House Bill 1141

By: Representatives Dunahoo of the 30th, Hawkins of the 27th, Tarvin of the 2nd, Clark of the 98th, Jasperse of the 11th, and others

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 repeal income taxes in their entirety; to completely revise sales and use taxes; to provide for conditions and limitations; to provide for legislative findings; to provide definitions; to provide a short title; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

This Act shall be known and may be cited as the "Georgia FairTax Act."

SECTION 2.

The General Assembly makes the following findings:

(a) The Georgia income tax:

(1) Retards economic growth and has reduced the standard of living of the Georgian public;

(2) Impedes the competitiveness of Georgia industry;

(3) Reduces savings and investment in Georgia by taxing income multiple times;

(4) Slows the capital formation necessary for real wages to steadily increase;

(5) Impedes innovation and lowers productivity;

(6) Imposes unacceptable and unnecessary administrative and compliance costs on individual and business taxpayers;

(7) Is unfair and inequitable;

(8) Unnecessarily intrudes upon the privacy and civil rights of Georgian citizens;

(9) Hides the true cost of government by embedding taxes in the costs of everything Georgians buy;

(10) Is not being complied with at satisfactory levels and therefore raises the tax burden on law-abiding citizens; and

(11) Impedes upward social mobility.

(b) The existing sales and use tax:

(1) Has too many exceptions which are unfair, increase complexity, and distort the economy;

(2) Taxes business inputs which results in a hidden tax and reduces investment in Georgia; and

(3) Has a disproportionately adverse impact on lower income Georgians.

(c) A broad-based sales tax on goods and services purchased for final consumption:

(1) Is simpler and more fair than the sales and use tax in place;

(2) Will promote savings and investment;

(3) Will promote fairness;

(4) Will promote economic growth;

(5) Will raise the standard of living;

(6) Will increase investment;

(7) Will enhance productivity and competitiveness;

(8) Will reduce administrative burdens on the Georgian taxpayer;

(9) Will improve upward social mobility;

(10) Will exempt the poor from tax;

(11) Will respect the privacy interests and civil rights of taxpayers; and

(12) Recent advances in smartcard technology provide an opportunity to distribute monthly rebates in an efficient and convenient manner.

SECTION 3.

Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is amended by repealing Chapter 7, relating to income taxes, and designating said chapter as reserved.

SECTION 4.

Said title is further amended by repealing Chapter 8, relating to sales and use tax, and enacting a new Chapter 8 to read as follows:

"CHAPTER 8

ARTICLE 1

48-8-1.

(a) Any court, the commissioner and the commissioner's delegates, and any other authority shall consider the purposes of this chapter as the primary aid in statutory construction.

(b) The purposes of this chapter are as follows:

(1) To raise revenue needed by the State of Georgia in a manner consistent with the other purposes of this chapter;

(2) To tax all consumption of goods and services in Georgia once, without exception, but only once;

(3) To prevent double, multiple, or cascading taxation;

(4) To simplify the tax law and reduce the administration costs of, and the costs of compliance with, the tax law; and

(5) To provide for the administration of the tax law in a manner that respects privacy, due process, individual rights when interacting with the government, the presumption of innocence in criminal proceedings, and the presumption of lawful behavior in civil proceedings.

(c) As a secondary aid in statutory construction, any court, the commissioner and the commissioner's delegates, and any other authority shall consider:

(1) The common law canons of statutory construction;

(2) The meaning and construction of concepts and terms used in this title as in effect before the effective date of this Act; and

(3) Construe any ambiguities in this Act in favor of reserving powers to the people.

48-8-2.

As used in this chapter, the term:

(1) 'Affiliated firms' means a firm is affiliated with another if one firm owns 50 percent or more of:

(A) The voting shares in a corporation; or

(B) The capital interests of a business firm that is not a corporation.

(2) 'Annual marriage penalty elimination amount' means the amount that is:

(A) The amount that is two times the annual level determined by the Department of Health and Human Services poverty guidelines required by Sections 652 and 673(2) of the Omnibus Reconciliation Act of 1981 for a family of one, less

(B) The annual level determined by the Department of Health and Human Services poverty guidelines required by Sections 652 and 673(2) of the Omnibus Reconciliation Act of 1981 for a family of two.

(3) 'Annual poverty level' means the sum of:

(A) The annual level determined by the Department of Health and Human Services poverty guidelines required by Sections 652 and 673(2) of the Omnibus Reconciliation Act of 1981 for a particular family size; and

(B) In case of families that include a married couple, the annual marriage penalty elimination amount.

(4) 'Bad debt' means a business debt that becomes wholly or partially worthless to the payee.

(5) 'Business debt' means a bona fide loan or debt made for a business purpose that both parties intended be repaid.

(6) 'Business use ratio' means the ratio of business use to total use for a particular calendar month or portion thereof if the property was owned for only part of such calendar month. For vehicles, the business use ratio shall be the ratio of business purpose miles to total miles in a particular calendar month. For real property, the business use ratio shall be the ratio of floor space used primarily for business purposes to total floor space in a particular calendar month. For tangible personal property, except for vehicles, the business use ratio shall be the ratio of total time used for business purposes to total time used in a particular calendar year. For other property or services, the business ratio shall be calculated using a reasonable method. Reasonable records shall be maintained to support a person's business use of the mixed use property or service.

(7) 'Designated commercial private courier service' means a firm designated as such by the commissioner, upon application of the firm, if the firm:

(A) Provides its services to the general public;

(B) Records electronically to its data base kept in the regular course of its business the date on which an item was given to such firm for delivery; and

(C) Has been operating for at least one year.

(8) 'Education and training' means tuition for primary, secondary, or postsecondary level education, and job-related training courses. Such term shall not include room, board, sports activities, recreational activities, hobbies, games, arts or crafts, or cultural activities.

(9) 'Employee discount' means an employer's offer of taxable property or services for sale to its employees or their families for less than the offer of such taxable property or services to the general public.

(10) 'Employee discount amount' means the amount by which taxable property or services are sold pursuant to an employee discount below the amount for which such taxable property or services would have been sold to the general public.

(11) 'Explicitly charged fees for financial intermediation services' includes:

(A) Brokerage fees;

(B) Explicitly stated banking, loan origination, processing, documentation, credit check fees, or other similar fees;

(C) Safe-deposit box fees;

(D) Insurance premiums, to the extent such premiums are not allocable to the investment account of the underlying insurance policy;

(E) Trustees' fees; and

(F) Other financial services fees, including mutual fund management, sales, and exit fees.

(12) 'Family members' shall mean:

(A) An individual;

(B) The individual's spouse;

(C) All lineal ancestors and descendants of such individual and such individual's spouse;

(D) All legally adopted children of such individual and such individual's spouse; and

(E) All children under legal guardianship of such individual and such individual's spouse.

(13) 'Financial intermediation services' means the sum of explicitly charged fees for financial intermediation services, and implicitly charged fees for financial intermediation services.

(14) 'Financing lease' means any lease under which the lessee has the right to acquire the property for 50 percent or less of its fair market value at the end of the lease term.

(15) 'Gross imputed amount' means:

(A) With respect to any underlying interest-bearing investment or account, the product of the excess, if any, of the basic interest rate over the rate paid on such investment, and the amount of the investment or account; and

(B) With respect to any underlying interest-bearing debt, the product of the excess, if any, of the rate paid on such debt over the basic interest rate, and the amount of the debt.

(16) 'Gross payments' means payments for taxable property or services, including taxes imposed by this chapter.

(17) 'Implicitly charged fees for financial intermediation services' means the gross imputed amount in relation to any underlying interest-bearing investment, account, or debt.

(18) 'Insurance contract' means a life insurance contract, a health insurance contract, a property and casualty loss insurance contract, a general liability insurance contract, a marine insurance contract, a fire insurance contract, an accident insurance contract, a disability insurance contract, a long-term care insurance contract, or an insurance contract that provides a combination of these types of insurance.

