

2003 Legislative Analysis For Enacted Legislation

Alcohol

House Bill 43 (O.C.G.A. §§ 48-11-1 through 48-11-5, 48-11-7 through 48-11-15, 48-11-17, 48-11-18, 48-11-22, 48-11-23, 48-11-23.1, 48-11-24 through 48-11-27, 48-18-3, 48-18-9, 35-3-8, 50-5-76, and 50-6-5) The provisions of this bill related to alcohol are as follows:

Sections 18 through 39 and Sections 42 through 44 - Tobacco Tax – Effective July 1, 2003.

These sections of the bill add a definition of loose or smokeless tobacco and subject loose or smokeless tobacco to the excise tax on tobacco as follows:

Little cigars – increased from 2 mills (\$.002) each to 2½ mills (\$.0025) each

Other cigars – increased from 13 percent to 23 percent of the wholesale cost price

Cigarettes – increased from 12¢ to 37¢ per pack of 20 cigarettes

Cigarettes – increased from 15¢ to 46.25¢ per pack of 25 cigarettes

Loose or smokeless tobacco – creates a new tax of 10 percent of the wholesale cost price

Bill adds a penalty of \$25 per individual container of non tax-paid loose or smokeless tobacco being transported in Georgia that is not supported by the appropriate invoices or delivery tickets.

House Bill 43 can be viewed by clicking on the following link

http://www.legis.state.ga.us/legis/2003_04/fulltext/hb43.htm

Income Tax

State and Local Tax Revision Act of 2003 - House Bill 43 (O.C.G.A. §§ 48-1-2, 48-2-32, 48-7-27, 48-7-40.16, 48-7-40.17, 48-7-40.24, 48-7-40.25, and 48-7-103) The income tax provisions of this bill are as follows:

Section 2 – Annual Update Provision. The amendment to O.C.G.A. § 48-1-2 is the annual update to follow the IRC as it exists on January 1, 2003. This update includes all applicable provisions of Federal tax legislation signed into law during 2002 (as they relate to the computation of Federal adjusted gross income and Federal taxable income), except it specifically excludes I.R.C. Section 168(k) (30% bonus depreciation) and Section 1400L (tax benefits for the New York Liberty Zone) passed in 2002 by the Federal Government. This section of the bill became law upon its approval by the Governor on June 4, 2003 and is applicable to taxable years beginning on or after January 1, 2003.

Section 3 – Remittance of Withholding Taxes via Electronic Funds Transfer. The amendment to O.C.G.A. § 48-7-32 requires employers who withhold taxes in excess of \$50,000 for the lookback period to remit the taxes required to be withheld via electronic funds transfer in a similar fashion as Federal requirements. Pursuant to Section 9 of this bill, the “lookback period” for each calendar year is defined as the 12-month period that ended the preceding June

30. This section of the bill requires the addition of a third type of withholding tax schedule termed semi-weekly. Semi-weekly payers are required to remit withholding taxes via electronic funds transfer depending upon the day of the week the payday occurs. If the pay day occurs on Wednesday, Thursday, or Friday the employer must remit the taxes required to be withheld via electronic funds transfer on the following Wednesday. If the pay day occurs on Saturday, Sunday, Monday, or Tuesday the employer must remit the taxes required to be withheld via electronic funds transfer on the following Friday. A “one-day rule” has also been added to the withholding tax remittance requirements. Once an employer’s taxes required to be withheld exceed \$100,000 for the payday, the taxes must be remitted via electronic funds transfer the following banking day. This section of the bill became law upon its approval by the Governor on June 4, 2003 and is applicable to all calendar quarters beginning on or after April 1, 2004

Section 4 – Increase in Retirement Exclusion. This section of the bill increases the retirement exclusion currently allowed pursuant to O.C.G.A. § 48-7-27(a)(5)(A). For taxable years beginning on or after January 1, 2006 and prior to January 1, 2007 the retirement exclusion increases to \$25,000. For taxable years beginning on or after January 1, 2007 and prior to January 1, 2008, the retirement exclusion increases to \$30,000 and increases to \$35,000 for taxable years beginning on or after January 1, 2008. This section of the bill was approved by the Governor on June 4, 2003 and becomes effective January 1, 2006

Section 5 – Exclusion from Income for Combat Zone Pay. This section of the bill excludes income received by a member of the National Guard or any reserve component of the armed services stationed in a combat zone pursuant to military orders. Currently the Internal Revenue Code excludes income earned by enlisted members and warrant officers of the military stationed in a combat zone from gross income. The income of commissioned officers is excluded up to the “maximum enlisted amount”. Consequently this income is excluded from the calculation of Georgia taxable income and is not taxed by the State of Georgia. Therefore this bill is only applicable to and provides relief only to commissioned officers stationed in a combat zone. This section of the bill became law upon its approval by the Governor on June 4, 2003 and is applicable to all taxable years beginning on or after January 1, 2003.

