



2011

LEGISLATIVE ANALYSIS FOR ENACTED LEGISLATION

ADMINISTRATIVE

HB 87 (O.C.G.A. §50-36-2) A portion of this bill provides for a definition of a “Secure and Verifiable Identity Document.” The attorney general shall provide a list of all acceptable secure and verifiable documents that may be presented as identification. As of January 1, 2012, agencies may only accept forms of identification provided for on the list.

This bill became effective July 1, 2011.

House Bill 87 can be viewed at the following link:

<http://www.legis.ga.gov/Legislation/20112012/116631.pdf>

ALCOHOL

SB 10 (O.C.G.A. § 3-3-7) This bill provides for the local authorization and regulation of sales of alcoholic beverages on Sunday after approval by the voters in a local referendum.

This bill became effective upon its approval by the Governor on April 28, 2011.

Senate Bill 10 can be viewed at the following link:

<http://www.legis.ga.gov/Legislation/20112012/116243.pdf>

SB 121 (O.C.G.A. § 3-8-2) This bill extends sales of alcoholic beverages to distilled spirits and wine on public golf courses and golf courses owned by the Department of Natural Resources; currently only sales of malt beverages are permitted.

This bill became effective upon its approval by the Governor on May 12, 2011.

Senate Bill 121 can be viewed at the following link:

<http://www.legis.ga.gov/Legislation/20112012/116838.pdf>

INCOME TAX

HB 117 (O.C.G.A. § 48-7-128) The income tax portion of this bill (see Section 2-1) provides, with respect to the nonresident withholding on the sale or transfer of real estate, that the person or entity identified as the seller on the settlement statement shall be considered the seller for all purposes regarding Code Section 48-7-128.

This bill became effective upon its approval by the Governor on May 13, 2011.

House Bill 117 can be viewed at the following link:

<http://www.legis.ga.gov/Legislation/20112012/116733.pdf>

HB 168 (O.C.G.A. § 48-1-2) The income tax portion of this bill (see Section 1), for taxable years beginning on or after January 1, 2010, with exceptions discussed below, adopts the provisions of all federal acts (as they relate to the computation of Federal Adjusted Gross Income (AGI) or federal taxable income for non-individuals) that were enacted on or before January 1, 2011. For 2010 and 2011, the I.R.C. Section 179 deduction is now \$250,000 and the related phase out is \$800,000. Georgia has not adopted the Section 179 deduction for certain real property.

Exceptions

Georgia has not adopted I.R.C. Section 168(k) (the 30%, 50% and 100% bonus depreciation rules) except for I.R.C. Section 168(k)(2)(A)(i) (the definition of qualified property), I.R.C. Section 168(k)(2)(D)(i) (exceptions to the definition of qualified property), and I.R.C. Section 168(k)(2)(E) (special rules for qualified property) and Georgia has not adopted I.R.C. Section 199 (federal deduction for income attributable to domestic production activities).

Georgia has also not adopted the following:

- The exclusion of \$2,400 of unemployment income for 2009, I.R.C. Section 85(c).
- Additional itemized deduction for the sales tax on the purchase of a new vehicle in 2009, I.R.C. Sections 164(a)(6) and 164(b)(6). Please note: Georgia also does not allow the increased standard deduction for sales tax on the purchase of a new vehicle in 2009 because Georgia has its own standard deduction.
- The election to increase the normal two year net operating loss carryback to 3, 4, or 5 years for tax years 2008 and 2009, I.R.C. Sections 172(b)(1)(H) and 810(b)(4).
- The transition rule that would allow a taxpayer to revoke a prior election to forego the net operating loss carryback period.
- Debt discharge income from reacquisitions of business debt at a discount in 2009 and 2010 which is deferred for up to five years, then included ratably over five years, I.R.C. Section 108(i).
- Modified rules for high yield original issue discount obligations, I.R.C. Sections 163(e)(5)(F) and 163(i)(1).
- New York Liberty Zone Benefits, I.R.C. Section 1400L.
- 50% first year depreciation for post 8/28/2006 Gulf Opportunity Zone property, I.R.C. Section 1400N(d)(1).
- 50% bonus depreciation for most tangible property and computer software bought after May 4, 2007 and placed in service in the Kansas Disaster Area, I.R.C. Section 1400N(d)(1).
- 50% bonus depreciation for “qualified reuse and recycling property”, I.R.C. Section 168(m).
- 50% bonus depreciation in connection with disasters federally declared after 2007, I.R.C. Section 168(n).
- Increased (\$8,000) first-year depreciation limit for passenger automobiles if the passenger automobile is “qualified property,” I.R.C. Section 168(k).
- 15 year straight-line cost recovery period for certain improvements to retail space, I.R.C. Sections 168(e)(3)(E)(ix), 168(e)(8), and 168(b)(3)(I).
- Modified rules relating to the 15 year straight-line cost recovery for qualified restaurant property (allowing buildings to now be included), I.R.C. Section 168(e)(7).
- 5 year depreciation life for most new farming machinery and equipment, I.R.C. Section 168(e)(3)(B)(vii).
- Special rules relating to Gulf Opportunity Zone public utility casualty losses, I.R.C. Section 1400N(j).
- 5 year carryback of NOLs attributable to Gulf Opportunity Zone losses, I.R.C. Section 1400N(k).
- 5 year carryback of NOLs incurred in the Kansas disaster area after May 3, 2007, I.R.C. Section 1400N(k).

