

The House Committee on Ways and Means offered the following substitute to SB 97:

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 6 of Title 48 of the Official Code of Georgia Annotated, relating to
2 intangible taxes, so as to provide that the person responsible for the collection of the real
3 estate transfer tax, the distributions, the making of determinations of whether the tax is due
4 and the performance of the other related duties shall be the clerk of the superior court; to
5 provide that the person responsible for making determinations of whether the tax is due shall
6 be the clerk of the superior court; to provide an effective date; to repeal conflicting laws; and
7 for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Chapter 6 of Title 48 of the Official Code of Georgia Annotated, relating to intangible taxes,
11 is amended by striking Code Section 48-6-4, relating to payment of real estate transfer tax,
12 certification of payment, and recording of deed, in its entirety and inserting in its place a new
13 Code Section 48-6-4 to read as follows:

14 "48-6-4.

15 (a) It is the intent of the General Assembly that the tax imposed by this article be paid to
16 the clerk of the superior court or his or her deputy prior to and as a prerequisite to the filing
17 for record of any deed, instrument, or other writing described in Code Section 48-6-1.

18 (b) No deed, instrument, or other writing described in Code Section 48-6-1 shall be filed
19 for record or recorded in the office of the clerk of the superior court or filed for record or
20 recorded in or on any other official record of this state or of any county until the tax
21 imposed by this article has been paid; provided, however, that any such deed, instrument,
22 or other writing filed or recorded which would otherwise constitute constructive notice
23 shall constitute such notice whether or not such tax was in fact paid.

24 (c)(1) The amount of tax to be paid on a deed, instrument, or other writing shall be
25 determined on the basis of written disclosure of the consideration or value of the interest
26 in the property granted, assigned, transferred, or otherwise conveyed. The disclosure shall
27 be made on a form or in electronic format prescribed by the commissioner and provided

1 by the ~~commissioner~~ clerk of the superior court. By the fifteenth day of the month
 2 following the month the deed, instrument, or other writing is recorded, a physical or
 3 electronic copy of each disclosure shall be forwarded or made available electronically to
 4 the state auditor and to the tax commissioner and the board of tax assessors in the county
 5 where the deed, instrument, or other writing is recorded.

6 (2) If the real property is located in more than one county, as a prerequisite to filing any
 7 instrument described in Code Section 48-6-1, the filing party shall calculate and disclose
 8 to the clerk of the superior court the proportionate amount of real property situated in the
 9 county in which the clerk serves and the amount of real estate transfer taxes due and
 10 payable for such property. The disclosure shall be made to the clerk of the superior court
 11 in each county in which the property is situated. The affidavit shall accompany the
 12 disclosure form required in paragraph (1) of this subsection, in the physical or electronic
 13 form prescribed by the commissioner and provided by the clerk of the superior court.

14 (d) Upon payment of the correct amount of tax, the clerk of the superior court or his or her
 15 deputy shall enter upon or attach to the deed, instrument, or other writing a certification of
 16 the fact that the tax as imposed by this article has been paid, the date, and the amount of
 17 the tax. The certification shall be signed by the clerk or deputy clerk receiving the tax. The
 18 certification may also be attested to electronically by the clerk or deputy clerk in such
 19 manner as may be prescribed by the commissioner.

20 (e) The certificate entered upon or attached physically or electronically to the deed,
 21 instrument, or other writing shall be recorded with the deed, instrument, or other writing
 22 and shall be in the physical or electronic form required by the commissioner. In each case,
 23 however, the certificate shall bear the signature of the clerk or his or her deputy. The
 24 certificate may be relied upon by subsequent purchasers or lenders as evidence that the
 25 proper tax has been paid. In the event any deed, instrument, or other writing upon which
 26 tax is imposed by this article is required to be recorded in more than one county, the
 27 required tax shall be paid to the clerk or his or her deputy of the county in which the deed,
 28 instrument, or other writing is first recorded."

29 SECTION 2.

30 Said chapter is further amended by striking Code Section 48-6-5, relating to the collection
 31 of real estate transfer tax and fees, in its entirety and inserting in its place a new Code
 32 Section 48-6-5 to read as follows:

33 "48-6-5.

