

House Bill 100 (AS PASSED HOUSE AND SENATE)

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

A BILL TO BE ENTITLED  
AN ACT

1 To amend Titles 48 and 50 of the Official Code of Georgia Annotated, relating, respectively,  
2 to revenue and taxation and state government, so as to create the Georgia Tax Tribunal as an  
3 independent and autonomous division within the Office of State Administrative Hearings  
4 operating under the sole direction of a chief tribunal judge; to repeal provisions relating to  
5 the Department of Revenue holding hearings when demanded by aggrieved taxpayers; to  
6 correct cross-references; to provide for a short title; to provide for legislative findings; to  
7 provide for the appointment, terms of office, designation, and removal of judges; to provide  
8 for the qualification, oath of office, and prohibition against other employment of judges; to  
9 provide for the principal office, locations, and facilities of the tax tribunal; to provide for the  
10 appointment of staff and expenditures of the tax tribunal; to provide for the jurisdiction of  
11 the tax tribunal; to provide for the commencement of cases, pleadings, and service of  
12 pleadings; to provide a stay of enforcement and collection action; to provide for filing and  
13 other fees; to provide procedures for hearings and decisions of the tax tribunal; to establish  
14 and provide the jurisdiction and procedures for a small claims division of the tax tribunal;  
15 to provide for appeals from tax tribunal decisions; to provide for representation in the tax  
16 tribunal; to provide for service; to authorize the tax tribunal to promulgate rules of practice  
17 and procedure and forms; to provide for powers, duties, and authority of the tax tribunal and  
18 the small claims division; to provide for procedures, conditions, and limitations; to provide  
19 for related matters; to provide for effective dates; to provide for dual applicability; to repeal  
20 conflicting laws; and for other purposes.

21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

22 **SECTION 1.**

23 Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is  
24 amended by revising subsection (c) of Code Section 48-2-18, relating to State Board of  
25 Equalization, as follows:

26 "(c) As ~~chairman~~ chairperson and chief administrative officer of the board, the  
 27 commissioner shall furnish to the board all necessary records and files and in this capacity  
 28 may compel the attendance of witnesses and the production of books and records or other  
 29 documents as ~~he~~ the commissioner is empowered to do in the administration of the tax  
 30 laws. After final approval by the State Board of Equalization of the digest of proposed  
 31 assessments made by the commissioner and after any adjustments by the board as  
 32 authorized by this Code section are made, the commissioner shall notify within 30 days  
 33 each taxpayer in writing of the proposed assessment of its property. At the same time, the  
 34 commissioner shall notify in writing the board of tax assessors of such county, as outlined  
 35 in Code Section 48-5-511, of the total proposed assessment of the property located within  
 36 the county of taxpayers who are required to return their property to the ~~commission~~  
 37 commissioner. If any such taxpayer notifies the commissioner and the board of tax  
 38 assessors in any such county of its intent to dispute a portion of the proposed assessment  
 39 within 20 days after receipt of the notice, the county board of tax assessors shall include  
 40 in the county digest only the undisputed amount of the assessment, and the taxpayer may  
 41 challenge the commissioner's proposed assessment in an appeal filed in the Superior Court  
 42 of Fulton County or with the Georgia Tax Tribunal in accordance with Chapter 13A of  
 43 Title 50 within 30 days of receipt of the notice. In any such appeal to the superior court,  
 44 the taxpayer shall have the right of discovery as provided in Chapter 11 of Title 9, the  
 45 'Georgia Civil Practice Act.' In any such appeal to the Georgia Tax Tribunal, discovery  
 46 shall be as provided in Chapter 13A of Title 50, the 'Georgia Tax Tribunal Act of 2012.'  
 47 Upon conclusion of the appeal, the taxpayer shall remit to the appropriate counties any  
 48 additional taxes owed, with interest at the rate provided by law for judgments. Such  
 49 interest shall accrue from the date the taxes would have been due absent the appeal to the  
 50 date the additional taxes are remitted."

51 **SECTION 2.**

52 Said title is further amended by revising paragraph (4) of subsection (c) of Code Section  
 53 48-2-35, relating to refunds, as follows:

54 "(4) Any taxpayer whose claim for refund is denied by the commissioner or the  
 55 commissioner's delegate or whose claim is not decided by the commissioner or the  
 56 commissioner's delegate within one year from the date of filing the claim shall have the  
 57 right to bring an action for a refund in the Georgia Tax Tribunal in accordance with  
 58 Chapter 13A of Title 50 or in the superior court of the county of the residence of the  
 59 taxpayer, except that:

60 (A) If the taxpayer is a public utility or a nonresident, the taxpayer shall have the right  
 61 to bring an action for a refund in the Georgia Tax Tribunal in accordance with Chapter

62 13A of Title 50 or in the superior court of the county in which is located the taxpayer's  
 63 principal place of doing business in this state or in which the taxpayer's chief or highest  
 64 corporate officer or employee resident in this state maintains an office; or  
 65 (B) If the taxpayer is a nonresident individual or foreign corporation having no place  
 66 of doing business and no officer or employee resident and maintaining an office in this  
 67 state, the taxpayer shall have the right to bring an action for a refund in the Georgia Tax  
 68 Tribunal in accordance with Chapter 13A of Title 50 or in the Superior Court of Fulton  
 69 County or in the superior court of the county in which the commissioner in office at the  
 70 time the action is filed resides."

