

House Bill 100

By: Representatives Peake of the 137th, Williams of the 4th, Lindsey of the 54th, Knight of the 126th, Abrams of the 84th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Titles 15, 9, 48, and 50 of the Official Code of Georgia Annotated, relating,
2 respectively, to courts, civil practice, revenue and taxation, and state government, so as to
3 create the Georgia Tax Court as a pilot project of limited duration under Article VI, Section
4 I, Paragraph X of the Georgia Constitution; to provide for a short title; to provide for
5 legislative findings; to provide for the appointment, terms of office, designation, and removal
6 of judges; to provide for the qualification, oath of office, and prohibition against other
7 employment of judges; to provide for the principal office, locations, and facilities of the Tax
8 Court; to provide for the appointment of staff and expenditures of the Tax Court; to provide
9 for the jurisdiction of the Tax Court; to provide for the commencement of cases, pleadings,
10 and service of pleadings; to provide a stay of enforcement and collection action; to provide
11 for filing and other fees; to provide procedures for hearings and decisions of the Tax Court;
12 to establish and provide the jurisdiction and procedures for a small claims division of the Tax
13 Court; to provide for appeals from Tax Court decisions; to provide for representation in the
14 Tax Court; to provide for service; to authorize the Tax Court to promulgate rules of practice
15 and procedure and forms; to provide for powers, duties, and authority of the Tax Court and
16 the Small Claims Division; to provide for procedures, conditions, and limitations; to provide
17 for related matters; to provide for effective dates; to provide for applicability; to repeal
18 conflicting laws; and for other purposes.

19 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

20 **SECTION 1.**

21 Title 15 of the Official Code of Georgia Annotated, relating to courts, is amended by adding
22 a new chapter to read as follows:

23 "CHAPTER 6A

24 15-6A-1.

25 This chapter shall be known and may be cited as the 'Tax Court Act of 2011.'

26 15-6A-2.

27 The General Assembly finds that there is a need for an independent trial court with
28 concurrent jurisdiction with the superior courts of Georgia over tax disputes involving the
29 Department of Revenue. The creation of such a tax court would (1) improve the utilization
30 of judicial resources by resolving tax cases in a more streamlined and efficient manner; (2)
31 increase the uniformity of decision making in tax cases; (3) improve the equal access of all
32 parties to court process; and (4) increase public confidence in the fairness of the state tax
33 system.

34 15-6A-3.

35 Except where the context may otherwise clearly require, all terms used in this chapter shall
36 have the meaning given such term by Code Section 48-1-2.

37 15-6A-4.

38 (a) There is created a Georgia Tax Court as a pilot project pursuant to authority granted
39 by Article VI, Section I, Paragraph X of the Georgia Constitution. The Georgia Tax Court
40 shall exist as a pilot project of limited duration until July 1, 2021.

41 (b) The Georgia Tax Court is established as a trial court of concurrent jurisdiction with
42 Georgia's superior courts to hear tax disputes involving the Department of Revenue.

43 (c) The Tax Court shall have a seal engraved with the words 'Georgia Tax Court.' The Tax
44 Court shall authenticate all of its orders, records, and proceedings with the seal, and the
45 courts of this state shall take judicial notice of the seal.

46 (d) The Tax Court shall be a court of record and shall have all powers of superior courts
47 as provided for in Code Section 15-6-8.

48 15-6A-5.

49 (a) The Tax Court shall consist of at least one full-time judge. If the Tax Court has more
50 than one judge, each shall exercise the powers of the Tax Court.

51 (b) Judges of the Tax Court shall be appointed by the Governor, with the consent of the
52 Senate and subject to the conditions set out in Code Section 15-6A-6. If, initially, the Tax
53 Court has more than one judge, then one judge shall be appointed for an initial term of four

54 years and one shall be appointed for an initial term of six years, to ensure that the judges'
55 initial terms do not expire in the same year.

56 (c) Each judge of the Tax Court shall receive an annual salary no less than that provided
57 by law for a Judge of the Court of Appeals under Code Section 15-3-5, and such salary
58 shall not be reduced during the judge's term appointment. Each judge shall have the right
59 to reimbursement of travel expenses, as provided for superior court judges under Code
60 Section 15-6-30, and the right to reimbursement of expenses for attending educational
61 programs as provided for superior court judges under Code Section 15-6-32.

62 (d) Once appointed and confirmed, each judge shall continue in office until his or her term
63 expires and a successor has been appointed and confirmed. A judge may be reappointed
64 for successive terms.

65 (e) A vacancy in the Tax Court occurring other than by expiration of term shall be filled
66 for the unexpired term in the same manner as an original appointment.

67 (f) If more than one judge is appointed, the judges of the Tax Court shall at least biennially
68 designate one judge to act as chief judge. The chief judge shall be the executive of the Tax
69 Court; shall have sole charge of the administration of the Tax Court; and shall apportion
70 among the judges all causes, matters, and proceedings coming before the Tax Court.

71 (g) With the consent of the Senate, the Governor may remove a judge, after notice and an
72 opportunity to be heard, for neglect of duty, inability to perform duties, malfeasance in
73 office, or other good cause.

