House Bill 1221 (AS PASSED HOUSE AND SENATE)

By: Representatives O`Neal of the 146th and Abrams of the 84th

A BILL TO BE ENTITLED

AN ACT

To amend Titles 48 and 50 of the Official Code of Georgia Annotated, relating, respectively, to revenue and taxation and state government, so as to provide for the comprehensive revision of sales and use tax provisions for streamlined sales tax purposes; to change and provide for definitions; to change and provide for exemptions; to change certain provisions regarding limitations on local sales and use taxes; to change certain provisions regarding designation of price brackets; to change certain provisions regarding tax collection from dealers; to change certain provisions regarding taxability burden of proof; to change certain provisions regarding property retention, demonstration, or display; to change certain provisions regarding reporting of sales and accounting methods; to change certain provision regarding dealer returns and estimated tax liability; to change certain provisions regarding dealer compensation; to change certain provisions regarding dealers' duty to keep records, examination, assessment, and collection; to change certain provisions regarding return allowances; to change certain provisions regarding dealer certificates of registration; to provide for comprehensive procedures, conditions, and limitations regarding implementation of streamlined sales tax purposes; to change certain provisions regarding the imposition of the joint county and municipal sales and use tax; to change certain provisions regarding imposition of the homestead option sales and use tax; to change certain provisions regarding imposition of the county special purpose local option sales tax; to change certain provisions regarding definitions relating to the Streamlined Sales and Use Tax Agreement; to provide for membership on the Streamlined Sales and Use Tax Governing Board; to change certain provisions regarding intergovernmental contracts and imposition of the municipal option water and sewer projects and costs tax; to provide for the correction of cross-references; to provide for related matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**SECTION 1.**

Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is amended by revising Code Section 48-8-2, relating to definitions regarding sales and use tax, as follows:

"48-8-2.

As used in this article, the term:

(1) 'Alcoholic Beverages' means beverages that are suitable for human consumption and contain one-half of one percent or more of alcohol by volume.

(2) 'Ancillary services' means services that are associated with or incidental to the provision of 'telecommunications services,' including but not limited to 'detailed telecommunications billing service,' 'directory assistance,' 'vertical service,' and 'voice mail services.'

(3) 'Bundled transaction' means the retail sale of two or more products, except real property and services to real property, where the products are otherwise distinct and identifiable and the products are sold for one nonitemized price. A 'bundled transaction' does not include the sale of any products in which the 'sales price' varies, or is negotiable, based on the selection by the purchaser of the products included in the transaction.

(A) 'Distinct and identifiable products' shall not include:

(i) Packaging such as containers, boxes, sacks, bags, and bottles or other materials such as wrapping, labels, tags, and instruction guides, that accompanies the 'retail sale' of the products and are incidental or immaterial to the 'retail sale' thereof. Examples of packaging that are incidental or immaterial include grocery sacks, shoe boxes, dry cleaning garment bags, and express delivery envelopes and boxes.

(ii) A product provided free of charge with the required purchase of another product. A product is 'provided free of charge' if the 'sales price' of the product purchased does not vary depending on the inclusion of the product 'provided free of charge.'

(iii) Items included in the 'sales price.'

(B) The term 'one nonitemized price' shall not include a price that is separately identified by product on binding sales or other supporting sales related documentation made available to the customer in paper or electronic form including, but not limited to, an invoice, bill of sale, receipt, contract, service agreement, lease agreement, periodic notice of rates and services, rate card, or price list.

(C) A transaction that otherwise meets the definition of a 'bundled transaction' as defined above, is not a 'bundled transaction' if it is:

(i) The 'retail sale' of tangible personal property and a service where the tangible personal property is essential to the use of the service, and is provided exclusively in connection with the service, and the true object of the transaction is the service;

(ii) The 'retail sale' of services where one service is provided that is essential to the use or receipt of a second service and the first service is provided exclusively in connection with the second service and the true object of the transaction is the second service;

(iii)(I) A transaction that includes taxable products and nontaxable products and the 'purchase price' or 'sales price' of the taxable products is de minimis. As used in this subparagraph the term, 'de minimis' means the seller's 'purchase price' or 'sales price' of the taxable product is 10 percent or less of the total 'purchase price' or 'sales price' of the bundled products.

(II) Sellers shall use either the 'purchase price' or the 'sales price' of the products to determine if the taxable products are de minimis. Sellers may not use a combination of the 'purchase price' and 'sales price' of the products to determine if the taxable products are de minimis.

(III) Sellers shall use the full term of a service contract to determine if the taxable products are de minimis; or

(iv) The 'retail sale' of exempt tangible personal property and taxable tangible personal property where:

(I) The transaction includes 'food and food ingredients,' 'drugs,' 'durable medical equipment,' 'mobility enhancing equipment,' 'over-the-counter drugs,' or 'prosthetic devices'; and

(II) The seller's 'purchase price' or 'sales price' of the taxable tangible personal property is 50 percent or less of the total 'purchase price' or 'sales price' of the bundled tangible personal property. Sellers may not use a combination of the 'purchase price' and 'sales price' of the tangible personal property when making the 50 percent determination for a transaction.

(4) 'Business' means any activity engaged in by any person or caused to be engaged in by any person with the object of direct or indirect gain, benefit, or advantage.

~~(2) 'Cost price' means the actual cost of articles of tangible personal property without any deductions for the cost of materials used, labor costs, service costs, transportation charges, or any other expenses of any kind.~~

(5) 'Coin operated telephone service' means a 'telecommunications service' paid for by inserting money into a telephone accepting direct deposits of money to operate.

(6) 'Computer software' means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.

(7) 'Conference bridging service' means an ancillary service that links two or more participants of an audio or video conference call and may include the provision of a

telephone number. 'Conference bridging service' shall not include the telecommunications services used to reach the conference bridge.

~~(3)~~(8) 'Dealer' means every person who:

(A) Has sold at retail, used, consumed, distributed, or stored for use or consumption in this state tangible personal property and who cannot prove that the tax levied by this article has been paid on the sale at retail or on the use, consumption, distribution, or storage of the tangible personal property;

(B) Imports or causes to be imported tangible personal property from any state or foreign country for sale at retail, or for use, consumption, distribution, or storage for use or consumption in this state;

(C) Is the lessee or renter of tangible personal property and who pays to the owner of the property a consideration for the use or possession of the property without acquiring title to the property;

(D) Leases or rents tangible personal property for a consideration, permitting the use or possession of the property without transferring title to the property;

(E) Maintains or has within this state, indirectly or by a subsidiary, an office, distribution center, salesroom or sales office, warehouse, service enterprise, or any other place of business;

(F) Manufactures or produces tangible personal property for sale at retail or for use, consumption, distribution, or storage for use or consumption in this state;

(G) Sells at retail, offers for sale at retail, or has in his possession for sale at retail, or for use, consumption, distribution, or storage for use or consumption in this state tangible personal property;

(H) Solicits business by an agent, employee, representative, or any other person;

(I) Engages in the regular or systematic solicitation of a consumer market in this state, unless the dealer's only activity in this state is:

(i) Advertising or solicitation by:

(I) Direct mail, catalogs, periodicals, or advertising fliers;

(II) Means of print, radio, or television media; or

(III) Telephone, computer, the Internet, cable, microwave, or other communication system; or

(ii) The delivery of tangible personal property within this state solely by common carrier or United States mail.

The exceptions provided in divisions (i) and (ii) of this subparagraph shall not apply to any requirements under Code Section 48-8-14;

(J) Is an affiliate that sells at retail, offers for sale at retail in this state, or engages in the regular or systematic solicitation of a consumer market in this state through a related dealer located in this state unless:

(i) The in-state dealer to which the affiliate is related does not engage in any of the following activities on behalf of the affiliate:

(I) Advertising;

(II) Marketing;

(III) Sales; or

(IV) Other services; and

(ii) The in-state dealer to which the affiliate is related accepts the return of tangible personal property sold by the affiliate and also accepts the return of tangible personal property sold by any person or dealer that is not an affiliate on the same terms and conditions as an affiliate's return;

As used in this subparagraph, the term 'affiliate' means any person that is related directly or indirectly through one or more intermediaries, controls, is controlled by, is under common control with, or is subject to the control of a dealer described in subparagraphs (A) through (I) of this paragraph or in this subparagraph;

(K) Notwithstanding any of the provisions contained in this paragraph, with respect to a person that is not a resident or domiciliary of Georgia, that does not engage in any other business or activity in Georgia, and that has contracted with a commercial printer for printing to be conducted in Georgia, such person shall not be deemed a 'dealer' in Georgia merely because such person:

(i) Owns tangible or intangible property which is located at the Georgia premises of a commercial printer for use by such printer in performing services for the owner;

(ii) Makes sales and distributions of printed material produced at and shipped or distributed from the Georgia premises of the commercial printer;

(iii) Performs activities of any kind at the Georgia premises of the commercial printer which are directly related to the services provided by the commercial printer; or

(iv) Has printing, including any printing related activities, and distribution related activities performed by the commercial printer in Georgia for or on its behalf,

nor shall such person, absent any contact with Georgia other than with or through the use of the commercial printer or the use of the United States Postal Service or a common carrier, have an obligation to collect sales or use tax from any of its customers located in Georgia based upon the activities described in divisions (i) through (iv) of this subparagraph. In no event described in this subparagraph shall such person be considered to have a fixed place of business in Georgia at either the commercial

printer's premises or at any place where the commercial printer performs services on behalf of that person;

(L) Each dealer shall collect the tax imposed by this article from the purchaser, lessee, or renter, as applicable, and no action seeking either legal or equitable relief on a sale, lease, rental, or other transaction may be had in this state by the dealer unless the dealer has fully complied with this article; or

(M) The commissioner shall promulgate such rules and regulations necessary to administer this paragraph, including other such information, applications, forms, or statements as the commissioner may reasonably require.

(9) 'Delivered electronically' means delivered to the purchaser by means other than tangible storage media.

(10) 'Delivery charges' means charges by the seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services including, but not limited to, transportation, shipping, postage, handling, crating, and packing.

(11) 'Detailed telecommunications billing service' means an ancillary service of separately stating information pertaining to individual calls on a customer's billing statement.

(12) 'Direct mail' means printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addressees on a mailing list provided by the purchaser or at the direction of the purchaser when the costs of the items are not billed directly to the recipients. 'Direct mail' includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material. 'Direct mail' does not include multiple items of printed material delivered to a single address.

(13) 'Directory assistance' means an ancillary service of providing telephone number information or address information, or both.

(14) 'Drug' means a compound, substance, or preparation, and any component of a compound, substance, or preparation, other than 'food and food ingredients,' 'dietary supplements,' or 'alcoholic beverages':

(A) Recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or supplement to any of them;

(B) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or

(C) Intended to affect the structure or any function of the body.

(15) 'Durable medical equipment' means equipment including repair and replacement parts for the same, but does not include 'mobility enhancing equipment,' which:

(A) Can withstand repeated use;

(B) Is primarily and customarily used to serve a medical purpose;

(C) Generally is not useful to a person in the absence of illness or injury; and

(D) Is not worn in or on the body.

~~(4) 'Gross sales' means the:~~

~~(A) Sum total of all retail sales of tangible personal property or services without any deduction of any kind other than as provided in this article; or~~

~~(B)(i) Charges, when applied to sales of telephone service, made for local exchange telephone service, except local messages which are paid for by inserting coins in coin operated telephones, but including the total amount of the guaranteed charge for semipublic coin box telephone services; except as otherwise provided in division (ii) of this subparagraph.~~

~~(ii)(I) If a telephone service is not subject to the tax levied by this chapter, and if the amount charged for such telephone service is aggregated with and not separately stated from the amount paid or charged for any service that is subject to such tax, then the nontaxable telephone service shall be treated as being subject to such tax unless the telephone service provider can reasonably identify the amount paid or charged for the telephone service not subject to such tax from its books and records kept in the regular course of business.~~

~~(II) If a telephone service is not subject to the tax levied by this chapter, a customer may not rely upon the nontaxability of such telephone service unless the telephone service provider separately states the amount charged for such nontaxable telephone service or the telephone service provider elects, after receiving a written request from the customer in the form required by the provider, to provide verifiable data based upon the provider's books and records that are kept in the regular course of business that reasonably identifies the amount charged for such nontaxable telephone service.~~

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

~~(5)~~(17) 'Lease or rental' means ~~the leasing or renting of tangible personal property and the possession or use of the property by the lessee or renter for a consideration without transfer of the title to the property~~ any transfer of possession or control of tangible

personal property for a fixed or indeterminate term for consideration. A lease or rental may include future options to purchase or extend. 'Lease or rental' shall not include:

(A) A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;

(B) A transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price does not exceed the greater of one hundred dollars or one percent of the total required payments; or

(C) Providing tangible personal property along with an operator for a fixed or indeterminate period of time. A condition of this exclusion is that the operator is necessary for the equipment to perform as designed. For the purpose of this subparagraph, an operator must do more than maintain, inspect, or install the tangible personal property.

(18) 'Load and leave' means delivery to the purchaser by use of a tangible storage media where the tangible storage media is not physically transferred to the purchaser.

(19) 'Mobile wireless service' means a telecommunications service that is transmitted, conveyed, or routed regardless of the technology used, by which the origination or termination points, or both, of the transmission, conveyance, or routing are not fixed, including, by way of example only, telecommunications services that are provided by a commercial mobile radio service provider.

(20) 'Mobility enhancing equipment' means equipment including repair and replacement parts to the same, but does not include 'durable medical equipment,' which:

(A) Is primarily and customarily used to provide or increase the ability to move from one place to another and which is appropriate for use either in a home or a motor vehicle;

(B) Is not generally used by persons with normal mobility; and

(C) Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.

(21) 'Place of primary use' means the street address representative of where the customer's use of the telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications services, 'place of primary use' must be within the licensed service area of the home service provider.

(22) 'Prepaid calling service' means the right to access exclusively 'telecommunications services,' which must be paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed,

and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

~~(5.1)~~(23) 'Prepaid local tax' means any local sales and use tax which is levied on the sale or use of motor fuel and imposed in an area consisting of less than the entire state, however authorized, including, but not limited to, such taxes authorized by or pursuant to constitutional amendment; by or pursuant to Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, known as the 'Metropolitan Atlanta Rapid Transit Authority Act of 1965'; or by or pursuant to Article 2, 2A, 3, or 4 of this chapter. Such tax is based on the same average retail sales price as set forth in subparagraph (b)(2)(B) of Code Section 48-9-14. Such price shall be used to compute the prepaid sales tax rate for local jurisdictions by multiplying such retail price by the applicable rate imposed by the jurisdiction. The person collecting and reporting the prepaid local tax for the local jurisdiction shall provide a schedule as to which jurisdiction these collections relate. This determination shall be based upon the shipping papers of the conveyance that delivered the motor fuel to the dealer or consumer in the local jurisdiction. A seller may rely upon the representation made by the purchaser as to which jurisdiction the shipment is bound and prepare shipping papers in accordance with those instructions.

~~(5.2)~~(24) 'Prepaid state tax' means the tax levied under Code Section 48-8-30 in conjunction with Code Section 48-8-3.1 and Code Section 48-9-14 on the retail sale of motor fuels for highway use and collected prior to that retail sale. This tax is based upon the average retail sales price as set forth in Code Section 48-9-14.

(25) 'Prepaid wireless calling service' means a 'telecommunications service' that provides the right to utilize 'mobile wireless service' as well as other nontelecommunications services including the download of digital products 'delivered electronically,' content, and 'ancillary services,' which must be paid for in advance that is sold in predetermined units of dollars of which the number declines with use in a known amount.

(26) 'Prewritten computer software' means 'computer software,' including prewritten upgrades, which is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two or more 'prewritten computer software' programs or prewritten portions thereof does not cause the combination to be other than 'prewritten computer software.' 'Prewritten computer software' includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the specific purchaser. Where a person modifies or enhances 'computer software' of which the person is not the author or creator, the person shall be deemed to be the author or creator only of such person's modifications or enhancements. 'Prewritten computer software' or a prewritten portion thereof that is modified or enhanced to any degree, where such

modification or enhancement is designed and developed to the specifications of a specific purchaser, remains 'prewritten computer software'; provided, however, that where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for such modification or enhancement, such modification or enhancement shall not constitute 'prewritten computer software.'

(27) 'Prepared food' means:

(A) Food:

(i) Sold in a heated state or heated by the seller;

(ii) With two or more food ingredients mixed or combined by the seller for sale as a single item; or

(iii) Sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport the food; and

(B) 'Prepared food' shall not include food:

(i) That is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as in Chapter 3, part 401.11 of the United States Food and Drug Administration Food Code so as to prevent food borne illnesses;

(ii) Sold by a seller whose proper primary North American Industrial Classification System code is subsector 311, food manufacturing, except for industry group 3118, bakeries and tortilla manufacturing, if sold without eating utensils provided by the seller; or

(iii) Sold by a seller whose proper primary North American Industrial Classification System code is industry group 3121, beverage manufacturing.

(28) 'Prescription' means an order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed practitioner authorized by the laws of this state.

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

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

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

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

(30) 'Purchase price' applies to the measure subject to use tax and has the same meaning as sales price.

~~(6)~~(31) 'Retail sale' or a 'sale at retail' means~~:~~ any sale, lease, or rental for any purpose other than for resale, sublease, or subrent.

