

House Bill 347

By: Representative Knight of the 130th

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 5 of Title 48 of the Official Code of Georgia Annotated, relating to ad
2 valorem taxation of property, so as to provide criteria for the use of the income approach in
3 order to determine the fair market value of real property; to provide for valuation of property
4 when the local governing authority does not allow access to the assessment procedures
5 manual prepared by the department; to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Chapter 5 of Title 48 of the Official Code of Georgia Annotated, relating to ad valorem
9 taxation of property, is amended by revising paragraph (3) of Code Section 48-5-2, relating
10 to definitions, as follows:

11 "(3) 'Fair market value of property' means the amount a knowledgeable buyer would pay
12 for the property and a willing seller would accept for the property at an arm's length, bona
13 fide sale. The income approach, if actual income and expense data is available are
14 supplied by the property owner, shall be ~~considered~~ applied in determining the fair
15 market value of income-producing property. For purposes of this subparagraph, income
16 and expense data prepared by the commissioner pursuant to Code Section 48-5-269 may
17 be used in addition to actual income and expense data. Notwithstanding any other
18 provision of this chapter to the contrary, the transaction amount of the most recent arm's
19 length, bona fide sale in any year shall be the maximum allowable fair market value for
20 the next taxable year. With respect to the valuation of equipment, machinery, and
21 fixtures when no ready market exists for the sale of the equipment, machinery, and
22 fixtures, fair market value may be determined by resorting to any reasonable, relevant,
23 and useful information available, including, but not limited to, the original cost of the
24 property, any depreciation or obsolescence, and any increase in value by reason of
25 inflation. Each tax assessor shall have access to any public records of the taxpayer for
26 the purpose of discovering such information.

27 (A) In determining the fair market value of a going business where its continued
28 operation is reasonably anticipated, the tax assessor may value the equipment,
29 machinery, and fixtures which are the property of the business as a whole where
30 appropriate to reflect the accurate fair market value.

31 (B) The tax assessor shall apply the following criteria in determining the fair market
32 value of real property:

33 (i) Existing zoning of property;

34 (ii) Existing use of property, including any restrictions or limitations on the use of
35 property resulting from state or federal law or rules or regulations adopted pursuant
36 to the authority of state or federal law;

37 (iii) Existing covenants or restrictions in deed dedicating the property to a particular
38 use;

39 (iv) Bank sales, other financial institution owned sales, or distressed sales, or any
40 combination thereof, of comparable real property;

41 (v) Decreased value of the property based on limitations and restrictions resulting
42 from the property being in a conservation easement;

43 (vi) Rent limitations, operational requirements, and any other restrictions imposed
44 upon the property in connection with the property being eligible for any income tax
45 credits described in subparagraph (B.1) of this paragraph or receiving any other state
46 or federal subsidies provided with respect to the use of the property as residential
47 rental property; provided, however, that such properties described in subparagraph
48 (B.1) of this paragraph shall not be considered comparable real property for
49 assessment or appeal of assessment of other properties; and

50 (vii) Any other existing factors provided by law or by rule and regulation of the
51 commissioner deemed pertinent in arriving at fair market value.

52 (B.1) The tax assessor shall not consider any income tax credits with respect to real
53 property which are claimed and granted pursuant to either Section 42 of the Internal
54 Revenue Code of 1986, as amended, or Chapter 7 of this title in determining the fair
55 market value of real property.

56 (B.2) In determining the fair market value of real property, the tax assessor shall not
57 include the value of any intangible assets used by a business, wherever located,
58 including patents, trademarks, trade names, customer agreements, and merchandising
59 agreements.

