

House Bill 168 (AS PASSED HOUSE AND SENATE)

By: Representatives Knight of the 126th, Channell of the 116th, and Holt of the 112th

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 48 of the Official Code of Georgia Annotated, relating to revenue and
2 taxation, so as to define the terms "Internal Revenue Code" and "Internal Revenue Code of
3 1986" and thereby incorporate certain provisions of the federal law into Georgia law; to
4 provide for the revision of sales and use tax provisions for streamlined sales tax purposes;
5 to change and provide for definitions; to change and provide for exemptions; to change
6 provisions related to deductions for bad debts; to change certain provisions relating to
7 taxability burden of proof; to change certain provisions relating to reporting and accounting
8 methods; to change certain provisions relating to dealer returns and estimated tax liability;
9 to change certain provisions relating to sourcing; to provide for certification of review
10 software; to provide for liability and relief from liability; to provide for an effective date; to
11 provide applicability; to repeal conflicting laws; and for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13 SECTION 1.

14 Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is
15 amended in Code Section 48-1-2, relating to definitions regarding revenue and taxation, by
16 revising paragraph (14) as follows:

17 "(14) 'Internal Revenue Code' or 'Internal Revenue Code of 1986' means for taxable years
18 beginning on or after January 1, ~~2009~~ 2010, the provisions of the United States Internal
19 Revenue Code of 1986, as amended, provided for in federal law enacted on or before
20 January 1, ~~2010~~ 2011, except that Section 85(c), Section 108(i), Section 163(e)(5)(F),
21 Section 164(a)(6), Section 164(b)(6), Section 168(b)(3)(I), Section 168(e)(3)(B)(vii),
22 Section 168(e)(3)(E)(ix), Section 168(e)(8), Section 168(k) (but not excepting Section
23 168(k)(2)(A)(i), Section 168(k)(2)(D)(i), and Section 168(k)(2)(E)), Section 168(m),
24 Section 168(n), Section 172(b)(1)(H), Section 172(b)(1)(J), Section 172(j),
25 Section 179(f), Section 199, Section 810(b)(4), Section 1400L, Section 1400N(d)(1),
26 Section 1400N(f), Section 1400N(j), Section 1400N(k), and Section 1400N(o) of the

27 Internal Revenue Code of 1986, as amended, shall be treated as if they were not in effect,
 28 and except that Section 168(e)(7), Section 172(b)(1)(F), Section 172(i)(1), and Section
 29 1221 of the Internal Revenue Code of 1986, as amended, shall be treated as they were in
 30 effect before the 2008 enactment of federal Public Law 110-343, and except that Section
 31 163(i)(1) of the Internal Revenue Code of 1986, as amended, shall be treated as it was in
 32 effect before the 2009 enactment of federal Public Law 111-5, and except that Section
 33 13(e)(4) of 2009 federal Public Law 111-92 shall be treated as if it was not in effect, and
 34 except that the limitations provided in Section 179(b)(1) shall be \$250,000.00 for tax
 35 years beginning in 2010 and shall be \$250,000.00 for tax years beginning in 2011, and
 36 except that the limitations provided in Section 179(b)(2) shall be \$800,000.00 for tax
 37 years beginning in 2010 and shall be \$800,000.00 for tax years beginning in 2011. For
 38 taxable years beginning on or after January 1, 2009, the terms 'Internal Revenue Code'
 39 or 'Internal Revenue Code of 1986' shall also include the provisions of federal Public Law
 40 111-126 as enacted on January 22, 2010. In the event a reference is made in this title to
 41 the Internal Revenue Code or the Internal Revenue Code of 1954 as it existed on a
 42 specific date prior to January 1, ~~2010~~ 2011, the term means the provisions of the Internal
 43 Revenue Code or the Internal Revenue Code of 1954 as it existed on the prior date.
 44 Unless otherwise provided in this title, any term used in this title shall have the same
 45 meaning as when used in a comparable provision or context in the Internal Revenue Code
 46 of 1986, as amended. For taxable years beginning on or after January 1, ~~2009~~ 2010,
 47 provisions of the Internal Revenue Code of 1986, as amended, which were as of
 48 January 1, ~~2010~~ 2011, enacted into law but not yet effective shall become effective for
 49 purposes of Georgia taxation on the same dates upon which they become effective for
 50 federal tax purposes."

