

House Bill 960 (AS PASSED HOUSE AND SENATE)

By: Representatives Kelley of the 16th, Sims of the 123rd, Dempsey of the 13th, Harrell of the 106th, Houston of the 170th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 2 of Title 48 of the Official Code of Georgia Annotated, relating to state
2 administration and collection of revenue, so as to provide for confidentiality of certain tax
3 information; to provide for an interest rate on delinquent payments that adjusts to reflect
4 changes in the prime rate; to adjust the penalties for nonpayment of ad valorem taxes to
5 offset the reduction in interest rate; to provide for the distribution of penalties between taxing
6 jurisdictions; to provide for additional procedures, conditions, and limitations; to provide for
7 notice to political subdivisions upon the filing of certain tax refund requests; to provide for
8 confidentiality of taxpayer information; to amend Chapter 13A of Title 50 of the Official
9 Code of Georgia Annotated, relating to tax tribunals, so as to provide for automatic transfer
10 to the Georgia Tax Tribunal in certain cases; to provide for related matters; to provide for an
11 effective date and applicability; to repeal conflicting laws; and for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13 style="text-align:center">**SECTION 1.**

14 Chapter 2 of Title 48 of the Official Code of Georgia Annotated, relating to state
15 administration and collection of revenue, is amended by revising subsection (b) and adding
16 a new subsection to Code Section 48-2-15, relating to confidential information, to read as
17 follows:

18 "(b) This Code section shall not:

- 19 (1) Be construed to prevent the use of confidential information as evidence before any
20 state or federal court in the event of litigation involving tax liability of any taxpayer;
- 21 (2) Be deemed to prevent the print or electronic publication of statistics so arranged as
22 not to reveal information respecting an individual taxpayer;
- 23 (3) Apply in any way whatsoever to any official finding of the commissioner with
24 respect to any assessment or any information properly entered upon an assessment roll
25 or other public record;

26 (4) Affect any information which in the regular course of business is by law made the
 27 subject matter of a public document in any federal or state office or in any local office in
 28 this state; or

29 (5) Apply to information, records, and reports required and obtained under Article 1 of
 30 Chapter 9 of this title, which requires distributors of motor fuels to make reports of the
 31 amounts of motor fuels sold and used in each county by the distributor, or under Article
 32 2 of Chapter 9 of this title, relating to road tax on motor carriers; or

33 (6) Be construed to prevent the disclosure of information, so arranged as not to reveal
 34 information respecting an individual taxpayer, requested by the House Committee on
 35 Ways and Means or the Senate Finance Committee regarding the department's
 36 administration of any tax."

37 "(f) This Code section shall not be construed to prohibit disclosure as required in
 38 subsection (h) of Code Section 48-2-35."

39 **SECTION 2.**

40 Said chapter is further amended by revising subsections (a) and (f) and adding new
 41 subsections in Code Section 48-2-35, relating to refunds of taxes and fees determined to have
 42 been erroneously or illegally assessed and collected, to read as follows:

43 "(a) A taxpayer shall be refunded any and all taxes or fees which are determined to have
 44 been erroneously or illegally assessed and collected from such taxpayer under the laws of
 45 this state, whether paid voluntarily or involuntarily, and shall be refunded interest, except
 46 as provided in subsection (b) of this Code section, on the amount of the taxes or fees ~~at the~~
 47 ~~rate of 1 percent per month~~ from the date of payment of the tax or fee to the commissioner
 48 at an annual rate equal to the bank prime loan rate as posted by the Board of Governors of
 49 the Federal Reserve System in statistical release H. 15 or any publication that may
 50 supersede it, plus 3 percent, to accrue monthly. Such annual interest rate shall be
 51 determined for each calendar year based on the first weekly posting of statistical release
 52 H. 15 on or after January 1 of each calendar year. For the purposes of this Code section,
 53 any period of less than one month shall be considered to be one month. Refunds shall be
 54 drawn from the treasury on warrants of the Governor issued upon itemized requisitions
 55 showing in each instance the person to whom the refund is to be made, the amount of the
 56 refund, and the reason for the refund."

57 "(f) For purposes of all claims for refund of sales and use taxes erroneously or illegally
 58 assessed and collected, the term 'taxpayer,' as defined under Code Section 48-2-35.1, shall
 59 apply. Such claim for refund shall contain the total refund claimed and the allocation of
 60 the local sales and use tax by the political subdivision.

61 (g) Any taxpayer required to pay taxes electronically in accordance with paragraph (2.1)
62 of subsection (f) of Code Section 48-2-32 shall also file any claims for refund
63 electronically. The department shall make claim for refund forms consistent with this
64 subsection electronically available.

65 (h)(1) As used in this subsection, the term:

66 (A) 'Political subdivision designee' means the chief officer or officers designated by
67 the political subdivision to receive information about a refund claim of local
68 significance pursuant to this subsection. Each political subdivision shall certify to the
69 commissioner that any such designee is so authorized on a form and in a manner
70 prescribed by the department.

