

STATE OF GEORGIA

COUNTY OF CLAYTON

RESOLUTION NO. 2007 – 98

**CLAYTON COUNTY – ATLANTA AIRPORT  
PUBLIC TRANSPORTATION DISTRICT  
SALES AND USE TAX RESOLUTION**

**ARTICLE I. GENERAL PROVISIONS**

This Resolution is enacted by Clayton County, Georgia ("County"), pursuant to authority granted to the County under the Metropolitan Atlanta Rapid Transit Authority Act of 1965, Ga. Laws 1965, p. 2243, et.seq., as amended (the "Act"), particularly as amended by Ga. Laws 1980, p. 3831.

Section 1. Title. This Resolution shall be known as the "Clayton-Atlanta Airport Sales and Use Tax Resolution." The tax levied by this resolution shall be known as the "Rapid Transit Sales and Use Tax."

Section 2. Purpose and Levy. County has entered into that certain Rapid Transit Contract by, between and among the Metropolitan Atlanta Rapid Transit Authority, Clayton County and Clayton County, Acting for and on behalf of the Clayton County-Atlanta Airport Public Transportation District as of June 5<sup>th</sup>, 2007 that has become final and binding upon County by compliance with the provisions of Sections 24(l) and 25(a) of the Act. Pursuant to and in accordance with Section 24(l) of the Act, County has adopted on June 5<sup>th</sup>, 2007, a Resolution creating and establishing the Clayton County-Atlanta Airport Public Transportation District (" District"). Pursuant to the authority of Sections 24(l)and 25(a)of the Act, this tax is hereby levied and imposed as a retail sales and use tax upon the retail purchase, retail sale, rental, storage, use or consumption of tangible personal property, and the services described and set forth in the Georgia Retailers' and Consumers' Sales and Use Tax Act ("Georgia Sales and Use Tax Act"), in Ga. Laws 1951, p. 360, as amended, and as it may be from time to time amended, except as set forth in Section 25(a) of the Act, and except as otherwise provided by law, on sales, uses and services rendered, in the District. Each transaction in the geographic area of the District which (i) is subject to the tax levied by the Georgia Sales and Use Tax Act, or (ii) involves the retail sales, rental, storage or consumption of motor fuel as described below, or (iii) may otherwise by law be subject to the Rapid Transit Sales and Use Tax, shall be subject to the Rapid Transit Sales and Use Tax.

Section 3. Rate. This tax levied at the rate of one per cent (1%)for the period from October 1, 2007, until June 30, 2049, or such other later date as may be provided from time to time by Section 25(b)of the Act, and shall thereafter be reduced to one-half (1/2%)of one percent. As required by Ga. Laws 1971, pp. 2082-2092, as amended, said tax shall be added to and collected with the sales and use tax imposed by the Georgia Sales and Use Tax Act, and the State Revenue Commissioner, pursuant to that Act, is hereby authorized and directed to establish a bracket system by appropriate rules and

regulations to collect the tax herein imposed by the County; provided that the tax levied upon the transactions described in Article I, section 2(ii) and (iii) shall be administered and collected by the State Revenue Commissioner in the same manner as the sales and use tax collected pursuant to the Georgia Sales and Use Tax Act.

Section 4. Motor Fuel. The Rapid Transit Sales and Use Tax hereby levied shall apply, any law to the contrary notwithstanding, to the retail sale, rental, storage, use or consumption of motor fuel as the term 'motor fuel' is defined by Official Code of Georgia Section 48-9-2.

Section 5. Other Transactions. The Rapid Transit Sales and Use Tax hereby levied shall apply to any transaction that may now or hereafter be subject by law to the Rapid Transit Sales and Use Tax.

Section 6. Use of Proceeds. The proceeds of the tax levied pursuant to this Resolution shall be used to fulfill the obligations incurred in the Rapid Transit Contract entered into with the Metropolitan Atlanta Rapid Transit Authority ("Authority").

## ARTICLE II. ADMINISTRATION

Section 1. Administration. The tax levied by this Resolution shall be collected and administered in accordance with Ga. Laws 1971, pp. 2082-2092, as amended. The Rapid Transit Sales and Use Tax shall be administered and collected solely by the State Revenue Commissioner in the same manner and subject to the same penalties provided for in the Georgia Sales and Use Tax Act. No variance shall be permitted between the Georgia Sales and Use Tax and the Rapid Transit Sales and Use Tax, except as to rate, except as provided in Section 25(a) of the Act, and except as may be otherwise provided by law. The vendor's responsibility shall be to the State Revenue Commissioner and not to the County. The County shall not make sales tax audits. Dealers shall be allowed a percentage of the amount of the tax due and accounted for pursuant to this Resolution and shall be reimbursed in the form of a deduction in submitting, reporting and paying the amount due, if said amount is not delinquent at the time of payment. The rate of the deduction shall be at the same rate authorized for deductions from State tax under the Georgia Sales and Use Tax Act, as now or hereafter amended.

