licensed nursing home, §48-8-3.
Off-premises food sales.
Exemptions, §48-8-3.
Orphan homes.
Exemptions, §48-8-3.
Other provisions of article.
Violations by dealers, §48-8-11.
Over-collected sales or use tax, §48-8-72.
Overhead materials.
Government contractors, §48-8-3.
Oxygen.
Exemptions, §48-8-3.
Payment of tax.
Advertising by dealer of assumption of payment, §48-8-36.
Violations, §48-8-37.
Cash basis of accounting, §48-8-45.
Compensation of dealers for reporting and paying tax, §48-8-50.
Contractors furnishing tangible personal property and services, §48-8-63.
Credit for tax when like tax paid in another state, §48-8-42.
Delinquent dealers.
Notice to persons holding credits of or owing debts to, §48-8-47.
Violations, §48-8-48.
Direct pay permit program, §48-8-49.1.
Estimated tax liability.
Failure to pay tax, §48-8-51.
Failure to make payment in full.
Penalties in addition to other penalties, §48-8-66.
Furnisher of machinery, §48-8-63.
Importing dealers, §48-8-61.
Invoices not reflecting true or actual cost price, §48-8-52.
Joint county and municipal tax.
Credit of tax paid by purchaser in another tax jurisdiction, §48-8-90.
Marketplace facilitators and sellers, §48-8-30.
Return of property sold to dealer by purchaser.
Credit for tax payments, §48-8-58.
Sale of or quitting business, §48-8-46.
Violations, §48-8-48.
Special county one percent tax.
Credit for tax paid in another jurisdiction, §48-8-116.

SALES AND USE TAXES —Cont'd
Payment of tax —Cont'd
Unidentifiable sale and use tax proceeds.
Distribution, §48-8-67.
Unpaid tax.
Period of delinquency of unpaid taxes, §48-8-56.
Used articles taken as credit on sale of new and used articles, §48-8-44.
Penalties.
Failure to file return or make payment in full, §48-8-66.
Frivolous refund claim, §48-2-35.1.
Personal property.
Tangible personal property.
Intent of article with respect to taxation, §48-8-1.
Pharmaceuticals distributed without cost.
Exemptions.
Ratification of executive order, §48-8-18.
Pharmacists and pharmacies.
Exemption of prescription drugs, §48-8-3.
Platinum bullion.
Exemptions, §48-8-3.
Pleadings.
Action raising issue of taxability.
Copy of initial pleading to attorney general, §48-8-41.
Political subdivisions.
Ceiling on local taxes, §48-8-6.
Coliseum capital outlay projects, special purpose local option sales tax, §§48-8-145 to 48-8-157.
Joint county and municipal tax (LOST).
Generally, §§48-8-80 to 48-8-97.
Sales and services included in article.
Prohibition against imposing tax on, §48-8-6.
Special county one percent tax.
Generally, §§48-8-110 to 48-8-124.
Poultry.
Exemptions.
Agricultural commodities not sold as finished product to ultimate consumer, §48-8-5.
Nonprofit organizations providing poultry diagnostic and disease monitoring services, sales to, §48-8-3.
Nonapplicability of use tax to poultry and poultry products by farmer, §48-8-4.

SALES AND USE TAXES —Cont'd
Prepaid local taxes.
Defined, §48-8-2.
Prepaid state taxes.
Temporary suspension of collection, temporary exemption, §48-8-17.
Temporary suspension of collection as it relates to motor fuels and aviation gasoline.
Ratification of governor's executive order, §48-8-17.
Prescriptions.
Exemption of prescription drugs, §48-8-3.
Presumptions.
Assessment for failure to file or filing false or fraudulent returns, §48-8-55.
Estimated tax upon failure to make return and pay tax, §48-8-51.
Price brackets.
Designation for collection of tax, §48-8-31.
Private colleges and universities.
Exemptions, §48-8-3.
Private schools.
Exemptions, §48-8-3.
Privilege taxes.
Tax levied in addition to privilege taxes, §48-8-30.
Propane and natural gas sold and delivered for residential heating.
Tax relief, time period, §48-8-15.
Property sold returned to dealer by purchaser.
Claim for refund.
Tax credit by retired dealer, §48-8-58.
Credit for taxes imposed with respect to return allowance, §48-8-58.
Credit memoranda, §48-8-58.
Credit to dealer for taxes collected, §48-8-58.
Deduction of return allowance, §48-8-58.
Retired dealers.
Claim for refund of tax credit, §48-8-58.
Return allowance defined, §48-8-58.
Prosthetic devices.
Exemptions, §48-8-3.
Purchases from printed catalogs, §48-8-69.
Qualified consolidated governments.
Coliseum capital outlay projects, special purpose local option sales tax, §§48-8-145 to 48-8-157.

SALES AND USE TAXES —Cont'd
Quitting business.
Final return and payment upon, §48-8-46.
Violation of code section, §48-8-48.
Railroads.
Exemptions, §48-8-3.
Freight and logistics projects.
Dedication of certain proceeds for freight and logistics projects, §48-8-78.
Rate of tax, §48-8-30.
Erroneous classification by state.
Purchaser relieved from liability.
Reliance by seller on, §48-8-75.
Erroneous data, §§48-8-71, 48-8-73.
Failure to collect at new rate.
Immunity from liability, §48-8-68.
Joint county and municipal tax.
Millage rate adjustment for ad valorem taxation of tangible personal property, §48-8-91.
Retail sales price and cost price collectable from dealers, §48-8-32.
Special sales and use tax, §48-8-77.
Statutory effective date, §48-8-74.
Reciprocity.
Credit for tax when like tax paid in another state.
No credit absent reciprocity, §48-8-42.
Records.
Coliseum capital outlay projects, special purpose local option sales tax, §48-8-157.
Dealer's duty to keep, §48-8-52.
Duty of wholesalers and jobbers to keep, §48-8-53.
Failure to keep and allow inspections, §48-8-54.
Failure to keep or allow inspection, §48-8-10.
Projects on which tax proceeds used, §48-8-122.
Refusal by transportation companies to allow examination, §48-8-12.
Referendum.
Joint county and municipal sales and use tax, §48-8-85.
Discontinuing imposition, §48-8-92.
Refunds.
Election for payment of refund over time period, §48-2-35.
Erroneous or illegally assessed payments, §§48-2-35, 48-2-35.1.

SALES AND USE TAXES —Cont'd
Refunds —Cont'd
Expedited refunds, §48-2-35.1.
Frivolous claim for refund, §48-2-35.1.
Local significance, refund claims, §48-2-35.
Purchaser entitled to purchase without paying tax.
Certificate or exemption determination letter not obtained prior to purchase, §48-2-35.1.
Return of property sold to dealer by purchaser.
Claim for refund of tax credit by retired dealer, §48-8-58.
Registration of dealers.
Certificate of registration, §48-8-59.
Engaging in business as seller without certificate, §48-8-60.
Importing dealers, §48-8-61.
Revocation or suspension, §48-8-62.
Religion.
Exemptions, §48-8-3.
Remittance of tax under extension of time for making returns, §48-8-51.
Reports.
Cash and credit sales, §48-8-45.
Projects on which tax proceeds used.
Annual reporting and publication, §48-8-122.
Resale of property purchased from sellers.
Certificate that property purchased for resale, §48-8-38.
Effect of sales from commingled goods when certificate given for portion, §48-8-40.
Effect of use other than retention, demonstration or display, §48-8-39.
Retail sales.
Exemption for specific sales, §48-8-3.
Retail sales price.
Rate collectable from dealers, §48-8-32.
Retired dealers.
Return of property sold to dealer by purchaser.
Claim for refund of tax credit by retired dealer, §48-8-58.
Return of property sold to dealer by purchaser.
Claim for refund of tax credit by retired dealer, §48-8-58.

SALES AND USE TAXES —Cont'd
Return of property sold to dealer by purchaser —Cont'd
Credit for tax payments, §48-8-58.
Credit memoranda, §48-8-58.
Deduction of return allowance, §48-8-58.
Retired dealer.
Claim for refund of tax credit, §48-8-58.
Return allowance defined, §48-8-58.
Returns.
Compensation of dealers for reporting and paying tax, §48-8-50.
Reimbursement deduction, §48-8-50.
Direct pay permit program, §48-8-49.1.
Electronic filing requirements, failure to follow, §48-2-44.1.
Estimated tax liability, §48-8-49.
Failure to make, grossly inaccurate or false or fraudulent returns, §48-8-51.
Extensions, §§48-8-49, 48-8-55.
Failure to file, §48-8-9.
Appearance before state revenue commissioner, §48-8-55.
Penalties in addition to other penalties, §48-8-66.
False or fraudulent returns, §48-8-8.
Appearance before state revenue commissioner, §48-8-55.
Penalties in addition to other penalties, §48-8-66.
Gross proceeds from rentals or leases, §48-8-49.
Gross proceeds of sales and purchases, §48-8-49.
Importing dealers, §48-8-61.
Joint county and municipal tax.
Required information, §48-8-88.
Revised homestead option sales tax, §48-8-109.19.
Sale of or quitting business, §48-8-46.
Violation of code section, §48-8-48.
Special county one percent tax.
Requirements, §48-8-114.
Special district mass transportation sales and use tax.
Contents of return, §48-8-266.
Special district option sales and use tax.
Required information, §48-8-109.35.
Transit special purpose local option sales and use tax, §48-8-269.49.
Unidentifiable sale and use tax proceeds.
Distribution, §48-8-67.

SALES AND USE TAXES —Cont'd
Revised homestead option sales tax, §§48-8-109.15 to 48-8-109.24.
Administration of provisions, §48-8-109.19.
Adoption of resolutions, §48-8-109.18.
Building and construction materials, exemption, §48-8-109.23.
Collection of taxes, §48-8-109.19.
Credit against similar taxes on same property, §48-8-109.20.
Deductions from ad valorem taxes due to application of proceeds, §48-8-109.19.
Disposition of proceeds, §48-8-109.19.
Election on adoption of revised provisions, §48-8-109.16.
Petition to call for election, §48-8-109.18.
Election on discontinuance of tax, §48-8-109.21.
Levy and rate of tax, §48-8-109.17.
Property ordered and delivered outside special district in which tax imposed, §48-8-109.22.
Returns, §48-8-109.19.
Rulemaking to implement provisions, §48-8-109.24.
Short title, §48-8-109.15.
Special districts.
Creation, §48-8-109.17.
Ride-sharing.
Network services.
Fares for vehicles operated under for-hire master license.
Exemptions, §48-8-3.
Rules and regulations.
Coliseum capital outlay projects, special purpose local option sales tax, §48-8-155.
Joint county and municipal sales and use tax, §48-8-95.
Special county one percent sales and use tax, §48-8-119.
Special district option sales and use tax, §48-8-109.40.
Sale at public auction of securities for collection of taxes due, §48-8-57.
Sale of business.
Final return and payment upon, §48-8-46.
Violation of section, §48-8-48.
Schools and education.
Exemption of private elementary and secondary schools, §48-8-3.

SALES AND USE TAXES —Cont'd
Schools and education —Cont'd
Parent-teacher organizations.
Exemptions, §48-8-3.
School lunches.
Exemptions, §48-8-3.
School supplies.
Exemption for specific sales, §48-8-3.
Secretary of state.
Nonresident dealer engaging in business.
Appointment of secretary as attorney in fact for service of process, §48-8-65.
Securities.
Sale at public auction for collection of taxes due, §48-8-57.
Service of process.
Nonresident dealer engaging in business.
Appointment of secretary of state as attorney in fact, §48-8-65.
Perfection of service of process against, §48-8-65.
Sale at public auction of securities for collection of taxes due.
Notice to dealer or depositor by mail or personal service, §48-8-57.
Shoes.
Exemption for specific sales, §48-8-3.
Silver bullion.
Exemptions, §48-8-3.
Software.
Exemptions.
Computer software, §48-8-3.
Streamlined sales and use tax agreement.
Certified automated system, §48-8-77.1.
Special county one percent tax, §§48-8-110 to 48-8-124.
Administration of tax, §48-8-113.
Application of article to consolidated government, §48-8-111.1.
Authorization, §48-8-110.1.
Beverages, §48-8-110.1.
Bond issues.
Election on authority to issue, §48-8-111.
Issuance of general obligation debt, §48-8-121.
Building and construction materials.
Defined, §48-8-118.
Inapplicability of tax to certain sales or uses, §48-8-118.

SALES AND USE TAXES —Cont'd
Special county one percent tax —Cont'd
Collection of tax, §48-8-113.
Compensation of dealers for reporting and paying tax, §48-8-113.
Consolidated government.
Application of article to, §48-8-111.1.
Continuation of tax, §48-8-112.
Credits, §48-8-116.
Deductions.
Dealer's deduction in submitting, reporting and paying, §48-8-113.
Delivery of property ordered outside taxing county, §48-8-117.
Disbursement of proceeds, §48-8-115.
Effective date, §48-8-112.
Elections.
Imposition of tax, §48-8-111.
Modification of projects approved by referendum, §48-8-123.
Enforcement of compliance, §48-8-124.
Food, §48-8-110.1.
General obligation debt.
Election, §48-8-111.
Issuance, §48-8-121.
Imposition of tax.
Authorization, §48-8-110.1.
Consolidated government, §48-8-111.1.
Effective date, §48-8-112.
Effect of other local sales and use taxes, §48-8-120.
Procedure, §48-8-111.
Reimposition, §48-8-112.
Inapplicability of tax.
Building and construction materials, §48-8-118.
Sales of tangible personal property outside taxing county, §48-8-117.
Jurisdiction to enforce provisions, §48-8-124.
Motor fuel sales.
Applicability, §48-8-110.1.
Notes.
Election on authority to issue general obligation debt, §48-8-111.
Issuance of general obligation debt, §48-8-121.
Notice of election on imposition of tax.
Publication, §48-8-111.
Ordinance.
Consolidated government, §48-8-111.1.

SALES AND USE TAXES —Cont'd
Special county one percent tax —Cont'd
Ordinance —Cont'd
Imposition of tax, §48-8-111.
Other local sales and use taxes.
Effect on imposition, §48-8-120.
Payment of tax.
Credit for tax paid in another jurisdiction, §48-8-116.
Percentage paid into general fund, §48-8-115.
Procedure for imposition, §48-8-111.
Promissory notes.
Election on authority to issue general obligation debt, §48-8-111.
Issuance of general obligation debt, §48-8-121.
Property ordered by and delivered outside taxing county, §48-8-117.
Publication.
Notice of election on imposition of tax, §48-8-111.
Reimposition of tax, §48-8-112.
Resolution imposing tax, §48-8-111.
Consolidated government, §48-8-111.1.
Returns.
Requirements, §48-8-114.
Rules and regulations, §48-8-119.
Sales of tangible personal property outside taxing county.
Inapplicability of tax to, §48-8-117.
Tax paid in another jurisdiction.
Credits, §48-8-116.
Termination of tax, §48-8-112.
Use of proceeds, §48-8-121.
Special district mass transportation sales and use tax, §§48-8-260 to 48-8-269.6.
Administration, §48-8-265.
Bond issues.
General obligation debt.
Ballot to include question, §48-8-263.
Determining that net proceeds sufficient to meet obligation, §48-8-269.5.
Calculating taxes due.
Credits.
Other taxes paid, §48-8-269.1.
Collection, §48-8-265.
Rulemaking to implement provisions, §48-8-269.3.

SALES AND USE TAXES —Cont'd
Special district mass transportation sales and use tax —Cont'd
County-based districts.
Creation of special districts, §48-8-261.
Creation of special districts, §48-8-261.
Credits.
Other taxes paid, §48-8-269.1.
Definitions, §48-8-260.
Delivery outside of geographic area.
Restriction from imposing tax on deliveries outside geographic area, §48-8-269.2.
Effect of tax on other funding or budgeting, §48-8-268.
Excess proceeds.
Use, §48-8-269.5.
Exemptions from tax, §48-8-269.
Funding and budgeting.
Tax's impact on other funding and budgeting considerations, §48-8-268.
General obligation debt.
Ballot to include question, §48-8-263.
Determining that net proceeds sufficient to meet obligation, §48-8-269.5.
Geographic reach of tax.
Restriction from imposing to deliveries outside geographic area, §48-8-269.2.
Impact of tax on other taxes, §48-8-269.4.
Imposition by special districts of tax, §48-8-261.
Timing of tax, §48-8-264.
Intergovernmental agreements.
Adjustment of tax rate based on population of absent municipalities, §48-8-262.
Contents, §48-8-262.
Defined, §48-8-260.
Execution, §48-8-262.
Metropolitan county special districts.
Levy of tax.
Disbursement of proceeds pursuant to intergovernmental agreement, §48-8-269.13.
General obligation debt, agreement provisions regarding, §48-8-269.20.

SALES AND USE TAXES —Cont'd
Special district mass transportation sales and use tax —Cont'd
Intergovernmental agreements —Cont'd
Proceeds.
Disbursement according to terms of agreement, §48-8-267.
Mass transportation.
Defined, §48-8-260.
Meetings to discuss projects, §48-8-262.
Metropolitan county special districts, §§48-8-269.7 to 48-8-269.21.
Administration of tax, §48-8-269.11.
Disbursement of proceeds to cover costs of administration, §48-8-269.13.
Rulemaking to implement provisions, §48-8-269.18.
Allocation or balancing of proceeds with state or federal funds, §48-8-269.14.
Applicability of provisions, §48-8-269.7.
Collection of tax, §48-8-269.11.
Rulemaking to implement provisions, §48-8-269.18.
Credit for taxes paid in another tax jurisdiction, §48-8-269.16.
Disbursement of proceeds, §48-8-269.13.
Exemptions from tax, §48-8-269.15.
Federal funds.
Allocation or balancing of proceeds with state or federal funds, §48-8-269.14.
General obligation debt, restrictions on incurring, §48-8-269.20.
Intergovernmental agreement.
Disbursement of proceeds pursuant to intergovernmental agreement, §48-8-269.13.
General obligation debt, agreement provisions regarding, §48-8-269.20.
Levy of tax, §48-8-269.7.
Additional tax to other local sales and use taxes, §48-8-269.19.
Costs and expenditures for purposes for which tax imposed, §48-8-269.21.
Credit for taxes paid in another tax jurisdiction, §48-8-269.16.

SALES AND USE TAXES —Cont'd
Special district mass transportation sales and use tax —Cont'd
Metropolitan county special districts —Cont'd
Levy of tax —Cont'd
Duration, §48-8-269.10.
Exemptions from tax, §48-8-269.15.
Geographic limits to imposition of tax, §48-8-269.17.
Intergovernmental agreement.
Disbursement of proceeds pursuant to intergovernmental agreement, §48-8-269.13.
General obligation debt, agreement provisions regarding, §48-8-269.20.
Items on which tax imposed, §48-8-269.15.
Local sales and use taxes authorized under other provisions.
Additional nature of district tax to other local sales and use taxes, §48-8-269.19.
No more than single tax within district, §48-8-269.10.
Notice to qualified municipalities, §48-8-269.8.
Out of district transactions, geographic limits to imposition, §48-8-269.17.
Part of metropolitan county district outside boundaries of metropolitan municipality special district, imposition of tax within county district, §48-8-269.8.
Procedure, time frame, etc, for imposition, §48-8-269.10.
Proceeds dedicated to transportation purposes, §48-8-269.20.
Referendum, §48-8-269.9.
Remission of taxes, contents, §48-8-269.12.
Reports.
Costs and expenditures for purposes for which tax imposed, §48-8-269.21.
Resolution, §48-8-269.8.
General obligation debt, agreement provisions regarding, §48-8-269.20.

SALES AND USE TAXES —Cont'd
Special district mass transportation sales and use tax —Cont'd
Metropolitan county special districts —Cont'd
Levy of tax —Cont'd
Returns, contents, §48-8-269.12.
Rulemaking to implement provisions, §48-8-269.18.
State funds.
Allocation or balancing of proceeds with state or federal funds, §48-8-269.14.
Local sales and use taxes authorized under other provisions.
Additional nature of district tax to other local sales and use taxes, §48-8-269.19.
Other jurisdictions.
Credit for taxes paid in another tax jurisdiction, §48-8-269.16.
Proceeds dedicated to transportation purposes, §48-8-269.20.
Metropolitan municipality special districts, §§48-8-269.22 to 48-8-269.36.
Additional nature of district taxes to other local sales and use taxes, §48-8-269.34.
Administration of tax, §48-8-269.26.
Disbursement of proceeds, §48-8-269.28.
Rulemaking to implement provisions, §48-8-269.33.
Allocation or balancing of proceeds with state and federal funds, §48-8-269.29.
Applicability of provisions, §48-8-269.22.
Collection of tax, §48-8-269.26.
Rulemaking to implement provisions, §48-8-269.33.
Credit for taxes paid in other tax jurisdictions, §48-8-269.31.
Dedication of proceeds to transportation purposes, §48-8-269.35.
Disbursement of proceeds, §48-8-269.28.
Exemptions from tax, §48-8-269.30.
Federal funds.
Allocation or balancing of proceeds with state and federal funds, §48-8-269.29.
General obligation debt.
Incurring, §48-8-269.35.

SALES AND USE TAXES —Cont'd
Special district mass transportation sales and use tax —Cont'd
Metropolitan municipality special districts —Cont'd
Geographic limits to tax, §48-8-269.32.
Items on which tax imposed, §48-8-269.30.
Levy of tax, §48-8-269.22.
Duration of tax, §48-8-269.25.
Geographic limits to tax, §48-8-269.32.
Procedures, timing, etc, for imposition of tax, §48-8-269.25.
Referendum, §48-8-269.25.
Resolution, §48-8-269.23.
General obligation debt, provisions regarding, §48-8-269.35.
Transportation purposes to be funded by tax.
Costs and expenditures of transportation purposes for which tax imposed, reporting, §48-8-269.36.
Resolution to include, §48-8-269.23.
Local sales and use taxes.
Additional nature of district taxes, §48-8-269.34.
Other jurisdictions.
Credit for taxes paid in other tax jurisdictions, §48-8-269.31.
Remission of taxes collected, §48-8-269.27.
Reports.
Costs and expenditures of transportation purposes for which tax imposed, §48-8-269.36.
Returns.
Remission of taxes collected, §48-8-269.27.
Rulemaking to implement provisions, §48-8-269.33.
State funds.
Allocation or balancing of proceeds with state and federal funds, §48-8-269.29.
Multiple taxes imposed within special district.
Combined rate limitation, §48-8-264.
Notice of desire to levy tax.
Qualified municipalities to be notified, §48-8-262.