71 **SECTION 3.**

72 Said title is further amended by revising paragraph (3) of subsection (c) of Code Section  
 73 48-2-36, relating to actions for which the commissioner may grant extensions of time, as  
 74 follows:

75 "(3) Filing a petition with the superior court, the Georgia Tax Tribunal in accordance  
 76 with Chapter 13A of Title 50, or the office of state administrative hearings as allowed  
 77 under the laws of this state;"

78 **SECTION 4.**

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

81 "(a) The commissioner's assessments shall not be reviewed except by the procedure  
 82 provided in this chapter or Chapter 13A of Title 50. No trial court shall have jurisdiction  
 83 of proceedings to question the assessments, except as provided in this chapter or Chapter  
 84 13A of Title 50."

85 **SECTION 5.**

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

88 "48-2-59.

89 (a) Except with respect to claims for refunds, either party may appeal from any order,  
 90 ruling, or finding of the commissioner to the Georgia Tax Tribunal in accordance with  
 91 Chapter 13A of Title 50 or the superior court of the county of the residence of the taxpayer,  
 92 except that:

93 (1) If the taxpayer is a public utility or nonresident, the appeal of either party shall be to  
 94 the Georgia Tax Tribunal in accordance with Chapter 13A of Title 50 or the superior  
 95 court of the county in which is located the taxpayer's principal place of doing business

96 or in which the taxpayer's chief or highest corporate officer residing in this state  
 97 maintains ~~his~~ such officer's office; or

98 (2) If the taxpayer is a nonresident individual or a foreign corporation having no place  
 99 of doing business and no officer or employee residing and maintaining ~~his~~ such officer's  
 100 office in this state, the taxpayer shall have the right to appeal to the Georgia Tax Tribunal  
 101 in accordance with Chapter 13A of Title 50 or the Superior Court of Fulton County or to  
 102 the superior court of the county in which the commissioner in office at the time the action  
 103 is filed resides.

104 ~~(b) The appeal and necessary records shall be certified by the commissioner and shall be~~  
 105 ~~filed with the clerk of~~ taxpayer shall commence an appeal by filing a petition with the  
 106 Georgia Tax Tribunal in accordance with Chapter 13A of Title 50 or the superior court  
 107 within 30 days from the date of decision by the commissioner. The procedure provided by  
 108 law for applying for and granting appeals from the probate court to the superior court shall  
 109 apply as far as suitable to the appeal authorized by this Code section, except that the appeal  
 110 authorized by this Code section may be filed within 30 days from the date of decision by  
 111 the commissioner.

112 (c) Before the superior court shall have jurisdiction to entertain an appeal filed by any  
 113 aggrieved taxpayer, the taxpayer shall file with the clerk of the superior court a written  
 114 statement whereby the taxpayer agrees to pay on the date or dates the taxes become due all  
 115 taxes for which the taxpayer has admitted liability. Additionally, the taxpayer shall file  
 116 with the clerk of the superior court within 30 days from the date of decision by the  
 117 commissioner, except ~~where~~ when the value of the appellant's title or interest in real  
 118 property owned in this state is in excess of the amount of the tax in dispute, a surety bond  
 119 or other security in an amount satisfactory to the clerk, conditioned to pay any tax over and  
 120 above that for which the taxpayer has admitted liability and which is found to be due by  
 121 a final judgment of the court, together with interest and costs. It shall be ground for  
 122 dismissal of the appeal if the taxpayer fails to pay all taxes admittedly owed upon the due  
 123 date or dates as provided by law. This subsection shall not apply to appeals filed with the  
 124 Georgia Tax Tribunal as provided in Chapter 13A of Title 50.

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

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

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

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

135 (3) This subsection shall not apply to appeals filed with the Georgia Tax Tribunal as  
 136 provided in Chapter 13A of Title 50."

137 **SECTION 6.**

138 Said title is further amended by revising Code Section 48-3-1, relating to tax executions, as  
 139 follows:

140 "48-3-1.

141 The commissioner may issue an execution for the collection of any tax, fee, license,  
 142 penalty, interest, or collection costs due the state. The execution shall be directed to all and  
 143 singular sheriffs of this state or to the commissioner or ~~his~~ the commissioner's authorized  
 144 representatives and shall command them to levy upon the goods, chattels, lands, and  
 145 tenements of the taxpayer, provided that the commissioner may transmit such executions  
 146 electronically. Each sheriff shall execute the execution as in cases of writs of execution  
 147 from the superior courts. Whenever any writ of execution has been issued by the  
 148 commissioner, the taxpayer, in order to obtain a determination of whether the tax is legally  
 149 due, may tender to the levying officer ~~his~~ such taxpayer's affidavit of illegality to the  
 150 execution and, upon ~~his~~ such taxpayer's payment of the tax if required as a condition  
 151 precedent by the law levying the tax or upon ~~his~~ such taxpayer's giving a good and solvent  
 152 bond in such an amount to cover the total of any adverse judgment plus costs ~~where~~ when  
 153 the law does not require the payment of the tax as a condition precedent, the levying officer  
 154 shall return the affidavit of illegality, except as otherwise provided by law, to the superior  
 155 court of the county of the taxpayer's residence. The affidavit of illegality shall be  
 156 summarily heard and determined by the court. Whenever any writ of execution has been  
 157 issued by the commissioner for the collection of any tax, or any penalty, interest, or  
 158 collection costs imposed with respect to any tax, the taxpayer may file a petition in the  
 159 Georgia Tax Tribunal in accordance with Chapter 13A of Title 50 to obtain a determination  
 160 of whether any such amounts are legally due."

