

The Senate Committee on Finance offered the following substitute to SB 141:

A BILL TO BE ENTITLED  
AN ACT

1 To amend Title 48 of the Official Code of Georgia Annotated, relating to revenue and  
2 taxation, so as to extend the appeal and protest period from 30 days to 45 days for tax  
3 assessments; to clarify final determination language for federal income tax adjustments; to  
4 provide for related matters; to provide for an effective date; to repeal conflicting laws; and  
5 for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is  
9 amended in Article 2 of Chapter 2, relating to administration, by revising paragraph (2) of  
10 subsection (c) and subparagraph (c)(6)(A) of Code Section 48-2-35, relating to refunds,  
11 claims, and notice to political subdivision designee, as follows:

12 "(2) In the event the taxpayer desires a conference or hearing before the commissioner  
13 or the commissioner's delegate in connection with any claim for refund, he or she shall  
14 specify such desire in writing in the claim and, if the claim conforms with the  
15 requirements of this Code section, the commissioner shall grant a conference at a time  
16 he or she shall reasonably specify. A taxpayer may contest any claim for refund that is

17 denied in whole or in part by filing with the commissioner a written protest at any time  
18 within ~~30~~ 45 days from the date of notice of refund denial or partial payment. Such ~~30~~  
19 45 day period shall be extended for such additional period as may be agreed upon in  
20 writing between the taxpayer and the commissioner during the initial ~~30~~ 45 day period  
21 or any extension thereof. In the event the taxpayer wishes to request a conference, that  
22 request shall be included in the written protest. All protests shall be prepared in the form  
23 and contain such information as the commissioner shall reasonably require and shall  
24 include a summary statement of the grounds upon which the taxpayer relies, an  
25 identification of the transactions being contested, and the reasons for disputing the  
26 findings of the commissioner. The commissioner shall grant a conference before the  
27 commissioner's designated officer or agent at a time specified and shall make reasonable  
28 rules governing the conduct of conferences. The discretion given in this Code section to  
29 the commissioner shall be reasonably exercised on all occasions."

30 "(6)(A) No action or proceeding for the recovery of a refund under this Code section  
31 shall be commenced before the expiration of one year from the date of filing the claim  
32 for refund unless the commissioner or the commissioner's delegate renders a decision  
33 on the claim within that time, nor shall any action or proceeding be commenced after  
34 the later of:

- 35 (i) The expiration of two years from the date the claim is denied; or  
36 (ii) If a valid protest is filed under paragraph (2) of this subsection, ~~30~~ 45 days after  
37 the date of the department's notice of decision on such protest."

38 **SECTION 2.**

39 Said title is further amended in said article by revising subsection (a) of Code Section  
40 48-2-38, relating to due date and interest on deferred taxes, as follows:

41 "(a) Except as otherwise expressly provided by law, all state taxes and licenses except ad  
42 valorem and income taxes shall be due and payable either with the return or within ~~30~~ 45  
43 days after notice, as the case may be."

44

### SECTION 3.

45 Said title is further amended in said article by revising subsection (a) of Code Section  
46 48-2-45, relating to service of notice of assessment, as follows:

47 "(a)(1) In all cases in which the commissioner is required by law to provide an  
48 opportunity to appeal, the assessment of a tax or license fee shall become final if no  
49 written appeal is filed by the taxpayer with the commissioner within ~~30~~ 45 days of the  
50 date of the notice of assessment.

51 (2) For the purposes of this subsection, the notice shall be deemed to have been given if  
52 written notice is sent by registered or certified or first-class mail or by statutory overnight  
53 delivery and addressed to the taxpayer at his or her last known address, as shown on the  
54 records of the department."

55

### SECTION 4.

56 Said title is further amended in said article by revising Code Section 48-2-46, relating to  
57 procedures for protests, as follows:

58 "48-2-46.