(19) 'Intangible property' includes copyrights, trademarks, patents, goodwill, financial instruments, securities, commercial paper, debts, notes and bonds, and other property

deemed intangible at common law. Such term shall not include tangible personal property, real property, or computer software and shall not include rents or leaseholds of any term for tangible personal property or real property.

(20) 'Intermediate article' means a property or service that:

(A) Is used to produce, provide, render, or sell a taxable property or service if such property or service is purchased by a person engaged in a trade or business for the purpose of employing or using such taxable property or service in the production, provision, rendering, or sale of other taxable property or services in the ordinary course of that trade or business;

(B) Is used in a trade or business for the purpose of research, experimentation, testing, and development;

(C) Purchased by an insurer on behalf of an insured, shall be treated as used to produce, provide, render, or sell taxable property or services if the premium for the insurance contract giving rise to the insurer's obligation was subject to tax pursuant to Code Section 48-8-80; or

(D) Is education or training.

(21) 'Mixed use property or service' means a taxable property or taxable service used for both taxable use or consumption and for a business purpose in a trade or business.

(22) 'Purchased for a business purpose in a trade or business' means purchased by a person engaged in a trade or business and used in that trade or business:

(A) For resale;

(B) To produce, provide, render, or sell taxable property or services; or

(C) In furtherance of other bona fide business purposes.

(23) 'Purchased for an investment purpose' means property purchased exclusively for purposes of appreciation or the production of income but not entailing more than minor personal efforts.

(24) 'Qualified family' means one or more family members sharing a common residence. All family members sharing a common residence shall be considered as part of one qualified family. In order for a person to be counted as a member of the family for purposes of determining the size of the qualified family, such person shall:

(A) Have a bona fide social security number; and

(B) Be a lawful resident of both the United States and the State of Georgia.

(25) 'Qualified not-for-profit organization' means a not-for-profit organization organized and operated exclusively:

(A) For religious, charitable, scientific, testing for public safety, literary, or educational purposes;

(B) As civic leagues or social welfare organizations;

(C) As labor, agricultural, or horticultural organizations;

(D) As chambers of commerce, business leagues, or trade associations; or

(E) As fraternal beneficiary societies, orders, or associations,

no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(26) 'Registered seller' means a person registered pursuant to Code Section 48-8-52.

(27) 'Responsible officers and partners' means:

(A) In the case of a corporation, any officer who is the president, the chief executive officer, a vice president, the secretary, the treasurer, or the chief financial officer or who serves a similar function for the corporation;

(B) In the case of a partnership, any partner other than limited partners; and

(C) In the case of a limited liability company, any officer serving the function of a corporate president or chief executive officer, treasurer or chief financial officer, or secretary and any member actively engaged in the management of the company.

(28) 'Tax inclusive fair market value' means the fair market value of taxable property or services plus the tax imposed by this chapter.

(29) 'Taxable employer' means any household employing domestic servants and any government. Such term shall not mean any employer which is engaged in a trade or business, a not-for-profit organization as provided in Code Section 48-8-75, or a government enterprise as provided in Code Section 48-8-73.

(30) 'Taxable gaming services' means:

(A) Gross receipts of the gaming sponsor from the sale of chances, minus

(B) The sum of total gaming payoffs to chance purchasers, and gaming specific taxes imposed by the federal, state, or local government.

(31) 'Taxable property or service' means any property, including leaseholds of any term or rents with respect to such property but excluding intangible property, used property, and any service, which shall include financial intermediation services. For the purposes of this paragraph, the term 'service' shall include any service performed by an employee for which the employee is paid wages or a salary by a taxable employer, but shall not include any service performed by an employee for which the employee is paid wages or a salary by:

(A) An employer in the regular course of the employer's trade or business;

(B) An employer that is a not-for-profit organization;

(C) An employer that is a government enterprise; or

(D) Taxable employers to employees directly providing education and training.

(32) 'Used property' means property on which the tax imposed by this chapter has been collected and for which no credit has been allowed under Code Section 48-8-31, 48-8-32,

or 48-8-35, or property that was held other than for a business purpose on December 31, 2017.

(33) 'Wage' and 'salary' mean all compensation paid for employment service, including cash compensation, employee benefits, disability insurance, or wage replacement insurance payments, unemployment compensation insurance, workers' compensation insurance, and the fair market value of any other consideration paid by an employer to an employee in consideration for employment services rendered.

ARTICLE 2

48-8-20.

(a) There is hereby imposed a tax on the use or consumption in the State of Georgia of taxable property or services.

(b) The rate of tax is 5.50 percent of the gross payments for the taxable property or service.

(c)(1) The person using or consuming a taxable property or service in the State of Georgia is liable for the tax imposed by this Code section, except as provided in paragraph (2) of this subsection.

(2) A person using or consuming a taxable property or service in the State of Georgia is not liable for the tax imposed by this Code section if the person pays the tax to a person selling the taxable property or service and receives from such person a purchaser's receipt within the meaning of Code Section 48-8-58.

48-8-21.

(a) No tax shall be imposed under Code Section 48-8-20 on any taxable property or service purchased for a business purpose in a trade or business.

(b) No tax shall be imposed under Code Section 48-8-20 on any taxable property or service purchased for an investment purpose and held exclusively for an investment purpose.

48-8-22.

(a) Except as provided otherwise by this Code section, any tax imposed by this chapter shall be collected and remitted by the seller of taxable property or services, which shall include financial intermediation services.

(b)(1) In the case of taxable property or services purchased outside of the State of Georgia and brought into the State of Georgia for use or consumption in the State of Georgia, the purchaser shall remit the tax imposed by Code Section 48-8-20.

(2) In the case of wages or salary paid by a taxable employer which are taxable services, the employer shall remit the tax imposed by Code Section 48-8-20.

(c) Property or services purchased for a business purpose in a trade or business, for an investment purpose or for sale outside of the State of Georgia and sold untaxed pursuant to Code Section 48-8-20 that is subsequently converted to personal use in the State of Georgia shall be deemed purchased at the time of conversion and shall be subject to the tax imposed by Code Section 48-8-20 at the fair market value of the converted property as of the date of conversion. The tax shall be due as if the property had been sold at the fair market value during the month of conversion. The person using or consuming the converted property is liable for and shall remit the tax.

(d) If gross payment for taxable property or services is made in other than money, then the person responsible for collecting and remitting the tax shall remit the tax in money as if gross payment had been made in money at the tax inclusive fair market value of the taxable property or services purchased.

ARTICLE 3

48-8-30.

(a) Each person shall be allowed a credit with respect to the taxes imposed by Code Section 48-8-20 for each month in an amount equal to the sum of:

(1) Such person's business use conversion credit pursuant to Code Section 48-8-31 for such month;

(2) Such person's intermediate and out-of-state sales credit pursuant to Code Section 48-8-32 for such month;

(3) The administrative credit pursuant to Code Section 48-8-33 for such month;

(4) The bad debt credit pursuant to Code Section 48-8-34 for such month;

(5) The insurance proceeds credit pursuant to Code Section 48-8-35 for such month;

(6) The transitional inventory credit pursuant to Code Section 48-8-91; and

(7) Any amount paid in excess of the amount due.

(b) Only one credit allowed by this Code section may be taken with respect to any particular gross payment.

48-8-31.

(a) For purposes of Code Section 48-8-30, a person's business use conversion credit for any month is the aggregate of the amounts determined under subsection (b) of this Code section with respect to taxable property and services:

(1) On which tax was imposed by this chapter and actually paid; and

(2) Which commenced to be 95 percent or more used during such month for business purposes.

(b) The amount determined under this Code section with respect to any taxable property or service is the lesser of the product of:

(1) The rate imposed by Code Section 48-8-20; and

(2) The quotient that is the fair market value of the property or service when its use is converted, divided by the quantity that is one minus the tax rate imposed by Code Section 48-8-20 or the amount of tax paid with respect to such taxable property or service, including the amount, if any, determined in accordance with Code Section 48-8-74.

48-8-32.

For purposes of Code Section 48-8-30, a person's intermediate and out-of-state sales credit is the amount of sales tax paid on the purchase of any taxable property or service:

(1) Purchased for a business purpose in a trade or business; or

(2) Purchased for use or consumption outside the State of Georgia.