161 **SECTION 7.**

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

164 "(b) The returns shall be made to the commissioner by the chief executive officer in charge  
 165 of the cars in this state. The final assessment of the property of railroad equipment  
 166 companies shall be fixed in the same manner as the proposed assessments of property of

167 public utilities under this article and Code Section 48-2-18, except that with respect to  
 168 railroad equipment companies, such assessment shall be final rather than proposed. By  
 169 following the procedure set forth in subsection (c) of Code Section 48-2-18 for appeals of  
 170 proposed assessments of public utility property, any Any railroad equipment company may  
 171 bring in the Superior Court of Fulton County or in the Georgia Tax Tribunal in accordance  
 172 with Chapter 13A of Title 50 a de novo action of the final assessment so fixed."

173 **SECTION 8.**

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

176 "(b)(1) A taxpayer whose claim for a refund is denied by the commissioner or ~~his~~ the  
 177 commissioner's delegate or with respect to whose claim no decision is rendered by the  
 178 commissioner or ~~his~~ the commissioner's delegate within one year from the date of filing  
 179 the claim shall have the right to bring an action for a refund in the superior court of the  
 180 county where the disputed tax was originally collected or in the Georgia Tax Tribunal in  
 181 accordance with Chapter 13A of Title 50. The taxpayer shall bring the action for refund  
 182 against the clerk of superior court of the county which collected the disputed tax. The  
 183 commissioner in ~~his~~ the commissioner's official capacity shall be made a party defendant  
 184 to the action in order that the interests of the state may be represented in the action. The  
 185 Attorney General shall represent both defendants in the action. If it is determined in the  
 186 action that an amount claimed by the taxpayer was erroneously or illegally collected, the  
 187 taxpayer shall be entitled to judgment against the defendant clerk of the superior court in  
 188 ~~his~~ the clerk's official capacity for the amount erroneously or illegally collected, without  
 189 interest to the date of judgment.

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

192 (3) For the purposes of this Code section, a failure by the commissioner to grant or deny  
 193 the taxpayer's claim for refund within the one-year period shall constitute a constructive  
 194 denial of the claim."

195 **SECTION 9.**

196 Said title is further amended by revising paragraph (1) of subsection (e) of Code Section  
 197 48-6-76, relating to refunds of intangible recording taxes, as follows:

198 "(e)(1) Any taxpayer whose claim for refund is denied entirely or in part by the  
 199 commissioner or with respect to whose claim no decision is rendered by the  
 200 commissioner within 30 days from the date of filing the claim shall have the right to bring  
 201 an action for refund of the amount so claimed and not approved against the collecting

202 officer or said officer's successor who collected the amount, in said officer's official  
 203 capacity, in the superior court of the county whose official collected the amount or in the  
 204 Georgia Tax Tribunal in accordance with Chapter 13A of Title 50."

205 **SECTION 10.**

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

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

212 (i) Separate accounting;

213 (ii) The exclusion of any one or more of the factors;

214 (iii) The inclusion of one or more additional factors that will fairly represent the  
 215 taxpayer's business activity within this state; or

216 (iv) The employment of any other method to effectuate an equitable allocation and  
 217 apportionment of the taxpayer's income.

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

221 **SECTION 11.**

222 Said title is further amended by revising subsection (b) of Code Section 48-7-165, relating  
 223 to hearing procedure and adjustments of incorrect debts, as follows:

224 "(b) The hearing established by subsection (a) of this Code section shall be in lieu of a  
 225 hearing before the department ~~pursuant to Code Section 50-13-12; and the department shall~~  
 226 ~~not grant a hearing~~ to determine the validity of the debt or the propriety of the setoff."

227 **SECTION 12.**

228 Title 50 of the Official Code of Georgia Annotated, relating to state government, is amended  
 229 by repealing Code Section 50-13-12, relating to Department of Revenue hearings for  
 230 aggrieved taxpayers and election of remedies, and designating said Code section as reserved.

231 **SECTION 13.**

232 Said title is further amended by revising subsection (c) of Code Section 50-13-13, relating  
 233 to hearings in contested cases, as follows:

234 ~~“(c) Except in cases in which a hearing has been demanded under Code Section 50-13-12,~~  
 235 ~~subsection~~ Subsection (a) of this Code section and the other provisions of this chapter  
 236 concerning contested cases shall not apply to any case arising in the administration of the  
 237 revenue laws, which case is subject to a subsequent de novo trial of the law and the facts  
 238 in the superior court or in the Georgia Tax Tribunal in accordance with Chapter 13A of this  
 239 title.”

240 **SECTION 14.**

241 Said title is further amended by adding a new subsection to Code Section 50-13-42, relating  
 242 to applicability, to read as follows:

243 “(c) This article shall not apply with respect to any matter as to which an aggrieved party  
 244 is permitted to file a petition with the Georgia Tax Tribunal in accordance with Chapter  
 245 13A of this title.”

246 **SECTION 15.**

247 Said title is further amended by adding a new chapter to read as follows:

248 “CHAPTER 13A

249 50-13A-1.

250 This chapter shall be known and may be cited as the 'Georgia Tax Tribunal Act of 2012.'

251 50-13A-2.

