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REVENUE AND TAXATION

Sales and Use Taxes: Exempt Sales Taxes on Certain Clothing, School Supplies, and Computers

CODE SECTION:	O.C.G.A. § 48-8-3 (amended)
BILL NUMBER:	HB 1312
ACT NUMBER:	402
GEORGIA LAWS:	2002 Ga. Laws 6
SUMMARY:	The Act, known as “Shop Georgia,” exempts from state and local sales tax certain school supplies, clothing, footwear, computers, and computer-related accessories over two different weekend periods. The sales tax exemption applies to clothing and footwear with a sales price of \$100 or less per article, but does not apply to accessories such as jewelry, handbags, umbrellas, eyewear, watches, and watchbands. Additionally, the Act excludes items intended primarily for use as athletic or sporting gear. The sales tax exemption applies to the purchase of a personal computer for home use with a purchase price of at least \$1500. This purchase must include the processing unit. Finally, the Act exempts the sales tax on the purchase of school supplies with a purchase price of \$20 or less per item.
EFFECTIVE DATE:	March 5, 2002 ¹

History

In the past few years, the general assemblies in several other states have passed legislation exempting from sales tax a specified list of

1. 2002 Ga. Laws 6, § 2, at 7. The Act became effective upon approval by the Governor. *See id.*

items, including clothing and shoes.² In those states, stores have reported significant increases in sales during the sales tax holiday period, resulting in an overall tax revenue increase.³ Georgia's Republican legislators included similar legislation in the prior two sessions, but it failed to pass.⁴ Additionally, Representative Ron Borders, author of HB 1312, had previously introduced similar legislation that also failed to pass.⁵ However, those proposals, as well as the other states' legislation, came "during flush economic times."⁶

In 2001, much of the nation, including Georgia, suffered through an economic recession.⁷ In order to stimulate the economy, the General Assembly passed HB 1312 exempting the sales tax on certain specified items.⁸ By exempting the sales tax on clothing, footwear, computers, and school supplies, the General Assembly provided an incentive for Georgians to spend money on needed items as well as to attract shoppers from neighboring states.⁹ Additionally, customers shopping for tax exempt items would also purchase items which were not tax exempt, thereby increasing tax revenues.¹⁰

HB 1312

Consideration by the House of Representatives

Representatives Ron Borders, Thomas Buck, Charlie Smith, Ellis Black, and Jay Shaw of the 177th, 135th, 175th, 178th, and the 176th

2. See e.g., D.C. CODE ANN. § 47-2005(32) (2001); FLA. ADMIN. CODE ANN. r. 12AER01-1 (2001); IOWA CODE STAT. § 422.45(59) (2002); N.C. GEN. STAT. § 105-164.13C (2001); S.C. CODE ANN. § 12-36-2120(57) (2001); see also Kristen Wyatt, *Sales Tax Holiday Popular Elsewhere, But Barnes Catches Heat*, APWIRES, Feb. 10, 2002.

3. See Wyatt, *supra* note 2.

4. See Andy Peters, *Barnes Pitches Sales Tax Holidays: Governor Touts Successes in State of the State*, MACON TELEGRAPH, Feb. 7, 2002; see also Kristen Wyatt, *Republicans Not Happy with Barnes' Plan for Sales Tax Holiday*, APWIRES, Feb. 11, 2002.

5. See Telephone Interview with Rep. Ron Borders, House District No. 177 (June 24, 2002) [hereinafter Borders Interview].

6. James Salzer, *Barnes Pitches Sales Tax Holiday: Shopping Incentive Meant to Aid Economy*, ATLANTA J. CONST. Feb. 7, 2002, at G1.

7. See Andy Peters, *State House Approves \$16.2 Billion Midyear Budget*, MACON TELEGRAPH, Feb. 15, 2002, at A1.

8. *Id.*; see also Wyatt, *supra* note 2.

9. See Salzer, *supra* note 6; see also Dave Williams, *Barnes Proposes Sales Tax Holiday: Idea Builds on Stimulus Package*, FLA. TIMES-UNION, Feb. 7, 2002, at A1.

10. Audio Recording of Senate Proceedings, Mar. 1, 2002 (remarks by Sen. Steve Thompson), at <http://www.state.ga.us/services/leg/audio/2002archive.html> [hereinafter Senate Audio].