48-8-33.

(a) Every person filing a timely monthly report in compliance with Code Section 48-8-51 shall be entitled to a taxpayer administrative credit equal to the greater of $200.00 or one-quarter of 1 percent of the tax remitted.

(b) The credit allowed under this Code section shall not exceed 20 percent of the tax due to be remitted prior to the application of any credit or credits permitted by Code Section 48-8-30.

48-8-34.

(a) Any person who has experienced a bad debt other than unpaid invoices shall be entitled to a credit equal to the product of:

(1) The rate imposed by Code Section 48-8-20; and

(2) The quotient that is:

(A) The amount of the bad debt, divided by

(B) The quantity that is one minus the rate imposed by Code Section 48-8-20.

(b) Any person electing the accrual method pursuant to Code Section 48-8-53 that has with respect to a transaction:

(1) Invoiced the tax imposed by Code Section 48-8-20;

(2) Remitted the invoiced tax;

(3) Actually delivered the taxable property or performed the taxable services invoiced; and

(4) Not been paid 180 days after the date the invoice was due to be paid,

shall be entitled to a credit equal to the amount of tax remitted and unpaid by the purchaser.

(c) Any payment made with respect to a transaction subsequent to a credit being taken pursuant to this Code section with respect to that transaction shall be subject to tax in the month the payment was received as if a tax inclusive sale of taxable property and services in the amount of the payment had been made.

(d) Partial payments shall be treated as pro rata payments of the underlying obligation and shall be allocated proportionately:

(1) For fully taxable payments, between payment for the taxable property and service and tax; and

(2) For partially taxable payments, among payment for the taxable property and service, tax and other payment.

(e) The credit provided by this Code section shall not be available with respect to sales made to affiliated firms or family members.

48-8-35.

(a) A person receiving a payment from an insurer by virtue of an insurance contract shall be entitled to a credit in an amount determined by subsection (b) of this Code section, less any amount paid to the insured by the insurer pursuant to subsection (c) of this Code section, if the entire premium, except that portion allocable to the investment account of the underlying policy, for the insurance contract giving rise to the insurer's obligation to make a payment to the insured was subject to the tax imposed by this chapter and such tax was paid.

(b) The amount of the credit shall be the product of:

(1) The rate imposed by Code Section 48-8-20; and

(2) The quotient that is:

(A) The amount of the payment made by the insurer to the insured, divided by

(B) The quantity that is one minus the rate imposed by Code Section 48-8-20.

(c) The credit determined in accordance with subsection (b) of this Code section shall be paid by the insurer to the insured and the insurer shall be entitled to the credit in lieu of the insured, except that the insurer may elect, in a form prescribed by the commissioner, to not pay the credit and require the insured to make application for the credit. In the event of such election, the insurer shall provide to the commissioner and the insured the name and tax identification number of the insurer and of the insured and indicate the proper amount of the credit.

(d) If taxable property or services purchased by an insurer on behalf of an insured are purchased free of tax, then the credit provided by this Code section shall not be available with respect to that purchase.

48-8-36.

(a) If a registered seller files a monthly tax report with an overpayment, then, upon application by the registered seller in a form prescribed by the commissioner, the overpayment shown on the report shall be refunded to the registered seller within 60 days of receipt of such application. In the absence of such application, the overpayment may be carried forward, without interest, by the person entitled to the credit.

(b) If a person other than a registered seller has an overpayment for any month, then, upon application by the person in a form prescribed by the commissioner, the credit balance due shall be refunded to the person within 60 days of receipt of such application.

(c) No interest shall be paid on any balance due from the commissioner under this Code section for any month if such balance due is paid within 60 days after the application for refund is received. Balances due not paid within 60 days after the application for refund is received shall bear interest from the date of application. Interest shall be paid at the federal short-term rate as described in Code Section 48-8-59.

ARTICLE 4

48-8-40.

Each qualified family shall be eligible to receive a sales tax rebate each month. The sales tax rebate shall be in an amount equal to the product of the rate of tax imposed by Code Section 48-8-20 and the monthly poverty level.

48-8-41.

(a) Any person who was a registered student during not fewer than five months in a calendar year while living away from the common residence of a qualified family but who receives over 50 percent of such person's support during a calendar year from members of the qualified family shall be included as part of the family unit whose members provided such support for purposes of this chapter.

(b) If a child's parents are divorced or legally separated, a child for purposes of this chapter shall be treated as part of the qualified family of the custodial parent. In cases of joint custody, the custodial parent for purposes of this chapter shall be the parent that has custody of the child for more than one-half of the time during a given calendar year. A parent entitled to be treated as the custodial parent pursuant to this subsection may release this claim to the other parent if such release is in writing.

(c)(1) Registration is not mandatory for any qualified family; however, in order to receive the family consumption allowance provided by Code Section 48-8-40, a qualified family must register with the commissioner in a form prescribed by the commissioner. The annual registration form shall provide:

(A) The name of each family member who shared the qualified family's residence on the family determination date;

(B) The social security number of each family member on the family determination date who shared the qualified family's residence on the family determination date;

(C) The family member or family members to whom the family consumption allowance should be paid;

(D) A certification that all listed family members are lawful residents of the United States;

(E) A certification that all listed family members are lawful residents of Georgia;

(F) A certification that all family members sharing the common residence are listed;

(G) A certification that no family members were incarcerated on the family determination date; and

(H) The address of the qualified family.

Such annual registration form shall be signed by all members of the qualified family who have attained the age of 21 years as of the date of filing.

(2) Any qualified family that fails to register in accordance with this subsection within 30 days of the family determination date shall cease receiving the monthly family consumption allowance in the month beginning 90 days after the family determination date.

(3) Any qualified family that failed to timely make its annual registration in accordance with this subsection but subsequently cures its failure to register shall be entitled to up to six months of lapsed sales tax rebate payments. No interest on lapsed payment amount shall be paid.

(4) Annual registrations shall take effect for the month beginning 90 days after the family registration date.

(5) A revised registration made pursuant to Code Section 48-8-44 shall take effect for the first month beginning 60 days after the revised registration was filed. The existing registration shall remain in effect until the effective date of the revised registration.

(6) An annual or revised registration shall be deemed filed when:

(A) Deposited in the United States mail, postage prepaid, to the designated address of the Department of Revenue;

(B) Delivered and accepted at the designated offices of the Department of Revenue; or

(C) Provided to a designated commercial private courier service for delivery within two days to the commissioner at the designated address of the Department of Revenue.

(7) Thirty or more days before the family registration date, the commissioner shall mail to the address shown on the most recent rebate registration or change of address notice filed pursuant to subsection (d) of Code Section 48-8-44 a proposed registration that may be simply signed by the appropriate family members if family circumstances have not changed.

(d) An individual shall not be eligible under this chapter to be included as a member of any qualified family if that individual:

(1) Is incarcerated in a local, state, or federal jail, prison, mental hospital, or other institution on the family determination date; and

(2) Is scheduled to be incarcerated for six months or more in the 12 month period following the effective date of the annual registration or the revised registration of such qualified family.

(e) The family determination date is a date assigned to each family by the commissioner for purposes of determining qualified family size and other information necessary for the administration of this chapter. The commissioner shall promulgate regulations regarding the issuance of family determination dates. In the absence of any regulations, the family determination date for all families shall be October 1. The commissioner may assign family determination dates for administrative convenience. Permissible means of assigning family determination dates include a method based on the birth dates of family members.

48-8-42.

The monthly poverty level for any particular month shall be one-twelfth of the annual poverty level.

48-8-43.

(a) The Department of Revenue shall provide a monthly sales tax rebate to duly registered qualified families in an amount determined in accordance with this article.

(b) The payments shall be made to the persons designated by the qualifying family in the annual or revised registration for each qualified family in effect with respect to the month for which payment is being made. Payments may only be made to persons 18 years or older. If more than one person is designated in a registration to receive the rebate, then the rebate payment shall be divided evenly between or among those persons designated.

(c) Rebates shall be mailed on or before the first business day of the month for which the rebate is being provided.