252 The General Assembly finds that there is a need for an independent specialized agency  
 253 separate and apart from the Department of Revenue to resolve disputes between the  
 254 department and taxpayers in an efficient and cost-effective manner. Such an agency  
 255 would:

- 256 (1) Improve the utilization of judicial resources by resolving tax cases in a more  
 257 streamlined and efficient manner;  
 258 (2) Increase the uniformity of decision making in tax cases;  
 259 (3) Improve the equal access of all parties to court process; and  
 260 (4) Increase public confidence in the fairness of the state tax system.

261 50-13A-3.

262 Except where the context may otherwise clearly require, all terms used in this chapter shall  
 263 have the meaning given such term by Code Section 48-1-2. As used in this chapter, the  
 264 term 'tribunal' means the Georgia Tax Tribunal established by Code Section 50-13A-4

265 which shall be an independent and autonomous division within the Office of State  
 266 Administrative Hearings operating under the sole direction of the chief tribunal judge.

267 50-13A-4.

268 (a) There is created within the executive branch of government the Georgia Tax Tribunal.  
 269 The tribunal shall be assigned for administrative purposes only, as provided in Code  
 270 Section 50-4-3, to the Department of Administrative Services and shall be funded through  
 271 appropriations by the General Assembly to the Department of Administrative Services.

272 (b) The tribunal shall have a seal engraved with the words 'Georgia Tax Tribunal.' The  
 273 tribunal shall authenticate all of its orders, records, and proceedings with the seal, and the  
 274 courts of this state shall take judicial notice of the seal.

275 50-13A-5.

276 (a) The tribunal shall consist of at least one full-time administrative law judge. If the  
 277 tribunal has more than one judge, each shall exercise the powers of the tribunal in all  
 278 matters, causes, or proceedings assigned to him or her.

279 (b) Initial tribunal judges shall be appointed by the Governor. If, initially, the tribunal has  
 280 only one judge, that individual shall be appointed for a term of four years and shall be the  
 281 chief tribunal judge; provided, however, that if, initially, the tribunal has more than one  
 282 judge, then one judge shall be appointed for an initial term of four years and one judge  
 283 shall be appointed as chief tribunal judge for an initial term of six years to ensure that the  
 284 judges' initial terms do not expire in the same year. Once appointed, each initial tribunal  
 285 judge shall continue in office until his or her term expires and a successor has been  
 286 appointed and confirmed. Initial tribunal judges may be reappointed for successive terms,  
 287 provided that each successive term shall be for four years.

288 (c) After initial appointments are made pursuant to subsection (b) of this Code section, all  
 289 appointments and reappointments of the chief tribunal judge and other tribunal judges shall  
 290 be made by the Governor, with the consent of the Senate, for terms of four years. Once  
 291 appointed and confirmed, each such tribunal judge shall continue in office until his or her  
 292 term expires and a successor has been appointed and confirmed. A tribunal judge may be  
 293 reappointed for successive terms.

294 (d) Each tribunal judge shall receive an annual salary no less than that of the chief  
 295 administrative law judge of the Office of State Administrative Hearings; provided,  
 296 however, that the tribunal judge's total salary shall not be reduced during such judge's term  
 297 of appointment.

298 (e) A vacancy in the tribunal occurring other than by expiration of term shall be filled for  
 299 the unexpired term in the same manner as an original appointment.

300 (f) The executive of the tribunal shall be the chief tribunal judge who shall have sole  
301 charge of the administration of the tribunal, including, but not limited to, the preparation  
302 of a budget and matters involving employment and expenditures as set forth in Code  
303 Section 50-13A-8, and shall apportion among the judges all causes, matters, and  
304 proceedings coming before the tribunal.

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

308 (h) Whenever the tribunal trial docket or business becomes congested or any tribunal judge  
309 is absent, is disqualified, or for any other reason is unable to perform his or her duties as  
310 tribunal judge, and it appears to the Governor that the services of an additional tribunal  
311 judge or judges should be provided, the Governor may, without obtaining the approval of  
312 the Senate, appoint a judge, or judges, pro tempore of the tribunal. Any person appointed  
313 judge pro tempore of the tribunal shall have the qualifications set forth in subsections (a)  
314 and (b) of Code Section 50-13A-6 and shall serve for a period not to exceed 12 months.

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

317 50-13A-6.

318 (a) Each judge of the tribunal shall be a citizen of the United States and, during the period  
319 of service, a resident of this state. No person shall be appointed as a tribunal judge unless  
320 at the time of appointment the individual is an attorney licensed to practice in this state and  
321 has practiced primarily in the area of tax law for at least eight years.

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

325 (c) Each tribunal judge shall devote his or her full time during business hours to the duties  
326 of the tribunal. A tribunal judge shall not engage in any other gainful employment or  
327 business that interferes with or is inconsistent with his or her duties as a judge and shall not  
328 hold another office or position of profit in a government of this state, any other state, or the  
329 United States.

330 (d) If a tribunal judge does not have a full docket of tax cases, the chief tribunal judge  
331 may, acting in his or her sole discretion, petition the chief administrative law judge of the  
332 Office of State Administrative Hearings to allow such tribunal judge to hear and resolve  
333 nontax cases pending before the Office of State Administrative Hearings. The chief  
334 tribunal judge, the chief administrative law judge of the Office of State Administrative  
335 Hearings, and the tribunal judge in question shall mutually agree upon the number and

336 types of such cases, taking into account the particular judge's background and  
337 qualifications.

338 50-13A-7.