~~(A) A sale to a consumer or to any person for any purpose other than for resale of tangible personal property or services taxable under this article including, but not limited to, any such transactions which the commissioner upon investigation finds to be in lieu of sales.~~ Sales for resale must be made in strict compliance with the commissioner's rules and regulations. Any dealer making a sale for resale which is not in strict compliance with the commissioner's rules and regulations shall himself be liable for and shall pay the tax~~;~~. The terms 'retail sale' or 'sale at retail' include but are not limited to the following:

~~(B)(i)~~(A) Except as otherwise provided in ~~division (ii) of this subparagraph~~ this chapter, the sale of natural or artificial gas, oil, electricity, solid fuel, transportation, local telephone services, alcoholic beverages, and tobacco products, when made to any purchaser for purposes other than resale~~.~~

~~(ii) The sale of electricity used directly in the manufacture of a product shall not constitute a retail sale for purposes of this article if the direct cost of such electricity exceeds 50 percent of the cost of all materials, including electricity, used directly in the product and shall be exempt from taxation under this article. Such exemption shall be applied to manufacturers located in this state as follows:~~

~~(I) For calendar years beginning on or after January 1, 1995, and prior to January 1, 1996, 20 percent of the direct cost of such electricity shall be exempt;~~

~~(II) For calendar years beginning on or after January 1, 1996, and prior to January 1, 1997, 40 percent of the direct cost of such electricity shall be exempt;~~

~~(III) For calendar years beginning on or after January 1, 1997, and prior to January 1, 1998, 60 percent of the direct cost of such electricity shall be exempt;~~

~~(IV) For calendar years beginning on or after January 1, 1998, and prior to January 1, 1999, 80 percent of the direct cost of such electricity shall be exempt; and~~

~~(V) For calendar years beginning on or after January 1, 1999, 100 percent of the direct cost of such electricity shall be exempt~~;

~~(C)~~(B) The sale or charges for any room, lodging, or accommodation furnished to transients by any hotel, inn, tourist camp, tourist cabin, or any other place in which rooms, lodgings, or accommodations are regularly furnished to transients for a consideration. This tax shall not apply to rooms, lodgings, or accommodations supplied for a period of 90 continuous days or more;

~~(D)~~(C) Sales of tickets, fees, or charges made for admission to, or voluntary contributions made to places of, amusement, sports, or entertainment including, but not limited to:

(i) Billiard and pool rooms;

(ii) Bowling alleys;

(iii) Amusement devices;

(iv) Musical devices;

(v) Theaters;

(vi) Opera houses;

(vii) Moving picture shows;

(viii) Vaudeville;

(ix) Amusement parks;

(x) Athletic contests including, but not limited to, wrestling matches, prize fights, boxing and wrestling exhibitions, football games, and baseball games;

(xi) Skating rinks;

(xii) Race tracks;

(xiii) Public bathing places;

(xiv) Public dance halls; and

(xv) Any other place at which any exhibition, display, amusement, or entertainment is offered to the public or any other place where an admission fee is charged;

~~(E) Reserved;~~

~~(F)~~(D) Charges made for participation in games and amusement activities; ~~or~~

~~(G)~~(E) Sales of tangible personal property to persons for resale when there is a likelihood that the state will lose tax funds due to the difficulty of policing the business operations because:

(i) Of the operation of the business;

(ii) Of the very nature of the business;

(iii) Of the turnover of so-called independent contractors;

(iv) Of the lack of a place of business in which to display a certificate of registration;

(v) Of the lack of a place of business in which to keep records;

(vi) Of the lack of adequate records;

(vii) The persons are minors or transients;

(viii) The persons are engaged in essentially service businesses; or

(ix) Of any other reasonable reason.

The commissioner may promulgate rules and regulations requiring vendors of persons described in this subparagraph to collect the tax imposed by this article on the retail price of the tangible personal property. The commissioner shall refuse to issue certificates of registration and may revoke certificates of registration issued in violation of his rules and regulations;~~.~~

(F) Charges, which applied to sales of telephone service, made for local exchange telephone service, except coin operated telephone service, except as otherwise provided in subparagraph (G) of this paragraph; or

(G) If the price is attributable to products that are taxable and products that are nontaxable, the portion of the price attributable to the nontaxable products may be subject to tax unless the provider can identify by reasonable and verifiable standards such portion from its books and records that are kept in the regular course of business for other purposes, including, but not limited to, nontax purposes. If the price is attributable to products that are subject to tax at different tax rates, the total price may be treated as attributable to the products subject to tax at the highest tax rate unless the provider can identify by reasonable and verifiable standards the portion of the price attributable to the products subject to tax at the lower rate from the provider's books and records that are kept in the regular course of business for other purposes, including, but not limited to, nontax purposes.

~~(7)~~(32) 'Retailer' means every person making sales at retail or for distribution, use, consumption, or storage for use or consumption in this state and has the same meaning as 'seller' in Code Section 48-8-161.

~~(8)(A)~~(33)(A) 'Sale' means any transfer of title or possession, transfer of title and possession, exchange, barter, lease, or rental, conditional or otherwise, in any manner or by any means of any kind of tangible personal property for a consideration except as otherwise provided in subparagraph (B) of this paragraph and includes, but is not limited to:

(i) The fabrication of tangible personal property for consumers who directly or indirectly furnish the materials used in such fabrication;

(ii) The furnishing, repairing, or serving for a consideration of any tangible personal property consumed on the premises of the person furnishing, repairing, or serving the tangible personal property; or

(iii) A transaction by which the possession of property is transferred but the seller retains title as security for the payment of the price.

(B) Notwithstanding a dealer's physical presence, in the case of a motor vehicle retail sale or a motor vehicle lease or rental when the lease or rental period exceeds 30 days and when the purchaser or lessee is a resident of this state, the taxable situs of the transaction for the purposes of collecting local sales and use taxes shall be the county of motor vehicle registration of the purchaser or lessee.

~~(9)(A)~~(34)(A) 'Sales price' applies to the measure subject to sales tax and means the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether ~~paid~~ received in money or otherwise~~, for which tangible personal property or services are sold including, but not limited to, any services that are a part of the sale and any amount for which credit is given to the purchaser by the seller~~ without any deduction ~~from the~~

~~total amount for the cost of the property sold, the cost of materials used, labor or service costs, losses, or any other expenses of any kind.~~ for the following:

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

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

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

(iv) Delivery charges;

(v) Installation charges; and

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

(B) 'Sales price' ~~does~~ shall not include:

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

(ii) ~~The amount charged for labor or services rendered in installing, applying, remodeling, or repairing property sold~~ Interest, financing, and carrying charges from credit extended on the sale of personal property or services, if the amount is separately stated on the invoice, bill of sale or similar document given to the purchaser; ~~or~~

(iii) ~~Finance charges, carrying charges, service charges, or interest from credit extended on sales of tangible personal property under conditional sale contracts or other conditional contracts providing for deferred payments of the purchase price~~ Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser;

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

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

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

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

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

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

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

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

(iv) One of the following criteria is met:

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

(II) The purchaser identifies himself or herself to the seller as a member of a group or organization entitled to a price reduction or discount; provided, however, that a 'preferred customer' card that is available to any patron shall not constitute membership in such a group; or

(III) The price reduction or discount is identified as a third party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate, or other documentation presented by the purchaser.

~~(10)~~(35) 'Storage' means any keeping or retention in this state of tangible personal property for use or consumption in this state or for any purpose other than sale at retail in the regular course of business.

(36) 'Streamlined sales tax agreement' means the Streamlined Sales and Use Tax Agreement under Code Section 48-8-162.

~~(11)~~(37) 'Tangible personal property' means personal property ~~which may~~ that can be seen, weighed, measured, felt, or touched or that is in any other manner perceptible to the senses. 'Tangible personal property' includes electricity, water, gas, steam, and prewritten computer software. 'Tangible personal property' does not mean stocks, bonds, notes, insurance, or other obligations or securities.

(38) 'Telecommunications nonrecurring charges' means an amount billed for the installation, connection, change, or initiation of 'telecommunications service' received by the customer.

(39) 'Telecommunications service' means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. The term 'telecommunications service' includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code or protocol of the content for purposes of transmission, conveyance or routing without regard to whether such service is referred to as voice over

Internet protocol services or is classified by the Federal Communications Commission as enhanced or value added. 'Telecommunications service' shall not include:

(A) Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where such purchaser's primary purpose for the underlying transaction is the processed data or information;

(B) Installation or maintenance of wiring or equipment on a customer's premises;

(C) Tangible personal property;

(D) Advertising, including but not limited to directory advertising;

(E) Billing and collection services provided to third parties;

(F) Internet access service;

(G) Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance and routing of such services by the programming service provider. Radio and television audio and video programming services shall include but not be limited to cable service as defined in 47 USC 522(6) and audio and video programming services delivered by commercial mobile radio service providers, as defined in 47 CFR 20.3;

(H) Ancillary services; or

(I) Digital products delivered electronically, including but not limited to software, music, video, reading materials, or ring tones.

~~(12)~~(40) 'Use' means the exercise of any right or power over tangible personal property incident to the ownership of the property including, but not limited to, the sale at retail of the property in the regular course of business.

~~(13)~~(41) 'Use tax' includes the use, consumption, distribution, and storage of tangible personal property as defined in this article.

(42) 'Vertical service' means an ancillary service that is offered in connection with one or more telecommunications services, which offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including conference bridging services.

(43) 'Voice mail service' means an ancillary service that enables the customer to store, send, or receive recorded messages. 'Voice mail service' does not include any vertical services that the customer may be required to have in order to utilize the voice mail service."

**SECTION 2.**

Said title is further amended by revising Code Section 48-8-3, relating to exemptions from sales and use tax, as follows:

571 ″48-8-3.

572 The sales and use taxes levied or imposed by this article shall not apply to:

573 (1) Sales to the United States government, this state, any county or municipality of this
574 state, or any bona fide department of such governments when paid for directly to the
575 seller by warrant on appropriated government funds;

576 (2) Transactions in which tangible personal property is furnished by the United States
577 government or by a county or municipality of this state to any person who contracts to
578 perform services for the governmental entity for the installation, repair, or extension of
579 any public water, gas, or sewage system of the governmental entity when the tangible
580 personal property is installed for general distribution purposes, notwithstanding Code
581 Section 48-8-63 or any other provision of this article. No exemption is granted with
582 respect to tangible personal property installed to serve a particular property site;

583 (3) The federal retailers' excise tax if the tax is billed to the consumer separately from
584 the selling price of the product or from the tax imposed by Article 1 of Chapter 9 of this
585 title relating to motor fuel taxes;

586 (4) Sales by counties and municipalities arising out of their operation of any public
587 transit facility and sales by public transit authorities or charges by counties,
588 municipalities, or public transit authorities for the transportation of passengers upon their
589 conveyances;

590 (5)(A) Fares and charges, except charges for charter and sightseeing service, collected
591 by an urban transit system for the transportation of passengers.

592 (B) As used in this paragraph, the term:

593 (i) 'Public transit system primarily urban in character' shall include a transit system
594 operated by any entity which provides passenger transportation services by means of
595 motor vehicles having passenger-carrying capacity within or between standard
596 metropolitan areas and urban areas, as those terms are defined in Code Section
597 32-2-3, of this state.

598 (ii) 'Urban transit system' means a public transit system primarily urban in character
599 which is operated by a street railroad company or a motor common carrier, is subject
600 to the jurisdiction of the Public Service Commission, and whose fares and charges are
601 regulated by the Public Service Commission, or is operated pursuant to a franchise
602 contract with a municipality of this state so that its fares and charges are regulated by
603 or are subject to the approval of the municipality. An urban transit system certificate
604 shall be issued by the Public Service Commission, or by the municipality which has
605 regulatory authority, upon an affirmative showing that the applicant operates an urban
606 transit system. The certificate shall be obtained and filed with the commissioner and
607 shall continue in effect so long as the holder of such certificate qualifies as an urban

transit system. Any urban transit system certificate granted prior to January 1, 2002, shall be deemed valid as of the date it was issued;

(6) Sales to any hospital authority created by Article 4 of Chapter 7 of Title 31;

(6.1) Sales to any housing authority created by Article 1 of Chapter 3 of Title 8, the 'Housing Authorities Law';

(6.2) Sales to any local government authority created on or after January 1, 1980, by local law, which authority has as its principal purpose or one of its principal purposes the construction, ownership, or operation of a coliseum and related facilities to be used for athletic contests, games, meetings, trade fairs, expositions, political conventions, agricultural events, theatrical and musical performances, conventions, or other public entertainments or any combination of such purposes;

(6.3) Sales to any agricultural commodities commission created by and regulated pursuant to Chapter 8 of Title 2;

(7) Sales of tangible personal property and services to a nonprofit licensed nursing home, nonprofit licensed in-patient hospice, or a nonprofit general or mental hospital used exclusively by such nursing home, in-patient hospice, or hospital in performing a general nursing home, in-patient hospice, hospital, or mental hospital treatment function in this state when such nursing home, in-patient hospice, or hospital is a tax exempt organization under the Internal Revenue Code and obtains an exemption determination letter from the commissioner;

(7.05)(A) For the period commencing on July 1, 2008, and ending on June 30, 2010, sales of tangible personal property to a nonprofit health center in this state which has been established under the authority of and is receiving funds pursuant to the United States Public Health Service Act, 42 U. S. C. Section 254b if such health clinic obtains an exemption determination letter from the commissioner.

(B)(i) For the purposes of this paragraph, the term 'local sales and use tax' shall mean any sales tax, use tax, or local sales and use tax which is levied and imposed in an area consisting of less than the entire state, however authorized, including, but not limited to, such taxes authorized by or pursuant to constitutional amendment; by or pursuant to Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, the 'Metropolitan Atlanta Rapid Transit Authority Act of 1965'; by or pursuant to Article 2, 2A, 3, or 4 of this chapter.

(ii) The exemption provided for in subparagraph (A) of this paragraph shall not apply to any local sales and use tax levied or imposed at any time.

(7.1) Sales of tangible personal property and services to a nonprofit organization, the primary function of which is the provision of services to mentally retarded persons, when

such organization is a tax exempt organization under the Internal Revenue Code and obtains an exemption determination letter from the commissioner;

(7.2) Sales of tangible personal property or services to any chapter of the Georgia State Society of the Daughters of the American Revolution which is tax exempt under Section 501(c)(3) of the Internal Revenue Code and obtains an exemption determination letter from the commissioner;

(7.3) For the period commencing July 1, 2008, and ending June 30, 2010, sales of tangible personal property and services to a nonprofit volunteer health clinic which primarily treats indigent persons with incomes below 200 percent of the federal poverty level and which property and services are used exclusively by such volunteer health clinic in performing a general treatment function in this state when such volunteer health clinic is a tax exempt organization under the Internal Revenue Code and obtains an exemption determination letter from the commissioner;

(8) Sales of tangible personal property and services to the University System of Georgia and its educational units;

(9) Sales of tangible personal property and services to be used exclusively for educational purposes by those private colleges and universities in this state whose academic credits are accepted as equivalents by the University System of Georgia and its educational units;

(10) Sales of tangible personal property and services to be used exclusively for educational purposes by those bona fide private elementary and secondary schools which have been approved by the commissioner as organizations eligible to receive tax deductible contributions if application for exemption is made to the department and proof of the exemption is established;

(11) Sales of tangible personal property or services to, and the purchase of tangible personal property or services by, any educational or cultural institute which:

(A) Is tax exempt under Section 501(c)(3) of the Internal Revenue Code;

(B) Furnishes at least 50 percent of its programs through universities and other institutions of higher education in support of their educational programs;

(C) Is paid for by government funds of a foreign country; and

(D) Is an instrumentality, agency, department, or branch of a foreign government operating through a permanent location in this state;

(12) School lunches sold and served to pupils and employees of public schools;

(13) Sales of ~~food to be~~ <u>prepared food and food and food ingredients</u> consumed ~~on the premises~~ by pupils and employees of bona fide private elementary and secondary schools which have been approved by the commissioner as organizations eligible to receive tax

deductible contributions when application for exemption is made to the department and proof of the exemption is established;

(14) Sales of objects of art and of anthropological, archeological, geological, horticultural, or zoological objects or artifacts and other similar tangible personal property to or for the use by any museum or organization which is tax exempt under Section 501(c)(3) of the Internal Revenue Code of such tangible personal property for display or exhibition in a museum within this state when the museum is open to the public and has been approved by the commissioner as an organization eligible to receive tax deductible contributions;

(15) Sales:

(A) Of any religious paper in this state when the paper is owned and operated by religious institutions or denominations and no part of the net profit from the operation of the institution or denomination inures to the benefit of any private person;

(B) By religious institutions or denominations when:

(i) The sale results from a specific charitable fundraising activity;

(ii) The number of days upon which the fundraising activity occurs does not exceed 30 in any calendar year;

(iii) No part of the gross sales or net profits from the sales inures to the benefit of any private person; and

(iv) The gross sales or net profits from the sales are used for the purely charitable purposes of:

(I) Relief to the aged;

(II) Church related youth activities;

(III) Religious instruction or worship; or

(IV) Construction or repair of church buildings or facilities;

(15.1) Sales of pipe organs or steeple bells to any church which is qualified as an exempt religious organization under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended;

(16) The sale or use of Holy Bibles, testaments, and similar books commonly recognized as being Holy Scripture regardless of by or to whom sold;

(17) The sale of fuel and supplies for use or consumption aboard ships plying the high seas either in intercoastal trade between ports in this state and ports in other states of the United States or its possessions or in foreign commerce between ports in this state and ports of foreign countries;

(18) Charges made for the transportation of tangible personal property including, but not limited to, charges for accessorial services such as refrigeration, switching, storage, and

demurrage made in connection with interstate and intrastate transportation of the property;

(19) All tangible personal property purchased outside of this state by persons who at the time of purchase are not domiciled in this state but who subsequently become domiciled in this state and bring the property into this state for the first time as a result of the change of domicile, if the property is not brought into this state for use in a trade, business, or profession;

(20) The sale of water delivered to consumers through water mains, lines, or pipes;

(21) Sales, transfers, or exchanges of tangible personal property made as a result of a business reorganization when the owners, partners, or stockholders of the business being reorganized maintain the same proportionate interest or share in the newly formed business reorganization;

(22) Professional, insurance, or personal service transactions which involve sales as inconsequential elements for which no separate charges are made;

(23) Fees or charges for services rendered by repairmen for which a separate charge is made;

(24) The rental of videotape or motion picture film to any person who charges an admission fee to view such film or videotape;

(25) The sale of seed; fertilizers; insecticides; fungicides; rodenticides; herbicides; defoliants; soil fumigants; plant growth regulating chemicals; desiccants including, but not limited to, shavings and sawdust from wood, peanut hulls, fuller's earth, straw, and hay; and feed for livestock, fish, or poultry when used either directly in tilling the soil or in animal, fish, or poultry husbandry;

(26) The sale to persons engaged primarily in producing farm crops for sale of machinery and equipment which is used exclusively for irrigation of farm crops including, but not limited to, fruit, vegetable, and nut crops;

(27) The sale of sugar used as food for honeybees kept for the commercial production of honey, beeswax, and honeybees when the commissioner's prior approval is obtained;

(28) The sale of cattle, hogs, sheep, horses, poultry, or bees when sold for breeding purposes;

(29) The sale of the following types of agricultural machinery:

(A) Machinery and equipment for use on a farm in the production of poultry and eggs for sale;

(B) Machinery and equipment used in the hatching and breeding of poultry and the breeding of livestock;

(C) Machinery and equipment for use on a farm in the production, processing, and storage of fluid milk for sale;

(D) Machinery and equipment for use on a farm in the production of livestock for sale;

(E) Machinery and equipment which is used by a producer of poultry, eggs, fluid milk, or livestock for sale for the purpose of harvesting farm crops to be used on the farm by that producer as feed for poultry or livestock;

(F) Machinery which is used directly in tilling the soil or in animal husbandry when the machinery is incorporated for the first time into a new farm unit engaged in tilling the soil or in animal husbandry in this state;

(G) Machinery which is used directly in tilling the soil or in animal husbandry when the machinery is incorporated as additional machinery for the first time into an existing farm unit already engaged in tilling the soil or in animal husbandry in this state;