(d) The commissioner may provide rebates in the form of smartcards that carry cash balances in their memory for use in making purchases at retail establishments or by direct electronic deposit. Such cash balances may only be used to offset Georgia sales and use taxes and may not under any circumstances be used to pay for the cost of any goods or services themselves.

48-8-44.

(a) In the absence of the filing of a revised registration in accordance with this chapter, the common residence of the qualified family, marital status, and number of persons in a qualified family on the family registration date shall govern determinations required to be made under this chapter for purposes of the following calendar year.

(b) In no event shall any person be considered part of more than one qualified family.

(c) A qualified family may file a revised registration to reflect a change in family circumstances. A revised registration form shall provide:

(1) The name of each family member who shared the qualified family's residence on the filing date of the revised registration;

(2) The social security number of each family member who shared the qualified family's residence on the filing date of the revised registration;

(3) The family member or family members to whom the family consumption allowance should be paid;

(4) A certification that all listed family members are lawful residents of the United States;

(5) A certification that all listed family members are lawful residents of Georgia;

(6) A certification that all family members sharing the common residence are listed;

(7) A certification that no family members were incarcerated on the family determination date; and

(8) The address of the qualified family.

Such revised registration shall be signed by all members of the qualified family who have attained the age of 21 years as of the filing date of the revised registration.

(d) A change of address for a qualified family may be filed with the commissioner at any time and shall not constitute a revised registration.

(e) Revised registrations reflecting changes in family status are not mandatory.

ARTICLE 5

48-8-50.

(a) The tax imposed by this chapter is a destination principle tax. This Code section shall govern for purposes of determining whether the destination of taxable property and services is within or without the State of Georgia.

(b) Except as provided in subsection (g) of this Code section, the destination of tangible personal property shall be the state or territory in which the property was first delivered to the purchaser, including agents and authorized representatives of such purchaser.

(c) The destination of real property, or rents or leaseholds on real property, shall be the state or territory in which the real property is located.

(d) The destination of any other taxable property shall be the residence of the purchaser.

(e)(1) The destination of services shall be the state or territory in which the use or consumption of the services occurred. Allocation of service invoices relating to more than one jurisdiction shall be on the basis of time or another method determined by regulation.

(2) The destination of telecommunications services shall be the residence of the purchaser. Telecommunications services include telephone, telegraph, beeper, radio, cable television, satellite, and computer on-line or network services.

(3) For transportation services where all of the final destinations are within the State of Georgia, the destination of transportation services shall be the State of Georgia. For transportation services where the final destination or origin of the trip is outside the State of Georgia, the service amount shall be deemed 50 percent attributable to the Georgia destination or origin.

(4) The destination of electrical services shall be the residence of the purchaser.

(f) The destination of financial intermediation services shall be the residence of the purchaser.

(g)(1) Except as provided in paragraph (2) of this subsection, the destination of rents paid for the lease of tangible property and leaseholds on such property shall be where the property is located while in use.

(2) The destination of rental and lease payments on land vehicles, aircraft, and watercraft shall be:

(A) In the case of rentals and leases of a term of one month or less, the location where the land vehicle, aircraft, or watercraft was originally delivered to the renter or lessee; and

(B) In the case of rentals and leases of a term greater than one month, the residence of the renter or lessee.

48-8-51.

(a)(1) On or before the fifteenth day of each month, each person that is:

(A) Liable to collect and remit the tax imposed by this chapter by reason of subsection (a) of Code Section 48-8-22; or

(B) Liable to pay tax imposed by this chapter which is not collected pursuant to subsection (a) of Code Section 48-8-22

shall submit to the commissioner in a form to be prescribed by the commissioner a report relating to the previous calendar month.

(2) The report required under paragraph (1) of this subsection shall set forth:

(A) The gross payments;

(B) The tax collected under Code Section 48-8-20 in connection with such payments;

(C) The amount and type of any credit claimed; and

(D) Other information reasonably required by the commissioner for the administration, collection, and remittance of the tax imposed by this chapter.

(b)(1) The tax imposed by this chapter during any calendar month is due and shall be paid to the Department of Revenue on or before the fifteenth day of the succeeding month.

(2) Subsection (e) of this Code section provides for the remitting of separate segregated funds for sellers that are not small sellers.

(c)(1) On application, an extension of not more than 30 days to file reports under subsection (a) of this Code section shall be automatically granted.

(2) On application, extensions of 30 to 60 days to file such reports shall be liberally granted by the commissioner for reasonable cause. Extensions greater than 60 days may be granted by the commissioner to avoid hardship.

(3) Notwithstanding paragraphs (1) and (2) of this subsection, no extension shall be granted with respect to the time for paying or remitting the taxes under this chapter.

(d) The commissioner shall establish a system under which a violation of this chapter can be brought to the attention of the commissioner for investigation through the use of a toll-free telephone number and otherwise.

(e)(1) Any registered seller that is not a small seller shall deposit all sales taxes collected pursuant to this chapter in a particular week in a separate segregated account maintained at a bank or other financial institution within three business days of the end of such week. Such registered seller shall also maintain in that account sufficient funds to meet the bank or financial institution minimum balance requirements, if any, and to pay account fees and costs.

(2) For purposes of this subsection, a small seller is any person that has not collected $5,000.00 or more of the taxes imposed by this chapter in any of the previous 12 months.

(3) Any seller that has collected $50,000.00 or more of the taxes imposed by this chapter in any of the previous 12 months is a large seller. A large seller shall remit to the commissioner the entire balance of deposited taxes in its separate segregated account on the first business day following the end of the calendar week. The commissioner may by regulation require the electronic transfer of funds due from large sellers.

(4) For purposes of this subsection, the term 'week' means the seven-day period ending on a Friday.

(f) A report filed pursuant to subsection (a) of this Code section shall be deemed filed when:

(1) Deposited in the United States mail, postage prepaid, addressed to the designated office of the Department of Revenue;

(2) Delivered and accepted at the designated office of the Department of Revenue;

(3) Provided to a designated commercial private courier service for delivery within two days to the designated office of the Department of Revenue; or

(4) By other means permitted by the commissioner.

(g) A large seller within the meaning of paragraph (3) of subsection (e) of this Code section shall be required to provide security in an amount equal to the greater of $100,000.00 or one and one-half times the seller's average monthly tax liability during the previous six calendar months. Security may be a cash bond, a bond from a surety company approved by the commissioner, a certificate of deposit, or a state or United States Treasury bond. A bond qualifying under this subsection must be a continuing instrument for each calendar year or portion thereof that the bond is in effect. The bond must remain in effect until the surety or sureties are released and discharged. Failure to provide security in accordance with this subsection shall result in revocation of the seller's Code Section 48-8-52 registration. If a person who has provided security pursuant to this subsection:

(1) Fails to pay an amount indicated in a final notice within the meaning of subsection (d) of Code Section 48-8-65 of an amount due under this chapter;

(2) No Taxpayer Assistance Order is in effect relating to the amount due;

(3) Either the time for filing an appeal pursuant to Code Section 48-8-63 has passed or the appeal was denied; and

(4) The amount due is not being litigated in any judicial forum,

then the security or part of the security, as the case may be, may be forfeited in favor of the commissioner to the extent of such tax due, plus interest if any.

(h) The commissioner is authorized to maintain a program of awards wherein individuals who assist the commissioner in discovering or prosecuting tax fraud may be remunerated.

48-8-52.

(a) Any person liable to collect and remit taxes pursuant to subsection (a) of Code Section 48-8-22 that is engaged in a trade or business shall register as a seller with the commissioner.

(b) Affiliated firms shall be treated as one person for purposes of this Code section. Affiliated firms may elect, upon giving notice to the commissioner in a form prescribed by the commissioner, to treat separate firms as separate persons for purposes of this chapter.

(c) Every person registered pursuant to subsection (a) of this Code section shall designate a tax matters person who shall be an individual whom the commissioner may contact regarding tax matters. Each person registered shall provide notice of a change in the identity of the tax matters person within 30 days of such change.

