

_____ offers the following
 substitute to HB 960:

A BILL TO BE ENTITLED
 AN ACT

1 To amend Chapter 2 of Title 48 of the Official Code of Georgia Annotated, relating to state
 2 administration and collection of revenue, so as to provide for confidentiality of certain tax
 3 information; to provide for an interest rate on delinquent payments that adjusts to reflect
 4 changes in the prime rate; to adjust the penalties for nonpayment of ad valorem taxes to
 5 offset the reduction in interest rate; to make distribution of penalties equitable between taxing
 6 jurisdictions; to provide for additional procedures, conditions, and limitations; to provide for
 7 notice to political subdivisions upon the filing of certain tax refund requests; to provide for
 8 confidentiality of taxpayer information; to provide for automatic transfer to the Georgia Tax
 9 Tribunal in certain cases; to provide for related matters; to provide for an effective date and
 10 applicability; to repeal conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

12 Chapter 2 of Title 48 of the Official Code of Georgia Annotated, relating to state
 13 administration and collection of revenue, is amended by adding a new subsection to Code
 14 Section 48-2-15, relating to confidential information, to read as follows:

15 "(f) In general, the return of a person shall, upon written request, be open to inspection by
 16 or disclosure to:

17 (1) In the case of an individual return:

18 (A) The individual who filed the return;

19 (B) The spouse of such individual if the individual and such spouse have signified their
 20 consent to consider a gift reported on such return as made one-half by the individual
 21 and one-half by the spouse pursuant to the provisions of 26 U.S.C. Section 2513; or

22 (C) The child of such individual or such child's legal representative;

23 (2) In the case of an income tax return filed jointly, either of the individuals with respect
 24 to whom the return is filed;
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26 (3) In the case of the return of a partnership, any person who was a member of such
 27 partnership during any part of the period covered by the return;

28 (4) In the case of the return of a corporation or a subsidiary thereof:

29 (A) Any person designated by resolution of its board of directors or other similar
 30 governing body;

31 (B) Any officer or employee of such corporation upon written request signed by any
 32 principal officer and attested to by the secretary or other officer;

33 (C) Any bona fide shareholder of record owning 1 percent or more of the outstanding
 34 stock of such corporation;

35 (D) If the corporation is an S corporation, any person who was a shareholder during
 36 any part of the period covered by such return during which an election under 26 U.S.C.
 37 Section 1362(a) was in effect; or

38 (E) If the corporation has been dissolved, any person authorized by applicable law to
 39 act for the corporation or any person having a material interest which will be affected
 40 by information contained therein;

41 (5) In the case of the return of an estate, the administrator, executor, or trustee of such
 42 estate and any heir at law, next of kin, or beneficiary under the will of the decedent,
 43 provided such heir at law, next of kin, or beneficiary has a material interest which will
 44 be affected by information contained therein; and

45 (6) In the case of the return of a trust, the trustee or trustees, jointly or separately, and
 46 any beneficiary of such trust, provided such beneficiary has a material interest which will
 47 be affected by information contained therein."

48 SECTION 2.

49 Said chapter is further amended by revising subsections (a) and (f) and adding new
 50 subsections in Code Section 48-2-35, relating to refunds of taxes and fees determined to have
 51 been erroneously or illegally assessed and collected, to read as follows:

52 "(a) A taxpayer shall be refunded any and all taxes or fees which are determined to have
 53 been erroneously or illegally assessed and collected from such taxpayer under the laws of
 54 this state, whether paid voluntarily or involuntarily, and shall be refunded interest, except
 55 as provided in subsection (b) of this Code section, on the amount of the taxes or fees ~~at the~~
 56 ~~rate of 1 percent per month~~ at an annual rate equal to the prime rate as published by the
 57 Board of Governors of the Federal Reserve System, as published in statistical release H.
 58 15 or any publication that may supersede it, plus 3 percent with interest calculated
 59 from the date of payment of the tax or fee to the commissioner the request for a refund or the date
 60 that the taxpayer was notified of an overpayment by the department, whichever is earlier.
 61 The department may bill such interest on a month-by-month basis so long as the monthly

62 bills equal what would have been the lump sum owed due to the annual interest rate as
63 provided for in this Code section. For the purposes of this Code section, any period of less
64 than one month shall be considered to be one month. Refunds shall be drawn from the
65 treasury on warrants of the Governor issued upon itemized requisitions showing in each
66 instance the person to whom the refund is to be made, the amount of the refund, and the
67 reason for the refund."

68 "(f) For purposes of all claims for refund of sales and use taxes erroneously or illegally
69 assessed and collected, the term 'taxpayer,' as defined under Code Section 48-2-35.1, shall
70 apply and any interest applicable to the refund request accrued after the date on which the
71 department notified the taxpayer or after the taxpayer requested a refund, whichever is
72 earlier, shall be paid by the state.

73 (g)(1) Within 30 business days following the filing of a refund request by a taxpayer or
74 the discovery of an overpayment by the department, the department shall, if such request
75 or overpayment is for an amount equal to or greater than 8 percent of the total yearly
76 average of aggregate sales and use tax collections for any single political subdivision
77 based on an average of the three most recent calendar years, notify each affected political
78 subdivision through its chief officer or officers that a refund request has been filed or an
79 overpayment has been discovered by the department. Such political subdivisions have
80 a material interest in refund requests pursuant to subsection (f) of Code Section 48-2-15.
81 Such notification shall include the fact that a refund has been filed, the total amount
82 requested by the taxpayer, the portion of the total amount for which the political
83 subdivision itself is responsible, any knowledge either that other political subdivisions
84 are also affected by the refund or that no other political subdivisions are also affected by
85 the same refund, and a copy of the confidentiality provisions contained in this Code
86 section. After the department has completed an audit of the refund request and
87 determined a final refund amount, the department shall supplement the above notice by
88 transmitting to the political subdivision the final refund amount for all affected political
89 subdivisions in sum and the final refund amount for which the political subdivision is
90 responsible.

