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Revenue and Taxation HB 386

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REVENUE AND TAXATION

Sales and Use Taxes: Amend Titles 2, 40, 44, and 48 of the Official Code of Georgia Annotated, Relating to Agriculture, Motor Vehicles, Property, and Revenue and Taxation, Respectively, so as to Provide for the Comprehensive Revision of Taxation of Motor Vehicles; Change Certain Provisions Regarding Tag Agents; Provide for State and Local Title Ad Valorem Tax Fees as Alternative Ad Valorem Taxes; Provide for Definitions; Provide for Continuation of Tag, Revalidation, and Registration Fees; Provide for Distribution of such State and Local Title Ad Valorem Tax Fees; Exclude Certain Vehicles from Certain Fees; Change Certain Provisions Regarding Classification of Motor Vehicles as a Separate Class of Property for Ad Valorem Tax Purposes; Provide for an Exemption from Sales and Use Taxes Only with Respect to Certain Sales or Purchases of Certain Motor Vehicles; Provide for Certain Reports; Provide for Certain Penalties and Sanctions; Provide for a Study Committee to Review and Report on Such State and Local Title Ad Valorem Tax Fees; Change the Personal Exemption for Married Taxpayers Filing an Income Tax Return; Revise Certain Provisions Regarding the Exclusion of Retirement Income from Taxable Net Income; Revise Provisions Relating to Tax Credits Available to Qualified Donors of Property for Conservation Purposes; Provide a Maximum Tax Credit Amount; Provide for Additional Requirements for Donated Conservation Easements; Provide for Certification Procedures; Modify Transferability of Tax Credits; Change Certain Provisions Relating to the Exemptions from Sales and Use Tax for Film Producers and Film Production Companies; Provide for Revision of Taxation of Machinery and Energy Used in Manufacturing and Agriculture; Provide for the Repeal of Certain Exemptions from State Sales and Use Tax; Provide for a New Exemption Regarding the Sale and Use of Machinery or Equipment which is Necessary and Integral to the Manufacture of Tangible Personal Property and the Sale, Use, Storage, or Consumption of Energy, Industrial Materials, or Packaging Supplies; Provide for Definitions; Provide for Procedures, Conditions, and Limitations; Provide for an

Exemption for Sales to, or Use by, a Qualified Agriculture Producer of Agricultural Production Inputs, Energy Used in Agriculture, and Agricultural Machinery and Equipment; Provide for Definitions; Provide for Procedures, Conditions, and Limitations; Provide for Powers, Duties, and Authority of the Commissioner of Agriculture; Provide for a Local Excise Tax on Energy Used in Manufacturing; Provide for a New Exemption for Construction Materials Used in Competitive Projects of Regional Significance for a Limited Period of Time; Modify the Exemption for Jet Fuel; Revise the Definition of Dealer in Order to Expand the Limits of Nexus with This State for Purposes of Collecting State Sales and Use Tax; Provide for Sales Tax Exemptions for Certain Items on Specified Dates; Provide for Related Matters; Provide for Effective Dates; Provide for Applicability; Provide that Existing Prosecutions Shall Not Abate; Provide for Severability; Repeal Conflicting Laws; and for Other Purposes

CODE SECTIONS:	O.C.G.A. §§ 2-1-5 (amended); 40-2-23 (amended); 44-10-3 (new); 48-5-441 (amended), -441.1 (new); 48-5B-1 (new); 48-7-26, -27 (amended), -29.12 (amended); 48-8-2, -3 (amended) ; 48-8-3.2 (new); 48-8-3.3 (new); 48-13-110, -111, -112, -113, -114, -115, -116, -117, -118 (new)
BILL NUMBER:	HB 386
ACT NUMBER:	607
GEORGIA LAWS:	2012 Ga. Laws 257
SUMMARY:	This Act establishes a comprehensive tax reform for the state of Georgia. This bill began in the 2010 legislative session with HB 1405, but failed to pass in both the 2010 and 2011 legislative sessions. This bill implements a number of tax cuts, exemptions, and credits for individuals, industry, and agriculture, while at the

	same time eliminating some tax benefits that were formerly available.
EFFECTIVE DATE:	O.C.G.A. §§ 48-8-3 ¶¶ (90), (91), (92), Jan. 1, 2012 (retroactive); § 48-8-3.2, Apr. 19, 2012; §§ 48-8-3 ¶¶ (25), (26), (27), (28), (29), (29.1), (34), (34.3), (35), (37), (49), (64), (73), (75), (77), (79), (82), (90), -3.3, 48-13-110, -111, -112, -113, -114, -115, -116, -117, -118, July 1, 2012; § 48-8-2, Oct. 1, 2012; §§ 2-1-5, 44-10-3, 48-7-26, -27, -29.12, Jan. 1, 2013; §§ 40-2-23, 48-5-441, -441.1, 48-5B-1, 48-8-3, Mar. 1, 2013

History

After facing an economic downturn in 2007 and 2008 the state of Georgia's budget faced a number of difficulties.[1] The Georgia General Assembly took action to respond to these issues by attempting to pass legislation to make up for the budgetary shortfalls.[2] In 2007 the Georgia General Assembly proposed a solution with House Bill (HB) 900.[3] This bill offered to cut a number of state and local taxes, and it also included a comprehensive flat tax, which was commonly known as the "fair tax."[4] However, it failed to make it out of the House of Representatives.[5]

Reform efforts continued in 2010 when the Georgia General Assembly passed HB 1405.[6] HB 1405 created two committees that were to complete a required examination of Georgia's tax code: the 2010 Special Council on Tax Reform and Fairness for Georgians ("Special Council"),[7] and the Special Joint Committee on Georgia

1. Benjamin Keck & Reed White, *Revenue and Taxation*, 28 GA. ST. U. L. REV. 217, 220 (2011).
2. *Id.*
3. HB 900, as introduced, 2007 Ga. Gen. Assem.
4. *Id.*
5. State of Georgia Final Composite Status Sheet, HB 900 (2007).
6. HB 1405, as introduced, 2010 Ga. Gen. Assem.
7. O.C.G.A. § 28-12-2 (repealed 2012).

Revenue Structure ("Joint Committee").[8] HB 1405 instructed the Special Council to conduct a comprehensive study of the current revenue structure in Georgia and then make a report of findings and recommendations to the Speaker of the House and the Lieutenant Governor.[9] The Joint Committee's responsibility was introducing a bill or resolution in the House of Representatives incorporating the recommendations of the Special Council.[10]

HB 386 arose from the ashes of 2011's proposed HBs 385–388, which were several versions of a massive tax reform bill that, in hindsight, were not ready for fruition.[11] The 2011 attempt at tax reform was the fruit of a six-month endeavor by the Special Council that included public hearings and negotiations; however, some believed the committee meetings resulted in controversial revisions to sales and income taxes that went too far.[12] Theories differ as to why the 2011 version of the bill failed, with some citing failure to recognize political realities and others blaming shifting revenue projections.[13] By the end of the 2011 session, however, it was clear that tax reform would be a hot-button issue in the 2012 session. As House Speaker David Ralson noted, "[t]ax reform is not dead. Tax reform is delayed."[14]

In the 2012 legislative session, the General Assembly continued its work on tax reform. Using the Special Council's 2011 recommendations as a cornerstone for the new 2012 HB 386, the bill also considered recommendations from Governor Deal's Competitiveness Initiative.[15] The Competitiveness Initiative

8. *Id.* § 28-12-3.

9. *Id.* § 28-12-1; Keck & White, *supra* note 1, at 222.

10. O.C.G.A. § 28-12-1 (repealed 2012); Keck & White, *supra* note 1, at 222.

11. *See* Interview with Rep. Larry O'Neal (R-146th) (Apr. 4, 2012) [hereinafter O'Neal Interview]. Representative O'Neal serves as the House Majority Leader. *Representatives: House Leadership*, GA. HOUSE OF REP., http://www.house.ga.gov/Representatives/en-US/Leadership.aspx (last visited Aug. 16, 2012).

