

Senate Bill 234

By: Senator Rogers of the 21st

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 48 of the Official Code of Georgia Annotated, the "Georgia Public Revenue
2 Code," so as to extensively revise provisions relating to ad valorem tax assessments and
3 appeals from such assessments; to provide that no execution shall issue while an appeal is
4 pending; to provide a procedure for taxpayers to notify tax officials of errors on their part and
5 for correction of errors; to provide for a notice of excessive increase where a tax assessment
6 is increased by more than a certain percentage; to provide for removal of tax assessors for
7 violation of oath of office; to extensively revise procedures for assessment appeals and
8 arbitration; to provide for recovery of certain interest, costs, attorney's fees, and other
9 amounts by taxpayers who appeal successfully under certain circumstances; to provide for
10 other related matters; to provide for an effective date and applicability; to repeal conflicting
11 laws; and for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13 SECTION 1.

14 Title 48 of the Official Code of Georgia Annotated, the the "Georgia Public Revenue Code,"
15 is amended in Code Section 48-3-3, relating to issuance of executions for nonpayment of
16 taxes, by revising subsections (b) and (c) as follows:

17 "(b) The tax collector or tax commissioner shall issue executions for nonpayment of taxes
18 collectable by the tax collector or tax commissioner at any time after ~~30 days~~ have one year
19 has elapsed since giving notice as provided in subsection (c) of this Code section. The
20 executions shall be directed to all and singular sheriffs and constables of the state. No
21 executions for nonpayment of taxes shall be issued for any year as to which the property
22 is in an appeal or for any years affected by the appeal until there has been a final
23 determination of the value of the property.

24 (c) As soon as the last day for the payment of taxes has arrived, the tax collector or tax
25 commissioner shall notify in writing, by certified mail or statutory overnight delivery, the
26 taxpayer of the fact that the taxes have not been paid and that, unless paid, an execution

27 shall be issued; provided, however, that notice shall not be required for taxes due on
 28 personal property and executions may be issued on the day next following the day when
 29 taxes are due. If the tax collector or tax commissioner operates a website, the notice shall
 30 also be posted on the website. If the tax collector or tax commissioner has an e-mail
 31 address for the taxpayer, the notice shall also be delivered by e-mail."

32 **SECTION 2.**

33 Said title is further amended in said Code Section 48-3-3 by adding a new subsection (g) to
 34 read as follows:

35 "(g)(1) Any taxpayer may send written notice to the tax commissioner or tax collector,
 36 by certified mail or statutory overnight delivery, of any factual errors by the tax assessor
 37 or tax commissioner. The tax commissioner or tax collector shall correct such factual
 38 errors within 30 days of the date of receipt of the notice and a corrected tax bill shall be
 39 reissued to the taxpayer, if such bill was determined to need correction. The corrected
 40 bill due date shall be 30 days from the date of reissuance and shall not include any
 41 previous interest or penalties due.

42 (2) If any errors by the tax commissioner or tax collector resulted in an issuance of
 43 execution for nonpayment of taxes, the county shall be responsible for redeeming all
 44 related tax liens, including all penalties and interest.

45 (3) If the tax assessor or tax collector fails to comply with the deadline in paragraph (1)
 46 of this subsection, the taxpayer may appeal to the superior court of the county in which
 47 the property is located. If through mediation, admission, agreement, or any other legal
 48 proceeding the tax assessor or tax collector is determined to have committed errors, the
 49 taxpayer shall recover costs of litigation and all attorney's fees incurred in the action. The
 50 county may not appeal such recovered costs and awards, nor shall the court reduce such
 51 awards."