- 5 year carryback of certain disaster losses, I.R.C. Sections 172(b)(1)(J) and 172(j).
- The election to deduct public utility property losses attributable to May 4, 2007 Kansas storms and tornadoes in the fifth tax year before the year of the loss, I.R.C. Section 1400N(o).
- Special rules relating to a financial institution being able to use ordinary gain or loss treatment for the sale or exchange of certain preferred stock after Dec. 31, 2007, I.R.C. Section 1221.
- Temporary tax relief provisions relating to the Midwestern disaster area, I.R.C. Sections 1400N(f) and 1400N(k).

The income tax portion of this bill became effective upon its approval by the Governor on April 27, 2011 and is applicable to taxable years beginning on or after January 1, 2010.

House Bill 168 can be viewed at the following link:

<http://www.legis.ga.gov/Legislation/20112012/116259.pdf>

HB 325 (O.C.G.A. §§ 20-2A-1 through 20-2A-7, and 48-7-29.16). This bill makes changes to the Qualified Education Expense Credit. The principal changes are as follows:

- Provides that if a student is deemed an eligible student under Code Section 20-2A-1, he or she shall continue to qualify as such until he or she graduates, reaches the age of 20, or returns to a public school, whichever occurs first.
- Specifies that a student scholarship organization must obligate for scholarships or tuition grants at least 90 percent of its annual revenue received from donations for scholarships or tuition grants.
- Provides that the maximum scholarship amount given by the SSO in any given year shall not exceed the average state and local expenditures per student in fall enrollment in public elementary and secondary education for this state. The Department of Education shall determine and publish such amount annually, no later than January 1.
- Provides that each SSO must have an independent board of directors with at least three members.
- Specifies that the audit conducted by the independent certified public accountant must verify that the SSO obligated for scholarships or tuition grants at least 90 percent of its annual revenue received from donations for scholarships or tuition grants.
- Provides that the report to the Department of Revenue must now also contain the following information:
 - The total number and dollar value of individual contributions and tax credits approved;
 - The total number and dollar value of corporate contributions and tax credits approved;
 - The total number and dollar value of scholarships awarded to eligible students.
- Specifies that DOR shall post on its website the information received by each student scholarship organization.
- Provides that all information or reports provided by SSOs to DOR shall be confidential taxpayer information, governed by Code Sections 48-2-15, 48-7-60, and 48-7-61, whether it relates to the donor or the SSO.
- Specifies that any SSO that fails to comply with any requirements under Chapter 2A shall be given written notice from DOR of such failure to comply by certified mail and shall have 90 days from receipt of such notice to correct all deficiencies. Upon failure to correct all deficiencies within 90 days, such SSO shall:
 - Be immediately removed from the Department of Education (DOE) list provided in Code Section 20-2A-6;
 - Be required to cease all operations as an SSO and transfer all scholarship account funds to a properly operating SSO within 30 calendar days of receipt of notice from DOR of removal from the approved list; and
 - Have all applications for preapproval of tax credits under Code Section 48-7-29.16 rejected by the DOR on or after the date DOE removes the SSO from its list provided under Code Section 20-2A-6.