Section 2. Special Fund. All sales and use tax monies collected by the State Revenue Commissioner under this Resolution shall be paid to the Director of the Fiscal Divisions of the Department of Administrative Services to the credit of a special fund which is on the books of the Fiscal Division of the Department of Administrative Services under the name "collection of Metropolitan Atlanta Rapid Transit Authority Taxes", and such sales and use tax monies shall be credited to the account of the County.

Section 3. Distribution of Funds. As soon as practicable after the Rapid Transit Sales and Use Tax monies collected under this Resolution have been paid into the State Treasury, in any month for the preceding month, the Director of the Fiscal Division of the Department of Administrative Services shall draw his warrant on the State Treasury in the proper amount due to the County in favor of the Authority, which payment the Authority shall credit to the County in the appropriate amount and which payment shall be charged to the account of the County under the special fund described above in Section 2 of this Article. Any errors made in any such payments or any adjustments otherwise necessary, whether attributable to refunds to taxpayers or by some

other fact, shall be corrected and adjustments shall be made in such payments for the next month or subsequent months. The amount due the County shall be reduced by the amount of costs incurred by the Department of Revenue in administration and collection of the Rapid Transit Sales and Use Tax. The amount of costs of the Department shall be certified by the State Revenue Commissioner to the Director of the Fiscal Division of the Department of Administrative Services who shall deduct such amount from the amount due to the County. The amount deducted shall be deposited by the Director of the Fiscal Division of the Department of Administrative Services in the State Treasury to the General Fund.

Section 4. Rules and Regulations. The State Revenue Commissioner shall have the power to make and publish reasonable rules and regulations not inconsistent with this Resolution or other laws, or the Constitutions of the State of Georgia or of the United States, for the administration and enforcement of the provisions of this Resolution and the collection of revenue hereunder.

Section 5. Forms. The State Revenue Commissioner shall utilize the forms used for returns and for the payment of taxes pursuant to the Georgia Sales and Use Tax Act and for the payment of tax on motor fuel, and shall add appropriate forms for the use of those persons with the responsibility of collecting the tax levied pursuant to this Resolution.

### ARTICLE III. INCORPORATION OF SALES AND USE TAX ACT

Section 1. Incorporation. Pursuant to the authority granted in Section 25 of the Act, the Georgia Sales and Use Tax Act, as amended, and as it may be from time to time amended, subject to Article II, Section 1, hereinabove, is incorporated herein, made a part hereof, and re-enacted as a part of this Resolution, insofar as it may as apply to the collection, administration and disposition of the tax authorized by the General Assembly of Georgia in Ga. Laws 1971, pp. 2082-2092, as amended. Such portions of said Georgia Sales and Use Tax Act which are inconsistent with or specifically do not apply to the collection of the Rapid Transit Sales and Use Tax are hereby excluded from incorporation. The Georgia Sales and Use Tax Act is further limited and changed as specifically set forth in this Resolution so as to define the imposition, administration and operation of the said Georgia Act as it applies to the collection of the Rapid Transit Sales and Use Tax in this or other counties which are now or may later join in the imposition of this tax.

Section 2. Amendments. All amendments to the Georgia Sales and Use Tax Act subsequent to the date of enactment of this Resolution which are not inconsistent with the provisions and intent of this Resolution shall automatically be incorporated in and become a part of this Resolution.

Section 3. Substitutions and Limitations to the Georgia Sales and Use Tax Act.

(a) Rate. Except where the Rapid Transit Sales and Use Tax is added to the tax imposed by the Georgia Sales and Use Tax Act for the purposes of establishing a bracket system, or for similar purposes of combining the two taxes, wherever a rate is set forth in the Georgia Sales and Use Tax Act, there shall be substituted therefore a rate which shall be equal to "one percent" until June 30, 2047, or such later date as may be provided from time to time by Section 25(b) of the Act, and thereafter the rate shall be

equal to "one half of one per cent."

(b) Taxing District. Wherever the terms "State" or "State of Georgia" appear in the Georgia Sales and Use Tax Act, where such terms are used to define the taxing district or the taxing boundaries, the term "District" shall be substituted therefore in order to define the area in which this tax is imposed. Where the term "State," "State of Georgia," or "Georgia" shall appear with reference to portions of that Act other than specified above, no substitution shall be made, unless the resulting interpretation would be clearly contrary to the intent expressed in this Resolution.

