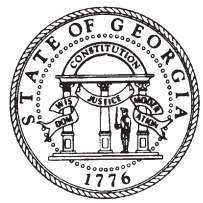
OFFICIAL CODE OF GEORGIA ANNOTATED

With Provision for Subsequent Pocket Parts

Prepared by

The Code Revision Commission
The Office of Legislative Counsel
and
The Editorial Staff of LexisNexis®



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Volume 36

2024 Edition

Title 48. Revenue and Taxation
(Chapters 1—6)

Including Acts of the 2024 Session of the General Assembly of Georgia
and Annotations taken from the Georgia Reports
and the Georgia Appeals Reports

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THE STATE OF GEORGIA

OFFICE OF SECRETARY OF STATE

I, Brad Raffensperger, Secretary of State of the State of Georgia, do hereby certify that

the statutory portion of the Official Code of Georgia Annotated contained in this volume is a true and correct copy of such material as enacted by the General Assembly of Georgia; all as the same appear on file and record in this office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of my office, at the Capitol, in the City of Atlanta, this 3rd day of June, in the year of our Lord Two Thousand and Twenty-Four and of the Independence of the United States of America the Two Hundred and Forty-Eighth.

Brad Raffensperger

Brad Raffensperger, Secretary of State

Preface

This volume cumulates and replaces the 2017 edition of Volume 36 of the Official Code of Georgia Annotated, as supplemented by the 2023 Cumulative Supplement. The 2017 Volume 36 and its 2023 Supplement may be recycled or, if so desired, retained for historical purposes. This volume contains all laws specifically codified in Title 48 (Chapters 1 through 6) by the General Assembly through the 2024 Regular and Extraordinary Sessions. This volume also contains case annotations reflecting decisions posted to LexisNexis® through May 19, 2024. These annotations will appear in the following traditional reporter sources: Georgia Supreme Court Opinions; Georgia Appeals Court Opinions; Southeastern Reporter, Second Series; Supreme Court Reporter; Federal Reporter, Third Series; Federal Supplement, Second Series; Federal Rules Decisions; and Bankruptcy Reporter.

Additionally, LexisNexis® has prepared annotations and references to Attorney General Opinions, law reviews, and other research sources that we hope will be beneficial as you utilize this product. A complete listing of those sources is as follows: Official and Unofficial Attorney General Opinions; Opinions of the Judicial Qualifications Commission; Advisory Opinions of the State Disciplinary Board of the State Bar; Formal Advisory Opinions of the State Disciplinary Board of the State Bar, issued by the Supreme Court of Georgia; Emory Law Journal; Georgia Law Review; Georgia State University Law Review; John Marshall Law Review; Mercer Law Review; Georgia State Bar Journal; American Law Reports; American Jurisprudence 2d; American Jurisprudence Pleading and Practice; American Jurisprudence Proof of Facts; American Jurisprudence Trials; Corpus Juris Secundum; and Uniform Laws Annotated. Also included, where appropriate, are cross references to the Official Code of Georgia Annotated and the Official Compilation of the Rules and Regulations of the State of Georgia.

This volume retains amendment notes and effective date notes for Acts passed during the 2022, 2023, and 2024 Regular and Extraordinary Sessions of the General Assembly. In order to determine the changes which were made or the effective date applied to a Code section by an Act passed prior to the 2022 Session of the General Assembly, the user should consult the Georgia Laws.

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User's Guide

In order to assist both the legal profession and the layperson in obtaining the maximum benefit from the Official Code of Georgia Annotated, a User's Guide containing comments and information on the many features found within the Code has been included in Volume 1 of the Official Code of Georgia Annotated.

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TITLE 48

REVENUE AND TAXATION

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18. Certified Capital Companies, 48-18-1 through 48-18-9. [Repealed].

Editor's notes.

Ga. L. 1978, p. 309, et seq., enacted a recodification of the revenue laws for the state. Section 1 of the Act provides that the intent of the General Assembly was to provide for a general recodification of revenue laws, to omit obsolete and duplicative provisions, to make uniform administrative provisions where uniformity was possible without major substantive change, and to use simple understandable English in the revenue laws. The section further provides that it was not the intent of the General Assembly to make any substantive change in the revenue laws of this state as the laws existed prior to January 1, 1980, except as expressly provided in the reenactment.

Law reviews.

For article surveying taxpayers' remedies in Georgia, see 1 Ga. B. J. 19 (1939).

For article discussing application of the principle that he who would have equity must do equity to taxpayer's suits, see 7 Ga. St. B.J. 305 (1971).

For article discussing taxation of foreign businesses in Georgia, see 27 Mercer L. Rev. 629 (1976).

For article surveying provisions of the Public Revenue Code, former Code 1933, T. 92 (see this title), see 14 Ga. St. B. J. 156 (1978).

For article, "A Practical Guide to State Tax Practice," see 15 Ga. St. B. J. 74 (1978).

For article surveying judicial decisions affecting Georgia's state and local taxation laws, decided under the prior Public Revenue Code, Code 1933, Title 92 (see this title), see 31 Mercer L. Rev. 217 (1979).

For article discussing ad valorem taxation and interest in real property in Georgia, prior to the enactment of the Georgia Public Revenue Code, T. 48, see 31 Mercer L. Rev. 293 (1979).

For article, "Reflections on the Revenue Act of 1978 and Future Tax Policy," see 13 Ga. L. Rev. 687 (1979).

For annual survey on state and local taxation, see 36 Mercer L. Rev. 307 (1984).

For article surveying state and local tax law, see 37 Mercer L. Rev. 361 (1985).

For annual survey of state and local taxation, see 40 Mercer L. Rev. 357 (1988).

For annual survey of state and local taxation, see 42 Mercer L. Rev. 421 (1990).

For article, "Revenue and Taxation: Sales and Use Taxes," see 29 Ga. St. U.L. Rev. 112 (2012).

For article, "Simplexity: Plain Language and the Tax Law," see 66 Emory L.J. 189 (2017).

For article, "The Offshore Tax Enforcement Dragnet," see 67 Emory L.J. 655 (2018).

For article, "America's (D)evolving Childcare Tax Laws," see 53 Ga. L. Rev. 1093 (2019).

For article, "Taxation of Settlement Payments," see 25 Ga. St. B.J. 19 (Oct. 2019).

For article, "Borrowing from Millennials to Pay Boomers: Can Tax Policy Create Sustainable Intergenerational Equity," see 36 Ga. St. U.L. Rev. 799 (2020).

For note, "Pay Toll with Coins: Looking Back on FBAR Penalties and Prosecutions to Inform the Future of Cryptocurrency Taxation," see 55 Ga. L. Rev. 359 (2020).

For article with annual survey on state and local taxation, see 73 Mercer L. Rev. 231 (2021).

For article, "SB 6: The Review, Creation, and Extension of Georgia Tax Credits and Deductions," see 38 Ga. St. U.L. Rev. 167 (2021).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Ga. L. 1929, p. 58 and former Code 1933, T. 92, which was subsequently repealed but was succeeded by provisions in this title, are included in the annotations for this title.

Revenue laws to be construed in favor of taxpayer. — Revenue laws are neither remedial statutes nor laws founded upon any permanent public policy, and are not, therefore, to be liberally construed. Hence, whenever there is a just doubt, that doubt should absolve the taxpayer from the burden. Mystyle Hosiery Shops, Inc. v. Harrison, 171 Ga. 430, 155 S.E. 765, 1930 Ga. LEXIS 374 (1930) (decided under Ga. L. 1929, p. 58).

Effect upon local laws. — The 1978 Georgia Public Revenue Code, Ga. L. 1978, p. 309, did not repeal by implication a local Act authorizing a city and county to contract for a consolidated board of tax assessors, and a later statute repealing the local Act was not void. Chatham County v. Hussey, 267 Ga. 895, 485 S.E.2d 753.

Revenue laws require strict construction. — Statutes which impose restrictions upon trade or common occupations, and which levy an excise or tax upon those trades or occupations, must be construed strictly. Mystyle Hosiery Shops, Inc. v. Harrison, 171 Ga. 430, 155 S.E. 765, 1930 Ga. LEXIS 374 (1930) (decided under Ga. L. 1929, p. 58).

Revenue laws are not to be extended by implication. — Statutes levying duties or taxes upon subjects or citizens are to be construed most strongly against the government, and in favor of their subjects or citizens, and their provisions are not to be extended, by implication, beyond the clear import of the language used. Mystyle Hosiery Shops, Inc. v. Harrison, 171 Ga. 430, 155 S.E. 765, 1930 Ga. LEXIS 374 (1930) (decided under Ga. L. 1929, p. 58).

When taxpayer's remedies do not expressly include action at law, such action does not lie. — When the General Assembly authorizes a tax for governmental purposes and provides an adequate remedy for the tax's collection by administrative officers, the necessary intent is that the collection of the tax is exclusively confined to that administrative department of the government, and when the statute undertakes to provide remedies for the collection of taxes, and those given do not embrace an action at law, a common-law action for the recovery of taxes as a debt will not lie. Kirk v. Bray, 181 Ga. 814, 184 S.E. 733, 1936 Ga. LEXIS 443 (1936) (decided under former Code 1933, T. 92).

Court of equity has no power to foreclose lien and order sale. — Power to levy and collect taxes is exclusively a legislative function, and unless authorized by statute, a court of equity is without power to foreclose a lien for taxes and order a sale of the property. No such power having been conferred by statute on a court of equity in this state, a court errs in decreeing that land be sold by the sheriff for the payment of state and county taxes. Kirk v. Bray, 181 Ga. 814, 184 S.E. 733, 1936 Ga. LEXIS 443 (1936) (decided under former Code 1933, T. 92).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, T. 92, which was subsequently repealed but was succeeded by provisions in this title, are included in the annotations for this title.

Transaction must have object other than tax evasion. — While ordinarily

motive is not controlling in a transaction planned for tax avoidance purposes, the rule is subject to an exception. There must be some authentic object other than the defeat of a tax. 1962 Ga. Op. Att'y Gen. 558 (decided under former Code 1933, T. 92).

RESEARCH REFERENCES

ALR.

Validity of statutory classifications based on population — tax statutes, 98 A.L.R.3d 1083.

CHAPTER 1

GENERAL PROVISIONS

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48-1-4.	Unlawful exercise by unauthorized person of duties or functions of representative of commissioner or department; penalty.	48-1-9.	Taxpayer Bill of Rights.
48-1-5.	Unlawful conversion of funds collected for benefit of state; penalty.	48-1-10.	Economic incentives to users of raw forest products.

Cross references.

Power of state to tax, Ga. Const. 1983, Art. VII, Sec. I.

Levy by counties and municipalities of excise tax on sale of distilled spirits by the drink, § 3-4-130 et seq.

Excise taxes relating to sale of malt beverages, § 3-5-60 et seq.

Excise taxation relating to sale of wine, § 3-6-50 et seq.

Excise taxation of sale of distilled spirits in private clubs, § 3-7-60.

Taxation of gross direct premiums received by insurance companies doing business in state, § 33-8-4.

Power of Governor to suspend collection of taxes due state until meeting of next General Assembly, § 45-12-22.

RESEARCH REFERENCES

ALR.

Liability to refund local taxes as within coverage of liability insurance, 21 A.L.R.4th 895.

48-1-1. Short title.

This title shall be known and may be cited as the "Georgia Public Revenue Code."

History.

Code 1933, § 91A-101, enacted by Ga. L. 1978, p. 309, § 2.

48-1-2. Definitions.

As used in this title, the term:

(1) "Agency" means any department, commission, institution, office, or officer of this state.

(2) "Aircraft" means any contrivance used or designed for navigation or flight through the air.

(3) "Airline company" means any person who undertakes, directly or indirectly, to engage in the scheduled transportation by aircraft of persons or property for hire in intrastate, interstate, or international transportation.

(4) "Commissioner" means the state revenue commissioner.

(5) "Contraband article" means:

(A) Any unauthorized, false, forged, altered, or counterfeit revenue stamp or marking, prima facie evidencing the payment of any tax imposed by the revenue laws of this state;

(B) Any article, plate, die, stamp, machine, apparatus, paraphernalia, or other device or material designed for use, intended to be used, or used in the making of any unauthorized, false, forged, altered, or counterfeit revenue stamp or marking described in subparagraph (A) of this paragraph; or

(C) Any article or property to which any unauthorized, false, forged, altered, or counterfeit revenue stamp or marking prima facie evidencing the payment of any tax imposed by the revenue laws of this state is attached or affixed.

(6) "Department" means the Department of Revenue.

(7) "Deputy commissioner" means the deputy revenue commissioner.

(8) "Domestic," when applied to any corporation or association (including, but not limited to, a partnership), means created, organized, or domiciled in this state.

(9) "Fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person, whether individual or corporate, acting in any fiduciary capacity for any person.

(10) Reserved.

(11) "Foreign," when applied to any corporation or association (including, but not limited to, a partnership), means created or organized outside this state.

(12) "Individual" means a natural person.

(13) "Intangible personal property" means the capital stock of all corporations; money, notes, bonds, accounts, or other credits, secured or unsecured; patent rights, copyrights, franchises, and any other classes and kinds of property defined by law as intangible personal property.

(14) "Internal Revenue Code" or "Internal Revenue Code of 1986" means for taxable years beginning on or after January 1, 2023, the

provisions of the United States Internal Revenue Code of 1986, as amended, provided for in federal law enacted on or before January 1, 2024, except that Section 108(i), Section 163(e)(5)(F), Section 168(b)(3)(I), Section 168(e)(3)(B)(vii), Section 168(e)(3)(E)(ix), Section 168(e)(8), Section 168(k), Section 168(m), Section 168(n), Section 179(d)(1)(B)(ii), Section 179(f), Section 199, Section 381(c)(20), Section 382(d)(3), Section 810(b)(4), Section 1400L, Section 1400N(d)(1), Section 1400N(f), Section 1400N(j), Section 1400N(k), and Section 1400N(o) of the Internal Revenue Code of 1986, as amended, shall be treated as if they were not in effect, and except that Section 168(e)(7), Section 172(b)(1)(F), and Section 172(i)(1) of the Internal Revenue Code of 1986, as amended, shall be treated as they were in effect before the 2008 enactment of federal Public Law 110-343, and except that Section 163(i)(1) of the Internal Revenue Code of 1986, as amended, shall be treated as it was in effect before the 2009 enactment of federal Public Law 111-5, and except that Section 13(e)(4) of 2009 federal Public Law 111-92 shall be treated as if it was not in effect, and except that Section 118, Section 163(j), Section 382(k)(1), and Section 174 of the Internal Revenue Code of 1986, as amended, shall be treated as they were in effect before the 2017 enactment of federal Public Law 115-97; provided, however, that all provisions in federal Public Law 117-58 (Infrastructure Investment and Jobs Act) that change or affect in any manner Section 118 shall be treated as if they were in effect, and except that all provisions in federal Public Law 116-136 (CARES Act) that change or affect in any manner Section 172 and Section 461(l) shall be treated as if they were not in effect, and except that all provisions in federal Public Law 117-2 (American Rescue Plan Act of 2021) that change or affect in any manner Section 461(l) shall be treated as if they were not in effect, and except that the limitations provided in Section 179(b)(1) shall be $250,000.00 for tax years beginning in 2010, shall be $250,000.00 for tax years beginning in 2011, shall be $250,000.00 for tax years beginning in 2012, shall be $250,000.00 for tax years beginning in 2013, and shall be $500,000.00 for tax years beginning in 2014, and except that the limitations provided in Section 179(b)(2) shall be $800,000.00 for tax years beginning in 2010, shall be $800,000.00 for tax years beginning in 2011, shall be $800,000.00 for tax years beginning in 2012, shall be $800,000.00 for tax years beginning in 2013, and shall be $2 million for tax years beginning in 2014, and provided that Section 1106 of federal Public Law 112-95 as amended by federal Public Law 113-243 shall be treated as if it is in effect, except the phrase "Code Section 48-2-35 (or, if later, November 15, 2015)" shall be substituted for the phrase "section 6511(a) of such Code (or, if later, April 15, 2015)," and notwithstanding any other provision in this title, no interest shall be refunded with respect to any claim for refund filed pursuant to Section 1106 of federal Public

Law 112-95, and provided that subsection (b) of Section 3 of federal Public Law 114-292 shall be treated as if it is in effect, except the phrase "Code Section 48-2-35" shall be substituted for the phrase "section 6511(a) of the Internal Revenue Code of 1986" and the phrase "such section" shall be substituted for the phrase "such subsection." In the event a reference is made in this title to the Internal Revenue Code or the Internal Revenue Code of 1954 as it existed on a specific date prior to January 1, 2024, the term means the provisions of the Internal Revenue Code or the Internal Revenue Code of 1954 as it existed on the prior date. Unless otherwise provided in this title, any term used in this title shall have the same meaning as when used in a comparable provision or context in the Internal Revenue Code of 1986, as amended. For taxable years beginning on or after January 1, 2023, provisions of the Internal Revenue Code of 1986, as amended, which were as of January 1, 2024, enacted into law but not yet effective shall become effective for purposes of Georgia taxation on the same dates upon which they become effective for federal tax purposes.

(14.1) "Internal Revenue Code" or "Internal Revenue Code of 1986" means for taxable years beginning after December 31, 2005, but before January 1, 2007, the provisions of the United States Internal Revenue Code of 1986, as amended, provided for in federal law enacted on or before January 1, 2006, except that Section 168(k) (but not excepting Section 168(k)(2)(A)(i), Section 168(k)(2)(D)(i), and Section 168(k)(2)(E)), Section 199, Section 1400L, Section 1400N(d)(1), Section 1400N(j), and Section 1400N(k) of the Internal Revenue Code of 1986, as amended, shall be treated as if they were not in effect, and except that the following provisions shall be as amended by the federal Tax Relief and Health Care Act of 2006 (Pub. L. No. 109-432) as such federal act existed on December 20, 2006, and effective for purposes of Georgia taxation on the same dates upon which they became effective for federal tax purposes pursuant to said federal act: Sections 38, 41, 45A, 45N, 51, 51A, 61, 62, 106, 121, 143, 164, 168 (except 168(k) but not excepting 168(k)(2)(A)(i), 168 (k)(2)(D)(i), and 168(k)(2)(E)), 170, 179E, 198, 220, 222, 223, 263, 280C, 312, 355, 613A, 954, 1043, 1221, 1245, 1355, 1397E, 1400A, 1400B, 7623, and 7872. For such taxable years, provisions of the Internal Revenue Code of 1986, as amended, which were as of January 1, 2006, enacted into law but not yet effective shall be effective for purposes of Georgia taxation on the same dates upon which they become effective for federal tax purposes. The provisions of this paragraph shall supersede and control over any provision of paragraph (14) of this Code section to the contrary.

(14.2) "Internal Revenue Code" or "Internal Revenue Code of 1986" means for taxable years beginning after December 31, 2006,

but before January 1, 2008, the provisions of the United States Internal Revenue Code of 1986, as amended, provided for in federal law enacted on or before January 1, 2008, except that Section 168(k) (but not excepting Section 168(k)(2)(A)(i), Section 168(k)(2)(D)(i), and Section 168(k)(2)(E)), Section 199, Section 1400L, Section 1400N(d)(1), Section 1400N(j), and Section 1400N(k) of the Internal Revenue Code of 1986, as amended, shall be treated as if they were not in effect. For such taxable years, provisions of the Internal Revenue Code of 1986, as amended, which were as of January 1, 2008, enacted into law but not yet effective shall be effective for purposes of Georgia taxation on the same dates upon which they become effective for federal tax purposes. The provisions of this paragraph shall supersede and control over any provision of paragraph (14) of this Code section to the contrary.

(14.3) "Internal Revenue Code" or "Internal Revenue Code of 1986" means for taxable years beginning after December 31, 2007, but before January 1, 2009, the provisions of the United States Internal Revenue Code of 1986, as amended, provided for in federal law enacted on or before January 1, 2009, except that Section 168(b)(3)(I), Section 168(e)(3)(B)(vii), Section 168(e)(3)(E)(ix), Section 168(e)(8), Section 168(k) (but not excepting Section 168(k)(2)(A)(i), Section 168(k)(2)(D)(i), and Section 168(k)(2)(E)), Section 168(m), Section 168(n), Section 172(b)(1)(F), Section 172(b)(1)(J), Section 172(j), Section 199, Section 1400L, Section 1400N(d)(1), Section 1400N(f), Section 1400N(j), Section 1400N(k), and Section 1400N(o) of the Internal Revenue Code of 1986, as amended, shall be treated as if they were not in effect, and except that Section 168(e)(7), Section 172(i)(1), and Section 1221 of the Internal Revenue Code of 1986, as amended, shall be treated as they were in effect before the 2008 enactment of federal Public Law 110-343. For such taxable years, provisions of the Internal Revenue Code of 1986, as amended, which were as of January 1, 2009, enacted into law but not yet effective shall be effective for purposes of Georgia taxation on the same dates upon which they become effective for federal tax purposes. The provisions of this paragraph shall supersede and control over any provision of paragraph (14) of this Code section to the contrary.

(15) "Internal Revenue Service" or "IRS" means the Internal Revenue Service of the United States Department of the Treasury.

(16) "Member of the armed forces" means commissioned officers and personnel below the grade of commissioned officers in all regular and reserve components of the uniformed services subject to the jurisdiction of the United States Department of Defense. The term also includes the Coast Guard, but it does not include civilian employees of the armed forces.

(17) "Municipality" means an incorporated municipality in this state.

(18) "Person" means any individual, firm, partnership, cooperative, nonprofit membership corporation, joint venture, association, company, corporation, agency, syndicate, estate, trust, business trust, receiver, fiduciary, or other group or combination acting as a unit, body politic, or political subdivision, whether public, private, or quasi-public.

(19) "Personal property" means all tangible personal property and all intangible personal property, as the terms are defined in this Code section.

(20) "Personal representative" means the duly qualified and acting personal representative of the estate of a decedent or, if there is no duly qualified and acting representative, the person in possession of any property of the decedent.

(21) "Public utility" means all railroad companies, street and suburban railroads, or sleeping car companies; persons or companies operating railroads, street railroads, suburban railroads, or sleeping cars in this state; all express companies including railroad companies doing express, telephone, or telegraph business (except small telephone companies or persons operating a telephone business, the value of whose capital stock or property is less than $5,000.00); all gas, electric light, electric power, hydroelectric power, steam heat, refrigerated air, dockage or cranage, canal, toll road, toll bridge, railroad equipment, and navigation companies; and any person or persons operating a gas, electric light, electric power, hydroelectric power, steam heat, refrigerated air, dockage or cranage, canal, toll road, toll bridge, railroad equipment, or navigation business, through their president, general manager, owner, or agent having control of the company's offices in this state.

(22) "Tangible personal property" means personal property which may be seen, weighed, measured, felt, or touched or which is in any other manner perceptible to the senses. The term "tangible personal property" shall not include intangible personal property. This paragraph shall not apply to Chapter 8 of this title relating to sales and use taxation.

(23) "Tax collector" means a county tax collector.

(24) "Tax commissioner" means a county tax commissioner.

(25) "Taxpayer" means any person required by law to file a return or to pay taxes.

(26) "Tax receiver" means a county tax receiver.

History.

Code 1933, § 91A-102, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 2; Ga. L. 1981, p. 1857, § 2; Ga. L. 1981, p. 1903, § 1; Ga. L. 1982, p. 3, § 48; Ga. L. 1984, p. 1323, § 1; Ga. L. 1987, p. 191, § 1; Ga. L. 1988, p. 475, § 1; Ga. L. 1989, p. 1402, § 1; Ga. L. 1990, p. 1350, § 1; Ga. L. 1991, p. 367, § 1; Ga. L. 1992, p. 1441, § 1; Ga. L. 1993, p. 728, § 1; Ga. L. 1993, p. 1402, § 16; Ga. L. 1994, p. 797, § 1; Ga. L. 1995, p. 324, § 1; Ga. L. 1996, p. 117, § 1; Ga. L. 1996, p. 130, § 1; Ga. L. 1996, p. 308, § 1; Ga. L. 1997, p. 396, § 1; Ga. L. 1998, p. 1224, § 1; Ga. L. 1999, p. 483, § 1; Ga. L. 2000, p. 1296, § 1; Ga. L. 2001, p. 1224, § 1; Ga. L. 2002, p. 439, § 1; Ga. L. 2003, p. 665, § 2; Ga. L. 2004, p. 410, § 2; Ga. L. 2005, p. 159, § 2/HB 488; Ga. L. 2006, p. 200, § 1/HB 1310; Ga. L. 2007, p. 2, §§ 1, 2/HB 357; Ga. L. 2008, p. 10, §§ 1, 2/HB 926; Ga. L. 2008, p. 324, § 48/SB 455; Ga. L. 2009, p. 6, §§ 1, 2/HB 74; Ga. L. 2010, p. 895, § 1/HB 1138; Ga. L. 2011, p. 38, § 1/HB 168; Ga. L. 2012, p. 694, § 1/HB 729; Ga. L. 2013, p. 7, § 1/HB 266; Ga. L. 2014, p. 231, § 1/HB 918; Ga. L. 2015, p. 2, § 1/HB 292; Ga. L. 2016, p. 1, § 1/HB 742; Ga. L. 2016, p. 864, § 48/HB 737; Ga. L. 2017, p. 4, § 1/HB 283; Ga. L. 2018, p. 8, § 1-1/HB 918; Ga. L. 2019, p. 817, § 1/HB 419; Ga. L. 2020, p. 184, § 1-1/HB 846; Ga. L. 2021, p. 1, § 1/HB 265; Ga. L. 2021, Ex. Sess. p. 3, § 1/HB 7EX; Ga. L. 2022, p. 316, § 1/HB 1320; Ga. L. 2023, p. 333, § 1/HB 95, effective May 2, 2023; Ga. L. 2023, p. 335, § 2-1/SB 56, effective May 2, 2023; Ga. L. 2024, p. 157, § 1/HB 1162, effective April 22, 2024.

Amendments.

The 2022 amendment, effective May 2, 2022, in paragraph (14), substituted "January 1, 2022" for "March 11, 2021" three times, and added the proviso following "Public Law 115-97" in the middle. See Editor's notes for applicability.

The first 2023 amendment, effective May 2, 2023, in paragraph (14), substituted "January 1, 2022" for "January 1, 2021" in two places and substituted "January 1, 2023" for "January 1, 2022" in three places. See Editor's notes for applicability.

The second 2023 amendment, effective May 2, 2023, made identical changes as the first 2023 amendment, and substituted "Section 163(j), Section 382(k)(1), and Section 174 of the Internal Revenue Code of 1986" for "Section 163(j), and Section 382(k)(1) of the Internal Revenue Code of 1986" in paragraph (14). See Editor's notes for applicability.

The 2024 amendment, effective April 22, 2024, in paragraph (14), substituted "January 1, 2023" for "January 1, 2022" in two places and substituted "January 1, 2024" for "January 1, 2023" in three places. See Editor's notes for applicability.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2007, quotes were deleted surrounding ", as amended," in paragraphs (14) and (14.1); and "supersede" was substituted for "supercede" in paragraph (14.1).

Editor's notes.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, provided that the Act applied to taxable years ending on or after March 11, 1987, and that a taxpayer with a taxable year ending on or after January 1, 1987, and before March 11, 1987, may elect to have the provisions of that Act apply; and also provided that tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by that Act; and also provided that provisions of the federal Tax Reform Act of 1986 and of the Internal Revenue Code of 1986 which as of January 1, 1987, were not yet effective become effective for purposes of Georgia taxation on the same dates as they become effective for federal purposes.

Ga. L. 1988, p. 475, § 3, not codified by the General Assembly, provided that the Act applies to taxable years beginning on or after January 1, 1988; and also provided that provisions of the Internal Revenue Code of 1986 which were as of January 1, 1988, enacted into law but not yet effective shall become effective for purposes of Georgia taxation on the same dates upon which they become effective for federal tax purposes.

Ga. L. 1989, p. 1402, § 2, not codified by the General Assembly, provides that the amendments to this Act shall apply to taxable years beginning on or after January 1, 1989, and that provisions of the Internal Revenue Code of 1986, which

were as of January 1, 1989, enacted into law but not yet effective, shall become effective for purposes of Georgia taxation on the same dates upon which they become effective for federal tax purposes.

Ga. L. 1990, p. 1350, § 2, not codified by the General Assembly, provided that the Act applies to taxable years beginning on or after January 1, 1990, and that provisions of the Internal Revenue Code of 1986, which were as of January 1, 1990, enacted into law but not yet effective, shall become effective for purposes of Georgia taxation on the same dates upon which they become effective for federal tax purposes.

Ga. L. 1991, p. 367, § 2, not codified by the General Assembly, provided that this Act became effective April 4, 1991, and applies to taxable years beginning on or after January 1, 1991. Provisions of the Internal Revenue Code of 1986, which were as of January 1, 1991, enacted into law but not yet effective shall become effective for purposes of Georgia taxation on the same dates upon which they become effective for federal tax purposes.

Ga. L. 1992, p. 1441, § 2, not codified by the General Assembly, provided that the Act shall apply to taxable years beginning on or after January 1, 1992, and that provisions of the Internal Revenue Code of 1986 which were as of January 1, 1992, enacted into law but not yet effective shall become effective for purposes of Georgia taxation on the same dates upon which they become effective for federal tax purposes.

Ga. L. 1993, p. 728, § 2, not codified by the General Assembly, provided that the Act shall become effective April 9, 1993, and shall apply to taxable years beginning on or after January 1, 1993, and that provisions of the Internal Revenue Code of 1986 which were as of January 1, 1993, enacted into law but not yet effective shall become effective for purposes of Georgia taxation on the same dates upon which they became effective for federal tax purposes.

Ga. L. 1994, p. 797, § 2, not codified by the General Assembly, provides that the Act shall apply to taxable years beginning on or after January 1, 1994, and that provisions of the Internal Revenue Code of 1986 which were as of January 1, 1994, enacted into law but not yet effective shall become effective for purposes of Georgia taxation on the same dates upon which they become effective for federal tax purposes.

Ga. L. 1995, p. 324, § 2, not codified by the General Assembly, provides that the Act shall apply to taxable years beginning on or after January 1, 1995, and that provisions of the Internal Revenue Code of 1986 which were as of January 1, 1995, enacted into law but not yet effective shall become effective for purposes of Georgia taxation on the same dates upon which they become effective for federal tax purposes.

Ga. L. 1996, p. 117, § 9, not codified by the General Assembly, provides that the Act shall not repeal any provision of Ga. L. 1996, p. 130 if Ga. L. 1996, p. 130 is passed at the 1996 regular session of the General Assembly, becomes law, and becomes effective.

Ga. L. 1996, p. 130, § 9, not codified by the General Assembly, provides that the 1996 amendment enacted by that Act becomes effective on January 1, 1997, and shall be applicable to all taxable years beginning on or after January 1, 1996, upon the ratification of House Resolution 734 (Ga. L. 1996, p. 1665) at the November 1996, general election; if such resolution is not ratified, the amendment shall not become effective and shall stand repealed on January 1, 1997. House Resolution 734 was ratified in 1996; and provided that the provisions of the Act shall not repeal but shall supersede and control over any conflicting provisions of any other Act enacted at the 1996 regular session, including, but not limited to, Ga. L. 1996, p. 117.

Ga. L. 1996, p. 308, § 2, not codified by the General Assembly, provides: "This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval and shall apply to taxable years beginning on or after January 1, 1996. Provisions of the Internal Revenue Code of 1986 which were as of January 1, 1996, enacted into law but not yet effective shall become effective for purposes of Georgia taxation on the same dates upon which they become effective

for federal tax purposes." [Ga. L. 1996, p. 308 was approved and became effective April 1, 1996.]

Ga. L. 1997, p. 396, § 2, not codified by the General Assembly, makes that Act applicable "to taxable years beginning on or after January 1, 1997. Provisions of the Internal Revenue Code of 1986 which were as of January 1, 1997, enacted into law but not yet effective shall become effective for purposes of Georgia taxation on the same dates upon which they become effective for federal tax purposes."

Ga. L. 1998, p. 1224, § 8(b), not codified by the General Assembly, provided that the Act shall be applicable to all taxable years beginning on or after January 1, 1998, and provides that: "Provisions of the Internal Revenue Code of 1986 which were as of January 1, 1998, enacted into law but not yet effective shall become effective for purposes of Georgia taxation on the same dates upon which they become effective for federal tax purposes."

Ga. L. 1999, p. 483, § 3, not codified by the General Assembly, provided that the Act shall be applicable to all taxable years beginning on or after January 1, 1999, and provides that: "Provisions of the Internal Revenue Code of 1986 which were as of January 1, 1999, enacted into law but not yet effective shall become effective for purposes of Georgia taxation on the same dates upon which they become effective for federal tax purposes."

Ga. L. 2000, p. 1296, § 2, not codified by the General Assembly, provides that the amendment to this Code section is applicable to taxable years beginning on or after January 1, 2000.

Ga. L. 2001, p. 1224, § 2, not codified by the General Assembly, provided that the Act shall be applicable to all taxable years beginning on or after January 1, 2001, and that: "Provisions of the Internal Revenue Code of 1986 which were as of January 1, 2001, enacted into law but not yet effective shall become effective for purposes of Georgia taxation on the same dates upon which they become effective for federal tax purposes."

Ga. L. 2002, p. 439, § 2, not codified by the General Assembly, provided that the Act shall be applicable to all taxable years beginning on or after January 1, 2002, and that: "Provisions of the Internal Revenue Code of 1986 which were as of January 1, 2002, enacted into law but not yet effective shall become effective for purposes of Georgia taxation on the same dates upon which they become effective for federal tax purposes."

Ga. L. 2003, p. 665, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2003.'"

Ga. L. 2003, p. 665, § 47(b), not codified by the General Assembly, provides that paragraph (14) of this Code section is applicable to all taxable years beginning on or after January 1, 2003.

Ga. L. 2004, p. 410, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2004.'"

Ga. L. 2004, p. 410, § 10(b), not codified by the General Assembly, provides that the amendment by that Act shall be applicable to all taxable years beginning on or after January 1, 2004, and further provides that: "Provisions of the Internal Revenue Code of 1986 which were as of January 1, 2004, enacted into law but not yet effective shall become effective for purposes of Georgia taxation on the same dates upon which they become effective for federal tax purposes."

Ga. L. 2005, p. 159, § 1/HB 488, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2005.'"

Ga. L. 2005, p. 159, § 27/HB 488, not codified by the General Assembly, provides that the 2005 amendment applies to all taxable years beginning on or after January 1, 2005, and further provides that: "Provisions of the Internal Revenue Code of 1986 which were as of January 1, 2005, enacted into law but not yet effective shall become effective for purposes of Georgia taxation on the same dates upon which they become effective for federal tax purposes."

Ga. L. 2006, p. 200, § 6/HB 1310, not codified by the General Assembly, provides that this Code section shall be applicable to all taxable years beginning

on or after January 1, 2006, and further provides that: "Provisions of the Internal Revenue Code of 1986 which were as of January 1, 2006, enacted into law but not yet effective shall become effective for purposes of Georgia taxation on the same dates upon which they become effective for federal tax purposes."

Ga. L. 2007, p. 2, § 3(a)/HB 357, not codified by the General Assembly, provides that paragraph (14.1) shall be applicable to all taxable years beginning after December 31, 2005, but before January 1, 2007.

Ga. L. 2007, p. 2, § 3(b)/HB 357, not codified by the General Assembly, provides that paragraph (14) shall be applicable to all taxable years beginning on or after January 1, 2007.

Ga. L. 2008, p. 10, § 3/HB 926, not codified by the General Assembly, provides in § 3(a) that the amendment to paragraph (14) is applicable to all taxable years beginning on or after January 1, 2008, and provides in § 3(b) that the addition of paragraph (14.2) is applicable to all taxable years beginning after December 31, 2006, but before January 1, 2008.

Ga. L. 2009, p. 6, § 3/HB 74, not codified by the General Assembly, provides in part that the amendment to paragraph (14) shall be applicable to all taxable years beginning on or after January 1, 2009, and the addition of paragraph (14.3) shall be applicable to all taxable years beginning after December 31, 2007, but before January 1, 2009.

Ga. L. 2010, p. 895, § 4(b)/HB 1138, not codified by the General Assembly, provides that the 2010 amendment shall be applicable to all taxable years beginning on or after January 1, 2009.

Ga. L. 2011, p. 38, § 10/HB 168, not codified by the General Assembly, provides, in part, that the amendment to this Code section shall be applicable to all taxable years beginning on or after January 1, 2010.

Ga. L. 2012, p. 694, § 5(b)/HB 729, not codified by the General Assembly, provides, in part, that the amendment to this Code section shall be applicable to all taxable years beginning on or after January 1, 2011.

Ga. L. 2013, p. 7, § 7(a)/HB 266, not codified by the General Assembly, provides, in part, that the 2013 amendment shall be applicable to all taxable years beginning on or after January 1, 2012, except the provisions in Section 1 relating to Section 1106 of federal Public Law 112-95 shall also apply to taxable years beginning before January 1, 2012.

Ga. L. 2014, p. 231, § 3/HB 918, not codified by the General Assembly, provides that: "This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval and Section 1 shall be applicable to all taxable years beginning on or after January 1, 2013." This Act became effective April 15, 2014.

Ga. L. 2015, p. 2, § 1/HB 292, not codified by the General Assembly, provides that: "This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval and shall be applicable to all taxable years beginning on or after January 1, 2014." This Act became effective March 6, 2015.

Ga. L. 2016, p. 1, § 8/HB 742, not codified by the General Assembly, provides, in part, that: "Section 1 of this Act shall be applicable to all taxable years beginning on or after January 1, 2015."

Ga. L. 2017, p. 4, § 2/HB 283, not codified by the General Assembly, provides that the amendment of paragraph (14) shall be applicable to all taxable years beginning on or after January 1, 2016.

Ga. L. 2018, p. 8, § 3-1(a)/HB 918, not codified by the General Assembly, provides, in part, that this Act "shall be applicable to all taxable years beginning on or after January 1, 2017."

Ga. L. 2019, p. 817, § 3/HB 419, not codified by the General Assembly, provides, in part, that this Act "shall be applicable to all taxable years beginning on or after January 1, 2018."

Ga. L. 2020, p. 184, § 4-1(a)/HB 846, not codified by the General Assembly, provides that the amendment of paragraph (14) "shall be applicable to all taxable years beginning on or after January 1, 2019."

Ga. L. 2021, p. 1, § 2/HB 265, not codified by the General Assembly, provides, in part, that this Act "shall be applicable to all taxable years beginning on or after January 1, 2020."

Ga. L. 2021, Ex. Sess., p. 3, § 2/HB 7EX, not codified by the General Assembly, provides that the amendment to paragraph (14) shall be applicable to all taxable years beginning on or after January 1, 2021.

Ga. L. 2022, p. 114, § 4-1/HB 1437, not codified by the General Assembly, amends Ga. L. 2018, p. 8, § 3-1/HB 918, by revising subsection (a) to read in pertinent part: "(1) Section 1-1 of this Act shall become effective upon the approval of this Act by the Governor or upon this Act becoming law without such approval and such section shall be applicable to all taxable years beginning on or after January 1, 2017; provided, however, that Code Section 48-1-2 as amended by Section 1-1 of this Act shall be amended by revisions contained in Acts approved by the Governor or that became or become law without such approval after March 2, 2018, and became or become applicable to tax years beginning on or after January 1, 2017."

Ga. L. 2022, p. 316, § 3/HB 1320, not codified by the General Assembly, makes paragraph (14) applicable to all taxable years beginning on or after January 1, 2021.

Ga. L. 2023, p. 333, § 2/HB 95, not codified by the General Assembly, makes paragraph (14) applicable to all taxable years beginning on or after January 1, 2022.

Ga. L. 2023, p. 335, § 4-1(a)(1), not codified by the General Assembly, provides, in part, that the amendment by this Act "shall be applicable to all taxable years beginning on or after January 1, 2022."

Ga. L. 2023, p. 335, § 4-1(b), not codified by the General Assembly, provides that: "Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by the passage of this Act and shall continue to be governed by the provisions of Title 48 of the Official Code of Georgia Annotated as they existed for such prior taxable years."

Ga. L. 2024, p. 157, § 2/HB 1162, not codified by the General Assembly, makes paragraph (14) applicable to all taxable years beginning on or after January 1, 2023.

U.S. Code.

The Internal Revenue Code, referred to throughout this Code section, is codified at Title 26 of the United States Code.

Administrative rules and regulations.

Meaning of terms used, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Income Tax Division, Elections and Definitions, Rule 560-7-6-.02.

Law reviews.

For article, "Issues and Opportunities Under Georgia's Updated Income Tax Provisions," see 25 Ga. St. B. J. 144 (1989).

For note on the 2003 amendment to this Code section, see 20 Georgia. St. U.L. Rev. 233 (2003).

For article, "A Taxing Exception: Southern LNG, Inc. v. MacGinnitie's Narrow Interpretation of the Mandamus Exception," see 66 Mercer L. Rev. 855 (2015).

For annual survey on state and local taxation: a two-year survey, see 71 Mercer L. Rev. 279 (2019).

For article with annual survey on state and local taxation, see 73 Mercer L. Rev. 231 (2021).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, §§ 92-102, 92-113, and 92-5902 are included in the annotations for this Code section.

A foreign corporation is not synonymous and cannot be equated with a nonresident corporation. Therefore, simply because a contractor may be considered a foreign corporation because it was incorporated in Texas does not preclude a finding that it is a resident contractor. Lenox Hotel Co. v. Charter Bldrs., Inc., 717 F. Supp. 1558, 1989 U.S. Dist. LEXIS 8236 (N.D. Ga. 1989).

Ordinarily, bills receivable and accounts receivable are personal property and subject to be taxed. Davis v. Smith, 197 Ga. 95, 28 S.E.2d 148, 1943 Ga. LEXIS 450 (1943), aff'd, 323 U.S. 111, 65 S. Ct. 157, 89 L. Ed. 107, 1944 U.S. LEXIS 1207 (1944) (decided under former Code 1933, § 92-102).

Customers' notes used as collateral for loans are intangible personal property. — Owner of customers' notes used as collateral for demand loans is legally obligated to pay the required intangibles tax. Yancey Bros. Co. v. United States, 319 F. Supp. 441, 1970 U.S. Dist. LEXIS 10192 (N.D. Ga. 1970) (decided under former Code 1933, § 92-113).

Taxability of personal property which agent of nonresident does not have "on hand." — Former Code 1933, §§ 92-101, 92-102 and 92-105 (see now O.C.G.A. §§ 48-1-2 and 48-5-3) declare in effect that the kinds of property mentioned in former Code 1933, § 92-6208 (see now O.C.G.A. § 48-5-16) shall be taxed in Georgia if within its jurisdiction, and manifestly the latter section was not intended to create an exception to taxability or to exempt property of any kind that is otherwise taxable, merely because, if belonging to a nonresident, an agent does not have it "on hand" in this state. Suttles v. Northwestern Mut. Life Ins. Co., 193 Ga. 495, 19 S.E.2d 396, 1942 Ga. LEXIS 446 (1942) (decided under former Code 1933, § 92-102).

When corporate purpose clause of taxpayer's charter authorizes taxpayer to engage in a gas business, the taxpayer is therefore a "gas company" within the meaning of this section although not doing a gas business. Undercofler v. Colonial Pipeline Co., 114 Ga. App. 739, 152 S.E.2d 768, 1966 Ga. App. LEXIS 906 (1966) (decided under former Code 1933, § 92-5902).

Liquid petroleum products are not gas within the meaning of this section. Undercofler v. Colonial Pipeline Co., 114 Ga. App. 739, 152 S.E.2d 768, 1966 Ga. App. LEXIS 906 (1966) (decided under former Code 1933, § 92-5902).

Public utility. — In a gas company's suit against the state revenue commissioner for mandamus compelling the commissioner to accept its property tax returns under O.C.G.A. §§ 48-1-2(21) and 48-5-511(a), remand was proper to determine if the company had an acceptable alternative remedy in its pending county tax appeals under O.C.G.A. § 48-5-311, if the commissioner could be made a party to those appeals by joinder or some other procedure. Southern LNG, Inc. v. MacGinnitie, 294 Ga. 657, 755 S.E.2d 683, 2014 Ga. LEXIS 168 (2014).

Mandamus improperly granted to a company. — Judgment of the trial court granting a company mandamus relief was reversed because the judgment did not show that the State Revenue Commissioner, in refusing to accept the company's ad valorem tax returns as a gas company, violated a clear legal duty, failed to act, or engaged in arbitrary, capricious, and unreasonable actions because the company was not authorized to engage in the business of a gas company under O.C.G.A. § 46-1-1(5) nor be a natural-gas company as defined in 15 U.S.C. § 717a(6). Riley v. Southern LNG, Inc., 300 Ga. 689, 797 S.E.2d 878, 2017 Ga. LEXIS 158 (2017).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 92-102 and Ga. L. 1951, p. 360, § 3 are included in the annotations for this Code section.

Georgia Seed Development Commission is included within the definition of "person." 1971 Op. Att'y Gen. No. 71-72 (rendered under Ga. L. 1951, p. 360, § 3).

Area vocational-technical schools as persons. — Area vocational-technical schools, operated by local units of school administration, engaged in selling books and other miscellaneous materials to their students on a nonprofit basis, must collect and remit sales taxes on sales made by

them; upon failure to make such collections and remittances the local units are liable themselves for the tax. 1973 Op. Att'y Gen. No. 73-83 (rendered under Ga. L. 1951, p. 360, § 3 and overruled to some extent by Op. Att'y Gen. 86-18).

Personal property owned by persons in military service. — Resident of Georgia is required to pay ad valorem taxes upon motor vehicles owned by the resident during the time that the taxpayer is in active military service and does not physically reside in Georgia. 1952-53 Ga. Op. Att'y Gen. 425 (rendered under former Code 1933, § 92-102).

Personal property of a citizen of Georgia in the military service is subject to taxation, whether such property is located within the state or outside the state because of such service. 1954-56 Ga. Op. Att'y Gen. 671 (rendered under former Code 1933, § 92-102).

Legal resident of this state is liable for Georgia ad valorem taxes on personal property owned by the resident on January first, irrespective of the fact that such person is in the military service and irrespective of the fact that both the property and the owner are absent from the state on January first, or the entire year; this would be so even if no Georgia license plate were purchased. 1962 Ga. Op. Att'y Gen. 476 (rendered under former Code 1933, § 92-102).

Boats owned and operated by military personnel on duty in this state, if properly registered in state of owner's residence, are not taxable in this state. 1962 Ga. Op. Att'y Gen. 484 (rendered under former Code 1933, § 92-102).

What constitutes personal property. — Vessels and other watercraft are personal property and are taxable like all other such property within the jurisdiction of a municipality where their situs for taxation is located. 1958-59 Ga. Op. Att'y Gen. 350 (rendered under former Code 1933, § 92-102).

Shrimp boats are personal property and are subject to taxation in the same manner as other personal property is taxed. 1958-59 Ga. Op. Att'y Gen. 350 (rendered under former Code 1933, § 92-102).

Motor vehicles of interstate motor carriers which are residents of or are domiciled in state, when not returned for ad valorem taxes, should be placed on tax digest by the county tax commissioner. 1962 Ga. Op. Att'y Gen. 491 (rendered under former Code 1933, § 92-102).

When a power company's property is located in this state and is a part of its reservoir used for producing electricity distributed to its customers, none of whom are Georgia residents, the company is a power company or a hydroelectric power company as that term is used in this section. 1968 Op. Att'y Gen. No. 68-155 (rendered under former Code 1933, § 92-5902; see O.C.G.A. § 48-1-2).

RESEARCH REFERENCES

Am. Jur. 2d.

63C Am. Jur. 2d, Property, §§ 8, 9, 19. 64 Am. Jur. 2d, Public Utilities, § 1 et seq. 71 Am. Jur. 2d, State and Local Taxation, § 123 et seq.

C.J.S.

47A C.J.S., Internal Revenue, § 1 et seq. 62 C.J.S., Municipal Corporations, § 1 et seq. 73B C.J.S., Public Utilities, § 1 et seq. 81A C.J.S., States, § 269 et seq. 82 C.J.S., Statutes, §§ 133, 222, 261, 524 et seq.

ALR.

Situs for taxation of membership in exchange or board of trade, 17 A.L.R. 89.

Gains from unlawful business or transactions as subject of income tax, 43 A.L.R. 799; 51 A.L.R. 1026; 166 A.L.R. 891.

Priority over existing lien of statutory lien upon real property for personal property taxes, 47 A.L.R. 378; 65 A.L.R. 677.

Oil and gas royalty as real or personal property, 131 A.L.R. 1371.

Meaning of association or joint stock company within statutes taxing associations or joint stock companies as corporations ("Massachusetts" or business trusts), 144 A.L.R. 1050; 166 A.L.R. 1461.

What passes under term "personal estate" in will, 53 A.L.R.2d 1059.

Solid mineral royalty as real or personal property, 68 A.L.R.2d 728.

Oil and gas royalty as real or personal property, 56 A.L.R.4th 539.

48-1-3. Forms and filings prior to January 1, 1980.

Every form of tax document or other tax related filing lawfully in use immediately prior to January 1, 1980, may continue to be so used and to be effective until the commissioner otherwise prescribes in accordance with this title.

History.
Code 1933, § 91A-104, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2017, p. 774, § 48/HB 323.

48-1-4. Unlawful exercise by unauthorized person of duties or functions of representative of commissioner or department; penalty.

(a) It shall be unlawful for any unauthorized person to exercise, attempt to exercise, or hold himself out to anyone as exercising the duties or functions of an auditor, agent, or other representative of the commissioner, the department, or any official, unit, or division of the department in any manner or for any purpose.

(b) Any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor.

History.
Ga. L. 1961, p. 452, § 1; Code 1933, § 91A-9901, enacted by Ga. L. 1978, p. 309, § 2.

48-1-5. Unlawful conversion of funds collected for benefit of state; penalty.

(a) It shall be unlawful for any person knowingly and willfully to convert funds collected for the benefit of the state pursuant to this title to his own use or to any other person's use with the intention of depriving the state of the funds.

(b) Any person who violates subsection (a) of this Code section shall be guilty of theft by conversion and shall be punished as provided for in Code Section 16-8-12.

History.
Code 1933, § 91A-9901.1, enacted by Ga. L. 1980, p. 834, § 1.

Cross references.
Theft by conversion generally, § 16-8-4.

JUDICIAL DECISIONS

Dismissal not error. — Trial court did not err by granting the defendant's motion for a plea in bar dismissing the charges of conversion of sales and use taxes, theft by taking, and false swearing against the defendant because the charges were not

brought within four years of the dates on which the crimes were allegedly committed as required by O.C.G.A. § 17-3-1. State v. Crowder, 338 Ga. App. 642, 791 S.E.2d 423, 2016 Ga. App. LEXIS 517 (2016), overruled in part, Countryman v. State, 355 Ga. App. 573, 845 S.E.2d 312, 2020 Ga. App. LEXIS 360 (2020).

48-1-6. Unlawful filing of false documents; omissions; tax evasion; penalty.

(a) It shall be unlawful for any person, willfully and with intent to defraud the state, to:

(1) File any return, report, protest, or claim for refund containing any false or fraudulent statement known by the person to be false;

(2) Omit knowingly and intentionally any fact, circumstance, condition, or thing in any written document, the omission of which constitutes a material misstatement or misrepresentation of fact; or

(3) By any trick, device, scheme, or plan, evade or attempt to evade any tax, license, penalty, interest, or other amount due the state.

(b) Any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor.

History.
Ga. L. 1937-38, Ex. Sess., p. 77, § 43; Code 1933, § 91A-9902, enacted by Ga. L. 1978, p. 309, § 2.

JUDICIAL DECISIONS

Legitimately minimizing taxes permitted. — Legitimate arrangement of one's affairs so as to minimize or avoid taxes differs from sham transactions designed to camouflage the actual situation; the former are permissible, but the latter are disapproved and may result in penalty or criminal prosecution. Whitley v. Whitley, 220 Ga. 471, 139 S.E.2d 381, 1964 Ga. LEXIS 585 (1964).

RESEARCH REFERENCES

Am. Jur. 2d.
71 Am. Jur. 2d, State and Local Taxation, §§ 512, 513, 514.
C.J.S.
37 C.J.S., Fraud, § 1 et seq. 47C C.J.S., Internal Revenue, § 855 et seq. 84 C.J.S., Taxation, §§ 85, 491 et seq. 85 C.J.S., Taxation, §§ 1251 et seq., 1715.
ALR.
Right of grantor or transferor or his privies to attack conveyance or transfer made for purpose of evading taxation, 118 A.L.R. 1184.

Misrepresentation as to tax law as within rule that party to contract or other instrument may not rely upon misrepresentation as to matters of law, 153 A.L.R. 538.

Test of "wilfulness" in prosecution for wilful failure to pay tax, file tax return, etc., under § 7203 of the Internal Revenue Code of 1954 (26 USC § 7203), 22 A.L.R.3d 1173.

Construction and application of 26 USCA § 6015(b)(1)(C) requiring that spouse not know of understatement of tax arising from erroneous deduction, credit, or basis to obtain innocent spouse

exemption from liability for tax, 154 A.L.R. Fed. 233; 161 A.L.R. Fed. 373.

Construction and application of 26 U.S.C.A. § 6015(b)(1)(C), requiring that spouse not know of omission of gross income from joint tax return to obtain innocent spouse exemption from liability for tax, 161 A.L.R. Fed. 373.

48-1-7. Fraudulent use of exemption certificate to evade taxes; penalty.

(a) It shall be unlawful for any person to attempt to evade the taxes imposed by this title by virtue of a certificate of exemption obtained through fraud or by using a certificate of exemption to which he is not entitled.

(b) Any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor.

History.
Ga. L. 1935, p. 11, § 22; Code 1933, § 91A-9903, enacted by Ga. L. 1978, p. 309, § 2.

RESEARCH REFERENCES

Am. Jur. 2d.
71 Am. Jur. 2d, State and Local Taxation, §§ 512, 513, 514.

C.J.S.
37 C.J.S., Fraud, §§ 30 et seq., 105 et seq. 85 C.J.S., Taxation, § 1806 et seq.

48-1-8. Computer software.

(a) As used in this Code section, the term "computer software" means any program or routine, or any set of one or more programs or routines, which are used or intended for use to cause one or more computers or pieces of computer related peripheral equipment, or any combination thereof, to perform a task or set of tasks. Without limiting the generality of the foregoing, the term "computer software" shall include operating and application programs and all related documentation.

(b) Except as otherwise provided in subsection (c) of this Code section, for the purposes of Chapters 5 and 6 of this title, computer software shall constitute personal property only to the extent of the value of the unmounted or uninstalled medium on or in which it is stored or transmitted.

(c) Nothing herein shall be deemed to affect the taxation under Chapter 5 or 8 of this title of copies of computer software held as inventory in a tangible medium ready for sale at retail by one who is a dealer with respect to such property and the sale of which is subject to sales and use taxation.

History.
Code 1981, § 48-1-8, enacted by Ga. L. 1993, p. 1647, § 1; Ga. L. 2017, p. 774, § 48/HB 323.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1993, Code Section 48-1-8, enacted by Ga. L. 1993, p. 294, § 1, was redesignated as Code Section 48-1-9, since Ga. L. 1993, p. 1647, § 1, also enacted a Code Section 48-1-8.

Law reviews.

For note on the 1993 enactment of this Code section, see 10 Georgia St. U.L. Rev. 215 (1993).

For note on the 1993 enactment of this Code section, see 10 Georgia St. U.L. Rev. 218 (1993).

48-1-9. Taxpayer Bill of Rights.

(a) This Code section shall be known and may be cited as the "Taxpayer Bill of Rights."

(b) The commissioner shall, as soon as practicable, but not later than January 1, 1994, prepare a statement which sets forth in simple and nontechnical terms:

(1) The rights of a taxpayer and the obligations of the commissioner during any tax audit or examination;

(2) The procedure by which a taxpayer may appeal any adverse decision of the commissioner, including administrative and judicial appeals;

(3) The procedures for prosecuting refund claims and for filing of taxpayer complaints; and

(4) The procedures which the commissioner may use in enforcing the state's revenue laws, including the filing and enforcement of liens.

(c) The statement shall also inform the taxpayer that the taxpayer shall receive:

(1) Fair and courteous treatment in all dealings with the department;

(2) Prompt and accurate responses to all questions and requests for tax assistance; and

(3) A fair and timely hearing on a dispute of any tax liability as provided for by law.

(d) The statement prepared in accordance with this Code section shall be distributed by the commissioner to a taxpayer:

(1) Upon request by the taxpayer;

(2) When a proposed assessment of any state tax is made against the taxpayer or when the taxpayer is contacted by the department for an examination of the taxpayer's records, whichever is earlier; or

(3) When the commissioner deems it appropriate.

(e) The commissioner shall take such action as deemed necessary to

ensure that distribution to a taxpayer does not result in multiple statements being sent to any one taxpayer.

History.
Code 1981, § 48-1-9, enacted by Ga. L. 1993, p. 294, § 1.
Code Commission notes.
Pursuant to Code Section 28-9-5, in 1993, Code Section 48-1-8, enacted by Ga. L. 1993, p. 294, § 1, was redesignated as Code Section 48-1-9, since Ga. L. 1993, p. 1647, § 1, also enacted a Code Section 48-1-8.

48-1-10. Economic incentives to users of raw forest products.

(a) As used in this Code section, the term:

(1) "Economic incentive" means any direct price subsidy made available by the state directly to support the purchase of raw forestry products. Such term shall not mean any such benefit available under statutorily provided programs.

(2) "Raw forest product" means any raw material harvested or recovered from forest wood or wood waste at its initial conversion.

(b) It is the intent of the General Assembly that any economic incentive granted on or after July 1, 2010, to any person, company, partnership, or other entity engaged in the commercial use of raw forest products shall be extended equitably to all users of raw forest products in this state so as to establish and maintain parity within that segment of the economy.

History.
Code 1981, § 48-1-10, enacted by Ga. L. 2010, p. 203, § 2/SB 409.
Editor's notes.
This Code section formerly pertained to the tax exemption of articles, equipment, and materials at the XXVI Summer Olympiad and the 1996 Atlanta Paralympic games. This Code section was based on Code 1981, § 48-1-10, enacted by Ga. L. 1995, p. 465, § 1 and was repealed by Ga. L. 1995, p. 465, § 1, effective December 31, 1996.

Ga. L. 2010, p. 203, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Georgia Forest Product Fairness Act.'"

CHAPTER 2

STATE ADMINISTRATIVE ORGANIZATION, ADMINISTRATION, AND ENFORCEMENT

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State Administrative Organization

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48-2-82. Seizure and disposition of contraband articles; exceptions to forfeiture.
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48-2-100. Exemptions for out-of-state businesses and employees conducting operations related to declared state of emergency; post-emergency application.

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Refunds for Eligible Recipients

48-2-110 through 48-2-115. [Repealed].

Administrative rules and regulations. Organization, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Administrative Unit, Rule 560-1-1-.02 et seq.

Substantive Regulations, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Fiscal Operations Division, Rule 560-3-2-.01 et seq.

Substantive Regulations, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Income Tax Division, Rule 560-7-3-.02 et seq.

Returns and Collections, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Income Tax Division, Rule 560-7-8-.01 et seq.

Substantive Regulations, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Local Government Services Division, Rule 560-11-2-.01 et seq.

Taxation of Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Local Government Services Division, Rule 560-11-5-.01 et seq.

Conservation Use Property, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Local Government Services Division, Rule 560-11-6-.01 et seq.

Appraisal Procedures Manual, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Local Government Services Division, Rule 560-11-10-.01 et seq.

Forms applicable to sales and use taxes, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Sales and Use Tax Division, Rule 560-12-3-.01 et seq.

RESEARCH REFERENCES

C.J.S.

81A C.J.S., States, §§ 164, 165, 260, 261.

ALR.

Power to allow discount or rebate for prompt payment of taxes, 51 A.L.R. 286; 102 A.L.R. 433.

Use of initial instead of first or middle name in publication of notice in tax proceeding, 53 A.L.R. 903.

Wilfulness or intent as an element of offenses denounced by Federal Income Tax Law, 90 A.L.R. 1280.

Uncollected taxes for previous years as deductible in determining amount to be appropriated or amount of taxes to be assessed for current year, 98 A.L.R. 500.

Right of one who pays taxes for which another is bound, to subrogation to the right of the taxing power, 106 A.L.R. 1212.

Enforceability, against undivided tract, of tax or special assessment levied against part of it at one rate and part at another, 112 A.L.R. 73.

Injunction, rather than quo warranto, as available to restrain enforcement of tax against real property upon ground involving attack upon legal existence of municipality, or upon inclusion of property within its boundaries, 129 A.L.R. 255.

Mandamus as taxpayer's remedy in respect of valuation of property for taxation, 131 A.L.R. 360.

Constitutionality of statute which provides for summary entry of judgment upon certificate or finding by taxing body or officer, 149 A.L.R. 312.

Liability of mortgagor or his grantee to mortgagee for loss or depreciation in value of mortgage security as result of failure to pay taxes, 154 A.L.R. 614.

Right of property taxpayer to recover back taxes voluntarily but mistakenly paid a second or successive time, 84 A.L.R.2d 1133.

ARTICLE 1

STATE ADMINISTRATIVE ORGANIZATION

48-2-1. Department of Revenue.

The Department of Revenue is created and shall be under the

direction of the state revenue commissioner. Except as otherwise expressly provided for by law, the department shall administer and enforce the revenue laws of this state and such other laws as may be specifically assigned by law to the department or to the commissioner. The official and legal office of the department and of the commissioner shall be in Fulton County.

History.
Ga. L. 1923, Ex. Sess., p. 13, §§ 1, 7; Ga. L. 1931, p. 7, §§ 78, 83; Ga. L. 1931, Ex. Sess., p. 24, § 42; Code 1933, §§ 92-4501, 92-4503; Ga. L. 1937-38, Ex. Sess., p. 77, § 2; Ga. L. 1943, p. 204, § 1; Ga. L. 1951, p. 614, § 1; Ga. L. 1960, p. 1185, § 1; Ga. L. 1962, p. 123, § 1; Ga. L. 1968, p. 118, § 1; Code 1933, § 91A-201, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 4.

JUDICIAL DECISIONS

Immunity from federal suit. — Georgia Department of Revenue is a state entity, entitled to Eleventh Amendment immunity from suit in federal court. Miles v. Georgia Dep't of Revenue, 797 F. Supp. 987, 1992 U.S. Dist. LEXIS 12343 (S.D. Ga. 1992).

RESEARCH REFERENCES

Am. Jur. 2d.
71 Am. Jur. 2d, State and Local Taxation, §§ 95, 98.

48-2-2. Office of state revenue commissioner.

(a) The office of state revenue commissioner is created.

(b) The commissioner shall be appointed by the Governor with the consent of the Senate and shall serve at the pleasure of the Governor.

(c) Beginning July 1, 1999, the commissioner shall receive an annual salary to be set by the Governor, payable monthly or semimonthly, which shall be his or her total compensation for services as commissioner. The commissioner shall not be entitled to receive a contingent expense allowance, except that the commissioner shall be reimbursed for all actual and necessary expenses incurred by him or her in carrying out his or her official duties.

(d) The commissioner shall be required to take and subscribe before the Governor an oath to discharge faithfully and impartially the duties of such office, which oath shall be in addition to the oath required of all civil officers.

(e) The commissioner shall be personally liable to the state for any losses occasioned to it by his or her own intentional acts of misconduct. To indemnify the state for any such losses, the commissioner, upon beginning his or her duties, shall execute and file with the Governor an

official surety bond approved as to form and sufficiency by the Attorney General in the amount of $100,000.00. The premium on the commissioner's bond shall be paid as an expense of the department.

History.
Ga. L. 1923, Ex. Sess., p. 16, §§ 1, 8, 45; Ga. L. 1931, p. 7, §§ 78, 83, 85; Code 1933, § 92-4501; Ga. L. 1937-38, Ex. Sess., p. 77, § 2; Ga. L. 1943, p. 204, § 1; Ga. L. 1951, p. 614, § 1; Ga. L. 1960, p. 1185, § 1; Ga. L. 1962, p. 123, § 1; Ga. L. 1968, p. 118, § 1; Code 1933, § 91A-202, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1999, p. 910, § 5; Ga. L. 1999, p. 1213, § 8.

Cross references.
Powers and duties of commissioner with regard to regulation of alcoholic beverages generally, § 3-2-1 et seq.
Official bonds generally, § 45-4-1 et seq.
Amount of salary for commissioner, § 45-7-4.

RESEARCH REFERENCES

C.J.S.
67 C.J.S., Officers and Public Employees, §§ 8, 9, 21, 22, 46 et seq. 81A C.J.S., States, §§ 164 et seq., 260, 261.

48-2-3. [Reserved] Eligibility for office of commissioner.

History.
Ga. L. 1983, p. 526, § 1, effective March 15, 1983, was based on Ga. L. 1937-38, Ex. Sess., p. 77, § 3a; Ga. L. 1949, p. 22, §§ 1, 2; Ga. L. 1959, p. 4, § 2; Ga. L. 1978, p. 309, § 2; Ga. L. 1981, p. 1857, § 3; repealed by Ga. L. 1983, p. 526, § 1, effective March 15, 1983.

Editor's notes.
Ga. L. 1983, p. 526, § 1 repealed and reserved this Code section, effective March 15, 1983.

48-2-4. Eligibility for elective office.

(a) No person serving as commissioner shall be eligible during his term of service and for a period of 12 months after the expiration or termination of his term of service to be a candidate in any primary, special, or general election for any state or federal elective office or to hold any such office.

(b) Subsection (a) of this Code section shall not be construed to prevent any commissioner or former commissioner from being appointed to any elective office, to disqualify him from being a candidate in any election to succeed himself in any such office to which he has been appointed, or to disqualify him from holding any such office in the event he is elected to and otherwise qualifies for the office.

History.
Ga. L. 1949, p. 22, §§ 1, 2; Ga. L. 1955, p. 656, §§ 1, 2; Code 1933, § 91A-204, enacted by Ga. L. 1978, p. 309, § 2.

RESEARCH REFERENCES

C.J.S.
29 C.J.S., Elections, § 33 et seq. 67 C.J.S., Officers and Public Employees, § 43.

48-2-5. Office of deputy state revenue commissioner.

(a) There is created the office of deputy state revenue commissioner, who shall exercise the authority of the commissioner in matters specified by law and in any other such matters as the commissioner may delegate to him or her in writing. The actions of the deputy commissioner, within the scope of his or her authority, shall have the same force and effect as the actions of the commissioner.

(b) The deputy commissioner shall be appointed by the commissioner. He or she shall hold office at the pleasure of the commissioner and shall not be subject to the state system of personnel administration provided by Chapter 20 of Title 45. The deputy commissioner shall take the oath of office of the commissioner as provided in subsection (d) of Code Section 48-2-2.

(c) The deputy commissioner shall receive a salary as determined by the commissioner, subject to the approval of the Office of Planning and Budget and paid from funds appropriated by the department. The deputy commissioner's salary shall in no event exceed the salary of the commissioner.

(d) The deputy commissioner shall execute and file an official surety bond approved as to form and sufficiency by the Attorney General in the same amount as required for the commissioner by subsection (e) of Code Section 48-2-2. The premium on the bond shall be paid as an expense of the department.

(e) The deputy commissioner shall have the authority of the commissioner to:

(1) Issue licenses;

(2) Make proposed and final assessments;

(3) Deny protests and claims for refund;

(4) Issue summons of garnishment;

(5) Enter into agreements extending statutory periods of limitation;

(6) Issue, amend, and cancel tax executions; and

(7) Execute all documents and papers necessary for the performance of his or her or the commissioner's duties or for the exercise of his or her authority or the authority of the commissioner which has been delegated to him or her in writing.

History.

Ga. L. 1951, p. 614, § 2; Ga. L. 1963, p. 133, § 1; Ga. L. 1970, p. 108, § 1; Code 1933, § 91A-205, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 5; Ga. L. 1983, p. 526, § 2; Ga. L. 2009, p. 745,

§ 1/SB 97; Ga. L. 2012, p. 446, § 2-88/HB 642.

Cross references.

Official bonds generally, § 45-4-1 et seq.

Editor's notes.

Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

JUDICIAL DECISIONS

Deputy director not authorized to execute instrument closing question of tax liability. — Plea in bar based upon an instrument signed by the petitioner and by one described as the deputy director, Department of Revenue, Income Tax Unit, whereby the revenue commissioner and the petitioner were obligated not to reopen the question of liability for taxes sought to be recovered, the instrument not being executed by anyone authorized by law to execute it on behalf of the state is binding upon neither, and the plea based thereon was properly dismissed on demurrer (now motion to dismiss). Redwine v. Schenley Indus., Inc., 210 Ga. 769, 83 S.E.2d 16, 1954 Ga. LEXIS 452 (1954).

RESEARCH REFERENCES

C.J.S.

81A C.J.S., States, § 174.

ALR.

Power to remit, release, or compromise tax claim, 28 A.L.R.2d 1425.

48-2-6. Departmental organization; employees; compensation; collection of delinquent taxes by contractors; mandatory fingerprinting.

(a) The commissioner shall establish by executive order such units within the department as he or she deems proper for its administration and shall designate persons to be directors and assistant directors of such units to exercise such authority as he or she may delegate to them in writing.

(b) The commissioner shall have the authority to employ as many persons as he or she deems necessary for the administration of the department and for the discharge of the duties of his or her office. He or she shall issue all necessary directions, instructions, orders, and rules applicable to such persons. He or she shall have authority, as he or she deems proper, to employ, assign, compensate, and discharge employees of the department within the limitations of the department's appropriation, the requirements of the state system of personnel administration, including the rules and regulations of the State Personnel Board, and the restrictions set forth by law.

(c) All employees of the department shall be compensated upon a fixed salary basis and no person shall be compensated for services to the department on a commission or contingent fee basis.

(d) Neither the commissioner nor any officer or employee of the department shall be given or receive any fee, compensation, loan, gift, or other thing of value in addition to the compensation and expense allowance provided by law for any service or pretended service either rendered or to be rendered as commissioner or as an officer or employee of the department.

(e) The commissioner is authorized to provide for the collection of delinquent taxes, including penalties and interest, by contractors. Any such contractors must be approved by the commissioner. No employee of the department shall be approved as a contractor under this subsection. Such contractors shall be compensated only on a commission or contingent fee basis.

(f) The following persons shall be subject to the mandatory fingerprinting and criminal record checks described in subsection (g) of this Code section:

(1) All prospective employees of the department, as a condition of employment;

(2) All personnel employed by the department after January 1, 2019, who have not had a criminal record check within the prior ten years, as a condition of continuing employment, with a requirement for subsequent criminal record checks not less frequently than once every ten years;

(3) Employees of prospective contractors of the department, and any subcontractors thereof, who may have access to confidential information as provided in Code Section 48-2-15 or 48-7-60 or who may have access to returns or return information as defined in 26 U.S.C. Section 6103 prior to any access to any of the foregoing information; and

(4) All personnel employed by contractors of the department, and any subcontractors thereof, after January 1, 2019, who have not had a criminal record check within the prior ten years, with a requirement for subsequent criminal record checks not less frequently than once every ten years.

(g)(1) The department's Office of Special Investigations shall have the authority and responsibility to order criminal record checks pursuant to this Code section through the Georgia Crime Information Center and the Federal Bureau of Investigation and shall have the authority to receive the results of such criminal record checks.

(2) Fingerprints shall be in such form and of such quality as shall

be acceptable for submission to the Georgia Crime Information Center and the Federal Bureau of Investigation. It shall be the duty of each law enforcement agency in this state to fingerprint those persons required to be fingerprinted by this Code section. At the discretion of the department, such fingerprinting may be performed by the department's Office of Special Investigations.

(3) Upon receipt thereof, the Georgia Crime Information Center shall promptly transmit one set of fingerprints to the Federal Bureau of Investigation for a search of the bureau records, retain another set of fingerprints, and conduct a search of its own records and records to which it has access. The Georgia Crime Information Center shall notify the department in writing of any findings or if there are no such findings. All conviction data received by the department shall not be public record, shall be privileged, and shall not be disclosed to any other person or agency except to any person or agency which otherwise has a legal right to inspect the employment file. All such information shall be maintained by the department in conformity with the requirements of the Georgia Crime Information Center and the Federal Bureau of Investigation. As used in this subsection, the term "conviction data" means a record of a finding or verdict of guilty, a plea of guilty, or a plea of nolo contendere with regard to any crime, regardless of whether an appeal of the conviction has been sought.

(4) At the discretion of the department, fees required for a criminal record check by the Georgia Crime Information Center or the Federal Bureau of Investigation shall be paid by the department or by the individual seeking employment or making application to the department. Contractors and subcontractors shall pay such fees for their employees and prospective employees.

(5) The department may use the information obtained from fingerprinting and a person's criminal record check only for the purpose of verifying the identification of such person and in the official determination of the fitness of such person's qualification for initial or continuing employment, or in the case of employees of contractors and subcontractors, for the purpose of allowing or denying access to legally protected information.

History.

Ga. L. 1937-38, Ex. Sess., p. 77, § 11; Ga. L. 1951, p. 360, § 22; Ga. L. 1960, p. 944, § 1; Ga. L. 1967, p. 788, § 7; Code 1933, § 91A-206, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1995, p. 781, § 3; Ga. L. 2009, p. 745, § 1/SB 97; Ga. L. 2012, p. 446, § 2-89/HB 642; Ga. L. 2018, p. 233, § 1/HB 816.

Editor's notes.

Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act

became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

Law reviews.

For article, "Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government," see 28 Georgia St. U.L. Rev. 217 (2011).

JUDICIAL DECISIONS

Directors of departmental units not state officials for purposes of § 45-15-11. — Although under the authority delegated to the commissioner, the commissioner may, for any reason satisfactory to the commissioner, designate a person as director of some tax unit, such designation cannot create an office or official, and the person so designated is not a state official or public official within the terms and provisions of Ga. L. 1943, p. 284, § 7 (see now O.C.G.A. § 45-15-11). Jones v. Mills, 216 Ga. 616, 118 S.E.2d 484, 1961 Ga. LEXIS 295 (1961).

Authority of commissioner as to employees within merit system. — Inclusion of Department of Revenue in the state merit system changed the authority of the commissioner to employ, discharge, and fix salaries of departmental employees, but the commissioner retains authority to pay all salaries and expenses of the office and to call for necessary appropriations to do so. Undercofler v. Scott, 220 Ga. 406, 139 S.E.2d 299, 1964 Ga. LEXIS 570 (1964).

Exemption interpreted as to foreign public authorities. — Legislature intended to exempt only the public authorities of Georgia and the U.S. Government and did not intend to include public authorities of other states when it amended the exemption statute, O.C.G.A. § 48-6-2(a)(3), to include public corporations and authorities. Hicks v. Fla. State Bd. of Admin., 265 Ga. App. 545, 594 S.E.2d 745, 2004 Ga. App. LEXIS 179 (2004).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, Ch. 92-8 are included in the annotations for this Code section.

Construed with § 48-6-5. — General Assembly did not contemplate the creation of an employer-employee relationship between the department and clerks of the superior courts in Ga. L. 1967, p. 788, § 4 (see now O.C.G.A. § 48-6-5). 1969 Op. Att'y Gen. No. 69-168 (decided under former Code 1933, Ch. 92-8).

Clerks of superior courts and staffs do not come under Employees' Retirement System of Georgia by virtue of their tax collection duties set forth in former Code 1933, Ch. 92-8 (see now O.C.G.A. Art. 1, Ch. 2, T. 48). 1969 Op. Att'y Gen. No. 69-168 (decided under former Code 1933, Ch. 92-8).

RESEARCH REFERENCES

Am. Jur. 2d.

71 Am. Jur. 2d, State and Local Taxation, §§ 195, 98.

48-2-6.1. Disclosure of return information; purpose; confidentiality.

(a) As used in this Code section, the term "return information" means any information secured by the commissioner incident to the administration of any tax.

(b) Notwithstanding any other provision of law, the commissioner shall be permitted to disclose any return information to such other persons as may be authorized by law to collect delinquent tax liabilities on behalf of the state to the extent such information is reasonably needed to effect such collections. Such information shall retain its privileged and confidential nature in the hands of such other persons to the same extent and under the same conditions as that information is privileged and confidential in the hands of the commissioner. Any such other person shall be subject to the same civil and criminal penalties as those provided for divulgence of information by employees of the department.

History.
Code 1981, § 48-2-6.1, enacted by Ga. L. 1996, p. 780, § 1.

48-2-7. Duties and powers of commissioner.

(a) The commissioner shall:

(1) Direct the affairs of the department in the administration and enforcement of all laws enacted for the purpose of raising revenues for this state by taxation or otherwise;

(2) Supervise all tax administration throughout the state, subject to the sovereign rights of the counties to regulate their own affairs;

(3) Assist local tax officials in every feasible manner when so requested by the local tax officials;

(4) Make studies of taxation in this state and elsewhere with a view to improvement of administration and legislation affecting the people of this state. In this connection, he may assemble and publish in print or electronically such statistics and reports as he may deem advisable within the limitations of his appropriation; and

(5) Submit to the Governor and to each regular session of the General Assembly an annual report of the conduct of his or her office. The commissioner shall not be required to distribute copies of the annual report to the members of the General Assembly but shall notify the members of the availability of the annual report in the manner which he or she deems to be most effective and efficient. As the chief revenue official of the state, he or she shall advise the

Governor and the General Assembly on all matters relating to revenue.

(b) The commissioner shall annually prepare and publish in print or electronically statistics reasonably available with respect to the operations of Chapter 7 of this title, including classification of taxpayers and of income; the amounts allowed as deductions, exemptions, and credits; and any other facts deemed pertinent and valuable.

(c) The provisions of this Code section enumerating the duties of the commissioner shall not be construed to exclude other duties assigned to the commissioner by law.

(d) No provision of this chapter shall be construed to give the commissioner any power to:

(1) Make assessments for ad valorem taxation or to collect such assessments from any taxpayer, except as specifically provided by law; or

(2) Examine the books, records, inventories, or business of any taxpayer for any purpose other than determining liability for taxes collected directly by the commissioner, except as otherwise specifically provided by law.

History.

Ga. L. 1937-38, Ex. Sess., p. 77, §§ 5, 46; Ga. L. 1967, p. 764, § 1; Ga. L. 1970, p. 298, § 1; Ga. L. 1972, p. 1125, § 7; Code 1933, § 91A-207, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, §§ 6, 6A; Ga. L. 2005, p. 1036, § 37/SB 49; Ga. L. 2010, p. 838, § 10/SB 388.

Cross references.

Powers and duties of state revenue commissioner relative to administration and enforcement of Georgia Alcoholic Beverage Code, § 3-1-1 et seq.

Powers and duties of commissioner with regard to certificates of title, security interests, and liens relating to motor vehicles, § 40-3-3.

Powers and duties of commissioner with regard to unclaimed or abandoned property, § 44-12-190 et seq.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under Ga. L. 1937-38, Ex. Sess., p. 156 are included in the annotations for this Code section.

Audits conducted solely to uncover criminal activity prohibited. — When the plaintiffs could show that Department of Revenue employees, acting for the commissioner, were engaged in a series of audits conducted solely to uncover criminal activity unrelated to tax improprieties on the part of the person audited, such conduct would be illegal and would constitute grounds for the issuance of an injunction against such employees. Willis v. Department of Revenue, 255 Ga. 649, 340 S.E.2d 591, 1986 Ga. LEXIS 581 (1986).

When appeals from assessment within jurisdiction of Court of Appeals. — Appeals from a local governing authority's assessment of ad valorem taxation which do not raise the constitutionality of a statute or ordinance nor involve equitable remedies shall be in the jurisdiction of the Court of Appeals and not transferred to the Supreme Court.

DeKalb County Bd. of Tax Assessors v. W.C. Harris & Co., 248 Ga. 277, 282 S.E.2d 880, 1981 Ga. LEXIS 991 (1981).

Good faith of taxing officials and the validity of their actions are presumed, and when assailed the burden of proof is upon the complaining party. Northwestern Mut. Life Ins. Co. v. Suttles, 201 Ga. 84, 38 S.E.2d 786, 1946 Ga. LEXIS 355 (1946) (decided under Ga. L. 1937-38, Ex. Sess., p. 156).

What constitutes discrimination in administration of tax laws. — Whether there was administrative discrimination would depend not on what the taxing authorities thought of a statute which was not then effective, but on whether they intentionally and systematically discriminated against the plaintiff and in favor of others in the actual administration of the existing tax laws. Northwestern Mut. Life Ins. Co. v. Suttles, 201 Ga. 84, 38 S.E.2d 786, 1946 Ga. LEXIS 355 (1946) (decided under Ga. L. 1937-38, Ex. Sess., p. 156).

Proof of discrimination in administration of tax laws. — To establish unlawful discrimination, it is not enough to show that the tax officials have merely made a mistake, or have not been diligent in seeking out those subject to tax, but there must be a clear and affirmative showing that the difference is an intentional discrimination and one adopted as a practice. Northwestern Mut. Life Ins. Co. v. Suttles, 201 Ga. 84, 38 S.E.2d 786, 1946 Ga. LEXIS 355 (1946) (decided under Ga. L. 1937-38, Ex. Sess., p. 156).

Immunity from federal suit. — Georgia Department of Revenue is a state entity entitled to Eleventh Amendment immunity from suit in federal court. Miles v. Georgia Dep't of Revenue, 797 F. Supp. 987, 1992 U.S. Dist. LEXIS 12343 (S.D. Ga. 1992).

RESEARCH REFERENCES

Am. Jur. 2d.

71 Am. Jur. 2d, State and Local Taxation, § 98.

C.J.S.

81A C.J.S., States, §§ 260, 261. 84 C.J.S., Taxation, § 15 et seq.

48-2-8. Judicial and investigative powers of commissioner.

(a) In the performance of his duties and in relation to any investigation or inquiry which the commissioner is authorized to conduct, the commissioner or any agent designated by him in writing may:

(1) Administer oaths and take affidavits;

(2) Conduct hearings;

(3) Examine witnesses under oath; and

(4) Subpoena the attendance of witnesses and require the production of books, papers, records, and documents and, subject to the rights of the taxpayer as to rights of privacy guaranteed to the taxpayer by the Constitution and laws of this state, may examine such items and the books, records, inventories, or business of any taxpayer or of any fiduciary, bailee, or other person having knowledge of the tax liability of any taxpayer or knowledge pertinent to the investigation or inquiry. The subpoena may be served by the commissioner or the commissioner's authorized representative to such person at the person's last known address by registered or certified mail or statutory overnight delivery, return receipt requested. If such

person refuses to accept service of a subpoena by registered or certified mail or statutory overnight delivery, the subpoena shall be served by the commissioner or the commissioner's authorized representative under any other method of lawful service, and the person shall be personally liable to the commissioner for a sum equal to the actual costs incurred to serve the subpoena. This liability shall be paid upon notice and demand by the commissioner or the commissioner's delegate and shall be assessed and collected in the same manner as other taxes administered by the commissioner.

(b) The powers conferred pursuant to subsection (a) of this Code section shall be exercised with due regard to the rights of the citizen and, when invoked, subject to the approval of the superior courts of this state.

(c) The commissioner, pursuant to his duties in relation to the collection of state ad valorem taxes, shall investigate settlements by tax collectors or tax commissioners and take appropriate action to collect any revenue due the state which has not been collected or, having been collected, has not been paid to the commissioner. No official or person may employ or commission any person to collect any of such taxes on a commission basis.

History.

Ga. L. 1931, p. 7, §§ 79, 80, 83-85; Ga. L. 1931, Ex. Sess., p. 24, §§ 45, 46; Code 1933, §§ 92-3213, 92-3214, 92-4511; Ga. L. 1937-38, Ex. Sess., p. 77, § 6; Ga. L. 1937-38, Ex. Sess., p. 156, § 9; Ga. L. 1951, p. 360, § 21; Ga. L. 1976, p. 341, § 1; Code 1933, § 91A-211, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 7; Ga. L. 2009, p. 816, § 2/HB 485.

Editor's notes.

Ga. L. 2009, p. 816, § 1/HB 485, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Improved Taxpayer Customer Service Act of 2009.'"

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under Ga. L. 1951, p. 360, § 17 are included in the annotations for this Code section.

Limits on right to examine records. — Right to examine records was not limited by the three-year period set forth in former Code 1933, § 92-3303 (see now O.C.G.A. § 48-7-82) for deficiency assessments, which period applied only to the assessment and collection of taxes. Redwine v. Arvaniti, 83 Ga. App. 203, 63 S.E.2d 222, 1951 Ga. App. LEXIS 832 (1951).

Declaratory judgment as to taxability under Ga. L. 1951, p. 360, § 1 et seq. (see now O.C.G.A. Ch. 8, T. 48) will not relieve a taxpayer from audit of the taxpayer's books under Ga. L. 1951, p. 360, §§ 17, 18, and 21 (see now O.C.G.A. §§ 48-2-8, 48-8-52, and 48-8-55). Undercofler v. Eastern Air Lines, 221 Ga. 824, 147 S.E.2d 436, 1966 Ga. LEXIS 713 (1966) (decided under Ga. L. 1951, p. 360, § 17).

OPINIONS OF THE ATTORNEY GENERAL

Duty to keep tax records. — Former Code 1933, §§ 91A-4525 and 91A-4526 (see now O.C.G.A. §§ 48-8-52 and 48-8-53) require that certain tax records

be kept for a period of three years and pertains only to sales tax information. 1969 Op. Att'y Gen. No. 69-288.

RESEARCH REFERENCES

C.J.S.
67 C.J.S., Oaths and Affirmations, §§ 5, 6. 81A C.J.S., States, §§ 260, 261.

48-2-9. Powers of commissioner in tax proceedings; assistance by Attorney General.

The commissioner is authorized and empowered, subject to the law provided in such cases, to act in the name and in behalf of the state to institute any action or judicial proceeding to collect delinquent state taxes, to cause property not listed to be assessed, to cause by mandamus the performance of any act required by law pursuant to the administration of any state revenue, or to collect any claim or obligation of any person, including any public official, which may be due the state. The commissioner is authorized to act as relator in any and all such actions or judicial proceedings. The Attorney General shall provide legal advice and assistance as may be necessary to enable the commissioner to perform the duties required by this Code section.

History.
Ga. L. 1937-38, Ex. Sess., p. 77, § 8; Ga. L. 1975, p. 722, § 1; Code 1933, § 91A-216, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2017, p. 774, § 48/HB 323.

JUDICIAL DECISIONS

Effect of judgment rendered against named commissioner after commissioner has left office. — Since cases arising in the administration of state revenue laws appear in the name of its successive agents, designated commissioners, as provided by this section, a verdict and judgment against a named commissioner in the commissioner's representative capacity, rendered after the commissioner is no longer in office, is not binding on the state. Williams v. Lawler Hosiery Mills, Inc., 212 Ga. 617, 94 S.E.2d 699, 1956 Ga. LEXIS 467 (1956).

When appeal was taken to superior court by taxpayer against commissioner, and judgment is rendered approximately nine months after that commissioner had been succeeded in office by another person, nothing having been done prior to the rendition of the judgment to substitute the name of the latter as agent of the state in lieu of the former, such judgment is a nullity, and no further proceedings can be had in the cause until parties have been made, when case must be tried de novo. Williams v. Lawler Hosiery Mills, Inc., 212 Ga. 617, 94 S.E.2d 699, 1956 Ga. LEXIS 467 (1956).

Immunity from federal suit. — Georgia Department of Revenue is a state entity, entitled to Eleventh Amendment immunity from suit in federal court. Miles v. Georgia Dep't of Revenue, 797 F. Supp. 987, 1992 U.S. Dist. LEXIS 12343 (S.D. Ga. 1992).

Notice as to actions under Ch. 8 of this title. — An action to recover a sum alleged to be due as a tax imposed by former Code 1933, Ch. 92-34A (see now O.C.G.A. Ch. 8, T. 48) may be maintained under that chapter without giving notice thereof under Ga. L. 1937-38, Ex. Sess., p.

77, § 8 (see now O.C.G.A. § 48-2-9). Craig-Tourial Leather Co. v. Reynolds, 87 Ga. App. 360, 73 S.E.2d 749, 1952 Ga. App. LEXIS 687 (1952).

RESEARCH REFERENCES

C.J.S.

7A C.J.S., Attorney General, § 28 et seq. 55 C.J.S., Mandamus, § 231 et seq. 85 C.J.S., Taxation, § 960 et seq.

ALR.

Judgment in favor of defendant or respondent in an action or proceeding involving a matter of public right or interest as a bar to a subsequent action or proceeding by a different plaintiff or relator, 20 A.L.R. 1133; 64 A.L.R. 1262.

Construction and application of statutes denying remedy by injunction against assessment or collection of tax, 108 A.L.R. 184.

48-2-10. Collection of certain local taxes by commissioner.

The commissioner is authorized to negotiate and contract with the governing authority of any county or municipality for the purpose of arranging for the collection by the commissioner of any tax levied by the county or municipality when the tax is also levied and collected by the commissioner for the state. The agreement shall include a fee to be paid by the county or municipality to the commissioner in an amount which covers fully the cost of collection of the local portion of the tax by the commissioner. The commissioner shall transmit to the county or municipality all taxes so collected on behalf of the county or municipality on or before the date specified in the agreement, less the collection fee agreed upon.

History.

Ga. L. 1969, p. 743, § 1; Code 1933, § 91A-259, enacted by Ga. L. 1978, p. 309, § 2.

RESEARCH REFERENCES

Am. Jur. 2d.

72 Am. Jur. 2d, State and Local Taxation, § 699.

C.J.S.

85 C.J.S., Taxation, § 1109 et seq.

48-2-11. Delegation of certain duties.

(a) When license fees are incidentally collected in connection with regulatory activities of some agency or department of the state government other than the Department of Revenue and such fees could be collected more economically by the regulatory agency or department than by the Department of Revenue, the commissioner may delegate by executive order approved by the Governor the collection of the license fees to the state official responsible for administering the regulatory activities.

(b) No delegation pursuant to subsection (a) of this Code section shall extend beyond the term of office of the commissioner or of the officer to whom the collection of fees is delegated by the commissioner.

(c) Except as otherwise expressly provided by law, no other department of the state government may employ any person or persons to collect any fees, licenses, or taxes or to inspect for the purpose of collecting such fees, licenses, or taxes, except when the authority to collect the licenses, fees, or taxes has been expressly delegated to the other department by the commissioner under the terms of this Code section.

(d) In any case in which the collection of any tax or license fee is delegated as provided in this Code section, the commissioner is charged with the duty of retaining supervisory authority over such activity. In any case in which the commissioner finds that a delegation should be revoked, modified, or transferred to another department or other departments, the commissioner, by executive order approved by the Governor, may make the revocation, modification, or transfer.

(e) This chapter shall not in any way affect the collection and administration activities of those regulatory, professional, or vocational bodies or boards operated under the division director of the professional licensing boards division appointed by the Secretary of State under Code Section 43-1-2 as provided by law or of those other regulatory bodies where a major portion of the license fees is collected by mail.

History.
Ga. L. 1937-38, Ex. Sess., p. 77, § 10; Code 1933, § 91A-209, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2000, p. 1706, § 25.

RESEARCH REFERENCES

Am. Jur. 2d.
71 Am. Jur. 2d, State and Local Taxation, §§ 95, 98.
C.J.S.
67 C.J.S., Officers and Public Employees, § 330. 81A C.J.S., States, §§ 174, 235 et seq.
ALR.
Authority of county to employ tax ferret, 32 A.L.R. 88.

48-2-12. Rules and regulations; forms.

(a) The commissioner shall have the power to make and publish in print or electronically reasonable rules and regulations not inconsistent with this title or other laws or with the Constitution of this state or of the United States for the enforcement of this title and the collection of revenues under this title.

(b) The commissioner shall prescribe the forms he deems necessary for the administration and enforcement of this title or any law which it is his duty to administer.

(c) The authority granted to the commissioner pursuant to this Code section shall be exercised at all times in conformity with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(d) This Code section shall apply to all rules and regulations promulgated by the commissioner pursuant to this title or pursuant to any revenue law of this state which is not a part of this title.

History.

Ga. L. 1937-38, Ex. Sess., p. 77, § 7; Code 1933, § 91A-215, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2010, p. 838, § 10/SB 388; Ga. L. 2017, p. 774, § 48/HB 323.

Administrative rules and regulations.

Meaning of Terms Used, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Income Tax Division, Elections and Divisions, Rule 560-7-6-.02.

Law reviews.

For annual survey of administrative law, see 57 Mercer L. Rev. 1 (2005).

For annual survey on administrative law, see 70 Mercer L. Rev. 1 (2018).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under Ga. L. 1937-38, Ex. Sess., p. 77, § 25 are included in the annotations for this Code section.

Construction and effect of rules and regulations. — Ga. L. 1972, p. 1104, § 1 et seq. (see now O.C.G.A. Pt. 1, Art. 5, Ch. 5, T. 48) does not establish detailed procedures for the employment and termination of the appraisal staff. The commissioner may make necessary rules and regulations not inconsistent with that Act, and such rules and regulations shall have the full force and effect of law. Spell v. Blalock, 243 Ga. 459, 254 S.E.2d 842, 1979 Ga. LEXIS 936 (1979).

Commissioner's determination entitled to deference. — Florida public authority's action under O.C.G.A. § 48-6-7(b), protesting the denial by the Revenue Commissioner of the State of Georgia of its request for a refund of real estate transfer tax, paid pursuant to O.C.G.A. § 48-6-1, was denied since it was found that the exemption provided in O.C.G.A. § 48-6-2(a)(3) did not apply to the out-of-state public authority; the Commissioner's determination that the exemption did not apply to such an entity was entitled to deference pursuant to the principles of O.C.G.A. § 48-2-12. Hicks v. Fla. State Bd. of Admin., 265 Ga. App. 545, 594 S.E.2d 745, 2004 Ga. App. LEXIS 179 (2004).

Trial court erred in declaring invalid a regulation used to interpret a research tax credit codified in a state statute on the ground that the regulation exceeded the scope of the authority upon which it was predicated; the state revenue commissioner had explicit authority to promulgate regulations for the enforcement of the Public Revenue Code and the collection of revenues under it, the regulation itself was authorized by statute, and the regulation reasonably required that a recipient have a positive Georgia taxable net income for each of the preceding three years in order to receive the tax credit. Ga. Dep't of Revenue v. Ga. Chemistry Council, Inc., 270 Ga. App. 615, 607 S.E.2d 207, 2004 Ga. App. LEXIS 1543 (2004), cert. denied, No. S05C0574, 2005 Ga. LEXIS 272 (Ga. Mar. 28, 2005).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under Ga. L. 1937-38, Ex. Sess., p. 77, § 25 are included in the annotations for this Code section.

Reasonability of stop payment rules and regulations. — Rules and regulations providing for stop payments to be issued after 180 days and the return of funds to the general treasury are deemed reasonable in the absence of statutory authority to the contrary. 1973 Op. Att'y Gen. No. 73-103 (decided under Ga. L. 1937-38, Ex. Sess., p. 77, § 25).

RESEARCH REFERENCES

Am. Jur. 2d.
71 Am. Jur. 2d, State and Local Taxation, § 98.
C.J.S.
67 C.J.S., Officers and Public Employees, § 326 et seq. 81A C.J.S., States, §§ 260, 261.

48-2-13. Oaths and certifications.

The commissioner and every officer or employee of the department designated by the commissioner for that purpose may administer such oaths or affirmations to any person and may certify such papers, reports, or returns of any person, as may be required or authorized under the revenue and license laws or regulations of this state.

History.
Ga. L. 1931, p. 7, § 80; Ga. L. 1931, Ex. Sess., p. 24, § 53; Code 1933, § 92-3004; Code 1933, § 91A-208, enacted by Ga. L. 1978, p. 309, § 2.

RESEARCH REFERENCES

C.J.S.
67 C.J.S., Oaths and Affirmations, § 3.

48-2-14. Official seal.

The commissioner shall have an official seal of such device as he or she shall select, subject to the approval of the Governor.

History.
Ga. L. 1931, p. 7, § 81; Code 1933, § 92-4504; Code 1933, § 91A-210, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2011, p. 99, § 91/HB 24.
Editor's notes.
Ga. L. 2011, p. 99, § 101/HB 24, not codified by the General Assembly, provides that the amendment of this Code section by that Act shall apply to any motion made or hearing or trial commenced on or after January 1, 2013.
Law reviews.
For article, "Evidence," see 27 Ga. St. U. L. Rev. 1 (2011).
For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 1 (2011).

RESEARCH REFERENCES

C.J.S.
31A C.J.S., Evidence, § 61. 32A C.J.S., Evidence, § 1107 et seq.

48-2-15. Confidential and privileged information.

(a) Except as otherwise provided in this Code section, information secured by the commissioner incident to the administration of any tax shall be confidential and privileged. Neither the commissioner nor any officer or employee of the department shall divulge or disclose any such

confidential information obtained from the department's records or from an examination of the business of any taxpayer to any person other than the commissioner, an officer or employee of the department, an officer of the state or local government entitled in his or her official capacity to have access to such information, or the taxpayer.

(b) This Code section shall not:

(1) Be construed to prevent the use of confidential information as evidence before any state or federal court in the event of litigation involving tax liability of any taxpayer;

(2) Be deemed to prevent the print or electronic publication of statistics so arranged as not to reveal information respecting an individual taxpayer;

(3) Apply in any way whatsoever to any official finding of the commissioner with respect to any assessment or any information properly entered upon an assessment roll or other public record;

(4) Affect any information which in the regular course of business is by law made the subject matter of a public document in any federal or state office or in any local office in this state;

(5) Apply to information, records, and reports required and obtained under Article 1 of Chapter 9 of this title, which requires distributors of motor fuels to make reports of the amounts of motor fuels sold and used in each county by the distributor, or under Article 2 of Chapter 9 of this title, relating to road tax on motor carriers;

(6) Be construed to prevent the disclosure of information, so arranged as not to reveal information respecting an individual taxpayer, requested by the House Committee on Ways and Means or the Senate Finance Committee regarding the department's administration of any tax; or

(7) Apply to information, records, and reports required and obtained under Title 38 or Title 46 as each pertains to collection and remittance of prepaid and postpaid 9-1-1 fees or charges. The application of the exemption provided for under this paragraph to Code Section 38-3-190 shall apply exclusively to the Georgia Emergency Communications Authority and Department of Revenue in the handling of such information.

(c) The provisions of this Code section shall not apply with respect to Chapter 7 of this title, relating to income taxation.

(d) Reserved.

(d.1)(1) Notwithstanding this Code section, the commissioner, upon request by resolution of the governing authority of any county,

consolidated government, or municipality of this state, shall furnish to the designated finance officer or taxing official of the county, consolidated government, or municipality information included on the vendor's sales tax certificate for all vendors that have filed a report for the designated period, to be used by such designated officer or official in the discharge of his or her official duties.

(2)(A) Such designated officer or official shall not be authorized to contact in any manner any taxpayer identified in such confidential information.

(B) Such designated officer or official to whom such confidential information is provided under this subsection may request the commissioner to validate the political subdivision to which a taxpayer with a business location within the political subdivision has remitted sales and use taxes for the designated period. Upon inquiry by such designated officer or official, the commissioner shall, within 30 days, respond to the inquiry and validate that the sales tax being collected from a taxpayer is being remitted to the proper political subdivision and take other appropriate action as provided by law.

(C) Any information furnished under this subsection to such designated officer or official shall retain its privileged and confidential nature to the same extent and under the same conditions as such information is privileged and confidential in the hands of the commissioner.

(3) Any such information furnished under this subsection shall constitute confidential tax information for purposes of paragraph (2) of Code Section 50-14-2 and paragraph (43) of subsection (a) of Code Section 50-18-72 and shall not be discussed or disclosed except as specifically authorized under this subsection.

(4) Such information may be discussed with or disclosed to the members of the governing authority of such county or municipality levying a tax pursuant to the provisions of Article 4 of Chapter 8 of this title, but only when the members of such governing authority are in executive session as defined in paragraph (2) of subsection (a) of Code Section 50-14-1. In the event of such discussion with or disclosure to the members of such governing authority, any such information so discussed or disclosed shall retain its privileged and confidential nature to the same extent and under the same conditions as such information is privileged and confidential in the hands of the commissioner, and any further disclosure by the members of such governing authority is prohibited. Prior to such discussion with or disclosure to the members of such governing authority, any member of the governing authority who has a conflict of interest shall be

required to recuse himself or herself from the executive session. For purposes of such recusal, a conflict of interest shall include, but not be limited to, engaging in similar business to those which are identified in the confidential information or having a financial or other personal interest, direct or indirect, in such matter which is incompatible with the impartial and proper discharge of that person's official duties, which would tend to impair the independence of that person's judgment or actions, or which would make such person privy to information that would provide a competitive business advantage.

(5) It shall be unlawful for any person to divulge confidential tax information in violation of this subsection. Any person who violates this paragraph shall, upon conviction thereof, be subject to the same penalties that would apply to an employee of the department convicted of divulging confidential tax information.

(6) The commissioner may make a nominal charge for any information so furnished, not to exceed the actual cost of furnishing the information; provided, however, that any such charge shall be in addition to the 1 percent administrative fee otherwise allowed to the commissioner for defraying the cost of collecting a local sales and use tax.

(7) Nothing contained in this subsection shall prevent or be construed to prevent:

(A) The use of the information as evidence in any state or federal court in the event of litigation involving any municipal or county tax liability of a taxpayer; or

(B) The release of the information pursuant to a subpoena or court order.

(e)(1) This Code section shall not be construed to prohibit persons or groups of persons other than employees of the department from having access to tax information when necessary to:

(A) Conduct research commissioned by the department or where necessary in connection with the processing, storage, transmission, and reproduction of such tax information; the programming, maintenance, repair, testing, and procurement of equipment; and the providing of other services for purposes of tax administration; or

(B)(i) Contract with an entity licensed to do business in this state for data analytics services that assist the department in the identification of taxpayers that are noncompliant with Chapter 8 of this title; provided, however, that:

(I) No such contract shall be for a period of more than three years; and

(II) Any services to be performed as provided in this subparagraph shall be by specific North American Industry Classification System (NAICS) sectors, as designated by the commissioner; and when such sectors have been so designated by the commissioner, such services shall encompass the entirety of taxpayers within such sectors.

(ii) Compensation for such data analytics services may be based on collections that may be attributable thereto.

(iii) Any contact with a taxpayer resulting from the data analytics services provided pursuant to this subparagraph, including correspondence, billings, assessments, and audits, shall only be made by the department.

(2)(A) Any access allowed by this subsection shall be pursuant to a written agreement with the department providing for the handling, permitted uses, and destruction of such tax information, requiring security clearance checks for such persons or groups of persons similar to those required of employees of the department, and including such other terms and conditions as the department may require to protect the confidentiality of the tax information to be disclosed.

(B) A contracting entity granted access, as provided in subparagraph (B) of paragraph (1) of this subsection, shall not utilize or retain such taxpayer information, whether anonymized or not, in any manner that is not specifically authorized in the written agreement with the department, which shall expressly prohibit any action not specifically set out in such agreement, including but not limited to the aggregation, study, transmission, retention, or dissemination of taxpayer information.

(C) Any person who divulges or makes known any tax information obtained under this subsection shall be subject to the same civil and criminal penalties as those provided for divulgence of information by employees of the department.

(f) This Code section shall not be construed to prohibit disclosure as required in subsection (h) of Code Section 48-2-35.

History.

Ga. L. 1937-38, Ex. Sess., p. 77, § 12; Ga. L. 1945, p. 160, § 1; Ga. L. 1969, p. 1137, § 1; Code 1933, § 91A-212, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, §§ 8, 9; Ga. L. 1981, p. 1857, § 4; Ga. L. 1991, p. 303, § 1; Ga. L. 2006, p. 200, § 2/HB 1310; Ga. L. 2010, p. 838, § 11/SB 388; Ga. L. 2011, p. 297, § 1/HB 346; Ga. L. 2016, p. 574, § 1/HB 960; Ga. L. 2018, p. 312, § 1/HB 811; Ga. L. 2018, p. 689, § 3-4/HB 751; Ga. L. 2018, p. 720, § 1/SB 371; Ga. L. 2019, p. 1056, § 48/SB 52.

Editor's notes.

Ga. L. 2018, p. 689, § 4-1(b)/HB 751, not codified by the General Assembly, provides that: "The provisions of this Act shall not in any manner diminish, extinguish, reduce, or affect any cause of action for audits, services, or the recovery

of funds from service providers which may have existed prior to January 1, 2019. Any such cause of action is expressly preserved."

Law reviews.

For comment, "Confidentiality and Dissemination of Personal Information: An Examination of State Laws Governing Data Protection," see 41 Emory L.J. 1185 (1992).

JUDICIAL DECISIONS

Purpose of exceptions to confidentiality of tax information. — It was clear from the exceptions to former Code 1933, § 92-3216 (see now O.C.G.A. § 48-7-60) and Ga. L. 1969, p. 1137, § 1 (see now O.C.G.A. § 48-2-15) that the confidentiality of tax returns is not absolute and that the social policy underlying the law providing for confidentiality of tax returns inures to the benefit of the state by encouraging the citizenry in voluntary reporting and assessment of income. Thus, the decision to produce the returns or appeal an order demanding the returns for use in a criminal prosecution lies with the Attorney General. Garrett v. State, 147 Ga. App. 666, 250 S.E.2d 1, 1978 Ga. App. LEXIS 2913 (1978), aff'd, 243 Ga. 322, 253 S.E.2d 741, 1979 Ga. LEXIS 898 (1979).

Use of tax information in litigation. — While a court will afford the utmost deference to a claim of privacy raised by the Attorney General with respect to income tax returns, the Attorney General cannot defeat the need for evidence in pending criminal proceedings based upon a generalized interest in confidentiality. In extraordinary cases, when the interest in criminal prosecution is as important as the release of privileged information to other governmental units for the purpose of collection of taxes, there exists a specific exception to the confidentiality of income tax returns. Garrett v. State, 147 Ga. App. 666, 250 S.E.2d 1, 1978 Ga. App. LEXIS 2913 (1978), aff'd, 243 Ga. 322, 253 S.E.2d 741, 1979 Ga. LEXIS 898 (1979).

OPINIONS OF THE ATTORNEY GENERAL

Legislative purpose. — Purpose of Ga. L. 1945, p. 160, § 1 (see now O.C.G.A. § 48-2-15) and former Code 1933, § 92-3216 (see now O.C.G.A. § 48-7-60) is to encourage taxpayers to fully disclose their income and to protect any confidential information with reference to their business which it is essential to divulge in an income tax return; it is also the intent of the General Assembly to relieve the department from furnishing information concerning a taxpayer's income tax return. 1960-61 Ga. Op. Att'y Gen. 538.

Former Code 1933, § 92-3216 (see now O.C.G.A. § 48-7-60) and Ga. L. 1945, p. 160, § 1 (see now O.C.G.A. § 48-2-15) must be construed together. 1954-56 Ga. Op. Att'y Gen. 767.

Permissible grounds for release of tax information. — Release of tax information for use is authorized only in cases involving the integrity of the tax return itself as the main issue, and not merely as a collateral issue. 1971 Op. Att'y Gen. No. 71-184.

Disclosure of information which is neither secret nor confidential. — This section would not prohibit disclosure of information as to whether a taxpayer filed a tax return for a particular year. 1957 Ga. Op. Att'y Gen. 317.

When Ga. L. 1945, p. 160, § 1 and Ga. L. 1959, p. 88, § 1 (see now O.C.G.A. §§ 48-2-15 and 50-18-70) are considered together, it was readily apparent, there being no prohibition by court order or by law against public inspection of public utilities tax information at the county level, that information incident to assessment of ad valorem taxes on public utilities furnished by the commissioner to

the counties was not covered by the secrecy provision of Ga. L. 1945, p. 160, § 1, and that release of information to the public by the commissioner would not violate Ga. L. 1945, p. 160, § 1. However, any information obtained by the commissioner which in the regular course of business is not furnished to the county in the process of assessing the tax would not be the subject matter of a public document in the county office and, therefore, would remain covered by the secrecy provision of Ga. L. 1945, p. 160, § 1. 1963-65 Ga. Op. Att'y Gen. 277.

An application for a liquor permit is a public record and is not confidential or secret. 1963-65 Ga. Op. Att'y Gen. 171.

Release of tax information to public officers and agencies. — Records of the income tax unit of the department constitute confidential information and should not be divulged to local taxing authorities of this state. 1952-53 Ga. Op. Att'y Gen. 471.

In order to assist county tax assessors in the discharge of their duties as prescribed by law, the commissioner has authority to furnish tax information to county boards of tax assessors upon official request. 1954-56 Ga. Op. Att'y Gen. 767.

This section limits the commissioner to furnishing the appropriate tax official of a local government with information to which the local official is entitled by law to have access. The commissioner may only furnish other tax information to the tax or legal officer of another state, territory, country, or to the United States government. 1954-56 Ga. Op. Att'y Gen. 828.

Neither former Code 1933, § 92-3216 (see now O.C.G.A. § 48-7-60) nor Ga. L. 1945, p. 160, § 1 (see now O.C.G.A. § 48-2-15) makes income tax returns privileged or confidential as to the commissioner, the commissioner's agents, or other persons who properly have access to them for use in the administration and the enforcement of any tax. 1965-66 Op. Att'y Gen. No. 66-225.

County boards of tax assessors in the discharge of their official duties are entitled to have access to the files of the commissioner, including the income tax files; any files furnished to county boards of tax assessors retain their privileged or confidential character in the hands of those officials. 1965-66 Op. Att'y Gen. No. 66-225.

Information contained in state income tax returns may not be furnished to city or municipal tax assessors. 1965-66 Op. Att'y Gen. No. 66-225.

Release of tax information to private firms and other groups. — It is not a violation of law for the department to deliver income tax returns to a private company for processing the information onto punch cards, if certain restrictions are followed. 1960-61 Ga. Op. Att'y Gen. 538.

Disclosure to National Alcohol Beverage Control Association of prices posted in department by various distilleries is not prohibited. 1962 Ga. Op. Att'y Gen. 300.

Fingerprinting not required. — Offenses arising from a violation of O.C.G.A. § 43-17-8.1 do not, at this time, appear to be offenses for which fingerprinting is required. 2018 Op. Att'y Gen. No. 18-3.

RESEARCH REFERENCES

C.J.S.

84 C.J.S., Taxation, § 642. 85 C.J.S. Taxation, § 1779 et seq.

ALR.

Recovery of damages under § 7431(c)(1)(B) of Internal Revenue Code (26 USCA § 7431(c)(1)(B)) based on improper release of confidential tax return information, 154 A.L.R. Fed. 537.

48-2-15.1. Disclosure of confidential taxpayer information or records.

Notwithstanding any other provision of law to the contrary, confidential taxpayer information or records with respect to which the taxpayer

has granted express written authorization to the commissioner or an officer or employee of the department may be disclosed to or discussed with another party.

History.
Code 1981, § 48-2-15.1, enacted by Ga. L. 2004, p. 429, § 1.

48-2-15.2. Ruling; regulations prescribing guidelines; precedential value of ruling.

(a) As used in this Code section, the term "ruling" means a written determination that is issued to a person by the commissioner pursuant to regulations promulgated for that purpose, in response to such person's written inquiry about his or her status for tax purposes or the tax effects of acts or transactions, and is based on applying the tax statutes, regulations, or other legal authority to such person's specific set of facts. Such term thus does not include, for example, notices of proposed or final assessment or decisions thereon, decisions on claims for refund, decisions to accept or reject offers in compromise, voluntary disclosure or closing agreements, and responses to petitions or applications under Code sections permitting the commissioner to waive penalty or interest.

(b) The commissioner is authorized to promulgate regulations prescribing guidelines and procedures for the submission of rulings, issuance or denial of issuance of rulings, and the redaction and disclosure of rulings to the public. The commissioner may not disclose a ruling to the public without first deleting the name, address, and other identifying details of the person to whom the ruling was issued.

(c) A ruling shall have no precedential value except to the person to whom the ruling was issued and then only for the specific transaction addressed in the ruling.

History.
Code 1981, § 48-2-15.2, enacted by Ga. L. 2012, p. 735, § 1/HB 846.
Editor's notes.
Ga. L. 2012, p. 735, § 4(b)/HB 846, not codified by the General Assembly, provides that this Code section "shall only be applied to rulings requested after the effective date of this Act." This Act became effective May 1, 2012.

48-2-16. Exchange of tax information.

(a) The commissioner and each tax receiver, tax collector, and tax commissioner of this state, at his discretion, may furnish to the tax officials of any other state, political subdivision of any other state, political subdivision of this state, the District of Columbia, or the United States and its territories any information contained in tax returns, reports, and related schedules and documents filed pursuant to

the tax laws of this state or contained in the report of an audit or investigation made with respect to any such return, report, schedule, or document if the jurisdiction to which the information is furnished grants similar privileges to this state and if the information is to be used only for tax purposes.

(b) The commissioner and each tax receiver, tax collector, and tax commissioner of this state may enter into agreements with tax officials described in subsection (a) of this Code section to provide for the exchange of tax information as authorized by this Code section.

(c) Furnishing information as permitted by this Code section shall not be deemed to change the confidential character of the information furnished.

History.
Ga. L. 1967, p. 537, §§ 1, 2; Code 1933, § 91A-213, enacted by Ga. L. 1978, p. 309, § 2.

48-2-17. Payment to Office of the State Treasurer.

Except as otherwise provided by law, all taxes, penalties, interest, and other moneys collected or received by the commissioner, the department, or any unit, officer, or employee of the department pursuant to this title or any other revenue or licensing law shall be paid to the Office of the State Treasurer and deposited within 45 days of such collection or receipt.

History.
Ga. L. 1931, p. 7, § 85; Ga. L. 1931, Ex. Sess., p. 24, § 60; Code 1933, §§ 92-3009, 92-3502; Ga. L. 1951, p. 360, § 23; Ga. L. 1955, p. 268, § 26; Ga. L. 1960, p. 7, § 27; Ga. L. 1968, p. 360, § 16; Code 1933, § 91A-214, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1982, p. 3, § 48; Ga. L. 1993, p. 1402, § 18; Ga. L. 2002, p. 1315, § 1; Ga. L. 2010, p. 863, § 2/SB 296.

Cross references.
Revenue to be paid into general fund, Ga. Const. 1983, Art. VII, Sec. III, Para. II.

Keeping taxes raised for school purposes separate, § 20-2-411.

Duties of Office of the State Treasurer generally, § 50-5A-7.

OPINIONS OF THE ATTORNEY GENERAL

What fees paid to Office of the State Treasurer. — Fees charged by the State Board of Barbers must be forwarded to the fiscal division (now Office of the State Treasurer) and such fees may not be retained by the Office of Secretary of State as reimbursement of expenses of that office. 1969 Op. Att'y Gen. No. 69-13.

Fees collected pursuant to establishment of the State Board of Cosmetology must be remitted to the fiscal division (now Office of the State Treasurer) and such fees may not be retained by the Office of Secretary of State as reimbursement of expenses of that office. 1969 Op. Att'y Gen. No. 69-13.

Fees collected pursuant to establishment of Composite State Board of Medical Examiners (now Georgia Composite Medical Board) must be forwarded by the joint secretary to the fiscal division (now Office of the State Treasurer) and may not be

retained by the Office of Secretary of State as reimbursement of expenses of that office. 1969 Op. Att'y Gen. No. 69-13.

Fees collected pursuant to establishment of the Georgia Real Estate Commission must be transmitted by the joint secretary of the state examining boards to the fiscal division (now Office of the State Treasurer) and such fees may not be retained by the Office of Secretary of State as reimbursement of expenses of that office. 1969 Op. Att'y Gen. No. 69-13.

Fees collected for the Georgia Board of Nursing must be forwarded to the fiscal division (now Office of the State Treasurer) and may not be retained by the Office of Secretary of State as reimbursements of expenses of that office. 1969 Op. Att'y Gen. No. 69-13.

Fees collected by the Secretary of State as commissioner of securities must be paid to the fiscal division (now Office of the State Treasurer) and such fees may not be retained by the Office of Secretary of State as reimbursements for expenses of that office. 1969 Op. Att'y Gen. No. 69-13.

RESEARCH REFERENCES

C.J.S.
85 C.J.S., Taxation, §§ 1109 et seq., 1786 et seq.

48-2-18. (For effective date, see note.) State Board of Equalization; duties.

(a) There is established a board composed of the commissioner, the state auditor, and the executive director of the State Properties Commission.

(b) The board created by this Code section shall be designated the State Board of Equalization. The chairman and administrative officer of the board shall be the commissioner. Each year, when the digest of assessments proposed by the commissioner is complete, the commissioner shall submit the digest to the State Board of Equalization which shall carefully examine the proposed assessments of each class of taxpayers or property and the digest of proposed assessments as a whole to determine that they are reasonably apportioned among the several tax jurisdictions and reasonably uniform with the values set on other classes of property throughout the state. If the board determines that the proposed assessed values of any one or more of the classes of taxpayers or property or the digest as a whole does not reasonably conform to the values set for other property throughout the state, it shall inquire as to the reason for the lack of conformity and shall adjust and equalize the same by either adding or subtracting a fixed percentage to the class of taxpayer, to the class of property, or to the digest as a whole, as the case may be.

(c) As chairperson and chief administrative officer of the board, the commissioner shall furnish to the board all necessary records and files and in this capacity may compel the attendance of witnesses and the production of books and records or other documents as the commissioner is empowered to do in the administration of the tax laws. After

final approval by the State Board of Equalization of the digest of proposed assessments made by the commissioner and after any adjustments by the board as authorized by this Code section are made, the commissioner shall notify within 30 days each taxpayer in writing of the proposed assessment of its property. At the same time, the commissioner shall notify in writing the board of tax assessors of such county, as outlined in Code Section 48-5-511, of the total proposed assessment of the property located within the county of taxpayers who are required to return their property to the commissioner. If any such taxpayer notifies the commissioner and the board of tax assessors in any such county of its intent to dispute a portion of the proposed assessment within 20 days after receipt of the notice, the county board of tax assessors shall include in the county digest only the undisputed amount of the assessment, and the taxpayer may challenge the commissioner's proposed assessment in an appeal filed in the Superior Court of Fulton County or with the Georgia Tax Tribunal in accordance with Chapter 13A of Title 50 within 30 days of receipt of the notice. In any such appeal to the superior court, the taxpayer shall have the right of discovery as provided in Chapter 11 of Title 9, the "Georgia Civil Practice Act." In any such appeal to the Georgia Tax Tribunal, discovery shall be as provided in Chapter 13A of Title 50, the "Georgia Tax Tribunal Act of 2012." All questions of law decided by a court or the Georgia Tax Tribunal pursuant to this subsection, including interpretations of constitutional, statutory, and regulatory provisions, shall be made without any deference to any determination or interpretation, whether written or unwritten, that may have been made on the matter by the department, except such requirement shall have no effect on the judicial standard of deference accorded to rules promulgated pursuant to the Georgia Administrative Procedure Act. Upon conclusion of the appeal, the taxpayer shall remit to the appropriate counties any additional taxes owed, with interest at the rate provided by law for judgments. Such interest shall accrue from the date the taxes would have been due absent the appeal to the date the additional taxes are remitted.

(d) Within 30 days after receipt of the proposed digest of assessments, the county board of tax assessors shall make the final assessment of the property in question and provide notice to the taxpayer. Such notice and any appeal therefrom shall be accomplished as is provided by Code Sections 48-5-306 and 48-5-311. In the event of an appeal, the department shall, upon request of the local board of tax assessors and without any charge or cost therefor, provide the local board of tax assessors with any and all technical assistance available from the resources of the department, including without limitation expert testimony by the employees of the department.

(e) Assessments made in accordance with subsection (d) of this Code section shall be added to the regular county digest at the time the digest

is transmitted to the commissioner or at such time as the digest is otherwise required to be compiled. In the event that the commissioner has not provided to the board of tax assessors by August 1 of a tax year the notice of proposed assessments set forth in subsection (c) of this Code section for taxpayers who are required to return their property to the commissioner pursuant to Code Section 48-5-511, the tax commissioner or tax receiver of the county where such property is located may issue an interim tax bill to such taxpayers, owning property in the county in an amount equal to 85 percent of such taxpayer's property tax bill for the immediately preceding tax year or, in the event that such tax year is under appeal, the tax bill for the most recent tax year in which the taxes for such property were finally assessed. At such time as the county board of tax assessors adds the assessments for the tax year made in accordance with subsection (d) of this Code section to the regular county digest, the tax commissioner or tax receiver shall issue a corrected tax bill to each taxpayer who received an interim tax bill, such corrected tax bill to be in an amount based upon the assessed value of such taxpayer's property shown on the regular county digest and such taxpayer shall remit any additional taxes due or, in the event of overpayment, shall be entitled to a tax refund, in either case, without interest or penalty. Nothing in this subsection is intended to alter a taxpayer's right to appeal from either the commissioner's notice of proposed assessment or the county board of assessors' final assessment under the procedures set forth in subsections (c) and (d) of this Code section. The billing pursuant to this Code section shall not subject the tax commissioner or tax receiver of the county to the forfeiture provisions of Code Section 48-5-135.

(f) The notice and appeal procedures provided for in this Code section shall not apply to any decision of the board relating to the assessed value of motor vehicle property.

History.

Ga. L. 1953, Jan.-Feb. Sess., p. 185, § 1; Ga. L. 1972, p. 1015, § 1702; Ga. L. 1972, p. 1120, § 1; Code 1933, § 91A-217, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1983, p. 1834, § 1; Ga. L. 1984, p. 352, § 1; Ga. L. 1985, p. 149, § 48; Ga. L. 1987, p. 485, § 1; Ga. L. 1988, p. 13, § 48; Ga. L. 1988, p. 1568, § 1; Ga. L. 1988, p. 1763, § 2; Ga. L. 1992, p. 1346, § 1; Ga. L. 2010, p. 1104, § 8-1/SB 346; Ga. L. 2012, p. 318, § 1/HB 100; Ga. L. 2013, p. 141, § 48/HB 79; Ga. L. 2021, p. 120, § 1/SB 185; Ga. L. 2024, p. 888, § 3-3/HB 1267, see notes for effective date.

Delayed effective date.

Ga. L. 2024, p. 888, § 4-1(a)/HB 1267, provides that the 2024 amendment shall only become effective on July 1, 2026 upon ratification of a resolution by the voters at the November, 2024, state-wide general election that amends the Constitution to provide that the Georgia Tax Court shall have state-wide jurisdiction as provided by law and that decisions of such court shall be appealed to the Court of Appeals, subject to review by the Supreme Court of Georgia. However, if such a Constitutional amendment is not so ratified, then the amendments to this Code section shall stand repealed on January 1, 2025. This Code section, as set out above, does not reflect the amendment by that Act owing to the delayed effective date. Upon ratification, subsection (c) will read as follows: "(c) As chairperson and chief

administrative officer of the board, the commissioner shall furnish to the board all necessary records and files and in this capacity may compel the attendance of witnesses and the production of books and records or other documents as the commissioner is empowered to do in the administration of the tax laws. After final approval by the State Board of Equalization of the digest of proposed assessments made by the commissioner and after any adjustments by the board as authorized by this Code section are made, the commissioner shall notify within 30 days each taxpayer in writing of the proposed assessment of its property. At the same time, the commissioner shall notify in writing the board of tax assessors of such county, as outlined in Code Section 48-5-511, of the total proposed assessment of the property located within the county of taxpayers who are required to return their property to the commissioner. If any such taxpayer notifies the commissioner and the board of tax assessors in any such county of its intent to dispute a portion of the proposed assessment within 20 days after receipt of the notice, the county board of tax assessors shall include in the county digest only the undisputed amount of the assessment, and the taxpayer may challenge the commissioner's proposed assessment in an appeal filed in the Superior Court of Fulton County or with the Georgia Tax Court in accordance with Chapter 5B of Title 15, the 'Georgia Tax Court Act of 2025,' within 30 days of receipt of the notice. In any such appeal to the superior court, the taxpayer shall have the right of discovery as provided in Chapter 11 of Title 9, the 'Georgia Civil Practice Act.' In any such appeal to the Georgia Tax Court, discovery shall be as provided in Chapter 5B of Title 15, the 'Georgia Tax Court Act of 2025.' All questions of law decided by a court or the Georgia Tax Court pursuant to this subsection, including interpretations of constitutional, statutory, and regulatory provisions, shall be made without any deference to any determination or interpretation, whether written or unwritten, that may have been made on the matter by the department, except such requirement shall have no effect on the judicial standard of deference accorded to rules promulgated pursuant to the Georgia Administrative Procedure Act. Upon conclusion of the appeal, the taxpayer shall remit to the appropriate counties any additional taxes owed, with interest at the rate provided by law for judgments. Such interest shall accrue from the date the taxes would have been due absent the appeal to the date the additional taxes are remitted."

Amendments.

The 2024 amendment, in subsection (c), substituted "the Georgia Tax Court in accordance with Chapter 5B of Title 15, the 'Georgia Tax Court Act of 2025,'" for "the Georgia Tax Tribunal in accordance with Chapter 13A of Title 50" in the fourth sentence, rewrote the sixth sentence, which read: "In any such appeal to the Georgia Tax Tribunal, discovery shall be as provided in Chapter 43A of Title 50, the 'Georgia Tax Tribunal Act of 2012.'", and substituted "Georgia Tax Court" for "Georgia Tax Tribunal" near the beginning of the seventh sentence. For effective date of this amendment, see the delayed effective date note.

Cross references.

Appeals to superior court from decisions of commissioner, § 48-2-59.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1988, "in Code Section 48-5-511" was substituted for "in Georgia Code Annotated 48-5-511" in the third sentence of subsection (c), and "in Chapter 11 of Title 9, the 'Georgia Civil Practice Act'" was substituted for "in the Georgia Civil Practice Act" at the end of the next-to-last sentence in subsection (c).

Pursuant to Code Section 28-9-5, in 2010, in subsection (e), in the second sentence, "the" was deleted preceding "such property" near the middle and a period was deleted following "preceding tax year" near the end; "the" was deleted preceding "subsections (c) and (d)" in the next to the last sentence; and "be" was deleted preceding "subject the" in the last sentence.

Editor's notes.

Ga. L. 1988, p. 1568, § 15, not codified by the General Assembly, provided that the Act "shall apply to all tax years beginning on or after January 1, 1989."

Ga. L. 2021, p. 120, § 5/SB 185, not codified by the General Assembly, provides: "This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval, and shall be applicable to all proceedings commenced before the Georgia Tax Tribunal or a superior court of this state on or after such date." The Governor approved this Act on April 29, 2021.

Ga. L. 2024, p. 888, § 4-1(a)/HB 1267, not codified by the General Assembly, provides that the 2024 amendment to this Code section is subject to an amendment to the Constitution to provide that the Georgia Tax Court shall have state-wide jurisdiction as provided by law and that decisions of such court shall be appealed to the Court of Appeals, subject to review by the Supreme Court of Georgia, that is ratified by the voters at the November, 2024, state-wide general election. If such a Constitutional amendment is not so ratified, then the amendments to this Code section shall stand repealed on January 1, 2025.

Law reviews.

For article on the 2012 amendment of this Code section, see 29 Ga. St. U. L. Rev. 70 (2012).

For annual survey on state and local taxation, see 3 Mercer L. Rev. 231 (2022).

JUDICIAL DECISIONS

Utility whose returns are not accepted by the commissioner. — In a gas company's suit against the state revenue commissioner for mandamus compelling the commissioner to accept its property tax returns under O.C.G.A. §§ 48-1-2(21) and 48-5-511(a), remand was proper to determine if the company had an acceptable alternative remedy in its pending county tax appeals under O.C.G.A. § 48-5-311, if the commissioner could be made a party to those appeals by joinder or some other procedure. Southern LNG, Inc. v. MacGinnitie, 294 Ga. 657, 755 S.E.2d 683, 2014 Ga. LEXIS 168 (2014).

Procedure pending appeal. — When utility companies sought to enjoin counties from collecting more than the undisputed amount of the tax during the pendency of a Fulton County appeal, the court properly concluded that no injunction was necessary; subsection (c) of O.C.G.A. § 48-2-18 states plainly that during the pendency of an appeal, the county board of tax assessors may include in the county digest only the undisputed amount of the assessment. It is not necessary to enjoin the counties to carry out the clear legislative mandate. Telecom*USA, Inc. v. Collins, 260 Ga. 362, 393 S.E.2d 235, 1990 Ga. LEXIS 268 (1990).

If, under O.C.G.A. § 48-2-18, a utility had both subsection (c) and subsection (d) appeals proceeding simultaneously, and a local appeal was still pending when the subsection (c) appeal was concluded, the provisions for the payment of taxes during the pendency of an appeal would apply. Telecom*USA, Inc. v. Collins, 260 Ga. 362, 393 S.E.2d 235, 1990 Ga. LEXIS 268 (1990).

Improper joinder of appeals. — O.C.G.A. § 48-2-18 contemplates an appeal taken from the proposed assessment made by the State Board of Equalization, as well as individual appeals in each county where a utility owns property, from actual final assessments made by the local tax assessors; thus, appeals pursuant to subsection (d) of § 48-2-18 were improperly joined in an appeal pursuant to subsection (c). Telecom*USA, Inc. v. Collins, 260 Ga. 362, 393 S.E.2d 235, 1990 Ga. LEXIS 268 (1990).

Board exceeded authority. — In an action filed by a utility seeking equitable relief from the rejection of the State Commissioner's fair market valuation by the county board of tax assessors, the trial court erred in granting summary judgment to a county board of tax assessors; the board exceeded the board's authority when, in the course of making a final assessment of a utility's property, it not only substituted the board's own assessment ratio, but also the board's own fair market value for those calculated by the State Commissioner, as a final assessment could not include a

reappraisal of the fair market value of a taxpayer required to make a return to the state. Ga. Power Co. v. Monroe County, 284 Ga. App. 707, 644 S.E.2d 882, 2007 Ga. App. LEXIS 399 (2007), aff'd, 283 Ga. 12, 655 S.E.2d 817, 2008 Ga. LEXIS 2 (2008).

Court of Appeals of Georgia properly held that, although the county board of tax assessors could alter the assessment ratio proposed by the Georgia Revenue Commissioner on land owned by a utility in the course of making a final assessment of a utility's property, it could not alter the apportioned fair market value for the property used by the Commissioner in its proposed assessment. Monroe County v. Ga. Power Co., 283 Ga. 12, 655 S.E.2d 817, 2008 Ga. LEXIS 2 (2008).

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Scope of board's authority. — Statute authorizes the board to settle and compromise tax claims falling under two categories: (1) cases involving insolvency of the taxpayer, and (2) cases involving any proposed tax assessment, any final tax assessment, or any tax fieri facias in which the questionable legal position of the state makes the collection of such taxes doubtful, and such settlement or compromise is in the best interest of the state. 1958-59 Ga. Op. Att'y Gen. 358.

Construing this statute as a whole, the board is not limited to situations when only a question of law is involved; it further confers power to settle if the state's legal position is questionable so as to render collection doubtful. 1958-59 Ga. Op. Att'y Gen. 358.

Word "compromise" covers both law and fact; any other interpretation would render this statute virtually meaningless because it is difficult to conceive of a case involving only a question of law. 1958-59 Ga. Op. Att'y Gen. 358.

Board must consider both questions of fact and law. — Board must of necessity find and consider both questions of fact and law which affect the state's legal position in order to determine whether the state occupies a questionable legal position which makes the collection of such taxes doubtful. If this were not true there would be no way for the board to determine the state's legal position in any case. 1958-59 Ga. Op. Att'y Gen. 358.

Person's legal position is ascertained and determined by applying principles and rules of law to basic facts and circumstances presented by that person's particular case, a mental process embracing both law and fact; determination of the state's legal position requires combining both functions in a single unitary process, and involves a mixed question of law and fact. 1958-59 Ga. Op. Att'y Gen. 358.

Contributions required by former Ga. L. 1937, p. 806 (see now O.C.G.A. Ch. 8, T. 34) were state taxes within the meaning of Ga. L. 1953, Jan.-Feb. Sess., p. 185, § 1 (see now O.C.G.A. § 48-2-18); the board had jurisdiction and authority to settle or compromise such tax liability. 1965-66 Op. Att'y Gen. No. 66-91.

RESEARCH REFERENCES

Am. Jur. 2d.

72 Am. Jur. 2d, State and Local Taxation, §§ 701, 710.

C.J.S.

84 C.J.S., Taxation, § 667 et seq.

ALR.

Power or duty of tax review or equalization boards to act after date for adjournment or closing of books, 105 A.L.R. 624.

What constitutes plain, speedy, and efficient state remedy under Tax Injunction Act (28 USCS § 1341), prohibiting federal district courts from interfering with assessment, levy, or collection of state business taxes, 31 A.L.R. Fed. 2d 237.

48-2-18.1. Settlement or compromise of tax assessments; application fee.

(a) The commissioner or his or her designee shall be authorized to settle and compromise any proposed tax assessment, any final tax assessment, or any tax fi. fa., where there is doubt as to liability or there is doubt as to collectability, and the settlement or compromise is in the best interests of the state. The commissioner shall develop procedures for the acceptance and rejection of offers in compromise. The commissioner shall keep a record of all settlements and compromises made and the reasons for each settlement and compromise.

(b) Each offer in compromise shall be accompanied by a $100.00 nonrefundable application fee. If the offer is accepted by the commissioner, such application fee shall be treated as part of the offer. Such application fee shall not apply if the applicant's total monthly income is at or below levels based on the poverty guidelines established by the United States Department of Health and Human Services. If this is the case, the applicant shall certify as such with their offer.

History.
Code 1981, § 48-2-18.1, enacted by Ga. L. 1984, p. 352, § 2; Ga. L. 1988, p. 426, § 1; Ga. L. 1997, p. 734, § 1; Ga. L. 2005, p. 159, § 3/HB 488.

Editor's notes.
Ga. L. 2005, p. 159, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2005.'"

48-2-19. Modernization and improvement of licensing, registration, valuation, and titling functions; utilization of tag and title information in electronic form.

(a) It is the intent of the General Assembly that the state revenue commissioner shall have total responsibility for the administration of the laws of the state relating to the licensing, registration, valuation, and titling of motor vehicles and that the commissioner shall carry out a complete modernization and improvement of such functions.

(b) The state revenue commissioner shall have total responsibility for developing and implementing a comprehensive and detailed plan to accomplish the modernization and improvement of the functions specified in subsection (a) of this Code section. Such plan shall include:

(1) A detailed analysis of personnel, equipment, motor vehicles, and facilities necessary for the administration of the laws relating to the licensing, registration, valuation, and titling of motor vehicles;

(2) A detailed analysis of the funding necessary to administer such functions of the department;

(3) Detailed recommendations for the most effective methods of carrying out the functions provided for in subsection (a) of this Code section, bearing in mind that the citizens of the State of Georgia should have a right to expect prompt, courteous, and cost-efficient service with respect to such functions;

(4) Recommendations for any changes in the relevant laws needed to accomplish the goals referred to in paragraph (3) of this subsection; and

(5) A suggested timetable for the completion of such recommendations.

(c) The state revenue commissioner shall from time to time report to the presiding officers of the Senate and House of Representatives with respect to:

(1) The progress of implementation of the plan provided for in subsection (b) of this Code section;

(2) Any deficiencies or inefficiencies noted by the state revenue commissioner in the current carrying out of the functions provided for in subsection (a) of this Code section; and

(3) Any interim improvements which should be made in the carrying out of such functions pending completion of the plan provided for in subsection (b) of this Code section.

(d) The state revenue commissioner shall obtain the necessary equipment and personnel in order to utilize effectively motor vehicle registration, licensing, and title information submitted in electronic form by the tax collectors and tax commissioners of the various counties of this state. All counties which have the technological capability of submitting such registration, licensing, and title information in an electronic form shall do so and all other counties are encouraged to develop such capabilities. The state revenue commissioner may promulgate rules and regulations for the purpose of standardizing the format of such electronic information to be submitted by the tax collectors and tax commissioners of the various counties, provided that such rules and regulations shall provide for the use of one or more electronic formats currently utilized by local taxing officials.

History.
Code 1981, § 48-2-19, enacted by Ga. L. 1994, p. 514, § 3.

ARTICLE 2

ADMINISTRATION

48-2-30. Remittances.

(a) Except with regard to ad valorem property taxes, when an application or return is filed with the commissioner under the revenue or license laws or regulations of this state and an amount is shown on the application or return to be due or to become due, the person required to make the application or return shall remit the amount with the application or return without further assessment, notice, or demand to the commissioner or department at the time and place fixed for filing of the application or return. Upon any failure in this regard, the commissioner shall have the authority to issue forthwith a fi. fa. for the collection of the amount due.

(b) The acceptance by the commissioner or the department of any payment received with respect to any tax or license fee shall not imply that the tax or license fee is thereby fully assessed, fixed, determined, or satisfied. All persons making such payments shall understand that the payments will be accepted and the proper account credited with the payment subject to a final determination of its correctness in due course, any condition expressed in such payment to the contrary notwithstanding. This subsection shall not apply to payments received pursuant to authorized compromises and settlements, which payments shall be governed by the special agreements and proceedings applicable thereto.

(c) No condition affixed to any remittance with respect to the time or manner of processing or negotiating its payment shall be given any force or effect.

History.

Ga. L. 1937-38, Ex. Sess., p. 77, § 26; Ga. L. 1961, p. 445, § 1; Code 1933, § 91A-230, enacted by Ga. L. 1978, p. 309, § 2.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under Ga. L. 1951, p. 360, § 18 are included in the annotations for this Code section.

Date and superiority of lien for sales and use taxes. — Lien and the lien's rank is provided for the state for sales and use taxes. Such lien attaches on the day on which the dealer is required to make the dealer's return and remittance to the commissioner and is declared to be superior to all other liens. State v. Atlanta Provision Co., 90 Ga. App. 147, 82 S.E.2d 145, 1954 Ga. App. LEXIS 655 (1954) (decided under Ga. L. 1951, p. 360, § 18).

Effect of recording lien. — Recording of the fieri facias issued by the commissioner on the general execution docket is not a condition precedent to the attachment of a lien for sales taxes. Only effect of failure to record the lien is that as

against innocent purchasers the lien will be lost. State v. Atlanta Provision Co., 90 Ga. App. 147, 82 S.E.2d 145, 1954 Ga. App. LEXIS 655 (1954) (decided under Ga. L. 1951, p. 360, § 18).

RESEARCH REFERENCES

Am. Jur. 2d.
72 Am. Jur. 2d, State and Local Taxation, §§ 712, 713.
C.J.S.
85 C.J.S., Taxation, § 991 et seq.
ALR.
Partial payment of tax, 84 A.L.R. 774.
Power to remit, release, or compromise tax claim, 99 A.L.R. 1062; 28 A.L.R.2d 1425.

48-2-31. Currency in which taxes to be paid.

Except as otherwise provided in Code Section 48-2-32, all taxes imposed by this title or any other revenue or license law shall be paid in lawful money of the United States, free from any expense to the state or any political subdivision of this state.

History.
Laws 1804, Cobb's 1851 Digest, p. 1051; Ga. L. 1851-52, p. 288, § 19; Code 1863, §§ 737, 762; Code 1868, §§ 804, 829; Code 1873, §§ 807, 833; Code 1882, §§ 807, 833; Civil Code 1895, §§ 773, 806; Civil Code 1910, §§ 1013, 1044; Code 1933, § 92-5706; Code 1933, § 91A-231, enacted by Ga. L. 1978, p. 309, § 2.

JUDICIAL DECISIONS

Payment by check sufficient even if bank fails before collection. — If a tax collector accepted a taxpayer's check and delivered a receipt for payment of state and county taxes, the payor bank charged the amount of the check to the drawer's account and later delivered the check canceled to the drawer, having also mailed to an intermediary bank a cashier's or exchange check, which remained unpaid because before the check's collection the first bank failed and discontinued business, the taxpayer was not subject to execution issued by the tax collector for the amount of the tax so paid. Palmer v. Harrison, 165 Ga. 842, 142 S.E. 276, 1928 Ga. LEXIS 76 (1928).

OPINIONS OF THE ATTORNEY GENERAL

What "bankable paper" includes. — Words "free of any expense to the state," found in former Code 1933, § 92-5706 (see now O.C.G.A. § 48-2-31), restrict the term "bankable paper," found in former Code 1933, § 68-208 (see now O.C.G.A. § 40-2-29), in that the former provision prohibited accepting postdated checks, checks drawn on non-par banks, and any check which was so qualified or conditioned that expense to the state would necessarily be incurred. 1963-65 Ga. Op. Att'y Gen. 607.

RESEARCH REFERENCES

C.J.S.
85 C.J.S., Taxation, § 1032.

48-2-32. Forms of payment.

(a) The commissioner may receive in payment of taxes and license fees personal, company, certified, treasurer's, and cashier's checks and bank, postal, and express money orders to the extent and under the conditions which he may reasonably prescribe by regulations or instructions.

(b) A check or money order, when authorized, shall be deemed to be payment as of the time it is received by the commissioner, provided the check or money order is duly paid upon presentation to the drawee. The time of receipt as shown by the records of the department shall be prima facie correct as to the time of actual receipt.

(c) If a check or money order so received is not duly paid, the person on whose account the check or money order was tendered shall remain liable for the payment of the tax or license fee and for all legal penalties and additions to the same extent as if the check or money order had not been tendered. Delay in the presentation for payment of the check or money order shall not absolve the person of this liability.

(d) If any certified, treasurer's, or cashier's check or money order so received is not duly paid, the state, in addition to its right to exact payment from the party originally obligated therefor, shall have a lien for the amount of the check or money order upon all assets of the bank or trust company on which drawn or for the amount of the money order upon all the assets of the issuer of the money order. The amount of the check or money order shall be paid out of such assets in preference to any other claims whatsoever against the banker or issuer.

(e)(1) On and after July 1, 2004, if any check or money order tendered to the commissioner in payment of any tax or license fee is not duly paid when presented to the drawee or issuer for payment, there shall be paid by the person who tendered the check or money order upon notice and demand of the commissioner or his delegate, in the same manner as tax, a penalty in an amount equal to 2 percent of the amount of the check or money order, unless the amount of the check or money order is less than $1,250.00, in which case the penalty under this Code section shall be $25.00. This penalty shall be in addition to any other penalties provided by law.

(2) This subsection shall not apply if the person who tendered the check or money order shows to the commissioner's reasonable satisfaction that the check or money order was tendered in good faith and with reasonable cause to believe it would be duly paid.

(f)(1) As used in this subsection, the term "electronic funds transfer" means a method of making financial payments from one party to another through a series of instructions and messages communicated

electronically, via computer, among financial institutions. Such term shall not include the electronic filing of tax returns.

(2) The commissioner may require that any person or business owing more than $10,000.00 in connection with any return, report, or other document required to be filed with the department on or after July 1, 1992, shall pay any such sales tax, use tax, withholding tax, motor fuel distributor tax, corporate estimated income tax, or individual estimated income tax liability to the state by electronic funds transfer so that the state receives collectable funds on the date such payment is required to be made. In emergency situations, the commissioner may authorize alternative means of payment in funds immediately available to the state on the date of payment.

(2.1)(A) The commissioner may require that any person or business owing more than $1,000.00 in connection with any return, report, or other document pertaining to sales tax, use tax, withholding tax, or motor fuel distributor tax required to be filed with the department for tax periods beginning on or after January 1, 2010, and prior to January 1, 2011, shall pay any such sales tax, use tax, withholding tax, or motor fuel distributor tax liability to the state by electronic funds transfer so that the state receives collectable funds on the date such payment is required to be made. In emergency situations, the commissioner may authorize alternative means of payment in funds immediately available to the state on the date of payment.

(B) The commissioner may require that any person or business owing more than $500.00 in connection with any return, report, or other document pertaining to sales tax, use tax, withholding tax, or motor fuel distributor tax required to be filed with the department for tax periods beginning on or after January 1, 2011, shall pay any such sales tax, use tax, withholding tax, or motor fuel distributor tax liability to the state by electronic funds transfer so that the state receives collectable funds on the date such payment is required to be made. In emergency situations, the commissioner may authorize alternative means of payment in funds immediately available to the state on the date of payment.

(3) In addition to the requirements contained in paragraph (2) of this subsection, every employer whose tax withheld or required to be withheld under Code Section 48-7-103 exceeds $50,000.00 in the aggregate for the lookback period as defined in paragraph (4) of subsection (b) of Code Section 48-7-103 must pay the taxes by electronic funds transfer as follows:

(A) For paydays occurring on Wednesday, Thursday, or Friday, the taxes must be remitted on or before the following Wednesday or, in the case of a holiday, the next banking day thereafter;

(B) For paydays occurring on Saturday, Sunday, Monday, or Tuesday, the taxes must be remitted on or before the following Friday or, in the case of a holiday, the next banking day thereafter; and

(C) Notwithstanding any other provision of this paragraph to the contrary, for employers whose tax withheld or required to be withheld exceeds $100,000.00 for the payday, the taxes must be remitted by the next banking day.

(4) In addition to the requirements contained in paragraphs (2), (2.1), and (3) of this subsection, every third-party payroll provider who prepares or remits, or both, Georgia withholding tax for more than 250 employers must pay the taxes by electronic funds transfer. Also, such third-party payroll providers must submit all state withholding tax registration applications electronically in the manner specified by the department. Any state withholding tax registration applications that are not submitted electronically by such third-party payroll provider in the manner specified by the department shall not be considered by the department.

(4.1) Each person that files or is required to file Form 1099-K with the Internal Revenue Service shall electronically file a copy of such Form 1099-K with the commissioner in the manner specified by the commissioner. Such filing shall be completed on or before the time that is required for filing such Form 1099-K with the Internal Revenue Service.

(5) The commissioner is specifically authorized to establish due dates and times for the initiation of electronic payments, establish an implementation schedule, promulgate regulations, and prescribe rules and procedures to implement this subsection.

(6) A penalty of 10 percent of the amount due shall be added to any payment which is made in other than immediately available funds which are specified by regulation of the commissioner unless the commissioner has authorized an alternate means of payment in an emergency.

(7) In addition to authority granted in Code Section 48-2-41, the commissioner is authorized to waive the collection of interest on electronic funds transfer payments, not to exceed the first two scheduled payments, whenever and to the extent that the commissioner reasonably determines that the default giving rise to the interest charge was due to reasonable cause and not due to gross or willful neglect or disregard of this subsection or regulations or instructions issued pursuant to this subsection.

(8) Notwithstanding any provision of law to the contrary, the commissioner is authorized to promulgate rules and regulations

setting forth the requirements for electronically transmitting all required returns, reports, or other documents required to be filed with taxes paid by electronic funds transfer.

(9) Notwithstanding any provision of law to the contrary, the commissioner is authorized to promulgate rules and regulations setting forth the procedure for satisfying the signature requirement for returns whether by electronic signature, voice signature, or other means, so long as appropriate security measures are implemented which assure security and verification of the signature procedure.

(10) Notwithstanding any provision of law to the contrary, the commissioner is authorized to pay all tax refunds by electronic funds transfer when requested by a taxpayer who has filed his or her return electronically with the department.

History.

Ga. L. 1960, p. 211, § 1; Code 1933, § 91A-232, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1991, p. 715, § 1; Ga. L. 1992, p. 1234, § 1; Ga. L. 1993, p. 91, § 48; Ga. L. 1996, p. 307, § 1; Ga. L. 1997, p. 734, § 2; Ga. L. 2003, p. 665, § 3; Ga. L. 2004, p. 410, §§ 3, 4; Ga. L. 2004, p. 631, § 48; Ga. L. 2005, p. 159, § 4/HB 488; Ga. L. 2006, p. 200, § 3/HB 1310; Ga. L. 2009, p. 648, § 1/HB 334; Ga. L. 2014, p. 231, § 2/HB 918; Ga. L. 2019, p. 902, § 1/SB 183.

Editor's notes.

Ga. L. 2003, p. 665, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2003.'"

Ga. L. 2003, p. 665, § 47(c), not codified by the General Assembly, provides that subsection (f) of this Code section shall be applicable to all calendar quarters beginning on or after April 1, 2004.

Ga. L. 2004, p. 410, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2004.'"

Ga. L. 2005, p. 159, § 1/HB 488, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2005.'"

Ga. L. 2005, p. 159, § 27/HB 488, not codified by the General Assembly, provides that the 2005 amendment applies to all payments made on or after January 1, 2005.

Law reviews.

For note on the 2003 amendment to this Code section, see 20 Georgia. St. U.L. Rev. 233 (2003).

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General Assembly intended that former Code 1933, §§ 68-208 and 68-212 and Ga. L. 1960, p. 211, § 1 (see now O.C.G.A. §§ 40-2-29 and 48-2-32) be construed together; when so construed, the words "or other similar bankable paper" found in former Code 1933, § 68-208 (see now O.C.G.A. § 40-2-29) include personal and company checks. 1963-65 Ga. Op. Att'y Gen. 607.

Remedies available if check dishonored. — When a tax commissioner accepts a check as payment for a motor vehicle license plate, which check is not honored by the bank but returned to the tax commissioner marked "insufficient funds", the tax commissioner would not have authority to seize or cancel the license plate which the commissioner issued. The tag agent accepts checks for motor vehicle license fees at the agent's own risk; consequently, the tag agent would have a cause of action against the applicant for the amount of the license fee

and the possibility of criminal action against the applicant. 1968 Op. Att'y Gen. No. 68-215.

RESEARCH REFERENCES

Am. Jur. 2d.
72 Am. Jur. 2d, State and Local Taxation, § 721 et seq.
C.J.S.
85 C.J.S., Taxation, § 1032.
ALR.
Payment of tax by check or draft, 44 A.L.R. 1234; 124 A.L.R. 1155.

Payment of tax by check or draft; and question of subrogation in that connection, 124 A.L.R. 1155.

48-2-33. Receipts for taxes.

(a) The commissioner and his agents and employees, upon request, shall give receipts for all sums collected by the commissioner or the department, except when the sums are in payment for stamps, tags, or license plates sold and delivered. No receipt shall be issued in lieu of a stamp representing a tax.

(b) When payment of any tax or license fee (except for stamps, tags, or license plates sold and delivered) is made in cash, it shall be the duty of the person making the payment to demand and receive, and the duty of the person receiving the payment to furnish, a written receipt for the payment in the form prescribed by the commissioner for official receipts of the department. The written receipt shall be conclusive as to the transaction and the commissioner shall not be required to give credit for a cash payment under any other circumstances. For the purposes of this subsection, a cash payment includes payment by check, money order, or other instrument payable or endorsed to bearer or to any payee or endorsee except a bearer, payee, or endorsee which is, in substance, the department.

(c) The commissioner, upon request, shall give to the person paying an estate tax duplicate receipts, either of which shall be sufficient evidence of such payment. The receipt shall entitle the legal representative of the estate to be credited and allowed the amount of the payment by any court having jurisdiction to audit or settle the legal representative's accounts.

History.
Ga. L. 1931, p. 7, § 85; Ga. L. 1931, Ex. Sess., p. 24, § 57; Code 1933, § 92-3312; Ga. L. 1960, p. 211, § 2; Code 1933, § 91A-233, enacted by Ga. L. 1978, p. 309, § 2.

RESEARCH REFERENCES

Am. Jur. 2d.
72 Am. Jur. 2d, State and Local Taxation, § 715.
C.J.S.
85 C.J.S., Taxation, §§ 1035 et seq., 1044

ALR.
Conclusiveness of tax receipt, 73 A.L.R. 152.

48-2-34. Failure to give official receipt for payment of taxes or license fees; penalty.

(a) Except as otherwise specifically authorized by law, it shall be unlawful for any person to receive payment of taxes or license fees without giving an official receipt as required in subsection (b) of Code Section 48-2-33.

(b) Any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor.

History.
Ga. L. 1960, p. 211, § 2; Code 1933, § 91A-9913, enacted by Ga. L. 1978, p. 309, § 2.

48-2-35. (For effective date, see note.) Refunds; claims; notice to political subdivision designee.

(a) A taxpayer shall be refunded any and all taxes or fees which are determined to have been erroneously or illegally assessed and collected from such taxpayer under the laws of this state, whether paid voluntarily or involuntarily, and shall be refunded interest, except as provided in subsection (b) of this Code section, on the amount of the taxes or fees from the date of payment of the tax or fee to the commissioner at an annual rate equal to the bank prime loan rate as posted by the Board of Governors of the Federal Reserve System in statistical release H. 15 or any publication that may supersede it, plus 3 percent, to accrue monthly. Such annual interest rate shall be determined for each calendar year based on the first weekly posting of statistical release H. 15 on or after January 1 of each calendar year. For the purposes of this Code section, any period of less than one month shall be considered to be one month. Refunds shall be drawn from the treasury on warrants of the Governor issued upon itemized requisitions showing in each instance the person to whom the refund is to be made, the amount of the refund, and the reason for the refund.

(b) No interest shall be paid if the taxes or fees were erroneously or illegally assessed and collected due to the taxpayer failing to claim any credits listed in Article 2 of Chapter 7 of this title on or before the due date for filing the applicable income tax return, including any extensions which have been granted.

(c)(1)(A) A claim for refund of a tax or fee erroneously or illegally assessed and collected may be made by the taxpayer at any time within three years after:

(i) The date of the payment of the tax or fee to the commissioner; or

(ii) In the case of income taxes, the later of the date of the payment of the tax or fee to the commissioner or the due date for filing the applicable income tax return, including any extensions which have been granted.

(B) Each claim shall be filed in writing in the form and containing such information as the commissioner may reasonably require and shall include a summary statement of the grounds upon which the taxpayer relies and an identification of the transactions being contested.

(C) Should any person be prevented from filing such a claim because of service of such person or such person's counsel in the armed forces during such period, the period of limitation shall date from the discharge of such person or such person's counsel from such service.

(D) A claim for refund may not be submitted by the taxpayer on behalf of a class consisting of other taxpayers who are alleged to be similarly situated.

(2) In the event the taxpayer desires a conference or hearing before the commissioner or the commissioner's delegate in connection with any claim for refund, he or she shall specify such desire in writing in the claim and, if the claim conforms with the requirements of this Code section, the commissioner shall grant a conference at a time he or she shall reasonably specify. A taxpayer may contest any claim for refund that is denied in whole or in part by filing with the commissioner a written protest at any time within 30 days from the date of notice of refund denial or partial payment. Such 30 day period shall be extended for such additional period as may be agreed upon in writing between the taxpayer and the commissioner during the initial 30 day period or any extension thereof. In the event the taxpayer wishes to request a conference, that request shall be included in the written protest. All protests shall be prepared in the form and contain such information as the commissioner shall reasonably require and shall include a summary statement of the grounds upon which the taxpayer relies, an identification of the transactions being contested, and the reasons for disputing the findings of the commissioner. The commissioner shall grant a conference before the commissioner's designated officer or agent at a time specified and shall make reasonable rules governing the conduct of conferences.

The discretion given in this Code section to the commissioner shall be reasonably exercised on all occasions.

(3) The commissioner or the commissioner's delegate shall consider information contained in the taxpayer's claim for refund, together with such other information as may be available, and shall approve or deny the taxpayer's claim and notify the taxpayer of the action.

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

(A) If the taxpayer is a public utility or a nonresident, the taxpayer shall have the right to bring an action for a refund in the Georgia Tax Tribunal in accordance with Chapter 13A of Title 50 or in the superior court of the county in which is located the taxpayer's principal place of doing business in this state or in which the taxpayer's chief or highest corporate officer or employee resident in this state maintains an office; or

(B) If the taxpayer is a nonresident individual or foreign corporation having no place of doing business and no officer or employee resident and maintaining an office in this state, the taxpayer shall have the right to bring an action for a refund in the Georgia Tax Tribunal in accordance with Chapter 13A of Title 50 or in the Superior Court of Fulton County or in the superior court of the county in which the commissioner in office at the time the action is filed resides.

(5) An action for a refund pursuant to paragraph (4) of this subsection shall not be brought by the taxpayer on behalf of a class consisting of other taxpayers who are alleged to be similarly situated.

(6)(A) No action or proceeding for the recovery of a refund under this Code section shall be commenced before the expiration of one year from the date of filing the claim for refund unless the commissioner or the commissioner's delegate renders a decision on the claim within that time, nor shall any action or proceeding be commenced after the later of:

(i) The expiration of two years from the date the claim is denied; or

(ii) If a valid protest is filed under paragraph (2) of this subsection, 30 days after the date of the department's notice of decision on such protest.

(B) The period prescribed in this paragraph for filing an action for refund shall be extended for such period as may be agreed upon in writing between the taxpayer and the commissioner prior to the expiration of such period or any extension thereof.

(7) In an action for a refund pursuant to paragraph (4) of this subsection, all questions of law decided by a court or the Georgia Tax Tribunal, including interpretations of constitutional, statutory, and regulatory provisions, shall be made without any deference to any determination or interpretation, whether written or unwritten, that may have been made on the matter by the department, except such requirement shall have no effect on the judicial standard of deference accorded to rules promulgated pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(d) In the event any taxpayer's claim for refund is approved by the commissioner or the commissioner's delegate and the taxpayer has not paid other state taxes which have become due, the commissioner or department may offset any existing liabilities against the refund. Once the offset authorized by this subsection occurs, the refund shall be deemed granted and the amount of the offset shall be considered for all purposes as a payment toward the particular tax liabilities at issue. Any excess refund amount after any offsets have been applied shall be refunded to the taxpayer at the same time the offset is taken.

(e) This Code section shall not apply to taxes paid for alcoholic beverages pursuant to Title 3.

(f) For purposes of all claims for refund of sales and use taxes erroneously or illegally assessed and collected, the term "taxpayer," as defined under Code Section 48-2-35.1, shall apply. Such claim for refund shall contain the total refund claimed and the allocation of the local sales and use tax by the political subdivision.

(g) Any taxpayer required to pay taxes electronically in accordance with paragraph (2.1) of subsection (f) of Code Section 48-2-32 shall also file any claims for refund electronically. The department shall make claim for refund forms consistent with this subsection electronically available.

(h)(1) As used in this subsection, the term:

(A) "Political subdivision designee" means the chief officer or officers designated by the political subdivision to receive information about a refund claim of local significance pursuant to this subsection. Each political subdivision shall certify to the commissioner that any such designee is so authorized on a form and in a manner prescribed by the department.

(B) "Refund claim of local significance" means a taxpayer's claim for refund of sales and use taxes erroneously or illegally

assessed and collected or the department's discovery of any overpayment of such taxes, if such claim for refund or overpayment is for an amount equal to or greater than 10 percent of the total yearly average of aggregate sales and use tax distributions to any single political subdivision based on the average of the three most recent calendar years.

(2)(A) Within 30 business days following the department's receipt of a refund claim of local significance, the department shall notify each affected political subdivision's political subdivision designee that a refund claim of local significance to the political subdivision has been received and shall furnish the taxpayer with a copy of such notification. Such notification shall include the date the refund claim of local significance was filed, the amount in the claim for refund for which the political subdivision itself would be responsible if the request is granted, and a copy of the confidentiality provisions in Code Section 48-2-15 and this Code section.

(B) After the department has completed an audit of the claim for refund and determined a final refund amount, the department shall supplement the above notice by transmitting to the political subdivision designee the final refund amount for which the political subdivision is responsible.

(C)(i) With respect to a final refund amount due to a taxpayer that made an overpayment of taxes pursuant to a direct pay permit issued in accordance with Code Section 48-8-49.1, in lieu of a single payment of the final refund amount to the taxpayer, an affected political subdivision may elect for the final refund amount, including applicable interest, to be repaid by the department to the taxpayer over a time period less than or equal to the total duration of the periods subject to the claim for refund. Any such election must be made by the political subdivision, in a manner prescribed by the department, within 30 days of the date the department notifies the political subdivision of the final refund amount for which the political subdivision is responsible.

(ii) When an election is made pursuant to division (i) of this subparagraph, the department shall make payment of the total final refund amount, which shall include amounts for local sales and use taxes, to the taxpayer in monthly installments due on or before the fifteenth day of each calendar month during the repayment period. Interest shall accrue on the unpaid balance during such repayment period pursuant to subsection (a) of this Code section.

(iii) The provisions of this subparagraph shall only apply to refund claims of local significance and resulting final refund

amounts due to a taxpayer that made an overpayment of local sales and use taxes pursuant to a direct pay permit issued in accordance with Code Section 48-8-49.1.

(3) Any information supplied to a political subdivision designee pursuant to this subsection shall retain, in the hands of the local official, its privileged and confidential nature to the same extent and under the same conditions as such information is privileged and confidential in the hands of the commissioner, pursuant to Code Section 48-2-15. It shall be the responsibility of the political subdivision designee, and not the department, to protect privileged and confidential information received under this subsection. Any person who divulges any tax information obtained under this subsection shall be subject to the same civil and criminal penalties as provided for divulgence of tax information by employees of the department. Though privileged and confidential information shall not be disclosed, the political subdivision designee may make reasonable budgetary recommendations to elected officials, city managers, and tax officials in political subdivisions based on the confidential information furnished. The department shall not be subject to any criminal or civil liability for the unauthorized divulgence of privileged and confidential information by a political subdivision designee. Notwithstanding the foregoing, in the event all or any portion of the refund claim of local significance is for a tax levied under Part 1 of Article 3 of Chapter 8 of this title, the affected county shall not be in violation of this confidential provision if it notifies all municipal political subdivision designees in the county that such notification has been received from the department.

(4) The commissioner, by rule or regulation, shall establish guidelines for identifying and producing documents to the Department of Audits and Accounts for review relating to the handling of refund claims of local significance. In the event of such review, the Department of Audits and Accounts shall assess whether the department followed proper procedures and used appropriate methodology to reach its final determination on a refund claim of local significance.

(5) Any refund claims of local significance pending with the department for two years after the claim for refund was filed shall be automatically transferred to the Georgia Tax Tribunal as a declaratory judgment of the commissioner requesting a show cause proceeding pursuant to Code Section 50-13A-19.1.

History.

Ga. L. 1937-38, Ex. Sess., p. 77, § 34; Ga. L. 1945, p. 272, § 1; Ga. L. 1955, p. 455, § 1; Ga. L. 1971, p. 378, § 1; Ga. L. 1973, p. 507, § 1; Ga. L. 1975, p. 156, §§ 7, 8; Code 1933, § 91A-245, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 11; Ga. L. 1979, p. 1078, §§ 1, 2; Ga. L. 1992, p. 1458, § 4; Ga. L. 2000, p. 777, § 1; Ga. L. 2003, p. 355, §§ 1, 2; Ga. L. 2003, p. 429, § 1; Ga. L. 2005, p. 159, § 5/HB 488; Ga. L. 2006, p. 72, § 48/SB

465; Ga. L. 2009, p. 816, § 3/HB 485; Ga. L. 2012, p. 318, § 2/HB 100; Ga. L. 2016, p. 574, § 2/HB 960; Ga. L. 2020, p. 184, § 1-2/HB 846; Ga. L. 2021, p. 120, § 2/SB 185; Ga. L. 2024, p. 888, § 3-4/HB 1267, see notes for effective date.

Delayed effective date.

Ga. L. 2024, p. 888, § 4-1(a)/HB 1267, provides that the 2024 amendment shall only become effective on July 1, 2026 upon ratification of a resolution by the voters at the November, 2024, state-wide general election that amends the Constitution to provide that the Georgia Tax Court shall have state-wide jurisdiction as provided by law and that decisions of such court shall be appealed to the Court of Appeals, subject to review by the Supreme Court of Georgia. However, if such a Constitutional amendment is not so ratified, then the amendments to this Code section shall stand repealed on January 1, 2025. This Code section, as set out above, does not reflect the amendment by that Act owing to the delayed effective date. Upon ratification, paragraphs (c)(4), (c)(7), and (h)(5) will read as follows: "(4) Any taxpayer whose claim for refund is denied by the commissioner or the commissioner's delegate or whose claim is not decided by the commissioner or the commissioner's delegate within one year from the date of filing the claim shall have the right to bring an action for a refund in the Georgia Tax Court in accordance with Chapter 5B of Title 15, the 'Georgia Tax Court Act of 2025,' or in the superior court of the county of the residence of the taxpayer, except that:

"(A) If the taxpayer is a public utility or a nonresident, the taxpayer shall have the right to bring an action for a refund in the Georgia Tax Court in accordance with Chapter 5B of Title 15, the 'Georgia Tax Court Act of 2025,' or in the superior court of the county in which is located the taxpayer's principal place of doing business in this state or in which the taxpayer's chief or highest corporate officer or employee resident in this state maintains an office; or

"(B) If the taxpayer is a nonresident individual or foreign corporation having no place of doing business and no officer or employee resident and maintaining an office in this state, the taxpayer shall have the right to bring an action for a refund in the Georgia Tax Court in accordance with Chapter 5B of Title 15, the 'Georgia Tax Court Act of 2025,' or in the Superior Court of Fulton County or in the superior court of the county in which the commissioner in office at the time the action is filed resides.

"(7) In an action for a refund pursuant to paragraph (4) of this subsection, all questions of law decided by a court or the Georgia Tax Court, including interpretations of constitutional, statutory, and regulatory provisions, shall be made without any deference to any determination or interpretation, whether written or unwritten, that may have been made on the matter by the department, except such requirement shall have no effect on the judicial standard of deference accorded to rules promulgated pursuant to Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.'

"(5) Any refund claims of local significance pending with the department for two years after the claim for refund was filed shall be automatically transferred to the Georgia Tax Court as a declaratory judgment of the commissioner requesting a show cause proceeding pursuant to Chapter 5B of Title 15, the 'Georgia Tax Court Act of 2025.'"

Amendments.

The 2024 amendment substituted "Georgia Tax Court in accordance with Chapter 5B of Title 15, the 'Georgia Tax Court Act of 2025,'" for "Georgia Tax Tribunal in accordance with Chapter 13A of Title 50" throughout paragraph (c)(4); substituted "Georgia Tax Court" for "Georgia Tax Tribunal" in paragraph (c)(7); and, in paragraph (h)(5), substituted "Georgia Tax Court" for "Georgia Tax Tribunal" and substituted "Chapter 5B of Title 15, the 'Georgia Tax Court Act of 2025.'" for "Code Section 50-13A-19.1." at the end. For effective date of this amendment, see the delayed effective date note.

Editor's notes.

Ga. L. 2003, p. 355, § 8(b), not codified by the General Assembly, provides that the first 2003 amendment shall apply to all claims for refunds filed or actions for refunds brought pursuant to this Code section before, on, or after May 29, 2003.

Ga. L. 2003, p. 429, § 2, not codified by the General Assembly, provides that the second 2003 amendment shall be applicable to all taxable years beginning on or after January 1, 2003.

Ga. L. 2005, p. 159, § 1/HB 488, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2005.'"

Ga. L. 2009, p. 816, § 1/HB 485, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Improved Taxpayer Customer Service Act of 2009.'"

Ga. L. 2012, p. 318, § 16(b)/HB 100, not codified by the General Assembly, provides that: "Sections 1 through 14 of this Act shall become effective on January 1, 2013, provided that cases pending on January 1, 2013, shall continue to be governed by the law in effect on December 31, 2012, until the conclusion of the case."

Ga. L. 2016, p. 574, § 6(b)/HB 960, not codified by the General Assembly, provides: "The new penalty and interest rates provided in Sections 2, 3, and 4 of this Act shall apply to penalties and interest accrued on or after the effective date of this Act." This Act became effective July 1, 2016.

Ga. L. 2016, p. 574, § 6(c)/HB 960, not codified by the General Assembly, provides: "The new notification requirement and the automatic transfer to the Georgia Tax Tribunal requirement contained in Section 2 of this Act regarding a refund claim of local significance shall apply to claims for refund received by the department on or after the effective date of this Act." This Act became effective July 1, 2016.

Ga. L. 2020, p. 184, § 4-1(b)/HB 846, not codified by the General Assembly, provides, in part, that: "The revisions to paragraph (2) of subsection (h) of Code Section 48-2-35 in Section 1-2 of this Act shall apply to notices for final refund amounts received by a political subdivision on or after September 1, 2020, and the interest rate provided in Section 1-3 of this Act (Code Section 48-2-35.1) shall apply to interest accruing on or after September 1, 2020."

Ga. L. 2021, p. 120, § 5/SB 185, not codified by the General Assembly, provides: "This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval, and shall be applicable to all proceedings commenced before the Georgia Tax Tribunal or a superior court of this state on or after such date." The Governor approved this Act on April 29, 2021.

Ga. L. 2024, p. 888, § 4-1(a)/HB 1267, not codified by the General Assembly, provides that the 2024 amendment to this Code section is subject to an amendment to the Constitution to provide that the Georgia Tax Court shall have state-wide jurisdiction as provided by law and that decisions of such court shall be appealed to the Court of Appeals, subject to review by the Supreme Court of Georgia, that is ratified by the voters at the November, 2024, state-wide general election. If such a Constitutional amendment is not so ratified, then the amendments to this Code section shall stand repealed on January 1, 2025.

Law reviews.

For article discussing remedies for tax illegally assessed under the former Georgia Retailers' and Consumers' Sales and Use Tax Act (former Code 1933, Ch. 92-34 (see Ch. 8 of this title), see 9 Ga. St. B. J. 45 (1972).

For article discussing and comparing the principal means by which the Georgia taxpayer may obtain judicial review of his state tax liability, with emphasis on income and sales taxes, see 27 Mercer L. Rev. 309 (1975).

For note as to the voluntary payment doctrine in Georgia, see 16 Ga. L. Rev. 893 (1982).

For survey article on real property law, see 60 Mercer L. Rev. 345 (2008).

For article on the 2012 amendment of this Code section, see 29 Ga. St. U. L. Rev. 70 (2012).

For annual survey on administrative law, see 69 Mercer L. Rev. 15 (2017).

For annual survey on administrative law, see 70 Mercer L. Rev. 1 (2018).

For article with annual survey on state and local taxation, see 73 Mercer L. Rev. 231 (2021).

For annual survey on state and local taxation, see 3 Mercer L. Rev. 231 (2022).

JUDICIAL DECISIONS

Analysis

General Consideration
Standing and Consent to Bring Action Against State
Refundable Payments
Elements of Proof
Denial of Claim

General Consideration

Nature of action. — Right given to bring an action for refund of taxes illegally assessed and collected is in the nature of an action for money had and received. Hawes v. Bigbie, 123 Ga. App. 122, 179 S.E.2d 660, 1970 Ga. App. LEXIS 748 (1970).

Availability of other procedures and remedies. — Only method by which a taxpayer may present a claim for refund to the superior court is by the procedure outlined in this statute. Ingalls Iron Works Co. v. Blackmon, 133 Ga. App. 164, 210 S.E.2d 377, 1974 Ga. App. LEXIS 1001 (1974).

Taxpayer has at least three remedial procedures available for use in disputing the correctness of an assessment rendered against the taxpayer by the commissioner under Ga. L. 1951, p. 360, § 1 et seq. (see now O.C.G.A. Ch. 8, T. 48) relating to sales and use taxes. Taxpayer may proceed: (1) by the method of appeal under Ga. L. 1937-38, Ex. Sess., p. 77, § 45 (see now O.C.G.A. § 48-2-59); (2) by affidavit of illegality under former Code 1933, § 92-7301 (see now O.C.G.A. § 48-3-1); or (3) by paying taxes illegally exacted and suing for refund under Ga. L. 1937-38, Ex. Sess., p. 77, § 34 (see now O.C.G.A. § 48-2-35). Ingalls Iron Works Co. v. Blackmon, 133 Ga. App. 164, 210 S.E.2d 377, 1974 Ga. App. LEXIS 1001 (1974).

When the manufacturer remitted tax payments under the pre-1985 version of O.C.G.A. § 3-4-60, even if the manufacturer was not procedurally barred from seeking a refund under O.C.G.A. § 48-2-35, the manufacturer's failure to avail itself of the predeprivation remedies available to the manufacturer prior to payment of the disputed taxes results in denial of recovery of taxes so paid. James B. Beam Distilling Co. v. State, 263 Ga. 609, 437 S.E.2d 782, 1993 Ga. LEXIS 823 (1993), cert. denied, 513 U.S. 1056, 115 S. Ct. 662, 130 L. Ed. 2d 597, 1994 U.S. LEXIS 8837 (1994).

O.C.G.A. § 48-2-35, though the statute does not satisfy the criteria of the Tax Injunction Act, 28 U.S.C. § 1341, so as to bar jurisdiction of the federal court, is not the only means by which a taxpayer might challenge the constitutional validity of a state tax and win retrospective relief, as a taxpayer can bring an action in state court under 42 U.S.C. § 1983. Johnsen v. Collins, 875 F. Supp. 1571, 1994 U.S. Dist. LEXIS 20214 (S.D. Ga. 1994).

Predeprivation remedies. — State could not hold out what plainly appeared to be a "clear and certain" postdeprivation remedy and then declare, only after the disputed taxes had been paid, that no such remedy existed. Reich v. Collins, 513 U.S. 106, 115 S. Ct. 547, 130 L. Ed. 2d 454, 1994 U.S. LEXIS 8789 (1994).

Jurisdiction of federal court. — Though the holding in Reich v. Collins, 262 Ga. 625, 422 S.E.2d 846 (1992), seems to bar most refunds under O.C.G.A. § 48-2-35 when this tax is challenged on constitutional grounds, the uncertain status of this holding makes a constitutional claim under the Georgia refund statute equally uncertain, and so does not satisfy the criteria of providing a "plain, speedy and efficient" post-taxation remedy so as to bar jurisdiction of the federal court. Johnsen v. Collins, 875 F. Supp. 1571, 1994 U.S. Dist. LEXIS 20214 (S.D. Ga. 1994).

General Consideration (Cont'd)

O.C.G.A. § 48-2-35 does not constitute a waiver of immunity under the Eleventh Amendment to the United States Constitution and was not enough to confer jurisdiction on federal courts in Georgia to hear a plaintiff's claims against the state for damages or prospective relief regarding the automobile "title transfer fee" statute (O.C.G.A. § 40-3-21.1) [repealed]. Johnsen v. Collins, 875 F. Supp. 1571, 1994 U.S. Dist. LEXIS 20214 (S.D. Ga. 1994).

Class action suit for tax refund may not be maintained in Georgia. State v. Private Truck Council of Am., Inc., 258 Ga. 531, 371 S.E.2d 378, 1988 Ga. LEXIS 358 (1988).

Direct cause of action against dealer not permitted. — Since the plain language of O.C.G.A. § 48-2-35.1(d) provides that a person may seek a refund of erroneously paid sales tax from a dealer who collected and remitted the tax to the commissioner or directly from the commissioner, but does not mention a direct cause of action against the dealer, the customers were not authorized to bring a direct action for a refund of allegedly over-collected sales tax against the power company. Ga. Power Co. v. Cazier, 321 Ga. App. 576, 740 S.E.2d 458, 2013 Ga. App. LEXIS 352 (2013), cert. denied, No. S13C1275, 2013 Ga. LEXIS 813 (Ga. Oct. 7, 2013).

Liability of Department of Revenue for refund of fees charged by another department. — Emission testing company, seeking a refund under O.C.G.A. § 48-2-35(a), was not entitled to recover invalid fees from the state revenue commissioner since the fee was collected by the Director of the Environmental Protection Division of the Department of Natural Resources; deletion of the first "by the Commissioner" from what was now the first sentence of the statute was not intended to allow a citizen to recover from the Revenue Commissioner any fee paid to any other department or agency of Georgia government. Ga. Emission Testing Co. v. Jackson, 259 Ga. App. 250, 576 S.E.2d 642, 2003 Ga. App. LEXIS 68 (2003).

Availability of defenses. — Effect of having an express statutory right to sue for a refund was to remove the defense of voluntary payment under former Code 1933, § 20-1007 (see now O.C.G.A. § 13-1-13). Hawes v. Smith, 120 Ga. App. 158, 169 S.E.2d 823, 1969 Ga. App. LEXIS 702 (1969).

Mandamus relief improperly denied. — Plaintiffs' mandamus claims were improperly denied as the plaintiffs did not have an adequate legal remedy to challenge the constitutionality of Ga. L. 2015, pp. 236, 241-264, §§ 5-8 (HB 170) by pursuing a refund action because the plaintiffs did not argue that H.B. 170 illegally assessed taxes against them, but, rather, the plaintiffs argued that it violated the state constitution by allowing revenues from taxes on motor fuels to be apportioned for purposes other than on roads and bridges; thus, the relief the plaintiffs sought was broader than the relief provided by the statute, O.C.G.A. § 48-9-3, which was limited to a refund of the assessed taxes plus interest, and the trial court erred in concluding that the refund statute was an adequate legal remedy for the plaintiffs' claims. Ga. Motor Trucking Ass'n v. Georgia Dep't of Revenue, 301 Ga. 354, 801 S.E.2d 9, 2017 Ga. LEXIS 457 (2017).

Standing and Consent to Bring Action Against State

Prerequisites to filing of claim for refund. — Before a claim for refund is filed with the commissioner there should be a legal determination that the tax was erroneously or illegally collected by the commissioner. Parke, Davis & Co. v. Cook, 198 Ga. 457, 31 S.E.2d 728, 1944 Ga. LEXIS 417 (1944).

Standing to claim refund. — Refunds provided for under this statute are to be made to taxpayers. A retailer, like a distributor of gasoline, is not a taxpayer in the retailer's capacity of collecting motor fuel taxes and turning the taxes over to the commissioner. Maynard v. Thrasher, 77 Ga. App. 316, 48 S.E.2d 471, 1948 Ga. App. LEXIS 543 (1948).

To come within this statute, one need only qualify as a taxpayer. Under former Code 1933, Ch. 92-14 (see now O.C.G.A.

Art. 1, Ch. 9, T. 48) the consumer was the taxpayer. Hawes v. Shepherd Constr. Co., 117 Ga. App. 842, 162 S.E.2d 231, 1968 Ga. App. LEXIS 1259 (1968).

Only the party who actually paid the taxes is entitled to claim a refund. Blackmon v. Premium Oil Stations, Inc., 129 Ga. App. 169, 198 S.E.2d 900, 1973 Ga. App. LEXIS 925 (1973).

Ga. L. 1937-38, Ex. Sess., p. 77, § 34 (see now O.C.G.A. § 48-2-35) does not preclude the owner of the facility into which waste treatment equipment is incorporated from filing a claim for refund pursuant to a regulation of the commissioner pursuant to Ga. L. 1951, p. 360, § 3 (see now O.C.G.A. § 48-8-3) which regulation provides that the application for a refund be filed by the ultimate user. Eimco BSP Servs. Co. v. Chilivis, 241 Ga. 263, 244 S.E.2d 829, 1978 Ga. LEXIS 985 (1978).

When, under the pre-1985 version of O.C.G.A. § 3-4-60, the manufacturer remitted a tax payment to the revenue commissioner and subsequently, in an itemized billing statement, required the wholesaler to remit payment for "state stamps" or "state tax," it was the wholesaler which was the taxpayer for purposes of O.C.G.A. § 48-2-35 and, due to the manufacturer's lack of standing, the manufacturer was procedurally barred from pursuing an action for refund. James B. Beam Distilling Co. v. State, 263 Ga. 609, 437 S.E.2d 782, 1993 Ga. LEXIS 823 (1993), cert. denied, 513 U.S. 1056, 115 S. Ct. 662, 130 L. Ed. 2d 597, 1994 U.S. LEXIS 8837 (1994).

When it is shown that customers and not retailers paid taxes, retailers have no legal standing to obtain a refund. Blackmon v. Georgia Indep. Oilmen's Ass'n, 129 Ga. App. 171, 198 S.E.2d 896, 1973 Ga. App. LEXIS 926 (1973), overruled, City of Atlanta v. Barnes, 276 Ga. 449, 578 S.E.2d 110, 2003 Ga. LEXIS 258 (2003).

Since this statute extends the state's consent to be sued only to the taxpayer who has overpaid the taxpayer's tax liability, a seller may not bring an action for a refund of sales and use taxes under this statute unless the seller establishes the seller's standing to assert that as a taxpayer the seller has overpaid the seller's tax liability. If a seller has merely remitted taxes which the seller has shifted to the seller's customers, the seller lacks standing to assert that as to those payments the seller as a taxpayer has overpaid the seller's liability. Blackmon v. Georgia Indep. Oilmen's Ass'n, 129 Ga. App. 171, 198 S.E.2d 896, 1973 Ga. App. LEXIS 926 (1973), overruled, City of Atlanta v. Barnes, 276 Ga. 449, 578 S.E.2d 110, 2003 Ga. LEXIS 258 (2003).

Electrical membership corporation lacked direct standing to pursue a claim for a refund of sales tax on behalf of the corporation's members/patrons, pursuant to O.C.G.A. § 48-2-35(b)(1), as it was not a "taxpayer" within O.C.G.A. § 48-2-35(b)(4) for purposes of bringing an action for a tax refund as the corporation did not bear the burden of the tax because the tax was passed on to the corporation's members/patrons; one purpose of the EMC was to furnish electrical energy and service to the corporation's members, pursuant to O.C.G.A. § 46-3-200(1), and the sale of electricity required a retail sales tax paid to the EMC, which was passed onto the Georgia Commissioner of Revenue, pursuant to O.C.G.A. § 48-8-30(a). Sawnee Elec. Mbrshp. Corp. v. Ga. Dep't of Revenue, 279 Ga. 22, 608 S.E.2d 611, 2005 Ga. LEXIS 117 (2005).

No standing to claim refund. — Trial court did not err in dismissing a bank's complaint alleging that the bank was entitled to a refund for sales tax paid under the General Refund Statute, O.C.G.A. § 48-2-35, because the bank was not a taxpayer entitled to a refund under § 48-2-35 since the bank was simply a third-party lender that contracted to advance the money for the consumer, and ultimately the merchant, to meet their obligations to pay the sales tax; the bank's recourse was against the consumer who defaulted on the debt or possibly through any provisions in the credit card program contracts assigning responsibility for bad debts among the various parties. Citibank (South Dakota), N.A. v. Graham, 315 Ga. App. 120, 726 S.E.2d 617, 2012 Ga. App.

Standing and Consent to Bring Action Against State (Cont'd)

LEXIS 330 (2012), cert. denied, No. S12C1281, 2012 Ga. LEXIS 1017 (Ga. Oct. 1, 2012).

Statute as providing standing to attack constitutionality of other provisions. — Authority under this statute to bring an action for a refund does not provide standing to attack constitutionality of another statute when facts alleged show no injury from enforcement of such statute. Atlanta Americana Motor Hotel Corp. v. Undercofler, 222 Ga. 295, 149 S.E.2d 691, 1966 Ga. LEXIS 461 (1966).

State as real party at interest. — Action under this statute against the predecessor of the present commissioner in an official capacity as commissioner is an action against the state. Forrester v. Continental Gin Co., 67 Ga. App. 119, 19 S.E.2d 807, 1942 Ga. App. LEXIS 344 (1942).

State, by this statute, has consented to be sued. Thompson v. Continental Gin Co., 73 Ga. App. 694, 37 S.E.2d 819, 1946 Ga. App. LEXIS 390 (1946).

Consent to be strictly construed. — State may not be sued without the state's consent. If consent to be sued is extended by the state, the scope of consent may not be extended by implication. Therefore, this statute is to be strictly construed. Schaffer v. Oxford, 102 Ga. App. 710, 117 S.E.2d 637, 1960 Ga. App. LEXIS 730 (1960).

Electrical membership corporation lacked associational standing to seek a sales tax refund on behalf of the corporation's members/patrons as the corporation was a nontaxpayer acting in a representative capacity and there was a very limited waiver of sovereign immunity provided by O.C.G.A. § 48-2-35, which did not extend to nontaxpayers; further, the waiver of sovereign immunity by Ga. Const. 1983, Art. I, Sec. II, Para. IX(e) was to be strictly construed, and even a taxpayer was prohibited from bringing a refund action on behalf of other taxpayers similarly situated, pursuant to O.C.G.A. § 48-2-35(b)(5). Sawnee Elec. Mbrshp. Corp. v. Ga. Dep't of Revenue, 279 Ga. 22, 608 S.E.2d 611, 2005 Ga. LEXIS 117 (2005).

Consent is conditioned on prior filing of refund claim. Blackmon v. Georgia Indep. Oilmen's Ass'n, 129 Ga. App. 171, 198 S.E.2d 896, 1973 Ga. App. LEXIS 926 (1973), overruled, City of Atlanta v. Barnes, 276 Ga. 449, 578 S.E.2d 110, 2003 Ga. LEXIS 258 (2003).

To whom consent granted. — Statute extends state's consent to be sued only with respect to overpayments by the taxpayer from whom such tax was collected. Blackmon v. Georgia Indep. Oilmen's Ass'n, 129 Ga. App. 171, 198 S.E.2d 896, 1973 Ga. App. LEXIS 926 (1973), overruled, City of Atlanta v. Barnes, 276 Ga. 449, 578 S.E.2d 110, 2003 Ga. LEXIS 258 (2003).

Refundable Payments

Applicability of statute. — Statute is meant to apply in cases of taxes erroneously or illegally assessed or collected. Hawes v. Bigbie, 123 Ga. App. 122, 179 S.E.2d 660, 1970 Ga. App. LEXIS 748 (1970).

What payments refundable. — Revenue derived through enforcement of executive order of commissioner providing for warehousing and other services with respect to distilled spirits passing through or stored in a state-operated warehouse and handled by state employees is not revenue obtained through tax or license within the purview of this statute. Schaffer v. Oxford, 102 Ga. App. 710, 117 S.E.2d 637, 1960 Ga. App. LEXIS 730 (1960).

Compensation granted a dealer is not allowable for one's own tax liability. Blackmon v. Premium Oil Stations, Inc., 129 Ga. App. 169, 198 S.E.2d 900, 1973 Ga. App. LEXIS 925 (1973).

Trial court properly dismissed the testing company's lawsuit brought pursuant to O.C.G.A. § 48-2-35 and seeking a refund of fees improperly assessed under the Motor Vehicle Emission Inspection and Maintenance Act, O.C.G.A. § 12-9-40 et seq., as the state revenue commissioner did not collect or administer the fee at issue and O.C.G.A. § 48-2-35 only applied to the illegal collection of a tax or license made by the state revenue commissioner.

Ga. Emission Testing Co. v. Reheis, 268 Ga. App. 560, 602 S.E.2d 153, 2004 Ga. App. LEXIS 879 (2004), cert. denied, No. S04C1952, 2004 Ga. LEXIS 894 (Ga. Oct. 12, 2004).

Dealer not required to prepay potentially refundable taxes prior to seeking approval of refund from Department of Revenue. — With regard to the period beginning by May 5, 2009 and ending on September 7, 2010, the court of appeals erred by affirming the dismissal of the dealer's case requesting a tax refund from the Georgia Department of Revenue because the statutes did not require a dealer to prepay potentially refundable taxes to consumers prior to seeking approval for a refund from the Department; and, although the Department's regulations required a dealer to pay any refund amount to the dealer's customers prior to the point that the dealer could acquire repayment of those funds from the Department, the statutes did not require a dealer to repay funds to the dealer's customers prior to filing a request for a refund or prior to the Department's decision of whether or not a refund was due. New Cingular Wireless PCS, LLC v. Ga. Dep't of Revenue, 303 Ga. 468, 813 S.E.2d 388, 2018 Ga. LEXIS 209 (2018).

Elements of Proof

Elements of proof of claim for refund. — In any case when tax was illegally collected, the plaintiff may file the plaintiff's claim for a refund, but in order to prevail upon the trial of the action the plaintiff must show that the taxing authority is not in equity and good conscience entitled to the money. Hawes v. Bigbie, 123 Ga. App. 122, 179 S.E.2d 660, 1970 Ga. App. LEXIS 748 (1970).

As a prerequisite to maintenance of an action, the plaintiff must prove at trial the plaintiff's averment that the basis on which the plaintiff computed and paid taxes is that taxes were not first collected by the plaintiff from the plaintiff's customers and that the plaintiff bore the burden of taxes claimed to have been overpaid, not the plaintiff's customers. Otherwise, the plaintiff has not established a basis for asserting that the plaintiff as a retailer has overpaid the plaintiff's liability as a taxpayer. Blackmon v. Georgia Indep. Oilmen's Ass'n, 129 Ga. App. 171, 198 S.E.2d 896, 1973 Ga. App. LEXIS 926 (1973), overruled, City of Atlanta v. Barnes, 276 Ga. 449, 578 S.E.2d 110, 2003 Ga. LEXIS 258 (2003).

Substantial evidence supported determinations of Public Service Commission. — Trial court did not err granting summary judgment to the power company upon determining that the Georgia Public Service Commission's determinations were supported by substantial evidence and were neither arbitrary nor capricious in its exclusive ratemaking authority. Cazier v. Ga. Power Co., 362 Ga. App. 112, 866 S.E.2d 827, 2021 Ga. App. LEXIS 570 (2021).

Denial of Claim

Refund of sales tax for failure to comply with regulations. — Grant of the Georgia Department of Revenue's motion to dismiss the appellants' complaint seeking a refund under O.C.G.A. § 48-2-35 of state sales tax paid was affirmed because the appellants failed to comply with a regulation that, before seeking a refund on behalf of their customers under § 48-2-35, the appellants were required to affirmatively show that the alleged erroneously or illegally collected tax had been refunded to their customers, which the appellants admittedly had not done.

Effect of denial of claim by commissioner. — When claim for tax refund is denied by the commissioner, the taxpayer has action against the state for refund. The money, having been paid into the state treasury, is no longer within the power or control of the commissioner. Wright v. Forrester, 192 Ga. 864, 16 S.E.2d 873, 1941 Ga. LEXIS 563 (1941).

State is the real party at interest on question of tax refund, and the statute imposes no further duty on the commissioner if the commissioner denies the claim. Wright v. Forrester, 192 Ga. 864, 16 S.E.2d 873, 1941 Ga. LEXIS 563 (1941).

Limitation of action. — Letter from Department of Revenue denying a claim for refund of sales and use taxes commenced the running of the two-year

Denial of Claim (Cont'd)

limitations period even though the denial was for "lack of documentation" and there was subsequent communication between the taxpayer and the Department. Collins v. Columbus Foundries, Inc., 262 Ga. 710, 425 S.E.2d 281, 1993 Ga. LEXIS 187 (1993).

OPINIONS OF THE ATTORNEY GENERAL

What payments refundable. — Payment of retail liquor license by the owner of a store, which the owner shortly thereafter sold to another, is not recoverable if voluntarily made. 1948-49 Ga. Op. Att'y Gen. 593.

Language of this statute clearly limits refunds made to such taxes which may be determined to have been erroneously or illegally assessed and collected. Therefore, license fees voluntarily paid for motor vehicle license plates cannot be recovered when the owner of such vehicle later decides not to operate the vehicle within the state. 1950-51 Ga. Op. Att'y Gen. 190.

Statute applies only to taxes paid to the state and has no application to the recording tax imposed on long-term real estate notes. 1960-61 Ga. Op. Att'y Gen. 521.

Overpayment of income taxes resulting from excess withholdings may not be recovered under normal circumstances by filing a claim for refund or by obtaining credit against liability of different years, when the taxpayer does not file an income tax return until more than three years after the date of payment. 1976 Op. Att'y Gen. No. 76-54.

Election by husband and wife to change from joint return to separate returns. — Husband and wife may amend a previously filed return or returns so as to change from joint return basis to separate return basis, or vice versa, but beyond the due date of the return they no longer have such right of election. The tax resulting from such election is not erroneously or illegally assessed or collected and no refund shall be issued, even if the tax is higher than if they had not so elected. 1963-65 Ga. Op. Att'y Gen. 589.

RESEARCH REFERENCES

Am. Jur. 2d.

72 Am. Jur. 2d, State and Local Taxation, § 965 et seq.

ALR.

Right to interest on tax refunds, 57 A.L.R. 357.

When may payment of tax or assessment be regarded as involuntary or made under duress, 64 A.L.R. 9; 84 A.L.R. 294.

Corporation which pays tax wrongfully exacted upon shares of its stock as proper party to maintain action for its recovery, 84 A.L.R. 107.

Action to recover back tax illegally exacted as one upon contract as regards applicability of limitation statutes, 92 A.L.R. 1360.

Constitutionality of statutes providing for refund of taxes illegally or erroneously exacted, 98 A.L.R. 284.

Excessive assessments as within contemplation of statute providing for refunding of taxes erroneously or illegally charged, 110 A.L.R. 670.

Right to amend claim for refund of taxes after time for filing has expired, 113 A.L.R. 1291.

Right as between dealer or manufacturer and taxing authorities in respect of taxes and license fees illegally received or collected, 119 A.L.R. 542.

Statute repealing or modifying previous statute providing for refunding of taxes illegally or erroneously assessed, collected, or paid, as applicable retroactively, 124 A.L.R. 1480.

Assignability of claim for tax refund, and rights of assignee in respect thereof, 134 A.L.R. 1202.

Right of payer, as against taxing authority, to refund of, or credit for, amount paid on another's income tax, 154 A.L.R. 159.

Claim of government against taxpayer (or one in privity with him) which is

barred by lapse of time as available to defeat or diminish claim of taxpayer against government, or vice versa, 154 A.L.R. 1052; 12 A.L.R.2d 815.

Power or duty, in absence of statute, to allow tax or license fee illegally exacted or erroneously paid as credit on valid tax or license fee, 160 A.L.R. 1423.

Retrospective operation of statute enlarging or shortening period for claim of tax refund, 163 A.L.R. 778.

Right to refund or recovery of back taxes paid on property not owned by taxpayer, 165 A.L.R. 879.

When does special limitation period for filing applications for tax refund begin to run, 175 A.L.R. 1100.

Retrospective application and effect of statutory provision for interest or changed rate of interest, 4 A.L.R.2d 932.

Claim of government against taxpayer (or one in privity with him) which is barred by lapse of time as available to defeat or diminish claim of taxpayer against government, or vice versa, 12 A.L.R.2d 815.

Power to remit, release, or compromise tax claim, 28 A.L.R.2d 1425.

When right to refund of state or local taxes accrues, within statute limiting time for applying for refund, 46 A.L.R.2d 1350.

What constitutes laches barring right to relief in taxpayer's action, 71 A.L.R.2d 529.

Right to interest on tax refund or credit in absence of specific controlling statute, 88 A.L.R.2d 823.

Refund of state inheritance or estate tax where claims are proven against estate after tax was paid, 63 A.L.R.3d 924.

Propriety of class action in state courts to recover taxes, 10 A.L.R.4th 655.

Recovery of tax paid on exempt property, 25 A.L.R.4th 186.

Validity and construction of state statute or rule allowing or changing rate of prejudgment interest in tort actions, 40 A.L.R.4th 147.

Retrospective application and effect of state statute or rule allowing interest or changing rate of interest on judgments or verdicts, 41 A.L.R.4th 694.

Validity and applicability of statutory time limit concerning taxpayer's claim for state tax refund, 1 A.L.R.6th 1.

Voluntary payment doctrine as bar to recovery of payment of generally unlawful tax, 1 A.L.R.6th 229.

Construction and operation of statutory time limit for filing claim for state tax refund, 14 A.L.R.6th 119.

Effect of delay in receipt or negotiation of refund check in determining right to interest under § 6611 of the Internal Revenue Code (26 USCA § 6611), 145 A.L.R. Fed. 437.

What constitutes payment for purposes of commencing limitations period under Internal Revenue Code (26 U.S.C.A. § 6511(a)) for refund of tax overpayments, 160 A.L.R. Fed. 137.

What constitutes plain, speedy, and efficient state remedy under Tax Injunction Act (28 USCS § 1341), prohibiting federal district courts from interfering with assessment, levy, or collection of state business taxes, 31 A.L.R. Fed. 2d 237.

48-2-35.1. (For effective date, see note.) Refund of sales and use taxes; expedited refunds; frivolous claims; refunds for taxes paid to dealers.

(a)(1) If a certificate or exemption determination letter issued by the commissioner certifying that the purchaser is entitled to purchase tangible personal property or taxable services without the payment of sales and use tax has not been obtained and used prior to purchasing such tangible personal property or taxable services, a refund of sales and use taxes shall be made to such purchaser without interest.

(2) For refunds of overpayments of state and local sales and use taxes made pursuant to a direct payment permit issued in accordance

with Code Section 48-8-49.1, interest shall be paid on the overpaid amount of the taxes or fees pursuant to subsection (a) of Code Section 48-2-35, and subject to the provisions of Code Section 50-13A-19.1; provided, however, that interest shall begin to accrue on the overpaid amount of taxes or fees from the date an amended return or refund claim claiming a refund is filed.

(b) Any taxpayer who wishes to expedite the payment of a sales and use tax claim for refund may apply to the commissioner for such expedited refund; and as part of such application the taxpayer shall file a bond that is satisfactory to the commissioner as security for the repayment of such refund and any applicable tax, interest, penalties, fees, or costs in the event that the commissioner determines within the applicable statute of limitations that all or a portion of such refund was paid in error. The commissioner shall issue the refund within 30 days of the date of the posting of the approved bond. Any assessment of tax, interest, penalties, fees, or costs related to the payment of such refund claim shall be made within three years after the date that such refund was paid by the commissioner.

(c)(1) As used in this subsection, the term:

(A) "Disregard" means any careless, reckless, or intentional disregard.

(B) "Excessive amount" means that portion of the claim for refund that exceeds the amount that is eligible for refund and for which there is no reasonable basis.

(C) "Frivolously filed" means a sales and use tax claim for refund in which the amount claimed exceeds the amount eligible for refund by at least 50 percent.

(D) "Negligence" includes any failure to make a reasonable attempt to comply with the provisions of this title.

(E) "Reasonable basis" means a position that is reasonably based on one or more of the following authorities: applicable provisions of this title and other statutory provisions; proposed and adopted regulations construing such statutes; court cases; official opinions of the Attorney General; and letter rulings, policy statements, informational bulletins, and other administrative pronouncements published by the commissioner. Notwithstanding the preceding list of authorities, an authority shall not continue to be an authority to the extent it is overruled or modified, implicitly or explicitly, by a body with the power to overrule or modify the earlier authority.

(2) Any taxpayer who frivolously files a sales and use tax claim for refund shall be subject to a penalty of 20 percent of the excessive

amount. No penalty shall be assessed pursuant to this subsection against any portion of an excessive amount for which a refund is claimed in good faith and the filing of which was not due to negligence or disregard of the law. The determination of whether a taxpayer acted in good faith shall be made on a case-by-case basis, taking into account all pertinent facts and circumstances. Generally, the most important factor in such determination is the extent of the taxpayer's effort to assess the taxpayer's proper tax liability. Circumstances that may indicate good faith shall include an honest misunderstanding of fact or law that is reasonable in light of all the facts and circumstances, including the experience, knowledge, and education of the taxpayer. An isolated computational or transcriptional error generally is not inconsistent with good faith.

(3) In addition to the penalty imposed under paragraph (2) of this subsection, when all or part of the excessive amount of the taxpayer's claim for refund is based on a position which is knowingly and willfully advanced in bad faith and is patently improper, such taxpayer shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than $1,000.00.

(d) Except as provided for in this subsection, for the purposes of all claims for refund of sales and use taxes erroneously or illegally assessed and collected, the term "taxpayer" as used in Code Section 48-2-35 shall mean a dealer as defined in Code Section 48-8-2 that collected and remitted erroneous or illegal sales and use taxes to the commissioner. A person that has erroneously or illegally paid sales taxes to a dealer that collected and remitted such taxes to the commissioner may file a claim for refund either initially with the commissioner or, alternatively, elect to seek a refund from the dealer, by submitting a written request for refund to the dealer, and file a claim for refund with the commissioner after being unable to obtain a refund from such dealer. Such person shall also be considered a taxpayer for purposes of filing a claim for refund with the commissioner under Code Section 48-2-35, but only if such person:

(1) When filing a refund claim initially with the commissioner, provides the department with a notarized form prescribed by the commissioner and executed by the dealer affirming that the dealer:

(A) Has not claimed or will not claim a refund of the same tax included in the person's request for refund;

(B) Will provide to the person any information or documentation in the dealer's possession needed for submission to the department to support or prove the claim for refund;

(C) Has remitted to the state the taxes being sought for refund; and

(D) Has not taken or will not take a credit for taxes being sought for refund; or

(2)(A) When filing a refund claim with the commissioner after being unable to obtain a refund from such dealer, such person provides a letter or other information as may be requested by the commissioner that either:

(i) The dealer refused or was unable to refund the erroneously or illegally assessed and collected taxes; or

(ii) The dealer did not act upon the person's written request for refund of the erroneously or illegally assessed and collected taxes within 90 days from the date of such request for refund.

(B) Upon acceptance of such letter or information by the commissioner, the dealer shall be deemed to have assigned all rights to the refund to such person.

History.

Code 1981, § 48-2-35.1, enacted by Ga. L. 2004, p. 630, § 1; Ga. L. 2009, p. 813, § 1/HB 441; Ga. L. 2009, p. 816, § 4/HB 485; Ga. L. 2013, p. 677, § 1/SB 137; Ga. L. 2020, p. 184, § 1-3/HB 846; Ga. L. 2024, p. 888, § 3-5/HB 1267, see notes for effective date.

Delayed effective date.

Ga. L. 2024, p. 888, § 4-1(a)/HB 1267, provides that the 2024 amendment shall only become effective on July 1, 2026 upon ratification of a resolution by the voters at the November, 2024, state-wide general election that amends the Constitution to provide that the Georgia Tax Court shall have state-wide jurisdiction as provided by law and that decisions of such court shall be appealed to the Court of Appeals, subject to review by the Supreme Court of Georgia. However, if such a Constitutional amendment is not so ratified, then the amendments to this Code section shall stand repealed on January 1, 2025. This Code section, as set out above, does not reflect the amendment by that Act owing to the delayed effective date. Upon ratification, paragraph (a)(2) will read as follows: "(2) For refunds of overpayments of state and local sales and use taxes made pursuant to a direct payment permit issued in accordance with Code Section 48-8-49.1, interest shall be paid on the overpaid amount of the taxes or fees pursuant to subsection (a) of Code Section 48-2-35, and subject to the provisions of Chapter 5B of Title 15, the 'Georgia Tax Court Act of 2025'; provided, however, that interest shall begin to accrue on the overpaid amount of taxes or fees from the date an amended return or refund claim claiming a refund is filed."

Amendments.

The 2024 amendment substituted "Chapter 5B of Title 15, the 'Georgia Tax Court Act of 2025'" for "Code Section 50-13A-19.1" in the middle of paragraph (a)(2). For effective date of this amendment, see the delayed effective date note.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2009, subsection (a) as enacted by Ga. L. 2009, p. 816, § 4/HB 485 was redesignated as subsection (d). Subsection (b) as designated by Ga. L. 2009, p. 816, § 4/HB 485 was identical to subsection (a) as designated by Ga. L. 2009, p. 813, § 1/HB 441, so the subsection (a) designation by Ga. L. 2009, p. 813, § 1/HB 441, was retained.

Editor's notes.

Ga. L. 2004, p. 630, § 2, not codified by the General Assembly, provides that this Code section shall be applicable to any sales and use tax refund claim filed on or after July 1, 2004.

Ga. L. 2009, p. 816, § 1/HB 485, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Improved Taxpayer Customer Service Act of 2009.'"

Ga. L. 2020, p. 184, § 4-1(b)/HB 846, not codified by the General Assembly, provides, in part, that: "The revisions to paragraph (2) of subsection (h) of Code Section 48-2-35 in Section 1-2 of this Act shall apply to notices for final refund amounts received by a political subdivision on or after September 1, 2020, and the interest rate provided in Section 1-3 of this Act shall apply to interest accruing on or after September 1, 2020."

Ga. L. 2024, p. 888, § 4-1(a)/HB 1267, not codified by the General Assembly, provides that the 2024 amendment to this Code section is subject to an amendment to the Constitution to provide that the Georgia Tax Court shall have state-wide jurisdiction as provided by law and that decisions of such court shall be appealed to the Court of Appeals, subject to review by the Supreme Court of Georgia, that is ratified by the voters at the November, 2024, state-wide general election. If such a Constitutional amendment is not so ratified, then the amendments to this Code section shall stand repealed on January 1, 2025.

Law reviews.

For annual survey on administrative law, see 70 Mercer L. Rev. 1 (2018).

For annual survey on state and local taxation: a two-year survey, see 71 Mercer L. Rev. 279 (2019).

For article with annual survey on state and local taxation, see 73 Mercer L. Rev. 231 (2021).

For annual survey on state and local taxation, see 3 Mercer L. Rev. 231 (2022).

JUDICIAL DECISIONS

Direct cause of action not permitted. — Since the plain language of O.C.G.A. § 48-2-35.1(d) provides that a person may seek a refund of erroneously paid sales tax from a dealer who collected and remitted the tax to the commissioner or directly from the commissioner, but does not mention a direct cause of action against the dealer, the customers were not authorized to bring a direct action for a refund of allegedly over-collected sales tax against the power company. Ga. Power Co. v. Cazier, 321 Ga. App. 576, 740 S.E.2d 458, 2013 Ga. App. LEXIS 352 (2013), cert. denied, No. S13C1275, 2013 Ga. LEXIS 813 (Ga. Oct. 7, 2013).

Dealer not required to prepay potenially refundable taxes prior to seeking approval of refund from Department of Revenue. — With regard to the period beginning by May 5, 2009 and ending on September 7, 2010, the court of appeals erred by affirming the dismissal of the dealer's case requesting a tax refund from the Georgia Department of Revenue because the statutes did not require a dealer to prepay potentially refundable taxes to consumers prior to seeking approval for a refund from the Department; and, although the Department's regulations required a dealer to pay any refund amount to the dealer's customers prior to the point that the dealer could acquire repayment of those funds from the Department, the stautes did not require a dealer to repay funds to the dealer's customers prior to filing a request for a refund or prior to the Department's decision of whether or not a refund was due. New Cingular Wireless PCS, LLC v. Ga. Dep't of Revenue, 303 Ga. 468, 813 S.E.2d 388, 2018 Ga. LEXIS 209 (2018).

Amendment granting standing to dealers was procedural and operated retroactively. — Because a dealer had statutorily granted representational standing under amended O.C.G.A. § 48-2-35.1 to recover wrongfully paid sales taxes from the state on behalf of the dealer's customers, and the amendment was procedural and could be applied retroactively, the dealer had standing to file a claim for any taxes for periods before the statute was amended. New Cingular Wireless PCS, LLC v. Dep't of Revenue, 308 Ga. 729, 843 S.E.2d 431, 2020 Ga. LEXIS 350 (2020).

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting not required. — An offense arising from a violation of O.C.G.A. § 48-2-35.1 does not, at this time, appear to be an offense for which

fingerprinting is required; thus, this offense is not designated as one for which those charged are to be fingerprinted. 2010 Op. Att'y Gen. No. 2010-2.

RESEARCH REFERENCES

ALR.
Construction and operation of statutory time limit for filing claim for state tax refund, 14 A.L.R.6th 119.

48-2-36. (For effective date, see note.) Extension of time for returns.

(a) The commissioner may grant, upon written request, a reasonable extension of time for filing returns, declarations, or other documents required under state revenue laws whenever, in the reasonable exercise of such commissioner's judgment, a good cause for the extension exists. The commissioner shall keep a record of every extension granted and the reason for the extension. No extension or extensions, except as otherwise expressly provided by law, shall aggregate more than six months, nor shall any extension of time for filing returns, except as otherwise expressly provided by law, operate to delay the payment of a tax unless a bond satisfactory to the commissioner is posted. In no event shall the commissioner extend the time of filing returns which are required to be filed with the tax receiver or tax commissioner.

(b) Notwithstanding any other provision in the laws of this state, in the case of a taxpayer determined by the commissioner to be affected by a Federally declared disaster, as such term is defined in Internal Revenue Code Section 165(i)(5), a fire with respect to which assistance is provided under Section 420 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, or a terroristic or military action, as defined in Internal Revenue Code Section 692(c)(2), the commissioner may specify a period of up to one year that may be disregarded in determining, under the laws of this state, in respect of any tax liability, fee liability, or other liability of such taxpayer:

(1) Whether any of the actions described in subsection (c) of this Code section were performed within the time prescribed therefor, determined without regard to extension under any other provision of the laws of this state for periods after the date, as determined by the commissioner, of such disaster or action;

(2) The amount of any interest, penalty, or addition to the taxes, fees, or other liability for periods after the date, as determined by the commissioner, of such disaster or action; and

(3) The amount of any refund.

(c) Actions which may be extended:

(1) Filing any return of taxes, fees, or other liability;

(2) Payment of any taxes, fees, or other liability or any installment thereof;

(3) Filing a petition with the superior court, the Georgia Tax Tribunal in accordance with Chapter 13A of Title 50, or the Office of State Administrative Hearings as allowed under the laws of this state;

(4) Allowance of a refund of any taxes, fees, or other liability;

(5) Filing a claim for refund of any taxes, fees, or other liability;

(6) Bringing suit upon any such claim for refund;

(7) Assessment of any taxes, fees, or other liability;

(8) Giving or making any notice, assessment, or demand for the payment of any taxes, fees, or other liability;

(9) Collection, by the commissioner, by tax execution, or otherwise, of the amount of any liability of any taxes, fees, or other liability;

(10) Bringing suit by the department, or any officer on its behalf, in respect of any liability in respect of any taxes, fees, or other liability; and

(11) Any other action required or permitted under the laws administered by the commissioner.

History.

Ga. L. 1937-38, Ex. Sess., p. 77, § 27; Code 1933, § 91A-234, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2006, p. 200, § 4/HB 1310; Ga. L. 2012, p. 318, § 3/HB 100; Ga. L. 2016, p. 864, § 48/HB 737; Ga. L. 2022, p. 316, § 2/HB 1320; Ga. L. 2024, p. 888, § 3-6/HB 1267, see notes for effective date.

Delayed effective date.

Ga. L. 2024, p. 888, § 4-1(a)/HB 1267, provides that the 2024 amendment shall only become effective on July 1, 2026 upon ratification of a resolution by the voters at the November, 2024, state-wide general election that amends the Constitution to provide that the Georgia Tax Court shall have state-wide jurisdiction as provided by law and that decisions of such court shall be appealed to the Court of Appeals, subject to review by the Supreme Court of Georgia. However, if such a Constitutional amendment is not so ratified, then the amendments to this Code section shall stand repealed on January 1, 2025. This Code section, as set out above, does not reflect the amendment by that Act owing to the delayed effective date. Upon ratification, paragraph (c)(3) will read as follows: "(3) Filing a petition with the superior court, the Georgia Tax Court in accordance with Chapter 5B of Title 15, the 'Georgia Tax Court Act of 2025,' or the Office of State Administrative Hearings as allowed under the laws of this state;".

Amendments.

The 2022 amendment, effective May 2, 2022, substituted "Federally declared disaster, as such term is defined in Internal Revenue Code Section 165(i)(5), a fire with respect to which assistance is provided under Section 420 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act," for "presidentially declared disaster, as defined in Internal Revenue Code Section 1033(h)(3)" in subsection (b).

The 2024 amendment substituted "Georgia Tax Court in accordance with Chapter 5B of Title 15, the 'Georgia Tax

Court Act of 2025,'" for "Georgia Tax Tribunal in accordance with Chapter 13A of Title 50," in paragraph (c)(3). For effective date of this amendment, see the delayed effective date note.

Editor's notes.

Ga. L. 2024, p. 888, § 4-1(a)/HB 1267, not codified by the General Assembly, provides that the 2024 amendment to this Code section is subject to an amendment to the Constitution to provide that the Georgia Tax Court shall have state-wide jurisdiction as provided by law and that decisions of such court shall be appealed to the Court of Appeals, subject to review by the Supreme Court of Georgia, that is ratified by the voters at the November, 2024, state-wide general election. If such a Constitutional amendment is not so ratified, then the amendments to this Code section shall stand repealed on January 1, 2025.

U.S. Code.

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, referred to in subsection (b) of this Code section, is codified at 42 U.S.C. § 5121 et seq.

Law reviews.

For article on the 2012 amendment of this Code section, see 29 Georgia St. U.L. Rev. 70 (2012).

RESEARCH REFERENCES

ALR.

Power of officer charged with duty of extending taxes to add to amount certified to him, 110 A.L.R. 126.

48-2-37. Preparation of delinquent returns.

In any case in which any return, report, or other information is not filed or made available to the commissioner as required by law, the commissioner may proceed at the expense of the delinquent taxpayer to ascertain such information in any way which the commissioner reasonably considers proper or appropriate; and the commissioner is authorized to prepare, execute, and file such returns. Any return so made and filed by the commissioner or his agent shall be prima facie correct and sufficient for all legal purposes.

History.

Ga. L. 1931, Ex. Sess., p. 24, § 48; Code 1933, § 92-3212; Ga. L. 1937, p. 109, § 16; Ga. L. 1937-38, Ex. Sess., p. 77, § 35; Code 1933, § 91A-246, enacted by Ga. L. 1978, p. 309, § 2.

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Construction with other provisions. — Construing former Code 1933, § 92-3212 (see now O.C.G.A. § 48-2-37) together with former Code 1933, Ch. 92-30 through 92-33C (see now O.C.G.A. Ch. 7, T. 48), the General Assembly did not intend more than that the return prepared by the commissioner should take the place of a return prepared by the taxpayer. Therefore, the commissioner has authority to make and file a return on behalf of a delinquent taxpayer when no return has been filed, and such return may be based upon the best information available to the commissioner. 1954-56 Ga. Op. Att'y Gen. 757.

It was the intent of the General Assembly that the procedure provided in former Code 1933, § 92-3302 (see now O.C.G.A. § 48-2-48) should be followed regardless of whether a return was filed by the taxpayer personally or the commissioner under former Code 1933, § 92-3212 (see now O.C.G.A. § 48-2-37) in the commissioner's behalf. Therefore, the commissioner or the commissioner's deputy cannot issue a fieri facias in cases when a return was made and filed under former Code 1933, § 92-3212 without

making a formal assessment under the procedure provided for in former Code 1933, § 92-3302. 1954-56 Ga. Op. Att'y Gen. 757.

48-2-38. Due date; interest on deferred taxes.

(a) Except as otherwise expressly provided by law, all state taxes and licenses except ad valorem and income taxes shall be due and payable either with the return or within 30 days after notice, as the case may be.

(b) When the collection of any tax specified in subsection (a) of this Code section is deferred under any law and unless a higher rate of interest or penalty is fixed by law, interest at the rate specified in Code Section 48-2-40 shall be collected thereon from the due date until the date of payment.

History.
Ga. L. 1937-38, Ex. Sess., p. 77, § 28; Code 1933, § 91A-235, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1980, p. 10, § 2.

RESEARCH REFERENCES

Am. Jur. 2d.
72 Am. Jur. 2d, State and Local Taxation, §§ 724, 730, 767.

48-2-39. Due date for payment or filing on holiday.

When the date prescribed by or imposed pursuant to law for the making of any return, the filing of any paper or document, or the payment of any tax or license fee pursuant to this title or any law relating to the taxation and licensing of automobiles, trucks, or trailers falls on a Saturday, Sunday, legal holiday, or day on which the Federal Reserve Bank is closed, the making of the return, the filing of the paper or document, or the payment of the tax or license fee shall be postponed by the person required to take such action until the first day following which is not a Saturday, Sunday, legal holiday, or day on which the Federal Reserve Bank is closed.

History.
Code 1933, § 91A-236, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1980, p. 712, § 1; Ga. L. 2015, p. 888, § 1/HB 234.

RESEARCH REFERENCES

C.J.S.
85 C.J.S., Taxation, § 1032.
ALR.
Payment of tax by check or draft, 44 A.L.R. 1234; 124 A.L.R. 1155.
Payment of tax by check or draft; and question of subrogation in that connection, 124 A.L.R. 1155.

48-2-40. Rate of interest on past due taxes.

Except as otherwise expressly provided by law, taxes owed the state

or any local taxing jurisdiction shall bear interest at an annual rate equal to the bank prime loan rate as posted by the Board of Governors of the Federal Reserve System in statistical release H. 15 or any publication that may supersede it, plus 3 percent, to accrue monthly. Such annual interest rate shall be determined for each calendar year based on the first weekly posting of statistical release H. 15 on or after January 1 of each calendar year. Interest shall begin to accrue from the date the tax is due until the date the tax is paid. For the purposes of this Code section, any period of less than one month shall be considered to be one month. This Code section shall also apply to alcoholic beverage taxes.

History.

Code 1933, § 91A-239.2, enacted by Ga. L. 1980, p. 10, § 4; Ga. L. 1980, p. 1759, § 1; Ga. L. 2016, p. 574, § 3/HB 960.

Cross references.

Penalties for failure to pay taxes or license fees on alcoholic beverages, § 3-2-11.

Editor's notes.

Ga. L. 2016, p. 574, § 6(b)/HB 960, not codified by the General Assembly, provides: "The new penalty and interest rates provided in Sections 2, 3, and 4 of this Act shall apply to penalties and interest accrued on or after the effective date of this Act." This Act became effective July 1, 2016.

Law reviews.

For article, "Procedure and Problems in Georgia Ad Valorem Tax Appeals," see 26 Ga. St. B.J. 98 (1990).

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Demand for payment of interest and fees proper. — When the plaintiff argued that the defendants improperly demanded interest and fees based on the higher assessment amount as the plaintiff entered into a consent agreement with the county tax commissioner to lower the value of the property prior to levy on the 2012 executions, the plaintiff's substantive claims were prohibited as a matter of law because the tax executions were validly issued by the commissioner; the plaintiff failed to pay the taxes while pursuing the plaintiff's appeal of the assessment and awaiting a refund; and the defendants were authorized to levy the executions and demand payment as the plaintiff failed to plead that the executions were void as a matter of law or were cancelled by the commissioner in the consent judgment. B.C. Grand, LLC v. FIG, LLC, 352 Ga. App. 646, 835 S.E.2d 676, 2019 Ga. App. LEXIS 622 (2019), cert. denied, No. S20C0503, 2020 Ga. LEXIS 425 (Ga. June 1, 2020).

Failure to award interest. — When a trial court found a tax commissioner improperly refused to pay a tax execution holder's executions, but did not find the commissioner had good cause for the refusal and did not award the holder 20 percent interest, pursuant to O.C.G.A. § 15-13-3(a), the matter had to be remanded for a determination of the good cause issue and to consider the holder's entitlement to one percent interest per month, pursuant to O.C.G.A. §§ 48-2-40 and 48-3-20. Scott v. Vesta Holdings I, LLC, 275 Ga. App. 196, 620 S.E.2d 447, 2005 Ga. App. LEXIS 930 (2005).

County was not entitled to interest per O.C.G.A. § 48-2-40 as the payments in lieu of taxes were not taxes, and nothing in the parties' memorandum of understanding or lease provided for the payment of such interest. In re Carbo Ceramics, No. 20-31973, No. 21-3031, 2024 Bankr. LEXIS 318 (Bankr. S.D. Tex. Feb. 8, 2024).

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Reference in O.C.G.A. § 48-2-40 to a month means that period of time from any day of a month to the same (or nearest) day of the next succeeding month. 1982 Op. Att'y Gen. No. U82-19.

48-2-41. Authority to waive interest on unpaid taxes.

The commissioner may waive the collection of any interest, in whole or in part, due the state on any unpaid taxes whenever or to the extent that he reasonably determines that the delay in payment of the taxes was attributable to the action or inaction of the department.

History.
Ga. L. 1960, p. 990, § 2; Code 1933, § 91A-238, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1982, p. 3, § 48.

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Authority if facts undisputed and assessment correct. — There is no provision authorizing the commissioner to compromise or settle the principal amount of tax in dispute when there is no dispute as to the facts and the commissioner finds that the assessment is correct in all respects. 1969 Op. Att'y Gen. No. 69-30.

RESEARCH REFERENCES

Am. Jur. 2d.
72 Am. Jur. 2d, State and Local Taxation, §§ 749, 750.

C.J.S.
85 C.J.S., Taxation, §§ 743 et seq., 1750 et seq.

ALR.
Power to remit, release, or compromise tax claim, 28 A.L.R.2d 1425.

48-2-42. Nature of penalties.

All penalties imposed by law are part of the tax and are to be collected as such. The proceedings to collect the original tax, the tax constituted from penalties imposed, and the interest shall all be conducted in the same manner. Any provision of law for criminal prosecution shall not operate under the tax laws of this state to relieve any taxpayer of any tax, penalty, or interest imposed by law.

History.
Ga. L. 1937-38, Ex. Sess., p. 77, § 37; Code 1933, § 91A-237, enacted by Ga. L. 1978, p. 309, § 2.

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Construction with other provisions. — Penalty collected under former Code 1933, § 92-6913 (see now O.C.G.A. § 48-5-299) should be paid into the county treasury, and remain the property of the county, notwithstanding Ga. L. 1937-38, Ex. Sess., p. 77, § 37 (see now O.C.G.A. § 48-2-42). 1954-56 Ga. Op. Att'y Gen. 577.

Penalties for failure to make timely tax returns arising under former Code 1933, § 92-6913 (see now O.C.G.A. § 48-5-299)

were property of the county, and no division should be made for the state or the school system. Since under former Code 1933, § 92-6913, penalties must be paid into the county treasury, Ga. L. 1937-38, Ex. Sess., p. 77, § 37 (see now O.C.G.A. § 48-2-42) did not affect the matter, even though Ga. L. 1937-38, Ex. Sess., p. 77, § 37 stated that penalties were part of the tax. 1972 Op. Att'y Gen. No. U72-22.

Statute makes penalties and interest as much a part of the tax as the tax itself. 1963-65 Ga. Op. Att'y Gen. 25.

RESEARCH REFERENCES

Am. Jur. 2d.

72 Am. Jur. 2d, State and Local Taxation, § 717.

C.J.S.

85 C.J.S., Taxation, §§ 1715, 1728 et seq., 1742, 1747 et seq.

ALR.

Constitutionality of legislation prescribing rate of interest or penalty for nonpayment of taxes, or the conditions liability in that regard, operative only in certain political subdivisions, 111 A.L.R. 1354.

Liability to penalty imposed for failure to pay tax of one who in good faith contested its validity, 147 A.L.R. 142.

Debts arising from tax penalties as exceptions to bankruptcy discharge under § 523(a)(7)(A) and (B) of Bankruptcy Code of 1978 (11 USCA § 523(a)(7)(A) and (B)), 157 A.L.R. Fed. 313.

48-2-43. Authority to waive penalties.

The commissioner may waive, in whole or in part, the collection of any amount due the state as a penalty under any revenue law of this state whenever or to the extent that he reasonably determines that the default giving rise to the penalty was due to reasonable cause and not due to gross or willful neglect or disregard of the law or of regulations or instructions issued pursuant to the law.

History.

Ga. L. 1960, p. 990, § 1; Code 1933, § 91A-239, enacted by Ga. L. 1978, p. 309, § 2.

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Grounds for waiving penalty. — There is no provision authorizing the commissioner to compromise or settle the principal amount of tax in dispute when there is no dispute as to the facts and the commissioner finds that the assessment is correct in all respects. 1969 Op. Att'y Gen. No. 69-30.

RESEARCH REFERENCES

Am. Jur. 2d.

72 Am. Jur. 2d, State and Local Taxation, § 749.

C.J.S.

85 C.J.S., Taxation, §§ 1711 et seq., 1743.

ALR.

Liability to penalty imposed for failure to pay tax of one who in good faith contested its validity, 147 A.L.R. 142.

Power to remit, release, or compromise tax claim, 28 A.L.R.2d 1425.

48-2-44. Willful failure to file return or pay revenue held in trust for state; willful failure to pay ad valorem tax; penalties and interest.

(a) In any instance in which any person willfully fails to file a report, return, or other information required by law or willfully fails to pay the commissioner any revenue held in trust for the state, such person shall pay, in the absence of a specific statutory civil penalty for the failure, a penalty of 10 percent of the amount of revenue held in trust and not paid on or before the time prescribed by law, together with interest on the principal amount at the rate specified in Code Section 48-2-40 from the date the return should have been filed or the revenue held in trust should have been remitted until it is paid.

(b)(1) In any instance in which any person willfully fails, on or after July 1, 1981, to pay, within 120 days of the date when due, any ad valorem tax owed the state or any local government, such person shall pay, in the absence of a specific statutory civil penalty for the failure, a penalty of 5 percent of the amount of tax due and not paid at the time such penalty is assessed, together with interest as specified by law. After 120 days from the imposition of the initial penalty, an additional penalty of 5 percent of any tax amount remaining due shall be imposed, together with interest as specified by law. If any tax amount remains due after 120 days from the imposition of such additional penalty, a penalty of 5 percent shall be imposed, together with interest as specified by law. Should any tax amount remain due 120 days after such date, a penalty of 5 percent shall be imposed, together with interest as specified by law. The aggregate amount of penalties imposed pursuant to this subsection shall not exceed an amount equal to 20 percent of the principal amount of the tax originally due. These penalties shall not, however, apply in the case of:

(A) Ad valorem taxes of $500.00 or less on homestead property as defined in Part 1 of Article 2 of Chapter 5 of this title; or

(B) With respect to tax year 1986 and future tax years, ad valorem taxes of any amount on homestead property as defined in Part 1 of Article 2 of Chapter 5 of this title, if the homestead property was during the tax year acquired by a new owner who did not receive a tax bill for the tax year and who immediately before acquiring the homestead property resided outside the State of Georgia and if the taxes are paid within one year following the due date.

(2) Any city or county authorized as of April 22, 1981, by statute or constitutional amendment to receive a penalty of greater than 10 percent for failure to pay an ad valorem tax is authorized to continue to receive that amount.

(3) With respect to all penalties and interest received by the tax commissioner on or after July 1, 1998, unless otherwise specifically provided for by general law, the tax commissioner shall distribute penalties collected and interest collected or earned as follows:

(A) Penalties collected for failure to pay ad valorem taxes attributable to the Board of Education or independent school district shall be paid into the county treasury in the same manner and at the same time the tax is collected and distributed to the county, and they shall remain the property of the county;

(B) Interest earned by the tax commissioner on taxes collected but not yet disbursed shall be distributed pro rata based on each taxing jurisdiction's share of the total amount upon which the interest was computed; and

(C) Except as otherwise provided in subparagraph (A) of this paragraph, penalties collected for failure to return property for ad valorem taxation or failure to pay ad valorem taxes, and interest collected on delinquent ad valorem taxes, shall be distributed pro rata based on each taxing jurisdiction's share of the total tax on which the penalty or interest was computed.

History.

Ga. L. 1937-38, Ex. Sess., p. 77, § 38; Code 1933, § 91A-239.1, enacted by Ga. L. 1979, p. 5, § 10; Ga. L. 1980, p. 10, § 3; Ga. L. 1981, p. 1857, § 5; Ga. L. 1986, p. 1322, § 1; Ga. L. 1998, p. 1120, § 1; Ga. L. 1999, p. 81, § 48; Ga. L. 2015, p. 1219, § 4/HB 202; Ga. L. 2016, p. 574, § 4/HB 960.

Editor's notes.

Ga. L. 2016, p. 574, § 6(b)/HB 960, not codified by the General Assembly, provides: "The new penalty and interest rates provided in Sections 2, 3, and 4 of this Act shall apply to penalties and interest accrued on or after the effective date of this Act." This Act became effective July 1, 2016.

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Penalty provided in subsection (b) of O.C.G.A. § 48-2-44 is automatic and mandatory, and must be imposed whenever conditions set forth are satisfied. 1981 Op. Att'y Gen. No. 81-86.

Penalty and execution fee cumulative. — If circumstances set forth in each section are met, the penalty provided by subsection (b) of O.C.G.A. § 48-2-44 and the execution fee provided by O.C.G.A. § 48-5-161(c) are cumulative in nature. 1982 Op. Att'y Gen. No. U82-37.

Penalty provided in subsection (b) of O.C.G.A. § 48-2-44 applies to all state and local ad valorem property taxes, except when the original tax due is $500.00 or less and is on homestead property as defined in O.C.G.A. Art. 2, Ch. 5, T. 48. The penalty applies to no other taxes. 1981 Op. Att'y Gen. No. 81-86.

Applicability of penalty provisions. — Penalty and fees provided in O.C.G.A. §§ 48-2-44 and 48-5-161 would apply to unpaid ad valorem taxes which were assessed in 1981, 1982, and 1983 as follows: When the statutory prerequisites of O.C.G.A. § 48-2-44 have been met, a penalty of 10 percent of the amount of tax due and not timely paid would apply to ad valorem taxes which were unpaid after July 1, 1981. In addition, a 10 percent execution fee would apply to ad valorem tax executions issued on or after July 1, 1982 and before March 15, 1983. In keeping with the reasoning employed in Ops. Att'y Gen. 81-76 and 82-72, only

those executions issued on or after March 15, 1983, the effective date of O.C.G.A. § 48-5-161, as amended by Ga. L. 1983, p. 575, would not be subject to a 10 percent execution fee, but the amount collected on these executions would include all costs, commissions, interest, and penalties as provided by law. 1984 Op. Att'y Gen. No. U84-25.

Local school systems are entitled to a proportionate share of funds raised through imposition of the penalty specified in subsection (b) of O.C.G.A. § 48-2-44. 1983 Op. Att'y Gen. No. 83-20.

Subsection (b) of O.C.G.A. § 48-2-44 does not penalize nonpayment of taxes which became due more than 90 days prior to July 1, 1981, because that subsection connects failure to pay on or after July 1, 1981, with a requirement that the tax be paid within 90 days of the due date. 1981 Op. Att'y Gen. No. 81-86.

Part-payments between due date and penalty date (90 days after due date) do not affect the penalty because the penalty provided in subsection (b) of O.C.G.A. § 48-2-44 is calculated based upon the amount of tax not paid when due. 1981 Op. Att'y Gen. No. 81-86.

Protection from penalty for taxes owed on homestead. — Municipality of Thunderbolt may not collect the penalty imposed by O.C.G.A. § 48-2-44 for failure to pay taxes of $500.00 or less on homestead property. 1987 Op. Att'y Gen. No. U87-15.

Accruing interest on unpaid estate taxes. — Unpaid tax begins bearing interest from the date the return was filed or as of the last date provided for filing the return, if no return was submitted; this interest continued to accrue until settlement, unless an execution was issued pursuant to former Code 1933, § 92-3404 (see now O.C.G.A. § 48-12-6). 1970 Op. Att'y Gen. No. 70-139.

RESEARCH REFERENCES

Am. Jur. 2d.

72 Am. Jur. 2d, State and Local Taxation, § 738 et seq.

C.J.S.

85 C.J.S., Taxation, § 1712 et seq.

ALR.

Business situs of intangibles in state other than domicile of owner as excluding tax at domicile, 79 A.L.R. 344.

Liability to penalty imposed for failure to pay tax of one who in good faith contested its validity, 96 A.L.R. 925; 147 A.L.R. 142.

Penalty for nonpayment of taxes when due as affected by lack of notice to taxpayer, 102 A.L.R. 405.

Constitutionality of legislation prescribing rate of interest or penalty for nonpayment of taxes, or the conditions liability in that regard, operative only in certain political subdivisions, 111 A.L.R. 1354.

Doubt as to liability for, or as to person to whom to pay, tax, as affecting liability for penalties and interest, 137 A.L.R. 306.

48-2-44.1. Failure to follow electronic filing requirements; penalty; waiver for undue hardship; reasonable cause.

(a) When this title requires that any return pertaining to sales tax, use tax, withholding tax, or motor fuel distributor tax be electronically transmitted or filed, or provides that the commissioner may by rule or regulation require that any return pertaining to sales tax, use tax, withholding tax, or motor fuel distributor tax be electronically transmitted or filed, and a taxpayer fails to electronically transmit or file such return, the taxpayer shall be deemed to have failed to make the required filing; provided, however, that any such taxpayer whose electronic filing was first transmitted on or before the due date of the return, including any extensions, and was rejected shall be allowed to

perfect the electronic filing under rules consistent with those applied by the Internal Revenue Service with respect to rejections of returns which are required to be electronically transmitted or filed. Such deemed failure to make the required filing shall also result in the forfeiture of the compensation of dealers for reporting and paying tax provided in Code Section 48-8-50 since such Code section provides such compensation only if such return is timely filed. The penalty imposed on the taxpayer for such failure shall be the greater of $25.00 for each such return or 5 percent of the tax due on each such return before application of any payments or credits. Such $25.00 penalty or 5 percent penalty amount shall be consistent with the penalty imposed on the failure to file a withholding tax return as provided in Code Section 48-7-126.

(b) The commissioner may grant waivers of the requirements of this Code section in cases of undue hardship.

(c) No penalties shall be assessed pursuant to this Code section upon a showing by the taxpayer or the tax return preparer that the failure was due to reasonable cause and not due to gross or willful neglect or disregard of the law or of regulations or instructions issued pursuant to the law.

History.
Code 1981, § 48-2-44.1, enacted by Ga. L. 2009, p. 648, § 2/HB 334.

Administrative rules and regulations.
Electronic Funds Transfer, Credit Card Payments, and Electronic Filing, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Fiscal Operations Division, Substantive Regulations, Rule 560-3-2-.26.

48-2-45. Service of notice of assessment.

(a)(1) In all cases in which the commissioner is required by law to provide an opportunity to appeal, the assessment of a tax or license fee shall become final if no written appeal is filed by the taxpayer with the commissioner within 30 days of the date of the notice of assessment.

(2) For the purposes of this subsection, the notice shall be deemed to have been given if written notice is sent by registered or certified or first-class mail or by statutory overnight delivery and addressed to the taxpayer at his or her last known address, as shown on the records of the department.

(b) A notice of assessment by the commissioner or his or her delegate of any tax or license fee shall be sufficiently served upon the person assessed if it is sent by registered or certified or first-class mail or by statutory overnight delivery to the person at his or her address as shown on the records of the department.

(c) If no return receipt is on file or if notice is returned, the notice

shall be by personal service; except that, if the notice mailed by registered, certified, or first-class mail or statutory overnight delivery, as provided in this Code section, is returned as "refused" or "unclaimed," the notice shall be sufficiently served.

History.
Ga. L. 1937-38, Ex. Sess., p. 77, § 29; Ga. L. 1961, p. 435, § 1; Code 1933, § 91A-240, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1981, p. 1857, § 6; Ga. L. 1981, p. 1903, § 2; Ga. L. 1983, p. 1834, § 2; Ga. L. 1989, p. 1400, § 1; Ga. L. 1993, p. 961, § 1; Ga. L. 2000, p. 1589, § 13.

Editor's notes.
Ga. L. 1989, p. 1400, § 2, not codified by the General Assembly, provides that the amendments to this Code section shall apply with respect to notices mailed after January 1, 1989.

RESEARCH REFERENCES

Am. Jur. 2d.
72 Am. Jur. 2d, State and Local Taxation, § 669 et seq.
C.J.S.
84 C.J.S., Taxation, § 429 et seq.

ALR.
Sufficiency of compliance with statute providing for service by mail of notice in tax procedure, 155 A.L.R. 1279.

48-2-46. Procedures for protests.

Any taxpayer may contest any proposed assessment or license fee made or determined by the commissioner by filing with the commissioner a written protest at any time within 30 days from the date of notice of the proposed assessment or license fee or within such other time limit as may be specified within the notice of proposed assessment or license fee, if a different time limit is specified. All protests shall be prepared in the form and contain such information as the commissioner shall reasonably require and shall include a summary statement of the grounds upon which the taxpayer relies and his reasons for disputing the finding of the commissioner. The filing of a written protest, a petition for redetermination of a deficiency, or a written request by the taxpayer for additional time for filing such a petition shall toll the period of limitations for making an assessment until the petition is denied by the commissioner or the request is withdrawn in writing by the taxpayer. In the event the taxpayer desires a conference or hearing, the fact of such desire must be set out in the protest. The commissioner shall grant a conference before his officers or agents as he may designate at a time he shall specify and shall make such reasonable rules governing the conduct of conferences as he may deem proper. The discretion given in this Code section to the commissioner shall be reasonably exercised on all occasions.

History.
Ga. L. 1937-38, Ex. Sess., p. 77, § 30; Code 1933, § 91A-241, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1981, p. 1857, § 7; Ga. L. 1993, p. 961, § 2.

Law reviews.
For article discussing general administrative procedures of the department as they relate to the assessment and collection of income taxes, see 27 Mercer L. Rev. 309 (1975).

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Federal rights protected. — Georgia's remedies for contesting tax assessments and collection practices are sufficient to protect taxpayers' federal rights under U.S. Const., amend. 14. Ayers v. Polk County, 697 F.2d 1375, 1983 U.S. App. LEXIS 30394 (11th Cir. 1983).

RESEARCH REFERENCES

Am. Jur. 2d.
72 Am. Jur. 2d, State and Local Taxation, §§ 681, 696.
C.J.S.
53 C.J.S., Licenses, § 108. 84 C.J.S., Taxation, § 1031 et seq.
ALR.
When may payment of tax or assessment be regarded as involuntary or made under duress, 64 A.L.R. 9; 84 A.L.R. 294.
Injunction as proper remedy against tax on exempt property, 84 A.L.R. 1315.
Grounds stated in protest against payment of property tax as a limitation of grounds upon which recovery back of tax may be claimed, 113 A.L.R. 1479.
Right to refund or recovery back of taxes paid on property not owned by taxpayer, 165 A.L.R. 879.
Who may complain of underassessment or nonassessment of property for taxation, 5 A.L.R.2d 576.
Standing of one taxpayer to complain of underassessment or nonassessment of property of another for state and local taxation, 9 A.L.R.4th 428.

48-2-47. Information considered; final assessment or final license fee.

In all cases in which a protest is lawfully filed by a taxpayer, the commissioner shall consider the information contained in the protest and information submitted by the taxpayer in conference or hearing before the commissioner or his officers or agents. The commissioner shall proceed to make a final assessment or to fix a final license fee and shall notify the taxpayer of the amount of the assessment or fee, subject to the right of appeal as provided by law.

History.
Ga. L. 1937-38, Ex. Sess., p. 77, § 31; Code 1933, § 91A-242, enacted by Ga. L. 1978, p. 309, § 2.

RESEARCH REFERENCES

C.J.S.
84 C.J.S., Taxation, § 629 et seq. 85 C.J.S., Taxation, §§ 1828 et seq., 2004 et seq.
ALR.
Construction and application of statute prohibiting or restricting reassessment after assessment and payment of taxes, 85 A.L.R. 107.
Power to remit, release, or compromise tax claim, 99 A.L.R. 1062; 28 A.L.R.2d 1425.
Grounds stated in protest against payment of property tax as a limitation of

grounds upon which recovery back of tax may be claimed, 113 A.L.R. 1479.

48-2-48. Deficiency assessments; interest.

If the commissioner ascertains that the return of any taxpayer (or dealer pursuant to Article 1 of Chapter 8 of this title) contains mistaken, false, or fraudulent statements or that it contains statements or omissions of data which are otherwise incorrect or misleading, and that as a result thereof improper or inadequate assessments of taxes have been made, the commissioner may determine and fix the amount of the taxes due from the taxpayer or dealer and shall proceed to collect the state tax due pursuant to the determination. In any case in which property assessments are made by the commissioner under the law for purposes of local taxation, the commissioner shall certify amounts of any property omitted from previous assessments to the proper local tax authorities for taxation in the local tax districts. All taxes collected under this Code section shall bear interest at the rate specified in Code Section 48-2-40, unless otherwise provided by law, from the date the commissioner advises the taxpayer in writing of the amount of the taxes due, until paid. The interest shall be assessed and collected as a part of the tax.

History.
Ga. L. 1937-38, Ex. Sess., p. 77, § 32; Code 1933, § 91A-243, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1980, p. 10, § 5.

RESEARCH REFERENCES

Am. Jur. 2d.
72 Am. Jur. 2d, State and Local Taxation, §§ 710 et seq., 748.
C.J.S.
84 C.J.S., Taxation, § 819 et seq.
ALR.
Retroactive effect of statutes relating to interest on or penalties in respect of delinquent taxes, 77 A.L.R. 1034.
Constitutionality of legislation prescribing rate of interest or penalty for nonpayment of taxes, or the conditions liability in that regard, operative only in certain political subdivisions, 111 A.L.R. 1354.

48-2-49. Periods of limitation for assessment of taxes.

(a) Except as otherwise provided in this Code section or this title, the amount of any tax imposed by this title may be assessed at any time.

(b) Except as otherwise provided by subsection (c) of this Code section or by this title, in the case where a return or report is filed, the amount of any tax imposed by this title shall be assessed within three years after the return or report was filed. For purposes of this subsection, a return or report filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day. If an extension of time for filing a return or report is granted and the return or report is filed on or before the extended date, the return or report shall be considered as filed on the extended due date.

(c) Except as otherwise provided by this title, in the case of a false or fraudulent return or report filed with the intent to evade tax or a failure to file a return or report, the amount of any tax imposed by this title may be assessed at any time.

(d) Where, before the expiration of the time prescribed in this Code section for the assessment of any tax imposed by this title, both the commissioner and the person subject to assessment have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the agreed upon period. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the previously agreed upon period. The commissioner is authorized in any such agreement to extend similarly the period within which a claim for refund may be filed.

(e) If a claim for refund of taxes paid for any taxable period is filed within the last six months of the period during which the commissioner may assess the amount of taxes, the assessment period is extended for a period of six months beginning on the day the claim for refund is filed.

(f) No action without assessment shall be brought for the collection of any tax after the expiration of the period for assessment.

History.

Ga. L. 1937-38, Ex. Sess., p. 77, § 33; Code 1933, § 91A-244, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1985, p. 1350, § 1.

JUDICIAL DECISIONS

Former provision conferred authority on state, not county. — Prior to the enactment of Ga. L. 1985, p. 1350 (see now O.C.G.A. § 48-2-49), the law was not intended to have any applicability to reassessments which were made by the county board of tax assessors and conferred authority only upon the state revenue commissioner. Fayette County Bd. of Tax Assessors v. Georgia Utils. Co., 186 Ga. App. 723, 368 S.E.2d 326, 1988 Ga. App. LEXIS 431 (1988).

Effect of 1985 amendment. — Superior court erred in construing O.C.G.A. § 48-2-49, as rewritten in 1985, as constituting the implicit grant of authority to a county board of tax appeals to make reassessments of 1985 taxes on realty, and erred in failing to construe § 48-2-49 in pari materia with the other provisions of Ga. L. 1985, p. 1350 et seq. Fayette County Bd. of Tax Assessors v. Georgia Utils. Co., 186 Ga. App. 723, 368 S.E.2d 326, 1988 Ga. App. LEXIS 431 (1988).

Statute of limitations inapplicable. — Three year statute of limitation under O.C.G.A. § 48-2-49(b) was inapplicable to bar a county tax assessment for back taxes and penalties against a company that did not report the company's tangible personal property even though the company filed tax returns in those years. It was as if no return was filed because the tax assessors discovered the property after conducting an audit, and the assessors thereby acquired full authority to tax the property at that point within the seven year limitation period of O.C.G.A. § 48-3-21. Hormel Food Corp. v. DeKalb County Bd. of Tax Assessors, 264 Ga. App. 10, 589 S.E.2d 836, 2003 Ga. App. LEXIS 1364 (2003).

OPINIONS OF THE ATTORNEY GENERAL

Time within which to make assessment after return is filed. — Former Code 1933, § 92-3303 (see now O.C.G.A. § 48-7-82) is a safeguard which gives the state an additional year in which to make the state's original audit and assessment. The General Assembly no doubt reasoned that if time permitted the commissioner to examine the return and make proper assessment thereon within the two-year period, the commissioner should not be given additional time to reopen the assessment and correct the commissioner's own errors. If, however, a large volume of returns filed prevents the commissioner from completing the commissioner's work within the two-year period, the commissioner is granted an additional year in which to perform the commissioner's duty. 1945-47 Ga. Op. Att'y Gen. 569.

When commissioner makes assessment on return which fully discloses all items relating to tax liability, the commissioner is precluded from redetermining such assessment unless the commissioner does so within two years from the last day on which the return could have been filed without becoming delinquent. 1945-47 Ga. Op. Att'y Gen. 569.

RESEARCH REFERENCES

Am. Jur. 2d.

71 Am. Jur. 2d, State and Local Taxation, § 501.

C.J.S.

85 C.J.S., Taxation, § 1049 et seq.

ALR.

Construction and application of statute prohibiting or restricting reassessment after assessment and payment of taxes, 85 A.L.R. 107.

Claim of government against taxpayer (or one in privity with him) which is barred by lapse of time as available to defeat or diminish claim of taxpayer against government, or vice versa, 154 A.L.R. 1052; 12 A.L.R.2d 815.

Suspension of running of period of limitation under 26 U.S.C.A. § 6503 for federal tax assessment or collection, 160 A.L.R. Fed. 1.

48-2-50. (For effective date, see note.) Review of assessments; certifications.

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

(b) When the commissioner is required by law to certify to any county or municipal government of this state all or any part of an assessment or tax against any taxpayer and the taxpayer disputes the correctness of the assessment or tax as determined by the commissioner, the commissioner is directed to certify to the county and municipal government the value of the property of the taxpayer or the tax admitted by him in his return to be due, or both such value and such tax due. After a final determination of the balance of the assessment or tax in dispute, the commissioner shall make a supplemental certification to the county and municipal government of the amount of the balance of the assessment or tax as finally determined. It shall be the duty of the taxpayer

to pay as required by law any taxes assessed by the state, county, or municipal governments, both upon the original value as shown in his return and upon the supplemental value determined as provided in this chapter.

History.

Ga. L. 1937-38, Ex. Sess., p. 77, § 44; Ga. L. 1943, p. 204, § 2; Code 1933, § 91A-254, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2012, p. 318, § 4/HB 100; Ga. L. 2024, p. 888, § 3-7/HB 1267, see notes for effective date.

Delayed effective date.

Ga. L. 2024, p. 888, § 4-1(a)/HB 1267, provides that the 2024 amendment shall only become effective on July 1, 2026 upon ratification of a resolution by the voters at the November, 2024, state-wide general election that amends the Constitution to provide that the Georgia Tax Court shall have state-wide jurisdiction as provided by law and that decisions of such court shall be appealed to the Court of Appeals, subject to review by the Supreme Court of Georgia. However, if such a Constitutional amendment is not so ratified, then the amendments to this Code section shall stand repealed on January 1, 2025. This Code section, as set out above, does not reflect the amendment by that Act owing to the delayed effective date. Upon ratification, subsection (a) will read as follows: "(a) The commissioner's assessments shall not be reviewed except by the procedure provided in this chapter or Chapter 5B of Title 15, the 'Georgia Tax Court Act of 2025.' No trial court shall have jurisdiction of proceedings to question the assessments, except as provided in this chapter or Chapter 5B of Title 15, the 'Georgia Tax Court Act of 2025.'"

Amendments.

The 2024 amendment substituted "Chapter 5B of Title 15, the 'Georgia Tax Court Act of 2025.'" for "Chapter 13A of Title 50." at the end of the first and second sentences. For effective date of this amendment, see the delayed effective date note.

Editor's notes.

Ga. L. 2012, p. 318, § 16(b)/HB 100, not codified by the General Assembly, provides that: "Sections 1 through 14 of this Act shall become effective on January 1, 2013, provided that cases pending on January 1, 2013, shall continue to be governed by the law in effect on December 31, 2012, until the conclusion of the case."

Ga. L. 2024, p. 888, § 4-1(a)/HB 1267, not codified by the General Assembly, provides that the 2024 amendment to this Code section is subject to an amendment to the Constitution to provide that the Georgia Tax Court shall have state-wide jurisdiction as provided by law and that decisions of such court shall be appealed to the Court of Appeals, subject to review by the Supreme Court of Georgia, that is ratified by the voters at the November, 2024, state-wide general election. If such a Constitutional amendment is not so ratified, then the amendments to this Code section shall stand repealed on January 1, 2025.

Law reviews.

For article discussing remedies for tax illegally assessed under the former Georgia Retailers' and Consumers' Sales and Use Tax Act, Ga. L. 1951, p. 360, § 1 et seq., see 9 Ga. St. B.J. 45 (1972).

For article on the 2012 amendment of this Code section, see 29 Ga. St. U. L. Rev. 70 (2012).

RESEARCH REFERENCES

ALR.

Who may complain of underassessment or nonassessment of property for taxation, 5 A.L.R.2d 576; 9 A.L.R.4th 428.

48-2-51. Jeopardy assessments; collection; bond.

(a) If the commissioner reasonably finds that a taxpayer gives

evidence of intention to leave the state, to remove his property from the state, to conceal himself or his property, to discontinue business, or to do any other act tending to prejudice or render wholly or partly ineffective proceedings to compute, assess, or collect any state tax, whereby it becomes advisable that such proceedings be brought without delay, the commissioner shall declare the taxable period for such taxpayer terminated forthwith and shall give notice of such finding and demand immediate payment of such tax as may be due. The commissioner may immediately make an arbitrary assessment and may proceed under the assessment to collect the tax or require the taxpayer to file with him a bond satisfactory to the commissioner as security for payment of the tax.

(b)(1) As used in this subsection, the term "illegal drug" means marijuana as defined in paragraph (16) of Code Section 16-13-21, as amended; a controlled substance as defined in paragraph (4) of Code Section 16-13-21, as amended; or a dangerous drug as defined in Code Section 16-13-71, as amended. The term illegal drug shall not include any drug when used pursuant to a valid medical prescription or when used as otherwise authorized by state or federal law.

(2) When an assessment for taxes based upon the possession, sale, or distribution of an illegal drug is made by the commissioner, such assessment shall be considered a jeopardy assessment for collection as provided in this Code section. The commissioner shall assess such tax and applicable penalties based on personal knowledge or information available to the commissioner; mail to the taxpayer at the taxpayer's last known address or serve in person a written notice of the amount of tax and penalty; demand its immediate payment; and, if payment is not immediately made, collect the tax and penalty by any method prescribed in this chapter.

(3) The tax and penalties assessed by the commissioner are presumed to be valid and correctly determined and assessed. With respect to any administrative or civil proceedings regarding the assessment or collection under this subsection of any taxes, interest, or penalties imposed by this title, the burden shall be upon the taxpayer to show their incorrectness or invalidity. Any statement filed by the commissioner with the court, or any other certificate by the commissioner of the amount of tax and penalties determined or assessed, shall be admissible in evidence and shall be prima-facie evidence of the facts contained in such statement or certificate.

History.

Ga. L. 1937-38, Ex. Sess., p. 77, § 39; Code 1933, § 91A-248, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1990, p. 2041, § 1.

Cross references.

Attachment proceedings, § 18-3-1 et seq.

Attachment of property by commissioner, § 48-2-55.

Code Commission notes.
Pursuant to Code Section 28-9-5, in 1990, "or federal" was substituted for "of federal" in the last sentence of paragraph (b)(1).

RESEARCH REFERENCES

C.J.S.
84 C.J.S., Taxation, § 497 et seq.

48-2-52. Personal liability of corporate officer or employee for tax delinquency.

(a) Any officer or employee of any corporation, any member, manager, or employee of any limited liability company, or any partner or employee of any limited liability partnership who has control or supervision of collecting from purchasers or others amounts required under this title or of collecting from employees any taxes required under this title, and of accounting for and paying over the amounts or taxes to the commissioner, and who willfully fails to collect the amounts or taxes or truthfully to account for and pay over the amounts or taxes to the commissioner, or who willfully attempts to evade or defeat any obligation imposed under this title, shall be personally liable for an amount equal to the amount evaded, not collected, not accounted for, or not paid over.

(b) The liability imposed by this Code section shall be paid upon notice and demand by the commissioner or his delegate and shall be assessed and collected in the same manner as the tax in connection with which the act or failure to act under this Code section occurs or has occurred.

History.
Ga. L. 1960, p. 210, §§ 1, 2; Code 1933, § 91A-251, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1980, p. 10, § 6; Ga. L. 2001, p. 984, § 1.

Law reviews.
For note on the 2001 amendment to this Code section, see 18 Ga. St. U. L. Rev. 294 (2001).

For article, "2014 Georgia Corporation and Business Organization Case Law Developments," see 20 Ga. St. B. J. 26 (April 2015).

JUDICIAL DECISIONS

Dealers are within scope of section. — Since an officer or employee may also be a dealer, as defined in Ga. L. 1951, p. 360, § 3 (see now O.C.G.A. § 48-8-3), it is clear that a dealer can violate Ga. L. 1960, p. 210, §§ 1 and 2 (see now O.C.G.A. § 48-2-52), though by definition only if the dealer is also an officer or employee in charge. Bunge v. State, 149 Ga. App. 712, 256 S.E.2d 23, 1979 Ga. App. LEXIS 1999 (1979).

"Willful" construed. — "Willful" as here used does not carry with it connotations of bad motives, fraud, or an intent to deprive the state of the state's tax claim. All that this statute requires is that the preference in favor of other creditors be made voluntarily with

knowledge of the existence of the valid tax claim. Blackmon v. Mazo, 125 Ga. App. 193, 186 S.E.2d 889, 1971 Ga. App. LEXIS 778 (1971).

Subsequent conduct relevant in determining willfulness. — While a defendant's subsequent attempts at payment of sales taxes cannot eradicate past willful failure to report and remit sales taxes, subsequent conduct may be relevant in determining whether such failure was willful in the first instance. Bunge v. State, 149 Ga. App. 712, 256 S.E.2d 23, 1979 Ga. App. LEXIS 1999 (1979).

When liability for sales taxes attaches. — Liability attaches upon the failure to pay the sales taxes imposed under Ga. L. 1951, p. 360, § 1 et seq. (see now O.C.G.A. Art. 2, Ch. 8, T. 48) at the time such taxes are due. Liability attaches upon the defendant's failure, if willful, to report or remit taxes, and not upon the defendant's receipt of notice and demand for payment. Bunge v. State, 149 Ga. App. 712, 256 S.E.2d 23, 1979 Ga. App. LEXIS 1999 (1979).

Right to recoup taxes forfeited. — Superior court did not err in reversing the decision of the Georgia Department of Revenue that a corporate officer was liable for a restaurant's sales and use taxes pursuant to O.C.G.A. § 48-2-52 because the release of and refund payment to the majority owner of the restaurant operated as a release of the officer; under O.C.G.A. § 13-1-13, by voluntarily paying the owner a settlement amount with full awareness of any potential joint claim the department had against the officer, the department forfeited any right the department had to recoup from the officer the payment the department made to the owner. Ga. Dep't of Revenue v. Moore, 317 Ga. App. 31, 730 S.E.2d 671, 2012 Ga. App. LEXIS 684 (2012).

Assessment prima facie correct under Art. 2, Ch. 8. — An assessment made under Ga. L. 1960, p. 210, §§ 1 and 2 (see now O.C.G.A. § 48-2-52) in the same manner as against the corporation is entitled to be considered or deemed to be prima facie correct as under Ga. L. 1951, p. 360, § 1 et seq. (see now O.C.G.A. Art. 2, Ch. 8, T. 48) in general. Hawes v. Le Craw, 121 Ga. App. 532, 174 S.E.2d 382, 1970 Ga. App. LEXIS 1272 (1970).

Duty to state evidence or findings as to liability. — Statute merely states the conditions under which a corporate employee is liable and imposes no requirement on the commissioner to state the findings which the commissioner may have made or the evidence on which any findings are based, except as may be incorporated by reference by the language empowering the commissioner to assess and collect the tax under this statute. Hawes v. Le Craw, 121 Ga. App. 532, 174 S.E.2d 382, 1970 Ga. App. LEXIS 1272 (1970).

Finding as to whether second responsible party was necessary in refund action was required. — In an assessment action under O.C.G.A. § 48-2-52, the Georgia Court of Appeals erred by concluding that because the Georgia Department of Revenue voluntarily refunded a tax payment made by a majority owner of a restaurant, the department could not seek payment from a second responsible party as the voluntary payment doctrine applied to contracts, not tax indebtedness; it was necessary to remand the case to see if the second responsible party was a necessary party to the majority owner's refund action. Ga. Dep't of Revenue v. Moore, 294 Ga. 20, 751 S.E.2d 57, 2013 Ga. LEXIS 885 (2013).

Assessment prima facie correct on appeal. — When a party assessed under Ga. L. 1960, p. 210, §§ 1 and 2 (see now O.C.G.A. § 48-2-52) has invoked the appeal procedure under Ga. L. 1937-38, Ex. Sess., p. 77, § 45 (see now O.C.G.A. § 48-2-59) to contest the validity of the assessment in the superior court, thereby opening the door to a de novo judicial investigation, the assessment is one which must be regarded as prima facie correct. Hawes v. Le Craw, 121 Ga. App. 532, 174 S.E.2d 382, 1970 Ga. App. LEXIS 1272 (1970).

Burden of proof on appeal from assessment. — An assessment pursuant to this statute is deemed to be "prima facie correct," and when the assessed party invokes the appeal procedure to the superior court to contest the validity of the

assessment, which is a de novo proceeding, the party comes into court in the status of a plaintiff who has the burden of proof, while the commissioner occupies the status of a defendant, who by transmitting the record showing the fact of the assessment, has provided sufficient answer to entitle the defendant to the defendant's day in court on the merits to rebut whatever proof the other party may offer to support the plaintiff's contention that the plaintiff is not liable for the tax deficiency. Blackmon v. Ross, 123 Ga. App. 89, 179 S.E.2d 548, 1970 Ga. App. LEXIS 735 (1970).

RESEARCH REFERENCES

Am. Jur. 2d.
72 Am. Jur. 2d, State and Local Taxation, § 771.

48-2-53. Compelled production of evidence.

If any person required by law to make any return, supply any information, or exhibit any books or records, whether with reference to his own returns or not, refuses to do so upon written request of the commissioner or his designated agent, the superior court for the county in which the person resides shall have jurisdiction by appropriate process to compel the person to testify and to cause the proper person to produce the books, papers, or other data. All of the laws of this state regarding the taking of depositions and interrogatories of both nonresidents and residents of this state shall be available to the commissioner.

History.
Ga. L. 1937-38, Ex. Sess., p. 77, § 36; Ga. L. 1937-38, Ex. Sess., p. 156, § 9; Code 1933, § 91A-247, enacted by Ga. L. 1978, p. 309, § 2.

Cross references.
Discovery of documents and other written material, § 9-11-34.

48-2-54. Action by commissioner to collect unpaid tax.

In the event any taxpayer fails to pay any tax due, the commissioner shall notify the taxpayer and his surety or sureties by mailing a letter to their post office addresses last known to the commissioner. If, after 30 days of mailing the notice, the amount due remains unpaid, the commissioner shall bring an action to collect the amount due including, but not limited to, penalties, interest, and costs. It shall not be necessary to make the defaulting taxpayer a party to any action that may be brought against his surety or sureties.

History.
Ga. L. 1937-38, Ex. Sess., p. 77, § 40; Code 1933, § 91A-249, enacted by Ga. L. 1978, p. 309, § 2.

RESEARCH REFERENCES

Am. Jur. 2d.
72 Am. Jur. 2d, State and Local Taxation, §§ 712, 713, 755.

ALR.
Provisions of tax statute as to time for performance of acts by boards or officers as mandatory or directory, 151 A.L.R. 248.

48-2-54.1. Authorization to charge taxpayer's account.

The commissioner is authorized to charge to the taxpayer's account any costs or fees which are charged to the commissioner by the United States Treasury Financial Management System for offsetting federal refund claims against any tax liability which is owed by a taxpayer to the state and for which the commissioner has the responsibility for collection.

History.
Code 1981, § 48-2-54.1, enacted by Ga. L. 2003, p. 442, § 2.

48-2-55. Attachment; garnishment; levy; judicial sales.

(a) All taxes are a personal debt of the person required by this title to file the returns or to pay the taxes imposed by this title.

(b)(1) The commissioner or his authorized representative may attach the property of a delinquent taxpayer on any ground provided by Code Section 18-3-1 or on the ground that the taxpayer is liquidating his property in an effort to avoid payment of the tax.

(2) The commissioner or the commissioner's authorized representative may use garnishment to collect any tax, fee, license, penalty, interest, or collection costs due the state which are imposed by this title or which the commissioner or the department is responsible for collecting under any other law. Garnishment may be issued by the commissioner or the commissioner's authorized representative against any person whom the commissioner believes to be indebted to the defendant or who has property, money, or effects in such person's hands belonging to the defendant. The summons of garnishment shall be served by the commissioner or the commissioner's authorized representative, shall be served at least 15 days before the sitting of the court to which the summons is made returnable, and shall be returned to either the superior court or the state court of the county in which the garnishee is served. The commissioner or the commissioner's authorized representative shall enter on the execution the names of the persons garnished and shall return the execution to the appropriate court. All subsequent proceedings shall be the same as provided by law regarding garnishments in other cases when judgment has been obtained or execution issued. In addition to any other

methods of service, the summons of garnishment may be served by the commissioner or the commissioner's authorized representative to the garnishee by registered or certified mail or statutory overnight delivery, return receipt requested. Either the return receipt indicating receipt by the garnishee or the envelope bearing the official notification from the United States Postal Service of the garnishee's refusal to accept delivery of such registered or certified mail or statutory overnight delivery shall be filed with the clerk of the court in which the garnishment is pending. If statutory overnight delivery was accomplished through a commercial firm as provided under paragraph (1) of subsection (b) of Code Section 9-10-12, the return receipt indicating receipt by the garnishee or the envelope bearing the official notification of such commercial firm of the garnishee's refusal to accept delivery shall be filed with the clerk of the court in which garnishment is pending. If a garnishee refuses to accept service of a summons of garnishment by registered or certified mail or statutory overnight delivery, the summons of garnishment shall be served by the commissioner or the commissioner's authorized representative under any other method of lawful service and the garnishee shall be personally liable to the commissioner for a sum equal to the actual costs incurred to serve the summons of garnishment. This liability shall be paid upon notice and demand by the commissioner or the commissioner's delegate and shall be assessed and collected in the same manner as other taxes administered by the commissioner.

(c)(1) In case of neglect or refusal by a taxpayer to pay any taxes, fees, licenses, penalties, interest, or collection costs due the state, the commissioner or his authorized representative may levy upon all property and rights to property belonging to the taxpayer, except such as are exempt by law, for the payment of the amount due, together with interest on the amount, any penalty for nonpayment, and such further amount as shall be sufficient for the fees, costs, and expenses of the levy. As used in this subsection, the term "property and rights to property" includes, but is not limited to, any account in or with a financial institution.

(2) A levy upon an account in or with a financial institution shall be a constructive levy and shall be effective at the time of personal service upon the financial institution as evidenced by an entry of service upon the levy by the commissioner or his authorized representative, or by an acknowledgment of service made by a proper official of the financial institution indicating the date and time of service. The commissioner or his authorized representative may, in lieu of personal service or service by mail, serve a levy upon a financial institution, and a financial institution may acknowledge service of a levy by telephonic facsimile transmission or by other

means of instantaneous electronic transmission. The financial institution shall remit to the commissioner or his authorized representative as provided in this subsection not later than 15 days after personal service or acknowledgment of service by mail or facsimile or other instantaneous electronic transmission. Notwithstanding any other law to the contrary, a financial institution receiving a levy shall remit the full amount of its depositor's accounts that are subject to levy, to the extent of the amount claimed upon the levy, without deduction; provided, however, that nothing contained in this subsection shall be deemed to diminish the right of a financial institution to exercise its right of setoff.

(d)(1) The commissioner or his or her authorized representative may levy and conduct judicial sales in the manner provided by law for sales by sheriffs and constables.

(2)(A) In the event the levy is upon personal property, the sale of such property shall be advertised ten days before the date of sale. Advertisements of sales shall designate the time, place, and manner of the sale, shall give a reasonable description of the property to be sold, shall be posted in three public places in the county, and shall be inserted at least one time in the newspaper in which sheriff's sales in the county are advertised. The commissioner may prescribe by regulation methods for providing notice of sale in addition to the provisions of this subparagraph.

(B) The commissioner or his or her authorized representative may conduct the sale of such personal property via public auction, public internet auction, or via sealed bids. If the sale is conducted via public auction, the sale shall be held between the hours of 10:00 A.M. and 4:00 P.M. eastern standard time or eastern daylight time, whichever is applicable. The sale shall be conducted within the county in which the property levied on is situated, except that if it appears to the commissioner that substantially higher bids may be obtained for the property if the sale is held at a place outside such county, he may order that the sale be held in such other place. If the location of the sale is in a county other than the county in which the levy was made, notice of the sale as required by this Code section shall be made in both counties. The commissioner may prescribe by regulation the manner or other conditions for sales by public auction, public internet auction, or sealed bids, including whether payment in full is required at the time of acceptance of the bid, under what circumstances the sale may be adjourned, and whether, and under what circumstances, multiple items of property may be sold separately, in groups, or in the aggregate.

(C) For each sale of personal property conducted pursuant to this paragraph, the commissioner or his or her authorized repre-

sentative shall determine a minimum bid price of the sale, and, in the absence of a bid equal to or greater than the minimum bid price, the commissioner shall retain possession of the property. In determining the minimum bid price, the commissioner or his or her authorized representative shall take into account the expense of making the levy and sale. In his discretion, the commissioner or his or her representative may delay disclosure of the minimum bid price until the receipt of the highest bid.

(3) In the event the levy is upon real property, the commissioner or his or her authorized representative, after making the levy, shall return the levy on the execution to the sheriff of the county in which the property is located. After the return, the sheriff shall proceed to advertise and sell the property as required by law.

(e) The department shall apply all moneys obtained under this Code section first against the expenses of the proceedings and then against the liability in respect to which the levy was made and any other liability owed to the department by the delinquent taxpayer.

(f)(1) Any person in possession of or obligated with respect to property or rights to property subject to levy upon which a levy has been made shall surrender such property or rights or discharge such obligation to the commissioner or his authorized representative, except such part of the property or rights as is subject, at the time of such levy, to an attachment or execution under any judicial process.

(2) Any person who willfully fails or refuses to surrender any property subject to levy shall be personally liable to the commissioner for a sum equal to the value of the property or rights not so surrendered but not exceeding the amount of the tax, interest, and penalties for the collection of which such levy has been made, together with costs and interest at the rate specified in Code Section 48-2-40 from the date of such levy. The liability imposed in this subsection shall be paid upon notice and demand by the commissioner or his delegate and shall be assessed and collected in the same manner as other taxes administered by the commissioner. Any amount other than costs recovered under this subsection shall be credited against the subject taxpayer's liability for the collection of which such levy was made.

(3) Any person in possession of or obligated with respect to property or rights to property subject to levy upon which a levy has been made who, upon service of levy by the commissioner or his authorized representative, surrenders such property or rights to property or discharges such obligation to the commissioner or his authorized representative shall be discharged from any obligation or liability to the delinquent taxpayer with respect to such property or rights to property arising from such surrender or payment.

History.

Ga. L. 1931, Ex. Sess., p. 24, § 44; Code 1933, § 92-3311; Ga. L. 1937-38, Ex. Sess., p. 77, § 41; Ga. L. 1951, p. 614, § 3; Ga. L. 1952, p. 300, § 1; Code 1933, § 91A-250, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 12; Ga. L. 1981, p. 1857, § 8; Ga. L. 1983, p. 1834, § 3; Ga. L. 1985, p. 931, § 1; Ga. L. 1990, p. 1875, § 1; Ga. L. 1991, p. 713, § 1; Ga. L. 1993, p. 961, §§ 3, 4; Ga. L. 2009, p. 816, § 5/HB 485; Ga. L. 2012, p. 735, § 2/HB 846; Ga. L. 2024, p. 1052, § 5(1)/SB 448, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, inserted "that" following "however," in paragraph (c)(2) and revised capitalization in subparagraph (d)(2)(B).

Cross references.

Judicial sales, § 9-13-140 et seq.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1993, "acknowledgment" was substituted for "acknowledgement" in two places in paragraph (c)(2).

Editor's notes.

Ga. L. 2009, p. 816, § 1/HB 485, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Improved Taxpayer Customer Service Act of 2009."

JUDICIAL DECISIONS

Requirement for assessment before tax due and personal debt created. — Payment of tax imposed is not conditioned upon assessment by the commissioner. State v. Fuller, 90 Ga. App. 349, 83 S.E.2d 69, 1954 Ga. App. LEXIS 710 (1954).

No assessment proceeding is required if the return is accepted by the commissioner as correct. The tax is due and payable as a personal debt without assessment. Assessment is an action taken only with regard to collection of tax exceeding that returned by the taxpayer. State v. Fuller, 90 Ga. App. 349, 83 S.E.2d 69, 1954 Ga. App. LEXIS 710 (1954).

Notice not required as to personal property. — Summary judgment was properly granted to a county tax commissioner in a taxpayer's action alleging violation of various statutory and constitutional provisions in the commissioner's levying upon the taxpayer's bank account to collect county taxes owed because neither O.C.G.A. § 48-2-55 nor O.C.G.A. §§ 48-3-3 and 48-3-9 required the commissioner to give the taxpayer notice of the levy prior to levying upon the personal property. Anderson v. Ford, 261 Ga. App. 34, 581 S.E.2d 623, 2003 Ga. App. LEXIS 464 (2003).

County ad valorem taxes paid from surplus. — Trial court properly ordered that county ad valorem taxes could be paid from surplus proceeds obtained from a foreclosure sale of the subject property given that: (1) the taxes were chargeable as a taxpayer's personal debt or as a lien, extending not only to the subject property, but also to all property the taxpayer owned, and the foreclosure notice did not limit the commissioner's authority as to how to collect the taxes owed; and (2) the security deed in turn provided that upon a foreclosure sale of the property, the lender bank would apply any surplus proceeds to the person or persons legally entitled to the proceeds, which also included the tax commissioner. Mulligan v. Sec. Bank of Bibb County, 280 Ga. App. 248, 633 S.E.2d 629, 2006 Ga. App. LEXIS 803 (2006).

Claim in bankruptcy. — Chapter 13 debtor was liable for property taxes assessed against the property despite the fact that the debtor's lender was granted relief from stay. Under O.C.G.A. §§ 48-2-55 and 48-5-10, the debtor remained personally liable for the taxes because the debtor was the title holder of the property on the first day of each tax year for which an unsecured priority claim was made. Waddy v. Fulton County Tax Comm'r (In re Waddy), No. 09-64634-WLH, 2010 Bankr. LEXIS 4003 (Bankr. N.D. Ga. Sept. 23, 2010).

OPINIONS OF THE ATTORNEY GENERAL

General state law on garnishments issued by state revenue commissioner governs over local legislation on garnishments. 1982 Op. Att'y Gen. No. 82-85.

Construed with § 9-13-60. — Subsection (c) of O.C.G.A. § 48-2-55, pertaining to tax levies, authorizes the Commissioner of the Department of Revenue and the Commissioner's agents to levy upon a delinquent taxpayer's equitable interest in real property encumbered by a deed to secure debt, without first satisfying the requirements of O.C.G.A. § 9-13-60. 1990 Op. Att'y Gen. No. 90-19.

RESEARCH REFERENCES

Am. Jur. 2d.

71 Am. Jur. 2d, State and Local Taxation, § 4. 72 Am. Jur. 2d, State and Local Taxation, §§ 780 et seq., 794 et seq., 803 et seq.

C.J.S.

38 C.J.S., Garnishment, §§ 1 et seq., 15, 17. 84 C.J.S., Taxation, § 429 et seq. 85 C.J.S., Taxation, §§ 1828 et seq., 2004 et seq.

ALR.

Provisions of tax statute as to time for performance of acts by boards or officers as mandatory or directory, 151 A.L.R. 248.

48-2-56. Liens for taxes; priority.

(a) Except as otherwise provided in this Code section, liens for all taxes due the state or any county or municipality in the state shall arise as of the time the taxes become due and unpaid and all tax liens shall cover all property in which the taxpayer has any interest from the date the lien arises until such taxes are paid.

(b) Except as otherwise provided in this Code section, liens for taxes are superior to all other liens and shall be paid before any other debt, lien, or claim of any kind. Liens for taxes shall rank among themselves as follows:

(1) Taxes due the state;

(2) Taxes due counties of the state;

(3) Taxes due school and other special tax districts of the state; and

(4) Taxes due municipal corporations of the state.

(c) The lien for taxes imposed by Article 1 of Chapter 9 of this title, relating to motor fuel taxes, shall not have priority as against:

(1) Any bona fide mortgagee, holder, or transferee of a deed to secure debt; or

(2) Any pledgee, judgment creditor, or purchaser of or from persons liable for the tax imposed by Article 1 of Chapter 9 of this title

where the rights of such mortgagee, holder, or transferee of a deed to secure debt, pledgee, judgment creditor, or purchaser have attached

prior to the time the lien has been filed by the commissioner in the office of the clerk of superior court of the county in which the principal place of business is located.

(d)(1) Liens for any ad valorem taxes shall cover the property of taxpayers liable to tax from the time fixed by law for valuation of the property in each year until such taxes are paid and shall cover the property of tax collectors or tax commissioners and their sureties from the time of giving bond until all the taxes for which they are responsible are paid.

(2) The lien for any ad valorem tax shall not be superior to the title and operation of a security deed when the tax represents an assessment upon property of the taxpayer other than property specifically covered by the title and operation of the security deed.

(3) When real property located within this state is transferred between the date on which any ad valorem tax lien on the property vests and the date on which the tax evidenced by the tax lien becomes due and payable, the ad valorem tax lien on the transferred property shall not extend to cover any other real property of the transferor.

(e) The lien for taxes imposed by the provisions of Article 2 of Chapter 7 of this title, relating to certain income taxes, shall:

(1) Arise and attach to all property of the taxpayer as of the time a tax execution for these taxes is filed with the clerk of superior court of the county of the last known address of the taxpayer appearing on the records of the department at the time the state tax execution is filed; and

(2) Not be superior to the lien of a prior recorded instrument securing a bona fide debt.

Before the lien provided for in this subsection shall attach to real property, an execution shall be filed with the clerk of superior court in the county where the real property is located.

(f) The lien for taxes imposed by the provisions of Article 5 of Chapter 7 of this title, relating to withholding taxes, shall:

(1) Arise and attach to all property of the defaulting employer or other person required to deduct and withhold on the date of the assessment of the taxes by operation of law or by action of the commissioner;

(2) Not be superior to the lien of a prior recorded instrument securing a bona fide debt; and

(3) Not attach to the interest of a subsequent bona fide purchaser nor be superior to the lien of a lender for value recorded prior to the

time the execution for the tax has been filed in the office of the clerk of superior court of the county of the last known address of the taxpayer appearing on the records of the department at the time the state tax execution is filed.

Before the lien provided for in this subsection shall attach to real property, an execution shall be filed with the clerk of superior court in the county where the real property is located.

(g)(1) The lien of a specific or occupation tax shall not be superior to the title and operation of a security deed recorded prior to the time the execution for the tax has been filed in the office of the clerk of superior court of the county of the last known address of the taxpayer appearing on the records of the department at the time the state tax execution is filed.

(2) As used in this subsection, the term "specific or occupation tax" means all state, county, and municipal taxes and all state licenses and fees except:

(A) The taxes imposed by Article 1 of Chapter 9 of this title;

(B) Ad valorem taxes;

(C) The taxes imposed by Article 2 of Chapter 7 of this title; and

(D) The taxes imposed by Article 5 of Chapter 7 of this title.

The term includes, but is not limited to, sales and use taxes, corporate net worth taxes, estate taxes, real estate transfer taxes, taxes on financial institutions, alcohol and tobacco taxes, road taxes on motor carriers, excise taxes, license fees, tax liabilities of corporate officers and business successors, and tax collections of a person who is a dealer under Chapter 8 of this title relating to sales and use taxation.

(h) Liens for taxes existing prior to July 1, 1983, shall not be changed by this Code section. On and after July 1, 1983, this Code section shall govern the time of creation of all tax liens and the priority of all tax liens.

(i) All executions, liens, releases, cancellations, or other related documents issued by the department to be filed with a superior court clerk shall be presented and filed electronically pursuant to Code Section 48-3-42 and the appropriate filing fees shall be paid by the department as provided in subsection (f) of Code Section 15-6-77.

History.

Ga. L. 1873, p. 42, § 2; Code 1873, § 1973; Code 1882, § 1973; Civil Code 1895, § 2791; Civil Code 1910, § 3333; Code 1933, § 92-5708; Ga. L. 1937-38, Ex. Sess., p. 77, § 42; Ga. L. 1937-38, Ex. Sess., p. 156, § 10; Ga. L. 1953, Nov.-Dec. Sess., p. 168, §§ 2, 3; Ga. L. 1968, p. 360, § 15; Ga. L. 1978, p. 1778, § 1; Code 1933, § 91A-252, enacted by Ga. L. 1978, p. 309,

§ 2; Ga. L. 1979, p. 5, § 13; Ga. L. 1983, p. 1834, § 4; Ga. L. 1984, p. 22, § 48; Ga. L. 1988, p. 13, § 48; Ga. L. 1993, p. 768, § 1; Ga. L. 2017, p. 723, § 2/HB 337; Ga. L. 2018, p. 1, § 1/HB 661.

Cross references.

Registration of federal tax liens, § 44-14-570 et seq.

Priority of claims against decedents' estates, § 53-7-40.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1987, a semicolon was deleted following "title" in paragraph (c)(2) and a comma was inserted following "subsection" in paragraph (g)(2).

Editor's notes.

Ga. L. 2017, p. 723, § 1/HB 337, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State Tax Execution Modernization Act."

Law reviews.

For comment on Brown v. Nash, 216 Ga. 303, 116 S.E.2d 227 (1960), see 12 Mercer L. Rev. 425 (1961).

For article surveying recent legislative and judicial developments in Georgia's real property laws, see 31 Mercer L. Rev. 187 (1979).

For annual survey of state and local tax law, see 35 Mercer L. Rev. 281 (1983).

For note on the 1993 amendment of this Code section, see 10 Ga. St. U. L. Rev. 218 (1993).

For annual survey of real property law, see 56 Mercer L. Rev. 395 (2004).

For annual survey on bankruptcy law, see 69 Mercer L. Rev. 1033 (2018).

JUDICIAL DECISIONS

Analysis

General Consideration
When Lien Attaches
Taxes Covered by Lien
Property Subject to Lien
Rank and Priority of Liens

General Consideration

Construed with Ch. 9 of Title 48. — Holding in In re Tuggle, 22 Bankr. 439 (Bankr. N.D. Ga. 1982) "that when liens for taxes other than ad valorem taxes attach to the property of the taxpayer, they are superior to all other liens filed thereafter but not those recorded prior in time," applies only to liens for taxes imposed under the provisions of O.C.G.A. § 48-9-1 et seq., which chapter is concerned with motor fuel taxes. Tuggle v. IRS, 30 B.R. 718, 1983 Bankr. LEXIS 6009 (Bankr. N.D. Ga. 1983).

Tax liability as personal debt. — Taxes due a county or municipality come within the generally accepted meaning of "personal debts," the collection of which is enforceable by appropriate judicial action. Woodall v. First Nat'l Bank, 118 Ga. App. 440, 164 S.E.2d 361, 1968 Ga. App. LEXIS 1423 (1968).

Conditions of tax commissioner's bond. — Official bond of a tax commissioner covers the commissioner's official duties and obligations as tax commissioner and no other obligations. Sanders v. Georgia Farm Bureau Mut. Ins. Co., 109 Ga. App. 772, 137 S.E.2d 389, 1964 Ga. App. LEXIS 990 (1964).

When Lien Attaches

Lien for sales and use taxes. — Lien for sales and use taxes attaches on the day on which the dealer is required to make the dealer's return and remittance to the commissioner. State v. Atlanta Provision Co., 90 Ga. App. 147, 82 S.E.2d 145, 1954 Ga. App. LEXIS 655 (1954).

Lien for property taxes. — Lien for state and county taxes attaches to property at the time fixed by law for valuation of the property in each year. Decatur County Bldg. & Loan Ass'n v. Thigpen, 173 Ga. 363, 160 S.E. 387, 1931 Ga. LEXIS 316 (1931).

Effect of failure to record lien. — Recording a fieri facias issued by the commissioner on the general execution

When Lien Attaches (Cont'd)

docket is not a condition precedent to attachment of a lien for sales taxes. The only effect of failure to record the lien is that as against innocent purchasers the lien will be lost. State v. Atlanta Provision Co., 90 Ga. App. 147, 82 S.E.2d 145, 1954 Ga. App. LEXIS 655 (1954).

When a lender takes notes and bills of sale to secure a debt, but security instruments are not recorded until after the tax liens have been entered on the execution docket, the property covered under the security instruments was property of the debtor at the time the debtor became liable for the tax and the fact that the lender foreclosed on the property and purchased the property at the foreclosure sale does not divest the tax lien, and it is proper for the state to levy the execution upon the foreclosed property then in the possession of the lender. Williams v. General Fin. Corp., 98 Ga. App. 31, 104 S.E.2d 649, 1958 Ga. App. LEXIS 500 (1958).

