

House Bill 688

By: Representatives Kirby of the 114th, Lindsey of the 54th, Sheldon of the 104th, Williamson of the 115th, Ballinger of the 23rd, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 48 of the Official Code of Georgia Annotated, relating to revenue and
2 taxation, so as to provide for a short title; to abolish the state income tax; to increase the rate
3 of tax on the retail purchase, retail sale, rental, storage, use, or consumption of certain
4 tangible property and on certain services; to provide for other matters relative to the
5 foregoing; to provide for an effective date; to provide for applicability; to repeal conflicting
6 laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 This Act shall be known and may be cited as the "Fair Taxation Act of 2014."

10 **SECTION 2.**

11 Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is
12 amended by repealing Chapter 7, relating to income taxes, and enacting a new Chapter 7 to
13 read as follows:

14 "CHAPTER 7

15 48-7-1.

16 On and after January 1, 2015, there shall be no income taxes whatsoever levied or collected
17 by the state or any political subdivision thereof, and no income tax returns shall be
18 required."

19 **SECTION 3.**

20 Said title is further amended by revising Code Section 48-8-30, relating to the rate and
21 imposition of the state sales and use tax, as follows:

22 "48-8-30.

23 (a) There is levied and imposed a tax on the retail purchase, retail sale, rental, storage, use,
24 or consumption of tangible personal property and on the services described in this article.

25 (b)(1) Every purchaser of tangible personal property at retail in this state shall be liable
26 for a tax on the purchase at ~~the rate of 4 percent~~ a percentage to be determined by the
27 General Assembly of the sales price of the purchase. The tax shall be paid by the
28 purchaser to the retailer making the sale, as provided in this article. The retailer shall
29 remit the tax to the commissioner as provided in this article and, when received by the
30 commissioner, the tax shall be a credit against the tax imposed on the retailer. Every
31 person making a sale or sales of tangible personal property at retail in this state shall be
32 a retailer and a dealer and shall be liable for a tax on the sale at ~~the rate of 4 percent~~ a
33 percentage to be determined by the General Assembly of the sales price, or the amount
34 of taxes collected by him or her from his or her purchaser or purchasers, whichever is
35 greater.

36 (2) No retail sale shall be taxable to the retailer or dealer which is not taxable to the
37 purchaser at retail.

38 (c)(1) Upon the first instance of use, consumption, distribution, or storage within this
39 state of tangible personal property purchased at retail outside this state, the owner or user
40 of the property shall be a dealer and shall be liable for a tax at ~~the rate of 4 percent~~ a
41 percentage to be determined by the General Assembly of the purchase price, except as
42 provided in paragraph (2) of this subsection.

43 (2) Upon the first instance of use, consumption, distribution, or storage within this state
44 of tangible personal property purchased at retail outside this state and used outside this
45 state for more than six months prior to its first use within this state, the owner or user of
46 the property shall be a dealer and shall be liable for a tax at ~~the rate of 4 percent~~ a
47 percentage to be determined by the General Assembly of the purchase price or fair market
48 value of the property, whichever is the lesser.

49 (3) This subsection shall not be construed to require a duplication in the payment of the
50 tax. The tax imposed by this subsection shall be subject to the credit otherwise granted
51 by this article for like taxes previously paid in another state.

52 (c.1)(1) Every purchaser of tangible personal property at retail outside this state from a
53 dealer, as defined in Code Section 48-8-2, when such property is to be used, consumed,
54 distributed, or stored within this state, shall be liable for a tax on the purchase at ~~the rate~~
55 ~~of 4 percent~~ a percentage to be determined by the General Assembly of the sales price of
56 the purchase. It shall be prima-facie evidence that such property is to be used, consumed,
57 distributed, or stored within this state if that property is delivered in this state to the
58 purchaser or agent thereof. The tax shall be paid by the purchaser to the retailer making

59 the sale, as provided in this article. The retailer shall remit the tax to the commissioner
 60 as provided in this article and, when received by the commissioner, the tax shall be a
 61 credit against the tax imposed on the retailer. Every person who is a dealer, as defined
 62 in Code Section 48-8-2, and who makes any sale of tangible personal property at retail
 63 outside this state, which property is to be delivered in this state to a purchaser or
 64 purchaser's agent, shall be a retailer and a dealer for purposes of this article and shall be
 65 liable for a tax on the sale at ~~the rate of 4 percent~~ a percentage to be determined by the
 66 General Assembly of such sales price or the amount of tax as collected by that person
 67 from purchasers having their purchases delivered in this state, whichever is greater.

68 (2) No retail sale shall be taxable to the retailer or dealer which is not taxable to the
 69 purchaser at retail. The tax imposed by this subsection shall be subject to the credit
 70 otherwise granted by this article for like taxes previously paid in another state. This
 71 subsection shall not be construed to require a duplication in the payment of the tax.