Districts, respectively, sponsored HB 1312 and introduced it on February 8, 2002.¹¹ The House voted to engross the bill on February 11, 2002.¹² The House Speaker assigned the bill to the Ways and Means Committee.¹³ On February 12, 2002, the Committee favorably reported the bill without changes.¹⁴ The House passed the bill by a vote of 170 to 1 on February 14, 2002.¹⁵

Consideration by the Senate

On February 18, 2002, the Senate referred HB 1312 to its Finance and Public Utilities Committee.¹⁶ On February 27, 2002, the Committee favorably reported the bill.¹⁷ Senator Rusty Paul introduced three amendments to expand the bill to include athletic gear, to eliminate the price cap on school supplies, and to make the sales tax holiday an annual event.¹⁸ However, the Senate did not adopt any of the amendments.¹⁹ Instead, the Senate unanimously passed the bill with no changes on March 1, 2002.²⁰ Governor Roy E. Barnes signed the bill into law on March 5, 2002.²¹

The Act

The Act adds a new paragraph to Code section 48-8-3, creating an exemption from state sales and use taxes on March 29 and 30, 2002,

11. HB 1312, as introduced, 2002 Ga. Gen. Assem.; State of Georgia Final Composite Status Sheet, HB 1312, Apr. 12, 2002. During the writing process, the bill underwent several changes including shortening the duration of tax exempt period, dividing the sales tax holiday into two separate periods to allow parents to purchase two seasons worth of clothes, and broadening the scope by adding computers and peripherals to help bridge the digital divide. *See* Borders Interview, *supra* note 5.

12. State of Georgia Final Composite Status Sheet, HB 1312, Apr. 12, 2002.

13. State of Georgia Final Composite Status Sheet, HB 1312, Apr. 12, 2002.

14. State of Georgia Final Composite Status Sheet, HB 1312, Apr. 12, 2002.

15. Georgia House of Representatives Voting Record, HB 1312 (Feb. 14, 2002); State of Georgia Final Composite Status Sheet, HB 1312, Apr. 12, 2002.

16. State of Georgia Final Composite Status Sheet, HB 1312, Apr. 12, 2002.

17. State of Georgia Final Composite Status Sheet, HB 1312, Apr. 12, 2002.

18. Senate Audio, *supra* note 10 (remarks by Sen. Rusty Paul).

19. Senate Audio, *supra* note 10 (remarks by Sen. Steve Thompson) (noting that since the House engrossed the bill, any changes would prevent its timely implementation since the bill would have to go back to the House).

20. *Compare* HB 1312, as introduced, 2002 Ga. Gen. Assem., *with* HB 1312, as passed, 2002 Ga. Gen. Assem. *See also* Georgia Senate Voting Record, HB 1312 (Mar. 1, 2002).

21. *See* 2002 Ga. Laws 6, § 2. at 7; State of Georgia Final Composite Status Sheet, HB 1312, Apr. 12, 2002.

and on August 2 and 3, 2002.²² On these specified dates, the Act permits shoppers to purchase, tax free, certain covered items in three large categories.²³ The first category of covered items is clothing and footwear with a sales price of \$100.00 or less per article, excluding accessories, athletic gear, eyewear, watches, and watchbands.²⁴

The second category includes personal computers and accessories purchased for “noncommercial home or person use.”²⁵ The Act exempts the sales tax on the first \$1500.00 of the sales price of a single purchase of the computer and the exemption is available on accessories such as monitors, keyboards, modems, and nonrecreational software only when purchased with a computer base unit.²⁶ However, the exemption does not apply to personal digital assistant devices, computer furniture, or any “systems, devices, software, or peripherals designed or intended primarily for recreational use.”²⁷

The third category of covered items is general school supplies for use in the classroom or for completing homework up to a sales price of \$20.00.²⁸

Opposition to HB 1312

Opposition to HB 1312 came primarily from Republicans.²⁹ Senator Rusty Paul questioned whether this bill was about tax relief or whether it was simply an election year gimmick.³⁰ He proposed three amendments to HB 1312 to demonstrate that the Senate was serious about helping the citizens of Georgia.³¹ First, he proposed an

22. Compare 2001 Ga. Laws 1068, § 1, at 1068 (formerly found at O.C.G.A. § 48-8-3 (Supp. 2001)) with O.C.G.A. § 48-8-3 (2002).

23. Compare 2001 Ga. Laws 1068, § 1, at 1068 (formerly found at O.C.G.A. § 48-8-3 (Supp. 2001)) with O.C.G.A. § 48-8-3 (2002).