12. Chris Joyner, *Changes to Tax System in Works*, ATLANTA J.-CONST., Feb. 26, 2011, at B3, *available at* http://www.ajc.com/news/georgia-politics-elections/major-georgia-tax-overhaul-853304.html; WESLEY THARPE, GA. BUDGET & POL'Y INST., BILL ANALYSIS: HOUSE BILL 386 (LC 34 3484S), TAX PACKAGE A COMPLEX HODGEPODGE OF REFORMS 1, (2012), *available at* http://gbpi.org/wp-content/uploads/2012/03/Bill-Analysis-HB-386.pdf.

13. Chris Joyner & April Hunt, *Tax Reform Effort Dies as House Adjorns,* ATLANTA J.-CONST., Apr. 12, 2011, at A1, *available at* http://www.ajc.com/news/georgia-politics-elections/tax-reform-effort-dies-905725.html.

14. *Id.*

15. O'Neal Interview, *supra* note 11.

embodied a group of volunteers who took testimony and suggestions from all over the state on making the Georgia marketplace more competitive for businesses.[16] Piecing together the initiative's suggestions with the council's original 2011 recommendations, HB 386 proposed a more balanced approach to Georgia's need for tax reform.[17]

Bill Tracking of HB 386

Consideration and Passage by the House

Representatives Mickey Channell (R-116th), Larry O'Neal (R-146th), Jan Jones (R-46th), and Allen Peake (R-137th) sponsored HB 386.[18] The House read the bill for the first time on February 28, 2011.[19] The House read the bill for a second time on March 1, 2011.[20] The Joint Committee on Tax Reform introduced substitute HB 386 in its meeting on March 19, 2012.[21] On March 20, 2012, the Joint Committee presented an amended version of substitute HB 386.[22] On that same day, the Joint Committee favorably reported substitute HB 386.[23] The House then read the bill for the third time and subsequently passed the bill on March 20, 2012 with a vote of 155 to 9.[24] After the House passed the bill it was immediately transmitted to the Senate on March 20, 2012.[25]

Substitute HB 386 differs from the comprehensive tax reform bills introduced in the 2011 legislative session in a number of ways.[26] The

16. *Id.*
17. THARPE, *supra* note 12, at 1, 7.
18. HB 386, as introduced, 2012 Ga. Gen. Assem.; State of Georgia Final Composite Status Sheet, HB 386, May 10, 2012.
19. State of Georgia Final Composite Status Sheet, HB 386, May 10, 2012.
20. *Id.*
21. Video Recording of Special Joint Committee on Tax Reform, Mar. 19, 2012 at 24 sec. (remarks by Committee Chairman Rep. Mickey Channell (R-116)), http://www.house.ga.gov/committees/en-US/CommitteeArchives174.aspx [hereinafter Joint Committee Video Mar. 19, 2012].
22. Video Recording of Special Joint Committee on Tax Reform, Mar. 20, 2012 at 7 sec. (remarks by Committee Chairman Rep. Mickey Channell (R-116)), http://www.house.ga.gov/committees/en-US/CommitteeArchives174.aspx.
23. State of Georgia Final Composite Status Sheet, HB 386, May 10, 2012.
24. *Id.*; Georgia House of Representatives Voting Record, HB 386 (Mar. 20, 2012).
25. State of Georgia Final Composite Status Sheet, HB 386, May 10, 2012.
26. *Compare* HB 386 (LC 34 3484S), 2012 Ga. Gen. Assem., *with* HBs 385–388, as introduced, 2011 Ga. Gen. Assem.

controversial 2011 bills were a comprehensive, full-fledged approach by the legislature to revise Georgia's sales and income taxes.[27] The bills failed to pass because the Joint Committee had insufficient data to support its proposed bill and the committee simply ran out of time, among other reasons.[28]

Alternatively, substitute HB 386, which was favorably reported by the Joint Committee in 2012, was much narrower and combined a number of smaller changes to Georgia's tax policies.[29] Key points substitute HB 386 provided for include: (1) an income tax cut for married couples; (2) special tax exemptions for the manufacturing, agriculture, and airline industries; (3) reductions and limitations to the amount of tax credits and exclusions that can be used for film production, conservation, and retirement income; (4) implementing a tax on e-commerce; and (5) eliminating the ad valorem tax.[30] House Majority Leader O'Neal stated that this bill passed because it eliminated regulation, encouraged risk into the spirit of Georgia, and created jobs at the small business level, in addition to being presented in a more attractive market.[31]

Consideration and Passage by the Senate

Senator Bill Heath (R-31st) sponsored HB 386 in the Senate and on March 20, 2012, the Senate read and referred the bill.[32] The Senate read the bill a second time on March 21, 2012.[33] The Senate

27. THARPE, *supra* note 12, at 1.

28. Republican leaders blamed the failure of the 2011 bill on their uneasiness surrounding the "shifting data" that was coming from the Georgia State Fiscal Research Center. Keck & White, *supra* note 1 at 252 (citing Chris Joyner, *AJC Exclusive Tax Bill's Final Days; How Tax Overhaul Fell Apart*, ATLANTA J.-CONST., Apr. 21, 2011, at A1, *available at* 2011 WLNR 7760236). On the other hand, House Minority Leader Stacey Abrams said issue was that "Republicans were fiddling with a complex economic problem in an attempt to get a predetermined result." *Id.* at 253 (citing Joyner, *supra*). For a more in-depth analysis of the 2011 proposed tax reform scheme, *see generally* Keck & White, *supra* note 1.

29. THARPE, *supra* note 12, at 1. Senator Bill Heath stated that the difference between the bill presented this year and the bills presented in previous years is that in previous years the legislature had not fully considered the individual impact instead of the state's perspective. Interview with Sen. Bill Heath (R-31st) (Mar. 29, 2012) [hereinafter Heath Interview].

30. THARPE, *supra* note 12, at 1.

31. *See* O'Neal Interview, *supra* note 11.

32. *See HB 386, Bill Tracking*, GA. GEN. ASSEMBLY (June 17, 2012, 1:45 AM), http://www1.legis.ga.gov/legis/2011_12/sum/hb386.htm.

33. State of Georgia Final Composite Status Sheet, HB 386, May 10, 2012.

read the bill a third time on March 22, 2012 and subsequently passed the bill with a unanimous vote of 54 to 0.[34]

The Act

The Act is a comprehensive tax reform for the state of Georgia.[35] This section discusses the various changes the Act made to the Official Code of Georgia Annotated.

O.C.G.A. § 2-1-5

Section 5-7 of the Act amends Title 2 of the Official Code of Georgia Annotated by adding subsection (b) to Code section 2-1-5 relating to certain agricultural annual license fees.[36] This additional subsection will require "qualified agriculture producers" to pay for an annual license fee costing between $15 and $25.[37] Subsection (e) also specifies that "the total amount of the proceeds from [the agricultural annual license] fees should not exceed the cost of administering [Code section 48-8-3.3]."[38]

O.C.G.A. § 40-2-23

Section 1-1 of the Act amends Title 40 of the Official Code of Georgia Annotated by deleting Code section 40-2-23(b).[39] This change removed the retail and so-called "casual sale"[40] automobile tax.[41] Local tax agents can no longer collect this tax, and will no longer be able to retain the $200 monthly collection fee for the local tax agent's services.[42]