51 **SECTION 2.**

52 Said title is further amended in Code Section 48-8-2, relating to sales and use tax definitions,
 53 by adding new paragraphs to read as follows:

54 "(11.1) 'Dietary supplement' means any product, other than tobacco, intended to
 55 supplement the diet that:

56 (A) Contains one or more of the following dietary ingredients:

57 (i) A vitamin;

58 (ii) A mineral;

59 (iii) An herb or other botanical;

60 (iv) An amino acid;

61 (v) A dietary substance for use by humans to supplement the diet by increasing the
 62 total dietary intake; or

63 (vi) A concentrate, metabolite, constituent, extract, or combination of any ingredient
 64 described in this subparagraph;

65 (B) Is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form,
 66 or if not intended for ingestion in such a form, is not represented as conventional food
 67 and is not represented for use as a sole item of a meal or of the diet; and

68 (C) Is required to be labeled as a dietary supplement, identifiable by the 'Supplements
 69 Facts' box found on the label as required pursuant to 21 C.F.R. Section 101.36."

70 "(20.1) 'Over-the-counter drug' means a drug that contains a label that identifies the
 71 product as a drug as required by 21 C.F.R. Section 201.66. The 'over-the-counter drug'
 72 label includes:

73 (A) A 'Drug Facts' panel; or

74 (B) A statement of the 'active ingredient(s)' with a list of those ingredients contained
 75 in the compound, substance, or preparation."

76 "(39.1) 'Tobacco' means cigarettes, cigars, chewing or pipe tobacco, or any other item
 77 that includes tobacco."

78 **SECTION 3.**

79 Said title is further amended in said Code section by revising paragraphs (16), (29), and (34)
 80 to read as follows:

81 "(16) 'Food and food ingredients' means substances, whether in liquid, concentrated,
 82 solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans
 83 and are consumed for their taste or nutritional value. 'Food and food ingredients' shall
 84 not include alcoholic beverages, dietary supplements, or tobacco."

85 "(29) 'Prosthetic device' means a replacement, corrective, or supportive device including
 86 repair and replacement parts for the same worn on or in the body to:

87 (A) Artificially replace a missing portion of the body;

88 (B) Prevent or correct physical deformity or malfunction; or

89 (C) Support a weak or deformed portion of the body.

90 'Prosthetic device' shall not include hearing aids."

91 "(34)(A) 'Sales price' applies to the measure subject to sales tax and means the total
 92 amount of consideration, including cash, credit, property, and services, for which
 93 personal property or services are sold, leased, or rented, valued in money, whether
 94 received in money or otherwise without any deduction for the following:

95 (i) The seller's cost of the property sold;

96 (ii) The cost of materials used, labor, or service cost, interest, losses, all costs of
 97 transportation to the seller, all taxes imposed on the seller, and any other expense of
 98 the seller;

99 (iii) Charges by the seller for any services necessary to complete the sale, ~~other than~~
 100 ~~delivery and installation charges; and~~

101 (iv) Delivery charges;

102 ~~(v) Installation charges; and~~

103 ~~(vi) Credit for any trade-in, except as otherwise provided in division (vii) of~~
 104 ~~subparagraph (B) of this paragraph.~~

105 (B) 'Sales price' shall not include:

106 (i) Discounts, including cash, term, or coupons that are not reimbursed by a third
 107 party that are allowed by a seller and taken by a purchaser on a sale;

108 (ii) Interest, financing, and carrying charges from credit extended on the sale of
 109 personal property or services, if the amount is separately stated on the invoice, bill of
 110 sale, or similar document given to the purchaser;

111 (iii) Any taxes legally imposed directly on the consumer that are separately stated on
 112 the invoice, bill of sale, or similar document given to the purchaser;

113 (iv) Installation charges if they are separately stated on the invoice, billing, or similar
 114 document given to the purchaser;

115 ~~(v) Charges by the seller for any services necessary to complete the sale if they are~~
 116 ~~separately stated on the invoice, billing, or similar document given to the purchaser;~~

117 ~~(vi)~~ Telecommunications nonrecurring charges if they are separately stated on the
 118 invoice, billing, or similar document; and

119 ~~(vii)~~(vi) Credit for any ~~motor vehicle~~ trade-in.

