

House Bill 1834

By: Representative Shanahan of the 10<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Article 1 of Chapter 6 of Title 48 of the Official Code of Georgia Annotated,  
2 relating to real estate transfer tax, so as to change the manner and method of collection and  
3 distribution of revenues with respect to such tax; to provide for procedures, conditions, and  
4 limitations; to provide for reports; to provide for protests and refunds; to provide for related  
5 matters; to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Article 1 of Chapter 6 of Title 48 of the Official Code of Georgia Annotated, relating to real  
9 estate transfer tax, is amended by striking Code Section 48-6-5, relating to collection of such  
10 tax by clerks of superior courts, and inserting in its place a new Code Section 48-6-5 to read  
11 as follows:

12 "48-6-5.

13 (a) Each clerk of superior court is designated as ~~an agent of the commissioner~~ the  
14 collecting officer for the purpose of collecting the tax provided in this article. Each clerk  
15 may affix certificates to the deeds, instruments, or other writings with respect to which a  
16 tax is required to be paid pursuant to this article. Each clerk shall also perform the duties  
17 provided in this article.

18 ~~(b) In the performance of the duties imposed by this article, each clerk of the superior~~  
19 ~~court shall be entitled to a fee in addition to all other fees provided by law of 50¢ for each~~  
20 ~~deed, instrument, or other writing with respect to which a tax is required to be paid as~~  
21 ~~provided in this article and filed for record and recorded in the county in which the clerk~~  
22 ~~of the court holds office. The fee shall be withheld from the funds received in payment of~~  
23 ~~the tax and remitted to the commissioner as provided in this article. Fees withheld by a~~  
24 ~~clerk shall be distributed as follows:~~

25 ~~(1) In the event the clerk withholding the fees is compensated on a salary basis, the~~  
26 ~~amount of the fees withheld shall be paid into the treasury of the county; or~~

1       ~~(2) In the event the clerk is not compensated on a salary basis, the amount of the fees~~  
2       ~~withheld shall be retained by the clerk as compensation for the duties performed under~~  
3       ~~this article.~~

4       (b) Each clerk shall make the distributions in the manner provided for in this Code section.

5       (c) The governing authority of each county shall take into consideration any increase or  
6       decrease in the duties and responsibilities of the offices of the tax commissioner and the  
7       clerk of the superior court required by this article in establishing the annual budget for each  
8       such office and, where applicable, the affected officers shall cooperate fully in any  
9       transferring of responsibilities required under this Code section.

10       (d) The collecting officer, on the basis of the tax commissioner's or tax collector's records  
11       and of certificates which shall be supplied by each school district, municipality, and other  
12       tax district in the county, shall distribute at least monthly the revenue collected under this  
13       article. Each year the millage rates used in the distributions of revenue under this Code  
14       section shall be based upon the immediately preceding year's millage rate of each  
15       participating tax authority as provided in this article.

16       (e) Revenue derived from taxes under this article shall be divided among the state and all  
17       other tax jurisdictions and districts including, but not limited to, county and municipal  
18       districts, which levy or cause to be levied for their benefit a property tax on real and  
19       tangible personal property having the same taxable situs as the real property which is the  
20       subject of the intangible tax. The distribution shall be made according to the proportion  
21       that the millage rate levied for the state and each other tax jurisdiction or district  
22       respectively bears to the total millage rate levied for all purposes applicable to real and  
23       tangible personal property having the same taxable situs as the subject of the intangible tax.  
24       The revenue distributed to municipalities having independent school systems supported by  
25       taxes levied by the municipality shall be divided between the municipality and the  
26       independent school system according to the proportion that the millage rate levied by the  
27       municipality for nonschool purposes and the millage rate levied for school purposes bear  
28       to the total millage rate levied by the municipality for all purposes. The tax levied by this  
29       article shall be deemed to be levied by the participating tax authorities in the proportion  
30       that the millage rate of each participating tax authority bears to the aggregate millage rate  
31       of all the participating tax authorities.

32       (f) In the event any distribution or part of a distribution as provided in this article is  
33       adjudged to be invalid for any reason, such distribution or part of a distribution shall be  
34       paid into the general fund of the state in the same manner and for the same purposes as  
35       provided in this article for the state's share of the revenues derived from the tax imposed  
36       by this article."



1 ~~The taxpayer shall bring the action for refund against the clerk of superior court of the~~  
2 ~~county which collected the disputed tax. The commissioner in his official capacity shall be~~  
3 ~~made a party defendant to the action in order that the interests of the state may be~~  
4 ~~represented in the action. The Attorney General shall represent both defendants in the~~  
5 ~~action. If it is determined in the action that an amount claimed by the taxpayer was~~  
6 ~~erroneously or illegally collected, the taxpayer shall be entitled to judgment against the~~  
7 ~~defendant clerk of the superior court in his official capacity for the amount erroneously or~~  
8 ~~illegally collected, without interest to the date of judgment.~~