52 **SECTION 3.**

53 Said title is further amended in Code Section 48-5-306, relating to annual notice of ad
 54 valorem tax assessment, by revising paragraph (1) of subsection (b) as follows:

55 "(1) The annual notice of current assessment required to be given by the county board
 56 of tax assessors under subsection (a) of this Code section shall be dated and shall contain
 57 the name and last known address of the taxpayer. The annual notice shall conform with
 58 the state-wide uniform assessment notice which shall be established by the commissioner
 59 by rule and regulation and shall contain:

60 (A) The amount of the previous assessment;

61 (B) The amount of the current assessment;

- 62 (C) The year for which the new assessment is applicable;
- 63 (D) A brief description of the assessed property broken down into real and personal
64 property classifications;
- 65 (E) The fair market value of property of the taxpayer subject to taxation and the
66 assessed value of the taxpayer's property subject to taxation after being reduced;
- 67 (F) The name, phone number, and contact information of the person in the assessors'
68 office who is administratively responsible for the handling of the appeal and who the
69 taxpayer may contact if the taxpayer has questions about the reasons for the assessment
70 change or the appeals process;
- 71 (G) If available, the website address of the office of the county board of tax assessors;
72 ~~and~~
- 73 (H) A statement that all documents and records used to determine the current value are
74 available upon request; and
- 75 (I) The words 'EXCESSIVE INCREASE' in boldface and capitalized type positioned
76 at the top of such notice if the property was increased in value more than 5 percent, in
77 a single year, since its last reassessment and the property was not improved, as
78 definitively evidenced by the issuance of a building permit since its last reassessment."

79 **SECTION 4.**

80 Said title is further amended in Code Section 48-5-311, relating to boards of equalization and
81 appeals of ad valorem tax assessments, by adding a new paragraph (6) of subsection (c) to
82 read as follows:

83 "(6) Any member of the board of equalization shall be removed by any judge of the
84 superior court of the county of which the member serves if the oath specified in
85 paragraph (5) of this subsection is determined to have been knowingly violated."

86 **SECTION 5.**

87 Said title is further amended in said Code Section 48-5-311 by revising subparagraph
88 (e)(1)(A) as follows:

89 "(1)(A) Any taxpayer or property owner as of the last date for filing an appeal may
90 elect to file an appeal from an assessment by the county board of tax assessors to either:

91 (i) The county board of equalization as to matters of taxability, uniformity of
92 assessment, and value, and, for residents, as to denials of homestead exemptions
93 pursuant to paragraph (2) of this subsection;

94 (ii) An arbitrator as to matters of value pursuant to subsection (f) of this Code
95 section; ~~or~~

96 (iii) A hearing officer as to matters of value and uniformity for a parcel of
 97 nonhomestead real property with a fair market value in excess of \$1 million pursuant
 98 to subsection (e.1) of this Code section; or

99 (iv) The superior court of the county in which the property lies, if:

100 (I) The taxpayers chooses not to appeal under division (i), (ii), or (iii) of this
 101 subparagraph; and

102 (II) The assessment of the property was increased by more than 5 percent in a
 103 single year since its last reassessment and the property has not been improved since
 104 its last reassessment as evidenced by the issuance of a building permit.

105 This division (iv) shall not be deemed to conflict with a taxpayer's rights under the
 106 other divisions of this subparagraph or the taxpayer's right to appeal to superior court
 107 but shall be considered an additional choice of the taxpayer.

108 The commissioner shall establish by rule and regulation a uniform appeal form that the
 109 taxpayer may use."

110 SECTION 6.

111 Said title is further amended in said Code Section 48-5-311 by revising subparagraph
 112 (e)(2)(C) as follows:

113 "(C) If changes or corrections are made by the county board of tax assessors, the board
 114 shall notify the taxpayer in writing, by certified mail or statutory overnight delivery, of
 115 such changes. If the board of assessors operates a website, the notice shall also be
 116 posted on the website. If the board of assessors has an e-mail address for the taxpayer,
 117 the notice shall also be delivered by e-mail. If the taxpayer is dissatisfied with such
 118 changes or corrections, the taxpayer shall, within 30 days of the date of mailing of the
 119 change notice, institute an appeal to the county board of tax assessors by e-mailing, if
 120 the county board of tax assessors has adopted a written policy consenting to electronic
 121 service, or by mailing to or filing with the county board of tax assessors a written notice
 122 of appeal. The county board of tax assessors shall send or deliver the notice of appeal
 123 and all necessary papers to the county board of equalization."