- Provides that any SSO that:
 - Awards or restricts the award of a scholarship to a specific eligible student at the request of a donor; or
 - Encourages or facilitates taxpayers to engage in actions that are prohibited by law; shall be subject to Code Section 20-2A-7(a)(2).
- Specifies that any officer or director of an SSO found to have actively participated in an SSO's intentional violation of its obligations under Chapter 2A shall be guilty of a misdemeanor.
- Provides that the annual maximum amount (amount of tax credits allowed per tax year) shall be adjusted annually until January 1, 2018, which adjustment may be based on the most recent annual percentage change in the Consumer Price Index for All Urban Consumers, U.S. City Average All Items Index, published by the Bureau of Labor Statistics of the United States Department of Labor, as determined by DOR.
- Specifies that the Department shall provide written notice to the taxpayer and the SSO of the taxpayer's preapproval or denial which shall not require any signed release or notarized approval by the taxpayer.
- Changes the number of days the taxpayer has to make the contribution after receiving preapproval from 30 days to 60 days.
- Provides that the Department shall establish a web-based donation approval process.
- Specifies that the Department shall maintain an ongoing, current list on its website of the amount of tax credits available.
- Provides that the Department shall not take any adverse action against donors to SSOs if the Commissioner preapproved a donation for a tax credit prior to the date the SSO is removed from the DOE list, and all such donations shall remain as preapproved tax credits subject to the donors compliance with Code Section 48-7-29.16(f)(3).

This bill became effective on July 1 and is applicable to taxable years beginning on or after January 1, 2011.

House Bill 325 can be viewed at the following link:

<http://www.legis.ga.gov/Legislation/20112012/116780.pdf>

HB 346 (O.C.G.A. §§ 48-2-15, 48-7-1, 48-7-29.12, 48-7-29.14, 48-7-60)

Sections 1 and 4 amend the Code Sections 48-2-15(e) and 48-7-60(d) provisions that provide that such Code sections shall not be construed to prohibit persons or groups of persons other than employees of the Department from having access to tax information when necessary to carry out the mission and operations of the Department. Any access to such tax information by persons or groups of persons other than employees of the Department shall be pursuant to a written agreement that shall include terms and conditions for the security, maintenance, and confidentiality of such tax information to be disclosed.

These sections of the bill became effective upon their approval by the Governor on May 11, 2011.

Section 2 amends the provisions of Code Section 48-7-1(11)(E) relating to deferred compensation and stock option income received by nonresidents as follows:

- Defines the terms “Deferred compensation” and “nonqualified deferred compensation plan”,
- Provides that for stock options granted and deferred compensation plans established before January 1, 2011, subparagraph (E) shall apply only to the portion of stock option income or deferred compensation income earned on or after January 1, 2011.
- Authorizes the Commissioner to promulgate a rule or regulation employing a “days worked in Georgia” method for determining the amount of income of a taxable nonresident.
- Requires employers to withhold Georgia income tax on all deferred compensation and stock option income which are required to be included in Georgia income of taxable nonresidents and provides methods to do so.

Section 2 became effective upon its approval by the Governor on May 11, 2011 and is applicable to taxable years beginning on or after January 1, 2011.

Section 3 amends Code Section 48-7-29.12 (the conservation tax credit) by specifying that any tax credits earned by a taxpayer and previously claimed but not used by such taxpayer against such taxpayer's income tax may be transferred or sold in whole or in part by such taxpayer to another Georgia taxpayer, subject to the following conditions:

- The transferor shall submit to the Department a written notification of any transfer or sale of tax credits within 30 days after the transfer or sale of such tax credits. The notification shall include such transferor's tax credit balance prior to transfer, the remaining balance after transfer, all tax identification numbers for each transferee, the date of transfer, the amount transferred, and any other information required by the Department.
- Failure to comply with this subsection shall result in the disallowance of the tax credit until the taxpayer is in full compliance.
- In no event shall the amount of the tax credit claimed and allowed for a taxable year exceed the transferee's income tax liability. Any unused credit may be carried forward to subsequent taxable years provided that the transfer or sale of this tax credit does not extend the time in which such tax credit can be used. The carry-forward period for tax credit that is transferred or sold shall begin on the date on which the tax credit was originally earned.
- A transferee shall have only such rights to claim and use the tax credit that were available to the transferor at the time of the transfer. To the extent that such transferor did not have rights to claim or use the tax credit at the time of the transfer, the Department shall either disallow the tax credit by the transferee or recapture the tax credit from the transferee. The transferee's recourse is against the transferor.

