

House Bill 833

By: Representatives Mitchell of the 88th, Bryant of the 162nd, Fludd of the 64th, Jordan of the 77th, Scott of the 76th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 16 of Title 48 of the Official Code of Georgia Annotated, relating to the
2 tax amnesty program, so as to provide for additional waiver periods; to provide for new
3 duration and applicability periods; to clarify when certain periods of time apply; to update
4 legislative findings; to provide a definition; to provide for related matters; to provide an
5 effective date; to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Chapter 16 of Title 48 of the Official Code of Georgia Annotated, relating to the tax amnesty
9 program, is amended by revising Code Section 48-16-1, relating to legislative findings,
10 declaration, and intent, as follows:

11 "48-16-1.

12 The General Assembly finds and declares that a public purpose is served by the waiver of
13 tax penalties and criminal prosecution in return for the immediate reporting and payment
14 of previously underreported, unreported, or unpaid tax liabilities. The General Assembly
15 further finds and declares that the benefits gained through this program include, among
16 other things, increased collection of certain currently owed taxes, permanently bringing
17 into the tax system taxpayers who have been evading payment of taxes, and providing an
18 opportunity for taxpayers to satisfy tax obligations before stepped-up tax enforcement
19 programs take effect. It is the intention of the General Assembly in enacting this chapter
20 that the tax amnesty program provided under this chapter be ~~a one-time occurrence which~~
21 ~~shall not be repeated in the future~~ opened infrequently and for short periods of time because
22 taxpayers' expectations of any future amnesty programs could have a substantial,
23 counterproductive effect on compliance ~~under this chapter with the tax laws of this state."~~

24 **SECTION 2.**

25 Said chapter is further amended by revising Code Section 48-16-3, relating to definitions, as
 26 follows:

27 "48-16-3.

28 As used in this chapter, the term:

29 (1) 'Accounts receivable' means an amount of state tax, penalty, or interest which has
 30 been recorded as due and entered in the account records or any ledger maintained in the
 31 department, or which a taxpayer should reasonably expect to become due as a direct or
 32 indirect result of any pending or completed audit or investigation, which a taxpayer
 33 knows is being conducted by any federal, state, or local taxing authority.

34 (2) 'Final, due, and owing' means an assessment which has become final and is owed to
 35 the state due to either the expiration of the taxpayer's appeal rights or, in the case of an
 36 assessment which has been appealed, either pursuant to Chapter 13 of Title 50, the
 37 'Georgia Administrative Procedure Act,' or pursuant to Code Section 48-2-59, the
 38 rendition of the final order by the commissioner or by any court of this state.
 39 Assessments that have been appealed shall be final, due, and owing 15 days after the last
 40 unappealed or unappealable order sustaining the assessment or any part thereof has
 41 become final. Assessments that have not been appealed shall be final, due, and owing 30
 42 days after service of notice of assessment pursuant to Code Section 48-2-45.

43 (3) 'Tax amnesty period' means the period of time from when a tax amnesty program is
 44 opened until its completion as prescribed by the commissioner in accordance with Code
 45 Section 48-16-4 or 48-16-4.1.

46 (4) 'Taxpayer' means any individual, partnership, joint venture, association, corporation,
 47 receiver, trustee, guardian, executor, administrator, fiduciary, or any other entity of any
 48 kind subject to any tax set forth in this title or any person required to collect any such tax
 49 under this title."

50 **SECTION 3.**

51 Said chapter is further amended by revising Code Section 48-16-4, relating to tax amnesty
 52 program, waiver of penalties, duration and applicability of program, and forms, as follows:

53 "48-16-4.

54 (a) The commissioner shall develop and administer a ~~one-time~~ tax amnesty program as
 55 provided in this chapter for outstanding liabilities for taxable periods or transactions that
 56 occur on or before December 31, 1990. The commissioner shall, upon the voluntary return
 57 and remission of taxes and interest owed by any taxpayer, waive all penalties that are
 58 assessed or subject to being assessed for outstanding liabilities for taxable periods ending
 59 or transactions occurring on or before December 31, 1990. The commissioner shall

60 provide by regulation as necessary for the administration of this amnesty program and shall
61 further provide for necessary forms for the filing of amnesty applications and returns.

62 (b) ~~Notwithstanding the provisions of any other law to the contrary, the~~ The tax amnesty
63 program provided in this Code section shall begin by October 31, 1992, and shall be
64 completed no later than December 31, 1992, and shall apply to all taxpayers owing taxes,
65 penalties, or interest administered by the commissioner under the provisions of this title,
66 except that the tax amnesty shall not apply to any property tax levied or administered by
67 the commissioner pursuant to Chapters 5 and 6 of this title. The program shall apply to tax
68 liabilities for taxable periods ending or transactions occurring on or before December 31,
69 1990. Amnesty tax return forms shall be in a form prescribed by the commissioner."