74 (h) Whenever the Tax Court trial docket or business becomes congested or any judge of
75 the Tax Court is absent, is disqualified, or for any other reason is unable to perform his or
76 her duties as judge, and it appears to the Governor that the services of an additional judge
77 or judges should be provided, the Governor may appoint a judge, or judges, pro tempore
78 of the Tax Court. Any person appointed judge pro tempore of the Tax Court shall have the
79 qualifications set forth in subsections (a) and (b) of Code Section 15-6A-6 and shall serve
80 for a period not to exceed six months.

81 (i) A judge may disqualify himself or herself on his or her own motion in any matter and
82 may be disqualified for any cause listed in Code Section 15-1-8.

83 15-6A-6.

84 (a) Each judge of the Tax Court shall be a citizen of the United States and, during the
85 period of service, a resident of this state. No person shall be appointed as a judge unless
86 at the time of appointment the individual is an attorney licensed to practice in this state and
87 has substantial knowledge of and experience in state tax law.

88 (b) Before entering upon the duties of office, each judge shall take and subscribe to an oath
89 or affirmation that he or she shall faithfully discharge the duties of the office, and such oath
90 shall be filed in the office of the Secretary of State.

91 (c) Each judge shall devote his or her full time during business hours to the duties of the
92 Tax Court. A judge shall not engage in any other gainful employment or business that
93 interferes with or is inconsistent with his or her duties as a judge and shall not hold another
94 office or position of profit in a government of this state, any other state, or the United
95 States.

96 15-6A-7.

97 (a) The Tax Court's principal location shall be located in Fulton County, Georgia, and in
98 a building that is separate and apart from any building in which the commissioner has an
99 office.

100 (b) The Tax Court may, but is not required to, conduct hearings at its principal location in
101 Fulton County. The Tax Court may also hold hearings at any place within the state, with
102 a view toward securing to taxpayers a reasonable opportunity to appear before the Tax
103 Court with as little inconvenience and expense as practicable. When the Tax Court holds
104 hearings outside of its principal location, it shall do so in a place that is physically separate
105 from facilities regularly occupied by the commissioner.

106 15-6A-8.

107 (a) The Tax Court shall appoint a clerk of court and a court reporter and may appoint such
108 other employees, including staff attorneys and clerical assistants, and make such other
109 expenditures, including expenditures for library, publications, and equipment, as are
110 reasonably necessary to permit it to execute its functions efficiently.

111 (b) The court reporter shall be subject to the provisions of Code Sections 15-14-20 through
112 15-14-37 as if appointed by a judge of a superior court, except where such provisions are
113 in conflict with this chapter.

114 (c) No employee of the Tax Court shall act as attorney, representative, or accountant for
115 others in a matter involving any tax imposed or levied by this state or county or
116 municipality of this state.

117 (d) In addition to contracting the services of the official reporter, the Tax Court may
118 contract the reporting of its proceedings and, in the contract, fix the terms and conditions
119 under which transcripts will be supplied by the contractor to the Tax Court and to other
120 persons and agencies.

121 15-6A-9.

122 (a) Any person may petition the Tax Court for relief as set forth in Code Sections 48-2-18,
123 48-2-35, 48-2-59, 48-3-1, 48-5-519, 48-6-7, and 48-6-76, and subparagraph (d)(2)(C) of
124 Code Section 48-7-31. The Tax Court also shall have jurisdiction over actions for
125 declaratory judgment that fall within subsection (a) of Code Section 50-13-10 and involve
126 a rule of the commissioner that is applicable to taxes administered by the commissioner
127 under Title 48.

128 (b) The Tax Court shall have concurrent jurisdiction with the superior courts over those
129 matters set forth in subsection (a) of this Code section.

130 (c) The Tax Court shall not have jurisdiction to hear any matters arising under Title 3 or
131 Title 40.

132 (d) No person shall be required as a condition either to initiating or maintaining an action
133 in the Tax Court to provide a surety bond or other security for any amounts that may be in
134 dispute in such action. Nothing contained in this chapter shall be construed to prohibit the
135 commissioner from requiring a bond under those circumstances set forth in Code Section
136 48-2-51.

137 15-6A-10.

138 (a) Actions in the Tax Court shall be commenced by filing a petition with the court,
139 naming the commissioner as respondent in his or her official capacity, within the time
140 periods prescribed by Code Section 48-2-18, 48-2-35, 48-2-59, 48-6-7, or 48-6-76 or
141 subparagraph (d)(2)(C) of Code Section 48-7-31, as the case may be, or as otherwise
142 provided by law. The petitioner shall serve a copy of the petition on the commissioner and
143 the Attorney General and attach a certificate of service to the petition filed with the Tax
144 Court. In the case of a refund action pursuant to Code Section 48-6-7 or 48-6-76, the
145 petition also shall be served on the clerk of the superior court who is made a party to the
146 action. Service shall be accomplished as prescribed in Code Section 15-6A-18. The
147 petition shall include a summary statement of facts and law upon which the petitioner relies
148 in seeking the requested relief.

