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Georgia Governor Signs Omnibus Tax Bill with Click Through Nexus Provisions

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Georgia Governor Nathan Deal on April 19, 2012 has signed omnibus tax legislation that includes click-through nexus provisions aimed at requiring certain online sellers to collect taxes on sales into the state. The law also amends corporate and personal income tax provisions relating to personal exemptions, retirement income, and the credit for donated conservation property; reinstates the annual state sales tax holiday, and replaces the sales tax on motor vehicle tax with a one time title fee. (L. 2012, H386, effective 01/01/2013.)

Sales and use tax nexus. The legislation aims to level the playing field for Georgia businesses by providing that tax be collected by out-of-state retailers that have nexus in Georgia by use of 129 affiliates in the state or that use "click through" marketing using affiliates in Georgia. That expanded "Amazon" language would create nexus for sellers with an agent in Georgia that performs installation and maintenance services, delivery services—other than common carriers—or uses the same or similar business name or trademark. There is an exception when gross sales from referrals by "click through" affiliates are under $50,000 annually; and for sellers that come into Georgia solely for trade shows up to a maximum of five days.

Sales tax holiday. The legislation would reinstate several sales tax holidays for two years (2012-2013). These include the "Back To School" holiday for computers and accessories, clothing, and school supplies, and the "Energy Star" and "Water Sense" holidays for energy-efficient and water-efficient appliances.

Motor vehicle tax reform. The sales tax on the purchase of motor vehicles (MV) and the ad valorem tax on the same MVs would be replaced with a one-time title fee calculated by multiplying the MV value by a fee rate of 7% (6.5% in 2013 and 6.75% in 2014). Car rental companies that purchase MVs would only pay a 1.5% title fee because they would be collecting sales taxes on the rental/lease of MVs. Salvage titles would be subject to a 1% title fee only.

Income tax provisions. To reduce the marriage penalty, the personal exemption for all married taxpayers filing jointly would be increased from $5,400 to $7,400, and for each spouse filing separately from $2,700 to $3,700. The retirement income exclusion for income tax purposes would be frozen at the current $65,000

level. Married couples would get $130,000 of retirement income exempt plus Social Security would also be exempt.

Manufacturing and agriculture exemptions Current agricultural sales tax exemptions would be replaced by new exemption language requiring that taxpayers apply to the state's agriculture commissioner and prove they were "legitimately in the business of farming. A new exemption for energy used in manufacturing and mining which is an exemption from state and local sales taxes, except for the 1% local sales taxes for education, would be phased in over four years beginning January 1, 2013. The energy exemption would not apply to manufacturers such as power companies that are primarily engaged in producing electricity for resale.

Limits on credits. The income tax credit for donations of land for conservation purposes would be limited to one transfer of the credit and would lower the partnership cap on the credit from $1 million to $500,000. The 30% film income tax credit would be retained, but the sales tax exemption on sales or leases of production equipment or services by film producers would be eliminated.

Energy excise tax. Local governments would be authorized to impose an excise tax on energy purchases by ordinance, subject to referendum approval. Revenues from the excise tax would be distributed in the same manner as the local sales taxes.

Jet fuel exemption. Airlines would be exempted from 1% of the 4% state sales and use tax on jet fuel purchases made at airports in Georgia.

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