

Senate Bill 141

By: Senators Hatchett of the 50th, Hufstetler of the 52nd, Albers of the 56th, Kennedy of the 18th, Anavitarte of the 31st and others

AS PASSED SENATE

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

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

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

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

SECTION 2.

Said title is further amended in said article by revising subsection (a) of Code Section 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

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the period of limitations for making an assessment until the petition is denied by the commissioner or the request is withdrawn in writing by the taxpayer.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

SECTION 5.

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

"48-2-54.

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

SECTION 6.

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

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

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

SECTION 7.

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

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

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

SECTION 8.

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

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

(i) Separate accounting;

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

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

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

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

SECTION 9.

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

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

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

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

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

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

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

SECTION 10.

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

193 notice of license cancellation, retention of bonds, public inspection of records, estimated
194 assessments, time extensions, and list of licensed distributors, as follows:

195 "(5) Reinstate a canceled license when information is provided at a hearing or otherwise
196 within ~~30~~ 45 days of cancellation which satisfies the commissioner that the license should
197 be reinstated;"

198 **SECTION 11.**

199 This Act shall become effective on July 1, 2025.

200 **SECTION 12.**

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