Taxes Covered by Lien

What taxes covered by lien. — Words "liens for taxes," as employed in former Civil Code 1910, §§ 1140, 3329, and 3333 (see now O.C.G.A. §§ 44-4-320, 48-2-56, and 48-5-28), were broad and sufficient to include taxes provided for by the subsequent statute for support of the state and counties and municipal corporations located in the state, although such tax may not be ad valorem or based on property. Atlanta Trust Co. v. Atlanta Realty Corp., 177 Ga. 581, 170 S.E. 791, 1933 Ga. LEXIS 363 (1933).

Bankruptcy case would serve no purpose that creditors of trust could not otherwise achieve under state law because one creditor was fully protected by their property tax liens, which were first priority liens under state law, and other creditors held first mortgages on three of the trust's parcels. In re Two Rivers Irrevocable Trust, 653 B.R. 284, 2023 Bankr. LEXIS 1773 (Bankr. M.D. Ga. 2023).

Applicability of section to sales taxes. — Provisions of former Code 1933, §§ 92-5707 and 92-5708 (see now O.C.G.A. §§ 48-5-28 and 48-2-56) deal with situations where the lien for taxes represents an assessment upon property of such owner other than that property specifically covered by the security instrument, and since sales tax is not a property tax and is not assessed against the property of the owner, these provisions are not applicable to sales taxes. Williams v. General Fin. Corp., 98 Ga. App. 31, 104 S.E.2d 649, 1958 Ga. App. LEXIS 500 (1958).

Property Subject to Lien

Taxes due state are not only against owner but also against property, regardless of judgments, mortgages, sales, transfers, or incumbrances of any kind. Bibb Nat'l Bank v. Colson, 162 Ga. 471, 134 S.E. 85, 1926 Ga. LEXIS 218 (1926); Decatur County Bldg. & Loan Ass'n v. Thigpen, 173 Ga. 363, 160 S.E. 387, 1931 Ga. LEXIS 316 (1931).

Trial court properly ordered that county ad valorem taxes could be paid from surplus proceeds obtained from a foreclosure sale of the subject property, given that: (1) the taxes were chargeable as a taxpayer's personal debt or as a lien, extending not only to the subject property, but also to all property the taxpayer owned, and the foreclosure notice did not limit the commissioner's authority as to how to collect the taxes owed; and (2) the security deed in turn provided that upon a foreclosure sale of the property, the lender bank would apply any surplus proceeds to the person or persons legally entitled to the proceeds, which also included the tax commissioner. Mulligan v. Sec. Bank of Bibb County, 280 Ga. App. 248, 633 S.E.2d 629, 2006 Ga. App. LEXIS 803 (2006).

Property not returned or assessed for taxation is nevertheless subject to levy and sale for taxes accruing upon other property which was returned or assessed for such purpose. The fact that unreturned property may be required to pay its own taxes at some time in the future is not a defense against enforcement of a valid lien against the property for taxes due upon other property. Federal Land Bank v. Farmers' & Merchants' Bank, 177 Ga. 505, 170 S.E. 504, 1933 Ga. LEXIS 341 (1933).

Sale under common-law execution does not divest municipality's lien for its due and unpaid taxes. LaGrange Grocery Co. v. City of LaGrange, 31 Ga. App. 97, 119 S.E. 536, 1923 Ga. App. LEXIS 745 (1923).

Farm products which are themselves exempt from taxation may nevertheless be levied on and sold for taxes due upon other property of the same owner. Federal Land Bank v. Farmers' & Merchants' Bank, 177 Ga. 505, 170 S.E. 504, 1933 Ga. LEXIS 341 (1933).

Property possessed and used by obligee under bond for title. — Lien for all taxes is binding upon all property in a municipality of a surviving obligee in the bond for title and the estate of the deceased obligee, represented by the surviving obligee as administrator, such obligees being holders of the bond for title and possessing and using the property at the time of accrual of the tax. Graves v. Walker, 182 Ga. 644, 186 S.E. 820, 1936 Ga. LEXIS 525 (1936).

Effect on lien of subsequent transfer or incumbrance. — Sale of land by the sheriff in November of a year under a general fi. fa. does not divest the lien of the state and county for the year's taxes of the defendant in fi. fa. Wilson v. Boyd, 84 Ga. 34, 10 S.E. 499, 1889 Ga. LEXIS 173 (1889).

When an owner of land conveys the land by warranty deed as security for debt, and in the succeeding year fails to return the land at the time the owner returns the owner's other property for state and county taxation for that year, and after default in payment execution is issued against the owner for state and county taxes on the basis of the owner's return of other property, the lien for such taxes will attach not only to the property included in the return but also to the land which the owner has conveyed as security for the debt. Decatur County Bldg. & Loan Ass'n v. Thigpen, 173 Ga. 363, 160 S.E. 387, 1931 Ga. LEXIS 316 (1931).

Ownership of property at the time of the tax sale is entirely immaterial since a tax lien attaches to property subject to taxation from the time fixed by law for valuation of such property. Furthermore, taxes due the state are not only against the owner but against the property also, regardless of judgments, mortgages, sales, transfers, or incumbrances of any kind. City of Leesburg v. Forrester, 59 Ga. App. 503, 1 S.E.2d 584, 1939 Ga. App. LEXIS 337 (1939).

Tax commissioner, who was an ex-officio sheriff, under O.C.G.A. § 48-5-137, could be subject to a money rule petition filed by the holder of county tax executions for refusing to pay those executions from the excess proceeds of tax sales of property; the holder could collect on the holder's execution from any property in which the taxpayer had an interest, which included the excess proceeds from the tax sale, before any payments to the taxpayer, under O.C.G.A. § 48-2-56(a) and (b), so it was error for the commissioner to refuse to pay the holder's claims. Scott v. Vesta Holdings I, LLC, 275 Ga. App. 196, 620 S.E.2d 447, 2005 Ga. App. LEXIS 930 (2005).

Levy on proceeds of mortgage foreclosure divests lien on foreclosed property. — Rule that the sale of property under a mortgage fi. fa. does not divest the lien for taxes is not applicable if the tax fi. fas. are placed in the hands of the levying officer for the purpose of claiming the proceeds of such sale. Patton v. Camp, 120 Ga. 936, 48 S.E. 361, 1904 Ga. LEXIS 752 (1904).

Lien transferred to proceeds of sale by administrator. — When under order of court an administrator sells lands subject to tax liens the lien is thereby divested and transferred to the proceeds of the sale. Herrington v. Tolbert, 110 Ga. 528, 35 S.E. 687, 1900 Ga. LEXIS 577 (1900).

Parties cannot by contract defeat the government's right to collect taxes for which property would otherwise be liable. City of Leesburg v. Forrester, 59 Ga. App. 503, 1 S.E.2d 584, 1939 Ga. App. LEXIS 337 (1939).

Mortgagees have no right to prorate lien amongst debtor's properties. — If different parties hold mortgages on different pieces of a debtor's property, neither can claim a right to have a tax execution prorated between the tracts. The lien covers both but may be enforced against either. Patton v. Camp,

Property Subject to Lien (Cont'd)

120 Ga. 936, 48 S.E. 361, 1904 Ga. LEXIS 752 (1904).

Failure to exercise right to redemption. — Transferee by tax deeds of tax lien encumbered property, following a tax sale of the property, held fee simple title to the property unencumbered by any competing tax liens after notice and expiration of the redemption period. Nat'l Tax Funding, L.P. v. Harpagon Co., 277 Ga. 41, 586 S.E.2d 235, 2003 Ga. LEXIS 723 (2003).

Rank and Priority of Liens

Federal tax liens have priority over later assessed state tax liens, but federal liens are subordinate to prior filed liens of judgment creditors. Tuggle v. IRS, 30 B.R. 718, 1983 Bankr. LEXIS 6009 (Bankr. N.D. Ga. 1983).

State lien attaching and becoming choate has priority over subsequent federal lien. — Because Georgia's lien for tax withholding penalties attached and became choate prior in time to any Internal Revenue Service lien, the Georgia lien had priority; because the subject of the lien was not real property, the last sentence of subsection (f) of O.C.G.A. § 48-2-56 did not apply. Ellenberg v. J.M. Tull Metals (In re McIntyre Grading & Pipe, Inc.), 193 B.R. 983, 1996 Bankr. LEXIS 274 (Bankr. N.D. Ga. 1996).

Intrastate tax lien priorities. — Ad valorem taxes did not become choate until the county's tax digest was approved by the State Revenue Commission pursuant to O.C.G.A. § 48-5-342; however, intrastate tax lien priorities do not depend on choateness, but are determined by state statute, specifically subsection (b) of O.C.G.A. § 48-2-56, which delineates the priority of tax liens and makes state tax liens superior to county tax liens regardless of date. Ellenberg v. J.M. Tull Metals (In re McIntyre Grading & Pipe, Inc.), 193 B.R. 983, 1996 Bankr. LEXIS 274 (Bankr. N.D. Ga. 1996).

Priority of tax liens not dependent on filing. — Priority of liens for taxes, other than real property ad valorem taxes, does not depend on when or if those liens are filed since tax liens are superior to all other liens against property. Tuggle v. IRS, 30 B.R. 718, 1983 Bankr. LEXIS 6009 (Bankr. N.D. Ga. 1983).

Priority based on status of taxing entity. — In passing O.C.G.A. § 48-2-56, the Georgia General Assembly provided specific directions on how tax liens shall be ranked, and by adopting the statute, the legislature intended to assign priority to tax liens based upon the status of the taxing entity, regardless of the date the lien was created. Vesta Holdings I, LLC v. Tax Comm'r, 259 Ga. App. 717, 578 S.E.2d 293, 2003 Ga. App. LEXIS 251 (2003).

No right to excess funds generated by tax sale. — In Wester v. United Capital Financial of Atlanta, LLC, 282 Ga. App. 392 (2006) and again in United Capital Financial of Atlanta v. American Investment Assoc., 302 Ga. App. 400 (2010), the Georgia Court of Appeals held that a creditor who redeems property following a tax sale has first priority to excess funds resulting from that tax sale, but properly overruled those decisions in DLT List, LLC. v. M7VEN Supportive Housing & Dev. Group, 335 Ga. App. 318 (2015) concluding that a redeeming creditor has no such priority. DLT List, LLC v. M7VEN Supportive Hous. & Dev. Group, 301 Ga. 131, 800 S.E.2d 362, 2017 Ga. LEXIS 374 (2017).

Redeeming creditor of a tax-sale property does not have a priority lien against excess funds arising from that sale. DLT List, LLC v. M7VEN Supportive Hous. & Dev. Group, 301 Ga. 131, 800 S.E.2d 362, 2017 Ga. LEXIS 374 (2017).

Circular priorities involving tax and judgment liens and security deeds under Georgia law shall be established according to the following rules: (1) liens for taxes shall be paid prior to all other liens against property; (2) security deeds shall be paid prior to liens for state taxes if the tax liens are not for ad valorem taxes against the property which is the subject of the security deeds at issue; and (3) judgment lien holders shall be subordinated to the preceding claims. Tuggle v. IRS, 30 B.R. 718, 1983 Bankr. LEXIS 6009 (Bankr. N.D. Ga. 1983).

Tax lien relegated to lower position upon landowner's death. — Statutory first or superior lien on real estate for

taxes as provided by O.C.G.A. § 48-2-56 is relegated to a lower position by former O.C.G.A. § 53-7-91 (see now O.C.G.A. § 53-7-40) when death of the landowner intervenes. State Revenue Comm'r v. Fleming, 172 Ga. App. 887, 324 S.E.2d 821, 1984 Ga. App. LEXIS 2704 (1984).

Liens of judgment creditors. — Lien for municipal taxes which a city has upon property of a taxpayer is superior to the lien of a judgment creditor. This is especially true if execution has been issued against a defaulting taxpayer and entered upon proper execution docket before the creditor's judgment was obtained. Royal Indem. Co. v. Mayor of Savannah, 209 Ga. 383, 73 S.E.2d 205, 1952 Ga. LEXIS 529 (1952).

State's lien upon property of a distributor under former Code 1933, Ch. 92-14 (see now O.C.G.A. Art. 1, Ch. 9, T. 48) for excise taxes collected by the distributor on sale or use of motor fuel and kerosene did not have priority over lien of judgment creditor, when rights of such creditor attached prior to filing of notice of state's lien in the office of the superior court; and if a surety upon such distributor's bond to state became subrogated to rights of state by payment of such taxes to state, the surety took the position of the state and acquired no greater rights with respect thereto than the state had at the time the surety became subrogated. Royal Indem. Co. v. Mayor of Savannah, 209 Ga. 383, 73 S.E.2d 205, 1952 Ga. LEXIS 529 (1952).

Lien of a special assessment is equal to that of general municipal taxes, and sale to enforce the latter leaves the other standing against the property. Steele v. City of Waycross, 190 Ga. 816, 10 S.E.2d 867, 1940 Ga. LEXIS 577 (1940).

Lien against property owners for the proportionate costs of paving streets has the rank of a tax lien and its dignity takes rank, and consequently takes priority over a prior mortgage. City of Brunswick v. Gordon Realty Co., 163 Ga. 636, 136 S.E. 898, 1927 Ga. LEXIS 37 (1927).

Rights of prior mortgagee. — Lien may be enforced even as against a mortgage holder whose mortgage is prior to the assessment. Verdery v. Dotterer, 69 Ga. 194, 1882 Ga. LEXIS 196 (1882).

Bona fide purchasers. — Liens for state, county, and municipal taxes are superior to all other liens and such liens follow property into hands of bona fide purchasers. Freeman v. Mayor of Atlanta, 66 Ga. 617, 1881 Ga. LEXIS 74 (1881); Carroll v. Richards, 50 Ga. App. 272, 178 S.E. 178, 1934 Ga. App. LEXIS 737 (1934).

Debtor's action, which alleged that the Tax Commissioner violated the automatic stay by filing writs of fieri facias post-petition on taxes assessed prepetition against the debtor's real property, was dismissed because there was no stay violation as filing each fieri facias did not create, perfect, or enforce any lien on the property. The city's lien for ad valorem taxes was perfected and superior to all other liens before the fieri facias was recorded. Steed v. GSRAN-Z, LLC (In re Steed), No. 18-69488-JWC, No. 19-05304-JWC, 2020 Bankr. LEXIS 877 (Bankr. N.D. Ga. Mar. 31, 2020).

Bona fide purchaser may avoid unrecorded tax liens. — In Georgia, a bona fide purchaser may avoid tax liens on property which attached prior to the purchaser's purchase of that property but were recorded subsequent thereto. Abney v. Cox Enters., Inc. (In re Fulton Air Serv., Inc.), 37 B.R. 358, 1984 Bankr. LEXIS 6420 (Bankr. N.D. Ga. 1984).

Depositors in dissolved financial institution. — Priorities of payment established in Ga. L. 1927, p. 195, § 5 (see now O.C.G.A. § 7-1-202), which allow payment to depositors before payments of state tax, supersede the provisions of former Code 1910, §§ 1140, 1141, and 3333 (see now O.C.G.A. §§ 48-2-56 and 48-5-28), which gave taxes priority over other debts. Felton v. McArthur, 173 Ga. 465, 160 S.E. 419, 1931 Ga. LEXIS 342 (1931).

Priority of lien on property of tax collector. — When, in an equitable proceeding between parties with claims to proceeds of performance bonds deposited with the state by a surety for a county tax collector, no claimant having obtained any judgment prior to the equitable proceeding, and when the county intervened in such equitable proceeding with the county's claim for loss sustained by default of the county's tax collector

Rank and Priority of Liens (Cont'd)

prior to the equitable proceeding, the county was entitled in equity, by virtue of superior lien given the county by the General Assembly, to priority in payment from bond proceeds. Lamar County Advisory Bd. v. McCalley, 181 Ga. 329, 182 S.E. 6, 1935 Ga. LEXIS 81 (1935).

OPINIONS OF THE ATTORNEY GENERAL

What taxes covered by lien. — Words "liens . . . taxes" used in this statute have been broadly construed by the Supreme Court to include taxes, provided for by subsequent statute, for support of the state and counties and municipal corporations located in the state. This includes taxes that are not ad valorem or based on property, and sales and use taxes. 1960-61 Ga. Op. Att'y Gen. 529.

Effect on lien of subsequent conveyance. — Since lien attaches as of the valuation date, liability of property for taxes for the year for which the lien attached would not be affected by conveyance of the property during such year to a municipality. 1963-65 Ga. Op. Att'y Gen. 652.

RESEARCH REFERENCES

Am. Jur. 2d.

72 Am. Jur. 2d, State and Local Taxation, §§ 780 et seq., 794 et seq.

C.J.S.

85 C.J.S., Taxation, § 976 et seq.

ALR.

Effect of receiver's failure to discharge tax liens, 39 A.L.R. 1415.

Priority over existing lien of statutory lien upon real property for personal property taxes, 47 A.L.R. 378; 65 A.L.R. 677.

Priority as between lien of taxes and lien of special assessments, 65 A.L.R. 1379.

Priority as between lien for inheritance or succession or income tax and lien for general taxes, 119 A.L.R. 1330.

Constitutionality of statute giving to lien for alteration of property pursuant to public requirement, mechanics' lien or similar lien, preference over pre-existing mortgage or other lien, 121 A.L.R. 616; 141 A.L.R. 66.

Constitutionality of statute impairing or postponing lien for taxes, 136 A.L.R. 328.

Priority of lien of sales or consumers' tax, 136 A.L.R. 1015.

Priority between tax or assessment lien and mortgage or other nontax lien held by state or municipality, 159 A.L.R. 832.

State's prerogative right of preference at common law, 167 A.L.R. 640.

Superiority of special or local assessment lien over earlier private lien or mortgage, where statute creating such special lien is silent as to superiority, 75 A.L.R.2d 1121.

Validity, construction, and effect of statutory provision for tax lien on property not belonging to taxpayer but used in his business, 84 A.L.R.2d 1090.

48-2-57. Effect of judicial sale on state tax lien.

A sale of property under legal process shall not divest the state of its tax liens.

History.

Civil Code 1895, § 884; Civil Code 1910, § 1141; Code 1933, § 92-5709; Code 1933, § 91A-260, enacted by Ga. L. 1978, p. 309, § 2.

History of Section.

This Code section is derived from the decision in Atlanta & R. Air-Line R.R. v. State, 63 Ga. 483 (1879).

JUDICIAL DECISIONS

Effect of bona fide purchase on unrecorded state tax lien. — There is no statutory protection afforded the state's unrecorded liens for withholding taxes and sales and use taxes when the bona fide purchaser takes the property in a sale not under legal process. In re Fulton Air Serv., 254 Ga. 649, 333 S.E.2d 581, 1985 Ga. LEXIS 908 (1985).

Purchaser at sheriff's sale may not avoid the state's unrecorded tax liens. In re Fulton Air Serv., 254 Ga. 649, 333 S.E.2d 581, 1985 Ga. LEXIS 908 (1985).

Ownership of property at time of tax sale is immaterial since the lien for state and county taxes attaches to property subject to taxation from the time fixed by law for valuation of such property. Furthermore, taxes due the state are not only against the owner but against the property also, regardless of judgments, mortgages, sales, transfers, or incumbrances of any kind. City of Leesburg v. Forrester, 59 Ga. App. 503, 1 S.E.2d 584, 1939 Ga. App. LEXIS 337 (1939).

Lien for municipal taxes not divested. — By analogy to the rule of this statute, sale under common-law execution does not divest the lien of a municipality for taxes. LaGrange Grocery Co. v. City of LaGrange, 31 Ga. App. 97, 119 S.E. 536, 1923 Ga. App. LEXIS 745 (1923).

Lien for county taxes not divested. — Sale of property under execution issued from a court of competent jurisdiction does not divest the liens of the state or county for taxes. Phoenix Mut. Life Ins. Co. v. Appling County, 164 Ga. 861, 139 S.E. 674, 1927 Ga. LEXIS 293 (1927).

Payment of taxes on property sold at receiver's sale. — Although a sale of property under legal process will not divest the state of the state's lien for taxes nor a municipality of the municipality's lien for taxes, it is the duty of a court of equity to direct the court's receiver to pay the taxes accruing on the property of an insolvent corporation while in the hands of the receiver, upon a timely application for that purpose made by the purchaser of such property at the receiver's sale. Empire Cotton Oil Co. v. Park, 147 Ga. 618, 95 S.E. 216, 1918 Ga. LEXIS 71 (1918).

When perishable property or property too expensive to keep was sold pursuant to former Civil Code 1910, §§ 6068 and 6069 (see now O.C.G.A. §§ 9-13-163 and 9-13-164), the short order sale divested liens on the property and they attach to proceeds of such sale. This rule will not affect property covered by a tax lien of the state since, under former Civil Code 1910, § 1140 (see now O.C.G.A. § 48-5-28), such property was always subject to such lien and since a sale of such property under legal process did not divest the state of the state's tax liens. State Revenue Comm'n v. Rich, 49 Ga. App. 271, 175 S.E. 394, 1934 Ga. App. LEXIS 360 (1934).

Lien on property sold by estate administrator transferred to proceeds of sale. — When taxes have accrued upon lands belonging to the estate of an intestate while in the hands of the intestate's administrator to be administered, and by proper order of the probate court one sells the lands, the tax lien thereon is divested and transferred to the fund realized from the sale. This fund should be distributed according to the priorities established by law. Herrington v. Tolbert, 110 Ga. 528, 35 S.E. 687, 1900 Ga. LEXIS 577 (1900).

RESEARCH REFERENCES

Am. Jur. 2d.

72 Am. Jur. 2d, State and Local Taxation, § 788.

C.J.S.

85 C.J.S., Taxation, § 968 et seq.

48-2-58. Release of property subject to state tax lien.

(a) The commissioner, upon the taxpayer's providing security suffi-

cient to protect the state's interest and with the consent of the Attorney General, may release some or all of the property of a taxpayer which is subject to a state tax lien when the legality of the assessment which is the basis of the lien is being litigated.

(b) The commissioner may release or subordinate all or any portion of the property subject to a state tax lien if the commissioner determines that the tax, interest, and penalties are sufficiently secured by a lien on other property or through other security or that the release, partial release, or subordination of such lien will not endanger or jeopardize the collection of amounts due.

History. Ga. L. 1975, p. 423, § 1; Code 1933, § 91A-253, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1993, p. 961, § 5.

RESEARCH REFERENCES

C.J.S.
85 C.J.S., Taxation, § 971 et seq.

48-2-59. (For effective date, see note.) Appeals; payment of taxes admittedly owed; bond; costs.

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

(1) If the taxpayer is a public utility or nonresident, the appeal of either party shall be to the Georgia Tax Tribunal in accordance with Chapter 13A of Title 50 or the superior court of the county in which is located the taxpayer's principal place of doing business or in which the taxpayer's chief or highest corporate officer residing in this state maintains such officer's office; or

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

(b) The taxpayer shall commence an appeal by filing a petition with the Georgia Tax Tribunal in accordance with Chapter 13A of Title 50 or the superior court within 30 days from the date of decision by the commissioner or at any time after the department records a state tax execution pursuant to Code Section 48-3-42.

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

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

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

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

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

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

(e) In an action pursuant to subsection (a) of this Code section, all questions of law decided by a court or the Georgia Tax Tribunal, including interpretations of constitutional, statutory, and regulatory provisions, shall be made without any deference to any determination or interpretation, whether written or unwritten, that may have been made on the matter by the department, except such requirement shall have no effect on the judicial standard of deference accorded to rules promulgated pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

History. Ga. L. 1937-38, Ex. Sess., p. 77, § 45; Ga. L. 1943, p. 204, § 3; Code 1933, § 91A-255, enacted by Ga. L. 1978, p. 309,

§ 2; Ga. L. 1979, p. 5, § 15; Ga. L. 1991, p. 716, § 1; Ga. L. 2012, p. 318, § 5/HB 100; Ga. L. 2017, p. 723, § 3/HB 337; Ga. L. 2021, p. 120, § 3/SB 185; Ga. L. 2024, p. 888, § 3-8/HB 1267, see notes for effective date.

Delayed effective date.

Ga. L. 2024, p. 888, § 4-1(a)/HB 1267, provides that the 2024 amendment shall only become effective on July 1, 2026 upon ratification of a resolution by the voters at the November, 2024, state-wide general election that amends the Constitution to provide that the Georgia Tax Court shall have state-wide jurisdiction as provided by law and that decisions of such court shall be appealed to the Court of Appeals, subject to review by the Supreme Court of Georgia. However, if such a Constitutional amendment is not so ratified, then the amendments to this Code section shall stand repealed on January 1, 2025. This Code section, as set out above, does not reflect the amendment by that Act owing to the delayed effective date. Upon ratification, this Code section will read as follows: "(a) Except with respect to claims for refunds, either party may appeal from any order, ruling, or finding of the commissioner to the Georgia Tax Court in accordance with Chapter 5B of Title 15, the 'Georgia Tax Court Act of 2025,' or the superior court of the county of the residence of the taxpayer, except that:

"(1) If the taxpayer is a public utility or nonresident, the appeal of either party shall be to the Georgia Tax Court in accordance with Chapter 5B of Title 15, the 'Georgia Tax Court Act of 2025,' or the superior court of the county in which is located the taxpayer's principal place of doing business or in which the taxpayer's chief or highest corporate officer residing in this state maintains such officer's office; or

"(2) If the taxpayer is a nonresident individual or a foreign corporation having no place of doing business and no officer or employee residing and maintaining such officer's office in this state, the taxpayer shall have the right to appeal to the Georgia Tax Court in accordance with Chapter 5B of Title 15, the 'Georgia Tax Court Act of 2025,' or the Superior Court of Fulton County or to the superior court of the county in which the commissioner in office at the time the action is filed resides.

"(b) The taxpayer shall commence an appeal by filing a petition with the Georgia Tax Court in accordance with Chapter 5B of Title 15, the 'Georgia Tax Court Act of 2025,' or the superior court within 30 days from the date of decision by the commissioner or at any time after the department records a state tax execution pursuant to Code Section 48-3-42.

"(c) Before the superior court shall have jurisdiction to entertain an appeal filed by any aggrieved taxpayer, the taxpayer shall file with the clerk of the superior court a written statement whereby the taxpayer agrees to pay on the date or dates the taxes become due all taxes for which the taxpayer has admitted liability. Additionally, the taxpayer shall file with the clerk of the superior court within 30 days from the date of decision by the commissioner, except when the value of the appellant's title or interest in real property owned in this state is in excess of the amount of the tax in dispute, a surety bond or other security in an amount satisfactory to the clerk, conditioned to pay any tax over and above that for which the taxpayer has admitted liability and which is found to be due by a final judgment of the court, together with interest and costs. It shall be ground for dismissal of the appeal if the taxpayer fails to pay all taxes admittedly owed upon the due date or dates as provided by law. This subsection shall not apply to appeals filed with the Georgia Tax Court as provided in Chapter 5B of Title 15, the 'Georgia Tax Court Act of 2025.'

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

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

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

"(2) In the event the final judgment of the court is adverse to the taxpayer, the

taxpayer shall pay the court costs regardless of whether the tax or any part of the tax has or has not become due at the time of the final judgment of the court.

"(3) This subsection shall not apply to appeals filed with the Georgia Tax Court as provided in Chapter 5B of Title 15, the 'Georgia Tax Court Act of 2025.'

"(e) In an action pursuant to subsection (a) of this Code section, all questions of law decided by a court or the Georgia Tax Court, including interpretations of constitutional, statutory, and regulatory provisions, shall be made without any deference to any determination or interpretation, whether written or unwritten, that may have been made on the matter by the department, except such requirement shall have no effect on the judicial standard of deference accorded to rules promulgated pursuant to Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.'"

Amendments.

The 2024 amendment substituted "Georgia Tax Court in accordance with Chapter 5B of Title 15, the 'Georgia Tax Court Act of 2025,'" for "Georgia Tax Tribunal in accordance with Chapter 13A of Title 50" throughout subsections (a) and (b); substituted "Georgia Tax Court as provided in Chapter 5B of Title 15, the 'Georgia Tax Court Act of 2025,'" for "Georgia Tax Tribunal as provided in Chapter 13A of Title 50" at the end of subsection (c) and at the end of paragraph (d)(3); and substituted "Georgia Tax Court" for "Georgia Tax Tribunal" near the beginning of subsection (e). For effective date of this amendment, see the delayed effective date note.

Editor's notes.

Ga. L. 2012, p. 318, § 16(b)/HB 100, not codified by the General Assembly, provides that: "Sections 1 through 14 of this Act shall become effective on January 1, 2013, provided that cases pending on January 1, 2013, shall continue to be governed by the law in effect on December 31, 2012, until the conclusion of the case."

Ga. L. 2017, p. 723, § 1/HB 337, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State Tax Execution Modernization Act."

Ga. L. 2021, p. 120, § 5/SB 185, not codified by the General Assembly, provides: "This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval, and shall be applicable to all proceedings commenced before the Georgia Tax Tribunal or a superior court of this state on or after such date." The Governor approved this Act on April 29, 2021.

Ga. L. 2024, p. 888, § 4-1(a)/HB 1267, not codified by the General Assembly, provides that the 2024 amendment to this Code section is subject to an amendment to the Constitution to provide that the Georgia Tax Court shall have state-wide jurisdiction as provided by law and that decisions of such court shall be appealed to the Court of Appeals, subject to review by the Supreme Court of Georgia, that is ratified by the voters at the November, 2024, state-wide general election. If such a Constitutional amendment is not so ratified, then the amendments to this Code section shall stand repealed on January 1, 2025.

Law reviews.

For article discussing remedies for tax illegally assessed under the Georgia Retailers' and Consumers' Sales and Use Tax Act, Ga. L. 1951, p. 360, § 1 et seq., see 9 Ga. St. B. J. 45 (1972).

For article discussing and comparing principal means by which a Georgia taxpayer may obtain judicial review of his state tax liability with emphasis on income and sales taxes, see 27 Mercer L. Rev. 309 (1975).

For article on the 2012 amendment of this Code section, see 29 Ga. St. U. L. Rev. 70 (2012).

For article with annual survey on state and local taxation, see 73 Mercer L. Rev. 231 (2021).

For annual survey on state and local taxation, see 3 Mercer L. Rev. 231 (2022).

JUDICIAL DECISIONS

Bond requirement of this statute is constitutional. Lee v. Chilivis, 234 Ga. 255, 215 S.E.2d 256, 1975 Ga. LEXIS 1101 (1975).

Applicability. — Ga. L. 1943, p. 204, § 3 (see now O.C.G.A. § 48-2-59) relates to individual assessments and tax digest revisions made by the commissioner pursuant to Ga. L. 1937-38, Ex. Sess., p. 77, § 1 et seq. (see now O.C.G.A. Ch. 2, T. 48). It is not applicable to the commissioner's denial of liquor license pursuant to Ga. L. 1937-38, Ex. Sess., p. 103, § 8 (see now O.C.G.A. § 3-2-3). Blackmon v. Alexander, 233 Ga. 832, 213 S.E.2d 842, 1975 Ga. LEXIS 1458 (1975).

State could not hold out what plainly appeared to be a "clear and certain" post-deprivation remedy and then declare, only after the disputed taxes had been paid, that no such remedy existed. Reich v. Collins, 513 U.S. 106, 115 S. Ct. 547, 130 L. Ed. 2d 454, 1994 U.S. LEXIS 8789 (1994).

Extending time for appeal. — Assessment by the commissioner pursuant to Ga. L. 1937-38, Ex. Sess., p. 77, § 39 (see now O.C.G.A. § 48-2-51) may not be cancelled or abated and a new assessment issued after the time for appeal has expired solely for the purpose of extending the time for appeal. Undercofler v. VFW Post 4625, 110 Ga. App. 711, 139 S.E.2d 776, 1964 Ga. App. LEXIS 748 (1964).

Appeal procedure. — Trial court properly dismissed a tobacco retailer's appeal of a decision of the Georgia Tax Tribunal that the retailer owed unpaid taxes as the general intention behind the creation of the Tribunal did not permit the court to ignore the plain language of O.C.G.A. § 48-11-18 concerning the designated appellate forum available to tobacco tax payers. Moosa Co. LLC v. Dep't of Revenue, 353 Ga. App. 429, 838 S.E.2d 108, 2020 Ga. App. LEXIS 14 (2020), cert. denied, No. S20C0816, 2020 Ga. LEXIS 679 (Ga. Aug. 24, 2020).

Modification of commissioner's original order. — When the commissioner modifies original executive order in a material manner so as to be tantamount to a new determination, the modification has the effect of superseding or vacating an earlier judgment with respect to computation of time allowable for appeal under this statute. Nikas v. Oxford, 103 Ga. App. 721, 120 S.E.2d 677, 1961 Ga. App. LEXIS 1041 (1961).

When commissioner fails to certify record to superior court within 30 days after appeal, the taxpayer should not be penalized because of the commissioner's neglect, and the taxpayer's appeal should not be dismissed. State Bd. of Equalization v. Pineland Tel. Coop., 135 Ga. App. 796, 219 S.E.2d 1, 1975 Ga. App. LEXIS 1829 (1975).

Burden of proof on appeal. — An assessment pursuant to Ga. L. 1960, p. 210, §§ 1, 2 (see now O.C.G.A. § 48-2-52) is deemed to be prima facie correct, and when an assessed party appeals to the superior court in order to contest the validity of the assessment, which is a de novo proceeding, one comes into court as a plaintiff and has the burden of proof, while the commissioner occupies the status of the defendant, who by transmitting the record showing the fact of assessment, has provided sufficient answer to entitle the defendant to rebut offers of proof by the plaintiff. Blackmon v. Ross, 123 Ga. App. 89, 179 S.E.2d 548, 1970 Ga. App. LEXIS 735 (1970).

Presumption on appeal as to validity of assessment. — When party assessed under Ga. L. 1960, p. 210, §§ 1, 2 (see now O.C.G.A. § 48-2-52) has appealed under Ga. L. 1937-38, Ex. Sess., p. 77, § 45 (see now O.C.G.A. § 48-2-59) to contest the validity of the assessment, thereby opening the door to a de novo judicial investigation, the assessment must be regarded as prima facie correct. Hawes v. Le Craw, 121 Ga. App. 532, 174 S.E.2d 382, 1970 Ga. App. LEXIS 1272 (1970).

Effect of judgment rendered against named commissioner after leaving office. — Since cases arising in the administration of state revenue laws appear in the name of its successive agents, designated as commissioners, as provided by Ga. L. 1937-38, Ex. Sess., p. 77, § 8 (see now O.C.G.A. § 48-2-9), a verdict and judgment against a named commissioner in the commissioner's representative capacity, rendered after the commissioner is no longer in office, is not binding on the state. Williams v.

Lawler Hosiery Mills, Inc., 212 Ga. 617, 94 S.E.2d 699, 1956 Ga. LEXIS 467 (1956).

When an appeal was taken to the superior court by the taxpayer against the commissioner, and judgment is rendered approximately nine months after that commissioner had been succeeded in office by another person, nothing having been done prior to the rendition of the judgment to substitute the name of the latter as agent of the state in lieu of the former, such judgment is a nullity, and no further proceedings can be had in the cause until the parties have been made, when the case must be tried de novo. Williams v. Lawler Hosiery Mills, Inc., 212 Ga. 617, 94 S.E.2d 699, 1956 Ga. LEXIS 467 (1956).

Res judicata on appeal or other review. — Taxpayer has available at least three remedial procedures for use in disputing the correctness of an assessment rendered against the taxpayer by the commissioner. The taxpayer may proceed by: (1) appeal under Ga. L. 1937-38. Ex. Sess., p. 77, § 45 (see now O.C.G.A. § 48-2-59); (2) contesting the assessment and collection after issuance and levy of execution by filing affidavit of illegality under former Code 1933, § 92-7301 (see now O.C.G.A. § 48-3-1); or (3) paying taxes illegally exacted and bringing an action for refund. By following any of these procedures through adjudication on the merits, the question becomes res judicata. Undercofler v. Ernhardt, 111 Ga. App. 598, 142 S.E.2d 317, 1965 Ga. App. LEXIS 1034 (1965); Ingalls Iron Works Co. v. Blackmon, 133 Ga. App. 164, 210 S.E.2d 377, 1974 Ga. App. LEXIS 1001 (1974).

Right of appeal as complete and adequate remedy at law. — Since the right of appeal provided for in this statute is a full, complete, and adequate remedy provided by law, the trial court properly dismissed the action seeking to enjoin the commissioner from holding a hearing on the revocation of a liquor license. Rozier v. Redwine, 211 Ga. 208, 85 S.E.2d 34, 1954 Ga. LEXIS 402 (1954).

Taxpayer's right to proceed in equity when no appeal taken. — When taxpayer fails to complain of valuations or uniformity, as prescribed by law for settling such matters, and tax digest conforming with the commissioner's direction has been approved by the commissioner, and no appeal therefrom has been taken under this statute, it is not permissible for either the taxpayer or the county to attack in a court of equity either the individual assessment or the commissioner's order approving the tax digest. Grafton v. Turner, 227 Ga. 809, 183 S.E.2d 458, 1971 Ga. LEXIS 851 (1971).

Jurisdiction of federal court. — O.C.G.A. §§ 9-4-1, 9-5-1, 40-2-8, 40-3-6, 40-3-21, and 48-2-60 provided the plaintiff challenging the automobile "title transfer fee" (O.C.G.A. § 40-3-21.1) [repealed] with "plain, speedy and efficient" pre-tax and post-tax remedies by which a taxpayer might challenge the constitutional validity of a state tax, and so satisfied the criteria of the Tax Injunction Act, 18 U.S.C. § 1341, so as to bar jurisdiction of the federal court. Johnsen v. Collins, 875 F. Supp. 1571, 1994 U.S. Dist. LEXIS 20214 (S.D. Ga. 1994).

OPINIONS OF THE ATTORNEY GENERAL

Appeal costs. — Taxpayers appealing from decisions of the state revenue commissioner pursuant to O.C.G.A. § 48-2-59 need only comply with the specific requirements of that section with regard to court costs; taxpayers need not pay the advance court cost deposit set forth in O.C.G.A. §§ 9-15-4 and 15-6-77. 1985 Op. Att'y Gen. No. U85-17.

RESEARCH REFERENCES

Am. Jur. 2d.
71 Am. Jur. 2d, State and Local Taxation, §§ 405 et seq. 72 Am. Jur. 2d, State and Local Taxation, §§ 617, 673, 674, 701, 702, 707.
C.J.S.
84 C.J.S., Taxation, § 828 et seq.
ALR.
Right of public officer or board to appeal from a judicial decision affecting his or its order or decision, 117 A.L.R. 216.

Who may complain of underassessment or nonassessment of property for taxation, 5 A.L.R.2d 576; 9 A.L.R.4th 428.

What constitutes plain, speedy, and efficient state remedy under Tax Injunction Act (28 USCS § 1341), prohibiting federal district courts from interfering with assessment, levy, or collection of state business taxes, 31 A.L.R. Fed. 2d 237.

48-2-60. Compromise settlements; penalty refunds.

(a) No action or other judicial proceeding for the enforcement of this chapter or for the collection of state taxes shall be settled except by agreement, compromise, or judgment in open court.

(b) No compromise or agreed judgment shall be entered in any such action or other judicial proceeding until there has been filed with the commissioner a verified statement setting forth the facts and showing the reasons why a compromise or agreed judgment should be entered and certifying that no agreement or settlement other than the one stated in the proposed judgment has been directly or indirectly entered into by the commissioner or by anyone for the commissioner and that the proposed judgment is, in the opinion of the Attorney General, for the best interest of the state.

(c) When any penalty is paid without the commencement of an action to recover on the penalty and the commissioner, within three years after the date of the payment, determines that the circumstances giving rise to the penalty were reasonably beyond the control of the taxpayer, the commissioner may authorize a refund of all or any part of the penalty so paid and any interest paid on the penalty.

History.
Ga. L. 1931, p. 7, § 85; Ga. L. 1931, Ex. Sess., p. 24, § 58; Code 1933, § 92-3007; Ga. L. 1937-38, Ex. Sess., p. 77, § 9; Ga. L. 1978, p. 1469, § 1; Code 1933, § 91A-256, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 16.

Law reviews.
For note as to the voluntary payment doctrine in Georgia, see 16 Ga. L. Rev. 893 (1982).

JUDICIAL DECISIONS

State is not bound by any unauthorized settlement, and if the taxpayer is party to an unlawful conspiracy to settle, the taxpayer remains liable for the full debt less the amount paid on good faith. Oxford v. Jessup, 101 Ga. App. 612, 115 S.E.2d 434, 1960 Ga. App. LEXIS 960 (1960).

OPINIONS OF THE ATTORNEY GENERAL

Refund of penalties paid prior to January 1, 1980 not authorized. — Subsection (c) of this statute does not authorize the state revenue commissioner to refund penalties paid prior to January 1, 1980. 1980 Op. Att'y Gen. No. 80-48.

Construction with penalty provisions. — Former Code 1933, § 92-3211 (see now O.C.G.A. § 48-7-57), which imposed a penalty for failure to file a return, was not by necessary implication or otherwise inconsistent with or repugnant to former Code 1933, § 92-3007 (see now O.C.G.A. § 48-2-60), and penalties fixed under former Code 1933, § 92-3211 may be compromised under former Code 1933, § 92-3007. 1954-56 Ga. Op. Att'y Gen. 764.

Word "compromise" in former Code 1933, § 92-3007 (see now O.C.G.A. § 48-2-60) meant that when the penalty had been fixed in accordance with former Code 1933, § 92-3211 (see now O.C.G.A. § 48-7-57) and added to the tax, it may be collected in whole or in part or not at all according to the circumstances of the particular case. When, in the judgment of the commissioner, after the penalty had been duly and legally assessed, concessions from the taxpayer of value to the state can be secured by waiving the penalty, then a compromise within the meaning of former Code 1933, § 92-3007 had been effected. 1954-56 Ga. Op. Att'y Gen. 764.

RESEARCH REFERENCES

Am. Jur. 2d.

72 Am. Jur. 2d, State and Local Taxation, § 734 et seq.

C.J.S.

85 C.J.S., Taxation, §§ 1046 et seq., 1073 et seq.

ALR.

Constitutionality and construction of statute providing for or authorizing waiver or reduction of penalty or interest in respect of taxes in default, 68 A.L.R. 431; 79 A.L.R. 999.

Liability to penalty imposed for failure to pay tax of one who in good faith contested its validity, 96 A.L.R. 925; 147 A.L.R. 142.

Right to interest on tax refund or credit in absence of specific controlling statute, 88 A.L.R.2d 823.

Voluntary payment doctrine as bar to recovery of payment of generally unlawful tax, 1 A.L.R.6th 229.

48-2-61. Effect of actions taken to avoid payment of taxes; liability.

(a) All deeds of gift, mortgages, sales, transfers of titles to motor vehicles, and assignments of property of any kind made to avoid payment of taxes and all judgments procured for the purpose of avoiding payment of taxes shall be null and void.

(b) The person holding such property or the person to whom such conveyance has been made and the property also, wherever found and no matter in whose possession it may be, shall be liable for taxes.

History.

Laws 1804, Cobb's 1851 Digest, p. 1050; Code 1863, §§ 743, 744; Code 1868, §§ 810, 811; Code 1873, §§ 813, 814; Code 1882, §§ 813, 814; Civil Code 1895, §§ 885, 886; Civil Code 1910, §§ 1142, 1143; Code 1933, §§ 92-5710, 92-5711; Code 1933, § 91A-261, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1997, p. 419, § 33.

Law reviews.

For article commenting on the 1997 amendment of this Code section, see 14 Georgia St. U.L. Rev. 215 (1997).

JUDICIAL DECISIONS

Effect as between parties to contract voided hereunder. — Statute condemns transactions of the character mentioned, which transactions are made to avoid payment of taxes and are asserted to prevent collection of taxes, but does not void such contracts as between individual parties thereto. Smith v. Johnson, 187 Ga. 584, 1 S.E.2d 650, 1939 Ga. LEXIS 751 (1939).

Execution valid against land even if issued against one who is no longer owner. — An execution issued by the tax collector for the unpaid taxes against the land, which has not been returned by any one, describing it as the property of the persons who last returned it, is valid against the land, although such persons may no longer be the owners of the land, and may not have owned the land at the time the law fixes the liability for taxes. Stokes v. State, 46 Ga. 412, 1872 Ga. LEXIS 80 (1872).

OPINIONS OF THE ATTORNEY GENERAL

Effect on tax lien of transfer to bona fide purchaser for value. — Ad valorem tax lien attaches to property, and a mobile home is no exception; the lien follows the property even into the hands of a bona fide purchaser for value. Attempted transfer of a mobile home to evade the tax is void. 1970 Op. Att'y Gen. No. U70-208.

Mere fact that property is transferred to another who resides beyond tax jurisdiction on tax day will not be effective when the transfer is made to defeat collection of taxes. 1967 Op. Att'y Gen. No. 67-24.

RESEARCH REFERENCES

Am. Jur. 2d.

71 Am. Jur. 2d, State and Local Taxation, § 6.

ALR.

Taking mortgage in name of, or assigning it to, third person to evade taxation, as affecting its validity and enforceability, 21 A.L.R. 396.

Constitutionality, construction, application and effect of specific provisions of state corporate income tax law in respect to tax evasion, 92 A.L.R. 1073.

Assignment of right to future earnings, commissions, or benefits as affecting income tax of assignor, 131 A.L.R. 661; 151 A.L.R. 1401.

Validity, construction, and effect of a provision of a trust instrument or will which attempts to withdraw property or interest otherwise passing thereunder, in event that it be held subject to tax, 154 A.L.R. 1222.

Construction, application, and effect, with respect to withholding, social security, and unemployment compensation taxes, of statutes imposing penalties for tax evasion or default, 22 A.L.R.3d 8.

48-2-62. Penalties for tax return preparers; prohibition on continuing to prepare returns; refunds.

(a) As used in this Code section, the term:

(1) "Tax return preparer" means any person who prepares for

compensation, or who employs one or more persons to prepare for compensation, any return of tax imposed under Chapter 7, 7A, or 8 of this title or any claim for refund of such tax. The preparation of a substantial portion of a return or claim for refund shall be treated as if it were the preparation of such return or claim for refund. A person shall not be considered a tax return preparer merely because the person does any of the following:

(A) Furnishes typing, reproducing, or other mechanical assistance;

(B) Prepares a return or claim for refund of the employer, or an officer or employee of the employer, by whom the person is regularly and continuously employed;

(C) Prepares as a fiduciary a return or claim for refund for any person; or

(D) Prepares a claim for refund for a taxpayer in response to a notice of proposed assessment issued to the taxpayer.

(2) "Understatement of liability" means an understatement of the net amount payable for a tax imposed under Chapter 7, 7A, or 8 of this title or an overstatement of the net amount creditable or refundable from such tax. For purposes of this paragraph, the amount determined as an underpayment of estimated income tax under the relevant provisions of this chapter is not considered an understatement of liability.

(b)(1) Any tax return preparer who prepares any return or claim for refund for which any part of an understatement of liability is due because of a position described in paragraph (2) of this subsection shall pay a penalty not to exceed $500.00 for each such return or claim for refund.

(2) A position is described in this subsection if:

(A) The tax return preparer knew or reasonably should have known of the position;

(B) There was not a reasonable basis for the position; and

(C) The position was frivolous or not adequately disclosed in the return or claim for refund or in a statement attached to the return or claim for refund.

(3) No penalty shall be imposed under this subsection if it is shown that there is reasonable cause for the understatement of liability and the tax return preparer acted in good faith.

(c) Any tax return preparer who prepares any return or claim for refund for which any part of an understatement of liability is due

because of conduct described in this subsection shall pay a penalty for each such return or claim for refund in an amount equal to the greater of $5,000.00 or 50 percent of the income derived, or to be derived, by the tax return preparer for the return or claim for refund. Conduct described in this subsection is conduct by the tax return preparer which is:

(1) A willful attempt in any manner to understate the liability for tax on the return or claim for refund; and

(2) A reckless or intentional disregard of the law.

(d) If at any time there is a final administrative determination or a final judicial decision that there was no understatement of liability in the case of the taxpayer's underlying return or claim for refund for which a penalty under subsection (b) or (c) of this Code section has been assessed against the tax return preparer, such assessment shall be canceled; and if any portion of such penalty has been paid, the amount so paid shall be refunded to the tax return preparer as an overpayment of tax without regard to any period of limitations which, but for this subsection, would apply to the making of such refund.

(e) Other assessable penalties on the preparation for other persons of returns of tax imposed under Chapter 7, 7A, or 8 of this title shall be as follows:

(1) Any tax return preparer who prepares any return or claim for refund and is required by regulations prescribed by the commissioner to sign such return or claim for refund but who fails to sign such return shall pay a penalty of $50.00 for such failure, unless it is shown that such failure is due to reasonable cause and not due to willful neglect or that the practice conformed to accepted industry standards. The maximum penalty imposed under this paragraph on any tax return preparer during any calendar year shall not exceed $25,000.00;

(2)(A) Any tax return preparer who prepares any return or claim for refund and fails to furnish the preparer's identifying number on such return or claim for refund shall pay a penalty of $50.00 for such failure, unless it is shown that such failure:

(i) Is due to reasonable cause and not due to willful neglect; or

(ii) Failed to conform to accepted industry standards.

(B) The maximum penalty imposed under this paragraph on any tax return preparer during any calendar year shall not exceed $25,000.00; and

(3) Any tax return preparer who fraudulently endorses or otherwise negotiates directly or through an agent any check made for the

taxes imposed under Chapter 7, 7A, or 8 of this title which is issued to a taxpayer other than the tax return preparer shall pay a penalty of $500.00 for each such check. This paragraph shall not apply to the deposit by a bank, within the meaning of Section 581 of the Internal Revenue Code of 1986, of the full amount of the check in the taxpayer's account in such bank for the benefit of the taxpayer.

(f)(1) A civil action in the name of the State of Georgia may be commenced at the request of the commissioner to enjoin any tax return preparer, or employer having knowledge of an employee tax return preparer, who is doing business in this state and engaging in conduct described in this subsection from further engaging in preparing tax returns. This action may be brought by the department in the superior court of the county of the tax return preparer's residence or principal place of business or in which the taxpayer for whose tax return the action is brought resides. The court may exercise its jurisdiction over the action separate and apart from any other action brought by the State of Georgia against the tax return preparer or any taxpayer.

(2) In an action under this subsection, the court may issue an injunction prohibiting a person from acting as a tax return preparer if the court finds that the individual has:

(A) Engaged in any pattern of conduct subject to civil penalty under subsection (b), (c), or (e) of this Code section; or

(B) Guaranteed the payment of any tax refund or the allowance of any tax credit.

(g) Any claim for refund of any penalty paid under this Code section shall be filed in accordance with rules and regulations promulgated by the commissioner. Any penalty under subsection (b) or (e) of this Code section shall be assessed within three years after the return or claim for refund was filed, and no proceeding in court without assessment for the collection of such tax shall begin after the expiration of such period. In the case of any penalty under subsection (c) of this Code section, the penalty may be assessed, or a proceeding in court for the collection of the penalty may be begun without assessment, at any time. Except as provided in subsection (d) of this Code section, any claim for refund of an overpayment of any penalty assessed under subsection (b), (c), or (e) of this Code section shall be filed within three years from the time the penalty was paid.

(h) Except as otherwise provided by this Code section, proceedings to assess, collect, or seek a refund of any penalty imposed under this Code section shall be conducted in the same manner and subject to the same rights of appeal as assessments, collections, and claims for refund of the related taxes under Chapter 7, 7A, or 8 of this title, as the case may be.

History.
Code 1981, § 48-2-62, enacted by Ga. L. 2009, p. 671, § 1/HB 444.

48-2-63. Delinquent taxpayer financial accounts; required reporting by financial institutions to department; confidentiality; fines; levies; liability.

(a) As used in this Code section, the term:

(1) "Account" means:

(A) With respect to a depository institution as defined in 12 U.S.C. Section 1813(c), a deposit account;

(B) With respect to any federal or state credit union as defined in 12 U.S.C. Section 1752, a deposit account; and

(C) With respect to a benefit association, safe deposit company, money market mutual fund, brokerage firm, trust company, or similar entity authorized to do business in the State of Georgia, any account.

(2) "Delinquent taxpayer" means a person owing an unpaid tax liability for which appeals from assessments of taxes pursuant to Title 48 or other applicable laws have expired or been exhausted, and for which an execution has been recorded by the department, unless such execution is released, withdrawn, or expired.

(3) "Financial institution" means:

(A) A depository institution as defined in 12 U.S.C. Section 1813(c);

(B) Any federal or state credit union as defined in 12 U.S.C. Section 1752; or

(C) Any benefit association, safe deposit company, money market mutual fund, brokerage firm, trust company, or similar entity authorized to do business in the State of Georgia.

(b) The department may request not more than four times a year from a financial institution information provided in subsection (c) of this Code section for delinquent taxpayers for whom the department has filed an execution in accordance with Chapter 3 of this title.

(c) Financial institutions doing business in this state shall, within 30 days after a financial institution receives a request for information under subsection (b) of this Code section, submit a report to the department in an industry standard, machine-readable, electronic format to be prescribed by the department. Each such report shall identify any accounts that the financial institution holds with respect to

the delinquent taxpayers identified in the request. The financial institution, to the maximum extent possible, shall provide the name, record address, social security number or other taxpayer identification number, account balance, and other electronically available account identifying information for each delinquent taxpayer who maintains an account at the financial institution as identified to such financial institution by the department by name and social security number or other taxpayer identification number in an industry standard, machine-readable, electronic format. The department may pay a reasonable fee to financial institutions for conducting the searches required by this Code section in an amount that does not exceed the actual costs incurred by the financial institution or $100.00, whichever is less.

(d) The department is authorized to enter into agreements with financial institutions to develop and operate an automated data exchange to accomplish the provisions of subsection (c) of this Code section.

(e) The department is authorized to designate a third-party agent to administer and operate the data exchange between the department and financial institutions provided for in subsection (d) of this Code section. Any data exchanged shall be protected as if it were confidential tax information and shall not be disclosed except as specifically authorized under this Code section. It shall be unlawful for any person to divulge confidential tax information in violation of this Code section and any such person shall, upon conviction thereof, be subject to the same penalties that would apply to an employee of the department convicted of divulging confidential tax information.

(f)(1) The department may impose a fine on any financial institution that fails to submit a report required pursuant to this Code section in the amount of $1,000.00, provided that:

(A) The department notifies the financial institution of its failure to submit a report by certified mail or statutory overnight delivery, return receipt requested;

(B) Such financial institution fails to submit such report within 15 business days after the mailing of the notification provided for in subparagraph (A) of this paragraph; and

(C) Such financial institution fails to present cause for such failure to the department that the department determines to be reasonable cause for such failure.

(2) The department may impose a fine on a financial institution in the amount of $1,000.00 if the department determines that a financial institution willfully provided false information with respect to any cause that such financial institution presents to the department for its failure to submit a report.

(g) The department may use the information received pursuant to this Code section only for the purpose of enforcing the collection of taxes and fees administered by the department. The department shall determine whether to levy upon accounts identified pursuant to this Code section and shall follow the levy process set forth in Code Section 48-2-55, subject to the rights and remedies of delinquent taxpayers provided for under Code Section 48-2-59 or other provisions of law, and the rights and remedies of financial institutions provided in Code Section 48-2-55 or other provisions of law.

(h) To the extent possible and in compliance with state and federal law, the department shall administer this Code section in the same manner as prescribed in Article 1 of Chapter 11 of Title 19 to avoid duplication and reduce the burden on financial institutions.

(i) Notwithstanding Code Section 7-1-360 or other provisions of law, a financial institution furnishing a report to the department or the department's designated agent under this Code section is prohibited from disclosing to any person, including the delinquent taxpayer, any information that has been received from or furnished to the department or the department's designated agent under this Code section. However, a financial institution may disclose to its depositors or account holders that the department has the authority to request certain identifying information on certain depositors or account holders pursuant to this Code section.

(j) A financial institution that complies with a request from the department by submitting a report to the department or the department's designated agent in accordance with this Code section shall not be liable to any person for:

(1) Disclosing information to the department or the department's designated agent under this Code section;

(2) Encumbering or surrendering any assets held by the financial institution in response to a notice of lien or levy issued by the department;

(3) Any error on the part of the department in connection with a notice of lien or levy issued by the department upon accounts identified pursuant to this Code section, including costs or fees charged to such accounts as a result of such error; or

(4) Other action taken in good faith to comply with the requirements of this Code section.

(k) Any financial records obtained pursuant to this Code section may be disclosed only for the purpose of, and to the extent necessary for, administration and enforcement of the tax laws of this state.

(l) The department may adopt rules establishing the procedures and

requirements for conducting data matches with financial institutions pursuant to this Code section.

(m) The commissioner may institute civil proceedings to enforce this Code section.

History.
Code 1981, § 48-2-63, enacted by Ga. L. 2021, p. 642, § 1/SB 201.

ARTICLE 3

ENFORCEMENT

RESEARCH REFERENCES

ALR.
What constitutes such discriminatory prosecution or enforcement of laws as to provide valid defense in state criminal proceedings, 95 A.L.R.3d 280.

48-2-80. Judicial enforcement of taxes imposed by other states.

The courts of this state shall recognize and enforce liabilities for taxes lawfully imposed by other states which extend like comity to this state.

History.
Ga. L. 1937-38, Ex. Sess., p. 77, § 47; Code 1933, § 91A-262, enacted by Ga. L. 1978, p. 309, § 2.

RESEARCH REFERENCES

C.J.S.
81A C.J.S., States, §§ 60, 61, 62.
ALR.
Reciprocity as affecting comity, 87 A.L.R. 973.

48-2-81. Duties of law enforcement officers and tax officials as to collecting taxes and prosecuting violators; payment of portion of fines to informants.

It shall be the duty of all sheriffs, deputies, and constables to enforce the collection of all taxes that may be due the state under any law. It shall be the duty of all tax collectors, tax commissioners, sheriffs, and constables to make sure that all persons violating any of the tax laws of this state are prosecuted for all such violations. One-fourth of the fines imposed upon persons convicted of violating any tax law of this state upon the information of any citizen of this state shall be paid to the informant by order of the court.

History.
Ga. L. 1927, p. 56, § 14; Code 1933, § 92-2103; Ga. L. 1935, p. 11, § 14; Code 1933, § 91A-6010, enacted by Ga. L. 1978, p. 309, § 2.

RESEARCH REFERENCES

C.J.S.
53 C.J.S., Licenses, § 70.
ALR.
Right, in absence of express statute, of one governmental unit, or officers thereof, to compensation for collecting or disbursing special taxes or assessments levied by or owed to another governmental unit, 114 A.L.R. 1098.

48-2-82. Seizure and disposition of contraband articles; exceptions to forfeiture.

(a)(1) Any contraband article and any vessel, vehicle, aircraft, or other conveyance which has been or is being used in violation of any provision of this title or of the revenue laws of this state, and any vessel, vehicle, aircraft, or other conveyance in, upon, or by means of which any violation has taken or is taking place shall be seized by any law enforcement officer or revenue officer of this state without a warrant and shall be delivered forthwith to the commissioner.

(2) After any such delivery, the commissioner shall post a notice of the seizure for a period of ten days in a prominent place in the courthouse of the county in which the seizure occurred. The notice shall state that a decision as to seizure and forfeiture will be made by the commissioner at the expiration of the ten-day period; and the notice shall act as a bar against any person subsequently asserting a claim of any interest existing in the article at the time of seizure.

(3) Upon determining that an article is contraband and that the seizure and forfeiture of the article is in accordance with this Code section, the commissioner shall direct the disposition or destruction of the article as he may reasonably deem appropriate. Any sale of such articles shall be to the highest bidder for cash and the proceeds of the sale shall be delivered to the Office of the State Treasurer.

(b) No vessel, vehicle, aircraft, or other conveyance used in the transaction of business as a common carrier shall be forfeited under this Code section unless it shall appear that, in the case of a railway car or engine, the owner or, in the case of any other such vessel, vehicle, aircraft, or other conveyance, the owner or the master of such vessel or the owner or conductor, driver, pilot, or other person in charge of such vehicle, aircraft, or other conveyance was at the time of the alleged illegal act a consenting party or privy thereto.

(c) No vessel, vehicle, aircraft, or other conveyance shall be forfeited under this Code section by reason of any act or omission shown by the owner of the conveyance to have been committed or omitted by any person other than the owner while the vessel, vehicle, aircraft, or other

conveyance was unlawfully in the possession of a person who acquired possession of the conveyance in violation of the criminal laws applicable to the location of acquisition, whether of the United States or of any state of the United States.

History.
Ga. L. 1956, p. 786, § 2; Code 1933, § 91A-257, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1982, p. 3, § 48; Ga. L. 1993, p. 1402, § 18; Ga. L. 2010, p. 863, § 2/SB 296.

RESEARCH REFERENCES

C.J.S.
79 C.J.S., Searches and Seizures, § 217 et seq.

48-2-83. Process to test legality of forfeited property.

The owner of any property subject to forfeiture under this title may test the legality of the forfeiture by filing in the superior court of the county in which the property was seized within ten days after the seizure an affidavit of illegality against the commissioner in the manner and form prescribed by law for testing the legality of tax fi. fas.

History.
Ga. L. 1956, p. 786, § 9; Code 1933, § 91A-258, enacted by Ga. L. 1978, p. 309, § 2.

RESEARCH REFERENCES

C.J.S.
79 C.J.S., Searches and Seizures, §§ 250 et seq., 276 et seq. 84 C.J.S., Taxation, §§ 751 et seq., 794 et seq. 85 C.J.S., Taxation, § 1687 et seq.

48-2-84. Unlawful activities as to revenue stamps; possession or transportation of contraband; penalty.

(a) It shall be unlawful for any person to:

(1) With intent to defraud and without authorization, make, falsify, forge, alter, or counterfeit any revenue stamp or marking prima facie evidencing the payment of any tax imposed by the revenue laws of this state;

(2) With knowledge, pass, publish, utter, or give currency to any unauthorized, false, forged, altered, or counterfeit revenue stamp or marking prima facie evidencing the payment of any tax imposed by the revenue laws of this state;

(3) Make, possess, or have custody or control of any contraband article;

(4) Transport, carry, or convey any contraband article in, upon, or by means of any vessel, vehicle, aircraft, or other conveyance;

(5) Conceal or possess any contraband article in or upon any vessel, vehicle, aircraft, or other conveyance or upon the person of anyone in or upon any vessel, vehicle, aircraft, or other conveyance; or

(6) Use any vessel, vehicle, aircraft, or other conveyance for the transportation, carriage, conveyance, concealment, receipt, possession, purchase, sale, barter, exchange, or giving away of any contraband article.

(b) Any person who violates this Code section shall be guilty of a felony and, upon conviction thereof, shall be punished by a fine of not more than $5,000.00 or imprisonment for not less than one year nor more than three years, or both.

History.
Ga. L. 1956, p. 786, §§ 3-8; Code 1933, §§ 91A-9904, 91A-9905, enacted by Ga. L. 1978, p. 309, § 2.

ARTICLE 4

FACILITATING BUSINESS RAPID RESPONSE TO STATE DECLARED DISASTERS

Editor's notes.
The former article, consisting of Code Sections 48-2-100 through 48-2-108, relating to "The Federal Retiree Refund Act of 1995," was based on Ga. L. 1995, p. 1, § 1; Ga. L. 1999, p. 81, § 48, and was repealed by Ga. L. 1995, p. 1, § 1, effective December 31, 1999.

48-2-100. Exemptions for out-of-state businesses and employees conducting operations related to declared state of emergency; post-emergency application.

(a) This Code section shall be known and may be cited as the "Facilitating Business Rapid Response to State Declared Disasters Act of 2014."

(b) For purposes of this Code section, the term:

(1) "Affected state" means a state where a declared state of disaster or emergency exists.

(2) "'Declared state of disaster or emergency" means a disaster or emergency event for which the Governor's state of emergency declaration has been issued or for which a presidential declaration of a federal major disaster or emergency has been issued.

(3) "Disaster or emergency period" means a period that begins ten days prior to the first day of the Governor's declaration or the president's declaration, whichever occurs first, and extends for a period of 60 calendar days after the end of the declared disaster or emergency period.

(4) "Infrastructure" means property and equipment owned or used by communications networks; cable, video, or broadband networks; gas and electric distribution systems; water pipelines; railways; public roads and bridges; and related support facilities that service multiple customers, including but not limited to real and personal property such as buildings, offices, lines, poles, pipes, structures, and equipment.

(5) "Out-of-state business" means a business entity that has no presence in this state and conducts no business in this state whose services are requested by a registered business in this state or by the state or a local government in this state for purposes of performing disaster or emergency related work in this state. This shall also include a business entity that is affiliated with a registered business in this state solely through common ownership if the affiliate has no registrations or required registrations or tax filings or required tax filings or nexus in this state prior to the declared state of disaster or emergency.

(6) "Out-of-state employee" means an employee who does not work in this state that is temporarily working in this state during the disaster or emergency period to perform disaster or emergency related work in this state to repair, renovate, install, build, or render services or other business activities that relate to infrastructure that has been damaged or destroyed during a declared state of disaster or emergency.

(7) "Registered business" means a business entity that owns or operates infrastructure in this state and is currently registered or is required to be registered to do business in this state prior to the declared state of disaster or emergency.

(c) The General Assembly finds that:

(1) When storms, floods, fires, earthquakes, hurricanes, or other natural disasters or emergencies occur, many businesses assign resources and personnel to the affected state from other states throughout the United States on a temporary basis to expedite the enormous and overwhelming task of cleaning, restoring, and repairing damaged equipment, property, and infrastructure.

(2) Most often this disaster or emergency relief effort involves the need for out-of-state businesses, including out-of-state affiliates of businesses registered in the affected state, to bring in resources, property, and personnel to perform disaster related activity in the affected state. In some instances, personnel may be located in the affected state for extended periods of time to perform such activities.

(3) During such time of operating in the affected state on a temporary basis solely for purposes of helping the affected state

recover from the disaster or emergency, these businesses and employees should not be burdened by any requirements for certain tax liabilities incurred as a result of such activities in the affected state for a temporary period.

(4) The affected state's nexus and residency thresholds for tax liability are intended for businesses and individuals in such state conducting business operations or who intend to reside in the state and should not be applied to businesses and individuals coming into the state on a temporary basis to provide help and assistance in response to a declared state of disaster or emergency.

(5) To ensure that businesses and individuals focus on quick response to the needs of this state and its citizens during a declared state of disaster or emergency, it is appropriate for the General Assembly to deem that such disaster or emergency relief activity for a reasonable period of time during and after the disaster or emergency period shall not establish any liability for purposes of certain state and local taxes, licensing, and regulatory requirements imposed in this state.

(d)(1) An out-of-state business whose presence is solely that of conducting operations within this state for purposes of performing work or services on infrastructure related to a declared state of disaster or emergency during the disaster or emergency period shall not be considered to have established a level of presence that would require that business to register, file, and remit certain state or local taxes or that would require that business to be subject to any licensing or registration requirements in this state. This exemption includes any state or local business licensing or registration requirements, any state or local employer income tax withholding, unemployment insurance, any state or local occupational licensing fees, public service commission or secretary of state licensing and regulatory requirements, and any state or local tax on or measured by, in whole or in part, net or gross income or receipts or net worth, including the filing required for a combined group of which the out-of-state business may be a part. For the apportionment of income pursuant to Chapter 7 of this title, the performance by an out-of-state business of any work in accordance with this Code section shall not increase the amount of income apportioned to this state.

(2) Any out-of-state employee shall not be considered to have established residency or a presence in this state that would require that employee to file and pay income taxes, to be subjected to income tax withholdings, or to be subject to any licensing or registration requirements in this state.

(e) Out-of-state businesses and out-of-state employees shall be required to pay transaction taxes and fees including but not limited to

fuel taxes or sales and use taxes on materials or services subject to sales and use taxes in this state, hotel taxes, and car rental taxes or fees that the out-of-state business or out-of-state employee purchases for use or consumption in the affected state during the disaster or emergency period, unless such taxes are otherwise exempted pursuant to Chapter 8 of this title.

(f) Any out-of-state business or out-of-state employee that remains in this state after the disaster or emergency period shall become subject to the state's normal requirements for establishing presence, residency, or doing business and shall comply with all state and local registration, licensing, and filing requirements.

(g)(1) Any out-of-state business that enters this state to perform qualified work during a disaster or emergency period shall provide to the department and to the Georgia Emergency Management and Homeland Security Agency a statement that it is in this state for purposes of responding to the disaster or emergency, which statement shall include the business's name, state of domicile, principal business address, federal tax identification number, date of entry, and contact information.

(2) A registered business in this state shall provide the information required in paragraph (1) of this subsection to the department and to the Georgia Emergency Management and Homeland Security Agency for any affiliate that enters this state that is an out-of-state business. The notification shall also include contact information for the registered business in this state.

(h) The Georgia Emergency Management and Homeland Security Agency and the department shall promulgate regulations as necessary to comply with the requirements of this Code section.

History.
Code 1981, § 48-2-100, enacted by Ga. L. 2014, p. 201, § 1/HB 782; Ga. L. 2016, p. 91, § 20/SB 416; Ga. L. 2017, p. 774, § 48/HB 323.

ARTICLE 5

REFUNDS FOR ELIGIBLE RECIPIENTS

Editor's notes.
Code Section 48-2-115 provided that this article was repealed on December 31, 2000.

48-2-110 through 48-2-115. [Repealed]

History.
Ga. L. 1995, p. 902, § 1; repealed by Ga. L. 1995, p. 902, § 1, effective December 31, 2000.

CHAPTER 3

TAX EXECUTIONS

Article 1

General Provisions

Sec.

48-3-1. [Reserved] Execution for collection of money due the state; affidavit of illegality.

48-3-2. Executions against foreign corporations.

48-3-3. Executions for nonpayment of taxes collectible by tax collectors and tax commissioners.

48-3-3.1. Immediate payment or bond when taxpayer likely to act to prejudice or render ineffective proceedings.

48-3-4. Selection of property to be levied.

48-3-5. Geographical scope of tax executions.

48-3-6. Levying officers; aggregate multiple executions.

48-3-7. Issuance of alias tax execution to replace lost original; conversion of executions into electronic form.

48-3-8. Interest on executions.

48-3-9. Notice of levy to owner of security deed or mortgage; lists; fees.

48-3-10. Form of notice.

48-3-11. [Reserved] Form of list of security deeds and mortgages.

48-3-12. Issuance of garnishments by tax collectors and tax commissioners; proceedings.

48-3-13. Procedures to petition to reduce unsatisfied tax execution to final judgment.

48-3-14. Procedures to petition to reduce unsatisfied tax execution to final judgment against nonresident; notices.

48-3-15. Demand for jury trial and issues available in action to reduce execution to judgment.

48-3-16. Procedures when respondent in action to reduce execution to judgment fails to appear.

48-3-17. Grace period after order; effect of respondent's appearance.

48-3-18. Deputies acting for named officers; Secretary of State relieved from mailing papers to respondent.

48-3-19. Transfer of executions.

48-3-20. Interest on transferred executions.

48-3-21. Statute of limitations for tax executions.

48-3-21.1. Statute of limitations for enforcement of executions for ad valorem taxes of less than $5.00; execution; restriction on adding together taxes to exceed limit.

48-3-22. Statutory limitations applicable to tax executions.

48-3-23. [Reserved] Nulla bona; tolling of statute of limitations.

48-3-23.1. Authorization for commissioner to develop standards which will provide a mechanism to discharge debts or obligations barred by the statute of limitations.

48-3-24. Interposition of claims; oath; bond; trial.

48-3-25. Remittance of money collected on process.

48-3-26. Judicial interference in tax levies.

48-3-27. Obstructing levying officers; penalty.

48-3-28. Release of state tax execution upon full satisfaction.

48-3-29. [Repealed] Publication of information regarding executions; withdrawal.

Article 2

Uniform System for Filing State Tax Executions

Sec.
48-3-40. Purpose; application; definitions.
48-3-41. When executions issue.
48-3-42. Filing; effective dates; electronic filings; continuing effectiveness.
48-3-43. Availability of information via electronic means; public records; unlawful use of data; regulatory authority.
48-3-44. "Released" executions.

Cross references.

Executions generally, § 9-13-1 et seq.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, Ch. 92-74 and 92-76 are included in the annotations for this chapter.

Execution not against person or in rem against an estate is void. — Tax execution issued merely against the estate of a named person, not being an execution in rem and being against no person as a defendant in fieri facias, is void. Wilson v. City of Eatonton, 180 Ga. 598, 180 S.E. 227, 1935 Ga. LEXIS 500 (1935) (decided under former Code 1933, Ch. 92-74 and 92-76).

When defendant life tenant dies and execution never levied, fieri facias not a cloud on remainderman's title. — When property is held by a life tenant, and taxes are assessed against the life tenant and executions issued in personam only, a sale under the levy of such execution would pass only the life estate. The executions not having been levied, and the life tenant having died, and the remainderman having succeeded to the fee in the property, the fieri facias in question did not constitute clouds upon the title. Kirk v. Bray, 181 Ga. 814, 184 S.E. 733, 1936 Ga. LEXIS 443 (1936) (decided under former Code 1933, Ch. 92-74 and 92-76).

RESEARCH REFERENCES

ALR.

Constitutionality and construction of statute providing for or authorizing waiver or reduction of penalty or interest in respect of taxes in default, 79 A.L.R. 999.

Right of one who pays taxes for which another is bound, to subrogation to the right of the taxing power, 106 A.L.R. 1212.

Constitutionality of statute which provides for summary entry of judgment upon certificate or finding by taxing body or officer, 149 A.L.R. 312.

ARTICLE 1

GENERAL PROVISIONS

Editor's notes.

Ga. L. 2017, p. 723, § 1/HB 337, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State Tax Execution Modernization Act.' "

48-3-1. [Reserved] Execution for collection of money due the state; affidavit of illegality.

History.
Ga. L. 1889, p. 29, § 7; Civil Code 1895, § 789; Civil Code 1910, § 1041; Ga. L. 1916, p. 34, § 1; Ga. L. 1927, p. 136, § 1; Ga. L. 1931, p. 7, § 80; Ga. L. 1931, Ex. Sess., p. 24, § 39; Code 1933, §§ 92-2706, 92-3306, 92-7301; Ga. L. 1937, p. 109, § 19; Ga. L. 1951, p. 360, § 19; Ga. L. 1952, p. 334, § 2; Code 1933, § 91A-301, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1983, p. 1834, § 5; Ga. L. 1997, p. 734, § 3; Ga. L. 2012, p. 318, § 6/HB 100; repealed by Ga. L. 2017, p. 723, § 4/HB 337, effective January 1, 2018.

Editor's notes.
Ga. L. 2017, p. 723, § 4/HB 337 repealed and reserved this Code section, effective January 1, 2018.

Law reviews.
For article discussing and comparing the principal means by which the Georgia taxpayer may obtain judicial review of his state tax liability with emphasis on income and sales taxes, see 27 Mercer L. Rev. 309 (1975).

48-3-2. Executions against foreign corporations.

An execution against an agent of a foreign corporation or other foreign company shall be against the chief agent or his successor and shall authorize the executing officer to levy on all property of the agency and to seize its money, notes, and other effects.

History.
Orig. Code 1863, § 807; Code 1868, § 886; Code 1873, § 883; Code 1882, § 883; Civil Code 1895, § 881; Civil Code 1910, § 1138; Code 1933, § 92-7307; Code 1933, § 91A-305, enacted by Ga. L. 1978, p. 309, § 2.

RESEARCH REFERENCES

Am. Jur. 2d.
30 Am. Jur. 2d, Executions, § 94.

C.J.S.
84 C.J.S., Taxation, § 198 et seq.

48-3-3. Executions for nonpayment of taxes collectible by tax collectors and tax commissioners.

(a) As used in this Code section, the term:

(1) "New owner" means the most recent subsequent owner who has purchased such property during the year after January 1, but on or before the due date of that tax bill year and whose deed has been duly recorded in the records of the clerk of the superior court for that county.

(2) "Owner of record" means the owner whose name appears in the deed record as the owner as of January 1 of that tax bill year.

(b) The tax collector or tax commissioner shall issue executions for nonpayment of taxes collectable by the tax collector or tax commissioner at any time after 30 days have elapsed since giving notice as

provided in subsection (c) of this Code section. The executions shall be directed to all and singular sheriffs and constables of this state.

(c) As soon as the last day for the payment of taxes has arrived, the tax collector or tax commissioner shall notify in writing the taxpayer of the fact that the taxes have not been paid and that, unless paid, an execution shall be issued; provided, however, that notice shall not be required for taxes due on personal property and executions may be issued on the day next following the day when taxes are due.

(d) No execution shall be issued against any person who is not the owner of record of the property on the day that the taxes become delinquent if, within 90 days from the due date, such person has provided satisfactory proof to the tax collector or tax commissioner that the property has been transferred by recorded deed and the liability for the payment of ad valorem taxes has been assigned to the vested transferee by written agreement or contract. In such cases, the execution shall be issued against the person who is the new owner of the property on the date that the taxes became delinquent only after such new owner has been sent a notice of the delinquent tax bill, and such notice shall state that the tax collector or tax commissioner intends to issue a tax execution in the new owner's name against such delinquent property if the bill and all applicable interest and other charges are not paid within 30 days of the date of the notice. Such notice shall be mailed by first-class mail to the address of record as shown on the real estate transfer tax declaration form in the records of the clerk of the superior court and to the address shown on the closing documents if presented or to the property location if the address differs from that shown on the real estate transfer tax declaration form. If an execution has already been issued against the owner of record, such execution shall be affirmatively cleared and vacated of record by the tax collector or tax commissioner upon receiving satisfactory proof as provided in this subsection.

(e)(1)(A) Whenever technologically feasible, the tax collector or tax commissioner, at the time tax bills or any subsequent delinquent notices are mailed, shall also mail such bills or notices to any new owner that at that time appear in the records of the county board of tax assessors. The bills or notices shall be mailed to the address of record as found in the county board of tax assessors' records.

(B)(i) In the discretion of the tax commissioner, a taxpayer shall have the option of receiving tax bills or subsequent delinquent notices via electronic transmission in lieu of, or in addition to, receiving a paper bill via first-class mail. The tax bill shall be transmitted to the taxpayer via email, with delivery or read receipt requested, in portable document format using all email addresses provided by the taxpayer, and the

date shown on such transmission shall serve as a postmark. In any instance where such transmission proves undeliverable, the tax commissioner shall mail such tax bill or subsequent delinquent notice to the address of record as found in the county board of tax assessors' records.

(ii) The commissioner shall develop and make available to tax commissioners a suitable form for use by taxpayers in exercising the option to receive tax bills or subsequent delinquent notices via electronic transmission.

(2) A new owner shall not be required to pay the interest specified in Code Section 48-2-40, or the penalty specified in Code Section 48-2-44, until 60 days after the tax collector or tax commissioner has forwarded a tax bill to the new owner in accordance with paragraph (1) of this subsection. This paragraph shall apply only to the tax bill applicable to the year in which the property was purchased.

(f) The real estate transfer tax declaration form shall provide for and indicate the correct tax map parcel identification number before being accepted by the clerk of the superior court for recordation.

History.

Orig. Code 1863, § 810; Code 1868, § 889; Code 1873, § 886; Code 1882, § 886; Civil Code 1895, § 894; Civil Code 1910, § 1151; Code 1933, § 92-7401; Code 1933, § 91A-307, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1988, p. 1363, § 1; Ga. L. 1990, p. 1337, § 1; Ga. L. 1994, p. 358, § 1; Ga. L. 2005, p. 138, § 2/HB 116; Ga. L. 2006, p. 72, § 48/SB 465; Ga. L. 2006, p. 739, § 1/SB 525; Ga. L. 2007, p. 172, § 1/HB 380; Ga. L. 2010, p. 878, § 48/HB 1387; Ga. L. 2015, p. 1219, § 5/HB 202; Ga. L. 2017, p. 738, § 1/HB 375; Ga. L. 2017, p. 774, § 48/HB 323; Ga. L. 2024, p. 1052, § 5(2)/SB 448, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substituted "email" for "e-mail" twice in division (e)(1)(B)(i).

Editor's notes.

Ga. L. 1988, p. 1363, § 3, not codified by the General Assembly, provided that this Code section applies with respect to executions transferred on or after July 1, 1988.

JUDICIAL DECISIONS

It is proper to issue one fieri facias for both state and county taxes. Citizens & S. Bank v. State, 151 Ga. 696, 108 S.E. 161, 1921 Ga. LEXIS 364 (1921).

Jurisdictional facts must appear on face. — Since a tax execution is not founded upon the judgment of any court, but is a purely summary process, it is essential to the validity of such an execution that all the necessary jurisdictional facts authorizing its issuance should appear upon its face. Equitable Bldg. & Loan Ass'n v. State, 115 Ga. 746, 42 S.E. 87, 1902 Ga. LEXIS 562 (1902).

Notice not required as to personal property. — Summary judgment was properly granted to a county tax commissioner in a taxpayer's action alleging violation of various statutory and constitutional provisions in the commissioner's levying upon the taxpayer's bank account to collect county taxes owed because neither O.C.G.A. § 48-3-3 nor O.C.G.A. §§ 48-2-55 and 48-3-9 required the commissioner to give

the taxpayer notice of the levy prior to levying upon the personal property. Anderson v. Ford, 261 Ga. App. 34, 581 S.E.2d 623, 2003 Ga. App. LEXIS 464 (2003).

Writings insufficient as executions. — When the executions are improperly directed "to any lawful officer," yet were executed by the proper officer, the levy and sale by that officer is not void because of the misdirection in the execution. Byars v. Curry, 75 Ga. 515, 1885 Ga. LEXIS 171 (1885).

Writing purporting to be an execution, but which merely commands the levying officers to whom it is directed to take of the property of a named corporation a specified sum as "now due and owing to this state and county for taxes, back taxes to 1899, as well as all lawful costs," is void. Equitable Bldg. & Loan Ass'n v. State, 115 Ga. 746, 42 S.E. 87, 1902 Ga. LEXIS 562 (1902).

Tax execution which omits the direction to any particular officer or officers, but commands a levy to be made upon the property of the defendant, was irregular but not void, and can be amended by adding a direction as provided by law. Winn v. Butts, 127 Ga. 385, 56 S.E. 406, 1907 Ga. LEXIS 274 (1907).

Executions levied by deputy need not be signed by sheriff. — When tax executions are levied by a deputy sheriff, entry of levy upon executions need not be signed by the sheriff or by someone legally authorized to sign the sheriff's name for the sheriff. Durham v. Smith, 186 Ga. 565, 198 S.E. 734, 1938 Ga. LEXIS 665 (1938).

When tax collector for convenience causes executions against tax defaulters to be printed, bearing the collector's official signature in print, but leaves blank spaces in which to write the names of persons against whom and the amount for which each should be issued, and places them in the collector's office and the clerk fills out such executions appropriately against individual tax defaulters, and with knowledge and consent of tax collector they are delivered to sheriff for enforcement, such action is a sufficient issuance of such executions, and they and the levy thereof by the sheriff are not void on ground that the printed papers were not signed by hand of tax collector or by someone in the collector's presence at the collector's request. Federal Land Bank v. Moultrie Banking Co., 178 Ga. 150, 172 S.E. 455, 1934 Ga. LEXIS 1 (1934).

Effect of tax execution issued against one other than owner of nonreturned property. — When owner fails to return land, there is no provision of law whereby the owner's title can be divested by levy and sale as property of another person under a tax execution issued against such other person. Nelson v. Brown, 174 Ga. 150, 162 S.E. 276, 1932 Ga. LEXIS 11 (1932).

No authority to issue execution for occupation tax against one illegally operating stock exchange. — One illegally conducting a stock exchange is not properly to be regarded as a tax defaulter against whom a tax collector has authority to issue an execution with a view to compelling payment of the occupation tax upon dealers in "futures." Jones v. Stewart, 117 Ga. 977, 44 S.E. 879, 1903 Ga. LEXIS 403 (1903).

Sufficiency of notice. — County undertook sufficient efforts to provide a taxpayer with reasonable notice of the tax sale on the taxpayer's property as the county checked the local deeds and records, and then contacted an outside locating agency for assistance; the taxpayer's failure to notify the county of a change of name and address played a significant role in the taxpayer's failure to receive actual notice of the tax sale. Cuvillier v. Rockdale County, 390 F.3d 1336, 2004 U.S. App. LEXIS 24090 (11th Cir. 2004), cert. denied, 544 U.S. 976, 125 S. Ct. 1850, 161 L. Ed. 2d 727, 2005 U.S. LEXIS 3366 (2005).

Tax commissioner immune to action for damages for failure to give notice. — Property owner's claim for damages based on a county tax commissioner's failure to properly send notices required by O.C.G.A. §§ 9-13-13, 48-3-3, 48-3-9(a), and 48-4-1, was barred by sovereign immunity; O.C.G.A. §§ 15-13-2 and 48-5-137 did not render the tax commissioner liable as an ex-officio sheriff because the notices did not constitute a "false return" or legal neglect to make a "proper return". Raw

Properties, Inc. v. Lawson, 335 Ga. App. 802, 783 S.E.2d 161, 2016 Ga. App. LEXIS 87 (2016), cert. denied, No. S16C1076, 2016 Ga. LEXIS 556 (Ga. Sept. 6, 2016).

Executions validly issued. — When the plaintiff argued that the defendants improperly demanded interest and fees based on the higher assessment amount as the plaintiff entered into a consent agreement with the county tax commissioner to lower the value of the property prior to levy on the 2012 executions, the plaintiff's substantive claims were prohibited as a matter of law because the tax executions were validly issued by the commissioner; the plaintiff failed to pay the taxes while pursuing the plaintiff's appeal of the assessment and awaiting a refund; and the defendants were authorized to levy the executions and demand payment as the plaintiff failed to plead that the executions were void as a matter of law or were cancelled by the commissioner in the consent judgment. B.C. Grand, LLC v. FIG, LLC, 352 Ga. App. 646, 835 S.E.2d 676, 2019 Ga. App. LEXIS 622 (2019), cert. denied, No. S20C0503, 2020 Ga. LEXIS 425 (Ga. June 1, 2020).

Entitlement to excess funds. — Trial court committed no error in disbursing excess funds from tax sale to owner of subject property at time of tax sale and vesting title to property to the property free and clear of the security deed holder's adverse claims because the owner had filed the owner's petition and the trial court ruled on the petition during the time the owner's right to redeem existed, and the owner's title as owner was not divested and the tax sale purchaser had no right to possess the property at that time. Republic Title Company, LLC v. Freeport Title and Guaranty, Inc., 351 Ga. App. 408, 829 S.E.2d 172, 2019 Ga. App. LEXIS 290 (2019), cert. denied, No. S19C1616, 2020 Ga. LEXIS 168 (Ga. Feb. 28, 2020).

OPINIONS OF THE ATTORNEY GENERAL

Persons authorized to make levy. — Officer making the levy can be a sheriff, or if there is a local Act making the tax collector an ex officio sheriff for the purpose of levy and sale under tax execution, it can be the tax collector. 1969 Op. Att'y Gen. No. 69-250.

Justice of the peace plays no part in actual collection of back taxes either county or state. 1969 Op. Att'y Gen. No. 69-263.

Duty of levying officer upon receipt of execution. — Upon delivery of execution, levying officer must proceed to seize and sell enough property to satisfy execution; if less than the whole of a particular piece of property would be sufficient to satisfy execution and property is reasonably capable of subdivision for purposes of sale, it is the duty of the levying officer to subdivide the property and sell no more of that property than is necessary to satisfy execution. 1967 Op. Att'y Gen. No. 67-369.

Entry of levy. — Officer making the levy shall enter the levy on the tax fieri facias and in such entry shall plainly describe the property levied on. 1969 Op. Att'y Gen. No. 69-250.

RESEARCH REFERENCES

Am. Jur. 2d.
30 Am. Jur. 2d, Executions, § 32.

C.J.S.
85 C.J.S., Taxation, § 1284 et seq.

48-3-3.1. Immediate payment or bond when taxpayer likely to act to prejudice or render ineffective proceedings.

If the tax collector or tax commissioner reasonably finds that a taxpayer gives evidence of intention to leave the state, to remove his or her property from the state, to conceal himself or herself or his or her

property, to discontinue business, or to do any other act tending to prejudice or render wholly or partly ineffective proceedings to compute, assess, or collect any ad valorem tax, whereby it becomes advisable that such proceedings be brought without delay, the tax collector or tax commissioner shall give notice of such finding and demand immediate payment of such tax as may be due. The tax collector or tax commissioner may immediately make an assessment based on the most recently accepted assessment or on a tax assessor's assisted assessment and may proceed under the assessment to collect the tax or require the taxpayer to file with him or her a bond satisfactory to the tax collector or tax commissioner as security for payment of the tax. Taxes assessed under this Code section for any tax year for which millage rates applicable to the property have not been established at the time of the assessment shall be based upon the millage rates in effect for the immediately preceding year.

History.
Code 1981, § 48-3-3.1, enacted by Ga. L. 1994, p. 561, § 1.

48-3-4. Selection of property to be levied.

A defendant against whom an execution has been issued by a tax collector or tax commissioner may select the property upon which the fi. fa. shall be levied. It shall be within the discretion and power of the tax collector or tax commissioner, however, to have the proper officer levy the execution on any other property the tax collector or tax commissioner may select whenever he deems it necessary to secure the prompt collection of the tax fi. fa.

History.
Ga. L. 1876, p. 128, § 1; Code 1882, § 891; Civil Code 1895, § 898; Civil Code 1910, § 1158; Code 1933, § 92-7404; Code 1933, § 91A-308, enacted by Ga. L. 1978, p. 309, § 2.

JUDICIAL DECISIONS

Selection of property constitutes waiver of defects in execution and levy. — When a defendant in fieri facias for taxes selects to the levying officer the property to be levied on, this will constitute a waiver of defects in the return, and the levy. Byars v. Curry, 75 Ga. 515, 1885 Ga. LEXIS 171 (1885); National Bank v. Danforth, 80 Ga. 55, 7 S.E. 546, 1887 Ga. LEXIS 322 (1887); Lumpkin v. Cureton, 119 Ga. 64, 45 S.E. 729, 1903 Ga. LEXIS 30 (1903).

Former Civil Code 1910, § 6028 (see now O.C.G.A. § 9-13-50) did not apply to cases when tax executions were levied upon the property of the defendant in fieri facias. Former Civil Code 1910, § 1158 (see now O.C.G.A. § 48-3-4) applied in such cases. Davis v. Moore, 154 Ga. 152, 113 S.E. 174, 1922 Ga. LEXIS 319 (1922).

RESEARCH REFERENCES

Am. Jur. 2d.
30 Am. Jur. 2d, Executions, § 98.
C.J.S.
33 C.J.S., Executions, § 139 et seq.
ALR.
Enforcement against tax-exempt property of tax on nonexempt property or on owner of tax-exempt property, 159 A.L.R. 461.

48-3-5. Geographical scope of tax executions.

If there is not sufficient property in the county in which the taxpayer resides to satisfy the tax execution, property of the taxpayer situated in any other county shall be subject to levy and sale.

History.
Laws 1804, Cobb's 1851 Digest, p. 1050.; Code 1863, § 822; Code 1868, § 901; Code 1873, § 899; Code 1882, § 899; Civil Code 1895, § 911; Civil Code 1910, § 1174; Code 1933, § 92-7405; Code 1933, § 91A-309, enacted by Ga. L. 1978, p. 309, § 2.

RESEARCH REFERENCES

Am. Jur. 2d.
30 Am. Jur. 2d, Executions, §§ 94, 102.

48-3-6. Levying officers; aggregate multiple executions.

(a) Executions may be levied by the officers to whom such executions are directed or by other officers who are authorized by law to act in their place.

(b) Any levying officer to whom there have been directed two or more executions against a defendant or to whom there have been directed two or more in rem executions against the same unreturned property may aggregate such executions and may make a levy for the total amount due as in the case of single execution.

History.
Orig. Code 1863, § 811; Code 1868, § 891; Code 1873, § 888; Ga. L. 1876, p. 30, § 1; Code 1882, § 888; Civil Code 1895, § 905; Civil Code 1910, § 1165; Code 1933, § 92-7406; Code 1933, § 91A-310, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1985, p. 1243, § 2.

Code Commission notes.
Pursuant to Code Section 28-9-5, in 1987, commas were deleted preceding and following the phrase "or to whom . . . unreturned property" in subsection (b).

JUDICIAL DECISIONS

Tax fieri facias should indicate levying officer. — Tax fieri facias which has been levied should show by whom it was levied in order to be used in evidence

to support a sheriff's deed thereunder. Jones v. Easley, 53 Ga. 454, 1874 Ga. LEXIS 505 (1874).

Executions levied by deputy need not be signed by sheriff. — When tax executions are levied by a deputy sheriff, entry of levy upon executions need not be signed by the sheriff or by someone legally authorized to sign the sheriff's name for the sheriff. Durham v. Smith, 186 Ga. 565, 198 S.E. 734, 1938 Ga. LEXIS 665 (1938).

Effect of misdirection of execution. — When the executions are improperly directed "to any lawful officer to execute and return," yet were executed by the proper officer, the levy and sale by that officer is not void because of the misdirection in the execution. Byars v. Curry, 75 Ga. 515, 1885 Ga. LEXIS 171 (1885).

Officer may levy on land without return of "no personalty." — In order for a constable to make a legal levy upon land under a fieri facias issued for state and county taxes, it is not necessary that the constable should make an entry or return of no personal property to be found. Watson v. Swann, 83 Ga. 198, 9 S.E. 612, 1889 Ga. LEXIS 33 (1889).

Sale of land previously sold under fieri facias. — It is not a fraud for the sheriff to sell for taxes, upon due levy and return to the sheriff by a constable, the same land which the constable had previously sold under a general fieri facias against the same defendant; nor is it a fraud for anyone to purchase at the tax sale though having full notice of the prior sale. Wilson v. Boyd, 84 Ga. 34, 10 S.E. 499, 1889 Ga. LEXIS 173 (1889).

Purchaser not affected by fraud of selling officer. — Purchaser at a tax sale duly made under a legal levy, who is neither implicated in nor aware of any fraud contemplated by the selling officer, is not affected thereby. Boyd v. Wilson, 86 Ga. 379, 12 S.E. 744, 1890 Ga. LEXIS 262 (1890).

OPINIONS OF THE ATTORNEY GENERAL

Justice of the peace plays no part in actual collection of back taxes either county or state. 1969 Op. Att'y Gen. No. 69-263.

RESEARCH REFERENCES

Am. Jur. 2d.
30 Am. Jur. 2d, Executions, § 184.

C.J.S.
33 C.J.S., Executions, § 135.

48-3-7. Issuance of alias tax execution to replace lost original; conversion of executions into electronic form.

(a) Except as provided in subsection (b) of this Code section, when a properly issued tax execution is lost or destroyed, an alias tax execution may be issued upon the filing by the party having the right to control the original execution of a statement under oath of the loss or destruction of such original execution with the judge of the probate court of the county in which the original execution was issued. The judge shall endorse the word "alias" on the alias tax execution. The alias tax execution shall have all the legal force and effect of the lost or destroyed original tax execution.

(b) When a tax execution which was regularly issued by an officer of the state as authorized by law is lost or destroyed, the state officer or the successor to the state officer by whom the same was issued may at any time issue an alias tax execution in lieu of the lost original tax

execution. The alias tax execution shall be dated the same date as the original tax execution and the officer shall endorse the word "alias" on the alias tax execution. The alias tax execution shall have all the legal force and effect of the lost or destroyed original tax execution.

(c) The commissioner or his or her duly appointed representative shall be authorized to convert regularly issued original or alias tax executions into electronic form for indexing, storage, archival, retrieval, or transmittal purposes, and any tax execution so converted, whether or not subsequently reduced to paper or other tangible medium, shall be treated as a regularly issued original for all purposes, and the commissioner shall not thereafter be required to maintain an original of such tax execution. Tax executions so converted, when reduced to paper or other tangible medium, shall fully reflect any and all entries or notations made on such tax executions.

History.
Laws 1804, Cobb's 1851 Digest, p. 1059.; Ga. L. 1857, p. 104, §§ 47, 48; Code 1863, §§ 3892, 3895; Code 1868, §§ 3912, 3915; Code 1873, §§ 3988, 3991; Code 1882, §§ 3988, 3991; Ga. L. 1882-83, p. 108, §§ 1, 2; Civil Code 1895, §§ 892, 893; Ga. L. 1904, p. 55, § 1; Civil Code 1910, §§ 1149, 1150; Code 1933, § 92-7407; Code 1933, § 91A-311, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1985, p. 1243, § 3; Ga. L. 2012, p. 735, § 3/HB 846.

JUDICIAL DECISIONS

Permissible use of alias execution. — Statute provides for the issuing of an alias tax fi. fa., in place of the lost or destroyed original, for the purpose of enforcement by levy and sale, at the instance of the party entitled to control the original, and not for the purposes of being used in evidence as an established copy of the original under which a sale has been made. Carr v. Georgia Loan & Trust Co., 108 Ga. 757, 33 S.E. 190, 1899 Ga. LEXIS 350 (1899).

RESEARCH REFERENCES

Am. Jur. 2d.
30 Am. Jur. 2d, Executions, § 89 et seq.

C.J.S.
33 C.J.S., Executions, § 116.

48-3-8. Interest on executions.

All executions issued for taxes due the state or any county or municipality of the state, whether issued on assessments for permanent improvements of streets or sewers of a municipality or otherwise, shall bear interest at the rate specified in Code Section 48-2-40 from the time fixed by law for issuing the execution.

History.
Ga. L. 1889, p. 31, § 1; Ga. L. 1890-91, p. 50, § 1; Civil Code 1895, §§ 731, 887; Civil Code 1910, §§ 878, 1144; Code 1933, § 92-7601; Ga. L. 1975, p. 811, § 1; Code 1933, § 91A-323, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1980, p. 10, § 7; Ga. L. 1982, p. 847, §§ 1, 2.

JUDICIAL DECISIONS

Interest under this statute is not in the nature of a penalty. Sparks v. Lowndes County, 98 Ga. 284, 25 S.E. 426, 1896 Ga. LEXIS 29 (1896). See also, Georgia R.R. & Banking v. Wright, 124 Ga. 596, 53 S.E. 251, 1906 Ga. LEXIS 565 (1906), rev'd, 207 U.S. 127, 28 S. Ct. 47, 52 L. Ed. 134, 1907 U.S. LEXIS 1209 (1907).

Executions bear interest, taxes do not. — Statute, properly construed, does not declare that taxes shall bear interest, but that only an execution for taxes shall bear interest. Georgia R.R. & Banking Co. v. Wright, 125 Ga. 589, 54 S.E. 52, 1906 Ga. LEXIS 229 (1906), rev'd, 207 U.S. 127, 28 S. Ct. 47, 52 L. Ed. 134, 1907 U.S. LEXIS 1209 (1907); McWilliams v. Jacobs, 128 Ga. 375, 57 S.E. 509, 1907 Ga. LEXIS 107 (1907).

Statute is applicable to executions issued on assessments by municipal corporations for improvements. Bacon v. Mayor of Savannah, 105 Ga. 62, 31 S.E. 127, 1898 Ga. LEXIS 449 (1898).

Statute imposes interest on executions for both taxes and assessments, and does not discriminate between them. Steele v. City of Waycross, 187 Ga. 382, 200 S.E. 704, 1938 Ga. LEXIS 798 (1938).

Effect of tender of taxes due before execution issued. — If a taxpayer tenders the amount of taxes due from the taxpayer before an execution is actually issued, no interest on the tax can be lawfully required of the taxpayer. Georgia R.R. & Banking Co. v. Wright, 125 Ga. 589, 54 S.E. 52, 1906 Ga. LEXIS 229 (1906), rev'd, 207 U.S. 127, 28 S. Ct. 47, 52 L. Ed. 134, 1907 U.S. LEXIS 1209 (1907).

Effect of injunction sought by taxpayer. — If a taxpayer causes an injunction to issue to prevent the collection of a tax and, under the final decree, liability for the tax is established, the taxpayer is not relieved from interest on the tax execution pending the proceedings in which the taxpayer obtained the injunction. Georgia R.R. & Banking Co. v. Wright, 125 Ga. 589, 54 S.E. 52, 1906 Ga. LEXIS 229 (1906), rev'd, 207 U.S. 127, 28 S. Ct. 47, 52 L. Ed. 134, 1907 U.S. LEXIS 1209 (1907).

Taxpayer not excused from interest when the taxpayer acquiesces in injunction obtained by another against taxation. — When a taxpayer is enjoined from returning given property for taxation and from paying taxes on the same, and the tax officer is also enjoined from levying and collecting any taxes upon such property, at the instance of a third party, the taxpayer is not relieved from the payment of interest on the tax execution subsequently issued, when it appears that the taxpayer was a mere complacent defendant, interposing no obstacle to the injunction, in no way seeking to obtain permission of the court to pay any amount as admitted to be due as taxes and, so far as the record discloses, acquiescing in the contention of the plaintiff that no tax is due thereon. Georgia R.R. & Banking Co. v. Wright, 125 Ga. 589, 54 S.E. 52, 1906 Ga. LEXIS 229 (1906), rev'd, 207 U.S. 127, 28 S. Ct. 47, 52 L. Ed. 134, 1907 U.S. LEXIS 1209 (1907).

One seeking to enjoin enforcement of execution, on ground that usury has been computed thereon, must first offer to pay an amount admitted or shown to be due, before the court of equity would intervene in one's behalf. Sharpe v. City of Waycross, 185 Ga. 208, 194 S.E. 522, 1937 Ga. LEXIS 713 (1937).

Special law which differed from this statute by imposing interest directly on an assessment when not paid within 30 days was a practical provision for making local improvement that did not permit escape from interest by voluntary payment of principal after delinquency but before issue of execution. Steele v. City of Waycross, 187 Ga. 382, 200 S.E. 704, 1938 Ga. LEXIS 798 (1938).

Executions against railroad companies bear interest, even as to taxes accruing while in receivership. Sparks v. Lowndes County, 98 Ga. 284, 25 S.E. 426, 1896 Ga. LEXIS 29 (1896).

RESEARCH REFERENCES

Am. Jur. 2d.
30 Am. Jur. 2d, Executions, § 72.
C.J.S.
85 C.J.S., Taxation, § 1198 et seq.
ALR.
Forfeiture or sale of land to state or political subdivision for nonpayment of taxes as suspending right to enforce special assessment or improvement lien or running of limitation in that regard, 113 A.L.R. 920.

48-3-9. Notice of levy to owner of security deed or mortgage; lists; fees.

(a) Whenever any real estate is levied upon by the sheriff for taxes, it shall be the sheriff's duty before proceeding to advertise the property for sale as provided by law to give 20 days' written notice of the levy to the record owner of the property and the record owner of each security deed and mortgage affecting such property as provided in subsection (b) of this Code section. The period of 20 days shall begin to run from the time the notice is personally delivered or, when delivered by registered or certified mail or statutory overnight delivery as provided in this Code section, from the date of its mailing. The notice shall contain a description of the land levied upon, the name of the owner of the land, the year or years for which the taxes were assessed, and a statement of the amount of the taxes due, together with the accrued cost. The notice shall be delivered to the owner and any secured parties entitled to notice either in person or by registered or certified mail or statutory overnight delivery, with return receipt requested, at the address given on the list. The sheriff shall keep a copy of the notice on which he or she shall enter the date the notice was delivered and how, where, and to whom the notice was delivered.

(b) In order to entitle any owner of a security deed or mortgage to notice as provided in subsection (a) of this Code section, the name and address of such owner must be stated: (1) on the face of a properly recorded security deed or mortgage from the owner of the property; or (2) on the face of a properly recorded transfer of such a security deed or mortgage.

History.
Ga. L. 1925, p. 252, § 1; Code 1933, § 92-7408; Code 1933, § 91A-312, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1982, p. 1184, § 1; Ga. L. 1997, p. 727, § 1; Ga. L. 2000, p. 1589, § 3; Ga. L. 2010, p. 878, § 48/HB 1387.

JUDICIAL DECISIONS

Constitutionality. — Notice to persons outside the county under subsection (b) of O.C.G.A. §§ 48-3-9 and § 48-4-46(b) and (c) is not in accord with the requirements of due process because an owner of a security deed or mortgage who lives outside the county in which the land is located will only receive published notice of the foreclosure of the right to redeem. Funderburke v. Kellet, 257 Ga.

822, 364 S.E.2d 845, 1988 Ga. LEXIS 65 (1988).

To whom notice given. — Law provides that notice shall be given to holder of security deed conveying wealth of sale of property under tax fi. fa., but there is no provision as to vendee of bill of sale of personalty to secure debt. Carroll v. Richards, 50 Ga. App. 272, 178 S.E. 178, 1934 Ga. App. LEXIS 737 (1934).

Notice as to personal property. — Summary judgment was properly granted to a county tax commissioner in a taxpayer's action alleging violation of various statutory and constitutional provisions in the commissioner's levying upon the taxpayer's bank account to collect county taxes owed because neither O.C.G.A. § 48-3-9 nor O.C.G.A. §§ 48-2-55 and 48-3-3 required the commissioner to give the taxpayer notice of the levy prior to levying upon the personal property. Anderson v. Ford, 261 Ga. App. 34, 581 S.E.2d 623, 2003 Ga. App. LEXIS 464 (2003).

Notice of levy no substitute for valid writ of execution. — When no valid levy occurs because of a defect in the writ of execution, the actual notice provided by the notice of levy issued pursuant to O.C.G.A. § 48-3-9 cannot serve as a seizure of the property so as to cure the defect in the writ of execution. Powers v. CDSaxton Props., LLC, 285 Ga. 303, 676 S.E.2d 186, 2009 Ga. LEXIS 149 (2009).

Constructive levy. — Property tax sale was not void because the evidence established that the sheriff had effectuated a levy on the property, pursuant to O.C.G.A. § 9-13-12, prior to issuing the required notices, advertisements, and sale of the property; a constructive levy of the property was made by tacking the Notice of Execution and Tax Levy issued by the sheriff onto the property itself and the tacked notice also was issued to the tenant in possession and to the owner at the address of record. Tharp v. Vesta Holdings I, LLC, 276 Ga. App. 901, 625 S.E.2d 46, 2005 Ga. App. LEXIS 1318 (2005), cert. denied, No. S06C0874, 2006 Ga. LEXIS 272 (Ga. May 8, 2006).

Tax sale invalid. — As a county tax commissioner's fieri facias on a parcel of property was defective because no entry of levy was made thereon as required by O.C.G.A. § 9-13-12, and the notice of levy issued under O.C.G.A. § 48-3-9 was not a substitute for a properly-executed fieri facias, the commissioner's subsequent tax sale of the property was invalid. Powers v. CDSaxton Props., LLC, 285 Ga. 303, 676 S.E.2d 186, 2009 Ga. LEXIS 149 (2009).

Tax execution sale proper. — Trial court properly granted summary judgment to the purchaser of real estate in a quiet title action that involved the taxpayer's home and the taxpayer's failure to pay the property taxes on the property as the property was properly levied upon and no question of fact remained that the sheriff officially seized the property. Further, the affidavits of the civil process coordinator at the time of the tax sale, and the coordinator's successor, were properly admitted into evidence as such affidavits fell within the business records exception to the rule against hearsay. Davis v. Harpagon Co., LLC, 283 Ga. 539, 661 S.E.2d 545, 2008 Ga. LEXIS 423 (2008).

Collection of expenses of execution and levy. — City was not authorized to collect the expenses of execution and levy until the levy was made; hence, because the city failed to show that it was authorized to collect a $75.00 fee for expenses incurred in connection with the tax execution prior to a levy, the trial court properly found in favor of a taxpayer as to the issue. Mayor of City of Fort Valley v. Grills, 282 Ga. App. 397, 638 S.E.2d 830, 2006 Ga. App. LEXIS 1406 (2006).

Tax commissioner immune to action for damages for failure to give notice. — Property owner's claim for damages based on a county tax commissioner's failure to properly send notices required by O.C.G.A. §§ 9-13-13, 48-3-3, 48-3-9(a), and 48-4-1 was barred by sovereign immunity; O.C.G.A. §§ 15-13-2 and 48-5-137 did not render the tax commissioner liable as an ex-officio sheriff because the notices did not constitute a "false return" or legal neglect to make a "proper return". Raw Properties, Inc. v. Lawson, 335 Ga. App. 802, 783 S.E.2d 161, 2016 Ga. App. LEXIS 87 (2016), cert. denied, No. S16C1076, 2016 Ga. LEXIS 556 (Ga. Sept. 6, 2016).

RESEARCH REFERENCES

Am. Jur. 2d.

30 Am. Jur. 2d, Executions, § 195.

C.J.S.

33 C.J.S., Executions, §§ 131 et seq., 143, 144, 209 et seq. 85 C.J.S., Taxation, § 1175.

ALR.

Failure of advertisement in judicial proceeding for sale of land for delinquent taxes or foreclosure of tax lien, to describe lands affected, as contrary to due process of law or other constitutional objection, 107 A.L.R. 285.

Provisions of tax statute as to time for performance of acts by boards or officers as mandatory or directory, 151 A.L.R. 248.

One in adverse possession as within class of persons entitled to redeem from tax sale, 164 A.L.R. 1285.

Who are entitled to notice, or are necessary parties, in order to perfect tax title, 169 A.L.R. 686.

Statutory limitation of period for attack on tax deed as affected by failure to comply with statutory requirement as to notice before tax deed, 5 A.L.R.2d 1021.

Right of interested party receiving due notice of tax sale or of right to redeem to assert failure or insufficiency of notice to other interested party, 45 A.L.R.4th 447.

48-3-10. Form of notice.

The form of the notice required by Code Section 48-3-9 to be given by the sheriff to the record owner of the property and the owner of each security deed or mortgage complying with Code Section 48-3-9 shall be in substance as follows:

DELINQUENT TAXES

Sheriff 's Notice to Owner of Warranty Deed,
Security Deed, or Mortgage

Notice is hereby given to _____ as the owner of a certain _____, recorded in the office of the clerk of the superior court in book _____ at page _____ of the County of _____, State of Georgia, that there are now due and unpaid taxes for the year _____ amounting to $_____ with accrued cost of $_____ for which a tax execution has been issued and levy has been made upon the following described land owned by _____ and embraced within _____ and that the property will be advertised for sale unless the taxes are paid within 20 days from the delivery of this notice as provided by law.

(Description of land levied upon.)

_____
Sheriff

_____
Address

_____
Date

History.
Ga. L. 1925, p. 252, § 2; Code 1933, § 92-7409; Code 1933, § 91A-313, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1982, p. 1184, § 2.

RESEARCH REFERENCES

ALR.
Statutory limitation of period for attack on tax deed as affected by failure to comply with statutory requirement as to notice before tax deed, 5 A.L.R.2d 1021.

48-3-11. [Reserved] Form of list of security deeds and mortgages.

History.
Ga. L. 1925, p. 252, § 2; Code 1933, § 92-7410; Code 1933, § 91A-314, enacted by Ga. L. 1978, p. 309, § 2; repealed by Ga. L. 1997, p. 727, § 2, effective April 14, 1997.

Editor's notes.
Ga. L. 1997, p. 727, § 2 repealed and reserved this Code section, effective April 14, 1997.

48-3-12. Issuance of garnishments by tax collectors and tax commissioners; proceedings.

(a) When any tax collector or tax commissioner can find no property belonging to a defendant on which to levy any tax execution in his hands, he shall make an entry to that effect on the execution. The tax collector or tax commissioner then may issue summons of garnishment against any person whom he believes to be indebted to the defendant or who has property, money, or effects in his hands belonging to the defendant. The summons of garnishment shall be served by the tax collector, tax commissioner, the sheriff, the sheriff's deputy, or any constable of the county in which the garnishee resides. The summons shall be served at least 15 days before the sitting of the court to which the summons is made returnable and shall be returned to either the superior court or the state court of the county in which the tax collector or tax commissioner holds office.

(b) The tax collector or tax commissioner shall enter on the execution the names of the persons garnished and shall return the execution to the appropriate court. All subsequent proceedings shall be the same as provided by law regarding garnishments in other cases when judgment has been obtained or execution issued.

History.
Ga. L. 1855-56, p. 137, §§ 1, 2; Code 1863, §§ 5112, 5113; Code 1868, §§ 3499, 3500; Code 1873, §§ 3557, 3558; Code 1882, §§ 3557, 3558; Civil Code 1895, §§ 895, 896; Civil Code 1910, §§ 1154, 1155; Code 1933, §§ 92-7501, 92-7502; Code 1933, § 91A-315, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1983, p. 1834, § 6; Ga. L. 1984, p. 948, § 1.

JUDICIAL DECISIONS

Entry of nulla bona as jurisdictional requirement. — Issuance of summons of garnishment is conditional upon entry of nulla bona upon tax execution. If affidavits in garnishment and attached copies of executions fail to show this jurisdictional fact, then the trial court is without jurisdiction of the subject matter of the litigation. Undercofler v. Brosnan, 113 Ga. App. 475, 148 S.E.2d 470, 1966 Ga. App. LEXIS 1099 (1966).

Summons of garnishment can issue in but three classes of cases: (1) when there is an action pending in circumstances delimited by statute; (2) when judgment has been rendered by court having jurisdiction; and (3) when tax collector has issued execution, has it in the collector's hands, and, being unable to find any property of the defendant, makes entry of nulla bona thereon. To entitle the plaintiff to benefit the plaintiff claims, the plaintiff must show that the plaintiff's case is one clearly contemplated by statute. Undercofler v. Brosnan, 113 Ga. App. 475, 148 S.E.2d 470, 1966 Ga. App. LEXIS 1099 (1966).

Garnishment proceedings are purely statutory and cannot be extended to cases not enumerated in statutes. Courts have no power to enlarge the remedy or hold under it property not made subject to the summons. Undercofler v. Brosnan, 113 Ga. App. 475, 148 S.E.2d 470, 1966 Ga. App. LEXIS 1099 (1966).

Summons of garnishment issued upon any ground not authorized by statute is without authority of law, and judgment based upon it is binding upon no one. Undercofler v. Brosnan, 113 Ga. App. 475, 148 S.E.2d 470, 1966 Ga. App. LEXIS 1099 (1966).

Effect of garnishment on persons or property out of state. — Garnishment issued under statute has no effect on persons or property out of the jurisdiction of the state at the time of issuance. Western R.R. v. Thornton & Acee, 60 Ga. 300, 1878 Ga. LEXIS 446 (1878).

Garnishment cannot be based on transferred execution. — When a tax execution has been transferred to a private person, such transferee cannot base upon it a garnishment proceeding against a debtor of the defendant in execution. Davis v. Millen, 111 Ga. 451, 36 S.E. 803, 1900 Ga. LEXIS 663 (1900).

OPINIONS OF THE ATTORNEY GENERAL

General state law on garnishments issued by state revenue commissioner governs over local legislation on garnishments. 1982 Op. Att'y Gen. No. 82-85.

Role of justice of the peace. — Justice of the peace plays no part in actual collection of back taxes either county or state. 1969 Op. Att'y Gen. No. 69-263.

RESEARCH REFERENCES

Am. Jur. 2d.
6 Am. Jur. 2d, Attachment and Garnishment, §§ 323, 362 et seq.
C.J.S.
38 C.J.S., Garnishment, § 173 et seq. 85 C.J.S., Taxation, §§ 1161, 1162.
ALR.
Provisions of tax statute as to time for performance of acts by boards or officers as mandatory or directory, 151 A.L.R. 248.

48-3-13. Procedures to petition to reduce unsatisfied tax execution to final judgment.

(a) When an execution for state taxes remains unsatisfied and an entry of nulla bona has been duly entered on the execution within the

immediately preceding 30 day period and the commissioner has reason to believe that the defendant in fi. fa. may have or may come into ownership of assets outside this state, the commissioner may petition the superior court of the county in which the defendant in fi. fa. maintains in this state a known residence, place of business, or agent to receive service for a rule to show cause why the unsatisfied tax execution should not be reduced to a final judgment of the superior court.

(b) The petition provided for in subsection (a) of this Code section shall name the defendant in fi. fa. as respondent in the action, shall set forth the jurisdiction of the superior court, and shall allege that an execution for state taxes has been duly issued by the commissioner or his deputy on behalf of this state, that an entry of nulla bona has been duly entered on the execution within the immediately preceding 30 day period, and that the commissioner has reason to believe that the respondent may have or may come into ownership of assets outside this state. The petition shall demand that process issue to cause the respondent to appear and answer why the tax execution should not be reduced to a final judgment of the court; that the tax execution including, but stated separately, interest and penalties be reduced to a final judgment of the court; and, in the event that the final judgment is entered, that costs of the action be assessed against the respondent. A true copy of the tax execution shall be attached as an exhibit to the petition and the petition shall be verified under oath by the commissioner to the best of his knowledge and belief.

(c) When an execution for local taxes remains unsatisfied and an entry of nulla bona has been duly entered on the execution within the immediately preceding 30 day period and the tax collector or tax commissioner has reason to believe that the defendant in fi. fa. may have or may come into ownership of assets outside this state, the commissioner may petition the superior court of the county in which the defendant in fi. fa. maintains in this state a known residence, place of business, or agent to receive service for a rule to show cause why the unsatisfied tax execution should not be reduced to a final judgment of the superior court.

(d) The petition provided for in subsection (c) of this Code section shall name the defendant in fi. fa. as respondent in the action, shall set forth the jurisdiction of the superior court, and shall allege that an execution for local taxes has been duly issued by the tax collector or tax commissioner on behalf of the named county, that an entry of nulla bona has been duly entered on the execution within the immediately preceding 30 day period, and that the tax collector or tax commissioner has reason to believe that the respondent may have or may come into ownership of assets outside this state. The petition shall demand that

process issue to cause the respondent to appear and answer why the tax execution should not be reduced to a final judgment of the court; that the tax execution including, but stated separately, interest and penalties be reduced to a final judgment of the court; and, in the event that the final judgment is entered, that costs of the action be assessed against the respondent. A true copy of the tax execution shall be attached as an exhibit to the petition and the petition shall be verified under oath by the tax collector or tax commissioner to the best of his knowledge and belief.

History.

Ga. L. 1957, p. 619, §§ 1, 2; Code 1933, § 91A-316, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1987, p. 665, § 1; Ga. L. 2024, p. 1052, § 5(3)/SB 448, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substituted "petition provided for in subsection (a) of this Code section shall name" for "petition shall name" in the first sentence in subsection (b) and substituted "petition provided for in subsection (c) of this Code section shall name" for "petition shall name" in subsection (d).

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1987, a comma was inserted following "named county" in the first sentence of subsection (d).

Pursuant to Code Section 28-9-5, in 1988, "that" was substituted for "than" preceding "an execution for" near the beginning of subsection (b).

RESEARCH REFERENCES

C.J.S.

85 C.J.S., Taxation, §§ 1174, 1175.

ALR.

Who may complain of underassessment or nonassessment of property for taxation, 5 A.L.R.2d 576; 9 A.L.R.4th 428.

48-3-14. Procedures to petition to reduce unsatisfied tax execution to final judgment against nonresident; notices.

(a) When a defendant in fi. fa. under Code Section 48-3-13 maintains no known residence, place of business, or agent to receive service in this state other than the Secretary of State, the sworn petition shall so allege and, in addition to the allegations prescribed in subsection (b) of Code Section 48-3-13, it shall further allege facts sufficient to show that the respondent personally or by employees or agents engaged in an act or activity within this state giving rise to the liability or obligation for the payment or collection of the tax for which the tax execution was issued and that the act or activity was not insubstantial in its quality or nature in relation to the fair administration of law. The action shall be brought in the superior court of the county in which the respondent formerly maintained a known residence, place of business, or agent to receive service at the time the liability or obligation arose, if such was the case, or, otherwise, in the superior court of any county in which the act or activity giving rise to the tax liability or obligation took place. The

petition shall demand service of process by publication as provided in subsection (b) of this Code section.

(b) When it appears from the sworn petition that the respondent engaged personally or by employees or agents in an act or activity within this state giving rise to the liability or obligation for the payment or collection of the tax for which the tax execution was issued, that the act or activity was not insubstantial in its quality or nature in relation to the fair administration of law, and that the respondent maintains no known residence, place of business, or agent to receive service in this state other than the Secretary of State, the superior court in which the action is pending shall order service to be perfected by publication in the paper in which sheriff's advertisements are printed. The notice shall be published once each calendar week for four consecutive weeks and shall be substantially as follows:

IN THE SUPERIOR COURT OF _____ COUNTY
STATE OF GEORGIA

The State of Georgia	)	
ex rel. _____,	)	
commissioner of revenue,	)	Action for judgment
Petitioner	)	on state tax
	)	fi. fa.
v.	)	No. _____
	)	
A.B.,	)	
Respondent	)	

NOTICE BY PUBLICATION

TO: A.B., Respondent

Foreign address (if known)

This court, under date of _____, has found that service by publication upon you in the above case is necessary because of your nonresidence and has ordered this service by publication. Accordingly, you are ordered to be and appear in this court within 60 days from the above date to show cause why tax fi. fa. no. _____, in favor of the State of Georgia, recorded in book _____, page _____ of the execution docket of _____ County, Georgia, should not be reduced to a judgment of this court.

Witness the Hon. _____, judge of this court.

This _____ day of _____, _____.

_____
Clerk

(c) If the residence or place of business of the respondent in another state is known, the commissioner shall send by registered or certified

mail or statutory overnight delivery to the respondent at the known address a copy of the petition and order of service by publication and a copy of the newspaper in which each of the four notices is published with the notice plainly marked. When the Secretary of State of this state is appointed agent by law to receive service for a nonresident, a copy of the petition, of the order of service by publication, and of the newspaper in which each of the four notices is published with the notice plainly marked shall also be sent by the commissioner by registered or certified mail or statutory overnight delivery to the Secretary of State. The copy of the petition and order of service by publication shall be mailed within ten days after the issuance of the order. Each copy of the newspaper shall be mailed within ten days after its publication. Thereupon, the commissioner shall file with the clerk of the superior court in which the action is pending a certificate of compliance with this subsection, which certificate shall be a part of the record of service in the case.

(d) When a defendant in fi. fa. under Code Section 48-3-13 maintains no known residence, place of business, or agent to receive service in this state other than the Secretary of State, the sworn petition shall so allege and, in addition to the allegations prescribed in subsection (c) of Code Section 48-3-13, it shall further allege facts sufficient to show that the respondent personally or by employees or agents engaged in an act or activity within the named county giving rise to the liability or obligation for the payment or collection of the tax for which the tax execution was issued and that the act or activity was not insubstantial in its quality or nature in relation to the fair administration of law. The action shall be brought in the superior court of the county in which the respondent formerly maintained a known residence, place of business, or agent to receive service at the time the liability or obligation arose, if such was the case, or, otherwise, in the superior court of the county in which the act or activity giving rise to the tax liability or obligation took place. The petition shall demand service of process by publication as provided in subsection (e) of this Code section.

(e) When it appears from the sworn petition that the respondent engaged personally or by employees or agents in an act or activity within the named county giving rise to the liability or obligation for the payment or collection of the tax for which the tax execution was issued, that the act or activity was not insubstantial in its quality or nature in relation to the fair administration of law, and that the respondent maintains no known residence, place of business, or agent to receive service in this state other than the Secretary of State, the superior court in which the action is pending shall order service to be perfected by publication in the paper in which sheriff 's advertisements are printed. The notice shall be published once each calendar week for four consecutive weeks and shall be substantially as follows:

IN THE SUPERIOR COURT OF _____ COUNTY
STATE OF GEORGIA

Tax collector or tax commissioner of _____ County, Petitioner	)	Action for judgment on local tax fi. fa. No. _____
v.	)	
A.B., Respondent	)	

NOTICE BY PUBLICATION

TO: A.B., Respondent

Foreign address (if known)

This court, under date of _____, has found that service by publication upon you in the above case is necessary because of your nonresidence and has ordered this service by publication. Accordingly, you are ordered to be and appear in this court within 60 days from the above date to show cause why tax fi. fa. no. _____, in favor of _____ County, Georgia, recorded in book _____, page _____ of the execution docket of _____ County, Georgia, should not be reduced to a judgment of this court.

Witness the Hon. _____, judge of this court.

This _____ day of _____, _____.

_____
Clerk

(f) If the residence or place of business of the respondent in another state is known, the tax collector or tax commissioner shall send by registered or certified mail or statutory overnight delivery to the respondent at the known address a copy of the petition and order of service by publication and a copy of the newspaper in which each of the four notices is published with the notice plainly marked. When the Secretary of State of this state is appointed agent by law to receive service for a nonresident, a copy of the petition, of the order of service by publication, and of the newspaper in which each of the four notices is published with the notice plainly marked shall also be sent by the commissioner by registered or certified mail or statutory overnight delivery to the Secretary of State. The copy of the petition and order of service by publication shall be mailed within ten days after the issuance of the order. Each copy of the newspaper shall be mailed within ten days after its publication. Thereupon, the tax collector or tax commissioner shall file with the clerk of the superior court in which the action is

pending a certificate of compliance with this subsection, which certificate shall be a part of the record of service in the case.

History.
Ga. L. 1957, p. 619, §§ 3-5; Code 1933, § 91A-317, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1987, p. 665, § 2; Ga. L. 1999, p. 81, § 48; Ga. L. 2000, p. 1589, § 3.

RESEARCH REFERENCES

C.J.S.
84 C.J.S., Taxation, § 138 et seq.

ALR.
Persons in possession of real property as affected by decree foreclosing tax lien, upon service by publication, or in a proceeding against unknown owners, 128 A.L.R. 114.

Effect of misnomer of landowner or delinquent taxpayer in notice, advertisement, etc., of tax foreclosure or sale, 43 A.L.R.2d 967.

Validity of notice of tax sale or of tax sale proceeding which fails to state tax year or kind or type of taxes covered by tax assessments, 43 A.L.R.2d 988.

48-3-15. Demand for jury trial and issues available in action to reduce execution to judgment.

Upon the trial of the action provided for in Code Section 48-3-13 or 48-3-14, which shall be without a jury unless a written demand for jury trial is filed in the case by either party, the respondent may take issue with the sufficiency in law, in fact, or both, of the petition including, but not limited to, jurisdiction over the person of the respondent. The respondent also may attack the tax execution involved in the petition in the manner of an affidavit of illegality and bond as provided by law.

History.
Ga. L. 1957, p. 619, § 6; Code 1933, § 91A-318, enacted by Ga. L. 1978, p. 309, § 2.

RESEARCH REFERENCES

Am. Jur. 2d.
30 Am. Jur. 2d, Executions, § 3.

C.J.S.
85 C.J.S., Taxation, §§ 1269, 1270.

48-3-16. Procedures when respondent in action to reduce execution to judgment fails to appear.

If the respondent in an action provided for in Code Section 48-3-13 or 48-3-14 does not appear in answer to the rule, the superior court shall ascertain for itself that service of the rule has been perfected in accordance with Code Section 48-3-13 or 48-3-14 and shall enter a finding to that effect. The superior court shall further order that the tax execution described in the petition, with the tax, penalties, and interest being stated separately, be reduced to a judgment of the court and that all costs of the action, including, but not limited to, advertising costs as per the sworn statement of the costs submitted by the commissioner, be added to the judgment and charged against the respondent. A copy of the finding and order shall be sent by registered or certified mail or

statutory overnight delivery by the clerk of the court to the respondent at the foreign address shown in the published notice and to the Secretary of State of this state when he is appointed as agent of the nonresident to receive service. The clerk of the court shall enter this action on the original order of the court.

History. Ga. L. 1957, p. 619, § 7; Code 1933, § 91A-319, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2000, p. 1589, § 3.

RESEARCH REFERENCES

C.J.S.
85 C.J.S., Taxation, § 1276 et seq.

48-3-17. Grace period after order; effect of respondent's appearance.

The order provided for in Code Section 48-3-16 shall not become final until the expiration of 30 days after its entry, during which time the respondent may appear and assert the defenses he could have asserted prior to the entry of the order; and the court shall so state in its order. If the respondent does not take advantage of this additional period within which to make a defense, the clerk of the superior court shall so note on the original order and the judgment shall be final. If the respondent does appear, the original order shall be vacated and the action shall proceed as if the order had never been entered.

History. Ga. L. 1957, p. 619, § 8; Code 1933, § 91A-320, enacted by Ga. L. 1978, p. 309, § 2.

RESEARCH REFERENCES

Am. Jur. 2d.
30 Am. Jur. 2d, Executions, § 51.
C.J.S.
85 C.J.S., Taxation, § 1221 et seq.
ALR.
Statute limiting period for attack on tax title as affecting remaindermen in respect of a tax sale during life tenancy, 124 A.L.R. 1145.
Statutory limitation of period for attack on tax deed as affected by failure to comply with statutory requirement as to notice before tax deed, 5 A.L.R.2d 1021.

48-3-18. Deputies acting for named officers; Secretary of State relieved from mailing papers to respondent.

When action is required to be taken by the commissioner, it shall be sufficient compliance with this chapter if the action is done by his deputy or his attorney. When action is required of the clerk of the superior court, it shall be sufficient compliance with this chapter if the action is done by his deputy. When the various papers and processes required to be mailed to the Secretary of State are received by him and it appears to him that a copy of the paper or process has been mailed by

the commissioner to a known address of the respondent, a second mailing shall not be required of the Secretary of State to the same address; but he shall keep the copy received by him on file as a source of information for any inquiry from the respondent, for whom the Secretary of State is attorney in fact, concerning the respondent's tax liabilities and obligations incident to his taxable acts or activities within this state. When action is required of the Secretary of State, it shall be sufficient compliance with this chapter if the action is done by his deputy.

History. Ga. L. 1957, p. 619, § 9; Code 1933, § 91A-321, enacted by Ga. L. 1978, p. 309, § 2.

RESEARCH REFERENCES

C.J.S.
67 C.J.S., Officers and Public Employees, § 399.

48-3-19. Transfer of executions.

(a) As used in this Code section, the term:

(1) "Delinquent taxpayer" means the person or persons against whom an execution has been issued or the successor in title to the property for which the execution has been issued.

(2) "Due diligence" means the performance of a diligent search to ascertain the actual location of the record owner of the property. The following actions shall satisfy the diligent search requirements of this Code section: sending notice by first-class mail, certified mail, or statutory overnight delivery, as required by law. If the notice is returned undelivered, the following actions shall satisfy the diligent search requirements of this Code section: checking telephone directories for the county wherein the property is located; checking the records of the tax commissioner of the county wherein the property is located; or checking the real estate records of the clerk of the superior court of the county wherein the property is located.

(3) "Execution" means an execution issued for the collection of any ad valorem taxes, special assessments, fees, penalties, interest, or collection costs due the state or any political subdivision thereof.

(4) "Transferee" means a person to whom an execution is transferred.

(5) "Transferor" means the official holding the tax executions and authorized to collect or transfer such tax executions.

(b)(1) Whenever any person other than the person against whom an execution has been issued pays an execution issued for state, county,

or municipal taxes or special assessments, the officer whose duty is to enforce the execution may transfer the execution to the party so paying the full value of the execution. No officer whose duty it is to enforce an execution issued for state, county, or municipal taxes or special assessments shall be required to make any transfer or transfers of such execution or executions. The transferee shall have the same rights as to enforcing the execution and priority of payment as might have been exercised or claimed by the tax official. The person to whom the execution is transferred shall, within 30 days of the transfer, cause the execution to be entered on the general execution docket of the superior court of the county in which the execution was issued. In default of the required entry or entries, the execution shall lose its lien upon any property which has been transferred in good faith and for a valuable consideration before the entry and without notice of the existence of the execution.

(2)(A) It shall be unlawful for any tax official covered by this subsection to pay a tax execution in order to obtain a transfer of the execution under this Code section. It shall be unlawful for any employee of a tax official covered by this subsection to pay a tax execution in order to obtain a transfer of the execution under this Code section. The tax officials covered by this subsection are:

(i) County tax receivers, tax collectors, and tax commissioners;

(ii) Members of county boards of tax assessors;

(iii) Members of county boards of equalization; and

(iv) County tax appraisers.

(B) Any execution transferred in violation of subparagraph (A) of this paragraph shall be void and unenforceable by the person obtaining the execution and such person's successors in interest.

(C) Any tax official or employee of a tax official violating subparagraph (A) of this paragraph shall be guilty of a misdemeanor.

(c)(1) Within 60 days following the transfer, the transferee shall notify the delinquent taxpayer of the transfer of the tax execution by first-class mail. The notice shall include:

(A) The name, mailing address, and telephone number for the transferee's business office;

(B) The amount necessary to satisfy such execution; and

(C) Other information as deemed appropriate by the transferee.

(2) In the event that any such notice by first-class mail is returned undelivered, the transferee shall be required to perform due diligence in an effort to obtain the delinquent taxpayer's correct address or any new owner's correct address and resend the notice by first-class mail.

(d) An execution which has been transferred shall bear interest as specified in Code Section 48-3-20 on the amount paid for such execution from the date of the transfer. In addition, the transferee may charge and collect recording fees actually expended in recording the transferred execution on the general execution docket of any county in which the transfer is recorded and such other penalties as are provided for in this title.

(e)(1) Whenever an execution has been transferred to any transferee, the transferee shall not be authorized to submit the execution to the appropriate levying officer until 12 months after the date of such transfer or 24 months after the tax giving rise to the execution was originally due, whichever is earlier. A transferee shall not have the right to advertise and sell property under a tax execution. Such right shall remain solely with the appropriate levying official, such as the sheriff or marshal.

(2) A transferee with multiple outstanding executions against the same property shall not be subject to the time period requirements of paragraph (1) of this subsection with respect to all such executions if at least one of the executions meets such requirements of paragraph (1) of this subsection.

(f) Until the execution is paid in full or satisfied, on or before November 15 of each year after the calendar year in which the transfer occurred, the transferee shall send notice by regular mail to the delinquent taxpayer and the record owner of the property advising that the tax execution is still outstanding. The notice must provide the transferee's most updated contact information, including mailing address and telephone number.

(g) Any transferee that pays the tax official more than $2 million in any calendar year for the transfer of executions shall maintain a reasonably accessible office within 50 miles of the courthouse wherein the superior court of the county wherein the transferred executions were issued is located. Said office shall be open to the public for at least eight hours per day for five days a week, official state holidays excepted.

History.

Code 1981, § 48-3-19, enacted by Ga. L. 2006, p. 770, § 3/SB 585; Ga. L. 2010, p. 878, § 48/HB 1387; Ga. L. 2017, p. 774, § 48/HB 323.

Editor's notes.

Ga. L. 2006, p. 770, § 8/SB 585, not codified by the General Assembly, provides: "The provisions of this Act shall apply to all executions transferred on or after July 1, 2006. Executions transferred prior to July 1, 2006, shall not be affected by this Act."

Law reviews.

For annual survey of real property law, see 58 Mercer L. Rev. 367 (2006).

For comment, "Making Debt Pay: Examining the Use of Property Tax Delinquency as a Revenue Source," see 62 Emory L.J. 217 (2012).

JUDICIAL DECISIONS

Demand for payment of interest and fees proper. — When the plaintiff argued that the defendants improperly demanded interest and fees based on the higher assessment amount as the plaintiff entered into a consent agreement with the county tax commissioner to lower the value of the property prior to levy on the 2012 executions, the plaintiff's substantive claims were prohibited as a matter of law because the tax executions were validly issued by the commissioner; the plaintiff failed to pay the taxes while pursuing the plaintiff's appeal of the assessment and awaiting a refund; and the defendants were authorized to levy the executions and demand payment as the plaintiff failed to plead that the executions were void as a matter of law or were cancelled by the commissioner in the consent judgment. B.C. Grand, LLC v. FIG, LLC, 352 Ga. App. 646, 835 S.E.2d 676, 2019 Ga. App. LEXIS 622 (2019), cert. denied, No. S20C0503, 2020 Ga. LEXIS 425 (Ga. June 1, 2020).

48-3-20. Interest on transferred executions.

All tax executions, when recorded as prescribed by law and which have been transferred to third persons, shall bear interest at the rate specified in Code Section 48-2-40 from the date of transfer.

History.

Ga. L. 1887, p. 21, § 1; Civil Code 1895, § 889; Civil Code 1910, § 1146; Code 1933, § 92-7603; Code 1933, § 91A-325, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1980, p. 10, § 8.

JUDICIAL DECISIONS

Former Civil Code 1910, § 1146 (see now O.C.G.A. § 48-3-20) must be construed with former Civil Code 1910, § 1144 (see now O.C.G.A. § 48-3-8). Palmer v. Phinizy, 151 Ga. 589, 107 S.E. 852, 1921 Ga. LEXIS 341 (1921).

Failure to award interest. — When a trial court found a tax commissioner improperly refused to pay a tax execution holder's executions, but did not find that the commissioner had good cause for the refusal and did not award the holder 20 percent interest, pursuant to O.C.G.A. § 15-13-3(a), the matter had to be remanded for a determination of the good cause issue and to consider the holder's entitlement to one percent interest per month, pursuant to O.C.G.A. §§ 48-3-20 and 48-2-40. Scott v. Vesta Holdings I, LLC, 275 Ga. App. 196, 620 S.E.2d 447, 2005 Ga. App. LEXIS 930 (2005).

Demand for payment of interest and fees proper. — When the plaintiff argued that the defendants improperly demanded interest and fees based on the higher assessment amount as the plaintiff entered into a consent agreement with the county tax commissioner to lower the value of the property prior to levy on the 2012 executions, the plaintiff's substantive claims were prohibited as a matter of law because the tax executions were validly issued by the commissioner; the plaintiff failed to pay the taxes while pursuing the plaintiff's appeal of the assessment and awaiting a refund; and the defendants were authorized to levy the executions and demand payment as

the plaintiff failed to plead that the executions were void as a matter of law or were cancelled by the commissioner in the consent judgment. B.C. Grand, LLC v. FIG, LLC, 352 Ga. App. 646, 835 S.E.2d 676, 2019 Ga. App. LEXIS 622 (2019), cert. denied, No. S20C0503, 2020 Ga. LEXIS 425 (Ga. June 1, 2020).

48-3-21. Statute of limitations for tax executions.

Except for executions issued by the commissioner, all county, municipal, or other tax executions, before or after legal transfer and record, shall be enforced within seven years from:

(1) The date of issue; or

(2) The time of the last entry upon the tax execution by the officer authorized to execute and return the execution if the execution and entry are properly entered or reentered upon the execution docket or books in which executions issued on judgments and entries on executions issued on judgments are required to be entered or reentered.

History.

Ga. L. 1887, p. 23, § 1; Civil Code 1895, § 890; Civil Code 1910, § 1147; Code 1933, § 92-7701; Ga. L. 1965, p. 316, § 1; Code 1933, § 91A-326, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1983, p. 1834, § 7; Ga. L. 2017, p. 723, § 5/HB 337; Ga. L. 2018, p. 1, § 2/HB 661.

Editor's notes.

Ga. L. 2017, p. 723, § 1/HB 337, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State Tax Execution Modernization Act"

JUDICIAL DECISIONS

Failure to timely issue execution results in bar. — Former Civil Code 1910, §§ 1147 and 1148 (see now O.C.G.A. §§ 48-3-21 and 48-3-22), when construed together, provide a statute of limitation against the right of the state and the state's subordinate public corporations to enforce a lien for taxes. Such a lien is barred not only by a failure to have the proper entries made on the tax execution and recorded, but also by a failure to issue the tax execution within seven years from the date that such execution may be lawfully issued. Georgia R.R. & Banking v. Wright, 124 Ga. 596, 53 S.E. 251, 1906 Ga. LEXIS 565 (1906), rev'd, 207 U.S. 127, 28 S. Ct. 47, 52 L. Ed. 134, 1907 U.S. LEXIS 1209 (1907).

Construction with other provisions. — Construing together former Code 1933, § 92-7701 (see now O.C.G.A. § 48-3-21) and former Code 1933, §§ 92-7702 and 110-1001 (see now O.C.G.A. §§ 48-3-22 and 9-12-60, respectively), it was the intention of the General Assembly to provide in effect that the mere entry of a tax execution itself on general execution docket within the seven-year period would prevent dormancy. Darby v. De Loach, 190 Ga. 499, 9 S.E.2d 626, 1940 Ga. LEXIS 481 (1940).

Former Code 1933, §§ 67-2501 and 67-2503 (see now O.C.G.A. § 44-2-2), which declared effective from date of filing "deeds, mortgages, and liens of all kinds," as against third persons acting in good faith and without notice, had no application to claims for taxes. Suttles v. Dickey, 192 Ga. 382, 15 S.E.2d 445, 1941 Ga. LEXIS 468 (1941).

Use of the word "shall" makes enforcement of tax fi. fas. within the period therein specified mandatory, rather than merely permissive. Oxford v. Generator Exch., Inc., 99 Ga. App. 290,

108 S.E.2d 174, 1959 Ga. App. LEXIS 839 (1959).

Requirement as to actual entry of execution on docket. — Merely depositing execution in office of the clerk and having entry of filing made thereon is ineffective, unless the execution is actually entered on the docket. Suttles v. Dickey, 192 Ga. 382, 15 S.E.2d 445, 1941 Ga. LEXIS 468 (1941).

Date from which period of limitation is measured. — Claims for taxes should be enforced within seven years from the date due and date when executions could have been issued therefor, unless within such time an execution is issued and entered on the general execution docket as in the case of judgments. Suttles v. Dickey, 192 Ga. 382, 15 S.E.2d 445, 1941 Ga. LEXIS 468 (1941).

Effect of running of period of limitation. — When execution for collection of taxes is barred by this statute, the taxpayer is no longer bound for taxes, and the taxpayer can maintain an action to enjoin enforcement of execution and for its cancellation. The taxpayer is not estopped from doing so because the taxpayer owned the property for the entire year for which taxes involved were due, failed to make a return of the property for such year, and had not paid nor offered to pay taxes. Suttles v. Dickey, 192 Ga. 382, 15 S.E.2d 445, 1941 Ga. LEXIS 468 (1941).

Right to revive dormant judgments inapplicable to tax executions. — Provisions of former Code 1933, Ch. 110-10 (see now O.C.G.A. Art. 3, Ch. 12, T. 9), relating to dormant judgments and providing a procedure for their revival, have no application to an action purportedly attempting to revive a dormant tax execution under former Code 1933, §§ 92-7701 and 92-7702 (see now O.C.G.A. §§ 48-3-21 and 48-3-22), which might properly be called the Dormant Tax Judgment Act. Oxford v. Generator Exch., Inc., 99 Ga. App. 290, 108 S.E.2d 174, 1959 Ga. App. LEXIS 839 (1959).

Seven-year statute of limitations applied. — Seven-year statute of limitation under O.C.G.A. § 48-3-21 was applicable to a county tax assessment for back taxes and penalties against a company that did not report the company's tangible personal property even though the company filed tax returns in those years. The tax assessors discovered the property after conducting an audit, so the assessors acquired full authority to tax the property at that point under the seven-year limitation period in O.C.G.A. § 48-3-21, and not under the three-year limitation period in O.C.G.A. § 48-3-49(b). Hormel Food Corp. v. DeKalb County Bd. of Tax Assessors, 264 Ga. App. 10, 589 S.E.2d 836, 2003 Ga. App. LEXIS 1364 (2003).

Running of seven-year period causes execution to be dead, not merely dormant. — Unless there is a bona fide effort to enforce a tax fi. fa. by a levy or an attempted levy with entry thereon, and unless the fi. fa., together with such entry or entries, is recorded on the general execution docket of the county of the residence of the defendant in fi. fa. within seven years from the date of the assessment, and unless thereafter there be a new levy or attempted levy with proper entries and recordation within seven years thereof, and subsequently within each seven-year period, such fi. fa. is not merely dormant but is dead, and nothing more can be done to enforce it by the taxing authority. Oxford v. Generator Exch., Inc., 99 Ga. App. 290, 108 S.E.2d 174, 1959 Ga. App. LEXIS 839 (1959).

Statute does not run when proceedings stayed by injunction of federal court. — Statute of limitations does not run against the state during the time that the comptroller general (now commissioner) is enjoined by a federal court from issuing any executions for taxes on the stock in dispute. Georgia R.R. & Banking v. Wright, 124 Ga. 596, 53 S.E. 251, 1906 Ga. LEXIS 565 (1906), rev'd, 207 U.S. 127, 28 S. Ct. 47, 52 L. Ed. 134, 1907 U.S. LEXIS 1209 (1907).

Period of limitation unaffected by contractual lien setting different period. — In cases of tax fi. fa. there is no contractual lien, fixing a period of limitation different from that provided by this statute, to fall back on, so as to prevent the bar of the execution. Lewis v. Moultrie Banking Co., 36 Ga. App. 347,

136 S.E. 554, 1927 Ga. App. LEXIS 69 (1927) (see O.C.G.A. § 48-3-21).

One subrogated to state's rights may enforce lien despite bar to action for money had and received. — An action brought to enforce the lien of the state and county for taxes, to which one becomes subrogated is not barred by this statute, although it would be barred as an action for money had and received. Thomas v. Lester, 166 Ga. 274, 142 S.E. 870, 1928 Ga. LEXIS 287 (1928).

OPINIONS OF THE ATTORNEY GENERAL

Construction with other provisions. — Ga. L. 1937-38, Ex. Sess., p. 156, § 8 (see O.C.G.A. § 48-6-22(6)) (now repealed) was not in conflict with nor repugnant to former Code 1933, § 92-7201 (see now O.C.G.A. § 48-3-21). 1952-53 Ga. Op. Att'y Gen. 198.

Date from which period of limitation is measured. — Statute of limitations on taxes imposed under former Code 1933, § 92-2301 (see now O.C.G.A. Art. 9, Ch. 5, T. 48) was seven years from the date that execution thereon issued, or could have been issued. If returns were not made, state had no way of knowing that the taxes were due, and for this reason the statute of limitations did not commence running until execution issued. 1952-53 Ga. Op. Att'y Gen. 198.

Actions to recover insurance taxes under Ga. L. 1960, p. 289, § 1 (see now O.C.G.A. Ch. 8, T. 33) must be brought within seven years from the date that the execution may be lawfully issued. 1969 Op. Att'y Gen. No. 69-396.

RESEARCH REFERENCES

C.J.S.

33 C.J.S., Executions, §§ 69, 85 et seq. 85 C.J.S., Taxation, § 1109 et seq.

ALR.

Forfeiture or sale of land to state or political subdivision for nonpayment of taxes as suspending right to enforce special assessment or improvement lien or running of limitation in that regard, 113 A.L.R. 920.

When statute of limitation commences to run against action to recover tax, 131 A.L.R. 822.

48-3-21.1. Statute of limitations for enforcement of executions for ad valorem taxes of less than $5.00; execution; restriction on adding together taxes to exceed limit.

(a) This Code section shall apply only to real property ad valorem taxes which are due in an amount of less than $5.00.

(b) Any execution for ad valorem taxes in an amount of less than $5.00 shall be enforced within one year after the execution is issued or the taxes become due, whichever is earlier.

(c) A tax execution which has become barred under this Code section shall not be subject to revival; and the taxpayer shall not be personally liable for such taxes after the execution becomes barred.

(d) Amounts of taxes due on more than one piece of real property or for more than one tax year shall not be added together so as to exceed the $5.00 limit if each of these amounts is individually less than $5.00.

History.
Code 1933, § 91A-326.1, enacted by Ga. L. 1981, p. 791, § 1; Ga. L. 1998, p. 575, § 1.
Editor's notes.
Ga. L. 1998, p. 575, § 2, not codified by the General Assembly, provides that the amendment to this Code section is applicable to all executions for ad valorem taxes issued on or after July 1, 1998.

48-3-22. Statutory limitations applicable to tax executions.

All laws in reference to a period of limitation as to ordinary executions for any purpose or to the length of time or circumstances under which ordinary executions lose their lien in whole or in part are applicable to tax executions.

History.
Ga. L. 1887, p. 23, § 2; Civil Code 1895, § 891; Civil Code 1910, § 1148; Code 1933, § 92-7702; Code 1933, § 91A-327, enacted by Ga. L. 1978, p. 309, § 2.

JUDICIAL DECISIONS

Construction with other provisions. — Construing together former Code 1933, § 92-7702 (see now O.C.G.A. § 48-3-22) and former Code 1933, §§ 92-7701 and 110-1001 (see now O.C.G.A. §§ 48-3-21 and 9-12-60, respectively), it was the intention of the General Assembly to provide in effect that the mere entry of a tax execution itself on the general execution docket within the seven-year period would prevent dormancy. Darby v. De Loach, 190 Ga. 499, 9 S.E.2d 626, 1940 Ga. LEXIS 481 (1940).

Former Code 1933, §§ 67-2501 and 67-2503 (see now O.C.G.A. § 44-2-2), which declare effective from the date of filing "deeds, mortgages, and liens of all kinds," as against third persons acting in good faith and without notice, have no application to claims for taxes. Suttles v. Dickey, 192 Ga. 382, 15 S.E.2d 445, 1941 Ga. LEXIS 468 (1941).

Requirement as to actual entry of execution on docket. — Merely depositing the execution in the office of the clerk and having an entry of filing made thereon is ineffective, unless the execution is actually entered on the docket. Suttles v. Dickey, 192 Ga. 382, 15 S.E.2d 445, 1941 Ga. LEXIS 468 (1941).

Date from which period of limitation is measured. — Claims for taxes should be enforced within seven years from the date due and date when executions could have been issued therefor, unless within such time an execution is issued and entered on the general execution docket, as in the case of judgments. Suttles v. Dickey, 192 Ga. 382, 15 S.E.2d 445, 1941 Ga. LEXIS 468 (1941).

Effect of running of period of limitation. — When execution for collection of taxes is barred by former Code 1933, § 92-7701 (see now O.C.G.A. § 48-3-21), the taxpayer is no longer bound for the taxes, and the taxpayer can maintain an action to enjoin enforcement of the execution and for its cancellation. The taxpayer is not estopped from doing so because the taxpayer owned the property for the entire year for which the taxes involved were due, failed to make a return of the property for such year, and had not paid nor offered to pay the taxes. Suttles v. Dickey, 192 Ga. 382, 15 S.E.2d 445, 1941 Ga. LEXIS 468 (1941).

Right to revive dormant judgments inapplicable to tax executions. — Provisions of former Code 1933, Ch. 110-10 (see now O.C.G.A. Art. 3, Ch. 12, T. 9) relating to dormant judgments and providing a procedure for their revival have no application to an action purportedly attempting to revive a dormant tax execution under former Code 1933, §§ 92-7701 and 92-7702 (see now

O.C.G.A. §§ 48-3-21 and 48-3-22), which might properly be called the Dormant Tax Judgment Act. Oxford v. Generator Exch., Inc., 99 Ga. App. 290, 108 S.E.2d 174, 1959 Ga. App. LEXIS 839 (1959).

Running of seven-year period causes execution to be dead, not merely dormant. — Unless there is a bona fide effort to enforce a tax fi. fa. by a levy or an attempted levy with entry thereon, and unless the fi. fa., together with such entry or entries, is recorded on the general execution docket of the county of the residence of the defendant in fi. fa. within seven years from the date of the assessment, and unless thereafter there be a new levy or attempted levy with proper entries and recordation within seven years thereof, and subsequently within each seven-year period, such fi. fa. is not merely dormant but is dead, and nothing more can be done to enforce it by the taxing authority. Oxford v. Generator Exch., Inc., 99 Ga. App. 290, 108 S.E.2d 174, 1959 Ga. App. LEXIS 839 (1959).

Loss of lien for failure to intervene in equity. — Former Code 1933, § 37-410 (see now O.C.G.A. § 23-2-97), relating to intervention in equity by claimants of assets, provides for circumstances under which all creditors may by inaction lose their rights, including creditors holding executions. It is therefore applicable to tax executions. Suttles v. J.B. Withers Cigar Co., 194 Ga. 617, 22 S.E.2d 129, 1942 Ga. LEXIS 619 (1942), overruled, Johnson v. Carrollton, 249 Ga. 173, 288 S.E.2d 565, 1982 Ga. LEXIS 1122 (1982) (holding service by publication on known claimants whose whereabouts are known unconstitutional).

RESEARCH REFERENCES

C.J.S.
33 C.J.S., Executions, §§ 69, 85 et seq.

48-3-23. [Reserved] Nulla bona; tolling of statute of limitations.

History.
Ga. L. 1957, p. 619, § 10; Code 1933, § 91A-322, enacted by Ga. L. 1978, p. 309, § 2; repealed by Ga. L. 2017, p. 723, § 6/HB 337, effective January 1, 2018.

Editor's notes.
Ga. L. 2017, p. 723, § 1/HB 337, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State Tax Execution Modernization Act.'"

Ga. L. 2017, p. 723, § 6/HB 337, reserved the designation of this Code section, effective January 1, 2018.

RESEARCH REFERENCES

Am. Jur. 2d.
30 Am. Jur. 2d, Executions, § 484.

C.J.S.
33 C.J.S., Executions, § 88.

ALR.
Applicability of general statute of limitations to real-estate tax lien foreclosure action, 59 A.L.R.2d 1144.

48-3-23.1. Authorization for commissioner to develop standards which will provide a mechanism to discharge debts or obligations barred by the statute of limitations.

In order to preserve public funds and to limit efforts to collect debts or obligations barred by the statute of limitations, the commissioner is authorized to develop appropriate standards that comply with the policies prescribed by the state accounting officer which will provide a mechanism to administratively discharge any debt or obligation in

favor of the department when the collection of any obligation or charge, regardless of amount, is barred by the applicable statute of limitations. Certificates identifying such uncollectable accounts shall be forwarded to the state accounting officer in a manner and at such times as are reflected in the standards developed by the state accounting officer and the department.

History.
Code 1981, § 48-3-23.1, enacted by Ga. L. 1997, p. 734, § 4; Ga. L. 2005, p. 694, § 40/HB 293.

48-3-24. Interposition of claims; oath; bond; trial.

When any execution is issued against a tax collector, tax commissioner, or taxpayer for taxes due the state or a county of the state and the sheriff or other officer levies the execution on property claimed by a person not a party to the execution, the claimant shall make the same oath as required in other claim cases and give bond and security for the amounts claimed in the execution plus costs. The same proceedings shall be had on the claim as are provided for the trial of the right of property, except that the trial shall be held in the county in which the levy was made. If the property is found to be subject to the execution, the liability of the claimant and his sureties shall be in all respects the same as the liability on an appeal bond.

History.
Laws 1810, Cobb's 1851 Digest, p. 1056.; Laws 1840, Cobb's 1851 Digest, p. 1072.; Code 1863, §§ 818, 3657; Code 1868, §§ 898, 3682; Code 1873, §§ 896, 3732; Code 1882, §§ 896, 3732; Civil Code 1895, §§ 899, 900; Civil Code 1910, §§ 1159, 1160; Code 1933, § 92-7801; Code 1933, § 91A-328, enacted by Ga. L. 1978, p. 309, § 2.

JUDICIAL DECISIONS

For discussion of distinction between claims under ordinary judgments and under tax fi. fa., see Lingo v. Harris, 73 Ga. 28, 1884 Ga. LEXIS 7 (1884).

What claimant may contest. — Claimant may set up invalidity of the fi. fa. on the trial of the claim case. Claimant may also contest the validity of a levy on the contention that it is an arbitrary and unreasonable division. Harris Orchard Co. v. Tharpe, 177 Ga. 547, 170 S.E. 811, 1933 Ga. LEXIS 353 (1933).

Filing claims to property levied on under city tax execution. — No provision for filing a claim to property levied on under a city tax execution is contained in this statute, and before such a claim can be recognized, provision therefor must have been made in the charter of the municipality concerned. Wilson v. City of Eatonton, 180 Ga. 598, 180 S.E. 227, 1935 Ga. LEXIS 500 (1935).

Claim under this statute is not available when the property is subject to the fi. fa. levied thereon. Jordan v. Baggett, 37 Ga. App. 537, 140 S.E. 902, 1927 Ga. App. LEXIS 398 (1927).

Right of claimant to proceed in equity. — When the petitioner has an adequate and complete remedy at law by filing of a claim in the event of an attempted sale of the property, the petitioner is not entitled to an injunction. Racine Iron Co. v. McCommons, 111 Ga. 536, 36 S.E. 866, 1900 Ga. LEXIS 676 (1900); Herrington v. Ashford, 157 Ga. 810, 122 S.E. 197, 1924 Ga. LEXIS 256 (1924), overruled, Wilson v. Eatonton, 180 Ga. 598, 180 S.E. 227, 1935 Ga. LEXIS

500 (1935); Kirk v. Bray, 181 Ga. 814, 184 S.E. 733, 1936 Ga. LEXIS 443 (1936).

Statute makes no provision for filing of a claim in a case of a levy of a city tax execution; it refers exclusively to state and county taxes. Therefore, in a suit to enjoin enforcement of a tax execution issued by a city and levied upon property in which the plaintiff, not the defendant in fi. fa., alleged an interest, the plaintiff did not have an adequate remedy at law, and the petition stated a cause of action. Wilson v. City of Eatonton, 180 Ga. 598, 180 S.E. 227, 1935 Ga. LEXIS 500 (1935).

When the petition alleges that the petitioner did not know of the tax sale until several months thereafter, and had been repeatedly advised by the defendant in execution that the taxes had been paid, there is sufficient reason for failure of the petitioner to pursue its remedy at law under this statute. Therefore, the petitioner can seek relief in equity. Bibb County v. Elkan, 184 Ga. 520, 192 S.E. 7, 1937 Ga. LEXIS 561 (1937).

No claims in forma pauperis. — Claim cannot be interposed in forma pauperis to property levied on under a tax execution issued by a municipal corporation. Such claims must be made under the provisions of former Civil Code 1882, § 896 (see now O.C.G.A § 48-3-24), and did not fall within former Code 1882, § 3733 (see now O.C.G.A. § 9-13-92). Lingo v. Harris, 73 Ga. 28, 1884 Ga. LEXIS 7 (1884).

RESEARCH REFERENCES

C.J.S.

33 C.J.S., Executions, §§ 60, 328 et seq.
85 C.J.S., Taxation, §§ 1144, 1145, 1164.

48-3-25. Remittance of money collected on process.

When an officer collects money on process issued pursuant to this chapter or on any other process issued by the commissioner, the officer shall immediately remit the money to the commissioner by some safe and speedy method. Upon failure to do so, the officer shall be liable as he would be to other plaintiffs in execution.

History.

Orig. Code 1863, § 808; Code 1868, § 887; Code 1873, § 884; Code 1882, § 884; Civil Code 1895, § 882; Civil Code 1910, § 1139; Code 1933, § 92-7308; Code 1933, § 91A-306, enacted by Ga. L. 1978, p. 309, § 2.

48-3-26. Judicial interference in tax levies.

No action seeking replevin shall lie nor shall any judicial interference be had in any levy or execution for taxes under this title. The injured party, however, shall be left to his proper remedy in any court having jurisdiction.

History.

Laws 1804, Cobb's 1851 Digest, p. 1051.; Code 1863, § 5115; Code 1868, § 3618; Code 1873, § 3668; Code 1882, § 3668; Civil Code 1895, § 903; Civil Code 1910, § 1163; Code 1933, § 92-7901; Code 1933, § 91A-329, enacted by Ga. L. 1978, p. 309, § 2.

JUDICIAL DECISIONS

Statute states the general rule, to which there are some exceptions: (a) an unconstitutional exaction, because what is then called a tax is no tax; (b)

when the law does not impose the tax or authorize the execution, for the same reason; (c) when the defendants do not occupy the official positions alleged in the executions; and (d) when execution issued for taxes which had been properly returned and taxes paid. There are doubtless other exceptions. Mayo v. Renfroe, 66 Ga. 408, 1881 Ga. LEXIS 33 (1881); Harris Orchard Co. v. Tharpe, 177 Ga. 547, 170 S.E. 811, 1933 Ga. LEXIS 353 (1933).

While the rule enunciated in this statute is subject to a number of exceptions in equity, these exceptions are exceptions only to the rule stated, and are not exceptions to general equitable principles and maxims. Whiddon v. State Revenue Comm'n, 184 Ga. 453, 191 S.E. 438, 1937 Ga. LEXIS 537 (1937).

Prohibition applies only to taxes properly laid, and not to taxes laid without authority of law. Vanover v. Davis, 27 Ga. 354, 1859 Ga. LEXIS 73 (1859).

Duty of courts to stop unconstitutional tax collection proceedings. — When any ministerial officer of the state is attempting to collect money out of a person, natural or artificial, under the forms of law, but without any constitutional law to authorize the process the officer uses and calls an execution for taxes, it is the duty of the courts, on a proper case made, to arrest the proceeding in some of the modes known to the law, and to afford relief to the party complaining. Wright v. Southwestern R.R., 64 Ga. 783, 1880 Ga. LEXIS 415 (1880).

Rule not applied in favor of tax collector seeking reimbursement from taxpayers. — Tax collector who has settled the collector's tax digest with the state and county may use the executions the collector has issued against delinquent taxpayers to reimburse the collector by collecting from the taxpayers their unpaid taxes, but the collector is not entitled to the immunity from judicial interference which the law provides for the state, and the collector can only collect such tax as is legally due. State ex rel. Gilbert, 51 Ga. 252, 1874 Ga. LEXIS 110 (1874).

Fact that tax proceeds are appropriated to a specific object or purpose does not authorize judicial interference. Yancey v. New Manchester Mfg. Co., 33 Ga. 622, 1863 Ga. LEXIS 39 (1863).

No interference on account of informalities or irregularities in collection. — When there is a valid law imposing tax for the state there will be no judicial interference in the collection on account of informalities or irregularities in the return or assessment. Decker v. McGowan, 59 Ga. 805, 1877 Ga. LEXIS 404 (1877); Georgia Mut. Loan Ass'n v. McGowan, 59 Ga. 811; Burke v. Speer, 59 Ga. 353, 1877 Ga. LEXIS 272 (1877).

Execution issued by the tax collector in due form cannot be properly resisted by interposing an affidavit of illegality. Georgia Trading Co. v. Marion County, 114 Ga. 397, 40 S.E. 250, 1901 Ga. LEXIS 717 (1901).

Writ of prohibition does not lie against a tax collector who is alleged to be proceeding to levy an illegal tax. The parties complaining must pay the tax, and then pursue their remedy against the tax collector as an individual. J.A. & W.H. Cody v. Lennard, 45 Ga. 85, 1872 Ga. LEXIS 165 (1872).

Mandamus will not lie as a remedy to compel a sheriff to accept an affidavit of illegality filed to an execution issued by the comptroller general (now commissioner) against a tax collector in default and the collector's bondsmen for the reason that the sheriff must make the sheriff's return to court under this statute and the comptroller-general (now commissioner) is not a court. Webb v. Newsom, 138 Ga. 342, 75 S.E. 106, 1912 Ga. LEXIS 303 (1912).

Availability of injunctive relief. — General rule is that no injunction will lie to interfere with collection of taxes. Before enjoining taxation, the law and the facts must be such as to clearly require such action. Candler v. Gilbert, 180 Ga. 679, 180 S.E. 723, 1935 Ga. LEXIS 527 (1935); Kent v. Murphey, 207 Ga. 707, 64 S.E.2d 49, 1951 Ga. LEXIS 508 (1951).

In a suit to enjoin enforcement of a tax execution issued by a city and levied upon property in which the plaintiff, not the

defendant in fi. fa., alleged an interest, the plaintiff did not have an adequate remedy at law, and the petition stated a cause of action. Wilson v. City of Eatonton, 180 Ga. 598, 180 S.E. 227, 1935 Ga. LEXIS 500 (1935).

General rule is that no injunction will lie to interfere with the collection of taxes. Derrick v. Campbell, 219 Ga. 795, 136 S.E.2d 381, 1964 Ga. LEXIS 410 (1964).

Injunction against excessive levy. — Injunction, when properly invoked, is an available remedy to restrain the collection of an unlawful exaction in the form of a tax based upon an excessive levy, and one need not await the levy of a tax execution before seeking such relief, and need not pay or tender any part of a tax under a levy wholly void. Williams v. Hutchins, 212 Ga. 594, 94 S.E.2d 412, 1956 Ga. LEXIS 454 (1956).

Powers of court of equity as to tax collection. — Statute means that court of equity will not interfere with tax officials leaving injured party to the party's statutory remedies, such as claim and illegality. Kirk v. Bray, 181 Ga. 814, 184 S.E. 733, 1936 Ga. LEXIS 443 (1936).

Power to levy and collect taxes is exclusively a legislative function, and unless authorized by statute, a court of equity is without the power to foreclose a lien for taxes and order a sale of the property. No such power having been conferred by statute on a court of equity in this state, the court erred in decreeing that land be sold by the sheriff for the payment of state and county taxes. Kirk v. Bray, 181 Ga. 814, 184 S.E. 733, 1936 Ga. LEXIS 443 (1936).

Injunction against tax sale. — When the petitioner has an adequate and complete remedy at law by the filing of a claim in the event of an attempted sale of the property, the petitioner is not entitled to an injunction. Kirk v. Bray, 181 Ga. 814, 184 S.E. 733, 1936 Ga. LEXIS 443 (1936).

When purported tax fi. fa. is of an origin unauthorized by law, the taxpayer is entitled to an injunction to prevent sale of property. Vincent v. Poole, 181 Ga. 718, 184 S.E. 269, 1936 Ga. LEXIS 415 (1936).

Statute does not apply to municipal taxes. Elder v. Atlanta-Southern Dental College, 183 Ga. 634, 189 S.E. 254, 1936 Ga. LEXIS 163 (1936).

Judicial interference with collection of taxes. — While judicial interference with collection of state taxes is prohibited, there is no prohibition against judicial interference with collection of municipal taxes. Dodson Printers' Supply Co. v. Upham, 179 Ga. 353, 175 S.E. 920, 1934 Ga. LEXIS 287 (1934).

When purposes for which taxes are levied seem lawful, and the general system of taxation and the amount of money to be raised thereby appear proper in view of the city's obligations, the courts should be slow to stop the wheels of municipal government, and throw the municipality's affairs into anarchy. Kent v. Murphey, 207 Ga. 707, 64 S.E.2d 49, 1951 Ga. LEXIS 508 (1951).

Payment of taxes as prerequisite to granting judicial relief. — One seeking relief from excessive tax levies, but admitting either expressly or by necessary implication that one owes part of the tax covered by such executions, must pay or offer to pay the amount of the taxes admitted to be due, in order to obtain the relief sought. Derrick v. Campbell, 219 Ga. 795, 136 S.E.2d 381, 1964 Ga. LEXIS 410 (1964).

Defense against execution issued for taxes collected but not accounted for. — An execution issued by the comptroller general (now commissioner) against a tax collector and the collector's sureties, for money alleged in the execution to have been collected by the tax collector and not accounted for, cannot be arrested by an affidavit of illegality. Perkins v. State, 101 Ga. 291, 28 S.E. 840, 1897 Ga. LEXIS 216 (1897).

RESEARCH REFERENCES

C.J.S.

85 C.J.S., Taxation, § 1204 et seq.

48-3-27. Obstructing levying officers; penalty.

(a) It is unlawful for any person knowingly and willfully to obstruct or hinder:

(1) The commissioner or his or her authorized representatives in the levy of a state tax execution; or

(2) Any sheriff, ex officio sheriff, tax commissioner, or municipal levy officer in the levy of a state, county, or municipal tax execution.

(b) Any person who violates this Code section shall be guilty of a misdemeanor.

History.
Code 1933, § 91A-9905.1, enacted by Ga. L. 1981, p. 1857, § 45; Ga. L. 2015, p. 1219, § 6/HB 202.

48-3-28. Release of state tax execution upon full satisfaction.

The department shall file a release of any state tax execution as soon as reasonably possible after a tax execution has been fully satisfied. All such releases shall be filed in all offices of the clerks of superior court where the executions were originally filed.

History.
Code 1981, § 48-3-28, enacted by Ga. L. 1983, p. 1834, § 8; Ga. L. 2017, p. 723, § 7/HB 337; Ga. L. 2018, p. 1, § 3/HB 661.
Editor's notes.
Ga. L. 2017, p. 723, § 1/HB 337, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State Tax Execution Modernization Act."

48-3-29. [Repealed] Publication of information regarding executions; withdrawal.

History.
Ga. L. 2003, p. 442, § 1; repealed by Ga. L. 2017, p. 723, § 8/HB 337, effective January 1, 2018.
Editor's notes.
Ga. L. 2017, p. 723, § 1/HB 337, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State Tax Execution Modernization Act.'"
Ga. L. 2018, p. 1112, § 48(1)/SB 365, part of an Act to revise, modernize, and correct the Code, repealed the reservation of this Code section, effective May 8, 2018.

ARTICLE 2

UNIFORM SYSTEM FOR FILING STATE TAX EXECUTIONS

Editor's notes.
Ga. L. 2017, p. 723, § 1/HB 337, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State Tax Execution Modernization Act.' "

48-3-40. Purpose; application; definitions.

(a) The purpose of this article is to provide a uniform state-wide system for filing notices of state tax executions issued by the commissioner that are in favor of or enforced by the department.

(b) This article shall only be applicable to state tax executions and to the liens of state tax executions as against real and personal property which arise pursuant to Code Section 48-2-56 for tax liabilities administered by the department.

(c) As used in this article, the term:

(1) "Authority" means the Georgia Superior Court Clerks' Cooperative Authority.

(2) "Delinquent taxpayer" means a person owing an unpaid tax liability for which an execution has been filed by the department, unless such execution is released, withdrawn, or expired.

(3) "Execution" means either a state tax execution or a renewed state tax execution, as applicable.

(4) "Last known address of the delinquent taxpayer" means the address of the delinquent taxpayer appearing on the records of the department at the time the state tax execution is filed with the superior court clerk.

(5) "Renewed state tax execution" means any tax execution properly filed by the department prior to January 1, 2018, that is refiled upon implementation of this article.

(6) "State tax execution" means any execution issued by the department for the collection of any tax, fee, license, penalty, interest, or collection costs due the state.

History. Code 1981, § 48-3-40, enacted by Ga. L. 2017, p. 723, § 9/HB 337; Ga. L. 2018, p. 1, § 4/HB 661.

48-3-41. When executions issue.

The department may issue an execution for the collection of any tax, fee, license, penalty, interest, or collection costs due the state once a lien has arisen pursuant to Code Section 48-2-56.

History. Code 1981, § 48-3-41, enacted by Ga. L. 2017, p. 723, § 9/HB 337; Ga. L. 2018, p. 1, § 4/HB 661.

48-3-42. Filing; effective dates; electronic filings; continuing effectiveness.

(a) On or after January 1, 2018, the execution shall be effective as

provided by law when such execution is filed by the department with the appropriate superior court clerk.

(b) All executions or writs of fieri facias issued by the department filed or recorded on the general execution docket or lien docket of any county shall be invalid as of December 31, 2017. Any such execution or writs of fieri facias which the department does not show as satisfied, issued in error, or otherwise withdrawn and which was last recorded or rerecorded on the general execution docket within seven years before January 1, 2018, may be renewed for a period of ten years upon the department's filing a renewed state tax execution with the clerk of superior court between January 1, 2018, and February 20, 2018. For priority purposes, a filed renewed state tax execution shall retain its original date of filing. All renewed state tax execution documents shall reflect the original date of filing.

(c) On or after January 1, 2018, any execution and any related releases, cancellations, or other documents submitted by the department for filing with the clerk of superior court shall be submitted for filing electronically.

(d) An execution filed or renewed after January 1, 2018, pursuant to this Code section shall be a lien against and attach to all existing and after-acquired property of the delinquent taxpayer, both real and personal, tangible and intangible, with the same force and effect as any recorded judgment on the lien docket of the superior court clerk.

(e) An execution electronically transmitted to the authority pursuant to this Code section shall be deemed filed and perfected upon its receipt by the authority for transmission to the applicable clerk of superior court. The authority shall provide to the department confirmation of receipt of an execution. Absent evidence of such confirmation there shall be no presumption of filing. Executions filed shall have priority as provided by law.

(f) The lien of an execution filed pursuant to this Code section shall continue in effect until released or withdrawn by the department or until the execution has expired.

(g) The department shall file an execution within five years of the date of a final assessment. An execution filed or renewed after January 1, 2018, shall expire ten years from the date of filing and shall not be subject to renewal by nulla bona or otherwise. The periods of limitation set forth in this subsection shall be tolled and suspended for:

(1) The duration of an installment agreement between the taxpayer and the commissioner for any tax liabilities contained within an execution plus an additional 90 days;

(2) If a timely proceeding in court for the imposition or collection of a tax is commenced, the duration of the period until the liability for

the tax or a judgment against the taxpayer arising from such liability is satisfied or becomes unenforceable;

(3) The duration of any enforcement action to collect the liability contained within an execution initiated prior to the expiration of the period of limitations and released after such period of limitations;

(4) In a case under Title 11 of the United States Code, the running of the period of limitations provided in this Code section shall be suspended and tolled for the period during which the commissioner is prohibited from collecting any tax liability and six months thereafter; or

(5) The period during which a taxpayer's offer-in-compromise is under consideration by the commissioner.

(h) All executions filed by the department on or after February 20, 2018, shall only attach to real property in the county in which the execution has been filed. After February 20, 2018, no execution previously filed by the department shall be considered to have state-wide attachment to all real property within the state and shall only attach to real property in the county in which the execution has been filed.

History.
Code 1981, § 48-3-42, enacted by Ga. L. 2017, p. 723, § 9/HB 337; Ga. L. 2018, p. 1, § 4/HB 661.

Code Commission notes.
Pursuant to Code Section 28-9-5, in 2018, "February 20, 2018" was substituted for "the effective date of this Act" at the end of the second sentence in subsection (b) and near the beginning of the second sentence of subsection (h) and "February 20, 2018," was substituted for "the effective date of this Act" in the middle of the first sentence of subsection (h).

48-3-43. Availability of information via electronic means; public records; unlawful use of data; regulatory authority.

(a) The department shall maintain information on executions in its information management system in a form that permits information related to executions to be readily accessible in an electronic form via the internet and available to the public. The following shall be available within such system at no charge to the public:

(1) Search by delinquent taxpayer name, execution number, last four digits of the taxpayer's social security number, or, when applicable, federal employee identification number;

(2) Search by identification number assigned to the execution by the department;

(3) The basis for an execution, including, but not limited to, the amount of the taxes, penalties, interest, and fees owed, and the tax periods and relevant assessment dates of the taxes owed;

(4) The place, date, and time of the filing of the execution;

(5) The status of the execution as defined in subsection (b) of this Code section;

(6) The present balance of the execution;

(7) Provision of official electronic copies of an execution; and

(8) Notwithstanding Code Sections 48-2-15 and 48-7-60, provision and issuance of official payoff information as to any execution.

(b) An execution shall hold one of the following official statuses on the department information system and such status shall be available, except as provided below, and on the electronic printable forms of state tax executions:

(1) Active — The execution is perfected and enforceable;

(2) Withdrawn — The execution was issued in error and is not enforceable. Within two business days from the date the department discovers an error in the filing of an execution, it shall change the status of the execution to withdrawn. Such execution shall be treated as though it was never filed;

(3) Released — The execution has been released and is no longer enforceable. Within 15 business days from the department's receipt of payment in full of an execution, the department shall change the status of the execution to released. The department may release an unpaid execution that the department determines is not legally or practically collectable;

(4) Refiled — If an execution is released in error, the department may file a new execution for any outstanding, finally determined tax liability to bear an active status as of the date of the new recording; and

(5) Expired — The execution has expired pursuant to Code Section 48-3-42 and is unenforceable.

(c) The department shall provide to the authority such electronic linking data elements as may be required by the authority to link filed executions found in the authority's state-wide uniform automated information system for real and personal property records to the matching data related to the execution in the department's information management system.

(d) The department's information management system as provided for in this Code section shall constitute a public record and the department shall redact information in accordance with Code Section 9-11-7.1.

(e) The department's information management system as provided

for in this Code section shall not be used for survey, marketing, or solicitation purposes. Survey, marketing, or solicitation purposes shall not include any action by the department or its authorized agents to collect a debt on an execution. The Attorney General is hereby authorized to bring an action at law or in equity to address the unlawful use of such information for a survey, marketing, or solicitation purpose and to recover the costs of such action, including reasonable attorney's fees.

(f) The commissioner may adopt reasonable rules and regulations providing for the maintenance, reliability, accessibility, and use of the department's information management system. Such rules and regulations may address, among other matters, the authenticity of the electronic printable executions and issues related to periods during which the information system may be unavailable for use due to routine maintenance or other activities.

History.

Code 1981, § 48-3-43, enacted by Ga. L. 2017, p. 723, § 9/HB 337; Ga. L. 2018, p. 1, § 4/HB 661; Ga. L. 2024, p. 1052, § 5(4)/SB 448, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, revised capitalization in the first sentence in subsection (a).

Cross references.

Revision of automated information system for state tax execution data, § 15-6-97.3.

48-3-44. "Released" executions.

An execution bearing a "Released" status on the department's information management system shall constitute a complete release of the execution by the department and the department shall also timely file the release of the lien in the office of the clerk of superior court where the execution was filed as required by Code Section 48-3-28.

History.

Code 1981, § 48-3-44, enacted by Ga. L. 2017, p. 723, § 9/HB 337; Ga. L. 2018, p. 1, § 4/HB 661.

CHAPTER 4

TAX SALES

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JUDICIAL DECISIONS

Sale under execution in personam against one not true owner is void. — As a general rule, property may not be sold under a tax execution issued in personam against one who has neither title nor possession, and no right to represent the owner; such a sale is void as to the true owner, and does not operate to divest the owner's title. Martin v. Clark, 190 Ga. 270, 9 S.E.2d 54, 1940 Ga. LEXIS 435 (1940).

Effect of void execution sale. — When a municipal assessment execution sale is void, the purchaser obtains no title as against the true owner. Williams v. Aycock, 52 Ga. App. 386, 183 S.E. 628, 1936 Ga. App. LEXIS 645 (1936), cert. dismissed, 183 Ga. 800, 189 S.E. 841, 1937 Ga. LEXIS 408 (1937).

Owner of property which is subject to void sale has right to maintain action for trespass. — One whose property is sold at a marshal's sale, which is void because based on an excessive levy, holds the legal title to the premises, and can maintain an action for trespass against one committing a trespass against one's title and right to possession. Williams v. Aycock, 52 Ga. App. 386, 183 S.E. 628, 1936 Ga. App. LEXIS 645 (1936),

cert. dismissed, 183 Ga. 800, 189 S.E. 841, 1937 Ga. LEXIS 408 (1937).

Execution in personam against decedent long after death does not divest true owner of title. — When tax execution under which one claims title is not in rem against specific property, but is in personam against deceased former owner, to enforce collection of taxes assessed long after death, the sale does not divest the title of the true owners. Martin v. Clark, 190 Ga. 270, 9 S.E.2d 54, 1940 Ga. LEXIS 435 (1940).

Land may be advertised in names of heirs even if returned in name of decedent's executor. — When land is returned for taxes in the individual name of the person who is the executor, and the executions were issued against the person as an individual, when the returns are in fact made by such person as the agent of the heirs and devisees of the decedent who owned the land, it is not illegal for the property to be advertised for sale as belonging to the heirs of the decedent, and for the deed so to recite. Quarterman v. Perry, 190 Ga. 275, 9 S.E.2d 61, 1940 Ga. LEXIS 438 (1940).

Levy on transferee void if original owner's remaining property sufficient to satisfy execution. — If one purchases about two-thirds of certain land, subject to paving assessment, and execution is levied on the entire lot, including the purchaser's property, the levy being grossly excessive, since the property remaining in the original owner was more than sufficient to satisfy the execution, the marshal's sale of premises so levied on is void and passes no title to the purchaser. Williams v. Aycock, 52 Ga. App. 386, 183 S.E. 628, 1936 Ga. App. LEXIS 645 (1936), cert. dismissed, 183 Ga. 800, 189 S.E. 841, 1937 Ga. LEXIS 408 (1937).

High bidder not entitled to mandamus to compel execution of deed if bid not accepted. — Party who makes a bid at a marshal's sale of property advertised for sale under a tax fieri facias is not entitled to mandamus to compel the execution of a deed to the plaintiff, when it does not appear that the bid was accepted, even though there was no higher bid made at the sale as a bid is a mere offer until accepted, and until the property is knocked down to the bidder there is no completed contract. Elder v. Bonded Mtg. Corp., 180 Ga. 607, 180 S.E. 134, 1935 Ga. LEXIS 502 (1935).

RESEARCH REFERENCES

ALR.

Tax title as affected by fact that tax had been paid before sale, 26 A.L.R. 622.

Tax deed and recitals therein as evidence of regularity of tax proceedings as to advertising and notice of sale, and as to time, manner, and place of sale, 30 A.L.R. 8; 88 A.L.R. 264.

Holder of invalid tax title as within occupying claimant's act, 44 A.L.R. 479.

Assessment for local improvements as taxes within statute providing for payment of taxes out of proceeds of judicial sale, 73 A.L.R. 1227.

Quantum of estate acquired by purchaser at tax sale of property which is subject to successive estates or different interests, 75 A.L.R. 416.

Right of holder of tax title or certificate of sale to reimbursement by taxing authorities where sale proves invalid, 77 A.L.R. 824; 116 A.L.R. 1408.

Sale of property at tax sale for more or less than the amount of taxes, penalties, and costs as affecting its validity, 97 A.L.R. 842; 147 A.L.R. 1141.

Rights and remedies of purchaser at tax sale as affected by delay in payment of bid, 104 A.L.R. 823.

Statutory enactment or repeal subsequent to tax sale or issuance of tax certificates as affecting rights of holders of tax certificates or purchasers at tax sale, 111 A.L.R. 237.

What informalities, irregularities, or defects in respect to the execution of a tax deed prevent the running of the statute of limitations or period of adverse possession, 113 A.L.R. 1343.

Right of holder of tax title or certificate of sale to reimbursement by taxing authorities where tax sale proves invalid, 116 A.L.R. 1408.

Effect of failure to make report, return,

or record of tax sale within time prescribed by statute, 117 A.L.R. 726.

Right of holder of bond or other instrument representing or based upon assessment for benefits or improvement, to purchase at tax sale, or acquire tax title and hold same in his own right as against owner of land, 123 A.L.R. 398.

Constitutionality, construction, and application of statute giving former owner right to purchase tax-acquired property while in public ownership, 126 A.L.R. 649.

Measure of recovery for improvements made by purchaser of invalid tax title, 129 A.L.R. 1354.

Lien for tax imposed by one taxing unit as affected by lien or sale for tax imposed by another taxing unit of same state, 135 A.L.R. 1464.

Right of mortgagee or other lienor to acquire and hold tax title in his own right as against persons owning other interests in or liens upon property, 140 A.L.R. 294.

Personal liability of tax official or his bond to purchaser at tax sale, 149 A.L.R. 220.

Discretion of court to refuse confirmation of, or to set aside, tax sale, where all proceedings are in compliance with statutory requirements, 152 A.L.R. 887.

Acquisition by state or other governmental body of title to land, otherwise than at tax sale, as affecting prior tax lien on land, or validity of sale for such taxes, 158 A.L.R. 563.

Respective rights and estates of persons claiming real property through sales from different agencies to enforce taxes or assessments, as between which there is parity of lien, 167 A.L.R. 1001.

Easement or servitude or restrictive covenant as affected by sale for taxes, 168 A.L.R. 529.

Who are entitled to notice, or are necessary parties, in order to perfect tax title, 169 A.L.R. 686.

Statutory limitation of period for attack on tax deed as affected by failure to comply with statutory requirement as to notice before tax deed, 5 A.L.R.2d 1021.

Tax sale as freeing property from possibility of further assessments for benefits to land, 11 A.L.R.2d 1133.

Effect of misnomer of landowner or delinquent taxpayer in notice, advertisement, etc., of tax foreclosure or sale, 43 A.L.R.2d 967.

Validity of notice of tax sale or of tax sale proceeding which fails to state tax year or kind or type of taxes covered by tax assessments, 43 A.L.R.2d 988.

Tax sales or forfeitures by or to governmental units as interrupting adverse possession, 50 A.L.R.2d 600.

Property owner's liability for unpaid taxes following acquisition of property by another at tax sale, 100 A.L.R.3d 593.

Right of interested party receiving due notice of tax sale or of right to redeem to assert failure or insufficiency of notice to other interested party, 45 A.L.R.4th 447.

Doctrine of marshaling assets or sale in inverse order of alienation as applicable to tax sale, 131 A.L.R.4th 79.

Easement, servitude, or covenant as affected by sale for taxes, 7 A.L.R.5th 187.

ARTICLE 1

SALES UNDER TAX EXECUTIONS

48-4-1. Procedures for sales under tax levies and executions.

(a)(1) Except as otherwise provided in this title, when a levy is made upon real or personal property, the property shall be advertised and sold in the same manner as provided for executions and judicial sales. Except as otherwise provided in this title, the sale of real or personal property under a tax execution shall be made in the same manner as provided for judicial sales; provided, however, that, in addition to such other notice as may be required by law, in any sale under a tax execution made pursuant to this chapter, the defendant shall be

given ten days' written notice of such sale by registered or certified mail or statutory overnight delivery, return receipt requested. The notice required by this Code section shall be sent:

(A) In cases of executions issued by a county officer for ad valorem taxes, to the defendant's last known address as listed in the records of the tax commissioner of the county that issued the tax execution;

(B) In cases of executions issued by a municipal officer for ad valorem taxes, to the defendant's last known address as listed in the records of the municipal officer of the municipality that issued the tax execution; or

(C) In cases of executions issued by a state officer, to the defendant's last known address as listed in the records of the department headed by the issuing officer.

(2) A copy of the notice provided for in paragraph (1) of this subsection shall also be sent by the same tax officer sending the notice to the defendant to the appropriate tax official of the state, county, or municipality which also has issued an execution with respect to such property.

(3) A sale for taxes due may be conducted by the tax commissioner or tax collector or his or her duly authorized officer and may be held in the office of the tax commissioner or tax collector or at such other location as may be identified in the notice required by this Code section. Such notice shall also be posted in a conspicuous location in the appropriate courthouse.

(b) If two or more executions have been levied against a defendant, or if two or more in rem executions have been levied against the same unreturned property, such executions may be aggregated and a single sale may be conducted for the total amount due as in the case of a single execution, and the 12 month period of redemption provided by Code Section 48-4-40 shall commence as to all such executions on the date of such sale, provided that at least one of the executions meets the provisions of this Code section.

(c) In advertisements for sales under tax executions, the property being sold may alternatively be described by tax parcel identification number and current street address, if any, together with a reference to the recording information for any deed conveying title to such property, without the necessity of using a full and complete description of the property.

History.

Orig. Code 1863, §§ 811, 813; Code 1868, §§ 891, 893; Code 1873, §§ 888, 890; Ga. L. 1876, p. 30, § 1; Code 1882, §§ 888, 890; Civil Code 1895, §§ 905, 907; Civil Code 1910, §§ 1165, 1167; Code

1933, §§ 92-8101, 92-8102; Code 1933, § 91A-401, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1983, p. 884, § 3-34; Ga. L. 1985, p. 1243, § 4; Ga. L. 1988, p. 1957, § 1; Ga. L. 1990, p. 1875, § 2; Ga. L. 2000, p. 1408, § 2; Ga. L. 2000, p. 1589, § 3; Ga. L. 2002, p. 1481, § 2; Ga. L. 2006, p. 770, § 4/SB 585; Ga. L. 2019, p. 271, § 1/SB 216; Ga. L. 2020, p. 493, § 48/SB 429; Ga. L. 2024, p. 1052, § 5(5)/SB 448, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, in the second sentence in paragraph (a)(1), revised punctuation and added ", return receipt requested" at the end.

Cross references.

Judicial sales generally, § 9-13-140 et seq.

Editor's notes.

Ga. L. 2006, p. 770, § 8/SB 585, not codified by the General Assembly, provides: "The provisions of this Act shall apply to all executions transferred on or after July 1, 2006. Executions transferred prior to July 1, 2006, shall not be affected by this Act."

Law reviews.

For annual survey of real property law, see 68 Mercer L. Rev. 231 (2016).

JUDICIAL DECISIONS

Sales to which section applicable. — Statute applies as well to sales made under execution issued by the comptroller general (now commissioner) as to sales made under execution issued by the tax collector of any county. Bedgood & Royal v. McLain, 89 Ga. 793, 15 S.E. 670, 1892 Ga. LEXIS 458 (1892).

Statute does not apply to sales by the marshal of a town or city. Ansley v. Wilson, 50 Ga. 418, 1873 Ga. LEXIS 281 (1873).

Sales under executions for municipal taxes must strictly comply with requirements. — Prior to the adoption of the Code, the utmost particularity was required in respect to sales under executions for taxes, and the law had to be complied with in every respect. Such still is the case as to sales under executions for municipal taxes. Byars v. Curry, 75 Ga. 515, 1885 Ga. LEXIS 171 (1885).

Standing to attack tax sale. — Holder of title to property who had been given notice of the tax sale and the opportunity to pay the tax and avoid the tax sale could not attack the sale on the ground of lack of notice to another party. GE Capital Mtg. Servs. Inc. v. Clack, 271 Ga. 82, 515 S.E.2d 619.

Sales of realty under tax fieri facias and judgment may not be combined. — Real estate when sold under a tax fieri facias being redeemable, and when sold under a judgment being irredeemable, there is such incompatibility in these incidents that they cannot combine and both follow from a single sale made by one and the same act, though sufficient authority for making a sale of either class be in the officer's hands. Clower v. Fleming, 81 Ga. 247, 7 S.E. 278, 1888 Ga. LEXIS 101 (1888).

Effect of combined sale of real estate under fieri facias and judgment. — Sale made under such circumstances will not be void, but will assume the characteristics of a tax sale. Clower v. Fleming, 81 Ga. 247, 7 S.E. 278, 1888 Ga. LEXIS 101 (1888).

Officer conducting judicial sale must keep sale open until competent bid is received or until the officer is satisfied that such a bid will not be offered. Upon failure of the purchaser to comply with a high bid, the sheriff does not have the authority to convey the property to the next highest bidder, but may resell the property within legal hours on the same day without readvertisement. Wachovia Mtg. Co. v. DeKalb County, 241 Ga. 416, 246 S.E.2d 183, 1978 Ga. LEXIS 1003 (1978).

Property sold under tax execution should be knocked off to highest bidder; on failure of the highest bidder to comply with the bid, the sheriff has no authority to convey the property to the next highest bidder. Citizens Bank v.

Lamar County, 187 Ga. 123, 200 S.E. 257, 1938 Ga. LEXIS 775 (1938).

Effect of "waiver" by highest bidder in favor of next highest bidder. — When land levied on as property of a named person, under tax execution against such person, was offered for sale by the sheriff on the regular sales day and the county was outbid by the bank and it was knocked off to the bank, and when the bank did not on the day of the sale pay the purchase price or receive a deed, but sometime thereafter "waived" the bank's bid in favor of the county in order that the sheriff might make a deed to the county upon the county's bid, which action was also assented to by the defendant in the fieri facias, the transaction did not constitute a judicial sale of the land to the county, and a deed conveying land to the county was void as against the holder of an outstanding security deed executed by the defendant in fieri facias before accrual of taxes. Citizens Bank v. Lamar County, 187 Ga. 123, 200 S.E. 257, 1938 Ga. LEXIS 775 (1938).

When sale deemed complete for purposes of measuring period of redemption. — For purposes of determining the right to redeem land which has been sold at a tax sale, the sale is not to be considered complete until payment of purchase money by bidder. Zugar v. Scarbrough, 186 Ga. 310, 197 S.E. 854, 1938 Ga. LEXIS 613 (1938).

When the purchaser at a tax sale was represented at the sale by the county tax collector who, instead of paying the amount of the bid to the sheriff, merely paid the sheriff's costs and the advertising fee and, in an adjustment of the collector's account as a tax collector, settled with the county commissioners by deducting the taxes from credits to which the sheriff was entitled, there was no such payment of the purchase money as to cause the period of redemption to commence. Zugar v. Scarbrough, 186 Ga. 310, 197 S.E. 854, 1938 Ga. LEXIS 613 (1938).

Right of redemption following bankruptcy. — LLC that purchased a debtor's home at a tax sale held pursuant to O.C.G.A. § 48-4-1 was entitled to an order lifting the stay that was imposed when the debtor declared Chapter 13 bankruptcy so the LLC could foreclose the deed the LLC received; although the debtor had the right under O.C.G.A. § 48-4-40 to redeem title to the home at the time the debtor declared bankruptcy because the time for doing so had not expired under state law, the debtor lost that right when the debtor failed to pay the LLC the amount it spent to purchase the tax deed, and the debtor's attempt to pay that amount in increments through the debtor's plan failed because the home was not property of the debtor's bankruptcy estate under 11 U.S.C. § 541. Harvest Assets, LLC v. Edwards (In re Edwards), No. 14-51366-CRM, 2014 Bankr. LEXIS 5432 (Bankr. N.D. Ga. Nov. 13, 2014).

Tax sale of property proper. — Trial court properly granted summary judgment to the purchaser of real estate in a quiet title action that involved the taxpayer's home and the taxpayer's failure to pay the property taxes on the property as the property was properly levied upon and no question of fact remained that the sheriff officially seized the property. Further, the affidavits of the civil process coordinator at the time of the tax sale, and the coordinator's successor, were properly admitted into evidence as such affidavits fell within the business records exception to the rule against hearsay. Davis v. Harpagon Co., LLC, 283 Ga. 539, 661 S.E.2d 545, 2008 Ga. LEXIS 423 (2008).

In a purchaser's quiet title action against the executor of a testatrix's estate, the trial court did not err in adopting the report of a special master and in decreeing that fee simple title to the land was vested in the purchaser because the purchaser acquired title to the property by virtue of a tax sale and deed, which was conducted in accordance with O.C.G.A. § 48-4-1 et seq.; a title search showed the testatrix's nephew as holding record title to the property, but out of caution, both the nephew and the executor were served with notice of the tax sale, the tax commissioner met with the executor prior to the sale and offered to accept payment for the back taxes, but the executor failed to do so, and the property was sold to the purchaser, with the overage going to the

nephew, and the executor did not timely seek to exercise a right of redemption under O.C.G.A. § 48-4-40. Mann v. Blalock, 286 Ga. 541, 690 S.E.2d 375, 2010 Ga. LEXIS 145 (2010).

Trial court did not err in granting summary judgment to the county as the nuisance abatement statute did not preclude the county from using a nonjudicial tax foreclosure sale, instead of a judicial in rem tax foreclosure sale, to sell the property because: both methods were available for collecting real property ad valorem taxes; judicial in rem tax foreclosure procedures were an alternative to nonjudicial tax foreclosure procedures, rather than a replacement for them; and the nuisance abatement statute did not require the county to use a judicial in rem tax foreclosure sale when collecting on a nuisance abatement lien. Derby Props., LLC v. Watson, 346 Ga. App. 631, 816 S.E.2d 766, 2018 Ga. App. LEXIS 422 (2018).

Effect of tax sale under an execution issued against one other than property owner. — When an owner fails to return land, there is no provision of law whereby the owner's title can be divested by levy and sale of the property as property of another person under a tax execution issued against such other person. Nelson v. Brown, 174 Ga. 150, 162 S.E. 276, 1932 Ga. LEXIS 11 (1932).

As a general rule, no property can be sold under a tax execution in personam as the property of the defendant therein, if the defendant has neither title nor possession, nor any right to represent the person who has the property; and a sale under these circumstances would be void as to the true owner. James v. Riley, 181 Ga. 454, 182 S.E. 604, 1935 Ga. LEXIS 120 (1935).

Entitlement to excess funds after tax sale. — Trial court erred by granting summary judgment to the property owner because the trial court erred by holding that the security deed holder lost the holder's right to excess funds that arose from the tax sale as the relevant date under O.C.G.A. § 44-14-80 when considering who was entitled to the excess funds from the tax sale was the tax sale date, not the fund distribution date. Worthwhile Investments, LLC v. Higgins, 337 Ga. App. 183, 787 S.E.2d 245, 2016 Ga. App. LEXIS 247 (2016), cert. denied, No. S16C1663, 2017 Ga. LEXIS 507 (Ga. June 5, 2017).

Tax commissioner immune to action for damages for failure to give notice. — Property owner's claim for damages based on a county tax commissioner's failure to properly send notices required by O.C.G.A. §§ 9-13-13, 48-3-3, 48-3-9(a), and 48-4-1 was barred by sovereign immunity; O.C.G.A. §§ 15-13-2 and 48-5-137 did not render the tax commissioner liable as an ex-officio sheriff because the notices did not constitute a "false return" or legal neglect to make a "proper return". Raw Properties, Inc. v. Lawson, 335 Ga. App. 802, 783 S.E.2d 161, 2016 Ga. App. LEXIS 87 (2016), cert. denied, No. S16C1076, 2016 Ga. LEXIS 556 (Ga. Sept. 6, 2016).

RESEARCH REFERENCES

Am. Jur. 2d.

30 Am. Jur. 2d, Executions, § 255 et seq. 72 Am. Jur. 2d, State and Local Taxation, § 807.

C.J.S.

85 C.J.S., Taxation, § 1221 et seq.

ALR.

Doctrine of marshaling assets or sale in inverse order of alienation as applicable to tax sale, 88 A.L.R. 1216; 131 A.L.R.4th 79.

Construction, application, and effect of statutory provision requiring seizure and possession of property before sale for delinquent taxes, 105 A.L.R. 635.

Right of officer conducting sale under execution or distress warrant to refuse to accept best bid because inadequate, 110 A.L.R. 1077.

What amounts to a sale at retail within tax statutes or ordinances, 139 A.L.R. 372.

Necessity of consent of court to tax sale of property in custody of court or of receiver or trustee appointed by it, 3 A.L.R.2d 893.

Property owner's liability for unpaid taxes following acquisition of property by another at tax sale, 100 A.L.R.3d 593.

Right of interested party receiving due

notice of tax sale or of right to redeem to assert failure or insufficiency of notice to other interested party, 45 A.L.R.4th 447.

48-4-2. Assessment and disposition of unreturned property.

When property which has not actually been returned by anyone is assessed for taxes, the tax collector or tax commissioner shall issue an execution against the property as soon as it is assessed for the amount due and costs. The sheriff shall advertise the property for sale in the newspaper in which sheriff's sales are advertised once a week for four weeks before the day of sale. If the taxes are not paid by the day of the sale, the property shall be sold, but only if renting or hiring the property will not bring the requisite amount. Surplus from a sale after the payment of the taxes and costs shall be paid over to the county governing authority as a part of the educational fund, together with a statement of the property and account of sales, subject to the claim of the true owner within four years.

History.

Orig. Code 1863, § 819; Code 1868, § 899; Code 1873, § 897; Code 1882, § 897; Civil Code 1895, § 908; Civil Code 1910, § 1168; Code 1933, § 92-8103; Code 1933, § 91A-402, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1984, p. 660, § 1.

Law reviews.

For comment on Bell v. Summerlin, 188 Ga. 648, 4 S.E.2d 831 (1939), see 2 Ga. B. J. 54 (1940).

For annual survey on real property, see 69 Mercer L. Rev. 251 (2017).

JUDICIAL DECISIONS

When section inapplicable. — Statute is, by the statute's express terms, inapplicable to tax sales by a sheriff when the property is returned for taxes by the defendant in execution, and when the fieri facias is not against the specific property levied upon, but against the whole property of the defendant named therein. Lumpkin v. Cureton, 119 Ga. 64, 45 S.E. 729, 1903 Ga. LEXIS 30 (1903).

What execution must show. — When the tax collector seeks to sell land which is unreturned, the execution should not only show that the land has been assessed for taxes, has been unreturned, but that the owner is unknown; for, in order to authorize the issuance of an execution for the collection of taxes in rem, it is necessary to show that the owner thereof is unknown. Leonard v. Pilkinton, 99 Ga. 738, 27 S.E. 753, 1896 Ga. LEXIS 509 (1896).

Effect of misdescription as to state of improvement of land. — As the tax collector, whether unreturned land be wild or improved, has power to issue execution against the land for taxes, it would seem that a sale is not void because of a misdescription of the land as wild when in fact the land was improved. Gardner v. Donaldson, 80 Ga. 71, 7 S.E. 163 (1887).

No authority to issue execution in rem when owner in possession. — Tax collector has no authority of law to issue a tax execution against land in rem if its owner is in possession thereof at the time when it becomes the officer's duty to make a return for the owner. Norris v. Coley, 100 Ga. 547, 28 S.E. 222, 1897 Ga. LEXIS 97 (1897).

Effect of tax deed obtained under in rem proceedings. — If tax deeds represent in rem assessments, levies, and sales, a purchaser under such deed or deeds acquires a good title as against the whole world. Pannell v. Continental Can

Co., 554 F.2d 216, 1977 U.S. App. LEXIS 12848 (5th Cir. 1977).

When execution against life tenant deemed in rem. — Purchaser at a sale under a tax execution in personam against a life tenant acquires only the life estate but when (a) the life tenant is in possession, (b) the whole property is levied upon, and (c) execution embraces only the taxes upon the specific property, the purchaser acquires title to the fee, and the whole property, including the remainder estate, as well as the life estate, passes. Pannell v. Continental Can Co., 554 F.2d 216, 1977 U.S. App. LEXIS 12848 (5th Cir. 1977).

Misapplication of surplus. — It may be that the persons having charge of the disbursement of the educational fund might maintain an action against the ordinary (now county governing authority) for a misapplication of the surplus, if not barred. Summers v. Christian, 72 Ga. 193, 1883 Ga. LEXIS 63 (1883).

OPINIONS OF THE ATTORNEY GENERAL

Tax executions in rem are issuable only if property is unreturned and owner is unknown. 1972 Op. Att'y Gen. No. U72-80.

RESEARCH REFERENCES

C.J.S.

85 C.J.S., Taxation, § 1221 et seq.

ALR.

Failure of advertisement in judicial proceeding for sale of land for delinquent taxes or foreclosure of tax lien, to describe lands affected, as contrary to due process of law or other constitutional objection, 107 A.L.R. 285.

Sale of property at tax sale for more or less than the amount of taxes, penalties, and costs, as affecting its validity, 147 A.L.R. 1141.

Constitutionality of statutes authorizing tax sale or resale for less than the amount of the taxes due, 155 A.L.R. 1177.

What constitutes "execution" of tax deed beginning or ending period for redemption from tax sale, 166 A.L.R. 853.

48-4-3. Duties of levying officers.

The tax collector or tax commissioner may place his executions in the hands of any constable of the county, who shall be authorized to collect or levy the executions in any part of the county. The constable or other levying officer to whom the tax collector or tax commissioner delivers the tax executions for collection shall proceed promptly to enforce by levy and sale the collection of the executions. The levying or collecting officer shall make prompt settlements with the tax collector or tax commissioner and in no event shall be allowed longer than 90 days from the time the executions are placed in his hands within which to make final settlement with the tax collector or tax commissioner and return to the tax collector or tax commissioner the tax collected and the uncollected executions with proper entries on the executions. Any constable or other levying officer who fails or refuses to make a final return or settlement within the time provided in this Code section shall forfeit all costs due him on the executions and shall be subject to be ruled before any court of competent jurisdiction and made to account as required by this Code section.

History.
Orig. Code 1863, § 812; Code 1868, § 892; Code 1873, § 889; Code 1882, § 889; Civil Code 1895, § 906; Ga. L. 1899, p. 26, § 1; Civil Code 1910, § 1166; Code 1933, § 92-8104; Code 1933, § 91A-403, enacted by Ga. L. 1978, p. 309, § 2.
Editor's notes.
For application of this statute in 2020 and 2021, see Executive Orders 10.30.20.02, 11.13.20.01, 11.30.20.02, 12.08.20.01, 12.30.20.02, 01.15.21.01, 01.29.21.02, 02.15.21.01, 02.26.21.02, 03.12.21.01, 03.31.21.03, 04.30.21.01, and 05.28.21.02.

JUDICIAL DECISIONS

Marshal of the municipal court of Columbus has authority to conduct tax sales. Percy Wilson Mtg. & Fin. Corp. v. Sizemore, 167 Ga. App. 211, 305 S.E.2d 903, 1983 Ga. App. LEXIS 2471 (1983).

Constable not treated as officer of a particular court or district. — Constable is not treated as the officer of a particular justice's court or limited to making a levy within the constable's district, but the tax collector may place the fieri facias in the hands of any one constable of the county, who shall be authorized to collect or levy the same in any part of the county. Winn v. Butts, 127 Ga. 385, 56 S.E. 406, 1907 Ga. LEXIS 274 (1907).

Order in which parcels of realty levied on. — Before levy upon property in a house and lot, indivisible, and of great value, to pay city taxes, the marshal of the city should exhaust smaller and less valuable parcels assessed by the city at more than enough to pay double the tax fieri facias levied. But if the sale be postponed at the instance of, and assented to by, the defendant in fieri facias the defendant cannot attack the levy as excessive. Jones v. Johnson, 60 Ga. 260, 1878 Ga. LEXIS 433 (1878).

RESEARCH REFERENCES

Am. Jur. 2d.
72 Am. Jur. 2d, State and Local Taxation, §§ 620, 621, 769 et seq.
ALR.
Payment of tax or redemption from tax sale by public officer for benefit of owner, 66 A.L.R. 1035.
Provisions of tax statute as to time for performance of acts by boards or officers as mandatory or directory, 151 A.L.R. 248.

48-4-4. Purchase by one obligated to pay.

One who is obligated to pay a tax on property cannot strengthen his title by purchasing the property at a tax sale. Each such purchase shall be treated as payment for the tax due.

History.
Civil Code 1895, § 904; Civil Code 1910, § 1164; Code 1933, § 92-8105; Code 1933, § 91A-404, enacted by Ga. L. 1978, p. 309, § 2.
History of Section.
This Code section is derived from the decision in Burns v. Lewis, 86 Ga. 591, 13 S.E. 123 (1891).

JUDICIAL DECISIONS

Effect of purchase or redemption by person liable for taxes. — One who is bound to pay the tax on property cannot strengthen one's title by purchasing at a tax sale; such purchase shall be treated as payment of the tax due. The same rule applies when, after a sale for taxes, the property is redeemed by the person liable

therefor. Holliday v. Guill, 196 Ga. 723, 27 S.E.2d 398, 1943 Ga. LEXIS 412 (1943).

Purchase by heir at law deemed purchase by one obligated for tax. — As between the plaintiff in execution and the administrator, it is the duty of the administrator to pay the taxes during the course of administration; but the title to the realty having vested in the heirs at law subject only to administration for the payment of debts and distribution, such duty as to payment of taxes extends, at least morally or equitably, to the heirs at law, since the administrator is a mere trustee holding the land for their benefit. Therefore, the claimant, as an heir at law, cannot strengthen the claimant's title against the plaintiff in execution by purchasing the property at a tax sale; nor can the claimant do so indirectly by purchasing from another who had purchased at such a sale. This is true even though the claimant purchases from the other person after the period of redemption has expired. Veal v. Veal, 192 Ga. 503, 15 S.E.2d 725, 1941 Ga. LEXIS 516 (1941).

Statute inapplicable when taxpayer purchases from sale purchaser or transferee. — Statute inapplicable when the purchaser at the tax sale conveys the property to another, although the latter buys the property for the use of the taxpayer, to whom the purchaser agrees to convey it upon the payment to the purchaser by the taxpayer of the amount which the purchaser is out upon the purchase, when such amount has not been paid. Miller v. Jennings, 168 Ga. 101, 147 S.E. 32, 1929 Ga. LEXIS 78 (1929).

Effect of conspiracy intended to defeat outstanding security interest. — When one other than the owner of realty sold for taxes holds an option to acquire from the purchaser at a tax sale the tax title thereto for the benefit of the owner, as per a conspiracy to defeat an outstanding security deed, after the legal period for redemption from such tax sale has expired, the holder of the outstanding security deed to such realty, who by grace of the holder of the tax title is accorded the privilege of redeeming the realty from the tax sale, is entitled to relief in a court of equity. Horton v. Johnson, 192 Ga. 338, 15 S.E.2d 605, 1941 Ga. LEXIS 488 (1941).

RESEARCH REFERENCES

Am. Jur. 2d.

72 Am. Jur. 2d, State and Local Taxation, § 842.

C.J.S.

33 C.J.S., Executions, §§ 346, 347. 85 C.J.S., Taxation, § 1293.

ALR.

Right of delinquent taxpayer or other person having an original interest in the property to purchase at, or acquire and hold, as against taxing unit, title derived from or through, tax sale, 136 A.L.R. 1145.

48-4-5. Payment of excess.

(a) If there are any excess funds after paying taxes, costs, and all expenses of a sale made by the tax commissioner, tax collector, or sheriff, or other officer holding excess funds, the officer selling the property shall give written notice of such excess funds to the record owner of the property at the time of the tax sale and to the record owner of each security deed affecting the property and to all other parties having any recorded equity interest or claim in such property at the time of the tax sale. Such notice shall be sent by first-class mail within 30 days after the tax sale. The notice shall contain a description of the land sold, the date sold, the name and address of the tax sale purchaser, the total sale price, and the amount of excess funds collected and held

by the tax commissioner, tax collector, sheriff, or other officer. The notice shall state that the excess funds are available for distribution to the owner or owners as their interests appear in the order of priority in which their interests exist.

(b) The tax commissioner, tax collector, sheriff, or other officer may file, when deemed necessary, an interpleader action in superior court for the payment of the amount of such excess funds. Such excess funds shall be distributed by the superior court to the intended parties, including the owner, as their interests appear and in the order of priority in which their interests exist. The cost of litigation of such an interpleader action, including reasonable attorney's fees, shall be paid from the excess funds upon order of the court.

(c) After five years have elapsed from the tax sale date, the tax commissioner, tax collector, sheriff, or other officer holding excess funds shall pay over to the department any excess unclaimed funds and for which no action or proceeding is pending in a claim for payment. Once excess funds are placed in the possession of the department, only a court order from an interpleader action filed in the county where the tax sale occurred, by the claimant for the funds, shall serve as justification for release of the funds.

History.

Orig. Code 1863, § 814; Code 1868, § 894; Code 1873, § 892; Code 1882, § 892; Civil Code 1895, § 912; Civil Code 1910, § 1175; Code 1933, § 92-8106; Code 1933, § 91A-405, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2002, p. 1481, § 3; Ga. L. 2006, p. 770, § 5/SB 585; Ga. L. 2010, p. 878, § 48/HB 1387.

Editor's notes.

Ga. L. 2006, p. 770, § 8/SB 585, not codified by the General Assembly, provides: "The provisions of this Act shall apply to all executions transferred on or after July 1, 2006. Executions transferred prior to July 1, 2006, shall not be affected by this Act."

Law reviews.

For annual survey on real property, see 65 Mercer L. Rev. 233 (2013).

JUDICIAL DECISIONS

Standing. — Bank did not lack standing to participate in the interpleader action and to move for contempt against the redeeming creditor because the bank, as the grantee of the security deed, had an ownership interest in the property. J. Michael Vince, LLC v. SunTrust Bank, 352 Ga. App. 791, 835 S.E.2d 809, 2019 Ga. App. LEXIS 627 (2019).

Responsibility of holding excess funds in the levying officer. — Language of O.C.G.A. § 48-4-5 directing that excess funds be paid over to the "person authorized to receive the excess" should be consistently construed. Thus, regardless of who owns the tax execution, the sheriff holds excess tax sale funds as the fiduciary of the record property owner and is not authorized to release such funds to the transferee of the tax execution. Alexander Inv. Group, Inc. v. Jarvis, 263 Ga. 489, 435 S.E.2d 609, 1993 Ga. LEXIS 718 (1993).

As against the lienee, the lienor has no right to the excess from a sale of the encumbered property under tax fieri facias, even were the security returned for taxation and assessed in the name of the lienor, since under this statute the excess from any tax sale is to be paid to the

person authorized to receive the excess. Particularly is this true if the lienor has contracted to keep the taxes on the property paid; the fact that the property was improperly returned for taxation in the name of the husband of the lienor and the tax assessed against the property in his name would not render the husband the person authorized to receive such excess from the tax sale. Simmons v. May, 53 Ga. App. 454, 186 S.E. 441, 1936 Ga. App. LEXIS 275 (1936).

Effect of nonpayment of excess on right of redemption. — Fact that "excess" was never paid to the sheriff or settled in any manner furnishes an additional reason why the tax sale was not complete, relative to the owner's right to redeem. Zugar v. Scarbrough, 186 Ga. 310, 197 S.E. 854, 1938 Ga. LEXIS 613 (1938).

Accrual of interest on surplus. — When a sheriff sells land as the property of an unrepresented estate for taxes and, after payment of the taxes and cost, a surplus remains in the sheriff's hands, the sheriff's term of office expires and the sheriff thereafter dies, and a number of years ensue before there is any administration upon the estate of the person whose property has thus been sold, in a suit by the administrator upon such estate upon the official bond of the sheriff, interest should be counted from the date of the qualification of the administrator. Morrison v. Slaton, 148 Ga. 294, 96 S.E. 422, 1918 Ga. LEXIS 312 (1918).

Transfer of entitlement to excess funds allowed. — As a matter of law, a defendant in fieri facias can effect a transfer of the defendant's entitlement to the excess funds generated in a tax sale under O.C.G.A. § 48-4-5. Barrett v. Marathon Inv. Corp., 268 Ga. App. 196, 601 S.E.2d 516, 2004 Ga. App. LEXIS 876 (2004), superseded by statute as stated in Denhardt v. Sparks, 356 Ga. App. 63, 844 S.E.2d 192, 2020 Ga. App. LEXIS 308 (2020).

State of title held by purchaser or purchaser's grantee pending period of redemption. — Trial court properly granted summary judgment to an association, and the association's employee and a board member, on the claims by a property purchaser against them for extortion and removal of liens arising out of the purchaser's failure to pay association fees after purchasing seven properties in a subdivision through a tax sale resulting from unpaid property taxes; while it was true that the purchaser did not obtain a fee simple absolute title, and that title could be restored to specified predecessors through redemption or before the purchaser gave notice pursuant to O.C.G.A. § 48-4-45, the purchaser did receive title sufficient to trigger automatic membership in the association and was thus required to pay its assessed fees. Croft v. Fairfield Plantation Prop. Owners Ass'n, 276 Ga. App. 311, 623 S.E.2d 531, 2005 Ga. App. LEXIS 1181 (2005).

Second unauthorized tax sale did not affect fee simple title of buyer at first tax sale. — Although a county did not have the recognized statutory option of conducting a second tax sale in order to satisfy the remainder of the tax deficiency owed, and while the assignee who took the property as a result of the second tax sale might be entitled to a refund of the purchase price, the special master's recommendation to issue a decree of fee simple title in the underlying property to the buyer at the first tax sale was upheld on appeal. DRST Holdings, Ltd. v. Agio Corp., 282 Ga. 903, 655 S.E.2d 586, 2008 Ga. LEXIS 6 (2008).

Tax deed purchaser responsible for taxes after tax sale. — Tax deed purchaser, not the church, a defendant in fi. fa., was obligated to pay ad valorem taxes that accrued after the tax sale and before redemption, and the tax commissioner could not use the excess funds to satisfy the buyer's tax obligation that occurred after the tax sale. Iglesia Del Dios Vivo Columna Y Apoyo De La Verdad La Luz Del Mundo, Inc. v. Downing, 321 Ga. App. 778, 742 S.E.2d 742, 2013 Ga. App. LEXIS 365 (2013), cert. denied, No. S13C1430, 2013 Ga. LEXIS 829 (Ga. Oct. 7, 2013).

No right to excess funds generated by tax sale. — Trial court did not err in granting a tax commissioner summary judgment in a lienholder's action under O.C.G.A. § 15-13-3 to recover excess funds from a tax sale because at the time

of the tax sale, at the time the tax commissioner notified the record owner of the property and record lienholders of the excess tax sale funds, and at the time the tax commissioner paid the excess tax sale funds to the record owner of the property, the lienholder had no recorded lien or interest in the property; after the tax commissioner fulfilled the obligation under O.C.G.A. § 48-4-5(a) to give notice to the record property owner and lienholders, the property owner submitted the only claim to the tax commissioner for the excess tax sale funds, and the lienholder failed to show that more was required of the tax commissioner before the funds were disbursed. Brina Bay Holdings, LLC v. Echols, 314 Ga. App. 242, 723 S.E.2d 533, 2012 Ga. App. LEXIS 169 (2012), overruled in part, DLT List, LLC v. M7VEN Supportive Hous. & Dev. Group, 335 Ga. App. 318, 779 S.E.2d 436, 2015 Ga. App. LEXIS 769 (2015).

In Wester v. United Capital Financial of Atlanta, LLC, 282 Ga. App. 392 (2006) and again in United Capital Financial of Atlanta v. American Investment Assoc., 302 Ga. App. 400 (2010), the Georgia Court of Appeals held that a creditor who redeems property following a tax sale has first priority to excess funds resulting from that tax sale, but properly overruled those decisions in DLT List, LLC. v. M7VEN Supportive Housing & Dev. Group, 335 Ga. App. 318 (2015) concluding that a redeeming creditor has no such priority. DLT List, LLC v. M7VEN Supportive Hous. & Dev. Group, 301 Ga. 131, 800 S.E.2d 362, 2017 Ga. LEXIS 374 (2017).

Redeeming creditor of a tax-sale property does not have a priority lien against excess funds arising from that sale. DLT List, LLC v. M7VEN Supportive Hous. & Dev. Group, 301 Ga. 131, 800 S.E.2d 362, 2017 Ga. LEXIS 374 (2017).

City was not entitled to the excess funds because it did not create any substantive legal rights or somehow convert a lien against real property into one that may be satisfied from personal property. Instead, it required notice and states the priority of payment for those who have an interest that may be satisfied from the excess funds. Flat Creek Falls, LLC v. Labat, 369 Ga. App. 90, 892 S.E.2d 188, 2023 Ga. App. LEXIS 409 (2023).

Entitlement to excess funds after tax sale. — Trial court erred by granting summary judgment to the property owner because the trial court erred by holding that the security deed holder lost the holder's right to excess funds that arose from the tax sale as the relevant date under O.C.G.A. § 44-14-80 when considering who was entitled to the excess funds from the tax sale was the tax sale date, not the fund distribution date. Worthwhile Investments, LLC v. Higgins, 337 Ga. App. 183, 787 S.E.2d 245, 2016 Ga. App. LEXIS 247 (2016), cert. denied, No. S16C1663, 2017 Ga. LEXIS 507 (Ga. June 5, 2017).

Trial court erred by awarding excess funds from a tax sale to a redeeming creditor because although the creditor had an interest in the property at the time of the tax sale that gave the creditor a statutory right of redemption, it was undisputed that the creditor's security deed had now been fully satisfied, and the creditor no longer retained any priority lien on the property; thus, the administrator of the original owner's estate was the party entitled to receipt of the funds. Bridges v. Collins-Hooten, 339 Ga. App. 756, 792 S.E.2d 721, 2016 Ga. App. LEXIS 609 (2016), cert. denied, No. S17C0621, 2017 Ga. LEXIS 500 (Ga. June 5, 2017).

Lender who had purchased a tax deed had a defeasible fee in the property, which became a fee simple interest when the property was not redeemed; excess proceeds from the tax sale were to be distributed first to the lender and then to any other recorded lien holder; and the lender's first-priority security lien was not merged into the tax deed purchase. However, the lender failed to show the amount owed, requiring reversal of the judgment in the lender's favor. Performance Food Group, Inc. v. Davis, 346 Ga. App. 487, 816 S.E.2d 468, 2018 Ga. App. LEXIS 408 (2018).

Recovery of excess proceeds from tax commissioner. — Holding company was entitled to recover from the tax commissioner the amounts necessary to pay the tax executions from the excess proceeds of the tax sales before any

payments to the owners of record at the time of the tax sale. As the holder of the tax liens, the holding company had the right to be paid "before any other debt, lien, or claim of any kind" could be claimed by the parties entitled to receive them, including those who hold other liens against the property. Scott v. Vesta Holdings I, LLC, 275 Ga. App. 196, 620 S.E.2d 447, 2005 Ga. App. LEXIS 930 (2005).

Interpleader and attorney fees awarded to tax director. — Trial court properly allowed the Georgia Tax Director to interplead in the tax sale action regarding disbursement of excess funds and award the director attorney fees because O.C.G.A. § 48-4-5(b) permitted interpleader as well as a reasonable attorney fee and the fee was not conditioned upon litigation. Bridges v. Collins-Hooten, 339 Ga. App. 756, 792 S.E.2d 721, 2016 Ga. App. LEXIS 609 (2016), cert. denied, No. S17C0621, 2017 Ga. LEXIS 500 (Ga. June 5, 2017).

Original owner not redeemer was entitled to excess proceeds of tax sale. — Pursuant to O.C.G.A. § 48-4-5(a), a county tax commissioner was properly ordered to disburse excess tax-sale funds totaling $105,188 to the original owner of the property and not the redeemer of the property from a tax sale purchaser; the redemption price would be the first priority lien, here the only lien, against the property going forward. DLT List, LLC v. M7VEN Supportive Hous. & Dev. Group, 335 Ga. App. 318, 779 S.E.2d 436, 2015 Ga. App. LEXIS 769 (2015), aff'd, 301 Ga. 131, 800 S.E.2d 362, 2017 Ga. LEXIS 374 (2017).

To the extent that Wester v. United Capital Finance of Atlanta, LLC, 282 Ga. App. 392, 638 S.E.2d 779 (2006), and United Capital Finance of Atlanta v. American Investment Assoc., 302 Ga. App. 400, 691 S.E.2d 272 (2010), held that the redeeming creditor at a tax sale had a first priority claim on the excess tax funds for the amount paid to redeem the property, those cases are overruled. DLT List, LLC v. M7VEN Supportive Hous. & Dev. Group, 335 Ga. App. 318, 779 S.E.2d 436, 2015 Ga. App. LEXIS 769 (2015), aff'd, 301 Ga. 131, 800 S.E.2d 362, 2017 Ga. LEXIS 374 (2017).

County's immunity from suit. — Pursuant to O.C.G.A. § 36-1-4 and Ga. Const. 1983, Art. I, Sec. II, Para. IX(e), a county was immune from a lender's suit because the lender pointed to no statute creating a waiver of immunity or any factual scenario warranting a waiver with respect to the lender's claim that the county failed to give it notice of the availability of excess funds following a tax sale as required by O.C.G.A. § 48-4-5. Bartow County v. S. Dev., III, L.P., 325 Ga. App. 879, 756 S.E.2d 11, 2014 Ga. App. LEXIS 90 (2014).

No right to jury trial. — Trial court did not err by not holding a trial to determine entitlement to the excess funds despite the estate executor's several demands for a jury trial because under the plain language of O.C.G.A. § 48-4-5(b), it was for the trial court to apportion the excess funds according to the priority of the claimants' interests and § 48-4-5 conferred no right to a jury trial in an interpleader action resulting from a tax sale. Mancuso v. Jackson, 359 Ga. App. 428, 858 S.E.2d 244, 2021 Ga. App. LEXIS 212 (2021).

RESEARCH REFERENCES

Am. Jur. 2d.

72 Am. Jur. 2d, State and Local Taxation, § 812.

C.J.S.

33 C.J.S., Executions, § 429. 85 C.J.S., Taxation, §§ 1312, 1313.

ALR.

Tax deed and recitals therein as evidence of regularity of tax proceedings as to advertising and notice of sale, and as to time, manner, and place of sale, 30 A.L.R. 8; 88 A.L.R. 264.

Sale of property at tax sale for more or less than the amount of taxes, penalties, and costs as affecting its validity, 97 A.L.R. 842; 147 A.L.R. 1141.

48-4-6. Validity of deed made at tax sale.

The deed or bill of sale made by the sheriff to the purchaser at a tax sale shall be just as valid as if made under an ordinary execution issuing from the superior court.

History.

Orig. Code 1863, § 815; Code 1868, § 895; Code 1873, § 893; Code 1882, § 893; Civil Code 1895, § 913; Civil Code 1910, § 1176; Code 1933, § 92-8107; Code 1933, § 91A-406, enacted by Ga. L. 1978, p. 309, § 2.

JUDICIAL DECISIONS

Inapplicable to sales for municipal taxes. — Statute has no application to deeds made by a municipal officer founded on sales for municipal taxes. Ansley v. Wilson, 50 Ga. 418, 1873 Ga. LEXIS 281 (1873); Johnson v. Phillips & Co., 89 Ga. 286, 15 S.E. 368, 1892 Ga. LEXIS 326 (1892).

Recitals in deed as to manner of sale presumed correct. — Recitals in a deed in regard to the conduct of the selling officer, the levying officer, with respect to advertisements and the like are presumptively correct. Livingston v. Hudson, 85 Ga. 835, 12 S.E. 17, 1890 Ga. LEXIS 149 (1890); Bennett v. Southern Pine Co., 123 Ga. 618, 51 S.E. 654, 1905 Ga. LEXIS 560 (1905).

Admissibility in evidence. — Statute does not give tax titles a higher status than belongs to a deed made by the sheriff under the judgment of a court, and such a deed, unsupported by the execution on which it is based is generally not admissible in evidence. Sabattie v. Baggs, 55 Ga. 572, 1876 Ga. LEXIS 416 (1876).

RESEARCH REFERENCES

C.J.S.

33 C.J.S., Executions, § 464 et seq. 85 C.J.S., Taxation, § 1468 et seq.

ALR.

Necessity of actual possession to give title by adverse possession under invalid tax title, 22 A.L.R. 550.

Right of holder of tax title or certificate of sale to reimbursement by taxing authorities where sale proves invalid, 77 A.L.R. 824; 116 A.L.R. 1408.

Tax deeds and recitals therein as evidence of regularity of tax proceedings as to advertising and notice of sale, and as to time, manner, and place of sale, 88 A.L.R. 264.

Time limitation for attack on tax title as affected by defective description of property in the assessment or the tax deed, 133 A.L.R. 570.

Payment, tender, or deposit of tax as condition of injunction against issuance of tax deed upon ground that it had become barred by lapse of time or that the property had been redeemed, 134 A.L.R. 543.

Rights and remedies of owner against holder of invalid tax title respecting rents and profits or use and occupation, 173 A.L.R. 1179.

Statutory limitation of period for attack on tax deed as affected by failure to comply with statutory requirement as to notice before tax deed, 5 A.L.R.2d 1021.

48-4-7. Authority of levying officer to put purchaser in possession of land.

The officer selling property at a tax sale shall have the authority to put purchasers in possession of land sold under tax fi. fas., as in other cases.

History.
Orig. Code 1863, § 816; Code 1868, § 896; Code 1873, § 894; Code 1882, § 894; Civil Code 1895, § 914; Civil Code 1910, § 1177; Code 1933, § 92-8108; Code 1933, § 91A-407, enacted by Ga. L. 1978, p. 309, § 2.

JUDICIAL DECISIONS

No right to possession pending redemption. — Purchaser of land at a tax sale is not entitled to be placed in possession until after the time for redemption has expired. Elrod v. Groves, 116 Ga. 468, 42 S.E. 731, 1902 Ga. LEXIS 141 (1902).

RESEARCH REFERENCES

Am. Jur. 2d.
30 Am. Jur. 2d, Executions, § 403 et seq. 72 Am. Jur. 2d, State and Local Taxation, § 853.

C.J.S.
33 C.J.S., Executions, §§ 496, 497. 85 C.J.S., Taxation, § 1480 et seq.

ARTICLE 2

PURCHASE BY COUNTIES

48-4-20. Authority of counties to buy property sold under tax executions.

(a) The governing authority of any county may purchase and hold in its official capacity any real property offered for sale by virtue of tax executions, except that the governing authority may bid on the real property only when other bids do not cover the amount of the tax executions and costs.

(b) The governing authority of the county shall not bid more for the property than the amount of taxes and costs. The governing authority, upon bidding on any property, shall draw its warrant on the county treasurer to pay to the levying officers the costs due on the tax executions and costs accrued in effecting the sales. The governing authority of the county shall not be required to pay the proportionate part of the taxes due the state, any school district, or any other political subdivision or authority of counties by virtue of the tax sale until the real property is redeemed in the manner provided in this chapter or is resold by the governing authority of the county.

(c) The 12 months' redemption period allowed under this chapter for the redemption of realty sold under a tax execution shall begin to run from the date of the sale; provided, however, that the redemption period for any realty sold under a tax execution before April 22, 1981, shall expire on December 31, 1988.

History.
Ga. L. 1892, p. 252, § 1; Civil Code 1895, § 915; Civil Code 1910, § 1178; Code 1933, § 92-8201; Ga. L. 1937, p. 446, § 1; Code 1933, § 91A-420, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1981, p. 1857, § 9; Ga. L. 1988, p. 1957, § 2.

Law reviews.
For article surveying recent legislative and judicial developments in Georgia's real property laws, see 31 Mercer L. Rev. 187 (1979).

JUDICIAL DECISIONS

Effect of redemption on vesting title. — Purchaser at tax sale acquires defeasible title, under which the purchaser is entitled to a deed from the officer selling the property, and can convey the purchaser's own defeasible title to another person, subject only to the right of redemption. If the amount required for redemption is paid or sufficiently tendered, such payment or tender revests title in the owner, but otherwise, at the expiration of the redemption period, title becomes absolute in the purchaser or the purchaser's grantee. Durham v. Crawford, 196 Ga. 381, 26 S.E.2d 778, 1943 Ga. LEXIS 365 (1943).

Availability of injunctive relief to preserve right of redemption. — An injunction will lie in favor of the owner of land bought by the county at a tax sale in order to prevent the county from reselling the land before the time claimed by the owner as expiration of the owner's redemption period, when it is alleged that the county is threatening to sell the land in small tracts to numerous purchasers while the right of redemption still exists, which if done would subject the owner to a multiplicity of suits with such purchasers. Newsom v. Dade County, 177 Ga. 612, 171 S.E. 145, 1933 Ga. LEXIS 370 (1933).

RESEARCH REFERENCES

C.J.S.
85 C.J.S., Taxation, § 1336 et seq.

ALR.
Right of public officer to purchase tax certificates or tax titles, 5 A.L.R. 969.

Sale of property at tax sale for more or less than the amount of taxes, penalties, and costs, as affecting its validity, 147 A.L.R. 1141.

Who may redeem, from a tax foreclosure or sale, property to which title or record ownership is held by corporation, 54 A.L.R.2d 1172.

48-4-21. Right of redemption; disposition of unredeemed property by county governing authority.

(a) When real property sold under and by virtue of tax executions is successfully bid on by the governing authority of a county, the owner of such property shall have the privilege of redeeming it as in other cases.

(b) The governing authority of the county may dispose of real property purchased under a tax execution, and remaining unredeemed, as provided in this title.

History.
Ga. L. 1892, p. 252, §§ 2, 3; Civil Code 1895, §§ 916, 917; Civil Code 1910, §§ 1179, 1180; Code 1933, §§ 92-8202, 92-8203; Code 1933, §§ 91A-421, 91A-422, enacted by Ga. L. 1978, p. 309, § 2.

JUDICIAL DECISIONS

Effect of redemption on vesting of title. — Purchaser at tax sale acquires defeasible title under which the purchaser is entitled to a deed from the officer selling the property, and can convey the purchaser's own defeasible title to another person, subject only to the right of redemption. If the amount required for redemption is paid or sufficiently tendered, such payment or tender revests title in the owner, but otherwise, at the expiration of the redemption period, title becomes absolute in the purchaser or the purchaser's grantee. Durham v. Crawford, 196 Ga. 381, 26 S.E.2d 778, 1943 Ga. LEXIS 365 (1943).

RESEARCH REFERENCES

Am. Jur. 2d.

30 Am. Jur. 2d, Executions, § 522 et seq. 72 Am. Jur. 2d, State and Local Taxation, §§ 900 et seq., 916.

C.J.S.

85 C.J.S., Taxation, §§ 1343 et seq.

ALR.

Right of public officer to purchase tax certificates or tax titles, 5 A.L.R. 969.

Right of person under disability to redeem from tax sale, 65 A.L.R. 582; 159 A.L.R. 1467.

Necessity and sufficiency of statement in notice of application for tax deed, or notice to redeem from tax sale, as regards time for redemption, 82 A.L.R. 502.

Judgment as lien on judgment debtor's equity of redemption in land sold for taxes, 91 A.L.R. 647.

Unexpired right of redemption as affecting status of purchaser at judicial or execution sale as sole unconditional owner within insurance policy, 91 A.L.R. 1439.

Refusal of tender, made under protest, of amount required for redemption from tax sale, 142 A.L.R. 1198.

One in adverse possession as within class of persons entitled to redeem from tax sale, 164 A.L.R. 1285.

Statutory limitation of period for attack on tax deed as affected by failure to comply with statutory requirement as to notice before tax deed, 5 A.L.R.2d 1021.

Who may redeem, from a tax foreclosure or sale, property to which title or record ownership is held by corporation, 54 A.L.R.2d 1172.

Necessity and sufficiency of tender of payment by one seeking to redeem property from mortgage foreclosure, 80 A.L.R.2d 1317.

48-4-22. Authority of counties to buy property sold under tax executions; finality of tax execution sales; issuance of "Bill of Sale for Personal Property."

(a) The governing authority of any county may purchase and hold in its official capacity any personal property offered for sale by virtue of tax executions, except that the governing authority may bid on the personal property only when other bids do not cover the amount of tax executions, accrued interest, penalties, and costs.

(b) The governing authority of the county shall not bid more for the property than the amount of taxes, accrued interest, penalties, and costs. The governing authority, upon bidding on any property, shall draw its warrant on the county treasurer to pay to the levying officers the costs due on the tax executions and costs accrued in effecting tax sales. The governing authority of the county shall not be required to pay the proportionate part of the taxes due the state, any school district, or

any other political subdivision or authority of counties by virtue of the tax sale until the personal property is resold by the governing authority of the county in the manner provided by law.

(c) When personal property is sold under tax executions at a tax sale, the sale is final.

(d) The officer authorized to conduct tax sales shall issue a "Bill of Sale for Personal Property" to the purchaser at the tax sale, and it shall be substantially as follows:

STATE OF GEORGIA

_____ COUNTY

BILL OF SALE FOR PERSONAL PROPERTY

This assignment made _____, between the tax commissioner and ex officio sheriff of _____ County, and _____, as purchaser,

Witnesseth: That,

Whereas, in obedience to writ(s) of fieri facias issued against _____, the taxpayer and defendant in fi. fa., for unpaid state, county, and applicable school taxes for the years _____, said tax commissioner and ex officio sheriff of _____ County did on _____, seize, levy, and serve notice on the within described personal property and, after the same being duly advertised agreeable to law, expose the said property within the legal hours of sale, at public outcry before the courthouse door in _____ County, Georgia, on the day and year first above written, when and where the same was knocked down to the named purchaser for the highest and best bid amount shown below, said purchaser being the highest and best bidder.

Now, therefore, in consideration of the sum of $_____, receipt of which is hereby acknowledged, the tax commissioner and ex officio sheriff of _____ County does assign, bargain, and sell, so far as the office of ex officio sheriff authorizes him, unto the said purchaser, heirs, and assigns, _____

_____

_____

_____

To have and to hold the said described personal property, together with all the rights and also all the estate, right, title, interest, claim, or demand of the said taxpayer and defendant in fi. fa., heirs, and assigns,

legal, equitable, or otherwise whatsoever, in and to the same, unto the said purchaser, heirs, and assigns.

In witness whereof, the said tax commissioner and ex officio sheriff of _____ County has set his hand and affixed his seal hereto on the day and year first above written.

_____
Tax commissioner and
ex officio sheriff of
_____ County, Georgia

Signed, sealed, and
delivered in the pres-
ence of:

_____
Unofficial witness

_____
Notary public

History.
Code 1981, § 48-4-22, enacted by Ga. L. 1984, p. 904, § 1.

48-4-23. County tax commissioners and certain employees prohibited from purchasing property offered for sale under tax executions or tax foreclosure proceedings; criminal penalties.

(a) A tax commissioner and any person employed in the office of the tax commissioner working on behalf of the tax commissioner shall not, directly or indirectly, acquire an interest in, buy, or profit from any real property sold at public auction by the county for which such tax commissioner or employee thereof serves for delinquent taxes, except that such tax commissioner or employee thereof may purchase property sold at public auction for delinquent taxes if such tax commissioner or employee has any ownership interest in the property and had an ownership interest in the property at the time the taxes became delinquent.

(b) Any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished by imprisonment for a period of not more than one year, by a fine not to exceed $1,000.00, or both.

(c) Any sale, transfer, or acquisition of interest in any real property in violation of this Code section shall be void.

History.
Code 1981, § 48-4-23, enacted by Ga. L. 2007, p. 111, § 1/HB 222.

Law reviews.
For survey article on local government law, see 59 Mercer L. Rev. 285 (2007).

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting of offenders not required. — Violation of O.C.G.A. § 48-4-23 is not an offense designated as one that requires fingerprinting. 2009 Op. Att'y Gen. No. 2009-1.

ARTICLE 3

REDEMPTION OF PROPERTY SOLD FOR TAXES

JUDICIAL DECISIONS

Redemption provisions to be liberally construed. — Former Code 1933, ch. 92-83 (see now O.C.G.A. Art. 3, Ch. 4, T. 48) was to be construed liberally and most favorably to persons allowed by the statute to redeem. Union Cent. Life Ins. Co. v. Bank of Tignall, 182 Ga. 233, 185 S.E. 108, 1936 Ga. LEXIS 320 (1936).

RESEARCH REFERENCES

ALR.
Payment, tender, or deposit of tax as condition of injunction against issuance of tax deed upon ground that it had become barred by lapse of time or that the property had been redeemed, 134 A.L.R. 543.

Constitutionality of provision for service by publication of notice of proceeding by purchaser at tax sale to foreclose delinquent owner's right of redemption, or of other proceeding to perfect tax purchaser's title, 145 A.L.R. 597.

Constitutionality, construction, and application of statutes providing for partial or proportional redemption from tax sale of land, 145 A.L.R. 1328.

Who entitled to rents and profits, or rental value, during the redemption period following tax sale, 147 A.L.R. 1084.

What constitutes "execution" of tax deed beginning or ending period for redemption from tax sale, 166 A.L.R. 853.

Who may redeem, from a tax foreclosure or sale, property to which title or record ownership is held by corporation, 54 A.L.R.2d 1172.

Necessity and sufficiency of tender of payment by one seeking to redeem property from mortgage foreclosure, 80 A.L.R.2d 1317.

48-4-40. Persons entitled to redeem land sold under tax execution; payment; time.

Whenever any real property is sold under or by virtue of an execution issued for the collection of state, county, municipal, or school taxes or for special assessments, the defendant in fi. fa. or any person having any right, title, or interest in or lien upon such property may redeem the property from the sale by the payment of the amount required for redemption, as fixed and provided in Code Section 48-4-42:

(1) At any time within 12 months from the date of the sale; and

(2) At any time after the sale until the right to redeem is

foreclosed by the giving of the notice provided for in Code Section 48-4-45.

History.

Orig. Code 1863, § 820; Code 1873, § 898; Code 1882, § 898; Civil Code 1895, § 909; Civil Code 1910, § 1169; Code 1933, § 92-8301; Ga. L. 1937, p. 491, § 2; Code 1933, § 91A-430, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1980, p. 10, § 9; Ga. L. 2016, p. 758, § 1/SB 379; Ga. L. 2016, p. 793, § 1/HB 51.

Law reviews.

For annual survey of real property law, see 57 Mercer L. Rev. 331 (2005).

For annual survey of real property law, see 58 Mercer L. Rev. 367 (2006).

For annual survey of real property law, see 68 Mercer L. Rev. 231 (2016).

For annual survey on real property, see 69 Mercer L. Rev. 251 (2017).

For annual survey on bankruptcy law, see 69 Mercer L. Rev. 1033 (2018).

For annual survey on real property law, see 70 Mercer L. Rev. 209 (2018).

For annual survey on real property, see 71 Mercer L. Rev. 241 (2019).

JUDICIAL DECISIONS

Analysis

General Consideration
Persons Who May Redeem
Redemption Period
Tender and Payment
Title to, and Rights in, Property Pending Redemption

General Consideration

Effect of subsequent executions. — It is not necessary for those seeking and entitled to redeem to tender the amount of tax fi. fas. issued subsequently to the sale. LaRoche v. Kinchlo, 154 Ga. 547, 114 S.E. 706, 1922 Ga. LEXIS 417 (1922).

Sale under both tax fi. Fa. And judgment. — Though there is incompatibility in selling land under both a tax fi. fa. and a fi. fa. founded on the judgment of a court at the same time, the sale is not void. The result is to annex to the sale as against both fi. fas. the statutory incident of redemption. The property is redeemable by refunding the whole amount paid by the purchaser, with the statutory premium thereon, but not by refunding a less amount measured by the taxes due. Clower v. Fleming, 81 Ga. 247, 7 S.E. 278, 1888 Ga. LEXIS 101 (1888).

No redemption in case of drainage district assessment. — Right of redemption is not given when land is sold under execution issued for an assessment to meet interest or principal, or the cost of draining the land in a drainage district. Sigmon-Reinhardt Co. v. Atkins Nat'l Bank, 163 Ga. 136, 135 S.E. 720, 1926 Ga. LEXIS 39 (1926).

Executor failed to exercise right of redemption. — In a purchaser's quiet title action against the executor of a testatrix's estate, the trial court did not err in adopting the report of a special master and in decreeing that fee simple title to the land was vested in the purchaser because the purchaser acquired title to the property by virtue of a tax sale and deed, which was conducted in accordance with O.C.G.A. § 48-4-1 et seq.; a title search showed the testatrix's nephew as holding record title to the property, but out of caution, both the nephew and the executor were served with notice of the tax sale, the tax commissioner met with the executor prior to the sale and offered to accept payment for the back taxes, but the executor failed to do so, and the property was sold to the purchaser, with the overage going to the nephew, and the executor did not timely seek to exercise a right of redemption under O.C.G.A. § 48-4-40. Mann v.

Blalock, 286 Ga. 541, 690 S.E.2d 375, 2010 Ga. LEXIS 145 (2010).

Intervention to redeem when intervention previously denied on other grounds. — Judgment sustaining a general demurrer (now motion to dismiss) to an intervention seeking to cancel tax deeds, which intervention is on grounds that the levy was excessive and that an interest less than the fee was conveyed, will not bar subsequent intervention by an owner within the redemption period, seeking to redeem the property as provided by law. Forrester v. Lowe, 192 Ga. 469, 15 S.E.2d 719, 1941 Ga. LEXIS 496 (1941).

Statute makes no exception in favor of minors for redeeming property sold under a tax execution. Dawson v. Dawson, 106 Ga. 45, 32 S.E. 29, 1898 Ga. LEXIS 15 (1898).

Power to issue injunctions. — Superior courts are empowered to issue injunctions, Ga. Const. 1983, Art. VI, Sec. I, Para. IV; O.C.G.A. § 15-6-8, and nothing in O.C.G.A. § 48-4-40(1) deprives them of that power in the arena of redemption of property following a tax sale. Am. Lien Fund, LLC v. Dixon, 286 Ga. 562, 690 S.E.2d 415, 2010 Ga. LEXIS 178 (2010).

Persons Who May Redeem

Right to redeem. — As to excess tax sale funds, a redeeming creditor can only make a claim for the funds in the amount of the pre-tax sale lien that gave the creditor the right to redeem. SunTrust Bank v. Cowan, 344 Ga. App. 604, 812 S.E.2d 13, 2018 Ga. App. LEXIS 73 (2018).

Corporations. — No construction, however liberal, which could be given this statute granting the privilege of redeeming land sold for taxes to the owner thereof, can inure to the benefit of a party, if the owner be a corporation, and it a mere stockholder therein. Carver Cotton Gin Co. v. Barrett & Caswell, 66 Ga. 526, 1881 Ga. LEXIS 51 (1881).

Wife, who is a beneficiary of a homestead estate sold under tax fi. fa. against the husband, can redeem the property. Lamar v. Sheppard, 80 Ga. 25, 5 S.E. 247, 1887 Ga. LEXIS 314 (1887).

Trustee in bankruptcy, as a creditor of a bankrupt, can redeem land sold under tax fieri facias if the trustee desires. In re Rogers & Williams, 3 F. Supp. 116, 1933 U.S. Dist. LEXIS 1562 (D. Ga. 1933).

Right of redemption following bankruptcy. — LLC that purchased a debtor's home at a tax sale held pursuant to O.C.G.A. § 48-4-1 was entitled to an order lifting the stay that was imposed when the debtor declared Chapter 13 bankruptcy so the LLC could foreclose the deed the LLC received; although the debtor had the right under O.C.G.A. § 48-4-40 to redeem title to the home at the time the debtor declared bankruptcy because the time for doing so had not expired under state law, the debtor lost that right when the debtor failed to pay the LLC the amount it spent to purchase the tax deed, and the debtor's attempt to pay that amount in increments through the debtor's plan failed because the home was not property of the debtor's bankruptcy estate under 11 U.S.C. § 541. Harvest Assets, LLC v. Edwards (In re Edwards), No. 14-51366-CRM, 2014 Bankr. LEXIS 5432 (Bankr. N.D. Ga. Nov. 13, 2014).

Lienholders acquiring interest subsequent to tax sale. — O.C.G.A. § 48-4-45 does not provide that the interest must have been held at the time of the tax sale. The statute requires notice to lienholders who exist at the time of any attempted foreclosure of the right of redemption. Therefore, such lienholders are not barred from the right of redemption by reason of having acquired their interest subsequent to the tax sale. Leathers v. McClain, 255 Ga. 378, 338 S.E.2d 666, 1986 Ga. LEXIS 510 (1986).

Interest re-conveyed prior to redemption deadline. — Chapter 13 debtor had a right of redemption under Georgia state law as of the debtor's petition date as the debtor obtained an interest in the property when the property was re-conveyed to the debtor prior to the redemption deadline. Although the tax sale purchaser held legal title to the property, the bundle of rights retained by the debtor was property of the debtor's bankruptcy estate. In re Jimerson, 564 B.R. 430, 2017 Bankr. LEXIS 227 (Bankr. N.D. Ga. 2017), rev'd, No. 1:17-cv-513-WSD, 2018 U.S. Dist. LEXIS 197306 (N.D. Ga. Jan. 22, 2018).

Persons Who May Redeem (Cont'd)

Assignee of redeemer. — Order disbursing excess tax sale funds to the assignee of the redeemer was reversed because the assignee could not show justifiable or good faith reliance on case law that had been overturned and, therefore, had no vested rights to the excess funds or that the issue was moot because it had already spent the funds. SunTrust Bank v. Cowan, 344 Ga. App. 604, 812 S.E.2d 13, 2018 Ga. App. LEXIS 73 (2018).

Redemption Period

When time begins to run against owner. — Year for redemption of property sold for taxes runs from the date of the sale and not from the time when the sheriff's deed is recorded. Boyd v. Wilson, 86 Ga. 379, 12 S.E. 744, 1890 Ga. LEXIS 262 (1890).

When out of time redemption is permissible. — An appellant was entitled to fee simple title to a 50-acre tract as a predecessor in interest who purchased the property from the county after the county had purchased the property at a tax sale did not make an out-of-time redemption under former Code 1933, § 92-8301 (see now O.C.G.A. § 48-4-40(2)) as the extension of the right to redeem was not enacted until after the death of the initial purchaser, who was the predecessor's parent; the notice requirement in O.C.G.A. § 48-4-45 also was not enacted at that time. Selph v. Williams, 284 Ga. 349, 667 S.E.2d 40, 2008 Ga. LEXIS 754 (2008).

Notice of foreclosure of right of redemption. — Claimant who asserted that the claimant was the owner of commercial property that had been sold at a tax sale, based on an oral contract that the claimant had fully performed and the claimant's payment of property taxes for over ten years, was not entitled to service of the notice of foreclosure of the right to redeem under O.C.G.A. § 48-4-45(a)(1) because subsection (b) required service on an "occupant" only if the occupant had an interest that was "of record," and the claimant had no recorded interest. Tyner v. Edge, 355 Ga. App. 196, 843 S.E.2d 632, 2020 Ga. App. LEXIS 288 (2020), cert. denied, No. S20C1315, 2020 Ga. LEXIS 969 (Ga. Dec. 7, 2020).

Tender after the time allowed by law for redemption under a tax sale is without efficacy, and an allegation thereof should be stricken on demurrer (now motion to dismiss). Allen v. Gates, 145 Ga. 652, 89 S.E. 821, 1916 Ga. LEXIS 434 (1916).

Redemption after expiration of period with permission of purchaser. — Although the statute affords a positive right to redeem only within the specified period, the statute does not inhibit the purchaser from according redemption after the period has expired as a matter of grace. Union Cent. Life Ins. Co. v. Bank of Tignall, 182 Ga. 233, 185 S.E. 108, 1936 Ga. LEXIS 320 (1936); Caffey v. Parris, 186 Ga. 303, 197 S.E. 898, 1938 Ga. LEXIS 619 (1938).

Power of court of equity to allow redemption after expiration of period. — After statutory redemption period has expired, the right to redeem is gone, and there is no power even in a court of equity to authorize redemption of the property in such cases. Boroughs v. Lance, 213 Ga. 143, 97 S.E.2d 357, 1957 Ga. LEXIS 324 (1957).

Court not precluded from acting after 12 months have passed. — The declaration in O.C.G.A. § 48-4-40(1) that one entitled to redeem the property may do so within 12 months did not preclude the trial court from acting after those 12 months had passed. The taxpayer seeking redemption sought an injunction preserving the parties' status quo well before the passage of 12 months. Am. Lien Fund, LLC v. Dixon, 286 Ga. 562, 690 S.E.2d 415, 2010 Ga. LEXIS 178 (2010).

Redemption period extended when no bad faith on part of tax deed purchaser. — Award to tax deed purchaser of fee simple title in the properties at issue was upheld because the evidence in the record established that the redeemer failed to tender lawful money prior to the end of the redemption period and that, given the circumstances in the case, that failure was not due to any bad faith on the part of the tax deed purchaser. Moxie Capital, LLC v. Delmont

21, LLC, 363 Ga. App. 152, 869 S.E.2d 127, 2022 Ga. App. LEXIS 56 (2022).

Interest acquired following redemption date. — Oral agreement to buy a homeowner's association's lien and indebtedness against real property was required to be in writing and signed by the party to be charged pursuant to O.C.G.A. § 13-5-30(4); because the buyer did not acquire an interest in the property until after the date of redemption, contrary to O.C.G.A. §§ 48-4-40 and 48-4-41, the redemption was void. DRST Holdings, Ltd. v. Brown, 290 Ga. 317, 720 S.E.2d 626, 2012 Ga. LEXIS 11 (2012).

Application to bankruptcy proceedings. — When Chapter 13 debtor proposed an extension plan prior to the date when the right of redemption would have expired under Georgia state law, without regard to an extension provided by 11 U.S.C. § 108, the debtor did not reside on that property, and the Chapter 13 plan would pay the redemption amount in full, plus interest, then the redemption amount could be paid over the length of the plan regardless of whether applicable state law required a lump sum payment. In re Jimerson, 564 B.R. 430, 2017 Bankr. LEXIS 227 (Bankr. N.D. Ga. 2017), rev'd, No. 1:17-cv-513-WSD, 2018 U.S. Dist. LEXIS 197306 (N.D. Ga. Jan. 22, 2018).

Tender and Payment

Requirements as to tender on offer to redeem. — Tender on an offer to redeem property from taxes not only must be in due time and manner, but be continuous, with a continuous offer to pay; and if such continuity is not otherwise shown, at least bringing money into court on filing suit is necessary in place of continuous offer by pleading. Durham v. Crawford, 196 Ga. 381, 26 S.E.2d 778, 1943 Ga. LEXIS 365 (1943).

Sale not complete until purchase money paid. — Relative to the right of the owner to redeem the land, the sale will not be considered as complete until payment of the purchase money by the bidder. The owner has 12 months from the time of such payment within which to tender the money to the purchaser for the purpose of redemption. Wood v. Henry, 107 Ga. 389, 33 S.E. 410, 1899 Ga. LEXIS 81 (1899). See also Cason v. United Realty & Auction Co., 158 Ga. 584, 123 S.E. 894, 1924 Ga. LEXIS 304 (1924).

Deposit with clerk of unendorsed draft as tender. — Under requirement either that continuous good tender be made or that actual money be paid into court, mere deposit with the clerk of a draft drawn on bank of another state, payable to order of the defendant and unendorsed, would not suffice as tender on an offer to redeem property from taxes; because the draft was not endorsed; because its payment could be stopped or refused, and because there was no showing that the plaintiff had funds sufficient for payment of the draft on deposit with the drawee bank. Durham v. Crawford, 196 Ga. 381, 26 S.E.2d 778, 1943 Ga. LEXIS 365 (1943).

To whom tender made when purchaser at sale has conveyed property to another. — Tender on offer to redeem property from a tax sale was ineffective when it is made to the purchaser at a tax sale instead of to the purchaser's grantee, after the grantee had paid the full tax money and consideration to the purchaser, and the person offering to redeem knew of such status of the property. Durham v. Crawford, 196 Ga. 381, 26 S.E.2d 778, 1943 Ga. LEXIS 365 (1943).

Payment or tender of redemption amount as prerequisite to equitable relief. — Under maxim that "he who would have equity must do equity", not only must the party seeking equitable relief from a tax sale have paid or tendered sum due to the other party, but one must have done so before filing of suit, unless tender, or offer to restore be excused upon some equitable ground. Durham v. Crawford, 196 Ga. 381, 26 S.E.2d 778, 1943 Ga. LEXIS 365 (1943).

No actual, present bona fide offer to pay redemption price. — Defendant's motion for summary judgment on the estates' claims pertaining to the redemption of the disputed property sold at a tax sale was properly granted because there was no evidence of record demonstrating an actual, present bona fide offer on behalf of the estates to pay the redemption price before the suit was

Tender and Payment (Cont'd)

filed as there was no evidence of any pre-suit communications on behalf of either estate that included an actual, present bona fide offer to pay the redemption price that had been provided by the defendant's attorney; and the administrator of the two estates did not have the money to pay the redemption price and had not obtained the probate court's approval to seek redemption of the property on the estates' behalf. Strong v. JWM Holdings, LLC, 341 Ga. App. 309, 800 S.E.2d 380, 2017 Ga. App. LEXIS 187 (2017).

Effect of nonpayment of purchase money by bidder. — As to right of owner to redeem land which has been sold at tax sale, sale is not to be considered as complete until payment of purchase money by bidder. Zugar v. Scarbrough, 186 Ga. 310, 197 S.E. 854, 1938 Ga. LEXIS 613 (1938).

Deduction of sale taxes from credits to which tax collector entitled as payment. — When a purchaser at a tax sale was represented at the sale by the county tax collector, who, instead of paying amount of bid to the sheriff, merely paid the sheriff's costs and advertising fee and, in an adjustment of the sheriff's account as tax collector, settled with the county commissioners by deducting the taxes from credits to which the sheriff was entitled, there was no such payment of purchase money as to cause period of redemption to commence. Zugar v. Scarbrough, 186 Ga. 310, 197 S.E. 854, 1938 Ga. LEXIS 613 (1938).

Effect of failure to pay or settle excess proceeds of sale. — Fact that "excess" was never paid to the sheriff or settled in any manner furnishes grounds that the tax sale was not complete, relative to the owner's right to redeem. Zugar v. Scarbrough, 186 Ga. 310, 197 S.E. 854, 1938 Ga. LEXIS 613 (1938).

Failure to allege payment or tender before filing action to redeem. — Allegation that within one year after a tax sale the redeemer tendered to one who had taken title under the purchaser at the tax sale the amount of the purchase price of the property at the sale plus ten percent interest thereon from date, is subject to special demurrer (now motion to dismiss) if it does not show the amount of the purchase price or of the tender. Forrester v. Lowe, 192 Ga. 469, 15 S.E.2d 719, 1941 Ga. LEXIS 496 (1941).

When one seeking in a court of equity to redeem property sold for taxes admits stated amounts to have been paid for the property at the sale, but fails to allege payment or tender of such amounts before filing such action, the petition should be dismissed on demurrer (now motion to dismiss). Allen v. Gates, 145 Ga. 652, 89 S.E. 821, 1916 Ga. LEXIS 434 (1916).

Trial court did not err in granting a purchaser's motion to dismiss a redemption company's action to enforce redemption of real property because both the company's pre-suit tender to the purchaser and the subsequent tender to the bank that held a security deed on the property long after adding the bank as a party to the redemption action failed to meet the legal requirement of O.C.G.A. § 48-4-40 that tender to the proper party be made prior to the filing of suit; tender should have been made to the bank, which had already been named as the grantee in a security deed by the purchaser of the tax deed before suit was filed. Cmty. Renewal & Redemption v. Nix, 288 Ga. 439, 704 S.E.2d 759, 2011 Ga. LEXIS 3 (2011).

Allegation that person to whom tender was made refused it and stated that it was unnecessary to make any further tender of any kind, as the person would not surrender the property save at the end of litigation, is sufficient to show a waiver of further tender, but does not supply the deficiencies in the allegations that there had been an actual tender of amounts, alleged in an indefinite way, the plaintiffs relying on actual tender as well as waiver. Allen v. Gates, 145 Ga. 652, 89 S.E. 821, 1916 Ga. LEXIS 434 (1916).

Successor in interest to the owner of property had successfully redeemed the property from the purchaser of a tax deed by tendering an adequate amount, O.C.G.A. § 48-4-40(2), although it was refused by the purchaser; the court rejected the purchaser's claim that the purchaser acquired title by prescription under O.C.G.A. § 48-4-48 because the

prescriptive period was not met and the purchaer's possession of the unfenced, uninhabited property was not sufficiently adverse. Nix v. 230 Kirkwood Homes, LLC, 300 Ga. 91, 793 S.E.2d 402, 2016 Ga. LEXIS 727 (2016).

After a tax deed holder had waived the requirement of tender by refusing to communicate with the successor in title to property sold at a tax sale, the fact that the successor in title had paid less than the amount required for redemption into the trial court's registry did not prevent the successor in title from redeeming the property when the successor stood ready, willing, and able to pay the redemption price. Mark Turner Props., Inc. v. Evans, 274 Ga. 547, 554 S.E.2d 492, 2001 Ga. LEXIS 860 (2001).

Title to, and Rights in, Property Pending Redemption

Effect on title of redemption or failure to redeem. — Purchaser at tax sale acquires a defeasible title, under which the purchaser is entitled to a deed from the officer selling the property, and can convey the purchaser's own defeasible title to another person, subject only to the right of redemption. If the amount required for redemption is paid or sufficiently tendered, such payment or tender revests title in the owner, but otherwise, at the expiration of the redemption period, title becomes absolute in the purchaser or the purchaser's grantee. Durham v. Crawford, 196 Ga. 381, 26 S.E.2d 778, 1943 Ga. LEXIS 365 (1943).

Upon tender by the owner for the purpose of redeeming the owner's property from a tax sale, the purchaser's inchoate, qualified, or defeasible estate terminates. Bowman v. Poole, 212 Ga. 261, 91 S.E.2d 770, 1956 Ga. LEXIS 333 (1956).

When no redemption is made during the time in which redemption is authorized, the purchaser acquires under the tax deed an absolute and unconditional title to the land sold. Thereupon the owner and all other parties authorized by law to redeem lose their redemption rights and cease to have any interest in the land. Forrester v. Lowe, 192 Ga. 469, 15 S.E.2d 719, 1941 Ga. LEXIS 496 (1941).

Recordation of interest not required. — O.C.G.A. § 48-4-40 does not require that a party's valid interest in property must be recorded in the county's deed books before the party is entitled to redeem the property. Freeman v. Eastern Sav. Bank, 271 Ga. 439, 520 S.E.2d 902.

State of title held by sale purchaser or purchaser's grantee pending period of redemption. — Purchaser at a tax sale may convey the property before expiration of the redemption period, in which case the vendee acquires the inchoate or defeasible title which passed to the vendor under the tax sale, subject to the right of an owner to redeem within the time prescribed by this statute. Braswell v. Palmer, 191 Ga. 262, 11 S.E.2d 889, 1940 Ga. LEXIS 629 (1940).

Trial court properly granted summary judgment to an association, and the association's employee and a board member, on the claims by a property purchaser against them for extortion and removal of liens arising out of the purchaser's failure to pay association fees after purchasing seven properties in a subdivision through a tax sale resulting from unpaid property taxes; while it was true that the purchaser did not obtain a fee simple absolute title, and that title could be restored to specified predecessors through redemption or before the purchaser gave notice pursuant to O.C.G.A. § 48-4-45, the purchaser did receive title sufficient to trigger automatic membership in the association and was thus required to pay the association's assessed fees. Croft v. Fairfield Plantation Prop. Owners Ass'n, 276 Ga. App. 311, 623 S.E.2d 531, 2005 Ga. App. LEXIS 1181 (2005).

Trial court erred by granting summary judgment to appellee because the homeowners' association's assignment of a lien for unpaid association dues the association relied upon to show the association possessed a property interest that authorized the association's redemption of the property indicated a different name than the property owners and the appellee had already obtained the excess tax sale funds

Title to, and Rights in, Property Pending Redemption (Cont'd)

based on the association's asserted lien resulting from the redemption. Postell v. Trinitec Portfolio Svcs., LLC, 341 Ga. App. 283, 799 S.E.2d 597, 2017 Ga. App. LEXIS 181 (2017).

Effect of redemption by cotenant on rights of other cotenants. — If cotenant redeemed property by payment of redemption money to the purchaser at tax sale, such redemption did not divest the other cotenant of title to that tenant's interest in the property. The effect of the redemption would be to restore title to the same owners who held the title before the tax sale. Andrews v. Walden, 208 Ga. 340, 66 S.E.2d 801, 1951 Ga. LEXIS 358 (1951).

Right of possession pending redemption. — During the time allowed for redemption, a purchaser's title is inchoate and the purchaser does not have the right to be put in possession of the property. Elrod v. Owensboro Wagon Co., 128 Ga. 361, 57 S.E. 712, 1907 Ga. LEXIS 103 (1907).

Rights concerning rents pending redemption. — Since rents accruing within 12 months after a tax sale may not be used to supplement cash tendered in a redemption, and a purchaser at a tax sale is not entitled to rents, issues, and profits accruing between the time of the purchaser's purchase and the redemption of the property, rent for the premises after the legal sale, not paid by the tenant purchaser, is recoverable up to the time the purchaser's deed became absolute. Beckham v. Lindsey, 22 Ga. App. 174, 95 S.E. 745, 1918 Ga. App. LEXIS 222 (1918).

Quiet title action from tax sale. — Trial court committed no error in disbursing excess funds from tax sale to owner of subject property at time of tax sale and vesting title to property to the property free and clear of the security deed holder's adverse claims because the owner had filed the owner's petition and the trial court ruled on the petition during the time the owner's right to redeem existed, and the owner's title as owner was not divested and the tax sale purchaser had no right to possess the property at that time. Republic Title Company, LLC v. Freeport Title and Guaranty, Inc., 351 Ga. App. 408, 829 S.E.2d 172, 2019 Ga. App. LEXIS 290 (2019), cert. denied, No. S19C1616, 2020 Ga. LEXIS 168 (Ga. Feb. 28, 2020).

RESEARCH REFERENCES

Am. Jur. 2d.

30 Am. Jur. 2d, Executions, § 522 et seq. 72 Am. Jur. 2d, State and Local Taxation, § 889 et seq.

C.J.S.

85 C.J.S., Taxation, § 1354 et seq.

ALR.

Constitutionality of statute extending period for redemption from judicial or tax sale, or sale upon mortgage foreclosure, 1 A.L.R. 143; 38 A.L.R. 229; 89 A.L.R. 966.

Effect of purchase by cotenant in possession of common property at foreclosure sale thereof, 6 A.L.R. 297; 54 A.L.R. 874; 85 A.L.R. 1535.

Effect of imprisonment to extend time for redemption from judicial, execution, or tax sale, 18 A.L.R. 531.

Right after redemption from tax sale or forfeiture to maintain action for trespass committed between sale or forfeiture and redemption, 33 A.L.R. 302.

Payment of tax or redemption from tax sale by public officer for benefit of owner, 66 A.L.R. 1035.

Necessity and sufficiency of statement in notice of application for tax deed, or notice to redeem from tax sale, as regards time for redemption, 82 A.L.R. 502.

Judgment as lien on judgment debtor's equity of redemption in land sold for taxes, 91 A.L.R. 647.

Unexpired right of redemption as affecting status of purchaser at judicial or execution sale as sole conditional own within insurance policy, 91 A.L.R. 1439.

Deed from purchaser of tax title to former owner or lienor as a conveyance of a new title or a redemption, as regards rights or liens of third persons subordinate to tax lien, 106 A.L.R. 887.

Right of creditor or mortgagee to redeem from his own sale, 108 A.L.R. 993.

Constitutionality of statutory provi-

sions relating to current taxes of tax delinquent property, 113 A.L.R. 1092.

Right and remedy of mortgagee who for protection of his security pays taxes on, or redeems from tax sale of, mortgaged property, 123 A.L.R. 1248.

Statute limiting period for attack on tax title as affecting remaindermen in respect of a tax sale during life tenancy, 124 A.L.R. 1145.

Right of true owner to recover proceeds of sale or lease of real property made by another in the belief that he was the owner of the property, 133 A.L.R. 1443.

Payment, tender, or deposit of tax as condition of injunction against issuance of tax deed upon ground that it had become barred by lapse of time or that the property had been redeemed, 134 A.L.R. 543.

What amounts to a sale at retail within tax statutes or ordinances, 139 A.L.R. 372.

Refusal of tender, made under protest, of amount required for redemption from tax sale, 142 A.L.R. 1198.

Retroactive application, to previous sales, of statutes reducing period of redemption from tax sales, as unconstitutional impairment of contract obligations, 147 A.L.R. 1123.

Sufficiency of tax redemption notice which includes more than one tax assessment for which land was sold, or more than one tract of land, 155 A.L.R. 1198.

Statutes providing for refund to purchaser at invalid tax sale as applicable where sale antedated the statute, 157 A.L.R. 399.

Right of person under disability to redeem from tax sale, 159 A.L.R. 1467.

One in adverse possession as within class of persons entitled to redeem from tax sale, 164 A.L.R. 1285.

What constitutes "execution" of tax deed beginning or ending period for redemption from tax sale, 166 A.L.R. 853.

Statutory limitation of period for attack on tax deed as affected by failure to comply with statutory requirement as to notice before tax deed, 5 A.L.R.2d 1021.

Effect of certificate, statement (or refusal thereof), or error by tax collector or other public officer regarding unpaid taxes or assessments against specific property, 21 A.L.R.2d 1273.

Who may redeem, from a tax foreclosure or sale, property to which title or record ownership is held by corporation, 54 A.L.R.2d 1172.

Applicability of tax redemption statutes to separate mineral estates, 56 A.L.R.2d 621.

What judgment creditors, other than the one on whose execution the sale was made, may redeem from execution sale, 58 A.L.R.2d 467.

Right of interested party receiving due notice of tax sale or of right to redeem to assert failure or insufficiency of notice to other interested party, 45 A.L.R.4th 447.

48-4-41. Redemption by creditor without lien.

If the property is redeemed by a creditor of the defendant in fi. fa. who has no lien, the creditor shall have a claim against the property for the amount advanced by him in order to redeem the property if:

(1) There is any sale of the property after the redemption under a judgment in favor of the creditor; and

(2) The quitclaim deed is recorded as required by law.

History.

Ga. L. 1898, p. 85, § 4; Civil Code 1910, § 1171; Code 1933, § 92-8303; Code 1933, § 91A-432, enacted by Ga. L. 1978, p. 309, § 2.

JUDICIAL DECISIONS

Construction with other law. — O.C.G.A. § 48-4-41 provides that if property that has been sold at a tax sale is redeemed by a creditor of the defendant in

fi. fa. who has no lien, the creditor has a claim against the property for the amounts advanced to redeem the property if there is any sale of the property after the redemption under a judgment in favor of the creditor. O.C.G.A. § 48-4-41 does not address, however, the priority of this claim and whether it constitutes a separate lien, which are matters addressed by O.C.G.A. § 48-4-43. United Capital Fin. of Atlanta, LLC v. Am. Inv. Assocs., 302 Ga. App. 400, 691 S.E.2d 272, 2010 Ga. App. LEXIS 139 (2010), overruled in part, DLT List, LLC v. M7VEN Supportive Hous. & Dev. Group, 335 Ga. App. 318, 779 S.E.2d 436, 2015 Ga. App. LEXIS 769 (2015).

Interest acquired following redemption date. — Oral agreement to buy a homeowner's association's lien and indebtedness against real property was required to be in writing and signed by the party to be charged, pursuant to O.C.G.A. § 13-5-30(4); because the buyer did not acquire an interest in the property until after the date of redemption, contrary to O.C.G.A. §§ 48-4-40 and 48-4-41, the redemption was void. DRST Holdings, Ltd. v. Brown, 290 Ga. 317, 720 S.E.2d 626, 2012 Ga. LEXIS 11 (2012).

Failure to show property interest. — Trial court erred by granting summary judgment to appellee because the homeowners' association's assignment of a lien for unpaid association dues the association relied upon to show the association possessed a property interest that authorized the association's redemption of the property indicated a different name than the property owners and the appellee had already obtained the excess tax sale funds based on the association's asserted lien resulting from the redemption. Postell v. Trinitec Portfolio Svcs., LLC, 341 Ga. App. 283, 799 S.E.2d 597, 2017 Ga. App. LEXIS 181 (2017).

RESEARCH REFERENCES

Am. Jur. 2d.
30 Am. Jur. 2d, Executions, § 499.
C.J.S.
85 C.J.S., Taxation, § 1359.
ALR.
Rights or interests covered by quitclaim deed, 44 A.L.R. 1266; 162 A.L.R. 556.

Right of mortgagor or purchaser of equity of redemption to defeat lien of mortgage by acquisition of title at sale subsequent to mortgage for nonpayment of taxes, or of assessment for local improvement, 134 A.L.R. 289.

48-4-42. Amount payable for redemption; additional costs.

(a) The amount required to be paid for redemption of property from any sale for taxes as provided in this chapter shall with respect to any sale made after July 1, 2002, be the amount paid for the property at the tax sale, as shown by the recitals in the tax deed, plus:

(1) Any taxes paid on the property by the purchaser after the sale for taxes;

(2) Any special assessments on the property; and

(3) A premium of 20 percent of the amount for the first year or fraction of a year which has elapsed between the date of the sale and the date on which the redemption payment is made and 10 percent for each year or fraction of a year thereafter.

(b) If redemption is not made until more than 30 days after the notice provided for in Code Section 48-4-45 has been given, there shall be

added to the sums set forth in subsection (a) of this Code section the sheriff's cost in connection with serving the notice and the cost of publication of the notice, if any.

(c) With respect to any sale made after July 1, 2016, there shall be added to the sums set forth in subsections (a) and (b) of this Code section any sums:

(1) Paid from the date of the tax sale to the date of redemption to a property owners' association, as defined in Code Section 44-3-221, in accordance with Code Section 44-3-232;

(2) Paid to a condominium association, that is an association, as defined in Code Section 44-3-71, in accordance with Code Section 44-3-109; or

(3) Paid to a homeowners' association established by covenants restricting land to certain uses related to planned residential subdivisions.

(d) All of the amounts required to be paid by this Code section shall be paid in lawful money of the United States to the purchaser at the tax sale or to the purchaser's successors.

History.

Ga. L. 1937, p. 491, § 2; Code 1933, § 91A-436, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1983, p. 822, § 1; Ga. L. 1984, p. 1016, § 1; Ga. L. 1996, p. 1022, § 1; Ga. L. 1997, p. 458, § 1; Ga. L. 2002, p. 1481, § 4; Ga. L. 2016, p. 758, § 2/SB 379; Ga. L. 2016, p. 793, § 2/HB 51.

Law reviews.

For article surveying recent legislative and judicial developments in Georgia's real property laws, see 31 Mercer L. Rev. 187 (1979).

For annual survey of real property law, see 58 Mercer L. Rev. 367 (2006).

JUDICIAL DECISIONS

Tender requirement does not violate due process. — Delinquent taxpayers could not maintain a suit to set aside a tax deed because the taxpayers failed to pay or tender the redemption amount required under O.C.G.A. § 48-4-47. O.C.G.A. § 48-4-47 did not violate their due process rights, although the redemption amount of $112,416 dwarfed the original $2,000 in unpaid taxes due to the addition of taxes and penalties under O.C.G.A. § 48-4-42. Saffo v. Foxworthy, Inc., 286 Ga. 284, 687 S.E.2d 463, 2009 Ga. LEXIS 734 (2009), cert. denied, 560 U.S. 939, 130 S. Ct. 3360, 176 L. Ed. 2d 1246, 2010 U.S. LEXIS 4422 (2010).

Retroactive application not unconstitutional. — Since a tax sale took place in 1995, application of the 1996 amendment that increased the amount of the annual premium from 10 percent to 20 percent was not unconstitutionally retroactive as neither the tax deed holder's rights to the property nor those of a successor in title had fully vested prior to the effective date of the amendment. Mark Turner Props., Inc. v. Evans, 274 Ga. 547, 554 S.E.2d 492, 2001 Ga. LEXIS 860 (2001).

One purpose of the 10 percent penalty is to make the purchaser whole for the use of the purchaser's money during the time it is tied up in the property. Southerland v. Bradshaw, 255 Ga. 455, 339 S.E.2d 579, 1986 Ga. LEXIS 573 (1986).

Purpose of requirement that payment be made to purchaser or heirs. — By the terms of this statute, a prerequisite to redemption is that amounts required for redemption must be paid to the purchaser, or the purchaser's heirs, successors, or assigns in lawful money of the United States. The intent and purpose of this payment is to fully compensate the owner for what the owner paid plus a penalty. This purpose is defeated if payment is made to just anyone in the chain for the owner at the time is alone entitled to such payment. Herrington v. Old S. Inv. Co., 222 Ga. 428, 150 S.E.2d 623, 1966 Ga. LEXIS 501 (1966).

Computation of time period for which premium is due. — By establishing the reference points of O.C.G.A. § 48-4-42 as "each year or fraction of a year which has elapsed between the date of the sale and the date on which the redemption payment is made", the General Assembly has demonstrated its intention to compute the time period for which a 10 percent premium is due as a 12-month year running from the date of sale. Southerland v. Bradshaw, 255 Ga. 455, 339 S.E.2d 579, 1986 Ga. LEXIS 573 (1986).

Effect of redemption. — Limited liability company (LLC) was entitled to fee simple title to property conveyed by a warranty deed after the LLC redeemed the property under O.C.G.A. § 48-4-42 as to a 1984 tax deed held by a corporation because title had not ripened in the corporation under O.C.G.A. § 48-4-48 as the corporation had not established adverse possession. BX Corp. v. Hickory Hill 1185, LLC, 285 Ga. 5, 673 S.E.2d 205, 2009 Ga. LEXIS 42 (2009).

Failure to pay or tender to proper party as bar to action to redeem. — When proper tender would have been to the holders under the security deed, failure to pay or tender to the holders the required amount for redemption is a bar to the prosecution of an action to redeem. Herrington v. Old S. Inv. Co., 222 Ga. 428, 150 S.E.2d 623, 1966 Ga. LEXIS 501 (1966).

Failure to exercise right of redemption. — Transferee by tax deeds of tax lien encumbered property, following a tax sale of the property, held fee simple title to the property unencumbered by any competing tax liens after notice and expiration of the redemption period. Nat'l Tax Funding, L.P. v. Harpagon Co., 277 Ga. 41, 586 S.E.2d 235, 2003 Ga. LEXIS 723 (2003).

Agreement to redeem. — In taxpayers' claim against a purchaser's assignee for rescission of a redemption agreement, the facts did not support rescission. The assignee's attorney did not defraud them or conceal any facts, but advised them to hire an attorney, and any failure to advise them of their legal rights was an opinion as to a matter of law and not a material fact. Boyd v. JohnGalt Holdings, LLC, 294 Ga. 640, 755 S.E.2d 675, 2014 Ga. LEXIS 171 (2014).

Award of fee simple title to tax deed purchaser upheld. — Award to tax deed purchaser of fee simple title in the properties at issue was upheld because the evidence in the record established that the redeemer failed to tender lawful money prior to the end of the redemption period and that, given the circumstances in the case, that failure was not due to any bad faith on the part of the tax deed purchaser. Moxie Capital, LLC v. Delmont 21, LLC, 363 Ga. App. 152, 869 S.E.2d 127, 2022 Ga. App. LEXIS 56 (2022).

Failure to show property interest. — Trial court erred by granting summary judgment to appellee because the homeowners' association's assignment of a lien for unpaid association dues the association relied upon to show the association possessed a property interest that authorized the association's redemption of the property indicated a different name than the property owners and the appellee had already obtained the excess tax sale funds based on the association's asserted lien resulting from the redemption. Postell v. Trinitec Portfolio Svcs., LLC, 341 Ga. App. 283, 799 S.E.2d 597, 2017 Ga. App. LEXIS 181 (2017).

RESEARCH REFERENCES

Am. Jur. 2d.
30 Am. Jur. 2d, Executions, §§ 533, 534. 72 Am. Jur. 2d, State and Local Taxation, § 723.
C.J.S.
85 C.J.S., Taxation, § 1434 et seq.

ALR.
Statutes providing for refund to purchaser at invalid tax sale as applicable where sale antedated the statute, 157 A.L.R. 399.

48-4-43. Effect of redemption.

When property has been redeemed, the effect of the redemption shall be to put the title conveyed by the tax sale back into the defendant in fi. fa., subject to all liens existing at the time of the tax sale. If the redemption has been made by any creditor of the defendant or by any person having any interest in the property, the amount expended by the creditor or person interested shall constitute a first lien on the property and, if the quitclaim deed provided for in Code Section 48-4-44 is recorded as required by law, shall be repaid prior to any other claims upon the property.

History.
Ga. L. 1898, p. 85, § 3; Civil Code 1910, § 1170; Code 1933, § 92-8302; Code 1933, § 91A-431, enacted by Ga. L. 1978, p. 309, § 2.

Law reviews.
For annual survey on local government law, see 69 Mercer L. Rev. 205 (2017).
For annual survey on real property, see 69 Mercer L. Rev. 251 (2017).

JUDICIAL DECISIONS

"Lien" construed. — As used in this statute, "lien" comprehends also title under deeds for security of debt. Union Cent. Life Ins. Co. v. Bank of Tignall, 182 Ga. 233, 185 S.E. 108, 1936 Ga. LEXIS 320 (1936).

Applicability after statutory redemption period expired. — Statute is equally applicable when property is redeemed after statutory period has expired. Union Cent. Life Ins. Co. v. Bank of Tignall, 182 Ga. 233, 185 S.E. 108, 1936 Ga. LEXIS 320 (1936); Caffey v. Parris, 186 Ga. 303, 197 S.E. 898, 1938 Ga. LEXIS 619 (1938).

Applicability of this section to property sold for federal taxes. — Statute does not apply only to tax sales by the state or some subdivision thereof. While provisions of federal statutes control as to manner in which property may be redeemed after sale for federal taxes, once the redemption has become effective, the effect of the redemption as to other liens on the property is determined by state statutes. Lowe v. City of Atlanta, 221 Ga. 477, 145 S.E.2d 534, 1965 Ga. LEXIS 501 (1965).

Effect of redemption by cotenant on rights of other cotenants. — If cotenant redeemed property by payment of redemption money to purchaser at tax sale, such redemption does not divest other cotenant of title to that cotenant's interest in the property. The effect of the redemption would be to restore title to the same owners who held title before the tax sale. Andrews v. Walden, 208 Ga. 340, 66 S.E.2d 801, 1951 Ga. LEXIS 358 (1951).

Failure to exercise right of redemption. — Transferee by tax deeds of tax lien encumbered property, following a tax sale of the property, held fee simple title to the property unencumbered by any competing tax liens after notice and expiration of the redemption period. Nat'l

Tax Funding, L.P. v. Harpagon Co., 277 Ga. 41, 586 S.E.2d 235, 2003 Ga. LEXIS 723 (2003).

Purchase by trustee in breach treated as redemption. — When in consequence of a trustee's breach of duty an estate is sold for taxes, the trustee cannot, even after the expiration of the redemption period, acquire a title from the purchaser at the tax sale, good against the cestui que trust. In equity the reconveyance will be treated as a correction of the wrong, leaving the property impressed with the original trust. Bourquin v. Bourquin, 120 Ga. 115, 47 S.E. 639, 1904 Ga. LEXIS 457 (1904).