24. Compare 2001 Ga. Laws 1068, § 1, at 1068 (formerly found at O.C.G.A. § 48-8-3 (Supp. 2001)) with O.C.G.A. § 48-8-3 (2002).

25. Compare 2001 Ga. Laws 1068, § 1, at 1068 (formerly found at O.C.G.A. § 48-8-3 (Supp. 2001)) with O.C.G.A. § 48-8-3 (2002).

26. Compare 2001 Ga. Laws 1068, § 1, at 1068 (formerly found at O.C.G.A. § 48-8-3 (Supp. 2001)) with O.C.G.A. § 48-8-3 (2002).

27. Compare 2001 Ga. Laws 1068, § 1, at 1068 (formerly found at O.C.G.A. § 48-8-3 (Supp. 2001)) with O.C.G.A. § 48-8-3 (2002).

28. Compare 2001 Ga. Laws 1068, § 1, at 1068 (formerly found at O.C.G.A. § 48-8-3 (Supp. 2001)) with O.C.G.A. § 48-8-3 (2002).

29. See Peters, *supra* note 4; Wyatt, *supra* note 4.

30. See Senate Audio, *supra* note 10 (remarks by Sen. Rusty Paul).

31. See *id.*

amendment to make the sales tax holiday an annual event.³² Second, he proposed eliminating the restriction on athletic gear as this discouraged participation in sports and athletics.³³ Finally, he proposed eliminating the \$20 limit on school supplies as this had the unintended problem of discriminating against large families who purchase a “large, super-sized pack” of pencils and notebooks which may be over the \$20 limit.³⁴ He also noted that some basic school supplies, such as clear backpacks required for school safety and good quality calculators, cost more than \$20 and would therefore not be exempt from sales tax.³⁵ The Senate voted against all three amendments.³⁶

Representatives had further concerns about the dates selected for the first sales tax holiday.³⁷ Representative Mitchell Kaye of the 124th noted that other states included Sunday in their sales tax holiday and that the Friday of Georgia’s first holiday period fell on Good Friday and Passover.³⁸

Representatives also expressed concern whether the State Revenue Department and stores could be ready for implementing the first holiday period which was approximately six weeks away.³⁹ Store employees noted that because of the short time period, they were not adequately stocked in appropriate merchandise, resulting in disappointed customers or the need to place catalog orders.⁴⁰ Additionally, store employees felt that they would have sold additional educational software if the sales tax exemption were not limited to only those shoppers who also purchased a computer base unit.⁴¹

32. Failed Senate Floor Amendment 1 to HB1312, introduced by Sen. Rusty Paul, Mar. 1, 2002; *see also* Senate Audio, *supra* note 10 (remarks by Sen. Rusty Paul).

33. *See* Failed Senate Floor Amendment 2 to HB1312, introduced by Sen. Rusty Paul, Mar. 1, 2002; *see also* Senate Audio, *supra* note 10 (remarks by Sen. Rusty Paul).

34. *See* Failed Senate Floor Amendment 3 to HB1312, introduced by Sen. Rusty Paul, Mar. 1, 2002; *see also* Senate Audio, *supra* note 10 (remarks by Sen. Rusty Paul).

35. Senate Audio, *supra* note 10 (remarks by Sen. Rusty Paul).

36. Georgia Senate Voting Record, HB 1312 (Mar. 1, 2002).

37. *See* Audio Recording of House Proceedings, Feb. 14, 2002 (remarks by Rep. Mitchell Kaye), at <http://www.state.ga.us/services/leg/audio/2002archive.html> [hereinafter House Audio].

38. *Id.* Representative Ron Borders stated that he was not aware that, because of religious principals, people would choose to not shop on those days. *Id.*

39. *Id.* (remarks by Rep. Jeff Lewis).

40. *See* Interview with Sharon Warburton, office supply store sales associate, in Snellville, Ga. (Apr. 21, 2002).

41. *See id.*

Nevertheless, Representative Borders noted that the results from the first tax exempt holiday were “staggering” and that the retail community could not believe the effect on their business and sales volume.⁴² He pointed out that the resulting figures were not as onerous as feared at the time the bill passed.⁴³

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42. See Borders Interview, *supra* note 5; see also Renee Degross, *Easter A Major Boost for March Retail Sales*, ATLANTA J. CONST. Apr. 12, 2002, at F1; Jim Tharpe, *State Tax Revenues Continue Decline: \$660 Million Shy of Last Year's Income*, ATLANTA J. CONST. May 10, 2002, at D1.

43. *Id.*