Section 3 is effective on January 1, 2012 and is applicable to taxable years beginning on or after January 1, 2012.

Section 3A amends Code Section 48-7-29.14 (the Clean Energy Property and Wood Residuals Credit) as follows:

- Extends the clean energy property tax credit to clean energy property placed into service by December 31, 2014 (current law provides the credit is allowed for clean energy property placed into service between July 1, 2008 and December 31, 2012).
- Specifies that the clean energy property tax credit allowed for calendar years 2012, 2013, and 2014 must be taken in four equal installments over four successive taxable years beginning with the taxable year in which the credit is allowed.
- Specifies that in no event shall the total amount of tax credits approved by the Commissioner for credits earned in calendar years 2012, 2013, and 2014 exceed \$5 million.
- Provides that if a taxpayer is denied all or part of the credit amount because the credit cap has been reached, the Commissioner shall add the taxpayer to a waiting list, prioritized by the date of the taxpayer's application. Taxpayers on the waiting list shall have priority over other taxpayers who apply for the credit for an installation in the subsequent years. (Current law provides for a reapplication process where taxpayers that are denied because the credit cap has been reached can reapply and have priority in the year of such reapplication; the bill removes this reapplication process.)

Section 3A became effective upon its approval by the Governor on May 11, 2011 and is applicable to taxable years beginning on or after January 1, 2011.

House Bill 346 can be viewed at the following link:

<http://www.legis.ga.gov/Legislation/20112012/116689.pdf>

HB 509 (O.C.G.A. § 48-7-161) The income tax portion of this bill (see Section 5) changes the name of the “State Medical Education Board” to the “Georgia Board of Physician Workforce” for purposes of setoff debt collection.

This bill became effective on July 1, 2011.

House Bill 509 can be viewed at the following link:

<http://www.legis.ga.gov/Legislation/20112012/116464.pdf>

MOTOR VEHICLE

HB 112 (Various Sections in Title 40) Part I - This bill provides for new code sections referring to the safe operation of motor carriers and commercial motor vehicles:

- Requires all motor carriers to attend an educational seminar and provide certification to DOR on motor carrier operations and safety regulations.
- Requires that a non-resident motor carrier designate a Georgia service agent to DOR.

Part II Amends code section §40-2-8 relating to the issuance of a dealer temporary license plate:

- The Department shall provide the temporary license plates to registered distributors.
- Dealers will be required to report the issuance of a dealer temporary license plate:
 - On the Electronic Title and Registration System (ETR);
 - On the web service provided by one of the dealer associations; and
 - At the County Tag Office

Part I of this bill became effective July 1, 2011 and Part II became effective November 1, 2011.

House Bill 112 can be viewed at the following link:

<http://www.legis.ga.gov/Legislation/20112012/116829.pdf>

HB 114 (O.C.G.A. §§ 40-11-1, 40-11-5, and 40-11-10) This bill amends Title 40 regarding abandoned motor vehicles:

- This bill sets the court filing fee on an abandoned vehicle at \$10.
- Requires the research for the owner’s information to extend to the vehicle’s state of registration, if there is no Georgia registration.
- Provides for additional items that are considered “contents” of the vehicle that may be claimed by the owner of the vehicle prior to the sale of such vehicle.
- If the owner does not claim the “contents,” they must be turned over to a local law enforcement agency prior to final sale or disposition of the abandoned vehicle.

This bill became effective upon its approval by the Governor on May 13, 2011.

House Bill 114 can be viewed at the following link:

<http://www.legis.ga.gov/Legislation/20112012/116711.pdf>

HB 142 (Various Sections in Title 40) This bill modernizes and corrects drafting and grammatical errors contained in the code. No substantive changes are made by this bill.

This bill became effective upon its approval by the Governor on May 13, 2011.