72 (d)(1) Every person to whom tangible personal property in the state is leased or rented
 73 shall be liable for a tax on the lease or rental at ~~the rate of 4 percent~~ a percentage to be
 74 determined by the General Assembly of the sales price. The tax shall be paid to the
 75 person who leases or rents the property by the person to whom the property is leased or
 76 rented. A person who leases or rents property to others as a dealer under this article shall
 77 remit the tax to the commissioner as provided in this article. When received by the
 78 commissioner, the tax shall be a credit against the tax imposed on the person who leases
 79 or rents the property to others. Every person who leases or rents tangible personal
 80 property in this state to others shall be a dealer and shall be liable for a tax on the lease
 81 or rental at ~~the rate of 4 percent~~ a percentage to be determined by the General Assembly
 82 of the sales price, or the amount of taxes collected by him or her from persons to whom
 83 he or she leases or rents tangible personal property, whichever is greater.

84 (2) No lease or rental shall be taxable to the person who leases or rents tangible property
 85 to another which is not taxable to the person to whom the property is leased or rented.

86 (3) The lessee of both taxable and exempt property in this state under a single lease
 87 agreement containing a lease period of ten years or more shall have the option to
 88 discharge in full all sales and use taxes imposed by this article relating to the tangible
 89 personal property by paying in a lump sum ~~4 percent~~ a percentage to be determined by
 90 the General Assembly of the fair market value of the tangible personal property at the
 91 date of inception of the lease agreement in the same manner and under the same
 92 conditions applicable to sales of the tangible personal property.

93 (e) Upon the first instance of use within this state of tangible personal property leased or
 94 rented outside this state, the person to whom the property is leased or rented shall be a
 95 dealer and shall be liable for a tax at ~~the rate of 4 percent~~ a percentage to be determined by

96 the General Assembly of the sales price paid to the person who leased or rented the
97 property, subject to the credit authorized for like taxes previously paid in another state.

98 (e.1)(1) Every person who leases, as lessor, or rents tangible personal property outside
99 this state for use within this state shall be liable for a tax at ~~the rate of 4 percent a~~
100 percentage to be determined by the General Assembly of the sales price paid for that
101 lease or rental if that person is a dealer, as defined in Code Section 48-8-2, and title to
102 that property remains in that person. It shall be prima-facie evidence that such property
103 is to be used within this state if that property is delivered in this state to the lessee or
104 renter of such property, or to the agent of either. The tax shall be paid by the lessee or
105 renter, and payment of the tax shall be made to the lessor or person receiving rental
106 payments for that property, which person shall be the dealer for purposes of this article.
107 The dealer shall remit the tax to the commissioner as provided in this article and, when
108 received by the commissioner, the tax shall be a credit against the tax imposed on the
109 dealer. Every person who is a dealer, as defined in Code Section 48-8-2, and who leases
110 or rents tangible personal property outside this state to be delivered in this state to the
111 lessee, renter, or agent of either shall be a dealer and shall be liable as such for a tax on
112 the lease or rental at ~~the rate of 4 percent a~~ percentage to be determined by the General
113 Assembly of the sales price from such leases or rentals or the amount of taxes collected
114 by that dealer for leases or rentals of tangible personal property delivered in this state,
115 whichever is greater.

116 (2) No lease or rental shall be taxable to the dealer which is not taxable to the lessee or
117 renter. The tax imposed by this subsection shall be subject to the credit granted by this
118 article for like taxes previously paid in another state. This subsection shall not be
119 construed to require a duplication in the payment of the tax.

120 (f)(1) Every person purchasing or receiving any service within this state, the purchase
121 of which is a retail sale, shall be liable for tax on the purchase at ~~the rate of 4 percent a~~
122 percentage to be determined by the General Assembly of the sales price made for the
123 purchase. The tax shall be paid by the person purchasing or receiving the service to the
124 person furnishing the service. The person furnishing the service, as a dealer under this
125 article, shall remit the tax to the commissioner as provided in this article; and, when
126 received by the commissioner, the tax shall be a credit against the tax imposed on the
127 person furnishing the service. Every person furnishing a service, the purchase of which
128 is a retail sale, shall be a dealer and shall be liable for a tax on the sale at ~~the rate of 4~~
129 percent a percentage to be determined by the General Assembly of the sales price made
130 for furnishing the service, or the amount of taxes collected by him or her from the person
131 to whom the service is furnished, whichever is greater.

132 (2) No sale of services shall be taxable to the person furnishing the service which is not
133 taxable to the purchaser of the service.