(H) Machinery which is used directly in tilling the soil or in animal husbandry when the machinery is bought to replace machinery in an existing farm unit already engaged in tilling the soil or in animal husbandry in this state;

(I) Rubber-tired farm tractors and attachments to the tractors which are sold to persons engaged primarily in producing farm crops for sale and which are used exclusively in tilling, planting, cultivating, and harvesting farm crops, and equipment used exclusively in harvesting farm crops or in processing onion crops which are sold to persons engaged primarily in producing farm crops for sale. For the purposes of this subparagraph, the term 'farm crops' includes only those crops which are planted and harvested within a 12 month period; and

(J) Pecan sprayers, pecan shakers, and other equipment used in harvesting pecans which is sold to persons engaged in the growing, harvesting, and production of pecans;

(29.1) The sale or use of any off-road equipment and related attachments which are sold to or used by persons engaged primarily in the growing or harvesting of timber and which are used exclusively in site preparation, planting, cultivating, or harvesting timber. Equipment used in harvesting shall include all off-road equipment and related attachments used in every forestry procedure starting with the severing of a tree from the ground until and including the point at which the tree or its parts in any form has been loaded in the field in or on a truck or other vehicle for transport to the place of use. Such off-road equipment shall include, but not be limited to, skidders, feller bunchers, debarkers, delimbers, chip harvestors, tub-grinders, woods cutters, chippers of all types, loaders of all types, dozers, and motor graders and the related attachments;

(30) The sale of a vehicle to a service-connected disabled veteran when the veteran received a grant from the United States Department of Veterans Affairs to purchase and specially adapt the vehicle to his disability;

(31) The sale of tangible personal property manufactured or assembled in this state for export when delivery is taken outside this state;

(32) Aircraft, watercraft, motor vehicles, and other transportation equipment manufactured or assembled in this state when sold by the manufacturer or assembler for use exclusively outside this state and when possession is taken from the manufacturer or assembler by the purchaser within this state for the sole purpose of removing the property from this state under its own power when the equipment does not lend itself more reasonably to removal by other means;

(33)(A) The sale of aircraft, watercraft, railroad locomotives and rolling stock, motor vehicles, and major components of each, which will be used principally to cross the borders of this state in the service of transporting passengers or cargo by common carriers and by carriers who hold common carrier and contract carrier authority in interstate or foreign commerce under authority granted by the United States government. Replacement parts installed by carriers in such aircraft, watercraft, railroad locomotives and rolling stock, and motor vehicles which become an integral part of the craft, equipment, or vehicle shall also be exempt from all taxes under this article;

(B) In lieu of any tax under this article which would apply to the purchase, sale, use, storage, or consumption of the tangible personal property described in this paragraph but for this exemption, the tax under this article shall apply with respect to all fuel purchased and delivered within this state by or to any common carrier and with respect to all fuel purchased outside this state and stored in this state irrespective, in either case, of the place of its subsequent use;

(33.1)(A) The sale or use of jet fuel to or by a qualifying airline at a qualifying airport, to the extent provided in subparagraphs (B), (C), and (D) of this paragraph.

(B) The sale or use of jet fuel to or by a qualifying airline at a qualifying airport shall be exempt from the first 1.80 percent of the 4 percent state sales and use tax imposed by this chapter and shall be subject to the remaining 2.20 percent of the 4 percent state sales and use tax imposed by this chapter.

(C) The sale or use of jet fuel to or by a qualifying airline at a qualifying airport shall also be exempt from the sales or use tax levied and imposed as authorized pursuant to Part 1 of Article 3 of this chapter.

(D) Except as provided for in subparagraph (C) of this paragraph, this exemption shall not apply to any other local sales and use tax levied or imposed at anytime in any area consisting of less than the entire state, however authorized, including, but not limited to, such taxes authorized by or pursuant to Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, the 'Metropolitan Atlanta Rapid Transit Authority Act of 1965,' or such taxes as authorized by or pursuant to Part 2 of Article 3 or Article 2, 2A, or 4 of this chapter.

(E) For purposes of this paragraph, a 'qualifying airline' shall mean any person which is authorized by the Federal Aviation Administration or appropriate agency of the United States to operate as an air carrier under an air carrier operating certificate and which provides regularly scheduled flights for the transportation of passengers or cargo for hire.

(F) For purposes of this paragraph, a 'qualifying airport' shall mean any airport in the state that has had more than 750,000 takeoffs and landings during a calendar year.

(G) The commissioner shall adopt rules and regulations to carry out the provisions of this paragraph.

(H) The exemption provided for in this paragraph shall apply only as to transactions occurring on or after July 1, 2009, and prior to July 1, 2011;

(34) The sale of the following types of manufacturing machinery:

(A) Machinery or equipment which is necessary and integral to the manufacture of tangible personal property when the machinery or equipment is bought to replace or upgrade machinery or equipment in a manufacturing plant presently existing in this state and machinery or equipment components which are purchased to upgrade machinery or equipment which is necessary and integral to the manufacture of tangible personal property in a manufacturing plant;

(B) Machinery or equipment which is necessary and integral to the manufacture of tangible personal property when the machinery or equipment is used for the first time in a new manufacturing plant located in this state;

(C) Machinery or equipment which is necessary and integral to the manufacture of tangible personal property when the machinery or equipment is used as additional machinery or equipment for the first time in a manufacturing plant presently existing in this state; and

(D) Any person making a sale of machinery or equipment for the purpose specified in subparagraph (B) of this paragraph shall collect the tax imposed on the sale by this article unless the purchaser furnishes him with a certificate issued by the commissioner certifying that the purchaser is entitled to purchase the machinery or equipment without paying the tax. As a condition precedent to the issuance of the certificate, the commissioner, at the commissioner's discretion, may require a good and valid bond with a surety company authorized to do business in this state as surety or may require legal securities, in an amount fixed by the commissioner, conditioned upon payment by the purchaser of all taxes due under this article in the event it should be determined that the sale fails to meet the requirements of this subparagraph;

(34.1)(A) The sale of primary material handling equipment which is used for the handling and movement of tangible personal property and racking systems used for the

conveyance and storage of tangible personal property in a warehouse or distribution facility located in this state when such equipment is either part of an expansion worth $5 million or more of an existing warehouse or distribution facility or part of the construction of a new warehouse or distribution facility where the total value of all real and personal property purchased or acquired by the taxpayer for use in the warehouse or distribution facility is worth $5 million or more.

(B) In order to qualify for the exemption provided for in subparagraph (A) of this paragraph, a warehouse or distribution facility may not make retail sales from such facility to the general public if the total of the retail sales equals or exceeds 15 percent of the total revenues of the warehouse or distribution facility. If retail sales are made to the general public by a warehouse or distribution facility and at any time the total of the retail sales equals or exceeds 15 percent of the total revenues of the facility, the taxpayer will be disqualified from receiving such exemption as of the date such 15 percent limitation is met or exceeded. The taxpayer may be required to repay any tax benefits received under subparagraph (A) of this paragraph on or after that date plus penalty and interest as may be allowed by law;

(34.2)(A) The sale or use of machinery or equipment, or both, which is used in the remanufacture of aircraft engines or aircraft engine parts or components in a remanufacturing facility located in this state. For purposes of this paragraph, 'remanufacture of aircraft engines or aircraft engine parts or components' means the substantial overhauling or rebuilding of aircraft engines or aircraft engine parts or components.

(B) Any person making a sale of machinery or equipment, or both, for the remanufacture of aircraft engines or aircraft engine parts or components shall collect the tax imposed on the sale by this article unless the purchaser furnishes a certificate issued by the commissioner certifying that the purchaser is entitled to purchase the machinery or equipment without paying the tax;

(34.3)(A) The sale or use of repair or replacement parts, machinery clothing or replacement machinery clothing, molds or replacement molds, dies or replacement dies, waxes, and tooling or replacement tooling for machinery which is necessary and integral to the manufacture of tangible personal property in a manufacturing plant presently existing in this state.

(B) The commissioner shall promulgate rules and regulations to implement and administer this paragraph;

(34.4)(A) Notwithstanding any provision of Code Section 48-8-63 to the contrary, sales of tangible personal property to, or used in or for the construction of, an alternative fuel facility primarily dedicated to the production and processing of ethanol,

biodiesel, butanol, and their by-products, when such fuels are derived from biomass materials such as agricultural products, or from animal fats, or the wastes of such products or fats.

(B) As used in this paragraph, the term:

(i) 'Alternative fuel facility' means any facility located in this state which is primarily dedicated to the production and processing of ethanol, biodiesel, butanol, and their by-products for sale.

(ii) 'Used in or for the construction' means any tangible personal property incorporated into a new alternative fuel facility that loses its character of tangible personal property. Such term does not mean tangible personal property that is temporary in nature, leased or rented, tools, or other items not incorporated into the facility.

(C) Any person making a sale of tangible personal property for the purpose specified in this paragraph shall collect the tax imposed on this sale unless the purchaser furnishes an exemption certificate issued by the commissioner certifying that the purchaser is entitled to purchase the tangible personal property without payment of tax.

(D) Any corporation, partnership, limited liability company, or any other entity or person that qualifies for this exemption must conduct at least a majority of its business with entities or persons with which it has no affiliation.

(E) The exemption provided for under subparagraph (A) of this paragraph shall not apply to sales of tangible personal property that occur after the production and processing of biodiesel, ethanol, butanol, and their by-products has begun at the alternative fuel facility.

(F) The exemption provided for under subparagraph (A) of this paragraph shall apply only to sales occurring during the period July 1, 2007, through June 30, 2012.

(G) The commissioner shall promulgate any rules and regulations necessary to implement and administer this paragraph;

(35)(A) The sale, use, storage, or consumption of:

(i) Industrial materials for future processing, manufacture, or conversion into articles of tangible personal property for resale when the industrial materials become a component part of the finished product;

(ii) Industrial materials other than machinery and machinery repair parts that are coated upon or impregnated into the product at any stage of its processing, manufacture, or conversion; or

(iii) Materials, containers, labels, sacks, or bags used for packaging tangible personal property for shipment or sale. To qualify for the packaging exemption, the items shall be used solely for packaging and shall not be purchased for reuse;

(B) As used in this paragraph, the term 'industrial materials' does not include natural or artificial gas, oil, gasoline, electricity, solid fuel, ice, or other materials used for heat, light, power, or refrigeration in any phase of the manufacturing, processing, or converting process;

(36)(A) The sale of machinery and equipment and any repair, replacement, or component parts for such machinery and equipment which is used for the primary purpose of reducing or eliminating air or water pollution;

(B) Any person making a sale of machinery and equipment or repair, replacement, or component parts for such machinery and equipment for the purposes specified in this paragraph shall collect the tax imposed on the sale by this article unless the purchaser furnishes him with a certificate issued by the commissioner certifying that the purchaser is entitled to purchase the machinery and equipment or repair, replacement, or component parts for such machinery and equipment without paying the tax;

(36.1)(A) The sale of machinery and equipment which is incorporated into any qualified water conservation facility and used for water conservation.

(B) As used in this paragraph, the term:

(i) 'Qualified water conservation facility' means any facility, including buildings, and any machinery and equipment used in the water conservation process resulting in a minimum 10 percent reduction in permit by relinquishment or transfer of annual permitted water usage from existing permitted ground-water sources. In addition, such facility shall have been certified pursuant to rules and regulations promulgated by the Department of Natural Resources as necessary to promote its ground-water management efforts for areas with a multiyear record of consumption at, near, or above sustainable use signaled by declines in ground-water pressure, threats of salt-water intrusion, need to develop alternate sources to accommodate economic growth and development, or any other indication of growing inadequacy of the existing resource.

(ii) 'Water conservation' means a minimum 10 percent reduction resulting in the relinquishment of transfer of annual permitted water usage from existing ground-water sources due to increased manufacturing process efficiencies or recycling of manufacturing process water which results in reduced ground-water usage, or a change from a ground-water source to a surface-water source or an alternate source.

(C) Any person making a sale of machinery and equipment for the purposes specified in this paragraph shall collect the tax imposed on this sale unless the purchaser furnishes such person with a certificate issued by the commissioner certifying that the purchaser is entitled to purchase the machinery and equipment without paying the tax;

(37) The sale of machinery and equipment for use in combating air and water pollution and any industrial material bought for further processing in the manufacture of tangible personal property for sale or any part of the industrial material or by-product thereof which becomes a wasteful product contributing to pollution problems and which is used up in a recycling or burning process. Any person making a sale of machinery and equipment for the purposes specified in this paragraph shall collect a tax imposed on the sale by this article unless the purchaser furnishes the person making the sale with a certificate issued by the commissioner certifying that the purchaser is entitled to purchase the machinery, equipment, or industrial material without paying the tax;

(38) Sales of tangible personal property and fees and charges for services by the Rock Eagle 4-H Center;

(39) Sales by any public or private school containing any combination of grades kindergarten through 12 of tangible personal property, concessions, or tickets for admission to a school event or function, provided that the net proceeds from such sales are used solely for the benefit of such public or private school or its students;

(39.1) The use of cargo containers and their related chassis which are owned by or leased to persons engaged in the international shipment of cargo by ocean-going vessels which containers and chassis are directly used for the storage and shipment of tangible personal property in or through this state in intrastate or interstate commerce;

(40) The sale of major components and repair parts installed in military craft, vehicles, and missiles;

(41)(A) Sales of tangible personal property and services to a child-caring institution as defined in paragraph (1) of Code Section 49-5-3, as amended; a child-placing agency as defined in paragraph (2) of Code Section 49-5-3, as amended; or a maternity home as defined in paragraph (14) of Code Section 49-5-3, as amended, when such institution, agency, or home is engaged primarily in providing child services and is a nonprofit, tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code and obtains an exemption determination letter from the commissioner; and

(B) Sales by an institution, agency, or home as described in subparagraph (A) of this paragraph when:

(i) The sale results from a specific charitable fundraising activity;

(ii) The number of days upon which the fundraising activity occurs does not exceed 30 in any calendar year;

(iii) No part of the gross sales or net profits from the sales inures to the benefit of any private person; and

(iv) The gross sales or net profits from the sales are used purely for charitable purposes in providing child services;

(42) The use by, or lease or rental of tangible personal property to, a person who acquires the property from another person where both persons are under 100 percent common ownership and where the person who furnishes, leases, or rents the property has:

(A) Previously paid sales or use tax on the property; or

(B) Been credited under Code Section 48-8-42 with paying a sales or use tax on the property so furnished, leased, or rented, and the tax credited is based upon the fair rental or lease value of the property;

(43) Gross revenues generated from all bona fide coin operated amusement machines which vend or dispense music or are operated for skill, amusement, entertainment, or pleasure which are in commercial use and are provided to the public for play which will require a permit fee under Chapter 17 of this title;

(44) Sales of motor vehicles, as defined in Code Section 48-5-440, to nonresident purchasers for immediate transportation to and use in another state in which the vehicles are required to be registered, provided the seller obtains from the purchaser and retains an affidavit stating the name and address of the purchaser, the state in which the vehicle will be registered and operated, the make, model, and serial number of the vehicle, and such other information as the commissioner may require;

(45) The sale, use, storage, or consumption of paper stock which is manufactured in this state into catalogs intended to be delivered outside this state for use outside this state;

(46) Sales to blood banks having a nonprofit status pursuant to Section 501(c)(3) of the Internal Revenue Code;

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

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

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

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

(ii) ~~'Dangerous drug'~~ 'Drug' means the same as provided in Code Section ~~16-13-1~~ 48-8-2.

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

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

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

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

(48) Sales to licensed commercial fishermen of bait for taking crabs and the use by licensed commercial fishermen of bait for taking crabs;

(49) Sales of liquefied petroleum gas or other fuel used in a structure in which broilers, pullets, or other poultry are raised;

(49.1)(A) From July 1, 2008, until June 30, 2010, the sale or use of liquefied petroleum gas or other fuel used in a structure in which swine are raised.

(B)(i) For the purposes of this paragraph, the term 'local sales and use tax' shall mean any sales tax, use tax, or local sales and use tax which is levied and imposed in an area consisting of less than the entire state, however authorized, including, but not limited to, such taxes authorized by or pursuant to constitutional amendment; by or pursuant to Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, the 'Metropolitan Atlanta Rapid Transit Authority Act of 1965'; by or pursuant to Article 2 of this chapter; by or pursuant to Article 2A of this chapter; by or pursuant to Part 1 of Article 3 of this chapter; by or pursuant to Part 2 of Article 3 of this chapter; and by or pursuant to Article 4 of this chapter.

(ii) The exemption provided for in subparagraph (A) of this paragraph shall not apply to any local sales and use tax levied or imposed at any time;

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

(51) Sales of oxygen prescribed by a licensed physician;

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

(53) Sales transactions for which food stamps or WIC coupons are used as the medium of exchange;

(54) The sale or use of any durable medical equipment or prosthetic device prescribed by a physician;

(55) The sale of lottery tickets authorized by Chapter 27 of Title 50;

(56) Sales by any parent-teacher organization qualified as a tax exempt organization under Section 501(c)(3) of the Internal Revenue Code;

(57)(A) The sale ~~for off-premises human consumption or use of eligible foods and beverages~~ of food and food ingredients, to the extent provided in subparagraph (B) of this paragraph.

~~(B) A transaction described in subparagraph (A) of this paragraph shall be exempt from sales and use tax only if occurring on or after October 1, 1996, and only to the extent set forth in divisions (i) through (iii) of this subparagraph as follows:~~

~~(i) For a transaction occurring during the period from October 1, 1996, through September 30, 1997, to the extent of 50 percent of that amount on which, but for this paragraph, sales and use tax would be levied or imposed;~~

~~(ii) For a transaction occurring during the period from October 1, 1997, through September 30, 1998, to the extent of 75 percent of that amount on which, but for this paragraph, sales and use tax would be levied or imposed; and~~

~~(iii) For a transaction occurring on or after October 1, 1998, to the extent of 100 percent of that amount on which, but for this paragraph, sales and use tax would be levied or imposed.~~

~~(C)~~(B) For the purposes of this paragraph, ~~'eligible food and beverages' means any food as defined in Section 3 of the federal Food Stamp Act of 1977 (P.L. 95-113), as amended, 7 U.S.C.A. 2012(g), as such Act existed on January 1, 1996, except that eligible food and beverages shall not include seeds or plants to grow food and shall not include food or drink dispensed by or through vending machines or related operations~~ 'food and food ingredients' shall not include prepared food, alcoholic beverages, or tobacco.

~~(D)(i)~~(C)(i) The exemption provided for in this paragraph shall not apply to any local sales and use tax levied or imposed at any time ~~by or pursuant to Article 3 of this chapter~~.