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34. *Id.*; Georgia Senate Voting Record, HB 386 (Mar. 22, 2012).
35. HB 386 (LC 34 3484S/AP), p. 1–2, ln. 1–36, 2012 Ga. Gen. Assem.
36. *Id.* § 5-7, p. 49, ln. 1745.
37. O.C.G.A. § 48-8-3.3(b) (Supp. 2012). "Qualified agriculture producer" is defined in Code section 48-8-3.3(a)(5). *Id.* § 48-8-3.3(a)(5).
38. *Id.* § 48-8-3.3(e).
39. HB 386 (LC 34 3484S/AP), § 1-1, p. 2, ln. 51–63, 2012 Ga. Gen. Assem.
40. "'[C]asual sale' or 'casual use' means the sale of a motor vehicle by a person who is not regularly or systematically engaged in making retail sales of motor vehicles and the first use, consumption, distribution, or storage for the use or consumption of such motor vehicle purchased through a casual sale." *Id.*
41. *Id.*
42. *Id.*

O.C.G.A. § 44-10-3

Section 3-2 of the Act amends Title 44 of the Official Code of Georgia Annotated by adding a new subsection (f) to Code section 44-10-3 regarding the creation or alteration of conservation easements.[43] This new subsection provides that "[n]o county, municipality, or consolidated government shall hold a conservation easement unless [at least part of the encumbered land is] within the jurisdictional boundaries of such county, municipality, or consolidated government" holding the conservation easement.[44]

O.C.G.A. § 48-5-441

Section 1-2 of the Act amends Title 48 of the Official Code of Georgia Annotated by revising Code section 48-5-441 to make the classification of motor vehicles and motor homes separate classes of tangible property for ad valorem tax purposes.[45] The Act adds in Code section 48-5-441(a)(2) and 48-5-441(c)(2), which state that the ad valorem tax does not apply to "motor vehicles subject to [the newly added] Code Section, 48-5-441.1."[46]

O.C.G.A. § 48-5-441.1

Section 1-2 of the Act adds a new Code section 48-5-441.1, which classifies motor vehicles "as a separate and distinct class of tangible property for the purposes of ad valorem taxation" subject to the provisions of the newly enacted Code chapter 5B to title 48.[47]

O.C.G.A. § 48-5B-1

Section 1-4 of the Act adds a new Chapter 5B to Title 48 of the Code, codified as sections 48-5B-1.[48] The new Code Section 48-5B-1 repeals the sales and use tax and ad valorem tax for cars with titles

43. HB 386 (LC 34 3484S/AP), § 3-2, p. 27, ln. 942–48, 2012 Ga. Gen. Assem.
44. O.C.G.A. § 44-10-3 (Supp. 2012).
45. HB 386 (LC 34 3484S/AP), § 1-2, p. 3, ln. 72–94, 2012 Ga. Gen. Assem.
46. O.C.G.A. §§ 48-5-441(a)(2), (c)(2) (Supp. 2012).
47. HB 386 (LC 34 3484S/AP), § 1-2, p. 3, ln. 72–94, 2012 Ga. Gen. Assem.
48. *Id.* § 1-4, p. 4–17, ln. 102–596.

issued on or after March 1, 2013, as these taxes will be replaced by a state title fee and a local title fee.[49] The section begins with definitions. Section (a)(1) defines "Fair Market Value of the motor vehicle" as the "average of the current fair market value and the current wholesale value of a motor vehicle for a vehicle listed in the current motor vehicle ad valorem assessment manual."[50] The Act also provides fair market value calculations for a used vehicle. Part (B) states: "For a used motor vehicle which is not so listed in such current motor vehicle ad valorem assessment manual, the value from the bill of sale or the value from a reputable used car market guide designated by the commissioner, whichever is greater."[51] If there is no value available under the motor vehicle ad valorem assessment manual, section (C) provides that the fair market value is "determined by the state revenue commissioner from the bill of sale of a new motor vehicle . . . less any rebate and before any reduction for the trade-in value of another motor vehicle."[52] Section (a)(7) provides that "'Trade-in value' means the value of the motor vehicle as stated in the bill of sale for a vehicle which has been traded in to the dealer in a transaction involving the purchase of another vehicle from the dealer."[53]

This Code section also includes several definitions that are important to the calculation of the tax given the elimination of the "casual sale" from O.C.G.A. 40-2-23.[54] Subsection (2) defines "Immediate family member" as a "spouse, parent, child, sibling, grandparent, or grandchild."[55] Subsection (3) defines "Loaner vehicle" as a "motor vehicle owned by a dealer which is withdrawn temporarily from dealer inventory for exclusive use as a courtesy vehicle loaned at no charge for a period not to exceed 30 days within a calendar year to any one customer whose motor vehicle is being serviced by such dealer."[56]

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49. O.C.G.A. § 48-5B-1 (Supp. 2012).
50. *Id.*
51. *Id.* § 48-5B-1(a)(1)(B).
52. *Id.* § 48-5B-1(a)(1)(C).
53. *Id.* § 48-5B-1(a)(7).
54. *See* discussion of Part 1-1, *supra*.
55. O.C.G.A. § 48-5B-1(a)(2) (Supp. 2012).
56. *Id.* § 48-5B-1(a)(3).

"Rental charge" is defined in subsection (4) as "the total value received by a rental motor vehicle concern for the rental or lease for 31 or fewer consecutive days of a rental motor vehicle, including the total cash and nonmonetary consideration for the rental or lease, including, but not limited to, charges based on time or mileage and charges for insurance coverage or collision damage waiver but excluding all charges for motor fuel taxes or sales and use taxes," and "Rental motor vehicle" is defined in subsection (5) as "a motor vehicle designed to carry ten or fewer passengers and used primarily for the transportation of persons that is rented or leased without a driver."[57] A "Rental motor vehicle concern" is defined in Section (a)(6) as "a person or legal entity which owns or leases five or more rental motor vehicles and which regularly rents or leases such vehicles to the public for value."[58]

Section (b)(1)(A) eliminates the annual "birthday tax."[59] It states that:

> any motor vehicle for which a title is issued in this state on or after March 1, 2013, shall be exempt from sales and use taxes to the extent provided under paragraph (92) of Code Section 48-8-3 and shall not be subject to the ad valorem tax as otherwise required under Chapter 5 of Title 48.[60]

Instead of the annual tax, the new Section provides that "[a]ny such motor vehicle shall be titled as otherwise required under Title 40 but shall be subject to a state title fee and a local title fee which shall be alternative ad valorem taxes as authorized by Article VII, Section I, Paragraph III(b)(3) of the Georgia Constitution."[61]

The Act discusses how the ad valorem tax rate will be calculated and divided between the state and local counties until 2022.[62] These tax divisions are subject to change, however, based on calculations by the state revenue commissioner. "Beginning in 2016 . . . the state

57. *Id.* §§ 48-5B-1(a)(4)–(5).
58. *Id.* § 48-5B-1(a)(6).
59. Chris Joyner, *Annual Car Tax Nears an End*, ATLANTA J.-CONST., Apr. 2, 2012, at A1, *available at* http://www.ajc.com/news/georgia-government/annual-car-tax-nears-1404499.html.
60. O.C.G.A. § 48-5B-1(b)(1)(A) (Supp. 2012).
61. *Id.*
62. *See* Figure 1, *infra*.

revenue commissioner shall determine the local target collection amount and local current collection amount for the preceding calendar year" and has the authority to adjust the tax rate if needed to maintain the specified combined state and local ad valorem tax rate.[63] The state revenue commissioner will also calculate the target and current state collection amounts in the same fashion and can adjust the rates to maintain the specified rates in the Act.[64] "The combined state and local title ad valorem tax rate shall not exceed 9 percent."[65] The Act requires either the purchaser or the motor vehicle dealer to pay the tag agent, in the purchaser's county, for the application for title and taxes.[66]

Figure 1: Ad Valorem Tax Rate and Division.

