House Bill 1310 (AS PASSED HOUSE AND SENATE)

By: Representatives O`Neal of the 146th, Knight of the 126th, Cole of the 125th, Smith of the 131st, and Mosby of the 90th

A BILL TO BE ENTITLED

AN ACT

To amend Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, so as to provide for the comprehensive revision of provisions regarding revenue and taxation; to define the terms "Internal Revenue Code" and "Internal Revenue Code of 1986" and thereby incorporate certain provisions of federal law into Georgia law; to change certain provisions relating to confidential information; to change certain provisions regarding forms of payment; to change certain provisions regarding extension of time for certain returns; to change certain provisions regarding sales and use tax return allowances; to provide effective dates; to provide for applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is amended by striking paragraph (14) of Code Section 48-1-2, relating to definitions regarding revenue and taxation, and inserting in its place a new paragraph (14) to read as follows:

"(14) 'Internal Revenue Code' or 'Internal Revenue Code of 1986' means for taxable years beginning on or after January 1, ~~2005~~ 2006, the provisions of the United States Internal Revenue Code of 1986 provided for in federal law enacted on or before January 1, ~~2005~~ 2006, except Section 168(k), (but not excepting Section 168(k)(2)(A)(i), Section 168(k)(2)(D)(i), and Section 168(k)(2)(E)), Section 199, ~~and~~ Section 1400L, Section 1400N(d)(1), Section 1400N(j), and Section 1400N(k) of the Internal Revenue Code of 1986 shall be treated as if they were not in effect. In the event a reference is made in this title to the Internal Revenue Code or the Internal Revenue Code of 1954 as it existed on a specific date prior to January 1, ~~2005~~ 2006, the term means the provisions of the Internal Revenue Code or the Internal Revenue Code of 1954 as it existed on the prior date. Unless otherwise provided in this title, any term used in this title shall have the same meaning as when used in a comparable provision or context in the Internal Revenue Code of 1986. For taxable years beginning on or after January 1, ~~2005~~ 2006, provisions of the

Internal Revenue Code of 1986 which were as of January 1, ~~2005~~ 2006, enacted into law but not yet effective shall become effective for purposes of Georgia taxation on the same dates upon which they become effective for federal tax purposes."

SECTION 2.

Said title is further amended in Code Section 48-2-15, relating to confidential information, by adding a new subsection (e) to read as follows:

"(e) This Code section shall not be construed to prohibit persons or groups of persons other than employees of the department from having access to tax information when necessary to conduct research commissioned by the department and when necessary for data processing operations and maintenance of data processing equipment, provided the persons or groups of persons have obtained prior written approval from the commissioner and are subject to the direct security control of department personnel during all periods of access. Any person who divulges or makes known any tax information obtained under this subsection shall be subject to the same civil and criminal penalties as those provided for divulgence of information by employees of the department."

SECTION 3.

Said title is further amended in subsection (f) of Code Section 48-2-32, relating to forms of payment, by adding a new paragraph immediately following paragraph (2), to be designated paragraph (2.1), to read as follows:

"(2.1) The commissioner may require that any person or business owing more than $5,000.00 in connection with any return, report, or other document pertaining to sales tax, use tax, withholding tax, or motor fuel distributor tax required to be filed with the department on or after July 1, 2006, shall pay any such sales tax, use tax, withholding tax, or motor fuel distributor tax liability to the state by electronic funds transfer so that the state receives collectable funds on the date such payment is required to be made. In emergency situations, the commissioner may authorize alternative means of payment in funds immediately available to the state on the date of payment."

SECTION 4.

Said title is further amended by striking Code Section 48-2-36, relating to extension of time for returns, and inserting in its place a new Code Section 48-2-36 to read as follows:

"48-2-36.

(a) The commissioner may grant, upon written request, a reasonable extension of time for filing returns, declarations, or other documents required under state revenue laws whenever, in the reasonable exercise of ~~his~~ such commissioner´s judgment, a good cause

for the extension exists. The commissioner shall keep a record of every extension granted and the reason for the extension. No extension or extensions, except as otherwise expressly provided by law, shall aggregate more than six months, nor shall any extension of time for filing returns, except as otherwise expressly provided by law, operate to delay the payment of a tax unless a bond satisfactory to the commissioner is posted. In no event shall the commissioner extend the time of filing returns which are required to be filed with the tax receiver or tax commissioner.