~~(ii) Except as otherwise provided in division (i) of this subparagraph, the exemption provided for in this paragraph shall not apply to any local sales and use tax which is effective before October 1, 1996, notwithstanding any provisions to the contrary in the law authorizing or imposing such tax.~~

~~(iii) Except as otherwise provided in divisions (i) and (iv) of this subparagraph, the exemption provided for in this paragraph shall apply with respect to any local sales and use tax which becomes effective on or after October 1, 1996, but such exemption shall apply only as to transactions occurring on or after October 1, 1998, notwithstanding any provision to the contrary in the law authorizing or imposing such tax.~~

~~(iv) The exemption provided for in this paragraph shall apply to any local sales and use tax levied or imposed at any time by or pursuant to Article 2A of this chapter.~~

~~(v)~~(ii) For the purposes of this subparagraph, the term 'local sales and use tax' shall mean any sales tax, use tax, or local sales and use tax which is levied and imposed in an area consisting of less than the entire state, however authorized, including, but not limited to, such taxes authorized by or pursuant to constitutional amendment; by or pursuant to Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, the 'Metropolitan Atlanta Rapid Transit Authority Act of 1965'; by or pursuant to ~~Article 2 of this chapter; by or pursuant to Article 2A of this chapter; or by or pursuant to Article 3~~ any article of this chapter.

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

(57.1)(A) From July 1, 2006, until June 30, 2010, sales of ~~eligible~~ food and ~~beverages~~ food ingredients to a qualified food bank.

(B) As used in this paragraph, the term~~:~~

~~(i) 'Eligible food and beverages' means any food as defined in Section 3 of the federal Food Stamp Act of 1977 (P.L. 95-113), as amended, 7 U.S.C.A. 2012(g), as such Act existed on January 1, 1996, whether or not for off premises consumption.~~

~~(ii) 'Qualified~~ 'qualified food bank' means any food bank which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code and which is operated primarily for the purpose of providing hunger relief to low income persons residing in this state.

(C) ~~Any person making a sale of eligible food and beverages for the purpose specified in this paragraph shall collect the tax imposed on this sale unless the purchaser furnishes such person with an exemption determination letter issued by the commissioner certifying that the purchaser is entitled to purchase the eligible food and beverages without paying the tax.~~

~~(D)~~ The commissioner is authorized to promulgate rules and regulations deemed necessary in order to administer and effectuate this paragraph;

(57.2)(A) For the period commencing July 1, 2007, and ending on June 30, 2011, the use of prepared food ~~and beverages~~ which ~~are~~ is donated to a qualified nonprofit agency and which are used for hunger relief purposes.

(B) As used in this paragraph, the term 'qualified nonprofit agency' means any entity which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code and which provides hunger relief.

(C) ~~Any person making a donation of prepared food and beverages for the purpose specified in this paragraph shall remit the tax imposed thereon unless the person making~~

~~use of such prepared food and beverages furnishes the person making the donation with an exemption determination letter issued by the commissioner certifying that the person making use of such food and beverages is entitled to use the prepared food and beverages without paying the tax.~~

~~(D)~~ The commissioner is authorized to promulgate rules and regulations deemed necessary in order to administer and effectuate this paragraph;

(57.3)(A) For the period commencing July 1, 2007, and ending on June 30, 2011, the use of prepared food ~~and beverages~~ which ~~are~~ is donated following a natural disaster and which are used for disaster relief purposes.

(B) The commissioner is authorized to promulgate rules and regulations deemed necessary in order to administer and effectuate this paragraph;

(58)(A) Notwithstanding any provisions of this chapter to the contrary, sales to or use by a government contractor of overhead materials in performance of a contract with the United States government to which title passes immediately to the government under the terms of the contract.

(B) As used in this paragraph, the term:

(i) 'Government contractor' means a person who enters into a contract with the United States Department of Defense or the National Aeronautics and Space Administration to sell services or tangible personal property, or both, for the purpose of the national defense.

(ii) 'Overhead materials' means any tangible personal property used or consumed in the performance of a contract between the United States Department of Defense or the National Aeronautics and Space Administration and a government contractor, the cost of which is charged to an expense account and allocated to various United States government contracts based upon generally accepted accounting principles, and consistent with government contract accounting standards. The term does not include tangible personal property which is incorporated into real property construction.

(C) This paragraph shall stand repealed on January 1, 2011;

~~(59)(A) For purposes of this paragraph, 'eligible food and beverages' means any food as defined in Section 3 of the federal Food Stamp Act of 1977 (P.L. 95-113), as amended, 7 U.S.C.A. 2012(g), as such Act existed on January 1, 1996, whether or not for off premises consumption~~.

~~(B)~~(A) Sales of ~~eligible food and beverages~~ food and food ingredients to and by member councils of the Girl Scouts of the U.S.A. in connection with fundraising activities of any such council.

~~(C)~~(B) Sales of ~~eligible food and beverages~~ food and food ingredients to and by member councils of the Boy Scouts of America in connection with fundraising activities of any such council;

(60) The sale of machinery and equipment which is incorporated into any telecommunications manufacturing facility and used for the primary purpose of improving air quality in advanced technology clean rooms of Class 100,000 or less, provided such clean rooms are used directly in the manufacture of tangible personal property;

(61) Printed advertising inserts or advertising supplements distributed in this state in or as part of any newspaper for resale;

(62) The sale of grass sod of all kinds and character when such sod is in the original state of production or condition of preparation for sale. The exemption provided for by this paragraph shall only apply to a sale made by the sod producer, a member of such producer's family, or an employee of such producer. The exemption provided for by this paragraph shall not apply to sales of grass sod by a person engaged in the business of selling plants, seedlings, nursery stock, or floral products;

(63) The sale or use of funeral merchandise, outer burial containers, and cemetery markers as defined in Code Section 43-18-1, which are purchased with funds received from the Georgia Crime Victims Emergency Fund under Chapter 15 of Title 17;

(64) The sale of electricity or other fuel for the operation of an irrigation system which is used on a farm exclusively for the irrigation of crops;

(65)(A) Sales of dyed diesel fuel exclusively used to operate vessels or boats in the commercial fishing trade by licensed commercial fishermen.

(B) Any person making a sale of dyed diesel fuel for the purposes specified in this paragraph shall collect the tax imposed on the sale by this article unless the purchaser furnishes such person with a certificate issued by the commissioner certifying that the purchaser is entitled to purchase the dyed diesel fuel without paying the tax;

(66) Sales of gold, silver, or platinum bullion or any combination of such bullion, provided that the dealer maintains proper documentation, as specified by rule or regulation to be promulgated by the department, to identify each sale or portion of a sale which is exempt under this paragraph;

(67) Sales of coins or currency or a combination of coins and currency, provided that the dealer maintains proper documentation, as specified by rule or regulation to be promulgated by the department, to identify each sale or portion of a sale which is exempt under this paragraph;

(68)(A) The sale or lease of computer equipment to be incorporated into a facility or facilities in this state to any high-technology company classified under North American

Industrial Classification System code 51121, 51331, 51333, 51334, 51421, 52232, 54133, 54171, 54172, 334413, 334611, 513321, 513322, 514191, 541511, 541512, 541513, or 541519 where such sale of computer equipment for any calendar year exceeds $15 million or, in the event of a lease of such computer equipment, the fair market value of such leased computer equipment for any calendar year exceeds $15 million.

(B) Any person making a sale or lease of computer equipment to a high-technology company as specified in subparagraph (A) of this paragraph shall collect the tax imposed on the sale by this article unless the purchaser furnishes such seller with a certificate issued by the commissioner certifying that the purchaser is entitled to purchase the computer equipment without paying the tax. As a condition precedent to the issuance of the certificate, the commissioner, at such commissioner's discretion, may require a good and valid bond with a surety company authorized to do business in this state as surety or may require legal securities, in an amount fixed by the commissioner, conditioned upon payment by the purchaser of all taxes due under this article in the event it should be determined that the sale fails to meet the requirements of this subparagraph.

(C)(i) As used in this paragraph, the term 'computer equipment' means any individual computer or organized assembly of hardware or software, such as a server farm, mainframe or midrange computer, mainframe driven high-speed print and mailing devices, and workstations connected to those devices via high bandwidth connectivity such as a local area network, wide area network, or any other data transport technology which performs one of the following functions: storage or management of production data, hosting of production applications, hosting of application systems development activities, or hosting of applications systems testing.

(ii) The term shall not include:

(I) Telephone central office equipment or other voice data transport technology; or

(II) Equipment with imbedded computer hardware or software which is primarily used for training, product testing, or in a manufacturing process.

(D) Any corporation, partnership, limited liability company, or any other similar entity which qualifies for the exemption and is affiliated in any manner with a nonqualified corporation, partnership, limited liability company, or any other similar entity must conduct at least a majority of its business with entities with which it has no affiliation;

(69) The sale of machinery, equipment, and materials incorporated into and used in the construction or operation of a clean room of Class 100 or less in this state, not to include the building or any permanent, nonremovable component of the building that houses such

clean room, provided that such clean room is used directly in the manufacture of tangible personal property in this state;

(70)(A) For the purposes of this paragraph, the term 'local sales and use tax' shall mean any sales tax, use tax, or local sales and use tax which is levied and imposed in an area consisting of less than the entire state, however authorized, including, but not limited to, such taxes authorized by or pursuant to constitutional amendment; by or pursuant to Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, the 'Metropolitan Atlanta Rapid Transit Authority Act of 1965'; by or pursuant to Article 2 of this chapter; by or pursuant to Article 2A of this chapter; by or pursuant to Part 1 of Article 3 of this chapter; or by or pursuant to Part 2 of Article 3 of this chapter.

(B) The sale of natural or artificial gas used directly in the production of electricity which is subsequently sold.

(C) The exemption provided for in subparagraph (B) of this paragraph shall not apply to any local sales and use tax levied or imposed at any time.

(D) The commissioner shall adopt rules and regulations to carry out the provisions of this paragraph;

(70.1)(A) For the period commencing July 1, 2008, and concluding on December 31, 2010, the sale of natural or artificial gas, No. 2 fuel oil, No. 6 fuel oil, propane, petroleum coke, and coal used directly or indirectly in the manufacture or processing, in a manufacturing plant located in this state, of tangible personal property primarily for resale, and the fuel cost recovery component of retail electric rates used directly or indirectly in the manufacture or processing, in a manufacturing plant located in this state, of tangible personal property primarily for resale.

(B) The exemption provided for in subparagraph (A) of this paragraph shall not apply to the first $7.60 per decatherm of the sales price or cost price of natural or artificial gas, the first $2.48 per gallon of the sales price or cost price of No. 2 fuel oil, the first $1.72 per gallon of the sales price or cost price of No. 6 fuel oil, the first $1.44 per gallon of the sales price or cost price of propane, the first $57.90 per ton of petroleum coke, the first $57.90 per ton of coal, or the first 3.44¢ per kilowatt hour of the fuel cost recovery component of retail electricity rates whether such fuel recovery charges are charged separately or are embedded in such electric rates. Dealers with such embedded rates may exempt from the electricity sales upon which the sales tax is calculated no more than the amount, if any, by which the fuel cost recovery charge approved by the Georgia Public Service Commission for transmission customers of electric utilities regulated by the Georgia Public Service Commission exceeds 3.44¢ per kilowatt hour.

(C)(i) For the purposes of this paragraph, the term 'local sales and use tax' shall mean any sales tax, use tax, or local sales and use tax which is levied and imposed in an

area consisting of less than the entire state, however authorized, including, but not limited to, such taxes authorized by or pursuant to constitutional amendment; by or pursuant to Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, the 'Metropolitan Atlanta Rapid Transit Authority Act of 1965'; or by or pursuant to Article 2, 2A, 3, or 4 of this chapter.

(ii) The exemption provided for in subparagraph (A) of this paragraph shall not apply to any local sales and use tax levied or imposed at any time.

(D) Any person making a sale of items qualifying for exemption under subparagraph (A) of this paragraph shall be relieved of the burden of proving such qualification if the person receives in good faith a certificate from the purchaser certifying that the purchase is exempt under this paragraph.

(E) Any person who qualifies for this exemption shall notify and certify to the person making the qualified sale that this exemption is applicable to the sale;

(71) Sales to or by any nonprofit organization which has as its primary purpose the raising of funds for books, materials, and programs for public libraries if such organization qualifies as a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code;

(72) The sale or use~~, to or by permanently disabled persons, of wheelchairs and any accompanying equipment, including seating equipment, all of which is manually or mechanically attached or adapted to such wheelchairs~~ <u>of all mobility enhancing equipment prescribed by a physician</u>;

(73)(A) The sale or lease of production equipment or production services for use in this state by a certified film producer or certified film production company for qualified production activities.

(B) As used in this paragraph, the term:

(i) 'Film producer' means any person engaged in the business of organizing and supervising qualified production activities.

(ii) 'Film production company' means any company that employs one or more film producers and whose goal is to engage in film production activity.

(iii) 'Production equipment' means items purchased or leased for use exclusively in qualified production activities in Georgia, including, but not limited to, cameras, camera supplies, camera accessories, lighting equipment, cables, wires, generators, motion picture film and videotape stock, cranes, booms, dollies, and teleprompters.

(iv) 'Production services' means services purchased for use exclusively in qualified production activities in Georgia, including, but not limited to, digital or tape editing, film processing, transfers of film to tape or digital format, sound mixing, computer graphics services, special effects services, animation services, and script production.

(v) 'Qualified production activities' means the production or post production of film or video projects such as feature films, series, pilots, movies for television, commercials, music videos, or sound recordings used in feature films, series, pilots, or movies for television, for which the film producer or film production company will be compensated and which are intended for nation-wide commercial distribution.

(C) Any person making a sale of production equipment or production services to a film producer or film production company as specified in this paragraph shall collect the tax imposed on the sale by this article unless the purchaser furnishes such seller with a certificate issued by the commissioner certifying that the purchaser is entitled to purchase the production equipment or production services without paying the tax. As a condition precedent to the issuance of the certificate, film producers and film production companies shall submit an application to the commissioner for designation as a certified film producer or certified film production company. Such application shall not be valid without prior written approval by the Georgia Film and Videotape Office of the Department of Economic Development;

(74)(A)(i) Except as otherwise provided in divisions (ii) and (iii) of this subparagraph, the sale or use of digital broadcast equipment sold to, leased to, or used by a federally licensed commercial or public radio or television broadcast station, a cable network, or a cable distributor that enables a radio or television station, cable network, or cable distributor to originate and broadcast or transmit or to receive and broadcast or transmit digital signals, including, but not limited to, digital broadcast equipment required by the Federal Communications Commission.

(ii) For commercial or public television broadcasters and cable distributors, such equipment shall be limited to antennas, transmission lines, towers, digital transmitters, studio to transmitter links, digital routing switchers, character generators, Advanced Television Systems Committee video encoders and multiplexers, monitoring facilities, cameras, terminal equipment, tape recorders, and file servers.

(iii) For radio broadcasters, such equipment shall be limited to transmitters, digital audio processors, and diskettes.

(B) As used in this paragraph, the term:

(i) 'Digital broadcast equipment' means equipment purchased, leased, or used for the origination or integration of program materials for broadcast over the airwaves or transmission by cable, satellite, or fiber optic line which uses or produces an electronic signal where the signal carries data generated, stored, and processed as strings of binary data. Data transmitted or stored as digital data consists of strings of positive or nonpositive elements of a transmission expressed in strings of 0's and 1's which a computer or processor can reconstruct as an electronic signal.

(ii) 'Federally licensed commercial or public radio or television broadcast station' means any entity or enterprise, either commercial or noncommercial, which operates under a license granted by the Federal Communications Commission for the purpose of free distribution of audio and video services when the distribution occurs by means of transmission over the public airwaves.

(C) The exemption provided under this paragraph shall not apply to any of the following:

(i) Repair or replacement parts purchased for the equipment described in this paragraph;

(ii) Equipment purchased to replace equipment for which an exemption was previously claimed and taken under this paragraph;

(iii) Any equipment purchased after a television station, cable network, or cable distributor has ceased analog broadcasting, or purchased after November 1, 2004, whichever occurs first; or

(iv) Any equipment purchased after a radio station has ceased analog broadcasting, or purchased after November 1, 2008, whichever occurs first.

(D) Any person making a sale of digital broadcasting equipment to a federally licensed commercial or public radio or television broadcast station, cable network, or cable distributor shall collect the tax imposed on the sale by this article unless the purchaser furnishes a certificate issued by the commissioner certifying that the purchaser is entitled to purchase the equipment without paying the tax;

(75)(A) The sale of any covered item. The exemption provided by this paragraph shall apply only to sales occurring during a period commencing at 12:01 A.M. on July 30, 2009, and concluding at 12:00 Midnight on August 2, 2009.

(B) As used in this paragraph, the term 'covered item' shall mean:

(i) Articles of clothing and footwear with a sales price of $100.00 or less per article of clothing or pair of footwear, excluding accessories such as jewelry, handbags, umbrellas, eyewear, watches, and watchbands;

(ii) A single purchase, with a sales price $1,500.00 or less, of personal computers and personal computer related accessories purchased for noncommercial home or personal use, including personal computer base units and keyboards, personal digital assistants, handheld computers, monitors, other peripheral devices, modems for Internet and network access, and nonrecreational software, whether or not they are to be utilized in association with the personal computer base unit. Computer and computer related accessories shall not include furniture and any systems, devices, software, or peripherals designed or intended primarily for recreational use; and

(iii) Noncommercial purchases of general school supplies to be utilized in the classroom or in classroom related activities, such as homework, up to a sales price of $20.00 per item including pens, pencils, notebooks, paper, book bags, calculators, dictionaries, thesauruses, and children's books and books listed on approved school reading lists for pre-kindergarten through twelfth grade.

(C) The exemption provided by this paragraph shall not apply to rentals, sales in a theme park, entertainment complex, public lodging establishment, restaurant, or airport or to purchases for trade, business, or resale.

(D) The commissioner shall promulgate any rules and regulations necessary to implement and administer this paragraph including but not be limited to a list of those articles and items qualifying for the exemption pursuant to this paragraph;

(76) Notwithstanding any provision of Code Section 48-8-63 to the contrary, from June 4, 2003, until January 1, 2007, sales of tangible personal property to, or used in the construction of, an aquarium owned or operated by an organization which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code;

(77) Sales of liquefied petroleum gas or other fuel used in a structure in which plants, seedlings, nursery stock, or floral products are raised primarily for the purposes of making sales of such plants, seedlings, nursery stock, or floral products for resale;

(78)(A) Notwithstanding any provision of Code Section 48-8-63 to the contrary, from the effective date of this paragraph until September 1, 2011, sales of tangible personal property used in direct connection with the construction of a new symphony hall facility owned or operated by an organization which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code if the aggregate construction cost of such facility is $200 million or more.