60 (C) Fair market value of 'historic property' as such term is defined in subsection (a) of
61 Code Section 48-5-7.2 means:

62 (i) For the first eight years in which the property is classified as 'rehabilitated historic
63 property,' the value equal to the greater of the acquisition cost of the property or the

- 64 appraised fair market value of the property as recorded in the county tax digest at the
 65 time preliminary certification on such property was received by the county board of
 66 tax assessors pursuant to subsection (c) of Code Section 48-5-7.2;
- 67 (ii) For the ninth year in which the property is classified as 'rehabilitated historic
 68 property,' the value of the property as determined by division (i) of this subparagraph
 69 plus one-half of the difference between such value and the current fair market value
 70 exclusive of the provisions of this subparagraph; and
- 71 (iii) For the tenth and following years, the fair market value of such property as
 72 determined by the provisions of this paragraph, excluding the provisions of this
 73 subparagraph.
- 74 (D) Fair market value of 'landmark historic property' as such term is defined in
 75 subsection (a) of Code Section 48-5-7.3 means:
- 76 (i) For the first eight years in which the property is classified as 'landmark historic
 77 property,' the value equal to the greater of the acquisition cost of the property or the
 78 appraised fair market value of the property as recorded in the county tax digest at the
 79 time certification on such property was received by the county board of tax assessors
 80 pursuant to subsection (c) of Code Section 48-5-7.3;
- 81 (ii) For the ninth year in which the property is classified as 'landmark historic
 82 property,' the value of the property as determined by division (i) of this subparagraph
 83 plus one-half of the difference between such value and the current fair market value
 84 exclusive of the provisions of this subparagraph; and
- 85 (iii) For the tenth and following years, the fair market value of such property as
 86 determined by the provisions of this paragraph, excluding the provisions of this
 87 subparagraph.
- 88 (E) Timber shall be valued at its fair market value at the time of its harvest or sale in
 89 the manner specified in Code Section 48-5-7.5.
- 90 (F) Fair market value of 'brownfield property' as such term is defined in subsection (a)
 91 of Code Section 48-5-7.6 means:
- 92 (i) Unless sooner disqualified pursuant to subsection (e) of Code Section 48-5-7.6,
 93 for the first ten years in which the property is classified as 'brownfield property,' or
 94 as this period of preferential assessment may be extended pursuant to subsection (o)
 95 of Code Section 48-5-7.6, the value equal to the lesser of the acquisition cost of the
 96 property or the appraised fair market value of the property as recorded in the county
 97 tax digest at the time application was made to the Environmental Protection Division
 98 of the Department of Natural Resources for participation under Article 9 of Chapter
 99 8 of Title 12, the '~~Georgia Hazardous Site Reuse and Redevelopment~~ Brownfield Act,'
 100 as amended; and

101 (ii) Unless sooner disqualified pursuant to subsection (e) of Code Section 48-5-7.6,
 102 for the eleventh and following years, or at the end of any extension of this period of
 103 preferential assessment pursuant to subsection (o) of Code Section 48-5-7.6, the fair
 104 market value of such property as determined by the provisions of this paragraph,
 105 excluding the provisions of this subparagraph."

106 SECTION 2.

107 Said chapter is further amended by revising subsection (b) of Code Section 48-5-304, relating
 108 to conditions, procedures, and limitations on approval of certain tax digests, as follows:

109 "(b)(1) The commissioner shall not approve any digest or portion thereof for any class
 110 or strata of property where evidence ~~exists~~ establishes that the county board of tax
 111 assessors has ~~substantially~~ failed to comply with the provisions of this title or the rules
 112 and regulations of the commissioner for valuation of such property or class or strata of
 113 property. Such evidence shall include, but not be limited to, a submission to the
 114 commissioner, in writing, by a taxpayer alleging such failure by the board of tax
 115 assessors.