124 SECTION 7.

125 Said title is further amended in said Code Section 48-5-311 by revising subdivision
 126 (e)(6)(D)(iii)(II) as follows:

127 "(II) If the final determination of the value on appeal is less than the valuation thus
 128 used, the taxpayer shall receive a deduction in such taxpayer's taxes for the year in
 129 question. Such deduction shall be refunded to the taxpayer and shall include interest

130 on the amount of such deduction at the same rate as specified in Code Section
 131 48-2-35 which shall accrue from November 15 of the taxable year in question or the
 132 date the final installment of the tax was due or was paid, whichever is later. ~~In no~~
 133 ~~event shall the amount of such interest exceed \$150.00.~~ Such deduction shall also
 134 include a refund of any penalties on the amount of such deduction."

135 **SECTION 8.**

136 Said title is further amended in said Code Section 48-5-311 by adding at the end of
 137 subsection (e) new paragraphs (10) and (11) to read as follows:

138 "(10) The tax assessor shall immediately forward any final determination of value to the
 139 tax commissioner.

140 (11) If the taxpayer is successful in any legal action against the county under this
 141 subsection (e) whether through mediation, admission, agreement, or any other legal
 142 proceeding, the taxpayer, in addition to the penalties and interested provided for, shall
 143 recover any costs of litigation and attorney's fees incurred in the action. The court shall
 144 not reduce such award, nor shall the county appeal."

145 **SECTION 9.**

146 Said title is further amended in said Code Section 48-5-311 by revising subsections (f) and
 147 (g) as follows:

148 **"(f) Arbitration.**

149 (1) As used in this subsection, the term 'certified appraisal' means an appraisal or
 150 appraisal report given, signed, and certified as such by a real property appraiser as
 151 classified by the Georgia Real Estate Commission and the Georgia Real Estate Appraisers
 152 Board.

153 (2) At the option of the taxpayer an appeal shall be submitted to arbitration in accordance
 154 with this subsection.

155 (3)(A) Following an election by the taxpayer to use the arbitration provisions of this
 156 subsection, an arbitration appeal shall be effected by the taxpayer by e-mailing, if the
 157 county board of tax assessors has adopted a written policy consenting to electronic
 158 service, or by filing a written notice of arbitration appeal with the county board of tax
 159 assessors. The notice of arbitration appeal shall specifically state the grounds for
 160 arbitration. The notice shall be filed within 45 days from the date of mailing the notice
 161 pursuant to Code Section 48-5-306. Within ten days of receipt of a taxpayer's notice
 162 of arbitration appeal, the board of tax assessors shall send to the taxpayer an
 163 acknowledgment of receipt of the appeal; a notice that the taxpayer must, within 45
 164 days of the filing of the notice, provide to the board of assessors for consideration a

165 copy of a certified appraisal; and a confirmation of the amount of the filing fees, if any,
166 required under Code Section 15-6-77 and notice that within 45 days the taxpayer shall
167 pay to the clerk of the superior court the fees, if the board of assessors rejects the
168 appraisal. Failure of the taxpayer to provide such certified appraisal ~~and filing fees~~
169 within such 45 days shall terminate the appeal unless the taxpayer within such 45 day
170 period elects to have the appeal forwarded to the board of equalization. Prior to
171 appointment of the arbitrator and within 45 days of filing the notice of appeal, the
172 taxpayer shall provide a copy of the certified appraisal as specified in this paragraph to
173 the board of assessors for consideration. Within 45 days of receiving the taxpayer's
174 certified appraisal, the board of assessors shall either accept the taxpayer's appraisal,
175 in which case that value shall become final or the county board of tax assessors shall
176 reject the taxpayer's appraisal by sending notice of rejection to the taxpayer, by certified
177 mail or statutory overnight delivery, together with a demand for the filing fees to be
178 paid within 30 days after the date of the sending of the notice, in which case the county
179 board of tax assessors shall ~~certify within 45 days~~ ten days after receipt of the filing
180 fees certify the appeal to the clerk of the superior court of the county in which the
181 property is located along with any other papers specified by the person seeking
182 arbitration under this subsection, including, but not limited to, the staff information
183 from the file used by the county board of tax assessors. In the event that the county
184 board of tax assessors neither accepts nor rejects the value set out in the certified
185 appraisal within ~~such 45 day period~~ 45 days after receipt of the certified appraisal, then
186 the certified appraisal shall become the final value. In any case where a taxpayer
187 properly filed for the 2009 tax year a notice of binding arbitration appeal and provided
188 the required certified appraisal in accordance with this paragraph and the board of
189 assessors neither accepted nor rejected the value set out in such certified appraisal
190 within the 30 day period formerly specified under this subparagraph, then for purposes
191 of the 2009 tax year, the value set forth in the taxpayer's certified appraisal shall be
192 deemed the final value. All papers and information certified to the clerk shall become
193 a part of the record on arbitration. At the time of certification of the appeal, the county
194 board of tax assessors shall serve the taxpayer and the taxpayer's attorney of record, if
195 any, or employee with a copy of the certification along with any other papers specified
196 by the person seeking arbitration along with the civil action file number assigned to the
197 appeal. Within 15 days of filing the certification to the clerk of the superior court, the
198 chief judge of the superior court of the circuit in which the property is located shall
199 issue an order authorizing the arbitration.