134 (3)(A) Assessments of the state sales and use tax under this article on the charges
135 described in subparagraph (H) of paragraph (31) of Code Section 48-8-2 shall accrue
136 commencing on July 1, 2011; provided, however, that collection of such state sales and
137 use tax upon such charges shall not commence until the commissioner of community
138 health has provided written notification to the state revenue commissioner that until
139 such time as the Centers for Medicare and Medicaid Services of the United States
140 Department of Health and Human Services has approved the state plan amendments
141 described in subsection (b) of Code Section 31-8-152.1. In the event that such approval
142 is not obtained or is reversed, or that the federal financial participation is not available
143 with respect to revenues derived from such state sales and use tax, all accrued amounts
144 of such tax shall lapse, and the charges described in subparagraph (H) of paragraph (31)
145 of Code Section 48-8-2 shall not constitute sales for purposes of this article.

146 (B)(i) The charges for services described in subparagraph (H) of paragraph (31) of
147 Code Section 48-8-2 shall be subject to state sales and use tax only and shall in no
148 event be subject to any local sales and use tax.

149 (ii) For purposes of this subparagraph, the term 'local sales and use tax' means any
150 sales tax, use tax, or local sales and use tax which is levied and imposed in an area
151 consisting of less than the entire state, however authorized, including, but not limited
152 to, such taxes authorized by or pursuant to constitutional amendment; by or pursuant
153 to Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended,
154 the 'Metropolitan Atlanta Rapid Transit Authority Act of 1965'; or by or pursuant to
155 any article of this chapter other than Article 1 of this chapter.

156 (C) This paragraph shall stand automatically repealed on the date the state treasurer
157 certifies in writing to the commissioner that federal matching funds have ceased to be
158 available or on June 30, 2014, whichever date is earlier.

159 (g) Whenever a purchaser of tangible personal property under subsection (b) or (c.1) of
160 this Code section, a lessee or renter of the property under subsection (d) or (e.1) of this
161 Code section, or a purchaser of taxable services under subsection (f) of this Code section
162 does not pay the tax imposed upon him or her to the retailer, lessor, or dealer who is
163 involved in the taxable transaction, the purchaser, lessee, or renter shall be a dealer himself
164 or herself and the commissioner, whenever he or she has reason to believe that a purchaser
165 or lessee has not so paid the tax, may assess and collect the tax directly against and from
166 the purchaser, lessee, or renter, unless the purchaser, lessee, or renter shows that the
167 retailer, lessor, or dealer who is involved in the transaction has nevertheless remitted to the
168 commissioner the tax imposed on the transaction. If payment is received directly from the

169 purchaser, it shall not be collected a second time from the retailer, lessor, or dealer who is
170 involved.

171 (h) The tax imposed by this Code section shall be collected from the dealer and paid at the
172 time and in the manner provided in this article. Any person engaging or continuing in
173 business as a retailer and wholesaler or jobber shall pay the tax imposed on the sales price
174 of retail sales of the business at the rate specified when proper books are kept showing
175 separately the gross proceeds of sales for each business. If the records are not kept
176 separately, the tax shall be paid as a retailer or dealer on the gross sales of the business.
177 For the purpose of this Code section, all sales through any one vending machine shall be
178 treated as a single sale. The gross proceeds for reporting vending sales shall be treated as
179 if the tax is included in the sale and the taxable proceeds shall be net of the tax included in
180 the sale.

181 (i) The tax levied by this Code section is in addition to all other taxes, whether levied in
182 the form of excise, license, or privilege taxes, and shall be in addition to all other fees and
183 taxes levied.

184 (j) In the event any distributor licensed under Chapter 9 of this title purchases any motor
185 fuel on which the prepaid state tax or prepaid local tax or both have been imposed pursuant
186 to this Code section and resells the same to a governmental entity that is totally or partially
187 exempt from such tax under paragraph (1) of Code Section 48-8-3, such distributor shall
188 be entitled to either a credit or refund. The amount of the credit or refund shall be the
189 prepaid state tax or prepaid local tax or both rates for which such governmental entity is
190 exempt multiplied by the gallons of motor fuel purchased for its exclusive use. To be
191 eligible for the credit or refund, the distributor shall reduce the amount such distributor
192 charges for the fuel sold to such governmental entity by an amount equal to the tax from
193 which such governmental entity is exempt. Should a distributor have a liability under this
194 Code section, the distributor may elect to take a credit for those sales against such liability.

195 (k) The prepaid local tax shall be imposed at the time tax is imposed under subparagraph
196 (b)(2)(B) of Code Section 48-9-14."

197 **SECTION 4.**

198 (a) This Act shall become effective on January 1, 2015.

199 (b) Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not
200 be affected by the passage of this Act and shall continue to be governed by the provisions of
201 Title 48 of the Official Code of Georgia Annotated as it existed immediately prior to the
202 effective date of this Act.

203

SECTION 5.

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