59 Any taxpayer may contest any proposed assessment or license fee made or determined by  
60 the commissioner by filing with the commissioner a written protest at any time within ~~30~~  
61 45 days from the date of notice of the proposed assessment or license fee or within such  
62 other time limit as may be specified within the notice of proposed assessment or license  
63 fee, if a different time limit is specified. All protests shall be prepared in the form and  
64 contain such information as the commissioner shall reasonably require and shall include  
65 a summary statement of the grounds upon which the taxpayer relies and his or her reasons

66 for disputing the finding of the commissioner. The filing of a written protest, a petition for  
67 redetermination of a deficiency, or a written request by the taxpayer for additional time for  
68 filing such a petition shall toll the period of limitations for making an assessment until the  
69 petition is denied by the commissioner or the request is withdrawn in writing by the  
70 taxpayer. In the event the taxpayer desires a conference or hearing, the fact of such desire  
71 must be set out in the protest. The commissioner shall grant a conference before his or her  
72 officers or agents as he or she may designate at a time he or she shall specify and shall  
73 make such reasonable rules governing the conduct of conferences as he or she may deem  
74 proper. The discretion given in this Code section to the commissioner shall be reasonably  
75 exercised on all occasions."

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**SECTION 5.**

77 Said title is further amended in said article by revising Code Section 48-2-54, relating to  
78 action by commissioner to collect unpaid tax, as follows:

79 "48-2-54.

80 In the event any taxpayer fails to pay any tax due, the commissioner shall notify the  
81 taxpayer and his or her surety or sureties by mailing a letter to their post office addresses  
82 last known to the commissioner. If, after ~~30~~ 45 days of mailing the notice, the amount due  
83 remains unpaid, the commissioner shall bring an action to collect the amount due,  
84 including, but not limited to, penalties, interest, and costs. It shall not be necessary to make  
85 the defaulting taxpayer a party to any action that may be brought against his or her surety  
86 or sureties."

87

**SECTION 6.**

88 Said title is further amended in said article by revising subsections (b) and (c) of Code  
89 Section 48-2-59, relating to appeals, payment of taxes admittedly owed, bond, and costs, as  
90 follows:

91 "(b) The taxpayer shall commence an appeal by filing a petition with the Georgia Tax  
92 Tribunal in accordance with Chapter 13A of Title 50 or the superior court within ~~30~~ 45  
93 days from the date of decision by the commissioner or at any time after the department  
94 records a state tax execution pursuant to Code Section 48-3-42.

95 (c) Before the superior court shall have jurisdiction to entertain an appeal filed by any  
96 aggrieved taxpayer, the taxpayer shall file with the clerk of the superior court a written  
97 statement whereby the taxpayer agrees to pay on the date or dates the taxes become due all  
98 taxes for which the taxpayer has admitted liability. Additionally, the taxpayer shall file  
99 with the clerk of the superior court within ~~30~~ 45 days from the date of decision by the  
100 commissioner, except when the value of the appellant's title or interest in real property  
101 owned in this state is in excess of the amount of the tax in dispute, a surety bond or other  
102 security in an amount satisfactory to the clerk, conditioned to pay any tax over and above  
103 that for which the taxpayer has admitted liability and which is found to be due by a final  
104 judgment of the court, together with interest and costs. It shall be ground for dismissal of  
105 the appeal if the taxpayer fails to pay all taxes admittedly owed upon the due date or dates  
106 as provided by law. This subsection shall not apply to appeals filed with the Georgia Tax  
107 Tribunal as provided in Chapter 13A of Title 50."

108

#### SECTION 7.

109 Said title is further amended in Article 3 of Chapter 6, relating to intangible recording tax,  
110 by revising subsection (c) of Code Section 48-6-76, relating to procedure for protesting  
111 intangible recording tax, payment under protest, special escrow fund, filing claim, approval  
112 or denial by commissioner, and action for refund, as follows:

113 "(c) The taxpayer making a payment under written protest may file at any time within ~~30~~  
114 45 days after the date of the payment a claim for refund of the protested amount of the  
115 payment with the commissioner. Each claim shall be in writing, shall be in the form and  
116 contain such information as the commissioner requires, and shall include a summary

117 statement of the grounds upon which the taxpayer relies in contending that the collection  
118 of the amount was erroneous or illegal. A copy of the claim shall be filed by the taxpayer  
119 within the ~~30~~ 45 day period with the collecting officer or said officer's successor who  
120 collected the protested amount."

121 **SECTION 8.**

122 Said title is further amended in Article 2 of Chapter 7, relating to imposition, rate,  
123 computation, exemptions, and credits, by revising subparagraph (d)(2)(C) of Code Section  
124 48-7-31, relating to taxation of corporations and computation, allocation, and apportionment  
125 of income, as follows:

126 "(C) If the allocation and apportionment provisions provided for in this paragraph do  
127 not fairly represent the extent of the taxpayer's business activity in this state, the  
128 taxpayer may petition the commissioner for, or the commissioner may by regulation  
129 require, with respect to all or any part of the taxpayer's business activity, if reasonable:

130 (i) Separate accounting;

131 (ii) The exclusion of any one or more of the factors;

132 (iii) The inclusion of one or more additional factors that will fairly represent the  
133 taxpayer's business activity within this state; or

134 (iv) The employment of any other method to effectuate an equitable allocation and  
135 apportionment of the taxpayer's income.