339 (a) The tribunal's principal location shall be located in Fulton County, Georgia, and in a  
340 building that is separate and apart from any building in which the commissioner has an  
341 office.

342 (b) The tribunal may, but shall not be required to, conduct hearings at its principal location  
343 in Fulton County. The tribunal may also hold hearings at any place within this state, with  
344 a view toward securing to taxpayers a reasonable opportunity to appear before the tribunal  
345 with as little inconvenience and expense as practicable. When the tribunal holds hearings  
346 outside of its principal location, it shall do so in a place that is physically separate from  
347 facilities regularly occupied by the commissioner.

348 50-13A-8.

349 (a) The chief tribunal judge shall appoint a clerk of the tribunal, a court reporter, and such  
350 other employees, including staff attorneys and clerical assistants, and make such other  
351 expenditures, including expenditures for library, publications, and equipment, as are  
352 reasonably necessary to permit the tribunal to execute its functions efficiently; provided,  
353 however, that the chief tribunal judge shall endeavor to utilize staff employed by the Office  
354 of State Administrative Hearings and shall consult with the chief state administrative law  
355 judge so as to best utilize staff positions to best serve both the tribunal and the Office of  
356 State Administrative Hearings.

357 (b) A tribunal court reporter shall be subject to the provisions of Code Sections 15-14-20  
358 through 15-14-36 as if appointed by a judge of a superior court, except when such  
359 provisions are in conflict with this chapter.

360 (c) No employee of the tribunal shall act as attorney, representative, or accountant for  
361 others in a matter involving any tax imposed or levied by this state or county or  
362 municipality of this state.

363 (d) In addition to contracting the services of the tribunal court reporter, the chief tribunal  
364 judge may contract the reporting of tribunal proceedings and, in the contract, fix the terms  
365 and conditions under which transcripts shall be supplied by the contractor to the tribunal  
366 and to other persons and agencies.

367 50-13A-9.

368 (a) On and after January 1, 2013, any person may petition the tribunal for relief as set forth  
369 in Code Sections 48-2-18, 48-2-35, 48-2-59, 48-3-1, 48-5-519, 48-6-7, and 48-6-76 and

370 subparagraph (d)(2)(C) of Code Section 48-7-31. The tribunal shall have jurisdiction over  
371 actions for declaratory judgment that fall within subsection (a) of Code Section 50-13-10  
372 and involve a rule of the commissioner that is applicable to taxes administered by the  
373 commissioner under Title 48.

374 (b) The tribunal shall have concurrent jurisdiction with the superior courts over those  
375 matters set forth in subsection (a) of this Code section.

376 (c) The tribunal shall not have jurisdiction to hear any matter arising under Title 3 or Title  
377 40.

378 (d) No person shall be required as a condition either to initiating or maintaining an action  
379 before the tribunal to provide a surety bond or other security for any amounts that may be  
380 in dispute in such action. Nothing contained in this chapter shall be construed to prohibit  
381 the commissioner from requiring a bond under those circumstances set forth in Code  
382 Section 48-2-51.

383 50-13A-10.

384 (a) Actions may be commenced before the tribunal on and after January 1, 2013. Actions  
385 before the tribunal shall be commenced by filing a petition with the tribunal, naming the  
386 commissioner as respondent in his or her official capacity, within the time periods  
387 prescribed by Code Section 48-2-18, 48-2-35, 48-2-59, 48-6-7, or 48-6-76 or subparagraph  
388 (d)(2)(C) of Code Section 48-7-31, as the case may be, or as otherwise provided by law.  
389 The petitioner shall serve a copy of the petition on the commissioner and the Attorney  
390 General and attach a certificate of service to the petition filed with the tribunal. In the case  
391 of a refund action pursuant to Code Section 48-6-7 or 48-6-76, the petition also shall be  
392 served on the clerk of the superior court or collecting officer who is made a party to the  
393 action. Service shall be accomplished by certified mail or statutory overnight delivery.  
394 The petition shall include a summary statement of facts and law upon which the petitioner  
395 relies in seeking the requested relief.

396 (b) The commissioner and any other respondents shall file a response to petitioner's  
397 statement of facts and law which constitutes his or her answer with the tribunal no later  
398 than 30 days after the service of the petition. The commissioner and any other respondents  
399 shall serve a copy of their response on the petitioner's representative or, if the petitioner is  
400 not represented, on the petitioner, and shall file a certificate of such service with the  
401 response. If in any case a response has not been filed within the time required by this  
402 subsection, the case shall automatically become in default unless the time for filing the  
403 response has been extended by agreement of the parties, for a period not to exceed 30 days,  
404 or by the judge of the tribunal. The default may be opened as a matter of right by the filing  
405 of a response within 15 days of the day of default and payment of costs. At any time

406 before final judgment, the judge of the tribunal, in his or her discretion, may allow the  
 407 default to be opened for providential cause that prevented the filing of the response or for  
 408 excusable neglect or when the tribunal judge, from all the facts, determines that a proper  
 409 case has been made for the default to be opened on terms to be fixed by the tribunal judge.

410 (c) Pleadings and proceedings before the tribunal shall be subject to the amendment and  
 411 supplementation provisions of Code Section 9-11-15.

412 (d) Code Section 50-13A-18 shall apply to service of pleadings and documents.

413 (e) As soon as reasonably practicable, the tribunal judge shall schedule a prehearing  
 414 conference to address discovery, scheduling, and other matters.