Date Vehicle Purchased	Combined State and Local Ad Valorem Tax Rate	State Tax	Local Tax
March 1, 2013–December 31, 2013	6.5% of "fair market value . . . less any trade in value"[67]	57%[68]	43%[69]
2014	6.75% of "fair market value . . . less any trade in value"[70]	55%[71]	45%[72]
2015	7% of "fair market value . . . less any trade in value"[73]	55%[74]	45%[75]
2016	7% of "fair market value . . . less any trade in value"[76]	53.5%[77]	46.5%[78]

63. O.C.G.A. § 48-5B-1(b)(1)(B)(xiii) (Supp. 2012).
64. *Id.* § 48-5B-1(b)(1)(B)(xiv).
65. *Id.*
66. *Id.* § 48-5B-1(b)(1)(C).
67. *Id.* § 48-5B-1(b)(1)(B)(ii)(I).
68. *Id.* § 48-5B-1(b)(1)(B)(iii).
69. O.C.G.A. § 48-5B-1(b)(1)(B)(iii) (Supp. 2012).
70. *Id.* § 48-5B-1(b)(1)(B)(ii)(II).
71. *Id.* § 48-5B-1(b)(1)(B)(iv).
72. *Id.*
73. *Id.*. § 48-5B-1(b)(1)(B)(ii)(III).
74. *Id.* § 48-5B-1(b)(1)(B)(v).
75. O.C.G.A. § 48-5B-1(b)(1)(B)(v) (Supp. 2012).
76. *Id.* § 48-5B-1(b)(1)(B)(ii)(III).
77. *Id.* § 48-5B-1(b)(1)(B)(vi).

2017	7% of "fair market value . . . less any trade in value"[79]	44%[80]	56%[81]
2018	7% of "fair market value . . . less any trade in value"[82]	40%[83]	60%[84]
2019	7% of "fair market value . . . less any trade in value"[85]	36%[86]	64%[87]
2020	7% of "fair market value . . . less any trade in value"[88]	34%[89]	66%[90]
2021	7% of "fair market value . . . less any trade in value"[91]	30%[92]	70%[93]
2022	7% of "fair market value . . . less any trade in value"[94]	28%[95]	72%[96]

The Act also adds a penalty for falsification of a bill of sale and a penalty for a dealer's failure to submit an application for title and tax within ten days following the sale date, if the dealer accepts an application for title and tax from a purchaser.[97] Subsection (c) provides instruction on the allocation and disbursement of funds to the municipalities and school boards that are collected under the provisions of Section 48-5B-1 of this Code.[98] Subsection (d)(1) discusses the receiving of a motor vehicle through an inheritance that was not subject to the ad valorem tax under this provision of the code

78. *Id.*
79. *Id.* § 48-5B-1(b)(1)(B)(ii)(III).
80. *Id.* § 48-5B-1(b)(1)(B)(vii).
81. O.C.G.A. § 48-5B-1(b)(1)(B)(vii) (Supp. 2012).
82. *Id.* § 48-5B-1(b)(1)(B)(ii)(III).
83. *Id.* § 48-5B-1(b)(1)(B)(viii).
84. *Id.*
85. *Id.* § 48-5B-1(b)(1)(B)(ii)(III).
86. *Id.* § 48-5B-1(b)(1)(B)(ix).
87. O.C.G.A. § 48-5B-1(b)(1)(B)(ix) (Supp. 2012).
88. *Id.* § 48-5B-1(b)(1)(B)(ii)(III).
89. *Id.* § 48-5B-1(b)(1)(B)(x).
90. *Id.*
91. *Id.* § 48-5B-1(b)(1)(B)(ii)(III).
92. *Id.* § 48-5B-1(b)(1)(B)(xi).
93. O.C.G.A. § 48-5B-1(b)(1)(B)(xi) (Supp. 2012).
94. *Id.* § 48-5B-1(b)(1)(B)(ii)(III).
95. *Id.*§ 48-5B-1(b)(1)(B)(xii).
96. *Id.*
97. *See id*. §§ 48-5B-1(b)(1)(D)–(F).
98. *See id.* § 48-5B-1(c).

and allows the person who inherited the vehicle to make an election to be taxed under this Act after the inheritance.[99]

Subsection (d)(2) discusses the transfer of a vehicle to an immediate family member in replacement of the "causal sale."[100] Immediate family member transfers of vehicles that are not subject to the new tax scheme will remain under the ad valorem scheme upon transfer unless a written election is made.[101] Vehicles purchased by immediate family members that were subject to the Act's title tax when originally purchased are taxed at purchase for one-quarter of one percent of the fair market value for the state and local tax.[102] Immediate family member transfers must be accompanied by an affidavit of the transferor stating that the transferee is an immediate family member; falsifying such material comes with a penalty.[103]

O.C.G.A. § 48-7-26

Section 2-1 of the Act amends subsection (b) of Code section 48-7-26 relating to the personal exemptions for income taxes.[104] This Act increases the personal exemption allowed as a deduction in computing Georgia taxable income of a married couple filing jointly from $5,400 to $7,400.[105] In addition, "if a taxpayer and spouse file separate returns, $3,700 shall be allowed to each person as a deduction in computing Georgia taxable income."[106] All other individuals who do not qualify for this exemption will be allowed a $2,700 deduction in computing Georgia taxable income.[107] This Act also amends the personal exemption for dependents from earlier years, and makes "$3,000 for each dependent of a taxpayer" the allowed deduction "in computing Georgia taxable income for a taxpayer."[108]

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99. O.C.G.A. § 48-5B-1(d)(1) (Supp. 2012).
100. *Id.* § 48-5B-1(d)(2). Subsection (a)(2) defines "Immediate family member" as a "spouse, parent, child, sibling, grandparent, or grandchild." *Id.* § 48-5B-1(a)(2).
101. *Id.* § 48-5B-1(d)(2)(A).
102. *Id.* § 48-5B-1(d)(2)(B).
103. *Id.* § 48-5B-1(d)(2)(C).
104. HB 386 (LC 34 3484S/AP), § 2-1, p. 18, ln. 609–10, 2012 Ga. Gen. Assem.
105. O.C.G.A. § 48-7-26(b)(1) (Supp. 2012).
106. *Id.*
107. *Id.* § 48-7-26(b)(2).
108. *Id.* § 48-7-26(b)(3).

O.C.G.A. § 48-7-27

Section 2-2 of the Act amends paragraph (5) of subsection (a) of Code section 48-7-27 relating to the computation of taxable net income including retirement income.[109] The Act amends Code section 48-7-27(a)(5)(A)(xiii) to extend the $35,000 limit on retirement income that can be excluded from the computation of Georgia taxable net income indefinitely into the future for taxpayers meeting the eligibility requirements set out in Code sections 48-7-27(a)(5)(D)(i)–(ii).[110] This Code section also provides for a $65,000 exclusion if the taxpayer meets the eligibility requirements set out in Code section 48-7-27(a)(5)(D)(iii).[111] To accomplish this, the Act amends Code section 48-7-27 by deleting Code sections 48-7-27(a)(5)(A)(xiv)–(xvii), which stipulated the limits on the amount of retirement income that could be excluded from the computation of Georgia taxable net income from 2013 until a set amount starting after 2015.[112]

O.C.G.A. § 48-7-29.12

Section 3-1 of the Act revises Code Section 48-7-29.12, relating to various tax credits for easement donations.[113] First, the Act modifies tax credits for the donation of real property to the state or a charitable nonprofit.[114] Code section 48-7-29.12(b)(3) changes tax credit limits for a donation by a partnership from one million dollars to

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109. HB 386 (LC 34 3484S/AP), § 2-2, p. 18, ln. 632–35, 2012 Ga. Gen. Assem.

110. O.C.G.A. § 48-7-27(a)(5)(A)(xiii) (Supp. 2012). *Id.* Section 48-7-27(a)(5)(D) provides:

> A taxpayer shall be eligible for the exclusions granted by this paragraph only if the taxpayer: (i) [i]s 62 years of age or older but less than 65 years of age during any part of the taxable year; or (ii) [i]s permanently and totally disabled in that the taxpayer has a medically demonstrable disability which is permanent and which renders the taxpayer incapable of performing any gainful occupation within the taxpayer's competence.