34 (a) Each clerk of the superior court ~~is designated as an agent of the commissioner for the~~
 35 ~~purpose of~~ shall be responsible for collecting the tax provided in this article. Each clerk
 36 may affix certificates to the deeds, instruments, or other writings with respect to which a

1 tax is required to be paid pursuant to this article. Each clerk shall also perform the duties
2 provided in this article.

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

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

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

15 SECTION 3.

16 Said chapter is further amended by striking Code Section 48-6-6, relating to reports of real
17 estate transfer tax, in its entirety and inserting in its place a new Code Section 48-6-6 to read
18 as follows:

19 "48-6-6.

20 Within 60 days of the end of each calendar year, the clerk of the superior court shall file
21 with the commissioner a report showing the total amount of tax distributed among the state,
22 county, and municipalities during the preceding calendar year. Each clerk of superior court
23 ~~shall remit to the commissioner at least once every 30 days and at more frequent intervals~~
24 ~~as the commissioner may direct all funds collected by the clerk in payment of the tax~~
25 ~~imposed by this article and shall make appropriate reports as the commissioner requires."~~

26 SECTION 4.

27 Said chapter is further amended by striking Code Section 48-6-7, relating to refunds of
28 erroneously or illegally collected real estate transfer tax, in its entirety and inserting in its
29 place a new Code Section 48-6-7 to read as follows:

30 "48-6-7.

31 (a) In any case in which the clerk of the superior court erroneously or illegally collects the
32 tax imposed by this article ~~and remits the tax to the commissioner,~~ the taxpayer from whom
33 the tax was collected may file a claim for refund with the ~~commissioner~~ clerk of the
34 superior court at any time within one year after the date of collection. Each claim for refund
35 shall be made in writing and shall be accompanied by evidence supporting the claim that

1 the collection was erroneous or illegal. The ~~commissioner or his delegate~~ clerk of the
 2 superior court shall consider the information contained in the taxpayer's claim for refund
 3 and other available information, shall approve or disapprove the claim, and shall notify the
 4 taxpayer of the decision.

5 (b) A taxpayer whose claim for a refund is denied by the ~~commissioner or his delegate~~
 6 clerk of the superior court or with respect to whose claim no decision is rendered by the
 7 ~~commissioner or his delegate~~ clerk of the superior court within one year from the date of
 8 filing the claim shall have the right to bring an action for a refund in the superior court of
 9 the county where the disputed tax was originally collected. The taxpayer shall bring the
 10 action for refund against the clerk of the superior court of the county which collected the
 11 disputed tax. ~~The commissioner in his official capacity shall be made a party defendant to~~
 12 ~~the action in order that the interests of the state may be represented in the action. The~~
 13 ~~Attorney General shall represent both defendants in the action. The county governing~~
 14 ~~authority shall provide legal representation for the clerk of the superior court when the~~
 15 ~~clerk is a defendant in an action pursuant to this Code section.~~ If it is determined in the
 16 action that an amount claimed by the taxpayer was erroneously or illegally collected, the
 17 taxpayer shall be entitled to judgment against the defendant clerk of the superior court in
 18 his or her official capacity for the amount erroneously or illegally collected, without
 19 interest to the date of judgment.

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

27 SECTION 5.

28 Said chapter is further amended by striking Code Section 48-6-8, relating to the distribution
 29 of real estate transfer tax, in its entirety and inserting in its place a new Code Section 48-6-8
 30 to read as follows:

31 "48-6-8.

32 ~~At least once every 30 days, all~~ revenues derived from the tax imposed by this article
 33 shall be distributed among the state and municipalities in which the real property is situated
 34 and the county in which the real property is situated in the same proportion that revenues
 35 derived from the taxes imposed by Article 3 of this chapter are divided. If the real property

1 is situated in more than one county, the appropriate portion of the tax shall be equitably
2 divided among the counties by the ~~commissioner~~ clerk of the superior court."

3 **SECTION 6.**

4 Said chapter is further amended by striking Code Section 48-6-70, relating to collection of
5 intangible recording tax on instruments secured by real estate located outside this state, in
6 its entirety and inserting in its place a new Code Section 48-6-70 to read as follows:

7 "48-6-70.