9 ~~(c) If a claim for refund is allowed by the commissioner as provided in subsection (a) of~~  
10 ~~this Code section or if the taxpayer obtains a final judgment as provided in subsection (b)~~  
11 ~~of this Code section, the commissioner shall refund the amount erroneously or illegally~~  
12 ~~collected from funds remitted by the clerk of superior court who collected the tax. The~~  
13 ~~refund shall be paid and charged in the same proportion that the disputed tax was originally~~  
14 ~~distributed by the commissioner as provided in this article.~~

15 (a) If a taxpayer files with the collecting officer at the time of payment of tax a written  
16 protest in duplicate of the collection or any part of the collection of the tax as erroneous or  
17 illegal, the collecting officer receiving the payment under written protest shall be deemed  
18 to have made a conditional collection of the protested amount of the payment. Each  
19 protested collection shall be effective to discharge any duty of the taxpayer to pay the tax  
20 and to require the collecting officer to enter upon or attach to the instrument upon which  
21 the tax is claimed to be due a certification of the fact that the tax has been paid. Each  
22 collection as provided in this Code section shall be subject to the conditions set forth in this  
23 article as to refund upon determination by the commissioner or by final judgment in a  
24 refund action that the collection was erroneous or illegal.

25 (b) A collecting officer receiving a payment under written protest shall deposit the  
26 protested amount of the payment in a separate account in a bank approved as a depository  
27 for state funds, shall hold the protested amount as a special escrow fund for the purposes  
28 provided in this article, and, except as provided in this Code section, shall not distribute the  
29 amount or retain from the amount or pay into the county treasury any commission.  
30 Immediately upon receiving a payment under written protest, the collecting officer shall  
31 forward to the commissioner one executed copy of the protest.

32 (c) The taxpayer making a payment under written protest may file at any time within 30  
33 days after the date of the payment a claim for refund of the protested amount of the  
34 payment with the commissioner. Each claim shall be in writing, shall be in the form and  
35 contain such information as the commissioner requires, and shall include a summary  
36 statement of the grounds upon which the taxpayer relies in contending that the collection  
37 of the amount was erroneous or illegal. A copy of the claim shall be filed by the taxpayer

1 within the 30 day period with the collecting officer or said officer's successor who  
2 collected the protested amount.

3 (d) The commissioner shall consider the claim for refund and shall approve or deny it and  
4 shall notify the taxpayer and the collecting officer or said officer's successor who collected  
5 the protested amount of said officer's action. If the commissioner approves the claim in  
6 whole or in part, the collecting officer or said officer's successor shall forthwith pay to the  
7 taxpayer the amount so approved, without interest, from the special escrow fund held by  
8 said officer, and no appropriation or further authorization shall be necessary to authorize  
9 and require the payment to the taxpayer from the special escrow fund.

10 (e)(1) Any taxpayer whose claim for refund is denied entirely or in part by the  
11 commissioner or with respect to whose claim no decision is rendered by the  
12 commissioner within 30 days from the date of filing the claim shall have the right to bring  
13 an action for refund of the amount so claimed and not approved against the collecting  
14 officer or said officer's successor who collected the amount, in said officer's official  
15 capacity, in the superior court of the county whose official collected the amount.

16 (2) No action for refund shall be brought after the expiration of 60 days from the date of  
17 denial of the taxpayer's claim for refund by the commissioner.

18 (3) For the purposes of this Code section, a failure by the commissioner to grant or deny  
19 the taxpayer's claim for refund within the 30 day period shall not constitute a constructive  
20 denial of the claim.

21 (f) The commissioner in said commissioner's official capacity shall be made a party  
22 defendant to each action for refund in order that the interests of the state may be  
23 represented in the action, and the Attorney General shall represent the defendants in each  
24 action. If it is determined in the action that the amount claimed by the taxpayer was  
25 erroneously or illegally collected from the taxpayer, the taxpayer shall be entitled to  
26 judgment against the defendant county tax official in said tax official's official capacity for  
27 the amount erroneously or illegally collected, without interest to the date of judgment.  
28 Court costs charged against the defendant in such an action and any interest payable on a  
29 judgment in favor of the taxpayer in such an action for a period before the judgment  
30 becomes final shall be paid by the commissioner as part of the expenses of administering  
31 this article. The principal amount of a final judgment in favor of the taxpayer in such an  
32 action, exclusive of court costs, shall be paid forthwith to the taxpayer by the defendant  
33 county tax official from the special escrow fund, and no appropriation or further  
34 authorization shall be necessary to authorize and require the payment of a judgment from  
35 the special escrow fund.

36 (g)(1) Upon expiration of the period for filing a claim for refund of a protested payment  
37 without any claim being filed, upon expiration of the period for filing an action for refund

1 of a protested payment without any action being filed, upon dismissal of such an action,  
2 or upon final judgment in such an action, whichever event occurs first, the collecting  
3 officer holding the protested amount in a special escrow fund shall retain from that  
4 portion of the amount which is not payable to the protesting taxpayer or shall pay into the  
5 county treasury the percentage of such portion which is allowed as compensation for such  
6 collecting officer's services in collecting the tax.  
7 (2) The balance of the portion after the deduction provided in paragraph (1) of this  
8 subsection shall be distributed as provided in Code Section 48-6-78 with respect to  
9 revenues derived, for the year during which the amount was paid by the taxpayer, from  
10 the tax imposed by this article."

11 **SECTION 4.**

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