(B) Any person making a sale of tangible personal property for the purpose specified in this paragraph shall collect the tax imposed on this sale unless the purchaser furnishes such person with an exemption determination letter issued by the commissioner certifying that the purchaser is entitled to purchase the tangible personal property without paying the tax;

(79) The sale or use of ice for chilling poultry or vegetables in processing for market and for chilling poultry or vegetables in storage rooms, compartments, or delivery trucks;

(80)(A) Notwithstanding any provision of Code Section 48-8-63 to the contrary, from the effective date of this paragraph until December 31, 2007, sales of tangible personal property to, or used in or for the new construction of an eligible corporate attraction.

(B) As used in this paragraph, the term: 'corporate attraction' means any tourist attraction facility constructed on or after the effective date of this paragraph dedicated to the history and products of a corporation which costs exceeds $50 million, is greater

than 60,000 square feet of space, and has associated facilities, including but not limited to parking decks and landscaping owned by the same owner as the eligible corporate attraction.

(C) Any person making a sale of tangible personal property for the purpose specified in this paragraph shall collect the tax imposed on this sale unless the purchaser furnishes such person with an exemption determination letter issued by the commissioner certifying that the purchaser is entitled to purchase the tangible personal property without paying the tax;

(81) The sale of food and ~~beverages, except for alcoholic beverages,~~ food ingredients to a qualifying airline for service to passengers and crew in the aircraft, whether in flight or on the ground, and the furnishing without charge of food and ~~beverages~~ food ingredients to qualifying airline passengers and crew in the aircraft, whether in flight or on the ground; and for purposes of this paragraph a 'qualifying airline' shall mean any person which is authorized by the Federal Aviation Administration or appropriate agency of the United States to operate as an air carrier under an air carrier operating certificate and which provides regularly scheduled flights for the transportation of passengers or cargo for hire. As used in this paragraph, 'food and food ingredients' means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. 'Food and food ingredients' shall not include alcoholic beverages or tobacco;

(82)(A) Purchase of energy efficient products or water efficient products with a sales price of $1,500.00 or less per product purchased for noncommercial home or personal use. The exemption provided by this paragraph shall apply only to sales occurring during a period commencing at 12:01 A.M. on October 1, 2009, and concluding at 12:00 Midnight on October 4, 2009.

(B) As used in this paragraph, the term:

(i) 'Energy efficient product' means any energy efficient product for noncommercial home or personal use consisting of any dishwasher, clothes washer, air conditioner, ceiling fan, fluorescent light bulb, dehumidifier, programmable thermostat, refrigerator, door, or window which has been designated by the United States Environmental Protection Agency and the United States Department of Energy as meeting or exceeding each such agency's energy saving efficiency requirements or which have been designated as meeting or exceeding such requirements under each such agency's Energy Star program.

(ii) 'Water efficient product' means any product used for the conservation or efficient use of water which has been designated by the United States Environmental Protection Agency as meeting or exceeding such agency's water saving efficiency

requirements or which has been designated as meeting or exceeding such requirements under such agency's Water Sense program.

(C) The exemption provided for in subparagraph (A) of this paragraph shall not apply to purchases of energy efficient products or water efficient products purchased for trade, business, or resale.

(D) The commissioner shall promulgate any rules and regulations necessary to implement and administer this paragraph;

(83)(A) The sale or use of biomass material, including pellets or other fuels derived from compressed, chipped, or shredded biomass material, utilized in the production of energy, including without limitation the production of electricity, steam, or the production of electricity and steam, which is subsequently sold.

(B) As used in this paragraph, the term 'biomass material' means organic matter, excluding fossil fuels, including agricultural crops, plants, trees, wood, wood wastes and residues, sawmill waste, sawdust, wood chips, bark chips, and forest thinning, harvesting, or clearing residues; wood waste from pallets or other wood demolition debris; peanut shells; pecan shells; cotton plants; corn stalks; and plant matter, including aquatic plants, grasses, stalks, vegetation, and residues, including hulls, shells, or cellulose containing fibers;

(84)(A) Notwithstanding any provision of Code Section 48-8-63 to the contrary, from July 1, 2006, until June 30, 2008, sales of tangible personal property used in direct connection with the construction of a national infantry museum and heritage park facility.

(B) As used in this paragraph, the term 'national infantry museum and heritage park facility' means a museum and park facility which is constructed after July 1, 2006; is dedicated to the history of the American foot soldier; has more than 130,000 square feet of space; and has associated facilities, including, but not limited to, parking, parade grounds, and memorial areas.

(C) Any person making a sale of tangible personal property for the purpose specified in this paragraph shall collect the tax imposed on this sale unless the purchaser furnishes such person with an exemption determination letter issued by the commissioner certifying that the purchaser is entitled to purchase the tangible personal property without paying the tax;

(85)(A) Sales of tangible personal property and services to a qualified job training organization when such organization obtains an exemption determination letter from the commissioner.

(B) For purposes of this paragraph, 'qualified job training organization' means an organization which:

(i) Is located in this state;

(ii) Is exempt from income taxation under Section 501 (c)(3) of the Internal Revenue Code;

(iii) Specializes in the retail sale of donated items;

(iv) Provides job training and employment services to individuals with workplace disadvantages and disabilities; and

(v) Uses a majority of its revenues for job training and placement programs.

(C)(i) For the purposes of this paragraph, the term 'local sales and use tax' shall mean any sales tax, use tax, or local sales and use tax which is levied and imposed in an area consisting of less than the entire state, however authorized, including, but not limited to, such taxes authorized by or pursuant to constitutional amendment; by or pursuant to Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, the 'Metropolitan Atlanta Rapid Transit Authority Act of 1965'; by or pursuant to Article 2 of this chapter; by or pursuant to Article 2A of this chapter; by or pursuant to Part 1 of Article 3 of this chapter; by or pursuant to Part 2 of Article 3 of this chapter; or by or pursuant to Article 4 of this chapter.

(ii) The exemption provided for in subparagraph (A) of this paragraph shall not apply to any local sales and use tax levied or imposed at any time.

(D) The commissioner shall promulgate any rules and regulations necessary to implement and administer this paragraph.

(E) This paragraph shall stand repealed in its entirety on July 1, 2010;

(86) For the period commencing on July 1, 2007, and ending on June 30, 2011, the sale or use of engines, parts, equipment, and other tangible personal property used in the maintenance or repair of aircraft when such engines, parts, equipment, and other tangible personal property are installed on such aircraft that is being repaired or maintained in this state so long as such aircraft is not registered in this state;

(87)(A) Notwithstanding any provision of Code Section 48-8-63 to the contrary, from July 1, 2009, until June 30, 2011, sales of tangible personal property used for and in the renovation or expansion of a zoological institution.

(B) As used in this ~~Code section~~ paragraph, the term 'zoological institution' means a nonprofit wildlife park, terrestrial institution, or facility which is:

(i) Open to the public, that exhibits and cares for a collection consisting primarily of animals other than fish, and has received accreditation from the Association of Zoos and Aquariums; and

(ii) Located in this state and owned or operated by an organization which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code.

(C) Any person making a sale of tangible personal property for the purpose specified in this paragraph shall collect the tax imposed on this sale unless the purchaser furnishes such person with an exemption determination letter issued by the commissioner certifying that the purchaser is entitled to purchase the tangible personal property without paying the tax;

(88)(A) Notwithstanding any provision of Code Section 48-8-63 to the contrary, from July 1, 2009, until July 30, 2015, sales of tangible personal property to, or used in or for the new construction of, a civil rights museum.

(B) As used in this paragraph, the term 'civil rights museum' means a museum which is constructed after July 1, 2009; is owned or operated by an organization which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code; has more than 70,000 square feet of space; and has associated facilities, including, but not limited to, special event space and retail space.

(C) Any person making a sale of tangible personal property for the purpose specified in this paragraph shall collect the tax imposed on this sale unless the purchaser furnishes such person with an exemption determination letter issued by the commissioner certifying that the purchaser is entitled to purchase the tangible personal property without paying the tax.

(D) The exemption provided for under subparagraph (A) of this paragraph shall not apply to sales of tangible personal property that occur after the museum is opened to the public; ~~or~~

(89) For the period commencing on July 1, 2009, and ending on June 30, 2011, the sale or use of an airplane flight simulation training device approved by the Federal Aviation Administration under Appendices A and B, 14 C.F.R. Part 60;

(90) The sale of electricity to a manufacturer located in this state used directly in the manufacture of a product if the direct cost of such electricity exceeds 50 percent of the cost of all materials, including electricity, used directly in the product; or

(91) The sale of prewritten software which has been delivered to the purchaser electronically or by means of load and leave."

**SECTION 3.**

Said title is further amended by revising Code Section 48-8-6, relating to limitations on local sales and use taxes, as follows:

"48-8-6.

(a) ~~Except as otherwise authorized by the General Assembly, no county, municipality, school district, or other political subdivision of this state shall impose, levy, or collect a~~

~~gross receipts tax, sales tax, use tax, or tax on amusement admission or services included in this article.~~

~~(b)~~ There shall not be imposed in any jurisdiction in this state or on any transaction in this state local sales taxes, local use taxes, or local sales and use taxes in excess of 2 percent. For purposes of this prohibition, the taxes affected are any sales tax, use tax, or sales and use tax which is levied in an area consisting of less than the entire state, however authorized, including such taxes authorized by or pursuant to constitutional amendment, except that the following taxes shall not count toward or be subject to such 2 percent limitation:

(1) A sales and use tax for educational purposes exempted from such limitation under Article VIII, Section VI, Paragraph IV of the Constitution;

(2) Any tax levied for purposes of a metropolitan area system of public transportation, as authorized by the amendment to the Constitution set out at Georgia Laws, 1964, page 1008; the continuation of such amendment under Article XI, Section I, Paragraph IV(d) of the Constitution; and the laws enacted pursuant to such constitutional amendment; provided, however, that the exception provided for under this paragraph shall only apply in a county in which a tax is being imposed under subparagraph (a)(1)(D) of Code Section 48-8-111 in whole or in part for the purpose or purposes of a water capital outlay project or projects, a sewer capital outlay project or projects, a water and sewer capital outlay project or projects, water and sewer projects and costs as defined under paragraph (3) of Code Section 48-8-200, or any combination thereof and with respect to which the county has entered into an intergovernmental contract with a municipality, in which the average waste-water system flow of such municipality is not less than 85 million gallons per day, allocating proceeds to such municipality to be used solely for water and sewer projects and costs as defined under paragraph (3) of Code Section 48-8-200. The exception provided for under this paragraph shall apply only during the period the tax under said subparagraph (a)(1)(D) is in effect. The exception provided for under this paragraph shall not apply in any county in which a tax is being imposed under Article 2A of this chapter;

(3) In the event of a rate increase imposed pursuant to Code Section 48-8-96, only the amount in excess of the initial 1 percent sales and use tax and in the event of a newly imposed tax pursuant to Code Section 48-8-96, only the amount in excess of a 1 percent sales and use tax; and

(4) A sales and use tax levied under Article 4 of this chapter.

If the imposition of any otherwise authorized local sales tax, local use tax, or local sales and use tax would result in a tax rate in excess of that authorized by this subsection, then such otherwise authorized tax may not be imposed.

(c) Where the exception specified in paragraph (2) of subsection (b) of this Code section applies, the tax imposed under subparagraph (a)(1)(D) of Code Section 48-8-111 shall not apply to:

(1) Reserved; and

(2) The sale of motor vehicles.

(c.1) Where the exception specified in paragraph (2) of subsection (b) of this Code section applies, on and after July 1, 2007, the aggregate amount of all excise taxes imposed under paragraph (5) of subsection (a) of Code Section 48-13-51 and all sales and use taxes shall not exceed 14 percent.

(d) Notwithstanding any law or ordinance to the contrary, any tax, charge, or fee levied by any political subdivision of this state and applicable to mobile telecommunications services, as defined in Section 124(7) of the federal Mobile Telecommunications Sourcing Act, 4 U.S.C. Section 124(7), shall apply only if the customer's place of primary use is located within the boundaries of the political subdivision levying such local tax, charge, or fee. For purposes of this subsection, the provisions of Code Section 48-8-13 shall apply in the same manner and to the same extent as such provisions apply to the tax levied by Code Section 48-8-1 on mobile telecommunications services. This subsection shall not be construed to authorize the imposition of any tax, charge, or fee."

**SECTION 4.**

Said title is further amended in Code Section 48-8-14, relating to certain state contract restrictions, by revising subsection (b) as follows:

"(b) On or after April 12, 2005, the Department of Administrative Services and any other state agency shall not enter into a state-wide contract or agency contract for goods or services, or both, in an amount exceeding $100,000.00 with a nongovernmental vendor if the vendor or an affiliate of the vendor is a dealer as defined in ~~paragraph (3) of~~ Code Section 48-8-2, or meets one or more of the conditions thereunder, but fails or refuses to collect sales or use taxes levied under this chapter on its sales delivered to Georgia."

**SECTION 5.**

Said title is further amended in Code Section 48-8-17, relating to ratification of an executive order regarding gasoline taxes, by revising subsection (b) and (c) as follows:

"(b) The General Assembly of Georgia ratifies the Executive Order of the Governor dated June 2, 2008, and filed in the official records of the Office of the Governor as Executive Order 06.02.08.01 which suspended the collection of any rate of prepaid state taxes as defined in ~~paragraph (5.2) of~~ Code Section 48-8-2 to the extent it differs from the rate

levied as of January 1, 2008, pursuant to Code Section 48-9-14 as it applies to sales of motor fuel and aviation gasoline as those terms are defined in Code Section 48-9-2.

(c) For the time period commencing on June 2, 2008, as specified in the Executive Order of the Governor dated June 2, 2008, and filed in the official records of the Office of the Governor as Executive Order 06.02.08.01, the collection of any rate of prepaid state taxes as defined in ~~paragraph (5.2) of~~ Code Section 48-8-2 to the extent it differs from the rate levied as of January 1, 2008, pursuant to Code Section 48-9-14 as it applies to sales of motor fuel and aviation gasoline as those terms are defined in Code Section 48-9-2 shall be governed by the provisions of this Code section notwithstanding any provisions of Code Section 48-9-14 or any other law to the contrary."

**SECTION 6.**

Said title is further amended in Code Section 48-8-17.1, relating to ratification of an executive order on prepaid taxes, by revising paragraph (1) of subsection (a) as follows:

"(1) Sonny Perdue, as Governor of Georgia, issued an Executive Order ('EO 06.02.08.01') that suspended the collection of any rate of prepaid taxes as defined in ~~paragraph (5.2) of~~ Code Section 48-8-2 to the extent it differed from the rate levied as of January 1, 2008, pursuant to Code Section 48-9-14 as it applied to sales of motor fuel and aviation gasoline as those terms are defined in Code Section 48-9-2 until the General Assembly acts upon the suspension;"

**SECTION 7.**

Said title is further amended by revising Code Section 48-8-30, relating to imposition, rates, and collection of sales and use tax, as follows:

"48-8-30.

(a) There is levied and imposed a tax on the retail purchase, retail sale, rental, storage, use, or consumption of tangible personal property and on the services described in this article.

(b)(1) Every purchaser of tangible personal property at retail in this state shall be liable for a tax on the purchase at the rate of 4 percent of the sales price of the purchase. The tax shall be paid by the purchaser to the retailer making the sale, as provided in this article. The retailer shall remit the tax to the commissioner as provided in this article and, when received by the commissioner, the tax shall be a credit against the tax imposed on the retailer. Every person making a sale or sales of tangible personal property at retail in this state shall be a retailer and a dealer and shall be liable for a tax on the sale at the rate of 4 percent of the ~~gross sale or gross~~ sales price, or the amount of taxes collected by him from his purchaser or purchasers, whichever is greater.

(2) No retail sale shall be taxable to the retailer or dealer which is not taxable to the purchaser at retail.

(c)(1) Upon the first instance of use, consumption, distribution, or storage within this state of tangible personal property purchased at retail outside this state, the owner or user of the property shall be a dealer and shall be liable for a tax at the rate of 4 percent of the ~~cost~~ purchase price, except as provided in paragraph (2) of this subsection.

(2) Upon the first instance of use, consumption, distribution, or storage within this state of tangible personal property purchased at retail outside this state and used outside this state for more than six months prior to its first use within this state, the owner or user of the property shall be a dealer and shall be liable for a tax at the rate of 4 percent of the ~~cost~~ purchase price or fair market value of the property, whichever is the lesser.

(3) This subsection shall not be construed to require a duplication in the payment of the tax. The tax imposed by this subsection shall be subject to the credit otherwise granted by this article for like taxes previously paid in another state.

(c.1)(1) Every purchaser of tangible personal property at retail outside this state from a dealer, as defined in ~~subparagraph (H) of paragraph (3) of~~ Code Section 48-8-2, when such property is to be used, consumed, distributed, or stored within this state, shall be liable for a tax on the purchase at the rate of 4 percent of the sales price of the purchase. It shall be prima-facie evidence that such property is to be used, consumed, distributed, or stored within this state if that property is delivered in this state to the purchaser or agent thereof. The tax shall be paid by the purchaser to the retailer making the sale, as provided in this article. The retailer shall remit the tax to the commissioner as provided in this article and, when received by the commissioner, the tax shall be a credit against the tax imposed on the retailer. Every person who is a dealer, as defined in ~~subparagraph (H) of paragraph (3) of~~ Code Section 48-8-2 and who makes any sale of tangible personal property at retail outside this state which property is to be delivered in this state to a purchaser or purchaser's agent shall be a retailer and a dealer for purposes of this article and shall be liable for a tax on the sale at the rate of 4 percent of such ~~gross~~ sales price or the amount of tax as collected by that person from purchasers having their purchases delivered in this state, whichever is greater.

(2) No retail sale shall be taxable to the retailer or dealer which is not taxable to the purchaser at retail. The tax imposed by this subsection shall be subject to the credit otherwise granted by this article for like taxes previously paid in another state. This subsection shall not be construed to require a duplication in the payment of the tax.

(d)(1) Every person to whom tangible personal property in the state is leased or rented shall be liable for a tax on the lease or rental at the rate of 4 percent of the ~~gross lease or rental charge~~ sales price. The tax shall be paid to the person who leases or rents the

property by the person to whom the property is leased or rented. A person who leases or rents property to others as a dealer under this article shall remit the tax to the commissioner as provided in this article. When received by the commissioner, the tax shall be a credit against the tax imposed on the person who leases or rents the property to others. Every person who leases or rents tangible personal property in this state to others shall be a dealer and shall be liable for a tax on the lease or rental at the rate of 4 percent of the ~~gross lease or rental proceeds~~ sales price, or the amount of taxes collected by him from persons to whom he leases or rents tangible personal property, whichever is greater.

(2) No lease or rental shall be taxable to the person who leases or rents tangible property to another which is not taxable to the person to whom the property is leased or rented.

(3) The lessee of both taxable and exempt property in this state under a single lease agreement containing a lease period of ten years or more shall have the option to discharge in full all sales and use taxes imposed by this article relating to the tangible personal property by paying in a lump sum 4 percent of the fair market value of the tangible personal property at the date of inception of the lease agreement in the same manner and under the same conditions applicable to sales of the tangible personal property.