8 Every resident holder of an instrument securing a long-term note secured by real property
9 located outside of this state including, but not limited to, domestic corporations and foreign
10 corporations having their principal places of business in this state shall file, in lieu of
11 recording the instrument securing any such note, at such periodic intervals as the
12 commissioner by regulation may designate, a memorandum of the instrument with the
13 ~~commissioner~~ clerk of the superior court in the county of the domicile of the taxpayer or,
14 if the taxpayer is a corporation, in the county of the principal place of business of the
15 taxpayer on forms prescribed by the commissioner or in electronic format as prescribed by
16 the commissioner. At the same time as the memorandum is filed, the holder of the
17 instrument shall pay to the ~~commissioner~~ collecting officer the amount of the tax required
18 by this article with respect to the instrument. The revenue from each instrument shall be
19 distributed to the state, counties, and municipalities as if the real property securing the
20 instrument were located in the county of the domicile of the taxpayer or, if the taxpayer is
21 a corporation, in the county of the principal place of business of the taxpayer."

22 **SECTION 7.**

23 Said chapter is further amended by striking Code Section 48-6-71, relating to refunds of
24 erroneously or illegally collected intangible recording tax, in its entirety and inserting in its
25 place a new Code Section 48-6-71 to read as follows:

26 "48-6-71.

27 The ~~commissioner~~ clerk of the superior court upon his or her own motion or upon the
28 written request of one or more holders of instruments securing notes secured by real
29 property shall render publicly and in writing his or her determination of whether the
30 intangible recording tax provided in this article is payable with respect to a particularly
31 described real property instrument or class of real property instruments or modifications
32 of such instruments. ~~The determination may be in the form of administrative regulations~~
33 ~~if applicable to a class of real property instruments.~~ A copy of all such determinations shall
34 be retained in the ~~files~~ minutes of the ~~department~~ clerk of the superior court as a permanent
35 and public record. Nonpayment of the tax provided for in this article, with respect to a real

1 property instrument filed for record, in reliance upon a determination rendered by the
 2 ~~commissioner clerk of the superior clerk~~ pursuant to this Code section shall not constitute
 3 a bar, as provided in Code Section 48-6-77, to the collection of the indebtedness secured
 4 by any such instrument."

5 SECTION 8.

6 Said chapter is further amended by striking Code Section 48-6-74, relating to distribution
 7 of intangible recording tax when real property is located in more than one county, in its
 8 entirety and inserting in its place a new Code Section 48-6-74 to read as follows:

9 "48-6-74.

10 All revenues derived from the intangible recording tax imposed by this article including,
 11 but not limited to, revenues from any imposition of the tax upon intangible trust property
 12 shall be distributed among the state, county, and municipality in which the real property
 13 is located in the same proportion that revenues derived from the intangible taxes imposed
 14 by Article 3 of this chapter are distributed. ~~If the real property is located in more than one~~
 15 ~~county, the appropriate portion of the intangible recording tax shall be distributed equitably~~
 16 ~~by the commissioner among the affected counties.~~ If the real property is located in more
 17 than one county, as a prerequisite to filing any instrument described in Code Section
 18 48-6-60 subject to the provisions of Code Section 48-6-61, the filing party shall calculate
 19 and disclose to the collecting officer the proportionate amount of real property situated in
 20 the county in which the collecting officer serves to facilitate calculation of the amount of
 21 intangible recording taxes due upon the security instrument affecting such property. The
 22 filing party shall pay the intangible recording taxes on the security instrument to the clerk
 23 of the superior court of each county in which the property is situated as provided in Code
 24 Section 48-6-61. The disclosure shall be made to the collecting officer in each county in
 25 which the property is situated. The disclosure form shall be prescribed by the Council of
 26 Superior Court Clerks of Georgia and provided by the collecting officer."

27 SECTION 9.

28 Said chapter is further amended by striking Code Section 48-6-76, relating to procedure for
 29 protesting intangible recording tax; payment under protest; special escrow fund; filing
 30 claims; approval or denial by commissioner and action for refund, in its entirety and
 31 inserting in its place a new Code Section 48-6-76 to read as follows:

32 "48-6-76.