111. *Id.* § 48-7-27(a)(5)(A)(xiii). "A taxpayer shall be eligible for the exclusions granted by this paragraph only if the taxpayer: . . . (iii) [i]s 65 years of age or older during any part of the year." *Id.* § 48-7-27(a)(5)(D).

112. HB 386 (LC 34 3484S/AP), § 2-2, p. 20, ln. 678–701, 2012 Ga. Gen. Assem.

113. *Id.,* § 3-1, p. 21, ln. 738–40.

114. O.C.G.A. § 48-7-29.12 (Supp. 2012).

$500,000.[115] The Act also limits the transfers of sale of tax credits earned in a taxable year to one transfer a year.[116]

O.C.G.A. § 48-8-2

Section 6-1 of the Act amends paragraph (8) of Code section 48-8-2 relating to definitions associated with state sales and use tax.[117] The Act amends the Code's definition of what qualifies as a "dealer" for the purpose of interpreting Code's sales and use tax sections.[118]

O.C.G.A. § 48-8-3

Section 4-1 of the Act amends paragraph (73) of Code section 48-8-3 relating to exemptions from sales and use tax.[119] The Act deletes paragraph (73), which provided a tax credit for the sale or lease of equipment or services associated with Georgia's film industry.[120] Paragraph (73) of Code section 48-8-3 is now "[r]eserved."[121]

Section 5-1 of the Act amends paragraphs (25), (26), (27), (28), (29), (29.1), (34), (34.3), (35), (37), (49), (64), (77), (79), and (90) of Code section 48-8-3 relating to exemptions from sales and use tax.[122] Paragraph (25) provided a sales and use tax exemption for the sale of seed, fertilizers, and other chemicals used for farming.[123] Paragraph (25) also afforded a sales and use tax exemption for the sale of feed for livestock, fish, or poultry.[124] Paragraph (26) provided an exemption for the sale of "machinery and equipment which [was]

115. *Id.* § 48-7-29.12(b)(3).
116. *Id.* § 48-7-29.12(d.1)(1).
117. HB 386 (LC 34 3484S/AP), § 6-1, p. 50, ln. 1758–59, 2012 Ga. Gen. Assem.
118. O.C.G.A. § 48-8-2(8) (Supp. 2012).
119. HB 386 (LC 34 3484S/AP), § 4-1, p. 27, ln. 952–53, 2012 Ga. Gen. Assem.
120. *Id.* § 4-1, p. 28, ln. 975–84. O.C.G.A. § 48-8-3(73)(A) previously provided for a sales and use tax for "[t]he 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." *Id.* § 48-8-3(73)(A) (2012).
121. O.C.G.A. § 48-8-3(73) (Supp. 2012).
122. HB 386 (LC 34 3484S/AP), § 5-1, p. 28, ln. 987–90, 2012 Ga. Gen. Assem.
123. O.C.G.A. § 48-8-3(25) (2011).
124. *Id.*

used . . . exclusively for the irrigation of farm crops."[125] Paragraph (27) provided an exemption for the "sale of sugar used as food for honeybees kept for the commercial production of honey, beeswax, and honeybees" when the commissioner gave prior approval.[126] Paragraph (28) provided an exemption for the "sale of cattle, hogs, sheep, horses, poultry, or bees when sold for breeding purposes."[127] Paragraph (29) provided an exemption for various types of agricultural machinery, for example, machines used to produce eggs, process milk, or harvest pecans.[128] Paragraph (29.1) provided an exemption for the sale of "any off-road equipment and related attachments which [were] . . . used exclusively in site preparation, planting, cultivating, or harvesting timber."[129] Paragraph (34) provided an exemption for the "sale of . . . machinery or equipment which [was] necessary and integral to the manufacture of tangible personal property."[130] Paragraph (34.3) provided an exemption for the sale of repair and replacement parts "necessary and integral to the manufacture of tangible personal property in a manufacturing plant presently existing in this state."[131] Paragraph (35) provided an exemption for the "sale, use, storage, or consumption of . . . industrial materials" that would become part of "tangible personal property" later in the manufacturing process.[132] Paragraph (37) provided an exemption for the sale of machinery and equipment used in "combating air and water pollution . . . in the manufacture of tangible personal property."[133] Paragraph (49) provided an exemption for the sale of fuels used in a structure in which poultry is raised.[134] Paragraph (64) provided an exemption for the "sale of electricity or other fuel" used on farms "exclusively for the irrigation of crops."[135] Paragraph (77) provided an exemption for the sale of fuels used in structures where "plants or . . . floral products [were] raised primarily

125. *Id.* § 48-8-3(26).
126. *Id.* § 48-8-3(27).
127. *Id.* § 48-8-3(28).
128. *Id.* § 48-8-3(29).
129. O.C.G.A. § 48-8-3(29.1) (2011).
130. *Id.* § 48-8-3(34).
131. *Id.* § 48-8-3(34.3).
132. *Id.* § 48-8-3(35).
133. *Id.* § 48-8-3(37).
134. *Id.* § 48-8-3(49).
135. O.C.G.A. § 48-8-3(64) (2011).

for . . . sale" or resale.[136] Paragraph (79) provided an exemption for the "sale or use of ice for chilling poultry or vegetables" while they were processed for market, held in storage rooms, or being transferred in delivery trucks.[137] Paragraph (90) provided an exemption for "[t]he sale of electricity to a manufacturer located in this state" when "the direct cost of such electricity exceed[ed] 50 percent of the cost of all materials . . . used directly in the product."[138] Paragraphs (25), (26), (27), (28), (29), (29.1), (34), (34.3), (35), (37), (49), (64), (77), (79), and (90) of Code section 48-8-3 are now "[r]eserved."[139]

Section 5-5 of the Act amends Title 48 by amending paragraphs (90) and (91), and adding a new paragraph (92) to Code section 48-8-3.[140] New paragraph (92) provides for an exemption from the sales and use tax for "sales of tangible personal property used for and in the construction of a competitive project of regional significance" from January 1, 2012, until June 30, 2014.[141] This exemption applies to any project that meets the definition of a "competitive project of regional significance" within the referenced time frame, but the sale does not have to be completed during the time frame to qualify.[142]

Section 5-6 also amends Title 48 by revising paragraph (33.1) of Code section 48-8-3, involving exemptions to sales and use taxes.[143] These revisions offer tax exemptions for "the sale or use of jet fuel to or by a qualifying airline"[144] at "qualifying airport[s]."[145] From July

136. *Id.* § 48-8-3(77).
137. *Id.* § 48-8-3(79).
138. *Id.* § 48-8-3(90).
139. *Id.* §§ 48-8-3(25), (26), (27), (28), (29), (29.1), (34), (34.3), (35), (37), (49), (64), (77), (79), (90) (Supp. 2012).
140. HB 386 (LC 34 3484S/AP), § 5-5, p. 47, ln. 1661–84, 2012 Ga. Gen. Assem.
141. O.C.G.A. § 48-8-3(92)(A) (Supp. 2012).
142. *Id.* § 48-8-3(92)(B) (Supp. 2012). "'[C]ompetitive project of regional significance' means the location or expansion of some or all of a business enterprise's operations in this state where the commissioner or economic development determines that the project would have a significant regional impact." *Id.* § 48-8-3(92)(D) (Supp. 2012).
143. HB 386 (LC 34 3484S/AP), § 5-6, p. 48, ln. 1686, 2012 Ga. Gen. Assem.
144. "Qualifying airline" means an airline that, "for the 12 month period immediately preceding the applicable period . . . had, or would have had in the absence of any exemption during such 12 month period, state sales and use tax liability on jet fuel of more than $15 million," and 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." O.C.G.A. §§ 48-8-3(33.1)(C), (E) (Supp. 2012).
145. *See generally id.* § 48-8-3(33.1) (Supp. 2012). "Qualifying airport" means "any airport in the state that has had more than 750,000 takeoffs and landings during a calendar year," and it must be a