70 **SECTION 4.**

71 Said chapter is further amended by adding a new Code section to read as follows:

72 "48-16-4.1.

73 (a) The commissioner shall develop and administer a tax amnesty program as provided in
74 this chapter. The commissioner shall, upon the voluntary return and remission of taxes and
75 interest owed by any taxpayer, waive all penalties that are assessed or subject to being
76 assessed for outstanding liabilities for taxable periods commencing or transactions
77 occurring on or after January 1, 1991, and on or before December 31, 2015. The
78 commissioner shall provide by regulation as necessary for the administration of this
79 amnesty program and shall further provide for necessary forms for the filing of amnesty
80 applications and returns.

81 (b) The tax amnesty program shall begin by October 31, 2016, and shall be completed no
82 later than December 31, 2016, and shall apply to all taxpayers owing taxes, penalties, or
83 interest administered by the commissioner under the provisions of this title, except that the
84 tax amnesty shall not apply to any property tax levied or administered by the commissioner
85 pursuant to Chapters 5 and 6 of this title. The program shall apply to tax liabilities for
86 taxable periods ending or transactions occurring on or before December 31, 2015.
87 Amnesty tax return forms shall be in a form prescribed by the commissioner."

88 **SECTION 5.**

89 Said chapter is further amended by revising Code Section 48-16-5, relating to applicability,
90 effect of audit, assessment, bill, notice, demand for payment or proceeding, installment
91 agreements, and deficiency assessment after amnesty period ends, as follows:

92 "48-16-5.

93 (a) The provisions of this chapter shall apply to any eligible taxpayer who files an
94 application for amnesty within the time prescribed by the commissioner and does the
95 following:

96 (1) Files such returns as may be required by the commissioner for all years or tax
97 reporting periods as stated on the application for which returns have not previously been
98 filed and files such returns as may be required by the commissioner for all years or tax
99 reporting periods for which returns were filed but the tax liability was underreported;

100 (2) Pays in full the taxes due for the periods and taxes applied for at the time the
101 application or amnesty tax returns are filed within the applicable tax amnesty period and
102 pays with the taxes the amount of interest due and pays the amount of any additional tax
103 and interest owed as may be determined by the commissioner within 30 days of
104 notification by the commissioner; and

105 (3) The commissioner may, in his discretion, impose by regulation, the further condition
106 that, in addition to the requirements set forth in paragraphs (1) and (2) of this subsection,
107 the requirement that any eligible taxpayer also pay in full within the applicable tax
108 amnesty period all taxes previously assessed by the commissioner that are final, due, and
109 owing at the time the application or amnesty tax returns are filed and pays with the taxes
110 the amount of interest due and pays within 30 days of notification by the commissioner
111 the amount of any additional interest owed.

112 (b) An eligible taxpayer may participate in the amnesty program whether or not the
113 taxpayer is under audit, notwithstanding the fact that the amount due is included in a
114 proposed assessment or an assessment, bill, notice, or demand for payment issued by the
115 commissioner, and without regard to whether the amount due is subject to a pending
116 administrative or judicial proceeding. An eligible taxpayer may participate in the amnesty
117 program to the extent of the uncontested portion of any assessed liability. However,
118 participation in the program shall be conditioned upon the taxpayer's agreement that the
119 right to protest or initiate an administrative or judicial proceeding or to claim any refund
120 of moneys paid under the program is barred with respect to the amounts paid with the
121 application or amnesty return.

122 (c) The commissioner may enter into an installment payment agreement in cases of severe
123 hardship in lieu of the complete payment required under subsection (a) of this Code
124 section. In such cases, 25 percent of the amount due shall be paid with the application or
125 amnesty return with the balance to be paid in monthly installments not less than 25 percent
126 of the original amount nor to exceed three months following the expiration of the
127 applicable tax amnesty period. Failure of the taxpayer to make timely payments shall void

128 the terms of the amnesty program. All such agreements and payments shall include interest
129 due and accruing during the installment agreement.

130 (d) If, following the termination of the applicable tax amnesty period, the commissioner
131 issues a deficiency assessment based upon information independent of that shown on a
132 return filed pursuant to subsection (a) of this Code section, the commissioner shall have the
133 authority to impose penalties and criminal action may be brought where authorized by law
134 only with respect to the difference between the amount shown on the amnesty tax return
135 and the correct amount of tax due. The imposition of penalties or criminal action shall not
136 invalidate any waiver granted under Code Section 48-16-6."