120 (C) 'Sales price' shall include consideration received by the seller from third parties if:

121 (i) The seller actually receives consideration from a party other than the purchaser
 122 and the consideration is directly related to a price reduction or discount on the sale;

123 (ii) The seller has an obligation to pass the price reduction or discount through to the
 124 purchaser;

125 (iii) The amount of the consideration attributable to the sale is fixed and determinable
 126 by the seller at the time of the sale of the item to the purchaser; and

127 (iv) One of the following criteria is met:

128 (I) The purchaser presents a coupon, certificate, or other documentation to the seller
 129 to claim a price reduction or discount where the coupon, certificate, or
 130 documentation is authorized, distributed, or granted by a third party with the
 131 understanding that the third party will reimburse any seller to whom the coupon,
 132 certificate, or documentation is presented;

133 (II) The purchaser identifies himself or herself to the seller as a member of a group
 134 or organization entitled to a price reduction or discount; provided, however, that a

135 'preferred customer' card that is available to any patron shall not constitute
 136 membership in such a group; or
 137 (III) The price reduction or discount is identified as a ~~third-party~~ third-party price
 138 reduction or discount on the invoice received by the purchaser or on a coupon,
 139 certificate, or other documentation presented by the purchaser."

140 **SECTION 4.**

141 Said title is further amended in Code Section 48-8-3, relating to exemptions from sales and
 142 use tax, by revising paragraphs (12), (18), (47), (50), (52), (54), and (57) as follows:

143 "(12) ~~School lunches~~ Food and food ingredients and prepared food sold and served to
 144 pupils and employees of public schools as part of a school lunch program;"

145 "(18) Charges made for the transportation of tangible personal property except delivery
 146 charges by the seller associated with the sale of taxable tangible personal property,
 147 including, but not limited to, charges for accessorial services such as refrigeration,
 148 switching, storage, and demurrage made in connection with interstate and intrastate
 149 transportation of the property;"

150 "(47)(A)(i) The sale or use of ~~controlled substances and~~ drugs which are lawfully
 151 ~~dispensed~~ dispensable only by prescription for the treatment of natural persons, and
 152 ~~sales~~ the sale or use of prescription eyeglasses and contact lenses including, without
 153 limitation, prescription contact lenses distributed by the manufacturer to licensed
 154 dispensers as free samples not intended for resale and labeled as such; and

155 (ii) The sale or use of ~~those controlled substances and~~ drugs lawfully dispensable by
 156 prescription for the treatment of natural persons which are dispensed or distributed
 157 without charge to physicians, dentists, clinics, hospitals, or any other person or entity
 158 located in Georgia by a pharmaceutical manufacturer or distributor; and the use of
 159 ~~controlled substances, drugs, new animal drugs, and medical devices~~ drugs and
 160 durable medical equipment lawfully dispensed or distributed without charge solely
 161 for the purposes of a clinical trial approved by either the United States Food and Drug
 162 Administration or by an institutional review board.

163 (B) For purposes of this paragraph, the term:

164 (i) ~~'Controlled substance'~~ means the same as provided in ~~Code Section 16-13-1.~~

165 (ii)(i) 'Drug' means the same as provided in Code Section 48-8-2 but shall not include
 166 over-the-counter drugs or tobacco.

167 (iii)(ii) 'Institutional review board' means an institutional review board as provided
 168 in 21 C.F.R. Section 56.

169 (iv) ~~'Medical device'~~ means a device as defined in subsection (h) of 21 U.S.C. Section
 170 321.