136 The denial of a petition under this subparagraph shall be appealable pursuant to Code  
137 Section 48-2-59. Such an appeal shall be filed within ~~30~~ 45 days of the date of the  
138 commissioner's notice of denial;"

139 **SECTION 9.**

140 Said title is further amended in Article 4 of Chapter 7, relating to payment, deficiencies,  
141 assessment, and collection, by revising subsection (e) of Code Section 48-7-82, relating to

142 periods of limitation for assessment of taxes, collection by execution, and change or  
143 correction of net income, as follows:

144 "(e)(1) Except as provided in Code Section 48-7-53, when a taxpayer's amount of net  
145 income for any year under this chapter as returned to the United States Department of the  
146 Treasury is changed or corrected by the commissioner of internal revenue or other officer  
147 of the United States of competent authority, the taxpayer, within 180 days after the final  
148 determination date of the changed or corrected net income, shall make a return to the  
149 commissioner of the changed or corrected income, and the commissioner shall make  
150 assessment within one year from the date the return required by this paragraph is filed or  
151 the taxpayer shall claim a refund based on the change or correction within one year from  
152 the date the return required by this paragraph is filed. If the taxpayer does not make the  
153 return reflecting the changed or corrected net income and the commissioner receives from  
154 the United States government or one of its agents a report reflecting the changed or  
155 corrected net income, the commissioner shall make assessment for taxes due based on the  
156 change or correction within five years from the date the report from the United States  
157 government or its agent is actually received. If he or she chooses, the commissioner shall  
158 have the authority to establish a de minimis amount upon which a taxpayer shall not be  
159 required to comply with this subsection. For purposes of this subsection the final  
160 determination date shall be determined as follows:

161 (A) Except as provided in ~~subparagraph~~ subparagraphs (B) and (C) of this paragraph,  
162 the final determination date is the first day on which no changes or corrections for a  
163 particular audit remain to be finally determined, whether by agreement, or, if appealed  
164 or contested, by a final decision with respect to which all rights of appeal have been  
165 waived or exhausted. For agreements required to be signed by the commissioner of  
166 internal revenue and the taxpayer, the final determination date is the date on which the  
167 last party signed the agreement; ~~or~~

168 (B) If the taxpayer filed as a member of a combined or consolidated group, the final  
169 determination date is the first day on which no related changes or corrections for a  
170 particular audit remain to be finally determined for the entire group; or

171 (C) If the federal adjustment results from filing an amended federal return, a federal  
172 refund claim, or an administrative adjustment request, or if it is a federal adjustment  
173 reported on an amended federal return or other similar report filed pursuant to Section  
174 6225(c) of the Internal Revenue Code, the final determination date is the day on which  
175 the amended return, refund claim, administrative adjustment request, or other similar  
176 report was filed.

177 (2) In the event the taxpayer fails to notify the commissioner of the final determination  
178 of his or her United States income taxes, the commissioner shall proceed to determine,  
179 upon evidence that the commissioner has brought to his or her attention or that he or she  
180 otherwise acquires, the corrected income of the taxpayer for the fiscal or calendar year.  
181 If additional tax is determined to be due, the tax shall be assessed and collected. If it is  
182 determined that there has been an overpayment of tax for the year, the taxpayer, by his  
183 or her failure to notify the commissioner as required in paragraph (1) of this subsection,  
184 shall forfeit his or her right to any refund due by reason of the change or correction. A  
185 taxpayer who so fails to notify the commissioner, however, shall be entitled to equitable  
186 recoupment of 90 percent of any overpayment so determined against any additional tax  
187 liability so determined, the remaining 10 percent of the overpayment being totally  
188 forfeited as a penalty for failure to make a return as required by paragraph (1) of this  
189 subsection."

190 **SECTION 10.**

191 Said title is further amended in Article 1 of Chapter 9, relating to motor fuel tax, by revising  
192 paragraph (5) of subsection (a) of Code Section 48-9-12, relating to powers of commissioner,