1, 2011 until June 30, 2012, qualifying airlines at qualifying airports will be exempt from "state sales and use tax until the aggregate state sales and use tax liability" from the purchase of jet fuel reaches $20 million.[146] Beginning July 1, 2012, qualifying airlines at qualifying airports will "be exempt from 1 per cent [sic] of the 4 percent sales and use tax[es]" associated with the sale or use of gasoline.[147]

Section 6-2 also amends Title 48 by revising paragraphs (75) and (82) of Code section 48-8-3, relating to sales and use tax exemptions.[148] This amendment implements the dates for tax-free holidays for 2012 and 2013.[149]

O.C.G.A. § 48-8-3.2

Section 5-2 further amends Title 48 to include a new Code section, 48-8-3.2.[150] This new Code section provides a comprehensive overhaul to the tax exemptions available for the sale of machinery, equipment, and industrial materials used in the manufacture of tangible personal property.[151]

O.C.G.A. § 48-8-3.3

In addition, Section 5-3 further amends Title 48 to include a new Code section, 48-8-3.3.[152] This new Code section provides a comprehensive overhaul to the tax exemption available for inputs, energy, machinery, and equipment used in the agricultural industry.[153]

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certificated air carrier airport in Georgia. *Id.* §§ 48-8-3(33.1)(C), (F).

146. O.C.G.A. § 48-8-3(33.1)(B)(i) (Supp. 2012).
147. *Id.* § 48-8-3(33.1)(B)(ii).
148. HB 386 (LC 34 3484S/AP), § 5-2, p. 54, ln. 1909–10, 2012 Ga. Gen. Assem.
149. *See generally* O.C.G.A. §§ 48-8-3(75), (82) (Supp. 2012).
150. HB 386 (LC 34 3484S/AP), § 5-2, p. 32, ln. 1117–1336 2012 Ga. Gen. Assem.
151. *See generally* O.C.G.A. § 48-8-3.2 (Supp. 2012).
152. HB 386 (LC 34 3484S/AP), § 5-3, p. 38–41, ln. 1338–1468, 2012 Ga. Gen. Assem.
153. *See generally* O.C.G.A. § 48-8-3.3 (Supp. 2012).

O.C.G.A. § 48-13-110–O.C.G.A. § 48-13-118

Section 5-4 of the Act amends Title 48 by adding new Code sections 48-13-110 through 48-13-118.[154] These new sections authorize the 159 counties in Georgia to collect an excise tax upon the use or sale of energy, except for the uses specified in Code section 48-8-3.2.[155] This new amendment has a four year phase-in period, and the counties will be able to charge the full amount of local excise taxes beginning on January 1, 2016.[156]

Analysis

The Act instituted five major changes into Georgia's tax code: (1) an income tax cut for married couples; (2) special tax exemptions for the manufacturing, agriculture, and airline industries; (3) reductions and limitations to the amount of tax credits and exclusions that can be used for film production, conservation, and retirement income; (4) implementing a tax on e-commerce; and (5) eliminating the ad valorem tax.[157]

Income Tax Cut for Married Couples

The Act amended the Code by increasing the income tax exemption available for married couples.[158] Before the Act, Code section 48-7-26 did not provide an incentive for couples to marry.[159] Married couples filing jointly only received a $5,400 exemption, and those filing separately received a $2,700 exemption per person.[160]

154. HB 386 (LC 34 3484S/AP), § 5-4, p. 41–47, ln. 1470–1659, 2012 Ga. Gen. Assem.

155. *See generally* O.C.G.A. §§ 48-13-110 to -118 (Supp. 2012).

156. O.C.G.A. § 48-13-112(a)(3)(A)–(D) (Supp. 2012). From January 1, 2013, until December 31, 2013, the "excise tax shall be at a rate equivalent to 25 percent of the total amount of local sales and use tax." *Id.* § 48-13-112(A). From January 1, 2014, until December 31, 2014, the "excise tax shall be at a rate equivalent to 50 percent of the total amount of local sales and use tax." *Id.* § 48-13-112(B). Finally, from January 1, 2015, until December 31, 2015, the "excise tax shall be at a rate equivalent to 75 percent of the total amount of local sales and use tax." *Id.* § 48-13-112(C). Beginning January 1, 2016, the "excise tax shall be at a rate equivalent to 100 percent of the total amount of local sales and use tax." *Id.* § 48-13-112(D).

157. THARPE, *supra* note 12, at 1.

158. HB 386 (LC 34 3484S/AP), § 2-1, p. 18, ln. 611–14, 2012 Ga. Gen. Assem.

159. *See* O.C.G.A. §§ 48-7-26(b)(1)-(2) (2011).

160. *Id.*

This was the same exemption given to every other Georgia citizen, whether they were married or single.[161] After the Act became effective there was an additional $2,000 tax exemption for married couples.[162] Married couples filing jointly will now receive a $7,400 exemption on their income taxes, and married persons filing separately will each receive a $3,700 exemption.[163] All other taxpayers that do not qualify for the married income tax exemption will receive the $2,700 exemption as they did before the Act.[164]

In the Special Joint Committee on Tax Reform's second meeting on March 19, 2012, Majority Leader Rogers (R-21st) noted that the Act "reduce[d] the marriage penalty by about two-thirds."[165] Rogers stated that the fact that we "penalize[d] people in Georgia for being married [was] . . . sickening on its face," and saw this income tax reduction as a very positive aspect of this bill.[166]

Special Tax Exemptions for Manufacturing, Agriculture, and Airline Industries

Section 5-2 amends Title 48 to include a new Code section 48-8-3.2, relating to sales and use tax cuts on energy used by manufacturers.[167] This amendment implements a four year energy phase-out so that in the next four years manufacturers will not have to pay sales tax on the energy used in manufacturing.[168] There is a very strict definition of what is considered "manufacturing," but

161. *Id.*
162. O.C.G.A. § 48-7-26(b)(1) (Supp. 2012).
163. *Id.*
164. *Id.* § 48-7-26(b)(2).
165. Joint Committee Video Mar. 19, 2012, *supra* note 21, at 25 min., 31 sec. (remarks by Senate Majority Leader Sen. Chip Rogers (R-21st)).
166. *Id.* at 25 min., 36 sec. This tax exemption should save married individuals $362 million in the first three years after the Act goes into effect. *Id.* at 5 min., 59 sec. (remarks by Sen. Don Balfour (R-9th)).
167. HB 386 (LC 34 3484S/AP), § 5-2, p. 32–38, ln. 1117–336, 2012 Ga. Gen. Assem.
168. Joint Committee Video Mar. 19, 2012, *supra* note 21, at 6 min., 44 sec. (remarks by Sen. Don Balfour (R-9th)). Dalton Mayor David Pennington, mayor of the "carpet capital of the world," told reporters that "[t]his had to be done to make our state more competitive. . . . Repealing this tax was our No. 1 issue this year." Janel Davis, *Reaction Mixed to Energy Tax Repeal*, ATLANTA J.-CONST., Apr. 3, 2012, at A1, *available at* http://www.ajc.com/news/georgia-government/local-impact-unclear-on-1405485.html.