415 (f) The tribunal judge may remand a matter in dispute to the commissioner for further  
 416 consideration upon motion by all parties to the proceeding, for good cause shown on the  
 417 motion of any party, or sua sponte when the tribunal judge reasonably determines that  
 418 circumstances warrant. Any such remand shall not divest the tribunal of jurisdiction, and  
 419 the tribunal judge's order shall provide that any party, upon appropriate advance notice to  
 420 all other parties, shall be entitled to have such matter returned to the tribunal for resolution.

421 (g) Contested cases pending before the Office of State Administrative Hearings on and  
 422 before December 31, 2012, and cases when the taxpayer made a written demand for a  
 423 hearing pursuant to Code Section 50-13-12 before January 1, 2013, shall not be transferred  
 424 to the tribunal. If, on and after January 1, 2013, a written petition for relief or a demand  
 425 for hearing is filed with the commissioner or by the affected party directly with the Office  
 426 of State Administrative Hearings in a matter falling within the tribunal's jurisdiction under  
 427 subsection (a) of Code Section 50-13A-9, such matter shall be transferred to the tribunal,  
 428 and the remaining provisions of this chapter shall be applicable.

429 50-13A-11.

430 (a) Except as provided for in Code Section 48-2-51, involving jeopardy assessments, the  
 431 filing of a petition with the tribunal shall operate as a stay of any enforcement or collection  
 432 action by the commissioner with respect to any tax, penalty, interest, or any collection costs  
 433 that are disputed in the petition until the tribunal decision is finalized, including appeals to  
 434 the superior court pursuant to Code Section 50-13A-17 or to any appellate court.

435 (b) Upon petition by the commissioner, and for good cause shown, the tribunal judge may  
 436 lift the stay provided for in subsection (a) of this Code section.

437 50-13A-12.

438 (a) Upon filing a petition, the petitioner shall pay to the clerk of the tribunal a fee as  
 439 determined by the rules established by the tribunal.

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

443 (c) The chief tribunal judge may fix a fee, not in excess of the fees charged and collected  
444 by the clerks of the superior courts of this state, for compiling, or for preparing and  
445 compiling, a transcript of the record, or for copying any record, entry, or other paper and  
446 the compilation and certification thereof.

447 50-13A-13.

448 (a) The provisions of Chapter 11 of Title 9, the 'Georgia Civil Practice Act,' governing  
449 discovery and depositions shall apply to proceedings before the tribunal; provided,  
450 however, that the parties to a proceeding shall make every effort to conduct discovery by  
451 informal consultation or communication. Upon motion of a party, the frequency or extent  
452 of formal discovery methods may be limited by the tribunal if it determines that the  
453 discovery is unduly burdensome or expensive when taking into account the amount in  
454 controversy, limitations on the parties' resources, and the importance of the issues at stake  
455 in the litigation.

456 (b) The chief tribunal judge shall, by rules and regulations or by order in a particular  
457 proceeding, prescribe the period during which any discovery shall be commenced and  
458 completed. After the period for completing discovery has expired, or earlier as the parties  
459 may agree, the parties to a proceeding shall stipulate all relevant and nonprivileged matters  
460 to the fullest extent to which complete or qualified agreement can be reached or fairly  
461 should be reached. Neither the existence nor the use of the discovery mechanisms  
462 authorized by this Code section shall excuse failure to comply with this provision.

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

465 (2) Except as otherwise stipulated or directed by the tribunal judge, expert witness  
466 disclosure shall, with respect to a witness who is retained or specially employed to  
467 provide expert testimony in the case or whose duties as an employee of the party  
468 regularly involve giving expert testimony, be accompanied by a written report prepared  
469 and signed by the witness if one has been prepared or will be offered at the hearing.

470 (d) A judge or the clerk of the tribunal, on the request of any party to the proceeding, shall  
471 issue subpoenas requiring the attendance of witnesses and giving of testimony and  
472 subpoenas requiring the production of evidence or things.

473 (e) Any employee of the tribunal designated in writing for such purpose by a tribunal  
474 judge, or by the chief tribunal judge if more than one judge has been appointed, may  
475 administer oaths.

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

478 (g) In proceedings before the tribunal, if any party or an agent or employee of a party  
479 disobeys or resists any lawful order of process; neglects to produce, after having been  
480 ordered to do so, any pertinent book, paper, or document; refuses to appear after having  
481 been subpoenaed; upon appearing, refuses to take the oath or affirmation as a witness; or,  
482 after taking the oath or affirmation, refuses to testify, the tribunal judge shall have the same  
483 rights and powers given any other court under Chapter 11 of Title 9, the 'Georgia Civil  
484 Practice Act.' If any person or party refuses as specified in this subsection, the tribunal  
485 judge may certify the facts to the superior court of the county where the offense is  
486 committed for appropriate action, including a finding of contempt.

487 50-13A-14.

488 (a) Trials in proceedings before the tribunal shall be de novo and without a jury. Hearings  
489 shall be open to the public, but on motion of any party, if such party shows good cause to  
490 protect certain information from being disclosed to the public, the tribunal judge may issue  
491 a protective order or an order closing part or all of a hearing to the public.

492 (b) The tribunal shall take evidence, and the tribunal judges shall conduct hearings and  
493 issue final judgments and interlocutory orders.

