

2004 Legislative Analysis For Enacted Legislation

Income Tax

Setoff of Department of Corrections Debt – House Bill 677 (O.C.G.A. §§ 48-7-161 and 48-7-163) This bill adds the Georgia Department of Corrections to the list of claimant agencies that may receive an individual taxpayer's state income tax refund to offset a debt for probation fees or debt for restitution ordered by a court. Debts greater than \$25.00 may be submitted by a claimant agency to the Department of Revenue for collection through setoff of an individual income tax refund under O.C.G.A. § 48-7-161. Previously the Department of Human Resources, Georgia Student Finance Authority, Georgia Higher Education Assistance Corporation, State Medical Education Board and the Department of Labor were the only state agencies statutorily allowed to offset debt with Georgia income tax refunds. The Governor approved this bill on May 5, 2004. The bill becomes effective July 1, 2004.

House Bill 677 can be viewed at the following link

http://www.legis.state.ga.us/legis/2003_04/versions/hb677_HB_677_APP_5.htm

Job Tax Credit for Less Developed Areas – House Bill 984 (O.C.G.A. § 48-7-40.1) This bill changes the current law on Job Tax Credit for less developed areas by: (1) adding any area comprised of one or more census tracts adjacent to a federal military installation where pervasive poverty is evidenced by a 15 percent poverty rate or greater; (2) adding any area comprised of two or more contiguous census block groups with a poverty rate of 20 percent or greater, which is included within a state enterprise zone, where a redevelopment plan has been adopted, and displays pervasive poverty, underdevelopment, general distress and blight; (3) allowing any businesses located in the area described in (2) above to claim the job tax credit without being a defined business enterprise; (4) removing the requirement that 30 percent of new full-time jobs be held by residents of the less developed area for which the credit is sought; and (5) allowing the credit to be used against 100 percent of the current income tax liability instead of 50 percent. This bill became law upon its approval by the Governor on May 17, 2004 and is applicable to taxable years beginning on or after January 1, 2004.

House Bill 984 can be viewed at the following link

http://www.legis.state.ga.us/legis/2003_04/versions/hb984_HB_984_AP_14.htm

Deduction for Expenses Incurred Related to Organ Donation – House Bill 1410 (O.C.G.A. § 48-7-27) This bill provides for an exclusion from income for certain expenses incurred related to organ donation. Only unreimbursed expenses related to travel, lodging and lost wages incurred as a direct result of the organ donation may be excluded and the total exclusion may not exceed \$10,000. In order to qualify for the exclusion the taxpayer, while living must have donated all or part of their kidney, liver, pancreas, intestine, lung, or bone marrow during the tax year the exclusion is claimed. The Governor approved this bill on April 29, 2004. This bill is effective for all taxable years beginning on or after January 1, 2005.

House Bill 1410 can be viewed at the following link

http://www.legis.state.ga.us/legis/2003_04/versions/hb1410_HB_1410_APP_5.htm

State and Local Tax Revision Act of 2004 - House Bill 1437 (O.C.G.A. §§ 48-1-2, 48-2-32, 48-7-57.1, 48-7-86, 48-7A-3, 50-18-72) 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, 2004. This update includes all applicable provisions of Federal tax legislation signed into law during 2003 (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% and 50% bonus depreciation) and Section 1400L (tax benefits for the New York Liberty Zone). Further, it treats I.R.C. Section 179(b) as it was in effect before enactment of the Jobs and Growth Tax Relief Reconciliation Act of 2003. This means Georgia continues to use a \$25,000 limit for the Section 179 deduction and a \$200,000 limit for the phase out of the Section 179 deduction. This section of the bill became law upon its approval by the Governor on May 13, 2004 and is applicable to taxable years beginning on or after January 1, 2004.

Section 3 – Bad Check Fee. The amendment to O.C.G.A. § 48-2-32 modifies the bad check fee the Department is allowed to charge. The minimum charge is now \$25 instead of the lesser of the amount of the check or \$15. This section of the bill became law upon its approval by the Governor on May 13, 2004.