171 ~~(v) 'New animal drug' means a new animal drug as defined in subsection (v) of 21~~
 172 ~~U.S.C. Section 321.~~

173 (C) The commissioner is authorized to prescribe forms and promulgate rules and
 174 regulations deemed necessary in order to administer and effectuate this paragraph;"

175 ~~"(50) Sales of blood measuring devices, other monitoring equipment, or insulin delivery~~
 176 ~~systems used exclusively by diabetics and sales of insulin; insulin syringes; and blood~~
 177 ~~glucose level measuring strips dispensed without a prescription;"~~

178 ~~"(52) Reserved The sale or use of hearing aids;"~~

179 ~~"(54) The sale or use of any durable medical equipment that is sold or used pursuant to~~
 180 ~~a prescription or prosthetic device that is sold or used pursuant to a prescription~~
 181 ~~prescribed by a physician;"~~

182 ~~"(57)(A) The sale of food and food ingredients to an individual consumer for~~
 183 ~~off-premises human consumption, to the extent provided in ~~subparagraph (B)~~ of this~~
 184 ~~paragraph.~~

185 (B) For the purposes of this paragraph, the term 'food and food ingredients' as defined
 186 in Code Section 48-8-2 shall not include prepared food, ~~alcoholic beverages, or tobacco~~
 187 ~~as defined in Code Section 48-8-2~~ drugs, or over-the-counter drugs.

188 (C) The exemption provided for in this paragraph shall not apply to the sale or use of
 189 food and food ingredients when purchased for any use in the operation of a business.

190 ~~(C)(i)(D)(i)~~ (D)(i) The exemption provided for in this paragraph shall not apply to any local
 191 sales and use tax levied or imposed at any time.

192 (ii) For the purposes of this subparagraph, the term 'local sales and use tax' shall
 193 mean any sales tax, use tax, or local sales and use tax which is levied and imposed in
 194 an area consisting of less than the entire state, however authorized, including, but not
 195 limited to, such taxes authorized by or pursuant to constitutional amendment; by or
 196 pursuant to Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as
 197 amended, the 'Metropolitan Atlanta Rapid Transit Authority Act of 1965'; by or
 198 pursuant to any article of this chapter.

199 ~~(D)(E)~~ (E) The commissioner shall adopt rules and regulations to carry out the provisions
 200 of this paragraph;"

201 SECTION 5.

202 Said title is further amended by revising Code Section 48-8-38, relating to taxability burden
 203 of proof, as follows:

204 "48-8-38.

205 (a) All gross sales of a retailer are subject to the tax imposed by this article until the
 206 contrary is established. The burden of proving that a sale of tangible personal property is

207 not a sale at retail is upon the person who makes the sale unless ~~he~~ such person takes from
 208 the purchaser a certificate stating that the property is purchased for resale or is otherwise
 209 exempt.

210 (b) The certificate relieves the seller from the burden of proof as provided in subsection (a)
 211 of this Code section if the seller acquires from the purchaser a properly completed
 212 certificate.

213 (c) The certificate shall include such information as is determined by the commissioner
 214 and is signed by the purchaser if it is a paper exemption certificate.

215 (d) A purchaser claiming an exemption electronically shall use the standard form as
 216 adopted by the Streamlined Sales Tax Governing Board.

217 (e) A seller shall obtain the same information for proof of a claimed exemption regardless
 218 of the medium in which the transaction occurred.

219 (f) The department shall relieve a seller of the tax otherwise applicable if the seller obtains
 220 a fully completed exemption certificate approved by the Streamlined Sales Tax Governing
 221 Board, the department, or the Multistate Tax Commission or captures the relevant data
 222 elements required under the Streamlined Sales and Use Tax Agreement within 90 days
 223 subsequent to the date of sale. If the seller has not obtained a fully completed exemption
 224 certificate or all relevant data elements required under the Streamlined Sales and Use Tax
 225 Agreement within 90 days subsequent to the date of sale, the department shall provide the
 226 seller with 120 days subsequent to a request for substantiation to either:

227 (1) Obtain a fully completed exemption certificate from the purchaser, taken in good
 228 faith which means that the seller obtain a certificate that claims an exemption that:

229 (A) Was statutorily available on the date of the transaction in the jurisdiction where the
 230 transaction is sourced;

231 (B) Could be applicable to the item being purchased; and

232 (C) Is reasonable for the purchaser's type of business; or

233 (2) Obtain other information establishing that the transaction was not subject to the tax.

