House Bill 965 (AS PASSED HOUSE AND SENATE)

By: Representatives Knight of the 126th, Peake of the 137th, and Carson of the 43rd

A BILL TO BE ENTITLED

AN ACT

To amend Article 5 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to current income tax payment, so as to allow certain fiduciaries an exception to the requirement of paying estimated taxes; to change certain provisions relating to withholding tax on taxable income of nonresident members of certain associations; to provide for related matters; to provide for an effective date and applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article 5 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to current income tax payment, is amended by revising Code Section 48-7-114, relating to payment of estimated income tax, as follows:

"48-7-114.

(a) **'Estimated tax' defined.** For purposes of this Code section, the term 'estimated tax' means the amount which the individual estimates as the amount of income tax imposed by Code Section 48-7-20 less the amount which the individual estimates as the sum of credits allowable by law against the tax.

(b) **Requirement of estimated tax.** Except as otherwise provided in subsection (d) of this Code section, every resident individual and every taxable nonresident individual shall file his or her estimated tax for the current taxable year if he or she can be reasonably expected to be required to file a Georgia income tax return for the current taxable year and his or her gross income can reasonably be expected to:

(1) Include more than $1,000.00 from sources other than wages as defined in paragraph (10) of Code Section 48-7-100; and

(2) Exceed:

(A) One thousand five hundred dollars if the individual is single or the individual is married and not living with his or her spouse or the individual is married and expects to claim only $1,500.00 of the marital exemption; or

(B) Three thousand dollars if the individual is married and living with his or her spouse and expects to claim the full marital exemption.

(c) **Return as estimated tax.** If on or before January 31 of the succeeding taxable year or, in the case of an individual referred to in subsection (b) of Code Section 48-7-115, relating to income from farming and fishing, on or before March 1 of the succeeding taxable year, the taxpayer files a return for the taxable year for which the estimated tax is required and pays in full the amount computed on the return as payable and the estimate is not required to be filed during the taxable year but is required to be filed on or before January 15, then the return shall be considered as the estimate.

(d) **Exemptions.** This Code section shall not apply to an individual in a given tax year if:

(1) The sum of the allowable credits shown on the individual's income tax return for the tax year exceeds the individual's tax liability shown on the return before the tax liability is reduced by the amount of the allowable credits; and

(2) The individual reasonably expected at the time estimated tax was otherwise required to be filed with respect to the tax year that the conditions of paragraph (1) of this subsection would be met for the tax year.

(e)(1) **Applicability to fiduciaries.** With respect to taxable years beginning on or after January 1, 1988, fiduciaries shall be subject to all requirements of this article in the same manner as individuals, except as provided in paragraph (2) of this subsection.

(2) This Code section shall not apply with respect to any taxable year ending before the date two years after the date of the decedent's death in the case of:

(A) The estate of such decedent; or

(B) A testamentary trust as defined in IRC Section 6654(l)(2)(B).″

SECTION 2.

Said article is further amended by revising Code Section 48-7-129, relating to withholding tax on distributions to nonresidents, as follows:

″48-7-129.

(a)(1) Any partnership, Subchapter 'S' corporation, or limited liability company which owns property or does business within this state shall be subject to a withholding tax. Such tax shall be withheld from ~~any distributions paid or any distributions credited but not paid to members who are not residents of Georgia~~ a nonresident member's share of taxable income sourced to this state, whether distributed or not, except as provided in subsection (c) of Code Section 48-7-24. For purposes of this Code section, the term

'taxable income sourced to this state' means the entity's income allocated or apportioned to Georgia pursuant to Code Section 48-7-31 or as otherwise provided by law.

(2) The amount of tax to be withheld for each nonresident member shall be determined by multiplying the ~~distribution paid or the distribution credited but not paid~~ nonresident member's share of the taxable income sourced to this state by a rate of 4 percent. To the extent that the partnership, Subchapter 'S' corporation, or limited liability company remits withholding tax during the course of the tax year which exceeds the Georgia income tax liability of a nonresident member, that member shall be entitled to a refund of the excess withholding at the end of the taxable year.

(3) Any partnership, Subchapter 'S' corporation, or limited liability company which fails to withhold and pay over to the commissioner any amount required to be withheld under this Code section may be liable for a penalty equal to 25 percent of the amount not withheld and paid over. Any penalty imposed under this subsection shall be paid upon notice and demand by the commissioner or the commissioner's delegate and shall be assessed and collected in the same manner as the withholding taxes imposed by this article.

(4) The partnership, Subchapter 'S' corporation, or limited liability company and its members shall be jointly and severally liable for the withholding tax liability imposed under this subsection and shall be assessed accordingly.

(b)(1) As an alternative to the withholding requirement imposed by subsection (a) of this Code section, the commissioner may allow the filing of composite returns by partnerships, Subchapter 'S' corporations, or limited liability companies on behalf of their nonresident members and may provide for the requirements of filing composite returns by regulation. For purposes of this subsection, the term 'composite return' means a return filed by a partnership, Subchapter 'S' corporation, or limited liability company on behalf of all of its nonresident members which reports and remits the Georgia income tax of the nonresident members.