House Bill 142 can be viewed at the following link:

<http://www.legis.ga.gov/Legislation/20112012/116256.pdf>

HB 269 (O.C.G.A. §§ 40-3-36 and 40-3-90) This bill amends code section §40-3-36 relating to reporting the cancellation of a certificate of title:

- Changes the value of a scrap vehicle's worth from \$750.00 to \$850.00, when the owner or authorized agent of the owner has not obtained a title or has lost the title and completes an application to cancel the Certificate of Title on a Scrap Vehicle (form MV-1SP).
- Requires the business to report within 48 hours a list of such vehicles to DOR.
- Requires the business acquiring the scrap vehicle to provide to DOR the identification number required by the National Motor Vehicle Title Information System (NMVTIS) in addition to their name and address.
- Requires DOR to provide a mechanism for reporting the cancellation of the Certificate of Title on Form MV-1SP and reporting the vehicle to NMVTIS.
- Any person who, with fraudulent intent, knowingly falsifies any information required shall be guilty of a felony.

This bill became effective on January 1, 2012.*

*Some provisions of this bill only become effective upon appropriation of full funding.

House Bill 269 can be viewed at the following link:

<http://www.legis.ga.gov/Legislation/20112012/116783.pdf>

HB 323 (O.C.G.A. § 40-3-50) This bill extends the period for making an application for a certificate of title in order to perfect the security interest from 20 days to 30 days.

This bill became effective on July 1, 2011.

House Bill 323 can be viewed at the following link:

<http://www.legis.ga.gov/Legislation/20112012/115075.pdf>

PROPERTY

HB 95 (O.C.G.A. § 48-5-7.7) This bill amends and clarifies the penalty provisions regarding the Forest Land Protection Act:

- If a single tract is required to have more than one covenant because the tract crosses county lines, the total acreage of the single tract can be combined to meet the 200 acre minimum requirement for the FLPA covenant in each of the counties.
- After partial conveyance of a tract under a FLPA covenant, if either the owner of the retained portion or the transferred portion breaches the covenant, only the owner of the portion in breach is liable for the penalty and interest; the portion not in breach continues under the original covenant. A breach no longer implicates the entire original tract.

This bill became effective upon its approval of the Governor on May 11, 2011.

House Bill 95 can be viewed at the following link:

<http://www.legis.ga.gov/Legislation/20112012/116470.pdf>

SALES AND USE TAX

HB 117 (O.C.G.A. §§ 31-8-152.1, 48-8-2, and 48-8-30) The sales and use tax portion of the bill amends Titles 31 and 48 of the O.C.G.A. relating to health and revenue and taxation. This bill provides for:

- State sales and use taxation of certain health care services for a limited period of time;
- Definitions, exclusions, procedures, conditions and limitations;
- Accrual of such taxes based upon certain circumstances;
- The establishment of a segregated account within the Indigent Care Trust Fund;
- The crediting of certain proceeds and investment thereof;
- Conditional appropriations;
- The automatic repeal of certain provisions of this Act when federal matching funds have ceased to be available or on June 30, 2014, whichever date is earlier.

The sales tax portion of the bill became effective on July 1, 2011, provided, however that collection of tax shall not commence until the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services has approved the state plan amendments described in subsection (b) of O.C.G.A. § 31-8-152.1.

HB 117 can be viewed at the following link:

<http://www.legis.ga.gov/Legislation/20112012/116733.pdf>.

HB 168 (Numerous Sections) The sales and use tax portion of the bill provides for the revision of certain sections of Title 48 of the O.C.G.A. to conform such provisions to the Streamlined Sales and Use Tax Agreement. This bill:

- Modifies and/or adds definitions for dietary supplements, over the counter drugs, tobacco, food and food ingredients, prosthetic device, and sales price;
- Modifies and/or clarifies exemptions related to school lunches, certain transportation charges, drugs, hearing aids, and food and food ingredients;
- Changes provisions relating to the entitlement to sales tax bad debt deductions and explains that bad debts will have the same meaning as defined in 26 U.S.C. 166, adjusted to exclude –
 - o financing charges or interest;
 - o sales or use taxes charged on the purchase price;
 - o uncollectible amounts on property that remain in the possession of the seller until the full purchase price is paid;
 - o expenses incurred in attempting to collect any debt; and
 - o repossessed property;
- Provides that refund claims may be filed when bad debts exceed the amount of taxable sales for a period and provides that such refund claims do not accrue interest;
- Modifies O.C.G.A. § 48-8-38 regarding a dealer's burden of proof with respect to exempt sales and provides that dealers have 120 days from the Department of Revenue's request for substantiation of exempt sales to provide such substantiation;
- Modifies provisions relating to dealer returns and estimated tax liability to provide that dealers that collected more than \$60,000.00 in state sales tax during the preceding calendar year must remit estimated tax;
- Clarifies that sales tax is due on rentals and leases based on the "sales price" and not on gross proceeds;
- Corrects a scrivener's error in O.C.G.A. § 48-8-77;
- Provides for review and certification of software submitted to the Department of Revenue as a Certified Automated System under Section 501 of the Streamlined Sales and Use Tax Agreement; and
- Provides guidelines regarding a certified service provider's liability and relief from liability.

This bill became effective upon its approval by the Governor on April 27, 2011.

HB 168 can be viewed at the following link:

<http://www.legis.ga.gov/Legislation/20112012/116259.pdf>.

HB 234 (Numerous Sections)

This bill amends Chapter 8 of Title 48 of the O.C.G.A relating to sales and use taxes. This bill extends for a limited time the exemption relating to sales of engines, parts, equipment or other tangible personal property used in the maintenance or repair of aircraft, and provides for a program of tax refunds for companies creating new tourism attractions or expanding existing tourism attractions. A new article known as the 'Georgia Tourism Development Act' was added, providing definitions for terms, providing for approved companies to be granted a sales and use tax refund from the incremental sales and use tax on sales generated by such approved company operating a tourism attraction. Recipients of the refund are not required to refund or otherwise return any amount to the persons from whom the sales and use tax was collected. For all tourism attractions, the term of the agreement granting the refund shall be ten years.

This bill became effective on July 1, 2011.

HB 234 can be viewed at the following link:

<http://www.legis.ga.gov/Legislation/20112012/116703.pdf>.

HB 240 (O.C.G.A. Title 48, Chapter 8, Article 3)

This bill adds a new code section relating to county sales and use taxes, so as to establish a procedure for modifying projects approved in a referendum that have become infeasible in connection with the county special purpose local option sales and use tax. This bill provides referendum procedures for a governing authority to determine that a project is infeasible and designate a new modified purpose for which the balance of the tax proceeds are to be used.

This bill became effective upon its approval by the Governor on May 11, 2011.

HB 240 can be viewed at the following link:

<http://www.legis.ga.gov/Legislation/20112012/116506.pdf>.

HB 256 (O.C.G.A. Title 46, Chapter 5, Article 2, Part 4)

This bill repeals section 46-5-134.2 relating to 911 charges for prepaid wireless service, and provides for the imposition, collection and distribution of a new 911 charge on prepaid wireless services. The new 911 charge is 75 cents per retail transaction and will be collected at the retail point of sale.

This bill became effective on various dates, but in no event shall a fee and charge be imposed prior to January 1, 2012.

HB 256 can be viewed at the following link:

<http://www.legis.ga.gov/Legislation/20112012/116512.pdf>.

HB 322 (O.C.G.A. §§ 48-8-3(33.1) and 48-8-67)

This bill amends the exemption for sales and use of jet fuel by qualifying airlines at a qualifying airport and also repeals the sunset on the revenue commissioner's authority to make distributions of unidentifiable sales and use tax proceeds. For the period of time beginning July 1, 2011 and ending June 30, 2012 qualifying

sales or use of jet fuel shall be fully exempt from state sales and use tax until the aggregate state sales and use tax liability of the taxpayer during such period with respect to jet fuel exceeds \$20 million, computed as if the exemption was not in effect. Thereafter during this period, the exemption shall not apply. For the period from June 30, 2012 to June 30, 2013, the exemption will apply on up to \$10 million of sales and use tax liability of jet fuel. The jet fuel exemption also applies to the county special purpose local option sales tax, if any.

Section one of this bill, regarding the jet fuel exemption, became effective July 1, 2011. Section two, regarding the distribution of unidentifiable sale and use tax proceeds, became effective upon its approval by the Governor on April 27, 2011.

HB 322 can be viewed at the following link:

<http://www.legis.ga.gov/Legislation/20112012/116758.pdf>.