149 (b) The commissioner shall file its answer in the Tax Court no later than 30 days after the
150 service of the petition. The commissioner shall serve a copy on the petitioner's
151 representative or, if the petitioner is not represented, on the petitioner, and shall file a
152 certificate of such service with the answer. If in any case an answer has not been filed
153 within the time required by this subsection, the case shall automatically become in default
154 unless the time for filing the answer has been extended by agreement of the parties, for a
155 period not to exceed 30 days, or by the Tax Court. The default may be opened as a matter
156 of right by the filing of an answer within 15 days of the day of default. At any time before

157 final judgment, the Tax Court, in its discretion, may allow the default to be opened for
158 providential cause preventing the filing of the answer or for excusable neglect or where the
159 judge, from all the facts, shall determine that a proper case has been made for the default
160 to be opened on terms to be fixed by the court.

161 (c) Pleadings in the Tax Court shall be subject to the amendment and supplementation
162 provisions of Code Section 9-11-15.

163 (d) As soon as reasonably practicable, the Tax Court shall schedule a prehearing
164 conference to address discovery, scheduling, and other matters.

165 (e) The Tax Court may remand a matter in dispute to the commissioner for further
166 consideration upon motion by all parties to the proceeding, for good cause shown on the
167 motion of any party, or sua sponte when the Tax Court itself reasonably determines that
168 circumstances warrant. Any such remand shall not divest the Tax Court of jurisdiction, and
169 the court's order shall provide that any party, upon appropriate advance notice to all other
170 parties, is entitled to have such matter returned to the Tax Court for resolution.

171 15-6A-11.

172 (a) Except as provided for in Code Section 48-2-51 relating to jeopardy assessments, the
173 filing of a petition with the Tax Court operates as a stay of any enforcement or collection
174 action by the commissioner with respect to any tax, penalty, interest, or any collection costs
175 that are disputed in the petition until the Tax Court decision is finalized, including appeals
176 to any appellate court.

177 (b) Upon petition by the commissioner, and for good cause shown, the Tax Court may lift
178 the stay provided for in subsection (a) of this Code section.

179 15-6A-12.

180 (a) Upon filing a petition, the petitioner shall pay to the clerk a fee as determined by the
181 rules established by the Tax Court.

182 (b) A similar fee shall be paid by other parties making an appearance in the proceeding,
183 except that no fee shall be charged to a government body or government official appearing
184 in a representative capacity.

185 (c) The Tax Court may fix a fee, not in excess of the fees charged and collected by the
186 clerks of the superior courts of this state, for compiling, or for preparing and compiling, a
187 transcript of the record, or for copying any record, entry, or other paper and the compilation
188 and certification thereof.

189 15-6A-13.

190 (a) The parties to a proceeding shall make every effort to conduct discovery by informal
191 consultation or communication.

192 (b) The parties to a proceeding shall stipulate all relevant and nonprivileged matters to the
193 fullest extent to which complete or qualified agreement can be reached or fairly should be
194 reached. Neither the existence nor the use of the discovery mechanisms authorized by this
195 Code section shall excuse failure to comply with this provision.

196 (c) Subject to reasonable limitations prescribed by the Tax Court, taking into account the
197 time and expense incurred by the parties, a party may conduct discovery by written
198 interrogatories; requests for the production of returns, books, papers, documents,
199 correspondence, or other evidence; depositions; and requests for admissions. In no event
200 shall the scope of discovery exceed the limitations set out in Code Sections 9-11-26
201 through 9-11-37. The Tax Court may provide for other forms of discovery.

202 (d)(1) A party shall disclose to other parties at a reasonable time prior to the hearing the
203 identity of any person who may be called at trial to present expert testimony.

204 (2) Except as otherwise stipulated or directed by the Tax Court, this disclosure shall,
205 with respect to a witness who is retained or specially employed to provide expert
206 testimony in the case or whose duties as an employee of the party regularly involve
207 giving expert testimony, be accompanied by a written report prepared and signed by the
208 witness if one has been prepared or will be offered at the hearing.

209 (e) A judge or the clerk of the Tax Court, on the request of any party to the proceeding,
210 shall issue subpoenas requiring the attendance of witnesses and giving of testimony and
211 subpoenas requiring the production of evidence or things.

212 (f) Any employee of the Tax Court designated in writing for such purpose by the judge,
213 or by the chief judge if more than one judge has been appointed, may administer oaths.

214 (g) Any witness who is subpoenaed or whose deposition is taken shall receive the same
215 fees and mileage as a witness in a superior court of this state.

216 15-6A-14.

217 (a) Proceedings before the Tax Court shall be tried de novo without a jury.

218 (b) Except as set forth in this chapter or as otherwise provided by law, the Tax Court shall
219 take evidence, conduct hearings, and issue final judgments and interlocutory orders.

220 (c) The Tax Court shall apply the rules of evidence as applied in the trial of civil nonjury
221 cases in the superior courts and may, when necessary to ascertain facts not reasonably
222 susceptible of proof under such rules, consider evidence not otherwise admissible
223 thereunder if it is of a type commonly relied upon by reasonably prudent persons in the
224 conduct of their affairs.

225 (d) Testimony shall be given only on oath or affirmation.
226 (e) The petition and other pleadings in the proceeding shall be deemed to conform to the
227 proof presented at the hearing, unless a party satisfies the Tax Court that presentation of
228 the evidence would unfairly prejudice the party in maintaining its position on the merits or
229 unless deeming the taxpayer's petition to conform to the proof would confer jurisdiction
230 on the Tax Court over a matter that would not otherwise come within the Tax Court's
231 jurisdiction.
232 (f) Except for hearings conducted in the Small Claims Division of the Tax Court as
233 provided in Code Section 15-6A-16, all hearings before the Tax Court shall be recorded
234 by means acceptable for use in courts of this state.