SALES AND USE TAXES —Cont'd
Special district mass transportation sales and use tax —Cont'd
Other taxes.
Credits for other taxes paid, §48-8-269.1.
Impact of tax on other taxes, §48-8-269.4.
Proceeds.
Debt payments, §48-8-269.5.
Disbursement, §48-8-267.
Excess proceeds.
Use, §48-8-269.5.
Report on use of proceeds and costs of transportation purposes undertaken, §48-8-269.6.
Transportation purposes, exclusive use of proceeds, §48-8-269.5.
Qualified municipalities.
Defined, §48-8-260.
Rate of tax, §48-8-264.
Records, §48-8-269.5.
Referendum on imposition of tax, §48-8-262.
Form of ballot, §48-8-263.
Timing, §48-8-264.1.
Report on use of proceeds and costs of transportation purposes undertaken, §48-8-269.6.
Resubmission of referendum to voters, §48-8-263.
Returns.
Contents, §48-8-266.
Rulemaking to implement provisions, §48-8-269.3.
Timing.
Imposition of tax, §48-8-264.
Referendum on imposition of tax, §48-8-264.1.
Transit special purpose local option sales and use tax, §§48-8-269.40 to 48-8-269.58.
Transportation purposes.
Defined, §48-8-260.
Exclusive use of proceeds, §48-8-269.5.
Report on use of proceeds and costs of transportation purposes undertaken, §48-8-269.6.
Special district option sales and use tax (contingently effective 1/1/2025), §§48-8-109.30 to 48-8-109.42.
Administration of tax, §48-8-109.34.

SALES AND USE TAXES —Cont'd
Special district option sales and use tax (contingently effective 1/1/2025) —Cont'd
Applicability of tax imposed.
Building and construction materials for pending contract, §48-8-109.39.
Delivery of property outside boundaries of district, §48-8-109.38.
Effect on other taxes, §48-8-109.41.
Motor fuels, §48-8-109.31.
Application of money to state tax liabilities of taxpayer, §48-8-109.34.
Boundaries of special districts, §48-8-109.30.
Building and construction materials.
Applicability of tax imposed on pending contract, §48-8-109.39.
Collection of tax, §48-8-109.34.
Conditions for referendum, §48-8-109.31.
Creation of special districts, §48-8-109.30.
Credit of tax paid in other tax jurisdiction, §48-8-109.37.
Delivery of property outside boundaries of district.
Applicability of tax, §48-8-109.38.
Effect on other taxes, §48-8-109.41.
Election on referendum, procedures, §48-8-109.32.
Imposition of tax.
After approval, when imposed, §48-8-109.33.
Effective date of tax, §48-8-109.33.
Effect on other taxes, §48-8-109.41.
Limited authority, purpose, and period of time, §48-8-109.31.
Maximum period of time, §48-8-109.32.
Reimposition, §48-8-109.33.
Insufficiency of tax paid in other tax jurisdiction, taxpayer to pay difference, §48-8-109.37.
Issuance of call for election, §48-8-109.32.
Motor fuels.
Applicability of tax imposed, §48-8-109.31.
Noncompliance by political subdivision, effect, §48-8-109.42.
Proceeds.
Disbursement, §48-8-109.36.

SALES AND USE TAXES —Cont'd
Special district option sales and use tax (contingently effective 1/1/2025) —Cont'd
Proceeds —Cont'd
Distribution to county, §48-8-109.36.
Restrictions on use, §48-8-109.42.
Property tax bill of taxpayer to state amount of reduction, §48-8-109.42.
Reimbursement of dealers, §48-8-109.34.
Returns.
Required information, §48-8-109.35.
Rulemaking to implement provisions, §48-8-109.40.
Situs of sale, §48-8-109.35.
Territory of special districts, §48-8-109.30.
Special district transportation sales and use tax, §§48-8-240 to 48-8-256.
Administration of tax, §48-8-246.
Allocation or balancing against state and federal funds, §48-8-256.
Authority to promulgate rules and regulations, §48-8-255.
Cessation of tax, §48-8-245.
Citizens review panel, §48-8-251.
Membership, §48-8-251.
Vacancy, §48-8-251.
Collection of tax, §§48-8-245, 48-8-246.
Construction of provisions, §48-8-256.
Creation, §48-8-241.
Definitions, §48-8-242.
Department of transportation projects, §48-8-249.
Distribution of proceeds, §48-8-248.
Exemptions from tax, §48-8-241.
Imposition of tax, §§48-8-241, 48-8-245.
Investment list of projects and programs, §§48-8-243, 48-8-249.
Legislative findings, §48-8-240.
Local of establishment tax collected, amount of sales, amount of taxes collected.
Required on tax return remitting taxes, §48-8-247.
Mass transportation.
Special district mass transportation sales and use tax.
Generally, §§48-8-260 to 48-8-269.6.
Metropolitan county special districts, §§48-8-269.7 to 48-8-269.21.

SALES AND USE TAXES —Cont'd
Special district transportation sales and use tax —Cont'd
Mass transportation —Cont'd
Special district mass transportation sales and use tax —Cont'd
Metropolitan municipality special districts, §§48-8-269.22 to 48-8-269.36.
Proceeds from tax, §§48-8-248, 48-8-249.
Proof of taxes paid in another state, §48-8-252.
Public policy, §48-8-240.
Remittance of taxes, §48-8-247.
Reports.
Citizens review panel, §48-8-251.
Investment list projects and programs, §48-8-243.
Website publication of investment list projects, §48-8-250.
Rulemaking authority, §48-8-255.
Special district gridlock, declaration of, §48-8-243.
Special election, §§48-8-240 to 48-8-243.
Ballots, §48-8-244.
Conduct of election, §48-8-244.
Effect of levy of tax, §48-8-244.1.
Levy of tax, §§48-8-244, 48-8-244.1.
Notice to election superintendents, §48-8-244.
Rejection of levy by voters, §48-8-244.
State revenue commissioner.
Administration of tax, §48-8-246.
Statewide strategic transportation plan, §48-8-243.
Tangible personal property.
Property outside geographical area, §48-8-253.
Taxes paid in another state, §48-8-252.
Tax rate, §48-8-241.
Transit special purpose local option sales and use tax.
Generally, §§48-8-269.40 to 48-8-269.58.
Referendum on tax for transit.
Determination as to whether referendum on transportation tax previously held, §48-8-269.42.
Use of proceeds, §48-8-249.
Website publication of investment list projects.
Reports, §48-8-250.

SALES AND USE TAXES —Cont'd
Special sales and use tax.
Prior to January 1, 2011, §48-8-77.
SPLOST (special purpose local option sales tax), §§48-8-110 to 48-8-124.
Sports.
Major sporting events.
Exemptions for ticket sales to certain nonrecurring events, §48-8-3.
Statutory effective date.
Rate of tax, §48-8-74.
Streamlined sales and use tax agreement, §§48-8-160 to 48-8-167.
Agent liable for sales and use taxes, §48-8-166.
Authority to enter into compact, §48-8-162.
Certified service provider as agent of seller, §48-8-166.
Citation of act, §48-8-160.
Computer software.
Certified automated system, §48-8-77.1.
Conflicts of law, §48-8-163.
Construction with other laws, §§48-8-163, 48-8-165.
Definitions, §48-8-161.
Goals and objectives, §§48-8-162, 48-8-164.
Public policy, §48-8-164.
Registration by purchasers, §48-8-76.
Right of action by individuals, prohibited, §48-8-165.
Tax governing board.
Appointment, §48-8-167.
Legislative members, §48-8-167.
Taxpayer contest of action under compact, §48-8-165.
Terms of the agreement, §48-8-76.
Title of act, §48-8-160.
Transaction not processed by certified service provider, §48-8-166.
Underpayments, liability to state for, §48-8-166.
Subcontractors.
Contractors furnishing tangible personal property and services.
Withholding by general or prime contractor of payments due subcontractors, §48-8-63.
Take-out food.
Exemptions, §48-8-3.

SALES AND USE TAXES —Cont'd
Tangible personal property and services.
Intent of article with respect to taxation of, §48-8-1.
Sale of tangible personal property outside taxing county.
Inapplicability of tax to, §48-8-117.
Tax evasion.
Filing false or fraudulent returns by dealers, §48-8-8.
Tax executions.
Issuance of fi. fa. for collection of delinquent taxes, §48-8-56.
Taxicabs.
Fares for vehicles operated under for-hire master license.
Exemptions, §48-8-3.
Telecommunications manufacturing facilities.
Exemption for sale of machinery and equipment used for improving air quality, §48-8-3.
Telephone service charges.
Gross sales defined, §48-8-2.
Time.
Assessment, §48-8-64.
Extension for returns, §§48-8-49, 48-8-51.
Joint county and municipal sales and use tax.
Referendum elections, §48-8-85.
Resolution by governing authorities imposing tax, §48-8-84.
Adoption, §48-8-86.
Tokens.
Use prohibited in collecting tax, §48-8-31.
Trade-in credit provision.
Payment of tax when used articles taken as credit on sale of new and used articles, §48-8-44.
Transit special purpose local option sales and use tax (Transit SPLOST), §§48-8-269.40 to 48-8-269.58.
Additional nature of tax, §48-8-269.56.
Administration of tax by commissioner, §48-8-269.48.
Authority.
Defined, §48-8-269.40.
Bond issues.
Counties not within nonattainment areas, procedures to impose tax, §48-8-269.44.

SALES AND USE TAXES —Cont'd
Transit special purpose local option sales and use tax (Transit SPLOST) —Cont'd
Bond issues —Cont'd
Counties within nonattainment areas, procedures to impose tax, §48-8-269.46.
Validation of general obligation debt, §48-8-269.57.
Collection of tax, §48-8-269.48.
Constitutional authority, §48-8-269.41.
Counties.
Defined, §48-8-269.40.
Counties not within nonattainment areas, procedures to impose tax.
Ballot language, §48-8-269.44.
Bond issues.
Constitutional authority, §48-8-269.44.
Statutory provisions applicable to general obligation debt, §48-8-269.44.
Conduct of election, §48-8-269.44.
Notice of referendum, §48-8-269.43.
Projects to include in referendum.
Meeting among counties and qualified municipalities to discuss, §48-8-269.43.
Resubmission to voters upon failure of measure, §48-8-269.44.
Counties within nonattainment areas, procedures to impose tax.
Bond issues.
Constitutional authority, §48-8-269.46.
Statutory provisions applicable to general obligation debt, §48-8-269.46.
Meeting to discuss projects included within referendum, §48-8-269.45.
Notice to qualified municipalities within special district, §48-8-269.45.
Referendum.
Ballot form, §48-8-269.46.
Notice of intent, §48-8-269.45.
Resolution for referendum, §48-8-269.45.
Credits against tax.
Taxes paid for same property in other taxing jurisdiction, §48-8-269.53.
Dealers.
Defined, §48-8-269.40.

SALES AND USE TAXES —Cont'd
Transit special purpose local option sales and use tax (Transit SPLOST) —Cont'd
Definitions, §48-8-269.40.
Disbursement of proceeds, §48-8-269.50.
Allocation or balancing of state and federal funds not to affect disbursement, §48-8-269.51.
Excess proceeds, §48-8-269.57.
Exclusive use of proceeds for transit projects.
Enforcement, §48-8-269.57.
Effect of other taxes, §48-8-269.56.
Effect on other taxes, §48-8-269.56.
Exemptions from local tax.
Additional exemptions, §48-8-269.52.
Applicability of state exemptions, §48-8-269.52.
Imposition of tax, §§48-8-269.47 to 48-8-269.58.
Intergovernmental agreements.
Defined, §48-8-269.40.
Nonattainment areas.
Defined, §48-8-269.40.
Outside of geographic area, purchases or deliveries.
No tax imposed, §48-8-269.54.
Proceeds of tax.
Disbursement of proceeds, §48-8-269.50.
Allocation or balancing of state and federal funds not to affect disbursement, §48-8-269.51.
Exclusive use of proceeds for transit projects.
Enforcement, §48-8-269.57.
Excess proceeds, §48-8-269.57.
Purchase and delivery outside of geographic area.
No tax imposed, §48-8-269.54.
Qualified municipalities.
Defined, §48-8-269.40.
Rate of tax, §48-8-269.47.
Referendum on tax.
Determination as to whether referendum on transportation tax previously held, §48-8-269.42.
Regional transit plan.
Defined, §48-8-269.40.
Reimposition of tax, §48-8-269.47.
Reports to public.
Newspaper reports to public, §48-8-269.58.

SALES AND USE TAXES —Cont'd
Transit special purpose local option sales and use tax (Transit SPLOST) —Cont'd
Returns, §48-8-269.49.
Rulemaking to implement provisions, §48-8-269.55.
Special districts created, §48-8-269.41.
Termination of tax, §48-8-269.47.
Time for imposition of tax, §48-8-269.47.
Transit defined, §48-8-269.40.
Transit projects.
Defined, §48-8-269.40.
Transportation.
Mass transportation.
Special district mass transportation sales and use tax.
Generally, §§48-8-260 to 48-8-269.6.
Metropolitan county special districts, §§48-8-269.7 to 48-8-269.21.
Metropolitan municipality special districts, §§48-8-269.22 to 48-8-269.36.
Transit special purpose local option sales and use tax, §§48-8-269.40 to 48-8-269.58.
Special district transportation sales and use tax, §§48-8-240 to 48-8-256.
Transit special purpose local option sales and use tax, §§48-8-269.40 to 48-8-269.58.
Transportation companies.
Refusal to allow examination of books, records and other documents, §48-8-12.
TSPLOST.
Special district transportation sales and use tax, §§48-8-240 to 48-8-256.
Unidentifiable sales and use tax proceeds.
Distribution, §48-8-67.
United States.
Exemptions, §48-8-3.
Universities and colleges.
Exemption of private colleges and universities, §48-8-3.
University system of Georgia.
Exemptions, §48-8-3.
Urban transit systems.
Exemptions, §48-8-3.

SALES AND USE TAXES —Cont'd
Use, consumption, distribution or storage.
Equivalent to sale at retail, §48-8-34.
Used articles taken as credit on sale of new and used articles.
Payment of tax, §48-8-44.
Vehicles for hire.
Fares for vehicles operated under for-hire master license.
Exemptions, §48-8-3.
Vendors.
Failure, neglect or refusal of nongovernmental vendors to collect.
State contracts with vendors, restrictions on, §48-8-14.
Sales tax certificates.
Release of information by commissioner to designated finance officer or taxing official of local government, §48-2-15.
Venue.
Actions against nonresident dealers engaging in business, §48-8-65.
Veterans.
Exemption of sale of vehicle to service-connected handicapped veteran, §48-8-3.
Videotapes.
Exemption of rental to persons charging admission fee to view, §48-8-3.
Violations of article by dealers.
Failure to furnish return, §48-8-9.
Failure to keep or allow inspection of records, §48-8-10.
False or fraudulent returns, §48-8-8.
Generally, §48-8-7.
Other provisions of article, §48-8-11.
Revocation or suspension of certificate of registration, §48-8-62.
Volunteer health clinics.
Exemptions, §48-8-3.
Water and sewer authorities created by local enactment.
Exemptions for sales to authority, §48-8-3.
Water and sewer projects and costs (MOST), §§48-8-200 to 48-8-212.
Administration of tax, §48-8-204.
Allocation of tax proceeds, §48-8-206.
Audit of tax imposed, §48-8-212.
Authority to make rules, §48-8-210.
Certification of election results, §48-8-203.

SALES AND USE TAXES —Cont'd
Water and sewer projects and costs (MOST) —Cont'd
Cessation of tax, §48-8-203.
Collection of tax, §48-8-204.
Payment of tax in another local jurisdiction, §48-8-207.
Conflict with other taxes, §48-8-211.
Construction material materials.
Criteria for no additional tax on materials, §48-8-209.
Definitions, §48-8-200.
Distribution of tax proceeds, §48-8-206.
Identification of location upon remitting tax return, §48-8-205.
Imposition of tax, §48-8-203.
Intergovernmental agreements for distribution of tax proceeds, §48-8-201.
Motor fuels.
Rate of tax, §48-8-201.
No additional tax on materials.
Criteria, §48-8-209.
No tax imposed.
Products ordered and delivered outside geographic area of municipality, §48-8-208.
Personal property taxes.
Payment of tax in another local jurisdiction, §48-8-207.
Products ordered and delivered outside geographic area of municipality.
No tax imposed, §48-8-208.
Products outside geographical area.
No tax on products, §48-8-207.
Rate of tax deduction, §48-8-204.
Recordkeeping requirements, §48-8-212.
Referendum by voters, approval of, §§48-8-201, 48-8-202.
Resolution of municipal governing authority, §48-8-201.
Retail establishments.
Identification of location upon remitting tax return, §48-8-205.
Rulemaking authority, §48-8-210.
Use of tax proceeds by localities, §48-8-212.
Water pollution.
Exemption of sale of machinery and equipment for use in combating, §48-8-3.
WaterSense products.
Exemptions, §48-8-3.

SALES AND USE TAXES —Cont'd
Water systems.
Conservation equipment manufacture.
Exemptions, §48-8-3.
Exemption of sale of water through water mains, lines or pipes, §48-8-3.
Wheelchairs.
Exemptions, §48-8-3.
Wholesalers.
Duty to keep records, §48-8-53.
Failure to keep and allow inspections, §48-8-54.
Withholding requirements.
Contractors furnishing tangible personal property and services.
Withholding by general or prime contractor of payments due subcontractors, §48-8-63.
ZIP codes.
Nine-digit ZIP code designation, §48-8-70.
Zoological institutions.
Exemptions, §48-8-3.

SALES TAX HOLIDAYS.
Sales and use taxes.
Exemption for specific sales, §48-8-3.

SATURDAYS.
Taxation.
Date for payment or filing on Saturday, §48-2-39.

SAVINGS AND LOAN ASSOCIATIONS.
Business license tax for depository financial institutions.
Local business license tax, §48-6-93.
Defined.
Taxation of depository institutions, §48-6-90.
License tax for depository financial institutions.
Local business license tax, §48-6-93.
Occupation tax on depository financial institutions.
Special state occupation tax, §48-6-95.
Taxation.
Depository financial institutions.
Interim special tax limitation for, §48-6-98.
Special tax occupation tax, §48-6-95.

SCHOOL BUSES.
Motor fuel taxes.
Exemptions.
Fuel paid for by school system, §48-9-3.

SCHOOLS AND EDUCATION.
Back-to-school purchases.
Sales tax exemption, §48-8-3.
Educational purposes, §§48-8-140 to 48-8-144.
Income taxes.
Credit for qualified education donations, §48-7-29.21 (Repealed 12/31/2029).
Credit for qualified education expenses, §48-7-29.16.
Independent school systems.
Municipal corporations.
Levy and collection of school taxes, §48-5-405.
Local boards of education.
Sales tax for educational purposes, §§48-8-140 to 48-8-144.
Authority for, §48-8-140.
Bonds, issuance, §48-8-142.
Imposition of tax, §48-8-141.
Legislative intent, §48-8-140.
Resolution to impose tax, §48-8-142.
Motor vehicle ad valorem taxation.
Exemption of driver educational motor vehicles, §48-5-470.
Exemption of vehicles used for transporting handicapped or disabled students, §48-5-470.1.
Municipal corporations.
Independent school systems.
Levy and collection of school taxes, §48-5-405.
Property taxes.
General provisions, §§48-5-400 to 48-5-405.
Sales and use taxes.
Back-to-school purchases, exemption, §48-8-3.
Educational purposes, §§48-8-140 to 48-8-144.
Exemptions.
Noncommercial written materials or mailings of 501(c)(3) organizations, §48-8-3.
Private elementary and secondary schools, §48-8-3.
School lunches.
Exemption, §48-8-3.
School districts.
Land banks, school district participation, §48-4-103.
Extinguishment of prior encumbrances, including taxes owed to school district, §48-4-112.

SCHOOLS AND EDUCATION —Cont'd
School districts —Cont'd
Sales under tax executions.
Land banks, school district participation, §48-4-103.
Taxation.
Sales tax for educational purposes, §§48-8-140 to 48-8-144.
School taxes generally, §§48-5-400 to 48-5-405.

SCHOOL SUPPLIES.
Sales and use taxes.
Exemption for specific sales, §48-8-3.

SCHOOL TAXES.
Amount of tax levied and collected, §48-5-400.
Assessments.
Equalization of assessments.
General provisions, §§48-5-260 to 48-5-275.
Public utility property subject to school tax, §48-5-402.
Collection.
Municipalities for independent school systems, §48-5-405.
Public utility property.
Subject to school tax, §48-5-402.
Tax commissioners or tax collectors, §48-5-404.
Contesting taxability of property.
Public utility property subject to school tax, §48-5-402.
County boards of education.
Recommendation as to school tax rate, §48-5-401.
County tax collectors.
Collection of taxes, §48-5-404.
County tax commissioners.
Collection of taxes, §48-5-404.
Definitions.
Prepayment by developer, §48-5-31.
Developers.
Prepayment, §48-5-31.
Equalization of assessments.
Equalized adjusted school property tax digest, §48-5-274.
General provisions, §§48-5-260 to 48-5-275.
Exemptions.
Exemptions from property taxes generally, §§48-5-40 to 48-5-56.

SCHOOL TAXES —Cont'd
Fair market value.
Public utility property subject to school tax.
Returns of fair market value of property, §48-5-402.
Homestead exemptions.
Exemptions from property taxes generally, §§48-5-40 to 48-5-56.
Homestead tax deferral for individuals 62 or older, §§48-5-70 to 48-5-84.
Independent school systems.
Levy and collection of tax by municipality, §48-5-405.
Industrial projects.
Prepayment by developer, §48-5-31.
Municipal corporations.
Levy and collection of tax for independent school system, §48-5-405.
Payment of taxes.
Developers.
Prepayment, §48-5-31.
Powers of county governing authorities to levy and collect, §48-5-400.
Property taxes generally, §§48-5-1 to 48-5-56.
Public utilities.
Property in school districts subject to school tax, §48-5-402.
Returns of fair market value of property, §48-5-402.
Property subject to school tax.
Contesting taxability of property, §48-5-402.
Railroad equipment companies.
Collection of taxes due, §48-5-402.
Rate.
Annual recommendation by county boards of education to governing authority, §48-5-401.
Sales tax for educational purposes, §§48-8-140 to 48-8-144.
Superior courts.
Contesting taxability of property.
Public utility property subject to school tax, §48-5-402.
Tax digest.
Equalized adjusted school property tax digest, §48-5-274.

SCHOOL TAXES —Cont'd
Venue.
Contesting taxability of property.
Public utility property subject to school tax, §48-5-402.

SCRAP METAL PROCESSORS.
Occupation tax or regulatory fee levied by local government.
Civil action to enforce, §48-13-9.1.
Example of business subject to, §48-13-9.