116 (2) Upon receipt of such evidence, the commissioner shall investigate the claims and
 117 prepare written findings. Within ten days of the receipt of such evidence, the
 118 commissioner shall notify the county board of tax assessors, the county tax collector, and
 119 the reporting taxpayer of the commencement of an investigation and notify the county
 120 board of tax assessors of its right to submit rebuttal evidence no later than 30 days from
 121 the date of the notice. The commissioner shall consider the evidence and conclude the
 122 investigation within 90 days of the date of submission of such evidence. The
 123 commissioner shall then issue his or her written findings to the county board of tax
 124 assessors, the county tax collector, and the reporting taxpayer. Upon a finding that the
 125 county board of tax assessors failed to comply with the provisions of this title or the rules
 126 and regulations of the commissioner for valuation of property or any class or strata of
 127 property, the commissioner shall disapprove the effected digest or portion thereof. The
 128 commissioner shall adopt rules and regulations to give effect to this provision.

129 (3) If a digest or portion thereof is disapproved under this Code section:

130 (A) The local governing authority may appeal under Code Section 48-5-349.2; or

131 (B) The county board of tax assessors may correct the deficiency or deficiencies
 132 identified by the commissioner. Such corrections, after approval of the county board
 133 of tax assessors, shall be communicated to the commissioner and notice shall be
 134 provided to the county tax collector. If the commissioner determines the corrections
 135 are satisfactory, the commissioner shall approve the digest or portion thereof. If the
 136 commissioner determines the deficiency or deficiencies are not corrected, the

137 commissioner shall make the necessary corrections as provided for in subsection (b) of
 138 Code Section 48-5-303."

139 **SECTION 3.**

140 Said chapter is further amended by revising subparagraph (e)(6)(A), subparagraph
 141 (e.1)(6)(A), and division (f)(3)(C)(iii) of Code Section 48-5-311, relating to the creation and
 142 duties of county boards of equalization, as follows:

143 "(6)(A) Within 15 days of the receipt of the notice of appeal, the county board of
 144 equalization shall set a date for a hearing on the questions presented and shall so notify
 145 the taxpayer and the county board of tax assessors in writing. Such notice shall be sent
 146 by first-class mail to the taxpayer and to any authorized agent or representative of the
 147 taxpayer ~~who~~ to whom the taxpayer has requested that such notice be sent. Such notice
 148 shall be transmitted by e-mail to the county board of tax assessors if such board has
 149 adopted a written policy consenting to electronic service, and, if it has not, then such
 150 notice shall be sent to such board by first-class mail or intergovernmental mail. Such
 151 written notice shall advise each party that the manual created by the commissioner
 152 under subparagraph (D) of paragraph (1) of this subsection is available, and a copy shall
 153 be provided to the taxpayer upon request. In the event the board of equalization does
 154 not have the manual, the notice shall advise the taxpayer that the property valuation
 155 asserted by the taxpayer on the property tax return or the taxpayer's notice of appeal
 156 shall be entered as the assessed fair market value for the taxpayer's property for the tax
 157 year under appeal. If no such assertion of value was submitted by the taxpayer, the fair
 158 market value for the taxpayer's property for the tax year under appeal shall be entered
 159 as the lesser of the prior year's fair market value or 85 percent of the fair market value
 160 assessed by the board of tax assessors. Such notice shall also advise each party that he
 161 or she may request a list of witnesses, documents, or other written evidence to be
 162 presented at the hearing by the other party, which shall be provided to the requesting
 163 party not less than seven days prior to the time of the hearing. Any failure to comply
 164 with this requirement shall be grounds for an automatic continuance or for exclusion
 165 of such witness, documents, or other written evidence. A taxpayer may appear before
 166 the board of equalization concerning any appeal in person, by his or her authorized
 167 agent or representative, or both. The taxpayer shall specify in writing to the board of
 168 equalization the name of any such agent or representative prior to any appearance by
 169 the agent or representative before the board."