Section 6 – Low Emission Vehicle Credit. This bill adjusts the amount of the low-emission and zero-emission vehicle tax credits as follows:

1. Previously a low-emission vehicle was allowed a credit of \$2,500. Now a credit of the lesser of 10% of the cost of the vehicle or \$2,500 is allowed.
2. Previously a zero-emission vehicle was allowed a credit of \$5,000. Now a credit of the lesser of 20% of the cost of the vehicle or \$5,000 is allowed.
3. Previously a credit up to \$2,500 was allowed for the conversion of a vehicle. Now the credit allowed is 10% of the cost of conversion, not to exceed \$2,500 per converted vehicle.
4. Previously a business enterprise was eligible for a credit of \$2,500 for the purchase of an electric vehicle charger. Now the credit allowed is the lesser of 10% of the cost of the charger or \$2,500.

This section of the bill became law upon its approval by the Governor on June 4, 2003 and is applicable to all taxable years beginning on or after January 1, 2003.

Section 7 – Headquarters Credit. This bill lowers the criteria to qualify for Georgia’s Headquarters Tax Credit. It changes the required number of headquarters employees from 100 to 50. The bill allows the counting of not only the headquarters employees of the taxpayer, but also counts the headquarters employees of the taxpayers’ subsidiaries. The credit is \$2,500 per job or \$5,000 per job if the average pay is 200% above the county average wage. The credit is first used to offset any income tax liability. The excess credit can be used to offset employee withholding taxes. Unused tax credits have a 10-year carry forward. This section of the bill became law upon its approval by the Governor on June 4, 2003 and is applicable to taxable years beginning on or after January 1, 2003.

Section 8 - Job Tax Withholding Tax Credits. This section enacts new Georgia Code Sections 48-7-40.24 and 48-7-40.25. Each code section provides a credit for manufactures who meet the requirements.

Georgia Code Section 48-7-40.24 provides a new jobs credit. In order to qualify, \$450 million in qualified investment property must be purchased for the project. The manufacturer must also create at a minimum, 1,800 new jobs within a six-year period; and can receive credit for up to a maximum of 3,300 jobs. After an affirmative review of their application by a panel, the manufacturer is rewarded with the new job tax credit. The credit is \$5,250 per job created. There is a 10-year carry forward of any unused tax credit.

Georgia Code Section 48-7-40.25 provides an incentive for a manufacturer who has operated a manufacturing facility in this state for at least 3 years and who spends \$800 million on a new manufacturing facility in this state. There is also the requirement that the number of full-time employees equal or exceed 1,800. However, these do not have to be new jobs to Georgia. Again, an application is filed which a panel must approve. The benefit awarded to a manufacturer is a credit against taxes equal to 6 percent of the cost of all qualified investment property purchased or acquired. The total credit allowed is limited to \$50 million. The credit offsets any income tax and any excess is allowed as a credit to offset withholding taxes. There is a 15-year carry forward of ny unused tax credit.

This section of the bill became law upon its approval by the Governor on June 4, 2003 and is applicable to taxable years beginning on or after January 1, 2003.

Section 9 – Change in Threshold for Withholding Taxes. This section of the bill adjusts the threshold for employers who remit withholding taxes on a monthly basis. Employers who are required to withhold tax equal to \$50,000 or less for the lookback period are required to file and remit taxes on the 15th day of the following month. This section further reiterates the semi-weekly requirement for employers who are required to withhold more than \$50,000 for the lookback period and the one-day rule as stated in section 3 of this bill. The “lookback period” for each calendar year is defined as the 12-month period that ended the preceding June 30. No changes were made to the filing and remittance requirements of employers who withhold \$200 or less per quarter. This section of the bill became law upon its approval by the Governor on June 4, 2003 and is applicable to all calendar quarters beginning on or after April 1, 2004.