(e) Upon the first instance of use within this state of tangible personal property leased or rented outside this state, the person to whom the property is leased or rented shall be a dealer and shall be liable for a tax at the rate of 4 percent of the ~~rental charge~~ sales price paid to the person who leased or rented the property, subject to the credit authorized for like taxes previously paid in another state.

(e.1)(1) Every person who leases, as lessor, or rents tangible personal property outside this state for use within this state shall be liable for a tax at the rate of 4 percent of the ~~rental charge~~ sales price paid for that lease or rental if that person is a dealer, as defined in ~~subparagraph (H) of paragraph (3) of~~ Code Section 48-8-2 and title to that property remains in that person. It shall be prima-facie evidence that such property is to be used within this state if that property is delivered in this state to the lessee or renter of such property, or to the agent of either. The tax shall be paid by the lessee or renter and payment of the tax shall be made to the lessor or person receiving rental payments for that property, which person shall be the dealer for purposes of this article. The dealer shall remit the tax to the commissioner as provided in this article and, when received by the commissioner, the tax shall be a credit against the tax imposed on the dealer. Every person who is a dealer, as defined in ~~subparagraph (H) of paragraph (3) of~~ Code Section 48-8-2 and who leases or rents tangible personal property outside this state to be delivered in this state to the lessee, renter, or agent of either shall be a dealer and shall be

liable as such for a tax on the lease or rental at the rate of 4 percent of the ~~gross proceeds~~ sales price from such leases or rentals or the amount of taxes collected by that dealer for leases or rentals of tangible personal property delivered in this state, whichever is greater.

(2) No lease or rental shall be taxable to the dealer which is not taxable to the lessee or renter. The tax imposed by this subsection shall be subject to the credit granted by this article for like taxes previously paid in another state. This subsection shall not be construed to require a duplication in the payment of the tax.

(f)(1) Every person purchasing or receiving any service within this state, the purchase of which is a retail sale, shall be liable for tax on the purchase at the rate of 4 percent of the ~~gross charge or charges~~ sales price made for the purchase. The tax shall be paid by the person purchasing or receiving the service to the person furnishing the service. The person furnishing the service, as a dealer under this article, shall remit the tax to the commissioner as provided in this article; and, when received by the commissioner, the tax shall be a credit against the tax imposed on the person furnishing the service. Every person furnishing a service, the purchase of which is a retail sale, shall be a dealer and shall be liable for a tax on the sale at the rate of 4 percent of the ~~gross charge or charges~~ sales price made for furnishing the service, or the amount of taxes collected by him from the person to whom the service is furnished, whichever is greater.

(2) No sale of services shall be taxable to the person furnishing the service which is not taxable to the purchaser of the service.

(g) Whenever a purchaser of tangible personal property under subsection (b) or (c.1) of this Code section, a lessee or renter of the property under subsection (d) or (e.1) of this Code section, or a purchaser of taxable services under subsection (f) of this Code section does not pay the tax imposed upon him or her to the retailer, lessor, or dealer who is involved in the taxable transaction, the purchaser, lessee, or renter shall be a dealer himself or herself and the commissioner, whenever he or she has reason to believe that a purchaser or lessee has not so paid the tax, may assess and collect the tax directly against and from the purchaser, lessee, or renter, unless the purchaser, lessee, or renter shows that the retailer, lessor, or dealer who is involved in the transaction has nevertheless remitted to the commissioner the tax imposed on the transaction. If payment is received directly from the purchaser, it shall not be collected a second time from the retailer, lessor, or dealer who is involved.

(h) The tax imposed by this Code section shall be collected from the dealer and paid at the time and in the manner provided in this article. Any person engaging or continuing in business as a retailer and wholesaler or jobber shall pay the tax imposed on the ~~gross proceeds~~ sales price of retail sales of the business at the rate specified when proper books are kept showing separately the gross proceeds of sales for each business. If the records

are not kept separately, the tax shall be paid as a retailer or dealer on the gross sales of the business. For the purpose of this Code section, all sales through any one vending machine shall be treated as a single sale. The gross proceeds for reporting vending sales shall be treated as if the tax is included in the sale and the taxable proceeds shall be net of the tax included in the sale.

(i) The tax levied by this Code section is in addition to all other taxes, whether levied in the form of excise, license, or privilege taxes, and shall be in addition to all other fees and taxes levied.

(j) In the event any distributor licensed under Chapter 9 of this title purchases any motor fuel on which the prepaid state tax or prepaid local tax or both have been imposed pursuant to this Code section and resells the same to a governmental entity that is totally or partially exempt from such tax under paragraph (1) of Code Section 48-8-3, such distributor shall be entitled to either a credit or refund. The amount of the credit or refund shall be the prepaid state tax or prepaid local tax or both rates for which such governmental entity is exempt multiplied by the gallons of motor fuel purchased for its exclusive use. To be eligible for the credit or refund, the distributor shall reduce the amount such distributor charges for the fuel sold to such governmental entity by an amount equal to the tax from which such governmental entity is exempt. Should a distributor have a liability under this Code section, the distributor may elect to take a credit for those sales against such liability.

(k) The prepaid local tax shall be imposed at the time tax is imposed under subparagraph (b)(2)(B) of Code Section 48-9-14."

**SECTION 8.**

Said title is further amended by revising Code Section 48-8-31, relating to designation of price brackets, as follows:

"48-8-31.

~~Except as otherwise provided in Code Section 48-8-30, the commissioner may prepare suitable brackets of prices for the collection of the tax imposed by this article. The use of tokens is prohibited~~ Tax computation must be carried to the third decimal place, and the tax must be rounded to a whole cent using a method that rounds up to the next cent whenever the third decimal place is greater than four."

**SECTION 9.**

Said title is further amended by revising Code Section 48-8-32, relating to tax collection from dealers, as follows:

"48-8-32.

The tax at the rate of 4 percent of the retail sales price at the time of sale or 4 percent of the ~~cost~~ purchase price at the time of purchase, as the case may be, shall be collectable from all persons engaged as dealers in the sale at retail, or in the use, consumption, distribution, or storage for use or consumption in this state of tangible personal property."

**SECTION 10.**

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

"48-8-38.

(a) All gross sales of a retailer are subject to the tax imposed by this article until the contrary is established. The burden of proving that a sale of tangible personal property is not a sale at retail is upon the person who makes the sale unless he takes from the purchaser a certificate stating that the property is purchased for resale or is otherwise exempt.

(b) The certificate relieves the seller from the burden of proof as provided in subsection (a) of this Code section ~~only if taken in good faith~~ if the seller acquires from ~~a person who:~~ the purchaser a properly completed certificate.

~~(1) Is engaged in the business of selling tangible personal property;~~

~~(2) Holds the permit provided for in this article; and~~

~~(3) At the time of purchasing the tangible personal property, intends to sell it in the regular course of business or is unable to ascertain at the time of purchase whether the property will be sold or will be used for some other purpose.~~

(c) The certificate ~~stating that the property is purchased for resale~~ shall~~:~~ include such information as is determined by the commissioner and is signed by the purchaser if it is a paper exemption certificate.

~~(1) Be signed by and bear the name and address of the purchaser;~~

~~(2) Indicate the number of the permit issued to the purchaser; and~~

~~(3) Indicate the general character of the tangible personal property sold by the purchaser in the regular course of business.~~"

**SECTION 11.**

Said title is further amended by revising Code Section 48-8-39, relating to property retention, demonstration, or display, as follows:

"48-8-39.

(a) If a purchaser who gives a certificate stating that property is purchased for resale makes any use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business, the use shall be deemed a retail sale by the purchaser as of the time the property is first used by him and the ~~cost~~ purchase price of the property to him shall be deemed the gross receipts from the retail sale. If the sole use of the property other than retention, demonstration, or display in the regular course of business is the rental of the property while holding it for sale or the transportation of persons for hire while holding the property for sale, the purchaser may elect to include in his gross receipts either the amount of the rental charged or the total amount of the charges made by him for the transportation rather than the cost of the property to him.

(b)(1)(A) If a person who engages in the business of processing, manufacturing, or converting industrial materials into articles of tangible personal property for sale, whether as custom-made or stock items, makes any use of the article of tangible personal property other than retaining, demonstrating, or displaying it for sale, the use shall be deemed a retail sale as of the time the article is first used by such person and its fair market value at the time shall be deemed the sales price of the article, except as otherwise provided in subparagraph (B) of this paragraph.

(B)(i) As used in this subparagraph, the term 'total raw material cost' means the manufactured cost of carpet samples; supplies used in the manufacturing of carpet samples such as binding, grommets, and similar items; carpet sample display devices such as racks, binders, and similar items; and inbound freight charges. Such term does not mean or include labor or overhead for assembling or producing samples from finished carpet and does not mean or include outbound freight charges which may be charged to the expense account for carpet samples.

(ii) For purposes of subparagraph (A) of this paragraph, the fair market value of any carpet sample shall be equal to 21.9 percent of the total raw material cost of the sample, except that the fair market value of a sample of carpet that is manufactured exclusively for commercial use shall be equal to 1 percent of the total raw material cost of the sample.

(2) If the sole use of the article other than retaining, demonstrating, or displaying it for sale is the rental of the article while holding it for sale, the processor, manufacturer, or converter may elect to treat the amount of the rental charged rather than the fair market value of the article as its sales price."

**SECTION 12.**

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

"48-8-45.

(a) Any person taxable under this article having both cash and credit sales may report the sales on either the cash or accrual basis of accounting. Each election of a basis of accounting shall be made on the first return filed and, once made, the election shall be irrevocable unless the commissioner grants written permission for a change. Permission for a change in the basis of accounting shall be granted only upon written application and under rules and regulations promulgated by the commissioner.

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

(c) Any person reporting on the accrual basis of accounting shall be allowed a deduction for bad debts under rules and regulations of the commissioner ~~on the same basis that bad debts are allowed as a deduction on state income tax returns~~.

(d) An assignee of private label credit card debt purchased directly from a dealer without recourse or a credit card bank which extends such credit to customers under a private label credit card program shall be allowed a deduction for private label credit card bad debts under rules and regulations of the commissioner ~~on the same basis that private label credit card bad debts are allowed as a deduction on state income tax returns~~. An issuer or assignee of private label credit card debt may claim its deduction for private label credit card bad debts on a return filed by a member of an affiliated group as defined under 26 U.S.C. Section 1504."

**SECTION 13.**

Said title is further amended by revising Code Section 48-8-49, relating to dealer returns and estimated tax liability, as follows:

"48-8-49.

(a) Each dealer, on or before the twentieth day of each month, shall transmit returns to the commissioner showing the gross sales and purchases arising from all sales and purchases taxable under this article during the preceding calendar month. The commissioner may provide by regulation for quarterly or annual returns or, upon application, may permit a dealer to file a return on a quarterly or annual basis if deemed advisable by the commissioner. The returns required by this subsection shall be made upon forms prescribed, prepared, and furnished by the commissioner.

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

(2) If the ~~estimated~~ tax liability of a dealer ~~for any taxable period exceeds $5,000.00~~ in the preceding calendar year was greater than $30,000.00 excluding local sales taxes, the dealer shall file a return and remit to the commissioner not less than 50 percent of the estimated tax liability for the taxable period on or before the twentieth day of the period. The amount of the payment of the estimated tax liability shall be credited against the amount to be due on the return required under subsection (a) of this Code section. This subsection shall not apply ~~to any dealer unless during the previous fiscal year the dealer's monthly payments exceeded $5,000.00 per month for three consecutive months or more nor shall this subsection apply~~ to any dealer whose primary business is the sale of motor fuels who is remitting prepaid state tax under paragraph (2) of subsection (b) of Code Section 48-9-14. ~~No local sales taxes shall be included in determining any estimated tax liability.~~

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

(d)(1) The commissioner, in his discretion, may grant extensions, upon written application, to the end of the calendar month in which any tax return is due under this Code section.

(2) No extension granted pursuant to paragraph (1) of this subsection shall be valid unless granted in writing and only for a period of not more than 12 consecutive months.

(3) Upon the grant of any extension authorized by this subsection, the taxpayer shall remit to the commissioner on or before the date the tax would otherwise become due without the grant of the extension an amount which, when added to the amount previously remitted for the period pursuant to subsection (b) of this Code section, equals not less than 100 percent of the dealer's payment for the corresponding period of the preceding tax year.

(4) No interest or penalty shall be charged, assessed, or collected by reason of the granting of an extension pursuant to this subsection.

(5) This subsection shall apply to all extensions granted pursuant to this subsection on or after July 1, 1980, and to all extensions granted pursuant to this subsection and in effect on July 1, 1980.″

**SECTION 14.**

Said title is further amended by revising Code Section 48-8-50, relating to dealer compensation, as follows:

"48-8-50.

(a) As used in this Code section, the term 'affiliated entity' means with respect to any corporation, sole proprietorship, partnership, limited partnership, enterprise, franchise, association, trust, joint venture, or other entity, any other corporation, sole proprietorship, partnership, limited partnership, enterprise, franchise, association, trust, joint venture, or other entity related thereto:

(1) As a parent, subsidiary, sister, or daughter corporation, sole proprietorship, partnership, limited partnership, enterprise, franchise, association, trust, joint venture, or other entity;

(2) By control of one corporation, sole proprietorship, partnership, limited partnership, enterprise, franchise, association, trust, joint venture, or other entity by the other; or

(3) By any other common ownership or control.

(b) Each dealer required to file a return under this article shall include such dealer's certificate of registration number or numbers for each sales location or affiliated entity of such dealer on such return. In reporting and paying the amount of tax due under this article, each dealer shall be allowed the following deduction, but only if the return was timely filed and the amount due was not delinquent at the time of payment; and that deduction shall be subject to the provisions of subsection (f) of this Code section pertaining to calculation of the deduction when more than one tax is reported on the same return:

(1) With respect to each certificate of registration number on such return, a deduction of 3 percent of the first $3,000.00 of the combined total amount of all sales and use taxes reported due on such return for each location other than the taxes specified in paragraph (3) of this subsection;

(2) With respect to each certificate of registration number on such return, a deduction of one-half of 1 percent of that portion exceeding $3,000.00 of the combined total amount of all sales and use taxes reported due on such return for each location other than the taxes specified in paragraph (3) of this subsection;

(3) With respect to each certificate of registration number on such return, a deduction of 3 percent of the combined total amount due of all sales and use taxes on motor fuel as defined under paragraph (9) of Code Section 48-9-2, which are imposed under any provision of this title, including, but not limited to, sales and use taxes on motor fuel imposed under any of the provisions described in subsection (f) of this Code section but not including Code Section 48-9-14; and

(4) A deduction with respect to Code Section 48-9-14, as defined in ~~paragraph (5.2) of~~ Code Section 48-8-2, shall be at the rate of one-half of 1 percent of the total amount due of the prepaid state tax reported due on such return, so long as the return and payment are timely, regardless of the classification of tax return upon which the remittance is made.

(c) The department shall compile and maintain a master registry of the certificate of registration numbers filed on such returns with respect to all the affiliated business entities and multiple locations of each dealer and shall assign a master number to each dealer. Each dealer required to file a return under this article shall also include such dealer's master number on such return if such number has been assigned by the department under this subsection.

(d) With respect to a dealer which consists of only a single sales location or which consists of a group of fewer than four sales locations or affiliated entities, or any combination thereof, claiming such deduction, a separate return shall be filed for each sales location and affiliated entity for each reporting period. With respect to a dealer which consists of a group of four or more sales locations or affiliated entities, or any combination thereof, claiming such deduction, a single, consolidated return shall be filed for such entire group. A consolidated return under this subsection shall be used for the purpose of identifying the sales locations or affiliated entities of a dealer and such consolidated return shall identify separately the reporting and paying of the tax due under this article for each sales location or affiliated entity of such dealer. The deduction requirements of subsection (b) of this Code section shall apply separately to each certificate of registration number on such return.

(e) No deduction shall be allowed under this Code section unless all of the requirements of subsections (b), (c), and (d) of this Code section have been satisfied.

(f) The deduction authorized under this Code section shall be combined with and calculated with the deductions authorized under Code Section 48-8-87, Code Section 48-8-104, Code Section 48-8-113, Code Section 48-8-204, Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, the 'Metropolitan Atlanta Rapid Transit Authority Act of 1965,' and any other sales tax, use tax, or sales and use tax which is levied and imposed in an area consisting of less than the entire state, however authorized, by applying the deduction rate specified in this Code section against the combined total of all such taxes reported due on the same return.

(g) The reimbursement deduction authorized under Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, the 'Metropolitan Atlanta Rapid Transit Authority Act of 1965,' shall be at the rate and subject to the requirements specified under subsections (b) through (f) of this Code section.

(h) Each certified service provider as defined in Code Section 48-8-161 shall receive the amount provided in the contract between the certified service provider and the Streamlined Sales Tax Governing Board."

**SECTION 15.**

Said title is further amended by revising Code Section 48-8-52, relating to dealers' duty to keep records, examination, assessment, and collection, as follows:

"48-8-52.

(a)(1) Each dealer required to make a return and pay any tax under this article shall keep and preserve:

(A) Suitable records of the sales and purchases taxable under this article;

(B) Other books of account which are necessary to determine the amount of tax due;

(C) Other information as required by the commissioner; and

(D) For a period of three years, all invoices and other records of goods, wares, merchandise, and other subjects of taxation under this article.

(2) All books, invoices, and other records required to be kept by this subsection shall be open to examination at all reasonable hours by the commissioner or any of his duly authorized agents.

(b) In the event the dealer has imported tangible personal property and fails to produce an invoice showing the ~~cost~~ purchase price of each article subject to tax or if the invoice does not reflect the true or actual ~~cost~~ purchase price, the commissioner shall ascertain in any manner feasible the true ~~cost~~ purchase price and shall assess and collect the tax with interest and penalties as accrued on the true ~~cost~~ purchase price as assessed by the commissioner. The assessment so made shall be considered prima facie correct and the burden to show the contrary shall rest upon the dealer.

(c) In the case of the lease or rental of tangible personal property when the consideration reported by the dealer does not, in the judgment of the commissioner, represent the true or actual consideration, the commissioner may fix the true or actual consideration and collect the tax on the consideration in the same manner as provided in Code Section 48-8-51, with interest and penalties as accrued."

**SECTION 16.**

Said title is further amended by revising Code Section 48-8-58, relating to return allowances, as follows:

"48-8-58.

(a)(1) As used in this subsection, the term 'return allowance' means the amount of the sales price or ~~cost~~ purchase price refunded by the dealer to the purchaser in cash or credit.

No credit shall be allowed to the dealer under this subsection for taxes collected by such dealer from the purchaser unless the taxes collected have been returned by the dealer to the purchaser.