(b) Notwithstanding any other provision in the laws of this state, in the case of a taxpayer determined by the commissioner to be affected by a presidentially declared disaster, as defined in Internal Revenue Code Section 1033(h)(3), or a terroristic or military action, as defined in Internal Revenue Code Section 692(c)(2), the commissioner may specify a period of up to one year that may be disregarded in determining, under the laws of this state, in respect of any tax liability, fee liability, or other liability of such taxpayer:

(1) Whether any of the actions described in subsection (c) of this Code section were performed within the time prescribed therefor, determined without regard to extension under any other provision of the laws of this state for periods after the date, as determined by the commissioner, of such disaster or action;

(2) The amount of any interest, penalty, or addition to the taxes, fees, or other liability for periods after the date, as determined by the commissioner, of such disaster or action; and

(3) The amount of any refund.

(c) Actions which may be extended:

(1) Filing any return of taxes, fees, or other liability;

(2) Payment of any taxes, fees, or other liability or any installment thereof;

(3) Filing a petition with the superior court or the office of state administrative hearings as allowed under the laws of this state;

(4) Allowance of a refund of any taxes, fees, or other liability;

(5) Filing a claim for refund of any taxes, fees, or other liability;

(6) Bringing suit upon any such claim for refund;

(7) Assessment of any taxes, fees, or other liability;

(8) Giving or making any notice, assessment, or demand for the payment of any taxes, fees, or other liability;

(9) Collection, by the commissioner, by tax execution, or otherwise, of the amount of any liability of any taxes, fees, or other liability;

(10) Bringing suit by the department, or any officer on its behalf, in respect of any liability in respect of any taxes, fees, or other liability; and

(11) Any other action required or permitted under the laws administered by the commissioner.″

SECTION 5.

Said title is further amended by striking Code Section 48-8-58, relating to sales and use tax return allowances, and inserting in its place a new Code Section 48-8-58 to read as follows:

″48-8-58.

(a)(1) As used in this subsection, the term 'return allowance' means the amount of the sales price or cost price refunded by the dealer to the purchaser in cash or credit. No credit shall be allowed to the dealer under this subsection for taxes collected by ~~him~~ such dealer from the purchaser unless the taxes collected have been returned by ~~him~~ the dealer to the purchaser.

(2) When property sold is subsequently returned by agreement to the dealer by the purchaser, the dealer shall be entitled to credit for the tax imposed by this article with respect to the return allowance, in the manner prescribed by the commissioner, as follows:

(A) ~~If property is returned within 90 days from the date of sale, the~~ The dealer in ~~his~~ the original return for the taxable period in which the return of the property is allowed ~~by him~~ may deduct from ~~his~~ the dealer´s gross sales the amount of the return allowance; or

~~(B) If property is returned more than 90 days from the date of sale, no credit shall be allowed except upon application for a credit memorandum in the amount of the tax imposed with respect to the return allowance. The application shall be made and the credit memorandum issued in the manner prescribed by the commissioner. The application shall be made within the time provided by law for the filing of claims for refund. The credit memorandum shall be applied by the dealer to his liability for each succeeding taxable period until exhausted; or~~

(B)~~(C)~~ When a dealer has retired from business and has filed a final return, a claim for refund of the tax for which the dealer would be entitled to credit under this subsection may be filed within the time and in the manner prescribed ~~by law~~ under Code Section 48-2-35.

(b) The commissioner shall make available to dealers all necessary forms for filing returns and instructions to ensure a full collection from dealers and an accounting for the taxes due. Failure of any dealer to secure the commissioner´s forms shall not relieve the dealer from the payment of the tax at the time and in the manner provided in this article.

(c) The commissioner shall promulgate any rules and regulations necessary to implement this Code section.″

SECTION 6.

(a) Except as otherwise provided in this section, this Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

(b) Section 1 of this Act shall become effective on its approval by the Governor or upon its becoming law without such approval and shall be applicable to all taxable years beginning on or after January 1, 2006. Provisions of the Internal Revenue Code of 1986 which were as of January 1, 2006, enacted into law but not yet effective shall become effective for purposes of Georgia taxation on the same dates upon which they become effective for federal tax purposes.

SECTION 7.

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