33 (a) If a taxpayer files with the collecting officer at the time of payment of tax as provided
 34 in Code Section 48-6-61 a written protest in duplicate of the collection or any part of the
 35 collection of the tax as erroneous or illegal, the collecting officer receiving the payment

1 under written protest shall be deemed to have made a conditional collection of the protested
2 amount of the payment. Each protested collection shall be effective to discharge any duty
3 of the taxpayer to pay the tax and to require the collecting officer to enter upon or attach
4 to the instrument securing the obligation upon which the tax is claimed to be due a
5 certification in the form prescribed in Code Section 48-6-62 of the fact that the intangible
6 recording tax as provided by Code Section 48-6-61 has been paid. Each collection as
7 provided in this Code section shall be subject to the conditions set forth in this article as
8 to refund upon determination by the ~~commissioner~~ clerk of the superior court or by final
9 judgment in a refund action that the collection was erroneous or illegal.

10 (b) A collecting officer receiving a payment under written protest shall deposit the
11 protested amount of the payment in a separate account in a bank approved as a depository
12 for state funds, shall hold the protested amount as a special escrow fund for the purposes
13 provided in this article, and, except as provided in this Code section, shall not distribute the
14 amount under Code Section 48-6-74 or retain from the amount or pay into the county
15 treasury any commission under Code Section 48-6-73. Immediately upon receiving a
16 payment under written protest, the collecting officer shall forward to the ~~commissioner~~
17 clerk of the superior court one executed copy of the protest.

18 (c) The taxpayer making a payment under written protest may file at any time within 30
19 days after the date of the payment a claim for refund of the protested amount of the
20 payment with the ~~commissioner~~ clerk of the superior court. Each claim shall be in writing,
21 shall be in the form and contain such information as the commissioner requires, and shall
22 include a summary statement of the grounds upon which the taxpayer relies in contending
23 that the collection of the amount was erroneous or illegal. A copy of the claim shall be filed
24 by the taxpayer within the 30 day period with the collecting officer or said officer's
25 successor who collected the protested amount.

26 (d) The ~~commissioner~~ clerk of the superior court shall consider the claim for refund and
27 shall approve or deny it and shall notify the taxpayer and the collecting officer or said
28 officer's successor who collected the protested amount of said officer's action. If the
29 ~~commissioner~~ clerk of the superior court approves the claim in whole or in part, the
30 collecting officer or said officer's successor shall forthwith pay to the taxpayer the amount
31 so approved, without interest, from the special escrow fund held by said officer, and no
32 appropriation or further authorization shall be necessary to authorize and require the
33 payment to the taxpayer from the special escrow fund.

34 (e)(1) Any taxpayer whose claim for refund is denied entirely or in part by the
35 ~~commissioner~~ clerk of the superior court or with respect to whose claim no decision is
36 rendered by the ~~commissioner~~ clerk of the superior court within 30 days from the date of
37 filing the claim shall have the right to bring an action for refund of the amount so claimed

1 and not approved against the collecting officer or said officer's successor who collected
 2 the amount, in said officer's official capacity, in the superior court of the county whose
 3 official collected the amount.

4 (2) No action for refund shall be brought after the expiration of 60 days from the date of
 5 denial of the taxpayer's claim for refund by the ~~commissioner~~ clerk of the superior court.

6 (3) For the purposes of this Code section, a failure by the ~~commissioner~~ clerk of the
 7 superior court to grant or deny the taxpayer's claim for refund within the 30 day period
 8 shall not constitute a constructive denial of the claim.

9 (f) The ~~commissioner~~ clerk of the superior court in said ~~commissioner's~~ clerk's official
 10 capacity shall be made a party defendant to each action for refund in order that the interests
 11 of the ~~state~~ county may be represented in the action, and the ~~Attorney General~~ county
 12 attorney shall represent the defendants in each action. If it is determined in the action that
 13 the amount claimed by the taxpayer was erroneously or illegally collected from the
 14 taxpayer, the taxpayer shall be entitled to judgment against the defendant county ~~tax~~
 15 ~~official~~ collecting officer in said ~~tax official's~~ collecting officer's official capacity for the
 16 amount erroneously or illegally collected, without interest to the date of judgment. Court
 17 costs charged against the defendant in such an action and any interest payable on a
 18 judgment in favor of the taxpayer in such an action for a period before the judgment
 19 becomes final shall be paid by the ~~commissioner~~ clerk of the superior court as part of the
 20 expenses of administering this article. The principal amount of a final judgment in favor
 21 of the taxpayer in such an action, exclusive of court costs, shall be paid forthwith to the
 22 taxpayer by the defendant county ~~tax official~~ collecting officer from the special escrow
 23 fund, and no appropriation or further authorization shall be necessary to authorize and
 24 require the payment of a judgment from the special escrow fund.