235 15-6A-15.
236 (a) Except with regard to proceedings in the Small Claims Division of the Tax Court
237 pursuant to Code Section 15-6A-16, the Tax Court shall render all final judgments and
238 interlocutory orders in writing, as appropriate, including therein a concise statement of the
239 facts found and the conclusions of law reached. The Tax Court's final judgment or
240 interlocutory order shall, subject to law, grant such relief, invoke such remedies, and issue
241 such orders as the Tax Court deems appropriate to carry out its final judgment or
242 interlocutory order.
243 (b) The Tax Court's final judgment shall have the same effect, and shall be enforced in the
244 same manner, as a judgment of a superior court of this state. The Tax Court's interlocutory
245 order shall have the same effect, and shall be enforced in the same manner, as an
246 interlocutory order of a superior court of this state.
247 (c) The Tax Court shall adopt rules and regulations to address confidentiality of taxpayer
248 information and proceedings before the Tax Court.
249 (d) The Tax Court shall adhere to the principle of stare decisis. The court's interpretation
250 of a tax statute subject to contest in one case shall be followed by the Tax Court in
251 subsequent cases involving the same statute, and its application of a statute to the facts of
252 one case shall be followed by the Tax Court in subsequent cases involving similar facts,
253 unless the Tax Court's interpretation or application conflicts with that of an appellate court
254 or the Tax Court provides satisfactory reasons for departing from prior precedent.
255 (e) Except as to a final judgment of the Small Claims Division, the Tax Court shall index
256 and publish its final judgments in such print or electronic form as it deems best adapted for
257 public convenience. Such publications shall be made permanently available and constitute
258 the official reports of the Tax Court.

259 15-6A-16.

260 (a) There is hereby established a Small Claims Division of the Tax Court.

261 (b) Judges of the Tax Court shall sit as the judges of the Small Claims Division.

262 (c) If the taxpayer elects within 90 days of filing its petition, the Small Claims Division
263 shall have jurisdiction over any proceeding with respect to which the amount of tax and
264 penalties in controversy, exclusive of interest, is less than a threshold amount determined
265 by the rules of the Tax Court. A taxpayer may not revoke an election to proceed in the
266 Small Claims Division after this 90 day period. For good cause, the Tax Court may, on its
267 own motion or on the motion of a party to the case, remove a case from the Small Claims
268 Division.

269 (d) In proceedings before the Small Claims Division of the Tax Court, accountants and
270 other tax return preparers designated by the taxpayer shall be permitted to accompany and
271 appear with the taxpayer in order to provide factual information regarding positions taken
272 on tax returns prepared by such accountant or other tax return preparer. An accountant or
273 tax return preparer accompanying and appearing with a taxpayer for this purpose shall not
274 be deemed to be acting as an advocate of the taxpayer or representing the taxpayer before
275 the Tax Court.

276 (e) At any time prior to entry of judgment, a taxpayer may dismiss a proceeding in the
277 Small Claims Division by notifying the clerk of the Tax Court in writing. Such dismissal
278 shall be without prejudice.

279 (f) Hearings in the Small Claims Division shall be conducted in a manner consistent with
280 proceedings before magistrate courts, as specified in Article 3 of Chapter 10 of Title 15.
281 The Tax Court judge may receive such evidence as the judge deems appropriate for
282 determination of the case. Testimony shall be given under oath or affirmation.

283 (g) A judgment of the Small Claims Division shall be conclusive upon all parties and may
284 not be appealed. A judgment of the Small Claims Division shall not be considered or cited
285 as precedent in any other case, hearing, or proceeding.

286 15-6A-17.

287 (a) Either party may appeal a final judgment of the Tax Court, except for judgments of the
288 Small Claims Division, to the Court of Appeals or the Supreme Court, as appropriate, in
289 accordance with the procedure for appeal from a final judgment in a civil case of a superior
290 court of this state pursuant to Chapter 6 of Title 5 with respect to judgments of the superior
291 courts. A cross-appeal in any such case may be taken in the manner prescribed by Code
292 Section 5-6-38.

293 (b) The taxpayer or the commissioner may obtain judicial review of an interlocutory order
294 of the Tax Court under the same conditions and in the same manner as an interlocutory
295 order in a civil case of a superior court, except for cases in the Small Claims Division.

296 (c) The record on appeal shall include the final judgment or interlocutory order of the Tax
297 Court, the stenographic transcript of the hearing before the Tax Court, if any, the pleadings,
298 briefs, and all exhibits and documents admitted into evidence.

299 (d) A judge of the Tax Court may, in his or her discretion, and without motion or notice
300 to the other party, grant such extensions of time for filing as are provided by Code Section
301 5-6-39, doing so in the manner and under the circumstances set forth therein.

302 15-6A-18.

303 (a) Any petition, statement, or other document required to be filed with the Tax Court
304 within a prescribed period, or on or before a prescribed date, is timely filed if it is delivered
305 in person on or before the due date to the Tax Court at its office during normal business
306 hours.