When a trustee allowed trust property to be sold for taxes, but purchased the property individually after the time for redemption had passed, the effect was a revesting of the interest of the cestui que trust, who was then entitled to redeem the land at a subsequent tax sale. Bourquin v. Bourquin, 120 Ga. 115, 47 S.E. 639, 1904 Ga. LEXIS 457 (1904).

Rescission of redeemer's foreclosure sale due to lack of actual notice to interested parties. — In a judicial foreclosure sale held after a tax sale and redemption, the super lien holder's failure to give actual notice of the sale to the record owner and two lienholders justified the trial court's setting aside the sale under O.C.G.A. § 9-13-172; the disappointed buyer from that sale had no interest in the property and lacked standing to ask the court to confirm or set aside a second sale. Ga. Home Appraisers, Inc. v. Trintec Portfolio Servs., LLC, 349 Ga. App. 356, 825 S.E.2d 833, 2019 Ga. App. LEXIS 173 (2019).

Effect against sale purchaser with independent title. — When land is redeemed no better title is acquired than the person redeeming had before, and if the purchaser at the tax sale has an independent title, it is not divested by the redemption. Elrod v. Owensboro Wagon Co., 128 Ga. 361, 57 S.E. 712, 1907 Ga. LEXIS 103 (1907). See also Morrison v. Whiteside, 116 Ga. 459, 42 S.E. 729, 1902 Ga. LEXIS 139 (1902).

Effect of sale and redemption on restrictions as to use of property. — Whether or not a restriction of land to use as a park might ordinarily be extinguished by a valid sale of the land under a municipal execution for paving assessments, when the owner of the property at the time of sale under execution merely redeems the property, the effect of such redemption is to place title back into such owner, subject to the restriction. Caffey v. Parris, 186 Ga. 303, 197 S.E. 898, 1938 Ga. LEXIS 619 (1938).

No right to excess funds generated by tax sale. — Trial court did not err in granting a tax commissioner summary judgment in a lienholder's action under O.C.G.A. § 15-13-3 to recover excess funds from a tax sale because at the time of the tax sale, at the time the tax commissioner notified the record owner of the property and record lienholders of the excess tax sale funds, and at the time the tax commissioner paid the excess tax sale funds to the record owner of the property, the lienholder had no recorded lien or interest in the property; after the tax commissioner fulfilled the obligation under O.C.G.A. § 48-4-5(a) to give notice to the record property owner and lienholders, the property owner submitted the only claim to the tax commissioner for the excess tax sale funds, and the lienholder failed to show that more was required of the tax commissioner before the funds were disbursed. Brina Bay Holdings, LLC v. Echols, 314 Ga. App. 242, 723 S.E.2d 533, 2012 Ga. App. LEXIS 169 (2012), overruled in part, DLT List, LLC v. M7VEN Supportive Hous. & Dev. Group, 335 Ga. App. 318, 779 S.E.2d 436, 2015 Ga. App. LEXIS 769 (2015).

To the extent that Wester v. United Capital Finance of Atlanta, LLC, 282 Ga. App. 392, 638 S.E.2d 779 (2006), and United Capital Finance of Atlanta v. American Investment Assoc., 302 Ga. App. 400, 691 S.E.2d 272 (2010), held that the redeeming creditor at a tax sale had a first priority claim on the excess tax funds for the amount paid to redeem the property, those cases are overruled. DLT List, LLC v. M7VEN Supportive Hous. & Dev. Group, 335 Ga. App. 318, 779 S.E.2d 436, 2015 Ga. App. LEXIS 769 (2015), aff'd, 301 Ga. 131, 800 S.E.2d 362, 2017 Ga. LEXIS 374 (2017).

Redeeming creditor of a tax-sale property does not have a priority lien against

excess funds arising from that sale. DLT List, LLC v. M7VEN Supportive Hous. & Dev. Group, 301 Ga. 131, 800 S.E.2d 362, 2017 Ga. LEXIS 374 (2017).

In Wester v. United Capital Financial of Atlanta, LLC, 282 Ga. App. 392 (2006) and again in United Capital Financial of Atlanta v. American Investment Assoc., 302 Ga. App. 400 (2010), the Georgia Court of Appeals held that a creditor who redeems property following a tax sale has first priority to excess funds resulting from that tax sale, but properly overruled those decisions in DLT List, LLC. v. M7VEN Supportive Housing & Dev. Group, 335 Ga. App. 318 (2015) concluding that a redeeming creditor has no such priority. DLT List, LLC v. M7VEN Supportive Hous. & Dev. Group, 301 Ga. 131, 800 S.E.2d 362, 2017 Ga. LEXIS 374 (2017).

As to excess tax sale funds, a redeeming creditor can only make a claim for the funds in the amount of the pre-tax sale lien that gave the creditor the right to redeem. SunTrust Bank v. Cowan, 344 Ga. App. 604, 812 S.E.2d 13, 2018 Ga. App. LEXIS 73 (2018).

Order disbursing excess tax sale funds to the assignee of the redeemer was reversed because the assignee could not show justifiable or good faith reliance on case law that had been overturned and, therefore, had no vested rights to the excess funds or that the issue was moot because it had already spent the funds. SunTrust Bank v. Cowan, 344 Ga. App. 604, 812 S.E.2d 13, 2018 Ga. App. LEXIS 73 (2018).

RESEARCH REFERENCES

Am. Jur. 2d.

30 Am. Jur. 2d, Executions, § 460 et seq.

C.J.S.

85 C.J.S., Taxation, § 1458 et seq.

ALR.

Judgment as lien on judgment debtor's equity of redemption in land sold for taxes, 91 A.L.R. 647.

Deed from purchaser of tax title to former owner or lienor as a conveyance of a new title or a redemption, as regards rights or liens of third persons subordinate to tax lien, 106 A.L.R. 887.

Right and remedy of mortgagee who for protection of his security pays taxes on, or redeems from tax sale of, mortgaged property, 123 A.L.R. 1248.

Statutes providing for refund to purchaser at invalid tax sale as applicable where sale antedated the statute, 157 A.L.R. 399.

Rights and remedies of owner against holder of invalid tax title respecting rents and profits or use and occupation, 173 A.L.R. 1179.

Applicability of tax redemption statutes to separate mineral estates, 56 A.L.R.2d 621.

48-4-44. Quitclaim deed by purchaser.

(a) In all cases where property is redeemed, the purchaser at the tax sale shall make a quitclaim deed to the defendant in fi. fa., which deed shall recite:

(1) The name of the person who has paid the redemption money; and

(2) The capacity in which or the claim of right or interest pursuant to which the redemption money was paid.

(b) The recitals required by subsection (a) of this Code section shall be prima-facie evidence of the facts stated.

(c) If the quitclaim deed provided for in subsection (a) of this Code section is presented to the purchaser at the time such person accepts the amount payable for the redemption in the form of cash or a certified check, the purchaser shall, at that time, sign the quitclaim deed if a notary public and an unofficial witness are present to witness such signature.

(d) If no quitclaim deed is presented at the time of the redemption or if sufficient witnesses are not present, it shall be the responsibility of the purchaser to prepare and properly execute such quitclaim deed as is required by law within seven days from the date of the redemption.

(e) It shall be the responsibility of the purchaser once the quitclaim deed is properly executed as required in subsection (d) of this Code section to present such deed for recordation to the clerk of the court within ten days of the redemption. The quitclaim deed shall be presented for recordation in the county where the tax sale originally occurred. The purchaser shall pay all recording costs and return the recorded quitclaim deed to the redeemer.

History.

Ga. L. 1898, p. 85, § 5; Civil Code 1910, § 1172; Code 1933, § 92-8304; Code 1933, § 91A-433, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2006, p. 770, § 6/SB 585.

Editor's notes.

Ga. L. 2006, p. 770, § 8/SB 585, not codified by the General Assembly, provides: "The provisions of this Act shall apply to all executions transferred on or after July 1, 2006. Executions transferred prior to July 1, 2006, shall not be affected by this Act."

JUDICIAL DECISIONS

Section inapplicable to sale for drainage assessments. — When land is sold under execution issued for an assessment to meet interest, principal, or costs of draining the land in a drainage district, the vendee will not be required to execute and deliver a quitclaim deed. Sigmon-Reinhardt Co. v. Atkins Nat'l Bank, 163 Ga. 136, 135 S.E. 720, 1926 Ga. LEXIS 39 (1926).

That purchaser does not yet have deed is no defense to demand for deed. — It is no defense to a demand for a deed to answer that the purchaser has not yet had the selling officer make a deed to the purchaser. Elrod v. Owensboro Wagon Co., 128 Ga. 361, 57 S.E. 712, 1907 Ga. LEXIS 103 (1907).

No bad faith of tax deed purchaser during redemption period.— Award to tax deed purchaser of fee simple title in the properties at issue was upheld because the evidence in the record established that the redeemer failed to tender lawful money prior to the end of the redemption period and that, given the circumstances in the case, that failure was not due to any bad faith on the part of the tax deed purchaser. Moxie Capital, LLC v. Delmont 21, LLC, 363 Ga. App. 152, 869 S.E.2d 127, 2022 Ga. App. LEXIS 56 (2022).

Failure to exercise right of redemption. — Transferee by tax deeds of tax lien encumbered property, following a tax sale of the property, held fee simple title to the property unencumbered by any competing tax liens after notice and expiration of the redemption period. Nat'l Tax Funding, L.P. v. Harpagon Co., 277 Ga. 41, 586 S.E.2d 235, 2003 Ga. LEXIS 723 (2003).

RESEARCH REFERENCES

Am. Jur. 2d.
30 Am. Jur. 2d, Executions, §§ 461, 462.
C.J.S.
85 C.J.S., Taxation, § 1468 et seq.
ALR.
Rights or interests covered by quitclaim deed, 44 A.L.R. 1266; 162 A.L.R. 556.
Statutes providing for refund to purchaser at invalid tax sale as applicable where sale antedated the statute, 157 A.L.R. 399.

48-4-45. Notice of foreclosure of right to redeem; persons entitled to notice.

(a) After 12 months from the date of a tax sale, the purchaser at the sale or his heirs, successors, or assigns may terminate, foreclose, divest, and forever bar the right to redeem the property from the sale by causing a notice or notices of the foreclosure, as provided for in this article:

(1) To be served upon all of the following persons who reside in the county in which the property is located:

(A) The defendant in the execution under or by virtue of which the sale was held;

(B) The occupant, if any, of the property; and

(C) All persons having of record in the county in which the land is located any right, title, or interest in, or lien upon the property;

(2) To be sent by registered or certified mail or statutory overnight delivery to each of the persons specified in subparagraphs (A), (B), and (C) of paragraph (1) of this subsection who resides outside the county in which the property is located, if the address of that person is reasonably ascertainable; and

(3) To be published, if that tax sale occurs on or after July 1, 1989, in the newspaper in which the sheriff's advertisements for the county are published in each county in which that property is located, which publication shall occur once a week for four consecutive weeks in the six-month period immediately prior to the week of the redemption deadline date specified in the notice.

(b) Nothing contained in this Code section shall be construed to require that any notice be sent to or served upon any person whose right, title, interest in, or lien upon the property does not appear of record in the county in which the land is located.

(c) The heirs of any deceased owner of any land entitled to notice pursuant to this Code section shall be served by the sheriff or notified as provided in this article.

History.

Ga. L. 1937, p. 491, § 2; Code 1933, § 91A-434, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1989, p. 1391, § 1; Ga. L. 2000, p. 1589, § 3.

Law reviews.

For annual survey of law of real property, see 38 Mercer L. Rev. 319 (1986).

For annual survey of real property law, see 57 Mercer L. Rev. 331 (2005).

For annual survey on real property law, see 61 Mercer L. Rev. 301 (2009).

For annual survey on real property, see 69 Mercer L. Rev. 251 (2017).

JUDICIAL DECISIONS

Notice requirements of O.C.G.A. § 48-4-45 must be complied with by one seeking redemption. Blizzard v. Moniz, 271 Ga. 50, 518 S.E.2d 407.

Proper notice requires compliance with multiple provisions. — Under the plain language of O.C.G.A. § 48-4-45(a), the right to redeem is foreclosed and forever barred only upon compliance with paragraphs (a)(1), (a)(2), and (a)(3); because those three paragraphs are set forth in the conjunctive, compliance with each paragraph is required. Reliance Equities, LLC v. Lanier 5, LLC, 299 Ga. 891, 792 S.E.2d 680, 2016 Ga. LEXIS 689 (2016).

Notice met due process requirements.— Because Chapter 13 debtor received more than thirty days notice of the termination date as provided in O.C.G.A. § 48-4-45, the constitutional due process requirements of the statute were met. In re Wood, 632 B.R. 916, 2021 Bankr. LEXIS 1841 (Bankr. M.D. Ga. 2021).

Lack of notice not affecting foreclosure of redemption. — Because the former owner's interest in property was foreclosed upon by the creditor prior to the issuance of the tax fi-fa, the former owner's interest did not appear of record in the county in which the property was located when the foreclosure of the right of redemption was begun and, accordingly, the lack of notice to the former owner did not affect the validity of the foreclosure. GE Capital Mtg. Servs. Inc. v. Clack, 271 Ga. 82, 515 S.E.2d 619.

When notice requirement applicable. — Appellant was entitled to fee simple title to a 50-acre tract as a predecessor in interest who purchased the property from the county after the county had purchased the property at a tax sale did not make an out-of-time redemption under former Code 1933, § 92-8301 (see now O.C.G.A. § 48-4-40(2)) as the extension of the right to redeem was not enacted until after the death of the initial purchaser, who was the predecessor's parent; the notice requirement in O.C.G.A. § 48-4-45 also was not enacted at that time. Selph v. Williams, 284 Ga. 349, 667 S.E.2d 40, 2008 Ga. LEXIS 754 (2008).

Proof of publication of notice. — Tax sale purchaser's attachment of a copy of the newspaper notice to the summary judgment affidavit satisfied the purchaser's burden of showing on the record that the purchaser was entitled to judgment. GE Capital Mtg. Servs. Inc. v. Clack, 271 Ga. 82, 515 S.E.2d 619.

Computation of time. — O.C.G.A. § 48-4-45 requires that 12 months shall have elapsed before the right to redeem property shall be foreclosed and before notice of the right to foreclose the right shall be served. Wallace v. President St., 263 Ga. 239, 430 S.E.2d 1, 1993 Ga. LEXIS 442 (1993).

Lienholders acquiring interest subsequent to tax sales not barred from redemption. — O.C.G.A. § 48-4-45 does not provide that the interest must have been held at the time of the tax sale. The statute requires notice to lienholders who exist at the time of any attempted foreclosure of the right of redemption. Therefore, such lienholders are not barred from the right of redemption by reason of having acquired their interest subsequent to the tax sale. Leathers v. McClain, 255 Ga. 378, 338 S.E.2d 666, 1986 Ga. LEXIS 510 (1986).

Power of court of equity to allow redemption after expiration of period. — After the statutory redemption has expired, the right to redeem is gone,

and there is no power even in a court of equity to authorize redemption of the property in such cases. Boroughs v. Lance, 213 Ga. 143, 97 S.E.2d 357, 1957 Ga. LEXIS 324 (1957).

Failure to exercise right of redemption. — Transferee by tax deeds of tax lien encumbered property, following a tax sale of the property, held fee simple title to the property unencumbered by any competing tax liens after notice and expiration of the redemption period. Nat'l Tax Funding, L.P. v. Harpagon Co., 277 Ga. 41, 586 S.E.2d 235, 2003 Ga. LEXIS 723 (2003).

Notice of barment. — There was no evidence in the record showing that the notice of barment was ever provided to the sheriff by the purchaser for service; consequently, there was no evidence that the sheriff violated the sheriff's duties regarding service of the notice of barment as alleged. Tharp v. Vesta Holdings I, LLC, 276 Ga. App. 901, 625 S.E.2d 46, 2005 Ga. App. LEXIS 1318 (2005), cert. denied, No. S06C0874, 2006 Ga. LEXIS 272 (Ga. May 8, 2006).

Right to notice not shown. — Because a tax sale listed the wrong owner of the property to be sold and the description of the property was inconsistent, such that it was unclear which property was being sold, the bidder's deed was defective, as was the quitclaim deed of the purchaser of the property from the bidder, and, accordingly, there was no merit to the purchaser's claim that it was due summary judgment on the issue of whether the owner's executrix had a right to redeem the property or whether the sale was barred under O.C.G.A. § 48-4-45; after the tax sale, the bidder quitclaimed the deed to the purchaser, which occurred prior to the sheriff's "administrative cancellation" of the tax sale due to procedural errors, and the purchaser's action to quiet title, pursuant to O.C.G.A. § 23-3-40 et seq., resulted in summary judgment to the executrix. Harpagon Co. v. Gelfond, 279 Ga. 59, 608 S.E.2d 597, 2005 Ga. LEXIS 113 (2005).

In a challenge to the tax deed holder's acquisition of the subject property, a neighbor's complaint that, because of the neighbor's claim of adverse possession, the neighbor was entitled to statutory notice of foreclosure of the right to redeem the property, was rendered moot by the neighbor's abandonment of the adverse possession claim and the neighbor failed to show any other basis for a right to notice under O.C.G.A. § 48-4-45(a)(1). Ritchie v. Metro Tax Investors, Inc., 280 Ga. 79, 623 S.E.2d 498, 2005 Ga. LEXIS 865 (2005).

Alleged property owner not entitled to notice because interest not recorded. — Claimant who asserted that the claimant was the owner of commercial property that had been sold at a tax sale, based on an oral contract that the claimant had fully performed and the claimant's payment of property taxes for over ten years, was not entitled to service of the notice of foreclosure of the right to redeem under O.C.G.A. § 48-4-45(a)(1) because subsection (b) required service on an "occupant" only if the occupant had an interest that was "of record," and the claimant had no recorded interest. Tyner v. Edge, 355 Ga. App. 196, 843 S.E.2d 632, 2020 Ga. App. LEXIS 288 (2020), cert. denied, No. S20C1315, 2020 Ga. LEXIS 969 (Ga. Dec. 7, 2020).

Power company easement a nullity. — Easement the power company obtained from the landowner after the landowner had already lost the property to a tax sale became a nullity when the property was not redeemed after a buyer properly invoked the state barment statutes. Land USA, LLC v. Ga. Power Co., 297 Ga. 237, 773 S.E.2d 236, 2015 Ga. LEXIS 367 (2015).

No record of successful completion of foreclosure of redemption rights. — Buyer's claim of foreclosure of all rights to redeem property purchased by the buyer at a tax sale failed because the county real estate records did not contain an entry memorializing successful completion of the foreclosure of the right of redemption as provided by O.C.G.A. § 48-4-46(d); a corporation thus only had notice that the buyer, as a later tax deed grantee, held an inchoate or defeasible title, which could have been perfected on foreclosure of all senior redemption rights. The corporation stood in the position of a

good-faith purchaser for value without notice. Washington v. McKibbon Hotel Group, Inc., 284 Ga. 262, 664 S.E.2d 201, 2008 Ga. LEXIS 623 (2008).

Reasonably diligent steps to locate property owner. — Summary judgment for a tax sale purchaser was affirmed as the purchaser took reasonably diligent steps to locate a property owner to notify the owner of the foreclosure of the owner's right to redeem the property as it: (1) attempted to learn from the owner's tenant how to contact the owner; (2) left letters under the condominium door; (3) contacted the management company; and (4) contacted the owner's mortgage company; the owner's claims that the purchaser should have searched a state court's docket and should have used a phone book to locate the owner were rejected. Hamilton v. Renewed Hope, Inc., 281 Ga. 393, 637 S.E.2d 412, 2006 Ga. LEXIS 934 (2006).

Tax sale buyer complied with O.C.G.A. § 48-4-45(a)'s notice requirements when, after conducting a reasonable search, the buyer sent notice to the owner's known addresses via certified mail, as the buyer resided outside the county where the property was located, and published the required notices in a newspaper in the county where the property was located. Mancuso v. TDGA, LLC, 301 Ga. 671, 802 S.E.2d 248, 2017 Ga. LEXIS 551 (2017), cert. denied, 584 U.S. 906, 138 S. Ct. 1330, 200 L. Ed. 2d 518, 2018 U.S. LEXIS 2010 (2018).

Bankruptcy. — Tax sale purchaser creditor's motion for relief from the automatic stay under 11 U.S.C. § 362(d) was denied, and the debtor could not yet proceed to foreclose on the debtor's equity of redemption under the barment provisions of O.C.G.A. §§ 48-4-45 and 48-4-46 because the foreclosure was filed after the chapter 13 bankruptcy petition. Greyfield Res., Inc. v. Drummer (In re Drummer), 457 B.R. 912, 2011 Bankr. LEXIS 3042 (Bankr. N.D. Ga. 2011).

Although the time period for the chapter 13 debtor to exercise the debtor's right of redemption as to the tax deed sale of the debtor's real property passed, under O.C.G.A. § 48-4-45, the debtor could still pay the claim pursuant to 11 U.S.C. § 1322 as a claim under the debtor's chapter 13 plan. Francis v. Scorpion Group, LLC (In re Francis), 489 B.R. 262, 2013 Bankr. LEXIS 923 (Bankr. N.D. Ga. 2013).

When Chapter 13 debtor proposed extension plan prior to date when the right of redemption would have expired under Georgia state law, without regard to an extension provided by 11 U.S.C. § 108, the debtor did not reside on that property, and the Chapter 13 plan would pay the redemption amount in full, plus interest, then the redemption amount could be paid over the length of the plan regardless of whether applicable state law required a lump sum payment. In re Jimerson, 564 B.R. 430, 2017 Bankr. LEXIS 227 (Bankr. N.D. Ga. 2017), rev'd, No. 1:17-cv-513-WSD, 2018 U.S. Dist. LEXIS 197306 (N.D. Ga. Jan. 22, 2018).

Where debtor's Chapter 13 plan proposed to pay the redemption price on foreclosed property plus 5% interest over the term of the plan, plan confirmation was denied because the debtor did not pay the redemption price in full on or before the termination date; the debtor's rights in the property were extinguished under state law, and there was no longer any "claim" to be modified. In re Wood, 632 B.R. 916, 2021 Bankr. LEXIS 1841 (Bankr. M.D. Ga. 2021).

Redemption untimely. — Judgment denying the redeemer's motion for relief was reversed because the plain terms of O.C.G.A. § 48-4-45(a) provided unambiguously that the right to redeem was foreclosed only after compliance with paragraphs (a)(1), (a)(2), and (a)(3) and the redeemer attempted to redeem the property before the buyer had complied with paragraph (a)(3); thus, the right to redeem was not yet foreclosed, and the buyer improperly rejected the redeemer's tender of the redemption price as untimely. Reliance Equities, LLC v. Lanier 5, LLC, 299 Ga. 891, 792 S.E.2d 680, 2016 Ga. LEXIS 689 (2016).

No bad faith of tax deed purchaser during redemption period. — Award to tax deed purchaser of fee simple title in the properties at issue was upheld because the evidence in the record established that the redeemer failed to

tender lawful money prior to the end of the redemption period and that, given the circumstances in the case, that failure was not due to any bad faith on the part of the tax deed purchaser. Moxie Capital, LLC v. Delmont 21, LLC, 363 Ga. App. 152, 869 S.E.2d 127, 2022 Ga. App. LEXIS 56 (2022).

RESEARCH REFERENCES

Am. Jur. 2d.

30 Am. Jur. 2d, Executions and Enforcement of Judges, §§ 847, 849 et seq. 72 Am. Jur. 2d, State and Local Taxation, § 911 et seq.

C.J.S.

85 C.J.S., Taxation, § 1370 et seq.

ALR.

Who entitled to notice necessary to perfect tax title, 54 A.L.R. 756; 169 A.L.R. 686.

Necessity and sufficiency of statement in notice of application for tax deed, or notice to redeem for tax sale, as regards time for redemption, 82 A.L.R. 502.

Tax title or deed as subject to attack for want of notice of application for tax deed or of expiration of redemption period, where a statute makes tax deed conclusive evidence of matters preliminary to its issuance or limits attack thereon to specific grounds or exempts deed from attack for procedural irregularities or omissions, 134 A.L.R. 796.

Statutory limitation of period for attack on tax deed as affected by failure to comply with statutory requirement as to notice before tax deed, 5 A.L.R.2d 1021.

Right of interested party receiving due notice of tax sale or of right to redeem to assert failure or insufficiency of notice to other interested party, 45 A.L.R.4th 447.

Recovery of sales taxes paid on bad debts, 38 A.L.R.6th 255.

48-4-46. Form of notice of foreclosure of right to redeem; service.

(a) The notice provided for in Code Section 48-4-45 shall be written or printed, or written in part and printed in part, and shall be in substantially the following form:

Take notice that:

The right to redeem the following described property, to wit:

_____ will expire and be forever foreclosed and barred on and after the _____ day of _____, _____.

The tax deed to which this notice relates is dated the _____ day of _____, _____, and is recorded in the office of the Clerk of the Superior Court of _____ County, Georgia, in Deed Book _____ at page _____.

The property may be redeemed at any time before the _____ day of _____, _____, by payment of the redemption price as fixed and provided by law to the undersigned at the following address: _____.

Please be governed accordingly._____

(b) The purchaser at the tax sale or his heirs, successors, or assigns,

as the case may be, shall make out an original notice in substantially the form prescribed in subsection (a) of this Code section and one copy of the notice for each person to be served with the notice. The purchaser shall deliver the notice and the copies together with a list of the persons to be served to the sheriff of the county in which the land is located not less than 45 days before the date set in each notice for the expiration of the right to redeem. Within 15 days after delivery to him, the sheriff shall serve a copy of the notice personally or by deputy upon each of the persons included on the list furnished him who reside in the county. The sheriff shall make an entry of the service on the original copy of the notice. Leaving a copy of the notice at the residence of any person required to be served with the notice shall be a sufficient service of the notice.

(c) If the sheriff personally or by deputy makes an entry that he is unable for any reason to effect service upon any person required to be served, the person who requested that the service be made shall forthwith cause a copy of the notice to be published once a week for two consecutive weeks in the newspaper in which the sheriff's advertisements for the county are published, unless that notice is being published as provided in paragraph (3) of subsection (a) of Code Section 48-4-45. Either publication shall operate as and for all purposes shall be treated as service upon all persons as to whom the sheriff has made an entry that he has been unable to effect service.

(d) Each original notice together with the entry of the sheriff on the notice shall be returned to the person by whom the service was requested upon the payment of the sheriff's costs as provided by law. Any original notice together with the entries on the notice may be filed and recorded on the deed records in the office of the clerk of the superior court of the county in which the land is located.

(e) Service of notices as provided in this Code section may be waived in writing by any person required or entitled to be served with the notice.

History.

Ga. L. 1937, p. 491, § 2; Code 1933, § 91A-435, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1982, p. 3, § 48; Ga. L. 1989, p. 1391, § 2; Ga. L. 1999, p. 81, § 48.

JUDICIAL DECISIONS

Constitutionality. — Notice to persons outside the county under O.C.G.A. § 48-3-9(b) and subsections (b) and (c) of O.C.G.A. § 48-4-46 are not in accord with the requirements of due process because an owner of a security deed or mortgage who lives outside the county in which the land is located will only receive published notice of the foreclosure of the right to redeem. Funderburke v. Kellet, 257 Ga. 822, 364 S.E.2d 845, 1988 Ga. LEXIS 65 (1988).

It is not presumed that the General Assembly intended to enable a tax sale purchaser to forego any methods of notice of foreclosure of the right to redeem which

might be required by the due process clause, and the words "for any reason" in O.C.G.A. § 48-4-46(c) are construed to mean that notice by publication is permissible only if a sheriff's inability to effect personal service satisfies the constitutional mandate of due process. Hamilton v. Renewed Hope, Inc., 277 Ga. 465, 589 S.E.2d 81, 2003 Ga. LEXIS 999 (2003).

Responsibility of purchasers. — Purchasers of a business were required to establish a fund sufficient to cover unpaid taxes regardless of the existence of other claims superior to the state tax execution. Collins v. Lesters, Inc., 225 Ga. App. 405, 484 S.E.2d 62.

No record of successful completion of foreclosure of redemption rights. — Buyer's claim of foreclosure of all rights to redeem property purchased by the buyer at a tax sale failed because the county real estate records did not contain an entry memorializing successful completion of the foreclosure of the right of redemption as provided by O.C.G.A. § 48-4-46(d); a corporation thus only had notice that the buyer, as a later tax deed grantee, held an inchoate or defeasible title, which could have been perfected on foreclosure of all senior redemption rights. The corporation stood in the position of a good-faith purchaser for value without notice. Washington v. McKibbon Hotel Group, Inc., 284 Ga. 262, 664 S.E.2d 201, 2008 Ga. LEXIS 623 (2008).

Failure of redemption.— Award to tax deed purchaser of fee simple title in the properties at issue was upheld because the evidence in the record established that the redeemer failed to tender lawful money prior to the end of the redemption period and that, given the circumstances in the case, that failure was not due to any bad faith on the part of the tax deed purchaser. Moxie Capital, LLC v. Delmont 21, LLC, 363 Ga. App. 152, 869 S.E.2d 127, 2022 Ga. App. LEXIS 56 (2022).

Notice posted at residence sufficient. — Appellant did not dispute that notice of the right to redeem was posted on the house, which appellant contended was appellant's residence and the argument that appellant did not see that notice was of no merit. Francis v. Nr Deed, LLC, 359 Ga. App. 707, 858 S.E.2d 99, 2021 Ga. App. LEXIS 208 (2021).

Reasonable efforts at providing notice not established. — When the assignee of a party who purchased certain real property at a tax sale unsuccessfully tried to give the property's owner notice of the foreclosure of the assignee's right to redeem the property by personal service at the owner's address as found in tax and deed records for the subject property, publication could not be constitutionally used to give the owner notice of the foreclosure until further efforts were made to provide the owner notice, absent evidence that other channels of information to locate the owner were not reasonably available, or that use of those channels would have been impractical. Hamilton v. Renewed Hope, Inc., 277 Ga. 465, 589 S.E.2d 81, 2003 Ga. LEXIS 999 (2003).

Reasonable efforts at providing notice established. — There was no evidence in the record showing that the notice of barment was ever provided to the sheriff by the purchaser for service; consequently, there was no evidence that the sheriff violated duties regarding service of the notice of barment as alleged. Tharp v. Vesta Holdings I, LLC, 276 Ga. App. 901, 625 S.E.2d 46, 2005 Ga. App. LEXIS 1318 (2005), cert. denied, No. S06C0874, 2006 Ga. LEXIS 272 (Ga. May 8, 2006).

More than 30 days notice received.— Because Chapter 13 debtor received more than thirty days notice of the termination date as provided in O.C.G.A. § 48-4-45, the constitutional due process requirements of the statute were met. In re Wood, 632 B.R. 916, 2021 Bankr. LEXIS 1841 (Bankr. M.D. Ga. 2021).

Bankruptcy. — Tax sale purchaser creditor's motion for relief from the automatic stay under 11 U.S.C. § 362(d) was denied, and the debtor could not yet proceed to foreclose on debtor's equity of redemption under the barment provisions of O.C.G.A. §§ 48-4-45 and 48-4-46 because the foreclosure was filed after the chapter 13 bankruptcy petition. Greyfield Res., Inc. v. Drummer (In re Drummer),

457 B.R. 912, 2011 Bankr. LEXIS 3042 (Bankr. N.D. Ga. 2011).

RESEARCH REFERENCES

Am. Jur. 2d.

30 Am. Jur. 2d, Executions and Enforcement of Judges, §§ 847, 849 et seq. 72 Am. Jur. 2d, State and Local Taxation, § 911 et seq.

ALR.

Tax title or deed as subject to attack for want of notice of application for tax deed or of expiration of redemption period, where a statute makes tax deed conclusive evidence of matters preliminary to its issuance or limits attack thereon to specific grounds or exempts deed from attack for procedural irregularities or omissions, 134 A.L.R. 796.

Statutory limitation of period for attack on tax deed as affected by failure to comply with statutory requirement as to notice before tax deed, 5 A.L.R.2d 1021.

Right of interested party receiving due notice of tax sale or of right to redeem to assert failure or insufficiency of notice to other interested party, 45 A.L.R.4th 447.

48-4-47. Tender of redemption price before action to cancel tax deed.

(a) After notice to foreclose the right of redemption as provided for in this article has been given, no action shall be filed, allowed, sanctioned, or maintained for the purpose of setting aside, canceling, or in any way invalidating the tax deed referred to in the notice or the title conveyed by the tax deed unless and until the plaintiff in the action pays or legally tenders to the grantee in the deed or to his successors the full amount of the redemption price for the property, as provided for in this article.

(b) Subsection (a) of this Code section shall apply unless it clearly appears that:

(1) The tax or special assessment for the collection of which the execution under or by virtue of which the sale was held was not due at the time of the sale; or

(2) Service or notice was not given as required in this article.

History.

Ga. L. 1937, p. 491, § 2; Code 1933, § 91A-437, enacted by Ga. L. 1978, p. 309, § 2.

JUDICIAL DECISIONS

Tender requirement does not violate due process. — Delinquent taxpayers could not maintain a suit to set aside a tax deed because they failed to pay or tender the redemption amount required under O.C.G.A. § 48-4-47. O.C.G.A. § 48-4-47 did not violate their due process rights, although the redemption amount of $112,416 dwarfed the original $2,000 in unpaid taxes due to the addition of taxes and penalties under O.C.G.A. § 48-4-42. Saffo v. Foxworthy, Inc., 286 Ga. 284, 687 S.E.2d 463, 2009 Ga. LEXIS 734 (2009), cert. denied, 560

U.S. 939, 130 S. Ct. 3360, 176 L. Ed. 2d 1246, 2010 U.S. LEXIS 4422 (2010).

Effect of plaintiff's financial inability to make tender. — Plaintiff's financial inability to make the tender of the amount owed does not alter the requirements of this statute. Ayer v. Lamar County, 194 Ga. 712, 22 S.E.2d 606, 1942 Ga. LEXIS 665 (1942).

Collateral attack on ownership of property. — Plaintiffs were barred from collaterally attacking the validity of the county's ownership of property at the time of the demolition of a home on the property since there was no tender of the redemption price to the county regarding the property and there was nothing in the record to indicate that taxes, which formed the basis for the tax sale of the property, were not due at the time of sale or that the county failed to provide proper notice or service of the county's bar of redemption. Hill v. Mayor & Aldermen of Savannah, 233 Ga. App. 742, 505 S.E.2d 35, 1998 Ga. App. LEXIS 1005 (1998), cert. denied, No. S98C1899, 1998 Ga. LEXIS 1223 (Ga. Dec. 4, 1998).

Tender of redemption price not required since notice not given to redeeming party. — Trial court erred by finding that the failure of the plaintiff to tender the full amount of the redemption price for the property at issue before filing suit barred that action under the statute since the plaintiff claimed that the plaintiff did not receive the statutorily required notice. H & C Dev., Inc. v. Bershader, 248 Ga. App. 546, 546 S.E.2d 907, 2001 Ga. App. LEXIS 340 (2001), cert. denied, No. S01C0992, 2001 Ga. LEXIS 739 (Ga. Sept. 17, 2001).

Exception to tender requirement found. — Because an exception to the tender requirement that the redemption price be tendered before the validity of a tax deed could be challenged applied, as it appeared that the tax or special assessment for the collection of which the execution under or by virtue of which the sale was held was not due at the time of the sale based on the property's tax-exempt status, the appeals court rejected a claim that trustees for the property lacked standing to contest the tax sale because they did not tender the amount of unpaid taxes for which the property was sold. Marathon Inv. Corp. v. Spinkston, 281 Ga. 888, 644 S.E.2d 133, 2007 Ga. LEXIS 306 (2007).

Because there was evidence in the form of a taxpayer's averment that there were no taxes due at the time of a tax sale, relieving the taxpayer of the obligation to make a complete tender prior to seeking redemption of the taxpayer's property under O.C.G.A. § 48-4-47(b)(1), a trial court did not abuse the court's discretion in granting an interlocutory injunction to maintain the status quo, pending resolution of the issues presented. Am. Lien Fund, LLC v. Dixon, 286 Ga. 562, 690 S.E.2d 415, 2010 Ga. LEXIS 178 (2010).

Failure to give notice of right to redemption. — O.C.G.A. § 48-4-47 was inapplicable in a redemption company's action against a purchaser to enforce redemption of real property because the purchaser had not given the statutorily required notice of foreclosure of the right to redemption at any time since the purchaser's purchase of the property by tax deed. Cmty. Renewal & Redemption v. Nix, 288 Ga. 439, 704 S.E.2d 759, 2011 Ga. LEXIS 3 (2011).

RESEARCH REFERENCES

Am. Jur. 2d.

72 Am. Jur. 2d, State and Local Taxation, § 723.

C.J.S.

85 C.J.S., Taxation, § 1441 et seq.

ALR.

Necessity of recording tax deed to protect title as against interest derived from former owner, 65 A.L.R. 1015.

Tax title or deed as subject to attack for want of notice of application for tax deed or of expiration of redemption period, where a statute makes tax deed conclusive evidence of matters preliminary to its issuance or limits attack thereon to specific grounds or exempts deed from attack for procedural irregularities or omissions, 134 A.L.R. 796.

48-4-48. Ripening of tax deed title by prescription.

(a) A title under a tax deed properly executed at a valid and legal sale prior to July 1, 1989, shall ripen by prescription after a period of seven years from the date of execution of that deed.

(b) A title under a tax deed executed on or after July 1, 1989, but before July 1, 1996, shall ripen by prescription after a period of four years from the execution of that deed. A title under a tax deed properly executed on or after July 1, 1996, at a valid and legal sale shall ripen by prescription after a period of four years from the recordation of that deed in the land records in the county in which said land is located.

(c) A tax deed which has ripened by prescription pursuant to any provision of this Code section shall convey, when the defendant in fi. fa. is not laboring under any legal disability, a fee simple title to the property described in that deed, and that title shall vest absolutely in the grantee in the deed or in the grantee's heirs or assigns. In the event the defendant in fi. fa. is laboring under any legal disability, the prescriptive term specified in this Code section shall begin from the time the disabilities are removed or abated.

(d) Notice of foreclosure of the right to redeem property sold at a tax sale shall not be required to have been provided in order for the title to such property to have ripened under subsection (a) or (b) of this Code section.

History.

Ga. L. 1949, p. 1132, § 1; Code 1933, § 91A-438, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1989, p. 1391, § 3; Ga. L. 1996, p. 783, § 1.

Law reviews.

For annual survey article discussing real property law, see 51 Mercer L. Rev. 441 (1999).

For annual survey article on real property law, see 52 Mercer L. Rev. 383 (2000).

For annual survey of real property law, see 58 Mercer L. Rev. 367 (2006).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under Ga. L. 1949, p. 1132, § 2-A, are included in the annotations for this Code section.

Vesting of rights. — Decision to award a limited liability company fee simple title in real property did not violate the contract impairment clauses in U.S. Const. Art. I, Sec. 10 and Ga. Const. 1983, Art. I, Sec. I, Para. X as a corporation's rights to the property pursuant to a 1984 tax deed had not vested prior to the effective date of a 1989 amendment of O.C.G.A. § 48-4-48, which operated retrospectively. BX Corp. v. Hickory Hill 1185, LLC, 285 Ga. 5, 673 S.E.2d 205, 2009 Ga. LEXIS 42 (2009).

If levy of tax execution is excessive, sale held under levy is void. Craig v. Arnold, 227 Ga. 333, 180 S.E.2d 733, 1971 Ga. LEXIS 694 (1971) (decided under Ga. L. 1949, p. 1132, § 2-A).

Adverse possession by the tax deed grantee required. — Tax grantee's title did not ripen since the grantee never occupied the property nor committed any acts or exhibited any conduct which would

amount to adverse possession of the property for the requisite period. Blizzard v. Moniz, 271 Ga. 50, 518 S.E.2d 407.

Since a tax deed holder never occupied the property or engaged in any act evidencing ownership other than payment of taxes, the trial court erred in finding that the tax deed holder had prescriptive title and in refusing to allow a successor in title to redeem the property. O.C.G.A. § 48-4-48 was not a statute of repose operating to foreclose the right of redemption upon the mere passage of time. Mark Turner Props., Inc. v. Evans, 274 Ga. 547, 554 S.E.2d 492, 2001 Ga. LEXIS 860 (2001).

Because a tax deed was executed after the effective date of the amendment to O.C.G.A. § 48-4-48, the trial court erred in ruling that title vested in a county by the passage of time and in granting summary judgment to its purchaser; the case was remanded for further proceedings since there were questions, inter alia, on the purchaser's entitlement to a prescriptive title. Cmty. Renewal & Redemption, LLC v. Nix, 279 Ga. 840, 621 S.E.2d 722, 2005 Ga. LEXIS 762 (2005).

Limited liability company (LLC) was entitled to fee simple title to property conveyed by a warranty deed after the LLC redeemed the property under O.C.G.A. § 48-4-42 as to a 1984 tax deed held by a corporation because title had not ripened in the corporation under O.C.G.A. § 48-4-48 as the corporation had not established adverse possession. BX Corp. v. Hickory Hill 1185, LLC, 285 Ga. 5, 673 S.E.2d 205, 2009 Ga. LEXIS 42 (2009).

In a quiet title action under O.C.G.A. § 23-3-60, although a corporation with a 1984 tax deed to the property in dispute claimed that ripening of title had occurred under O.C.G.A. § 48-4-48 as the corporation held the tax deed for the required seven-year period under a former version of the statute, a 1989 amendment that applied expressly to tax deeds executed prior to July 1, 1989, required adverse possession by the tax deed grantee in order for title to ripen. BX Corp. v. Hickory Hill 1185, LLC, 285 Ga. 5, 673 S.E.2d 205, 2009 Ga. LEXIS 42 (2009).

Successor in interest to the owner of property had successfully redeemed the property from the purchaser of a tax deed by tendering an adequate amount, O.C.G.A. § 48-4-40(2), although it was refused by the purchaser; the court rejected the purchaser's claim that the purchaser acquired title by prescription under O.C.G.A. § 48-4-48 because the prescriptive period was not met and the purchaser's possession of the unfenced, uninhabited property was not sufficiently adverse. Nix v. 230 Kirkwood Homes, LLC, 300 Ga. 91, 793 S.E.2d 402, 2016 Ga. LEXIS 727 (2016).

Insufficient showing of actual possession. — Trial court did not err when the court concluded that a buyer's tax deed did not ripen by prescription into a fee simple title because neither the buyer's payments of taxes nor occasional cleanup and mowing of areas were sufficiently notorious or exclusive as to constitute actual possession. Washington v. McKibbon Hotel Group, Inc., 284 Ga. 262, 664 S.E.2d 201, 2008 Ga. LEXIS 623 (2008).

Exercise of right of redemption required. — It was incumbent upon parties claiming a right to redemption actually to exercise the right during the four-year period; the filing of a civil action alleging the existence of that unexercised right was not sufficient. Machen v. Wolande Mgt. Group, Inc., 271 Ga. 163, 517 S.E.2d 58.

State of title held by purchaser or purchaser's grantee pending period of redemption. — Trial court properly granted summary judgment to an association, and the association's employee and a board member, on the claims by a property purchaser against them for extortion and removal of liens arising out of the purchaser's failure to pay association fees after the purchaser purchased seven properties in a subdivision through a tax sale resulting from unpaid property taxes; while it was true that the purchaser did not obtain a fee simple absolute title, and that title could be restored to specified predecessors through redemption or before the purchaser gave notice pursuant to O.C.G.A. § 48-4-45, the purchaser did receive title sufficient to trigger automatic membership in the association and was

thus required to pay the association's assessed fees. Croft v. Fairfield Plantation Prop. Owners Ass'n, 276 Ga. App. 311, 623 S.E.2d 531, 2005 Ga. App. LEXIS 1181 (2005).

RESEARCH REFERENCES

Am. Jur. 2d.

30 Am. Jur. 2d, Executions, § 462.

ALR.

Necessity of actual possession to give title by adverse possession under invalid tax title, 22 A.L.R. 550.

Necessity of recording tax deed to protect title as against interest derived from former owner, 65 A.L.R. 1015.

Statute limiting period for attack on tax title as affecting remaindermen in respect of a tax sale during life tenancy, 124 A.L.R. 1145.

Time limitation for attack on tax title as affected by defective description of property in the assessment or the tax deed, 133 A.L.R. 570.

Payment, tender, or deposit of tax as condition of injunction against issuance of tax deed upon ground that it had become barred by lapse of time or that the property had been redeemed, 134 A.L.R. 543.

ARTICLE 4

LAND BANK AUTHORITIES

48-4-60. Definitions.

As used in this article, the term:

(1) "Agreement" means:

(A) An interlocal cooperation agreement entered into by the parties pursuant to this article; or

(B) A resolution of a consolidated government establishing an authority pursuant to this article.

(2) "Authority" means the land bank authority established pursuant to this article.

(3) "Parties" means the parties to the agreement, which shall include one or more cities and the county containing such cities, or a consolidated government which has adopted a resolution establishing an authority.

(4) "Property" means real property, including any improvements thereon.

(5) "Tax delinquent property" means any property on which the taxes levied and assessed by any party remain in whole or in part unpaid on the date due and payable.

History.

Code 1981, § 48-4-60, enacted by Ga. L. 1990, p. 1875, § 3; Ga. L. 1996, p. 824, § 1; Ga. L. 1997, p. 882, § 1.

48-4-61. Land bank authority established by interlocal cooperation agreement; powers; purpose; dissolution.

(a) One or more cities and the county containing such cities may enter into an interlocal cooperation agreement, or a consolidated government may adopt a resolution, for the purpose of establishing a land bank authority pursuant to this article.

(b) The authority shall be a public body corporate and politic with the power to sue and be sued, to accept and issue deeds in its name, including without limitation the acceptance of real property in accordance with the provisions of subsection (f) of Code Section 9-16-19, and to institute quia timet actions and shall have any other powers necessary and incidental to carry out the powers granted by this article.

(c) The authority shall be established to acquire the tax delinquent properties of the parties and any property deeded to it pursuant to subsection (d) of Code Section 9-16-19 in order to foster the public purpose of returning land which is in a nonrevenue-generating, nontax-producing status to an effective utilization status or of returning real property forfeited pursuant to Chapter 16 of Title 9 to such status in order to provide housing, new industry, and jobs for the citizens of the county. The authority shall have the powers provided in this article and those necessary and incidental to the exercise of such powers.

(d) Any authority established pursuant to this article may be dissolved by any party to the agreement or by resolution of a consolidated government or, where multiple cities are involved, any city may withdraw from the agreement which established the authority, or such authority may be dissolved by local Act of the General Assembly.

(e) An authority whose parties form a consolidated government after entering into an interlocal cooperation agreement shall thereafter operate under and be governed by the provisions of this article applicable to authorities of consolidated governments as if created by resolution of a consolidated government. The board governing such an authority shall be reconstituted by resolution of the consolidated governments in conformity with the provisions of subsection (a) of Code Section 48-4-62 prior to the first meeting of such board subsequent to the effective date of consolidation of the party governments.

(f) No land bank authority shall be created pursuant to this article on or after July 1, 2012. Except as otherwise provided in subsection (j) of Code Section 48-4-104, any land bank created pursuant to this article prior to July 1, 2012, shall continue to be governed by this article.

History. Code 1981, § 48-4-61, enacted by Ga. L. 1990, p. 1875, § 3; Ga. L. 1996, p. 824, § 1; Ga. L. 1997, p. 882, § 1; Ga. L. 2002,

p. 1286, § 2; Ga. L. 2012, p. 1055, § 1/SB 284; Ga. L. 2015, p. 693, § 3-28/HB 233; Ga. L. 2024, p. 1052, § 5(6)/SB 448, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, in the first sentence in subsection (c), substituted "subsection (d) of Code Section 9-16-19" for "paragraph (2.1) of subsection (u) of Code Section 16-13-49" and substituted "pursuant to Chapter 16 of Title 9" for "pursuant to Code Section 16-13-49".

Law reviews.

For note on the 2002 amendment of this Code section, see 19 Ga. St. U. L. Rev. 92 (2002).

For article on the 2015 amendment of this Code section, see 32 Ga. St. U.L. Rev. 1 (2015).

48-4-62. Board to govern authority; members; meetings; organization; staff.

(a) The authority shall be governed by a board composed in such a manner as to provide two members to represent each party: two appointed by the mayor of each party city and two appointed by the county commission of the party county. An authority established by resolution of a consolidated government shall be governed by a board composed of four members to be appointed by the governing authority of the consolidated government. Each member shall serve at the pleasure of the respective appointing authority for a term of four years and shall serve without compensation. The members shall be residents of the county and may be employees of the parties. Any vacancy shall be filled for the remainder of the unexpired term in the same manner as the original appointment.

(b) The board of the authority shall meet from time to time as required, and the presence of either (1) three members, if there are only two parties to the agreement or if the authority was created by a consolidated government or (2) 50 percent of the members then in office, if there are more than two parties to the agreement, shall constitute a quorum. Approval by a majority of the membership then in office shall be necessary for any action to be taken by the authority. All meetings shall be open to the public, except as otherwise provided by Chapter 14 of Title 50, and a written record shall be maintained of all meetings. A chairperson shall be elected from among the members, and he or she shall execute all deeds, leases, and contracts of the authority when authorized by the board.

(c) The authority may employ its own staff or may utilize employees of the parties, as determined by the agreement.

History.

Code 1981, § 48-4-62, enacted by Ga. L. 1990, p. 1875, § 3; Ga. L. 1996, p. 824, § 1; Ga. L. 1997, p. 882, § 1.

48-4-63. Administration of properties.

(a) The authority shall hold in its own name, for the benefit of the

parties, all properties conveyed to it by the parties, all tax delinquent properties acquired by it pursuant to this article, and all properties otherwise acquired.

(b) It shall be the duty of the authority to administer the properties acquired by it as follows:

(1) All property acquired by the authority shall be inventoried and appraised, and the inventory shall be maintained as a public record;

(2) The authority shall organize and classify the property on the basis of suitability for use;

(3) The authority shall maintain all property held by it in accordance with applicable laws and codes; and

(4) The authority shall have the power to manage, maintain, protect, rent, lease, repair, insure, alter, sell, trade, exchange, or otherwise dispose of any property on terms and conditions determined in the sole discretion of the authority. The authority may assemble tracts or parcels of property for public parks or other public purposes and to that end may exchange parcels and otherwise effectuate the purposes determined by agreement with any party.

(c) The acquisition and disposal of property by the authority shall not be governed or controlled by any regulations or laws of the parties unless specifically provided in the agreement, and transfers of property by parties to the authority shall be treated as transfers to a body politic as contemplated by subparagraph (a)(3)(A) of Code Section 36-9-3.

(d) Property held by the authority may be sold, traded, exchanged, or otherwise disposed of by the authority so long as the disposition is approved by a majority of the membership, as required in subsection (b) of Code Section 48-4-62 for any action by the authority, and approved as follows:

(1) If the property is located within a party city and the party county, approved by both authority members appointed by the mayor of such city and one of the authority members appointed by the county commission;

(2) If the property is located within the county party but outside all the party cities, approved by both authority members appointed by the county commission;

(3) If the property is located within a party city but outside the party county, approved by both authority members of such city; or

(4) If the property is located within the boundaries of a consolidated government, approved by a majority of the authority members.

History.

Code 1981, § 48-4-63, enacted by Ga. L. 1990, p. 1875, § 3; Ga. L. 1996, p. 824, § 1; Ga. L. 1997, p. 882, § 1; Ga. L. 2010, p. 878, § 48/HB 1387; Ga. L. 2024, p. 1052, § 5(7)/SB 448, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substituted "subparagraph (a)(3)(A)" for "subparagraph (a)(2)(A)" near the end of subsection (c).

48-4-64. Acquisition and disposal of property.

(a) If any party obtains a judgment for taxes against a tax delinquent property within the party county, any of the party cities, or the boundaries of the consolidated government and the property is ordered sold at a tax sale to satisfy the judgment, the authority may tender one bid at such sale, and such bid shall comprise the authority's commitment to pay not more than all costs of the sale and its assumption of liability for all taxes, accrued interest thereon, and penalties, and, if there is no other bid, the tax commissioner shall accept the authority's bid and make a deed of the property to the authority.

(b) In accordance with the provisions of Code Section 48-4-45, the authority shall have the right to foreclose the right to redeem property at any time after the 12 month redemption period has expired pursuant to Code Section 48-4-65. Notwithstanding the foregoing provisions of this subsection, the right of redemption shall automatically terminate and expire upon failure to redeem in accordance with Code Section 48-4-81 where the tax sale was conducted pursuant to Article 5 of this chapter.

(c) When a property is acquired by the authority, the authority shall have the power to extinguish all county and city or consolidated government taxes, including school district taxes, at the time it sells or otherwise disposes of property; provided, however, that, with respect to school district taxes, the authority shall first obtain the consent of the board of education governing the school district in which the property is located. In determining whether or not to extinguish taxes, the authority shall consider the public benefit to be gained by tax forgiveness with primary consideration given to purchasers who intend to build or rehabilitate low-income housing. The decision by the authority to extinguish taxes is subject to the vote requirements for dispositions of property under subsection (d) of Code Section 48-4-63.

(d) At the time that the authority sells or otherwise disposes of property as part of its land bank program, the proceeds from the sale, if any, shall be allocated as determined by the authority among the following priorities: (1) furtherance of authority operations; (2) recovery of authority expenses; and (3) distribution to the parties and the

appropriate school district in proportion to and to the extent of their respective tax bills and costs. Any excess proceeds shall be distributed pursuant to the agreement of the parties or by resolution of the consolidated government in accordance with the public policy stated in this article.

(e) The authority shall have full discretion in determining the sale price of the property. The agreement of the parties shall provide for a distribution of property that favors neighborhood nonprofit entities obtaining the land for low-income housing and, secondarily, other entities intending to produce low-income or moderate-income housing.

History.
Code 1981, § 48-4-64, enacted by Ga. L. 1990, p. 1875, § 3; Ga. L. 1992, p. 1355, § 1; Ga. L. 1995, p. 282, § 4; Ga. L. 1996, p. 824, § 1; Ga. L. 1997, p. 882, § 1.

48-4-65. Foreclosure of right of redemption to property conveyed to authority.

The authority may foreclose the right of redemption to the property conveyed to the authority pursuant to a tax sale conducted in accordance with Article 1 of this chapter in the following manner:

(1) The record title to the property shall be examined and a certificate of title shall be prepared for the benefit of the authority;

(2) The authority shall serve the prior owner whose interest was foreclosed upon and all persons having record title or interest in or lien upon the property with a notice of foreclosure of this right to redeem in conformance with Code Section 48-4-46;

(3) In the event persons entitled to service are located outside the county, they may be served by certified mail or statutory overnight delivery; or

(4) In the event the sheriff is unable to perfect service or certified mail or statutory overnight delivery attempts are returned unclaimed, the authority shall conduct a search for the person with an interest in the property conveyed to the authority, which search must, at a minimum, have included the following:

(A) An examination of the addresses given on the face of the instrument vesting interest or the addresses given to the clerk of the superior court by the transfer tax declaration form. The clerk of the superior court and the tax assessor of the county are required to share information contained in the transfer tax declaration form with one another in a timely manner;

(B) A search of the current telephone directory for the county in which the property is located;

(C) A letter of inquiry to the person who sold the property to

the defendant in the tax sale at the address shown in the transfer tax declaration form or in the telephone directory;

(D) A letter of inquiry to the attorney handling the closing prior to the tax sale if provided on the deed forms;

(E) A sign being no less than four feet by six feet shall be erected on the property and maintained by the authority for a minimum of 30 days reading as follows:

"THIS PROPERTY HAS BEEN CONVEYED TO THE _____ LAND BANK AUTHORITY BY VIRTUE OF A SALE FOR UNPAID TAXES. PERSONS WITH INFORMATION REGARDING THE PRIOR OWNER OF THE PROPERTY ARE REQUESTED TO CALL _____."; and

(F) If the authority has made the search as required by this paragraph and been unable to locate those persons required to be served under paragraph (2) of this Code section or, having located additional addresses of those persons through such search, attempted without success to serve those persons in either manner provided by paragraph (2) or (3) of this Code section, the authority shall make a written summary of the attempts made to serve the notice, in recordable form, and may authorize the foreclosure of the redemption rights of record.

History.
Code 1981, § 48-4-65, enacted by Ga. L. 1990, p. 1875, § 3; Ga. L. 1996, p. 824, § 1; Ga. L. 1997, p. 882, § 1; Ga. L. 2000, p. 1589, § 3.

Code Commission notes.
Pursuant to Code Section 28-9-5, in 1990, the subsection (a) designation was deleted.

ARTICLE 5

AD VALOREM TAX FORECLOSURES

Law reviews.
For note on the 1995 enactment of this article, see 12 Ga. St. U. L. Rev. 352 (1995).

48-4-75. Legislative findings.

The General Assembly finds that the nonpayment of ad valorem taxes by property owners effectively shifts a greater tax burden to property owners willing and able to pay their share of such taxes, that the failure to pay ad valorem taxes creates a significant barrier to neighborhood and urban revitalization, that significant tax delinquency creates barriers to marketability of the property, and that nonjudicial tax foreclosure procedures are inefficient, lengthy, and commonly result in title to real property which is neither marketable nor insurable. In addition, the General Assembly finds that tax delinquency in many

instances results in properties which present health and safety hazards to the public. Consequently, the General Assembly further finds that the alternative to nonjudicial tax foreclosure procedures authorized by this article is an effective means of eliminating health and safety hazards by putting certain tax delinquent properties back on the tax rolls and into productive use.

History.
Code 1981, § 48-4-75, enacted by Ga. L. 1995, p. 272, § 1.

48-4-76. Judicial in rem tax foreclosures.

(a) In addition to any other rights and remedies provided under state law for the enforcement of tax liens by the State of Georgia and its counties and municipalities, such governmental entities may proceed with judicial in rem tax foreclosures for delinquent taxes in accordance with the provisions of this article by enactment of an ordinance or resolution of the governing authority of the county in which the property is located which ordinance or resolution shall be sufficient authority for use of the provisions of this article by such county and all municipalities within such county as to their respective taxes. In the event that the governing authority of a county does not so act, a municipality located in such county may, by enactment of its own ordinance or resolution, authorize the use of judicial in rem tax foreclosures for delinquent municipal taxes in accordance with the provision of this article. Any such ordinance or resolution may set forth criteria for selection of properties to be subject to the provisions of this article.

(b) Proceedings in accordance with this article are designed solely to enforce the lien for ad valorem taxes against the property subject to such taxation and shall not constitute an action for personal liability for such taxes of the owner or owners of such property.

(c) The rights and remedies set forth in this article are available solely to the governmental entities authorized by law to collect ad valorem taxes and shall not extend to any transferee of tax executions or tax liens.

(d) The enforcement proceedings authorized by this article may be initiated by a county, by a municipality, by one acting on behalf of the other pursuant to contract, or by joint action in a single proceeding.

History.
Code 1981, § 48-4-76, enacted by Ga. L. 1995, p. 272, § 1; Ga. L. 1996, p. 1280, § 1; Ga. L. 2004, p. 907, § 4.

JUDICIAL DECISIONS

Tax foreclosure sale. — Trial court did not err in granting summary judgment to the county as the nuisance abatement statute did not preclude the county from using a nonjudicial tax foreclosure sale, instead of a judicial in rem tax foreclosure sale, to sell the property because both methods were available for collecting real property ad valorem taxes; judicial in rem tax foreclosure procedures were an alternative to nonjudicial tax foreclosure procedures, rather than a replacement for them; and the nuisance abatement statute did not require the county to use a judicial in rem tax foreclosure sale when collecting on a nuisance abatement lien. Derby Props., LLC v. Watson, 346 Ga. App. 631, 816 S.E.2d 766, 2018 Ga. App. LEXIS 422 (2018).

48-4-77. Definitions.

As used in this article, the term:

(1) "Interested party" means:

(A) Those parties having an interest in the property as revealed by a certification of title to the property conducted in accordance with the title standards of the State Bar of Georgia;

(B) Those parties having filed a notice in accordance with Code Section 48-3-9; and

(C) Any other party having an interest in the property whose identity and address are reasonably ascertainable from the records of the petitioner or records maintained in the county courthouse or by the clerk of the court. "Interested party" shall not include the holder of the benefit or burden of any easement or right of way whose interest is properly recorded which interest shall remain unaffected.

(2) "Redemption amount" means the full amount of the delinquent ad valorem taxes, accrued interest at the rate specified in Code Section 48-2-40, penalties determined in accordance with Code Section 48-2-44, and costs incurred by the governmental entity in collecting such taxes including without limitation the cost of title examination and publication of notices.

History.
Code 1981, § 48-4-77, enacted by Ga. L. 1995, p. 272, § 1; Ga. L. 1999, p. 81, § 48.

JUDICIAL DECISIONS

"Interested party." — Party whose interest in property derived from an unrecorded deed received from a party who was the holder of a deed to secure debt from the record owner of the property was not an "interested party" under paragraph (1) and the party had no right under O.C.G.A. § 9-11-24(a) to intervene in an in rem judicial tax foreclosure proceeding. Burruss v. Ferdinand, 245 Ga. App. 203, 536 S.E.2d 555, 2000 Ga. App. LEXIS 814 (2000).

Definition of "interested party" in O.C.G.A. § 48-4-77(1)(A) for purposes of a tax foreclosure has no application to an action to redeem property after a tax sale; however, even if the definition was applicable, it was unlikely that the bank that held a security deed on real property would constitute an interested party as one having an interest in the property whose identity and address were reasonably ascertainable from the records maintained in the county courthouse or by the clerk of court. Cmty. Renewal & Redemption v. Nix, 288 Ga. 439, 704 S.E.2d 759, 2011 Ga. LEXIS 3 (2011).

48-4-78. Identification of properties on which ad valorem taxes are delinquent; petition for tax foreclosure; contents of petition; notice.

(a) After an ad valorem tax lien, based upon a digest approved in accordance with the law, has become payable and is past due and thereby delinquent, a tax commissioner or other tax collector, as appropriate, may identify those properties on which to commence a tax foreclosure in accordance with this article. The tax commissioner or other tax collector, as appropriate, shall not commence tax foreclosure in accordance with this article for a period of 12 months following the date upon which the taxes initially became delinquent. Once enforcement proceedings have commenced in accordance with the provisions of this article, the enforcement proceedings may be amended to include any and all ad valorem taxes which become delinquent subsequent to the date of the initial ad valorem tax lien that was the original basis for the enforcement proceedings.

(b) The tax commissioner or other tax collector, as appropriate, shall file a petition with the superior court of the county in which the property is located, which petition shall have form and content substantially identical to that form as provided in subsection (g) of this Code section. When the subject property is located in more than one taxing jurisdiction, the entity filing the petition shall identify in the petition only those portions of such property lying within the jurisdiction of the taxing authority of the petitioner.

(c) The petition shall be filed against the property for which taxes are delinquent and shall provide:

(1) The identity of the petitioner and the name and address of the individual responsible for collecting the delinquent taxes;

(2) The property address;

(3) A description of the property;

(4) The tax identification number of the property;

(5) The calendar year or years for which the taxes are delinquent;

(6) The principal amount of the delinquent taxes together with interest and penalties; and

(7) The names and addresses of parties to whom copies of the petition are to be sent in accordance with subsection (d) of this Code section.

(d) The petitioner shall mail copies of the petition by certified mail or statutory overnight delivery, return receipt requested, to all interested parties whose identity and address are reasonably ascertainable. Copies of the petition shall also be mailed by first-class mail to the property address to the attention of the occupants of the property, if any, and shall be posted on the property.

(e) Simultaneous with the filing of the petition, the petitioner shall cause notice of the petition to be filed in the appropriate lis pendens docket in the county in which the property is located.

(f) Within 30 days of the filing of the petition, the petitioner shall cause a notice of the filing of the petition to be published on two separate dates in the official organ of the county in which the property is located. Such notice shall specify:

(1) The identity of the petitioner and the name and address of the individual responsible for collecting the delinquent taxes;

(2) The property address;

(3) A description of the property;

(4) The tax identification number of the property;

(5) The applicable period of tax delinquency;

(6) The principal amount of the delinquent taxes together with interest and penalties; and

(7) The date and place of the filing of the petition.

(g) The petition for ad valorem tax foreclosure shall be written or printed, or written in part and printed in part, and shall be in substantially the following form:

SUPERIOR COURT OF _____ COUNTY
STATE OF GEORGIA

Petitioner:	)	
TAX COMMISSIONER/TAX COLLECTOR	)	
_____	)	
_____	)	
_____	)	
(Name, Address,	)	
Telephone Number)	)	
v.	)	
Respondents:	)	Case No.: _____
_____ ACRES OF LAND LYING	)	

AND BEING IN LAND LOT)
_____, DISTRICT _____,)
_____ COUNTY, GEORGIA;)
AND _____)
_____)
(Insert name and mailing address of owner of property.)

PETITION FOR AD VALOREM TAX FORECLOSURE

COMES NOW (Petitioner) and petitions this Court for an in rem tax foreclosure by showing this Court as follows:

1.

_____ is the owner of certain real property located at _____ (the "Property") having a tax identification number of _____. (A legal description of the Property is attached hereto as Exhibit "A" and by this reference incorporated herein).

2.

The ad valorem taxes assessed against the Property by City/ County of _____ for the year(s) _____ in the amount of $_____ (amount includes principal amount of taxes owed and any accrued interest and penalties as of this date) have not been paid.

3.

Attached hereto as Exhibit "B" is a list of the names and addresses of Interested Parties also receiving a copy of this Petition by certified mail or statutory overnight delivery, return receipt requested.

4.

_____ and _____ as occupants of the respondent Property shall be served by mailing the petition by first-class mail to the attention of the occupants at the above-listed Property address.

5.

The Petition has also been posted on the Property in accordance with Code Section 48-4-78 of the Official Code of Georgia Annotated.

6.

Simultaneously with the filing of this Petition, Petitioner has filed a lis pendens.

WHEREFORE, Petitioner demands (1) a hearing in the Superior Court of _____ County (the "Court") and (2) a judgment by the Court stating that (a) the taxes for the Property are delinquent and (b) that Notice has been given to all Interested Parties, and ordering that the Property may be sold at public outcry pursuant to Code Section _____ of the Official Code of Georgia Annotated.

TAX COMMISSIONER/
TAX COLLECTOR
City/County of _____
By: _____
Its: _____

NOTICE TO RESPONDENTS AND ALL INTERESTED PARTIES

This Petition serves as notice to the Respondents and all Interested Parties that (1) each party is presumed to own or have a legal interest in the Property, (2) that foreclosure proceedings have been commenced because of the failure to pay the real property taxes cited above, and (3) foreclosure will result in the loss of ownership of the Property and all rights or interests of all Interested Parties.

To avoid loss of ownership or any interest in the Property, payment of the full amount of taxes, penalties, interest, and costs must be paid to the _____ office located at _____ by _____date. Respondents and all Interested Parties are also reminded that each of you may wish to contact an attorney to protect your rights.

A Hearing on the above matter shall take place in the Superior Court of _____ County no earlier than 30 days after the filing of this Petition. To determine the exact time and date of such hearing, please call Clerk of Superior Court of _____ County.

This _____ day of _____, ____.

_____
Deputy Clerk
Superior Court of
_____ County

EXHIBIT A
Description of the Property

_____

_____

_____

Together with all rights, title, and interest running with the above-

described property but not taxed under a separate tax reference number as delineated on the tax maps of the petitioner for the year(s) for the taxes being foreclosed.

EXHIBIT B
Names and Addresses of Interested Parties

_____

_____

_____

History.
Code 1981, § 48-4-78, enacted by Ga. L. 1995, p. 272, § 1; Ga. L. 2000, p. 1589, § 3; Ga. L. 2004, p. 907, § 5; Ga. L. 2005, p. 60, § 48/HB 95; Ga. L. 2010, p. 878, § 48/HB 1387.

Law reviews.
For comment, "Making Debt Pay: Examining the Use of Property Tax Delinquency as a Revenue Source," see 62 Emory L.J. 217 (2012).

For annual survey on real property, see 66 Mercer L. Rev. 151 (2014).

JUDICIAL DECISIONS

Substantial compliance not sufficient. — Petitions for ad valorem tax foreclosure of abatement liens against homeowners were denied because the petitions failed to comply with the clear and unambiguous requirements of O.C.G.A. § 48-4-78 because the petitions were filed against the owners of the properties rather than against the properties for which the taxes were delinquent. Porche v. Noriega, 325 Ga. App. 524, 754 S.E.2d 112, 2014 Ga. App. LEXIS 11 (2014).

48-4-79. Judicial hearing on petition; orders; priority of claims; death of interested party.

(a) The petitioner shall request that a judicial hearing on the petition occur not earlier than 30 days following the filing of the petition. At such hearing any interested party shall have the right to be heard and to contest the delinquency of the taxes or the adequacy of the proceedings. If the superior court determines that the information set forth in the petition is accurate, the court shall render its judgment and order that:

(1) The taxes are delinquent;

(2) Proper notice has been given to all interested parties;

(3) The property as described in the petition be sold in accordance with the provisions of this article; and

(4) The sale shall become final and binding 60 days after the date of the sale in accordance with Code Section 48-4-81.

(b) The order of the superior court shall provide that the property be sold free and clear of all liens, claims, and encumbrances other than:

(1) Rights of redemption provided under federal law;

(2) Tax liens held by Georgia governmental entities other than the petitioner which are superior to the taxes identified in the petition by virtue of the provisions of subsection (b) of Code Section 48-2-56;

(3) Easements and rights of way of holders who are not interested parties under subparagraph (C) of paragraph (1) of Code Section 48-4-77; and

(4) Benefits or burdens of any real covenants filed of record as of the date of filing of the petition.

(c) If, upon production of evidence to the court by any party, it is determined by the court that any interested party died within the six-month period of time immediately preceding the filing of the petition, the court may postpone the hearing, for a period of up to six months, to allow the administrator or executor of the estate adequate time to close the estate.

History.
Code 1981, § 48-4-79, enacted by Ga. L. 1995, p. 272, § 1; Ga. L. 1999, p. 81, § 48.

48-4-80. Redemption by owner or other interested party.

(a) At any point prior to the moment of the sale, any interested party may redeem the property from the sale by payment of the redemption amount. Payment shall be made to the petitioner. Following receipt of such payment, the petitioner shall file for dismissal of the proceedings.

(b) In the event of such payment by the owner of the subject property, the proceedings shall be dismissed and the rights and interests of all interested parties shall remain unaffected.

(c) In the event of such payment by any interested party other than the owner, the party accomplishing such payment shall possess a lien on the property for the full amount of such payment, which lien shall have the same priority as the lien for the delinquent taxes. Such lienholder shall have the right to enforce such lien as permitted to the holder of any lien under existing law. Such lienholder shall not otherwise succeed to the rights of the petitioner as described in this article.

History.
Code 1981, § 48-4-80, enacted by Ga. L. 1995, p. 272, § 1; Ga. L. 1999, p. 81, § 48.

48-4-81. Sale procedures; minimum bid; finality; right of redemption by owner; execution of tax deed; report of sale.

(a) Following the hearing and order of the superior court in accordance with Code Section 48-4-79, a sale of the property shall be advertised and conducted on the date, time, place, and manner which are required by law of sheriffs' sales. Such sale shall not occur earlier than 45 days following the date of issuance of such order of the superior court.

(b) Except as otherwise authorized by law, the minimum bid price for the sale of the property shall be the redemption amount. In the absence of any higher bid, the petitioner may, but shall not be obligated to, tender its own bid in an amount equal to the minimum bid price and thereby become the purchaser at the sale.

(c) From and after the moment of the sale, the sale shall be final and binding, subject only to the right of the owner of the property to redeem the property from the sale upon payment into the superior court of the full amount of the minimum bid price of the sale. Such right of redemption of the owner shall exist for a period of 60 days from and after the date of the sale and shall be in accordance with the following provisions:

(1) Redemption by an owner in accordance with this subsection shall result in a dismissal of the proceedings. Immediately following such redemption by an owner, if the property was sold to a third party at the sale, the petitioner shall refund to such purchaser the full amount paid by such purchaser at the sale;

(2) For purposes of redemption under this subsection, "owner" shall mean the owner of record of fee simple interest in the property as of the date of filing of the petition, together with such owner's successors-in-interest by death or operation of law. This right of redemption shall not otherwise be transferable; and

(3) This right of redemption shall automatically terminate and expire upon failure to redeem in accordance with the provisions of this subsection within the 60 day period following the date of the sale.

(d) If the property is not redeemed by the owner in accordance with subsection (c) of this Code section, then within 90 days following the date of the sale, the petitioner shall cause to be executed on behalf of the petitioner and delivered to the foreclosure sale purchaser a deed for the

property in substantially the form set forth in subsection (g) of this Code section, together with such real estate transfer tax declaration forms as may be required by law.

(e) Within 90 days following the date of the sale, the petitioner shall file a report of the sale with the superior court, which report shall identify whether a sale took place, the foreclosure sale price, and the identity of the purchaser.

(f) In the event that the foreclosure sale price exceeds the minimum bid amount at the foreclosure sale, the petitioner shall deposit into the registry of the superior court the amount of such surplus. Such surplus shall be distributed by the superior court to the interested parties, including the owner, as their interests appear and in the order of priority in which their interests exist.

(g) The form of the deed provided for in subsection (d) of this Code section shall be substantially as follows:

When recorded, please return to:
_____
_____
_____

CROSS-REFERENCE:
Deed Book _____, page _____,
_____ County, Georgia Records

STATE OF GEORGIA

COUNTY OF _____

TAX DEED

This indenture (the "Deed") made this _____ day of _____, _____, by and between _____, a _____ ("Grantor") and _____, a _____ ("Grantee").

WITNESSETH

WHEREAS, on the _____ day of _____, _____, during the legal hours of sale, Grantor did expose for sale at public outcry to the highest bidder for cash before the courthouse door in _____ County, Georgia, the Property (as hereinafter defined) at which sale Grantee was the highest and best bidder for the sum of $_____ and the Property was then and there knocked off to Grantee for said sum. The sale was made by Grantor pursuant to and by virtue of the power and authority granted to it in that certain Order granted _____, _____, Case No. _____, Superior Court of _____ County, Georgia (the "Order"). Said sale was made after advertising the time, place, and terms thereof in the _____, published

in _____, Georgia, in the aforesaid county, and being the publication in which Sheriff's advertisements for said county are now published, once a week for four consecutive weeks prior to said sale on the _____, _____, _____, and _____ of _____, _____, and said advertisement in all respects complied with the requirements of Code Section _____ of the Official Code of Georgia Annotated. Notice of the time, place, and terms of the sale of the Property was given pursuant to Code Section _____ of the Official Code of Georgia Annotated. Said sale was made for the purpose of paying the ad valorem taxes owed to _____, the interest and penalties on said indebtedness, the expenses of the sale including attorneys' fees, all of which were mature and payable because of failure of the owner to pay the ad valorem taxes owed.

NOW, THEREFORE, Grantor, acting under and by virtue of the Order and pursuant to Code Section _____ of the Official Code of Georgia Annotated, for and in consideration of the facts hereinbefore recited, has bargained, sold, and conveyed and does hereby bargain, sell, and convey unto Grantee, its successors and assigns, the following described property (herein referred to as the "Property"); to wit:

All that tract or parcel of land lying and being in Land Lot _____ of the _____ District, _____ County, Georgia, and being more particularly described on Exhibit "A" attached hereto and by this reference made a part hereof.

This Deed is given subject to all restrictions and easements, if any, to which the Deed is junior and inferior in terms of priority, and any and all tax liens which pursuant to subsection (b) of Code Section 48-2-56 of the Official Code of Georgia Annotated are superior to the rights conveyed herein relating to the Property.

TO HAVE AND TO HOLD, the Property unto Grantee, its successors and assigns in fee simple.

IN WITNESS WHEREOF, Grantor, has caused its duly authorized officer to sign and seal this Deed as of the day and year first above written.

_____

Signed, sealed, and delivered in the presence of:

_____

Unofficial Witness

By: _____ (SEAL)
Its: _____

_____
Notary Public

Commission Data:

_____
(NOTARIAL SEAL)

EXHIBIT A
Description of the Property

_____
_____
_____

Together with all right, title, and interest running with the above-described property but not taxed under a separate tax reference number as delineated on the tax maps of the petitioner for the year(s) for the taxes being foreclosed.

History.
Code 1981, § 48-4-81, enacted by Ga. L. 1995, p. 272, § 1.

ARTICLE 6

LAND BANKS

48-4-100. Short title; applicability.

(a) This article shall be known and may be cited as the "Georgia Land Bank Act."

(b) Any land bank created prior to July 1, 2012, pursuant to Article 4 of this chapter shall not be affected by this article but shall be entitled to continue in existence and exercise all powers granted in such article. The board of any existing land bank may vote, in the manner provided in subsection (j) of Code Section 48-4-104, to continue in existence under the provisions of this article, thus exercising the additional authorities and powers contained herein.

History.
Code 1981, § 48-4-100, enacted by Ga. L. 2012, p. 1055, § 2/SB 284.

48-4-101. Legislative findings and declarations.

The General Assembly finds and declares that:

(1) Georgia's communities are important to the social and economic vitality of this state. Whether urban, suburban, or rural, many communities are struggling to cope with dilapidated, abandoned, and tax delinquent properties;

(2) Citizens of Georgia are affected adversely by dilapidated, abandoned, and tax delinquent properties, including properties that have been abandoned due to mortgage foreclosure;

(3) Dilapidated, abandoned, and tax delinquent properties impose significant costs on neighborhoods and communities by lowering property values, increasing fire and police protection costs, decreasing tax revenues, and undermining community cohesion;

(4) There is an overriding public need to confront the problems caused by dilapidated, abandoned, and tax delinquent properties, and to return properties which are in nonrevenue-generating, non-tax-producing status to an effective utilization status in order to provide affordable housing, new industry, and jobs for the citizens of this state through the creation of new tools that enable communities to turn abandoned spaces into vibrant places; and

(5) Land banks are one of the tools that can be utilized by communities to facilitate the return of dilapidated, abandoned, and tax delinquent properties to productive use.

History.
Code 1981, § 48-4-101, enacted by Ga. L. 2012, p. 1055, § 2/SB 284.

48-4-102. Definitions.

As used in this article, the term:

(1) "Board of directors" or "board" means the board of directors of a land bank.

(2) "Consolidated government" means a unified government created pursuant to Article IX, Section III, Paragraph II of the Constitution of Georgia.

(3) "Intergovernmental contract" means a contract as authorized pursuant to Article IX, Section III, Paragraph I of the Constitution of Georgia and paragraph (5) of Code Section 36-34-2, and entered into by counties, consolidated governments, and municipal corporations pursuant to this article.

(4) "Land bank" means a public body corporate and politic established in accordance with the provisions of this article.

(5) "Land bank member" means the local governments that are parties to the intergovernmental contract or resolution creating a

land bank and the local governments that join a land bank subsequent to its creation pursuant to the provisions of this article.

(6) "Real property" means all lands and the buildings thereon, all things permanently attached to land or to the buildings thereon, and any interest existing in, issuing out of, or dependent upon land or the buildings thereon.

(7) "School district" means any school district, independent school system, or other local school system in this state.

History.
Code 1981, § 48-4-102, enacted by Ga. L. 2012, p. 1055, § 2/SB 284.

48-4-103. Creation; existence; board membership.

(a) Any county, municipal corporation, or consolidated government may elect to create a land bank in accordance with subsection (b) of this Code section by the adoption of a local law, ordinance, or resolution as appropriate to the applicable counties, consolidated governments, or municipal corporations, which action specifies the following:

(1) The name of the land bank;

(2) The number of members of the board of directors, which shall consist of an odd number of board members and be not less than five board members or more than 11 board members;

(3) The initial individuals to serve as board members and the length of terms for which they will serve; and

(4) The qualifications, manner of selection or appointment, and terms of office of board members.

(b) A land bank may be created pursuant to an intergovernmental contract by any of the following and any combination of the following methods:

(1) A county and one or more municipal corporations located wholly or partially within the county;

(2) Two or more counties and one or more municipal corporations located wholly or partially within the geographical boundaries of each county;

(3) A consolidated government and one or more municipal corporations located wholly or partially within the same county as the consolidated government; or

(4) Any consolidated government without a municipal corporation located wholly or partially within the same county as the consolidated government may create a land bank as follows:

(A) Through ordinance or resolution of the governing authority of the consolidated government;

(B) Through an intergovernmental contract with another consolidated government without a municipal corporation located wholly or partially within the same county as the consolidated government; or

(C) Through an intergovernmental contract with other counties, municipal corporations, or consolidated governments creating land banks pursuant to paragraph (1), (2), or (3) of this subsection.

(c) Any intergovernmental contract creating a land bank shall specify the matters identified in subsection (a) of this Code section.

(d) Subject to the limitations of subsection (b) of this Code section, any county or municipal corporation or consolidated government may elect to join any preexisting land bank by executing the intergovernmental contract or resolution that created the land bank and such other documentation as may be necessary.

(e) A land bank shall have the power to acquire real property only in those portions of the county located outside of the geographical boundaries of a nonparticipating municipal corporation located within the county; provided, however, that a land bank may acquire real property lying within such nonparticipating municipal corporation with the consent of such municipal corporation.

(f) A school district may participate in a land bank pursuant to an intergovernmental contract provided such contract specifies any members of the board of education serving on the board of the land bank and any actions of the land bank which are subject to approval by the board of education.

(g) A land bank shall be a public body corporate and politic and shall have permanent and perpetual duration until terminated and dissolved in accordance with the provisions of subsection (c) of Code Section 48-4-111.

History.
Code 1981, § 48-4-103, enacted by Ga. L. 2012, p. 1055, § 2/SB 284.

48-4-104. Size of board; membership; governance.

(a) The initial size of a board shall be determined in accordance with paragraph (2) of subsection (a) of Code Section 48-4-103. Unless restricted by the actions or agreements specified in Code Section 48-4-103, and subject to the limits stated in this Code section, the size

of the board may be adjusted in accordance with the bylaws of the land bank.

(b) In the event the board of a land bank created by a county and a municipal corporation or by a consolidated government before July 1, 2012, votes to continue in existence under the provisions of this article, the land bank members shall jointly nominate and approve at least one additional board member so that there is an odd number of board members. In the event the land bank members of such a preexisting land bank are unable to approve such additional board members, such preexisting land bank shall not exist under the provisions of this article unless and until a new intergovernmental contract is approved in accordance with this article.

(c) Notwithstanding any law to the contrary, an elected member of the municipal governing authority shall be eligible to serve as a board member, and the acceptance of the appointment shall neither terminate nor impair that public office. Any municipal employee shall be eligible to serve as a board member. Notwithstanding any law to the contrary, an elected member of the county governing authority shall be eligible to serve as a board member, and the acceptance of the appointment shall neither terminate nor impair that public office. Any county employee shall be eligible to serve as a board member. Notwithstanding any law to the contrary, an elected member of a consolidated government governing authority shall be eligible to serve as a board member, and the acceptance of the appointment shall neither terminate nor impair that public office. Any consolidated government employee shall be eligible to serve as a board member. A tax commissioner or tax collector, or both, may serve ex officio as a member of the land bank board if so authorized by the intergovernmental contract, local law, ordinance, or resolution that creates the land bank or by subsequent intergovernmental contracts with the land bank members.

(d) The members of the board shall select annually from among themselves a chairperson, vice chairperson, secretary, treasurer, and such other officers as the board may determine and shall establish their duties as may be regulated by the intergovernmental contract or by rules adopted by the board. When in actual conflict the intergovernmental contract shall control over the bylaws or rules adopted by the board.

(e)(1) The board shall establish rules and regulations relative to the attendance and participation of board members in its regular and special meetings. The rules and regulations may prescribe a procedure whereby a board member who fails to comply with the rules and regulations of the board may be removed from office by no less than a majority vote of the remaining members of the board, and that board member's position shall be vacant as of the first day of the next calendar month.

(2) A land bank member may remove any board member appointed by that land bank member.

(3) Any board member removed under the provisions of this subsection shall be ineligible for reappointment to the board, unless the reappointment is confirmed by at least a two-thirds' vote of the governing authority of the appointing land bank member.

(f) A vacancy on the board shall be filled in the same manner as the original appointment.

(g) Board members shall serve without compensation. The board may reimburse a board member for expenses actually incurred in the performance of duties on behalf of the land bank.

(h) The board shall meet in regular session according to a schedule adopted by the board and also shall meet in special session as convened by the chairperson or upon written notice signed by a majority of the board members.

(i) A quorum of board membership shall be a simple majority of the entire board membership, and no action of the board shall be taken in the absence of a quorum. All actions of the board must be approved by the affirmative vote of a majority of the members of the board present and voting; provided, however, that no action of the board shall be authorized on the following matters unless approved by a majority of the entire board membership:

(1) Adoption of bylaws and other rules and regulations for conduct of the land bank's business;

(2) Hiring or firing of any employee or contractor of the land bank. Such function may by majority vote be delegated by the board to a specified officer or committee of the land bank under such terms and conditions and to the extent that the board may specify;

(3) Incurring of debt;

(4) Adoption or amendment of the annual budget; and

(5) Sale, lease, encumbrance, or alienation of real property, improvements, or personal property with a value of more than $50,000.00.

(j) A land bank created pursuant to Article 4 of this chapter may continue in existence in accordance with provisions of this article upon the unanimous consent of the board members, and contingent upon the appointment of at least one additional board member pursuant to subsection (b) of this Code section.

(k) A board member shall not be liable personally on obligations of the land bank, and the rights of creditors of a land bank shall be solely against the land bank.

(l) A board member shall be prohibited from voting by proxy. A board member may request a recorded vote on any resolution or action of the land bank.

History.
Code 1981, § 48-4-104, enacted by Ga. L. 2012, p. 1055, § 2/SB 284; Ga. L. 2017, p. 774, § 48/HB 323.

48-4-105. Employment of executive director, legal counsel, technical experts, agents, and employees; contracts and agreements with localities for staffing services.

A land bank may employ an executive director, its own counsel and legal staff, and such technical experts, other agents, and employees, permanent or temporary, as it may require and may determine the qualifications and fix the compensation and benefits of those persons. A land bank may also enter into contracts and agreements with municipal corporations or counties or consolidated governments for staffing services to be provided to the land bank by agencies or departments thereof or for a land bank to provide such staffing services to agencies or departments thereof.

History.
Code 1981, § 48-4-105, enacted by Ga. L. 2012, p. 1055, § 2/SB 284.

48-4-106. Powers; limitation or withdrawal of power by land bank member under certain circumstances.

(a) A land bank shall constitute a public body, corporate and politic, and shall have all powers necessary or appropriate to carry out and effectuate the purposes and provisions of this article, including the following powers:

(1) To adopt, amend, and repeal bylaws for the regulation of its affairs and the conduct of its business;

(2) To sue and be sued in its own name and plead and be impleaded in all civil actions, including, but not limited to, actions to clear title to property of the land bank;

(3) To adopt a seal and to alter the same at pleasure;

(4) To acquire by purchase, lease, or otherwise and to hold, lease, and dispose of real or personal property of every kind and character, or any interest therein, in furtherance of the public purposes of the land bank;

(5) To acquire, accept, or retain equitable interests, security interests, or other interests in any real property, personal property, or fixtures by loan agreement, note, mortgage, deed to secure debt, trust

deed, security agreement, assignment, pledge, conveyance, contract, lien, loan agreement, or other consensual transfer in order to secure credit extended by the land bank;

(6) To borrow from private lenders, from municipal corporations, counties, or consolidated governments, from the state, or from federal government funds, as may be necessary, for the operation and work of the land bank;

(7) To borrow money to further or carry out its public purpose and to execute notes, other obligations, leases, trust indentures, trust agreements, agreements for the sale of its notes or other obligations, loan agreements, mortgages, deeds to secure debt, trust deeds, security agreements, assignments, and such other agreements or instruments as may be necessary or desirable, in the judgment of the land bank, to evidence and to provide security for such borrowing;

(8) To issue notes or other obligations of the land bank and use the proceeds thereof for the purpose of paying all or any part of the cost of any land bank projects and otherwise to further or carry out the public purpose of the land bank and to pay all costs of the land bank incidental to, or necessary and appropriate to, furthering or carrying out such purpose;

(9) To make application directly or indirectly to any federal, state, county, or municipal government or agency or to any other source, whether public or private, for loans, grants, guarantees, or other financial assistance in furtherance of the land bank's public purpose and to accept and use the same upon such terms and conditions as are prescribed by such federal, state, county, or municipal government or agency or other source;

(10) To enter into agreements with the federal government or any agency thereof to use the facilities or services of the federal government or any agency thereof in order to further or carry out the public purposes of the land bank;

(11) A land bank shall have no authority to lend money to a nongovernmental entity; provided, however, that a land bank may administer funds in the form of a loan to a nongovernmental entity when such funds are received from federal, state, and local government entities for the purpose of making such loans; provided, further, that only such transactions which are fully consistent with the purpose of the land bank shall be permitted. In those transactions, a land bank may extend credit to any person, corporation, partnership, whether limited or general, or other entity for the costs of any land bank projects which credit may be evidenced or secured by loan agreements, notes, mortgages, deeds to secure debt, trust deeds, security agreements, assignments, or such other instruments, or by

rentals, revenues, fees, or charges, upon such terms and conditions as the land bank shall determine to be reasonable in connection with such extension of credit, including provision for the establishment and maintenance of reserve funds, and, in the exercise of powers granted by this article in connection with any land bank projects the land bank shall have the right and power to require the inclusion in any such loan agreement, note, mortgage, deed to secure debt, trust deed, security agreement, assignment, or other instrument of such provisions or requirements for guaranty of any obligations, insurance, construction, use, operation, maintenance, and financing of a project, and such other terms and conditions, as the land bank may deem necessary or desirable;

(12) As security for repayment of any notes or other obligations of the land bank, to pledge, mortgage, convey, assign, hypothecate, or otherwise encumber any property of the land bank, including, but not limited to, real property, fixtures, personal property, and revenues or other funds, and to execute any lease, trust indenture, trust agreement, agreement for the sale of the land bank's notes or other obligations, loan agreement, mortgage, deed to secure debt, trust deed, security agreement, assignment, or other agreement or instrument as may be necessary or desirable, in the judgment of the land bank, to secure any such notes or other obligations, which instruments or agreements may provide for foreclosure or forced sale of any property of the land bank upon default in any obligation of the land bank, either in payment of principal, premium, if any, or interest or in the performance of any term or condition contained in any such agreement or instrument. The state, on behalf of itself and each county, municipal corporation, political subdivision, or taxing district therein, waives any right it or such county, municipal corporation, political subdivision, or taxing district may have to prevent the forced sale or foreclosure of any property of the land bank upon such default and agrees that any agreement or instrument encumbering such property may be foreclosed in accordance with law and the terms thereof;

(13) To receive and administer gifts, grants, and devises of money and property of any kind and to administer trusts;

(14) To use any real property, personal property, or fixtures or any interest therein or to rent or lease such property to or from others or make contracts with respect to the use thereof, or to sell, lease, exchange, transfer, assign, pledge, or otherwise dispose of or grant options for any such property in any manner as it deems to be in the best interests of the land bank and the public purpose thereof;

(15) To procure insurance or guarantees from the General Assembly or federal government of the payments of any debts or parts

thereof incurred by the land bank and to pay premiums in connection therewith;

(16) To enter into contracts and other instruments necessary, incidental, or convenient to the performance of its duties and the exercise of its powers, including, but not limited to, intergovernmental contracts for the joint exercise of powers under this article. Intergovernmental contracts with municipal corporations, counties, or consolidated governments may include contracts for the performance of services by municipal corporations, counties, or consolidated governments on behalf of the land bank or by the land bank on behalf of municipal corporations, counties, or consolidated governments, whether or not such counties, consolidated governments, or municipal corporations are located inside or outside the geographical boundaries of the land bank members;

(17) To procure insurance against losses in connection with the real property, assets, or activities of the land bank;

(18) To accept and issue deeds in its name, including without limitation the acceptance of real property in accordance with the provisions of Chapter 16 of Title 9;

(19) To finance by loan, grant, lease, or otherwise, refinance, construct, erect, assemble, purchase, acquire, own, repair, remodel, rehabilitate, modify, maintain, extend, improve, install, sell, equip, expand, add to, operate, or manage real property or rights or interests in property, and to pay the costs of any such project from the proceeds of loans by persons, corporations, partnerships, whether limited or general, or other entities, all of which the land bank is authorized to receive, accept, and use;

(20) To fix, charge, and collect rents, fees, and charges for the use of real property of the land bank and for services provided by the land bank;

(21) To grant or acquire a license, easement, lease, as lessor or lessee, or option with respect to real property of the land bank;

(22) To enter into partnerships, joint ventures, and other collaborative relationships with municipalities and other public and private entities for the ownership, management, development, and disposition of real property;

(23) To hold title to real property for purposes of establishing contracts with nonprofit community land trusts, including, but not limited to, long-term lease contracts;

(24) To organize and reorganize the executive, administrative, clerical, and other departments of the land bank and to fix the duties,

powers, and compensation of all employees, agents, and consultants of the land bank; and

(25) To do all other things necessary or convenient to achieve the objectives and purposes of the land bank or other laws that relate to the purposes and responsibilities of the land bank.

(b) The exercise of a specific power by a land bank may be limited or withdrawn by a land bank member when the land bank is acting with respect to real property within the jurisdiction of such member. Procedures for the exercise of such limitation or withdrawal of power shall be provided in the intergovernmental contract.

History.
Code 1981, § 48-4-106, enacted by Ga. L. 2012, p. 1055, § 2/SB 284; Ga. L. 2024, p. 1052, § 5(8)/SB 448, effective July 1, 2024.
Amendments.
The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substituted "Chapter 16 of Title 9" for "paragraph (2.1) of subsection (u) of Code Section 16-13-49" at the end of paragraph (a)(18).

48-4-107. No eminent domain power.

A land bank shall neither possess nor exercise the power of eminent domain.

History.
Code 1981, § 48-4-107, enacted by Ga. L. 2012, p. 1055, § 2/SB 284.

48-4-108. Exemption of land bank property from state and local taxation; acquisition of real property interests; geographical restriction.

(a) The real property of a land bank and its income and operations are exempt from all taxation by the state and by any of its political subdivisions, including, but not limited to, real property held by a land bank as lessor pursuant to long-term lease contracts with community land trusts.

(b) A land bank may acquire real property or interests in real property by gift, devise, transfer, exchange, foreclosure, purchase, or otherwise on terms and conditions and in a manner the board considers is in the best interest of the land bank.

(c)(1) A land bank may acquire real property by purchase contracts, lease-purchase agreements, and may accept transfers from municipal corporations, counties, or consolidated governments upon such terms and conditions as agreed to by the land bank and the municipal corporation, county, or consolidated government.

(2) Notwithstanding any other law to the contrary, a municipal corporation, county, or consolidated government may transfer to a land bank real property and interests in real property of the municipal corporation, county, or consolidated government on such terms and conditions and according to such procedures as determined by the municipal corporation, county, or consolidated government, so long as the real property is located within the geographical boundaries of the land bank.

(3) The acquisition of property by the land bank shall not be governed or controlled by any regulations or laws relating to procurement or acquisition of property of the counties, consolidated governments, or municipal corporations that are members of the land bank unless specifically provided in the applicable intergovernmental contract or resolution, and transfers of property by municipal corporations, counties, or consolidated governments to the land bank shall be treated as transfers to a body politic as contemplated by subparagraph (a)(2)(A) of Code Section 36-9-3.

(d) A land bank shall maintain all of its real property in accordance with the laws and ordinances of the jurisdiction in which the real property is located.

(e)(1) Except as otherwise provided in paragraph (2) of this subsection, a land bank shall not own or hold real property located outside the geographical boundaries of the land bank members.

(2) A land bank may be granted pursuant to an intergovernmental contract with a county, consolidated government, or municipal corporation the authority to manage and maintain real property located within the geographical boundaries of such county, consolidated government, or municipal corporation, but outside the geographical boundaries of the land bank members.

History.
Code 1981, § 48-4-108, enacted by Ga. L. 2012, p. 1055, § 2/SB 284.

48-4-109. Acquired property in land bank name; public review and inspection of inventory; property transaction requirements; hierarchy of uses.

(a) A land bank shall hold in its own name all real property acquired by the land bank without regard to the identity of the transferor of the property.

(b) A land bank shall maintain and make available for public review and inspection an inventory of all real property held by the land bank.

(c) A land bank may convey, exchange, sell, transfer, lease as lessor,

grant, and mortgage as mortgagor any and all interests in, upon, or to real property of the land bank in some form and by such method as determined by the board to be in the best interest of the land bank.

(d)(1) A land bank shall determine the terms, conditions, form, and substance of consideration necessary to convey, exchange, sell, transfer, lease as lessor, grant, and mortgage as mortgagor any interests in, upon, or to real property.

(2) Consideration may take the form of monetary payments and secured financial obligations, covenants, and conditions related to the present and future use of the property, contractual commitments of the transferee, and such other forms of consideration as determined by the board to be in the best interest of the land bank.

(e)(1) The board shall determine and state in the land bank policies and procedures the general terms and conditions for consideration to be received by the land bank for the transfer of real property and interests in real property.

(2) The disposition of property by the land bank shall not be governed or controlled by any regulations or laws of the participating land bank members unless specifically provided in the applicable intergovernmental contract.

(f) Land bank members may, in the resolution or intergovernmental contract creating a land bank, establish a hierarchical ranking of priorities for the use of real property conveyed by a land bank, or, if the resolution or intergovernmental contract creating the land bank is silent, the board of directors may establish a hierarchical ranking of priorities for the use of real property conveyed by a land bank, including but not limited to:

(1) Use for purely public spaces and places;

(2) Use for affordable housing;

(3) Use for retail, commercial, and industrial activities;

(4) Use as conservation areas;

(5) Use for land trusts or for other public entities; and

(6) Such other uses and in such hierarchical order as determined by the board of directors of the land bank.

(g)(1) Subject to the requirements of paragraph (5) of subsection (i) of Code Section 48-4-104, a county, municipal corporation, or consolidated government may, in the applicable intergovernmental contract or in the resolution creating a land bank, require that any particular form of disposition of real property, or any disposition of real property located within specified jurisdictions, be subject to specified voting and approval requirements of the board.

(2) Except and unless restricted or constrained as provided in paragraph (1) of this subsection, the board may delegate to officers and employees the authority to enter into and execute agreements, instruments of conveyance, and all other related documents pertaining to the conveyance of real property by the land bank.

History.
Code 1981, § 48-4-109, enacted by Ga. L. 2012, p. 1055, § 2/SB 284.

48-4-110. Funding through grants and loans; receipt of payments for various activities; remission of real property tax; allocation of proceeds from sale of property.

(a) A land bank may receive funding through grants and loans from the land bank members, from any other municipal corporations, counties, or consolidated governments in the state, from the General Assembly, from the federal government, and from other public and private sources.

(b) A land bank may receive and retain payments for services rendered, for rents and leasehold payments received, for consideration for disposition of real and personal property, for proceeds of insurance coverage for losses incurred, for income from investments, and for any other asset and activity lawfully permitted to a land bank under this article.

(c) Up to 75 percent of the real property taxes collected on real property, exclusive of any state or school district ad valorem tax, conveyed by a land bank pursuant to the laws of this state shall be remitted to the land bank. The specific percentage of such taxes to be remitted, as to each land bank member, shall be set forth in the local law, ordinance, or resolution or in the intergovernmental contract of the land bank. Such allocation of property tax revenues shall commence with the first taxable year following the date of conveyance and shall continue for a period of five years. Such funds shall be remitted to the land bank in accordance with the administrative procedures established by the tax commissioner or tax collector of the county or counties in which the land bank is located. Such allocation of property tax revenues shall not occur if such taxes have been previously allocated to a tax allocation district, or to secure a debt of the municipal corporation or consolidated government, unless the tax allocation district, municipal corporation, county, or consolidated government enters into an agreement with the land bank for the remittance of such funds to the land bank.

(d) At the time that the land bank sells or otherwise disposes of property as part of its land bank program, the proceeds from the sale,

if any, shall be allocated as determined by the land bank among the following priorities:

(1) Furtherance of land bank operations;

(2) Recovery of land bank expenses; and

(3) Remitter to the tax commissioner or tax collector for distribution to the appropriate taxing entity in proportion to and to the extent of their respective tax bills and costs.

Any excess proceeds shall be distributed pursuant to any applicable intergovernmental contract or land bank rules, regulations, or bylaws in accordance with the public policy stated in this article.

History.
Code 1981, § 48-4-110, enacted by Ga. L. 2012, p. 1055, § 2/SB 284.

48-4-111. Public meetings; conflicts of interest; dissolution.

(a) All meetings shall be open to the public, except as otherwise provided by Chapter 14 of Title 50, and a written record shall be maintained of all meetings. All records of a land bank shall be subject to Article 4 of Chapter 18 of Title 50, relating to open records.

(b) No board member or employee of a land bank shall acquire any interest, direct or indirect, in real property owned or to be acquired by the land bank, nor shall any board member assist any third party in negotiating against the land bank for property identified by the land bank for acquisition by the land bank. No board member or employee of a land bank shall have any interest, direct or indirect, in any contract or proposed contract for materials or services to be furnished or used by a land bank. The board may adopt supplemental rules and regulations addressing potential conflicts of interest and ethical guidelines for board members and land bank employees.

(c)(1) A land bank may be dissolved as a public body corporate and politic 60 calendar days after an affirmative resolution approved by two-thirds of the membership of the board.

(2) Sixty calendar days' advance written notice of consideration of a resolution of dissolution shall be given to the governing authorities of the land bank members, shall be published in a local newspaper of general circulation.

(3) Upon dissolution of the land bank, all real property, personal property, and other assets of the land bank shall become the assets of the municipal corporation, county, or consolidated government in which the property is located, unless provided otherwise in any applicable intergovernmental contracts.

(4) Land banks created pursuant to paragraphs (2) through (4) of subsection (b) of Code Section 48-4-103 shall not automatically dissolve upon the withdrawal of one or more land bank members unless the intergovernmental contract so provides, except that no municipal corporation may maintain the existence of a land bank if the county in which the municipal corporation is located withdraws from the land bank, and no county may maintain the existence of a land bank if the single municipal corporation that is both located within that county and is a member of the land bank withdraws from the land bank.

History.
Code 1981, § 48-4-111, enacted by Ga. L. 2012, p. 1055, § 2/SB 284.

48-4-112. Extinguishment of prior encumbrances, liens, and claims for real property taxes owed; remission to tax collector; tax collector authorized to assign, transfer, or sell to land bank certain ad valorem tax executions; content of notice of transfer; nonjudicial tax sale.

(a) Whenever any real property is acquired by a land bank and is encumbered by a lien or claim for real property taxes owed to one or more of the land bank members or to municipal corporations, counties, or consolidated governments that have an intergovernmental contract with the land bank, the land bank may, by resolution of the board, discharge and extinguish any and all such liens or claims. The decision by the board to extinguish such liens or claims is subject to the voting requirements contained in subsection (i) of Code Section 48-4-104. Unless provided otherwise in an applicable intergovernmental contract, whenever any real property is acquired by a land bank and is encumbered by a lien or claim for real property taxes owed to a school district, the land bank shall notify the school district of its intent to extinguish all such liens and claims in writing. If the school district fails to object in written form to the proposed extinguishment within 30 days of receipt of such notice to the land bank, the land bank shall have the power, by resolution of the board, to discharge and extinguish any and all such liens or claims. To the extent necessary and appropriate, the land bank shall file in appropriate public records evidence of the extinguishment and dissolution of such liens or claims.

(b) To the extent that a land bank receives payments of any kind attributable to liens or claims for real property taxes owed to a municipal corporation, county, consolidated government, or school district on property acquired by the land bank, the land bank shall remit the full amount of the payments to the tax commissioner or tax collector for distribution to the appropriate taxing entity.

(c)(1) A tax commissioner or tax collector may assign, transfer, or sell to a land bank any ad valorem tax executions issued against a single property or ad valorem tax executions issued against multiple tracts of property in the geographical jurisdiction of the land bank in one or more transactions and upon such terms and conditions as are mutually acceptable to the tax commissioner and the land bank. Notwithstanding the notice requirements in subsection (c) of Code Section 48-3-19, when the land bank is the holder of a tax execution, the land bank shall provide notice of the transfer of the tax execution to the land bank in the following manner:

(A) Immediately upon acquisition of one or more tax executions, the land bank shall send notice of the tax execution transfer by certified mail, return receipt requested, to all interested parties whose identity and address are reasonably ascertainable. Copies of the notice of the tax execution transfer shall also be sent by first class mail to the property address to the attention of the occupants of the property, if any. In addition, notice shall be posted on the property; and

(B) Within 30 days of the tax execution transfer, the land bank shall cause a notice of the tax execution transfer to be published on two separate dates in the official organ of the county in which the property is located.

(2) The notice contained in subparagraphs (A) and (B) of paragraph (1) of this subsection shall specify:

(A) The name of the land bank and the contact information for the individual responsible for collecting the delinquent taxes;

(B) The property address;

(C) A description of the property;

(D) The tax identification number of the property;

(E) The applicable period of tax delinquency; and

(F) The principal amount of the delinquent taxes together with interest and penalties.

(3) The land bank may submit the execution to the levying officer 12 months after the date of transfer or 24 months after the tax giving rise to the execution was originally due, whichever is earlier.

(d)(1) Notwithstanding any other provision of law, at a nonjudicial tax sale conducted pursuant to Article 1 of this chapter where the tax commissioner or tax collector or the land bank is the holder of the tax execution giving rise to the sale, a land bank may tender a bid in an amount equal to the total amount of all tax liens which were the basis

of the execution and any accrued interest, penalties, and costs. In the event of such tender by the land bank, such bid comprises the land bank's commitment to pay not more than all costs of the sale and its assumption of liability for all taxes, accrued interest thereon, and penalties, and, if there is no other bid, the tax commissioner or tax collector shall accept the land bank's bid and make a deed of the property to the land bank.

(2) If there are third parties who bid on a given parcel and the land bank tenders the highest bid on that parcel, the land bank shall pay the tax commissioner or tax collector the full amount of the bid tendered by the land bank in order to obtain the parcel.

(e)(1) A land bank may tender a bid at any sale ordered by the court pursuant to Article 5 of this chapter in an amount equal to the total amount of all tax liens which were the basis of the judgment and any accrued interest, penalties, and costs. In the event of such tender by the land bank, such bid shall comprise the land bank's commitment to pay not more than all costs of the sale and its assumption of liability for all taxes, accrued interest thereon, and penalties. If there is no other bid and the property is not redeemed by the owner in accordance with subsection (c) of Code Section 48-4-81, the tax commissioner or tax collector shall accept the land bank's bid and make a deed of the property to the land bank.

(2) If there are third parties who bid on a given parcel and the land bank tenders the highest bid on that parcel, the land bank shall pay the tax commissioner or tax collector the full amount of the bid tendered by the land bank in order to obtain the parcel.

(3) Subject to the statutory 60 day redemption period required pursuant to subsection (c) of Code Section 48-4-81, the land bank, as purchaser at such sale, shall take and thereafter have an absolute title to the property sold, free and discharged of all tax and municipal claims, liens, mortgages, charges, and estates of whatsoever kind except for those interests referenced in subsection (b) of Code Section 48-4-79. In the event of purchase by a land bank, the conveying instrument described in subsection (g) of Code Section 48-4-81 shall note the conveyance to the land bank pursuant to this article.

(4) The deed to the land bank shall be executed and delivered to the land bank within 90 days of the sale pursuant to subsection (d) of Code Section 48-4-81.

(5) Notwithstanding any other provision of law, a land bank that is a transferee and holder of tax executions may file petitions of foreclosure pursuant to Article 5 of this chapter on real property located within a jurisdiction that has authorized the ad valorem tax foreclosure process contained in Article 5 of this chapter. In a petition

of foreclosure pursuant to Article 5 of this chapter, a land bank is authorized to combine in a single petition multiple tracts of real property, and the court may order in a single final judgment that all or part of the real properties identified in the petition be sold to the land bank free and clear of all liens and encumbrances so long as the petition and accompanying affidavits provide:

(A) Identification of each tract of real property;

(B) The identities of all parties having an interest in each respective tract of property;

(C) The amount of the tax lien due and owing; and

(D) The nature of the notice of the proposed sale provided to such interested parties.

History.
Code 1981, § 48-4-112, enacted by Ga. L. 2012, p. 1055, § 2/SB 284.

CHAPTER 5

AD VALOREM TAXATION OF PROPERTY

Article 1

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County Tax Officials and Administration

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Article 5

Uniform Property Tax Administration and Equalization

PART 1

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48-5-541. Property tax return on airline flight equipment; penalties.
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48-5-543. Method of valuation of aircraft; apportionment among tax jurisdictions based on plane hours.
48-5-544. Levy and collection of tax upon apportioned valuation of aircraft by local tax jurisdictions.
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48-5-545. Submission of proposed valuations for flight equipment and aircraft by commissioner to State Board of Equalization.
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48-5-603. Certification as qualified owner; requirements.
48-5-604. Certification as qualified timberland property; requirements; annual updating; audit; filing with county tax officials.
48-5-605. (For effective date, see note.) Appeal of commissioner's decisions by taxpayer or county board.
48-5-606. (For effective date, see note.) Appeal of commissioner's decisions by taxpayers or groups.
48-5-607. Adoption of forms and regulations.

Law reviews.

For article discussing taxation of foreign businesses in Georgia, see 27 Mercer L. Rev. 629 (1976).

For survey article on local government law, see 34 Mercer L. Rev. 225 (1982).

For note on 1991 amendments to this chapter, see 8 Ga. St. U. L. Rev. 182 (1992).

For annual survey article on local government law, see 50 Mercer L. Rev. 263 (1998).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, Ch. 92-1, are included in the annotations for this chapter.

Commerce clause no bar to nondiscriminatory municipal ad valorem tax. — Commerce clause, U.S. Const., Art. I, Sec. VIII, Cl. III, does not exempt either tangible or intangible property from a nondiscriminatory ad valorem tax by a municipality. Parke, Davis & Co. v. City of Atlanta, 200 Ga. 296, 36 S.E.2d 773, 1946 Ga. LEXIS 376 (1946) (decided under former Code 1933, Ch. 92-1).

RESEARCH REFERENCES

Am. Jur. Proof of Facts.

Overassessment of Income-Producing Property — Neighborhood Shopping Center, 3 POF2d 1.

Market Value of Single-Family Residence — Market Comparison Appraisal, 5 POF2d 411.

Valuation of Structure Based on Reproduction or Replacement Cost, 8 POF2d 399.

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Where wrecked vessel taxable, 8 A.L.R. 663.

Payment of tax assessment which improperly describes property owned by taxpayer as good payment on that property, 23 A.L.R. 79.

Assessment of corporate property at full value according to law when valuations generally are illegally fixed lower, 28 A.L.R. 983; 55 A.L.R. 503.

Outstanding lease as affecting taxable value of property against owner, 30 A.L.R. 361.

Validity and effect of condition of dedication that remaining property shall not be subject to assessments for improvements, 37 A.L.R. 1357.

Inclusion in assessment for public improvement of amount to cover delinquencies as contrary to constitutional guaranties, 42 A.L.R. 1185.

Place of taxation of dam, flowage rights, or water power, 64 A.L.R. 143.

Deduction of fixed periodical percentage ("straight-line method") as proper method of determining depreciation for purposes of property or income taxes, 71 A.L.R. 971.

Right to recover back taxes paid upon property assessed in wrong district, 94 A.L.R. 1223.

What is a property tax as distinguished from excise, license, and other taxes, 103 A.L.R. 18.

Situs as between different states or countries of tangible chattels for purposes of property taxation, 110 A.L.R. 707.

Conditional sales in relation to taxation, 110 A.L.R. 1499.

Doctrine of equitable conversion in relation to taxation, 112 A.L.R. 23.

Tax on corporations as affected by fact that corporation is not actually engaged in or carrying on business for which it was incorporated, 124 A.L.R. 1109.

Validity of so-called "sales tax", 128 A.L.R. 893.

Situs for property taxation as between different governmental units within state of personal property or interests therein held by trustees, executors, or administrators, 129 A.L.R. 273.

Books or records of title abstracts as subject of property taxes, 149 A.L.R. 1038.

Price paid or received by taxpayer for property as evidence of its value for tax purposes, 160 A.L.R. 684.

Specific tax imposed on goods in stock of dealer, as excise, or property tax, 173 A.L.R. 1316.

Property destined for, or in course of, removal from state as subject to taxation therein, 11 A.L.R.2d 938.

Method of calculating value of stock of goods or the like for purposes of tangible personal property tax, 66 A.L.R.2d 833.

Requirement of full-value real property taxation assessments, 42 A.L.R.4th 676.

Oil and gas royalty as real or personal property, 56 A.L.R.4th 539.

ARTICLE 1

GENERAL PROVISIONS

48-5-1. Legislative intent.

The intent and purpose of the tax laws of this state are to have all property and subjects of taxation returned at the value which would be realized from the cash sale, but not the forced sale, of the property and subjects as such property and subjects are usually sold except as otherwise provided in this chapter.

History.

Ga. L. 1909, p. 36, § 22; Civil Code 1910, § 1004; Code 1933, § 92-5702; Ga. L. 1968, p. 358, § 1; Ga. L. 1975, p. 96, § 1; Ga. L. 1978, p. 1950, § 1; Code 1933, § 91A-1001, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1991, p. 1903, § 1.

Editor's notes.

Ga. L. 1991, p. 1903, § 15, not codified by the General Assembly, provides that the amendment to this Code section shall be applicable beginning January 1, 1992, with respect to ad valorem taxation of timber and shall be applicable beginning January 1, 1992, for all other purposes. Taxation for prior periods shall continue to be governed by prior law.

Administrative rules and regulations.

Taxation of Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Local Government Services Division, Rule 560-11-5-.01 et seq.

Conservation Use Property, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Local Government Services Division, Rule 560-11-6-.01 et seq.

Appraisal Procedures Manual, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Local Government Services Division, Rule 560-11-10-.01 et seq.

Forest, Official Compilation of the Rules and Regulations of the State of Georgia, Local Government Services Division.

Law reviews.

For article surveying developments in Georgia local government law from mid-1980 through mid-1981, see 33 Mercer L. Rev. 187 (1981).

For article surveying developments in Georgia real property law from mid-1980 through mid-1981, see 33 Mercer L. Rev. 219 (1981).

For annual survey on local government law, see 68 Mercer L. Rev. 199 (2016).

For annual survey on local government law, see 71 Mercer L. Rev. 189 (2019).

JUDICIAL DECISIONS

Construction. — The language in O.C.G.A. § 48-5-1 that exempts forced sales from determining the tax value of a property is limited by the "notwithstanding any other provision" language in O.C.G.A. § 48-5-2 (3) as well as by its own terms "except as otherwise provided in this chapter." Thus, foreclosure sales can be arm's length, bona fide sales and these properties can not be taxed at fair market values higher than the amounts paid at public auctions. DeKalb County Bd. of Tax Assessors v. Astor Atl, LLC, 349 Ga. App. 867, 826 S.E.2d 685, 2019 Ga. App. LEXIS 216 (2019).

Fact that property may be rented for amount which is disproportionate to "fair market value" does not, in and of itself, entitle the owner to an assessment based on some other method of valuation. Williamson v. DeKalb County Bd. of Tax Assessors, 168 Ga. App. 47, 308 S.E.2d 55, 1983 Ga. App. LEXIS 2672 (1983).

No intent to limit manner of investigation into property value. — Statute merely states a rule to be applied

by municipalities in arriving at the value at which taxable property shall be assessed for the purposes of taxation, and does not purport to limit investigations or the manner or agencies by which the municipal authorities shall inquire into such value of taxable property. Tietjen v. Mayor of Savannah, 161 Ga. 125, 129 S.E. 653, 1925 Ga. LEXIS 313 (1925).

Land should be assessed at market value without entering into a determination of the value only of a life estate placed thereon. Loudermilk v. Cobb County Bd. of Tax Assessors, 155 Ga. App. 591, 271 S.E.2d 723, 1980 Ga. App. LEXIS 2692 (1980).

Market value of property, not the fractional interest is evaluated in determining the tax base. Loudermilk v. Cobb County Bd. of Tax Assessors, 155 Ga. App. 591, 271 S.E.2d 723, 1980 Ga. App. LEXIS 2692 (1980).

Arm's length, bona fide sale occurred. — Trial court erred by determining that the sheriff's sale of certain real property was not an arm's length, bona fide sale under O.C.G.A. § 48-5-2(3) because the sheriff's sale of the subject property was a distress sale and public auction; thus, it was an arm's length, bona fide sale under the plain terms of § 48-5-2(.1). Park Solutions, LLC v. DeKalb County Bd. of Tax Assessors, 336 Ga. App. 832, 783 S.E.2d 453, 2016 Ga. App. LEXIS 183 (2016).

Club membership appurtenant to property. — Although the taxpayers' memberships in a club were not subject to taxation, if a taxpayer relinquished that membership upon sale of the taxpayer's real estate, the buyer could apply for immediate membership, and such an application would normally be granted. Therefore, a county board of tax assessors would have violated Ga. Const. 1983, Art. VII, Sec. I, Para. III and O.C.G.A. § 48-5-1 if the board excluded the enhanced value of the properties attributable to the right to apply for such memberships from ad valorem taxation because it was part of the properties' fair market value. Morton v. Glynn County Bd. of Tax Assessors, 294 Ga. App. 901, 670 S.E.2d 528, 2008 Ga. App. LEXIS 1333 (2008).

Effect of life estate on rate of taxation. — Life estate is not a restrictive covenant or condition in a deed and does not affect the rate of taxation on the land. Loudermilk v. Cobb County Bd. of Tax Assessors, 155 Ga. App. 591, 271 S.E.2d 723, 1980 Ga. App. LEXIS 2692 (1980).

Life interest in an individual does not constitute a restriction dedicating the property to a particular use. Loudermilk v. Cobb County Bd. of Tax Assessors, 155 Ga. App. 591, 271 S.E.2d 723, 1980 Ga. App. LEXIS 2692 (1980).

RESEARCH REFERENCES

C.J.S.

82 C.J.S., Statutes, § 524 et seq. 84 C.J.S., Taxation, § 12 et seq.

48-5-2. (For effective date, see note.) Definitions.

As used in this chapter, the term:

(.1) "Arm's length, bona fide sale" means a transaction which has occurred in good faith without fraud or deceit carried out by unrelated or unaffiliated parties, as by a willing buyer and a willing seller, each acting in his or her own self-interest, including but not limited to a distress sale, short sale, bank sale, or sale at public auction.

(1) "Current use value" of bona fide conservation use property

means the amount a knowledgeable buyer would pay for the property with the intention of continuing the property in its existing use and in an arm's length, bona fide sale and shall be determined in accordance with the specifications and criteria provided for in subsection (b) of Code Section 48-5-269.

(2) "Current use value" of bona fide residential transitional property means the amount a knowledgeable buyer would pay for the property with the intention of continuing the property in its existing use and in an arm's length, bona fide sale. The tax assessor shall consider the following criteria, as applicable, in determining the current use value of bona fide residential transitional property:

(A) The current use of such property;

(B) Annual productivity; and

(C) Sales data of comparable real property with and for the same existing use.

(3) "Fair market value of property" means the amount a knowledgeable buyer would pay for the property and a willing seller would accept for the property at an arm's length, bona fide sale. The income approach, if data are available, shall be considered in determining the fair market value of income-producing property. If actual income and expense data are voluntarily supplied by the property owner, such data shall be considered in such determination. Notwithstanding any other provision of this chapter to the contrary, the transaction amount of the most recent arm's length, bona fide sale in any year shall be the maximum allowable fair market value for the next taxable year. With respect to the valuation of equipment, machinery, and fixtures when no ready market exists for the sale of the equipment, machinery, and fixtures, fair market value may be determined by resorting to any reasonable, relevant, and useful information available, including, but not limited to, the original cost of the property, any depreciation or obsolescence, and any increase in value by reason of inflation. Each tax assessor shall have access to any public records of the taxpayer for the purpose of discovering such information.

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

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

(i) Existing zoning of property;

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

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

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

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

(vi) Rent limitations, higher operating costs resulting from regulatory requirements imposed on the property, and any other restrictions imposed upon the property in connection with the property being eligible for any income tax credits with respect to real property which are claimed and granted pursuant to either Section 42 of the Internal Revenue Code of 1986, as amended, or Chapter 7 of this title or receiving any other state or federal subsidies provided with respect to the use of the property as residential rental property; provided, however, that properties described in this division shall not be considered comparable real property for the assessment or appeal of assessment of properties not covered by this division;

(vii)(I) In establishing the value of any property subject to rent restrictions under the sales comparison approach, any income tax credits described in division (vi) of this subparagraph that are attributable to a property may be considered in determining the fair market value of the property, provided that the tax assessor uses comparable sales of property which, at the time of the comparable sale, had unused income tax credits that were transferred in an arm's length, bona fide sale.

(II) In establishing the value of any property subject to rent restrictions under the income approach, any income tax credits described in division (vi) of this subparagraph that are attributable to property may be considered in determining the fair market value of the property, provided that such income tax credits generate actual income to the record holder of title to the property; and

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

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

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

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

(i) For the first eight years in which the property is classified as rehabilitated historic property, the value equal to the greater of the acquisition cost of the property or the appraised fair market value of the property as recorded in the county tax digest at the time preliminary certification on such property was received by the county board of tax assessors pursuant to subsection (c) of Code Section 48-5-7.2;

(ii) For the ninth year in which the property is classified as rehabilitated historic property, the value of the property as determined by division (i) of this subparagraph plus one-half of the difference between such value and the current fair market value exclusive of the provisions of this subparagraph; and

(iii) For the tenth and following years, the fair market value of such property as determined by the provisions of this paragraph, excluding the provisions of this subparagraph.

(D) Fair market value of "landmark historic property" as such term is defined in subsection (a) of Code Section 48-5-7.3 means:

(i) For the first eight years in which the property is classified as landmark historic property, the value equal to the greater of the acquisition cost of the property or the appraised fair market value of the property as recorded in the county tax digest at the time certification on such property was received by the county board of tax assessors pursuant to subsection (c) of Code Section 48-5-7.3;

(ii) For the ninth year in which the property is classified as landmark historic property, the value of the property as determined by division (i) of this subparagraph plus one-half of the difference between such value and the current fair market value exclusive of the provisions of this subparagraph; and

(iii) For the tenth and following years, the fair market value of such property as determined by the provisions of this paragraph, excluding the provisions of this subparagraph.

(E) Timber shall be valued at its fair market value at the time of its harvest or sale in the manner specified in Code Section 48-5-7.5.

(F) Fair market value of "brownfield property" as such term is defined in subsection (a) of Code Section 48-5-7.6 means:

(i) Unless sooner disqualified pursuant to subsection (e) of Code Section 48-5-7.6, for the first ten years in which the property is classified as brownfield property, or as this period of preferential assessment may be extended pursuant to subsection (o) of Code Section 48-5-7.6, the value equal to the lesser of the acquisition cost of the property or the appraised fair market value of the property as recorded in the county tax digest at the time application was made to the Environmental Protection Division of the Department of Natural Resources for participation under Article 9 of Chapter 8 of Title 12, the "Georgia Brownfield Act," as amended; and

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

(G) Fair market value of "qualified timberland property" means the fair market value determined in accordance with Article 13 of this chapter.

(4) "Foreign merchandise in transit" means personal property of any description which has been or will be moved by waterborne commerce through any port located in this state and:

(A) Which has entered the export stream, although temporarily stored or warehoused in the county where the port of export is located; or

(B) Which was shipped from a point of origin located outside the customs territory of the United States and on which United States customs duties are paid at or through any customs district or port located in this state, although stored or warehoused in the county where the port of entry is located while in transit to a final destination.

(5) "Forest land conservation use value" of forest land conserva-

tion use property means the amount determined in accordance with the specifications and criteria provided for in Code Section 48-5-271 and Article VII, Section I, Paragraph III(f) of the Constitution.

(6) "Forest land fair market value" means the fair market value of the forest land determined in accordance with Article VII, Section I, Paragraph III(f) of the Constitution.

History.

Ga. L. 1909, p. 36, § 22; Civil Code 1910, § 1004; Code 1933, § 92-5702; Ga. L. 1968, p. 358, § 1; Ga. L. 1969, p. 980, § 2; Ga. L. 1975, p. 96, § 1; Ga. L. 1978, p. 1950, § 1; Code 1933, § 91A-1001, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 17; Ga. L. 1983, p. 716, § 1; Ga. L. 1989, p. 1585, § 1; Ga. L. 1990, p. 1122, § 1; Ga. L. 1990, p. 1869, § 1; Ga. L. 1991, p. 1903, § 2; Ga. L. 1992, p. 1008, § 1; Ga. L. 2001, p. 1098, § 1; Ga. L. 2003, p. 170, § 1; Ga. L. 2008, p. 297, § 1/HB 1211; Ga. L. 2009, p. 27, § 1/SB 55; Ga. L. 2010, p. 1104, §§ 5-1, 5-2, 5-3, 5-4/SB 346; Ga. L. 2012, p. 843, § 3/HB 1102; Ga. L. 2014, p. 672, § 1/HB 755; Ga. L. 2014, p. 820, § 1/HB 954; Ga. L. 2017, p. 55, § 1/HB 196; Ga. L. 2017, p. 774, § 48/HB 323; Ga. L. 2018, p. 119, §§ 1, 2/HB 85; Ga. L. 2018, p. 1112, § 48/SB 365; Ga. L. 2019, p. 651, § 1/HB 507; Ga. L. 2024, p. 20, § 1-1/HB 581, see notes for effective date.

Delayed effective date.

Ga. L. 2024, p. 20, § 4-1/HB 581, provides that the 2024 amendment becomes effective on January 1, 2025; provided, however, that, if a constitutional amendment which becomes effective on January 1, 2025 and which authorizes the General Assembly to provide by general law for a homestead exemption that applies statewide, but that permits political subdivisions to individually opt out of such homestead exemption, has not been ratified, then this Act shall stand automatically repealed on January 1, 2025. This Code section, as set out above, does not reflect the amendment by that Act owing to the delayed effective date. If the voters approve, paragraph (2.1) will be added and paragraph (3) will be amended to read: "(2.1) 'Estimated roll-back rate' means the current year's estimated millage rate minus the millage equivalent of the total net assessed value added by reassessments:

"(A) As calculated and certified to the tax commissioner by the levying authority for county and educational tax purposes; and

"(B) As calculated and certified to the collecting officer of the municipality by the levying authority for municipal tax purposes.

"(3) 'Fair market value of property' means the amount a knowledgeable buyer would pay for the property and a willing seller would accept for the property at an arm's length, bona fide sale. The income approach, if data are available, shall be considered in determining the fair market value of income-producing property. If actual income and expense data are voluntarily supplied by the property owner, such data shall be considered in such determination. With respect to the valuation of equipment, machinery, and fixtures when no ready market exists for the sale of the equipment, machinery, and fixtures, fair market value may be determined by resorting to any reasonable, relevant, and useful information available, including, but not limited to, the original cost of the property, any depreciation or obsolescence, and any increase in value by reason of inflation. Each tax assessor shall have access to any public records of the taxpayer for the purpose of discovering such information."

Amendments.

The 2024 amendment, added paragraph (2.1) and deleted the former fourth sentence in paragraph (3), which read: "Notwithstanding any other provision of this chapter to the contrary, the transaction amount of the most recent arm's length, bona fide sale in any year shall be the maximum allowable fair market value for the next taxable year." For effective date of this amendment, see the delayed

effective date note. See Editor's notes for applicability.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2010, a misspelling of "occurred" was corrected in paragraph (.1).

Pursuant to Code Section 28-9-5, in 2018, "rehabilitated" was inserted before "historic property" in subparagraph (3)(C).

Editor's notes.

Ga. L. 1991, p. 1903, § 15, not codified by the General Assembly, provides that the amendment to this Code section shall be applicable beginning January 1, 1992, with respect to ad valorem taxation of timber and shall be applicable beginning January 1, 1992, for all other purposes. Taxation for prior periods shall continue to be governed by prior law.

Ga. L. 2008, p. 297, § 5/HB 1211, not codified by the General Assembly, provides that the 2008 amendment becomes effective on January 1, 2009, upon the ratification of a resolution at the November 2008, state-wide general election, which resolution amends the Constitution so as to provide for the special assessment and taxation of forest land conservation use property and for local government assistance grants. The constitutional amendment (Ga. L. 2008, p. 1209) was ratified at the general election held on November 4, 2008.

Ga. L. 2009, p. 27, § 5/SB 55, not codified by the General Assembly, provides, in part, that the amendment to this Code section shall be applicable to all taxable years beginning on or after January 1, 2009.

Ga. L. 2018, p. 119, § 7/HB 85, not codified by the General Assembly, provides, in part, that this Act shall become effective on January 1, 2019, upon the ratification of the question presented to the voters at the November 6, 2018 election. The constitutional amendment was approved by a majority of the qualified voters voting at the general election held on November 6, 2018.

Ga. L. 2024, p. 20, § 4-1/HB 581, not codified by the General Assembly, makes paragraphs (2.1) and (3) of this Code section applicable to taxable years beginning on or after January 1, 2025. For effective date of this amendment, see the delayed effective date note.

Law reviews.

For article discussing tax exemptions and deductions as incentives for establishment of foreign business in Georgia, see 27 Mercer L. Rev. 629 (1976).

For note on the 1989 amendment to this Code section, see 6 Ga. St. U. L. Rev. 173 (1989).

For annual survey on law of real property, see 43 Mercer L. Rev. 353 (1991).

For article, "The Tax Abatement Program for Historic Properties in Georgia," see 28 Ga. St. B.J. 129 (1992).

For annual survey on real property law, see 61 Mercer L. Rev. 301 (2009).

For annual survey on real property, see 66 Mercer L. Rev. 151 (2014).

For survey article on local government law, see 67 Mercer L. Rev. 147 (2015).

For survey article on real property law, see 67 Mercer L. Rev. 193 (2015).

For annual survey on local government law, see 68 Mercer L. Rev. 199 (2016).

For annual survey of real property law, see 68 Mercer L. Rev. 231 (2016).

For annual survey on local government law, see 69 Mercer L. Rev. 205 (2017).

For annual survey on local government law, see 71 Mercer L. Rev. 189 (2019).

JUDICIAL DECISIONS

Analysis

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General Consideration

Constitutionality of utilizing other methods for determining fair market value. — Utilization of different methods for determining fair market value for purposes of taxation creates no infirmity under the United States Constitution or under the state constitution or laws. Dougherty County Bd. of Tax Assessors v. Burt Realty Co., 250 Ga. 467, 298 S.E.2d 475, 1983 Ga. LEXIS 536, cert. denied, 463 U.S. 1208, 103 S. Ct. 3540, 77 L. Ed. 2d 1390, 1983 U.S. LEXIS 755 (1983).

Statute is not unconstitutional for vagueness of the term "fair market value of property." Chilivis v. Backus, 236 Ga. 88, 222 S.E.2d 371, 1976 Ga. LEXIS 774 (1976).

Section runs afoul of taxation uniformity provision of constitution. — Inasmuch as O.C.G.A. § 48-5-2(3)(B.1) exempted the low-income housing tax credits from consideration in determining the fair market value of the properties, the statute granted preferential treatment for ad valorem taxation purposes and created a subclass of tangible property other than as permitted by the State Constitution, Ga. Const. 1983, Art. VII, Sec. I, Para. III (b), which ran afoul of the taxation uniformity provision. Heron Lake II Apts., L. P. v. Lowndes County Bd. of Tax Assessors, 299 Ga. 598, 791 S.E.2d 77, 2016 Ga. LEXIS 574 (2016).

Definition of "fair market value of property" is not too vague and indefinite to be enforced. Chilivis v. Kell, 236 Ga. 226, 223 S.E.2d 117, 1976 Ga. LEXIS 820 (1976).

Constitutionality of the term "fair market value of property." — Term "fair market value of property" as defined in this statute is not too vague and indefinite to be enforced, and there is no merit in the constitutional attacks on county ad valorem tax assessments statutes because of their use of this term. Butts County v. Briscoe, 236 Ga. 233, 223 S.E.2d 199, 1976 Ga. LEXIS 822 (1976).

Fair market value. — Because "fair market value of property" was not defined as the amount a buyer would pay to purchase, and a willing seller would accept, for a defeasable interest in property; the appellate court concluded the tax sale did not qualify as an arm's length, bona fide sale such that the one-year freeze applied and, thus, the trial court did not err in granting summary judgment to the Newton County Board of Tax Assessors, and in denying the buyers' cross-motion on that ground. Ballard v. Newton County Bd. of Tax Assessors, 332 Ga. App. 521, 773 S.E.2d 780, 2015 Ga. App. LEXIS 349 (2015).

Income approach inapplicable. — Trial court did not err by finding that the income approach was inapplicable and could not be used based on the current structure of the tax credits that did not provide any actual income to the taxpayer because, as state low-income housing tax credits were currently structured, the tax assessors could not use the income approach in determining the fair market value of Section 42 of the Internal Revenue Code of 1986 properties. Freedom Heights v. Lowndes County Bd. of Tax Assess., 369 Ga. App. 725, 894 S.E.2d 438, 2023 Ga. App. LEXIS 513 (2023).

Highest and best use may be considered. — In assessing the fair market value of real property, tax assessors may, when appropriate, consider the "highest and best use" of real property under the statutory criterion allowing "[A]ny other factors deemed pertinent in arriving at a fair market value." Sibley v. Cobb County Bd. of Tax Assessors, 171 Ga. App. 65, 318 S.E.2d 643, 1984 Ga. App. LEXIS 2102 (1984).

Applicability of 1979 amendment. — Change made by Ga. L. 1979, p. 5, § 17, is not to the tax year 1979 but to tax years 1980 and thereafter. Monroe County Bd. of Tax Assessors v. Remick, 165 Ga. App. 616, 300 S.E.2d 203, 1983 Ga. App. LEXIS 1974 (1983).

Simultaneous application of local Act homestead exemption was not precluded. — Although an owner's property qualified for preferential assessment under the Rehabilitated Historic Property Preferential Assessment Act (RHPPA), O.C.G.A. § 48-5-7.2, the owner was allowed to use the effective date of the local Act homestead exemption, Ga. L. 1999, p.

General Consideration (Cont'd)

4213, § 1, as the base year for the fair market valuation assessment of the property because the simultaneous application of the RHPPA and the local Act homestead exemption was not precluded. Chatham County Bd. of Tax Assessors v. Bock, 299 Ga. App. 257, 682 S.E.2d 355, 2009 Ga. App. LEXIS 872 (2009).

"Foreign merchandise in transit." — Imported stone tile/slab, which was stored at the taxpayer's pleasure for sale to anyone who might wish to purchase it, was not "in transit to a final destination" within the contemplation of subparagraph (4)(B) of O.C.G.A. § 48-5-2 and was consequently not exempt from ad valorem taxation under O.C.G.A. § 48-5-5. Seabrook Corp. v. Chatham County Bd. of Equalization, 195 Ga. App. 730, 394 S.E.2d 796, 1990 Ga. App. LEXIS 646 (1990).

Merchandise brought into the United States through the port of Charleston, South Carolina and transported, via land freight carrier to a container freight station in Chatham County, was not "foreign merchandise in transit" and was therefore not exempt from ad valorem taxation. Pier 1 Imports v. Chatham County Bd. of Tax Assessors, 199 Ga. App. 294, 404 S.E.2d 637, 1991 Ga. App. LEXIS 446 (1991), cert. denied, No. S91C0996, 1991 Ga. LEXIS 734 (Ga. May 22, 1991).

Construction of O.C.G.A. § 48-5-2(3) with local constitutional amendment. — Trial court properly determined that no conflict existed between a local constitutional amendment (LCA) and O.C.G.A. § 48-5-2(3) because the statute focused on the market-determined value of property on the actual date the property was acquired, rather than the property's value as much as a year later and was entirely consistent with the LCA, which froze the ad valorem tax value of homestead property in the county at the property's fair market value at the start of the year after a homestead exemption was allowed or after ownership of the property changed. Columbus Bd. of Tax Assessors v. Yeoman, 293 Ga. 107, 744 S.E.2d 18, 2013 Ga. LEXIS 490 (2013).

Trial court is correct in disregarding valuation placed on property by board of tax assessors when the chairperson concedes that the chairperson has no knowledge of the existing use of the property, that the existing zoning is not indicative of any use to which the property might reasonably be put, and that the chairperson knows of no other factors, other than the property's general location, which might be pertinent in determining the amount the property would bring at a cash sale. Evans v. Board of Tax Assessors, 168 Ga. App. 792, 310 S.E.2d 562, 1983 Ga. App. LEXIS 2924 (1983).

No distinction between property owned by public utility corporations and individuals. Ogletree v. Woodward, 150 Ga. 691, 105 S.E. 243, 1920 Ga. LEXIS 298 (1920).

Duty to return all property at fair market value is a statutory mandate. — Provision requiring that all property be returned for taxation at the property's fair market value is, undeniably, a statutory mandate. McLennan v. Undercofler, 222 Ga. 302, 149 S.E.2d 705, 1966 Ga. LEXIS 462 (1966), superseded by statute as stated in Salem v. Tattnall County, 250 Ga. 881, 302 S.E.2d 99, 1983 Ga. LEXIS 681 (1983).

Duty to return all property at fair market value is not supreme, but yields to the duty to avoid discrimination. McLennan v. Undercofler, 222 Ga. 302, 149 S.E.2d 705, 1966 Ga. LEXIS 462 (1966), superseded by statute as stated in Salem v. Tattnall County, 250 Ga. 881, 302 S.E.2d 99, 1983 Ga. LEXIS 681 (1983); Griggs v. Greene, 230 Ga. 257, 197 S.E.2d 116, 1973 Ga. LEXIS 880 (1973), overruled in part as stated in Rice v. Fulton County, 358 Ga. App. 1, 852 S.E.2d 860, 2020 Ga. App. LEXIS 681 (2020).

Construction of "existing use of property." — Term "existing use of property" as used in the definition of "fair market value of property" cannot be assigned any particular value since real property is unique and the extent to which existing use affects the property's value is dependent upon a great variety of other factors. Cobb County Bd. of Tax Assessors v. Sibley, 244 Ga. 404, 260 S.E.2d 313, 1979 Ga. LEXIS 1252 (1979).

Construction with other law. — Assessments lacked uniformity in failing

to follow the mandates of O.C.G.A. § 48-5-2 regarding consideration of "existing use of the property" and "other factors deemed pertinent in arriving at fair market value" and in failing to exempt standing timber under the mandate of O.C.G.A. §§ 48-5-7.1(a)(1) and 48-5-7.5 as set forth in Ga. Const. 1983, Art. VII, Sec. I, Para. III. Leverett v. Jasper County Bd. of Tax Assessors, 233 Ga. App. 470, 504 S.E.2d 559.

"Bona fide sale" included sale by Freddie Mac at a loss. — Trial court erred in concluding that a 2011 sale of taxable property by Freddie Mac did not qualify as an arm's length, bona fide sale for purposes of limiting the assessment value of the property in the next year under O.C.G.A. § 48-5-2(3); O.C.G.A. § 48-5-2(.1) expressly defined a bona fide sale to include distress transactions. CPF Invs., LLLP v. Fulton County Bd. of Assessors, 330 Ga. App. 744, 769 S.E.2d 159, 2015 Ga. App. LEXIS 52 (2015).

Arm's length bona fide sale occurred at sheriff's sale. — Trial court erred by determining that the sheriff's sale of certain real property was not an arm's length, bona fide sale under O.C.G.A. § 48-5-2(3) because the sheriff's sale of the subject property was a distress sale and public auction; thus, it was an arm's length, bona fide sale under the plain terms of § 48-5-2(.1). Park Solutions, LLC v. DeKalb County Bd. of Tax Assessors, 336 Ga. App. 832, 783 S.E.2d 453, 2016 Ga. App. LEXIS 183 (2016).

Foreclosure sale was arm's length bona fide sale. — Foreclosure sale was an arm's length, bona fide sale and, thus, the trial court properly determined that the DeKalb County Board of Tax Assessors was precluded from taxing the subject properties at fair market values higher than the amounts paid at public auctions. DeKalb County Bd. of Tax Assessors v. Astor Atl, LLC, 349 Ga. App. 867, 826 S.E.2d 685, 2019 Ga. App. LEXIS 216 (2019).

Discrepancies in tax evaluation assessment. — Bankruptcy court found that for the purposes of ad valorem tax on the debtors' equipment that: (1) for 1997, the value was the lowest of the tax assessors' value due to discrepancies in the tax assessors' values; (2) for 1998, the court accepted the value determined by the board of equalization which gave some weight to the debtors' appraiser who considered comparable sales; (3) for 1999, the court took the tax assessors' lowest value as the debtors' appraiser omitted a laser device; and (4) for 2000, the debtors did not challenge the tax assessors' value. In re R-P Packaging, Inc., 278 B.R. 281, 2002 Bankr. LEXIS 726 (Bankr. M.D. Ga. 2002).

Valuation, uniformity, and equalization proper matters for basis of refund claim. — County homeowners, who alleged that the assessors board engaged in "sales chasing" by selectively targeting recently sold properties for reappraisal at the increased sales price while leaving the assessed values of similar unsold properties unchanged, stated a tax refund claim under O.C.G.A. § 48-5-380; the procedure allegedly violated the uniformity and equalization requirements of Ga. Const. 1983, Art. VII, Sec. I, Para. III(a) and O.C.G.A. § 48-5-306(a). Rice v. Fulton County, 358 Ga. App. 1, 852 S.E.2d 860, 2020 Ga. App. LEXIS 681 (2020), cert. denied, No. S21C0644, 2021 Ga. LEXIS 561 (Ga. July 7, 2021).

Factors to Be Considered

Existing use of property is not exclusive factor in determining fair market value; assessors are directed to consider also existing zoning of property, existing covenants or restrictions in the deed dedicating the property to a particular use, or any other factors deemed pertinent in arriving at a fair market value. Cobb County Bd. of Tax Assessors v. Sibley, 244 Ga. 404, 260 S.E.2d 313, 1979 Ga. LEXIS 1252 (1979).

Existing use must be employed as a yardstick with which to measure fair market value. Inland Container Corp. v. Paulding County Bd. of Tax Assessors, 220 Ga. App. 878, 470 S.E.2d 702.

Sufficiency of evidence that assessors failed to consider existing use of property in valuation. — Evidence is sufficient to support the judgment of the trial court that assessors

Factors to Be Considered (Cont'd)

failed to consider the existing use of land which is generally categorized as vacant land, not commercial, industrial, or residential subdivision, when assessors, relying on the property's highest and best use, assigned such land a base value according to the district in which the land was located, which value was determined by the sale price of other vacant lands purchased for development, which sales did not accurately reflect the value of other vacant land because such sales were often for special purposes such as schools or parks, or speculative development. Cobb County Bd. of Tax Assessors v. Sibley, 244 Ga. 404, 260 S.E.2d 313, 1979 Ga. LEXIS 1252 (1979).

"Other pertinent factors" should be considered only after factors listed in section. — It is error for a court to approve a valuation which tilts market value in favor of an assumed highest and best use to appear from future speculation and development, rather than first determining the criteria for zoning, existing use, and deed restrictions, if any, at which time other pertinent factors may be considered. Dotson v. Henry County Bd. of Tax Assessors, 155 Ga. App. 557, 271 S.E.2d 691, 1980 Ga. App. LEXIS 2671 (1980); Dotson v. Henry County Bd. of Tax Assessors, 161 Ga. App. 257, 287 S.E.2d 696, 1982 Ga. App. LEXIS 1841 (1982).

Intent as to use of "highest and best use" as factor in valuation. — While under the criterion "any other factors deemed pertinent" the highest and best use may be considered, the General Assembly did not base market value on highest and best use, nor did the General Assembly list highest and best use as a specific criterion. Dotson v. Henry County Bd. of Tax Assessors, 155 Ga. App. 557, 271 S.E.2d 691, 1980 Ga. App. LEXIS 2671 (1980).

"Highest and best use" is factor only if it reflects amount realized from cash sale of the property. That valuation will not be confined to actual use alone, and all criteria added by the General Assembly are to be considered. Dotson v. Henry County Bd. of Tax Assessors, 155 Ga. App. 557, 271 S.E.2d 691, 1980 Ga. App. LEXIS 2671 (1980).

"Highest and best use" is a much more speculative assigned value than existing use. Dotson v. Henry County Bd. of Tax Assessors, 155 Ga. App. 557, 271 S.E.2d 691, 1980 Ga. App. LEXIS 2671 (1980).

Valuation of income-producing property by income capitalization method. — In considering existing use, when the use is income producing, it would appear that the income capitalization method should at least be considered, this being a standard method of arriving at value. Dotson v. Henry County Bd. of Tax Assessors, 155 Ga. App. 557, 271 S.E.2d 691, 1980 Ga. App. LEXIS 2671 (1980).

Method for fixing fair market value of leaseholds. — In fixing the fair market value of a leasehold for tax purposes, the rule of "fair market value of property" should always be applied. Delta Air Lines v. Coleman, 219 Ga. 12, 131 S.E.2d 768, 1963 Ga. LEXIS 352, cert. denied, 375 U.S. 904, 84 S. Ct. 195, 11 L. Ed. 2d 145, 1963 U.S. LEXIS 263 (1963).

Valuation of separate taxable interests when tax liability divided among owners. — Existence of separate taxable interests and estates in the same property and determination of their respective fair market values for assessment purposes is necessary only when the tax liability is likewise divided among the owners. Martin v. Liberty County Bd. of Tax Assessors, 152 Ga. App. 340, 262 S.E.2d 609, 1979 Ga. App. LEXIS 2920 (1979).

Valuation of leases. — Assessed value must consider, inter alia: existing zoning, existing use, and "any other factors deemed pertinent in arriving at fair market value." Therefore, a consideration of "existing use" (the current leases) must be employed as a " 'yardstick' with which to measure fair market value" not hypothetical non-existing leases. Dougherty County Bd. of Equalization v. Castro Dev. Co., 228 Ga. App. 293, 491 S.E.2d 483.

Valuation of dairy farm cannot be based on sales for speculative or development purposes. — When the assessed value of rural acreage used as a

dairy farm is based primarily on sales of other property, and all the so-called comparable sales are for speculative or development purposes, with the exception of one which was intended for use as a private airport, the statutory formula has not been properly applied. Dotson v. Henry County Bd. of Tax Assessors, 155 Ga. App. 557, 271 S.E.2d 691, 1980 Ga. App. LEXIS 2671 (1980).

Club membership's relevancy to valuation of property. — Although the taxpayers' memberships in a club were not subject to taxation, if a taxpayer relinquished that membership upon sale of the taxpayer's real estate, the buyer could apply for immediate membership, and such an application would normally be granted. Therefore, a county board of tax assessors would have violated Ga. Const. 1983, Art. VII, Sec. I, Para. III and O.C.G.A. § 48-5-1 if the board excluded the enhanced value of the properties attributable to the right to apply for such memberships from ad valorem taxation because the membership was part of the properties' fair market value. Morton v. Glynn County Bd. of Tax Assessors, 294 Ga. App. 901, 670 S.E.2d 528, 2008 Ga. App. LEXIS 1333 (2008).

Trial court erred by holding as a matter of law that the county was required to reduce the relevant valuations by the value of reduced dues for the club membership associated with quarter ownership interests in the condominium to determine the fair market value as the club membership was part of, and could not be separated from, the value of the membership. Glynn County Bd. of Assessors v. SIA Propco I, LLC, 351 Ga. App. 103, 830 S.E.2d 403, 2019 Ga. App. LEXIS 386 (2019).

Superior court did not err by concluding that the value of the taxpayers' memberships in the recreational club could be included in assessing the fair market value of the properties, and thus the membership rights were not intangible personal property that were not subject to ad valorem taxation, because membership in the club terminated when a quarter ownership interest owner sold his or her interest and thus was inextricably bound with the sale of real property. Barsamian v. Glynn County Board of Tax Assessors, 370 Ga. App. 490, 897 S.E.2d 893, 2024 Ga. App. LEXIS 44 (2024).

Use of a "value in use in place" standard was not an inappropriate method of determining the fair market value of machinery and equipment for taxation purposes. Flambeau Corp. v. Morgan County Bd. of Tax Assessors, 238 Ga. App. 812, 520 S.E.2d 275.

Reliance on faulty valuation was legal error. — Because the trial court determined that the county's witnesses were only required to consider, rather than actually apply, the factors listed in O.C.G.A. § 48-5-2(3)(B) and relied upon a faulty valuation in declaring the complex's fair market value for the 2018 tax year, that conclusion was legal error, and the trial court's fair market valuation had to be reversed. Bainbridge Ltd., L.P. v. DeKalb Cty Tax Assessors, 362 Ga. App. 654, 869 S.E.2d 606, 2022 Ga. App. LEXIS 80 (2022).

Federal tax credits considered. — Prior to the statutory amendment contained in O.C.G.A. § 48-5-2(3)(B.1), tax credits under 26 U.S.C. § 42 were properly considered in establishing the fair market value of real estate for property tax purposes. Pine Pointe Hous., L.P. v. Lowndes County Bd. of Tax Assessors, 254 Ga. App. 197, 561 S.E.2d 860, 2002 Ga. App. LEXIS 314 (2002), cert. denied, No. S02C1045, 2002 Ga. LEXIS 556 (Ga. June 21, 2002).

Low income housing tax credits awarded to taxpayers who owned low income housing properties did not constitute actual income for purposes of determining the value of the property under the income method, O.C.G.A. § 48-5-2(3)(B)(vii)(II), and neither (3)(B)(vii)(I) or (3)(B)(v)(II) violated the taxation uniformity provision under Ga. Const. 1983, Art. VII, Sec. I, Para. III(a). Heron Lake II Apartments, LP v. Lowndes County Bd. of Tax Assessors, 306 Ga. 816, 833 S.E.2d 528, 2019 Ga. LEXIS 627 (2019).

Historic properties. — O.C.G.A. § 48-5-2(3)(C) defines "fair market value" of property classified as rehabilitated historic property under O.C.G.A. § 48-5-7.2 and sets forth the same test to

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be used when the county tax receiver or tax commissioner enters the basis or value of a parcel of rehabilitated historic property; thus, § 48-5-7.2 did not require that both the rehabilitation process and the Department of Natural Resources final certification process be completed within the two-year period before the owner may have applied for and obtained preferential assessment for the property and a tax board's argument that the board had no value upon which to base the preferential assessment whenever the owner allows the preliminary assessment to lapse upon expiration of the two-year rehabilitation period was without merit. Chatham County Bd. of Tax Assessors v. Emmoth, 278 Ga. 144, 598 S.E.2d 495, 2004 Ga. LEXIS 538 (2004).

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Tax commissioner may legitimately inquire into the cost, depreciation, age, and use of property which is subject to taxation for purposes of investigating the property's fair market value. This does not mean that property is to be returned or assessed for taxation at other than the property's fair market value; nor does it mean property should be assessed at book value rather than fair market value, although in many cases, fair market value may, in fact, be identical with book value. 1963-65 Ga. Op. Att'y Gen. 113.

Earnings as an element of fair market value of property. — Formula taking earnings into consideration may be used in arriving at the fair market value of property of a public service corporation; the formula used should not be considered conclusive but be used merely as a guide. 1965-66 Op. Att'y Gen. No. 66-12.

Duty of county tax assessors to periodically update property valuations. — If the fair market value of property increases every two years, then it is the duty of the county tax assessors to increase the valuation of property for tax purposes every two years. 1969 Op. Att'y Gen. No. 69-504.

Applicability to 1990 and 1991 tax years. — Neither subsection (1)(E) (now subparagraph (3)(E)) nor § 48-5-33 (repealed) applies to the 1990 tax year. With respect to the 1991 tax year, absent further constitutional amendment or action by the General Assembly, § 48-5-33 (repealed) governs over subsection (1)(E) to the extent they are inconsistent. 1990 Op. Att'y Gen. No. 90-17.

Administrative caps on assistance grants prohibited. — Because neither Ga. Const. 1983, Art. VII, Sec. I, Para. III nor the Forest Land Protection Act, O.C.G.A. § 48-5-7.7, authorize or contemplate a cap on assistance grants based on the total exemption value of forest land conservation use property, the Department of Revenue would not be authorized to impose an administrative cap on assistance grants issued pursuant to the Forest Land Protection Act of 2008 in the manner proposed. 2016 Op. Att'y Gen. No. 16-5.

RESEARCH REFERENCES

ALR.

Taxes: valuing undeveloped mining property as prospect, 2 A.L.R. 1550.

Assessment of corporate property at full value according to law when valuations generally are illegally fixed lower, 3 A.L.R. 1370; 28 A.L.R. 983; 55 A.L.R. 503.

Prospective value as basis of valuation of land for purposes of property taxation, 24 A.L.R. 649.

Method or rule for valuation of leasehold interest for purpose of property taxation, 84 A.L.R. 1310.

Rights appurtenant, easements, restrictions, or charges in respect of land as factors in assessment of real property for property taxation, 108 A.L.R. 829.

Valuation of property for purpose of taxation as affected by variation of tax rates for local or special purposes in dif-

ferent local taxing units, or inclusion of property within particular taxing unit, 119 A.L.R. 1300.

Easement as factor in property taxation, 134 A.L.R. 963.

Discretion of court or referee as to mode of valuation of real property for tax purposes, 152 A.L.R. 611.

Application of "blockage rule" or "blockage discount theory" in determining stock valuation, for purposes of taxation of intangibles, 33 A.L.R.2d 607.

Income or rental value as a factor in evaluation of real property for purposes of taxation, 96 A.L.R.2d 666.

Separate assessment and taxation of air rights, 56 A.L.R.3d 1300.

Situs of tangible personal property for purposes of property taxation, 2 A.L.R.4th 432.

48-5-3. Taxable property.

All real property including, but not limited to, leaseholds, interests less than fee, and all personal property shall be liable to taxation and shall be taxed, except as otherwise provided by law. Liability of property for taxation shall not be affected by the individual or corporate character of the property owner or by the resident or nonresident status of the property owner.

History.

Ga. L. 1851, p. 288, § 1; Code 1863, §§ 730, 732, 733; Code 1868, §§ 797, 799, 800; Code 1873, §§ 799, 802, 803; Code 1882, §§ 799, 802, 803; Ga. L. 1889, p. 35, §§ 1, 2; Civil Code 1895, §§ 767, 768, 769, 777; Civil Code 1910, §§ 1002, 1008, 1009, 1017; Code 1933, §§ 92-101, 92-104, 92-105; Ga. L. 1937-38, Ex. Sess., p. 156, § 2; Code 1933, § 91A-1002, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 18.

Law reviews.

For note discussing taxation of shares of stock, see 1 Ga. L. Rev. No. 2, p. 41 (1927).

For note, "Land Use Decisions and the Property Tax," see 11 Ga. St. B. J. 103 (1974).

For article discussing ad valorem taxation and interest in real property in Georgia, prior to the enactment of the Georgia Public Revenue Code, Code 1933, Title 91A (see this title), see 31 Mercer L. Rev. 293 (1979).

For comment, "Making Debt Pay: Examining the Use of Property Tax Delinquency as a Revenue Source," see 62 Emory L.J. 217 (2012).

JUDICIAL DECISIONS

Analysis

General Consideration
Specific Items of Property

General Consideration

Construction with other provisions. — Former Code 1933, § 92-101 (see now O.C.G.A. § 48-5-3), provided that all real and personal property, whether owned by individuals or corporations, resident or non-resident, shall be liable to taxation, except as otherwise provided by law. Furthermore, former Code 1933, § 92-102 (see now O.C.G.A. § 48-1-2) declared that for the purpose of taxation personal property shall be construed to include, among other things, moneys, credits, and effects, whatsoever they may be, and money due on open account or evidenced by notes, contracts, bonds, or other obligations, whether secured or unsecured. Finally, former Code 1933, § 92-105 (see now O.C.G.A. § 48-5-3) provided that lands or other property belonging to citizens of the United States, not residents of this state, shall not be taxed higher than the property of residents, but such nonresidents, whether their property in this state is real or personal, shall pay taxes on the property in Georgia. Suttles

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v. Northwestern Mut. Life Ins. Co., 193 Ga. 495, 19 S.E.2d 396, 1942 Ga. LEXIS 446 (1942).

No application to understanding of transfer tax. — Because Georgia's ad valorem taxation scheme is contained in its own chapter, entirely separate from the chapter that describes the real estate transfer tax, the definition of taxable property in O.C.G.A. § 48-5-3 did not support an argument regarding the nature of the transfer tax in O.C.G.A. § 48-6-1 et seq. Athens-Clarke County Unified Gov't v. Fed. Hous. Fin. Agency, 945 F. Supp. 2d 1401, 2013 U.S. Dist. LEXIS 68225 (M.D. Ga. 2013), aff'd, 776 F.3d 1247, 2015 U.S. App. LEXIS 705 (11th Cir. 2015).

State has ample power to tax the estates of nonresidents, living or dead, actually located within the state. City of Blakely v. Hilton, 150 Ga. 27, 102 S.E. 340, 1920 Ga. LEXIS 9 (1920).

Power of municipalities to levy taxes. — Municipality may levy no taxes upon the municipality's inhabitants or upon property therein, except when the power to do so has been plainly and unmistakably conferred by the state. Lewis & Holmes Motor Freight Corp. v. City of Atlanta, 195 Ga. 810, 25 S.E.2d 699, 1943 Ga. LEXIS 302 (1943).

Power of municipality to determine tax situs for purposes of municipal taxation. — While the state has the power to separate tax situs from the domicile of the owner as to personalty which is kept in transit and may not be said to have any one fixed location, and to provide for the property's assessment for municipal taxation, unless the state does so, a municipality may not declare such a separate situs and thus render such property subject to taxation when it otherwise should not be so. Lewis & Holmes Motor Freight Corp. v. City of Atlanta, 195 Ga. 810, 25 S.E.2d 699, 1943 Ga. LEXIS 302 (1943).

Effect of local practices or interpretations which conflict with state tax law. — Since state law plainly required taxation of the credits in question, no interpretation or practice to the contrary by local authorities could properly be adopted by the court in determining their taxability. Suttles v. Northwestern Mut. Life Ins. Co., 193 Ga. 495, 19 S.E.2d 396, 1942 Ga. LEXIS 446 (1942).

In bankruptcy proceedings, for purposes of ad valorem taxation, the value of the debtor's equipment was based on declarations of value in the debtor's tax returns; the court was not persuaded by the testimony of the debtor's witness regarding a lower valuation. Chipman-Union, Inc. v. Greene County, 285 B.R. 752, 2002 Bankr. LEXIS 1261 (Bankr. M.D. Ga. 2002).

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Contract created security interest not subject to Georgia taxation. United States v. DeKalb County, 729 F.2d 738, 1984 U.S. App. LEXIS 23628 (11th Cir. 1984).

Leasehold held by a nonprofit hospital, when severed from the private- and taxable-fee owned by a for-profit corporation, took on the tax exempt status of the holder of the leasehold. Douglas County v. Anneewakee, Inc., 179 Ga. App. 270, 346 S.E.2d 368, 1986 Ga. App. LEXIS 1889 (1986).

Interest of private corporation under lease from county industrial development authority need not be returned for county ad valorem taxation. McMillan v. Jacobs, 249 Ga. 117, 288 S.E.2d 211, 1982 Ga. LEXIS 755 (1982).

Attorney's law library. — An attorney's law library, which is maintained in connection with the practice of his or her profession, is not exempted from ad valorem taxation by Georgia's constitution, nor is the attorney's law library exempted by any legislation enacted pursuant to the constitution. Clayton County Bd. of Tax Assessors v. King, 260 Ga. 495, 397 S.E.2d 293, 1990 Ga. LEXIS 407 (1990).

Income is not property in the sense the word property is used in this statute, but is the fruit of property. Waring v. Mayor of Savannah, 60 Ga. 93, 1878 Ga. LEXIS 380 (1878).

Promissory notes held by nonresidents on residents of this state, although

actually in the state for collection, are not taxable. Collins v. Miller, 43 Ga. 336, 1871 Ga. LEXIS 237 (1871).

Notes and accounts representing credit transactions involving a foreign corporation, maintaining a place of business in this state, are taxable. Armour Packing Co. v. Mayor of Savannah, 115 Ga. 140, 41 S.E. 237, 1902 Ga. LEXIS 330 (1902); Armour Packing Co. v. City Council, 118 Ga. 552, 45 S.E. 424, 1903 Ga. LEXIS 617 (1903); Armour Packing Co. v. Clark, 124 Ga. 369, 52 S.E. 145, 1905 Ga. LEXIS 716 (1905).

Return and taxation of leaseholds. — Leasehold is an estate in land less than the fee; it is severed from the fee and classified for tax purposes as realty. Delta Air Lines v. Coleman, 219 Ga. 12, 131 S.E.2d 768, 1963 Ga. LEXIS 352, cert. denied, 375 U.S. 904, 84 S. Ct. 195, 11 L. Ed. 2d 145, 1963 U.S. LEXIS 263 (1963); Henson v. Georgia Indus. Realty Co., 220 Ga. 857, 142 S.E.2d 219, 1965 Ga. LEXIS 652 (1965); Ferguson v. Leggett, 226 Ga. 333, 174 S.E.2d 913, 1970 Ga. LEXIS 531 (1970); Martin v. Liberty County Bd. of Tax Assessors, 152 Ga. App. 340, 262 S.E.2d 609, 1979 Ga. App. LEXIS 2920 (1979).

Owner of a leasehold is required to return it for taxes and pay taxes on it as other property. Ferguson v. Leggett, 226 Ga. 333, 174 S.E.2d 913, 1970 Ga. LEXIS 531 (1970).

Leasehold estate which has been severed from a fee in public property is taxable. Delta Air Lines v. Coleman, 219 Ga. 12, 131 S.E.2d 768, 1963 Ga. LEXIS 352, cert. denied, 375 U.S. 904, 84 S. Ct. 195, 11 L. Ed. 2d 145, 1963 U.S. LEXIS 263 (1963).

Widow is liable for the taxes on the real estate assigned to the widow as dower. Austell v. Swann, 74 Ga. 278, 1885 Ga. LEXIS 303 (1885).

Possibility of reverter remaining in a grantor is not an estate in land and is not taxable. Mayor of Gainesville v. Brenau College, 150 Ga. 156, 103 S.E. 164, 1920 Ga. LEXIS 93 (1920).

City may not tax daily average value of motor corporation's vehicles within city. — City charter provision granting to the city the right to levy "an ad valorem tax on all real and personal property which under the laws of this state is subject to taxation within the incorporate limits of said city," in conjunction with this statute, does not grant the city the power to tax a "daily average" of the composite value of truck and trailer property of a motor corporation as may be moved within and without the city, since this is not a tax on any specific property anywhere. Lewis & Holmes Motor Freight Corp. v. City of Atlanta, 195 Ga. 810, 25 S.E.2d 699, 1943 Ga. LEXIS 302 (1943).

Scope of exemptions from taxation of property. — Apart from permitted exemptions, the Constitution of Georgia evinces an intention that no property which is subject to taxation in this state shall be relieved therefrom, and the statutes express with equal certainty an intention by lawmakers to lay a tax upon all property of every kind or class which this state has jurisdiction to tax, nothing excepted. Suttles v. Northwestern Mut. Life Ins. Co., 193 Ga. 495, 19 S.E.2d 396, 1942 Ga. LEXIS 446 (1942).

Bonds of the state are not taxable property. Miller v. Wilson, 60 Ga. 505, 1879 Ga. LEXIS 615 (1879).

Only those federal obligations necessary to functioning of government are immune from state taxation. — Federal statutes immunize from state taxation only the interest-bearing obligations of the United States which are needed to secure credit to carry on the necessary functions of government. Smith v. Davis, 323 U.S. 111, 65 S. Ct. 157, 89 L. Ed. 107, 1944 U.S. LEXIS 1207 (1944).

An open account claim against United States is taxable. — An open account claim against the United States does not represent a credit instrumentality of the federal government immune from state taxation. Smith v. Davis, 323 U.S. 111, 65 S. Ct. 157, 89 L. Ed. 107, 1944 U.S. LEXIS 1207 (1944).

Lease that granted a usufruct was not subject to county taxation. — Fifty year lease from a city recreational authority to a company to develop and operate a municipal golf course granted a nontaxable usufruct interest since the

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provisions of the parties' lease showed that the authority retained dominion and control over the property and that the company took only a circumscribed and limited use of the premises. It was error to grant a county tax assessor's motion for summary judgment to assess ad valorem taxes against the company on the value of the land and the company's improvements to the land since a usufruct was not an interest in land subject to taxation under O.C.G.A. § 48-5-3. Diversified Golf, LLC v. Hart County Bd. of Tax Assessors, 267 Ga. App. 8, 598 S.E.2d 791, 2004 Ga. App. LEXIS 436 (2004), cert. denied, No. S04C1441, 2004 Ga. LEXIS 719 (Ga. Sept. 7, 2004).

Courts of Georgia have drawn distinctions between the rights of a holder of a usufruct and those of a title holder. A usufruct is not subject to ad valorem taxation pursuant to O.C.G.A. § 48-5-3, and the usufruct interest does not authorize the tenant to seek an easement by necessity, pursuant to O.C.G.A. § 44-9-40(b). However, the usufruct holder's possessory rights may constitute a property interest for which just compensation is payable under Ga. Const. 1983, Art. I, Sec. III, Para. I(a). The Stuttering Foundation, Inc. v. Glynn County, 301 Ga. 492, 801 S.E.2d 793, 2017 Ga. LEXIS 526 (2017).

Valuation of railroad. — In an action in which a railroad filed suit under the Railroad Revitalization and Regulatory Reform Act of 1976 against the Georgia Board of Equalization, and its individual members, including the Georgia Commissioner of Revenue, challenging the assessment of the fair market value, under O.C.G.A. § 48-5-6, of the railroad's taxable railroad operating property in Georgia, and the Board's acceptance of the assessment under O.C.G.A. § 48-2-18(c), because in Georgia, O.C.G.A. § 48-5-3 defined taxable property as all real property, including but not limited to leaseholds, interests less than fee, and all personal property, and O.C.G.A. § 48-5-520 also provided that a railroad's rolling stock and other personal property appurtenant to the rolling stock was to be taxed on as much as the whole value of the rolling stock and personal property as the length of the railroad in Georgia bore to the whole length of the railroad, without regard to the location of the head office of the railroad, there was no commercial and industrial personal property tax exemption in Georgia. CSX Transp., Inc. v. State Bd. of Equalization, 448 F. Supp. 2d 1330, 2005 U.S. Dist. LEXIS 43390 (N.D. Ga. 2005), aff'd, 472 F.3d 1281, 2006 U.S. App. LEXIS 31142 (11th Cir. 2006), rev'd, 521 F.3d 1300, 2008 U.S. App. LEXIS 6139 (11th Cir. 2008).

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Construction with other provisions. — Former Code 1933, § 92-101 (see now O.C.G.A. § 48-5-3) read in conjunction with former Code 1933, § 92-6208 (see now O.C.G.A. § 48-5-16) led to the conclusion that all property not specifically exempted from taxation was taxable and must be returned for taxation. 1963-65 Ga. Op. Att'y Gen. 34.

What terms "personal property" and "real or personal property" include. — "Personal property," in its broad and general sense, includes everything which is subject of ownership not coming under the denomination of real estate, and the term "real or personal property" is commonly used to denote property of all kinds. 1948-49 Ga. Op. Att'y Gen. 661.

What property subject to taxation. — Raw materials, goods in process, and goods in transit owned by the taxpayer are taxable and must be returned for taxation. 1963-65 Ga. Op. Att'y Gen. 34.

Golf carts and motor boats are

subject to property taxation. 1969 Op. Att'y Gen. No. 69-378.

Chickens comprising a chicken business must be returned for taxation. 1948-49 Ga. Op. Att'y Gen. 661.

Lease of real property conveying an interest therein is subject to ad valorem taxation. 1969 Op. Att'y Gen. No. 69-482.

An easement which amounts to a freehold interest is subject to ad valorem taxation. 1960-61 Ga. Op. Att'y Gen. 476.

Taxation of mineral interests. — There is no tax on mineral interests which is dependent upon the producing or nonproducing element of such interest, but mineral interests are taxable ad valorem as other property. 1952-53 Ga. Op. Att'y Gen. 425.

Granite deposit is assessed as part of realty until it is quarried or unless a mineral lease has been granted to another. 1945-47 Ga. Op. Att'y Gen. 554.

Taxation of property leased from United States. — While property owned by the United States government is not subject to any ad valorem taxation, any such property which has been leased to an individual for private purposes is subject to ad valorem taxation as to the latter's interest. 1952-53 Ga. Op. Att'y Gen. 424.

Effect of purchase of Georgia license tag by persons on military duty in Georgia. — Purchase of a Georgia license tag by a member of the armed forces stationed in Georgia does not necessarily render such person liable for Georgia property taxes. If, however, such person is domiciled in Georgia, the mere fact that the person is a member of the armed forces does not relieve the person of Georgia property taxes. 1952-53 Ga. Op. Att'y Gen. 427.

Taxation of personal property owned by residents in military service. — Resident of Georgia is required to pay ad valorem taxes upon motor vehicles owned by the resident during the time that the taxpayer was in active military service and did not physically reside in Georgia. 1952-53 Ga. Op. Att'y Gen. 425; 1954-56 Ga. Op. Att'y Gen. 671.

Military personnel who are residents of Georgia are required to pay personal property tax, even though the military personnel are not physically present in the state. 1954-56 Ga. Op. Att'y Gen. 668.

Taxation of personal property owned by nonresidents in this state on military service. — Military personnel who are residents of other states, and who are in Georgia solely by virtue of military orders, are not subject to Georgia ad valorem taxes, even though the personnel purchase an automobile license tag in Georgia. 1954-56 Ga. Op. Att'y Gen. 671.

Resident military personnel are subject to all state, county, and municipal taxes on their personal property, but military personnel who are residents of another state and stationed in Georgia are not subject to such taxes. 1954-56 Ga. Op. Att'y Gen. 673.

RESEARCH REFERENCES

Am. Jur. 2d.

71 Am. Jur. 2d, State and Local Taxation, § 127 et seq.

C.J.S.

84 C.J.S., Taxation, § 77 et seq.

ALR.

Taxation of chattels and conditional sale contracts or title retaining notes given in respect of them, 12 A.L.R. 566.

Situs for taxation of membership in exchange or board of trade, 17 A.L.R. 89.

Power of state to tax debts due from United States under contracts other than loans, 30 A.L.R. 1462.

Liability of purchaser of personal property for taxes assessed against former owner, 41 A.L.R. 187.

Priority over existing lien of statutory lien upon real property for personal property taxes, 47 A.L.R. 378; 65 A.L.R. 677.

Taxation of land under perpetual lease or ground rent, 55 A.L.R. 154.

Leasehold interest as real property within tax laws, 59 A.L.R. 701.

Situs for property taxation as between different states or countries, of personal property, or interests therein, held by trustees, executors, or administrators, 67

A.L.R. 393; 127 A.L.R. 379; 172 A.L.R. 341.

Method or rule for valuation of leasehold interest for purpose of property taxation, 84 A.L.R. 1310.

Right of taxpayer to pay one tax against his property without paying other taxes against it, 89 A.L.R. 715.

Income as "property" within constitutional limitation on taxation, 97 A.L.R. 1488.

Tax on corporations as affected by fact that corporation is not actually engaged in or carrying on business for which it was incorporated, 124 A.L.R. 1109.

General property tax in respect of royalties and other interests (apart from interest of lessee) under oil and gas lease, 128 A.L.R. 851; 162 A.L.R. 420.

Tax exemption of educational institutions as extending to athletic fields or property used for social or recreation purposes, 143 A.L.R. 274.

Rights of insured or beneficiary under insurance policy as subject to property tax, 150 A.L.R. 788; 167 A.L.R. 1052.

Tenant's interest in respect of building or other structure erected by him as separate unit for property tax apart from land, 154 A.L.R. 1309.

Situs of vessels for tax purposes, 26 A.L.R.2d 1376.

Income or rental value as a factor in evaluation of real property for purposes of taxation, 96 A.L.R.2d 666.

Availability of tax exemption to property held on lease from exempt owner, 54 A.L.R.3d 402.

Separate assessment and taxation of air rights, 56 A.L.R.3d 1300.

Property taxation of computer software, 82 A.L.R.3d 606.

Validity, construction, and effect of state statutes affording preferential property tax treatment to land used for agricultural purposes, 98 A.L.R.3d 916.

Situs of aircraft, rolling stock, and vessels for purposes of property taxation, 3 A.L.R.4th 837.

48-5-4. Ad valorem taxation of property of federal corporations and agencies.

Except as prohibited by the Constitution and laws of the United States, all property owned or possessed in this state by a corporation organized under the laws of the United States or owned or possessed by an agency of the United States engaged in this state in proprietary, as distinguished from governmental, activities shall be subject to ad valorem taxation in this state at the same rate and in the same manner as the property of private corporations owning property in this state and engaged in similar businesses. All laws relating to ad valorem taxation of private corporations shall apply to ad valorem taxation of agencies of the United States and corporations organized under the laws of the United States.

History.

Ga. L. 1939, p. 95, § 1; Code 1933, § 91A-1005, enacted by Ga. L. 1978, p. 309, § 2.

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City was not a local authority. — In a declaration suit, a city was properly determined not to be a local authority as that term is used in O.C.G.A. § 48-13-13(5) and, thus, was subject to the levy of occupation taxes by another municipality for the city's proprietary operations at its airport, which was in the other municipality's city limits, because the terms local authority and municipality were not the same under the statute. City of Atlanta v. City of College

Park, 292 Ga. 741, 741 S.E.2d 147, 2013 Ga. LEXIS 316 (2013).

RESEARCH REFERENCES

Am. Jur. 2d.

71 Am. Jur. 2d, State and Local Taxation, § 154.

ALR.

Applicability of state license tax law to property or business of individual on land owned by federal government, 46 A.L.R. 224.

State tax on goods purchased by, or for the benefit of, the federal government, or on the privilege of conducting the business in connection with which the sales are made, 140 A.L.R. 621.

48-5-5. No situs status for foreign merchandise in transit and property with contract for commercial printing services.

(a) Foreign merchandise in transit shall acquire no situs so as to become subject to ad valorem taxation by political subdivisions of this state in which the port of original entry or the port of export of such merchandise is located. Such property shall not acquire situs by virtue of the fact that while in the warehouse the property is assembled, bound, joined, processed, disassembled, divided, cut, broken in bulk, relabeled, or repackaged. The grant of "no situs" status shall be liberally construed to effect the purposes of this Code section.

(b) Property which meets all of the following qualifications shall acquire no situs so as to become subject to ad valorem taxation by political subdivisions of this state:

(1) Such property is owned by a person who is not a Georgia resident and does not maintain or operate a place of business in Georgia;

(2) Such person has contracted with a commercial printer located in Georgia for printing services to be performed in Georgia; and

(3) Such property is provided by such person to such printer for the performance of such services.

History.

Ga. L. 1969, p. 980, §§ 1, 2; Code 1933, § 91A-1006, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1983, p. 716, § 2; Ga. L. 1998, p. 124, § 1.

Editor's notes.

Ga. L. 1998, p. 124, § 4, not codified by the General Assembly, provides that the amendment to this Code section is applicable to all taxable years beginning on or after January 1, 1999.

Law reviews.

For article discussing tax exemptions and deductions as incentives for establishment of foreign business in Georgia, see 27 Mercer L. Rev. 629 (1976).

For article, "Freeport Exemption from Property Taxes for Inventory Stored in Georgia But Destined for Shipment Out-of-State," see 28 Ga. St. B. J. 108 (1991).

JUDICIAL DECISIONS

What constitutes goods "in transit." — Imported stone tile/slab, which was stored at the taxpayer's pleasure for sale to anyone who might wish to purchase it, was not "in transit to a final destination" within the contemplation of O.C.G.A. § 48-5-2(2)(B) (see now O.C.G.A. § 48-5-2(4)(B)) and was consequently not exempt from ad valorem taxation under O.C.G.A. § 48-5-5. Seabrook Corp. v. Chatham County Bd. of Equalization, 195 Ga. App. 730, 394 S.E.2d 796, 1990 Ga. App. LEXIS 646 (1990).

Merchandise brought into the United States through the port of Charleston, South Carolina and transported, via land freight carrier to a container freight station in Chatham County, was not "foreign merchandise in transit" and was therefore not exempt from ad valorem taxation. Pier 1 Imports v. Chatham County Bd. of Tax Assessors, 199 Ga. App. 294, 404 S.E.2d 637, 1991 Ga. App. LEXIS 446 (1991), cert. denied, No. S91C0996, 1991 Ga. LEXIS 734 (Ga. May 22, 1991).

Merchandise brought into the United States through the port of Savannah, Georgia, and transported monthly from Gotham County warehouse to the company's distributorship office in Los Angeles was not "in transit" and was therefore not exempt from ad valorem taxation. Los Angeles Tile Co. v. Chatham County Bd. of Tax Assessors, 209 Ga. App. 245, 433 S.E.2d 82, 1993 Ga. App. LEXIS 837 (1993), cert. denied, No. S93C1524, 1993 Ga. LEXIS 906 (Ga. Oct. 5, 1993).

RESEARCH REFERENCES

Am. Jur. 2d.

71 Am. Jur. 2d, State and Local Taxation, § 157 et seq.

ALR.

Situs as between different states or countries of tangible chattels for purposes of property taxation, 110 A.L.R. 707.

License or excise tax on merchandise brokers or persons performing similar functions as affected by commerce clause, 155 A.L.R. 239.

State tax on or in respect of goods shipped in interstate commerce to consignee for sale on consignor's account without previous sale or order for purchase, 4 A.L.R.2d 244.

Situs of vessels for tax purposes, 26 A.L.R.2d 1376.

Situs of tangible personal property for purposes of property taxation, 2 A.L.R.4th 432.

Situs of aircraft, rolling stock, and vessels for purposes of property taxation, 3 A.L.R.4th 837.

48-5-6. Return of property at fair market value.

All property shall be returned for taxation at its fair market value except as otherwise provided in this chapter.

History.

Ga. L. 1909, p. 36, § 15; Civil Code 1910, § 1003; Code 1933, § 92-5701; Code 1933, § 91A-1007, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 21; Ga. L. 1991, p. 1903, § 3.

Editor's notes.

Ga. L. 1991, p. 1903, § 15, not codified by the General Assembly, provides that the amendment to this Code section shall be applicable beginning January 1, 1992, with respect to ad valorem taxation of timber and shall be applicable beginning January 1, 1992, for all other purposes. Taxation for prior periods shall continue to be governed by prior law.

Law reviews.

For comment on McLennan v. Undercofler, 222 Ga. 306, 149 S.E.2d 705 (1966), see 18 Mercer L. Rev. 290 (1966).

JUDICIAL DECISIONS

Analysis

General Consideration
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General Consideration

Determination of the fair market value of the property involved is generally a question for the trier of fact. Delta Air Lines, Inc. v. Clayton County Bd. of Tax Assessors, 246 Ga. App. 225, 539 S.E.2d 905, 2000 Ga. App. LEXIS 1200 (2000), cert. denied, No. S01C0204, 2001 Ga. LEXIS 370 (Ga. Apr. 30, 2001).

Constitutionality of utilizing other methods for determining fair market value. — Utilization of different methods for determining fair market value for purposes of taxation creates no infirmity under the United States Constitution or under the state constitution or laws. Dougherty County Bd. of Tax Assessors v. Burt Realty Co., 250 Ga. 467, 298 S.E.2d 475, 1983 Ga. LEXIS 536, cert. denied, 463 U.S. 1208, 103 S. Ct. 3540, 77 L. Ed. 2d 1390, 1983 U.S. LEXIS 755 (1983).

Fair market value is not the retail value to the taxpayer, but the current wholesale value adjusted for the fair market; the taxpayer's cost may be adjusted upward, downward, or remain the same to reflect the "wholesale market" as that term reflects the fair market value of the tangible personalty in the taxpayer's possession. Macon-Bibb County Bd. of Tax Assessors v. J.C. Penney Co., 239 Ga. App. 322, 521 S.E.2d 234.

Fair market value of land. — Fair market value of land, whether it be the fee, a leasehold, or any other interest, is a question which necessarily addresses itself to the honesty, the experience, and the familiarity of land values in a given locality of the person or persons whose duty it becomes to determine and fix the value. DeKalb County Bd. of Tax Assessors v. W.C. Harris & Co., 248 Ga. 277, 282 S.E.2d 880, 1981 Ga. LEXIS 991 (1981).

Failure to indicate fair market value on return. — When a taxpayer sold improvements on the taxpayer's property, then filed a return in which the taxpayer left blank the area for "market value," the taxpayer was not entitled to a refund under O.C.G.A. § 48-5-380, as under O.C.G.A. § 48-5-6, returns had to state fair market value; a county was not required to interpret the taxpayer's silence on market value as a declaration that there was no value, and under O.C.G.A. § 48-5-20(a)(1), a taxpayer who failed to return taxable property in a given year was deemed to have returned the property at the same valuation as applied the preceding year. Int'l Auto Processing, Inc. v. Glynn County, 287 Ga. App. 431, 651 S.E.2d 535, 2007 Ga. App. LEXIS 990 (2007).

Statute is not unconstitutional for vagueness of the term "fair market value of property." Chilivis v. Backus, 236 Ga. 88, 222 S.E.2d 371, 1976 Ga. LEXIS 774 (1976).

Statute does not violate the uniformity of tax requirement of the Constitution of Georgia because the property of railroads and other utility companies is assessed by the commissioner. Butts County v. Briscoe, 236 Ga. 233, 223 S.E.2d 199, 1976 Ga. LEXIS 822 (1976).

Duty to return all property at fair market value is a statutory mandate. — Provision requiring that all property be returned for taxation at the property's fair market value is, undeniably, a statutory mandate. McLennan v. Undercofler, 222 Ga. 302, 149 S.E.2d 705, 1966 Ga. LEXIS 462 (1966), superseded by statute as stated in Salem v. Tattnall County, 250 Ga. 881, 302 S.E.2d 99, 1983 Ga. LEXIS 681 (1983) (commented on in 18 Mercer L. Rev. 290 (1966)).

Duty to return all property at fair market value is not supreme, but yields to the duty to avoid discrimination. McLennan v. Undercofler, 222 Ga. 302, 149 S.E.2d 705, 1966 Ga. LEXIS 462 (1966), superseded by statute as stated in Salem v. Tattnall County, 250 Ga. 881, 302 S.E.2d 99, 1983 Ga. LEXIS 681 (1983) (commented on in

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18 Mercer L. Rev. 290 (1966)); Griggs v. Greene, 230 Ga. 257, 197 S.E.2d 116, 1973 Ga. LEXIS 880 (1973), overruled in part as stated in Rice v. Fulton County, 358 Ga. App. 1, 852 S.E.2d 860, 2020 Ga. App. LEXIS 681 (2020).

Property purchased through industrial revenue bonds. — Company's personal property purchased through industrial revenue bonds was not entitled to a leasehold interest value of 50 percent of the property's fair market value because neither the leasing agreement, nor any representations purportedly made by the development authority, required a reduction of the company's tax burden and such a reduction violated the uniformity requirements of the state constitution. Coweta County Bd. of Tax Assessors v. EGO Prods., Inc., 241 Ga. App. 85, 526 S.E.2d 133.

Discrepancies in tax evaluation assessment. — Bankruptcy court found that for the purposes of ad valorem tax on the debtors' equipment that: (1) for 1997, the value was the lowest of the tax assessors' value due to discrepancies in the tax assessors' values; (2) for 1998, the court accepted the value determined by the board of equalization which gave some weight to the debtors' appraiser who considered comparable sales; (3) for 1999, the court took the tax assessors' lowest value as the debtors' appraiser omitted a laser device; and (4) for 2000, the debtors did not challenge the tax assessors' value. In re R-P Packaging, Inc., 278 B.R. 281, 2002 Bankr. LEXIS 726 (Bankr. M.D. Ga. 2002).

Factors to Be Considered

Fact that property may be rented for amount which is disproportionate to "fair market value" does not, in and of itself, entitle the owner to an assessment based on some other method of valuation. Williamson v. DeKalb County Bd. of Tax Assessors, 168 Ga. App. 47, 308 S.E.2d 55, 1983 Ga. App. LEXIS 2672 (1983).

Cost may be fair market value. — "Cost" to the taxpayer may be part and parcel of an assessment of the "fair market value" of personalty. Eckerd Corp. v. Coweta County Bd. of Tax Assessors, 228 Ga. App. 94, 491 S.E.2d 173.

Acquisition cost of property. — Evidence held insufficient to show that the fair market value of inventory equaled the inventory's acquisition cost. J.C. Penney Co. v. Richmond County Bd. of Tax Assessors, 233 Ga. App. 399, 504 S.E.2d 201.

Past assessments or assessments of nearby property. — It is not proper to determine the fair market value of property on the basis of past assessments or assessments of nearby property without a showing that these assessments are based on fair market value. Evans v. Board of Tax Assessors, 168 Ga. App. 792, 310 S.E.2d 562, 1983 Ga. App. LEXIS 2924 (1983).

Construction of term "existing use of property" as used in § 48-5-2. — Term "existing use of property," as used in former Code 1933, § 92-5707 (see now O.C.G.A. § 48-5-2), cannot be assigned any particular value as real property was unique and the extent to which existing use affects the property's value was dependent upon a great variety of other factors. Cobb County Bd. of Tax Assessors v. Sibley, 244 Ga. 404, 260 S.E.2d 313, 1979 Ga. LEXIS 1252 (1979).

Existing use of property is not exclusive factor in determining fair market value; assessors are directed by former Code 1933, § 92-5702 (see now O.C.G.A. § 48-5-2) to consider also existing zoning of property, existing covenants or restrictions in the deed dedicating the property to a particular use, or any other factors deemed pertinent in arriving at fair market value. Cobb County Bd. of Tax Assessors v. Sibley, 244 Ga. 404, 260 S.E.2d 313, 1979 Ga. LEXIS 1252 (1979).

Method for fixing fair market value of leaseholds. — In fixing the fair market value of a leasehold for tax purposes, the rule of "fair market value of property" should always be applied. Delta Air Lines v. Coleman, 219 Ga. 12, 131 S.E.2d 768, 1963 Ga. LEXIS 352, cert. denied, 375 U.S. 904, 84 S. Ct. 195, 11 L. Ed. 2d 145, 1963 U.S. LEXIS 263 (1963).

Valuation of separate taxable interests when tax liability divided among owners. — Existence of separate

taxable interests and estates in the same property and a determination of their respective "fair market values" for assessment purposes is necessary only when the tax liability is likewise divided among the owners. Martin v. Liberty County Bd. of Tax Assessors, 152 Ga. App. 340, 262 S.E.2d 609, 1979 Ga. App. LEXIS 2920 (1979).

Valuation of railroad. — In an action in which a railroad filed suit under the Railroad Revitalization and Regulatory Reform Act of 1976 against the Georgia Board of Equalization, and its individual members, including the Georgia Commissioner of Revenue, challenging the assessment of the fair market value, under O.C.G.A. § 48-5-6, of the railroad's taxable railroad operating property in Georgia, and the Board's acceptance of the assessment under O.C.G.A. § 48-2-18(c), because in Georgia, O.C.G.A. § 48-5-3 defined taxable property as all real property, including but not limited to leaseholds, interests less than fee, and all personal property, and O.C.G.A. § 48-5-520 also provided that a railroad's rolling stock and other personal property appurtenant to the rolling stock was to be taxed on as much as the whole value of the rolling stock and personal property as the length of the railroad in Georgia bore to the whole length of the railroad, without regard to the location of the head office of the railroad, there was no commercial and industrial personal property tax exemption in Georgia. CSX Transp., Inc. v. State Bd. of Equalization, 448 F. Supp. 2d 1330, 2005 U.S. Dist. LEXIS 43390 (N.D. Ga. 2005), aff'd, 472 F.3d 1281, 2006 U.S. App. LEXIS 31142 (11th Cir. 2006), rev'd, 521 F.3d 1300, 2008 U.S. App. LEXIS 6139 (11th Cir. 2008).

Federal tax credits considered. — Low income housing tax credits awarded to taxpayers who owned low income housing properties did not constitute actual income for purposes of determining the value of the property under the income method, O.C.G.A. § 48-5-2(3)(B)(vii)(II), and neither (3)(B)(vii)(I) or (3)(B)(v)(II) violated the taxation uniformity provision under Ga. Const. 1983, Art. VII, Sec. I, Para. III(a). Heron Lake II Apartments, LP v. Lowndes County Bd. of Tax Assessors, 306 Ga. 816, 833 S.E.2d 528, 2019 Ga. LEXIS 627 (2019).

Admissibility of assessed value for previous year in valuation disputes. — In tax valuation disputes, the value of the property determined by the tax assessors for the previous year is admissible as evidence of the current value of the property at the insistence of the taxpayer. Board of Tax Assessors v. McCauley, 245 Ga. 381, 265 S.E.2d 786, 1980 Ga. LEXIS 804 (1980).

Sufficiency of evidence that assessors failed to consider existing use of property in valuation. — Evidence is sufficient to support judgment of trial court that assessors failed to consider the existing use of land which is generally categorized as vacant land, not commercial, industrial, or residential subdivision, when assessors, relying on the property's highest and best use, assigned such land a base value according to the district in which the land was located, which value was determined by the sale price of other vacant lands purchased for development, which sales did not accurately reflect the value of other vacant land because such sales were often for special purposes such as schools or parks, or speculative development. Cobb County Bd. of Tax Assessors v. Sibley, 244 Ga. 404, 260 S.E.2d 313, 1979 Ga. LEXIS 1252 (1979).

Faulty valuation results in legal error. — Because the trial court determined that the county's witnesses were only required to consider, rather than actually apply, the factors listed in O.C.G.A. § 48-5-2(3)(B) and relied upon a faulty valuation in declaring the complex's fair market value for the 2018 tax year, that conclusion was legal error, and the trial court's fair market valuation had to be reversed. Bainbridge Ltd., L.P. v. DeKalb Cty Tax Assessors, 362 Ga. App. 654, 869 S.E.2d 606, 2022 Ga. App. LEXIS 80 (2022).

Assessment upheld. — Court affirmed the trial court's ruling regarding the assessment of a taxpayer's residential property when the taxpayer presented no evidence of the property's fair market value and the board of assessors

Factors to Be Considered (Cont'd)

presented evidence of comparable sales in the taxpayer's neighborhood that established that the assessment actually approximated fair market value. Smith v. Elbert County Bd. of Tax Assessors, 292 Ga. App. 417, 664 S.E.2d 786, 2008 Ga. App. LEXIS 782 (2008), cert. denied, No. S08C1865, 2008 Ga. LEXIS 889 (Ga. Oct. 27, 2008), overruled in part, Gilmer County Bd. of Tax Assessors v. Spence, 309 Ga. App. 482, 711 S.E.2d 51, 2011 Ga. App. LEXIS 371 (2011).

Club membership appurtenant to property. — Although the taxpayers' memberships in a club were not subject to taxation, if a taxpayer relinquished that membership upon sale of the taxpayer's real estate, the buyer could apply for immediate membership, and such an application would normally be granted. Therefore, a county board of tax assessors would have violated Ga. Const. 1983, Art. VII, Sec. I, Para. III and O.C.G.A. § 48-5-1 if the board excluded the enhanced value of the properties attributable to the right to apply for such memberships from ad valorem taxation because the membership was part of the properties' fair market value. Morton v. Glynn County Bd. of Tax Assessors, 294 Ga. App. 901, 670 S.E.2d 528, 2008 Ga. App. LEXIS 1333 (2008).

OPINIONS OF THE ATTORNEY GENERAL

Tax commissioner may legitimately inquire into the cost, depreciation, age, and use of property which is subject to taxation for purposes of investigating the property's fair market value. This does not mean that the property is to be returned or assessed for taxation at other than the property's fair market value; nor does it mean property should be assessed at book value rather than fair market value, although in many cases, fair market value may, in fact, be identical with book value. 1963-65 Ga. Op. Att'y Gen. 113.

Earnings as an element of fair market value of property. — Formula taking earnings into consideration may be used in arriving at the fair market value of property of a public service corporation; the formula used should not be considered conclusive but be used merely as a guide. 1965-66 Op. Att'y Gen. No. 66-12.

RESEARCH REFERENCES

Am. Jur. 2d.

71 Am. Jur. 2d, State and Local Taxation, § 113.

C.J.S.

84 C.J.S., Taxation, § 413 et seq.

ALR.

Taxes: valuing undeveloped mining property as prospect, 2 A.L.R. 1550.

Assessment of corporate property at full value according to law when valuations generally are illegally fixed lower, 3 A.L.R. 1370; 28 A.L.R. 983; 55 A.L.R. 503.

Prospective value as basis of valuation of land for purposes of property taxation, 24 A.L.R. 649.

Rights appurtenant, easements, restrictions, or charges in respect of land as factors in assessment of real property for property taxation, 108 A.L.R. 829.

Valuation of property for purpose of taxation as affected by variation of tax rates for local or special purposes in different local taxing units, or inclusion of property within particular taxing unit, 119 A.L.R. 1300.

Price paid or received by taxpayer for property as evidence of its value for tax purposes, 160 A.L.R. 684.

Separate assessment and taxation of air rights, 56 A.L.R.3d 1300.

48-5-7. Assessment of tangible property.

(a) Except as otherwise provided in this Code section, taxable tangible property shall be assessed at 40 percent of its fair market value

and shall be taxed on a levy made by each respective tax jurisdiction according to 40 percent of the property's fair market value.

(b) Tangible real property which is devoted to bona fide agricultural purposes as defined in this chapter and which otherwise conforms to the conditions and limitations imposed in this chapter shall be assessed for ad valorem property tax purposes at 75 percent of the value which other tangible real property is assessed and shall be taxed on a levy made by each respective tax jurisdiction according to said assessment.

(c) Tangible real property which qualifies as rehabilitated historic property pursuant to the provisions of Code Section 48-5-7.2 shall be assessed at 40 percent of its fair market value and shall be taxed on a levy made by each respective tax jurisdiction according to 40 percent of the property's fair market value. For the purposes of this subsection, the term "fair market value" shall mean the fair market value of rehabilitated historic property pursuant to the provisions of subparagraph (C) of paragraph (3) of Code Section 48-5-2.

(c.1) Tangible real property which qualifies as landmark historic property pursuant to the provisions of Code Section 48-5-7.3 shall be assessed at 40 percent of its fair market value and shall be taxed on a levy made by each respective tax jurisdiction according to 40 percent of the property's fair market value. For the purposes of this subsection, the term "fair market value" shall mean the fair market value of landmark historic property pursuant to the provisions of subparagraph (D) of paragraph (3) of Code Section 48-5-2.

(c.2) Tangible real property which is devoted to bona fide conservation uses as defined in this chapter and which otherwise conforms to the conditions and limitations imposed in this chapter shall be assessed for property tax purposes at 40 percent of its current use value and shall be taxed on a levy made by each respective tax jurisdiction according to 40 percent of the property's current use value.

(c.3) Tangible real property located in a transitional developing area which is devoted to bona fide residential uses and which otherwise conforms to the conditions and limitations imposed in this chapter for bona fide residential transitional property shall be assessed for property tax purposes at 40 percent of its current use value and shall be taxed on a levy made by each respective tax jurisdiction according to 40 percent of the property's current use value.

(c.4) Tangible real property which qualifies as brownfield property pursuant to the provisions of Code Section 48-5-7.6 shall be assessed at 40 percent of its fair market value and shall be taxed on a levy made by each respective tax jurisdiction according to 40 percent of the property's fair market value. For the purposes of this subsection, the term "fair market value" shall mean the fair market value of brownfield property

pursuant to the provisions of subparagraph (F) of paragraph (3) of Code Section 48-5-2.

(c.5) Tangible real property which qualifies as forest land conservation use property pursuant to the provisions of Code Section 48-5-7.7 shall be assessed at 40 percent of its forest land conservation use value and shall be taxed on a levy made by each respective tax jurisdiction according to 40 percent of the property's forest land conservation use value.

(c.6) Tangible real property which qualifies as qualified timberland property in accordance with the provisions of Article 13 of this chapter shall be assessed at 40 percent of its fair market value of qualified timberland property and shall be taxed on a levy made by each respective tax jurisdiction according to 40 percent of its fair market value of qualified timberland property as such value is determined by the commissioner in accordance with Article 13 of this chapter.

(d) The requirement contained in this Code section that all tax jurisdictions assess taxable tangible property at 40 percent of fair market value shall not apply to any tax jurisdiction whose ratio of assessed value to fair market value exceeded 40 percent for the tax year 1971. No tax jurisdiction so exempted shall assess at a ratio of less than 40 percent except as necessary to effect the preferential assessment provided in subsection (b) of this Code section.

(e) Each notice of ad valorem taxes due sent to taxpayers of counties and municipalities shall include both the fair market value of the property of the taxpayer which is subject to taxation and the assessed value of the property after being reduced as provided by this Code section.

History.

Ga. L. 1851-52, p. 288, § 14; Code 1863, § 734; Code 1868, § 801; Code 1873, § 804; Code 1882, § 804; Civil Code 1895, § 770; Ga. L. 1909, p. 36, § 1; Civil Code 1910, § 1010; Code 1933, § 92-5703; Ga. L. 1968, p. 358, § 2; Ga. L. 1972, p. 1102, § 1; Ga. L. 1975, p. 1083, § 1; Ga. L. 1976, p. 518, § 1; Code 1933, § 91A-1019, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 26; Ga. L. 1983, p. 1850, § 2; Ga. L. 1989, p. 1585, § 2; Ga. L. 1990, p. 1122, § 2; Ga. L. 1991, p. 1903, § 4; Ga. L. 1992, p. 6, § 48; Ga. L. 2003, p. 170, § 2; Ga. L. 2018, p. 119, § 3/HB 85.

Editor's notes.

Ga. L. 1983, p. 1850, § 1, effective April 8, 1983, not codified by the General Assembly, provided that: "It is the intent of this Act to implement certain changes imposed by Article VII, Section I, Paragraph III, subparagraph (c) of the Constitution of the State of Georgia."

Ga. L. 1983, p. 1850, § 4, effective April 8, 1983, not codified by the General Assembly, provided that that Act (§ 2 of which amended this Code section) "shall apply to all tax years beginning on or after January 1, 1984."

Ga. L. 1991, p. 1903, § 15, not codified by the General Assembly, provides that the amendment to this Code section shall be applicable beginning January 1, 1992, with respect to ad valorem taxation of timber and shall be applicable beginning January 1, 1992, for all other purposes. Taxation for prior periods shall continue to be governed by prior law.

The state-wide referendum (Ga. L. 2002, p. 1017, § 2), which would have

added a new subsection (c.4), relating to exemption from ad valorem taxation for commercial dockside facilities, was defeated at the November 2002, general election.

Ga. L. 2018, p. 119, § 7/HB 85, not codified by the General Assembly, provides, in part, that the addition of subsections (c.5) and (c.6) to this Code section shall become effective on January 1, 2019, only if an amendment to the Constitution of Georgia is ratified at the November, 2018, general election modifying constitutional prescriptions for forest land conservation use property and related assistance grants, permitting the withholding of a portion of assistance grants to provide for certain state administrative costs, and establishing qualified timberland property as a subclassification of tangible property for purposes of ad valorem taxation. The constitutional amendment was approved by a majority of the qualified voters voting at the general election held on November 6, 2018.

Law reviews.

For note on the 1989 amendment to this Code section, see 6 Ga. St. U. L. Rev. 173 (1989).

JUDICIAL DECISIONS

Statute is not unconstitutional for vagueness of the term "fair market value." Chilivis v. Backus, 236 Ga. 88, 222 S.E.2d 371, 1976 Ga. LEXIS 774 (1976).

Constitutionality. — Setting the assessed value of tangible property at 40 percent of fair market value is not in conflict with the Georgia Constitution. Salem v. Tattnall County, 250 Ga. 881, 302 S.E.2d 99, 1983 Ga. LEXIS 681 (1983).

Department of Natural Resources certification not required within two-year time frame. — Under O.C.G.A. § 48-5-7.2, an owner needed only to complete the rehabilitation of property within 24 months in order to be allowed to apply for and obtain certification of the property as rehabilitated historic property for purposes of preferential assessment under O.C.G.A. § 48-5-7(c) and there was no statutory basis that the owner obtain final certification from the Department of Natural Resources within that two year time frame. Chatham County Bd. of Tax Assessors v. Emmoth, 278 Ga. 144, 598 S.E.2d 495, 2004 Ga. LEXIS 538 (2004).

Assessment procedures upheld. — Assessment of property at 40% of value did not violate the constitutional requirement of uniformity, even though statistical evidence showed the average level of assessment of other property to be 38.84% of fair market value or lower. Bellsouth Telecommunications, Inc. v. Henry County Bd. of Assessors, 217 Ga. App. 699, 458 S.E.2d 705, 1995 Ga. App. LEXIS 567 (1995), cert. denied, No. S95C1673, 1995 Ga. LEXIS 1058 (Ga. Oct. 2, 1995).

Construction with other provisions. — Words "assessed value" in Ga. Const. 1945, Art. VIII, Sec. XII, Para. I (see now Ga. Const. 1983, Art. VIII, Sec. VI, Para. I) mean the correctly assessed value, that is, the assessed value approved by the commissioner, not an incorrectly assessed value. Board of Comm'rs v. Allgood, 234 Ga. 9, 214 S.E.2d 522, 1975 Ga. LEXIS 1003 (1975).

Because a beneficial property owner only benefitted from a lower ad valorem tax in proportion to the interest owned in the property, the trial court did not err in granting summary judgment to a corporation, as approval of preferential ad valorem tax treatment for property co-owned by the shareholders of the corporation by a tenancy in common did not violate O.C.G.A. § 48-5-7.4(b)(3), as an individual's benefit was to be determined on a pro-rata basis; thus, if the interests of shareholders who were tenants in common of the property were so calculated, no single shareholder would have benefitted from current use assessment as to more than 2,000 acres. Effingham County Bd. of Tax Assessors v. Samwilka, Inc., 278 Ga. App. 521, 629 S.E.2d 501, 2006 Ga. App. LEXIS 362 (2006).

Under O.C.G.A. § 48-5-7.4, the owners of "bona fide conservation use property,"

including property used for certain agricultural purposes and meeting other statutory criteria and conditions, may apply to the county board of tax assessors for "current use assessment" of their property for purposes of calculating ad valorem taxes. If the application is granted, the property is assessed for tax purposes at 40 percent of the property's "current use value" instead of 40 percent of the property's "fair market value," under O.C.G.A. § 48-5-7(a) and (c.2), thus resulting in tax savings. Morrison v. Claborn, 294 Ga. App. 508, 669 S.E.2d 492, 2008 Ga. App. LEXIS 1262 (2008).

Court erred by failing to make necessary findings as to business operated on property. — Trial court erred by holding that operating a commercial grain business on property designated conservation use property under O.C.G.A. § 48-5-7.4 did not constitute a breach of the conservation use covenant because the court failed to make any findings as to whether the grain business was incidental and not detrimental to the qualifying use of the property. Terrell County Bd. of Tax Assessors v. Goolsby, 324 Ga. App. 535, 751 S.E.2d 158, 2013 Ga. App. LEXIS 879 (2013).

All property to be returned at fair market value. — Basic requirement, whether the property is returnable to the comptroller general (now commissioner) or to the tax receivers of the several counties, is that all property shall be returned and assessed at the property's fair market value. Ogletree v. Woodward, 150 Ga. 691, 105 S.E. 243, 1920 Ga. LEXIS 298 (1920).

Property is not ordinarily deemed as taxed until tax has been levied since the word "taxation" ordinarily includes a determination of the rate of levy and imposition of the levy, as an essential part of the sovereign power and process, it follows that property will not ordinarily be deemed as taxed until the tax has been levied. Rayle Elec. Membership Corp. v. Cook, 195 Ga. 734, 25 S.E.2d 574, 1943 Ga. LEXIS 283 (1943).

Valuation of debts. — It is not necessary that the owner of a debt should return it at more than its fair market value, and the fact that the debt is valued, with other debts, at a gross amount, and the whole thus returned, can make no difference, provided the value placed upon them is what the taxpayer believes to be their fair market value. Lewis v. Horne, 44 Ga. 627, 1872 Ga. LEXIS 388 (1872).

Right to appeal penalty assessment. — An assessment of a penalty for a breach of a conservation use covenant is an assessment for which a property owner has the right to appeal pursuant to O.C.G.A. § 48-5-311. Oconee County Bd. of Tax Assessors v. Thomas, 282 Ga. 422, 651 S.E.2d 45, 2007 Ga. LEXIS 592 (2007).

Mandamus relief properly denied since certification of appeals obtained. — Trial court did not err by denying a group of property owners their request for mandamus relief in the nature of finding that the county board of tax assessors certified their property tax appeals because it was undisputed that the tax appeals were physically delivered to the trial court and that it had ruled that such appeals were certified to it, thus, the property owners received the relief sought regarding certification. Newton Timber Co., L.L.L.P. v. Monroe County Bd. of Tax Assessors, 295 Ga. 29, 755 S.E.2d 770, 2014 Ga. LEXIS 189 (2014).

RESEARCH REFERENCES

Am. Jur. 2d.

72 Am. Jur. 2d, State and Local Taxation, §§ 689, 731.

C.J.S.

84 C.J.S., Taxation, § 413 et seq.

ALR.

Construction and application of statute prohibiting or restricting reassessment after assessment and payment of taxes, 85 A.L.R. 107.

Original cost of construction or reproduction cost as proper factors in assessing real property for taxation, 104 A.L.R. 790.

Different parts or parcels of land in

same ownership as single unit or separate units for tax assessment purposes, 133 A.L.R. 524.

Real-estate tax equalization, reassessment, or revaluation program commenced but not completed within the year, as violative of constitutional provisions requiring equal and uniform taxation, 76 A.L.R.2d 1077.

Tax assessor's civil liability to taxpayer for excessive or improper assessment of real property, 82 A.L.R.2d 1148.

Income or rental value as a factor in evaluation of real property for purposes of taxation, 96 A.L.R.2d 666.

Judicial notice as to assessed valuations, 42 A.L.R.3d 1439.

48-5-7.1. Tangible real property devoted to agricultural purposes.

(a) For purposes of this article, the term "tangible real property which is devoted to bona fide agricultural purposes":

(1) Is tangible real property, the primary use of which is good faith commercial production from or on the land of agricultural products, including horticultural, floricultural, forestry, dairy, livestock, poultry, and apiarian products and all other forms of farm products; but

(2) Includes only the value which is $100,000.00 or less of the fair market value of tangible real property which is devoted to the storage or processing of agricultural products from or on the property; and

(3) Excludes the entire value of any residence located on the property.

(b) No property shall qualify for the preferential ad valorem property tax assessment provided for in subsection (b) of Code Section 48-5-7 unless:

(1) It is owned by one or more natural or naturalized citizens; or

(2) It is owned by a family-farm corporation, the controlling interest of which is owned by individuals related to each other within the fourth degree by civil reckoning, and such corporation derived 80 percent or more of its gross income for the year immediately preceding the year in which application for preferential assessment is made from bona fide agricultural pursuits carried out on tangible real property located in this state, which property is devoted to bona fide agricultural purposes.

(c) No property shall qualify for said preferential assessment if such assessment would result in any person who has a beneficial interest in such property, including any interest in the nature of stock ownership, receiving in any tax year any benefit of preferential assessment as to more than 2,000 acres. If any taxpayer has any beneficial interest in more than 2,000 acres of tangible real property which is devoted to bona fide agricultural purposes, such taxpayer shall apply for preferential assessment only as to 2,000 acres of such land.

(d) No property shall qualify for preferential assessment unless and until the owner of such property agrees by covenant with the appropriate taxing authority to maintain the eligible property in bona fide agricultural purposes for a period of at least ten years beginning on the first day of January of the year in which such property qualifies for preferential assessment and ending on the last day of December of the tenth year of the covenant period. After the expiration of any ten-year covenant period, the property shall not qualify for further preferential assessment until and unless the owner of the property enters into a renewal covenant for an additional period of ten years.

(e) No property shall maintain its eligibility for preferential assessment unless a valid covenant remains in effect and unless the property is continuously devoted to bona fide agricultural purposes during the entire period of the covenant.

(f) If any change in ownership of such qualified property occurs during the covenant period, all qualification requirements must be met again before the property shall be eligible to be continued for preferential assessment. If ownership of the property is acquired during a covenant period by a person qualified to enter into an original covenant, by a newly formed corporation the stock in which is owned by the original covenantor or others related to the original covenantor within the fourth degree by civil reckoning, or by the personal representative of an owner who was a party to the covenant, then the original covenant may be continued by such acquiring party for the remainder of the term, in which event no breach of the covenant shall be deemed to have occurred.

(g) A penalty shall be imposed under this subsection if during the period of the covenant entered into by a taxpayer the covenant is breached. The penalty shall be computed by multiplying the amount by which the preferential assessment has reduced taxes otherwise due for the year in which the breach occurs times:

(1) A factor of five if the breach occurs in the first or second year of the covenant period;

(2) A factor of four if the breach occurs during the third or fourth year of the covenant period;

(3) A factor of three if the breach occurs during the fifth or sixth year of the covenant period; or

(4) A factor of two if the breach occurs in the seventh, eighth, ninth, or tenth year of the covenant period.

(h) A penalty imposed under subsection (g) of this Code section shall bear interest at the rate specified in Code Section 48-2-40 from the date the covenant is breached.

(i) Penalties and interest imposed under this Code section shall constitute a lien against the property and shall be collected as other unpaid ad valorem taxes are collected. Such penalties and interest shall be distributed pro rata to each taxing jurisdiction wherein the preferential assessment has been granted based upon the total amount by which such preferential assessment has reduced taxes for each such taxing jurisdiction on the property in question as provided in this Code section.

(j) The penalty imposed by subsection (g) of this Code section shall not apply in any case where a covenant is breached solely as a result of:

(1) The acquisition of part or all of the property under the power of eminent domain;

(2) The sale of part or all of the property to a public or private entity which would have had the authority to acquire the property under the power of eminent domain; or

(3) The death of an owner who was a party to the covenant.

(k) All applications for preferential assessment, including the covenant agreement required under this Code section, shall be filed on or before the last day for filing ad valorem tax returns in the county for the tax year for which such preferential assessment shall be first applicable. An application for continuation of preferential assessment upon a change in ownership of the qualified property shall be filed on or before the last date for filing tax returns in the year following the year in which the change in ownership occurred. Applications for preferential assessment shall be filed with the county board of tax assessors who shall approve or deny the application. If the application is approved on or after July 1, 1998, the county board of tax assessors shall file a copy of the approved application in the office of the clerk of the superior court in the county in which the eligible property is located. The clerk of the superior court shall file and index such application in the real property records maintained in the clerk's office. Applications approved prior to July 1, 1998, shall be filed and indexed in like manner without payment of any fee. If the application is not so recorded in the real property records, a transferee of the property affected shall not be bound by the covenant or subject to any penalty for its breach. The fee of the clerk of the superior court for recording such applications approved on or after July 1, 1998, shall be paid by the owner of the eligible property with the application for preferential treatment and shall be paid to the clerk by the board of tax assessors when the application is filed with the clerk. If the application is denied, the board of tax assessors shall notify the applicant in the same manner that notices of assessment are given pursuant to Code Section 48-5-306 and shall return any filing fees advanced by the owner. Appeals from the denial of an application by the

board of tax assessors shall be made in the same manner that other property tax appeals are made pursuant to Code Section 48-5-311. As to property approved for preferential assessment prior to July 1, 1998, the county board of tax assessors shall file copies of all approved applications in the office of the clerk of the superior court not later than August 14, 1998, and the clerk shall file, index, and record such approved applications, as provided for in this subsection, with the fee of the clerk of the superior court for filing, indexing, and recording to be paid out of the general funds of the county.

(l) The commissioner shall by regulation provide uniform application and covenant forms to be used in making application for preferential assessment. Such application shall include an oath or affirmation by the taxpayer that he has not at any time received, or made a pending application for, preferential assessment in the same or another county with respect to any property which taken together with property for which application is then being made exceeds 2,000 acres.

(m) The commissioner shall annually submit a report to the Governor and members of the General Assembly which shall show the fiscal impact of the preferential assessment provided for in this Code section. The report shall include the amount of assessed value eliminated from each county's digest as a result of the preferential assessment; approximate tax dollar losses, by county, to all local governments affected by such preferential assessment; and any recommendations regarding state and local administration of this Code section, with emphasis upon enforcement problems, if any, attendant with this Code section. The report shall also include any other data or facts which the commissioner deems relevant.

(n)(1) The transfer prior to July 1, 1988, of a part of the property subject to a covenant shall not constitute a breach of a covenant entered into before or after July 1, 1984, if:

(A) The part of the property so transferred is used for single-family residential purposes and the residence is occupied by a person who is related within the fourth degree of civil reckoning to an owner of the property subject to the covenant; and

(B) The part of the property so transferred, taken together with any other part of the property so transferred during the covenant period, does not exceed a total of three acres.

(2) The transfer on or after July 1, 1988, of a part of the property subject to a covenant shall not constitute a breach of a covenant entered into before or after July 1, 1988, if:

(A) The part of the property so transferred is transferred to a person who is related within the fourth degree of civil reckoning to an owner of the property subject to the covenant; and

(B) The part of the property so transferred, taken together with any other part of the property transferred to the same relative during the covenant period, does not exceed a total of five acres.

(o) The following shall not constitute a breach of a covenant entered into before or after July 1, 1984:

(1) Mineral exploration of the property subject to the covenant or the leasing of the property subject to the covenant for purposes of mineral exploration if the primary use of the property continues to be the good faith commercial production from or on the land of agricultural products; or

(2) Allowing all or part of the property subject to the covenant to lie fallow or idle for purposes of any land conservation program, for purposes of any federal agricultural assistance program, or for other agricultural management purposes.

(p) Property which is subject to preferential assessment shall be separately classified from all other property on the tax digest; and such separate classification shall be such as will enable any person examining the tax digest to readily ascertain that the property is subject to preferential assessment. Covenants shall be public records and shall be indexed and maintained in such manner as will allow members of the public to readily locate the covenant affecting any particular property subject to preferential assessment.

(q)(1) In any case in which a covenant is breached solely as a result of the foreclosure of a deed to secure debt, or the property is conveyed to the lienholder without compensation and in lieu of foreclosure, the penalty specified by paragraph (2) of this subsection shall apply and the penalty specified by subsection (g) of this Code section shall not apply if:

(A) The deed to secure debt was executed as a part of a bona fide commercial loan transaction in which the grantor of the deed to secure debt received consideration equal in value to the principal amount of the debt secured by the deed to secure debt;

(B) The loan was made by a person or financial institution who or which is regularly engaged in the business of making loans; and

(C) The deed to secure debt was intended by the parties as security for the loan and was not intended for the purpose of carrying out a transfer which would otherwise be subject to the penalty specified by subsection (g) of this Code section.

(2) When a breach occurs solely as a result of a foreclosure which meets the qualifications of paragraph (1) of this subsection, the

penalty imposed shall be the amount by which preferential assessment has reduced taxes otherwise due for the year in which the covenant is breached.

(3) A penalty imposed under this subsection shall bear interest at the rate specified in Code Section 48-2-40 from the date the covenant is breached.

(r)(1) In any case in which a covenant is breached solely as a result of a medically demonstrable illness or disability which renders the owner of the real property physically unable to continue the property in agricultural use, the penalty specified by paragraph (2) of this subsection shall apply and the penalty specified by subsection (g) of this Code section shall not apply. The penalty specified by paragraph (2) of this subsection shall likewise be substituted for the penalty specified by subsection (g) of this Code section in any case in which a covenant is breached solely as a result of a medically demonstrable illness or disability which renders the operator of the real property physically unable to continue the property in agricultural use, provided that the alternative penalty shall apply in this case only if the operator of the real property is a member of the family owning a family-farm corporation which owns the real property.

(2) When a breach occurs which meets the qualifications of paragraph (1) of this subsection, the penalty imposed shall be the amount by which preferential assessment has reduced taxes otherwise due for the year during which the covenant is breached.

(3) A penalty imposed under this subsection shall bear interest at the rate specified in Code Section 48-2-40 from the date the covenant is breached.

(4) Prior to the imposition of the alternative penalty authorized by this subsection in lieu of the penalty specified by subsection (g) of this Code section, the board of tax assessors shall require satisfactory evidence which clearly demonstrates that the breach is the result of a medically demonstrable illness or disability which meets the qualifications of paragraph (1) of this subsection.

(r.1) In any case in which a covenant is breached solely as a result of an owner electing to discontinue the property in its qualifying use, provided such owner has renewed without an intervening lapse at least once the covenant under this Code section, has reached the age of 65 or older, and has kept the property in a qualifying use under the renewal covenant for at least three years the penalty specified by subsection (g) of this Code section shall not apply and the penalty imposed shall be the amount by which preferential assessment has reduced taxes otherwise due for the year in which the covenant is breached. Such penalty shall bear interest at the rate specified in Code Section 48-2-40 from the date

of the breach. Such election shall be in writing and shall not become effective until filed with the county board of tax assessors.

(s) Property which is subject to preferential assessment and which is subject to a covenant under this Code section may be changed from such covenant and placed in a covenant for bona fide conservation use under Code Section 48-5-7.4 if such property meets all of the requirements and conditions specified in Code Section 48-5-7.4. Any such change shall terminate the covenant under this Code section, shall not constitute a breach of the covenant under this Code section, and shall require the establishment of a new covenant period under Code Section 48-5-7.4. No property may be changed under this subsection more than once.

(t) At such time as the property ceases to be eligible for preferential assessment or when any ten-year covenant period expires and the property does not qualify for further preferential assessment, the owner of the property shall file an application for release of preferential treatment with the county board of tax assessors who shall approve the release upon verification that all taxes and penalties with respect to the property have been satisfied. After the application for release has been approved by the board of tax assessors, the board shall file the release in the office of the clerk of the superior court in the county in which the original covenant was filed. The clerk of the superior court shall file and index such release in the real property records maintained in the clerk's office. No fee shall be paid to the clerk of the superior court for recording such release. The commissioner shall by regulation provide uniform release forms.

History.

Code 1981, § 48-5-7.1, enacted by Ga. L. 1983, p. 1850, § 3; Ga. L. 1984, p. 22, § 48; Ga. L. 1984, p. 686, § 1; Ga. L. 1985, p. 149, § 48; Ga. L. 1986, p. 820, § 1; Ga. L. 1987, p. 286, §§ 1-3; Ga. L. 1988, p. 895, § 1; Ga. L. 1990, p. 292, § 1; Ga. L. 1991, p. 668, § 1; Ga. L. 1991, p. 1903, § 5; Ga. L. 1998, p. 553, §§ 1, 2; Ga. L. 1999, p. 589, § 1; Ga. L. 2002, p. 1031, § 1; Ga. L. 2017, p. 774, § 48/HB 323.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1985, "convenant" was changed to "covenant" in the beginning of subsection (n) (now (n)(1)) and in paragraph (o)(2).

Editor's notes.

Ga. L. 1983, p. 1850, § 1, effective April 8, 1983, not codified by the General Assembly, provided that: "It is the intent of this Act to implement certain changes imposed by Article VII, Section I, Paragraph III, subparagraph (c) of the Constitution of the State of Georgia."

Ga. L. 1983, p. 1850, § 4, effective April 8, 1983, not codified by the General Assembly, provided that that Act (§ 3 of which enacted this Code section) "shall apply to all tax years beginning on or after January 1, 1984."

Ga. L. 1987, p. 286, § 4, not codified by the General Assembly, provided that the amendments to subsections (g), (q) and (r) by that Act shall apply to breaches occurring on or after the effective date of the Act [March 26, 1987] and the amendment to subsection (k) shall apply with respect to changes of ownership occurring during calendar year 1986 or at any time thereafter.

Ga. L. 1991, p. 1903, § 15, not codified by the General Assembly, provides that the amendment to this Code section by that act shall be applicable beginning

January 1, 1992, with respect to ad valorem taxation of timber and shall be applicable beginning January 1, 1992, for all other purposes. Taxation for prior periods shall continue to be governed by prior law.

Ga. L. 2002, p. 1031, § 9, not codified by the General Assembly, provided that the Act shall be applicable to all taxable years beginning on or after January 1, 2002.

JUDICIAL DECISIONS

Construction with other law. — Assessments lacked uniformity in failing to follow the mandates of O.C.G.A. § 48-5-2 regarding consideration of "existing use of the property" and "other factors deemed pertinent in arriving at fair market value" and in failing to exempt standing timber under the mandate of paragraph (a)(1) of O.C.G.A. § 48-5-7.1 and O.C.G.A. § 48-5-7.5 as set forth in Ga. Const. 1983, Art. VII, Sec. I, Para. III. Leverett v. Jasper County Bd. of Tax Assessors, 233 Ga. App. 470, 504 S.E.2d 559.

OPINIONS OF THE ATTORNEY GENERAL

Transfer of portion of property. — Subsection (f) of O.C.G.A. § 48-5-7.1 does not require that all property subject to a covenant be transferred before the covenant can be continued pursuant to that provision. 1987 Op. Att'y Gen. No. U87-14.

Subsections (f) and (n) may be implemented concurrently, which would allow the transfer of up to three acres of land to a relative for the purpose of building a residence, while also allowing the covenant to be continued by the same relative with respect to the remaining acreage transferred which is to be continued in agricultural usage as required by the statute. 1987 Op. Att'y Gen. No. U87-10.

48-5-7.2. Preferential assessment for rehabilitated historic property.

(a)(1) For the purposes of this article, "rehabilitated historic property" means tangible real property which:

(A) Qualifies for listing on the Georgia Register of Historic Places as provided in Part 1 of Article 3 of Chapter 3 of Title 12;

(B) Is in the process of or has been substantially rehabilitated, provided that in the case of owner occupied residential real property the rehabilitation has increased the fair market value of the building or structure by not less than 50 percent, or, in the case of income-producing real property, the rehabilitation has increased the fair market value of the building or structure by not less than 100 percent, or, in the case of real property used primarily as residential property but partially as income-producing property, the rehabilitation has increased the fair market value of the building or structure by not less than 75 percent, provided that the exact percentage of such increase in the fair market value to be required shall be determined by rules and regulations promulgated by the Department of Community Affairs. For the purposes of this subparagraph, the term "fair

market value" shall mean the fair market value of the property, excluding the provisions of subparagraph (C) of paragraph (3) of Code Section 48-5-2;

(C) The rehabilitation of which meets the rehabilitation standards as provided in regulations promulgated by the Department of Community Affairs; and

(D) Has been certified by the Department of Community Affairs as rehabilitated historic property eligible for preferential assessment.

(2) The preferential classification and assessment of rehabilitated historic property provided for in this Code section shall apply to the building or structure which is the subject of the rehabilitation, the real property on which the building or structure is located, and not more than two acres of real property surrounding the building or structure. The remaining property shall be assessed for tax purposes as otherwise provided by law.

(3) Property may qualify as historic property only if substantial rehabilitation of such property was initiated after January 1, 1989, and only property which has been certified as rehabilitated historic property by the Department of Community Affairs after July 1, 1989, may qualify for preferential assessment.

(b) In order for property to qualify for preferential assessment as provided for in subsection (c) of Code Section 48-5-7, the property must receive certification as rehabilitated historic property as defined in paragraph (1) of subsection (a) of this Code section and pursuant to regulations promulgated by the Department of Community Affairs. Applications for certification of such property shall be accompanied by a fee specified by rules and regulations of the Department of Community Affairs. The Department of Community Affairs may, at its discretion, delegate its responsibilities conferred under subparagraph (a)(1)(C) of this Code section.

(c) Upon a property owner's receiving preliminary certification pursuant to the provisions of subsection (b) of this Code section, such property owner shall submit a copy of such preliminary certification to the county board of tax assessors. A property owner shall have 24 months from the date that preliminary certification is received pursuant to subsection (b) of this Code section in which to complete the rehabilitation of such property in conformity with the application approved by the Department of Community Affairs. After receiving the preliminary certification from the property owner, the county board of tax assessors shall not increase the assessed value of such property during the period of rehabilitation of such property, not to exceed two years. During such period of rehabilitation of the property, the county

tax receiver or tax commissioner shall enter upon the tax digest a notation that the property is subject to preferential assessment and shall also enter an assessment of the fair market value of the property, excluding the preferential assessment authorized by this Code section. Any taxes not paid on the property as a result of the preliminary certification and frozen assessed value of the property shall be considered deferred until a final determination is made as to whether such property qualifies for preferential assessment as provided in this Code section.

(d) Upon the completion of the rehabilitation of such property, the property owner shall submit a request in writing for final certification to the Department of Community Affairs. The Department of Community Affairs shall determine whether such property as rehabilitated constitutes historic property which will be listed on the Georgia Register of Historic Places and which qualifies for preferential assessment. The Department of Community Affairs shall issue to the property owner a final certification if such property so qualifies.

(e) Upon receipt of final certification from the Department of Community Affairs, a property owner desiring classification of any such historic property as rehabilitated historic property in order to receive the preferential assessment shall make application to the county board of tax assessors and include the order of final certification with such application. The county board of tax assessors shall determine if the value of the building or structure has been increased in accordance with the provisions of subparagraph (a)(1)(B) of this Code section; provided, however, that, if the property owner can document expenditures on rehabilitation of owner occupied property of not less than 50 percent of the fair market value of the building or structure at the time of the preliminary certification of the property, or, in the case of income-producing property, expenditures on rehabilitation of such property of not less than 100 percent of the fair market value of the building or structure at the time of preliminary certification of the property, or, in the case of real property used primarily as residential property but partially as income-producing property, expenditures on rehabilitation of such property of not less than 75 percent of the fair market value of the building or structure at the time of preliminary certification of the property, the county board of tax assessors shall be required to grant preferential assessment to such property. For the purposes of this subsection, the term "fair market value" shall mean the fair market value of the building or structure, excluding the provisions of subparagraph (C) of paragraph (3) of Code Section 48-5-2; and such rehabilitation expenditures shall also include expenditures incurred in preserving specimen trees upon not more than two acres of real property surrounding the building or structure. As used in this Code section, the term "specimen tree" means any tree having a trunk

diameter of 30 inches or more. The county board of tax assessors shall make the determination within 30 days after receiving the application and shall notify the applicant in the same manner that notices of assessment are given pursuant to Code Section 48-5-306. Appeals from the denial of an application for preferential assessment by the board of tax assessors shall be made in the same manner that other property tax appeals are made pursuant to Code Section 48-5-311.

(f) A property owner who fails to have property classified as rehabilitated historic property and listed on the Georgia Register of Historic Places for the preferential assessment shall be required to pay the difference between the amount of taxes on the property during the period that the assessment was frozen pursuant to the provisions of subsection (c) of this Code section and the amount of taxes which would have been due had the property been assessed at the regular fair market value, plus interest at the rate prescribed in Code Section 48-2-40.

(g)(1) Property which has been classified by the county board of tax assessors as rehabilitated historic property shall be eligible for the preferential assessment provided for in subsection (c) of Code Section 48-5-7; provided, however, that, for the purposes of determining the years of eligibility for preferential assessment, the tax year following the year in which the preliminary certification was filed with the county board of tax assessors pursuant to subsection (c) of this Code section shall be considered and counted as the first year of eligibility.

(2) Property which is subject to preferential assessment shall be separately classified from all other property on the tax digest; and such separate classification shall be such as will enable any person examining the tax digest to ascertain readily that the property is subject to preferential assessment.

(3) The county tax receiver or tax commissioner shall enter upon the tax digest as the basis or value of a parcel of rehabilitated historic property a value equal to the greater of the acquisition cost of the property or the assessment of the fair market value of the property as recorded in the county tax digest at the time preliminary certification on such property was received by the county board of tax assessors pursuant to subsection (c) of this Code section. Property classified as rehabilitated historic property shall be recorded upon the tax digest as provided in this Code section for nine consecutive assessment years, and the notation "rehabilitated historic property" shall be entered on the tax digest adjacent to the valuation of such property to indicate that the property is being preferentially assessed. The tax commissioner or tax receiver shall also enter upon the tax digest an assessment of the fair market value of the property each year, excluding the provisions of subparagraph (C) of paragraph (3) of Code Section 48-5-2.

(h) When property has once been classified and assessed as rehabilitated historic property, it shall remain so classified and be granted the special assessment until the property becomes disqualified by any one of the following:

(1) Written notice by the taxpayer to the county tax commissioner or receiver to remove the preferential classification and assessment;

(2) Sale or transfer of ownership making the property exempt from property taxation;

(3) Decertification of such property by the Department of Community Affairs. The Department of Community Affairs has the authority to decertify any property which no longer possesses the qualities and features which made it eligible for the Georgia Register of Historic Places or which has been altered through inappropriate rehabilitation as determined by the Department of Community Affairs. The sale or transfer to a new owner shall not operate to disqualify the property from preferential classification and assessment so long as the property continues to qualify as rehabilitated historic property. When for any reason the property or any portion thereof ceases to qualify as rehabilitated historic property, the owner at the time of change shall notify the Department of Community Affairs and the county board of tax assessors prior to the next January; or

(4) The expiration of nine years during which the property was classified and assessed as rehabilitated historic property; provided, however, that any such property may qualify thereafter as rehabilitated historic property if such property is subject to subsequent rehabilitation and qualifies under the provisions of this Code section.

(i) Any person who is aggrieved or adversely affected by any order or action of the Department of Community Affairs pursuant to this Code section shall, upon petition within 30 days after the issuance of such order or taking of such action, have a right to a hearing before an administrative law judge appointed by the Department of Community Affairs. The hearing before the administrative law judge shall be conducted in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." The decision of the administrative law judge shall constitute the final decision of the board and any party to the hearing, including the Department of Community Affairs, shall have the right of judicial review thereof in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(j)(1) The taxes and interest deferred pursuant to this Code section shall constitute a prior lien and shall attach as of the date and in the same manner and shall be collected as are other liens for taxes, as provided for under this title, but the deferred taxes and interest shall only be due, payable, and delinquent as provided in this Code section.

(2) Liens for taxes deferred under this Code section, except for any lien covering the then current tax year, shall not be divested by an award for year's support authorized pursuant to former Chapter 5 of Title 53 as such existed on December 31, 1997, if applicable, or Chapter 3 of Title 53.

History.

Code 1981, § 48-5-7.2, enacted by Ga. L. 1989, p. 1585, § 3; Ga. L. 1992, p. 6, § 48; Ga. L. 1998, p. 128, § 48; Ga. L. 2000, p. 775, § 1; Ga. L. 2011, p. 752, § 48/HB 142; Ga. L. 2020, p. 38, §§ 9, 10/SB 473.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1991, "owner's" was substituted for "owner" near the beginning of subsection (c).

Administrative rules and regulations.

Preliminary and Final Certification of Rehabilitated Historic Properties, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Natural Resources, Historic Preservation, Chapter 391-5-11.

Law reviews.

For note on the 1989 enactment of this Code section, see 6 Ga. St. U. L. Rev. 173 (1989).

For article, "The Tax Abatement Program for Historic Properties in Georgia," see 28 Ga. St. B.J. 129 (1992).

For note on the 2000 amendment of this Code section, see 17 Ga. St. U. L. Rev. 274 (2000).

JUDICIAL DECISIONS

Final certification from Department of Natural Resources not required in two-year time frame. — Under O.C.G.A. § 48-5-7.2, an owner needed only to complete the rehabilitation of property within 24 months in order to be allowed to apply for and obtain certification of the property as rehabilitated historic property for purposes of preferential assessment under O.C.G.A. § 48-5-7(c) and there was no statutory basis that the owner obtain final certification from the Department of Natural Resources within that two year time frame. Chatham County Bd. of Tax Assessors v. Emmoth, 278 Ga. 144, 598 S.E.2d 495, 2004 Ga. LEXIS 538 (2004).

Simultaneous application of local Act homestead exemption was not precluded. — Although an owner's property qualified for preferential assessment under the Rehabilitated Historic Property Preferential Assessment Act (RHPPA), O.C.G.A. § 48-5-7.2, the owner was allowed to use the effective date of the local Act homestead exemption, Ga. L. 1999, p. 4213, § 1, as the base year for the fair market valuation assessment of the property because the simultaneous application of the RHPPA and the local Act homestead exemption was not precluded. Chatham County Bd. of Tax Assessors v. Bock, 299 Ga. App. 257, 682 S.E.2d 355, 2009 Ga. App. LEXIS 872 (2009).

48-5-7.3. Preferential assessment for landmark historic property.

(a)(1) As used in this Code section, the term "landmark historic property" means tangible real property which:

(A) Has been listed on the National Register of Historic Places or on the Georgia Register of Historic Places as provided in Part

1 of Article 3 of Chapter 3 of Title 12 and has been so certified by the Department of Community Affairs; and

(B) Has been certified by a local government as landmark historic property having exceptional architectural, historic, or cultural significance pursuant to a comprehensive local historic preservation or landmark ordinance which is of general application within such locality and has been approved as such by the state historic preservation officer.

(2) The preferential classification and assessment of landmark historic property provided for in this Code section shall apply to the building or structure which is listed on the National Register of Historic Places or on the Georgia Register of Historic Places, the real property on which the building or structure is located, and not more than two acres of real property surrounding the building or structure. The remaining property shall be assessed for tax purposes as otherwise provided by law.

(3) Property may qualify as landmark historic property and be eligible to receive the preferential assessment provided for in this Code section only if the local governing authority has adopted an ordinance authorizing such preferential assessments for landmark historic property under this Code section. Notwithstanding any other provision of this paragraph, said ordinances may extend the preferential assessment authorized by this Code section to tangible income-producing real property, tangible nonincome-producing real property, or combination thereof, so as to encourage the preservation of historic properties and assist in the revitalization of historic areas.

(b) In order for property to qualify under this Code section for preferential assessment as provided for in subsection (c.1) of Code Section 48-5-7, the property must receive the certifications required for landmark historic property as defined in paragraph (1) of subsection (a) of this Code section.

(c) Upon receipt of said certifications, a property owner desiring classification of any such historic property as landmark historic property in order to receive the preferential assessment shall make application to the county board of tax assessors and include said certifications with such application. The county board of tax assessors shall determine if the provisions of this Code section have been complied with and upon such determination, the county board of tax assessors shall be required to grant preferential assessment to such property. The county board of tax assessors shall make the determination within 30 days after receiving the application and shall notify the applicant in the same manner that notices of assessment are given pursuant to Code Section 48-5-306. Appeals from the denial of an application for

preferential assessment by the board of tax assessors shall be made in the same manner that other property tax appeals are made pursuant to Code Section 48-5-311.

(d)(1) Property which has been classified by the county board of tax assessors as landmark historic property shall be immediately eligible for the preferential assessment provided for in subsection (c.1) of Code Section 48-5-7; provided, however, that, for the purposes of determining the years of eligibility for preferential assessment, the tax year following the year in which the certification was filed with the county board of tax assessors pursuant to subsection (c) of this Code section shall be considered and counted as the first year of eligibility.

(2) Property which is subject to preferential assessment shall be separately classified from all other property on the tax digest; and such separate classification shall be such as will enable any person examining the tax digest to ascertain readily that the property is subject to preferential assessment.

(3) The county tax receiver or tax commissioner shall enter upon the tax digest as the basis or value of a parcel of landmark historic property a value equal to the greater of the acquisition cost of the property or the assessment of the fair market value of the property as recorded in the county tax digest at the time certification on such property was received by the county board of tax assessors pursuant to subsection (c) of this Code section. Property classified as landmark historic property shall be recorded upon the tax digest as provided in this Code section for nine consecutive assessment years, and the notation "landmark historic property" shall be entered on the tax digest adjacent to the valuation of such property to indicate that the property is being preferentially assessed. The tax commissioner or tax receiver shall also enter upon the tax digest an assessment of the fair market value of the property each year, excluding the provisions of subparagraph (D) of paragraph (3) of Code Section 48-5-2.

(e)(1) When property has once been classified and assessed as landmark historic property, it shall remain so classified and be granted the special assessment until the property becomes disqualified by any one of the following:

(A) Written notice by the taxpayer to the county tax commissioner or receiver to remove the preferential classification and assessment;

(B) Sale or transfer of ownership making the property exempt from property taxation;

(C) Decertification of such property by the Department of Community Affairs. The Department of Community Affairs has

the authority to decertify any property which no longer possesses the qualities and features which made it eligible for the Georgia Register of Historic Places or which has been altered through inappropriate rehabilitation as determined by the Department of Community Affairs. The sale or transfer to a new owner shall not operate to disqualify the property from preferential classification and assessment so long as the property continues to qualify as landmark historic property, except as specified in subparagraph (B) of this paragraph. When for any reason the property or any portion thereof ceases to qualify as landmark historic property, the owner at the time of change shall notify the Department of Community Affairs and the county board of tax assessors prior to the next January;

(D) Decertification of such property by the local governing authority for failure to maintain such property in a standard condition as specified in the local historic preservation or landmark ordinance or in local building codes; or

(E) The expiration of nine years during which the property was classified and assessed as landmark historic property; provided, however, that any such property may qualify thereafter as landmark historic property if such property is subject to subsequent rehabilitation and qualifies under other portions of the historic properties tax incentive program contained within the provisions of this Code section.

(2) Except as otherwise provided in this Code section, if a property becomes disqualified pursuant to any provision of this subsection, the decertification shall be transmitted to the county board of tax assessors and said assessors shall appropriately notate the property as decertified. Such property shall not be eligible to receive the preferential assessment provided for in this Code section during the taxable year in which such disqualification occurs.

(f) Any person who is aggrieved or adversely affected by any order or action of the Department of Community Affairs pursuant to this subsection shall, upon petition within 30 days after the issuance of such order or taking of such action, have a right to a hearing before an administrative law judge appointed by the Department of Community Affairs. The hearing before the administrative law judge shall be conducted in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." The decision of the administrative law judge shall constitute the final decision of the board and any party to the hearing, including the Department of Community Affairs, shall have the right of judicial review thereof in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(g) No property shall be eligible to receive simultaneously more than

one of the preferential assessments provided for in this Code section and Code Section 48-5-7.2.

(h) Any landmark historic property which lies within a locally designated landmark or historic preservation district which is predominantly a residential district as determined by the local governing authority shall not be eligible for the preferential assessment provided for in this subsection if such landmark historic property constitutes a nonconforming use pursuant to applicable local zoning ordinances or if such landmark historic property does not contribute to the architectural, historic, or cultural values for which said district is significant.

(i)(1) The difference between the preferential assessment granted by this Code section and the taxes which would otherwise be assessed and interest thereon shall constitute a prior lien and shall attach as of the date and in the same manner and shall be collected as are other liens for taxes, as provided for under this title, but shall only be due, payable, and delinquent as provided in this Code section.

(2) Such liens for taxes, except for any lien covering the then current tax year, shall not be divested by an award for year's support authorized pursuant to former Chapter 5 of Title 53 as such existed on December 31, 1997, if applicable, or Chapter 3 of Title 53.

History.
Code 1981, § 48-5-7.3, enacted by Ga. L. 1990, p. 1122, § 3; Ga. L. 1992, p. 6, § 48; Ga. L. 1992, p. 1502, § 1; Ga. L. 1998, p. 128, § 48; Ga. L. 2011, p. 752, § 48/HB 142; Ga. L. 2017, p. 774, § 48/HB 323; Ga. L. 2020, p. 38, §§ 9, 10/SB 473.

Editor's notes.
Ga. L. 1998, p. 128, § 48(3), purported to amend paragraph (2) of subsection (j) of this Code section but, in fact, amended paragraph (2) of subsection (i); this Code section contains no subsection (j).

Law reviews.
For article, "The Tax Abatement Program for Historic Properties in Georgia," see 28 Ga. St. B.J. 129 (1992).

48-5-7.4. Preferential assessment for bona fide conservation use property and bona fide residential transitional property.

(a) For purposes of this article, the term "bona fide conservation use property" means property described in and meeting the requirements of paragraph (1) or (2) of this subsection, as follows:

(1) Not more than 2,000 acres of tangible real property of a single person, the primary purpose of which is any good faith production, including but not limited to subsistence farming or commercial production, from or on the land of agricultural products or timber, subject to the following qualifications:

(A) Such property includes the value of tangible property permanently affixed to the real property which is directly con-

nected to such owner's production of agricultural products or timber and which is devoted to the storage and processing of such agricultural products or timber from or on such real property;

(A.1) In the application of the limitation contained in the introductory language of this paragraph, the following rules shall apply to determine beneficial interests in bona fide conservation use property held in a family owned farm entity as described in division (1)(C)(iv) of this subsection:

(i) A person who owns an interest in a family owned farm entity as described in division (1)(C)(iv) of this subsection shall be considered to own only the percent of the bona fide conservation use property held by such family owned farm entity that is equal to the percent interest owned by such person in such family owned farm entity; and

(ii) A person who owns an interest in a family owned farm entity as described in division (1)(C)(iv) of this subsection may elect to allocate the lesser of any unused portion of such person's 2,000 acre limitation or the product of such person's percent interest in the family owned farm entity times the total number of acres owned by the family owned farm entity subject to such bona fide conservation use assessment, with the result that the family owned farm entity may receive bona fide conservation use assessment on more than 2,000 acres;

(B) Such property excludes the entire value of any residence and its underlying property; as used in this subparagraph, the term "underlying property" means the minimum lot size required for residential construction by local zoning ordinances or two acres, whichever is less. The board of tax assessors shall not require a recorded plat or survey to set the boundaries of the underlying property. This provision for excluding the underlying property of a residence from eligibility in the conservation use covenant shall only apply to property that is first made subject to a covenant or is subject to the renewal of a previous covenant on or after May 1, 2012;

(C) Except as otherwise provided in division (vii) of this subparagraph, such property must be owned by:

(i) One or more natural or naturalized citizens;

(ii) An estate of which the devisees or heirs are one or more natural or naturalized citizens;

(iii) A trust of which the beneficiaries are one or more natural or naturalized citizens;

(iv) A family owned farm entity, such as a family corpora-

tion, a family partnership, a family general partnership, a family limited partnership, a family limited corporation, or a family limited liability company, all of the interest of which is owned by one or more natural or naturalized citizens related to each other by blood or marriage within the fourth degree of civil reckoning, except that, solely with respect to a family limited partnership, a corporation, limited partnership, limited corporation, or limited liability company may serve as a general partner of the family limited partnership and hold no more than a 5 percent interest in such family limited partnership, an estate of which the devisees or heirs are one or more natural or naturalized citizens, a trust of which the beneficiaries are one or more natural or naturalized citizens, or an entity created by the merger or consolidation of two or more entities which independently qualify as a family owned farm entity, and which family owned farm entity derived 80 percent or more of its gross income from bona fide conservation uses, including earnings on investments directly related to past or future bona fide conservation uses, within this state within the year immediately preceding the year in which eligibility is sought; provided, however, that in the case of a newly formed family farm entity, an estimate of the income of such entity may be used to determine its eligibility;

(v) A bona fide nonprofit organization designated under Section 501(c)(3) of the Internal Revenue Code;

(vi) A bona fide club organized for pleasure, recreation, and other nonprofitable purposes; or

(vii) In the case of constructed storm-water wetlands, any person may own such property;

(D) Factors which may be considered in determining if such property is qualified may include, but not be limited to:

(i) The nature of the terrain;

(ii) The density of the marketable product on the land;

(iii) The past usage of the land;

(iv) The economic merchantability of the agricultural product; and

(v) The utilization or nonutilization of recognized care, cultivation, harvesting, and like practices applicable to the product involved and any implemented plans thereof;

(E) Such property shall, if otherwise qualified, include, but not be limited to, property used for:

(i) Raising, harvesting, or storing crops;

(ii) Feeding, breeding, or managing livestock or poultry;

(iii) Producing plants, trees, fowl, or animals, including without limitation the production of fish or wildlife by maintaining not less than ten acres of wildlife habitat either in its natural state or under management, which shall be deemed a type of agriculture; provided, however, that no form of commercial fishing or fish production shall be considered a type of agriculture; or

(iv) Production of aquaculture, horticulture, floriculture, forestry, dairy, livestock, poultry, and apiarian products; and

(F) The primary purpose described in this paragraph includes land conservation and ecological forest management in which commercial production of wood and wood fiber products may be undertaken primarily for conservation and restoration purposes rather than financial gain; or

(2) Not more than 2,000 acres of tangible real property, excluding the value of any improvements thereon, of a single owner of the types of environmentally sensitive property specified in this paragraph and certified as such by the Department of Natural Resources, if the primary use of such property is its maintenance in its natural condition or controlling or abating pollution of surface or ground waters of this state by storm-water runoff or otherwise enhancing the water quality of surface or ground waters of this state and if such owner meets the qualifications of subparagraph (C) of paragraph (1) of this subsection:

(A) Environmentally sensitive areas, including any otherwise qualified land area 1,000 feet or more above the lowest elevation of the county in which such area is located that has a percentage slope, which is the difference in elevation between two points 500 feet apart on the earth divided by the horizontal distance between those two points, of 25 percent or greater and shall include the crests, summits, and ridge tops which lie at elevations higher than any such area;

(B) Wetland areas that are determined by the United States Army Corps of Engineers to be wetlands under their jurisdiction pursuant to Section 404 of the federal Clean Water Act, as amended, or wetland areas that are depicted or delineated on maps compiled by the Department of Natural Resources or the United States Fish and Wildlife Service pursuant to its National Wetlands Inventory Program;

(C) Significant ground-water recharge areas as identified on maps or data compiled by the Department of Natural Resources;

(D) Undeveloped barrier islands or portions thereof as provided for in the federal Coastal Barrier Resources Act, as amended;

(E) Habitats as certified by the Department of Natural Resources as containing species that have been listed as either endangered or threatened under the federal Endangered Species Act of 1973, as amended;

(F) River or stream corridors or buffers which shall be defined as those undeveloped lands which are:

(i) Adjacent to rivers and perennial streams that are within the 100 year flood plain as depicted on official maps prepared by the Federal Emergency Management Agency; or

(ii) Within buffer zones adjacent to rivers or perennial streams, which buffer zones are established by law or local ordinance and within which land-disturbing activity is prohibited; or

(G)(i) Constructed storm-water wetlands of the free-water surface type certified by the Department of Natural Resources under subsection (k) of Code Section 12-2-4 and approved for such use by the local governing authority.

(ii) No property shall maintain its eligibility for current use assessment as a bona fide conservation use property as defined in this subparagraph unless the owner of such property files an annual inspection report from a licensed professional engineer certifying that as of the date of such report the property is being maintained in a proper state of repair so as to accomplish the objectives for which it was designed. Such inspection report and certification shall be filed with the county board of tax assessors on or before the last day for filing ad valorem tax returns in the county for each tax year for which such assessment is sought.

(a.1) Notwithstanding any other provision of this Code section to the contrary, in the case of property which otherwise meets the requirements for current use assessment and the qualifying use is pursuant to division (1)(E)(iii) of subsection (a) of this Code section, when the owner seeks to renew the covenant or reenter a covenant subsequent to the termination of a previous covenant which met such requirements and the owner meets the qualifications under this Code section but the property is no longer being used for the qualified use for which the previous covenant was entered pursuant to division (1)(E)(iii) of subsection (a) of this Code section, the property is not environmentally sensitive property within the meaning of paragraph (2) of subsection (a)

of this Code section, and the primary use of the property is maintenance of a wildlife habitat of not less than ten acres either by maintaining the property in its natural condition or under management, the county board of tax assessors shall be required to accept such use as a qualifying use for purposes of this Code section.

(b) Except in the case of the underlying portion of a tract of real property on which is actually located a constructed storm-water wetland, the following additional rules shall apply to the qualification of conservation use property for current use assessment:

(1) When one-half or more of the area of a single tract of real property is used for a qualifying purpose, then such tract shall be considered as used for such qualifying purpose unless some other type of business is being operated on the unused portion; provided, however, that such unused portion must be minimally managed so that it does not contribute significantly to erosion or other environmental or conservation problems. The lease of hunting rights or the use of the property for hunting purposes shall not constitute another type of business. The charging of admission for use of the property for fishing purposes shall not constitute another type of business;

(2)(A) The owner of a tract, lot, or parcel of land totaling less than ten acres shall be required by the tax assessor to submit additional relevant records regarding proof of bona fide conservation use for qualified property that on or after May 1, 2012, is either first made subject to a covenant or is subject to a renewal of a previous covenant. The provisions of this paragraph relating to requiring additional relevant records regarding proof of bona fide conservation use shall not apply to such property if the owner of the subject property provides one or more of the following:

(i) Proof that such owner has filed with the Internal Revenue Service a Schedule E, reporting farm related income or loss, or a Schedule F, with Form 1040, or, if applicable, a Form 4835, pertaining to such property;

(ii) Proof that such owner has incurred expenses for the qualifying use; or

(iii) Proof that such owner has generated income from the qualifying use.

Prior to a denial of eligibility under this paragraph, the tax assessor shall conduct and provide proof of a visual, on-site inspection of the property. Reasonable notice shall be provided to the property owner before being allowed a visual, on-site inspection of the property by the tax assessor.

(B) The owner of a tract, lot, or parcel of land totaling ten acres or more shall not be required by the tax assessor to submit

additional relevant records regarding proof of bona fide conservation use for qualified property that on or after May 1, 2012, is either first made subject to a covenant or is subject to a renewal of a previous covenant;

(3) No property shall qualify as bona fide conservation use property if such current use assessment would result in any person who has a beneficial interest in such property, including any interest in the nature of stock ownership, receiving in any tax year any benefit of current use assessment as to more than 2,000 acres. If any taxpayer has any beneficial interest in more than 2,000 acres of tangible real property which is devoted to bona fide conservation uses, such taxpayer shall apply for current use assessment only as to 2,000 acres of such land;

(4) No property shall qualify as bona fide conservation use property if it is leased to a person or entity which would not be entitled to conservation use assessment;

(5) No property shall qualify as bona fide conservation use property if such property is at the time of application for current use assessment subject to a restrictive covenant which prohibits the use of the property for the specific purpose described in subparagraph (a)(1)(E) of this Code section for which bona fide conservation use qualification is sought; and

(6) No otherwise qualified property shall be denied current use assessment on the grounds that no soil map is available for the county in which such property is located; provided, however, that, if no soil map is available for the county in which such property is located, the owner making an application for current use assessment shall provide the board of tax assessors with a certified soil survey of the subject property unless another method for determining the soil type of the subject property is authorized in writing by such board.

(c) For purposes of this article, the term "bona fide residential transitional property" means not more than five acres of tangible real property of a single owner which is private single-family residential owner occupied property located in a transitional developing area. Such classification shall apply to all otherwise qualified real property which is located in an area which is undergoing a change in use from single-family residential use to agricultural, commercial, industrial, office-institutional, multifamily, or utility use or a combination of such uses. Change in use may be evidenced by recent zoning changes, purchase by a developer, affidavits of intent, or close proximity to property which has undergone a change from single-family residential use. To qualify as residential transitional property, the valuation must reflect a change in value attributable to such property's proximity to or location in a transitional area.

(d) No property shall qualify for current use assessment under this Code section unless and until the owner of such property agrees by covenant with the appropriate taxing authority to maintain the eligible property in bona fide qualifying use for a period of ten years beginning on the first day of January of the year in which such property qualifies for such current use assessment and ending on the last day of December of the final year of the covenant period. After the owner has applied for and has been allowed current use assessment provided for in this Code section, it shall not be necessary to make application thereafter for any year in which the covenant period is in effect and current use assessment shall continue to be allowed such owner as specified in this Code section. At least 60 days prior to the expiration date of the covenant, the county board of tax assessors shall send by first-class mail written notification of such impending expiration. Upon the expiration of any covenant period, the property shall not qualify for further current use assessment under this Code section unless and until the owner of the property has entered into a renewal covenant for an additional period of ten years; provided, however, that the owner may enter into a renewal contract in the ninth year of a covenant period so that the contract is continued without a lapse for an additional ten years.

(e) A single owner shall be authorized to enter into more than one covenant under this Code section for bona fide conservation use property, provided that the aggregate number of acres of qualified property of such owner to be entered into such covenants does not exceed 2,000 acres. Any such qualified property may include a tract or tracts of land which are located in more than one county. A single owner shall be authorized to enter qualified property in a covenant for bona fide conservation use purposes and to enter simultaneously the residence located on such property in a covenant for bona fide residential transitional use if the qualifications for each such covenant are met. A single owner shall be authorized to enter qualified property in a covenant for bona fide conservation use purposes and to enter other qualified property of such owner in a covenant for bona fide residential transitional use.

(f) An owner shall not be authorized to make application for and receive current use assessment under this Code section for any property which at the time of such application is receiving preferential assessment under Code Section 48-5-7.1 except that such owner shall be authorized to change such preferential assessment covenant in the manner provided for in subsection (s) of Code Section 48-5-7.1.

(g) Except as otherwise provided in this subsection, no property shall maintain its eligibility for current use assessment under this Code section unless a valid covenant remains in effect and unless the property is continuously devoted to an applicable bona fide qualifying

use during the entire period of the covenant. An owner shall be authorized to change the type of bona fide qualifying conservation use of the property to another bona fide qualifying conservation use and the penalty imposed by subsection (l) of this Code section shall not apply, but such owner shall give notice of any such change in use to the board of tax assessors.

(h) If any breach of a covenant occurs, the existing covenant shall be terminated and all qualification requirements must be met again before the property shall be eligible for current use assessment under this Code section.

(i)(1) If ownership of all or a part of the property is acquired during a covenant period by a person or entity qualified to enter into an original covenant, then the original covenant may be continued by such acquiring party for the remainder of the term, in which event no breach of the covenant shall be deemed to have occurred.

(2)(A) As used in this paragraph, the term "contiguous" means real property within a county that abuts, joins, or touches and has the same undivided common ownership. If an applicant's tract is divided by a county boundary, public roadway, public easement, public right of way, natural boundary, land lot line, or railroad track, then the applicant has, at the time of the initial application, a one-time election to declare the tract as contiguous irrespective of a county boundary, public roadway, public easement, public right of way, natural boundary, land lot line, or railroad track.

(B) If a qualified owner has entered into an original bona fide conservation use covenant and subsequently acquires additional qualified property contiguous to the property in the original covenant, the qualified owner may elect to enter the subsequently acquired qualified property into the original covenant for the remainder of the ten-year period of the original covenant; provided, however, that such subsequently acquired qualified property shall be less than 50 acres.

(j)(1) All applications for current use assessment under this Code section, including the covenant agreement required under this Code section, shall be filed on or before the last day for filing ad valorem tax returns in the county for the tax year for which such current use assessment is sought, except that in the case of property which is the subject of a reassessment by the board of tax assessors an application for current use assessment may be filed in conjunction with or in lieu of an appeal of the reassessment. An application for continuation of such current use assessment upon a change in ownership of all or a part of the qualified property shall be filed on or before the last date

for filing tax returns in the year following the year in which the change in ownership occurred. Applications for current use assessment under this Code section shall be filed with the county board of tax assessors who shall approve or deny the application. If the application is approved on or after July 1, 1998, the county board of tax assessors shall file a copy of the approved application in the office of the clerk of the superior court in the county in which the eligible property is located. The clerk of the superior court shall file and index such application in the real property records maintained in the clerk's office. Applications approved prior to July 1, 1998, shall be filed and indexed in like manner without payment of any fee. If the application is not so recorded in the real property records, a transferee of the property affected shall not be bound by the covenant or subject to any penalty for its breach. The fee of the clerk of the superior court for recording such applications approved on or after July 1, 1998, shall be paid by the owner of the eligible property with the application for preferential treatment and shall be paid to the clerk by the board of tax assessors when the application is filed with the clerk. If the application is denied, the board of tax assessors shall notify the applicant in the same manner that notices of assessment are given pursuant to Code Section 48-5-306 and shall return any filing fees advanced by the owner. Appeals from the denial of an application by the board of tax assessors shall be made in the same manner that other property tax appeals are made pursuant to Code Section 48-5-311.

(2) If the final determination on appeal to superior court is to approve the application for current use assessment, the taxpayer shall recover costs of litigation and reasonable attorney's fees incurred in the action.

(3) Any final determination on appeal that causes a reduction in taxes and creates a refund that is owed to the taxpayer shall be paid by the tax commissioner to such taxpayer, entity, or transferee that paid the taxes within 60 days from the date of the final determination of value. Such refund shall include interest at the same rate specified in Code Section 48-2-35 which shall accrue from the due date of the taxable year in question or the date paid, whichever is later, through the date on which the final determination of value was made. In no event shall the amount of such interest exceed $5,000.00. Any refund paid after the sixtieth day shall accrue interest from the sixty-first day until paid with interest at the same rate specified in Code Section 48-2-35. The interest accrued after the sixtieth day shall not be subject to the limits imposed by this subsection. The tax commissioner shall pay the tax refund and any interest for the refund from current collections in the same proportion for each of the levying authorities for which the taxes were collected.

(4) For the purposes of this Code section, any final determination on appeal that causes an increase in taxes and creates an additional billing shall be paid to the tax commissioner as any other tax due. After the tax bill notice has been mailed out, the taxpayer shall be afforded 60 days from the date of the postmark to make full payment of the adjusted bill. Once the 60 day payment period has expired, the bill shall be considered past due and interest shall accrue from the original billing due date as specified in Code Section 48-2-40 without limit until the bill is paid in full. Once past due, all other fees, penalties, and late and collection notices shall apply as prescribed in this chapter for the collection of delinquent taxes.

(5) In the event such application is approved, the taxpayer shall continue to receive annual notification of any change in the fair market value of such property and any appeals with respect to such valuation shall be made in the same manner as other property tax appeals are made pursuant to Code Section 48-5-311.

(k)(1) The commissioner shall by regulation provide uniform application and covenant forms to be used in making application for current use assessment under this Code section. Such application shall include an oath or affirmation by the taxpayer that he or she is in compliance with the provisions of paragraphs (3) and (4) of subsection (b) of this Code section, if applicable.

(2) The applicable local governing authority shall accept applications for approval of property for purposes of subparagraph (a)(2)(G) of this Code section and shall certify property to the local board of tax assessors as meeting or not meeting the criteria of such paragraph. The local governing authority shall not certify any property as meeting the criteria of subparagraph (a)(2)(G) of this Code section unless:

(A) The owner has submitted to the local governing authority:

(i) A plat of the tract in question prepared by a licensed land surveyor, showing the location and measured area of such tract;

(ii) A certification by a licensed professional engineer that the specific design used for the constructed storm-water wetland was recommended by the engineer as suitable for such site after inspection and investigation; and

(iii) Information on the actual cost of constructing and estimated cost of operating the storm-water wetland, including without limitation a description of all incorporated materials, machinery, and equipment; and

(B) An authorized employee or agent of the local governing authority has inspected the site before, during, and after con-

struction of the storm-water wetland to determine compliance with the requirements of subparagraph (a)(2)(G) of this Code section.

(k.1) In the case of an alleged breach of the covenant, the owner shall be notified in writing by the board of tax assessors. The owner shall have a period of 30 days from the date of such notice to cease and desist the activity alleged in the notice to be in breach of the covenant or to remediate or correct the condition or conditions alleged in the notice to be in breach of the covenant. Following a physical inspection of property, the board of tax assessors shall notify the owner that such activity or activities have or have not properly ceased or that the condition or conditions have or have not been remediated or corrected. The owner shall be entitled to appeal the decision of the board of tax assessors and file an appeal disputing the findings of the board of tax assessors. Such appeal shall be conducted in the same manner that other property tax appeals are made pursuant to Code Section 48-5-311. If the final determination on appeal to superior court is to reverse the decision of the board of tax assessors to enforce the breach of the covenant, the taxpayer shall recover costs of litigation and reasonable attorney's fees incurred in the action.

(l) A penalty shall be imposed under this subsection if during the period of the covenant entered into by a taxpayer the covenant is breached. The penalty shall be applicable to the entire tract which is the subject of the covenant and shall be twice the difference between the total amount of tax paid pursuant to current use assessment under this Code section and the total amount of taxes which would otherwise have been due under this chapter for each completed or partially completed year of the covenant period. No penalty shall be imposed until the appeal of the board of tax assessors' determination of breach is concluded. After the final determination on appeal, the taxpayer shall be afforded 60 days from issuance of the bill to make full payment. Once the 60 day payment period has expired, the bill shall be considered past due and interest shall accrue from the original billing due date as specified in Code Section 48-2-40 without limit until the bill is paid in full. Once past due, all other fees, penalties, and late and collection notices shall apply as prescribed in this chapter for the collection of delinquent taxes.

(m) Penalties and interest imposed under this Code section shall constitute a lien against the property and shall be collected in the same manner as unpaid ad valorem taxes are collected. Such penalties and interest shall be distributed pro rata to each taxing jurisdiction wherein current use assessment under this Code section has been granted based upon the total amount by which such current use assessment has reduced taxes for each such taxing jurisdiction on the property in question as provided in this Code section.

(n) The penalty imposed by subsection (l) of this Code section shall not apply in any case where a covenant is breached solely as a result of:

(1) The acquisition of part or all of the property under the power of eminent domain;

(2) The sale of part or all of the property to a public or private entity which would have had the authority to acquire the property under the power of eminent domain; or

(3) The death of an owner who was a party to the covenant.

(o) The transfer of a part of the property subject to a covenant for a bona fide conservation use shall not constitute a breach of a covenant if:

(1) The part of the property so transferred is used for single-family residential purposes, starting within one year of the date of transfer and continuing for the remainder of the covenant period, and the residence is occupied within 24 months from the date of the start by a person who is related within the fourth degree of civil reckoning to an owner of the property subject to the covenant; and

(2) The part of the property so transferred, taken together with any other part of the property so transferred to the same relative during the covenant period, does not exceed a total of five acres;

and in any such case the property so transferred shall not be eligible for a covenant for bona fide conservation use, but shall, if otherwise qualified, be eligible for current use assessment as residential transitional property and the remainder of the property from which such transfer was made shall continue under the existing covenant until a terminating breach occurs or until the end of the specified covenant period.

(p) The following shall not constitute a breach of a covenant:

(1) Mineral exploration of the property subject to the covenant or the leasing of the property subject to the covenant for purposes of mineral exploration if the primary use of the property continues to be the good faith production from or on the land of agricultural products;

(2) Allowing all or part of the property subject to the covenant to lie fallow or idle for purposes of any land conservation program, for purposes of any federal agricultural assistance program, or for other agricultural management purposes;

(3) Allowing all or part of the property subject to the covenant to lie fallow or idle due to economic or financial hardship if the owner notifies the board of tax assessors on or before the last day for filing a tax return in the county where the land lying fallow or idle is located and if such owner does not allow the land to lie fallow or idle for more than two years of any five-year period;

(4)(A) Any property which is subject to a covenant for bona fide conservation use being transferred to a place of religious worship or burial or an institution of purely public charity if such place or institution is qualified to receive the exemption from ad valorem taxation provided for under subsection (a) of Code Section 48-5-41. No person shall be entitled to transfer more than 25 acres of such person's property in the aggregate under this paragraph.

(B) Any property transferred under subparagraph (A) of this paragraph shall not be used by the transferee for any purpose other than for a purpose which would entitle such property to the applicable exemption from ad valorem taxation provided for under subsection (a) of Code Section 48-5-41 or subsequently transferred until the expiration of the term of the covenant period. Any such use or transfer shall constitute a breach of the covenant;

(5) Leasing a portion of the property subject to the covenant, but in no event more than six acres, for the purpose of placing thereon a cellular telephone transmission tower. Any such portion of such property shall cease to be subject to the covenant as of the date of execution of such lease and shall be subject to ad valorem taxation at fair market value;

(6) Allowing all or part of the property subject to the covenant on which a corn crop is grown to be used for the purpose of constructing and operating a maze so long as the remainder of such corn crop is harvested;

(7)(A) Allowing all or part of the property subject to the covenant to be used for agritourism purposes.

(B) As used in this paragraph, the term "agritourism" means charging admission for persons to visit, view, or participate in the operation of a farm or dairy or production of farm or dairy products for entertainment or educational purposes or selling farm or dairy products to persons who visit such farm or dairy;

(8) Allowing all or part of the property which has been subject to a covenant for at least one year to be used as a site for farm weddings;

(9) Allowing all or part of the property which has been subject to a covenant for at least one year to be used to host not for profit equestrian performance events to which spectator admission is not contingent upon an admission fee but which may charge an entry fee from each participant;

(10) Allowing all or part of the property subject to the covenant to be used to host a not for profit rodeo event to which spectator

admission and participant entry fees are charged in an amount that in aggregate does not exceed the cost of hosting such event;

(11)(A) Allowing part of the property subject to the covenant to be used for solar generation of energy and conversion of such energy into heat or electricity, and the sale of the same in accordance with applicable law.

(B) The provisions of subparagraph (A) of this paragraph shall not allow the portion of the property on which such solar energy generating equipment is located, as depicted by a boundary survey prepared by a licensed surveyor, and which is subject to an existing covenant to remain in the covenant. Such property shall be removed from the existing covenant at the time of the installation of the solar energy generating equipment and shall be subject to the penalty for breach of the covenant contained in subsection (q) of this Code section and shall be subject to ad valorem taxation at fair market value; or

(12)(A) Allowing part of the property subject to the covenant to be used for farm labor housing. As used in this paragraph, the term "farm labor housing" means all buildings or structures used as living quarters when such housing is provided free of charge to workers who provide labor on agricultural property.

(B) The provisions of subparagraph (A) of this paragraph shall not allow the portion of the property on which such farm labor housing is located and which is subject to an existing covenant to remain in the covenant. Such property shall be removed from the existing covenant at the time construction of the farm labor housing begins and shall be subject to ad valorem taxation at fair market value.

(q) In the following cases, the penalty specified by subsection (l) of this Code section shall not apply and the penalty imposed shall be the amount by which current use assessment has reduced taxes otherwise due for the year in which the covenant is breached, such penalty to bear interest at the rate specified in Code Section 48-2-40 from the date of the breach:

(1) Any case in which a covenant is breached solely as a result of the foreclosure of a deed to secure debt or the property is conveyed to the lienholder without compensation and in lieu of foreclosure, if:

(A) The deed to secure debt was executed as a part of a bona fide commercial loan transaction in which the grantor of the deed to secure debt received consideration equal in value to the principal amount of the debt secured by the deed to secure debt;

(B) The loan was made by a person or financial institution who

or which is regularly engaged in the business of making loans; and

(C) The deed to secure debt was intended by the parties as security for the loan and was not intended for the purpose of carrying out a transfer which would otherwise be subject to the penalty specified by subsection (l) of this Code section;

(2) Any case in which a covenant is breached solely as a result of a medically demonstrable illness or disability which renders the owner of the real property physically unable to continue the property in the qualifying use, provided that the board of tax assessors shall require satisfactory evidence which clearly demonstrates that the breach is the result of a medically demonstrable illness or disability;

(3) Any case in which a covenant is breached solely as a result of an owner electing to discontinue the property in its qualifying use, provided such owner has renewed without an intervening lapse at least once the covenant for bona fide conservation use, has reached the age of 65 or older, and has kept the property in a qualifying use under the renewal covenant for at least three years. Such election shall be in writing and shall not become effective until filed with the county board of tax assessors;

(4) Any case in which a covenant is breached solely as a result of an owner electing to discontinue the property in its qualifying use, provided such owner entered into the covenant for bona fide conservation use for the first time after reaching the age of 67 and has either owned the property for at least 15 years or inherited the property and has kept the property in a qualifying use under the covenant for at least three years. Such election shall be in writing and shall not become effective until filed with the county board of tax assessors; or

(5) Any case in which a covenant is breached solely as a result of an owner that is a family owned farm entity as described in division (a)(1)(C)(iv) of this Code section electing to discontinue the property in its qualifying use on or after July 1, 2018, provided that the owner has renewed at least once, without an intervening lapse, the covenant for bona fide conservation use, has kept the property in a qualifying use under the renewal covenant for at least three years, and any current shareholder, member, or partner of such family owned farm entity has reached the age of 65 and such shareholder, member, or partner held some beneficial interest, directly or indirectly through a family owned farm entity, in the property continuously since the time the covenant immediately preceding the current renewal covenant was entered. Such election shall be in writing and shall not become effective until filed with the county board of tax assessors.

(r) Property which is subject to current use assessment under this Code section shall be separately classified from all other property on the tax digest; and such separate classification shall be such as will enable any person examining the tax digest to ascertain readily that the property is subject to current use assessment under this Code section. Covenants shall be public records and shall be indexed and maintained in such manner as will allow members of the public to locate readily the covenant affecting any particular property subject to current use assessment under this Code section. Based on information submitted by the county boards of tax assessors, the commissioner shall maintain a central registry of conservation use property, indexed by owners, so as to ensure that the 2,000 acre limitations of this Code section are complied with on a state-wide basis.

(s) The commissioner shall annually submit a report to the Governor, the Department of Agriculture, the Georgia Agricultural Statistical Service, the State Forestry Commission, the Department of Natural Resources, and the University of Georgia Cooperative Extension Service and the House Ways and Means, Natural Resources and Environment, and Agriculture and Consumer Affairs committees and the Senate Finance, Natural Resources and Environment, and Agriculture and Consumer Affairs committees and shall make such report available to other members of the General Assembly, which report shall show the fiscal impact of the assessments provided for in this Code section and Code Section 48-5-7.5. The report shall include the amount of assessed value eliminated from each county's digest as a result of such assessments; approximate tax dollar losses, by county, to all local governments affected by such assessments; and any recommendations regarding state and local administration of this Code section and Code Section 48-5-7.5, with emphasis upon enforcement problems, if any, attendant with this Code section and Code Section 48-5-7.5. The report shall also include any other data or facts which the commissioner deems relevant.

(t) A public notice containing a brief, factual summary of the provisions of this Code section shall be posted in a prominent location readily viewable by the public in the office of the board of tax assessors and in the office of the tax commissioner of each county in this state.

(u) Reserved.

(v) Reserved.

(w) At such time as the property ceases to be eligible for current use assessment or when any ten-year covenant period expires and the property does not qualify for further current use assessment, the owner of the property shall file an application for release of current use treatment with the county board of tax assessors who shall approve the release upon verification that all taxes and penalties with respect to the

property have been satisfied. After the application for release has been approved by the board of tax assessors, the board shall file the release in the office of the clerk of the superior court in the county in which the original covenant was filed. The clerk of the superior court shall file and index such release in the real property records maintained in the clerk's office. No fee shall be paid to the clerk of the superior court for recording such release. The commissioner shall by regulation provide uniform release forms.

(x) Notwithstanding any other provision of this Code section to the contrary, in any case where a renewal covenant is breached by the original covenantor or a transferee who is related to that original covenantor within the fourth degree by civil reckoning, the penalty otherwise imposed by subsection (l) of this Code section shall not apply if the breach occurs during the sixth through tenth years of such renewal covenant, and the only penalty imposed shall be the amount by which current use assessment has reduced taxes otherwise due for each year in which such renewal covenant was in effect, plus interest at the rate specified in Code Section 48-2-40 from the date the covenant is breached.

(y) The commissioner shall have the power to make and publish reasonable rules and regulations for the implementation and enforcement of this Code section. Without limiting the commissioner's authority with respect to any other such matters, the commissioner may prescribe soil maps and other appropriate sources of information for documenting eligibility as a bona fide conservation use property. The commissioner also may provide that advance notice be given to taxpayers of the intent of a board of tax assessors to deem a change in use as a breach of a covenant.

(z) The governing authority of a county shall not publish or promulgate any information which is inconsistent with the provisions of this chapter.

History.

Code 1981, § 48-5-7.4, enacted by Ga. L. 1991, p. 1903, § 6; Ga. L. 1992, p. 6, § 48; Ga. L. 1993, p. 947, §§ 1-6; Ga. L. 1994, p. 428, §§ 1, 2; Ga. L. 1996, p. 1021, § 1; Ga. L. 1998, p. 553, §§ 3, 4; Ga. L. 1998, p. 574, § 1; Ga. L. 1999, p. 589, § 2; Ga. L. 1999, p. 590, § 1; Ga. L. 1999, p. 656, § 1; Ga. L. 2000, p. 1338, § 1; Ga. L. 2002, p. 1031, §§ 2, 3; Ga. L. 2003, p. 271, § 2; Ga. L. 2003, p. 565, § 1; Ga. L. 2004, p. 360, § 1; Ga. L. 2004, p. 361, § 1; Ga. L. 2004, p. 362, §§ 1, 1A; Ga. L. 2005, p. 60, § 48/HB 95; Ga. L. 2005, p. 222, §§ 1, 2/HB 1; Ga. L. 2006, p. 685, § 1/HB 1293; Ga. L. 2006, p. 819, § 1/HB 1502; Ga. L. 2007, p. 90, § 1/HB 78; Ga. L. 2007, p. 608, § 1/HB 321; Ga. L. 2008, p. 1149, §§ 1, 2, 3/HB 1081; Ga. L. 2012, p. 763, § 1/HB 916; Ga. L. 2013, p. 141, § 48/HB 79; Ga. L. 2013, p. 655, § 1/HB 197; Ga. L. 2013, p. 683, § 1/SB 145; Ga. L. 2016, p. 583, § 1/HB 987; Ga. L. 2017, p. 9, § 1/HB 238; Ga. L. 2018, p. 910, § 1/SB 458; Ga. L. 2019, p. 1056, § 48/SB 52; Ga. L. 2024, p. 1052, § 5(9)/SB 448, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modern-

ize, and correct the Code, revised punctuation in paragraph (b)(6).

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1998, subsection (w), as added by Ga. L. 1998, p. 574, § 1, was redesignated as subsection (x).

Pursuant to Code Section 28-9-5, in 2003, divisions (a)(2)(G)(1) and (a)(2)(G)(2) as added by Ga. L. 2003, p. 271, § 2, were redesignated as divisions (a)(2)(G)(i) and (a)(2)(G)(ii).

Pursuant to Code Section 28-9-5, in 2004, paragraph (a)(2.1) was redesignated as subsection (a.1) and "paragraph (2) of subsection (a) of this Code section" was substituted for "paragraph (2) of this subsection" in subsection (a.1).

Pursuant to Code Section 28-9-5, in 2012, "and paragraph (3)" was deleted following "paragraph (1) or (2)" in the beginning of subsection (a); "May 1, 2012" was substituted for "the effective date of this paragraph" at the end of subparagraph (a)(1)(B); in paragraph (b)(2), "May 1, 2012," was substituted for "the effective date of this paragraph" in the first sentence, a period was substituted for a semicolon at the end of the next-to-last sentence, and a semicolon was added at the end. The language appearing in the Act as "(1)(A) The governing authority of a county shall not publish or promulgate any information which is inconsistent with the provisions of this Chapter." was redesignated as subsection (z).

Pursuant to Code Section 28-9-5, in 2018, "July 1, 2018" was substituted for "the effective date of this paragraph" in paragraph (q)(5).

Editor's notes.

Ga. L. 1991, p. 1903, § 15, not codified by the General Assembly, provides that this Code section shall be applicable beginning January 1, 1992, with respect to ad valorem taxation of timber and shall be applicable beginning January 1, 1992, for all other purposes. Taxation for prior periods shall continue to be governed by prior law.

Ga. L. 1993, p. 947, § 10, not codified by the General Assembly, provides: "Sections 1, 2, 3, 4, and 9 of this Act shall be applicable to all bona fide conservation use covenants entered into for all taxable years beginning on or after January 1, 1993, and to any table of values of bona fide conservation use property established by the state revenue commissioner for all taxable years beginning on or after January 1, 1993. Any bona fide conservation use covenant entered into for the taxable year beginning January 1, 1992, shall continue to be governed by the law in effect for that taxable year."

Ga. L. 2002, p. 1031, § 9, not codified by the General Assembly, provided that the Act shall be applicable to all taxable years beginning on or after January 1, 2002.

Ga. L. 2003, p. 271, § 3, not codified by the General Assembly, provides that the amendment by this Act shall be applicable to all taxable years beginning on or after January 1, 2004.

Ga. L. 2004, p. 361, § 2, not codified by the General Assembly, provides that the amendment to subparagraph (a)(2)(F) shall apply to all taxable years beginning on or after January 1, 2005.

For application of this statute in 2020, see Executive Order 03.31.20.03.

Administrative rules and regulations.

Rules for Certification of Environmentally Sensitive Property, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Natural Resources, Environmental Protection, Chapter 391-3-18.

Law reviews.

For note on the 2000 amendment of this Code section, see 17 Ga. St. U. L. Rev. 277 (2000).

For survey article on real property law, see 60 Mercer L. Rev. 345 (2008).

For annual survey on zoning and land use law, see 61 Mercer L. Rev. 427 (2009).

For article, "The Chevron Two-Step in Georgia's Administrative Law," see 46 Ga. L. Rev. 871 (2012).

For annual survey on real property, see 66 Mercer L. Rev. 151 (2014).

For annual survey on administrative law, see 69 Mercer L. Rev. 15 (2017).

For annual survey on local government law, see 69 Mercer L. Rev. 205 (2017).

For annual survey on environmental law, see 71 Mercer L. Rev. 1005 (2020).

JUDICIAL DECISIONS

Valuation of comparable properties as evidence. — Evidence of the valuations of conservation use properties was relevant in an action involving the assessment of comparable corporate properties. Georgia-Pacific Corp. v. Talbot County Bd. of Tax Assessors, 241 Ga. App. 444, 526 S.E.2d 914, 1999 Ga. App. LEXIS 1652 (1999).

Requirement of valid covenant and bona fide qualifying use. — O.C.G.A. § 48-5-7.4(g) provides that no property shall maintain the property's eligibility for current use assessment under that Code section unless a valid covenant remains in effect and unless the property is continuously devoted to an applicable bona fide qualifying use during the entire period of the covenant. Terrell County Bd. of Tax Assessors v. Goolsby, 324 Ga. App. 535, 751 S.E.2d 158, 2013 Ga. App. LEXIS 879 (2013).

Failure to conduct on-site inspection. — Board of Tax Assessors was prohibited from applying O.C.G.A. § 48-5-7.4(b)(2), because the Board failed to show the Board conducted an on-site inspection. Cherokee County Bd. of Tax Assessors v. Mason, 340 Ga. App. 889, 798 S.E.2d 32, 2017 Ga. App. LEXIS 93 (2017), cert. denied, No. S17C1415, 2017 Ga. LEXIS 723 (Ga. Aug. 28, 2017).

Owner only benefitted from a lower ad valorem tax in proportion to interest owned. — Because a beneficial property owner only benefitted from a lower ad valorem tax in proportion to the interest owned in the property, the trial court did not err in granting summary judgment to a corporation, as approval of preferential ad valorem tax treatment for property co-owned by the shareholders of the corporation by a tenancy in common did not violate O.C.G.A. § 48-5-7.4(b)(3), as an individual's benefit was to be determined on a pro-rata basis; thus, if the interests of shareholders who were tenants in common of the property were so calculated, no single shareholder would have benefitted from the current use assessment as to more than 2,000 acres. Effingham County Bd. of Tax Assessors v. Samwilka, Inc., 278 Ga. App. 521, 629 S.E.2d 501, 2006 Ga. App. LEXIS 362 (2006).

Property properly disqualified as bona fide conservation use property. — Board's determination that an owner's property did not qualify as a bona fide conservation use property due to restrictive covenants was proper because O.C.G.A. § 48-5-7.4(b)(5) was strictly construed in favor of the board, and disqualified property which was restricted from any, but not necessarily all, of the activities described in O.C.G.A. § 48-5-7.4(a)(1)(E). Morrison v. Claborn, 294 Ga. App. 508, 669 S.E.2d 492, 2008 Ga. App. LEXIS 1262 (2008).

Property not qualified for current use assessment. — Georgia Court of Appeals concludes that if the taxpayer is operating some other type of business, a business separate and apart from the commercial production from or on the land of agricultural products, and the business is not incidental, occasional, intermediate, or temporary but is detrimental to or in conflict with the property's primary purpose, then the land does not qualify for current use assessment under O.C.G.A. § 48-5-7.4. Terrell County Bd. of Tax Assessors v. Goolsby, 324 Ga. App. 535, 751 S.E.2d 158, 2013 Ga. App. LEXIS 879 (2013).