25 (g)(1) Upon expiration of the period for filing a claim for refund of a protested payment
 26 without any claim being filed, upon expiration of the period for filing an action for refund
 27 of a protested payment without any action being filed, upon dismissal of such an action,
 28 or upon final judgment in such an action, whichever event occurs first, the collecting
 29 officer holding the protested amount in a special escrow fund shall retain from that
 30 portion of the amount which is not payable to the protesting taxpayer or shall pay into the
 31 county treasury, as provided in Code Section 48-6-73, the percentage of such portion
 32 which is allowed by Code Section 48-6-73 as compensation for such collecting officer's
 33 services in collecting the tax.

34 (2) The balance of the portion after the deduction provided in paragraph (1) of this
 35 subsection shall be distributed as provided in Code Section 48-6-74 with respect to
 36 revenues derived, for the year during which the amount was paid by the taxpayer, from
 37 the intangible recording tax imposed by this article."

SECTION 10.

Said chapter is further amended by striking Code Section 48-6-77, relating to failure to pay intangible recording tax barring action on indebtedness; removal of bar; penalty; conditions under which penalty waived; and acquisition of instrument by holder exempt from tax, in its entirety and inserting in its place a new Code Section 48-6-77 to read as follows:

"48-6-77.

(a) Failure to pay the tax levied by this article shall constitute a bar to the collection by any action, foreclosure, the exercise of any power of sale, or otherwise of the indebtedness secured by any instrument required by this article to be recorded, whether the instrument is held by an original party to the instrument or by a transferee. However, failure to pay the tax levied by this article shall not affect or discharge the indebtedness and other obligations secured by such instrument or the debtor's liability on account thereof and, subject to the bar, such instrument shall continue to secure the indebtedness and other obligations secured thereby and shall continue to encumber the collateral described therein. The bar may be removed by the payment of the required tax, plus interest at the rate specified in Code Section 48-2-40 from the time the tax was due, plus a penalty of 50 percent of the amount of the tax, after which the process to collect the indebtedness, including foreclosure, may proceed as if no bar ever existed. However, if an instrument required to be recorded fails to reflect on its face that the tax levied by this article is due and after a foreclosure has taken place it is discovered that the instrument securing the indebtedness is in fact subject to the tax, any deed given pursuant to the foreclosure or in lieu of foreclosure shall be imperfect but may be perfected by the payment of the required tax, plus interest at the rate specified in Code Section 48-2-40 from the time the tax was due plus a penalty of 50 percent of the amount of the tax. Once the tax, interest, and penalty as required in this subsection have been paid, the perfection of the deed will revert back to the date of the deed, and the deed shall retain its priority over any and all intervening liens or conveyances except those conveyances and liens made or created by the grantee, its successors, and assigns named in the foreclosure deed or deed in lieu of foreclosure. These provisions shall have no effect on any instrument subject to the tax on which the statute of limitations has expired.

(b) The failure to pay the tax shall not constitute a bar to the collection of the indebtedness as provided in subsection (a) of this Code section when the ~~commissioner~~ clerk of the superior court has determined that the tax is not payable.

(c) The ~~commissioner~~ clerk of the superior court may waive the penalty provided for in subsection (a) of this Code section if he or she determines that the failure to pay the tax was through ignorance of the law or inadvertence and that the failure did not occur out of bad faith.

1 (d) This Code section shall not apply to instruments acquired at a time when the holder of
2 the instrument was otherwise exempt from the payment of the tax imposed by this article."

3 **SECTION 11.**

4 This Act shall become effective on July 1, 2003.

5 **SECTION 12.**

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