

House Bill 935 (AS PASSED HOUSE AND SENATE)

By: Representatives Harrell of the 106th, Powell of the 171st, Stephens of the 164th, Knight of the 130th, Duncan of the 26th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Part 1 of Article 2 of Chapter 5 of Title 48 of the Official Code of Georgia
2 Annotated, relating to exemptions from ad valorem tax, so as to add certain fulfillment
3 centers to properties eligible for a freeport exemption; to provide for related matters; to
4 repeal conflicting laws; and for other purposes.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

6 SECTION 1.

7 Part 1 of Article 2 of Chapter 5 of Title 48 of the Official Code of Georgia Annotated,
8 relating to exemptions from ad valorem tax, is amended by revising subsection (b) of Code
9 Section 48-5-48.1, relating to an exemption for tangible personal property inventory, as
10 follows:

11 "(b) The application for the level 1 freeport exemption shall provide for:

12 (1) A schedule of the inventory of goods in the process of manufacture or production
13 which shall include all partly finished goods and raw materials held for direct use or
14 consumption in the ordinary course of the taxpayer's manufacturing or production
15 business in the State of Georgia;

16 (2) A schedule of the inventory of finished goods manufactured or produced within the
17 State of Georgia in the ordinary course of the taxpayer's manufacturing or production
18 business when held by the original manufacturer or producer of such finished goods; ~~and~~

19 (3) A schedule of the inventory of finished goods which on January 1 are stored in a
20 warehouse, dock, or wharf, whether public or private, and which are destined for
21 shipment outside the State of Georgia and the inventory of finished goods which are
22 shipped into the State of Georgia from outside this state and which are stored for
23 transshipment to a final destination outside this state. The information required by Code
24 Section 48-5-48.2 to be contained in the official books and records of the warehouse,
25 dock, or wharf where such property is being stored, which official books and records are
26 required to be open to the inspection of taxing authorities of this state and political

27 subdivisions thereof, shall not be required to be included as a part of or to accompany the
 28 application for such exemption; and
 29 (4) A schedule of the stock in trade of a fulfillment center which on January 1 are stored
 30 in the fulfillment center. The information required by Code Section 48-5-48.2 to be
 31 contained in the official books and records of the fulfillment center where such property
 32 is being stored, which official books and records are required to be open to the inspection
 33 of the taxing authorities of this state and political subdivisions thereof, shall not be
 34 required to be included as a part of or to accompany the application for such exemption."

35 **SECTION 2.**

36 Said part is further amended by revising Code Section 48-5-48.2, relating to the level 1
 37 freeport exemption, as follows:

38 "48-5-48.2.

39 (a) This Code section shall be known and may be cited as the 'Level 1 Freeport
 40 Exemption.'

41 (b) As used in this Code section, the term:

42 (1) 'Destined for shipment to a final destination outside this state' means, for purposes
 43 of a level 1 freeport exemption, that portion or percentage of an inventory of finished
 44 goods which the taxpayer can establish, through a historical sales or shipment analysis,
 45 either of which utilizes information from the preceding calendar year, or other reasonable,
 46 documented method, is reasonably anticipated to be shipped to a final destination outside
 47 this state. Such other reasonable, documented method may only be utilized in the case
 48 of a new business, in the case of a substantial change in scope of an existing business, or
 49 in other unusual situations where a historical sales or shipment analysis does not
 50 adequately reflect future anticipated shipments to a final destination outside this state.
 51 It is not necessary that the actual final destination be known as of January 1 in order to
 52 qualify for the exemption.

53 (2) 'Finished goods' means, for purposes of a level 1 freeport exemption, goods, wares,
 54 and merchandise of every character and kind but shall not include unrecovered,
 55 unextracted, or unsevered natural resources or raw materials or goods in the process of
 56 manufacture or production or the stock in trade of a retailer.

57 (3) 'Foreign merchandise in transit' means, for purposes of a level 1 freeport exemption,
 58 any goods which are in international commerce where the title has passed to a foreign
 59 purchaser and the goods are temporarily stored in this state while awaiting shipment
 60 overseas.