200 (B) The arbitration shall be conducted pursuant to the following procedure:

- 201 (i) The board of assessors shall include in the notice of rejection of the taxpayer's
202 certified appraisal a notice of a meeting time and place to decide on an arbitrator, to
203 occur within 60 days after the date of sending of the rejection of the taxpayer's
204 appraisal. If such meeting does not occur within the 60 days due to any fault of the
205 assessor, the taxpayer's certified appraisal shall become the final determination of
206 value. If the parties agree, the matter shall be submitted to a single arbitrator chosen
207 by the parties. ~~If~~ Only if the parties cannot agree on the single arbitrator, the
208 arbitrator shall be chosen by ~~the chief~~ any judge of the superior court of the circuit in
209 which the property is located within 90 days after the date of the rejection of the
210 taxpayer's certified appraisal. If a judge fails to choose an arbitrator within such 90
211 day period, the taxpayer's certified appraisal shall become the final determination of
212 value;
- 213 (ii) In order to be qualified to serve as an arbitrator, a person shall be classified as a
214 state certified general real property appraiser or state certified residential real property
215 appraiser pursuant to the rules and regulations of the Georgia Real Estate Commission
216 and the Georgia Real Estate Appraisers Board and shall have experience or expertise
217 in appraising the type of property that is the subject of the arbitration;
- 218 (iii) The arbitrator, within 30 days after his or her appointment, shall set a time and
219 place to hear evidence and testimony from both parties within 90 days after the date
220 of his or her appointment. The arbitrator shall provide written notice to the parties
221 personally or by registered or certified mail or statutory overnight delivery not less
222 than ten days before the hearing. The arbitrator may adjourn or postpone the hearing.
223 ~~The chief~~ Any judge of the superior court of the circuit in which the property is
224 located may direct the arbitrator to proceed promptly with the hearing and the
225 determination of the appeal upon application of any party;
- 226 (iv) At the hearing, the parties shall be entitled to be heard, to present documents,
227 testimony, and other matters, and to cross-examine witnesses. The arbitrator may
228 hear and determine the controversy upon the documents, testimony, and other matters
229 produced notwithstanding the failure of a party duly notified to appear;
- 230 (v) The arbitrator shall maintain a record of all pleadings, documents, testimony, and
231 other matters introduced at the hearing. The arbitrator or any party to the proceeding
232 may have the proceedings transcribed by a court reporter;
- 233 (vi) The provisions of this paragraph may be waived at any time by written consent
234 of the taxpayer and the board of tax assessors;
- 235 (vii) At the conclusion of the hearing, the arbitrator shall render a decision regarding
236 the value of the property subject to arbitration;

237 (viii) In order to determine the value, the arbitrator shall consider a the single value
 238 for the property submitted by the board of assessors in the original notice sent to the
 239 taxpayer and a the single value submitted by the taxpayer in the original certified
 240 appraisal submitted to the board of assessors by the taxpayer. The taxpayer shall be
 241 responsible for the initial cost of any appraisal by the taxpayer's appraiser;