307 (b) Any petition, statement, or other document required to be filed within a prescribed
308 period, or on or before a prescribed date, that is delivered by the United States mail to the
309 Tax Court is timely filed if the date provided on a certificate of mailing received from the
310 United States Postal Service is within the prescribed period or on or before the prescribed
311 date for filing, and the envelope was deposited in the United States mail, postage prepaid,
312 and properly addressed to the Tax Court.

313 (c) Mailing by United States first-class or certified or registered mail, postage prepaid, to
314 the address of the taxpayer given on the taxpayer's petition, or to the address of the
315 taxpayer's representative of record, if any, or to the usual place of business of the
316 commissioner, and, where applicable, of the clerk of superior court who is made a party to
317 the action, shall constitute personal service on such party. A petition filed pursuant to
318 subsection (a) of Code Section 15-16A-10 shall be served on the commissioner, the
319 Attorney General, and, where applicable, on the clerk of superior court who is made a party
320 to the action, by United States certified or registered mail. The Tax Court may by rule
321 prescribe that notice by other means shall constitute personal service and may in a
322 particular case order that notice be given to additional persons or order that notice be given
323 by other means.

324 (d)(1) Any reference in this Code section to United States mail or United States
325 first-class or certified or registered mail shall be treated as including a reference to any
326 designated delivery service as defined in paragraph (2) of this subsection.

327 (2) For purposes of this Code section, the term 'designated delivery service' means any
328 delivery service provided by a trade or business that is designated by the Tax Court, by

329 rule, as provided in this paragraph. The Tax Court may so designate a delivery service
 330 only if the Tax Court determines that such service:

331 (A) Is available to the general public;

332 (B) Is at least as timely and reliable on a regular basis as the United States mail;

333 (C) Records electronically to its data base, kept in the regular course of its business,
 334 or marks on the cover in which any item referred to in this Code section is to be
 335 delivered, the date on which such item was given to such trade or business for delivery;
 336 and

337 (D) Meets such other criteria as the Tax Court may prescribe.

338 (3) The Tax Court may provide a rule similar to the rule of paragraph (1) of this
 339 subsection with respect to any service provided by a designated delivery service which
 340 is substantially equivalent to United States certified or registered mail.

341 (e) Mailing by United States first-class or certified or registered mail or delivery by a
 342 designated delivery service approved by the Tax Court shall be deemed to have occurred,
 343 respectively, on the date of mailing or the date of submission to the designated delivery
 344 service.

345 15-6A-19.

346 The Tax Court shall adopt rules of practice and procedure and adopt all reasonable rules
 347 and forms as may be necessary or appropriate to carry out the intent and purposes of this
 348 chapter.

349 15-6A-20.

350 This chapter shall be repealed in its entirety on July 1, 2021."

351 **SECTION 2.**

352 Title 9 of the Official Code of Georgia Annotated, relating to civil practice, is amended by
 353 revising subsections (a) and (b) of Code Section 9-4-2, relating to declaratory judgments, as
 354 follows:

355 "(a) In cases of actual controversy, the respective superior courts of this state and, with
 356 respect to controversies described in Code Section 15-6A-9, the Tax Court, shall have
 357 power, upon petition or other appropriate pleading, to declare rights and other legal
 358 relations of any interested party petitioning for such declaration, whether or not further
 359 relief is or could be prayed; and the declaration shall have the force and effect of a final
 360 judgment or decree and be reviewable as such.

361 (b) In addition to the cases specified in subsection (a) of this Code section, the respective
 362 superior courts of this state and, with respect to controversies described in Code Section

363 15-6A-9, the Tax Court, shall have power, upon petition or other appropriate pleading, to
 364 declare rights and other legal relations of any interested party petitioning for the
 365 declaration, whether or not further relief is or could be prayed, in any civil case in which
 366 it appears to the court that the ends of justice require that the declaration should be made;
 367 and the declaration shall have the force and effect of a final judgment or decree and be
 368 reviewable as such."

369 **SECTION 3.**

370 Said Title 9 is further amended by revising Code Section 9-4-5, relating to the filing and
 371 service of declaratory judgments, as follows:

372 "9-4-5.

373 A proceeding instituted under this chapter shall be filed and served as are other cases in the
 374 superior courts of this state or, with respect to controversies described in Code Section
 375 15-6A-9, the Tax Court, and may be tried at any time designated by the court not earlier
 376 than 20 days after the service thereof, unless the parties consent in writing to an earlier
 377 trial. Except with respect to cases before the Tax Court, if ~~if~~ there is an issue of fact which
 378 requires a submission to a jury, the jury may be drawn, summoned, and sworn either in
 379 regular term or specially for the pending case."

380 **SECTION 4.**

381 Said Title 9 is further amended by revising Code Section 9-4-6, relating to submitting fact
 382 issues to a jury in declaratory judgement actions, as follows:

383 "9-4-6.

384 Except with respect to cases before the Tax Court, when ~~When~~ a declaration of right or the
 385 granting of further relief based thereon involves the determination of issues of fact triable
 386 by a jury and jury trial is not waived, the issues shall be submitted to a jury of 12 in the
 387 form of interrogatories, with proper instructions by the court, whether a general verdict is
 388 required or not. The instructions by the court shall in all respects be governed by the laws
 389 of this state relating to instructions or charges by a court to a jury."