SEALS AND SEALED INSTRUMENTS.
State revenue commissioner, §48-2-14.

SEARCHES AND SEIZURES.
Contraband.
Cigar and cigarette sales, §§48-11-9, 48-11-19.
Tax seizures, §48-2-82.
Tax seizures.
Contraband articles, §48-2-82.
Tobacco and alternative nicotine products taxes.
Counterfeit cigarettes.
Seizure and destruction of machinery, §48-11-30.
Powers of special agents and enforcement officers.
Search warrants, §48-11-19.
Seizure of contraband, §48-11-19.
Seizure as contraband of unstamped cigarettes or nontax-paid cigars, §48-11-9.
Seizure of property of delinquent distributor, dealer or taxpayer, §48-11-17.
Vending machines.
Tobacco and alternative nicotine products taxes.
Seizure of machines where unstamped cigarettes dispensed, §48-11-9.

SECRETARY OF STATE.
Contractors.
Nonresident contractors.
Appointment as agent for service of process, §48-13-35.
Record book of docketed actions kept by secretary, §48-13-36.
Motor carriers' road tax.
Agent of nonresident motor carriers for service of process or notice, §48-9-42.

SECRETARY OF STATE —Cont'd
Nonresident contractors.
Agent for service of process, §48-13-35.
Record book of docketed actions kept by secretary, §48-13-36.
Notice.
Motor carriers' road tax.
Agent of nonresident motor carriers, §48-9-42.
Sales and use taxes.
Nonresident dealer engaging in business.
Appointment of secretary as attorney in fact for service of process, §48-8-65.
Service of process.
Motor carriers' road tax.
Agent of nonresident motor carriers, §48-9-42.
Nonresident contractors.
Appointment as agent for service, §48-13-35.
Sales and use taxes.
Nonresident dealers engaging in business.
Appointment of secretary as attorney in fact for service, §48-8-65.
Tax executions.
Relieved from mailing papers to respondent, §48-3-18.

SECURITIES.
Sales and use taxes.
Sale at public auction for collection of taxes due, §48-8-57.

SEMINARIES.
Property tax exemption, §48-5-41.

SENIOR CITIZENS.
Homestead tax deferral for individuals 62 or older.
General provisions, §§48-5-70 to 48-5-84.
Property taxes.
Homestead tax deferral for individuals 62 or older, §§48-5-70 to 48-5-84.

SENTENCING.
Tobacco and alternative nicotine products taxes.
Counterfeit cigarettes.
Habitual sale or possession of contraband, §48-11-30.
Transportation of unstamped cigarettes and nontax-paid cigars, §48-11-23.

SERVICE OF PROCESS.
Contractors.
Nonresident contractors.
Appointment of secretary of state as agent for service, §48-13-35.
Service and return of summons, §48-13-36.
County property taxes.
Examination of county tax digest.
Petition for refund of taxes illegally collected or paid (contingently effective 1/1/2026), §48-5-342.
Service of notice of appeal, §48-5-311.
Service of papers, §48-5-307.
Energy, excise tax on sale or use of.
County meeting with and notice to municipalities within special district, §48-13-113.
Foreclosures.
Sales under tax executions.
Notice, §48-4-46.
Garnishment.
Municipal property taxes.
Issuance and service of summons of garnishment, §48-5-360.
Motor carriers' road tax.
Powers of department of public safety in administering and enforcing article, §48-9-43.
Secretary of state as agent of nonresident motor carriers, §48-9-42.
Municipal property taxes.
Issuance and service of summons of garnishment, §48-5-360.
Nonresident contractors.
Appointment of secretary of state as agent for service, §48-13-35.
Service and return of summons, §48-13-36.
Nonresidents.
Contractors, §§48-13-35, 48-13-36.
Motor carriers road tax.
Secretary of state as agent of nonresident motor carriers, §48-9-42.
Sales and use taxes.
Nonresident dealer engaging in business.
Appointment of secretary of state as attorney in fact for service, §48-8-65.
Perfection of service of process against, §48-8-65.

SERVICE OF PROCESS —Cont'd
Nonresidents —Cont'd
Tobacco and alternative nicotine products taxes.
Service on agent of nonresident distributors, §48-11-5.
Property taxes.
County boards of tax assessors.
Service of papers, §48-5-307.
County property tax appeal, service of notice, §48-5-311.
Sales and use taxes.
Nonresident dealer engaging in business.
Appointment of secretary of state as attorney in fact, §48-8-65.
Perfection of service of process against, §48-8-65.
Sale at public auction of securities for collection of taxes due.
Notice to dealer or depositor by mail or personal service, §48-8-57.
Secretary of state.
Motor carriers' road tax.
Agent of nonresident motor carriers, §48-9-42.
Nonresident contractors.
Appointment as agent for service, §48-13-35.
Sales and use taxes.
Nonresident dealers engaging in business.
Appointment of secretary as attorney in fact for service, §48-8-65.
Taxation.
Executions.
Petition to reduce execution to judgment, §48-3-13.
Nonresidents, §48-3-14.
Sales under tax executions.
Notice of foreclosure of right to redeem, §48-4-46.
Summons of garnishment, §48-3-12.
Notice of assessment, §48-2-45.
Subpoenas issued by commissioner, §48-2-8.
Summons of garnishment, §48-2-55.
Tobacco and alternative nicotine products taxes.
Nonresident distributors.
Service on agents, §48-11-5.

SETOFFS.
Income taxes.
Refunds for overpayments of withheld taxes, §48-7-112.

SETOFFS —Cont'd
Income taxes —Cont'd
Setoff debt collection.
General provisions, §§48-7-160 to 48-7-170.
Taxation.
Federal refund claims against tax liability to state.
Fees charged to taxpayer's account, §48-2-54.1.
Income taxes.
Setoff debt collection.
General provisions, §§48-7-160 to 48-7-170.
Unpaid taxes against refunds, §48-2-35.

SETTLEMENTS.
County property taxes.
Appeals of decisions of county boards of equalization.
Settlement conference, effect of nonparticipation (contingently effective 1/1/2025), §48-5-311.
Taxation, §48-2-60.
State revenue commissioner.
Settlement or compromise of tax assessments.
Authority, procedures, development, record required, offer in compromise, application fee, §48-2-18.1.
State tax executions.
Consideration of offers to compromise by commissioner.
Tolling or suspension of execution, §48-3-42.

SEWAGE SYSTEMS.
Contractors.
Nonresident contractors, §§48-13-30 to 48-13-38.
Municipal property taxes.
Executions for collection of assessments for laying sewers, §48-5-358.
Water and sewer projects and costs tax (MOST), §§48-8-200 to 48-8-212.

SEWER AUTHORITIES.
Sales and use taxes.
Water and sewer authorities created by local enactment.
Exemptions for sales to authority, §48-8-3.

SHERIFFS.
County property taxes.
Delinquent tax officials.
Direction to sheriffs of executions against, §48-5-202.
Periodic payment to proper officials of money collected, §48-5-141.
County tax collectors.
Ex officio sheriffs, §48-5-137.
County tax commissioners.
Ex officio sheriffs, §48-5-137.
Deputies.
Execution sales.
Property tax collections, §48-5-202.
Tax collecting, §48-2-81.
Executions.
Delinquent tax officials.
Direction to sheriffs of executions, §48-5-202.
Execution sales.
Property tax collections, §48-5-202.
Ex officio sheriffs.
Tax collectors and tax commissioners, §48-5-137.
Tax executions.
Obstructing or hindering.
Criminal offense, §48-3-27.
Motor fuel taxes.
Enforcement of article, §48-9-15.
Sale of distributor's property.
Filing of statement, §48-9-13.
Property taxes.
Delinquent tax officials.
Direction to sheriffs of executions against, §48-5-202.
Periodic payment to proper county officials of money collected, §48-5-141.
Taxation.
Collection of taxes and prosecution of violators.
Duties, §48-2-81.
Tax executions.
Delinquent tax officials.
Direction to sheriffs of executions against, §48-5-202.
Notice of levy to owner of security deed or mortgage, §48-3-9.
Obstructing or hindering.
Criminal offense, §48-3-27.

SHIPS AND VESSELS.
Taxation.
Contraband articles used in violations, §§48-2-82 to 48-2-84.

SHOES.
Sales and use taxes.
Exemption for specific sales, §48-8-3.

SHOOTING GALLERIES.
Occupation tax or regulatory fee levied by local government.
Civil action to enforce, §48-13-9.1.
Example of business subject to, §48-13-9.

SHOP GEORGIA.
Sales tax holidays.
Exemption for specific sales, §48-8-3.

SHORT-TERM NOTES SECURED BY REAL ESTATE.
Intangible recording tax.
General provisions, §§48-6-60 to 48-6-77.

SIGNATURES.
Electronic signatures.
Oaths.
Return of taxable property, §48-5-19.
Income taxes.
Returns.
Employers required to deduct and withhold taxes.
Persons authorized to sign, §48-7-107.

SILVER.
Sales and use taxes.
Exemption, §48-8-3.

SISTERS.
County board of tax assessors.
Appointment of relatives, §48-5-290.

SISTERS-IN-LAW.
County board of tax assessors.
Appointment of relatives, §48-5-290.

SITUS.
Exports and imports.
Property taxes.
Foreign goods in transit, §48-5-5.
Property taxes.
Airports.
Property located on airport, §48-5-15.1.
Nonresidents, §48-5-12.
Residents, §48-5-11.

SMALL BUSINESS CORPORATIONS.
Income taxes, deduction for payments to classified subcontractors.
Minority, women, or veteran owned businesses, §48-7-38.

SMOKELESS TOBACCO.
Tobacco and alternative nicotine products taxes, §§48-11-1 to 48-11-30.

SOCCER.
Major sporting events.
Sales tax exemptions for ticket sales to certain nonrecurring events, §48-8-3.

SOCIAL SECURITY.
Income taxes.
Employer social security credits, §48-7-28.2.

SOCIAL SECURITY NUMBERS.
Income tax setoff debt collection.
Identification of debtors, §48-7-165.

SOCIAL WORKERS.
Fees.
Regulatory fees imposed by counties or municipalities.
Civil action to enforce, §48-13-9.1.
Examples of businesses not subject to, §48-13-9.

SOFTWARE.
Sales and use taxes.
Exemptions.
Computer software, §48-8-3.
Streamlined sales and use tax agreement.
Certified automated system, §48-8-77.1.

SOLAR ENERGY.
Income tax credits for clean energy property, §48-7-29.14.
Property taxes.
Bona fide conservation use property.
Solar generation and conversion of energy not considered breach of covenant, §48-5-7.4.
Forest land conservation use property.
Solar generation and conversion of energy not considered breach of covenant, §48-5-7.7.

SPAS.
Occupation tax or regulatory fee levied by local government.
Civil action to enforce, §48-13-9.1.
Example of business subject to, §48-13-9.

SPECIAL COUNTY ONE PERCENT SALES AND USE TAX, §§48-8-110 to 48-8-124.

SPECIAL DISTRICTS.
Excise tax on rental motor vehicles, §48-13-92.
Excise tax on rooms, lodgings and accommodations.
General provisions, §§48-13-50 to 48-13-63.
Joint county and municipal sales and use tax (LOST).
General provisions, §§48-8-80 to 48-8-97.
Sales and use taxes.
Equalized homestead option sales tax.
Special districts for local services and related taxes.
Creation, §48-8-109.3.
Mass transportation.
Joint county and municipal sales and use tax (LOST).
General provisions, §§48-8-80 to 48-8-97.
Special district mass transportation sales and use tax.
Generally, §§48-8-260 to 48-8-269.6.
Metropolitan county special districts, §§48-8-269.7 to 48-8-269.21.
Metropolitan municipality special districts, §§48-8-269.22 to 48-8-269.36.
Special district option sales and use tax (contingently effective 1/1/2025), §§48-8-109.30 to 48-8-109.42.
Special district transportation sales and use tax, §§48-8-240 to 48-8-256.
Transit special purpose local option sales and use tax, §§48-8-269.40 to 48-8-269.58.

SPECIAL FRANCHISES.
Taxation generally, §§48-5-420 to 48-5-425.

SPECIAL FUELS.
Motor fuel tax law.
General provisions, §§48-9-1 to 48-9-19.

SPORTS.
Amateur sports associations.
Income tax exemption, §48-7-25.
Championship events.
Sales tax exemptions for ticket sales to certain nonrecurring events, §48-8-3.

SPORTS —Cont'd
Income taxes.
Exemption of amateur sports.
Associations and professional football leagues, §48-7-25.
Major sporting events.
Sales tax exemptions for ticket sales to certain nonrecurring events, §48-8-3.
Sales and use taxes.
General provisions, §§48-8-1 to 48-8-78.

STABLES.
Occupation tax or regulatory fee levied by local government.
Civil action to enforce, §48-13-9.1.
Example of business subject to, §48-13-9.

STAMPS.
Revenue stamps.
Unlawful activities, §48-2-84.
Tobacco and alternative nicotine products taxes, §§48-11-3 to 48-11-25.
Acceptance of deliveries of unstamped cigarettes, §48-11-8.
Affixation by distributors, §48-11-8.
Authorized use by nonresident distributors, §48-11-5.
Collection and payment of tax through use of, §48-11-3.
Distributors authorized to stamp, §48-11-8.
Fraudulently making, uttering, forging or counterfeiting, §48-11-28.
Purchase on account, §48-11-16.
Redemption at cost price by state revenue commissioner, §48-11-3.
Refund of cost price of stamps, §48-11-15.
Reports of unstamped cigarettes, §48-11-8.
Sale at discount to distributors, §48-11-3.
Sale or exchange by distributor with another distributor prohibited, §48-11-3.
Sale or possession of unstamped cigars and cigarettes, §48-11-8.
Seizure as contraband of unstamped cigars and cigarettes, §48-11-9.
Unstamped cigarettes and cigars.
Penalty for possession, §§48-11-24, 48-11-25.

STAMPS —Cont'd
Tobacco and alternative nicotine products taxes —Cont'd
Unstamped cigarettes and cigars —Cont'd
Selling, §48-11-25.
Transportation, §48-11-22.

STATE AUDITOR.
Property taxes.
Equalization of assessments.
Establishment of equalized adjusted school property tax digest.
Information furnished by auditor, §48-5-274.
Purposes of part to provide for state ratio studies by, §48-5-260.
Sales and use taxes.
Water and sewer projects and costs (MOST).
Audit of tax imposed, §48-8-212.
State board of equalization.
Member of, §48-2-18.

STATE DEPARTMENTS AND AGENCIES.
Income taxes.
Setoff debt collection.
General provisions, §§48-7-160 to 48-7-170.
Setoff debt collection.
Income tax refunds.
General provisions, §§48-7-160 to 48-7-170.

STATE SALES AND USE TAX.
General provisions, §§48-8-1 to 48-8-78.

STATE TAX EXECUTIONS, §§48-3-40 to 48-3-44.

STATE TREASURER.
County property taxes.
Withholding of grants to counties until tax digest submitted to commissioner, §48-5-304.
Highways, roads and streets.
County roads systems.
Payment of funds appropriated to for road construction and maintenance, §48-14-3.
Payment of taxes, penalties, interest, etc., to, §48-2-17.

STATISTICS.
Drugs.
Excise taxes on marijuana and controlled substances, §48-15-10.

STATUTE OF LIMITATIONS.
County and municipal taxes or license fees, §48-5-380.
County tax and license fee collection.
Erroneous collection, §48-5-380.
County tax collectors.
Actions brought on correctness of accounting reports, §48-5-154.
County tax commissioners.
Correctness of accounting reports, §48-5-154.
County taxes and license fees.
Erroneous collection, §48-5-380.
County tax or license fee refund, §48-5-380.
Energy tax.
Assessments.
Time for assessments, §48-13-117.
Refunds.
Time to claim refund, §48-13-117.
Erroneous collection of taxes.
County and municipal taxes and license fees, §48-5-380.
Illegal collection of tax.
County and municipal taxes and license fees, §48-5-380.
Income taxes.
Periods of limitation for assessment of taxes, §48-7-82.
Revocation of exempt status, §48-7-25.
Intangible recording tax.
Actions for refunds of protested amount, §48-6-76.
Municipal corporations.
Erroneous collection of taxes and license fees, §48-5-380.
Municipal tax or license fee refunds, §48-5-380.
Property taxes.
Assessment of taxes, §48-2-49.
Personal property.
Assessment of tax imposed.
Time period, extension, §48-5-300.1.
Refunds from counties and municipalities, §48-5-380.
Real estate transfer tax.
Action for refund upon denial of claim, §48-6-7.
Refund of tax.
County and municipal taxes and license fees, §48-5-380.
Taxation.
Refunds, §48-2-35.

STATUTE OF LIMITATIONS —Cont'd
Tax executions, §§48-3-21 to 48-3-23.1.
Administrative discharge of debts or obligations.
Commissioner to develop standards, §48-3-23.1.
Enforcement of executions for ad valorem taxes of less than $1, §48-3-21.1.
Nulla bona.
Tolling of statute of limitations, §48-3-23.
Real property ad valorem taxes due in amount of less than $5.00, §48-3-21.
State tax executions.
Time for filing, §48-3-42.
Statutory limitations applicable to tax executions, §48-3-22.
Tax refunds.
County and municipal taxes or license fees, §48-5-380.

STEM CELLS.
Research, contributions through income tax returns, §48-7-63.

STOCK BONUS PLANS.
Income taxes.
Exempt organizations, §48-7-25.

STORAGE.
Sales and use taxes.
General provisions, §§48-8-1 to 48-8-78.

STORM-WATER.
County taxes.
Purposes.
Storm sewer projects, §48-5-220.

STREET RAILROADS.
Public utility ad valorem taxation.
General provisions, §§48-5-510 to 48-5-524.

STUDENT SCHOLARSHIP ORGANIZATIONS.
Income taxes.
Credits.
Education, qualified expenses.
Representations by organizations soliciting contributions, §48-7-29.16.

SUBCHAPTER S CORPORATIONS.
Income tax.
Adjustment to federal gross income by shareholders.
Nonrecognition of subchapter S corporations by another state, §48-7-27.
Credits.
Education, qualified expenses.
Shareholders, §48-7-29.16.
Distributions.
Withholding, §48-7-129.
Elections, §48-7-21.

SUBCONTRACTORS.
Income taxes.
Deduction for payments to classified subcontractors, §48-7-38.
Occupation taxes or regulatory fees levied by local governments.
Civil action to enforce, §48-13-9.1.
Example of businesses subject to, §48-13-9.
Sales and use taxes.
Contractors furnishing tangible personal property and services.
Withholding by general or prime contractor of payments due subcontractors, §48-8-63.

SUBPOENAS.
County boards of tax assessors.
Powers to issue, §48-5-300.
Property taxes.
County boards of tax assessors.
Power to issue, §48-5-300.
Tax commissioner.
Judicial and investigative powers of commissioner, §48-2-8.
Tax amnesty program.
Failure to obey subpoena of commissioner.
Criminal penalties, §48-16-12.

SUBROGATION.
County tax collectors.
Liability for failure to collect taxes.
Payment by collectors or sureties, §48-5-157.

SUBROGATION —Cont'd
County tax commissioners.
Failure to collect taxes.
Transfer of executions to commissioner or surety held liable.
Payment of taxes, §48-5-157.

SUBURBAN RAILROADS.
Public utility ad valorem taxation.
General provisions, §§48-5-510 to 48-5-524.

SUMMONS AND PROCESS.
Tax assessors' board, §48-5-300.

SUNDAYS.
Taxation.
Date for payment or filing on Sunday, §48-2-39.

SUPERIOR COURTS.
Aged persons.
Homestead tax deferral for individuals 62 or older.
Appeals of decisions disapproving application, §48-5-74.
Appeals to superior courts.
County tax collectors and tax receivers.
Affidavit of illegality to execution against, §48-5-203.
Property taxes.
Challenge to commissioner's proposed assessment, §48-2-18.
Disapproval of county tax digest, §48-5-349.3.
Homestead tax deferral for individuals 62 or older.
Appeals of decisions disapproving application, §48-5-74.
Public utility ad valorem taxation.
Railroad equipment company assessments, §48-5-519.
Taxation.
Orders, rulings or findings of commissioner, §48-2-59.
Clerks of court.
County property taxes.
County boards of equalization.
Clerk of superior court, oversight authority, §48-5-311.
Deputies.
Real estate transfer tax.
Payment to deputy, §48-6-4.
Real estate transfer tax.
Agent of commissioner for collecting tax, §48-6-5.

SUPERIOR COURTS —Cont'd
Clerks of court —Cont'd
Tax executions.
Actions done by deputies, §48-3-18.
Contractors.
Nonresident contractors.
Actions against, §48-13-36.
County property taxes.
Appeals of decisions of county boards of equalization, §48-5-311.
County boards of tax assessors.
Removal from office, §48-5-295.
Disapproval of county tax digest.
Appeals to, §48-5-349.3.
Execution against person holding county money.
Affidavit of illegality by person against whom execution issues, §48-5-239.
Refunds, §48-5-380.
Temporary collection of taxes pending approval or appeal of disapproval of digest, §48-5-310.
County tax commissioners.
Affidavit of illegality to execution issued against commissioners.
Trial in and deposition by superior court, §48-5-203.
Homestead tax deferral for individuals 62 or older.
Appeals of decisions disapproving application, §48-5-74.
Intangible recording tax.
Actions for refunds of protested amount, §48-6-76.
Jurisdiction.
Property taxes.
Acquisition of jurisdiction in property tax litigation.
Payment and distribution of property taxes at issue, §48-5-29.
Taxation.
Appeals of orders, rulings or findings of commissioner, §48-2-59.
Compelling production of evidence, §48-2-53.
Tobacco and alternative nicotine products taxes.
Criminal violations of chapter, §48-11-21.
Enforcement and collection of penalties, §48-11-24.
Mobile home ad valorem taxation.
Contesting tax assessments, §48-5-450.

SUPERIOR COURTS —Cont'd
Motor vehicle ad valorem taxation.
Contesting tax assessments, §48-5-450.
Municipal property taxes.
Refunds, §48-5-380.
Nonresident contractors.
Actions against, §48-13-36.
Property taxes.
Acquisition of jurisdiction in litigation.
Payment and distribution of property taxes at issue, §48-5-29.
Appeals of decisions of county boards of equalization, §48-5-311.
Challenge to commissioner's proposed assessment.
Appeal filed in superior court of Fulton county, §48-2-18.
County boards of tax assessors.
Removal from office, §48-5-295.
Determination of county entitled to return and payment, §48-5-17.
Disapproval for county tax digest.
Appeals to, §48-5-349.3.
Homestead tax deferral for individuals 62 or older.
Appeals of decisions disapproving application, §48-5-74.
Motor vehicle and mobile home ad valorem taxation.
Contesting tax assessments, §48-5-450.
Refunds, §48-5-380.
School taxes.
Contesting taxability of property.
Public utility property subject to school tax, §48-5-402.
Temporary collection of taxes pending approval or appeal of disapproval of digest, §48-5-310.
Public utility ad valorem taxation.
Railroad equipment companies.
Appeals of assessments, §48-5-519.
Real estate transfer tax.
Action for refund upon denial of claim, §48-6-7.
Clerks.
Agents of state revenue commissioner for collecting tax, §48-6-5.
Fees for collecting tax, §48-6-5.
Sales and use taxes.
Special county one percent tax.
Jurisdiction to enforce provisions, §48-8-124.