(c) Coverage of the Tax. In addition to those transactions to be taxed under the Georgia Sales and Use Tax Act, the Rapid Transit Sales and Use Tax shall (as provided in Section 25 of the Act) apply to the retail sale, rental, storage, use or consumption of motor fuel as the term "motor fuel" is defined in Official Code of Georgia Section 48-9-2, just as if said retail sale, rental, storage, use or consumption of motor fuel were subject to the tax imposed by the Georgia Sales and Use Tax Act, and the Rapid Transit Sales and Use Tax shall apply to such other transactions that may otherwise by law be subject to the Rapid Transit Sales and use Tax,

#### ARTICLE IV. MISCELLANEOUS PROVISIONS

Section 1. Effective Date. The effective date of the tax authorized by this Resolution shall be the first day of October 2007, provided that with respect to services which are regularly billed on a monthly basis, the tax shall become effective with the first regular billing period coinciding with or following the effective date of the tax as herein specified.

Section 2. Application to Contracts Existing at Time of Enactment. The tax imposed under this Resolution shall not apply to sales of goods made pursuant to bona fide written contracts entered into before the date of the enactment of this Resolution, provided delivery is completed prior to October 1<sup>st</sup>, 2007 or to the purchase price of any building supplies, fixtures or equipment that enter into or become part of a building or other kind of structure in the District, where plans, specifications and the construction contract for a specific project have been entered into prior to the date of the enactment of this Resolution, provided delivery is completed prior to October 1<sup>st</sup>, 2007. The provisions of this Section shall supersede and replace the provisions of Section 3403aC. (2)(e) of the Georgia Sales and Use Tax Act.

Section 3. Tax Credit. The tax imposed under this Resolution shall not apply in respect to the use, consumption, distribution, or storage of tangible personal property for use or consumption in the District upon which a rapid transit sales tax under this Resolution has been paid in other portions of the County, another county or municipality, the proof of payment of such tax to be according to rules and regulations made by the State Revenue Commissioner. If the amount of tax paid in such other areas or jurisdictions is not equal to or greater than the amount of tax imposed under this Resolution, then the dealer shall pay an amount sufficient to make the tax paid in such other area or jurisdiction and the District equal to the tax imposed under this Resolution. No credit shall be given under this Section for taxes paid in areas outside the District if the governing body of such other area does not grant a like credit for taxes paid in the District.

Section 4. Notice to Metropolitan Atlanta Rapid Transit Authority of Dealer-

Purchaser Litigation. Where suit is filed between the dealer and purchaser or consumer as described in Official Code of Georgia Sections 48-8-35, 48-8-38, and 48-8-41, and where the issue of taxability is raised in any such case, the person who raised such issue shall furnish the Metropolitan Atlanta Rapid Transit Authority a copy of the initial pleading wherein such issue is raised, receipt of which shall be acknowledged by the Metropolitan Atlanta Rapid Transit Authority and such acknowledgement filed in the Court wherein such case is pending.

Section 5. (a) Inter-county Transactions. The Rapid Transit Sales and Use Tax imposed by this Resolution is also levied in the geographic area of Fulton County, Georgia ("Fulton") and DeKalb County, Georgia ("DeKalb") and may hereafter be levied in portions of Clayton County outside of the District and in the Counties of Gwinnett and Cobb if they satisfy the requirements of the Act and become a party to the Rapid Transit Contract dated as of September 1, 1971, between the Authority, Fulton and the County. For the purposes of this Resolution, the Rapid Transit Sales and Use Tax is a retail sales and use tax upon the retail purchase, retail sale, rental, storage, use or consumption of tangible personal property and the services described and set forth in Ga. Laws 1951, page 360, as now or hereafter amended, and upon the retail sale, rental, storage, use or consumption of motor fuel as the term motor fuel is defined by Official Code of Georgia Section 48-9-2, and upon such other transactions which may otherwise be subject by law to the Rapid Transit Sales and Use Tax, on sales, uses and services rendered in the geographic area governed by the County:

(1) The Rapid Transit Sales and Use Tax is deemed to be a "point of sale" tax pursuant to which all retail sales are, regardless of the residence of the purchaser and place of delivery, consummated at the place of business of the retailer.

(2) All retail sales of goods and services by retailers located in the District to persons in the District or in any other county levying a Rapid Transit Sales and Use Tax are taxable.

(3) All retail sales of goods and services by the District and any other jurisdiction levying a Rapid Transit Sales and Use Tax are taxable, provided, however, that no Rapid Transit Sales and Use Tax shall be imposed upon the sale of tangible personal property which is ordered by and delivered to the purchaser at a point outside the geographical area governed by any of the local governments imposing the tax, regardless of the point at which title passes, if such delivery is made by the seller's vehicle, U. S. mail, common carrier or by private or contract carrier licensed by the Interstate Commerce Commissioner or the Georgia Public Service Commissioner.