170 "(6)(A) The appeal administrator shall randomly select from such list a hearing officer
 171 who shall have experience or expertise in hearing or appraising the type of property that
 172 is the subject of appeal to hear the appeal, unless the taxpayer and the county board of

173 tax assessors mutually agree upon a hearing officer from such list. The appeal
174 administrator shall notify the taxpayer and the taxpayer's attorney in compliance with
175 subsection (o) of this Code section that the manual created by the commissioner under
176 subparagraph (e)(1)(D) of this Code section is available, and a copy shall be provided
177 to the taxpayer upon request. In the event the appeal administrator does not have the
178 manual, the notice shall advise the taxpayer that the property valuation asserted by the
179 taxpayer on the property tax return or the taxpayer's notice of appeal shall be entered
180 as the assessed fair market value for the taxpayer's property for the tax year under
181 appeal. If no such assertion of value was submitted by the taxpayer, the fair market
182 value for the taxpayer's property for the tax year under appeal shall be entered as the
183 lesser of the prior year's fair market value or 85 percent of the fair market value
184 assessed by the board of tax assessors. Such notice shall also advise the taxpayer and
185 the taxpayer's attorney of the name of the hearing officer and transmit a copy of the
186 hearing officer's disqualification questionnaire and resume provided for under
187 paragraph (2) of this subsection. The hearing officer, in conjunction with all parties to
188 the appeal, shall set a time and place to hear evidence and testimony from both parties.
189 The hearing shall take place in the county where the property is located, or such other
190 place as mutually agreed to by the parties and the hearing officer. The hearing officer
191 shall provide electronic or written notice to the parties personally or by registered or
192 certified mail or statutory overnight delivery not less than ten days before the hearing.
193 Such written notice shall advise each party that documents or other written evidence to
194 be presented at the hearing by a party must be provided to the other party not less than
195 seven days prior to the time of the hearing and that any failure to comply with this
196 requirement shall be grounds for an automatic continuance or for exclusion of such
197 documents or other written evidence."

198 "(iii) The arbitrator, within 30 days after his or her appointment, shall set a time and
199 place to hear evidence and testimony from both parties. The arbitrator shall provide
200 written notice to the parties personally or by registered or certified mail or statutory
201 overnight delivery not less than ten days before the hearing. Such written notice shall
202 advise each party that the manual created by the commissioner under subparagraph
203 (e)(1)(D) of this Code section is available, and a copy shall be provided to the
204 taxpayer upon request to the appeal administrator. In the event the arbitrator confirms
205 that the appeal administrator does not have the manual, the notice shall advise the
206 taxpayer that the property valuation asserted by the taxpayer in the certified appraisal
207 shall be entered as the assessed fair market value for the taxpayer's property for the
208 tax year under appeal. Such notice shall also advise the taxpayer and the taxpayer's
209 attorney that documents or other written evidence to be presented at the hearing by

210 a party must be provided to the other party not less than seven days prior to the time
 211 of the hearing and that any failure to comply with this requirement, unless waived by
 212 mutual written agreement of such parties, shall be grounds for a continuance or for
 213 exclusion of such documents or other written evidence. The arbitrator, in consultation
 214 with the parties, may adjourn or postpone the hearing. Following notification of the
 215 taxpayer of the date and time of the hearing, the taxpayer shall be authorized to
 216 exercise a one-time option of changing the date and time of the hearing to a date and
 217 time acceptable to the taxpayer and the county board of tax assessors. The presiding
 218 or chief judge of the superior court of the circuit in which the property is located may
 219 direct the arbitrator to proceed promptly with the hearing and the determination of the
 220 appeal upon application of any party. The hearing shall occur in the county in which
 221 the property is located or such other place as may be agreed upon in writing by the
 222 parties;"

223 **SECTION 4.**

224 Said chapter is further amended by adding a new paragraph to subsection (d) of Code Section
 225 48-5-349.2, relating to the procedure for an appeal to the department, as follows:

226 "(5) The hearing officer shall be authorized to hear and grant an appeal with respect to
 227 a determination by the commissioner that a digest or portion thereof for any class or strata
 228 of property is disapproved under subsection (b) of Code Section 48-5-304. The digest
 229 or portion thereof shall be deemed approved in any case where an appeal is granted under
 230 this paragraph."

231 **SECTION 5.**

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