Evidence of use for farming timber. — Trial court did not err by finding that the land owner's actions constituted good faith production including, but limited to farming or commercial production, from or on the land of agricultural products or timber as it simply made a credibility determination, accepting the owner's account of the owner's past harvesting and intent to harvest poplar in the future. Cherokee County Bd. of Tax Assessors v. Mason, 340 Ga. App. 889, 798 S.E.2d 32, 2017 Ga. App. LEXIS 93 (2017), cert. denied, No. S17C1415, 2017 Ga. LEXIS 723 (Ga. Aug. 28, 2017).

Error in failing to make necessary findings as to business operated on property. — Trial court erred by holding that operating a commercial grain business on property designated conservation use property under O.C.G.A.

§ 48-5-7.4 did not constitute a breach of the conservation use covenant because the court failed to make any findings as to whether the grain business was incidental and not detrimental to the qualifying use of the property. Terrell County Bd. of Tax Assessors v. Goolsby, 324 Ga. App. 535, 751 S.E.2d 158, 2013 Ga. App. LEXIS 879 (2013).

Right to appeal penalty assessment. — An assessment of a penalty for a breach of a conservation use covenant is an assessment for which a property owner has the right to appeal pursuant to O.C.G.A. § 48-5-311. Oconee County Bd. of Tax Assessors v. Thomas, 282 Ga. 422, 651 S.E.2d 45, 2007 Ga. LEXIS 592 (2007).

Mandamus relief properly denied since certification of appeals obtained. — Trial court did not err by denying a group of property owners their request for mandamus relief in the nature of finding that the county board of tax assessors certified their property tax appeals because it was undisputed that the tax appeals were physically delivered to the trial court and that it had ruled that such appeals were certified to it, thus, the property owners received the relief sought regarding certification. Newton Timber Co., L.L.L.P. v. Monroe County Bd. of Tax Assessors, 295 Ga. 29, 755 S.E.2d 770, 2014 Ga. LEXIS 189 (2014).

Notice and opportunity to cure not properly given. — Board of Tax Assessors failed to meet its threshold obligation to provide the property owner with notice of an opportunity to correct the alleged breach of a conservation covenant; therefore, the property owner was entitled to summary judgment in an action for breach of the covenant and assessment of a penalty against the property owner. Morgan County Bd. of Tax Assessors v. Ward, 318 Ga. App. 186, 733 S.E.2d 470, 2012 Ga. App. LEXIS 874 (2012), cert. denied, No. S13C0372, 2013 Ga. LEXIS 164 (Ga. Feb. 18, 2013).

48-5-7.5. Assessment of standing timber; penalty for failure to timely report; effect of reduction of property tax digest; supplemental assessment.

(a) Standing timber shall be assessed for ad valorem taxation only once and such assessment shall be made following its harvest or sale as provided for in this Code section. Such timber shall be subject to ad valorem taxation notwithstanding the fact that the underlying land is exempt from taxation, unless such taxation is prohibited by federal law or treaty. Such timber shall be assessed at 100 percent of its fair market value and shall be taxed on a levy made by each respective taxing jurisdiction according to such 100 percent fair market value. Such assessment shall be made in the county where the timber was grown and shall be taxable by that county and any other taxing jurisdiction therein in which the timber was grown.

(b) For purposes of this Code section, the term "sale" of timber shall mean the arm's length, bona fide sale of standing timber for harvest separate and apart from the underlying land and shall not include the simultaneous sale of a tract of land and the timber thereon.

(c) **Lump sum sales.**

(1) Where standing timber is sold, in an arm's length, bona fide sale, by timber deed, contract, lease, agreement, or otherwise to be harvested within a three-year period after the date of the sale and for

a lump sum price, so much of said timber as will be harvested within three years shall be assessed for taxation as of the date of the sale. The fair market value of such timber for purposes of ad valorem taxation shall be the lump sum price paid by the purchaser in the arm's length, bona fide sale. Any timber described in any sale instrument which is not harvested within three years after the date of the sale shall later be assessed for taxation following its future harvest or sale. Ad valorem taxes shall be payable by the seller and shall be calculated by multiplying the 100 percent fair market value of the timber times the millage rate levied by the taxing authority on tangible property for the previous calendar year. Immediately upon receipt by the seller of the purchase price, the seller shall remit to the purchaser the amount of ad valorem tax due on the sale, in the form of a negotiable instrument payable to the tax collector or tax commissioner. Such negotiable instrument shall be remitted by the purchaser to the tax collector or tax commissioner not later than five days after receipt of the tax from the seller. A purchaser failing to make such remittance shall be personally liable for the tax. With said remittance, the purchaser shall present to the board of tax assessors and to the tax collector or tax commissioner a report of the sale showing the lump sum sales price of the standing timber, the date of sale, the addresses of the seller and purchaser, and the location of the standing timber in the county. The tax collector or tax commissioner shall collect from the purchaser the seller's negotiable instrument in payment of the tax; and a receipt showing payment of the tax shall promptly be delivered by the tax collector or tax commissioner to the seller.

(2) Upon request of the purchaser, the tax collector or tax commissioner shall enter upon or attach to the instrument conveying the standing timber a certification that the ad valorem tax has been paid, the date, and the amount of the tax. The certificate shall be signed by the tax collector or tax commissioner or his deputy. The purchaser may then present the instrument together with the certificate to the clerk of superior court of the county or counties in which the standing timber is located, who shall then file the instrument for record. The ad valorem tax levied under this subsection on lump sum sales of standing timber shall be paid to the tax collector or tax commissioner prior to and as a prerequisite to the filing for record of the instrument with the clerk of superior court, and the clerk shall not be permitted to file the instrument for record unless the instrument discloses on its face the proper certificate showing that the tax has been paid; and the certificate shall be recorded with the instrument.

(d) **Unit price sales.**

(1) Any person purchasing standing timber, in an arm's length, bona fide sale, by timber deed, contract, lease, agreement, or other-

wise by unit prices shall furnish a report to the seller and the county board of tax assessors within 45 days after the end of each calendar quarter. The report shall show the total dollar value of standing timber paid to the seller and the volume, in pounds, if available, or measured volume, of softwood and hardwood pulpwood, chip and saw logs, saw timber, poles, posts, and fuel wood harvested. Such report shall include such data through the last business day of the calendar quarter, the names and addresses of the seller and the purchaser, and the location of the harvested timber. A copy of such report shall also be furnished by the seller to the tax assessors within 60 days after the end of the calendar quarter. The fair market value of such timber for purposes of ad valorem taxation shall be the total dollar values paid by the purchaser in the arm's length, bona fide sale. Ad valorem taxes shall be payable by the seller in the unit price sales transaction as provided in subsection (h) of this Code section and shall be calculated by multiplying the 100 percent fair market value of the timber times the millage rate levied by the taxing authority on tangible property for the previous calendar year.

(2) Reports to the tax assessors shall be confidential, shall not be revealed to any person other than authorized tax officials, and shall be exempt from disclosure under Article 4 of Chapter 18 of Title 50.

(e) **Owner harvests.** Owners of real property in this state who harvest standing timber from their own lands shall report the volume, in pounds, if available, or measured volume, of softwood and hardwood pulpwood, chip and saw logs, saw timber, poles, posts, and fuel wood harvested through the last business day of each calendar quarter from said lands to the tax assessors within 45 days after the end of each calendar quarter. Such reports shall also identify the location of the tract from which the standing timber was harvested. The fair market value of such timber for purposes of ad valorem taxation shall be as determined under subsection (g) of this Code section. Ad valorem taxes shall be paid by the landowner as provided in subsection (h) of this Code section and shall be calculated by multiplying the 100 percent fair market value of the timber times the millage rate levied by the taxing authority on tangible property for the previous calendar year.

(f) **Other sales and harvests.** Every sale and every harvest of timber not previously taxed (excepting only a sale not for harvest within three years) shall be a taxable event. If any such sale or harvest is not a reportable taxable event described under subsection (c), (d), or (e) of this Code section, such timber shall be subject to ad valorem taxation under this subsection; and such sale or harvest shall be reported and taxed under the provisions of subsection (c), (d), or (e) of this Code section, whichever is most nearly applicable.

(g) The commissioner, after consultation with the State Forestry Commission, shall provide the tax assessors of each county with the

weighted average price paid, in pounds and measured volume, during each calendar year for softwood and hardwood pulpwood, chip and saw logs, saw timber, poles, posts, and fuel wood in each county or multicounty area within 60 days of the end of each calendar year. The most recent weighted average prices provided by the commissioner shall be applied by the tax assessors to the volume of wood removals reported as provided in this Code section to determine the fair market value of timber harvested other than under a taxable lump sum sale or taxable unit price sale.

(h)(1)(A) Based on the reports and data provided under subsections (d), (f), and (g) of this Code section, the tax collector or tax commissioner shall on a quarterly basis mail tax bills for sales and harvests other than lump sum sales. Ad valorem taxes on such sales and harvests shall be payable by the landowner within 30 days of receipt of the bill from the tax collector or tax commissioner.

(B) Based upon the reports and data provided under subsections (e) and (g) of this Code section, ad valorem taxes for owner harvests shall be payable by the landowner to the tax collector or tax commissioner within 45 days after the end of each calendar quarter.

(2) Any ad valorem tax or penalty which is not timely paid as provided in this Code section shall bear interest at the rate specified in Code Section 48-2-40 from the due date. Unpaid taxes, penalty, and interest imposed under this Code section shall constitute a lien against the property of the person responsible for payment of such tax and shall be collected in the same manner as other unpaid ad valorem taxes are collected.

(i) The millage rate applicable at the time of sale or the time of harvest of standing timber shall be the millage rate levied by the taxing authority on tangible property for the preceding calendar year.

(j) Any person who fails to timely make any report or disclosure required by this Code section shall pay a penalty of 50 percent of the tax due, except that if the failure to comply is unintentional and the report or disclosure is filed within 12 months after the due date the amount of the penalty shall be 1 percent for each month or part of a month that the report or disclosure is late.

(k) Forms for reports required by this Code section shall be supplied to each county by the department.

(l)(1) In any county in which the ad valorem taxation of timber pursuant to this Code section reduces the total property tax digest of such county for tax year 1992 by more than 20 percent of the amount

of the total property tax digest of such county for the immediately preceding taxable year, such digest shall be supplemented as follows:

(A) The difference between the total property tax digest for the county and the total property tax digest less the total assessed value of standing timber removed from the digest shall be calculated;

(B) The difference calculated under subparagraph (A) of this paragraph shall be reduced by the fair market value of sold or harvested timber; and

(C) If the amount calculated under subparagraph (B) of this paragraph is more than 20 percent of the amount of the total property tax digest of such county for the immediately preceding taxable year, the resulting amount shall be assigned and taxed on a levy made by the tax officials of such county in a pro rata manner against the land underlying the standing timber so removed from the digest.

(2) Where a digest is so supplemented for tax year 1992, it shall be supplemented in subsequent years as follows:

(A) For tax year 1993, such supplemental assessment shall be in an amount equal to 75 percent of the supplemental assessment received for tax year 1992;

(B) For tax year 1994, such supplemental assessment shall be in an amount equal to 50 percent of the supplemental assessment received for tax year 1992;

(C) For tax year 1995, such supplemental assessment shall be in an amount equal to 25 percent of the supplemental assessment received for tax year 1992; and

(D) For tax year 1996 and future tax years, no supplemental assessment shall be received.

(m)(1) Any supplemental assessment added to a digest pursuant to subsection (l) of this Code section shall not be included in the calculation of the equalized adjusted school property tax digest under Code Section 48-5-274 for the purpose of calculating the required local five mill share for school funding purposes under Code Section 20-2-164.

(2) The fair market value of timber harvested or sold added to a digest pursuant to this Code section shall be included in the calculation of the equalized adjusted school property tax digest under Code Section 48-5-274 for the purpose of calculating the required local five mill share for school funding purposes under Code Section 20-2-164.

History.

Code 1981, § 48-5-7.5, enacted by Ga. L. 1991, p. 1903, § 6; Ga. L. 1995, p. 792, §§ 1-6; Ga. L. 2000, p. 618, § 96; Ga. L. 2017, p. 774, § 48/HB 323.

Editor's notes.

Ga. L. 1991, p. 1903, § 14, effective April 24, 1991, not codified by the General Assembly, provides: "To assist counties and boards of education in planning, volumes of standing timber harvested in each county through the last business day of the second and third quarters of 1991 shall be reported by the purchaser, or by the harvester if there is no purchaser, to the tax assessors of the county or counties in which the timber was harvested by November 15, 1991. Such reports shall show the number of pounds, if available, or measured volume of softwood and hardwood pulpwood, chip and saw logs, saw timber, poles, posts, and fuel wood so harvested. The commissioner, after consultation with the Georgia Forestry Commission, shall provide the tax assessor of each county with the weighted average unit price in pounds and measured volume paid through the last business day of such period for each such product class, no later than November 15, 1991."

Ga. L. 1991, p. 1903, § 15, not codified by the General Assembly, provides that this Code section shall be applicable beginning January 1, 1992, with respect to ad valorem taxation of timber and shall be applicable beginning January 1, 1992, for all other purposes. Taxation for prior periods shall continue to be governed by prior law.

Ga. L. 2000, p. 618, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'A Plus Education Reform Act of 2000.' "

JUDICIAL DECISIONS

Construction with other law. — Assessments lacked uniformity in failing to follow the mandates of O.C.G.A. § 48-5-2 regarding consideration of "existing use of the property" and "other factors deemed pertinent in arriving at fair market value" and in failing to exempt standing timber under the mandate of O.C.G.A. §§ 48-5-7.1(a)(1) and 48-5-7.5 as set forth in Ga. Const. 1983, Art. VII, Sec. I, Para. III(e)(2). Leverett v. Jasper County Bd. of Tax Assessors, 233 Ga. App. 470, 504 S.E.2d 559.

Timber appraised as separate stratum. — Assessments of land and timber into one number, which were predicated upon appraisals which had been conducted in violation of former O.C.G.A. § 48-5-33 in that timber was appraised as a separate stratum of property, were null and void. Hancock County Bd. of Tax Assessors v. Dickens, 208 Ga. App. 742, 431 S.E.2d 735, 1993 Ga. App. LEXIS 669 (1993).

OPINIONS OF THE ATTORNEY GENERAL

State not subject to timber tax. — Timber provision does not reveal a clear legislative intent to tax the state, as a result, the state is not subject to the timber tax provided by O.C.G.A. § 48-5-7.5. Because the taxation of timber provision can be read not to apply to public property, the statute must be construed consistent with the principles that the state is exempt from ad valorem taxation. 1992 Op. Att'y Gen. No. 92-32.

48-5-7.6. Preferential assessment for brownfield property.

(a)(1) For the purposes of this Code section, "brownfield property" means tangible real property where:

(A) There has been a release of hazardous waste, hazardous constituents, and hazardous substances into the environment;

(B) The director of the Environmental Protection Division of the Department of Natural Resources, under Article 9 of Chapter 8 of Title 12, the "Georgia Brownfield Act," as amended, has approved and not revoked said approval of the prospective purchaser's corrective action plan or compliance status report for such brownfield property;

(C) The director of the Environmental Protection Division of the Department of Natural Resources, under Article 9 of Chapter 8 of Title 12, the "Georgia Brownfield Act," as amended, has issued and not revoked a limitation of liability certificate for the prospective purchaser; and

(D) The Environmental Protection Division of the Department of Natural Resources has certified eligible costs of remediation pursuant to subsection (j) of this Code section.

(2) The preferential classification and assessment of brownfield property provided for in this Code section shall apply to all real property qualified by the Environmental Protection Division of the Department of Natural Resources under Article 9 of Chapter 8 of Title 12, the "Georgia Brownfield Act," as amended, and any subsequent improvements to said property.

(3) "Eligible brownfield costs" means costs incurred after July 1, 2003, and directly related to the receipt of a limitation of liability pursuant to Article 9 of Chapter 8 of Title 12, the "Georgia Brownfield Act," as amended, that are not ineligible costs.

(4) "Ineligible costs" means expenses of the following types:

(A) Purchase or routine maintenance of equipment of a durable nature that is expected to have a period of service of one year or more after being put into use at the property without material impairment of its physical condition, unless the applicant can show that the purchase was directly related to the receipt of a limitation of liability, or the applicant can demonstrate that the equipment was a total loss and that the loss occurred during the activities required for receipt of applicant's limitation of liability pursuant to Article 9 of Chapter 8 of Title 12, the "Georgia Brownfield Act," as amended;

(B) Materials or supplies not purchased specifically for obtain-

ing a limitation of liability pursuant to Article 9 of Chapter 8 of Title 12, the "Georgia Brownfield Act," as amended;

(C) Employee salaries and out-of-pocket expenses normally provided for in the property owner's operating budget (i.e., meals, fuel) and employee fringe benefits;

(D) Medical expenses;

(E) Legal expenses;

(F) Other expenses not directly related to the receipt of a limitation of liability pursuant to Article 9 of Chapter 8 of Title 12, the "Georgia Brownfield Act," as amended;

(G) Costs arising as a result of claims for damages filed by third parties against the property owner or its agents should there be a new release at the property during or after the receipt of a limitation of liability;

(H) Costs resulting from releases after the purchase of qualified brownfield property that occur as a result of violation of state or federal laws, rules, or regulations;

(I) Purchases of property;

(J) Construction costs;

(K) Costs associated with maintaining institutional controls after the certification of costs by the Environmental Protection Division of the Department of Natural Resources; and

(L) Costs associated with establishing, maintaining or demonstrating financial assurance after the certification of costs by the Environmental Protection Division of the Department of Natural Resources.

(5) "Local taxing authority" means a county, municipal, school district, or any other local governing authority levying ad valorem taxes on a taxpayer's property. If a taxpayer's property is taxed by more than one such authority, the term "local taxing authority" shall mean every levying authority.

(6) "Taxable base" means a value assigned to the brownfield property pursuant to the provisions of subparagraph (F) of paragraph (3) of Code Section 48-5-2.

(7) "Tax savings" means the difference between the amount of taxes paid on the taxable base and the taxes that would otherwise be due on the current fair market value of the qualified brownfield property. Tax savings run with the qualified brownfield property regardless of title transfer and shall be available until the brownfield

property is disqualified pursuant to subsection (e) of this Code section.

(b) In order for property to qualify under this Code section for preferential assessment as provided for in subsection (c.4) of Code Section 48-5-7, the applicant must receive the certifications required for brownfield property as defined in paragraph (1) of subsection (a) of this Code section.

(c) Upon receipt of said certifications, a property owner desiring classification of any such contaminated property as brownfield property in order to receive the preferential assessment shall make application to the county board of tax assessors and include said certifications with such application. The county board of tax assessors shall determine if the provisions of this Code section have been complied with, and upon such determination, the county board of tax assessors shall be required to grant preferential assessment to such property. The county board of tax assessors shall make the determination within 90 days after receiving the application and shall notify the applicant in the same manner that notices of assessment are given pursuant to Code Section 48-5-306. Failure to timely make such determination or so notify the applicant pursuant to this subsection shall be deemed an approval of the application. Appeals from the denial of an application for preferential assessment by the board of tax assessors shall be made in the same manner that other property tax appeals are made pursuant to Code Section 48-5-311.

(d)(1) Property which has been classified by the county board of tax assessors as brownfield property shall be immediately eligible for the preferential assessment provided for in subsection (c.4) of Code Section 48-5-7; provided, however, that, for the purposes of determining the years of eligibility for preferential assessment, the tax year following the year in which the certification was filed with the county board of tax assessors pursuant to subsection (c) of this Code section shall be considered and counted as the first year of eligibility.

(2) Property which is subject to preferential assessment shall be separately classified from all other property on the tax digest; and such separate classification shall be such as will enable any person examining the tax digest to ascertain readily that the property is subject to preferential assessment.

(3) The local taxing authority shall enter upon the tax digest as the basis or value of a parcel of brownfield property a value equal to the lesser of the acquisition cost of the property or the assessment of the fair market value of the property as recorded in the county tax digest at the time application for participation in the program was

submitted to the Environmental Protection Division of the Department of Natural Resources under Article 9 of Chapter 8 of Title 12, the "Georgia Brownfield Act," as amended. Property classified as brownfield property shall be recorded upon the tax digest as provided in this Code section for ten consecutive assessment years, or as extended pursuant to subsection (o) of this Code section, unless sooner disqualified pursuant to subsection (e) of this Code section, and the notation "brownfield property" shall be entered on the tax digest adjacent to the valuation of such property to indicate that the property is being preferentially assessed. The local taxing authority shall also enter upon the tax digest an assessment of the fair market value of the property each year, excluding the provisions of subparagraph (F) of paragraph (3) of Code Section 48-5-2.

(e)(1) When property has once been classified and assessed as brownfield property, it shall remain so classified and be granted the preferential assessment until the property becomes disqualified by any one of the following:

(A) Written notice by the taxpayer to the local taxing authority to remove the preferential classification and assessment;

(B) Sale or transfer of ownership to a person not subject to property taxation or making the property exempt from property taxation except a sale or transfer to any authority created by or pursuant to the Constitution of Georgia, statute or local legislation, including a development authority created pursuant to Code Section 36-62-4, constitutional amendment or local legislation, a downtown development authority created pursuant to Code Section 36-42-4, an urban redevelopment agency created pursuant to Code Section 36-61-18, a joint development authority created pursuant to Code Section 36-62-5.1, or a housing authority created pursuant to Code Section 8-3-4;

(C) Revocation of a limitation of liability by the Department of Natural Resources. The Department of Natural Resources has the authority to revoke a limitation of liability pursuant to Article 9 of Chapter 8 of Title 12, the "Georgia Brownfield Act," as amended. The sale or transfer to a new owner shall not operate to disqualify the property from preferential classification and assessment so long as the property continues to qualify as brownfield property, except as specified in subparagraph (B) of this paragraph;

(D) The later of the expiration of ten years during which the property was classified and assessed as brownfield property or the expiration of this preferential assessment period as extended pursuant to subsection (o) of this Code section; or

(E) The tax savings accrued on the property equal the eligible brownfield costs certified by the Environmental Protection Division of the Department of Natural Resources and submitted to the local taxing authority.

(2) Except as otherwise provided in this Code section, if a property becomes disqualified pursuant to subparagraph (C) of paragraph (1) of this subsection, the decertification shall be transmitted to the county board of tax assessors by the Environmental Protection Division of the Department of Natural Resources and said assessors shall appropriately notate the property as decertified. Such property shall not be eligible to receive the preferential assessment provided for in this Code section during the taxable year in which such disqualification occurs.

(f) After a qualified brownfield property begins to receive preferential tax treatment the property owner shall:

(1) In a sworn affidavit, report his or her tax savings realized for each year to the local taxing authority. Such report shall include:

(A) The number of years preferential tax treatment pursuant to this Code section has been received;

(B) Total certified eligible brownfield costs;

(C) Tax savings realized to date;

(D) Transfers of eligible brownfield costs, if any; and

(E) Eligible brownfield costs remaining;

(2) In the tax year in which the taxes otherwise due on the fair market value of the property exceed any remaining eligible brownfield costs, the taxpayer shall pay the taxes due on the fair market value of the property less any remaining eligible brownfield costs.

(g) A qualified brownfield property may be transferred or leased and continue to receive preferential tax treatment if:

(1) The transferee or lessee of the property is an entity required to pay ad valorem property tax on the qualified brownfield property or an interest therein;

(2) The transferee or lessee complies with all of the requirements of this Code section;

(3) The transferee or lessee meets the requirements of Code Section 12-8-206;

(4) The transferee or lessee continues any and all activities, if any are required, for the continuation of a limitation of liability pursuant

to Article 9 of Chapter 8 of Title 12, the "Georgia Brownfield Act," as amended;

(5) The transferee or lessee and the transferor notify the local taxing authority with respect to the transfer of the qualified brownfield property by filing a separate copy of the transfer with the local taxing authority no later than 90 days following the date of the transfer;

(6) Failure to timely notify one local taxing authority shall not affect any timely notification to any other local taxing authority; and

(7) The transfer of property shall not restart, reset or otherwise lengthen the period of preferential tax treatment pursuant to this Code section.

(h)(1) A qualified brownfield property may be subdivided into smaller parcels and continue to receive preferential tax treatment if:

(A) All of the requirements of subsection (g) of this Code section are met; and

(B) The transferee and transferor agree and jointly submit to the local taxing authority a sworn affidavit stating the eligible brownfield costs being transferred to the subdivided property, to wit:

(i) A transferor's report to the local taxing authority shall include:

(I) The total certified eligible brownfield costs for the qualified brownfield property;

(II) The tax savings realized to date;

(III) The eligible brownfield costs being transferred;

(IV) The number of years of preferential tax treatment pursuant to this Code section has been received;

(V) The eligible brownfield costs remaining; and

(VI) A request to establish the taxable base of the transferred property and reestablish the taxable base for the retained property pursuant to paragraph (2) of this subsection;

(ii) Failure to file a sworn affidavit with one local taxing authority shall not affect any sworn affidavit submitted to any other local taxing authority;

(iii) A transferee's first report to the local taxing authority shall include:

(I) A statement of the amount of the transferred eligible brownfield costs;

(II) The number of years of preferential tax treatment the property received prior to transfer (carry over from transferor); and

(II) A request to establish a taxable base for the property pursuant to paragraph (2) of this subsection; and

(iv) Subsequent reports made by a transferee shall include the same information provided by property owners in paragraph (1) of subsection (f) of this Code section.

(2) The taxable base for the subdivided property shall be established by the local taxing authority based on the ratio of acres purchased to total acres at the time of the establishment of the taxable base for the entire qualified brownfield property. Such ratio shall be applied to the taxable base as recorded in the county tax digest at the time the application was received by the Environmental Protection Division for participation in the program under Article 9 of Chapter 8 of Title 12, the "Georgia Brownfield Act." The taxable base on the retained qualified brownfield property shall be decreased by the amount of taxable base assigned to the subdivided portion of the property.

(3) The subdivision of property shall not restart, reset, or otherwise lengthen the period of preferential tax treatment pursuant to this Code section.

(i) In the year in which preferential tax treatment ends, the taxpayer shall be liable for any and all ad valorem taxes due on the property for which a certified eligible brownfield cost is not claimed as an offset.

(j) The Environmental Protection Division of the Department of Natural Resources shall review the eligible costs submitted by the applicant/taxpayer and shall approve or deny those costs prior to those costs being submitted to the local tax authority. Eligible costs to be certified as accurate by the Environmental Protection Division shall be submitted by the applicant to the division at such time and in such form as is prescribed by the division. Eligible costs may be submitted for certification only once for each assessment or remediation undertaken pursuant to Article 9 of Chapter 8 of Title 12, the "Georgia Brownfield Act," as amended. The certification of costs shall be a decision of the director and may be appealed in accordance with subsection (c) of Code Section 12-2-2.

(k) The taxing authority shall provide an appropriate form or forms or space on an existing form or forms to implement this Code section.

(l) Taxpayers shall have the same rights to appeal from the deter-

mination of the taxable base and assessments and reassessments of qualified brownfield property as set out in Code Section 48-5-311.

(m) A penalty shall be imposed under this Code section if during the special classification period the taxpayer fails to abide by the corrective action plan. The penalty shall be applicable to the entire tract which is the subject of the special classification and shall be twice the difference between the total amount of tax paid pursuant to preferential assessment under this Code section and the total amount of taxes which would otherwise have been due under this chapter for each completed or partially completed year of the special classification period. Any such penalty shall bear interest at the rate specified in Code Section 48-2-40 from the date the special classification is breached.

(n) Penalties and interest imposed under this Code section shall constitute a lien against the property and shall be collected in the same manner as unpaid ad valorem taxes are collected. Such penalties and interest shall be distributed pro rata to each taxing jurisdiction wherein current use assessment under this Code section has been granted based upon the total amount by which such preferential assessment has reduced taxes for each such taxing jurisdiction on the property in question as provided in this Code section.

(o)(1) Notwithstanding anything to the contrary in subsections (a) through (n) of this Code section, a qualified brownfield property may be eligible for preferential assessment in accordance with the provisions of subsection (c.4) of Code Section 48-5-7 for a period not to exceed 15 years under the following circumstances:

(A) Construction of improvements on the property commenced but thereafter ceased for a period in excess of 180 days;

(B) After a delay in excess of 180 days, construction of improvements on the property resumed; and

(C) The owner of the qualified brownfield property submits a sworn certification to the county board of tax assessors stating the date on which construction first commenced, the date on which construction ceased, and the date on which construction resumed.

(2) Upon receipt of the certification required by subparagraph (C) of paragraph (1) of this subsection, the county board of tax assessors shall extend the period of preferential assessment for one year for each 365 days of construction inactivity for up to a maximum of five consecutive years. Under no circumstances shall the period of preferential assessment exceed 15 consecutive years.

History. Code 1981, § 48-5-7.6, enacted by Ga. L. 2003, p. 170, § 3; Ga. L. 2004, p. 631, § 48; Ga. L. 2012, p. 843, § 4/HB 1102;

Ga. L. 2013, p. 141, § 48/HB 79; Ga. L. 2014, p. 866, § 48/SB 340; Ga. L. 2016, p. 864, § 48/HB 737; Ga. L. 2017, p. 774, § 48/HB 323.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2017, "program" was substituted for "Hazardous Site Reuse and Redevelopment Program" in the first sentence of paragraph (d)(3); and "program under Article 9 of Chapter 8 of Title 12, the 'Georgia Brownfield Act' " was substituted for "Georgia Hazardous Site Reuse and Redevelopment Program" in the second sentence of paragraph (h)(2).

48-5-7.7. Preferential assessment for forest land conservation use property.

(a) This Code section shall be known and may be cited as the "Georgia Forest Land Protection Act of 2008."

(b) As used in this Code section, the term:

(1) "Contiguous" means real property within a county that abuts, joins, or touches and has the same undivided common ownership. If an applicant's tract is divided by a county boundary, public roadway, public easement, public right of way, natural boundary, land lot line, or railroad track, then the applicant has, at the time of the initial application, a one-time election to declare the tract as contiguous irrespective of a county boundary, public roadway, public easement, public right of way, natural boundary, land lot line, or railroad track.

(2) "Forest land conservation use property" means real property that is forest land of at least 200 acres in aggregate which lies within one or more counties, provided that such forest land is in parcels of at least 100 acres within any given county and that is subject to the following qualifications:

(A) Such property must be owned by an individual or individuals or by any entity registered to do business in this state;

(B) Such property excludes the entire value of any residence and its underlying land located on the property; as used in this subparagraph, the term "underlying land" means the minimum lot size required for residential construction by local zoning ordinances or two acres, whichever is less. This provision for excluding the underlying land of a residence from eligibility in the conservation use covenant shall only apply to property that is first made subject to such a covenant, or is subject to a renewal of a previous conservation use covenant, on or after January 1, 2014;

(C) Such property has as its primary use the good faith subsistence or commercial production of trees, timber, or other wood and wood fiber products from or on the land. Such primary use includes land conservation and ecological forest management

in which commercial production of wood and wood fiber products may be undertaken primarily for conservation and restoration purposes rather than financial gain. Such property may, in addition, have one or more of the following secondary uses:

(i) The promotion, preservation, or management of wildlife habitat;

(ii) Carbon sequestration in accordance with the Georgia Carbon Sequestration Registry;

(iii) Mitigation and conservation banking that results in restoration or conservation of wetlands and other natural resources; or

(iv) The production and maintenance of ecosystem products and services, such as, but not limited to, clean air and water.

Forest land conservation use property may include, but is not limited to, land that has been certified as environmentally sensitive property by the Department of Natural Resources or which is managed in accordance with a recognized sustainable forestry certification program, such as the Sustainable Forestry Initiative, Forest Stewardship Council, American Tree Farm Program, or an equivalent sustainable forestry certification program approved by the State Forestry Commission.

(3) "Qualified owner" means any individual or individuals or any entity registered to do business in this state.

(4) "Qualified property" means forest land conservation use property as defined in this subsection.

(5) "Qualifying purpose" means a use that meets the qualifications of subparagraph (C) of paragraph (2) of this subsection.

(c) The following additional rules shall apply to the qualification of forest land conservation use property for conservation use assessment:

(1) Forest land conservation use property of an owner within a county for which forest land conservation use assessment is sought under this Code section shall be in covenants, which shall include forest land of at least 200 acres in aggregate which lies within one or more counties, provided that such forest land is in parcels of at least 100 acres within any given county, unless otherwise required under subsection (e) of this Code section;

(2) When one-half or more of the area of a single tract of real property is used for the qualifying purpose, then the entirety of such tract shall be considered as used for such qualifying purpose unless some other type of business is being operated on the portion of the

tract that is not being used for a qualifying purpose; provided, however, that such other portion must be minimally managed so that it does not contribute significantly to erosion or other environmental or conservation problems or must be used for one or more secondary purposes specified in subparagraph (b)(2)(C) of this Code section. The following uses of real property shall not constitute using the property for another type of business:

(A) The lease of hunting rights or the use of the property for hunting purposes;

(B) The charging of admission for use of the property for fishing purposes;

(C) The production of pine straw or native grass seed;

(D) The granting of easements solely for ingress and egress; and

(E) Any type of business devoted to secondary uses listed under subparagraph (b)(2)(C) of this Code section; and

(3) No otherwise qualified forest land conservation use property shall be denied conservation use assessment on the grounds that no soil map is available for the county or counties, if applicable, in which such property is located; provided, however, that, if no soil map is available for the county or counties, if applicable, in which such property is located, the board of tax assessors shall use the current soil classification applicable to such property.

(d) No property shall qualify for conservation use assessment under this Code section unless and until the qualified owner of such property agrees by covenant with the appropriate taxing authority to maintain the eligible property in forest land conservation use for a period of ten years beginning on the first day of January of the year in which such property qualifies for such conservation use assessment and ending on the last day of December of the final year of the covenant period. After the qualified owner has applied for and has been allowed conservation use assessment provided for in this Code section, it shall not be necessary to make application thereafter for any year in which the covenant period is in effect and conservation use assessment shall continue to be allowed such qualified owner as specified in this Code section. At least 60 days prior to the expiration date of the covenant, the county board of tax assessors where the property is located shall send by first-class mail written notification of such impending expiration. Upon the expiration of any covenant period, the property shall not qualify for further conservation use assessment under this Code section unless and until the qualified owner of the property has entered into a renewal covenant for an additional period of ten years; provided,

however, that the qualified owner may enter into a renewal contract in the ninth year of a covenant period so that the contract is continued without a lapse for an additional ten years.

(e) Subject to the limitations of paragraph (1) of subsection (c) of this Code section, a qualified owner shall be authorized to enter into more than one covenant under this Code section for forest land conservation use property. Any such qualified property may include a tract or tracts of land which are located in more than one county in which event the owner shall enter into a covenant with each county. In the event a single contiguous tract is required to have separate covenants under this subsection, the total acreage of that single contiguous tract shall be utilized for purposes of determining the 200 acre requirement of this Code section.

(f)(1) A qualified owner shall not be authorized to make application for and receive conservation use assessment under this Code section for any property which at the time of such application is receiving preferential assessment under Code Section 48-5-7.1 or current use assessment under Code Section 48-5-7.4; provided, however, that, if any property is subject to a covenant under either of those Code sections, it may be changed from such covenant and placed under a covenant under this Code section if it is otherwise qualified. Any such change shall terminate the existing covenant and shall not constitute a breach thereof. No property may be changed more than once under this paragraph.

(2) Any property that is subject to a covenant under this Code section and subsequently fails to adhere to the qualifying purpose, as defined in paragraph (5) of subsection (b) of this Code section, may be changed from the covenant under this Code section and placed under a covenant provided for in Code Section 48-5-7.4 if the property otherwise qualifies under the provisions of that Code section. In such a case, the existing covenant under this Code section shall be terminated, and the change shall not constitute a breach thereof. No property may be changed more than once under this paragraph.

(g) Except as otherwise provided in this Code section, no property shall maintain its eligibility for conservation use assessment under this Code section unless a valid covenant or covenants, if applicable, remain in effect and unless the property is continuously devoted to forest land conservation use during the entire period of the covenant or covenants, if applicable.

(h) If any breach of a covenant occurs, the existing covenant shall be terminated and all qualification requirements must be met again before the property shall be eligible for conservation use assessment under this Code section.

(i)(1) If ownership of all or a part of a forest land conservation use property is acquired during a covenant period by another qualified owner, then the original covenant may be continued only by both such acquiring owner and the transferor for the remainder of the term, in which event, no breach of the covenant shall be deemed to have occurred if the total size of a tract from which the transfer was made is reduced below 200 acres or the size of the tract transferred is less than 200 acres. Following the expiration of the original covenant, no new covenant shall be entered with respect to either tract unless such tract exceeds 200 acres. If a qualified owner has entered into an original forest land conservation use covenant and subsequently acquires additional qualified property contiguous to the property in the original covenant, the qualified owner may elect to enter the subsequently acquired qualified property into the original covenant for the remainder of the 15 year period of the original covenant; provided, however, that such subsequently acquired qualified property shall be less than 200 acres.

(2) If, following such transfer, a breach of the covenant occurs by the acquiring owner, the penalty and interest shall apply to the entire transferred tract and shall be paid by the acquiring owner who breached the covenant. In such case, the covenant shall terminate on such entire transferred tract but shall continue on such entire remaining tract from which the transfer was made and on which the breach did not occur for the remainder of the original covenant.

(3) If, following such transfer, a breach of the covenant occurs by the transferring owner, the penalty and interest shall apply to the entire remaining tract from which the transfer was made and shall be paid by the transferring owner who breached the covenant. In such case, the covenant shall terminate on such entire remaining tract from which the transfer was made but shall continue on such entire transferred tract and on which the breach did not occur for the remainder of the original covenant.

(j)(1) For each taxable year beginning on or after January 1, 2014, all applications for conservation use assessment under this Code section, including any forest land covenant required under this Code section, shall be filed on or before the last day for filing ad valorem tax appeals of the annual notice of assessment except that in the case of property which is the subject of a tax appeal of the annual notice of assessment under Code Section 48-5-311, an application for forest land conservation use assessment may be filed at any time while such appeal is pending. An application for continuation of such forest land conservation use assessment upon a change in ownership of all or a part of the qualified property shall be filed on or before the last date for filing tax returns in the year following the year in which the

change in ownership occurred. Applications for forest land conservation use assessment under this Code section shall be filed with the county board of tax assessors in which the property is located who shall approve or deny the application. Such county board of tax assessors shall file a copy of the approved covenant in the office of the clerk of the superior court in the county in which the eligible property is located. The clerk of the superior court shall file and index such covenant in the real property records maintained in the clerk's office. If the covenant is not so recorded in the real property records, a transferee of the property affected shall not be bound by the covenant or subject to any penalty for its breach. The fee of the clerk of the superior court for recording such covenants shall be paid by the qualified owner of the eligible property with the application for forest land conservation use assessment under this Code section and shall be paid to the clerk by the board of tax assessors when the application is filed with the clerk. If the application is denied, the board of tax assessors shall notify the applicant in the same manner that notices of assessment are given pursuant to Code Section 48-5-306 and shall return any filing fees advanced by the owner. Appeals from the denial of an application or covenant by the board of tax assessors shall be made in the same manner that other property tax appeals are made pursuant to Code Section 48-5-311.

(2) In the event such application is approved, the qualified owner shall continue to receive annual notification of any change in the forest land fair market value of such property, and any appeals with respect to such valuation shall be made in the same manner as other property tax appeals are made pursuant to Code Section 48-5-311.

(k) The commissioner shall by regulation provide uniform application and covenant forms to be used in making application for conservation use assessment under this Code section.

(l) In the case of an alleged breach of the covenant, the qualified owner shall be notified in writing by the board of tax assessors. The qualified owner shall have a period of 30 days from the date of such notice to cease and desist the activity alleged in the notice to be in breach of the covenant or to remediate or correct the condition or conditions alleged in the notice to be in breach of the covenant. Following a physical inspection of property, the board of tax assessors shall notify the qualified owner that such activity or activities have or have not properly ceased or that the condition or conditions have or have not been remediated or corrected. The qualified owner shall be entitled to appeal the decision of the board of tax assessors and file an appeal disputing the findings of the board of tax assessors. Such appeal shall be conducted in the same manner that other property tax appeals are made pursuant to Code Section 48-5-311.

(m)(1) A penalty shall be imposed under this subsection if during the period of the covenant entered into by a qualified owner the covenant is breached.

(2) Except as provided in subsection (i) of this Code section and paragraph (4) of this subsection, the penalty shall be applicable to the entire tract which is the subject of the covenant.

(3) The penalty shall be twice the difference between the total amount of the tax paid pursuant to the conservation use assessment under this Code section and the total amount of taxes which would otherwise have been due under this chapter for each completed or partially completed year of the covenant period. Any such penalty shall bear interest at the rate specified in Code Section 48-2-40 from the date the covenant is breached.

(4) If ownership of a portion of the land subject to the original covenant constituting at least 200 acres is transferred to another owner qualified to enter into an original forest land conservation use covenant in a bona fide arm's length transaction and breach subsequently occurs, then the penalty shall either be assessed against the entire remaining tract from which the transfer was made or the entire transferred tract, on whichever the breach occurred. The calculation of penalties in paragraph (3) of this subsection shall be used except that the penalty amount resulting from such calculation shall be multiplied by the percentage which represents the acreage of such tract on which the breach occurs to the original covenant acreage. The resulting amount shall be the penalty amount owed by the owner of such tract of land on which the breach occurred.

(n) In any case of a breach of the covenant where a penalty under subsection (m) of this Code section is imposed, an amount equal to the amount of reimbursement to each county, municipality, and board of education in each year of the covenant shall be collected under subsection (o) of this Code section and paid over to the commissioner who shall deposit such amount in the general fund.

(o) Penalties and interest imposed under this Code section shall constitute a lien against that portion of the property to which the penalty has been applied under subsection (m) of this Code section and shall be collected in the same manner as unpaid ad valorem taxes are collected. Except as provided in subsection (n) of this Code section, such penalties and interest shall be distributed pro rata to each taxing jurisdiction wherein conservation use assessment under this Code section has been granted based upon the total amount by which such conservation use assessment has reduced taxes for each such taxing jurisdiction on the property in question as provided in this Code section.

(p) The penalty imposed by subsection (m) of this Code section shall not apply in any case where a covenant is breached solely as a result of:

(1) The acquisition of part or all of the property under the power of eminent domain;

(2) The sale of part or all of the property to a public or private entity which would have had the authority to acquire the property under the power of eminent domain; or

(3) The death of an individual qualified owner who was a party to the covenant.

(q) The following shall not constitute a breach of a covenant:

(1) Mineral exploration of the property subject to the covenant or the leasing of the property subject to the covenant for purposes of mineral exploration if the primary use of the property continues to be the good faith production from or on the land of timber;

(2) Allowing all or part of the property subject to the covenant to lie fallow or idle for purposes of any forestry conservation program, for purposes of any federal agricultural assistance program, or for other agricultural management purposes;

(3) Allowing all or part of the property subject to the covenant to lie fallow or idle due to economic or financial hardship if the qualified owner notifies the board of tax assessors on or before the last day for filing a tax return in the county where the land lying fallow or idle is located and if such qualified owner does not allow the land to lie fallow or idle for more than two years of any five-year period;

(4)(A) Any property which is subject to a covenant for forest land conservation use being transferred to a place of religious worship or burial or an institution of purely public charity if such place or institution is qualified to receive the exemption from ad valorem taxation provided for under subsection (a) of Code Section 48-5-41. No qualified owner shall be entitled to transfer more than 25 acres of such person's property in the aggregate under this paragraph.

(B) Any property transferred under subparagraph (A) of this paragraph shall not be used by the transferee for any purpose other than for a purpose which would entitle such property to the applicable exemption from ad valorem taxation provided for under subsection (a) of Code Section 48-5-41 or subsequently transferred until the expiration of the term of the covenant period. Any such use or transfer shall constitute a breach of the covenant;

(5) Leasing a portion of the property subject to the covenant, but in no event more than six acres of every unit of 2,000 acres, for the purpose of placing thereon a cellular telephone transmission tower.

Any such portion of such property shall cease to be subject to the covenant as of the date of execution of such lease and shall be subject to ad valorem taxation at fair market value;

(6)(A) Allowing part of the property subject to the covenant to be used for solar generation of energy and conversion of such energy into heat or electricity, and the sale of the same in accordance with applicable law.

(B) The provisions of subparagraph (A) of this paragraph shall not allow the portion of the property on which such solar energy generating equipment is located, as depicted by a boundary survey prepared by a licensed surveyor, and which is subject to an existing covenant to remain in the covenant. Such property shall be removed from the existing covenant at the time of the installation of the solar energy generating equipment and shall be subject to the penalty for breach of the covenant contained in subsection (r) of this Code section and shall be subject to ad valorem taxation at fair market value; or

(7)(A) Allowing part of the property subject to the covenant to be used for farm labor housing. As used in this paragraph, the term "farm labor housing" means all buildings or structures used as living quarters when such housing is provided free of charge to workers who provide labor on agricultural property.

(B) The provisions of subparagraph (A) of this paragraph shall not allow the portion of the property on which such farm labor housing is located and which is subject to an existing covenant to remain in the covenant. Such property shall be removed from the existing covenant at the time construction of the farm labor housing begins and shall be subject to ad valorem taxation at fair market value.

(r) In the following cases, the penalty specified by subsection (m) of this Code section shall not apply and the penalty imposed shall be the amount by which conservation use assessment has reduced taxes otherwise due for the year in which the covenant is breached, such penalty to bear interest at the rate specified in Code Section 48-2-40 from the date of the breach:

(1) Any case in which a covenant is breached solely as a result of the foreclosure of a deed to secure debt or the property is conveyed to the lienholder without compensation and in lieu of foreclosure, if:

(A) The deed to secure debt was executed as a part of a bona fide commercial loan transaction in which the grantor of the deed to secure debt received consideration equal in value to the principal amount of the debt secured by the deed to secure debt;

(B) The loan was made by a person or financial institution who or which is regularly engaged in the business of making loans; and

(C) The deed to secure debt was intended by the parties as security for the loan and was not intended for the purpose of carrying out a transfer which would otherwise be subject to the penalty specified by subsection (m) of this Code section;

(2) Any case in which a covenant is breached solely as a result of a medically demonstrable illness or disability which renders the qualified owner of the real property physically unable to continue the property in the qualifying use, provided that the board of tax assessors or boards of assessors, if applicable, shall require satisfactory evidence which clearly demonstrates that the breach is the result of a medically demonstrable illness or disability;

(3) Any case in which a covenant is breached solely as a result of a qualified owner electing to discontinue the property in its qualifying use, provided such qualified owner has renewed without an intervening lapse at least once the covenant for land conservation use, has reached the age of 65 or older, and has kept the property in the qualifying use under the renewal covenant for at least three years. Such election shall be in writing and shall not become effective until filed with the county board of tax assessors or boards of assessors, if applicable; or

(4) Any case in which a covenant is breached solely as a result of a qualified owner electing to discontinue the property in its qualifying use, provided such qualified owner entered into the covenant for forest land conservation use for the first time after reaching the age of 67 and has either owned the property for at least 15 years or inherited the property and has kept the property in the qualifying use under the covenant for at least three years. Such election shall be in writing and shall not become effective until filed with the county board of tax assessors where the property is located.

(s) Property which is subject to forest land conservation use assessment under this Code section shall be separately classified from all other property on the tax digest; and such separate classification shall be such as will enable any person examining the tax digest to ascertain readily that the property is subject to conservation use assessment under this Code section. Covenants shall be public records and shall be indexed and maintained in such manner as will allow members of the public to locate readily the covenant affecting any particular property subject to conservation use assessment under this Code section. Based on information submitted by the county boards of tax assessors, the commissioner shall maintain a central registry of conservation use property, indexed by qualified owners.

(t) The commissioner shall annually submit a report to the Governor, the Department of Agriculture, the Georgia Agricultural Statistical Service, the State Forestry Commission, the Department of Natural Resources, and the University of Georgia Cooperative Extension Service and the House Ways and Means, Natural Resources and Environment, and Agriculture and Consumer Affairs committees and the Senate Finance, Natural Resources and the Environment, and Agriculture and Consumer Affairs committees and shall make such report available to other members of the General Assembly, which report shall show the fiscal impact of the assessments provided for in this Code section. The report shall include the amount of assessed value eliminated from each county's digest as a result of such assessments; approximate tax dollar losses, by county, to all local governments affected by such assessments; and any recommendations regarding state and local administration of this Code section, with emphasis upon enforcement problems, if any, attendant with this Code section. The report shall also include any other data or facts which the commissioner deems relevant.

(u) A public notice containing a brief, factual summary of the provisions of this Code section shall be posted in a prominent location readily viewable by the public in the office of the board of tax assessors and in the office of the tax commissioner of each county in this state.

(v) At such time as the property ceases to be eligible for forest land conservation use assessment or when any ten-year covenant period expires and the property does not qualify for further forest land conservation use assessment, the qualified owner of the property shall file an application for release of forest land conservation use treatment with the county board of tax assessors where the property is located who shall approve the release upon verification that all taxes and penalties with respect to the property have been satisfied. After the application for release has been approved by such board of tax assessors, the board shall file the release in the office of the clerk of the superior court in the county in which the original covenant was filed. The clerk of the superior court shall file and index such release in the real property records maintained in the clerk's office. No fee shall be paid to the clerk of the superior court for recording such release. The commissioner shall by regulation provide uniform release forms.

(w) The commissioner shall have the power to make and publish reasonable rules and regulations for the implementation and enforcement of this Code section. Without limiting the commissioner's authority with respect to any other such matters, the commissioner may prescribe soil maps and other appropriate sources of information for documenting eligibility as a forest land conservation use property. The commissioner also may provide that advance notice be given to a

qualified owner of the intent of a board of tax assessors to deem a change in use as a breach of a covenant.

History.

Code 1981, § 48-5-7.7, enacted by Ga. L. 2008, p. 297, § 2/HB 1211; Ga. L. 2009, p. 27, § 2/SB 55; Ga. L. 2009, p. 216, § 2A/SB 240; Ga. L. 2011, p. 285, § 1/HB 95; Ga. L. 2013, p. 655, § 2/HB 197; Ga. L. 2017, p. 9, § 2/HB 238; Ga. L. 2018, p. 119, § 4/HB 85; Ga. L. 2024, p. 1052, § 5(10)/SB 448, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, revised punctuation in paragraphs (c)(3) and (f)(1).

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2010, "Code Section 48-5-7.4" was substituted for "Code Section 48-7-7.4" in the first sentence of subsection (f) (now paragraph (f)(1)).

Editor's notes.

Ga. L. 2008, p. 297, § 5/HB, 1211 not codified by the General Assembly, provides that this Code section becomes effective on January 1, 2009, upon the ratification of a resolution at the November, 2008, state-wide general election, which resolution amends the Constitution so as to provide for the special assessment and taxation of forest land conservation use property and for local government assistance grants. The constitutional amendment (Ga. L. 2008, p. 1209) was ratified at the general election held on November 4, 2008.

Ga. L. 2009, p. 27, § 5/SB 55, not codified by the General Assembly, provides, in part, that the amendment to this Code section shall be applicable to all taxable years beginning on or after January 1, 2009.

Ga. L. 2018, p. 119, § 7/HB 85, not codified by the General Assembly, provides, in part, that the 2018 amendments to subsections (b), (c), (d), and (v) of this Code section shall become effective on January 1, 2019, only if an amendment to the Constitution of Georgia is ratified at the November, 2018, general election modifying constitutional prescriptions for forest land conservation use property and related assistance grants, permitting the withholding of a portion of assistance grants to provide for certain state administrative costs, and establishing qualified timberland property as a subclassification of tangible property for purposes of ad valorem taxation. The constitutional amendment was approved by a majority of the qualified voters voting at the general election held on November 6, 2018.

For application of this statute in 2020, see Executive Order 03.31.20.03.

Administrative rules and regulations.

Forest, Official Compilation of the Rules and Regulations of the State of Georgia, Local Government Services Division.

OPINIONS OF THE ATTORNEY GENERAL

Administrative caps on assistance grants prohibited. — Because neither Ga. Const. 1983, Art. VII, Sec. I, Para. III nor the Forest Land Protection Act, O.C.G.A. § 48-5-7.7, authorize or contemplate a cap on assistance grants based on the total exemption value of forest land conservation use property, the Department of Revenue would not be authorized to impose an administrative cap on assistance grants issued pursuant to the Forest Land Protection Act of 2008 in the manner proposed. 2016 Op. Att'y Gen. No. 16-5.

48-5-8. [Reserved] Manner and time of making state levy; notice on taxpayer's ad valorem tax bill.

History.

Ga. L. 1851-52, p. 288, § 14; Code 1863, § 735; Code 1868, § 802; Code 1873, § 805; Code 1882, § 805; Civil Code 1895,

§ 771; Civil Code 1910, § 1011; Code 1933, § 92-5704; Code 1933, § 91A-1020, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2010, p. 9, § 3-1/HB 1055; repealed by Ga. L. 2018, p. 209, § 1/HB 729, effective July 1, 2018.

Editor's notes.

Ga. L. 2018, p. 209, § 1/HB 729 repealed and reserved this Code section, effective July 1, 2018.

48-5-9. Persons liable for taxes on property.

Taxes shall be charged against the owner of property if the owner is known and against the specific property itself if the owner is not known. Life tenants and those who own and enjoy the property shall be chargeable with the taxes on the property.

History.

Civil Code 1895, § 778; Civil Code 1910, § 1018; Code 1933, § 92-110; Code 1933, § 91A-1021, enacted by Ga. L. 1978, p. 309, § 2.

History of Section.

This Code section is derived from the decisions in National Bank v. Danforth, 80 Ga. 55, 7 S.E. 546 (1887); Burns v. Lewis, 86 Ga. 591, 13 S.E. 123 (1891); Wells v. Mayor of Savannah, 87 Ga. 397, 13 S.E. 442 (1891); Wells v. Mayor of Savannah, 107 Ga. 1, 32 S.E. 669 (1899), aff'd, 181 U.S. 531, 21 S. Ct. 697, 45 L. Ed. 986 (1901).

Law reviews.

For comment on Bell v. Summerlin, 188 Ga. 648, 4 S.E.2d 831 (1939), see 2 Ga. B. J. 54 (1940).

For comment on Townsend v. McIntosh, 205 Ga. 643, 54 S.E.2d 592 (1949), see 12 Ga. B. J. 205 (1949).

For article surveying developments in Georgia real property law from mid-1980 through mid-1981, see 33 Mercer L. Rev. 219 (1981).

JUDICIAL DECISIONS

Analysis

General Consideration
Persons Liable for Taxes
Sale of Property for Taxes

General Consideration

Statute is but a codification of the rulings of the Supreme Court in National Bank v. Danforth, 80 Ga. 55, 7 S.E. 546 (1887); Burns v. Lewis, 86 Ga. 591, 13 S.E. 123 (1891); and Wells v. Mayor of Savannah, 87 Ga. 397, 13 S.E. 442 (1891). Lowe v. City of Atlanta, 191 Ga. 76, 11 S.E.2d 891, 1940 Ga. LEXIS 630 (1940).

History of life tenant provision. — Latter part of this statute, referring to life tenants and others, who may own and enjoy property, was taken from the decision in National Bank v. Danforth, 80 Ga. 55, 7 S.E. 546 (1887), written by Mr. Chief Justice Bleckley. Pursley v. Manley, 166 Ga. 809, 144 S.E. 242, 1928 Ga. LEXIS 412 (1928).

Who may be owner. — Owner of property must be a natural person, a corporation, or a quasi-person or entity, such as a partnership. The law recognizes no other owners of property. "The estate of A.J. Miller" is not the name of a natural person, and does not import either a partnership or a corporation. Miller v. Brooks, 120 Ga. 232, 47 S.E. 646, 1904 Ga. LEXIS 520 (1904).

Section does not apply to assessments for land drainage taxes. Pursley v. Manley, 166 Ga. 809, 144 S.E. 242, 1928 Ga. LEXIS 412 (1928).

Real estate transfer tax imposed is not a tax on the property as such as is

General Consideration (Cont'd)

the ad valorem tax which is charged against the owner of the property or against the specific property. City of Columbus v. Ronald A. Edwards Constr. Co., 155 Ga. App. 502, 271 S.E.2d 643, 1980 Ga. App. LEXIS 2636 (1980).

Instructions. — Since the requested instruction was a correct statement of the law that a life tenant is bound to pay current taxes unless otherwise provided in the deed, and such charge was not adequately given to the jury, the verdict in favor of the life tenant on the issue of back taxes had to be set aside. Clark v. Childs, 253 Ga. 493, 321 S.E.2d 727, 1984 Ga. LEXIS 981 (1984).

Persons Liable for Taxes

Liability for taxes on property which is given as security for a debt. — When the property owner conveys legal title thereto as security for a debt, retention of the equitable interest constitutes such substantial beneficial ownership as will render the owner liable for taxes thereon, and such equitable interest may be assigned. Decatur County Bldg. & Loan Ass'n v. Thigpen, 173 Ga. 363, 160 S.E. 387, 1931 Ga. LEXIS 316 (1931); Anderson v. Alexander, 179 Ga. 511, 176 S.E. 367, 1934 Ga. LEXIS 324 (1934); Carroll v. Richards, 50 Ga. App. 272, 178 S.E. 178, 1934 Ga. App. LEXIS 737 (1934).

Liability for taxes on notes given as collateral for demand loans. — Owner of customers' notes used as collateral for demand loans is legally obligated to pay the required tax on intangibles imposed. Yancey Bros. Co. v. United States, 319 F. Supp. 441, 1970 U.S. Dist. LEXIS 10192 (N.D. Ga. 1970).

Private agreement as to liability for taxes. — Ordinarily, as between a life tenant and a remainderman, the former, as the person enjoying the property, should be chargeable with taxes, but when the deed reserves a life estate in the grantor, conveys the entire remainder to the grantees, and further expressly stipulates that the grantees should "pay all taxes," it was evidently intended to reverse the ordinary rule of liability as between the parties, and to require the grantees to pay all taxes of every kind that might be assessed against the property during the life of the grantor. Evans v. Brown, 196 Ga. 634, 27 S.E.2d 300, 1943 Ga. LEXIS 395 (1943).

Rights of parties to private agreement as to tax liability upon tax sale of property. — While the grantor and grantee in a security deed may agree as between themselves as to which shall be liable for taxes upon the property conveyed, the complete title is nevertheless subject to taxation as a whole, and a sale made in pursuance of a proper assessment and execution would divest the interest and title of each of the parties, with the exception of the right of redemption. Real Estate Loan Co. v. Union City, 177 Ga. 55, 169 S.E. 301, 1933 Ga. LEXIS 113 (1933); City of Leesburg v. Forrester, 59 Ga. App. 503, 1 S.E.2d 584, 1939 Ga. App. LEXIS 337 (1939).

Payment of current taxes on land sold. — As a general rule, in the absence of any stipulation in a contract of sale relating to the payment of current taxes, when the sale occurs and the property is delivered subsequently to the assessment of the taxes, the payment of the current taxes devolves upon the vendor. Baker v. Smith, 135 Ga. 628, 70 S.E. 239, 1911 Ga. LEXIS 26 (1911).

Effect of cloud upon title on duty to pay taxes. — If a previous and void sale, which was made against one without title or possession of the land, has the effect of casting a cloud upon one's title and this has not been removed, such person is not thereby relieved of one's duty to pay taxes. One's remedy, if any, is an action to cancel and remove the cloud upon the title. Haden v. City of Atlanta, 177 Ga. 869, 171 S.E. 703, 1933 Ga. LEXIS 451 (1933).

Life tenant is responsible for return and payment of taxes. — Life tenant, in the absence of special stipulations or other circumstances, is responsible for returning and paying the applicable taxes on the land during the period of the tenant's occupancy, and the method of determining the amount of such taxes is by determining market value according to the yardstick laid down in former Code 1933, § 92-5702 (see now

O.C.G.A. § 48-5-2). Loudermilk v. Cobb County Bd. of Tax Assessors, 155 Ga. App. 591, 271 S.E.2d 723, 1980 Ga. App. LEXIS 2692 (1980).

Effect of death of life tenant during taxable year. — Statute, so far as it relates to the rights and liabilities of individuals, clearly does not contemplate the death of the life tenant during a given taxable year, but refers only to living life tenants. Trust Co. v. Kenny, 188 Ga. 243, 3 S.E.2d 553, 1939 Ga. LEXIS 484 (1939).

Taxpayer's liability when some but not all assessments are illegal. — If assessments made against the owner of property include assessments against some property not belonging to the owner, the owner cannot enjoin the sale of the owner's property thereunder without paying or offering to pay the proportion of the taxes lawfully charged against the owner's property. Haden v. City of Atlanta, 177 Ga. 869, 171 S.E. 703, 1933 Ga. LEXIS 451 (1933).

Lease renewable forever. — Lessee under a lease for 101 years, renewable forever at the lessee's option, has a right both to possession and profits, which may be projected indefinitely into the future, and is chargeable with the tax thereon. Wright v. Central of Ga. Ry., 146 Ga. 406, 91 S.E. 471, 1917 Ga. LEXIS 325 (1917), rev'd, 248 U.S. 525, 39 S. Ct. 181, 63 L. Ed. 401, 1919 U.S. LEXIS 2260 (1919), rev'd, 250 U.S. 519, 40 S. Ct. 1, 63 L. Ed. 1123, 1919 U.S. LEXIS 1771 (1919).

Lease which creates determinable fee. — Lease of land to A for as long as A, A's heirs, or assigns shall pay a stipulated annual ground rent to the lessor or the lessor's heirs or assigns, and shall comply with the covenants therein stated, creates a base or determinable fee, and the property should be taxed to the lessee as owner. Penick v. Atkinson, 139 Ga. 649, 77 S.E. 1055, 1914B Am. Ann. Cas. 842 (1913).

Possession as a basis for ascribing ownership for taxation purposes. — Taxing authorities are at liberty to assess property as belonging to an unknown owner, but not to ascribe ownership to any and every person indifferently. They can treat as the owner any person in possession when they are not able to fix ownership on anyone else, for possession is a mark of ownership. Townsend v. McIntosh, 205 Ga. 643, 54 S.E.2d 592, 1949 Ga. LEXIS 561 (1949).

Taxpayer liable during inverse condemnation suit. — Taxpayer remained the legal owner of property after the taxpayer filed an inverse condemnation suit and was liable for taxes until the title to the property was delivered. Jamestown Assocs. v. Fulton County Bd. of Tax Assessors, 228 Ga. App. 360, 492 S.E.2d 1.

Reasonability of tax sale purchaser's inferences from possession as to ownership and tax liability. — When nothing more appears, sale of property under a tax execution in personam against a life tenant passes only the life estate, but when the person named as defendant in the tax execution, that is, the life tenant, is in possession at the time of assessment and levy and sale, and it is proved upon the trial that the execution is for taxes upon the specific property only, then the purchaser at the tax sale is justified in assuming the purchaser is acquiring a fee. Townsend v. McIntosh, 205 Ga. 643, 54 S.E.2d 592, 1949 Ga. LEXIS 561 (1949).

Tax deed purchaser responsible for taxes after tax sale. — Tax deed purchaser, not the church, a defendant in fi. fa., was obligated to pay ad valorem taxes that accrued after the tax sale and before redemption, and the tax commissioner could not use the excess funds to satisfy the buyer's tax obligation that occurred after the tax sale. Iglesia Del Dios Vivo Columna Y Apoyo De La Verdad La Luz Del Mundo, Inc. v. Downing, 321 Ga. App. 778, 742 S.E.2d 742, 2013 Ga. App. LEXIS 365 (2013), cert. denied, No. S13C1430, 2013 Ga. LEXIS 829 (Ga. Oct. 7, 2013).

Sale of Property for Taxes

Tax sale of property in which defendant has no interest nor right to represent owner. — No property can be sold under a tax execution in personam as the property of the defendant therein, when the defendant neither has title nor possession, nor any right to represent the person who has the property; and a sale

Sale of Property for Taxes (Cont'd)

under these circumstances would be void as to the true owner. Haden v. City of Atlanta, 177 Ga. 869, 171 S.E. 703, 1933 Ga. LEXIS 451 (1933).

For sale of minor's trust property under execution against trustee, see Bourquin v. Bourquin, 120 Ga. 115, 47 S.E. 639, 1904 Ga. LEXIS 457 (1904).

Procedure upon discovery that tax sale involved property in which defendant had no interest. — When a municipal corporation, after causing an illegal and void sale against one without title or possession to the land sold, discovered the sale's invalidity and refunded to the purchaser the amount which the purchaser had paid, it then had the right to proceed in a proper manner to make an assessment against the true owner and to collect taxes by fieri facias in personam against the owner, upon the owner's failure to return the property for taxation. Haden v. City of Atlanta, 177 Ga. 869, 171 S.E. 703, 1933 Ga. LEXIS 451 (1933).

Execution and sale against life tenant passes only life estate. — When property is sold under a tax execution against a life tenant in personam, only the life estate passes to the purchaser. Townsend v. McIntosh, 205 Ga. 643, 54 S.E.2d 592, 1949 Ga. LEXIS 561 (1949).

Rights of purchaser at tax sale against lessor and lessee of property sold. — When owner of realty entered into a written contract with another by which the lessee, being placed in possession, obligated oneself to pay all taxes that might be assessed against the premises, and when the lessee, rather than the owner returned the property for taxation and taxes were assessed against the lessee in possession, and when on default in the payment of taxes the premises were levied on and sold as property of the lessee, the purchaser of the premises at a tax sale acquired the property divested of the owner's and lessor's title. Lowe v. City of Atlanta, 191 Ga. 76, 11 S.E.2d 891, 1940 Ga. LEXIS 630 (1940).

Power of municipal tax officials to issue execution in rem. — In the absence of charter power, municipal officers in charge of levying and collecting taxes are without power to issue an execution in rem against land when the land's ownership is not in doubt. Martin v. Clark, 190 Ga. 270, 9 S.E.2d 54, 1940 Ga. LEXIS 435 (1940).

Designation of owner or property in execution. — Owners have an interest in being properly designated in executions which issue for the collection of taxes upon the owners' property, or, if the owners cannot be designated with reasonable certainty, that the property shall be pointed out in the executions as authority for seizing the property irrespective of ownership, or as the property of some particular person. In all cases of doubt, the execution should specify the particular realty on which the tax accrued, and direct the officer to seize the property or so much of the property as is necessary to pay its own taxes. Miller v. Brooks, 120 Ga. 232, 47 S.E. 646, 1904 Ga. LEXIS 520 (1904).

County ad valorem taxes paid from surplus of foreclosure. — Trial court properly ordered that county ad valorem taxes could be paid from surplus proceeds obtained from a foreclosure sale of the subject property, given that: (1) the taxes were chargeable as a taxpayer's personal debt or as a lien, extending not only to the subject property, but also to all property the taxpayer owned, and the foreclosure notice did not limit the commissioner's authority as to how to collect the taxes owed; and (2) the security deed in turn provided that upon a foreclosure sale of the property, the lender bank would apply any surplus proceeds to the person or persons legally entitled to the proceeds, which also included the tax commissioner. Mulligan v. Sec. Bank of Bibb County, 280 Ga. App. 248, 633 S.E.2d 629, 2006 Ga. App. LEXIS 803 (2006).

OPINIONS OF THE ATTORNEY GENERAL

Property sold under bond for title. — Purchaser/possessor of a piece of property under a bond for title can be subjected to ad valorem taxation for that

parcel, and once the Board of Tax Assessors chooses to assess the property against the occupant, and not the seller of the property, the occupant should receive the tax notices required by O.C.G.A. § 48-5-306, and be treated as "the taxpayer" entitled to appeal under O.C.G.A. § 48-5-311. 1989 Op. Att'y Gen. U89-17.

Statute is not applicable in determining the extent of the homestead which should be granted to the occupant who owns a joint interest in the property. 1954-56 Ga. Op. Att'y Gen. 735.

Taxation by city of automobiles used within city limits by employees of nonresident owner. — City may not legally assess ad valorem taxes against automobiles owned by nonresidents although the automobiles are used within the city by employees of the owners. 1952-53 Ga. Op. Att'y Gen. 188.

RESEARCH REFERENCES

Am. Jur. 2d.

72 Am. Jur. 2d, State and Local Taxation, § 634.

C.J.S.

84 C.J.S., Taxation, § 124 et seq.

ALR.

Liability for taxes accruing after execution of contract for sale of land and before conveyance, 12 A.L.R. 411.

Taxation of chattels and conditional sale contracts or title retaining notes given in respect of them, 12 A.L.R. 566.

Period covered by lessee's, sublessee's, or assignee's covenant to pay taxes or assessments, 97 A.L.R. 931.

Name under which property of decedent should be assessed, 119 A.L.R. 383.

Right of mortgagee or other lienor to acquire and hold tax title in his own right as against persons owning other interest or liens upon property, 140 A.L.R. 294.

Liability of mortgagor or his grantee to mortgagee for loss or depreciation in value of mortgage security as result of failure to pay taxes, 154 A.L.R. 614.

Duty to pay real property taxes as affected by time of commencement or termination of life estate, 8 A.L.R.4th 643.

48-5-9.1. Forms of payment.

The governing authority of each county or municipality may by appropriate resolution or ordinance elect to receive in payment of ad valorem taxes any form of payment.

History.

Code 1981, § 48-5-9.1, enacted by Ga. L. 2010, p. 1104, § 9-2/SB 346.

48-5-10. Returnable property.

All property shall be returned by the taxpayers for taxation to the tax commissioner or tax receiver as provided by law. Each return by a taxpayer shall be for property held and subject to taxation on January 1 next preceding each return.

History.

Ga. L. 1913, p. 123, § 1; Code 1933, § 92-6202; Code 1933, § 91A-1008, enacted by Ga. L. 1978, p. 309, § 2.

Law reviews.

For article, "Freeport Exemption from Property Taxes for Inventory Stored in Georgia But Destined for Shipment Out-of-State," 28 Ga. St. B. J. 108 (1991).

For annual survey on real property, see 64 Mercer L. Rev. 255 (2012).

JUDICIAL DECISIONS

Component parts for installation outside state exempt as inventory. — Component parts of a self-checkout system purchased by a retailer and which were held in Georgia for shipment to retail stores in other states were exempt from ad valorem tax under the freeport exemption in O.C.G.A. § 48-5-48.2(c)(3), which included inventory; the fact that the components required installation did not render the components "in the process of manufacture or production." Fayette Cty. Bd. of Tax Assess. v. WalMart Stores, Inc., 354 Ga. App. 584, 841 S.E.2d 104, 2020 Ga. App. LEXIS 196 (2020).

First day of tax year controlled bankruptcy debtor's liability. — Chapter 13 debtor was liable for property taxes assessed against the property despite the fact that the debtor's lender was granted relief from stay. Under O.C.G.A. §§ 48-2-55 and 48-5-10, the debtor remained personally liable for the taxes because the debtor was the title holder of the property on the first day of each tax year for which an unsecured priority claim was made. Waddy v. Fulton County Tax Comm'r (In re Waddy), No. 09-64634-WLH, 2010 Bankr. LEXIS 4003 (Bankr. N.D. Ga. Sept. 23, 2010).

OPINIONS OF THE ATTORNEY GENERAL

Personal property is generally subject to taxation in county where owner resides on January 1 of that year, unless the property is connected with some trade or business which is situated more or less permanently in another county. 1965-66 Op. Att'y Gen. No. 65-104.

Construing former Code 1933, §§ 92-6202 and 92-6208 (see now O.C.G.A. §§ 48-5-10 and 48-5-16) together, a dealer engaged in business in one county on January 1 who, subsequent to that date, removes the dealer's business to another county is liable under former Code 1933, § 92-6208 (see now O.C.G.A. § 48-5-16) to the first county for ad valorem taxes on all personal property of whatever kind, connected with or used in such business. The fact that the property was moved from the county after January 1 would not relieve the owner from taxation in the county in which the property was located on January 1. 1958-59 Ga. Op. Att'y Gen. 350.

Prorating tax liability of persons who are resident for only part of year. — Person resident in this state on January 1 but for only part of the year is liable for ad valorem taxation for the entire year since there is no provision for prorating of taxes. 1954-56 Ga. Op. Att'y Gen. 666.

Taxation of property bought or sold after January 1. — Owner must return and pay tax for a given year on property owned on January 1 of that year, even if subsequently sold, but is not required to return or pay tax for that year on property bought after January 1. 1954-56 Ga. Op. Att'y Gen. 666.

Tax commissioner not required to aid owner in shifting taxes to subsequent purchasers. — Tax commissioner is not required to handle an account in such a manner as to permit a firm owning property on January 1 to require subsequent purchasers of lots to pay ad valorem taxes due thereon. 1954-56 Ga. Op. Att'y Gen. 667.

Taxation of automobiles shipped into state after January 1. — Automobiles shipped into this state after January 1 of any year are not subject to ad valorem taxes for that year. If the automobiles are in the state on January 1, the person owning such automobiles on January 1 of any year is liable for ad valorem taxes thereon. 1952-53 Ga. Op. Att'y Gen. 427.

When taxation of annexed property may commence. — Property annexed by

a city may be made subject to ad valorem taxation as of January 1 following the annexation. 1969 Op. Att'y Gen. No. 69-259.

Municipal corporation may tax property having a tax situs within the municipality's corporate limits on January 1 of the tax year; for example, property annexed into a city on February 10, 1970, would not be subject to 1970 taxes. 1970 Op. Att'y Gen. No. U70-96.

Tax lien on a transferred piece of property follows that property even if the property is transferred to a tax-exempt public entity. However, the original owner can still be held responsible for the tax liability. Accordingly, the county should not voluntarily prorate the taxes due on that property unless the county does so pursuant to a bargained for consideration in a binding agreement entered into in order to acquire the property. 1988 Op. Att'y Gen. No. U88-12.

Tax lien follows property which the county acquires by donation, purchase, or condemnation, if the full tax amount cannot be collected against the original owner. 1988 Op. Att'y Gen. No. U88-12.

RESEARCH REFERENCES

Am. Jur. 2d.
72 Am. Jur. 2d, State and Local Taxation, § 624.

48-5-11. Situs for returns by residents.

Unless otherwise provided by law, all:

(1) Real property of a resident shall be returned for taxation to the tax commissioner or tax receiver of the county where the property is located; and

(2) Personal property of a resident individual shall be returned for taxation to the tax commissioner or tax receiver of the county where the individual maintains a permanent legal residence.

History.
Code 1933, § 91A-1010, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 23.

JUDICIAL DECISIONS

Application to property outside state unconstitutional. — Application of O.C.G.A. § 48-5-11 to property permanently located outside the State of Georgia is an unconstitutional deprivation of due process of law. Marion v. Floyd County Bd. of Equalization, 270 Ga. 475, 511 S.E.2d 512.

RESEARCH REFERENCES

Am. Jur. 2d.
72 Am. Jur. 2d, State and Local Taxation, § 624.
ALR.
Situs for property taxation as between different states or counties of personal property, or interest therein, held by trustees, executors, or administrators, 127 A.L.R. 379; 172 A.L.R. 341.

48-5-12. Situs of returns by nonresidents.

Unless otherwise provided by law, all real and personal property of

nonresidents shall be returned for taxation to the tax commissioner or tax receiver of the county where the property is located.

History.

Laws 1840, Cobb's 1851 Digest, p. 1073.; Code 1863, § 760; Code 1868, § 827; Code 1873, § 831; Code 1882, § 831; Civil Code 1895, § 819; Civil Code 1910, § 1067; Code 1933, §§ 92-6205, 92-6403; Code 1933, § 91A-1009, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 22.

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Effect of residence on tax situs of merchandise used in connection with a business. — Merchandise used in connection with a business permanently located in a county is taxable in that county regardless of the owner's residence. 1945-47 Ga. Op. Att'y Gen. 558.

RESEARCH REFERENCES

Am. Jur. 2d.

72 Am. Jur. 2d, State and Local Taxation, § 624.

ALR.

Situs for property taxation as between different states or counties of personal property, or interest therein, held by trustees, executors, or administrators, 127 A.L.R. 379; 172 A.L.R. 341.

Succession tax at domicile of debtor or corporation as to credits or corporate stock belonging to estate of nonresident, 139 A.L.R. 1458.

Domicile of debtor within state, or location therein of real property securing debt, as giving debt to nonresident a situs within state for purpose of property taxation, 160 A.L.R. 788.

Situs of aircraft, rolling stock, and vessels for purposes of property taxation, 3 A.L.R.4th 837.

48-5-13. Instruction for local tax officials and staff.

(a) As used in this Code section, the term "local tax officials and staff" means:

(1) All county tax collectors and county tax commissioners;

(2) All county appraisers and county appraisal staff; and

(3) All members of county boards of tax assessors.

(b) The commissioner shall prepare, instruct, operate, and administer courses of instruction deemed necessary to provide training of and continuing education to all local tax officials and staff and members of the county boards of equalization. Course materials for such training shall be reviewed not less than once every five years and updated if necessary. All such training materials shall be made available online, and the commissioner shall determine what training may be offered or available online instead of attended in person in order to reduce the cost to taxpayers to pay for such training.

(c) All such courses of instruction shall be open and made available by the commissioner to the public upon request and upon payment of

such reasonable instruction fee as set by the commissioner and upon available space as determined by the commissioner.

(d) The commissioner is authorized to work with any organization or other professionals with expertise in providing instruction in property tax administration, property taxation, or related matters.

History.
Code 1981, § 48-5-13, enacted by Ga. L. 2010, p. 1104, § 4-1/SB 346.
Editor's notes.
This Code section formerly pertained to notice to nonresidents or agents of receipt of returns and amount of tax due and the associated penalty. The former Code section was based on Ga. L. 1880-81, p. 45, §§ 3, 5; Code 1882, § 874d; Ga. L. 1882-83, p. 43, §§ 1-4; Ga. L. 1882-83, p. 47, § 1; Civil Code 1895, §§ 822, 823, 824, 825; Civil Code 1910, §§ 1071, 1072, 1073, 1074; Code 1933, §§ 92-6212, 92-6213, 92-6214; Code 1933, § 91A-1018; Ga. L. 1978, p. 309, § 2; and Ga. L. 1981, Ex. Sess., p. 8 and was repealed by Ga. L. 1992, p. 2411, § 1, effective April 20, 1992.

48-5-14. Liability of nonresidents, agents of nonresidents, and their property.

A nonresident person, all persons who return property for a nonresident, and the nonresident's property located in this state shall be liable for the taxes on the property.

History.
Laws 1804, Cobb's 1851 Digest, p. 1047.; Code 1863, § 789; Code 1868, § 853; Code 1873, § 857; Code 1882, § 857; Civil Code 1895, § 854; Civil Code 1910, § 1112; Code 1933, § 92-6404; Code 1933, § 91A-1024, enacted by Ga. L. 1978, p. 309, § 2.

JUDICIAL DECISIONS

Sale of nonresident's land. — When land is given in for taxation by the agent of the estate of a nonresident, which land is sold by the sheriff for the nonpayment of state and county taxes under an execution for the taxes against such agent, the purchaser at such sale acquires a valid title. John Doe v. Roe, 51 Ga. 453, 1874 Ga. LEXIS 160 (1874).

RESEARCH REFERENCES

ALR.
Domicile of debtor within state, or location therein of real property securing debt, as giving debt to nonresident a situs within state for purpose of property taxation, 160 A.L.R. 788.

48-5-15. Returns of taxable real property.

(a) All improved and unimproved real property in this state which is subject to taxation shall be returned by the person owning the real property or by his or her agent or attorney to the tax receiver or tax commissioner of the county where the real property is located.

(b) If the real property has a district, number, and section designation, the tax receiver or tax commissioner shall require the person

making a return of the real property to return it by district, number, and section designation. If the real property has no designation by district, number, and section, it shall be returned by such description as will enable the tax receiver or tax commissioner to identify it.

(c) No tax receiver or tax commissioner shall receive any return of real property which does not designate the real property as provided in this Code section. The commissioner shall not allow any tax receiver or tax commissioner who receives returns in any manner other than as provided in this Code section any compensation or percentage for his services.

History.

Ga. L. 1872, p. 77, § 1; Code 1873, § 873; Code 1882, § 873; Civil Code 1895, § 820; Civil Code 1910, § 1068; Code 1933, § 92-6206; Ga. L. 1964, p. 333, § 1; Code 1933, § 91A-1011, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1991, p. 1110, § 1; Ga. L. 1992, p. 1643, § 1; Ga. L. 2010, p. 564, § 1/HB 963.

Editor's notes.

Ga. L. 1991, p. 1110, § 3(b), not codified by the General Assembly, provides, in part, that the 1991 amendment to this Code section shall be applicable to all taxable years beginning on or after January 1, 1991.

JUDICIAL DECISIONS

Failure to itemize specific property interests. — After an owner of mineral rights had entered into an agreement with the county where the property was located to pay lump-sum taxes without itemizing the specific property interests, the agreement did not meet the requirements of O.C.G.A. § 48-5-15, nor did it constitute payment of taxes due within the meaning of O.C.G.A. § 44-5-168. Georgia Marble Co. v. Whitlock, 260 Ga. 350, 392 S.E.2d 881, 1990 Ga. LEXIS 259 (1990), cert. denied, 498 U.S. 1026, 111 S. Ct. 675, 112 L. Ed. 2d 667, 1991 U.S. LEXIS 9 (1991).

Underpayment of taxes based on automatic tax return. — Following a bench trial, an order was issued establishing the 1997 fair market value of the taxpayer's property at a value of $4,709,000.00, which was an amount greater than the value set by the board of equalization; however, when the taxpayer paid taxes in 1997, 1998, and 1999, the taxpayer did so based on the board of equalization's 1997 valuation and because the 1997 value of the taxpayer's property was finally determined to be $4,709,000.00, the taxpayer automatically returned the property in 1998 and 1999 at that value and, thus, the taxpayer underpaid the taxpayer's taxes for the 1997, 1998, and 1999 tax years and the tax assessors were entitled to summary judgment finding that the taxpayer had underpaid the taxpayer's taxes and owed additional sums. Pine Pointe Hous., L. P. v. Bd. of Tax Assessors, 269 Ga. App. 855, 605 S.E.2d 443, 2004 Ga. App. LEXIS 1318 (2004), cert. denied, No. S05C0346, 2005 Ga. LEXIS 92 (Ga. Jan. 24, 2005).

Real estate tax transfer form not sufficient return. — Filing by the seller of property of a real estate tax transfer form that was not signed by the buyer, did not contain an oath as required by O.C.G.A. § 48-5-19, and did not contain section numbers of the parcels of property was not sufficient to serve as a return of real property. CC Office Assocs. v. DeKalb County, 219 Ga. App. 101, 464 S.E.2d 243, 1995 Ga. App. LEXIS 955 (1995).

Proof of agency required. — In performance of the commissioner's duty to examine tax returns before receiving the returns, a commissioner has discretion to reject returns signed by a person other than the owner, absent proof of

authorization. Southern Tax Consultants, Inc. v. Scott, 267 Ga. 347, 478 S.E.2d 126.

OPINIONS OF THE ATTORNEY GENERAL

Combined return of adjoining tracts. — Adjoining tracts of land, acquired at different times, can be combined and returned as one tract in a tax return. 1958-59 Ga. Op. Att'y Gen. 338.

Return of property lying on or across county line. — Owners of property lying on or across county lines must return to the tax receiver of each county the portion lying in such county. 1945-47 Ga. Op. Att'y Gen. 556; 1967 Op. Att'y Gen. No. 67-81.

Homestead exemption for land divided by county line. — If land is divided by a county line, the applicant for homestead exemption is entitled to the exemption in each of the counties in proportion to the value of property located therein, provided all other requirements for exemptions are met. 1967 Op. Att'y Gen. No. 67-81.

RESEARCH REFERENCES

Am. Jur. 2d.

72 Am. Jur. 2d, State and Local Taxation, § 624.

ALR.

Liability for taxes accruing after execution of contract for sale of land and before conveyance, 12 A.L.R. 411.

Conditional sales in relation to taxation, 110 A.L.R. 1499.

Sufficiency of description of property on tax rolls or in tax proceedings, by reference to map, plat, or survey, 137 A.L.R. 184.

48-5-15.1. Returns of real property and tangible personal property located on airport premises.

(a) All real property and tangible personal property shall be returned for taxation and subject to taxation as provided in this Code section where such property is located on the premises of an airport and:

(1) Such airport is divided by one or more county lines such that the airport is located in two or more counties; and

(2) Such airport is owned or operated by a local airport authority which authority functions on behalf of one of the counties within which the airport is located.

(b) For the purposes of this Code section, an authority shall be considered as functioning on behalf of a county where a majority of the members of the authority are members who meet any of the following descriptions:

(1) An authority member who is also a member of the county governing authority or an official or employee of the county;

(2) An authority member appointed by the county governing authority or appointed by an officer of the county;

(3) An authority member who is also a member of the governing

authority of a city within the county or an official or employee of a city within the county; or

(4) An authority member appointed by the governing authority of a city within the county or appointed by an officer of a city within the county.

(c) All such real property and tangible personal property located on the premises of an airport as described in subsections (a) and (b) of this Code section shall be returned for taxation to the tax commissioner or tax receiver of the county on behalf of which the airport authority functions. All such real and tangible personal property shall be subject to taxation by only the county on behalf of which the airport authority functions and not by any other county.

(d) Nothing in this Code section shall apply with respect to any airport certificated under Title 14, Part 139, of the Code of Federal Regulations or shall apply with respect to the taxation of commercial airliners which shall be subject to Article 12 of this chapter and other applicable provisions of law. With respect to aircraft which would otherwise be subject to the provisions of Code Section 48-5-16, the provisions of this Code section shall control over the provisions of Code Section 48-5-16. Except as specifically provided otherwise in the first sentence of this subsection, this Code section shall control over any other conflicting provisions of this chapter; but nothing in this Code section shall be construed as taking away the tax-exempt status of any property which is otherwise exempted by law from ad valorem taxation.

History.
Code 1981, § 48-5-15.1, enacted by Ga. L. 1995, p. 1008, § 1.

48-5-16. Return of tangible personal property in county where business conducted; exemptions; boats; aircraft.

(a) Any person who conducts a business enterprise upon real property, which is not taxable in the county in which the person resides or in which the person's office is located, shall return for taxation the tangible personal property of the business enterprise to the tax commissioner or tax receiver of the county in which is taxable the real property upon which the business enterprise is located or conducted.

(b) When the agent in this state of any person who is a resident of another state has on hand and for sale, storage, or otherwise merchandise or other tangible property, he shall return the property for taxation as provided in Code Section 48-5-12.

(c) This Code section shall not apply to public utilities and other companies required to make returns of their properties and franchises to the commissioner under Articles 9, 11, and 12 of this chapter.

(d)(1) As used in this subsection, the term:

(A) "Boat" means every description of watercraft used or capable of being used as a means of transportation on the water.

(B) "Functionally located" means located in a county in this state for 184 days or more during the immediately preceding calendar year. The 184 days or more requirement of this subsection shall mean the cumulative total number of days during such calendar year, which days may, but shall not be required to be, consecutive.

(2) Any person who owns tangible personal property in the form of a boat which is functionally located for recreational or convenience purposes in a county in this state other than the county in which such person maintains a permanent legal residence shall return such property for taxation to the tax commissioner or tax receiver of the county in which such property is functionally located. Tangible personal property of a person which does not meet the 184 days or more requirement provided for in this subsection shall be returned for taxation in the manner provided for in Code Section 48-5-11.

(e)(1) As used in this subsection, the term:

(A) "Aircraft" means any contrivance used or designed for navigation through the air; provided, however, that such term does not include commercial airliners.

(B) "Primary home base" means an airport where an aircraft is principally hangared or tied down and out of which its flights normally originate.

(2) Any person who owns tangible personal property in the form of an aircraft which has its primary home base in a county in this state other than the county in which such person maintains a permanent legal residence shall return such property for taxation to the tax commissioner or tax receiver of the county in which such primary home base is located. Such aircraft which does not have a primary home base in a county of this state other than the county in which the owner maintains a permanent legal residence shall be returned for taxation in the manner provided for in Code Section 48-5-11.

History.

Ga. L. 1855-56, p. 275, § 1; Code 1863, §§ 756, 757, 759; Code 1868, §§ 823, 824, 826; Code 1873, §§ 827, 828, 830; Code 1882, §§ 827, 828, 830; Civil Code 1895, §§ 816, 818, 826; Ga. L. 1903, p. 15, § 1; Ga. L. 1904, p. 54, § 1; Civil Code 1910, §§ 1064, 1066, 1069, 1075; Ga. L. 1927, p. 56, § 8; Code 1933, §§ 92-6204, 92-6207, 92-6208, 92-6209; Ga. L. 1935, p. 11, § 8; Code 1933, § 91A-1012, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1992, p. 2480, § 1; Ga. L. 1994, p. 1776, § 1; Ga. L. 1995, p. 10, § 48.

Law reviews.

For comment on Collins v. Mills, 198 Ga. 18, 30 S.E.2d 866 (1944), see 7 Ga. B. J. 357 (1945).

JUDICIAL DECISIONS

Subsection (b) is not intended to create tax exemption. — Former Code 1933, § 92-101 (see now O.C.G.A. § 48-5-3) and the definition of "personal property" in former Code 1933, § 92-102 (see now O.C.G.A. § 48-1-2) declare in effect that the kinds of property mentioned in former Code 1933, § 92-6208 (see now O.C.G.A. § 48-5-16) shall be taxed in Georgia if within the state's jurisdiction. Manifestly § 92-6208 was not intended to create an exception to taxability or to exempt property of any kind that is otherwise taxable, merely because, if belonging to a nonresident, an agent does not have the property "on hand" in this state. Suttles v. Northwestern Mut. Life Ins. Co., 193 Ga. 495, 19 S.E.2d 396, 1942 Ga. LEXIS 446 (1942).

Requirement of subsection (e) of O.C.G.A. § 48-5-16 to return for taxation an aircraft in the county in which the aircraft has the aircraft's primary home base does not effectively create a prohibited separate class of tangible property in violation of the constitutional requirement for uniformity of taxation. Rogers v. DeKalb County Bd. of Tax Assessors, 269 Ga. 31, 495 S.E.2d 33.

Requirements as to permanence of business location. — Personal property is ordinarily taxed in the county where the owner resides. In order for personal property to acquire a situs for taxation in some other county, it must be connected with some business enterprise that is situated more or less permanently in a different county as distinguished from an enterprise whose location is merely transitory or temporary. Joiner v. Pennington, 143 Ga. 438, 85 S.E. 318, 1915 Ga. LEXIS 477 (1915); Collins v. Mills, 198 Ga. 18, 30 S.E.2d 866, 1944 Ga. LEXIS 344 (1944) (for comment, see)7 Ga. B.J. 357 (1945).

What constitutes property used in a business enterprise. — When the contractor agreed in writing to maintain certain vending machines in operation in a given county, the location of such machines in the county was such a business enterprise of the contractor as to cause the personal property thus located in that county to be subject to ad valorem taxes in that county. Macon Coca-Cola Bottling Co. v. Evans, 214 Ga. 1, 102 S.E.2d 547, 1958 Ga. LEXIS 319 (1958).

Apportionment of ad valorem taxes not required. — County was not required to apportion ad valorem taxes under O.C.G.A. § 48-5-543 since the aircraft had not been used for commercial purposes in the tax year and the owner was not an airline company. White Cloud Charter, Inc. v. DeKalb County Bd. of Tax Assessors, 238 Ga. App. 805, 520 S.E.2d 708.

Evidence of "primary home base" of aircraft. — Even though an aircraft owner's principal place of business was in another state, the aircraft at issue was principally hangared at an airport within the county as shown by the number of days the aircraft was located at the airport and the number of flights originating there. White Cloud Charter, Inc. v. DeKalb County Bd. of Tax Assessors, 238 Ga. App. 805, 520 S.E.2d 708.

O.C.G.A. § 48-5-16 does not require that the aircraft itself be physically present in a county on the first day of the calendar year. White Cloud Charter, Inc. v. DeKalb County Bd. of Tax Assessors, 238 Ga. App. 805, 520 S.E.2d 708.

Consigned merchandise owned by out-of-state residents. — State ad valorem tax was properly applied to an agent for consigned merchandise owned by out-of-state residents but offered for sale in the state by the agent, notwithstanding that such jewelry customarily remained in the state only for brief periods. Brown & Co. Jewelry v. Fulton County Bd. of Assessors, 248 Ga. App. 651, 548 S.E.2d 404, 2001 Ga. App. LEXIS 362 (2001), cert. denied, No. S01C1038, 2001 Ga. LEXIS 659 (Ga. Sept. 7, 2001).

Issue of taxability barred by collateral estoppel. — County board of tax assessors was collaterally estopped from re-litigating the issue of whether funeral vaults sold through pre-need burial packages but stored by their seller

in the county were subject to ad valorem taxes under O.C.G.A. § 48-5-16 by a 2001 consent decree between the seller and the assessors that stated the vaults were not taxable. Morgan County Bd. of Tax Assessors v. Vantage Prods. Corp., 323 Ga. App. 823, 748 S.E.2d 468, 2013 Ga. App. LEXIS 753 (2013).

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Construing former Code 1933, §§ 92-6202 and 92-6208 (see now O.C.G.A. §§ 48-5-10 and 48-5-16) together, a dealer engaged in business in one county on January 1 who, subsequent to that date removes the dealer's business to another county, is liable under § 92-6208 to the first county for ad valorem taxes on all personal property of whatever kind, connected with or used in such business. The fact that the property was moved from the county after January 1 would not relieve the owner from taxation in the county in which the property was located on January 1. 1958-59 Ga. Op. Att'y Gen. 350.

Owner's residence is not tax situs for business merchandise if business permanently located elsewhere. — Merchandise used in connection with a business permanently located in a county is taxable in that county, regardless of the owner's residence. 1945-47 Ga. Op. Att'y Gen. 558.

Business location must be more or less permanent, not merely transitory or temporary. — Property which is temporarily located in a county other than that of the owner's residence, even though used to carry on a business, does not come within the exception provided for in this section and is taxable in the county in which its owner resides, when the property is moved from place to place according to where the owner decides that its operation would be most profitable to the owner. 1945-47 Ga. Op. Att'y Gen. 558.

Personal property is ordinarily taxed in the county where the owner resides. In order for personal property to acquire a situs for taxation in some other county, it must be connected with some business enterprise that is situated more or less permanently in a different county, as distinguished from an enterprise whose location is merely transitory or temporary. 1954-56 Ga. Op. Att'y Gen. 683; 1958-59 Ga. Op. Att'y Gen. 350.

Farm equipment located on a farm outside the municipality where the owner resides is taxable as personal property, but not by the municipality. 1954-56 Ga. Op. Att'y Gen. 681.

Situs for taxation of vehicle used in business. — Trucks which are used for business purposes elsewhere than the owner's place of residence, and which never enter the city limits but do not pay municipal taxes elsewhere, would be taxed at the residence of the owner unless such property acquires a taxable situs in some other county in connection with some business enterprise that is situated more or less permanently in certain counties. 1954-56 Ga. Op. Att'y Gen. 681.

When property is connected with some trade or business and that trade or business is situated more or less permanently in another county, then the tax situs is in the county where the business is situated. The fact that a vehicle is not in the county on January 1 does not cause the vehicle to be exempt from taxation. 1965-66 Op. Att'y Gen. No. 65-113.

Tax situs of vessels owned by navigation company. — Taxable situs of a vessel owned by a navigation company is not determined by the place where the owner may have paid taxes nor by the place where the vessel is registered, but is determined by the domicile of the owner. 1958-59 Ga. Op. Att'y Gen. 350 (See also subsection (d) added in 1992).

State does not have a special tax upon business inventories, but such property is taxable under the general laws relating to ad valorem taxation. 1952-53 Ga. Op. Att'y Gen. 186.

RESEARCH REFERENCES

Am. Jur. 2d.

72 Am. Jur. 2d, State and Local Taxation, § 624.

ALR.

Situs for property taxation as between different states or counties, of personal property, or interests therein, held by trustees, executors, or administrators, 67 A.L.R. 393; 127 A.L.R. 379; 172 A.L.R. 341.

License or excise tax on merchandise brokers or persons performing similar functions as affected by commerce clause, 155 A.L.R. 239.

Domicile of debtor within state, or location therein of real property securing debt, as giving debt to nonresident a situs within state for purpose of property taxation, 160 A.L.R. 788.

48-5-17. Proceedings to determine county entitled to return and payment; collection pending determination; commissions.

(a)(1) If a county claims to be entitled to the return and taxation of any property returned or about to be returned in another county, the county claiming to be so entitled may apply to the superior court of the county in which the property has been or is about to be returned, in a petition to which the taxpayer and all the counties claiming the taxes shall be made parties, for direction and judgment as to which county is entitled under the law to the return and taxes.

(2) If a county claims to be entitled to the return and taxation of any property returned or about to be returned in another county by any person to the commissioner, the county disputing the return may apply to the superior court of the county in which the taxpayer has located the property in the return to the commissioner for direction and judgment as to which county under the law is entitled to the return and taxes. All counties claiming the taxes, the taxpayer, and the commissioner shall be made parties to the action.

(3) The proceedings under this Code section shall be the same in all respects as in other actions seeking equitable relief except that the petition shall be triable at the first term of the court and, as in other cases, shall be reviewed on appeal.

(4) This subsection shall not affect the law relating to returns to be made to the commissioner other than by providing a venue for determining a dispute on tax rights as set forth in this subsection.

(b) If any officer having charge of the fiscal affairs of the county bringing the action can make the affidavit required by Code Section 9-10-51, the judge of the superior court before whom the action is brought shall change the venue to an adjoining county. The losing party in the contest shall pay all costs.

(c) The taxes due the state and the undisputed taxes due the counties contesting shall not be held up by an action brought pursuant to this

Code section, and the restraint shall apply only to the taxes in dispute under the issue, which shall be plainly set forth in the petition.

(d) Pending the determination of the case, accruing taxes shall be collected by the officers of the county to which the return has been made by the taxpayer. Should another county be found to be entitled to the taxes, judgment shall be entered in favor of the county entitled to the taxes and against the county collecting the taxes for the portion of the taxes paid into the treasury of the collecting county.

(e) Should the amount of taxes recovered by an entitled county for any year exceed the amount that would have been assessed for that year on the return as made by the taxpayer had the return been made in the county entitled, the excess shall be returned to the taxpayer. Should the amount of taxes recovered fall short, execution shall be issued, as in the case of defaulting taxpayers, by the officer of the county entitled.

(f) No commission shall be paid to the tax receiver, tax collector, or tax commissioner on state and county taxes collected when an action concerning the collection is pending as provided in this Code section. The county's portion of the tax, together with commissions on state and county taxes allowed the tax receiver, tax collector, or tax commissioner shall be paid into the county treasury of the county collecting to await the outcome of the litigation. Upon the final determination, the officers of the county determined to be entitled to the taxes shall receive their legal commissions. The state taxes collected pending the action shall be forwarded to the commissioner by the officer collecting as though no such action were pending. Commissions allowed on state taxes shall be paid into the county treasury of the county collecting to await the determination of the action, as provided in this Code section.

History.

Ga. L. 1903, p. 16, §§ 3, 4; Civil Code 1910, §§ 1079, 1080, 1081; Ga. L. 1913, p. 38, § 1; Code 1933, §§ 92-6218, 92-6219, 92-6220, 92-6221, 92-6222, 92-6223, 92-6224; Ga. L. 1946, p. 726, § 28; Code 1933, § 91A-1025, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2016, p. 883, § 3-12/HB 927.

Editor's notes.

Ga. L. 2016, p. 883, § 1-1/HB 927, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Appellate Jurisdiction Reform Act of 2016.'"

Ga. L. 2016, p. 883, § 6-1/HB 927, not codified by the General Assembly, provides, in part, that: "Part III of this Act shall become effective on January 1, 2017, and shall apply to cases in which a notice of appeal or application to appeal is filed on or after such date."

Law reviews.

For article on the 2016 amendment of this Code section, see 33 Ga. St. U. L. Rev. 205 (2016).

JUDICIAL DECISIONS

County not required to claim county is entitled to return and taxation. — Word "may" in the provision in this statute that a county may apply to the superior court should not be construed as having the force of "shall." That provision confers the right upon a county, when it is about to be deprived of taxes rightfully payable to it, to have that question settled as between itself and another county. It should not be so construed as to put it in the power of the landowner and taxpayer to force a county into litigation for the purpose of determining whether it is entitled to such taxes. Williams v. Wilkinson County, 146 Ga. 601, 91 S.E. 571, 1917 Ga. LEXIS 396 (1917).

RESEARCH REFERENCES

ALR.

Situs for property taxation as between different governmental units within state of personal property or interests therein held by trustees, executors, or administrators, 129 A.L.R. 273.

Constitutionality, construction, and application of statutes providing for impleading other taxing units in suit by taxing units for foreclosure of tax lien and the sale of the property free from lien of taxes due to such impleaded units, 134 A.L.R. 1286.

48-5-18. Time for making tax returns.

Each tax commissioner and tax receiver shall open his or her books for the return of real or personal property ad valorem taxes on January 1 and shall close those books on April 1 of each year.

History.

Ga. L. 1913, p. 123, § 1; Code 1933, § 92-6201; Ga. L. 1945, p. 424, § 1; Ga. L. 1953, Nov.-Dec. Sess., p. 270, § 1; Code 1933, § 91A-1013, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 24; Ga. L. 1979, p. 538, § 1; Ga. L. 1981, p. 594, § 1; Ga. L. 1981, p. 1857, § 10; Ga. L. 1982, p. 537, § 1; Ga. L. 1982, p. 575, §§ 1, 8; Ga. L. 1982, p. 999, §§ 1, 3; Ga. L. 1982, p. 1108, § 1; Ga. L. 1983, p. 1849, § 1; Ga. L. 1984, p. 22, § 48; Ga. L. 1991, p. 6, § 1; Ga. L. 1991, p. 303, § 2; Ga. L. 1992, p. 1188, § 1; Ga. L. 1994, p. 237, § 2; Ga. L. 1996, p. 778, § 1; Ga. L. 2002, p. 1313, § 1; Ga. L. 2010, p. 1104, § 3-1/SB 346.

Law reviews.

For article, "Procedure and Problems in Georgia Ad Valorem Tax Appeals," see 26 Ga. St. B.J. 98 (1990).

JUDICIAL DECISIONS

City and county could not close their books prior to April 1 because neither Ga. Const. 1983, Art. IX, Sec. III, Para. I(a) nor provisions of the city charter satisfied the requirement of former subsection (e) of O.C.G.A. § 48-5-18 pertaining to the operation of a joint tax receiving or assessing program. Board of Tax Assessors v. Tom's Foods, Inc., 264 Ga. 309, 444 S.E.2d 771, 1994 Ga. LEXIS 467 (1994).

RESEARCH REFERENCES

Am. Jur. 2d.

72 Am. Jur. 2d, State and Local Taxation, § 625.

48-5-19. Signature and declaration of persons making returns of taxable property.

(a) Each return of taxable property shall be signed by or for the person responsible for filing the return and shall contain or be verified by the following written declaration:

"I do solemnly swear that I have carefully read (or have heard read) and have duly considered the questions propounded in the foregoing tax list, and that the value placed by me on the property returned, as shown by the list, is the true market value thereof; and I further swear that I returned, for the purpose of being taxed thereon, every species of property that I own in my own right or have control of either as agent, executor, administrator, or otherwise; and that in making this return, for the purpose of being taxed thereon, I have not attempted either by transferring my property to another or by any other means to evade the laws governing taxation in this state. I do further swear that in making this return I have done so by estimating the true worth and value of every species of property contained therein."

(b) The fact that a person appears to have signed a return of taxable property on behalf of a person required to file a return shall be prima-facie evidence that the person was authorized to sign on behalf of such person.

(c) Any person who shall make any false statement in any return of taxable property shall be guilty of false swearing, whether or not an oath is actually administered to him or her, if such statement shall purport to be under oath. On conviction of such offense, such person shall be punished as provided by Code Section 16-10-71.

(d)(1) As used in this subsection, the term "digital signature" means a digital or electronic method executed or adopted by a party with the intent to be bound by or to authenticate a record, which is unique to the person using it, is capable of verification, is under the sole control of the person using it, and is linked to data in such a manner that if the data are changed the digital or electronic signature is invalidated.

(2) Notwithstanding any provision of law to the contrary, the commissioner is authorized to promulgate rules and regulations setting forth the procedure for satisfying the signature requirement for returns whether by electronic digital signature, voice signature, or other means, so long as appropriate security measures are implemented which assure security and verification of the signature procedure.

History. Ga. L. 1884-85, p. 28, § 3; Ga. L. 1886, p. 24, § 2; Civil Code 1895, § 834; Ga. L. 1909, p. 36, § 16; Civil Code 1910, § 1091;

Code 1933, § 92-6216; Ga. L. 1964, p. 333, § 2; Code 1933, § 91A-1014, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2000, p. 1360, § 1.

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Section contemplates that the taxpayer must return every species of property which the taxpayer controls as agent or trustee. Douglas v. McCurdy, 154 Ga. 814, 115 S.E. 658, 1923 Ga. LEXIS 403 (1923).

Oath is necessary part of return. — Oath prescribed by this statute is a part of the return of the taxpayer, and is necessary to make the return complete or of any probative value. McLendon v. Dunlap Hdwe. Co., 3 Ga. App. 206, 59 S.E. 718, 1907 Ga. App. LEXIS 597 (1907).

Filing by the seller of property of a real estate tax transfer form that was not signed by the buyer, did not contain an oath as required by O.C.G.A. § 48-5-19, and did not contain section numbers of the parcels of property was not sufficient to serve as a return of real property. CC Office Assocs. v. DeKalb County, 219 Ga. App. 101, 464 S.E.2d 243, 1995 Ga. App. LEXIS 955 (1995).

Manner in which oath to be made. — Acts of the administering officer and of the affiant must be concurrent, and must conclusively indicate that it was the purpose of the one to administer and the other to take the oath in order to make a valid affidavit. Gruber v. Fulton County, 111 Ga. App. 71, 140 S.E.2d 552, 1965 Ga. App. LEXIS 882 (1965).

In order to make an affidavit, there must be present the officer and affiant and the paper, and there must be something done which amounts to the administration of an oath. The affiant must swear to the affidavit, and the fact of the affiant's swearing must be certified by a proper officer. Gruber v. Fulton County, 111 Ga. App. 71, 140 S.E.2d 552, 1965 Ga. App. LEXIS 882 (1965).

Presumption that taxpayer made oath as to return. — When the taxpayer was required to make an oath to the return, in the absence of any showing to the contrary, it must be presumed that the taxpayer did so. Gruber v. Fulton County, 111 Ga. App. 71, 140 S.E.2d 552, 1965 Ga. App. LEXIS 882 (1965).

Effect of oath administered by or affidavit subscribed before unqualified person. — Since it is required by this statute that the oath be administered by and the affidavit subscribed before the tax commissioner, the attempted performance by anyone else will be without force or validity unless such person were authorized by law to do it. Gruber v. Fulton County, 111 Ga. App. 71, 140 S.E.2d 552, 1965 Ga. App. LEXIS 882 (1965).

An attempted oath administered by one who is personally not qualified to administer the oath is abortive and in effect no oath. Gruber v. Fulton County, 111 Ga. App. 71, 140 S.E.2d 552, 1965 Ga. App. LEXIS 882 (1965).

Requirement that oath be statement by taxpayer rather than tax official. — Form of the oath prescribed by this statute and used in the printed form on the returns requires that the person making the return swear that "the value placed by me" — not that placed by the tax officials — "is the true market value thereof." Otherwise the returns are hearsay, without probative value, and should be excluded. Gruber v. Fulton County, 111 Ga. App. 71, 140 S.E.2d 552, 1965 Ga. App. LEXIS 882 (1965).

Proof of agency required. — In performance of the commissioner's duty to examine tax returns before receiving the returns, a commissioner has discretion to reject returns signed by a person other than the owner, absent proof of authorization. Southern Tax Consultants, Inc. v. Scott, 267 Ga. 347, 478 S.E.2d 126.

Effect of writing without valid jurat. — In the absence of a valid jurat, a writing in the form of an affidavit has no force or validity, and amounts to nothing, whether standing alone or when construed in connection with other

evidence. Gruber v. Fulton County, 111 Ga. App. 71, 140 S.E.2d 552, 1965 Ga. App. LEXIS 882 (1965).

Underpayment of taxes based on automatic tax return. — Following a bench trial, an order was issued establishing the 1997 fair market value of the taxpayer's property at a value of $4,709,000.00, which was an amount greater than the value set by the board of equalization; however, when the taxpayer paid taxes in 1997, 1998, and 1999, the taxpayer did so based on the board of equalization's 1997 valuation and because the 1997 value of the taxpayer's property was finally determined to be $4,709,000.00, the taxpayer automatically returned the property in 1998 and 1999 at that value and, thus, the taxpayer underpaid the taxpayer's taxes for the 1997, 1998, and 1999 tax years and the tax assessors were entitled to a summary judgment finding that the taxpayer had underpaid the taxpayer's taxes and owed additional sums. Pine Pointe Hous., L. P. v. Bd. of Tax Assessors, 269 Ga. App. 855, 605 S.E.2d 443, 2004 Ga. App. LEXIS 1318 (2004), cert. denied, No. S05C0346, 2005 Ga. LEXIS 92 (Ga. Jan. 24, 2005).

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Requirement that oath state "fair market value" rather than "market value" or "book value." — Since the form of the oath requires that the taxpayer swear to the fair market value of the property returned, an oath which departs from this statutory form by allowing the taxpayer to swear to the book value of the taxpayer's property is not authorized by law; "market value" and "book value" are not synonymous. 1970 Op. Att'y Gen. No. U70-115.

48-5-20. Effect of failure to return taxable property; acquisition of real property by transfer; penalty for failure to make timely return.

(a)(1) Any taxpayer of any county that returned or paid taxes in the county for the preceding tax year and that fails to return property for taxation for the current tax year as required by this chapter shall be deemed to have returned for taxation the same property as was returned or deemed to have been returned in the preceding tax year at the same valuation as the property was finally determined to be subject to taxation in the preceding year. Each such taxpayer shall also be deemed to have claimed the same homestead exemption and personal property exemption as allowed in the preceding year.

(2) Any taxpayer of any county that acquired real property by transfer in the preceding tax year for which a properly completed real estate transfer tax form has been filed and the real estate transfer tax required under Article 1 of Chapter 6 of this title has been paid, and where no subdivision of the real property has occurred at the time of transfer, shall be deemed to have returned for taxation the same real property as was acquired by transfer at the same valuation as the real property was finally determined to be subject to taxation in the preceding year. Nothing in this paragraph shall be construed to relieve the taxpayer of the responsibility to file a new timely claim for a homestead exemption and personal property exemption or to file a

timely return where improvements have been made to the real property since it was last returned for taxation.

(b) Any penalty prescribed by this title or by any other law for the failure of a taxpayer to return property for taxation within the time provided by law shall apply only to the property:

(1) Which the taxpayer did not return prior to the expiration of the time for making returns; and

(2) Which the taxpayer has acquired since filing the taxpayer's most recent tax return or which represents improvements on existing property since such return was filed.

(c) A taxpayer's failure to return real property or whether or not such real property was deemed returned for taxation shall not affect such taxpayer's right to appeal pursuant to Code Section 48-5-311.

History.

Code 1933, § 92-6202.1, enacted by Ga. L. 1969, p. 960, § 1; Ga. L. 1970, p. 278, § 1; Code 1933, § 91A-1015, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1992, p. 1643, § 2; Ga. L. 1994, p. 237, § 2; Ga. L. 2019, p. 656, § 1/HB 183.

Law reviews.

For article, "Procedure and Problems in Georgia Ad Valorem Tax Appeals," see 26 Ga. St. B.J. 98 (1990).

For survey article on real property law for the period from June 1, 2002 to May 31, 2003, see 55 Mercer L. Rev. 397 (2003).

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Failure to itemize specific property interests. — After an owner of mineral rights entered into an agreement with the county where the property was located to pay lump-sum taxes without itemizing the specific property interests, the agreement did not meet the requirements of O.C.G.A. § 48-5-15(c), nor did it constitute payment of taxes due within the meaning of O.C.G.A. § 44-5-168. Georgia Marble Co. v. Whitlock, 260 Ga. 350, 392 S.E.2d 881, 1990 Ga. LEXIS 259 (1990), cert. denied, 498 U.S. 1026, 111 S. Ct. 675, 112 L. Ed. 2d 667, 1991 U.S. LEXIS 9 (1991).

O.C.G.A. § 48-5-20 does not empower a county board of tax assessors to reassess property that has been automatically returned and the taxes paid as the equivalent of unreturned property, even though the property owner violated an affirmative duty to make an actual return. Cobb County Bd. of Tax Assessors v. Morrison, 249 Ga. App. 691, 548 S.E.2d 624, 2001 Ga. App. LEXIS 252 (2001).

Failure to make return of improvements. — Automatic refiling of a prior return does not exempt property owners from the duty to make a return of any improvements or subdivision of the property; however, such provision does not empower a county board of tax assessors to treat such under returned fair market value as unreturned because no statute expressly grants such power. Cobb County Bd. of Tax Assessors v. Morrison, 249 Ga. App. 691, 548 S.E.2d 624, 2001 Ga. App. LEXIS 252 (2001).

Failure to indicate fair market value on return. — When a taxpayer sold improvements on the taxpayer's property, then filed a return in which the taxpayer left blank the area for "market value," it was not entitled to a refund under O.C.G.A. § 48-5-380, as under O.C.G.A. § 48-5-6, returns had to state fair market value; a county was not required to interpret the taxpayer's silence on market value as a declaration that there was no value, and under O.C.G.A. § 48-5-20(a)(1), a taxpayer who failed to return taxable property in a given year was deemed to have returned

the property at the same valuation as applied the preceding year. Int'l Auto Processing, Inc. v. Glynn County, 287 Ga. App. 431, 651 S.E.2d 535, 2007 Ga. App. LEXIS 990 (2007).

Valuation of property not based on valuation of Form PT-61. — In connection with the purchase of real property at a tax sale, the value of the property shown on the Form PT-61 did not trump the county tax commissioner's valuation because the proper value to be assigned to the property was the same valuation as in prior years, not the amount shown on Form PT-61. In re Powell-Garvey Co., No. 05-43338, 2006 Bankr. LEXIS 5095 (Bankr. S.D. Ga. June 13, 2006).

Right of arbitration as to property automatically returned. — If property is automatically returned under this statute, and no change is made by the tax assessors, then there is no legal right to arbitration. Security-Morosgo Apts., Inc. v. City of Atlanta, 230 Ga. 117, 196 S.E.2d 17, 1973 Ga. LEXIS 829 (1973).

Document filed as a "class return" by taxpayers is ineffective, since there are no provisions of law for such a return. The members of that class of taxpayers who have the remedy of class arbitration and who do not file individual returns within the time provided by law are deemed to have returned their property at the assessment placed upon the property for the previous year. Callaway v. Carswell, 240 Ga. 579, 242 S.E.2d 103, 1978 Ga. LEXIS 715 (1978).

Return held improper. — Trial court erred in awarding a property owner $7,515.00 in attorney fees under O.C.G.A. § 48-5-311(g)(4)(B)(ii) against a county board of tax assessors after a jury valued the property in question substantially lower than the board's valuation; the record did not support the trial court's conclusion that the property was returned for taxation by operation of law pursuant to O.C.G.A. § 48-5-20(a)(2), and the board did not waive the board's objection to the fees because the trial court did not hold a hearing on the issue of the attorney's fees, O.C.G.A. § 9-11-46(a), and the board therefore did not have an opportunity to object to the award. Fulton County Bd. of Tax Assessors v. Butner, 258 Ga. App. 68, 573 S.E.2d 100, 2002 Ga. App. LEXIS 1354 (2002).

Underpayment of taxes based on automatic tax return. — Following a bench trial, an order was issued establishing the 1997 fair market value of the taxpayer's property at a value of $4,709,000.00, which was an amount greater than the value set by the board of equalization; however, when the taxpayer paid taxes in 1997, 1998, and 1999, the taxpayer did so based on the board of equalization's 1997 valuation and because the 1997 value of the taxpayer's property was finally determined to be $4,709,000.00, the taxpayer automatically returned the property in 1998 and 1999 at that value and thus, the taxpayer underpaid the taxpayer's taxes for the 1997, 1998, and 1999 tax years and the tax assessors were entitled to summary judgment finding that the taxpayer had underpaid the taxpayer's taxes and owed additional sums. Pine Pointe Hous., L. P. v. Bd. of Tax Assessors, 269 Ga. App. 855, 605 S.E.2d 443, 2004 Ga. App. LEXIS 1318 (2004), cert. denied, No. S05C0346, 2005 Ga. LEXIS 92 (Ga. Jan. 24, 2005).

Tax return not required. — As a taxpayer did not pay the prior year's taxes, the taxes paid by the taxpayer for the prior year were deemed the taxpayer's tax return for the tax year under O.C.G.A. § 48-5-20(a)(2), so the taxpayer was not required to file a separate tax return on the taxpayer's property, and the taxpayer's late return was a nullity; therefore, upon the taxpayer's successful appeal of an assessment of the taxpayer's property, an award of costs and attorneys fees was mandatory under O.C.G.A. § 48-5-311(g)(4)(B)(ii). Simmons v. Bd. of Tax Assessors, 268 Ga. App. 411, 602 S.E.2d 213, 2004 Ga. App. LEXIS 932 (2004), cert. denied, No. S04C1950, 2004 Ga. LEXIS 1071 (Ga. Nov. 22, 2004).

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Applicability to claims to the increased homestead exemption. — General Assembly did not intend this statute to apply to persons claiming the

increased homestead exemption provided for in Ga. Const. 1945, Art. VII, Sec. I, Para. IV (see now Ga. Const. 1983, Art. VII, Sec. II, Para. I-IV); this statute does not eliminate the requirement that persons claiming the increased homestead exemption file an annual application for such exemption. 1969 Op. Att'y Gen. No. 69-236; 1969 Op. Att'y Gen. No. 69-459.

RESEARCH REFERENCES

Am. Jur. 2d.
72 Am. Jur. 2d, State and Local Taxation, § 625.

48-5-21. Return and collection of taxes on property unlawfully exempted.

Each tax receiver and tax commissioner shall have all property which is required by law to be returned for taxes, whether or not exempted by the county authorities, returned for taxation. The tax collector or tax commissioner shall collect the taxes due upon the property.

History.
Ga. L. 1889, p. 35, § 2; Civil Code 1895, § 765; Civil Code 1910, § 1001; Code 1933, § 92-6203; Code 1933, § 91A-1016, enacted by Ga. L. 1978, p. 309, § 2.

48-5-22. Penalty for failing to have returned for taxation and to collect taxes on property unlawfully exempted.

(a) It shall be unlawful for any tax receiver or tax commissioner to fail to:

(1) Have returned for taxation all property required by law to be returned for taxation pursuant to Code Section 48-5-21; or

(2) Collect taxes assessed on all property pursuant to Code Section 48-5-21.

(b) Any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor.

History.
Ga. L. 1889, p. 35, § 3; Penal Code 1895, § 275; Penal Code 1910, § 279; Code 1933, § 92-9919; Code 1933, § 91A-9911, enacted by Ga. L. 1978, p. 309, § 2.

RESEARCH REFERENCES

Am. Jur. 2d.
72 Am. Jur. 2d, State and Local Taxation, § 769 et seq.

48-5-23. Collection and payment of taxes on tangible property in installments; authorization; alternate procedure.

(a)(1) The governing authority of each county and of each municipal corporation is authorized to provide by appropriate resolution or ordinance for the collection and payment of ad valorem taxes, fees, or special assessments on tangible property other than motor vehicles in installments. If the governing authority of any county or municipal corporation elects to provide for installment payments, any ad valorem taxes, fees, or special assessments due the state, county, and county board of education or the municipality and any municipal board of education which are levied upon tangible property other than motor vehicles shall become due and payable as provided in this Code section.

(2) The resolution or ordinance required pursuant to this subsection shall be adopted by the governing authority of the county or municipal corporation on or before December 31 for the next succeeding tax year. Any governing authority of a county or municipal corporation electing to collect such taxes, fees, or special assessments in installments shall file with the commissioner a certified copy of the appropriate resolution or ordinance within ten days of its adoption. The resolution or ordinance shall continue in full force and effect in all subsequent tax years unless repealed by the governing authority of the respective county or municipal corporation, in which case the governing authority shall notify the commissioner of the repeal within ten days after such action is taken.

(b) Notwithstanding that the governing authority of any county or municipal corporation, pursuant to this Code section, provides for the collection and payment of ad valorem taxes, fees, or special assessments on tangible property other than motor vehicles in installments based on the fraction of such taxes, fees, or special assessments levied on the property for the preceding tax year, the governing authority of any county or municipal corporation is further authorized to provide by appropriate resolution or ordinance for the collection and payment of ad valorem taxes, fees, or special assessments on tangible property other than motor vehicles in installments with a single billing for the current tax year based on the current final tax digest as authorized by the commissioner pursuant to Code Section 48-5-345, or on a temporary digest authorized by the judge of superior court pursuant to Code Section 48-5-310. The resolution or ordinance required by this subsection shall be adopted by the governing authority of the county or municipal corporation on or before December 31 for the next succeeding tax year. The resolution or ordinance shall be filed with the commissioner and shall continue in full force and effect as provided in subsection (a) of this Code section. Notification of the repeal of the

resolution or ordinance shall be made as provided in subsection (a) of this Code section.

(c) The resolution or ordinance providing for such taxes, fees, or special assessments due and payable in installments on tangible property shall establish the due dates for the installments.

(d) Nothing contained in this Code section shall be construed to impose any liability for the payment of any ad valorem taxes, fees, or special assessments upon any person for property which was not owned on January 1 of the applicable tax year.

(e)(1) This Code section shall apply to all persons required by law to make annual tax returns of all their property in this state to the commissioner.

(2) The governing authority of each county and of each municipal corporation is authorized to collect taxes, fees, or special assessments in accordance with the installment provisions of subsection (c) of this Code section even though no assessment has been placed on the subject tangible property for the tax year for which the installments are being collected.

(3) Taxes, fees, or special assessments not paid when due under any installment authorized pursuant to this Code section shall bear interest at the rate provided by law for unpaid ad valorem taxes from the due date of any such installment. Any taxes, fees, or special assessments not paid in full by December 20 or 60 days from the date of billing, whichever comes later, of any year shall be subject to the penalties and interest provided by law.

(f) The governing authority of each county may by ordinance or resolution provide for an earlier due date for the final installment authorized by this Code section. When the governing authority elects to establish an earlier due date, the final installment shall bear interest at the rate specified in Code Section 48-2-40 from the earlier date so established.

History.

Ga. L. 1974, p. 972, §§ 1-5; Ga. L. 1977, p. 622, §§ 1-5; Code 1933, § 91A-1028, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, §§ 28, 29; Ga. L. 1980, p. 10, § 12; Ga. L. 1996, p. 744, § 1; Ga. L. 2010, p. 1104, § 9-1/SB 346.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1999, "48-2-40" was substituted for "48-5-40" in the last sentence of subsection (f).

OPINIONS OF THE ATTORNEY GENERAL

Taxpayers who return their property for valuation to the commissioner are subject to this statute, which allows local governments

to establish installment payments of ad valorem property taxes. 1975 Op. Att'y Gen. No. 75-112.

RESEARCH REFERENCES

Am. Jur. 2d.

72 Am. Jur. 2d, State and Local Taxation, § 727, 728.

ALR.

Failure of property owner to make formal election to avail himself of privilege of paying taxes or special assessment in installments, 140 A.L.R. 1442.

48-5-24. Payment of taxes to county in which returns are made; installment payments, interest, and penalty on delinquent tax payments in certain counties; executions.

(a) All resident and nonresident persons who are required or directed by law to return any property for taxation to a tax commissioner or tax receiver shall pay the taxes on the property to the county in which the property is required or directed by law to be returned.

(b) In all counties having a population of not less than 690,000 nor more than 800,000 according to the United States decennial census of 2010 or any future such census, the taxes shall become due in two equal installments. One-half of the taxes shall be due and payable on July 1 of each year and shall become delinquent if not paid by August 15 in each year. The remaining one-half of the taxes shall be due and payable on October 1 of each year and shall become delinquent if not paid by November 15 of each year. A penalty not to exceed 5 percent of the amount of each installment shall be added to each installment that is not paid before the installment becomes delinquent. Intangible taxes in one installment shall become due on October 1 of each year and shall become delinquent if not paid by December 31. A penalty not to exceed 5 percent of the amount of intangible taxes due shall be added to any installment that is not paid before it becomes delinquent. All taxes remaining unpaid as of the close of business on December 31 of each year shall bear interest at the rate specified in Code Section 48-2-40, but in no event shall an interest payment for delinquent taxes be less than $1.00. The tax collectors shall issue executions for delinquent taxes, penalties, and interest against each delinquent taxpayer in their respective counties. Notwithstanding the foregoing, the governing authority of any county subject to this subsection may change the tax due dates provided in this subsection if the county's tax digest is not approved pursuant to Code Section 48-5-271 before July 1 of any year.

(c)(1) All ad valorem taxes, fees, service charges, and assessments owed by any taxpayer to any county in this state having a population of 900,000 or more according to the United States decennial census of 2010 or any future such census or to any municipality lying wholly or

partially within such county and having a population of 350,000 or more according to the United States decennial census of 1970 or any future such census, which are not paid when due shall bear interest at the following rates until paid:

(A) The rate specified in Code Section 48-2-40 on the total amount of any such taxes, fees, service charges, or assessments which are not paid when due; and

(B) An additional rate of interest on the amount of such taxes, fees, service charges, and assessments which exceeds $1,000.00 equal to 1 percent per annum for each full calendar month which elapses between the date that the taxes, fees, service charges, and assessments first become due and the date on which they are paid in full. The total rate of interest determined under this paragraph shall not exceed 12 percent per annum or the rate specified in Code Section 48-2-40, whichever is more. The additional rate of interest shall not apply to amounts determined to be owed by a taxpayer pursuant to any arbitration, equalization, or similar proceeding, if brought in good faith by the taxpayer, provided that the taxpayer shall have previously paid to the county or municipality the amount of such liability which was not in dispute;

(2) The rates of interest provided in subparagraphs (A) and (B) of paragraph (1) of this subsection shall be determined on the date delinquent amounts are paid in full and interest at the rate so determined shall accrue from the date on which the amount or installment thereof first becomes due until the date on which the amount or installment thereof is paid in full. Determination of the rates of interest shall be made separately as to amounts owed by a taxpayer to separate taxing jurisdictions, and the determination shall be made separately as to each parcel of property owned by a taxpayer.

(3) The tax collectors, tax commissioners, or governing authority of any such county or municipality shall issue executions against such taxpayer owing taxes, fees, service charges, or assessments together with interest thereon as provided in this subsection when the same become delinquent.

(d) In all counties having a population of not less than 150,000 nor more than 180,000 or not less than 183,000 nor more than 216,000 or not less than 218,000 nor more than 445,000 according to the United States decennial census of 1990 or any future such census, a penalty of 10 percent of the tax due shall accrue on taxes not paid on or before December 20 of each year, and interest shall accrue at the rate specified in Code Section 48-2-40 on the total amount of unpaid taxes and

penalty until both the taxes and penalty are paid. The tax collectors shall issue executions for such taxes, penalty, and interest against each delinquent taxpayer in their respective counties. The 10 percent penalty shall be paid over to the county fiscal authority to assist the county in paying the expense of collecting the delinquent taxes.

(e) In all counties having a population of not less than 680,000 nor more than 690,000 according to the United States decennial census of 2010 or any future such census, the taxes shall become due and payable on August 15 in each year and shall become delinquent if not paid by October 15 of each year. A penalty of 5 percent of the tax due shall accrue on taxes not paid on or before October 15 of each year, and interest shall accrue at the rate specified in Code Section 48-2-40 on the total amount of unpaid taxes and penalty until both the taxes and the penalty are paid. The tax collectors shall issue executions for delinquent taxes, penalties, and interest against each delinquent taxpayer in their respective counties. Nothing contained in this subsection shall be construed to impose any liability for the payment of any ad valorem taxes upon any person for property which was not owned on January 1 of the applicable tax year.

History.

Ga. L. 1903, p. 16, § 1; Civil Code 1910, § 1078; Code 1933, § 92-6402; Code 1933, § 91A-1022, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1980, p. 10, § 10; Ga. L. 1980, p. 710, § 1; Ga. L. 1981, p. 388, § 1; Ga. L. 1981, p. 533, § 1; Ga. L. 1981, p. 1857, § 11; Ga. L. 1982, p. 3, § 48; Ga. L. 1982, p. 936, § 1; Ga. L. 1983, p. 3, § 37; Ga. L. 1984, p. 22, § 48; Ga. L. 1991, p. 303, § 3; Ga. L. 1992, p. 1218, § 1; Ga. L. 1992, p. 1690, § 1; Ga. L. 2002, p. 1409, §§ 1, 2; Ga. L. 2002, p. 1473, § 1; Ga. L. 2012, p. 687, § 1/HB 634.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1986, "subparagraphs (A) and (B) of paragraph (1)" was substituted for "subparagraphs (1)(A) and (1)(B)" in the first sentence of paragraph (c)(2).

Editor's notes.

Ga. L. 1982, p. 936, § 2, not codified by the General Assembly, provided that that Act shall apply to all taxable years beginning on or after January 1, 1983.

Code Section 48-5-271, referred to in the last sentence of subsection (b) of this Code section, was repealed by Ga. L. 1988, p. 1763, § 3, effective January 1, 1989.

Law reviews.

For article, "Procedure and Problems in Georgia Ad Valorem Tax Appeals," see 26 Ga. St. B.J. 98 (1990).

RESEARCH REFERENCES

Am. Jur. 2d.

72 Am. Jur. 2d, State and Local Taxation, § 769.

ALR.

Validity and effect of single assessment of separate parcels of real estate belonging to different owners, 144 A.L.R. 341.

48-5-25. Proportionate payments of property taxes by owners and persons with interest in or on property.

The owner or the holder of any equity, lien, or interest in or on

property returned or assessed with other property for taxes shall be allowed to pay the taxes assessed against any one or more pieces of such property: (1) when listed separately by the owner or assessor on the tax return or digest, according to the valuation shown by the return or assessment; or (2) when not listed separately on the tax return or digest by the owner or assessor, by paying the proportionate part of the taxes represented by such property according to the valuation in the return or assessment; that is to say, such proportionate part of all of the taxes represented by the return or assessment as the value of the separate piece or pieces of property upon which payment is being made bears to all of the property in such return or assessment. The officials charged with the collection of taxes for this state or for any subdivision of this state including, but not limited to, municipalities, counties, and all other subdivisions of this state, and any transferee of a tax lien shall be required to accept payment of the taxes when tender is made as provided in this Code section, shall issue a receipt showing the payment, and shall execute a release of the property from the lien for taxes. The official or transferee accepting the payment and releasing the property shall be paid a fee of 50¢ for issuing the receipt and release.

History.

Ga. L. 1931, p. 122, § 1; Ga. L. 1933, p. 50, § 1; Code 1933, § 92-5712; Code 1933, § 91A-1030, enacted by Ga. L. 1978, p. 309, § 2.

Law reviews.

For comment on Brown v. Nash, 216 Ga. 303, 116 S.E.2d 227 (1960), see 12 Mercer L. Rev. 425 (1961).

JUDICIAL DECISIONS

Holder of security interest. — O.C.G.A. § 48-5-25 applies when partial payment of past due ad valorem taxes are made by the holder of a security interest in the property upon which the tax is paid. Roberts v. Ford Motor Credit Co., 160 Ga. App. 827, 288 S.E.2d 238, 1982 Ga. App. LEXIS 1703 (1982).

An action for declaratory judgment is the appropriate remedy to enforce the rights of the party holding the security interest. Roberts v. Ford Motor Credit Co., 160 Ga. App. 827, 288 S.E.2d 238, 1982 Ga. App. LEXIS 1703 (1982).

Property under levy. — There is nothing in O.C.G.A. § 48-5-25 which requires a distinction to be made between property under levy but prior to sale and property "returned or assessed with other property." Roberts v. Ford Motor Credit Co., 160 Ga. App. 827, 288 S.E.2d 238, 1982 Ga. App. LEXIS 1703 (1982).

Word "property" in this statute means both real and personal property. Aldridge v. Federal Land Bank, 203 Ga. 285, 46 S.E.2d 578, 1948 Ga. LEXIS 311 (1948).

Requirement that both real and personal taxes be paid for release. — When the purchaser, at the time the lien becomes effective and at the time one purchases the property, is not the owner or the holder of any equity, lien, or interest in the real property purchased, and when one purchases the property with knowledge of the existence of a tax lien against the property, covering both real and personal property taxes, the purchaser obtains no better title than the purchaser's grantor had since the purchaser's grantor could not have obtained a release of the real property without payment of both real and personal property taxes. Brown v. Nash,

216 Ga. 303, 116 S.E.2d 227, 1960 Ga. LEXIS 452 (1960).

Effect of payment by cotenant of all taxes on jointly held property. — Since joint property is liable for all taxes, payment of the taxes by one cotenant is payment for all. Bank of Tupelo v. Collier, 191 Ga. 852, 14 S.E.2d 59, 1941 Ga. LEXIS 378 (1941).

Subrogation and contribution rights of cotenant who pays taxes on common property. — When one tenant in common, in order to protect one's interest, pays a mortgage on the common property, one is entitled to be subrogated to the rights of the mortgagee and to enforce the mortgage as against one's cotenants, to the extent of their liability to contribute to the satisfaction of the mortgage. This principle of subrogation is applicable in favor of a cotenant who pays taxes on common property. Bank of Tupelo v. Collier, 191 Ga. 852, 14 S.E.2d 59, 1941 Ga. LEXIS 378 (1941).

Availability of remedy when property levied upon after payment. — When the purchaser, under former Code 1933, § 92-5712 (see now O.C.G.A. § 48-5-25), was entitled to pay the pro rata part of taxes assessed against the property the purchaser purchased subsequent to the issuance of tax fieri facias, and when these fieri facias were levied upon the property purchased, had the purchaser had an adequate remedy at law by a claim under former Code 1933, § 92-7801 (see now O.C.G.A. § 48-3-24). Bibb County v. Mortgage Bond Co., 183 Ga. 402, 188 S.E. 698, 1936 Ga. LEXIS 248 (1936).

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Right of security deed holder to release upon payment of taxes. — Commissioner is required to release the last piece of property which secures a tax liability upon the security deed holder's tender of payment for the taxes owed on the real property even though unpaid personal property tax obligations remain outstanding and will become unsecured. 1987 Op. Att'y Gen. No. U87-2.

Section 48-5-26 not applicable to security deed holders. — O.C.G.A. § 48-5-26 only appears to supplement the general provisions of O.C.G.A. § 48-5-25 for the limited scope and purpose of addressing a narrow question of the rights that owners and transferees of real property have to obtain a release by paying taxes on selected parcels of property between the tax lien date and the date when the taxes actually become due; the law does not apply in cases involving security deed holders. 1987 Op. Att'y Gen. No. U87-2.

Word "property" as used in this statute embraces both realty and personalty. 1950-51 Ga. Op. Att'y Gen. 382.

Effect of this statute. — In effect, this statute compels the holder of the lien to resort to other property involved or owned by the person against whom the tax fieri facias issued, and upon which taxes have not been paid, for satisfaction of the remainder of the fieri facias, or lien. 1945-47 Ga. Op. Att'y Gen. 551.

When payment may be made. — Holder of the equity, interest, or lien has the right to pay a proportionate part of the taxes on the property in question, together with a proportionate part of the cost which had accrued up until the date of payment at any time prior to the sale under an execution of property which has been advertised for sale. 1960-61 Ga. Op. Att'y Gen. 476.

Statute permits a proportionate payment of taxes after fieri facias has been issued. 1958-59 Ga. Op. Att'y Gen. 377.

Owner of property may not pay portion of tax and thus obtain release of portion of property covered by lien. 1960-61 Ga. Op. Att'y Gen. 529.

RESEARCH REFERENCES

Am. Jur. 2d.

72 Am. Jur. 2d, State and Local Taxation, §§ 718, 719.

ALR.

Taking mortgage in name of, or assigning it to, third person to evade taxation, as affecting its validity and enforceability 21 A.L.R. 396.

Priority over existing lien of statutory lien upon real property for personal property taxes, 47 A.L.R. 378; 65 A.L.R. 677.

Period covered by lessee's, sublessee's, or assignee's covenant to pay taxes or assessments, 97 A.L.R. 931.

Right of mortgagee or other lienor to acquire and hold tax title in his own right as against persons owning other interest or liens upon property, 140 A.L.R. 294.

Liability of mortgagor or his grantee to mortgagee for loss or depreciation in value of mortgage security as result of failure to pay taxes, 154 A.L.R. 614.

Tenant's interest in respect of building or other structure erected by him as separate unit for property tax apart from land, 154 A.L.R. 1309.

Superiority of special or local assessment lien over earlier private lien or mortgage, where statute creating such special lien is silent as to superiority, 75 A.L.R.2d 1121.

48-5-26. Payment of taxes on real property by owners or transferees.

The owner of any real property located in this state, and the transferee of every owner who acquires title to real property within this state between the date on which the tax lien on the property vests and the date on which the tax evidenced by the tax lien shall become due and payable, shall have the right to pay the taxes assessed against any one or more lots, tracts, or parcels of the real property: (1) by paying the amount of tax assessed against such lot, tract, or parcel if the property was separately returned by the owner or, in the case of a transfer, by the transferor of the property; or (2) if the property was not separately returned, by paying that percentage of the total tax assessed which the value of the property sought to be released bears to the value of all the property returned by the owner of such property as of the date on which the tax lien vested. The officials charged with the collection of taxes for this state or any subdivision of this state including, but not limited to, municipalities and counties, and any transferee of a tax lien shall accept payment of the taxes assessed against one or more lots, tracts, or parcels of real property upon tender by the owner of such property, including any transferee of the real property who has obtained title to the property between the time when the lien vested and the time on which the taxes are payable, and shall execute a release as to the property without regard to whether or not the taxes assessed against any other property, real or personal, of the owner, the transferee of the real property, or the transferor of the owner have been paid. The official or transferee of the tax lien accepting the payment and releasing the property shall be paid a fee of $2.00 for issuing the receipt and release. No such official or transferee of the tax lien shall be required to release any one or more tracts of real property after a fi. fa. has been recorded on the general execution docket in the county where the property is

located without first receiving the entire amount of past due taxes as reflected in the fi. fa. No such official or transferee shall be required to release the last or only remaining lot, parcel, or tract of real property until all personal property taxes owed by the owner have been paid.

History.
Ga. L. 1961, p. 160, § 1; Code 1933, § 91A-1031, enacted by Ga. L. 1978, p. 309, § 2.

Law reviews.
For comment on Brown v. Nash, 216 Ga. 303, 116 S.E.2d 227 (1960), see 12 Mercer L. Rev. 425 (1961).

OPINIONS OF THE ATTORNEY GENERAL

Section not applicable to security deed holders. — O.C.G.A. § 48-5-26 only appears to supplement the general provisions of O.C.G.A. § 48-5-25 for the limited scope and purpose of addressing a narrow question of the rights that owners and transferees of real property have to obtain a release by paying taxes on selected parcels of property between the tax lien date and the date when the taxes actually become due; the statute does not apply in cases involving security deed holders. 1987 Op. Att'y Gen. No. U87-2.

RESEARCH REFERENCES

Am. Jur. 2d.
72 Am. Jur. 2d, State and Local Taxation, § 718, 719.

ALR.
Different parts or parcels of land in same ownership as single unit or separate units for tax assessment purposes, 133 A.L.R. 524.

48-5-27. Collection of taxes for former years.

Tax commissioners, tax receivers, and tax collectors shall receive returns and collect taxes due on returns for former years for which any person is in default. The taxes shall be assessed according to the law in force at the time the default occurred, and the fact of assessment according to the law in force at the time of default shall be specified in the digest.

History.
Laws 1813, Cobb's 1851 Digest, p. 1060; Code 1863, § 798; Code 1868, § 866; Code 1873, § 870; Code 1882, § 870; Civil Code 1895, § 855; Civil Code 1910, § 1113; Code 1933, § 92-6228; Code 1933, § 91A-1027, enacted by Ga. L. 1978, p. 309, § 2.

RESEARCH REFERENCES

ALR.
Power after death of owner to spread property taxes against property omitted from tax rolls for years prior to his death, 89 A.L.R. 848.

48-5-28. Priority of taxes over other claims; superiority of security deed.

(a) Except as otherwise provided in Code Section 53-7-91, taxes shall

be paid before any other debt, lien, or claim of any kind. The property returned, the property held at the time of returning property, and the property held after the time of returning property shall always be subject to a lien for taxes.

(b) The title and operation of a security deed shall be superior to the taxes assessed against the owner of property when the tax represents an assessment upon property of the owner other than that property specifically subject to the title and operation of the security deed.

History.

Laws 1804, Cobb's 1851 Digest, p. 1050.; Code 1863, § 742; Code 1868, § 809; Code 1873, § 812; Code 1882, § 812; Civil Code 1895, § 883; Civil Code 1910, § 1140; Code 1933, § 92-5707; Ga. L. 1953, Nov.-Dec. Sess., p. 168, § 1; Code 1933, § 91A-1023, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1980, p. 10, § 11.

Cross references.

Liens, § 44-14-320 et seq.

Law reviews.

For comment on Brown v. Nash, 216 Ga. 303, 116 S.E.2d 227 (1960), see 12 Mercer L. Rev. 425 (1961).

For annual survey of state and local tax law, see 35 Mercer L. Rev. 281 (1983).

JUDICIAL DECISIONS

Analysis

General Consideration
Priority Over Other Claims
Property Subject to Tax Lien
Priority of Security Deeds

General Consideration

What taxes included in term "lien for taxes." — The words "lien for taxes," as employed in former Civil Code 1910, §§ 1140, 3329, and 3333 (see now O.C.G.A. §§ 44-14-320, 48-2-56, and 48-5-28) were broad and sufficient to include taxes provided for by a subsequent statute for support of the state, counties, and municipal corporations located in the state, although such tax may not be ad valorem or based on property. Atlanta Trust Co. v. Atlanta Realty Corp., 177 Ga. 581, 170 S.E. 791, 1933 Ga. LEXIS 363 (1933).

Power of General Assembly to pass laws regarding priority of claims. — Statute does not divest the General Assembly of power to pass other laws fixing the order of priority of other claims relative to taxes. Baggett v. Mobley, 171 Ga. 268, 155 S.E. 334, 1930 Ga. LEXIS 331 (1930).

Applicability to sales taxes. — Provisions of former Code 1933, §§ 92-5707 and 92-5708 (see now O.C.G.A. §§ 48-2-56 and 48-5-28) dealt with situations where the lien for taxes represented an assessment upon property of such owner other than that property specifically covered by the security instrument, and since sales tax was not a property tax and was not assessed against the property of the owner, these provisions were not applicable to sales tax. Williams v. General Fin. Corp., 98 Ga. App. 31, 104 S.E.2d 649, 1958 Ga. App. LEXIS 500 (1958).

Property to which section applicable. — Statute applies to all property returned or held by a taxpayer that is subject to taxation under Ga. Const. 1877, Art. VII, Sec. II, Para. I (see now Ga. Const. 1983, Art. VII, Sec. I, Para. III). Cason v. Aldred, 175 Ga. 256, 165 S.E. 221, 1932 Ga. LEXIS 228 (1932).

Taxes are against property as well as owner. — Taxes are not only against the owner, but are against the property also, without reference to judgments,

mortgages, sales, transfers, or encumbrances. The only concern as to the owner is to know against whom the assessment is to be made, but the tax or lien therefor is against the property. Verdery v. Dotterer, 69 Ga. 194, 1882 Ga. LEXIS 196 (1882); Wilson v. Boyd, 84 Ga. 34, 10 S.E. 499, 1889 Ga. LEXIS 173 (1889); Decatur County Bldg. & Loan Ass'n v. Thigpen, 173 Ga. 363, 160 S.E. 387, 1931 Ga. LEXIS 316 (1931); Carroll v. Richards, 50 Ga. App. 272, 178 S.E. 178, 1934 Ga. App. LEXIS 737 (1934).

When lien takes effect. — Lien for taxes takes effect when, by law, in each and every year the property is made taxable, and not with the return of the property or the issuance of the execution. Wilson v. Boyd, 84 Ga. 34, 10 S.E. 499, 1889 Ga. LEXIS 173 (1889).

No need to make return of no personalty before levying on land. — Statute changes the rule that personalty is to be first applied to taxes. It is not necessary for an officer, before levying on land for taxes, to make a return of no personal property to be found. Watson v. Swann, 83 Ga. 198, 9 S.E. 612, 1889 Ga. LEXIS 33 (1889).

Parties cannot by contract defeat government right to collect taxes for which property would otherwise be liable. City of Leesburg v. Forrester, 59 Ga. App. 503, 1 S.E.2d 584, 1939 Ga. App. LEXIS 337 (1939).

Priority Over Other Claims

Circular priorities involving tax and judgment liens and security deeds under Georgia law shall be established according to the following rules: (1) liens for taxes shall be paid prior to all other liens against property; (2) security deeds shall be paid prior to liens for state taxes if those tax liens are not for ad valorem taxes against the property which is the subject of the security deeds at issue; and (3) judgment lien holders shall be subordinated to the preceding claims. Tuggle v. IRS, 30 B.R. 718, 1983 Bankr. LEXIS 6009 (Bankr. N.D. Ga. 1983).

Priority of tax lien over judgment creditor's lien. — Lien for municipal taxes which a city has upon property of a taxpayer is superior to the lien of a judgment creditor. This is especially true when execution has been issued against the defaulting taxpayer and entered upon the proper execution docket before the creditor's judgment was obtained. Royal Indem. Co. v. Mayor of Savannah, 209 Ga. 383, 73 S.E.2d 205, 1952 Ga. LEXIS 529 (1952).

Federal tax liens have priority over later assessed state tax liens, but federal liens are subordinate to prior filed liens of judgment creditors. Tuggle v. IRS, 30 B.R. 718, 1983 Bankr. LEXIS 6009 (Bankr. N.D. Ga. 1983).

Effect of unrecorded tax lien. — Under Georgia law, taxes constitute a lien against the property, whether that lien is recorded or not. In re Consolidated S.E. Group, Inc., 75 B.R. 102, 1987 Bankr. LEXIS 1010 (Bankr. N.D. Ga. 1987).

Effect of failure to record tax fieri facias. — Recording of the fieri facias issued by the commissioner on the general execution docket is not a condition precedent to the attachment of a lien for sales taxes. The only effect of failure to record the lien is that as against innocent purchasers the lien will be lost. State v. Atlanta Provision Co., 90 Ga. App. 147, 82 S.E.2d 145, 1954 Ga. App. LEXIS 655 (1954).

Effect of failure to record transfer of tax fieri facias. — Record of a transfer of a tax fieri facias is not necessary to preserve the lien as against the taxpayer nor is such record necessary to preserve the priority of the lien against others, except as to persons who may have purchased the property bona fide subsequently to the transfer. Federal Land Bank v. Farmers' & Merchants' Bank, 177 Ga. 505, 170 S.E. 504, 1933 Ga. LEXIS 341 (1933).

Priority of transferred tax executions. — When a married woman, using money from her separate estate, purchases tax executions, for taxes which are a lien on her husband's property, and where these executions are transferred to her by the proper authorities and duly recorded, they are liens on the husband's property, superior to any other lien against it. Atlanta Nat'l Bank v. Brown,

Priority Over Other Claims (Cont'd)

173 Ga. 213, 159 S.E. 874, 1931 Ga. LEXIS 297 (1931).

Priorities as to payments from assets of liquidated or dissolved financial institution. — Priorities of payment established in Ga. L. 1927, p. 195, § 5 (see now O.C.G.A. § 7-1-202), which allow payment to depositors before payments of state tax, supersede the provisions of former Civil Code 1910, §§ 1140 and 3333 (see now O.C.G.A. §§ 48-2-56 and 48-5-28) which gave taxes priority over other debts. Felton v. McArthur, 173 Ga. 465, 160 S.E. 419, 1931 Ga. LEXIS 342 (1931).

Priority of tax lien when lender has foreclosed and sold property under a lien. — When a lender took notes and bills of sale to secure a debt, but security instruments were not recorded until after the tax liens had been entered on the execution docket, the property covered under the security instruments was property of the debtor at the time the debtor became liable for the tax and the fact that the lender foreclosed on the property and purchased the property at the foreclosure sale did not divest the tax lien, and it was proper for the state to levy the execution upon the foreclosed property then in the possession of the lender. Williams v. General Fin. Corp., 98 Ga. App. 31, 104 S.E.2d 649, 1958 Ga. App. LEXIS 500 (1958).

Priority of lien acquired by cotenant upon payment of taxes on common property. — When one tenant in common, in order to protect that tenant's interest, pays taxes and assessments on the common property, the tenant is in equity entitled to a lien against the interest of the cotenant for the cotenant's share of the taxes and assessments, which lien has the same priority as that for the taxes and assessments paid. Since liens for taxes and assessments are superior to a security deed, the cotenant's lien for reimbursement from the cotenant is also superior to a security deed given by the cotenant, whether the lien arose before or after the execution of the security deed. Bank of Tupelo v. Collier, 191 Ga. 852, 14 S.E.2d 59, 1941 Ga. LEXIS 378 (1941).

Apportionment of tax liability against properties in which multiple creditors have interests. — When each of two or more creditors of a common insolvent debtor has, relative to the other, the highest lien with respect to distinct property belonging to such debtor, and when there is outstanding against the debtor a tax execution issued generally, the burden of discharging such lien should, as a general rule, be apportioned among the creditors by requiring each of the separate properties to bear its proportionate part of the taxes, according to value. Federal Land Bank v. Farmers' & Merchants' Bank, 177 Ga. 505, 170 S.E. 504, 1933 Ga. LEXIS 341 (1933).

Mortgagee may foreclose before final judicial determination of mortgagor's tax liability. — It is inequitable to penalize a mortgagee for protecting the mortgagee's interest in the mortgaged property through foreclosure proceedings before a final judicial determination of the mortgagor's tax liability. If the mortgagee fails to protect the mortgagee's security interest in the property, and the mortgagor's tax exemption claim is decided against the mortgagee, the mortgagee's security interest would be inferior to the taxing authority's claim against the mortgagor for delinquent taxes. Ravenwood Church v. Starbright, Inc., 168 Ga. App. 870, 310 S.E.2d 582, 1983 Ga. App. LEXIS 2944 (1983).

Property Subject to Tax Lien

What property covered by tax lien. — Statute applies to all property of a taxpayer that is subject to taxation under the Constitution of Georgia. A lien for taxes due the state is against both the owner and the owner's property, regardless of judgments, mortgages, sales, transfers, or encumbrances of any kind. Phoenix Mut. Life Ins. Co. v. Appling County, 164 Ga. 861, 139 S.E. 674, 1927 Ga. LEXIS 293 (1927); Armour Fertilizer Works v. Durrence, 176 Ga. 519, 168 S.E. 572, 1933 Ga. LEXIS 215 (1933).

Property returned or held at time of giving in is subject to lien of the

state, which cannot be divested by sale. Bibb Nat'l Bank v. Colson, 162 Ga. 471, 134 S.E. 85, 1926 Ga. LEXIS 218 (1926).

Ownership of property at time of tax sale is entirely immaterial since a tax lien attaches to property subject to taxation from the time fixed by law for valuation of such property. Furthermore, taxes due the state are not only against the owner but against the property also, regardless of judgments, mortgages, sales, transfers, or encumbrances of any kind. City of Leesburg v. Forrester, 59 Ga. App. 503, 1 S.E.2d 584, 1939 Ga. App. LEXIS 337 (1939).

Transfer of lien to specific property. — It is doubted that any officer would have the authority to transfer the lien of the state for taxes to a specific fund, and thus waive the lien as against the general property of the taxpayer. It is questioned further whether the failure of the sheriff to obey such demand, if made by some other officer, could have the effect of relegating the state to a rule or other action against the sheriff for a neglect of duty. Brown v. Roach, 31 Ga. App. 476, 120 S.E. 813, 1923 Ga. App. LEXIS 992 (1923).

Lien unaffected by existence of other property which could be levied on. — That taxpayer is in possession of other property on which the tax fi. fa. could be levied does not affect the state's lien against the property in question. Brown v. Roach, 31 Ga. App. 476, 120 S.E. 813, 1923 Ga. App. LEXIS 992 (1923).

Levy on property which has previously been alienated. — Taxing authorities are not required to limit the levy to property of the defendant in execution which has not been alienated at the time of the levy. Reynolds v. Hardin, 187 Ga. 40, 200 S.E. 119, 1938 Ga. LEXIS 759 (1938).

Attachment of tax lien to property conveyed as security for a debt. — When an owner of land conveys the land by warranty deed as security for a debt, and in the succeeding year fails to return the land at the time the owner returns the owner's other property for state and county taxation for that year, and after default in payment execution is issued against the owner for state and county taxes on the basis of the owner's return of other property, the lien for such taxes will attach not only to the property included in the return but also to the land which the owner has conveyed as security for debt. Decatur County Bldg. & Loan Ass'n v. Thigpen, 173 Ga. 363, 160 S.E. 387, 1931 Ga. LEXIS 316 (1931).

Tax lien against property which is transferred after tax accrues. — Lien for all taxes is binding upon all property of the surviving obligee in the bond for title and upon the estate of the deceased obligee, such obligees being holders of the bond for title and possessing and using the property at the time of accrual of the tax. Graves v. Walker, 182 Ga. 644, 186 S.E. 820, 1936 Ga. LEXIS 525 (1936).

Liability of subsequently acquired property for taxes. — Fact that the taxpayer has disposed of all property returned by the taxpayer in the years for which assessments were made against the taxpayer for the taxpayer's taxes does not discharge property subsequently acquired by the taxpayer from the lien for such taxes and from executions issued against the taxpayer for the enforcement thereof. People's Credit Clothing Co. v. City of Atlanta, 173 Ga. 653, 160 S.E. 873, 1931 Ga. LEXIS 376 (1931).

When property which was perishable or expensive to keep was sold pursuant to former Civil Code 1910, §§ 6068 (see now O.C.G.A. § 9-13-163) and 6069 (see now O.C.G.A. § 9-13-164) the short order sale divested liens on the property, and the liens attached to the proceeds of such sale. This rule will not affect property covered by a tax lien of the state, which under former Civil Code 1910, § 1140 (see now O.C.G.A. § 48-5-28) was always subject, and a sale of which under former Civil Code 1910, § 1141 (see now O.C.G.A. § 48-2-57) did not divest the lien of the state for taxes. State Revenue Comm'n v. Rich, 49 Ga. App. 271, 175 S.E. 394, 1934 Ga. App. LEXIS 360 (1934).

Order of liability of interests for payment of taxes. — When a fund representing both the title and the equity is before the court for distribution, the equity or interest of the grantor should first be subjected to the payment of the

Property Subject to Tax Lien (Cont'd)

taxes, but when the equity is insufficient to pay the tax claims in full, since these taxes are superior to security deeds, the "title" fund must be used to pay the balance of the taxes in excess of the "equity" fund. Minchew v. Juniata College, 188 Ga. 517, 4 S.E.2d 212, 1939 Ga. LEXIS 572 (1939).

Owner's failure to return property is no defense to one who purchases the property after lien accrues. — Failure of the owner of property levied on to return the property furnishes no defense to one who purchased from the owner after the lien for taxes accrued. Winn v. Butts, 127 Ga. 385, 56 S.E. 406, 1907 Ga. LEXIS 274 (1907).

Second unauthorized tax sale did not affect fee simple title of buyer at first tax sale. — Although a county did not have the recognized statutory option of conducting a second tax sale in order to satisfy the remainder of the tax deficiency owed, and while the assignee who took the property as a result of the second tax sale might be entitled to a refund of the purchase price, the special master's recommendation to issue a decree of fee simple title in the underlying property to the buyer at the first tax sale was upheld on appeal. DRST Holdings, Ltd. v. Agio Corp., 282 Ga. 903, 655 S.E.2d 586, 2008 Ga. LEXIS 6 (2008).

Priority of Security Deeds

Purpose of provisions relating to priority of security deeds. — Purpose of provisions relating to priority of tax liens and security deeds is to protect holders of security deeds and bills of sale to secure debt in certain instances from having the security levied upon because of taxes owed by the owner of the equity in the property since the taxes are not directly upon the property involved in the security instrument. Williams v. General Fin. Corp., 98 Ga. App. 31, 104 S.E.2d 649, 1958 Ga. App. LEXIS 500 (1958).

Order of distribution of sale proceeds to tax lienors and security deed holders. — When, after the death of the grantor under security deeds, the equity of redemption is set apart to his widow and minor child, and thereafter the property is sold under an execution in favor of the first security deed holder, the year's support claim is entitled to the full amount of the equity of redemption, tax claims which attached to the property before the setting apart of the year's support are entitled to preference over the security deed holders to the extent that the tax claims are in excess of the portion of the taxes that could and should have been paid from the equity of redemption in the absence of a year's support, and the security deed holders are entitled to the full amount of their secured debt, less the taxes in excess of the equity of redemption. Minchew v. Juniata College, 188 Ga. 517, 4 S.E.2d 212, 1939 Ga. LEXIS 572 (1939).

OPINIONS OF THE ATTORNEY GENERAL

What taxes included in term "lien for taxes." — Words "lien for taxes" used in former Code 1933, §§ 92-5707 and 92-5708 and Ga. L. 1937-38, Ex. Sess., p. 77, § 42 (see now O.C.G.A. §§ 48-2-56 and 48-5-28) have been broadly construed by the Supreme Court to include taxes, provided for by subsequent statute, for support of the state and counties and municipal corporations located in the state, although such taxes may not be ad valorem or based on property, and sales and use taxes. 1960-61 Ga. Op. Att'y Gen. 529.

Effect of transfer of property. — An ad valorem tax lien attaches to property and follows the property even into the hands of a bona fide purchaser for value; an attempted transfer of property to evade the tax would be void. 1970 Op. Att'y Gen. No. U70-208.

RESEARCH REFERENCES

Am. Jur. 2d.
72 Am. Jur. 2d, State and Local Taxation, § 794 et seq.
ALR.
Priority over existing lien of statutory lien upon real property for personal property taxes, 47 A.L.R. 378; 65 A.L.R. 677.

48-5-29. Acquisition of jurisdiction by superior court in ad valorem property tax litigation; payment and distribution of property taxes; excess payments; underpayments.

(a) Before the superior court has jurisdiction to entertain any civil action, appeal, or affidavit of illegality filed under this title by any aggrieved taxpayer concerning liability for ad valorem property taxes, taxability of property for ad valorem property taxes, valuation of property for ad valorem taxes, or uniformity of assessments for ad valorem property taxes, the taxpayer shall pay the amount of ad valorem property taxes assessed against the property at issue for the last year for which taxes were finally determined to be due on the property, or, if less, the amount of the temporary tax bill issued pursuant to Code Section 48-5-311. For the purposes of this Code section, taxes shall not be deemed finally determined to be due on a property for a tax year until all appeals under Code Section 48-5-311 and proceedings for refunds under Code Section 48-5-380 have become final.

(b) Ad valorem taxes due under this Code section shall be paid to the tax collector or tax commissioner of the county where the property is located. If the property is located within any municipality, the portion of the payment due the municipality shall be paid to the officer designated by the municipality to collect ad valorem taxes.

(c) All taxes paid to the county tax collector or tax commissioner under this Code section shall be distributed to the state, county, county schools, and any other applicable taxing districts in the same proportion as the millage rate for each bears to the total millage rate applicable to the property for the current year. If the total millage rate has not been determined for the current year, the distribution shall be made on the basis of the millage rates established for the immediately preceding year.

(d) Any payment made by the taxpayer in accordance with this Code section which is in excess of his or her finally determined tax liability shall be refunded to the taxpayer. If the amount finally determined to be the tax liability of the taxpayer exceeds the amount paid under this Code section, the taxpayer shall be liable for the amount of the difference between the amount of tax paid and the amount of tax owed.

The amount of difference shall be subject to the interest provided under subsection (g) of Code Section 48-5-311.

History.

Ga. L. 1976, p. 1154, §§ 1-4; Code 1933, § 91A-1029, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1981, p. 1857, § 12; Ga. L. 2014, p. 672, § 2/HB 755.

Law reviews.

For article, "Procedure and Problems in Georgia Ad Valorem Tax Appeals," see 26 Ga. St. B.J. 98 (1990).

JUDICIAL DECISIONS

What taxes must be paid to satisfy jurisdictional requirement. — Statute supersedes the rule that a taxpayer need only tender the amount of taxes admitted to be due as the taxes become due. North By N.W. Civic Ass'n v. Cates, 241 Ga. 39, 243 S.E.2d 32, 1978 Ga. LEXIS 876, cert. denied, 439 U.S. 838, 99 S. Ct. 123, 58 L. Ed. 2d 134, 1978 U.S. LEXIS 2766 (1978).

Penalties and interest became part of the "ad valorem taxes assessed against the property" such that tender of the past due principal only was insufficient to vest jurisdiction in the superior court for purposes of an ad valorem property tax appeal. Bannister v. Douglas County Bd. of Tax Assessors, 219 Ga. App. 68, 464 S.E.2d 29, 1995 Ga. App. LEXIS 943 (1995).

Trial court order dismissing the taxpayers' appeal of the 2006 ad valorem valuation of certain real property was vacated and the case was remanded to the trial court to determine if the taxpayers had paid a sufficient amount of the 2005 taxes to cure the jurisdictional defect under O.C.G.A. § 48-5-29(a), or whether the defect could no longer be cured. Lake Erma, LLC v. Henry County Bd. of Tax Assessors, 298 Ga. App. 733, 681 S.E.2d 188, 2009 Ga. App. LEXIS 746 (2009), cert. denied, No. S09C1880, 2010 Ga. LEXIS 25 (Ga. Jan. 12, 2010).

Cure of jurisdictional defect before motion to dismiss is filed. — When a jurisdictional defect, a failure to pay taxes based on the previous year's assessment prior to filing suit, is cured by the time the defendants' motion to dismiss for lack of jurisdiction is filed, the trial court has jurisdiction. Allright Parking of Ga., Inc. v. Joint City-County Bd. of Tax Assessors, 244 Ga. 378, 260 S.E.2d 315, 1979 Ga. LEXIS 1245 (1979).

Statute does not apply to a complaint filed as a "class return" by taxpayers for the limited purpose of requiring the county board of tax assessors to enter into class arbitration with the taxpayers. A decision in the case will not determine tax liability, taxability of property, valuation of property, or uniformity of assessments for ad valorem property taxes. It merely determines whether the taxpayers may have class arbitration. Callaway v. Carswell, 240 Ga. 579, 242 S.E.2d 103, 1978 Ga. LEXIS 715 (1978).

Failure to comply with O.C.G.A. § 48-5-29(a). — Trial court did not err in dismissing for lack of jurisdiction the taxpayers' action seeking an interlocutory injunction to prohibit a county tax commissioner from collecting upon tax fi. fas. issued against their personal property based on their failure to pay ad valorem property taxes because the taxpayers were required to comply with O.C.G.A. § 48-5-29(a), but the taxpayers did not pay all of their taxes; the taxpayers could not circumvent the requirement of § 48-5-29(a) by characterizing their complaint as a constitutional "due process" action rather than one arising under the Revenue Code because the complaint was squarely aimed at challenging their ad valorem property tax assessments. Coffman Grading Co. v. Forsyth County, 303 Ga. App. 836, 695 S.E.2d 310, 2010 Ga. App. LEXIS 415 (2010).

Although the trial court correctly held that taxpayers had to pay certain taxes pursuant to O.C.G.A. § 48-5-29(a), the court erred in failing to hold an evidentiary hearing to determine the amount taxpayers owed; because the taxpayers challenged the ad valorem

taxes on the property for the years 2004 through 2008, the last year for which taxes were finally determined to be due was 2003, and in order for the trial court to entertain the action, the taxpayers had to pay an amount equal to the 2003 ad valorem taxes on the property for each of the challenged years, less the value of property already seized. Coffman Grading Co. v. Forsyth County, 303 Ga. App. 836, 695 S.E.2d 310, 2010 Ga. App. LEXIS 415 (2010).

O.C.G.A. § 48-5-29(d) provides for a refund with interest. Clayton County Bd. of Tax Assessors v. City of Atlanta, 299 Ga. App. 233, 682 S.E.2d 328, 2009 Ga. App. LEXIS 863 (2009).

Procedure pending appeal. — If, under O.C.G.A. § 48-2-18, a utility had both subsection (c) and subsection (d) appeals proceeding simultaneously, and a local appeal was still pending when the subsection (c) appeal was concluded, the provisions for the payment of taxes during the pendency of an appeal would apply. Telecom*USA, Inc. v. Collins, 260 Ga. 362, 393 S.E.2d 235, 1990 Ga. LEXIS 268 (1990).

48-5-30. Filing extension for service personnel serving abroad.

Notwithstanding any provision of Code Section 48-5-7.1 or 48-5-7.4 to the contrary, a member of the armed forces of the United States serving outside the continental United States may file such member's initial or renewal application for special assessment at any time within a period of six months following the return of such member to the continental United States.

History.

Code 1981, § 48-5-30, enacted by Ga. L. 2004, p. 455, § 1.

Editor's notes.

This Code section formerly pertained to quarterly ad valorem tax billings in certain counties. The former Code section was based on Ga. L. 1982, p. 595, § 1 and was repealed by Ga. L. 1994, p. 237, § 2, effective July 1, 1994.

48-5-31. Prepayment by developer of ad valorem or school taxes; time of effect of prepayment agreements; use of prepayment proceeds for public purposes; forfeiture of excess of prepayment over taxes due; validation procedure.

(a) As used in this Code section, the term:

(1) "Developer" means a person constructing a development.

(2) "Development" or "development property" means a major industrial project which will employ at least 200 persons during construction or operation of the project.

(3) "Local board of education" means the county or area board of education, or in the case of an independent school district the board of education or other body, having authority over and responsibility for a school district.

(4) "Local government" means any county or any municipal corporation which has the authority to collect ad valorem taxes.

(5) "Program of public improvement" includes any or all projects

for which a local government or local board of education is authorized by any provision of law to impose or recommend the imposition of taxes and shall include programs of school construction or expenditures for other educational purposes for which a local board of education is authorized by any provision of law to impose taxes.

(6) "School district" means any area, county, independent, or local school district within which all or any part of any development is located.

(7) "School tax" includes any tax authorized by any provision of law to be assessed by a local government or by a local board of education for educational purposes, including but not limited to the construction of schools and the repayment of bonds issued for such purposes.

(b) Notwithstanding any provision of law to the contrary, and subject to the conditions specified in this Code section, any developer may enter into an agreement with any local government or local board of education, or both, for the prepayment of ad valorem taxes or school taxes or both. Any such agreement may include programs of public improvements adopted by the local government or the local board of education, or any combination thereof, and shall be a lawful and binding contract enforceable by and against the local government, local board of education, developer, and the beneficial owners of any development property assessed for taxation which is the subject of a tax prepayment agreement.

(c) Each tax prepayment agreement shall become effective upon its adoption by resolution of the governing body of the local government or by resolution of the local board of education, or both, as the case may be, agreement by the developer, and the subsequent prepayment of taxes by the developer. Such tax prepayment agreement shall provide for the prepayment to the local government or the local board of education, or both, of not more than two times the estimated ad valorem tax, school tax, or both, which will be due for (1) the year in which the development is anticipated to be completed, (2) its first year of commercial use, or (3) its first year of productive use. The amount of taxes thus prepaid, without interest, shall be subsequently credited by the local government or local board of education, or both, against taxes due following an assessment of the development property by the county tax assessor or the Department of Revenue, as appropriate, in five equal annual installments beginning not earlier than the year described above for which the tax prepayment amount was calculated. In no event may the sum of credits exceed the amount of prepayment made.

(d) A local government may adopt by resolution of its governing authority or a local board of education may adopt by resolution a public

improvement program to be included as part of tax prepayment agreements. Prepayment proceeds may be used for any public purpose except that the local government, local board of education, or both, may adopt a program of public improvements which is reasonably related to the anticipated increased demand for public services resulting from the development for which prepayment of taxes is made, to be funded in whole or in part by prepayment proceeds. The local government, local board of education, or both, may, by adoption of such program, provide that such funds shall be maintained in separate accounts and not be expended except for projects included in such program of public improvements.

(e) Notwithstanding any other provision of law, no tax prepayment shall create a debt of the local government or school district. To the extent that annual credits for prepaid taxes may exceed taxes due in any particular year pursuant to annual assessments of development property, the excess annual credit otherwise due that year shall be forfeited and in no event shall the developer or any other person be allowed to claim a refund of any part of a prepayment.

(f) The determination by any local government's governing authority, by any local board of education, or both as to the necessity for the public improvements to be funded by prepayments under a program established by a tax prepayment agreement shall be final and not subject to review.

(g) Nothing contained in this Code section shall be construed to require a local government, a local board of education, or any developer to enter into a tax prepayment agreement.

(h) Notwithstanding the fact that tax prepayments made in accordance with this Code section do not create a debt of any local government or school district, the validity of any such tax prepayment and the related tax prepayment agreement or agreements may be determined by application of the validation procedure set forth in Code Sections 36-82-73 through 36-82-83. However, the petition filed in such validation proceeding pursuant to Code Section 36-82-75 shall be amended as appropriate to reflect that no bonds are being issued and no debt is being incurred, and the relevant tax prepayment agreement and program of public improvements shall be filed as an exhibit to the petition.

History.

Code 1933, § 91A-1028.1, enacted by Ga. L. 1982, p. 2382, § 1; Code 1981, § 48-5-30, enacted by Ga. L. 1982, p. 2382, § 2; Code 1981, § 48-5-31, as redesignated by Ga. L. 1983, p. 3, § 37.

Cross references.

Exemption of development authorities from taxation, § 36-62-3.

Editor's notes.

This Code section, which was enacted as Code Section 48-5-30 [now repealed], was

originally unofficially designated as Code Section 48-5-31, since Ga. L. 1982, p. 595, § 1 also enacted a Code Section 48-5-30. Ga. L. 1983, p. 3, § 37, effective January 25, 1983, officially redesignated this Code section as Code Section 48-5-31; reversed the designations of subsections (a) and (b); revised Code references in subsections (g) and (h); and substituted "36-82-75" for "36-82-21" in subsection (h).

48-5-31.1. Contract with local government and tax commissioner for prepayment of ad valorem taxes.

(a) As used in this Code section, the term "local government" means the governing body of any county or any municipal corporation which has the authority to collect ad valorem taxes.

(b) Notwithstanding any provision of law to the contrary, and subject to the conditions specified in this Code section, any taxpayer may enter into an agreement with any local government and tax commissioner or tax collector for the prepayment of ad valorem taxes. Any such agreement shall be a lawful and binding contract enforceable by and against the local government and the taxpayer.

(c) No tax prepayment agreement authorized under this Code section shall become effective until the local government with the concurrence of the tax commissioner or tax collector has adopted a resolution authorizing such agreements and the subsequent execution of the prepayment of taxes agreement by the taxpayer, the tax commissioner or tax collector, and the local government. Such tax prepayment agreement shall provide for the prepayment to the tax commissioner or tax collector of not more than the amount of ad valorem taxes assessed on the subject property for the preceding tax year. The amount of taxes thus prepaid, without interest, shall be subsequently credited by the tax commissioner or tax collector against taxes due in the current tax year. Prepayments may be made by installments as provided for in the agreement. Such prepaid funds shall be maintained in a separate escrow account and shall not be expended except for payment of the taxpayer's ad valorem tax liability.

(d) Nothing contained in this Code section shall be construed to require a local government to enter into a tax prepayment agreement.

(e) Notwithstanding any other provision of law, no tax prepayment shall create a debt of the local government. To the extent that annual credits for prepaid taxes may exceed taxes due in any particular year pursuant to annual assessments of the subject property, the excess annual credit otherwise due that year shall be carried forward in the taxpayer's account and in no event shall the taxpayer or any other person be allowed to claim a refund of any part of a prepayment.

History.
Code 1981, § 48-5-31.1, enacted by Ga. L. 2019, p. 271, § 2/SB 216.

48-5-32. Publication by county of ad valorem tax rate.

(a) As used in this Code section, the term:

(1) "Levying authority" means a county, a municipality, or a consolidated city-county governing authority or other governing authority of a political subdivision of this state that exercises the power to levy ad valorem taxes to carry out the governing authority's purposes.

(2) "Recommending authority" means a county, independent, or area school board of education that exercises the power to cause the levying authority to levy ad valorem taxes to carry out the board's purposes.

(3) "Taxing jurisdiction" means all the tangible property subject to the levy of a specific levying authority or the recommended levy of a specific recommending authority.

(b)(1) Each levying authority and each recommending authority shall cause a report to be published in a newspaper of general circulation throughout the county and posted on such authority's website, if available:

(A) At least one week prior to the certification of any recommending authority to the levying authority of such recommending authority's recommended school tax for the support and maintenance of education pursuant to Article VIII, Section VI, Paragraph I of the Constitution; and

(B) At least one week prior to the establishment by each levying authority of the millage rates for ad valorem taxes for educational purposes and ad valorem taxes for purposes other than educational purposes for the current calendar year.

(2) Such reports shall be in a prominent location in such newspaper and shall not be included with legal advertisements, and such reports shall be posted in a prominent location on such authority's website, if available. The size and location of the advertisements shall not be grounds for contesting the validity of the levy.

(c) The reports required under subsection (b) of this Code section shall contain the following:

(1) For levying authorities, the assessed taxable value of all property, by class and in total, which is within the levying authority's taxing jurisdiction and the proposed millage rate for the levying

authority's purposes for the current calendar year and such assessed taxable values and the millage rates for each of the immediately preceding five calendar years, as well as the proposed total dollar amount of ad valorem taxes to be levied for the levying authority's purposes for the current calendar year and the total dollar amount of ad valorem taxes levied for the levying authority's purposes for each of the immediately preceding five calendar years. The information required for each year specified in this paragraph shall also indicate the percentage increase and total dollar increase with respect to the immediately preceding calendar year. In the event the rate levied in the unincorporated area is different from the rate levied in the incorporated area, the report shall also indicate all required information with respect to the incorporated area, unincorporated area, and a combination of incorporated and unincorporated areas;

(2) For recommending authorities, the assessed taxable value of all property, by class and in total, which is within the recommending authority's taxing jurisdiction and the proposed millage rate for the recommending authority's purposes for the current calendar year and such assessed taxable values and the millage rates for each of the immediately preceding five calendar years, as well as the proposed total dollar amount of ad valorem taxes to be recommended for the recommending authority's purposes for the current calendar year and the total dollar amount of ad valorem taxes levied for the recommending authority's purposes for each of the immediately preceding five calendar years. The information required for each year specified in this paragraph shall also indicate the percentage increase and total dollar increase with respect to the immediately preceding calendar year; and

(3) The date, time, and place where the levying or recommending authority will be setting its millage rate for such authority's purposes.

(d) The commissioner shall not accept for review the digest of any county which does not submit simultaneously a copy of such published reports for the county governing authority and the county board of education with such digest. In the event a digest is not accepted for review by the commissioner pursuant to this subsection, it shall be accepted for review upon satisfactory submission by such county of a copy of such published reports. The levies of each of the levying authorities other than the county governing authority shall be invalid and unenforceable until such time as the provisions of this Code section have been met.

History.

Code 1981, § 48-5-32, enacted by Ga. L. 1990, p. 889, § 1; Ga. L. 1991, p. 1903, § 7; Ga. L. 1993, p. 947, § 7; Ga. L. 2015, p. 1219, § 7/HB 202.

Editor's notes.

Ga. L. 1991, p. 1903, § 15, not codified by the General Assembly, provides that the amendment to this Code section shall be applicable beginning January 1, 1992, with respect to ad valorem taxation of timber and shall be applicable beginning January 1, 1992, for all other purposes. Taxation for prior periods shall continue to be governed by prior law.

48-5-32.1. Certification of assessed taxable value of property and method of computation; resolution or ordinance required for millage rate; advertisement of intent to increase property tax.

(a) As used in this Code section, the term:

(1) "Ad valorem tax" or "property tax" means a tax imposed upon the assessed value of real property.

(2) "Certified tax digest" means the total net assessed value on the annual property tax digest certified by the tax commissioner of a taxing jurisdiction to the department and authorized by the commissioner for the collection of taxes, or, in the case where the governing authority of a county whose digest has not been approved by the commissioner has petitioned the superior court of the county for an order authorizing the immediate and temporary collection of taxes, the temporary digest so authorized.

(3) "Levying authority" means a county, a municipality, or a consolidated city-county governing authority or other governing authority of a political subdivision of this state that exercises the power to levy ad valorem taxes to carry out the governing authority's purposes.

(4) "Mill" means one one-thousandth of a United States dollar.

(5) "Millage" or "millage rate" means the levy, in mills, which is established by the governing authority for purposes of financing, in whole or in part, the taxing jurisdiction's expenses for its fiscal year.

(6) "Millage equivalent" means the number of mills which would result when the total net assessed value added by reassessments is divided by the certified tax digest and the result is multiplied by the previous year's millage rate.

(7) "Net assessed value" means the taxable assessed value of property after all exemptions.

(8) "Recommending authority" means a county, independent, or area school board of education that exercises the power to cause the levying authority to levy ad valorem taxes to carry out the purposes of such board of education.

(9) "Roll-back rate" means the previous year's millage rate minus

the millage equivalent of the total net assessed value added by reassessments:

(A) As calculated and certified to the commissioner by the tax commissioner for county and educational tax purposes; and

(B) As calculated by the collecting officer of the municipality for municipal tax purposes.

(10) "Taxing jurisdiction" means all the real property subject to the levy of a specific levying authority or the recommended levy of a specific recommending authority.

(11) "Total net assessed value added by reassessments" means the total net assessed value added to the certified tax digest as a result of revaluation of existing real property that has not been improved since the previous tax digest year.

(b) At the time of certification of the digest, the tax receiver or tax commissioner shall also certify to the recommending authority and levying authority of each taxing jurisdiction the total net assessed value added by reassessments contained in the certified tax digest for that tax digest year of the taxing jurisdiction.

(c)(1) Whenever a recommending authority or levying authority shall propose to adopt a millage rate which does not exceed the roll-back rate, it shall adopt that millage rate at an advertised public meeting and at a time and place which is convenient to the taxpayers of the taxing jurisdiction, in accordance with the procedures specified under Code Section 48-5-32.

(2) In those instances in which the recommending authority or levying authority proposes to establish a general maintenance and operation millage rate which would require increases beyond the roll-back rate, the recommending authority or levying authority shall advertise its intent to do so and shall conduct at least three public hearings thereon, at least one of which shall commence between the hours of 6:00 P.M. and 7:00 P.M., inclusive, on a business weekday. The recommending authority or levying authority shall place an advertisement in a newspaper of general circulation serving the residents of the unit of local government and post such advertisement on the website of the recommending or levying authority, which shall read as follows:

"NOTICE OF PROPERTY TAX INCREASE

The (name of recommending authority or levying authority) has tentatively adopted a millage rate which will require an increase in property taxes by (percentage increase over roll-back rate) percent.

All concerned citizens are invited to the public hearing on this tax increase to be held at (place of meeting) on (date and time).

Times and places of additional public hearings on this tax increase are at (place of meeting) on (date and time).

This tentative increase will result in a millage rate of (proposed millage rate) mills, an increase of (millage rate increase above the roll-back rate) mills. Without this tentative tax increase, the millage rate will be no more than (roll-back millage rate) mills. The proposed tax increase for a home with a fair market value of (average home value from previous year's digest rounded to the nearest $25,000.00) is approximately $(increase) and the proposed tax increase for nonhomestead property with a fair market value of (average non-homestead property value from previous year's digest rounded to nearest $25,000.00) is approximately $(increase)."

Simultaneously with this notice the recommending authority or levying authority shall provide a press release to the local media.

(3) The advertisement shall appear at least one week prior to each hearing, be prominently displayed, not be less than 30 square inches, and not be placed in that section of the newspaper where legal notices appear and shall be posted on the appropriate website at least one week prior to each hearing. In addition to the advertisement specified under this paragraph, the levying or recommending authority may include in the notice reasons or explanations for such tax increase.

(4) No recommending authority shall recommend and no levying authority shall levy a millage rate in excess of the proposed millage rate as established pursuant to paragraph (2) of this subsection without beginning anew the procedures and hearings required by this Code section and those required by Code Section 48-5-32.

(5) Any notice or hearing required under this Code section may be combined with any notice or hearing required under Article 1 of Chapter 81 of Title 36 or Code Section 48-5-32.

(d) Nothing contained in this Code section shall serve to extend or authorize any millage rate in excess of the maximum millage rate permitted by law or to prevent the reduction of the millage rate.

(e) The commissioner shall not accept a digest for review or issue an order authorizing the collection of taxes if the recommending authority or levying authority other than municipal governing authorities has established a millage rate that is in excess of the correct rollback without complying fully with the procedures required by this Code section. In the event a digest is not accepted for review by the commissioner pursuant to this subsection, it shall be accepted for review upon satisfactory submission by such authorities of such evidence. The levies of each of the levying authorities other than the county governing authority shall be invalid and unenforceable until such time as the provisions of this Code section have been met.

(f) The commissioner shall promulgate such rules and regulations as may be necessary for the administration of this Code section.

History.

Code 1933, § 48-5-32.1, enacted by Ga. L. 1999, p. 1043, § 1; Ga. L. 2000, p. 1270, § 1; Ga. L. 2006, p. 857, § 8/HB 1361; Ga. L. 2010, p. 1104, § 10-1/SB 346; Ga. L. 2017, p. 774, § 48/HB 323.

Editor's notes.

This Code section formerly pertained to certification of assessed taxable value of property and method of computation. This Code section was based on Ga. L. 1991, p. 1903, § 8 and was repealed by Ga. L. 1993, p. 947, § 8, effective April 13, 1993.

Ga. L. 1999, p. 1043, § 4, not codified by the General Assembly, provides that the Act is applicable to all assessments and proceedings commenced on or after January 1, 2000.

Ga. L. 2006, p. 857, § 9/HB 1361, not codified by the General Assembly, provides that: "Nothing in this Act shall impair or invalidate any redevelopment plan, redevelopment area, or tax allocation district in effect on May 5, 2006, or any bonds, notes or certificates thereof. Any redevelopment agency as defined in paragraph (6) of Code Section 36-44-3 having an existing tax allocation district to which the definition of 'ad valorem property taxes' provided for in Section 1 of this Act is effective may apply, in writing, to the state revenue commissioner for a determination or redetermination of the tax allocation increment base of such tax allocation district. Within a reasonable time, and not exceeding 60 days after such application, the state revenue commissioner shall certify to the redevelopment agency the tax allocation increment base, as defined by this Act, as of the effective date of the creation of such tax allocation district. Such certification shall supersede any prior certification and, unless amended pursuant to subsection (b) of Code Section 36-44-10, shall constitute the tax allocation increment base of the tax allocation district." Section 1 of this Act amended Code Section 36-44-3.

48-5-33. Temporary tax relief to buildings in disaster area; assessment; local authority; appeals.

(a) As used in this Code section, the term:

(1) "Disaster area" means that portion of any county which is wholly or partially located in a nationally declared disaster area under the federal Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. Sections 5121-5207.

(2) "Eligible damaged tax parcel" means any tax parcel that contains a building located wholly or partially in a disaster area, which building has been determined by the appropriate local emergency management director to have incurred a degree of damage as a result of the disaster sufficient to qualify as "major."

(3) "Eligible destroyed tax parcel" means any tax parcel that contains a building located wholly or partially in a disaster area, which building has been determined by the appropriate local emergency management director to have incurred a degree of damage as a result of the disaster sufficient to qualify as "destroyed."

(4) "Eligible tax parcel" means any eligible damaged tax parcel and any eligible destroyed tax parcel.

(5) "Governing authority" means the governing authority of the appropriate county, consolidated government, or municipality or the governing body of the appropriate county or independent board of education.

(6) "Local emergency management director" means:

(A) The director of the local organization for emergency management for the county appointed pursuant to subsection (a) of Code Section 38-3-27, or the designee thereof. This subparagraph shall apply to the county, consolidated government, county board of education, municipality, and independent board of education except as otherwise provided under subparagraph (B) of this paragraph; or

(B) In the event that the governing authority of a municipality has elected to implement its own local organization for emergency management under subsection (a) of Code Section 38-3-27, the director of the local organization for emergency management for the municipality, or the designee thereof. This subparagraph shall apply to such municipality and any independent board of education thereof.

(b) Pursuant to Article VII, Section I, Paragraph III(h) of the Constitution of Georgia, this Code section provides an optional mechanism to grant temporary tax relief to buildings located in a disaster area that have been destroyed or severely damaged as a result of the disaster.

(c)(1) Each local emergency management director shall establish and maintain rules for the purposes of this Code section, which may use the most recent edition of the Federal Emergency Management Agency Preliminary Damage Assessment Guide, or any other similar guide established by the federal government, if such director determines that such federal guide reflects appropriately the effects of damage assessment on persons in the State of Georgia. Such rules shall set forth the conditions for a building to be determined to have incurred a degree of damage sufficient to qualify as "major" or "destroyed."

(2) During the normal course of the disaster response operations of the local emergency management director, such director shall travel through the disaster area and identify and make a determination regarding all buildings that have incurred a degree of damage sufficient to qualify as "major" or "destroyed" as a result of the disaster.

(3) Such determinations shall be consolidated into a written damage report containing the location or physical address and

damage status of each building which shall be provided to the tax commissioner of each county wholly or partially containing the disaster area. Such damage report shall not contain any tangible personal property or any real property other than a building.

(4) Each such tax commissioner shall use such damage report to determine the proper parcel numbers and shall provide aggregated data of all eligible tax parcels to each affected governing authority whose jurisdiction wholly or partially contains the associated disaster area.

(d)(1) Following receipt of an applicable damage report, a governing authority shall be authorized, but not required, to adopt a resolution consenting to provide temporary tax relief pursuant to this Code section to eligible tax parcels or eligible destroyed tax parcels for the taxable year in which such disaster occurred. If such governing authority consents to such temporary tax relief, the resolution shall state the total dollar amount of ad valorem property tax relief to be granted throughout its jurisdiction and the method by which the total value of such relief shall be applied throughout the jurisdiction. Such method may exclude eligible damaged tax parcels or provide that eligible damaged tax parcels and eligible destroyed tax parcels shall receive differing amounts, but, in any event, shall grant relief through either:

(A) A reduction or reductions in the millage rate, which shall be applied as follows:

(i) A single rate reduction amount applied equally among all eligible tax parcels or, if eligible damaged tax parcels are excluded, among all eligible destroyed tax parcels; or

(ii) Two rate reduction amounts with one applied equally among all eligible destroyed tax parcels and the other applied equally among all eligible damaged tax parcels; or

(B) A flat dollar amount or amounts to be credited as follows:

(i) One flat dollar amount to be credited equally for all eligible tax parcels or, if eligible damaged tax parcels are excluded, among all eligible destroyed tax parcels; or

(ii) Two flat dollar amounts with one applied equally among all eligible destroyed tax parcels and the other applied equally among all eligible damaged tax parcels.

(2) Upon the adoption of such resolution, such eligible tax parcels or eligible destroyed tax parcels shall automatically qualify to receive such temporary tax relief without need of application or action therefor by the owner.

(3) No governing authority shall be bound or limited by the determination of another governing authority and the determination of one shall be independent of the others.

(4) If a governing authority consents to such temporary tax relief, the resolution shall specify that for such tax year, the taxpayer shall be authorized either to receive a tax credit on the taxpayer's tax bill or the taxpayer shall be authorized to claim a refund in the same manner as otherwise provided under Code Section 48-5-380.

(e) Any credits, reductions, or refunds approved or allowed under this Code section shall be paid from funds of the county, consolidated government, municipality, or county or independent board of education to which the taxes were or were to have been paid.

(f) Any owner of real property that contains a building shall have a right to appeal in writing to the local emergency management director if such owner, in good faith, believes that such owner's property was overlooked or missed by such director and that it is an eligible tax parcel or that such owner's property was improperly given a classification other than as an eligible tax parcel. Such director as soon as practicable shall make an on-site determination. If the director agrees with such owner, an amendment to the written report under paragraph (3) of subsection (c) of this Code section shall be filed by the director with the tax commissioner who shall update the information required under paragraph (4) of subsection (c) of this Code section and provide such update to the appropriate governing authorities. The determination of such director shall be final.

History.

Ga. L. 2023, p. 3, § 1/HB 311, effective March 16, 2023.

Effective date.

This Code section became effective March 16, 2023. See Editor's notes for applicability.

Code Commission notes.

Ga. L. 2023, p. 3, § 1/HB 311, purported to enact Code Section 48-5-33 but amended such Code section by replacing "Reserved." with the language set forth.

Editor's notes.

Ga. L. 1991, p. 1903, § 15, not codified by the General Assembly, provides that the repeal of this former Code section shall be applicable beginning January 1, 1992, with respect to ad valorem taxation of timber and shall be applicable beginning January 1, 1992, for all other purposes. Taxation for prior periods shall continue to be governed by prior law.

Former Code Section 48-5-33, relating to inclusion of standing timber as part of real property, was based on Ga. L. 1990, p. 1901, § 1, and was repealed by Ga. L. 1991, p. 1903, § 9, effective July 1, 1991.

Ga. L. 2023, p. 3, § 2/HB 311, not codified by the General Assembly, provides, in part, that this Act shall be applicable to property tax assessments issued on or after April 1, 2023.

48-5-34. (For effective date, see note.) Ad valorem property tax bill form.

(a) In addition to any other requirements provided by law, the ad valorem property tax bill form shall be prepared annually by the county

tax commissioner or collector and furnished to each taxpayer who owes state, county, or county school tax for the current tax year. The form shall provide the total amount of such taxes levied on property owned by the taxpayer, the amount of property tax credit granted by Act of the 1973 Session of Georgia's General Assembly, and the net amount of such taxes due for the current tax year.

(b) In addition to the requirements of subsection (a) of this Code section, regarding any ad valorem property tax bill where the millage rate adopted by a tax authority exceeds the estimated roll-back rate, such tax bill shall include a notice containing the name of such taxing authority and the following statement in bold print:

> "The adopted millage rate exceeds the estimated roll-back rate as stated in the annual notice of assessment that you previously received for this taxable year, which will result in an increase in the amount of property tax that you will owe."

History.

Ga. L. 2024, p. 20, § 1-2/HB 581, see notes for effective date.

Delayed effective date.

Ga. L. 2024, p. 20, § 4-1/HB 581, provides this Code section becomes effective on January 1, 2025; provided, however, that, if a constitutional amendment which becomes effective on January 1, 2025 and which authorizes the General Assembly to provide by general law for a homestead exemption that applies statewide, but that permits political subdivisions to individually opt out of such homestead exemption, has not been ratified, then this Act shall stand automatically repealed on January 1, 2025. See Editor's notes for applicability.

Editor's notes.

Ga. L. 2024, p. 20, § 4-1/HB 581, not codified by the General Assembly, makes this Code section applicable to taxable years beginning on or after January 1, 2025.

ARTICLE 2

PROPERTY TAX EXEMPTIONS AND DEFERRAL

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, Ch. 92-2 are included in the annotations for this article.

Construction of tax exemptions must not conflict with legislative intent. — Rule of strict construction of tax exemptions does not relieve a court of the duty of interpreting the exemption by the ordinary rules of construction in order to carry out the intention of the General Assembly and does not apply if there is no language in an Act justifying or requiring construction. A fair and reasonable construction of a statute or contract must always be adopted, giving the language used its ordinary meaning, and taking into consideration the purpose and spirit of the exemption as well as the public policy entertained at the time and the history of the times when the statute was passed. Turner v. Board of County Tax Assessors, 71 Ga. App. 374, 31 S.E.2d 61, 1944 Ga. App. LEXIS 374 (1944) (decided under former Code 1933, Ch. 92-2).

Strict construction requires elimination of well-founded doubts, not mere possibility of doubt. — Rule that exemptions must be strictly construed in favor of the taxing power does not mean that if there is a possibility

of a doubt it is to be at once resolved against the exemption. It simply means that if, after the application of all rules of interpretation for the purpose of ascertaining the intention of the General Assembly a well-founded doubt exists, then an ambiguity occurs which may be settled by the strict rule of construction. Turner v. Board of County Tax Assessors, 71 Ga. App. 374, 31 S.E.2d 61, 1944 Ga. App. LEXIS 374 (1944) (decided under former Code 1933, Ch. 92-2).

Strict construction of tax exemptions does not require that the narrowest possible meaning be given to words descriptive of the exemption. Turner v. Board of County Tax Assessors, 71 Ga. App. 374, 31 S.E.2d 61, 1944 Ga. App. LEXIS 374 (1944) (decided under former Code 1933, Ch. 92-2).

OPINIONS OF THE ATTORNEY GENERAL

Exception to penalty provided for in article. — Penalty provided in O.C.G.A. § 48-2-44(b) applies to all state and local ad valorem property taxes, except if original tax due is $500.00 or less and is on homestead property as defined in O.C.G.A. Art. 2, Ch. 5, T. 48. The penalty applies to no other taxes. 1981 Op. Att'y Gen. No. 81-86.

RESEARCH REFERENCES

ALR.

Exemption of part of building or part of its value for taxation, 159 A.L.R. 685.

Tax exemption of real property as affected by time of acquisition of title by private owner entitled to exemption, 54 A.L.R.2d 996.

PART 1

TAX EXEMPTIONS

Law reviews.

For comment, "Trinity Lutheran Church v. Comer: Playing 'In the Joints' and on the Playground," see 68 Emory L.J. 1147 (2019).

For note, "Bearing Hospital Tax Breaks: How Nonprofits Benefit from Your Surprise Medical Bills," see 35 Ga. St. U. L. Rev. 809 (2019).

48-5-40. Definitions.

As used in this part, the term:

(1) "Applicant" means a person who is:

(A)(i) A married individual living with his or her spouse;

(ii) An individual who is unmarried but who permanently maintains a home for the benefit of one or more other individuals who are related to such individual or dependent wholly or partially upon such individual for support;

(iii) An individual who is widowed having one or more children and maintaining a home occupied by himself or herself and the child or children;

(iv) A divorced individual living in a bona fide state of

separation and having legal custody of one or more children, when the divorced individual owns and maintains a home for the child or children; or

(v) An individual who is unmarried or is widowed and who permanently maintains a home owned and occupied by himself or herself; and

(B) A resident of this state as defined in paragraph (15) of Code Section 40-5-1, as amended.

(2) "Home for the aged" means a facility which provides residential services, healthcare services, or both residential services and healthcare services to the aged.

(3) "Homestead" means the real property owned by and in possession of the applicant on January 1 of the taxable year and upon which the applicant resides including, but not limited to, the land immediately surrounding the residence to which the applicant has a right of possession under a bona fide claim of ownership. The term "homestead" includes the following qualifications:

(A) The actual permanent place of residence of an individual who is the applicant and which constitutes the home of the family;

(B) Where the person who is the applicant holds the bona fide fee title (although subject to mortgage or debt deed), an estate for life, or under any bona fide contract of purchase providing for the conveyance of title to the applicant upon performance of the contract;

(C) Where the building is occupied primarily as a dwelling;

(D) Where the children of deceased or incapacitated parents occupy the homestead of their parents and one of the children stands in the relation of applicant. This subparagraph shall apply whether or not the estate is distributed;

(E) Where a husband or wife occupies a dwelling and the title of the homestead is in the name of the wife;

(F) In the event a dwelling house which is classed as a homestead is destroyed by fire, flood, storm, or other unavoidable accident or is demolished or repaired so that the owner is compelled to reside temporarily in another place, the dwelling house shall continue to be classed as a homestead for a period of one year after the occurrence;

(G) In the event an individual who is the applicant owns two or more dwelling houses, he shall be allowed the exemption granted

by law on only one of the houses. Only one homestead shall be allowed to one immediate family group;

(H) Where property is owned and occupied jointly by two or more individuals all of whom occupy the property as a home and if the property is otherwise entitled to a homestead exemption, the homestead may be claimed in the names of the joint owners residing in the home. Where the property on which a homestead exemption is claimed is jointly owned by the occupant and others, the occupant or occupants shall be entitled to claim the full amount of the homestead exemption;

(I) The permanent place of residence of an individual in the armed forces. Any such residence shall be construed to be actually occupied as the place of abode of such individual when the family of the individual resides in the residence or when the family is forced to live elsewhere because of the individual's service in the armed forces;

(J) Absence of an individual from his residence because of duty in the armed forces shall not be considered as a waiver upon the part of the individual in applying for a homestead exemption. Any member of the immediate family of the individual or a friend of the individual may notify the tax receiver or the tax commissioner of the individual's absence. Upon receipt of this notice, the tax receiver or tax commissioner shall grant the homestead exemption to the individual who is absent in the armed forces;

(K) The homestead exempted must be actually occupied as the permanent residence and place of abode by the applicant awarded the exemption, and the homestead shall be the legal residence and domicile of the applicant for all purposes whatever;

(L) In all counties having a population of not less than 25,400 nor more than 25,500, according to the United States decennial census of 2020 or any future such census, where the person who is the applicant holds real property subject to a written lease; the applicant has held the property subject to such a lease for not less than three years prior to the year for which application is made; and the applicant is the owner of all improvements located on the real property;

(M) The deed reflecting the actual ownership of the property for which the applicant seeks to receive a homestead exemption must be recorded in the deed records of the county prior to the filing of the application for the homestead exemption; and

(N) Absence of an individual from such individual's residence because of health reasons shall not in and of itself be considered

as a waiver upon the part of the individual in applying for a homestead exemption if all other qualifications are otherwise met. Any member of the immediate family of the individual or a friend of the individual may notify the tax receiver or the tax commissioner of the individual's absence. Upon receipt of this notice, the tax receiver or tax commissioner shall grant the homestead exemption to the individual who is absent for health reasons.

(4) "Hospital" means an institution in which medical, surgical, or psychiatric care is provided to individuals who are sick, injured, diseased, mentally ill, or crippled. "Hospital" does not include an institution licensed as a nursing home under the laws of this state.

(5) "Institutions of purely public charity," "nonprofit hospitals," and "hospitals not operated for the purpose of private or corporate profit and income" mean such institutions or hospitals which may have incidental income from paying patients when the income, if any, is devoted exclusively to the charitable purpose of caring for patients who are unable to pay and to maintaining, operating, and improving the facilities of such institutions and hospitals, and when the income is not directly or indirectly for distribution to shareholders in corporations owning such property or to other owners of such property.

(6) "Occupied primarily as a dwelling" means:

(A) The applicant or members of his family occupy the property as a home; or

(B)(i) The applicant or members of his family occupy a portion of the property as a home;

(ii) No more than one exemption may be claimed pursuant to this subparagraph in connection with the occupancy of one building, except in the case of a duplex or double occupancy dwelling when the line of division follows a natural and bona fide plan as to both land and building and the two units thus formed are separately owned and occupied.

History.

Ga. L. 1878-79, p. 33, § 1; Code 1882, § 798; Civil Code 1895, § 762; Civil Code 1910, § 998; Ga. L. 1913, p. 122, § 1; Ga. L. 1919, p. 82, § 1; Code 1933, § 92-201; Ga. L. 1937-38, Ex. Sess., p. 145, §§ 7-9; Ga. L. 1939, p. 98, § 1; Ga. L. 1939, p. 99, §§ 1, 2; Ga. L. 1943, p. 103, §§ 1, 1A; Ga. L. 1943, p. 348, § 1; Ga. L. 1945, p. 435, § 3; Ga. L. 1945, p. 455, § 1; Ga. L. 1946, p. 12, § 1; Ga. L. 1947, p. 1183, §§ 1, 2; Ga. L. 1952, p. 265, § 1; Ga. L. 1952, p. 317, §§ 1, 2; Ga. L. 1955, p. 122, § 1; Ga. L. 1955, p. 262, § 1; Ga. L. 1965, p. 182, § 1; Ga. L. 1973, p. 19, § 2; Ga. L. 1973, p. 934, § 1; Ga. L. 1977, p. 1152, §§ 1, 2; Code 1933, § 91A-1101, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1980, p. 1707, § 1; Ga. L. 1981, p. 1267, § 1; Ga. L. 1981, p. 1857, § 13; Ga. L. 1992, p. 2058, §§ 1, 2; Ga. L. 1998, p. 550, § 1; Ga. L. 1998, p. 586, § 1; Ga. L. 1998, p. 1150, § 1; Ga. L. 2002, p. 835, § 1; Ga. L. 2006, p. 1104, § 1/HB 81; Ga. L. 2007, p. 47, § 48/SB

103; Ga. L. 2012, p. 687, § 2/HB 634; Ga. L. 2023, p. 301, § 1/HB 138, effective May 1, 2023; Ga. L. 2024, p. 1052, § 5(11)/SB 448, effective July 1, 2024.

Amendments.

The 2023 amendment, effective May 1, 2023, in subparagraph (3)(L), substituted "not less than 25,400 nor more than 25,500" for "not less than 23,500 no more than 23,675" and "census of 2020" for "census of 2010".

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substituted "healthcare" for "health care" twice in paragraph (2).

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1998, subparagraph (3)(M) as added by Ga. L. 1998, p. 550, § 1 was redesignated as subparagraph (3)(N), to become effective upon ratification by the voters as described in the Editor's notes set out below. Additionally, the "; or," added by Ga. L. 1998, p. 550, § 1 at the end of subparagraph (3)(L) was not implemented and the "and" added at the end of subparagraph (3)(L) by Ga. L. 1998, p. 586, § 1 was moved to the end of subparagraph (3)(M).

Editor's notes.

Ga. L. 1998, p. 586, § 2, not codified by the General Assembly, provides that the amendment to this Code section is applicable to all taxable years beginning on or after January 1, 1999.

The state-wide referendum (Ga. L. 1998, p. 550, § 2) which provided for continued homestead exemptions from ad valorem taxes for persons absent from their residence due to health reasons was approved by a majority of the qualified voters voting at the November 1998 general election.

The state-wide referendum (Ga. L. 1998, p. 1150, § 4) which provided for an ad valorem tax exemption for livestock and crops was approved by a majority of the qualified voters voting at the 1998 November general election.

Law reviews.

For comment criticizing Elder v. Henrietta Eggleston Hosp. for Children, Inc., 205 Ga. 489, 53 S.E.2d 751 (1949), holding hospital property exempt from taxation, even though income is derived therefrom, when income was applied exclusively to maintenance and charitable purposes, see 1 Mercer L. Rev. 111 (1949).

For annual survey of state and local taxation, see 38 Mercer L. Rev. 337 (1986).

JUDICIAL DECISIONS

Analysis

Homestead
Hospitals and Other Institutions of Charity

Homestead

Requirements as to residence and domicile. — Requirement in former Code 1933, § 92-233(h) (see now subparagraph (3)(K) of O.C.G.A. § 48-5-40) that the exempted homestead be the legal residence and domicile of such person for all purposes means no more than is required by Ga. Const. 1877, Art. VII, Sec. II, Para. VII (see now Ga. Const. 1983, Art. VII, Sec. II, Para. I-IV) which requires actual occupancy primarily as a residence or homestead. Turner v. Board of County Tax Assessors, 71 Ga. App. 374, 31 S.E.2d 61, 1944 Ga. App. LEXIS 374 (1944).

Exemption when applicant's dependents occupy claimed property. — When an applicant for exemption maintains a house as a permanent residence, home, and place of abode, though the applicant's father and mother who are dependent on the applicant for support, although the applicant personally only occupies the house twice a year, the applicant is entitled to the homestead exemption, unless facts are shown which would deprive the applicant of the right to the exemption. Turner v.

Homestead (Cont'd)

Board of County Tax Assessors, 71 Ga. App. 374, 31 S.E.2d 61, 1944 Ga. App. LEXIS 374 (1944).

There is no limitation as to size or physical proportions of property to be embraced within the homestead provision, and it would seem that the purpose of Ga. Const. 1945, Art. VII, Sec. I, Para. IV (see now Ga. Const. 1983, Art. VII, Sec. II, Para. I-IV) and former Code 1933, § 92-219 (see now O.C.G.A. § 48-5-44) in fixing a maximum valuation was to equalize the exemption as between applicants on the basis of value, regardless of the extent of the tract involved. Jones v. Johnson, 80 Ga. App. 340, 55 S.E.2d 904, 1949 Ga. App. LEXIS 835 (1949).

Effect of use to which rural or farm homestead is put. — Reasonable intent of the homestead exemption provisions of the Constitution of Georgia and its statutes is to include in rural homesteads the entire tract of land upon which the house is situated, regardless of whether the land surrounding the dwelling is used simply as an extended approach to the building or put to agricultural uses. Jones v. Johnson, 80 Ga. App. 340, 55 S.E.2d 904, 1949 Ga. App. LEXIS 835 (1949).

Farming not considered commercial or business enterprise for purposes of homestead exemption. — Owner of a farm located in this state, who resides in a house on the farm, is entitled to a homestead exemption as to the entire tract of land upon which the house is situated, to a value of $2,000.00 notwithstanding the fact that the owner devotes the land to agricultural purposes, since this is not such a use of the land as to amount to a commercial or business enterprise. Jones v. Johnson, 80 Ga. App. 340, 55 S.E.2d 904, 1949 Ga. App. LEXIS 835 (1949).

Hospitals and Other Institutions of Charity

Exempt charitable institutions must be both pure charity and public charity. — Constitution of Georgia restricts tax exemption of institutions of charity to those and those only that are "purely" charity and also that are "public" charity. Central Bd. on Georgia Osteopathic Hosp. v. Alford, 217 Ga. 663, 124 S.E.2d 402, 1962 Ga. LEXIS 355 (1962).

Exemption of property used by charitable institution to produce money for charitable purposes. — Interpreting "private or corporate income" to mean any income which is not public, productive property used as capital to raise money to expend in charity is used for private income when the owner is a private individual, and for corporate income when the owner is a corporation. It is no more allowable under the Constitution for a charitable association to accumulate money by the use of exempt property, which money is to be disbursed in charity, than it is for a common citizen to do it. Richardson v. Executive Comm., 176 Ga. 705, 169 S.E. 18, 1933 Ga. LEXIS 259 (1933).

Terms "private or corporate" are employed in contradistinction to "public." — Public property is not taxed, whether income is derived from the property or not; but private or corporate property, though the property is connected with the external, visible "institution," is not exempt if used for income since the income from such property must, by reason of the property's ownership, be either private or corporate; these terms being comprehensive enough to include all income whatsoever that is not public. Richardson v. Executive Comm., 176 Ga. 705, 169 S.E. 18, 1933 Ga. LEXIS 259 (1933).

Exemption of hospital neither chartered as charity nor using property exclusively as such. — When a hospital is not chartered as a purely public charity, and when the hospital's property is not put to use as a purely public charity, and neither the hospital's income nor the hospital's surplus is used exclusively for purely public charity, the hospital does not bring itself within the strict requirements for the ad valorem tax exemption sought. St. Joseph Hosp. v. Bohler, 229 Ga. 577, 193 S.E.2d 603, 1972 Ga. LEXIS 682 (1972).

For a nursing home to be tax exempt the nursing home must be purely

charitable and public. Central Bd. on Care of Jewish Aged, Inc. v. Henson, 120 Ga. App. 627, 171 S.E.2d 747, 1969 Ga. App. LEXIS 886 (1969).

To qualify as public a nursing home need not be open to the entire public. It is sufficient that the nursing home be open to the classes for whose relief the nursing home is intended. Central Bd. on Care of Jewish Aged, Inc. v. Henson, 120 Ga. App. 627, 171 S.E.2d 747, 1969 Ga. App. LEXIS 886 (1969).

Effect of Act which expressly exempted hospitals of purely public charity. — When, by enacting former Code 1933, § 92-201 (see now O.C.G.A. § 48-5-41), the General Assembly exempted from taxation all of the property enumerated in Ga. Const. 1945, Art. VII, Sec. I, Para. IV (see Ga. Const. 1983, Art. VII, Sec. II, Para. I-IV), using the identical language there employed, it fully exhausted its constitutional power to make exemptions, and the amending Act, Ga. L. 1947, p. 1183, which expressly exempted from taxation all hospitals of purely public charity added nothing to what the General Assembly had previously done by Ga. L. 1946, p. 12, § 1. Elder v. Henrietta Egleston Hospital for Children, Inc., 205 Ga. 489, 53 S.E.2d 751, 1949 Ga. LEXIS 375 (1949).

Independent-living units exempt as home for aged. — Nonprofit charitable institution's independent-living units for the elderly were entitled to share the institution's longstanding tax exemption as a home for the aged because: (1) the institution was clearly a nonprofit home for the aged, which was defined in O.C.G.A. § 48-5-40(2) as a facility which provides residential services, health care services, or both residential services and health care services to the aged; (2) the institution had neither stockholders nor distributed income to private persons, was subject to Georgia laws regulating nonprofit and charitable corporations, and had been determined to be a tax-exempt organization under both federal and Georgia law; (3) the institution was a charitable one because supplying care for aged people was a charitable and benevolent purpose; and (4) the independent-living units were not held by the institution primarily for investment purposes. Bd. of Tax Assessors v. Baptist Vill., Inc., 269 Ga. App. 848, 605 S.E.2d 436, 2004 Ga. App. LEXIS 1315 (2004).

Hospital exempt when all income used for maintenance, operations, and furtherance of charitable purposes. — When a hospital is organized for charitable purposes, and uses all of the hospital's income from all sources including income from pay patients, exclusively for maintenance, operation, enlarging the hospital's charitable facilities, and for furtherance of the hospital's charitable purposes, with no part of the same distributable to anyone having an interest therein, the hospital is exempt within the meaning of Ga. Const. 1945, Art. VII, Sec. I, Para. IV (see now Ga. Const. 1983, Art. VII, Sec. II, Para. I-IV), an interpretation of that constitutional provision which accords with the intention of the framers of that document as shown in the Records of the Constitutional Commission 1943-1944, Vol. I, pp. 138-141, 388-395, 397, 528-531; Vol. II, pp. 58-59. Elder v. Henrietta Egleston Hospital for Children, Inc., 205 Ga. 489, 53 S.E.2d 751, 1949 Ga. LEXIS 375 (1949).

Home for mentally handicapped held not exempt. — When over 70 percent of the operating costs of a home for mentally handicapped persons comes from the government or client fees, and private donations account for only 15 percent of the expenditures of the home, and when the families or residents or government agencies pay monthly fees on behalf of each resident, it is not sufficiently "public" in nature to be considered an institution of purely public charity. Annandale at Suwanee, Inc. v. Gwinnett County Bd. of Tax Assessors, 242 Ga. 241, 248 S.E.2d 640, 1978 Ga. LEXIS 1156 (1978).

Hospital with paying patients held not exempt. — When a hospital receives charitable patients without pay but it also charges for patients able to pay, the proportion being vastly in favor of the latter, the property in question is used for corporate income, and is not exempted

Hospitals and Other Institutions of Charity (Cont'd)

from taxation. Richardson v. Executive Comm., 176 Ga. 705, 169 S.E. 18, 1933 Ga. LEXIS 259 (1933).

Hospital which charges off uncollectable bills to charity. — When a hospital is operated generally for profit, and while there is some evidence that it does on occasion treat indigent patients, the general practice of the institution is to collect all that it can from its patients, and only charge off as charity those bills it is unable to collect, the hospital is engaged principally for noncharitable purposes and apparently chiefly for the benefit of its staff, and is not exempt from taxation. Central Bd. on Georgia Osteopathic Hosp. v. Alford, 217 Ga. 663, 124 S.E.2d 402, 1962 Ga. LEXIS 355 (1962).

OPINIONS OF THE ATTORNEY GENERAL

Analysis

General Consideration
Applicant
Homestead

General Consideration

Life tenant with remainderman responsible for ad valorem taxes. — Covenant contained in a deed conveying a life estate which makes the remainder interest responsible for paying the ad valorem taxes does not alter the ownership interests in the property for purposes of eligibility to claim the homestead exemptions allowed for the elderly. 1983 Op. Att'y Gen. No. U83-71.

Homestead exemption fixes a person's residence for voting purposes. 1981 Op. Att'y Gen. No. 81-33.

Exemption on automobile claimed by military personnel stationed in Georgia. — Member of the military stationed in Georgia may claim an exemption on the member's automobile pursuant to the Soldiers and Sailors Relief Act [50 U.S.C. App. § 574] regardless of the member's spouse's claiming homestead exemption on the spouse's house in Georgia, unless other conduct on the member's part establishes an intent to change the member's residency to Georgia. 1990 Op. Att'y Gen. No. U90-15.

Applicant

Husband and wife together constitute only one "applicant" and are entitled to only one exemption. 1958-59 Ga. Op. Att'y Gen. 343.

Homestead

Applicant must have duly recorded fee title, estate for life, or contract of purchase. — Applicant for a homestead exemption must have a right to possession under a bona fide claim of ownership, which contemplates duly recorded fee title, estate for life, or contract of purchase. 1948-49 Ga. Op. Att'y Gen. 370.

Exemption when owner occupies property on January 1, but not for entire year. — An applicant who owned and occupied real property as a home on January 1 of the taxable year and otherwise qualified for homestead exemption would be entitled to claim the property as exempt, even though the applicant ceased to occupy the property at any time after January 1 of the taxable year. 1954-56 Ga. Op. Att'y Gen. 750.

Exemption when owner occupies property less than full time. — Any person who owns and maintains a home, evidenced by the home being furnished, whose legal residence is in that particular county, and who may actually live outside of the county a part of the time in carrying out the person's work, is still entitled to a homestead exemption when the person has properly made application as provided by law. 1950-51 Ga. Op. Att'y Gen. 173.

Taxpayer who owns a residence and land surrounding the residence, but because of duties in occupation is required to be in another county except on weekends

when the taxpayer occupies such residence is nevertheless entitled to a homestead exemption on property. 1954-56 Ga. Op. Att'y Gen. 750.

Applicability of other provisions as to exemption of joint interest. — Former Code 1933, § 92-110 (see now O.C.G.A. § 48-5-9) was not applicable in determining the extent of the homestead which should be granted to an occupant who owned a joint interest in the property. 1954-56 Ga. Op. Att'y Gen. 735.

Effect of failure of house loan to go through until after January 1. — When one moves into a house prior to January 1, but the loan does not go through until after January 1, one is entitled to the homestead exemption. 1958-59 Ga. Op. Att'y Gen. 344.

Since a husband and wife constitute one immediate family group, they are entitled to only one homestead exemption, even though each owns property which was previously entitled to an exemption. 1958-59 Ga. Op. Att'y Gen. 343.

Exemptions allowed to separated husband and wife. — Husband and wife who are separated, each residing on one's own property on January 1, are not each entitled to apply for a homestead exemption. 1958-59 Ga. Op. Att'y Gen. 344.

Taxpayer may claim a homestead exemption when members of the taxpayer's family occupy the home. 1957 Ga. Op. Att'y Gen. 295.

Exemption when house is occupied partly by owner and partly by tenant. — Person who with the person's family occupies a portion of the person's house as a dwelling may receive a homestead exemption, although the remainder is occupied by the person's tenants. 1945-47 Ga. Op. Att'y Gen. 563; 1954-56 Ga. Op. Att'y Gen. 731.

When owner stores personal possessions in a home which is rented to another while owner resides elsewhere, the owner is not entitled to a homestead exemption since the owner does not live in or occupy the property upon which the exemption is claimed. 1958-59 Ga. Op. Att'y Gen. 344.

Taxpayer who rents out property, but who retains portion for storage and visits the property several times weekly, is not entitled to a homestead exemption on the property. 1954-56 Ga. Op. Att'y Gen. 749.

Effect of operation of store in building occupied as a home. — Fact that an applicant for homestead exemption conducts a store in a building occupied by the applicant as a home would not affect the applicant's eligibility for such exemption. 1952-53 Ga. Op. Att'y Gen. 437.

Full homestead exemption is granted on tourist courts when the owner occupies a certain portion as a home. 1954-56 Ga. Op. Att'y Gen. 731.

Exemption of hotel to which is attached an apartment for owner's use. — When the owner of a hotel builds an apartment attached to the hotel and occupies the apartment as a home, the apartment attached to the hotel would become a part of the hotel. Therefore, the applicant who owns and occupies a portion of the hotel would be entitled to a homestead exemption up to the value of $2,000.00. 1954-56 Ga. Op. Att'y Gen. 731.

Exemption of farm lands rented to another. — Party who owns a farm, the assessed value of which does not exceed $2,000.00, and who rents the farm lands, but reserves the farmhouse and occupies the farmhouse as the party's home, is entitled to the homestead exemption on the farm lands. 1954-56 Ga. Op. Att'y Gen. 731.

Homestead exemption does not apply to other buildings not actually occupied by the taxpayer, although the total value of such buildings and the buildings so occupied by the taxpayer are not equal to the amount allowed the taxpayer as a homestead exemption. 1952-53 Ga. Op. Att'y Gen. 209.

Intent of provisions for persons in military service. — Former Code 1933, § 92-233(k) (see now subparagraph (3)(I) of O.C.G.A. § 48-5-40) was enacted to preserve the homestead exemption of a member of the armed services who is forced to be away from home during the member's military service. It is not intended to grant a homestead exemption to members of the armed services on property never occupied by the members

or their families as a residence. 1957 Ga. Op. Att'y Gen. 296.

Persons in military service who establish domicile in this state are entitled to homestead exemption, and are liable for ad valorem taxation on personal property. 1954-56 Ga. Op. Att'y Gen. 737.

Both career and drafted members of the military services are entitled to a homestead exemption on property owned by the member's, but not occupied by the members due to such service. 1954-56 Ga. Op. Att'y Gen. 738.

Availability of homestead exemption to members of armed forces not residents of this state. — No person, whether a member of the armed services or not, who maintains a legal residence and votes in another state is eligible to claim a homestead exemption in this state since the homestead exemption law specifically states that the homestead shall be the legal residence and domicile of such person for all purposes whatsoever. 1954-56 Ga. Op. Att'y Gen. 737.

Exemption of property rented out while on military duty elsewhere. — Members of the armed services can continue to claim a homestead exemption on property rented out while stationed elsewhere because of service in the armed forces. 1954-56 Ga. Op. Att'y Gen. 736; 1967 Op. Att'y Gen. No. 67-131.

Effect of homestead claim by military personnel on liability for personal property tax. — Military personnel who claim a homestead exemption on real property owned in this state are declaring their intentions to become residents of this state and thus are subject to personal property tax. 1954-56 Ga. Op. Att'y Gen. 741; 1965-66 Op. Att'y Gen. No. 66-97.

Failure of person in military service to return to personal property in a county does not deprive a person of homestead exemption. 1954-56 Ga. Op. Att'y Gen. 739.

Owner who works farm but resides elsewhere cannot claim homestead exemption on farm. 1954-56 Ga. Op. Att'y Gen. 729.

Homestead exemption does not extend to rented property or vacant lots adjoining a homestead. 1958-59 Ga. Op. Att'y Gen. 339.

Exemption of land which is divided into lots. — Taxpayer is entitled to homestead exemption on residence and land immediately surrounding the residence, whether such land is divided into one or more lots. 1954-56 Ga. Op. Att'y Gen. 747.

Exemption of property which lies in more than one county. — If land lies in two counties, the applicant for homestead exemptions would have the right to file an application in each county in proportion to the value of the land located in such county, so long as the exemption does not exceed the total amount allowable by law. 1954-56 Ga. Op. Att'y Gen. 745; 1954-56 Ga. Op. Att'y Gen. 746.

Exemption of properties which are divided by railroads, rivers, or highways. — Fact that lands owned and occupied by the taxpayer are crossed by a highway would not affect the eligibility of a taxpayer for a homestead exemption thereon. 1952-53 Ga. Op. Att'y Gen. 437.

An island separated from a farm by a natural navigable tidewater river cannot be included as part of a homestead exemption. 1954-56 Ga. Op. Att'y Gen. 744.

Even though a portion of a tract of land is separated from the remainder by a railroad track, the owner is entitled to claim a homestead exemption on the entire tract. 1954-56 Ga. Op. Att'y Gen. 745.

Division of a tract of land by a public road, by a railroad, or by some other public utility would not affect the rights of the owner to claim as the owner's homestead exemption the property so divided. 1957 Ga. Op. Att'y Gen. 293.

Duplex dwelling would come under this statute; therefore, the exemption would be allowable to the owner of such a dwelling. 1948-49 Ga. Op. Att'y Gen. 363.

Owner who occupies a duplex will be entitled to claim a homestead exemption on the entire property regardless of the number of entrances thereto. 1954-56 Ga. Op. Att'y Gen. 731.

Test for exemption of duplex. — It is possible for two people to each claim an exemption of $2,000.00 on a duplex when

the line of division follows a natural and bona fide plan as to both land and building, and the two units thus formed are separately owned and occupied. 1954-56 Ga. Op. Att'y Gen. 731.

House trailer and land immediately surrounding it qualify if owned and occupied by applicant. — Statute states that "homestead" means real property. Although a house trailer is not real property, when a person owns a trailer and the land on which it is located, and occupies the trailer as a home, the person would be entitled to claim the trailer and the land immediately surrounding the trailer as a homestead. 1954-56 Ga. Op. Att'y Gen. 729; 1954-56 Ga. Op. Att'y Gen. 887; 1958-59 Ga. Op. Att'y Gen. 342.

When the owner of a house trailer uses the trailer as the owner's residence and has the trailer mounted on a foundation similar to the foundation of a house but on land the owner does not own, the owner is not entitled to a homestead exemption. 1960-61 Ga. Op. Att'y Gen. 491.

Land qualifies when owned by applicant even if trailer not on permanent foundation. — If the house trailer is not on a permanent foundation but is located on land owned by the person residing in the trailer, the owner is entitled to a homestead exemption on the value of the land. A house trailer is not real property but moveable personal property; therefore, unless a house trailer has been mounted on a foundation similar to the foundation of a house, the trailer remains personal property. 1960-61 Ga. Op. Att'y Gen. 491.

When land on which trailer is parked is rented. — Person who owns a house trailer and rents the land on which the trailer is parked is not entitled to claim a homestead exemption on the house trailer. 1954-56 Ga. Op. Att'y Gen. 730; 1958-59 Ga. Op. Att'y Gen. 342.

When a farm has been incorporated there can be no homestead exemption either to the corporation or the owner of the stock. 1969 Op. Att'y Gen. No. 69-3.

Nature of homestead exemption granted to certain persons 65 or older. — Homestead exemption allowed under Ga. Const. 1945, Art. VII, Sec. I, Para. IV (see now Ga. Const. 1983, Art. VII, Sec. II, Para. I-IV) to persons 65 years of age or over, provided the income limitation is met, is a personal right of only those persons 65 or over. When the homestead property is jointly owned, each owner may assert that owner's claim as an applicant for an exemption based only upon the interest the owner holds in the property. 1969 Op. Att'y Gen. No. 69-60.

RESEARCH REFERENCES

C.J.S.

40 C.J.S., Homesteads, § 83 et seq.

ALR.

Hospital as within tax exemption provision not specifically naming hospitals, 144 A.L.R. 1483.

Tax on property held under executory contract with exempt vendor, 166 A.L.R. 595.

Garage or parking lot as within tax exemption extended to property of educational, charitable, or hospital organizations, 33 A.L.R.3d 938.

Homes for the aged as exempt from property taxation, 37 A.L.R.3d 565.

Receipt of pay from beneficiaries as affecting tax exemption of charitable institutions, 37 A.L.R.3d 1191.

Prospective use for tax-exempt purposes as entitling property to tax exemption, 54 A.L.R.3d 9.

Availability of tax exemption to property held on lease from exempt owner, 54 A.L.R.3d 402.

Qualification of health care entities for federal tax exemption as charitable organization under 26 USCS § 501(c)(3), 134 A.L.R. Fed 395.

48-5-41. Exempt property.

(a) The following property shall be exempt from all ad valorem property taxes in this state:

(1)(A) Except as provided in this paragraph, all public property.

(B) No public real property which is owned by a political subdivision of this state and which is situated outside the territorial limits of the political subdivision shall be exempt from ad valorem taxation unless the property is:

(i) Developed by grading or other improvements to the extent of at least 25 percent of the total land area and facilities are located on the property which are actively used for a public or governmental purpose;

(ii) Three hundred acres or less in area;

(iii) Located inside a county embracing all or part of a municipality owning such property; or

(iv) That portion of any real property which has been designated as a watershed by the United States Soil and Water Conservation Service and used as a watershed by the political subdivision owning the property.

(C) Property which is owned by and used exclusively as the general state headquarters of a nonprofit corporation organized for the primary purpose of encouraging cooperation between parents and teachers to promote the education and welfare of children and youth, notwithstanding the fact that such nonprofit corporation may derive income from fees or dues paid by persons, organizations, or associations to affiliate with such nonprofit corporation, shall be considered to be an extension of the public schools of this state and such property shall be considered to be public property within the meaning of this paragraph.

(D) Property which is held by a Georgia nonprofit corporation whose income is exempt from federal income tax pursuant to Section 115 of the Internal Revenue Code of 1986 and held exclusively for the benefit of a county, municipality, or school district shall be considered to be public property within the meaning of this paragraph.

(E) Property which qualifies as a public-private transportation project pursuant to Code Section 32-2-80 which property is owned or leased by the state, a state agency, or another governmental entity and which is developed, operated, or held by a private partner shall be considered to be public property within the meaning of this paragraph.

(F) All interests in property on a campus of the Board of Regents of the University System of Georgia primarily used for student housing or parking held by a private party that is contractually obligated to operate such property primarily for the use or benefit of a public college or university shall be considered to be public property within the meaning of this paragraph, provided that such interest of the private party resulted from a competitive procurement.

(2) All places of burial;

(2.1)(A) All places of religious worship.

(B) All property owned by and operated exclusively as a church, an association or convention of churches, a convention mission agency, or as an integrated auxiliary of a church or convention or association of churches, when such entity is qualified as an exempt religious organization under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and such property is used in a manner consistent with such exemption under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended;

(3) All property owned by religious groups and used only for single-family residences when no income is derived from the property;

(4) All institutions of purely public charity;

(5)(A) All property of nonprofit hospitals used in connection with their operation when the hospitals have no stockholders, have no income or profit which is distributed to or for the benefit of any private person, and are subject to the laws of this state regulating nonprofit or charitable corporations.

(B) Property exempted pursuant to this paragraph shall not include property of a nonprofit hospital held primarily for investment purposes or used for purposes unrelated to:

(i) Providing of patient care;

(ii) Providing and delivery of healthcare services; or

(iii) Training and education of physicians, nurses, and other healthcare personnel;

(6) All buildings erected for and used as a college, incorporated academy, or other seminary of learning;

(7) All funds or property held or used as endowment by colleges, nonprofit hospitals, incorporated academies, or other seminaries of learning when the funds or property are not invested in real estate;

(8) When used by or connected with any public library, all the real and personal property of such library and all the real and personal property of any other literary association;

(9) All books, philosophical apparatus, paintings, and statuary of any company or association which are kept in a public hall and which are not held as merchandise or for purposes of sale or gain;

(10) Reserved;

(11) All property used in or which is a part of any facility which has been installed or constructed at any time for the primary purpose of eliminating or reducing air or water pollution if such facilities have been certified by the Department of Natural Resources as necessary and adequate for the purposes intended;

(12)(A) Property of a nonprofit home for the aged used in connection with its operation when the home for the aged has no stockholders and no income or profit which is distributed to or for the benefit of any private person and when the home is qualified as an exempt organization under the United States Internal Revenue Code, Section 501(c)(3), as amended, and Code Section 48-7-25, and is subject to the laws of this state regulating nonprofit and charitable corporations.

(B) Property exempted by this paragraph shall not include property of a home for the aged held primarily for investment purposes or used for purposes unrelated to the providing of residential or health care to the aged.

(C) For purposes of this paragraph, indirect ownership of such home for the aged through a limited liability company that is fully owned by such exempt organization shall be considered direct ownership;

(13)(A) All property of any nonprofit home for the mentally disabled used in connection with its operation when the home for the mentally disabled has no stockholders and no income or profit which is distributed to or for the benefit of any private person and when the home is qualified as an exempt organization under the United States Internal Revenue Code of 1954, Section 501(c)(3), as amended, and Code Section 48-7-25, and is subject to the laws of this state regulating nonprofit and charitable corporations.

(B) Property exempted by this paragraph shall not include property of a home for the mentally disabled held primarily for investment purposes or used for purposes unrelated to the providing of residential or health care to the mentally disabled.

(C) For purposes of this paragraph, indirect ownership of such home for the mentally disabled through a limited liability com-

pany that is fully owned by such exempt organization shall be considered direct ownership.

(D) For purposes of this paragraph, the participation of a business corporation or other entity or person in the indirect ownership of such home for the mentally disabled, as a member of the limited liability company or limited partner of the partnership that is the direct owner of such home, for the purpose of providing financing for the construction or renovation of such home in return for a share of any tax credits pursuant to United States Internal Revenue Code of 1986, Section 42, as amended, and which relinquishes all ownership of such home upon the completion of its obligation under the financing agreement, shall not operate to disqualify such home for the exemption under this paragraph;

(14)(A) Property which is owned by and used exclusively as the headquarters, post home, or similar facility of a veterans organization. As used in this paragraph, the term "veterans organization" means any organization or association chartered by the Congress of the United States which is exempt from federal income taxes but only if such organization is a post or organization of past or present members of the armed forces of the United States organized in the State of Georgia with at least 75 percent of the members of which are past or present members of the armed forces of the United States, and where no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(B) Property which is owned by and used exclusively by any veterans organization which is qualified as a nonprofit organization under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and which has been organized for the purpose of refurbishing and operating historic military aircraft acquired from the federal government and other sources, making such aircraft airworthy, and putting such aircraft on display to the public for educational purposes;

(15) Property that is owned by a historical fraternal benefit association and which is used exclusively for charitable, fraternal, and benevolent purposes. As used in this paragraph, the term "fraternal benefit association" means any organization qualified as an exempt organization under the United States Internal Revenue Code of 1954, Section 501(c)(10), as amended, where such organization has a representative form of government and a lodge system with a ritualistic form of work for the meeting of its chapters or other subordinate bodies and whose founding organization received its charter from the General Assembly of Georgia prior to January 1, 1880; and

(16) All real property owned by a purely public charity, if such charity is exempt from taxation under Section 501(c)(3) of the federal Internal Revenue Code and such real property is held exclusively for the purpose of building or repairing single-family homes to be financed by such charity to individuals using loans that shall not bear interest. If any portion of such real property is not financed without interest by such charity to an individual purchasing a single-family home then the full amount of all ad valorem taxes exempted for such property pursuant to this paragraph shall become due and payable.

(b) The exemptions provided for in this Code section which refer to colleges, nonprofit hospitals, incorporated academies, or other seminaries of learning shall only apply to those colleges, nonprofit hospitals, incorporated academies, or other seminaries of learning which are open to the general public.

(c) The property exempted by this Code section, excluding property exempted by paragraph (1) of subsection (a) of this Code section, shall not be used for the purpose of producing private or corporate profit and income distributable to shareholders in corporations owning such property or to other owners of such property, and any income from such property shall be used exclusively for religious, educational, and charitable purposes or for either one or more of such purposes and for the purpose of maintaining and operating such religious, educational, and charitable institutions.

(d)(1) Except as otherwise provided in paragraph (2) of this subsection, this Code section, excluding paragraph (1) of subsection (a) of this Code section, shall not apply to real estate or buildings which are rented, leased, or otherwise used for the primary purpose of securing an income thereon and shall not apply to real estate or buildings which are not used for the operation of religious, educational, and charitable institutions. Donations of property to be exempted shall not be predicated upon an agreement, contract, or other instrument that the donor or donors shall receive or retain any part of the net or gross income of the property.

(2) With respect to paragraph (4) of subsection (a) of this Code section, a building which is owned by a charitable institution that is otherwise qualified as a purely public charity and that is exempt from taxation under Section 501(c)(3) of the federal Internal Revenue Code and which building is used by such charitable institution exclusively for the charitable purposes of such charitable institution, and not more than 15 acres of land on which such building is located, may be used for the purpose of securing income so long as such income is used exclusively for the operation of that charitable institution.

History.

Ga. L. 1878-79, p. 32, § 1; Code 1882, § 798; Civil Code 1895, § 762; Civil Code 1910, § 998; Ga. L. 1913, p. 122, § 1; Ga. L. 1919, p. 82, § 1; Code 1933, § 92-201; Ga. L. 1943, p. 348, § 1; Ga. L. 1946, p. 12, § 1; Ga. L. 1947, p. 1183, §§ 1, 2; Ga. L. 1955, p. 262, § 1; Ga. L. 1965, p. 182, § 1; Ga. L. 1967, p. 629, § 1; Ga. L. 1973, p. 19, §§ 1-3; Ga. L. 1973, p. 934, § 1; Ga. L. 1976, p. 639, § 1; Ga. L. 1977, p. 1152, §§ 1, 2; Code 1933, § 91A-1102, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, §§ 29A, 30; Ga. L. 1982, p. 3, § 48; Ga. L. 1984, p. 520, § 1; Ga. L. 1984, p. 1058, § 1; Ga. L. 1984, p. 1253, § 1; Ga. L. 1987, p. 191, § 9; Ga. L. 1994, p. 927, § 1; Ga. L. 1994, p. 965, § 1; Ga. L. 1995, p. 233, § 1; Ga. L. 1995, p. 1302, § 14; Ga. L. 1997, p. 963, § 1; Ga. L. 1998, p. 1015, § 1; Ga. L. 1998, p. 1150, § 2; Ga. L. 2001, p. 1098, § 3; Ga. L. 2006, p. 235, § 1/HB 173; Ga. L. 2006, p. 376, § 1/HB 848; Ga. L. 2007, p. 341, § 1/HB 445; Ga. L. 2010, p. 987, § 1/HB 1186; Ga. L. 2014, p. 679, § 1/HB 788; Ga. L. 2016, p. 864, § 48/HB 737; Ga. L. 2017, p. 55, § 2/HB 196; Ga. L. 2017, p. 774, § 48/HB 323; Ga. L. 2019, p. 488, § 1/HB 344; Ga. L. 2024, p. 1052, § 5(12)/SB 448, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substituted "healthcare" for "health care" in divisions (a)(5)(B)(ii) and (a)(5)(B)(iii).

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2001, in subparagraph (a)(12)(C), the subparagraph "(C)" designation was capitalized and a semicolon was substituted for the period at the end of the subparagraph.

Editor's notes.

Ga. L. 1984, p. 520, § 2 and Ga. L. 1984, p. 1253, § 2, not codified by the General Assembly, provided that those Acts (which added subparagraph (a)(1)(C) and paragraph (a)(13), respectively) would become effective January 1, 1985, if approved at a referendum conducted in conjunction with the November 1984 general election, and would apply to all tax years beginning on or after January 1, 1985; otherwise, the amendments by those Acts would be void. Both amendments were approved by a state-wide referendum held on November 6, 1984.

Ga. L. 1984, p. 1058, § 9, not codified by the General Assembly, provided as follows: "In the event of any conflict between this Act and any other Act of the 1984 General Assembly the provisions of such other Act shall control over the provisions of this Act."

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, provided that that Act applies to taxable years ending on or after March 11, 1987, and that a taxpayer with a taxable year ending on or after January 1, 1987, and before March 11, 1987, may elect to have the provisions of that Act apply.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by that Act.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that provisions of the federal Tax Reform Act of 1986 and of the Internal Revenue Code of 1986 which as of January 1, 1987, were not yet effective become effective for purposes of Georgia taxation on the same dates as they become effective for federal purposes.

The state-wide referendum (Ga. L. 1994, p. 927), which would have added a new paragraph (a)(10.1), concerning blueberry plants, was defeated at the November, 1994 general election.

The state-wide referendum (Ga. L. 1994, p. 965), which added paragraph (a)(14) was approved by a majority of the qualified voters voting at the general election held in November, 1994, and took effect January 1, 1995.

The state-wide referendum (Ga. L. 1995, p. 233), which added paragraph (a)(15) was approved by a majority of the qualified voters voting at the general election held in November, 1996, and took effect January 1, 1997.

The state-wide referendum (Ga. L. 1998, p. 1015), which provided for an ad valorem tax exemption for church convention property was approved by a majority of the qualified voters voting at the November, 1998 general election.

The state-wide referendum (Ga. L. 1998, p. 1150), which provided for an ad valorem tax exemption for livestock and crops was approved by a majority of the voters voting at the November, 1998 general election.

The state-wide referendum (Ga. L. 2000, p. 813, § 2), which would have added a new paragraph (a)(16), relating to exemption from ad valorem taxation of property owned by an Elks Lodge, was defeated at the November 7, 2000 general election.

Ga. L. 2001, p. 1098, § 3, which amended this Code section, purported to amend Code Section 48-5-40 but actually amended Code Section 48-5-41.

The state-wide referendum (Ga. L. 2002, p. 994, § 2), which would have added a new paragraph (a)(16), relating to exemption from ad valorem taxation of property owned by a nonprofit corporation housing a medical museum or medical society, was defeated at the November, 2002 general election.

The state-wide referendum (Ga. L. 2002, p. 1057, §§ 1 and 2), which would have added a new paragraph (a)(16) and revised subsections (c) and (d), relating to exemption from ad valorem taxation of certain commercial fishing vessels, was defeated at the November, 2002 general election.

Ga. L. 2006, p. 235, § 2/HB 173, not codified by the General Assembly, provides that, if approved, the amendment to paragraph (a)(14) by that Act shall apply to all taxable years beginning on or after January 1, 2007.

The state-wide referendum (Ga. L. 2006, p. 235, § 2/HB 173), which designated former paragraph (a)(14) as subparagraph (a)(14)(A), inserted "or" at the end, and added subparagraph (a)(14)(B), relating to exemption from ad valorem taxation for veterans organizations which refurbish historic military aircraft, was approved by a majority of qualified voters at the November 7, 2006 general election.

The state-wide referendum (Ga. L. 2006, p. 376, § 2/HB 848), which designated former subsection (d) as paragraph (d)(1), and in paragraph (d)(1), added "Except as otherwise provided in paragraph (2) of this subsection," at the beginning, and added paragraph (d)(2) was approved by a majority of qualified voters at the November 7, 2006 general election.

The state-wide referendum (Ga. L. 2014, p. 679, § 3/HB 788), which added subparagraph (a)(1)(F), was approved by a majority of qualified voters at the November 4, 2014 general election.

Ga. L. 2017, p. 55, § 4/HB 196 provided for the amendment of paragraph (a)(13), effective January 1, 2019, upon approval by the voters at the November 2018 election. The constitutional amendment was approved by a majority of the qualified voters voting at the general election held on November 6, 2018.

The state-wide referendum (Ga. L. 2019, p. 488, § 1/HB 344), which deleted "and" at the end of paragraph (a)(14), substituted "; and" for a period at the end of paragraph (a)(15), and added paragraph (a)(16), was approved by a majority of qualified voters at the November 3, 2020 general election.

Ga. L. 2019, p. 488, § 2/HB 344, not codified by the General Assembly, provides, in part, that the Act shall be applicable to all tax years beginning on or after January 1, 2021.

Law reviews.

For comment criticizing Elder v. Henrietta Egleston Hosp. for Children, Inc., 205 Ga. 489, 53 S.E.2d 751 (1949), holding hospital property exempt from taxation, even though income is derived therefrom, when income was applied exclusively to maintenance and charitable purposes, see 1 Mercer L. Rev. 111 (1949).

For comment on Delta Airlines v. Coleman, 219 Ga. 12, 131 S.E.2d 768 (1963), see 26 Ga. B. J. 201 (1963).

For note on discriminatory charitable trusts in Georgia, with regard to application of the cy pres doctrine, in light of Evans v. Newton, 382 U.S. 296, 86 S. Ct. 486, 15 L. Ed. 2d 373 (1966), see 6 Ga. St. B. J. 428 (1970).

For comment as to tax exempt status of church administrative offices, in light of Leggett v. Macon Baptist Ass'n, 232 Ga. 27, 205 S.E.2d 197 (1974), see 26 Mercer L. Rev. 361 (1974).

For article discussing tax exemptions

and deductions as incentives for establishment of foreign business in Georgia, see 27 Mercer L. Rev. 629 (1976).

For article, "Tax-exempt Financing of Private Business: Structural Approaches," see 16 Ga. St. B. J. 8 (1979).

For article surveying legislative and judicial developments in Georgia local government law for 1978-79, see 31 Mercer L. Rev. 155 (1979).

For survey article on local government law, see 34 Mercer L. Rev. 225 (1982).

For annual survey of real property law, see 35 Mercer L. Rev. 257 (1983).

For annual survey of state and local tax law, see 35 Mercer L. Rev. 281 (1983).

For annual survey of state and local taxation, see 38 Mercer L. Rev. 337 (1986).

For annual survey of state and local taxation, see 42 Mercer L. Rev. 421 (1990).

For article, "Freeport Exemption from Property Taxes for Inventory Stored in Georgia But Destined for Shipment Out-of-State," see 28 Ga. St. B. J. 108 (1991).

For survey article on real property law, see 59 Mercer L. Rev. 371 (2007).

For annual survey on real property law, see 70 Mercer L. Rev. 209 (2018).

JUDICIAL DECISIONS

Analysis

General Consideration
Public Property
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General Consideration

Constitution does not itself exempt anything, but only grants power to the General Assembly to exempt the enumerated property, expressly denying the legislature power to exempt any other. Trustees of Academy v. Bohler, 80 Ga. 159, 7 S.E. 633, 1887 Ga. LEXIS 349 (1887), superseded by statute as stated in Grant v. Georgia-Pacific Corp., 239 Ga. App. 748, 521 S.E.2d 868, 1999 Ga. App. LEXIS 1129 (1999) (See also, 6 Enc. Dig. 84).

Effect of Act not providing for enumerated exemptions. — Failure of an Act providing for a general tax, ad valorem on all property, to make any reference to the property permanently exempted from taxation by this statute, does not render the Act unconstitutional or make such property taxable thereunder. Blount v. Munroe, 60 Ga. 61, 1878 Ga. LEXIS 373 (1878).

Exemptions strictly construed and must follow intent of General Assembly. — Exemptions from taxation must be strictly construed, and an exemption will not be held to be conferred unless the terms under which the exemption is granted clearly and distinctly show that such was the intention of the General Assembly. Gold Kist, Inc. v. Jones, 231 Ga. 881, 204 S.E.2d 584, 1974 Ga. LEXIS 1268 (1974).

Construction following 2007 amendment. — In order for an institution to be granted a property tax exemption pursuant to O.C.G.A. § 48-5-41(a)(4), the institution must satisfy certain factors (the owner must be an institution devoted entirely to charitable pursuits, the charitable pursuits of the owner must be for the benefit of the public, and the use of the property must be exclusively devoted to those charitable pursuits) and O.C.G.A. § 48-5-41 because the General Assembly must have intended to allow those institutions that otherwise qualify as a purely public charity to use their property to raise income from activities that are not

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necessarily charitable in nature so long as the primary purpose of the property was charitable and any income is used exclusively for the operation of that charitable institution, O.C.G.A. § 48-5-41(d)(1), (2); when the General Assembly passed the 2007 amendment, the General Assembly did not intend a change to the effect of O.C.G.A. § 48-5-41(d)(2) but only sought to make clear that, in order to be granted an exemption, any charitable institution must be otherwise qualified as a purely public charity, which includes meeting the requirement that the property be used exclusively for the charitable pursuits of the institution, and the 2007 amendment does not effect a change to existing law since a charitable institution, even before the 2007 amendment, had to qualify as a purely public charity under O.C.G.A. § 48-5-41(a)(4) because, according to the statutory terms, O.C.G.A. § 48-5-41(d)(2) would not even apply unless the former provision was first satisfied. Nuci Phillips Mem. Found. v. Athens-Clarke County Bd. of Tax Assessors, 288 Ga. 380, 703 S.E.2d 648, 2010 Ga. LEXIS 849 (2010).

Statute is to be strictly construed. Brenau Ass'n v. Harbison, 120 Ga. 929, 48 S.E. 363, 1904 Ga. LEXIS 751 (1904); Mayor of Gainesville v. Brenau College, 150 Ga. 156, 103 S.E. 164, 1920 Ga. LEXIS 93 (1920).

Since taxation is the rule and exemption is the exception, tax exemptions are to be strictly construed. Leggett v. Macon Baptist Ass'n, 232 Ga. 27, 205 S.E.2d 197, 1974 Ga. LEXIS 848 (1974).

All exemptions from taxation must be strictly construed in favor of taxing authorities and against the taxpayer. Collins v. Mills, 198 Ga. 18, 30 S.E.2d 866, 1944 Ga. LEXIS 344 (1944); Presbyterian Ctr., Inc. v. Henson, 221 Ga. 750, 146 S.E.2d 903, 1966 Ga. LEXIS 687 (1966); Johnson v. Wormsloe Found., Inc., 228 Ga. 722, 187 S.E.2d 682, 1972 Ga. LEXIS 894 (1972); Annandale at Suwanee, Inc. v. Gwinnett County Bd. of Tax Assessors, 242 Ga. 241, 248 S.E.2d 640, 1978 Ga. LEXIS 1156 (1978).

Exemptions not to be unreasonably construed. — While it is the rule that all grants of exemption from taxation must be strictly construed in favor of the state, and that nothing passes by implication, this rule must not be pushed to unreasonableness. Roberts v. Atlanta Baptist Ass'n, 240 Ga. 503, 241 S.E.2d 224, 1978 Ga. LEXIS 784 (1978).

Requirements of subsections (c) and (d) of O.C.G.A. § 48-5-41 must also be complied with by any institution that qualifies under paragraph (a)(4) as an institution of purely public charity in order to entitle that institution to exemption from ad valorem taxation. York Rite Bodies v. Board of Equalization, 261 Ga. 558, 408 S.E.2d 699, 1991 Ga. LEXIS 422 (1991).

Property not exempt during renovation. — Given the statutory language, binding precedents interpreting that language, and governing principles applicable when discerning entitlement to tax exemptions, the court was without authority to effectively expand upon the reaches of O.C.G.A. § 48-5-41(a)(4). The organization's cited "use" of the property during the property's renovation did not bring the property within the ambit of § 48-5-41(a)(4). H.O.P.E. Through Divine Interventions, Inc. v. Fulton County Bd. of Tax Assessors, 318 Ga. App. 592, 734 S.E.2d 288, 2012 Ga. App. LEXIS 957 (2012).

Until property gets into form of enumerated items or articles, no exemption obtains. Trustees of Academy v. Bohler, 80 Ga. 159, 7 S.E. 633, 1887 Ga. LEXIS 349 (1887), superseded by statute as stated in Grant v. Georgia-Pacific Corp., 239 Ga. App. 748, 521 S.E.2d 868, 1999 Ga. App. LEXIS 1129 (1999).

Exemption is not release in personam, but in rem, and the res to which the release applies must be found and identified by the officer, or no exemption can be recognized. Trustees of Academy v. Bohler, 80 Ga. 159, 7 S.E. 633, 1887 Ga. LEXIS 349 (1887), superseded by statute as stated in Grant v. Georgia-Pacific Corp., 239 Ga. App. 748, 521 S.E.2d 868, 1999 Ga. App. LEXIS 1129 (1999).

Reviewing court lacked subject matter jurisdiction. — Reviewing court lacked subject matter jurisdiction to consider value and uniformity in an

appeal of a decision of the Hall County Board of Equalization (BOE) as a hospital did not present those issues in the underlying administrative tax case, which was limited to O.C.G.A. § 48-5-41(a)(5), and its application; further, as there was no Hall County Board of Tax Assessors decision concerning value and uniformity that could have been appealed to the BOE, there was no appeal to the BOE on those issues that could have been waived by mutual agreement and initiated, instead, in the reviewing court under O.C.G.A. § 48-5-311(g)(1). Hall County Bd. of Tax Assessors v. Northeast Ga. Health Sys., 317 Ga. App. 389, 730 S.E.2d 715, 2012 Ga. App. LEXIS 691 (2012), cert. denied, No. S12C2044, 2013 Ga. LEXIS 80 (Ga. Jan. 22, 2013).

It is the use made of private property which renders the property exempt or nonexempt, and not the purchase and sale thereof. Georgia Mausoleum Co. v. City of Dublin, 147 Ga. 652, 95 S.E. 233, 1918 Ga. LEXIS 96 (1918).

Use of income derived from private property is not determinative of the property's exempt status. Trustees of Academy v. Bohler, 80 Ga. 159, 7 S.E. 633, 1887 Ga. LEXIS 349 (1887), superseded by statute as stated in Grant v. Georgia-Pacific Corp., 239 Ga. App. 748, 521 S.E.2d 868, 1999 Ga. App. LEXIS 1129 (1999); Massenburg v. Grand Lodge, F. & A.M, 81 Ga. 212, 7 S.E. 636, 1888 Ga. LEXIS 96 (1888); Mundy v. Van Hoose, 104 Ga. 292, 30 S.E. 783, 1898 Ga. LEXIS 320 (1898).

It is not the declared purpose of incorporation which determines whether corporate property is exempt. Baggett v. Georgia Conference Ass'n of Seventh Day Adventists, 157 Ga. 488, 121 S.E. 838, 1924 Ga. LEXIS 187 (1924).

Extent of land exempted. — Buildings which are exempt from taxation under this statute embrace the land upon which such buildings are located and the land adjacent thereto necessary for their proper use. Mayor of Gainesville v. Brenau College, 150 Ga. 156, 103 S.E. 164, 1920 Ga. LEXIS 93 (1920); Hurlbutt Farm v. Medders, 157 Ga. 258, 121 S.E. 321, 1924 Ga. LEXIS 30 (1924); Baggett v. Georgia Conference Ass'n of Seventh Day Adventists, 157 Ga. 488, 121 S.E. 838, 1924 Ga. LEXIS 187 (1924).

Scheme of exemption as to other than public property seems to be this: to exempt all that is used immediately and directly as a part of the establishment in the conduct of the regular business there carried on, but not such as may be devoted to other uses, such as farming, merchandising, manufacturing, etc., and from which profit or income is derived. Trustees of Academy v. Bohler, 80 Ga. 159, 7 S.E. 633, 1887 Ga. LEXIS 349 (1887), superseded by statute as stated in Grant v. Georgia-Pacific Corp., 239 Ga. App. 748, 521 S.E.2d 868, 1999 Ga. App. LEXIS 1129 (1999).

Municipal bonds. — Bonds issued by a municipal corporation of this state, as evidence of a loan made to it, are instrumentalities of the government which creates the municipal corporation and are not taxable by this state or any county thereof while in the hands of a resident of this state. Penick v. Foster, 129 Ga. 217, 58 S.E. 773, 1907 Ga. LEXIS 334 (1907).

City not entitled to exemption. — When real property owned by a tax-exempt development authority was sold to a city, the city was not entitled to piggyback onto the authority's exemption; furthermore, the city's lease of the property to another city was not a governmental purpose under O.C.G.A. § 48-5-41, as there was nothing in the record to indicate that the city entered into the lease in anything other than the city's proprietary capacity, and the lease was a profit-generating undertaking for the city. Clayton County Bd. of Tax Assessors v. City of Atlanta, 286 Ga. App. 193, 648 S.E.2d 701, 2007 Ga. App. LEXIS 721 (2007), cert. denied, No. S07C1645, 2008 Ga. LEXIS 111 (Ga. Jan. 7, 2008), overruled in part, Gilmer County Bd. of Tax Assessors v. Spence, 309 Ga. App. 482, 711 S.E.2d 51, 2011 Ga. App. LEXIS 371 (2011).

In a declaration suit, a city was properly determined not to be a local authority as that term is used in O.C.G.A. § 48-13-13(5) and, thus, was subject to

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the levy of occupation taxes by another municipality for the city's proprietary operations at the city's airport, which was in the other municipality's city limits, because the terms local authority and municipality were not the same under the statute. City of Atlanta v. City of College Park, 292 Ga. 741, 741 S.E.2d 147, 2013 Ga. LEXIS 316 (2013).

Burden of proving a tax exemption under this statute is on party seeking exemption. See Thomas v. Northeast Ga. Council, Inc. BSA, 241 Ga. 291, 244 S.E.2d 842, 1978 Ga. LEXIS 974 (1978).

Trial court's determination that a county board of tax assessors did not have to prove the board's assessment on a ministry's property by a preponderance of the evidence, under O.C.G.A. § 48-5-311(c), was proper as the appellate procedure for assessments was based on both O.C.G.A. §§ 48-5-41 and 48-5-311(c), which were read in pari materia; under O.C.G.A. § 48-5-41, the ministry which was seeking the exemption had the burden of proof to show its entitlement, and the board had the burden of proof by a preponderance of the evidence that its assessment was correct under O.C.G.A. § 48-5-311(c). Lamad Ministries, Inc. v. Dougherty County Bd. of Tax Assessors, 268 Ga. App. 798, 602 S.E.2d 845, 2004 Ga. App. LEXIS 1023 (2004).

Whether property is subject to execution of judgment depends on whether subject to taxation. — It has been held that since the public welfare is a dominant consideration as to both exemption from taxation and immunity from suit, and since it is the prerogative of the legislature to declare the policy of the state touching the general welfare, the test as to whether property is subject to execution of a judgment is whether the property is subject to taxation. Mack v. Big Bethel A.M.E. Church, Inc., 125 Ga. App. 713, 188 S.E.2d 915, 1972 Ga. App. LEXIS 1453 (1972).

Mandamus for levy in case of illegal exemption. — If there has been an illegal exemption, and a refusal to levy, the levy may be compelled by mandamus. Ford v. Mayor of Cartersville, 84 Ga. 213, 10 S.E. 732, 1889 Ga. LEXIS 226 (1889).

Attorney's law library. — An attorney's law library, which is maintained in connection with the practice of his or her profession, is not exempted from ad valorem taxation by Georgia's constitution, nor is the attorney's library exempted by any legislation enacted pursuant to the constitution. Clayton County Bd. of Tax Assessors v. King, 260 Ga. 495, 397 S.E.2d 293, 1990 Ga. LEXIS 407 (1990).

Lending money to partnership is not charity. — Because an owner gave a limited partnership—in which an entity controlled by the owner had a nominal interest—a loan that was not expected to be repaid, the loan did not serve a charitable purpose and violated the owner's articles of incorporation; therefore, the owner was not entitled to an ad valorem tax exemption under O.C.G.A. § 48-5-41(a)(4). P'ship Hous. Affordable to Soc'y Everywhere, Inc. v. Decatur County Bd. of Tax Assessors, 312 Ga. App. 663, 719 S.E.2d 556, 2011 Ga. App. LEXIS 1006 (2011), cert. denied, No. S12C0523, 2012 Ga. LEXIS 667 (Ga. July 2, 2012).

Collateral estoppel. — Collateral estoppel prevented redundant litigation of the same question of a statute's application to a taxpayer's status; an earlier decision finding that an owner's real property was exempt from ad valorem taxes barred relitigation of the owner's tax exempt status. Davis v. Birdsong, 275 F.2d 113, 1960 U.S. App. LEXIS 5266 (5th Cir. 1960).

Public Property

Purpose of exemption. — Public property is not subject to taxation. This immunity rests upon the most fundamental principles of government; being necessary, that the functions of government be not unduly impeded, and that the government be not forced into the inconsistency of taxing itself in order to raise money to pay over to itself. Penick v. Foster, 129 Ga. 217, 58 S.E. 773, 1907 Ga. LEXIS 334 (1907); State v. Western & A.R.R., 136 Ga. 619, 71 S.E. 1055, 1911 Ga. LEXIS 160 (1911).

What constitutes public property. — "Public property," in the sense it is used in the provision for rendering property

exempt, means property belonging to the state, or the political divisions thereof, such as counties, cities, towns, and the like. Mundy v. Van Hoose, 104 Ga. 292, 30 S.E. 783, 1898 Ga. LEXIS 320 (1898).

Public property embraces only such property as is owned by the state or some political division thereof, and title to which is vested directly in the state or one of the state's subordinate political divisions, or in some person holding exclusively for the benefit of the state or subordinate public corporation. Board of Trustees v. City of Atlanta, 113 Ga. 883, 39 S.E. 394, 1901 Ga. LEXIS 405 (1901); Culbreth v. Southwest Ga. Regional Hous. Auth., 199 Ga. 183, 33 S.E.2d 684, 1945 Ga. LEXIS 286 (1945), overruled in part as stated in Pass v. Athens Housing Authority, 368 Ga. App. 445, 890 S.E.2d 342, 2023 Ga. App. LEXIS 331 (2023).

When property deemed dedicated to public use. — Mere use of one's property by a small portion of the public, even for an extended period of time, will not amount to a dedication of the property to a public use, unless it appears clearly that there was an intention to dedicate and that this dedication was accepted by the public for public use. Johnson v. Wormsloe Found., Inc., 228 Ga. 722, 187 S.E.2d 682, 1972 Ga. LEXIS 894 (1972).

Showing of intent to dedicate to the public use. — An intention on the part of the owner to dedicate the owner's property to the public use must be shown in order to claim a tax exemption, whether such dedication is express or implied. When an implied dedication is claimed, the facts relied on must be such as to clearly indicate a purpose on the part of the owner to abandon the owner's personal dominion over the property and to devote the property to a definite public use. Johnson v. Wormsloe Found., Inc., 228 Ga. 722, 187 S.E.2d 682, 1972 Ga. LEXIS 894 (1972).

Public property not taxed whether income derived or not. — Proviso in paragraph (5) (see now subsection (c)) of this statute, which excludes property used for purposes of private or corporate profit or income, does not apply to public property. Public property is not taxed, whether income be derived from the property or not. Trustees of Academy v. City Council, 90 Ga. 634, 17 S.E. 61, 1892 Ga. LEXIS 227 (1892).

Total acreage owned by one political subdivision inside another. — Tax exemption provided by subsection (a)(1)(B)(ii) of O.C.G.A. § 48-5-41 refers to total acreage owned by one political subdivision inside another, and not to the size of the individual tract of land under consideration. The total quantity of land owned within the territory must be aggregated for purposes of determining whether it amounts to 300 acres or less. City of Atlanta v. Clayton County Bd. of Tax Assessors, 189 Ga. App. 50, 375 S.E.2d 75, 1988 Ga. App. LEXIS 1290 (1988).

Exemption of 300-acre parcels not an arbitrary classification. — Exemption of 300 acres or less from the provision for taxation of public real property owned by a city outside the city's territorial limits is not an arbitrary classification of property for taxation, because the quantity of land held by a city in a county which contains no part of the city has a reasonable relationship to the right of the county to subject the land to taxation. Since the finances of a county could be adversely affected by large quantities of tax exempt land within the county's boundaries, there must be some limit of acreage in order to distinguish a smaller tract from a larger tract, and consequently, such a classification does not offend Ga. Const. 1976, Art. VII, Sec. I, Para. IV (see now Ga. Const. 1983, Art. VII, Sec. III, Para. II). City of Atlanta v. Spence, 242 Ga. 194, 249 S.E.2d 554, 1978 Ga. LEXIS 1137 (1978).

Leasehold estate severed from a fee in public property can be taxed. See Delta Air Lines v. Coleman, 219 Ga. 12, 131 S.E.2d 768, 1963 Ga. LEXIS 352, cert. denied, 375 U.S. 904, 84 S. Ct. 195, 11 L. Ed. 2d 145, 1963 U.S. LEXIS 263 (1963) (for comment see 26 Ga. B.J. 201 (1963)).

Lease of property in public airport. — Operation of central food and beverage commissary to furnish concessionaires open to the public within airport complex constituted a use of property for public purposes and was exempt from taxation. Clayton County Bd. of Tax Assessors v.

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City of Atlanta, 164 Ga. App. 864, 298 S.E.2d 544, 1982 Ga. App. LEXIS 2957 (1982), superseded by statute as stated in 271 Ga. App. 84, 608 S.E.2d 710, 2004 Ga. App. LEXIS 1585 (2004).

Public airport property leased to corporation, which property was used for provision of inflight meals, was subject to taxation where provisions of lease did not preserve the public's "rightful, equal, and uniform use" of the property as required by O.C.G.A. § 6-3-25. Clayton County Bd. of Tax Assessors v. City of Atlanta, 164 Ga. App. 864, 298 S.E.2d 544, 1982 Ga. App. LEXIS 2957 (1982), superseded by statute as stated in 271 Ga. App. 84, 608 S.E.2d 710, 2004 Ga. App. LEXIS 1585 (2004).

Expansion of city airport. — Parcel of land purchased by a city as part of a carefully orchestrated, governmentally approved plan to expand the city's airport was exempt from ad valorem taxation, pursuant to O.C.G.A. § 48-5-41(a)(1)(B), despite little activity on that particular parcel; the parcel should be considered a part of all of the land in conjunction with the airport since 25 percent of the airport was developed and contained facilities used for public purposes. City of Atlanta v. Clayton County Bd. of Tax Assessors, 284 Ga. App. 871, 645 S.E.2d 42, 2007 Ga. App. LEXIS 344 (2007), cert. denied, No. S07C1270, 2007 Ga. LEXIS 708 (Ga. Sept. 24, 2007), overruled in part, Gilmer County Bd. of Tax Assessors v. Spence, 309 Ga. App. 482, 711 S.E.2d 51, 2011 Ga. App. LEXIS 371 (2011).

Property leased to airline for airport facilities was public use. — Five parcels of property at a city-owned airport that were leased to an airline and used for hangars, flight kitchens, and air cargo were reasonably and uniformly used for the public convenience and welfare to facilitate the effective operation of the airport, and were therefore exempt from ad valorem taxation under O.C.G.A. § 48-5-41(a)(1)(B)(i). City of Atlanta v. Clayton County Bd. of Tax Assessors, 306 Ga. App. 381, 702 S.E.2d 704, 2010 Ga. App. LEXIS 947 (2010), cert. denied, No. S11C0342, 2011 Ga. LEXIS 222 (Ga. Feb. 28, 2011), overruled in part, Gilmer County Bd. of Tax Assessors v. Spence, 309 Ga. App. 482, 711 S.E.2d 51, 2011 Ga. App. LEXIS 371 (2011).

Public nature of authorities. — No private interest exists in the property of an authority. The members thereof may not use the property for private gain or income. An authority holds title only for the benefit of the state and the public, and an authority is an instrumentality of the state or a subordinate public authority or corporation of the state. Hospital Auth. v. Stewart, 226 Ga. 530, 175 S.E.2d 857, 1970 Ga. LEXIS 588 (1970).

Hospital authority's leasehold interest in retirement facility was exempt. — Hospital authority's leasehold interest in a continuing care retirement facility was public property exempt from ad valorem taxation under O.C.G.A. § 48-5-41(a)(1); an earlier, unappealed superior court bond validation order found that it was a public project within the scope of the Hospital Authorities Law, O.C.G.A. § 31-7-70 et seq., and this finding was final and binding.

Property held by a hospital authority is public property. — Property, the title to which is held directly by a hospital authority, is public property and, therefore, exempt from ad valorem taxation. Hospital Auth. v. Stewart, 122 Ga. App. 497, 177 S.E.2d 270, 1970 Ga. App. LEXIS 920 (1970).

Effect of legal title vested in a trustee for the authority. — That legal title to property is vested in a trustee for a hospital authority does not deprive the property of the property's tax-exempt status. Hospital Auth. v. Stewart, 122 Ga. App. 497, 177 S.E.2d 270, 1970 Ga. App. LEXIS 920 (1970).

Nonprofit hospital need not meet the definition of O.C.G.A. § 48-5-40(5) before the hospital can qualify for an exemption under paragraph (a)(5) of O.C.G.A. § 48-5-41, since nonprofit hospitals qualifying under subsection (a)(5) are not a subclass wholly subsumed by the definition in § 48-5-40(5). Douglas County v. Anneewakee, Inc., 179 Ga. App. 270, 346 S.E.2d 368, 1986 Ga. App. LEXIS 1889 (1986).

Fact that the children accepted by a psychiatric care hospital had to

meet certain requirements before the children were eligible to be admitted and, thus, the facility was not open to the whole public, did not disqualify the hospital from tax exempt status since it was uncontroverted that the hospital was open to the whole of the classes for whose relief the hospital was intended or adapted. Douglas County v. Anneewakee, Inc., 179 Ga. App. 270, 346 S.E.2d 368, 1986 Ga. App. LEXIS 1889 (1986).

Building and stock of liquors owned by municipal corporation and operated by the corporation as a dispensary are "public property" within the meaning of this statute and, as such, are exempt from taxation. This is so although the town has no legal authority to maintain and operate a dispensary. Walden v. Town of Whigham, 120 Ga. 646, 48 S.E. 159, 1904 Ga. LEXIS 664 (1904).

Armory. — Armory "owned" and occupied by a command of the volunteer military forces of the state is not within the exemption. Board of Trustees v. City of Atlanta, 113 Ga. 883, 39 S.E. 394, 1901 Ga. LEXIS 405 (1901).

Motor vehicle registration fee not considered tax on public property. — License fee provided for in the motor vehicle registration law is nothing more than a license fee and is not in essence a revenue raising measure, and, therefore, does not amount to the levying of a tax against public property. Burkett v. State, 198 Ga. 747, 32 S.E.2d 797, 1945 Ga. LEXIS 226 (1945).

Places of Religious Worship

Construction of term "religious worship." — Words "religious worship" import a concept of a congregation assembling in a place open to the public to honor the Deity through reverance and homage. Leggett v. Macon Baptist Ass'n, 232 Ga. 27, 205 S.E.2d 197, 1974 Ga. LEXIS 848 (1974).

Unorthodoxy will not serve to disqualify a religious group from tax exemption, as long as the group holds a sincere and meaningful belief in God occupying in the life of its possessors a place parallel to that occupied by God in traditional religions, and dedicates itself to the practice of that belief. Roberts v. Ravenwood Church of Wicca, 249 Ga. 348, 292 S.E.2d 657, 1982 Ga. LEXIS 1072 (1982).

What constitutes a place of religious worship. — A building is not necessary for a place to qualify as a place of worship. Neither is it necessary for a complete congregation to hold regularly scheduled services at one location. All one must show is that the property is used exclusively as a "place of religious worship." Columbus, Ga., By Bd. of Tax Assessors v. Outreach For Christ, Inc., 241 Ga. 2, 243 S.E.2d 42 (1978) disapproved to the extent that it suggests that property must be used exclusively, rather than primarily, for religious worship in order to qualify for tax exemption Roberts v. Ravenwood Church of Wicca, 249 Ga. 348, 292 S.E.2d 657 (1982).

A place of public worship is not necessarily a church, nor is the term synonymous with a church. In the connection in which the words are used, the words mean the gathering of individuals for public worship, at whatever place the individuals may be, whether in the open air, under a tent, beneath an arbor, in a warehouse, and sometimes in an opera house. Roberts v. Atlanta Baptist Ass'n, 240 Ga. 503, 241 S.E.2d 224, 1978 Ga. LEXIS 784 (1978).

Mere absence of some element of worship does not, alone or automatically, negative the place as a place of religious worship. Roberts v. Atlanta Baptist Ass'n, 240 Ga. 503, 241 S.E.2d 224, 1978 Ga. LEXIS 784 (1978).

Only church properties enumerated in this statute are exempt from taxes, and all references to income relate solely to such exempted property. Church of God of Union Ass'y, Inc. v. City of Dalton, 216 Ga. 659, 119 S.E.2d 11, 1961 Ga. LEXIS 304 (1961).

Primary use of property determines exempt status. — In applying the exemption authorized by Ga. Const. 1945, Art. VII, Sec. I, Para. IV (see now Ga. Const. 1983, Art. VII, Sec. II, Para. I-IV) and former Code 1933, § 92-201 (see now O.C.G.A. § 48-5-41) to the facts in the individual case, the court must look to the use of the property, not

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merely the property's ownership, and must also look to the primary use of the property to determine whether the property is exempt from taxation. Leggett v. Macon Baptist Ass'n, 232 Ga. 27, 205 S.E.2d 197, 1974 Ga. LEXIS 848 (1974).

Trial court's determination that a ministry was not entitled to the "place of religious worship" and "property owned and operated exclusively by a church" exemptions under O.C.G.A. § 48-5-41 was clearly erroneous as the trial court should have made a separate determination of exemption as to those portions of the ministry's property that were used primarily for a home for the elderly from those parts of the parcels of property which were primarily used as a place of religious worship; the exemption for a "place of religious worship" depended upon the primary purposes for which that property was used, which was shown to be within the exemption. Lamad Ministries, Inc. v. Dougherty County Bd. of Tax Assessors, 268 Ga. App. 798, 602 S.E.2d 845, 2004 Ga. App. LEXIS 1023 (2004).

Use of property, not ownership, determines exemption status. — Court of Appeals of Georgia finds no statutory requirement that the owner be the user of the property when dealing with a place of religious worship tax exemption; rather, it is the use of the property that governs the analysis of religious worship tax exemptions. DeKalb County Bd. of Tax Assessors v. Presbytery of Greater Atlanta, Inc., 320 Ga. App. 312, 739 S.E.2d 764, 2013 Ga. App. LEXIS 176 (2013).

Trial court properly granted a property owner summary judgment because the non-cemetery portion of the property at issue qualified for a religious tax exemption under O.C.G.A. § 48-5-41(a)(2.1)(A) since no profit was realized from the lease of the property to another religious non-profit corporation. DeKalb County Bd. of Tax Assessors v. Presbytery of Greater Atlanta, Inc., 320 Ga. App. 312, 739 S.E.2d 764, 2013 Ga. App. LEXIS 176 (2013).

Recreational facilities on land used for religious worship. — Land owned by a religious association was exempt from taxation as a place of religious worship, since, although recreational facilities on the property were secular in nature and fees were charged for their use, such use was shown to be intimately connected and intertwined with the religious activities to which the property was primarily dedicated. Pickens County Bd. of Tax Assessors v. Atlanta Baptist Ass'n, 191 Ga. App. 260, 381 S.E.2d 419, 1989 Ga. App. LEXIS 548 (1989).

Exemption of property used primarily for profit or purposes other than operation of institution. — When church property is used primarily for either profit or purposes other than the operation of the institution, that property is not exempt from taxes. The fact that the property is used to make profit which will in turn be given or used by the church for church purposes in no degree confers tax exemption thereupon. Church of God of Union Ass'y, Inc. v. City of Dalton, 216 Ga. 659, 119 S.E.2d 11, 1961 Ga. LEXIS 304 (1961).

Exemption primarily applies to buildings where public religious services are held. — Exemptions from taxation of places of religious worship, unless stated otherwise, are intended primarily to apply to buildings where congregations come together in a public forum for religious services. Leggett v. Macon Baptist Ass'n, 232 Ga. 27, 205 S.E.2d 197, 1974 Ga. LEXIS 848 (1974).

When only a portion of a building is used for tax-exempt purpose, comparative value of portion used for tax-exempt purpose should be distinguished from remainder, with only that part used for tax-exempt purpose being spared taxation. Roberts v. Ravenwood Church of Wicca, 249 Ga. 348, 292 S.E.2d 657, 1982 Ga. LEXIS 1072 (1982).

Fact that residents of place of religious worship are charged a rental toward operating expenses does not destroy the religious nature of an otherwise religious institution. Roberts v. Ravenwood Church of Wicca, 249 Ga. 348, 292 S.E.2d 657, 1982 Ga. LEXIS 1072 (1982).

Test of whether requirements for exemption met. — Church falls squarely within statutory and constitutional

exemptions when no dividends, income, or profits have been, or will be, distributable for profit or personal gain, since the property upon which the execution has been levied is a place of religious worship, used in maintaining and operating a church, since the income derived therefrom is used exclusively for religious purposes, and since the primary purpose of such real estate is not that of securing an income thereon, but of providing a meeting place and quarters for members of affiliate churches. Church of God v. City of Dalton, 213 Ga. 76, 97 S.E.2d 132, 1957 Ga. LEXIS 306 (1957).

What constitutes real property used for profit. — Real property owned for profit by a church such as: (1) apartment buildings leased for rent by church; (2) property formerly used as a dining hall but now as an apartment rented to a widow who sometimes pays rent; and (3) lot and dwelling house rented sometimes to a widow who pays rent when the widow can is not exempt from taxation. Church of God of Union Ass'y, Inc. v. City of Dalton, 216 Ga. 659, 119 S.E.2d 11, 1961 Ga. LEXIS 304 (1961).

City is authorized to impose sanitary service charges upon places of public worship because such charges are not within the exemption of this statute for places of religious worship. First Pentecostal Church v. City of Atlanta, 144 Ga. App. 718, 242 S.E.2d 357, 1978 Ga. App. LEXIS 1764 (1978).

Exemption from assessments. — Property occupied by a church and used solely for church purposes is not exempt from payment of local street improvement assessments. City of Atlanta v. First Presbyterian Church, 86 Ga. 730, 13 S.E. 252, 1891 Ga. LEXIS 53 (1891).

Rental of church parking lot did not qualify for tax exempt status. — Grant of summary judgment was affirmed because the parking lot lease agreement and its impact upon the church's use of the property supported the conclusion that the property was real estate rented, leased, or otherwise used for the primary purpose of securing an income thereon as contemplated by O.C.G.A. § 48-5-41(d)(1). First Congregational Church v. Fulton County Bd. of Tax Assessors, 320 Ga. App. 868, 740 S.E.2d 798, 2013 Ga. App. LEXIS 292 (2013).

Cemeteries

Public policy to protect and encourage cemeteries arises out of the common wish of mankind to insure a fitting resting place for the dead, especially in crowded areas, while at the same time giving consideration to the safety of the living, and saving the public from the burden of maintaining them at the public's expense. Suttles v. Hill Crest Cem., 87 Ga. App. 343, 73 S.E.2d 760, 1952 Ga. App. LEXIS 684 (1952).

Property to which exemptions for cemeteries is applicable. — Exemption accorded to cemetery lands may extend to all property used or held exclusively for the burial of the dead or for the care, maintenance, or upkeep of such property, and ordinarily applies to a columbarium, crematory, mausoleum or unsold lots, crypts, or niches, and covers permanent improvements placed on the land and necessary to the land's use as a burying ground. City of Atlanta v. Crest Lawn Mem. Park Corp., 218 Ga. 497, 128 S.E.2d 722, 1962 Ga. LEXIS 545 (1962).

There is a distinction between those structures in which bodies are prepared for burial, and buildings necessary for the administration of the cemetery and maintenance of the burying grounds. The latter are exempt from taxation. City of Atlanta v. Crest Lawn Mem. Park Corp., 218 Ga. 497, 128 S.E.2d 722, 1962 Ga. LEXIS 545 (1962).

Tombs or crypts in mausoleum, owned by a private corporation, having no value except for burial purposes, cannot be used for purposes of private or corporate profit or income, and are exempt from taxation, together with the ground where located. Georgia Mausoleum Co. v. City of Dublin, 147 Ga. 652, 95 S.E. 233, 1918 Ga. LEXIS 96 (1918).

Exemption of area of cemetery tract for future needs. — When the evidence indicated that the number of burials was increasing each year, and that the undeveloped area of cemetery tract was not disproportionate to the future needs of the area from which the burials were made, the trial judge did not err in

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holding that the undeveloped portion of the area was exempt from taxation. City of Atlanta v. Crest Lawn Mem. Park Corp., 218 Ga. 497, 128 S.E.2d 722, 1962 Ga. LEXIS 545 (1962).

Taxes to which exemptions applicable. — Unless the assessment is for general revenue purposes, it is not a tax for which the law grants an exemption to places of religious worship or burial. Crestlawn Mem. Park v. City of Atlanta, 235 Ga. 194, 219 S.E.2d 122, 1975 Ga. LEXIS 819 (1975).

Special assessments not for revenue purposes are radically different from ad valorem taxes, and are not taxes within the meaning of the Constitution of Georgia. Crestlawn Mem. Park v. City of Atlanta, 235 Ga. 194, 219 S.E.2d 122, 1975 Ga. LEXIS 819 (1975).

Sanitary service charge assessments levied by a city upon cemetery property are not taxes as contemplated by this statute. Crestlawn Mem. Park v. City of Atlanta, 235 Ga. 194, 219 S.E.2d 122, 1975 Ga. LEXIS 819 (1975).

Preservation of a historical site in a tract of land dedicated to burial purposes would not change the land's character as a place of burial. City of Atlanta v. Crest Lawn Mem. Park Corp., 218 Ga. 497, 128 S.E.2d 722, 1962 Ga. LEXIS 545 (1962).

Exemption when deed restricts use but land reserved for future use. — Under Ga. Const. 1945, Art. VII, Sec. I, Para. IV (see now Ga. Const. 1983, Art. VII, Sec. II, Para. I-IV) and former Code 1933, § 92-201 (see now O.C.G.A. § 48-5-41) exempting "places of burial" from taxation, land acquired by a cemetery corporation under a deed containing a restriction that the land was to be used as a cemetery for human beings and for no other purpose was, under the facts stipulated, exempt from taxation, despite the fact that the land in question was being reserved for future needs. Suttles v. Hill Crest Cem., 87 Ga. App. 343, 73 S.E.2d 760, 1952 Ga. App. LEXIS 684 (1952).

Institutions of Purely Public Charity

Constitutional restrictions on exemption of institutions of charity. — Constitution of Georgia restricts tax exemption of institutions of charity to those and those only that are purely charity and also that are public charity. Central Bd. on Georgia Osteopathic Hosp. v. Alford, 217 Ga. 663, 124 S.E.2d 402, 1962 Ga. LEXIS 355 (1962).

Scope of term "charity." — "Charity," as used in this statute, is not restricted to the relief of the sick or indigent, but extends to other forms of philanthropy or public beneficence, such as practical enterprises for the good of humanity, operated at moderate cost to the beneficiaries, or enterprises operated for the general improvement and happiness of mankind. Tharpe v. Central Ga. Council of BSA, 185 Ga. 810, 196 S.E. 762, 1938 Ga. LEXIS 539 (1938); Peachtree on Peachtree Inn, Inc. v. Camp, 120 Ga. App. 403, 170 S.E.2d 709, 1969 Ga. App. LEXIS 795 (1969); Central Bd. on Care of Jewish Aged, Inc. v. Henson, 120 Ga. App. 627, 171 S.E.2d 747, 1969 Ga. App. LEXIS 886 (1969).

A familiar meaning of the word "charity" is almsgiving, but as used in the law it may include substantially any scheme or effort to better the condition of society or any considerable part of society. Tharpe v. Central Ga. Council of BSA, 185 Ga. 810, 196 S.E. 762, 1938 Ga. LEXIS 539 (1938); Peachtree on Peachtree Inn, Inc. v. Camp, 120 Ga. App. 403, 170 S.E.2d 709, 1969 Ga. App. LEXIS 795 (1969); Central Bd. on Care of Jewish Aged, Inc. v. Henson, 120 Ga. App. 627, 171 S.E.2d 747, 1969 Ga. App. LEXIS 886 (1969).

Term "charity" used in this statute is to be construed in the statutes broad sense. The meaning includes substantially any scheme or effort to better the condition of society or any considerable part thereof. Camp v. Fulton County Medical Soc'y, 219 Ga. 602, 135 S.E.2d 277, 1964 Ga. LEXIS 343 (1964).

What constitutes charitable institution generally. — Hospitals, almshouses, asylums for the insane, for

the deaf and dumb, or the blind, orphan asylums, homes of various kinds, souphouses, etc., permanently established and open, without charge, to the whole public, or to the whole of the classes for whose relief they are intended or adapted, are institutions of the exempt order, irrespective of their ownership, and without regard to whether they have behind them, or connected with them, any institution in the personal or ideal sense of the term, or not. Trustees of Academy v. Bohler, 80 Ga. 159, 7 S.E. 633, 1887 Ga. LEXIS 349 (1887), superseded by statute as stated in Grant v. Georgia-Pacific Corp., 239 Ga. App. 748, 521 S.E.2d 868, 1999 Ga. App. LEXIS 1129 (1999).

In determining whether property qualifies for exemption as an institution of "purely public charity" as set forth in paragraph (a)(4) of O.C.G.A. § 48-5-41, three factors must be considered and must coexist. First, the owner must be an institution devoted entirely to charitable pursuits; second, the charitable pursuits of the owner must be for the benefit of the public; and, third, the use of the property must be exclusively devoted to those charitable pursuits. York Rite Bodies v. Board of Equalization, 261 Ga. 558, 408 S.E.2d 699, 1991 Ga. LEXIS 422 (1991).