242 (ix) Upon consideration of the single value submitted by the board of assessors and
 243 the single value submitted by the taxpayer, and evidence supporting the values
 244 submitted by the board of assessors and the taxpayer, the arbitrator shall determine
 245 which value is the value for the property under appeal;

246 (x) If the taxpayer's value is determined by the arbitrator to be the value, the county
 247 shall be responsible for the clerk of the superior court's fees, if any, ~~and~~ the fees and
 248 costs of such arbitrator, and the costs of the taxpayer's certified appraisal. If the board
 249 of tax assessors' value is determined by the arbitrator to be the value, the taxpayer
 250 shall be responsible for the clerk of the superior court's fees, if any, and the fees and
 251 costs of such arbitrator; and

252 (xi) The board of tax assessors shall have the burden of proving its opinion of value
 253 and the validity of its proposed assessment by a preponderance of evidence.

254 (4) The provisions in subsection (c) of Code Section 48-5-299 shall apply to the
 255 valuation established or rendered by any county board of equalization, arbitrator, hearing
 256 officer, or superior court.

257 (5) If the county's tax bills are issued before an arbitrator has rendered its decision on
 258 property which is on appeal, the county board of tax assessors shall specify to the county
 259 tax commissioner the higher of the taxpayer's return valuation or 85 percent of the current
 260 year's valuation as set by the county board of tax assessors. This amount shall be the
 261 basis for a temporary tax bill to be issued. Such tax bill shall be accompanied by a notice
 262 to the taxpayer that the bill is a temporary tax bill pending the outcome of the appeal
 263 process. Such notice shall also indicate that upon resolution of the appeal, there may be
 264 additional taxes due or a refund issued.

265 (6) If the taxpayer is successful in any agreement, admission, mediation, or other legal
 266 proceeding concerning enforcement of any issue within this subsection (f), the taxpayer
 267 shall recover costs of litigation and all attorney's fees incurred in the action. The court
 268 shall not reduce such award. Additionally, the county may not appeal any decision under
 269 this subsection.

270 (g) **Appeals to the superior court.**

271 (1) The taxpayer or the county board of tax assessors may appeal decisions of the county
 272 board of equalization or hearing officer, as applicable, to the superior court of the county
 273 in which the property lies. By mutual written agreement, the taxpayer and the county

274 board of tax assessors may waive an appeal to the county board of equalization and
275 initiate an appeal under this subsection. A county board of tax assessors shall not appeal
276 a decision of the county board of equalization or hearing officer, as applicable, changing
277 an assessment by 20 percent or less unless the board of tax assessors gives the county
278 governing authority a written notice of its intention to appeal, and, within ten days of
279 receipt of the notice, the county governing authority by majority vote does not prohibit
280 the appeal. In the case of a joint city-county board of tax assessors, such notice shall be
281 given to the city and county governing authorities, either of which may prohibit the
282 appeal by majority vote within the allowed period of time.

283 (2) An appeal by the taxpayer as provided in paragraph (1) of this subsection shall be
284 effected by e-mailing, if the county board of tax assessors has adopted a written policy
285 consenting to electronic service, or by mailing to or filing with the county board of tax
286 assessors a written notice of appeal. An appeal by the county board of tax assessors shall
287 be effected by giving notice to the taxpayer. The notice to the taxpayer shall be dated and
288 shall contain the name and the last known address of the taxpayer. The notice of appeal
289 shall specifically state the grounds for appeal. The notice shall be mailed or filed within
290 30 days from the date on which the decision of the county board of equalization or
291 hearing officer is mailed pursuant to subparagraph (e)(6)(D) or paragraph (6) of
292 subsection (e.1) of this Code section. The county board of tax assessors shall certify to
293 the clerk of the superior court the notice of appeal and any other papers specified by the
294 person appealing including, but not limited to, the staff information from the file used by
295 the county board of tax assessors, the county board of equalization, or the hearing officer.
296 All papers and information certified to the clerk shall become a part of the record on
297 appeal to the superior court. At the time of certification of the appeal, the county board
298 of tax assessors shall serve the taxpayer and his or her attorney of record, if any, with a
299 copy of the notice of appeal and with the civil action file number assigned to the appeal.
300 Such service shall be effected in accordance with subsection (b) of Code Section 9-11-5.
301 No discovery, motions, or other pleadings may be filed by the county board of tax
302 assessors in the appeal until such service has been made.