SUPERIOR COURTS —Cont'd
School taxes.
Contesting taxability of property.
Public utility property subject to school tax, §48-5-402.
Taxes generally.
Actions for refunds, §48-2-35.
Appeals of orders, rulings or findings of commissioner, §48-2-59.
Compelling production of evidence, §48-2-53.
Tax executions.
Clerks.
Actions done by deputies, §48-3-18.
Petitions to reduce execution to judgment, §§48-3-13 to 48-3-17.
Tobacco and alternative nicotine products taxes.
Enforcement and collection of penalties, §48-11-24.
Jurisdiction over criminal violations of chapter, §48-11-21.

SURVEYS AND SURVEYORS.
Land surveyors.
Regulatory fees imposed by counties or municipalities.
Civil action to enforce, §48-13-9.1.
Examples of businesses not subject to, §48-13-9.

SURVIVING SPOUSES.
Homestead exemption from ad valorem taxation.
Exemption from state, county, municipal and school purposes, §48-5-52.1.
Surviving spouses of peace officers or firefighters killed in the line of duty, §48-5-48.4.
Municipal corporation located in multiple counties.
Exemption of residents, §48-5-44.1.
Property taxes.
Homestead exemption.
Exemption from state, county, municipal and school purposes, §48-5-52.1.
Surviving spouses of peace officers or firefighters killed in the line of duty, §48-5-48.4.
Statewide exemption (contingently effective 1/1/2025), §48-5-44.2.

SYNDICATES.
Corporations.
Person defined, §48-1-2.

SYNDICATES —Cont'd
Partnership.
Defined, §48-7-53.

T

TANKS.
Motor fuel taxes.
Identification cards for trucks, tanks, etc., transporting motor fuels, §48-9-9.

TATTOOING.
Occupation tax or regulatory fee levied by local government.
Civil action to enforce, §48-13-9.1.
Example of business subject to, §48-13-9.

TAX AMNESTY PROGRAM.
Accounts and accounting.
Funds collected under program, §48-16-9.
Property taxes, §48-16A-9.
Applicability of program, §§48-16-4, 48-16-5.
To whom amnesty granted, §48-16-6.
Assessments.
Deficiency assessment after amnesty period ends, §48-16-5.
Effect of assessment, §48-16-5.
Attorneys at law.
Contracts with attorneys to collect delinquent taxes, penalties and interest, §48-16-11.
Audits.
Effect of audit, §48-16-5.
Citation of act.
Short title, §48-16-2.
Collection of delinquent taxes, penalties and interest.
Contracts with debt collection agencies or attorneys, §48-16-11.
Cost of collection fee.
Imposition after amnesty period expires, §48-16-10.
Property tax amnesty program, §48-16A-10.
Criminal law and procedure.
Subpoena or order of commissioner.
Failure to obey, §48-16-12.
Willful failure to make return or false return, §48-16-12.
Debt collection agencies.
Contracts to collect delinquent taxes, penalties and interest, §48-16-11.

TAX AMNESTY PROGRAM —Cont'd
Definitions, §48-16-3.
Property tax amnesty program, §48-16A-3.
Return, §48-16-12.
Disposition of funds collected, §48-16-9.
Duration of program, §48-16-4.
Property taxes, §48-16A-4.
Fees.
Cost of collection fee.
Imposition after amnesty period expires, §48-16-10.
Property tax amnesty program, §48-16A-10.
Felonies.
Willful failure to make return or false return, §48-16-12.
Findings of legislature, §48-16-1.
Property tax amnesty program, §48-16A-1.
Fines.
Subpoena or order of commissioner.
Failure to obey, §48-16-12.
Willful failure to make return or false return, §48-16-12.
Installment agreements, §48-16-5.
Interest, §48-16-7.
Interest.
Collection of delinquent interest.
Contracts with debt collection agencies or attorneys, §48-16-11.
Installment agreements, §48-16-7.
Payment of interest or penalty prior to request for amnesty, §48-16-6.
Property tax amnesty program, §48-16A-7.
Refunded or credited overpayment, §48-16-7.
Refund or credit of taxes or interest paid under program, §48-16-6.
Legislative declaration, §48-16-1.
Property tax amnesty program, §48-16A-1.
Misdemeanors.
Subpoena or order of commissioner.
Failure to obey, §48-16-12.
Notice.
Effect of notices, §48-16-5.
Notice of criminal investigation or pending criminal litigation, §48-16-6.
Prison terms.
Subpoena or order of commissioner.
Failure to obey, §48-16-12.

TAX AMNESTY PROGRAM —Cont'd
Prison terms —Cont'd
Willful failure to make return or false return, §48-16-12.
Property taxes, §§48-16A-1 to 48-16A-10.
Administration of program, §48-16A-4.
Citation of provisions, §48-16A-2.
Collections.
Accounting, §48-16A-9.
Costs, §48-16A-10.
Reports, §48-16A-9.
Defined terms, §48-16A-3.
Development of programs, §48-16A-4.
Duration of program, §48-16A-4.
Eligibility, §48-16A-6.
Forms, §48-16A-4.
Interest, §48-16A-7.
Legislative findings, §48-16A-1.
Participation requirements, §48-16A-5.
Publicizing program, §48-16A-8.
Waiver of penalties, §48-16A-4.
Publicity.
Duties of commissioner, §48-16-8.
Property tax amnesty program, §48-16A-8.
Refunds.
Interest on refunded or credited overpayment, §48-16-7.
Taxes or interest paid under program, §48-16-6.
Reports.
Accounting and reporting of funds collected under program, §48-16-9.
Property tax amnesty program, §48-16A-9.
Returns.
Defined, §48-16-12.
False returns or willful failure to make return.
Felonies, §48-16-12.
Rules and regulations, §48-16-8.
State revenue commissioner.
Contracts with debt collection agencies or attorneys.
Collection of delinquent taxes, penalties and interest, §48-16-11.
Duties, §§48-16-4, 48-16-8.
Orders.
Failure to obey.
Criminal penalties, §48-16-12.
Subpoenas.
Failure to obey.
Criminal penalties, §48-16-12.

TAX AMNESTY PROGRAM —Cont'd
Subpoenas.
Commissioner.
Failure to obey subpoena of commissioner.
Criminal penalties, §48-16-12.
Title of act.
Short title, §48-16-2.
Waiver of penalties, §48-16-4.
Property tax amnesty program, §48-16A-4.

TAX AMNESTY PROGRAM ACT.
General provisions, §§48-16-1 to 48-16-12.
Short title, §48-16-2.

TAXATION.
Action or proceeding for enforcement of chapter.
Compromise settlements, §48-2-60.
Actions for refunds, §48-2-35.
Actions to collect unpaid taxes, §48-2-54.
State tax executions.
Tolling or suspension of execution, §48-3-42.
Action to enjoin tax return preparer, §48-2-62.
Advertising.
Judicial sales, §48-2-55.
Affidavits.
Contraband articles.
Test.
Affidavit to test legality of forfeiture, §48-2-83.
Judicial and investigative powers of commissioner.
Power to take, §48-2-8.
Aged persons.
Property taxes.
Homestead tax deferral for individuals 62 or older, §§48-5-70 to 48-5-84.
Agriculture.
Income taxes.
Estimated income tax by individuals.
Installment payments by farmers, §48-7-116.
Time for filing by farmers, §48-7-115.
Motor fuel taxes.
Refunds to persons using gasoline for agricultural purposes, §48-9-10.
False swearing on applications, §48-9-11.

TAXATION —Cont'd
Agriculture —Cont'd
Property tax exemption for agricultural products, §§48-5-41, 48-5-41.1.
Sales and use taxes.
Exemption of agricultural commodities.
Commodities not sold as finished product to ultimate consumer, §48-8-5.
Nonapplicability of use tax to products used by producer, §48-8-4.
Air commerce.
Prohibition of tax on persons traveling in, §48-13-4.
Aircraft.
Contraband articles used in violations of title, §§48-2-82 to 48-2-84.
Airline ad valorem taxation.
General provisions, §§48-5-540 to 48-5-546.
Air pollution eliminating or reducing property.
Property tax exemption, §48-5-41.
Animals.
Property tax exemption.
Domestic animals, §48-5-42.
Appeals.
Orders, rulings or findings of commissioner, §48-2-59.
Armed forces.
Income taxes.
Armed forces members dying on active duty.
Income taxes due, §48-7-37.
Service in or in support of armed forces.
Tolling of time limits for filing, §48-7-36.
Assessments.
Certifications, §48-2-50.
Deficiency assessments, §48-2-48.
Final assessments, §48-2-47.
Jeopardy assessments, §48-2-51.
Protests, §48-2-46.
Review, §48-2-50.
Service of notice, §48-2-45.
Assignments to avoid payment of taxes.
Effect, §48-2-61.
Attachment.
Property of delinquent taxpayer, §48-2-55.

TAXATION —Cont'd
Banks and trust companies.
Moneyed capital competing with national banks, §48-6-94.
Boards.
County board of tax assessors.
General provisions, §§48-5-290 to 48-5-314.
County boards of equalization, §48-5-311.
Bond issues.
Special county one percent sales and use tax.
Election on issuance of general obligation debt, §48-8-111.
Issuance of general obligation debt, §48-8-121.
Modification of projects approved by referendum, §48-8-123.
Bonds, surety.
Appeals of orders, rulings or findings of commissioner, §48-2-59.
Jeopardy assessments, §48-2-51.
Building and construction materials.
Joint county and municipal sales and use tax.
Materials sold or used under contract entered into prior to approval of tax levy, §48-8-94.
Buildings.
Joint county and municipal sales and use tax.
Building and construction materials.
Sold or used under contract entered into prior to approval of tax levy, §48-8-94.
Special county one percent sales and use tax.
Building and construction materials.
Inapplicability of tax to certain sales or uses, §48-8-118.
Business taxes.
Privilege taxes generally, §§48-13-2 to 48-13-29.
Capitation tax.
Prohibition, §48-13-3.
Charitable trusts.
Excise tax on rooms, lodgings and accommodations.
Limitation on or applicability of tax levies, §48-13-55.
Checks.
Forms of payment, §48-2-32.
Penalty when check not paid when presented, §48-2-32.

TAXATION —Cont'd
Claims for refunds, §48-2-35.
Coliseum capital outlay projects, special purpose local option sales tax, §§48-8-145 to 48-8-157.
Collection of taxes.
Action to collect unpaid taxes, §48-2-54.
Disclosure of return information, §48-2-6.1.
Duties of law enforcement officers and tax officials to enforce, §48-2-81.
Enforcement.
Contractors employed by commissioner, §48-2-6.
Duties of law enforcement officers and tax officials, §48-2-81.
Erroneous or illegal collection.
County and municipal taxes and license fees, §48-5-380.
Extension of time, §48-2-36.
Garnishment, §48-2-55.
Jeopardy assessments, §48-2-51.
Setoffs of federal refund claims against tax liability to state.
Fees charged to taxpayer's account, §48-2-54.1.
State revenue commissioner.
Collection of certain local taxes, §48-2-10.
Committee.
Judicial enforcement of taxes imposed by other states, §48-2-80.
Commodities.
Sales and use taxes.
Exemption of agricultural commodities.
Commodities not sold as finished product to ultimate consumer, §48-8-5.
Common carriers.
Forfeitures of contraband articles, §48-2-82.
Franchise tax.
Special franchises generally, §§48-5-420 to 48-5-425.
Compromise and settlement, §48-2-60.
State revenue commissioner.
Settlement or compromise of tax assessments.
Authority, procedures, development, record required, offer in compromise, application fee, §48-2-18.1.

TAXATION —Cont'd
Computer software.
Defined, §48-1-8.
Status for taxation, §48-1-8.
Confidentiality of information, §48-2-15.
County boards of tax assessors taxpayers' records, §48-5-314.
Disclosure of confidential taxpayer information.
Written authorization by taxpayer, §48-2-15.1.
Exchange of tax information, §48-2-16.
Rulings issued by commissioner.
Guidelines and procedures, §48-2-15.2.
Constables.
Collection of taxes and prosecution of violators.
Duties, §48-2-81.
Construction.
Special county one percent sales and use tax.
Building and construction materials.
Inapplicability of tax to certain sales or uses, §48-8-118.
Contraband.
Disposition or destruction of articles, §48-2-82.
Forfeitures, §48-2-82.
Affidavit to test legality, §48-2-83.
Possession or transportation of contraband, §48-2-84.
Seizure without warrant, §48-2-82.
Contractors.
Nonresident contractors, §§48-13-30 to 48-13-38.
Controlled substances.
Excise tax on marijuana and controlled substances, §§48-15-1 to 48-15-11.
Jeopardy assessments.
Possession, sale or distribution of illegal drug, §48-2-51.
Conversion of funds collected for benefit of state.
Unlawful conversion, §48-1-5.
Corporate net worth tax, §§48-13-70 to 48-13-79.
Corporations.
Income taxes.
Combining net worth tax return with state income tax return, §48-13-77.
Deductions for payments to classified subcontractors, §48-7-38.

TAXATION —Cont'd
Corporations —Cont'd
Income taxes —Cont'd
Dissolved corporations.
Action for collection of tax out of assets, §48-7-83.
Distorting taxable income, §48-7-58.
Returns, §48-7-51.
Personal liability of officers or employees for tax delinquency, §48-2-52.
Costs.
Appeals of orders, rulings or findings of commissioner.
Final judgments adverse to taxpayer, §48-2-59.
Counties.
Motor fuel taxes.
Prohibition of tax on motor fuel by political subdivisions, §48-9-3.
Property taxes.
General provisions, §§48-5-220 to 48-5-349.5.
Tax officials.
Delinquent tax officials.
General provisions, §§48-5-200 to 48-5-205.
Tax collectors.
General provisions, §§48-5-121 to 48-5-165.
Tax receivers.
General provisions, §§48-5-101 to 48-5-109.
TVA.
Apportionment of payments to in lieu of taxes, §48-14-2.
Credit unions, §48-6-97.
Income taxes.
Exempt organizations, §48-7-25.
Criminal background checks.
Collection of taxes.
Enforcement.
Contractors employed by commissioner, §48-2-6.
Department of revenue.
Employees and prospective employees, §48-2-6.
State revenue commissioner.
Collection of taxes.
Contractors, §48-2-6.
Decedents' estates.
Income taxes.
Periods of limitation for assessment of taxes, §48-7-82.
Deferred taxes.
Homestead tax deferral for individuals 62 or older, §§48-5-70 to 48-5-84.
TAXATION —Cont'd
Deferred taxes —Cont'd
Interest on, §48-2-38.
Definitions, §48-1-2.
Corporation.
Corporate net worth tax, §48-13-70.
Excise tax on marijuana and controlled substances, §48-15-2.
Illegal drug, §48-2-51.
Income taxes, §48-7-1.
Business enterprises, §§48-7-40, 48-7-40.1.
Current income tax payment, §48-7-100.
Deduction for payments to classified subcontractors, §48-7-38.
Dependent, §48-7A-2.
Estimated income tax.
Individuals and corporations, §§48-7-114, 48-7-117.
Partner.
Partnership returns, §48-7-53.
Partnership.
Partnership returns, §48-7-53.
Setoff debt collection, §48-7-161.
Underpayment, §48-7-86.
Intangible recording tax, §48-6-60.
Motor fuel tax, §48-9-30.
Occupation taxes, §48-13-5.
Road tax on motor carriers, §48-9-30.
Sales and use taxes, §48-8-2.
Urban transit system, §48-8-3.
Tobacco and alternative nicotine products taxes, §48-11-1.
Delinquent tax officials.
General provisions, §§48-5-200 to 48-5-205.
Delinquent taxpayers.
Action to collect unpaid taxes, §48-2-54.
Attachment of property, §48-2-55.
Corporations.
Personal liability of officers or employees, §48-2-52.
Financial institution reporting on delinquent taxpayers, §48-2-63.
Interest on past due taxes, §48-2-40.
New purchasers of property, exemptions, §48-3-3.
Waiver, §48-2-41.
Limited liability companies.
Personal liability of members, managers, or employees, §48-2-52.
Limited liability partnerships.
Personal liability of partners or employees, §48-2-52.

TAXATION —Cont'd
Delinquent taxpayers —Cont'd
Preparation of delinquent returns, §48-2-37.
Tax executions.
General provisions, §§48-3-1 to 48-3-44.
Sales under tax executions, §§48-4-1 to 48-4-65.
Department of revenue.
Administration of revenue laws, §48-2-1.
Created, §48-2-1.
Delinquent taxpayers.
Financial institution reporting on delinquent taxpayers, §48-2-63.
Directed by state revenue commissioner, §48-2-1.
Duties, §48-2-1.
Unlawful exercise by unauthorized person, §48-1-4.
Employees.
Contractors, §48-2-6.
Employment and compensation, §48-2-6.
Enforcement of revenue laws, §48-2-1.
Excise taxes.
For-hire ground transportation.
Rulemaking to implement provisions, §48-13-144.
Income tax credits.
Rural hospital organizations providing services to underserved areas.
Qualified rural hospital organization expenses, tax credit.
Information posted on department website, §48-7-29.20 (Repealed 12/31/2029).
Oaths.
Administration by officers or employees, §48-2-13.
Office of department, §48-2-1.
Organization, §48-2-6.
Unlawful exercise by unauthorized person of duties or functions, §48-1-4.
Disasters.
Facilitating business rapid response to state declared disasters, §48-2-100.
Districts.
Air commerce.
Prohibition, §48-13-4.
TAXATION —Cont'd
Districts —Cont'd
Capitation tax.
Prohibition, §48-13-3.
Excise tax on rooms, lodgings and accommodations.
Special districts, §§48-13-50 to 48-13-63.
Joint county and municipal sales and use tax (LOST).
Special districts, §§48-8-80 to 48-8-97.
Drugs.
Excise tax on marijuana and controlled substances, §§48-15-1 to 48-15-11.
Jeopardy assessments.
Possession, sale or distribution of illegal drug, §48-2-51.
Elections.
Joint county and municipal sales and use tax, §48-8-85.
Discontinuing imposition, §48-8-92.
Special county one percent sales and use tax, §48-8-111.
Electronic transmission of documents.
Electronic filing requirements, failure to follow, §48-2-44.1.
Electronic funds transfer.
Defined, §48-2-32.
Refunds, claims, §48-2-35.
Rules and regulations, §48-2-32.
Employment taxes levied by municipalities.
Limitation on, §48-13-19.
Equalization of assessments.
County boards of tax equalization, §48-5-311.
General provisions, §§48-5-260 to 48-5-275.
Erroneous collection of taxes.
County and municipal taxes and license fees, §48-5-380.
Estates.
Income taxes.
Fiduciaries and beneficiaries, §48-7-22.
Individual income taxation.
Applicability to estates and trusts, §48-7-20.
Estate tax eliminated, §48-12-1.
Evasion of taxes, §48-1-6.
Effect of actions taken to avoid payment, §48-2-61.

TAXATION —Cont'd
Evasion of taxes —Cont'd
Fraudulent use of exemption certificate, §48-1-7.
Income taxes, §48-7-5.
Current income tax payment.
Attempts to evade or defeat tax imposed by article, §48-7-127.
Real estate transfer tax, §48-6-10.
Tobacco and alternative nicotine products taxes.
Deficiency due to fraudulent intent to evade, §48-11-12.
Evidence.
Compelled production, §48-2-53.
Confidential information generally.
Evidence before state or federal courts, §48-2-15.
Exchange of tax information, §48-2-16.
Excise taxes.
Energy, sale or use of, §§48-13-110 to 48-13-128.
Hotel/motel tax.
Excise tax on rooms, lodging and accommodations, §§48-13-50 to 48-13-63.
Marijuana and controlled substances, §§48-15-1 to 48-15-11.
Motor fuel taxes, §§48-9-1 to 48-9-19.
Rental motor vehicles, §§48-13-90 to 48-13-97.
Tobacco and alternative nicotine products taxes, §§48-11-1 to 48-11-30.
Excise tax on marijuana and controlled substances, §§48-15-1 to 48-15-11.
Executions.
General provisions, §§48-3-1 to 48-3-44.
Power of commissioner to levy upon property and rights to property.
Neglect or refusal by taxpayer to pay, §48-2-55.
Sales under tax executions, §§48-4-1 to 48-4-65.
Exemptions from taxation.
Air pollution eliminating or reducing property.
Property tax exemption, §48-5-41.
Animals.
Property tax exemption.
Domestic animals, §48-5-42.
Certificates.
Fraudulent use to evade taxes, §48-1-7.

TAXATION —Cont'd
Exemptions from taxation —Cont'd
Commodities.
Sales and use taxes.
Exemption of agricultural commodities.
Commodities not sold as finished product to ultimate consumer, §48-8-5.
Corporate net worth tax, §48-13-71.
Credit unions.
Income taxes.
Exempt organizations, §48-7-25.
Evasion of taxes.
Fraudulent use of exemption certificate, §48-1-7.
Fraudulent use of exemption certificate to evade taxes, §48-1-7.
Hospitals.
Nonprofit hospitals.
Property tax exemption, §48-5-41.
Land banks, §48-4-108.
Libraries.
Property tax exemption, §48-5-41.
Livestock.
Sales and use taxes.
Exemption of agricultural commodities.
Commodities not sold as finished product to ultimate consumer, §48-8-5.
Manual laborers.
Property tax exemption for tools, §48-5-42.
Motor fuel taxes.
Motor fuel use for non-highway purposes, §48-9-3.
Purchase of tax-exempt motor fuel and permitting it to be used for highway purposes, §48-9-17.
Sales by licensed distributors, §48-9-3.
Poultry.
Sales and use taxes.
Exemption of agricultural commodities.
Commodities not sold as finished product to ultimate consumer, §48-8-5.
Property taxes, §§48-5-40 to 48-5-56.
Public property.
Property tax exemption, §48-5-41.
Religion.
Income taxes.
Exempt organizations, §48-7-25.