(4) All goods and services purchased by persons resident in this District or in any other jurisdiction levying a Rapid Transit Sales and Use Tax, said sales being made by a retailer outside of the District or any other jurisdiction levying a Rapid Transit Sale and Use Tax, and said Rapid Transit Sales and Use Tax shall be collected by the retailer who shall remit such tax to the State Revenue Department.

(5) All sales of goods and services made to a resident outside of the District or in any other jurisdiction levying a Rapid Transit Sales and Use Tax by retailers out of the State of Georgia are taxable to the same extent said transactions are taxable under the Georgia Retailers' and Consumers' Sales and Use Tax Act.

(6) All sales made by retailers in the District or in any other jurisdiction

levying a Rapid Transit Sales and Use Tax where the tangible personal property or services are delivered by the retailer or his agent to an out of state destination or to a common carrier for delivery to out of state destination are taxable only to the extent such services are taxable under the Georgia Retailers' and Consumers' Sales and Use Tax Act, are otherwise taxable in accordance with Section 25(a) of the Act, or may otherwise by law be subject to the Rapid Transit Sales and Use Tax.

(b) The basis for credit to the account of a local government when a sale involves two or more areas subject to the Rapid Transit Sales and Use Tax, shall be the point of sale. The Rapid Transit Sales and Use Tax shall not be due on any tangible personal property or services the point of sale of which has already created liability for the Rapid Transit Sales and Use Tax. In the event a retailer has no permanent place of business in the State or has more than one place of business, the place or places at which the retail sales are consummated shall be determined under rules and regulations made and published by the State Revenue Commissioner.

Section 6. Penalties and Interest. All penalties and interest collected under the provisions of this Resolution on sales and use tax assessments shall be prorated between the State and the County on such basis as may be prescribed by the State Revenue Commissioner.

Section 7. Act and Resolution as Contracts. The Act and this Resolution constitute contracts with the holders of revenue bonds issued under the Act, as declared in Section 10(q) of the Act, and said contracts are made in part for the purpose of securing and inducing investors to buy the revenue bonds of the Authority, and the provisions of the Federal and Georgia Constitutions prohibiting the passage of laws impairing the obligations of contracts protect the rights and security of the holders of such bonds under such contracts from impairment by the General Assembly of the State of Georgia, by the County, or by the County acting for and on behalf of the District.

Section 8. Severability. In the event any section, sub section, sentence, clause or phrase of this Resolution shall be declared or adjudged invalid or unconstitutional, such adjudication shall in no manner affect the other sections, sub-clauses, sections, sentences, or phrases of this Resolution, which shall remain in full force and effect, as if the section, subsection, sentence, clause or phrase so declared or adjudged invalid or unconstitutional was not originally a part hereof. The County hereby declares that it would have passed the remaining parts of this Resolution if it had known that such part or parts hereof would be declared or adjudged invalid or unconstitutional.

Section 9. Repealer. All resolutions or parts of resolutions in conflict with this Resolution are hereby repealed.

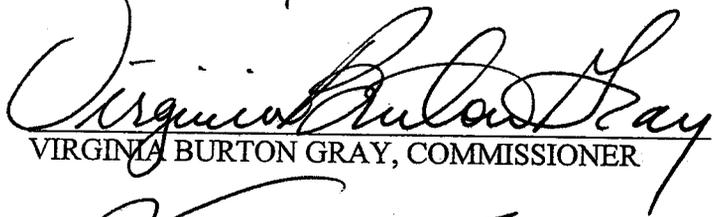
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SO RESOLVED, this the 5<sup>th</sup> day of June, 2007.

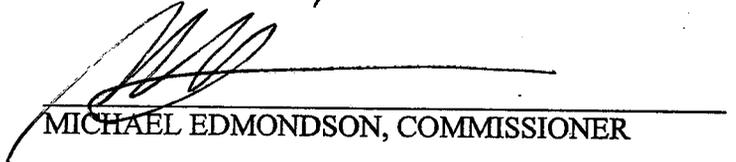
CLAYTON COUNTY BOARD OF COMMISSIONERS

  
ELDRIN BELL, CHAIRMAN

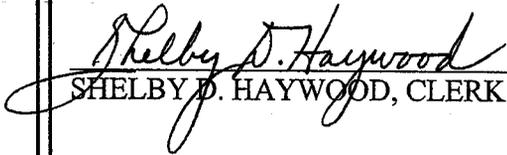
  
SONNA SINGLETON, VICE CHAIRWOMAN

  
VIRGINIA BURTON GRAY, COMMISSIONER

  
WOLE RALPH, COMMISSIONER

  
MICHAEL EDMONDSON, COMMISSIONER

ATTEST:

  
SHELBY D. HAYWOOD, CLERK