303 (3) The appeal shall constitute a de novo action. The board of tax assessors shall have
304 the burden of proving its opinions of value and the validity of its proposed assessment by
305 a preponderance of evidence. Upon a failure of the board of tax assessors to meet such
306 burden of proof, the court may, upon motion or sua sponte, authorize the finding that the
307 value asserted by the taxpayer is unreasonable and authorize the determination of the
308 final value of the property.

309 (4)(A) The appeal shall be placed on the court's next available jury or bench trial
310 calendar, at the taxpayer's election, following the filing of the appeal unless continued

311 by the court upon a showing of good cause. If only questions of law are presented in
 312 the appeal, the appeal shall be heard as soon as practicable before the court sitting
 313 without a jury. Each hearing before the court sitting without a jury shall be held within
 314 30 days following the date on which the appeal is filed with the clerk of the superior
 315 court. The time of any hearing shall be set in consultation with the taxpayer and at a
 316 time acceptable to the taxpayer between the hours of 8:00 A.M. and 7:00 P.M. on a
 317 business day.

318 (B)(i) The county board of tax assessors shall use the valuation of the county board
 319 of equalization or the hearing officer, as applicable, in compiling the tax digest for the
 320 county. If the final determination of value on appeal is less than the valuation set by
 321 the county board of equalization or hearing officer, as applicable, the taxpayer shall
 322 receive a deduction in such taxpayer's taxes for the year in question. Such deduction
 323 shall be refunded to the taxpayer and shall include interest on the amount of such
 324 deduction at the same rate as specified in Code Section 48-2-35 which shall accrue
 325 from November 15 of the taxable year in question or the date the final installment of
 326 the tax was due or was paid, whichever is later. ~~In no event shall the amount of such~~
 327 ~~interest exceed \$150.00.~~ The taxpayer shall also receive reimbursement for any
 328 interest and penalties charged on the amount of the deduction if paid by the taxpayer.

329 (ii) If the final determination of value on appeal, whether through mediation,
 330 admission, agreement, or any other legal proceeding is 80 percent or less of the
 331 valuation set by the county board of equalization or hearing officer as to commercial
 332 property, or 85 percent or less of the valuation set by the county board of tax assessors
 333 as to other property, the taxpayer, in addition to the interest provided for by this
 334 paragraph, shall recover costs of litigation and ~~reasonable~~ double the attorney's fees
 335 incurred in the action shall be paid directly to the attorney. The county may not
 336 appeal such recovered costs and awards provided for in this division. Additionally,
 337 the county may not appeal the determination of value. The court shall not reduce the
 338 costs and fees specified in this division.

339 (iii) If the final determination of value on appeal is greater than the valuation set by
 340 the county board of equalization or hearing officer, as applicable, the taxpayer shall
 341 be liable for the increase in taxes for the year in question due to the increased
 342 valuation fixed on appeal with interest at the same rate as specified in Code Section
 343 48-2-35. Such interest shall accrue from November 15 of the taxable year in question
 344 or the date the final installment of tax was due to the date the additional taxes are
 345 remitted, but in no event shall the amount of such interest exceed \$150.00.

346 (iv) If the taxpayer's property was increased in assessment by more than 5 percent
 347 and the taxpayer appealed directly to the superior court under division (e)(1)(A)(iv)

348 of this Code section and the final determination of value on appeal was reduced by
349 more than 5 percent, whether through mediation, admission, agreement, or any other
350 legal proceeding, the taxpayer, in addition to the costs and interest provided for, shall
351 recover costs of litigation and any attorney's fees incurred in the action. The county
352 may not appeal such recovered costs and awards."

353 **SECTION 10.**

354 This Act shall become effective upon its approval by the Governor or upon its becoming law
355 without such approval and shall apply to the ad valorem tax year beginning January 1, 2011,
356 as well as all future ad valorem tax years.

357 **SECTION 11.**

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