Senator Balfour (R-9th) thinks that this strict definition will go away "so that we get in line with most other state[s]."[169]

In the meantime, the Act provides that the Governor can give an energy sales and use tax exemption to projects that are of regional significance before the end of the four-year phase-out is complete.[170] The amendment gives the Governor a discretionary amount to provide an energy exemption to entice companies to move into Georgia.[171] This change to the Code was an important part of persuading Caterpillar, Inc.[172] and other manufacturers to build their manufacturing plants in Georgia.[173]

Additionally, the Act provides for an agricultural sales and use tax exemption.[174] The agricultural amendment provides for forty-two million dollars' worth of sales and use tax cuts for the agriculture industry in Georgia over the next three years.[175] This amendment is intended to grow the agricultural industry in Georgia.[176]

Finally, section 5-6 of the Act amends Title 48 by revising paragraph (33.1) of Code section 48-8-3, involving exemptions to sales and use taxes regarding the airline industry.[177] This provision primarily involves a jet fuel exemption.[178] The previous jet fuel exemption was due to expire after fiscal year 2013 and was only intended to benefit one company, Delta Airlines.[179] The implementation of the jet fuel exemption applies so that starting on July 1, 2012, every airline will only pay three percent—rather than

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169. Joint Committee Video, Mar. 19, 2012, *supra* note 21, at 6 min., 59 sec. (remarks by Sen. Don Balfour (R-9th)). For a complete list of what is included as "manufacturing," see generally O.C.G.A. § 48-8-3.2 (Supp. 2012).

170. O.C.G.A. § 48-8-3 (Supp. 2012).

171. *Id.* § 48-8-3(90)–(92); Joint Committee Video Mar. 19, 2012, *supra* note 21, at 7 min., 11 sec. (remarks by Sen. Don Balfour (R-9th)).

172. Caterpillar, Inc. is the world's leading construction manufacturer, as well as a leading service provider, with revenue in 2011 of $60.138 billion. *About the Company*, CATERPILLAR, INC., www.cat.com/about-the-company (last visited Aug. 11, 2012).

173. Joint Committee Video Mar. 19, 2012, *supra* note 21, at 7 min., 26 sec. (remarks by Sen. Don Balfour (R-9th)).

174. O.C.G.A. § 48-8-3.3 (Supp. 2012).

175. *Id.* § 48-8-3 (90)–(92) (Supp. 2012); Joint Committee Video Mar. 19, 2012, *supra* note 21, at 8 min., 3 sec. (remarks by Sen. Don Balfour (R-9th)).

176. O.C.G.A. § 48-8-3 (90)–(92) (Supp. 2012); *see also* Joint Committee Video Mar. 19, 2012, *supra* note 21, at 20 min., 19 sec. (remarks by Sen. Don Balfour (R-9th)).

177. O.C.G.A. § 48-8-3 (Supp. 2012).

178. Joint Committee Video Mar. 19, 2012, *supra* note 21, at 8 min., 56 sec. (remarks by Sen. Don Balfour (R-9th)).

179. *Id.*; THARPE, *supra* note 12, at 4.

four percent—on their fuel taxes.[180] The goal of this amendment is to "bring airlines into the state, and bring airlines into outlying areas and not just Hartsfield."[181]

Reductions and Limitations to Film Production, Conservation, and Retirement Income Tax Credits

The film credit in Georgia has brought many movie stars, as well as Hollywood's money to Georgia.[182] The Act eliminates the sales tax exemption for purchased or leased equipment, such as materials bought locally for set design or wardrobes.[183] This does not, however, put an end to movies in Georgia, as the thirty percent tax credit remains.[184] The Georgia Budget and Policy Institute called this cut "a prime example of how tax expenditures can, and should, be periodically reviewed to maximize effectiveness."[185] The Act also eliminates the unlimited transferability of the income tax credit for individuals, corporations, or partnerships who donate land to government entities or qualified nonprofits for the purpose of conservation that were originally allowed to be sold without limit.[186] The amount of retirement income that can be shielded from state income tax is now capped at $65,000 for individuals per year or $130,000 for couples per year under the Act.[187] This puts a limit on 2010 legislation that would have increased the amount of retirement income, such as pensions and investments that Georgians over age

180. O.C.G.A. § 48-8-3(33.1)(B)(ii) (Supp. 2012). This change will apply at *all* Georgia airports, not just Hartsfield-Jackson Atlanta International Airport. *Id.* § 48-8-3(33.1)(F); Joint Committee Video Mar. 19, 2012, *supra* note 21, at 9 min., 25 sec. (remarks by Sen. Don Balfour (R-9th)).

181. Joint Committee Video Mar. 19, 2012, *supra* note 21, at 9 min., 33 sec. (remarks by Sen. Don Balfour (R-9th)).

182. *See* THARPE, *supra* note 12, at 4. Proponents claim that Georgia's film tax credits, expanded in 2008, have helped grow Georgia's entertainment industry from a $240 million industry in 2006 to a $1.2 billion industry now. *Id.*

183. HB 386 (LC 34 3484S/AP), § 4-1, p. 27–28, ln. 954–84, 2012 Ga. Gen. Assem.

184. "[T]he movies that are being made here still get the tax credit but they no longer get the sales tax exemption on film." Joint Committee Video Mar. 19, 2012, *supra* note 21, at 6 min., 34 sec. (remarks by Senator Don Balfour (R-9th)).

185. THARPE, *supra* note 12, at 6.

186. According to the GBPI, the unlimited transferability of unused credits increasingly cost the state valuable revenue, with "the state's loss of revenue [rising] from $14 million in 2011 to $33 million in 2013." THARPE, *supra* note 12, at 6.

187. O.C.G.A. § 48-7-27 (Supp. 2012).

sixty-five could shield from state taxes yearly until 2016, when the exclusion would have become unlimited.[188]

Implementing a Tax on E-Commerce and Dealers in Georgia

Section 6-1 of the Act amends paragraph (8) of Code section 48-8-2 relating to the definitions associated with Georgia's state sales and use taxes.[189] This amendment changes what will qualify as a dealer by expanding the types of contacts that will establish a nexus for a dealer to have to pay sales and use taxes, and also establishes a nexus for sales and use taxes for sales made by dealers over the internet.[190]

The Act expanded the definition of what qualifies as a "dealer."[191] A "dealer" under the tax code now includes anyone who "maintains or *utilizes* . . . an office, distribution center, salesroom or sales office, warehouse, service enterprise, or any other place of business."[192] Before this amendment, the Code only charged a sales or use tax to anyone who "[m]aintain[ed] or has within this state, indirectly or by a subsidiary" any of these properties.[193] Now the property or building does not even have to be owned by the person being taxed, but the person only has to utilize the property to be subject to the sales and use tax.[194]

Perhaps the biggest impact under section 6-1 of the Act is the sales and use tax imposed on sales made over the internet.[195] The Special

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188. *See* THARPE, *supra* note 12, at 5. The exemption excludes the majority of seniors paying state income taxes, thus, some have asserted that the change only benefited Georgia's wealthiest retirees. *Id.* The GBPI notes that:

> [t]his was especially true because wage income was not shielded from taxes in the same way as unearned income. If the retirement income exclusion were allowed to go unlimited in 2016, a senior citizen supplementing her income by working at Wal-Mart would be subject to income taxes, whereas one receiving a million-dollar pension would not.

Id.

189. O.C.G.A. § 48-8-2 (Supp. 2012).

190. *Id.*

191. *Id.*

192. *Id.* § 48-8-2(8)(E) (Supp. 2012).

193. O.C.G.A. § 48-8-2(8)(E) (2011).

194. O.C.G.A. § 48-8-2(8)(E) (Supp. 2012). The Code now provides that persons will be charged a sales or use tax for maintaining or utilizing these properties "whether owned by such person or any other person, other than a common carrier acting in its capacity as such." *Id.*

195. *See* O.C.G.A. § 48-8-2(8)(M) (Supp. 2012).