House Bill 43 can be viewed by clicking on the following link
http://www.legis.state.ga.us/legis/2003_04/fulltext/hb43.htm

Military Income Earned in a Combat Zone – House Bill 383 (O.C.G.A. § 48-7-27) This bill contains identical verbiage as reflected in section 5 of House Bill 43. Both bills exclude income received by a member of the National Guard or any reserve component of the armed services stationed in a combat zone pursuant to military orders from Georgia taxable income. Currently the Internal Revenue Code excludes income earned by enlisted members and warrant officers of the military stationed in a combat zone from gross income. The income of commissioned officers is excluded up to the “maximum enlisted amount”. Consequently this income is excluded from the calculation of Georgia taxable income and is not taxed by the State of Georgia. Therefore this bill is only applicable to and provides relief only to commissioned officers stationed in a combat zone. This bill became law upon its approval by the Governor on May 30, 2003 and is applicable to all taxable years beginning on or after January 1, 2003.

House Bill 383 can be viewed by clicking on the following link
http://www.legis.state.ga.us/legis/2003_04/fulltext/hb383.htm

Underpayment of Estimated Tax Penalty – House Bill 468 (O.C.G.A. § 48-7-120) This bill changes the computation of the penalty for the underpayment of estimated tax so that it more closely follows the Federal computation. Previously, if the taxpayer did not meet one of the exceptions to the penalty, the penalty would be computed based on 70% of the current year’s liability even if 100% of the preceding year’s liability was a lower amount. Now, as long as the preceding taxable year was 12 months and a tax return was filed for the preceding year, the penalty is computed based on the lower of 70% of the current year’s liability or 100% of the preceding year’s liability. This bill became law upon its approval by the Governor on June 2, 2003 and is applicable to taxable years beginning on or after January 1, 2003.

House Bill 468 can be viewed by clicking on the following link
http://www.legis.state.ga.us/legis/2003_04/fulltext/hb468.htm

Claim for Refund Filing Date – House Bill 469 (O.C.G.A. § 48-2-35) This bill extends the time to file a claim for refund for income taxes. Previously, the time to file a claim for refund was three years from the date of the payment of the income taxes. Administratively, payments received before the due date of the return (excluding extensions) were considered as being paid on the due date of the return (excluding extensions). Now, the time to file a claim for refund for income taxes is three years from the later of the date of the payment of the tax or the due date of the income tax return (including extensions which have been granted). This bill became law upon its approval by the Governor on June 2, 2003 and is applicable to taxable years beginning on or after January 1, 2003. Accordingly, claims for refunds for taxes paid for taxable years 2002 and prior will continue to be subject to the prior laws.

House Bill 469 can be viewed by clicking on the following link
http://www.legis.state.ga.us/legis/2003_04/fulltext/hb469.htm

Claim for Refund – House Bill 504 (O.C.G.A. § 48-2-35) The income tax portion of this bill prohibits the filing of a refund claim on behalf of a class of taxpayers who are similarly situated or a lawsuit with respect to a refund claim on behalf of a class of taxpayers who are similarly situated. This bill became effective upon its approval by the Governor on May 30, 2003 and applies to all claims for refunds filed or actions for refunds brought pursuant to Code Section 48-2-35 before, on, or after such effective date.

House Bill 504 can be viewed by clicking on the following link
http://www.legis.state.ga.us/legis/2003_04/fulltext/hb504.htm

Housing Tax Credits - House Bill 537 (O.C.G.A. § 33-1-18) This bill corrects a typographical error in previous legislation which added insurance companies to those eligible to use the Georgia low income housing tax credit. The previous language indicates that the credits were useful to offset “income tax” when in reality the insurance premium tax was what it offset. This change corrects this. This bill became law upon its approval by the Governor on May 30, 2003.

House Bill 537 can be viewed by clicking on the following link
http://www.legis.state.ga.us/legis/2003_04/fulltext/hb537.htm

Augmentation of Commissioner’s Powers – House Bill 556 (O.C.G.A. §§ 48-3-29, 48-2-54.1, 48-7-56, and 48-7-80) This bill provides the commissioner with the authority to publish in the media or on the Internet for public access any or all information with respect to executions issued for the collection of any tax, fee, license, penalty, interest, or collection costs due the state which are recorded on the public records of any county. Section 2 of this bill grants the commissioner with the authority to charge the taxpayer’s account with the costs or fees charged to the State by the United States Treasury Financial Management System for offsetting Federal refund claims against any tax liability due to the State by the taxpayer. Additionally, sections 3 and 4 of this bill allow individual taxpayers that file returns electronically to file and remit any tax due on or before the due date allowed under the Internal Revenue Code of 1986 as it existed on or after January 1, 2003. Currently regardless of the mode of filing the return, the return and any tax due is required to be filed on or before the 15th day of the month following the close of the taxpayer’s year. This bill became law upon its approval by the Governor on June 2, 2003.