494 (c) The tribunal judges shall apply the rules of evidence as applied in the trial of civil  
495 nonjury cases in the superior courts; provided, however, that for hearings conducted in the  
496 small claims division, the tribunal judge may, when necessary to ascertain facts not  
497 reasonably susceptible of proof under such rules, consider evidence not otherwise  
498 admissible thereunder if it is of a type commonly relied upon by reasonably prudent  
499 persons in the conduct of their affairs.

500 (d) Testimony before a tribunal judge shall be given only on oath or affirmation.

501 (e) The petition and other pleadings in the proceeding shall be deemed to conform to the  
502 proof presented at the hearing, unless a party satisfies the tribunal judge that presentation  
503 of the evidence would unfairly prejudice the party in maintaining its position on the merits  
504 or unless deeming the taxpayer's petition to conform to the proof would confer jurisdiction  
505 on the tribunal over a matter that would not otherwise come within the tribunal's  
506 jurisdiction.

507 (f) Except for hearings conducted in the small claims division of the tribunal as provided  
508 in Code Section 50-13A-16, all hearings before the tribunal shall be recorded by means  
509 acceptable for use in courts of this state.

510 50-13A-15.

511 (a) Except with regard to proceedings in the small claims division of the tribunal pursuant  
512 to Code Section 50-13A-16, the tribunal judge shall render all final judgments and  
513 interlocutory orders in writing, as appropriate, including therein a concise statement of the  
514 facts found and the conclusions of law reached. The tribunal judge's final judgment or  
515 interlocutory order shall, subject to law, grant such relief, invoke such remedies, and issue  
516 such orders as the tribunal judge deems appropriate to carry out its final judgment or  
517 interlocutory order.

518 (b) The chief tribunal judge shall adopt rules and regulations to address confidentiality of  
519 taxpayer information and proceedings before the tribunal.

520 (c) The tribunal judges shall adhere to the principle of stare decisis. The tribunal judge's  
521 interpretation of a tax statute subject to contest in one case shall be followed by the tribunal  
522 in subsequent cases involving the same statute, and its application of a statute to the facts  
523 of one case shall be followed by tribunal judges in subsequent cases involving similar facts,  
524 unless the tribunal judge's interpretation or application conflicts with that of an appellate  
525 court or the tribunal judge provides satisfactory reasons for departing from prior precedent.

526 (d) Except as to a final judgment of the small claims division, all other final judgments of  
527 the tribunal shall be indexed and published in such print or electronic form as the chief  
528 tribunal judge deems best adapted for public convenience. Such publications shall be made  
529 permanently available and constitute the official reports of the tribunal.

530 50-13A-16.

531 (a) There is hereby established a small claims division of the tribunal.

532 (b) Judges of the tribunal shall sit as the judges of the small claims division.

533 (c) Within 90 days of filing a petition pursuant to the Code Section 50-13A-9, a taxpayer  
534 may elect to have the small claims division have jurisdiction over any proceeding with  
535 respect to which the amount of tax and penalties in controversy, exclusive of interest, is  
536 less than a threshold amount determined by the rules of the tribunal. A taxpayer may not  
537 revoke such election to proceed in the small claims division after this 90 day period. For  
538 good cause, the tribunal judge may, on his or her own motion or on the motion of a party  
539 to the case, remove a case from the small claims division.

540 (d) In proceedings before the small claims division of the tribunal, accountants and other  
541 tax return preparers designated by the taxpayer shall be permitted to accompany and appear  
542 with the taxpayer in order to provide factual information regarding positions taken on tax  
543 returns of the taxpayer. An accountant or tax return preparer accompanying and appearing  
544 with a taxpayer for this purpose shall not be deemed to be acting as an advocate of the  
545 taxpayer or representing the taxpayer before the tribunal.

546 (e) At any time prior to entry of judgment, a taxpayer may dismiss a proceeding in the  
547 small claims division by notifying the clerk of the tribunal in writing. Such dismissal shall  
548 be without prejudice.

549 (f) Hearings in the small claims division shall be conducted in a manner consistent with  
550 proceedings before magistrate courts, as specified in Article 3 of Chapter 10 of Title 15.  
551 The tribunal judge may receive such evidence as the judge deems appropriate for  
552 determination of the case. Testimony shall be given under oath or affirmation.

553 (g) A judgment of the small claims division shall be conclusive upon all parties and may  
554 not be appealed. A judgment of the small claims division shall not be considered or cited  
555 as precedent in any other case, hearing, or proceeding.

556 50-13A-17.

557 (a) As used in this Code section, the term 'reviewing court' means the Superior Court of  
558 Fulton County.

559 (b) Any party may appeal a final judgment of the tribunal, except for judgments of the  
560 small claims division, to the reviewing court. Proceedings for judicial review shall be  
561 instituted by filing a petition with the reviewing court within 30 days after the service of  
562 the tribunal's final judgment or, if a rehearing is requested, within 30 days after the decision  
563 thereon. Copies of the petition for judicial review shall be served upon the tribunal and all  
564 parties of record. The petition shall state the nature of the petitioner's interest, the fact  
565 showing that the petitioner is aggrieved by the judgment, and the grounds as specified in  
566 subsection (g) of this Code section upon which the petitioner contends that the judgment  
567 should be reversed or modified. The petition for judicial review may be amended by leave  
568 of the reviewing court.

569 (c) Notwithstanding any provisions of law or tribunal rule with respect to motions for  
570 rehearing or reconsideration after a final tribunal judgment or interlocutory order, the filing  
571 of such a motion shall not be a prerequisite to the filing of any action for judicial review  
572 or relief; provided, however, that no objection to any order or judgment of the tribunal shall  
573 be considered by the reviewing court upon petition for review unless such objection has  
574 been heard by the tribunal.