Section 4 – Penalty for Failure to Remit Withholding Tax. This section of the bill amends O.C.G.A. § 48-2-32 allowing the imposition of a penalty equal to 10 percent of the tax due if payment was required to be made in immediately available funds such as via electronic transfer and was not. This penalty is in addition to all other penalties provided by law. This section of the bill became law upon its approval by the Governor on May 13, 2004.

Section 5 – Increase in Frivolous Return Penalty. The amendment to O.C.G.A. § 48-7-57.1 increases the penalty to \$1,000. The penalty is imposed on an individual who files a return that reflects a frivolous position or a desire to delay or impede the administration of state income taxes. This section of the bill became law upon its approval by the Governor on May 13, 2004.

Section 6 – Innocent Spouse Provision. This section amends O.C.G.A. § 48-7-86 related to individuals who were granted relief under Section 6015 of the Internal Revenue Code. This bill provides relief from liability for tax, interest and penalty to the extent the individual has been relieved of such liability for federal income taxes pursuant to Section 6015 of the Internal Revenue Code. This section of the bill became law upon its approval by the Governor on May 13, 2004.

Section 7 – Low Income Credit. This section amends O.C.G.A. § 48-7A-3 related to the low income credit. This bill prohibits individuals incarcerated within Georgia for extended periods of time from filing an individual income tax return to claim and receive a refundable low income credit. This section of the bill became law upon its approval by the Governor on May 13, 2004.

Section 9 – Open Records Act. This section amends O.C.G.A. 50-18-72 to include employees of the Department of Revenue in the list of state employees already protected from disclosing confidential information to the public. This section of the bill became law upon its approval by the Governor on May 13, 2004.

House Bill 1437 can be viewed at the following link

http://www.legis.state.ga.us/legis/2003_04/versions/hb1437_HB_1437_APP_5.htm

False Claims of Independent Contractor Status – House Bill 1444 (O.C.G.A. § 48-7-127) This bill makes it unlawful for any person knowingly to coerce, induce, or threaten an individual falsely to declare himself or herself to be an independent contractor in order to avoid or evade the withholding or payment of tax. Individuals who violate this law in connection with contracts with the State or any political subdivision thereof, upon conviction are subject to a fine equal to the amount of tax owed for the first offense. Upon conviction of the second offense, the individual is subject to a fine equal to two times the amount of tax owed. Upon conviction of the third and subsequent offenses, the individual is subject to a fine equal to four times the tax owed. The Governor approved this bill on May 13, 2004. This bill is effective from July 1, 2004 through July 1, 2014.

House Bill 1444 can be viewed at the following link

http://www.legis.state.ga.us/legis/2003_04/versions/hb1444_HB_1444_AP_4.htm

Confidentiality – House Bill 1461 (O.C.G.A. § 48-2-15.1) This provides that the Department may disclose confidential information if the taxpayer grants express written authorization. This bill became law upon its approval by the Governor on May 13, 2004.

House Bill 1461 can be viewed at the following link

http://www.legis.state.ga.us/legis/2003_04/versions/hb1461_HB_1461_APP_5.htm

Additional Job Tax credit for Joint Authorities – Senate Bill 444 (O.C.G.A. § 36-62-5.1) This bill amends the statute to allow counties to belong to more than one joint authority. This bill also clarifies that the number of joint authorities a county belongs to will not increase the additional job tax credit amount by more than \$500 for each new full-time employee. This bill became law upon its approval by the Governor on May 17, 2004.

Senate Bill 444 can be viewed at the following link

http://www.legis.state.ga.us/legis/2003_04/versions/sb444_AP_6.htm

False Claims of Independent Contractor Status – Senate Bill 491 (O.C.G.A. § 48-7-127) This bill is identical to [House Bill 1444](#).