390 **SECTION 5.**

391 Said Title 9 is further amended by revising Code Section 9-11-81, relating to applicability
 392 of the Civil Practice Act, as follows:

393 "9-11-81.

394 This chapter shall apply to all special statutory proceedings except to the extent that
 395 specific rules of practice and procedure in conflict herewith are expressly prescribed by
 396 law; but, in any event, the provisions of this chapter governing the sufficiency of pleadings,

397 defenses, amendments, counterclaims, cross-claims, third-party practice, joinder of parties
 398 and causes, making parties, discovery and depositions, interpleader, intervention, evidence,
 399 motions, summary judgment, relief from judgments, and the effect of judgments shall apply
 400 to all such proceedings, except that the provisions of this chapter governing discovery and
 401 depositions shall apply to proceedings in the Tax Court only to the extent provided in Code
 402 Section 15-6A-13 or in the rules of the Tax Court."

403 **SECTION 6.**

404 Title 48 of the Official Code of Georgia Annotated, related to revenue and taxation, is
 405 amended by adding a new paragraph in Code Section 48-1-2, relating to definitions, to read
 406 as follows:

407 "(24.1) 'Tax Court' means the Georgia Tax Court established by Code Section 15-6A-4."

408 **SECTION 7.**

409 Said Title 48 is further amended by revising subsection (c) of Code Section 48-2-18, relating
 410 to State Board of Equalization, as follows:

411 "(c) As ~~chairman~~ chairperson and chief administrative officer of the board, the
 412 commissioner shall furnish to the board all necessary records and files and in this capacity
 413 may compel the attendance of witnesses and the production of books and records or other
 414 documents as ~~he~~ the commissioner is empowered to do in the administration of the tax
 415 laws. After final approval by the State Board of Equalization of the digest of proposed
 416 assessments made by the commissioner and after any adjustments by the board as
 417 authorized by this Code section are made, the commissioner shall notify within 30 days
 418 each taxpayer in writing of the proposed assessment of its property. At the same time, the
 419 commissioner shall notify in writing the board of tax assessors of such county, as outlined
 420 in Code Section 48-5-511, of the total proposed assessment of the property located within
 421 the county of taxpayers who are required to return their property to the commission. If any
 422 such taxpayer notifies the commissioner and the board of tax assessors in any such county
 423 of its intent to dispute a portion of the proposed assessment within 20 days after receipt of
 424 the notice, the county board of tax assessors shall include in the county digest only the
 425 undisputed amount of the assessment, and the taxpayer may challenge the commissioner's
 426 proposed assessment in an appeal filed in the Superior Court of Fulton County or in the
 427 Tax Court within 30 days of receipt of the notice. In any such appeal to the superior court,
 428 the taxpayer shall have the right of discovery as provided in Chapter 11 of Title 9, the
 429 'Georgia Civil Practice Act.' In any such appeal to the Tax Court, discovery shall be as
 430 provided in Chapter 6A of Title 15, the 'Tax Court Act of 2011.' Upon conclusion of the
 431 appeal, the taxpayer shall remit to the appropriate counties any additional taxes owed, with

432 interest at the rate provided by law for judgments. Such interest shall accrue from the date
 433 the taxes would have been due absent the appeal to the date the additional taxes are
 434 remitted."

435 **SECTION 8.**

436 Said Title 48 is further amended by revising paragraph (4) of subsection (c) of Code Section
 437 48-2-35, relating to refunds, as follows:

438 "(4) Any taxpayer whose claim for refund is denied by the commissioner or the
 439 commissioner's delegate or whose claim is not decided by the commissioner or the
 440 commissioner's delegate within one year from the date of filing the claim shall have the
 441 right to bring an action for a refund in the Tax Court or in the superior court of the county
 442 of the residence of the taxpayer, except that:

443 (A) If the taxpayer is a public utility or a nonresident, the taxpayer shall have the right
 444 to bring an action for a refund in the Tax Court or in the superior court of the county
 445 in which is located the taxpayer's principal place of doing business in this state or in
 446 which the taxpayer's chief or highest corporate officer or employee resident in this state
 447 maintains an office; or

448 (B) If the taxpayer is a nonresident individual or foreign corporation having no place
 449 of doing business and no officer or employee resident and maintaining an office in this
 450 state, the taxpayer shall have the right to bring an action for a refund in the Tax Court
 451 or in the Superior Court of Fulton County or in the superior court of the county in
 452 which the commissioner in office at the time the action is filed resides."

453 **SECTION 9.**

454 Said Title 48 is further amended by revising paragraph (3) of subsection (c) of Code Section
 455 48-2-36, relating to actions for which the commissioner may grant extensions of time, as
 456 follows:

457 "(3) Filing a petition with the superior court, the Tax Court, or the office of state
 458 administrative hearings as allowed under the laws of this state;"

459 **SECTION 10.**

460 Said Title 48 is further amended by revising subsection (a) of Code Section 48-2-50, relating
 461 to review of assessments, as follows:

462 "(a) The commissioner's assessments shall not be reviewed except by the procedure
 463 provided in this chapter or Chapter 6A of Title 15. No trial court shall have jurisdiction of
 464 proceedings to question the assessments, except as provided in this chapter or Chapter 6A
 465 of Title 15."