(d) Any person that is required to register but fails to do so is prohibited from selling taxable property or services. The commissioner may bring an action seeking a temporary restraining order, an injunction, or such other order as may be appropriate to enforce this Code section.

48-8-53.

(a) Registered sellers and other persons shall report transactions using the cash method of accounting unless an election to use the accrual method of accounting is made pursuant to subsection (b) of this Code section.

(b) A person may elect with respect to a calendar year to remit taxes and report transactions with respect to the month where a sale was invoiced and accrued.

48-8-54.

(a) Each person who is required to register pursuant to Code Section 48-8-52 but fails to do so prior to notification by the commissioner shall be liable for a penalty of $500.00.

(b)(1) Each person who is required to and recklessly or willfully fails to collect taxes imposed by this chapter shall be liable for a penalty equal to the greater of $500.00 or 20 percent of tax not collected.

(2) Each person who is required to and willfully fails as part of a trade or business to collect taxes imposed by this chapter may be fined an amount up to the amount determined in accordance with paragraph (1) of this subsection or imprisoned for a period of not more than one year, or both.

(c)(1) Each person who recklessly or willfully asserts an invalid intermediate or out-of-state sales exemption from the taxes imposed by this chapter shall be liable for a penalty equal to the greater of $500.00 or 20 percent of the tax not collected or remitted.

(2) Each person who willfully asserts an invalid intermediate or out-of-state sales exemption from the taxes imposed by this chapter may be fined an amount up to the amount determined in accordance with paragraph (1) of this subsection or imprisoned for a period of not more than one year, or both.

(d)(1) Each person who is required to and recklessly or willfully fails to remit taxes imposed by this chapter and collected from purchasers shall be liable for a penalty equal to the greater of $1,000.00 or 50 percent of the tax not remitted.

(2) Each person who willfully fails to remit taxes imposed by this chapter and collected from purchasers may be fined an amount up to the amount determined in accordance with paragraph (1) of this subsection or imprisoned for a period of not more than two years, or both.

(e) Each person who is required to and recklessly or willfully fails to pay taxes imposed by this chapter shall be liable for a penalty equal to the greater of $500.00 or 20 percent of the tax not paid.

(f)(1) In the case of a failure by any person who is required to and fails to file a report required by Section 501 of the Internal Revenue Code on or before the due date (determined with regard to any extension) for such report, such person shall pay a penalty for each month or fraction thereof that such report is late equal to the greater of $50.00 or 0.5 percent of the gross payments required to be shown on the report.

(2) The amount of the penalty under paragraph (1) of this subsection shall be doubled with respect to any report filed after a written inquiry with respect to such report is received by the taxpayer from the commissioner.

(3) The penalty imposed under this subsection shall not exceed 12 percent.

(4)(A) No penalty shall be imposed under this subsection with respect to any failure if it is shown that such failure is due to reasonable cause.

(B) In addition to penalties not imposed by reason of subparagraph (A) of this paragraph, the commissioner, on application, shall waive the penalty imposed by paragraph (1) of this subsection once per registered person per 24 month period. The preceding sentence shall not apply to a penalty determined under paragraph (2) of this subsection.

(g) A person who willingly or recklessly accepts a false intermediate or out-of-state sales certificate shall pay a penalty equal to 20 percent of the tax not collected by reason of such acceptance.

(h)(1) A person who is required to timely remit taxes imposed by this chapter and remits taxes more than one month after such taxes are due shall pay a penalty equal to 1 percent per month or fraction thereof from the due date.

(2) The penalty imposed under this subsection shall not exceed 24 percent.

(3) The penalty imposed under paragraph (1) of this subsection with respect to any late remittance shall be reduced by one-half if it is shown that such late remittance is due to reasonable cause.

(i)(1) A person who willingly or recklessly files a false claim for a family consumption allowance rebate shall:

(A) Pay a penalty equal to the greater of $500.00 or 50 percent of the claimed annual rebate amount not actually due; and

(B) Repay any rebates received as a result of the false rebate claim together with interest.

(2) A person who willingly files a false claim for a family consumption allowance rebate may be fined an amount up to the amount determined in accordance with paragraph (1) of this subsection or imprisoned for a period of not more than one year, or both.

(j) If any check or money order in payment of any amount receivable under this chapter is not duly paid, in addition to other penalties provided by law, the person who tendered such check shall pay a penalty equal to the greater of $25.00 or 2 percent of the amount of such check.

(k) Any person required to maintain a separate segregated account pursuant to subsection (e) of Code Section 48-8-51 that fails to maintain such a separate segregated account shall pay a penalty of $500.00.

(l) Any person required to deposit collected taxes into a separate segregated account maintained pursuant to subsection (e) of Code Section 48-8-51 that fails to timely deposit such taxes into the separate segregated account shall pay a penalty equal to 1 percent of the amount required to be deposited. Such penalty imposed shall be tripled unless such taxes have been deposited in the separate segregated account or remitted to the commissioner within 16 days of the date such deposit was due.

(m) The tax matters person designated pursuant to subsection (c) of Code Section 48-8-52 and responsible officers or partners of a firm shall be jointly and severally liable for the tax imposed by this chapter and penalties imposed by this chapter.

(n) If more than one person is liable with respect to any tax or penalty imposed by this chapter, each person who paid such tax or penalty shall be entitled to recover from other persons who are liable for such tax or penalty an amount equal to the excess of the amount paid by such person over such person's proportionate share of the tax or penalty in accordance with regulations promulgated by the commissioner. Such regulations may take culpability into account when allocating liability for tax or penalty among responsible officers or partners.

(o)(1) The fact that a civil penalty has been imposed shall not prevent the imposition of a criminal fine.

(2) The fact that a criminal fine has been imposed shall not prevent the imposition of a civil penalty.

(p) Any person who violates the requirements relating to confidentiality of tax information, as provided in subsection (e) of Code Section 48-8-65, may be fined up to $10,000.00 or imprisoned for a period of not more than one year, or both.

48-8-55.

In all disputes concerning taxes imposed by this chapter, the person engaged in a dispute with the commissioner shall have the burden of production of documents and records but the commissioner shall have the burden of persuasion. In all disputes concerning an exemption claimed by a purchaser, if the seller has on file an intermediate sale or out-of-state sale certificate from the purchaser and did not have reasonable cause to believe that the certificate was improperly provided by the purchaser with respect to such purchase, then the burden of production of documents and records relating to that exemption shall rest with the purchaser and not with the seller.

48-8-56.

(a) Persons are subject to administrative summons by the commissioner for records, documents, and testimony required by the commissioner to accurately determine liability for tax under this chapter. A summons shall be served by the commissioner by an attested copy delivered in hand to the person to whom it is directed or left at such person's last known address. The summons shall describe with reasonable certainty what is sought.

(b) The commissioner has the authority to conduct at a reasonable time and place examinations and audits of persons who are or may be liable to collect and remit tax imposed by this chapter and to examine the books, papers, records, or other data of such persons which may be relevant or material to the determination of tax due.

(c) No administrative summons shall be issued by the commissioner and no action shall be commenced to enforce an administrative summons with respect to any person if a referral to the Attorney General's office is in effect with respect to such person relating to a tax imposed by this chapter. Such referral is in effect with respect to any person if the commissioner has recommended to the Attorney General's office a grand jury investigation of such person or a criminal prosecution of such person that contemplates criminal sanctions under this chapter. A referral shall be terminated when:

(1) The Attorney General's office notifies the commissioner that the Attorney General will not:

(A) Prosecute such person for any offense connected with the tax laws;

(B) Authorize a grand jury investigation of such person with respect to such offense; or

(C) Continue such a grand jury investigation; or

(2) A final disposition has been made of any criminal proceeding connected with tax laws against such person.

48-8-57.

Any person liable to remit taxes pursuant to this chapter shall keep records, including a record of all Code Section 48-8-58 receipts provided, complete records of intermediate and out-of-state sales, including the purchaser's intermediate and out-of-state sales certificates and tax number and the net of tax amount of purchase, sufficient to determine the amounts reported, collected, and remitted for a period of six years after the latter of the filing of the report for which the records formed the basis or when the report was due to be filed. Any purchaser who purchased taxable property or services but did not pay tax by reason of asserting an intermediate and out-of-state sales exemption shall keep records sufficient to determine whether such exemption was valid for a period of seven years after the purchase of taxable property or services.