137 **SECTION 6.**

138 Said chapter is further amended by revising Code Section 48-16-10, relating to imposition
139 of cost of collection fee after amnesty period expires, as follows:

140 "48-16-10.

141 (a) In addition to all other penalties provided under this chapter or any other law, the
142 commissioner may by regulation impose after the expiration of the tax amnesty period
143 provided in Code Section 48-16-4 a cost of collection fee of 20 percent of any deficiency
144 assessed for any taxable period ending or transactions occurring after December 31, 1990.
145 This fee shall be in addition to all other applicable penalties, fees, or costs. The
146 commissioner shall have the right to waive any collection fee when it is demonstrated that
147 any deficiency of the taxpayer was not due to negligence, intentional disregard of
148 administrative rules and regulations, or fraud.

149 (b) In addition to all other penalties provided under this chapter or any other law, the
150 commissioner may pursuant to regulation impose after the expiration of the tax amnesty
151 period provided in Code Section 48-16-4 a cost of collection fee of 50 percent of any
152 deficiency assessed after the amnesty period provided in Code Section 48-16-4 for taxable
153 periods ending or transactions occurring on or before December 31, 1990, regardless of
154 when due. This fee shall be in addition to all other applicable penalties, fees, or costs. The
155 commissioner shall have the right to waive any collection fee when it is demonstrated that
156 any deficiency of the taxpayer was not due to negligence, intentional disregard of
157 administrative rules and regulations, or fraud.

158 (c) The provisions of subsections (a) and (b) of this Code section shall not apply to any
159 account which has been protested pursuant to Code Section 48-2-46 as of the expiration of
160 the amnesty period provided in Code Section 48-16-4 and which does not become final,
161 due, and owing, or to any account on which the taxpayer is remitting timely payments
162 under a payment agreement negotiated with the commissioner prior to or during the
163 amnesty period provided in Code Section 48-16-4.

164 (d) The fee levied under subsections (a) and (b) of this Code section shall not be imposed
165 in addition to the fee provided for in Code Section 48-16-4.1 or apply to taxes paid
166 pursuant to the terms of the amnesty program provided in Code Section 48-16-4 or
167 48-16-4.1."

168 **SECTION 7.**

169 Said chapter is further amended by adding a new Code section to read as follows:

170 "48-16-10.1.

171 (a) In addition to all other penalties provided under this chapter or any other law, the
172 commissioner may by regulation impose after the expiration of the tax amnesty period
173 provided in Code Section 48-16-4.1 a cost of collection fee of 20 percent of any deficiency
174 assessed for any taxable period ending or transactions occurring after December 31, 2015.
175 This fee shall be in addition to all other applicable penalties, fees, or costs. The
176 commissioner shall have the right to waive any collection fee when it is demonstrated that
177 any deficiency of the taxpayer was not due to negligence, intentional disregard of
178 administrative rules and regulations, or fraud.

179 (b) In addition to all other penalties provided under this chapter or any other law, the
180 commissioner may pursuant to regulation impose after the expiration of the tax amnesty
181 period provided in Code Section 48-16-4.1 a cost of collection fee of 50 percent of any
182 deficiency assessed after the amnesty period provided in Code Section 48-16-4.1 for
183 taxable periods ending or transactions occurring on or before December 31, 2015,
184 regardless of when due. This fee shall be in addition to all other applicable penalties, fees,
185 or costs. The commissioner shall have the right to waive any collection fee when it is
186 demonstrated that any deficiency of the taxpayer was not due to negligence, intentional
187 disregard of administrative rules and regulations, or fraud.

188 (c) The provisions of subsections (a) and (b) of this Code section shall not apply to any
189 account which has been protested pursuant to Code Section 48-2-46 as of the expiration of
190 the amnesty period provided in Code Section 48-16-4.1 and which does not become final,
191 due, and owing, or to any account on which the taxpayer is remitting timely payments
192 under a payment agreement negotiated with the commissioner prior to or during the
193 amnesty period provided in Code Section 48-16-4.1.

194 (d) The fee levied under subsections (a) and (b) of this Code section shall not be imposed
195 in addition to the fee provided for in Code Section 48-16-4 or apply to taxes paid pursuant
196 to the terms of the amnesty program provided in Code Section 48-16-4 or 48-16-4.1."

197 **SECTION 8.**

198 This Act shall become effective upon its approval by the Governor or upon its becoming law
199 without such approval.

200 **SECTION 9.**

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