That the owner of property is a nonprofit institution, that its charter declares it to be a charitable institution, and that the institution serves a benevolent purpose does not necessarily lead to the conclusion that the institution is exempted from ad valorem taxation by paragraph (a)(4) of O.C.G.A. § 48-5-41. The facts of each case must be viewed as a whole and all of the circumstances surrounding the institution must be considered. York Rite Bodies v. Board of Equalization, 261 Ga. 558, 408 S.E.2d 699, 1991 Ga. LEXIS 422 (1991).

Charitable nature of institutions for the elderly. — Concept of charity is not confined to relief of the needy and destitute, for aged people require care and attention apart from financial assistance, and the supply of this care and attention is as much a charitable and benevolent purpose as the relief of their financial wants. Peachtree on Peachtree Inn, Inc. v. Camp, 120 Ga. App. 403, 170 S.E.2d 709, 1969 Ga. App. LEXIS 795 (1969); Central Bd. on Care of Jewish Aged, Inc. v. Henson, 120 Ga. App. 627, 171 S.E.2d 747, 1969 Ga. App. LEXIS 886 (1969).

Nonprofit charitable institution's independent-living units for the elderly were entitled to share the institution's long-standing tax exemption as a home for the aged because: (1) the institution was clearly a nonprofit home for the aged, which was defined in O.C.G.A. § 48-5-40(2) as a facility which provides residential services, health care services, or both residential services and health care services to the aged; (2) the institution had neither stockholders nor distributed income to private persons, was subject to Georgia laws regulating nonprofit and charitable corporations, and had been determined to be a tax-exempt organization under both federal and Georgia law; (3) the institution was a charitable one because supplying care for aged people was a charitable and benevolent purpose; and (4) the independent-living units were not held by the institution primarily for investment purposes. Bd. of Tax Assessors v. Baptist Vill., Inc., 269 Ga. App. 848, 605 S.E.2d 436, 2004 Ga. App. LEXIS 1315 (2004).

"Charity" is broad enough to include use of property by Boy Scouts. — Word "charity," as used in former Code 1933, § 92-201 (see now O.C.G.A. § 48-5-41), and in Ga. Const. 1877, Art. VII, Sec. II, Para. II (see now Ga. Const. 1983, Art. VII, Sec. II, Para. I-IV) was broad enough to include the use of property by the Boy Scout organization. Tharpe v. Central Ga. Council of BSA, 185 Ga. 810, 196 S.E. 762, 1938 Ga. LEXIS 539 (1938).

An institution may be public even though the institution is not open to the whole public, if the institution is open to the whole of the classes for whose relief the institution is intended or adapted. Tharpe v. Central Ga. Council of BSA, 185 Ga. 810, 196 S.E. 762, 1938 Ga. LEXIS 539 (1938); Peachtree on Peachtree Inn, Inc. v. Camp, 120 Ga. App. 403, 170 S.E.2d 709, 1969 Ga. App. LEXIS 795 (1969); Central Bd. on Care of Jewish

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Aged, Inc. v. Henson, 120 Ga. App. 627, 171 S.E.2d 747, 1969 Ga. App. LEXIS 886 (1969).

Benevolent purpose alone insufficient. — An institution which serves a benevolent purpose is not necessarily a purely public charity. In order for an institution to qualify as a charitable institution for tax exemption under this statute, it must have as the institution's sole purpose and activity the dispensing of public charity. Camp v. Fulton County Medical Soc'y, 219 Ga. 602, 135 S.E.2d 277, 1964 Ga. LEXIS 343 (1964).

An institution which serves a benevolent purpose is not necessarily a purely public charity. Rabun Gap-Nacoochee Sch. v. Thomas, 228 Ga. 231, 184 S.E.2d 824, 1971 Ga. LEXIS 530 (1971); Georgia Congress of Parents & Teachers, Inc. v. Boynton, 239 Ga. 472, 238 S.E.2d 113, 1977 Ga. LEXIS 1214 (1977).

What property and obligations of a charity are exempt. — Property of an institution of purely public charity, and all debentures and revenue bonds issued by the institution, are exempt from all state and local taxation. Smith v. Hayes, 217 Ga. 94, 121 S.E.2d 113, 1961 Ga. LEXIS 386 (1961), superseded by statute as stated in Odom v. Union City Downtown Dev. Authority, 251 Ga. 248, 305 S.E.2d 110, 1983 Ga. LEXIS 789 (1983).

Test for charitable immunity from taxation is nature of source of income. — Test for charitable immunity from suit is not the use to which the income is put, but the nature of the source from which the income is derived. This is the same test applied in determining the taxability of property. The scheme of exemption as to other than public property seems to be this: To exempt all that is used immediately and directly as a part of the establishment in the conduct of regular business there carried on, but not such as may be devoted to other uses, such as farming, merchandising, manufacturing, etc., and from which profit or income is derived. Mack v. Big Bethel A.M.E. Church, Inc., 125 Ga. App. 713, 188 S.E.2d 915, 1972 Ga. App. LEXIS 1453 (1972).

Sufficiency of allegation that property is exempt as that of a purely public charity. — Petition which alleges that property is dedicated to the education, uplift, and advancement of the early history of Atlanta, and is not used for any commercial purpose, fails to allege how the property is being used. In the absence of such allegation, the petition does not allege that the property is used for purely public charity, and fails to state a cause of action for exemption from taxation. Historic House Museum Corp. v. Camp, 223 Ga. 510, 156 S.E.2d 361, 1967 Ga. LEXIS 587 (1967).

Property must be dedicated to charity and used exclusively as such. — Test for exemption as an institution of purely public charity under this statute is not whether the plaintiff is an organization of purely public charity, but whether the property itself is dedicated to charity and used exclusively as an institution of purely public charity. Mu Beta Chapter Chi Omega House Corp. v. Davison, 192 Ga. 124, 14 S.E.2d 744, 1941 Ga. LEXIS 431 (1941); Central Bd. on Georgia Osteopathic Hosp. v. Alford, 217 Ga. 663, 124 S.E.2d 402, 1962 Ga. LEXIS 355 (1962); Historic House Museum Corp. v. Camp, 223 Ga. 510, 156 S.E.2d 361, 1967 Ga. LEXIS 587 (1967); Johnson v. Wormsloe Found., Inc., 228 Ga. 722, 187 S.E.2d 682, 1972 Ga. LEXIS 894 (1972).

No matter how high the ideals of an institution, nor how lofty the institution's purposes, in order to qualify as a charitable institution for tax purposes, the institution must have the sole purpose and activity of dispensing public charity. Institute of Nuclear Power Operations v. Cobb County Bd. of Tax Assessors, 236 Ga. App. 48, 510 S.E.2d 844.

When the plaintiff's primary purpose was to collect, analyze, and disseminate industry lessons learned based on highly confidential surveys, since there was not a single disinterested director on the board, since members paid dues, since the plaintiff's offices were restricted to members and their guests, and since the public was expressly excluded from meetings, the facts indicated that the plaintiff did not

exist for the sole purpose and activity of dispensing purely public charity. Institute of Nuclear Power Operations v. Cobb County Bd. of Tax Assessors, 236 Ga. App. 48, 510 S.E.2d 844.

Nonexempt uses of property generally. — When property is used primarily for either profit or purposes other than the operation of the institution, the property is generally not exempt from taxes. Leggett v. Macon Baptist Ass'n, 232 Ga. 27, 205 S.E.2d 197, 1974 Ga. LEXIS 848 (1974).

Income used for charitable purposes. — Under the Constitution of Georgia, productive property is taxable, even though the income be used for charitable purposes. Atlanta Masonic Temple Co. v. City of Atlanta, 162 Ga. 244, 133 S.E. 864, 1926 Ga. LEXIS 156 (1926).

Insofar as charitable organizations are administrators and disbursers of purely public charity, their property permanently in use for that purpose is exempt from taxation. Richardson v. Executive Comm., 176 Ga. 705, 169 S.E. 18, 1933 Ga. LEXIS 259 (1933).

When charitable organizations are capitalists or proprietors engaged in acquiring money or effects to be disbursed, property of any and every kind from which their income is derived is subject to be taxed the same as property generally. Richardson v. Executive Comm., 176 Ga. 705, 169 S.E. 18, 1933 Ga. LEXIS 259 (1933).

Latent ownership of property as basis for exemption. — Property owned by a charitable institution is not exempt from taxation unless the property is used for the purposes for which that institution was established. Mere latent ownership of property by an institution of public charity will not entitle the institution to an exemption in the absence of the required application of the property to the charitable goals of the owner. Thomas v. Northeast Ga. Council, Inc. BSA, 241 Ga. 291, 244 S.E.2d 842, 1978 Ga. LEXIS 974 (1978).

Mere latent ownership of property by an institution of public charity will not entitle the property to an exemption. York Rite Bodies v. Board of Equalization, 261 Ga. 558, 408 S.E.2d 699, 1991 Ga. LEXIS 422 (1991).

Property used to produce income to be expended in charity is not exempt since it is too remote from the ultimate charitable object. If property is allowed to be used as taxed property, it also is to be taxed. If the property competes in the common business and occupations of life with the property of other owners, the property must bear the tax which theirs bears, and the property is a noncharitable asset, not immune from execution of a judgment. Rabun Gap-Nacoochee Sch. v. Thomas, 228 Ga. 231, 184 S.E.2d 824, 1971 Ga. LEXIS 530 (1971); Mack v. Big Bethel A.M.E. Church, Inc., 125 Ga. App. 713, 188 S.E.2d 915, 1972 Ga. App. LEXIS 1453 (1972).

Property used to produce income to be expended in charity is too remote from the ultimate charitable object to be exempt. Trustees of Academy v. Bohler, 80 Ga. 159, 7 S.E. 633, 1887 Ga. LEXIS 349 (1887), superseded by statute as stated in Grant v. Georgia-Pacific Corp., 239 Ga. App. 748, 521 S.E.2d 868, 1999 Ga. App. LEXIS 1129 (1999).

Lands held in trust to appropriate the annual product to the erection of a poorhouse and the support of its inmates forever are not exempt. The poorhouse, when erected, will be exempt, but not detached property from which its support is to be derived. Trustees of Academy v. Bohler, 80 Ga. 159, 7 S.E. 633, 1887 Ga. LEXIS 349 (1887), superseded by statute as stated in Grant v. Georgia-Pacific Corp., 239 Ga. App. 748, 521 S.E.2d 868, 1999 Ga. App. LEXIS 1129 (1999).

Interpreting "private or corporate income" to mean any income which is not public, productive property used as capital to raise money to expend in charity is used for private income when the owner is a private individual, and for corporate income when the owner is a corporation. It is no more allowable under the Constitution of Georgia for a charitable association to accumulate money by the use of exempt property, which money is to be disbursed in charity, than it is for a common citizen to do it. Richardson v. Executive Comm., 176 Ga. 705, 169 S.E. 18, 1933 Ga. LEXIS 259 (1933).

Terms "private or corporate" are employed in contradistinction to "public." — Public property is not taxed, whether income be derived from the

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property or not; but private or corporate property, though it be connected with the external, visible "institution," is not exempt if used for income, since the income from such property must, by reason of the property's ownership, be either private or corporate; these terms being comprehensive enough to include all income whatsoever that is not public. Richardson v. Executive Comm., 176 Ga. 705, 169 S.E. 18, 1933 Ga. LEXIS 259 (1933).

Exemption of property which produces incidental income from operation of institution. — Provision that the exempt property not be used for purposes of private or corporate profit or income is not intended to destroy the exemption already granted when incidental income is derived from the operation of the charitable or educational institution. Richardson v. Executive Comm., 176 Ga. 705, 169 S.E. 18, 1933 Ga. LEXIS 259 (1933).

Exemption of property used partly for income-producing purposes. — When the property of an institution of purely public charity is used partly for purposes of corporate income, the most that the corporation can claim is that the comparative value of the part used for income, and the part not so used, may be distinguished in making the institution's tax returns, and that the latter part by due apportionment of value, shall be spared from taxation. Massenburg v. Grand Lodge, F. & A.M, 81 Ga. 212, 7 S.E. 636, 1888 Ga. LEXIS 96 (1888); Hurlbutt Farm v. Medders, 157 Ga. 258, 121 S.E. 321, 1924 Ga. LEXIS 30 (1924).

When an institution is a purely public charity and meets the requirements of this statute, the portion of the institution's property which is being used as a home for the aged is tax exempt. However, if part of the building consists of two retail stores which are leased, that part would not be tax exempt, since the area where the stores are located is being used to gain rental and not for the primary purpose of operating the inn. Peachtree on Peachtree Inn, Inc. v. Camp, 120 Ga. App. 403, 170 S.E.2d 709, 1969 Ga. App. LEXIS 795 (1969).

Use of real estate as affecting exemption for taxes. — "Used for the operation of such institution" means that the charitable institution itself must be carrying on an operation on the institution's real estate for the benefit of the public or for some other legitimate charitable purpose in order for such property to be exempt. Johnson v. Wormsloe Found., Inc., 228 Ga. 722, 187 S.E.2d 682, 1972 Ga. LEXIS 894 (1972).

Merely making real estate available to other public or charitable institutions for their use is not sufficient to qualify for the tax exemption. Instead, the use of the property must be exclusively devoted to conduct that benefits the public by furthering the charitable pursuits of the property's owner. York Rite Bodies v. Board of Equalization, 261 Ga. 558, 408 S.E.2d 699, 1991 Ga. LEXIS 422 (1991).

Income-producing real estate, not used directly in charitable activities, is a noncharitable asset and the defendant is liable to the extent of such noncharitable assets. Mack v. Big Bethel A.M.E. Church, Inc., 125 Ga. App. 713, 188 S.E.2d 915, 1972 Ga. App. LEXIS 1453 (1972).

Exemption of real property furnished to other public or charitable institutions. — Merely making real estate available to other public or charitable institutions for their use is not sufficient to qualify the property of a charitable institution for the tax exemption. Atlanta Masonic Temple Co. v. City of Atlanta, 162 Ga. 244, 133 S.E. 864, 1926 Ga. LEXIS 156 (1926); Johnson v. Wormsloe Found., Inc., 228 Ga. 722, 187 S.E.2d 682, 1972 Ga. LEXIS 894 (1972).

Use of property controls over declarations in charter in determining taxability. — Use to which property is put, not the declaration of purpose in the property owner's charter, determines the question of exemption from taxation. Central Bd. on Georgia Osteopathic Hosp. v. Alford, 217 Ga. 663, 124 S.E.2d 402, 1962 Ga. LEXIS 355 (1962); Georgia Congress of Parents & Teachers, Inc. v. Boynton, 239 Ga. 472, 238 S.E.2d 113, 1977 Ga. LEXIS 1214 (1977).

No matter how high the ideals of an institution, nor how lofty the institution's purposes, in order for the institution to qualify as a charitable institution for tax exemption under paragraph (a)(4) of O.C.G.A. § 48-5-41, the institution must have the sole purpose and activity of dispensing public charity. York Rite Bodies v. Board of Equalization, 261 Ga. 558, 408 S.E.2d 699, 1991 Ga. LEXIS 422 (1991).

Character of a corporation, as disclosed by the corporation's charter provisions and other evidence, will be considered in determining whether the use of the property is such as to exempt the property from taxation. Tharpe v. Central Ga. Council of BSA, 185 Ga. 810, 196 S.E. 762, 1938 Ga. LEXIS 539 (1938).

Effect of declarations in charter and of nonprofit and noncommercial status. — That the organization is nonprofit, is not used for commercial purposes, and the organization's charter declares the organization to be a charitable and benevolent institution, does not make the organization a charitable institution. Nor does the fact that the organization may serve a benevolent purpose make the organization such. Historic House Museum Corp. v. Camp, 223 Ga. 510, 156 S.E.2d 361, 1967 Ga. LEXIS 587 (1967).

Institution's efforts properly found not purely charitable. — Such diffuse public benefit as promoting excellence and the highest safety standards within the commercial nuclear power industry was secondary to the immediate pecuniary benefit of the plaintiff's members, predominantly commercial suppliers, and their shareholders, in an industry generating $12 billion in net profits, and the superior court correctly determined that the plaintiff's efforts were not purely charitable. Institute of Nuclear Power Operations v. Cobb County Bd. of Tax Assessors, 236 Ga. App. 48, 510 S.E.2d 844.

Property of a private firefighting service was exempt as a "purely public charity." Chatham County Bd. of Tax Assessors v. Southside Communities Fire Protection, Inc., 217 Ga. App. 361, 457 S.E.2d 267, 1995 Ga. App. LEXIS 416 (1995), cert. denied, No. S95C1383, 1995 Ga. LEXIS 1013 (Ga. Sept. 5, 1995).

Exemption of hospital neither chartered as charity nor using property or income exclusively as such. — When a hospital is not chartered as a purely public charity, and when the hospital's property is not put to use as purely public charity, and neither the hospital's income nor the hospital's surplus is used exclusively for purely public charity, the hospital does not bring itself within the strict requirements for the ad valorem tax exemption sought. St. Joseph Hosp. v. Bohler, 229 Ga. 577, 193 S.E.2d 603, 1972 Ga. LEXIS 682 (1972).

Tax exemption for health services corporation. — When appellee health services corporation offered evidence that the corporation provided the corporation's services to all in need, not just to those who could pay and evidence that, while most patients had some source of funds, their needs often exceeded those sources, and they were treated as uncompensated patients, some evidence supported the jury's verdict that the corporation qualified for a tax exemption as an institution of "purely public charity" under O.C.G.A. § 48-5-41(a)(4); thus, the appellant tax board's motions for a directed verdict against the corporation or for judgment notwithstanding the verdict were properly denied. Fulton County Bd. of Tax Assessors v. Visiting Nurse Health Sys. of Metro. Atlanta, Inc., 256 Ga. App. 475, 568 S.E.2d 798, 2002 Ga. App. LEXIS 934 (2002).

That residents of an institution pay rent according to the residents' ability to pay does not destroy the charitable nature of the institution. Central Bd. on Care of Jewish Aged, Inc. v. Henson, 120 Ga. App. 627, 171 S.E.2d 747, 1969 Ga. App. LEXIS 886 (1969).

That residents of an inn for the elderly are charged rental toward operating expenses does not necessarily destroy the charitable nature of the institution, especially if payments made by the residents are insufficient to cover the direct operating expenses of the inn and all income is used for operation, maintenance, and enlarging the facilities, with no part of its income being distributed to

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any person with an interest therein. Peachtree on Peachtree Inn, Inc. v. Camp, 120 Ga. App. 403, 170 S.E.2d 709, 1969 Ga. App. LEXIS 795 (1969).

Effect of Act which expressly exempted hospitals of purely public charity. — When, by enacting former Code 1933, § 92-201 (see now O.C.G.A. § 48-5-41), the General Assembly exempted from taxation all of the property enumerated in Ga. Const. 1945, Art. VII, Sec. I, Para. IV (see now Ga. Const. 1983, Art. VII, Sec. II, Para. I-IV) using the identical language there employed, it fully exhausted its constitutional power to make exemptions, and the amending Act, Ga. L. 1947, p. 1183, which expressly exempted from taxation all hospitals of purely public charity (see now O.C.G.A. § 48-5-40) added nothing to what the General Assembly had previously done by Ga. L. 1946, p. 12, § 1. Elder v. Henrietta Egleston Hospital for Children, Inc., 205 Ga. 489, 53 S.E.2d 751, 1949 Ga. LEXIS 375 (1949) (commented on in 1 Mercer L. Rev. 111 (1949).

Hospital exempt when all income used for maintenance, operations, and furtherance of charitable purposes. — When a hospital is organized for charitable purposes, and uses all of the hospital's income from all sources, including income from pay patients, exclusively for maintenance, operation, enlarging the hospital's charitable facilities, and for furtherance of the hospital's charitable purposes, with no part of the same distributable to anyone having an interest therein, it is exempt within the meaning of Ga. Const. 1945, Art. VII, Sec. I, Para. IV (see now Ga. Const. 1983, Art. VII, Sec. II, Para. I-IV), an interpretation of that constitutional provision which accords with the intention of the framers of that document as shown in the Records of the Constitutional Commission 1943-1944, Vol. I, pp. 138-141, 388-395, 397, 528-531; Vol. II, pp. 58-59. Elder v. Henrietta Egleston Hospital for Children, Inc., 205 Ga. 489, 53 S.E.2d 751, 1949 Ga. LEXIS 375 (1949) (commented on in 1 Mercer L. Rev. 111 (1949).

Home for mentally handicapped when private donations only a small percentage of income held not exempt. — Since over 70 percent of the operating costs of a home for mentally handicapped persons comes from the government or client fees, and private donations account for only 15 percent of the expenditures of the home, and since the families or residents or government agencies pay monthly fees on behalf of each resident, it is not sufficiently "public" in nature to be considered an institution of purely public charity. Annandale at Suwanee, Inc. v. Gwinnett County Bd. of Tax Assessors, 242 Ga. 241, 248 S.E.2d 640, 1978 Ga. LEXIS 1156 (1978).

Exempt status of hospital when proportion of paying patients vastly greater than charitable patients. — When a hospital receives charitable patients without pay but the hospital also charges for patients able to pay, the proportion being vastly in favor of the latter, the property in question is used for corporate income, and is not exempted from taxation. Richardson v. Executive Comm., 176 Ga. 705, 169 S.E. 18, 1933 Ga. LEXIS 259 (1933).

Hospital which collects some patient fees and charges off uncollectable bills to charity held not exempt. — When a hospital is operated generally for profit, and while there is some evidence that the hospital does on occasion treat indigent patients, the general practice of the institution is to collect all that the institution can from the institution's patients, and only charge off as charity those bills the institution is unable to collect, the hospital is engaged principally for noncharitable purposes and apparently chiefly for the benefit of the institution's staff, and is not exempt from taxation. Central Bd. on Georgia Osteopathic Hosp. v. Alford, 217 Ga. 663, 124 S.E.2d 402, 1962 Ga. LEXIS 355 (1962).

For a nursing home to be tax exempt, the nursing home must be purely charitable and public. Central Bd. on Care of Jewish Aged, Inc. v. Henson, 120 Ga.

App. 627, 171 S.E.2d 747, 1969 Ga. App. LEXIS 886 (1969).

Charges paid by Boy Scouts do not destroy charitable nature of that organization. — Under Georgia decisions, the fact that Boy Scouts are charged a sum sufficient only to pay for their food does not destroy the charitable nature of the institution nor prevent its exemption. Tharpe v. Central Ga. Council of BSA, 185 Ga. 810, 196 S.E. 762, 1938 Ga. LEXIS 539 (1938).

Exemption of a headquarters facility available only to dues-paying members. — Use made of property sought to be exempt from ad valorem taxes is not such as could be said to be "purely public" charitable use when the property is a headquarters available only to those who pay dues. Georgia Congress of Parents & Teachers, Inc. v. Boynton, 239 Ga. 472, 238 S.E.2d 113, 1977 Ga. LEXIS 1214 (1977).

Legislative intent as to religious groups or institutions. — General Assembly did not intend that religious groups or institutions be considered charitable institutions for the purpose of this exemption. Presbyterian Ctr., Inc. v. Henson, 221 Ga. 750, 146 S.E.2d 903, 1966 Ga. LEXIS 687 (1966).

Although religious institutions are, for some purposes, considered to be matters of charity, religious institutions are not necessarily considered such for all purposes, and the word "charity" itself is given a narrower meaning in tax exemption cases. Presbyterian Ctr., Inc. v. Henson, 221 Ga. 750, 146 S.E.2d 903, 1966 Ga. LEXIS 687 (1966).

Since this statute elsewhere specifically exempts certain property owned by a seminary of learning and then exempts "all institutions of purely public charity," it appears that it was the intention of the drafters of the Constitution of Georgia that a seminary of learning not be considered as an institution of purely public charity for the purpose of this exemption. Rabun Gap-Nacoochee Sch. v. Thomas, 228 Ga. 231, 184 S.E.2d 824, 1971 Ga. LEXIS 530 (1971).

Masons not qualified. — Although the Masons serve a benevolent purpose and pursue many public charities, because many of their activities and resources are used exclusively for the personal benefit of their group, it cannot be said that the group has the sole purpose and activity of dispensing public charity so as to qualify as a charitable institution for tax exemption under O.C.G.A. § 48-5-41(a)(4). Board of Equalization v. York Rite Bodies of Freemasonry, 209 Ga. App. 359, 433 S.E.2d 299, 1993 Ga. App. LEXIS 889 (1993), cert. denied, No. S93C1650, 1993 Ga. LEXIS 887 (Ga. Oct. 5, 1993), cert. denied, 511 U.S. 1070, 114 S. Ct. 1646, 128 L. Ed. 2d 366, 1994 U.S. LEXIS 3357 (1994).

Home health care services organization was not a purely public charitable institution because the organization charged for services rendered, the amount of revenue generated suggested that the organization was not a purely public charity, and there was no evidence to support the conclusion that the organization used all the property at issue for charitable pursuits. Fulton County Bd. of Tax Assessors v. Visiting Nurse Health Sys. of Metro. Atlanta, Inc., 243 Ga. App. 64, 532 S.E.2d 416, 2000 Ga. App. LEXIS 415 (2000).

Georgia School Board Association, a not for profit organization providing needed services to local school boards in exchange for fees and dues, is not a "purely public charity." Gwinnett County Bd. of Tax Assessors v. Georgia Sch. Bd. Ass'n, 211 Ga. App. 437, 439 S.E.2d 666, 1993 Ga. App. LEXIS 1562 (1993), cert. denied, No. S94C0447, 1994 Ga. LEXIS 370 (Ga. Feb. 3, 1994).

Garden center was not dispensing purely public charity because the evidence showed that the payment of member club dues and rent to the center resulted in the provision of substantial services and benefits not available to the general public. Cobb County Bd. of Tax Assessors v. Marietta Educ. Garden Ctr., Inc., 239 Ga. App. 740, 521 S.E.2d 892.

Home for the aged exemption. — Ministry was entitled to a "home for the aged" exemption under O.C.G.A. § 48-5-41(a)(12)(A) as the ministry met all of the statutory conditions and there was no requirement that the home had to

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be a separate tax exempt corporation from the tax exempt organization that operated both a home for the aged and other tax exempt operations, such as a church, a radio ministry, and a counsel center. A Georgia nonprofit tax exempt corporation may receive tax exemption from ad valorem taxes when the corporation operates a home for the aged exclusively or when the corporation operates a home for the aged as well as other tax exempt activities. Lamad Ministries, Inc. v. Dougherty County Bd. of Tax Assessors, 268 Ga. App. 798, 602 S.E.2d 845, 2004 Ga. App. LEXIS 1023 (2004).

Memorial foundation exempt from ad valorem taxation. — Court of appeals erred in reversing an order affirming a decision of a county board of equalization to grant a memorial foundation an exemption from ad valorem taxation for the property on which the foundation's facility was located because the foundation established that the foundation qualified as a purely public charity pursuant to O.C.G.A. § 48-5-41(a)(4) and fulfilled the requirements in O.C.G.A. § 48-5-41(c), (d)(1), and (2). The property the foundation owned was devoted entirely to charitable purposes; the charitable purposes of the foundation were for the benefit of the public, the foundation qualified as a purely public charity, the foundation provided evidence that all income obtained from the property was used in furtherance of the foundation's charitable services or to offset expenses incurred in the maintenance of the organization's property, and no part of the foundation's income was being distributed to any person with an interest therein. Nuci Phillips Mem. Found. v. Athens-Clarke County Bd. of Tax Assessors, 288 Ga. 380, 703 S.E.2d 648, 2010 Ga. LEXIS 849 (2010).

Educational Institutions

It is the use of the property which renders the property exempt or non-exempt, not the use of the income derived from the property. Elder v. Atlanta-Southern Dental College, 183 Ga. 634, 189 S.E. 254, 1936 Ga. LEXIS 163 (1936).

Discretion of institution as to what is necessary and proper to further the institution's objectives. — Some discretion must be given to the governing authorities of the institution to determine what buildings are necessary or proper to further their educational objectives. Elder v. Trustees of Atlanta Univ., 194 Ga. 716, 22 S.E.2d 515, 1942 Ga. LEXIS 661 (1942).

Use of property controls over declarations in charter in determining taxability. — Use to which property of an educational institution is put, rather than the declaration of the institution's purpose found in the institution's charter, determines the question of exemption from taxation. Rabun Gap-Nacoochee Sch. v. Thomas, 228 Ga. 231, 184 S.E.2d 824, 1971 Ga. LEXIS 530 (1971).

Effect of fees charged and used for institution. — Grounds, buildings, and other property occupied and used by the owner or owners thereof for conducting a college or school, for attendance upon which charges for board and tuition are arbitrarily made without any reference to the actual cost of conducting the school, are subject to taxation. Mundy v. Van Hoose, 104 Ga. 292, 30 S.E. 783, 1898 Ga. LEXIS 320 (1898).

All buildings erected for and used as a college, incorporated academy, or other seminary of learning are exempt from taxation, even if in the operation of the institution, income is derived from tuition fees, since the fees themselves are not used for the purpose of private or corporate profit or income, but are appropriated to the maintenance of the institution. Linton v. Lucy Cobb Inst., 117 Ga. 678, 45 S.E. 53, 1903 Ga. LEXIS 302 (1903); Brewer v. American Missionary Ass'n, 124 Ga. 490, 52 S.E. 804, 1905 Ga. LEXIS 758 (1905).

Effect of right to convey property at will and make any desired use of income. — Property of a corporation having a capital stock formed for the business of conducting an educational institution, and which has the absolute

ownership of all the realty and personalty employed in such enterprise, with the right to convey it at will and to make any desired disposition of the income derived from the fees charged for tuition and board is not exempt from taxation. Brenau Ass'n v. Harbison, 120 Ga. 929, 48 S.E. 363, 1904 Ga. LEXIS 751 (1904).

Institution for education of poor boys and girls. — Property of an institution for the education of worthy but poor boys and girls, instructing the boys and girls in general educational and agricultural subjects, if used for purely religious, charitable, and educational purposes, is not taxable, provided the institution's income is not used, nor intended to be used, as dividends or profits. City of Waycross v. Waycross Sav. & Trust Co., 146 Ga. 68, 90 S.E. 382, 1916 Ga. LEXIS 582 (1916); See also, Hurlbutt Farm v. Medders, 157 Ga. 258, 121 S.E. 321, 1924 Ga. LEXIS 30 (1924); Baggett v. Georgia Conference Ass'n of Seventh Day Adventists, 157 Ga. 488, 121 S.E. 838, 1924 Ga. LEXIS 187 (1924).

Exemption of college fraternity houses. — Fraternity houses are buildings erected for and used as a college, and not used for the purpose of making either private or corporate income or profit for the university. The law of this state says that fraternity houses shall be exempt from taxes. Alford v. Emory Univ., 216 Ga. 391, 116 S.E.2d 596, 1960 Ga. LEXIS 484 (1960).

Private corporation operating a fraternity on land owned in fee simple by that corporation was not entitled to the same tax exemptions as those fraternities and sororities located on real property belonging to the "college," and therefore constitutional equal protection rights were not implicated. Zach, Inc. v. Fulton County, 235 Ga. App. 478, 509 S.E.2d 746.

Exemption found in paragraph (a)(6) of O.C.G.A. § 48-5-41 applies only to residential property owned by an educational institution or an "arm or extension" and did not apply to property owned by a company for use as a fraternity house. Zach, Inc. v. Fulton County, 271 Ga. 411, 520 S.E.2d 899.

Residential buildings on university property. — When the university owns the property, residential buildings thereon may be "used as a college" and qualify for ad valorem tax exemption under paragraph (a)(6) of O.C.G.A. § 48-5-41. Johnson v. Southern Greek Hous. Corp., 251 Ga. 544, 307 S.E.2d 491, 1983 Ga. LEXIS 888 (1983).

Exemption of fraternity and sorority houses. — Property of nonprofit corporation, organized as an instrument of a state university, used to erect fraternity and sorority houses was exempt from ad valorem taxation under paragraph (a)(6) of O.C.G.A. § 48-5-41. Johnson v. Southern Greek Hous. Corp., 251 Ga. 544, 307 S.E.2d 491, 1983 Ga. LEXIS 888 (1983).

Private, nonprofit corporation owning a fraternity house on a college campus was not an "arm or extension" of the college and was not entitled to an ad valorem tax exemption. Zach, Inc. v. Fulton County, 226 Ga. App. 842, 487 S.E.2d 602.

Term "seminary of learning," as applied in its general meaning, does not exclude an institution such as the Mechanical Trades Institute. J.A.T.T. Title Holding Corp. v. Roberts, 258 Ga. 519, 371 S.E.2d 861, 1988 Ga. LEXIS 380 (1988).

Taxation of grounds and buildings. — While an educational institution may be exempt, some of the institution's grounds and buildings may be taxed if those grounds or buildings generate a private profit. J.A.T.T. Title Holding Corp. v. Roberts, 258 Ga. 519, 371 S.E.2d 861, 1988 Ga. LEXIS 380 (1988).

Building used by aspiring artists to develop their abilities by practicing their craft did not qualify for a tax exemption. Atlanta Artists Ctr., Inc. v. Fulton County Bd. of Assessors, 245 Ga. App. 253, 537 S.E.2d 701, 2000 Ga. App. LEXIS 927 (2000).

Farm Products

Obvious intent of the exemption for farm products is to relieve the farmer by giving the farmer a year after harvest in which to sell the farmer's products; therefore, during that period until the farmer sells the farmer's products, the farmer is exempt from ad valorem taxation thereupon. Gold Kist, Inc. v. Jones, 231 Ga. 881, 204 S.E.2d 584, 1974 Ga. LEXIS 1268 (1974).

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Effect upon other laws. — Exemption does not change the general rule and policy of the state that personal property is taxable only at the domicile of the owner if a resident of this state. City of Blakely v. Hilton, 150 Ga. 27, 102 S.E. 340, 1920 Ga. LEXIS 9 (1920).

No exemption for farm products sold or transferred for future sale. — Language of this statute does not contemplate an exemption for farm products either after an outright sale, or when placed in the hands of another for future sale or processing with advance payment to the producer. Gold Kist, Inc. v. Jones, 231 Ga. 881, 204 S.E.2d 584, 1974 Ga. LEXIS 1268 (1974).

Farm products may be levied on and sold for taxes due on other property. — Farm products which are themselves exempt from taxation may nevertheless be levied on and sold for taxes due upon other property of the same owner. Sumter County v. Hollis, 51 Ga. App. 410, 180 S.E. 750, 1935 Ga. App. LEXIS 720 (1935).

Farm products already sold to a bona fide purchaser not subject to levy and sale. — While farm products which are themselves exempt from taxation for the next year after their production may nevertheless be levied on and sold for taxes due upon other property of the same owner, the products are not subject to such levy when there was a bona fide sale of the products by the grower to a third person within the exempted period, and if the fi. fa. against the producer was levied on the products after such sale. Sumter County v. Hollis, 51 Ga. App. 410, 180 S.E. 750, 1935 Ga. App. LEXIS 720 (1935).

Taxability presumed if product not ordinarily classified as farm product. — Since according to its usual signification, the term "lumber" would not ordinarily be classified as a farm product; it would be presumed prima facie that it was not such a product and in the circumstances, it was not sufficient to allege in mere general terms that this lumber was a farm product and as such exempt from taxation. Collins v. Mills, 198 Ga. 18, 30 S.E.2d 866, 1944 Ga. LEXIS 344 (1944).

For effect of failure to allege crop was grown by holder or upon holder's land, see City of Blakely v. Hilton, 150 Ga. 27, 102 S.E. 340, 1920 Ga. LEXIS 9 (1920).

Hospitals

Home health care organization was not a hospital for purposes of exemption from ad valorem taxes. Fulton County Bd. of Tax Assessors v. Visiting Nurse Health Sys. of Metro. Atlanta, Inc., 243 Ga. App. 64, 532 S.E.2d 416, 2000 Ga. App. LEXIS 415 (2000).

Whether hospital authority's property public depended on purpose. — Two bond validation orders pertaining to a hospital authority's establishment of a continuing care retirement center did not conclusively determine, for purposes of O.C.G.A. § 48-5-41(a)(1)(A), that the property was public property exempt from ad valorem taxation; remand was required for the trial court to address taxability. Columbus Board of Tax Assessors v. Medical Ctr. Hosp. Auth., 302 Ga. 358, 806 S.E.2d 525, 2017 Ga. LEXIS 889 (2017).

Continuing care retirement center was exempt. — Hospital authority's leasehold interest in certain property under a lease agreement was exempt from ad valorem taxation as public property because the property was a continuing care residential retirement community, providing the elderly with room and board and nursing care, which addressed a public need of an identifiable class of citizens and was a project contemplated under Hospital Authority laws. Columbus v. Medical Ctr. Hosp. Auth., 368 Ga. App. 489, 890 S.E.2d 409, 2023 Ga. App. LEXIS 340 (2023).

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Effect of claim of two or more similar exemptions. — If a taxpayer is qualified for and chooses to invoke the benefits of any one of the exemptions from

any one of the types of ad valorem taxes, the taxpayer necessarily triggers the limitation clause of that exemption. Any attempt to take two or more similar exemptions would violate the limitation clause of each of the exemptions and cannot be done. 1974 Op. Att'y Gen. No. U74-83.

Corporation organized for both exempt and nonexempt purposes is not entitled to property tax exemption. 1960-61 Ga. Op. Att'y Gen. 515.

Effect of owner's character in determining use to which property put. — Owner's character, while not controlling, does play an important part in determining the nature of the use to which property is put. 1962 Ga. Op. Att'y Gen. 495.

Exemption of property owned by a mutual fund. — Neither former Code 1933, § 92-201 (see now O.C.G.A. § 48-5-41), Ga. L. 1937-38, Ex. Sess., p. 156, § 4 (see now O.C.G.A. § 48-6-27 (now repealed)), nor Ga. Const. 1945, Art. VII, Sec. I, Para. V (see now Ga. Const. 1983, Art. VII, Sec. I, Para. V) exempt from ad valorem taxation taxable property owned by a mutual fund. 1968 Op. Att'y Gen. No. 68-195.

Intangibles belonging to the trust fund administered by the Peace Officers' Association of Georgia are exempt from ad valorem taxes imposed by Georgia Law upon intangibles. 1967 Op. Att'y Gen. No. 67-338.

Discussion of what educational and religious institution property is exempt from taxation. — See 1952-53 Ga. Op. Att'y Gen. 181.

Public Property

Taxation of property transferred to municipality after January 1. — Property returned for taxation on January 1 and later sold to a municipality is not subject to be levied on for taxes in the hands of the municipality. 1954-56 Ga. Op. Att'y Gen. 680.

Liability for taxes on condemned property. — Under the law of eminent domain as the law now exists in this state, the payment of city or county taxes is not a proper element of damages in a condemnation case. The payment of property taxes is a responsibility of the landowner only so long as the landowner, in fact, owns the property. The property owner or condemnee would be responsible for payment of taxes up to the date of taking. After that time, the responsibility for the payment of these taxes would lie upon the condemning body, if in fact that body is an entity which would have the responsibility for payment of these taxes; all public property, however, is exempt from taxation by virtue of this statute. 1969 Op. Att'y Gen. No. 69-494.

Georgia Development Authority is exempt from the intangibles tax on its property, including its direct long term mortgage notes. The holder of long term mortgage notes is not exempt from paying intangibles tax on those notes when the Georgia Development Authority merely guarantees or insures payment. 1963-65 Ga. Op. Att'y Gen. 31.

Property held by the various agricultural commodity commissions is public property within the meaning of this statute and is exempt from taxation. 1977 Op. Att'y Gen. No. 77-29.

Exemption of property of the Agricultural Commodity Commission for Peanuts. — Property owned by the Agricultural Commodity Commission for Peanuts, a public corporation and an instrumentality of the state according to Ga. L. 1961, p. 301, § 8 (see now O.C.G.A. § 2-8-15), is public property, not used for the purpose of private or corporate profit and income and, therefore, it is exempt under former Code 1933, § 92-201 (see now O.C.G.A. § 48-5-41) from city and county ad valorem taxes. 1963-65 Ga. Op. Att'y Gen. 390.

Georgia Regional Hospital at Atlanta is not subject to DeKalb County property taxation because the hospital is owned by the state. 1970 Op. Att'y Gen. No. 70-205.

Corporation organized under the Cooperative Marketing Act, Ga. L. 1921, p. 139, § 1 (see now O.C.G.A. Art. 3, Ch. 10, T. 2), is required to make ad valorem tax returns. 1952-53 Ga. Op. Att'y Gen. 180.

Places of Religious Worship

Church is exempt from municipal taxes. 1945-47 Ga. Op. Att'y Gen. 414.

Land owned by a religious organization is exempt from taxation so long as the land is used for religious worship or as a recreational park for purely public charity. 1954-56 Ga. Op. Att'y Gen. 716.

Exemption of land leased for commercial purposes. — Land owned by a religious organization, which is normally tax exempt, is subject to taxation when leased for commercial purposes. 1954-56 Ga. Op. Att'y Gen. 716.

Exemption of camps for physical, mental, moral, and spiritual development of children. — Camp operated for the physical, mental, moral, and spiritual growth and development of young boys and girls is dedicated to a charitable use. That use is public if the camp is open to boys and girls generally or to all those of a particular religious faith. The fact that a charge is made does not destroy the charitable nature of the camp, provided the following conditions are met: (1) the camp property must not be used for the primary purpose of producing income; (2) any income received from the camp's use must be used exclusively for camp operation and maintenance; (3) such income must not be distributed to shareholders in the corporation owning camp, if owned by a corporation, or to other owners if not owned by a corporation; and (4) if the property was donated, the donation must not have been based upon an agreement providing that the donor shall receive any part of the net or gross income from the property's use. 1962 Ga. Op. Att'y Gen. 495.

Camp grounds owned and operated by Conference of Seventh-Day Adventists are exempt from taxation as an institution of purely public charity. 1962 Ga. Op. Att'y Gen. 499.

Motor vehicles owned by churches are not exempt from taxation. — 1957 Ga. Op. Att'y Gen. 287.

Cars used for transportation to and from church functions are not places of religious worship, and are, therefore, not exempt from state, county, and municipal property taxes. 1963-65 Ga. Op. Att'y Gen. 464.

Motor vehicles furnished by religious groups to ministers are not exempt from taxation. 1962 Ga. Op. Att'y Gen. 507.

Cemeteries

Cemeteries are exempt from property taxation, including land not yet sold as burial lots. 1960-61 Ga. Op. Att'y Gen. 474.

Character of owner as affecting exemption of cemetery property. — Property utilized as a cemetery or place of burial is exempt from taxation without regard for the fact that the property is owned by either a public or private corporation, or by individuals, collectively or severally. 1975 Op. Att'y Gen. No. U75-15.

Residences Owned by Religious Groups

Exemption of more than one residence. — Single family residence owned by a church is exempt from ad valorem taxes as long as no income is derived therefrom; the same rule applies when the church owns two or more residences. 1970 Op. Att'y Gen. No. U70-172.

Two single-family residences owned by a church, one of which is occupied rent-free by the pastor as the pastor's residence, and the other of which is occupied rent-free by the minister of education as that minister's residence, are both exempt from ad valorem taxes. 1970 Op. Att'y Gen. No. U70-94.

Trailer owned by a church, situated on church land, and used as a parsonage, is exempt from taxation. 1954-56 Ga. Op. Att'y Gen. 715.

Institutions of Purely Public Charity

Description in charter that an institution is charitable is not necessarily controlling; institution's tangible personal property is taxable when it appears proceeds may inure to the benefit of private person. 1962 Ga. Op. Att'y Gen. 523.

Exemption of fraternal organizations. — Fraternal organizations, such as American Legion, Veterans of Foreign Wars, and Moose are not exempt from payment of ad valorem taxes since they are not purely charitable organizations. 1962 Ga. Op. Att'y Gen. 481; 1962 Ga. Op. Att'y Gen. 501.

Masonic hall is exempt from state and county taxation. 1954-56 Ga. Op. Att'y Gen. 715.

Uses to which American Legion clubhouses are normally put are neither exclusively charitable nor public in nature. 1962 Ga. Op. Att'y Gen. 495.

American Legion clubs are not institutions of purely public charity as contemplated by this statute and, therefore, are not exempt from taxation. 1950-51 Ga. Op. Att'y Gen. 154; 1958-59 Ga. Op. Att'y Gen. 338.

Hall used to carry on normal activities of a fraternal benefit society is not exempt under this statute. 1962 Ga. Op. Att'y Gen. 495.

Test as to taxation of property belonging to private clubs depends upon property's use. — If the property itself is dedicated to and used for purely public charity, the property is not taxable, but if the property is used for purposes other than purely public charity, the property is taxable. 1958-59 Ga. Op. Att'y Gen. 338.

Exemption of property used for social purposes. — When the property of an organization, the nature of which is in part social, is used for social purposes, the property is not exempt since the property furthers the interest of the organization's members even though the property incidentally serves the community. 1969 Op. Att'y Gen. No. 69-392.

That a community swimming pool is operated by a nonprofit corporation does not authorize a municipality to exempt the facility from ad valorem taxes when the facility is not used as a purely public charity. The mere nonprofit nature of the operation is not sufficient to exempt the operation under this statute. 1971 Op. Att'y Gen. No. U71-46.

Exemption of fraternity houses. — Although a corporation's petition for charter describes the corporation as an institution of purely public charity, the corporation's property is not exempt from taxation under this statute, the property involved being a dwelling purchased for use as a place of residence by members of the local chapter of a Greek letter college fraternity, its use and occupancy being limited to those who are active members of the fraternity, who become members by invitation, and each member of the local chapter who resides at such chapter house paying to the local chapter a monthly fee for room and board, which charge is identical with the charges made by the educational institution at which such chapter is located for the use of its dormitories, where meals are furnished as well as rooms. 1958-59 Ga. Op. Att'y Gen. 338.

Nonprofit corporation which charges for furnishing housing to service organizations, the receipts from which are used for maintenance and mortgage payments, is not a public charity as to be exempt from city and county ad valorem taxes. 1970 Op. Att'y Gen. No. U70-34.

Educational Institutions

When a motel owned by a college is held or used as an endowment, such property is not exempt from ad valorem taxation because it is invested in real estate. 1969 Op. Att'y Gen. No. 69-362.

Farm Products

Term "farm products" is not limited to products of the soil, but also encompasses livestock and poultry, including laying hens, which are commonly regarded as agricultural products; such products are exempt from taxation so long as they meet other criteria of this statute. 1969 Op. Att'y Gen. No. 69-359.

"Farm products" does not include buildings and equipment used in farm operations. — Chickens, eggs, and honey are exempt from taxation for the year next after their production. However, the buildings and equipment used in these operations are not exempt from taxation. 1962 Ga. Op. Att'y Gen. 481.

When corporation buys eggs from third parties and sells the eggs to the public, the eggs would not be exempt from taxation because the eggs did not remain in the hands of the producer but were purchased from the producer by that corporation. 1967 Op. Att'y Gen. No. 67-159.

When corporation leases farms on which laying hens owned by the corporation are kept, and the farmer-lessor cares for the hens and oversees the egg production, but the farmer receives for the farmer's services a salary which is not dependent on egg production or price, the eggs are not subject to ad valorem taxation when in the hands of that corporation. 1967 Op. Att'y Gen. No. 67-159.

When corporation owns hens, and keeps the hens on the corporation's lands, and hires individuals to oversee the hens, the eggs would be exempt from ad valorem taxation for the year next after production. 1967 Op. Att'y Gen. No. 67-159.

Farm products in the hands of warehousemen who are not producers are not exempt from property taxation. 1969 Op. Att'y Gen. No. 69-283.

Baled cotton stored in a warehouse and owned by a warehouseman on January 1 is subject to ad valorem taxation. 1952-53 Ga. Op. Att'y Gen. 429.

Exemption of farm products owned by producer and stored by federal government. — Since farm products in the hands of the producer, within the year next after their production, and all property within the scope of federal ownership are exempt from taxation, farm products owned by the producer and stored by the federal government are not within the classification of properties taxable by a municipal corporation. 1963-65 Ga. Op. Att'y Gen. 238.

No exemption for agricultural property. — Municipality does not have the authority to exempt from city taxes real property located within the municipality's corporate limits and held for agricultural purposes. 1984 Op. Att'y Gen. No. U84-21.

Antipollution Equipment

Eligibility for exemption to be determined from all circumstances, not merely expressed intent. — Question of whether or not the property was installed or constructed for the primary purpose of reducing or eliminating air or water pollution rather than primarily for another purpose, such as increasing production, is not to be determined solely from the expressed intention of the taxpayer, but from all the circumstances of the case. The dominant purpose of the taxpayer is to be considered. 1969 Op. Att'y Gen. No. 69-325.

Incidental intent to control pollution insufficient for exemption. — Board of tax assessors must exempt property used in or as part of any facility which has been certified by a pollution control agency as necessary and adequate to eliminate or reduce air or water pollution, if the board of tax assessors finds from all the circumstances surrounding the case that the facility was installed for the primary purpose of eliminating or reducing pollution. If the board finds that the facility, even though certified, was not installed or constructed for that primary purpose, but for another purpose, such as increasing production with only an incidental intent to control pollution, then it must find that the exemption does not apply. 1969 Op. Att'y Gen. No. 69-325.

RESEARCH REFERENCES

Am. Jur. 2d.

71 Am. Jur. 2d, State and Local Taxation, § 234 et seq.

ALR.

Necessity of acceptance of dedicated street to relieve it from taxation, 5 A.L.R. 1537.

Taxation: exemption of parsonage or residence of minister or priest, 13 A.L.R. 1196.

Construction of exemption of religious body or society from taxation or special assessment, 17 A.L.R. 1027.

Exemption from taxation of property of

fraternal or relief association, 22 A.L.R. 907; 83 A.L.R. 773.

Exemption from taxation of property of labor organization, 23 A.L.R. 813; 172 A.L.R. 1070.

Exemption of charitable organization from taxation or special assessment, 34 A.L.R. 634; 62 A.L.R. 328; 108 A.L.R. 284.

Bond or warrant of governmental subdivision as subject of taxation or exemption, 44 A.L.R. 510.

State or political subdivision as subject to license or sales tax, 60 A.L.R. 878; 67 A.L.R. 1310; 159 A.L.R. 365.

Exemption from taxation of the property of a Y.M.C.A. or Y.W.C.A., 81 A.L.R. 1453.

Property of one municipality within territorial limits of another as subject to taxation by latter, 81 A.L.R. 1518; 99 A.L.R. 1143.

Injunction as proper remedy against tax on exempt property, 84 A.L.R. 1315.

What are educational bodies or schools within contemplation of tax exemption provision, 95 A.L.R. 62.

Reservation of option or conditions in conveyance which may operate to defeat or extinguish title of exempt grantee as affecting exemption of real estate from taxation, 98 A.L.R. 1372.

Property located in one state, political subdivision, or municipality, but belonging to another, as subject to taxation therein, 99 A.L.R. 1143.

Cooperative corporations or associations formed by producers of agricultural products as within provisions of taxing statute regarding agricultural products or producers, 100 A.L.R. 439.

Who as between grantor and grantee, immediate or remote, is entitled to refund of tax or assessment for public improvement against land, 105 A.L.R. 698.

Exemption of charitable organization from taxation or special assessment, 108 A.L.R. 284.

What is a municipal corporation within constitutional or statutory tax exemption provisions, 108 A.L.R. 577.

Tax exemption as affected by failure to claim or delay in claiming it for past years, 115 A.L.R. 1484.

Exemption from taxation of property of Boy Scout or Girl Scout organization, 116 A.L.R. 378.

Exemption of part of real property assessed or levied upon as a whole as affecting tax upon nonexempt part, 118 A.L.R. 861.

Taxation of property owned by public body but not devoted to public or governmental use, 129 A.L.R. 480.

Exemption of property or bonds of housing authority from taxation, 133 A.L.R. 365; 152 A.L.R. 239.

Extent of area within tax exemption extended to property used for educational, religious, or charitable purposes, 134 A.L.R. 1176.

Tax exemption of educational institutions as extending to athletic fields or property used for social or recreation purposes, 143 A.L.R. 274.

Hospital as within tax exemption provision not specifically naming hospitals, 144 A.L.R. 1483.

Tax exemption of property as affecting its inclusion in determining requisite consent of property owners to annexation territory, local improvement, bond issue, and other public activity, 146 A.L.R. 1260.

Tax exemption of property of religious, educational, or charitable body as extending to property or income thereof used for publication or sale of literature, 154 A.L.R. 895.

Distinction between governmental and proprietary functions of state or its agency as affecting taxation, 155 A.L.R. 423.

Equitable title under executory contract for purchase of real property as sustaining exemption from taxation, 156 A.L.R. 1301.

Exemption of part of building or part of its value from taxation, 159 A.L.R. 685.

Property acquired by a taxing unit for delinquent taxes as exempt from taxation by another taxing unit, 162 A.L.R. 1119.

Tax on property held under executory contract with exempt vendor, 166 A.L.R. 595.

Scope and application of exemption of cemeteries from taxation, 168 A.L.R. 283.

Consent to state taxation of federal property or instrumentalities as affecting exemption thereof under provision of State Enabling Act, Constitution, or statute, 168 A.L.R. 547.

Construction of exemption of religious body or society from taxation or special assessment, 168 A.L.R. 1222.

What is within tax exemption of machinery, tools, apparatus, etc., used in manufacturing, 172 A.L.R. 313.

Exemption from taxation of property of labor organization, 172 A.L.R. 1070.

Property used by personnel as living quarters or for recreation purposes as within contemplation of tax exemptions extended to property of religious, educational, charitable, or hospital organizations, 15 A.L.R.2d 1064; 55 A.L.R.3d 356; 55 A.L.R.3d 485; 61 A.L.R.4th 1105.

Exemption from taxation of municipally owned or operated stadium, auditorium, and similar property, 16 A.L.R.2d 1376.

Power to remit, release, or compromise tax claim, 28 A.L.R.2d 1425.

What is a "scientific institution" within property tax exemption provisions, 34 A.L.R.2d 1221.

Tax exemption of real property as affected by time of acquisition of title by private owner entitled to exemption, 54 A.L.R.2d 996.

Exemption from taxation of college fraternity or sorority house, 66 A.L.R.2d 904.

Property used as dining rooms or restaurants as within tax exemptions extended to property of religious, educational, charitable, or hospital organizations, 72 A.L.R.2d 521.

Exemption from taxation of property of agricultural fair society or association, 89 A.L.R.2d 1104.

Exemption of public school property from assessments for local improvements, 15 A.L.R.3d 847.

Garage or parking lot as within tax exemption extended to property of educational, charitable, or hospital organizations, 33 A.L.R.3d 938.

Receipt of pay from beneficiaries as affecting tax exemption of charitable institutions, 37 A.L.R.3d 1191.

Tax exemption of property used by fraternal or benevolent association for clubhouse or similar purposes, 39 A.L.R.3d 640.

Prospective use for tax-exempt purposes as entitling property to tax exemption, 54 A.L.R.3d 9.

Availability of tax exemption to property held on lease from exempt owner, 54 A.L.R.3d 402.

Taxation: exemption of parsonage or residence of minister, priest, rabbi, or other church personnel, 55 A.L.R.3d 356.

Property tax: exemption of property leased by and used for purposes of otherwise tax-exempt body, 55 A.L.R.3d 430.

Tax exemption of property of educational body as extending to property used by personnel as living quarters, 55 A.L.R.3d 485.

Validity and construction of statute or ordinance allowing tax exemption for property used in pollution control, 65 A.L.R.3d 434.

What constitutes church, religious society, or institution exempt from property tax under state constitutional or statutory provisions, 28 A.L.R.4th 344.

What are educational institutions or schools within state property tax exemption provisions, 34 A.L.R.4th 698.

Exemption of public golf courses from local property taxes, 41 A.L.R.4th 963.

Exemption of nonprofit theater or concert hall from local property taxation, 42 A.L.R.4th 614.

Property tax: Effect of tax-exempt lessor's reversionary interest on valuation of nonexempt lessee's interest, 57 A.L.R.4th 950.

Exemption from real-property taxation of residential facilities maintained by hospital for patients, staff, or others, 61 A.L.R.4th 1105.

Nursing homes as exempt from property taxation, 34 A.L.R.5th 529.

When is property owned by state or local governmental body put to public use so as to be eligible for property tax exemption, 114 A.L.R.5th 561.

48-5-41.1. Exemption of qualified farm products and harvested agricultural products of family farm entities.

(a) As used in this Code section, the term:

(1) "Agricultural equipment" means farm tractors, combines, and all other farm equipment other than motor vehicles, whether fixed or

mobile, which are owned by or held under a lease-purchase agreement and directly used in the production of farm products by a family owned qualified farm products producer.

(2) "Family owned farm entity" means an entity that has derived 80 percent or more of its gross income from bona fide agricultural uses within this state within the year immediately preceding the year in which the exemption provided by this Code section is sought and that is organized as:

(A) A family corporation, a family partnership, a family general partnership, a family limited partnership, a family limited corporation, or a family limited liability company all of the interest of which is owned by one or more natural or naturalized citizens related to each other within the fourth degree of civil reckoning;

(B) An entity created by the merger or consolidation of two or more entities that would qualify independently as a family owned farm entity as defined in subparagraph (A) of this paragraph;

(C) An estate of which the devisees or heirs are one or more natural or naturalized citizens related to each other within the fourth degree of civil reckoning; or

(D) A trust of which the beneficiaries are one or more natural or naturalized citizens related to each other within the fourth degree of civil reckoning.

(3) "Family owned qualified farm products producer" means an individual or family owned farm entity primarily engaged in the direct cultivation of the soil, including soil removed from the land and placed in pots or containers, or operation of land for the production of qualified farm products. A family owned qualified farm products producer shall not include wholesalers, distributors, storage facility owners, manufacturers, processors, or other similar entities that primarily prepare qualified farm products for any intermediate or final market or that primarily operate to move or facilitate the movement of qualified farm products from a producer to any intermediate or final markets.

(4) "Farm products" means only those farm products eligible to qualify for exemption from ad valorem taxation pursuant to the former provisions of paragraph (10) of subsection (a) of Code Section 48-5-41 as it existed prior to January 1, 1999.

(5) "Harvested agricultural products" means only those harvested agricultural products eligible to qualify for exemption from ad valorem taxation pursuant to the former provisions of paragraph (10) of subsection (a) of Code Section 48-5-41 as it existed prior to January 1, 1999.

(6) "Initial production" means:

(A) When applied to a laying hen, a period beginning at the time the laying hen comes into production at age six months rather than a period beginning when the laying hen is hatched; or

(B) When applied to a brood cow, a period of nine months from the time the brood cow is able to conceive at age 12 months rather than a period beginning when the brood cow is born.

(7) "Lease-purchase agreement" means a financing agreement under which lessee payments are credited toward the purchase of agricultural equipment or that provides for a fixed amount purchase option to a lessee during the lease term. Under a lease-purchase agreement the title of ownership may remain with the lessor during the lease.

(8) "Producer" means any entity that produces farm products.

(9) "Qualified farm products" means livestock; dairy products; unfertilized eggs of poultry; crops; fruit or nut-bearing trees, bushes, or plants; annual and perennial plants; Christmas trees; and plants and trees grown in nurseries for transplantation elsewhere. Qualified farm products shall not include standing timber.

(b) The following property shall be exempt from all ad valorem property taxes in this state:

(1) All farm products grown in this state and remaining in the hands of the producer during the one year beginning immediately after their initial production;

(2) Harvested agricultural products which have a planting-to-harvest cycle of 12 months or less, which are customarily cured or aged for a period in excess of one year after harvesting and before manufacturing, and which are held in this state for manufacturing and processing purposes;

(3) All qualified farm products grown in this state:

(A) Remaining in the hands of a family owned qualified farm products producer;

(B) Still in their natural and unprocessed condition, unless processed solely for further use in the production of other qualified farm products; and

(C) Not held for direct retail sale by someone other than the original family owned qualified farm products producer; and

(4) Agricultural equipment.

History.

Code 1981, § 48-5-41.1, enacted by Ga. L. 1998, p. 1150, § 3; Ga. L. 1999, p. 81, § 48; Ga. L. 2000, p. 950, § 1; Ga. L. 2001, p. 887, § 1; Ga. L. 2005, p. 140, § 1/HB 203; Ga. L. 2015, p. 947, § 1/HB 374; Ga. L. 2017, p. 482, § 1/HB 290; Ga. L, 2021, p. 602, § 2-1/HB 498, effective January 1, 2023.

Amendments.

The 2021 amendment, effective January 1, 2023, rewrote paragraph (a)(2), which read: "'Family owned farm entity' means a family corporation, a family partnership, a family general partnership, a family limited partnership, a family limited corporation, or a family limited liability company all of the interest of which is owned by one or more natural or naturalized citizens related to each other within the fourth degree of civil reckoning. It shall include an estate of which the devisees or heirs are one or more natural or naturalized citizens related to each other within the fourth degree of civil reckoning. It shall include a trust of which the beneficiaries are one or more natural or naturalized citizens related to each other within the fourth degree of civil reckoning. Such family owned farm entity must have derived 80 percent or more of its gross income from bona fide agricultural uses within this state within the year immediately preceding the year in which the exemption provided by this Code section is sought.", and, in paragraph (a)(9), substituted "livestock; dairy products; unfertilized eggs of poultry; crops; fruit or nut-bearing trees" for "livestock; crops; fruit or nut bearing trees". See Editor's notes for applicability.

Editor's notes.

Ga. L. 1998, p. 1150, § 4, not codified by the General Assembly, provides that the Act is applicable to taxable years beginning on or after January 1, 1999.

The state-wide referendum (Ga. L. 1998, p. 1150), which exempted from ad valorem taxation livestock, crops, fruit or nut bearing trees, bushes, or plants; annual and perennial plants; Christmas trees, and plants and trees grown in nurseries for transplantation, was approved by a majority of the qualified voters voting at the November, 1998 general election.

The state-wide referendum (Ga. L. 2000, p. 950, § 2), which added subsection (c) was approved by a majority of the qualified voters voting at the general election held on November 7, 2000.

The state-wide referendum (Ga. L. 2005, p. 140, § 2), which inserted language in subsection (c) was approved by a majority of the qualified voters voting at the general election held on November 7, 2006.

The state-wide referendum (Ga. L. 2021, p. 602, § 2-2/HB 498), which amended paragraphs (a)(2) and (a)(9) was approved by a majority of the qualified voters voting at the general election held on November 8, 2022.

Ga. L. 2021, p. 602, § 2-2/HB 498, not codified by the General Assembly, provides, in part, that the amendments to paragraphs (a)(2) and (a)(9) shall be applicable to all tax years beginning on or after January 1, 2023.

In paragraphs (a)(4) and (a)(5) of this Code section, there is a reference to the "former provisions of paragraph (10) of subsection (a) of Code Section 48-5-41 as it existed prior to January 1, 1999" and those provisions provided as follows: "All farm products grown in this state and remaining in the hands of the producer during the one year beginning immediately after their production and harvested agricultural products which have a planting-to-harvest cycle of 12 months or less, which are customarily cured or aged for a period in excess of one year after harvesting and before manufacturing, and which are held in this state for manufacturing and processing purposes;".

Law reviews.

For note on the 2001 amendment to this Code section, see 18 Ga. St. U. L. Rev. 289 (2001).

48-5-41.2. Exemption of personal property in inventory for business.

All tangible personal property constituting the inventory of a business shall be exempt from state ad valorem taxation.

History.
Code 1981, § 48-5-41.2, enacted by Ga. L. 2009, p. 674, § 1/HB 482; Ga. L. 2010, p. 878, § 48/HB 1387.

Editor's notes.
The state-wide referendum (Ga. L. 2009, p. 674, § 1/HB 482), which enacted this Code section, was approved by a majority of qualified voters at the November 2, 2010 general election, and took effect January 1, 2011.

The state-wide referendum (Ga. L. 2010, p. 878, § 48(7)/HB 1387), provides that the 2010 amendment becomes effective on January 1, 2011, but only if an Act found at Ga. L. 2009, p. 674, is approved in a state-wide referendum conducted on the date of the November, 2010 state-wide general election. Ga. L. 2009, p. 674, was approved by a majority of the voters voting at the November 2, 2010 general election.

48-5-41.3. Exemption of timber equipment.

(a) As used in this Code section, the term:

(1) "Timber equipment" means:

(A) Any equipment other than motor vehicles, whether fixed or mobile, which is owned by or held under a lease-purchase agreement by a timber producer and directly used in the production or harvest of timber.

(B)(i) Equipment used in harvesting shall include all off-road equipment and related attachments used in every forestry procedure starting with the severing of a tree from the ground until and including the point at which the tree or its parts in any form has been loaded in the field in or on a truck or other vehicle for transport to the place of use.

(ii) Such off-road equipment shall include, but not be limited to, skidders, feller bunchers, debarkers, delimbers, chip harvesters, tub-grinders, woods cutters, chippers of all types, loaders of all types, dozers, mid-motor graders, and the related attachments.

(2) "Timber producer" means any one or more individuals or any entity, which is registered to do business in this state, that is primarily engaged in the good faith subsistence or commercial production or harvest of timber products. Such persons may also be engaged in one or more of the following secondary practices:

(A) Land conservation and ecological forest management in which commercial production of wood and wood fiber products may be undertaken primarily for conservation and restoration purposes rather than financial gain;

(B) The promotion, preservation, or management of wildlife habitat;

(C) Carbon sequestration in accordance with the Georgia Carbon Sequestration Registry;

(D) Mitigation and conservation banking that results in restoration or conservation of wetlands and other natural resources; or

(E) The production and maintenance of ecosystem products and services, such as, but not limited to, clean air and water.

(3) "Timber products" means trees, timber, or other wood and wood fiber products grown from or on the land.

(b) On and after January 1, 2023, timber equipment shall be exempt from all ad valorem property taxes in this state.

History.
Code 1981, § 48-5-41.3, enacted by Ga. L. 2022, p. 736, § 1/HB 997, effective January 1, 2023.
Editor's notes.
The state-wide referendum (Ga. L. 2022, p. 736, § 2/HB 997), which enacted this Code section was approved by a majority of the qualified voters voting at the general election held on November 8, 2022.
Ga. L. 2022, p. 736, § 2/HB 997, not codified by the General Assembly, provides, in part, that this Code section shall be applicable to all tax years beginning on or after January 1, 2023.

48-5-42. Exempt personalty.

All personal clothing and effects, household furniture, furnishings, equipment, appliances, and other personal property used within the home, if not held for sale, rental, or other commercial use, shall be exempt from all ad valorem taxation. All tools and implements of trade of manual laborers shall be exempt from all ad valorem taxation in an amount not to exceed $2,500.00 in actual value and all domestic animals shall be exempt from all ad valorem taxation in an amount not to exceed $300.00 in actual value.

History.
Ga. L. 1946, p. 12, § 1; Ga. L. 1971, p. 3, § 1; Code 1933, § 91A-1130, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2000, p. 470, § 1.
Editor's notes.
The state-wide referendum (Ga. L. 2000, p. 470, § 2), which amended this Code section by making exempt from ad valorem taxation tools and implements of trade of manual laborers in an amount not to exceed $2,500.00, was approved by a majority of the qualified voters voting at the general election held on November 7, 2000.

JUDICIAL DECISIONS

Tractor. — Tractor used in family garden for the direct support of members of the family was not taxable agricultural equipment. Denney v. Coweta County, 232 Ga. App. 440, 502 S.E.2d 297.

OPINIONS OF THE ATTORNEY GENERAL

Constitutional authority for exemptions. — Ga. L. 1946, p. 12, § 1 (see now O.C.G.A. §§ 48-5-42 and 48-5-44) are authorized by Ga. Const. 1945, Art. VII, Sec. I, Para. IV (see now Ga. Const. 1983, Art. VII, Sec. II, Para. I-IV). 1952-53 Ga. Op. Att'y Gen. 439.

Taxes to which exemption applicable. — Exemption provided by this statute applies to state, county, municipal, and school district ad valorem taxes, including taxes for the payment of principal and interest on bonds issued by a governmental instrumentality. 1948-49 Ga. Op. Att'y Gen. 694; 1952-53 Ga. Op. Att'y Gen. 439.

Exempt uses of domestic animals. — Domestic animal used within the home or in a capacity related to the home or family can be included within the property subject to a $300.00 personalty exemption from taxation; the phrase "within the home" means that the animals must be used for the direct support of the members of the family and not as income producing property. 1962 Ga. Op. Att'y Gen. 506.

Effect of claim of two or more similar exemptions. — If a taxpayer is qualified for and chooses to invoke the benefits of any one of the exemptions from any one of the types of ad valorem taxes, the taxpayer necessarily triggers the limitation clause of that exemption; any attempt to take two or more similar exemptions would violate the limitation clause of each of the exemptions and cannot be done. 1974 Op. Att'y Gen. No. U74-83.

Comparison of personal property exemption and homestead exemption. — Personal property ad valorem tax exemption differs from homestead exemption in that the former provides for an exemption of property up to $300.00 in value from all taxes, whereby the homestead exemption is exempt from all taxes, except taxes for school purposes and taxes to pay interest on and retire bonded indebtedness. 1962 Ga. Op. Att'y Gen. 500.

RESEARCH REFERENCES

Am. Jur. 2d.
71 Am. Jur. 2d, State and Local Taxation, § 235.

48-5-42.1. (For effective date, see note.) Exemption for personal property with value not exceeding $7,500.00.

(a) It is the intent of this Code section to exempt from the payment of ad valorem taxation certain tangible personal property on which the tax due does not exceed the reasonable cost of administering and collecting the tax.

(b) All tangible personal property of a taxpayer, except motor vehicles, trailers, and mobile homes, shall be exempt from all ad valorem taxation if the actual fair market value of the total amount of taxable tangible personal property owned by the taxpayer within the county, as determined by the board of tax assessors, does not exceed $7,500.00.

History.
Code 1981, § 48-5-42.1, enacted by Ga. L. 1986, p. 878, § 1; Ga. L. 1988, p. 13, § 48; Ga. L. 2001, p. 1218, § 1; Ga. L. 2024, p. 696, § 1/HB 808, see notes for effective date.

Delayed effective date.

Ga. L. 2024, p. 696, § 3/HB 808, provides that the 2024 amendment becomes effective upon approval by the voters held at an election on November 5, 2024. The Secretary of State shall cause the date and purpose of the election to be published once a week for two weeks immediately preceding the date thereof in the official organ of each county in the state. The ballot shall have written or printed thereon the words:

"( ) YES Do you approve the Act that
( ) NO increases an exemption from property tax for all tangible personal property from $7,500.00 to $20,000.00?"

If more than one-half of the votes cast on such question are for approval of the Act, Section 1 of this Act shall become of full force and effect on January 1, 2025. If the Act is not so approved or if the election is not conducted as provided in this section, Section 1 of this Act shall not become effective and this Act shall be automatically repealed on the first day of January immediately following such election date. It shall be the duty of each county election superintendent to certify the results thereof to the Secretary of State. This Code section as amended is not set out in the Code owing to the delayed effective date. If the voters approve, subsection (b) will read: "(b) All tangible personal property of a taxpayer, except motor vehicles, trailers, and mobile homes, shall be exempt from all ad valorem taxation if the actual fair market value of the total amount of taxable tangible personal property owned by the taxpayer within the county, as determined by the board of tax assessors, does not exceed $20,000.00."

Amendments.

The 2024 amendment substituted "$20,000.00" for "$7,500.00" at the end of subsection (b). For effective date of this amendment, see the delayed effective date note.

Editor's notes.

The Act (Ga. L. 1986, p. 878) which enacted the exemption granted by this Code section and which became effective on January 1, 1987, and was applicable to all tax years beginning on or after January 1, 1987, was approved by a majority of the voters voting at the November, 1986 general election.

The state-wide referendum (Ga. L. 2001, p. 1218, § 2), which provided for an ad valorem tax exemption for tangible personal property not exceeding $7,500.00 total was approved by a majority of the qualified voters voting at the November, 2002 general election.

48-5-43. Exemption for fertilizers.

Consumers of commercial fertilizers shall not be required to return for taxation any commercial fertilizers or any manures commonly used by farmers and others as fertilizers if the land upon which the fertilizer is to be used has been properly returned for taxation.

History.

Ga. L. 1901, p. 65, § 1; Civil Code 1910, § 1090; Code 1933, § 92-203; Code 1933, § 91A-1103, enacted by Ga. L. 1978, p. 309, § 2.

Cross references.

Georgia Fertilizer Act of 1997, § 2-12-1 et seq.

48-5-44. Exemption of homestead occupied by owner; effect of participation in rural housing program.

The homestead of each resident of this state actually occupied by the owner as a residence and homestead shall be exempted from all ad valorem taxation for state, county, and school purposes, except taxes levied by municipalities for school purposes and except to pay interest on and to retire bonded indebtedness, for as long as the residence and

homestead is actually occupied by the owner primarily as a residence and homestead. The exemption shall not exceed $2,000.00 of the value of the homestead. Should the owner of a dwelling house on a farm who is already entitled to a homestead exemption participate in the program of rural housing and obtain a new house under contract with the local housing authority, he shall be entitled to receive the same homestead exemption as allowed before making the contract. Except as otherwise specifically provided by law, the value of all homestead property in excess of $2,000.00 shall remain subject to taxation. The exemption shall be returned and claimed in the manner prescribed by law. This exemption shall not apply to taxes levied by municipalities.

History.

Ga. L. 1946, p. 12, § 1; Ga. L. 1937-38, Ex. Sess., p. 145, §§ 6, 12, 14; Code 1933, § 91A-1110, enacted by Ga. L. 1978, p. 309, § 2.

Cross references.

Exemption of homestead and other property from levy and sale, Ga. Const. 1983, Art. VII, Sec. II, Para. I- IV.

JUDICIAL DECISIONS

There is no limitation as to size or physical proportions of property to be embraced within the homestead provision, and it would seem that the purpose of Ga. Const. 1945, Art. VII, Sec. I, Para. IV (see now Ga. Const. 1983, Art. VII, Sec. II, Para. I-IV) and Ga. L. 1946, p. 12, § 1 (see now O.C.G.A. § 48-5-44) in fixing a maximum valuation was by so doing to equalize the exemption as between applicants on the basis of value, regardless of the extent of the tract involved. Jones v. Johnson, 80 Ga. App. 340, 55 S.E.2d 904, 1949 Ga. App. LEXIS 835 (1949).

Effect of use to which rural or farm homestead is put. — Reasonable intent of the homestead exemption provisions of the Constitution of Georgia and its statutes is to include in rural homesteads the entire tract of land upon which the house is situated, regardless of whether the land surrounding the dwellings be used simply as an extended approach to the building or put to agricultural uses. Jones v. Johnson, 80 Ga. App. 340, 55 S.E.2d 904, 1949 Ga. App. LEXIS 835 (1949).

Farming not considered commercial or business enterprise for purposes of homestead exemption. — Owner of a farm located in this state, who resides in a house on the farm, is entitled to a homestead exemption as to the entire tract of land upon which the house is situated, to a value of $2,000.00, notwithstanding the fact that the owner devotes the land to agricultural purposes, since this is not such a use of the land as to amount to a commercial or business enterprise. Jones v. Johnson, 80 Ga. App. 340, 55 S.E.2d 904, 1949 Ga. App. LEXIS 835 (1949).

OPINIONS OF THE ATTORNEY GENERAL

Constitutional authority for exemptions. — Ga. L. 1946, p. 12, § 1 (see now O.C.G.A. §§ 48-5-42 and 48-5-44) are authorized by Ga. Const. 1945, Art. VII, Sec. I, Para. IV (see now Ga. Const. 1983, Art. VII, Sec. II, Para. I-IV). 1952-53 Ga. Op. Att'y Gen. 439.

Construction of provision in constitution for disabled veterans with other provisions. — Amendment to Ga. Const. 1945, Art. VII, Sec. I, Para. IV (see Ga. Const. 1983, Art. VII, Sec. II, Para. I-IV), granting an exemption of $10,000.00 to disabled veterans, is to be read in pari materia with the original homestead provision in that

constitutional provision. The statutes passed to carry the original provision into effect, former Code 1933, § 92-219 et seq. (see now O.C.G.A. § 48-5-40 et seq.) should also be applied to that amendment. 1960-61 Ga. Op. Att'y Gen. 492.

In determining whether an applicant is entitled to a homestead exemption, it is necessary to ascertain from all the facts available whether the applicant owned and occupied the home on January 1 and whether the home was being occupied as a permanent residence and place of abode and was the legal residence of the applicant for all purposes. 1967 Op. Att'y Gen. No. 67-11.

Property must be occupied by claimant as dwelling place. — Homestead exemption is allowed only for that property actually occupied by the claimant as a dwelling place. 1950-51 Ga. Op. Att'y Gen. 172.

Widow who owns a life estate in her dead husband's property is entitled to a homestead exemption. 1968 Op. Att'y Gen. No. 68-190.

Exemption of farm which lies in two counties. — Owner of a farm is entitled to claim an exemption on the entire farm. If the farm lies in two counties, the applicant has a right to file application in each of the counties in proportion to the acreage or value located therein and claim as exempt the property located in each county, so long as the total exemption does not exceed the sum of $2,000.00. 1958-59 Ga. Op. Att'y Gen. 342.

Exemption of house trailers. — If the house trailer is not on a permanent foundation but is located on land owned by the person residing in the trailer, the person is entitled to a homestead exemption on the value of the land. However, if the owner of a house trailer uses the trailer as the owner's residence and has the trailer mounted on a foundation similar to the foundation of a house, but on land the owner does not own, the owner is not entitled to a homestead exemption. 1960-61 Ga. Op. Att'y Gen. 491.

Exemption from taxes levied to pay principal and interest on bond indebtedness. — Exemption does not exempt property from taxes levied to pay the principal and interest on bonded indebtedness, whether past, present, or future. 1957 Ga. Op. Att'y Gen. 295.

Homestead exemption must be applied prior to collection of taxes for county school purposes as well as for other taxing purposes. 1962 Ga. Op. Att'y Gen. 504.

Liability of city residents for county school taxes after merger of school systems. — When an independent school system of a city was merged with the county school system in accordance with former Code 1933, §§ 32-1201, 32-1202 and 32-1203, (see now O.C.G.A. §§ 20-2-370 through 20-2-372), the homestead exemptions granted under Ga. L. 1937-38, Ex. Sess., p. 145, §§ 6, 12 and 14 (see now O.C.G.A. § 48-5-44) to the residents of the city would not become subject to the tax levied by the county for school purposes. In other words, the residents of the city would be on the same basis as residents of the county outside of the municipality with reference to school taxes. 1958-59 Ga. Op. Att'y Gen. 348.

Comparison of homestead exemption and personal property exemption. — Personal property ad valorem tax exemption differs from a homestead exemption in that the former provides for an exemption of property up to $300.00 in value from all taxes whereby a homestead exemption is exempt from all taxes, except taxes for school purposes and taxes to pay interest on and retire bonded indebtedness. 1962 Ga. Op. Att'y Gen. 500.

Effect of claim of two or more similar exemptions. — If a taxpayer is qualified for and chooses to invoke the benefits of any one of the exemptions from any one of the types of ad valorem taxes, the taxpayer necessarily triggers the limitation clause of that exemption; any attempt to take two or more similar exemptions would violate the limitation clause of each of the exemptions and cannot be done. 1974 Op. Att'y Gen. No. U74-83.

RESEARCH REFERENCES

Am. Jur. 2d.
40 Am. Jur. 2d, Homestead, § 1 et seq.
C.J.S.
40 C.J.S., Homesteads, § 14 et seq.
ALR.
Tax exemption of property as affecting its inclusion in determining requisite consent of property owners to annexation territory, local improvement, bond issue, and other public activity, 146 A.L.R. 1260.

Homestead exemption as extending to rentals derived from homestead property, 40 A.L.R.2d 897.

Prospective use for tax-exempt purposes as entitling property to tax exemption, 54 A.L.R.3d 9.

Availability of tax exemption to property held on lease from exempt owner, 54 A.L.R.3d 402.

48-5-44.1. Homestead exemption for certain residents residing in a municipal corporation located in more than one county.

(a) For purposes of this Code section, the term:

(1) "Ad valorem taxes" means all ad valorem taxes for municipal purposes levied by, for, or on behalf of any municipality in this state, but excluding any ad valorem taxes to pay interest on and to retire municipal bonded indebtedness.

(2) "Adjusted base year value" means the previous adjusted base year value adjusted annually by 2.6 percent plus any change in homestead value, provided that no such change in homestead value shall be duplicated as to the same addition or improvement.

(3) "Change in homestead value" means value, including any final determination of value on appeal pursuant to Code Section 48-5-311 derived from additions or improvements to, or the removal of real property of, the homestead after the lowest base year value is determined.

(4) "Homestead" means homestead as defined and qualified in Code Section 48-5-40 with the additional qualification that it shall include only the pri!mary residence and not more than five contiguous acres of land immediately surrounding such residence.

(5) "Lowest base year value" means:

(A) Among the 2016, 2017, and 2018 taxable years, the lowest assessed value, including any final determination of value on appeal pursuant to Code Section 48-5-311 of the homestead, with such assessed value being multiplied by 1.0423, which number represents inflation rate data for December, 2015, through December, 2017, with respect to an exemption under this Code section which is first granted to a person on such person's homestead in the 2019 taxable year or who thereafter reapplies for and is granted such exemption in the 2020 taxable year, or

thereafter, solely because of a change in ownership to a joint tenancy with right of survival; or

(B) In all other cases, the lower of the assessed value, including any final determination of value on appeal pursuant to Code Section 48-5-311 of the homestead, from the taxable year immediately preceding the taxable year in which the exemption under this Code section is first granted to the most recent owner of such homestead or the assessed value, including any final determination of value on appeal pursuant to Code Section 48-5-311 of the homestead, from the taxable year in which the exemption under this Act is first granted to the most recent owner of such homestead, with respect to an exemption under this Code section which is first granted to a person on such person's homestead in the 2020 taxable year or who thereafter reapplies for and is granted such exemption in the 2021 taxable year, or thereafter, solely because of a change in ownership to a joint tenancy with right of survival.

(6) "Previous adjusted base year" means:

(A) With respect to an exemption under this Code section that is first granted to a person on such person's homestead, the lowest base year value; or

(B) In all other cases, the adjusted base year value as calculated in the taxable year immediately preceding the current year.

(b) When a resident of this state resides in a municipal corporation that is located in more than one county, that levies a sales tax for the purposes of a metropolitan area system of public transportation, and that has within its boundaries an independent school system, the homestead of each such resident actually occupied by the owner as a residence and homestead shall be exempted from ad valorem taxes for municipal purposes in an amount equal to the amount by which the current year assessed value, including any final determination of value on appeal pursuant to Code Section 48-5-311 of such homestead exceeds the adjusted base year value of the homestead. The value of such property in excess of such exempted amount shall remain subject to taxation.

(c) The surviving spouse of the person who has been granted the exemption provided for in subsection (b) of this Code section shall continue to receive such exemption so long as such surviving spouse continues to occupy the home as a residence and homestead.

(d) A person shall not receive the homestead exemption granted by subsection (b) of this Code section unless such person or person's agent files an application with the tax receiver or tax commissioner of his or

her respective municipality charged with the duty of receiving returns of property for taxation giving such information relative to receiving such exemption as will enable such tax receiver or tax commissioner to make a determination regarding the initial and continuing eligibility of such person for such exemption or has already filed for and is receiving a homestead exemption and such existing application provides sufficient information to make such determination of eligibility. Such tax receiver or tax commissioner shall provide application forms for this purpose.

(e) The exemption shall be claimed and returned as provided in Code Section 48-5-50.1. Such exemption shall be automatically renewed from year to year so long as the owner occupies the residence as a homestead. After a person or a person's agent has filed the proper application as provided in subsection (d) of this Code section, it shall not be necessary to make application thereafter for any year and the exemption shall continue to be allowed to such person. It shall be the duty of any person granted the homestead exemption under subsection (b) of this Code section to notify the tax receiver or tax commissioner of the municipality in the event such person for any reason becomes ineligible for such exemption.

(f)(1) Except as otherwise provided in paragraph (2) of this subsection, the homestead exemption granted by subsection (b) of this Code section shall be in addition to and not in lieu of any other homestead exemption applicable to ad valorem taxes for municipal purposes.

(2) The homestead exemption granted by subsection (b) of this Code section shall be in lieu of and not in addition to any other base year assessed value or adjusted base year value homestead exemption provided by local Act which is applicable to ad valorem taxes for municipal purposes.

(g) The exemption granted by subsection (b) of this Code section shall apply to all taxable years beginning on or after January 1, 2019.

(h) Any municipal corporation described in subsection (b) of this Code section shall be exempt from the provisions of subsections (c) and (e) of Code Section 48-5-32.1.

History.

Code 1981, § 48-5-44.1, enacted by Ga. L. 2018, p. 235, § 1/HB 820.

Editor's notes.

Ga. L. 2018, p. 235, § 3/HB 820, not codified by the General Assembly, provides, in part, that this Code section becomes effective January 1, 2019, upon the ratification of the question presented to the voters at the November 6, 2018 election. The constitutional amendment was approved by a majority of the qualified voters voting at the general election held on November 6, 2018.

48-5-44.2. (For effective date, see note.) Base year homestead exemption.

(a) For purposes of this Code section, the term:

(1) "Ad valorem taxes" means all ad valorem taxes levied by, for, or on behalf of the state or any county, consolidated government, municipality, or local school district in this state, except for any ad valorem taxes levied to pay interest on and to retire bonded indebtedness.

(2) "Adjusted base year assessed value" means the sum of:

(A) The previous adjusted base year assessed value;

(B) An amount equal to the difference between the current year assessed value of the homestead and the base year assessed value of the homestead, provided that such amount shall not exceed the total of the previous adjusted base year assessed value of the homestead multiplied by the inflation rate for the prior year; and

(C) The value of any substantial property change, provided that no such value added improvements to the homestead shall be duplicated as to the same addition or improvement.

(3) "Base year assessed value" means:

(A) With respect to an exemption under this Code section which is first granted to a person on such person's homestead for the 2025 taxable year, the assessed value for taxable year 2024, including any final determination of value on appeal pursuant to Code Section 48-5-311, of the homestead; or

(B) In all other cases, the assessed value, including any final determination of value on appeal pursuant to Code Section 48-5-311, of the homestead from the taxable year immediately preceding the taxable year in which the exemption under this Code section is first granted to the applicant.

(4) "Homestead" means homestead as defined and qualified in Code Section 48-5-40.

(5) "Inflation rate" means the annual inflationary index rate as determined for a given year by the commissioner in accordance with subsection (g) of this Code section.

(6) "Previous adjusted base year assessed value" means:

(A) With respect to the year for which the exemption under this Code section is first granted to a person on such person's homestead, the base year assessed value; or

(B) In all other cases, the adjusted base year assessed value of the homestead as calculated in the taxable year immediately preceding the current year, including any final determination of value on appeal pursuant to Code Section 48-5-311.

(7) "Substantial property change" means any increase or decrease in the assessed value of a homestead derived from additions or improvements to, or the removal of real property from, the homestead which occurred after the year in which the base year assessed value is determined for the homestead. The assessed value of the substantial property changes shall be established following any final determination of value on appeal pursuant to Code Section 48-5-311.

(b)(1) Subject to the limitations provided in this Code section, each resident of this state is granted an exemption on that person's homestead from ad valorem taxes in an amount equal to the amount by which the current year assessed value of that homestead, including any final determination of value on appeal pursuant to Code Section 48-5-311, exceeds its previous adjusted base year assessed value.

(2) Except as provided for in subsection (c) of this Code section, no exemption provided for in this subsection shall transfer to any subsequent owner of the property, and the assessed value of the property shall be as provided by law.

(c) The surviving spouse of the person who has been granted the exemption provided for in subsection (b) of this Code section shall continue to receive the exemption provided under subsection (b) of this Code section, so long as such surviving spouse continues to occupy the residence as a homestead.

(d) No person shall receive the exemption granted by subsection (b) of this Code section unless such person or person's agent files an application with the tax receiver or tax commissioner of his or her respective local government or governments charged with the duty of receiving returns of property for taxation giving such information relative to receiving such exemption as will enable such tax receiver or tax commissioner to make a determination regarding the initial and continuing eligibility of such person for such exemption; provided, however, that any person who had previously applied for a homestead exemption, was allowed such homestead exemption for the 2024 tax year, and remains eligible for a homestead exemption for that same homestead property in the 2025 tax year shall be automatically allowed the exemption granted under subsection (b) of this Code section for that homestead without further application. Such tax receiver or tax commissioner shall provide application forms for this purpose.

(e) The exemption granted by subsection (b) of this Code section shall be claimed and returned as provided in Code Section 48-5-50.1. Such

exemption shall be automatically renewed from year to year so long as the owner occupies the residence as a homestead. After a person or a person's agent has filed the proper application or is automatically granted the homestead exemption as provided in subsection (d) of this Code section, it shall not be necessary to make application thereafter for any year, and the exemption shall continue to be allowed to such person. It shall be the duty of any person granted the homestead exemption under subsection (b) of this Code section to notify the tax receiver or tax commissioner of the local government or governments in the event such person for any reason becomes ineligible for such exemption.

(f)(1) Except as otherwise provided in paragraph (2) of this subsection, the homestead exemption granted by subsection (b) of this Code section shall be in addition to and not in lieu of any other homestead exemption applicable to ad valorem taxes.

(2) The homestead exemption granted by subsection (b) of this Code section shall not be applied in addition to any other base year value homestead exemption provided by law with respect to the given taxing jurisdiction to which the such law applies. In any such event, the tax receiver or tax commissioner of the taxpayer's respective local government or governments charged with the duty of receiving returns of property for taxation shall apply only the base year value homestead exemption that is larger or more beneficial for the taxpayer with respect to the particular taxing jurisdictions to which more than one base year value homestead exemption applies.

(g) For the purposes of this Code section, the commissioner shall promulgate a standardized method for determining annual inflationary index rates which reflect the effects of inflation and deflation on the cost of living for residents of this state for a given calendar year. Such method may utilize the Consumer Price Index as reported by the Bureau of Labor Statistics of the United States Department of Labor or any other similar index established by the federal government if the commissioner determines that such federal index fairly reflects the effects of inflation and deflation on residents of this state.

(h) The exemption granted by subsection (b) of this Code section shall apply to all taxable years beginning on or after January 1, 2025, provided that:

(1) A constitutional amendment is ratified and becomes effective on January 1, 2025, which authorizes the General Assembly to provide by general law for a homestead exemption that shall not be applicable to certain political subdivisions, which elect to opt out of the homestead exemption by a date certain; and

(2) The exemption granted by subsection (b) of this Code section shall not be applicable for any county, consolidated government,

municipality, or school district for which the governing authority of such political subdivision adopts an opt-out resolution in accordance with subsection (i) of this Code section.

(i) The governing authority of any county, consolidated government, municipality, or school district may elect to opt out of the homestead exemption otherwise granted by subsection (b) of this Code section with respect to such political subdivision through the adoption of a resolution to do the same by March 1, 2025, after completing the following steps:

(1) The governing authority shall advertise its intent to do so and shall conduct at least three public hearings thereon, at least one of which shall commence between the hours of 6:00 P.M. and 7:00 P.M., inclusive, on a business weekday. The governing authority shall place an advertisement in a newspaper of general circulation serving the residents of the political subdivision and post such advertisement on its website, which shall read as follows:

"INTENT TO OPT OUT OF HOMESTEAD EXEMPTION
The (name of governing authority) intends to opt out of the statewide adjusted base year ad valorem homestead exemption for (name of the political subdivision).
All concerned citizens are invited to the public hearing on this matter to be held at (place of meeting) on (date and time).
Times and places of additional public hearings on this matter are at (place of meeting) on (date and time)."

Simultaneously with this notice the governing authority shall provide a press release to the local media.

(2) The advertisement required by paragraph (1) of this subsection shall appear at least one week prior to each hearing, be prominently displayed, be not less than 30 square inches, and not be placed in that section of the newspaper where legal notices appear and shall be posted on the appropriate website at least one week prior to each hearing. In addition to the advertisement specified under this paragraph, the levying or recommending authority may include in the notice reasons or explanations for its intention to opt out of the homestead exemption.

(3) No resolution to opt out of the homestead exemption shall become effective with respect to a political subdivision unless the procedures and hearings required by this subsection are completed and a copy of such resolution is filed with the Secretary of State by March 1, 2025.

History.
Ga. L. 2024, p. 20, § 2-1/HB 581, see notes for effective date.
Delayed effective date.
Ga. L. 2024, p. 20, § 4-1/HB 581, provides this Code section becomes effective on January 1, 2025; provided, however, that, if a constitutional amendment which becomes effective on January 1, 2025 and which authorizes the General Assembly to provide by general law for a homestead exemption that applies statewide, but that permits political subdivisions to individually opt out of such homestead exemption, has not been ratified, then this Act shall stand automatically repealed on January 1, 2025. See Editor's notes for applicability.
Editor's notes.
Ga. L. 2024, p. 20, § 4-1/HB 581, not codified by the General Assembly, makes this Code section applicable to taxable years beginning on or after January 1, 2025.

48-5-45. Application for homestead exemption; unlawful to solicit fee to file application for homestead for another.

(a)(1) An applicant seeking a homestead exemption as provided in Code Section 48-5-44 and qualifying under the provisions of Code Section 48-5-40 shall file a written application and schedule with the tax receiver or tax commissioner charged with the duty of receiving returns of property for taxation at any time during the calendar year subsequent to the property becoming the primary residence of the applicant up to and including the date for the closing of the books for the return of taxes for the calendar year.

(2) The failure to file properly the application and schedule on or before the date for the closing of the books for the return of taxes of a calendar year in which the taxes are due shall constitute a waiver of the homestead exemption on the part of the applicant failing to make the application for such exemption for that year.

(b) The owner of a homestead which is actually occupied by the owner as a residence and homestead shall not have to apply for the exemption more than once so long as the owner remains in continuous occupation of the residence as a homestead. The exemption shall automatically be renewed from year to year so long as the owner continuously occupies the residence as a homestead.

(c) It is unlawful for any person, firm, or corporation to solicit, either directly or by mail or advertisement, any other person for the purpose of filing on behalf of such other person the application and schedule for homestead exemption required by this Code section if a fee is charged for filing such application and schedule on behalf of such other person. A violation of this subsection shall be a misdemeanor.

History.
Ga. L. 1937-38, Ex. Sess., p. 145, § 2; Ga. L. 1943, p. 101, § 1; Ga. L. 1945, p. 435, § 1; Ga. L. 1952, p. 317, § 1; Code 1933, § 91A-1111, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 538, § 2; Ga. L. 1979, p. 830, § 1,; Ga. L. 1981, p. 528, §§ 1; Ga. L. 1982, p. 3,§ 48; Ga. L. 1982, p. 531, § 2; Ga. L. 1982, p. 575, §§ 2. 9; Ga. L. 1982, p. 1108, § 2; Ga. L. 1983, p. 1849, §§ 2, 3; Ga. L. 1984, p. 22, § 48; Ga. L. 1992, p. 1190, § 1; Ga. L. 1994, p. 507,

§ 1; Ga. L 1997, p. 963, § 2; Ga. L. 1998, p. 1651, § 1; Ga. L. 2002, p. 1087, § 1; Ga. L. 2004, p. 455, § 2; Ga. L. 2008, p. 229, § 1/SB 159.

Editor's notes.

Ga. L. 1979, p. 830, § 2 provides that in the event of any conflict between Ga. L. 1979, p. 830, and Ga. L. 1978, p. 309, the 1979 Act shall prevail.

Ga. L. 1997, p. 963, § 5, not codified by the General Assembly, provides that the amendment to this Code section is applicable to all taxable years beginning on or after January 1, 1998.

Ga. L. 1998, p. 1651, § 2, not codified by the General Assembly, provides that the amendment to this Code section is applicable to taxable years beginning on or after January 1, 1999.

OPINIONS OF THE ATTORNEY GENERAL

Time for filing application for homestead exemption may not be extended. 1945-47 Ga. Op. Att'y Gen. 562.

Removal of owner from residence subsequent to January 1 does not make the owner ineligible to claim homestead exemption. 1954-56 Ga. Op. Att'y Gen. 748.

Automatic renewal applies only to home originally exempted. — Statute provides for automatic renewal of homestead exemption of the taxpayer so long as the taxpayer continues to occupy the previously exempted property as a home. If the applicant sells the applicant's home and occupies a new home, it would be necessary for the applicant to file a new application for homestead exemption. The automatic renewal is limited to the property actually exempted in the original instance so long as the owner continues to occupy the property as a home. 1954-56 Ga. Op. Att'y Gen. 748.

Exemption automatically renewed even if taxpayer files no return. — Homestead exemption of $2,000.00 need be applied for only one time. Even though the taxpayer fails to file a return, the assessor must credit the taxpayer with the $2,000.00 homestead exemption, so long as the taxpayer continues to occupy such property as the taxpayer's residence. 1957 Ga. Op. Att'y Gen. 293.

Application must be made and is not inferred solely from return. — Homestead exemption must be applied for and is not granted solely on the basis of information contained in the tax return. 1957 Ga. Op. Att'y Gen. 292.

When taxpayer originally applied for less than the full allowable homestead exemption, and when the taxpayer has not reapplied but relied on automatic renewal, and when the taxpayer's property has been revalued upward, the county board of assessors may raise the homestead exemption and should do so, as the taxpayer has not waived any part of the full exemption provided in Ga. Const. 1945, Art. VII, Sec. I, Para. IV (see now Ga. Const. 1983, Art. VII, Sec. II, Para. I-IV). 1963-65 Ga. Op. Att'y Gen. 142.

Absence from residence because of duty in the armed forces is not a waiver of the homestead exemption, provided the tax receiver or tax commissioner is notified. 1945-47 Ga. Op. Att'y Gen. 561.

Necessity for application and automatic renewal by persons in the armed service. — Statute provides that a person shall not be obligated to apply for the exemption but one time so long as such owner remains in continuous occupation of such residence as a homestead. This language would indicate that there must have been at least one application. However, when a homestead is granted without an application due to the fact that the taxpayer was in the armed services, since eligibility was established by virtue of being in the armed services, eligibility would continue so long as the taxpayer owns and occupies the property as a home. 1954-56 Ga. Op. Att'y Gen. 727.

Duty of taxpayer to make homestead application personally. — Filing of a homestead exemption is a personal privilege and a taxpayer who requested the tax receiver to make for the taxpayer a homestead exemption application, and who has not filed the

taxpayer's return, is liable for the penalty. 1948-49 Ga. Op. Att'y Gen. 669.

It is necessary to file annually to obtain a homestead exemption on personal property. 1954-56 Ga. Op. Att'y Gen. 725; 1954-56 Ga. Op. Att'y Gen. 743.

Statute makes no provision for automatic renewal of a homestead exemption on personal property. In order to obtain a homestead exemption on personal property, it is necessary to make a tax return and file an application therefor as provided by law. 1954-56 Ga. Op. Att'y Gen. 742; 1957 Ga. Op. Att'y Gen. 293.

Penalty on late return is figured on tax due over and above homestead exemption. — After the taxpayer has once filed for a homestead exemption on real property, it is automatically renewed. Therefore, the penalty for filing a late return is on the tax due on property over and above the homestead exemption. 1954-56 Ga. Op. Att'y Gen. 725.

RESEARCH REFERENCES

C.J.S.
40 C.J.S., Homesteads, § 41.

48-5-46. Procedure for application for homestead exemption.

(a) The application for the homestead exemption shall be furnished by the commissioner not later than February 1 of each year to the tax receiver or tax commissioner and municipal authorities, as the case may be, of the various counties.

(b) The application shall provide for:

(1) A statement of ownership of the homestead, a complete description of the property on which homestead exemption is claimed, when and from whom the property was acquired, the kind of title held, and the amount of liens, if any, and to whom due; and

(2) The approval of the application by the official so authorized.

(c) A form of oath shall be provided and shall be administered to the applicant seeking the homestead exemption. The oath may be administered and witnessed by the tax receiver, tax commissioner, any authorized deputy of the tax receiver or tax commissioner, or any individual authorized by law to administer oaths.

(d) The tax receiver or tax commissioner shall deliver to any interested person the forms prescribed for the exemption. The applicant must answer all questions correctly to be entitled to an approval of the application.

(e) The tax receiver or tax commissioner shall receive all applications for homestead exemption and shall file and preserve the applications. The application shall be filed with the tax receiver or tax commissioner as provided by law.

History.
Ga. L. 1937-38, Ex. Sess., p. 145, §§ 3, 4; Code 1933, § 91A-1112, enacted by Ga. L. 1978, p. 309, § 2.

OPINIONS OF THE ATTORNEY GENERAL

Remedy when application lost or misplaced by tax officials. — Taxpayer whose application for homestead exemption has been lost or misplaced by the tax receiver or commissioner has a remedy in the courts. 1945-47 Ga. Op. Att'y Gen. 562.

RESEARCH REFERENCES

C.J.S.
40 C.J.S., Homesteads, §§ 12, 33 et seq.

48-5-47. Applications for homestead exemptions of individuals 65 or older.

(a) Article VII, Section II, Paragraph IV of the Constitution of the State of Georgia ratified in 1982 continued in effect as statutory law, until otherwise provided for by law, those types of exemptions from ad valorem taxation in effect on June 30, 1983. One such exemption is the homestead exemption granted to certain individuals 65 years of age or over by the seventh unnumbered subparagraph of Article VII, Section I, Paragraph IV of the Constitution of 1976. Pursuant to said provision of the Constitution ratified in 1982, the homestead exemption formerly granted by said provision of the Constitution of 1976 is superseded and modified as provided in subsection (b) of this Code section.

(b) Each person who is 65 years of age or over is hereby granted an exemption from all state and county ad valorem taxes in the amount of $4,000.00 on a homestead owned and occupied by him as a residence if his net income, together with the net income of his spouse who also occupies and resides at such homestead, as net income is defined by Georgia law, from all sources, except as hereinafter provided, does not exceed $10,000.00 for the immediately preceding taxable year for income tax purposes. For the purposes of this subsection, net income shall not include income received as retirement, survivor or disability benefits under the federal Social Security Act or under any other public or private retirement, disability or pension system, except such income which is in excess of the maximum amount authorized to be paid to an individual and his spouse under the federal Social Security Act, and income from such sources in excess of such maximum amount shall be included as net income for the purposes of this subsection. The value of the residence in excess of the above-exempted amount shall remain subject to taxation. Any such owner shall not receive the benefits of such homestead exemption unless he, or through his agent, files an affidavit with the tax commissioner or tax receiver of the county in which he resides, giving his age and the amount of income which he and

his spouse received during the last taxable year for income tax purposes, and such additional information relative to receiving the benefits of such exemption as will enable the tax commissioner or tax receiver to make a determination as to whether such owner is entitled to such exemption. The tax commissioner or tax receiver shall provide affidavit forms for this purpose. Such applications shall be processed in the same manner as other applications for homestead exemption, and the provisions of law applicable to the processing of homestead exemptions, as the same now exists or may hereafter be amended, shall apply thereto. Provided, that after any such owner has filed the proper affidavit, as provided above, and has once been allowed the exemption provided in this subsection, it shall not be necessary that he make application and file the said affidavit thereafter for any year and the said exemption shall continue to be allowed to such owner. It shall be the duty of any such owner, however, to notify the tax commissioner or tax receiver in the event he becomes ineligible for any reason for the exemption provided in this subsection.

(c) The application for the homestead exemption of individuals 65 years of age or older provided for by subsection (b) of this Code section shall be in the form prescribed by the commissioner. The application shall require the applicant's social security number. The tax commissioner or tax receiver shall be authorized to have the statement of income of any claimant verified by the department upon sending the social security number of a claimant to the department.

History.

Ga. L. 1972, p. 821, §§ 2, 3; Code 1933, § 91A-1115, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1984, p. 1058, § 2; Ga. L. 1988, p. 2, § 1; Ga. L. 1999, p. 81, § 48.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1986, "of 1976" was inserted following "Constitution" in the second sentence of subsection (a).

Pursuant to Code Section 28-9-5, in 1991, "in this subsection" was substituted for "herein" in the next-to-last sentence of subsection (b).

Editor's notes.

Ga. L. 1984, p. 1058, § 9, not codified by the General Assembly, provides: "In the event of any conflict between this Act and any other Act of the 1984 General Assembly the provisions of such other Act shall control over the provisions of this Act."

Ga. L. 1988, p. 2, § 3, not codified by the General Assembly, required the Secretary of State to call and conduct a referendum for the approval or disapproval of this Act on the date of and in conjunction with the 1988 presidential preference primary. The referendum was held on March 8, 1988, and the amendment of this Code section was approved by a vote of 655,019 to 144,603. Further, Section 3 also provided: "If a taxpayer files a proper affidavit on or before the last day for filing his or her tax return in 1988, then Sections 1 and 2 of this Act shall apply with respect to such taxpayer's 1988 and future ad valorem taxes; and otherwise Sections 1 and 2 of this Act shall apply to any taxpayer who has so filed a timely affidavit at any time thereafter. Nothing in this Act shall require any person who qualified for any homestead exemption under prior law to reapply in order to be allowed the exemption."

RESEARCH REFERENCES

Am. Jur. 2d.
40 Am. Jur. 2d, Homestead, § 13.

48-5-47.1. Homestead exemptions for individuals 62 or older with annual incomes not exceeding $30,000.00.

(a) For purposes of this Code section, the term:

(1) "Ad valorem taxes" means all state ad valorem taxes and all county ad valorem taxes for county purposes levied by, for, or on behalf of a county, except for taxes to pay interest on and to retire bonded indebtedness.

(2) "Base year" means the taxable year immediately preceding the taxable year in which the exemption under this Code section is granted.

(3) "Homestead" as applied in this Code section shall mean the homestead as defined and qualified in Code Section 48-5-40, with the additional qualification that it shall include only the primary residence and not more than five contiguous acres of land immediately surrounding such residence.

(4) "Income" means federal adjusted gross income, as defined in the Internal Revenue Code of 1986, as amended, from all sources.

(5) "Senior citizen" means a person who is 62 years of age or over on or before January 1 of the year in which application for the exemption under this Code section is made.

(b) Each resident of a county who is a senior citizen is granted an exemption on that person's homestead from all ad valorem taxes in an amount equal to the amount of the assessed value of that homestead which exceeds the assessed value of that homestead for the taxable year immediately preceding the taxable year in which this exemption is first granted to such resident, if that person's income, together with the income of the spouse of such person and any other person who resides within such homestead, does not exceed $30,000.00 for the immediately preceding taxable year. This exemption shall not apply to taxes assessed on improvements to the homestead or additional land that is added to the homestead after January 1 of the base year. If any real property is removed from the homestead, the assessment in the base year shall be adjusted to reflect such removal and the exemption shall be recalculated accordingly.

(c) A person shall not receive the homestead exemption granted by subsection (b) of this Code section unless the person or person's agent files an application with the tax commissioner of the county giving the

person's age and the amount of gross income which the person and the person's spouse and any other persons residing within such homestead received during the last taxable year, and such additional information relative to receiving such exemption as will enable the tax commissioner to make a determination as to whether such owner is entitled to such exemption.

(d) The commissioner shall provide application forms for the exemption granted by this Code section which shall require such information as may be necessary to determine the initial and continuing eligibility of the owner for the exemption.

(e) The exemption shall be claimed and returned as provided in Code Section 48-5-50.1. The exemption shall be automatically renewed from year to year as long as the owner occupies the residence as a homestead. After a person has filed the proper application as provided in subsection (c) of this Code section, it shall not be necessary to make application and file such affidavit thereafter for any year and the exemption shall continue to be allowed to such person. It shall be the duty of any person granted the homestead exemption under this Code section to notify the tax commissioner of the county or the designee thereof in the event that person for any reason becomes ineligible for that exemption.

(f) The exemption granted by this Code section shall not apply to or affect any municipal taxes or county school district taxes for educational purposes. The homestead exemption granted by this Code section shall be in lieu of and not in addition to any other homestead exemption applicable to county ad valorem taxes for county purposes.

(g) The exemption granted by this Code section shall apply to all taxable years beginning on or after January 1, 1995.

History.
Code 1981, § 48-5-47.1, enacted by Ga. L. 1994, p. 400, § 1; Ga. L. 1999, p. 81, § 48.

Editor's notes.
Ga. L. 1994, p. 400, § 2, not codified by the General Assembly, provides, in part: "Unless prohibited by the federal Voting Rights Act of 1965, as amended, the Secretary of State shall call and conduct an election as provided in this section for the purpose of submitting this Act to the electors of the State of Georgia for approval or rejection." That Act was approved by the voters at the November 8, 1994 general election, so this Code section became effective January 1, 1995, pursuant to the provisions of that Act.

48-5-48. Homestead exemption for qualified disabled veterans.

(a) As used in this Code section, the term "disabled veteran" means:

(1) Any veteran who is a citizen and a resident of this state, who was discharged under honorable conditions, and who has been adjudicated by the United States Department of Veterans Affairs as having a service related disability that renders such veteran as being

100 percent totally disabled or as being less than 100 percent totally disabled but is compensated at the 100 percent level due to individual unemployability or is entitled to receive a statutory award from the United States Department of Veterans Affairs for:

(A) Loss or permanent loss of use of one or both feet;

(B) Loss or permanent loss of use of one or both hands;

(C) Loss of sight in one or both eyes; or

(D) Permanent impairment of vision of both eyes of the following status: central visual acuity of 20/200 or less in the better eye, with corrective glasses, or central visual acuity of more than 20/200 if there is a field defect in which the peripheral field has contracted to such an extent that the widest diameter of visual field subtends on angular distance no greater than 20 degrees in the better eye;

(2) An American veteran of any war or armed conflict in which any branch of the armed forces of the United States engaged, whether under United States command or otherwise, and that he or she is disabled due to the loss or loss of use of both lower extremities such as to preclude locomotion without the aid of braces, crutches, canes, or a wheelchair; due to blindness in both eyes, having only light perception, together with the loss or loss of use of one lower extremity; or due to the loss or loss of use of one lower extremity together with residuals of organic disease or injury which so affect the functions of balance or propulsion as to preclude locomotion without resort to a wheelchair;

(3) Any disabled veteran who is not entitled to receive benefits from the Department of Veterans Affairs but who qualifies otherwise, as provided for by Article VII, Section I, Paragraph IV of the Constitution of Georgia of 1976;

(4) An American veteran of any war or armed conflict who is disabled due to loss or loss of use of one lower extremity together with the loss or loss of use of one upper extremity which so affects the functions of balance or propulsion as to preclude locomotion without the aid of braces, crutches, canes, or a wheelchair; or

(5) A veteran becoming eligible for assistance in acquiring housing under Section 2101 of Title 38 of the United States Code as hereafter amended on or after July 1, 1999.

(b) Any disabled veteran as defined in any paragraph of subsection (a) of this Code section who is a citizen and resident of Georgia is granted an exemption of the greater of $32,500.00 or the maximum amount which may be granted to a disabled veteran under Section 2102

of Title 38 of the United States Code, as amended, on his or her homestead which such veteran owns and actually occupies as a residence and homestead, such exemption being from all ad valorem taxation for state, county, municipal, and school purposes. As of January 1, 2004, the maximum amount which may be granted to a disabled veteran under the above-stated federal law is $50,000.00. The value of all property in excess of the exempted amount cited above shall remain subject to taxation. The unremarried surviving spouse or minor children of any such disabled veteran as defined in this Code section shall also be entitled to an exemption of the greater of $32,500.00 or the maximum amount which may be granted to a disabled veteran under Section 2102 of Title 38 of the United States Code, as amended, on the homestead so long as the unremarried surviving spouse or minor children continue actually to occupy the home as a residence and homestead, such exemption being from all ad valorem taxation for state, county, municipal, and school purposes. As of January 1, 2004, the maximum amount which may be granted to the unremarried surviving spouse or minor children of any such disabled veteran under the above-stated federal law is $50,000.00. The value of all property in excess of such exemption granted to such unremarried surviving spouse or minor children shall remain subject to taxation.

(b.1) The unremarried surviving spouse or minor children of any disabled veteran shall also be entitled to an exemption of the greater of $32,500.00 or the maximum amount on a homestead, or any subsequent homestead within the same county, where such spouse or minor children continue to occupy the home as a homestead, such exemption being from ad valorem taxation for state, county, municipal, and school purposes.

(c)(1) Any disabled veteran qualifying pursuant to paragraph (1) or (2) of subsection (a) of this Code section for the homestead exemption provided for in this Code section shall file with the tax commissioner or tax receiver a letter from the Department of Veterans Affairs or the Department of Veterans Service stating the qualifying disability.

(2) Any disabled veteran qualifying pursuant to paragraph (3) of subsection (a) of this Code section for the homestead exemption provided for in this Code section shall file with the tax commissioner or tax receiver a copy of his DD form 214 (discharge papers from his military records) along with a letter from a doctor who is licensed to practice medicine in this state stating that he is disabled due to loss or loss of use of both lower extremities such as to preclude locomotion without the aid of braces, crutches, canes, or a wheelchair; due to blindness in both eyes, having only light perception, together with the loss or loss of use of one lower extremity; or due to the loss or loss of use of one lower extremity together with residuals of organic

disease or injury which so affect the functions of balance or propulsion as to preclude locomotion without resort to a wheelchair. Prior to approval of an exemption, a county board of tax assessors may require the applicant to provide not more than two additional doctors' letters if the board is in doubt as to the applicant's eligibility for the exemption.

(3) Any disabled veteran qualifying pursuant to paragraph (4) of subsection (a) of this Code section for the homestead exemption provided for in this Code section shall file with the tax commissioner or tax receiver a letter from a doctor who is licensed to practice medicine in this state stating the qualifying disability. Prior to approval of an exemption, a county board of tax assessors may require the applicant to provide not more than two additional doctors' letters if the board is in doubt as to the applicant's eligibility for the exemption.

(4) Any disabled veteran qualifying pursuant to paragraph (5) of subsection (a) of this Code section for the homestead exemption provided for in this Code section shall file with the tax commissioner or tax receiver a letter from the Department of Veterans Affairs or the Department of Veterans Service stating the eligibility for such housing assistance.

(d) Each disabled veteran shall file for the exemption only once in the county of his residence. Once filed, the exemption shall automatically be renewed from year to year, except as provided in subsection (e) of this Code section. Such exemption shall be extended to the unremarried surviving spouse or minor children at the time of his death so long as they continue to occupy the home as a residence and homestead. In the event a disabled veteran who would otherwise be entitled to the exemption dies or becomes incapacitated to the extent that he or she cannot personally file for such exemption, the spouse, the unremarried surviving spouse, or the minor children at the time of the disabled veteran's death may file for the exemption and such exemption may be granted as if the disabled veteran had made personal application therefor.

(e) Not more often than once every three years, the county board of tax assessors may require the holder of an exemption granted pursuant to this Code section to substantiate his continuing eligibility for the exemption. In no event may the board require more than three doctors' letters to substantiate eligibility.

(f) Any person who as of January 1, 1991, has applied and is eligible for the exemption for disabled veterans, their surviving spouses, and minor children formerly provided for by the sixth unnumbered subparagraph of Article VII, Section I, Paragraph IV of the Constitution of 1976;

the exemption for disabled veterans provided for in Article VII, Section II, Paragraph V of the Constitution of 1983; or the exemption for disabled veterans formerly provided for by Code Section 48-5-48.3 as enacted by an Act approved April 11, 1986 (Ga. L. 1986, p. 1445), shall be eligible for the exemption granted by subsection (b) of this Code section without applying for such exemption.

(g)(1) If a disabled veteran receives a final determination of disability from the United States Department of Veterans Affairs containing a retroactive period of eligibility, such disabled veteran or his or her surviving unremarried spouse or minor children shall be entitled to a refund of the ad valorem taxes paid during such period that he or she or his or her surviving unremarried spouse or minor children would have otherwise been exempt from such taxes pursuant to this Code section, provided that the refund shall only be for the three tax years preceding his or her or his or her surviving unremarried spouse's or minor children's application for the homestead exemption permitted by this Code section.

(2) Upon application for the homestead exemption provided by this Code section and submittal of proper documentation, each county and municipality shall consider the taxes paid by such disabled veteran or his or her surviving unremarried spouse or minor children under the circumstances provided in paragraph (1) of this subsection to be voluntarily or involuntarily overpaid and shall refund such taxes to such disabled veteran or his or her surviving unremarried spouse or minor children in accordance with Code Section 48-5-380.

(3) Upon final determination and approval of a period of prior eligibility, the county board of assessors shall immediately transmit such approval to the local tax commissioner and local municipal tax officer if applicable. The tax commissioner and municipal tax officer shall be authorized to refund the proportionate amount of taxes from the entities for whom the taxes were collected for the tax years approved for the exemption. Such refund shall not exceed three tax years and shall not include interest.

History.

Ga. L. 1959, p. 170, § 1; Ga. L. 1964, p. 280, § 1; Ga. L. 1967, p. 813, § 1; Code 1933, § 91A-1116, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1981, p. 1857, § 15; Ga. L. 1983, p. 3, § 64; Ga. L. 1984, p. 22, § 48; Ga. L. 1984, p. 1058, § 3; Ga. L. 1985, p. 149, § 48; Ga. L. 1990, p. 45, § 1; Ga. L. 1990, p. 1858, § 1; Ga. L. 2000, p. 1223, § 1; Ga. L. 2004, p. 69, § 4; Ga. L. 2004, p. 417, § 1; Ga. L. 2009, p. 646, § 1/HB 304; Ga. L. 2015, p. 816, § 6/HB 48; Ga. L. 2016, p. 166, § 3/SB 258; Ga. L. 2016, p. 770, § 2/HB 862; Ga. L. 2017, p. 55, § 3/HB 196; Ga. L. 2017, p. 774, § 48/HB 323.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1990, "subsection (e)" was substituted for "subsection (d)" in the second sentence of subsection (d).

Editor's notes.

Ga. L. 1984, p. 1058, § 3, effective July 1, 1984, purported to add a new

subsection (d) at the end of this Code section. Since there was already a subsection designated as (d), the subsection added by the 1984 Act was redesignated as subsection (e) by Ga. L. 1985, p. 149, § 48.

Ga. L. 1984, p. 1058, § 9, not codified by the General Assembly, provides: "In the event of any conflict between this Act and any other Act of the 1984 General Assembly the provisions of such other Act shall control over the provisions of this Act."

Ga. L. 1990, p. 1858, § 3, not codified by the General Assembly, provides: "This Act is enacted pursuant to authority provided for in Article VII, Section II, Paragraph V of the Constitution."

Ga. L. 2004, p. 69, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Taxation, Financing, and Service Delivery Revision Act of 2004.'"

Law reviews.

For article on the 2004 amendment of this Code section, see 21 Ga. St. U. L. Rev. 226 (2004).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code Section 48-5-48.3 are included in the annotations for this Code section.

Referendum is not required to implement the veterans' exemption provided by Ga. L. 1986, p. 1445, § 1. 1987 Op. Att'y Gen. No. 87-2 (rendered under former § 48-5-48.3).

48-5-48.1. Level 1 freeport exemption; application; filing; renewal.

(a) Any person, firm, or corporation seeking a level 1 freeport exemption from ad valorem taxation of certain tangible personal property inventory when such exemption has been authorized by the governing authority of any county or municipality after approval of the electors of such county or municipality pursuant to the authority of the Constitution of Georgia or Code Section 48-5-48.2 shall file a written application and summary of property with the county board of tax assessors on forms furnished by such board. Such application shall be filed in the year in which exemption from taxation is sought no later than the date on which the tax receiver or tax commissioner of the county in which the property is located closes the books for the return of taxes.

(b) The application for the level 1 freeport exemption shall provide for:

(1) A summary, as prescribed by the department, of the inventory of goods in the process of manufacture or production which shall include all partly finished goods and raw materials held for direct use or consumption in the ordinary course of the taxpayer's manufacturing or production business in the State of Georgia;

(2) A summary, as prescribed by the department, of the inventory of finished goods manufactured or produced within the State of Georgia in the ordinary course of the taxpayer's manufacturing or

production business when held by the original manufacturer or producer of such finished goods;

(3) A summary, as prescribed by the department, of the inventory of finished goods which on January 1 are stored in a warehouse, dock, or wharf, whether public or private, and which are destined for shipment outside the State of Georgia and the inventory of finished goods which are shipped into the State of Georgia from outside this state and which are stored for transshipment to a final destination outside this state. The information required by Code Section 48-5-48.2 to be contained in the official books and records of the warehouse, dock, or wharf where such property is being stored, which official books and records are required to be open to the inspection of taxing authorities of this state and political subdivisions thereof, shall not be required to be included as a part of or to accompany the application for such exemption; and

(4) A summary, as prescribed by the department, of the stock in trade of a fulfillment center which on January 1 is stored in the fulfillment center. The information required by Code Section 48-5-48.2 to be contained in the official books and records of the fulfillment center where such property is being stored, which official books and records are required to be open to the inspection of the taxing authorities of this state and political subdivisions thereof, shall not be required to be included as a part of or to accompany the application for such exemption.

(c)(1) For purposes of this subsection, the term "file properly" shall mean and include the timely filing of the completed application for which exemption is sought on or before the due date specified in subsection (a) of this Code section. Any clerical error, including, but not limited to, a typographical error, scrivener's error, or any unintentional immaterial error or omission in the application shall not be construed as a failure to file properly.

(2) The failure to file properly the completed application shall constitute a waiver of the exemption on the part of the person, firm, or corporation failing to make the application for such exemption for that year as follows:

(A) The failure to report any inventory for which such exemption is sought in the summary provided for in the application shall constitute a waiver of the exemption on the part of the person, firm, or corporation failing to so report for that taxable year in an amount equal to the difference between fair market value of the inventory as reported and the fair market value finally determined to be applicable to the inventory for which the exemption is sought; and

(B) The failure to file timely such completed application shall constitute a waiver of the exemption until the first day of the month following the month such completed application is filed properly with the county tax assessor; provided, however, that unless such completed application is filed on or before June 1 of such year, the exemption shall be waived for that entire year.

(d) Upon receiving the application required by this Code section, the county board of tax assessors shall determine the eligibility of all types of tangible personal property listed on the application. If any property has been listed which the board believes is not eligible for the exemption, the board shall issue a letter notifying the applicant, not later than 180 days after receiving the application, that all or a portion of the application has been denied. The denial letter shall list the type and total fair market value of all property listed on the application for which the exemption has been approved and the type and total fair market value of all property listed on the application for which the exemption has been denied. The applicant shall have the right to appeal from the denial of the exemption for any property listed and such appeal shall proceed as provided in Code Section 48-5-311. Except as otherwise provided in subparagraph (c)(2)(A) of this Code section, the county board of assessors shall not send a second letter of notification denying the exemption of all or a portion of such property listed on the application on new grounds that could and should have been discerned at the time the initial denial letter was issued. If, however, the county board of tax assessors fails to issue a letter of denial within 180 days after receiving the taxpayer's application, then the freeport exemption sought in the application shall be deemed accepted in its entirety.

(e) If the level 1 freeport exemption has been granted to a taxpayer for a taxable year, the county board of tax assessors shall issue a notice of renewal to the taxpayer for the immediately following taxable year. Such notice of renewal shall be issued not later than January 15 of such immediately following taxable year to facilitate the filing of a timely completed application by the taxpayer for such taxable year.

(f) Notwithstanding any other provision of law to the contrary, for a taxpayer that claimed an exemption for the 2020 taxable year for finished goods inventory described within paragraph (2) of subsection (c) of Code Section 48-5-48.2, the taxpayer shall have the option to determine the fair market value of eligible finished goods inventory for which such exemption is applicable and sought for the 2021 taxable year based on either the fair market value of applicable inventory as of January 1, 2020, or the fair market value of applicable inventory as of January 1, 2021.

History.
Code 1981, § 48-5-48.1, enacted by Ga. L. 1982, p. 1101, § 1; Ga. L. 1983, p. 3, § 37; Ga. L. 1984, p. 1371, § 1; Ga. L.

1992, p. 2482, § 1; Ga. L. 1997, p. 963, § 3; Ga. L. 1998, p. 128, § 48; Ga. L. 1998, p. 1120, § 1A; Ga. L. 1999, p. 81, § 48; Ga. L. 2004, p. 464, § 1; Ga. L. 2012, p. 249, § 1/HB 48; Ga. L. 2016, p. 731, § 1/HB 935; Ga. L. 2017, p. 774, § 48/HB 323; Ga. L. 2018, p. 986, § 1/HB 888; Ga. L. 2021, p. 272, § 1/HB 451.

Editor's notes.

Ga. L. 1997, p. 963, § 5, not codified by the General Assembly, provides that the amendment to this Code section is applicable to all taxable years beginning on or after January 1, 1998.

Ga. L. 2012, p. 249, § 5/HB 48, not codified by the General Assembly, provides for severability.

Law reviews.

For article, "Freeport Exemption from Property Taxes for Inventory Stored in Georgia But Destined for Shipment Out-of-State," see 28 Ga. St. B. J. 108 (1991).

For annual survey on state and local taxation, see 3 Mercer L. Rev. 231 (2022).

JUDICIAL DECISIONS

Filings not required prior to statute. — When "freeport" exemption was approved by voters, and at all times relevant to the instant appeal there was no state statutory provisions specifying that the exemption from taxation which had otherwise been granted to inventories was conditioned upon the taxpayer's timely filing of an application therefor, the subsequent enactment of O.C.G.A. § 48-5-48.1 calling for a timely filing in order to obtain the exemption was intended to change the existing law; therefore, the procedure denying an exemption for untimely filings used by the county board of tax assessors prior to the statutory addition was not an authorized penalty under state law. TEC Am., Inc. v. DeKalb County Bd. of Tax Assessors, 170 Ga. App. 533, 317 S.E.2d 637, 1984 Ga. App. LEXIS 1939 (1984).

Failure to receive the application for exemption form does not excuse the taxpayer from meeting the taxpayer's burden to file the application. Rockdale County v. Finishline Indus., Inc., 238 Ga. App. 467, 518 S.E.2d 720.

Waiver by untimely application. — When the only proof of timely mailing of applications for exemption was testimony of the corporation's tax specialist that the specialist placed the envelopes in the mailbox in the corporation's home office, and since the envelopes were not imprinted with U.S. Postal Service postmarks, but contained private postage meter stamps, the applications were untimely filed and the exemption was waived. Gwinnett County Bd. of Tax Assessors v. Makita Corp. of Am., 218 Ga. App. 175, 460 S.E.2d 538, 1995 Ga. App. LEXIS 677 (1995), cert. denied, No. S95C1794, 1995 Ga. LEXIS 1143 (Ga. Oct. 27, 1995).

Amended application. — It was arbitrary and capricious for a board of tax assessors to refuse, under O.C.G.A. § 48-5-48.1(c)(2)(B), to allow a taxpayer to retroactively amend a timely filed and valid freeport exemption when the board changed the board's valuation method. William L. Bonnell Co. v. Coweta County Bd. of Tax Assessors, 252 Ga. App. 151, 556 S.E.2d 159, 2001 Ga. App. LEXIS 1221 (2001).

Taxpayer's understatement of value of personal property did not preclude taking the freeport exemption. Georgian Art Lighting Designs, Inc. v. Gwinnett County Bd. of Tax Assessors, 211 Ga. App. 510, 439 S.E.2d 687, 1993 Ga. App. LEXIS 1549 (1993), cert. denied, No. S94C0537, 1994 Ga. LEXIS 517 (Ga. Feb. 21, 1994).

Since the parties stipulated that the county tax assessors board denied the taxpayer an exemption from ad valorem taxation of certain tangible personal property based on an undervaluation of its inventory, since the taxpayer properly filed for the exemption, and because statutory law stated that the exemption was waived for failing to report inventory, and not an undervaluation of inventory, the trial court properly granted summary judgment to the taxpayer on the issue of

whether the county equalization board properly determined that the taxpayer was entitled to the exemption. Gwinnett County Bd. of Tax Assessors v. Std. Distrib. & Supply, 263 Ga. App. 128, 587 S.E.2d 262, 2003 Ga. App. LEXIS 1135 (2003), writ denied, No. S04C0166, 2004 Ga. LEXIS 93 (Ga. Jan. 20, 2004).

Untimely filing of freeport application. — Court could find no statutory basis under state law to excuse an untimely filing of a freeport application by a debtor in bankruptcy. Scana Energy Mktg., Inc. v. Cobb Energy Mgmt. Corp., 259 Ga. App. 216, 576 S.E.2d 548, 2002 Ga. App. LEXIS 1459 (2002), cert. denied, No. S03C0750, 2003 Ga. LEXIS 454 (Ga. Apr. 29, 2003).

Freeport exemption did not apply. — Freeport exemption from ad valorem taxes did not apply to a taxpayer's inventory of barbecue grill bodies because the taxpayer's involvement with the grill bodies ended when the taxpayer sold the grill bodies to a producer of barbecue grills, and the final destination of the grill bodies was the producer's plant; the producer incorporated the grill bodies into finished barbecue grills, and it was the completed barbecue grills that the producer eventually shipped out of state. Muscogee County Bd. of Tax Assessors v. Pace Indus., 307 Ga. App. 532, 705 S.E.2d 678, 2011 Ga. App. LEXIS 3 (2011).

Extension of time for filing not authorized. — County board of tax assessors was not authorized to extend the period of time for accepting applications beyond the date on which the books for the return of taxes in the county were closed. Committee for Better Gov't v. Black, 216 Ga. App. 173, 453 S.E.2d 772, 1995 Ga. App. LEXIS 60 (1995), cert. denied, No. S95C0830, 1995 Ga. LEXIS 688 (Ga. Apr. 20, 1995).

What becomes of inventory not relevant to determination of exemption. — Under O.C.G.A. § 48-5-48.1(a), the entity seeking the freeport exemption is required to file a written application and schedule of the property for which the exemption is sought; thus, the statutory scheme looks to the property, that is, the inventory, held by the taxpayer, and what becomes of the inventory in the hands of a purchaser from the taxpayer is not relevant to the determination of the availability of the freeport exemption. Muscogee County Bd. of Tax Assessors v. Pace Indus., 307 Ga. App. 532, 705 S.E.2d 678, 2011 Ga. App. LEXIS 3 (2011).

OPINIONS OF THE ATTORNEY GENERAL

Waiver by untimely application. — Taxpayer who fails to file a timely application for the freeport inventory exemption in accordance with the requirements of O.C.G.A. § 48-5-48.1 has waived that exemption for the tax year. 1987 Op. Att'y Gen. No. U87-7.

RESEARCH REFERENCES

Am. Jur. Proof of Facts.
Deductibility of Home Office Expenses, 38 POF2d 555.

48-5-48.2. Level 1 freeport exemption; referendum.

(a) This Code section shall be known and may be cited as the "Level 1 Freeport Exemption."

(b) As used in this Code section, the term:

(1) "Affiliates" means those entities that are part of an affiliated group of the taxpayer as defined in Section 1504(a) of the Internal

Revenue Code and all other entities that are directly or indirectly owned 50 percent or more by members of the affiliated group.

(2) "Destined for shipment to a final destination outside this state" means, for purposes of a level 1 freeport exemption, that portion or percentage of an inventory of finished goods which the taxpayer can establish, through a historical sales or shipment analysis, either of which utilizes information from the preceding calendar year, or other reasonable, documented method, is reasonably anticipated to be shipped to a final destination outside this state. Such other reasonable, documented method may only be utilized in the case of a new business, in the case of a substantial change in scope of an existing business, or in other unusual situations where a historical sales or shipment analysis does not adequately reflect future anticipated shipments to a final destination outside this state. It is not necessary that the actual final destination be known as of January 1 in order to qualify for the exemption.

(3) "Finished goods" means, for purposes of a level 1 freeport exemption, goods, wares, and merchandise of every character and kind but shall not include unrecovered, unextracted, or unsevered natural resources or raw materials or goods in the process of manufacture or production or the stock in trade of a retailer.

(4) "Foreign merchandise in transit" means, for purposes of a level 1 freeport exemption, any goods which are in international commerce where the title has passed to a foreign purchaser and the goods are temporarily stored in this state while awaiting shipment overseas.

(5) "Fulfillment center" means, for purposes of a level 1 freeport exemption, a business location in Georgia which is used to pack, ship, store, or otherwise process tangible personal property sold by electronic, internet, telephonic, or other remote means, provided that such a business location does not allow customers to purchase or receive goods onsite at such business location.

(6) "Raw materials" means, for purposes of a level 1 freeport exemption, any material, whether crude or processed, that can be converted by manufacture, processing, or a combination thereof into a new and useful product but shall not include unrecovered, unextracted, or unsevered natural resources.

(7) "Stock in trade of a fulfillment center" means, for purposes of a level 1 freeport exemption, goods, wares, and merchandise held by one in the business of making sales of such goods when such goods are held or stored at a fulfillment center.

(8) "Stock in trade of a retailer" means, for purposes of a level 1 freeport exemption, finished goods held by one in the business of

making sales of such goods at retail in this state, within the meaning of Chapter 8 of this title, when such goods are held or stored at a business location from which such retail sales are regularly made. Goods stored in a warehouse, dock, or wharf, including a warehouse or distribution center which is part of or adjoins a place of business from which retail sales are regularly made, shall not be considered stock in trade of a retailer to the extent that the taxpayer can establish, through a historical sales or shipment analysis, either of which utilizes information from the preceding calendar year, or other reasonable, documented method, the portion or percentage of such goods which is reasonably anticipated to be shipped outside this state for resale purposes.

(c) The governing authority of any county or municipality may, subject to the approval of the electors of such political subdivision, exempt from ad valorem taxation, including all such taxes levied for educational purposes and for state purposes, all or any combination of the following types of tangible personal property:

(1) Inventory of goods in the process of manufacture or production which shall include all partly finished goods and raw materials held by the taxpayer, the taxpayer's affiliate, or the taxpayer's designated agent for direct use or consumption in the ordinary course of the taxpayer's manufacturing or production business in this state. The exemption provided for in this paragraph shall apply only to tangible personal property which is substantially modified, altered, combined, or changed in the ordinary course of the taxpayer's manufacturing, processing, or production operations in this state. For purposes of this paragraph, the following activities shall constitute substantial modification in the ordinary course of manufacturing, processing, or production operations:

(A) The cleaning, drying, pest control treatment, or segregation by grade of grain, peanuts or other oil seeds, or cotton;

(B) The remanufacture of aircraft engines or aircraft engine parts or components, meaning the substantial overhauling or rebuilding of aircraft engines or aircraft engine parts or components;

(C) The blending of fertilizer bulk materials into a custom mixture, whether performed at a commercial fertilizer blending plant, retail outlet, or any application site;

(D) The substantial assembly of finished parts; and

(E) The remanufacture, which includes repair or modification of goods manufactured, processed, or produced by the taxpayer;

(2) Inventory of finished goods manufactured or produced within this state in the ordinary course of the taxpayer's manufacturing or

production business when held by the original manufacturer or producer of such finished goods. The exemption provided for in this paragraph shall be for a period not exceeding 12 months from the date such property is produced or manufactured;

(3) Inventory of finished goods which, on January 1, are stored in a warehouse, dock, or wharf, whether public or private, and which are destined for shipment to a final destination outside this state and inventory of finished goods which are shipped into this state from outside this state and stored for transshipment to a final destination outside this state, including foreign merchandise in transit. The exemption provided for in this paragraph shall be for a period not exceeding 12 months from the date such property is stored in this state. Such period shall be determined based on application of a first-in, first-out method of accounting for the inventory. The official books and records of the warehouse, dock, or wharf where such property is being stored shall contain a full, true, and accurate inventory of all such property, including the date of the receipt of the property, the date of the withdrawal of the property, the point of origin of the property, and the point of final destination of the same, if known. The official books and records of any such warehouse, dock, or wharf, whether public or private, pertaining to any such property for which a freeport exemption has been claimed shall be at all times open to the inspection of all taxing authorities of this state and of any political subdivision of this state; or

(4) Stock in trade of a fulfillment center which, on January 1, is stored in a fulfillment center and which is made available to remote purchasers who may make such purchases by electronic, internet, telephonic, or other remote means, and where such stock in trade of a fulfillment center will be shipped from the fulfillment center and delivered to the purchaser at a location other than the location of the fulfillment center. The exemption provided for in this paragraph shall be for a period not exceeding 12 months from the date such property is stored in this state. Such period shall be determined based on application of a first-in, first-out method of accounting for the inventory. The official books and records of the fulfillment center where such property is being stored shall contain a full, true, and accurate inventory of all such property, including the date of the receipt of the property and the date of the withdrawal of the property. The official books and records of any such fulfillment center pertaining to any such property for which a freeport exemption has been claimed shall be at all times open to the inspection of all taxing authorities of this state and of any political subdivision of this state.

(d) Whenever the governing authority of any county or municipality wishes to exempt such tangible property from ad valorem taxation, as

provided in this Code section, the governing authority thereof shall notify the election superintendent of such political subdivision, and it shall be the duty of said election superintendent to issue the call for an election for the purpose of submitting to the electors of the political subdivision the question of whether such exemption shall be granted. The referendum ballot shall specify as separate questions the type or types of property as defined in this Code section which are being proposed to be exempted from taxation. The election superintendent shall issue the call and shall conduct the election on a date and in the manner authorized under Code Section 21-2-540.

(e) The governing authority of any county or municipality wherein an exemption has been approved by the voters as provided in this Code section may, by appropriate resolution, a copy of which shall be immediately transmitted to the state revenue commissioner, exempt from taxation 20 percent, 40 percent, 60 percent, 80 percent, or all of the value of such tangible personal property as defined in this Code section; provided, however, that once an exemption has been granted, no reduction in the percent of the value of such property to be exempted may be made until and unless such exemption is revoked or repealed as provided in this Code section. An increase in the percent of the value of the property to be exempted may be accomplished by appropriate resolution of the governing authority of such county or municipality, and a copy thereof shall be immediately transmitted to the state revenue commissioner, provided that such increase shall be in increments of 20 percent, 40 percent, 60 percent, or 80 percent of the value of such tangible personal property as defined in this Code section, within the discretion of such governing authority.

(f)(1) If more than one-half of the votes cast on such question are in favor of such exemption, then such exemption may be granted by the governing authority commencing on the first day of any ensuing calendar year; otherwise, such exemption may not be granted. This paragraph is intended to clearly provide that following approval of such exemption in such referendum, such exemption may be granted on the first day of any calendar year following the year in which such referendum was conducted. This paragraph shall not be construed to imply that the granting of such exemption could not previously be delayed to any such calendar year.

(2) Exemptions may only be revoked by a referendum election called and conducted as provided in this Code section, provided that the call for such referendum shall not be issued within five years from the date such exemptions were first granted and, if the results of said election are in favor of the revocation of such exemptions, then such revocation shall be effective only at the end of a five-year period from the date of such referendum.

(g) Level 1 freeport exemptions effected pursuant to this Code section may be granted either in lieu of or in addition to level 2 freeport exemptions under Code Section 48-5-48.6.

(h) The commissioner shall by regulation adopt uniform procedures and forms for the use of local officials in the administration of this Code section.

History.

Code 1981, § 48-5-48.2, enacted by Ga. L. 1984, p. 1058, § 4; Ga. L. 1992, p. 2482, § 2; Ga. L. 1996, p. 926, § 1; Ga. L. 1998, p. 295, § 3; Ga. L. 1998, p. 1120, § 2; Ga. L. 2012, p. 249, § 2/HB 48; Ga. L. 2013, p. 83, § 1/HB 304; Ga. L. 2016, p. 731, § 2/HB 935; Ga. L. 2017, p. 774, § 48/HB 323; Ga. L. 2018, p. 986, § 2/HB 888; Ga. L. 2019, p. 763, § 1/HB 405.

Editor's notes.

Ga. L. 1984, p. 1058, § 9, not codified by the General Assembly, provides: "In the event of any conflict between this Act and any other Act of the 1984 General Assembly the provisions of such other Act shall control over the provisions of this Act."

Ga. L. 2012, p. 249, § 5/HB 48, not codified by the General Assembly, provides for severability.

Ga. L. 2013, p. 83, § 2/HB 304, not codified by the General Assembly, provided that the amendment to this Code section shall apply to all taxable years beginning on and after January 1, 2014.

Law reviews.

For article, "Procedure and Problems in Georgia Ad Valorem Tax Appeals," see 26 Ga. St. B.J. 98 (1990).

For article, "Freeport Exemption from Property Taxes for Inventory Stored in Georgia But Destined for Shipment Out-of-State," see 28 Ga. St. B. J. 108 (1991).

JUDICIAL DECISIONS

Purpose of statutory language. — By using the all-encompassing descriptive term "inventory of finished goods," instead of "tangible property," the General Assembly intended to include all classes of tangible property under the constitution without enumerating each so that there would be equal treatment to avoid constitutional implications as to equal protection, rational purpose, and disparate treatment. Fulton County Tax Comm'r v. GMC, 234 Ga. App. 459, 507 S.E.2d 772.

"For resale purposes" as used in O.C.G.A. § 48-5-48.2(a)(4), expressly excludes from the freeport exemption any merchandise sold at retail, regardless of whether the sale is made to a resident or nonresident of Georgia. Aircraft Spruce & Specialty Co. v. Fayette County Bd. of Tax Assessors, 294 Ga. App. 241, 669 S.E.2d 417, 2008 Ga. App. LEXIS 1149 (2008), overruled in part, Gilmer County Bd. of Tax Assessors v. Spence, 309 Ga. App. 482, 711 S.E.2d 51, 2011 Ga. App. LEXIS 371 (2011).

O.C.G.A. § 48-5-48.2 gives county discretion as to: (1) whether to submit the exemption issue to a voter referendum; (2) what types of inventory will be submitted to the voters for exemption; and (3) the percentage of the value of goods to be exempted. Levetan v. Lanier Worldwide, Inc., 265 Ga. 323, 454 S.E.2d 504, 1995 Ga. LEXIS 134 (1995).

Accounting methods. — O.C.G.A. § 48-5-48.2(b)(1) and (2) (now paragraphs (b)(2) and (b)(3)) did not require a particular accounting method to be used for valuation, so it was arbitrary and capricious to apply a particular accounting method to a taxpayer's freeport exemption application, because the application did not disclose a particular accounting method. William L. Bonnell Co. v. Coweta County Bd. of Tax Assessors, 252 Ga. App. 151, 556 S.E.2d 159, 2001 Ga. App. LEXIS 1221 (2001).

Grain merchandising and storage. — Under its pre-1998 version, O.C.G.A. § 48-5-48.2 did not apply to farm products stored for a grain merchandising and

storage business. Board of Assessors v. McCoy Grain Exch., Inc., 234 Ga. App. 98, 505 S.E.2d 832.

Evidence to show timely filing. — Without evidence of a United States post office postmark date to prove an application for freeport exemption was mailed timely, or other evidence to show compliance with an internal policy, the taxpayer was unable to prove the taxpayer's return was timely filed. DeKalb County Bd. of Tax Assessors v. Lanier Worldwide, Inc., 208 Ga. App. 435, 430 S.E.2d 595 (1993).

Charge on risk of using mail system needed. — Because the instruction sheet for the application for freeport exemption makes it clear that the taxpayer bears the responsibility for ensuring that the postmark date is the same as the mailing date, the charge that one who selects the United States mail takes all the risks that are usually incident was relevant. DeKalb County Bd. of Tax Assessors v. Lanier Worldwide, Inc., 208 Ga. App. 435, 430 S.E.2d 595 (1993).

Packaging materials are not "raw materials." Murray Bakery Prods., Inc. v. Board of Tax Assessors, 186 Ga. App. 559, 367 S.E.2d 852, 1988 Ga. App. LEXIS 387, aff'd, 258 Ga. 484, 371 S.E.2d 393, 1988 Ga. LEXIS 356 (1988).

Merely assembling purchased packaging materials was not a substantial change of personal property in the ordinary course of a cookie maker's manufacturing business, and such materials did not qualify for the freeport exemption. Murray Bakery Prods., Inc. v. Board of Tax Assessors, 258 Ga. 484, 371 S.E.2d 393, 1988 Ga. LEXIS 356 (1988).

Business involving both transportation and manufacture. — Fact that a company is in the transportation business is not fatal to the company's claim for a freeport exemption because the company functions as a manufacturer of aircraft parts and a remanufacturer of aircraft engines in the regular course of the company's business and those operations are located in this state. Delta Air Lines, Inc. v. Clayton County Bd. of Tax Assessors, 246 Ga. App. 225, 539 S.E.2d 905, 2000 Ga. App. LEXIS 1200 (2000), cert. denied, No. S01C0204, 2001 Ga. LEXIS 370 (Ga. Apr. 30, 2001).

Inventory sold from a taxpayer to a purchaser. — Under O.C.G.A. § 48-5-48.1(a), the entity seeking the freeport exemption is required to file a written application and schedule of the property for which the exemption is sought; thus, the statutory scheme looks to the property, that is, the inventory, held by the taxpayer, and what becomes of the inventory in the hands of a purchaser from the taxpayer is not relevant to the determination of the availability of the freeport exemption. Muscogee County Bd. of Tax Assessors v. Pace Indus., 307 Ga. App. 532, 705 S.E.2d 678, 2011 Ga. App. LEXIS 3 (2011).

Inventory being held for leasing purposes. — Computers owned by taxpayer and held in storage until leased to travel agencies, after the period of which lease the computers are returned to the taxpayer, were not "finished goods" being held for "final destination outside this state" within the meaning of O.C.G.A. § 48-5-48.2, and therefore did not meet the requirements to qualify for the exemption under § 48-5-48.2. Apollo Travel Servs. v. Gwinnett County Bd. of Supvrs., 230 Ga. App. 790, 498 S.E.2d 297.

Inventory of finished goods. — Aircraft parts stored at the company and destined for shipment to airport stations outside Georgia qualified for the freeport exemption. The company was not required to prove that the parts were intended for resale. Delta Air Lines, Inc. v. Clayton County Bd. of Tax Assessors, 246 Ga. App. 225, 539 S.E.2d 905, 2000 Ga. App. LEXIS 1200 (2000), cert. denied, No. S01C0204, 2001 Ga. LEXIS 370 (Ga. Apr. 30, 2001).

Inventory included in freeport exemption. — Component parts of self-checkout systems purchased by a retailer and which were held in Georgia for shipment to retail stores in other states were exempt from ad valorem tax under the freeport exemption in O.C.G.A. § 48-5-48.2(c)(3), which included inventory; the fact that the components required installation did not render the components "in the process of manufacture or production." Fayette Cty.

Bd. of Tax Assess. v. WalMart Stores, Inc., 354 Ga. App. 584, 841 S.E.2d 104, 2020 Ga. App. LEXIS 196 (2020).

Freeport exemption did not apply. — Freeport exemption from ad valorem taxes did not apply to a taxpayer's inventory of barbecue grill bodies because the taxpayer's involvement with the grill bodies ended when the taxpayer sold the grill bodies to a producer of barbecue grills, and the final destination of the grill bodies was the producer's plant; the producer incorporated the grill bodies into finished barbecue grills, and it was the completed barbecue grills that the producer eventually shipped out of state. Muscogee County Bd. of Tax Assessors v. Pace Indus., 307 Ga. App. 532, 705 S.E.2d 678, 2011 Ga. App. LEXIS 3 (2011).

Res judicata and collateral estoppel as to exemption. — Following a final consent judgment, the factual and legal basis for freeport exemption for several previous years became res judicata as to what had been litigated, and collateral estoppel would apply on the exemption issue on future applications unless there was a substantial factual change. Fulton County Tax Comm'r v. GMC, 234 Ga. App. 459, 507 S.E.2d 772.

Doctrine of collateral estoppel applied to preclude the county board of tax assessors from relitigating a taxpayer's eligibility for the freeport exemption since there had been no change or development in the law. Gwinnett County Bd. of Tax Assessors v. GE Capital Computer Servs., 273 Ga. 175, 538 S.E.2d 746, 2000 Ga. LEXIS 866 (2000).

Role of superior court. — It is initially the county board of tax assessors and, in the event of continued disagreement, the superior court, that must consider the taxpayer's showing and make an appropriate grant of freeport exemption if all conditions are satisfied. Fulton County Tax Comm'r v. GMC, 234 Ga. App. 459, 507 S.E.2d 772.

Motor vehicles and mobile homes. — While motor vehicles and mobile homes are classified as separate classes of tangible property for ad valorem purposes, the General Assembly did not intend to exclude this class of tangible property from the ambit of O.C.G.A. § 48-5-48.2 for purposes of freeport exemption. Fulton County Tax Comm'r v. GMC, 234 Ga. App. 459, 507 S.E.2d 772.

Aircraft engines in the process of remanufacture. — Process of "heavy maintenance," constituting the disassembly of the engine, the replacement of a number of expendable parts, the machine working of other parts to specification, its reassembly and testing over an approximate six to eight week period, is "substantial" for purposes of the exemption under O.C.G.A. § 48-5-48.2. Delta Air Lines, Inc. v. Clayton County Bd. of Tax Assessors, 246 Ga. App. 225, 539 S.E.2d 905, 2000 Ga. App. LEXIS 1200 (2000), cert. denied, No. S01C0204, 2001 Ga. LEXIS 370 (Ga. Apr. 30, 2001).

Whether aircraft engines undergoing "light" maintenance were undergoing "substantial overhauling or rebuilding" for purpose of the exemption under O.C.G.A. § 48-5-48.2 is an issue meriting submission to a jury. Delta Air Lines, Inc. v. Clayton County Bd. of Tax Assessors, 246 Ga. App. 225, 539 S.E.2d 905, 2000 Ga. App. LEXIS 1200 (2000), cert. denied, No. S01C0204, 2001 Ga. LEXIS 370 (Ga. Apr. 30, 2001).

Out of state retail sales via telephone or Internet. — There was no merit to a taxpayer's argument that retail sales made via the telephone or Internet to out-of-state customers were not sales that occurred in Georgia. In determining whether a retail sale was made in Georgia, the court had to look to the location and conduct of the seller, rather than the location of the buyer, and here, all aspects of the retail sales made from the taxpayer's Georgia warehouse to Internet and telephone customers occurred in Georgia. Aircraft Spruce & Specialty Co. v. Fayette County Bd. of Tax Assessors, 294 Ga. App. 241, 669 S.E.2d 417, 2008 Ga. App. LEXIS 1149 (2008), overruled in part, Gilmer County Bd. of Tax Assessors v. Spence, 309 Ga. App. 482, 711 S.E.2d 51, 2011 Ga. App. LEXIS 371 (2011).

RESEARCH REFERENCES

ALR.

Validity, construction, and application of sales, use, and utility taxes on retail transactions of internet sellers and internet access providers, 30 A.L.R.6th 341.

48-5-48.3. Homestead exemption for senior citizens.

(a) As used in this Code section, the term:

(1) "Homestead" means homestead as defined and qualified in Code Section 48-5-40 with the additional qualification that it shall include only the primary residence and not more than ten contiguous acres of land immediately surrounding such residence.

(2) "Senior citizen" means a person who is 65 years of age or over on or before January 1 of the year in which application for the exemption under this Code section is made.

(b) Any person who is a senior citizen and resident of Georgia is granted upon application an exemption on his or her homestead which such person owns and actually occupies as a residence and homestead in an amount equal to the actual levy for state ad valorem taxation made pursuant to Code Section 48-5-8 with respect to that homestead, such exemption being from all ad valorem taxation for state purposes. The value of all property in excess of the exempted amount cited above shall remain subject to taxation.

(c) The exemption shall be claimed and returned in the same manner as otherwise required under Code Section 48-5-50.1. Each person shall file for the exemption only once in the county of his or her residence. Once filed, the exemption shall automatically be renewed from year to year.

(d) The exemption granted by this Code section shall not apply to or affect county taxes, municipal taxes, or school district taxes.

(e) The exemption granted by this Code section shall be in addition to and not in lieu of any other homestead exemption from state taxes.

History.

Code 1981, § 48-5-48.3, enacted by Ga. L. 2006, p. 376, § 3/HB 848; Ga. L. 2010, p. 878, § 48/HB 1387.

Cross references.

Homestead exemptions, § 44-13-1 et seq.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2006, Code Section 48-5-48.3, as enacted by Ga. L. 2006, p. 1104, § 2/HB 81, was redesignated as Code Section 48-5-48.4.

Editor's notes.

Ga. L. 1990, p. 1858, § 2 provided for the repeal of the former Code section effective January 1, 1991, applicable to all taxable years beginning on or after that date. This Code section was based on Ga. L. 1986, p. 1445, § 1 and Ga. L. 1990, p. 45, § 1. For present provisions concerning homestead exemptions by qualified disabled veterans and certain surviving family members, see Code Section 48-5-48.

The state-wide referendum (Ga. L. 2006, p. 376, § 4/HB 848), which provided for a homestead exemption for senior citizens in an amount equal to the actual levy for state ad valorem tax purposes on the homestead, was approved by a majority of the qualified voters voting at the November 7, 2006 general election.

48-5-48.4. Homestead exemption for unremarried surviving spouse of peace officer or firefighter killed in the line of duty.

(a) As used in this Code section, the term:

(1) "Ad valorem taxes" means all state ad valorem taxes and all county, county school district, municipal, and independent school district taxes for county, county school district, municipal, or independent school district purposes including, but not limited to, taxes to retire bonded indebtedness.

(2) "Homestead" means homestead as defined and qualified in Code Section 48-5-40.

(b) Each resident of the state who is the unremarried surviving spouse of a peace officer or firefighter who was killed in the line of duty is granted an exemption on that person's homestead from all ad valorem taxes for the full value of that homestead.

(c) A person shall not receive the homestead exemption granted by subsection (b) of this Code section unless the person or person's agent files an affidavit with the tax commissioner of the county in which that person resides giving such information relative to receiving such exemption as will enable the tax commissioner to make a determination as to whether such person is entitled to such exemption. The tax commissioner shall provide affidavit forms for this purpose and shall require such information as may be necessary to determine the initial and continuing eligibility of the applicant for the exemption.

(d) The exemption shall be claimed and returned as provided in Code Section 48-5-50.1. The exemption shall be automatically renewed from year to year as long as the applicant occupies the residence as a homestead. After a person has filed the proper affidavit as provided in subsection (c) of this Code section, it shall not be necessary to make application and file such affidavit thereafter for any year and the exemption shall continue to be allowed to such person. It shall be the duty of any person granted the homestead exemption under this Code section to notify the tax commissioner or the designee thereof in the event that person for any reason becomes ineligible for that exemption.

(e) The exemption granted by this Code section shall be in lieu of and not in addition to any other homestead exemption from ad valorem taxes.

(f) The exemption granted by this Code section shall apply to all taxable years beginning on or after January 1, 2007.

History.
Code 1981, § 48-5-48.4, enacted by Ga. L. 2006, p. 1104, § 2/HB 81.

Cross references.
Homestead exemptions, § 44-13-1 et seq.

Code Commission notes.
Pursuant to Code Section 28-9-5, in 2006, Code Section 48-5-48.3, as enacted by Ga. L. 2006, p. 1104, § 2/HB 81, was redesignated as Code Section 48-5-48.4.

Editor's notes.
The state-wide referendum (Ga. L. 2006, p. 1104, § 3/HB 81), which provided for a homestead exemption for the full value of the homestead with respect to all ad valorem taxes for the unremarried surviving spouse of a peace officer or firefighter who was killed in the line of duty, was approved by a majority of qualified voters at the November 7, 2006 general election.

48-5-48.5. Level 2 freeport exemption; application; filing; renewal.

(a) Any person, firm, or corporation seeking a level 2 freeport exemption from ad valorem taxation of certain tangible personal property inventory when such exemption has been authorized by the governing authority of any county or municipality after approval of the electors of such county or municipality pursuant to the authority of the Constitution of Georgia and Code Section 48-5-48.6 shall file a written application and summary, as prescribed by the department, of property with the county board of tax assessors on forms furnished by such board. Such application shall be filed in the year in which exemption from taxation is sought no later than the date on which the tax receiver or tax commissioner of the county in which the property is located closes the books for the return of taxes.

(b) The application for the level 2 freeport exemption shall provide for a summary, as prescribed by the department, of the inventory of finished goods held by one in the business of making sales of such goods in this state.

(c)(1) For purposes of this subsection, the term "file properly" shall mean and include the timely filing of the application and complete summary, as prescribed by the department, of the inventory for which exemption is sought on or before the due date specified in subsection (a) of this Code section. Any clerical error, including, but not limited to, a typographical error, scrivener's error, or any unintentional immaterial error or omission in the application shall not be construed as a failure to file properly.

(2) The failure to file properly the application and summary, as prescribed by the department, shall constitute a waiver of the exemption on the part of the person, firm, or corporation failing to make the application for such exemption for that year as follows:

(A) The failure to report any inventory for which such exemp-

tion is sought in the summary, as prescribed by the department, provided for in the application shall constitute a waiver of the exemption on the part of the person, firm, or corporation failing to so report for that taxable year in an amount equal to the difference between fair market value of the inventory as reported and the fair market value finally determined to be applicable to the inventory for which the exemption is sought; and

(B) The failure to file timely such application and summary, as prescribed by the department, shall constitute a waiver of the exemption until the first day of the month following the month such application and summary, as prescribed by the department, are filed properly with the county tax assessor; provided, however, that unless the application and schedule are filed on or before June 1 of such year, the exemption shall be waived for that entire year.

(d) Upon receiving the application required by this Code section, the county board of tax assessors shall determine the eligibility of all types of tangible personal property listed on the application. If any property has been listed which the board believes is not eligible for the exemption, the board shall issue a letter notifying the applicant that all or a portion of the application has been denied. The denial letter shall list the type and total fair market value of all property listed on the application for which the exemption has been approved and the type and total fair market value of all property listed on the application for which the exemption has been denied. The applicant shall have the right to appeal from the denial of the exemption for any property listed, and such appeal shall proceed as provided in Code Section 48-5-311. Except as otherwise provided in subparagraph (c)(2)(A) of this Code section, the county board of assessors shall not send a second letter of notification denying the exemption of all or a portion of such property listed on the application on new grounds that could and should have been discerned at the time the initial denial letter was issued.

(e) If the level 2 freeport exemption has been granted to a taxpayer for a taxable year, the county board of tax assessors shall issue a notice of renewal to the taxpayer for the immediately following taxable year. Such notice of renewal shall be issued not later than January 15 of such immediately following taxable year to facilitate the filing of a timely application and summary, as prescribed by the department, by the taxpayer for such taxable year.

History.
Code 1981, § 48-5-48.5, enacted by Ga. L. 2012, p. 249, § 3/HB 48; Ga. L. 2018, p. 986, § 3/HB 888.

Editor's notes.
Ga. L. 2012, p. 249, § 5/HB 48, not codified by the General Assembly, provides for severability.

48-5-48.6. Level 2 freeport exemption; referendum.

(a) This Code section shall be known and may be cited as the "Level 2 Freeport Exemption."

(b) As used in this Code section, the term "finished goods" means, for purposes of a level 2 freeport exemption, goods, wares, and merchandise of every character and kind constituting a business's inventory which would not otherwise qualify for a level 1 freeport exemption.

(c) The governing authority of any county or municipality may, subject to the approval of the electors of such political subdivision, exempt from ad valorem taxation, including all such taxes levied for educational purposes and for state purposes, inventory of finished goods.

(d) Whenever the governing authority of any county or municipality wishes to exempt such tangible property from ad valorem taxation, as provided in this Code section, the governing authority thereof shall notify the election superintendent of such political subdivision, and it shall be the duty of said election superintendent to issue the call for an election for the purpose of submitting to the electors of the political subdivision the question of whether such exemption shall be granted. The referendum ballot shall specify retail business inventory as the types of property as defined in this Code section which are being proposed to be exempted from taxation. The election superintendent shall issue the call and shall conduct the election on a date and in the manner authorized under Code Section 21-2-540.

(e) The governing authority of any county or municipality wherein an exemption has been approved by the voters as provided in this Code section may, by appropriate resolution, a copy of which shall be immediately transmitted to the state revenue commissioner, exempt from taxation 20 percent, 40 percent, 60 percent, 80 percent, or all of the value of such tangible personal property as defined in this Code section; provided, however, that, once an exemption has been granted, no reduction in the percent of the value of such property to be exempted may be made until and unless such exemption is revoked or repealed as provided in this Code section. An increase in the percent of the value of the property to be exempted may be accomplished by appropriate resolution of the governing authority of such county or municipality, and a copy thereof shall be immediately transmitted to the state revenue commissioner, provided that such increase shall be in increments of 20 percent, 40 percent, 60 percent, or 80 percent of the value of such tangible personal property as defined in this Code section, within the discretion of such governing authority.

(f)(1) If more than one-half of the votes cast on such question are in favor of such exemption, then such exemption may be granted by the

governing authority commencing on the first day of any ensuing calendar year; otherwise, such exemption may not be granted. This paragraph is intended to clearly provide that following approval of such exemption in such referendum, such exemption may be granted on the first day of any calendar year following the year in which such referendum was conducted. This paragraph shall not be construed to imply that the granting of such exemption could not previously be delayed to any such calendar year.

(2) Exemptions may only be revoked by a referendum election called and conducted as provided in this Code section, provided that the call for such referendum shall not be issued within five years from the date such exemptions were first granted and, if the results of said election are in favor of the revocation of such exemptions, then such revocation shall be effective only at the end of a five-year period from the date of such referendum.

(g) Level 2 freeport exemptions effected pursuant to this Code section may be granted either in lieu of or in addition to level 1 freeport exemptions under Code Section 48-5-48.2.

(h) The commissioner shall by regulation adopt uniform procedures and forms for the use of local officials in the administration of this Code section.

History.

Code 1981, § 48-5-48.6, enacted by Ga. L. 2012, p. 249, § 3/HB 48; Ga. L. 2024, p. 1052, § 5(13)/SB 448, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, revised punctuation in the first sentence in subsection (e).

Editor's notes.

Ga. L. 2012, p. 249, § 5/HB 48, not codified by the General Assembly, provides for severability.

48-5-48.7. Freeport exemptions; determination of timely filing; recourse for improper determinations.

(a) Any document required to be filed under Code Section 48-5-48.1 or 48-5-48.5 shall be considered properly and timely filed if the postal date on the mailed document, whether metered or stamped, is on or before the date on which the tax receiver or tax commissioner of the county in which the property is located closes the book for the return of taxes.

(b) Any document properly and timely filed pursuant to subsection (a) of this Code section and incorrectly determined to be untimely filed, upon sufficient proof thereof, shall entitle the applicant to a credit against future ad valorem assessments from the county which improperly denied the applicant the exemption under Code Section 48-5-48.1 or 48-5-48.5.

History.
Code 1981, § 48-5-48.7, enacted by Ga. L. 2018, p. 986, § 4/HB 888.

48-5-49. Determination of eligibility of applicant for homestead exemption; appeal.

(a) The official receiving an application for homestead exemption shall determine the eligibility of the applicant to claim the exemption and, whether the application is approved or disapproved, he shall then transfer the application to the county board of tax assessors for final determination by the board as to eligibility and value as provided by law.

(b) The applicant shall have the right of appeal from the decision of the board of assessors to the county board of equalization as provided in Code Section 48-5-311.

History.
Ga. L. 1937-38, Ex. Sess., p. 145, § 5; Code 1933, § 91A-1113, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 31; Ga. L. 1981, p. 1857, § 14.

JUDICIAL DECISIONS

Statute does not violate due process clause. — Ga. L. 1937-38, Ex. Sess., p. 145, § 5 (see now subsection (a) of O.C.G.A. § 48-5-49) does not deny taxpayers a chance to be heard before either the tax commissioner or the board of tax assessors. The rights of an applicant for a homestead exemption are further safeguarded by Ga. L. 1937-38, Ex. Sess., p. 145, § 5 (see now subsection (b) of O.C.G.A. § 48-5-49), allowing the right of appeal from a decision of the board. This statute is not, for any reason assigned, violative of the due process clause of the Constitution. Duncan v. Proctor, 195 Ga. 499, 24 S.E.2d 791, 1943 Ga. LEXIS 533 (1943).

Statute does not violate homestead provisions of constitution. — Procedure contained in this statute, providing for determination of the eligibility of a resident to receive the homestead exemption, is not violative of Ga. Const. 1877, Art. VII, Sec. II, Para. VII (see now Ga. Const. 1983, Art. VII, Sec. II, Para. I-IV), upon which this statute is based. Duncan v. Proctor, 195 Ga. 499, 24 S.E.2d 791, 1943 Ga. LEXIS 533 (1943).

Right to appeal. — County's recalculations of the taxpayers' homestead exemptions involved the value of the exemptions, bringing the taxpayers within O.C.G.A. § 48-5-49, which permitted an appeal under O.C.G.A. § 48-5-311. Since the county had not given the taxpayers notice under O.C.G.A. § 48-5-306 of the taxpayers' right to appeal, the taxpayers were entitled to equitable relief requiring the county to: (1) provide taxpayers with proper notice of and the right to appeal changes in the homestead exemptions; (2) stop collecting taxes referenced in bills sent without proper notice; and (3) refund any tax money collected based on bills issued without such notice. Fulton County Bd. of Tax Assessors v. Marani, 299 Ga. App. 580, 683 S.E.2d 136, 2009 Ga. App. LEXIS 909 (2009), cert. denied, No. S09C2072, 2010 Ga. LEXIS 18 (Ga. Jan. 12, 2010).

RESEARCH REFERENCES

Am. Jur. 2d.
40 Am. Jur. 2d, Homestead, § 13 et seq.

C.J.S.
40 C.J.S., Homesteads, § 41.

48-5-50. Homestead value credited with exemption; approval of correctness of value, exemption, and difference.

The value of the homestead as finally determined shall be credited with the homestead exemption provided by law. The homestead value, exemption, and difference, if any, shall be shown on the owner's tax return and the correctness of the value, exemption, and difference shall be approved on the return as provided by law.

History.
Ga. L. 1937-38, Ex. Sess., p. 145, § 10; Code 1933, § 91A-1114, enacted by Ga. L. 1978, p. 309, § 2.

JUDICIAL DECISIONS

Effect of determination of value when contrary to law. — In the absence of a successful constitutional attack on this statute, the allowable homestead exemption should be credited on the assessed value of each taxpayer's land as such value was finally determined and fixed by those tax officials who were required by law to value the land, rather than on the fair market value. Kiker v. Pinson, 120 Ga. App. 784, 172 S.E.2d 333, 1969 Ga. App. LEXIS 925 (1969).

RESEARCH REFERENCES

C.J.S.
40 C.J.S., Homesteads, § 50.

48-5-50.1. Claim and return of constitutional or local law homestead exemptions from county taxes, county school taxes, or municipal or independent school district taxes.

(a) This Code section shall govern the procedure for returning and claiming homestead exemptions which are created by or pursuant to local laws or constitutional amendments which were not general amendments. If, however, such a constitutional amendment or local law contains provisions which are in conflict with this Code section, then such other provisions shall prevail over this Code section.

(b)(1) If the homestead exemption is from county taxes or county school taxes, it shall be claimed and returned as provided in Code Sections 48-5-45, 48-5-46, 48-5-49, and 48-5-50.

(2) If the homestead exemption is from municipal or independent school district taxes, it shall be claimed and returned as provided in Code Sections 48-5-45, 48-5-46, and 48-5-50, except that any reference to the tax commissioner or tax receiver shall be deemed to

refer to the municipal governing authority or its designee. The determination of eligibility of the applicant to claim the exemption shall be made by the municipal governing authority subject to appeal to the superior court. Any such appeal must be filed within 30 days after the final determination by the municipal governing authority and shall be a de novo proceeding.

(3) In addition to the provisions required by Code Section 48-5-46, the application for an exemption under this Code section may provide where necessary for an affidavit as to the age of the owner, the income of the owner and of each member of his family residing on the homestead, and such other information as may be necessary to determine eligibility of the owner for the exemption. The commissioner shall not be required to furnish specialized forms required by this Code section.

History. Code 1933, § 91A-1118, enacted by Ga. L. 1981, p. 117, § 1; Ga. L. 1984, p. 1058, § 5.

RESEARCH REFERENCES

Am. Jur. 2d.
71 Am. Jur. 2d, State and Local Taxation, § 207 et seq.

48-5-51. Fraudulent claim of homestead exemption under Code Sections 48-5-44 through 48-5-50; penalty.

(a) It shall be unlawful for any person to:

(1) Make any false or fraudulent claim for exemption under Code Sections 48-5-44 through 48-5-50;

(2) Make any false statement or false representation of a material fact in support of a claim for exemption under Code Sections 48-5-44 through 48-5-50; or

(3) Assist another knowingly in the preparation of any false or fraudulent claim for exemption under Code Sections 48-5-44 through 48-5-50, or enter into any collusion with another by the execution of a fictitious deed, deed of trust, mortgage, or otherwise.

(b) Any person who violates this Code section shall be guilty of a misdemeanor. In addition, the property shall be taxed in an amount double the tax otherwise to be paid.

History. Code 1933, § 91A-9906, enacted by Ga. L. 1978, p. 309, § 2. Ga. L. 1937-38, Ex. Sess., p. 145, § 11;

RESEARCH REFERENCES

Am. Jur. 2d.
71 Am. Jur. 2d, State and Local Taxation, §§ 512, 513, 514.

C.J.S.
37 C.J.S., Fraud, §§ 1 et seq., 39 et seq.

48-5-52. Exemption from ad valorem taxation for educational purposes of homesteads of qualified individuals 62 or older; application; replacement of revenue.

(a) The homestead of each resident of each independent school district and of each county school district within this state who is 62 years of age or older and, for the purposes of all tax years beginning on or after January 1, 2003, whose net income together with the net income of the spouse who also occupies and resides at such homestead, as net income is defined by Georgia law from all sources, except as otherwise provided in this subsection, does not exceed $10,000.00 for the immediately preceding taxable year for income tax purposes, is exempted from all ad valorem taxes for educational purposes levied by, for, or on behalf of any such school system, including taxes to retire school bond indebtedness. For the purposes of this subsection, net income shall not include income received as retirement, survivor, or disability benefits under the federal Social Security Act or under any other public or private retirement, disability, or pension system, except such income which is in excess of the maximum amount authorized to be paid to an individual and his or her spouse under the federal Social Security Act. Income from such sources in excess of such maximum amount shall be included as net income for the purposes of this subsection. The exemption shall not exceed $10,000.00 of the homestead's assessed value. Except as otherwise specifically provided by law, the value of that property in excess of such exempted amount shall remain subject to taxation.

(b)(1) The exemption provided for in subsection (a) of this Code section shall not be granted unless an affidavit of the owner of the homestead, prepared upon forms prescribed by the commissioner for that purpose, is filed with either the tax receiver or tax commissioner, in the case of residents of county school districts, or with the governing authority of the owner's city, in the case of residents of independent school districts.

(2) The affidavit shall in the first year for which the exemption is sought be filed on or before the last day for making a tax return and shall show the:

(A) Age of the owner on January 1 immediately preceding the filing of the affidavit;

(B) Total amount of net income received by the owner and

spouse from all sources during the immediately preceding calendar year; and

(C) Such additional information as may be required by the commissioner.

(3) Copies of all affidavits received or extracts of the information contained in the affidavits shall be forwarded to the commissioner by the various taxing authorities with whom the affidavits are filed. The commissioner is authorized to compare such information with information contained in any income tax return, sales tax return, or other tax documents or records of the department and to report immediately to the appropriate county or city taxing authority any apparent discrepancies between the information contained in any affidavit and the information contained in any other tax records of the department.

(4) After the owner has filed the affidavit and has once been allowed the exemption provided for in this Code section, it shall not be necessary to make application and file the affidavit thereafter for any year and the exemption shall continue to be allowed to such owner; provided, however, that it shall be the duty of any such owner to notify the tax commissioner or tax receiver in the event the owner becomes ineligible for any reason for the exemption provided for in this Code section.

(c) The homestead exemption granted by this Code section shall extend to and shall apply to those properties the legal title to which is vested in one or more titleholders when such property is actually occupied as a residence by one or more of the titleholders who possess the qualifications provided in subsection (a) of this Code section and who claim the exemption in the manner provided for in this Code section. The exemption shall also extend to those homesteads the title to which is vested in a personal representative or trustee if one or more of the heirs or beneficiaries residing on the property possess the qualifications provided for and claim the exemption in the manner provided in this Code section.

(d)(1) The State Board of Education, when funds are specifically appropriated for the purpose of replacing revenue lost by local school systems as a result of this Code section, shall provide each school district in this state which, on July 1, 1974, had in effect a tax levy of 20 mills or more for educational purposes or was levying the maximum permissible tax authorized by law for educational purposes, with grants for educational purposes which shall equal the revenues lost by the school district due to the exemption provided by this Code section for property located within the school district.

(2) The State Board of Education may promulgate reasonable rules to carry out this subsection.

History.

Ga. L. 1974, p. 183, §§ 1-4; Code 1933, § 91A-1117, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1981, p. 1857, § 16; Ga. L. 1984, p. 1437, § 1; Ga. L. 1988, p. 2, § 2; Ga. L. 2001, p. 1092, § 1; Ga. L. 2010, p. 564, § 2/HB 963.

Editor's notes.

Ga. L. 1988, p. 2, § 3, not codified by the General Assembly, required the Secretary of State to call and conduct a referendum for the approval or disapproval of this Act on the date of and in conjunction with the 1988 presidential preference primary. The referendum was held on March 8, 1988, and the amendment of this Code section was approved by a vote of 655,019 to 144,603. Further, Section 3 also provided: "If a taxpayer files a proper affidavit on or before the last day for filing his or her tax return in 1988, then Sections 1 and 2 of this Act shall apply with respect to such taxpayer's 1988 and future ad valorem taxes; and otherwise Sections 1 and 2 of this Act shall apply to any taxpayer who has so filed a timely affidavit at any time thereafter. Nothing in this Act shall require any person who qualified for any homestead exemption under prior law to reapply in order to be allowed the exemption."

The state-wide referendum (Ga. L. 2001, p. 1092, § 1), which changed the income requirements for this ad valorem tax exemption was approved by a majority of the voters voting at the November, 2002 general election.

OPINIONS OF THE ATTORNEY GENERAL

Life tenant with remainderman responsible for ad valorem taxes. — Covenant contained in a deed conveying a life estate which makes the remainder interest responsible for paying the ad valorem taxes does not alter the ownership interests in the property for purposes of eligibility to claim the homestead exemptions allowed for the elderly. 1983 Op. Att'y Gen. No. U83-71.

Construction with homestead provisions in constitution. — Taxpayer who meets the qualifications of both this statute and Ga. Const. 1945, Art. VII, Sec. I, Para. IV (see now Ga. Const. 1983, Art. VII, Sec. II, Para. I-IV), relating to exemptions for persons 65 and over, would be entitled to an exemption of no more than $4,000.00 from state ad valorem taxes, $4,000.00 from county ad valorem taxes excluding those taxes levied for educational purposes, and $10,000.00 from ad valorem taxes levied for educational purposes. 1974 Op. Att'y Gen. No. U74-83.

Social security benefits are included in income for the purposes of determining a taxpayer's entitlement to the homestead exemption granted in this statute. 1974 Op. Att'y Gen. No. U74-83.

Effect of claim of two or more similar exemptions. — If a taxpayer is qualified for and chooses to invoke the benefits of any one of the exemptions from any one of the types of ad valorem taxes, the taxpayer necessarily triggers the limitation clause of that exemption; any attempt to take two or more similar exemptions would violate the limitation clause of each of the exemptions and cannot be done. 1974 Op. Att'y Gen. No. U74-83.

Applicable levy under subsection (d). — If the governing authority of a county has not set a tax levy for 1974 prior to July 1, 1974, then that tax levy which was set in 1973 is the levy in effect for purposes of this statute. 1974 Op. Att'y Gen. No. U74-73.

Effect of levy recommended and requested but not adopted by county prior to July 1, 1974. — When a county board of education has recommended and requested a certain levy prior to July 1, 1974, but such recommendation and request has not been officially adopted by the county governing authority prior to that date, the levy recommended and requested by the board is not in effect for purposes of this statute. 1974 Op. Att'y Gen. No. U74-73.

RESEARCH REFERENCES

Am. Jur. 2d.

40 Am. Jur. 2d, Homestead, § 13.

ALR.

Tax exemption of property as affecting its inclusion in determining requisite consent of property owners to annexation territory, local improvement, bond issue, and other public activity, 146 A.L.R. 1260.

Validity of statute or ordinance giving property tax exemption or favorable property tax rate to older persons, 45 A.L.R.3d 1147.

Construction of statute or ordinance giving property tax exemption or favorable property tax rate to older persons, 45 A.L.R.3d 1153.

Prospective use for tax-exempt purposes as entitling property to tax exemption, 54 A.L.R.3d 9.

Availability of tax exemption to property held on lease from exempt owner, 54 A.L.R.3d 402.

48-5-52.1. Exemption from ad valorem taxation for state, county, municipal, and school purposes of homesteads of unremarried surviving spouses of U.S. servicemembers killed in action.

(a) Any person who is a citizen and resident of Georgia and who is an unremarried surviving spouse of a member of the armed forces of the United States, which member has been killed in or has died as a result of any war or armed conflict in which the armed forces of the United States engaged, whether under United States command or otherwise, shall be granted a homestead exemption from all ad valorem taxation for state, county, municipal, and school purposes in the amount of the greater of $32,500.00 or the maximum amount which may be granted to a disabled veteran under Section 2102 of Title 38 of the United States Code, as amended. As of January 1, 1999, the maximum amount which may be granted to a disabled veteran under the above-stated federal law is $43,000.00. For the purposes of this Code section, the term "unremarried surviving spouse" of a member of the armed forces includes the unmarried widow or widower of a member of the armed forces who is receiving spousal benefits from the United States Department of Veterans Affairs. The exemption shall be on the homestead which the unremarried surviving spouse owns and actually occupies as a residence and homestead. In the event such surviving spouse remarries, such person shall cease to be qualified to continue the exemption under this Code section effective December 31 of the taxable year in which such person remarries. The value of all property in excess of such exemption granted to such unremarried surviving spouse shall remain subject to taxation.

(b) In order to qualify for the exemption provided for in this Code section, the unremarried surviving spouse shall furnish to the tax commissioner of the county of residence documents from the Secretary of Defense evidencing that such unremarried surviving spouse receives spousal benefits as a result of the death of such person's spouse who as

a member of the armed forces of the United States was killed or died as a result of a war or armed conflict while on active duty or while performing authorized travel to or from active duty during such war or armed conflict in which the armed forces of the United States engaged, whether under United States command or otherwise, pursuant to the Survivor Benefit Plan under Subchapter II of Chapter 73 of Title 10 of the United States Code or pursuant to any preceding or subsequent federal law which provides survivor benefits for spouses of members of the armed forces who were killed or who died as a result of any war or armed conflict.

(c) An unremarried surviving spouse filing for the exemption under this Code section shall be required to file with the tax commissioner information relative to marital status and other such information which the county board of tax assessors deems necessary to determine eligibility for the exemption. Each unremarried surviving spouse shall file for the exemption only once with the tax commissioner. Once filed, the exemption shall automatically be renewed from year to year, except that the county board of tax assessors may require annually that the holder of an exemption substantiate his or her continuing eligibility for the exemption. It shall be the duty of any person granted the homestead exemption under this Code section to notify the tax commissioner in the event that person for any reason becomes ineligible for such exemption.

(d) The exemption granted by this Code section shall be in lieu of and not in addition to any other exemption from ad valorem taxation for state, county, municipal, and school purposes which is equal to or lower in amount than such exemption granted by this Code section. If the amount of any other exemption from ad valorem taxation for state, county, municipal, and school purposes applicable to any resident qualifying under this Code section is greater than or is increased to an amount greater than the amount of the applicable exemption granted by this Code section, such other exemption shall apply and shall be in lieu of and not in addition to the exemption granted by this Code section.

(e) The exemptions granted by this Code section shall apply to the tax year beginning on January 1, 2001, and all tax years thereafter.

History.

Code 1981, § 48-5-52.1, enacted by Ga. L. 2000, p. 799, § 1; Ga. L. 2002, p. 868, § 1.

Cross references.

Gold Star license plates, § 40-2-85.3.

Editor's notes.

Ga. L. 2000, p. 799, § 2, provides that this Code section becomes effective January 1, 2001, only upon approval by the voters at the November 2000 general election. The constitutional amendment (Ga. L. 1999, p. 1275) was approved by a majority of the qualified voters voting at the general election held on November 7, 2000.

The state-wide referendum (Ga. L. 2002, p. 868, § 2), which provided for an ad valorem tax exemption from taxation for the surviving spouses of military per-

sonnel killed while serving in war or armed conflict was approved by a majority of the qualified voters voting at the November, 2002 general election.

Ga. L. 2002, p. 868, § 2, not codified by the General Assembly, provides that this Act shall apply to all tax years beginning on or after January 1, 2003.

RESEARCH REFERENCES

ALR.

Validity, construction and application of statutory and constitutional provisions exempting real property of persons in military service, or formerly in such service, from taxation, 7 A.L.R.7th 6.

48-5-53. Falsification of information required by Code Section 48-5-52; penalty.

(a) It shall be unlawful for any person willfully to falsify information required by the commissioner pursuant to Code Section 48-5-52, whether relating to age, income, or otherwise.

(b) Any person who violates subsection (a) of this Code section commits the offense of false swearing.

History.

Ga. L. 1974, p. 183, § 6; Code 1933, § 91A-9907, enacted by Ga. L. 1978, p. 309, § 2.

Cross references.

Penalty for false swearing, § 16-10-71.

48-5-54. Application of homestead exemptions to properties with multiple titleholders and properties held by administrators, executors, or trustees.

(a) The exemptions granted to the homestead pursuant to this part shall extend to and shall apply to those properties the legal title to which is vested in one or more titleholders if actually occupied by one or more of such owners as a residence. In such instances, such exemptions shall be granted to such properties if claimed in the manner provided by law by one or more of the owners actually residing on such property. Such exemptions shall also extend to those homesteads the title to which is vested in an administrator, executor, or trustee if one or more of the heirs or cestui que uses residing on such property claims the exemption in the manner provided by law. The provisions of this Code section shall also apply to exemptions granted to the homestead by any local law adopted after July 1, 1984, unless the local law expressly provides to the contrary.

(b) The failure to file properly the application and schedule shall not be cause for waiver of the exemption where such waiver arises because of an administrator's or executor's deed transferring the property to a surviving spouse. In such instances, the board of tax assessors shall give notice of its intent to deny the exemption as required by Code Section 48-5-49, and the surviving spouse may make application for the

amount of homestead exemption to which such applicant is entitled within 30 days from the date of the notice by the board of tax assessors. In the case of a base year assessed value homestead exemption, so long as the surviving spouse otherwise meets the requirements specified for such exemption and makes proper application under this subsection, upon approval of such application the exemption shall be continued with the same base year assessed value as had been established for the deceased spouse of such surviving spouse, unless otherwise provided by local law.

History.
Code 1981, § 48-5-54, enacted by Ga. L. 1984, p. 1058, § 6; Ga. L. 1985, p. 149, § 48; Ga. L. 1993, p. 1777, § 2; Ga. L. 2006, p. 1104, § 4/HB 81; Ga. L. 2017, p. 774, § 48/HB 323.
Editor's notes.
Ga. L. 2006, p. 1104, § 5/HB 81, not codified by the General Assembly, provides, in part, that the amendment to subsection (b) shall be applicable to all taxable years beginning on or after January 1, 2007.
The state-wide referendum (Ga. L. 2006, p. 1104, § 5/HB 81), which provided that, with respect to base year assessed value homestead exemptions, the surviving spouse of a deceased spouse who has been granted such a homestead exemption shall receive that exemption at the same base year valuation that applied to the deceased spouse so long as that surviving spouse continues to occupy the home as a residence and homestead, was approved by a majority of the qualified voters at the November 7, 2006 general election.

48-5-55. Continuation of constitutional exemptions from ad valorem taxation.

(a) Exemptions from ad valorem taxation granted by or pursuant to constitutional amendments other than general constitutional amendments of state-wide application, which exemptions were in effect on June 30, 1983, are continued in effect as statutory law until otherwise provided for by law.

(b) The provisions of this part shall not prohibit any otherwise lawful local Act from granting exemptions from ad valorem taxes other than state ad valorem taxes, which exemptions are in addition to or in place of the exemptions granted pursuant to this part.

History.
Code 1981, § 48-5-55, enacted by Ga. L. 1984, p. 1058, § 7.
Editor's notes.
Ga. L. 1984, p. 1058, § 9, not codified by the General Assembly, provided as follows: "In the event of any conflict between this Act and any other Act of the 1984 General Assembly the provisions of such other Act shall control over the provisions of this Act."

48-5-56. Notice of homestead exemptions from ad valorem taxation to accompany bill for ad valorem taxes on real property.

Each bill for ad valorem taxes on real property other than property

required to be returned to the commissioner shall contain or be accompanied by a notice in substantially the following form:

> "Certain persons are eligible for certain homestead exemptions from ad valorem taxation. In addition to the regular homestead exemption authorized for all homeowners, certain elderly persons are entitled to additional homestead exemptions. The full law relating to each exemption must be referred to in order to determine eligibility for the exemption. If you are eligible for one of these exemptions and are not now receiving the benefit of the exemption, you must apply for the exemption not later than (insert date) in order to receive the exemption in future years. For more information on eligibility for exemptions or on the proper method of applying for an exemption, you may contact the office of the county tax receiver or county tax commissioner, which is located at: (insert address) and which may be contacted by telephone at: (insert telephone number).
>
> If you feel that your property has been assigned too high a value for tax purposes by the board of tax assessors, you should file a tax return reducing the value not later than _____ in order to have an opportunity to have this value lowered for next year's taxes. Information on filing a return can be obtained from the county tax receiver or tax commissioner at the above address and telephone number."

History.
Code 1981, § 48-5-56, enacted by Ga. L. 1985, p. 1262, § 1.

Editor's notes.
Ga. L. 1985, p. 1262, § 3, not codified by the General Assembly, provided that that Act would apply to tax bills and assessment notices mailed on or after January 1, 1986.

Part 2

Tax Deferral for the Elderly

48-5-70. Short title.

This part shall be known and may be cited as the "Tax Deferral for the Elderly Act."

History.
Code 1933, § 91A-2401, enacted by Ga. L. 1980, p. 1707, § 1.

48-5-71. Definitions.

As used in this part, the term:

(1) "Gross household income" means all income, for all individuals

residing within the homestead, from whatever source derived including, but not limited to, the following sources:

(A) Compensation for services including fees, commissions, and similar items;

(B) Gross income derived from business;

(C) Gains derived from dealings in property;

(D) Interest;

(E) Rents;

(F) Royalties;

(G) Dividends;

(H) Alimony and separate maintenance payments;

(I) Income from life insurance and endowment contracts;

(J) Annuities;

(K) Pensions;

(L) Income from discharge of indebtedness;

(M) Distributive share of partnership gross income;

(N) Income from an interest in an estate or trust; and

(O) Federal old-age, survivor, or disability benefits.

(2) "Homestead exemption" means a homestead exemption pursuant to Code Section 48-5-44 with respect to state, county, and school purpose ad valorem taxes as provided in Code Section 48-5-44 and a homestead exemption pursuant to a local Act with respect to municipal ad valorem taxes for municipal purposes as provided in any such local Act.

(3) "Household" means an individual or group of individuals living together in a room or group of rooms as a housing unit.

(4) "Tax official" means the tax collector or tax commissioner with respect to state, county, and school purpose ad valorem taxes pursuant to Code Section 48-5-44 and the municipal governing authority or designee thereof with respect to municipal ad valorem taxes for municipal purposes pursuant to any local Act homestead exemption.

History. Code 1933, § 91A-2402, enacted by Ga. L. 1980, p. 1707, § 1; Ga. L. 2000, p. 533, § 1.

48-5-72. Homestead tax deferral for individuals 62 or older; demonstration of compliance with part.

(a) Any individual aged 62 or older who is entitled to claim a homestead exemption may elect to defer payment of all or part of the ad valorem taxes levied on such individual's homestead by filing an annual application for tax deferral with the appropriate tax official on or before April 1 of the year for which the deferral is sought. If the homestead for which a deferral is requested has an assessed value for purposes of ad valorem taxation of $50,000.00 or more, the deferral may apply only to the taxes on that portion of the assessed value which is $50,000.00 or less.

(b) It shall be the burden of each applicant for a deferral to demonstrate affirmatively his compliance with the requirements of this part.

History. Code 1933, § 91A-2403, enacted by Ga. L. 1980, p. 1707, § 1; Ga. L. 2000, p. 533, § 2.

48-5-72.1. Alternative to tax deferral authorized by Code Section 48-5-72; burden on applicant to demonstrate compliance.

(a) As an alternative to the tax deferral authorized by Code Section 48-5-72, any individual aged 62 or older residing within any county of this state having a population of 550,000 or more according to the United States decennial census of 1980 or any future such census who is entitled to claim a homestead exemption pursuant to Code Section 48-5-44 may elect to defer payment of all or any part of that portion of the ad valorem taxes levied on the individual's homestead which exceeds 4 percent of the individual's gross household income for the immediately preceding calendar year. An application for tax deferral under this Code section shall be filed annually with the tax collector or tax commissioner on or before April 1 of the year for which the deferral is sought. If an individual files for a tax deferral under this Code section, such individual shall not be authorized to file for a tax deferral under Code Section 48-5-72.

(b) The amount of the assessed value of the homestead and the amount of gross household income shall not limit the tax deferral authorized by this Code section. However, except for the provisions of Code Section 48-5-72 and paragraph (2) of Code Section 48-5-73, the provisions of this part shall apply to the tax deferral authorized by this Code section.

(c) It shall be the burden of each applicant for a deferral under this Code section to demonstrate affirmatively the applicant's compliance with this Code section and other provisions of this part.

History.
Code 1981, § 48-5-72.1, enacted by Ga. L. 1988, p. 466, § 1.

48-5-73. Limitations on grant of homestead tax deferral.

No tax deferral in any one year shall be granted pursuant to Code Section 48-5-72:

(1) If the total amount of deferred taxes and interest plus the total amount of all other unsatisfied liens on the homestead exceeds 85 percent of the fair market value of the homestead as shown on the county tax digest for the immediately preceding tax year;

(2) If the applicant's gross household income for the immediately preceding calendar year exceeds $15,000.00;

(3) If the homestead for which the deferral is sought is subject to any lien, the terms of which are dictated by federal law, rule, or regulation prohibiting deferral of taxes; or

(4) With respect to taxes levied to retire bonded indebtedness or for special assessments.

History.
Code 1933, § 91A-2404, enacted by Ga. L. 1980, p. 1707, § 1; Ga. L. 1981, p. 1857, § 24.

48-5-74. Application for homestead tax deferral; decision by tax official; appeal procedure.

(a) The application for deferral shall be made upon a form prescribed by the department and furnished by the appropriate tax official. The application form shall advise the applicant of the manner in which interest is computed. Each application form shall contain an explanation of the conditions to be met for approval and the conditions under which deferred taxes and interest become due, payable, and delinquent. Each application form shall clearly state that all deferrals pursuant to this part shall constitute a lien on the applicant's homestead.

(b) A form of oath shall be provided and shall be administered to the individual seeking the deferral. The oath may be administered by the appropriate tax official, any authorized deputy of the appropriate tax official, or any individual authorized by law to administer oaths.

(c)(1) The appropriate tax official shall consider each annual application for homestead tax deferral within 30 days of the date the application is filed or as soon as practicable thereafter. If the appropriate tax official finds that the applicant is entitled to the tax deferral, such official shall approve the application and file the application in the permanent records. If the appropriate tax official finds that the applicant is not entitled to the deferral, such official

shall send a notice of disapproval to the applicant giving the reasons therefor within 30 days of the filing of the application either by personal delivery or by registered or certified mail or statutory overnight delivery to the mailing address given by the applicant, and such official shall make a return on the original notice of the manner in which the notice was served on the applicant and shall file the return among the permanent records of such official's office. The original notice of disapproval sent to the applicant shall advise the applicant of the right to appeal the decision of the appropriate tax official to the board of equalization and shall inform the applicant of the procedure for filing an appeal.

(2) An appeal of the decision of the appropriate tax official to the board of equalization shall be in writing on a form prescribed by the department and furnished by the appropriate tax official. The appeal shall be filed with the board within 20 days after the applicant's receipt of the notice of disapproval. The board shall review the application and evidence presented to the appropriate tax official upon which the applicant based such applicant's claim for a tax deferral and, at the election of the applicant, shall hear the applicant in person or by agent in such applicant's behalf on such applicant's right to a homestead tax deferral. The board of equalization shall reverse the decision of the appropriate tax official and shall grant a homestead tax deferral to the applicant if in its judgment the applicant is entitled thereto, or it shall affirm the decision of the appropriate tax official. Such action by the board of equalization shall be final unless the applicant, appropriate tax official, or other lienholder files an appeal with the superior court of the county in which the property lies within 30 days from the date the taxpayer receives written notification of the decision of the board of equalization.

(d) Each application shall contain a list, and the current value, of all outstanding liens on the applicant's homestead.

(e) If proof of fire and extended coverage insurance has not been furnished with a prior application, each applicant shall furnish proof of such insurance in an amount which is in excess of the sum of all outstanding liens and deferred taxes and interest with a loss payable clause to the appropriate tax official.

History.

Code 1933, § 91A-2407, enacted by Ga. L. 1980, p. 1707, § 1; Ga. L. 1981, p. 1857, § 27; Ga. L. 2000, p. 533, § 3; Ga. L. 2000, p. 1589, § 3.

48-5-75. Rate of interest on amount of deferred taxes; time of accrual of interest on deferred taxes.

(a) The amount of taxes deferred pursuant to this part shall accrue interest until paid at three-fourths of the rate specified in Code Section 48-2-40.

(b) Interest on taxes deferred pursuant to this part in any year shall begin accruing on the date the taxes were due in that year.

History. Code 1933, § 91A-2405, enacted by Ga. L. 1980, p. 1707, § 1; Ga. L. 1981, p. 1857, § 25.

48-5-76. Deferred taxes and interest constitute prior lien; effect of award for year's support on liens for deferred taxes.

(a) The taxes and interest deferred pursuant to this part shall constitute a prior lien and shall attach as of the date and in the same manner and shall be collected as are other liens for taxes, as provided for under this title, but the deferred taxes and interest shall only be due, payable, and delinquent as provided in this part.

(b) Liens for taxes deferred under this part, except for any lien covering the then current tax year, shall not be divested by an award for year's support authorized pursuant to former Chapter 5 of Title 53 as such existed on December 31, 1997, if applicable, or Chapter 3 of Title 53.

History. Code 1933, § 91A-2406, enacted by Ga. L. 1980, p. 1707, § 1; Ga. L. 1981, p. 1857, § 26; Ga. L. 1998, p. 128, § 48; Ga. L. 2011, p. 752, § 48/HB 142.

48-5-77. Annual notification to property owner of sum of deferred taxes and interest outstanding.

Each year, at the time the tax bills are mailed, the appropriate tax official shall notify each property owner to whom a homestead tax deferral has been previously granted of the accumulated sum of deferred taxes and interest outstanding.

History. Code 1933, § 91A-2408, enacted by Ga. L. 1980, p. 1707, § 1; Ga. L. 1981, p. 1857, § 28; Ga. L. 2000, p. 533, § 4.

48-5-78. Change in ownership or use of, or failure to maintain insurance on, tax-deferred homestead; payment of deferred taxes, interest, and unsatisfied liens.

(a) In the event that there is a change in use of tax-deferred property so that the owner is no longer entitled to a homestead exemption for the

property, or if the owner fails to maintain the required fire and extended insurance coverage, the total amount of deferred taxes and interest for all previous years shall be due and payable either on the date on which the change in use occurs or on the date failure to maintain insurance occurs.

(b) In the event that there is a change in ownership of tax-deferred property, the total amount of deferred taxes and interest for all previous years shall be due and payable on the date the change in ownership occurs. When, however, the change in ownership is to a surviving spouse and the spouse is eligible for a homestead exemption on the property, the surviving spouse may continue the deferral of previously deferred taxes and interest pursuant to this part.

(c) During any year in which the total amount of deferred taxes, interest, and all other unsatisfied liens on a homestead exceeds 85 percent of the fair market value of the homestead, the appropriate tax official shall immediately notify the owner of the homestead that the portion of taxes and interest which exceeds 85 percent of the value of the homestead shall be due and payable within 30 days of receipt of the notice. Failure to pay the amount due shall cause the total amount of deferred taxes and interest also to become due and payable at the end of the 30 days.

(d) Each year, upon notification, each owner of property on which taxes and interest have been deferred shall submit to the appropriate tax official a list, and the current value, of all outstanding liens on the owner's homestead. Failure to respond to the notification within 30 days of its receipt shall cause the total amount of deferred taxes and interest to become due and payable at the end of the 30 days.

(e) All deferred taxes which are made due and payable by this Code section shall be delinquent and subject to interest in accordance with Code Section 48-5-75 at the end of 120 days following the date the deferred taxes become due and payable.

History. Code 1933, § 91A-2409, enacted by Ga. L. 1980, p. 1707, § 1; Ga. L. 1981, p. 1857, § 29; Ga. L. 2000, p. 533, § 5.

48-5-79. Prepayment of deferred taxes and accrued interest; partial payments.

(a) All or part of the deferred taxes and accrued interest may be paid at any time to the appropriate tax official by:

(1) The owner of the property or the spouse of the owner; or

(2) The next of kin of the owner, heir of the owner, child of the owner, or any person having or claiming a legal or equitable interest in the property, provided that no objection is made by the owner

within 30 days after the appropriate tax official notifies the owner of the fact that such payment has been tendered. Any payment made under this paragraph shall be deposited in a special escrow account for the 30 day period; and the appropriate tax official shall not make distribution of the amount under Code Section 48-6-74 while the funds are held in escrow.

(b) Any partial payment made pursuant to this Code section shall be applied first to accrued interest. By resolution of the appropriate county or municipal governing authority, a minimum amount of partial payment which may be accepted in the county or municipality pursuant to this part may be established. The required minimum payment shall not exceed $25.00.

History.
Code 1933, § 91A-2410, enacted by Ga. L. 1980, p. 1707, § 1; Ga. L. 1981, p. 1857, § 30; Ga. L. 1982, p. 3, § 48; Ga. L. 2000, p. 533, § 6.

48-5-80. Distribution of deferred tax and interest payments; duty to keep record of property and amount of payment.

When any deferred taxes or interest is collected, the appropriate tax official shall maintain a record of the payment, which record shall contain a description of the property and the amount of taxes or interest collected for the property. The appropriate tax official shall distribute payments received to the local tax jurisdictions to whom the taxes and interest are owed.

History.
Code 1933, § 91A-2411, enacted by Ga. L. 1980, p. 1707, § 1; Ga. L. 2000, p. 533, § 7.

OPINIONS OF THE ATTORNEY GENERAL

Distribution for accrued interest. — Interest accrued on delinquent taxes after collection by the tax commissioner but before the taxes are remitted to the state or locality should be distributed to the same political subdivision for which the underlying tax, penalty, and interest were collected from the taxpayer. 1987 Op. Att'y Gen. No. U87-6.

48-5-81. Payment by holder of deed to secure debt or by mortgagee; effect on right to foreclose.

If any holder of a deed to secure debt or any mortgagee elects to pay the taxes of an applicant who qualifies for and receives a tax deferral, such election shall not give the holder of the deed or the mortgagee the right to foreclose.

History.
Code 1933, § 91A-2415, enacted by Ga. L. 1980, p. 1707, § 1; Ga. L. 1981, p. 1857, § 32.

48-5-82. Prohibition of clauses preventing applications for homestead tax deferral; exceptions.

Except with respect to requirements dictated by federal law, rule, or regulation, no mortgage, deed to secure debt, or other agreement may contain a provision, clause, or statement which prohibits the owner from claiming a real property tax deferral on his homestead. Any such provision, clause, or statement executed on or after July 1, 1980, is void and unenforceable.

History.
Code 1933, § 91A-2412, enacted by Ga. L. 1980, p. 1707, § 1.

48-5-83. Construction of part.

Nothing in this part shall be construed to prevent the collection of personal property taxes which become a lien against tax-deferred property.

History.
Code 1933, § 91A-2413, enacted by Ga. L. 1980, p. 1707, § 1.

48-5-84. Penalties for willfully filing incorrect information.

(a) The following penalties shall be imposed on any person who willfully files information required under Code Sections 48-5-72, 48-5-72.1, and 48-5-78 which is incorrect:

(1) The person shall pay the total amount of taxes and interest deferred, which amount shall immediately become due;

(2) The person shall be disqualified from filing a homestead tax deferral application for the next three years; and

(3) The person shall pay a penalty of 25 percent of the total amount of taxes and interest deferred.

(b) Any person against whom the penalties prescribed in this Code section have been imposed may appeal the penalties imposed to the county board of equalization within 30 days after the penalties are imposed.

History.
Code 1933, § 91A-2414, enacted by Ga. L. 1980, p. 1707, § 1; Ga. L. 1981, p. 1857, § 31; Ga. L. 1988, p. 466, § 2.

ARTICLE 3
COUNTY TAX OFFICIALS AND ADMINISTRATION

RESEARCH REFERENCES

ALR.

Exemption from taxation of the property of a Y.M.C.A. or Y.W.C.A., 34 A.L.R. 1067; 81 A.L.R. 1453.

Homestead as subject to assessment for local improvements, 79 A.L.R. 712.

Reservation of option or conditions in conveyance which may operate to defeat or extinguish title of exempt grantee as affecting exemption of real estate from taxation, 98 A.L.R. 1372.

Constitutionality of statutes relieving property subject to assessment for improvements from all or part of such assessment, 105 A.L.R. 1169.

Validity and construction of statute or ordinance providing for relief of poor persons from taxes, 123 A.L.R. 597.

Constitutionality, construction, and application of statutes which exempt from taxation mineral land or land used or suitable for growing of certain products or which discriminate in favor of such land, 126 A.L.R. 724.

Enforcement against tax-exempt property of tax on nonexempt property or on owner of tax-exempt property, 159 A.L.R. 461.

Tax exemptions and the contract clause, 173 A.L.R. 15.

Statutory provision that specified fund or property shall be "exempt from taxation," "exempt from any tax," or the like, as exempting such property from estate or succession taxes, 47 A.L.R.2d 999.

Legislative power to exempt from taxation property, purposes, or uses additional to those specified in Constitution, 61 A.L.R.2d 1031.

When is corporation, community chest, fund, foundation, or club "organized and operated exclusively" for charitable or other exempt purposes under Internal Revenue Code, 69 A.L.R.2d 871.

PART 1
TAX RECEIVERS

Cross references.

Consolidation of offices of tax receiver and tax collector into office of tax commissioner, Ga. Const. 1983, Art. IX, Sec. I, Para. III.

48-5-100. [Reserved] Election of tax receivers; term of office; commission; vacancy.

History.

Ga. L. 1872, p. 80, § 8; Code 1873, § 917; Code 1882, § 917; Ga. L. 1894, p. 40, § 1; Civil Code 1895, § 931; Civil Code 1910, § 1194; Ga. L. 1914, p. 47, § 1; Code 1933, § 92-4601; Code 1933, § 91A-1301, enacted by Ga. L. 1978, p. 309, § 2; repealed by Ga. L. 1985, p. 489, § 1, effective July 1, 1985.

Editor's notes.

Ga. L. 1985, p. 489, § 1 repealed and reserved this Code section, effective July 1, 1985.

48-5-101. Oath and bond for tax receivers.

Each elected or appointed tax receiver before entering on the duties of his office shall take and subscribe to the following oath in addition to the oath required of all civil officers:

"I swear that I will truly and faithfully perform the duties of receiver of returns of taxable property, or of persons or things specially taxed in the county to which I am appointed, as required of me by the laws, and will before receiving returns carefully examine each, and will to the best of my ability carry out all the requirements made upon me by the tax laws. So help me God."

At the time he takes the oath, the tax receiver shall give bond and security in a sum equal to one-fourth of the amount of the state tax supposed to be due from the county for the year in which he gives bond. No tax receiver shall be required to give a bond exceeding $10,000.00. The amount of the bond shall be determined by the commissioner before being sent out to the several counties.

History.
Orig. Code 1863, § 842; Ga. L. 1863-64, p. 124, § 1; Code 1868, § 921; Code 1873, § 918; Code 1882, § 918; Civil Code 1895, § 932; Ga. L. 1896, p. 38, § 1; Ga. L. 1901, p. 23, § 1; Civil Code 1910, § 1195; Code 1933, § 92-4602; Code 1933, § 91A-1302, enacted by Ga. L. 1978, p. 309, § 2.
Cross references.
Official bonds, T. 45, C. 4.

JUDICIAL DECISIONS

No bond is required of a tax receiver to be payable to the county or to the probate judge. Fannin County v. Pack, 149 Ga. 703, 102 S.E. 166, 1920 Ga. LEXIS 379 (1920).

RESEARCH REFERENCES

C.J.S.
20 C.J.S., Counties, §§ 159, 160.

48-5-102. Liability of tax receivers and sureties; action on tax receiver's bond.

(a) Tax receivers and their sureties are liable on their bonds for all penalties or forfeitures they may incur under the law and for all losses, damages, or expenses the state may sustain by reason of their conduct.

(b) An action may be brought on a tax receiver's bond only when some emergency makes the action necessary.

History.
Orig. Code 1863, §§ 843, 864; Code 1868, §§ 922, 943; Code 1873, §§ 919, 940; Code 1882, §§ 919, 940; Civil Code 1895, §§ 933, 972; Civil Code 1910, §§ 1196, 1239; Code 1933, §§ 92-4608, 92-4610; Code 1933, § 91A-1304, enacted by Ga. L. 1978, p. 309, § 2.

JUDICIAL DECISIONS

Surety not liable for warrant exceeding legal commission when surety received none of such funds. — When no bond was given by the receiver to the ordinary (now county governing authority) or to the county, but the bond payable to the Governor as required by former Civil Code 1910, § 1195 (see now O.C.G.A. § 48-5-101) was given, conditioned generally for the faithful discharge of all the duties required of the receiver, and when the receiver, in the receiver's settlement with the ordinary, by mistake or otherwise, obtained a warrant on the county treasurer for a sum in excess of the receiver's legal commissions and received payment thereof out of county funds and retained that sum, and when the surety personally had never received any county funds, the ordinary (now county governing authority) was not authorized to issue an execution against the surety on the bond of the receiver. Fannin County v. Pack, 149 Ga. 703, 102 S.E. 166, 1920 Ga. LEXIS 379 (1920).

OPINIONS OF THE ATTORNEY GENERAL

When a tax receiver is erroneously paid too much commission, the receiver is liable to the state and county for the excess. 1952-53 Ga. Op. Att'y Gen. 305.

RESEARCH REFERENCES

Am. Jur. 2d.
72 Am. Jur. 2d, State and Local Taxation, §§ 769, 942, 943.
C.J.S.
20 C.J.S., Counties, § 211 et seq.
ALR.
Effect of receiver's failure to discharge tax liens, 39 A.L.R. 1415.

48-5-103. Duties of tax receivers.

It shall be the duty of the tax receiver to:

(1) Receive all tax returns within the time and in the manner prescribed by law;

(2) Make out and perfect the three digests plainly, legibly, and neatly in writing and in figures and to deposit the digests properly;

(3) Post and maintain a notice showing both the days on which his office is open for the purpose of receiving tax returns and also the office hours of his office;

(4) Receive tax returns at any time when a taxpayer applies to submit his returns, except that receipt at such time shall not reduce, eliminate, or otherwise affect any penalty, interest, or similar assessment otherwise due for any return not received as provided in paragraph (1) of this Code section;

(5) Designate, in the discretion of the tax receiver or tax commissioner, the board of assessors to receive tax returns as provided in paragraph (4) of this Code section or to receive applications for homestead exemptions from ad valorem tax, or both;

(6) Reserved;

(7) Enter upon the digests deposited with the governing authority of the county the county taxes levied according to law together with the rate percentage as fixed by the governing authority;

(8) Conform to the rules with which he is furnished and obey such orders as may be given by the commissioner;

(9) Enter upon the digest prepared by him an itemization of all properties exempt from taxation along with the owners of the properties and the reason the properties are exempt from taxation; and

(10) Perform all other duties the law requires and which necessarily under the law appertain to the office of tax receiver.

History.

Laws 1804, Cobb's 1851 Digest, p. 1045.; Laws 1807, Cobb's 1851 Digest, p. 1054.; Laws 1812, Cobb's 1851 Digest, p. 1057.; Laws 1813, Cobb's 1851 Digest, p. 1059.; Ga. L. 1851-52, p. 290, §§ 9-13; Code 1863, § 844; Code 1868, § 923; Code 1873, § 920; Code 1882, § 920; Civil Code 1895, § 934; Civil Code 1910, § 1197; Code 1933, § 92-4611; Ga. L. 1962, p. 533, §§ 1, 2; Ga. L. 1970, p. 641, § 1; Code 1933, § 91A-1305, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1990, p. 1324, §§ 1, 2; Ga. L. 1992, p. 2411, § 2; Ga. L. 1993, p. 577, § 1; Ga. L. 1999, p. 81, § 48.

JUDICIAL DECISIONS

Return of taxable property to county tax receiver. — All taxable property in Georgia is required to be returned by the taxpayer at the property's fair market value to the county tax receiver. Adams v. Smith, 415 F. Supp. 787, 1976 U.S. Dist. LEXIS 14487 (N.D. Ga. 1976), aff'd, 568 F.2d 1232, 1978 U.S. App. LEXIS 12338 (5th Cir. 1978).

No duty to collect or handle county funds. — Duties of receivers enumerated in this statute do not include the duty to collect or handle any county funds. Fannin County v. Pack, 149 Ga. 703, 102 S.E. 166, 1920 Ga. LEXIS 379 (1920).

OPINIONS OF THE ATTORNEY GENERAL

Duty of tax officials to cause under-returned property to be assessed. — Tax receiver, the tax collector, and the board of assessors have an independent duty to actively cause under-returned property to be placed on the digest and assessed for taxes. This duty applies to both real and personal property, including automobiles. 1963-65 Ga. Op. Att'y Gen. 113.

It is not proper for a county tax commissioner to store tax records at home. 1975 Op. Att'y Gen. No. U75-75.

RESEARCH REFERENCES

Am. Jur. 2d.
72 Am. Jur. 2d, State and Local Taxation, § 769.

C.J.S.
20 C.J.S., Counties, § 377 et seq.

48-5-104. Refusal by tax receiver or tax commissioner to receive returns; penalty.

(a) It shall be unlawful for any tax receiver or tax commissioner to refuse to receive any return of taxes when the return is properly tendered in the presence of a witness and within the time required by law.

(b) Any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor.

History.
Orig. Code 1863, § 846; Code 1868, § 925; Code 1873, § 922; Code 1882, § 922; Ga. L. 1895, p. 63, § 2; Penal Code 1895, § 274; Penal Code 1910, § 277; Code 1933, § 92-9918; Code 1933, § 91A-9910, enacted by Ga. L. 1978, p. 309, § 2.

RESEARCH REFERENCES

C.J.S.
85 C.J.S., Taxation, § 1148.

48-5-105. Tax return forms furnished by commissioner to tax receivers and tax commissioners.

The commissioner shall adopt and furnish to each tax receiver and tax commissioner a sufficient number of forms to enable the tax receiver or tax commissioner to take the returns of the taxpayers of his county. The forms shall be designed so as to make the items contained in the forms correspond as nearly as practicable to the items on the digests as furnished to the tax receivers and tax commissioners.

History.
Ga. L. 1884-85, p. 28, § 1; Ga. L. 1886, p. 24, § 1; Civil Code 1895, § 835; Civil Code 1910, § 1093; Code 1933, § 92-6301; Code 1933, § 91A-1306, enacted by Ga. L. 1978, p. 309, § 2.

48-5-105.1. Uniform tangible personal property tax forms.

(a) The commissioner shall adopt by rule, subject to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," an appropriate form or forms for use on a uniform basis throughout the state for the return of tangible personal property.

(b) All returns of tangible personal property shall be made pursuant to the form or forms adopted by the commissioner pursuant to subsection (a) of this Code section.

(c) The commissioner shall furnish each appropriate local tax official a sufficient number of the forms adopted pursuant to this Code section to take the returns of the taxpayers of his county.

(d) In the content of the form adopted pursuant to subsection (a) of this Code section, nothing shall be included that would take from the county boards of tax assessors the authority to see that all taxable property within the county is assessed and returned at fair market value.

History.
Code 1933, § 91A-1306.1, enacted by Ga. L. 1981, p. 1554, § 1.

RESEARCH REFERENCES

Am. Jur. 2d.
71 Am. Jur. 2d, State and Local Taxation, §§ 101 et seq., 123.

48-5-106. Time and manner of making and furnishing county tax digests.

The tax receiver or tax commissioner shall make out three legible county tax digests and when the tax returns have been finally adjusted and fixed as provided by law he shall furnish one copy of the revised and corrected digest to the commissioner, one to the county governing authority, and one to the tax collector.

History.
Ga. L. 1851-52, p. 291, § 13; Code 1863, § 781; Code 1868, § 845; Code 1873, § 849; Code 1882, § 849; Civil Code 1895, § 838; Civil Code 1910, § 1096; Ga. L. 1913, p. 123, § 1; Code 1933, § 92-6303; Code 1933, § 91A-1307, enacted by Ga. L. 1978, p. 309, § 2.

JUDICIAL DECISIONS

Return to the tax receiver by the arbitrators of their award is sufficient compliance with this statute, and it is the tax receiver's duty to accept the return when properly made and offered. Clarkson v. Hair, 207 Ga. 699, 64 S.E.2d 64, 1951 Ga. LEXIS 516 (1951).

48-5-107. [Reserved] Form and size, binding, and labeling of digests.

History.
Ga. L. 1913, p. 123, § 1; Code 1933, § 92-6304; Code 1933, § 91A-1308, enacted by Ga. L. 1978, p. 309, § 2; repealed by Ga. L. 2005, p. 529, § 1/HB 556, effective July 1, 2005.

Editor's notes.
Ga. L. 2005, p. 529, § 1/HB 556 repealed and reserved this Code section, effective July 1, 2005.

48-5-108. Entry of returns in digests.

Land and interests in land, together with the returns of personal estates and other interests subject to taxation, shall be returned and set down in the digest in separate columns according to the classification furnished to the tax receivers and tax commissioners by the commissioner in each year, and the aggregate value of the property shall be extended.

History.
Ga. L. 1851-52, p. 290, § 13; Code 1863, § 780; Code 1868, § 844; Code 1873, § 848; Code 1882, § 848; Civil Code 1895, § 837; Civil Code 1910, § 1095; Code 1933, § 92-6305; Code 1933, § 91A-1309, enacted by Ga. L. 1978, p. 309, § 2.

48-5-109. Accumulation of statistical information on taxpayers by tax receivers and tax commissioners.

Each tax receiver and tax commissioner shall accumulate statistical information, in regard to taxpayers, of such nature as they deem to be of benefit to the commissioner. Nothing contained in this Code section shall preclude or prohibit the commissioner from collecting such information as he deems necessary and beneficial in discharging the official duties of his office.

History.
Ga. L. 1966, p. 393, § 1; Code 1933, § 91A-1310, enacted by Ga. L. 1978, p. 309, § 2.

Part 2

Tax Collectors

Cross references.
Consolidation of offices of tax receiver and tax collector into office of tax commissioner, Ga. Const. 1983, Art. IX, Sec. I, Para. III.

48-5-120. [Reserved] Election of tax collectors; term of office; commission; vacancy.

History.
Ga. L. 1872, p. 80, § 8; Code 1873, §§ 927, 928; Code 1882, §§ 927, 928; Ga. L. 1894, p. 40, § 1; Civil Code 1895, §§ 942, 943; Civil Code 1910, §§ 1204, 1205; Ga. L. 1914, p. 47, § 1; Code 1933, § 92-4701; Code 1933, § 91A-1320, enacted by Ga. L. 1978, p. 309, § 2; repealed by Ga. L. 1985, p. 489, § 2, effective July 1, 1985.
Editor's notes.
Ga. L. 1985, p. 489, § 2 repealed and reserved this Code section, effective July 1, 1985.

48-5-121. Oath of office for tax collectors.

Each tax collector before entering on the duties of his office shall take and subscribe to the following oath in addition to the oath required of all civil officers:

"I, _____ , tax collector of the County of _____ , do swear that I will faithfully discharge the duties required of me by law as tax collector, and that I will diligently collect all taxes required by law for me to collect and faithfully pay these over to the persons authorized to receive the same. So help me God."

History.
Orig. Code 1863, § 853; Code 1868, § 932; Code 1873, § 929; Code 1882, § 929; Civil Code 1895, § 944; Civil Code 1910, § 1206; Code 1933, § 92-4702; Code 1933, § 91A-1321, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1992, p. 2411, § 3; Ga. L. 1995, p. 10, § 48.

RESEARCH REFERENCES

C.J.S.
20 C.J.S., Counties, § 159.

48-5-122. Bonds for tax collectors and tax commissioners.

(a) Tax collectors and tax commissioners shall give bond and security for 40 percent of the state tax supposed to be due from the county for the year for which the officer is required to give bond. The amount of bond shall be determined by the commissioner before being sent to the several counties. The required bond shall not exceed $50,000.00.

(b) The tax collector or tax commissioner shall give a bond with sufficient security payable to the governing authority of the county and conditioned upon the faithful performance of his duties as tax collector or tax commissioner for the collection of the county taxes. Each bond shall be for an amount to be fixed by the county governing authority. The bond required of the tax collector or tax commissioner on behalf of the county shall not exceed $100,000.00.

History.
Orig. Code 1863, § 854; Ga. L. 1863-64, p. 124, § 2; Code 1868, § 933; Code 1873, § 930; Code 1882, § 930; Civil Code 1895, § 945; Civil Code 1910, § 1207; Ga. L. 1925, p. 79, § 1; Ga. L. 1933, p. 47, § 1; Code 1933, § 92-4801; Ga. L. 1963, p. 253, § 1; Code 1933, § 91A-1323, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 34.
Cross references.
Official bonds, T. 45, C. 4.

JUDICIAL DECISIONS

Constitutionality of local bond requirements. — An Act requiring the sureties on bonds of county officers in a certain county to be guaranty companies is violative of Ga. Const. 1877, Art. I, Sec. IV, Para. I (see now Ga. Const. 1983, Art. III, § VI, Para. IV) in that it is a local law on a subject for which there was provision by an existing general law at the time of the statute's adoption. Maloy v. Williams, 140 Ga. 376, 78 S.E. 1054, 1913 Ga. LEXIS 138 (1913).

Effect of delay in executing bond. — When a tax collector does not give a bond until several months after the election, still, the bond then given stands in the place of the bond which should have been given. Therefore, when an execution was so issued and levied on the property of the sureties, it was error to dismiss the levy

on the ground that the bond was not a statutory bond. County of Fulton v. Clarke, 73 Ga. 665, 1884 Ga. LEXIS 197 (1884).

Tax collector's bond binds the tax collector for a tax for school purposes as for other county taxes. If it be too small, that may be reason for legislative change, but not for injunction. Smith v. Bohler, 72 Ga. 546, 1884 Ga. LEXIS 294 (1884).

Security on bond to Governor not liable for county taxes. — Securities upon a tax collector's bond, payable to the Governor, conditioned for the faithful performance of the Governor's duty in the collection of the general tax of the state, are not liable to the ordinary (now county governing authority) for the failure of the tax collector to collect and pay over the county tax. Barlow v. Ordinary of Sumter County, 47 Ga. 639, 1873 Ga. LEXIS 188 (1873).

Payment for default as to county taxes deemed voluntary for subrogation purposes. — Bond payable to the Governor does not cover defalcation of county funds, and if the sureties pay for such defalcations, it is a voluntary payment, and they are not entitled to subrogation to the county's right against a bank alleged to have aided the tax collector. McWhorter v. Bank of Menlo, 160 Ga. 894, 129 S.E. 433, 1925 Ga. LEXIS 288 (1925).

What constitutes breach of bond. — It is the duty of the tax collector, only when the tax collector is succeeded by another, to make final settlement for the taxes levied and chargeable for the year for which the tax collector was elected, and for the collection of which the tax collector has given bond. It is the failure to pay over taxes collected, not the date of the collection, which constitutes the breach of the bond. Fidelity Deposit Co. v. State, 148 Ga. 545, 97 S.E. 536, 1918 Ga. LEXIS 432 (1918).

Liability of surety for defalcations in regard to registration and licensing of motor vehicles. — Surety on a bond given by a tax commissioner under this statute conditioned for the faithful performance of the commissioner's official duties as a tax commissioner is not liable for the commissioner's defalcations committed in the performance of the commissioner's duties and obligations as agent of the state revenue commissioner for the registration and licensing of motor vehicles. Sanders v. United States Fid. & Guar. Co., 108 Ga. App. 849, 134 S.E.2d 831, 1964 Ga. App. LEXIS 1037 (1964).

No breach of bond when county authorities on notice of tax commissioner's actions. — When the proper county authorities were fully put on notice as to the nature and the character of the tax commissioner's claims by the commissioner's reports, which reports were duly made and filed with them as provided by law, a breach of the commissioner's official bond, conditioned for the faithful performance of the commissioner's duties, was not established as a matter of fact or of law. Keen v. Lewis, 215 Ga. 166, 109 S.E.2d 764, 1959 Ga. LEXIS 423 (1959).

OPINIONS OF THE ATTORNEY GENERAL

State revenue commissioner does not pay the premium on the bond that is payable to the state under this statute.

RESEARCH REFERENCES

C.J.S.
20 C.J.S., Counties, § 160.

48-5-123. Approval, filing, and recording of bonds.

Upon submission, each bond for county taxes required by Code

Section 48-5-122 must be approved by the governing authority of the county, filed in the governing authority's office, recorded in the book with other official bonds, and in all respects shall be an official bond.

History.
Orig. Code 1863, § 855; Code 1868, § 934; Code 1873, § 931; Code 1882, § 931; Civil Code 1895, § 946; Civil Code 1910, § 1208; Code 1933, § 92-4802; Code 1933, § 91A-1324, enacted by Ga. L. 1978, p. 309, § 2.
Cross references.
Official bonds, T. 45, C. 4.

RESEARCH REFERENCES

C.J.S.
20 C.J.S., Counties, § 160.

48-5-124. Liability of tax collectors, tax commissioners, and sureties; action on bond.

(a) Tax collectors, tax commissioners, and their sureties are liable on their bonds for all penalties or forfeitures they may incur under the law and for all losses, damages, or expenses the state may sustain by reason of their conduct.

(b) An action may be brought on a tax collector's or tax commissioner's bond only when some emergency makes the action necessary.

History.
Orig. Code 1863, § 864; Code 1868, § 943; Code 1873, § 940; Code 1882, § 940; Civil Code 1895, § 972; Civil Code 1910, § 1239; Code 1933, § 92-4810; Code 1933, § 91A-1327, enacted by Ga. L. 1978, p. 309, § 2.

RESEARCH REFERENCES

Am. Jur. 2d.
72 Am. Jur. 2d, State and Local Taxation, § 769 et seq.
C.J.S.
20 C.J.S., Counties, § 211 et seq.
ALR.
Personal liability of tax collector of state or its subdivision for illegal taxes collected, 14 A.L.R.2d 383.

48-5-125. Collection before bond given and oath taken; penalty.

(a) It shall be unlawful for any tax collector or tax commissioner to collect or attempt to collect any tax before he has given and had approved the necessary bond and security and has taken the oaths of office.

(b) Any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor.

History.
Laws 1826, Cobb's 1851 Digest, p. 1026.; Code 1863, § 839; Code 1868, § 918; Code 1873, § 916; Code 1882, § 916; Ga. L.

1895, p. 63, § 2; Penal Code 1895, § 273; Penal Code 1910, § 276; Code 1933, § 92-9917; Code 1933, § 91A-9909, enacted by Ga. L. 1978, p. 309, § 2.

Cross references.
Official bonds, T. 45, C. 4.

RESEARCH REFERENCES

Am. Jur. 2d.
72 Am. Jur. 2d, State and Local Taxation, §§ 769, 771.

48-5-126. Temporary appointee where tax collector or tax commissioner fails to give satisfactory bond.

(a) No tax collector or tax commissioner shall collect any county taxes until the bond required by Code Section 48-5-122 is given. If a tax collector or tax commissioner fails to give a bond or fails to give a bond satisfactory to the governing authority of the county, the governing authority may appoint some competent person to collect the county taxes.

(b) When an appointment is made as provided in subsection (a) of this Code section, the person appointed shall give the same bond as is required of a tax collector or tax commissioner. The appointee shall take an oath faithfully to collect and pay over the county taxes and in all respects shall have the same privileges, discharge the same duties, and incur the same penalties as the tax collector or tax commissioner would in collecting the county taxes.

History.
Laws 1823, Cobb's Digest, p. 1065; Code 1863, §§ 856, 857; Code 1868, §§ 935, 936; Code 1873, §§ 932, 933; Code 1882, §§ 932, 933; Civil Code 1895, §§ 947, 948; Civil Code 1910, §§ 1209, 1210; Code 1933, §§ 92-4803, 92-4804; Code 1933, § 91A-1325, enacted by Ga. L. 1978, p. 309, § 2.

Cross references.
Official bonds, T. 45, C. 4.

48-5-126.1. Training classes for county tax collectors and tax commissioners.

(a)(1) It shall be the responsibility of each county tax collector or tax commissioner in this state who has never served in such office prior to January 1, 1982, to attend 40 hours of training classes pertaining to all areas of county taxation, particularly property taxation and motor vehicle titling and registration, during the initial term of office served by such local tax official.

(2) Of the 40 hours of required training classes, 20 hours of such classes shall be attended during the period between the election of the local tax official and the date such official assumes office.

(3) The remaining 20 hours of required training classes shall be

attended during the first year of the local tax official's initial term of office (unless sickness, emergency, or some other unforeseen circumstance prohibits attendance during that year) at the seminar on county taxation and related matters held at the University of Georgia under the supervision of the Georgia Center for Continuing Education.

(b) In the event a county tax collector or tax commissioner who has never served in such office prior to January 1, 1982, assumes the office during a regular term of office, such local tax official shall be required to obtain special training and instruction from the Department of Revenue in lieu of the training requirements of subsection (a) of this Code section.

(c) Beginning January 1, 2005, each county tax collector or tax commissioner shall be required to attend 15 hours of training classes on county tax administration, property taxation, motor vehicle titling and registration, or related matters during each year of service as a county tax collector or tax commissioner. For the purposes of satisfying the requirements of this subsection, credit will be given for attendance of the county taxation seminar conducted by the University of Georgia under the supervision of the Georgia Center for Continuing Education or any seminar conducted by the Department of Revenue, the Georgia Association of Tax Officials, or other similarly qualified organization of affiliated tax officials, or certain management, supervisory, leadership, or accounting seminars that qualify for continuing education credits. This training shall be generally devoted to contemporary business and taxation practices and shall be germane to the duties and operational functions of the office of county tax collector or tax commissioner. This subsection shall not apply to a county tax collector or tax commissioner who is serving the first year of such official's initial term of office.

(d) The costs of attending the training classes required by this Code section shall be met by the payment of registration fees by each local tax official attending such classes. Each local tax official shall be reimbursed by such official's county for the amount of such fees and related travel expenses.

(e) The instructors for the training classes required by this Code section shall consist of representatives of the Department of Revenue, the Georgia Association of Tax Officials or other similarly qualified organization of affiliated tax officials, the Georgia Center for Continuing Education, or any other qualified persons with expertise in the field of county tax administration, property taxation, motor vehicle titling and registration, or related matters.

(f) The state revenue commissioner may adopt and enforce reasonable rules and regulations governing the establishment and administration of the training classes provided for by this Code section.

(g) The state revenue commissioner is authorized to work with officials and personnel of the Georgia Center for Continuing Education in establishing the training classes to be held at that institution.

(h) Any county tax collector or tax commissioner who, without good cause such as sickness or other emergency, fails to comply with the training requirements of this Code section may be subject to removal from office by the Governor.

History.
Ga. L. 1981, p. 1022, §§ 1-3; Ga. L. 1982, p. 3, § 48; Ga. L. 1986, p. 502, § 1; Ga. L. 2002, p. 415, § 48; Ga. L. 2004, p. 938, § 1; Ga. L. 2005, p. 334, § 29-1/HB 501; Ga. L. 2007, p. 47, § 48/SB 103.

RESEARCH REFERENCES

Am. Jur. 2d.
72 Am. Jur. 2d, State and Local Taxation, § 619.

48-5-127. Duties of tax collectors.

(a) It shall be the duty of the tax collector to:

(1) Collect diligently and pay promptly the funds allowed the state by law and the county taxes to the commissioner and the county treasurer, respectively;

(2) Have his insolvent lists allowed in the manner provided by law before final settlement with the commissioner;

(3) Post and maintain a notice showing both the days on which his office is open for the purpose of collecting taxes and also the office hours of his office;

(4)(A) Pay the tax receiver his commissions upon the production of the commissioner's receipt for his digest together with a specification therein of the amount of commissions to which he is entitled; and

(B) Submit the tax receiver's receipts together with his receipts thereon to the commissioner before he shall be allowed credits for such commissions;

(5) Conform to such rules as may be furnished and obey such orders as may be given by the commissioner;

(6) Issue executions as provided by law for all taxes due the state or any county remaining unpaid after the time provided by law for payment;

(7) Keep a permanent qualification or voters' book and make up the registration lists, as provided by Article 6 of Chapter 2 of Title 21; and

(8) Perform all other duties that the law requires and which necessarily under the law appertain to the office of tax collector.

(b) The tax collector or tax commissioner and his agents, servants, and employees shall not be obligated to furnish a written receipt for the payment of any tax or license fee to any taxpayer or person making the payment when the payment is paid by check, money order, or other instrument payable or endorsed to bearer, payee, or endorsee, except when the taxpayer or person making the payment on behalf of the taxpayer demands a receipt.

History.

Laws 1804, Cobb's 1851 Digest, p. 1046.; Laws 1812, Cobb's 1851 Digest, p. 1058.; Ga. L. 1857, p. 131, §§ 7-15; Ga. L. 1858, p. 102, § 1; Ga. L. 1862-63, p. 56, § 2; Code 1863, § 858; Code 1868, § 937; Ga. L. 1873, p. 5, §§ 3, 4; Code 1873, § 934; Ga. L. 1875, p. 120, § 1; Ga. L. 1878-79, p. 78, § 2; Code 1882, § 934; Civil Code 1895, § 949; Civil Code 1910, § 1211; Code 1933, § 92-4901; Ga. L. 1962, p. 532, § 1; Code 1933, § 91A-1328, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1980, p. 1390, § 1; Ga. L. 1981, p. 1906, § 1; Ga. L. 1982, p. 3, § 48; Ga. L. 1982, p. 996, §§ 1, 4; Ga. L. 1992, p. 2411, § 4.

JUDICIAL DECISIONS

Duty to act with diligence in collection of taxes. — Diligence in collection requires that the tax commissioner do all things and take all steps which the commissioner may reasonably and lawfully do. Sanders v. Fulton County, 111 Ga. App. 434, 142 S.E.2d 293, 1965 Ga. App. LEXIS 994 (1965).

Tax commissioner is presumed to have posted the notice required by this statute until the contrary appears. The tax commissioner is not required to accept taxes at any other time. Allen v. Thomas, 225 Ga. 650, 171 S.E.2d 132, 1969 Ga. LEXIS 598 (1969).

Use of forms without tax collector's official signature. — When tax collector for convenience causes executions against tax defaulters to be printed, bearing the collector's official signature in print, but leaves blank spaces in which to write the names of persons against whom and the amount for which each should be issued, and places them in the collector's office, and the clerk fills out such executions appropriately against individual tax defaulters, and with the knowledge and consent of the tax collector they are delivered to the sheriff for enforcement, such action is a sufficient issuance of such executions delivered to the sheriff, and they and the levy thereof by the sheriff are not void on the ground that the printed papers were not signed by the hand of the tax collector or by someone in the collector's presence at the collector's request. Federal Land Bank v. Moultrie Banking Co., 178 Ga. 150, 172 S.E. 455, 1934 Ga. LEXIS 1 (1934).

OPINIONS OF THE ATTORNEY GENERAL

Justice of the peace plays no part in the actual collection of back taxes, either county or state. 1969 Op. Att'y Gen. No. 69-263.

Duty of tax officials to cause under-returned property to be assessed. — Tax receiver, the tax collector, and the board of assessors has an independent duty to actively cause under-returned property to be placed on the digest and assessed for taxes. This duty applies to both real and personal property, including automobiles. 1963-65 Ga. Op. Att'y Gen. 113.

Commissions on taxes which have not been collected. — Contrary to

existing Georgia cases, the tax receiver is entitled to commissions on taxes which have not been collected. 1952-53 Ga. Op. Att'y Gen. 305.

It is not proper for a county tax commissioner to store tax records at home. 1975 Op. Att'y Gen. No. U75-75.

Collection of motor vehicle registration fees in Baldwin County. — Since Ga. L. 1964, Ex. Sess., p. 382 gives the governing authority of Baldwin County the authority to require motor vehicle registration fees, collect these fees, and promulgate the necessary rules and regulations, the governing authority can require the tax collector to collect the fees. 1968 Op. Att'y Gen. No. 68-51.

RESEARCH REFERENCES

Am. Jur. 2d.

72 Am. Jur. 2d, State and Local Taxation, § 769 et seq.

ALR.

Necessity of publishing list of lands delinquent for nonpayment of taxes, and effect of failure to publish list, 81 A.L.R. 1246.

48-5-128. Transfer of duties from outgoing to incoming tax collector or tax commissioner.

When the tax collector or tax commissioner of any county is succeeded by another, the outgoing tax collector or tax commissioner shall no longer be authorized to collect taxes or enforce executions issued for the collection of taxes. All uncompleted duties in respect to the collection of taxes and enforcement of executions shall pass to the successor tax collector or tax commissioner as provided by Code Section 48-5-164.

History.

Ga. L. 1872, p. 80, § 8; Ga. L. 1873, § 1320; Code 1882, § 1320; Civil Code 1895, § 98; Ga. L. 1898, p. 41, § 1; Civil Code 1910, § 112; Ga. L. 1933, p. 78, § 10; Code 1933, § 92-4703; Code 1933, § 91A-1322, enacted by Ga. L. 1978, p. 309, § 2.

48-5-128.1. Appointment in certain counties of chief deputy tax commissioner; filling vacancy in office of chief deputy; succession to office of tax commissioner.

(a) In all counties of this state having a population of 550,000 or more according to the United States decennial census of 1950 or any future such census and in which there exists the office of tax commissioner, the tax commissioner shall be required to appoint from among the assistants or deputies in his office a chief deputy. Upon making the appointment, the tax commissioner shall notify the county governing authority, which shall record a copy of the appointment upon its minutes. The tax commissioner shall appoint the chief deputy at his will and pleasure, such appointment in no event to extend beyond the term of office of the person making the appointment.

(b) If the person appointed as chief deputy resigns, if the appointment is revoked, or if for any other reason the appointment is vacant, the tax commissioner shall appoint a new chief deputy and shall notify

the county governing authority of the new appointment. The county governing authority shall record a copy of the new appointment upon its minutes.

(c) If a vacancy occurs in the office of tax commissioner in any county specified in subsection (a) of this Code section, the person appointed as chief deputy by the tax commissioner and certified to the county governing authority, upon qualifying for the office of tax commissioner in the manner provided by law, shall succeed to the office of tax commissioner and fill the unexpired term of the tax commissioner of the county.

History.
Code 1981, § 48-5-128.1, enacted by Ga. L. 1982, p. 2107, § 49.

48-5-129. Allowance of insolvent lists; reissuance of executions before allowance of insolvent lists.

(a) The insolvent lists of a tax collector or tax commissioner shall be allowed only by the county governing authority upon a return of the tax execution with entry by the proper legal officer of "no property."

(b) The county governing authority, if it has any reason to suspect the return of the officer to be incorrect in any particular, shall cause the execution to be sent out again for collection. Before the county governing authority allows any insolvent list, the officer in whose hands the tax fi. fas. have been placed for collection shall take an oath that he has made every effort in his power to collect the fi. fas. and that he verily believes the taxpayers on the list have no property from which the tax can be collected.

History.
Orig. Code 1863, §§ 791, 792; Code 1868, §§ 855, 856; Code 1873, §§ 859, 860; Ga. L. 1878-79, p. 180, § 1; Code 1882, §§ 859, 860; Civil Code 1895, §§ 860, 861; Civil Code 1910, §§ 1118, 1119; Code 1933, §§ 92-7102, 92-7103; Code 1933, §§ 91A-1329, 91A-1330, enacted by Ga. L. 1978, p. 309, § 2.

RESEARCH REFERENCES

ALR.
Waiver of right of government to preference in the assets of insolvent debtor by taking security, 24 A.L.R. 1495; 83 A.L.R. 1119.

48-5-130. Allocation of tax on insolvent lists; contents of list of insolvent taxpayers.

In making out the insolvent list, the county governing authority shall state how much is allowed the tax collector on account of the state tax and how much is allowed on the county tax and shall furnish the

commissioner an alphabetical list of the names of insolvent taxpayers, the militia district in which each resides, and the amount of each fi. fa.

History.
Ga. L. 1861, p. 76, §§ 15, 19; Code 1868, § 857; Code 1873, § 861; Code 1882, § 861; Civil Code 1895, § 862; Ga. L. 1900, p. 42, § 1; Civil Code 1910, § 1120; Code 1933, § 92-7104; Code 1933, § 91A-1331, enacted by Ga. L. 1978, p. 309, § 2.

RESEARCH REFERENCES

ALR.
Waiver of right of government to preference in the assets of insolvent debtor by taking security, 24 A.L.R. 1495; 83 A.L.R. 1119.

48-5-131. Retention of copy of insolvent list by county governing authority; collection of executions.

When the tax collector or tax commissioner has his insolvent list credited, it shall be the duty of the county governing authority allowing the list to retain a copy of the list and return the executions to the tax collector, who shall cause them to be placed in the hands of a levying officer for collection, to be levied and sales under the executions to be made in accordance with the laws governing sales under executions issued upon common-law judgments. The levying officer shall be entitled to the same fees as he is entitled to for other executions, plus 2 1/2 percent. After deducting the commission, the levying officer shall pay the balance to the tax collector or tax commissioner, who shall transmit the county's taxes to the county treasury and the state's taxes to the Office of the State Treasurer.

History.
Ga. L. 1857, p. 132, § 15; Ga. L. 1861, p. 76, § 19; Code 1868, § 858; Code 1873, § 862, 886a; Ga. L. 1880-81, p. 45, § 1; Code 1882, §§ 862, 886a; Civil Code 1895, §§ 863, 897; Civil Code 1910, §§ 1121, 1156; Code 1933, § 92-7105; Code 1933, § 91A-1332, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1982, p. 3, § 48; Ga. L. 1993, p. 1402, § 18; Ga. L. 2010, p. 863, § 2/SB 296.

JUDICIAL DECISIONS

Payment to county commissioner not effective as payment of fieri facias. — When an individual member of a board of commissioners of roads and revenues (now board of commissioners) received from a tax debtor money with which to pay a tax fieri facias against the latter, the individual received it as agent of the taxpayer, and the fieri facias was not paid until the money reached the officer having the power to collect, such board member having no such authority conferred on the member by law. Taylor v. Aultman, 177 Ga. 524, 170 S.E. 355, 1933 Ga. LEXIS 345 (1933).

RESEARCH REFERENCES

ALR.
Waiver of right of government to preference in the assets of insolvent debtor by taking security, 24 A.L.R. 1495; 83 A.L.R. 1119.

48-5-132. Disposition of insolvent lists.

When insolvent lists are allowed, they shall be entered on the minutes, and the county governing authority shall furnish the tax collector certified copies of the lists and shall state in the certificates when and by what tribunal the lists were allowed.

History.
Orig. Code 1863, § 791; Code 1868, § 859; Code 1873, § 863; Code 1882, § 863; Civil Code 1895, § 864; Civil Code 1910, § 1122; Code 1933, § 92-7106; Code 1933, § 91A-1333, enacted by Ga. L. 1978, p. 309, § 2.

RESEARCH REFERENCES

ALR.
Waiver of right of government to preference in the assets of insolvent debtor by taking security, 24 A.L.R. 1495; 83 A.L.R. 1119.

48-5-133. Crediting tax collectors and tax commissioners with insolvent lists.

Tax collectors and tax commissioners under any circumstances shall not be allowed or credited with insolvent lists after executions are issued against them for taxes until they go to the commissioner and settle fairly and fully with him.

History.
Laws 1812, Cobb's 1851 Digest, p. 1059; Code 1863, § 793; Code 1868, § 861; Code 1873, § 865; Code 1882, § 865; Civil Code 1895, § 866; Civil Code 1910, § 1124; Code 1933, § 92-7107; Code 1933, § 91A-1334, enacted by Ga. L. 1978, p. 309, § 2.

RESEARCH REFERENCES

ALR.
Waiver of right of government to preference in the assets of insolvent debtor by taking security, 24 A.L.R. 1495; 83 A.L.R. 1119.

48-5-134. Extension of time to complete digests and pay taxes.

The time by which digests shall be completed, the taxes paid, and penalties incurred shall not apply in the case of tax receivers, tax collectors, and tax commissioners who have not been in office long enough to complete the work by the time specified. In all such cases, the officials shall comply with the requirements of the commissioner.

History.
Laws 1843, Cobb's 1851 Digest, p. 1074; Code 1863, § 794; Code 1868, § 862; Code 1873, § 866; Code 1882, § 866; Civil Code 1895, § 867; Civil Code 1910, § 1125; Code 1933, § 92-7108; Code 1933, § 91A-1335, enacted by Ga. L. 1978, p. 309, § 2.

48-5-135. Effect of collection or attempted collection of taxes before filing digest with commissioner.

If any tax collector or tax commissioner collects or attempts to collect any taxes before the tax receiver has completed and transmitted his digest to the commissioner, unless specially so ordered by the commissioner or allowed by special enactment, he shall forfeit to the state double the amount collected or attempted to be collected. Each forfeiture shall be collected by execution issued by the commissioner.

History.
Orig. Code 1863, § 838; Code 1868, § 917; Code 1873, § 915; Code 1882, § 915; Civil Code 1895, § 929; Civil Code 1910, § 1192; Code 1933, § 92-5601; Code 1933, § 91A-1346, enacted by Ga. L. 1978, p. 309, § 2.

48-5-136. [Reserved] Schedule of defaulters.

History.
Ga. L. 1857, p. 130, § 7; Code 1863, § 796; Code 1868, § 864; Code 1873, § 868; Code 1882, § 868; Civil Code 1910, § 1127; Code 1933, § 92-7110; Code 1933, § 91A-1336; Ga. L. 1978, p. 309, § 2; Ga. L. 1981, Ex. Sess., p. 8; Ga. L. 1992, p. 6, § 48; repealed by Ga. L. 1992, p. 2411, § 5, effective April 20, 1992.
Editor's notes.
Ga. L. 1992, p. 2411, § 5 repealed and reserved this Code section, effective April 20, 1992.

48-5-137. Tax collectors and tax commissioners as ex officio sheriffs.

(a) Tax collectors and tax commissioners, upon the written consent of the sheriff of the county involved, may be ex officio sheriffs insofar as to enable them to collect taxes due the state and county by levy and sale under tax execution. Tax collectors or tax commissioners acting as ex officio sheriffs as provided in this Code section shall not be allowed to turn over any tax execution to the sheriffs or to any other levying officials of this state except when it becomes necessary for the purpose of enforcing the execution by sending it to a county other than that in which the execution was issued. Each tax collector or tax commissioner by virtue of his office shall have full power and authority to levy all tax executions issued by him as effectively as if done by the sheriffs of the counties.

(b) Each tax collector or tax commissioner when acting as an ex officio sheriff shall have full power to bring property to sale for the purpose of collecting taxes due the state and county. Additionally, he shall have all the powers vested in sheriffs for the advertisement of the

property for sale, for the sale of the property, and for the making and delivery of all due and proper conveyances and bills of sale. All sales made by a tax collector or tax commissioner acting as an ex officio sheriff shall be valid and shall carry the title to property sold as fully and completely as if made by the sheriff of the county.

(c) All acts done and performed by tax collectors or tax commissioners by virtue of this Code section shall be done in conformity with the law in force governing the performance of the act done. All advertisements of property to be sold by a tax collector or tax commissioner acting as an ex officio sheriff, when the advertisements are required by law to be published in a newspaper, shall be published in the newspaper in which the sheriff's advertisements are published.

(d) In carrying out this Code section, tax collectors or tax commissioners shall have the power and authority to appoint one or more deputies with all the powers of the tax collectors or tax commissioners while acting as ex officio sheriffs in the levy and collection of taxes. Each deputy shall be required to give bond as may be required by the tax collectors or tax commissioners under the law. Each tax collector or tax commissioner shall be responsible for the acts of the deputy or deputies in the same manner and to the same degree as sheriffs are liable for the acts of their deputies.

(e) This Code section is supplemental to and cumulative of any general law of local application providing for tax collectors or tax commissioners to be ex officio sheriffs for the purposes provided in this Code section and is not in lieu of any such law to the extent that any such law conflicts with this Code section.

(f) With respect to a tax collector or tax commissioner or his deputy acting pursuant to this Code section in the county in which he holds office, the requirement of written consent of the sheriff shall not apply in any county with a population of not less than 300,000 according to the United States decennial census of 1970 or any future such census.

(g) Each tax collector or tax commissioner who is compensated on a salary basis and who is authorized to act as an ex officio sheriff under this Code section and whose office performs substantially all of the duties of the sheriff with respect to tax executions shall be entitled to a salary of $416.94 per month for his or her service as ex officio sheriff. Such compensation shall be in addition to any other compensation to which such tax commissioner or tax collector is entitled. Such additional compensation shall not be paid to any tax commissioner who is compensated solely by the fee system of compensation; but such compensation shall be paid to any tax commissioner who is compensated in part by fees and in part by a salary. Such compensation shall be paid in equal monthly installments from county funds.

History.

Code 1933, § 92-4901.1, enacted by Ga. L. 1972, p. 822, § 1; Code 1933, § 91A-1337, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1981, p. 713, § 1; Ga. L. 1982, p. 999, §§ 2, 4; Ga. L. 1985, p. 1115, § 1; Ga. L. 1985, p. 1492, § 1; Ga. L. 1994, p. 237, § 2; Ga. L. 1998, p. 1159, § 18; Ga. L. 2001, p. 902, § 19; Ga. L. 2006, p. 568, § 13/SB 450; Ga. L. 2019, p. 1015, § 9/SB 171; Ga. L. 2024, p. 1052, § 5(14)/SB 448, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, in subsection (f), substituted "any county with a population of not less than 300,000" for "counties within the following population brackets" and substituted a period for a colon at the end; deleted former paragraph (f)(1), which read: "Not less than 300,000;"; and deleted former reserved paragraphs (f)(2) through (f)(5).

JUDICIAL DECISIONS

Levying officer as necessary or indispensable party in action to cancel sheriff's deed. — Since levying officials under this statute have been held not to be necessary parties in proceedings to cancel a sheriff's deed to a purchaser of land by virtue of a sale under a tax fi. fa., there is clearly no authority upon which they could be found to be indispensable parties. Stith v. Hudson, 231 Ga. 520, 202 S.E.2d 392, 1973 Ga. LEXIS 765 (1973).

Tax commissioner's liability. — Tax commissioner, who was an ex-officio sheriff, under O.C.G.A. § 48-5-137, could be subject to a money rule petition filed by the holder of county tax executions for refusing to pay those executions from the excess proceeds of tax sales of property; the holder could collect on the holder's execution from any property in which the taxpayer had an interest, which included the excess proceeds from the tax sale, before any payments to the taxpayer, under O.C.G.A. § 48-2-56(a) and (b), so it was error for the commissioner to refuse to pay the holder's claims. Scott v. Vesta Holdings I, LLC, 275 Ga. App. 196, 620 S.E.2d 447, 2005 Ga. App. LEXIS 930 (2005).

Property owner's claim for damages based on a county tax commissioner's failure to properly send notices required by O.C.G.A. §§ 9-13-13, 48-3-3, 48-3-9(a), and 48-4-1 was barred by sovereign immunity; O.C.G.A. §§ 15-13-2 and 48-5-137 did not render the tax commissioner liable as an ex-officio sheriff because the notices did not constitute a "false return" or legal neglect to make a "proper return". Raw Properties, Inc. v. Lawson, 335 Ga. App. 802, 783 S.E.2d 161, 2016 Ga. App. LEXIS 87 (2016), cert. denied, No. S16C1076, 2016 Ga. LEXIS 556 (Ga. Sept. 6, 2016).

OPINIONS OF THE ATTORNEY GENERAL

Officers not eligible for membership in annuity and benefit fund. — Tax collectors and tax commissioners who become ex officio sheriffs under the provisions of O.C.G.A. § 48-5-137 are not thereby rendered "peace officers" eligible for membership in the Peace Officers' Annuity and Benefit Fund. 1982 Op. Att'y Gen. No. U82-9.

Principle of mandamus applies to require a county sheriff to levy and foreclose upon delinquent taxpayers when the sheriff has not consented in writing that the tax commissioner or tax collector perform such duty under this statute. 1973 Op. Att'y Gen. No. U73-16.

48-5-137.1. Advertising as additional cost of execution.

The costs of all advertisements of property to be sold under tax execution by a sheriff, or tax collector or tax commissioner acting as an

ex officio sheriff, when such advertisements are required by law shall be an additional cost of the execution to be satisfied voluntarily by the defendant or by levy and sale of the property.

History.
Code 1981, § 48-5-137.1, enacted by Ga. L. 1987, p. 1049, § 1.

48-5-138. Cashbook to be kept by tax collectors and tax commissioners; recording disbursements; audit.

(a) Each tax collector and tax commissioner shall keep a record in the form of a cashbook in which he shall record all items of cash collected for taxes, the date collected, the amount collected, and the name of the person for whose taxes the cash was collected. All of such items, amounts, entries, and dates shall be entered on the debit side upon the lines and in the columns designated in the record book. The entries required to be made by this subsection shall be entered on the book kept for such purpose within 15 days after payment of taxes is received.

(b) Each tax collector and tax commissioner shall record in the cashbook all items of cash paid out by him to the authorities of the state or counties, designating whether to the state or the counties, to whom paid for either the state or county, the date each amount was paid, and the amount paid. All of such items, amounts, entries, and dates shall be entered on the credit side in the lines and columns designated in the record book.

(c) The tax collector or tax commissioner shall present the record book to the county governing authority at the times prescribed by law for making his report to the governing authority so as to permit checking and auditing of the book, to have the endorsement of the name and authority of the auditing official entered in the book, and to have the date of the entry noted. The checking, auditing, and signature of the governing authority auditing official in the record book shall at no time be construed as, nor is it intended to be, a binding or final settlement with the tax collector or tax commissioner. Each check, audit, and signature shall be evidence only that he has reported to the county governing authority as required by law and that the report checks and is in accord with the record book that the tax collector or tax commissioner is required to keep.

(d) The tax collector or tax commissioner shall make and file an accounting as required by Code Section 48-5-154. The record book shall be preserved by the tax collector or tax commissioner in the tax collector's or tax commissioner's office. The commissioner shall furnish the tax collectors and tax commissioners the book required pursuant to this Code section at the state's expense.

(e) Instead of the cashbook or record book specified in this Code section, a tax collector or tax commissioner is authorized to maintain a computerized list showing the information required under this Code section, which list shall be deemed to be such cashbook or record book for the purposes of this article.

History.
Ga. L. 1910, p. 121, §§ 1-4; Code 1933, §§ 92-4902, 92-4903, 92-4904, 92-4905; Ga. L. 1968, p. 1115, § 1; Code 1933, § 91A-1338, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1990, p. 1324, §§ 3, 4; Ga. L. 2011, p. 99, § 92/HB 24.
Editor's notes.
Ga. L. 2011, p. 99, § 101/HB 24, not codified by the General Assembly, provides that the amendment of this Code section by that Act shall apply to any motion made or hearing or trial commenced on or after January 1, 2013.
Law reviews.
For article, "Evidence," see 27 Ga. St. U. L. Rev. 1 (2011).
For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 1 (2011).

RESEARCH REFERENCES

Am. Jur. 2d.
72 Am. Jur. 2d, State and Local Taxation, § 769.
ALR.
Provisions of tax statute as to time for performance of acts by boards or officers as mandatory or directory, 151 A.L.R. 248.

48-5-139. Failure by tax collector or tax commissioner to keep cashbook; penalty.

(a) It shall be unlawful for a tax collector or tax commissioner to fail or refuse to keep a cashbook, as prescribed by this article.

(b) Any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor.

History.
Ga. L. 1910, p. 123, § 5; Code 1933, § 92-9916; Code 1933, § 91A-9908, enacted by Ga. L. 1978, p. 309, § 2.

48-5-140. Accountability of tax collectors and tax commissioners to county governing authority; effect of failure to account; appointment of successor.

(a) It shall be the duty of the tax collector or tax commissioner to render annually to the county governing authority an account of his official actions respecting the county taxes and funds and to make his books, vouchers, accounts, and all things pertaining to his office available for inspection by the county governing authority.

(b)(1) The failure or refusal of any tax collector or tax commissioner to render the account required by subsection (a) of this Code section after being so notified by the governing authority of the county shall

constitute malpractice in office. Conviction for such malpractice shall subject the offender to removal from office.

(2) Pending the continuance of the failure or refusal of the tax collector or tax commissioner to render the account after the notice by the governing authority, the governing authority shall suspend the tax collector or tax commissioner from duty and an interim tax collector or tax commissioner shall be appointed as provided in Code Section 48-5-211 to collect the county taxes during the suspension and until the question of removal can be passed upon and decided by the proper tribunal. Proper bonds as provided by law shall be taken from the person so appointed.

(3) The power given by this Code section to inquire into the affairs of the tax collector or tax commissioner and to suspend him from office in certain cases shall in no way affect the tax collector's or tax commissioner's own liability or that of the sureties of his official bond.

History.
Ga. L. 1882-83, p. 82, §§ 1, 2; Civil Code 1895, §§ 418, 419; Civil Code 1910, §§ 527, 528; Code 1933, §§ 92-4906, 92-4907; Code 1933, § 91A-1339, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1992, p. 2411, § 7.

JUDICIAL DECISIONS

County governing authority acts in judicial or quasi-judicial capacity. — In a proceeding under former Civil Code 1910, § 527 or § 528 (see now O.C.G.A. § 36-6-22 or O.C.G.A. § 48-5-140), the ordinary (now county governing authority) acted in a judicial or quasi-judicial capacity. Riner v. Flanders, 173 Ga. 43, 159 S.E. 693, 1931 Ga. LEXIS 256 (1931).

RESEARCH REFERENCES

ALR.
Provisions of tax statute as to time for performance of acts by boards or officers as mandatory or directory, 151 A.L.R. 248.

48-5-141. Periodic payment to proper officials of money collected by tax collector or commissioner, sheriff, or constable.

(a) The tax collector or tax commissioner, sheriff, and constables in each county having a population of 30,000 or more shall each week pay over to the proper county officials as required by law the county taxes including, but not limited to, any interest, penalties, or other amounts due the county which they have collected during the week. Such payment shall be made at the same time as the report required by Code Section 48-5-142 and shall be for the period covered by the report.

(b) The tax collector or tax commissioner, sheriff, and constables in each county having a population of less than 30,000 shall every two

weeks pay over to the proper county officials as required by law the county taxes including, but not limited to, any interest, penalties, or other amounts due the county which they have collected during the two weeks. Such payment shall be made at the same time as the report required by Code Section 48-5-142 and shall be for the period covered by the report.

History.
Ga. L. 1890-91, p. 105, § 1; Civil Code 1895, § 955; Civil Code 1910, § 1222; Ga. L. 1925, p. 81, § 3; Code 1933, §§ 92-4910, 92-4913; Code 1933, § 91A-1340, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1984, p. 962, § 1; Ga. L. 1986, p. 10, § 48.

JUDICIAL DECISIONS

Fiduciary relationship not created. — Tax commissioner who pled guilty to violations of O.C.G.A. §§ 48-5-141, 48-5-142, and 48-5-148 was not a fiduciary of the county for purposes of deciding bankruptcy dischargeability. These Code sections created a bailor/bailee relationship, and did not designate the commissioner as a fiduciary, or impose fiduciary-like duties. Utica Mut. Ins. Co. v. Johnson, 203 B.R. 1017, 1997 Bankr. LEXIS 7 (Bankr. S.D. Ga. 1997).

OPINIONS OF THE ATTORNEY GENERAL

Distribution of accrued interest. — Interest accrued on delinquent taxes after collection by the tax commissioner but before the taxes are remitted to the state or locality should be distributed to the same political subdivision for which the underlying tax, penalty, and interest were collected from the taxpayer. 1987 Op. Att'y Gen. No. U87-6.

RESEARCH REFERENCES

Am. Jur. 2d.
72 Am. Jur. 2d, State and Local Taxation, § 769.

48-5-142. Weekly report of taxes collected by tax collector or tax commissioner to county governing authority.

(a) The tax collector or tax commissioner in each county having a population of 30,000 or more shall make a weekly report to the governing authority of the county of the aggregate amount of taxes collected for the state and the amount collected for the county and shall swear that the report is a correct report of the taxes collected.

(b) The tax collector or tax commissioner in each county having a population of less than 30,000 shall make a report every two weeks to the county governing authority of the aggregate amount of taxes collected during the two-week period. Each report shall separately specify the amount collected for the state and the amount collected for the county. The tax collector or tax commissioner shall swear that the report is a correct report of the taxes collected.

History.
Ga. L. 1890-91, p. 105, § 4; Ga. L. 1892, p. 89, § 1; Civil Code 1895, § 956; Civil Code 1910, § 1223; Ga. L. 1925, p. 79, § 4; Code 1933, §§ 92-4911, 92-4914; Code 1933, § 91A-1341, enacted by Ga. L. 1978, p. 309, § 2.

JUDICIAL DECISIONS

Fiduciary relationship not created. — Tax commissioner who pled guilty to violations of O.C.G.A. §§ 48-5-141, 48-5-142, and 48-5-148 was not a fiduciary of the county for purposes of deciding bankruptcy dischargeability. These Code sections created a bailor/bailee relationship, and did not designate the commissioner as a fiduciary, or impose fiduciary-like duties. Utica Mut. Ins. Co. v. Johnson, 203 B.R. 1017, 1997 Bankr. LEXIS 7 (Bankr. S.D. Ga. 1997).

RESEARCH REFERENCES

ALR.
Provisions of tax statute as to time for performance of acts by boards or officers as mandatory or directory, 151 A.L.R. 248.

48-5-143. Monthly remittance of state taxes to commissioner.

(a) Except as provided by subsection (b) of this Code section, the tax collector or tax commissioner of each county shall pay over to the commissioner at least once a month all state taxes which he has collected. Each monthly payment shall be made on or before the fifteenth day of each calendar month.

(b) A tax collector or tax commissioner may pay over state taxes which he has collected on a more frequent basis than once a month when he so desires.

History.
Ga. L. 1925, p. 79, § 2; Code 1933, § 92-4912; Ga. L. 1977, p. 1162, § 3; Code 1933, § 91A-1342, enacted by Ga. L. 1978, p. 309, § 2.

RESEARCH REFERENCES

Am. Jur. 2d.
72 Am. Jur. 2d, State and Local Taxation, § 769.

48-5-144. Furnishing report forms by commissioner.

The commissioner shall have prepared and shall furnish the several tax collectors and tax commissioners suitable forms on which to make their reports.

History.
Ga. L. 1896, p. 35, § 5; Civil Code 1910, § 1217; Code 1933, § 92-4915; Code 1933, § 91A-1343, enacted by Ga. L. 1978, p. 309, § 2.

48-5-145. Effect of neglect of duty by tax collector or tax commissioner.

If any tax collector or tax commissioner fails or refuses to make payment, if he makes a false return, or if he fails or refuses to file the report as required, it shall be the duty of the commissioner or the county governing authority to report such facts to the Governor. The Governor shall cause a notice of the failure, refusal, or making of a false return to be served on the tax collector or tax commissioner for him to show cause why he should not be removed from office. If the tax collector or tax commissioner fails to make a proper excuse within ten days, it shall be the duty of the Governor to remove the offending official.

History.
Ga. L. 1892, p. 89, § 1; Civil Code 1895, § 957; Civil Code 1910, § 1224; Ga. L. 1925, p. 79, § 5; Code 1933, § 92-4916; Code 1933, § 91A-1344, enacted by Ga. L. 1978, p. 309, § 2.

Cross references.
Liability of officer charged with collection of taxes for failure to note in title register delinquency in payment of taxes or assessments charged upon registered land, § 44-2-176.

RESEARCH REFERENCES

ALR.
Provisions of tax statute as to time for performance of acts by boards or officers as mandatory or directory, 151 A.L.R. 248.

48-5-146. Receipt of checks or money orders by tax commissioner or tax collector; liability for unpaid checks or money orders; penalty.

(a) No tax commissioner or tax collector shall be personally liable for unpaid checks or money orders received in payment of taxes and license fees when:

(1) The county governing authority has authorized the receipt of personal, company, certified, treasurer's, or cashier's checks, or bank, postal, or express money orders in payment of taxes and license fees;

(2) The tax commissioner or tax collector has received such checks or money orders to the extent and under the conditions prescribed by the governing authority;

(3) The tax commissioner or tax collector has made written demand for payment by the taxpayer on whose account the unpaid check or money order was tendered within 30 days after the notification to the tax commissioner or tax collector of the dishonor of the check or money order; such demand shall be sent by certified mail or statutory overnight delivery to the taxpayer's last address as it appears on the latest records of the tax commissioner or tax collector; and

(4) In all cases where payment is not received within 20 days after the mailing of the demand specified in paragraph (3) of this subsection, the tax commissioner or tax collector has initiated within 40 days after such mailing at least one of the rights and remedies allowed him by law for the enforcement of the collection and payment of taxes and license fees.

(b) A check or money order, when authorized, shall be deemed to be payment as of the time it is received by the tax commissioner or tax collector, provided the check or money order is duly paid upon presentation to the drawee. The time of receipt as shown by the records of the tax commissioner or tax collector shall be prima facie correct as to the time of actual receipt.

(c) If a check or money order so received is not duly paid, the person on whose account the check or money order was tendered shall remain liable for the payment of the tax or license fee and for all legal penalties and additions to the same extent as if the check or money order had not been tendered. Delay in the presentation of a check or money order for payment shall not remove this liability.

(d) If any certified check, treasurer's check, cashier's check, or money order so received is not duly paid, the tax commissioner or tax collector, in addition to the right to exact payment from the party originally obligated for the payment, shall have a lien for the amount of the check or money order upon all assets of the bank or trust company on which drawn or for the amount of the money order upon all the assets of the issuer of the money order. The amount of the lien shall be paid out of the assets of the bank, trust company, or issuer in preference to any other claims whatsoever against the bank, trust company, or issuer.

(e) If any check or money order tendered to the tax commissioner or tax collector as payment of any tax or license fee is not duly paid when presented to the drawee or issuer for payment, in addition to any other penalties provided by law, there shall be paid as a penalty by the person who tendered the check or money order upon notice and demand of the tax commissioner or tax collector, in the same manner as tax, an amount equal to 1 percent of the amount of the check or money order, except that, if the amount of the check or money order is less than $500.00, the penalty under this Code section shall be the lesser of $5.00 or the amount of the check or money order. This subsection shall not apply if the person who tendered the check or money order shows to the satisfaction of the tax commissioner or tax collector that it was tendered in good faith and with reasonable cause to believe it would be duly paid.

History.

Ga. L. 1976, p. 1044, § 1; Code 1933, § 91A-1347, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1982, p. 3, § 48; Ga. L. 2000, p. 1589, § 3.

Cross references.
Commercial paper, T. 11, A. 3.

RESEARCH REFERENCES

Am. Jur. 2d.
72 Am. Jur. 2d, State and Local Taxation, § 769, 779.

48-5-147. Use of lock box system for mailed tax returns and payments.

(a) The governing authority of each county, municipality, and other political subdivision of the state may enter into a contract for a lock box system with any bank in this state to have the bank receive, process, and deposit mailed tax returns and payments.

(b) In any county of this state in which the county tax collector or tax commissioner receives mailed tax payments or otherwise collects taxes for the county as well as for one or more municipalities lying wholly or partially within the county, the county tax collector or tax commissioner may enter into a contract for a lock box system described by subsection (a) of this Code section on behalf of the county and any such municipality, provided such contract is approved by the governing authority of the county and by the governing authority of any municipality whose tax payments are covered by such contract. A tax collector or tax commissioner and any such officer's surety shall not be liable for any tax payments mailed directly to a bank as the depository under a contract for a lock box system authorized by this subsection. Any contract for a lock box system under this subsection shall require a detailed accounting by the depository of all tax payments received by the depository and shall provide for such other matters as may be necessary to fully protect the interests of the taxpayers, tax officials, and local governing authorities affected by the contract for a lock box system.

History.
Ga. L. 1977, p. 672, § 1; Code 1933, § 91A-1348, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1987, p. 374, § 1.

48-5-148. Interest on unpaid taxes; rate; record of interest and taxes collected.

(a)(1) Except as otherwise expressly provided for by law, ad valorem taxes due the state or any county remaining unpaid on December 20 in each year shall bear interest at the rate specified in Code Section 48-2-40 from December 20, and each tax collector and tax commissioner shall collect the interest on unpaid taxes and account for such interest in his final settlement.

(2) The minimum interest payment on unpaid taxes shall be $1.00.

(3) In the discretion of the tax commissioner, a taxpayer shall have the option of receiving notices of taxes due via electronic transmission in lieu of, or in addition to, receiving a paper bill via first-class mail. The tax bill shall be transmitted to the taxpayer via email, with delivery or read receipt requested, in portable document format using all email addresses provided by the taxpayer, and the date shown on such transmission shall serve as a postmark. In any instance where such transmission proves undeliverable, the tax commissioner shall mail a bill to the address of record as found in the county board of tax assessors' records. Each taxpayer shall be afforded 60 days from date of postmark to make full payment of taxes due before the taxes shall bear interest as provided in this Code section. The time period for payment provided for by this paragraph shall not apply in those counties in which a lesser time has been provided by law.

(b) Each tax collector and tax commissioner shall keep a record showing the amount of interest collected from delinquent or defaulting taxpayers, the date upon which the taxes and interest were collected, and the name of the person from whom the tax and interest were collected.

(c) Any provision of law except Code Section 48-5-511 to the contrary notwithstanding, in each county having a population of not less than 71,500 nor more than 73,000 according to the United States decennial census of 1990 or any future such census, all ad valorem taxes due the county and the state remaining unpaid on November 20 of each year shall bear interest at the rate specified in Code Section 48-2-40 from November 20. On November 20 of each year, the local tax officials shall issue executions against each delinquent or defaulting taxpayer in their respective counties and shall otherwise comply with subsection (a) of Code Section 48-5-161.

(d) Any provision of law except Code Section 48-5-511 to the contrary notwithstanding, in each county having a population of not less than 71,500 and not more than 75,000 according to the United States decennial census of 1990 or any future such census, all ad valorem taxes due the county and the state remaining unpaid on October 20 of each year shall bear interest at the highest legal rate provided by law from that date. On October 20 of each year, the local tax officials shall issue executions against each delinquent or defaulting taxpayer in their respective counties and shall otherwise comply with subsection (a) of Code Section 48-5-161.

History.

Ga. L. 1917, p. 197, §§ 1, 2; Code 1933, §§ 92-5001, 92-5003; Ga. L. 1970, p. 446, § 1; Ga. L. 1972, p. 3921, § 2; Ga. L. 1975, p. 835, § 1; Code 1933, § 91A-1349, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 538, § 3; Ga. L. 1980, p. 10, § 13; Ga. L. 1981, p. 1857, §§ 17, 18; Ga. L. 1982, p. 575, §§ 3, 10; Ga. L. 1983, p. 3, § 37; Ga. L. 1984, p. 22, § 48; Ga. L. 1992, p. 1189, § 1; Ga. L. 1992, p. 1211, § 1; Ga. L. 2015, p. 1219, § 8/HB 202; Ga. L. 2024, p. 1052, § 5(15)/SB 448, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substituted "email" for "e-mail" twice in paragraph (a)(3); and substituted "except Code Section 48-5-511" for "(except Code Section 48-5-511)" near the beginning of subsection (c).

JUDICIAL DECISIONS

Fiduciary relationship not created. — Tax commissioner who pled guilty to violations of O.C.G.A. §§ 48-5-141, 48-5-142, and 48-5-148 was not a fiduciary of the county for purposes of deciding bankruptcy dischargeability. These Code sections created a bailor/bailee relationship, and did not designate the commissioner as a fiduciary, or impose fiduciary-like duties. Utica Mut. Ins. Co. v. Johnson, 203 B.R. 1017, 1997 Bankr. LEXIS 7 (Bankr. S.D. Ga. 1997).

Statute applies to taxes legally due. — Statute, providing for the payment of interest on taxes remaining unpaid after December 20 in each year, applies to taxes that are legally due for each year. Alexander v. Blackmon, 233 Ga. 235, 210 S.E.2d 736, 1974 Ga. LEXIS 726 (1974).

Interest on taxes owed by bank which accrued after bank's failure. — When a bank fails and goes into the hands of the superintendent of banks (now Department of Banking and Finance) for liquidation, the assets in the superintendent's (now department's) possession in the next year are subject to ad valorem taxation for that year, according to the general rule as to taxation. Taxes so accruing, after the bank fails, are payable as such, with interest from maturity, and do not constitute a mere expense of administration to be paid by the superintendent (now department) without interest. Tharpe v. Gormley, 184 Ga. 605, 192 S.E. 211, 1937 Ga. LEXIS 589 (1937).

Postmarks are not required on tax bills or notices mailed out by the county; the reference to the "date of the postmark" in paragraph (a)(3) is merely for the purpose of providing a computational marker for measuring when the county is authorized to charge interest after the statutory due date and, therefore, even though taxpayers received tax notices without postmarks, the county was authorized to assess penalties and interest on taxes more than 90 days past due. Averett v. Troup County, 219 Ga. App. 74, 464 S.E.2d 32, 1995 Ga. App. LEXIS 931 (1995), cert. denied, No. S96C0397, 1996 Ga. LEXIS 383 (Ga. Feb. 9, 1996).

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Counties mailing tax bills October 22 or later. — Paragraph (a)(3) supersedes the December 20 due date in counties which mail their tax bills on or after October 22, assuming that a period of less than 60 days has not been provided for by law. 1982 Op. Att'y Gen. No. U82-19.

RESEARCH REFERENCES

Am. Jur. 2d.

72 Am. Jur. 2d, State and Local Taxation, § 742.

C.J.S.

85 C.J.S., Taxation, §§ 1738, 1750 et seq.

48-5-149. [Reserved] Rate of interest and penalty on delinquent ad valorem taxes in certain counties; application during appeal of assessment.

History.
Ga. L. 1980, p. 353, § 1; Ga. L. 1983, p. 752, § 1; repealed by Ga. L. 1994, p. 237, § 2, effective July 1, 1994.

Editor's notes.
Ga. L. 1994, p. 237, § 2 repealed and reserved this Code section, effective July 1, 1994.

48-5-150. Alternative provisions for interest and final settlements; rate of interest; reports; forfeiture of commissions.

(a) The governing authority of any county, with the approval of the tax collector or tax commissioner, may provide by resolution that all taxes due the state or the county remaining unpaid either on November 15 or December 1 in each year as specified in such resolution shall bear interest at the rate specified in Code Section 48-2-40 from the date specified in the resolution. The tax collector or tax commissioner shall collect the interest on the unpaid taxes and account for such interest in his final settlement.

(b) On the date specified in the resolution in each year in the counties in which the governing authority, with the approval of the tax collector or tax commissioner, has changed the date on which state and county taxes are due, the tax collector or tax commissioner shall furnish to the commissioner and to the county governing authority a report showing the amount of state taxes and the amount of county taxes remaining unpaid on the tax digest. Every 30 days thereafter until a final settlement is made with both the state and the county, the tax collector or tax commissioner shall furnish to the commissioner and the county governing authority a report showing the amount of state taxes collected and the amount of county taxes collected after the date specified in the resolution to the date of rendering the report. Each report shall show also the amount of interest collected from delinquent or defaulting taxpayers.

(c) Each tax collector or tax commissioner in counties in which the governing authority, with the approval of the tax collector or tax commissioner, has changed the date on which state and county taxes are due shall make final settlements with both the state and the county within four months after the date specified in the resolution of the year in which the taxes become due, unless the time for the settlement is extended by the commissioner as authorized by Code Section 48-5-154. Upon failure of any tax collector or tax commissioner to make final settlement within the time provided in this subsection, the tax collector or tax commissioner shall forfeit one-fourth of his commissions unless some good and sufficient reason rendering the making of the final settlement impossible is given.

History.
Code 1933, §§ 92-5001.1, 92-5002.1, 92-5004.1, enacted by Ga. L. 1975, p. 1252, §§ 1-3; Code 1933, § 91A-1357, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1980, p. 10, § 14; Ga. L. 1990, p. 289, § 1.

RESEARCH REFERENCES

Am. Jur. 2d.
72 Am. Jur. 2d, State and Local Taxation, § 742.

48-5-151. Interest payments by tax collectors and tax commissioners.

All interest collected by tax collectors and tax commissioners shall be paid by them to the state and county at the time and in the manner that taxes are required to be paid.

History.
Ga. L. 1917, p. 197, § 5; Code 1933, § 92-5005; Code 1933, § 91A-1358, enacted by Ga. L. 1978, p. 309, § 2.

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Distribution of accrued interest. — Interest accrued on delinquent taxes after collection by the tax commissioner but before the taxes are remitted to the state or locality should be distributed to the same political subdivision for which the underlying tax, penalty, and interest were collected from the taxpayer. 1987 Op. Att'y Gen. No. U87-6.

48-5-152. Effect of failure to collect interest and make reports and settlements; penalty.

The failure or refusal of any tax collector or tax commissioner to carry out any of the provisions contained in Code Section 48-5-148, 48-5-150, 48-5-151, or 48-5-153 shall constitute malpractice in office. A conviction for such malpractice shall subject the offender to removal from office.

History.
Ga. L. 1917, p. 197, § 6; Code 1933, § 92-5006; Code 1933, § 91A-1359, enacted by Ga. L. 1978, p. 309, § 2.

RESEARCH REFERENCES

C.J.S.
67 C.J.S., Officers and Public Employees, § 235 et seq.

48-5-153. Reports of unpaid taxes by tax collector and tax commissioner to commissioner and county governing authority; final settlement period.

(a) On December 20 in each year each tax collector or tax commissioner shall furnish to the commissioner and to the county governing

authority, upon the request of either, a report showing the amount of state taxes and the amount of county taxes remaining unpaid on the tax digest and, every 30 days thereafter until a final settlement is made with both the state and the county, shall furnish to the commissioner and the governing authority, upon the request of either, a report showing the amount of state taxes collected and the amount of county taxes collected from December 20 to the date of rendering the report. Each report shall also show the amount of interest collected from the delinquent or defaulting taxpayers.

(b) Each tax collector or tax commissioner shall make final settlements of accounts with both the state and the county and shall pay over all amounts due the state and county within four months from December 20 of the year in which taxes become due, unless the time for the settlement is extended by the commissioner as authorized by Code Section 48-5-154. Upon failure of any tax collector or tax commissioner to make final settlement and payment within the time provided in this subsection, the tax collector or tax commissioner shall forfeit one-fourth of his commissions unless some good and sufficient reason rendering the timely making of the final settlement impossible is given.

(c) With respect to any county operating on a fiscal year basis, the settlement period of subsection (b) of this Code section shall be within four months following the end of such fiscal year.

History.

Ga. L. 1917, p. 197, §§ 2, 4; Ga. L. 1933, p. 78, § 10; Code 1933, §§ 92-5002, 92-5004; Code 1933, § 91A-1350, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 37; Ga. L. 1990, p. 1324, § 5; Ga. L. 1991, p. 668, § 2.

Cross references.

Duty of officers charged with collection of taxes to note in title register any delinquent taxes or assessments charged upon registered land, § 44-2-176.

RESEARCH REFERENCES

Am. Jur. 2d.

72 Am. Jur. 2d, State and Local Taxation, § 769.

ALR.

Effect of certificate or statement of treasurer or other public official regarding unpaid taxes or assessments against specific property, 107 A.L.R. 568; 21 A.L.R.2d 1273.

Effect of certificate, statement (or refusal thereof), or error by tax collector or other public officer regarding unpaid taxes or assessments against specific property, 21 A.L.R.2d 1273.

48-5-154. Annual accounting reports; citations for default, negligence, or bad faith; approval in whole or in part.

Annually on or before April 20, unless the time is extended by the commissioner for cause which the commissioner deems sufficient, each tax collector or tax commissioner shall make and file an accounting with the commissioner as to state taxes and with the governing

authority of his county as to county taxes for the preceding year, in which the accounts of the tax collector or tax commissioner shall be fully stated and uncollected items on the digest of the preceding year shall be listed in detail. The tax collector or tax commissioner shall set opposite each item the reason why the item has not been collected and the name of the officer in whose hands the tax execution is or, if no execution has been issued, the reason why it has not been issued, and such further information as the commissioner or the county governing authority, as the case may be, shall require. If the commissioner or the county governing authority finds that all collections made up to the date of the accounting have been properly accounted for by the tax collector or tax commissioner, an order to that effect shall be entered by the commissioner or the county governing authority. If it appears that there is any default in accounting for collections made, the tax collector or tax commissioner and his sureties shall be promptly cited as provided by law to make good the default. The commissioner and the county governing authority shall have the jurisdiction and power to correct all errors in the digests, to order abatement or cancellation of taxes erroneously assessed, and to make other adjustments in the digests of a similar nature and to reflect the same in the account as stated. Regarding uncollected items not relieved against in the manner stated, the commissioner or the county governing authority, as the case may be, shall ascertain whether failure to collect the item or any part of the item has been due to negligence or bad faith on the part of the tax collector or tax commissioner. If the commissioner or the county governing authority is of the opinion that there is sufficient evidence of negligence or bad faith to justify a citation as for a default, a citation shall be issued against the tax collector or tax commissioner and his sureties. Otherwise, and unless a default appears in the proper accounting for collections made by the tax collector or tax commissioner, the accounts of the tax collector or tax commissioner shall be approved. If an account is disapproved in part, if there are uncollected items with respect to the failure of collection of which no negligence or bad faith on the part of the tax collector or tax commissioner appears, the commissioner or county governing authority shall approve them and in detail shall state in what part the account is approved and in what part and for what reasons the account is not approved. An approved account or approved part of an account shall be prima facie conclusive of its correctness as of the date of the approval and, unless its correctness is challenged in a citation or in an action brought within two years from the date of the approval, shall be absolutely conclusive of the correctness of the account or of the approved parts of the account as of the date of the approval.

History. Ga. L. 1933, p. 78, § 10; Code 1933, § 89-827; Code 1933, § 91A-1351, enacted by Ga. L. 1978, p. 309, § 2.

RESEARCH REFERENCES

Am. Jur. 2d.
72 Am. Jur. 2d, State and Local Taxation, § 769.

ALR.
Effect of certificate or statement of treasurer or other public official regarding unpaid taxes or assessments against specific property, 107 A.L.R. 568; 21 A.L.R.2d 1273.

Provisions of tax statute as to time for performance of acts by boards or officers as mandatory or directory, 151 A.L.R. 248.

Effect of certificate, statement (or refusal thereof), or error by tax collector or other public officer regarding unpaid taxes or assessments against specific property, 21 A.L.R.2d 1273.

48-5-155. Removal or suspension of tax collector or tax commissioner failing to account or defaulting; opportunity for hearing; citation.

If any tax collector or tax commissioner fails to submit his account for settlement by April 20 or within such further time, not exceeding four months, as is allowed by the commissioner or, if on examination of the account, defaults are ascertained which are not promptly cured by the tax collector or tax commissioner, the commissioner or the county governing authority shall report such facts to the Governor who, after giving the tax collector or tax commissioner opportunity to be heard (unless the tax collector or tax commissioner absconds or absents himself from the state or otherwise cannot be given notice), shall have the power to suspend him or remove him from office; and the commissioner and the county governing authority shall proceed to cite the delinquent tax collector or tax commissioner and his surety.

History.
Ga. L. 1933, p. 78, § 10; Code 1933, § 89-828; Code 1933, § 91A-1352, enacted by Ga. L. 1978, p. 309, § 2.