Senate Bill 491 can be viewed at the following link

http://www.legis.state.ga.us/legis/2003_04/versions/sb491_AP_6.htm

Sales and Use Tax

House Bill 709 [O.C.G.A. § §48-8-6, 48-8-96, 48-8-200 – 48-8-212, 48-8-110 – 48-8-121, 48-8-122]. This bill affected several statute changes. The following are the changes to Sales and Use Tax created through this bill:

- Allows the Local Option Sales Tax rate to increase to 2% for consolidated governments that have frozen property tax values for the purposes of ad valorem taxes. The voters in a county must approve this rate increase. Currently, only Muscogee – Columbus Consolidated Government will be eligible to call the vote for the rate increase. The 1% increase is not subject to the 2% local county cap and will not be subject to sales of room accommodations or motor vehicles.
- Creates a 1% Municipal Special Purpose Sales Tax for the City of Atlanta to fund sewer projects and bond indebtedness. The City Council could call a referendum to impose this tax only within the city if the county does not call for a countywide Special Purpose Tax to provide in part funding for City of Atlanta sewer projects. The municipal special purpose sales tax would be for a maximum period of four years or the amount of the sewer and water projects, whichever occurs first. The voters are allowed to continue the tax for two additional periods. This tax is not subject to the 2% local county cap and will not be subject to sales of motor vehicles.
- Amends the provisions of Special Purpose Tax (SPLOST) to include road, street, and bridge projects as a capital outlay projects, simplifies the ballot language, and defines a qualified municipality for the purposes of entering into an intergovernmental agreement to share tax proceeds.
- Amends the provisions for Special Purpose and Municipal Sales Tax to require the annual audit findings to be published in the county newspaper.

The sales and use tax provisions of this bill will be effective July 1, 2004. The Department will be drafting a municipal sales and use tax regulation and establishing an 8% bracket for the collection of this tax.

House Bill 709 can be viewed at the following link

http://www.legis.state.ga.us/legis/2003_04/fulltext/hb709.htm

House Bill 1184, [O.C.G.A. § 48-8-3(75)]. This bill amends the sales tax exemption to provide for a 4-day Sales Tax Holiday (July 29 – August 1, 2004) that exempts certain clothing with a sales price of \$100 or less per item, the single purchase of computers and computer related accessories that do not exceed \$1,500, and school supplies where the sales price does not exceed \$20 per item. The exemption does not apply to rentals, sales in a theme park, entertainment complex, public lodging establishment, restaurants, airports or to purchases for a trade, business or for resale. The Sales Tax Holiday Regulation (Revenue Rule 560-12-2-.110) will be amended for the 2004 Sales Tax Holiday. Additional details are available on the DOR website (www.gatax.org). This bill will be effective July 1, 2004.

House Bill 1184 can be viewed at the following link
http://www.legis.state.ga.us/legis/2003_04/fulltext/hb1184.htm

House Bill 1238, [O.C.G.A. §48-8-3(58)] This bill amends the sales tax exemption on overhead materials used in certain federal Defense and NASA contracts to extend the sunset provision to January 1, 2007. Revenue Rule 560-12-2-.106 entitled The United States Government Defense Contractors will be amended to incorporate the change. This bill will be effective July 1, 2004.

House Bill 1238 can be viewed at the following link
http://www.legis.state.ga.us/legis/2003_04/fulltext/hb1238.htm

House Bill 1239, [O.C.G.A. § 48-2-35.1]. This bill creates a new provision under refunds to bar interest on refunds when a purchaser fails to apply for or use a Certificate or Letter of Exemption issued by the Commissioner. This will apply to any exemption that requires an application to be filed and a determination to be issued by the Commissioner. A new Revenue Rule will be proposed to explain sales and use tax refund procedures and this new provision. The effective date of the bill is July 1, 2004 and shall apply to any refund claim filed on or after that date.

House Bill 1239 can be viewed at the following link
http://www.legis.state.ga.us/legis/2003_04/fulltext/hb1239.htm

House Bill 1409, [O.C.G.A. §48-8-3(78)]. This bill creates a new sales and use tax exemption to ice used in chilling poultry or vegetables during processing or shipment. The Revenue Rule 560-12-2-.52 entitled Ice will be amended to incorporate the change. This bill will be effective July 1, 2004.

House Bill 1409 can be viewed at the following link
http://www.legis.state.ga.us/legis/2003_04/fulltext/hb1409.htm

House Bill 1437, [O.C.G.A. §48-8-161 – 48-8-166]. This bill creates a new Article to enable Georgia to participate in the Streamlined Sales and Use Tax Agreement. This allows the State to take an active role in the decision making process of developing uniform definitions and procedures that will make it easy for out of state retailers to collect our tax. This bill will be effective July 1, 2004.