House Bill 556 can be viewed by clicking on the following link
http://www.legis.state.ga.us/legis/2003_04/fulltext/hb556.htm

Georgia Green Space Trust Fund – Senate Bill 247 (O.C.G.A. § 36-22-4) This bill allows contributions to the Georgia Green Space Trust Fund on an income tax return by donating all or any part of any tax refund due, by authorizing a reduction in the refund check otherwise payable, or by contributing any amount over and above any amount of tax owed by adding that amount to the taxpayer's payment. This bill is effective for income tax return years beginning on or after January 1, 2004 and was approved by the Governor on May 30, 2003.

Senate Bill 247 can be viewed by clicking on the following link
http://www.legis.state.ga.us/legis/2003_04/fulltext/sb247.htm

Property Tax

H.B. 290 – Riverside or Streamside Land - Effective Jan. 1, 2004. Bill amends: O.C.G.A. 48-5-7.4. Bill extends the current use assessment for ad valorem taxation for bona fide conservation use property to undeveloped riverside or streamside lands within buffer zones established by law or local ordinance and within which land disturbing activity is prohibited.

Bill further amends O.C.G.A. 48-8-6 (b) which limits any specific excise tax on prepared food and beverages not to exceed two percent.

House Bill 290 can be viewed by clicking on the following link
http://www.legis.state.ga.us/legis/2003_04/fulltext/hb290.htm

H.B. 413 – Storm Water Wetlands - Effective Jan. 1, 2004. Bill amends O.C.G.A.48-5-7.4. Bill extends preferential assessment of bona fide conservation use treatment to property which has been certified by the Department of Natural Resources as land constructed storm-water wetlands of the free-water surface.

House Bill 413 can be viewed by clicking on the following link
http://www.legis.state.ga.us/legis/2003_04/fulltext/hb413.htm

H.B. 506 – Manufactured Homes/ Mobile Homes - Effective May 31, 2003. Bill Amends O.C.G.A. 8-2-180-191. Bill provides a specific procedure for manufactured housing, which is normally considered personal property unless it is or is to be permanently affixed to land, to become real property and vice versa. It also specifies that a manufactured home that has been classified as real property under this section shall not be a part of the mobile home class of property and instead shall be classified as real property on the tax digest.

House Bill 506 can be viewed by clicking on the following link
http://www.legis.state.ga.us/legis/2003_04/fulltext/hb506.htm

H.B. 527 – Farm Equipment in Inventory for Resale - Effective Jan. 1, 2004. Bill amends O.C.G.A. 48-5-504. Bill declares that self- propelled farm equipment held in inventory by a dealer for sale or resale to be a separate class of property not subject to ad valorem tax.

House Bill 527 can be viewed by clicking on the following link
http://www.legis.state.ga.us/legis/2003_04/fulltext/hb527.htm

H.B 531 – Environmentally Contaminated Property - Effect May14, 2003. Bill amends O.C.G.A. 48-5-2 and 48-5-7.6. Bill provides for the preferential assessment of environmental and contaminated property by freezing the value for 10 years as an incentive for developers to cleanup and return the property to the tax rolls. This bill also allows an owner to recoup against taxes due certain eligible brownfield costs.

House Bill 531 can be viewed by clicking on the following link
http://www.legis.state.ga.us/legis/2003_04/fulltext/hb531.htm

H.B. 748 – Enterprise Zones – Effective July 1, 2003. Bill amends O.C.G.A. 36-88-3. Bill extends special tax treatment for property declared an enterprise zone to retail businesses and includes property set aside primarily for day-care activities.

House Bill 748 can be viewed by clicking on the following link
http://www.legis.state.ga.us/legis/2003_04/fulltext/hb748.htm

S.B. 97 – Real Estate Transfer Tax - Effective July 1, 2003. Bill amends O.C.G.A. 48-6-2. Bill takes the responsibilities previously handled by the Revenue Commissioner regarding the collecting and distributing of the real estate transfer tax and gives it to the Clerk of Superior Court. Bill allows internal real estate transfers to be exempt from the real estate transfer tax. This bill further permits the real estate transfer tax to be made on a form or in electronic format prescribed by the Revenue Commissioner. The determinations as to whether the real estate transfer tax is due and/or payable still remains with the Department of Revenue.