TAXATION —Cont'd
Exemptions from taxation —Cont'd
Religion —Cont'd
Property tax exemption.
Places of religious worship, §48-5-41.
Property owned by religious groups used for single-family residences, §48-5-41.
Sales and use tax exemptions, §48-8-3.
Sales and use taxes, §48-8-3.
Agricultural commodities not sold as finished product to ultimate consumer, §48-8-5.
Agricultural equipment and machinery, §48-8-3.3.
Agricultural products, poultry and livestock.
Nonapplicability of use tax to products used by producer, §48-8-4.
Contractors furnishing tangible personal property and services.
Property unconsumed in use, §48-8-63.
Equipment used for manufacturing tangible personal property, or sale, use, storage or consumption of industrial materials, packaging supplies or energy, §48-8-3.2.
Motor fuels, §48-8-3.1.
Tax evasion.
Fraudulent use of exemption certificate, §48-1-7.
Timber equipment.
Property tax exemption, §48-5-41.3.
Tobacco and alternative nicotine products taxes, §48-11-2.
Tax on persons having cigar or cigarettes on which tax not paid, §48-11-13.
Universities and colleges.
Property tax exemption, §48-5-41.
Water pollution eliminating or reducing property.
Property tax exemption, §48-5-41.
Exports.
Prohibition of export tax on state products, §48-13-2.
False or fraudulent statements, §48-1-6.

TAXATION —Cont'd
Fees.
Settlement or compromise of tax assessments.
Offer in settlement, application fee, §48-2-18.1.
Fertilizers.
Property tax exemption, §48-5-43.
Fiduciaries.
Income taxes, §48-7-22.
Filings.
Prior to January 1, 1980.
Continuation of effect of filings, §48-1-3.
Financial institutions.
Payment to, §48-2-17.
Fireworks.
Taxation of consumer fireworks, §§48-13-130 to 48-13-133.
Fishing.
Income taxes.
Estimated income tax by individuals.
Installment payments by fishermen, §48-7-116.
Time for filing by fishermen, §48-7-115.
Food and other necessaries credit.
Income taxes, §§48-7A-2, 48-7A-3.
Foreign corporations.
Corporate network tax, §48-13-75.
Venue for actions for refunds, §48-2-35.
Venue for appeals from orders, rulings or findings of commissioner, §48-2-59.
Forest products.
Tax incentives for users of raw forest products.
Georgia forest product fairness act, §48-1-10.
Forfeitures.
Contraband articles, §48-2-82.
Affidavit to test legality, §48-2-83.
Form 1099-K filing required by IRS.
Electronic copy to be filed with commissioner, §48-2-32.
Forms.
Prior to January 1, 1980.
Continuation of use and effect, §48-1-3.
Franchise tax.
General provisions, §§48-5-420 to 48-5-425.

TAXATION —Cont'd
Fraud.
Exemption certificates.
Fraudulent use to evade taxes, §48-1-7.
False or fraudulent statements, §48-1-6.
Fuels.
Motor fuel tax law.
General provisions, §§48-9-1 to 48-9-19.
Sales and use taxes.
Motor fuels, §48-8-3.1.
Credit or refund for sales tax where prepaid state or local tax imposed, §48-8-30.
Imposition of prepaid local tax, §48-8-82.
Rate, §48-8-82.
Special county one percent sales and use tax.
Applicability to sales of motor fuel, §48-8-110.1.
Garnishment.
Collection of tax, §48-2-55.
Gifts to avoid payment of taxes.
Effect, §48-2-61.
Hearings.
Judicial and investigative powers of commissioner, §48-2-8.
Refunds, §48-2-35.
Heavy-duty equipment ad valorem taxation, §§48-5-505 to 48-5-509.
Construction equipment owned by nonresidents, §§48-5-500, 48-5-501.
Highways, roads and streets.
Franchise tax.
General provisions, §§48-5-420 to 48-5-425.
Holidays.
Date for payment or filing on holiday, §48-2-39.
Hospitals.
Nonprofit hospitals.
Property tax exemption, §48-5-41.
Hotel/motel tax.
Excise tax on rooms, lodging and accommodations, §§48-13-50 to 48-13-63.
Illegal collection of taxes.
County and municipal taxes and license fees, §48-5-380.
Income taxes.
Current income tax payment, §§48-7-100 to 48-7-129.

TAXATION —Cont'd
Income taxes —Cont'd
General provisions, §§48-7-1 to 48-7-6.
Imposition, rate, computation, exemptions, §§48-7-20 to 48-7-42.
Local income tax prohibition, §48-7-140.
Payment, deficiencies, assessment, and collection, §§48-7-80 to 48-7-86.
Returns and furnishing of information, §§48-7-50 to 48-7-64.
Setoff debt collection, §§48-7-160 to 48-7-170.
Informants.
Payment of portion of fines to, §48-2-81.
Intangible real estate transfer tax.
General provisions, §§48-6-1 to 48-6-10.
Intangible recording tax, §§48-6-60 to 48-6-77.
Interest.
Deferred taxes, §48-2-38.
Deficiency assessments, §48-2-48.
Failure to file return or pay revenue held in trust for state, §48-2-44.
Past due taxes, §48-2-40.
New purchasers of property, exemptions, §48-3-3.
Waiver on unpaid taxes, §48-2-41.
Refunds, §48-2-35.
Investigations.
Powers of commissioner, §48-2-8.
Jeopardy assessments, §48-2-51.
Joint county and municipal sales and use tax (LOST).
General provisions, §§48-8-80 to 48-8-97.
Judicial sales.
Effect on state tax lien, §48-2-57.
Power of commissioner or authorized representative, §48-2-55.
Sales under tax executions.
General provisions, §§48-4-1 to 48-4-65.
Lawful money of the United States.
Currency in which taxes to be paid, §48-2-31.
Levy upon property or rights to property.
Neglect or refusal to pay taxes, §48-2-55.
Tax executions.
General provisions, §§48-3-1 to 48-3-44.

TAXATION —Cont'd
Levy upon property or rights to property —Cont'd
Tax executions —Cont'd
Sales under tax executions, §§48-4-1 to 48-4-65.
Libraries.
Property tax exemption, §48-5-41.
License taxes.
Financial institutions.
Local business license tax for depository financial institutions, §48-6-93.
Privilege taxes generally, §§48-13-2 to 48-13-29.
Liens for taxes, §48-2-56.
Intangible recording tax.
General provisions, §§48-6-60 to 48-6-77.
Judicial sales effect on state tax lien, §48-2-57.
Priority, §48-2-56.
Release of property subject to state tax lien, §48-2-58.
Tobacco and alternative nicotine products taxes.
Amount of unpaid tax, §48-11-17.
Limitation of actions.
Assessment of taxes, §48-2-49.
Refunds, §48-2-35.
Limited liability companies.
Delinquent taxes.
Personal liability of members, managers, or employees, §48-2-52.
Limited liability partnerships.
Delinquent taxes.
Personal liability of partners or employees, §48-2-52.
Livestock.
Sales and use taxes.
Exemption of agricultural commodities.
Commodities not sold as finished product to ultimate consumer, §48-8-5.
Nonapplicability of use tax to livestock and livestock products used by producer, §48-8-4.
Manual laborers.
Property tax exemption for tools, §48-5-42.
Manufacturing and telecommunications facilities.
Tax credits, §§48-7-40.2 to 48-7-40.4, 48-7-40.7 to 48-7-40.9.
TAXATION —Cont'd
Marijuana.
Excise tax on marijuana and controlled substances, §§48-15-1 to 48-15-11.
Mobile home ad valorem taxation.
General provisions, §§48-5-440 to 48-5-451, 48-5-490 to 48-5-495.
Money orders.
Forms of payment, §48-2-32.
Penalty when money order not paid when presented, §48-2-32.
Mortgages to avoid payment of taxes.
Effect, §48-2-61.
Motor carriers' road tax, §§48-9-30 to 48-9-46.
Motor fuels.
General provisions, §§48-9-1 to 48-9-19.
Sales and use taxes, §48-8-3.1.
Credit or refund for sales tax where prepaid state or local tax imposed, §48-8-30.
Imposition of prepaid local tax, §48-8-82.
Rate, §48-8-82.
Special county one percent sales and use tax.
Applicability to motor fuel sales, §48-8-110.1.
Motor vehicle ad valorem taxation, §§48-5-440 to 48-5-478.4.
Motor vehicle leases.
Road tax on motor carriers.
Lessee and lessor of motor vehicles deemed motor carriers, §48-9-37.
Motor vehicles.
Contraband articles used in violations of title, §§48-2-82 to 48-2-84.
Municipal property taxes.
General provisions, §§48-5-350 to 48-5-361.
Necessaries.
Income taxes.
Food and other necessaries credit, §§48-7A-2, 48-7A-3.
Nonresident contractors, §§48-13-30 to 48-13-38.
Nonresidents.
Income taxes.
Estimated income tax by individuals.
Requirement of estimated tax, §48-7-114.

TAXATION —Cont'd
Nonresidents —Cont'd
Venue for actions for refunds, §48-2-35.
Venue for appeals from orders, rulings or findings of commissioner, §48-2-59.
Notes.
Special county one percent sales and use tax.
Election on issuance of general obligation debt, §48-8-111.
Issuance of general obligation debt, §48-8-111.
Notice.
Action to collect unpaid taxes, §48-2-54.
Jeopardy assessments.
Possession, sale or distribution of illegal drug.
Amount of tax and penalty, §48-2-51.
Judicial sales, §48-2-55.
Seizure of contraband articles, §48-2-82.
Service of notice of assessment, §48-2-45.
Nursing homes.
Property tax exemption.
Nonprofit homes for the aged, §48-5-41.
Oaths.
Administration of oaths by commissioner and officers or employees of department, §48-2-13.
Deputy state revenue commissioner, §48-2-5.
Judicial and investigative powers of commissioner.
Administration of oaths, §48-2-8.
State revenue commissioner, §48-2-2.
Occupation taxes.
Charitable trusts.
Furnishing rooms, lodgings or accommodations, §48-13-55.
Depository financial institutions.
Special state occupation tax on, §48-6-95.
Privilege taxes generally, §§48-13-2 to 48-13-29.
Omissions knowingly and intentionally made, §48-1-6.
TAXATION —Cont'd
Ordinances.
Special county one percent sales and use tax, §48-8-111.
Consolidated government, §48-8-111.1.
Modification of projects approved by referendum, §48-8-123.
Out-of-state businesses.
Facilitating business rapid response to state declared disasters, §48-2-100.
Partnerships.
Income taxes, §48-7-23.
Nonresident members of resident partnership, §48-7-24.
Resident members of nonresident partnership, §48-7-24.
Returns, §48-7-53.
Past due taxes.
Action to collect unpaid taxes, §48-2-54.
Interest, §48-2-40.
New purchasers of property, exemptions, §48-3-3.
Waiver, §48-2-41.
Payment of taxes.
Action to collect unpaid taxes, §48-2-54.
Appeals from orders, rulings or findings of commissioner.
Taxes admittedly owned.
Payment as condition for appeal, §48-2-59.
Avoiding payment of taxes.
Effect of actions taken, §48-2-61.
Corporations.
Personal liability of officers or employees, §48-2-52.
Currency in which taxes to be paid, §48-2-31.
Deferred taxes.
Interest, §48-2-38.
Due date, §48-2-38.
Date for payment or filing on holiday, §48-2-39.
Extension of time for payment, §48-2-36.
Failure to pay revenue held in trust for state.
Penalty and interest, §48-2-44.
Forms of payment, §48-2-32.
Holidays, Saturdays or Sundays.
Date for payment or filing on, §48-2-39.

TAXATION —Cont'd
Payment of taxes —Cont'd
Levy upon property or rights to property.
Neglect or refusal to pay taxes, §48-2-55.
Limited liability companies.
Personal liability of members, managers, or employees, §48-2-52.
Limited liability partnerships.
Personal liability of partners or employees, §48-2-52.
Past due taxes.
Action to collect unpaid taxes, §48-2-54.
Interest, §48-2-40.
New purchasers of property, exemptions, §48-3-3.
Waiver, §48-2-41.
Penalty and interest for failure to pay revenue held in trust for state, §48-2-44.
Penalty when check or money order not paid when presented, §48-2-32.
Personal debt of person required to pay, §48-2-55.
Receipts, §48-2-33.
Failure to give official receipt, §48-2-34.
Refunds, §48-2-35.
Remittances, §48-2-30.
To state treasurer, §48-2-17.
Penalties.
Check or money order tendered in payment not paid when presented, §48-2-32.
Electronic filing requirements, failure to follow, §48-2-44.1.
Failure to file return or pay revenue held in trust for state, §48-2-44.
Nature of penalties, §48-2-42.
New purchasers of property, exemptions, §48-3-3.
Refund of penalty, §48-2-60.
Tax return preparers, §48-2-62.
Waiver, §48-2-43.
Personal debt of person required to pay, §48-2-55.
Personal property.
Sales and use taxes.
General provisions, §§48-8-1 to 48-8-78.
Intent of article with respect to taxation of, §48-8-1.
TAXATION —Cont'd
Petitions.
Protests, §48-2-46.
Political subdivisions.
Motor fuel taxes.
Prohibition of tax on motor fuel, §48-9-3.
TVA.
Apportionment of payments to political subdivisions in lieu of taxes, §48-14-2.
Poultry.
Sales and use taxes.
Exemption of agricultural commodities.
Commodities not sold as finished product to ultimate consumer, §48-8-5.
Nonapplicability of use tax to poultry and poultry products used by producer, §48-8-4.
Preparers.
Penalties, §48-2-62.
Priorities.
Liens for taxes, §48-2-56.
Privileged communications.
Confidential information generally, §48-2-15.
Privilege taxes.
Franchise tax.
General provisions, §§48-5-420 to 48-5-425.
Road tax on motor carriers.
General provisions, §§48-9-30 to 48-9-46.
Professional taxes.
Privilege taxes generally, §§48-13-2 to 48-13-29.
Promissory notes.
Special county one percent sales and use tax.
Election on issuance of general obligation debt, §48-8-111.
Property taxes.
Aged persons.
Homestead tax deferral for individuals 62 or older, §§48-5-70 to 48-5-84.
Airline ad valorem taxation.
General provisions, §§48-5-540 to 48-5-546.
County board of tax assessors.
General provisions, §§48-5-290 to 48-5-314.
County taxation generally, §§48-5-220 to 48-5-243.

TAXATION —Cont'd
Property taxes —Cont'd
Delinquent tax officials.
General provisions, §§48-5-200 to 48-5-205.
Equalization of assessments.
General provisions, §§48-5-260 to 48-5-275.
Examination of county tax digest.
General provisions, §§48-5-340 to 48-5-349.5.
Exemptions generally, §§48-5-40 to 48-5-56.
Franchise tax.
General provisions, §§48-5-420 to 48-5-425.
General provisions, §§48-5-1 to 48-5-56.
Heavy-duty equipment ad valorem taxation, §§48-5-505 to 48-5-509.
Construction equipment owned by nonresidents, §§48-5-500, 48-5-501.
Homestead tax deferral for individuals 62 or older, §§48-5-70 to 48-5-84.
Mobile homes.
General provisions, §§48-5-440 to 48-5-451, 48-5-490 to 48-5-495.
Motor vehicles.
General provisions, §§48-5-440 to 48-5-478.4.
Municipal taxation generally, §§48-5-350 to 48-5-361.
Public utility ad valorem taxation.
General provisions, §§48-5-510 to 48-5-524.
Real estate transfer tax.
General provisions, §§48-6-1 to 48-6-10.
School taxes.
General provisions, §§48-5-400 to 48-5-405.
Special franchises.
General provisions, §§48-5-420 to 48-5-425.
Tax collectors.
General provisions, §§48-5-121 to 48-5-165.
Tax receivers.
General provisions, §§48-5-101 to 48-5-109.
Timberland.
Qualified timberland property, §§48-5-600 to 48-5-607.
Protests.
Procedures, §48-2-46.

TAXATION —Cont'd
Public property.
Property tax exemption, §48-5-41.
Public utilities.
General provisions, §§48-5-510 to 48-5-524.
Venue for actions for refunds, §48-2-35.
Venue for appeals from orders, rulings or findings of commissioner, §48-2-59.
Railroads.
Assessment of property for purposes of county and municipal taxation, §48-5-521.
Equipment companies doing business in state, §48-5-519.
Franchise tax.
Special franchises generally, §§48-5-420 to 48-5-425.
Property taxes.
Public utility ad valorem taxation.
Assessment for county and municipal taxation purposes, §48-5-521.
Railroad equipment companies, §48-5-519.
Rolling stock and other personal property, §48-5-520.
Public utility ad valorem taxation.
Assessment for county and municipal taxation purposes, §48-5-521.
General provisions, §§48-5-510 to 48-5-524.
Railroad equipment companies, §48-5-520.
Rolling stock and other personal property, §48-5-520.
Rolling stock and other personal property, §48-5-520.
Sales and use taxes.
Exemptions, §48-8-3.
School taxes.
Railroad equipment companies.
Collection of school taxes, §48-5-402.
Street, suburban and interurban railroads.
Exemption for certain railroad companies.
Sales and use taxes, §48-8-3.
Real estate transfer tax, §§48-6-1 to 48-6-10.
Receipts for taxes, §48-2-33.
Failure to give official receipt, §48-2-34.

TAXATION —Cont'd
Reciprocity.
Judicial enforcement of taxes imposed by other states, §48-2-80.
Records.
Extension of time for returns, §48-2-36.
Settlement or compromise of tax assessments.
State revenue commissioner to keep, §48-2-18.1.
Redemption.
Sales under tax executions.
General provisions, §§48-4-1 to 48-4-65.
Referendum.
Joint county and municipal sales and use tax, §48-8-85.
Discontinuing imposition, §48-8-92.
Refunds, §48-2-35.
County and municipal taxes and license fees, §48-5-380.
Extension of time, §48-2-36.
Local significance, refund claims, §48-2-35.
Penalty refund, §48-2-60.
Releases.
Property subject to state tax lien, §48-2-58.
Religion.
Income taxes.
Exempt organizations, §48-7-25.
Property tax exemption.
Places of religious worship, §48-5-41.
Property owned by religious groups used for single-family residences, §48-5-41.
Sales and use tax exemptions, §48-8-3.
Remittances, §48-2-30.
Return information.
Defined, §48-2-6.1.
Returns.
Delinquent returns.
Preparation, §48-2-37.
Electronic filing requirements, failure to follow, §48-2-44.1.
Extension of time, §48-2-36.
Failure to file.
Penalty and interest, §48-2-44.
Penalty and interest on failure to file, §48-2-44.
New purchasers of property, exemptions, §48-3-3.
Tax return preparers, penalties, §48-2-62.

TAXATION —Cont'd
Revenue stamps.
Unlawful activities as to, §48-2-84.
Road tax on motor carriers.
General provisions, §§48-9-30 to 48-9-46.
Rules and regulations.
Powers of commissioner, §48-2-12.
Guidelines and procedures for rulings issued by commissioner, §48-2-15.2.
Rulings issued by commissioner.
Guidelines and procedures for submission, issuance or denial of rulings, §48-2-15.2.
Sales to avoid payment of taxes.
Effect, §48-2-61.
Sales under tax executions.
General provisions, §§48-4-1 to 48-4-65.
Saturdays.
Date for payment or filing on Saturday, §48-2-39.
Savings and loan associations.
Taxation of depository financial institutions.
Interim special tax limitation for, §48-6-98.
School taxes.
General provisions, §§48-5-400 to 48-5-405.
Sales tax for educational purposes, §§48-8-140 to 48-8-144.
Security clearances.
Access to tax information by persons other than employees, §48-2-15.
Seizures of contraband articles, §48-2-82.
Service of notice of assessment, §48-2-45.
Service of summons of garnishment, §48-2-55.
Setoffs.
Federal refund claims against tax liability to state.
Fees charged to taxpayer's account, §48-2-54.1.
Income taxes.
Setoff debt collection.
General provisions, §§48-7-160 to 48-7-170.
Unpaid taxes against refunds, §48-2-35.

TAXATION —Cont'd
Settlements.
State revenue commissioner.
Settlement or compromise of tax assessments.
Authority, procedures, development, record required, offer in compromise, application fee, §48-2-18.1.
Sheriffs.
Collection of taxes and prosecution of violators.
Duties, §48-2-81.
Short title.
Georgia public revenue code, §48-1-1.
Special county one percent sales and use tax.
General provisions, §§48-8-110 to 48-8-124.
Special districts.
Excise tax on rooms, lodgings and accommodations.
General provisions, §§48-13-50 to 48-13-63.
Joint county and municipal sales and use tax (LOST).
General provisions, §§48-8-80 to 48-8-97.
Special franchises generally, §§48-5-420 to 48-5-425.
Stamps.
Revenue stamps.
Unlawful activities, §48-2-84.
State board of equalization.
Actions of judicial proceedings to collect delinquent state taxes, cause property not listed to be assessed, etc.
Chairman and administrative officer, §48-2-18.
Digest of proposed assessments.
Examination and final approval, §48-2-18.
Duties, §48-2-18.
Established, §48-2-18.
State revenue commissioner.
Actions of judicial proceedings to collect delinquency state taxes, cause property not listed to be assessed, etc.
Powers in tax proceedings, §48-2-9.
Airline ad valorem taxation.
General provisions, §§48-5-540 to 48-5-546.
Appointment, §48-2-2.

TAXATION —Cont'd
State revenue commissioner —Cont'd
Attorney general.
Legal advice and assistance to, §48-2-9.
Bond, §48-2-2.
Certifications by commissioner or officers or employees, §48-2-13.
Collection of taxes.
Certain local taxes, §48-2-10.
Contractors, §48-2-6.
Disclosure of return information, §48-2-6.1.
Confidential information, §48-2-15.
Creation of office, §48-2-2.
Delegation of certain duties, §48-2-11.
Department of revenue.
Employees.
Authority to employ and compensate, §48-2-6.
Establishment of units within department, §48-2-6.
Under direction of commissioner, §48-2-1.
Deputy state revenue commissioner.
Appointment by commissioner, §48-2-5.
Authority, §48-2-5.
Bond, §48-2-5.
Creation of office, §48-2-5.
Force and effective actions, §48-2-5.
Oath, §48-2-5.
Salary, §48-2-5.
Duties, §48-2-7.
Delegation of certain duties, §48-2-11.
Unlawful exercise by unauthorized person, §48-1-4.
Elective office.
Eligibility for, §48-2-4.
Eligibility for elective office, §48-2-4.
Exchange of tax information, §48-2-16.
Excise tax on marijuana and controlled substances.
General provisions, §§48-15-1 to 48-15-11.
Expenses, §48-2-2.
Governor.
Appointment of commissioner, §48-2-2.
Heavy-duty equipment ad valorem taxation, §§48-5-505 to 48-5-509.
Construction equipment owned by nonresidents, §§48-5-500, 48-5-501.