466

SECTION 11.

467 Said Title 48 is further amended by revising Code Section 48-2-59, relating to appeals,
468 payment of taxes admittedly owed, bonds, and costs, as follows:

469 "48-2-59.

470 (a) Except with respect to claims for refunds, either party may appeal from any order,
471 ruling, or finding of the commissioner to the Tax Court or the superior court of the county
472 of the residence of the taxpayer, except that:

473 (1) If the taxpayer is a public utility or nonresident, the appeal of either party shall be to
474 the Tax Court or the superior court of the county in which is located the taxpayer's
475 principal place of doing business or in which the taxpayer's chief or highest corporate
476 officer residing in this state maintains ~~his~~ such officer's office; or

477 (2) If the taxpayer is a nonresident individual or a foreign corporation having no place
478 of doing business and no officer or employee residing and maintaining ~~his~~ such officer's
479 office in this state, the taxpayer shall have the right to appeal to the Tax Court or the
480 Superior Court of Fulton County or to the superior court of the county in which the
481 commissioner in office at the time the action is filed resides.

482 (b) ~~The taxpayer shall commence an appeal and necessary records shall be certified by the~~
483 ~~commissioner and shall be filed with the clerk of the~~ by filing a petition with the Tax Court
484 or the superior court within 30 days from the date of decision by the commissioner. ~~The~~
485 ~~procedure provided by law for applying for and granting appeals from the probate court to~~
486 ~~the superior court shall apply as far as suitable to the appeal authorized by this Code~~
487 ~~section, except that the appeal authorized by this Code section may be filed within 30 days~~
488 ~~from the date of decision by the commissioner.~~

489 (c) Before the superior court shall have jurisdiction to entertain an appeal filed by any
490 aggrieved taxpayer, the taxpayer shall file with the clerk of the superior court a written
491 statement whereby the taxpayer agrees to pay on the date or dates the taxes become due all
492 taxes for which the taxpayer has admitted liability. Additionally, the taxpayer shall file with
493 the clerk of the superior court within 30 days from the date of decision by the
494 commissioner, except where the value of the appellant's title or interest in real property
495 owned in this state is in excess of the amount of the tax in dispute, a surety bond or other
496 security in an amount satisfactory to the clerk, conditioned to pay any tax over and above
497 that for which the taxpayer has admitted liability and which is found to be due by a final
498 judgment of the court, together with interest and costs. It shall be ground for dismissal of
499 the appeal if the taxpayer fails to pay all taxes admittedly owed upon the due date or dates
500 as provided by law. This subsection shall not apply to appeals filed with the Tax Court.

501 (d)(1) If the final judgment of the court places upon the taxpayer any tax liability which
502 has not already been paid and if the tax or any part of the tax has:

503 (A) Not become due on the date of the final judgment of the court, then the taxpayer
 504 shall pay the amount of the unpaid tax liability on the due date or dates as provided by
 505 law; or

506 (B) Already become due at the time of final judgment of the court, the taxpayer shall
 507 immediately pay the tax or as much of the tax as has already become due, with interest.

508 (2) In the event the final judgment of the court is adverse to the taxpayer, ~~he~~ the taxpayer
 509 shall pay the court costs regardless of whether the tax or any part of the tax has or has not
 510 become due at the time of the final judgment of the court.

511 (3) This subsection shall not apply to appeals filed with the Tax Court."

512 **SECTION 12.**

513 Said Title 48 is further amended by revising Code Section 48-3-1, relating to tax executions,
 514 as follows:

515 "48-3-1.

516 The commissioner may issue an execution for the collection of any tax, fee, license,
 517 penalty, interest, or collection costs due the state. The execution shall be directed to all and
 518 singular sheriffs of this state or to the commissioner or ~~his~~ the commissioner's authorized
 519 representatives and shall command them to levy upon the goods, chattels, lands, and
 520 tenements of the taxpayer, provided that the commissioner may transmit such executions
 521 electronically. Each sheriff shall execute the execution as in cases of writs of execution
 522 from the superior courts. Whenever any writ of execution has been issued by the
 523 commissioner, the taxpayer, in order to obtain a determination of whether the tax is legally
 524 due, may tender to the levying officer ~~his~~ such taxpayer's affidavit of illegality to the
 525 execution and, upon ~~his~~ such taxpayer's payment of the tax if required as a condition
 526 precedent by the law levying the tax or upon ~~his~~ such taxpayer's giving a good and solvent
 527 bond in such an amount to cover the total of any adverse judgment plus costs where the law
 528 does not require the payment of the tax as a condition precedent, the levying officer shall
 529 return the affidavit of illegality, except as otherwise provided by law, to the superior court
 530 of the county of the taxpayer's residence. The affidavit of illegality shall be summarily
 531 heard and determined by the court. Whenever any writ of execution has been issued by the
 532 commissioner for the collection of any tax, or any penalty, interest, or collection costs
 533 imposed with respect to any tax, the taxpayer may file a petition in the Tax Court to obtain
 534 a determination of whether any such amounts are legally due."