48-8-58.

(a) For each purchase of taxable property or services for which a tax is imposed by Code Section 48-8-20, the seller shall charge the tax imposed by Code Section 48-8-20 separately from the purchase price. For purchase of taxable property or services for which a tax is imposed by Code Section 48-8-20, the seller shall provide to the purchaser a receipt for each transaction that includes:

(1) The property or service price exclusive of tax;

(2) The amount of tax paid;

(3) The property or service price inclusive of tax;

(4) The amount of tax paid divided by the property or service price inclusive of tax;

(5) The date that the good or service was sold;

(6) The name of the vendor; and

(7) The vendor registration number.

(b) The requirements of subsection (a) of this Code section shall be inapplicable in the case of sales by vending machines. Vending machines for purposes of this subsection are machines that dispense taxable property in exchange for coins or currency and that sell no single item exceeding $10.00 per unit in price.

(c) The requirements of subsection (a) of this Code section shall be inapplicable in the case of sales financial intermediation service. Receipts shall be issued when the tax is imposed in accordance with Code Section 48-8-82.

48-8-59.

(a)(1) In the case of a debt instrument, investment, financing lease, or account with a term of not over three years, the applicable interest rate is the federal short-term rate as determined by the United States Secretary of the Treasury.

(2) In the case of a debt instrument, investment, financing lease, or account with a term of over three years but not over nine years, the applicable interest rate is the federal mid-term rate as determined by the United States Secretary of the Treasury.

(3) In the case of a debt instrument, investment, financing lease, or account with a term of over nine years, the applicable interest rate is the federal long-term rate as determined by the United States Secretary of the Treasury.

(b) The commissioner shall publish the applicable rate monthly. Should the United States Secretary of the Treasury cease to determine or to publish the relevant federal interest rates, then the commissioner shall determine and publish the applicable rate using the same methodology used by the secretary, as nearly as is practical, prior to the secretary discontinuing such determination or publication.

(c) The amount of interest due to be paid by the taxpayer with respect to past due taxes imposed by this chapter shall be determined by the rate determined in accordance with Code Section 48-2-44.

ARTICLE 6

48-8-60.

The commissioner shall collect the taxes imposed by this chapter.

48-8-61.

(a) The commissioner may levy and seize property, garnish wages or salary, and file liens to collect amounts due under this chapter, pursuant to enforcement of:

(1) A judgment duly rendered by a court of law;

(2) An amount due if the taxpayer has failed to exercise his or her appeals rights under Code Section 48-8-63; or

(3) An amount due if the appeals process determined that an amount remained due and the taxpayer has failed to timely petition a court for relief.

(b) There shall be exempt from levy, seizure, and garnishment or penalty in connection with any tax imposed by this chapter:

(1) Wearing apparel, school books, fuel, provisions, furniture, personal effects, tools of a trade or profession, livestock in a household up to an aggregate value of $15,000.00; and

(2) Monthly money income equal to 150 percent of the monthly poverty level.

(c) Subject to such reasonable regulations as the commissioner may provide, any lien imposed with respect to a tax imposed by this chapter shall be released not later than 30 days after:

(1) The liability was satisfied or became unenforceable; or

(2) A bond was accepted as security.

48-8-62.

(a) The commissioner shall establish an independent problem resolution office and appoint an adequate number of problem resolution officers. The head of the problem resolution office shall be appointed by, and serve at the pleasure of, the Governor.

(b) Problem resolution officers shall have the authority to investigate complaints and issue a taxpayer assistance order to administratively enjoin any collection activity if, in the opinion of the problem resolution officer, such collection activity is reasonably likely to not be in compliance with law or to prevent hardship, other than by reason of having to pay taxes lawfully due. Problem resolution officers shall also have the authority to issue taxpayer assistance orders releasing or returning property that has been levied upon or seized, ordering that a lien be released and that garnished wages be returned. A taxpayer assistance order may only be rescinded or modified by the problem resolution officer that issued it, by the commissioner or by the general counsel of the Department of Revenue upon a finding that the collection activity is justified by clear and convincing evidence. The authority to reverse or modify a taxpayer assistance order shall not be delegated.

(c) The commissioner shall establish a form and procedure to aid persons requesting the assistance of the problem resolution office and to aid the problem resolution office in understanding the needs of the person seeking assistance. The use of this form, however, shall not be a prerequisite to a problem resolution officer taking action, including issuing a taxpayer assistance order.

(d) A taxpayer assistance order shall contain the name of the problem resolution officer, any provision relating to the running of any applicable period of limitation, the name of the person that the taxpayer assistance order assists, the government office to whom it is directed, and the action or cessation of action that the taxpayer assistance order requires of such government office. The taxpayer assistance order need not contain findings of fact or its legal basis; however, the problem resolution officer shall provide findings of fact and the legal basis for the issuance of the taxpayer assistance order to the commissioner upon the commissioner's request within two weeks of the receipt of such request.

(e) Problem resolution officers shall not be disciplined or adversely affected for the issuance of administrative injunctions unless a pattern of issuing injunctions that are manifestly unreasonable is proven by clear and convincing evidence in an administrative hearing by a preponderance of the evidence. A finding against a problem resolution officer shall be subject to de novo review by a court of competent jurisdiction.

(f) Nothing in this Code section shall limit the authority of the commissioner, the registered person, or other person from pursuing any legal remedy in any court with jurisdiction over the dispute at issue.

(g) The running of any applicable period of limitation shall be suspended for a period of eight weeks following the issuance of a taxpayer assistance order or, if specified, for a longer period set forth in the taxpayer assistance order provided the suspension does not exceed six months.

48-8-63.

(a) The commissioner shall establish an administrative appeals process wherein the registered person or other person in disagreement with a decision of the commissioner asserting liability for tax is provided a full and fair hearing in connection with any disputes such person has with the commissioner.

(b) Such administrative appeal must be made within 60 days of receiving a final notice of amount due pursuant to subsection (d) of Code Section 48-8-65 unless leave for an extension is granted by the appeals officer in a form prescribed by the commissioner. Leave shall be granted to avoid hardship.

48-8-64.

In all disputes concerning taxes imposed by this chapter, the person engaged in a dispute with the commissioner shall be entitled to reasonable attorneys' fees, accountancy fees, and other reasonable professional fees incurred in direct relation to the dispute unless the commissioner establishes that the commissioner's position was substantially justified.

48-8-65.

(a) The commissioner shall provide to any person against whom the commissioner has:

(1) Commenced an audit or investigation;

(2) Issued a final notice of amount due;

(3) Filed an administrative lien, levy, or garnishment;

(4) Commenced other collection action;

(5) Commenced an action for civil penalties; or

(6) Commenced any other legal action

a document setting forth in plain English the rights of the person. The document shall explain the administrative appeals process, the authority of the problem resolution office and how to contact that office, the burden of production and persuasion that the person and the commissioner bear, the right of the person to professional fees, the right to record interviews, and such other rights as the person may possess under this chapter. Such document shall also set forth the procedures for entering into an installment agreement.

(b) In all dealings with the commissioner, a person shall have the right to assistance, at such person's own expense, of one or more professional advisors.

(c) Any person who is interviewed by an agent of the commissioner shall have the right to video or audio tape the interview at such person's own expense.

(d) No collection or enforcement action shall be commenced against a person until 30 days after such person has been provided with a final notice of amount due under this chapter by the commissioner. The final notice of amount due shall set forth the amount of tax due along with any interest and penalties due and the factual and legal basis for such amounts being due with sufficient specificity that such basis can be understood by a reasonable person who is not a tax professional reading the notice. The final notice shall be sent by certified mail, return receipt requested, to:

(1) The address last provided by a registered seller; or

(2) The best available address to a person who is not a registered seller.