TAXATION —Cont'd
State revenue commissioner —Cont'd
Income taxes.
General provisions, §§48-7-100 to 48-7-170.
Intentional acts of misconduct.
Personal liability, §48-2-2.
Investigative powers, §48-2-8.
Joint county and municipal sales and use tax (LOST).
General provisions, §§48-8-80 to 48-8-97.
Judicial powers, §48-2-8.
Local taxes.
Collection of certain local taxes, §48-2-10.
Mobile home ad valorem taxation, §§48-5-440 to 48-5-451, 48-5-490 to 48-5-495.
Motor carriers' road tax.
General provisions, §§48-9-30 to 48-9-46.
Motor fuel taxes.
General provisions, §§48-9-1 to 48-9-19.
Motor vehicle ad valorem taxation.
General provisions, §§48-5-440 to 48-5-478.4.
Motor vehicle licensing, registration, valuation and titling functions.
Modernization and improvement, §48-2-19.
Oath, §48-2-2.
Administration of oaths.
By commissioner and officers or employees, §48-2-13.
Office of commissioner.
Location, §48-2-1.
Personal liability, §48-2-2.
Powers, §48-2-7.
Collection of certain local taxes, §48-2-10.
Judicial and investigative powers, §48-2-8.
Rules and regulations, §48-2-12.
Tax proceedings, §48-2-9.
Property taxes.
Delinquent officials.
General provisions, §§48-5-200 to 48-5-205.
Examination of county tax digest, §§48-5-340 to 48-5-349.5.
Exemptions generally, §§48-5-40 to 48-5-56.
General provisions, §§48-5-1 to 48-5-56.

TAXATION —Cont'd
State revenue commissioner —Cont'd
Property taxes —Cont'd
Homestead tax deferral for individuals 62 or older, §§48-5-70 to 48-5-84.
Tax collectors.
General provisions, §§48-5-121 to 48-5-165.
Tax receivers.
General provisions, §§48-5-101 to 48-5-109.
Public utility ad valorem taxation.
General provisions, §§48-5-510 to 48-5-524.
Records.
Settlement or compromise of tax assessments, §48-2-18.1.
Report.
Annual report to governor and general assembly, §48-2-7.
Road tax on motor carriers.
General provisions, §§48-9-30 to 48-9-46.
Rules and regulations, §48-2-12.
Salary, §48-2-2.
Sales and use taxes.
Joint county and municipal sales and use tax (LOST).
General provisions, §§48-8-80 to 48-8-97.
Transit special purpose local option sales and use tax.
Rulemaking to implement provisions, §48-8-269.55.
Seal, §48-2-14.
Settlement or compromise of tax assessments.
Authority, procedures, development, record required, offer in compromise, application fee, §48-2-18.1.
State board of equalization.
Chairman and administrative officer, §48-2-18.
Tax executions.
General provisions, §§48-3-1 to 48-3-44.
Sales under tax executions, §§48-4-1 to 48-4-65.
Tobacco and alternative nicotine products taxes.
General provisions, §§48-11-1 to 48-11-30.
Unauthorized exercise by unauthorized person of duties or functions, §48-1-4.

TAXATION —Cont'd
State treasurer.
Payment to, §48-2-17.
Subpoenas.
Judicial and investigative powers of commissioner, §48-2-8.
Sundays.
Date for payment or filing on Sunday, §48-2-39.
Superior courts.
Actions for refunds, §48-2-35.
Appeals of orders, rulings or findings of commissioner, §48-2-59.
Compelling production of evidence, §48-2-53.
Tax amnesty program, §§48-16-1 to 48-16-12.
Tax credits, §§48-7A-2, 48-7A-3.
Tax evasion, §48-1-6.
Effect of actions taken to avoid payment of taxes, §48-2-61.
Fraudulent use of exemption certificate, §48-1-7.
Income taxes, §48-7-5.
Current income tax payment.
Attempts to evade or defeat tax imposed by article, §48-7-127.
Real estate transfer tax, §48-6-10.
Tobacco and alternative nicotine products taxes.
Deficiency due to fraudulent intent to evade, §48-11-12.
Tax executions.
General provisions, §§48-3-1 to 48-3-44.
Sales under tax executions, §§48-4-1 to 48-4-65.
Taxpayer bill of rights, §48-1-9.
Tax receivers.
General provisions, §§48-5-101 to 48-5-109.
Tax return preparers.
Penalties, §48-2-62.
Telegraphs.
Franchise tax.
Special franchises generally, §§48-5-420 to 48-5-425.
Income taxes.
Taxation of public service corporations, §48-7-32.
Public utility ad valorem taxation generally, §§48-5-510 to 48-5-524.
Telephones.
Franchise tax.
Special franchises generally, §§48-5-420 to 48-5-425.
TAXATION —Cont'd
Telephones —Cont'd
Income taxes.
Taxation of public service corporations, §48-7-32.
Public utility ad valorem taxation generally, §§48-5-510 to 48-5-524.
Temporary residence.
Facilitating business rapid response to state declared disasters, §48-2-100.
Tennessee Valley Authority.
Apportionment of payments to state and political subdivisions in lieu of taxes, §48-14-2.
Theft by conversion.
Unlawful conversion of funds collected for benefit of state, §48-1-5.
Timber equipment.
Property tax exemption, §48-5-41.3.
Time.
Assessment of taxes, §48-2-49.
Due date for payment of taxes, §48-2-38.
Date for payment or filing on holiday, §48-2-39.
Returns.
Extension, §48-2-36.
Tobacco and alternative nicotine products taxes, §§48-11-1 to 48-11-30.
Tools and implements of trade of manual laborers.
Property tax exemption, §48-5-42.
Trusts.
Income taxes.
Beneficiaries and fiduciaries of trusts, §48-7-22.
Deduction in lieu of personal exemption, §48-7-26.
Individual tax rate.
Applicability to estates and trusts, §48-7-20.
Persons required to file returns, §48-7-50.
Trustee in bankruptcy.
Operating property or business of corporation.
Returns, §48-7-51.
Property taxes.
Homestead exemption.
Application to property held by trustee, §48-5-54.
TVA.
Apportionment of payments to state and political subdivisions in lieu of taxes, §48-14-2.

TAXATION —Cont'd
Understatement of liability.
Penalties for tax return preparers, §48-2-62.
Universities and colleges.
Property tax exemption, §48-5-41.
Unpaid taxes.
Action to collect, §48-2-54.
Vehicles.
Contraband articles used in violations of title, §§48-2-82 to 48-2-84.
Venue.
Actions for refunds, §48-2-35.
Appeals of orders, rulings or findings of commissioner, §48-2-59.
Judicial sales, §48-2-55.
Vessels.
Contraband articles.
Used in violation of title, §§48-2-82 to 48-2-84.
Violation of tax laws.
Duties of law enforcement officers and tax officials to prosecute, §48-2-81.
Waiver of interest on unpaid taxes, §48-2-41.
Waiver of penalties, §48-2-43.
Water and sewer projects and costs tax (MOST), §§48-8-200 to 48-8-212.
Water pollution eliminating or reducing property.
Property tax exemption, §48-5-41.
Witnesses.
Judicial and investigative powers of commissioner, §48-2-8.

TAX COLLECTORS.
General provisions, §§48-5-121 to 48-5-165.
Tax receivers.
General provisions, §§48-5-101 to 48-5-109.

TAX COURTS (CONTINGENTLY EFFECTIVE 7/1/2026).
County property taxes.
Examination of county tax digest.
Petition for refund of taxes illegally collected or paid (contingently effective 1/1/2026), §48-5-342.
Intangible recording tax.
Refund of protested amount, §48-6-76.
Property taxes.
Timber, qualified timberland property, §§48-5-605, 48-5-606.
Public utility ad valorem taxation.
Railroad equipment companies.
Appeals of assessments, §48-5-519.

TAX COURTS (CONTINGENTLY EFFECTIVE 7/1/2026) —Cont'd
Questions of law determined by tax court.
Appeals and payments of taxes admittedly owed, §48-2-59.
Assessments and equalization issues, §48-2-18.
Refunds, §48-2-35.
Real estate transfer tax.
Refund, action for, §48-6-7.

TAX DEFERRAL FOR THE ELDERLY ACT.
General provisions.
Homestead tax deferral for individuals 62 or older, §§48-5-70 to 48-5-84.
Short title, §48-5-70.

TAX EXECUTIONS, §§48-3-1 to 48-3-44.
Actions to enforce.
Statute of limitations generally, §§48-3-21 to 48-3-23.1.
Administrative discharge of debts or obligations.
Collection barred by statute of limitations, §48-3-23.1.
Ad valorem taxes of less than one dollar.
Statute of limitations, §48-3-21.1.
Affidavits.
Execution for collection of money due state.
Affidavit of illegality, §48-3-1.
Aggregating multiple executions, §48-3-6.
Alias tax execution.
Replacement of lost or destroyed executions, §48-3-7.
Appearances.
Petition to reduce execution to judgment.
Appearance of respondent.
Effect on grace period before final judgment, §48-3-17.
Failure of respondent to appear, §48-3-16.
Effect on grace period before final judgment, §48-3-17.
Bonds, surety.
Interposition of claims, §48-3-24.
Claims by persons not party to execution.
Interposition of claims, §48-3-24.
Collection of taxes, §48-3-1.
Affidavit of illegality of execution, §48-3-1.

TAX EXECUTIONS —Cont'd
Collection of taxes —Cont'd
Immediate payment or bond.
Demand where person or property may leave jurisdiction or property's value may be prejudiced, §48-3-3.1.
Corporations.
Executions against foreign corporations, §48-3-2.
County property taxes.
Persons holding county money, §48-5-238.
Affidavit of illegality by person against whom execution issues, §48-5-239.
Applicability of article to persons borrowing county money, §48-5-240.
County tax collectors, §48-3-3.
Advertising as additional cost, §48-5-137.1.
Collection, §48-5-161.
Collection of executions on insolvent lists, §48-5-131.
Delinquent tax officials.
Issuance of execution against generally, §§48-5-200 to 48-5-205.
Execution docket, §48-5-161.
Failure to collect taxes.
Transfer of executions to collector or surety held liable for failure, §48-5-157.
Immediate payment or bond.
Demanding where person or property may leave jurisdiction or property's value may be prejudiced, §48-3-3.1.
Inspection by grand jury, §48-5-161.
Issuance of execution, §48-5-161.
Penalties for violations by collectors, §48-5-162.
Issuance of garnishments, §48-3-12.
Levy administration fee, §48-5-161.
Petition to reduce execution to judgment, §§48-3-13 to 48-3-17.
Powers as ex officio sheriffs, §48-5-137.
Reissuance of execution before allowance of insolvent lists, §48-5-129.
Sales under tax executions.
Generally, §§48-4-1 to 48-4-65.
Selection of property to be levied, §48-3-4.

TAX EXECUTIONS —Cont'd
County tax commissioners, §48-3-3.
Advertising as additional cost of execution, §48-5-137.1.
Collection, §48-5-161.
Executions on insolvent lists, §48-5-131.
Delinquent tax officials.
Issuance of execution against generally, §§48-5-200 to 48-5-205.
Failure to collect taxes.
Transfer of executions to commissioner or surety held liable, §48-5-157.
Immediate payment or bond.
Demanding where person or property may leave jurisdiction or property's value may be prejudiced, §48-3-3.1.
Inspection by grand jury, §48-5-161.
Issuance of execution.
Penalties for violations by commissioners, §48-5-162.
Issuance of garnishments, §48-3-12.
Levy administration fee, §48-5-161.
Petition to reduce execution to judgment, §§48-3-13 to 48-3-17.
Powers as ex officio sheriffs, §48-5-137.
Publication of information regarding execution, §48-3-29.
Reissuance of execution before allowance of insolvent lists, §48-5-129.
Sales under tax executions.
Generally, §§48-4-1 to 48-4-65.
Selection of property to be levied, §48-3-4.
County tax receivers.
Delinquent tax officials.
General provisions, §§48-5-200 to 48-5-205.
Delinquent tax officials.
Issuance of executions against generally, §§48-5-200 to 48-5-205.
Deputies acting for named officers, §48-3-18.
Destroyed executions.
Issuance of alias tax execution, §48-3-7.
Dockets.
County tax collectors and commissioners to keep execution docket, §48-5-161.

TAX EXECUTIONS —Cont'd
Enforcement.
Statute of limitations, §48-3-21.
Ad valorem taxes of less than one dollar, §48-3-21.1.
Excise tax on marijuana and controlled substances, §48-15-9.
Foreign corporations.
Executions against, §48-3-2.
Forms.
Notice to owner of warranty deed, security deed or mortgage, §48-3-10.
Petition to reduce execution to judgment.
Notice to nonresident by publication, §48-3-14.
Sales under tax executions.
Notice of foreclosure of right to redeem, §48-4-46.
Purchases by counties.
Bill of sale for personal property, §48-4-22.
Garnishment.
Issuance by tax collectors and commissioners, §48-3-12.
Geographical scope, §48-3-5.
Income taxes.
Collection by execution, §48-7-82.
Interest, §48-3-8.
Transferred executions, §48-3-20.
Interposition of claims, §48-3-24.
Jeopardy assessments.
Immediate payment or bond where person or property may leave jurisdiction or property's value may be prejudiced, §48-3-3.1.
Judgments.
Petition to reduce execution to judgment, §§48-3-13 to 48-3-17.
Judicial interference in tax levies, §48-3-26.
Jurisdiction.
Jurisdictional scope of tax executions, §48-3-5.
Jury trials.
Petition to reduce execution to judgment, §48-3-15.
Leviers of executions, §48-3-6.
Liability of officers for failure to remit, §48-3-25.
Limitation of actions, §§48-3-21 to 48-3-23.1.
Administrative discharge of debts or obligations.
Commissioner to develop standards, §48-3-23.1.

TAX EXECUTIONS —Cont'd
Limitation of actions —Cont'd
Enforcement of executions for ad valorem taxes of less than one dollar, §48-3-21.1.
Nulla bona.
Tolling of statute of limitations, §48-3-23.
Real property ad valorem taxes due in amount of less than $5.00, §48-3-21.
State tax executions.
Time for filing, §48-3-42.
Statutory limitations applicable to tax executions, §48-3-22.
Lists of security deeds or mortgages, §48-3-9.
Lost executions.
Issuance of alias tax execution, §48-3-7.
Mortgages and deeds of trust.
Notice of levy to owner of security deed or mortgage.
Forms, §48-3-10.
Motor carriers' road tax.
Levy to collect deficiencies and road taxes due, §48-9-41.
Multiple executions.
Aggregating, §48-3-6.
Municipal property taxes.
Paving streets, laying sewers or other improvements.
Collection of assessments, §48-5-358.
Sale of property for taxes due municipality, §48-5-359.
Nonresidents.
Petition to reduce execution to judgment, §48-3-14.
Notice.
Issuance by tax collectors and commissioners, §48-3-3.
Owners of security deeds or mortgages, §48-3-9.
Form, §48-3-10.
Petition to reduce execution to judgment.
Nonresidents, §48-3-14.
Publication of information regarding execution, §48-3-29.
Sales under tax executions, §48-4-1.
Excess funds, §48-4-5.
Foreclosure of right to redeem, §48-4-45.
Form, §48-4-46.
Land bank authorities, §48-4-65.

TAX EXECUTIONS —Cont'd
Notice —Cont'd
Sales under tax executions —Cont'd
Unreturned property, §48-4-2.
State tax executions.
Released executions, notice to taxpayer, §48-3-44.
Transfers, §48-3-19.
Nulla bona, §48-3-23.
Oaths.
Interposition of claims, §48-3-24.
Issuance of alias tax execution, §48-3-7.
Obstructing levying officers, §48-3-27.
Owners of warranty deeds, security deeds or mortgages.
Notice.
Form, §48-3-10.
Person not record owner of property on day taxes become delinquent.
Execution not issued against, §48-3-3.
Petition to reduce execution to judgment, §§48-3-13 to 48-3-17.
Appearance by respondent.
Effect on grace period before final judgment, §48-3-17.
Failure of respondent to appear, §48-3-16.
Effect on grace period before final judgment, §48-3-17.
Grace period before final judgment, §48-3-17.
Jury trial.
Demand, §48-3-15.
Local taxes remaining unsatisfied, §48-3-13.
Nonresidents.
Procedures for, §48-3-14.
Nulla bona, §48-3-23.
Procedures, §48-3-13.
Failure of respondent to appear, §48-3-16.
Nonresidents, §48-3-14.
State taxes remaining unsatisfied, §48-3-13.
Property taxes.
Delinquent tax payments in certain counties, §48-5-24.
Property to be levied.
Selection, §48-3-4.
Publication.
Petition to reduce execution to judgment.
Procedures for nonresident, §48-3-14.

TAX EXECUTIONS —Cont'd
Publication —Cont'd
Public information regarding execution, §48-3-29.
Public utility ad valorem taxation.
Failure to file returns, §48-5-512.
Railroad equipment companies, §48-5-519.
Redemption.
Sales under tax executions, §§48-4-40 to 48-4-48.
Releases.
Satisfaction of execution.
Filing of release, §48-3-28.
State tax executions.
Filing release of lien, §48-3-44.
Remittance of money collected, §48-3-25.
Replevin.
Notice action seeking replevin to lie, §48-3-26.
Sales and use taxes.
Conducting sale by tax commissioner or tax collector or duly authorized officers, §48-2-32.
Issuance of fieri facias for collection of delinquent taxes, §48-8-56.
Sales under tax executions, §§48-4-1 to 48-4-65.
Advertisements for property.
Description of property, §48-4-1.
Assessment of unreturned property, §48-4-2.
Bills of sale.
Validity, §48-4-6.
Counties purchasing, §§48-4-20 to 48-4-23.
Authority to purchase personal property, §48-4-22.
Authority to purchase real property, §48-4-20.
Disposition of unredeemed property, §48-4-21.
Employees of county.
Prohibitions on purchasing and financial interests in property, §48-4-23.
Form of bill of sale for personal property, §48-4-22.
Redemption, §48-4-21.
Deeds.
Validity, §48-4-6.
Delinquent tax officials.
Proceedings in selling property under execution, §48-5-202.

TAX EXECUTIONS —Cont'd
Sales under tax executions —Cont'd
Descriptions of property in advertisements, §48-4-1.
Disposition of unreturned property, §48-4-2.
Duties of levying officers, §48-4-3.
Excess after paying taxes.
Payment of excess, §48-4-5.
Interpleader.
Excess funds distribution, §48-4-5.
Judicial sales.
Advertised and sold in same manner, §48-4-1.
Land bank authorities, §§48-4-60 to 48-4-65.
Acquisition of tax delinquent properties, §48-4-64.
Administration of properties, §48-4-63.
Purposes, §48-4-61.
Board to govern authority.
Meetings, §48-4-62.
Members, §48-4-62.
Organization, §48-4-62.
Staff, §48-4-62.
Definitions, §48-4-60.
Disposal of property, §48-4-64.
Dissolution, §48-4-61.
Established, §48-4-61.
Extinguishment of county and city taxes, §48-4-64.
Foreclosure of right to redeem, §48-4-64.
Procedure, §48-4-65.
Inventory and appraisal.
Properties acquired, §48-4-63.
Notice of foreclosure of right to redeem, §48-4-65.
Powers, §48-4-61.
Purposes, §48-4-61.
Redemption.
Foreclosure, §§48-4-64, 48-4-65.
Land banks, §§48-4-100 to 48-4-112.
Acquisition of real property.
Extinguishment of liens or claims for taxes, §48-4-112.
Holding in name of land bank, §48-4-109.
Powers, §48-4-108.
Where located, §48-4-103.
Ad valorem tax executions against multiple tracts of property.
Assignment, transfer or sale to land bank, §48-4-112.

TAX EXECUTIONS —Cont'd
Sales under tax executions —Cont'd
Land banks —Cont'd
Allocation of property tax revenues, §48-4-110.
Applicability of act, §48-4-100.
Bid in nonjudicial tax sale, §48-4-112.
Board of directors.
Actions requiring majority approval, §48-4-104.
Conflicts of interest, §48-4-111.
Continuance of existing land bank, consent of board, §48-4-104.
Liability of members for obligations of land bank, §48-4-104.
Meetings, §48-4-104.
Public meetings, §48-4-111.
Members, §48-4-104.
Officers, §48-4-104.
Proxy voting prohibited, §48-4-104.
Quorum, §48-4-104.
Removal of member, §48-4-104.
Vacancies, §48-4-104.
Conflict of interest of board or employee, §48-4-111.
Contracts for staffing services, §48-4-105.
Conveyance of property, §48-4-109.
Creation by local government, §48-4-103.
Definitions, §48-4-102.
Dissolution, §48-4-111.
Eminent domain power, §48-4-107.
Employment of professionals, §48-4-105.
Extinguishment of liens or claims for taxes, §48-4-112.
Filing petition of foreclosure, §48-4-112.
Funding sources, §48-4-110.
Intergovernmental contract creating, §48-4-103.
Inventory of real property, access to, §48-4-109.
Joining existing land bank, §48-4-103.
Legislative findings, §48-4-101.
Limitation of powers by member, §48-4-106.
Loans, limitation of powers, §48-4-106.

TAX EXECUTIONS —Cont'd
Sales under tax executions —Cont'd
Land banks —Cont'd
Ordinance creating, requirements, §48-4-103.
Payments for services rendered, §48-4-110.
Powers generally, §48-4-106.
Proceeds from sale of property, §48-4-110.
Public purpose, §48-4-101.
Ranking of priorities for use of property, §48-4-109.
Records, public nature, §48-4-111.
School district participation, §48-4-103.
Extinguishment of prior encumbrances, including taxes owed to school district, §48-4-112.
Tax exemptions for land bank property, income and operations, §48-4-108.
Title of act, §48-4-100.
Transfer of property from local government to land bank, §48-4-108.
Withdrawal of members, effect, §48-4-111.
Levying officers.
Authority to purchaser in possession of land, §48-4-7.
Duties, §48-4-3.
Municipal property taxes.
Executions for collection of assessments for improvements.
Sales at public auction, §48-5-358.
Sale of property for taxes due municipalities, §48-5-359.
Notice of sale, §48-4-1.
Unreturned property, §48-4-2.
Payment of excess altering paying taxes, §48-4-5.
Persons obligated to pay.
Purchases by, §48-4-4.
Procedures generally, §48-4-1.
Purchase by one obligated to pay, §48-4-4.
Purchasers in possession of land.
Authority of levying officer, §48-4-7.
Purchases by counties, §§48-4-20 to 48-4-23.
Quitclaim deeds, §48-4-44.
Redemption, §§48-4-40 to 48-4-48.
Amount payable, §48-4-42.