RESEARCH REFERENCES

C.J.S.
67 C.J.S., Officers and Public Employees, § 227 et seq.

48-5-156. Surety's right to demand release from future liability; office vacated by failure to provide new bond; liability of new surety.

The surety on the bond of the tax collector or tax commissioner shall also have the right to report the failure to account for the default alleged by the commissioner or the county governing authority to the Governor and to demand a release from future liability on the bond of the tax collector or tax commissioner. The Governor, upon such demand, shall order the tax collector or tax commissioner to make a new bond or bonds within a time to be set, not exceeding 30 days. Upon the tax collector's or tax commissioner's default in so doing, the Governor shall

declare the officer removed and the office vacant. Upon the office being declared vacant or upon the new bond being given, the moving surety shall be discharged from all future liability. Unless the Governor requires that the sureties on the new bond shall assume concurrent liability with the sureties on the old bond, the sureties on the new bond shall be liable only for future defaults and the sureties on the old for the preexisting defaults.

History.
Ga. L. 1933, p. 78, § 10; Code 1933, § 89-829; Code 1933, § 91A-1353, enacted by Ga. L. 1978, p. 309, § 2.

RESEARCH REFERENCES

ALR.
Liability of sureties on bond of tax collector for illegal or unauthorized acts of latter toward individual taxpayer, 127 A.L.R. 857.

48-5-157. Transfer of executions to tax collector, tax commissioner, or surety held liable for failure to collect taxes; subrogation.

If a tax collector, tax commissioner, or his sureties are held liable on proceedings by citation, on appeal, or in any other action for having failed by reason of his negligence or bad faith to collect any taxes, the tax collector or tax commissioner, or his surety paying off any liability thus established, shall be entitled to have the tax execution or executions transferred to him. If the execution or executions relate both to state and county taxes, the commissioner and the county governing authority, or either of them, may make the transfer as to both state and county taxes and any other tax included in the execution. As to such taxes, the tax collector, tax commissioner, or his surety paying the judgment, order, or decree fixing liability for the taxes shall be subrogated to all the rights of the state, county, and other public body for whose benefit the tax was levied.

History.
Ga. L. 1933, p. 78, § 10; Code 1933, § 89-831; Code 1933, § 91A-1355, enacted by Ga. L. 1978, p. 309, § 2.

RESEARCH REFERENCES

C.J.S.
83 C.J.S., Subrogation, § 1 et seq.
ALR.
Liability of sureties on bond of tax collector for illegal or unauthorized acts of latter toward individual taxpayer, 127 A.L.R. 857.

48-5-158. Nonliability of tax collector, tax commissioner, and surety for failure to collect taxes.

Neither a tax collector, tax commissioner, nor his surety shall be

liable for failure to collect any state, county, or other taxes from delinquent taxpayers if he or his surety shall make it appear that:

(1) By reason of the insolvency of the taxpayer, the tax collector or tax commissioner could not by ordinary care and diligence collect the tax;

(2) The tax collector or tax commissioner with ordinary diligence issued execution and placed it in the hands of the sheriff or other officer having power to levy the execution, and that failure to realize the money on the execution was due to no fault of the tax collector or tax commissioner;

(3) The failure to collect the taxes promptly was due to obedience to instructions from the commissioner as to state taxes or from the county governing authority as to county taxes; or

(4) He was prevented from the collection of the taxes by legal proceedings.

History.
Ga. L. 1933, p. 78, § 13; Code 1933, § 89-834; Code 1933, § 91A-1356, enacted by Ga. L. 1978, p. 309, § 2.

RESEARCH REFERENCES

ALR.
Liability of sureties on bond of tax collector for illegal or unauthorized acts of latter toward individual taxpayer, 127 A.L.R. 857.

48-5-159. False reports of taxes collected by tax collector or tax commissioner pursuant to this article; penalty.

(a) It shall be unlawful for any tax collector or tax commissioner to make out a false return or report of the amount of taxes collected which is required to be reported by this article.

(b) Any person who violates subsection (a) of this Code section commits the offense of false swearing.

History.
Ga. L. 1892, p. 89, § 1; Penal Code 1895, § 265; Penal Code 1910, § 268; Code 1933, § 92-9921; Code 1933, § 91A-9912, enacted by Ga. L. 1978, p. 309, § 2.

48-5-160. [Reserved] Duty of tax collectors and tax commissioners to keep stub book of tax receipts.

History.
Ga. L. 1884-85, p. 66, § 1; Civil Code 1895, § 961; Civil Code 1910, § 1228; Code 1933, § 92-5101; Code 1933, § 91A-1360, enacted by Ga. L. 1978, p. 309, § 2; repealed by Ga. L. 1990, p. 1324, § 6, effective July 1, 1990.

Editor's notes.
Ga. L. 1990, p. 1324, § 6 repealed and reserved this Code section, effective July 1, 1990.

48-5-161. Issue of execution; execution docket; levy administration fee; collection; inspection by grand jury.

(a) Each tax collector or tax commissioner shall keep an execution docket. On December 20 in each year, unless further time is allowed as provided by law, he shall issue execution against each delinquent or defaulting taxpayer in his county and enter the names of delinquent or defaulting taxpayers on the docket together with an itemized statement of the taxes covered by the execution.

(b) When executions have been issued, it shall be the duty of the officer issuing the execution to place the execution in the hands of an officer authorized by law to collect the execution and make an entry on his execution docket of the name of the officer and the date of delivery.

(c)(1) The officer in whose hands the execution is placed shall proceed at once to collect the execution and, when the execution is paid by the defendant voluntarily or by levy and sale, the officer shall enter the amount collected including all costs, commissions, interest, and penalties as provided by law on the execution. The officer shall return the execution to the tax collector or tax commissioner with the amount of tax collected. The tax collector or tax commissioner shall at once copy the entry of the officer on his or her execution docket and file the execution in his or her office.

(2)(A) As used in this paragraph, the term "costs" includes, but is not limited to, title examination expenses, certified mail expenses, reasonable attorney's fees, or other such necessary research expenses.

(B) Once an execution is issued against a delinquent or defaulting taxpayer, the sheriff or ex officio sheriff shall collect, in addition to any other costs, commissions, interest, and penalties, the actual expenses incurred by the county in issuing the execution and administering the levy by imposing a levy administration fee which shall be 5 percent of the delinquent tax or $250.00, whichever is the lesser. Regardless of any other provision of this paragraph, however, no such levy administration fee shall be less than $50.00.

(3) The levy administration fee provided by paragraph (2) of this subsection shall likewise be charged and collected when the execution is enforced through garnishment as provided for in Code Section 48-3-12.

(d) Each tax collector or tax commissioner shall submit his respective execution docket and cashbook to the grand jury at the spring term of

the superior court of his county. It shall be the duty of the grand jury to inspect thoroughly the docket and book and to report on them by general or special presentment.

History.

Ga. L. 1884-85, p. 66, §§ 2-5; Civil Code 1895, §§ 962, 963, 964, 965; Civil Code 1910, §§ 1229, 1230, 1231, 1232; Code 1933, §§ 92-5102, 92-5103, 92-5104, 92-5105; Code 1933, § 91A-1361, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1981, p. 1857, § 19; Ga. L. 1982, p. 1114, §§ 1, 2; Ga. L. 1983, p. 575, § 1; Ga. L. 1987, p. 965, § 1; Ga. L. 1990, p. 1324, § 7; Ga. L. 2009, p. 216, § 2B/SB 240.

Editor's notes.

Ga. L. 1987, p. 965, § 2, not codified by the General Assembly, provided that that Act shall apply with respect to executions issued on or after July 1, 1987.

JUDICIAL DECISIONS

Attorneys fees. — Statute does not constitute authorization for adding attorney fees to the principal, interest, and costs. Money v. Thompson & Green Mach. Co., 155 Ga. App. 566, 271 S.E.2d 699, 1980 Ga. App. LEXIS 2676 (1980).

Presumption as to timely performance of duties by tax officials. — When the defendant county fiscal and taxing authorities are required by law to perform all of the acts sought to be enjoined by the taxpayer (increasing valuation of taxpayers' property, compiling and transmitting tax digest and levying taxes) on or before December 20, and when the court refuses to restrain the authorities from performing those official duties at the proper time, it would be presumed, unless the contrary appears, that the returns were timely and properly performed by the authorities. Kight v. Gilliard, 215 Ga. 152, 109 S.E.2d 599, 1959 Ga. LEXIS 417 (1959).

Effect of failure to enter execution on docket. — Mere deposit of execution was in the clerk's office and entry of filing thereon is ineffective unless the execution was actually entered on the docket. Suttles v. Dickey, 192 Ga. 382, 15 S.E.2d 445, 1941 Ga. LEXIS 468 (1941).

Failure to attach unsigned receipt to execution. — Failure of the tax collector to attach an unsigned receipt to the execution does not render the execution void but only irregular. Wilson v. Herrington, 86 Ga. 777, 13 S.E. 129, 1891 Ga. LEXIS 63 (1891).

Claims for taxes should be enforced within seven years from the date when the taxes are due and when executions could have been issued therefor, unless within such time an execution is issued and entered on the general execution docket, as in the case of judgments. Suttles v. Dickey, 192 Ga. 382, 15 S.E.2d 445, 1941 Ga. LEXIS 468 (1941).

Action to enjoin enforcement of execution when execution barred. — When execution for collection of taxes was barred, the taxpayer was no longer bound for the taxes, and the taxpayer could maintain an action to enjoin enforcement of the execution and for its cancellation. The taxpayer was not estopped from doing so because the taxpayer owned the property for the entire year for which the taxes involved were due, failed to make a return of the property for such year, and had not paid or offered to pay the taxes. Suttles v. Dickey, 192 Ga. 382, 15 S.E.2d 445, 1941 Ga. LEXIS 468 (1941).

Priority of tax claims over recorded deeds, mortgages, and liens. — Provisions of former Code 1933, § 67-2501 (see now O.C.G.A. § 44-2-2), declaring effective from the date of filing "deeds, mortgages, and liens of all kinds," as against third persons acting in good faith and without notice have no application to claims for taxes. Suttles v. Dickey, 192 Ga. 382, 15 S.E.2d 445, 1941 Ga. LEXIS 468 (1941).

Collection of expenses of execution and levy. — City was not authorized to collect the expenses of execution and levy until the levy was made; hence, because the city failed to show that the city was authorized to collect a $75.00 fee for

expenses incurred in connection with the tax execution prior to a levy, the trial court properly found in favor of a taxpayer as to the issue. Mayor of City of Fort Valley v. Grills, 282 Ga. App. 397, 638 S.E.2d 830, 2006 Ga. App. LEXIS 1406 (2006).

Court of appeals did not err in finding that no levy occurred that would have authorized the imposition and collection of fees pursuant to O.C.G.A. § 48-5-161(c)(2) because it correctly recognized that the execution documents on which a county tax commissioner relied did not show a valid levy occurred when although the commissioner pointed repeatedly to documents reflecting unsigned and undated executions that were recorded in the execution docket, there was no official entry of levy by the levying officer on those documents, i.e., no signature accompanying a statement that the property identified on the execution had been levied upon; the court of appeals also recognized properly that no levy occurred when a collection agent for the county was told to begin "phase two" of the collection process because nothing in the record reflected a physical tacking of a valid notice of execution of levy on the real property in issue. Huff v. Harpagon Co., LLC, 286 Ga. 809, 692 S.E.2d 336, 2010 Ga. LEXIS 274, aff'd, 304 Ga. App. 51, 695 S.E.2d 402, 2010 Ga. App. LEXIS 455 (2010).

Because there was no valid levy, a fee discussion by the court of appeals constituted an improper advisory opinion in that the court of appeals attempted to determine in the abstract how O.C.G.A. § 48-5-161(c)(2) had to be construed; the construction to be given the fees provision in § 48-5-161 was not properly before the court of appeals. Huff v. Harpagon Co., LLC, 286 Ga. 809, 692 S.E.2d 336, 2010 Ga. LEXIS 274, aff'd, 304 Ga. App. 51, 695 S.E.2d 402, 2010 Ga. App. LEXIS 455 (2010).

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Application of penalty provisions. — Penalty and fees provided in O.C.G.A. §§ 48-2-44 and 48-5-161 would apply to unpaid ad valorem taxes which were assessed in 1981, 1982, and 1983 as follows: When the statutory prerequisites of § 48-2-44 have been met, a penalty of 10 percent of the amount of tax due and not timely paid would apply to ad valorem taxes which were unpaid after July 1, 1981. In addition, a 10 percent execution fee would apply to ad valorem tax executions issued on or after July 1, 1982, and before March 15, 1983. In keeping with the reasoning employed in Ops. Att'y Gen. 81-76 and 82-72, only those executions issued on or after March 15, 1983, the effective date of § 48-5-161, as amended by Ga. L. 1983, p. 575, would not be subject to a 10 percent execution fee, but the amount collected on these executions would include all costs, commissions, interest, and penalties as provided by law. 1984 Op. Att'y Gen. No. U84-25.

Ten percent execution fee is automatic and mandatory, and must be collected whenever conditions set forth in subsection (c) of O.C.G.A. § 48-5-161 are satisfied. 1982 Op. Att'y Gen. No. 82-72.

Ten percent execution fee applies only to executions issued on or after July 1, 1982. 1982 Op. Att'y Gen. No. 82-72.

When fee arises. — Ten percent execution fee arises upon issuance of execution (ordinarily December 20 of the tax year in question). 1982 Op. Att'y Gen. No. 82-72.

Who may collect fee. — Ten percent execution fee is collectible by whoever is authorized to collect other amounts specified in execution. 1982 Op. Att'y Gen. No. 82-72.

Execution fee and penalty cumulative. — If circumstances set forth in each section are met, the penalty provided by O.C.G.A. § 48-2-44(b) and execution fee provided by subsection (c) of O.C.G.A. § 48-5-161 are cumulative in nature. 1982 Op. Att'y Gen. No. U82-37.

Delinquent municipal taxes. — Execution fee provided for in O.C.G.A. § 48-5-161 does not apply to executions issued for delinquent municipal taxes. 1983 Op. Att'y Gen. No. 83-7.

Number of executions immaterial to penalty amount. — Because the 10 percent penalty imposed by O.C.G.A. § 48-5-161 as to ad valorem tax executions issued on or after July 1, 1982, and before March 15, 1983, is based on the amount of tax due, the number of executions which have been issued are immaterial to the amount of the penalty. 1984 Op. Att'y Gen. No. U84-25.

Local school systems were entitled to a proportionate share of funds raised through imposition of the execution fee on delinquent taxes collected through execution, under former subsection (c) of O.C.G.A. § 48-5-161. 1983 Op. Att'y Gen. No. 83-20.

48-5-162. Penalties for violations of subsection (a) of Code Section 48-5-161.

For a violation of any of the provisions of subsection (a) of Code Section 48-5-161, the tax collector or tax commissioner so violating shall forfeit all or such part of his commissions as the grand jury of the county shall recommend. If the tax collector or tax commissioner fails to pay over the penalty imposed, it shall be enforced against the tax collector or tax commissioner and his sureties by the commissioner as provided by law for defaulting tax collectors, and a 20 percent penalty of the amount of the penalty set by the grand jury shall be added to such penalty.

History.
Ga. L. 1884-85, p. 66, § 6; Civil Code 1895, § 966; Civil Code 1910, § 1233; Code 1933, § 92-5106; Code 1933, § 91A-1362, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1991, p. 94, § 48.

48-5-163. [Reserved] Fee for issuing tax executions; allowance of costs on executions.

History.
Ga. L. 1979, p. 5, § 38A; repealed by Ga. L. 2017, p. 738, § 2/HB 375, effective July 1, 2017.

Editor's notes.
Ga. L. 2017, p. 738, § 2/HB 375 repealed and reserved this Code section, effective July 1, 2017.

48-5-164. Duties of successor tax collector or tax commissioner as to performing uncompleted duties of outgoing collector or commissioner; distribution of commissions; liability.

(a) In case a tax collector or tax commissioner has been succeeded in office by another person, a list of the uncollected items of tax appearing in the account of the outgoing tax collector or tax commissioner at the time of the accounting shall be furnished by the commissioner or the county governing authority to the tax collector or tax commissioner who succeeds the outgoing tax collector or tax commissioner.

(b)(1) Each tax collector or tax commissioner to whom a list is furnished as provided in subsection (a) of this Code section shall pay to the outgoing tax collector or tax commissioner, as the taxes are

collected, one-half of the commissions and retain for his services one-half, the commissions to be calculated as if the amounts had been collected by the outgoing tax collector or tax commissioner.

(2) Reserved.

(c) The outgoing tax collector or tax commissioner shall no longer have the right or the duty to collect the taxes uncollected during his term or to enforce the executions issued for the taxes, but all uncompleted duties with respect to the enforcement and collection of the taxes shall pass to his successor.

(d) The outgoing tax collector or tax commissioner and his sureties or his bond shall be discharged upon his delivery to his successor of the books and papers in his office which relate to the uncollected taxes, except for defaults existing prior to that time.

History.
Ga. L. 1933, p. 78, § 10; Code 1933, § 89-830; Code 1933, § 91A-1354, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 38; Ga. L. 1994, p. 237, § 2.

RESEARCH REFERENCES

Am. Jur. 2d.
72 Am. Jur. 2d, State and Local Taxation, § 772.

ALR.
Liability of sureties on bond of tax collector for illegal or unauthorized acts of latter toward individual taxpayer, 127 A.L.R. 857.

48-5-165. Duty of tax collector to instruct taxpayers that negotiable instruments are to be made payable to county tax office.

It shall be the duty of each tax collector, whether acting on behalf of the county, municipality, board of education, or as an agent of the state, to instruct the taxpayers that any check, money order, or other similar bankable paper for the payment of taxes shall be made payable to the county tax office to which the taxes are due, rather than to the tax collector. The tax collector shall not be required, however, to return to the taxpayer a check or money order for the payment of taxes that is not made payable to the taxing entity in strict conformity with the instructions.

History.
Code 1981, § 48-5-165, enacted by Ga. L. 1985, p. 537, § 1; Ga. L. 1986, p. 274, § 1; Ga. L. 1990, p. 1495, § 1.

PART 3

COMPENSATION

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, Ch. 92-53 are included in the annotations for this part.

Tax commissioner's compensation. — Salary of the tax commissioner must either be established by former Code 1933, Ch. 92-53 (see this part), which sets the minimum compensation for tax commissioners, or by local legislation, whichever results in a higher salary. 1977 Op. Att'y Gen. No. U77-8.

48-5-180. Rates of commissions.

(a) The commissions to be allowed to each tax receiver and tax collector of state and county taxes shall be as provided in the following schedule:

Net Tax Digest Amount	Rate of Commission
Up to and including $6,000.00	6%
Over $6,000.00 and not exceeding $14,000.00	5%
Over $14,000.00 and not exceeding $24,000.00	4%
Over $24,000.00 and not exceeding $36,000.00	3%
Over $36,000.00 and not exceeding $52,000.00	2 1/2%
Over $52,000.00 and not exceeding $76,000.00	2%
Over $76,000.00	1 3/4%.

(b) Subsection (a) of this Code section shall not apply to any county where the tax collector, tax receiver, or tax commissioner is on a salary basis only.

(c)(1) Except as otherwise provided in this subsection and as far as tax collectors and tax commissioners are concerned, the rates and schedules prescribed by subsection (a) of this Code section shall apply to the first 90 percent of the ad valorem net digests collected by the tax collector or tax commissioner. On all taxes collected in excess of 90 percent of the total of taxes due according to the net tax digest, the tax collector's or tax commissioner's commission shall be 10 percent of all such collections, irrespective of the schedule and rates in subsection (a) of this Code section.

(2) The governing authority of the county may provide by appropriate resolution that the tax collector's or tax commissioner's commission shall be 10 percent of all taxes collected in excess of 80 percent of the total taxes due according to the net tax digest.

(3) Except as otherwise provided in this paragraph, the tax collector or tax commissioner shall be entitled to and shall receive such commissions as provided in this subsection even though he is paid on a salary basis. In those counties where the tax collector or tax commissioner is paid on a salary basis and his salary is $8,000.00 or more per annum, the tax collector or tax commissioner shall not be entitled to the commissions provided for in this subsection unless the local Act placing the tax collector or tax commissioner on a salary or an amendment of such Act specifically provides that the tax collector or tax commissioner shall receive the commissions, in which event the tax collector or tax commissioner shall be entitled to receive the commissions as provided for in this subsection. If such Act does not so specifically provide, the commissions shall be county funds and shall not be received by the tax collector or tax commissioner.

History.

Orig. Code 1863, §§ 850, 860; Ga. L. 1863-64, p. 16, § 1; Code 1868, §§ 929, 939; Code 1873, §§ 926, 936, 936a; Ga. L. 1878-79, p. 25, § 1; Code 1882, §§ 926, 936, 936a; Civil Code 1895, §§ 940, 967, 968; Civil Code 1910, §§ 1202, 1232, 1235; Ga. L. 1918, p. 110, § 1; Code 1933, § 92-5301; Ga. L. 1937-38, Ex. Sess., p. 297, §§ 1-3; Ga. L. 1939, p. 370, § 1; Ga. L. 1951, p. 815, § 1; Ga. L. 1953, Jan.-Feb. Sess., p. 234, §§ 1-4; Ga. L. 1955, p. 176, § 1; Ga. L. 1965, p. 626, § 1; Ga. L. 1971, p. 2897, § 1; Ga. L. 1973, p. 2624, § 1; Code 1933, § 91A-1370, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1982, p. 3, § 48; Ga. L. 1982, p. 996, §§ 2, 5; Ga. L. 1984, p. 22, § 48; Ga. L. 1990, p. 8, § 48; Ga. L. 1994, p. 237, § 2; Ga. L. 2017, p. 774, § 48/HB 323.

JUDICIAL DECISIONS

History and intent of section. — For a discussion of the history and intent of this section, particularly as to subsection (a), see Bruce v. County of Troup, 92 Ga. App. 786, 90 S.E.2d 60, 1955 Ga. App. LEXIS 715 (1955).

Section inapplicable to returns made exclusively to commissioner. — Statute has no application to returns made exclusively to the comptroller-general (now commissioner) in which case they are not entered on the tax-receiver's digest. Glynn County v. Dubberly, 148 Ga. 290, 96 S.E. 566, 1918 Ga. LEXIS 308 (1918).

Collection of tax as prerequisite to commission thereon. — Tax receivers and tax collectors are only entitled to commissions on such taxes as are actually collected. Clements v. Peerless Woolen Mills, 197 Ga. 296, 29 S.E.2d 175, 1944 Ga. LEXIS 261 (1944).

Former county tax collector has no vested right in commissions on taxes and whether the collector is entitled to commissions is determined at the time the tax is collected. Hale v. Davison, 231 Ga. 505, 202 S.E.2d 411, 1973 Ga. LEXIS 757 (1973).

Compensation of county tax commissioner. — O.C.G.A. § 48-5-183 controlled over a local act upon which a tax commissioner relied since, for the commissioner's entire tenure, the commissioner's minimum salary under that section was higher than that provided in the local act, as well as higher than the maximum salary permitted in order to receive fees pursuant to O.C.G.A. §§ 40-2-33 and 48-5-180. Brown v. Liberty County, 271 Ga. 634, 522 S.E.2d 466, 1999 Ga. LEXIS 947 (1999).

County may not deprive tax commissioner of fees to which commissioner is entitled. — Fees or commissions payable by the state to the county tax collector or tax commissioner for collecting taxes, as provided by this statute, belong to such officer. Accordingly, since the board of county commissioners in a resolution fixing the salary of the county tax commissioner provided that

the commissioner should be paid a stated salary, but that any fees and commissions to which the tax commissioner might be entitled under the law from the state should be deducted therefrom, the provision for such deduction was contrary to law and without force and effect, the tax commissioner being entitled to such fixed salary from the county and in addition thereto the fees or commissions due the commissioner from the state. Bruce v. County of Troup, 92 Ga. App. 786, 90 S.E.2d 60, 1955 Ga. App. LEXIS 715 (1955).

No commission for school taxes. — Statute does not embrace a provision for paying the tax receiver commissions for any services in connection with the levy of the county-wide tax for school purposes raised under the school laws. Board of Educ. v. Drake, 157 Ga. 8, 121 S.E. 645, 1923 Ga. LEXIS 354 (1923); Hurst v. Board of Comm'rs, 157 Ga. 648, 122 S.E. 45, 1924 Ga. LEXIS 220 (1924).

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Construction of section. — Former Code 1933, §§ 92-5301 (see subsections (a) and (b) of this section) and Ga. L. 1937-38, Ex. Sess., p. 297, § 3 (see subsection (c) of this section) must be construed together; the net digest is used in order to determine the commissions which may be due a tax collector or tax commissioner over 90 percent of the commissioner's net digest, or over 80 percent of the net digest in case a resolution is passed in accordance with this statute. 1957 Ga. Op. Att'y Gen. 261.

Construction with other provisions. — Proviso that no tax collector's or tax commissioner's salary shall be increased during the commissioner's present term contained in former Code 1933, §§ 92-5306 to 92-5309 (see now O.C.G.A. § 48-5-183) applied only to those tax collectors and tax commissioners who were compensated by salary; "present term" meant only the term which was being served by salaried tax collectors or tax commissioners on July 1, 1976; the base salary set in former Code 1933, § 92-5301 (see now O.C.G.A. § 48-5-180) was replaced by that set in former Code 1933, §§ 92-5306 to 92-5309 (see now § 48-5-183). 1976 Op. Att'y Gen. No. U76-64.

Compensation provided for in this statute does not apply to school taxes on which the compensation is fixed. 1970 Op. Att'y Gen. No. U70-163.

Statute applies only to the state and county tax digest and not to the school tax digest. 1968 Op. Att'y Gen. No. 68-401; 1970 Op. Att'y Gen. No. U70-17.

No commission for collection of school tax. — Tax commissioner is not entitled to receive a 10 percent commission on collections after 90 percent of the net digest has been collected on school tax. 1967 Op. Att'y Gen. No. 67-425.

Applicability to taxes for bond retirement and provision for sick and poor. — Statute provides a commission of 10 percent on all taxes collected in excess of 90 percent of the total taxes due and does not make any exception for taxes levied to retire bonds or taxes levied to provide for the sick and poor of the county. 1954-56 Ga. Op. Att'y Gen. 880.

When taxes are finally collected after many years and the tax commissioner is on salary basis, no commissions are due any tax commissioner since salary basis was put into effect and no past collector or commissioner has any vested interest in commissions on taxes the collector did not collect. 1962 Ga. Op. Att'y Gen. 569.

Extra commission available only if appropriate resolution adopted. — Statute, when properly applied to salaried tax commissioners, only extends the commission of 10 percent of the taxes collected in excess of 90 percent of the total taxes due or the excess over 80 percent, if an appropriate resolution has been adopted. 1979 Op. Att'y Gen. No. U79-11.

Increase in commissions received by county governing authority. — Governing authority of a county cannot, by resolution, increase the commissions which it receives to an amount greater than the amount which the tax collector or tax commissioner was receiving at the time the commissioner was placed on a

salary only basis of compensation. 1979 Op. Att'y Gen. No. 79-67.

Compensation when resolution passed before tax official placed purely on salary basis. — If an "appropriate resolution" establishing the commission to be 10 percent of all taxes collected in excess of 80 percent has been passed by the governing authority of a county prior to the tax collector or tax commissioner of the county being placed purely on a salary basis of $8,000.00 or more, then the county is entitled to the same commissions the tax collector or tax commissioner would receive if not on a salary basis, i.e., 10 percent of the excess of 80 percent. 1974 Op. Att'y Gen. No. U74-42.

Manner for obtaining payment of commissions. — Since the provisions of former Code 1933, § 92-5305 (see now O.C.G.A. § 48-5-182) were clear in their meaning, a tax receiver under its provisions was entitled to receive from the tax collector the commissions provided for in former Code 1933, § 92-5301 (see now O.C.G.A. § 48-5-180) on "net digests" upon the presentation to the tax collector or tax commissioner the "Receipt for Digest and Commission Voucher," from the first money collected on the net digests it covers. 1948-49 Ga. Op. Att'y Gen. 385.

When a tax commissioner is entitled to commissions the commissioner may retain the commissions and is not required to pay the commissions over to either the state or county for subsequent return. 1969 Op. Att'y Gen. No. 69-462.

48-5-181. Deductions of default and insolvent lists for net amount of digests.

In arriving at the net amount of the digest, the default list shall be deducted in the case of tax receivers and the insolvent list shall be deducted in the case of tax collectors.

History.

Laws 1847, Cobb's 1851 Digest, p. 1079; Ga. L. 1851-52, p. 288, § 19; Code 1863, § 738; Code 1868, § 805; Code 1873, § 808; Code 1882, § 808; Civil Code 1895, § 774; Civil Code 1910, § 1014; Code 1933, § 92-5302; Code 1933, § 91A-1371, enacted by Ga. L. 1978, p. 309, § 2.

48-5-182. Payment of commissions to tax receivers.

The tax collector shall pay to the tax receiver his commissions due by the state and by the county, but only upon the production of the commissioner's receipt for the tax receiver's net digest and only with a specification in the digest of the amount of commissions to which the tax receiver is entitled. The tax collector shall submit the tax receiver's receipts with his receipts thereon to the commissioner before the tax collector is allowed credits for such commissions.

History.

Ga. L. 1937-38, Ex. Sess., p. 297, § 4; Code 1933, § 91A-1372, enacted by Ga. L. 1978, p. 309, § 2.

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Meaning of this statute is simple, plain, and clear. — Language of this statute consists of common, ordinary words, and there is nothing therein to show that any unusual meaning is to be attached to the terms employed. 1948-49 Ga. Op. Att'y Gen. 385.

Construction of term "net digest." — "Net digest" means the remaining taxable property after nontaxable

property, such as homestead exemption, has been deducted from the total digest. 1952-53 Ga. Op. Att'y Gen. 305.

Commissions on taxes that have not been collected. — Contrary to existing Georgia cases, the tax receiver is entitled to commissions on taxes which have not been collected. 1952-53 Ga. Op. Att'y Gen. 305.

Issuance of execution and delivery to sheriff does not entitle tax collector to fees. — Tax collector is not entitled to the collector's fees merely after the issuance of a tax execution and delivery thereof to the sheriff, but such fees may only be paid after collection of such execution. 1952-53 Ga. Op. Att'y Gen. 297.

Manner for obtaining payment of commissions. — Since the provisions of Ga. L. 1937-38, Ex. Sess. p. 297, § 4 (see now O.C.G.A. § 48-5-182) are clear in its meaning, a tax receiver under its provisions is entitled to receive from the tax collector the commissions provided for in former Code 1933, § 92-5301 (see now O.C.G.A. § 48-5-180) on "net digests" upon the presentation to the tax collector or tax commissioner the "Receipt for Digest and Commission Voucher," from the first money collected on the net digests it covers. 1948-49 Ga. Op. Att'y Gen. 385.

48-5-183. Salaries of tax collectors and tax commissioners.

(a) Nothing contained in this Code section shall apply to any tax commissioner or tax collector who is compensated by the fee system of compensation in lieu of a fixed salary. On and after January 1, 1995, no tax collector or tax commissioner in a county having a population of 45,000 or more shall be entitled to fees authorized by Code Section 48-5-180 or Code Section 40-2-33.

(b)(1) Any other provision of law to the contrary notwithstanding, except for the provisions of paragraph (2) of this subsection, the minimum annual salary of each tax collector and tax commissioner who is compensated by an annual salary shall be fixed according to the population of the county in which he or she serves, as determined by the United States decennial census of 2010 or any future such census; provided, however, that such annual salary shall be recalculated in any year following a census year in which the Department of Community Affairs publishes a census estimate for the county prior to July 1 in such year that is higher than the immediately preceding decennial census. Each such officer shall receive an annual salary, payable in equal monthly installments from the funds of his or her county, of not less than the amount fixed in the following schedule:

Population			Minimum Salary
0	—	5,999	$ 35,576.65
6,000	—	11,889	48,856.63
11,890	—	19,999	55,344.71
20,000	—	28,999	59,296.04

Population			Minimum Salary
29,000	—	38,999	63,247.38
39,000	—	49,999	67,203.60
50,000	—	74,999	75,327.48
75,000	—	99,999	80,855.58
100,000	—	149,999	86,381.94
150,000	—	199,999	92,237.91
200,000	—	249,999	100,722.08
250,000	—	299,999	109,336.93
300,000	—	399,999	120,695.99
400,000	—	499,999	125,596.32
500,000	or more		130,496.72

(2)(A) Whenever the state employees subject to compensation plans authorized and approved in accordance with Code Section 45-20-4 receive a cost-of-living increase or general performance based increase of a certain percentage or a certain amount, the amounts fixed in the minimum salary schedule in paragraph (1) of this subsection, in subsection (g) of Code Section 48-5-137, and, where applicable, in subsection (c) of Code Section 21-2-213, or the amounts derived by increasing each of said amounts through the application of longevity increases pursuant to subsection (d) of this Code section, where applicable, shall be increased by the same percentage or same amount applicable to such state employees. If the cost-of-living increase or general performance based increase received by state employees is in different percentages or different amounts as to certain categories of employees, the amounts fixed in the minimum salary schedule in paragraph (1) of this subsection, in subsection (g) of Code Section 48-5-137, and, where applicable, in subsection (c) of Code Section 21-2-213, or the amounts derived through the application of longevity increases, shall be increased by a percentage or an amount not to exceed the average percentage or average amount of the general increase in salary granted to the state employees. The Office of Planning and Budget shall calculate the average percentage increase or average amount increase when necessary.

The periodic changes in the minimum salary schedule in paragraph (1) of this subsection, in subsection (g) of Code Section 48-5-137, and, where applicable, in subsection (c) of Code Section 21-2-213, or the amounts derived through the application of longevity increases, as authorized by this paragraph shall become effective on the first day of January following the date that the cost-of-living increases received by state employees become effective; provided, however, that, if the cost-of-living increases or general performance based increases received by state employees become effective on January 1, such periodic changes in the amounts fixed in the minimum salary schedule in paragraph (1) of this subsection, in subsection (g) of Code Section 48-5-137, and, where applicable, in subsection (c) of Code Section 21-2-213, or the amounts derived through the application of longevity increases as authorized by this paragraph, shall become effective on the same date that the cost-of-living increases or general performance based increases received by state employees become effective.

(B) The amounts fixed in the minimum salary schedule in this subsection shall not be increased by any state cost-of-living or general performance based increases that have been applied or are effective prior to January 1, 2020. Any state cost-of-living or general performance based increases effective on or after January 1, 2020, shall be calculated as provided in this Code section.

(3) The county governing authority may supplement the minimum annual salary of the tax commissioner in such amount as it may fix from time to time; but no tax commissioner's compensation supplement shall be decreased during any term of office. Any prior expenditure of county funds to supplement the tax commissioner's salary in the manner authorized by this paragraph is ratified and confirmed. Nothing contained in this paragraph shall prohibit the General Assembly by local law from supplementing the annual salary of the tax commissioner.

(c) In any county in which more than 50 percent of the population of the county according to the United States decennial census of 1990 or any future such census resides on property of the United States government which is exempt from taxation by this state, the population of the county for the purpose of subsection (b) of this Code section shall be deemed to be the total population of the county minus the population of such county which resides on property of the United States government.

(d) The amounts provided in paragraph (1) of subsection (b) of this Code section, subsection (g) of Code Section 48-5-137, and, where applicable, Code Section 21-2-213, as increased by paragraph (2) of

subsection (b) of this Code section, shall be increased by multiplying said amounts by the percentage which equals 5 percent times the number of completed four-year terms of office served by any tax collector or tax commissioner after December 31, 1976, effective the first day of January following the completion of each such period of service. This Code section shall not be construed to affect any local legislation except where the local legislation provides for a salary lower than the salary provided in this Code section, in which event this Code section shall prevail. This Code section shall not be construed to reduce the salary of any tax collector or tax commissioner in office on July 1, 1991; provided, however, that successors to such tax collectors and tax commissioners in office on July 1, 1991, shall be governed by the provisions of this Code section. The minimum salaries provided for in this Code section shall be considered as salary only. Expenses for deputies, equipment, supplies, copying equipment, and other necessary and reasonable expenses for the operation of a tax collector's or tax commissioner's office shall come from funds other than the funds specified as salary in this Code section.

(e) Notwithstanding any other provisions of this Code section, any tax collector or tax commissioner who, prior to July 1, 1979, was entitled to the commissions allowed by Code Section 40-2-33 may elect to receive the salary he or she was receiving prior to July 1, 1979, together with such commissions relating to the sale of motor vehicle license plates in lieu of the minimum salary provided in subsection (b) of this Code section.

(f) Notwithstanding any other provisions of this Code section, any tax collector or tax commissioner who, prior to January 1, 1980, was receiving a salary lower than the applicable minimum salary provided by subsection (b) of this Code section pursuant to a local law but who also was receiving certain fees and commissions in addition thereto may elect to be excluded from this Code section.

(g) Except as otherwise provided in subsection (f) of this Code section, any local Acts in effect on or enacted subsequent to January 1, 1980, which deal with the compensation of the various tax collectors or tax commissioners, shall remain in full force and effect, except in those instances where such local Acts provide for a salary which is less than the minimum salary provided in subsection (b) of this Code section, in which event this Code section shall prevail.

(h) This Code section shall not be construed so as to place any tax collector or tax commissioner who is on the fee system of compensation on January 1, 1980, on a salary system of compensation. Any such officer who is compensated under the fee system of compensation on January 1, 1980, shall continue to be compensated pursuant to the fee system of compensation until the General Assembly abolishes by local

Act the fee system of compensation for such officer and places him or her on an annual salary equal to or greater than the minimum annual salary provided in this Code section.

History.

Ga. L. 1976, p. 988, § 104; Ga. L. 1977, p. 187, § 1; Code 1933, § 91A-1373, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 1250, § 3; Ga. L. 1980, p. 547, § 2; Ga. L. 1982, p. 2244, §§ 1, 2; Ga. L. 1983, p. 3, § 37; Ga. L. 1984, p. 22, § 48; Ga. L. 1985, p. 456, § 1; Ga. L. 1987, p. 366, § 1; Ga. L. 1988, p. 931, § 4; Ga. L. 1989, p. 801, § 4; Ga. L. 1991, p. 94, § 48; Ga. L. 1992, p. 1478, § 7; Ga. L. 1994, p. 620, § 6; Ga. L. 1998, p. 128, § 48; Ga. L. 1998, p. 1159, § 19; Ga. L. 1999, p. 782, § 1; Ga. L. 2001, p. 902, § 20; Ga. L. 2006, p. 568, § 14/SB 450; Ga. L. 2009, p. 745, § 1/SB 97; Ga. L. 2012, p. 446, § 2-90/HB 642; Ga. L. 2019, p. 1015, § 10/SB 171; Ga. L. 2020, p. 493, § 48/SB 429; Ga. L. 2020, p. 526, § 4/SB 295; Ga. L. 2024, p. 1052, § 5(16)/SB 448, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, revised punctuation in subparagraph (b)(2)(A).

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1988, the word "become" was substituted for "becomes" near the end of paragraph (b)(2) (now (b)(2)(A)).

Pursuant to Code Section 28-9-5, in 2020, the paragraph (b)(2) designation was changed to subparagraph (b)(2)(B).

Editor's notes.

Ga. L. 1988, p. 931, § 5, not codified by the General Assembly, provided that this Code section applies to cost-of-living adjustments received by employees in the classified service of the state merit system after the effective date [April 5, 1988].

Code Section 1-3-4.1 provides that no general Act providing for an increase in the compensation of tax collectors and tax commissioners shall be effective until the first day of January following passage of the Act. However, Ga. L. 1994, p. 620, § 7, not codified by the General Assembly, provides: "This Act shall become effective upon its approval by the governor [March 31, 1994] or upon its becoming law without such approval."

Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

Law reviews.

For annual survey article on local government law, see 52 Mercer L. Rev. 341 (2000).

JUDICIAL DECISIONS

Constitutionality. — O.C.G.A. § 48-5-183 is not unconstitutionally vague as the statute gives sufficient notice of the statute's coverage to counties and their tax commissioners and the statute's provisions cannot be called meaningless or contradictory. Brown v. Liberty County, 271 Ga. 634, 522 S.E.2d 466, 1999 Ga. LEXIS 947 (1999).

Section controls over local Acts. — O.C.G.A. § 48-5-183 controlled over a local Act upon which a tax commissioner relied since, for the commissioner's entire tenure, the commissioner's minimum salary under that statute was higher than that provided in the local act, as well as higher than the maximum salary permitted in order to receive fees pursuant to O.C.G.A. §§ 40-2-33 and 48-5-180. Brown v. Liberty County, 271 Ga. 634, 522 S.E.2d 466, 1999 Ga. LEXIS 947 (1999).

Commissioner taking office after July 1, 1979. — Trial court did not err in

construing a local act, providing that a county commissioner was entitled to retain motor vehicle license plate fees as part of the commissioner's compensation, to be applicable only to the then incumbent commissioner and not to the commissioner's successor; subsection (e) of O.C.G.A. § 48-5-183 must be read to disapprove the continuation of such method of compensation for any tax commissioner taking office after July 1, 1979. Weldon v. Board of Comm'rs, 212 Ga. App. 885, 443 S.E.2d 513, 1994 Ga. App. LEXIS 420 (1994), cert. denied, No. S94C1180, 1994 Ga. LEXIS 855 (Ga. July 14, 1994), cert. denied, No. S94C1208, 1994 Ga. LEXIS 856 (Ga. July 14, 1994).

Tax commissioner's personnel decisions not state functions. — Madison County tax commissioner was not acting as an arm of the state for purposes of U.S. Const., amend 11, when making the decision to terminate an employee; although the tax commissioner was an elected state constitutional officer pursuant to Ga. Const. 1983, Art. IX, Sec. I, Para. III, and the tax commissioner's office was not a division of Madison County or its governing authority pursuant to Ga. Const. 1983, Art. IX, Sec. II, Para. I, since the tax commissioner's duties included both state functions and county functions to be performed within Madison County and, with regard to personnel administration, the state distinguished between employees of the county and employees of elected county officials, Ga. Const. 1983, Art. IX, Sec. II, Para. I(c)(1), and so the tax commissioner, and not the county, defined certain work regulations for the tax commissioner's employees, a fact that did not transform the tax commissioner's administration of personnel into a state function, however, because, although state law provided the tax commissioner with the authority to manage office personnel, the state exercised little control over the use of that authority. Epps v. Watson, No. 3:05-CV-68, 2006 U.S. Dist. LEXIS 33318 (M.D. Ga. May 25, 2006), aff'd, 492 F.3d 1240, 2007 U.S. App. LEXIS 16988 (11th Cir. 2007).

As for funding, O.C.G.A. § 48-5-183 provided that the county, not the state, funded the tax commissioner's office expenses, including personnel expenses, and gave the tax commissioner the authority to set employee salaries, limited to the budget provided by the county; based on these considerations, the court found that the Madison County tax commissioner did not wear a "state hat" when making personnel decisions for the tax commissioner's office. Epps v. Watson, No. 3:05-CV-68, 2006 U.S. Dist. LEXIS 33318 (M.D. Ga. May 25, 2006), aff'd, 492 F.3d 1240, 2007 U.S. App. LEXIS 16988 (11th Cir. 2007).

OPINIONS OF THE ATTORNEY GENERAL

For discussion of the effect of this statute on local legislation, see 1980 Op. Att'y Gen. No. U80-8.

Cost-of-living increases for sheriffs, probate judges, clerks of superior court, tax collectors, and tax commissioners adopted by the State Personnel Board for fiscal year 1989-1990 should take the same form as the corresponding cost-of-living increases for classified employees of the Merit System, so that those salaries less than $18,000 in the schedules for sheriff, clerk, probate judge, tax collector, and tax commissioner would be increased $450, the rest 2 ½ percent. 1989 Op. Att'y Gen. 89-33.

48-5-183.1. Monthly contingent expense allowance for the operation of the office of the tax commissioner.

In addition to any salary, fees, or expenses now or hereafter provided by law, the governing authority of each county is authorized to provide as contingent expenses for the operation of the office of tax commissioner, and payable from county funds, a monthly expense allowance of not less than the amount fixed in the following schedule:

Population			Minimum Salary
0	—	11,889	$ 100.00
11,890	—	74,999	200.00
75,000	—	249,999	300.00
250,000	—	499,999	400.00
500,000	or more		500.00

History.
Code 1981, § 48-5-183.1, enacted by Ga. L. 2001, p. 902, § 21.

48-5-184. Deferred compensation plan for eligible tax commissioners; contributions.

(a) As used in this Code section, the term "eligible county tax commissioner" means any county tax commissioner or tax collector who is compensated pursuant to Code Section 48-5-183 and, as of March 1, 2023, was not eligible to participate in any:

(1) Retirement system, as such term is defined in Code Section 47-20-3; or

(2) Deferred compensation plan offered by the county that utilizes Section 401(k) or 457(b) of the United States Internal Revenue Code of 1986.

(b) The state revenue commissioner shall contract with the Board of Trustees of the Employees' Retirement System of Georgia for the administration of a deferred compensation plan offered as a state benefit for eligible county tax commissioners as provided for in this Code section.

(c)(1) Subject to the contract required under subsection (b) of this Code section, the Board of Trustees of the Employees' Retirement System of Georgia shall investigate and approve a deferred compensation plan that offers to eligible county tax commissioners income tax benefits in connection with plans authorized by the United States Internal Revenue Code of 1986, so that compensation deferred under such plan shall not be included for purposes of computation of any federal income tax withheld on behalf of any such tax commissioner or payable by such tax commissioner before any deferred payment date. All contributions to such deferred compensation plans shall also be exempt from state withholding tax so long as such contributions are not includable in gross income for federal income tax purposes.

(2) Notwithstanding any conflicting provisions of paragraph (1) of this subsection, for any deferred compensation plan established pursuant to said paragraph, the Board of Trustees of the Employees' Retirement System of Georgia shall be authorized to include as an option for eligible county tax commissioners a qualified Roth contribution program in accordance with Section 402A of the United States Internal Revenue Code of 1986.

(d)(1) On and after July 1, 2023, for any eligible county tax commissioner who contributes a percentage from his or her minimum annual salary paid by the county pursuant to paragraphs (1) and (2) of subsection (b) of Code Section 48-5-183 into the deferred compensation plan established under this Code section, the state shall contribute an equal amount into such eligible county tax commissioner's plan account, up to a maximum of 5 percent; provided, however, that all state contributions to plan accounts shall be subject to limitations imposed by federal law.

(2) Each eligible county tax commissioner may make such additional contributions as he or she desires, subject to limitations imposed by federal law.

(e) The Board of Trustees of the Employees' Retirement System of Georgia and the state revenue commissioner shall be entitled to impose requirements for the withholding and remittance of contributions by county governing authorities in order to effectuate this Code section and comply with state and federal law.

(f) Any eligible county tax commissioner who becomes eligible to participate in a retirement system or county plan described in paragraph (1) or (2) of subsection (a) of this Code section on or after May 2, 2023, shall no longer receive the state contributions paid pursuant to subsection (d) of this Code section.

History.

Code 1981, § 48-5-184, enacted by Ga. L. 2023, p. 335, § 1-1/SB 56, effective May 2, 2023.

Effective date.

This Code section became effective May 2, 2023.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2023, "on or after May 2, 2023," was substituted for "on or after the effective date of this Code section" in subsection (f).

Editor's notes.

Ga. L. 2023, p. 335, § 4-1(b)/SB 56, not codified by the General Assembly, provides: "Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by the passage of this Act and shall continue to be governed by the provisions of Title 48 of the Official Code of Georgia Annotated as they existed for such prior taxable years."

PART 4

DELINQUENT TAX OFFICIALS

48-5-200. Issuance of process against tax receiver, tax collector, or tax commissioner indebted in any way to state.

The commissioner may issue execution or other legal process against a tax receiver, tax collector, or tax commissioner when or if the tax receiver, tax collector, or tax commissioner:

(1) Receives commissions which he is not entitled to receive or retain;

(2) Becomes possessed in any other manner of any money belonging to the state; or

(3) Incurs any liability to the state.

History.
Orig. Code 1863, § 828; Code 1868, § 907; Code 1873, § 905; Code 1882, § 905; Civil Code 1895, § 921; Civil Code 1910, § 1184; Code 1933, § 92-5501; Code 1933, § 91A-1381, enacted by Ga. L. 1978, p. 309, § 2.

JUDICIAL DECISIONS

Overpayments which tax receiver refuses to repay bear interest. — When a tax receiver is paid by the county authorities larger amounts than are due the receiver and refuses to pay back such excess, interest should be charged. Glynn County v. Dubberly, 148 Ga. 290, 96 S.E. 566, 1918 Ga. LEXIS 308 (1918).

Tax receivers not subject to 20 percent penalty. — There is no statute putting the tax receiver on the same basis as the tax collector in this respect, nor do the same reasons exist for exacting a penalty of 20 percent as in case of defaulting tax collectors. Glynn County v. Dubberly, 148 Ga. 290, 96 S.E. 566, 1918 Ga. LEXIS 308 (1918).

48-5-201. Issuance of executions against tax collector or tax commissioner upon failure to settle accounts; allowance of credits; interest only on amount of default.

If any tax collector or tax commissioner fails to settle his accounts with the commissioner as provided by law, the commissioner shall issue execution against the tax collector or tax commissioner and his sureties for the principal amount, together with interest at the rate of 20 percent per annum on the amount. If upon a final settlement it appears that the tax collector or tax commissioner was entitled to credits at the time he is required by law to settle, the commissioner may allow the credits and charge interest only on the amount for which the tax collector or tax commissioner is in default, together with all the costs and attorney's fees incurred by reason of the issuance of the execution.

History.

Laws 1823, Cobb's 1851 Digest, p. 1025.; Code 1863, §§ 832, 833; Code 1868, §§ 911, 912; Code 1873, §§ 909, 910; Code 1882, §§ 909, 910; Ga. L. 1889, p. 52, § 1; Civil Code 1895, § 924; Civil Code 1910, § 1187; Code 1933, § 92-5504; Code 1933, § 91A-1383, enacted by Ga. L. 1978, p. 309, § 2.

JUDICIAL DECISIONS

Constitutionality of § 48-5-201 as construed together with § 36-6-27. — Former Code 1910, § 585 (see now O.C.G.A. § 36-6-27), insofar as the statute authorized the board of commissioners of roads and revenues (now county governing authority) to include in such an execution attorney's fees under former Civil Code 1910, § 1187 (see now O.C.G.A. § 48-5-201), was unconstitutional and void because the statute was violative of the due process of law clauses of the Constitution of the State of Georgia and of the United States in that no provision is made giving the county treasurer and the sureties on the treasurer's bond an opportunity to be heard as to the amount or reasonableness of such fees, and the law does not otherwise provide for any method of attack thereon. It is further unconstitutional and void because the statute was in violation of Ga. Const. 1877, Art. I, Sec. I, Paras. I and XXIII (see now Ga. Const. 1983, Art. I, Sec. II, Paras. II and III) in that the determination of what attorney's fees incurred are reasonable and the assessment of such fees are judicial functions and cannot be delegated to an administrative official. The effect of this ruling is to preclude collection by the county of interest at the rate of 20 percent per annum and attorney's fees, under § 1187, if that were applicable under the provisions contained in former Civil Code 1910, § 585 (see now O.C.G.A. § 36-6-27). Massachusetts Bonding & Ins. Co. v. Floyd County, 178 Ga. 595, 173 S.E. 720, 1934 Ga. LEXIS 111 (1934).

Statute is applicable when a fi. fa. is issued by the board of commissioners against the tax collector for moneys claimed to be due the county. McWhorter v. Chattooga County, 154 Ga. 289, 114 S.E. 203, 1922 Ga. LEXIS 351 (1922).

Not available against usurper of tax collector's power. — Comptroller general (now commissioner) is only authorized to issue executions against tax collectors, and their securities, when in default. When the state, by the state's agent, procures a judgment declaring one as usurper, exercising the duties of the office of tax collector without warrant or authority; then, the comptroller general (now commissioner), as its agent cannot legally issue an execution to collect for the state from the comptroller general, as tax collector, the amount of money alleged to have been received by the comptroller general as such usurper, and which the comptroller general had already been ordered by judgment to pay over to the clerk of the superior court of the comptroller general's county. Hartley v. State, 3 Ga. 233, 1847 Ga. LEXIS 102 (1847).

Liability of county treasurer. — Under former Civil Code 1895, § 469 (see now O.C.G.A. § 36-6-27), construed with former Civil Code 1895, § 924 (see now O.C.G.A. § 48-5-201), a county treasurer was liable for the 20 percent penalty imposed by that section. Lamb v. Dart, 108 Ga. 602, 34 S.E. 160, 1899 Ga. LEXIS 308 (1899).

Subrogation of surety. — When the comptroller general (now commissioner) issued an execution against a defaulting tax collector and the tax collector's sureties, for money due the state for taxes collected and not paid over, such sureties have the right to pay off the execution, or the balance due thereon, and to control the same as against the property of their principal, or property which the tax collector owned at the time of the execution of the tax collector's bond. Irby

v. Livingston, 81 Ga. 281, 6 S.E. 591, 1888 Ga. LEXIS 108 (1888).

Enforceable against otherwise exempt property. — Homestead set apart under Ga. Const. 1868, Art. VII (see now Ga. Const. 1983, Art. VII, Sec. II, Para. I-IV) for the family of a tax collector is liable for the collector's default in paying over to the state taxes collected by the tax collector. Davis v. State, 60 Ga. 76, 1878 Ga. LEXIS 375 (1878).

Execution against a defaulting tax collector and the collector's sureties is an execution for taxes in the true intent and meaning of the Constitution of Georgia, and may be enforced against personalty set apart and exempt from ordinary judgments, executions, and decrees, in possession of the collector or the collector's sureties. Cahn v. Wright, 66 Ga. 119, 1880 Ga. LEXIS 26 (1880).

Provisions of former Code 1933, § 89-833 (see now O.C.G.A. § 45-8-7) as to interest supersede those of former Code 1933, § 92-5504 (see now O.C.G.A. § 48-5-201), providing for interest at the rate of 20 percent per annum on the principal amount against the tax collector and the collector's sureties. Employers Liab. Assurance Corp. v. Lewis, 101 Ga. App. 802, 115 S.E.2d 387, 1960 Ga. App. LEXIS 1015 (1960).

Provision for 20 percent interest is highly penal. Massachusetts Bonding & Ins. Co. v. Board of Comm'rs, 172 Ga. 409, 157 S.E. 459, 1931 Ga. LEXIS 107 (1931).

Date from which interest accrues. — When a defalcation occurs in the office of county treasurer, the statutory interest of 20 percent per annum, specified in this statute to be charged against the treasurer and the surety on the treasurer's bond, should be calculated from the date of demand for payment or the equivalent of demand such as the issuance of execution and the like, and not from the date of defalcation when no such demand is made at that time. Massachusetts Bonding & Ins. Co. v. Board of Comm'rs, 172 Ga. 409, 157 S.E. 459, 1931 Ga. LEXIS 107 (1931).

Distinction between principal and surety with regard to payment of interest. — Former Civil Code 1910, §§ 585 and 1187 (see now O.C.G.A. §§ 36-6-27 and 48-5-201) draws no distinction between the principal and surety with regard to payment of interest, but the interest specified in the statute is to be charged against both principal and surety. Massachusetts Bonding & Ins. Co. v. Board of Comm'rs, 172 Ga. 409, 157 S.E. 459, 1931 Ga. LEXIS 107 (1931).

Applicability to county treasurers and their bondsmen. — Provisions of former Civil Code 1910, § 1187 (see now O.C.G.A. § 48-5-201), relating to issuance of executions against defaulting county tax collectors and their bondsmen, were by former Civil Code 1910, § 585 (see now O.C.G.A. § 36-6-27) made applicable to the issuance of executions against defaulting county treasurers and their bondsmen. Massachusetts Bonding & Ins. Co. v. Board of Comm'rs, 172 Ga. 409, 157 S.E. 459, 1931 Ga. LEXIS 107 (1931).

Affidavit of illegality not available to county treasurers and their bondsmen. — Ga. L. 1915, p. 55, §§ 1-3 (see now O.C.G.A. § 48-5-203) amends the law in relation to issuance of executions against county tax collectors so as to afford a remedy by affidavit of illegality, but that section does not extend so far as to afford such remedy to county treasurers and their bondsmen. Massachusetts Bonding & Ins. Co. v. Board of Comm'rs, 172 Ga. 409, 157 S.E. 459, 1931 Ga. LEXIS 107 (1931).

Liability of county treasurer and surety when bank in which tax receipts held is insolvent. — When a county treasurer, in making an accounting with the treasurer's successor, delivers a check representing public funds which the treasurer has in a bank, and the check is accepted in lieu of cash, and upon acceptance and presentation of such check by the payee, credit therefor is transferred by the bank to the new treasurer, the fact that the bank may be insolvent at the time of such transaction does not necessarily show a default by the officer making such accounting, but in equity the transaction should be treated as a transfer of money, to the extent of the amount which the bank could and would have paid in cash, if cash had been demanded. Under this principle, the petition of a surety company alleged a good defense against the

enforcement of the execution, and upon the hearing for injunction the evidence made an issue of fact as to the existence of such defense. Board of Comm'rs v. Massachusetts Bonding & Ins. Co., 175 Ga. 584, 165 S.E. 828, 1932 Ga. LEXIS 294 (1932).

48-5-202. Direction to sheriffs of executions against tax collectors, tax receivers, and tax commissioners; suspension of collection; property bound; proceedings of sale.

(a) All executions and other process against tax collectors, tax receivers, and tax commissioners shall be directed to all and singular the sheriffs of the state and shall be executed by the sheriffs, their lawful deputies, or other officers lawfully in their stead.

(b) Executions issued pursuant to subsection (a) of this Code section shall not be suspended or delayed by any judicial interference except as provided in Code Section 48-5-203. The Governor, however, may suspend collection until the next meeting of the General Assembly but no longer.

(c) The property of tax collectors, tax commissioners, and their sureties shall be bound from the time the bonds are executed for the payment of taxes collected and for the discharge of their duties.

(d) The proceedings in selling property under such executions shall be the same as under executions issued from the superior court.

History.

Laws 1804, Cobb's 1851 Digest, pp. 1051, 1052.; Code 1863, §§ 834, 835, 836, 837; Code 1868, §§ 913, 914, 915, 916; Code 1873, §§ 911, 912, 913, 914; Code 1882, §§ 911, 912, 913, 914; Civil Code 1895, §§ 925, 926, 927, 928; Civil Code 1910, §§ 1188, 1189, 1190, 1191; Ga. L. 1917, p. 198, § 1; Code 1933, §§ 92-5508, 92-5509, 92-5510, 92-5511; Code 1933, § 91A-1385, enacted by Ga. L. 1978, p. 309, § 2.

JUDICIAL DECISIONS

Prohibition against entertaining affidavit of illegality is constitutional. — Courts are prohibited from entertaining an affidavit of illegality to an execution proceeding against a defaulting tax collector and the collector's sureties. The prohibition is constitutional. Eve v. State, 21 Ga. 50, 1857 Ga. LEXIS 5 (1857).

Date and priority of county's lien on property of tax collector and collector's surety. — From the day of execution of the bond by the tax collector and collector's surety, the county has a lien upon the collector's property and that of the collector's surety, subject only to the superior lien of the state for taxes due the state. Lamar County Advisory Bd. v. McCalley, 181 Ga. 329, 182 S.E. 6, 1935 Ga. LEXIS 81 (1935).

Priority of county's lien on property of tax collector and collector's surety. — When, in an equitable proceeding between the parties with claims to the proceeds of performance bonds deposited with the state by a surety for a county tax collector, no claimant having obtained any judgment prior to the equitable proceeding, and when a county intervened in such equitable proceeding with its claim for loss sustained by default of its tax collector prior to the equitable proceeding, the county was entitled in equity, by virtue of the superior lien given

it by the General Assembly, to priority in payment from bond proceeds. Lamar County Advisory Bd. v. McCalley, 181 Ga. 329, 182 S.E. 6, 1935 Ga. LEXIS 81 (1935).

Liability of otherwise exempt property. — Setting apart of a homestead to the family of a tax collector out of the collector's property does not protect the property from liability to an execution issued by the comptroller general (now commissioner) against the collector and the collector's sureties for a default. Brooks v. State, 54 Ga. 36, 1875 Ga. LEXIS 63 (1875).

Defendant cannot levy execution against codefendant or cosurety. — When one of the defendants in an execution is the sheriff of the county, the sheriff is a party at interest, and cannot levy the execution upon the property of the cosurety and codefendant. The disability of the levying officer being apparent on the face of the papers, the levy may be dismissed on motion of the claimant. State v. Jeter, 60 Ga. 489, 1878 Ga. LEXIS 514 (1878).

Subrogation of surety. — When the sureties for a defaulting tax collector pay off the execution against the collector and take control of the execution, they are subrogated to the rights of the state, and become entitled to the same lien that the state has on all the property of the principal at the time the principal gave the bond. Irby v. Livingston, 81 Ga. 281, 6 S.E. 591, 1888 Ga. LEXIS 108 (1888).

Remedies available to one who claims one is not bound on tax collector's bond. — Mandamus will not lie as a remedy to compel a sheriff to accept an affidavit of illegality filed to an execution issued by the comptroller general (now commissioner) against a tax collector in default and the collector's bondsmen, and levied on the property of one of the alleged bondsmen, who avers in one's affidavit of illegality that one did not sign the tax collector's bond, or authorize anyone else to do so for the tax collector. In such case, an equitable petition for injunction is an available remedy when filed by a bondsman. Webb v. Newsom, 138 Ga. 342, 75 S.E. 106, 1912 Ga. LEXIS 303 (1912).

When execution may be resisted in judicial proceedings. — Tax executions may be resisted in judicial proceedings when there is an unconstitutional exaction, because what is then called a tax is no tax, since the law does not impose the tax or authorize the execution, for the same reason, and since the defendants did not occupy the official positions alleged in the execution. Mayo v. Renfroe, 66 Ga. 408, 1881 Ga. LEXIS 33 (1881).

Money raised by execution cannot be diverted by judicial interference. — Money raised by a sheriff, under an execution issued by the comptroller general (now commissioner) against a delinquent tax collector, cannot be diverted, by judicial interference, from the payment of such execution. The sheriff cannot be required by rule to pay the money to the plaintiff in a judgment older than the comptroller's (now commissioner's) process. The sheriff's duty is to remit to the comptroller (now commissioner) without delay. Goldsmith v. Kemp, 58 Ga. 106, 1877 Ga. LEXIS 17 (1877).

No authority for requiring sheriff to hold money pending court decision. — Whenever a sheriff has money in the sheriff's hands collected from a defaulting tax collector, it is the sheriff's duty to pay the money over to the comptroller general (now commissioner) at once. There is no lawful authority for any person to give the sheriff notice to hold it up until the person's claim to the fund can be passed upon by a court. Wilson v. Wright, 83 Ga. 38, 9 S.E. 834, 1889 Ga. LEXIS 6 (1889).

Neither taxpayer's agent's fraud nor suit on agent's bond is ground for interference. — Courts will not entertain jurisdiction to enjoin an execution against a defaulting agent of a railroad on the ground that there is a suit pending, at the instance of the state, against the defaulting agent and their securities on their bond, or on the ground that the amount for which the agent is a defaulter was fraudulently used and embezzled by the agent. Scofield v. Perkerson, 46 Ga. 325, 1872 Ga. LEXIS 68 (1872).

Courts have no power to prescribe evidentiary requirements for issuance of executions. — Issuing of executions by the comptroller general

(now commissioner) to collect the public revenue due to the state is the act of the executive department of the government. The courts have no power to prescribe the kind or sufficiency of the evidence which shall be necessary to authorize the process of execution to issue against defaulting officers or agents, or to restrain that department in pursuing this course. Scofield v. Perkerson, 46 Ga. 350, 1872 Ga. LEXIS 69 (1872).

OPINIONS OF THE ATTORNEY GENERAL

Priority of state's lien over security deed. — State has lien on property for faithful performance of duties superior to that of the security deed given after the tax collector goes into office. 1962 Ga. Op. Att'y Gen. 572.

48-5-203. Affidavit of illegality to execution against tax collector, tax commissioner, and sureties; trial; damages for delay; appeal.

(a) Whenever the commissioner issues an execution against any defaulting tax collector or tax commissioner and the sureties on his official bond, as set forth in Code Section 48-5-201, the tax collector, tax commissioner, or any surety on his bond at any time after the issuance of the execution and before a sale thereunder may file an affidavit of illegality to the execution. The affidavit shall state any matters of defense which would be available in denial of either the alleged default or of the amount of the default as stated in the execution and shall be returned to be tried in and disposed of by the superior court of the county in which the tax collector or tax commissioner held office in the same manner as provided by law for the trial and disposition of such issues generally.

(b) Code Section 9-13-128, authorizing the jury to assess damages for delay upon the trial of an issue formed on an affidavit of illegality, shall be applicable to the affidavit of illegality provided for in subsection (a) of this Code section.

(c) Upon any final decision by the superior court on the issue made by the affidavit of illegality, either party may file an appeal and carry the case to the appellate court as in cases of injunction.

History.

Ga. L. 1915, p. 55, §§ 1-3; Code 1933, §§ 92-5505, 92-5506, 92-5507; Code 1933, § 91A-1384, enacted by Ga. L. 1978, p. 309, § 2.

JUDICIAL DECISIONS

Affidavit of illegality not available to county treasurers and their bondsmen. — Statute amends the law in relation to issuance of executions against county tax collectors so as to afford a remedy by affidavit of illegality, but this statute does not extend so far as to afford such remedy to county treasurers and their bondsmen. Massachusetts Bonding & Ins. Co. v. Board of Comm'rs, 172 Ga. 409, 157 S.E. 459, 1931 Ga. LEXIS 107 (1931).

48-5-204. Authority to vacate commissions of defaulting tax collectors, tax commissioners, or tax receivers; filling vacancies.

The Governor may vacate the commissions of defaulting tax collectors or tax commissioners or of tax receivers failing or refusing to do their duty, to give bond, or to take the oath required by law. In any such event, the vacancy shall be filled in the manner prescribed for other vacancies.

History.
Laws 1826, Cobb's 1851 Digest, p. 1260.; Code 1863, § 839; Code 1868, § 918; Code 1873, § 916; Code 1882, § 916; Civil Code 1895, § 930; Civil Code 1910, § 1193; Code 1933, § 92-5602; Code 1933, § 91A-1386, enacted by Ga. L. 1978, p. 309, § 2.

JUDICIAL DECISIONS

Section does not violate constitutional removal procedures. — Statute authorizing the Governor to vacate the commission of defaulting tax collectors is not inconsistent with Ga. Const. 1868, Art. IX (see now Ga. Const. 1983, Art. IX, Sec. I, Para. III) which provides that the county officers shall be removable on conviction for malpractice in office. State ex rel. Lennard v. Frazier, 48 Ga. 137, 1873 Ga. LEXIS 34 (1873).

48-5-205. Penalties for incomplete or improper digests.

(a) If a tax receiver or tax commissioner fails to have his or her digest completed and deposited by September 1 in each year, unless excused by provisions of law or by the commissioner, such tax receiver or tax commissioner shall forfeit one-tenth of his or her commissions for each week's delay. If the delay extends beyond 30 days, such tax receiver or tax commissioner shall forfeit one-half of his or her commissions. If the delay extends beyond the time when the Governor and commissioner fix the rate percentage, such tax receiver or tax commissioner shall forfeit all such tax receiver's or tax commissioner's commissions.

(b) If a tax receiver or tax commissioner fails to make out his digest in the manner prescribed by law or fails to comply with the directions given him by the commissioner in making out his digest, he shall forfeit one-half his commissions.

(c) If the digest is made out so badly as not to fulfill the purpose of the tax laws, the tax receiver or tax commissioner shall forfeit all his commissions and shall be removed from office by the governing authority of the county upon the request of the commissioner.

History.
Orig. Code 1863, §§ 825, 826, 827; Code 1868, §§ 904, 905, 906; Code 1873, §§ 902, 903, 904; Code 1882, §§ 902, 903, 904; Civil Code 1895, §§ 918, 919, 920; Civil Code 1910, §§ 1181, 1182, 1183; Code 1933, §§ 92-5401, 92-5402, 92-5403; Code 1933, § 91A-1380, enacted by Ga. L.

1978, p. 309, § 2; Ga. L. 2015, p. 1219, § 9/HB 202.

Editor's notes.

Ga. L. 2015, p. 1219, § 27(c)/HB 202, not codified by the General Assembly, provides, in part, that Sections 9, 12, and 15 of this Act shall be applicable to all appeals filed on or after January 1, 2016.

48-5-206. [Repealed] Liability of tax receiver or tax commissioner for making false entry of a return or for causing taxpayer to pay more than lawful tax.

History.

Laws 1804, Cobb's 1851 Digest, p. 1052; Code 1863, §§ 829, 830; Code 1868, §§ 908, 909; Code 1873, §§ 906, 907; Code 1882, §§ 906, 907; Civil Code 1895 §§ 922, 923; Civil Code 1910, §§ 1185, 1186; Code 1933, §§ 92-5502, 92-5503; Code 1933, § 91A-1382; enacted by Ga. L. 1978, p. 309, § 2 and Ga. L. 1981, Ex. Sess., p. 8; repealed by Ga. L. 1992, p. 2411, § 6, effective April 20, 1992.

Part 5

County Tax Officials

48-5-210. Election of county tax receivers, tax collectors, and tax commissioners; qualifications.

(a) County tax receivers, tax collectors, and tax commissioners shall be elected by the voters of their respective counties at the time and in the manner provided by law. Each such officer shall be elected for a term of four years.

(b)(1) No person shall be eligible to offer for election to or hold the office of tax receiver, tax collector, or tax commissioner unless the person:

(A) Is a citizen of the United States;

(B) Is a resident of the county in which the person seeks office for at least two years prior to qualifying for election to the office and remains a resident of such county during the term of office;

(C) Is a registered voter;

(D) Has attained the age of 25 years prior to the date of qualifying for election to the office, but this subparagraph shall not apply to any person who was holding the office of tax receiver, tax collector, or tax commissioner on July 1, 1981;

(E) Has obtained a high school diploma or its recognized equivalent, but this subparagraph shall not apply to any person who was holding the office of tax receiver, tax collector, or tax commissioner on April 1, 1986; and

(F) Has not been convicted of a felony offense or any offense involving moral turpitude contrary to the laws of this state, any other state, or the United States.

(2) Each person offering as a candidate for the office of tax receiver, tax collector, or tax commissioner shall file an affidavit with the officer before whom such person has qualified to seek the office of tax receiver, tax collector, or tax commissioner prior to or at the time of qualifying as a candidate. The affidavit shall affirm that the person meets all the qualifications required by paragraph (1) of this subsection.

History.
Code 1981, § 48-5-210, enacted by Ga. L. 1985, p. 489, § 3; Ga. L. 1986, p. 495, § 1; Ga. L. 1986, p. 1229, § 1; Ga. L. 1989, p. 1091, § 7.

48-5-211. Interim and emergency filling of vacancies in office of tax receiver, collector, or commissioner.

(a) Except as otherwise provided in Code Section 48-5-212, as soon as a vacancy occurs in the office of county tax receiver, tax collector, or tax commissioner, the judge of the probate court shall appoint a qualified person to discharge the duties of such officer until the vacancy is filled.

(b) When a vacancy occurs as provided in subsection (a) of this Code section and it is not more than six months from the time the election can be called by the county election superintendent and held until the existing term will expire, the person or persons appointed shall discharge the duties of the office for the balance of the term and there shall be no special election.

(c) Except as otherwise provided in this chapter, if from any sudden emergency there is a vacancy and a proper person cannot immediately be appointed, the judge of the probate court or his clerk shall act as county tax receiver, tax collector, or tax commissioner.

(d) Except as provided in subsection (b) of this Code section, when a vacancy occurs as provided in subsection (a) of this Code section, the election superintendent of the county where it occurs shall call and conduct a special election in the manner provided for in Chapter 2 of Title 21.

(e) The person elected pursuant to subsection (d) of this Code section shall hold office for the unexpired term. The returns of the election shall be made to the Secretary of State. Such person shall be commissioned by the Governor.

History.
Code 1981, § 48-5-211, enacted by Ga. L. 1986, p. 1229, § 2; Ga. L. 1988, p. 586, § 5; Ga. L. 1988, p. 1449, § 1.
Code Commission notes.
Two 1988 Acts amended this Code section. Subsection (a) is set out as amended by Ga. L. 1988, p. 1449, § 1. Subsections (b)-(e) are set out as amended by Ga. L. 1988, p. 586, § 5.
Editor's notes.
Ga. L. 1988, p. 586, § 7, not codified by the General Assembly, provided that the 1988 amendment of this Code section

applied to any vacancy occurring on or after March 30, 1988.

48-5-212. Chief deputy tax receiver, collector, or commissioner; appointment; duties; assumption of duties of tax commissioner.

(a) Except as otherwise provided in Code Section 48-5-128.1, the tax receiver, tax collector, or tax commissioner of any county shall be authorized to appoint a chief deputy tax receiver, chief deputy tax collector, or chief deputy tax commissioner, provided that such person has met the same training requirements as enumerated in Code Section 48-5-126.1. Such chief deputy shall have the duties prescribed by the appointing tax official and the authority prescribed in this Code section.

(b) Except as otherwise provided in Code Section 48-5-128.1, in any county in which a chief deputy tax commissioner has been appointed pursuant to subsection (a) of this Code section and said chief deputy meets all qualifications for the office of tax commissioner, the chief deputy tax commissioner shall assume the duties of the office of the tax commissioner upon the death, resignation, incapacity, or inability of such tax commissioner of any such county to serve. Such chief deputy shall serve until such time as the incapacity or inability of such tax commissioner is removed or until January 1 following the next succeeding general election which occurs more than 60 days after the occurrence of the vacancy or the expiration of the remaining term of office, whichever occurs first. The chief deputy tax commissioner shall receive no additional compensation for performing the duties of such tax commissioner except in cases involving the death or resignation of such tax commissioner, in which case the chief deputy shall receive the same compensation, paid in the same manner, as such tax commissioner would have received less any longevity raises received by the previous tax commissioner. If the next succeeding general election is not one at which county officers are elected and is more than 60 days after the occurrence of the vacancy and unless the incapacity or inability of such tax commissioner is removed prior to such election, a duly qualified person shall be elected tax commissioner at a special election held at the same time as the general election. The person so elected shall take office on January 1 following such election and shall serve for the remainder of the unexpired term of office.

History.

Code 1981, § 48-5-212, enacted by Ga. L. 1988, p. 1449, § 2; Ga. L. 1991, p. 365, § 1; Ga. L. 1994, p. 237, § 2; Ga. L. 1998, p. 1159, § 20.

Editor's notes.

Both Ga. L. 1988, p. 586, § 5 and Ga. L. 1988, p. 1449, § 2 enacted a Code Section 48-5-212. The version of Code Section 48-5-212 enacted by Ga. L. 1988, p. 1449, § 2 is set out above.

ARTICLE 4
COUNTY TAXATION

Cross references.

Grants to counties for road construction and maintenance, as such grants relate to relief of ad valorem taxation on tangible property in county, § 36-17-20 et seq.

RESEARCH REFERENCES

ALR.

Limitation of power to tax as limitation of power to incur indebtedness or vice versa, 97 A.L.R. 1103.

Constitutionality and construction of statute which provides for the use of the general funds or credit of the municipality in event of default or delay in payment of, or inability to collect, or insufficiency of, special assessments for local improvements, 135 A.L.R. 1287.

48-5-220. Purposes of county taxes.

County taxes may be levied and collected for the following public purposes:

(1) To pay the expenses of administration of the county government;

(2) To pay the principal and interest of any debt of the county and to provide a sinking fund for the payment of the principal and interest;

(3) For educational purposes upon property located outside of independent school systems, as provided in Article VIII of the Constitution of this state;

(4) To build and repair public buildings and bridges;

(5) To pay the expenses of courts and the maintenance and support of inmates, to pay sheriffs and coroners, and to pay for litigation;

(6) To build and maintain a system of county roads;

(7) For public health purposes in the county and for the collection and preservation of records of vital statistics;

(8) To pay county police;

(9) To support indigent individuals;

(10) To pay county agricultural and home demonstration agents;

(11)(A) To provide for payment of old age assistance to aged individuals in need and for the payment of assistance to needy blind, assistance to dependent children, and other welfare benefits.

(B) No individual shall be entitled to assistance as provided in this paragraph who does not qualify for assistance in every respect as provided by law prescribing the qualifications for beneficiaries.

(C) No indebtedness or liability against the county shall ever be created for the purpose stated in this paragraph when the indebtedness or liability is in excess of amounts reasonably expected to be raised by county taxes levied as provided by law;

(12) To provide for fire protection of forest lands and for the conservation of natural resources;

(13) To provide hospitalization and medical or other care for the indigent sick people of the county;

(14) To acquire, improve, and maintain airports, public parks, and public libraries;

(15) To provide for workers' compensation and retirement or pension funds for officers and employees;

(16) To provide reasonable reserves for public improvements as may be fixed by law;

(17) To pay pensions and other benefits and costs under a teacher retirement system or systems;

(18) For school lunch purposes, upon property located outside of independent school systems as provided in Article VIII of the Constitution of this state, to provide for payment of costs and expenses incurred in the: purchase, replacement, and maintenance of school lunchroom equipment; purchase of school lunchroom supplies; transportation, storage, and preparation of foods; and all other costs and expenses incurred in the operation of school lunch programs;

(19) To provide for ambulance services within the county;

(20) To provide for financial assistance to county or joint county and municipal development authorities for the purpose of developing trade, commerce, industry, and employment opportunities. No tax for this purpose shall exceed one mill per dollar upon the assessed value of the taxable property in the county levying the tax; provided, however, that the authority to levy and collect a tax for the purpose described in this paragraph shall not be deemed to be an exclusive authorization and shall not prevent any county from exercising any power granted to it pursuant to any constitutional amendment, whether general or special, to levy any ad valorem tax for the purpose of providing financial assistance to any county or joint county and municipal development authority. The exceptions to the one mill per dollar tax limitation contained in the proviso of the preceding

sentence shall not be construed so as to affect any action pending in court on February 20, 1984;

(21) To provide for public health and sanitation including, but not limited to, water pollution control projects, sewage treatment facilities, storm and sanitary sewer facilities, and water supply facilities; and

(22) To provide for financial assistance to county children and youth commissions providing children and youth services, including but not limited to, the study of the needs, issues, and problems relating to children and youth; the gathering of data, identification of problem areas, and planning and implementation of programs for dealing with problems of children and youth; and the dissemination of information relating to issues of children and youth.

History.

Code 1933, § 92-3701; Ga. L. 1937-38, Ex. Sess., p. 292, § 1; Ga. L. 1939, p. 200, § 1; Ga. L. 1939, p. 201, § 1; Ga. L. 1941, p. 318, § 1; Ga. L. 1946, p. 87, § 1; Ga. L. 1958, p. 370, § 1; Ga. L. 1962, p. 458, §§ 1, 2; Ga. L. 1970, p. 582, § 1; Ga. L. 1972, p. 922, § 1; Ga. L. 1977, p. 845, § 1; Ga. L. 1978, p. 2006, § 1; Code 1933, § 91A-1201, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 32; Ga. L. 1984, p. 807, § 1; Ga. L. 1988, p. 1748, § 1; Ga. L. 1990, p. 793, § 1; Ga. L. 1999, p. 81, § 48.

Cross references.

Provisions regarding employment of county agricultural and home demonstration agents, § 20-2-62.

JUDICIAL DECISIONS

Analysis

General Consideration
Specific Purposes Construed

General Consideration

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1868, § 548, and former Code 1873, § 514, former Code 1882, § 514, and former Civil Code 1895, § 404, former Civil Code 1910, § 513 are included in the annotations for this Code section.

Intent is to cover same purposes as expressed in Constitution. — Statute is intended to cover the same purposes expressed in Ga. Const. 1877, Art. VII, Sec. VI, Para. II (see now Ga. Const. 1983, Art. IX, Sec. IV, Para. I-III), although the language is not the same as that employed in the Constitution. Richter v. Bacon, 145 Ga. 408, 89 S.E. 367, 1916 Ga. LEXIS 347 (1916) (decided under former Civil Code 1910, § 513).

Section intended to inform public as to use of county funds. — Statute is of great importance, and ordinaries (now county governing authority) and treasurers who neglect to conform to this salutary law are greatly to blame. By the division of the funds into as many as nine or ten smaller funds, the public are made aware of the uses to which the taxes are to be applied, and a far better control over the public money is secured. Mitchell v. Speer, 39 Ga. 56, 1869 Ga. LEXIS 174 (1869) (decided under former Code 1868, § 548).

When a tax is levied for any one of the purposes set forth in this statute it includes all items named in that

purpose. Central of Ga. Ry. v. Wright, 35 Ga. App. 144, 132 S.E. 449, 1926 Ga. App. LEXIS 591 (1926), aff'd, 165 Ga. 43, 139 S.E. 909, 1927 Ga. LEXIS 305 (1927) (decided under former Civil Code 1910, § 513).

Identification of purposes for which tax levied. — It is sufficient if each item of a tax levy under this statute gives the percent of the tax levied under that item, and it is not necessary that the percent levied for each separate purpose expressed in the item be stated. Southern Ry. v. Whitfield County, 38 Ga. App. 703, 145 S.E. 668, 1928 Ga. App. LEXIS 412 (1928) (decided under former Civil Code 1910, § 513).

Publication of treasurer's annual statement not covered by section. — Publication of the treasurer's annual statement required by former Code 1895, § 460 (see now O.C.G.A. § 36-6-14) was not a court expense and as such a legal charge against the county by virtue of former Civil Code 1895, § 404. Howard v. Early County, 104 Ga. 669, 30 S.E. 880, 1898 Ga. LEXIS 395 (1898) (decided under former Civil Code 1895, § 404).

Amendment of levy when item of levy is indefinite but not void. — When an item of a tax levy under this statute is indefinite but not void, it may be clarified and made definite by an amendment which does not change the purpose or the amount of the original levy. This is true even though the generality of taxpayers have paid their taxes and the amendment is made after the property of a protesting taxpayer has been levied on under a tax fi. fa., and an affidavit of illegality has been interposed to the levy. Southern Ry. v. Whitfield County, 38 Ga. App. 703, 145 S.E. 668, 1928 Ga. App. LEXIS 412 (1928) (decided under former Civil Code 1910, § 513).

Scope of and payment for legal county debts. — Term "legal indebtedness" (now "debt"), properly construed, includes legal liabilities other than current expense and bonded debt. A legal indebtedness on the part of a county arises whenever a county by contract receives either material or services of value, to be paid for out of available funds in the hands of the treasurer or out of the proceeds of taxes that have been or may be lawfully levied during the year in which such contracts are made. When a county has not paid such a demand and there is no available fund in the treasury with which to pay the demand, the county authorities may during a subsequent year levy a tax for the discharge of such liabilities. A county may levy taxes to pay legal indebtedness of the county due, or to become due, or past due. Atlanta Distrib. Terms., Inc. v. Board of Comm'rs of Rds. & Revenues, 177 Ga. 250, 170 S.E. 52, 1933 Ga. LEXIS 157 (1933) (decided under former Civil Code 1910, § 513).

Applicability to accumulated indebtedness. — Under the terms "due" and "past due" in former Civil Code 1910, § 513(1) (see now paragraph (2) of this Code section) was embraced, necessarily, the accumulated indebtedness of the county. Indebtedness of the county due or past due may possibly be more extensive, in the last analysis of those expressions, than "accumulated indebtedness," but "accumulated indebtedness" cannot be more extensive than the aggregate of the indebtedness which is due and that which is past due. Consequently, a tax for the purpose of paying accumulated indebtedness is provided for exclusively under the statute. Central of Ga. Ry. v. Wright, 35 Ga. App. 144, 132 S.E. 449, 1926 Ga. App. LEXIS 591 (1926), aff'd, 165 Ga. 43, 139 S.E. 909, 1927 Ga. LEXIS 305 (1927) (decided under former Civil Code 1910, § 513).

Unpaid lawful current expenses are accumulated debts. — Unpaid lawful current expenses incurred in one year, which were not discharged by payment, and for which county warrants were legally issued, are accumulated debts of the county falling within the statute. Southern Ry. v. Fulton County, 170 Ga. 248, 152 S.E. 567, 1930 Ga. LEXIS 432 (1930) (decided under former Civil Code 1910, § 513).

Extra and special taxes excluded from computation of limitation on debt for certain purposes. — No extra or special taxes provided by local or general laws as fixed charges upon the particular county are to be included in computing limitations on debt so as to

General Consideration (Cont'd)

affect or prevent the levy of such taxes as may be necessary to pay the county's legal indebtedness and the county's current expenses. Alabama G.S.R.R. v. Harrison, 54 Ga. App. 368, 188 S.E. 49, 1936 Ga. App. LEXIS 581 (1936).

Whether a bridge is built and repaired from funds raised under this statute does not determine whether the bridge is a public bridge. Early County v. Fain, 2 Ga. App. 288, 58 S.E. 528, 1907 Ga. App. LEXIS 347 (1907) (decided under former Civil Code 1895, § 404).

Limitation on taxes assessed for building, erecting, or repairing bridges. — There is no limitation on the amount of taxes which may be assessed and collected within the year for the purpose of building and repairing bridges within the counties of this state, excepting the cost of erecting the bridges. Settle v. Howell, 174 Ga. 792, 164 S.E. 189, 1932 Ga. LEXIS 143 (1932) (decided under former Civil Code 1910, § 513).

Provision for advertising of orders is directory, not mandatory. — Provision of former Civil Code 1910, § 515, in reference to advertising the order levying county taxes was directory and not mandatory, and a failure to comply with such provision did not render the tax levy void. Garrison v. Perkins, 137 Ga. 744, 74 S.E. 541, 1912 Ga. LEXIS 138 (1912) (decided under former Civil Code 1910, § 515); Dunn v. Harris, 144 Ga. 385, 87 S.E. 299, 1915 Ga. LEXIS 213 (1915) (decided under former Civil Code 1910, § 515); McGregor v. Hogan, 153 Ga. 473, 112 S.E. 471, 1922 Ga. LEXIS 106 (1922), aff'd, 263 U.S. 234, 44 S. Ct. 50, 68 L. Ed. 282, 1923 U.S. LEXIS 2738 (1923) (decided under former Civil Code 1910, § 515); McMillan v. Tucker, 154 Ga. 154, 113 S.E. 391, 1922 Ga. LEXIS 320 (1922) (decided under former Civil Code 1910, § 515).

Advertisement effective as notice of levy. — Whether the requirement of former Civil Code 1910, § 515 be deemed mandatory or directory, or partly one and partly the other, the advertising in a public newspaper follows the passing of the order and the entry of the order on the minutes, and gives notice to the public of the levy which has been made. Dunn v. Harris, 144 Ga. 157, 86 S.E. 556, 1915 Ga. LEXIS 99 (1915) (decided under former Civil Code 1910, § 515).

Inapplicable to order to collect balance due on previous levy. — An order by the county authorities directing the tax collector to proceed with the collection of the balance due on previous levy did not constitute a new tax levy or assessment, and did not fall within the provisions of the statute. Johnson v. Pinson, 127 Ga. 144, 56 S.E. 238, 1906 Ga. LEXIS 776 (1906) (decided under former Civil Code 1895, § 406).

Workers compensation. — Trial court properly determined that a county could not provide workers compensation coverage to Georgia superior court judges as the judges were not county employees; counties were specifically authorized by Ga. Const. 1983, Art. IX, Sec. IV, Para. I and O.C.G.A. § 48-5-220 to provide workers compensation to "county officials," such as a sheriff, pursuant to O.C.G.A. § 34-9-1, but judges were deemed state employees. Freeman v. Barnes, 282 Ga. App. 895, 640 S.E.2d 611, 2006 Ga. App. LEXIS 1390 (2006), cert. denied, No. S07C0609, 2007 Ga. LEXIS 275 (Ga. Mar. 26, 2007).

Specific Purposes Construed

Inquest fees to coroner. — County is liable to suit by coroner for fees for inquests. Davis v. County of Bibb, 116 Ga. 23, 42 S.E. 403, 1902 Ga. LEXIS 12 (1902) (decided under former Civil Code 1895, § 404).

Compensating appointed counsel from county funds prohibited. — Attorney at law who is assigned by the judge as counsel for an indigent defendant is not entitled to be paid for such services out of the county funds. Elam v. Johnson, 48 Ga. 348, 1873 Ga. LEXIS 63 (1873) (decided under former Code 1873, § 514).

Payment for publishing general presentment of grand jury does not come within the terms of the statute. Houston County v. Kersh & Wynne, 82 Ga. 252, 10 S.E. 199, 1888 Ga. LEXIS 407

(1888) (decided under former Code 1882, § 514).

Levy of taxes to supplement salaries of county agents. — While the Board of Regents of the University System of Georgia, through the College of Agriculture, controls the general scope of the agricultural extension work and is empowered to employ and discharge county agents, the counties may levy a tax to supplement the salaries of county agents. Royal Indem. Co. v. Humphries, 90 Ga. App. 567, 83 S.E.2d 565, 1954 Ga. App. LEXIS 755 (1954).

Hospitalization, medical, or other care to indigents. — Authority of counties to provide hospitalization and medical or other care to indigent sick people of the county is not limited to personal administration by officers or agents of the governing authority, but such authority may, except as otherwise limited by law, enter into a contract with a corporation having appropriate charter power, under the terms of which the latter corporation will care for the poor in the matter of medical and surgical treatment. Brock v. Chappell, 196 Ga. 567, 27 S.E.2d 38, 1943 Ga. LEXIS 387 (1943).

Contract by county authorities with a hospital in the county to provide a ward for the hospitalization and medical treatment of the indigent sick of the county is neither a gratuity nor otherwise prohibited, unless in violation of statutory limitations on the levy taxes to support such a contract. Brock v. Chappell, 196 Ga. 567, 27 S.E.2d 38, 1943 Ga. LEXIS 387 (1943).

Levy of tax to pay for county's liability for diminution in value of land. — County may be held liable for a diminution in the value of land resulting from the alteration and relocation of a public road passing through the county, and the county authorities may lawfully levy a tax to pay such liability. Hall County v. Smith, 178 Ga. 212, 172 S.E. 645, 1934 Ga. LEXIS 13 (1934) (decided under former Civil Code 1910, § 513).

Contract between county and airport authority valid. — Even though, under a contract between a county and an airport authority for use by the county of an expanded airport facility, the consideration to be paid by the county was not expressed in terms of a definite dollar amount, it was not an unconstitutional "new debt" under Ga. Const. 1983, Art. IX, Sec. V, Para. I(a); the contract was a valid intergovernmental contract pursuant to paragraph (14) of O.C.G.A. § 48-5-220. Clayton County Airport Auth. v. State, 265 Ga. 24, 453 S.E.2d 8, 1995 Ga. LEXIS 68 (1995).

Contract between the county and the airport authority, which managed the airport, qualified as an enforceable intergovernmental agreement (IGA) that did not violate the Debt Clause in the Georgia Constitution because the IGA was between appropriate governmental entities; the agreement's term did not exceed 50 years; the agreement related to both the provision of services and the joint use of facilities as the airport authority agreed to manage and maintain the expanded taxiway, and the county, in return, agreed to provide funding and manage the debt required to be incurred to complete the expansion; and the agreement dealt with services and facilities about which the county had the authority to enter contracts. Avery v. State of Ga., 295 Ga. 630, 761 S.E.2d 56, 2014 Ga. LEXIS 547 (2014).

Affirmative action programs. — After the plaintiffs claimed that the defendants violated O.C.G.A. § 48-5-220 in connection with the operation of a county's minority and female business enterprise program, the defendants were entitled to summary judgment because the statute does not prohibit the conduct of which the plaintiffs complain and there is no authority that allows a private right of action in cases when the statutory scheme does not provide for one. Webster v. Fulton County, 44 F. Supp. 2d 1359, 1999 U.S. Dist. LEXIS 12325 (N.D. Ga. 1999).

Transcript costs for indigents. — Under O.C.G.A. § 17-12-34 of the Georgia Indigent Defense Act of 2003, the Georgia Public Defender Standards Council is not required to pay for indigent defendants' costs of transcripts in criminal cases; under laws existing before the Act, counties were required to pay for such transcripts, and the Act does not repeal these laws by implication. Ga. Public

Specific Purposes Construed (Cont'd)

Defender Stds. Council v. State of Ga., 284 Ga. App. 660, 644 S.E.2d 510, 2007 Ga. App. LEXIS 387 (2007).

OPINIONS OF THE ATTORNEY GENERAL

County is authorized to collect and levy taxes for the purpose of abating the disposal of pollutants into wells by closing the wells. 1983 Op. Att'y Gen. No. U83-42.

One mill tax limitation of paragraph (20) of O.C.G.A. § 48-5-220 limits the amount of ad valorem tax funds a county may pay to a county development authority. 1997 Op. Att'y Gen. No. U97-15.

Witness fees. — County must pay per diem witness fees to witnesses summoned in civil or criminal cases; the source of funds for witness fees is from county taxes. 1970 Op. Att'y Gen. No. U70-11.

Source of funds for county roads. — Board of education may not use the board's funds for laying out, altering, maintaining, and improving a public, county-maintained road even though school transportation would be facilitated thereby; it is the sole duty and responsibility of the local officials in charge of county matters to lay out, alter, maintain, and improve the subject road in the manner they deem best suited to the needs of the county. 1962 Ga. Op. Att'y Gen. 189.

"Public health purpose" construed. — Disposal and burial of diseased livestock so as to prevent the spread of disease is within ". . . public health purposes . . ." in paragraph (7) of this statute. 1968 Op. Att'y Gen. No. 68-172.

Salaries and expenses of county and home demonstration agents. — When county taxes are levied under Ga. Const. 1945, Art. VII, Sec. IV, Para. I (see now Ga. Const. 1983, Art. IX, Sec. IV, Para. I-III) and this statute, the expenses and salaries of the county and home demonstration agent would be paid by the governing authority of the county. 1958-59 Ga. Op. Att'y Gen. 127.

Statute does not provide any limitation upon the rate of taxation for welfare purposes, other than that stated in Ga. Const. 1945, Art. VII, Sec. II, Para. I (see now Ga. Const. 1983, Art. VII, Sec. III, Para. I). 1948-49 Ga. Op. Att'y Gen. 357.

County may donate funds to be used for child day care services as part of the state's former Aid to Families with Dependent Children program. 1975 Op. Att'y Gen. No. U75-1.

Private day care centers not open to eligible children may not receive county funds. — Since the Constitution limits county taxation and expenditures to welfare programs as provided for by law, and since the only welfare provided for by law which may include this type of day care services is the Aid to Families with Dependent Children program, there is no authority for a county to appropriate money for the private day care center which is not operated as a service for eligible children. 1975 Op. Att'y Gen. No. U75-1.

Sheriff's widow is entitled to workers' compensation benefits. 1962 Ga. Op. Att'y Gen. 612.

Workers' compensation for county administrative personnel. — Administrative personnel who assisted the clerk of court, judge of the probate court and the tax commissioner and who were paid by those persons with funds received from the county were covered by former Code 1933, Ch. 114 (see now O.C.G.A. Ch. 9, T. 34). 1962 Ga. Op. Att'y Gen. 612.

Teacher retirement benefits for county agricultural agent. — County may levy taxes to provide teacher retirement benefits for a county agricultural agent. 1945-47 Ga. Op. Att'y Gen. 209.

Emergency management within meaning of this statute. — Civil defense (now emergency management) coordination and preparation for better utilization of county facilities is within the meaning of this statute. 1962 Ga. Op. Att'y Gen. 27.

Order need not be advertised in official county newspaper. —

Advertising of a tax levy in the paper which is approved for county advertisements, once a week for a period of 30 days would comply with the provisions of former Code 1933, § 92-3802. However, it was not mandatory upon the county commissioners to publish the levy in the official newspaper of the county; the commissioners may, if the commissioners so desire, publish the levy in any other paper, either daily or weekly, in the commissioners' discretion. 1957 Ga. Op. Att'y Gen. 42.

Former Code 1933, § 92-3802 was directory and not mandatory, and a failure to comply with the provision did not render the tax levy void. 1954-56 Ga. Op. Att'y Gen. 707.

Effect of mistake in publication of tax levy. — Since the failure to publish the county tax levy as required by former Code 1933, § 92-3802 did not invalidate the levy, it is obvious that in a case when a mistake is made in the publication of the tax levy that the levy would not be void. 1954-56 Ga. Op. Att'y Gen. 707.

RESEARCH REFERENCES

ALR.

Validity and construction of statute or ordinance providing for relief of poor persons from taxes, 123 A.L.R. 597.

48-5-221 through 48-5-231. [Reserved].

History.

Repealed by Ga. L. 1981, p. 1857, § 46, effective April 22, 1981.

Editor's notes.

Ga. L. 2017, p. 774, § 48/HB 323, effective May 9, 2017, part of an Act to revise, modernize, and correct the Code, designated these Code sections as reserved.

These Code sections were based on former Code 1933, §§ 91A-1202 through 91A-1212. For present provisions governing the purposes of county taxes, see Code Section 48-5-220.

48-5-232. [Reserved] Advertisement of county property tax assessment.

History.

Ga. L. 1978, p. 309, § 2; repealed by Ga. L. 1995, p. 10, § 48(3), effective February 21, 1995.

Editor's notes.

Ga. L. 1995, p. 10, § 48(3) repealed and reserved this Code section, effective February 21, 1995.

48-5-233. Official collection and paying over of county taxes.

All taxes levied for county purposes shall be assessed upon the tax commissioner's or tax receiver's books for each year and shall be collected by the tax commissioner or tax collector. After collection, the tax commissioner or tax collector shall pay the taxes to the county treasurer.

History.

Orig. Code 1863, § 491; Code 1868, § 553; Ga. L. 1872, p. 78, § 8; Code 1873, § 519; Code 1882, § 519; Civil Code 1895, § 408; Civil Code 1910, § 517; Code 1933, § 92-3803; Code 1933, § 91A-1214, enacted by Ga. L. 1978, p. 309, § 2.

Law reviews.

For note discussing problems with profits generated by escrow account, and proposing federal legislative reform, see 10 Ga. St. B.J. 618 (1974).

JUDICIAL DECISIONS

Collection of sanitation assessments not prohibited. — Sanitation assessments are not taxes but service charges, and thus collection of those charges is not prohibited. Levetan v. Lanier Worldwide, Inc., 265 Ga. 323, 454 S.E.2d 504, 1995 Ga. LEXIS 134 (1995).

Telephone companies were authorized to collect 911 charges and retain fee. — O.C.G.A. § 46-5-134(a)(1)(B) clearly authorized telephone service providers to collect the 911 charge, and § 46-5-134(d) authorized providers to retain an administrative fee; to the extent § 46-5-134 conflicted with O.C.G.A. § 48-5-233, which was part of the 1860 Code, it prevailed as a later, more specific statute. Even if there was a conflict between the 911 Act and § 48-5-233, that was not a compelling reason to conclude that the 911 charge was a fee rather than a tax. Bellsouth Telecoms., LLC v. Cobb County, 305 Ga. 144, 824 S.E.2d 233, 2019 Ga. LEXIS 106 (2019).

48-5-234. Enforcement of collection and payment of county property taxes.

Any remedy or right allowed by law for the enforcement of the collection and payment of state property taxes, either by the commissioner, tax commissioner, or tax collector, may be used for the enforcement of the collection and payment of county property taxes by the county governing authority.

History.

Laws 1796, Cobb's 1851 Digest, p. 182.; Laws 1815, Cobb's 1851 Digest, p. 1062.; Laws 1825, Cobb's 1851 Digest, p. 1066.; Code 1863, § 493; Code 1868, § 556; Code 1873, § 522; Code 1882, § 522; Civil Code 1895, § 412; Civil Code 1910, § 521; Code 1933, § 92-3807; Code 1933, § 91A-1217, enacted by Ga. L. 1978, p. 309, § 2.

JUDICIAL DECISIONS

Notice not necessary. — Former Code 1882, §§ 522, 523, and 524 (see now O.C.G.A. §§ 48-5-234, 48-5-238, and 48-5-239) did not prescribe notice as a condition precedent before execution was issued against tax collectors and sureties. Walden v. County of Lee, 60 Ga. 296, 1878 Ga. LEXIS 444 (1878); Price v. Douglas County, 77 Ga. 163, 3 S.E. 240, 1887 Ga. LEXIS 89 (1887).

Commissioner has no right to proceed against one wrongfully acting as tax official. — When one assuming to act as tax collector is, on the information of the solicitor general (now district attorney) acting as the agent of the state, declared by a court of competent jurisdiction to be exercising the duties of the office without any warrant or authority, and the money in the collector's hands is ordered to be paid into the hands of the clerk of the superior court, the comptroller general (now commissioner), as the agent of the state, cannot legally issue execution against the collector and the collector's securities as tax collector, for the money which the collector had wrongfully collected and been ordered to pay out by the judgment of the court. Hartley v. State, 3 Ga. 233, 1847 Ga. LEXIS 102 (1847).

48-5-235. Liability of tax commissioners and tax collectors for default or improper conduct.

The tax commissioners and tax collectors shall be subject to the same

fines and forfeitures for any default or improper conduct relating to county property taxes as are provided by law with respect to state property taxes.

History.
Orig. Code 1863, § 492; Code 1868, § 554; Code 1873, § 520; Code 1882, § 520; Civil Code 1895, § 410; Civil Code 1910, § 519; Code 1933, § 92-3805; Code 1933, § 91A-1215, enacted by Ga. L. 1978, p. 309, § 2.

48-5-236. Allowance of commissions of tax commissioners or tax collectors.

The governing authority of each county, in allowing the tax commissioner or tax collector his commissions for collecting the taxes levied in the county, shall aggregate the taxes for the various purposes levied and allow commissions on the whole amount. Each allowance shall be made in accordance with the schedule from which the commissioner is authorized to allow commissions to tax commissioners or tax collectors for collecting state property taxes.

History.
Ga. L. 1861, p. 76, § 23; Code 1868, § 555; Code 1873, § 521; Code 1882, § 521; Civil Code 1895, § 411; Civil Code 1910, § 520; Code 1933, § 92-3806; Code 1933, § 91A-1216, enacted by Ga. L. 1978, p. 309, § 2.

48-5-237. Payment of taxes where property lies in more than one county.

A taxpayer who has a portion of real property extending into more than one county may pay all property taxes due on the property to the tax collector or tax commissioner of the county where the majority of the property is located. Nothing contained in this Code section shall change the amount of tax due each county, but this Code section shall change only the place of payment and collection. The tax collector or tax commissioner of the county of collection shall transmit to the tax collector or tax commissioner of the other counties the moneys due the other counties and a certificate showing that all taxes due on the property have been paid.

History.
Ga. L. 1972, p. 398, § 1; Code 1933, § 91A-1222, enacted by Ga. L. 1978, p. 309, § 2.

48-5-238. Executions against persons holding county money.

(a) The governing authority of each county may compel all persons and their heirs and personal representatives who have in their possession any county money collected for any county purpose whatever to pay over the county money to the county governing authority.

(b) Upon the failure of obligated persons to pay over county moneys,

the county governing authority shall issue executions against such persons and their securities, if any, for the full amount appearing to be due. The executions shall be issued in the same manner as the commissioner issues executions against defaulting tax commissioners or tax collectors.

History.

Laws 1796, Cobb's 1851 Digest, p. 182.; Code 1863, §§ 494, 495; Code 1868, §§ 557, 558; Code 1873, §§ 523, 524; Code 1882, §§ 523, 524; Civil Code 1895, §§ 413, 414; Civil Code 1910, §§ 522, 523; Code 1933, §§ 92-3808, 92-3809; Code 1933, § 91A-1218, enacted by Ga. L. 1978, p. 309, § 2.

JUDICIAL DECISIONS

Constitutionality. — Former Civil Code 1910, §§ 522 and 523 (see now O.C.G.A. § 48-5-238) was held to be constitutional in view of former Civil Code 1910, § 524 (see now O.C.G.A. § 48-5-239). Hobbs v. Dougherty County, 98 Ga. 574, 25 S.E. 579, 1896 Ga. LEXIS 105 (1896); Roberts v. Dancer, 144 Ga. 341, 87 S.E. 287, 1915 Ga. LEXIS 197 (1915).

Against whom execution may be issued. — Under former Civil Code 1910, §§ 522, 523, and 525 (see now O.C.G.A. §§ 48-5-238 and 48-5-240), an execution may be issued against any person, whether an official or not, holding county money, and without suit or notice of any kind. Hobbs v. Dougherty County, 98 Ga. 574, 25 S.E. 579, 1896 Ga. LEXIS 105 (1896); Greer v. Turner County, 138 Ga. 558, 75 S.E. 578, 1912 Ga. LEXIS 609 (1912).

Degree of specificity required in execution. — It is not essential to the validity of an execution issued by virtue of this statute that it be set out therein from whom the defendant in fi. fa. received the money, what particular money it was, or how it was county money. Greer v. Turner County, 138 Ga. 558, 75 S.E. 578, 1912 Ga. LEXIS 609 (1912).

Execution cannot be legally issued under this statute against the sheriff of a county on the bond given by the sheriff of a city court of the county, although both offices may have been filled by the same individual. Martin v. Decatur County, 34 Ga. App. 816, 131 S.E. 302, 1926 Ga. App. LEXIS 58 (1926).

Execution against surety on bond of receiver for excess legal commissions not authorized. — An ordinary (now county governing authority) is not authorized to issue an execution against a surety on the bond of a receiver payable to the Governor for an amount received in excess of the receiver's legal commissions. Fannin County v. Pack, 149 Ga. 703, 102 S.E. 166, 1920 Ga. LEXIS 379 (1920).

Execution founded on bond unenforceable when no bond given. — An execution founded on a tax collector's bond cannot be enforced on the ground that the tax collector has public money in the collector's hands, when it appears that the tax collector did not in fact give a bond. To hold the tax collector liable for public funds held by the tax collector, a proper execution must be issued. County of Lee v. Walden, 68 Ga. 664, 1882 Ga. LEXIS 80 (1882).

After levy of an execution issued, an affidavit of illegality is an available remedy. Massachusetts Bonding & Ins. Co. v. Board of Comm'rs, 172 Ga. 409, 157 S.E. 459, 1931 Ga. LEXIS 107 (1931).

If the execution provided for under this statute has not been levied, an affidavit of illegality is not available and an injunction is the remedy. Massachusetts Bonding & Ins. Co. v.

Board of Comm'rs, 172 Ga. 409, 157 S.E. 459, 1931 Ga. LEXIS 107 (1931).

Procedure when tax official retains excess sums as commission. — While under former Code 1933, § 32-1106 the tax collector was required to pay over to school authorities all sums collected as taxes for educational purposes, such taxes were nevertheless levied by the county authorities; and when a tax commissioner has succeeded to the duties of a tax collector and has retained from such taxes a sum as commissions in excess of the amount to which the commissioner is entitled, the proper county authorities may issue an execution for the excess under this statute. Palmer v. Burke County, 180 Ga. 478, 179 S.E. 344, 1935 Ga. LEXIS 450 (1935).

When a tax was levied by the county for educational purposes, it was within the province of the county authorities to issue execution for any sum unlawfully retained by the tax commissioner, and the disposition of the recovery is a matter between the county and the educational authorities; the presumption being that the amount so recovered will be applied according to law. Palmer v. Burke County, 180 Ga. 478, 179 S.E. 344, 1935 Ga. LEXIS 450 (1935).

48-5-239. Affidavit of illegality by person against whom execution issues.

If execution as provided in subsection (b) of Code Section 48-5-238 issues for an amount greater than the amount due or if the defendant denies on oath owing any part of the amount claimed, the defendant may cause an issue to be formed on the execution by filing an affidavit of illegality according to the rules governing other illegalities. Each issue shall be tried by a jury at the first term of the superior court held after the filing of the affidavit.

History.

Orig. Code 1863, § 496; Code 1868, § 559; Code 1873, § 525; Code 1882, § 525; Civil Code 1895, § 415; Civil Code 1910, § 524; Code 1933, § 92-3810; Code 1933, § 91A-1219, enacted by Ga. L. 1978, p. 309, § 2.

Cross references.

Refunds of taxes and license fees by counties and municipalities; time and manner of filing claims and actions for refund; authority to approve or disapprove claims, § 48-5-380.

JUDICIAL DECISIONS

Remedy by affidavit of illegality under this statute is valid and constitutional. Bennett v. Wheatley, 154 Ga. 591, 115 S.E. 83, 1922 Ga. LEXIS 428 (1922).

Affidavit of illegality available after levy of execution. — After levy of an execution issued under former Civil Code 1910, §§ 522 and 523 (see now O.C.G.A. § 48-5-238), an affidavit of illegality was an available remedy. Massachusetts Bonding & Ins. Co. v. Board of Comm'rs, 172 Ga. 409, 157 S.E. 459, 1931 Ga. LEXIS 107 (1931).

Remedy by affidavit of illegality is not available if there was no levy on the property. Ben Hill County v. Massachusetts Bonding & Ins. Co., 144 Ga. 325, 87 S.E. 15, 1915 Ga. LEXIS 187 (1915).

Remedy before levy is injunction. — If the execution provided for under former Civil Code 1910, §§ 522 and 523 (see now O.C.G.A. § 48-5-238) had not been levied, an affidavit of illegality was not available and an injunction is the remedy. Massachusetts Bonding & Ins. Co. v. Board of Comm'rs, 172 Ga. 409, 157 S.E. 459, 1931 Ga. LEXIS 107 (1931).

Affidavit issued against administratrix of tax collector. — An affidavit of illegality to a tax fi. fa., issued by order of the ordinary (now county

governing authority) against the administratrix of the collector and the collector's sureties, is properly retained to try the issue pursuant to the provisions of this statute. Walden v. County of Lee, 60 Ga. 296, 1878 Ga. LEXIS 444 (1878); County of Lee v. Walden, 68 Ga. 664, 1882 Ga. LEXIS 80 (1882).

Sale after acceptance of affidavit is invalid. — When an execution has been issued against a tax collector and the sureties on the collector's bond, and an affidavit of illegality filed by the tax collector under former Code 1882, §§ 525 and 3666 (see now O.C.G.A. §§ 9-13-127 and 48-5-239), has been accepted by the levying officer, a subsequent sale of the property of the surety, before judgment on the illegality, was invalid, and conveyed no title. Whelchel v. Lucky, 41 F. 114, 1890 U.S. App. LEXIS 1963 (C.C.D. Ga. 1890).

48-5-240. Borrowing county money.

This article is applicable to all persons and their sureties who borrow or pretend to borrow any county money from any person having custody of the county money. Any such person borrowing or pretending to borrow county money shall be held in all respects to be a holder of county funds.

History.
Orig. Code 1863, § 497; Code 1868, § 560; Code 1873, § 526; Code 1882, § 526; Civil Code 1895, § 416; Civil Code 1910, § 525; Code 1933, § 92-3811; Code 1933, § 91A-1220, enacted by Ga. L. 1978, p. 309, § 2.

48-5-241. Refund or credit of county taxes.

(a) In all cases where a person has been overtaxed or claims for any reason that taxes should be credited or refunded, the county governing authority may hear and determine such application to the extent of the interest of the county in the matter.

(b) In all cases where the county governing authority, pursuant to subsection (a) of this Code section, has authorized the tax collector or tax commissioner to credit or refund any overpayment of property tax in cases where the taxpayer has been overtaxed or has claimed that the tax should be credited or refunded, the authorization to the tax collector or tax commissioner shall be authority to credit or refund the proportionate amount of the state and county school tax represented in the overpayment and, in the case of refunds, he shall deduct such amounts from his next distribution to the state and county school boards, respectively.

History.
Laws 1845, Cobb's 1851 Digest, pp. 1077, 1078.; Orig. Code 1863, §§ 499, 783; Code 1868, §§ 562, 847; Code 1873, §§ 527, 851; Code 1882, §§ 527, 851; Civil Code 1895, §§ 417, 844; Civil Code 1910, §§ 526, 1102; Code 1933, §§ 92-3812, 92-6502; Ga. L. 1958, p. 219, § 1; Code 1933, § 91A-1221, enacted by Ga. L. 1978, p. 309, § 2.

JUDICIAL DECISIONS

Statute does not confer power to compromise. — Statute might, perhaps, be interpreted as imposing upon the probate judge (now county governing authority) some clerical or ministerial duty as to correcting errors in regard to taxes, but it cannot be construed as conferring upon that officer (now authority) the power to enter into a contract of compromise whereby a taxpayer is relieved of any portion of the taxes which have been lawfully assessed against the taxpayer. Harrison v. Southern Ry., 44 Ga. App. 49, 160 S.E. 656, 1931 Ga. App. LEXIS 593 (1931).

OPINIONS OF THE ATTORNEY GENERAL

Purpose. — There is nothing in this statute to indicate that a taxpayer is given any legal rights to a refund beyond those otherwise authorized by law. It appears only to provide a method for obtaining a refund to the extent otherwise authorized by law. 1960-61 Ga. Op. Att'y Gen. 521.

Statute is not intended to create a new or additional right to credit or refund, but is intended only to prescribe the procedure for obtaining those credits or refunds otherwise provided for under the law. 1960-61 Ga. Op. Att'y Gen. 525.

Construction with other provisions. — Governing authority of the county in exercising authority under former Code 1933, § 92-3812 (see now O.C.G.A. § 48-5-241) was subject to the general law set forth in former Code 1933, § 20-1007 (see now O.C.G.A. § 13-1-13), relating to payments voluntarily made, and was also subject to the period of limitation prescribed in former Code 1933, § 23-1602 (see now O.C.G.A. § 36-11-1). 1958-59 Ga. Op. Att'y Gen. 379.

Statute provides a means for obtaining correction of clerical errors and mistakes caused by the taxation authorities. 1958-59 Ga. Op. Att'y Gen. 379.

No consent to suit is given by this statute. 1958-59 Ga. Op. Att'y Gen. 379.

Governing authority appears to be the sole judge of what corrections ought to be made under this statute. 1958-59 Ga. Op. Att'y Gen. 379.

Scope of rights and authority conferred under subsection (a). — Subsection (a) of this statute does not authorize the governing authority to compromise a valid claim for taxes; a taxpayer is not thereby given any legal rights to a refund beyond those otherwise provided for in subsection (b) of this statute. 1958-59 Ga. Op. Att'y Gen. 379.

Taxes recoverable under this section. — Subsection (a) of this statute applies only to county taxes and not to taxes collected for county school purposes or for state purposes. Subsection (b) of this statute permits the governing authority of the county also to make corrections with regard to county school taxes and state levies. 1960-61 Ga. Op. Att'y Gen. 521.

Refunds of city taxes. — Statute makes no reference to city taxes; however, city governing authorities can, by ordinance, provide for refunds of city taxes within the scope allowed county authorities under this statute. 1958-59 Ga. Op. Att'y Gen. 379; 1960-61 Ga. Op. Att'y Gen. 525.

Elements of proof for recovery on grounds of illegality of tax. — In order to sustain an action to recover back money on the grounds of an illegality of the tax, the authority to levy the tax must be wholly wanting, the money sued for must have been actually received by the defendant, and the payment of the plaintiff must have been made upon compulsion, to prevent the immediate seizure of the plaintiff's goods or the arrest of the plaintiff's person, and not voluntarily made. 1968 Op. Att'y Gen. No. 68-399.

RESEARCH REFERENCES

C.J.S.
20 C.J.S., Counties, § 382 et seq.
ALR.
Validity and applicability of statutory time limit concerning taxpayer's claim for state tax refund, 1 A.L.R.6th 1.

Effect of delay in receipt or negotiation of refund check in determining right to interest under § 6611 of the Internal Revenue Code (26 USCA § 6611), 145 A.L.R. Fed. 437.

48-5-242. Waiver of penalties or interest due on unpaid taxes.

(a) Upon written approval by the governing authority of the county in accordance with subsection (c) of this Code section, the tax collector or tax commissioner may waive, in whole or in part, the collection of any amount due the taxing authorities for which taxes are collected, when such amount represents a penalty or an amount of interest assessed for failure to comply with the laws governing the assessment and collection of ad valorem taxes, when the tax collector or tax commissioner reasonably determines that the default giving rise to the penalty or interest was due to reasonable cause and not due to gross or willful neglect or disregard of the law or of regulations or instructions issued pursuant to the law, and when the interest to be waived accrues on or after July 1, 2002.

(b) In the case of penalties or interest arising from the failure of the taxpayer to comply with the terms, conditions, or covenants required with respect to properties receiving any type of preferential assessment, the tax collector or tax commissioner shall not be authorized to waive any portion of the penalty or interest that represents a recovery by the taxing authorities of any amount by which taxes were reduced as a result of the granting of such preferential assessment.

(c) The waiver of penalties or interest in accordance with this Code section shall be subject to the written approval of the county governing authority either on a case-by-case basis or by a resolution delegating the authority to the tax collector or tax commissioner to make the final determinations. Such resolution may establish rules and regulations governing the administration of this Code section and establish guidelines to be followed by the tax collector or tax commissioner when granting such waivers.

History.
Code 1981, § 48-5-242, enacted by Ga. L. 1995, p. 361, § 1; Ga. L. 1999, p. 81, § 48; Ga. L. 2002, p. 614, § 1.

48-5-243. Waiver of penalty or interest when default due to military service.

The tax collector or tax commissioner shall waive the collection of any amount due the taxing authorities for which taxes are collected, when such amount represents a penalty or an amount of interest assessed for

failure to comply with the laws governing the assessment and collection of ad valorem taxes, if:

(1) The tax collector or tax commissioner determines that the default giving rise to such penalty or interest was due to a taxpayer's military service in the armed forces of the United States in an area designated by the President of the United States by executive order as a combat zone and not due to gross or willful neglect or disregard of the law or of regulations or instructions issued pursuant to the law; and

(2) The taxpayer makes full payment of taxes due, not including penalties and interest, within 60 days of such taxpayer's return from such military service.

History.
Code 1981, § 48-5-243, enacted by Ga. L. 2016, p. 584, § 2/HB 991.

Cross references.
Relief from civil or criminal liability for servicemembers, § 38-2-270.

Editor's notes.
Ga. L. 2016, p. 584, § 1/HB 991, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Returning Heroes Act.'"

ARTICLE 5

UNIFORM PROPERTY TAX ADMINISTRATION AND EQUALIZATION

RESEARCH REFERENCES

ALR.
Action of board of equalization as affecting right to attack assessment on ground of assessor's fraud, 9 A.L.R. 1284.

Rights and remedies in case of overpayment of federal income tax, 34 A.L.R. 978.

Assessment of corporate property at full value according to law when valuations generally are illegally fixed lower, 55 A.L.R. 503.

Construction and application of statute prohibiting or restricting reassessment after assessment and payment of taxes, 85 A.L.R. 107.

Right of taxpayer to relief from overassessment of his property as affected by overassessment of the other property within the district, 87 A.L.R. 1296.

Property located in one state, political subdivision, or municipality, but belonging to another, as subject to taxation therein, 99 A.L.R. 1143.

Tax assessor's civil liability to taxpayer for excessive or improper assessment of real property, 82 A.L.R.2d 1148.

PART 1

EQUALIZATION OF ASSESSMENTS

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, Ch. 92-70 are included in the annotations for this part.

Presumption of equality and uniformity in tax procedures. — Presumption of law arises that once the taxing procedure has been completed and approved by the commissioner as between an individual taxpayer and the county, all property for assessment purposes has been equalized and made uniform. Ward v. Landrum, 140 Ga. App. 497, 231 S.E.2d 347, 1976 Ga. App. LEXIS 1533, 1976 Ga. App. LEXIS 2643 (1976) (decided under former Code 1933, Ch. 92-70).

Ga. L. 1972, p. 1104, §§ 1-13 (see now O.C.G.A. §§ 48-5-260 through 48-5-270) do not establish in detail procedures for employment and termination of appraisal staff, but the statutes do provide that the commissioner may make necessary rules and regulations not inconsistent with the statute to enforce the statute, and that such rules and regulations shall have the full force and effect of law. Spell v. Blalock, 243 Ga. 459, 254 S.E.2d 842, 1979 Ga. LEXIS 936 (1979).

48-5-260. Purpose of part.

It is the purpose and intent of this part to:

(1) Create, provide, and require a comprehensive system for the equalization of taxes on real property within this state by the establishment of uniform state-wide forms, records, and procedures and by the establishment of a competent, full-time staff for each county of this state to:

(A) Assist the board of tax assessors of each county in developing the proper information for setting tax assessments on property;

(B) Maintain the tax assessment records for each county; and

(C) Provide for state-wide duties and qualification standards for such staffs;

(2) Provide for the examination of county tax digests in order to determine whether property valuation is uniform between the counties;

(3) Provide for adjustments and equalizations of property valuations in certain instances;

(4) Provide for state ratio studies by the state auditor; and

(5) Provide for state assistance to counties in implementing this part.

History.
Ga. L. 1972, p. 1104, § 1; Code 1933, § 91A-1401, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 39.

RESEARCH REFERENCES

Am. Jur. 2d.
72 Am. Jur. 2d, State and Local Taxation, §§ 701, 710, 711.

48-5-261. Classification of counties for administration of part.

For the purpose of administering this part, the counties of this state are placed in the following classes:

(1) Class I — Counties having less than 3,000 parcels of real property;

(2) Class II — Counties having at least 3,000 but less than 8,000 parcels of real property;

(3) Class III — Counties having at least 8,000 but less than 15,000 parcels of real property;

(4) Class IV — Counties having at least 15,000 but less than 25,000 parcels of real property;

(5) Class V — Counties having at least 25,000 but less than 35,000 parcels of real property;

(6) Class VI — Counties having at least 35,000 but less than 50,000 parcels of real property;

(7) Class VII — Counties having at least 50,000 but less than 100,000 parcels of real property; and

(8) Class VIII — Counties having at least 100,000 or more parcels of real property.

History. Ga. L. 1972, p. 1104, § 3; Code 1933, § 91A-1403, enacted by Ga. L. 1978, p. 309, § 2.

48-5-262. County appraisal staff; qualifications; inclusion of employees of county board of tax assessors in county civil service system.

(a) Class I counties shall provide for an appraisal staff pursuant to paragraph (1) of Code Section 48-5-260 by:

(1) Employing a full-time appraiser;

(2) Contracting with a contiguous county to provide the staff requirement; or

(3) Contracting with a professional appraisal person to provide the staff requirement.

(b) Each county other than Class I counties shall employ a minimum

staff of appraisers, to be known as the county property appraisal staff, to perform the duties set forth in this part. For compensation purposes, the appraisers will be designated, lowest grade first, as Appraiser I, Appraiser II, Appraiser III, and Appraiser IV.

(c) The minimum staff requirement for each county shall be as follows:

(1) Class II counties — One Appraiser III;

(2) Class III counties — One Appraiser III and one Appraiser I;

(3) Class IV counties — One Appraiser III, one Appraiser II, and one Appraiser I;

(4) Class V counties — Two Appraisers III, two Appraisers II, and one Appraiser I;

(5) Class VI counties — One Appraiser IV, two Appraisers III, two Appraisers II, and one Appraiser I;

(6) Class VII counties — One Appraiser IV, four Appraisers III, one Appraiser II, and two Appraisers I;

(7) Class VIII counties — Two Appraisers IV, eight Appraisers III, five Appraisers II, and five Appraisers I.

(d) The establishment of minimum staff requirements shall not preclude any county from employing additional appraisers in order to carry out this part.

(e)(1) As used in this subsection, the term "county civil service system" means any county civil service system, county merit system, county personnel plan or policy, or stated rules of work.

(2) The county governing authority shall be authorized, in its discretion and upon adoption of the appropriate resolution or ordinance, to provide that staff and employees of the county board of tax assessors shall be positions of employment covered by the county civil service system. Following the adoption of such ordinance or resolution, the county board of tax assessors may hire and manage such employees, but only in compliance with the county civil service system. The failure of the county board of tax assessors to comply with the requirements of such system shall be grounds for removal of one or more members of the county board of tax assessors pursuant to subsection (b) of Code Section 48-5-295.

History. Ga. L. 1972, p. 1104, § 4; Code 1933, § 91A-1404, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2000, p. 1370, § 1.

JUDICIAL DECISIONS

"County" refers to board of tax assessors. — Word "county" as used in Ga. L. 1972, p. 1104, § 4 (see now O.C.G.A. § 48-5-262) and again in Ga. L. 1972, p. 1104, § 5 (see now O.C.G.A. § 48-5-263) is not a reference to either the board of commissioners or the county administrator because in these matters it is the board of tax assessors through which the county acts. Spell v. Blalock, 243 Ga. 459, 254 S.E.2d 842, 1979 Ga. LEXIS 936 (1979).

Authority to hire and fire a tax appraiser rested with the board of tax appraisers, not with the board of commissioners which previously approved the employment contract. Chambers v. Fulford, 268 Ga. 892, 495 S.E.2d 6.

RESEARCH REFERENCES

Am. Jur. 2d.
72 Am. Jur. 2d, State and Local Taxation, § 619 et seq.

48-5-263. Qualifications, duties, and compensation of appraisers.

(a) **Qualifications.**

(1) The commissioner shall establish, and the Department of Administrative Services may review, the qualifications and rate of compensation for each appraiser grade.

(2) Each appraiser shall, before his or her employment, obtain a satisfactory grade, as determined by the commissioner, on an examination prepared by the commissioner and an institution of higher education in this state.

(b) **Duties.** Each member of the county property appraisal staff shall:

(1) Make appraisals of the fair market value of all taxable property in the county other than property returned directly to the commissioner;

(2) Maintain all tax records and maps for the county in a current condition. This duty shall include, but not be limited to, the mapping, platting, cataloging, and indexing of all real and personal property in the county;

(3) Prepare annual assessments on all taxable property appraised in the county and submit the assessments for approval to the county board of tax assessors;

(4) Prepare annual appraisals on all tax-exempt property in the county and submit the appraisals to the county board of tax assessors;

(5) Prepare and mail assessment notices after the county board of tax assessors has determined the final assessments;

(6) Attend hearings of the county board of equalization and provide information to the board regarding the valuation and assessments approved by the county board of tax assessors on those properties concerning which appeals have been made to the county board of equalization;

(7) Provide information to the department as needed by the department and in the form requested by the department;

(8) Attend the standard approved training courses as directed by the commissioner for all minimum county property appraisal staffs;

(9) Compile sales ratio data and furnish the data to the commissioner as directed by the commissioner;

(10) Comply with the rules and regulations for staff duties established by the commissioner; and

(11) In counties that elect to require decals pursuant to Code Section 48-5-492, inspect mobile homes located in the county to determine if the proper decal is attached to and displayed on the mobile home by the owner as provided by law; notify the residents of those mobile homes to which a decal is not attached of the provisions of Code Sections 48-5-492 and 48-5-493; and furnish to the tax collector or tax commissioner a periodic list of those mobile homes to which a decal is not attached.

(c) **Compensation.** Staff appraisers shall be paid from county funds. The rates of compensation established by the commissioner shall not preclude any county from paying a higher rate of compensation to any appraiser grade.

History.

Ga. L. 1972, p. 1104, § 5; Code 1933, § 91A-1405, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1981, p. 1857, § 23; Ga. L. 1981, p. 1906, § 2; Ga. L. 2009, p. 745, § 1/SB 97; Ga. L. 2012, p. 446, § 2-91/HB 642; Ga. L. 2021, p. 564, § 1/SB 193.

Editor's notes.

Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

Administrative rules and regulations.

County Appraisal Staff — Duties, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Revenue, Local Government Services Division, Substantive Regulations, § 560-11-2-.28.

Inspections and Citations, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Revenue, Local Government Services Division, Uniform Procedures for Mobile Homes, § 560-11-9-.05.

JUDICIAL DECISIONS

"County" refers to board of tax assessors. — Word "county" as used in Ga. L. 1972, p. 1104, § 4 (see now O.C.G.A. § 48-5-262) and again in Ga. L. 1972, p. 1104, § 5 (see now O.C.G.A. § 48-5-263) is not a reference to either the board of commissioners or the county administrator because in these matters it is the board of tax assessors through which the county acts. Spell v. Blalock, 243 Ga. 459, 254 S.E.2d 842, 1979 Ga. LEXIS 936 (1979).

Claims under Title VII and Family and Medical Leave Act. — *Unpublished decision:* Employees' Title VII and Family and Medical Leave Act claims against a county board of tax assessors (Board) failed because: (1) the Board employed less than 15 people; and (2) the Board and the county were not one employer as the Board was a separate entity that controlled employment relationships, triggering the Lyes presumption, which was not rebutted since the Board controlled labor operations and could hire, fire, and set work schedules or assignments, and state law determined compensation, O.C.G.A. § 48-5-263(a)(1), and training, O.C.G.A. § 48-5-268. Ballard v. Chattooga County Bd. of Tax Assessors, 615 Fed. Appx. 621, 2015 U.S. App. LEXIS 11636 (11th Cir. 2015).

RESEARCH REFERENCES

Am. Jur. 2d.
72 Am. Jur. 2d, State and Local Taxation, § 619 et seq.

C.J.S.
67 C.J.S., Officers and Public Employees, § 122 et seq.

48-5-264. (For effective date, see note.) Designation and duties of chief appraiser.

(a) The board of tax assessors in each county shall designate an Appraiser IV or, in those counties not having an Appraiser IV, an Appraiser III as the chief appraiser of the county. The chief appraiser shall be responsible for:

(1) The operation and functioning of the county property appraisal staff;

(2) Certifying and signing documents prepared by the staff; and

(3) Implementing procedures deemed necessary for the efficient operation of the staff.

(b) The chief appraiser may appoint an assistant and may delegate his authority in writing to the assistant.

(c) The chief appraiser may be a member of the county board of tax assessors.

History.
Ga. L. 1972, p. 1104, § 6; Code 1933, § 91A-1406, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2024, p. 20, § 1-3/HB 581, see notes for effective date.

Delayed effective date.
Ga. L. 2024, p. 20, § 4-1/HB 581, provides that the 2024 amendment becomes effective on January 1, 2025; provided, however, that, if a constitutional

amendment which becomes effective on January 1, 2025 and which authorizes the General Assembly to provide by general law for a homestead exemption that applies statewide, but that permits political subdivisions to individually opt out of such homestead exemption, has not been ratified, then this Act shall stand automatically repealed on January 1, 2025. This Code section as amended is not set out in the Code owing to the delayed effective date. If the voters approve, subsection (d) will read: "(d) The chief appraiser shall ensure that every parcel in his or her respective county is appraised at least every three years."

Amendments.

The 2024 amendment added subsection (d). For effective date of this amendment, see the delayed effective date note. See Editor's notes for applicability.

Editor's notes.

Ga. L. 2024, p. 20, § 4-1/HB 581, not codified by the General Assembly, makes subsection (d) of this Code section applicable to taxable years beginning on or after January 1, 2025. For effective date of this amendment, see the delayed effective date note.

JUDICIAL DECISIONS

Removal of board members unwarranted. — Trial court did not abuse the court's discretion in refusing to remove the only two members of the Montgomery County Board of Tax Appeals for their failure to hire a level III appraiser as the chief county appraiser, as required by O.C.G.A. § 48-5-264(a), for the inadequacy of the notice sent to taxpayers to explain the increased assessments of property, and for the failure to supervise a county-wide mass appraisal; while the trial court was troubled by the members' actions, budget restraints were, in part, to blame for the failure to hire a level III appraiser, and it did not abuse the court's discretion in concluding that removing the only two members from the Board was too drastic a remedy and would disrupt the running of an essential office. Smith v. Montgomery County Bd. of Tax Assessors, 268 Ga. App. 177, 601 S.E.2d 386, 2004 Ga. App. LEXIS 815 (2004), cert. denied, No. S04C1864, 2004 Ga. LEXIS 868 (Ga. Sept. 27, 2004).

RESEARCH REFERENCES

Am. Jur. 2d.

72 Am. Jur. 2d, State and Local Taxation, § 619 et seq.

ALR.

Extent of power of tax commission or other officials primarily charged with duty of administering tax statute to deputize or delegate to others matters relating to computation of tax or extent of taxpayer's liability, 107 A.L.R. 1482.

48-5-264.1. Right to inspect property; display of identification; notification of right to file property tax return.

(a) The chief appraiser, other members of the county property appraisal staff, authorized agents of the county board of tax assessors, and members of the county board of tax assessors who are conducting official business of the chief appraiser, the county appraisal staff, or the county board of tax assessors may go upon property outside of buildings, posted or otherwise, in order to carry out the duty of making appraisals of the fair market value of taxable property in the county, other than property returned directly to the commissioner; provided, however, such person representing such chief appraiser, appraisal staff,

or county board of tax assessors shall carry identification which is sufficiently prominent to permit the occupant to readily ascertain that such person is such representative. Such representative shall not enter upon the property unless reasonable notice has been provided to the owner and to the occupant of the property regarding the purpose for which such person is entering upon such property.

(b) The county tax commissioner shall include a statement with the ad valorem tax bill of each taxpayer notifying the taxpayer of the right to file an ad valorem property tax return. A notification of the right of taxpayers to file ad valorem property tax returns shall also be maintained by the tax commissioner on the official website of the county.

History.

Code 1981, § 48-5-264.1, enacted by Ga. L. 1991, p. 666, § 1; Ga. L. 2009, p. 646, § 2/HB 304.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1991, a comma was inserted following "however" near the middle of this Code section (now subsection (a)).

48-5-265. Formation of joint county property appraisal staffs.

(a)(1) The governing authorities of any two or more counties may join together and by intergovernmental agreement create a joint county property appraisal staff following consultation with the county boards of tax assessors of such counties. Under any such intergovernmental agreement, the parcels of real property within the counties subject to the intergovernmental agreement shall be totaled, and the counties shall be deemed one county for purposes of determining the class of the counties, the resulting minimum staff requirements, and the amount of money to be received from the department. The costs of the joint county property appraisal staff shall be determined in the intergovernmental agreement.

(2) The governing authorities of any two or more counties may execute an intergovernmental agreement to provide for the sharing of one or more designated members of property appraisal staff following consultation with the county boards of tax assessors of such counties. The costs of such shared staff members shall be determined in the intergovernmental agreement.

(b) The governing authorities of any two or more counties may join together and by intergovernmental agreement carry out this part following consultation with the county boards of tax assessors of such counties. All counties subject to an intergovernmental agreement under this subsection shall retain their separate character for the purpose of determining the class and minimum staff requirements for each county.

(c)(1) Any county, at its discretion, may enter into contracts with persons to render advice or assistance to the county board of tax

assessors in the assessment and equalization of taxes, the establishment of property valuations, or the defense of such valuations. Such advice and assistance shall be in compliance with the laws of this state and the rules and regulations of the commissioner. Individuals performing services under such contracts shall complete satisfactorily such training courses as directed by the commissioner. The function of any person contracting to render such services shall be advisory or ministerial, and the final decision as to the amount of assessments and the equalization of assessments shall be made by the county board of tax assessors and shall be set forth in the minutes of the county board of tax assessors.

(2) No contract entered into pursuant to paragraph (1) of this subsection shall contain any provision authorizing payment to any person contracted with, or to any person employed by any person contracted with, upon a percentage basis or upon any basis under which compensation is dependent or conditioned in any way upon increasing or decreasing the aggregate assessment of property in the county. Any contract or provision of a contract which is in violation of this paragraph shall be void and unenforceable.

History.
Ga. L. 1972, p. 1104, § 7; Code 1933, § 91A-1407, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2015, p. 1219, § 10/HB 202.

RESEARCH REFERENCES

Am. Jur. 2d.
72 Am. Jur. 2d, State and Local Taxation, § 619 et seq.

48-5-266. Submission by chief appraiser of assessment list with supporting information; attendance and providing of information at appeal hearings.

(a) The chief appraiser shall submit a certified list of assessments for all taxable property within the county to the county board of tax assessors. The list shall be accompanied by any supporting information requested by the board of tax assessors and shall be submitted within the time prescribed by the board of tax assessors.

(b) The chief appraiser or his delegate shall attend all hearings on appeals of assessments made to the county board of equalization. He shall provide the county board of equalization with the information supporting the appraisal and assessment which has been appealed.

History.
Ga. L. 1972, p. 1104, § 8; Code 1933, § 91A-1408, enacted by Ga. L. 1978, p. 309, § 2.

RESEARCH REFERENCES

Am. Jur. 2d.
72 Am. Jur. 2d, State and Local Taxation, §§ 620, 621.

48-5-267. State payments for minimum staff of appraisers; state salary supplements for qualified appraisers.

(a) An amount which is equal to one-half of the total compensation payable to the minimum staff in all of the counties, as determined by the commissioner with the approval of the Department of Administrative Services, shall be paid to the counties by the department in the following manner:

(1) The greater of 15 percent of the amount appropriated and deemed available by the commissioner for the purpose of carrying out the provisions of this part regarding minimum staff compensation or $200,000.00, if deemed available by the commissioner, shall be distributed equally among all of the counties of the state; and

(2) The payment to be made to each county from the remainder of the amount after distribution as provided in paragraph (1) of this subsection, if any, shall be equal to the remaining amount multiplied by a fraction, the denominator of which is the total of all parcels of real property located within the state and the numerator of which is the number of parcels of real property located within the county.

(b) Payments provided for in this Code section shall be made in the manner determined by the commissioner. The commissioner shall not make any payments to any county which:

(1) Is not maintaining its records as required by this part;

(2) Has not employed a minimum staff of appraisers; or

(3) In the case of Class I counties, has not entered into a contract providing for the performance of the requirements of this part.

(c) Payments provided for in this Code section shall be paid from funds appropriated to the department.

(d) In addition to the payments for minimum staff appraisers authorized by this Code section, the commissioner, from funds appropriated for that purpose, shall pay to qualified appraisers employed by county governments salary supplements in accordance with the following provisions:

(1) Each individual employed as a staff appraiser who has earned the Certified Assessment Evaluator designation or the Certified Personalty Evaluator designation, as conferred by the International

Association of Assessing Officers, shall be paid a salary supplement of $1,000.00 per year;

(2) Each individual employed as a staff appraiser who has earned the Georgia Certified Appraiser designation conferred by the Georgia Association of Assessing Officials shall be paid a salary supplement of $750.00 per year. The qualifications and requirements necessary for achievement of the Georgia Certified Appraiser designation shall be approved by the commissioner before any supplements are paid for this designation; and

(3) Salary supplements shall be paid to each individual qualifying under paragraphs (1) and (2) of this subsection only for the period of time he or she is actually employed by a county as a staff appraiser and only for the period of time that he or she holds the qualifying designation. Salary supplements shall be paid to each qualified individual for only one qualifying designation at any one time.

History.

Ga. L. 1972, p. 1104, § 9; Code 1933, § 91A-1409, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2009, p. 745, § 1/SB 97; Ga. L. 2012, p. 446, § 2-92/HB 642.

Editor's notes.

Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

Administrative rules and regulations.

Appraisal staff definitions, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Revenue, Local Government Services Division, Substantive Regulations, § 560-11-2-.62.

48-5-268. Training and continuing education courses for appraisers; designated staff member to appraise tangible personal property.

(a) The department may prepare, instruct, operate, and administer courses of instruction deemed necessary to provide for the training of new appraisers and the continuing education of experienced appraisers.

(b)(1) The department shall prepare, instruct, operate, and administer courses of instruction for the training of new appraisers and the continuing education of experienced appraisers in the appraisal of tangible personal property.

(2) In all counties except Class I counties, the chief appraiser shall designate at least one person on the county appraisal staff to be responsible for the appraisal of tangible personal property. Any person or persons so designated shall be required to attend the

standard approved training courses operated by the department in accordance with this subsection as part of their duties specified in subsection (b) of Code Section 48-5-263.

(c) The department may contract with any institution of higher education in this state to provide the courses of instruction, or any part of the courses, called for in this Code section.

History.
Ga. L. 1972, p. 1104, § 10; Code 1933, § 91A-1410, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1981, p. 1554, § 2.

JUDICIAL DECISIONS

Claims under Title VII and Family and Medical Leave Act. — *Unpublished decision:* Employees' Title VII and Family and Medical Leave Act claims against a county board of tax assessors (Board) failed because: (1) the Board employed less than 15 people; and (2) the Board and the county were not one employer as the Board was a separate entity that controlled employment relationships, triggering the Lyes presumption, which was not rebutted since the Board controlled labor operations and could hire, fire, and set work schedules or assignments, and state law determined compensation, O.C.G.A. § 48-5-263(a)(1), and training, O.C.G.A. § 48-5-268. Ballard v. Chattooga County Bd. of Tax Assessors, 615 Fed. Appx. 621, 2015 U.S. App. LEXIS 11636 (11th Cir. 2015).

RESEARCH REFERENCES

Am. Jur. 2d.
72 Am. Jur. 2d, State and Local Taxation, § 619.

48-5-269. Authority to promulgate rules and regulations regarding uniform books, records, forms, and manuals; limits on change in current use value of conservation use property.

(a) Subject to the limitations contained in Chapter 2 of this title, the commissioner may promulgate rules and regulations specifically regarding this part, including, but not limited to, the following:

(1) Prescription of the forms, books, and records to be used for standard property tax reporting for all taxing units, including, but not limited to, the forms, books, and records to be used in the listing, appraisal, and assessment of property and how the forms, books, and records shall be compiled and kept;

(2) Prescription of the form and content of state-wide, uniform appraisal and assessment forms, books, and manuals;

(3) Development and prescription of procedures under which property sales ratio surveys shall be conducted; and

(4) Prescription of methods and procedures by which identifica-

tion data, appraisal and assessment data, sales data, and any other information relating to the appraisal and assessment of property shall be furnished to the department using electronic data processing systems and equipment.

(b) The commissioner shall promulgate after consultation with the Department of Agriculture, the Georgia Agricultural Statistical Service, the State Forestry Commission, the Department of Natural Resources, and the Cooperative Extension Service, and county tax officials shall follow uniform rules and regulations establishing a table of values for the current use value of bona fide conservation use property. Such rules and regulations shall apply to the evaluation of bona fide conservation use property, exclusive of any improvements thereon, which improvements shall have their current use value determined as otherwise provided by law. Such rules and regulations shall include, but not be limited to, the following provisions and criteria:

(1) Sales data for arm's length, bona fide sales of comparable real property with and for the same existing use and per-acre property values determined by the capitalization of net income before property taxes, with sales data to be weighted 35 percent and income capitalization values to be weighted 65 percent. All sales data shall be adjusted to remove the influence of the size of the tract on the sales price of tracts below 50 acres in size. Income capitalization values shall be derived from the respective conservation use property classifications, with consideration given to productivity of the respective major geological or geographical regions, and for this purpose:

(A) Net income before property taxes shall be determined for:

(i) Agricultural land by calculating a weighted average of all crop and pasture acreage in each district as designated by paragraph (2) of this subsection in the following manner:

(I) Crop land by calculating the five-year weighted average of per-acre net income before property taxes from the major predominant acreage crops harvested in Georgia, and as used in this subdivision, the term "predominant acreage crops" means the top acreage crops with production in no less than 125 counties of the state; and

(II) Pasture property by calculating a five-year weighted average of per-acre rental rates from pasture land; and

(ii) Forest property by calculating a five-year weighted average of per-acre net income before property taxes from hardwood and softwood harvested in Georgia. For purposes of this division, the term "property taxes" shall not include the tax

under Code Section 48-5-7.5 which tax shall be considered in calculating net income; and

(B) The capitalization rate shall be based upon:

(i) The long-term financing rate available on January 1 from the Regional Federal Land Bank located in Columbia, South Carolina, and published pursuant to 26 U.S.C. Section 2032A(e)(7)(A)(ii), further referenced by regulations 26 C.F.R. 20.2032A-4(e);

(ii) The arithmetic mean of Federal Farm Credit bond yields, whose maturity is no less than five years in the future, as published in the *Wall Street Journal* on January 1 or the most recent business day of the current year, rounded to the nearest hundredth;

(iii) For the purpose of determining the income capitalization rate, divisions (i) and (ii) of this subparagraph shall be given weighted influences of 80 percent and 20 percent, respectively; and

(iv) A property tax component which shall be the five-year average true tax rate for the unincorporated area of each county located within the regions established by paragraph (2) of this subsection;

(2) The state shall be divided into an appropriate grouping of the nine crop-reporting districts as delineated by the Georgia Agricultural Statistical Service for the purpose of determining any calculation under this subsection;

(3) In no event may the current use value of any conservation use property in the table of values established by the commissioner under this subsection for the taxable year beginning January 1, 1993, increase or decrease by more than 15 percent from its current use value as set forth in the table of values established by the commissioner under this subsection for the taxable year beginning January 1, 1992. In no event may the current use value of any conservation use property in the table of values established by the commissioner under this subsection for the taxable year beginning January 1, 1994, or any subsequent taxable year increase or decrease by more than 3 percent from its current use value as set forth in the table of values established by the commissioner under this subsection for the immediately preceding taxable year; and

(4) Environmentally sensitive properties as certified by the Department of Natural Resources shall be valued according to the average value determined for property of the same or similar soil type, as determined under paragraphs (1) and (2) of this subsection.

(c) In no event may the current use value of any conservation use property increase or decrease during a covenant period by more than 3 percent from its current use value for the previous taxable year or increase or decrease during a covenant period by more than 34.39 percent from the first year of the covenant period. The limitations imposed by this subsection shall apply to the total value of all the conservation use property that is the subject of an individual covenant including any improvements that meet the qualifications set forth in paragraph (1) of subsection (a) of Code Section 48-5-7.4; provided, however, that, in the event the owner changes the use of any portion of the land or adds or removes therefrom any such qualified improvements, the limitations imposed by this subsection shall be recomputed as if the new uses and improvements were in place at the time the covenant was originally entered.

History.

Ga. L. 1972, p. 1104, § 11; Code 1933, § 91A-1411, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1991, p. 1903, § 10; Ga. L. 1993, p. 947, § 9; Ga. L. 1999, p. 81, § 48; Ga. L. 2017, p. 774, § 48/HB 323; Ga. L. 2024, p. 1052, § 5(17)/SB 448, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, revised punctuation in the last sentence in subsection (c).

Editor's notes.

Ga. L. 1991, p. 1903, § 15, not codified by the General Assembly, provides that the amendment to this Code section shall be applicable beginning January 1, 1992, with respect to ad valorem taxation of timber and shall be applicable beginning January 1, 1992, for all other purposes. Taxation for prior periods shall continue to be governed by prior law.

Ga. L. 1993, p. 947, § 10, not codified by the General Assembly, provides: "Sections 1, 2, 3, 4, and 9 of this Act shall be applicable to all bona fide conservation use covenants entered into for all taxable years beginning on or after January 1, 1993, and to any table of values of bona fide conservation use property established by the state revenue commissioner for all taxable years beginning on or after January 1, 1993. Any bona fide conservation use covenant entered into for the taxable year beginning January 1, 1992, shall continue to be governed by the law in effect for that taxable year."

48-5-269.1. Adoption by commissioner and requirement of use of uniform procedural manual for appraising tangible personal property.

(a) The commissioner shall adopt by rule, subject to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," and maintain an appropriate procedural manual for use by county property appraisal staff in appraising tangible real and personal property for ad valorem tax purposes.

(b) The manual adopted by the commissioner pursuant to this Code section shall be utilized by county property appraisal staff in the appraisal of tangible real and personal property for ad valorem tax purposes.

History.
Code 1933, § 91A-1411.1, enacted by Ga. L. 1981, p. 1554, § 3; Ga. L. 1997, p. 1059, § 1.

48-5-270. Commissioner's authority to purchase, develop, prescribe, and improve electronic data processing systems regarding property valuation and assessment.

The commissioner is authorized, from funds appropriated to the department, to develop and prescribe systems of data collection, appraisal, and assessment and any other systems relating to property valuation and assessment utilizing electronic data processing systems and equipment for use by county boards of tax assessors. The commissioner may purchase existing systems and services from other government agencies, educational institutions, or private businesses or contract with these entities for the development of information and new systems that may be utilized by county boards of tax assessors in property valuation and assessment. The commissioner shall actively seek out technological advancements and systems that will improve the uniformity, fairness, and efficiency of property valuations and assessments and include his or her recommendations in the annual budget request.

History.
Ga. L. 1972, p. 1104, § 13; Code 1933, § 91A-1412, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1996, p. 190, § 1.

48-5-271. Table of values for conservation use value of forest land.

(a) The commissioner shall promulgate and county tax officials shall follow uniform rules and regulations establishing a table of values for the conservation use value of forest land conservation use property. Such values shall be the same as provided for forest land values under Code Section 48-5-269.

(b) In no event may the forest land conservation use value of any forest land conservation use property in the table of values established by the commissioner under this Code section for the taxable year beginning January 1, 2010, or any subsequent taxable year increase or decrease by more than 3 percent from its forest land conservation use value as set forth in the table of values established by the commissioner under this Code section. The limitations imposed by this subsection shall apply to the total value of all the forest land conservation use property that is the subject of an individual covenant.

History.
Code 1981, § 48-5-271, as enacted by Ga. L. 2008, p. 297, § 3/HB 1211.

Editor's notes.
The former Code section, concerning examination by the commissioner of county tax digests for uniformity of property valuation between counties, was repealed by Ga. L. 1988, p. 1763, § 3, effective January 1, 1989, and was based

on Ga. L. 1966, p. 45, § 1; Ga. L. 1970, p. 91, §§ 1, 2; Ga. L. 1970, p. 642, § 1; Ga. L. 1972, p. 174, § 1; Code 1933, § 91A-1413, enacted by Ga. L. 1978, p. 309, § 2. For present similar provisions, see Code Section 48-5-340 et seq.

Ga. L. 2008, p. 297, § 5/HB 1211, provides that this Code section becomes effective on January 1, 2009, upon the ratification of a resolution at the November, 2008 state-wide general election, which resolution amends the Constitution so as to provide for the special assessment and taxation of forest land conservation use property and for local government assistance grants. The constitutional amendment (Ga. L. 2008, p. 1209) was ratified at the general election held on November 4, 2008.

OPINIONS OF THE ATTORNEY GENERAL

Administrative caps on assistance grants prohibited. — Because neither Ga. Const. 1983, Art. VII, Sec. I, Para. III nor the Forest Land Protection Act, O.C.G.A. § 48-5-7.7, authorize or contemplate a cap on assistance grants based on the total exemption value of forest land conservation use property, the Department of Revenue would not be authorized to impose an administrative cap on assistance grants issued pursuant to the Forest Land Protection Act of 2008 in the manner proposed. 2016 Op. Att'y Gen. No. 16-5.

48-5-272. [Reserved] Duty of county board of tax assessors and county governing authority to effect adjustments to digest and millage levy.

History.

Ga. L. 1966, p. 45, § 2; Ga. L. 1972, p. 174, § 2; Code 1933, § 91A-1414, enacted by Ga. L. 1978, p. 309, § 2; repealed by Ga. L. 1988, p. 1763, § 4, effective January 1, 1989.

Editor's notes.

Ga. L. 2017, p. 774, § 48/HB 323, effective May 9, 2017, part of an Act to revise, modernize, and correct the Code, designated this Code section as reserved.

For present similar provisions, see Code Section 48-5-340 et seq.

48-5-273. Counties to submit tax rate to commissioner.

The governing authority of each county shall submit to the commissioner, at the time the county tax digest for the current year is submitted for his approval, the total county millage levy established pursuant to law for the county for the current year. The commissioner shall not consider the approval of any county tax digest unless the tax rate is submitted to him as provided in this Code section.

History.

Ga. L. 1972, p. 174, § 3; Code 1933, § 91A-1415, enacted by Ga. L. 1978, p. 309, § 2.

JUDICIAL DECISIONS

Property classification scheme is not unconstitutional. — No language in this statute expressly establishes separate classes of tangible property for the purposes of taxation, in violation of Ga. Const. 1945, Art. VII, Sec. I, Para. III (see now Ga. Const. 1983, Art. VII, Sec. I, Para. III), and no language reasonably authorizes the construction that such was the legislative intent. Griggs v. Greene,

230 Ga. 257, 197 S.E.2d 116, 1973 Ga. LEXIS 880 (1973), overruled in part as stated in Rice v. Fulton County, 358 Ga. App. 1, 852 S.E.2d 860, 2020 Ga. App. LEXIS 681 (2020).

Subclassification of tangible personal property. — Ga. L. 1972, p. 174, § 3 and former Code 1933, §§ 92-7001 and 92-7002 do not either expressly or impliedly require or authorize the subclassification of tangible property for tax purposes. Herring v. Ferrell, 130 Ga. App. 431, 203 S.E.2d 617, 1973 Ga. App. LEXIS 1341 (1973), aff'd in part and rev'd in part, 233 Ga. 1, 209 S.E.2d 599, 1974 Ga. LEXIS 654 (1974).

48-5-274. (For effective date, see note.) Establishment of equalized adjusted property tax digest; information to be furnished by commissioner.

(a) As used in this Code section, the term:

(1) "Assessment ratio" means the fractional relationship between the assessed value and the fair market value of the property.

(2) "Measures of central tendency" means the tendency of data to cluster around some typical or central value, such as the median ratio, the mean ratio, or the weighted mean ratio (the weighted mean ratio is also called the aggregate ratio), as defined in the Standard on Assessment-Ratio Studies published by the International Association of Assessing Officers.

(b) The state auditor shall establish on a continuing basis, no later than November 15 in each year, an equalized adjusted property tax digest for each county in the state and for the state as a whole for the current calendar year. Such digest shall exclude all real and personal property exempted from taxation and the difference between the value of all taxable property within any tax allocation district and the tax allocation increment base of such tax allocation district as defined under paragraph (15) of Code Section 36-44-3 for which consent has been obtained pursuant to Code Section 36-44-9. The state auditor may establish a unit within the Department of Audits and Accounts consisting of such number of personnel as is deemed necessary in order to establish and maintain on a continuing basis the equalized adjusted property tax digest. The equalized adjusted property tax digest shall be established and maintained as follows:

(1) Determine the locally assessed valuation of the county property tax assessment digest for the preceding calendar year, exclusive of real and personal property exempted from taxation, exclusive of the difference between the value of all taxable property within any tax allocation district and the tax allocation increment base of such tax allocation district as defined under paragraph (15) of Code Section 36-44-3 for which consent has been obtained pursuant to Code Section 36-44-9, exclusive of railroad equipment company property shown on the county railroad equipment company property

tax digest, exclusive of any property subject to current use valuation on the county property tax digest, and exclusive of the locally assessed valuation of timber harvested or sold;

(2) Determine the fair market value for timber harvested or sold during the calendar year;

(3) Divide the sum of the locally assessed valuation of the county property tax assessment digest under paragraph (1) of this subsection by the ratio of assessed value to fair market value of the property established by the state auditor in accordance with paragraph (8) of this subsection;

(4) Determine the fair market value of the county railroad equipment company property tax digest for the preceding calendar year;

(5) Determine the sum of the current use valuation of the county property tax digest;

(6) Determine the total fair market value of the Public Utility Digest as established by the commissioner;

(6.1) Determine any adjustment necessary to account for the net activities on any digest due to the activities of a joint authority as provided in Code Section 36-62-5.1;

(7) The total of the sums obtained through the calculations prescribed in paragraphs (2), (3), (4), (5), (6), and (6.1) of this subsection shall be known as the current equalized adjusted property tax digest of the county. The sum of the current equalized adjusted property tax digest of all counties of the state combined shall be known as the current equalized adjusted property tax digest for the state as a whole; and

(8) Establish for each county in the state the ratio of assessed value to fair market value of county property subject to taxation, excluding railroad equipment company property. The ratio shall be determined by establishing the ratio of assessed value to sales price for each of a representative number of parcels of real property, the titles to which were transferred during a period of time to be determined by the state auditor, and then by establishing the measure of central tendency for the county as a whole based upon a representative number of usable transactions studied. Any such sales price shall be adjusted upward or downward, in a manner consistent with the Standard on Ratio Studies published by the International Association of Assessing Officers or its successors, as reasonably needed to account for the effects of price changes reflected in the market between the date of sale and January 1 of the calendar year for which the equalized adjusted property tax digest is being prepared. Sales prices also shall be reduced by any portion thereof

attributable to personal property, real property exempt from taxation, or standing timber included in the sales transaction. The representative number of transactions shall not include any parcel of which the sales price is not reflective of the fair market value of such property as fair market value is defined in Code Section 48-5-2. The state auditor shall supplement realty sales price data available in any county with actual appraisals of a representative number of parcels of farm property and industrial and commercial property located within the county, the titles to which were not transferred within the period of time determined by the state auditor. The state auditor may make appraisals on other types of real property located within the county when adequate realty sales data cannot be obtained on such property. The representative number of parcels of each class of real property as defined by the commissioner used for the study shall be determined by the state auditor. The state auditor may use the same ratio for other personal property, excluding motor vehicles, within the county as is finally determined for real property within the county.

(c) The assessment ratio of assessed value to fair market value of county property to be established by the state auditor for the purposes of paragraph (8) of subsection (b) of this Code section shall be established through the use of personnel of the Department of Audits and Accounts who have sufficient competence and expertise by way of education, training, and experience in the fields of property evaluation and appraisal techniques. The Department of Audits and Accounts shall use the Standard on Assessment-Ratio Studies published by the International Association of Assessing Officers or its successors to determine the valid transactions necessary to establish accurately the measure of central tendency described in paragraph (8) of subsection (b) of this Code section; provided, however, that standard shall only be used to the extent it does not conflict with criteria enumerated in subparagraph (B) of paragraph (3) of Code Section 48-5-2.

(d) The assessment ratio of assessed value to fair market value determined for each county shall be used as provided for in this Code section until such time as a new ratio is determined on a continuing basis for each county. The state auditor shall provide to the commissioner the assessment ratio of assessed value to fair market value for all counties upon completion.

(e) On or before November 15 of each year, the state auditor shall furnish to the State Board of Education the current equalized adjusted property tax digest of each county in the state and the current equalized adjusted property tax digest for the state as a whole. In any county which has more than one school system, the state auditor shall furnish the State Board of Education a breakdown of the current county

equalized adjusted property tax digest showing the amount of the digest applicable to property located within each of the school systems located within the county. At the same time, the state auditor shall furnish the governing authority of each county, the governing authority of each municipality having an independent school system, the local board of education of each school system, the tax commissioner or tax collector of each county, and the board of tax assessors of each county the current equalized adjusted property tax digest of the local school system or systems, as the case may be, and the current equalized adjusted property tax digest for the state as a whole.

(f)(1) Each county governing authority, each governing authority of a municipality having an independent school system, and each local board of education, when aggrieved or when having an aggrieved constituent, shall have a right, upon written request made within 30 days after receipt of the digest information, to refer the question of correctness of the current equalized adjusted property tax digest of the local school system to the state auditor. The state auditor shall take any steps necessary to make a determination of the correctness of the digest and to notify all interested parties of the determination within 45 days after receiving the request questioning the correctness of the digest.

(2)(A) If any party questioning the correctness of the digest is dissatisfied with the determination made by the state auditor pursuant to paragraph (1) of this subsection, the party shall have the right, which must be exercised within 15 days after being notified of the determination made by the state auditor, to refer in writing the question of the correctness of the digest to a board of arbitrators.

(B) Each board of arbitrators shall consist of three members, one to be chosen by the state auditor within 15 days after receipt of a written complaint, one to be chosen by the complaining party at the time of requesting the arbitration, and one to be chosen within 15 days after selection of the first two members by the first two members of the board. In the event the two arbitrators cannot agree on a third member, the Chief Justice of the Supreme Court of Georgia shall appoint the third member upon petition of either party with notice to the opposing party.

(C) The board of arbitrators or a majority of the board within 15 days after appointment of the full board shall render its decision regarding the correctness of the digest in question and, if correction of the digest is required, regarding the extent and manner in which the digest should be corrected. The decision of the board shall be final.

(D) The state auditor shall correct the digest in question in

accordance with the decision of the board of arbitrators and shall report the corrections to the parties entitled to receive such information under this Code section.

(E) Each member of the board of arbitrators shall subscribe to an oath to perform faithfully and impartially the duties required in connection with the controversy concerning the correctness of the digest in question and to render a decision within the time required. Each member of the board of arbitrators shall be paid a sum not to exceed $250.00 for each appeal heard. In addition, each member of the board shall receive the same daily expense allowance as is provided for each member of the General Assembly and actual transportation costs when traveling by public carrier or the legal mileage rate when traveling by personal automobile. All costs of arbitration of matters arising under this Code section shall be shared and paid equally by the Department of Audits and Accounts and by the governing authority requesting the arbitration.

(3) Upon receiving notice that the current equalized adjusted property tax digest of any local school system is being questioned pursuant to paragraph (1) of this subsection, the state auditor shall notify the State Board of Education that the digest is being questioned. No computations shall be made on the basis of a questioned digest under Article 6 of Chapter 2 of Title 20, the "Quality Basic Education Act," until the digest has been corrected, if necessary, pursuant to this subsection.

(g) The commissioner shall provide to the state auditor such digest information as is needed in the calculation of the equalized adjusted property tax digests. Such information shall be provided for each county and for each local school system. For independent school systems in municipalities authorized to assess property in excess of 40 percent of fair market value pursuant to Code Section 48-5-7, the commissioner shall provide digest information to the state auditor at the assessment ratios utilized by both the municipal government and the county government or governments in which the municipality is located. If revision is made to the digest of any county or any portion of a county comprising a local school system following the initial reporting of the digest to the state auditor, the commissioner shall report any such revision to the state auditor.

History.

Ga. L. 1970, p. 542, §§ 1-5; Ga. L. 1972, p. 829, §§ 1-7; Code 1933, § 91A-1416, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1988, p. 1568, § 2; Ga. L. 1989, p. 597, § 1; Ga. L. 1991, p. 1801, §§ 1, 2; Ga. L. 1991, p. 1903, § 11; Ga. L. 1993, p. 699, § 1; Ga. L. 2000, p. 1683, § 1; Ga. L. 2007, p. 707, § 1/HB 182; Ga. L. 2009, p. 27, § 3/SB 55; Ga. L. 2015, p. 1219, § 11/HB

202; Ga. L. 2019, p. 767, § 2/HB 406; Ga. L. 2024, p. 20, § 1-4/HB 581, see notes for effective date.

Delayed effective date.

Ga. L. 2024, p. 20, § 4-1/HB 581, provides that the 2024 amendment becomes effective on January 1, 2025; provided, however, that, if a constitutional amendment which becomes effective on January 1, 2025 and which authorizes the General Assembly to provide by general law for a homestead exemption that applies statewide, but that permits political subdivisions to individually opt out of such homestead exemption, has not been ratified, then this Act shall stand automatically repealed on January 1, 2025. This Code section, as set out above, does not reflect the amendment by that Act owing to the delayed effective date. If the voters approve, paragraph (f)(1) will read: "(1) Each county governing authority, each governing authority of a municipality having an independent school system, each local board of education, and each county board of tax assessors, when aggrieved or when having an aggrieved constituent, shall have a right, upon written request made within 30 days after receipt of the digest information, to refer the question of correctness of the current equalized adjusted property tax digest of the local school system to the state auditor. The state auditor shall take any steps necessary to make a determination of the correctness of the digest and to notify all interested parties of the determination within 45 days after receiving the request questioning the correctness of the digest."

Amendments.

The 2024 amendment, in the first sentence of paragraph (f)(1), deleted "and" preceding "each local" and inserted "and each county board of tax assessors,". For effective date of this amendment, see the delayed effective date note. See Editor's notes for applicability.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2000, former subsection (f) was redesignated as present subsection (g).

Editor's notes.

Ga. L. 1988, p. 1568, § 15, not codified by the General Assembly, provided that the Act "shall apply to all tax years beginning on or after January 1, 1989."

Ga. L. 1991, p. 1903, § 15, not codified by the General Assembly, provides that the amendment to this Code section shall be applicable beginning January 1, 1992, with respect to ad valorem taxation of timber and shall be applicable beginning January 1, 1992, for all other purposes. Taxation for prior periods shall continue to be governed by prior law.

Ga. L. 2000, p. 1683, § 11, not codified by the General Assembly, provides that the amendment to this Code section shall be applicable to all equalized digests established on or after January 1, 2000.

Ga. L. 2009, p. 27, § 5/SB 55, not codified by the General Assembly, provides, in part, that the amendment to this Code section shall be applicable to all taxable years beginning on or after January 1, 2009.

Ga. L. 2024, p. 20, § 4-1/HB 581, not codified by the General Assembly, makes paragraph (f)(1) of this Code section applicable to taxable years beginning on or after January 1, 2025. For effective date of this amendment, see the delayed effective date note.

Law reviews.

For article, "Procedure and Problems in Georgia Ad Valorem Tax Appeals," see 26 Ga. St. B.J. 98 (1990).

For survey article on local government law, see 67 Mercer L. Rev. 147 (2015).

48-5-275. Applicability of part.

This part shall apply in both the incorporated and unincorporated areas in each county of this state. The intent of this Code section is to recognize each county as a unit in applying this part without regard to other distinctions existing between incorporated and unincorporated areas within each county.

History.
Ga. L. 1972, p. 1104, § 2; Code 1933, § 91A-1402, enacted by Ga. L. 1978, p. 309, § 2.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Ga. L. 1970, p. 542, § 1, are included in the annotations for this Code section.

Constitutionality. — Statute did not violate Ga. Const. 1945, Art. VII, Sec. I, Para. III (see now Ga. Const. 1983, Art. VII, Sec. I, Para. III). Butts County v. Briscoe, 236 Ga. 233, 223 S.E.2d 199, 1976 Ga. LEXIS 822 (1976) (decided under Ga. L. 1970, p. 542, § 1).

Statute did not destroy uniformity as between taxpayers of a county. Chilivis v. Kell, 236 Ga. 226, 223 S.E.2d 117, 1976 Ga. LEXIS 820 (1976) (decided under Ga. L. 1970, p. 542, § 1).

RESEARCH REFERENCES

C.J.S.
7 81A C.J.S., States, § 142.

PART 2

COUNTY BOARDS OF TAX ASSESSORS

JUDICIAL DECISIONS

County governing authority has no implied authority to perform acts of assessors. — Former Code 1933, Ch. 92-69 (see now O.C.G.A. Pt. 2, Art. 5, Ch. 5, T. 48) conferring authority upon assessors to perform specific acts negatives any implied power of the county commissioners (now county governing authority) to perform the same acts. Bagwell v. Cash, 207 Ga. 222, 60 S.E.2d 628, 1950 Ga. LEXIS 437 (1950).

Assessors cannot obligate county to pay another for services the assessors are required to perform. — County tax assessors cannot, with the approval of county commissioners (now county governing authority), obligate the county to pay another with county funds for performing services which the assessors are required to perform and for which the assessors draw pay from the county. Bagwell v. Cash, 207 Ga. 222, 60 S.E.2d 628, 1950 Ga. LEXIS 437 (1950).

Increases for sole purpose of raising revenue, not for fixing fair values, are unconstitutional. — When county tax assessors, without investigation, make a systematic and comprehensive increase in the value of all property returned in the county for taxes for a particular year, not for the purpose of fixing just and fair values after investigation, or for the purpose of equalizing taxes, but for the sole purpose of raising additional revenue, such assessments are null and void as the assessments are clearly violative of Ga. Const. 1945, Art. VII, Sec. I, Para. III (see now Ga. Const. 1983, Art. VII, Sec. I, Para. III) and Ga. Const. 1945, Art. I, Sec. I, Para. II (see now Ga. Const. 1983, Art. I, Sec. I, Para. II) and U.S. Const., amend. 14. Hutchins v. Howard, 211 Ga. 830, 89 S.E.2d 183, 1955 Ga. LEXIS 483 (1955).

Suits by board employees against county for compensation are unauthorized. — Even were it to be assumed that the employment of a copyist to be compensated by the county would be authorized, there is nothing in the Act at variance with the prohibition against suits against a county save when expressly authorized by statute or by the provision of the state Constitution. Accordingly, even though it be assumed that the claim against the county is a just

one, a suit by such an employee against the county for the recovery of such compensation is unauthorized. Decatur County v. Townsend, 46 Ga. App. 103, 166 S.E. 774, 1932 Ga. App. LEXIS 65 (1932).

48-5-290. Creation of county board of tax assessors; composition.

(a) There is established a county board of tax assessors in each of the several counties of this state.

(b) Except as provided in Code Section 48-5-309 with respect to the election of board members, each county board of tax assessors shall consist of not less than three nor more than five members to be appointed by the county governing authority.

(c) The order making an appointment to the county board of tax assessors shall be regularly entered upon the record of the superior court of the county. A certificate from the clerk of the superior court reciting the order and stating that the person appointed has taken the oath required by law shall constitute the commission of a member. No other commission shall be required. The clerk of the superior court shall transmit a copy of the certificate to the commissioner within five days of the date the oath is administered.

(d) No individual may be appointed or reappointed to a county board of tax assessors when the individual is related to a member of the county governing authority in one or more of the following degrees:

(1) Mother or mother-in-law;

(2) Father or father-in-law;

(3) Sister or sister-in-law;

(4) Brother or brother-in-law;

(5) Grandmother or grandmother by marriage;

(6) Grandfather or grandfather by marriage;

(7) Son or son-in-law; or

(8) Daughter or daughter-in-law.

History.

Ga. L. 1913, p. 123, § 2; Code 1933, § 92-6903; Ga. L. 1951, p. 715, § 1; Ga. L. 1978, p. 1751, § 1; Code 1933, § 91A-1432, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 40; Ga. L. 1986, p. 1322, § 2; Ga. L. 2006, p. 819, § 2/HB 1502.

Law reviews.

For survey article on labor and employment law, see 60 Mercer L. Rev. 217 (2008).

JUDICIAL DECISIONS

For a discussion of the relationship between O.C.G.A. § 48-5-290 and the DeKalb County Reorganization Act of 1981 relating to the appointment of members to the county board of tax assessors and the board of directors of the Metropolitan Atlanta Rapid Transit Authority, see Maloof v. Williams, 175 Ga. App. 546, 334 S.E.2d 16, 1985 Ga. App. LEXIS 2157 (1985).

Claims barred. — *Unpublished decision:* Eleventh Amendment barred the employees' 42 U.S.C. § 1983 claims against a county board of tax assessors (Board) because: (1) the Board was independent of county government, under O.C.G.A. §§ 48-5-290 and 48-5-295; (2) the state controlled the Board and mandated county funding as well as employee qualifications and duties; and (3) the Board was liable for any judgment. Ballard v. Chattooga County Bd. of Tax Assessors, 615 Fed. Appx. 621, 2015 U.S. App. LEXIS 11636 (11th Cir. 2015).

OPINIONS OF THE ATTORNEY GENERAL

Georgia Open Meetings Law, O.C.G.A. § 50-14-1 et seq., applies to proceedings both of a county board of tax assessors and of a county board of equalization. 1995 Op. Att'y Gen. No. U95-22.

Secretary of a county board of tax assessors can legally serve as a tax commissioner under former Code 1933, §§ 92-6903 and 92-6910 (see now O.C.G.A. §§ 48-5-290, 48-5-292, and 48-5-298). 1952-53 Ga. Op. Att'y Gen. 303.

No alternate assessor permissible. — O.C.G.A. § 48-5-290 requires that a county board of tax assessors be composed of only three members; no alternate assessor is permissible. 1981 Op. Att'y Gen. No. U81-49 (issued prior to 1986 amendment).

RESEARCH REFERENCES

Am. Jur. 2d.
72 Am. Jur. 2d, State and Local Taxation, § 619.

48-5-291. Qualifications for members; approved appraisal courses; rules and regulations.

(a) No individual shall serve as a member of the county board of tax assessors who:

(1) Is less than 21 years of age;

(2) Fails to make his or her residence within the county within six months after taking the oath of office as a member of the board;

(3) Does not hold a high school diploma or its equivalent;

(4) Has not successfully completed 40 hours of training either prior to or within 180 days of appointment as provided in subsection (b) of this Code section;

(5) Has not obtained and maintained a certificate issued by the commissioner; and

(6) In addition to the training required in paragraph (4) of this Code section, does not successfully complete an additional 40 hours of approved appraisal courses as provided in subsection (b) of this Code section during each two calendar years of tenure as a member of the county board of tax assessors.

(b) Approved appraisal courses shall be courses of instruction covering the basic principles of appraisal and assessing of all classes and types of property including instruction in the fundamentals of Georgia law covering the appraisal and assessing of property for ad valorem tax purposes as prescribed and designated by the commissioner pursuant to Code Section 48-5-13. To ensure that the assessment functions are performed in a professional manner by competent assessors, meeting clearly specified professional qualifications, the commissioner shall develop, approve, and administer courses of instruction designed to qualify applicants or tax assessors under this Code section and to specify qualification requirements for certification. The commissioner may contract with any professional appraisal organization or firm or institution of higher education in this state to provide the necessary courses of instruction or any part of any such course pursuant to Code Section 48-5-13.

(c) The commissioner shall promulgate such rules and regulations as may be necessary for the administration of this Code section.

History.
Ga. L. 1913, p. 123, § 4; Code 1933, § 92-6905; Ga. L. 1972, p. 1114, § 2; Ga. L. 1976, p. 1744, § 2; Ga. L. 1977, p. 302, § 1; Ga. L. 1977, p. 666, § 1; Code 1933, § 91A-1435, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1983, p. 576, § 1; Ga. L. 2006, p. 819, § 3/HB 1502; Ga. L. 2010, p. 1104, § 4-2/SB 346.

JUDICIAL DECISIONS

Removal of board members unwarranted. — Trial court did not abuse the court's discretion in refusing to remove the only two members of the Montgomery County Board of Tax Assessors for their failure to take courses required under O.C.G.A. § 48-5-291(a)(6) as the members had become current by completing the required coursework; the trial court properly considered O.C.G.A. § 48-5-296 and found that removing the only two Board members would disrupt an essential county function, which finding was buttressed by evidence that the county had difficulty obtaining people to fill positions on the Board. Smith v. Montgomery County Bd. of Tax Assessors, 268 Ga. App. 177, 601 S.E.2d 386, 2004 Ga. App. LEXIS 815 (2004), cert. denied, No. S04C1864, 2004 Ga. LEXIS 868 (Ga. Sept. 27, 2004).

RESEARCH REFERENCES

Am. Jur. 2d.
72 Am. Jur. 2d, State and Local Taxation, § 619.

48-5-292. Ineligibility of county tax assessors to hold other offices; applicability in certain counties.

(a) No member of a county board of tax assessors shall be eligible to hold any state, county, or municipal office during the time he holds such office. A member of the board may be reappointed to succeed himself as a member of the board.

(b) Reserved.

(c) In any county in this state with a population of 100,000 or more according to the United States decennial census of 1990 or any future such census, no member of a county board of tax assessors shall be eligible to hold any county property appraisal staff position during the time such person holds office as a member of a county board of tax assessors, except as otherwise provided by law.

(d) In any county in this state in which a chief appraiser or a member of the county property appraisal staff is not otherwise prohibited under this Code section from serving simultaneously as a member of the county board of tax assessors and is serving simultaneously in such capacity, such chief appraiser or member of the county property appraisal staff shall upon ceasing to serve as chief appraiser or member of the county property appraisal staff automatically cease to serve as a member of the county board of tax assessors. Any vacancy created on the county board of tax assessors under this subsection shall be filled in the manner provided under subsection (a) of Code Section 48-5-295.

History.

Ga. L. 1913, p. 123, § 4; Code 1933, § 92-6907; Ga. L. 1961, p. 563, § 1; Code 1933, § 91A-1437, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 514, § 2; Ga. L. 1993, p. 603, § 1; Ga. L. 1994, p. 237, § 2; Ga. L. 1994, p. 507, § 2.

JUDICIAL DECISIONS

The office of grand juror is not "a county office" within the meaning of this statute. Accordingly, the trial judge did not err in denying the defendant's motion to quash the indictment on the grounds that the grand jury was improperly formed in that a named member is now and was at the time such jury list was compiled a tax assessor of a county, and by virtue of holding this office was ineligible to be in the grand jury box. Butts v. State, 211 Ga. 16, 83 S.E.2d 610, 1954 Ga. LEXIS 469 (1954).

Holding simultaneous position permitted. — Tax assessor's service on a county agricultural committee (as part of a federal agency) did not bar appointment to the tax board because federal offices were excluded, the position was temporary, and would not interfere with the tax assessor's duties on the tax board. Wheeler County Bd. of Tax Assessors v. Gilder, 256 Ga. App. 478, 568 S.E.2d 786, 2002 Ga. App. LEXIS 935 (2002).

OPINIONS OF THE ATTORNEY GENERAL

Member of county board of tax assessors may not also serve as elected member of city council. 1980 Op. Att'y Gen. No. 80-166.

Prior service on board of tax assessors not a bar to holding public office. — Person who has previously served in the position of county tax assessor and is no longer a member of the board of tax assessors would not be ineligible because of the person's prior service on the board of tax assessors to serve in a "county office." 1968 Op. Att'y Gen. No. 68-262.

Eligibility to serve as member of county governing authority. — Holding of the position of tax assessor would make one ineligible to serve on the board of commissioners of roads and revenues (now county governing authority). 1968 Op. Att'y Gen. No. 68-241.

Tax assessor cannot at the same time hold office of county commissioner. 1962 Ga. Op. Att'y Gen. 62.

Tax assessor can be an employee of any of the branches of government. 1954-56 Ga. Op. Att'y Gen. 665.

Secretary of a county board of tax assessors could legally serve as a tax commissioner under former Code 1933, §§ 92-6907 and 92-6910 (see now O.C.G.A. §§ 48-5-290, 48-5-292, and 48-5-298). 1952-53 Ga. Op. Att'y Gen. 303.

Eligibility to serve on county board of education. — Member of the county board of tax assessors is ineligible to hold office as a member of the county board of education. 1945-47 Ga. Op. Att'y Gen. 142.

Deputy sheriff, not being elected official and being removable from office at will of sheriff, is not prohibited from serving on board of tax assessors. 1962 Ga. Op. Att'y Gen. 56.

Eligibility to hold office of justice of the peace. — Individual may not serve as a member of the board of tax assessors and at the same time hold the office of justice of the peace. 1958-59 Ga. Op. Att'y Gen. 34; 1967 Op. Att'y Gen. No. 67-122.

Eligibility to hold office of ex officio justice of the peace. — Member of the county board of tax assessors is not eligible to hold the office of ex officio justice of the peace. 1948-49 Ga. Op. Att'y Gen. 344.

Person holding a notary public, ex officio justice of the peace commission cannot, at the same time, serve as county tax assessor. 1952-53 Ga. Op. Att'y Gen. 297; 1958-59 Ga. Op. Att'y Gen. 34.

Office of registrar not a state, county, or municipal office. — Statute states that the tax assessors shall be ineligible to hold any state, county, or municipal office, but the office of registrar would not come within either one of those classifications since that office is not a state or municipal office. 1948-49 Ga. Op. Att'y Gen. 457.

48-5-293. Oaths of office.

Each member of the county board of tax assessors shall take an oath before the judge or the clerk of the superior court of the county to perform faithfully and impartially the duties imposed upon him by law. In addition, he shall also take the oath required of all public officers as provided in Code Section 45-3-1.

History.

Ga. L. 1913, p. 123, § 4; Code 1933, § 92-6906; Code 1933, § 91A-1436, enacted by Ga. L. 1978, p. 309, § 2.

RESEARCH REFERENCES

Am. Jur. 2d.
72 Am. Jur. 2d, State and Local Taxation, § 619.

48-5-294. Compensation.

Each member of the county board of tax assessors shall be paid as compensation for his services an amount to be determined from time to time by the county governing authority. The compensation to be paid to a member of the board shall not be less than $20.00 per day for the time he is actually discharging the duties required of him. Attendance at required approved appraisal courses shall be part of the official duties of a member of the board and he shall be paid for each day in attendance at such courses and shall be allowed reasonable expenses necessarily incurred in connection with the courses. The compensation of the members of the board and other expenses as may necessarily be incurred in the performance of the duties of the board shall be paid from the county treasury in the same manner as other payments by the county are made.

History.
Ga. L. 1913, p. 123, § 4; Code 1933, § 92-6908; Ga. L. 1972, p. 1114, § 3; Code 1933, § 91A-1438, enacted by Ga. L. 1978, p. 309, § 2.

OPINIONS OF THE ATTORNEY GENERAL

Payment of fees to tax assessors. — Even though this statute refers to "compensation," this does not preclude the county commissioners (now county governing authority) from paying a tax assessor on a fee basis. 1960-61 Ga. Op. Att'y Gen. 323.

Additional compensation for performance of extra duties. — Board of county commissioners (now county governing authority) may legally pay certain members of the board of tax assessors additional compensation for the performance of extra duties in assembling information. 1952-53 Ga. Op. Att'y Gen. 296.

48-5-295. Terms of office; vacancies; removal by county governing authority.

(a) Each member of the county board of tax assessors appointed to such office on and after July 1, 1996, shall be appointed by the county governing authority for a term of not less than three nor more than six years. A county governing authority shall, by resolution, within the range provided by this subsection, select the length of terms of office for members of its county board of tax assessors. Following the adoption of such resolution, all new appointments and reappointments to the county board of tax assessors shall be for the term lengths specified in the resolution; however, such resolution shall not have the effect of shortening or extending the terms of office of current members of the

board of assessors whose terms have not yet expired. The county governing authority shall not be authorized to again change the term length until the expiration of the term of office of the first appointment or reappointment following the resolution that last changed such terms of office. If the resolution changing the terms of office of members of the board of tax assessors would result in a voting majority of the board of tax assessors having their terms expire in the same calendar year, the county governing authority shall provide in the resolution for staggered initial appointments or reappointments of a duration of not less than three nor more than six years that will prevent such an occurrence. The county governing authority shall transmit to the board of assessors a copy of the resolution setting the length of terms of members of the county board of tax assessors within ten days of the date the resolution is adopted. Any member of the county board of tax assessors shall be eligible for reappointment after review of his or her service on the board by the appointing authority. Such review shall include education and certification information furnished by the commissioner. Any member of the county board of tax assessors who fails to maintain the certification and qualifications specified pursuant to Code Section 48-5-291 shall not be eligible for reappointment until all requirements have been met. In case of a vacancy on the board at any time, whether caused by death, resignation, removal, or otherwise, the vacancy shall be immediately filled by appointment of the county governing authority. Any person appointed to fill a vacancy shall be appointed only to serve for the remainder of the unexpired term of office and shall possess the same qualifications required under this part for regular appointment to a full term of office.

(b) A member of the county board of tax assessors may be removed by the county governing authority only for cause shown for the failure to perform the duties or requirements or meet the qualifications imposed upon such member by law including, but not limited to, the duties, requirements, and qualifications specified pursuant to Code Section 48-5-295.1 and subsection (e) of Code Section 48-5-262. No member of the board who is also employed by the county as a staff appraiser under Code Section 48-5-262 and no member whose removal is attempted based on this subsection may be removed by the county governing authority during such member's term of appointment until the member has been afforded an opportunity for a hearing before the judge of the superior court of the county for recommendations by the judge of the superior court to the county governing authority regarding such removal.

(c) As used in subsection (b) of this Code section, the term "failure to perform the duties" shall include a finding by the county governing authority that the member of the county board of tax assessors has shown a pattern of decisions in his or her capacity as such member that

has provided substantially incorrect assessments or substantially inconsistent tax assessments between similar properties.

(d) The provisions of subsection (b) of this Code section shall be a supplemental alternative to proceedings for removal under Code Section 48-5-296; and the existence of one remedy shall not bar the other.

History.

Ga. L. 1913, p. 123, § 3; Code 1933, § 92-6904; Ga. L. 1972, p. 1114, § 1; Code 1933, § 91A-1433, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1981, p. 1554, § 4; Ga. L. 1996, p. 190, § 2; Ga. L. 2000, p. 416, § 1; Ga. L. 2000, p. 1370, § 2; Ga. L. 2002, p. 1009, § 1; Ga. L. 2006, p. 819, § 4/HB 1502.

Code Commission notes.

The amendment of this Code section by Ga. L. 2000, p. 416, § 1, irreconcilably conflicted with and was treated as superseded by Ga. L. 2000, p. 1370, § 2. See County of Butts v. Strahan, 151 Ga. 417 (1921).

Pursuant to Code Section 28-9-5, in 2000, the reference to "subsection (d) of Code Section 48-5-298" was changed to "subsection (e) of Code Section 48-5-262" in the first sentence of subsection (b) and the reference to "member that have provided" was changed to "member that has provided" in subsection (c).

Pursuant to Code Section 28-9-5, in 2002, "has provided" was substituted for "have provided" near the end of subsection (c).

Law reviews.

For article surveying legislative and judicial developments in Georgia local government law for 1978-79, see 31 Mercer L. Rev. 155 (1979).

JUDICIAL DECISIONS

Constitutionality. — Statute is constitutional and not in violation of Ga. Const. 1945, Art. I, Sec. I, Para. III (see now Ga. Const. 1983, Art. I, Sec. I, Para. I). Kirton v. Biggers, 232 Ga. 223, 206 S.E.2d 33, 1974 Ga. LEXIS 914 (1974).

Constitutional notice and hearing requirements. — Statute, providing for dismissal of tax assessors for cause shown, implies the necessity of notice and hearing so as to satisfy the constitutional requirements of due process of law. Hughes v. Russell, 148 Ga. App. 143, 251 S.E.2d 70, 1978 Ga. App. LEXIS 3053 (1978), aff'd in part and rev'd in part, 244 Ga. 634, 261 S.E.2d 584, 1979 Ga. LEXIS 1356 (1979).

After the members of a board of tax assessors were removed from office for, inter alia, failing to file tax digests by the deadline provided in O.C.G.A. § 48-5-302, the abbreviated procedure provided for the members to challenge their removal did not violate their due process rights since their defense was considered and rejected, and the members did not indicate what additional evidence, if any, the members would have presented had the members had more time to prepare. Pope v. Bd. of Comm'rs, 276 Ga. App. 121, 622 S.E.2d 471, 2005 Ga. App. LEXIS 1183 (2005).

Phrase "for cause shown" necessarily implies that notice and hearing are required. Kirton v. Biggers, 232 Ga. 223, 206 S.E.2d 33, 1974 Ga. LEXIS 914 (1974).

Review by superior court. — Chief tax assessor against whom discharge was sought was not entitled to a hearing before the superior court since the assessor did not request a formal hearing within the time limit set forth in the superior court's order. The court had acted in substantial compliance with the provisions of subsection (b) of O.C.G.A. § 48-5-295 since the court ordered the parties to conduct the hearing before a tribunal of commissioners who had previously voted to discharge the chief tax assessor without a hearing and provided in the court's order that the board shall state the grounds for removal, but shall not act until the appellant had an

opportunity to have a hearing before this court should the appellant request one. Parsons v. Chatham County Bd. of Comm'rs, 204 Ga. App. 130, 418 S.E.2d 459, 1992 Ga. App. LEXIS 709 (1992), overruled, Swafford v. Dade County Bd. of Comm'rs, 266 Ga. 646, 469 S.E.2d 666, 1996 Ga. LEXIS 223 (1996).

Requirements as to notice of discharge. — When a statute provides that a public employee may not be discharged except after notice, the charges must be in terms sufficiently explicit to enable the employee to make an explanation. Mere vagaries or generalities are insufficient, and the notice must be sufficiently specific and detailed to convey to the employee the substantial nature of the charge without requiring speculation on the employee's part as to the precise complaint the employee must answer. Hughes v. Russell, 148 Ga. App. 143, 251 S.E.2d 70, 1978 Ga. App. LEXIS 3053 (1978), aff'd in part and rev'd in part, 244 Ga. 634, 261 S.E.2d 584, 1979 Ga. LEXIS 1356 (1979).

Requirement as to form of charges. — The statement or charges must be such that the employee would have sufficient knowledge or reason to know the basis on which the employee's removal is sought. Kirton v. Biggers, 135 Ga. App. 416, 218 S.E.2d 113, 1975 Ga. App. LEXIS 1685 (1975).

Sufficiency of charges or reasons. — Charges or reasons given in an action to remove the county tax assessors from office must be sufficient in their nature to warrant removal. Allen v. Norris, 148 Ga. App. 261, 251 S.E.2d 145, 1978 Ga. App. LEXIS 3150 (1978).

Service on county not required. — When the superior court was petitioned to review a quasi-judicial decision of the county board of commissioners under O.C.G.A. § 48-5-295(b), because the plaintiff's petition for certiorari was procedurally sound, the superior court erred in dismissing the petition for lack of service on the county. Pope v. Board of Comm'rs, 248 Ga. App. 201, 546 S.E.2d 333, 2001 Ga. App. LEXIS 215 (2001), cert. denied, No. S01C0909, 2001 Ga. LEXIS 541 (Ga. June 25, 2001).

Allegations of a wholly political conspiracy to remove the plaintiff as chair of a county board of tax assessors failed to state a cause of action under the federal civil rights act after the plaintiff failed to allege the deprivation of a protected property interest and showed no equal protection violation vis-a-vis anyone else similarly situated. Smith v. Turner, 764 F. Supp. 632, 1991 U.S. Dist. LEXIS 7131 (N.D. Ga. 1991).

Preferential treatment resulted in discharge of assessor. — Chief tax assessor's granting of preferential treatment to one taxpayer's property violated the long-established laws requiring tax assessors to perform the assessors' duties in good faith and to ensure that the fair market value between individual taxpayers is fairly and justly equalized and therefore justified the chief tax assessor's discharge. Parsons v. Chatham County Bd. of Comm'rs, 204 Ga. App. 130, 418 S.E.2d 459, 1992 Ga. App. LEXIS 709 (1992), overruled, Swafford v. Dade County Bd. of Comm'rs, 266 Ga. 646, 469 S.E.2d 666, 1996 Ga. LEXIS 223 (1996).

No differentiation among duties for purposes of removal from office. — Statute does not differentiate either between duties which are mandatory or directory, joint or several, or between failures of performance of duties which are intentional or negligent. Kirton v. Biggers, 135 Ga. App. 416, 218 S.E.2d 113, 1975 Ga. App. LEXIS 1685 (1975).

Liability of chair of board of tax assessors. — Board of commissioners (now county governing authority) is within the board's rights in holding the chair of the board of tax assessors accountable for the failure of statutory compliance of the whole board. Kirton v. Biggers, 135 Ga. App. 416, 218 S.E.2d 113, 1975 Ga. App. LEXIS 1685 (1975).

Judicial review of appointing body's decisions. — Scope and criteria of judicial review of the appointing body's decisions is closely analogous to standards for judicial review of an agency as set out in Ga. L. 1964, p. 338, § 20 (see now O.C.G.A. § 50-13-19(h)). Kirton v. Biggers, 135 Ga. App. 416, 218 S.E.2d 113, 1975 Ga. App. LEXIS 1685 (1975).

At a hearing conducted for the discharge of the chief tax assessor, testi-

mony regarding the assessor's intoxication and conduct while attending certain county-financed activities, the assessor's conduct regarding certain female personnel who were employed in the assessor's office, and the assessor's attempted display of a jar of dog testicles to a female employee, was relevant to establish whether the assessor had violated a duty imposed on the assessor by law, and accordingly was admissible. Parsons v. Chatham County Bd. of Comm'rs, 204 Ga. App. 130, 418 S.E.2d 459, 1992 Ga. App. LEXIS 709 (1992), overruled, Swafford v. Dade County Bd. of Comm'rs, 266 Ga. 646, 469 S.E.2d 666, 1996 Ga. LEXIS 223 (1996).

Assessors' failure to complete the digest required by O.C.G.A. § 48-5-302 did not mandate the assessors' removal, but this breach of duty gave the commission discretion to remove the assessors. Cashin v. Hardman, 223 Ga. App. 301, 477 S.E.2d 433.

Evidence sufficient that assessors failed to complete digest. — After the members of board of tax assessors were removed from office for, inter alia, failing to file tax digests by the deadline provided in O.C.G.A. § 48-5-302, the members' statement that it was impossible to comply with the statute and that no board of tax assessors had complied with the statute since 1988 tacitly admitted the allegation against the assessors and was sufficient evidence supporting the assessors' removal. Pope v. Bd. of Comm'rs, 276 Ga. App. 121, 622 S.E.2d 471, 2005 Ga. App. LEXIS 1183 (2005).

Claims under 42 U.S.C. § 1983. — *Unpublished decision:* Eleventh Amendment barred the employees' 42 U.S.C. § 1983 claims against a county board of tax assessors (Board) because: (1) the Board was independent of county government, under O.C.G.A. §§ 48-5-290 and 48-5-295; (2) the state controlled the Board and mandated county funding as well as employee qualifications and duties; and (3) the Board was liable for any judgment. Ballard v. Chattooga County Bd. of Tax Assessors, 615 Fed. Appx. 621, 2015 U.S. App. LEXIS 11636 (11th Cir. 2015).

48-5-295.1. Performance review board.

(a) The county governing authority may, upon adoption of a resolution, request that a performance review of the county board of tax assessors be conducted. Such resolution shall be transmitted to the commissioner who shall appoint an independent performance review board within 30 days after receiving such resolution. The commissioner shall appoint three competent persons to serve as members of the performance review board, one of whom shall be an employee of the department and two of whom shall be chief appraisers, provided that neither chief appraiser shall be a chief appraiser for the county under review.

(b) It shall be the duty of a performance review board to make a thorough and complete investigation of the county board of tax assessors with respect to all actions of the county board of tax assessors and appraisal staff regarding the technical competency of appraisal techniques and compliance with state law and regulations, including the Property Tax Appraisal Manual. The performance review board shall issue a written report of its findings to the commissioner and the county governing authority which shall include such evaluations, judgments, and recommendations as it deems appropriate. The county governing authority shall reimburse the members of the performance review

board for reasonable expenses incurred in the performance of their duties, including mileage, meals, lodging, and costs of materials.

(c) The findings of the report of the review board under subsection (b) of this Code section or of any audit performed by the Department of Revenue at the request of the Governor may be grounds for removal of one or more members of the county board of tax assessors pursuant to subsection (b) of Code Section 48-5-295.

(d) The commissioner shall promulgate such rules and regulations as may be necessary for the administration of this Code section.

History.
Code 1981, § 48-5-295.1, enacted by Ga. L. 2000, p. 1370, § 3; Ga. L. 2002, p. 1009, § 1; Ga. L. 2005, p. 159, § 6/HB 488; Ga. L. 2013, p. 655, § 3/HB 197.

Editor's notes.
Ga. L. 2005, p. 159, § 1/HB 488, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2005.' "

48-5-295.2. Independent performance review board; written report; withholding of funds.

(a) The commissioner shall appoint an independent performance review board if he or she determines, through the examination of the digest for any county in a digest review year pursuant to Code Section 48-5-342, that there is evidence which calls into question the technical competence of appraisal techniques and compliance with state law and regulations, including the Property Tax Appraisal Manual, with respect to the conservation use value of forest land.

(b) The commissioner shall appoint three competent persons to serve as members of the performance review board, one of whom shall be an employee of the department and two of whom shall be chief appraisers, provided that neither chief appraiser shall be a chief appraiser for the county under review.

(c) The performance review board shall issue a written report of its findings to the commissioner and the county governing authority which shall include such evaluations, judgments, and recommendations as it deems appropriate. The county governing authority shall reimburse the members of the performance review board for reasonable expenses incurred in the performance of their duties, including mileage, meals, lodging, and costs of materials.

(d) The findings of the report of the review board under subsection (c) of this Code section or of any audit performed by the Department of Revenue or the Department of Audits shall be grounds for the state to withhold local assistance grants pursuant to Code Section 48-5A-3; provided, however, that any portion of a local assistance grant

designated for use by a board of education of any political subdivision shall not be withheld pursuant to this subsection. If the findings in the report of the performance review board indicate that the provisions of paragraph (6) of Code Section 48-5-2 have been knowingly violated by a local government in order to receive a larger local assistance grant than allowed by law, then the most recent local assistance grant requested by the local government shall be withheld by the Department of Revenue. For a second or subsequent offense, the next two requests for local assistance grants shall be withheld by the Department of Revenue.

(e) The commissioner shall promulgate such rules and regulations as may be necessary for the administration of this Code section.

History.
Code 1981, § 48-5-295.2, enacted by Ga. L. 2013, p. 655, § 4/HB 197.

48-5-296. Removal from office on petition of freeholders; appeals.

Whenever by petition to the judge of the superior court any 100 or more freeholders of the county allege that any member of the county board of tax assessors is disqualified or is not properly and impartially discharging his duties or is discriminating in favor of certain citizens or classes of citizens and against others, the judge shall cite the member to appear before him at a time and place to be fixed in the citation, such time to be not less than 20 nor more than 40 days from the date of the presentation of the petition, and to answer to the petition. A copy of the petition shall be attached to the citation and service of the citation may be made by any sheriff, deputy sheriff, or constable of this state. The officer making the service shall serve copies and return the original petition and citation to the clerk of the court as other process is returned. At the time and place fixed in the citation, unless postponed for reasonable cause, the judge shall hear and determine the matter without a jury and shall render such judgment and order as may be right and proper, either dismissing the petition or removing the offending member of the county board of tax assessors from office and declaring a vacancy in the office. If either party to the controversy is dissatisfied with the judgment and order of the court, the party may appeal the issue as in other cases.

History.
Ga. L. 1913, p. 123, § 4; Code 1933, § 92-6909; Ga. L. 1946, p. 726, § 29; Code 1933, § 91A-1439, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1980, p. 771, § 1.

Law reviews.
For article surveying legislative and judicial developments in Georgia local government law for 1978-79, see 31 Mercer L. Rev. 155 (1979).

JUDICIAL DECISIONS

Notice provisions constitutional. — O.C.G.A. § 48-5-296 expressly provides for both notice and hearing as a matter of right, and clearly meets the Constitution's requirements of due process. Brown v. Wetherington, 250 Ga. 682, 300 S.E.2d 680, 1983 Ga. LEXIS 610 (1983).

Style of proceeding. — Proceeding for the removal of members of a county board of tax assessors brought in the name of a committee consisting of over 100 freeholders met the requirements of O.C.G.A. § 48-5-296, even though the proper style of the case would be the names of the petitioner freeholders. Committee for Better Gov't v. Black, 216 Ga. App. 173, 453 S.E.2d 772, 1995 Ga. App. LEXIS 60 (1995), cert. denied, No. S95C0830, 1995 Ga. LEXIS 688 (Ga. Apr. 20, 1995).

Discretion of court. — It is within the court's discretion to remove members from office upon showing cause. Allen v. Norris, 151 Ga. App. 305, 259 S.E.2d 701, 1979 Ga. App. LEXIS 2536 (1979).

Removal of board members held unwarranted. — Superior court did not abuse the court's discretion in determining that removal of board members was not warranted since the court concluded that the board members were qualified, that the members had acted in a proper, reasonable, and impartial fashion in preparing a tax digest, and that the members did not discriminate in favor of certain citizens or classes of citizens and against others. Thompson v. Queen, 198 Ga. App. 627, 402 S.E.2d 361, 1991 Ga. App. LEXIS 205 (1991).

Trial court did not abuse the court's discretion in determining that the removal of board members was not warranted under the evidence presented. Swafford v. Bradford, 225 Ga. App. 486, 484 S.E.2d 300.

Trial court did not abuse the court's discretion in refusing to remove the only two members of the Montgomery County Board of Tax Assessors for their failure to take courses required under O.C.G.A. § 48-5-291(a)(6) as the members had become current by completing the required coursework; the trial court properly considered O.C.G.A. § 48-5-296 and found that removing the only two Board members would disrupt an essential county function, which finding was buttressed by evidence that the county had difficulty obtaining people to fill positions on the Board. Smith v. Montgomery County Bd. of Tax Assessors, 268 Ga. App. 177, 601 S.E.2d 386, 2004 Ga. App. LEXIS 815 (2004), cert. denied, No. S04C1864, 2004 Ga. LEXIS 868 (Ga. Sept. 27, 2004).

Trial court did not abuse the court's discretion in refusing to remove the only two members of the Montgomery County Board of Tax Appeals for the members' failure to hire a level III appraiser as the chief county appraiser, as required by O.C.G.A. § 48-5-264(a), for the inadequacy of the notice sent to taxpayers to explain the increased assessments of property, and for the failure to supervise a county-wide mass appraisal; while the trial court was troubled by the members' actions, budget restraints were, in part, to blame for the failure to hire a level III appraiser, and the court did not abuse the court's discretion in concluding that removing the only two members from the Board was too drastic a remedy and would disrupt the running of an essential office. Smith v. Montgomery County Bd. of Tax Assessors, 268 Ga. App. 177, 601 S.E.2d 386, 2004 Ga. App. LEXIS 815 (2004), cert. denied, No. S04C1864, 2004 Ga. LEXIS 868 (Ga. Sept. 27, 2004).

RESEARCH REFERENCES

C.J.S.

67 C.J.S., Officers and Public Employees, § 120 et seq.

48-5-297. Meetings.

The first meeting of the county board of tax assessors shall be held no later than ten days after the date the tax receiver or tax commissioner is required by law to submit the tax digest for the year to the county board of tax assessors. The secretary of the board shall at that time and at every meeting of the board present to the board all of the appraisal staff information relating to the digest. The county board of tax assessors must consider the staff information in the performance of their duties. The county board of tax assessors shall adhere to the assessment standards and techniques as required by law, by the commissioner, and by the State Board of Equalization. In each instance, however, the assessment placed on each parcel of property shall be the assessment established by the county board of tax assessors as provided in Code Section 48-5-306.

History.
Ga. L. 1913, p. 123, § 6; Code 1933, § 92-6911; Ga. L. 1937, p. 517, § 2; Ga. L. 1970, p. 580, § 1; Ga. L. 1971, p. 33, § 1; Ga. L. 1972, p. 1114, § 5; Ga. L. 1974, p. 609, § 1; Ga. L. 1975, p. 1083, § 2; Ga. L. 1976, p. 518, § 2; Code 1933, § 91A-1448, enacted by Ga. L. 1978, p. 309, § 2.

48-5-298. Selection of chairman and secretary; employment contracts with persons to assist board; payment of expenses.

(a) Each county board of tax assessors shall elect one of its members to serve as chairman for each tax year. The election of a chairman shall be the first order of business at the first meeting of the board for each tax year. At the same time, the board shall select from the county appraisal staff one appraiser to act as secretary to the board for that tax year. Each county board of tax assessors, subject to the approval of the county governing authority, may enter into employment contracts with persons to:

(1) Assist the board in the mapping, platting, cataloging, indexing, and appraising of taxable properties in the county;

(2) Make, subject to the approval of the board, reevaluations of taxable property in the county; and

(3) Search out and appraise unreturned properties in the county.

(b) Each county board of tax assessors may enter into a contract with any municipality or political subdivision of the state to provide any information for which the board could contract pursuant to subsection (a) of this Code section.

(c) The expenses of employees engaged and work performed pursuant to this Code section shall be paid, subject to the contracts and after approval by the county governing authority, out of county funds as a

part of the expenses of the board. A county board of education or independent board of education may expend funds to assist in paying the expenses incurred in discovering unreturned properties pursuant to this Code Section for the purpose of collecting unpaid school taxes. The method of such expenditure as provided in this subsection and the amount thereof shall be within the discretion of the county board of education or independent board of education.

History.

Ga. L. 1913, p. 123, § 5; Code 1933, § 92-6910; Ga. L. 1937, p. 517, § 1; Ga. L. 1953, Jan.-Feb. Sess., p. 189, § 1; Ga. L. 1972, p. 1114, § 4; Code 1933, § 91A-1447, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1990, p. 1830, § 1.

JUDICIAL DECISIONS

Claims for compensation to be made to county governing authority. — Board of commissioners of roads and revenues (now county governing authority) has not only the right, but the duty to examine, audit, and approve claims of agents of the board of tax assessors for compensation and expenses; hence, the petition seeking by way of mandamus to require the county treasurer to pay a certain amount for services rendered, failed to state a cause of action. Armistead v. MacNeill, 203 Ga. 204, 45 S.E.2d 652, 1947 Ga. LEXIS 584 (1947).

Limits on power to delegate duties and to contract for services. — County board of tax assessors cannot delegate the board's duties pertaining to the equalization of property valuations for ad valorem taxation, nor can a board contract for a private company to seek out unreturned, taxable property and to reevaluate all property in the county. Bagwell v. Cash, 207 Ga. 222, 60 S.E.2d 628, 1950 Ga. LEXIS 437 (1950).

Contingent fee contract void as against public policy. — Contingency contract between a county board of tax assessors and a private auditing corporation by which the corporation contingently shared in a percentage of the tax collected was void as against public policy. Sears, Roebuck & Co. v. Parsons, 260 Ga. 824, 401 S.E.2d 4, 1991 Ga. LEXIS 80 (1991).

Contract with private firm for audit services proper. — County board of tax assessors was authorized to contract with a private firm for audit services to aid the board in discovering unreturned and untaxed property. Eckerd Corp. v. Fayette County Bd. of Tax Assessors, 220 Ga. App. 454, 469 S.E.2d 285; Wal-Mart Stores v. Board of Tax Assessors, 246 Ga. App. 161, 539 S.E.2d 869, 2000 Ga. App. LEXIS 1178 (2000).

Authority to hire and fire a tax appraiser rested with the board of tax appraisers, not with the board of commissioners which previously approved the employment contract. Chambers v. Fulford, 268 Ga. 892, 495 S.E.2d 6.

Payment of contract for employment not considered ratification of contract as a whole. — In a breach of contract action centering around a contract of employment with a county employer and the county's board of tax assessors, because the employment contract was never approved by the county commission, and the county's payment of a salary to the employee was not considered a ratification of the contract in the contract's entirety, the employee possessed only an at-will employment. Thus, summary judgment was properly entered against the employee. Powell v. Wheeler County, 290 Ga. App. 508, 659 S.E.2d 893, 2008 Ga. App. LEXIS 362 (2008), cert. denied, No. S08C1300, 2008 Ga. LEXIS 686 (Ga. Sept. 8, 2008).

OPINIONS OF THE ATTORNEY GENERAL

Employees beyond minimum staff requirements. — Individuals employed in the Ben Hill County Tax Assessor's office above and beyond the minimum staff requirements are employees of the Ben Hill County Board of Tax Assessors, not the board of county commissioners, and the Ben Hill County Board of Tax Assessors need not obtain the approval of the Ben Hill County Board of Commissioners before terminating the employment of those individuals. 1985 Op. Att'y Gen. No. U85-25.

Secretary of a county board of tax assessors can legally serve as a tax commissioner under former Code 1933, §§ 92-6903, 92-6907, and 92-6910 (see now O.C.G.A. §§ 48-5-290, 48-5-292, and 48-5-298). 1952-53 Ga. Op. Att'y Gen. 303.

Contracts with nonresident corporations for services. — Nonresident corporations may enter into contracts with county boards of tax assessors to assist such boards in mapping, platting, cataloging, indexing, and appraising of taxable property, and to make reevaluations of taxable property, and to search out and appraise unreturned properties in such counties. 1957 Ga. Op. Att'y Gen. 27.

Payment for survey and appraisal from taxes levied for school purposes. — County which contracts for the surveying and appraisal of taxable property may not pay any part of the cost of such services from the taxes levied for school purposes. 1952-53 Ga. Op. Att'y Gen. 341.

48-5-299. (For effective date, see note.) Ascertainment of taxable property; assessments and penalty on unreturned personal property; new valuation established by appeal decision or agreement; investigation of valuation of property in municipality located in more than one county.

(a) It shall be the duty of the county board of tax assessors to investigate diligently and to inquire into the property owned in the county for the purpose of ascertaining what real and personal property is subject to taxation in the county and to require the proper return of the property for taxation. The board shall make such investigation as may be necessary to determine the value of any property upon which for any reason all taxes due the state or the county have not been paid in full as required by law. In all cases where the full amount of taxes due the state or county has not been paid, the board shall assess against the owner, if known, and against the property, if the owner is not known, the full amount of taxes which has accrued and which may not have been paid at any time within the statute of limitations. In all cases where taxes are assessed against the owner of property, the board may proceed to assess the taxes against the owner of the property according to the best information obtainable; and such assessment, if otherwise lawful, shall constitute a valid lien against the property so assessed.

(b) In all cases in which unreturned personal property is assessed by the board after the time provided by law for making tax returns has expired, the board shall add to the assessment of the property a penalty of 10 percent, which shall be included as a part of the taxable value for the year.

(c) When the value of real property is reduced or is unchanged from the value on the initial annual notice of assessment or a corrected annual notice of assessment issued by the board of tax assessors and such valuation has been established as the result of an appeal decision rendered by the board of equalization, hearing officer, arbitrator, or superior court pursuant to Code Section 48-5-311 or stipulated by written agreement signed by the board of tax assessors and taxpayer or taxpayer's authorized representative, the new valuation so established by appeal decision or agreement may not be increased by the board of tax assessors during the next two successive years, unless otherwise agreed in writing by both parties, subject to the following exceptions:

(1) This subsection shall not apply to a valuation established by an appeal decision if the taxpayer or his or her authorized representative failed to attend the appeal hearing or provide the board of equalization, hearing officer, or arbitrator with some written evidence supporting the taxpayer's opinion of value;

(2) This subsection shall not apply to a valuation established by an appeal decision or agreement if the taxpayer files a return at a different valuation during the next two successive years;

(3) Unless otherwise agreed in writing by both parties, if the taxpayer files an appeal pursuant to Code Section 48-5-311 during the next two successive years, the board of tax assessors, the board of equalization, hearing officer, or arbitrator may increase or decrease the value of the real property based on the evidence presented by the taxpayer during the appeal process; and

(4) The board of tax assessors may increase or decrease the value of the real property if, after a visual on-site inspection of the property, it is found that there have been substantial additions, deletions, or improvements to such property or that there are errors in the board of tax assessors' records as to the description or characterization of the property, or the board of tax assessors finds an occurrence of other material factors that substantially affect the current fair market value of such property.

(d) When real or personal property is located within a municipality whose boundaries extend into more than one county, it shall be the duty of each board of tax assessors of a county, wherein a portion of the municipality lies, to cooperatively investigate diligently into whether the valuation of such property is uniformly assessed with other properties located within the municipality but outside the county where such property is located. Such investigation shall include, but is not limited to, an analysis of the assessment to sales ratio of properties that have recently sold within the municipality and a comparison of the average assessment level of such properties by the various counties

wherein a portion of the municipality lies. The respective boards shall exchange such information as will facilitate this investigation and make any necessary adjustments to the assessment of the real and personal property that is located in their respective counties within the municipality to achieve a uniform assessment of such property throughout the municipality. Any uniformity adjustments pursuant to this subsection shall only apply to the assessment used for municipal ad valorem tax purposes within the applicable county.

History.

Ga. L. 1913, p. 123, § 7; Code 1933, § 92-6913; Ga. L. 1937, p. 517, § 3; Ga. L. 1976, p. 1042, § 1; Ga. L. 1976, p. 1071, § 1; Code 1933, § 91A-1440, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1994, p. 786, § 1; Ga. L. 2000, p. 873, § 1; Ga. L. 2006, p. 431, § 1/HB 560; Ga. L. 2015, p. 1219, § 12/HB 202; Ga. L. 2016, p. 166, § 4/SB 258; Ga. L. 2017, p. 774, § 48/HB 323; Ga. L. 2024, p. 20, § 1-5/HB 581, see notes for effective date.

Delayed effective date.

Ga. L. 2024, p. 20, § 4-1/HB 581, provides that the 2024 amendment becomes effective on January 1, 2025; provided, however, that, if a constitutional amendment which becomes effective on January 1, 2025 and which authorizes the General Assembly to provide by general law for a homestead exemption that applies statewide, but that permits political subdivisions to individually opt out of such homestead exemption, has not been ratified, then this Act shall stand automatically repealed on January 1, 2025. This Code section as amended is not set out in the Code owing to the delayed effective date. If the voters approve, the beginning of subsection (c) will read: "(c) When the value of real property is reduced from the value on the initial annual notice of assessment or a corrected annual notice of assessment issued by the board of tax assessors and such reduced valuation has been established as the result of an appeal decision rendered by the board of equalization, hearing officer, arbitrator, or superior court pursuant to Code Section 48-5-311 or stipulated by written agreement signed by the board of tax assessors and taxpayer or taxpayer's authorized representative, the new valuation so established by appeal decision or agreement may not be increased by the board of tax assessors during the next two successive years, unless otherwise agreed in writing by both parties, subject to the following exceptions:".

Amendments.

The 2024 amendment, near the beginning of subsection (c), deleted "or is unchanged" following "is reduced" and substituted "such reduced valuation" for "such valuation". For effective date of this amendment, see the delayed effective date note. See Editor's notes for applicability.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2016, "agreed" was substituted for "agree" near the beginning of paragraph (c)(3).

Editor's notes.

Ga. L. 2015, p. 1219, § 27(c)/HB 202, not codified by the General Assembly, provides, in part, that Sections 9, 12, and 15 of this Act shall be applicable to all appeals filed on or after January 1, 2016.

Ga. L. 2024, p. 20, § 4-1/HB 581, not codified by the General Assembly, makes the amendment of subsection (c) of this Code section applicable to taxable years beginning on or after January 1, 2025. For effective date of this amendment, see the delayed effective date note.

Law reviews.

For survey article on real property law, see 59 Mercer L. Rev. 371 (2007).

For annual survey on local government law, see 71 Mercer L. Rev. 189 (2019).

JUDICIAL DECISIONS

Effective date for application of subsection (c). — Taxpayer was not entitled to the protection of subsection (c) of O.C.G.A. § 48-5-299 for a judicial determination setting valuations for years prior to 1995 and its effective date; however, the taxpayer would be entitled to such protection as to an appeal establishing the valuation for the tax year 1995, which then would affect 1996 and 1997 as coming under subsection (c). Moreton Rolleston, Jr., Living Trust v. Glynn County Bd. of Tax Assessors, 240 Ga. App. 405, 523 S.E.2d 600.

Pursuant to subsection (c) of O.C.G.A. § 48-5-299, only those appeals which result in a valuation established by the board of equalization or superior court will prohibit the tax assessor from changing the value within the next two successive years. Cullum v. Chatham County Bd. of Tax Assessors, 243 Ga. App. 865, 534 S.E.2d 535, 2000 Ga. App. LEXIS 592 (2000).

Because a taxpayer paid taxes based on a lower valuation from the county board of equalization and not based on the value assigned on appeal, the case did not involve a reassessment or a change in valuation of the taxpayer's real property, but rather, the tax assessors merely sought to apply the fair market land value, as determined through the appeals process and automatically returned by the taxpayer, in the two succeeding tax years, a request that fell squarely within O.C.G.A. § 48-5-299(c); thus, the tax assessors did not violate O.C.G.A. § 48-5-299(c) because the assessors did not improperly reassess the value of the taxpayer's property within two years after the appeal established the property's value. Pine Pointe Hous., L. P. v. Bd. of Tax Assessors, 269 Ga. App. 855, 605 S.E.2d 443, 2004 Ga. App. LEXIS 1318 (2004), cert. denied, No. S05C0346, 2005 Ga. LEXIS 92 (Ga. Jan. 24, 2005).

Subsection (a) of O.C.G.A. § 48-5-299 empowers the board to audit, at any time within the statute of limitations, prior personalty tax returns and collect taxes over and above those that may have been assessed and paid because the valuation of the personalty by the taxpayer was incorrect, and thus was not "paid in full." Eckerd Corp. v. Coweta County Bd. of Tax Assessors, 228 Ga. App. 94, 491 S.E.2d 173.

O.C.G.A. § 48-5-306(a) does not require tax assessors to use any definite system or method but demands only that valuations be just and that the valuations be fairly and justly equalized among the individual taxpayers according to the best information obtainable. Rogers v. DeKalb County Bd. of Tax Assessors, 247 Ga. 726, 279 S.E.2d 223, 1981 Ga. LEXIS 842 (1981).

Two requirements for material factors. — Georgia Court of Appeals held that in applying rules of statutory interpretation, and reading O.C.G.A. § 48-5-299(c)(4) as a whole, the other material factors contemplated by the statute must meet two requirements: first, they must be factors that an on-site inspection of the property would reveal; and, second, they must be factors that are specific to the particular piece of property at issue DeKalb County Bd. of Tax Assessors v. CWS SGARR Brookhaven, LLC, No. A19A1618, 352 Ga. App. 848, 836 S.E.2d 729, 2019 Ga. App. LEXIS 639 (2019).

No material factor identified. — Grant of summary judgment to the taxpayers in the taxpayers' respective assessment appeals was upheld because the county board's stated basis for increasing the properties' valuations of changes in comparable sales could not, as a matter of law, constitute a material factor as contemplated by O.C.G.A. § 48-5-299(c)(4). DeKalb County Bd. of Tax Assessors v. CWS SGARR Brookhaven, LLC, 352 Ga. App. 848, 836 S.E.2d 729, 2019 Ga. App. LEXIS 639 (2019).

Improper purpose. — Summary judgment for a county board of tax assessors (BTA) in a taxpayer's suit seeking injunctive relief and a writ of mandamus compelling a board of equalization (BOE) to adjudicate its appeal of a reassessment for one tax year was reversed as: (1) there were no

objective criteria in place for choosing businesses for audits when the taxpayer was chosen for a four-year audit; (2) there was evidence that the BTA attempted to thwart the taxpayer's statutory right to prompt adjudication of its appeal before the BOE under O.C.G.A. § 48-5-311; and (3) there was a jury question as to whether the audit was begun by an accounting firm or the BTA for an improper purpose in violation of O.C.G.A. § 48-5-299(a). Parisian, Inc. v. Cobb County Bd. of Tax Assessors, 263 Ga. App. 332, 587 S.E.2d 771, 2003 Ga. App. LEXIS 1117 (2003), cert. denied, No. S04C0238, 2004 Ga. LEXIS 75 (Ga. Jan. 20, 2004).

When board may issue new assessment notice. — Board is empowered by subsection (a) of O.C.G.A. § 48-5-299 to issue a new assessment notice to correct an obvious and undisputed clerical error which occurs when the original valuation figure is entered into the computer, even though the taxpayer has already paid the taxes in full based on the erroneous notice. Barland Co. v. Bartow County Bd. of Tax Assessors, 176 Ga. App. 798, 338 S.E.2d 16, 1985 Ga. App. LEXIS 2435 (1985).

Amended notices unauthorized. — Trial court did not err in ruling that a county board of tax assessors (BOA) lacked authority under O.C.G.A. § 48-5-299(a) to issue two corrected property tax assessment notices that increased the fair market value of the taxpayers' property because the BOA's second and third corrected notices were not authorized since the notices were not sent merely to remedy a clerical error but to revise the BOA's view of the proper value of the property during a pending appeal of the prior year valuation; retroactive amendments to assessments are prohibited absent a clerical error or some other lawful basis. Douglas County Bd. of Assessors v. Denyse, 314 Ga. App. 266, 723 S.E.2d 705, 2012 Ga. App. LEXIS 175 (2012).

Property can't be reassessed to avoid disparate treatment of other valuations. — Pursuant to subsection (c) of O.C.G.A. § 48-5-299, the fair market value of property which has been subject to reassessment by the board of equalization or the superior court on appeal cannot be reassessed to avoid disparate treatment of other property valuations because the earlier reassessment appealed from has already determined the property's fair market value in the county. Moreton Rolleston, Jr. Living Trust v. Glynn County Bd. of Tax Assessors, 228 Ga. App. 371, 491 S.E.2d 812.

Reassessments based on new appraisals not authorized. — For years prior to the enactment of present O.C.G.A. § 48-2-49, a county board of tax assessors was seeking to collect additional taxes on the basis of a totally new appraisal of the value of realty as improved property. O.C.G.A. § 48-5-299 was not authority for the board's reassessments. Fayette County Bd. of Tax Assessors v. Georgia Utils. Co., 186 Ga. App. 723, 368 S.E.2d 326, 1988 Ga. App. LEXIS 431 (1988).

Proper assessment required as part of tax enforcement proceedings. — An assessment made in the manner prescribed by law is indispensable in proceedings to enforce the collection of taxes. Colvard v. Ridley, 218 Ga. 490, 128 S.E.2d 732, 1962 Ga. LEXIS 542 (1962).

Duty to ensure just and fair valuation of property and proportionate distribution of taxes. — It is the duty of the board of tax assessors to see that all taxable property within the county is returned and assessed for taxes at the property's just and fair value, and that valuations as between the individual taxpayers are fairly and justly equalized so that each taxpayer shall pay as near as may be only the taxpayer's proportionate share of taxes. Colvard v. Ridley, 218 Ga. 490, 128 S.E.2d 732, 1962 Ga. LEXIS 542 (1962).

Property in same class to be valued by same standard or system. — Tax assessors must use the same standard or system in determining and fixing taxable value of all property of the same class. Colvard v. Ridley, 218 Ga. 490, 128 S.E.2d 732, 1962 Ga. LEXIS 542 (1962).

What valuation methods authorized. — Tax assessors may use any system, method, cadastral survey, books, available lists of valuations of types of property, city valuations or other

instruments or other information obtainable, provided such information is the best information available in their fixing of just and fair valuation of the property assessed, and provided that the taxation as between individual taxpayers is justly and fairly equalized. Kight v. Gilliard, 214 Ga. 445, 105 S.E.2d 333, 1958 Ga. LEXIS 456 (1958); Colvard v. Ridley, 218 Ga. 490, 128 S.E.2d 732, 1962 Ga. LEXIS 542 (1962).

Trial court erred in denying the taxpayer's motion for summary judgment challenging the county's reassessment of the taxpayer's property because as in case law interpreting O.C.G.A. § 48-5-299(c)(4), the other material factors exception in order to raise the value on a recently appealed property based upon sales of comparable properties did not apply to justify the increased valuation. Brookhaven v. DeKalb Cty. Bd. of Tax Assessors, 353 Ga. App. 556, 839 S.E.2d 24, 2020 Ga. App. LEXIS 38 (2020).

Tax assessors are authorized to fix fair market value from the best information obtainable. — This statute does not require the tax assessors to use any definite system or method, but demands only that the valuations be just and that the valuation be fairly and justly equalized among the individual taxpayers, according to the best information obtainable. Kight v. Gilliard, 214 Ga. 445, 105 S.E.2d 333, 1958 Ga. LEXIS 456 (1958); Colvard v. Ridley, 218 Ga. 490, 128 S.E.2d 732, 1962 Ga. LEXIS 542 (1962).

Use of appraisals by the board of tax assessors. — Employment of professional tax appraisers and the use of the appraisals by the board of tax assessors does not constitute an unauthorized delegation of authority by the board. Register v. Langdale, 226 Ga. 82, 172 S.E.2d 620, 1970 Ga. LEXIS 439 (1970).

Subpoena of personal property tax returns by the county board of tax assessors was a proper means of determining unreturned property tax liability. Eckerd Corp. v. Fayette County Bd. of Tax Assessors, 220 Ga. App. 454, 469 S.E.2d 285.

Bankruptcy. — Reconsideration was unwarranted after the bankruptcy court ruled the debtors could not claim additional depreciation in calculating payments in lieu of taxes under an agreement with a Georgia county because the assessors' proofs of claim for taxes owed by the debtors' bankruptcy estate did not preclude determining whether the debtors owed payments in lieu of taxes and because the assessors, as contracting parties and as the county's administrative agents, were proper parties to a counterclaim. CARBO Ceramics, Inc. v. Bd. of Tax Assessors (In re CARBO Ceramics, Inc.), No. 20-31973, No. 21-3031, 2024 Bankr. LEXIS 316 (Bankr. S.D. Tex. Feb. 8, 2024).

Use of cadastral surveys in equalizing values for taxation. — Authority granted by Ga. L. 1941, p. 382 and Ga. L. 1951, p. 85 to tax assessors to use information based upon a cadastral survey in equalizing values for taxation is not a substitution of the survey for the discretion of the assessors. Hutchins v. Candler, 209 Ga. 415, 73 S.E.2d 191, 1952 Ga. LEXIS 522 (1952).

Valuations not voided by failure to use past methods. — Duties placed on the board of tax assessors do not require the use of any definite system or method, but demand only that the valuations be just and fair and that the valuations be justly and fairly equalized among taxpayers. The failure to use any particular system, method, cadastral survey, book, or other instruments used in the past to derive values would not in any way render void the valuations placed on such property by the assessors. Hutchins v. Williams, 212 Ga. 754, 95 S.E.2d 674, 1956 Ga. LEXIS 519 (1956).

When in rem execution prohibited. — When the owner of land is known, and the ownership is not doubtful, officers in charge of levying and collecting taxes may not issue an execution in rem against the land. Suttles v. B-X Corp., 212 Ga. 221, 91 S.E.2d 334, 1956 Ga. LEXIS 322 (1956).

Tax officials must use reasonable diligence to ascertain property owners. — When land is in possession of known persons, tax officials are without authority to issue an execution in rem against the property since the officials must at all times use reasonable diligence

to ascertain the owner thereof. Suttles v. B-X Corp., 212 Ga. 221, 91 S.E.2d 334, 1956 Ga. LEXIS 322 (1956).

Duties as to property when owner or possessor unknown. — When the tax officials do not know the owner or possessor, it is the officials' duty to assess the property and describe the property particularly in a default book kept for that purpose. Suttles v. B-X Corp., 212 Ga. 221, 91 S.E.2d 334, 1956 Ga. LEXIS 322 (1956).

Motor vehicles used in interstate commerce. — Only duty a county board of tax assessors has under O.C.G.A. § 48-5-299 is to investigate and determine if motor vehicles are returned, returned in the correct county, returned in the correct state, or to apportion the ad valorem taxation between states when the vehicle is used in interstate commerce. Fulton County Tax Comm'r v. GMC, 234 Ga. App. 459, 507 S.E.2d 772.

Change in valuation after jury adjudication was authorized only if sale affected value of property retained. — Declaration that a county could not challenge a previous jury adjudication of property value for two years was proper; while a part of the property was sold after the jury adjudication, a change in valuation under O.C.G.A. § 48-5-299(c) or the relevant rules and regulations was authorized only if the sale affected the value of the property retained by the ownership. DeKalb County v. Wellborn Rd. Common Tenancy, 276 Ga. App. 14, 622 S.E.2d 409, 2005 Ga. App. LEXIS 1142 (2005).

Ruling as to value did not "establish" value for additional two-year period. — Ruling as to the value of the owners' real property, pursuant to O.C.G.A. § 48-5-299(c), did not "establish" the value of the property as contemplated by that provision so as to entitle a taxpayer to an additional two-year period of protection; a trial court's ruling, that a consent judgment setting property value for 1999 froze the value for 2000 and 2001, but not 2002, was proper. Mundell v. Chatham County Bd. of Tax Assessors, 280 Ga. App. 389, 634 S.E.2d 180, 2006 Ga. App. LEXIS 860 (2006), superseded by statute as stated in DeKalb County Bd. of Tax Assessors v. Barrett, 361 Ga. App. 598, 865 S.E.2d 192, 2021 Ga. App. LEXIS 516 (2021).

Agent's failure to protect taxpayer from upward reassessment. — In a breach of contract suit brought by a taxpayer against the tax service hired to handle real property assessments regarding an office building, a trial court ruling in favor of the tax service for tax year 2002 was reversed since the taxpayer established that the tax service breached a duty to the taxpayer by failing to protect the taxpayer from an upward reassessment of its property pursuant to O.C.G.A. § 48-5-299(c). However, because the taxpayer failed to show any damage or loss for tax year 2003, the trial court's ruling in favor of the tax service for that year was upheld. AT&T Corp. v. Property Tax Servs., 288 Ga. App. 679, 655 S.E.2d 295, 2007 Ga. App. LEXIS 1275 (2007).

Property owners could not contest assessed value. — Because the property owners did not file a return for 2013, the property owners were deemed to have returned their property for the value from 2012, which was the same value from 2011, and the property owners did not trigger the exception found in O.C.G.A. § 48-5-299(c) that might have allowed them to contest the assessed value of their property for the 2013 tax year. Surette v. Henry County Bd. of Tax Assessors, 332 Ga. App. 457, 773 S.E.2d 416, 2015 Ga. App. LEXIS 327 (2015).

Two-year freeze on value of taxpayer's properties. — Taxpayer was entitled to a two-year freeze on the taxable values of his various properties for the 2019 and 2020 tax years because the decision of the DeKalb County Board of Tax Assessors (Board) to increase the values of the taxpayer's properties for the 2018 taxable year was done in contravention of the agreement the taxpayer reached with the DeKalb County Board of Equalization (BOE) for the 2017 taxable year and in violation of O.C.G.A. § 48-5-299(c); and, when the taxpayer was forced to pursue a second appeal to the BOE to challenge the Board's new, increased assessments for 2018, the taxpayer was entitled to a two-year freeze on the value of the taxpayer's properties

following the 2018 taxable year. DeKalb County Bd. of Tax Assessors v. Barrett, 361 Ga. App. 598, 865 S.E.2d 192, 2021 Ga. App. LEXIS 516 (2021).

Award of attorney's fees when issue was "freeze" on property value. — Owner was entitled to attorney fees under O.C.G.A. § 48-5-311(g)(4)(B)(ii) in an appeal of a property valuation because the final determination of value on appeal to the trial court was 85 percent or less of the valuation set by the board of tax assessors; it was irrelevant that the owner's appeal to the trial court dealt with a "freeze" of the property value under O.C.G.A. § 48-5-299(c) and not a new determination of value. Fulton County Bd. of Tax Assessors v. Lamb, 298 Ga. App. 618, 680 S.E.2d 656, 2009 Ga. App. LEXIS 759 (2009).

Final property valuation that was set by operation of law pursuant to O.C.G.A. § 48-5-299(c) based on a prior tax year appeal did not preclude an award of attorney's fees and costs under O.C.G.A. § 48-5-311(g)(4)(B)(ii). Fulton County Bd. of Tax Assessors v. LM Atlanta Airport, LLC, 313 Ga. App. 439, 721 S.E.2d 640, 2011 Ga. App. LEXIS 1122 (2011).

Mandamus relief properly denied since certification of appeals obtained. — Trial court did not err by denying a group of property owners their request for mandamus relief in the nature of finding that the county board of tax assessors certified their property tax appeals because it was undisputed that the tax appeals were physically delivered to the trial court and that it had ruled that such appeals were certified to it, thus, the property owners received the relief sought regarding certification. Newton Timber Co., L.L.L.P. v. Monroe County Bd. of Tax Assessors, 295 Ga. 29, 755 S.E.2d 770, 2014 Ga. LEXIS 189 (2014).

OPINIONS OF THE ATTORNEY GENERAL

Assessment of unreturned personal property. — County tax assessors may assess unreturned personal property discovered in an audit for all tax years within the seven year period of limitation pertinent to property tax liabilities. 1987 Op. Att'y Gen. No. U87-13.

Assessment of returned but undervalued property. — Property that has been returned may only be revalued in accordance with O.C.G.A. § 48-5-306 if the county board of tax assessors has not previously rendered a final assessment of that property pursuant to the same Code section. 1987 Op. Att'y Gen. No. U87-13, rescinding and superseding Op. Att'y Gen. 1961, p. 482 insofar as it suggests that returned property may be revalued and reassessed at any time within the applicable period of limitation.

Notice to taxpayer. — Statute does not provide for any notice to the taxpayer and no notice is required when property has not been returned for taxation. 1954-56 Ga. Op. Att'y Gen. 827.

Procedure for correcting tax return. — It is not necessary that the tax assessors receive any official notice from the comptroller general or state revenue commissioner in making a correction on a tax return. 1957 Ga. Op. Att'y Gen. 254.

Access to files of state revenue commissioner. — County board of tax assessors in the discharge of the assessors' official duties are entitled to have access to the files of the state revenue commissioner, including the income tax files. Any files furnished to county boards of tax assessors retain their privileged or confidential character in the hands of those officials. 1965-66 Op. Att'y Gen. No. 66-225.

Confidentiality of state income tax returns. — Information in state income tax returns may not be furnished to city or municipal tax assessors. 1965-66 Op. Att'y Gen. No. 66-225.

What taxes penalty intended to cover. — It was the intention of the General Assembly in enacting this statute to provide a penalty of ten percent which would cover all state and county taxes, including county-wide school tax. 1954-56 Ga. Op. Att'y Gen. 826.

Penalty is based on taxes due after homestead exemption taken. — Statute, which imposes a penalty of ten percent upon the failure to file a tax

return, applies to all taxpayers who come within the statutory provisions. However, this statute states that "the board shall add to the amount of state and county taxes due a penalty of ten percent." It therefore follows that the penalty can only be imposed on taxes on property in excess of the homestead exemption. 1954-56 Ga. Op. Att'y Gen. 741.

Effect of automatic renewal of homestead exemption. — After the taxpayer has once filed for homestead exemption on real property the exemption is automatically renewed. Therefore, the ten percent penalty for filing a late return is on tax due on property over and above the homestead exemption. 1954-56 Ga. Op. Att'y Gen. 725.

Penalties arising under this statute are the property of the county, and no division should be made for the state or the school system. Since, under former Code 1933, § 92-6913 (see now O.C.G.A. § 48-5-299), penalties must be paid into the county treasury, Ga. L. 1937-38, Ex. Sess., p. 77, § 37 (see now O.C.G.A. § 48-2-42) did not affect the matter, even though the latter section stated that penalties "are part of the tax." 1954-56 Op. Att'y Gen. p. 577; 1954-56 Op. Att'y Gen. p. 825; 1972 Op. Att'y Gen. No. U72-22.

Board of education is not entitled to any portion of penalties collected by tax commissioner. 1969 Op. Att'y Gen. No. 69-391.

RESEARCH REFERENCES

Am. Jur. 2d.

72 Am. Jur. 2d, State and Local Taxation, § 620.

ALR.

Notice to property owners of increase in assessment or valuation by board of equalization or review, 24 A.L.R. 331; 84 A.L.R. 197.

Outstanding lease as affecting taxable value of property against owner, 30 A.L.R. 361.

48-5-299.1. Designation of board of assessors to receive tax returns.

Upon designation by the tax receiver or tax commissioner pursuant to paragraph (5) of Code Section 48-5-103, it shall be the duty of the board of assessors to receive tax returns as provided under paragraph (4) of Code Section 48-5-103 or to perform all duties of tax receivers or tax commissioners relating to the receiving of applications for homestead exemptions from ad valorem tax, or both, pursuant to such designation.

History.

Code 1981, § 48-5-299.1, enacted by Ga. L. 1993, p. 577, § 2.

JUDICIAL DECISIONS

Bankruptcy. — Reconsideration was unwarranted after the bankruptcy court ruled the debtors could not claim additional depreciation in calculating payments in lieu of taxes under an agreement with a Georgia county because the assessors' proofs of claim for taxes owed by the debtors' bankruptcy estate did not preclude determining whether the debtors owed payments in lieu of taxes and because the assessors, as contracting parties and as the county's administrative agents, were proper parties to a counterclaim. CARBO Ceramics, Inc. v. Bd. of Tax Assessors (In re CARBO Ceramics, Inc.), No. 20-31973, No. 21-3031, 2024 Bankr. LEXIS 316 (Bankr. S.D. Tex. Feb. 8, 2024).

48-5-300. Power to summon witnesses and require production of documents; exempt documents; contempt proceedings.

(a)(1) Except as otherwise provided in paragraph (2) of this subsection, the county board of tax assessors may issue subpoenas for the attendance of witnesses and may subpoena of any person any books, papers, or documents which may contain any information material to any question relative to the existence or liability of property subject to taxation or to the identity of the owner of property liable to taxation or relevant to other matters necessary to the proper assessment of taxes lawfully due the state or county. Such subpoenas may be issued in the name of the board, shall be signed by any one or more members of the board or by the secretary of the board, and shall be served upon a taxpayer or witness or any party required to produce documents or records five days before the day upon which any hearing by the board is scheduled at which the attendance of the party or witness or the production of such documents is required.

(2) The authority provided for in paragraph (1) of this subsection shall not apply to the following documents or records:

(A) Any income tax records or returns;

(B) Any property appraisals prior to the appeal process;

(C) All insurance policies; or

(D) Any individual tenant sales information.

(b) If any witness subpoenaed by any county board of tax assessors fails or refuses to appear, fails or refuses to answer questions propounded, or fails or refuses to produce any books, papers, or documents required to be produced by an order of the board, except upon a legal excuse which would relieve the witness of the obligation to attend as a witness or to produce such documents before the superior court if lawfully required to do so, the person so failing or refusing shall be guilty of contempt and shall be cited by the board to appear before a judge of the superior court of the county. The judge of the superior court of the county shall have the same power and jurisdiction to punish the person failing or refusing to comply with the order for contempt and to require and compel the giving of the testimony or the production of the books and records as in cases of contempt committed in the presence of the court and as in cases pending in the court.

History.

Ga. L. 1913, p. 123, § 7; Code 1933, § 92-6914; Ga. L. 1937, p. 517, § 4; Code 1933, § 91A-1441, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1996, p. 190, § 3.

Cross references.

Exercise of power of contempt, § 15-1-4.

JUDICIAL DECISIONS

Contempt denied when no hearing scheduled. — Application for contempt brought against a taxpayer under subsection (b) of O.C.G.A. § 48-5-300 was properly denied when no hearing was scheduled in which the taxpayer was required to appear but the county board of tax assessors merely sought examination of certain documents pursuant to an investigation of tax liability of a taxpayer for a particular year. Presley v. Payne, 163 Ga. App. 89, 294 S.E.2d 199, 1982 Ga. App. LEXIS 2411 (1982).

RESEARCH REFERENCES

ALR.

Notice to property owners of increase in assessment or valuation by board of equalization or review, 24 A.L.R. 331; 84 A.L.R. 197.

Power of board of tax review to receive evidence as to assessable value, without notice to taxpayer, 113 A.L.R. 990.

48-5-300.1. Time period for taxation of personal property; extension by consent; refunds.

(a) Except as otherwise provided in this Code section or this title, the amount of any tax imposed under this chapter with respect to personal property may be assessed at any time.

(b) Except as otherwise provided by subsection (c) of this Code section or by this title, in the case where a return or report is filed or deemed to be filed for personal property, the amount of any tax imposed by this chapter shall be assessed within three years from the date the original tax bill was paid, unless such personal property in question is the subject of an audit by the board of tax assessors.

(c) Except as otherwise provided by this title, in the case of a false or fraudulent personal property tax return or report filed with the intent to evade tax, or if the property owner has been notified of a pending audit of personal property, the amount of any tax imposed by this chapter may be assessed at any time.

(d) Where, before the expiration of the time prescribed in this Code section for the assessment of any tax imposed by this chapter with respect to personal property, both the board of tax assessors and the person subject to assessment have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the agreed upon period. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the previously agreed upon period. The board of tax assessors is authorized in any such agreement to extend similarly the period within which a claim for refund may be filed.

(e) If a claim for refund of such taxes paid for any taxable period is filed within the last six months of the period during which the board of

tax assessors may assess the amount of such taxes, the assessment period shall be extended for a period of six months beginning on the day the claim for refund is filed.

(f) No action without assessment shall be brought for the collection of any such tax after the expiration of the period for assessment.

History.
Code 1981, § 48-5-300.1, enacted by Ga. L. 2004, p. 464, § 2.

RESEARCH REFERENCES

ALR.
Validity and applicability of statutory time limit concerning taxpayer's claim for state tax refund, 1 A.L.R.6th 1.

48-5-301. Time for presentation of returns by tax receiver or tax commissioner.

(a) Except as provided in subsection (b) of this Code section, not later than April 11 in each year the tax receiver or tax commissioner of each county shall present the tax returns of the county for the current year to the county board of tax assessors.

(b) In all counties having a population of not less than 81,300 nor more than 89,000 according to the United States decennial census of 1990 or any future such census, the tax receiver or tax commissioner of each such county shall present the tax returns of the county for the current year to the county board of tax assessors not later than March 11 of that year.

History.
Ga. L. 1913, p. 123, § 1; Code 1933, § 92-6902; Ga. L. 1945, p. 423, § 1; Code 1933, § 91A-1431, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 538, § 4; Ga. L. 1982, p. 575, §§ 4, 11; Ga. L. 1984, p. 22, § 48; Ga. L. 1992, p. 1187, § 1.

JUDICIAL DECISIONS

Injunction against unlawful or arbitrary valuations. — When an increase in the valuations of realty returned by taxpayers is not for the purpose of equalizing such valuations, but is an unlawful and arbitrary attempt to provide additional revenue for educational purposes, a court may grant an interlocutory injunction against the making up, compiling, or listing of any report or digest incorporating or including therein any increased assessment or changes or alterations in the returns, and may enjoin the tax receiver from transmitting to the department or the comptroller general (now commissioner) or the tax collector of the county, or any tax authorities of the county or state, any report, list, or other compilation or digest including or incorporating therein any increase or change or alteration in the return filed with the tax receiver by any taxpayer thereof. Green v. Calhoun, 204 Ga. 550, 50 S.E.2d 209, 1948 Ga. LEXIS 466 (1948).

48-5-302. Time for completion of revision and assessment of returns; submission of completed digest to commissioner.

Each county board of tax assessors shall complete its revision and assessment of the returns of taxpayers in its respective county by July 15 of each year, except that, in all counties providing for the collection and payment of ad valorem taxes in installments, such date shall be June 1 of each year. The tax receiver or tax commissioner shall then immediately forward one copy of the completed digest to the commissioner for examination and approval.

History.

Ga. L. 1913, p. 123, § 10; Ga. L. 1931, p. 7, § 85; Code 1933, § 92-6917; Ga. L. 1945, p. 251, § 1; Code 1933, § 91A-1444, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 538, § 5; Ga. L. 1982, p. 575, §§ 5, 12; Ga. L. 1984, p. 22, § 48; Ga. L. 1992, p. 1191, § 1; Ga. L. 1997, p. 963, § 4; Ga. L. 2010, p. 878, § 48/HB 1387; Ga. L. 2015, p. 1219, § 13/HB 202.

Editor's notes.

Ga. L. 1997, p. 963, § 5, not codified by the General Assembly, provides that the amendment to this Code section shall be applicable to all taxable years on or after January 1, 1998.

Law reviews.

For article surveying legislative and judicial developments in Georgia local government law for 1978-79, see 31 Mercer L. Rev. 155 (1979).

For annual survey of local government law, see 58 Mercer L. Rev. 267 (2006).

JUDICIAL DECISIONS

Purpose. — Statute is designed to promote method, system, uniformity, and dispatch of the work of tax officials so that a complete digest may be submitted to the state revenue commissioner for examination and approval, and is directory only. Garr v. E.W. Banks Co., 206 Ga. 831, 59 S.E.2d 400, 1950 Ga. LEXIS 607 (1950).

Requirement that the board complete the board's equalization duties by June 1 is merely directory; the board has power and authority to perform and complete any of the board's official duties after that date. Hence, such board has the right to retain possession and control of all annual tax returns until the board's official duty respecting the returns is completely performed. Sauls v. Winters, 215 Ga. 515, 111 S.E.2d 41, 1959 Ga. LEXIS 527 (1959); Colvard v. Ridley, 219 Ga. 361, 133 S.E.2d 364, 1963 Ga. LEXIS 457 (1963).

Effect on powers and duties of board of tax assessors. — Statute does not deprive boards of tax assessors of any and all power and authority, or render the boards impotent to perform their duties after June 1. Garr v. E.W. Banks Co., 206 Ga. 831, 59 S.E.2d 400, 1950 Ga. LEXIS 607 (1950); Brown v. Franklin County Sch. Dist., 213 Ga. App. 599, 445 S.E.2d 360, 1994 Ga. App. LEXIS 665 (1994).

Assessors' failure to complete the digest required by O.C.G.A. § 48-5-302 did not mandate their removal, but this breach of duty gave the commission discretion to remove the assessors. Cashin v. Hardman, 223 Ga. App. 301, 477 S.E.2d 433.

Evidence sufficient that assessors failed to complete digest. — After the members of a board of tax assessors were removed from office for, inter alia, failing to file tax digests by the deadline provided in O.C.G.A. § 48-5-302, the members' statement that it was impossible to comply with the statute and that no board of tax assessors had complied with the statute since 1988 tacitly admitted the allegation against the assessors and was sufficient evidence supporting the

assessors' removal. Pope v. Bd. of Comm'rs, 276 Ga. App. 121, 622 S.E.2d 471, 2005 Ga. App. LEXIS 1183 (2005).

Recommendation by court as to assessments does not usurp commissioner's authority. — When a court order does not purport to require the commissioner to use the suggested assessment increase factor, but merely recommends the factor's use by the commissioner, it is not a usurpation of the revenue commissioner's statutory authority and duty to examine and approve the tax digest. Alexander v. Blackmon, 233 Ga. 235, 210 S.E.2d 736, 1974 Ga. LEXIS 726 (1974).

Temporary decree in equity to facilitate payment of taxes. — Trial court is only authorized under the court's equitable power to fashion a reasonable temporary decree for the temporary payment of taxes so that a county is able to function until a new tax digest is approved. Anderson v. Blackmon, 232 Ga. 4, 205 S.E.2d 250, 1974 Ga. LEXIS 820 (1974).

Trial court has no authority to replace illegal assessments with legal assessments since the court cannot order the county to collect taxes on a digest which had not been approved by the commissioner. Anderson v. Blackmon, 232 Ga. 4, 205 S.E.2d 250, 1974 Ga. LEXIS 820 (1974).

When taxes collected and fi. Fa. Issued. — Taxes may not be collected or fi. fa. for taxes issued until the digest has been submitted to the commissioner, approved by the commissioner, and returned to the county. Colvard v. Ridley, 219 Ga. 361, 133 S.E.2d 364, 1963 Ga. LEXIS 457 (1963).

Return to tax receiver of arbitrated award. — Return to the tax receiver by the arbitrators of their award is sufficient compliance with the statute, and it is the receiver's duty to accept the award when properly made and offered. Clarkson v. Hair, 207 Ga. 699, 64 S.E.2d 64, 1951 Ga. LEXIS 516 (1951).

Refunds to taxpayers who pay prior to approval of digest. — When taxes are voluntarily paid prior to approval of the digest by the commissioner and when any change in the digest by the commissioner results in overpayment of taxes due, the overpayment must be refunded to such taxpayers. Colvard v. Ridley, 219 Ga. 361, 133 S.E.2d 364, 1963 Ga. LEXIS 457 (1963).

Proceedings based on void assessments are likewise void. — If the assessments made by the tax assessors are null and void, all further proceedings including the review and approval by the commissioner are likewise null and void and completely nugatory. Colvard v. Ridley, 219 Ga. 361, 133 S.E.2d 364, 1963 Ga. LEXIS 457 (1963).

OPINIONS OF THE ATTORNEY GENERAL

Invalidity of tax digest has no effect on validity of taxpayer's return. — Tax return of a property owner is separate from the tax digest prepared by the tax commissioner, and the invalidity of the digest has no effect on the validity of the taxpayer's return. 1970 Op. Att'y Gen. No. U70-41.

RESEARCH REFERENCES

ALR.

Notice to property owners of increase in assessment or valuation by board of equalization or review, 24 A.L.R. 331; 84 A.L.R. 197.

48-5-303. Correction of mistakes in digest; notification of correction.

(a) The county board of tax assessors shall have authority to correct

factual errors in the tax digest when discovered within three years and when such corrections are of benefit to the taxpayer. Such corrections, after approval of the county board of tax assessors, shall be communicated to the taxpayer and notice shall be provided to the tax commissioner.

(b) If a tax receiver or tax commissioner makes a mistake in the digest which is not corrected by the county board of tax assessors or county board of equalization, the commissioner, with the sanction of the Governor, shall correct the mistake by making the necessary entries in the digest furnished the commissioner. The commissioner shall notify the county governing authority and the tax collector of the county from which the digest comes of the mistake and correction.

History.
Laws 1845, Cobb's 1851 Digest, p. 1077; Code 1863, § 782; Code 1868, § 846; Code 1873, § 850; Code 1882, § 850; Civil Code 1895, § 843; Civil Code 1910, § 1101; Code 1933, § 92-6501; Code 1933, § 91A-1444.1, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2010, p. 1104, § 12-1/SB 346.

48-5-304. Conditions, procedures, and limitations on approval of tax digests when assessments in arbitration or on appeal; withholding of grants by Office of the State Treasurer.

(a) The commissioner shall not approve any digest of any county when the assessed value that is in dispute for any property or properties on appeal or in arbitration exceeds 5 percent of the total assessed value of the total taxable digest of the county for the same year. In any year in which a complete revaluation or reappraisal program is implemented, the commissioner shall not approve a digest of any county when 8 percent or more of the assessed value in dispute is in arbitration or on appeal and 8 percent or more of the number of properties is in arbitration or on appeal. When the assessed value in dispute on any one appeal or arbitration exceeds 1.5 percent of the total assessed value of the total taxable digest of the county for the same year, such appeal or arbitration may be excluded by the commissioner in making his or her determination of whether the digest may be approved under the limitations provided for in this Code section. Where appeals have been filed or arbitrations demanded, the assessment or assessments fixed by the board of tax assessors shall be listed together with the return value on the assessments and forwarded in a separate listing to the commissioner at the time the digest is filed for examination and approval.

(b) The commissioner shall not approve any digest or portion thereof for any class or strata of property where evidence exists that the county has substantially failed to comply with the provisions of this title or the rules and regulations of the commissioner for valuation of such class or

strata of property. The commissioner shall adopt rules and regulations to give effect to this provision.

(c) The Office of the State Treasurer shall withhold any and all grants appropriated to any county until the county tax digest for the previous calendar year has been submitted to the commissioner as required by law.

History.

Ga. L. 1971, p. 301, §§ 1, 2; Ga. L. 1972, p. 824, § 1; Code 1933, § 91A-1445, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1982, p. 3, § 48; Ga. L. 1986, p. 747, § 1; Ga. L. 1993, p. 1402, § 18; Ga. L. 2000, p. 136, § 48; Ga. L. 2000, p. 1705, § 1; Ga. L. 2010, p. 863, § 2/SB 296; Ga. L. 2010, p. 1104, § 11-1/SB 346; Ga. L. 2014, p. 672, § 3/HB 755.

JUDICIAL DECISIONS

Authority to disapprove county's digest. — In an action challenging a tax re-valuation of property, the authority to disapprove the digest of the county under O.C.G.A. § 48-5-304 rested solely with the tax commissioner, who was not a party. Hooten v. Thomas, 297 Ga. App. 487, 677 S.E.2d 670, 2009 Ga. App. LEXIS 366 (2009), cert. denied, No. S09C1356, 2009 Ga. LEXIS 616 (Ga. Oct. 5, 2009).

OPINIONS OF THE ATTORNEY GENERAL

Acceptance of digests in a revaluation year. — O.C.G.A. § 48-5-304 permits the Department of Revenue to accept an ad valorem tax digest submitted for review by a county in a revaluation year if either: (a) the disputed assessed value of property involved in arbitration or appeals is five percent or less of the total assessed value of all property reflected on the taxable tangible digest; or (b) the number of parcels of property involved in arbitration or appeals is five percent or less of the total number of parcels shown on the digest. 1998 Op. Att'y Gen. No. 98-21.

48-5-305. Valuation of property not in digest.

(a) The county board of tax assessors may provide, pursuant to rules or regulations promulgated by the board and consistent with this article, the manner of ascertaining the fair market value for taxation of any real or personal property not appearing in the digest of any year within the period of the statute of limitations.

(b) It is the purpose and intent of this Code section to confer upon the county board of tax assessors full power and authority necessary to have placed upon the digest an assessment of the fair market value of all property in the county of every character which is subject to taxation and for which either state or county taxes have not been paid in full.

(c) Nothing contained in this Code section shall apply to those persons who are required to make their returns to the commissioner.

History.

Ga. L. 1913, p. 123, § 8; Code 1933, § 92-6915; Ga. L. 1937, p. 517, § 5; Code 1933, § 91A-1442, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 41.

JUDICIAL DECISIONS

Application of this part to persons who make returns to commissioner is unconstitutional. — Because former Code 1933, §§ 92-6901 and 92-6915 (see now O.C.G.A. §§ 48-5-305 and 48-5-313) provided that nothing in former Code 1933, Ch. 92 (see now O.C.G.A. Pt. 2, Art. 5, Ch. 5, T. 48) shall apply to those persons who were required to make their returns to the comptroller general (now commissioner), these two sections expressly excluded such persons from the benefit of any such due process procedure as may be afforded under former Code 1933, Ch. 92 (see now O.C.G.A. Pt. 2, Art. 5, Ch. 5, T. 48). Therefore, an application of former Code 1933, Ch. 92 (see now O.C.G.A. Pt. 2, Art. 5, Ch. 5, T. 48) by the county board as to such persons contravened the federal and state Constitutions. Pullman Co. v. Suttles, 187 Ga. 217, 199 S.E. 821, 1938 Ga. LEXIS 753 (1938).

County board exceeded authority. — In an action filed by a utility seeking equitable relief from the rejection of the State Commissioner's fair market valuation by the county board of tax assessors, the trial court erred in granting summary judgment to a county board of tax assessors; the board exceeded the board's authority when, in the course of making a final assessment of a utility's property, it not only substituted the board's own assessment ratio, but also the board's own fair market value for those calculated by the State Commissioner as a final assessment could not include a reappraisal of the fair market value of a taxpayer required to make a return to the state. Ga. Power Co. v. Monroe County, 284 Ga. App. 707, 644 S.E.2d 882, 2007 Ga. App. LEXIS 399 (2007), aff'd, 283 Ga. 12, 655 S.E.2d 817, 2008 Ga. LEXIS 2 (2008).

Subpoena of personal property tax returns by the county board of tax assessors was a proper means of determining unreturned property tax liability. Eckerd Corp. v. Fayette County Bd. of Tax Assessors, 220 Ga. App. 454, 469 S.E.2d 285.

OPINIONS OF THE ATTORNEY GENERAL

Assessment of unreturned personal property. — County tax assessors may assess unreturned personal property discovered in the audit for all tax years within the seven year period of limitation pertinent to property tax liabilities. 1987 Op. Att'y Gen. No. U87-13.

Assessment of returned but undervalued property. — Property that has been returned may only be revalued in accordance with O.C.G.A. § 48-5-306 if the county board of tax assessors has not previously rendered a final assessment of that property pursuant to that Code section. 1987 Op. Att'y Gen. No. U87-13, rescinding and superseding Op. Att'y Gen. 1961, p. 482 insofar as it suggests that returned property may be revalued and reassessed at any time within the applicable period of limitation.

Invalidity of tax digest has no effect on validity of taxpayer's return. — Tax return of a property owner is separate from the tax digest prepared by the tax commissioner, and the invalidity of the digest has no effect on the validity of the taxpayer's return. 1970 Op. Att'y Gen. No. U70-41.

RESEARCH REFERENCES

Am. Jur. 2d.

72 Am. Jur. 2d, State and Local Taxation, § 619.

ALR.

Notice to property owners of increase in assessment or valuation by board of equalization or review, 24 A.L.R. 331; 84 A.L.R. 197.

Outstanding lease as affecting taxable value of property against owner, 30 A.L.R. 361.

Power of board of tax review to receive evidence as to assessable value, without notice to taxpayer, 113 A.L.R. 990.

48-5-306. (For effective date, see note.) Annual notice of current assessment; contents; posting notice; new assessment description.

(a) **Method of giving annual notice of current assessment to taxpayer.** Each county board of tax assessors may meet at any time to receive and inspect the tax returns to be laid before it by the tax receiver or tax commissioner. The board shall examine all the returns of both real and personal property of each taxpayer, and if in the opinion of the board any taxpayer has omitted from such taxpayer's returns any property that should be returned or has failed to return any of such taxpayer's property at its fair market value, the board shall correct the returns, assess and fix the fair market value to be placed on the property, make a note of such assessment and valuation, and attach the note to the returns. The board shall see that all taxable property within the county is assessed and returned at its fair market value and that fair market values as between the individual taxpayers are fairly and justly equalized so that each taxpayer shall pay as nearly as possible only such taxpayer's proportionate share of taxes. The board shall give annual notice to the taxpayer of the current assessment of taxable real property. When any corrections or changes, including valuation increases or decreases, or equalizations have been made by the board to personal property tax returns, the board shall give written notice to the taxpayer of any such changes made in such taxpayer's returns. The annual notice may be given personally by leaving the notice at the taxpayer's dwelling house, usual place of abode, or place of business with some person of suitable age and discretion residing or employed in the house, abode, or business, or by sending the notice through the United States mail as first-class mail to the taxpayer's last known address. The taxpayer may elect in writing to receive all such notices required under this Code section by electronic transmission if electronic transmission is made available by the county board of tax assessors. When notice is given by mail, the county board of tax assessors' return address shall appear in the upper left corner of the face of the mailing envelope and with the United States Postal Service endorsement "Return Service Requested" and the words "Official Tax Matter" clearly

printed in boldface type in a location which meets United States Postal Service regulations.

(b) **Contents of notice.**

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

(A) The amount of the previous assessment;

(B) The amount of the current assessment;

(C) The year for which the new assessment is applicable;

(D) A brief description of the assessed property broken down into real and personal property classifications;

(E) The fair market value of property of the taxpayer subject to taxation and the assessed value of the taxpayer's property subject to taxation after being reduced;

(F) The name, phone number, and contact information of the person in the assessors' office who is administratively responsible for the handling of the appeal and who the taxpayer may contact if the taxpayer has questions about the reasons for the assessment change or the appeals process;

(G) If available, the internet website address of the office of the county board of tax assessors; and

(H) A statement that all documents and records used to determine the current value are available upon request.

(2)(A) In addition to the items required under paragraph (1) of this subsection, the notice shall contain a statement of the taxpayer's right to an appeal and an estimate of the current year's taxes for all levying authorities which shall be in substantially the following form:

The amount of your ad valorem tax bill for this year will be based on the appraised and assessed values specified in this notice. You have the right to appeal these values to the county board of tax assessors. At the time of filing your appeal you must select one of the following options:

(i) An appeal to the county board of equalization with appeal to the superior court;

(ii) To arbitration without an appeal to the superior court; or

(iii) For a parcel of nonhomestead property with a fair market value in excess of $500,000.00 as shown on the taxpayer's annual notice of current assessment under this Code section, or for one or more account numbers of wireless property as defined in subparagraph (e.1)(1)(B) of Code Section 48-5-311 with an aggregate fair market value in excess of $500,000.00 as shown on the taxpayer's annual notice of current assessment under this Code section, to a hearing officer with appeal to the superior court.

If you wish to file an appeal, you must do so in writing no later than 45 days after the date of this notice. If you do not file an appeal by this date, your right to file an appeal will be lost. For further information on the proper method for filing an appeal, you may contact the county board of tax assessors which is located at: (insert address) and which may be contacted by telephone at: (insert telephone number).

(B) The notice shall also contain the following statements in bold print:

"The estimate of your ad valorem tax bill for the current year is based on the previous or most applicable year's millage rate and the fair market value contained in this notice. The actual tax bill you receive may be more or less than this estimate. This estimate may not include all eligible exemptions."

(3) The annual notice required under this Code section shall be mailed no later than July 1; provided, however, that the annual notice required under this Code section may be sent later than July 1 for the purpose of notifying property owners of corrections and mapping changes.

(c) **Posting notice on certain conditions.** In all cases where a notice is required to be given to a taxpayer under subsection (a) of this Code section, if the notice is not given to the taxpayer personally or if the notice is mailed but returned undelivered to the county board of tax assessors, then a notice shall be posted in front of the courthouse door or shall be posted on the internet website of the office of the county board of tax assessors for a period of 30 days. Each posted notice shall contain the name of the owner liable to taxation, if known, or, if the owner is unknown, a brief description of the property together with a statement that the assessment has been made or the return changed or altered, as the case may be, and the notice need not contain any other information. The judge of the probate court of the county shall make a certificate as to the posting of the notice. Each certificate shall be signed by the judge and shall be recorded by the county board of tax assessors in a book kept for that purpose. A certified copy of the certificate of the

judge duly authenticated by the secretary of the board shall constitute prima-facie evidence of the posting of the notice as required by law.

(d) **Records and information availability.** Notwithstanding the provisions of Code Section 50-18-71, in the case of all public records and information of the county board of tax assessors pertaining to the appraisal and assessment of real property:

(1) The taxpayer may request, and the county board of tax assessors shall provide within ten business days, copies of such public records and information, including, but not limited to, a description of the methodology used by the board of tax assessors in setting the property's fair market value, all documents reviewed in making the assessment, the address and parcel identification number of all real property utilized as qualified comparable properties, and all factors considered in establishing the new assessment, at a uniform copying fee not to exceed 25¢ per page;

(2) No additional charges or fees may be collected from the taxpayer for reasonable search, retrieval, or other administrative costs associated with providing such public records and information; and

(3)(A) The superior courts of this state shall have jurisdiction in law and in equity to entertain actions against the board of tax assessors to enforce compliance with the provisions of this subsection.

(B) In any action brought to enforce the provisions of this subsection in which the court determines that either party acted without substantial justification either in not complying with this subsection or in instituting the litigation, the court shall, unless it finds that special circumstances exist, assess in favor of the complaining party reasonable attorney's fees and other litigation costs reasonably incurred. Whether the position of the complaining party was substantially justified shall be determined on the basis of the record as a whole which is made in the proceeding for which fees and other expenses are sought.

(e) **Description of current assessment.** The notice required by this Code section shall be accompanied by a simple, nontechnical description of the basis for the current assessment.

(f) **Rules and regulations.** The commissioner shall promulgate such rules and regulations as may be necessary for the administration of this Code section.

History.
Ga. L. 1913, p. 123, § 6; Code 1933, § 92-6911; Ga. L. 1937, p. 517, § 2; Ga. L. 1970, p. 580, § 1; Ga. L. 1971, p. 33, § 1; Ga. L. 1972, p. 1114, § 5; Ga. L. 1974, p. 609, § 1; Ga. L. 1975, p. 1083, § 2; Ga. L.

1976, p. 518, § 2; Code 1933, § 91A-1448, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1985, p. 1262, § 2; Ga. L. 1994, p. 1823, § 1; Ga. L. 1999, p. 1043, § 2; Ga. L. 1999, p. 1212, § 1; Ga. L. 2009, p. 27, § 4/SB 55; Ga. L. 2009, p. 216, § 2C/SB 240; Ga. L. 2010, p. 1104, § 1-1/SB 346; Ga. L. 2015, p. 1219, § 14/HB 202; Ga. L. 2017, p. 774, § 48/HB 323; Ga. L. 2018, p. 162, § 1/HB 374; Ga. L. 2024, p. 20, § 1-6/HB 581, see notes for effective date; Ga. L. 2024, p. 1052, § 5(18)/SB 448, effective July 1, 2024.

Delayed effective date.

Ga. L. 2024, p. 20, § 4-1/HB 581, provides that the 2024 amendment becomes effective on January 1, 2025; provided, however, that, if a constitutional amendment which becomes effective on January 1, 2025 and which authorizes the General Assembly to provide by general law for a homestead exemption that applies statewide, but that permits political subdivisions to individually opt out of such homestead exemption, has not been ratified, then this Act shall stand automatically repealed on January 1, 2025. This Code section, as set out above, does not reflect the amendment by that Act owing to the delayed effective date. If the voters approve, subparagraphs (b)(1)(G) through (b)(1)(I) and paragraph (b)(2) will read: "(G) If available, the internet website address of the office of the county board of tax assessors;

"(H) A statement that all documents and records used to determine the current value are available upon request; and

"(I) The current year's estimated rollback rate.

"(2) In addition to the items required under paragraph (1) of this subsection, the notice shall contain a statement of the taxpayer's right to an appeal which shall be in substantially the following form:

"'The amount of your ad valorem tax bill for this year will be based on the appraised and assessed values specified in this notice. You have the right to appeal these values to the county board of tax assessors. At the time of filing your appeal you must select one of the following options:

"(A) An appeal to the county board of equalization with appeal to the superior court;

"(B) To arbitration without an appeal to the superior court; or

"(C) For a parcel of nonhomestead property with a fair market value in excess of $500,000.00 as shown on the taxpayer's annual notice of current assessment under this Code section, or for one or more account numbers of wireless property as defined in subparagraph (e.1)(1)(B) of Code Section 48-5-311 with an aggregate fair market value in excess of $500,000.00 as shown on the taxpayer's annual notice of current assessment under this Code section, to a hearing officer with appeal to the superior court.

"If you wish to file an appeal, you must do so in writing no later than 45 days after the date of this notice. If you do not file an appeal by this date, your right to file an appeal will be lost. For further information on the proper method for filing an appeal, you may contact the county board of tax assessors which is located at: (insert address) and which may be contacted by telephone at: (insert telephone number).'"

Amendments.

The first 2024 amendment deleted "and" from the end of subparagraph (b)(1)(G); substituted "; and" for a period at the end of subparagraph (b)(1)(H); added subparagraph (b)(1)(I); redesignated subparagraph (b)(2)(A) as paragraph (b)(2) and redesignated divisions (b)(2)(A)(i) through (b)(2)(A)(iii) as subdivisions (b)(2)(A) through (b)(2)(C), respectively; in the beginning of paragraph (b)(2), deleted "and an estimate of the current year's taxes for all levying authorities" following "appeal"; and deleted subparagraph (b)(2)(B), which read: "(B) The notice shall also contain the following statements in bold print:

"'The estimate of your ad valorem tax bill for the current year is based on the previous or most applicable year's millage rate and the fair market value contained in this notice. The actual tax bill you receive may be more or less than this estimate. This estimate may not include all eligible exemptions.'". For effective date of this amendment, see the delayed effective date note. See Editor's notes for applicability.

The second 2024 amendment, effective July 1, 2024, part of an Act to revise,

modernize, and correct the Code, inserted "internet" preceding "website" in subparagraph (b)(1)(G) and in subsection (c).

Editor's notes.

Ga. L. 1985, p. 1262, § 3, not codified by the General Assembly, provided that that Act would apply to tax bills and assessment notices mailed on or after January 1, 1986.

Ga. L. 1999, p. 1043, § 4, not codified by the General Assembly, provides that the amendment to this Code section shall be applicable to all assessments and proceedings commenced on or after January 1, 2000.

Ga. L. 1999, p. 1212, § 2, not codified by the General Assembly, provides that the amendment to this Code section shall be applicable to all taxable years beginning on or after January 1, 2000.

Ga. L. 2009, p. 27, § 5/SB 55, not codified by the General Assembly, provides, in part, that the amendment to this Code section shall be applicable to all taxable years beginning on or after January 1, 2009.

Ga. L. 2024, p. 20, § 4-1/HB 581, not codified by the General Assembly, makes subparagraphs (b)(1)(G) through (b)(1)(I) and paragraph (b)(2) of this Code section applicable to taxable years beginning on or after January 1, 2025. For effective date of this amendment, see the delayed effective date note.

Law reviews.

For article surveying legislative and judicial developments in Georgia local government law for 1978-79, see 31 Mercer L. Rev. 155 (1979).

For article, "Procedure and Problems in Georgia Ad Valorem Tax Appeals," see 26 Ga. St. B.J. 98 (1990).

For note on the 1999 amendment to this Code section, see 16 Ga. St. U. L. Rev. 223 (1999).

For survey article on local government law, see 67 Mercer L. Rev. 147 (2015).

For annual survey on local government, see 73 Mercer L. Rev. 193 (2021).

JUDICIAL DECISIONS

Analysis

General Consideration
Valuation of Property
Notice

General Consideration

Editor's notes. — In light of the similarity of the statutory provisions, decisions under Ga. L. 1931, p. 7, § 85 are included in the annotations for this Code section.

Subsection (a) of O.C.G.A. § 48-5-306 does not require tax assessors to use any definite system or method, but demands only that valuations be just and that the valuations be fairly and justly equalized among the individual taxpayers according to the best information obtainable. Rogers v. DeKalb County Bd. of Tax Assessors, 247 Ga. 726, 279 S.E.2d 223, 1981 Ga. LEXIS 842 (1981).

Subsection (a) of O.C.G.A. § 48-5-306 permits the board to audit and make changes to a taxpayer's return with regard to personalty omitted and personalty that has been returned and undervalued. Eckerd Corp. v. Coweta County Bd. of Tax Assessors, 228 Ga. App. 94, 491 S.E.2d 173.

Statute establishes the procedure for securing tax uniformity in a county. Hawes v. Conner, 224 Ga. 567, 163 S.E.2d 724, 1968 Ga. LEXIS 850 (1968).

Import of this statute is to ensure that the burden of taxation is spread evenly over the taxpayers, according to a fair valuation (now fair market value) of their property holdings. Allen v. Norris, 148 Ga. App. 261, 251 S.E.2d 145, 1978 Ga. App. LEXIS 3150 (1978).

Application to persons who make returns to commissioner is unconstitutional. — Because former Code 1933, §§ 92-6901 and 92-6915 (see

General Consideration (Cont'd)

now O.C.G.A. §§ 48-5-305 and 48-5-306) provided that nothing in former Code 1933, Ch. 92 (see now O.C.G.A. Pt. 2, Art. 5, Ch. 5, T. 48) shall apply to those persons who were required to make their returns to the comptroller general (now commissioner), these two sections, therefore, expressly excluded such persons from the benefit of any such due process procedure as may be afforded under former Code 1933, Ch. 92 (see now O.C.G.A. Pt. 2, Art. 5, Ch. 5, T. 48). Therefore, an application of former Code 1933, Ch. 92 (see now O.C.G.A. Pt. 2, Art. 5, Ch. 5, T. 48) by the county board as to such persons contravened the federal and state Constitutions. Pullman Co. v. Suttles, 187 Ga. 217, 199 S.E. 821, 1938 Ga. LEXIS 753 (1938).

Action of board outside the board's authority is void when the board of tax assessors acts arbitrarily and beyond the scope of the board's authority, there is no sound distinction between a situation when the board raises the valuations of all the taxpayers in order to obtain additional revenue for school purposes, or when the board lowers all the valuations by a certain percent in order to reduce taxes. In so doing, the board's action is outside their authority and hence void. Cross v. Miller, 221 Ga. 579, 146 S.E.2d 279, 1965 Ga. LEXIS 534 (1965).

Trial court did not err in denying the plaintiff's request for a mandamus nisi because the Open Records Act, O.C.G.A. § 50-14-1 et seq., was not available to enforce compliance with the plaintiff's requests for information from the county board of tax assessors regarding property tax assessments as those requests were made pursuant to O.C.G.A. § 48-5-306 and not the Open Records Act. Hansen v. DeKalb County Board of Tax Assessors, 295 Ga. 385, 761 S.E.2d 35, 2014 Ga. LEXIS 532 (2014).

If assessment action displeases a taxpayer, the taxpayer's remedy is arbitration as provided in former Code 1933, § 92-6912 (see now O.C.G.A. § 48-5-311). Hawes v. Conner, 224 Ga. 567, 163 S.E.2d 724, 1968 Ga. LEXIS 850 (1968).

Injunction against unlawful or arbitrary valuations. — When an increase in the valuations of realty returned by taxpayers is not for the purpose of equalizing such valuations, but is an unlawful and arbitrary attempt to provide additional revenue for educational purposes, a court may grant an interlocutory injunction against the making up, compiling, or listing of any report or digest incorporating or including therein any increased assessment or changes or alterations in the returns, and may enjoin the tax receiver from transmitting to the department or the comptroller general or the tax collector of the county, or any tax authorities of the county or state any report, list, or other compilation or digest including or incorporating therein any increase or change or alteration in the return filed with the tax receiver by any taxpayer thereof. Green v. Calhoun, 204 Ga. 550, 50 S.E.2d 209, 1948 Ga. LEXIS 466 (1948).

Right to appeal penalty assessment. — Assessment of a penalty for a breach of a conservation use covenant is an assessment for which a property owner has the right to appeal pursuant to O.C.G.A. § 48-5-311, and the failure of the county board of assessment to provide notice of the property owner's right to appeal was in error. Oconee County Bd. of Tax Assessors v. Thomas, 282 Ga. 422, 651 S.E.2d 45, 2007 Ga. LEXIS 592 (2007).

Requirements from county board of tax assessors regarding information requests. — Trial court did not err in denying the plaintiff's request for a mandamus nisi because the plaintiff's request for mandamus was unsupportable as a matter of law as it was undisputed that the county board of tax assessors provided various documents in response to the plaintiff's information requests regarding property tax assessments, and the plaintiff's demands for supplementation of the responses and an explanation of those responses in a recorded meeting session strayed far

beyond what was required by O.C.G.A. § 48-5-306. Hansen v. DeKalb County Board of Tax Assessors, 295 Ga. 385, 761 S.E.2d 35, 2014 Ga. LEXIS 532 (2014).

Valuation of Property

Proper assessment required as part of tax enforcement proceedings. — Assessment made in the manner prescribed by the statute is indispensable in proceedings to enforce the collection of taxes. Colvard v. Ridley, 218 Ga. 490, 128 S.E.2d 732, 1962 Ga. LEXIS 542 (1962).

Duty to ensure just and fair valuation of property and proportionate distribution of taxes. — It is the duty of the board of tax assessors to see that all taxable property within the county is returned and assessed for taxes at the property's just and fair value (now fair market value) and that valuations as between the individual taxpayers are fairly and justly equalized so that each taxpayer shall pay as near as may be only the taxpayer's proportionate share of taxes. Colvard v. Ridley, 218 Ga. 490, 128 S.E.2d 732, 1962 Ga. LEXIS 542 (1962); Register v. Langdale, 226 Ga. 82, 172 S.E.2d 620, 1970 Ga. LEXIS 439 (1970).

County homeowners, who alleged that the assessors board engaged in "sales chasing" by selectively targeting recently sold properties for reappraisal at the increased sales price while leaving the assessed values of similar unsold properties unchanged, stated a tax refund claim under O.C.G.A. § 48-5-380; the procedure allegedly violated the uniformity and equalization requirements of Ga. Const. 1983, Art. VII, Sec. I, Para. III(a), and O.C.G.A. § 48-5-306(a). Rice v. Fulton County, 358 Ga. App. 1, 852 S.E.2d 860, 2020 Ga. App. LEXIS 681 (2020), cert. denied, No. S21C0644, 2021 Ga. LEXIS 561 (Ga. July 7, 2021).

Property in same class to be valued by same standard or system. — Tax assessors must use the same standard or system in determining and fixing taxable value of all property of the same class. Colvard v. Ridley, 218 Ga. 490, 128 S.E.2d 732, 1962 Ga. LEXIS 542 (1962).

Taxation within class must be uniform, equal, and by same standard. — Taxation of all kinds of property of the same class must be uniform and by the same standard of valuation, equally with other taxable property of the same class. Champion Papers, Inc. v. Williams, 221 Ga. 345, 144 S.E.2d 514, 1965 Ga. LEXIS 458 (1965).

What valuation methods authorized. — Tax assessors may use any system, method, cadastral survey, books, available lists of valuations of types of property, city valuations, or other instruments, or other information obtainable, provided such information is the best information available in the assessors fixing of just and fair valuation (now fair market value) of the property assessed, and provided that the taxation as between individual taxpayers is justly and fairly equalized. Kight v. Gilliard, 214 Ga. 445, 105 S.E.2d 333, 1958 Ga. LEXIS 456 (1958); Colvard v. Ridley, 218 Ga. 490, 128 S.E.2d 732, 1962 Ga. LEXIS 542 (1962).

Tax assessors are authorized to fix fair market value from the best information obtainable. This does not require the tax assessors to use any definite system or method, but demands only that the valuations be just and that the valuations be fairly and justly equalized among the individual taxpayers, according to the best information obtainable. Kight v. Gilliard, 214 Ga. 445, 105 S.E.2d 333, 1958 Ga. LEXIS 456 (1958); Colvard v. Ridley, 218 Ga. 490, 128 S.E.2d 732, 1962 Ga. LEXIS 542 (1962).

Use of cadastral surveys in equalizing values for taxation. — Authority granted by Ga. L. 1941, p. 382 and Ga. L. 1951, p. 85 to tax assessors to use information based upon a cadastral survey in equalizing values for taxation is not a substitution of the survey for the discretion of the assessors. Hutchins v. Candler, 209 Ga. 415, 73 S.E.2d 191, 1952 Ga. LEXIS 522 (1952).

Valuations not voided by failure to use past methods. — Duties placed on the board of tax assessors do not require the use of any definite system or method, but demand only that the valuations be just and fair (now fair market value) and that the valuations be justly and fairly equalized among taxpayers. The failure to use any particular system, method,

Valuation of Property (Cont'd)

cadastral survey, book, or other instruments used in the past to derive values would not in any way render void the valuations placed on such property by the assessors. Hutchins v. Williams, 212 Ga. 754, 95 S.E.2d 674, 1956 Ga. LEXIS 519 (1956).

Property valuation may be increased even if property not further improved. — Tax authorities are not prevented from increasing the valuation by the fact that the property has been returned for a lower valuation in the past, and that there have been no improvements thereon, or that no particular fixed system was used to derive the valuation as long as there is a just and fair valuation (now fair market valuation) and the valuation as between individual taxpayers is justly and fairly equalized. Whitehead v. Henson, 115 Ga. App. 81, 153 S.E.2d 581, 1967 Ga. App. LEXIS 1010, rev'd, 223 Ga. 329, 155 S.E.2d 391, 1967 Ga. LEXIS 515 (1967).

Reevaluation and reassessment of only rural real estate of 25 acres or more did not constitute an impermissible spot or piecemeal reappraisal. Harrington v. Baldwin County Bd. of Tax Assessors, 214 Ga. App. 178, 447 S.E.2d 300, 1994 Ga. App. LEXIS 815 (1994), cert. denied, No. S94C1697, 1994 Ga. LEXIS 1134 (Ga. Oct. 28, 1994).

Piecemeal or spot reappraisals which follow a general appraisal of residential property throughout the jurisdiction and which results in a significant increase in taxes without regard to any equalization between taxpayers is contrary to the statutory mandate and void. Thorpe v. Benham, 161 Ga. App. 116, 289 S.E.2d 275, 1982 Ga. App. LEXIS 1779 (1982); Dade County v. Eldridge, 229 Ga. App. 401, 494 S.E.2d 106.

Valuation of leasehold estates. — Trial court erred in dismissing for failure to state a claim upon which relief could be granted a taxpayer's petition seeking a declaration that the valuation method a county board of assessors and the development authority of the county used for leasehold estates arising from a local development authority sale-leaseback bond transaction was illegal and in granting the authority's motion for judgment on the pleadings because the taxpayer made material allegations that could be supported by admissible evidence on the issue of whether the valuation method fairly and justly approximated the fair market value of a bond transaction leasehold estate, and the board and authority failed to show that they were clearly entitled to judgment; although O.C.G.A. § 36-80-16.1(e) gave county boards of tax assessors authority to use simplified methods for determining the value of a bond transaction leasehold estate, the statute did not relieve the board and authority from their duty to value the leasehold estate at the estate's fair market value, and any contention that the statute did allow the board and authority to value a bond transaction leasehold estate at less than the estate's fair market value would make the statute illegal and unconstitutional. Sherman v. Fulton County Bd. of Assessors, 288 Ga. 88, 701 S.E.2d 472, 2010 Ga. LEXIS 813 (2010).

Failure to show entitlement to mandamus relief. — In a taxpayer's suit against a county and officials (the county), the court upheld the grant of summary judgment to the county because the taxpayer's mandamus claims failed for the simple reason that the claim adduced no evidence that any actual assessment of any particular property was other than at fair market value or that the county had failed to comply with the county's legal duty to see that all taxable property within the county is assessed and returned for taxes at the property's fair market value. SJN Props., LLC v. Fulton County Bd. of Assessors, 296 Ga. 793, 770 S.E.2d 832, 2015 Ga. LEXIS 192 (2015).

Notice

Purpose of notice requirements. — Purpose of the notice required by this statute is to give the taxpayer an opportunity to exercise the taxpayer's right to challenge the change by an appeal to the board of equalization. Oxford v. City of Waycross, 241 Ga. 159, 243 S.E.2d 881, 1978 Ga. LEXIS 905 (1978).

Notice provisions to be strictly construed. — Statute providing for

notice when, for failure of service, a person may be deprived of the person's property must be strictly construed. Gilmore v. Curry, 225 Ga. 483, 170 S.E.2d 31, 1969 Ga. LEXIS 541 (1969).

When a reassessment notice was properly mailed to a taxpayer pursuant to O.C.G.A. § 48-5-306 and the taxpayer's request for a late appeal was denied by the board of tax assessors, the taxpayers were not entitled to declaratory relief or to mandamus because O.C.G.A. § 48-5-311 prescribes a time limit for filing appeals, the appeal was not filed within that period, and the board was powerless to extend the period. Dillard v. Denson, 243 Ga. App. 458, 533 S.E.2d 101, 2000 Ga. App. LEXIS 428 (2000).