575 (d) Within 30 days after the service of the petition for judicial review or within further  
576 time allowed by the reviewing court, the tribunal shall transmit to the reviewing court the  
577 original or a certified copy of the entire record of the proceeding under review. By  
578 stipulation of all parties to the review proceedings, the record may be shortened. A party  
579 unreasonably refusing to stipulate to limit the record may be taxed by the reviewing court  
580 for the additional costs. The reviewing court may require or permit subsequent corrections  
581 or additions to the record.

582 (e) If, before the date set for hearing in the reviewing court, application is made to the  
583 reviewing court for leave to present additional evidence and it is shown to the satisfaction  
584 of the reviewing court that the additional evidence is material and there were good reasons  
585 for failure to present it in the proceedings before the tribunal, the reviewing court may  
586 order that the additional evidence be taken before the tribunal upon conditions determined  
587 by the reviewing court. A tribunal judge may modify his or her findings and judgment by  
588 reason of the additional evidence and shall file that evidence and any modifications, new  
589 findings, or judgments with the reviewing court.

590 (f) The hearing or a petition for judicial review shall be conducted by the reviewing court  
591 without a jury and shall be confined to the record. In cases of alleged irregularities in  
592 procedure before the tribunal not shown in the record, proof thereon may be taken in the  
593 reviewing court. The reviewing court, upon request, shall hear oral argument and receive  
594 written briefs. The reviewing court shall affirm, reverse, or modify the tribunal's judgment  
595 or remand the case for further proceedings within 90 days of the filing of the last such  
596 written brief.

597 (g) The reviewing court shall not substitute its judgment for that of the tribunal's as to the  
598 weight of the evidence on questions of fact. The reviewing court may affirm the tribunal's  
599 judgment or remand the case for further proceedings. The reviewing court may reverse or  
600 modify the judgment if substantial rights of the petitioner have been prejudiced because the  
601 tribunal judge's findings, inferences, conclusions, or judgments are:

602 (1) In violation of constitutional or statutory provisions;

603 (2) In excess of the statutory authority of the tribunal;

604 (3) Made upon unlawful procedure;

605 (4) Affected by other error of law;

606 (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the  
607 whole record; or

608 (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted  
609 exercise of discretion.

610 (h) An aggrieved party may seek a review of any final judgment of the reviewing court by  
611 the Court of Appeals or the Supreme Court, as provided by law.

612 50-13A-18.

613 (a) An initial petition shall be served by certified mail or statutory overnight delivery and  
614 any other pleading, motion, response, statement, or document permitted or required to be  
615 served shall be served by first-class mail or hand delivery.

616 (b) Any pleading, motion, response, statement, or document required by law, rule, or  
 617 regulation to be received by or filed with the tribunal pursuant to the requirements of this  
 618 chapter shall be deemed to be received by or filed with the tribunal on the earlier of:

619 (1) The date such pleading, motion, response, statement, or document is actually  
 620 received by the tribunal;

621 (2) The official postmark date such pleading, motion, response, statement, or document  
 622 was mailed, properly addressed with postage prepaid, by registered or certified mail; or

623 (3) The date on which such pleading, motion, response, statement, or document was  
 624 delivered to a commercial delivery company for statutory overnight delivery as provided  
 625 in Code Section 9-10-12 as evidenced by the receipt provided by the commercial delivery  
 626 company.

627 (c) Mailing or delivery to the address of the taxpayer given on the taxpayer's petition or  
 628 to the address of the taxpayer's representative of record, if any, or to the usual place of  
 629 business of the commissioner, and, when applicable, of the clerk of superior court or  
 630 collecting official who is made a party to the action shall constitute personal service on  
 631 such party. The chief tribunal judge may by rule prescribe that notice by other means shall  
 632 constitute personal service and may in a particular case order that notice be given to  
 633 additional persons or order that notice be given by other means.

634 50-13A-19.

635 The tribunal shall adopt rules of practice and procedure and adopt all reasonable rules and  
 636 forms as may be necessary or appropriate to carry out the intent and purposes of this  
 637 chapter.

638 50-13A-20.

639 (a) For purposes of the language contained in the Code sections referenced in  
 640 subsection (b) of this Code section, the term 'agency' shall include the tribunal.

641 (b) Only the following provisions of Article 1 of Chapter 13 of this title shall apply to the  
 642 tribunal and its administration:

643 (1) Code Section 50-13-3, except for paragraph (4) of subsection (a);

644 (2) Code Section 50-13-4, except for paragraphs (3) and (4) of subsection (a) and  
 645 subsections (b), (g), (h), and (i);

646 (3) Code Section 50-13-6, except for paragraph (2) of subsection (c);

647 (4) Code Section 50-13-7;

648 (5) Code Section 50-13-8; and

649 (6) Code Section 50-13-10."

650

**SECTION 16.**

651 (a) Except as provided in subsection (b) of this section, this section, Section 15, and Section  
652 17 of this Act shall become effective on July 1, 2012, and shall be applicable to all  
653 proceedings commenced on or after January 1, 2013.

654 (b) Sections 1 through 14 of this Act shall become effective on January 1, 2013, provided  
655 that cases pending on January 1, 2013, shall continue to be governed by the law in effect on  
656 December 31, 2012, until the conclusion of the case.

657

**SECTION 17.**

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