TAX EXECUTIONS —Cont'd
Sales under tax executions —Cont'd
Redemption —Cont'd
Creditors without liens, §48-4-41.
Effect of redemption, §48-4-43.
Effect, §48-4-43.
Foreclosure, §48-4-45.
Form of notice of foreclosure, §48-4-46.
Land bank authorities, §§48-4-64, 48-4-65.
Tender of redemption price before action to cancel tax deed, §48-4-47.
Form of notice of foreclosure, §48-4-46.
Municipal property taxes.
Sales under executions to collect assessments for improvements, §48-5-358.
Notice of foreclosure, §48-4-45.
Form, §48-4-46.
Land bank authorities, §48-4-65.
Tender of redemption price before action to cancel tax deed, §48-4-47.
Payment.
Amount, §48-4-42.
Persons entitled to redeem, §48-4-40.
Creditors without liens, §48-4-41.
Prescription.
Ripening of tax deed title by, §48-4-48.
Purchases by counties, §48-4-21.
Quitclaim deed by purchase, §48-4-44.
Service of notice of foreclosure, §48-4-46.
Time, §48-4-40.
Title by prescription, §48-4-48.
Waiver of service of notice of foreclosure, §48-4-46.
Tax collectors and tax commissioners.
Advertising as additional cost of execution, §48-5-137.1.
Powers as ex officio sheriffs, §48-5-137.
Two or more executions levied against defendants.
Aggregation and single sale, §48-4-1.
Unreturned property.
Assessment and disposition, §48-4-2.
Satisfaction of execution.
Release of execution.
Filing of release, §48-3-28.

TAX EXECUTIONS —Cont'd
Scope.
Geographical scope, §48-3-5.
Secretary of state.
Relieved from mailing papers to respondent, §48-3-18.
Selection of property to be levied, §48-3-4.
Service of process.
Petition to reduce execution to judgment, §48-3-13.
Nonresidents, §48-3-14.
Sales under tax executions.
Notice of foreclosure of right to redeem, §48-4-46.
Summons of garnishment, §48-3-12.
Sheriffs.
Delinquent tax officials.
Direction to sheriffs of executions against, §48-5-202.
State tax executions, §§48-3-40 to 48-3-44.
Access to information online, §48-3-43.
Actions for collection of tax.
Tolling or suspension of execution, §48-3-42.
Active executions.
Status as contained in online information management system, §48-3-43.
Applicability of provisions, §48-3-40.
Attachment to real property in county filed, §48-3-42.
Definitions, §48-3-40.
Duration of lien, §48-3-42.
Effective date of execution, §48-3-42.
Electronic transmission, §48-3-42.
Expiration of filed execution, §48-3-42.
Expired executions.
Status as contained in online information management system, §48-3-43.
Filing, §48-3-42.
Force and effect, §48-3-42.
Information management system, §48-3-43.
Installment agreements.
Tolling or suspension of execution, §48-3-42.
Invalid prior executions, §48-3-42.
Issuance, §48-3-41.
Lien on property of taxpayer, §48-3-42.
Filing release of lien, §48-3-44.
Issuance of execution upon lien arising, §48-3-41.

TAX EXECUTIONS —Cont'd
State tax executions —Cont'd
Offers to compromise, consideration by commissioner.
Tolling or suspension of execution, §48-3-42.
Priority, §48-3-42.
Purpose of provisions, §48-3-40.
Refiled executions.
Status as contained in online information management system, §48-3-43.
Released executions.
Filing release of lien, §48-3-44.
Notice to taxpayer of release, §48-3-44.
Status as contained in online information management system, §48-3-43.
Renewal of unsatisfied executions previously existing, §48-3-42.
Status of execution as contained in online information management system, §48-3-43.
Time for filing, §48-3-42.
Tolling or suspension of execution, §48-3-42.
Uniform state-wide system for filing notices, creation, §48-3-40.
Withdrawn executions.
Status as contained in online information management system, §48-3-43.
Statute of limitations, §§48-3-21 to 48-3-23.1.
Enforcement of executions for ad valorem taxes of less than one dollar, §48-3-21.1.
Limitation periods applicable to tax executions, §48-3-22.
Nulla bona.
Tolling, §48-3-23.
Real property ad valorem taxes due in amount of less than $5.00, §48-3-21.
State tax executions.
Time for filing, §48-3-42.
Superior courts.
Clerks.
Actions done by deputies, §48-3-18.
Transfer of executions, §48-3-19.
Interest, §48-3-20.
Trial.
Interposition of claims, §48-3-24.
Petition to reduce execution to judgment.
Demand for jury trial, §48-3-15.

TAX EXECUTIONS —Cont'd
Venue.
Petition to reduce execution to judgment, §48-3-13.
Nonresidents, §48-3-14.

TAXICABS.
Occupation taxes or regulatory fees.
Civil action to enforce, §48-13-9.1.
Example of business subject to, §48-13-9.
Sales and use tax exemptions.
Fares for vehicles operated under for-hire master license, §48-8-3.

TAXPAYER BILL OF RIGHTS, §48-1-8.

TAX RECEIVERS.
General provisions, §§48-5-101 to 48-5-109.
Tax collectors.
General provisions, §§48-5-121 to 48-5-165.

TAX RETURN PREPARERS.
Penalties, §48-2-62.

TAX SALES, §§48-4-1 to 48-4-65.

TEACHERS.
High-need subject areas.
Recruitment and retention program.
Income tax credit for program participants, §48-7-29.23.
Recruitment and retention program.
Income tax credit for program participants, §48-7-29.23.

TEACHERS RETIREMENT SYSTEM OF GEORGIA.
Municipal property taxes.
Power to levy and collect taxes to pay benefits under, §48-5-351.

TECHNICAL COLLEGE SYSTEM OF GEORGIA.
Contributions to foundation through income tax returns, §48-7-64.

TELECOMMUNICATIONS.
Tax credits, §§48-7-40.2 to 48-7-40.4, 48-7-40.7 to 48-7-40.9.

TELEGRAPHS.
Franchise tax.
Special franchises generally, §§48-5-420 to 48-5-425.

TELEGRAPHS —Cont'd
Highways, roads and rights of way.
Construction, operation of lines and facilities along.
Authority, approval of local government, §48-5-1.
Income taxes.
Taxation of public service corporations, §48-7-32.
Property taxes.
Franchise tax.
Special franchises generally, §§48-5-420 to 48-5-425.
Public utility ad valorem taxation.
General provisions, §§48-5-510 to 48-5-524.
Public utility ad valorem taxation.
General provisions, §§48-5-510 to 48-5-524.
Special franchises.
Taxation generally, §§48-5-420 to 48-5-425.
Taxation.
Franchise tax.
Special franchises generally, §§48-5-420 to 48-5-425.
Income taxes.
Taxation of public service corporations, §48-7-32.
Public utility ad valorem taxation generally, §§48-5-510 to 48-5-524.

TELEPHONES.
Franchise tax.
General provisions, §§48-5-420 to 48-5-425.
Highways, roads and rights of way.
Construction or operation of lines or facilities along.
Power, approval of local government, §48-5-1.
Income taxes.
Taxation of public service corporations, §48-7-32.
Mobile telephones.
Sales and use taxes.
Taxing jurisdiction for mobile telecommunications services, §48-8-13.
9-1-1 system.
Charges.
Records of collections, preservation.
Confidentiality, §48-2-15.

TELEPHONES —Cont'd
Property taxes.
Franchise tax.
Special franchises generally, §§48-5-420 to 48-5-425.
Public utility ad valorem taxation.
General provisions, §§48-5-510 to 48-5-524.
Public utility ad valorem taxation.
General provisions, §§48-5-510 to 48-5-524.
Special franchises.
Taxation generally, §§48-5-420 to 48-5-425.
Taxation.
Franchise tax.
Special franchises generally, §§48-5-420 to 48-5-425.
Income taxes.
Taxation of public service corporations, §48-7-32.
Public utility ad valorem taxation.
General provisions, §§48-5-510 to 48-5-524.

TELEVISION.
Income tax credits.
Film, gaming, video or digital production in state, §48-7-40.26.
Postproduction expenditures, §48-7-40.26A.

TELEWORKING TAX CREDITS.
Employers allowed, §48-7-29.11.

TENANTS IN COMMON.
Real estate transfer tax.
Exemption of certain instruments, deeds or writings, §48-6-2.

TENDER OF PAYMENT.
Tax executions.
Foreclosure.
Tender of redemption price before action to cancel tax deed, §48-4-47.

TENDER OF REDEMPTION.
Foreclosures.
Tax executions.
Foreclosure of right to redeem, §48-4-47.

TENNESSEE VALLEY AUTHORITY.
Taxation.
Apportionment of payments to state and political subdivisions in lieu of taxes, §48-14-2.

TENT SHOWS.
Licenses or permits.
Unlawful to conduct without, §48-13-10.

THEATERS.
Sales and use taxes, exemptions.
Theater located within facility containing art museum, symphonic hall and theater.
Renovation or expansion, property used, §48-8-3.

THEFT.
By conversion.
Taxation.
Unlawful conversion of funds collected for benefit of state, §48-1-5.
Taxation.
Theft by conversion.
Unlawful conversion of funds collected for benefit of state, §48-1-5.

TICKETS.
Sales and use taxes.
General provisions, §§48-8-1 to 48-8-78.
Tobacco and alternative nicotine products taxes.
Transportation of unstamped cigarettes and nontax-paid cigars.
Delivery tickets, §48-11-22.
Violations of section, §48-11-23.

TIMBER.
Equipment.
Property tax exemption, §48-5-41.3.
Harvest.
Property tax assessments.
Assessment made following harvest or sale, §48-5-7.5.
Income taxes.
Timber industry, relief for losses caused by Hurricane Michael, §48-7-40.36.
Property taxes.
Assessment of standing timber, §48-5-7.5.
Exemption for timber equipment, §48-5-41.3.
Fair market value, §48-5-2.
Qualified timberland property, §§48-5-600 to 48-5-607.
Appeals, §§48-5-605, 48-5-606.

TIMBER —Cont'd
Property taxes —Cont'd
Qualified timberland property —Cont'd
Appraisals.
Complete parameters for appraisal.
Appeals, §48-5-606.
Fair market value determinations, §48-5-601.
Appeals, §48-5-605.
Manual for appraisals, §48-5-602.
Assessment, §48-5-7.
Certification as qualified owner, §48-5-603.
Appeals, §48-5-605.
Certification as qualified timberland property, §48-5-604.
Appeals, §48-5-605.
Classification as separate and distinct class of tangible property, §48-5-600.1.
Contiguous tracts.
Division of tract by boundary, roadway, railroad track, etc.
Election of owner to declare tract as contiguous, §48-5-600.
Criteria for qualification, §48-5-604.
Definitions, §48-5-600.
Fair market value.
Determination, §48-5-601.
Appeal of complete parameters for appraisal, §48-5-606.
Appeals, §48-5-605.
Complete parameters for appraisal, §48-5-602.
Manual for appraisals, §48-5-602.
Forms.
Prescribing forms to implement provisions, §48-5-607.
Owner.
Certification as qualified owner, §48-5-603.
Rulemaking to implement provisions, §48-5-607.
Sales.
Property tax assessments.
Assessment made following harvest or sale, §48-5-7.5.
Standing timber.
Property taxes, §48-5-7.5.

TIPS.
Income taxes.
Computation of taxable net income.
Retirement income.
Exceptions, §48-7-27.

TITLE.
Sales under tax executions.
Effect of redemption, §48-4-43.
Prescription.
Ripening of tax deed title by, §48-4-48.
Tax executions.
Redemption.
Effect, §48-4-43.
Ripening of tax deed title by prescription, §48-4-48.

TOBACCO.
Smokeless tobacco.
Tobacco and alternative nicotine products taxes, §§48-11-1 to 48-11-30.
Taxation.
Tobacco and alternative nicotine products taxes.
General provisions, §§48-11-1 to 48-11-30.
Tobacco and alternative nicotine products taxes.
General provisions, §§48-11-1 to 48-11-30.

TOBACCO AND ALTERNATIVE NICOTINE PRODUCTS TAXES, §§48-11-1 to 48-11-30.
Actions.
Enforcement and collection of penalties, §48-11-24.
Appeals.
Persons aggrieved by action or decision of commissioner after hearing, §48-11-18.
Suspension, refusal of renewal and revocation of licenses, §48-11-6.
Arrest.
Powers of special agents and enforcement officers, §48-11-19.
Assessments.
Acquisition of cigars or cigarettes for which tax not paid.
Failure to make required reports or incorrect reports, §48-11-14.
Deficiency, §48-11-12.
Badges.
Special agents.
Retention upon retirement, §48-11-19.

TOBACCO AND ALTERNATIVE NICOTINE PRODUCTS TAXES —Cont'd
Bonds, surety.
Appeals of actions or decisions of commissioner, §48-11-18.
Distributors.
Execution of bonds by distributors, §48-11-7.
Nonresident distributors, §48-11-5.
Licensed distributors, §48-11-4.
Purchase of stamps on account, §48-11-16.
Sale of unstamped cigarettes or nontax-paid cigars.
Pending appeal.
Bond posted to prevent, §48-11-9.
Special agents or enforcement officers, §48-11-19.
Claims for refund, §48-11-15.
Collection of tax.
Alternate method in lieu of stamps, §48-11-3.
Once per item, §48-11-2.
Seller or distributor to collect from purchaser or consumer, §48-11-2.
Stamps, §48-11-3.
Common carriers.
Authority to require reports from, §48-11-10.
Examination of records, §48-11-11.
Confiscation.
Transportation of unstamped cigarettes and nontax-paid cigars.
Absence of invoices or delivery tickets, §48-11-22.
Contraband.
Package cigarette sales.
Unlawful affixing of tax stamp, §48-11-23.1.
Powers of special agents and enforcement officers to seize and take possession, §48-11-19.
Seizure of unstamped cigars and cigarettes or nontax-paid cigars, §48-11-9.
Contract carriers.
Examination of records, §48-11-11.
Costs.
Appeals from action or decision of commissioner, §48-11-18.
Enforcement and collection of penalties, §48-11-24.
Counterfeit cigarettes.
Sale or possession of contraband, §48-11-30.

TOBACCO AND ALTERNATIVE NICOTINE PRODUCTS TAXES —Cont'd
Counterfeiting stamps, §48-11-28.
Credits.
Manufacturers who export to foreign countries, §48-7-40.20.
Deficiency assessments, §48-11-12.
Definitions, §48-11-1.
Package cigarette sales, §48-11-23.1.
Delinquent distributors, dealers or taxpayers.
Lien against property.
Unpaid taxes, §48-11-17.
Seizure and sale of property, §48-11-17.
Deliveries of unstamped cigarettes or nontax-paid cigars, §48-11-8.
Delivery sales, §48-11-4.2.
Enforcement officers.
Powers and duties, §48-11-19.
Evasion of tax.
Deficiency due to fraudulent intent to evade, §48-11-12.
Evidence.
Certificate of commissioner.
Prima facie evidence, §48-11-20.
Examinations.
Nonresident distributor records, §48-11-5.
Records of distributors and dealers, §48-11-11.
Records of transportation companies, carriers and warehouses, §48-11-11.
Exemptions, §48-11-2.
Tax on persons having cigars or cigarettes on which tax not paid, §48-11-13.
False entries on invoices or records, §48-11-27.
False or fraudulent reports, §48-11-26.
Fees.
Dealer and distributor licenses, §48-11-4.
Licensing of promotional activity, §48-11-4.
Registration of vending machines, §48-11-4.
Firearms.
Powers of special agents and enforcement officers to carry, §48-11-19.
Retention upon retirement, §48-11-19.

TOBACCO AND ALTERNATIVE NICOTINE PRODUCTS TAXES —Cont'd
First taxable transaction.
Tax advanced and paid by distributor on, §48-11-2.
Forgery.
Stamps, §48-11-28.
Fraud.
Deficiency due to fraudulent intent to evade tax, §48-11-12.
False or fraudulent reports, §48-11-26.
Stamps, §48-11-28.
Hearings.
Acquisition of cigars and cigarettes for which tax not paid.
Assessment for failure to file or filing incorrect report, §48-11-14.
Initiation by commissioner, §48-11-18.
Procedure where aggrieved by action of commissioner, §48-11-18.
Sale of unstamped cigarettes or nontax-paid cigars, §48-11-9.
Suspension, refusal of renewal and revocation of licenses, §48-11-6.
Imposition of tax, §48-11-2.
Tax on persons having cigars or cigarettes on which tax not paid, §48-11-13.
Investigations.
Powers of special agents and enforcement officers, §48-11-19.
Stock of cigars and cigarettes, §48-11-11.
Invoices.
False entries, §48-11-27.
Transportation of unstamped cigarettes and nontax-paid cigars, §48-11-22.
Violations of section, §48-11-23.
Jurisdiction.
State revenue commissioner, §48-11-4.
Superior courts.
Criminal violations of chapter, §48-11-21.
Enforcement and collection of penalties, §48-11-24.
Licenses.
Dealers and distributors, §48-11-4.
Delivery sales, §48-11-4.2.
Nonresident distributors, §48-11-5.
Operation of unlicensed business or activities, §48-11-24.
Package cigarette sales, §48-11-23.1.
Suspension, refusal of renewal and revocation, §§48-11-6, 48-11-23.1.

TOBACCO AND ALTERNATIVE NICOTINE PRODUCTS TAXES —Cont'd
Licenses —Cont'd
Promotional activities, §48-11-4.
Liens.
Amount of unpaid tax, §48-11-17.
Little cigars.
Definitions, §48-11-1.
Possession of unstamped tobacco products, penalties, §48-11-24.
Rate, §48-11-2.
Tax on persons having cigars or cigarettes on which tax not paid.
Applicability to little cigars, §48-11-13.
Transportation of unstamped tobacco products.
Applicability to little cigars, §48-11-22.
Violations, §48-11-23.
Metering machines.
Authorized use by nonresident distributors, §48-11-5.
Nonresidents.
Bond of nonresident distributors, §48-11-5.
Licensing of nonresident distributors, §48-11-5.
Reports of shipments by nonresident distributors, §48-11-5.
Service on agent of nonresident distributors, §48-11-5.
Stamps or metering machines.
Authorized use by nonresident distributors, §48-11-5.
Nontax-paid cigars.
Acceptance of deliveries, §48-11-8.
Penalties for possession, §§48-11-24, 48-11-25.
Reports, §48-11-8.
Sale or possession, §48-11-8.
Seizure as contraband, §48-11-9.
Selling, §48-11-25.
Transportation, §48-11-22.
Violations of section, §48-11-23.
Notice.
Acquisition of cigars and cigarettes for which tax not paid.
Assessment for failure to file reports or filing incorrect report, §48-11-14.
Hearings, §48-11-18.
Sale of unstamped cigars and cigarettes or nontax-paid cigars, §48-11-9.

TOBACCO AND ALTERNATIVE NICOTINE PRODUCTS TAXES —Cont'd
Notice —Cont'd
Suspension, refusal of renewal and revocation of licenses, §48-11-6.
Payment of tax.
Alternate payment, §48-11-8.
Method in lieu of stamps, §48-11-3.
Distributors to pay, §48-11-8.
Lien on amount of unpaid tax, §48-11-17.
Seller or distributor responsible for, §48-11-2.
Stamps, §48-11-3.
Tax paid only once, §48-11-8.
Penalties.
Acquisition of cigars and cigarettes for which tax not paid.
Failure to register or make required reports, §48-11-14.
Deficiency assessments, §48-11-12.
Failure to file required reports, §48-11-10.
Operation of unlicensed business or activity, §48-11-24.
Possession of unstamped cigarettes or nontax-paid cigars, §48-11-24.
Transportation of unstamped cigarettes and nontax-paid cigars.
Violations of requirements, §48-11-22.
Permits.
Purchase of stamps on account, §48-11-16.
Promotional activities.
Licensing, §48-11-4.
Publication.
Notice of sale of unstamped cigarettes or nontax-paid cigars, §48-11-9.
Rate of tax, §48-11-2.
Tax on persons having cigars or cigarettes on which tax not paid, §48-11-13.
Recordation.
Liens on amount of unpaid tax, §48-11-17.
Records.
Distributors and dealers, §48-11-11.
Examination of transportation company, carriers and warehouse records, §48-11-11.
False entries, §48-11-27.
Nonresident distributors, §48-11-5.
Retention period, §48-11-11.

TOBACCO AND ALTERNATIVE NICOTINE PRODUCTS TAXES —Cont'd
Refunds.
Procedure, §48-11-15.
Registration.
Persons acquiring cigars and cigarettes for which tax not paid, §48-11-14.
Vending machines, §48-11-4.
Reports.
Acquisition of cigars and cigarettes for which tax not paid, §48-11-14.
Common carriers and warehousemen.
Authority to require reports from, §48-11-10.
Failure to file, §§48-11-10, 48-11-26.
False or fraudulent reports, §48-11-26.
Monthly reports of licensed distributors, §48-11-10.
Nonresident distributors.
Shipments, §48-11-5.
Unstamped cigarettes and nontax-paid cigars, §48-11-8.
Sales.
Delinquent distributor, dealer or taxpayer property, §48-11-17.
Delivery sales, §48-11-4.2.
Unstamped cigars and cigarettes or nontax-paid cigars, §48-11-8.
Public action, §48-11-9.
Vapor products, permissible means of sale, §48-11-4.1.
Search warrants.
Powers of special agents and enforcement officers, §48-11-19.
Seizure as contraband of unstamped cigarettes or nontax-paid cigars, §48-11-9.
Special agents and enforcement officers, §48-11-19.
Seizure of property of delinquent distributors, dealers or taxpayers, §48-11-17.
Service of process.
Nonresident distributors.
Service on agents, §48-11-5.
Special agents.
Powers and duties, §48-11-19.
Weapon and badge retention upon retirement, §48-11-19.
Stamps.
Acceptance of deliveries of unstamped cigarettes, §48-11-8.
Authorized use by nonresident distributors, §48-11-5.