Required contents of notice. — Statute requires that the taxpayer be told of the time period in which an appeal may be demanded, and statement on the notice of assessment that the assessment will become final if not protested as provided by law did not comply with the statutory requirement. Ledbetter Trucks, Inc. v. Floyd County Bd. of Tax Assessors, 240 Ga. 791, 242 S.E.2d 596, 1978 Ga. LEXIS 829 (1978).

Relation to § 48-5-7.2(e). — O.C.G.A. § 48-5-7.2(e) expressly requires a tax board, upon denying an application for preferential assessment, to notify the applicant in the same manner that notices of assessment are given pursuant to O.C.G.A. § 48-5-306, and appeals from the denial of an application for preferential assessment by the board of tax assessors shall be made in the same manner that other property tax appeals are made pursuant to O.C.G.A. § 48-5-311; in light of a tax board's failure to provide an applicant with the proper statutory notice, the board's argument that the applicant failed to exhaust the applicant's administrative remedies was without merit. Chatham County Bd. of Tax Assessors v. Emmoth, 278 Ga. 144, 598 S.E.2d 495, 2004 Ga. LEXIS 538 (2004).

Notice sufficient unless defect misleads taxpayer to taxpayer's detriment. — Failure of the board of tax assessors to comply strictly with the requirements for the contents of the notice does not invalidate the notice, unless the defect in the notice in fact misleads the taxpayer to the taxpayer's detriment. Oxford v. City of Waycross, 241 Ga. 159, 243 S.E.2d 881, 1978 Ga. LEXIS 905 (1978).

Increased valuation may be enjoined when taxpayer not given notice of it. — When a taxpayer returns the taxpayer's property, and an assessment and a higher valuation is made by the assessors for those years, the taxpayer should be given due notice thereof and have an opportunity to be heard thereon. If the taxpayer has not been given such notice, the enforcement of a tax fi. fa. based upon the increased valuation may be enjoined by a court of equity. Gilmore v. Curry, 225 Ga. 483, 170 S.E.2d 31, 1969 Ga. LEXIS 541 (1969).

Taxpayer need not be served notice of reduction in assessment. — When a taxpayer's assessment is increased by the board of tax assessors, the taxpayer must be served with a notice which will give the taxpayer an opportunity to contest the increase. When the board reduces the assessment on a taxpayer's property, the taxpayer need not be served with notice of the reduction. County Bd. of Tax Assessors v. Catledge, 173 Ga. 656, 160 S.E. 909, 1931 Ga. LEXIS 377 (1931) (decided under Ga. L. 1931, p. 7, § 85).

Notice not required. — Because the tax assessors did not correct the taxpayer's 1998 or 1999 returns, change those returns, or reassess the property but rather, the taxpayer elected to automatically return the taxpayer's property in 1998 and 1999 at the 1997 value, the statutory notice requirements of O.C.G.A. § 48-5-306 did not preclude summary judgment. Pine Pointe Hous., L. P. v. Bd. of Tax Assessors, 269 Ga. App. 855, 605 S.E.2d 443, 2004 Ga. App. LEXIS 1318 (2004), cert. denied, No. S05C0346, 2005 Ga. LEXIS 92 (Ga. Jan. 24, 2005).

Manner in which notice to be served. — Statute contemplates that the notice of a change made by the board of tax equalizers shall be served personally upon the taxpayer, or by leaving the same either at the taxpayer's place of residence or the taxpayer's place of business. Only in the case of a nonresident taxpayer is

Notice (Cont'd)

service by sending notice through the United States mail allowed. Gilmore v. Curry, 225 Ga. 483, 170 S.E.2d 31, 1969 Ga. LEXIS 541 (1969).

When notice of a change of assessment is served in the manner requested by the taxpayer, the taxpayer cannot complain that service was inadequate. Oxford v. City of Waycross, 241 Ga. 159, 243 S.E.2d 881, 1978 Ga. LEXIS 905 (1978).

Manner of notifying taxpayer of valuations and changes therein. — Requirement that the assessors fix the just and fair valuation (now fair market value) of a taxpayer's property and make a note of any change and attach the note to the return does not require any fixed system of doing so, such as attaching a separate memorandum. When this change is made by pencil note on the taxpayer's return itself, the statute is satisfied. Hutchins v. Williams, 212 Ga. 754, 95 S.E.2d 674, 1956 Ga. LEXIS 519 (1956).

Notice to taxpayer as to tentative changes. — When tax assessors made tentative changes in tax returns during the period that the assessors studied the returns, but made no final decision on changes until a date within five days of the date on which notices of such changes were mailed, there was sufficient compliance with subsection (a) of this statute. Register v. Langdale, 226 Ga. 82, 172 S.E.2d 620, 1970 Ga. LEXIS 439 (1970).

Failure to mail or file notice of appeal within 30 days. — Failure of limited liability companies (LLC) to satisfy the requirement of O.C.G.A. § 48-5-311(e)(2)(A) barred any further right to appeal because the letters and returns the LLCs' representative submitted months before the assessment notices were mailed did not excuse the LLCs from complying with the requirement of O.C.G.A. § 48-5-311(e)(2)(A) that a taxpayer mail or file a notice of appeal within 30 days from the date of mailing the notice pursuant to O.C.G.A. § 48-5-306; because the LLCs failed to comply with O.C.G.A. § 48-5-311(e) so as to effectuate an appeal to the county board of equalization, the LLCs' appeals to the superior court should have been dismissed. Hall County Bd. of Tax Assessors v. Avalon Hills Partners, LLC, 307 Ga. App. 520, 705 S.E.2d 674, 2010 Ga. App. LEXIS 1151 (2010), cert. denied, No. S11C0703, 2011 Ga. LEXIS 602 (Ga. Sept. 6, 2011).

Failure to give notice to taxpayer of right to appeal. — County's recalculations of taxpayers' homestead exemptions involved the value of the exemptions, bringing the taxpayers within O.C.G.A. § 48-5-49, which permitted an appeal under O.C.G.A. § 48-5-311. Since the county had not given the taxpayers notice under O.C.G.A. § 48-5-306 of the taxpayers' right to appeal, the taxpayers were entitled to equitable relief requiring the county to: (1) provide taxpayers with proper notice of and the right to appeal changes in the homestead exemptions; (2) stop collecting taxes referenced in bills sent without proper notice; and (3) refund any tax money collected based on bills issued without such notice. Fulton County Bd. of Tax Assessors v. Marani, 299 Ga. App. 580, 683 S.E.2d 136, 2009 Ga. App. LEXIS 909 (2009), cert. denied, No. S09C2072, 2010 Ga. LEXIS 18 (Ga. Jan. 12, 2010).

Sufficiency of pleadings regarding compliance with notice provisions. — Allegation in a petition that a board of tax assessors raised the assessments made by the tax assessors without giving petitioners notice of the change in tax assessments as required by law was not as against demurrer (now motion to strike), an averment that the petitioners were not given the five-day notice required under this statute. Lanier v. Suttles, 212 Ga. 154, 91 S.E.2d 21, 1956 Ga. LEXIS 286 (1956).

OPINIONS OF THE ATTORNEY GENERAL

Occupant of property sold under bond for title. — Purchaser/possessor of a piece of property under a bond for title can be subjected to ad valorem taxation

for that parcel, and once the Board of Tax Assessors chooses to assess the property against the occupant, and not the seller of the property, the occupant should receive the tax notices required by O.C.G.A. § 48-5-306, and be treated as "the taxpayer" entitled to appeal under O.C.G.A. § 48-5-311. 1989 Op. Att'y Gen. U89-17.

Assessment of returned but undervalued property. — Property that has been returned may only be revalued in accordance with O.C.G.A. § 48-5-306 if the county board of tax assessors has not previously rendered a final assessment of that property pursuant to that Code section. 1987 Op. Att'y Gen. No. U87-13, rescinding and superseding Op. Att'y Gen. 1961, p. 482 insofar as it suggests that returned property may be revalued and reassessed at any time within the applicable period of limitation.

Duty to reassess property when fair market value increases. — If the fair market value of property increases every two years, then it is the duty of the county tax assessors to increase the valuation of property for tax purposes every two years. 1969 Op. Att'y Gen. No. 69-504.

Duty to correct errors and certify corrections to commissioner. — County board of tax assessors is not only authorized to correct mistakes and errors made by the board, but it is made the board's duty to do so. Such correction should be certified to the commissioner so that the digest on file in the commissioner's office may be made to conform with the county digest. 1950-51 Ga. Op. Att'y Gen. 154.

Real property may not be reassessed despite error in first assessment. — Tax assessors are precluded from again assessing real estate that the assessors have previously assessed, although the assessors were mistaken as to the property's value at that time. 1969 Op. Att'y Gen. No. 69-183.

Invalidity of tax digest has no effect on validity of taxpayer's return. — Tax return of a property owner is separate from the tax digest prepared by the tax commissioner, and the invalidity of the digest has no effect on the validity of the taxpayer's return. 1970 Op. Att'y Gen. No. U70-41.

Board of tax assessors cannot place a nominal value on property of new industries, but must see that such valuations are equalized with the valuations placed on property owned by other taxpayers. 1967 Op. Att'y Gen. No. 67-328.

Board of tax assessors does not have authority to classify personal property as real estate. 1958-59 Ga. Op. Att'y Gen. 357.

Valuation of automobiles. — Municipal and county tax assessors have a legal right to place a higher valuation on automobiles than on other property. 1954-56 Ga. Op. Att'y Gen. 675.

Manner in which notice to be served. — When property evaluation is altered, the taxpayer must be notified personally or through posting of reevaluation notice in front of the courthouse door. The provisions of this statute requiring the board to give notice either personally or by mail indicate that the giving of notice by mail is not personal service as contemplated by the statute. 1962 Ga. Op. Att'y Gen. 483.

Board of tax assessors may act in absence of a member. — Board of tax assessors consisting of three members, and sitting in accordance with this statute, can legally act in the absence, for any reason, of one of the board's members. 1971 Op. Att'y Gen. No. U71-55.

Additional compensation for extra duties performed by tax assessors. — Board of county commissioners (now county governing authority) may legally pay certain members of the board of tax assessors additional compensation for the performance of extra duties in assembling information. 1952-53 Ga. Op. Att'y Gen. 296.

RESEARCH REFERENCES

ALR.

Notice to property owners of increase in assessment or valuation by board of equalization review, 24 A.L.R. 331; 84 A.L.R. 197.

Power of board of tax review to receive

evidence as to assessable value, without notice to taxpayer, 113 A.L.R. 990.

Provisions of tax statute as to time for performance of acts by boards or officers as mandatory or directory, 151 A.L.R. 248.

48-5-306.1. Brochures describing exemptions and preferential assessments available to taxpayers.

(a) The tax commissioner shall annually prepare and maintain a brochure or other publication describing the exemptions and preferential assessments available to the taxpayers of the county along with the conditions of eligibility and deadlines for applying for each. Such brochure or other publication shall also describe the requirements and deadlines for the return of property for taxation and the appeal procedures and such other information as the tax commissioner or board of tax assessors may determine to be helpful to the property owner. Such brochure or other publication shall be available freely to taxpayers in the office of the tax commissioner and board of assessors and shall also be mailed or otherwise delivered to the appropriate taxpayer under the following conditions:

(1) Upon the transfer of residential or agricultural property for which a properly completed real estate transfer tax form has been filed;

(2) Whenever a homestead exemption has been newly approved or whenever an existing homestead exemption has been modified with new conditions of eligibility; and

(3) Whenever a preferential assessment with respect to ad valorem property taxes is enacted or modified.

(b) The commissioner shall promulgate such rules and regulations as may be necessary for the administration of this Code section.

History.

Code 1981, § 48-5-306.1, enacted by Ga. L. 1999, p. 1043, § 2.

Editor's notes.

Ga. L. 1999, p. 1043, § 4, not codified by the General Assembly, provides that the Act shall be applicable to all assessments and proceedings commenced on or after January 1, 2000.

48-5-307. Service of papers; fees.

Whenever, pursuant to this part, any notice, subpoena, or writing is required to be given or served, the notice, subpoena, or writing may be served by any sheriff, deputy sheriff, or lawful constable. Each such officer shall be paid for his services the same fees as are paid officers for serving similar process in civil actions; and the fees shall be paid from the county treasury in the same manner as other payments by the county are made.

History.
Ga. L. 1913, p. 123, § 9; Code 1933, § 92-6916; Code 1933, § 91A-1443, enacted by Ga. L. 1978, p. 309, § 2.

Cross references.
Fees for sheriff's services, § 15-16-21.

RESEARCH REFERENCES

ALR.
Notice to property owners of increase in assessment or valuation by board of equalization or review, 24 A.L.R. 331; 84 A.L.R. 197.

48-5-308. Effect of part on laws granting additional authority to county boards of tax assessors.

It is not the intention or the purpose of this part to repeal any law enacted prior to January 1, 1980, granting to any county board of tax assessors additional powers or authority not contained in this part.

History.
Ga. L. 1937, p. 517, § 6; Code 1933, § 91A-1446, enacted by Ga. L. 1978, p. 309, § 2.

48-5-309. Applicability to counties electing members of board of tax assessors.

Nothing contained in Code Sections 48-5-291 through 48-5-300 and 48-5-302 through 48-5-308 regarding appointment, terms of office, vacancies, removals, qualifications, or compensation of members of county boards of tax assessors shall apply to any county which has elected to elect the members of its county board of tax assessors.

History.
Ga. L. 1972, p. 1114, § 6; Code 1933, § 91A-1434, enacted by Ga. L. 1978, p. 309, § 2.

Code Commission notes.
Pursuant to Code Section 28-9-5, in 1991, the comma was deleted following "assessors" near the middle of this Code section.

48-5-310. Temporary collection of taxes pending approval or appeal of disapproval of digest.

(a) The governing authority of a county whose digest has not been approved by the commissioner may petition the superior court of the county for an order authorizing the immediate and temporary collection of taxes when:

(1)(A) An appeal is or has been filed as provided by law to prevent the approval of the digest by the commissioner;

(B) The digest has not otherwise been approved by the commissioner; or

(C) The digest is otherwise not enforceable or collectable by law; and

(2) The appeal, disapproval, or disability prohibits or prevents collections from being made or enforced on the digest.

(b)(1) The petition filed by the governing authority shall be styled "In the Matter of the (year) Tax Digest for (name of county) County." In the petition, the governing authority of the county shall assert that unless the court authorizes the immediate, temporary collection of the taxes the county authority will not be able to either:

(A) Pay the county's debts as they mature;

(B) Pay appropriate salaries of employees, other government officials, and other persons entitled to receive either compensation by or funds from the county as provided by law;

(C) Maintain an orderly and normal function of county business and governmental affairs;

(D) Maintain an adequate, proper, or desirable credit rating either to maintain or affect existing or future interest rates on bonded indebtedness or indebtedness on loans incurred or obligated by the county governing authority; or

(E) Avoid by practical means the suffering of immediate and irreparable injury, loss, damage, or any other significant matter.

(2) The petition shall further identify the last year in which the county had an approved tax digest as provided in this title and shall state the particular year for which the tax collections are sought.

(c) After the filing of the petition, a judge of the superior court in which the petition was filed shall set a time and date for a hearing on the petition. The hearing shall be held not less than ten days from the date of the filing of the petition. The court shall direct that the county governing authority have the petition published at least once prior to the hearing in the official newspaper of the county for publication of official notices. The court shall further order that the governing authority post a copy of the petition in a prominent place in the courthouse. No hearing shall be held on the petition until the petition has been so published and posted.

(d) After the petition has been filed and before the hearing, each interested party may intervene for the purpose of opposing the issuance of an order allowing the immediate and temporary collection of taxes.

(e) At the hearing on the petition, the governing authority shall bear the burden of proof of establishing the existence of one or more of the conditions set forth in subsection (b) of this Code section. The court may

not issue an order allowing the temporary collection of taxes unless it finds that the evidence adduced at the hearing preponderates in favor of a finding that one of the conditions referred to in subsection (b) of this Code section exists. If the court so determines, the court shall enter an order containing findings of fact and conclusions of law to that end and shall order the temporary collection of taxes as sought by the county governing authority.

(f) In the court's order, the court shall establish the basis on which the temporary tax on each parcel of property shall be established and the manner in which the taxes shall be billed, collected, and otherwise received. The basis upon which the temporary taxes may be collected shall be one of the following:

(1) Any tax digest for the tax year in question which has been submitted to the commissioner but which has been rejected or is otherwise unenforceable;

(2) The most recently submitted and approved tax digest as amended to reflect changes in ownership of property; or

(3) Any other reasonable method which will do substantial justice to the parties under the exigencies of all the circumstances.

(g) Any taxes collected or paid after the entry of the order for collection as provided for in this Code section shall not be considered as, and shall not be deemed to be, voluntary payments. Collection or payment of such taxes after the entry of an order by the court as provided in this Code section shall not in any manner affect or limit anyone who pays the taxes from receiving and enjoying the full benefits of any adjustments, benefits, refunds, or additional assessments determined by the final disposition of the validity of the tax digest.

(h) The temporary collection of taxes on the basis ordered by the superior court shall proceed and shall be of full force and effect exactly as if the tax digest used as the basis for the court's order had been approved by the commissioner or otherwise approved or in force as provided by law, except as may be modified by court order. The court shall retain jurisdiction to issue any appropriate order necessary to enforce the court's order allowing the temporary collection of taxes.

(i)(1) Any governing authority filing a petition seeking an order allowing the temporary collection of taxes shall serve the commissioner with a copy of the petition.

(2) The commissioner may not be joined in an action seeking the temporary collection of taxes without the commissioner's specific consent.

(j) The procedures provided by this Code section shall apply to the tax digest of any municipality using as a basis for municipal tax

purposes the fair market value determined for county ad valorem tax purposes. For the purposes of this subsection, the provisions of this Code section applicable to the governing authority of a county shall also be applicable to the governing authority of any such municipality, and the methods, procedures, and conditions for temporary collection and enforcement of taxes for municipalities shall be under the same terms and conditions as provided for counties in this Code section.

History.
Ga. L. 1977, p. 903, § 1; Code 1933, § 91A-1449.1, enacted by Ga. L. 1979, p. 5, § 43.

JUDICIAL DECISIONS

Procedure of O.C.G.A. § 48-5-310 is not a prerequisite for collecting property taxes following the approval of the digest or resolution of a tax appeal. Brown v. Franklin County Sch. Dist., 213 Ga. App. 599, 445 S.E.2d 360, 1994 Ga. App. LEXIS 665 (1994).

Subsection (f) of O.C.G.A. § 48-5-310 empowers the court to set millage rate for temporary tax collection at judge's discretion. In re Board of Twiggs County Comm'rs, 249 Ga. 642, 292 S.E.2d 673, 1982 Ga. LEXIS 873 (1982), overruled in part, Duke v. State, 306 Ga. 171, 829 S.E.2d 348, 2019 Ga. LEXIS 406 (2019).

Millage rate producing surplus allowed. — Trial court did not abuse the court's discretion in approving the use of a county's adopted millage rate for the collection of temporary taxes, even assuming the adopted rate would produce a surplus, because there are no constitutional or statutory laws prohibiting counties from setting a millage rate intended to produce a surplus as long as such surplus is properly accounted for so as to create a balanced budget as required under Georgia law. Clayton County v. Sexton, 273 Ga. 150, 538 S.E.2d 737, 2000 Ga. LEXIS 863 (2000).

Additional taxes may be collected. — O.C.G.A. § 48-5-310 authorizes the "temporary" collection of ad valorem taxes pursuant to an order of the superior court and additional taxes may be collected, or refunds issued, following any reevaluations and reassessments necessitated by the commissioner's disapproval of the digest. Harrington v. Baldwin County Bd. of Tax Assessors, 214 Ga. App. 178, 447 S.E.2d 300, 1994 Ga. App. LEXIS 815 (1994), cert. denied, No. S94C1697, 1994 Ga. LEXIS 1134 (Ga. Oct. 28, 1994).

Authority of trial court to challenge proposed expenditures. — Trial court was authorized to enter an order for the immediate and temporary collection of real property taxes for tax year 1991 on the basis of the 1990 tax digest; however, it was beyond the province of the trial court to require the county authorities to justify the wisdom (as opposed to the legality) of proposed county expenditures. Board of Comm'rs v. 1991 Tax Digest, 261 Ga. 702, 410 S.E.2d 721, 1991 Ga. LEXIS 1045 (1991).

48-5-311. (For effective date, see note.) Creation of county boards of equalization; duties; review of assessments; appeals.

(a) **Definition.** As used in this Code section, the term "appeal administrator" means the clerk of the superior court.

(a.1) **Appeal administrator.**

(1) The appeal administrator is vested with administrative au-

thority in all other matters governing the conduct and business of the boards of equalization so as to provide oversight and supervision of such boards.

(2) It shall be the duty of the appeal administrator to receive any complaint filed with respect to the official actions of any member of a county board of equalization regarding technical competency, compliance with state law and regulations, or rude or unprofessional conduct or behavior toward any member of the public and to forward such complaint to the grand jury for investigation. Following an investigation, the grand jury shall issue a written report of its findings, which shall include such evaluations, judgments, and recommendations as it deems appropriate. The findings of the report may be grounds for removal of a member of the board of equalization by the grand jury for failure to perform the duties required under this Code section.

(a.2) **Establishment of boards of equalization.**

(1) Except as otherwise provided in this subsection, there is established in each county of this state a county board of equalization to consist of three members and three alternate members appointed in the manner and for the term set forth in this Code section. In those counties having more than 10,000 parcels of real property, the county governing authority, by appropriate resolution adopted on or before November 1 of each year, may elect to have selected one additional county board of equalization for each 10,000 parcels of real property in the county or for any part of a number of parcels in the county exceeding 10,000 parcels.

(1.1) The grand jury shall be authorized to conduct a hearing following its receipt of the report of the appeal administrator under paragraph (2) of subsection (a.1) of this Code section and to remove one or more members of the board of equalization for failure to perform the duties required under this Code section.

(2) Notwithstanding any part of this subsection to the contrary, at any time the governing authority of a county makes a request to the grand jury of the county for additional alternate members of boards of equalization, the grand jury shall appoint the number of alternate members so requested to each board of equalization, such number not to exceed a maximum of 21 alternate members for each of the boards. The alternate members of the boards shall be duly qualified and authorized to serve on any of the boards of equalization of the county. The members of each board of equalization may designate a chairperson and two vice chairpersons of each such board of equalization. The appeal administrator shall have administrative authority in all matters governing the conduct and business of the boards of equal-

ization so as to provide oversight and supervision of such boards and scheduling of appeals. Any combination of members or alternate members of any such board of equalization of the county shall be competent to exercise the power and authority of the board. Any person designated as an alternate member of any such board of equalization of the county shall be competent to serve in such capacity as provided in this Code section upon appointment and taking of oath.

(3) Notwithstanding any provision of this subsection to the contrary, in any county of this state having a population of 400,000 or more according to the United States decennial census of 1990 or any future such census, the governing authority of the county, by appropriate resolution adopted on or before November 1 of each year, may elect to have selected one additional county board of equalization for each 10,000 parcels of real property in the county or for any part of a number of parcels in the county exceeding 10,000 parcels. In addition to the foregoing, any two members of a county board of equalization of the county may decide an appeal from an assessment, notwithstanding any other provisions of this Code section. The decision shall be in writing and signed by at least two members of the board of equalization; and, except for the number of members necessary to decide an appeal, the decision shall conform to the requirements of this Code section.

(4) The governing authorities of two or more counties may by intergovernmental agreement establish regional boards of equalization for such counties which shall operate in the same manner and be subject to all of the requirements of this Code section specified for county boards of equalization. The intergovernmental agreement shall specify the manner in which the members of the regional board shall be appointed by the grand jury of each of the counties, shall specify which appeal administrator shall have oversight over and supervision of such regional board, and shall provide for funding from each participating county for the operations of the appeal administrator as required by subparagraph (d)(4)(C.1) of this Code section. All hearings and appeals before a regional board shall be conducted in the county in which the property which is the subject of the hearing or appeal is located.

(b) **Qualifications of board of equalization members.**

(1) Each person who is, in the judgment of the appointing grand jury, qualified and competent to serve as a grand juror, who is the owner of real property located in the county where such person is appointed to serve, or, in the case of a regional board of equalization, is the owner of real property located in any county in the region where such person is appointed to serve, and who is at least a high

school graduate shall be qualified, competent, and compellable to serve as a member or alternate member of the county board of equalization. No member of the governing authority of a county, municipality, or consolidated government; member of a county or independent board of education; member of the county board of tax assessors; employee of the county board of tax assessors; or county tax appraiser shall be competent to serve as a member or alternate member of the county board of equalization.

(2)(A) Each person seeking to be appointed as a member or alternate member of a county board of equalization shall, not later than immediately prior to the time of his or her appointment under subsection (c) of this Code section, file with the clerk of the superior court a uniform application form which shall be a public record. The Council of Superior Court Clerks of Georgia created under Code Section 15-6-50.2 shall design the form which indicates the applicant's education, employment background, experience, and qualifications for such appointment.

(B)(i) Within the first year after a member's initial appointment to the board of equalization, each member shall satisfactorily complete not less than 40 hours of instruction in appraisal and equalization processes and procedures, as prepared and required by the commissioner pursuant to Code Section 48-5-13.

(ii) The failure of any member to fulfill the requirements of the applicable provisions of division (i) of this subparagraph shall render such member ineligible to serve on the board; and the vacancy created thereby shall be filled in the same manner as other vacancies on the board are filled.

(C)(i) Any person appointed to a board of equalization shall be required to complete annually a continuing education requirement of at least eight hours of instruction in appraisal and equalization procedures, as prepared and required by the commissioner pursuant to Code Section 48-5-13.

(ii) The failure of any member to fulfill the requirements of division (i) of this subparagraph shall render such member ineligible to serve on the board; and the vacancy created thereby shall be filled in the same manner as other vacancies on the board are filled.

(c) **Appointment of board of equalization members.**

(1) Except as provided in paragraph (2) of this subsection, each member and alternate member of the county board of equalization shall be appointed for a term of three calendar years next succeeding

the date of such member or such alternate member's selection. Each term shall begin on January 1.

(2) The grand jury in each county at any term of court preceding November 1 of 1991 shall select three persons who are otherwise qualified to serve as members of the county board of equalization and shall also select three persons who are otherwise qualified to serve as alternate members of the county board of equalization. The three individuals selected as alternates shall be designated as alternate one, alternate two, and alternate three, with the most recent appointee being alternate number three, the next most recent appointee being alternate number two, and the most senior appointee being alternate number one. One member and one alternate shall be appointed for terms of one year, one member and one alternate shall be appointed for two years, and one member and one alternate shall be appointed for three years. Each year thereafter, the grand jury of each county shall select one member and one alternate for three-year terms.

(3) If a vacancy occurs on the county board of equalization, the individual designated as alternate one shall then serve as a member of the board of equalization for the unexpired term. If a vacancy occurs among the alternate members, the grand jury then in session or the next grand jury shall select an individual who is otherwise qualified to serve as an alternate member of the county board of equalization for the unexpired term. The individual so selected shall become alternate member three, and the other two alternates shall be redesignated appropriately.

(4) Within five days after the names of the members and alternate members of the county board or boards of equalization have been selected, the clerk of the superior court shall cause such appointees to appear before the clerk of the superior court for the purpose of taking and executing in writing the oath of office. The clerk of the superior court may utilize any means necessary for such purpose, including, but not limited to, telephonic or other communication, regular first-class mail, or issuance of and delivery to the sheriff or deputy sheriff a precept containing the names of the persons so selected. Within ten days of receiving the precept, the sheriff or deputy sheriff shall cause the persons whose names are written on the precept to be served personally or by leaving the summons at their place of residence. The summons shall direct the persons named on the summons to appear before the clerk of the superior court on a date specified in the summons, which date shall not be later than December 15.

(5) Each member and alternate member of the county board of equalization, on the date prescribed for appearance before the clerk of

the superior court and before entering on the discharge of such member and alternate member's duties, shall take and execute in writing before the clerk of the superior court the following oath:

> "I, _____, agree to serve as a member of the board of equalization of the County of _____ and will decide any issue put before me without favor or affection to any party and without prejudice for or against any party. I will follow and apply the laws of this state. I also agree not to discuss any case or any issue with any person other than members of the board of equalization except at any appeal hearing. I shall faithfully and impartially discharge my duties in accordance with the Constitution and laws of this state, to the best of my skill and knowledge. So help me God.
>
> _____
> Signature of member or alternate member"

In addition to the oath of office prescribed in this paragraph, the presiding or chief judge of the superior court or the appeal administrator shall charge each member and alternate member of the county board of equalization with the law and duties relating to such office.

(d) **Duties and powers of board of equalization members.**

(1) The county board of equalization shall hear and determine appeals from assessments and denials of homestead exemptions as provided in subsection (e) of this Code section.

(2) If, in the course of determining an appeal, the county board of equalization finds reason to believe that the property involved in an appeal or the class of property in which is included the property involved in an appeal is not uniformly assessed with other property included in the digest, the board shall request the respective parties to the appeal to present relevant information with respect to that question. If the board determines that uniformity is not present, the board may order the county board of tax assessors to take such action as is necessary to obtain uniformity, except that, when a question of county-wide uniformity is considered by the board, the board may recommend a partial or total county-wide revaluation only upon a determination by a majority of all the members of the board that the clear and convincing weight of the evidence requires such action. The board of equalization may act pursuant to this paragraph whether or not the appellant has raised the issue of uniformity.

(3) The board shall establish procedures which comply strictly with the regulations promulgated by the commissioner pursuant to subparagraph (e)(1)(D) of this Code section for the conducting of

appeals before the board. The procedures shall be entered into the minutes of the board, and a copy of the procedures shall be made available to any individual upon request.

(4)(A) The appeal administrator shall have oversight over and supervision of all boards of equalization of the county and hearing officers. This oversight and supervision shall include, but not be limited to, requiring appointment of members of county boards of equalization by the grand jury; giving the notice of the appointment of members and alternates of the county board of equalization by the county grand jury as required by Code Section 15-12-81; collecting the names of possible appointees; collecting information from possible appointees as to their qualifications; presenting the names of the possible appointees to the county grand jury; processing the appointments as required by paragraph (4) of subsection (c) of this Code section, including administering the oath of office to the newly appointed members and alternates of the county board of equalization as required by paragraph (5) of such subsection; instructing the newly appointed members and alternates as to the training they must receive and the operations of the county board of equalization; presenting to the grand jury of the county the names of possible appointees to fill vacancies as provided in paragraph (3) of such subsection; maintaining a roster of board members and alternates, maintaining a record showing that the board members and alternates completed training, keeping attendance records of board members and alternates for the purpose of payment for service, and maintaining the uniform application forms and keeping a record of the appointment dates of board members and alternates and their terms in office; and informing the county board of equalization that it must establish by regulation procedures for conducting appeals before the board as required by paragraph (3) of this subsection. Oversight and supervision shall also include the scheduling of board hearings, assistance in scheduling hearings before hearing officers, and giving notice of the date, time, and place of hearings to the taxpayers and the county board of tax assessors and giving notice of the decisions of the county board of equalization or hearing officer to the taxpayer and county board of tax assessors as required by division (e)(6)(D)(i) of this Code section.

(B) The county governing authority shall provide any resources to the appeal administrator that are required to be provided by paragraph (7) of subsection (e) of this Code section.

(C) The county governing authority shall provide to the appeal administrator facilities and secretarial and clerical help for appeals pursuant to subsection (e.1) of this Code section.

(C.1) The operations of the appeal administrator under this Code section shall, for budgeting purposes, constitute a distinct budget unit within the county budget that is separate from the operations of the clerk of the superior court. The appeal administrator budget unit shall contain a separate line item for the compensation of the appeal administrator for the performance of duties required under this Code section as well as separate line items for resources, facilities, and personnel as specified under subparagraphs (B) and (C) of this paragraph.

(D) The appeal administrator shall maintain any county records of all notices to the taxpayer and the taxpayer's attorney, of certified receipts of returned or unclaimed mail, and from the hearings before the board of equalization and before hearing officers for 12 months after the deadline to file any appeal to the superior court expires. If an appeal is not filed to the superior court, the appeal administrator is authorized to properly destroy any records from the hearings before the county board of equalization or hearing officers but shall maintain records of all notices to the taxpayer and the taxpayer's attorney and certified receipts of returned or unclaimed mail for 12 months. If an appeal to the superior court is filed, the appeal administrator shall file such appeal and records in the civil action that is considered open by the clerk of superior court for such appeal, and such records shall become part of the record on appeal in accordance with paragraph (2) of subsection (g) of this Code section.

(e) **Appeal.**

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

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

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

(iii) A hearing officer as to matters of value and uniformity of assessment for a parcel of nonhomestead real property with a fair market value in excess of $500,000.00 as shown on the taxpayer's annual notice of current assessment under Code Section 48-5-306, and any contiguous nonhomestead real property owned by the same taxpayer, pursuant to subsection (e.1) of this Code section; or

(iv) A hearing officer as to matters of values or uniformity of

assessment of one or more account numbers of wireless property as defined in subparagraph (e.1)(1)(B) of this Code section with an aggregate fair market value in excess of $500,000.00 as shown on the taxpayer's annual notice of current assessment under Code Section 48-5-306, pursuant to subsection (e.1) of this Code section.

(A.1) The commissioner shall establish by rule and regulation a uniform appeal form that the taxpayer may use. Such uniform appeal form shall require the initial assertion of a valuation of the property by the taxpayer.

(A.2) A taxpayer's failure to return real property or whether or not such real property was deemed returned for taxation shall not affect such taxpayer's right to appeal pursuant to this Code section.

(B) In addition to the grounds enumerated in subparagraph (A) of this paragraph, any taxpayer having property that is located within a municipality, the boundaries of which municipality extend into more than one county, may also appeal from an assessment on such property by the county board of tax assessors to the county board of equalization, to a hearing officer, or to arbitration as to matters of uniformity of assessment of such property with other properties located within such municipality, and any uniformity adjustments to the assessment that may result from such appeal shall only apply for municipal ad valorem tax purposes.

(B.1) The taxpayer or his or her agent or representative may submit in support of his or her appeal an appraisal given, signed, and certified as such by a real property appraiser as classified by the Georgia Real Estate Commission and the Georgia Real Estate Appraisers Board which was performed not later than nine months prior to the date of assessment. The board of tax assessors shall consider the appraisal upon request. Within 45 days of the receipt of the taxpayer's appraisal, the board of tax assessors shall notify the taxpayer or his or her agent or representative of acceptance of the appraisal or shall notify the taxpayer or his or her agent or representative of the reasons for rejection.

(B.2) The taxpayer or his or her agent or representative may submit in support of his or her appeal the most current report of the sales ratio study for the county conducted pursuant to Code Section 48-5-274. The board of tax assessors shall consider such sales ratio study upon request of the taxpayer or his or her agent or representative.

(B.3) Any assertion of value by the taxpayer on the uniform appeal form made to the board of tax assessors shall be subject to

later amendment or revision by the taxpayer by submission of written evidence to the board of tax assessors.

(B.4) If more than one property of a taxpayer is under appeal, the board of equalization, arbitrator, or hearing officer, as the case may be, shall, upon request of the taxpayer, consolidate all such appeals in one hearing and shall announce separate decisions as to each parcel or item of property. Any appeal from such a consolidated hearing to the superior court as provided in subsection (g) of this Code section shall constitute a single civil action and, unless the taxpayer specifically so indicates in the taxpayer's notice of appeal, shall apply to all such parcels or items of property.

(B.5) Within ten days of a final determination of value under this Code section and the expiration of the 30 day appeal period provided by subsection (g) of this Code section, or, as otherwise provided by law, with no further option to appeal, the county board of tax assessors shall forward such final determination of value to the tax commissioner.

(C) Appeals to the county board of equalization shall be conducted in the manner provided in paragraph (2) of this subsection. Appeals to a hearing officer shall be conducted in the manner specified in subsection (e.1) of this Code section. Appeals to an arbitrator shall be conducted in the manner specified in subsection (f) of this Code section. Such appeal proceedings shall be conducted between the hours of 8:00 A.M. and 7:00 P.M. on a business day. Following the notification of the taxpayer of the date and time of such taxpayer's scheduled hearing, the taxpayer shall be authorized to exercise a one-time option of changing the date and time of the taxpayer's scheduled hearing to a day and time acceptable to the taxpayer and the county board of tax assessors. The appeal administrator shall grant additional extensions to the taxpayer or the county board of tax assessors for good cause shown, or by agreement of the parties.

(D) The commissioner, by regulation, shall adopt uniform procedures and standards which shall be followed by county boards of equalization, hearing officers, and arbitrators in determining appeals. Such rules shall be updated and revised periodically and reviewed no less frequently than every five years. The commissioner shall publish and update annually a manual for use by county boards of equalization, arbitrators, and hearing officers.

(2)(A) An appeal shall be effected by emailing, if the county board of tax assessors has adopted a written policy consenting to

electronic service, by mailing to, or by filing with the county board of tax assessors a notice of appeal within 45 days from the date of mailing the notice pursuant to Code Section 48-5-306. A written objection to an assessment of real property received by a county board of tax assessors stating the location of the real property and the identification number, if any, contained in the tax notice shall be deemed a notice of appeal by the taxpayer under the grounds listed in paragraph (1) of this subsection. A written objection to an assessment of personal property received by a county board of tax assessors giving the account number, if any, contained in the tax notice and stating that the objection is to an assessment of personal property shall be deemed a notice of appeal by the taxpayer under the grounds listed in paragraph (1) of this subsection. The county board of tax assessors shall review the valuation or denial in question, and, if any changes or corrections are made in the valuation or decision in question, the board shall send a notice of the changes or corrections to the taxpayer pursuant to Code Section 48-5-306. Such notice shall also explain the taxpayer's right to appeal to the county board of equalization as provided in subparagraph (C) of this paragraph if the taxpayer is dissatisfied with the changes or corrections made by the county board of tax assessors.

(B) If no changes or corrections are made in the valuation or decision, the county board of tax assessors shall send written notice thereof to the taxpayer, to any authorized agent or representative of the taxpayer to whom the taxpayer has requested that such notice be sent, and to the county board of equalization which notice shall also constitute the taxpayer's appeal to the county board of equalization without the necessity of the taxpayer's filing any additional notice of appeal to the county board of tax assessors or to the county board of equalization. The county board of tax assessors shall also send or deliver all necessary papers to the county board of equalization. If, however, the taxpayer and the county board of tax assessors execute a signed agreement as to valuation, the appeal shall terminate as of the date of such signed agreement.

(C) If changes or corrections are made by the county board of tax assessors, the board shall notify the taxpayer in writing of such changes. The commissioner shall develop and make available to county boards of tax assessors a suitable form which shall be used in such notification to the taxpayer. The notice shall be sent by regular mail properly addressed to the address or addresses the taxpayer provided to the county board of tax assessors and to any authorized agent or representative of the taxpayer to whom the taxpayer has requested that such notice be sent. If the

taxpayer is dissatisfied with such changes or corrections, the taxpayer shall, within 30 days of the date of mailing of the change notice, notify the county board of tax assessors to continue the taxpayer's appeal to the county board of equalization by emailing, if the county board of tax assessors has adopted a written policy consenting to electronic service, or by mailing to or filing with the county board of tax assessors a written notice of continuance. The county board of tax assessors shall send or deliver the notice of appeal and all necessary papers to the county board of equalization.

(D) The written notice to the taxpayer required by this paragraph shall contain a statement of the grounds for rejection of any position the taxpayer has asserted with regard to the valuation of the property. No addition to or amendment of such grounds as to such position shall be permitted before the county board of equalization.

(3)(A) In each year, the county board of tax assessors shall review the appeal and notify the taxpayer (i) if there are no changes or corrections in the valuation or decision, or (ii) of any corrections or changes within 180 days after receipt of the taxpayer's notice of appeal. If the county board of tax assessors fails to respond to the taxpayer within such 180 day period, the property valuation asserted by the taxpayer on the property tax return or the taxpayer's notice of appeal shall become the assessed fair market value for the taxpayer's property for the tax year under appeal. If no such assertion of value was submitted by the taxpayer, the appeal shall be forwarded to the county board of equalization.

(B) In any county in which the number of appeals exceeds a number equal to or greater than 3 percent of the total number of parcels in the county or the sum of the current assessed value of the parcels under appeal is equal to or greater than 3 percent of the gross tax digest of the county, the county board of tax assessors may be granted an additional 180 day period to make its determination and notify the taxpayer. However, as a condition to receiving such an extension, the county board of tax assessors shall, at least 30 days before the expiration of the 180 day period provided under subparagraph (A) of this paragraph, notify each affected taxpayer of the additional 180 day review period provided in this subparagraph by mail or electronic communication, including posting notice on the internet website of the county board of tax assessors if such an internet website is available. Such additional period shall commence immediately following the last day of the 180 days provided for under subparagraph (A) of this paragraph. If the county board of tax assessors

fails to review the appeal and notify the taxpayer of either no changes or of any corrections or changes not later than the last day of such additional 180 day period, then the most recent property tax valuation asserted by the taxpayer on the property tax return or on appeal shall prevail and shall be deemed the value established on such appeal unless a time extension is granted under subparagraph (C) of this paragraph. If no such assertion of value was submitted by the taxpayer, the appeal shall be forwarded to the county board of equalization.

(C) Upon a sufficient showing of good cause by reason of unforeseen circumstances proven to the commissioner at least 30 days prior to the expiration of the additional 180 day period provided for under subparagraph (B) of this paragraph, the commissioner shall be authorized, in the commissioner's sole discretion, to provide for a time extension beyond the end of such additional 180 day period. The duration of any such time extension shall be specified in writing by the commissioner and, at least 30 days prior to the expiration of the extension provided for under subparagraph (B) of this paragraph, shall be sent to each affected taxpayer and shall also be posted on the internet website of the county board of tax assessors if such an internet website is available. If the county board of tax assessors fails to make its review and notify the taxpayer and the taxpayer's attorney not later than 30 days before the last day of such time extension, the most recent property tax valuation asserted by the taxpayer on the property tax return or on the taxpayer's notice of appeal shall prevail and shall be deemed the value established on such appeal. If no such assertion of value was submitted by the taxpayer, the appeal shall be forwarded to the county board of equalization. In addition, the commissioner shall be authorized to require additional training or require such other remediation as the commissioner may deem appropriate for failure to meet the deadline imposed by the commissioner under this subparagraph.

(4) The determination by the county board of tax assessors of questions of factual characteristics of the property under appeal, as opposed to questions of value, shall be prima-facie correct in any appeal to the county board of equalization. However, the board of tax assessors shall have the burden of proving its opinions of value and the validity of its proposed assessment by a preponderance of evidence.

(5) The county board of equalization shall determine all questions presented to it on the basis of the best information available to the board.

(6)(A) Within 15 days of the receipt of the notice of appeal, the county board of equalization shall set a date for a hearing on the

questions presented and shall so notify the taxpayer and the county board of tax assessors in writing. Such notice shall be sent by first-class mail to the taxpayer and to any authorized agent or representative of the taxpayer to whom the taxpayer has requested that such notice be sent. Such notice shall be transmitted by email to the county board of tax assessors if such board has adopted a written policy consenting to electronic service, and, if it has not, then such notice shall be sent to such board by first-class mail or intergovernmental mail. Such written notice shall advise each party that he or she may request a list of witnesses, documents, or other written evidence to be presented at the hearing by the other party. Such request must be made not less than ten days prior to the hearing date, and such information shall be provided to the requesting party not less than seven days prior to the time of the hearing. Any failure to comply with this requirement shall be grounds for an automatic continuance or for exclusion of such witness, documents, or other written evidence. A taxpayer may appear before the board of equalization concerning any appeal in person, by his or her authorized agent or representative, or both. The appeal administrator, in his or her discretion and with the consent of all parties, may alternatively conduct the hearing by audio or video teleconference or any other remote communication medium. The taxpayer shall specify in writing to the board of equalization the name of any such agent or representative prior to any appearance by the agent or representative before the board.

(B) Within 30 days of the date of notification to the taxpayer of the hearing required in this paragraph but not earlier than 20 days from the date of such notification to the taxpayer, the county board of equalization shall hold such hearing to determine the questions presented.

(C) If more than one property of a taxpayer is under appeal, the board of equalization shall, upon request of the taxpayer, consolidate all such appeals in one hearing and announce separate decisions as to each parcel or item of property. Any appeal from such a consolidated board of equalization hearing to the superior court as provided in this subsection shall constitute a single civil action, and, unless the taxpayer specifically so indicates in his or her notice of appeal, shall apply to all such parcels or items of property.

(D)(i) The board of equalization shall announce its decision on each appeal at the conclusion of the hearing held in accordance with subparagraph (B) of this paragraph before proceeding with another hearing. The decision of the county board of

equalization shall be in writing, shall be signed by each member of the board, shall specifically decide each question presented by the appeal, shall specify the reason or reasons for each such decision as to the specific issues of taxability, uniformity of assessment, value, or denial of homestead exemptions depending upon the specific issue or issues raised by the taxpayer in the course of such taxpayer's appeal, shall state that with respect to the appeal no member of the board is disqualified from acting by virtue of subsection (j) of this Code section, and shall certify the date on which notice of the decision is given to the parties. Notice of the decision shall be delivered by hand to each party, with written receipt, or given to each party by sending a copy of the decision by registered or certified mail or statutory overnight delivery to the appellant and by filing the original copy of the decision with the county board of tax assessors. Each of the three members of the county board of equalization must be present and must participate in the deliberations on any appeal. A majority vote shall be required in any matter. All three members of the board shall sign the decision indicating their vote.

(ii) Except as otherwise provided in subparagraph (g)(4)(B) of this Code section, the county board of tax assessors shall use the valuation of the county board of equalization in compiling the tax digest for the county for the year in question and shall indicate such valuation as the previous year's value on the property tax notice of assessment of such taxpayer for the immediately following year rather than substituting the valuation which was changed by the county board of equalization.

(iii)(I) If the county's tax bills are issued before an appeal has been finally determined, the county board of tax assessors shall specify to the county tax commissioner the lesser of the valuation in the last year for which taxes were finally determined to be due on the property or 85 percent of the current year's value, unless the property in issue is homestead property and has been issued a building permit and structural improvements have occurred, or structural improvements have been made without a building permit, in which case, it shall specify 85 percent of the current year's valuation as set by the county board of tax assessors. Depending on the circumstances of the property, this amount shall be the basis for a temporary tax bill to be issued; provided, however, that a nonhomestead owner of a single property valued at $2 million or more may elect to pay the temporary tax bill which specifies 85 percent of the current year's valuation; or, such owner may elect to pay the amount of the difference between the 85

percent tax bill based on the current year's valuation and the tax bill based on the valuation from the last year for which taxes were finally determined to be due on the property in conjunction with the amount of the tax bill based on valuation from the last year for which taxes were finally determined to be due on the property, to the tax commissioner's office. Only the amount which represents the difference between the tax bill based on the current year's valuation and the tax bill based on the valuation from the last year for which taxes were finally determined to be due will be held in an escrow account by the tax commissioner's office. Once the appeal is concluded, the escrowed funds shall be released by the tax commissioner's office to the prevailing party. The taxpayer may elect to pay the temporary tax bill in the amount of 100 percent of the current year's valuation if no substantial property improvement has occurred. The county tax commissioner shall have the authority to adjust such tax bill to reflect the 100 percent value as requested by the taxpayer. Such tax bill shall be accompanied by a notice to the taxpayer that the bill is a temporary tax bill pending the outcome of the appeal process. Such notice shall also indicate that, upon resolution of the appeal, there may be additional taxes due or a refund issued.

(II) For the purposes of this Code section, any final value that causes a reduction in taxes and creates a refund that is owed to the taxpayer shall be paid by the tax commissioner to the taxpayer, entity, or transferee who paid the taxes with interest, as provided in subsection (m) of this Code section.

(III) For the purposes of this Code section, any final value that causes an increase in taxes and creates an additional billing shall be paid to the tax commissioner as any other tax due along with interest, as provided in subsection (m) of this Code section.

(7) The appeal administrator shall furnish the county board of equalization necessary facilities and administrative help. The appeal administrator shall see that the records and information of the county board of tax assessors are transmitted to the county board of equalization. The county board of equalization shall consider in the performance of its duties the information furnished by the county board of tax assessors and the taxpayer.

(8) If at any time during the appeal process to the county board of equalization the county board of tax assessors and the taxpayer mutually agree in writing on the fair market value, then the county board of tax assessors, or the county board of equalization, as the case may be, shall enter the agreed amount in all appropriate records as

the fair market value of the property under appeal, and the appeal shall be concluded. The provisions in subsection (c) of Code Section 48-5-299 shall apply to the agreed-upon valuation unless otherwise waived by both parties.

(9) Notwithstanding any other provision of law to the contrary, on any real property tax appeal made under this Code section on and after January 1, 2016, the assessed value being appealed may be lowered by the deciding body based upon the evidence presented but cannot be increased from the amount assessed by the county board of tax assessors. This paragraph shall not apply to any appeal where the taxpayer files an appeal during a time when subsection (c) of Code Section 48-5-299 is in effect for the assessment being appealed.

(e.1) **Appeals to hearing officer.**

(1)(A) For any dispute involving the value or uniformity of a parcel of nonhomestead real property with a fair market value in excess of $500,000.00 as shown on the taxpayer's annual notice of current assessment under Code Section 48-5-306, at the option of the taxpayer, an appeal may be submitted to a hearing officer in accordance with this subsection. If such taxpayer owns nonhomestead real property contiguous to such qualified nonhomestead real property, at the option of the taxpayer, such contiguous property may be consolidated with the qualified property for purposes of the hearing under this subsection.

(B)(i) As used in this subparagraph, the term "wireless property" means tangible personal property or equipment used directly for the provision of wireless services by a provider of wireless services which is attached to or is located underneath a wireless cell tower or at a network data center location but which is not permanently affixed to such tower or data center so as to constitute a fixture.

(ii) For any dispute involving the values or uniformity of one or more account numbers of wireless property as defined in this subparagraph with an aggregate fair market value in excess of $500,000.00 as shown on the taxpayer's annual notice of current assessment under Code Section 48-5-306, at the option of the taxpayer, an appeal may be submitted to a hearing officer in accordance with this subsection.

(2) Individuals desiring to serve as hearing officers and who are either state certified general real property appraisers or state certified residential real property appraisers as classified by the Georgia Real Estate Commission and the Georgia Real Estate Appraisers Board for real property appeals or are designated appraisers by a nationally recognized appraiser's organization for wireless property

appeals shall complete and submit an application, a list of counties the hearing officer is willing to serve, disqualification questionnaire, and resume and be approved by the Georgia Real Estate Commission and the Georgia Real Estate Appraisers Board to serve as a hearing officer. Such board shall annually publish a list of qualified and approved hearing officers for Georgia.

(3) The appeal administrator shall furnish any hearing officer so selected the necessary facilities.

(4) An appeal shall be effected by emailing, if the county board of tax assessors has adopted a written policy consenting to electronic service, or by filing with the county board of tax assessors a notice of appeal to a hearing officer within 45 days from the date of mailing the notice of assessment pursuant to Code Section 48-5-306. A written objection to an assessment of real property or wireless property received by a county board of tax assessors stating the taxpayer's election to appeal to a hearing officer and showing the location of the real property or wireless property contained in the assessment notice shall be deemed a notice of appeal by the taxpayer.

(5) The county board of tax assessors may for no more than 90 days review the taxpayer's written appeal, and if changes or corrections are made by the county board of tax assessors, the board shall notify the taxpayer in writing of such changes. Within 30 days of the county board of tax assessors' mailing of such notice, the taxpayer may notify the county board of tax assessors in writing that the changes or corrections made by the county board of tax assessors are not acceptable, in which case, the county board of tax assessors shall, within 30 days of the date of mailing of such taxpayer's notification, send or deliver all necessary documentation to the appeal administrator, in paper or electronic format as agreed upon by the county board of tax assessors and appeal administrator, and mail a copy to the taxpayer or, alternatively, forward the appeal to the board of equalization if so elected by the taxpayer and such election is included in the taxpayer's notification that the changes are not acceptable. If, after review, the county board of tax assessors determines that no changes or corrections are warranted, the county board of tax assessors shall notify the taxpayer of such decision. The taxpayer may elect to forward the appeal to the board of equalization by notifying the county board of tax assessors within 30 days of the mailing of the county board of tax assessor's notice of no changes or corrections. Upon the expiration of 30 days following the mailing of the county board of tax assessors' notice of no changes or corrections, the county board of tax assessors shall certify the notice of appeal and send or deliver all necessary documentation to the appeal administrator, in paper or electronic format as agreed upon by the county

board of tax assessors and appeal administrator, for the appeal to the hearing officer, or board of equalization if elected by the taxpayer, and mail a copy to the taxpayer. If the county board of tax assessors fails to respond in writing, either with changes or no changes, to the taxpayer within 180 days after receiving the taxpayer's notice of appeal, the property valuation asserted by the taxpayer on the property tax return or the taxpayer's notice of appeal shall become the assessed fair market value for the taxpayer's property for the tax year under appeal.

(6)(A) The appeal administrator shall randomly select from such list a hearing officer who shall have experience or expertise in hearing or appraising the type of property that is the subject of appeal to hear the appeal, unless the taxpayer and the county board of tax assessors mutually agree upon a hearing officer from such list. The appeal administrator shall notify the taxpayer and the taxpayer's attorney in compliance with subsection (o) of this Code section of the name of the hearing officer and transmit a copy of the hearing officer's disqualification questionnaire and resume provided for under paragraph (2) of this subsection. If no hearing officer is appointed or if no hearing is scheduled within 180 days after the county board of tax assessors receives the taxpayer's notice of appeal, the property valuation asserted by the taxpayer on the property tax return or the taxpayer's notice of appeal shall become the assessed fair market value for the taxpayer's property for the tax year under appeal, and subsection (c) of Code Section 48-5-299 shall apply. The hearing officer, in conjunction with all parties to the appeal, shall set a time and place to hear evidence and testimony from both parties. The hearing shall take place in the county where the property is located, or such other place as mutually agreed to by the parties and the hearing officer. The hearing officer shall provide electronic or written notice to the parties personally or by registered or certified mail or statutory overnight delivery not less than ten days before the hearing. Such written notice shall advise each party that he or she may request a list of witnesses, documents, or other written evidence to be presented at the hearing by the other party. Such request must be made not less than ten days prior to the hearing date, and such information shall be provided to the requesting party not less than seven days prior to the time of the hearing. Any failure to comply with this requirement shall be grounds for an automatic continuance or for exclusion of such witnesses, documents, or other written evidence.

(B) If the appeal administrator, after a diligent search, cannot find a qualified hearing officer who is willing to serve, the appeal

administrator shall transfer the certification of the appeal to the county or regional board of equalization and notify the taxpayer and the taxpayer's attorney in compliance with subsection (o) of this Code section and the county board of tax assessors of the transmittal of such appeal.

(7) The hearing officer shall swear in all witnesses, perform the powers, duties, and authority of a county or regional board of equalization, and determine the fair market value of the real property or wireless property based upon the testimony and evidence presented during the hearing. Any issues other than fair market value and uniformity raised in the appeal shall be preserved for appeal to the superior court. The board of tax assessors shall have the burden of proving its opinion of value and the validity of its proposed assessment by a preponderance of evidence. At the conclusion of the hearing, the hearing officer shall notify both parties of the decision verbally and shall either send both parties the decision in writing or deliver the decision by hand to each party, with written receipt.

(8) The taxpayer or the board of tax assessors may appeal the decision of the hearing officer to the superior court as provided in subsection (g) of this Code section.

(9) If, at any time during the appeal under this subsection, the taxpayer and the county board of tax assessors execute a signed written agreement on the fair market value and any other issues raised: the appeal shall terminate as of the date of such signed agreement; the fair market value as set forth in such agreement shall become final; and subsection (c) of Code Section 48-5-299 shall apply.

(9.1) The provisions contained in this subsection may be waived at any time by written consent of the taxpayer and the county board of tax assessors.

(10) Each hearing officer shall be compensated by the county for time expended in hearing appeals. The compensation shall be paid at a rate of not less than $100.00 per hour for the first hour and not less than $25.00 per hour for each hour thereafter as determined by the county governing authority or as may be agreed upon by the parties with the consent of the county governing authority. Compensation pursuant to this paragraph shall be paid from the county treasury or, if the parties agree to pay compensation exceeding the minimum compensation set by this Code section, by a combination of the parties as agreed upon by the parties. The hearing officer shall receive such compensation upon certification by the hearing officer of the hours expended in hearing of appeals. The attendance at any training required by the commissioner shall be part of the qualifications of the hearing officer, and any nominal cost of such training shall be paid by the hearing officer.

(11) The commissioner shall promulgate rules and regulations for the proper administration of this subsection, including, but not limited to, qualifications; training, including an eight-hour course on Georgia property law, Georgia evidence law, preponderance of evidence, burden of proof, credibility of the witnesses, and weight of evidence; disqualification questionnaire; selection; removal; an annual continuing education requirement of at least four hours of instruction in recent legislation, current case law, and updates on appraisal and equalization procedures, as prepared and required by the commissioner; and any other matters necessary to the proper administration of this subsection. The failure of any hearing officer to fulfill the requirements of this paragraph shall render such officer ineligible to serve. Such rules and regulations shall also include a uniform appeal form which shall require the initial assertion of a valuation of the property by the taxpayer. Any such assertion of value shall be subject to later revision by the taxpayer based upon written evidence. The commissioner shall seek input from all interested parties prior to such promulgation.

(12) If the county's tax bills are issued before the hearing officer has rendered his or her decision on property which is on appeal, a temporary tax bill shall be issued in the same manner as otherwise required under division (e)(6)(D)(iii) of this Code section.

(13) Upon determination of the final value, the temporary tax bill shall be adjusted as required under division (e)(6)(D)(iii) of this Code section.

(f) **Nonbinding arbitration.**

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

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

(3)(A) Following an election by the taxpayer to use the arbitration provisions of this subsection, an arbitration appeal shall be effected by the taxpayer by emailing, if the county board of tax assessors has adopted a written policy consenting to electronic service, or by filing a written notice of arbitration appeal with the county board of tax assessors. The notice of arbitration appeal shall specifically state the grounds for arbitration. The notice shall be filed within 45 days from the date of mailing the notice pursuant to Code Section 48-5-306. Within ten days of receipt of a taxpayer's notice of arbitration appeal, the board of tax assessors shall send to the taxpayer an acknowledgment of

receipt of the appeal and a notice that the taxpayer shall, within 45 days of the date of transmittal of the acknowledgment of receipt of the appeal, provide to the county board of tax assessors for consideration a copy of a certified appraisal. Failure of the taxpayer to provide such certified appraisal within such 45 days shall terminate the appeal unless the taxpayer within such 45 day period elects to have the appeal immediately forwarded to the board of equalization. Prior to appointment of the arbitrator and within 45 days of the acknowledgment of the receipt of the appeal, the taxpayer shall provide a copy of the certified appraisal as specified in this paragraph to the county board of tax assessors for consideration. Within 45 days of receiving the taxpayer's certified appraisal, the county board of tax assessors shall either accept the taxpayer's appraisal, in which case that value shall become final, or the county board of tax assessors shall reject the taxpayer's appraisal by sending within ten days of the date of such rejection a written notification by certified mail of such rejection to the taxpayer and the taxpayer's attorney of record in compliance with subsection (o) of this Code section, in which case the county board of tax assessors shall certify within 45 days the appeal to the appeal administrator of the county in which the property is located along with any other documentation specified by the person seeking arbitration under this subsection, including, but not limited to, the staff information from the file used by the county board of tax assessors. In the event the taxpayer is not notified of a rejection of the taxpayer's appraisal within such ten-day period, the taxpayer's appraisal value shall become final. In the event that the county board of tax assessors neither accepts nor rejects the value set out in the certified appraisal within 45 days after the receipt of the certified appraisal, then the certified appraisal shall become the final value. All papers and information certified to the appeal administrator shall become a part of the record on arbitration. At the time of certification of the appeal, the county board of tax assessors shall serve the taxpayer and the taxpayer's attorney of record in compliance with subsection (o) of this Code section, if any, or employee with a copy of the certification along with any other papers specified by the person seeking arbitration along with the civil action file number assigned to the appeal, if any. Within 15 days of filing the certification to the appeal administrator, the presiding or chief judge of the superior court of the circuit in which the property is located shall issue an order authorizing the arbitration.

(B) At any point, the county board of tax assessors and the taxpayer may execute a signed, written agreement establishing

the fair market value without entering into or completing the arbitration process. The fair market value as set forth in such agreement shall become the final value.

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

(i) The county board of tax assessors shall, at the time the appeal is certified to the appeal administrator under subparagraph (A) of this paragraph, provide to the taxpayer a notice of a meeting time and place to decide upon an arbitrator, to occur within 60 days after the date of sending the rejection of the taxpayer's certified appraisal. Following the notification of the taxpayer of the date and time of the meeting, the taxpayer shall be authorized to exercise a one-time option of changing the date and time of the meeting to a date and time acceptable to the taxpayer and the county board of tax assessors. If the parties agree, the matter shall be submitted to a single arbitrator chosen by the parties. If the parties cannot agree on the single arbitrator, the arbitrator may be chosen by the presiding or chief judge of the superior court of the circuit in which the property is located within 30 days after the filing of a petition by either party;

(ii) In order to be qualified to serve as an arbitrator, a person shall be classified as a state certified general real property appraiser or state certified residential real property appraiser pursuant to the rules and regulations of the Georgia Real Estate Commission and the Georgia Real Estate Appraisers Board and shall have experience or expertise in appraising the type of property that is the subject of the arbitration;

(iii) The arbitrator, within 30 days after his or her appointment, shall set a time and place to hear evidence and testimony from both parties. The arbitrator shall provide written notice to the parties personally or by registered or certified mail or statutory overnight delivery not less than 21 days before the hearing. Such written notice shall advise each party that he or she may request a list of witnesses, documents, or other written evidence to be presented at the hearing by the other party. Such request must be made not less than ten days prior to the hearing date, and such information shall be provided to the requesting party not less than seven days prior to the time of the hearing. Any failure to comply with this requirement shall be grounds for an automatic continuance or for exclusion of such witnesses, documents, or other written evidence. The arbitrator, in consultation with the parties, may adjourn or postpone the hearing. Following notification of the taxpayer of

the date and time of the hearing, the taxpayer shall be authorized to exercise a one-time option of changing the date and time of the hearing to a date and time acceptable to the taxpayer and the county board of tax assessors. The presiding or chief judge of the superior court of the circuit in which the property is located may direct the arbitrator to proceed promptly with the hearing and the determination of the appeal upon application of any party. The hearing shall occur in the county in which the property is located or such other place as may be agreed upon in writing by the parties;

(iv) At the hearing, the parties shall be entitled to be heard, to present documents, testimony, and other matters, and to cross-examine witnesses. The arbitrator may hear and determine the controversy upon the documents, testimony, and other matters produced notwithstanding the failure of a party duly notified to appear;

(v) The arbitrator shall maintain a record of all pleadings, documents, testimony, and other matters introduced at the hearing. The arbitrator or any party to the proceeding may have the proceedings transcribed by a court reporter;

(vi) The provisions of this paragraph may be waived at any time by written consent of the taxpayer and the board of tax assessors;

(vii) At the conclusion of the hearing, the arbitrator shall render a decision regarding the fair market value of the property subject to nonbinding arbitration;

(viii) In order to determine the fair market value, the arbitrator may consider the final value for the property submitted by the county board of tax assessors at the hearing and the final value submitted by the taxpayer at the hearing. The taxpayer shall be responsible for the cost of any appraisal by the taxpayer's appraiser;

(ix) The arbitrator shall consider the final value submitted by the county board of tax assessors, the final value submitted by the taxpayer, and evidence supporting the values submitted by the county board of tax assessors and the taxpayer. The arbitrator shall determine the fair market value of the property under appeal. The arbitrator shall notify both parties of the decision verbally and shall either send both parties the decision in writing or deliver the decision by hand to each party, with written receipt;

(x) If the taxpayer's value is closest to the fair market value determined by the arbitrator, the county shall be responsible

for the fees and costs of such arbitrator. If the value of the board of tax assessors is closest to the fair market value determined by the arbitrator, the taxpayer shall be responsible for the fees and costs of such arbitrator; and

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

(4) If the county's tax bills are issued before an arbitrator has rendered his or her decision on property which is on appeal, a temporary tax bill shall be issued in the same manner as otherwise required under division (e)(6)(D)(iii) of this Code section.

(5) Upon determination of the final value, the temporary tax bill shall be adjusted as required under division (e)(6)(D)(iii) of this Code section.

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

(1) The taxpayer or the county board of tax assessors may appeal decisions of the county board of equalization, hearing officer, or arbitrator, as applicable, to the superior court of the county in which the property lies. By mutual written agreement, the taxpayer and the county board of tax assessors may waive an appeal to the county board of equalization and initiate an appeal under this subsection. A county board of tax assessors shall not appeal a decision of the county board of equalization, arbitrator, or hearing officer, as applicable, changing an assessment by 20 percent or less unless the board of tax assessors gives the county governing authority a written notice of its intention to appeal, and, within ten days of receipt of the notice, the county governing authority by majority vote does not prohibit the appeal. In the case of a joint city-county board of tax assessors, such notice shall be given to the city and county governing authorities, either of which may prohibit the appeal by majority vote within the allowed period of time.

(2) An appeal by the taxpayer as provided in paragraph (1) of this subsection shall be effected by emailing, if the county board of tax assessors has adopted a written policy consenting to electronic service, or by mailing to or filing with the county board of tax assessors a written petition for review. An appeal by the county board of tax assessors shall be effected by giving a petition for review to the taxpayer. The petition for review given to the taxpayer shall be dated and shall contain the name and the last known address of the taxpayer. The petition for review shall specifically state the grounds for appeal. The petition for review shall be mailed or filed within 30 days from the date on which the decision of the county board of equalization, hearing officer, or arbitrator is delivered pursuant to

subparagraph (e)(6)(D), paragraph (7) of subsection (e.1), or division (f)(3)(C)(ix) of this Code section. Within 45 days of receipt of a taxpayer's petition for review and before the petition for review is filed in superior court, the county board of tax assessors shall send to the taxpayer notice that a settlement conference, in which the county board of tax assessors and the taxpayer shall confer in good faith, will be held at a specified date and time which shall be no later than 30 days from the notice of the settlement conference, and notice of the amount of the filing fee for a petition for review, if any, required by the clerk of the superior court. A taxpayer may appear for the settlement conference in person, by his or her authorized agent or representative, or both. The county board of tax assessors, in their discretion and with the consent of the taxpayer, may alternatively conduct the settlement conference by audio or video teleconference or any other remote communication medium. The taxpayer may exercise a one-time option to reschedule the settlement conference to a different date and time acceptable to the taxpayer during normal business hours. After a settlement conference has convened, the parties may agree to continue the settlement conference to a later date. If at the end of the 45 day review period the county board of tax assessors elects not to hold a settlement conference, then the appeal shall terminate and the taxpayer's stated value shall be entered in the records of the board of tax assessors as the fair market value for the year under appeal and the provisions of subsection (c) of Code Section 48-5-299 shall apply to such value. If the taxpayer chooses not to participate in the settlement conference, he or she may not seek and shall not be awarded fees and costs at such time when the petition for review is reviewed in superior court. If at the conclusion of the settlement conference the parties reach an agreement, the settlement value shall be entered in the records of the county board of tax assessors as the fair market value for the tax year under appeal and the provisions of subsection (c) of Code Section 48-5-299 shall apply to such value. If at the conclusion of the settlement conference the parties cannot reach an agreement, then written notice shall be provided to the taxpayer that the filing fees for the superior court must be paid by the taxpayer by submitting to the county board of tax assessors a check, money order, or any other instrument payable to the clerk of the superior court within 20 days of the date of the conference. Notwithstanding any other provision of law to the contrary, the amount of the filing fee for an appeal under this subsection shall be $25.00. An appeal under this subsection shall not be subject to any other fees or additional costs otherwise required under any provision of Title 15 or under any other provision of law. Within 30 days of receipt of the taxpayer's payment made out to the clerk of the superior court, or, in the case of a petition for review filed by the county board of tax assessors, within 30 days of giving notice

of the petition for review to the taxpayer, the county board of tax assessors shall file with the clerk of the superior court the petition for review and any other papers specified by the person appealing, including, but not limited to, the staff information from the file used by the county board of tax assessors, the county board of equalization, the hearing officer, or the arbitrator. Immediately following payment of such $25.00 filing fee to the clerk of the superior court, the clerk shall remit the proceeds thereof to the governing authority of the county which shall deposit the proceeds into the general fund of the county. All papers and information filed with the clerk shall become a part of the record on appeal to the superior court. At the time of the filing of the petition for review, the county board of tax assessors shall serve the taxpayer and his or her attorney of record, if any, with a copy of the petition for review filed in the superior court and with the civil action file number assigned to the appeal. Such service shall be effected in accordance with subsection (b) of Code Section 9-11-5. No discovery, motions, or other pleadings may be filed by the county board of tax assessors in the appeal until such service has been made.

(3) The appeal shall constitute a de novo action. The board of tax assessors shall have the burden of proving its opinions of value and the validity of its proposed assessment by a preponderance of evidence. Upon a failure of the board of tax assessors to meet such burden of proof, the court shall find that the value asserted by the board of tax assessors is incorrect and authorize the determination of the final value of the property.

(4)(A) The appeal shall be placed on the court's next available jury or bench trial calendar, at the taxpayer's election, following the filing of the appeal unless continued by the court. If only questions of law are presented in the appeal, the appeal shall be heard as soon as practicable before the court sitting without a jury. Each hearing before the court sitting without a jury at the taxpayer's election shall be held within 30 days following the date on which the appeal is filed with the clerk of the superior court unless continued by the court for a period not to exceed 90 days.

(B)(i) The county board of tax assessors shall use the valuation of the county board of equalization, the hearing officer, or the arbitrator, as applicable, in compiling the tax digest for the county.

(ii)(I) If the final determination of value on appeal is less than the valuation thus used, the tax commissioner shall be authorized to adjust the taxpayer's tax bill to reflect the final value for the year in question.

(II) If the final determination of value on appeal causes a reduction in taxes and creates a refund that is owed to the

taxpayer, it shall be paid by the tax commissioner to the taxpayer, entity, or transferee who paid the taxes with interest, as provided in subsection (m) of this Code section.

(III) If the taxpayer appeals to the superior court pursuant to this subsection and the final determination of value on appeal is 85 percent or less of the valuation set by the county board of equalization, hearing officer, or arbitrator as to any real property, the taxpayer, in addition to the interest provided for in subsection (m) of this Code section, shall recover costs of litigation and reasonable attorney's fees incurred in the action. Any appeal of an award of attorney's fees by the county shall be specifically approved by the governing authority of the county.

(IV) If the board of assessors appeals to the superior court pursuant to this subsection and the final determination of value on appeal is 85 percent or less of the valuation set by the board of assessors as to any real property, the taxpayer, in addition to the interest provided for in subsection (m) of this Code section, shall recover costs of litigation and reasonable attorney's fees incurred in the action. Any appeal of an award of attorney's fees by the county shall be specifically approved by the governing authority of the county.

(iii) If the final determination of value on appeal is greater than the valuation set by the county board of equalization, hearing officer, or arbitrator, as applicable, causes an increase in taxes, and creates an additional billing, it shall be paid to the tax commissioner as any other tax due along with interest, as provided in subsection (m) of this Code section.

(g.1) **Valuation.** The provisions in subsection (c) of Code Section 48-5-299 shall apply to the valuation, unless otherwise waived in writing by both parties, as to:

(1) The valuation established or announced by any county board of equalization, arbitrator, hearing officer, or superior court; and

(2) Any written agreement or settlement of valuation reached by the county board of tax assessors and the taxpayer as permitted by this Code section.

(h) **Recording of interviews or hearings.**

(1) In the course of any assessment, appeal, or arbitration, or any related proceeding, the taxpayer shall be entitled to:

(A) Have an interview with an officer or employee who is authorized to discuss tax assessments of the board of tax asses-

sors relating to the valuation of the taxpayer's property subject to such assessment, appeal, arbitration, or related proceeding, and the taxpayer may record the interview at the taxpayer's expense and with equipment provided by the taxpayer, and no such officer or employee of the board of tax assessors may refuse to participate in an interview relating to such valuation for reason of the taxpayer's choice to record such interview; and

(B) Record, at the taxpayer's expense and with equipment provided by the taxpayer, all proceedings before the board of equalization or any hearing officer.

(2) The interview referenced in subparagraph (A) of paragraph (1) of this subsection shall be granted to the taxpayer within 30 calendar days from the postmark date of the taxpayer's written request for the interview, and the interview shall be conducted in the office of the board of assessors. The time and date for the interview, within such 30 calendar day period, shall be mutually agreed upon between the taxpayer and the taxing authority. The taxing authority may extend the time period for the interview an additional 30 days upon written notification to the taxpayer.

(3) The superior courts of this state shall have jurisdiction to enforce the provisions of this subsection directly and without the issue being first brought to any administrative procedure or hearing. The taxpayer shall be awarded damages in the amount of $100.00 per occurrence where the taxpayer requested the interview, in compliance with this subsection, and the board of assessors failed to timely comply; and the taxpayer shall be entitled to recover reasonable attorney's fees and expenses of litigation incurred in any action brought to compel such interview.

(i) **Alternate members of boards of equalization.**

(1) Alternate members of the county board of equalization in the order in which selected shall serve:

(A) As members of the county board of equalization in the event there is a permanent vacancy on the board created by the death, ineligibility, removal from the county, or incapacitating illness of a member or by any other circumstances. An alternate member who fills a permanent vacancy shall be considered a member of the board for the remainder of the unexpired term; or

(B) In any appeal for which an alternate member is selected for service by the appeal administrator.

(2) A hearing panel shall consist of no more than three members at any time, one of whom shall serve as the presiding member for the purpose of the hearing.

(j) **Disqualification.**

(1) No member of the county board of equalization and no hearing officer shall serve with respect to any appeal concerning which he or she would be subject to a challenge for cause if he or she were a member of a panel of jurors in a civil case involving the same subject matter.

(2) The parties to an appeal to the county board of equalization or to a hearing officer shall file in writing with the appeal, in the case of the person appealing, or, in the case of the county board of tax assessors, with the certificate transmitting the appeal, questions relating to the disqualification of members of the county board of equalization or hearing officer. Each question shall be phrased so that it can be answered by an affirmative or negative response. The members of the county board of equalization or hearing officer shall, in writing under oath within two days of their receipt of the appeal, answer the questions and any question which may be adopted pursuant to subparagraph (e)(1)(D) of this Code section. Answers of the county board of equalization or hearing officers shall be part of the decision of the board or hearing officer and shall be served on each party by first-class mail. Determination of disqualification shall be made by the judge of the superior court upon the request of any party when the request is made within two days of the response of the board or hearing officer to the questions. The time prescribed under subparagraph (e)(6)(A) of this Code section shall be tolled pending the determination by the judge of the superior court.

(k) **Compensation of board of equalization members.**

(1) Each member of the county board of equalization shall be compensated by the county per diem for time expended in considering appeals. The compensation shall be paid at a rate of not less than $25.00 per day and shall be determined by the county governing authority. The attendance at required approved appraisal courses shall be part of the official duties of a member of the board, and he or she shall be paid for each day in attendance at such courses and shall be allowed reasonable expenses necessarily incurred in connection with such courses. Compensation pursuant to this paragraph shall be paid from the county treasury upon certification by the member of the days expended in consideration of appeals or attending approved appraisal courses.

(2) Each member of the county board of equalization who participates in online training provided by the department shall be compensated by the county at the rate of $25.00 per day for each eight hours of completed training. A member shall certify under oath and file an affidavit with the appeal administrator stating the number of

hours required to complete such training and the number of hours which were actually completed. The appeal administrator shall review the affidavit and, following approval thereof, shall notify the county governing authority. The Council of Superior Court Clerks of Georgia shall develop and make available an appropriate form for such purpose. Compensation pursuant to this paragraph shall be paid from the county treasury following approval of the appeal administrator of the affidavit filed under this paragraph.

(l) **Military service.** In the event of the absence of an individual from such individual's residence because of duty in the armed forces, the filing requirements set forth in paragraph (3) of subsection (f) of this Code section shall be tolled for a period of 90 days. During this period, any member of the immediate family of the individual, or a friend of the individual, may notify the tax receiver or the tax commissioner of the individual's absence due to military service and submit written notice of representation for the limited purpose of the appeal. Upon receipt of this notice, the tax receiver or the tax commissioner shall initiate the appeal.

(m) **Interest.**

(1) For the purposes of this Code section, any final value that causes a reduction in taxes and creates a refund that is owed to the taxpayer shall be paid by the tax commissioner to the taxpayer, entity, or transferee who paid the taxes within 60 days from the date of the final determination of value. Such refund shall include interest at the same rate specified in Code Section 48-2-35 which shall accrue from the due date of the taxable year in question or the date paid, whichever is later, through the date on which the final determination of value was made. In no event shall the amount of such interest exceed $150.00 for homestead property or $5,000.00 for nonhomestead property. Any refund paid after the sixtieth day shall accrue interest from the sixty-first day until paid with interest at the same rate specified in Code Section 48-2-35. The interest accrued after the sixtieth day and forward shall not be subject to the limits imposed by this subsection. The tax commissioner shall pay the tax refund and any interest for the refund from current collections in the same proportion for each of the levying authorities for whom the taxes were collected.

(2) For the purposes of this Code section, any final value that causes an increase in taxes and creates an additional billing shall be paid to the tax commissioner as any other tax due. After the tax bill notice has been mailed out, the taxpayer shall be afforded 60 days from the date of the postmark to make full payment of the adjusted bill. Once the 60 day payment period has expired, the bill shall be considered past due and interest shall accrue from the original billing

due date as specified in Code Section 48-2-40 without limit until the bill is paid in full. Once past due, all other fees, penalties, and late and collection notices shall apply as prescribed in this chapter for the collection of delinquent taxes.

(n) **Service of notice.** A notice of appeal to a board of tax assessors under subsection (e), (e.1), (f), or (g) of this Code section shall be deemed filed as of the date of the United States Postal Service postmark, receipt of delivery by statutory overnight delivery, or, if the board of tax assessors has adopted a written policy consenting to electronic service, by transmitting a copy to the board of tax assessors via email in portable document format using all email addresses provided by the board of tax assessors. Service by mail, statutory overnight delivery, or electronic transmittal is complete upon such service. Proof of service may be made within 45 days of receipt of the annual notice of current assessment under Code Section 48-5-306 to the taxpayer by certificate of the taxpayer, the taxpayer's attorney, or the taxpayer's employee by written admission or by affidavit. Failure to make proof of service shall not affect the validity of service.

(o) **Notice to representative.** When a taxpayer authorizes an agent, representative, or attorney in writing to act on the taxpayer's behalf, and a copy of such written authorization is provided to the county board of tax assessors, all notices required to be provided to the taxpayer under this Code section, including those regarding hearing times, dates, certifications, notice of changes or corrections, or other official actions, shall be provided to the taxpayer and the authorized agent, representative, or attorney. Upon agreement by the county board of tax assessors and the taxpayer's agent, representative, or attorney, notices required by this Code section to be sent to the taxpayer or the taxpayer's agent, representative, or attorney may be sent by email. The failure to comply with this subsection with respect to a notice required under this Code section shall result in the tolling of any deadline imposed on the taxpayer under this Code section with respect to that notice.

History.

Ga. L. 1913, p. 123, § 6; Ga. L. 1918, p. 230, § 1; Ga. L. 1931, p. 7, § 85; Code 1933, § 92-6912; Ga. L. 1958, p. 387, § 1; Ga. L. 1972, p. 1094, §§ 1-9; Ga. L. 1973, p. 709, § 1; Ga. L. 1974, p. 609, §§ 2-4; Ga. L. 1975, p. 1090, §§ 1, 2; Ga. L. 1976, p. 276, § 1; Ga. L. 1976, p. 366, § 1; Ga. L. 1976, p. 1744, § 1; Ga. L. 1977, p. 588, § 1; Ga. L. 1977, p. 903, § 1; Ga. L. 1977, p. 1009, § 1; Code 1933, § 91A-1449, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 519, § 2; Ga. L. 1980, p. 1722, § 1; Ga. L. 1981, p. 1554, § 5; Ga. L. 1983, p. 576, § 2; Ga. L. 1983, p. 1158, § 1; Ga. L. 1984, p. 22, § 48; Ga. L. 1984, p. 352, § 3; Ga. L. 1986, p. 419, § 1; Ga. L. 1988, p. 220, §§ 1, 2; Ga. L. 1988, p. 487, §§ 1, 2; Ga. L. 1990, p. 1122, § 4; Ga. L. 1990, p. 1361, § 1; Ga. L. 1991, p. 664, § 1; Ga. L. 1991, p. 1110, § 2; Ga. L. 1992, p. 1678, § 1; Ga. L. 1992, p. 2352, § 1; Ga. L. 1993, p. 435, §§ 1, 2; Ga. L. 1993, p. 1777, § 3; Ga. L. 1994, p. 318, §§ 1, 2; Ga. L. 1994, p. 787, §§ 1, 2; Ga. L. 1994, p. 1051, § 1; Ga. L. 1994, p. 1088, § 1; Ga. L. 1994, p. 1823, § 2; Ga. L. 1995, p. 10, § 48; Ga. L. 1999, p. 1043, § 3; Ga. L. 2000, p. 136, § 48; Ga.

L. 2000, p. 873, §§ 2, 3; Ga. L. 2000, p. 1589, § 3; Ga. L. 2001, p. 495, § 1; Ga. L. 2004, p. 455, § 3; Ga. L. 2006, p. 769, § 1/SB 597; Ga. L. 2008, p. 1149, §§ 4, 5, 6/HB 1081; Ga. L. 2009, p. 216, §§ 1, 2/SB 240; Ga. L. 2010, p. 1104, §§ 2-1, 4-3, 6-1/SB 346; Ga. L. 2013, p. 655, § 5/HB 197; Ga. L. 2014, p. 672, § 4/HB 755; Ga. L. 2015, p. 1219, §§ 15, 16/HB 202; Ga. L. 2016, p. 166, § 5/SB 258; Ga. L. 2016, p. 864, § 48/HB 737; Ga. L. 2017, p. 774, § 48/HB 323; Ga. L. 2018, p. 162, § 2/HB 374; Ga. L. 2019, p. 656, § 2/HB 183; Ga. L. 2019, p. 1056, § 48/SB 52; Ga. L. 2020, p. 254, § 1/SB 410; Ga. L. 2021, p. 377, § 1/HB 292; Ga. L. 2021, p. 922, § 48/HB 497; Ga. L. 2022, p. 767, § 2-39/HB 916; Ga. L. 2024, p. 20, § 1-7/HB 581, see notes for effective date; Ga. L. 2024, p. 1052, § 5(19)/SB 448, effective July 1, 2024.

Delayed effective date.

Ga. L. 2024, p. 20, § 4-1/HB 581, provides that the 2024 amendment becomes effective on January 1, 2025; provided, however, that, if a constitutional amendment which becomes effective on January 1, 2025 and which authorizes the General Assembly to provide by general law for a homestead exemption that applies statewide, but that permits political subdivisions to individually opt out of such homestead exemption, has not been ratified, then this Act shall stand automatically repealed on January 1, 2025. This Code section, as set out above, does not reflect the amendment by that Act owing to the delayed effective date. If the voters approve, paragraph (g)(2) will read: "(2) An appeal by the taxpayer as provided in paragraph (1) of this subsection shall be effected by emailing, if the county board of tax assessors has adopted a written policy consenting to electronic service, or by mailing to or filing with the county board of tax assessors a written petition for review. An appeal by the county board of tax assessors shall be effected by giving a petition for review to the taxpayer. The petition for review given to the taxpayer shall be dated and shall contain the name and the last known address of the taxpayer. The petition for review shall specifically state the grounds for appeal. The petition for review shall be mailed or filed within 30 days from the date on which the decision of the county board of equalization, hearing officer, or arbitrator is delivered pursuant to subparagraph (e)(6)(D), paragraph (7) of subsection (e.1), or division (f)(3)(C)(ix) of this Code section. Within 45 days of receipt of a taxpayer's petition for review and before the petition for review is filed in superior court, the county board of tax assessors shall send to the taxpayer notice that a settlement conference, in which the county board of tax assessors and the taxpayer shall confer in good faith, will be held at a specified date and time which shall be no later than 30 days from the notice of the settlement conference, and notice of the amount of the filing fee for a petition for review, if any, required by the clerk of the superior court. A taxpayer may appear for the settlement conference in person, by his or her authorized agent or representative, or both. The county board of tax assessors, in their discretion and with the consent of the taxpayer, may alternatively conduct the settlement conference by audio or video teleconference or any other remote communication medium. The taxpayer may exercise a one-time option to reschedule the settlement conference to a different date and time acceptable to the taxpayer during normal business hours. After a settlement conference has convened, the parties may agree to continue the settlement conference to a later date. If at the end of the 45 day review period the county board of tax assessors elects not to hold a settlement conference, then the appeal shall terminate and the taxpayer's stated value shall be entered in the records of the board of tax assessors as the fair market value for the year under appeal and the provisions of subsection (c) of Code Section 48-5-299 shall apply to such value. If neither the taxpayer nor his or her authorized agent or representative attends a properly scheduled settlement conference or fails to confer with the board of tax assessors in good faith on the matter, then such taxpayer shall not receive the benefits of any temporary reduction in the amount of taxes due pending the outcome of the appeal and shall not be awarded attorney's fees or

costs of litigation in connection with the appeal to the superior court. If at the conclusion of the settlement conference the parties reach an agreement, the settlement value shall be entered in the records of the county board of tax assessors as the fair market value for the tax year under appeal and the provisions of subsection (c) of Code Section 48-5-299 shall apply to such value. If at the conclusion of the settlement conference the parties cannot reach an agreement, then written notice shall be provided to the taxpayer that the filing fees for the superior court must be paid by the taxpayer by submitting to the county board of tax assessors a check, money order, or any other instrument payable to the clerk of the superior court within 20 days of the date of the conference. Notwithstanding any other provision of law to the contrary, the amount of the filing fee for an appeal under this subsection shall be $25.00. An appeal under this subsection shall not be subject to any other fees or additional costs otherwise required under any provision of Title 15 or under any other provision of law. Within 30 days of receipt of the taxpayer's payment made out to the clerk of the superior court, or, in the case of a petition for review filed by the county board of tax assessors, within 30 days of giving notice of the petition for review to the taxpayer, the county board of tax assessors shall file with the clerk of the superior court the petition for review and any other papers specified by the person appealing, including, but not limited to, the staff information from the file used by the county board of tax assessors, the county board of equalization, the hearing officer, or the arbitrator. Immediately following payment of such $25.00 filing fee to the clerk of the superior court, the clerk shall remit the proceeds thereof to the governing authority of the county which shall deposit the proceeds into the general fund of the county. All papers and information filed with the clerk shall become a part of the record on appeal to the superior court. At the time of the filing of the petition for review, the county board of tax assessors shall serve the taxpayer and his or her attorney of record, if any, with a copy of the petition for review filed in the superior court and with the civil action file number assigned to the appeal. Such service shall be effected in accordance with subsection (b) of Code Section 9-11-5. No discovery, motions, or other pleadings may be filed by the county board of tax assessors in the appeal until such service has been made."

Amendments.

The 2022 amendment, effective July 1, 2023, rewrote paragraph (g)(2); in the third sentence in paragraph (g)(3), substituted "shall find" for "may, upon motion or sua sponte, authorize the finding" and "incorrect" for "unreasonable"; and added "unless continued by the court for a period not to exceed 90 days" at the end of subparagraph (g)(4)(A). See Editor's notes for applicability.

The first 2024 amendment substituted "If neither the taxpayer nor his or her authorized agent or representative attends a properly scheduled settlement conference or fails to confer with the board of tax assessors in good faith on the matter, then such taxpayer shall not receive the benefits of any temporary reduction in the amount of taxes due pending the outcome of the appeal and shall not be awarded attorney's fees or costs of litigation in connection with the appeal to the superior court." for "If the taxpayer chooses not to participate in the settlement conference, he or she may not seek and shall not be awarded fees and costs at such time when the petition for review is reviewed in superior court." near the middle of paragraph (g)(2). For effective date of this amendment, see the delayed effective date note. See Editor's notes for applicability.

The second 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, in the second sentences in subparagraphs (e)(3)(B) and (e)(3)(C), substituted "the internet website" for "the website" and "an internet website" for "a website".

History of Section.

This Code section is partially derived from the decisions in Vestel v. Edwards, 143 Ga. 368, 85 S.E. 187 (1915); Ogletree v. Woodward, 150 Ga. 691, 105 S.E. 243 (1920); Turner v. Wade, 254 U.S. 64, 41 S. Ct. 27, 65 L. Ed. 134 (1920).

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1987, a semicolon was deleted following "minutes of the board" in the second sentence of paragraph (d)(3), "prima-facie" was substituted for "prima facie" in the first sentence of paragraph (e)(4).

Pursuant to Code Section 28-9-5, in 2010, "an arbitration" was substituted for "a arbitration" in the first sentence of subparagraph (f)(3)(A).

Pursuant to Code Section 28-9-5, in 2015, "separate line items" was substituted for "separate lines items" near the end of subparagraph (d)(4)(C.1).

Pursuant to Code Section 28-9-5, in 2018, "Valuation" heading was added to subsection (g.1).

Pursuant to Code Section 28-9-5, in 2018, "Notice to representative" heading was added to subsection (o).

Editor's notes.

Ga. L. 1999, p. 1043, § 4, not codified by the General Assembly, provides that the amendment to this Code section is applicable to all assessments and proceedings commenced on or after January 1, 2000.

Ga. L. 2006, p. 769, § 2/SB 597, not codified by the General Assembly, provides that the 2006 amendment of this Code section shall apply with respect to all tax appeals filed with the county boards of tax assessors on or after that date.

Ga. L. 2009, p. 216, § 3/SB 240, not codified by the General Assembly, provides that the amendments to this Code section shall be applicable to all property tax appeals submitted to arbitration or appealed to the superior court on or after April 29, 2009.

Ga. L. 2015, p. 1219, § 27/HB 202, not codified by the General Assembly, provides, in part, that Sections 13 and 15 of this Act shall become effective on July 1, 2015, and that Sections 9, 12, and 15 of this Act shall be applicable to all appeals filed on or after January 1, 2016. Ga. L. 2015, p. 1219, § 15/HB 202, purported, in part, to amend subsections (a) through (e) but actually amended subsections (a) through (e.1).

Ga. L. 2020, p. 254, § 3/SB 410, not codified by the General Assembly, provides that this Act shall be applicable to tax years beginning on or after January 1, 2021.

For application of this statute in 2020 and 2021, see Executive Orders 05.28.20.02, 06.11.20.01, 06.29.20.02, 07.15.20.01, 07.31.20.02, 08.15.20.01, 08.31.20.02, 09.15.20.01, 09.30.20.02, 10.15.20.01, 10.30.20.02, 11.13.20.01, 11.30.20.02, 12.08.20.01, 12.30.20.02, 01.15.21.01, 01.29.21.02, 02.15.21.01, 02.26.21.02, 03.12.21.01, 03.31.21.03, 04.30.21.01, 05.28.21.02, 06.30.21.02, 07.22.21.02, 08.19.21.02, and 09.20.21.02.

Ga. L. 2024, p. 20, § 4-1/HB 581, not codified by the General Assembly, makes paragraph (g)(2) of this Code section applicable to taxable years beginning on or after January 1, 2025. For effective date of this amendment, see the delayed effective date note.

Law reviews.

For article surveying developments in Georgia local government law from mid-1980 through mid-1981, see 33 Mercer L. Rev. 187 (1981).

For annual survey of state and local taxation, see 38 Mercer L. Rev. 337 (1986).

For article, "Procedure and Problems in Georgia Ad Valorem Tax Appeals," see 26 Ga. St. B.J. 98 (1990).

For annual survey of state and local taxation, see 42 Mercer L. Rev. 421 (1990).

For note on the 1992 amendment of this Code section, see 9 Ga. St. U. L. 329 (1992).

For survey article on real property law for the period from June 1, 2002 to May 31, 2003, see 55 Mercer L. Rev. 397 (2003).

For survey article on administrative law, see 60 Mercer L. Rev. 1 (2008).

For survey article on real property law, see 60 Mercer L. Rev. 345 (2008).

For annual survey on real property law, see 61 Mercer L. Rev. 301 (2009).

For article, "Administrative Law," see 63 Mercer L. Rev. 47 (2011).

For survey article on local government law, see 67 Mercer L. Rev. 147 (2015).

For survey article on real property law, see 67 Mercer L. Rev. 193 (2015).

For article, "A Taxing Exception: Southern LNG, Inc. v. MacGinnitie's Narrow Interpretation of the Mandamus Exception," see 66 Mercer L. Rev. 855 (2015).

For annual survey on local government law, see 70 Mercer L. Rev. 177 (2018).

For annual survey on local government, see 73 Mercer L. Rev. 193 (2021).

JUDICIAL DECISIONS

Analysis

General Consideration
Qualifications of Members
Appeals
1. In General
2. Notice of Appeal
3. Appeals to Board of Equalization
4. Appeals to Superior Court

General Consideration

Constitutionality of board of equalization's judicial powers. — Even if the General Assembly has vested some judicial powers in the county boards of equalization, such action is not violative of Ga. Const. 1945, Art. VI, Sec. I, Para. I (see now Ga. Const. 1983, Art. VI, Sec. I, Para. I). Tax Assessors v. Chitwood, 235 Ga. 147, 218 S.E.2d 759, 1975 Ga. LEXIS 808 (1975).

Statute does not deny due process or equal protection. Webb v. Board of Tax Assessors, 235 Ga. 790, 221 S.E.2d 810, 1976 Ga. LEXIS 1446 (1976).

Notice, hearing, and appeal provisions comport with due process requirements. — Statute provides for ample notice and a hearing, and the statute also provides for an appeal to the superior court, which constitutes a de novo action. Therefore, the statute does not violate the due process clause of the state and federal Constitutions. Webb v. Board of Tax Assessors, 235 Ga. 790, 221 S.E.2d 810, 1976 Ga. LEXIS 1446 (1976).

Pre- and post-deprivation remedies met due process requirements. — With respect to a challenge to a tax re-valuation of property, a pre-deprivation remedy under O.C.G.A. § 48-5-311(e)(6)(D)(iii)(I), allowing a taxpayer to pay less than the full amount of the tax assessed, and a post-deprivation remedy under § 48-5-311(e)(6)(D)(iii)(II), allowing a refund in the event the tax assessor lost in the appeals process, met federal and state due process requirements. Hooten v. Thomas, 297 Ga. App. 487, 677 S.E.2d 670, 2009 Ga. App. LEXIS 366 (2009), cert. denied, No. S09C1356, 2009 Ga. LEXIS 616 (Ga. Oct. 5, 2009).

Denial of the taxpayer's hearing provided for by this statute violates the taxpayer's due process rights. Ward v. Landrum, 140 Ga. App. 497, 231 S.E.2d 347, 1976 Ga. App. LEXIS 1533, 1976 Ga. App. LEXIS 2643 (1976).

Procedure described in this statute satisfies requirements of due process and equal protection, insofar as these require notice and an opportunity to be heard. Griggs v. Greene, 230 Ga. 257, 197 S.E.2d 116, 1973 Ga. LEXIS 880 (1973), overruled in part as stated in Rice v. Fulton County, 358 Ga. App. 1, 852 S.E.2d 860, 2020 Ga. App. LEXIS 681 (2020).

Statute meets constitutional due process requirements so long as the statute affords a review by an unbiased board. Stewart County v. Thompson, 224 Ga. 303, 161 S.E.2d 877, 1968 Ga. LEXIS 750 (1968).

Loss of right to hearing not denial of due process when due to taxpayer's action. — Allowing a taxpayer's right to a hearing on the assessment of the taxpayer's property to be cut off by the passage of time, or the independent action of other parties, violates the taxpayer's due process rights unless caused by culpable or negligent conduct on the part of the taxpayer. Ward v. Landrum, 140 Ga. App. 497, 231 S.E.2d 347, 1976 Ga. App. LEXIS 1533, 1976 Ga. App. LEXIS 2643 (1976).

Termination of administrative procedure did not violate separation of powers. — O.C.G.A. § 48-5-311(g)(2),

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requiring a county board of tax assessors to schedule a settlement conference within 45 days of the taxpayer's notice of appeal, and providing that the taxpayer's stated value be adopted if the board elected not to schedule a conference, did not usurp the superior court's jurisdiction or violate the separation of powers clause, Ga. Const. 1983, Art. I, Sec. II, Par. III. Hall County Bd. of Tax Assessors v. Westrec Props., 303 Ga. 69, 809 S.E.2d 780, 2018 Ga. LEXIS 42 (2018).

Representation before board. — Agreement in which a company committed itself to represent a taxpayer's interests before the board of equalization was not void as constituting the unauthorized practice of law. Grand Partners Joint Venture I v. Realtax Resource, Inc., 225 Ga. App. 409, 483 S.E.2d 922.

Section concerns and affects both the public interest and the interest of the taxpayer. — Public has an interest in the proper administration of the revenue laws and the solvency of its fisc, while the taxpayer is entitled to know promptly and precisely the extent of the taxpayer's tax liability. Lackey v. DeKalb County, 156 Ga. App. 309, 274 S.E.2d 705, 1980 Ga. App. LEXIS 2954 (1980).

Statute sets forth remedy of taxpayer seeking uniformity of assessment. — Procedure for securing uniformity in tax assessments in a county was former Code 1933, § 92-6911 (see O.C.G.A. § 48-5-306) placed upon county tax assessors, and if their action displeases a taxpayer, the taxpayer's remedy was arbitration as provided in former Code 1933, § 92-6912 (see O.C.G.A. § 48-5-311). Grafton v. Turner, 227 Ga. 809, 183 S.E.2d 458, 1971 Ga. LEXIS 851 (1971).

Taxpayers have an adequate and complete remedy at law for the contention that the taxpayers tax digest lacks the uniformity required under the Constitution of Georgia. Tax Assessors v. Chitwood, 235 Ga. 147, 218 S.E.2d 759, 1975 Ga. LEXIS 808 (1975); Chilivis v. Backus, 236 Ga. 88, 222 S.E.2d 371, 1976 Ga. LEXIS 774 (1976); Gordon County Bd. of Tax Assessors v. Aldon Indus., 237 Ga. 527, 228 S.E.2d 905, 1976 Ga. LEXIS 1296 (1976).

Adequate remedy at law provided by statute. — Taxpayers were not entitled to injunctive relief in a class action against a county board of tax assessors alleging that spot reappraisals violated the taxpayers' constitutional right to equal protection under 42 U.S.C. § 1983 since O.C.G.A. § 48-5-311 provided an adequate remedy at law. Glynn County Bd. of Tax Assessors v. Haller, 273 Ga. 649, 543 S.E.2d 699, 2001 Ga. LEXIS 207 (2001), overruled in part, Gilliam v. State, 312 Ga. 60, 860 S.E.2d 543, 2021 Ga. LEXIS 467 (2021).

Provisions of O.C.G.A. § 9-11-17(a) regarding dismissal for failure to prosecute in the name of a real party in interest apply to O.C.G.A. § 48-5-311. Spencer v. Lamar County Bd. of Tax Assessors, 202 Ga. App. 742, 415 S.E.2d 332, 1992 Ga. App. LEXIS 129 (1992).

Appointments subject to O.C.G.A. § 15-12-81. — Trial court did not err in granting a citizen's motion for a writ of mandamus compelling a superior court clerk's compliance, with respect to the appointments of county board of equalization (BOE) members, with the public notice requirements of O.C.G.A. § 15-12-81 because there was no error in granting mandamus to require the clerk to comply with her mandatory duties under § 15-12-81; because BOE members are appointed by the grand jury, O.C.G.A. § 48-5-311(c)(2), their appointments are plainly subject to the provisions of § 15-12-81. Everetteze v. Clark, 286 Ga. 11, 685 S.E.2d 72, 2009 Ga. LEXIS 643 (2009).

No material factor identified under O.C.G.A. § 48-5-299. — Grant of summary judgment to the taxpayers in the taxpayers' respective assessment appeals was upheld because the county board's stated basis for increasing the properties' valuations of changes in comparable sales could not, as a matter of law, constitute a material factor as contemplated by O.C.G.A. § 48-5-299(c)(4). DeKalb County Bd. of Tax Assessors v. CWS SGARR Brookhaven, LLC, 352 Ga. App. 848, 836

S.E.2d 729, 2019 Ga. App. LEXIS 639 (2019).

Two requirements for determining material factors. — Georgia Court of Appeals held that in applying rules of statutory interpretation, and reading O.C.G.A. § 48-5-299(c)(4) as a whole, the other material factors contemplated by the statute must meet two requirements: first, they must be factors that an on-site inspection of the property would reveal; and, second, they must be factors that are specific to the particular piece of property at issue. DeKalb County Bd. of Tax Assessors v. CWS SGARR Brookhaven, LLC, 352 Ga. App. 848, 836 S.E.2d 729, 2019 Ga. App. LEXIS 639 (2019).

Procedures contemplate findings as to fair market value. — Statutory design of appeal to the county board of equalization and then to the superior court contemplates that findings as to fair market value shall be made. Hodsdon v. Duckett, 135 Ga. App. 922, 219 S.E.2d 634, 1975 Ga. App. LEXIS 1876 (1975).

When tax assessors fail to use same standard in assessing property of same class as affirmatively shown by facts alleged in a petition for injunctive relief and declaration of illegality of tax assessment, there is no merit in the contention that the plaintiffs have an adequate and complete remedy by arbitration (now hearing and trial) under this statute. Colvard v. Ridley, 218 Ga. 490, 128 S.E.2d 732, 1962 Ga. LEXIS 542 (1962).

Valuation of property may be changed in subsequent years even if not further improved. — Mere fact that property had been assessed for taxes at a certain value after arbitration (now appeal) under this statute in a previous tax year would not prevent the taxing authorities from fixing the valuation different for a succeeding year, even though no improvements had been made on the property since the arbitration (now appeal). Hutchins v. Williams, 212 Ga. 754, 95 S.E.2d 674, 1956 Ga. LEXIS 519 (1956).

Fee awards afforded to the taxpayer the additional relief to which the taxpayer was statutorily entitled under O.C.G.A. §§ 9-11-54(c)(1) and 48-5-311(g)(4)(B)(ii). Fulton County Bd. of Tax Assessors v. Toro Props. VI, LLC, 329 Ga. App. 26, 763 S.E.2d 496, 2014 Ga. App. LEXIS 613 (2014).

Valuation, uniformity, and equalization proper matters for basis of refund claim. — County homeowners, who alleged that the assessors board engaged in "sales chasing" by selectively targeting recently sold properties for reappraisal at the increased sales price while leaving the assessed values of similar unsold properties unchanged, stated a tax refund claim under O.C.G.A. § 48-5-380; the procedure allegedly violated the uniformity and equalization requirements of Ga. Const. 1983, Art. VII, Sec. I, Para. III(a), and O.C.G.A. § 48-5-306(a). Rice v. Fulton County, 358 Ga. App. 1, 852 S.E.2d 860, 2020 Ga. App. LEXIS 681 (2020), cert. denied, No. S21C0644, 2021 Ga. LEXIS 561 (Ga. July 7, 2021).

No time limitation in fee award. — Rendering the fee awards after the expiration of the term of the court of the valuation orders did not frustrate judicial economy or violate Georgia's public policy as O.C.G.A. § 48-5-311(g)(4)(B)(ii) contained no time limitation dictating when a taxpayer must move or a court must award litigation costs and attorney fees. Fulton County Bd. of Tax Assessors v. Toro Props. VI, LLC, 329 Ga. App. 26, 763 S.E.2d 496, 2014 Ga. App. LEXIS 613 (2014).

No party estopped from challenging court jurisdiction when material to party's interest. — Fact that the taxpayer objected to an assessment and invoked arbitration does not estop the taxpayer from attacking an award in equity as void since the court was without jurisdiction of the subject matter. Such a judgment is void and may be attacked collaterally as a mere nullity in any court by any party when it becomes material to that party's interest. Montgomery v. Suttles, 191 Ga. 781, 13 S.E.2d 781, 1941 Ga. LEXIS 366 (1941).

Effect of subsequent amendments on other laws. — Special law which incorporated the pre-1972 version of this statute was not repealed implicitly or explicitly by the subsequent 1972

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enactment. Boynton v. Lenox Square, Inc., 232 Ga. 456, 207 S.E.2d 446, 1974 Ga. LEXIS 982 (1974).

When a local law incorporates this statute using the language "as amended," the law is not construed to include future amendments, but only those made prior to the passage of the local law. Medical Ass'n v. Joint City, 132 Ga. App. 188, 207 S.E.2d 673, 1974 Ga. App. LEXIS 1642 (1974).

Determination of uniform assessment. — Pursuant to O.C.G.A. § 48-5-311, the requirement that property be "uniformly assessed" means that the property be assessed uniformly with other property included in the county's own tax digest. Williams v. DeKalb County Bd. of Tax Assessors, 249 Ga. 164, 289 S.E.2d 235, 1982 Ga. LEXIS 764 (1982).

In determining whether a county board of tax assessors has "uniformly assessed" the value of certain property pursuant to O.C.G.A. § 48-5-311, it is not significant that the board of tax assessors of a neighboring county might have assessed it differently, and thus the trial court did not err in excluding the taxpayer's evidence of the neighboring county's tax digest. Williams v. DeKalb County Bd. of Tax Assessors, 249 Ga. 164, 289 S.E.2d 235, 1982 Ga. LEXIS 764 (1982).

Jurisdiction to order equalization. — Superior Court had jurisdiction to order equalization of tax digests and, no appeal having been taken from the order, the court could enjoin the county tax commissioner from collecting taxes until such time as the county board of tax assessors had complied with the order. Wallace v. Meyer, 260 Ga. 253, 394 S.E.2d 350, 1990 Ga. LEXIS 295 (1990).

Notice of appeal to equalization board did not raise issue of uniformity. — Notice of appeal to board of equalization stating that assessment in question reflected unrealistic values which had been placed on referenced property did not raise issue of uniformity or equalization of the assessment and could not be raised for the first time on appeal to the superior court. DeKalb County Bd. of Tax Assessors v. Kendall, Inc., 164 Ga. App. 374, 295 S.E.2d 345, 1982 Ga. App. LEXIS 2804 (1982).

No default judgment for failure to file defensive pleadings on appeal. — Appeal procedure outlined in subsection (f) of O.C.G.A. § 48-5-311 does not contemplate the filing of a "complaint" or "answer," and a default judgment will not lie for failure to file defensive pleadings in a de novo hearing on appeal in the superior court from a property evaluation. Rogers v. DeKalb County Bd. of Tax Assessors, 247 Ga. 726, 279 S.E.2d 223, 1981 Ga. LEXIS 842 (1981).

No takings claim. — Taxpayers did not have a takings claim under 42 U.S.C. § 1983 because the procedures of O.C.G.A. § 48-5-380 or O.C.G.A. § 48-5-311 provide adequate remedies. Brian Realty Corp. v. DeKalb County, 229 Ga. App. 209, 493 S.E.2d 595 (1997).

Board's failure to schedule settlement conference within 45 days. — Plain language of O.C.G.A. § 48-5-311(g)(2) required a county board of tax assessors to schedule and notice a settlement conference with taxpayers within 45 days of receipt of the taxpayers' notices of appeal, and provided that the appeal terminated and the taxpayer's stated value was adopted if the board elected not to schedule a conference. Hall County Bd. of Tax Assessors v. Westrec Props., 303 Ga. 69, 809 S.E.2d 780, 2018 Ga. LEXIS 42 (2018).

Prompt adjudication required. — Summary judgment for a county board of tax assessors (BTA) in a taxpayer's suit seeking injunctive relief and a writ of mandamus compelling a board of equalization (BOE) to adjudicate its appeal of a reassessment for one tax year was reversed as: (1) there were no objective criteria in place for choosing businesses for audits when the taxpayer was chosen for a four-year audit; (2) there was evidence that the BTA attempted to thwart the taxpayer's statutory right to prompt adjudication of its appeal before the BOE under O.C.G.A. § 48-5-311; and (3) there was a jury question as to whether the audit was begun by an accounting firm or the BTA for an improper purpose in violation of O.C.G.A. § 48-5-299(a). Parisian, Inc. v. Cobb

County Bd. of Tax Assessors, 263 Ga. App. 332, 587 S.E.2d 771, 2003 Ga. App. LEXIS 1117 (2003), cert. denied, No. S04C0238, 2004 Ga. LEXIS 75 (Ga. Jan. 20, 2004).

Time within which to accept or reject taxpayer's appraisal. — Because O.C.G.A. § 48-5-311(f)(3)(A) specifies the effect of the failure of the board of assessors to accept or reject the taxpayer's appraisal within 45 days, that language must be enforced. Fulton County Bd. of Tax Assessors v. Fast Evictions, LLC, 314 Ga. App. 178, 723 S.E.2d 461, 2012 Ga. App. LEXIS 137 (2012).

Board of tax assessors failed to timely reject taxpayer's appraisals. — Trial court did not err by deciding that a county board of tax assessors failed to timely reject a taxpayer's certified appraisals of the taxpayer's real property pursuant to O.C.G.A. § 48-5-311(f)(3)(A) because the board completely failed to show when the board made the board's decision to reject the appraisals; the board notified the taxpayer that the board rejected the taxpayer's appraisal and adopted a different recommended value 53 days after the taxpayer submitted the appraisal, but there was no indication in the record of when the board made the board's decision. Fulton County Bd. of Tax Assessors v. Fast Evictions, LLC, 314 Ga. App. 178, 723 S.E.2d 461, 2012 Ga. App. LEXIS 137 (2012).

Board of assessors failed to prove that prior year sale was not bona fide. — Board of Assessors failed to prove its contention that a 2011 sale of taxable property by Freddie Mac did not qualify as an arm's length, bona fide sale for purposes of limiting the assessment value of the property in the next year under O.C.G.A. § 48-5-2(3). CPF Invs., LLLP v. Fulton County Bd. of Assessors, 330 Ga. App. 744, 769 S.E.2d 159, 2015 Ga. App. LEXIS 52 (2015).

Faulty valuation resulted in legal error. — Because the trial court determined that the county's witnesses were only required to consider, rather than actually apply, the factors listed in O.C.G.A. § 48-5-2(3)(B) and relied upon a faulty valuation in declaring the complex's fair market value for the 2018 tax year, that conclusion was legal error, and the trial court's fair market valuation had to be reversed. Bainbridge Ltd., L.P. v. DeKalb Cty Tax Assessors, 362 Ga. App. 654, 869 S.E.2d 606, 2022 Ga. App. LEXIS 80 (2022).

Issuance of quo warranto improper. — Trial court erred in granting a citizen a writ of quo warranto revoking county board of equalization (BOE) members' appointments because, although BOE members were public officers subject to quo warranto, the citizen's petition for a writ of quo warranto was subject to dismissal when the citizen did not seek leave of court prior to filing the complaint. Everetteze v. Clark, 286 Ga. 11, 685 S.E.2d 72, 2009 Ga. LEXIS 643 (2009).

Qualifications of Members

Members must be fair, disinterested, and impartial. — In addition to other statutory qualifications, since an arbitrator (now member of board of equalization) acts in a quasi-judicial capacity, the arbitrator must possess the judicial qualifications of fairness, disinterestedness, and impartiality. Hill v. Board of Tax Equalizers, 227 Ga. 145, 179 S.E.2d 243, 1971 Ga. LEXIS 618 (1971).

When disqualification for relationship must be sought. — Contention that a member of the board of tax equalizers was disqualified because of a relationship to the defendant came too late when made at the jury trial. Statute sets the method for objection on this ground. Murray v. Richardson, 134 Ga. App. 676, 215 S.E.2d 715, 1975 Ga. App. LEXIS 2123 (1975).

Appeals

1. In General

Challenge to constitutionality of system. — O.C.G.A. § 48-5-311 provided a plain and adequate remedy at law to a taxpayer's challenge that a county's tax assessment and appraisal system deprived the taxpayer of due process of law, equal protection of the law, and lacked uniformity as required under the provisions of the Constitution of Georgia. Vann v. DeKalb County Bd. of Tax Assessors, 186 Ga. App. 208, 367 S.E.2d

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43, 1988 Ga. App. LEXIS 308 (1988); Arnold v. Gwinnett County Bd. of Tax Assessors, 207 Ga. App. 759, 429 S.E.2d 146, 1993 Ga. App. LEXIS 355 (1993).

Taxpayer, whose challenge to the constitutionality of the board's methodology for assessing taxes is inextricably bound to the basic issue of uniformity of assessment of real property located within the county, may appeal under the provisions of subsection (e) and (f) (now (g)) of O.C.G.A. § 48-5-311 "as to matters of taxability, uniformity of assessment, and value." Vann v. DeKalb County Bd. of Tax Assessors, 186 Ga. App. 208, 367 S.E.2d 43, 1988 Ga. App. LEXIS 308 (1988).

To assert the taxpayer's constitutional issue before the superior court in a de novo appeal, the taxpayer must have timely raised the issue before the board of equalization. Vann v. DeKalb County Bd. of Tax Assessors, 186 Ga. App. 208, 367 S.E.2d 43, 1988 Ga. App. LEXIS 308 (1988).

Even though the statutes providing for ad valorem taxation of motor vehicles do not specifically provide for apportionment, the statutes are not unconstitutional since the assessment of value may be challenged through the appeal procedure of O.C.G.A. § 48-5-311 and the owner thereby has the opportunity to establish that a vehicle has acquired a tax situs in another state. East W. Express, Inc. v. Collins, 264 Ga. 774, 449 S.E.2d 599, 1994 Ga. LEXIS 864 (1994).

Mandamus improperly granted to a company. — Judgment of the trial court granting a company mandamus relief was reversed because the judgment did not show that the State Revenue Commissioner, in refusing to accept the company's ad valorem tax returns as a gas company, violated a clear legal duty, failed to act, or engaged in arbitrary, capricious, and unreasonable actions because the company was not authorized to engage in the business of a gas company under O.C.G.A. § 46-1-1(5) nor be a natural-gas company as defined in 15 U.S.C. § 717a(6). Riley v. Southern LNG, Inc., 300 Ga. 689, 797 S.E.2d 878, 2017 Ga. LEXIS 158 (2017).

Scope of superior court's jurisdiction on appeal. — Trial court properly ruled that the moratorium in O.C.G.A. § 48-5B-1 applied to the subject property in the de novo appeal of the value determination and was not a waived issue because the board of tax assessors, the arbitrator, and the board of equalization had all made determinations as to value and the applicability of the moratorium, thus, it was properly before the trial court. SPH Glynn, LLC v. Glynn County Bd. of Tax Assessors, 326 Ga. App. 196, 756 S.E.2d 282, 2014 Ga. App. LEXIS 142 (2014), cert. denied, No. S14C1002, 2014 Ga. LEXIS 514 (Ga. June 16, 2014), cert. denied, No. S14C1003, 2014 Ga. LEXIS 512 (Ga. June 16, 2014).

Exemption denial not subject to federal law suit. — Denial of an exemption of a portion of taxability was not subject to suit under 42 U.S.C. § 1983. Gwinnett County Bd. of Tax Assessors v. Network Publications, Inc., 208 Ga. App. 15, 429 S.E.2d 696, 1993 Ga. App. LEXIS 440 (1993).

Appeals process was efficient, plain, and speedy. — Appeals process of O.C.G.A. § 48-5-311 was "efficient" in addition to being "plain" and "speedy" both on its face and as applied to the instant taxpayers. Accordingly, the case was barred by the Tax Injunction Act of 1937, 28 U.S.C. § 1341, since the case sought a federal court injunction over a state tax assessment when a "plain, speedy, and efficient" remedy existed under state law. Amos v. Glynn County Bd. of Tax Assessors, 347 F.3d 1249, 2003 U.S. App. LEXIS 21209 (11th Cir. 2003), overruled in part as stated in, Otero v. Newrez LLC, No. 21-12990, 2022 U.S. App. LEXIS 21851 (11th Cir. Aug. 8, 2022).

Burden of proof is on the taxpayers, when the taxpayers are the parties who initiate an appeal to the superior court. Hawkins v. Grady County Bd. of Tax Assessors, 180 Ga. App. 834, 350 S.E.2d 790, 1986 Ga. App. LEXIS 2277 (1986).

Procedures must be followed. — Corporate taxpayers were barred from seeking refunds pursuant to O.C.G.A.

§ 48-5-380 of ad valorem taxes paid on vehicles with tax situses in other states because the taxpayers failed to follow the appeal procedures provided by O.C.G.A. § 48-5-311. DeKalb County v. Genuine Parts Co., 225 Ga. App. 376, 484 S.E.2d 57.

County and the county tax commission were entitled to summary judgment as a matter of law in an action filed by a trucking company seeking a refund for ad valorem taxes the company paid, as it was undisputed at trial that the company failed to timely file for either an apportionment in two subject years, as required by Ga. Comp. R. & Regs. r. 560-11-7-.02, and that the company did not appeal the company's ad valorem assessment within 45 days of the assessment in either year, pursuant to O.C.G.A. § 48-5-311; furthermore, O.C.G.A. § 48-5-380, which allowed a taxpayer to seek a refund up to three years after paying an erroneous or illegal tax, did not apply. Trans Link Motor Express, Inc. v. Dougherty County, 265 Ga. App. 10, 592 S.E.2d 859, 2003 Ga. App. LEXIS 1612 (2003).

Whether an appeal is procedurally defective is a judicial decision, not a clerical determination, and the County Board of Tax Assessors should have certified the taxpayer's appeal to the superior court instead of concluding that the notice of appeal was defective. Fulton County Bd. of Tax Assessors v. Boyajian, 271 Ga. 881, 525 S.E.2d 687, 2000 Ga. LEXIS 3 (2000).

Time periods directory only. — Provisions of paragraph (e)(3) and subparagraphs (e)(6)(A) and (e)(6)(B) of O.C.G.A. § 48-5-311 are directory rather than mandatory because a county board of equalization can become so swamped with appeals that the board cannot hear all pending cases within such short statutory time periods. Moreton Rolleston, Jr., Living Trust v. Glynn County Bd. of Tax Assessors, 240 Ga. App. 405, 523 S.E.2d 600.

If the county board of equalization, in the exercise of due diligence and with reasonable justification for delay, sets a hearing at the earliest available date, which date falls outside of the statutory time period, there has been substantial compliance with O.C.G.A. § 48-5-311. Moreton Rolleston, Jr., Living Trust v. Glynn County Bd. of Tax Assessors, 240 Ga. App. 405, 523 S.E.2d 600.

Excusable delay was properly found. — Because a county board of tax assessors certified appeals filed by 16 taxpayers to the superior court notifying the Clerk of the Court that the clerk was required to assign these appeals for trial at the first term following the filing of the appeals, any requirement that the taxpayers had to also make demand for trial at the first term was clearly redundant and, therefore, unnecessary; thus, the trial court properly found that an excusable delay from obtaining a trial at the first term was shown, warranting denial of the board's motion to dismiss the appeals. Glynn County Bd. of Tax Assessors v. Paulding, 270 Ga. App. 851, 608 S.E.2d 317, 2004 Ga. App. LEXIS 1624 (2004).

No presumption of correctness attaches to assessments of the property of taxpayers who take an appeal to the superior court. Hawkins v. Grady County Bd. of Tax Assessors, 180 Ga. App. 834, 350 S.E.2d 790, 1986 Ga. App. LEXIS 2277 (1986).

Court not bound by board of equalization valuation. — Trial court's ruling in a tax appeal that the tax value for the property was limited to the value set by the board of equalization was error because O.C.G.A. § 48-5-311(g)(3) provided that tax appeals to the superior court were de novo actions, and thus the trial court's determination of value in the tax appeal was not restricted to the valuation of the board of equalization; the dicta in Gwinnett County Bd. of Tax Assessors v. Ackerman/Indian Trail Assn., 198 Ga. App. 723, 402 S.E.2d 794 (Ga. Ct. App. 1991), was disapproved to the extent that the opinion conflicted with the holding that a tax appeal required a trial de novo, regardless of which party filed the appeal, and that the trial court was not bound by the board of equalization's findings. Fulton County Bd. of Tax Assessors v. NABISCO, 296 Ga. App. 884, 676 S.E.2d 41, 2009 Ga. App. LEXIS 394 (2009).

Relation to other law. — O.C.G.A. § 48-5-7.2(e) expressly requires a tax

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board, upon denying an application for preferential assessment, to notify the applicant in the same manner that notices of assessment are given pursuant to O.C.G.A. § 48-5-306, and appeals from the denial of an application for preferential assessment by the board of tax assessors shall be made in the same manner that other property tax appeals are made pursuant to O.C.G.A. § 48-5-311; in light of a tax board's failure to provide an applicant with the proper statutory notice, the board's argument that the applicant failed to exhaust the applicant's administrative remedies was without merit. Chatham County Bd. of Tax Assessors v. Emmoth, 278 Ga. 144, 598 S.E.2d 495, 2004 Ga. LEXIS 538 (2004).

Appeal process under § 48-5-380 distinguished. — While the appeal process of O.C.G.A. § 48-5-311 is available to address any asserted error in an ad valorem real property tax assessment, the refund process established by O.C.G.A. § 48-5-380 is intended only to correct errors of fact or law which have resulted in erroneous or illegal taxation. Gwinnett County v. Gwinnett I Ltd. Partnership, 265 Ga. 645, 458 S.E.2d 632, 1995 Ga. LEXIS 507 (1995).

Taxpayer need not comply with the appeal procedure provided in subsection (e) of O.C.G.A. § 48-5-311 prior to proceeding under O.C.G.A. § 48-5-380. Marconi Avionics, Inc. v. DeKalb County, 165 Ga. App. 628, 302 S.E.2d 384, 1983 Ga. App. LEXIS 1983 (1983).

Appeal to board required for judicial review. — When the appellant and the board of tax assessors entered into a stipulation that the board of equalization would adopt the position of the board of tax assessors, therefore eliminating the need to appeal to the board of equalization, and then the appellant filed an appeal to the superior court, a judgment rendered by the superior court would be reversed for lack of subject-matter jurisdiction because jurisdiction cannot be conferred by agreement or consent. Barland Co. v. Bartow County Bd. of Tax Assessors, 172 Ga. App. 61, 322 S.E.2d 316, 1984 Ga. App. LEXIS 2396 (1984).

Superior Court properly dismissed the taxpayer's action questioning the validity of a second tax assessment which was issued to correct an earlier assessment for the same tax year since the case was subject to appeal to and decision by the county board of equalization. Dean v. Fulton County Bd. of Tax Assessors, 218 Ga. App. 760, 463 S.E.2d 64, 1995 Ga. App. LEXIS 876 (1995).

Property owners improperly challenged a tax re-valuation by a county in a Georgia trial court because the owners had an adequate remedy at law pursuant to O.C.G.A. § 48-5-311 in an appeal to a county board of tax equalization (BOE) as the BOE had to first address procedural errors and errors in methodology to value the property under § 48-5-311(e)-(g); constitutional claims, such as claims of the uniformity of assessment under Ga. Const. 1983, Art. VII, Sec. I, Para. III also had to be addressed first before the BOE. Hooten v. Thomas, 297 Ga. App. 487, 677 S.E.2d 670, 2009 Ga. App. LEXIS 366 (2009), cert. denied, No. S09C1356, 2009 Ga. LEXIS 616 (Ga. Oct. 5, 2009).

Exhaustion of administrative remedies prerequisite. — Because the superior court should not have exercised the court's equitable jurisdiction when the property owners failed to exhaust their administrative remedies under O.C.G.A. § 48-5-311 through the county board of equalization, the superior court's judgment for declaratory relief in favor of the property owners at summary judgment was reversed; instead, the superior court should have dismissed the property owners' suit for failing to state a claim. Chatham County Bd. of Assessors v. Jepson, 261 Ga. App. 771, 584 S.E.2d 22, 2003 Ga. App. LEXIS 774 (2003).

When a taxpayer challenged an assessment, but paid the taxes, the taxpayer could not bring an action in the courts for a declaratory judgment to determine the validity of the assessment until the taxpayer exhausted the taxpayer's statutory administrative options under either O.C.G.A. § 48-5-311 or O.C.G.A.

§ 48-5-380. Wilmington Trust Co. v. Glynn County, 265 Ga. App. 704, 595 S.E.2d 562, 2004 Ga. App. LEXIS 239 (2004).

Trial court had jurisdiction of taxpayer's action to find reassessments invalid for failure of the county board of tax assessors to follow provisions of O.C.G.A. § 48-5-311 requiring a response to the taxpayer's assessment appeal. Moreton Rolleston, Jr. Living Trust v. Glynn County Bd. of Tax Assessors, 228 Ga. App. 371, 491 S.E.2d 812.

Denial of dismissal motion no ground for reversal when taxpayer attempting to overturn board's decision. — When a taxpayer files a "motion to dismiss" in the superior court based on the failure of the board of equalization to set a hearing date on the taxpayer's appeal within 15 days of receipt of the taxpayer's notice of appeal from the decision of the board of tax assessors, which decision the taxpayer is attempting to overturn, the denial of the motion to dismiss is favorable to the taxpayer and establishes no ground for reversal of the trial court's judgment. Williamson v. DeKalb County Bd. of Tax Assessors, 168 Ga. App. 47, 308 S.E.2d 55, 1983 Ga. App. LEXIS 2672 (1983).

Right to appeal penalty assessment. — Assessment of a penalty for a breach of a conservation use covenant is an assessment for which a property owner has the right to appeal pursuant to O.C.G.A. § 48-5-311. Oconee County Bd. of Tax Assessors v. Thomas, 282 Ga. 422, 651 S.E.2d 45, 2007 Ga. LEXIS 592 (2007).

Costs and expenses on appeal. — Taxpayer was not entitled to costs and expenses for having to appear at the hearing of the county board of equalization on the taxpayer's initial appeal and for having to appeal to the superior court in order to have the board rule on the taxpayer's request. Hulse v. Joint City-County Bd. of Assessors, 219 Ga. App. 309, 464 S.E.2d 890, 1995 Ga. App. LEXIS 1028 (1995).

Trial court erred in awarding a property owner $7,515.00 in attorney fees under O.C.G.A. § 48-5-311(g)(4)(B)(ii) against a county board of tax assessors after a jury valued the property in question substantially lower than the board's valuation; the record did not support the trial court's conclusion that the property was returned for taxation by operation of law pursuant to O.C.G.A. § 48-5-20(a)(2), and the board did not waive the board's objection to the fees, because the trial court did not hold a hearing on the issue of the attorney's fees, O.C.G.A. § 9-11-46(a), and the board therefore did not have an opportunity to object to the award. Fulton County Bd. of Tax Assessors v. Butner, 258 Ga. App. 68, 573 S.E.2d 100, 2002 Ga. App. LEXIS 1354 (2002).

As a taxpayer did not pay the prior year's taxes, the taxes paid by the taxpayer for the prior year were deemed the taxpayer's tax return for the tax year under O.C.G.A. § 48-5-20(a)(2), so the taxpayer was not required to file a separate tax return on the taxpayer's property, and the taxpayer's late return was a nullity; therefore, upon the taxpayer's successful appeal of an assessment of the taxpayer's property, an award of costs and attorneys fees was mandatory under O.C.G.A. § 48-5-311(g)(4)(B)(ii). Simmons v. Bd. of Tax Assessors, 268 Ga. App. 411, 602 S.E.2d 213, 2004 Ga. App. LEXIS 932 (2004), cert. denied, No. S04C1950, 2004 Ga. LEXIS 1071 (Ga. Nov. 22, 2004).

Owner was entitled to attorney fees under O.C.G.A. § 48-5-311(g)(4)(B)(ii) in an appeal of a property valuation because the final determination of value on appeal to the trial court was 85 percent or less of the valuation set by the board of tax assessors; it was irrelevant that the owner's appeal to the trial court dealt with a "freeze" of the property value under O.C.G.A. § 48-5-299(c) and not a new determination of value. Fulton County Bd. of Tax Assessors v. Lamb, 298 Ga. App. 618, 680 S.E.2d 656, 2009 Ga. App. LEXIS 759 (2009).

Order awarding a city attorney fees pursuant to O.C.G.A. § 48-5-311(g)(4)(B)(ii) in the city's appeal of a county's tax assessment of the city's property was error because § 48-5-311(g)(4)(B)(ii) only applied when there was a final determination of value on appeal, and the city's appeal related

Appeals (Cont'd)
1. In General (Cont'd)

not to value, but to taxability; valuation was not an issue, and, thus, the city did not satisfy the condition precedent to an award of fees under § 48-5-311(g)(4)(B)(ii). O.C.G.A. § 48-5-311(g)(4)(B)(ii) did not permit an award of attorney fees or litigation costs when, as here, the sole issue was taxability. Clayton County Bd. of Tax Assessors v. City of Atlanta, 299 Ga. App. 233, 682 S.E.2d 328, 2009 Ga. App. LEXIS 863 (2009).

Final property valuation that was set by operation of law pursuant to O.C.G.A. § 48-5-299(c) based on a prior tax year appeal did not preclude an award of attorney's fees and costs under O.C.G.A. § 48-5-311(g)(4)(B)(ii). Fulton County Bd. of Tax Assessors v. LM Atlanta Airport, LLC, 313 Ga. App. 439, 721 S.E.2d 640, 2011 Ga. App. LEXIS 1122 (2011).

In a tax appeal, the trial court erred by denying the taxpayer's request for attorney fees under O.C.G.A. § 48-5-311(g)(4)(B)(ii) because it was successful against the county board of tax assessors and the capped value met the statutory threshold mandating that the taxpayer shall recover costs of litigation and reasonable attorney's fees incurred in the action. SPH Glynn, LLC v. Glynn County Bd. of Tax Assessors, 326 Ga. App. 196, 756 S.E.2d 282, 2014 Ga. App. LEXIS 142 (2014), cert. denied, No. S14C1002, 2014 Ga. LEXIS 514 (Ga. June 16, 2014), cert. denied, No. S14C1003, 2014 Ga. LEXIS 512 (Ga. June 16, 2014).

Applicability to challenge to multi-year audit. — Taxpayer was not required to file an appeal pursuant to O.C.G.A. § 48-5-311 contesting the denial of the taxpayer's reduction in the value of the taxpayer's merchandise for one tax year as the taxpayer was no longer challenging the taxpayer's property tax assessment for one tax year, but was seeking to avoid a multi-year audit that the taxpayer attributed to an improper motive. Parisian, Inc. v. Cobb County Bd. of Tax Assessors, 263 Ga. App. 332, 587 S.E.2d 771, 2003 Ga. App. LEXIS 1117 (2003), cert. denied, No. S04C0238, 2004 Ga. LEXIS 75 (Ga. Jan. 20, 2004).

Trial court erred in awarding costs and attorney fees to the taxpayers after the jury valued their improved real property as the jury's valuation figure was 85.8 percent and the applicable statute provided that the valuation figure had to be 85 percent or less of the equalization board's figure in order for an award of costs and attorney fees to be permitted; the trial court erred because the court deducted the undisputed value of an improvement on the land from the jury's verdict, but a proper valuation of the fair market value of the property dictated that the value of that improvement be included in determining whether the valuation was 85 percent or less of the equalization board's valuation for the purpose of awarding fees and costs. Stephens County Bd. of Tax Assessors v. Shirley, 263 Ga. App. 743, 589 S.E.2d 263, 2003 Ga. App. LEXIS 1270 (2003), cert. denied, No. S04C0426, 2004 Ga. LEXIS 155 (Ga. Feb. 16, 2004).

Value to be determined by arbitrator. — In a taxpayer's appeal from a real estate tax valuation assessment, the trial court erred in holding that the value of a parcel of real property was the value set out in the taxpayer's appraisal since within 45 days of receiving the taxpayer's certified appraisal, the county board of tax assessors voted to reject the taxpayer's appraisal value, and within another 45 days, the board certified the appeal in compliance with O.C.G.A. § 48-5-311(f)(3)(A). Thus, the value remained to be determined by an arbitrator in accordance with the procedures set out in § 48-5-311(f). Fulton County Bd. of Tax Assessors v. Greenfield Inv. Group, LLC, 313 Ga. App. 195, 721 S.E.2d 128, 2011 Ga. App. LEXIS 1026 (2011), cert. dismissed, No. S12C0711, 2012 Ga. LEXIS 706 (Ga. Sept. 10, 2012).

2. Notice of Appeal

The 30 day limit in paragraph (g)(2) of O.C.G.A. § 48-5-311 applies to boards of assessors as well as to taxpayers. Stoddard v. Cone, 250 Ga. 852, 301 S.E.2d 641, 1983 Ga. LEXIS 660 (1983).

Failure of the board of tax assessors to give 30-day notice of appeal to taxpayers

deprived the superior court of jurisdiction and such failure was not an amendable or curable defect. Fulton County Bd. of Tax Assessors v. CPS Four Hundred, Ltd., 213 Ga. App. 1, 443 S.E.2d 645, 1994 Ga. App. LEXIS 447 (1994).

Failure to file notice with board of tax assessors or to state grounds for appeal warrants dismissal. — When a landowner seeks to appeal the county tax assessor's assessed valuation of the landowner's property, but the notice of appeal is not filed with the board of tax assessors and does not state the grounds for appeal, the superior court does not err in dismissing the landowner's complaint to enjoin the county tax commissioner from selling the landowner's property because of unpaid taxes. Davis v. Holland, 251 Ga. 86, 303 S.E.2d 455, 1983 Ga. LEXIS 732 (1983).

Tax assessors must certify notice of appeal. — O.C.G.A. § 48-5-311 did not give a board of tax assessors the discretion to refuse to certify a notice of appeal based on the taxpayer's failure to be present at the hearing. Fulton County Bd. of Tax Assessors v. Jones, 264 Ga. 828, 452 S.E.2d 99, 1995 Ga. LEXIS 9 (1995).

Deadline for filing an appeal runs 30 days from date taxpayer receives decision.— Deadline of 30 days to file a property tax appeal under O.C.G.A. § 48-5-311(g)(2) was held to run from the date the taxpayer received the decision, not the date it was mailed; therefore, the trial court properly denied the county board of tax assessors' motion to dismiss because the taxpayer's appeal was timely. Chattooga County Bd. of Tax Assessors v. Connelly, 370 Ga. App. 598, 898 S.E.2d 608, 2024 Ga. App. LEXIS 59 (2024).

Failure to notify taxpayers of right to appeal. — County's recalculations of the taxpayers' homestead exemptions involved the value of the exemptions, bringing the taxpayers within O.C.G.A. § 48-5-49, which permitted an appeal under O.C.G.A. § 48-5-311. Since the county had not given the taxpayers notice under O.C.G.A. § 48-5-306 of the taxpayers' right to appeal, the taxpayers were entitled to equitable relief requiring the county to: (1) provide taxpayers with proper notice of and the right to appeal changes in the homestead exemptions; (2) stop collecting taxes referenced in bills sent without proper notice; and (3) refund any tax money collected based on bills issued without such notice. Fulton County Bd. of Tax Assessors v. Marani, 299 Ga. App. 580, 683 S.E.2d 136, 2009 Ga. App. LEXIS 909 (2009), cert. denied, No. S09C2072, 2010 Ga. LEXIS 18 (Ga. Jan. 12, 2010).

Sufficiency of notice. — Superior court erred in granting a county's motion to dismiss a taxpayer's appeal when, although the taxpayer had not offered an explanation as to the basis for the taxpayer's appeal, the board of tax assessors thereafter certified the case to the superior court and, in connection with the docketing of the case in that court, the taxpayer filed a form in which the taxpayer stated that the taxpayer was filing the appeal "under Ga. Code No. 48-5-311. . . regarding taxability and value." Vaughters v. DeKalb County Bd. of Tax Assessors, 198 Ga. App. 589, 402 S.E.2d 340, 1991 Ga. App. LEXIS 188 (1991).

Because the taxpayers' notice of appeal of the valuation of their property was filed with the County Board of Tax Assessors (BTA) and the trial court on the same day, which was within the statutory time limitation of O.C.G.A. § 48-5-311(g)(2), the BTA received the required notice initiating the taxpayers' appeal; filing the notice in the trial court did not render the notice ineffective. Fulton County Bd. of Tax Assessors v. Love, 296 Ga. App. 613, 676 S.E.2d 256, 2009 Ga. App. LEXIS 288 (2009).

Notice provisions to be strictly construed. — When a reassessment notice was properly mailed to a taxpayer pursuant to O.C.G.A. § 48-5-306 and the taxpayer's request for a late appeal was denied by the board of tax assessors, the taxpayers were not entitled to declaratory relief or to mandamus because O.C.G.A. § 48-5-311 prescribes a time limit for filing appeals, the appeal was not filed within that period, and the board was powerless to extend the period. Dillard v. Denson, 243 Ga. App. 458, 533 S.E.2d 101, 2000 Ga. App. LEXIS 428 (2000).

Liberal reading of notice of appeal. — Trial court erred in dismissing the taxpayers' appeal, when, although the

Appeals (Cont'd)
2. Notice of Appeal (Cont'd)

taxpayers' enumerated errors to the superior court were not clearly defined, a liberal reading of the notice of appeal indicated that the taxpayers were challenging the assessed value of their property based on an alleged error in computation. Andrew v. DeKalb County Bd. of Tax Assessors, 194 Ga. App. 274, 390 S.E.2d 115, 1990 Ga. App. LEXIS 104 (1990).

3. Appeals to Board of Equalization

Judicial power to determine taxability is vested in the board of equalization. Bouy v. Kiley, 238 Ga. 47, 230 S.E.2d 861, 1976 Ga. LEXIS 1085 (1976).

Authority to remedy deficiencies in ad valorem tax digest. — General Assembly has invested county boards of tax equalization with ample authority to remedy deficiencies in an ad valorem tax digest. The board is authorized to order the entire digest recompiled if such action is necessary to obtain uniformity. Tax Assessors v. Chitwood, 235 Ga. 147, 218 S.E.2d 759, 1975 Ga. LEXIS 808 (1975).

Scope of board's authority to redress grievances as to tax assessments. — County board of equalization has full authority to fashion an adequate and appropriate legal remedy to redress grievances of taxpayers regarding the valuation of individual parcels of land and the uniformity of the county tax assessments. Tax Assessors v. Chitwood, 235 Ga. 147, 218 S.E.2d 759, 1975 Ga. LEXIS 808 (1975); Chilivis v. Kell, 236 Ga. 226, 223 S.E.2d 117, 1976 Ga. LEXIS 820 (1976).

Time for appeal begins to run on the day notice is received by the taxpayer. Hamilton v. Edwards, 245 Ga. 810, 267 S.E.2d 246, 1980 Ga. LEXIS 944 (1980).

Extension of time for appeal not within authority of board of tax assessors. — There is no power or authority given the board of tax assessors or any members thereof to extend the period in which an appeal may be filed by the taxpayer, and the attempted extension of the time for filing such an appeal is void. Tift v. Tift County Bd. of Tax Assessors, 234 Ga. 155, 215 S.E.2d 3, 1975 Ga. LEXIS 1072 (1975).

Sufficiency of statement of grounds for appeal. — Letter expressing no more than dissatisfaction with an assessment does not specifically state the grounds for appeal. Ledbetter Trucks, Inc. v. Floyd County Bd. of Tax Assessors, 143 Ga. App. 323, 238 S.E.2d 440, 1977 Ga. App. LEXIS 2304 (1977), rev'd, 240 Ga. 791, 242 S.E.2d 596, 1978 Ga. LEXIS 829 (1978).

Excuse from filing notice of appeal. — Prior communications with a firm employed by the board of tax assessors to assist the board in making valuations do not excuse taxpayers from complying with the requirement for filing a notice of appeal from the official notice given by the board of tax assessors. Peagler v. Georgetown Assocs., 232 Ga. 848, 209 S.E.2d 186, 1974 Ga. LEXIS 1109 (1974).

Notice met requirements. — Board of Equalization sent notice according to the statutory requirements as Property Tax Advisers, LLC, while retained and authorized to act on behalf of the taxpayer, was not an attorney who could be served under O.C.G.A. § 48-5-311(o), and the taxpayer admitted receiving a copy of the notice that was sent via certified mail. Dickey v. Fulton County Bd. of Assessors, 333 Ga. App. 346, 776 S.E.2d 480, 2015 Ga. App. LEXIS 313 (2015).

Necessity for appellant to raise issue of nonuniformity. — County board of equalization may fashion a remedy in light of evidence that there is a lack of uniformity of property assessment within the county. Such nonuniformity within the county need not be raised by an appellant before the county board of equalization. The board need only find reason to believe that property is not uniformly assessed. Therefore, a taxpayer who in good faith returns the taxpayer's property at the property's fair market value and does not have the taxpayer's return changed would seem to be entitled to present evidence to the county board of equalization that there is a lack of uniformity within the county. Adams v. Smith, 415 F. Supp. 787, 1976 U.S. Dist. LEXIS 14487 (N.D. Ga. 1976), aff'd, 568

F.2d 1232, 1978 U.S. App. LEXIS 12338 (5th Cir. 1978).

Specification of reasons for uniformity determination. — After the taxpayer raised the issue of uniformity of taxation in the taxpayer's appeal, the county board of equalization was required to specifically decide the issue and to specify the reasons for the board's determination. Hulse v. Joint City-County Bd. of Assessors, 219 Ga. App. 309, 464 S.E.2d 890, 1995 Ga. App. LEXIS 1028 (1995).

Errors in the hearing before the board of equalization are waived if not objected to at the equalizers' hearing. Murray v. Richardson, 134 Ga. App. 676, 215 S.E.2d 715, 1975 Ga. App. LEXIS 2123 (1975).

Challenge of procedure for carrying assessments forward from one year to the next. — When a taxpayer challenges the procedure used by the county tax officials in carrying forward assessments from one year to the next, rather than attacking the validity of the tax digest or the amount of the assessment, the taxpayer is not required to appeal to the county board of equalization. Smith v. Day, 237 Ga. 48, 226 S.E.2d 588, 1976 Ga. LEXIS 1142 (1976).

Board's challenge to non taxable usufruct finding. — Trial court determined that the lease agreement conveyed a non taxable usufruct to the airport hotel owner because the 50 year agreement created a rebuttable presumption of an estate for years and that presumption was sufficiently rebutted in the specific terms of the agreement which when read together made clear that the hotel owner could not use the land in as absolute a manner as may be done with an estate for years. Chatham County Bd. of Assessors v. Jay Lalaji, Inc., 357 Ga. App. 34, 849 S.E.2d 768, 2020 Ga. App. LEXIS 557 (2020).

Hearing must be timely scheduled. — Board of Equalization hearing officer was correct to find that Appeal Administrator did not timely act and, as a result, it was correct to find taxpayer's asserted property valuation of $2,335,000 to be fair market value for property pursuant to O.C.G.A. § 48-5-311(e.1)(6)(A). Fulton County Bd. of Tax Assessors v. Westside Atlanta Retail, 363 Ga. App. 839, 872 S.E.2d 886, 2022 Ga. App. LEXIS 226 (2022).

4. Appeals to Superior Court

Applicability of Ch. 11, T. 9 to appeals to superior court. — An appeal brought under former Code 1933, § 92-6912 (see now O.C.G.A. § 48-5-311) to the superior court from a county tax assessment was a "complaint" pursuant to Ga. L. 1966, p. 609 § 3 (see now O.C.G.A. § 9-11-3), which was required to be answered by responsive pleading pursuant to Ga. L. 1966, p. 609, § 12 (see now O.C.G.A. § 9-11-12). Hall County Bd. of Tax Assessors v. Reed, 142 Ga. App. 556, 236 S.E.2d 532, 1977 Ga. App. LEXIS 1699 (1977).

Approval of appeal not required. — O.C.G.A. § 48-5-311 does not require a county or city governing authority to vote to approve an appeal by the board of tax assessors; the plain meaning of the Code section is that the governing authority be notified of appeals by the board of tax assessors from assessment changes of 15 percent or less so that, within 10 days of receipt of such notice, the governing authority may choose to prohibit the appeal by majority vote. Hall County Bd. of Tax Assessors v. Peachtree Doors, Inc., 214 Ga. App. 613, 448 S.E.2d 476, 1994 Ga. App. LEXIS 983 (1994), cert. denied, No. S95C0076, 1995 Ga. LEXIS 254 (Ga. Jan. 26, 1995).

Appeals must be received, not merely mailed, within time limit. — Although mailed within 30 days of date on which decision of board of equalization was sent by registered mail, an appeal from the board's decision was not timely because the appeal was not received until two days after expiration of the 30-day time limit imposed by statute. Camden County Bd. of Tax Assessors v. Proctor, 155 Ga. App. 650, 271 S.E.2d 902, 1980 Ga. App. LEXIS 2719 (1980).

Amendment of notice of appeal to superior court. — Since the policy of the law is in favor of deciding tax appeals on the merits, even at the expense of procedural technicalities, Ga. L. 1972, p.

Appeals (Cont'd)
4. Appeals to Superior Court (Cont'd)

624, § 1 (see now O.C.G.A. § 5-6-48 (b)), which allowed amendments of notices of appeal from superior courts, also applied to notices of appeal to the superior courts from administrative boards. Mundy v. Clayton County Tax Assessors, 146 Ga. App. 473, 246 S.E.2d 479, 1978 Ga. App. LEXIS 2414 (1978).

While the notice of appeal that the board of tax assessors sent to the taxpayer was insufficient to perfect the appeal of the board of tax assessors to the superior court because it did not specifically state the grounds for the appeal, the superior court erred in dismissing the appeal; the superior court should have allowed the board of assessors to cure the defect by amending the notice of appeal since notices of appeal could be amended and a policy existed to decide tax appeals on their merits. Fulton County Bd. of Tax Assessors v. Layton, 261 Ga. App. 356, 582 S.E.2d 520, 2003 Ga. App. LEXIS 628 (2003).

Jury trial required for questions of facts. — When questions of fact are presented by such an appeal, the law requires a de novo investigation by trial before a jury. Hall County Bd. of Tax Assessors v. Reed, 142 Ga. App. 556, 236 S.E.2d 532, 1977 Ga. App. LEXIS 1699 (1977).

Clerk's duty to set appeal for first term. — When it is the express command of a statute that appeal cases be tried by a jury at the first term after the appeal has been entered, it would appear to be the duty of the clerk to place the appeal upon the trial calendar for the first term after docketing. McCauley v. Bd. of Tax Assessors, 243 Ga. 844, 257 S.E.2d 266, 1979 Ga. LEXIS 1112 (1979).

Dismissal of appeals not heard during first term following filing. — Dismissal of appeal on the ground that the appeal was not brought to trial at the first term is proper when the appellant fails to request that the appeal be placed at the head of the calendar and given the preference to which it is entitled under the law. The provision of this statute, requiring the appeal from the board's decision to be heard before a jury at the first term following the filing of the appeal, concerns and affects both the public interest and the interest of the taxpayer since the public has an interest in the proper administration of the revenue laws and the solvency of its fisc, while the taxpayer is entitled to know promptly and precisely the extent of the taxpayer's tax liability. Thus, dismissal will result from a failure to obtain a trial at the first term unless a reasonable excuse is shown. DeKalb County Bd. of Tax Assessors v. Stone Mountain Indus. Park, 147 Ga. App. 503, 249 S.E.2d 318, 1978 Ga. App. LEXIS 2737 (1978).

Default judgment will not lie for failure to file defensive pleadings in a de novo hearing on appeal in the superior court from a property evaluation. Hall County Bd. of Tax Assessors v. Reed, 142 Ga. App. 556, 236 S.E.2d 532, 1977 Ga. App. LEXIS 1699 (1977).

Under Ga. L. 1966, p. 609, § 55 and Ga. L. 1967, p. 226, § 24 (see now O.C.G.A. § 9-11-55) in conjunction with former Code 1933, § 92-6912 (see now O.C.G.A. § 48-5-311) an appeal did not automatically become in default upon failure to timely file responses, when the statutory design contemplated that findings as to fair market value shall be made. Hall County Bd. of Tax Assessors v. Reed, 142 Ga. App. 556, 236 S.E.2d 532, 1977 Ga. App. LEXIS 1699 (1977).

No automatic default when unliquidated damages involved. — Under Ga. L. 1966, § 55 and Ga. L. 1967, p. 226, § 24 (see now O.C.G.A. § 9-11-55) a case did not automatically become in default upon the failure to timely file responses if the action involves unliquidated damages. Hall County Bd. of Tax Assessors v. Reed, 142 Ga. App. 556, 236 S.E.2d 532, 1977 Ga. App. LEXIS 1699 (1977).

Having failed to appeal from the decision of the board of equalization, a party could not at a later date successfully institute an original action in the superior court to raise the issue of taxability. Bouy v. Kiley, 238 Ga. 47, 230 S.E.2d 861, 1976 Ga. LEXIS 1085 (1976).

Failure of limited liability companies (LLC) to satisfy the requirement of

O.C.G.A. § 48-5-311(e)(2)(A) barred any further right to appeal because the letters and returns the LLCs' representative submitted months before the assessment notices were mailed did not excuse the LLCs from complying with the requirement of O.C.G.A. § 48-5-311(e)(2)(A) that a taxpayer mail or file a notice of appeal within 30 days from the date of mailing the notice pursuant to O.C.G.A. § 48-5-306; because the LLCs failed to comply with O.C.G.A. § 48-5-311(e) so as to effectuate an appeal to the county board of equalization, the LLCs' appeals to the superior court should have been dismissed. Hall County Bd. of Tax Assessors v. Avalon Hills Partners, LLC, 307 Ga. App. 520, 705 S.E.2d 674, 2010 Ga. App. LEXIS 1151 (2010), cert. denied, No. S11C0703, 2011 Ga. LEXIS 602 (Ga. Sept. 6, 2011).

Trial court properly dismissed a taxpayer group's suit seeking a rollback of 2009 assessed values to the 2008 assessed values because whether the moratorium under O.C.G.A. § 48-5B-1 applied should have been raised in an administrative appeal under O.C.G.A. § 48-5-311 and, by failing to pursue the taxpayers' remedy, the taxpayers' complaint was subject to dismissal. We, the Taxpayers v. Bd. of Tax Assessors, 292 Ga. 31, 734 S.E.2d 373, 2012 Ga. LEXIS 944 (2012).

Tax assessor proper party to appeal decision of Board of Equalization. — When the superior court granted the taxpayer's motion for summary judgment and held that the taxpayer's inventory was exempt from property tax, the trial court properly denied the school district's motion to intervene as untimely because the school district moved to intervene after the final judgment and after the appeal period had run; the school district failed to make the required showing to justify intervention; it was the duty of the tax assessor to protect the interests of every recipient of taxes collected, including the school district; and the tax assessor was the appropriate party to appeal the decision of the board of equalization to the superior court. Henry County Sch. Dist. v. Home Depot U. S. A., Inc., 348 Ga. App. 723, 824 S.E.2d 622, 2019 Ga. App. LEXIS 72 (2019).

Scope of superior court's jurisdiction on appeal. — Only those decisions of the board of equalization on questions presented to the board or incident thereto may be relitigated in the superior court. Camp v. Boggs, 240 Ga. 127, 239 S.E.2d 530, 1977 Ga. LEXIS 1421 (1977).

Trial court properly dismissed a taxpayer's appeal from a purported denial of a homestead exemption on grounds that the court lacked subject matter jurisdiction over the case as the taxpayer failed to show both an application for and the denial of a homestead exemption, and failed to exhaust any and all of the applicable administrative remedies under O.C.G.A. § 48-5-311. Carter v. Fayette County, 287 Ga. App. 175, 651 S.E.2d 108, 2007 Ga. App. LEXIS 908 (2007).

Reviewing court lacked subject matter jurisdiction to consider value and uniformity in an appeal of a decision of the Hall County Board of Equalization (BOE) as a hospital did not present those issues in the underlying administrative tax case, which was limited to O.C.G.A. § 48-5-41(a)(5), and the statute's application; further, as there was no Hall County Board of Tax Assessors decision concerning value and uniformity that could have been appealed to the BOE, there was no appeal to the BOE on those issues that could have been waived by mutual agreement and initiated, instead, in the reviewing court under O.C.G.A. § 48-5-311(g)(1). Hall County Bd. of Tax Assessors v. Northeast Ga. Health Sys., 317 Ga. App. 389, 730 S.E.2d 715, 2012 Ga. App. LEXIS 691 (2012), cert. denied, No. S12C2044, 2013 Ga. LEXIS 80 (Ga. Jan. 22, 2013).

When appellant raises only a question of value before the board of equalization, the appellant cannot raise a new claim of uniformity for the first time on appeal to the superior court. Camp v. Boggs, 240 Ga. 127, 239 S.E.2d 530, 1977 Ga. LEXIS 1421 (1977).

Objections waived on appeal if not brought before board. — Matters of taxability, uniformity of assessment, and value must be raised before the county board of equalization in order to raise the matters on appeal to the superior court, notwithstanding that the action in superior court is de novo. Williams v.

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DeKalb County Bd. of Tax Assessors, 249 Ga. 164, 289 S.E.2d 235, 1982 Ga. LEXIS 764 (1982).

When issues not raised before board may be raised before superior court. — When a taxpayer appeals an assessment of the board of tax assessors to the board of equalization, and from the decision of the latter to the superior court for a de novo hearing, the taxpayer is not permitted to raise in the superior court appeal issues which were not raised in the original appeal to the board of equalization. However, when the original appeal to the board of equalization is not included in the record, and when it is not contended that such original appeal failed to raise the question of valuation, an appellant is not estopped in an appeal to the superior court from an adverse decision of the board of equalization from urging at the de novo hearing that the valuation set is excessive. Mundy v. Clayton County Tax Assessors, 146 Ga. App. 473, 246 S.E.2d 479, 1978 Ga. App. LEXIS 2414 (1978).

When a board of equalization fails to answer some of the questions submitted by the taxpayer, such failure should be enumerated as error on a de novo appeal. Accordingly, relief by way of injunction or mandamus is inappropriate because a taxpayer must raise the issue before the board and exhaust the taxpayer's remedies by the statutorily provided appeal. Wilkes v. Redding, 242 Ga. 78, 247 S.E.2d 872, 1978 Ga. LEXIS 1100 (1978).

Burden of proof in superior court is on party initiating appeal to that court. — Because the nonprofit charitable institution had already carried the institution's burden of proving entitlement to a charitable exemption, the burden of proof showing that the institution was not entitled to the exemption on an appeal was on the board of tax assessors. Bd. of Tax Assessors v. Baptist Vill., Inc., 269 Ga. App. 848, 605 S.E.2d 436, 2004 Ga. App. LEXIS 1315 (2004).

Admissibility of hearing proceedings on appeal to superior court. — What transpired at the hearing would not be admissible if objected to in the de novo investigation at trial before jury. Murray v. Richardson, 134 Ga. App. 676, 215 S.E.2d 715, 1975 Ga. App. LEXIS 2123 (1975).

References to prior proceedings and procedures should be omitted as the references have no relevance in a de novo matter. Weeks v. Gwinnett County Bd. of Tax Equalization, 139 Ga. App. 37, 227 S.E.2d 865, 1976 Ga. App. LEXIS 1670 (1976), overruled in part, Gilmer County Bd. of Tax Assessors v. Spence, 309 Ga. App. 482, 711 S.E.2d 51, 2011 Ga. App. LEXIS 371 (2011).

Evidentiary weight given to findings of fact by the board of tax assessors. — Board of tax assessors' findings of fact are not deemed prima facie correct on appeals to the superior court, but are evidence which the jury may consider, along with other evidence, in resolving the issue before the jury. Weeks v. Gwinnett County Bd. of Tax Equalization, 139 Ga. App. 37, 227 S.E.2d 865, 1976 Ga. App. LEXIS 1670 (1976), overruled in part, Gilmer County Bd. of Tax Assessors v. Spence, 309 Ga. App. 482, 711 S.E.2d 51, 2011 Ga. App. LEXIS 371 (2011).

Request for certification from tax consulting firm. — Nothing in the language of O.C.G.A. § 48-5-311 prohibits a tax consulting firm from writing a letter to the board of tax assessors requesting certification of an appeal to superior court. Interstate North Sporting Club v. Cobb County Bd. of Tax Assessors, 250 Ga. App. 221, 551 S.E.2d 91, 2001 Ga. App. LEXIS 733 (2001), cert. denied, No. S01C1545, 2001 Ga. LEXIS 947 (Ga. Nov. 30, 2001).

No presumption of correctness attaches to the assessments of the board of equalization on appeal to the superior court. Hodsdon v. Duckett, 135 Ga. App. 922, 219 S.E.2d 634, 1975 Ga. App. LEXIS 1876 (1975).

Exercise of equitable powers unnecessary. — An appeal before a county board of equalization provides an adequate remedy at law for the determination of county taxpayers' questions, making unnecessary the exercise of the equitable powers of the superior court. Wilkes v. Redding, 242 Ga.

78, 247 S.E.2d 872, 1978 Ga. LEXIS 1100 (1978).

Mandamus and actions in equity not authorized. — Board of equalization is the appropriate forum for deciding a taxpayer's constitutional and procedural issues as well as questions of uniformity, valuation, and taxability; therefore, an action in equity and mandamus in the superior court raising those issues is unauthorized. Wilkes v. Redding, 242 Ga. 78, 247 S.E.2d 872, 1978 Ga. LEXIS 1100 (1978).

Mandamus relief properly denied since certification of appeals obtained. — Trial court did not err by denying a group of property owners their request for mandamus relief in the nature of finding that the county board of tax assessors certified their property tax appeals because it was undisputed that the tax appeals were physically delivered to the trial court and that it had ruled that such appeals were certified to it, thus, the property owners received the relief sought regarding certification. Newton Timber Co., L.L.L.P. v. Monroe County Bd. of Tax Assessors, 295 Ga. 29, 755 S.E.2d 770, 2014 Ga. LEXIS 189 (2014).

Certification required before case placed on trial calendar. — Absent certification of the taxpayers' appeal by the county board of tax assessors, the filing of the appeal under O.C.G.A. § 48-5-311(g)(4)(A) did not occur and the requirement that the case be placed on the first available trial calendar was not yet triggered. Monroe County Bd. of Tax Assessors v. Wilson, 336 Ga. App. 404, 785 S.E.2d 67, 2016 Ga. App. LEXIS 190 (2016), cert. denied, No. S16C1323, 2016 Ga. LEXIS 638 (Ga. Oct. 3, 2016).

Assessment of property taxes. — Judgment setting the value for improved residential real property owned by the property owners at $ 291,000 was appropriate because an appraiser gave expert opinion testimony that the fair market value of the property was $291,000 and other expert witnesses opined that the county employed appraisal methods in ways that systemically produced incorrect or arbitrary estimates of fair market value for residential properties. Gilmer County Bd. of Tax Assessors v. McHugh, 309 Ga. App. 145, 709 S.E.2d 311, 2011 Ga. App. LEXIS 242 (2011), cert. denied, No. S11C1231, 2011 Ga. LEXIS 698 (Ga. Sept. 12, 2011).

Property owners' challenges to tax assessment in superior court. — There was no merit in the Gilmer County Board of Tax Assessor's claim that the superior court erred in allowing the property owners to challenge the uniformity of the tax assessment. The property owners did not base the owners' uniformity challenge solely upon the amount of taxes paid by the specific developer who owned property within the owners' subdivision; the owners also based the owners' challenge upon the amount of taxes paid by numerous other taxpayers in the county to whose properties the property owners contended an absorption rate had been misapplied. Gilmer County Bd. of Tax Assessors v. McHugh, 309 Ga. App. 145, 709 S.E.2d 311, 2011 Ga. App. LEXIS 242 (2011), cert. denied, No. S11C1231, 2011 Ga. LEXIS 698 (Ga. Sept. 12, 2011).

Costs. — When the owner of commercial property successfully appealed an assessment of the property's value by a board of equalization, and the value determined on appeal was less than 80 percent of the value assessed by the board, the taxpayer was entitled to an award of costs, including attorney fees and litigation costs because O.C.G.A. § 48-5-311(g)(4)(B)(ii) became effective prior to the assessment. Pulaski County Bd. of Tax Assessors v. JFS Props., 274 Ga. App. 520, 618 S.E.2d 151, 2005 Ga. App. LEXIS 789 (2005).

Attorney fee awards. — When taxpayers challenging an assessment filed an appeal from the verdict of the first jury that tried the case, it was error, following retrial, to deny the taxpayers attorney fees in connection with the appeal from the first jury verdict. "Action" in O.C.G.A. § 48-5-311(g)(4)(B)(ii) does not limit recovery to attorney fees incurred in the trial court. Buckler v. DeKalb County Bd. of Tax Assessors, 288 Ga. App. 332, 654 S.E.2d 184, 2007 Ga. App. LEXIS 1195 (2007).

Taxpayer was entitled to an award of attorney fees of $37,475 under O.C.G.A.

Appeals (Cont'd)
4. Appeals to Superior Court (Cont'd)

§ 48-5-311(g)(4)(B)(ii) because the jury's valuation of the taxpayer's property was less than 85 percent of the value assessed by the county board of assessors. Although the county later lowered the property's value, the taxpayer had already appealed three times from the original value, and the attorney's fee amendment was intended to ensure that valuations were accurate from the outset. Fulton County Bd. of Tax Assessors v. White, 302 Ga. App. 512, 691 S.E.2d 341, 2010 Ga. App. LEXIS 169 (2010).

Tax assessor waived the assessor's argument that the company was not entitled to attorney fees under O.C.G.A. § 48-5-311(g)(4)(B)(ii) on the grounds that the bank failed to file a property tax return or that the bank was the real party in interest. Fulton County Bd. of Assessors v. Calliope Props., LLC, 312 Ga. App. 875, 720 S.E.2d 312, 2011 Ga. App. LEXIS 1059 (2011).

Award of attorney fees approved on appeal. — Because the value was less than 85 percent of the valuation set by the board of assessors, the trial court awarded the owner attorney fees under O.C.G.A. § 48-5-311(g)(4)(B)(ii). The amount of the fee award was within the range of the evidence adduced at the hearing, and the award was not manifestly unreasonable on its face. Fulton County Bd. of Assessors v. Calliope Props., LLC, 315 Ga. App. 405, 727 S.E.2d 198, 2012 Ga. App. LEXIS 377 (2012).

Dismissal of appeal held erroneous. — Command stated under O.C.G.A. § 48-5-311(g)(4)(A), specifically, that non-jury trials in appeals from a board of equalization to the superior court were to be held within 40 days of filing, was directory rather than mandatory, making erroneous the superior court's dismissal of the appeals upon a failure to hold a hearing within that time period. Jasper County Bd. of Tax Assessors v. Thomas, 289 Ga. App. 38, 656 S.E.2d 188, 2007 Ga. App. LEXIS 1327 (2007).

Remand held proper. — In a gas company's suit against the state revenue commissioner for mandamus compelling the commissioner to accept its property tax returns under O.C.G.A. §§ 48-1-2(21) and 48-5-511(a), remand was proper to determine if the company had an acceptable alternative remedy in its pending county tax appeals under O.C.G.A. § 48-5-311, if the commissioner could be made a party to those appeals by joinder or some other procedure. Southern LNG, Inc. v. MacGinnitie, 294 Ga. 657, 755 S.E.2d 683, 2014 Ga. LEXIS 168 (2014).

OPINIONS OF THE ATTORNEY GENERAL

Georgia Open Meetings Law, O.C.G.A. § 50-14-1 et seq., applies to proceedings both of a county board of tax assessors and of a county board of equalization. 1995 Op. Att'y Gen. No. U95-22.

Persons holding office as members of a county board of equalization by virtue of a one-year appointment under prior law, former Code 1933, § 91A-1449(c), continue in office until their successors can be "commissioned and qualified." As the current statute, O.C.G.A. § 48-5-311(c), provides no mechanism to appoint for a term beginning prior to January 1, 1984, current members thus hold over in office until such time after December 31, 1983, as their successor is commissioned and qualified. 1983 Op. Att'y Gen. No. U83-30.

Property sold under bond for title. — Purchaser/possessor of a piece of property under a bond for title can be subjected to ad valorem taxation for that parcel and once the Board of Tax Assessors chooses to assess the property against the occupant, and not the seller of the property, the occupant should receive the tax notices required by O.C.G.A. § 48-5-306, and be treated as "the taxpayer" entitled to appeal under O.C.G.A. § 48-5-311. 1989 Op. Att'y Gen. U89-17.

Cost of appeal to superior court. — Appellants contesting a decision rendered by a county board of equalization in

superior court must pay the advance court cost deposit set forth in O.C.G.A. §§ 9-15-4 and 15-6-77. 1985 Op. Att'y Gen. No. U85-17, following 1974 Op. Att'y Gen. U74-46.

Effect of late notice from board of tax assessors. — When county tax assessors make a change in property valuation and send out notice thereof in which the date set for a hearing is more than ten days after the mailing of the notice, such notice is not a notice of final assessment, but only of a proposed assessment. 1970 Op. Att'y Gen. No. U70-141.

Payment of ad valorem property taxes would not prejudice a taxpayer's appeal brought pursuant to former Code 1933, § 92-6912 (see now O.C.G.A. § 48-5-311). If successful in such an appeal, the taxpayer would be entitled to a refund under former Code 1933, Ch. 92-39A (see now O.C.G.A. § 48-5-380). 1975 Op. Att'y Gen. No. 75-55.

Cost of appeal to superior court. — Party who files notice of appeal to the superior court bears burden of cost deposit under former Code 1933, §§ 24-2727 and 24-3406 (see now O.C.G.A. §§ 9-15-4 and 15-6-77). 1974 Op. Att'y Gen. No. U74-46.

Possibility of conflict of interest between the grand jury and county board of equalization would not constitute a disqualification for service upon either body, but would be a question for the court at the time of jury selection. 1973 Op. Att'y Gen. No. U73-111.

RESEARCH REFERENCES

Am. Jur. 2d.

72 Am. Jur. 2d, State and Local Taxation, §§ 701, 710.

ALR.

Notice to property owners of increase in assessment or valuation by board of equalization or review, 24 A.L.R. 331; 84 A.L.R. 197.

Construction and application of statute prohibiting or restricting reassessment after assessment and payment of taxes, 85 A.L.R. 107.

Power of board of tax review to receive evidence as to assessable value, without notice to taxpayer, 113 A.L.R. 990.

Standing of one taxpayer to complain of underassessment or nonassessment of property of another for state and local taxation, 9 A.L.R.4th 428.

48-5-312. [Reserved] Status of ad valorem taxes pending review in certain counties and municipalities; petition for lower assessment due to casualty.

History.

Ga. L. 1974, p. 2489, §§ 1-3; Code 1933, 91A-1450, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1981, p. 538, § 1; Ga. L. 1991, p. 303, § 4; repealed by Ga. L. 1996, p. 798, § 1, effective July 1, 1996.

Editor's notes.

Ga. L. 1996, p. 798, § 1 repealed and reserved this Code section, effective July 1, 1996.

48-5-313. Applicability of part.

Nothing contained in this part shall apply to those persons who are required to make their returns to the commissioner.

History.

Ga. L. 1913, p. 123, § 8; Code 1933, § 92-6901; Code 1933, § 91A-1430, enacted by Ga. L. 1978, p. 309, § 2.

JUDICIAL DECISIONS

Application to individuals who make returns to the commissioner is unconstitutional. — Because former Code 1933, §§ 92-6901 and 92-6915 (see now O.C.G.A. §§ 48-5-305 and 48-5-313) provide that nothing in this part shall apply to those persons who are required to make their returns to the comptroller general (now commissioner), these two sections, therefore, expressly exclude such persons from the benefit of any such due process procedure as may be afforded under this part. Therefore, an application of this part by the county board as to such persons contravenes the federal and state Constitutions. Pullman Co. v. Suttles, 187 Ga. 217, 199 S.E. 821, 1938 Ga. LEXIS 753 (1938).

County board exceeded authority. — In an action filed by a utility seeking equitable relief from the rejection of the State Commissioner's fair market valuation by the county board of tax assessors, the trial court erred in granting summary judgment to a county board of tax assessors; the board exceeded the board's authority when, in the course of making a final assessment of a utility's property, it not only substituted the board's own assessment ratio, but also the board's own fair market value for those calculated by the State Commissioner as a final assessment could not include a reappraisal of the fair market value of a taxpayer required to make a return to the state. Ga. Power Co. v. Monroe County, 284 Ga. App. 707, 644 S.E.2d 882, 2007 Ga. App. LEXIS 399 (2007), aff'd, 283 Ga. 12, 655 S.E.2d 817, 2008 Ga. LEXIS 2 (2008).

48-5-314. Confidentiality of taxpayer records; exceptions; penalties.

(a)(1) All records of the county board of tax assessors which consist of materials other than the return obtained from or furnished by an ad valorem taxpayer shall be confidential and shall not be subject to inspection by any person other than authorized personnel of appropriate tax administrators. As an illustration of the foregoing, materials which are confidential shall include, but shall not be limited to, taxpayers' accounting records, profit and loss statements, income and expense statements, balance sheets, and depreciation schedules. Such information shall remain confidential when it is made part of an appeal file. Nothing in this Code section, however, shall prevent any disclosure necessary or proper to the collection of any tax in any administrative or court proceeding.

(2) Records which consist of materials containing information gathered by personnel of the county board of tax assessors, such as field cards, shall not be confidential and are subject to inspection at all times during office hours. The provisions of this paragraph shall not remove the confidentiality of materials such as are specified in paragraph (1) of this subsection.

(3) Failure of the county board of tax assessors to make available records which are not confidential as provided in paragraph (2) of this subsection shall be a misdemeanor.

(b) Any person who knowingly and willfully furnishes information which is confidential under this Code section to a person who is not

authorized by law to receive such information shall upon conviction be subject to a civil penalty not to exceed $1,000.00.

History.

Code 1981, § 48-5-314, enacted by Ga. L. 1986, p. 747, § 2; Ga. L. 1987, p. 558, § 1; Ga. L. 1999, p. 81, § 48.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1987, in the second sentence of paragraph (a)(2), "paragraph" was substituted for "subsection" and "paragraph (1)" was substituted for "subsection (1)".

Editor's notes.

Ga. L. 1986, p. 747, § 3, not codified by the General Assembly, provided: "This Act shall become effective upon its approval by the Governor [approved April 3, 1986] or upon its becoming law without such approval, except that no prosecution shall be made pursuant to this Act for any act committed before July 1, 1986."

Law reviews.

For annual survey of state and local taxation, see 38 Mercer L. Rev. 337 (1986).

JUDICIAL DECISIONS

Contract with private firm for audit services proper. — County board of tax assessors was authorized to contract with a private firm for audit services to aid the board in discovering unreturned and untaxed property. Eckerd Corp. v. Fayette County Bd. of Tax Assessors, 220 Ga. App. 454, 469 S.E.2d 285; Wal-Mart Stores v. Board of Tax Assessors, 246 Ga. App. 161, 539 S.E.2d 869, 2000 Ga. App. LEXIS 1178 (2000).

Private accounting firm bound by confidentiality provision. — Private accounting firm which has contracted with a county board of assessors to conduct an audit of a taxpayer is bound by the confidentiality provision of the statute. Fulton County Bd. of Assessors v. Saks Fifth Ave., Inc., 248 Ga. App. 836, 547 S.E.2d 620, 2001 Ga. App. LEXIS 413 (2001).

Protective order in connection with audit by private firm. — Trial court erred in issuing a protective order in connection with a personal property tax audit of the defendant until such time as the private accounting firm hired by the county board to conduct the audit and the defendant entered into a confidentiality agreement; however, the trial court had full authority to determine what restrictions and limitations were appropriate under the circumstances so long as the court's ruling did not conflict with the rights of the parties under applicable law. Fulton County Bd. of Assessors v. Saks Fifth Ave., Inc., 248 Ga. App. 836, 547 S.E.2d 620, 2001 Ga. App. LEXIS 413 (2001).

OPINIONS OF THE ATTORNEY GENERAL

Information obtained from real estate transfer tax forms and included on county tax assessors' property record cards is not confidential. 1990 Op. Att'y Gen. No. U90-25.

RESEARCH REFERENCES

ALR.

Recovery of damages under § 7431(c)(1)(B) of Internal Revenue Code (26 USCA § 7431(c)(1)(B)) based on improper release of confidential tax return information, 154 A.L.R. Fed. 537.

PART 3

STATE LOANS TO COUNTIES

48-5-330. Financial aid to counties for programs to evaluate and equalize assessments; terms of contract; limitations; procedure when state funds insufficient.

(a) The commissioner may make loans to counties or, if sufficient funds are not available for loans, may contract with counties for the payment specified, as an aid to the counties in financing or defraying the cost of employing persons to assist county boards of tax assessors in carrying out programs reasonably designed to survey and evaluate all, or substantially all, of the property within a county's boundaries and to equalize assessments on the property. The commissioner may promulgate rules, regulations, and instructions as he deems necessary to the purposes and administration of this Code section. The governing authority of each county shall have the exclusive right to determine with whom it shall contract or whom it shall employ to carry out a program receiving aid pursuant to this Code section.

(b) Upon application by a county governing authority for aid under this Code section and upon the submission of a valuation and equalization program, the commissioner shall determine whether the program complies with the rules, regulations, and instructions promulgated pursuant to this Code section. Upon the showing of compliance, the commissioner may contract, to the extent funds are available for loans to counties from funds appropriated for such purpose, with the county governing authority for a loan from the state to pay a part, or all, of the cost of the program and for the repayment of the amount loaned. The contract shall provide for the repayment of the amount loaned without interest in five equal annual installments. The first installment on each loan shall be due on December 31 of the first calendar year for which a property tax digest is prepared following the final payment by the commissioner under the terms of the contract. One of the remaining annual installments shall be due on December 31 in each of the four calendar years following the initial payment. The contract shall also provide that whenever an annual installment is in default, the commissioner shall have an irrevocable power of attorney from the governing authority to direct the Office of the State Treasurer to pay over to him, as commissioner, all funds otherwise due the county or its governing authority under Code Section 48-14-3 or under any other appropriation of the General Assembly for grants to counties for aid in county road construction or county road maintenance until the default has been paid. The Office of the State Treasurer shall comply in each instance with the commissioner's direction. The commissioner shall not make loans in excess of $100,000.00 to any one county.

(c) In the event the commissioner determines that insufficient funds are available under subsection (b) of this Code section to meet the needs of any county in financing a qualified program, subject to the maximum limitation provided in subsection (b) of this Code section, and in the further event that a county governing authority applying and submitting a qualified program demonstrates to the satisfaction of the commissioner that sufficient additional funds can be obtained from other sources to complete satisfactorily the program, the commissioner may contract with the county governing authority for the payment by the state from funds appropriated and available for such purpose of 10 percent of the cost of the qualified program. No amount contracted for pursuant to this subsection shall be repaid. The amount to be paid by the state, however, on behalf of any one county under any contract entered into pursuant to this subsection, shall not exceed $10,000.00. The commissioner may direct that any payment by the state pursuant to this subsection be made in a single installment or two installments 12 months apart.

History.
Ga. L. 1963, p. 419, §§ 1-4; Ga. L. 1967, p. 467, § 1; Code 1933, § 91A-1460, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1982, p. 3, § 48; Ga. L. 1983, p. 3, § 37; Ga. L. 1993, p. 1402, § 18; Ga. L. 2010, p. 863, § 2/SB 296.

RESEARCH REFERENCES

C.J.S.
81A C.J.S., States, § 389 et seq.

48-5-331. Capital fund for loans to counties for property valuation and equalization purposes.

All funds appropriated to the department for the purpose of making loans to counties to aid in defraying the cost of property valuation and equalization programs for ad valorem tax purposes, when such funds were or are included in an allotment approved by the Governor, shall be deemed to create a capital fund to be administered by the commissioner for the purpose of making loans for property valuation and equalization purposes authorized by law. Any funds which are repaid to the commissioner in accordance with the terms of the loans shall become a part of the capital fund and may be reloaned by the commissioner in the manner and under the terms authorized by law.

History.
Ga. L. 1962, p. 447, § 1; Code 1933, § 91A-1461, enacted by Ga. L. 1978, p. 309, § 2.

ARTICLE 5A

EXAMINATION OF COUNTY TAX DIGESTS

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 92-7001 are included in the annotations for this article.

Property classification scheme is not unconstitutional. — No language in this statute expressly establishes separate classes of tangible property for the purposes of taxation in violation of Ga. Const. 1945, Art. VII, Sec. I, Para. III (see now Ga. Const. 1983, Art. VII, Sec. I, Para. III), and no language reasonably authorizes the construction that such was the legislative intent. Griggs v. Greene, 230 Ga. 257, 197 S.E.2d 116, 1973 Ga. LEXIS 880 (1973), overruled in part as stated in Rice v. Fulton County, 358 Ga. App. 1, 852 S.E.2d 860, 2020 Ga. App. LEXIS 681 (2020) (decided under former Code 1933, § 92-7001).

Statute does not violate constitutional due process and equal protection provisions. — The scheme of equalization of tax digests as between the counties does not violate the due process or equal protection provisions of the United States or Georgia Constitutions. Griggs v. Greene, 230 Ga. 257, 197 S.E.2d 116, 1973 Ga. LEXIS 880 (1973), overruled in part as stated in Rice v. Fulton County, 358 Ga. App. 1, 852 S.E.2d 860, 2020 Ga. App. LEXIS 681 (2020) (decided under former Code 1933, § 92-7001).

Commissioner is required to seek uniformity throughout the state on the state levy by requiring all counties to assess property uniformly throughout the state. Hawes v. Conner, 224 Ga. 567, 163 S.E.2d 724, 1968 Ga. LEXIS 850 (1968) (decided under former Code 1933, § 92-7001).

Commissioner may use such means as the commissioner deems proper and reasonable to make the commissioner's determination as to reasonable uniformity. Strickland v. Douglas County, 246 Ga. 640, 272 S.E.2d 340, 1980 Ga. LEXIS 1233 (1980) (decided under former Code 1933, § 92-7001).

Adjustments in the total digest are presumed not to disturb previously established uniformity and equality as between individual taxpayers since all who pay taxes on the class or classes of property to which the adjustments are applied remain in substantially the same relation to each other after the adjustments as the taxpayers were before the adjustments were made. Griggs v. Greene, 230 Ga. 257, 197 S.E.2d 116, 1973 Ga. LEXIS 880 (1973), overruled in part as stated in Rice v. Fulton County, 358 Ga. App. 1, 852 S.E.2d 860, 2020 Ga. App. LEXIS 681 (2020) (decided under former Code 1933, § 92-7001).

Commissioner may examine and adjust tax digest by class of property. — It is clear that the commissioner's duty to examine the digest of a particular county extends no further than an examination of the digest as to particular classes of property as entities, and that the commissioner is authorized to make percentage adjustments in the digests as to any particular class or classes of property with respect to the whole digest of that class and not with respect to segments of the class. Griggs v. Greene, 230 Ga. 257, 197 S.E.2d 116, 1973 Ga. LEXIS 880 (1973), overruled in part as stated in Rice v. Fulton County, 358 Ga. App. 1, 852 S.E.2d 860, 2020 Ga. App. LEXIS 681 (2020) (decided under former Code 1933, § 92-7001).

Subclassification of tangible property for tax purposes. — Former Code 1933, §§ 92-7001 and 92-7002 and Ga. L. 1972, p. 174, § 3 (see now O.C.G.A. § 48-5-273) do not either expressly or impliedly require or authorize the subclassification of tangible property for tax purposes. Herring v. Ferrell, 130 Ga. App. 431, 203 S.E.2d 617, 1973 Ga. App. LEXIS 1341 (1973), aff'd in part and rev'd

in part, 233 Ga. 1, 209 S.E.2d 599, 1974 Ga. LEXIS 654 (1974) (decided under former Code 1933, § 92-7001).

Millage rate based on disapproved tax digest. — No board of education should be required to determine a binding millage rate on a tax digest which is disapproved by order of the commissioner as being assessed at less than 40 percent of the fair market value. Board of Comm'rs v. Allgood, 234 Ga. 9, 214 S.E.2d 522, 1975 Ga. LEXIS 1003 (1975) (decided under former Code 1933, § 92-7001).

Standing to object to equalization of tax digests. — An objection made to the exercise of the discretion of the commissioner in equalizing digests must come from the county, and not from individual taxpayers. Chilivis v. Kell, 236 Ga. 226, 223 S.E.2d 117, 1976 Ga. LEXIS 820 (1976) (decided under former Code 1933, § 92-7001).

County may seek review of commissioner's exercise of discretion in making adjustments in county tax digests. Strickland v. Douglas County, 246 Ga. 640, 272 S.E.2d 340, 1980 Ga. LEXIS 1233 (1980) (decided under former Code 1933, § 92-7001).

When commissioner's order must be upheld. — Commissioner's order that assessments contained in a given county tax digest be increased or decreased by certain percentages must be upheld unless the commissioner's actions are deemed to be unreasonable, beyond the commissioner's authority, or constitute an abuse of discretion. Strickland v. Douglas County, 246 Ga. 640, 272 S.E.2d 340, 1980 Ga. LEXIS 1233 (1980) (decided under former Code 1933, § 92-7001).

Differences of opinion insufficient for review of commissioner's determination. — Differences in opinion regarding what is reasonable uniformity of tax digests are not sufficient to bring the commissioner's determination in a given case within range of judicial review, unless a manifest abuse of discretion, or arbitrary or capricious conduct on the commissioner's part is shown. This is a question of law for the court. Strickland v. Douglas County, 246 Ga. 640, 272 S.E.2d 340, 1980 Ga. LEXIS 1233 (1980) (decided under former Code 1933, § 92-7001).

Classwide challenge to commissioner's decision. — Remedy which Georgia law provides for the classwide decision of the commissioner is a challenge by the representatives of the class affected, such as the board of tax assessors. Adams v. Smith, 415 F. Supp. 787, 1976 U.S. Dist. LEXIS 14487 (N.D. Ga. 1976), aff'd, 568 F.2d 1232, 1978 U.S. App. LEXIS 12338 (5th Cir. 1978) (decided under former Code 1933, § 92-7001).

Remedies available to individual taxpayers. — Any objection to an adjustment by the state revenue commissioner or failure to make an adjustment must come from the county board of tax assessors. However, an individual remedy is not always unavailable to an individual taxpayer, who may obtain an injunction against the commissioner. While the general rule is that individual taxpayers cannot bring suit against the commissioner, when the orders complained of are void and illegal because the orders do not follow the mandate of the Acts nor of the constitutional provisions under which they purportedly were issued such suits may be authorized. Adams v. Smith, 415 F. Supp. 787, 1976 U.S. Dist. LEXIS 14487 (N.D. Ga. 1976), aff'd, 568 F.2d 1232, 1978 U.S. App. LEXIS 12338 (5th Cir. 1978) (decided under former Code 1933, § 92-7001).

Challenge by individual taxpayer to decisions affecting classes of property. — Commissioner makes decisions which affect classes of property. Although individual taxpayers ultimately are affected by the commissioner's decisions, Georgia law does not allow an individual taxpayer individually to sue the commissioner to challenge the commissioner's decision on any particular class of property. The rationale is that a decision on a class of property affects many people other than an individual taxpayer and an individual taxpayer should not be allowed to enjoin an action of the commissioner which affects an entire class of taxpayers. Adams v. Smith, 415 F. Supp. 787, 1976 U.S. Dist. LEXIS 14487 (N.D. Ga. 1976), aff'd, 568 F.2d 1232, 1978 U.S. App. LEXIS 12338 (5th Cir. 1978) (decided under former Code 1933, § 92-7001).

Challenge of factual decisions in equalizing tax digests. — Individual taxpayers have no right under state law to

challenge factual decisions of the commissioner in equalizing the digests of the various counties. Adams v. Smith, 415 F. Supp. 787, 1976 U.S. Dist. LEXIS 14487 (N.D. Ga. 1976), aff'd, 568 F.2d 1232, 1978 U.S. App. LEXIS 12338 (5th Cir. 1978) (decided under former Code 1933, § 92-7001).

Taxpayers may not challenge factual decisions within commissioner's statutory responsibility. — Insofar as the commissioner makes factual decisions within the commissioner's statutory responsibility, individual taxpayers may not challenge the commissioner's actions. The reason for such a rule is because the commissioner may not act to affect an individual taxpayer apart from any particular class or classes of property. Adams v. Smith, 415 F. Supp. 787, 1976 U.S. Dist. LEXIS 14487 (N.D. Ga. 1976), aff'd, 568 F.2d 1232, 1978 U.S. App. LEXIS 12338 (5th Cir. 1978) (decided under former Code 1933, § 92-7001).

Rationale for not permitting individual taxpayers to challenge factual decisions. — It would create a chaotic condition in the tax affairs of the state if individual taxpayers in each of the counties had the right to challenge the factual decisions of the commissioner in equalizing "as far as practicable" the values of property subject to taxation in the state. Adams v. Smith, 415 F. Supp. 787, 1976 U.S. Dist. LEXIS 14487 (N.D. Ga. 1976), aff'd, 568 F.2d 1232, 1978 U.S. App. LEXIS 12338 (5th Cir. 1978) (decided under former Code 1933, § 92-7001).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, §§ 92-7001 and 92-7002 are included in the annotations for this article.

Power of commissioner to adopt schedule of uniform values for like properties. — It is clear that the commissioner is bound to examine the county tax digests for the purpose of ascertaining whether the tax valuations of the various classes of property are reasonably uniform as between counties. Under this authority, the commissioner has the power to adopt a schedule of uniform values on like properties as between counties that, in the commissioner's discretion, will carry out the intention of the law. 1950-51 Ga. Op. Att'y Gen. 168 (rendered under former Code 1933, § 92-7001).

Purpose and intent. — It is the purpose and intent of the statute to bring about as far as practicable an equalization throughout the state of the values of the various classes of property subject to be taxed so that the values fixed in one county shall not be out of due proportion to the values fixed in other counties on the same classes of property. 1957 Ga. Op. Att'y Gen. 277 (rendered under former Code 1933, § 92-7002).

RESEARCH REFERENCES

ALR.

Notice to property owners of increase in assessment or valuation by board of equalization or review, 24 A.L.R. 331; 84 A.L.R. 197.

48-5-340. Purpose of article.

It is the purpose and intent of this article to establish a procedure for use by the commissioner to equalize county property tax digests between counties and within counties so as to require county boards of tax assessors to make adjustments in the valuation of property to ensure uniformity and equity. The commissioner shall continue to examine the digest and exercise his responsibility to bring about

property valuations that are reasonably uniform and equalized throughout the state.

History.
Code 1981, § 48-5-340, enacted by Ga. L. 1988, p. 1763, § 1.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under Ga. L. 1966, p. 45, § 1, former Code 1933, § 91A-1413, and former Code Section 48-5-271 are included in the annotations for this Code section.

Uniformity of taxation inherent and delegable power of General Assembly. — General Assembly's power to require uniformity of taxation between counties is inherent, is not prohibited by the Constitution, and may be properly delegated to the state revenue commissioner. Salem v. Tattnall County, 250 Ga. 881, 302 S.E.2d 99, 1983 Ga. LEXIS 681 (1983) (decided under former O.C.G.A. § 48-5-271).

Statute does not violate constitutional due process and equal protection provisions. — Scheme of equalization of tax digests as between the counties does not violate the due process or equal protection provisions of the United States or Georgia Constitutions. Griggs v. Greene, 230 Ga. 257, 197 S.E.2d 116, 1973 Ga. LEXIS 880 (1973), overruled in part as stated in Rice v. Fulton County, 358 Ga. App. 1, 852 S.E.2d 860, 2020 Ga. App. LEXIS 681 (2020) (decided under Ga. L. 1966, p. 45, § 1).

Property classification scheme is not unconstitutional. — No language in the statute expressly establishes separate classes of tangible property for the purposes of taxation in violation of Ga. Const. 1945, Art. VII, Sec. I, Para. III (see Ga. now Const. 1983, Art. VII, Sec. I, Para. III), and no language reasonably authorizes the construction that such was the legislative intent. Griggs v. Greene, 230 Ga. 257, 197 S.E.2d 116, 1973 Ga. LEXIS 880 (1973), overruled in part as stated in Rice v. Fulton County, 358 Ga. App. 1, 852 S.E.2d 860, 2020 Ga. App. LEXIS 681 (2020) (decided under Ga. L. 1966, p. 45, § 1).

Commissioner is required to seek uniformity throughout the state on the state levy by requiring all counties to assess property uniformly throughout the state. Hawes v. Conner, 224 Ga. 567, 163 S.E.2d 724, 1968 Ga. LEXIS 850 (1968) (decided under Ga. L. 1966, p. 45, § 1).

Methods for equalizing digests. — Commissioner may use such means as the commissioner deems proper and reasonable to make the commissioner's determination as to reasonable uniformity. Strickland v. Douglas County, 246 Ga. 640, 272 S.E.2d 340, 1980 Ga. LEXIS 1233 (1980) (decided under former Code 1933, § 91A-1413).

Subclassification of tangible property for tax purposes. — Ga. L. 1966, p. 45, § 1, former Code 1933, § 92-7002, and Ga. L. 1972, p. 174, § 3 (see now O.C.G.A. § 48-5-273) did not either expressly or impliedly require or authorize the subclassification of tangible property for tax purposes. Herring v. Ferrell, 130 Ga. App. 431, 203 S.E.2d 617, 1973 Ga. App. LEXIS 1341 (1973), aff'd in part and rev'd in part, 233 Ga. 1, 209 S.E.2d 599, 1974 Ga. LEXIS 654 (1974) (decided under Ga. L. 1966, p. 45, § 1).

Standing to object to equalization of tax digests. — An objection made to the exercise of the discretion of the commissioner in equalizing digests must come from the county, and not from individual taxpayers. Chilivis v. Kell, 236 Ga. 226, 223 S.E.2d 117, 1976 Ga. LEXIS 820 (1976) (decided under Ga. L. 1966, p. 45, § 1).

Classwide challenge to commissioner's decision. — Remedy which Georgia law provides for the classwide decision of the commissioner is a challenge by the representatives of the class affected, such as the board of tax assessors. Adams v. Smith, 415 F. Supp.

787, 1976 U.S. Dist. LEXIS 14487 (N.D. Ga. 1976), aff'd, 568 F.2d 1232, 1978 U.S. App. LEXIS 12338 (5th Cir. 1978) (decided under Ga. L. 1966, p. 45, § 1).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, §§ 92-7001 and 92-7002 are included in the annotations for this Code section.

Purpose and intent. — It is the purpose and intent of the statute to bring about as far as practicable an equalization throughout the state of the values of the various classes of property subject to be taxed so that the values fixed in one county shall not be out of due proportion to the values fixed in other counties on the same classes of property. 1957 Ga. Op. Att'y Gen. 277 (rendered under former Code 1933, § 92-7002).

Power of commissioner to adopt schedule of uniform values for like properties. — It is clear that the commissioner is bound to examine the county tax digests for the purpose of ascertaining whether the tax valuations of the various classes of property are reasonably uniform as between counties. Under this authority, the commissioner has the power to adopt a schedule of uniform values on like properties as between counties that, in the commissioner's discretion, will carry out the intention of the law. 1950-51 Ga. Op. Att'y Gen. 168 (rendered under former Code 1933, § 92-7001).

48-5-341. Definitions.

As used in this article, the term:

(1) "Assessment bias" means any tendency or trend of assessment ratios, when analyzed by an appropriate statistical method, which reveals assessment progressivity or assessment regressivity.

(2) "Assessment progressivity" means any systematic pattern of assessment in which higher value properties are generally assessed at a larger percentage of fair market value than properties of lower value.

(3) "Assessment ratio" means the fractional relationship the assessed value of property bears to the fair market value of the property as determined in paragraph (8) of subsection (b) of Code Section 48-5-274.

(4) "Assessment regressivity" means any systematic pattern of assessment in which lower value properties are generally assessed at a larger percentage of fair market value than properties of higher value.

(5) "Assessment variance" means the absolute value of the difference between the assessment ratio for each parcel of property within each class of property and the average assessment ratio for that class and expressed as a percentage of the average assessment ratio.

(6) "Class of property" means any reasonable divisions of homogeneous groups of property that the commissioner determines are necessary to examine digests for uniformity and equalization.

(7) "Digest evaluation cycle" means a recurring period of three years beginning initially on January 1 of the first year, as so designated by the commissioner for each county, and ending on December 31 of the third year thereafter.

(8) "Digest review year" means the first year of each evaluation cycle for each county.

History.

Code 1981, § 48-5-341, enacted by Ga. L. 1988, p. 1763, § 1; Ga. L. 1991, p. 728, § 1; Ga. L. 1992, p. 2494, § 1; Ga. L. 2000, p. 1683, § 2.

Editor's notes.

Ga. L. 1992, p. 2494, § 10, not codified by the General Assembly, provided, in part: "County tax digests that were conditionally approved or disapproved by the commissioner for tax year 1991 in accordance with Article 5A of Chapter 5 of Title 48 of the Official Code of Georgia Annotated as it existed on January 1, 1992, shall be considered conditionally approved for each succeeding year beginning January 1, 1992, until such time as the first digest review year occurs for the county under the provisions of this Act."

Ga. L. 2000, p. 1683, § 11(c), not codified by the General Assembly, provides that Sections 2 through 10 of the Act shall be applicable to the 2000 tax digests and any subsequent tax digests.

JUDICIAL DECISIONS

"Class of property." — Tax assessors have the authority to place property in homogeneous groups for the purpose of determining the property's value in relation to other and like property, and different valuation methods may be utilized. Harrington v. Baldwin County Bd. of Tax Assessors, 214 Ga. App. 178, 447 S.E.2d 300, 1994 Ga. App. LEXIS 815 (1994), cert. denied, No. S94C1697, 1994 Ga. LEXIS 1134 (Ga. Oct. 28, 1994).

48-5-342. (For effective date, see note.) Commissioner to examine digests.

(a) The commissioner shall carefully examine the tax digests of the counties filed in his office. Each digest for a county in a digest review year shall be examined for the purpose of determining if the valuations of property for taxation purposes are reasonably uniform and equalized between counties and within counties.

(b) For any digest in any digest review year where the digest for the preceding digest review year was conditionally approved by the commissioner, the commissioner shall also carefully examine the digest to determine if it satisfactorily corrects the deficiencies that resulted in the digest for the preceding digest review year being conditionally approved.

(c) For each year, including each year that is not a digest review year for the county, the commissioner shall utilize the overall assessment ratio for the county as provided by the state auditor.

(d) It shall be the further duty of the commissioner to examine the

itemizations of exempt properties appearing on the digest and, if in the judgment of the commissioner any properties appearing on the digest are subject to taxation, to so advise the board of tax assessors of the counties concerned with an explanation of his reasons for believing the property is subject to taxation.

(e)(1) The commissioner may, upon his or her own initiative or upon complaint by a taxpayer, examine the itemizations of properties appearing on the digest, and if in the judgment of the commissioner any properties are illegally appearing on the digest and should not be subject to taxation under this chapter, the commissioner shall strike such items from the digest and return the digest to the county for removal of such items and resubmission to the commissioner. The commissioner shall provide by rule and regulation procedures by which the county board of tax assessors may appeal such finding to the commissioner. If appealed by the board of tax assessors, the commissioner shall, after reviewing such appeal, issue a final order and include a finding as to the taxability of the digest items in dispute and shall finalize the digest in accordance therewith.

(2) If a property has been found by the commissioner to not be subject to taxation under this chapter and again appears on the digest at any time within five years of the initial determination of nontaxability and is again determined to be nontaxable, the commissioner shall strike such item from the digest and return the digest to the county for removal of such item and resubmission to the commissioner. The commissioner shall notify the Department of Community Affairs in writing of his or her finding, and upon receipt of such notice, the qualified local government status of such county shall be revoked for a period of three years following the receipt of such notice by the Department of Community Affairs unless reinstated earlier pursuant to this subsection. Upon such revocation, the governing authority of such county, without regard to any limitation of Code Section 48-5-295, shall be specifically authorized to remove immediately every member of the board of tax assessors and reappoint new members who shall serve for the unexpired terms of the removed members. The county governing authority shall provide written notification of such removal and new appointment to the commissioner. Upon certification of the corrected digest, the commissioner shall notify in writing the Department of Community Affairs, and upon receipt thereof, the Department of Community Affairs shall immediately reinstate the qualified local government status of such county.

(3) If a property has been found by the commissioner to not be subject to taxation under this chapter and if such nontaxable property has appeared on a county digest in any year within the preceding

five-year period, then the taxpayer shall be entitled to file a petition directly with the Georgia Tax Tribunal for a refund of all such taxes illegally collected or taxes paid, interest equal to the bank prime loan rate as posted by the Board of Governors of the Federal Reserve System in statistical release H. 15 or any publication that may supersede it plus 3 percent calculated from the date of payment of such taxes, and attorney's fees in an amount of not less than 15 percent nor more than 40 percent of the total of the illegally charged taxes and accrued interest. Such petition shall name the board of tax assessors and the tax receiver or tax commissioner of the county as the respondent in their official capacities and shall be served upon such board and tax receiver or tax commissioner. Service shall be accomplished by certified mail or statutory overnight delivery. The petition shall include a summary statement of facts and law upon which the petitioner relies in seeking the requested relief. The respondents shall file a response to the petitioner's statement of facts and law which constitutes their answer with the tribunal no later than 30 days after the service of the petition. The respondents shall serve a copy of their response on the petitioner's representative or, if the petitioner is not represented, on the petitioner and shall file a certificate of service with such response. If in any case a response has not been filed within the time required by this paragraph, the case shall automatically become in default unless the time for filing the response has been extended by agreement of the parties, for a period not to exceed 30 days, or by the judge of the tribunal. The default may be opened as a matter of right by the filing of a response within 15 days of the day of the default and payment of costs. At any time before the final judgment, the judge of the tribunal, in his or her discretion, may allow the default to be opened for providential cause that prevented the filing of the response, for excusable neglect, or when the tribunal judge, from all the facts, determines that a proper case has been made for the default to be opened on terms to be fixed by the tribunal judge. The tribunal judge shall proceed to hear and decide the matter and may grant appropriate relief under the law and facts presented.

History.

Code 1981, § 48-5-342, enacted by Ga. L. 1988, p. 1763, § 1; Ga. L. 1991, p. 728, § 2; Ga. L. 1992, p. 2494, § 2; Ga. L. 2000, p. 1683, § 3; Ga. L. 2016, p. 277, § 1/HB 364; Ga. L. 2017, p. 774, § 48/HB 323; Ga. L. 2024, p. 888, § 3-9/HB 1267, see notes for effective date.

Delayed effective date.

Ga. L. 2024, p. 888, § 4-1(a)/HB 1267, provides that the 2024 amendment shall only become effective on July 1, 2026 upon ratification of a resolution by the voters at the November, 2024, state-wide general election that amends the Constitution to provide that the Georgia Tax Court shall have state-wide jurisdiction as provided by law and that decisions of such court shall be appealed to the Court of Appeals, subject to review by the Supreme Court of Georgia. However, if such a Constitutional amendment is not so ratified, then the amendments to this Code section shall stand repealed on January 1, 2025. This

Code section, as set out above, does not reflect the amendment by that Act owing to the delayed effective date. Upon ratification, paragraph (e)(3) will read as follows: "(3) If a property has been found by the commissioner to not be subject to taxation under this chapter and if such nontaxable property has appeared on a county digest in any year within the preceding five-year period, then the taxpayer shall be entitled to file a petition directly with the Georgia Tax Court for a refund of all such taxes illegally collected or taxes paid, interest equal to the bank prime loan rate as posted by the Board of Governors of the Federal Reserve System in statistical release H. 15 or any publication that may supersede it plus 3 percent calculated from the date of payment of such taxes, and attorney's fees in an amount of not less than 15 percent nor more than 40 percent of the total of the illegally charged taxes and accrued interest. Such petition shall name the board of tax assessors and the tax receiver or tax commissioner of the county as the respondent in their official capacities and shall be served upon such board and tax receiver or tax commissioner. Service shall be accomplished by certified mail or statutory overnight delivery. The petition shall include a summary statement of facts and law upon which the petitioner relies in seeking the requested relief. The respondents shall file a response to the petitioner's statement of facts and law which constitutes their answer with the court no later than 30 days after the service of the petition. The respondents shall serve a copy of their response on the petitioner's representative or, if the petitioner is not represented, on the petitioner and shall file a certificate of service with such response. If in any case a response has not been filed within the time required by this paragraph, the case shall automatically become in default unless the time for filing the response has been extended by agreement of the parties, for a period not to exceed 30 days, or by the judge of the court. The default may be opened as a matter of right by the filing of a response within 15 days of the day of the default and payment of costs. At any time before the final judgment, the judge of the court, in his or her discretion, may allow the default to be opened for providential cause that prevented the filing of the response, for excusable neglect, or when the court judge, from all the facts, determines that a proper case has been made for the default to be opened on terms to be fixed by the court judge. The court judge shall proceed to hear and decide the matter and may grant appropriate relief under the law and facts presented."

Amendments.

The 2024 amendment, in paragraph (e)(3), substituted "Georgia Tax Court" for "Georgia Tax Tribunal" in the first sentence, and substituted "court" for "tribunal" throughout. For effective date of this amendment, see the delayed effective date note.

Editor's notes.

Ga. L. 1992, p. 2494, § 10, not codified by the General Assembly, provided, in part: "County tax digests that were conditionally approved or disapproved by the commissioner for tax year 1991 in accordance with Article 5A of Chapter 5 of Title 48 of the Official Code of Georgia Annotated as it existed on January 1, 1992, shall be considered conditionally approved for each succeeding year beginning January 1, 1992, until such time as the first digest review year occurs for the county under the provisions of this Act."

Ga. L. 2000, p. 1683, § 11(c), not codified by the General Assembly, provides that Sections 2 through 10 of the Act shall be applicable to the 2000 tax digests and any subsequent tax digests.

Ga. L. 2024, p. 888, § 4-1(a)/HB 1267, not codified by the General Assembly, provides that the 2024 amendment to this Code section is subject to an amendment to the Constitution to provide that the Georgia Tax Court shall have state-wide jurisdiction as provided by law and that decisions of such court shall be appealed to the Court of Appeals, subject to review by the Supreme Court of Georgia, that is ratified by the voters at the November, 2024, state-wide general election. If such a Constitutional amendment is not so ratified, then the amendments to this Code section shall stand repealed on January 1, 2025.

JUDICIAL DECISIONS

Editor's notes. In light of the similarity of the statutory provisions, decisions under former Code Section 48-5-271 are included in the annotations for this Code section.

Commissioner may delegate to the commissioner's staff the mechanics of evaluating the tax digest of the various counties. Fulton County v. Strickland, 251 Ga. 473, 306 S.E.2d 299, 1983 Ga. LEXIS 846 (1983) (decided under former O.C.G.A. § 48-5-271).

Section does not concern individual taxpayer's assessment. — O.C.G.A. § 48-5-343(c) is part of an article outlining the Georgia State Revenue Commissioner's duty to examine county tax digests throughout the state and within a county for the purpose of determining if the valuations of property for taxation purposes are reasonably uniform and equalized between counties and within counties and has nothing to do with an individual taxpayer's assessment; the statute creates no burden of proof on a board of tax assessors in a dispute with an individual taxpayer. Hill v. Hall County Bd. of Tax Assessors, 275 Ga. App. 504, 621 S.E.2d 517, 2005 Ga. App. LEXIS 1012 (2005), overruled in part, Gilmer County Bd. of Tax Assessors v. Spence, 309 Ga. App. 482, 711 S.E.2d 51, 2011 Ga. App. LEXIS 371 (2011).

Division of duties between commissioner and counties. — It is the duty of the commissioner to ascertain the value of the entire class of property, and to provide for uniformity among the counties. It is the responsibility of the county to provide for equalization between properties within a class. The commissioner is precluded from subdividing classes of property and applying different factors for each subdivision within a class. Fulton County v. Strickland, 251 Ga. 473, 306 S.E.2d 299, 1983 Ga. LEXIS 846 (1983) (decided under former O.C.G.A. § 48-5-271).

Jurisdiction of superior court. — Superior court was without jurisdiction to apply an equalization factor in determining assessment based on a jury verdict. Shaheen v. Cobb County Bd. of Tax Assessors, 167 Ga. App. 780, 307 S.E.2d 301, 1983 Ga. App. LEXIS 2614 (1983) (decided under former O.C.G.A. § 48-5-271).

Choateness dependent upon approval of digests. — Ad valorem taxes did not become choate until the county's tax digest was approved by the State Revenue Commission pursuant to O.C.G.A. § 48-5-342; however, intrastate tax lien priorities do not depend on choateness, but are determined by state statute, specifically O.C.G.A. § 48-2-5(b), which delineates the priority of tax liens and makes state tax liens superior to county tax liens regardless of date. Ellenberg v. J.M. Tull Metals (In re McIntyre Grading & Pipe, Inc.), 193 B.R. 983, 1996 Bankr. LEXIS 274 (Bankr. N.D. Ga. 1996).

48-5-342.1. Digest evaluation cycles established; time for review of digest.

(a) The commissioner shall by regulation establish the digest evaluation cycles for each of the counties in this state giving weight to the number of taxable parcels in each county, the geographical location of each county, and each such county's compliance with the provisions of Code Section 48-5-343. The starting date of each county's digest evaluation cycle shall be staggered so that the digest review year of one-third of the counties shall occur each year.

(b) For those digests submitted by counties in their designated digest review year, the commissioner shall begin his or her review of the digest in accordance with Code Section 48-5-343 and shall, within 30 days

after the date the state auditor furnishes to the commissioner the ratios established pursuant to paragraph (8) of subsection (b) of Code Section 48-5-274 or by August 1 of the next succeeding tax year, whichever comes later, approve or conditionally approve the digest.

History.
Code 1981, § 48-5-342.1, enacted by Ga. L. 1992, p. 2494, § 3; Ga. L. 2000, p. 1683, § 4.

Editor's notes.
Ga. L. 1992, p. 2494, § 10, not codified by the General Assembly, provided, in part: "County tax digests that were conditionally approved or disapproved by the commissioner for tax year 1991 in accordance with Article 5A of Chapter 5 of Title 48 of the Official Code of Georgia Annotated as it existed on January 1, 1992, shall be considered conditionally approved for each succeeding year beginning January 1, 1992, until such time as the first digest review year occurs for the county under the provisions of this Act."

Ga. L. 2000, p. 1683, § 11(c), not codified by the General Assembly, provides that Sections 2 through 10 of the Act shall be applicable to the 2000 tax digests and any subsequent tax digests.

48-5-343. Approval of digests.

(a) The commissioner shall, when a county is in its digest review year, approve the digest of any such county as being reasonably uniform and equalized if the digest meets the following criteria:

(1) The average assessment ratio for each class of property within the county shall be as close to the assessments provided for in Code Section 48-5-7 as is reasonably practicable;

(2) The average assessment variance for each class of property within the county shall not be excessive with respect to that which is reasonably practicable; and

(3) Within each class of property, assessment ratios of the properties shall not reveal any significant assessment bias.

(b) The commissioner shall by regulation establish the statistical standards to be used in determining whether or not digests are in accordance with the uniformity requirements contained in subsection (a) of this Code section. The commissioner shall utilize information developed by the state auditor under Code Section 48-5-274.

(c) If the assessed value of the portion of the digest that does not meet the uniformity requirements constitutes 10 percent or less of the assessed value of the total digest, the commissioner may approve the digest if, in his judgment, the approval will not substantially violate the concept of uniformity and equalization.

History.
Code 1981, § 48-5-343, enacted by Ga. L. 1988, p. 1763, § 1; Ga. L. 1992, p. 2494, § 4; Ga. L. 2000, p. 1683, § 5.

Editor's notes.
Ga. L. 1992, p. 2494, § 10, not codified by the General Assembly, provided, in part: "County tax digests that were

conditionally approved or disapproved by the commissioner for tax year 1991 in accordance with Article 5A of Chapter 5 of Title 48 of the Official Code of Georgia Annotated as it existed on January 1, 1992, shall be considered conditionally approved for each succeeding year beginning January 1, 1992, until such time as the first digest review year occurs for the county under the provisions of this Act."

Ga. L. 2000, p. 1683, § 11(c), not codified by the General Assembly, provides that Sections 2 through 10 of the Act shall be applicable to the 2000 tax digests and any subsequent tax digests.

OPINIONS OF THE ATTORNEY GENERAL

In light of the similarity of the statutory provisions, opinions under former Code Sections §§ 48-5-271 and 48-5-272 are included in the annotations for this Code section.

Amendment of school tax millage rate following entry of digest adjustment order of state revenue commissioner does not preclude approval of county tax digest. 1981 Op. Att'y Gen. No. 81-96 (rendered under former O.C.G.A. §§ 48-5-271 and 48-5-272).

48-5-344. Conditional approval of digests.

(a) If the commissioner determines that in any one or more of the counties that is in a digest review year the taxable values of property are not reasonably uniform and equalized in accordance with the requirements of subsection (a) of Code Section 48-5-343, he shall conditionally approve the digest and notify the county board of tax assessors in writing of his action.

(b) The written notification shall contain:

(1) A list of specific reasons that resulted in the digest being conditionally approved;

(2) A list of the statistical standards used by the commissioner when examining the digest; and

(3) Any other information the commissioner believes would be of assistance to the county board of tax assessors in correcting the deficiencies that resulted in the digest being conditionally approved or in otherwise making the digest reasonably uniform and equalized.

History.

Code 1981, § 48-5-344, enacted by Ga. L. 1988, p. 1763, § 1; Ga. L. 1991, p. 728, § 3; Ga. L. 1992, p. 2494, § 5; Ga. L. 2000, p. 1683, § 6.

Editor's notes.

Ga. L. 1992, p. 2494, § 10, not codified by the General Assembly, provided, in part: "County tax digests that were conditionally approved or disapproved by the commissioner for tax year 1991 in accordance with Article 5A of Chapter 5 of Title 48 of the Official Code of Georgia Annotated as it existed on January 1, 1992, shall be considered conditionally approved for each succeeding year beginning January 1, 1992, until such time as the first digest review year occurs for the county under the provisions of this Act."

Ga. L. 2000, p. 1683, § 11(c), not codified by the General Assembly, provides

that Sections 2 through 10 of the Act shall be applicable to the 2000 tax digests and any subsequent tax digests.

JUDICIAL DECISIONS

Editor's notes. In light of the similarity of the statutory provisions, decisions under Ga. L. 1966, p. 45, § 1 and former Code 1933, § 91A-1413 are included in the annotations for this Code section.

Adjustments in the total digest are presumed not to disturb previously established uniformity and equality as between individual taxpayers since all who pay taxes on the class or classes of property to which the adjustments are applied remain in substantially the same relation to each other after the adjustments as the taxpayers were before the adjustments were made. Griggs v. Greene, 230 Ga. 257, 197 S.E.2d 116, 1973 Ga. LEXIS 880 (1973), overruled in part as stated in Rice v. Fulton County, 358 Ga. App. 1, 852 S.E.2d 860, 2020 Ga. App. LEXIS 681 (2020) (decided under Ga. L. 1966, p. 45, § 1).

Commissioner may examine and adjust tax digest by class of property. — It is clear that the commissioner's duty to examine the digest of a particular county extends no further than an examination of the digest as to particular classes of property as entities, and that the commissioner is authorized to make percentage adjustments in the digests as to any particular class or classes of property with respect to the whole digest of that class and not with respect to segments of the class. Griggs v. Greene, 230 Ga. 257, 197 S.E.2d 116, 1973 Ga. LEXIS 880 (1973), overruled in part as stated in Rice v. Fulton County, 358 Ga. App. 1, 852 S.E.2d 860, 2020 Ga. App. LEXIS 681 (2020) (decided under Ga. L. 1966, p. 45, § 1).

Millage rate based on disapproved tax digest. — No board of education should be required to determine a binding millage rate on a tax digest which is disapproved by order of the commissioner as being assessed at less than 40 percent of the fair market value. Board of Comm'rs v. Allgood, 234 Ga. 9, 214 S.E.2d 522, 1975 Ga. LEXIS 1003 (1975) (decided under Ga. L. 1966, p. 45, § 1).

Ground for disapproval under former Code 1933, § 91A-1413 (former O.C.G.A. § 48-5-271). — See In re Board of Twiggs County Comm'rs, 249 Ga. 642, 292 S.E.2d 673, 1982 Ga. LEXIS 873 (1982), overruled in part, Duke v. State, 306 Ga. 171, 829 S.E.2d 348, 2019 Ga. LEXIS 406 (2019) (decided under former Code 1933, § 91A-1413).

48-5-345. Receipt for digest and order authorizing use; assessment if deviation from proper assessment ratio.

(a)(1) Upon the determination by the commissioner that a county tax digest is in proper form, that the property therein that is under appeal is within the limits of Code Section 48-5-304, and that the digest is accompanied by all documents, statistics, and certifications required by the commissioner, including the number, overall value and percentage of total real property parcels of appeals in each county to the boards of equalization, arbitration, hearing officer, and superior court, and the number of taxpayers' failure to appear at any hearing, for the prior tax year, the commissioner shall issue a receipt for the digest and enter an order authorizing the use of said digest for the collection of taxes. All statistics and certifications regarding real property appeals provided to the commissioner under this paragraph

shall be made publicly available on the Department of Revenue website.

(2) Nothing in this subsection shall be construed to prevent the superior court from allowing the new digest to be used as the basis for the temporary collection of taxes under Code Section 48-5-310.

(b) Each year the commissioner shall determine if the overall assessment ratio for each county, as computed by the state auditor under paragraph (8) of subsection (b) of Code Section 48-5-274, deviates substantially from the proper assessment ratio as provided in Code Section 48-5-7, and if such deviation exists, the commissioner shall assess against the county governing authority additional state tax in an amount equal to the difference between the amount the state's levy, as prescribed in Code Section 48-5-8, would have produced if the digest had been at the proper assessment ratio and the amount the digest that is actually used for collection purposes will produce. The commissioner shall notify the county governing authority annually of the amount so assessed and this amount shall be due and payable not later than five days after all appeals have been exhausted or the time for appeal has expired or the final date for payment of taxes in the county, whichever comes latest, and shall bear interest at the rate specified in Code Section 48-2-40 from the due date.

(c) Beginning with tax digests on or after January 1, 2016, no county shall be subject to the assessment authorized by subparagraph (b) of this Code section.

History.

Code 1981, § 48-5-345, enacted by Ga. L. 1988, p. 1763, § 1; Ga. L. 1991, p. 728, § 4; Ga. L. 1992, p. 2494, § 6; Ga. L. 2000, p. 1683, § 7; Ga. L. 2012, p. 694, § 2/HB 729; Ga. L. 2015, p. 1219, § 18/HB 202.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2015, "January 1, 2016" was substituted for "the effective date of this subsection" in subsection (c).

Editor's notes.

Ga. L. 1992, p. 2494, § 10, not codified by the General Assembly, provided, in part: "County tax digests that were conditionally approved or disapproved by the commissioner for tax year 1991 in accordance with Article 5A of Chapter 5 of Title 48 of the Official Code of Georgia Annotated as it existed on January 1, 1992, shall be considered conditionally approved for each succeeding year beginning January 1, 1992, until such time as the first digest review year occurs for the county under the provisions of this Act."

Ga. L. 2000, p. 1683, § 11(c), not codified by the General Assembly, provides that Sections 2 through 10 of the Act shall be applicable to the 2000 tax digests and any subsequent tax digests.

48-5-346. Effect of conditionally approving next subsequent digest.

(a)(1) If a county tax digest for its preceding digest review year was conditionally approved and the commissioner conditionally approves the digest for the next subsequent digest review year for the same or

substantially the same reasons, the commissioner shall order the payment of the specific penalty as provided in this Code section and the withholding from the county of the state grants specified in this paragraph. The Office of the State Treasurer and any other state agency or officer shall upon such order's taking effect permanently withhold from the county any funds otherwise becoming payable during the withholding period specified in subsection (b) of this Code section to the county under:

(A) The road mileage grant program specified in Article 1 of Chapter 17 of Title 36;

(B) The county appraisal staff grant program specified in Code Section 48-5-267; and

(C) The public road grant program specified in Code Section 48-14-3.

(2) In addition to the withholding of state grant funds specified in this Code section, a specific penalty is levied which shall be $5.00 per taxable parcel of real property located in the county as of January 1 of the year in which the penalty is levied and it shall be paid by the governing authority of the county to the commissioner.

(b) The withholding of the grants and moneys shall begin not later than five days after all appeals have been exhausted, or the time for appeal has expired, and shall continue until such time as the digest is satisfactorily corrected as to the deficiencies identified by the commissioner that resulted in the digest being initially conditionally approved. The levy of the specific penalty shall be made at the same time that the withholding of grants begins and it shall be paid to the commissioner within 60 days after the commissioner has notified the county of the amount of such penalty.

(c) The commissioner shall determine and publish in print or electronically annually a list of all available state grants which will be withheld in accordance with this Code section.

(d) If the digest for the preceding digest review year was conditionally approved and the commissioner conditionally approves the digest submitted in the next subsequent digest review year for different reasons, the county shall not have any penalties assessed or state grants withheld as a result of such conditional approval.

History.

Code 1981, § 48-5-346, enacted by Ga. L. 1988, p. 1763, § 1; Ga. L. 1991, p. 728, § 5; Ga. L. 1992, p. 2494, § 7; Ga. L. 1993, p. 1402, § 18; Ga. L. 2010, p. 863, § 2/SB 296; Ga. L. 2010, p. 838, § 10/SB 388.

Editor's notes.

Ga. L. 1992, p. 2494, § 10, not codified by the General Assembly, provided, in part: "County tax digests that were conditionally approved or disapproved by the commissioner for tax year 1991 in

accordance with Article 5A of Chapter 5 of Title 48 of the Official Code of Georgia Annotated as it existed on January 1, 1992, shall be considered conditionally approved for each succeeding year beginning January 1, 1992, until such time as the first digest review year occurs for the county under the provisions of this Act."

48-5-347. [Reserved] Ad Valorem Assessment Review Commission created; appointment of members; terms; vacancies; expenses.

History.
Ga. L. 1988, p. 1763, § 1; repealed by Ga. L. 1991, p. 728, § 6, effective April 10, 1991.

Editor's notes.
Ga. L. 1991, p. 728, § 6 repealed and reserved this Code section, effective April 10, 1991.

48-5-348. Appeal from conditional approvals.

(a) The commissioner, through a hearing officer, shall hear and determine appeals by local governing authorities on issues relating to the conditional approval of the digest by the commissioner including, but not limited to, the issue of the adequacy of the time period allowed to correct the deficiencies that resulted in the digest being conditionally approved.

(b) The hearing officer may compel the attendance of witnesses and the production of books and records or other documents from the county board of tax assessors. The hearing officer may also compel the production of appropriate records from the commissioner.

(c) With respect to any digest conditional approval by the commissioner which will not result in the withholding of state funds and the levy of specific penalties, the county governing authority shall be authorized to appeal only on the issue of the correctness of the commissioner's determination that the digest does not meet the requirements of subsection (a) of Code Section 48-5-343. With respect to any digest conditional approval by the commissioner which will result in the withholding of state funds or the penalty specified in subsection (a) of Code Section 48-5-346, the county governing authority shall be authorized to appeal on the issues of:

(1) The correctness of the commissioner's determination that the digest does not meet the requirements of Code Section 48-5-343; and

(2) The adequacy of the time period which was available to the county to correct prior deficiencies in the digest, including any issue of the adequacy of the time period allowed under Code Section 48-5-345 and any extension of time granted pursuant to any prior appeal.

(d) With respect to any additional state tax assessed against the county by the commissioner pursuant to subsection (b) of Code Section

48-5-345, the county governing authority shall be authorized to appeal on the correctness of the commissioner's determination that such an assessment is due and the accuracy of the amount so assessed.

(e) With respect to any specific penalty levied against the county by the commissioner pursuant to paragraph (2) of subsection (a) of Code Section 48-5-346, the county governing authority shall be authorized to appeal on the correctness of the commissioner's determination that such a levy is due and the accuracy of the amount so levied.

(f) Hearing officers provided for in this Code section shall be appointed by the State Board of Equalization. A hearing officer shall be assigned to hear appeals only from counties located wholly or partially in the congressional district in which the hearing officer resides.

(g) Any appeals filed pursuant to this Code section may not challenge the correctness of the information provided to the commissioner by the state auditor pursuant to Code Section 48-5-274.

History.

Code 1981, § 48-5-348, enacted by Ga. L. 1988, p. 1763, § 1; Ga. L. 1991, p. 728, § 7; Ga. L. 1992, p. 2494, § 8; Ga. L. 2000, p. 1683, § 8.

Editor's notes.

Ga. L. 1992, p. 2494, § 10, not codified by the General Assembly, provided, in part: "County tax digests that were conditionally approved or disapproved by the commissioner for tax year 1991 in accordance with Article 5A of Chapter 5 of Title 48 of the Official Code of Georgia Annotated as it existed on January 1, 1992, shall be considered conditionally approved for each succeeding year beginning January 1, 1992, until such time as the first digest review year occurs for the county under the provisions of this Act."

Ga. L. 2000, p. 1683, § 11(c), not codified by the General Assembly, provides that Sections 2 through 10 of the Act shall be applicable to the 2000 tax digests and any subsequent tax digests.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under Ga. L. 1966, p. 45, § 1, former Code 1933, §§ 91A-1413 and 91A-7001, and former Code Section 48-5-271 are included in the annotations for this Code section.

Commissioner's determination must be upheld unless the commissioner's actions are deemed to be unreasonable, beyond the commissioner's authority, or constitute an abuse of discretion. Fulton County v. Strickland, 251 Ga. 473, 306 S.E.2d 299, 1983 Ga. LEXIS 846 (1983) (decided under former O.C.G.A. § 48-5-271).

Commissioner's order upheld absent certain circumstances. — Commissioner's order that assessments contained in a given county tax digest be increased or decreased by certain percentages must be upheld unless the commissioner's actions are deemed to be unreasonable, beyond the commissioner's authority, or constitute an abuse of discretion. Strickland v. Douglas County, 246 Ga. 640, 272 S.E.2d 340, 1980 Ga. LEXIS 1233 (1980) (decided under former Code 1933, § 91A-1413).

County may seek review of commissioner's exercise of discretion in making adjustments in county tax digests. Strickland v. Douglas County, 246 Ga. 640, 272 S.E.2d 340, 1980 Ga. LEXIS 1233 (1980) (decided under former Code 1933, § 91A-1413).

Differences of opinion insufficient for review of commissioner's determination. — Individual taxpayers

have no right under state law to challenge factual decisions of the commissioner, within the commissioner's statutory responsibility, in equalizing the digests of the various counties. To permit such a challenge would create chaos in the tax affairs of the state. Adams v. Smith, 415 F. Supp. 787, 1976 U.S. Dist. LEXIS 14487 (N.D. Ga. 1976), aff'd, 568 F.2d 1232, 1978 U.S. App. LEXIS 12338 (5th Cir. 1978) (decided under Ga. L. 1966, p. 45, § 1).

Differences in opinion regarding what is reasonable uniformity of tax digests are not sufficient to bring the commissioner's determination in a given case within range of judicial review, unless a manifest abuse of discretion, or arbitrary or capricious conduct on the commissioner's part is shown. This is a question of law for the court. Strickland v. Douglas County, 246 Ga. 640, 272 S.E.2d 340, 1980 Ga. LEXIS 1233 (1980) (decided under former Code 1933, § 91A-7001).

Standing to challenge factual decision. — Individual taxpayers have no right to challenge the factual decisions of the State Revenue Commissioner in equalizing the digests of various counties. Board of Tax Assessors v. Clary, 161 Ga. App. 828, 290 S.E.2d 110, 1982 Ga. App. LEXIS 2052 (1982) (decided under former Code 1933, § 91A-1413).

Challenge by individual taxpayer to decisions affecting classes of property. — Commissioner makes decisions which affect classes of property. Although individual taxpayers ultimately are affected by the commissioner's decisions, Georgia law does not allow an individual taxpayer individually to sue the commissioner to challenge the commissioner's decision on any particular class of property. The rationale is that a decision on a class of property affects many people other than an individual taxpayer and an individual taxpayer should not be allowed to enjoin an action of the commissioner which affects an entire class of taxpayers. Adams v. Smith, 415 F. Supp. 787, 1976 U.S. Dist. LEXIS 14487 (N.D. Ga. 1976), aff'd, 568 F.2d 1232, 1978 U.S. App. LEXIS 12338 (5th Cir. 1978) (decided under Ga. L. 1966, p. 45, § 1).

Remedies available to individual taxpayers. — Any objection to an adjustment by the state revenue commissioner or failure to make an adjustment must come from the county board of tax assessors. However, an individual remedy is not always unavailable to an individual taxpayer, who may obtain an injunction against the commissioner. While the general rule is that individual taxpayers cannot bring suit against the commissioner, when the orders complained of are void and illegal because they do not follow the mandate of the Acts nor of the constitutional provisions under which they purportedly were issued such suits may be authorized. Adams v. Smith, 415 F. Supp. 787, 1976 U.S. Dist. LEXIS 14487 (N.D. Ga. 1976), aff'd, 568 F.2d 1232, 1978 U.S. App. LEXIS 12338 (5th Cir. 1978) (decided under Ga. L. 1966, p. 45, § 1).

48-5-349. [Reserved] Composition of commission members.

History.
Ga. L. 1988, p. 1763, § 1; repealed by Ga. L. 1991, p. 728, § 8, effective April 10, 1991.

Editor's notes.
Ga. L. 1991, p. 728, § 8 repealed and reserved this Code section, effective April 10, 1991.

48-5-349.1. [Reserved] Commission chairman; appeals boards; assignment of commission to department.

History.
Ga. L. 1988, p. 1763, § 1; Ga. L. 1990, p. 291, § 1; repealed by Ga. L. 1991, p. 728, § 9, effective April 10, 1991.

Editor's notes. Ga. L. 1991, p. 728, § 9, repealed and reserved this Code section, effective April 10, 1991.

48-5-349.2. Procedure for appeal to department.

(a)(1) An appeal to the department shall be effected by a local governing authority by filing with the commissioner a notice of appeal within 30 days after receipt by the local board of tax assessors of the commissioner's notification of digest conditional approval or disapproval. The notice of appeal shall be accompanied by whatever records, reports, or other relevant information is required by rule or order of the commissioner.

(2) Upon receipt of an appeal of a conditional approval order of the commissioner where the specific penalty and the withholding of state grants to the county provided by Code Section 48-5-346 shall otherwise be imposed, the commissioner shall be authorized to enter into an agreement with the county specifying a detailed plan in the form required by the commissioner to ensure that the deficiencies in the digest will be corrected on or before the time of submission of the digest for the next succeeding digest review year. As a part of such agreement the commissioner shall be authorized to defer the imposition of all or part of the specific penalty and the withholding of state grants. Such deferral shall be predicated upon the county's detailed plans of correction being followed and where such a deferral has been agreed to by the commissioner and the county, the amounts deferred shall be permanently waived by the commissioner provided the agreement is faithfully completed by the county. In the event, however, the county only partially completes the agreement with the commissioner, the commissioner may, at his option, still allow all or a reduced amount of the specific penalty or withholding of funds to be waived if, in his judgment, the county's deviation from the original agreement was not unreasonable under the circumstances.

(b) Within ten days of receipt of a notice of appeal, the hearing officer shall set the date for a hearing on the appeal. At the initial hearing the hearing officer may require additional hearings or filings of additional information by any person having custody of such information. In determining whether additional hearings are needed, the hearing officer shall consider the need for such hearings in the county making the appeal for the purpose of receiving information on local factors affecting the determination of property valuations in the county.

(c)(1) After hearing all testimony determined necessary and after reviewing all filings and information determined to be relevant and necessary, the hearing officer shall reach a decision. Each decision shall be rendered in writing.

(2) The decision shall:

(A) Specifically decide each issue presented on appeal; and

(B) Certify the date on which the notice of the decision is given.

(3) Each party to an appeal shall be furnished a copy of the decision within ten days after the issuance of the decision.

(d)(1) The hearing officer shall be authorized to hear and grant an appeal with respect to a determination by the commissioner that a digest does not meet the requirements of subsection (a) of Code Section 48-5-343. The hearing officer may not hear and grant an appeal with respect to the correctness of the information supplied to the commissioner by the state auditor pursuant to Code Section 48-5-274. The digest shall be deemed approved in any case where an appeal is granted under this paragraph.

(2) The hearing officer shall be authorized to hear and grant an appeal with respect to the adequacy of the time period which was available to the county to correct prior deficiencies in the digest. If an appeal is granted under this paragraph, the specific penalty and the withholding of state grants to the county provided by Code Section 48-5-346 shall not be imposed during the digest evaluation cycle in which the digest review year being appealed lies.

(3) The hearing officer shall be authorized to hear and grant an appeal with respect to a determination of an additional amount due which is assessed by the commissioner pursuant to subsection (b) of Code Section 48-5-345 to the extent such appeal is not based on the correctness of the information supplied to the commissioner by the state auditor pursuant to Code Section 48-5-274. If an appeal is granted under this paragraph, the commissioner may be directed to withdraw the assessment of the additional state tax or recalculate it in accordance with the findings of the hearing officer.

(4) The hearing officer shall be authorized to hear and grant an appeal with respect to a determination of a specific penalty which is levied by the commissioner pursuant to paragraph (2) of subsection (a) of Code Section 48-5-346 to the extent such appeal is not based on the correctness of the information supplied to the commissioner by the state auditor pursuant to Code Section 48-5-274. If an appeal is granted under this paragraph, the commissioner may be directed to withdraw the levy of the specific penalty or recalculate it in accordance with the findings of the hearing officer.

History.

Code 1981, § 48-5-349.2, enacted by Ga. L. 1988, p. 1763, § 1; Ga. L. 1991, p. 728, § 10; Ga. L. 1992, p. 2494, § 9; Ga. L. 1999, p. 81, § 48; Ga. L. 2000, p. 1683, § 9.

Editor's notes.

Ga. L. 1992, p. 2494, § 10, not codified by the General Assembly, provided, in part: "County tax digests that were conditionally approved or disapproved by the commissioner for tax year 1991 in

accordance with Article 5A of Chapter 5 of Title 48 of the Official Code of Georgia Annotated as it existed on January 1, 1992, shall be considered conditionally approved for each succeeding year beginning January 1, 1992, until such time as the first digest review year occurs for the county under the provisions of this Act."

Ga. L. 2000, p. 1683, § 11(c), not codified by the General Assembly, provides that Sections 2 through 10 of the Act shall be applicable to the 2000 tax digests and any subsequent tax digests.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code Section 48-5-271 are included in the annotations for this Code section.

Commissioner's determination must be upheld unless the commissioner's actions are deemed to be unreasonable, beyond the commissioner's authority, or constitute an abuse of discretion. Fulton County v. Strickland, 251 Ga. 473, 306 S.E.2d 299, 1983 Ga. LEXIS 846 (1983) (decided under former O.C.G.A. § 48-5-271).

48-5-349.3. Appeal to superior court.

The commissioner or the county governing authority dissatisfied with the decision of the hearing officer on any question of law may appeal to the superior court of the county dissatisfied with the decision. Any appeal to the superior court shall be taken, so far as is applicable, in the manner provided by law for appeals to the superior court from decisions of the commissioner.

History.
Code 1981, § 48-5-349.3, enacted by Ga. L. 1988, p. 1763, § 1; Ga. L. 1991, p. 728, § 11.

48-5-349.4. Compliance with decision of appeals board or court as correction of deficiency.

Compliance by any local governing authority with the findings and decision of the hearing officer, or of the court of final review, with respect to any matter concerning the local tax digest shall be considered satisfactory correction of the deficiency involved for the purposes of Code Sections 48-5-345 and 48-5-346.

History.
Code 1981, § 48-5-349.4, enacted by Ga. L. 1988, p. 1763, § 1; Ga. L. 1991, p. 728, § 12.

48-5-349.5. Annual report.

Not later than January 20, 1990, and not later than the twentieth day of January of each year thereafter, the commissioner shall submit to the Senate Finance Committee and to the Ways and Means Committee of the House of Representatives an annual report concerning the implementation of this article. Such report shall contain such statistics and other matter as may be pertinent in determining from year to year the progress of the counties of this state in achieving the purpose and intent

of this article, a statement of any state funds withheld from counties pursuant to this article and of the relevant circumstances, and such other matter as may be deemed pertinent by the commissioner.

History.

Code 1981, § 48-5-349.5, enacted by Ga. L. 1988, p. 1763, § 1; Ga. L. 1992, p. 6, § 48; Ga. L. 2009, p. 303, § 11/HB 117.

Editor's notes.

Ga. L. 2009, p. 303, § 20/HB 117, not codified by the General Assembly, provides that: "This Act is intended to reflect the current internal organization of the Georgia Senate and House of Representatives and is not otherwise intended to change substantive law. In the event of a conflict with any other Act of the 2009 General Assembly, such other Act shall control over this Act."

ARTICLE 6

MUNICIPAL TAXATION

RESEARCH REFERENCES

ALR.

Constitutionality of statute subjecting tax levy by municipal authorities to review or modification by state authorities, 70 A.L.R. 1243.

Property of one municipality within territorial limits of another as subject to taxation by latter, 81 A.L.R. 1518; 99 A.L.R. 1143.

Right to interpose setoff or counterclaim against municipal claims, 90 A.L.R. 431.

Municipal tax imposed upon or measured by sales of gasoline by one conducting business within city limits as payable in respect of sales or deliveries beyond city limits, 95 A.L.R. 1524; 106 A.L.R. 1332.

Limitation of power to tax as limitation of power to incur indebtedness or vice versa, 97 A.L.R. 1103.

Validity and construction of statute or ordinance providing for relief of poor persons from taxes, 123 A.L.R. 597.

Validity of municipal admission tax for college football games or other college sponsored public events, 60 A.L.R.3d 1027.

48-5-350. Power to levy and collect tax to provide funds for municipal development authorities.

Every municipality may levy and collect municipal taxes upon all taxable property within the limits of the municipality to provide for financial assistance to its development authority or a joint county and municipal development authority for the purpose of developing trade, commerce, industry, and employment opportunities. The tax levied for the purposes provided in this Code section shall not exceed three mills per dollar upon the assessed value of the property; provided, however, that the authorization contained in this Code section to levy and collect such tax shall not be deemed to be exclusive and shall not prevent any municipality from exercising any additional power granted to it pursuant to any constitutional amendment, whether general or special, to levy any ad valorem tax for the purpose of providing financial assistance to any municipal or joint county and municipal development authority. The exceptions to the three mill per dollar tax limitation

contained in the proviso of the preceding sentence shall not be construed so as to affect any action pending in court on February 20, 1984.

History.
Ga. L. 1977, p. 1034, § 1; Ga. L. 1978, p. 2008, § 1; Code 1933, § 91A-1506.1, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 45; Ga. L. 1984, p. 805, § 1; Ga. L. 1988, p. 1748, § 2; Ga. L. 2024, p. 1052, § 5(20)/SB 448, effective July 1, 2024.

Amendments.
The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substituted "however, that" for "however," in the second sentence.

Law reviews.
For article discussing tax-exempt financing in Georgia, see 18 Ga. St. B. J. 20 (1981).

RESEARCH REFERENCES

Am. Jur. 2d.
71 Am. Jur. 2d, State and Local Taxation, § 43.

48-5-351. Power to levy and collect taxes to pay benefits under teacher retirement systems.

Each municipality may levy and collect taxes for the purpose of paying pensions and other benefits and costs under a teacher retirement system or systems.

History.
Ga. L. 1946, p. 24, § 1; Code 1933, § 91A-1506, enacted by Ga. L. 1978, p. 309, § 2.

Cross references.
Teachers Retirement System of Georgia, T. 47, C. 3.

RESEARCH REFERENCES

Am. Jur. 2d.
71 Am. Jur. 2d, State and Local Taxation, §§ 35, 43.

48-5-352. Determination of fair market value for county and municipal ad valorem property taxation purposes; counties to furnish information relative to fair market value of property.

(a) The provisions of any municipal charter to the contrary notwithstanding, in determining the fair market value of property within their respective tax jurisdictions for purposes of ad valorem property taxation, municipalities shall use the fair market value finally determined for the property for county ad valorem property taxation purposes. Fair market value shall be finally determined for county ad valorem property taxation purposes when all means for administrative and judicial

review of the fair market value have been exhausted or are no longer available.

(b) As soon as the fair market value of property within a county is finally determined, such information shall be furnished without charge by the county to the governing authority of each municipality lying wholly or partially within the county.

History.
Ga. L. 1890-91, p. 231, §§ 1, 2; Civil Code 1895, §§ 717, 718; Civil Code 1910, §§ 862, 863; Code 1933, § 92-4001; Code 1933, § 92-4002, enacted by Ga. L. 1974, p. 1206, § 2; Code 1933, §§ 91A-1501, 91A-1502, enacted by Ga. L. 1978, p. 309, § 2.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Civil Code 1910, § 862 are included in the annotations for this Code section.

Property owner is entitled to a hearing at some time before the assessment of the value of the owner's property becomes finally binding, and a statute which attempts to authorize an assessment when the law does not afford the owner such a hearing will be declared unconstitutional. Shippen Bros. Lumber Co. v. Elliott, 134 Ga. 699, 68 S.E. 509, 1910 Ga. LEXIS 331 (1910), overruled, Collins v. Williams, 237 Ga. 576, 229 S.E.2d 388, 1976 Ga. LEXIS 1307 (1976).

RESEARCH REFERENCES

Am. Jur. 2d.
72 Am. Jur. 2d, State and Local Taxation, §§ 642, 643.

48-5-353. Basis for fair market value of property subject to both municipal and county ad valorem taxes.

Except as otherwise provided in Code Section 48-5-7, the board of tax assessors in each municipality which has such a board pursuant to the municipal charter shall use as the basis for fair market value of property subject to both municipal and county ad valorem taxation the 100 percent fair market value determined for the property for county ad valorem taxation purposes before being reduced to the 40 percent assessed value required by law for county ad valorem taxation purposes.

History.
Code 1933, § 92-4004, enacted by Ga. L. 1972, p. 1103, § 1; Ga. L. 1973, p. 913, § 1; Ga. L. 1974, p. 1206, § 4; Code 1933, § 91A-1503, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1981, p. 599, § 1; Ga. L. 1992, p. 1226, § 1; Ga. L. 1994, p. 237, § 2.

JUDICIAL DECISIONS

Applicability. — Statute does not apply to municipalities which do not have a board of tax assessors pursuant to their charters. Town of Lyerly v. Short, 234 Ga.

877, 218 S.E.2d 588, 1975 Ga. LEXIS 1312 (1975).

RESEARCH REFERENCES

Am. Jur. 2d.
72 Am. Jur. 2d, State and Local Taxation, §§ 642, 643.

48-5-354. Law governing municipal and county occupation taxes for certain salespersons and merchants.

The provisions of Article 1 of Chapter 13 of Title 48 shall govern municipal and county occupation taxes for the following: traveling salespersons engaged in taking orders for the sale of goods when no delivery of goods is made at the time of taking the order; a merchant or dealer, the situs of whose business is outside the taxing jurisdiction, who delivers goods previously ordered; and the employees of a merchant or dealer who are engaged in the delivery of the goods to customers.

History.
Code 1981, § 48-5-354, enacted by Ga. L. 1993, p. 1292, § 4.

Cross references.
Regulation of business of transient merchants, T. 43, C. 46.

Restriction on power of local governments to charge license fees for wholesale dealers of malt beverages, § 3-5-43.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under Ga. L. 1896, p. 36, § 1, former Civil Code 1910, § 868, and former Code 1933, § 92-4105 are included in the annotations for this Code section.

Legislative intent. — One purpose of the General Assembly in passing the statute was to protect the traveling representatives of mercantile houses or manufacturers which are located in this state from municipal taxation because of the fact that the salespeople, or agents of merchants or manufacturers located and holding their goods in other states, can come into Georgia and take orders for such goods without paying any municipal tax whatever, being protected from such taxation by the Constitution of the United States. Fruit Co. v. City of Dalton, 184 Ga. 277, 191 S.E. 130, 1937 Ga. LEXIS 518 (1937) (decided under former Code 1933, § 92-4105).

"Traveling salesperson" defined. — An agent of a firm or corporation who goes from town to town in this state, exhibiting samples of goods and taking orders on the agent's employer or employers for such goods from consumers, is a traveling salesperson within the meaning of this statute. Kimmel v. Mayor of Americus, 105 Ga. 694, 31 S.E. 623, 1898 Ga. LEXIS 698 (1898) (decided under Ga. L. 1896, p. 36, § 1).

Protection given to traveling salespeople extends to merchants and dealers represented by the salespeople, and prevents the municipality from levying any tax against a dealer the situs of whose business is elsewhere, and who merely delivers goods to customers in the municipality upon orders previously

taken by the salespeople. Fruit Co. v. City of Dalton, 184 Ga. 277, 191 S.E. 130, 1937 Ga. LEXIS 518 (1937) (decided under former Code 1933, § 92-4105).

Taxation of businesses which deal through traveling salespeople. — Municipality cannot require a license of a traveling salesperson when no delivery of goods is made at the time the orders are taken, and cannot split up a business into the business's constituent parts and levy a tax on each element thereof, nor can it levy a tax upon the delivery of goods. Burroughs v. Town of Meigs, 209 Ga. 409, 73 S.E.2d 169, 1952 Ga. LEXIS 513 (1952) (decided under former Code 1933, § 92-4105).

Exemption does not include persons traveling from town to town soliciting magazine subscriptions to be delivered in the future by mail sent from another city. Southern Ruralist v. Mayor of Carrollton, 169 Ga. 112, 149 S.E. 882, 1929 Ga. LEXIS 294 (1929) (decided under former Civil Code 1910, § 868).

Tax on transient dealers who take orders from local agents is invalid. — Tax imposed upon transient dealers taking orders and sending certain goods to local agents in a city is invalid because contrary to the spirit and purpose of this statute. Hofmayer, Jones & Co. v. City of Blakely, 116 Ga. 777, 43 S.E. 69, 1902 Ga. LEXIS 258 (1902) (decided under Ga. L. 1896, p. 36, § 1).

Farmers owning dairy farms upon which milk is produced for delivery to customers in the city are not exempt as a traveling salesperson from the license charge imposed by municipal ordinance on dairies. Rossman v. City of Moultrie, 189 Ga. 681, 7 S.E.2d 270, 1940 Ga. LEXIS 368 (1940) (decided under former Code 1933, § 92-4105).

What constitutes an order previously taken. — When a sales contract constitutes a prior order from a company outside the municipality, and the quantity to be delivered is unascertainable until delivery, and title passes upon delivery, and when there are periodic deliveries carried out under the terms of the prior contract, it necessarily follows that the contract constituted a prior order and that the transaction is not one of simultaneous order and delivery. Thus, the municipal ordinance requiring the licensing of such dealers does not apply since the ordinance's application would contravene the express provisions of statute. Segler v. City Council, 91 Ga. App. 481, 85 S.E.2d 799, 1955 Ga. App. LEXIS 781 (1955) (decided under former Code 1933, § 92-4105).

What acts incident to delivery permissible within exemption. — When an oil company is engaged in one city in selling wholesale gasoline, oil, etc., and delivers by truck, upon orders received by telephone or mail, in the quantities required by the terms of such orders to retail dealers in other towns, the wholesale dealer is not engaged in selling by wholesale in the towns at which the retail dealers are located, although the payments are made there by the check of the retail dealers, payable to the wholesale dealer, the check at the time of delivery being handed to the driver of the truck of the wholesale dealer for the latter. Wofford Oil Co. v. City of Pitts, 178 Ga. 339, 173 S.E. 384, 1934 Ga. LEXIS 51 (1934) (decided under former Code 1933, § 92-4105).

When under prior arrangements between consumers and a gas company, whose business was located outside the limits of a city, a truck driver for the company was to test the quantity of gas in the consumer's tank and replenish the gas as necessary, the city ordinance requiring a license for selling or distributing gas was not applicable to sustain a conviction of the driver. Kirkpatrick v. City of Conyers, 90 Ga. App. 74, 81 S.E.2d 844, 1954 Ga. App. LEXIS 636 (1954) (decided under former Code 1933, § 92-4105).

Ordinance imposing license fee or tax on a taxpayer for "delivering" gasoline and oils to filling stations belonging to a taxpayer, whose agent paid an occupation tax for operating such stations, when such delivery was made on orders previously obtained, is void as against the taxpayer under the general charter powers of the municipality, which seeks to tax only an incident or part of the taxpayer's business. Wofford Oil Co. v. City of Boston, 170 Ga. 624, 154 S.E. 145, 1930 Ga. LEXIS 208 (1930) (decided under former Civil Code 1910, § 868).

Exemption does not apply to vendors making both sales and deliveries in the levying municipality. Rossman v. City of Moultrie, 189 Ga. 681, 7 S.E.2d 270, 1940 Ga. LEXIS 368 (1940) (decided under former Code 1933, § 92-4105).

Effect of single sale from samples. — Though an agent may in a single instance offer to sell, or even actually sell, one of the samples which the agent carries with the agent, this fact alone would not render the agent liable to pay the license imposed upon peddlers. Kimmel v. Mayor of Americus, 105 Ga. 694, 31 S.E. 623, 1898 Ga. LEXIS 698 (1898) (decided under Ga. L. 1896, p. 36, § 1).

Municipal licensing of wholesale dealers of malt beverages. — While municipal authorities may not levy a tax on a traveling salesperson, the authorities may levy a license on a wholesale dealer of malt beverages. Collier v. State, 54 Ga. App. 346, 187 S.E. 843, 1936 Ga. App. LEXIS 574 (1936) (decided under former Code 1933, § 92-4105).

Facts as stipulated did not warrant a finding that malt beverage wholesaler located in one county had established within a municipality in another county a sufficient trade nexus upon which the municipality could base the invocation of the municipality's licensing power. City of Gainesville v. Georgia Crown Distrib. Co., 231 Ga. 352, 201 S.E.2d 410, 1973 Ga. LEXIS 695 (1973) (decided under former Code 1933, § 92-4105).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 92-4105 are included in the annotations for this Code section.

State Farmers' Market. — Business operated upon the property of a State Farmers' Market is exempted from municipal taxation and regulations of any kind except certain regulations as to police, fire, and health. Anyone operating a business on a State Farmers' Market who leaves the market and solicits orders and makes deliveries in the adjacent municipality would be subject to municipal license laws, unless one is exempted under one of the statutes exempting agricultural products. 1954-56 Ga. Op. Att'y Gen. 494 (rendered under former Code 1933, § 92-4105).

Vendors or businesses operating out of the State Farmers' Market in Forest Park who solicit orders and make deliveries within the City of Forest Park could conceivably be required to obtain a business license from the City of Forest Park. 1987 Op. Att'y Gen. No. 87-36, provided that the vendors or businesses were not exempt under O.C.G.A. § 48-5-356.

Those businesses or vendors operating out of the State Farmers' Market in Forest Park who solicit orders and subsequently make deliveries in municipalities other than the City of Forest Park would be exempt from any municipal license fee provided that the county in which the municipality is located does not have a population greater than 500,000. 1987 Op. Att'y Gen. No. 87-36, provided that the businesses vendors do not fall outside the exceptions created in O.C.G.A. §§ 48-5-354 and 48-5-356.

Businesses or vendors operating strictly within the State Farmers' Market are not subject to any business license fee by the City of Forest Park. 1988 Op. Att'y Gen. No. 88-8.

Vendors or businesses operating out of the State Farmers' Market in Forest Park who solicit orders and make deliveries within the City of Forest Park could conceivably be required to obtain a business license from the City of Forest Park provided the vendors or businesses were not exempt under O.C.G.A. § 48-5-356. 1988 Op. Att'y Gen. No. 88-8.

Businesses or vendors operating out of the State Farmers' Market in Forest Park who solicit orders and subsequently make deliveries in municipalities other than the City of Forest Park would be exempt from any municipal license fee provided that the businesses or vendors do not fall outside the exceptions created in O.C.G.A. §§ 48-5-354 and 48-5-356. 1988 Op. Att'y Gen. No. 88-8.

Distributors of distilled spirits. — In determining whether a municipality

may impose license fees upon wholesale distributors of distilled spirits who has business situs elsewhere, this statute, which restricts the taxation of traveling salespeople by municipal corporations, is applicable. 1971 Op. Att'y Gen. No. U71-69 (rendered under former Code 1933, § 92-4105).

Beer wholesalers. — Statute does not prohibit a municipality from levying a business tax on beer wholesalers and requiring the wholesalers to pay a license fee. 1952-53 Ga. Op. Att'y Gen. 458 (rendered under former Code 1933, § 92-4105).

RESEARCH REFERENCES

ALR.

License or excise tax on merchandise brokers or persons performing similar functions as affected by commerce clause, 155 A.L.R. 239.

Legislative power to exempt from taxation property, purposes, or uses additional to those specified in constitution, 61 A.L.R.2d 1031.

48-5-355. Exemption from municipal tax or license fee of certain goods purchased in carload lots for distribution among several purchasers.

Any one or more persons purchasing guano, meats, meal, flour, bran, cottonseed, or cottonseed meal and hulls in carload lots shall be entitled, upon delivery of the car and the surrender of the bill of lading, to apportion the shipment or shipments between or among themselves without the payment of a special tax or license fee to any municipality as dealers or distributors of the goods or merchandise when:

(1) The bill of lading for the shipment is taken in the name of an individual;

(2) The freight is paid pro rata by the owners of the goods or merchandise; and

(3) The goods or merchandise is being procured for the individual use of the purchasers and not for sale by them.

History.

Ga. L. 1914, p. 147, § 1; Code 1933, § 92-4106; Code 1933, § 91A-1505, enacted by Ga. L. 1978, p. 309, § 2.

Cross references.

Warehouse receipts, bills of lading, and other documents of title, T. 11, A. 7.

48-5-356. Exemption from municipal taxation of agricultural products and livestock raised in state.

No municipality shall levy any tax or license fee or shall require the payment of any fee or tax upon the sale or introduction into the municipality of any agricultural product raised in this state including, but not limited to, swine, cattle, sheep, goats, poultry, and the products of such animals when the sale and introduction are made by the producer of the product and the sale of the product is made within 90 days of the introduction of the product into the municipality. The

exemptions provided in this Code section shall be in addition to all other exemptions from taxation and licensing provided by law for any such product.

History.
Ga. L. 1957, p. 607, § 1; Code 1933, § 91A-1507, enacted by Ga. L. 1978, p. 309, § 2.

Cross references.
Dealers in agricultural products, T. 2, C. 9.
Livestock dealers, T. 4, C. 6.

OPINIONS OF THE ATTORNEY GENERAL

State Farmers' Market. — Businesses or vendors operating strictly within the State Farmers' Market are not subject to any business license fee by the City of Forest Park. 1988 Op. Att'y Gen. No. 88-8.

Vendors or businesses operating out of the State Farmers' Market in Forest Park who solicit orders and make deliveries within the City of Forest Park could conceivably be required to obtain a business license from the City of Forest Park provided the vendors or businesses were not exempt under O.C.G.A. § 48-5-356. 1988 Op. Att'y Gen. No. 88-8.

Businesses or vendors operating out of the State Farmers' Market in Forest Park who solicit orders and subsequently make deliveries in municipalities other than the City of Forest Park would be exempt from any municipal license fee provided that the businesses or vendors do not fall outside the exceptions created in O.C.G.A. §§ 48-5-354 and 48-5-356. 1988 Op. Att'y Gen. No. 88-8.

Determination of validity of tax. — Validity of a municipal tax upon the business of chicken raising must be determined from a study of the ordinance in question, considered in the light of restrictions upon municipal taxation of agricultural products. 1970 Op. Att'y Gen. No. U70-90.

As long as an egg producer comes within the conditions of this statute a municipality would be without authority to impose any tax upon such a producer. 1963-65 Ga. Op. Att'y Gen. 63.

Exemption of farm products stored by the federal government. — As farm products within the hands of the producer, within the year next after their production, and all property within the scope of federal ownership are exempt from taxation, farm products owned by the producer and stored by the federal government are not within the classification of properties taxable by a municipal corporation. 1963-65 Ga. Op. Att'y Gen. 238.

48-5-357. Frontage owned by state or subdivisions abutting streets or sidewalks treated as owned by individuals for purpose of assessment for improvements; designation of signers.

Whenever the owners of land abutting on any street or sidewalk petition to have the street or sidewalk improved and the state or any of its political subdivisions is the owner of property abutting on the street, the frontage owned by the state or political subdivision shall be counted as if owned by an individual and shall be treated as if owned by an individual for the purposes of assessment. When the state is the owner of the property, the Governor may sign the application for and in behalf of the state. When a county is the owner of the property, the county governing authority may sign in behalf of the county. When a munici-

pality is the owner of the property, the mayor of the municipality where the property is located may sign in behalf of the municipality.

History.

Ga. L. 1906, p. 119, § 1; Civil Code 1910, § 871; Code 1933, § 92-4202; Code 1933, § 91A-1509, enacted by Ga. L. 1978, p. 309, § 2.

JUDICIAL DECISIONS

Applicability. — Statute has no application except whenever the abutting owners of any street or sidewalk in the state petition to have the street or sidewalk improved. City of LaGrange v. Troup County, 132 Ga. 384, 64 S.E. 267, 1909 Ga. LEXIS 117 (1909).

OPINIONS OF THE ATTORNEY GENERAL

Sovereign immunity of the state. — So important a sovereign right as the state's immunity from suit should not and could not be relinquished without a clear, unambiguous, and unequivocal Act of the General Assembly. This statute is ambiguous, and the state's immunity from suits is not sufficiently expressed and specific to rule that the state's immunity has been removed. 1948-49 Ga. Op. Att'y Gen. 344.

State's liability for paving assessments. — General Assembly intended and did in fact fix the state's liability for paving assessments when the paving is done as a result of a petition; the liability is fixed at the same rate as that of individuals. 1948-49 Ga. Op. Att'y Gen. 344.

When state liable for paving assessments. — State's property is not subject to assessment for street improvements in the absence of the state's assent or a petition by the state for such improvements. 1963-65 Ga. Op. Att'y Gen. 744.

State's authority to pay for paving property abutting its property. — State may not, without legislative authority, pay a municipality for the cost of paving property abutting that of the state. 1948-49 Ga. Op. Att'y Gen. 347.

Department of Transportation may not reimburse a municipality for paving already done on property abutting that of the state. 1948-49 Ga. Op. Att'y Gen. 347.

48-5-358. Executions for collection of assessments for paving streets, laying sewers, or other improvements; sales at public auction; right of redemption.

Each municipality may enforce the collection of any amount due or to become due for paving streets or alleys, laying sewers and drains, or cleaning or repairing privy vaults by execution issued by the municipal finance officer against the persons who owe the debts. The execution may be levied by the marshal on the real property of the owners and, after proceedings as in cases of sales for municipal taxes, the property may be sold at public auction. All sales under execution made by municipalities shall be subject to both purchase by the municipality and the right of redemption by the owner after sale.

History.

Ga. L. 1884-85, p. 148, § 1; Civil Code 1895, § 723; Civil Code 1910, § 869; Code 1933, § 92-4201; Code 1933, § 91A-1508, enacted by Ga. L. 1978, p. 309, § 2.

Cross references.

Execution, levy, and sale on unpaid municipal assessments or interest, § 36-39-21.

JUDICIAL DECISIONS

Rights of sheriff's sale purchaser when property sold for unpaid assessments. — Purchaser of real property at sheriff's sale which was levied upon and sold to satisfy two fieri facias for unpaid sewer assessments was not entitled to the delivery of the fieri facias with no entry of satisfaction as well as a sheriff's deed to the property, but instead was entitled either to a sheriff's deed which accurately states the circumstances of the sale, or to the return of money with lawful interest. West v. Stynchcombe, 253 Ga. 135, 317 S.E.2d 541, 1984 Ga. LEXIS 847 (1984).

Execution subject to same period of limitations as tax fi. Fa. — A fi. fa. issued by a city is in the nature of a tax fi. fa. and governed by the same procedure, and must be taken to be subject to the same period of limitation. Lewis v. Moultrie Banking Co., 36 Ga. App. 347, 136 S.E. 554, 1927 Ga. App. LEXIS 69 (1927).

Assessments not abated when city accepts work of paving contractor. — When repaving is done on city streets and the city accepts the repaving, and by reason of a latent defect the paving becomes broken and cracked, and the contractor repairs the pavement under contract, and the city accepts the pavement as repaired, such acceptance, in the absence of fraud, is binding upon the property owners. The presence of such defects in the paving will not be cause for abatement of the balance of the installments of the assessments for the cost of repaving them unpaid, on the ground that the property owners have paid all that the repaving is worth. Webb v. City of Atlanta, 186 Ga. 430, 198 S.E. 50, 1938 Ga. LEXIS 620 (1938).

Authority of city to bid and purchase at sale. — When city was authorized to pave the city's streets and assess the costs of such paving against abutting property, the law must be read into the city's charter and the city may bid upon and purchase such property when execution, levy, and sale were necessary to collect the assessment. City of Valdosta v. Ousley, 175 Ga. 775, 166 S.E. 195, 1932 Ga. LEXIS 327 (1932).

Manner in which and by whom property redeemed. — Realty which has been levied upon and sold under a fi. fa. for municipal paving may be redeemed by the owner, the owner's grantee in a security deed, or a mortgagee, as well as others having an interest in the property, upon paying or tendering to pay to the purchaser, within 12 months, the purchase price, with a premium of 10 percent from the date of the sale to the date of the offer to redeem. Hopkins v. Chatham Phoenix Nat'l Bank & Trust Co., 174 Ga. 136, 162 S.E. 521, 1932 Ga. LEXIS 8 (1932).

RESEARCH REFERENCES

ALR.

One in adverse possession as within class of persons entitled to redeem from tax sale, 164 A.L.R. 1285.

Property owner's liability for unpaid taxes following acquisition of property by another at tax sale, 100 A.L.R.3d 593.

48-5-359. Sale of property for taxes due municipality; purchase and sale by municipality; recitals in tax deeds prima-facie correct; distribution and retention of proceeds of sale.

(a) The time, place, and manner of the sale of real and personal property for taxes due municipalities shall be the same as that provided by law for sheriffs' sales for state and county taxes. A sale for taxes due may be conducted by the marshal or duly authorized officer of the municipality and may be held in the council chamber or the usual place of meeting of the governing authority of the municipality.

(b) If, during any sale of property by a municipality for taxes due and after the property has been offered a reasonable time, no one present at the sale bids an amount for the property being sold which is as much as the total of the tax due plus the officer's cost due on the sale, then any duly appointed officer or agent of the municipality may purchase the property for the municipality. If the municipality purchases property at a sale, the marshal or other officer conducting the sale shall make to the municipality a deed to the property sold and shall deliver the deed to the officer designated by the municipality to receive it. Title acquired by a municipality at a tax sale by a deed issued pursuant to the sale shall be as perfect, valid, and binding, after the period provided for redemption by the owner has elapsed and there is no redemption by the owner, as if purchased by any person other than the municipality. The marshal or other duly authorized officer conducting the sale shall put the municipality, through any officer or person the municipality designates, in possession of the property so sold.

(c) Property acquired by a municipality pursuant to subsection (b) of this Code section may be divested or alienated by the municipality only by public sale of the property to the highest bidder. However, when it is clearly shown to the municipal governing authority that returned or unreturned property has been sold and purchased by the governing authority to protect both the taxes of the municipality and the cost of collecting such taxes and that the governing authority has not parted with title to the property, the governing authority may quitclaim the property by unanimous vote to the owner of the property at the time of purchase by the governing authority or to the owner's administrators, executors, heirs, or assigns upon payment of all taxes which are due on the property and all costs due by reason of the sale.

(d) Each municipality may pass appropriate ordinances and bylaws to carry into effect this Code section.

(e) The recitals in a deed under a sale for municipal taxes shall be prima-facie evidence of the facts recited in the deed.

(f) The marshal of a municipality and other officers of the munici-

pality whose duty it is to collect the taxes and other revenues of the municipality by levy and sale shall be subject to be ruled for money in the hands of the officer arising from the public sale of any property pursuant to process issued by the municipality. Action pursuant to this Code section may be taken either in the superior court, city court, or state court in the county where the municipality is located and shall be accomplished in the same manner as sheriffs and constables are ruled for the distribution of money coming into their hands from the sale of any property.

(g) When an execution is placed in the hands of the marshal or other selling officer of any municipality with written notice to retain the proceeds arising from the sale of any property of the defendant in fi. fa., the marshal or other selling officer, after first paying to the municipality the amount due on the process under which the sale was made, shall retain the balance of the funds in his hands until he is ordered by the court first acquiring jurisdiction under proper proceedings to pay out the funds.

History.

Ga. L. 1877, p. 125, §§ 1-4; Code 1882, §§ 3656a, 3656c, 3656d, 3656e; Civil Code 1895, §§ 732, 734, 735, 736, 738; Ga. L. 1900, p. 81, §§ 1, 2; Ga. L. 1901, p. 23, § 1; Ga. L. 1904, p. 52, § 1; Ga. L. 1906, p. 32, § 1; Civil Code 1910, §§ 879, 881, 882, 883, 885, 911, 912; Code 1933, §§ 92-4401, 92-4403, 92-4404, 92-4405, 92-4407, 92-4408, 92-4409; Ga. L. 1939, p. 226, § 1; Code 1933, § 91A-1511, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1983, p. 884, § 3-35.

History of Section.

This Code section is partially derived from the decision in Johnson v. Phillips & Co., 89 Ga. 286, 15 S.E. 368 (1892).

JUDICIAL DECISIONS

"Time, place, and manner of sale" does not embrace advertisement of sale. — Words "time, place, and manner of sale" do not embrace the newspaper in which the sale is to be advertised. Consequently, the statute does not require that sales for municipal taxes shall be advertised in the same newspaper in which the sheriff's sales for city and county taxes are advertised. Bacon v. Mayor of Savannah, 86 Ga. 301, 12 S.E. 580, 1890 Ga. LEXIS 236 (1890); Scheurman v. City of Columbus, 106 Ga. 34, 31 S.E. 787, 1898 Ga. LEXIS 11 (1898).

Proper notice. — Even if the documents from the sheriff's office notifying a property owner of a tax sale were not properly authenticated, that would not render the tax sale or the deed therefrom void; the owner's claim that a buyer failed to properly provide notice of foreclosure of the owner's right of redemption because the notification was delivered by a private process server rather than the sheriff had been rejected. Davis v. Harpagon Co., LLC, 281 Ga. 250, 637 S.E.2d 1, 2006 Ga. LEXIS 838 (2006).

Sufficiency of advertisement. — Under a provision in a city charter declaring that tax sales shall be advertised for 30 days, one insertion of the advertisement of such a sale in each calendar week during the period of 30 days immediately preceding the day of sale will suffice, provided the first insertion appeared at least 30 days before the sale. Montford v. Allen, 111 Ga. 18, 36 S.E. 305, 1900 Ga. LEXIS 474 (1900).

Advertisement of marshal's sale in Sunday newspaper. — Publication of the advertisement of a marshal's sale for taxes in a newspaper appearing on

Sunday is not legal, and the sale thereunder passes no title. Sawyer v. Cargile, 72 Ga. 290, 1884 Ga. LEXIS 257 (1884), superseded by statute as stated in Trammel v. National Bank of Georgia, 159 Ga. App. 850, 285 S.E.2d 590, 1981 Ga. App. LEXIS 2847 (1981).

Notice provision in city charter must be strictly followed. — As regards the effect of a failure properly to advertise, there is a distinction to be drawn between tax sales had in pursuance of the general law of the state and those had in pursuance of a provision in a municipal charter. In the former, the law in reference to notice is merely directory, and purchasers at such sales, if themselves without fault, will be protected; whereas a provision of a city charter prescribing the time for giving notice of a municipal tax sale must be strictly complied with, or the sale will be void even as against an innocent purchaser. Montford v. Allen, 111 Ga. 18, 36 S.E. 305, 1900 Ga. LEXIS 474 (1900).

City clerk unauthorized to postpone tax sale or grant indulgence to defendant in execution. — When, under a city charter, it is the duty of the marshal to collect executions for taxes and conduct sales thereunder, the city clerk has no authority to postpone a tax sale or grant indulgence to the defendant in the tax execution, the taxpayer would rely on the execution at the taxpayer's peril, and such an arrangement would not invalidate the sale, even if made. Montford v. Allen, 111 Ga. 18, 36 S.E. 305, 1900 Ga. LEXIS 474 (1900).

Procedure when taxpayer admittedly owes part of tax complained of. — One seeking relief from excessive tax levies, but admitting, either expressly or by necessary implication, that one owes part of the tax covered by such executions, must pay or offer to pay the amount of the taxes admitted to be due, in order to obtain the relief sought; this rule also applies to those seeking relief from excessive levies by municipal authorities. Lowe v. City of Atlanta, 191 Ga. 76, 11 S.E.2d 891, 1940 Ga. LEXIS 630 (1940).

Authority of city to bid and purchase at sale. — When city was authorized to pave the city's streets and assess costs of such paving against abutting property, the law must be read into the city's charter and the city may bid upon and purchase such property when execution, levy, and sale were necessary to collect the assessments. City of Valdosta v. Ousley, 175 Ga. 775, 166 S.E. 195, 1932 Ga. LEXIS 327 (1932).

Valid tax sale. — Buyer provided sufficient evidence that a tax sale took place as the tax sale deed was appropriately signed by the sheriff; a valid fiere facias (fi fa) was issued by the county as the tax commissioner appropriately attached the commissioner's signature to the fi fa. Davis v. Harpagon Co., LLC, 281 Ga. 250, 637 S.E.2d 1, 2006 Ga. LEXIS 838 (2006).

Title acquired by city subject to lien of special assessment. — Title acquired by the city at a tax sale is the same as that any individual would have obtained; that is, the city obtains title subject to the lien of the special assessment. The city is authorized to convey no better title than it holds. The city may not by merely reselling the property divest the lien of the assessment for to allow this would provide a method for vitiating the provision making this lien coequal with the lien of other taxes. Steele v. City of Waycross, 190 Ga. 816, 10 S.E.2d 867, 1940 Ga. LEXIS 577 (1940).

Manner in which and by whom property redeemed. — Realty which has been levied upon and sold under a fi. fa. for municipal paving may be redeemed by the owner, the owner's grantee in a security deed, or a mortgagee, as well as others having an interest in the property, upon paying or tendering to pay to the purchaser, within 12 months, the purchase price, with a premium of 10 percent from the date of the sale to the date of the offer to redeem. Hopkins v. Chatham Phoenix Nat'l Bank & Trust Co., 174 Ga. 136, 162 S.E. 521, 1932 Ga. LEXIS 8 (1932).

Summary judgment properly denied. — Special master did not err in finding that a fact question remained as to whether a proper levy of the property occurred in accordance with O.C.G.A. § 9-13-12 as deposition testimony from representatives of the sheriff's office

raised significant questions as to whether required entries of the levy, including the necessary description of the property, were appropriately made on the writ of execution, or fiere facias, and in the sheriff's records; on the other hand, however, the buyer presented a tax sale deed that recited that the formalities required for a levy had been honored, thereby providing evidence that some seizure of the property had occurred. Davis v. Harpagon Co., LLC, 281 Ga. 250, 637 S.E.2d 1, 2006 Ga. LEXIS 838 (2006).

OPINIONS OF THE ATTORNEY GENERAL

City official may not bid on own behalf. — It would not be legal for a city official to bid for the official's own private use at public sales conducted by the city as the city is itself authorized to make purchases in the city's own behalf. 1952-53 Ga. Op. Att'y Gen. 386.

RESEARCH REFERENCES

Am. Jur. 2d.

72 Am. Jur. 2d, State and Local Taxation, §§ 807, 820, 833, 857.

ALR.

Tax deed and recitals therein as evidence of regularity of tax proceedings as to advertising and notice of sale, and as to time, manner, and place of sale, 30 A.L.R. 8; 88 A.L.R. 264.

48-5-359.1. Contracts for county tax commissioners to prepare municipal tax digests and assess and collect municipal taxes.

(a)(1)(A) This paragraph shall apply to a county which has fewer than 50,000 tax parcels within such county.

(B) Any county and any municipality wholly or partially located within such county may contract, subject to approval by the tax commissioner of the county, for the tax commissioner to prepare the tax digest for such municipality; to assess and collect municipal taxes in the same manner as county taxes; and, for the purpose of collecting such municipal taxes, to invoke any remedy permitted for collection of municipal taxes. Any contract authorized by this subsection between the county governing authority and a municipality shall specify an amount to be paid by the municipality to the county which amount will substantially approximate the cost to the county of providing the service to the municipality. Notwithstanding the provisions of any other law, the tax commissioner is authorized to contract for and to accept, receive, and retain compensation from the municipality for such additional duties and responsibilities in addition to that compensation provided by law to be paid to the tax commissioner by the county.

(2)(A) This paragraph shall apply to any county which has 50,000 or more tax parcels within such county.

(B) Any county and any municipality wholly or partially located within such county may contract for the tax commissioner to prepare the tax digest for such municipality; to assess and collect municipal taxes in the same manner as county taxes; and, for the purpose of collecting such municipal taxes, to invoke any remedy permitted for collection of municipal taxes. Any contract authorized by this subsection between the county governing authority and a municipality shall specify an amount to be paid by the municipality to the county which amount will substantially approximate the cost to the county of providing the service to the municipality. Notwithstanding the provisions of any other law, the tax commissioner is authorized to accept, receive, and retain compensation from the county for such additional duties and responsibilities in addition to that compensation provided by law to be paid to the tax commissioner by the county.

(3)(A) This paragraph shall apply to any county which contains 14 or more municipalities, in whole or in part, within such county, and paragraphs (1) and (2) of this subsection shall not apply to such counties.

(B) Any county and any municipality wholly or partially located within such county may contract for the county tax commissioner to prepare the tax digest for such municipality; to assess and collect municipal taxes in the same manner as county taxes; and, for the purpose of collecting such municipal taxes, to invoke any remedy permitted for collection of municipal taxes. Such contracts shall not be subject to the approval of any county tax commissioner. Any contract authorized by this subparagraph between the county governing authority and a municipality shall specify an amount to be paid by the municipality to the county, which amount will substantially approximate the cost to the county of providing the service to the municipality, as well as the cost to the county of providing compensation to its tax commissioner, if any, with respect to providing such service. Notwithstanding any provision of law to the contrary, including paragraphs (1) and (2) of this subsection, the tax commissioner of any such county shall conduct such additional duties and responsibilities, and shall be authorized to accept, receive, and retain compensation to be determined and paid by the county for such additional duties and responsibilities in addition to that compensation provided by law to be paid to the tax commissioner by the county. Nothing in this subparagraph shall require a county to compensate the county tax commissioner for such additional duties and responsibilities.

(b) With respect to any county for which the office of tax commissioner has not been created, any reference in subsection (a) of this Code

section to the tax commissioner shall be deemed to refer to the tax receiver and the tax collector.

History.

Code 1981, § 48-5-359.1, enacted by Ga. L. 1988, p. 368, § 1; Ga. L. 1999, p. 557, § 1; Ga. L. 2007, p. 365, § 1/HB 486; Ga. L. 2021, p. 642, § 2/SB 201; Ga. L. 2024, p. 1052, § 5(21)/SB 448, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, revised punctuation in the third sentence in subparagraph (a)(3)(B).

Editor's notes.

Ga. L. 1999, p. 557, § 3, not codified by the General Assembly, provides that the amendment to this Code section is applicable to all tax years beginning on or after January 1, 2000.

Law reviews.

For survey article on local government law, see 59 Mercer L. Rev. 285 (2007).

48-5-360. Issuance and service of summons of garnishment against person holding property of defendant owing municipal taxes; entries on execution and returns; proceedings.

(a) When any finance officer or other person authorized to collect the taxes due any municipality can find no property of the defendant on which to levy a tax execution, he shall make an entry to that effect on the execution and may then issue summons of garnishment without making affidavit or giving bond against any person who he believes is indebted to the defendant or who he believes has property, money, or effects of the defendant in his hands. The summons of garnishment shall be served by the finance officer, other tax collector, sheriff, or any constable of the county in which the garnishee resides at least 15 days before the sitting of the superior court or city court of the county in which the municipality is located and shall be returned to such appropriate court.

(b) The finance officer or other person authorized to collect taxes shall enter on the execution the name of the person garnished and shall return the execution to the court. The subsequent proceedings on the garnishment shall be the same as on garnishments in cases when judgment has been obtained.

History.

Ga. L. 1890-91, p. 53, §§ 1, 2; Civil Code 1895, §§ 729, 730; Civil Code 1910, §§ 876, 877; Code 1933, §§ 92-4301, 92-4302; Code 1933, § 91A-1510, enacted by Ga. L. 1978, p. 309, § 2.

48-5-361. Applicability to counties.

Nothing contained in this article shall be construed to apply to any county unless application to counties is expressly provided in a particular provision of this article.

History.
Ga. L. 1877, p. 125, § 5; Code 1882, § 3656f; Civil Code 1895, § 737; Civil Code 1910, § 884; Code 1933, § 92-4406; Code 1933, § 91A-1512, enacted by Ga. L. 1978, p. 309, § 2.

ARTICLE 7

MISCELLANEOUS LOCAL ADMINISTRATIVE PROVISIONS

Law reviews.
For article, "Procedure and Problems in Georgia Ad Valorem Tax Appeals," see 26 Ga. St. B.J. 98 (1990).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, Ch. 92-39A are included in the annotations for this article.

Payment of ad valorem property taxes would not prejudice a taxpayer's appeal brought pursuant to former Code 1933, § 92-6912 (see now O.C.G.A. § 48-5-311). If successful in such an appeal the taxpayer would be entitled to a refund under the provisions of former Code 1933, Ch. 92-39A (see now O.C.G.A. § 48-5-380). 1975 Op. Att'y Gen. No. 75-55 (decided under former Code 1933, Ch. 92-39A).

48-5-380. Refunds of taxes and license fees by counties and municipalities; time and manner of filing claims and actions for refund; authority to approve or disapprove claims.

(a) As provided in this Code section, each county and municipality shall refund to taxpayers any and all taxes and license fees:

(1) Which are determined to have been erroneously or illegally assessed and collected from the taxpayers under the laws of this state or under the resolutions or ordinances of any county or municipality; or

(2) Which are determined to have been voluntarily or involuntarily overpaid by the taxpayers.

(a.1) If property owners have been billed and have remitted property tax payments to either a county or a municipality based on the fair market value of the land and subsequently the fair market value of such land is reduced on an appeal, then the county or the municipality shall reimburse the property owner the difference between tax remitted and the final tax owed for each year in which the incorrect fair market value of the land was used in the calculations.

(b) Any taxpayer from whom a tax or license fee was collected who alleges that such tax or license fee was collected illegally or erroneously may file a claim for a refund with the governing authority of the county or municipality at any time within one year or, in the case of taxes, three years after the date of the payment of the tax or license fee to the

county or municipality. The claim for refund shall be in writing and shall be in the form and shall contain the information required by the appropriate governing authority. The claim shall include a summary statement of the grounds upon which the taxpayer relies. In the event the taxpayer desires a conference or hearing before the governing authority in connection with any claim for a refund, the taxpayer shall so specify in writing in the claim. If the claim conforms to the requirements of this Code section, the governing authority shall grant a conference at a time specified by the governing authority. The governing authority shall consider information contained in the taxpayer's claim for a refund and such other information as is available. The governing authority shall approve or disapprove the taxpayer's claim and shall notify the taxpayer of its action. In the event any claim for refund is approved, the governing authority shall proceed under subsection (a) of this Code section to give effect to the terms of that subsection. No refund provided for in this Code section shall be assignable. Submitting a request for refund to the governing authority is not a prerequisite to bringing suit.

(c) The filing of a request for a refund with the governing authority under subsection (b) of this Code section shall act to stay the time period for initiating suit for a refund. Following the filing of a request for refund with the governing authority, no suit may be commenced until the earlier of the governing authority's denial of the request for refund or the expiration of 90 days from the date of filing the claim. Alternatively, any taxpayer may forgo requesting a refund from the governing authority under subsection (b) of this Code section and elect to proceed directly to filing suit.

(d) Any refunds approved or allowed under this Code section shall be paid from funds of the county, the municipality, the county board of education, the state, or any other entity to which the taxes or license fees were originally paid. Refunds shall be paid within 60 days of the approval of the taxpayer's claim or within 60 days of the entry of a final decision in any action for a refund.

(e) The governing authority of any county, by resolution, and the governing authority of any municipality, by ordinance, shall adopt rules and regulations governing the administration of this Code section and may delegate the administration of this Code section, including the approval or disapproval of claims where the reason for the claim is based on an obvious clerical error, to an appropriate department in local government. In disputed cases where there is no obvious error, the approval or disapproval of claims may not be delegated by the governing authority.

(f) Nothing contained in subsections (b) or (c) of this Code section shall be deemed the exclusive remedy to seek a refund nor deprive

taxpayers of the right to seek a refund mandated by subsection (a) by any other cause of action available at law or equity.

(g) Under no circumstances may a suit for refund be commenced more than five years from the date of the payment of taxes or fees at issue.

History.

Code 1933, §§ 92-3901a, 92-3902a, 92-3903a, 92-3904a, 92-3905a, enacted by Ga. L. 1975, p. 774, § 1; Ga. L. 1978, p. 928, § 1; Code 1933, § 91A-1601, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 46; Ga. L. 1980, p. 463, § 2; Ga. L. 2010, p. 1104, § 7-1/SB 346; Ga. L. 2014, p. 672, § 5/HB 755.

Law reviews.

For note as to the voluntary payment doctrine in Georgia, see 16 Ga. L. Rev. 893 (1982).

For annual survey of state and local taxation, see 38 Mercer L. Rev. 337 (1986).

For survey article on real property law, see 67 Mercer L. Rev. 193 (2015).

For annual survey on local government law, see 70 Mercer L. Rev. 177 (2018).

For annual survey on real property law, see 70 Mercer L. Rev. 209 (2018).

For annual survey on local government, see 73 Mercer L. Rev. 193 (2021).

JUDICIAL DECISIONS

City tax against airlines illegal. — City tax assessments against an airline, based on either the total gross receipts of the business or on the total number of employees, are illegal under 49 U.S.C. § 1513, and the airline is entitled to a refund under O.C.G.A. § 48-5-380 for the payments the airline timely claimed. City of College Park v. Atlantic S.E. Airlines, 194 Ga. App. 637, 391 S.E.2d 460, 1990 Ga. App. LEXIS 254 (1990).

Appeal process under § 48-5-311 distinguished. — While the appeal process of O.C.G.A. § 48-5-311 is available to address any asserted error in an ad valorem real property tax assessment, the refund process established by O.C.G.A. § 48-5-380 is intended only to correct errors of fact or law which have resulted in erroneous or illegal taxation. Gwinnett County v. Gwinnett I Ltd. Partnership, 265 Ga. 645, 458 S.E.2d 632, 1995 Ga. LEXIS 507 (1995).

Standing. — Because the taxpayer's assignee lacked standing to claim a refund of ad valorem taxes allegedly overpaid by its assignor, the trial court erred in finding that the assignee was entitled to the refund; as a result, the court also erred in denying the respective counties summary judgment on the issue. Clayton County v. HealthSouth Holdings, Inc., 288 Ga. App. 406, 654 S.E.2d 143, 2007 Ga. App. LEXIS 1087 (2007).

Amount of assessment not proper matter for basis of refund claim. — Claim for refund of taxes that was not based on any inaccuracy in the factual record or in any illegality in the procedure used to reach the assessment, but on a disagreement with the amount thereof was not one cognizable as a refund action under O.C.G.A. § 48-5-380. Gwinnett County v. Gwinnett I Ltd. Partnership, 265 Ga. 645, 458 S.E.2d 632, 1995 Ga. LEXIS 507 (1995); Parian Lodge, Inc. v. DeKalb County, 225 Ga. App. 853, 485 S.E.2d 545; National Health Network, Inc. v. Fulton County, 228 Ga. App. 584, 492 S.E.2d 333.

City's occupation tax did not violate commerce clause. — City's occupation tax did not violate the commerce clause because both interstate sellers and businesses selling exclusively within Georgia were charged the tax based on the number of employees within the city and the gross receipts from sales in Georgia. GMC v. City of Doraville, 284 Ga. 689, 670 S.E.2d 787, 2008 Ga. LEXIS 1020 (2008).