(2) When property sold is subsequently returned by agreement to the dealer by the purchaser, the dealer shall be entitled to credit for the tax imposed by this article with respect to the return allowance, in the manner prescribed by the commissioner, as follows:

(A) The dealer in the original return for the taxable period in which the return of the property is allowed may deduct from the dealer's gross sales the amount of the return allowance; or

(B) When a dealer has retired from business and has filed a final return, a claim for refund of the tax for which the dealer would be entitled to credit under this subsection may be filed within the time and in the manner prescribed under Code Section 48-2-35.

(b) The commissioner shall make available to dealers all necessary forms for filing returns and instructions to ensure a full collection from dealers and an accounting for the taxes due. Failure of any dealer to secure the commissioner's forms shall not relieve the dealer from the payment of the tax at the time and in the manner provided in this article.

(c) The commissioner shall promulgate any rules and regulations necessary to implement this Code section."

**SECTION 17.**

Said title is further amended by revising Code Section 48-8-59, relating to dealer certificates of registration, as follows:

"48-8-59.

(a)(1) Every person desiring to engage in or conduct business as a seller or dealer in this state shall file with the commissioner an application for a certificate of registration for each place of business.

(2) Each person whose business extends into more than one county shall be required to secure only one certificate of registration under this article. The certificate of registration shall cover all operations of the company throughout this state.

(b) Every application for a certificate of registration shall be made upon a form prescribed by the commissioner and shall contain the name under which the applicant transacts or intends to transact business, the location of his place or places of business, and such other information as the commissioner may require. ~~The~~ Except for sellers or dealers who register with the Streamlined Sales Tax Governing Board, the application shall be signed:

(1) If the owner is an individual, by the individual;

(2) In the case of an association or partnership, by a member or partner; or

(3) In the case of a corporation, by an executive officer or some other person specifically authorized by the corporation to sign the application. Written evidence of this authority to sign shall be attached to the application.

(c) When the required application has been made, the commissioner shall issue to the applicant a separate certificate of registration for each place of business within the state. A certificate of registration is not assignable and is valid only for the person in whose name it is issued and for the transaction of business at the place designated in the certificate. The certificate shall be conspicuously displayed at all times at the place for which the certificate is issued.

(d) A seller whose certificate of registration has been previously suspended or revoked shall pay the commissioner a fee of $1.00 for the renewal or issuance of a certificate of registration."

**SECTION 18.**

Said title is further amended by adding new Code sections to read as follows:

"48-8-68.

If the sales tax rate changes with less than 30 days between the enactment of the rate change and the effective date of such rate change, sellers shall be relieved of liability for failing to collect tax at the new rate if:

(1) The seller collected tax at the immediately preceding effective rate; and

(2) The seller's failure to collect at the newly effective rate does not extend beyond 30 days after the date of enactment of the new rate.

The provisions of this Code section do not apply if the commissioner establishes that the seller fraudulently failed to collect at the new rate or solicits purchasers based on the immediately preceding effective rate.

48-8-69.

(a) Any local sales tax rate changes made pursuant to this chapter shall apply to purchases from printed catalogs wherein the purchaser computed the tax based upon local tax rates published in the catalog only on the first day of a calendar quarter after a minimum of 120 days' notice to sellers.

(b) For sales and use tax purposes only, local jurisdiction boundary changes are effective only on the first day of a calendar quarter after a minimum of 60 days' notice to sellers.

48-8-70.

If a nine-digit ZIP code designation is not available for a street address or if a seller or certified service provider is unable to determine the nine-digit ZIP code designation

2157 applicable to a purchase after exercising due diligence to determine the designation, the
2158 seller or certified service provider may apply the rate for the five-digit ZIP code area. For
2159 the purposes of this Code section, there is a rebuttable presumption that a seller or certified
2160 service provider has exercised due diligence if the seller has attempted to determine the
2161 nine digit ZIP code designation by utilizing software approved by the Streamlined Sales
2162 Tax Governing Board that makes this designation from the street address and the five-digit
2163 ZIP code applicable to a purchase.

2164 48-8-71.
2165 Sellers and certified service providers shall not be liable for having charged and collected
2166 the incorrect amount of sales or use tax resulting from the seller or certified service
2167 provider relying on erroneous data provided by this state on state and local tax rates, local
2168 boundaries, and taxing jurisdiction assignments.

2169 48-8-72.
2170 (a) A cause of action against a seller for over-collected sales or use taxes does not accrue
2171 until a purchaser has provided written notice to the seller and the seller has had 60 days to
2172 respond. Such notice to the seller must contain the information necessary to determine the
2173 validity of the request.
2174 (b) In connection with a purchaser's request from a seller of over-collected sales or use
2175 taxes, a seller shall be presumed to have a reasonable business practice, if in the collection
2176 of such sales or use taxes, the seller:
2177 (1) Uses either a provider or a system, including a proprietary system, that is certified by
2178 the state; and
2179 (2) Has remitted to the state all taxes collected less any deductions, credits, or collection
2180 allowances.

2181 48-8-73.
2182 A seller and certified service provider are relieved of liability for having charged and
2183 collected the incorrect amount of sales or use tax resulting from the seller or certified
2184 service provider relying on erroneous data provided by this state in the taxability matrix.

2185 48-8-74.
2186 The effective date for a sales tax rate change for services covering a period starting before
2187 and ending after the statutory effective date shall be as follows:
2188 (1) For a rate increase, the new rate shall apply to the first billing period starting on or
2189 after the effective date; and

(2) For a rate decrease, the new rate shall apply to bills rendered on or after the effective date.

48-8-75.

(a) A purchaser shall be relieved from liability for penalty for having failed to pay the correct amount of sales or use tax if:

(1) A purchaser's seller or certified service provider relied on erroneous data provided by this state on tax rates, boundaries, taxing jurisdiction assignments, or in the taxability matrix completed by this state;

(2) A purchaser holding a direct pay permit relied on erroneous data provided by this state on tax rates, boundaries, taxing jurisdiction assignments, or in the taxability matrix completed by this state;

(3) A purchaser relied on erroneous data provided by this state in the taxability matrix completed by this state; or

(4) A purchaser using databases provided by this state relied on erroneous data provided by this state on tax rates, boundaries, or taxing jurisdiction assignments.

(b) A purchaser shall be relieved from liability for tax and interest for having failed to pay the correct amount of sales or use tax in the circumstances described subsection (a) of this Code section provided that, with respect to reliance on the taxability matrix completed by this state, such relief is limited to the state's erroneous classification in the taxability matrix of terms included in the Library of Definitions as 'taxable' or 'exempt,' 'included in sales price,' or 'excluded from sales price' or 'included in the definition' or 'excluded from the definition.'

48-8-76.

(a) A seller who registers to pay or to collect and remit applicable sales or use tax on sales made to purchasers in this state in accordance with the terms of the Streamlined Sales and Use Tax Agreement is relieved from the obligation to remit uncollected sales tax provided the seller was not so registered in this state in the twelve-month period preceding the effective date of this state's participation in the Streamlined Sales and Use Tax Agreement.

(b) The relief provided in subsection (a) of this Code section precludes an assessment for uncollected or unpaid sales together with penalty or interest for sales made during the period the seller was not registered in this state, provided that the registration occurs within 12 months of the effective date of this state's participation in the Streamlined Sales and Use Tax Agreement.

(c) The relief provided in subsection (a) of this Code section shall not be available to a seller with respect to any matter or matters for which the seller received notice of the

commencement of an audit and which audit is not yet finally resolved including any related administrative and judicial processes.

(d) The relief provided in subsection (a) of this Code section shall not be available for sales or use taxes already paid or remitted to this state or to taxes collected by the seller.

(e) The relief provided in subsection (a) of this Code section is fully effective, absent the seller's fraud or intentional misrepresentation of a material fact, as long as the seller continues registration and continues payment or collection and remittance of applicable sales or use taxes for a period of at least 36 months. The statute of limitations applicable to asserting a tax liability is tolled during this 36 month period.

(f) The relief provided in subsection (a) of this Code section is applicable only to sales or use taxes due from a seller in its capacity as a seller and not to sales or use taxes due from a seller in its capacity as a buyer.

48-8-77.

(a) This Code section shall not be construed to impose sales and use tax on any tangible personal property or service which was not subject to such tax prior to January 1, 2011.

(b)(1) The retail sale, excluding lease or rental, of a product shall be sourced as follows:

(A) When the product is received by the purchaser at a business location of the seller, the sale is sourced to that business location;

(B) When the product is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser, or the purchaser's donee, designated as such by the purchaser, occurs, including the location indicated by instructions for delivery to the purchaser or donee, known to the seller;

(C) When subparagraph (A) or (B) of this paragraph does not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith;

(D) When subparagraph (A), (B), or (C) of this paragraph does not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith;

(E) When subparagraph (A), (B), (C), or (D) of this paragraph does not apply, including the circumstance in which the seller is without sufficient information to apply the previous rules, then the location will be determined by the address from which tangible personal property was shipped, from which the digital good or the computer software delivered electronically was first available for transmission by the seller, or

from which the service was provided, disregarding for these purposes any location that merely provided the digital transfer of the product sold.

(2) The lease or rental of tangible personal property, other than property identified in paragraph (3) or (4) of this subsection, shall be sourced as follows:

(A) For a lease or rental that requires recurring periodic payments, the first periodic payment is sourced the same as a retail sale in accordance with the provisions of paragraph (1) of this subsection. Periodic payments made subsequent to the first payment are sourced to the primary property location for each period covered by the payment. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. The property location shall not be altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls.

(B) For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of paragraph (1) of this subsection.

(C) This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.

(3) The lease or rental of motor vehicles, trailers, semitrailers, or aircraft that do not qualify as transportation equipment, as defined in paragraph (4) of this subsection, shall be sourced as follows:

(A) For a lease or rental that requires recurring periodic payments, each periodic payment is sourced to the primary property location. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. This location shall not be altered by intermittent use at different locations.

(B) For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of paragraph (1) of this subsection.

(C) This subsection shall not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.

(4) The retail sale, including lease or rental, of transportation equipment shall be sourced the same as a retail sale in accordance with the provisions of paragraph (1) of this

subsection, notwithstanding the exclusion of lease or rental in paragraph (1) of this subsection. As used in this paragraph, 'transportation equipment' means any of the following:

(A) Locomotives and railcars that are utilized for the carriage of persons or property in interstate commerce.

(B) Trucks and truck-tractors with a Gross Vehicle Weight Rating of 10,001 pounds or greater, trailers, semitrailers, or passenger buses that are:

(i) Registered through the International Registration Plan; and

(ii) Operated under authority of a carrier authorized and certificated by the U.S. Department of Transportation or another federal authority to engage in the carriage of persons or property in interstate commerce.

(C) Aircraft that are operated by air carriers authorized and certificated by the U.S. Department of Transportation or another federal or a foreign authority to engage in the carriage of persons or property in interstate or foreign commerce.

(D) Containers designed for use on and component parts attached or secured on the items set forth in subparagraph (A), (B), or (C) of this paragraph.

(c) For the purposes of paragraph (1) of subsection (b) of this Code section, the terms 'receive' and 'receipt' mean:

(1) Taking possession of tangible personal property;

(2) Making first use of services; or

(3) Taking possession or making first use of digital goods, whichever comes first.

The terms 'receive' and 'receipt' shall not include possession by a shipping company on behalf of the purchaser.

(d)(1) Notwithstanding subsection (b) of this Code section, the following provisions shall apply to sales of 'advertising and promotional direct mail':

(A) A purchaser of 'advertising and promotional direct mail' may provide the seller with either:

(i) A direct pay permit;

(ii) An agreement certificate of exemption claiming 'direct mail' or other written statement approved, authorized, or accepted by the state; or

(iii) Information showing the jurisdictions to which the 'advertising and promotional direct mail' is to be delivered to recipients;

(B) If the purchaser provides the permit, certificate, or statement referred to in division (i) or (ii) of subparagraph (A) of this paragraph, the seller, in the absence of bad faith, is relieved of all obligations to collect, pay, or remit any tax on any transaction involving 'advertising and promotional direct mail' to which the permit, certificate, or statement applies. The purchaser shall source the sale to the jurisdictions

to which the 'advertising and promotional direct mail' is to be delivered to the recipients and shall report and pay any applicable tax due;

(C) If the purchaser provides the seller information showing the jurisdictions to which the 'advertising and promotional direct mail' is to be delivered to recipients, the seller shall source the sale to the jurisdictions to which the 'advertising and promotional direct mail' is to be delivered and shall collect and remit the applicable tax. In the absence of bad faith, the seller is relieved of any further obligation to collect any additional tax on the sale of 'advertising and promotional direct mail' where the seller has sourced the sale according to the delivery information provided by the purchaser; and

(D) If the purchaser does not provide the seller with any of the items listed in subparagraph (A) of this paragraph, the sale shall be sourced according to Section 310.A.5 of the Streamlined Sales and Use Tax Agreement. The state to which the 'advertising and promotional direct mail' is delivered may disallow credit for tax paid on sales sourced under this paragraph.

(2) Notwithstanding subsection (b) of this Code section, the following provisions shall apply to sales of 'other direct mail':

(A) Except as otherwise provided in this paragraph, sales of 'other direct mail' are sourced in accordance with subparagraph (l)(1)(A) of this Code section;

(B) A purchaser of 'other direct mail' may provide the seller with either:

(i) A direct pay permit; or

(ii) An agreement certificate of exemption claiming 'direct mail' or other written statement approved, authorized, or accepted by the state; and

(C) If the purchaser provides the permit, certificate, or statement referred to in paragraph (1) or (2) of this subsection, the seller, in the absence of bad faith, is relieved of all obligations to collect, pay or remit any tax on any transaction involving 'other direct mail' to which the permit, certificate, or statement apply. Notwithstanding paragraph (l) of this subsection, the sale shall be sourced to the jurisdictions to which the 'other direct mail' is to be delivered to the recipients and the purchaser shall report and pay applicable tax due.

(3) For purposes of this subsection, the term:

(A) 'Advertising and promotional direct mail' means:

(i) Printed material that meets the definition of 'direct mail,' under Code Section 48-8-2;

(ii) The primary purpose of which is to attract public attention to a product, person, business, or organization, or to attempt to sell, popularize, or secure financial support for a product, person, business, or organization. As used in this division, the term

'product' means tangible personal property, a product transferred electronically or a service.

(B) 'Other direct mail' means any direct mail that is not 'advertising and promotional direct mail' regardless of whether 'advertising and promotional direct mail' is included in the same mailing. The term includes, but is not limited to:

(i) Transactional direct mail that contains personal information specific to the addressee including, but not limited to, invoices, bills, statements of account, and payroll advices;

(ii) Any legally required mailings including, but not limited to, privacy notices, tax reports, and stockholder reports; and

(iii) Other nonpromotional direct mail delivered to existing or former shareholders, customers, employees, or agents including, but not limited to, newsletters and informational messages.

Other direct mail does not include the development of billing information or the provision of any data processing service that is more than incidental.

(4)(A)(i) This paragraph shall apply to a transaction characterized under this chapter as the sale of services only if the service is an integral part of the production and distribution of printed material that meets the definition of 'direct mail.'

(ii) This paragraph shall not apply to any transaction that includes the development of billing information or the provision of any data processing service that is more than incidental regardless of whether 'advertising and promotional direct mail' is included in the same mailing.

(B) If a transaction is a 'bundled transaction' that includes 'advertising and promotion direct mail,' this subsection shall apply only if the primary purpose of the transaction is the sale of products or services that meet the definition of 'advertising and promotional direct mail.'

(C) Nothing in this paragraph shall limit any purchaser's:

(i) Obligation for sales or use tax to any state to which the direct mail is delivered,

(ii) Right under local, state, federal, or constitutional law, to a credit for sales or use taxes legally due and paid to other jurisdictions; or

(iii) Right to a refund of sales or use taxes overpaid to any jurisdiction.

(D) This subsection applies for purposes of uniformly sourcing 'direct mail' transactions and does not otherwise impose requirements regarding the taxation of products that meet the definition of 'direct mail' or to the application of sales for resale or other exemptions.

(e)(1) Except for the defined telecommunication services in paragraph (3) of this subsection, the sale of telecommunication service sold on a call-by-call basis shall be sourced to:

(A) Each level of taxing jurisdiction where the call originates and terminates in that jurisdiction; or

(B) Each level of taxing jurisdiction where the call either originates or terminates and in which the service address is also located.

(2) Except for the defined telecommunication services in paragraph (3) of this subsection, a sale of telecommunications services sold on a basis other than a call-by-call basis, is sourced to the customer's place of primary use.

(3) A sale of prepaid calling service or a sale of a prepaid wireless calling service is sourced in accordance with subsection (b) of this Code section; provided, however, that in the case of a sale of prepaid wireless calling service, the rule provided in subparagraph (b)(1)(E) of this Code Section shall include as an option the location associated with the mobile telephone number.

(4) The sale of an ancillary service is sourced to the customer's place of primary use.″

**SECTION 19.**

Said title is further amended by revising Code Section 48-8-82, relating to imposition of the joint county and municipal sales and use tax, as follows:

″48-8-82.

When the imposition of a joint county and municipal sales and use tax is authorized according to the procedures provided in this article within a special district, the county whose geographical boundary is conterminous with that of the special district and each qualified municipality located wholly or partially within the special district shall levy a joint sales and use tax at the rate of 1 percent. Except as to rate, the joint tax shall correspond to the tax imposed and administered by Article 1 of this chapter. No item or transaction which is not subject to taxation by Article 1 of this chapter shall be subject to the tax levied pursuant to this article, except that the joint tax provided in this article shall be applicable to sales of motor fuels as prepaid local tax as that term is defined ~~by paragraph (5.1) of~~ in Code Section 48-8-2 and shall be applicable to the sale of food and food ingredients and alcoholic beverages only to the extent provided for in paragraph (57) of Code Section 48-8-3.″

**SECTION 20.**

Said title is further amended by revising Code Section 48-8-87, relating to sales tax returns, as follows:

"48-8-87.

The tax levied pursuant to this article shall be exclusively administered and collected by the commissioner for the use and benefit of each county whose geographical boundary is conterminous with that of a special district and of each qualified municipality located wholly or partially therein. Such administration and collection shall be accomplished in the same manner and subject to the same applicable provisions, procedures, and penalties provided in Article 1 of this chapter, except that the joint tax provided in this article shall be applicable to sales of motor fuels as prepaid local tax as that term is defined ~~by paragraph (5.1) of~~ in Code Section 48-8-2; provided, however, that all moneys collected from each taxpayer by the commissioner shall be applied first to such taxpayer's liability for taxes owed the state. Dealers shall be allowed a percentage of the amount of the tax due and accounted for and shall be reimbursed in the form of a deduction in submitting, reporting, and paying the amount due if such amount is not delinquent at the time of payment. The deduction shall be at the rate and subject to the requirements specified under subsections (b) through (f) of Code Section 48-8-50."