535 **SECTION 13.**

536 Said Title 48 is further amended by revising subsection (b) of Code Section 48-5-519,
 537 relating to property tax returns filed by railroad companies, as follows:

538 "(b) The returns shall be made to the commissioner by the chief executive officer in charge
 539 of the cars in this state. The final assessment of the property of railroad equipment
 540 companies shall be fixed in the same manner as the proposed assessments of property of
 541 public utilities under this article and Code Section 48-2-18, except that with respect to
 542 railroad equipment companies such assessment shall be final rather than proposed. By
 543 following the procedure set forth in subsection (c) of Code Section 48-2-18 for appeals of
 544 proposed assessments of public utility property, any ~~Any~~ railroad equipment company may
 545 bring in the Superior Court of Fulton County or in the Tax Court a de novo action of the
 546 final assessment so fixed."

547 **SECTION 14.**

548 Said Title 48 is further amended by revising subsection (b) of Code Section 48-6-7, relating
 549 to refunds of real estate transfer taxes, as follows:

550 "(b)(1) A taxpayer whose claim for a refund is denied by the commissioner or ~~his~~ the
 551 commissioner's delegate or with respect to whose claim no decision is rendered by the
 552 commissioner or ~~his~~ the commissioner's delegate within one year from the date of filing
 553 the claim shall have the right to bring an action for a refund in the superior court of the
 554 county where the disputed tax was originally collected or in the Tax Court. The taxpayer
 555 shall bring the action for refund against the clerk of superior court of the county which
 556 collected the disputed tax. The commissioner in ~~his~~ the commissioner's official capacity
 557 shall be made a party defendant to the action in order that the interests of the state may
 558 be represented in the action. The Attorney General shall represent both defendants in the
 559 action. If it is determined in the action that an amount claimed by the taxpayer was
 560 erroneously or illegally collected, the taxpayer shall be entitled to judgment against the
 561 defendant clerk of the superior court in ~~his~~ the clerk's official capacity for the amount
 562 erroneously or illegally collected, without interest to the date of judgment.

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

565 (3) For the purposes of this Code section, a failure by the commissioner to grant or deny
 566 the taxpayer's claim for refund within the one-year period shall not constitute a
 567 constructive denial of the claim."

568 **SECTION 15.**

569 Said Title 48 is further amended by revising paragraph (1) of subsection (e) of Code Section
 570 48-6-76, relating to refunds of intangible recording taxes, as follows:

571 "(e)(1) Any taxpayer whose claim for refund is denied entirely or in part by the
 572 commissioner or with respect to whose claim no decision is rendered by the

573 commissioner within 30 days from the date of filing the claim shall have the right to bring
 574 an action for refund of the amount so claimed and not approved against the collecting
 575 officer or said officer's successor who collected the amount, in said officer's official
 576 capacity, in the superior court of the county whose official collected the amount or in the
 577 Tax Court."

578 **SECTION 16.**

579 Said Title 48 is further amended by revising subparagraph (d)(2)(C) of Code Section
 580 48-7-31, relating to allocation and apportionment of corporate income, as follows:

581 "(C) If the allocation and apportionment provisions provided for in this paragraph do
 582 not fairly represent the extent of the taxpayer's business activity in this state, the
 583 taxpayer may petition the commissioner for, or the commissioner may by regulation
 584 require, with respect to all or any part of the taxpayer's business activity, if reasonable:

- 585 (i) Separate accounting;
- 586 (ii) The exclusion of any one or more of the factors;
- 587 (iii) The inclusion of one or more additional factors that will fairly represent the
 588 taxpayer's business activity within this state; or
- 589 (iv) The employment of any other method to effectuate an equitable allocation and
 590 apportionment of the taxpayer's income.

591 The denial of a petition under this subparagraph shall be appealable pursuant to ~~either~~
 592 ~~Code Section 48-2-59 or 50-13-12.~~ Such an appeal shall be filed within 30 days of the
 593 date of the commissioner's notice of denial;"

594 **SECTION 17.**

595 Title 50 of the Official Code of Georgia Annotated, relating to state government, is amended
 596 by repealing Code Section 50-13-12, relating to Department of Revenue hearings and
 597 election of remedies, and designating said Code section as reserved.

598 **SECTION 18.**

599 Said Title 50 is further amended by revising subsection (c) of Code Section 50-13-13,
 600 relating to administrative procedure, as follows:

601 ~~"(c) Except in cases in which a hearing has been demanded under Code Section 50-13-12,~~
 602 ~~subsection~~ Subsection (a) of this Code section and the other provisions of this chapter
 603 concerning contested cases shall not apply to any case arising in the administration of the
 604 revenue laws, which case is subject to a subsequent de novo trial of the law and the facts
 605 in the superior court or in the Tax Court."

606 **SECTION 19.**

607 Said Title 50 is further amended by adding a new subsection to Code Section 50-13-42,
608 relating to applicability, to read as follows:

609 "(c) This article shall not apply with respect to any matter as to which an aggrieved party
610 is permitted to file a petition with the Tax Court."

611 **SECTION 20.**

612 (a) Except as otherwise provided in this section, this Act shall become effective upon its
613 approval by the Governor or upon its becoming law without such approval.

614 (b) Sections 2 through 19 of this Act shall become effective on January 1, 2012.

615 **SECTION 21.**

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