House Bill 1437 can be viewed at the following link
http://www.legis.state.ga.us/legis/2003_04/fulltext/hb1437.htm

House Bill 1457, [O.C.G.A. § 50-5-82]. This bill creates a new code section under procurement to require any company bidding on a State Agency contract that exceeds \$100,000 per year and their affiliates to register, collect and remit Georgia sales and use tax on all their retail sales occurring in Georgia. This provision will be coordinated through Department of Administrative Services and Department of Revenue to verify all sales tax registrations. The bill is effective with the approval of the Governor or upon becoming law without such approval.

House Bill 1457 can be viewed at the following link
http://www.legis.state.ga.us/legis/2003_04/fulltext/hb1457.htm

House Bill 1459,[O.C.G.A. § 48-8-50, 48-9-3, 48-9-5, 48-9-8 and 48-9-10]. This provides for a new vendor's compensation of ½ % of the prepaid state tax on motor fuels and increases the vendor's compensation on the first motor fuel tax (.075 cents per gal.) from 1% of the first 5 ½ cents to 1% of the full 7 ½ cents per gallon. It also eliminates User Distributor (UD) licenses of fuel oils (clear diesel, dyed diesel and clear kerosene) since these users can purchase dyed diesel fuel tax free without a license, and bars interest on refunds for motor fuel taxes of clear diesel fuel oils used for non-highway purposes. This bill will be effective July 1, 2004.

House Bill 1459 can be viewed at the following link

http://www.legis.state.ga.us/legis/2003_04/fulltext/hb1459.htm

House Bill 1511, [O.C.G.A. § 48-8-3]. This bill creates a new sales and use tax exemption for materials used in direct connection with the construction of a new symphony hall facility costing \$200 million or more that is owned and operated by certain non-profit organizations. A new Revenue Rule will be proposed to explain the procedures and application requirements for this new provision. This exemption will be effective July 1, 2004 and sunsets on December 31, 2008.

House Bill 1511 can be viewed at the following link

http://www.legis.state.ga.us/legis/2003_04/fulltext/hb1511.htm

House Bill 1528, [O.C.G.A. § 48-8-3]. This bill creates a new sales and use tax exemption for any tangible personal property sold to or used in the construction of an eligible corporate attraction that is dedicated to the history and products of a corporation. An eligible corporate attraction is any tourist attraction facility costing in excess of \$50 million, containing 60,000 square feet and has a parking lot; which is constructed on or after the effective date of the exemption. A new Revenue Rule will be proposed to explain the procedures and application requirements for this new provision. This exemption contains a sunset provision of January 1, 2007.

House Bill 1528 can be viewed at the following link

http://www.legis.state.ga.us/legis/2003_04/fulltext/hb1528.htm

House Bill 1744,[O.C.G.A. § 48-8-3(41)]. This bill amends the sales and use tax exemption for orphanages to replace orphan's homes with any nonprofit child caring institute, child placing agency or maternity homes as defined by the Department of Human Resources. It also extends an exemption for sales by such entities. These organizations will be required to be tax exempt under IRC 501(c) (3) and must obtain an exemption letter from the Department of Revenue. The Revenue Rule 560-12-2-.100 Orphan's Homes operated, as Nonprofit Organizations will be amended to incorporate the new provision. This bill will be effective on July 1, 2004.

House Bill 1744 can be viewed at the following link

http://www.legis.state.ga.us/legis/2003_04/fulltext/hb1744.htm

Local Excise Tax

House Bill 1415, [O.C.G.A.§48-13-51]. This bill amends the provisions of the Accommodations Excise Tax to create a 11-member review board headed by the Department of Community Affairs to oversee and hear noncompliance issues reported in the annual audit of local governments imposing such tax and consumer complaints. The review board will review these issues during the months of September through December and give local authorities 90 days to correct any noncompliance. If the local authority fails to correct the noncompliant issue, the Revenue Commissioner is to initiate corrective action up to and including termination of the accommodations excise tax. This bill will be effective July 1, 2004.

House Bill 1415 can be viewed at the following link
http://www.legis.state.ga.us/legis/2003_04/fulltext/hb1415.htm