71 (B) 'Refund claim of local significance' means a taxpayer's claim for refund of sales
72 and use taxes erroneously or illegally assessed and collected or the department's
73 discovery of any overpayment of such taxes, if such claim for refund or overpayment
74 is for an amount equal to or greater than 10 percent of the total yearly average of
75 aggregate sales and use tax distributions to any single political subdivision based on the
76 average of the three most recent calendar years.

77 (2) Within 30 business days following the department's receipt of a refund claim of local
78 significance, the department shall notify each affected political subdivision's political
79 subdivision designee that a refund claim of local significance to the political subdivision
80 has been received and shall furnish the taxpayer with a copy of such notification. Such
81 notification shall include the date the refund claim of local significance was filed, the
82 amount in the claim for refund for which the political subdivision itself would be
83 responsible if the request is granted, and a copy of the confidentiality provisions in Code
84 Section 48-2-15 and this Code section. After the department has completed an audit of
85 the claim for refund and determined a final refund amount, the department shall
86 supplement the above notice by transmitting to the political subdivision designee the final
87 refund amount for which the political subdivision is responsible.

88 (3) Any information supplied to a political subdivision designee pursuant to this
89 subsection shall retain, in the hands of the local official, its privileged and confidential
90 nature to the same extent and under the same conditions as such information is privileged
91 and confidential in the hands of the commissioner, pursuant to Code Section 48-2-15. It
92 shall be the responsibility of the political subdivision designee, and not the department,
93 to protect privileged and confidential information received under this subsection. Any
94 person who divulges any tax information obtained under this subsection shall be subject
95 to the same civil and criminal penalties as provided for divulgence of tax information by
96 employees of the department. Though privileged and confidential information shall not
97 be disclosed, the political subdivision designee may make reasonable budgetary

98 recommendations to elected officials, city managers, and tax officials in political
 99 subdivisions based on the confidential information furnished. The department shall not
 100 be subject to any criminal or civil liability for the unauthorized divulgence of privileged
 101 and confidential information by a political subdivision designee. Notwithstanding the
 102 foregoing, in the event all or any portion of the refund claim of local significance is for
 103 a tax levied under Part 1 of Article 3 of Chapter 8 of this title, the affected county shall
 104 not be in violation of this confidential provision if it notifies all municipal political
 105 subdivision designees in the county that such notification has been received from the
 106 department.

107 (4) The commissioner, by rule or regulation, shall establish guidelines for identifying and
 108 producing documents to the Department of Audits and Accounts for review relating to
 109 the handling of refund claims of local significance. In the event of such review, the
 110 Department of Audits and Accounts shall assess whether the department followed proper
 111 procedures and used appropriate methodology to reach its final determination on a refund
 112 claim of local significance.

113 (5) Any refund claims of local significance pending with the department for two years
 114 after the claim for refund was filed shall be automatically transferred to the Georgia Tax
 115 Tribunal as a declaratory judgment of the commissioner requesting a show cause
 116 proceeding pursuant to Code Section 50-13A-19.1."

117 **SECTION 3.**

118 Said chapter is further amended by revising Code Section 48-2-40, relating to the rate of
 119 interest on past due taxes, as follows:

120 "48-2-40.

121 Except as otherwise expressly provided by law, taxes owed the state or any local taxing
 122 jurisdiction shall bear interest ~~at the rate of 1 percent per month~~ at an annual rate equal to
 123 the bank prime loan rate as posted by the Board of Governors of the Federal Reserve
 124 System in statistical release H. 15 or any publication that may supersede it, plus 3 percent,
 125 to accrue monthly. Such annual interest rate shall be determined for each calendar year
 126 based on the first weekly posting of statistical release H. 15 on or after January 1 of each
 127 calendar year. Interest shall begin to accrue from the date the tax is due until the date the
 128 tax is paid. For the purposes of this Code section, any period of less than one month shall
 129 be considered to be one month. This Code section shall also apply to alcoholic beverage
 130 taxes."

131 **SECTION 4.**

132 Said chapter is further amended by revising subsection (b) of Code Section 48-2-44, relating
 133 to penalties and interest on failure to file return or timely pay taxes held in trust for the state,
 134 as follows:

135 "(b)(1) In any instance in which any person willfully fails, on or after July 1, 1981, to
 136 pay, within ~~90~~ 120 days of the date when due, any ad valorem tax owed the state or any
 137 local government, such person shall pay, in the absence of a specific statutory civil
 138 penalty for the failure, a penalty of ~~10~~ 5 percent of the amount of tax due and not paid at
 139 the time such penalty is assessed, together with interest as specified by law. ~~This 10~~
 140 ~~percent penalty~~ After 120 days from the imposition of the initial penalty, an additional
 141 penalty of 5 percent of any tax amount remaining due shall be imposed, together with
 142 interest as specified by law. If any tax amount remains due after 120 days from the
 143 imposition of such additional penalty, a penalty of 5 percent shall be imposed, together
 144 with interest as specified by law. Should any tax amount remain due 120 days after such
 145 date, a penalty of 5 percent shall be imposed, together with interest as specified by law.
 146 The aggregate amount of penalties imposed pursuant to this subsection shall not exceed
 147 an amount equal to 20 percent of the principal amount of the tax originally due. These
 148 penalties shall not, however, apply in the case of:

149 (A) Ad valorem taxes of \$500.00 or less on homestead property as defined in Part 1 of
 150 Article 2 of Chapter 5 of this title; or

151 (B) With respect to tax year 1986 and future tax years, ad valorem taxes of any amount
 152 on homestead property as defined in Part 1 of Article 2 of Chapter 5 of this title, if the
 153 homestead property was during the tax year acquired by a new owner who did not
 154 receive a tax bill for the tax year and who immediately before acquiring the homestead
 155 property resided outside the State of Georgia and if the taxes are paid within one year
 156 following the due date.

157 (2) Any city or county authorized as of April 22, 1981, by statute or constitutional
 158 amendment to receive a penalty of greater than 10 percent for failure to pay an ad
 159 valorem tax is authorized to continue to receive that amount.

160 (3) With respect to all penalties and interest received by the tax commissioner on or after
 161 July 1, 1998, unless otherwise specifically provided for by general law, the tax
 162 commissioner shall distribute penalties collected and interest collected or earned as
 163 follows:

164 (A) Penalties collected for failure to ~~return property for ad valorem taxation or for~~
 165 ~~failure to pay ad valorem taxes, and interest earned by the tax commissioner on taxes~~
 166 ~~collected but not yet disbursed;~~ pay ad valorem taxes attributable to the Board of
 167 Education or independent school district shall be paid into the county treasury in the

168 same manner and at the same time the tax is collected and distributed to the county, and
 169 they shall remain the property of the county; ~~and~~
 170 (B) Interest earned by the tax commissioner on taxes collected but not yet disbursed
 171 shall be distributed pro rata based on each taxing jurisdiction's share of the total amount
 172 upon which the interest was computed; and
 173 ~~(B)~~(C) Except as otherwise provided in subparagraph (A) of this paragraph, penalties
 174 collected for failure to return property for ad valorem taxation or failure to pay ad
 175 valorem taxes, and interest ~~Interest~~ collected on delinquent ad valorem taxes, shall be
 176 distributed pro rata based on each taxing jurisdiction's share of the total tax on which
 177 the penalty or interest was computed."

178 SECTION 5.

179 Chapter 13A of Title 50 of the Official Code of Georgia Annotated, relating to tax tribunals,
 180 is amended by adding a new Code section to read as follows:

181 "50-13A-19.1.

182 (a) The tribunal shall docket the declaratory judgments of the revenue commissioner
 183 pursuant to subsection (h) of Code Section 48-2-35 as actions in the tribunal without the
 184 filing of a petition for relief.

185 (b)(1) The tribunal shall determine by interlocutory order the party at fault for the delay
 186 in finally determining a claim for refund.

187 (2) If the tribunal determines that the Department of Revenue is primarily at fault, the
 188 order shall require that the Department of Revenue pay all interest due to the taxpayer on
 189 the claim for refund, including the interest due on the local sales and use tax deemed to
 190 have been illegally or erroneously collected. The tribunal shall thereafter remand the
 191 matter back to the Department of Revenue for determination on the underlying claim for
 192 refund.

193 (3) If the tribunal determines that the taxpayer who made the claim for refund is
 194 primarily at fault, the order shall prohibit the accrual of any interest due to the taxpayer
 195 on the finally determined claim for refund. The tribunal shall thereafter remand the
 196 matter back to the Department of Revenue for determination on the underlying claim for
 197 refund.

198 (4) If the tribunal determines that the delay is justified, the order shall remand the matter
 199 back to the Department of Revenue for determination and for further hearings at the
 200 tribunal's discretion.

201 (c) The tribunal, at its discretion, may award reasonable attorneys' fees to either party in
 202 such proceedings.

- 203 (d) Orders of the tribunal issued pursuant to this Code section shall be excluded from the
204 provisions of subsection (d) of Code Section 50-13A-15.
205 (e) Except as otherwise provided in this Code section, such actions shall follow the
206 procedures and tribunal rules applicable to other proceedings within the tribunal."

207 **SECTION 6.**

- 208 (a) This Act shall become effective on July 1, 2016.
209 (b) The new penalty and interest rates provided in Sections 2, 3, and 4 of this Act shall apply
210 to penalties and interest accrued on or after the effective date of this Act.
211 (c) The new notification requirement and the automatic transfer to the Georgia Tax Tribunal
212 requirement contained in Section 2 of this Act regarding a refund claim of local significance
213 shall apply to claims for refund received by the department on or after the effective date of
214 this Act.

215 **SECTION 7.**

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