61 (4) 'Fulfillment center' means, for purposes of a level 1 freeport exemption, a business
 62 location in Georgia which is used to pack, ship, store, or otherwise process tangible

63 personal property sold by electronic, Internet, telephonic, or other remote means,
 64 provided that such a business location does not allow customers to purchase or receive
 65 goods onsite at such business location.

66 (5) 'Raw materials' means, for purposes of a level 1 freeport exemption, any material,
 67 whether crude or processed, that can be converted by manufacture, processing, or a
 68 combination thereof into a new and useful product but shall not include unrecovered,
 69 unextracted, or unsevered natural resources.

70 (6) 'Stock in trade of a fulfillment center' means, for purposes of a level 1 freeport
 71 exemption, goods, wares, and merchandise held by one in the business of making sales
 72 of such goods when such goods are held or stored at a fulfillment center.

73 ~~(5)~~(7) 'Stock in trade of a retailer' means, for purposes of a level 1 freeport exemption,
 74 finished goods held by one in the business of making sales of such goods at retail in this
 75 state, within the meaning of Chapter 8 of this title, when such goods are held or stored
 76 at a business location from which such retail sales are regularly made. Goods stored in
 77 a warehouse, dock, or wharf, including a warehouse or distribution center which is part
 78 of or adjoins a place of business from which retail sales are regularly made, shall not be
 79 considered stock in trade of a retailer to the extent that the taxpayer can establish, through
 80 a historical sales or shipment analysis, either of which utilizes information from the
 81 preceding calendar year, or other reasonable, documented method, the portion or
 82 percentage of such goods which is reasonably anticipated to be shipped outside this state
 83 for resale purposes.

84 (c) The governing authority of any county or municipality may, subject to the approval of
 85 the electors of such political subdivision, exempt from ad valorem taxation, including all
 86 such taxes levied for educational purposes and for state purposes, all or any combination
 87 of the following types of tangible personal property:

88 (1) Inventory of goods in the process of manufacture or production which shall include
 89 all partly finished goods and raw materials held for direct use or consumption in the
 90 ordinary course of the taxpayer's manufacturing or production business in this state. The
 91 exemption provided for in this paragraph shall apply only to tangible personal property
 92 which is substantially modified, altered, or changed in the ordinary course of the
 93 taxpayer's manufacturing, processing, or production operations in this state. For purposes
 94 of this paragraph, the following activities shall constitute substantial modification in the
 95 ordinary course of manufacturing, processing, or production operations:

96 (A) The cleaning, drying, pest control treatment, or segregation by grade of grain,
 97 peanuts or other oil seeds, or cotton;

98 (B) The remanufacture of aircraft engines or aircraft engine parts or components,
 99 meaning the substantial overhauling or rebuilding of aircraft engines or aircraft engine
 100 parts or components; and

101 (C) The blending of fertilizer bulk materials into a custom mixture, whether performed
 102 at a commercial fertilizer blending plant, retail outlet, or any application site;

103 (2) Inventory of finished goods manufactured or produced within this state in the
 104 ordinary course of the taxpayer's manufacturing or production business when held by the
 105 original manufacturer or producer of such finished goods. The exemption provided for
 106 in this paragraph shall be for a period not exceeding 12 months from the date such
 107 property is produced or manufactured; ~~or~~

108 (3) Inventory of finished goods which, on January 1, are stored in a warehouse, dock, or
 109 wharf, whether public or private, and which are destined for shipment to a final
 110 destination outside this state and inventory of finished goods which are shipped into this
 111 state from outside this state and stored for transshipment to a final destination outside this
 112 state, including foreign merchandise in transit. The exemption provided for in this
 113 paragraph shall be for a period not exceeding 12 months from the date such property is
 114 stored in this state. Such period shall be determined based on application of a first-in,
 115 first-out method of accounting for the inventory. The official books and records of the
 116 warehouse, dock, or wharf where such property is being stored shall contain a full, true,
 117 and accurate inventory of all such property, including the date of the receipt of the
 118 property, the date of the withdrawal of the property, the point of origin of the property,
 119 and the point of final destination of the same, if known. The official books and records
 120 of any such warehouse, dock, or wharf, whether public or private, pertaining to any such
 121 property for which a freeport exemption has been claimed shall be at all times open to the
 122 inspection of all taxing authorities of this state and of any political subdivision of this
 123 state; or

