

House Bill 100 (COMMITTEE SUBSTITUTE)

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

A BILL TO BE ENTITLED
AN ACT

1 To amend Titles 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:

H. B. 100 (SUB)

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 prepared by such accountant or other tax return preparer. An accountant or tax
544 return preparer accompanying and appearing with a taxpayer for this purpose shall not be

545 deemed to be acting as an advocate of the taxpayer or representing the taxpayer before the
546 tribunal.

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

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

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

557 50-13A-17.

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

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

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

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

581 for the additional costs. The reviewing court may require or permit subsequent corrections
582 or additions to the record.

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

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

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

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

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

605 (3) Made upon unlawful procedure;

606 (4) Affected by other error of law;

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

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

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

613 50-13A-18.

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

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

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

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

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

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

635 50-13A-19.

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

639 50-13A-20.

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

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

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

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

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

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

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

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

651 **SECTION 16.**

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

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

658 **SECTION 17.**

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