(e)(1) All reports and report information provided to the commissioner pursuant to this chapter shall be confidential, and except as authorized by this chapter:

(A) No officer or employee, including former officers and employees, of the State of Georgia; and

(B) No other person who has had access to returns or return information

shall disclose any report or report information obtained by him or her in any manner in connection with his or her service as such officer or employee or otherwise.

(2) The commissioner may, subject to such requirements as the commissioner may impose, disclose the report and report information of a person to that person or persons as that person may designate to receive such information or return.

(3) The commissioner may, subject to such requirements as the commissioner may impose, disclose the report and report information to the committee, trustee, or guardian of a person who is incompetent.

(4) The commissioner may disclose the report and report information to the decedent's:

(A) Personal representative, administrator, executor, or estate trustee; or

(B) Heir at law, next of kin, or beneficiary under a will who has a material interest that will be affected by the information.

(5) The commissioner shall disclose the report and report information to a person's trustee in bankruptcy.

(6) The commissioner shall disclose the report and report information in compliance with a court order.

(7) Upon written request from the chairperson of the House Committee on Ways and Means or the chairperson of the Senate Finance Committee, the commissioner shall disclose the report and report information, except that any report or report information that can be associated with or otherwise identify a particular person shall be furnished to such committees only when sitting in closed executive session unless such person otherwise consents in writing to such disclosure.

(8) A person may waive confidentiality rights provided by this subsection. Such waiver shall be in writing.

(9) Disclosure of the report or report information by officers or employees of the Department of Revenue to other officers or employees of the Department of Revenue in the ordinary course of tax administration activities shall not constitute unlawful disclosure of the report or report information.

(10) Upon request of the Governor, the commissioner shall furnish such reports and report information to such officers and employees of the State of Georgia as the Governor may prescribe by regulation or executive order for the purposes of, and only to the extent necessary, statistical activities authorized by law.

48-8-66.

The commissioner is authorized to enter into written agreements with any person under which the person is allowed to satisfy liability for payment of any tax under this chapter, and penalties and interest relating thereto, in installment payments if the commissioner determines that such agreement will facilitate the collection of such liability. The agreement shall remain in effect for the term of the agreement unless the information that the person provided to the commissioner was materially inaccurate or incomplete. The commissioner may compromise any amounts alleged to be due.

48-8-67.

No addition to tax shall be made under Code Section 48-8-54 with respect to a period during which a case is pending under United States Code Title 11:

(1) If such tax was incurred by the estate and the failure occurred pursuant to an order of the court finding probable insufficiency of funds of the estate to pay administrative expenses; or

(2) Such tax was incurred by the debtor before the earlier of the order for relief or in the involuntary case the appointment of a trustee, and the petition was filed before the due date prescribed by law, including extensions, for filing a return of such tax, or the date for making the addition to tax occurs on or after the date the petition was filed.

ARTICLE 7

48-8-70.

(a) Neither the exemption afforded by Code Section 48-8-21 for intermediate sales nor the credits available pursuant to Code Section 48-8-31 or 48-8-32 shall be available for any taxable property or service purchased for use in an activity if that activity is not engaged in for profit.

(b) If the activity has received gross payments for the sale of taxable property or services that exceed the sum of:

(1) Taxable property and services purchased;

(2) Wages and salary paid; and

(3) Taxes of any type paid

in two or more of the most recent three calendar years during which it operated, then the business activity shall be conclusively deemed to be engaged in for profit.

48-8-71.

(a) For purposes of this Code section, the term 'chance' means a lottery ticket, a raffle ticket, chips, other tokens, a bet or bets placed, a wager or wagers placed, or any similar device where the purchase of the right gives rise to an obligation by the gaming sponsor to pay upon the occurrence of a random or unpredictable event, or an event over which neither the gaming sponsor nor the person purchasing the chance has control over the outcome.

(b) Any person selling one or more chances is a gaming sponsor and shall register, in a form prescribed by the commissioner, with the commissioner as a gaming sponsor; provided, however, that a not-for-profit organization that has gross receipts from the sale of chances of less than $5,000.00 during any calendar year shall not be required to register.

(c) Notwithstanding any other provision in this chapter, a chance is not taxable property or services for purposes of Code Section 48-8-20.

(d) A tax is hereby imposed on the taxable gaming services of a gaming sponsor at the same rate at the tax imposed by Code Section 48-8-20. This tax shall be paid and remitted by the gaming sponsor. The tax shall be remitted by the fifteenth day of each month with respect to taxable gaming services during the previous calendar month. A not-for-profit organization that has gross receipts from the sale of chances of less than $5,000.00 during any calendar year shall not be required to remit the tax imposed by this Code section.

48-8-72.

Purchases of taxable property and services made by the United States government or any state or its political subdivisions shall be subject to the tax imposed by Code Section 48-8-20.

48-8-73.

(a) Nothing in this chapter shall be construed to exempt any federal, state, or local governmental unit or political subdivision operating a government enterprise from collecting and remitting tax imposed by this chapter on any sale of taxable property or services. Government enterprises shall comply with all duties imposed by this chapter and shall be liable for penalties and subject to enforcement action in the same manner as private persons that are not government enterprises.

(b) Any entity owned or operated by a federal, state, or local governmental unit or political subdivision that receives gross payments from private persons is a government enterprise, except that a government-owned entity shall not become a government enterprise for purposes of this Code section unless in any quarter it has revenues from selling taxable property or services that exceed $2,500.00.

(c) Government enterprises shall not be subject to tax on purchases that would not be subject to tax pursuant to Code Section 48-8-21 if the government enterprise were a private enterprise, provided that government enterprises shall not use such exemption to serve as a conduit for tax-free purchases by governmental units that would otherwise be subject to taxation on purchases pursuant to Code Section 48-8-72. Transfers of taxable property or services purchased exempt from tax from a government enterprise to such governmental unit shall be taxable.

(d) Any government enterprise shall maintain books of account, separate from the nonenterprise government accounts, maintained in accordance with generally accepted accounting principles.

(e) A government enterprise shall be treated as a trade or business for purposes of this chapter.

(f) A transfer of funds to a government enterprise by a government entity without full consideration shall constitute a taxable government purchase within the meaning of Code Section 48-8-72 to the extent that the transfer of funds exceeds the fair market value of the consideration.

48-8-74.

(a)(1) Mixed use property or service shall be subject to tax notwithstanding subsection (a) of Code Section 48-8-21 unless such property or service is used more than 95 percent for purposes that would give rise to an exemption pursuant to subsection (a) of Code Section 48-8-21 during each calendar year or portions thereof it is owned.

(2) A person registered pursuant to Code Section 48-8-52 is entitled to a business use conversion credit pursuant to Code Section 48-8-31 equal to the product of:

(A) The mixed use property amount;

(B) The business use ratio; and

(C) The rate of tax imposed by Code Section 48-8-20.

(3) The mixed use property amount for each month or fraction thereof in which the property was owned shall be:

(A) One-three-hundred-sixtieth of the gross payments for real property for 360 months or until the property is sold;

(B) One-eighty-fourth of the gross payments for tangible personal property for 84 months or until the property is sold;

(C) One-sixtieth of the gross payments for vehicles for 60 months or until the property is sold; or

(D) For other types of taxable property or services, a reasonable amount or in accordance with regulations prescribed by the commissioner.

(b) A person entitled to a credit pursuant to paragraph (2) of subsection (a) of this Code section arising out of the ownership of mixed use property must account for the mixed use on a calendar year basis, and may file for the credit with respect to mixed use property in any month following the calendar year giving rise to the credit.

48-8-75.

(a) Dues, contributions, and similar payments to qualified not-for-profit organizations shall not be considered gross payments for taxable property or services for purposes of this chapter.

(b) Upon application in a form prescribed by the commissioner, the commissioner shall provide qualification certificates to qualified not-for-profit organizations.

(c) If a qualified not-for-profit organization provides taxable property or services in connection with contributions, dues, or similar payments to the organization, then it shall be required to treat the provision of such taxable property or services as a purchase taxable pursuant to this chapter at the fair market value of such taxable property or services.