124 (4) Stock in trade of a fulfillment center which, on January 1, are stored in a fulfillment
 125 center and which are made available to remote purchasers who may make such purchases
 126 by electronic, Internet, telephonic, or other remote means, and where such stock in trade
 127 of a fulfillment center will be shipped from the fulfillment center and delivered to the
 128 purchaser at a location other than the location of the fulfillment center. The exemption
 129 provided for in this paragraph shall be for a period not exceeding 12 months from the date
 130 such property is stored in this state. Such period shall be determined based on application
 131 of a first-in, first-out method of accounting for the inventory. The official books and
 132 records of the fulfillment center where such property is being stored shall contain a full,
 133 true, and accurate inventory of all such property, including the date of the receipt of the
 134 property and the date of the withdrawal of the property. The official books and records

135 of any such fulfillment center pertaining to any such property for which a freeport
136 exemption has been claimed shall be at all times open to the inspection of all taxing
137 authorities of this state and of any political subdivision of this state.

138 (d) Whenever the governing authority of any county or municipality wishes to exempt
139 such tangible property from ad valorem taxation, as provided in this Code section, the
140 governing authority thereof shall notify the election superintendent of such political
141 subdivision, and it shall be the duty of said election superintendent to issue the call for an
142 election for the purpose of submitting to the electors of the political subdivision the
143 question of whether such exemption shall be granted. The referendum ballot shall specify
144 as separate questions the type or types of property as defined in this Code section which
145 are being proposed to be exempted from taxation. The election superintendent shall issue
146 the call and shall conduct the election on a date and in the manner authorized under Code
147 Section 21-2-540.

148 (e) The governing authority of any county or municipality wherein an exemption has been
149 approved by the voters as provided in this Code section may, by appropriate resolution, a
150 copy of which shall be immediately transmitted to the state revenue commissioner, exempt
151 from taxation 20 percent, 40 percent, 60 percent, 80 percent or all of the value of such
152 tangible personal property as defined in this Code section; provided, however, that once
153 an exemption has been granted, no reduction in the percent of the value of such property
154 to be exempted may be made until and unless such exemption is revoked or repealed as
155 provided in this Code section. An increase in the percent of the value of the property to be
156 exempted may be accomplished by appropriate resolution of the governing authority of
157 such county or municipality, and a copy thereof shall be immediately transmitted to the
158 state revenue commissioner, provided that such increase shall be in increments of 20
159 percent, 40 percent, 60 percent, or 80 percent of the value of such tangible personal
160 property as defined in this Code section, within the discretion of such governing authority.

161 (f)(1) If more than one-half of the votes cast on such question are in favor of such
162 exemption, then such exemption may be granted by the governing authority commencing
163 on the first day of any ensuing calendar year; otherwise, such exemption may not be
164 granted. This paragraph is intended to clearly provide that following approval of such
165 exemption in such referendum, such exemption may be granted on the first day of any
166 calendar year following the year in which such referendum was conducted. This
167 paragraph shall not be construed to imply that the granting of such exemption could not
168 previously be delayed to any such calendar year.

169 (2) Exemptions may only be revoked by a referendum election called and conducted as
170 provided in this Code section, provided that the call for such referendum shall not be
171 issued within five years from the date such exemptions were first granted and, if the

172 results of said election are in favor of the revocation of such exemptions, then such
173 revocation shall be effective only at the end of a five-year period from the date of such
174 referendum.

175 (g) Level 1 freeport exemptions effected pursuant to this Code section may be granted
176 either in lieu of or in addition to level 2 freeport exemptions under Code Section 48-5-48.6.

177 (h) The commissioner shall by regulation adopt uniform procedures and forms for the use
178 of local officials in the administration of this Code section."

179 **SECTION 3.**

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