91 (2) In any case in which a refund request is filed by a political subdivision or an
92 overpayment is discovered by the department for an amount equal to or greater than 8
93 percent of the total yearly average of aggregate sales and use tax collections for any
94 single political subdivision based on an average of the three most recent calendar years,
95 the taxpayer may, and the department shall, prior to the issuance of a final determination,
96 request an audit of the determination by the Department of Audits and Accounts. The
97 Department of Audits and Accounts shall certify that the department followed proper
98 procedures and used appropriate calculations to reach the final determination.

99 (3) The commissioner, in his or her discretion, may allow any political subdivision in
 100 this state that is determined to owe a refund of taxes collected by the department and
 101 distributed to such political subdivision to repay such obligation, including applicable
 102 interest, over a period of up to one year. The one-year period shall begin on the date the
 103 department issues a final determination that the refund is due the state from the affected
 104 political subdivision.

105 (4) Any information supplied to a political subdivision or any official thereof shall be
 106 considered confidential and privileged information and furnishing information as
 107 permitted by this Code section shall not be deemed to change the confidential character
 108 of the information furnished. Any person who divulges any tax information obtained
 109 under this Code section shall be subject to the same civil and criminal penalties as
 110 provided for divulgence of tax information by members of the department. Though the
 111 confidential information may not be disclosed, the chief officer or officers of the political
 112 subdivision in receipt of such information may make reasonable budgetary
 113 recommendations to elected officials, city managers, and tax officials in their political
 114 subdivisions based on the confidential information furnished and may coordinate with the
 115 chief officer or officers of other political subdivisions included in the department's notice
 116 to the political subdivisions that are also affected by the refund.

117 (h) Any refund request that remains pending in the department for one year or longer after
 118 the initial request was filed shall be automatically transferred to the jurisdiction of the
 119 Georgia Tax Tribunal for determination. The department shall provide all requested
 120 information and supporting documentation to the Georgia Tax Tribunal."

121 SECTION 3.

122 Said chapter is further amended by revising Code Section 48-2-40, relating to the rate of
 123 interest on past due taxes, as follows:

124 "48-2-40.

125 Except as otherwise expressly provided by law, taxes owed the state or any local taxing
 126 jurisdiction shall bear interest ~~at the rate of 1 percent per month~~ at an annual rate equal to
 127 the prime rate as published by the Board of Governors of the Federal Reserve System, as
 128 published in statistical release H. 15 or any publication that may supersede it, plus 3
 129 percent with interest calculated from the date the tax is due until the date the tax is paid.
 130 For the purposes of this Code section, any period of less than one month shall be
 131 considered to be one month. This Code section shall also apply to alcoholic beverage
 132 taxes."

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SECTION 4.

Said chapter is further amended by revising subsection (b) of Code Section 48-2-44, relating to penalties and interest on failure to file return or timely pay taxes held in trust for the state, as follows:

"(b)(1) In any instance in which any person willfully fails, on or after July 1, 1981, to pay, within 90 days of the date when due, any ad valorem tax owed the state or any local government, such person shall pay, in the absence of a specific statutory civil penalty for the failure, a penalty of ~~10~~ 5 percent of the amount of tax due and not paid at the time such penalty is assessed, together with interest as specified by law. ~~This 10 percent penalty~~ An additional penalty of 5 percent of the amount of tax shall be imposed on any amount remaining due every six months after the due date, together with interest as specified by law. These penalties shall not, however, apply in the case of:

(A) Ad valorem taxes of \$500.00 or less on homestead property as defined in Part 1 of Article 2 of Chapter 5 of this title; or

(B) With respect to tax year 1986 and future tax years, ad valorem taxes of any amount on homestead property as defined in Part 1 of Article 2 of Chapter 5 of this title, if the homestead property was during the tax year acquired by a new owner who did not receive a tax bill for the tax year and who immediately before acquiring the homestead property resided outside the State of Georgia and if the taxes are paid within one year following the due date.

(2) Any city or county authorized as of April 22, 1981, by statute or constitutional amendment to receive a penalty of greater than 10 percent for failure to pay an ad valorem tax is authorized to continue to receive that amount.

(3) With respect to all penalties and interest received by the tax commissioner on or after July 1, 1998, unless otherwise specifically provided for by general law, the tax commissioner shall distribute penalties collected and interest collected or earned as follows:

(A) ~~Penalties collected for failure to return property for ad valorem taxation or for failure to pay ad valorem taxes, and interest~~ Interest earned by the tax commissioner on taxes collected but not yet disbursed; shall be paid into the county treasury in the same manner and at the same time the tax is collected and distributed to the county, and they shall remain the property of the county; and

(B) ~~Interest~~ Penalties collected for failure to return property for ad valorem taxation or for failure to pay ad valorem taxes and interest collected on delinquent ad valorem taxes shall be distributed pro rata based on each taxing jurisdiction's share of the total tax on which the penalty or interest was computed."

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SECTION 5.

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This Act shall become effective on July 1, 2016, and shall be applicable to all proceedings

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initiated on or after that date. All proceedings initiated prior to the effective date of this Act

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shall be governed by the law as it existed immediately prior to such effective date.

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SECTION 6.

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