(2) Where a partnership, Subchapter 'S' corporation, or limited liability company chooses to file a composite return and meets all the requirements of filing such composite return, such partnership, Subchapter 'S' corporation, or limited liability company shall be exempt from the withholding requirements imposed under subsection (a) of this Code section.

(3) The liability imposed by this subsection shall be paid upon notice and demand by the commissioner or the commissioner's delegate and shall be assessed and collected in the same manner as all other withholding taxes imposed by this article.

(c)(1) If a partnership, Subchapter 'S' corporation, or limited liability company fails to remit withholding for a nonresident member and the commissioner determines that such failure is due to a false representation that the member is a resident of Georgia, there shall

be imposed in addition to the tax a penalty of the greater of $250.00 or 5 percent of the amount which should have been withheld. The partnership, Subchapter 'S' corporation, or limited liability company and the nonresident member shall be jointly and severally liable for any such penalty imposed.

(2) The penalty imposed by this subsection shall be paid upon notice and demand by the commissioner or the commissioner's delegate and shall be assessed and collected in the same manner as withholding tax imposed by this article.

(d)(1) Every partnership, Subchapter 'S' corporation, or limited liability company which is required to deduct and withhold the withholding tax imposed by subsection (a) of this Code section shall remit such tax and file the required return on a form approved by the commissioner ~~as follows:~~.

~~(A) Taxes deducted and withheld on distributions paid by a partnership, Subchapter 'S' corporation, or limited liability company to members who are nonresidents shall be due on or before the last day of the calendar month following the calendar month within which the distribution was paid; and~~

~~(B)~~ Taxes ~~deducted and~~ withheld on ~~distributions credited but not paid by a partnership, Subchapter 'S' corporation, or limited liability company to members who are nonresidents~~ a nonresident member's share of the taxable income sourced to this state shall be due on or before the due date for filing the income tax return for the partnership, Subchapter 'S' corporation, or limited liability company as prescribed in subsection (a) of Code Section 48-7-56 without regard to any extension of time for filing such income tax return.

(2) Every partnership, Subchapter 'S' corporation, or limited liability company required to deduct and withhold tax under this article shall furnish a written statement or form approved by the commissioner to each nonresident member. Such statement or form shall include the name and federal tax identification number of the partnership, Subchapter 'S' corporation, or limited liability company, the member's name and federal tax identification number, the total amount of ~~distributions paid to the member~~ the nonresident member's share of the taxable income sourced to this state during the taxable year, the total amount of tax deducted and withheld with respect to such member during the year, and such other information as the commissioner shall prescribe. Such statement or form shall be furnished to the nonresident member and filed in duplicate with the commissioner on or before the earlier of the date the income tax return is filed or the due date for filing the income tax return of such partnership, Subchapter 'S' corporation, or limited liability company as prescribed in subsection (a) of Code Section 48-7-56 without regard to any extension of time for filing such income tax return.

(3) Any partnership, Subchapter 'S' corporation, or limited liability company required to furnish a nonresident member with the written statement required by this subsection which furnishes a false or fraudulent statement or which fails to furnish the statement shall be subject to the penalty contained in subsection (d) of Code Section 48-7-126. The penalty imposed by this subsection shall be paid upon notice and demand by the commissioner or the commissioner's delegate and shall be assessed and collected in the same manner as the withholding tax imposed by this article.

(e)(1) Notwithstanding subsection (a) of this Code section, a partnership, Subchapter 'S' corporation, or limited liability company shall not be required to deduct and withhold tax for a nonresident member if:

(A) A composite return is filed on behalf of nonresident members pursuant to the requirements of filing such composite returns as set by the commissioner;

(B) The aggregate ~~annual distributions made to a member are~~ amount of a nonresident member's share of the taxable income sourced to this state is less than $1,000.00;

(C) A federally chartered Subchapter 'S' corporation fails to meet the requirements of subparagraph (b)(7)(B) of Code Section 48-7-21 and is therefore required to remit corporate income tax;

(D) Compliance will cause undue hardship on the partnership, Subchapter 'S' corporation, or limited liability company, provided that no partnership, Subchapter 'S' corporation, or limited liability company shall be exempt from complying with the withholding requirements imposed under subsection (a) of this Code section unless the commissioner approves in writing a written petition for exemption from the withholding requirements based on undue hardship. The commissioner may prescribe the form and contents of such a petition and specify standards for when a partnership, Subchapter 'S' corporation, or limited liability company shall not be required to comply with the withholding requirements due to undue hardship;

(E) The partnership is a publicly traded partnership as defined in Section 7704 of the Internal Revenue Code of 1986; or

(F) The member meets one of the exceptions as set forth in the rules and regulations promulgated by the commissioner.

(2) Where ~~distributions paid or distributions credited but not paid, or both, to nonresident members of partnerships, Subchapter 'S' corporations, or limited liability companies are~~ a nonresident member's share of the taxable income sourced to this state is subject to withholding under other provisions of Georgia law ~~or represent a return of such member's investment or a return of capital~~, such ~~distributions~~ amount shall not be subject to withholding under subsection (a) of this Code section.

(f) The commissioner shall be authorized to prescribe forms and to promulgate rules and regulations which the commissioner deems necessary in order to effectuate this Code section."

SECTION 3.

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval, and Section 2 of this Act shall be applicable to all taxable years beginning on or after January 1, 2012.

SECTION 4.

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