**SECTION 21.**

Said title is further amended by revising subsection (h) of Code Section 48-8-96, relating to levy of the joint county and municipal sales and use tax by consolidated governments, as follows:

"(h)(1) In the case of increase from 1 percent to 2 percent, the amount in excess of the initial 1 percent sales and use tax shall not apply to the ~~furnishing for value to the public of any room or rooms, lodgings, or accommodations which are subject to taxation under Article 3 of Chapter 13 of this title or to the~~ sale of motor vehicles.

(2) In the case of a newly imposed 2 percent sales and use tax under this Code section, only the amount in excess of a 1 percent sales and use tax shall not apply to the ~~furnishing for value of any room or rooms, lodgings, or accommodations which are subject to tax under Article 3 of Chapter 13 of this title or to the~~ sale of motor vehicles."

**SECTION 22.**

Said title is further amended by revising Code Section 48-8-102, relating to imposition of the homestead option sales and use tax, as follows:

"48-8-102.

(a) Pursuant to the authority granted by Article IX, Section II, Paragraph VI of the Constitution of this state, there are created within this state 159 special districts. The geographical boundary of each county shall correspond with and shall be conterminous with the geographical boundary of one of the 159 special districts.

(b) When the imposition of a local sales and use tax is authorized according to the procedures provided in this article within a special district, the county whose geographical boundary is conterminous with that of the special district shall levy a local sales and use tax at the rate of 1 percent. Except as to rate, the local sales and use tax shall correspond to the tax imposed and administered by Article 1 of this chapter. No item or transaction which is not subject to taxation by Article 1 of this chapter shall be subject to the sales and use tax levied pursuant to this article, except that the sales and use tax provided in this article shall be applicable to sales of motor fuels as prepaid local tax as that term is defined ~~by paragraph (5.1) of~~ in Code Section 48-8-2 and shall be applicable to the sale of food and food ingredients and alcoholic beverages only to the extent provided for in paragraph (57) of Code Section 48-8-3.

(c)(1) Except as otherwise provided in paragraph (2) of this subsection, the proceeds of the sales and use tax levied and collected under this article shall be used only for the purposes of funding capital outlay projects and of funding services within a special district equal to the revenue lost to the homestead exemption as provided in Code Section 48-8-104 and, in the event excess funds remain following the expenditure for such purposes, such excess funds shall be expended as provided in subparagraph (c)(2)(C) of Code Section 48-8-104.

(2) Prior to January 1 of the year immediately following the first complete calendar year in which the sales and use tax under this article is imposed, such proceeds may be used for funding all or any portion of those services which are to be provided by the governing authority of the county whose geographic boundary is conterminous with that of the special district pursuant to and in accordance with Article IX, Section II, Paragraph III of the Constitution of this state.

(d) Such sales and use tax shall only be levied in a special district following the enactment of a local Act which provides for a homestead exemption of an amount to be determined from the amount of sales and use tax collected under this article. Such exemption shall commence with taxable years beginning on or after January 1 of the year immediately following the first complete calendar year in which the sales and use tax under this article is levied. Any such local Act shall incorporate by reference the terms and conditions specified under this article. Any such local Act shall not be subject to the provisions of Code Section 1-3-4.1. Any such homestead exemption under this article shall be in addition to and not in lieu of any other homestead exemption applicable to county taxes for county purposes within the special district. Notwithstanding any provision of such local Act to the contrary, the referendum which shall otherwise be required to be conducted under such local Act shall only be conducted if the resolution required under subsection (a) of Code Section 48-8-103 is adopted prior to the issuance of the call for the referendum

under the local Act by the election superintendent. If such ordinance is not adopted by that date, the referendum otherwise required to be conducted under the local Act shall not be conducted.

(e) No sales and use tax shall be levied in a special district under this article in which a tax is levied and collected under Article 2 of this chapter."

**SECTION 23.**

Said title is further amended in Code Section 48-8-104, relating to administration of the homestead option sales and use tax, by revising subsection (a) as follows:

"(a) The sales and use tax levied pursuant to this article shall be exclusively administered and collected by the commissioner for the use and benefit of each county whose geographical boundary is conterminous with that of a special district. Such administration and collection shall be accomplished in the same manner and subject to the same applicable provisions, procedures, and penalties provided in Article 1 of this chapter except that the sales and use tax provided in this article shall be applicable to sales of motor fuels as prepaid local tax as that term is defined ~~by paragraph (5.1) of~~ in Code Section 48-8-2; provided, however, that all moneys collected from each taxpayer by the commissioner shall be applied first to such taxpayer's liability for taxes owed the state. Dealers shall be allowed a percentage of the amount of the sales and use tax due and accounted for and shall be reimbursed in the form of a deduction in submitting, reporting, and paying the amount due if such amount is not delinquent at the time of payment. The deduction shall be at the rate and subject to the requirements specified under subsections (b) through (f) of Code Section 48-8-50."

**SECTION 24.**

Said title is further amended by revising Code Section 48-8-110.1, relating to imposition of the county special purpose local option sales tax, as follows:

"48-8-110.1.

(a) Pursuant to the authority granted by Article IX, Section II, Paragraph VI of the Constitution of this state, there are created within this state 159 special districts. The geographical boundary of each county shall correspond with and shall be conterminous with the geographical boundary of the 159 special districts.

(b) When the imposition of a special district sales and use tax is authorized according to the procedures provided in this part within a special district, the governing authority of any county in this state may, subject to the requirement of referendum approval and the other requirements of this part, impose within the special district a special sales and use tax for

a limited period of time which tax shall be known as the county special purpose local option sales tax.

(c) Any tax imposed under this part shall be at the rate of 1 percent. Except as to rate, a tax imposed under this part shall correspond to the tax imposed by Article 1 of this chapter. No item or transaction which is not subject to taxation under Article 1 of this chapter shall be subject to a tax imposed under this part, except that a tax imposed under this part shall apply to sales of motor fuels as prepaid local tax as that term is defined ~~by paragraph (5.1) of~~ in Code Section 48-8-2 and shall be applicable to the sale of food and food ingredients and alcoholic beverages as provided for in ~~division (57)(D)(i) of~~ Code Section 48-8-3."

**SECTION 25.**

Said title is further amended by revising Code Section 48-8-113, relating to administration of the county special purpose local option sales and use tax, as follows:

"48-8-113.

A tax levied pursuant to this part shall be exclusively administered and collected by the commissioner for the use and benefit of the county and qualified municipalities within such special district imposing the tax. Such administration and collection shall be accomplished in the same manner and subject to the same applicable provisions, procedures, and penalties provided in Article 1 of this chapter except that the sales and use tax provided in this article shall be applicable to sales of motor fuels as prepaid local tax as that term is defined ~~by paragraph (5.1) of~~ in Code Section 48-8-2; provided, however, that all moneys collected from each taxpayer by the commissioner shall be applied first to such taxpayer's liability for taxes owed the state; and provided, further, that the commissioner may rely upon a representation by or in behalf of the county and qualified municipalities within the special district or the Secretary of State that such a tax has been validly imposed, and the commissioner and the commissioner's agents shall not be liable to any person for collecting any such tax which was not validly imposed. Dealers shall be allowed a percentage of the amount of the tax due and accounted for and shall be reimbursed in the form of a deduction in submitting, reporting, and paying the amount due if such amount is not delinquent at the time of payment. The deduction shall be at the rate and subject to the requirements specified under subsections (b) through (f) of Code Section 48-8-50."

**SECTION 26.**

Said title is further amended by revising Code Section 48-8-161, relating to definitions regarding the Streamlined Sales and Use Tax Agreement, as follows:

"48-8-161.

As used in this article, the term:

(1) 'Agent' means a person appointed by a seller to represent the seller before the member states.

~~(1)~~(2) 'Agreement' means the Streamlined Sales and Use Tax Agreement.

~~(2)~~(3) 'Certified automated system' means software certified jointly by the states that are signatories to the agreement to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state, and maintain a record of the transaction.

~~(3)~~(4) 'Certified service provider' means an agent certified jointly by the states that are signatories to the agreement to perform all of the seller's sales tax functions.

(5) 'Model 1 seller' means a seller registered under the agreement that has selected a certified service provider as its agent to perform all the seller's sales and use tax functions, other than the seller's obligation to remit tax on its own purchases.

(6) 'Model 2 seller' means a seller registered under the agreement that has selected a certified automated system to perform part of its sales and use tax functions, but retains responsibility for remitting the tax.

(7) 'Model 3 seller' means seller registered under the agreement that has sales in at least five member states, has total annual sales revenue of at least five hundred million dollars, has a proprietary system that calculates the amount of tax due each jurisdiction, and has entered into a performance agreement with the member states that establishes a tax performance standard for the seller. As used in this definition, a seller includes an affiliated group of sellers using the same proprietary system.

(8) 'Model 4 seller' means a seller that is not a 'Model 1 seller', a 'Model 2 seller', or a 'Model 3 seller.'

~~(4)~~(9) 'Person' means an individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation, or any other legal entity.

~~(5)~~(10) 'Sales tax' means the taxes levied under this chapter.

~~(6)~~(11) 'Seller' means any person making sales, leases, or rentals of personal property or services.

~~(7)~~(12) 'State' means any state of the United States, ~~and~~ the District of Columbia, and the Commonwealth of Puerto Rico.

~~(8)~~(13) 'Use tax' means the taxes levied under this chapter.″

**SECTION 27.**

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

″48-7-167.

The Georgia members of the Streamlined Sales Tax Governing Board shall be a member of the House of Representatives appointed by the Speaker of the House of Representatives,

a member of the Senate appointed by the President Pro Tempore of the Senate, and a designee of the commissioner."

**SECTION 28.**

Said title is further amended in Code Section 48-8-200, relating to definitions regarding the water and sewer projects and costs tax, by revising paragraph (2) as follows:

"(2) 'Dealer' means a dealer as defined in ~~paragraph (3) of~~ Code Section 48-8-2."

**SECTION 29.**

Said title is further amended by revising Code Section 48-8-201, relating to intergovernmental contract for distribution of municipal option water and sewer projects and costs tax proceeds, as follows:

"48-8-201.

(a)(1) In any county in which the provisions of paragraph (2) of subsection ~~(b)~~ (a) of Code Section 48-8-6 will be applicable if the tax under Part 1 of Article 3 of this chapter is imposed pursuant to subparagraph (a)(1)(D) of Code Section 48-8-111 in whole or in part for the purpose or purposes of a water capital outlay project or projects, a sewer capital outlay project or projects, a water and sewer capital outlay project or projects, or a combination of such projects, the governing authority of a municipality, the majority of which is located wholly or partially in such county, may deliver or mail a written copy of a resolution of such municipal governing authority calling for the imposition by the county of the tax under Part 1 of Article 3 of this chapter pursuant to subparagraph (a)(1)(D) of Code Section 48-8-111 in whole or in part for the purpose or purposes of a water capital outlay project or projects, a sewer capital outlay project or projects, a water and sewer capital outlay project or projects, water and sewer projects and costs, or any combination thereof.

(2) Within ten days following the date of delivery of such resolution to the governing authority of such county, the governing authorities of such county and municipality may enter into an intergovernmental contract as authorized by Article IX, Section III of the Constitution which shall specify the allocation of the proceeds of the tax between such county and municipality according to the ratio the population of such municipality bears to the population of such county according to the United States decennial census of 2000 or any future such census so that such municipality's share of the total net proceeds shall be the percentage of the total population of such municipality divided by the total population of such county. Such intergovernmental contract shall specify that the proceeds allocated to the municipality shall only be expended for water and sewer projects and costs.

(3) Immediately following the entering into of the intergovernmental contract under paragraph (2) of this subsection, the governing authority of such county may select the next practicable date authorized under Code Section 21-2-540 for conducting a special election on the question of imposing such tax under Part 1 of Article 3 of this chapter. The governing authority of such county shall notify the county election superintendent by forwarding to the superintendent a copy of the resolution of the governing authority of such municipality calling for the imposition of the tax in such county. Following receipt of the resolution, the election superintendent shall issue the appropriate call for an election for the purpose of submitting the question of the imposition of the tax to the voters of such county in the manner specified in Code Section 48-8-111. If approved in such referendum, the tax shall be levied and imposed as provided in this Code section and Part 1 of Article 3 of this chapter.

(b) If the governing authority of the county takes no action under paragraph (2) or (3) of subsection (a) of this Code section, it shall provide notice thereof by resolution to the governing authority of the municipality not later than ten days following the date of delivery of such municipality's resolution to the county under subsection (a) of this Code section. Upon receipt by the governing authority of the municipality of such county resolution or if timely notice of no action is not provided by the governing authority of the county to the governing authority of the municipality or if the county referendum is conducted but is not approved by the voters, the governing authority of any municipality in this state may, subject to the requirement of referendum approval and the other requirements of this article, immediately commence proceedings to seek to impose within the municipality a special sales and use tax for a limited period of time for the purpose of funding water and sewer projects and costs. Any tax imposed under this article shall be at the rate of 1 percent. Except as otherwise provided in this article, a tax imposed under this article shall correspond to the tax imposed by Article 1 of this chapter.

(c) In the event a tax imposed under this article is imposed only by the municipality:

(1) No item or transaction which is not subject to taxation under Article 1 of this chapter shall be subject to a tax imposed under this article, except that a tax imposed under this article shall apply to:

(A) Sales of motor fuels as prepaid local tax as that term is defined ~~by paragraph (5.1) of~~ in Code Section 48-8-2;

(B) The sale of food and food ingredients and alcoholic beverages as provided for in ~~division (57)(D)(i) of~~ Code Section 48-8-3;

(C) The sale of natural or artificial gas used directly in the production of electricity which is subsequently sold, notwithstanding paragraph (70) of Code Section 48-8-3; and

(D) The furnishing for value to the public of any room or rooms, lodgings, or accommodations which is subject to taxation under Article 3 of Chapter 13 of this title; and

(2) A tax imposed under this article shall not apply to the sale of motor vehicles.

(d) On and after July 1, 2007, the aggregate amount of all excise taxes imposed under paragraph (5) of subsection (a) of Code Section 48-13-51 and all sales and use taxes shall not exceed 14 percent."

**SECTION 30.**

Said title is further amended by revising Code Section 48-8-203, relating to imposition of the municipal option water and sewer projects and costs tax, as follows:

"48-8-203.

(a)(1) If the imposition of the tax is approved by referendum, the tax shall be imposed on the first day of the next succeeding calendar quarter which begins more than ~~70~~ 80 days after the date of the election at which the tax was approved by the voters.

(2) With respect to services which are regularly billed on a monthly basis, however, the resolution or ordinance imposing the tax shall become effective with respect to and the tax shall apply to the first regular billing period coinciding with or following the effective date specified in paragraph (1) of this subsection. A certified copy of the ordinance or resolution imposing the tax shall be forwarded to the commissioner so that it will be received within five business days after certification of the election results.

(b) The tax shall cease to be imposed on the earliest of the following dates:

(1) If the resolution or ordinance calling for the imposition of the tax provided for the issuance of general obligation debt and such debt is the subject of validation proceedings, as of the end of the first calendar quarter ending more than 80 days after the date on which a court of competent jurisdiction enters a final order denying validation of such debt;

(2) On the final day of the maximum period of time specified for the imposition of the tax; or

(3) As of the end of the calendar quarter during which the commissioner determines that the tax will have raised revenues sufficient to provide to the municipality net proceeds equal to or greater than the amount specified as the maximum amount of net proceeds to be raised by the tax.

(c)(1) No municipality shall impose at any time more than a single 1 percent tax under this article.

(2) A municipality in which a tax authorized by this article is in effect may, while the tax is in effect, adopt a resolution or ordinance calling for a reimposition of a tax as

authorized by this article upon the termination of the tax then in effect; and a referendum may be held for this purpose while the tax is in effect. Proceedings for such reimposition shall not be conducted more than two times; shall be in the same manner as proceedings for the initial imposition of the tax as provided for in Code Section 48-8-202 and shall be solely within the discretion of the governing authority of the municipality without regard to any requirement of county participation otherwise specified under subsection (a) of Code Section 48-8-201. Such newly authorized tax shall not be imposed until the expiration of the tax then in effect; provided, however, that in the event of emergency conditions under which a municipality is unable to conduct a referendum so as to continue the tax then in effect without interruption, the commissioner may, if feasible administratively, waive the limitations of subsection (a) of this Code section to the minimum extent necessary so as to permit the reimposition of a tax, if otherwise approved as required under this Code section, without interruption, upon the expiration of the tax then in effect.

(3) Following the expiration of a tax under this article which has been renewed two times under paragraph (2) of this subsection, a municipality shall not be authorized to initiate proceedings for the reimposition of a tax under this article or to reimpose such tax.″

**SECTION 31.**

Said title is further amended by revising Code Section 48-8-204, relating to administration of the water and sewer projects and costs tax, as follows:

″48-8-204.

A tax levied pursuant to this article shall be exclusively administered and collected by the commissioner for the use and benefit of the municipality imposing the tax. Such administration and collection shall be accomplished in the same manner and subject to the same applicable provisions, procedures, and penalties provided in Article 1 of this chapter except that the sales and use tax provided in this article shall be applicable to sales of motor fuels as prepaid local tax as that term is defined ~~by paragraph (5.1) of~~ in Code Section 48-8-2; provided, however, that all moneys collected from each taxpayer by the commissioner shall be applied first to such taxpayer's liability for taxes owed the state; and provided, further, that the commissioner may rely upon a representation by or in behalf of the municipality or the Secretary of State that such a tax has been validly imposed, and the commissioner and the commissioner's agents shall not be liable to any person for collecting any such tax which was not validly imposed. Dealers shall be allowed a percentage of the amount of the tax due and accounted for and shall be reimbursed in the form of a deduction in submitting, reporting, and paying the amount due if such amount is not delinquent at the

time of payment. The deduction shall be at the rate and subject to the requirements specified under subsections (b) through (f) of Code Section 48-8-50.″

**SECTION 32.**

Title 50 of Official Code of Georgia Annotated, relating to state government, is amended in Code Section 50-5-82, relating to limitations on contracting for goods, by revising subsection (b) as follows:

″(b) On or after May 13, 2004, the Department of Administrative Services and any other state agency to which this article applies shall not enter into a state-wide contract or agency contract for goods or services, or both, in an amount exceeding $100,000.00 with a nongovernmental vendor if the vendor or an affiliate of the vendor is a dealer as defined in ~~paragraph (3) of~~ Code Section 48-8-2, or meets one or more of the conditions thereunder, but fails or refuses to collect sales or use taxes levied under Chapter 8 of Title 48 on its sales delivered to Georgia.″

**SECTION 33.**

This Act shall become effective on January 1, 2011.

**SECTION 34.**

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