234 (g) The department shall relieve a seller of the tax otherwise applicable if the seller obtains
 235 a blanket exemption certificate from a purchaser with which the seller has a recurring
 236 business relationship."

237 **SECTION 6.**

238 Said title is further amended by revising Code Section 48-8-45, relating to reporting and
 239 accounting methods, as follows:

240 "48-8-45.

241 (a) Any ~~person~~ dealer taxable under this article having both cash and credit sales may
 242 report the sales on either the cash or accrual basis of accounting. Each election of a basis

243 of accounting shall be made on the first return filed and, once made, the election shall be
244 irrevocable unless the commissioner grants written permission for a change. Permission
245 for a change in the basis of accounting shall be granted only upon written application and
246 under rules and regulations promulgated by the commissioner.

247 (b) Any person dealer reporting on a cash basis of accounting shall include in each return
248 all cash sales made during the period covered by the return and all collections made in any
249 period on credit sales of prior periods and shall pay the tax on the sales at the time of filing
250 the return.

251 (c) Any person dealer reporting on the accrual basis of accounting shall be allowed a
252 deduction for bad debts under rules and regulations of the commissioner. Any deduction
253 taken or refund claimed that is attributed to bad debts shall not accrue or include interest.

254 (d) ~~An assignee of private label credit card debt purchased directly from a dealer without~~
255 ~~recourse or a credit card bank which extends such credit to customers under a private label~~
256 ~~credit card program shall be allowed a deduction for private label credit card bad debts~~
257 ~~under rules and regulations of the commissioner. An issuer or assignee of private label~~
258 ~~credit card debt may claim its deduction for private label credit card bad debts on a return~~
259 ~~filed by a member of an affiliated group as defined under 26 U.S.C. Section 1504. The bad~~
260 ~~debt may be deducted on the return for the period during which the bad debt is written off~~
261 ~~as uncollectable in the claimant's books and records and is eligible to be deducted for~~
262 ~~federal income tax purposes. Any such deduction for such bad debt shall be reported as~~
263 ~~a separate line item on the claimant's sales and use tax return. If such deduction is not~~
264 ~~reported as a line item, it shall be disallowed. A claimant who is not required to file federal~~
265 ~~income tax returns may deduct a bad debt on a return filed for the period in which the bad~~
266 ~~debt is written off as uncollectable in the claimant's books and records and the claimant~~
267 ~~would be eligible for a bad debt deduction for federal income tax purposes if the claimant~~
268 ~~was required to file a federal income tax return.~~

269 (e) If a deduction is taken for a bad debt and the debt is subsequently collected in whole
270 or in part, the tax on the amount so collected must be paid and reported on the return filed
271 for the period in which the collection is made. For the purposes of reporting a payment
272 received on a previously claimed bad debt, any payments made on a debt or account are
273 applied first proportionally to the taxable price of the property or service and the sales tax
274 thereon, and, secondly, to interest, service charges, and any other charges.

275 (f)(1) As used in this subsection, 'assignee' includes but is not limited to:

276 (A) Assignees of promissory notes, accounts, or accounts receivable; or

277 (B) Financial institutions that do not make taxable retail sales but that finance retail
278 sales by making loans or issuing credit cards to purchasers.

279 (2) The deduction and refund provided for in this Code section are not assignable. The
 280 deduction and refund provided for in this Code section are only available to a dealer that
 281 makes a taxable retail sale, remits tax on that sale, and subsequently incurs a bad debt
 282 with respect to that sale. Assignees may not take a deduction or claim a refund pursuant
 283 to this Code section.

284 (g) For purposes of calculating the deduction taken or refund claimed, a 'bad debt' shall
 285 have the same meaning as defined in 26 U.S.C. Section 166. However, the amount
 286 calculated pursuant to 26 U.S.C. Section 166 shall be adjusted to exclude:

287 (1) Financing charges or interest;

288 (2) Sales or use taxes charged on the purchase price;

289 (3) Uncollectable amounts on property that remain in the possession of the seller until
 290 the full purchase price is paid;

291 (4) Expenses incurred in attempting to collect any debt; and

292 (5) Repossessed property.