Senate Bill 97 can be viewed by clicking on the following link
http://www.legis.state.ga.us/legis/2003_04/fulltext/sb97.htm

S.B. 277 – Conservation Use Covenant Property - Effective July 1, 2003. Bill amends O.C.G.A. 45-5-7.4. Bill allows conservation use covenant property to be renewed in the ninth year of the covenant for an additional 10 years to prevent any lapse in agreement.

Senate Bill 277 can be viewed by clicking on the following link
http://www.legis.state.ga.us/legis/2003_04/fulltext/sb277.htm

Sales, Use, and Motor Fuel Tax

H. B. 43 (O.C.G.A. §§ 48-8-2, 48-8-49, 48-8-50, 48-9-14, 48-9-16, and 48-8-3

The sales and use and motor fuel tax provisions of this bill are as follows:

Section 10 defines the four percent Prepaid State Tax as being the three percent second motor fuel tax and the one percent state sales tax on motor fuels. That it shall not include any of the local sales taxes on motor fuels

Section 11 – Prescription Contact Lenses - Effective June 4, 2003. This section of the bill amends OCGA 48-8-3(47) to provide for a sales tax exemption on free samples of prescription contact lenses not intended for resale distributed by the manufacturer to licensed dispensers.

Section 12 – Sales Tax Holiday; Aquarium Construction - Effective June 4, 2003. This section of the bill incorporates the provisions of HB 542 and amends OCGA 48-8-3(75) to provide for a sales tax holiday from July 31 through August 3, 2003 for clothes, computers and accessories, and school supplies.

The section also provides for a new exemption on tangible personal property that is sold to be or is used in the construction of an aquarium owned or operated by an organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code. The exemption for the aquarium is effective June 4, 2003 until Jan. 1, 2007.

Section 14 This section eliminates the “estimated sales tax” requirement from retail dealers who primarily sell motor fuel and remit the Prepaid State Tax to their wholesale motor fuel distributor.

Section 15 This section removes the three percent vendors’ compensation allowance from the Prepaid State Tax.

Section 16 This section defines the Prepaid State Tax in the motor fuel law (OCGA 48-9-14). It imposes the collection and payment of the prepaid state tax on the distributor. It authorizes the Revenue Commissioner to calculate on a semiannual basis the rate of prepaid tax at four percent of the state-wide average retail price by motor fuel type as compiled by the Energy Information Agency of the United States Department of Energy, the Oil Pricing Information Service, or a similar reliable published index excluding state and local taxes. If the retail price changes by 25 percent or more within a semiannual period, the Commissioner shall issue a revised prepaid state tax rate for the remainder of that period. Finally, this section establishes that the motor fuel distributor shall collect the tax at the same time the 7.5 cents per gallon tax (1st motor fuel tax) is collected.

Section 17 This section establishes the penalties and interest for the Prepaid State Tax in the motor fuel law.

House Bill 43 can be viewed by clicking on the following link
http://www.legis.state.ga.us/legis/2003_04/fulltext/hb43.htm

H. B. 148 - Liquid Petroleum – Effective July 1, 2003. This bill amends O.C.G.A. §48-8-3. Bill provides a new sales tax exemption on the sales of liquid petroleum or other fuels used in structures in which nursery products are raised for resale.

House Bill 148 can be viewed by clicking on the following link
http://www.legis.state.ga.us/legis/2003_04/fulltext/hb148.htm

H.B. 189 - Carpet Samples – Effective May 30, 2003. This bill amends O.C.G.A. § 48-8-39 to define the fair market value of carpet samples when these products are given away.

House Bill 189 can be viewed by clicking on the following link
http://www.legis.state.ga.us/legis/2003_04/fulltext/hb189.htm

House Resolution 261 This resolution establishes a House Study Committee on Sales Tax Simplification to review the issues related to the national Streamlined Sales Tax Project. The Committee is to recommend any action or legislation that is deemed necessary for Georgia to become a participate or implementing state in the project.

House Resolution 261 can be viewed by clicking on the following link
http://www.legis.state.ga.us/legis/2003_04/fulltext/hr261.htm