(d) Taxable property and services purchased by a qualified not-for-profit organization shall be eligible for the exemptions provided in Code Section 48-8-21 if purchased for resale or in connection with a trade or business operated by the qualified not-for-profit organization.

ARTICLE 8

48-8-80.

The seller of financial intermediation services shall be:

(1) In the case of explicitly charged fees for financial intermediation services, the person who receives the gross payments for the charged financial intermediation services;

(2) In the case of implicitly charged fees for financial intermediation services with respect to any underlying interest-bearing investment or account, the person making the interest payments on the interest-bearing investment or account; and

(3) In the case of implicitly charged fees for financial intermediation services with respect to any interest-bearing debt, the person receiving the interest payments on the interest-bearing debt.

48-8-81.

(a) No loan or debt shall be considered wholly or partially worthless unless it has been in arrears for 180 days or more, except that if a debt is discharged wholly or partially in bankruptcy before 180 days has elapsed, then it shall be deemed wholly or partially worthless on the date of discharge.

(b) A loan or debt that has been in arrears for 180 days or more may be deemed wholly or partially worthless by the holder unless a payment schedule has been entered into between the debtor and the lender.

48-8-82.

The tax on financial intermediation services with respect to an underlying investment account or debt shall be imposed and collected with the same frequency that statements are rendered by the financial institution in connection with the investment account or debt but not less frequently than quarterly.

48-8-83.

(a) Financing leases shall be taxed in the method set forth in this Code section.

(b) The commissioner shall promulgate rules for disaggregating the principal and interest components of a financing lease. The principal amount shall be determined to the extent possible by examination of the contemporaneous sales price or prices of property the same as or similar to the leased property.

(c) In the event that contemporaneous sales prices of property the same as or similar to the leased property are not available, the principal and interest components of a financing lease shall be disaggregated using the applicable interest rate plus 4 percent.

(d) The principal component of the financing lease shall be subject to tax as if a purchase in the amount of the principal component had been made on the day on which such lease was executed.

(e) The financial intermediation services amount with respect to the interest component of the financing lease shall be subject to tax under this chapter.

(f) If the principal component and financial intermediation services amount with respect to the interest component of a lease have been taxed pursuant to this Code section, then the gross lease or rental payments shall not be subject to additional tax.

48-8-84.

For purposes of this chapter, the basic interest rate with respect to a debt instrument, investment, financing lease, or account shall be the applicable interest rate. For debt instruments, investments, or accounts of contractually fixed interest, the applicable interest rate of the month of issuance shall apply. For debt instruments, investments, or accounts of variable interest rates and which have no reference interest rate, the applicable interest shall be the federal short-term interest rate for each month. For debt instruments, investments, or accounts of variable interest rates and which have a reference interest rate, the applicable interest shall be the applicable interest rate for the reference interest rate for each month.

48-8-85.

(a) Financial intermediation services shall be deemed as used or consumed within the State of Georgia if the person purchasing the services is a resident of the State of Georgia.

(b) Any person that provides financial intermediation services to Georgia residents must, as a condition of lawfully providing such services, designate, in a form prescribed by the commissioner, a tax representative for purposes of this chapter. The tax representative shall be responsible for ensuring that the taxes imposed by this chapter are collected and remitted and shall be jointly and severally liable for collecting and remitting these taxes.

The commissioner may require reasonable bond of the tax representative. The commissioner may bring an action seeking a temporary restraining order, an injunction, or such other order as may be appropriate to enforce this Code section.

ARTICLE 9

48-8-90.

(a) The sale of a copyright or trademark shall be treated as the sale of taxable services if the substance of the sales of copyright or trademark constituted the sale of the services that produced the copyrighted material or the trademark.

(b) Up to $1,000.00 of gross payments per calendar year shall be exempt from the tax imposed by this chapter if:

(1) Made by a person not in connection with a trade or business at any time during such calendar year prior to making such gross payments; and

(2) Made to purchase any taxable property or service which is brought into Georgia by such person for use or consumption by such person in Georgia.

(c) Up to $5,000.00 per calendar year of gross payments shall be exempt from the tax imposed by this chapter if received:

(1) By a person not in connection with a trade or business during such calendar year prior to the receipt of such gross payments; and

(2) In connection with a casual or isolated sale.

(d) Up to $10,000.00 per calendar year of gross payments received by a person from the sale of financial intermediation services shall be exempt from the tax imposed by this chapter. The exemption provided by this subsection is in addition to other exemptions afforded by this chapter. The exemption provided by this subsection shall not be available to large sellers.

(e) If a registered person provides taxable property or services to a person either as a gift, prize, reward, or as remuneration for employment, and such taxable property or services were not previously subject to tax pursuant to Code Section 48-8-20, then the provision of such taxable property or services by the registered person shall be deemed the conversion of such taxable property or services to personal use subject to tax pursuant to subsection (c) of Code Section 48-8-22 at the tax inclusive fair market value of such taxable property or services.

(f) The substance of a transaction shall prevail over its form if the transaction has no bona fide economic purpose and is designed to evade tax imposed by this chapter.

(g) If the employee discount amount exceeds 20 percent of the price that the taxable property or services would have been sold to the general public, then the sale of such taxable property or services by the employer shall be deemed the conversion of such taxable property or services to personal use and tax shall be imposed on the taxable employee discount amount. The taxable employee discount amount shall be the employee discount amount, minus 20 percent of the amount for which such taxable property or services would have been sold to the general public.

(h) When the last day prescribed for performing any act required by this chapter falls on a Saturday, Sunday, or legal holiday, the performance of such act shall be considered timely if it is performed on the next day which is not a Saturday, Sunday, or legal holiday.

48-8-91.

(a)(1) Inventory held by a trade or business on the close of business on December 31, 2016, shall be qualified inventory if it is sold:

(A) Before December 31, 2017;

(B) By a registered person; and

(C) Subject to the tax imposed by this chapter.

(2) For purposes of this subsection, qualified inventory shall have the cost that it had for federal income tax purposes for the trade or business as of December 31, 2016, including any amounts capitalized by reason of Section 263A of the Internal Revenue Code of 1986 as in effect on December 31, 2016.

(3) The trade or business which held the qualified inventory on the close of business on December 31, 2016, shall be entitled to a transitional inventory credit equal to the cost of the qualified inventory times the rate of tax imposed by Code Section 48-8-20.

(4) The credit provided under paragraph (3) of this subsection shall be allowed with respect to the month when the inventory is sold subject to the tax imposed by this chapter. Such credit shall be reported as an intermediate and out-of-state sales credit, and the person claiming such credit shall attach supporting schedules in the form that the commissioner may prescribe.

(b) For purposes of this Code section, inventory shall include work-in-process.

(c)(1) Qualified inventory held by a business that sells such qualified inventory not subject to tax pursuant to subsection (a) of Code Section 48-8-21 shall be eligible for the transitional inventory credit only if that business or a business that has successor rights pursuant to paragraph (2) of this subsection receives certification in a form satisfactory to the commissioner that the qualified inventory was subsequently sold subject to the tax imposed by this chapter.

(2) The business entitled to the transitional inventory credit may sell the right to receive such transitional inventory credit to the purchaser of the qualified inventory that gave rise to the credit entitlement. Any purchaser of such qualified inventory or property or

services into which the qualified inventory has been incorporated may sell the right to such transitional inventory credit to a subsequent purchaser of such qualified inventory or property or services into which the qualified inventory has been incorporated.

48-8-92.

(a) Appropriations for any expenses of the Department of Revenue, including processing tax returns with respect to the taxes repealed by this Act, revenue accounting, and management for years after fiscal year 2017, are not authorized.

(b) Records related to the administration of taxes repealed this Act shall be destroyed by the end of fiscal year 2018, except that any records necessary to support ongoing litigation with respect to taxes owed or refunds due shall be retained until final disposition of such litigation."

SECTION 5.

Said title is further amended by repealing Chapter 13, relating to specific, business, and occupation taxes, and designating said chapter as reserved.

SECTION 6.

This Act shall become effective on January 1, 2017.

SECTION 7.

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