293 (h) For bad debts incurred and written off after January 1, 2011, when the amount of bad
 294 debt exceeds the amount of taxable sales for the period during which the bad debt is written
 295 off, a refund claim may be filed. The statute of limitations for filing such claim shall be
 296 three years from the due date of the return on which the bad debt could first be claimed.
 297 Such refund shall be claimed on such form as shall be established by the commissioner.

298 (i) Where filing responsibilities have been assumed by a certified service provider, the
 299 department allows the service provider to claim, on behalf of the seller, any bad debt
 300 allowance provided by this Code section. Such refund shall be claimed on such form as
 301 shall be established by the commissioner. The certified service provider must credit or
 302 refund the full amount of any bad debt allowance or refund received to the seller.

303 (j) Where the books and records of the party claiming the bad debt allowance support an
 304 allocation of the bad debts among the Streamlined Sales Tax member states, such
 305 allocation is permitted."

306 **SECTION 7.**

307 Said title is further amended by revising subsections (b) and (c) of Code Section 48-8-49,
 308 relating to dealer returns and estimated tax liability, as follows:

309 "(b)(1) As used in this subsection, the term 'estimated tax liability' means a dealer's tax
 310 liability, adjusted to account for any subsequent change in the state sales and use tax rate,
 311 based on the dealer's average monthly payments for the last ~~fiscal~~ calendar year.

312 (2) If the tax liability of a dealer in the preceding calendar year was greater than
 313 ~~\$30,000.00~~ \$60,000.00 excluding local sales taxes, the dealer shall file a return and remit
 314 to the commissioner not less than 50 percent of the estimated tax liability for the taxable

315 period on or before the twentieth day of the period. The amount of the payment of the
 316 estimated tax liability shall be credited against the amount to be due on the return
 317 required under subsection (a) of this Code section. This subsection shall not apply to any
 318 dealer whose primary business is the sale of motor fuels who is remitting prepaid state
 319 tax under paragraph (2) of subsection (b) of Code Section 48-9-14.

320 (c) ~~Gross proceeds from rentals~~ Rentals or leases of tangible personal property shall be
 321 reported and the tax shall be paid with respect to the ~~gross proceeds~~ sales price in
 322 accordance with the rules and regulations prescribed by the commissioner."

323 SECTION 8.

324 Said title is further amended by revising subparagraph (d)(2)(A) of Code Section 48-8-77,
 325 relating to sourcing, as follows:

326 "(A) Except as otherwise provided in this paragraph, sales of 'other direct mail' are
 327 sourced in accordance with subparagraph ~~(1)(A)~~ (b)(1)(C) of this Code section;"

328 SECTION 9.

329 Said title is further amended by adding a new Code section as follows:

330 "48-8-77.1.

331 (a) For purposes of this Code section, the definitions as provided in Code Section 48-8-161
 332 shall apply.

333 (b) The department shall review software submitted to the Streamlined Sales Tax
 334 Governing Board for certification as a Certified Automated System under Section 501 of
 335 the Streamlined Sales and Use Tax Agreement. Such review shall include a review to
 336 determine that the program accurately reflects the taxability of the product categories
 337 included in the program. Upon approval by the department, the state will certify its
 338 acceptance of the software to the Streamlined Sales Tax Governing Board.

339 (c) The department shall relieve certified service providers and model 2 sellers from
 340 liability to the state and local jurisdictions in the state for not collecting sales or use taxes
 341 resulting from the certified service provider or model 2 seller relying on the certification
 342 provided by the state.

343 (d) The department shall provide relief from liability to certified service providers for not
 344 collecting sales and use taxes in the same manner as provided to sellers under Code
 345 Section 48-8-38.

346 (e) If the department determines that an item or transaction is incorrectly classified as to
 347 the item or transaction's taxability, the department shall notify the certified service
 348 providers or model 2 sellers of the incorrect classification. The certified service provider

349 or model 2 seller shall have ten days to revise the classification after receipt of notice from
350 the department of the determination."

351 **SECTION 10.**

352 This Act shall become effective upon its approval by the Governor or upon its becoming law
353 without such approval and Section 1 of this Act shall be applicable to all taxable years
354 beginning on or after January 1, 2010.

355 **SECTION 11.**

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