TOBACCO AND ALTERNATIVE NICOTINE PRODUCTS TAXES —Cont'd
Stamps —Cont'd
Collection and payment of tax through use of, §48-11-3.
Criteria for affixing, §48-11-23.1.
Distributors authorized to stamp, §48-11-8.
Fraudulently making, uttering, forging or counterfeiting, §48-11-28.
Package cigarette sales.
Affixing requirements, §48-11-23.1.
Purchase on account, §48-11-16.
Redemption at cost price by state revenue commissioner, §48-11-3.
Refund of cost price of stamps, §48-11-15.
Reports of unstamped cigarettes, §48-11-8.
Sale at discount to distributors, §48-11-3.
Sale or exchange by distributor with another distributor prohibited, §48-11-3.
Sale or possession of unstamped cigars and cigarettes, §48-11-8.
Seizure as contraband of unstamped cigars and cigarettes, §48-11-9.
Unstamped cigarettes and cigars.
Penalty for possession, §§48-11-24, 48-11-25.
Selling, §48-11-25.
Transportation, §48-11-22.
Violations of section, §48-11-23.
Stock of cigars and cigarettes.
Investigation and examination, §48-11-11.
Superior courts.
Enforcement and collection of penalties, §48-11-24.
Jurisdiction over criminal violations of chapter, §48-11-21.
Tax evasion.
Deficiency due to fraudulent intent to evade, §48-11-12.
Tax on persons having cigars or cigarettes on which tax not paid, §48-11-13.
Registration, reports and tax payments of persons acquiring, §48-11-14.
Tax stated separately from sales tax, §48-11-2.

TOBACCO AND ALTERNATIVE NICOTINE PRODUCTS TAXES —Cont'd
Tickets.
Transportation of unstamped cigarettes and nontax-paid cigars.
Delivery tickets, §48-11-22.
Violations of section, §48-11-23.
Transportation companies.
Examination of records, §48-11-11.
Transportation of unstamped cigarettes and nontax-paid cigars.
Violations of section, §48-11-23.
Unstamped cigarettes and cigars.
Acceptance of deliveries of unstamped cigarettes, §48-11-8.
Penalties for possession, §§48-11-24, 48-11-25.
Reports, §48-11-8.
Sale or possession, §§48-11-8, 48-11-25.
Seizure as contraband, §48-11-9.
Transportation, §48-11-22.
Violation of section, §48-11-23.
Vending machines.
Contraband unstamped cigarettes.
Seizure of machine, §48-11-9.
Registration, §48-11-4.
Rules and regulations governing, §48-11-4.
Venue.
Violations of chapter, §48-11-20.
Violations of chapter.
Generally, §48-11-25.
Jurisdiction of superior courts over criminal violations, §48-11-21.
Venue, §48-11-20.
Warehouses.
Authority to require reports of warehousemen, §48-11-10.
Examination of records, §48-11-11.
Investigation and examination of stock of cigars or cigarettes, §48-11-11.
Weapons.
Powers of special agents and enforcement officers to carry firearms, §48-11-19.
Retention upon retirement, §48-11-19.

TOKENS.
Tickets.
Sales and use taxes.
General provisions, §§48-8-1 to 48-8-78.

TOLLING OF STATUTES OF LIMITATIONS.
Income taxes.
Armed forces members' returns.
Filing, §48-7-36.
Military affairs.
Income taxes.
Time limits for filings by reason of war related service, §48-7-36.
Tax executions.
Nulla bona, §48-3-23.

TOLL ROADS AND TOLL BRIDGES.
Public utility ad valorem taxation.
General provisions, §§48-5-510 to 48-5-524.
Special franchises.
Taxation generally, §§48-5-420 to 48-5-425.

TOOLS.
Property tax exemption.
Manual laborers' tools and implements of trade, §48-5-42.

TORTS.
Ordinary care or diligence.
Property taxes.
Liability of tax collector, tax commissioner, etc., §48-5-158.

TOURISM.
Excise tax on rooms, lodgings and accommodations.
General provisions, §§48-13-50 to 48-13-63.
Georgia tourism development act, §§48-8-270 to 48-8-277.
Approved company.
Defined, §48-8-271.
Sales and use tax refund, §§48-8-273, 48-8-276.
Successor company.
Transfer of rights and obligations, §48-8-277.
Tourism attractions agreement, §§48-8-273 to 48-8-276.
Citation of act, §48-8-270.
Construction of act, §48-8-272.
Definitions, §48-8-271.
Department of community affairs.
Authority to contract, §48-8-275.
Review of compliance with agreement, §48-8-276.
Public policy, §48-8-272.
Sales and use tax refund, §48-8-273.
Title of act, §48-8-270.

TOURISM —Cont'd
Georgia tourism development act —Cont'd
Tourism attraction agreements.
Defined, §48-8-271.
Execution, §48-8-273.
Failure to abide by terms, §48-8-276.
Required terms and provisions, §48-8-275.
Sales and use tax refund, §§48-8-273, 48-8-276.
Tourism attraction project.
Applications process, §48-8-274.
Conditions of eligibility, §48-8-274.
Defined, §48-8-271.
Independent consultants, review by, §48-8-274.

TOURIST CABINS.
Excise tax on rooms, lodgings and accommodations.
General provisions, §§48-13-50 to 48-13-63.
State sales and use tax.
Retail sale or sale of retail.
Defined, §48-8-2.

TOURIST CAMPS.
Excise tax on rooms, lodgings and accommodations.
County and municipal levies, §48-13-51.
State sales and use tax definitions.
Retail sale or sale at retail, §48-8-2.

TOURIST COURTS.
Excise tax on rooms, lodgings and accommodations.
General provisions, §§48-13-50 to 48-13-63.

TOWNS.
Conservation use property.
Forest land conservation use property.
Conservation use assessment.
Assistance grants to make up revenue reduction, §§48-5A-1 to 48-5A-6.
Forest land conservation use property.
Conservation use assessment.
Assistance grants to make up revenue reduction, §§48-5A-1 to 48-5A-6.
Municipal property taxes, §§48-5-350 to 48-5-361.

TRADE-IN CREDIT.
Sales and use taxes.
Payment of tax when used articles as credit on sale of new and used articles, §48-8-44.

TRADE SHOWS.
Excise tax on rooms, lodgings and accommodations.
General provisions, §§48-13-50 to 48-13-63.

TRANSFER OF EXECUTIONS.
Tax executions, §§48-3-19, 48-3-20.

TRANSFER TAX.
Real estate transfer tax, §§48-6-1 to 48-6-10.

TRANSIT SERVICES.
Sales and use taxes.
Transit special purpose local option sales and use tax, §§48-8-269.40 to 48-8-269.58.

TRANSPORTATION.
Motor carriers' road tax, §§48-9-30 to 48-9-46.
Motor fuel taxes.
General provisions, §§48-9-1 to 48-9-19.
Sales and use taxes.
Mass transportation.
Special district mass transportation sales and use tax.
Generally, §§48-8-260 to 48-8-269.6.
Metropolitan county special districts, §§48-8-269.7 to 48-8-269.21.
Metropolitan municipality special districts, §§48-8-269.22 to 48-8-269.36.
Special district transportation sales and use tax, §§48-8-240 to 48-8-256.
Transit special purpose local option sales and use tax, §§48-8-269.40 to 48-8-269.58.

TRANSSHIPMENT TO FINAL DESTINATION OUTSIDE STATE.
Ad valorem taxation of property.
Freeport exemptions.
Level 1, §§48-5-48.1, 48-5-48.2.
Timeliness of filings, §48-5-48.7.

TRAVELING SALESMEN.
Municipal property taxes.
Exemption, §48-5-354.

TRIAL.
Tax executions.
Interposition of claims, §48-3-24.
Petition to reduce execution to judgment.
Demand for jury trial, §48-3-15.

TRUSTS AND TRUSTEES.
Estate tax eliminated, §48-12-1.
Homestead exemption from ad valorem taxation.
Application to properties held by trustees, §48-5-54.
Income taxes.
Charitable remainder trust.
Exempt organizations, §48-7-25.
Deduction in lieu of personal exemption, §48-7-26.
Estimated income tax by individuals.
Applicability to estates and trusts, §48-7-114.
Fiduciaries and beneficiaries of trusts, §48-7-22.
Individual tax rate.
Applicability to trusts, §48-7-20.
Persons required to file returns, §48-7-50.
Trustee in bankruptcy operating property or business of corporation.
Returns, §48-7-51.
Property taxes.
Homestead exemption.
Application to properties held by trustees, §48-5-54.
Real estate transfer tax.
Exemption of deed of assent or distribution by trustee, §48-6-2.
Taxation.
Income taxes.
Beneficiaries and fiduciaries of trusts, §48-7-22.
Deduction in lieu of personal exemption, §48-7-26.
Individual tax rate.
Applicability to estates and trusts, §48-7-20.
Persons required to file returns, §48-7-50.
Trustee in bankruptcy.
Operating property or business of corporation.
Returns, §48-7-51.
Property taxes.
Homestead exemption.
Application to property held by trustee, §48-5-54.

TVA.
Defined, §48-14-2.
Taxation.
Apportionment of payments to state and political subdivisions in lieu of taxes, §48-14-2.

U

UNCLAIMED PROPERTY.
Tax executions.
Sales under tax executions.
Excess funds, §48-4-5.

UNDERPAYMENTS.
Corporate taxes, §48-7-120.
Income taxes, §48-7-86.

UNEMPLOYMENT COMPENSATION.
Claims for benefits.
Setoff debt collection.
Income tax refunds generally, §§48-7-160 to 48-7-170.
Contributions and payments in lieu of contributions.
Setoff debt collection.
Income tax refunds generally, §§48-7-160 to 48-7-170.
Income taxes.
Setoff debt collection.
General provisions, §§48-7-160 to 48-7-170.
Setoff debt collection.
Income tax refunds generally, §§48-7-160 to 48-7-170.

UNFAIR OR DECEPTIVE TRADE PRACTICES.
Tobacco and alternative nicotine products taxes.
Package cigarette sales.
Unlawful affixing of tax stamp, §48-11-23.1.

UNIFORM SALES AND USE TAX ADMINISTRATION ACT.
General provisions, §§48-8-160 to 48-8-167.
Short title, §48-8-160.

UNITED STATES.
Property taxes.
Federal corporations and agencies, §48-5-4.
Sales and use taxes.
Exemptions, §48-8-3.

UNIVERSITIES AND COLLEGES.
County property taxes.
Equalization of assessments.
Contracts to provide instruction courses to appraisers, §48-5-268.
Income taxes.
Savings trust account contributions and withdrawals for education expenses.
Not taxable, §48-7-27.
Major sporting events.
Sales tax exemptions for ticket sales to certain nonrecurring events, §48-8-3.
Medical scholarships.
Setoff debt collection.
Income tax refunds generally, §§48-7-160 to 48-7-170.
Property taxes.
Equalization of assessments.
Contracts to provide instruction courses to appraisers, §48-5-268.
Exemption, §48-5-41.
Sales and use taxes.
Exemption of private colleges and universities, §48-8-3.
Sports.
Major sporting events.
Sales tax exemptions for ticket sales to certain nonrecurring events, §48-8-3.
Student finance authority.
Income taxes.
Setoff debt collection, §§48-7-160 to 48-7-170.
Taxation.
Property tax exemption, §48-5-41.
Tuition.
Savings trust account contributions and withdrawals.
Not taxable, §48-7-27.

UNIVERSITY SYSTEM OF GEORGIA.
Sales and use taxes.
Exemption, §48-8-3.

UNPAID TAXES.
Actions to collect, §48-2-54.
Business income taxes.
Sale of business, §48-7-106.
County taxes.
Interest, §§48-5-148 to 48-5-150.
Reports, §48-5-153.
Delinquency periods, §48-8-56.
Tax refunds, §48-2-35.

UNPAID TAXES —Cont'd
Tobacco and alternative nicotine products taxes.
Delinquent distributors.
Property liens, §48-11-17.
Waivers of interest, §48-2-41.

URBAN TRANSIT SYSTEMS.
Sales and use taxes.
Exemptions, §48-8-3.

USE TAXES.
Sales and use taxes.
General provisions, §§48-8-1 to 48-8-78.

V

VAPES.
Delivery sales, §48-11-4.2.
Taxes.
Tobacco and alternative nicotine products taxes, §§48-11-1 to 48-11-30.
Unlicensed persons, sale to, §48-11-4.1.

VEHICLES FOR HIRE.
Sales and use tax exemptions.
Fares for vehicles operated under for-hire master license, §48-8-3.

VENDING MACHINES.
Tobacco and alternative nicotine products taxes.
Contraband unstamped cigarettes.
Seizure of machine, §48-11-9.
Registration, §48-11-4.
Rules and regulations governing, §48-11-4.

VENUE.
Contractors.
Nonresident contractors.
Actions against, §48-13-36.
Mobile home ad valorem taxation.
Failure to attach and display decal.
Criminal prosecution, §48-5-493.
Nonresidents.
Actions against nonresident contractors, §48-13-36.
Property taxes.
Challenge to commissioner's proposed assessment.
Appeals filed in superior court of Fulton county, §48-2-18.
Proceedings to determine county entitled to return and payment, §48-5-17.

VENUE —Cont'd
Property taxes —Cont'd
School taxes.
Contesting taxability of property.
Public utility property subject to school tax, §48-5-402.
Public utility ad valorem taxation.
Appeals by railroad equipment companies of assessments, §48-5-519.
Sales and use taxes.
Actions against nonresident dealers engaging in business, §48-8-65.
School taxes.
Contesting taxability of property.
Public utility property subject to school tax, §48-5-402.
Taxation.
Appeals of orders, rulings or findings of commissioner, §48-2-59.
Judicial sales, §48-2-55.
Property taxes.
Challenge to commissioner's proposed assessment.
Appeals filed in superior court of Fulton county, §48-2-18.
Proceedings to determine county entitled to return and payment, §48-5-17.
School taxes.
Contesting taxability of property.
Public utility property subject to school tax, §48-5-402.
Refund action, §48-2-35.
Tax executions.
Petition to reduce execution to judgment, §48-3-13.
Nonresidents, §48-3-14.
Tax return preparers.
Injunction actions, §48-2-62.
Tobacco and alternative nicotine products taxes.
Violations of chapter, §48-11-20.

VERIFICATION.
Taxation.
Employer returns, §48-7-107.

VESSELS.
Contraband.
Taxation.
Contraband articles used in violations of title, §§48-2-82 to 48-2-84.
Taxation.
Contraband articles used in violations of title, §§48-2-82 to 48-2-84.

VETERANS' AFFAIRS.
Disabled veterans.
Homestead exemption from ad valorem taxation.
Extension by qualified disabled veterans, §48-5-48.
Income tax deductions.
Disability compensation, certain disabled veterans, §48-7-27.
Motor vehicle ad valorem taxation.
Constitutional exemption, §48-5-478.
Proof of continuing eligibility, §48-5-478.
Property taxes.
Homestead exemption.
Extension, §48-5-48.
Motor vehicle ad valorem taxation.
Constitutional exemption, §48-5-478.
Proof of continuing eligibility, §48-5-478.
Homestead exemptions.
Disabled veterans property tax homestead exemption.
Extension, §48-5-48.
Income taxes.
Disability compensation.
Deductions for certain disabled veterans, §48-7-27.
Exemption of veterans organizations, §48-7-25.
Minority, women, or veteran-owned businesses.
Income deduction for payments to classified subcontractors, §48-7-38.
Job training organizations.
Sales and use tax exemptions.
Qualified job training organizations, sales of property and services to organization, §48-8-3.
Medal of Honor recipients.
Motor vehicle ad valorem tax exemption, §48-5-478.3.
Motor vehicle ad valorem taxation.
Disabled veterans constitutional exemption, §48-5-478.
Proof of continuing eligibility, §48-5-478.
Prisoner of war exemption, §48-5-478.1.
Motor vehicle ad valorem tax exemption.
Medal of Honor recipients, §48-5-478.3.

VETERANS' AFFAIRS —Cont'd
Motor vehicle ad valorem tax exemption —Cont'd
Veterans' organization, §48-5-478.4.
Property taxes.
Disabled veterans homestead exemption.
Extension by qualified disabled veterans, §48-5-48.
Exemption from ad valorem property taxes, §48-5-41.
Motor vehicle ad valorem taxation.
Disabled veterans constitutional exemption, §48-5-478.
Proof of continuing eligibility, §48-5-478.
Prisoner of war exemption, §48-5-478.1.
Purple Heart recipients.
Motor vehicle ad valorem tax exemption, §48-5-478.2.
Sales and use taxes.
Exemption of sale of vehicle to service-connected handicapped veteran, §48-8-3.
Small businesses.
Minority, women, or veteran-owned businesses.
Income deduction for payments to classified subcontractors, §48-7-38.
Veterans organizations.
Motor vehicle ad valorem tax exemption, §48-5-478.3.
Property tax exemption, §48-5-41.

VETERANS OF FOREIGN WARS.
Motor vehicle ad valorem tax exemption, §48-5-478.4.
Property taxes.
Exemption from ad valorem property taxes, §48-5-41.

VETERINARIANS.
Regulatory fees imposed by counties or municipalities.
Civil action to enforce, §48-13-9.1.
Examples of businesses not subject to, §48-13-9.

VIDEO GAMES.
Gaming industry production.
Income tax credits.
Film, gaming, video or digital production in state, §48-7-40.26.
Postproduction expenditures, §48-7-40.26A.

VIDEO RECORDINGS.
Income tax credits.
Film, gaming, video or digital production in state, §48-7-40.26.
Postproduction expenditures, §48-7-40.26A.

VIDEO TAPES.
Income tax credits.
Film, gaming, video or digital production in state, §48-7-40.26.
Postproduction expenditures, §48-7-40.26A.
Sales and use taxes.
Exemption of rental to persons charging admission fee to view, §48-8-3.

VILLAGES.
Excise tax on rooms, lodgings and accommodations.
Generally, §§48-13-50 to 48-13-63.
Heavy-duty equipment ad valorem taxation.
Construction equipment owned by nonresidents, §§48-5-500, 48-5-501.
Income taxes.
Local income tax prohibition, §48-7-140.
Mobile home ad valorem taxation.
Generally, §§48-5-440 to 48-5-451, 48-5-490 to 48-5-495.
Motor vehicle ad valorem taxation.
Generally, §§48-5-440 to 48-5-478.4.
Municipal property taxes, §§48-5-350 to 48-5-361.
Privilege taxes generally, §§48-13-2 to 48-13-29.
Public utility ad valorem taxation.
Generally, §§48-5-510 to 48-5-524.
Sales and use taxes.
Joint county and municipal tax (LOST) generally, §§48-8-80 to 48-8-97.

VOCATIONAL EDUCATION.
Career education programs generally.
Job training organizations.
Sales and use tax exemptions.
Qualified job training organizations, sales of property and services to organization, §48-8-3.

VOCATIONAL EDUCATION —Cont'd
Job training organizations.
Sales and use tax exemptions.
Qualified job training organizations, sales of property and services to organization, §48-8-3.

VOLUNTEER HEALTH CLINICS.
Sales and use tax exemptions, §48-8-3.

W

WAGES.
Income tax deduction as business expense.
Disallowed unless individual receiving compensation authorized employee, §48-7-21.1.
Income withholding.
Statements of wages paid and withheld, §48-7-105.

WAIVER.
County property taxes.
Penalties and interest, waiver.
Military service in combat zone as cause of default, §48-5-243.
Sales and use taxes.
Homestead option sales and use tax.
Municipalities, waiver of equalization, §48-8-104.
Taxation.
Electronic filing requirements, failure to follow.
Waiver of penalty for undue hardship, §48-2-44.1.

WAR.
Income tax filing.
Time limit tolling, §48-7-36.

WAREHOUSES.
Tobacco and alternative nicotine products taxes.
Authority to require reports of warehousemen, §48-11-10.
Examination of records, §48-11-11.
Investigation and examination of stock of cigars or cigarettes, §48-11-11.

WARRANTIES.
Deeds.
Warranty deeds.
Tax execution, §§48-3-9, 48-3-10.

WATER AND SEWER PROJECTS AND COSTS TAX (MOST), §§48-8-200 to 48-8-212.

WATER AUTHORITIES.
Sales and use taxes.
Water and sewer authorities created by local enactment.
Exemptions for sales to authority, §48-8-3.

WATER CONSERVATION.
Income taxes credits.
Business and domestic energy or water conservation, §48-7-40.29.
Manufacturing facilities.
Tax credits for water conservation facilities, §48-7-40.10.
Shift from ground-water usage.
Manufacturing facility tax credit, §48-7-40.11.

WATER POLLUTION.
Property tax exemption.
Elimination or reduction of property, §48-5-41.
Sales and use taxes.
Exemption of sale of machinery and equipment for use in combating, §48-8-3.

WATERSENSE PRODUCTS.
Sales and use taxes.
Exemption, §48-8-3.

WATER SUPPLY.
Contractors.
Nonresident contractors, §§48-13-30 to 48-13-38.
Sales and use taxes.
Exemption of sale of water through water mains, lines or pipes, §48-8-3.
Water and sewer projects and costs tax (MOST), §§48-8-200 to 48-8-212.

WATER WELLS.
Contractors.
Nonresident contractors generally, §§48-13-30 to 48-13-38.
Nonresident contractors.
General provisions, §§48-13-30 to 48-13-38.

WEAPONS.
Firearms.
Tobacco and alternative nicotine products taxes.
Powers of special agents and enforcement officers to carry, §48-11-19.

WEAPONS —Cont'd
Tobacco and alternative nicotine products taxes.
Powers of special agents and enforcement officers to carry firearms, §48-11-19.

WEDDINGS.
Property taxes.
Bona fide conservation use property.
Farm weddings not considered breach of covenant, §48-5-7.4.

WELFARE.
Food stamps.
Income taxes, food and other necessaries credit.
Applicability to food stamp recipients, §48-7A-3.
Sales and use taxes exemptions, §48-8-3.
Income taxes.
Setoff debt collection.
General provisions, §§48-7-160 to 48-7-170.
Setoff debt collection.
Income tax refunds generally, §§48-7-160 to 48-7-170.

WETLANDS.
Property taxes.
Conservation use property, §48-5-7.4.

WHEELCHAIRS.
Sales and use taxes.
Exemptions, §48-8-3.

WHOLESALERS.
Sales and use taxes.
Records.
Duty to keep, §48-8-53.
Failure to keep, §48-8-54.

WIND ENERGY.
Income tax credits for clean energy property, §48-7-29.14.

WIRELESS COMMUNICATIONS.
Sales and use taxes.
Taxing jurisdiction for mobile telecommunications services, §48-8-13.

WITNESSES.
Taxation.
Judicial and investigative powers of commissioner, §48-2-8.

WOMEN.
Income taxes.
Minority, women, or veteran-owned businesses.
Income deduction for payments to classified subcontractors, §48-7-38.
Small businesses.
Minority, women, or veteran-owned businesses.
Income deduction for payments to classified subcontractors, §48-7-38.

Z

ZERO EMISSION VEHICLES.
Tax credit, §48-7-40.16.

ZERO EXEMPTION.
Income taxes.
Withholding exemption status, §48-7-102.

ZOOS.
Sales and use tax exemption, §48-8-3.