Joint Committee on Tax Reform referred to this tax on e-commerce as "e-fairness."[196] This amendment requires persons, including out-of-state sellers, entering sales agreements with Georgia residents to pay a sales or use tax if the person:

> [D]irectly or indirectly refers potential customers, whether by a link on an Internet website, an in-person oral presentation, telemarketing, or otherwise . . . if the cumulative gross receipts from sales by the person to customers in this state . . . [are] in excess of $50,000.00 during the preceding 12 months.[197]

This tax is intended to level the playing field for in-state retailers who are competing against out-of-state online retailers regarding sales tax.[198] This is not a new or additional tax on consumers in Georgia, as it is currently the obligation of consumers in the state to pay a use tax on tangible items purchased from out-of-state retailers on the internet.[199] The Act simply puts this obligation into the Georgia Code, as consumers in the state are currently not paying the use tax.[200] This amended part of the tax code is projected to have a $47 million impact on Georgia's revenue.[201]

The nexus that connects the company to Georgia can also be established under the Act if the person has a "related member" that has a substantial nexus in the state that either: (1) "sells a similar line of products as the person and does so under the same or a similar business name"; or (2) "uses trademarks, service marks, or trade names in [Georgia] that are the same or substantially similar to those used by the person."[202] In addition, a nexus can be established under

196. Joint Committee Video Mar. 19, 2012, *supra* note 21, at 37 min., 01 sec. (remarks by Sen. Don Balfour (R-9th)).

197. O.C.G.A. § 48-8-2(8)(M)(i) (Supp. 2012).

198. Joint Committee Video Mar. 19, 2012, *supra* note 21, at 36 min., 11 sec. (remarks by Rep. Allen Peake (R-137th)). For example, if a Georgia consumer bought a television from Best Buy and Amazon.com. *Id.* at 37 min., 26 sec. (remarks by Sen. Don Balfour (R-9th)). On the television purchased from Best Buy, the consumer will have to pay sales tax because Best Buy has a nexus in Georgia as the company has stores here. *Id.* However, Amazon.com does not have a nexus in Georgia, and therefore does not have to charge a sales tax. *Id.* This amendment will ensure that these customers are still paying the use tax, which the consumer would have already owed before the Act. *Id.*

199. *Id.* at 36 min., 25 sec. (remarks by Rep. Allen Peake (R-137th)).

200. *Id.* at 37 min., 59 sec. (remarks by Sen. Don Balfour (R-9th)).

201. *Id.* at 36 min., 57 sec.

202. O.C.G.A. § 48-8-2(8)(K) (Supp. 2012). The presumption that this person qualifies as a dealer,

the Act if the person "[m]akes sales of tangible personal property or services . . . if any other person . . . who has a substantial nexus in this state (1) delivers, installs, assembles, or performs maintenance services for the person's customers within [Georgia]"; (2) assists in the delivery of the tangible property to customers in Georgia; or (3) "conducts any other activities . . . that are significantly associated with the person's ability to establish and maintain a market in this state for the person's sales."[203]

Eliminating the Ad Valorem Tax

Section 1-4 of the Act adds a new Chapter 5B to Title 48 of the Code, codified as section 48-5B-1.[204] The new Code Section 48-5B-1 repeals the sales and use tax and ad valorem tax for cars with titles issued on or after March 1, 2013, replacing the tax with a state title fee and a local title fee.[205] Prior to the Act, Georgia residents were required to pay a yearly tax on their car, due on their birthday—locally known as the dreaded "birthday tax."[206] Under the Act, drivers will pay a one-time tax upon purchase of a new vehicle instead. While this new form of taxation may be popular with voters, the economic impact on Georgia's treasury remains yet to be seen.

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and therefore has a nexus to pay sales and use taxes in Georgia, "may be rebutted by showing that the person does not have a physical presence in this state and that any in-state activities conducted on its behalf are not significantly associated with the person's ability to establish and maintain a market in this state." *Id.* § 48-8-2(8)(K)(ii).

203. *Id.* § 48-8-2(8)(L). Similar to Code section 48-8-2(8)(K), the presumption that this person qualifies as a dealer, and therefore has a nexus to pay sales and use taxes in Georgia, "may be rebutted by showing that the person does not have a physical presence in this state and that any in-state activities conducted on its behalf are not significantly associated with the person's ability to establish and maintain a market in this state." *Id.* § 48-8-2(8)(L)(ii).

204. *Id.* § 48-5B-1.

205. *Id.* Unlike purchased vehicles, leased vehicles will remain subject to the sales tax. Being subject to multiple levels of tax, leased vehicles will thus become relatively less desirable than owned vehicles from a tax perspective. *Id.*

206. Chris Joyner, *Annual Car Tax Nears an End*, ATLANTA J.-CONST., Apr. 2, 2012, at A1, *available at* http://www.ajc.com/news/georgia-government/annual-car-tax-nears-1404499.html.

> "Stupid birthday tax," she wrote from her Twitter account. "Happy birthday from Georgia, give us money!" Neslund, who lives in Avondale Estates, had just paid the annual tax on her 2003 Mercury days ahead of her birthday. "It's kind of insulting when you pay sales tax when you buy the car," she said in a telephone interview Friday. "It's like, Happy birthday, pay tax on something you've already paid for."

Id.

One major concern of the committee was how the tax would be viewed—as a tax increase or decrease.[207] In 2007 the tax was called "fiscally irresponsible" by then-Governor Perdue, and in 2009 abandoning the birthday tax was considered for a "one-time fee of 7 percent, but they capped the fee at $1,500."[208] Given the bill's fiscal projections through 2022, the accuracy of the committee's projections was one the major financial concerns of Senate Minority Leader Stacey Abrams.[209] Senator Balfour agreed that the projections cannot be accurate, stating: "[y]ou don't know if it is wrong high or low, but you know the number is wrong because we are projecting ten years out into the future."[210] He did argue, however, that the fiscal analysis performed by Georgia State University is conservative in estimating a four percent growth rate each year.[211]

According to Georgia Budget and Policy Institute, what revenue may be lost on the purchase of new cars is countered by the tax increase that comes from the extension of taxes to vehicles sold between individuals, or "casual sales", and the tax for automobiles purchased out of state.[212] The GBPI determined that "the projections indicate the state will bring in considerable revenue in the first three years, while the local governments will collect much less than they would under the current system."[213] The Act does respond to local governmental concerns, however. It has safeguards in place that prevent revenue from falling to a certain level as the state will guarantee local governments a minimum revenue of $1 billion each year with a two percent annual increase.[214] Since the portion of the title fee provided to local governments will automatically increase to meet that goal, the guarantee could lead to revenue reductions for the state, but the Act automatically increases the overall fee up to nine

207. Joint Committee Video Mar. 19, 2012, *supra* note 21, at 21 min., 03 sec. (remarks by House Representative Allen Peake (R-137th)).

208. Chris Joyner, *supra* note 206. The 2009 cap "earned criticism as a giveaway to luxury car buyers and died on the final day of that legislative session," because of the $1500 cap on the one time ad valorem tax. *Id.*

209. Joint Committee Video Mar. 19, 2012, *supra* note 21, at 14 min., 30 sec. (remarks by Senate Minority Leader Stacey Abrams (D-84th)).

210. Joint Committee Video Mar. 19, 2012, *supra* note 21, at 17 min., 06 sec. (remarks by Senator Don Balfour (R-9th)).

211. *Id.*

212. THARPE, *supra* note 12 at 5.

213. *Id.*

214. O.C.G.A. § 48-5B-1(b) (Supp. 2012).

percent—ensuring both the state and local governments meet their projections.[215]

As for the tax on new residents of Georgia, some of the Joint Committee members had their reservations. When Minority Leader Stacey Abrams asked about the tax impact on new residents of Georgia, Senator Don Balfour replied that while military families are exempt:

> if a school teacher moves here from another state, and they have a ten thousand dollar vehicle, they would have to title their car and pay on the ten thousand dollar car, seven hundred dollars in a title fee. For the military example you gave me, military people do not have to re-title their cars.[216]

This "welcome to Georgia" tax is ultimately why some of the bill's opponents in the house voted against the bill.[217]

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215. *Id.*
216. Joint Committee Video Mar. 19, 2012, *supra* note 21, at 12 min., 41 sec. (remarks by Senate Minority Leader Stacey Abrams (D-84th) and Senator Don Balfour (R-9th)).
217. *See* Interview with Rep. Representative Carolyn F. Hugley (D-133rd) (March, 29 2012).