Taxpayer need not comply with the appeal procedure provided in O.C.G.A. § 48-5-311(e) prior to proceeding under O.C.G.A. § 48-5-380. Marconi Avionics, Inc. v. DeKalb County, 165 Ga. App. 628, 302 S.E.2d 384, 1983 Ga. App. LEXIS 1983 (1983).

Failure to comply with O.C.G.A. § 48-5-311. — Corporate taxpayers were barred from seeking refunds, pursuant to O.C.G.A. § 48-5-380, of ad valorem taxes paid on vehicles with tax situses in other states because the taxpayers failed to follow the appeal procedures provided by O.C.G.A. § 48-5-311. DeKalb County v. Genuine Parts Co., 225 Ga. App. 376, 484 S.E.2d 57.

County and the county tax commission were entitled to summary judgment as a matter of law in an action filed by a trucking company seeking a refund for ad valorem taxes the company paid as it was undisputed at trial that the company failed to timely file for either an apportionment in two subject years, as required by Ga. Comp. R. & Regs. r. 560-11-7-.02, and that the company did not appeal the company's ad valorem assessment within 45 days of the assessment in either year, pursuant to O.C.G.A. § 48-5-311; furthermore, O.C.G.A. § 48-5-380, which allowed a taxpayer to seek a refund up to three years after paying an erroneous or illegal tax, did not apply. Trans Link Motor Express, Inc. v. Dougherty County, 265 Ga. App. 10, 592 S.E.2d 859, 2003 Ga. App. LEXIS 1612 (2003).

When a taxpayer challenged an assessment, but paid the taxes, the taxpayer could not bring an action in the courts for a declaratory judgment to determine the validity of the assessment until the taxpayer exhausted the taxpayer's statutory administrative options under either O.C.G.A. § 48-5-311 or O.C.G.A. § 48-5-380. Wilmington Trust Co. v. Glynn County, 265 Ga. App. 704, 595 S.E.2d 562, 2004 Ga. App. LEXIS 239 (2004).

Exhaustion of administrative remedies. — In a tax refund class action under O.C.G.A. § 48-5-380, the named attorneys satisfied the administrative exhaustion requirement for an entire class of attorneys; the named attorneys acted for the entire class pursuant to former O.C.G.A. § 9-11-23 by giving the City of Atlanta notice of the tax constitutionality claim by filing administrative and civil actions, and permitting recovery only to those attorneys with the foresight to have demanded a refund was untenable in a case such as the instant one that involved a matter of constitutional import and an unconstitutional ordinance that had been relied upon to improperly collect taxes. Barnes v. City of Atlanta, 281 Ga. 256, 637 S.E.2d 4, 2006 Ga. LEXIS 831 (2006).

Trial court erred by dismissing the taxpayer's complaint against the city, which alleged that certain fees imposed by the Department of Watershed Management constituted illegal taxes, for lack of subject matter jurisdiction because the taxpayer exhausted the taxpayer's administrative remedies, as O.C.G.A. § 48-5-380 contained no 30-day limitation period for challenging an agency's decision. Jones v. City of Atlanta, 360 Ga. App. 152, 860 S.E.2d 833, 2021 Ga. App. LEXIS 331 (2021).

Mandamus appropriate. — O.C.G.A. § 48-5-380 does not provide a legally adequate remedy to a taxpayer who has been denied the long-term preferential assessment that may be accorded rehabilitated historic property under O.C.G.A. § 48-5-7.2, and thus mandamus is an appropriate remedy. Chatham County Bd. of Tax Assessors v. Emmoth, 278 Ga. 144, 598 S.E.2d 495, 2004 Ga. LEXIS 538 (2004).

Property owners filed a class action alleging that a county had improperly recalculated property taxes without affording taxpayers the required statutory notice and the opportunity to appeal under O.C.G.A. § 48-5-311. Given the differences between the appeal remedy and the refund remedy provided by O.C.G.A. § 48-5-380 — as well as the possibility that a refund action might not be available to all class members — the trial court properly determined that a refund action was not an adequate remedy and that equitable relief was necessary to protect the class members' right to pursue the legal remedy provided in § 48-5-311. Fulton County Bd. of Tax

Assessors v. Marani, 299 Ga. App. 580, 683 S.E.2d 136, 2009 Ga. App. LEXIS 909 (2009), cert. denied, No. S09C2072, 2010 Ga. LEXIS 18 (Ga. Jan. 12, 2010).

Justification for asserting claim. — General Assembly did not intend to make a taxpayer's right to assert a claim for a tax refund contingent on a prior decision by the taxing authority or some unspecified appeals tribunal approving a nonexistent claim. Rather, subsection (b) of O.C.G.A. § 48-5-380 clearly authorizes the taxpayer to assert a claim for a refund based on the taxpayer's own determination that such a refund is warranted. Eastern Air Lines v. Fulton County, 183 Ga. App. 891, 360 S.E.2d 425, 1987 Ga. App. LEXIS 2115 (1987), superseded by statute as stated in Ga. Dep't of Corr. v. Couch, 295 Ga. 469, 759 S.E.2d 804, 2014 Ga. LEXIS 489 (2014), cert. denied, 183 Ga. App. 905.

County's inability to produce a property tax card in response to discovery requests did not in itself show a factual inaccuracy in the assessment procedure. National Health Network, Inc. v. Fulton County, 228 Ga. App. 584, 492 S.E.2d 333.

Zoning issues. — Taxpayer's contention that the assessors failure to consider zoning conditions in making an assessment raised an error of law for purposes of O.C.G.A. § 48-5-380, even though such conditions were not recorded with the superior court at the time of the assessment. Brian Realty Corp. v. DeKalb County, 229 Ga. App. 209, 493 S.E.2d 595 (1997).

Nontaxability of property proper grounds for seeking refund based on improper assessment. — There is nothing in the statutory scheme, or in the procedure for appeals from property tax assessments, that precludes consideration of the taxability or nontaxability of property if that forms the basis of the allegation that the property was erroneously or illegally assessed or that there was an overpayment. Marconi Avionics, Inc. v. DeKalb County, 165 Ga. App. 628, 302 S.E.2d 384, 1983 Ga. App. LEXIS 1983 (1983).

Valuation, uniformity, and equalization proper matters for basis of refund claim. — Landowner's right to recover taxes illegally collected over a 13-year period was limited to three years prior to the filing of the landowner's claim, even though the county did not admit that the county was not entitled to the taxes collected until just before the claim was filed, since the landowner had suspected error and could have instituted a claim for refund earlier but failed to do so. Webb v. Coweta County, 178 Ga. App. 170, 342 S.E.2d 345, 1986 Ga. App. LEXIS 1609 (1986).

County homeowners, who alleged that the assessors board engaged in "sales chasing" by selectively targeting recently sold properties for reappraisal at the increased sales price while leaving the assessed values of similar unsold properties unchanged, stated a tax refund claim under O.C.G.A. § 48-5-380; the procedure allegedly violated the uniformity and equalization requirements of Ga. Const. 1983, Art. VII, Sec. I, Para. III(a), and O.C.G.A. § 48-5-306(a). Rice v. Fulton County, 358 Ga. App. 1, 852 S.E.2d 860, 2020 Ga. App. LEXIS 681 (2020), cert. denied, No. S21C0644, 2021 Ga. LEXIS 561 (Ga. July 7, 2021).

Tax refund statute did not waive school district immunity. — Taxpayer's suit against a school district seeking a refund was barred by immunity under Ga. Const. 1983, Art. I, Sec, II, Para. IX(e) and Ga. Const. 1983, Art. IX, Sec. II, Para. IX; O.C.G.A. § 48-5-380 provided for tax refunds by counties and municipalities but not school districts and, therefore, did not constitute a waiver of the school district's immunity. City of Dublin Sch. Dist. v. MMT Holdings, LLC, 346 Ga. App. 546, 816 S.E.2d 494, 2018 Ga. App. LEXIS 414 (2018), dismissed, 351 Ga. App. 112, 830 S.E.2d 487, 2019 Ga. App. LEXIS 399 (2019).

Failure to consider factors relevant to fair market value not "erroneous." — County's alleged failure to consider factors listed in O.C.G.A. § 48-5-2 that are relevant to fair market value does not make the assessed value factually inaccurate and, therefore, erroneous. National Health Network, Inc. v. Fulton County, 270 Ga. 724, 514 S.E.2d 422.

Neither taxpayer brought a claim for an erroneous or illegal tax assessment under the refund statute since the taxpayers did

not allege that the counties did not have authority to impose the tax, committed a clerical error, or collected a wrongly assessed tax; instead, both claims constituted assertions that the assessors, although using correct procedures, did not take into account matters which the taxpayer believed should have been considered in determining the assessed value. National Health Network, Inc. v. Fulton County, 270 Ga. 724, 514 S.E.2d 422.

Failure to indicate fair market value on return. — When a taxpayer sold improvements on the taxpayer's property, then filed a return in which the taxpayer left blank the area for "market value," the taxpayer was not entitled to a refund under O.C.G.A. § 48-5-380, as under O.C.G.A. § 48-5-6, returns had to state fair market value; a county was not required to interpret the taxpayer's silence on market value as a declaration that there was no value, and under O.C.G.A. § 48-5-20(a)(1), a taxpayer who failed to return taxable property in a given year was deemed to have returned the property at the same valuation as applied the preceding year. Int'l Auto Processing, Inc. v. Glynn County, 287 Ga. App. 431, 651 S.E.2d 535, 2007 Ga. App. LEXIS 990 (2007).

Recovery of overpaid taxes due to miscalculation of homestead exemption. — Under local legislation, the term "base year" was defined as the taxable year immediately preceding the taxable year in which the homestead exemption was first granted by a county; therefore, the county erred in using the next year to calculate the taxpayers' exemption and the taxpayers could recover under O.C.G.A. § 48-5-380. Coleman v. Glynn County, 344 Ga. App. 545, 809 S.E.2d 383, 2018 Ga. App. LEXIS 20 (2018), cert. denied, No. S18C0869, 2018 Ga. LEXIS 566 (Ga. Aug. 20, 2018), cert. denied, No. S18C0881, 2018 Ga. LEXIS 572 (Ga. Aug. 20, 2018).

Failure to provide notice of damages issue. — While the trial court did not err in entering an order granting partial summary judgment to a city on the city's breach of contract claim against a county and the county's tax commissioner, ruling that the latter breached their contract to bill, collect, and remit ad valorem taxes on the city's behalf because the county was not given adequate notice that the trial court would address the amount of damages incurred by the city as a result of the county's breach, the grant of summary judgment as to the damages issue was reversed on due process grounds. Ferdinand v. City of East Point, 288 Ga. App. 152, 653 S.E.2d 529, 2007 Ga. App. LEXIS 1159 (2007), cert. denied, No. S08C0466, 2008 Ga. LEXIS 213 (Ga. Feb. 25, 2008).

Failure to pay taxes while pursuing appeal and awaiting refund. — When the plaintiff argued that the defendants improperly demanded interest and fees based on the higher assessment amount as the plaintiff entered into a consent agreement with the county tax commissioner to lower the value of the property prior to levy on the 2012 executions, the plaintiff's substantive claims were prohibited as a matter of law because the tax executions were validly issued by the commissioner; the plaintiff failed to pay the taxes while pursuing the plaintiff's appeal of the assessment and awaiting a refund; and the defendants were authorized to levy the executions and demand payment as the plaintiff failed to plead that the executions were void as a matter of law or were cancelled by the commissioner in the consent judgment. B.C. Grand, LLC v. FIG, LLC, 352 Ga. App. 646, 835 S.E.2d 676, 2019 Ga. App. LEXIS 622 (2019), cert. denied, No. S20C0503, 2020 Ga. LEXIS 425 (Ga. June 1, 2020).

Form for claiming refund. — Subsection (b) of O.C.G.A. § 48-5-380 quite clearly does not require that a tax refund claim be made "on" a particular form supplied by the taxing authority but merely that the claim be made "in writing" and "in the form and [containing] the information required by" the authority. Eastern Air Lines v. Fulton County, 183 Ga. App. 891, 360 S.E.2d 425, 1987 Ga. App. LEXIS 2115 (1987), superseded by statute as stated in Ga. Dep't of Corr. v. Couch, 295 Ga. 469, 759 S.E.2d 804, 2014 Ga. LEXIS 489 (2014), cert. denied, 183 Ga. App. 905.

Substantial compliance. — Notice of refund claim filed pursuant to O.C.G.A.

§ 48-5-380 was not deficient when the notice clearly stated a summary of grounds upon which the taxpayer relied. There is no requirement that the summary of grounds must be the exact grounds upon which a refund was ultimately authorized; a notice in substantial compliance with § 48-5-380 is sufficient. City of College Park v. Atlantic S.E. Airlines, 194 Ga. App. 637, 391 S.E.2d 460, 1990 Ga. App. LEXIS 254 (1990).

Assignment of interest in refund action. — Taxpayer's assignment of an interest in a refund action to a consulting firm was not improper because the agreement provided that the firm was to retain a percentage of the amount of the refund the firm obtained for the taxpayer. Brian Realty Corp. v. DeKalb County, 229 Ga. App. 209, 493 S.E.2d 595 (1997).

City's occupation tax used same combination of criteria for all taxpayers. — Taxpayer claimed a city's occupation tax did not classify different companies by the same "combination of criteria" as required by O.C.G.A. § 48-13-10(a) as some businesses paid taxes based on their gross receipts, while others paid based on the number of their employees. This claim failed as § 48-13-10(a)(1) and (a)(3) provided that an occupation tax could be calculated using both the number of employees and gross receipts, and the occupation tax was calculated in the same manner for every company. GMC v. City of Doraville, 284 Ga. 689, 670 S.E.2d 787, 2008 Ga. LEXIS 1020 (2008).

No takings claim. — Taxpayers did not a have a takings claim under 42 U.S.C. § 1983 because the procedures of O.C.G.A. § 48-5-311 or O.C.G.A. § 48-5-380 provide adequate remedies. Brian Realty Corp. v. DeKalb County, 229 Ga. App. 209, 493 S.E.2d 595 (1997).

Action under 42 U.S.C. § 1983 barred. — Statute provides an adequate remedy at law to contest a tax assessment or deficiency notice; therefore, the plaintiff owners of restaurants and bars holding liquor licenses could not maintain an action against the defendant city under 42 U.S.C. § 1983 for declaratory and injunctive relief. Atlanta Hospitality Workers, Inc. v. City of Atlanta, 247 Ga. App. 650, 545 S.E.2d 49, 2001 Ga. App. LEXIS 74 (2001), cert. denied, No. S01C0736, 2001 Ga. LEXIS 509 (Ga. June 11, 2001).

Defenses unavailable in federal government action. — Neither voluntary payment nor the failure to exhaust state administrative remedies is available as a defense to a federal government action sounded in quasi-contract for the recovery of treasury funds paid by mistake which result in the unjust enrichment of a county. United States v. DeKalb County, 729 F.2d 738, 1984 U.S. App. LEXIS 23628 (11th Cir. 1984).

Recovery of prejudgment interest. — Taxpayer may recover prejudgment interest in an action for a refund of wrongfully collected taxes from the date of the demand for refund, not from the date the taxes were collected. Eastern Air Lines v. Fulton County, 183 Ga. App. 891, 360 S.E.2d 425, 1987 Ga. App. LEXIS 2115 (1987), superseded by statute as stated in Ga. Dep't of Corr. v. Couch, 295 Ga. 469, 759 S.E.2d 804, 2014 Ga. LEXIS 489 (2014), cert. denied, 183 Ga. App. 905.

Taxpayers could only recover overpayments for three years preceding their claim. — Because O.C.G.A. § 48-5-380(b) limited taxpayer recovery to overpayments made within three years of a written claim for refund, the county's sovereign immunity was waived only for the improper payments made within that three-year window. In a class action, the class members' three-year window was determined as of the date of filing the action. Mandamus and equity were unavailable to circumvent this limitation. Coleman v. Glynn County, 344 Ga. App. 545, 809 S.E.2d 383, 2018 Ga. App. LEXIS 20 (2018), cert. denied, No. S18C0869, 2018 Ga. LEXIS 566 (Ga. Aug. 20, 2018), cert. denied, No. S18C0881, 2018 Ga. LEXIS 572 (Ga. Aug. 20, 2018).

County immune from suit. — Trial court properly dismissed a tax refund case and determined that the payments made by the real estate investors in lieu of taxes were not a tax or license fee that would allow the investors to pursue an action

under the waiver of sovereign immunity laid out in O.C.G.A. § 48-5-380 as the statute did not waive a county's sovereign immunity for payments in lieu of taxes, even if those payments are collected in a similar manner to taxes. 2200 Atlanta Investors, LLC v. DeKalb County, 369 Ga. App. 537, 894 S.E.2d 70, 2023 Ga. App. LEXIS 491 (2023).

Suit properly brought within five years of payment of taxes. — Dismissal of the plaintiff's suit seeking a refund of property taxes paid on the basis that the suit was barred by sovereign immunity was reversed because O.C.G.A. § 48-5-380 allowed for the filing of a suit against a county or municipality for a tax refund within five years of the date the disputed taxes were paid; thus, the Georgia General Assembly expressly waived the application of sovereign immunity for that duration of time. Hojeij Branded Foods, LLC v. Clayton County, 355 Ga. App. 222, 843 S.E.2d 902, 2020 Ga. App. LEXIS 292 (2020), cert. denied, No. S20C1346, 2020 Ga. LEXIS 979 (Ga. Dec. 7, 2020).

OPINIONS OF THE ATTORNEY GENERAL

Construction with § 33-8-8.6. — With respect to certain tax refunds, the requirements of O.C.G.A. § 48-5-380 should be read in conjunction with O.C.G.A. § 33-8-8.6. 1984 Op. Att'y Gen. No. 84-24.

RESEARCH REFERENCES

Am. Jur. 2d.

72 Am. Jur. 2d, State and Local Taxation, § 965 et seq.

ALR.

When right to refund of state or local taxes accrues, within statute limiting time for applying for refund, 46 A.L.R.2d 1350.

Recovery of tax paid on exempt property, 25 A.L.R.4th 186.

Validity and applicability of statutory time limit concerning taxpayer's claim for state tax refund, 1 A.L.R.6th 1.

Construction and operation of statutory time limit for filing claim for state tax refund, 14 A.L.R.6th 119.

Effect of delay in receipt or negotiation of refund check in determining right to interest under § 6611 of the Internal Revenue Code (26 USCA § 6611), 145 A.L.R. Fed. 437.

48-5-381. Reserve funds of counties and municipalities.

(a) Whenever the governing authority of any county or municipality determines that because of unusual conditions it is impractical to expend the funds raised by taxation for the purposes for which the taxes were levied and that it is in the best interest of the county or municipality and its citizens and taxpayers for public work to be postponed until more advantageous conditions prevail, the governing authority may order as much of the funds as it deems proper transferred to a fund to be known as the "reserve fund" of the county or municipality. The reserve fund may be deposited in the manner provided by law or may be invested in obligations of the United States.

(b) A county or municipal governing authority may transfer from time to time to its reserve fund any accumulated overage in its general fund.

(c) The county or municipal reserve fund shall be held until the

governing authority determines that it is practical and advantageous to undertake public work needed in the county or municipality. Upon the determination, the governing authority may order funds transferred from the reserve fund to any of the several funds or to the general fund of the county or municipality. Before any transfer from the reserve fund is made, the governing authority shall give notice of its intention to make the transfer and the purpose for which the transferred fund is to be expended by publication in its official organ in one issue not less than ten days prior to the meeting of the governing authority at which the transfer is to be made.

(d) The existence of a county or municipal reserve fund shall not prevent tax levies from being made by the governing authority for the several purposes authorized by law at such rates as are necessary for the current or anticipated needs of the county or municipality to the same extent the governing authority could lawfully levy if no reserve fund was in existence.

(e) When any county or municipal reserve fund is established, it shall be the duty of the governing authority to expend the fund for needed public work and improvements as rapidly as it deems practical.

History.
Ga. L. 1945, p. 393, §§ 1-5; Code 1933, § 91A-1602, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1983, p. 3, § 37.

ARTICLE 8

SCHOOL TAXATION

Cross references.
Local taxation for education, Ga. Const. 1983, Art. VIII, Sec. VI.

48-5-400. Power of county governing authorities to levy and collect taxes for educational purposes.

The governing authority of each county may levy and collect taxes for educational purposes in such amounts as the county governing authority shall determine. Amounts collected from such levies shall be appropriated to the use of the county board of education and to the educational work directed by the county board of education.

History.
Ga. L. 1922, p. 81, § 1; Code 1933, § 32-1127; Code 1933, § 91A-1701, enacted by Ga. L. 1978, p. 309, § 2.
Cross references.
Free public education prior to college or postsecondary level and support by taxation, Ga. Const. 1983, Art. VIII, Sec. I, Para. I.

RESEARCH REFERENCES

Am. Jur. 2d.
71 Am. Jur. 2d, State and Local Taxation, § 35 et seq.

C.J.S.
78A C.J.S., Schools and School Districts, § 558 et seq.

48-5-401. Annual recommendation by county boards of education to county governing authorities of school tax rate.

Each county board of education shall annually recommend to the county governing authority the rate of levy to be made for taxes for the support and maintenance of education in the county, exclusive of property located in independent school districts, and likewise shall notify the commissioner of the rate of the levy to be made on such property in the county for the support and maintenance of education.

History.
Ga. L. 1919, p. 288, § 134; Code 1933, § 32-1118; Ga. L. 1946, p. 206, § 17; Code 1933, § 91A-1702, enacted by Ga. L. 1978, p. 309, § 2.

48-5-402. Public utility property in school districts subject to school tax; returns to show fair market value of property; assessment and collection of school tax by commissioner; contesting taxability.

(a) All real and personal property including, but not limited to, franchises belonging to a public utility which is required to make its returns to the commissioner, when the property is within the taxable limits of any school district, shall be subject to taxation by the school district as fully and completely as is the property of other persons within the taxable limits of the school district.

(b)(1) It is the duty of every public utility, in addition to the facts otherwise required to be included in its returns to the commissioner, to show in its return the fair market value of its property in each of the school districts in which its property is located. For the purpose of enabling the public utility to show in its returns the fair market value of its property in each school district, each county superintendent of schools shall furnish to each public utility information as to the boundaries of each school district in which the public utility may have property so as to enable the public utility to determine the amount of its property in each school district. The county superintendent of schools shall also furnish similar information whenever the boundaries of any school district are changed.

(2) The rolling stock, franchises, and other personal property of public utilities shall be distributed to the school districts on the same basis that rolling stock, franchises, and other personal property are distributed to counties and municipalities as provided by law.

(c) In all cases where taxes are authorized for school purposes in the counties or school districts, each public utility's annual return to the commissioner shall set forth all its taxable property in the county or school district. The commissioner shall fix the proposed assessment of the utility's property for school purposes at the same time and in the same manner as he is authorized by law to fix the proposed assessment of the property for ordinary county purposes. The commissioner shall assess the property of railroad equipment companies and shall apply the school tax rate fixed by the school authorities in the counties or school districts. The school tax rate shall be certified and transmitted to the commissioner by the county authorities at the same time they certify to the commissioner the county tax rate for ordinary county purposes.

(d) The commissioner shall use the same procedures for collecting school taxes of railroad equipment companies, insofar as they can be applied, as are provided for the collection of county taxes due from railroad equipment companies under Code Section 48-5-519. When it becomes necessary for the commissioner to issue a tax fi. fa. for county purposes as well as for school purposes, he may include the school tax in the fi. fa. and shall specify separately in the assessment and tax execution the amount of the county taxes for ordinary purposes and the amount for school purposes so that the tax commissioner or tax collector, after collecting the taxes, can pay over each tax to the proper person authorized by law to receive the tax. Should the taxpayer desire to contest the taxability of his property, as provided under this subsection, he may do so by bringing an action for equitable relief in the Superior Court of Fulton County.

History.

Ga. L. 1910, p. 22, § 3; Ga. L. 1919, p. 288, §§ 132, 133; Code 1933, §§ 32-1116, 32-1117, 92-6803; Code 1933, § 91A-1703, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1988, p. 1568, § 3; Ga. L. 2017, p. 774, § 48/HB 323.

Editor's notes.

Ga. L. 1988, p. 1568, § 15, not codified by the General Assembly, provided that the Act "shall apply to all tax years beginning on or after January 1, 1989."

RESEARCH REFERENCES

Am. Jur. 2d.

71 Am. Jur. 2d, State and Local Taxation, § 353 et seq.

48-5-403. [Reserved] Assessment of property subject to school taxes by tax commissioners or tax receivers; adoption and use of assessment by county boards of education; contesting taxability.

History.
Ga. L. 1910, p. 22, § 4; Code 1933, § 92-6804; Code 1933, § 91A-1704, enacted by Ga. L. 1978, p. 309, § 2; repealed by Ga. L. 2005, p. 529, § 1/HB 556, effective July 1, 2005.

Editor's notes.
Ga. L. 2005, p. 529, § 1/HB 556 repealed and reserved this Code section, effective July 1, 2005.

48-5-404. Collection of county school taxes by tax commissioners or tax collectors; collection of school taxes and commissions in certain counties.

(a) The tax commissioner or tax collector shall continue to collect unpaid county school taxes and all county school taxes levied pursuant to Article VIII, Section VI, Paragraph I of the Constitution of this state and shall be entitled to a commission of 2 ½ percent for collecting the taxes. The tax commissioner or tax collector shall pay over to the county board of education all moneys collected for the schools on the same schedule of distributions as is provided for counties in Code Section 48-5-141. In those counties where the tax collector or tax commissioner is on a salary basis, the fees provided for in this Code section shall be collected by the tax commissioner or tax collector and paid over to the proper governing authority of the county.

(b) Reserved.

(c) In all counties of this state having a population of not less than 350,000 nor more than 500,000 according to the United States decennial census of 1980 or any future such census, the tax commissioner or tax collector shall remit all education funds collected by said officer to the board of education of the county except 1.9 percent of the funds collected which shall be retained by the tax commissioner or tax collector if the officer is on a fee basis or remitted to the governing authority of the county if the officer is on a salary basis of compensation.

History.
Ga. L. 1919, p. 288, § 122; Code 1933, § 32-1106; Ga. L. 1946, p. 206, § 12; Code 1933, § 91A-1705, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1980, p. 367, § 1; Ga. L. 1982, p. 1853, §§ 1, 2; Ga. L. 1983, p. 3, § 64; Ga. L. 1984, p. 22, § 48; Ga. L. 1994, p. 237, § 2; Ga. L. 2000, p. 1198, § 1.

Cross references.
Reduction of established rate by local act, Ga. Const. 1983, Art. VIII, Sec. VI, Para. III.

Minimum salaries for tax collectors and tax commissioners, § 48-5-183.

Editor's notes.
Ga. L. 1982, p. 996, § 6, which had been codified as subsection (c) of § 48-5-405, stated that it amended § 48-5-405 but appears to have been intended as an amendment to this Code section. Ga. L.

1983, p. 414, § 1, effective July 1, 1983, repealed subsection (c) of § 48-5-405 as added by Ga. L. 1982, p. 996, § 6. The repealed subsection dealt with the disbursement of educational funds collected by tax commissioners and collectors in counties with populations between 150,300 and 155,000.

Ga. L. 1983, p. 4113, § 1, effective July 1, 1983, not codified by the General Assembly, provides that the tax commissioner in Clayton County shall remit all education funds collected by him to the board of education of Clayton County, except for 1.60 percent of those funds which he is to remit to the governing authority of Clayton County to reimburse the county for the expenses incurred in collecting school taxes. Section 2 of that Act provides that: "It is the intention of this Act to reduce the amount authorized by subsection (a) of Code Section 48-5-404 of the O.C.G.A. as reimbursement to counties for the collection of school taxes, and this Act is pursuant to the specific authority of Paragraph III of Section VI of Article VIII of the Constitution of the State of Georgia."

JUDICIAL DECISIONS

Commissions are necessary and incidental. — These commissions are necessary and incidental whether or not tax commissioners are compensated on a fee or salary basis. Clayton County v. Worsham, 239 Ga. 135, 236 S.E.2d 80, 1977 Ga. LEXIS 841 (1977).

Commissions may not be paid to salaried tax commissioner when not expressly provided for. — Once a tax commissioner has been placed solely on a salary basis with no explicit provision in the statute for using school tax funds for the payment of that salary, school tax funds cannot be constitutionally used for that purpose under Ga. Const. 1945, Art. VIII, Sec. XII, Para. I (see now Ga. Const. 1983, Art. VIII, Sec. VI, Para. I). Coleman v. Kiley, 236 Ga. 751, 225 S.E.2d 273, 1976 Ga. LEXIS 1015 (1976).

Commissions authorized. — County ordinance and state statute under which a county received a 2.5% commission for collecting school taxes was constitutional as Ga. Const. 1983, Art. VIII, Sec. VI, Para. III and O.C.G.A. § 48-5-404(a) allowed the entity that collected school taxes up to a 2.5% commission. Bd. of Pub. Educ. v. Hair, 276 Ga. 575, 581 S.E.2d 28, 2003 Ga. LEXIS 487 (2003).

OPINIONS OF THE ATTORNEY GENERAL

Taxes on which commission collected. — County tax collector is entitled to a commission of 2 ½ percent for collecting the school tax for the maintenance and operation of public schools and a commission of 2 ½ percent for collecting the school bond tax; since the tax collector is on a salary basis, both commissions will be paid over to the county. 1954-56 Ga. Op. Att'y Gen. 886.

Applicability to school bond taxes. — Statute makes no specific reference to commissions to be paid tax collectors for the collection of school bond taxes. However, school bond taxes would be classified as school taxes and the rate for collection thereof would be 2 ½ percent. Taxes collected for this purpose should be paid over to the county board of education rather than the county commissioners. 1952-53 Ga. Op. Att'y Gen. 30.

Applicability of other compensation provisions. — Provision for additional compensation in Ga. L. 1937-38, Ex. Sess., p. 297, § 3 (see now O.C.G.A. § 48-5-180) did not apply to taxes levied for school purposes. A tax collector, if on a fee basis, was entitled to receive 2 ½ percent of all taxes collected for school purposes as was provided in former Code 1933, § 32-1106 (see now O.C.G.A. § 48-5-404). 1958-59 Ga. Op. Att'y Gen. 388.

Compensation provided for in former Code 1933, § 92-5301 (see now O.C.G.A. § 48-5-180) did not apply to school taxes on which the compensation was fixed. 1970 Op. Att'y Gen. No. U70-163.

Retention of 10 percent by collector. — Construing this statute, the tax collector is not authorized to retain 10 percent of the excess of 90 percent collected in regard to school taxes and bonds. 1950-51 Ga. Op. Att'y Gen. 247.

Statute applies to tax collectors, and not to tax receivers. 1970 Op. Att'y Gen. No. U70-17.

Permissible uses of commissions. — Commissions on the collection of county school taxes may only be expended to provide for the maintenance and support of the county public school systems. In those counties where the tax commissioner is paid on a salary basis these commissions may not be paid to the county fiscal authorities without specific legislative direction that the funds be expended by those authorities solely for the support and maintenance of the public schools. 1976 Op. Att'y Gen. No. 76-66.

RESEARCH REFERENCES

Am. Jur. 2d.

72 Am. Jur. 2d, State and Local Taxation, § 712, 713 et seq.

ALR.

Propriety of using census data as basis for governmental regulations or activities - state cases, 56 A.L.R.5th 171.

48-5-405. Levy and collection of tax by municipalities for independent school systems; authorized purposes for expenditures.

(a) Each municipality authorized by law to maintain an independent school system may support and maintain the public common schools within the independent school system by levy of ad valorem taxes at the rate fixed by law upon all taxable property within the limits of the independent school system. The board of education of the municipality or other authority charged with the duty of operating the independent school system shall annually recommend to the governing authority of the municipality the rate of the tax levy, within the limitations fixed by law, to be made upon all taxable property within the limits of the independent school system. Taxes levied and collected for support and maintenance of the independent school system by the municipal governing authority shall be appropriated, when collected, by the governing authority to the board of education or other authority charged with the duty of operating the independent school system. Funds appropriated to an independent school system shall be expended by the board of education or other authority charged with the duty of operating the independent school system only for educational purposes including, but not limited to, school lunch purposes. The term "school lunch purposes" shall include payment of costs and expenses incurred in the purchase of school lunchroom supplies; the purchase, replacement, or maintenance of school lunchroom equipment; the transportation, storage, and preparation of foods; and all current operating expenses incurred in the management and operation of school lunch programs in the public common schools of the independent school system. "School lunch purposes" shall not include the purchase of foods.

(b) This Code section shall be cumulative of all general and local laws authorizing municipalities to levy taxes for the support of independent school systems permitted to be maintained by law.

History.

Ga. L. 1962, p. 628, §§ 1, 2; Code 1933, § 91A-1706, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1982, p. 996, §§ 3, 6; Ga. L. 1983, p. 414, § 1; Ga. L. 2015, p. 1219, § 19/HB 202.

Cross references.

Procedure for consolidation of independent and county school systems, § 20-2-370 et seq.

Editor's notes.

Ga. L. 1982, p. 996, § 6, which had been codified as subsection (c) of this Code section, stated that it amended this Code section but appears to have been intended as an amendment to Code Section 48-5-404. Ga. L. 1983, p. 414, § 1, effective July 1, 1983, repealed subsection (c) of this Code section as added by Ga. L. 1982, p. 996, § 6.

JUDICIAL DECISIONS

Refund of improper assessment. — When city received more tax revenue from taxpayers than the taxpayers lawfully owed, which error resulted in the city remitting more tax funds to the school board than the board was entitled to receive, the school board was required to refund the board's pro-rata share of the taxes, penalties, and interest due the taxpayers because of the improper assessment. The city was effectively acting as an agent for the school board. Atlanta Bd. of Educ. v. City of Atlanta, 262 Ga. 15, 413 S.E.2d 716, 1992 Ga. LEXIS 208 (1992).

Use of local school taxes for redevelopment. — School system, development authority, and others were properly granted summary judgment in a suit challenging the allocation of school taxes because the 2008 amendments to Ga. Const. 1983, Art. IX, Sec. II, Para. VII(b) and O.C.G.A. § 36-44-9(g), governing tax allocation districts, changed the law and retroactively allowed use of local school taxes for general redevelopment purposes. Sherman v. Atlanta Indep. Sch. Sys., 293 Ga. 268, 744 S.E.2d 26, 2013 Ga. LEXIS 493 (2013).

ARTICLE 9

FRANCHISES

RESEARCH REFERENCES

ALR.

Bond or warrant of governmental subdivision as subject of taxation or exemption, 44 A.L.R. 510.

Constitutionality of retroactive statute imposing excise, license, or privilege tax, 146 A.L.R. 1011.

Municipality as subject to state license or excise taxes, 159 A.L.R. 365.

48-5-420. "Special franchise" defined.

As used in this article, the term "special franchise" means:

(1) Every right and privilege exercised within this state and granted to any person by the state or its authority, by any county or county officer, or by any municipality or municipal officer for the:

(A) Exercise of the power of eminent domain;

(B) Use of any public highway or street; or

(C) Use of land above or below any highway or street;

(2) Every special right exercised within this state and granted by charter, resolution, statute, or otherwise, whether pursuant to the laws of this state or any other state, for the exercise of any public service including, but not limited to, the:

(A) Construction and operation of railroads;

(B) Common carriage of passengers or freight;

(C) Construction and operation of any plant for the distribution and sale of gas, water, electric lights, electric power, steam heat, refrigerated air, or other substances by means of wires, pipes, or conduits laid under or above any street, alley, or highway; and

(D) Construction and operation of any telephone plant or telegraph plant;

(3) All rights to conduct wharfage, dockage, or cranage business;

(4) All rights to conduct any express business or for the operation of sleeping, palace, dining, or chair cars;

(5) All rights and privileges to construct, maintain, or operate canals, toll roads, or toll bridges; and

(6) The right to carry on the business of maintaining equipment companies, navigation companies, freight depots, passenger depots, and every other similar special function dependent upon the grant of public powers or privileges not allowed by law to individuals or involving the performance of any public service.

The term does not include the mere right to be a corporation engaged in trading or manufacturing and exercising no franchise enumerated in this Code section.

History.

Ga. L. 1902, p. 37, § 1; Civil Code 1910, § 1019; Code 1933, § 92-2301; Code 1933, § 91A-1801, enacted by Ga. L. 1978, p. 309, § 2.

Cross references.

Acquisition of property for highway and other transportation purposes, T. 32, C. 3.

Grants of franchises by counties to cable television systems, T. 36, C. 18.

JUDICIAL DECISIONS

Contractual rights not impaired. — Franchise granted in 1940 by town ordinance to a gas company allowing for the sale and distribution of gas services to town inhabitants was not granted in perpetuity; thus, a 1980 town ordinance providing for a three-percent franchise tax on gas sales impaired no contractual

rights granted to the assignor of the gas company's franchise, and the trial court did not err in refusing to declare the 1980 ordinance unconstitutional as an impairment of contract. Gas Light Co. v. Town of Bibb City, 253 Ga. 498, 322 S.E.2d 250, 1984 Ga. LEXIS 1011 (1984).

Franchise is a grant of right by public authority, the main element of which is permission to do something which otherwise the grantee would not have the right to do. Western Union Tel. Co. v. Wright, 185 F. 250, 1910 U.S. App. LEXIS 5119 (5th Cir. 1910).

Exemption of franchise by charter. — When the scheme of taxation, provided in the charter of a corporation, is to tax stock (meaning capital stock) by taxing the net earnings, it necessarily covers and embraces the franchise and prevents a subsequent taxation of the franchise as such. Georgia R.R. & Banking Co. v. Wright, 132 F. 912, 1904 U.S. App. LEXIS 5056 (C.C.D. Ga. 1904), aff'd, 216 U.S. 420, 30 S. Ct. 242, 54 L. Ed. 544, 1910 U.S. LEXIS 1908 (1910).

Right of telegraph companies to use federal military or post roads. — Whatever franchise or right a telegraph company acquires from the United States by its acceptance of the provisions of the Act of July 24, 1866, c. 230, 14 Stat. 221 (U.S. Comp. St. 1901, p. 3579), giving such companies the right to use the military or post roads of the United States, etc., is exempt from taxation by a state. Western Union Tel. Co. v. Wright, 185 F. 250, 1910 U.S. App. LEXIS 5119 (5th Cir. 1910).

OPINIONS OF THE ATTORNEY GENERAL

Rights granted by Georgia Public Service Commission are a special franchise. — Rights granted by the Georgia Public Service Commission, when the commission issues a certificate of public convenience and necessity, are a special franchise within the meaning of this statute. All persons exercising such special franchise are required to make a special return thereof as of January 1. Any firm failing to make a return of such special franchise is liable to double taxes thereon. 1962 Ga. Op. Att'y Gen. 511 (see O.C.G.A. § 48-5-240).

RESEARCH REFERENCES

Am. Jur. 2d.

71 Am. Jur. 2d, State and Local Taxation, §§ 171, 172.

C.J.S.

37 C.J.S., Franchises, § 1 et seq.

ALR.

Indebtedness of corporation as proper item for inclusion in computing franchise tax, 107 A.L.R. 1303.

Mortgage on property of taxpayer who is not personally liable as "debt" for purposes of taxing statute, 107 A.L.R. 1310.

Transfer of surplus to capital stock account as a dividend for purposes of franchise tax, 107 A.L.R. 1335.

Franchise tax of corporation as affected by creation of affiliated corporation, 117 A.L.R. 508.

48-5-421. Taxation of unenumerated franchises.

Nothing in this article shall be construed to exempt from taxation any franchise not enumerated in this article. All franchises of value not provided for in this article shall be returned for taxation and taxed pursuant to law as is other property.

History.

Ga. L. 1902, p. 37, § 9; Civil Code 1910, § 1027; Code 1933, § 92-2302; Code 1933, § 91A-1802, enacted by Ga. L. 1978, p. 309, § 2.

JUDICIAL DECISIONS

No exemption from municipal license or occupation fees. — To properly construe the meaning of the word "franchise," as used in Ga. L. 1937-38, Ex. Sess., p. 307, § 13 (see now O.C.G.A. § 7-1-786), it must be considered in connection with the other property for which an exemption from taxation was given. Franchises were property, and former Code 1933, § 92-2302 (see now O.C.G.A. § 48-5-241) provided for the taxation of a franchise. When the word "franchise" was considered in connection with the other items exempted from taxation, it must be taken as meaning the powers conferred by the sovereignty, and that the exemption granted was an exemption from taxation of the property right in the powers so conferred, and not an exemption from a license or occupation fee required by a municipality in order to do business. City of Atlanta v. First Fed. Sav. & Loan Ass'n, 209 Ga. 517, 74 S.E.2d 243, 1953 Ga. LEXIS 303 (1953).

48-5-421.1. Certain property projects shall not constitute special franchises.

Any property which is exempt from ad valorem taxation pursuant to subparagraphs (a)(1)(E) or (a)(1)(F) of Code Section 48-5-41 shall not constitute a special franchise for purposes of this article and shall not be subject to the provisions of this article.

History.

Code 1981, § 48-5-421.1, enacted by Ga. L. 2010, p. 987, § 2/HB 1186; Ga. L. 2014, p. 679, § 2/HB 788.

Editor's notes.

The state-wide referendum (Ga. L. 2014, p. 679, § 4/HB 788), was approved by a majority of qualified voters at the November 4, 2014, general election.

48-5-422. Returns to commissioner; effect of filing certified copy of authorization of franchise.

On or before March 1 in each year, each person holding, or owning, and exercising any special franchise within the state shall make a special return as of January 1 of that year to the commissioner. Each return made pursuant to this Code section shall state the value of the special franchise as exercised within this state; shall particularly describe the special franchise; shall be accompanied by a certified copy of every statute, ordinance, resolution, contract, or grant pursuant to which the franchise is held, claimed, or owned; and shall be sworn to by the person making the return or by the chief executive officer of the corporation if the person owning and exercising the franchise is a corporation. Once a certified copy has been filed with the commissioner as required by this Code section, it shall not be necessary in any subsequent annual return to duplicate the certified copy and the filed certified copy shall be considered returned thereafter by reference to the copy filed as required by this Code section.

History.
Ga. L. 1902, p. 37, § 2; Civil Code 1910, § 1020; Code 1933, § 92-2303; Code 1933, § 91A-1803, enacted by Ga. L. 1978, p. 309, § 2.
Editor's notes.
Former Code 1933, § 92-2303, upon which this Code section is based, was partially based on Ga. Const. 1877, Art. VII, Sec. II, Para. VI, for which there is no corresponding section in either the 1945, 1976, or 1983 Georgia Constitution.

48-5-423. Ascertainment of valuations of special franchises; levy and collection of tax.

(a) In arriving at a proposed assessment, the commissioner shall not be bound to accept the valuation fixed for a special franchise in the return made but shall review the return and valuation. When the commissioner refuses to accept the return, the subsequent proceedings shall be in all particulars the same procedures as are provided by law in the case of refusal to accept the returns made by public utilities of their tangible property.

(b) Special franchises shall be taxed at the same rate as other property upon the value of the special franchise as returned or upon the value determined by the county board of tax assessors. The tax on special franchises shall be levied and collected in the same manner as is provided by law in the case of the tangible property of public utilities.

History.
Ga. L. 1902, p. 37, § 3; Civil Code 1910, § 1021; Code 1933, § 92-2304; Code 1933, § 91A-1804, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1988, p. 1568, § 4.
Editor's notes.
Ga. L. 1988, p. 1568, § 15, not codified by the General Assembly, provided that the Act "shall apply to all tax years beginning on or after January 1, 1989."

RESEARCH REFERENCES

Am. Jur. 2d.
71 Am. Jur. 2d, State and Local Taxation, § 185.
ALR.
Basis of valuation, for taxing purposes, of special franchise or privilege of crossing street, 57 A.L.R. 379.
Indebtedness of corporation as proper item for inclusion in computing franchise tax, 107 A.L.R. 1303.
Mortgage on property of taxpayer who is not personally liable as "debt" for purposes of taxing statute, 107 A.L.R. 1310.
Transfer of surplus to capital stock account as a dividend for purposes of franchise tax, 107 A.L.R. 1335.

48-5-424. Returns of special franchises exercised in more than one county, municipality, or school district; apportionment of valuation; certification by commissioner; collection and enforcement.

(a) In the case of any special franchise exercised beyond the limits of one county, municipality, or school district, the return provided for in this article shall show, as in the case of telegraph lines, telephone lines, railroads, or steamboats, the number of miles over which the railroad,

telegraph, telephone, or other franchise is exercised in each county, municipality, and school district. The information required by this Code section shall be shown in the same manner as is required of a public utility for the return of its tangible property.

(b) The valuation for taxation of special franchises in each county, municipality, and school district in or through which the franchise is exercised shall be apportioned to the county, municipality, and school district in the same manner as is provided by law for the apportionment of the tangible personal property of public utilities.

(c) The commissioner shall certify to every municipality and to the taxing authorities of every county the proposed assessment of every special franchise taxable within the county, municipality, or school district in the same manner as is provided by law in the case of public utilities.

(d) Taxes due each county, municipality, or school district on a special franchise shall be assessed, collected, and enforced in the same manner as is provided by law in the case of other taxes due from public utilities to the county, municipality, or school district.

History.

Ga. L. 1902, p. 37, §§ 4-7; Civil Code 1910, §§ 1022, 1023, 1024, 1028; Ga. L. 1919, p. 288, §§ 132-134; Code 1933, §§ 92-2305, 92-2306, 92-2307, 92-2308; Code 1933, § 91A-1805, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1988, p. 1568, § 5.

Editor's notes.

Ga. L. 1988, p. 1568, § 15, not codified by the General Assembly, provided that the Act "shall apply to all tax years beginning on or after January 1, 1989."

OPINIONS OF THE ATTORNEY GENERAL

Duty to issue executions against public utilities. — Although the language of former Code 1933, § 92-7301 (see now O.C.G.A. § 48-3-1) did not describe a mandatory or compelling duty and merely empowered the commissioner to issue an execution, a fi. fa. against a public utility other than a railroad should also be issued by the commissioner. This strict concept of mandatory duty in the case of all other utilities was strengthened in the light of former Code 1933, § 92-2308 (see now O.C.G.A. § 48-5-424). 1963-65 Ga. Op. Att'y Gen. 348.

RESEARCH REFERENCES

ALR.

Basis of valuation, for taxing purposes, of special franchise or privilege of crossing street, 57 A.L.R. 379.

48-5-425. Deductions from special franchise tax due any county, municipality, or school district.

(a) The amount of all taxes and charges specified in subsection (b) of this Code section which are paid or liable to be paid by a taxpayer in any

tax year to a county, municipality, or school district may be deducted by the taxpayer from the amount of special franchise tax due or paid by the taxpayer in the same tax year to the county, municipality, or school district.

(b)(1) Amounts of the following fees and charges may qualify for the deduction provided in subsection (a) of this Code section:

(A) Gross receipts tax;

(B) Income tax;

(C) Occupation tax or charge;

(D) Privilege tax or charge; and

(E) Charges due for the special franchise or privilege other than special franchise taxes.

(2) Amounts of the following shall not qualify for the deduction provided in subsection (a) of this Code section even if they would otherwise be qualified for the deduction pursuant to paragraph (1) of this subsection:

(A) Ad valorem tax;

(B) Charges for bridge rentals; and

(C) Charges or assessments for paving or repairing any street, highway, or public place.

(c) No deduction may be taken pursuant to this Code section when the deduction would result in a credit against the special franchise tax due for the tax year to a county, municipality, or school district which is greater than the taxpayer's liability for the tax in the tax year.

History.
Ga. L. 1903, p. 18, §§ 1-3; Civil Code 1910, §§ 1025, 1026, 1030; Ga. L. 1919, p. 288, §§ 132-134; Code 1933, §§ 92-2310, 92-2311, 92-2312; Code 1933, § 91A-1806, enacted by Ga. L. 1978, p. 309, § 2.

RESEARCH REFERENCES

Am. Jur. 2d.
71 Am. Jur. 2d, State and Local Taxation, § 181.

ALR.
Indebtedness of corporation as proper item for inclusion in computing franchise tax, 107 A.L.R. 1303.

Mortgage on property of taxpayer who is not personally liable as "debt" for purposes of taxing statute, 107 A.L.R. 1310.

Transfer of surplus to capital stock account as a dividend for purposes of franchise tax, 107 A.L.R. 1335.

ARTICLE 10

AD VALOREM TAXATION OF MOTOR VEHICLES, MOBILE HOMES, CERTAIN EQUIPMENT, AND CERTAIN INVENTORY

Administrative rules and regulations.
Motor vehicle value apportionment, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Revenue, Local Government Services Division, Chapter 560-11-7.

JUDICIAL DECISIONS

Constitutional authority for placing motor vehicles in a separate category. — Georgia Const. 1945, Art. VII, Sec. I, Para. III (see now Ga. Const. 1983, Art. VII, Sec. I, Para. III and Art. IX, Sec. IV, Para. I) authorized the enactment of Ga. L. 1966, p. 517 (see now Pts. 1 and 2 of O.C.G.A. Art. 10, Ch. 5, T. 48), wherein the General Assembly placed motor vehicles in a different category from other tangible property. Hawes v. Cordell Ford Co., 223 Ga. 260, 154 S.E.2d 599, 1967 Ga. LEXIS 489 (1967).

Uniformity required in taxation of motor vehicles. — Motor vehicles, having been placed in a separate classification of tangible property, as permitted by Ga. Const. 1945, Art. VII, Sec. I, Para. III (see now Ga. Const. 1983, Art. VII, Sec. I, Para. III and Art. IX, Sec. IV, Para. I) must all be assessed uniformly. Hawes v. Cordell Ford Co., 223 Ga. 260, 154 S.E.2d 599, 1967 Ga. LEXIS 489 (1967).

OPINIONS OF THE ATTORNEY GENERAL

Legislative intent. — Former Code 1933, Ch. 92-15 (see now O.C.G.A. Pts. 1 and 2, Art. 10, Ch. 5, T. 48) was not intended to change the basic law relating to the ad valorem taxation of personal property. Its main objective was to provide a tool whereby a greater amount of ad valorem tax on a particular class of personal property might be collected since many taxpayers have not been returning their motor vehicles for taxation. 1968 Op. Att'y Gen. No. 68-194.

Acquisition of tax situs as prerequisite to taxation of motor vehicle. — Motor vehicles are subject to ad valorem tax by the various taxing jurisdictions only where the vehicle has acquired a tax situs. 1968 Op. Att'y Gen. No. 68-19.

Motor vehicles owned by a leasing company must be assessed at the value furnished by the department and not at 75 percent thereof. 1967 Op. Att'y Gen. No. 67-458.

Motor vehicles owned by railroad companies and other utilities must be returned in accordance with the provisions of Ga. L. 1966, p. 517 (see now O.C.G.A. Pts. 1 and 2, Art. 10, Ch. 5, T. 48) and not under the provisions of former Code 1933, Ch. 92-27 (see now O.C.G.A. Art. 11, Ch. 5, T. 48). 1967 Op. Att'y Gen. No. 67-99.

RESEARCH REFERENCES

ALR.
Tax on automobile or on its use for cost of road or street construction, improvement, or maintenance, 24 A.L.R. 937; 68 A.L.R. 200.

Constitutionality, construction, and application of statutes relating to ad valorem or property taxation of motor vehicles, 114 A.L.R. 847.

Review of decisions of United States Supreme Court since Union Refrigerator Transit Co. v. Kentucky, 199 U.S. 194, 26 S. Ct. 36, 50 L. Ed. 150 (1905), on situs of

personal property for purposes of taxation, 123 A.L.R. 179; 139 A.L.R. 1463; 153 A.L.R. 270.

Constitutionality of retroactive statute imposing excise, license, or privilege tax, 146 A.L.R. 1011.

Part 1

General Provisions

48-5-440. Definitions.

As used in this article, the term:

(1) "Antique or hobby or special interest motor vehicle" means a motor vehicle which is 25 years old or older as indicated by the model year or a motor vehicle which has been designed and manufactured to resemble an antique or historical vehicle.

(1.1) "Commercial vehicle" means a truck, truck-tractor, trailer, or semitrailer which is a commercial vehicle:

(A) Registered or registerable under the International Registration Plan pursuant to Code Section 40-2-88; or

(B) Would otherwise be registerable under the International Registration Plan pursuant to Code Section 40-2-88 except that such vehicle is only engaged in intrastate commerce.

(2) "Driver educational motor vehicle" means a motor vehicle which is furnished and assigned to a public school in this state for use by the school in a program of driver education when the assignment is authorized and approved by the local board of education.

(2.1) "Initial registration period" has the same meaning as provided in paragraph (.1) of subsection (a) of Code Section 40-2-21.

(3) "Mobile homes" means manufactured homes and relocatable homes as defined in Part 2 of Article 2 of Chapter 2 of Title 8. Any mobile home which qualifies the taxpayer for a homestead exemption under the laws of this state shall not be considered a mobile home nor subject to this article. This article shall not apply to dealers engaged in the business of selling mobile homes at wholesale or retail and every mobile home owned in this state on January 1 by a dealer shall be subject to ad valorem taxation in the same manner as other taxable tangible personal property.

(4) "Motor vehicle" means a vehicle which is designed primarily for use upon the public roads. Such term shall not include heavy-duty equipment as defined in paragraph (2) of Code Section 48-5-500 which is owned by a nonresident and operated in this state.

(5) "Owner" has the same meaning as provided in paragraph (.2) of subsection (a) of Code Section 40-2-21.

(6) "Registration period" has the same meaning as provided in paragraph (1) of subsection (a) of Code Section 40-2-21.

History.

Ga. L. 1966, p. 517, § 2; Ga. L. 1967, p. 603, § 1; Ga. L. 1976, p. 1529, § 2; Code 1933, §§ 91A-1902, 91A-1921, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1980, p. 1390, § 2; Ga. L. 1982, p. 1376, §§ 6, 8; Ga. L. 1983, p. 3, § 37; Ga. L. 1986, p. 180, § 1; Ga. L. 1992, p. 1551, § 1; Ga. L. 1993, p. 1012, § 1; Ga. L. 1993, p. 1678, § 2; Ga. L. 1997, p. 419, § 34; Ga. L. 1997, p. 957, § 1; Ga. L. 1999, p. 667, § 3B.

Editor's notes.

Ga. L. 1993, p. 1012, §§ 3 and 4, not codified by the General Assembly, provide: "Section 3. This Act is passed pursuant to Article VII, Section I, Paragraph III of the Constitution of the State of Georgia which provides that heavy-duty equipment motor vehicles owned by nonresidents and operated in this state may be classified as a separate class of property for ad valorem property tax purposes and different rates, methods, and assessment dates may be provided for such motor vehicles and which authorizes the General Assembly to provide by general law for the ad valorem taxation of motor vehicles.

"Section 4. This Act shall become effective upon its approval by the Governor [April 13, 1993] or upon its becoming law without such approval and shall apply to heavy-duty equipment brought into this state after such effective date during the 1993 taxable year."

Law reviews.

For article commenting on the 1997 amendment of this Code section, see 14 Georgia St. U.L. Rev. 215 (1997).

OPINIONS OF THE ATTORNEY GENERAL

Farm tractor not a motor vehicle. — Farm tractor not being designed primarily for use upon the public roads is not a motor vehicle, although under rare circumstances a particular use of such tractor may require the tracter's licensing. 1965-66 Op. Att'y Gen. No. 66-102.

Equipment permanently attached to a truck. — Value of equipment permanently attached to a truck is used in determining the taxable value of the motor vehicle. 1965-66 Op. Att'y Gen. No. 66-102.

RESEARCH REFERENCES

C.J.S.

101A C.J.S., Zoning and Land Planning, § 56.

48-5-441. Classification of motor vehicles and mobile homes as separate classes of tangible property for ad valorem taxation purposes; procedures prescribed in article exclusive.

(a)(1) For the purposes of ad valorem taxation, motor vehicles shall be classified as a separate and distinct class of tangible property. Such class of tangible property shall be divided into two distinct and separate subclasses of tangible property with one subclass including heavy-duty equipment motor vehicles as defined in Code Section

48-5-505 and the other subclass including all other motor vehicles. The procedures prescribed by this article for returning motor vehicles, excluding heavy-duty equipment motor vehicles as defined in Code Section 48-5-505, for taxation, determining the applicable rates for taxation, and collecting the ad valorem tax imposed on motor vehicles shall be exclusive.

(2) This subsection shall not apply to motor vehicles subject to Code Section 48-5-441.1.

(b) For the purposes of ad valorem taxation, mobile homes shall be classified as a separate and distinct class of tangible property. The procedures prescribed by this article for returning mobile homes for taxation, determining the applicable rates for taxation, and collecting the ad valorem tax imposed on mobile homes shall be exclusive.

(c)(1) For the purposes of ad valorem taxation, commercial vehicles shall be classified as a separate and distinct class of tangible property. The procedures prescribed by this article for returning commercial vehicles for taxation and for determining the valuation of commercial vehicles shall be exclusive and as provided for in Code Section 48-5-442.1. All other procedures prescribed by this article for the taxation of motor vehicles shall be applicable to the taxation of commercial vehicles.

(2) This subsection shall not apply to motor vehicles subject to Code Section 48-5-441.1.

History.

Ga. L. 1966, p. 517, § 1; Ga. L. 1976, p. 1529, § 1; Code 1933, §§ 91A-1901, 91A-1920, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1997, p. 957, § 2; Ga. L. 1998, p. 1145, § 1; Ga. L. 2012, p. 257, § 1-2/HB 386.

Editor's notes.

Ga. L. 2012, p. 257, § 7-1(h)/HB 386, not codified by the General Assembly, provides: "Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by the passage of this Act and shall continue to be governed by the provisions of general law as it existed immediately prior to the effective date of the relevant portion of this Act." As to this Code section, this Act became effective March 1, 2013.

Ga. L. 2012, p. 257, § 7-1(i)/HB 386, not codified by the General Assembly, provides: "This Act shall not abate any prosecution, punishment, penalty, administrative proceedings or remedies, or civil action related to any violation of law committed prior to the effective date of the relevant portion of this Act." As to this Code section, this Act became effective March 1, 2013.

Ga. L. 2012, p. 257, § 7-2/HB 386, not codified by the General Assembly, provides for severability. As to this Code section, this Act became effective March 1, 2013.

Law reviews.

For article on the 2012 amendment of this Code section, see 29 Ga. St. U. L. Rev. 112 (2012).

OPINIONS OF THE ATTORNEY GENERAL

City may not collect a specific or flat rate property tax levied on automobiles. 1967 Op. Att'y Gen. No. 67-140.

RESEARCH REFERENCES

Am. Jur. 2d.

71 Am. Jur. 2d, State and Local Taxation, §§ 109, 110, 134.

ALR.

Constitutionality, construction, and application of statutes relating to ad valorem or property taxation of motor vehicles, 114 A.L.R. 847.

Constitutionality, construction, and application of statute or ordinance imposing license fee or tax upon automobiles or trailers used for habitation, 150 A.L.R. 853.

Classification, as real estate or personal property, of mobile homes or trailers for purposes of state or local taxation, 7 A.L.R.4th 1016.

48-5-441.1. Classification of motor vehicles for purposes of ad valorem taxation.

In accordance with Article VII, Section I, Paragraph III(b)(3) of the Georgia Constitution, motor vehicles subject to the provisions of Code Section 48-5C-1 shall be classified as a separate and distinct class of tangible property for the purposes of ad valorem taxation.

History.

Code 1981, § 48-5-441.1, enacted by Ga. L. 2012, p. 257, § 1-3/HB 386.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2012, "Code Section 48-5C-1" was substituted for "Code Section 48-5B-1" in this Code section.

Editor's notes.

Ga. L. 2012, p. 257, § 7-1(h)/HB 386, not codified by the General Assembly, provides: "Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by the passage of this Act and shall continue to be governed by the provisions of general law as it existed immediately prior to the effective date of the relevant portion of this Act." As to this Code section, this Act became effective March 1, 2013.

Ga. L. 2012, p. 257, § 7-1(i)/HB 386, not codified by the General Assembly, provides: "This Act shall not abate any prosecution, punishment, penalty, administrative proceedings or remedies, or civil action related to any violation of law committed prior to the effective date of the relevant portion of this Act." As to this Code section, this Act became effective March 1, 2013.

Ga. L. 2012, p. 257, § 7-2/HB 386, not codified by the General Assembly, provides for severability. As to this Code section, this Act became effective March 1, 2013.

Law reviews.

For article on the 2012 enactment of this Code section, see 29 Ga. St. U. L. Rev. 112 (2012).

48-5-442. Preparation and distribution of uniform evaluation of motor vehicles for tax purposes.

(a)(1)(A) For the taxable year beginning January 1, 2001, only, the commissioner shall prepare and distribute to each of the tax collectors and tax commissioners a uniform evaluation of all motor vehicles for use as the taxable value of the motor vehicles subject to this article. Each evaluation shall reflect the value which would result from taking 75 percent of the current fair market value and 25 percent of the current wholesale value for all motor vehicles as determined by the commissioner.

(B) For all taxable years beginning on or after January 1, 2002, the commissioner shall prepare at least annually and distribute to each of the tax collectors and tax commissioners a uniform evaluation of all motor vehicles for use as the taxable value of the motor vehicles subject to this article. Each evaluation shall reflect the average of the current fair market value and the current wholesale value for all motor vehicles as determined by the commissioner.

(2) The commissioner shall prepare annually and distribute to each of the tax collectors and tax commissioners uniform procedures for the evaluation of all mobile homes subject to this article.

(b) Notwithstanding subsection (a) of this Code section, all antique and hobby or special interest motor vehicles, as defined in Code Section 48-5-440, shall, notwithstanding true fair market value if any, be deemed by the commissioner to have a fair market value of $100.00 in the uniform evaluation prepared and distributed annually by the commissioner.

(c) This Code section shall not apply to commercial vehicles.

History.

Ga. L. 1966, p. 517, § 10; Ga. L. 1976, p. 1529, § 11; Code 1933, § 91A-1933, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1993, p. 1678, § 3; Ga. L. 1995, p. 809, § 15; Ga. L. 1997, p. 957, § 3; Ga. L. 2000, p. 416, § 2.

Editor's notes.

Ga. L. 1995, p. 809, § 22, not codified by the General Assembly, provides: "Any local law enacted pursuant to Code Section 40-2-21, which is in conflict with the provisions of this Act, shall stand repealed on the effective date of this Act." The Act became effective January 1, 1997.

Administrative rules and regulations.

Motor vehicle value apportionment, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Revenue, Local Government Services Division, Chapter 560-11-7.

JUDICIAL DECISIONS

Constitutionality. — Even though the statutes providing for ad valorem taxation of motor vehicles do not specifically provide for apportionment, the statutes are not unconstitutional since the assessment of value may be challenged through the appeal procedure of O.C.G.A. § 48-5-442 and the owner thereby has the opportunity to establish that a vehicle has acquired a tax situs in another state. East W. Express, Inc. v. Collins, 264 Ga. 774, 449 S.E.2d 599, 1994 Ga. LEXIS 864 (1994).

Notice of tax assessment is duty of tax commissioner. — County board of tax assessors acted ultra vires in sending a notice of tax assessment as this ministerial duty is placed in the hands of the tax commissioner by O.C.G.A. § 48-5-442, and valuation and assessments are to be made by the state revenue commissioner. Fulton County Tax Comm'r v. GMC, 234 Ga. App. 459, 507 S.E.2d 772.

OPINIONS OF THE ATTORNEY GENERAL

Antique automobiles must be assessed at fair market value upon the best information obtainable by local officials. 1970 Op. Att'y Gen. No. U70-42.

RESEARCH REFERENCES

Am. Jur. 2d.
72 Am. Jur. 2d, State and Local Taxation, §§ 701, 710.

48-5-442.1. Definitions; determination of valuation of commercial vehicle for ad valorem tax purposes.

(a) As used in this Code section, the term:

(1) "Georgia fleet mileage ratio" means a fraction, the numerator of which is the total miles driven in Georgia by all commercial vehicles registered in Georgia under the International Registration Plan pursuant to Code Section 40-2-88, and the denominator of which is the total miles driven within and without Georgia by such commercial vehicles.

(2) "Gross capital cost" means the freight on board, delivered cost of a commercial vehicle to the purchaser of such commercial vehicle but shall not include any excise or use taxes paid as a part of such purchase.

(b) The valuation of a commercial vehicle, trailer, or semitrailer for ad valorem tax purposes shall be determined as follows:

(1) The gross capital cost of a commercial vehicle, trailer, or semitrailer shall be multiplied by a percentage factor representing the remainder of such vehicle's value after depreciation according to a depreciation schedule which the commissioner shall annually prepare and distribute to each of the tax collectors and tax commissioners. Except as provided in paragraph (2) of this subsection, the resulting value of such commercial vehicle, trailer, or semitrailer shall be assessed at the rate of 40 percent of such value for ad valorem tax purposes in this state; or

(2) For a trailer, a semitrailer, or a commercial vehicle which is not registered in Georgia under the International Registration Plan pursuant to Code Section 40-2-88, the assessment calculated under paragraph (1) of this subsection shall be multiplied by the Georgia fleet mileage ratio. The resulting apportioned value shall be the Georgia assessed value of the commercial vehicle, trailer, or semitrailer for ad valorem tax purposes in this state.

History.
Code 1981, § 48-5-442.1, enacted by Ga. L. 1997, p. 957, § 4; Ga. L. 2013, p. 32, § 3/HB 463.
Editor's notes.
Ga. L. 2013, p. 32, § 5/HB 463, not codified by the General Assembly, provides, in part, that the amendment to this Code section shall be applicable to all registration, annual, or license fees of apportionable vehicles and ad valorem and alternative ad valorem taxes of apportionable vehicles on or after January 1, 2014.

48-5-443. Ad valorem tax rate.

Ad valorem taxes imposed on motor vehicles and mobile homes subject to this article shall be at the assessment level and mill rate levied by the taxing authority on tangible property for the previous calendar year.

History.
Ga. L. 1966, p. 517, § 11; Ga. L. 1976, p. 1529, § 12; Code 1933, § 91A-1934, enacted by Ga. L. 1978, p. 309, § 2.

RESEARCH REFERENCES

Am. Jur. 2d.
72 Am. Jur. 2d, State and Local Taxation, § 613.

48-5-444. Place of return of motor vehicles and mobile homes.

(a)(1) For purposes of this subsection, the term "functionally located" means located in a county in this state for 184 days or more during the immediately preceding calendar year. The 184 days or more requirement of this subsection shall mean the cumulative total number of days during such calendar year, which days may be consecutive.

(2)(A) Except as otherwise provided in paragraph (3) of this subsection, each motor vehicle owned by a resident of this state shall be returned:

(i) In the county where the owner claims a homestead exemption;

(ii) If no such exemption is claimed, then in the county of the owner's domicile; or

(iii) If the motor vehicle is primarily used in connection with some established business enterprise located in a different county, in the county where the business is located.

(B) A motor vehicle owned by a resident of this state may be registered in the county where the vehicle is functionally located if the vehicle is a passenger car as defined in paragraph (41) of Code Section 40-1-1. Such vehicle shall first be returned for taxation as provided in subparagraph (A) of this paragraph. This

subparagraph shall not apply with respect to any vehicle which is used by a student enrolled in a college or university in this state in a county other than the student's domicile.

(C) Each motor vehicle owned by a nonresident shall be returned in the county where the motor vehicle is situated.

(3)(A) As used in this paragraph, the term:

(i) "Family owned qualified farm products producer" shall have the same meaning as provided in paragraph (3) of subsection (a) of Code Section 48-5-41.1.

(ii) "Passenger car" shall have the same meaning as provided for in paragraph (41) of Code Section 40-1-1.

(iii) "Truck" shall have the same meaning as provided for in paragraph (70) of Code Section 40-1-1.

(B) If a passenger car or truck is primarily used in connection with some established farm operated by a family owned qualified farm products producer located in a county other than the county where the owner claims a homestead exemption or the county of the owner's domicile, such passenger car or truck shall be returned in the county where the farm operated by a family owned qualified farm products producer is located.

(4) Any person who shall knowingly make any false statement in any application for the registration of any vehicle, in transferring any certificate of registration, or in applying for a new certificate of registration shall be guilty of false swearing, whether or not an oath is actually administered to such person, if such statement shall purport to be under oath. On conviction of such offense, such person shall be punished as provided by Code Section 16-10-71.

(b) Mobile homes shall be returned in the county where situated unless the mobile home is primarily used in connection with some established business enterprise located in a different county, in which case it shall be returned in the county where the business is located.

History.

Ga. L. 1966, p. 517, § 6; Ga. L. 1976, p. 1529, § 8; Code 1933, § 91A-1930, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 50; Ga. L. 1993, p. 303, § 1; Ga. L. 1994, p. 790, § 1; Ga. L. 1995, p. 10, § 48; Ga. L. 1998, p. 128, § 48; Ga. L. 2006, p. 1020, § 1/HB 1236; Ga. L. 2009, p. 942, § 1/HB 318; Ga. L. 2024, p. 1052, § 5(22)/SB 448, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substituted "paragraph (3) of subsection (a)" for "paragraph (2)" in division (a)(3)(A)(i).

RESEARCH REFERENCES

Am. Jur. 2d.
72 Am. Jur. 2d, State and Local Taxation, § 624.
ALR.
Situs of aircraft, rolling stock, and vessels for purposes of property taxation, 3 A.L.R.4th 837.

48-5-445. Collection of ad valorem taxes by tax collectors or tax commissioners.

The tax collector or tax commissioner receiving the return shall collect all ad valorem taxes imposed on a motor vehicle or mobile home irrespective of the tax authority levying the taxes. No other official shall be authorized to collect such taxes.

History.
Ga. L. 1966, p. 517, § 9; Ga. L. 1976, p. 1529, § 10; Code 1933, § 91A-1932, enacted by Ga. L. 1978, p. 309, § 2.

OPINIONS OF THE ATTORNEY GENERAL

City may not collect the specific or flat rate property tax levied on automobiles. 1967 Op. Att'y Gen. No. 67-140.

Person holding only equitable interest is liable for property taxes. — If the owner of property transfers legal title thereto, retention of the equitable interest is such substantial beneficial ownership as will render the owner liable for the ad valorem taxes on the property. 1967 Op. Att'y Gen. No. 67-46.

Savings and loan associations must pay the ad valorem taxes on its motor vehicles prior to purchasing license tags. 1967 Op. Att'y Gen. No. 67-25.

Service person who has not registered the person's car and obtained license plates in the person's home state may be required to license the person's car in Georgia, and to pay all taxes essential to the functioning of the state's licensing and registration laws. 1967 Op. Att'y Gen. No. 67-4.

No effect on exemption under Soldiers and Sailors Civil Relief Act of 1940. — Statute does not affect the exemption afforded service people under the Soldiers and Sailors Civil Relief Act of 1940, 50 U.S.C. App. § 501 et seq. Ad valorem taxes are collected at the time of application for license plates for motor vehicles only if under the tax laws of this state and other applicable statutes the motor vehicle is subject to ad valorem tax in Georgia. 1967 Op. Att'y Gen. No. 67-4.

RESEARCH REFERENCES

Am. Jur. 2d.
72 Am. Jur. 2d, State and Local Taxation, § 769.

48-5-446. Remittance of taxes collected to tax authority; time.

The tax collector or tax commissioner collecting the ad valorem taxes on motor vehicles and mobile homes as prescribed by this article shall remit to the tax authority imposing the tax such sums as have been collected, less the commissions provided in this article, on or before the fifteenth day of the month following the month of collection.

History. Ga. L. 1966, p. 517, § 13; Ga. L. 1976, p. 1529, § 14; Code 1933, § 91A-1936, enacted by Ga. L. 1978, p. 309, § 2.

48-5-447. Compensation of tax collectors and tax commissioners for collecting taxes; rates; agreed rate in case of individual adjustment; procedure; disposition of commissions pursuant to local Acts.

(a) The tax collector or tax commissioner shall be compensated for his services in collecting the ad valorem taxes imposed on motor vehicles and mobile homes by the various tax jurisdictions within his county by each jurisdiction on all net collections made during any calendar year for each jurisdiction as follows:

(1) Up to and including $6,000.00 ..... 6%

(2) Over $6,000.00 and not exceeding $14,000.00 ..... 5%

(3) Over $14,000.00 and not exceeding $24,000.00 ..... 4%

(4) Over $24,000.00 and not exceeding $36,000.00 ..... 3%

(5) Over $36,000.00 and not exceeding $52,000.00 ..... 2 1/2

(6) Over $52,000.00 and not exceeding $76,000.00 ..... 2%

(7) Over $76,000.00 ..... 1 3/4

(b) In those instances which require individual adjustment, the schedule of commissions provided in subsection (a) of this Code section may be changed and altered by the agreement of the parties concerned by contract. Provisions of laws in effect on January 1, 1980, covering such compensation shall not be repealed by this article.

(c)(1) All fees and commissions allowed tax collectors and tax commissioners for collecting ad valorem taxes on motor vehicles and mobile homes shall be collected by those officials. In instances where the officials are compensated by the fee system, the commissions shall be retained by the officials as a part of their compensation. Where the tax collector or tax commissioner has been placed on a salary in lieu of the fee system of compensation, the fees and commissions shall be turned over to the county treasury.

(2) The provisions of paragraph (1) of this subsection to the contrary notwithstanding, the fees and commissions provided for in this Code section shall be disposed of pursuant to local Acts specifically providing for the disposition of such fees and commissions.

History. Ga. L. 1966, p. 517, §§ 14, 15; Ga. L. 1976, p. 1529, §§ 15, 16; Code 1933, § 91A-1937, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1982, p. 3, § 48.

OPINIONS OF THE ATTORNEY GENERAL

No commission for collecting of school taxes. — Tax commissioner is not entitled to receive a 10 percent commission on collections after 90 percent of the net digest has been collected on school taxes. 1967 Op. Att'y Gen. No. 67-425.

48-5-448. Value of all returned motor vehicles and mobile homes included in tax digest.

(a) The value of all motor vehicles returned for taxation during the previous calendar year shall be added to the regular digest at the time the regular digest is transmitted to the commissioner or at such other time as the digest is required to be compiled.

(b) The value of all mobile homes returned for taxation during each calendar year shall be added to the regular digest at the time the regular digest is transmitted to the commissioner or at such other time as the digest is required to be compiled.

(c) The total of the regular digest and the value of returns required to be added pursuant to this Code section shall constitute the tax digest.

History.
Ga. L. 1966, p. 517, § 17; Ga. L. 1976, p. 1529, § 17; Code 1933, § 91A-1938, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1999, p. 667, § 3A.

48-5-449. Discretion of county governing authorities to expend county funds for additional help and equipment.

The governing authority of each county, at its discretion, may expend county funds to hire any additional help and to purchase any additional equipment necessary to implement this article.

History.
Ga. L. 1968, p. 380, § 1; Ga. L. 1976, p. 1529, § 18; Code 1933, § 91A-1939, enacted by Ga. L. 1978, p. 309, § 2.

48-5-450. Contesting tax assessments; filing affidavit of illegality; bond; trial in superior court; appeal.

Any owner who contests the assessment of an ad valorem tax against a motor vehicle may purchase the license plate without payment of the ad valorem tax, and any owner who contests the assessment of an ad valorem tax against a mobile home may secure a decal for the year in question, by filing with the tax collector or tax commissioner an affidavit of illegality to the assessment together with a surety bond issued by a surety company authorized to do business in this state or, in lieu of such bond, a bond approved by the clerk of the superior court of the county or a cash bond. Whatever bond is filed shall be in an amount equal to the tax and any penalties and interest which may be found to

be due. The bond shall be made payable to the tax collector or tax commissioner and shall be conditioned upon the payment of taxes and penalties ultimately found to be due. The affidavit of illegality and the bond shall be transferred immediately by the tax collector or tax commissioner to the superior court, shall be filed in the superior court, and shall be tried as affidavits of illegality are tried in tax cases. Any owner who contests the value assessment of a motor vehicle or mobile home may appeal such assessed value as provided for in Code Section 48-5-311, insofar as applicable.

History.

Ga. L. 1966, p. 517, § 12; Ga. L. 1967, p. 91, § 2A; Ga. L. 1976, p. 1529, § 13; Code 1933, § 91A-1935, enacted by Ga. L. 1978, p. 309, § 2.

JUDICIAL DECISIONS

Statute provides direct appeal to superior court. — O.C.G.A. § 48-5-450 provides a direct appeal to the superior court, avoiding the normal, slower appeal procedure for contested ad valorem assessments that go through the county board of equalization before going to the superior court, which factor of speed is a consideration in determining the applicability of a tax appeal procedure. Fulton County Tax Comm'r v. GMC, 234 Ga. App. 459, 507 S.E.2d 772.

Required to pursue procedural requirements. — Absent the existence of an underlying constitutional right, no 42 U.S.C. § 1983 claim was available; thus, the service person, who had an ad valorem tax levied against the serviceman's mobile home for the 2001 tax year, was required to pursue the procedural requirements for contesting tax assessments under O.C.G.A. § 48-5-450 because the service person did not specify in the original complaint what constitutional right was violated. Martinet v. Wainright, 261 Ga. App. 160, 582 S.E.2d 139, 2003 Ga. App. LEXIS 578 (2003).

RESEARCH REFERENCES

ALR.

Construction and application of statute prohibiting or restricting reassessment after assessment and payment of taxes, 85 A.L.R. 107.

48-5-451. Penalty for failure to make return or pay tax on motor vehicle or mobile home.

(a) Except as otherwise provided in subsection (b) of this Code section, every owner of a motor vehicle or a mobile home, in addition to the ad valorem tax due on the motor vehicle or mobile home, shall be liable for a penalty of 10 percent of the tax due or $5.00, whichever is greater, for the failure to make the return or pay the tax in accordance with this article.

(b) Any Georgia resident who voluntarily cancels the registration of his or her motor vehicle pursuant to Code Section 40-2-10 shall not be assessed any penalty for failure to pay the tax due on a motor vehicle under subsection (a) of this Code section for any such period of time.

Any such person shall remain liable for the ad valorem tax due on a motor vehicle he or she owns. This subsection shall not apply to motor vehicles subject to Code Section 48-5-441.1. The commissioner shall promulgate any necessary rules and forms to implement the provisions of this subsection.

History.

Ga. L. 1966, p. 517, § 8; Ga. L. 1976, p. 1529, § 9; Code 1933, § 91A-1931, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1990, p. 2048, § 16; Ga. L. 1995, p. 809, § 16; Ga. L. 1996, p. 1118, § 15; Ga. L. 2015, p. 825, § 1/HB 94.

Editor's notes.

Ga. L. 1995, p. 809, § 22, not codified by the General Assembly, provides: "Any local law enacted pursuant to Code Section 40-2-21, which is in conflict with the provisions of this Act, shall stand repealed on the effective date of this Act." The Act became effective January 1, 1997.

Ga. L. 1996, p. 1118, § 17, not codified by the General Assembly, provides: "Any local Act enacted pursuant to Code Section 40-2-21 which is in conflict with the provisions of this Act shall stand repealed on the effective date of this Act; provided, however, that any local Act enacted in 1996 pursuant to the provisions of Code Section 40-2-21 as enacted by Act No. 385, Ga. L. 1995, which local Act provides for a four-month staggered registration period for a county, shall not be repealed by the provisions of this Act, but the registration period for such county shall be as provided by subparagraph (a)(1)(B) of Code Section 40-2-21 as enacted by this Act and not as provided in such local Act." The Act became effective January 1, 1997.

Ga. L. 1996, p. 1118, § 18, not codified by the General Assembly, provides: "Those parts of Act No. 385, Ga. L. 1995, an Act amending Chapter 2 of Title 40 of the Official Code of Georgia Annotated, relating to registration and licensing of motor vehicles, and amending Article 10 of Chapter 5 of Title 48 of the Official Code of Georgia Annotated, relating to ad valorem taxation of motor vehicles and mobile homes, approved April 19, 1995, in conflict with this Act are repealed."

Ga. L. 2015, p. 825, § 2/HB 94, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2015, and shall be applicable to any penalties assessed on or after that date. Any proceedings instituted for the collection of penalties under the law in existence prior to July 1, 2015, shall not be affected by the enactment of this Act."

Administrative rules and regulations.

Penalties, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Revenue, Local Government Services Division, Uniform Procedures for Mobile Homes, § 560-11-9-.11.

RESEARCH REFERENCES

Am. Jur. 2d.

72 Am. Jur. 2d, State and Local Taxation, § 625.

PART 2

MOTOR VEHICLES

Administrative rules and regulations.

Motor vehicle value apportionment, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Revenue, Local Government Services Division, Chapter 560-11-7.

48-5-470. Exemption of driver educational motor vehicles from ad valorem taxation.

Driver educational motor vehicles are declared to be public property used exclusively for public purposes and are exempted from any and all ad valorem taxes imposed by any tax jurisdiction in this state.

History.
Ga. L. 1967, p. 603, § 2; Code 1933, § 91A-1903, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1980, p. 1390, § 3.

48-5-470.1. Exemption of motor vehicles used for transporting persons with disabilities or disabled students to or from educational institutions.

All motor vehicles owned by a school or educational institution and used principally for the purpose of transporting persons with disabilities or disabled students to or from such school or educational institution are exempted from any and all ad valorem taxes imposed by any tax jurisdiction in this state. The exemption provided for in this Code section shall apply only when such school or educational institution is qualified as an exempt organization under the United States Internal Revenue Code, Section 501(c)(3), as such section exists on January 1, 1984.

History.
Code 1981, § 48-5-470.1, enacted by Ga. L. 1984, p. 788, § 1; Ga. L. 1987, p. 191, § 9; Ga. L. 1995, p. 1302, § 11.

48-5-470.2. Exemption of vans and buses owned by religious groups.

Vans and buses owned by religious groups and used exclusively for the purpose of maintaining and operating exempt properties owned by such groups or for the exclusive purpose of transporting individuals to religious services or trips sponsored by such religious groups designed to promote religious, educational, or charitable purposes and not for the purposes of producing private or corporate profit and income distributable to shareholders in corporations owning such property or to other owners of such property or for any private purposes are exempted from any and all ad valorem taxes imposed by any tax jurisdiction in this state.

History.
Code 1981, § 48-5-470.2, enacted by Ga. L. 1996, p. 1260, § 1.

48-5-471. Motor vehicles subject to ad valorem taxation.

(a) Every motor vehicle owned in this state by a natural person is subject to ad valorem taxation by the various tax jurisdictions autho-

rized to impose an ad valorem tax on property as provided in Code Section 48-5-473; provided, however, that under no circumstances shall such ad valorem taxation be collected more than one time per calendar year with respect to the same motor vehicle. Every vehicle owned in this state by an entity other than a natural person is, except as specifically provided in Code Section 48-5-472, subject to ad valorem taxation by the various tax jurisdictions authorized to impose an ad valorem tax on property as provided in Code Section 48-5-473; provided, however, that under no circumstances shall such ad valorem taxation be collected more than one time per calendar year with respect to the same motor vehicle. Taxes shall be charged against the owner of the property, if known, and, if unknown, against the specific property itself.

(b)(1) Any motor vehicle wholly owned in this state by a nonresident member of the armed forces of the United States temporarily stationed in this state as a result of military orders shall not acquire a tax situs in this state and such motor vehicle shall not be required to be returned for taxation in this state. Not more than one motor vehicle jointly owned by such member of the armed forces of the United States together with such member's nonresident spouse, when such nonresident spouse temporarily resides in this state at the temporary domicile of such member of the armed forces of the United States for the primary purpose of residing together as a family with such member of the armed forces of the United States, shall not acquire a tax situs in this state and such motor vehicle shall not be required to be returned for taxation in this state.

(2) This subsection shall not apply to any motor vehicle that is used in the conduct of a business.

(3) Nothing in this subsection shall be construed to excuse the members of the armed forces of the United States or spouses from returning such motor vehicles for ad valorem taxation as may be required by the laws of their state of permanent domicile.

History.

Ga. L. 1966, p. 517, § 3; Ga. L. 1967, p. 459, § 1; Code 1933, § 91A-1905, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 47; Ga. L. 1995, p. 809, § 17; Ga. L. 1997, p. 419, § 35; Ga. L. 2000, p. 1177, § 1.

Editor's notes.

Ga. L. 1995, p. 809, § 22, not codified by the General Assembly, provides: "Any local law enacted pursuant to Code Section 40-2-21, which is in conflict with the provisions of this Act, shall stand repealed on the effective date of this Act." The Act became effective January 1, 1997.

Ga. L. 2000, p. 1177, § 2, not codified by the General Assembly, provided that the Act shall be applicable to all taxable years beginning on or after January 1, 2001.

Law reviews.

For article on the 1997 amendment of this Code section, see 14 Ga. St. U. L. Rev. 215 (1997).

JUDICIAL DECISIONS

Situs of property destined for but not yet in state. — Property used in connection with a trade or business acquires a tax situs since it is more or less permanently situated, i.e., where the business is located, but when the property at issue (motor vehicles) was ultimately destined for a Georgia business concern and ultimately would become permanently situated in Georgia, but these events had not occurred as of the relevant taxing date, the business situs rule was inapplicable in that the property was not permanently situated within the state until the property had been accepted by the Georgia business concern. Roberts v. Chancellor Fleet Corp., 182 Ga. App. 69, 354 S.E.2d 628, 1987 Ga. App. LEXIS 1607 (1987).

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All motor vehicles having a Georgia tax situs on January 1 shall be taxed. 1968 Op. Att'y Gen. No. 68-19.

Tax must be paid in correct city and county. — If a taxpayer fails to make a return, the taxpayer is still subject to an ad valorem tax on the taxpayer's automobile; the paying of an ad valorem tax in another county does not satisfy the tax obligation to the resident county and city. 1967 Op. Att'y Gen. No. 67-406.

Taxation of nonresident military personnel who purchase Georgia license tags. — Military personnel who are residents of other states, and who are in Georgia solely by virtue of military orders, are not subject to Georgia ad valorem taxes, even though the military personnel purchase an automobile license tag in Georgia. 1954-56 Ga. Op. Att'y Gen. 671.

Subsequent owner not liable for tax in year acquired. — Owner of the motor vehicle on January 1 is liable for the ad valorem taxes for that year, and not the individual who acquired the vehicle after January 1. 1967 Op. Att'y Gen. No. 67-173.

Payment of taxes by subsequent purchaser in order to remove lien and obtain license plates. — Owner on January 1 is responsible for the ad valorem taxes on the vehicle, even if purchased by another after January 1 of that year. However, since license plates cannot be purchased for the motor vehicle until the ad valorem taxes have been paid, and since there is a lien against the vehicle which could be enforced by the taxing authority, the purchaser may desire to pay the taxes and then proceed against the seller. 1967 Op. Att'y Gen. No. 67-309.

Taxes must be paid before license tag can be purchased. — An automobile license tag cannot be purchased unless the application is accompanied by an affidavit that ad valorem taxes have been paid on the vehicle. 1954-56 Ga. Op. Att'y Gen. 668.

RESEARCH REFERENCES

ALR.

Constitutionality, construction, and application of statutes relating to ad valorem or property taxation of motor vehicles, 114 A.L.R. 847.

Situs of aircraft, rolling stock, and vessels for purposes of property taxation, 3 A.L.R.4th 837.

48-5-472. Ad valorem taxation of motor vehicles owned and held by dealers for retail sale.

(a) For the purpose of this Code section, the term "dealer" means any person who is engaged in the business of selling motor vehicles at retail

and who holds a valid current dealer's identification number issued by the department.

(b) Motor vehicles which are owned by a dealer and held in inventory for sale or resale shall constitute a separate subclassification of motor vehicles within the motor vehicle classification of tangible property for ad valorem taxation purposes. The procedures prescribed in this article for returning motor vehicles for ad valorem taxation, determining the applicable rates for taxation, and collecting the ad valorem taxes imposed on motor vehicles do not apply to such motor vehicles which are owned by a dealer. Such motor vehicles which are owned by a dealer shall not be returned for ad valorem taxation, shall not be taxed, and no taxes shall be collected on such motor vehicles until they are transferred and then become subject to taxation as provided in Code Section 48-5-473.

History.

Ga. L. 1967, p. 91, § 1; Ga. L. 1975, p. 183, § 1; Code 1933, § 91A-1904, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1995, p. 809, § 18; Ga. L. 1997, p. 419, § 36.

Cross references.

Used car dealers, § 43-47-1 et seq.

Editor's notes.

Ga. L. 1995, p. 809, § 22, not codified by the General Assembly, provides: "Any local law enacted pursuant to Code Section 40-2-21, which is in conflict with the provisions of this Act, shall stand repealed on the effective date of this Act." The Act became effective January 1, 1997.

Law reviews.

For article on the 1997 amendment of this Code section, see 14 Ga. St. U. L. Rev. 215 (1997).

JUDICIAL DECISIONS

Constitutionality. — Provision of O.C.G.A. § 48-5-472 creating an exemption from ad valorem taxation for dealer-owned motor vehicles was authorized by the Georgia Constitution. Lowry v. McDuffie, 269 Ga. 202, 496 S.E.2d 727.

Standing. — Taxpayer had standing to challenge the provision of O.C.G.A. § 48-5-472 creating an exemption from ad valorem taxation for dealer-owned motor vehicles that are held for sale or resale. Lowry v. McDuffie, 269 Ga. 202, 496 S.E.2d 727.

48-5-473. Returns for taxation; application for and issuance of license plates upon payment of taxes due.

(a)(1) Except as provided in paragraph (2) of this subsection, every owner of a motor vehicle subject to taxation under this article shall be required to return the motor vehicle for taxation and pay the taxes due on the motor vehicle at the time the owner applies or is required by law to apply for registration of the motor vehicle and for the purchase of a license plate for the motor vehicle during the owner's registration period.

(2)(A) In all counties for which a local Act has not been enacted pursuant to Code Section 40-2-21, the final date for payment of ad valorem taxes shall be the last day of the owner's registration

period and the lien for such taxes shall attach at midnight on the last day of the owner's registration period if the vehicle has not been registered but only if the vehicle is still owned on such date by such owner.

(B) In all counties for which a local Act has been enacted pursuant to Code Section 40-2-21, the final date for payment of ad valorem taxes shall be the last day of the owner's registration period and the lien for such taxes on such motor vehicle shall attach on the first day of the owner's registration period.

(C) A motor vehicle shall not be returned for taxation and no ad valorem taxes shall be due, payable, or collected at the time a vehicle is registered during any initial registration period for such vehicle.

(D) A motor vehicle shall not be returned for taxation and no ad valorem taxes shall be due, payable, or collected at the time of a transfer of the vehicle.

(3) Notwithstanding any other provision of this Code section to the contrary, under no circumstances shall such ad valorem taxation be collected more than one time per calendar year with respect to the same motor vehicle.

(b) Notwithstanding subsection (a) of this Code section, in the case of an antique or hobby or special interest motor vehicle, as defined in Code Section 48-5-440, the owner or owners shall certify at the time of returning the antique or hobby or special interest motor vehicle for taxation, paying the taxes due on the motor vehicle, and purchasing a license plate for the motor vehicle or at the time of the first sale or transfer of the motor vehicle that the vehicle is an antique or hobby or special interest motor vehicle as defined in Code Section 48-5-440, and, upon said certification, said vehicle shall be registered and a license plate issued with the imposition of an ad valorem tax based on $100.00 valuation; provided, however, that taxes shall be due at the time of registration or at the time required by law for registration during the owner's registration period as provided in subsection (a) of this Code section.

(c) Notwithstanding subsection (a) of this Code section, within the motor vehicle classification of property for ad valorem taxation purposes, motor vehicles held in inventory for sale or resale by an entity which is engaged in the business of selling motor vehicles and which has a current distinguishing dealer's identification number issued by the department shall constitute a separate subclassification of property for ad valorem taxation purposes and shall not be the subject of ad valorem taxation until such time as such vehicles are transferred and until such time as such vehicles then become subject to taxation as provided in this Code section.

History.
Ga. L. 1966, p. 517, § 4; Ga. L. 1967, p. 91, § 2; Code 1933, § 91A-1906, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1986, p. 1053, § 5; Ga. L. 1993, p. 1678, § 4; Ga. L. 1995, p. 809, § 19; Ga. L. 1997, p. 419, § 37; Ga. L. 1998, p. 1179, § 39; Ga. L. 1999, p. 667, § 1A.
Cross references.
Registration and licensing of motor vehicles, § 40-2-1 et seq.
Editor's notes.
Ga. L. 1995, p. 809, § 22, not codified by the General Assembly, provides: "Any local law enacted pursuant to Code Section 40-2-21, which is in conflict with the provisions of this Act, shall stand repealed on the effective date of this Act." The Act became effective January 1, 1997.
Law reviews.
For article on the 1997 amendment of this Code section, see 14 Ga. St. U. L. Rev. 215 (1997).

OPINIONS OF THE ATTORNEY GENERAL

Taxation of nonresident military personnel who purchase Georgia license tags. — Military personnel who are residents of other states, and who are in Georgia solely by virtue of military orders, are not subject to Georgia ad valorem taxes even though the military personnel purchase an automobile license tag in Georgia. 1954-56 Ga. Op. Att'y Gen. 671.

Taxes must be paid before license tag can be purchased. — An automobile license tag cannot be purchased unless the application is accompanied by an affidavit that ad valorem taxes have been paid on the vehicle. 1954-56 Ga. Op. Att'y Gen. 668.

RESEARCH REFERENCES

C.J.S.
60 C.J.S., Motor Vehicles, § 182 et seq.

48-5-474. Application for registration and purchase of license plate constitutes return; form of application.

The application for registration of a motor vehicle and for the purchase of a license plate for the motor vehicle shall constitute the return of that motor vehicle for ad valorem taxation but only if ad valorem taxes are due at the time of registration. The state revenue commissioner is directed to prescribe a form for the application for registration which shall provide the information needed by the tax commissioner or tax collector in determining the amount of taxes due under this article.

History.
Ga. L. 1966, p. 517, § 7; Code 1933, § 91A-1908, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1997, p. 419, § 38; Ga. L. 2000, p. 951, § 11-1; Ga. L. 2005, p. 334, § 29-2/HB 501.
Cross references.
Registration and licensing of motor vehicles, § 40-2-1 et seq.
Law reviews.
For article on the 1997 amendment of this Code section, see 14 Ga. St. U. L. Rev. 215 (1997).

48-5-475. Tax collectors and tax commissioners as agents of commissioner for accepting applications for registration of motor vehicles.

All original motor vehicle license plates shall be sold by the tax collector or tax commissioner of the several counties. Such officials are designated as agents of the state revenue commissioner for the purpose of accepting applications for the registration of motor vehicles and for purposes of collecting ad valorem taxes in connection with the registration of motor vehicles. The duties and responsibilities incident to the exercise of this designation shall be a part of the official duties and responsibilities of the various tax collectors and tax commissioners.

History.
Ga. L. 1966, p. 517, § 16; Code 1933, § 91A-1909, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2000, p. 951, § 11-1; Ga. L. 2005, p. 334, § 29-3/HB 501.

Cross references.
For further provisions regarding designation of tax collectors and tax commissioners as tag agents, see § 40-2-22.

48-5-476. Collection procedure when taxing county differs from county of purchaser's residence.

When a motor vehicle is purchased from a seller who is required to return the motor vehicle for ad valorem taxation in a county other than the county where the purchaser resides, the tax collector or tax commissioner of the county in which the motor vehicle is returned for taxation shall collect the required fee for the registration of the vehicle in addition to the ad valorem taxes due on the vehicle and, at the request of the purchaser, shall transmit the fee, the application for registration, and an appropriate certificate indicating that all ad valorem taxes due on the motor vehicle have been paid to the tax collector or tax commissioner of the county where the purchaser resides. Upon receipt of the fee and documents, the tax collector or tax commissioner of the county where the purchaser resides shall issue the required license plate.

History.
Ga. L. 1966, p. 517, § 5; Code 1933, § 91A-1907, enacted by Ga. L. 1978, p. 309, § 2.

48-5-477. Requirement for paying tax prior to purchasing license plate on motor vehicles not subject to ad valorem taxation.

Nothing contained in this article shall be construed to require the payment of an ad valorem tax prior to the purchase of a license plate for any motor vehicle:

(1) Which is not subject to ad valorem taxation within this state; or

(2) Provided for in Code Section 48-5-472 which is not otherwise subject to ad valorem taxation under this article.

History.
Ga. L. 1966, p. 517, § 18; Ga. L. 1967, p. 91, § 3; Code 1933, § 91A-1910, enacted by Ga. L. 1978, p. 309, § 2.

48-5-478. Constitutional exemption from ad valorem taxation for disabled veterans.

(a) A motor vehicle owned by or leased to a disabled veteran who is a citizen and resident of this state is hereby exempted from all ad valorem taxes for state, county, municipal, and school purposes, including any alternative title ad valorem tax assessed pursuant to Code Section 48-5C-1. Such exemption shall be applicable to a single motor vehicle owned by or leased to a disabled veteran. As used in this Code section, the term "disabled veteran" shall have the same meaning as that term is defined in paragraph (1) of subsection (a) of Code Section 48-5-48. The department may issue such rules and regulations as are necessary to implement this subsection.

(b) Once a disabled veteran has established his or her eligibility for such ad valorem tax exemption by being 100 percent totally disabled, he or she shall be entitled to receive such ad valorem tax exemption in succeeding years thereafter. A disabled veteran who claims 100 percent total disability shall furnish proof of such disability through a letter from the United States Department of Veterans Affairs.

(c) Once a disabled veteran has established his or her eligibility for such ad valorem tax exemption but his or her disability has not been adjudicated a 100 percent total disability, he or she shall be entitled to such ad valorem tax exemption in succeeding years upon furnishing, on an annual basis, proof of his or her status as a disabled veteran through a letter from the United States Department of Veterans Affairs.

(d) In the event of the death of the disabled veteran who received such ad valorem tax exemption pursuant to this Code section, upon complying with the motor vehicle laws relating to registration and licensing of motor vehicles, his or her unmarried surviving spouse or minor child may continue to receive the exemption.

History.
Code 1981, § 48-5-478, enacted by Ga. L. 1984, p. 1058, § 8; Ga. L. 1985, p. 149, § 48; Ga. L. 1990, p. 45, § 1; Ga. L. 1998, p. 259, § 2; Ga. L. 1999, p. 81, § 48; Ga. L. 2015, p. 816, § 7/HB 48; Ga. L. 2016, p. 166, § 6/SB 258; Ga. L. 2016, p. 770, § 3/HB 862; Ga. L. 2023, p. 61, § 5/HB 175, effective January 1, 2024.

Amendments.
The 2023 amendment, effective January 1, 2024, in subsection (a), rewrote the first sentence of subsection (a), which read: "A motor vehicle owned by or leased to a disabled veteran who is a citizen and resident of this state and on which such disabled veteran actually places the free disabled veteran motor vehicle license

plate he or she receives pursuant to Code Section 40-2-69 is hereby exempted from all ad valorem taxes for state, county, municipal, and school purposes.", and added the second and last sentences.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1990, "United States Department of Veterans Affairs" was substituted for "Veterans Administration" in the second sentence (now the second sentence of subsection (b)).

Editor's notes.

Ga. L. 1984, p. 1058, § 9, not codified by the General Assembly, provides: "In the event of any conflict between this act and any other Act of the 1984 General Assembly the provisions of such other Act shall control over the provisions of this Act."

The state-wide referendum proposed by Ga. L. 1998, p. 259, which broadened the ad valorem tax exemption for motor vehicles owned by disabled veterans to include motor vehicles leased to disabled veterans, was approved by a majority of the voters voting at the general election held in November 1998.

48-5-478.1. Ad valorem taxation; exemption of certain motor vehicles owned by former prisoners of war.

(a) As used in this Code section, the term "prisoners of war" shall have the same meaning as provided for in subsection (a) of Code Section 40-2-73, as amended.

(b) Any former prisoner of war who is a citizen and resident of Georgia and who attaches or presents a true copy of a Department of Defense Form 214, a military 201 file, or similar sufficient proof of his or her former prisoner of war status with his or her ad valorem tax return is granted an exemption from all ad valorem taxes for state, county, municipal, and school purposes on one vehicle such former prisoner of war owns.

(c) The unremarried surviving spouse of a deceased former prisoner of war who is a citizen and resident of Georgia and who attaches or presents a true copy of a Department of Defense Form 214, a military 201 file, or similar sufficient proof of the former prisoner of war status of the deceased former prisoner of war with his or her ad valorem tax return is granted an exemption from all ad valorem taxes for state, county, municipal, and school purposes on one vehicle such unremarried surviving spouse owns.

History.

Code 1981, § 48-5-478.1, enacted by Ga. L. 1998, p. 547, § 1; Ga. L. 1999, p. 557, § 2.

Editor's notes.

The state-wide referendum proposed by Ga. L. 1998, p. 547, which provided for an exemption from ad valorem taxes for certain motor vehicles owned by former prisoners of war, was approved by a majority of the voters voting at the November 1998 general election.

Ga. L. 1998, p. 547, § 2, not codified by the General Assembly, provides that the Act is applicable to taxable years beginning on or after January 1, 1999.

Ga. L. 1999, p. 557, § 3, not codified by the General Assembly, provides that the amendment to this Code section is applicable to all tax years beginning on or after January 1, 2000.

48-5-478.2. Tax exemption for veterans awarded the Purple Heart citation.

A single motor vehicle owned by or leased to a veteran of the armed forces of the United States who has been awarded the Purple Heart citation and who is a citizen and resident of Georgia and on which such veteran actually places a motor vehicle license plate he or she receives from the State of Georgia pursuant to Code Section 40-2-84 is hereby exempted from all ad valorem taxes for state, county, municipal, and school purposes.

History.
Code 1981, § 48-5-478.2, enacted by Ga. L. 2000, p. 417, § 1.
Editor's notes.
Ga. L. 2000, p. 417, § 2, not codified by the General Assembly, provides that this Code Section shall be applicable to all taxable years beginning on or after January 1, 2001.

48-5-478.3. Tax exemption for veterans awarded Medal of Honor.

A single motor vehicle owned by or leased to a veteran of the armed forces of the United States who has been awarded the Medal of Honor and who is a citizen and resident of Georgia and on which such veteran actually places the motor vehicle license plates he or she receives from the State of Georgia pursuant to Code Section 40-2-68 is hereby exempted from all ad valorem taxes for state, county, municipal, and school purposes.

History.
Code 1981, § 48-5-478.3, enacted by Ga. L. 2004, p. 69, § 22.
Code Commission notes.
Pursuant to Code Section 28-9-5, in 2004, Code Section 48-5-478.3, as enacted by Ga. L. 2004, p. 417, § 1A, was redesignated as Code Section 48-5-478.4.
Editor's notes.
Ga. L. 2004, p. 69, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Taxation, Financing, and Service Delivery Revision Act of 2004.' "

48-5-478.4. Exemption from ad valorem taxes for motor vehicle owned by veterans' organization.

(a) As used in this Code section, the term "veterans organization" means any organization or association chartered by the Congress of the United States which is exempt from federal income taxes but only if such organization is a post or organization of past or present members of the armed forces of the United States organized in the State of Georgia with at least 75 percent of the members of which are past or present members of the armed forces of the United States and where no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(b) A single motor vehicle owned by or leased to a veterans organization is hereby exempted from all ad valorem taxes for state, county, municipal, and school purposes.

History.
Code 1981, § 48-5-478.4, enacted by Ga. L. 2004, p. 417, § 1A; Ga. L. 2010, p. 878, § 48/HB 1387.
Code Commission notes.
Pursuant to Code Section 28-9-5, in 2004, Code Section 48-5-478.3, as enacted by Ga. L. 2004, p. 417, § 1A, was redesignated as Code Section 48-5-478.4.
Editor's notes.
Ga. L. 2004, p. 417, § 1B, not codified by the General Assembly, provides that this Code section is applicable to all taxable years beginning on or after January 1, 2005.

Part 3

Mobile Homes

RESEARCH REFERENCES

ALR.
Classification, as real estate or personal property, of mobile homes or trailers for purposes of state or local taxation, 7 A.L.R.4th 1016.

48-5-490. Mobile homes owned on January 1 subject to ad valorem taxation.

Every mobile home owned in this state on January 1 is subject to ad valorem taxation by the various taxing jurisdictions authorized to impose an ad valorem tax on property. Taxes shall be charged against the owner of the property, if known, and, if unknown, against the specific property itself.

History.
Ga. L. 1976, p. 1529, § 4; Code 1933, § 91A-1923, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 48.

RESEARCH REFERENCES

Am. Jur. 2d.
71 Am. Jur. 2d, State and Local Taxation, § 134.

48-5-491. [Reserved] Ad valorem taxation of mobile homes owned and held by dealers for sale; returns of dealers' inventory; dealer's assessed value; determination of tax rate; time for payment of taxes; mobile homes in transit on January 1.

History.
Ga. L. 1976, p. 1529, § 3; Code 1933, § 91A-1922, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1992, p. 2411, § 8; Ga. L. 1999, p. 667, § 4; repealed by Ga. L. 1999, p. 667, § 3C, effective January 1, 2000.

Editor's notes.
Ga. L. 1999, p. 667, § 3C repealed and reserved this Code section, effective January 1, 2000.

48-5-492. Issuance of mobile home location permits; issuance and display of decals.

(a) Each year every owner of a mobile home subject to taxation under this article shall obtain on or before April 1 from the tax collector or tax commissioner of the county of taxation of the mobile home a mobile home location permit. The issuance of the permit by the tax collector or tax commissioner shall, if required by the governing authority of the county in which the mobile home is located, be evidenced by the issuance of a decal, the color of which shall be prescribed for each year by the commissioner. Each decal shall reflect the county of issuance and the calendar year for which the permit is issued. The decal may be prominently attached and displayed on the mobile home by the owner.

(b) Except as provided for mobile homes owned by a dealer, no mobile home location permit shall be issued by the tax collector or tax commissioner until all ad valorem taxes due on the mobile home have been paid. Each year every owner of a mobile home situated in this state on January 1 which is not subject to taxation under this article shall obtain on or before April 1 from the tax collector or tax commissioner of the county where the mobile home is situated a mobile home location permit. The issuance of the permit shall, if required by the governing authority of the county in which the mobile home is located, be evidenced by the issuance of a decal which shall reflect the county of issuance and the calendar year for which the permit is issued. The decal may be prominently attached and displayed on the mobile home by the owner.

History.
Ga. L. 1976, p. 1529, § 5; Ga. L. 1978, p. 1459, § 1; Code 1933, § 91A-1924, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 49; Ga. L. 1979, p. 538, § 6; Ga. L. 1982, p. 575, §§ 6, 13; Ga. L. 1984, p. 22, § 48; Ga. L. 1992, p. 1683, § 1; Ga. L. 1992, p. 2411, § 9; Ga. L. 1999, p. 667, § 3D; Ga. L. 2015, p. 1219, § 20/HB 202; Ga. L. 2021, p. 564, § 2/SB 193.

48-5-493. Failure to attach and display decal; penalties; venue for prosecution.

(a)(1) It shall be unlawful to fail to attach and display on a mobile home the decal as may be required by Code Section 48-5-492.

(2) Any person who violates paragraph (1) of this subsection shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than $100.00 nor more than $300.00, except that upon receipt of proof of purchase of a decal prior to the date of the issuance of a summons, the fine shall be $50.00; provided, however, that, in the event such person owns more than one mobile

home in an individual mobile home park, then the maximum fine under this paragraph for such person with respect to such mobile home park shall not exceed $1,000.00.

(b)(1) It shall be unlawful for any person to move or transport any mobile home which is required to and which does not have attached and displayed thereon the decal as may be required by Code Section 48-5-492.

(2) Any person who violates paragraph (1) of this subsection shall be guilty of a misdemeanor and shall be punished by a fine of not less than $200.00 nor more than $1,000.00 or by imprisonment for not more than 12 months, or both.

(c) Violation of subsection (a) or (b) of this Code section may be prosecuted in the magistrate court of the county where the mobile home location permit is to be issued in the manner prescribed for the enforcement of county ordinances set forth in Article 4 of Chapter 10 of Title 15.

History.
Code 1933, § 91A-9945, enacted by Ga. L. 1980, p. 436, § 1; Ga. L. 1990, p. 780, § 1; Ga. L. 1992, p. 2411, § 10; Ga. L. 2015, p. 1219, § 21/HB 202; Ga. L. 2021, p. 564, § 3/SB 193; Ga. L. 2024, p. 1052, § 5(23)/SB 448, effective July 1, 2024.

Amendments.
The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, revised punctuation in paragraph (a)(2).

48-5-494. Returns for taxation; application for and issuance of mobile home location permits upon payment of taxes due.

Each year every owner of a mobile home subject to taxation under this article shall return the mobile home for taxation and shall pay the taxes due on the mobile home at the time the owner applies for the mobile home location permit, or at the time of the first sale or transfer of the mobile home after December 31, or on April 1, whichever occurs first. If the owner returns such owner's mobile home for taxation prior to the date that the application for the mobile home location permit is required, such owner shall apply for the permit at the time such owner returns the mobile home for taxation.

History.
Ga. L. 1976, p. 1529, § 6; Code 1933, § 91A-1925, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 538, § 7; Ga. L. 1982, p. 575, §§ 7, 14; Ga. L. 1984, p. 22, § 48; Ga. L. 1992, p. 1684, § 1; Ga. L. 1992, p. 2411, § 11; Ga. L. 1999, p. 667, § 3E; Ga. L. 2015, p. 1219, § 22/HB 202.

48-5-495. Collection procedure when taxing county differs from county of purchaser's residence.

When a mobile home is purchased from a seller who is required to

return the mobile home for ad valorem taxation in a county other than the purchaser's county of residence, the tax collector or tax commissioner of the county in which the mobile home is returned for taxation shall collect the required ad valorem taxes due and, at the request of the purchaser, shall transmit to the purchaser an appropriate certificate which shall indicate that all ad valorem taxes due on the mobile home have been paid. Upon receipt of the certificate, the tax collector or tax commissioner of the purchaser's county of residence shall issue the required mobile home location permit and, when applicable, decal.

History.
Ga. L. 1976, p. 1529, § 7; Code 1933, § 91A-1926, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2021, p. 564, § 4/SB 193.

Part 4

Heavy-duty Construction Equipment Owned by Nonresidents

Editor's notes.
Ga. L. 1992, p. 1551, § 4, not codified by the General Assembly, provides: "This Act shall stand repealed in its entirety on January 1, 1993, if [Ga. L. 1992, p. 3336], which provides that heavy-duty equipment motor vehicles owned by nonresidents and operated in this state may be classified as a separate class of property for ad valorem property tax purposes, is passed by the General Assembly at the 1992 regular session and is ratified by the voters of this state at the 1992 general election and if H.B. No. 1279, which provides for the ad valorem taxation of heavy-duty equipment used for construction purposes which is owned by a nonresident and operated in this state, is passed by the General Assembly at the 1992 regular session and becomes effective January 1, 1993." The amendment to Ga. Const. 1983, Art. VII, Sec. I, Para III, (proposed in Ga. L. 1992, p. 3336) was ratified at the 1992 general election. H.B. 1279 was not passed at the 1992 regular session.

Ga. L. 1993, p. 1012, § 2, effective April 13, 1993, repealed the Code sections formerly codified at this part and enacted the current part. The former part pertained to heavy duty construction equipment owned by nonresidents, and consisted of Code Sections 48-5-500 and 48-5-501 and was based on Ga. L. 1992, p. 1551, § 2.

Ga. L. 1993, p. 1012, §§ 3 and 4, not codified by the General Assembly, provide: "Section 3. This Act is passed pursuant to Article VII, Section I, Paragraph III of the Constitution of the State of Georgia which provides that heavy-duty equipment motor vehicles owned by nonresidents and operated in this state may be classified as a separate class of property for ad valorem property tax purposes and different rates, methods, and assessment dates may be provided for such motor vehicles and which authorizes the General Assembly to provide by general law for the ad valorem taxation of motor vehicles.

"Section 4. This Act shall become effective upon its approval by the Governor [April 13, 1993] or upon its becoming law without such approval and shall apply to heavy-duty equipment brought into this state after such effective date during the 1993 taxable year."

48-5-500. Definitions.

As used in this part, the term:

(1) "Construction purposes" does not include mining activities or the transportation of materials used in or produced by forestry activities.

(2) "Heavy-duty equipment" means any motor vehicle used primarily off the open road for construction purposes, but shall include all road construction equipment whose gross weight exceeds 16,000 pounds, but shall not include inventory on hand for sale by duly licensed heavy-duty equipment dealers.

History.
Code 1981, § 48-5-500, enacted by Ga. L. 1993, p. 1012, § 2.
Editor's notes.
Ga. L. 1993, p. 1012, § 3, not codified by the General Assembly, provides: "This Act is passed pursuant to Article VII, Section I, Paragraph III of the Constitution of the State of Georgia which provides that heavy-duty equipment motor vehicles owned by nonresidents and operated in this state may be classified as a separate class of property for ad valorem property tax purposes and different rates, methods, and assessment dates may be provided for such motor vehicles and which authorizes the General Assembly to provide by general law for the ad valorem taxation of motor vehicles."

48-5-501. Equipment subject to ad valorem taxation.

Except as exempted by law, heavy-duty equipment used for construction purposes which is owned by a nonresident and operated in this state after January 1 of any year and which was brought into Georgia from a state which subjects to taxation heavy-duty equipment owned by residents of this state and taken into such other state after the initial tax assessment date in such other state shall be subject to ad valorem taxation the same as if such heavy-duty equipment had been held or owned in this state on January 1, except that such ad valorem tax shall be prorated with respect to the number of months remaining in the year.

History.
Code 1981, § 48-5-501, enacted by Ga. L. 1993, p. 1012, § 2.
Editor's notes.
Ga. L. 1993, p. 1012, § 3, not codified by the General Assembly, provides: "This Act is passed pursuant to Article VII, Section I, Paragraph III of the Constitution of the State of Georgia which provides that heavy-duty equipment motor vehicles owned by nonresidents and operated in this state may be classified as a separate class of property for ad valorem property tax purposes and different rates, methods, and assessment dates may be provided for such motor vehicles and which authorizes the General Assembly to provide by general law for the ad valorem taxation of motor vehicles."

Part 5

Farm Equipment

Editor's notes.
Ga. L. 2003, p. 190, § 2, not codified by the General Assembly, provides that this part shall be applicable to all taxable years beginning on or after January 1, 2004.

48-5-504. Self-propelled farm equipment as subclassification of motor vehicle for ad valorem taxation purposes.

(a) As used in this Code section, the term:

(1) "Dealer" means any person who is engaged in the business of selling farm equipment at retail.

(2) "Farm equipment" means any vehicle as defined in Code Section 40-1-1 which is self-propelled and which is designed and used primarily for agricultural, horticultural, forestry, or livestock raising operations.

(b) Self-propelled farm equipment which is owned by a dealer and held in inventory for sale or resale shall constitute a separate subclassification of motor vehicle within the motor vehicle classification of tangible property for ad valorem taxation purposes. The procedures prescribed in this chapter for returning self-propelled farm equipment for ad valorem taxation, determining the application rates for taxation, and collecting the ad valorem taxes imposed on self-propelled farm equipment do not apply to self-propelled farm equipment which is owned by a dealer and held in inventory for sale or resale. Such self-propelled farm equipment which is owned by a dealer and held in inventory for sale or resale shall not be returned for ad valorem taxation, shall not be taxed, and no taxes shall be collected on such self-propelled farm equipment until it is transferred and then otherwise, if at all, becomes subject to taxation as provided in this chapter.

History.
Code 1981, § 48-5-504, enacted by Ga. L. 2003, p. 190, § 1; Ga. L. 2010, p. 878, § 48/HB 1387; Ga. L. 2015, p. 947, § 2/HB 374.

Part 6

Aircraft Held in Dealer's Inventory

Editor's notes.
Ga. L. 2005, p. 1221, § 2/HB 211, not codified by the General Assembly, provides that this part shall be applicable to all taxable years beginning on or after January 1, 2006.

48-5-504.20. Exemption for aircraft owned by a dealer and held in inventory for sale or resale.

(a) As used in this Code section, the term:

(1) "Aircraft" means any vehicle which is self-propelled and which is capable of flight.

(2) "Dealer" means any person who is engaged in the business of selling aircraft at retail.

(b) Aircraft which is owned by a dealer and held in inventory for sale or resale shall constitute a separate classification of tangible property for ad valorem taxation purposes. The procedures prescribed in this chapter for returning aircraft for ad valorem taxation, determining the application rates for taxation, and collecting the ad valorem taxes imposed on aircraft do not apply to aircraft which is owned by a dealer and held in inventory for sale or resale. Such aircraft which is owned by a dealer and held in inventory for sale or resale shall not be returned for ad valorem taxation and shall not be taxed; and no taxes shall be collected on such aircraft until it is transferred and then otherwise, if at all, becomes subject to taxation as provided in this chapter.

History. Code 1981, § 48-5-504.20, enacted by Ga. L. 2005, p. 1221, § 1/HB 211; Ga. L. 2006, p. 72, § 48/SB 465.

Part 7

Watercraft and All-Terrain Vehicles Held in Inventory for Resale

48-5-504.40. Watercraft and all-terrain vehicles held in inventory for resale exempt from taxation for limited period of time.

(a) As used in this Code section, the term:

(1) "All-terrain vehicle" shall have the same meaning as provided for in paragraph (3) of Code Section 40-1-1.

(2) "Dealer" means any person who is engaged in the business of selling watercraft or all-terrain vehicles at retail.

(3) "Watercraft" means any vehicle which is self-propelled or which is capable of self-propelled water transportation, or both.

(b) Watercraft and all-terrain vehicles owned by a dealer and held in inventory for sale or resale shall constitute a separate classification of tangible property for ad valorem taxation purposes. The procedures prescribed in this chapter for returning watercraft or all-terrain vehicles for ad valorem taxation, determining the application rates for taxation, and collecting the ad valorem taxes imposed on watercraft or all-terrain vehicles do not apply to watercraft or all-terrain vehicles owned by a dealer and held in inventory for sale or resale. Such watercraft or all-terrain vehicles owned by a dealer and held in inventory for sale or resale shall not be returned for ad valorem taxation and shall not be taxed, and no taxes shall be collected on such watercraft or all-terrain vehicles until they are transferred and then otherwise, if at all, become subject to taxation as provided in this chapter.

History.
Code 1981, § 48-5-504.40, enacted by Ga. L. 2006, p. 674, § 1/HB 1249; Ga. L. 2008, p. 944, § 1/HB 1046; Ga. L. 2010, p. 575, § 1/HB 1105; Ga. L. 2015, p. 1351, § 1/HB 457; Ga. L. 2016, p. 617, § 1/HB 769; Ga. L. 2019, p. 277, § 3/HB 101.
Editor's notes.
Ga. L. 2015, p. 1351, § 2/HB 457, not codified by the General Assembly, provides, in part, that this Act shall apply to all tax years beginning on and after January 1, 2016, and ending on December 31, 2019.
Ga. L. 2016, p. 617, § 2/HB 769, not codified by the General Assembly, provides, in part, that this Act shall apply to all taxable years beginning on and after January 1, 2017.

ARTICLE 10A

AD VALOREM TAXATION OF HEAVY-DUTY EQUIPMENT MOTOR VEHICLES

48-5-505. Definitions.

As used in this article, the term:

(1) "Dealer" means any person who is engaged in the business of selling heavy-duty equipment motor vehicles at retail and who holds a valid current dealer's resale tax exemption number.

(2) "Heavy-duty equipment motor vehicle" means a motor vehicle with all its attachments and parts which is self-propelled, weighs 5,000 pounds or more, and is primarily designed and used for construction, industrial, maritime, or mining uses, provided that such motor vehicles are not required to be registered and have a license plate.

History.
Code 1981, § 48-5-505, enacted by Ga. L. 1998, p. 1145, § 2.

48-5-506. Heavy-duty equipment motor vehicles; dealers.

(a) The provisions of this article shall apply only to heavy-duty equipment motor vehicles and dealers as defined in Code Section 48-5-505.

(b) The provisions of Part 2 of Article 10 of this chapter shall apply to all other heavy-duty equipment motor vehicles and dealers not provided for in subsection (a) of this Code section.

History.
Code 1981, § 48-5-506, enacted by Ga. L. 1998, p. 1145, § 2.

48-5-506.1. [Repealed] Partial exemption from ad valorem taxation of heavy-duty equipment motor vehicles.

History.
Code 1981, § 48-5-506.1, enacted by Ga. L. 2009, p. 942, § 2/HB 318; repealed by Ga. L. 2009, p. 942, § 2/HB 318, effective December 31, 2010.

48-5-507. Change of method of evaluating heavy-duty equipment motor vehicles for ad valorem taxes; purpose.

(a) Except as provided in subsections (b) and (c) of this Code section, every heavy-duty equipment motor vehicle owned in this state by a natural person or other entity is subject to ad valorem taxation by the various tax jurisdictions authorized to impose an ad valorem tax on property only if owned by such natural person or entity on the first day of January of any taxable year. Taxes shall be charged against the owner of the property, if known, and, if unknown, against the specific property itself. The owner shall return the heavy-duty equipment motor vehicle for taxation as provided in Article 1 of this chapter.

(b)(1) Any and all purchases of heavy-duty equipment motor vehicles by dealers for the purpose of resale shall be exempt from ad valorem tax at the time of the purchase by the dealer.

(2) Any person or entity which purchases a heavy-duty equipment motor vehicle from a dealer shall, for the taxable year in which the heavy-duty equipment motor vehicle is purchased only, return such heavy-duty equipment motor vehicle for ad valorem taxation purposes, within 30 days of the end of the month in which such purchase is made, to the appropriate county and shall pay a tax for such taxable year. Upon receipt of such return, the tax commissioner shall within five days prepare and bill the purchaser for the ad valorem tax. Such tax shall be equal to 33 ⅓ percent of the amount derived by multiplying the amount of ad valorem tax which would otherwise be due on the heavy-duty equipment motor vehicle and shall be based on the selling price to the end user times 40 percent, thus deriving the taxable assessment, times the tax rate imposed by the tax authority for the preceding tax year, by a fraction the numerator of which is the number of months remaining in the calendar year not counting the month of purchase and the denominator of which is 12. In no event shall the ad valorem tax due be less than $100.00 for the year of purchase. The taxes levied under this subsection shall be due 60 days after the billing therefor.

(3) Any ad valorem tax due shall be based on the selling price of the heavy-duty equipment motor vehicle purchased.

(4) In the event that any heavy-duty equipment motor vehicle is purchased other than for resale by a person or entity not domiciled in

this state, at the time of the sale the dealer shall collect the ad valorem tax which would be applicable for the county where the heavy-duty equipment motor vehicle was held in inventory at the time of the sale. Each dealer, on or before the last day of the month following a sale to such person or entity, shall transmit returns and remit the ad valorem taxes collected to the tax commissioner of the county where the heavy-duty equipment motor vehicle was held in inventory at the time of the sale. Such returns shall show all sales and purchases taxable under this article during the preceding calendar month. The returns required by this subsection shall be made upon forms prescribed, prepared, and furnished by the state revenue commissioner. If any dealer liable for any tax, interest, or penalty imposed by this article sells out his or her business's heavy-duty equipment motor vehicles or quits the business, he or she shall make a final return and payment within 30 days after the date of selling or quitting the business. Any dealer who does not collect tax as required under this paragraph or who fails to properly remit taxes collected under this paragraph shall be liable for the tax and the tax commissioner shall collect such tax, penalty, and interest in the same manner that other taxes are collected.

(c) Except as otherwise provided in this subsection, heavy-duty equipment motor vehicles which are owned by a dealer are not included within the distinct subclassification of tangible property made by this article for all other heavy-duty equipment motor vehicles. The procedures prescribed in this article for returning heavy-duty equipment motor vehicles for ad valorem taxation, determining the applicable rates for taxation, and collecting the ad valorem taxes imposed on heavy-duty equipment motor vehicles do not apply to heavy-duty equipment motor vehicles which are owned by a dealer. Heavy-duty equipment motor vehicles which are owned by a dealer shall not be returned for ad valorem taxation, shall not be taxed, and no taxes shall be collected on such heavy-duty equipment motor vehicles until they become subject to taxation as provided in subsections (a) and (b) of this Code section. No heavy-duty equipment motor vehicle held by a dealer in inventory for resale shall be subject to ad valorem taxation unless such heavy-duty equipment motor vehicle was in the dealer's inventory on January 1 of the taxable year and continued to remain in such dealer's inventory on December 20 of such taxable year, in which case the dealer shall be required to return the heavy-duty equipment motor vehicle for ad valorem taxation on December 21 of that taxable year. The assessed value of each heavy-duty equipment motor vehicle owned by a dealer shall be 40 percent of the fair market value of the heavy-duty equipment motor vehicle on January 1 of that taxable year. The tax commissioner shall prepare and mail a tax bill within five days of receipt of such dealer's return. The taxes levied under this subsection shall be due 60 days after the billing therefor.

(d) Within 30 days of the last day of a month during which there is a sale of any heavy-duty equipment motor vehicle other than for resale, the dealer shall mail to the tax commissioner of the county where the purchaser is domiciled a statement notifying the tax commissioner of the sale which shall include information such as the date of the sale, the selling price, and the name and address of the purchaser. Such statement shall be upon forms prescribed, prepared, and furnished by the state revenue commissioner.

(e) The failure of any person or entity to return property as required by this Code section shall subject such person or entity to penalties as provided in Code Section 48-5-299. The failure of any person or entity to pay the taxes as required by this Code section shall subject such person or entity to penalties and interest as provided by Code Section 48-2-44.

History. Code 1981, § 48-5-507, enacted by Ga. L. 1998, p. 1145, § 2; Ga. L. 1999, p. 667, § 2.

48-5-507.1. Effect of rental status on dealer's inventory.

If the nature of the dealer's business is primarily the sale of heavy-duty equipment motor vehicles, then for purposes of this article, the rental of a heavy-duty equipment motor vehicle by the dealer to a customer shall not be deemed to have removed the vehicle from the dealer's inventory.

History.
Code 1981, § 48-5-507.1, enacted by Ga. L. 2001, p. 959, § 1.

48-5-508. Appeal of assessed value.

Any taxpayer who contests the value assessment of a heavy-duty equipment motor vehicle as defined in this article may appeal such assessed value as provided for in Code Section 48-5-311 except that such appeal shall be effected by mailing to or filing with the tax commissioner a notice of appeal within 60 days of the date the tax bill is mailed by the tax commissioner. Such appeal, to be properly filed, must be accompanied by a payment equal to 85 percent of the amount of such tax bill. The tax commissioner shall forward such notice of appeal to the board of tax assessors and the appeal shall be processed in accordance with Code Section 48-5-311.

History. Code 1981, § 48-5-508, enacted by Ga. L. 1998, p. 1145, § 2; Ga. L. 1999, p. 667, § 3.

48-5-509. Rules and regulations.

The commissioner shall be authorized to promulgate rules and

regulations to facilitate and ensure compliance with the provisions of this article.

History.
Code 1981, § 48-5-509, enacted by Ga. L. 1998, p. 1145, § 2.

ARTICLE 11

AD VALOREM TAXATION OF PUBLIC UTILITIES

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1882, §§ 826 through 826d, former Civil Code 1895, T. 8, Ch. 1, Art. 4, and former Civil Code 1910, T. 8, Ch. 1, Art. 6 are included in the annotations for this article.

Article does not violate constitutional requirements as to uniformity of taxes. — Former Code 1882, §§ 826 through 826d (see now O.C.G.A. § 48-5-511 and former O.C.G.A. §§ 48-5-516, 48-5-517, and 48-5-523) were not unconstitutional as violating Ga. Const. 1877, Art. VII, Sec. II, Para. I (see now Ga. Const. 1983, Art. VII, Sec. I, Para. III and Art. IX, Sec. IV, Para. I). Columbus S. Ry. v. Wright, 89 Ga. 574, 15 S.E. 293, 1892 Ga. LEXIS 410 (1892), aff'd, 151 U.S. 470, 14 S. Ct. 396, 38 L. Ed. 238, 1894 U.S. LEXIS 2073 (1894) (decided under former Code 1882, §§ 826 through 826d).

Inapplicable to railroads doing business in single city. — Civil Code 1895, T. 8, Ch. 1, Art. 4 (see now O.C.G.A. §§ 48-5-511, 48-5-512, and 48-5-521) apply to those railroads running from one county to another, and not to those doing business in and near a single city. Savannah, T. & I. of H. Ry. v. Williams, 117 Ga. 414, 43 S.E. 751, 1903 Ga. LEXIS 249 (1903) (decided under former Civil Code 1895, T. 8, Ch. 1, Art. 4).

Lessor may not be assessed for taxes paid by lessee under lease covenant. — When the lessee undertakes to pay all taxes which may be levied upon the lessor, the lessor railroad company cannot again be assessed for taxes which have been paid by the lessee under its covenant. Harrison v. Georgia, F. & A.R.R., 174 Ga. 549, 163 S.E. 200, 1932 Ga. LEXIS 86 (1932) (decided under former Civil Code 1910, T. 8, Ch. 1, Art. 6).

Assessment of lease contract when lessor has no interest for 99 years is void. — Assessment of a lease contract as property is void when the lessor has no estate whatever in the property leased for a period of 99 years. This is not an effort to tax the actual rental received by the railroad company, but purports to be a tax on the capitalized value of the contract, based on the amount of rent to be paid by the railroad company. Harrison v. Georgia, F. & A.R.R., 174 Ga. 549, 163 S.E. 200, 1932 Ga. LEXIS 86 (1932) (decided under former Civil Code 1910, T. 8, Ch. 1, Art. 6).

OPINIONS OF THE ATTORNEY GENERAL

Return of motor vehicles owned by utilities. — Motor vehicles owned by railroad companies and other utilities must be returned in accordance with the provisions of former Code 1933, Ch. 92-15 (see now O.C.G.A. Art. 10, Ch. 5, T. 48), not under the provisions of former Code 1933, Ch. 92-27 (see now O.C.G.A. Art. 11, Ch. 5, T. 48). 1967 Op. Att'y Gen. No. 67-99.

RESEARCH REFERENCES

ALR.

What property of electric, gas, water, telephone, or street railway company constitutes real property for taxation purposes, 57 A.L.R. 869.

Place of taxation of dam, flowage rights, or water power, 64 A.L.R. 143.

Scope and content of term "right of way" as employed in statute relating to taxation, or exemption from taxation, of railroads or railroad property, 108 A.L.R. 242.

Reasonableness of classifications, based on character of use by consumer, in statutes imposing tax or license fee on public utilities or persons furnishing same, 109 A.L.R. 1516.

Situs of aircraft, rolling stock, and vessels for purposes of property taxation, 3 A.L.R.4th 837.

48-5-510. Definitions.

As used in this article, the term:

(1) "Chief executive officer" means the owner, president, general manager, or agent having control of a public utility's offices or property in this state.

(2) "Pertinent business factors" means data that reflect the use of the public utility's property including, but not limited to, data relating to gross revenue, net income, tons of freight carried, revenue ton miles, passenger miles, car miles, and comparable data.

(3) "Pertinent mileage factors" means factual information as to the linear miles of the public utility's track, wire, lines, pipes, routes, similar operational routes, and miles traveled by the public utility's rolling stock or other property.

History.

Ga. L. 1927, p. 97, § 9; Code 1933, § 92-5902; Ga. L. 1935, p. 11, § 9; Ga. L. 1972, p. 1119, § 1; Ga. L. 1976, p. 190, § 1; Code 1933, § 91A-2201, enacted by Ga. L. 1978, p. 309, § 2.

48-5-511. Returns of public utilities to commissioner; itemization and fair market value of property; other information; apportionment to more than one tax jurisdiction.

(a)(1) As used in this Code section, the term "electronic transmission" means any form of communication that does not directly involve the physical transmission of paper and that creates a record that may be retained, retrieved, and reviewed by a recipient thereof and that may be directly reproduced in paper form by such a recipient through an automated process.

(2) The chief executive officer of each public utility shall be required to make by electronic transmission an annual tax return of all property located in this state to the commissioner. The return shall be made to the commissioner on or before March 1 in each year and shall be current as of January 1 preceding.

(b) The returns of each public utility shall be in writing and sworn to under oath by the chief executive officer to be a just, true, and full return of the fair market value of the property of the public utility without any deduction for indebtedness. Each class or species of property shall be separately named and valued as far as practicable and shall be taxed like all other property under the laws of this state. The returns shall also include the capital stock, net annual profits, gross receipts, business, or income (gross, annual, net, or any other kind) for which the public utility is subject to taxation by the laws of this state. Each parcel of real estate included in the return shall be identified by its street address. If the commissioner is unable to locate the property by its street address after exercising due diligence in attempting to locate the property, then the commissioner may request more information from the taxpayer to help identify the exact location of the property. Such additional information may include a map or parcel identification information.

(c)(1) Each chief executive officer shall apportion, under rules and regulations promulgated by the commissioner, the fair market value of his or her public utility's properties to this state, if the public utility owns property in states other than this state, and between the several tax jurisdictions in this state.

(2) In promulgating the regulations specifying the method of apportionment, the commissioner shall consider:

(A) The location of the various classes of property;

(B) The gross or net investment in the property;

(C) Any other factor reflecting the public utility's investment in property;

(D) Pertinent business factors reflecting the utility of the property;

(E) Pertinent mileage factors; and

(F) Any other factors which in the commissioner's judgment are reasonably calculated to apportion fairly and equitably the property between the various tax jurisdictions.

(3) Any reasonable value directly attributable to property physically located in one jurisdiction in this state shall not be apportioned to any other jurisdiction in this state.

History.

Orig. Code 1863, §§ 755, 761; Code 1868, §§ 822, 828; Code 1873, §§ 826, 832; Ga. L. 1874, p. 107, § 2; Ga. L. 1877, p. 126, § 1; Code 1882, §§ 826, 826a, 826d, 832; Ga. L. 1889, p. 29, § 1; Ga. L. 1889, p. 36, § 1; Ga. L. 1890-91, p. 152, §§ 2, 3; Civil Code 1895, §§ 726, 727, 780, 784, 804, 805, 812; Ga. L. 1905, p. 68, § 1; Civil Code 1910, §§ 873, 874, 1032, 1036, 1042, 1043, 1050; Code 1933, §§ 92-2602, 92-2701, 92-2802, 92-2803, 92-5901, 92-

5902, 92-5903, 92-5904; Ga. L. 1935, p. 11, § 9; Ga. L. 1972, p. 1119, § 1; Ga. L. 1976, p. 190, § 1; Code 1933, §§ 91A-2202, 91A-2203, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2009, p. 216, § 2D/SB 240; Ga. L. 2020, p. 254, § 2/SB 410.

Editor's notes.

Code Sections 92-2701 and 92-5901, upon which this Code section is based, were based in part on Ga. Const. 1877, Art. VII, Sec. II, Para. VI, for which there is no corresponding section in either the 1945, 1976, or 1983 Georgia Constitution.

Ga. L. 2020, p. 254, § 3/SB 410, not codified by the General Assembly, provides that this Act shall be applicable to tax years beginning on or after January 1, 2021.

JUDICIAL DECISIONS

Analysis

General Consideration
Property to be Returned

General Consideration

Power to tax is limited by federal power over interstate commerce. — Power of a city to tax railroads is limited by the exclusive power of the United States over interstate commerce. City Council v. Augusta & A. Ry., 130 Ga. 815, 61 S.E. 992, 1908 Ga. LEXIS 429 (1908).

Assessment of railroad property at higher rate unconstitutional. — An assessment of a railroad's property at a given level under this statute, while properties of other taxpayers in those counties are being assessed on a basis of value which would produce a much lower assessment of the railroad's property, violates Ga. Const. 1945, Art. VII, Sec. I, Para. III (see now Ga. Const. 1983, Art. VII, Sec. I, Para. III and Art. IX, Sec. IV, Para. I), Ga. Const. 1945, Art. I, Sec. I, Para. II (see now Ga. Const. 1983, Art. I, Sec. I, Para. II), and U.S. Const., amend. 14. Undercofler v. Seaboard Air Line R.R., 222 Ga. 822, 152 S.E.2d 878, 1966 Ga. LEXIS 641 (1966).

Provisions as to taxation of railroads to be construed together and are exhaustive. — Provisions relating to the method of assessing and collecting taxes upon the property of railroad companies for state, county, and municipal purposes are to be construed together, and when so construed the provisions are exhaustive as to the method of assessing and collecting all taxes required to be paid by railroad companies on property owned by railroad companies. Georgia R.R. & Banking Co. v. Wright, 125 Ga. 589, 54 S.E. 52, 1906 Ga. LEXIS 229 (1906), rev'd, 207 U.S. 127, 28 S. Ct. 47, 52 L. Ed. 134, 1907 U.S. LEXIS 1209 (1907); Greene County v. Wright, 126 Ga. 504, 54 S.E. 951, 1906 Ga. LEXIS 427 (1906).

Laches as bar to assessment or correction of return. — When a taxpayer filed the taxpayer's assessment and return and the comptroller general (now commissioner) did not make any objection to the return or any part thereof within the time prescribed by this statute and apparently had never suggested any correction of the assessment and return, the trustees of the school district in which the taxpayer owed a portion of the taxpayer's taxes were powerless to obtain the relief the trustees sought, not by reason of any deficiency of a legal remedy, but on account of the trustees' laches in not moving sooner in the matter. Garrison v. Toccoa Elec. Power Co., 177 Ga. 850, 171 S.E. 564, 1933 Ga. LEXIS 446 (1933).

Effect on charter exemption. — Statute does not abolish the provision, or impair the contract obligation, contained in the charter of a railroad company granted prior to its enactment, whereby the railroad is totally or partially exempted from taxation. State v. Georgia R.R. & Banking, 54 Ga. 423, 1875 Ga. LEXIS 190 (1875); Georgia R.R. & Banking Co. v. Wright, 132 F. 912, 1904 U.S. App. LEXIS 5056 (C.C.D. Ga. 1904), aff'd, 216 U.S. 420, 30 S. Ct. 242, 54 L. Ed. 544, 1910 U.S. LEXIS 1908 (1910); Wright v. Georgia R.R. & Banking Co., 216 U.S.

420, 30 S. Ct. 242, 54 L. Ed. 544, 1910 U.S. LEXIS 1908 (1910).

Nature of action brought to prevent assessment. — Action by railroad company for declaratory judgment and injunction against collection of ad valorem taxes is in substance and effect an action against the state and the action is not maintainable, unless the state has consented to be sued. Musgrove v. Georgia R.R. & Banking Co., 204 Ga. 139, 49 S.E.2d 26, 1948 Ga. LEXIS 563 (1948).

It is a well recognized general rule that an action to restrain a state official from executing an unconstitutional statute or a state constitutional provision which conflicts with the United States Constitution in violation of the plaintiff's rights and to the plaintiff's irreparable damage is not an action against the state, for in such a case the officer is stripped of the officer's official or representative character and is subject in the officer's person to the consequences of the officer's individual conduct. However, when the plaintiff claims certain provisions of its charter to constitute a contract with the state, the state has a distinct and direct interest in the subject matter of the litigation, as distinguished from a mere governmental interest in the enforcement of its laws. Therefore, this rule has no application when the company seeks to prevent assessment of taxes allegedly in violation of the company's charter. Musgrove v. Georgia R.R. & Banking Co., 204 Ga. 139, 49 S.E.2d 26, 1948 Ga. LEXIS 563 (1948).

Power to reject return and reassess property. — Comptroller general (now commissioner) may reject the return made by a railroad company of the value of the company's entire property for state taxation, and correct the return or reassess the property. City of Atlanta v. Wright, 119 Ga. 207, 45 S.E. 994, 1903 Ga. LEXIS 88 (1903).

Power of State Board of Equalization on appeal. — On appeal to arbitration (now State Board of Equalization) from an assessment of value placed on unreturned property by the comptroller general (now commissioner), the arbitrators (now State Board of Equalization) cannot include property in their award which was not embraced in the comptroller's (now commissioner's) assessment. Georgia Ry. & Power v. Wright, 146 Ga. 29, 90 S.E. 465, 1916 Ga. LEXIS 564 (1916).

Board exceeded authority. — In an action filed by a utility seeking equitable relief from the rejection of the state commissioner's fair market valuation by the county board of tax assessors, the trial court erred in granting summary judgment to a county board of tax assessors; the board exceeded the board's authority when, in the course of making a final assessment of a utility's property, it not only substituted the board's own assessment ratio, but also the board's own fair market value for those calculated by the state commissioner as a final assessment could not include a reappraisal of the fair market value of a taxpayer required to make a return to the state. Ga. Power Co. v. Monroe County, 284 Ga. App. 707, 644 S.E.2d 882, 2007 Ga. App. LEXIS 399 (2007), aff'd, 283 Ga. 12, 655 S.E.2d 817, 2008 Ga. LEXIS 2 (2008).

Court of Appeals of Georgia properly held that, although the county board of tax assessors could alter the assessment ratio proposed by the Georgia Revenue Commissioner on land owned by a utility in the course of making a final assessment of a utility's property, the board could not alter the apportioned fair market value for the property used by the commissioner in the commissioner's proposed assessment. Monroe County v. Ga. Power Co., 283 Ga. 12, 655 S.E.2d 817, 2008 Ga. LEXIS 2 (2008).

Mandamus to require commissioner to accept returns. — In a gas company's suit against the state revenue commissioner for mandamus compelling the commissioner to accept its property tax returns under O.C.G.A. §§ 48-1-2(21) and 48-5-511(a), remand was proper to determine if the company had an acceptable alternative remedy in its pending county tax appeals under O.C.G.A. § 48-5-311, if the commissioner could be made a party to those appeals by joinder or some other procedure. Southern LNG, Inc. v. MacGinnitie, 294 Ga. 657, 755 S.E.2d 683, 2014 Ga. LEXIS 168 (2014).

Mandamus improperly granted to a company. — Judgment of the trial court

General Consideration (Cont'd)

granting a company mandamus relief was reversed because the judgment did not show that the State Revenue Commissioner, in refusing to accept the company's ad valorem tax returns as a gas company, violated a clear legal duty, failed to act, or engaged in arbitrary, capricious, and unreasonable actions because the company was not authorized to engage in the business of a gas company under O.C.G.A. § 46-1-1(5) nor be a natural-gas company as defined in 15 U.S.C. § 717a(6). Riley v. Southern LNG, Inc., 300 Ga. 689, 797 S.E.2d 878, 2017 Ga. LEXIS 158 (2017).

Property to be Returned

Property included in return. — Return clearly embraces all the property of these companies, both real and personal. It embraces tangible personal property and intangible personal property. It embraces realty and personalty used in the conduct of their usual and ordinary business, and also realty and personalty not so used. Greene County v. Wright, 126 Ga. 504, 54 S.E. 951, 1906 Ga. LEXIS 427 (1906); Georgia R.R. & Banking Co. v. Wright, 125 Ga. 589, 54 S.E. 52, 1906 Ga. LEXIS 229 (1906), rev'd, 207 U.S. 127, 28 S. Ct. 47, 52 L. Ed. 134, 1907 U.S. LEXIS 1209 (1907).

All property of every nature whatsoever is to be embraced in the return to the commissioner. Georgia R.R. & Banking Co. v. Wright, 125 Ga. 589, 54 S.E. 52, 1906 Ga. LEXIS 229 (1906), rev'd, 207 U.S. 127, 28 S. Ct. 47, 52 L. Ed. 134, 1907 U.S. LEXIS 1209 (1907).

Property not used for railroad purposes must also be returned. — Property used by the company for railroad purposes should be returned to the comptroller general (now commissioner), as well as that which is not so used, and the entire state taxes upon every character of property owned by the company should be levied by the comptroller general (now commissioner). Georgia R.R. & Banking Co. v. Wright, 125 Ga. 589, 54 S.E. 52, 1906 Ga. LEXIS 229 (1906), rev'd, 207 U.S. 127, 28 S. Ct. 47, 52 L. Ed. 134, 1907 U.S. LEXIS 1209 (1907).

Return should classify property as to purpose. — Return should specify the several sorts of property so that the kind appurtenant and necessary to a company for railroad purposes should bear only the rate of taxation fixed by the charter, and other property, not so appurtenant and necessary, should be taxed as that of all other persons; the entire state tax being levied by the comptroller general (now commissioner). Savannah, F. & W. Ry. v. Morton, 71 Ga. 24, 1883 Ga. LEXIS 132 (1883).

Real property or personal property within a county or municipality, not used for railroad purposes, is still subject to the same tax as like property owned by individuals. The tax goes to the county or municipality. Georgia R.R. & Banking Co. v. Wright, 125 Ga. 589, 54 S.E. 52, 1906 Ga. LEXIS 229 (1906), rev'd, 207 U.S. 127, 28 S. Ct. 47, 52 L. Ed. 134, 1907 U.S. LEXIS 1209 (1907).

When corporate purpose clause of taxpayer's charter authorizes taxpayer to engage in a gas business, taxpayer is therefore a "gas company" within the meaning of former Code 1933, § 92-5902 (see now paragraph (21) of O.C.G.A. § 48-1-2). Since the taxpayer is a gas company, the gas company is required by former Code 1933, § 92-5902 to make the company's ad valorem tax return to the commissioner although not doing a gas business. Undercofler v. Colonial Pipeline Co., 114 Ga. App. 739, 152 S.E.2d 768, 1966 Ga. App. LEXIS 906 (1966).

Sleeping cars with no fixed situs in the state not taxable. — Commissioner has no authority to assess sleeping cars for county taxation if the cars have no fixed situs in this state, but are temporarily out of train in a county, the assessment being based on the average number and average value of the cars out of the train. Forrester v. Pullman Co., 192 Ga. 221, 15 S.E.2d 185, 1941 Ga. LEXIS 443 (1941).

OPINIONS OF THE ATTORNEY GENERAL

Finality of commissioner's valuation of public utility's property. — Municipalities of the state are bound to accept the valuation as finally fixed by the commissioner on the property of public utilities operating within the municipalities' limits. 1963-65 Ga. Op. Att'y Gen. 220.

Local political subdivision has no authority to assess railroad property for taxation. 1954-56 Ga. Op. Att'y Gen. 826.

Returns of railroads. — Railroad must return for taxation all of the railroad's property, whether devoted to railroad purposes or not, to the commissioner, who makes the assessment. 1954-56 Ga. Op. Att'y Gen. 826.

Taxation of power company with property but no customers in this state. — When a power company's property is located in this state and is a part of its reservoir used for producing electricity distributed to its customers, none of whom are Georgia residents, the company is a power company or a hydroelectric power company as is required by this statute to file the company's annual property tax return with the commissioner. 1968 Op. Att'y Gen. No. 68-155.

RESEARCH REFERENCES

Am. Jur. 2d.

71 Am. Jur. 2d, State and Local Taxation, §§ 353, 354.

ALR.

What property is within provision in relation to local taxation of certain railroad property under statute or constitution providing for assessment or taxation of railroad property by state commission or board, 80 A.L.R. 252.

State tax in connection with transportation or distribution of oil or gas through pipe lines as affected by commerce clause, 154 A.L.R. 623.

48-5-512. Issuance of execution for failure to file return.

(a) If any person required to make a return to the commissioner fails to return the taxable property or pay annually to the state, any county, or any municipality the taxes for which it may be liable by reason of the return, the county tax collector or tax commissioner or the municipal governing authority or its designee, as appropriate, shall issue an execution for the amount of taxes due, according to the law, together with the costs and penalties.

(b) The executions issued by the county tax collector or tax commissioner or the municipal governing authority or its designee, as appropriate, against any corporation or other company shall be directed to all sheriffs and other lawful officers of this state with directions to levy the execution on the property of the corporation or company and with the authority to issue and serve garnishments upon the debtors of the corporation or company.

History.

Orig. Code 1863, §§ 800, 806; Code 1868, §§ 879, 885; Code 1873, §§ 876, 882; Code 1882, §§ 876, 882; Ga. L. 1889, p. 29, § 6; Civil Code 1895, §§ 788, 874, 880; Civil Code 1910, §§ 1040, 1132, 1137; Code 1933, §§ 92-2705, 92-7302, 92-7303; Code 1933, §§ 91A-302, 91A-303, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1982, p. 3, § 48; Ga. L. 1990, p. 1337, § 2.

JUDICIAL DECISIONS

Applicability. — Statute is applicable whether there is an entire failure to make a return, or only an incomplete and partial return. Georgia R.R. & Banking Co. v. Wright, 125 Ga. 589, 54 S.E. 52, 1906 Ga. LEXIS 229 (1906), rev'd, 207 U.S. 127, 28 S. Ct. 47, 52 L. Ed. 134, 1907 U.S. LEXIS 1209 (1907).

Effect of acceptance of incomplete return. — Acceptance by the comptroller general (now commissioner) of a return from which taxable property has been omitted does not bar the state from subsequently proceeding against the delinquent for the tax due on the omitted property. Georgia R.R. & Banking v. Wright, 124 Ga. 596, 53 S.E. 251, 1906 Ga. LEXIS 565 (1906), rev'd, 207 U.S. 127, 28 S. Ct. 47, 52 L. Ed. 134, 1907 U.S. LEXIS 1209 (1907).

Commissioner may issue execution upon default in payment, even if no return made. — Statute which imposes a specific tax, and requires payment to the comptroller general (now commissioner), virtually designates that officer to receive the return as well as the money; and in case of a default as to payment, whether a return has been made or not, the officer may issue an execution. Smith v. Goldsmith, 63 Ga. 736, 1879 Ga. LEXIS 330 (1879).

Requirement for new return upon reduction of tax liability on appeal. — When a railroad company has contested a tax, and is relieved of a part thereof by the United States Supreme Court, a new return should be made, and upon failure to do so the comptroller general (now commissioner) is authorized to make the assessment from the best information the comptroller general can procure. State v. Southwestern R.R., 70 Ga. 11, 1883 Ga. LEXIS 295 (1883).

Action at law for collection will not lie. — Statute provides an adequate remedy for the collection of taxes imposed upon railroad companies for county purposes, and a common law action for the recovery of the tax as a debt will not lie. State v. Western & A.R.R., 136 Ga. 619, 71 S.E. 1055, 1911 Ga. LEXIS 160 (1911).

48-5-513. Penalty for failure to file return and pay tax; revocation of charter.

(a) If a public utility fails to make the return required by Code Section 48-5-511 by the date specified in that Code section, or as extended by the commissioner pursuant to Code Section 48-2-36, the utility shall pay a penalty of 10 percent of the amount of the taxes for which it may be liable by reason of the return. The penalty imposed by this subsection shall be payable to the state, any county, or any municipality to which the taxes upon which the penalty is based are payable.

(b) In addition to the penalty provided by subsection (a) of this Code section, the penalty for failure of a corporation to make a return by the date the return is due or to pay a tax as provided in subsection (a) of Code Section 48-5-512, in the case of a domestic corporation, shall be the forfeiture of its charter and, in the case of a foreign corporation, shall be the revocation of its permit to do business in this state.

History.

Orig. Code 1863, § 801; Code 1868, § 880; Code 1873, § 877; Code 1882, § 877; Civil Code 1895, § 875; Civil Code 1910, § 1133; Code 1933, § 92-7304; Code 1933, § 91A-304, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1987, p. 977, § 1.

RESEARCH REFERENCES

Am. Jur. 2d.
19 Am. Jur. 2d, Corporations, §§ 2387, 2388, 2402, 2403.
ALR.
Power of corporation after expiration or forfeiture of its charter, 47 A.L.R. 1288; 97 A.L.R. 477.

48-5-514. [Reserved] Subjection of returns of public utilities for county, municipal, and school taxation to laws governing returns of such property for state taxation.

History.
Ga. L. 1908, p. 24, § 1; Civil Code 1910, § 1054; Code 1933, § 92-6005; Ga. L. 1972, p. 1123, § 4; Code 1933, § 91A-2205, enacted by Ga. L. 1978, p. 309, § 2; repealed by Ga. L. 1988, p. 1568, § 6, effective April 12, 1988.

Editor's notes.
Ga. L. 1988, p. 1568, § 6 repealed and reserved this Code section, effective April 12, 1988.

48-5-515. Availability of returns and tax documents for public inspection.

Every return made to the commissioner by any person required to make returns of the value of its properties or franchises to the commissioner under this article or Article 9 or Article 12 of this chapter and every document used to arrive at evaluation within the custody of the commissioner or the department, with the exception of income tax returns, shall be made available for inspection upon the request of any interested person at a reasonable time and accessible place to be reasonably determined by the commissioner. It is the intent of this Code section to make the returns and documents easily and readily available for public inspection, and the discretion of the commissioner shall be exercised accordingly.

History.
Code 1933, § 92-5910, enacted by Ga. L. 1978, p. 1603, § 1; Code 1933, § 91A-2203.1, enacted by Ga. L. 1979, p. 5, § 51; Ga. L. 1990, p. 1337, § 3.

48-5-516. [Reserved] Appeals in cases of assessment or of correction of returns to State Board of Equalization; notice; time; procedure.

History.
Ga. L. 1877, p. 126, § 1; Ga. L. 1878-79, p. 166, § 1; Code 1882, §§ 826d, 833a; Civil Code 1895, §§ 807, 812; Ga. L. 1905, p. 68, § 1; Civil Code 1910, §§ 1045, 1050; Code 1933, § 92-6002; Ga. L. 1972, p. 1123, § 2; Code 1933, § 91A-2204, enacted by Ga. L. 1978, p. 309, § 2; repealed by Ga. L. 1988, p. 1568, § 7, effective April 12, 1988.

Editor's notes.
Ga. L. 1988, p. 1568, § 7 repealed and reserved this Code section, effective April 12, 1988.

48-5-517. [Reserved] Payment of taxes assessed to commissioner by chief executive officers; time of payment.

History.
Ga. L. 1874, p. 107, § 2; Code 1882, §§ 826, 826b; Civil Code 1895, §§ 781, 805; Civil Code 1910, §§ 1033, 1043; Code 1933, §§ 92-2603, 92-5908; Code 1933, §§ 91A-2206, 91A-2207, enacted by Ga. L. 1978, p. 309, § 2; repealed by Ga. L. 1988, p. 1568, § 8, effective April 12, 1988.
Editor's notes.
Ga. L. 1988, p. 1568, § 8 repealed and reserved this Code section, effective April 12, 1988.

48-5-518. [Reserved] Taxation of nonresident sleeping car companies doing business in state; method of assessment; returns to commissioner by chief executive officer.

History.
Code 1933, § 91A-2208; repealed by Ga. L. 1981, p. 1857, § 22, effective April 22, 1981.
Code Commission notes.
Pursuant to Code Section 28-9-5, in 2010, this Code section was reserved.

48-5-519. (For effective date, see note.) Taxation of railroad equipment companies doing business in state; exemption of railroad company operating railroad; collecting and remitting taxes; execution for failure to make return.

(a) Any person owning, leasing, furnishing, or operating any kind of railroad cars on any railroad in this state shall be deemed a railroad equipment company. Every railroad equipment company shall be required to make returns to the commissioner and shall be taxed as follows:

(1) Ascertain the total number and the value of all cars of the railroad equipment company, the total car-wheel mileage made by the cars in the United States, and the total car-wheel mileage in this state;

(2) Tax the cars at the regular rate imposed on property in this state on a valuation based on the proportion to the entire value of the cars that the car-wheel mileage made in this state bears to the entire car-wheel mileage of the cars in the United States; and

(3) Ascertain the total track mileage in each local tax jurisdiction in this state and tax the cars at the regular rate imposed on property in each local tax jurisdiction on a valuation based on the proportion to the entire value of the cars as determined in paragraph (2) of this subsection that the track mileage in the local tax jurisdiction bears to the entire track mileage in this state.

(b) The returns shall be made to the commissioner by the chief executive officer in charge of the cars in this state. The final assessment of the property of railroad equipment companies shall be fixed in the same manner as the proposed assessments of property of public utilities under this article and Code Section 48-2-18, except that with respect to railroad equipment companies, such assessment shall be final rather than proposed. By following the procedure set forth in subsection (c) of Code Section 48-2-18 for appeals of proposed assessments of public utility property, any railroad equipment company may bring in the Superior Court of Fulton County or in the Georgia Tax Tribunal in accordance with Chapter 13A of Title 50 a de novo action of the final assessment so fixed.

(c) For the purposes of this Code section, a railroad company operating a railroad is not a railroad equipment company.

(d)(1) The commissioner shall collect all taxes levied by this Code section and shall remit all taxes collected to the authorities entitled thereto, less 1 percent of the amount collected, which shall be paid into the general fund of the state treasury in order to defray the costs of collection.

(2) The commissioner may submit tax bills to railroad equipment companies in one or more stages each year; and the taxes reflected in each bill shall be due 60 days after the commissioner mails the bill to the company and, if not so paid, shall bear interest at the rate specified in Code Section 48-2-40 and become subject to penalty in accordance with Code Section 48-2-44. The commissioner shall remit the taxes collected at least once each year. In arriving at the amount to be billed in each instance, the commissioner shall utilize the millage rate established by each taxing jurisdiction for the year in question unless no such rate has been finally established at the time the bill in question is prepared, in which case the commissioner may decline to include such jurisdiction in the billing or may utilize a millage rate established by court order.

(3) All taxes collected under a millage rate which is later changed shall be collected subject to adjustment upward or downward, as the case may be. Such adjustments may be billed or refunded separately or may be made by offset the following year, in the discretion of the commissioner. If any refunds are made separately, they shall be made by the local taxing jurisdiction.

(4) This subsection shall apply to all tax years beginning on or after January 1, 1981.

(e)(1) If any chief executive officer of a railroad equipment company required to make a return to the commissioner by this Code section fails to return the taxable property or pay to the state all taxes for

which such company may be liable by reason of the return, the commissioner shall issue an execution for the amount of taxes due, according to the law, together with costs and penalties.

(2) The executions issued by the commissioner against any such company shall be directed to all sheriffs, constables, and other lawful officers of this state with directions to levy the execution on the property of the corporation or company and with the authority to issue and serve garnishments upon the debtors of the corporation or company.

History.

Ga. L. 1927, p. 99, § 9; Code 1933, § 92-2606; Ga. L. 1935, p. 11, § 9; Code 1933, § 91A-2209, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1980, p. 1735, § 1; Ga. L. 1980, p. 1737, § 1; Ga. L. 1981, p. 1857, §§ 20, 21; Ga. L. 1988, p. 1568, § 9; Ga. L. 1990, p. 1337, § 4; Ga. L. 2012, p. 318, § 7/HB 100; Ga. L. 2024, p. 888, § 3-10/HB 1267, see notes for effective date.

Delayed effective date.

Ga. L. 2024, p. 888, § 4-1(a)/HB 1267, provides that the 2024 amendment shall only become effective on July 1, 2026 upon ratification of a resolution by the voters at the November, 2024, state-wide general election that amends the Constitution to provide that the Georgia Tax Court shall have state-wide jurisdiction as provided by law and that decisions of such court shall be appealed to the Court of Appeals, subject to review by the Supreme Court of Georgia. However, if such a Constitutional amendment is not ratified, then the amendments to this Code section shall stand repealed on January 1, 2025. This Code section, as set out above, does not reflect the amendment by that Act owing to the delayed effective date. Upon ratification, subsection (b) will read: "(b) The returns shall be made to the commissioner by the chief executive officer in charge of the cars in this state. The final assessment of the property of railroad equipment companies shall be fixed in the same manner as the proposed assessments of property of public utilities under this article and Code Section 48-2-18, except that with respect to railroad equipment companies, such assessment shall be final rather than proposed. By following the procedure set forth in subsection (c) of Code Section 48-2-18 for appeals of proposed assessments of public utility property, any railroad equipment company may bring in the Superior Court of Fulton County or in the Georgia Tax Court in accordance with Chapter 5B of Title 15, the 'Georgia Tax Court Act of 2025,' a de novo action of the final assessment so fixed."

Amendments.

The 2024 amendment substituted "Georgia Tax Court in accordance with Chapter 5B of Title 15, the 'Georgia Tax Court Act of 2025,'" for "Georgia Tax Tribunal in accordance with Chapter 13A of Title 50," near the end of the third sentence in subsection (b). For effective date of this amendment, see the delayed effective date note.

Editor's notes.

Ga. L. 1988, p. 1568, § 15, not codified by the General Assembly, provided that the Act "shall apply to all tax years beginning on or after January 1, 1989."

Ga. L. 2012, p. 318, § 16(b)/HB 100, not codified by the General Assembly, provides that: "Sections 1 through 14 of this Act shall become effective on January 1, 2013, provided that cases pending on January 1, 2013, shall continue to be governed by the law in effect on December 31, 2012, until the conclusion of the case."

Ga. L. 2024, p. 888, § 4-1(a)/HB 1267, not codified by the General Assembly, provides that the 2024 amendment to this Code section is subject to an amendment to the Constitution to provide that the Georgia Tax Court shall have state-wide jurisdiction as provided by law and that decisions of such court shall be appealed to the Court of Appeals, subject to review by the Supreme Court of Georgia, that is ratified by the voters at the November, 2024, state-wide general election. If such

a Constitutional amendment is not so ratified, then the amendments to this Code section shall stand repealed on January 1, 2025.

RESEARCH REFERENCES

ALR.

Tax on corporations as affected by fact that corporation is not actually engaged in or carrying on business for which it was incorporated, 124 A.L.R. 1109.

Situs of aircraft, rolling stock, and vessels for purposes of property taxation, 3 A.L.R.4th 837.

48-5-520. Taxation of rolling stock and other personal property of railroad companies doing business in state; method of assessment.

A railroad company operating a railroad lying wholly within this state or lying partly in this state and partly in another state shall be taxed as to the rolling stock of the company and other personal property appurtenant to the rolling stock, which is not permanently located in any of the states through which the railroad passes, on as much of the whole value of the rolling stock and personal property as the length of the railroad in this state bears to the whole length of the railroad, without regard to the location of the head office of the railroad company.

History.

Ga. L. 1882-83, p. 42, § 1; Civil Code 1895, § 779; Civil Code 1910, § 1031; Code 1933, § 92-2601; Code 1933, § 91A-2210, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1980, p. 1737, § 2.

JUDICIAL DECISIONS

What property of interstate railroad taxable. — When taxpayer is an interstate railroad, the comptroller general (now commissioner) is without authority to levy an assessment against the railroad, if the railroad is liable at all, upon the value of the entire property of the railroad both within and outside the state. Harrison v. Georgia, F. & A.R.R., 174 Ga. 549, 163 S.E. 200, 1932 Ga. LEXIS 86 (1932).

Valuation of railroad. — In an action in which a railroad filed suit under the Railroad Revitalization and Regulatory Reform Act of 1976 against the Georgia Board of Equalization, and the board's individual members, including the Georgia Commissioner of Revenue, challenging the assessment of the fair market value, under O.C.G.A. § 48-5-6, of the railroad's taxable railroad operating property in Georgia, and the board's acceptance of the assessment under O.C.G.A. § 48-2-18(c), because in Georgia, O.C.G.A. § 48-5-3 defined taxable property as all real property, including but not limited to leaseholds, interests less than fee, and all personal property, and O.C.G.A. § 48-5-520 also provided that a railroad's rolling stock and other personal property appurtenant to the rolling stock was to be taxed on as much as the whole value of the rolling stock and personal property as the length of the railroad in Georgia bore to the whole length of the railroad, without regard to the location of the head office of the railroad, there was no commercial and industrial personal property tax exemption in Georgia. CSX Transp., Inc. v. State Bd. of Equalization, 448 F. Supp. 2d 1330, 2005 U.S. Dist. LEXIS 43390 (N.D. Ga. 2005), aff'd, 472 F.3d 1281, 2006 U.S. App. LEXIS 31142 (11th Cir. 2006), rev'd,

521 F.3d 1300, 2008 U.S. App. LEXIS 6139 (11th Cir. 2008).

Sleeping cars with no fixed situs in the state not taxable. — Commissioner has no authority to assess sleeping cars for county taxation when the cars have no fixed situs in this state, but are temporarily out of train in a county, the assessment being based on the average number and average value of the cars out of the train. Forrester v. Pullman Co., 192 Ga. 221, 15 S.E.2d 185, 1941 Ga. LEXIS 443 (1941).

RESEARCH REFERENCES

Am. Jur. 2d.

71 Am. Jur. 2d, State and Local Taxation, § 385.

ALR.

Situs of aircraft, rolling stock, and vessels for purposes of property taxation, 3 A.L.R.4th 837.

48-5-521. Method of assessment of property of railroad companies for purposes of county and municipal taxation.

(a) The commissioner shall propose, and the appropriate local tax officials shall fix, an assessment on each railroad company's property in each of the counties and municipalities of the state in the following manner:

(1) The tax shall be assessed upon the property located in each county and municipality on the basis of the value given in the returns; and

(2) The amount of tax to be assessed upon the rolling stock and other personal property is as follows: as the value of the property located in the particular county or municipality is to the value of the whole property, real and personal, of the company, such shall be the amount of rolling stock and other personal property to be distributed for taxing purposes to the county or municipality.

(b) The value of the property located in each county or municipality and the share of the rolling stock and personal property thus ascertained and apportioned to each of such counties or municipalities shall be the amount to be taxed to the extent of the assessment in each county and municipality.

History.

Ga. L. 1889, p. 29, § 3; Civil Code 1895, § 786; Civil Code 1910, § 1038; Code 1933, § 92-2703; Code 1933, § 91A-2211, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1980, p. 10, § 15; Ga. L. 1988, p. 1568, § 10.

Editor's notes.

Ga. L. 1988, p. 1568, § 15, not codified by the General Assembly, provided that the Act "shall apply to all tax years beginning on or after January 1, 1989."

JUDICIAL DECISIONS

Constitutionality. — Provision for distributing for taxation purposes the rolling stock and other unlocated personal property of a railway company, to and for the benefit of the counties traversed by the railroad, does not violate the provision in U.S. Const., amend. 14, that no state deny to any person within the state's jurisdiction the equal protection of the state's laws. Columbus S. Ry. v. Wright, 151 U.S. 470, 14 S. Ct. 396, 38 L. Ed. 238, 1894 U.S. LEXIS 2073 (1894).

Section contemplates distinction between fixed and movable personalty. — Statute seems to contemplate that a railroad has two kinds of personalty; "located," having a fixed and actual situs or abiding place for the time being; and "unlocated," being movable like rolling stock and frequently shifting its place. The scheme of the statute is to tax the located property of the railroad, real and personal, in each county where it is situated, at the county rate of taxation of force in that county, and to apportion the transitory, frequently moving personalty, in fair proportion among the several counties. Having no fixed situs, it is absolutely right to apportion it, and that is really all that could be appropriately done with it for taxing purposes. Columbus S. Ry. v. Wright, 89 Ga. 574, 15 S.E. 293, 1892 Ga. LEXIS 410 (1892), aff'd, 151 U.S. 470, 14 S. Ct. 396, 38 L. Ed. 238, 1894 U.S. LEXIS 2073 (1894); Greene County v. Wright, 126 Ga. 504, 54 S.E. 951, 1906 Ga. LEXIS 427 (1906).

Effect of movability and use of property. — Located property is to be taxed in the county or municipality where located, without reference to whether the property is used for railroad purposes or whether the property be real property or personal property, and the unlocated property is to be distributed to the different counties or municipalities. Georgia R.R. & Banking Co. v. Wright, 125 Ga. 589, 54 S.E. 52, 1906 Ga. LEXIS 229 (1906), rev'd, 207 U.S. 127, 28 S. Ct. 47, 52 L. Ed. 134, 1907 U.S. LEXIS 1209 (1907).

Sleeping cars with no fixed situs in state not taxable. — Commissioner has no authority to assess sleeping cars for county taxation, when the cars have no fixed situs in this state but are temporarily out of train in a county, the assessment being based on average number and average value of the cars out of the train. Forrester v. Pullman Co., 192 Ga. 221, 15 S.E.2d 185, 1941 Ga. LEXIS 443 (1941).

Stock in a nonresident railroad corporation owned by a domestic railroad company is taxable for county and municipal purposes in that county and city wherein the principal office of such corporation is fixed by the corporation's charter or by-law. Such property is "located" property in the meaning of this statute. Greene County v. Wright, 126 Ga. 504, 54 S.E. 951, 1906 Ga. LEXIS 427 (1906).

Effect of reassessment by the commissioner. — Comptroller general (now commissioner) must make the comptroller's assessment upon the basis of the value given by the returns, and if the valuation of the property given in a return is rejected and, by means of the legal machinery provided, such property is assessed at a higher valuation than that shown by the return, the effect will be to correspondingly increase the proportionate valuation of the property in the different counties and municipalities through which the railroad runs. But the proportion which the value of the property situated in those counties and municipalities bears to the value of the entire property is determined by the return, and cannot be altered by the comptroller general (now commissioner). City of Atlanta v. Wright, 119 Ga. 207, 45 S.E. 994, 1903 Ga. LEXIS 88 (1903).

RESEARCH REFERENCES

Am. Jur. 2d.

71 Am. Jur. 2d, State and Local Taxation, §§ 381, 382.

ALR.

What property of electric, gas, water, telephone, or street railway company

constitutes real property for taxation purposes, 57 A.L.R. 869.

Situs of aircraft, rolling stock, and vessels for purposes of property taxation, 3 A.L.R.4th 837.

48-5-522. [Reserved] Notice and demand to file return.

History.

Ga. L. 1918, p. 233, § 2; Code 1933, § 92-6102; Code 1933, § 91A-2212, enacted by Ga. L. 1978, p. 309, § 2; repealed by Ga. L. 1987, p. 977, § 2, effective January 1, 1988.

Editor's notes.

Ga. L. 1987, p. 977, § 2 repealed and reserved this Code section, effective January 1, 1988.

48-5-523. [Reserved] Affidavit of illegality by public utilities; procedure; requirement that tax be paid; hearing in superior court; effect of failure to pay tax; right of amendment; bond and security.

History.

Ga. L. 1874, p. 107, § 3; Code 1882, § 826c; Civil Code 1895, § 782; Civil Code 1910, § 1034; Ga. L. 1931, p. 24, § 18; Code 1933, § 92-2604; Code 1933, § 91A-2209.1, enacted by Ga. L. 1978, p. 309, § 2; repealed by Ga. L. 1988, p. 1568, § 11, effective April 12, 1988.

Editor's notes.

Ga. L. 1988, p. 1568, § 11 repealed and reserved this Code section, effective April 12, 1988.

48-5-524. Annual report by commissioner to each county board of tax assessors of all public utility property within county; contents; availability for public inspection.

(a) At least once each year, the commissioner shall make a report to the board of tax assessors in each county as to the return of property located within the county for purposes of ad valorem taxation by each person required to make returns of the value of its properties and franchises to the commissioner under this article and Article 9 of this chapter. Each report shall be itemized by public utility and by parcel of real property or type of personal property returned and shall specify clearly the value returned by the utility for each parcel of real property or type of personal property together with any change as to value made by the commissioner, by the State Board of Equalization or, where appropriate, by both.

(b) A copy of each report made under this Code section shall be made reasonably available for public inspection at the office of the county board of tax assessors and at the office of the commissioner or at such other reasonably accessible place within the headquarters building of the department as may be designated by the commissioner.

History.

Code 1933, § 92-6010, enacted by Ga. L. 1978, p. 1604, § 1; Code 1933, § 91A-2211.1, enacted by Ga. L. 1979, p. 5, § 52.

ARTICLE 12

AD VALOREM TAXATION OF AIRLINE COMPANIES

RESEARCH REFERENCES

ALR.
Situs of aircraft, rolling stock, and vessels for purposes of property taxation, 3 A.L.R.4th 837.

48-5-540. Definitions.

As used in this article, the term:

(1) "Operated," "operating," or "operation" means landings or takeoffs of aircraft by any airline company.

(2) "Plane hours" means, for each type and model of aircraft, all hours in flight and all hours on the ground including, but not limited to, ground and air time associated with overhaul, maintenance, flight testing, and training.

History.
Ga. L. 1972, p. 1129, § 1; Code 1933, § 91A-2301, enacted by Ga. L. 1978, p. 309, § 2.

48-5-541. Property tax return on airline flight equipment; penalties.

(a) Each airline company operating in this state shall make an annual property tax return of its flight equipment to the commissioner on or before March 1 in each year for the preceding calendar year. Each type and model of flight equipment shall be separately returned, valued, and apportioned as provided in this article.

(b) If an airline company fails to make the return required by subsection (a) of this Code section by the date specified in that subsection, or as extended by the commissioner pursuant to Code Section 48-2-36, the airline company shall pay a penalty of 10 percent of the amount of the taxes for which it may be liable by reason of the return. The penalty imposed by this subsection shall be payable to the state, any county, or any municipality to which the taxes upon which the penalty is based are payable.

History.
Ga. L. 1972, p. 1129, § 2; Code 1933, § 91A-2302, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1987, p. 977, § 3.

RESEARCH REFERENCES

ALR.
Situs of aircraft, rolling stock, and vessels for purposes of property taxation, 3 A.L.R.4th 837.

48-5-542. Review of returns by commissioner; valuation of aircraft in same manner as other personal property.

The commissioner shall scrutinize carefully each return made to him and, if in his judgment it is necessary, he shall in arriving at a proposed assessment adjust, equalize, and apportion the valuation of all aircraft of each airline company of any type or model operated in this state by the airline company by such type or model. The aircraft shall be valued by the department in the same manner as other personal property in the state.

History.
Ga. L. 1972, p. 1129, § 3; Code 1933, § 91A-2303, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1988, p. 1568, § 12.
Editor's notes.
Ga. L. 1988, p. 1568, § 15, not codified by the General Assembly, provided that the Act "shall apply to all tax years beginning on or after January 1, 1989."

48-5-543. Method of valuation of aircraft; apportionment among tax jurisdictions based on plane hours.

The valuation of aircraft apportioned to this state shall be, for each type and model of aircraft, that portion of the total valuation of each type or model of aircraft as the ratio of plane hours in this state bears to the total system plane hours for each type and model of aircraft. The valuation thus established shall be apportioned for each type and model of aircraft among the tax jurisdictions in this state through which the aircraft company operates. The apportionment among the tax jurisdictions in this state shall be based as nearly as practicable upon plane hours.

History.
Ga. L. 1972, p. 1129, § 4; Code 1933, § 91A-2304, enacted by Ga. L. 1978, p. 309, § 2.

JUDICIAL DECISIONS

Apportionment of ad valorem taxes not required. — County was not required to apportion ad valorem taxes under O.C.G.A. § 48-5-543 since the aircraft had not been used for commercial purposes in the tax year and the owner was not an airline company. White Cloud Charter, Inc. v. DeKalb County Bd. of Tax Assessors, 238 Ga. App. 805, 520 S.E.2d 708.

48-5-544. Levy and collection of tax upon apportioned valuation of aircraft by local tax jurisdictions.

Each local tax jurisdiction to which a proposed valuation of aircraft is apportioned by the commissioner shall assess its apportionment of aircraft and shall levy and collect a tax thereupon as it does upon other property subject to taxation in that jurisdiction.

History.
Ga. L. 1972, p. 1129, § 5; Code 1933, § 91A-2305, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1988, p. 1568, § 13.
Editor's notes.
Ga. L. 1988, p. 1568, § 15, not codified by the General Assembly, provided that the Act "shall apply to all tax years beginning on or after January 1, 1989."

48-5-545. Submission of proposed valuations for flight equipment and aircraft by commissioner to State Board of Equalization.

The proposed assessed valuations for flight equipment and aircraft shall be submitted by the commissioner to the State Board of Equalization for its review in the same manner as required by law for other classes of property which are returned for ad valorem taxation to the commissioner.

History.
Ga. L. 1972, p. 1129, § 6; Code 1933, § 91A-2306, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1988, p. 1568, § 14.
Editor's notes.
Ga. L. 1988, p. 1568, § 15, not codified by the General Assembly, provided that the Act "shall apply to all tax years beginning on or after January 1, 1989."

48-5-546. Ad valorem taxation, assessment, and apportionment authorized by article exclusive.

The ad valorem taxation, assessment, and methods of apportionment authorized by this article shall be in lieu of all other ad valorem taxation, assessments, and apportionments of the aircraft of airline companies.

History.
Ga. L. 1972, p. 1129, § 7; Code 1933, § 91A-2307, enacted by Ga. L. 1978, p. 309, § 2.

ARTICLE 13

AD VALOREM TAXATION OF QUALIFIED TIMBERLAND PROPERTY

Editor's notes.
Ga. L. 2018, p. 119, § 7/HB 85, not codified by the General Assembly, provides, in part, that this article becomes effective on January 1, 2019, only if an amendment to the Constitution of Georgia is ratified at the November, 2018, general election modifying constitutional prescriptions for forest land conservation use property and related assistance grants, permitting the withholding of a portion of assistance grants to provide for certain state administrative costs, and establishing qualified timberland property as a subclassification of tangible property for purposes of ad valorem taxation. The constitutional amendment was approved by a majority of the qualified voters voting at the general election held on November 6, 2018.

48-5-600. Definitions.

As used in this article, the term:

(1) "Bona fide production of trees" means the good faith, real, actual, and genuine production of trees for commercial uses.

(2)(A) "Contiguous'" means real property within a county that abuts, joins, or touches and has the same undivided common ownership.

(B) If an applicant's tract is divided by a county boundary, public roadway, public easement, public right of way, natural boundary, land lot line, or railroad track, then the applicant may make an election at the time of application to declare the tract as contiguous irrespective of a county boundary, public roadway, public easement, public right of way, natural boundary, land lot line, or railroad track.

(3) "Qualified owner'" means an individual or entity that meets the conditions of Code Section 48-5-603.

(4) "Qualified timberland property" means timberland property that meets the conditions of Code Section 48-5-604.

(5) "Timberland property" means tangible real property that has as its primary use the bona fide production of trees for the primary purpose of producing timber for commercial uses.

History. Code 1981, § 48-5-600, enacted by Ga. L. 2018, p. 119, § 5/HB 85; Ga. L. 2021, p. 586, § 1/HB 282.

48-5-600.1. Classification of qualified timberland property; exclusive procedures for appraisal and valuation.

In accordance with Article VII, Section I, Paragraph III(f.1) of the Constitution of Georgia, qualified timberland property shall be classified as a separate and distinct class of tangible property. The procedures prescribed by this article for appraisal and valuation of such property and for appeals of the assessed value of such property shall be exclusive.

History. Code 1981, § 48-5-600.1, enacted by Ga. L. 2018, p. 119, § 5/HB 85.

48-5-601. Determination of fair market value; access to property; delivery to county tax officials.

(a) Qualified timberland property shall be returned to the commissioner between January 1 and April 1 each year.

(b) The fair market value of qualified timberland property shall be determined through an annual appraisal conducted by the commissioner in accordance with the qualified timberland property appraisal manual provided for in Code Section 48-5-602.

(c) The commissioner shall have access to qualified timberland property for the purpose of conducting appraisals, provided that prior notice has been given to the qualified owner of such property.

(d) The commissioner shall ensure that the appraisal values of qualified timberland property are delivered to county tax officials by July 1 of each year.

(e) Notwithstanding anything in this chapter to the contrary, pursuant to Article VII, Section I, Paragraph III(f.1) of the Constitution, the value of qualified timberland property shall be at least 175 percent of such property's forest land conservation value determined pursuant to this chapter.

History.
Code 1981, § 48-5-601, enacted by Ga. L. 2018, p. 119, § 5/HB 85.

48-5-602. Adoption and maintenance of qualified timberland property appraisal manual.

(a) The commissioner shall adopt by rule, subject to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," and maintain a qualified timberland property appraisal manual that shall be used by the commissioner in the appraisal of qualified timberland property for ad valorem tax purposes.

(b) The commissioner shall provide for a period of consultation with the Georgia Agricultural Statistical Service, Cooperative Extension Service, Georgia Forestry Association, and State Forestry Commission prior to the adoption of the qualified timberland property appraisal manual.

(c)(1) Such manual shall be proposed and published on or before June 1, 2019, and annually thereafter.

(2) Published manuals shall apply to the tax year following the tax year in which they are published.

(3) This annual publication requirement shall not be construed to require annual adjustments, revisions, or modifications to the appraisal methodology.

(d) Such manual shall contain:

(1) Complete parameters for the appraisal of qualified timberland property, which shall be limited to determining the fair market value

of qualified timberland property through a market approach to valuation, which shall constitute 50 percent of the value, and an income approach to valuation, which shall constitute 50 percent of the value;

(2) A table of regional values for qualified timberland property based on the geographic locations and productivity levels within the state; and

(3) A prescription of methods and procedures by which identification data, appraisal and assessment data, sales data, and any other information relating to the appraisal and assessment of property shall be furnished to the department using electronic data processing systems and equipment.

History. Code 1981, § 48-5-602, enacted by Ga. L. 2018, p. 119, § 5/HB 85; Ga. L. 2021, p. 586, § 2/HB 282.

48-5-603. Certification as qualified owner; requirements.

The commissioner shall certify as a qualified owner any individual or entity registered to do business in this state that is engaged in the bona fide production of trees for the primary purpose of producing timber for commercial uses, provided that such individual or entity:

(1) Registers with the commissioner; and

(2) Certifies to the commissioner that such individual or entity is engaged in the bona fide production of trees.

History.
Code 1981, § 48-5-603, enacted by Ga. L. 2018, p. 119, § 5/HB 85.

48-5-604. Certification as qualified timberland property; requirements; annual updating; audit; filing with county tax officials.

(a) Upon application by a qualified owner, the commissioner shall certify as qualified timberland property any timberland property that is titled to a qualified owner, provided that:

(1) The timberland property is at least 50 contiguous acres;

(2) The production of trees on the timberland property is being done for the purpose of making a profit and is the primary activity taking place on the property;

(3) A consistent effort has been clearly demonstrated in land management in accordance with accepted commercial forestry practices, which may include reforestation, periodic thinning, under-

growth control of unwanted vegetation, fertilization, prescribed burning, sales of timber, and maintenance of firebreaks; and

(4) Such qualified owner:

(A) Submits a list of all parcels to the commissioner that contain timberland property and that identify the specific portions of such parcels that such owner certifies are timberland property; and

(B) Certifies that such timberland property is used for the bona fide production of trees and that:

(i) There is a reasonable attainable economic salability of the timber products within a reasonable future time; and

(ii) The production of trees is being done for the purpose of making a profit and is the primary activity taking place on the property.

(b)(1) The qualified owner's submission provided for in paragraph (4) of subsection (a) of this Code section shall be certified by the qualified owner through the submission of an affidavit. Such submission shall be updated annually through the submission of a new affidavit filed together with such qualified owner's return required by subsection (a) of Code Section 48-5-601. For each application or annual update, a qualified owner shall be entitled to submit one such affidavit covering all of the qualified owner's timberland property. With respect to the provisions of subparagraph (a)(4)(B) of this Code section, the requirements shall be satisfied through an attestation by the qualified owner in the required affidavits that the timberland property is used for the bona fide production of trees and is consistently managed with generally accepted commercial forestry practices. If such conditions are not met annually, the real property at issue shall be decertified as qualified timberland property and the commissioner shall notify the respective county tax officials of such decertification by April 15 of the respective year.

(2) The commissioner shall be authorized to conduct an audit of any list submitted pursuant to this Code section.

(3) With respect to the list of all parcels that contain timberland property that is required to be submitted to the commissioner pursuant to subparagraph (a)(4)(A) of this Code section, the commissioner shall accept:

(A) A parcel map drawn by the county cartographer or GIS technician and signed by the county board of assessors and qualified owner;

(B) A legal description of the property;

(C) A plat of the property prepared by a licensed land surveyor showing the location and measured area of the parcel; or

(D) A written legal description of the property delineating the metes and bounds and measured area.

(4) With respect to the certification that such timberland property is used for the bona fide production of trees that is required pursuant to subparagraph (a)(4)(B) of this Code section, the qualified owner shall not be required to submit a simple Forest Management Plan.

(c) The commissioner shall file certifications of qualified timberland property with the respective county tax officials in which any of such real property exists by April 15 each year.

History.
Code 1981, § 48-5-604, enacted by Ga. L. 2018, p. 119, § 5/HB 85; Ga. L. 2021, p. 586, § 3/HB 282.

48-5-605. (For effective date, see note.) Appeal of commissioner's decisions by taxpayer or county board.

(a) A taxpayer or county board of tax assessors may appeal the commissioner's decisions related to:

(1) Such taxpayer's status as a qualified owner;

(2) The certification or noncertification of such taxpayer's timberland as qualified timberland property; or

(3) The appraised value of such taxpayer's qualified timberland property.

(b)(1) Such appeals shall be made as an appeal to the Georgia Tax Tribunal in accordance with Chapter 13A of Title 50 within 30 days of the commissioner's publication of such decision.

(2) The Georgia Tax Tribunal shall issue a final decision on such appeals on or before September 1 of the year in which an appeal is filed.

History.
Code 1981, § 48-5-605, enacted by Ga. L. 2018, p. 119, § 5/HB 85; Ga. L. 2024, p. 888, § 3-11/HB 1267, see notes for effective date.

Delayed effective date.
Ga. L. 2024, p. 888, § 4-1(a)/HB 1267, provides that the 2024 amendment shall only become effective on July 1, 2026 upon ratification of a resolution by the voters at the November, 2024, state-wide general election that amends the Constitution to provide that the Georgia Tax Court shall have state-wide jurisdiction as provided by law and that decisions of such court shall be appealed to the Court of Appeals, subject to review by the Supreme Court of Georgia. However, if such a Constitutional amendment is not so ratified, then the amendments to this Code section shall stand repealed on January 1, 2025. This Code section, as set out above, does not reflect the amendment by that Act owing to the delayed effective date. Upon ratification, subsection (b) will read: "(b)(1) Such appeals shall be made as an

appeal to the Georgia Tax Court in accordance with Chapter 5B of Title 15, the 'Georgia Tax Court Act of 2025,' within 30 days of the commissioner's publication of such decision.

"(2) The Georgia Tax Court shall issue a final decision on such appeals on or before September 1 of the year in which an appeal is filed."

Amendments.

The 2024 amendment substituted "Georgia Tax Court" for "Georgia Tax Tribunal" in paragraphs (b)(1) and (b)(2); and, substituted "Chapter 5B of Title 15, the 'Georgia Tax Court Act of 2025,'" for "Chapter 13A of Title 50" in paragraph (b)(1). For effective date of this amendment, see the delayed effective date note.

Editor's notes.

Ga. L. 2024, p. 888, § 4-1(a)/HB 1267, not codified by the General Assembly, provides that the 2024 amendment to this Code section is subject to an amendment to the Constitution to provide that the Georgia Tax Court shall have state-wide jurisdiction as provided by law and that decisions of such court shall be appealed to the Court of Appeals, subject to review by the Supreme Court of Georgia, that is ratified by the voters at the November, 2024, state-wide general election. If such a Constitutional amendment is not so ratified, then the amendments to this Code section shall stand repealed on January 1, 2025.

48-5-606. (For effective date, see note.) Appeal of commissioner's decisions by taxpayers or groups.

(a) A taxpayer, group of taxpayers, county board of tax assessors, or association representing taxpayers may appeal the commissioner's decisions related to the commissioner's complete parameters for the appraisal of qualified timberland property required by paragraph (1) of subsection (d) of Code Section 48-5-602.

(b)(1) Such appeals shall be made as an appeal to the Georgia Tax Tribunal in accordance with Chapter 13A of Title 50 within 60 days of the commissioner's publication of such manual.

(2) The Georgia Tax Tribunal shall issue a final decision on such appeals on or before September 1 of the year in which an appeal is filed.

History.

Code 1981, § 48-5-606, enacted by Ga. L. 2018, p. 119, § 5/HB 85; Ga. L. 2019, p. 1056, § 48/SB 52; Ga. L. 2024, p. 888, § 3-12/HB 1267, see notes for effective date.

Delayed effective date.

Ga. L. 2024, p. 888, § 4-1(a)/HB 1267, provides that the 2024 amendment shall only become effective on July 1, 2026 upon ratification of a resolution by the voters at the November, 2024, state-wide general election that amends the Constitution to provide that the Georgia Tax Court shall have state-wide jurisdiction as provided by law and that decisions of such court shall be appealed to the Court of Appeals, subject to review by the Supreme Court of Georgia. However, if such a Constitutional amendment is not so ratified, then the amendments to this Code section shall stand repealed on January 1, 2025. This Code section, as set out above, does not reflect the amendment by that Act owing to the delayed effective date. Upon ratification, subsection (b) will read: "(b)(1) Such appeals shall be made as an appeal to the Georgia Tax Court in accordance with Chapter 5B of Title 15, the 'Georgia Tax Court Act of 2025,' within 60 days of the commissioner's publication of such manual.

"(2) The Georgia Tax Court shall issue a

final decision on such appeals on or before September 1 of the year in which an appeal is filed."

Amendments.

The 2024 amendment substituted "Georgia Tax Court" for "Georgia Tax Tribunal" in paragraphs (b)(1) and (b)(2); and, substituted "Chapter 5B of Title 15, the 'Georgia Tax Court Act of 2025,'" for "Chapter 13A of Title 50" in paragraph (b)(1). For effective date of this amendment, see the delayed effective date note.

Editor's notes.

Ga. L. 2024, p. 888, § 4-1(a)/HB 1267, not codified by the General Assembly, provides that the 2024 amendment to this Code section is subject to an amendment to the Constitution to provide that the Georgia Tax Court shall have state-wide jurisdiction as provided by law and that decisions of such court shall be appealed to the Court of Appeals, subject to review by the Supreme Court of Georgia, that is ratified by the voters at the November, 2024, state-wide general election. If such a Constitutional amendment is not so ratified, then the amendments to this Code section shall stand repealed on January 1, 2025.

48-5-607. Adoption of forms and regulations.

The commissioner shall be authorized to prescribe such forms and promulgate such rules and regulations as are necessary to implement this article.

History.

Code 1981, § 48-5-607, enacted by Ga. L. 2018, p. 119, § 5/HB 85.

CHAPTER 5A

SPECIAL ASSESSMENT OF FOREST LAND CONSERVATION USE PROPERTY

Sec.		Sec.	
48-5A-1.	Definitions.	48-5A-5.	Retention of funds for administrative costs.
48-5A-2.	Funds for forest land conservation.	48-5A-6.	Value of local assistance grants.
48-5A-3.	Local assistance grants.		
48-5A-4.	Administration.		

Administrative rules and regulations.

Forest, Official Compilation of the Rules and Regulations of the State of Georgia, Local Government Services Division.

Classification of real and personal property on individual ad valorem tax returns, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Revenue, Local Government Services Division, Substantive Regulations, § 560-11-2-.20.

48-5A-1. Definitions.

As used in this chapter, the term:

(1) "Applicable rollback" means a:

(A) Rollback of an ad valorem tax millage rate pursuant to subsection (a) of Code Section 48-8-91 in a county or municipality that levies a local option sales tax;

(B) Rollback of an ad valorem tax millage rate pursuant to subparagraph (c)(2)(C) of Code Section 48-8-104 in a county or municipality that levies a homestead option sales tax;

(C) Subtraction from an ad valorem millage rate pursuant to Code Section 20-2-334 in a local school system that receives a state school tax credit;

(D) Reduction of an ad valorem tax millage rate pursuant to the development of a service delivery strategy under Code Section 36-70-24; and

(E) Reduction of an ad valorem tax millage rate pursuant to paragraph (2) of subsection (a) of Code Section 33-8-8.3 in a county that collects insurance premium tax.

(2) "County millage rate" means the net ad valorem tax millage rate, after deducting applicable rollbacks, levied by a county for county purposes and applying to forest land conservation use properties in the county, including any millage levied for those special districts reported on the 2004 ad valorem tax digest certified to and

received by the commissioner on or before December 31, 2004, but not including any millage levied for purposes of bonded indebtedness and not including any millage levied on behalf of a county school district for educational purposes.

(3) "Fiscal authority" means the individual authorized to collect ad valorem taxes for a county or municipality which levies ad valorem taxes.

(4) "Forest land conservation use property" means a forest land conservation use property qualified for special assessment and taxation under Code Section 48-5-7.7 and Article VII, Section I, Paragraph III(f) of the Constitution.

(5) "Forest land conservation use value" means the same as such term is defined in paragraph (5) of Code Section 48-5-2 and shall not include the value of standing timber on such property.

(6) "Forest land fair market value" means the same as such term is defined in paragraph (6) of Code Section 48-5-2.

(7) "Municipal millage rate" means the net ad valorem tax millage rate, after deducting applicable rollbacks, levied by a municipality for municipal purposes and applying to forest land conservation use properties in the municipality, including any millage levied for those special tax districts reported on the 2004 City and Independent School Millage Rate Certification certified to and received by the commissioner on or before December 31, 2004, but not including any millage levied for purposes of bonded indebtedness and not including any millage levied on behalf of an independent school district for educational purposes.

(8) "School millage rate" means the net ad valorem tax millage rate, after deducting applicable rollbacks, levied on behalf of a county or independent school district for educational purposes and applying to forest land conservation use properties in the county or independent school district, not including any millage levied for purposes of bonded indebtedness and not including any millage levied for county or municipal purposes.

(9) "State millage rate" means the state millage levy.

History.

Code 1981, § 48-5A-1, enacted by Ga. L. 2008, p. 297, § 4/HB 1211.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2008, "state revenue" was deleted preceding "commissioner" in paragraphs (2) and (7).

OPINIONS OF THE ATTORNEY GENERAL

Administrative caps on assistance grants prohibited. — Because neither Ga. Const. 1983, Art. VII, Sec. I, Para. III nor the Forest Land Protection Act,

O.C.G.A. § 48-5-7.7, authorize or contemplate a cap on assistance grants based on the total exemption value of forest land conservation use property, the Department of Revenue would not be authorized to impose an administrative cap on assistance grants issued pursuant to the Forest Land Protection Act of 2008 in the manner proposed. 2016 Op. Att'y Gen. No. 16-5.

48-5A-2. Funds for forest land conservation.

In each year the General Assembly shall appropriate to the department funds for forest land conservation use assistance grants to counties, municipalities, and county or independent school districts pursuant to Article VII, Section I, Paragraph III(f) of the Constitution. The General Appropriations Act shall specify the amount appropriated subject to the limitations of this chapter.

History.

Code 1981, § 48-5A-2, enacted by Ga. L. 2008, p. 297, § 4/HB 1211.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2008, "department" was substituted for "Department of Revenue" in the first sentence.

48-5A-3. Local assistance grants.

(a) Pursuant to the appropriation of funds as provided in Code Section 48-5A-2, such grants shall be allotted to each county, municipality, and county or independent school district in the state as provided in this Code section.

(b) The revenue reduction to each county, municipality, and county or independent school district shall be calculated by subtracting the aggregate forest land conservation use value of qualified properties from the aggregate forest land fair market value of qualified properties for the applicable tax year and the resulting amount shall be multiplied by the millage rate of the county, municipality, or county or independent school district.

(c)(1)(A) Immediately following the actual preparation of ad valorem property tax bills, each county fiscal authority shall notify the department of the amount of the reduction pursuant to the implementation of Article VII, Section I, Paragraph III(f) of the Constitution.

(B) If the forest land conservation use property is located in a county where forest land conservation use value causes an ad valorem tax revenue reduction of 3 percent or less pursuant to Article VII, Section I, Paragraph III(f) of the Constitution, in each taxable year in which such reduction occurs, the assistance grant to the county shall be in an amount equal to 50 percent of the amount of such reduction.

(C) If the forest land conservation use property is located in a county where forest land conservation use value causes an ad valorem tax revenue reduction of more than 3 percent pursuant to Article VII, Section I, Paragraph III(f) of the Constitution, in each taxable year in which such reduction occurs, the assistance grants to the county shall be as follows:

(i) For the first 3 percent of such reduction amount, in an amount equal to 50 percent of the amount of such reduction; and

(ii) For the remainder of such reduction amount, in an amount equal to 100 percent of the amount of such remaining reduction amount.

(2)(A) Immediately following the actual preparation of ad valorem property tax bills, each county or independent school district's fiscal authority shall notify the department of the amount of the reduction pursuant to the implementation of Article VII, Section I, Paragraph III(f) of the Constitution.

(B) If the forest land conservation use property is located in a county or independent school district where forest land conservation use value causes an ad valorem tax revenue reduction of 3 percent or less pursuant to Article VII, Section I, Paragraph III(f) of the Constitution, in each taxable year in which such reduction occurs, the assistance grant to the county or independent school district shall be in an amount equal to 50 percent of the amount of such reduction.

(C) If the forest land conservation use property is located in a county or independent school district where forest land conservation use value causes an ad valorem tax revenue reduction of more than 3 percent pursuant to Article VII, Section I, Paragraph III(f) of the Constitution, in each taxable year in which such reduction occurs, the assistance grant to the county or independent school district shall be as follows:

(i) For the first 3 percent of such reduction amount, in an amount equal to 50 percent of the amount of such reduction; and

(ii) For the remainder of such reduction amount, in an amount equal to 100 percent of the amount of such remaining reduction amount.

(3)(A) Immediately following the actual preparation of ad valorem property tax bills, each municipality's fiscal authority shall notify the department of the amount of the reduction pursuant Article VII, Section I, Paragraph III(f) of the Constitution.

(B) If the forest land conservation use property is located in a municipality where forest land conservation use value causes an ad valorem tax revenue reduction of 3 percent or less to Article VII, Section I, Paragraph III(f) of the Constitution, in each taxable year in which such reduction occurs, the assistance grant to the municipality shall be in an amount equal to 50 percent of the amount of such reduction.

(C) If the forest land conservation use property is located in a municipality where forest land conservation use value causes an ad valorem tax revenue reduction of more than 3 percent pursuant to Article VII, Section I, Paragraph III(f) of the Constitution, in each taxable year in which such reduction occurs, the assistance grant to the municipality shall be as follows:

(i) For the first 3 percent of such reduction amount, in an amount equal to 50 percent of the amount of such reduction; and

(ii) For the remainder of such reduction amount, in an amount equal to 100 percent of the amount of such remaining reduction amount.

History.
Code 1981, § 48-5A-3, enacted by Ga. L. 2008, p. 297, § 4/HB 1211.
Code Commission notes.
Pursuant to Code Section 28-9-5, in 2008, "department" was substituted for "Department of Revenue" and "of the Constitution" was inserted following "Paragraph III(f)" throughout this Code section.

48-5A-4. Administration.

The commissioner shall administer this chapter and shall adopt rules and regulations for the administration of this chapter, including specific instructions to local governments procedures.

History.
Code 1981, § 48-5A-4, enacted by Ga. L. 2008, p. 297, § 4/HB 1211.
Code Commission notes.
Pursuant to Code Section 28-9-5, in 2008, "state revenue" was deleted preceding "commissioner".

48-5A-5. Retention of funds for administrative costs.

Pursuant to Article VII, Section I, Paragraph III(f) of the Constitution, the commissioner shall deduct and retain an amount equal to 3 percent of an assistance grant upon distribution of such assistance grant to a county, municipality, or county or independent school district as an administrative fee to provide for the costs of administering Article 13 of Chapter 5 of this title.

History.
Code 1981, § 48-5A-5, enacted by Ga. L. 2018, p. 119, § 6/HB 85.
Editor's notes.
Ga. L. 2018, p. 119, § 7/HB 85, not codified by the General Assembly, provides, in part, that this Code section becomes effective on January 1, 2019, only if an amendment to the Constitution of Georgia is ratified at the November, 2018, general election modifying constitutional prescriptions for forest land conservation use property and related assistance grants, permitting the withholding of a portion of assistance grants to provide for certain state administrative costs, and establishing qualified timberland property as a subclassification of tangible property for purposes of ad valorem taxation. The constitutional amendment was approved by a majority of the qualified voters voting at the general election held on November 6, 2018.

48-5A-6. Value of local assistance grants.

(a) For 2019, the value of the local assistance grant to any county shall be increased by an amount equal to 80 percent of the difference between the value of the local assistance grant such county received for 2018 and the amount for which such county is eligible to receive in 2019.

(b) For 2020, the value of the local assistance grant to any county shall be increased by an amount equal to 60 percent of the difference between the value of the local assistance grant such county received for 2018 and the amount for which such county is eligible to receive in 2020.

(c) For 2021, the value of the local assistance grant to any county shall be increased by an amount equal to 40 percent of the difference between the value of the local assistance grant such county received for 2018 and the amount for which such county is eligible to receive in 2021.

(d) For 2022, the value of the local assistance grant to any county shall be increased by an amount equal to 20 percent of the difference between the value of the local assistance grant such county received for 2018 and the amount for which such county is eligible to receive in 2022.

History.
Code 1981, § 48-5A-6, enacted by Ga. L. 2018, p. 119, § 6/HB 85.
Editor's notes.
Ga. L. 2018, p. 119, § 7/HB 85, not codified by the General Assembly, provides, in part, that this Code section becomes effective on January 1, 2019, only if an amendment to the Constitution of Georgia is ratified at the November, 2018, general election modifying constitutional prescriptions for forest land conservation use property and related assistance grants, permitting the withholding of a portion of assistance grants to provide for certain state administrative costs, and establishing qualified timberland property as a subclassification of tangible property for purposes of ad valorem taxation. The constitutional amendment was approved by a majority of the qualified voters voting at the general election held on November 6, 2018.

CHAPTER 5B

MORATORIUM PERIOD FOR VALUATION INCREASES IN PROPERTY

Sec.
48-5B-1. [Reserved] Moratorium on increases in value; corrections of errors in valuation; decrease in value; fair market value for improvements; role of commissioner.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2012, Chapter 5B of Title 48, as enacted by Ga. L. 2012, p. 257, § 1-4/HB 386, was redesignated as Chapter 5C.

48-5B-1. [Reserved] Moratorium on increases in value; corrections of errors in valuation; decrease in value; fair market value for improvements; role of commissioner.

History.

Code 1981, § 48-5B-1, enacted by Ga. L. 2009, p. 780, § 1/HB 233; Ga. L. 2010, p. 1104, § 6-2/SB 346; repealed by Ga. L. 2009, p. 780, § 1/HB 233, effective January 10, 2011.

Editor's notes.

This chapter consisted of Code Section 48-5B-1, relating to the moratorium period for valuation increases in property, and was based on Code 1981, § 48-5B-1, enacted by Ga. L. 2009, p. 780, § 1/HB 233; Ga. L. 2010, p. 1104, § 6-2/SB 346.

Ga. L. 2014, p. 866, § 48/SB 340, reserved the designation of this chapter, effective April 29, 2014.

CHAPTER 5C

TITLE AD VALOREM TAX ON MOTOR VEHICLES (TAVT)

Sec.
48-5C-1. (Effective until January 1, 2025.) Alternative ad valorem taxation of motor vehicles; title ad valorem tax fee.

Sec.
48-5C-1. (Effective January 1, 2025.) Alternative ad valorem taxation of motor vehicles; title ad valorem tax fee.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2012, Chapter 5B of Title 48, as enacted by Ga. L. 2012, p. 257, § 1-4/HB 386, was redesignated as Chapter 5C.

Editor's notes.

Ga. L. 2012, p. 257, § 7-1(h)/HB 386, not codified by the General Assembly, provides: "Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by the passage of this Act and shall continue to be governed by the provisions of general law as it existed immediately prior to the effective date of the relevant portion of this Act."

Ga. L. 2012, p. 257, § 7-1(i)/HB 386, not codified by the General Assembly, provides: "This Act shall not abate any prosecution, punishment, penalty, administrative proceedings or remedies, or civil action related to any violation of law committed prior to the effective date of the relevant portion of this Act."

Ga. L. 2012, p. 257, § 7-2/HB 386, not codified by the General Assembly, provides for severability.

48-5C-1. (Effective until January 1, 2025.) Alternative ad valorem taxation of motor vehicles; title ad valorem tax fee.

(a) As used in this Code section, the term:

(.1) "Disabled first responder" means a law enforcement officer, firefighter, publicly employed emergency medical technician, or surviving spouse of such an individual receiving payments pursuant to Code Section 45-9-85 due to total permanent disability, partial permanent disability, organic brain damage, or death occurring in the line of duty, provided that such law enforcement officer, firefighter, or publicly employed emergency medical technician is not facing pending charges for and has not been convicted of a crime related to his or her conduct in the line of duty, and his or her state licensure as a law enforcement officer, firefighter, or emergency medical technician is not subject to pending action for suspension or revocation and has not been revoked or suspended due to his or her bad conduct.

(1) "Fair market value of the motor vehicle" means:

(A) For a used motor vehicle purchased from a new or used car

dealer other than under a seller financed sale arrangement, the retail selling price of the motor vehicle, less any reduction for the trade-in value of another motor vehicle;

(B)(i) For a used motor vehicle purchased from a person other than a new or used car dealer or a used motor vehicle purchased under a seller financed sale arrangement, the average of the current fair market value and the current wholesale value of a motor vehicle for a vehicle listed in the current motor vehicle ad valorem assessment manual utilized by the state revenue commissioner and based upon a nationally recognized motor vehicle industry pricing guide for fair market and wholesale market values in determining the taxable value of a motor vehicle under Code Section 48-5-442; provided, however, that, if the motor vehicle is not listed in such current motor vehicle ad valorem assessment manual, the fair market value shall be the value from a reputable used car market guide designated by the commissioner and, in the case of a motor vehicle purchased from a new or used car dealer under a seller financed sale arrangement, less any reduction for the trade-in value of another motor vehicle;

(ii) Upon written application and supporting documentation submitted by an applicant under this Code section, a county tag agent may deviate from the fair market value as defined in division (i) of this subparagraph based upon mileage and condition of the used vehicle. Supporting documentation may include, but not be limited to, bill of sale, odometer statement, and values from reputable pricing guides. The fair market value as determined by the county tag agent pursuant to this subparagraph shall be appealable as provided in subsection (e) of this Code section;

(C) Reserved;

(D) For a new motor vehicle, the retail selling price, less any reduction for the trade-in value of another motor vehicle and any rebate. The retail selling price shall include any charges for labor, freight, delivery, dealer fees and similar charges, tangible accessories, dealer add-ons, and mark-ups, but shall not include any federal retailers' excise tax or extended warranty, service contract, maintenance agreement, or similar products itemized on the dealer's invoice to the customer or any finance, insurance, and interest charges for deferred payments billed separately. No reduction for the trade-in value of another motor vehicle shall be taken unless the name of the owner and the vehicle identification number of such trade-in motor vehicle are shown on the bill of sale;

(E) For a motor vehicle that is leased:

(i) In the case of a motor vehicle that is leased to a lessee for use primarily in the lessee's trade or business and for which the lease agreement contains a provision for the adjustment of the rental price as described in Code Section 40-3-60, the agreed upon value of the motor vehicle less any reduction for the trade-in value of another motor vehicle and any rebate;

(ii) In the case of a motor vehicle that is leased other than described in division (i) of this subparagraph, the total of the depreciation plus any amortized amounts pursuant to the lease agreement plus any down payments; and

(iii) The term "any down payments" as used in this subparagraph shall mean cash collected from the lessee at the inception of the lease which shall include cash supplied as a capital cost reduction; shall not include rebates, noncash credits, or net trade allowances; and shall include any upfront payments collected from the lessee at the inception of the lease except for taxes or fees imposed by law and monthly lease payments made in advance; or

(F) For a kit car which is assembled by the purchaser from parts supplied by a manufacturer, the retail selling price of the kit. A kit car shall not include a rebuilt or salvage vehicle.

(2) "Immediate family member" means spouse, parent, child, sibling, grandparent, or grandchild.

(3) "Loaner vehicle" means a motor vehicle owned by a dealer which is withdrawn temporarily from dealer inventory for exclusive use as a courtesy vehicle loaned at no charge for a period not to exceed 45 days within a 366 day period to any one customer whose motor vehicle is being serviced by such dealer.

(4) "Rental charge" means the total value received by a rental motor vehicle concern for the rental or lease for 31 or fewer consecutive days of a rental motor vehicle, including the total cash and nonmonetary consideration for the rental or lease, including, but not limited to, charges based on time or mileage and charges for insurance coverage or collision damage waiver but excluding all charges for motor fuel taxes or sales and use taxes.

(5) "Rental motor vehicle" means a motor vehicle designed to carry 15 or fewer passengers and used primarily for the transportation of persons that is rented or leased without a driver.

(6) "Rental motor vehicle concern" means a person or legal entity which owns or leases five or more rental motor vehicles and which regularly rents or leases such vehicles to the public for value.

(7) "Trade-in value" means the value of the motor vehicle as stated in the bill of sale for a vehicle which has been traded in to the dealer in a transaction involving the purchase of another vehicle from the dealer.

(b)(1)(A) Except as otherwise provided in this subsection, any motor vehicle for which a title is issued in this state on or after March 1, 2013, shall be exempt from sales and use taxes to the extent provided under paragraph (95) of Code Section 48-8-3 and shall not be subject to the ad valorem tax as otherwise required under Chapter 5 of this title. Any such motor vehicle shall be titled as otherwise required under Title 40 but shall be subject to a state title fee and a local title fee which shall be alternative ad valorem taxes as authorized by Article VII, Section I, Paragraph III(b)(3) of the Georgia Constitution. Motor vehicles registered under the International Registration Plan shall not be subject to state and local title ad valorem tax fees but shall continue to be subject to apportioned ad valorem taxation under Article 10 of Chapter 5 of this title.

(B)(i) Reserved.

(ii) The combined state and local title ad valorem tax shall be at a rate equal to 7 percent of the fair market value of the motor vehicle; provided, however, that, beginning on January 1, 2020, and continuing through June 30, 2023, such rate shall be equal to 6.6 percent of the fair market value of the motor vehicle.

(iii) Beginning on July 1, 2019, the state and local title ad valorem tax proceeds each month shall be distributed by each county remitting 35 percent of the funds to the state revenue commissioner as provided in subparagraph (c)(2)(A) of this Code section and distributing 65 percent of the funds as provided in paragraph (3) of subsection (c) of this Code section.

(iv) The state revenue commissioner shall promulgate such rules and regulations as may be necessary and appropriate to implement and administer this Code section, including, but not limited to, rules and regulations regarding appropriate public notification of rate amounts and rules and regulations regarding appropriate enforcement and compliance procedures and methods for the implementation and operation of this Code section. The state revenue commissioner shall promulgate a standardized form to be used by all dealers of new and used vehicles in this state in order to ease the administration of this Code section. The state revenue commissioner may promulgate and implement rules and regulations as may be necessary to

permit seller financed sales of used vehicles to be assessed 2.5 percentage points less than the rate specified in division (ii) of this subparagraph.

(C) The application for title and the state and local title ad valorem tax fees provided for in subparagraph (A) of this paragraph shall be paid to the tag agent in the county where the motor vehicle is to be registered and shall be paid at the time the application for a certificate of title is submitted or, in the case of an electronic title transaction, at the time when the electronic title transaction is finalized. In an electronic title transaction, the state and local title ad valorem tax fees shall be remitted electronically directly to the county tag agent. A dealer of new or used motor vehicles shall make such application for title and state and local title ad valorem tax fees on behalf of the purchaser of a new or used motor vehicle for the purpose of submitting or, in the case of an electronic title application, finalizing such title application and remitting state and local title ad valorem tax fees. The state and local title ad valorem tax fees provided for in this chapter shall be imposed on the purchaser, including a lessor, that acquires title to the motor vehicle; provided, however, that a lessor that pays such state and local title ad valorem tax fees may seek reimbursement for such state and local title ad valorem tax fees from the lessee.

(D) There shall be a penalty imposed on any person who, in the determination of the commissioner, falsifies any information in any bill of sale used for purposes of determining the fair market value of the motor vehicle. Such penalty shall not exceed $2,500.00 as a state penalty and shall not exceed $2,500.00 as a local penalty as determined by the commissioner. Such determination shall be made within 60 days of the commissioner receiving information of a possible violation of this paragraph.

(E) Except in the case in which an extension of the registration period has been granted by the county tag agent under Code Section 40-2-20, a dealer of new or used motor vehicles that makes an application for title and collects state and local title ad valorem tax fees from a purchaser of a new or used motor vehicle and does not submit or, in the case of an electronic title transaction, finalize such application for title and remit such state and local title ad valorem tax fees to the county tag agent within 30 days following the date of purchase shall be liable to the county tag agent for an amount equal to 5 percent of the amount of such state and local title ad valorem tax fees. An additional penalty equal to 10 percent of the amount of such state and local title ad valorem tax fees shall be imposed if such payment is not

transmitted within 60 days following the date of purchase. An additional penalty equal to 15 percent of the amount of such state and local title ad valorem tax fees shall be imposed if such payment is not transmitted within 90 days following the date of purchase, and an additional penalty equal to 20 percent of the amount of such state and local title ad valorem tax fees shall be imposed if such payment is not transmitted within 120 days following the date of purchase. An additional penalty equal to 25 percent of the amount of such state and local title ad valorem tax fees shall be imposed for each subsequent 30 day period in which the payment is not transmitted.

(F) A dealer of new or used motor vehicles that makes an application for title and collects state and local title ad valorem tax fees from a purchaser of a new or used motor vehicle and converts such fees to his or her own use shall be guilty of theft by conversion and, upon conviction, shall be punished as provided in Code Section 16-8-12.

(2) A person or entity acquiring a salvage title pursuant to subsection (b) of Code Section 40-3-36 shall not be subject to the fee specified in paragraph (1) of this subsection but shall be subject to a state title ad valorem tax fee in an amount equal to 1 percent of the fair market value of the motor vehicle. Such state title ad valorem tax fee shall be an alternative ad valorem tax as authorized by Article VII, Section I, Paragraph III(b)(3) of the Georgia Constitution.

(c)(1) The amount of proceeds collected by tag agents each month as state and local title ad valorem tax fees, state salvage title ad valorem tax fees, administrative fees, penalties, and interest pursuant to subsection (b) of this Code section shall be allocated and disbursed as provided in this subsection.

(2) For the 2013 tax year and in each subsequent tax year, the amount of such funds shall be disbursed within 20 days following the end of each calendar month as follows:

(A) State title ad valorem tax fees, state salvage title ad valorem tax fees, administrative fees, penalties, and interest shall be remitted to the state revenue commissioner who shall deposit such proceeds in the general fund of the state less an amount to be retained by the tag agent not to exceed 1 percent of the total amount otherwise required to be remitted under this subparagraph to defray the cost of administration. Such retained amount shall be remitted to the collecting county's general fund. Failure by the tag agent to disburse within such 20 day period shall result in a forfeiture of such administrative fee plus interest on such amount at the rate specified in Code Section 48-2-40; and

(B) Local title ad valorem tax fees, administrative fees, penalties, and interest shall be designated as local government ad valorem tax funds. The tag agent shall then distribute the proceeds as specified in paragraph (3) of this subsection, less an amount to be retained by the tag agent not to exceed 1 percent of the total amount otherwise required to be remitted under this subparagraph to defray the cost of administration. Such retained amount shall be remitted to the collecting county's general fund. Failure by the tag agent to disburse within such 20 day period shall result in a forfeiture of such administrative fee plus interest on such amount at the rate specified in Code Section 48-2-40.

(3) Beginning July 1, 2019, the portion of the title ad valorem tax fee proceeds to be retained by the county pursuant to division (b)(1)(B)(iii) of this Code section shall be distributed as follows:

(A) The tag agent of the county shall within 20 days following the end of each calendar month allocate and distribute to the water and sewerage authority for which the county has levied an ad valorem tax in accordance with a local constitutional amendment, and in a county in which a sales and use tax is levied for purposes of a metropolitan area system of public transportation, as authorized by the amendment to the Constitution set out at Ga. L. 1964, p. 1008, the governing body of the transportation authority created by the Metropolitan Atlanta Rapid Transit Authority Act of 1965, Ga. L. 1965, p. 2243, as amended, and the amendment to the Constitution set out at Ga. L. 1964, p. 1008, an amount of those proceeds necessary to offset any reduction in:

(i) Ad valorem taxes on motor vehicles collected under Chapter 5 of this title on behalf of such water and sewerage authority during calendar year 2012; and

(ii) With respect to the transportation authority, the monthly average portion of the sales and use tax levied for purposes of a metropolitan area system of public transportation applicable to any motor vehicle titled in a county which levied such tax in 2012.

Such amount of tax under division (ii) of this subparagraph may be determined by the commissioner for counties which levied such tax in 2012, and in any counties which subsequently levy a tax pursuant to a metropolitan area system of public transportation, as authorized by the amendment to the Constitution set out at Ga. L. 1964, p. 1008, the governing body of the transportation authority created by the Metropolitan Atlanta Rapid Transit Authority Act of 1965, Ga. L. 1965, p. 2243, as amended, and the amendment to the Constitution set out at Ga. L. 1964, p. 1008, the commissioner may

determine what amount of sales and use tax would have been collected in calendar year 2012, had such tax been levied. The amount of the reduction to be offset under this subparagraph with respect to division (i) of this subparagraph shall be calculated by the county governing authority by subtracting the amount of title ad valorem tax on motor vehicles collected under Chapter 5 of this title on behalf of such water and sewerage authority in the current calendar month from one-twelfth of the amount of such ad valorem tax on motor vehicles collected on behalf of such water and sewerage authority in calendar year 2012. The amount of the reduction to be offset under this subparagraph with respect to division (ii) of this subparagraph shall be calculated by the county governing authority by subtracting the amount of sales tax collected or determined to have been collected on such motor vehicles by the state revenue commissioner in the current calendar month in any such county from one-twelfth of the amount of sales and use tax collected, or determined to have been collected, on such motor vehicles, by the state revenue commissioner in calendar year 2012 in such county. In the event that the local title ad valorem tax proceeds are insufficient to offset fully such reduction in ad valorem taxes on motor vehicles or the portion of the sales and use tax described in division (ii) of this subparagraph, the tag agent shall allocate a proportionate amount of the proceeds to such water and sewerage authority and the transportation authority, as appropriate, and any remaining shortfall shall be paid from the following month's local title ad valorem tax fee proceeds. In the event that a shortfall remains, the tag agent shall continue to first allocate local title ad valorem tax fee proceeds to offset such shortfalls until the shortfall has been fully repaid;

(B) As to the proceeds remaining after the distribution provided for in subparagraph (A) of this paragraph, with regard to the proceeds associated with and collected on motor vehicle titles for motor vehicles registered in the unincorporated areas of the county, the tag agent of the county shall within 20 days following the end of each calendar month allocate and distribute 51 percent of such proceeds to the county governing authority and distribute 49 percent of such proceeds to the board of education of the county school district; and

(C) As to the proceeds remaining after the distribution provided for in subparagraph (A) of this paragraph, with regard to the proceeds associated with and collected on motor vehicle titles for motor vehicles registered in the incorporated areas of the county, the tag agent of the county shall within 20 days following the end of each calendar month allocate such proceeds by the municipality from which the proceeds were derived and then, for

each such municipality, distribute 23 percent of such proceeds to the county governing authority and 28 percent of such proceeds to the governing authority of such municipality, and the remaining 49 percent of such proceeds shall be distributed to the board of education of the county school district; provided, however, that, if there is an independent school district in such municipality, then 23 percent of such proceeds shall be distributed to the county governing authority and 34 percent of such proceeds shall be distributed to the governing authority of such municipality and the remaining 43 percent of such proceeds shall be distributed to the board of education of the independent school district.

(d)(1)(A) Upon the death of an owner of a motor vehicle which has not become subject to paragraph (1) of subsection (b) of this Code section, the immediate family member or immediate family members of such owner who receive such motor vehicle pursuant to a will or under the rules of inheritance shall, subsequent to the transfer of title of such motor vehicle, continue to be subject to ad valorem tax under Chapter 5 of this title and shall not be subject to the state and local title ad valorem tax fees provided for in paragraph (1) of subsection (b) of this Code section unless the immediate family member or immediate family members make an affirmative written election to become subject to paragraph (1) of subsection (b) of this Code section. In the event of such election, such transfer shall be subject to the state and local title ad valorem tax fees provided for in paragraph (1) of subsection (b) of this Code section.

(B) Upon the death of an owner of a motor vehicle which has become subject to paragraph (1) of subsection (b) of this Code section, the immediate family member or immediate family members of such owner who receive such motor vehicle pursuant to a will or under the rules of inheritance shall be subject to a state title ad valorem tax fee in an amount equal to one-quarter of 1 percent of the fair market value of the motor vehicle and a local title ad valorem tax fee in an amount equal to one-quarter of 1 percent of the fair market value of the motor vehicle. Such title ad valorem tax fees shall be an alternative ad valorem tax as authorized by Article VII, Section I, Paragraph III(b)(3) of the Georgia Constitution.

(2)(A) Upon the transfer from an immediate family member of a motor vehicle which has not become subject to paragraph (1) of subsection (b) of this Code section, the immediate family member or immediate family members who receive such motor vehicle shall, subsequent to the transfer of title of such motor vehicle, continue to be subject to ad valorem tax under Chapter 5 of this

title and shall not be subject to the state and local title ad valorem tax fees provided for in paragraph (1) of subsection (b) of this Code section unless the immediate family member or immediate family members make an affirmative written election to become subject to paragraph (1) of subsection (b) of this Code section. In the event of such election, such transfer shall be subject to the state and local title ad valorem tax fees provided for in paragraph (1) of subsection (b) of this Code section.

(B) Upon the transfer from an immediate family member of a motor vehicle which has become subject to paragraph (1) of subsection (b) of this Code section, the immediate family member who receives such motor vehicle shall transfer title of such motor vehicle to such recipient family member and shall be subject to a state title ad valorem tax fee in an amount equal to one-quarter of 1 percent of the fair market value of the motor vehicle and a local title ad valorem tax fee in an amount equal to one-quarter of 1 percent of the fair market value of the motor vehicle. Such title ad valorem tax fees shall be an alternative ad valorem tax as authorized by Article VII, Section I, Paragraph III(b)(3) of the Georgia Constitution.

(C) Any title transfer under this paragraph shall be accompanied by an affidavit of the transferor and transferee that such persons are immediate family members to one another. There shall be a penalty imposed on any person who, in the determination of the state revenue commissioner, falsifies any material information in such affidavit. Such penalty shall not exceed $2,500.00 as a state penalty and shall not exceed $2,500.00 as a local penalty as determined by the state revenue commissioner. Such determination shall be made within 60 days of the state revenue commissioner receiving information of a possible violation of this paragraph.

(3) Any individual who:

(A) Is required by law to register a motor vehicle or motor vehicles in this state which were registered in the state in which such person formerly resided; and

(B) Is required to file an application for a certificate of title under Code Section 40-3-21 or 40-3-32

shall be required to pay state and local title ad valorem tax fees in an amount equal to 3 percent of the fair market value of the motor vehicle.

(4) The state and local title ad valorem tax fees provided for under this Code section shall not apply to corrected titles, replacement titles

under Code Section 40-3-31, or titles reissued to the same owner pursuant to Code Sections 40-3-50 through 40-3-56.

(5) Any motor vehicle subject to state and local title ad valorem tax fees under paragraph (1) of subsection (b) of this Code section shall continue to be subject to the title, license plate, revalidation decal, and registration requirements and applicable fees as otherwise provided in Title 40 in the same manner as motor vehicles which are not subject to state and local title ad valorem tax fees under paragraph (1) of subsection (b) of this Code section.

(6) Motor vehicles owned or leased by or to the state or any county, consolidated government, municipality, county or independent school district, or other government entity in this state shall not be subject to the state and local title ad valorem tax fees provided for under paragraph (1) of subsection (b) of this Code section; provided, however, that such other government entity shall not qualify for the exclusion under this paragraph unless it is exempt from ad valorem tax and sales and use tax pursuant to general law.

(7)(A) Any motor vehicle which is exempt from sales and use tax pursuant to paragraph (30) of Code Section 48-8-3 shall be exempt from state and local title ad valorem tax fees under this subsection.

(B) Any motor vehicle which is exempt from ad valorem taxation pursuant to Code Section 48-5-478, 48-5-478.1, 48-5-478.2, or 48-5-478.3 shall be exempt from state and local title ad valorem tax fees under paragraph (1) of subsection (b) of this Code section.

(C) Each disabled first responder shall be allowed an exemption from state and local title ad valorem tax fees under paragraph (1) of subsection (b) of this Code section levied on a maximum of $50,000.00 in aggregate of the fair market value combined for all motor vehicles that he or she registers in this state during any three-year period.

(7.1)(A) As used in this paragraph, the term "for-hire charter bus or motor coach" means a motor vehicle designed for carrying more than 15 passengers and used for the transportation of persons for compensation.

(B) In the case of for-hire charter buses or motor coaches, the person applying for a certificate of title shall be required to pay title ad valorem tax fees in the amount of 50 percent of the amount which would otherwise be due and payable under this subsection at the time of filing the application for a certificate of title, and the remaining 50 percent shall be paid within 12 months following the filing of such application.

(8) There shall be a penalty imposed on the transfer of all or any part of the interest in a business entity that includes primarily as an asset of such business entity one or more motor vehicles, when, in the determination of the state revenue commissioner, such transfer is done to evade the payment of state and local title ad valorem tax fees under this subsection. Such penalty shall not exceed $2,500.00 as a state penalty per motor vehicle and shall not exceed $2,500.00 as a local penalty per motor vehicle, as determined by the state revenue commissioner, plus the amount of the state and local title ad valorem tax fees. Such determination shall be made within 60 days of the state revenue commissioner receiving information that a transfer may be in violation of this paragraph.

(9) Any owner of any motor vehicle who fails to submit within 30 days of the date such owner is required by law to register such vehicle in this state an application for a first certificate of title under Code Section 40-3-21 or a certificate of title under Code Section 40-3-32 shall be required to pay a penalty in the amount of 10 percent of the state title ad valorem tax fees and 10 percent of the local title ad valorem tax fees required under this Code section and, if such state and local title ad valorem tax fees and the penalty are not paid within 60 days following the date such owner is required by law to register such vehicle, interest at the rate of 1 percent per month shall be imposed on the state and local title ad valorem tax fees due under this Code section, unless a temporary permit has been issued by the tax commissioner. The tax commissioner shall grant a temporary permit in the event the failure to timely apply for a first certificate of title is due to the failure of a lienholder to comply with Code Section 40-3-56, regarding release of a security interest or lien, and no penalty or interest shall be assessed. Such penalty and interest shall be in addition to the penalty and fee required under Code Section 40-3-21 or 40-3-32, as applicable.

(10) The owner of any motor vehicle for which a title was issued in this state on or after January 1, 2012, and prior to March 1, 2013, shall be authorized to opt in to the provisions of this subsection at any time prior to February 28, 2014, upon compliance with the following requirements:

(A)(i) The total amount of Georgia state and local title ad valorem tax fees which would be due from March 1, 2013, to December 31, 2013, if such vehicle had been titled in 2013 shall be determined; and

(ii) The total amount of Georgia state and local sales and use tax and Georgia state and local ad valorem tax under Chapter 5 of this title which were due and paid in 2012 for that motor vehicle and, if applicable, the total amount of such taxes which

were due and paid for that motor vehicle in 2013 and 2014 shall be determined; and

(B)(i) If the amount derived under division (i) of subparagraph (A) of this paragraph is greater than the amount derived under division (ii) of subparagraph (A) of this paragraph, the owner shall remit the difference to the tag agent. Such remittance shall be deemed local title ad valorem tax fee proceeds; or

(ii) If the amount derived under division (i) of subparagraph (A) of this paragraph is less than the amount derived under division (ii) of subparagraph (A) of this paragraph, no additional amount shall be due and payable by the owner.

Upon certification by the tag agent of compliance with the requirements of this paragraph, such motor vehicle shall not be subject to ad valorem tax as otherwise required under Chapter 5 of this title in the same manner as otherwise provided in paragraph (1) of subsection (b) of this Code section.

(11)(A) In the case of rental motor vehicles owned by a rental motor vehicle concern, the state title ad valorem tax fee shall be in an amount equal to .625 percent of the fair market value of the motor vehicle, and the local title ad valorem tax fee shall be in an amount equal to .625 percent of the fair market value of the motor vehicle, but only if in the immediately prior calendar year the average amount of sales and use tax attributable to the rental charge of each such rental motor vehicle was at least $400.00 as certified by the state revenue commissioner. If, in the immediately prior calendar year, the average amount of sales and use tax attributable to the rental charge of each such rental motor vehicle was not at least $400.00, this paragraph shall not apply and such vehicles shall be subject to the state and local title ad valorem tax fees prescribed in division (b)(1)(B)(ii) of this Code section.

(B) Such title ad valorem tax fees shall be an alternative ad valorem tax as authorized by Article VII, Section I, Paragraph III(b)(3) of the Georgia Constitution.

(12) A loaner vehicle shall not be subject to state and local title ad valorem tax fees under paragraph (1) of subsection (b) of this Code section for a period of time not to exceed 366 days commencing on the date such loaner vehicle is withdrawn temporarily from inventory. Immediately upon the expiration of such 366 day period, if the dealer does not return the loaner vehicle to inventory for resale, the dealer shall be responsible for remitting state and local title ad valorem tax fees in the same manner as otherwise required of an owner under paragraph (9) of this subsection and shall be subject to the same penalties and interest as an owner for noncompliance with the requirements of paragraph (9) of this subsection.

(13) Any motor vehicle which is donated to a nonprofit organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code shall, when titled in the name of such nonprofit organization, not be subject to state and local title ad valorem tax fees under paragraph (1) of subsection (b) of this Code section but shall be subject to state and local title ad valorem tax fees in the amount of 1 percent of the fair market value of the motor vehicle. Such title ad valorem tax fees shall be an alternative ad valorem tax as authorized by Article VII, Section I, Paragraph III(b)(3) of the Georgia Constitution.

(14)(A) A lessor of motor vehicles that leases motor vehicles for more than 31 consecutive days to lessees residing in this state shall register with the department. The department shall collect an annual fee of $100.00 for such registrations. Failure of a lessor to register under this subparagraph shall subject such lessor to a civil penalty of $2,500.00.

(B) A lessee residing in this state who leases a motor vehicle under this paragraph shall register such motor vehicle with the tag agent in such lessee's county of residence within 30 days of the commencement of the lease of such motor vehicle or beginning residence in this state, whichever is later.

(C) A lessor that leases a motor vehicle under this paragraph to a lessee residing in this state shall apply for a certificate of title in this state within 30 days of the commencement of the lease of such motor vehicle.

(15) There shall be no liability for any state or local title ad valorem tax fees in any of the following title transactions:

(A) The addition or substitution of lienholders on a motor vehicle title so long as the owner of the motor vehicle remains the same;

(B) The acquisition of a bonded title by a person or entity pursuant to Code Section 40-3-28 if the title is to be issued in the name of such person or entity;

(C) The acquisition of a title to a motor vehicle by a person or entity as a result of the foreclosure of a mechanic's lien pursuant to Code Section 40-3-54 if such title is to be issued in the name of such lienholder;

(D) The acquisition of a title to an abandoned motor vehicle by a person or entity pursuant to Chapter 11 of Title 40 if such person or entity is a manufacturer or dealer of motor vehicles and the title is to be issued in the name of such person or entity;

(E) The obtaining of a title to a stolen motor vehicle by a person or entity pursuant to Code Section 40-3-43;

(F) The obtaining of a title by and in the name of a motor vehicle manufacturer, licensed distributor, licensed dealer, or licensed rebuilder for the purpose of sale or resale or to obtain a corrected title, provided that the manufacturer, distributor, dealer, or rebuilder shall submit an affidavit in a form promulgated by the commissioner attesting that the transfer of title is for the purpose of accomplishing a sale or resale or to correct a title only;

(G) The obtaining of a title by and in the name of the holder of a security interest when a motor vehicle has been repossessed after default in accordance with Part 6 of Article 9 of Title 11 if such title is to be issued in the name of such security interest holder;

(H) The obtaining of a title by a person or entity for purposes of correcting a title, changing an odometer reading, or removing an odometer discrepancy legend, provided that, subject to subparagraph (F) of this paragraph, title is not being transferred to another person or entity;

(I) The obtaining of a title by a person who pays state and local title ad valorem tax fees on a motor vehicle and subsequently moves out of this state but returns and applies to retitle such vehicle in this state;

(J) The obtaining of a replacement title on a vehicle that is not less than 15 years old upon sufficient proof provided to the commissioner that such title no longer exists;

(K) The transfer of a title made as a result of a business reorganization when the owners, partners, members, or stockholders of the business being reorganized maintain the same proportionate interest or share in the newly formed business reorganization;

(L) The transfer of a title from a company to an owner of the company for the purpose of such individual obtaining a prestige or special license plate for the motor vehicle;

(M) The transfer of a title from an owner of a company to the company; and

(N) The transfer of a title from one legal entity in which an individual holds an ownership interest of at least 50 percent to another legal entity in which the same individual holds an ownership interest of at least 50 percent, provided that the

alternative ad valorem tax imposed by this chapter has been levied on such motor vehicle and has been paid by the transferring entity or such individual.

(16) It shall be unlawful for a person to fail to obtain a title for and register a motor vehicle in accordance with the provisions of this chapter. Any person who knowingly and willfully fails to obtain a title for or register a motor vehicle in accordance with the provisions of this chapter shall be guilty of a misdemeanor.

(17)(A) Any person who purchases a 1963 through 1989 model year motor vehicle for which such person obtains a title shall be subject to this Code section, but the state title ad valorem tax fee shall be in an amount equal to 0.5 percent of the fair market value of such motor vehicle, and the local title ad valorem tax fee shall be in an amount equal to 0.5 percent of the fair market value of such motor vehicle.

(B) The owner of a 1962 or earlier model year motor vehicle who obtains a conditional title pursuant to Code Section 40-3-21.1 for such motor vehicle shall be authorized to opt in to the provisions of this subsection upon the payment of a state title ad valorem tax fee in an amount equal to 0.5 percent of the fair market value of such motor vehicle and a local title ad valorem tax fee in an amount equal to 0.5 percent of the fair market value of such motor vehicle. Upon certification by the tag agent of compliance with the requirements of this subparagraph, such motor vehicle shall not be subject to ad valorem tax as otherwise required under Chapter 5 of this title in the same manner as otherwise provided in paragraph (1) of subsection (b) of this Code section.

(18)(A) Upon the transfer of title as the result of a divorce decree or court order of a motor vehicle which has not become subject to paragraph (1) of subsection (b) of this Code section, the person who receives such motor vehicle shall, subsequent to the transfer of title of such motor vehicle, continue to be subject to the ad valorem tax under Chapter 5 of this title and shall not be subject to the state and local title ad valorem tax fees provided for in paragraph (1) of subsection (b) of this Code section unless such person makes an affirmative written election to become subject to paragraph (1) of subsection (b) of this Code section. In the event of such election, such transfer shall be subject to the state and local title ad valorem tax fees provided for in paragraph (1) of subsection (b) of this Code section.

(B) Upon the transfer of title as the result of a divorce decree or court order of a motor vehicle which has become subject to

paragraph (1) of subsection (b) of this Code section, the person who receives such motor vehicle shall, at the time of the transfer of title of such motor vehicle, be subject to a state title ad valorem tax fee in an amount equal to one-half of 1 percent of the fair market value of the motor vehicle and a local title ad valorem tax fee in an amount equal to one-half of 1 percent of the fair market value of the motor vehicle. Such title ad valorem tax fees shall be an alternative ad valorem tax as authorized by Article VII, Section I, Paragraph III(b)(3) of the Georgia Constitution.

(C) Any title transfer under this paragraph shall be accompanied by an affidavit of the transferee that such transfer is pursuant to a divorce decree or court order, and the transferee shall attach such decree or order to the affidavit. There shall be a penalty imposed on any person who, in the determination of the state revenue commissioner, falsifies any material information in such affidavit. Such penalty shall not exceed $2,500.00 as a state penalty and shall not exceed $2,500.00 as a local penalty as determined by the state revenue commissioner. Such determination shall be made within 60 days of the state revenue commissioner receiving information of a possible violation of this paragraph.

(e) The fair market value of any motor vehicle subject to this Code section shall be appealable in the same manner as otherwise authorized for a motor vehicle subject to ad valorem taxation under Code Section 48-5-450; provided, however, that the person appealing the fair market value shall first pay the full amount of the state and local title ad valorem tax prior to filing any appeal. If the appeal is successful, the amount of the tax owed shall be recalculated and, if the amount paid by the person appealing the determination of fair market value is greater than the recalculated tax owed, the person shall be promptly given a refund of the difference.

(f) Beginning in 2014, on or before January 31 of each year, the department shall provide a report to the chairpersons of the House Committee on Ways and Means and the Senate Finance Committee showing the state and local title ad valorem tax fee revenues collected pursuant to this chapter and the motor vehicle ad valorem tax proceeds collected pursuant to Chapter 5 of this title during the preceding calendar year.

(g) A motor vehicle dealer shall be authorized to apply to the county tag agent of the county in which such motor vehicle is registered for a refund of state and local title ad valorem taxes on behalf of the person who purchased a motor vehicle from such dealer. Such dealer shall promptly pay to such purchaser any refund received by the dealer which is owed to the purchaser, and in any event, such payment shall

be made no later than ten days following the receipt of such refund by the dealer. The county tag agent shall approve or deny the request for refund within 30 days after the filing of the application for refund. If the county tag agent denies the refund, the county tag agent shall specify the reasons for such denial. The motor vehicle dealer shall be authorized to appeal such denial to the commissioner within 30 days following such denial.

History.

Code 1981, § 48-5C-1, enacted by Ga. L. 2012, p. 257, § 1-4/HB 386; Ga. L. 2013, p. 7, § 2/HB 266; Ga. L. 2013, p. 32, § 4/HB 463; Ga. L. 2013, p. 141, § 48/HB 79; Ga. L. 2015, p. 5, § 48/HB 90; Ga. L. 2015, p. 1219, § 23/HB 202; Ga. L. 2016, p. 758, § 3/SB 379; Ga. L. 2016, p. 864, § 48/HB 737; Ga. L. 2017, p. 499, § 1/HB 340; Ga. L. 2018, p. 8, § 2-1/HB 918; Ga. L. 2018, p. 287, § 1/HB 329; Ga. L. 2019, p. 908, § 3/SB 138; Ga. L. 2019, p. 936, §§ 1-4/SB 65; Ga. L. 2019, p. 1056, § 48/SB 52; Ga. L. 2020, p. 18, § 1/HB 779; Ga. L. 2020, p. 346, § 1/HB 808; Ga. L. 2020, p. 493, § 48/SB 429; Ga. L. 2021, p. 316, § 1/HB 63.

Delayed effective date.

Code Section 48-5C-1 is set out twice in this Code. This version is effective until January 1, 2025. For version effective January 1, 2025, see the following version.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2012, the first occurrence of subdivision (b)(1)(B)(i)(II) was redesignated as subdivision (b)(1)(B)(i)(I).

Pursuant to Code Section 28-9-5, in 2015, "of" was inserted preceding "subparagraph (A)" in subdivision (d)(10)(B)(i).

Pursuant to Code Section 28-9-5, in 2018, subparagraphs (d)(15)(J) through (d)(15)(L), as added by Ga. L. 2018, p. 287, § 1/HB 329, were redesignated as subparagraphs (d)(15)(K) through (d)(15)(M) and related stylistic changes were made.

Editor's notes.

Ga. L. 2013, p. 32, § 5/HB 463, not codified by the General Assembly, provides, in part, that the amendment to this Code section shall be immediately applied to relevant fair market value determinations. The Governor approved this Act on April 10, 2013.

Ga. L. 2017, p. 499, § 2/HB 340, not codified by the General Assembly, provides that this Act shall apply to all taxable years beginning on or after January 1, 2018.

Ga. L. 2019, p. 908, § 5/SB 138, not codified by the General Assembly, provides, in part, that Section 4 of this Act shall apply to taxable years beginning on or after January 1, 2019.

Administrative rules and regulations.

Certificate of title of a vehicle where the commissioner is not satisfied as to the ownership and bond, Official Compilation of the Rules and Regulations of the State of Georgia, Motor Vehicle Division, Scrapped vehicles under the Motor Vehicles Certificate of Title Act, § 560-10-13-.04.

State and local title ad valorem tax fee, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Revenue, Local Government Services Division, Chapter 560-11-14.

48-5C-1. (Effective January 1, 2025.) Alternative ad valorem taxation of motor vehicles; title ad valorem tax fee.

(a) As used in this Code section, the term:

(.1) (Repealed effective December 31, 2029.) "Disabled first responder" means a law enforcement officer, firefighter, publicly employed emergency medical technician, or surviving spouse of such an individual receiving payments pursuant to Code Section 45-9-85 due

to total permanent disability, partial permanent disability, organic brain damage, or death occurring in the line of duty, provided that such law enforcement officer, firefighter, or publicly employed emergency medical technician is not facing pending charges for and has not been convicted of a crime related to his or her conduct in the line of duty, and his or her state licensure as a law enforcement officer, firefighter, or emergency medical technician is not subject to pending action for suspension or revocation and has not been revoked or suspended due to his or her bad conduct. This paragraph shall stand repealed on December 31, 2029.

(1) "Fair market value of the motor vehicle" means:

(A) For a used motor vehicle purchased from a new or used car dealer other than under a seller financed sale arrangement, the retail selling price of the motor vehicle, less any reduction for the trade-in value of another motor vehicle;

(B)(i) For a used motor vehicle purchased from a person other than a new or used car dealer or a used motor vehicle purchased under a seller financed sale arrangement, the average of the current fair market value and the current wholesale value of a motor vehicle for a vehicle listed in the current motor vehicle ad valorem assessment manual utilized by the state revenue commissioner and based upon a nationally recognized motor vehicle industry pricing guide for fair market and wholesale market values in determining the taxable value of a motor vehicle under Code Section 48-5-442; provided, however, that, if the motor vehicle is not listed in such current motor vehicle ad valorem assessment manual, the fair market value shall be the value from a reputable used car market guide designated by the commissioner and, in the case of a motor vehicle purchased from a new or used car dealer under a seller financed sale arrangement, less any reduction for the trade-in value of another motor vehicle;

(ii) Upon written application and supporting documentation submitted by an applicant under this Code section, a county tag agent may deviate from the fair market value as defined in division (i) of this subparagraph based upon mileage and condition of the used vehicle. Supporting documentation may include, but not be limited to, bill of sale, odometer statement, and values from reputable pricing guides. The fair market value as determined by the county tag agent pursuant to this subparagraph shall be appealable as provided in subsection (e) of this Code section;

(C) Reserved;

(D) For a new motor vehicle, the retail selling price, less any reduction for the trade-in value of another motor vehicle and any rebate. The retail selling price shall include any charges for labor, freight, delivery, dealer fees and similar charges, tangible accessories, dealer add-ons, and mark-ups, but shall not include any federal retailers' excise tax or extended warranty, service contract, maintenance agreement, or similar products itemized on the dealer's invoice to the customer or any finance, insurance, and interest charges for deferred payments billed separately. No reduction for the trade-in value of another motor vehicle shall be taken unless the name of the owner and the vehicle identification number of such trade-in motor vehicle are shown on the bill of sale;

(E) For a motor vehicle that is leased:

(i) In the case of a motor vehicle that is leased to a lessee for use primarily in the lessee's trade or business and for which the lease agreement contains a provision for the adjustment of the rental price as described in Code Section 40-3-60, the agreed upon value of the motor vehicle less any reduction for the trade-in value of another motor vehicle and any rebate;

(ii) In the case of a motor vehicle that is leased other than described in division (i) of this subparagraph, the total of the depreciation plus any amortized amounts pursuant to the lease agreement plus any down payments; and

(iii) The term "any down payments" as used in this subparagraph shall mean cash collected from the lessee at the inception of the lease which shall include cash supplied as a capital cost reduction; shall not include rebates, noncash credits, or net trade allowances; and shall include any upfront payments collected from the lessee at the inception of the lease except for taxes or fees imposed by law and monthly lease payments made in advance; or

(F) For a kit car which is assembled by the purchaser from parts supplied by a manufacturer, the retail selling price of the kit. A kit car shall not include a rebuilt or salvage vehicle.

(2) "Immediate family member" means spouse, parent, child, sibling, grandparent, or grandchild.

(3) "Loaner vehicle" means a motor vehicle owned by a dealer which is withdrawn temporarily from dealer inventory for exclusive use as a courtesy vehicle loaned at no charge for a period not to exceed 45 days within a 366 day period to any one customer whose motor vehicle is being serviced by such dealer.

(4) "Rental charge" means the total value received by a rental motor vehicle concern for the rental or lease for 31 or fewer consecutive days of a rental motor vehicle, including the total cash and nonmonetary consideration for the rental or lease, including, but not limited to, charges based on time or mileage and charges for insurance coverage or collision damage waiver but excluding all charges for motor fuel taxes or sales and use taxes.

(5) "Rental motor vehicle" means a motor vehicle designed to carry 15 or fewer passengers and used primarily for the transportation of persons that is rented or leased without a driver.

(6) "Rental motor vehicle concern" means a person or legal entity which owns or leases five or more rental motor vehicles and which regularly rents or leases such vehicles to the public for value.

(7) "Trade-in value" means the value of the motor vehicle as stated in the bill of sale for a vehicle which has been traded in to the dealer in a transaction involving the purchase of another vehicle from the dealer.

(b)(1)(A) Except as otherwise provided in this subsection, any motor vehicle for which a title is issued in this state on or after March 1, 2013, shall be exempt from sales and use taxes to the extent provided under paragraph (95) of Code Section 48-8-3 and shall not be subject to the ad valorem tax as otherwise required under Chapter 5 of this title. Any such motor vehicle shall be titled as otherwise required under Title 40 but shall be subject to a state title fee and a local title fee which shall be alternative ad valorem taxes as authorized by Article VII, Section I, Paragraph III(b)(3) of the Georgia Constitution. Motor vehicles registered under the International Registration Plan shall not be subject to state and local title ad valorem tax fees but shall continue to be subject to apportioned ad valorem taxation under Article 10 of Chapter 5 of this title.

(B)(i) Reserved.

(ii) The combined state and local title ad valorem tax shall be at a rate equal to 7 percent of the fair market value of the motor vehicle; provided, however, that, beginning on January 1, 2020, and continuing through June 30, 2023, such rate shall be equal to 6.6 percent of the fair market value of the motor vehicle.

(iii) Beginning on July 1, 2019, the state and local title ad valorem tax proceeds each month shall be distributed by each county remitting 35 percent of the funds to the state revenue commissioner as provided in subparagraph (c)(2)(A) of this

Code section and distributing 65 percent of the funds as provided in paragraph (3) of subsection (c) of this Code section.

(iv) The state revenue commissioner shall promulgate such rules and regulations as may be necessary and appropriate to implement and administer this Code section, including, but not limited to, rules and regulations regarding appropriate public notification of rate amounts and rules and regulations regarding appropriate enforcement and compliance procedures and methods for the implementation and operation of this Code section. The state revenue commissioner shall promulgate a standardized form to be used by all dealers of new and used vehicles in this state in order to ease the administration of this Code section. The state revenue commissioner may promulgate and implement rules and regulations as may be necessary to permit seller financed sales of used vehicles to be assessed 2.5 percentage points less than the rate specified in division (ii) of this subparagraph.

(C) The application for title and the state and local title ad valorem tax fees provided for in subparagraph (A) of this paragraph shall be paid to the tag agent in the county where the motor vehicle is to be registered and shall be paid at the time the application for a certificate of title is submitted or, in the case of an electronic title transaction, at the time when the electronic title transaction is finalized. In an electronic title transaction, the state and local title ad valorem tax fees shall be remitted electronically directly to the county tag agent. A dealer of new or used motor vehicles shall make such application for title and state and local title ad valorem tax fees on behalf of the purchaser of a new or used motor vehicle for the purpose of submitting or, in the case of an electronic title application, finalizing such title application and remitting state and local title ad valorem tax fees. The state and local title ad valorem tax fees provided for in this chapter shall be imposed on the purchaser, including a lessor, that acquires title to the motor vehicle; provided, however, that a lessor that pays such state and local title ad valorem tax fees may seek reimbursement for such state and local title ad valorem tax fees from the lessee.

(D) There shall be a penalty imposed on any person who, in the determination of the commissioner, falsifies any information in any bill of sale used for purposes of determining the fair market value of the motor vehicle. Such penalty shall not exceed $2,500.00 as a state penalty and shall not exceed $2,500.00 as a local penalty as determined by the commissioner. Such determination shall be made within 60 days of the commissioner receiving information of a possible violation of this paragraph.

(E) Except in the case in which an extension of the registration period has been granted by the county tag agent under Code Section 40-2-20, a dealer of new or used motor vehicles that makes an application for title and collects state and local title ad valorem tax fees from a purchaser of a new or used motor vehicle and does not submit or, in the case of an electronic title transaction, finalize such application for title and remit such state and local title ad valorem tax fees to the county tag agent within 30 days following the date of purchase shall be liable to the county tag agent for an amount equal to 5 percent of the amount of such state and local title ad valorem tax fees. An additional penalty equal to 10 percent of the amount of such state and local title ad valorem tax fees shall be imposed if such payment is not transmitted within 60 days following the date of purchase. An additional penalty equal to 15 percent of the amount of such state and local title ad valorem tax fees shall be imposed if such payment is not transmitted within 90 days following the date of purchase, and an additional penalty equal to 20 percent of the amount of such state and local title ad valorem tax fees shall be imposed if such payment is not transmitted within 120 days following the date of purchase. An additional penalty equal to 25 percent of the amount of such state and local title ad valorem tax fees shall be imposed for each subsequent 30 day period in which the payment is not transmitted.

(F) A dealer of new or used motor vehicles that makes an application for title and collects state and local title ad valorem tax fees from a purchaser of a new or used motor vehicle and converts such fees to his or her own use shall be guilty of theft by conversion and, upon conviction, shall be punished as provided in Code Section 16-8-12.

(2) A person or entity acquiring a salvage title pursuant to subsection (b) of Code Section 40-3-36 shall not be subject to the fee specified in paragraph (1) of this subsection but shall be subject to a state title ad valorem tax fee in an amount equal to 1 percent of the fair market value of the motor vehicle. Such state title ad valorem tax fee shall be an alternative ad valorem tax as authorized by Article VII, Section I, Paragraph III(b)(3) of the Georgia Constitution.

(c)(1) The amount of proceeds collected by tag agents each month as state and local title ad valorem tax fees, state salvage title ad valorem tax fees, administrative fees, penalties, and interest pursuant to subsection (b) of this Code section shall be allocated and disbursed as provided in this subsection.

(2) For the 2013 tax year and in each subsequent tax year, the amount of such funds shall be disbursed within 20 days following the end of each calendar month as follows:

(A) State title ad valorem tax fees, state salvage title ad valorem tax fees, administrative fees, penalties, and interest shall be remitted to the state revenue commissioner who shall deposit such proceeds in the general fund of the state less an amount to be retained by the tag agent not to exceed 1 percent of the total amount otherwise required to be remitted under this subparagraph to defray the cost of administration. Such retained amount shall be remitted to the collecting county's general fund. Failure by the tag agent to disburse within such 20 day period shall result in a forfeiture of such administrative fee plus interest on such amount at the rate specified in Code Section 48-2-40; and

(B) Local title ad valorem tax fees, administrative fees, penalties, and interest shall be designated as local government ad valorem tax funds. The tag agent shall then distribute the proceeds as specified in paragraph (3) of this subsection, less an amount to be retained by the tag agent not to exceed 1 percent of the total amount otherwise required to be remitted under this subparagraph to defray the cost of administration. Such retained amount shall be remitted to the collecting county's general fund. Failure by the tag agent to disburse within such 20 day period shall result in a forfeiture of such administrative fee plus interest on such amount at the rate specified in Code Section 48-2-40.

(3) Beginning July 1, 2019, the portion of the title ad valorem tax fee proceeds to be retained by the county pursuant to division (b)(1)(B)(iii) of this Code section shall be distributed as follows:

(A) The tag agent of the county shall within 20 days following the end of each calendar month allocate and distribute to the water and sewerage authority for which the county has levied an ad valorem tax in accordance with a local constitutional amendment, and in a county in which a sales and use tax is levied for purposes of a metropolitan area system of public transportation, as authorized by the amendment to the Constitution set out at Ga. L. 1964, p. 1008, the governing body of the transportation authority created by the Metropolitan Atlanta Rapid Transit Authority Act of 1965, Ga. L. 1965, p. 2243, as amended, and the amendment to the Constitution set out at Ga. L. 1964, p. 1008, an amount of those proceeds necessary to offset any reduction in:

(i) Ad valorem taxes on motor vehicles collected under Chapter 5 of this title on behalf of such water and sewerage authority during calendar year 2012; and

(ii) With respect to the transportation authority, the monthly average portion of the sales and use tax levied for purposes of a metropolitan area system of public transporta-

tion applicable to any motor vehicle titled in a county which levied such tax in 2012.

Such amount of tax under division (ii) of this subparagraph may be determined by the commissioner for counties which levied such tax in 2012, and in any counties which subsequently levy a tax pursuant to a metropolitan area system of public transportation, as authorized by the amendment to the Constitution set out at Ga. L. 1964, p. 1008, the governing body of the transportation authority created by the Metropolitan Atlanta Rapid Transit Authority Act of 1965, Ga. L. 1965, p. 2243, as amended, and the amendment to the Constitution set out at Ga. L. 1964, p. 1008, the commissioner may determine what amount of sales and use tax would have been collected in calendar year 2012, had such tax been levied. The amount of the reduction to be offset under this subparagraph with respect to division (i) of this subparagraph shall be calculated by the county governing authority by subtracting the amount of title ad valorem tax on motor vehicles collected under Chapter 5 of this title on behalf of such water and sewerage authority in the current calendar month from one-twelfth of the amount of such ad valorem tax on motor vehicles collected on behalf of such water and sewerage authority in calendar year 2012. The amount of the reduction to be offset under this subparagraph with respect to division (ii) of this subparagraph shall be calculated by the county governing authority by subtracting the amount of sales tax collected or determined to have been collected on such motor vehicles by the state revenue commissioner in the current calendar month in any such county from one-twelfth of the amount of sales and use tax collected, or determined to have been collected, on such motor vehicles, by the state revenue commissioner in calendar year 2012 in such county. In the event that the local title ad valorem tax proceeds are insufficient to offset fully such reduction in ad valorem taxes on motor vehicles or the portion of the sales and use tax described in division (ii) of this subparagraph, the tag agent shall allocate a proportionate amount of the proceeds to such water and sewerage authority and the transportation authority, as appropriate, and any remaining shortfall shall be paid from the following month's local title ad valorem tax fee proceeds. In the event that a shortfall remains, the tag agent shall continue to first allocate local title ad valorem tax fee proceeds to offset such shortfalls until the shortfall has been fully repaid;

(B) As to the proceeds remaining after the distribution provided for in subparagraph (A) of this paragraph, with regard to the proceeds associated with and collected on motor vehicle titles for motor vehicles registered in the unincorporated areas of the county, the tag agent of the county shall within 20 days following

the end of each calendar month allocate and distribute 51 percent of such proceeds to the county governing authority and distribute 49 percent of such proceeds to the board of education of the county school district; and

(C) As to the proceeds remaining after the distribution provided for in subparagraph (A) of this paragraph, with regard to the proceeds associated with and collected on motor vehicle titles for motor vehicles registered in the incorporated areas of the county, the tag agent of the county shall within 20 days following the end of each calendar month allocate such proceeds by the municipality from which the proceeds were derived and then, for each such municipality, distribute 23 percent of such proceeds to the county governing authority and 28 percent of such proceeds to the governing authority of such municipality, and the remaining 49 percent of such proceeds shall be distributed to the board of education of the county school district; provided, however, that, if there is an independent school district in such municipality, then 23 percent of such proceeds shall be distributed to the county governing authority and 34 percent of such proceeds shall be distributed to the governing authority of such municipality and the remaining 43 percent of such proceeds shall be distributed to the board of education of the independent school district.

(d)(1)(A) Upon the death of an owner of a motor vehicle which has not become subject to paragraph (1) of subsection (b) of this Code section, the immediate family member or immediate family members of such owner who receive such motor vehicle pursuant to a will or under the rules of inheritance shall, subsequent to the transfer of title of such motor vehicle, continue to be subject to ad valorem tax under Chapter 5 of this title and shall not be subject to the state and local title ad valorem tax fees provided for in paragraph (1) of subsection (b) of this Code section unless the immediate family member or immediate family members make an affirmative written election to become subject to paragraph (1) of subsection (b) of this Code section. In the event of such election, such transfer shall be subject to the state and local title ad valorem tax fees provided for in paragraph (1) of subsection (b) of this Code section.

(B) Upon the death of an owner of a motor vehicle which has become subject to paragraph (1) of subsection (b) of this Code section, the immediate family member or immediate family members of such owner who receive such motor vehicle pursuant to a will or under the rules of inheritance shall be subject to a state title ad valorem tax fee in an amount equal to one-quarter of 1 percent of the fair market value of the motor vehicle and a

local title ad valorem tax fee in an amount equal to one-quarter of 1 percent of the fair market value of the motor vehicle. Such title ad valorem tax fees shall be an alternative ad valorem tax as authorized by Article VII, Section I, Paragraph III(b)(3) of the Georgia Constitution.

(2)(A) Upon the transfer from an immediate family member of a motor vehicle which has not become subject to paragraph (1) of subsection (b) of this Code section, the immediate family member or immediate family members who receive such motor vehicle shall, subsequent to the transfer of title of such motor vehicle, continue to be subject to ad valorem tax under Chapter 5 of this title and shall not be subject to the state and local title ad valorem tax fees provided for in paragraph (1) of subsection (b) of this Code section unless the immediate family member or immediate family members make an affirmative written election to become subject to paragraph (1) of subsection (b) of this Code section. In the event of such election, such transfer shall be subject to the state and local title ad valorem tax fees provided for in paragraph (1) of subsection (b) of this Code section.

(B) Upon the transfer from an immediate family member of a motor vehicle which has become subject to paragraph (1) of subsection (b) of this Code section, the immediate family member who receives such motor vehicle shall transfer title of such motor vehicle to such recipient family member and shall be subject to a state title ad valorem tax fee in an amount equal to one-quarter of 1 percent of the fair market value of the motor vehicle and a local title ad valorem tax fee in an amount equal to one-quarter of 1 percent of the fair market value of the motor vehicle. Such title ad valorem tax fees shall be an alternative ad valorem tax as authorized by Article VII, Section I, Paragraph III(b)(3) of the Georgia Constitution.

(C) Any title transfer under this paragraph shall be accompanied by an affidavit of the transferor and transferee that such persons are immediate family members to one another. There shall be a penalty imposed on any person who, in the determination of the state revenue commissioner, falsifies any material information in such affidavit. Such penalty shall not exceed $2,500.00 as a state penalty and shall not exceed $2,500.00 as a local penalty as determined by the state revenue commissioner. Such determination shall be made within 60 days of the state revenue commissioner receiving information of a possible violation of this paragraph.

(3) Any individual who:

(A) Is required by law to register a motor vehicle or motor

vehicles in this state which were registered in the state in which such person formerly resided; and

(B) Is required to file an application for a certificate of title under Code Section 40-3-21 or 40-3-32

shall be required to pay state and local title ad valorem tax fees in an amount equal to 3 percent of the fair market value of the motor vehicle.

(4) The state and local title ad valorem tax fees provided for under this Code section shall not apply to corrected titles, replacement titles under Code Section 40-3-31, or titles reissued to the same owner pursuant to Code Sections 40-3-50 through 40-3-56.

(5) Any motor vehicle subject to state and local title ad valorem tax fees under paragraph (1) of subsection (b) of this Code section shall continue to be subject to the title, license plate, revalidation decal, and registration requirements and applicable fees as otherwise provided in Title 40 in the same manner as motor vehicles which are not subject to state and local title ad valorem tax fees under paragraph (1) of subsection (b) of this Code section.

(6) Motor vehicles owned or leased by or to the state or any county, consolidated government, municipality, county or independent school district, or other government entity in this state shall not be subject to the state and local title ad valorem tax fees provided for under paragraph (1) of subsection (b) of this Code section; provided, however, that such other government entity shall not qualify for the exclusion under this paragraph unless it is exempt from ad valorem tax and sales and use tax pursuant to general law.

(7)(A) Any motor vehicle which is exempt from sales and use tax pursuant to paragraph (30) of Code Section 48-8-3 shall be exempt from state and local title ad valorem tax fees under this subsection.

(B) Any motor vehicle which is exempt from ad valorem taxation pursuant to Code Section 48-5-478, 48-5-478.1, 48-5-478.2, or 48-5-478.3 shall be exempt from state and local title ad valorem tax fees under paragraph (1) of subsection (b) of this Code section.

(C) (Repealed effective December 31, 2029.) Each disabled first responder shall be allowed an exemption from state and local title ad valorem tax fees under paragraph (1) of subsection (b) of this Code section levied on a maximum of $50,000.00 in aggregate of the fair market value combined for all motor vehicles that he or she registers in this state during any three-year period. This subparagraph shall stand repealed on December 31, 2029.

(7.1)(A) As used in this paragraph, the term "for-hire charter bus or motor coach" means a motor vehicle designed for carrying more than 15 passengers and used for the transportation of persons for compensation.

(B) In the case of for-hire charter buses or motor coaches, the person applying for a certificate of title shall be required to pay title ad valorem tax fees in the amount of 50 percent of the amount which would otherwise be due and payable under this subsection at the time of filing the application for a certificate of title, and the remaining 50 percent shall be paid within 12 months following the filing of such application.

(8) There shall be a penalty imposed on the transfer of all or any part of the interest in a business entity that includes primarily as an asset of such business entity one or more motor vehicles, when, in the determination of the state revenue commissioner, such transfer is done to evade the payment of state and local title ad valorem tax fees under this subsection. Such penalty shall not exceed $2,500.00 as a state penalty per motor vehicle and shall not exceed $2,500.00 as a local penalty per motor vehicle, as determined by the state revenue commissioner, plus the amount of the state and local title ad valorem tax fees. Such determination shall be made within 60 days of the state revenue commissioner receiving information that a transfer may be in violation of this paragraph.

(9) Any owner of any motor vehicle who fails to submit within 30 days of the date such owner is required by law to register such vehicle in this state an application for a first certificate of title under Code Section 40-3-21 or a certificate of title under Code Section 40-3-32 shall be required to pay a penalty in the amount of 10 percent of the state title ad valorem tax fees and 10 percent of the local title ad valorem tax fees required under this Code section and, if such state and local title ad valorem tax fees and the penalty are not paid within 60 days following the date such owner is required by law to register such vehicle, interest at the rate of 1 percent per month shall be imposed on the state and local title ad valorem tax fees due under this Code section, unless a temporary permit has been issued by the tax commissioner. The tax commissioner shall grant a temporary permit in the event the failure to timely apply for a first certificate of title is due to the failure of a lienholder to comply with Code Section 40-3-56, regarding release of a security interest or lien, and no penalty or interest shall be assessed. Such penalty and interest shall be in addition to the penalty and fee required under Code Section 40-3-21 or 40-3-32, as applicable.

(10) The owner of any motor vehicle for which a title was issued in this state on or after January 1, 2012, and prior to March 1, 2013,

shall be authorized to opt in to the provisions of this subsection at any time prior to February 28, 2014, upon compliance with the following requirements:

(A)(i) The total amount of Georgia state and local title ad valorem tax fees which would be due from March 1, 2013, to December 31, 2013, if such vehicle had been titled in 2013 shall be determined; and

(ii) The total amount of Georgia state and local sales and use tax and Georgia state and local ad valorem tax under Chapter 5 of this title which were due and paid in 2012 for that motor vehicle and, if applicable, the total amount of such taxes which were due and paid for that motor vehicle in 2013 and 2014 shall be determined; and

(B)(i) If the amount derived under division (i) of subparagraph (A) of this paragraph is greater than the amount derived under division (ii) of subparagraph (A) of this paragraph, the owner shall remit the difference to the tag agent. Such remittance shall be deemed local title ad valorem tax fee proceeds; or

(ii) If the amount derived under division (i) of subparagraph (A) of this paragraph is less than the amount derived under division (ii) of subparagraph (A) of this paragraph, no additional amount shall be due and payable by the owner.

Upon certification by the tag agent of compliance with the requirements of this paragraph, such motor vehicle shall not be subject to ad valorem tax as otherwise required under Chapter 5 of this title in the same manner as otherwise provided in paragraph (1) of subsection (b) of this Code section.

(11)(A) In the case of rental motor vehicles owned by a rental motor vehicle concern, the state title ad valorem tax fee shall be in an amount equal to .625 percent of the fair market value of the motor vehicle, and the local title ad valorem tax fee shall be in an amount equal to .625 percent of the fair market value of the motor vehicle, but only if in the immediately prior calendar year the average amount of sales and use tax attributable to the rental charge of each such rental motor vehicle was at least $400.00 as certified by the state revenue commissioner. If, in the immediately prior calendar year, the average amount of sales and use tax attributable to the rental charge of each such rental motor vehicle was not at least $400.00, this paragraph shall not apply and such vehicles shall be subject to the state and local title ad valorem tax fees prescribed in division (b)(1)(B)(ii) of this Code section.

(B) Such title ad valorem tax fees shall be an alternative ad

valorem tax as authorized by Article VII, Section I, Paragraph III(b)(3) of the Georgia Constitution.

(12) A loaner vehicle shall not be subject to state and local title ad valorem tax fees under paragraph (1) of subsection (b) of this Code section for a period of time not to exceed 366 days commencing on the date such loaner vehicle is withdrawn temporarily from inventory. Immediately upon the expiration of such 366 day period, if the dealer does not return the loaner vehicle to inventory for resale, the dealer shall be responsible for remitting state and local title ad valorem tax fees in the same manner as otherwise required of an owner under paragraph (9) of this subsection and shall be subject to the same penalties and interest as an owner for noncompliance with the requirements of paragraph (9) of this subsection.

(13) Any motor vehicle which is donated to a nonprofit organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code shall, when titled in the name of such nonprofit organization, not be subject to state and local title ad valorem tax fees under paragraph (1) of subsection (b) of this Code section but shall be subject to state and local title ad valorem tax fees in the amount of 1 percent of the fair market value of the motor vehicle. Such title ad valorem tax fees shall be an alternative ad valorem tax as authorized by Article VII, Section I, Paragraph III(b)(3) of the Georgia Constitution.

(14)(A) A lessor of motor vehicles that leases motor vehicles for more than 31 consecutive days to lessees residing in this state shall register with the department. The department shall collect an annual fee of $100.00 for such registrations. Failure of a lessor to register under this subparagraph shall subject such lessor to a civil penalty of $2,500.00.

(B) A lessee residing in this state who leases a motor vehicle under this paragraph shall register such motor vehicle with the tag agent in such lessee's county of residence within 30 days of the commencement of the lease of such motor vehicle or beginning residence in this state, whichever is later.

(C) A lessor that leases a motor vehicle under this paragraph to a lessee residing in this state shall apply for a certificate of title in this state within 30 days of the commencement of the lease of such motor vehicle.

(15) There shall be no liability for any state or local title ad valorem tax fees in any of the following title transactions:

(A) The addition or substitution of lienholders on a motor vehicle title so long as the owner of the motor vehicle remains the same;

(B) The acquisition of a bonded title by a person or entity pursuant to Code Section 40-3-28 if the title is to be issued in the name of such person or entity;

(C) The acquisition of a title to a motor vehicle by a person or entity as a result of the foreclosure of a mechanic's lien pursuant to Code Section 40-3-54 if such title is to be issued in the name of such lienholder;

(D) The acquisition of a title to an abandoned motor vehicle by a person or entity pursuant to Chapter 11 of Title 40 if such person or entity is a manufacturer or dealer of motor vehicles and the title is to be issued in the name of such person or entity;

(E) The obtaining of a title to a stolen motor vehicle by a person or entity pursuant to Code Section 40-3-43;

(F) The obtaining of a title by and in the name of a motor vehicle manufacturer, licensed distributor, licensed dealer, or licensed rebuilder for the purpose of sale or resale or to obtain a corrected title, provided that the manufacturer, distributor, dealer, or rebuilder shall submit an affidavit in a form promulgated by the commissioner attesting that the transfer of title is for the purpose of accomplishing a sale or resale or to correct a title only;

(G) The obtaining of a title by and in the name of the holder of a security interest when a motor vehicle has been repossessed after default in accordance with Part 6 of Article 9 of Title 11 if such title is to be issued in the name of such security interest holder;

(H) The obtaining of a title by a person or entity for purposes of correcting a title, changing an odometer reading, or removing an odometer discrepancy legend, provided that, subject to subparagraph (F) of this paragraph, title is not being transferred to another person or entity;

(I) The obtaining of a title by a person who pays state and local title ad valorem tax fees on a motor vehicle and subsequently moves out of this state but returns and applies to retitle such vehicle in this state;

(J) The obtaining of a replacement title on a vehicle that is not less than 15 years old upon sufficient proof provided to the commissioner that such title no longer exists;

(K) The transfer of a title made as a result of a business reorganization when the owners, partners, members, or stockholders of the business being reorganized maintain the same

proportionate interest or share in the newly formed business reorganization;

(L) The transfer of a title from a company to an owner of the company for the purpose of such individual obtaining a prestige or special license plate for the motor vehicle;

(M) The transfer of a title from an owner of a company to the company; and

(N) The transfer of a title from one legal entity in which an individual holds an ownership interest of at least 50 percent to another legal entity in which the same individual holds an ownership interest of at least 50 percent, provided that the alternative ad valorem tax imposed by this chapter has been levied on such motor vehicle and has been paid by the transferring entity or such individual.

(16) It shall be unlawful for a person to fail to obtain a title for and register a motor vehicle in accordance with the provisions of this chapter. Any person who knowingly and willfully fails to obtain a title for or register a motor vehicle in accordance with the provisions of this chapter shall be guilty of a misdemeanor.

(17)(A) Any person who purchases a 1963 through 1989 model year motor vehicle for which such person obtains a title shall be subject to this Code section, but the state title ad valorem tax fee shall be in an amount equal to 0.5 percent of the fair market value of such motor vehicle, and the local title ad valorem tax fee shall be in an amount equal to 0.5 percent of the fair market value of such motor vehicle.

(B) The owner of a 1962 or earlier model year motor vehicle who obtains a conditional title pursuant to Code Section 40-3-21.1 for such motor vehicle shall be authorized to opt in to the provisions of this subsection upon the payment of a state title ad valorem tax fee in an amount equal to 0.5 percent of the fair market value of such motor vehicle and a local title ad valorem tax fee in an amount equal to 0.5 percent of the fair market value of such motor vehicle. Upon certification by the tag agent of compliance with the requirements of this subparagraph, such motor vehicle shall not be subject to ad valorem tax as otherwise required under Chapter 5 of this title in the same manner as otherwise provided in paragraph (1) of subsection (b) of this Code section.

(18)(A) Upon the transfer of title as the result of a divorce decree or court order of a motor vehicle which has not become subject to paragraph (1) of subsection (b) of this Code section, the person

who receives such motor vehicle shall, subsequent to the transfer of title of such motor vehicle, continue to be subject to the ad valorem tax under Chapter 5 of this title and shall not be subject to the state and local title ad valorem tax fees provided for in paragraph (1) of subsection (b) of this Code section unless such person makes an affirmative written election to become subject to paragraph (1) of subsection (b) of this Code section. In the event of such election, such transfer shall be subject to the state and local title ad valorem tax fees provided for in paragraph (1) of subsection (b) of this Code section.

(B) Upon the transfer of title as the result of a divorce decree or court order of a motor vehicle which has become subject to paragraph (1) of subsection (b) of this Code section, the person who receives such motor vehicle shall, at the time of the transfer of title of such motor vehicle, be subject to a state title ad valorem tax fee in an amount equal to one-half of 1 percent of the fair market value of the motor vehicle and a local title ad valorem tax fee in an amount equal to one-half of 1 percent of the fair market value of the motor vehicle. Such title ad valorem tax fees shall be an alternative ad valorem tax as authorized by Article VII, Section I, Paragraph III(b)(3) of the Georgia Constitution.

(C) Any title transfer under this paragraph shall be accompanied by an affidavit of the transferee that such transfer is pursuant to a divorce decree or court order, and the transferee shall attach such decree or order to the affidavit. There shall be a penalty imposed on any person who, in the determination of the state revenue commissioner, falsifies any material information in such affidavit. Such penalty shall not exceed $2,500.00 as a state penalty and shall not exceed $2,500.00 as a local penalty as determined by the state revenue commissioner. Such determination shall be made within 60 days of the state revenue commissioner receiving information of a possible violation of this paragraph.

(e) The fair market value of any motor vehicle subject to this Code section shall be appealable in the same manner as otherwise authorized for a motor vehicle subject to ad valorem taxation under Code Section 48-5-450; provided, however, that the person appealing the fair market value shall first pay the full amount of the state and local title ad valorem tax prior to filing any appeal. If the appeal is successful, the amount of the tax owed shall be recalculated and, if the amount paid by the person appealing the determination of fair market value is greater than the recalculated tax owed, the person shall be promptly given a refund of the difference.

(f) Beginning in 2014, on or before January 31 of each year, the department shall provide a report to the chairpersons of the House

Committee on Ways and Means and the Senate Finance Committee showing the state and local title ad valorem tax fee revenues collected pursuant to this chapter and the motor vehicle ad valorem tax proceeds collected pursuant to Chapter 5 of this title during the preceding calendar year.

(g) A motor vehicle dealer shall be authorized to apply to the county tag agent of the county in which such motor vehicle is registered for a refund of state and local title ad valorem taxes on behalf of the person who purchased a motor vehicle from such dealer. Such dealer shall promptly pay to such purchaser any refund received by the dealer which is owed to the purchaser, and in any event, such payment shall be made no later than ten days following the receipt of such refund by the dealer. The county tag agent shall approve or deny the request for refund within 30 days after the filing of the application for refund. If the county tag agent denies the refund, the county tag agent shall specify the reasons for such denial. The motor vehicle dealer shall be authorized to appeal such denial to the commissioner within 30 days following such denial.

History.

Code 1981, § 48-5C-1, enacted by Ga. L. 2012, p. 257, § 1-4/HB 386; Ga. L. 2013, p. 7, § 2/HB 266; Ga. L. 2013, p. 32, § 4/HB 463; Ga. L. 2013, p. 141, § 48/HB 79; Ga. L. 2015, p. 5, § 48/HB 90; Ga. L. 2015, p. 1219, § 23/HB 202; Ga. L. 2016, p. 758, § 3/SB 379; Ga. L. 2016, p. 864, § 48/HB 737; Ga. L. 2017, p. 499, § 1/HB 340; Ga. L. 2018, p. 8, § 2-1/HB 918; Ga. L. 2018, p. 287, § 1/HB 329; Ga. L. 2019, p. 908, § 3/SB 138; Ga. L. 2019, p. 936, §§ 1-4/SB 65; Ga. L. 2019, p. 1056, § 48/SB 52; Ga. L. 2020, p. 18, § 1/HB 779; Ga. L. 2020, p. 346, § 1/HB 808; Ga. L. 2020, p. 493, § 48/SB 429; Ga. L. 2021, p. 316, § 1/HB 63; Ga. L. 2024, p. 794, § 3-3/HB 1181, effective January 1, 2025.

Delayed effective date.

Code Section 48-5C-1 is set out twice in this Code. This version is effective January 1, 2025. For version effective until January 1, 2025, see the preceding version.

Amendments.

The 2024 amendment, effective January 1, 2025, added the last sentence in paragraph (a)(.1) and subparagraph (d)(7)(C).

CHAPTER 6

TAXATION OF INTANGIBLES

Article 1

Real Estate Transfer Tax

Sec.

48-6-1. Transfer tax rate.

48-6-2. Exemption of certain instruments, deeds, or writings from real estate transfer tax; requirement that consideration be shown.

48-6-3. Persons required to pay real estate transfer tax.

48-6-4. Payment of tax prerequisite to filing deed, instrument, or other writing; certification of payment; recording certification with deed.

48-6-5. Clerks of superior courts responsible for tax collecting; fees.

48-6-6. Annual report of tax distribution.

48-6-7. (For effective date, see note.) Refund of erroneously or illegally collected tax; procedure for filing claim; action for refund in superior court upon denial of claim; manner of paying refund.

48-6-8. Distribution of tax revenues among state and other tax jurisdictions and districts.

48-6-9. Failure to collect, account for, and pay over tax imposed by article; penalty.

48-6-10. Evasion of tax imposed by article; penalty.

Article 2

Intangible Personal Property Tax

48-6-20 through 48-6-44. [Reserved].

Article 3

Intangible Recording Tax

Sec.

48-6-60. Definitions.

48-6-61. Filing instruments securing long-term notes; procedure; intangible recording tax; rate; maximum tax.

48-6-62. Certification of payment of tax; alternate procedure for filing new or modified note.

48-6-63. [Reserved] Ad valorem taxation of short-term notes secured by real estate; rate; exemptions.

48-6-64. Tax imposed on long-term and short-term notes secured by realty.

48-6-65. Extension, transfer, assignment, modification, or renewal of instrument; exemption for amount of note refinanced.

48-6-66. Showing correct amount and due date on instruments conveying, encumbering, or creating a lien upon real estate.

48-6-67. Violation of Code Section 48-6-66; penalty.

48-6-68. Bond for title in absence of security deed; recording and tax.

48-6-69. Encumbered real property located in more than one county; encumbered real property located within and outside state and secured by instrument held by nonresident.

48-6-70. Encumbered real property located outside state and secured by instrument held by resident.

48-6-71. Determinations by commissioner of whether tax is payable; determinations to be public record; effect of nonpayment in reliance on determination.

48-6-72. Collection and distribution of revenues.

48-6-73. Reports and distributions by collecting officer; failure to distribute as breach of duty and bond; commissions; long-term notes not

Sec.
entered on property tax digest.
48-6-74. Distribution of revenues from intangible recording tax; procedure when real property located in more than one county.
48-6-75. Collection procedures in absence of collecting officer.
48-6-76. (For effective date, see note.) Procedure for protesting intangible recording tax; payment under protest; special escrow fund; filing claim; approval or denial by commissioner; action for refund.
48-6-77. Failure to pay intangible recording tax bars action on indebtedness; removal of bar; penalty; conditions under which penalty waived; acquisition of instrument by holder exempt from tax.

Article 4

Taxation of Financial Institutions

48-6-90. Definitions.
48-6-90.1. Depository financial institutions subject to state and local taxation as business corporations.
48-6-91. Exemption for domestic international banking facilities.
48-6-92. [Reserved] Taxation of banks and building and loan associations under article exclusive; exception.
48-6-93. Local business license tax on depository financial institutions; tax rate based on Georgia gross receipts; return required; credits.
48-6-94. Rate of taxation of moneyed capital competing with national banks.
48-6-95. Special state occupation tax on depository financial institutions; tax rate based on Georgia gross receipts; return required; annual report; credits.
48-6-96. Exemptions, credits, and deductions from taxation of depository financial institutions filing consolidated returns with parent organization.
48-6-97. Taxation of credit unions; legislative intent to tax state and federally chartered credit unions equally.
48-6-98. Legislative intent to tax all depository financial institutions equally; interim special tax limitation for savings and loan associations.

RESEARCH REFERENCES

ALR.

Taxation of intangible property of foreign corporation having chief place of business in the state, 104 A.L.R. 806.

Tax on corporations as affected by fact that corporation is not actually engaged in or carrying on business for which it was incorporated, 124 A.L.R. 1109.

ARTICLE 1

REAL ESTATE TRANSFER TAX

JUDICIAL DECISIONS

Real estate transfer tax is not a tax on the property as such, as is the ad valorem tax which is charged against the owner of the property or against the specific property. Rather, it is an excise tax on transactions involving the sale of property. City of Columbus v. Ronald A. Edwards Constr. Co., 155 Ga. App. 502,

271 S.E.2d 643, 1980 Ga. App. LEXIS 2636 (1980).

Real estate transfer tax does not preempt builder-contractor's license tax. — Real estate transfer tax does not preempt city's gross receipts tax, which is a license tax required by city ordinance as a condition precedent before a builder-contractor can carry on everyday business. City of Columbus v. Ronald A. Edwards Constr. Co., 155 Ga. App. 502, 271 S.E.2d 643, 1980 Ga. App. LEXIS 2636 (1980).

City gross receipts tax is not special law covering subject already covered by general law. — City's gross receipts tax is distinguishable from the real estate transfer tax, which is imposed on every transferor of real property on each individual sale of such property, regardless of whether the transferor has a license to sell real property and regardless of whether such transferor is subject to a gross receipts tax, and hence is not a special law for which provision has been made by an existing general law. City of Columbus v. Ronald A. Edwards Constr. Co., 155 Ga. App. 502, 271 S.E.2d 643, 1980 Ga. App. LEXIS 2636 (1980).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, Ch. 92-8 are included in the annotations for this article.

Exemption of transactions to which national bank a party. — Real estate transfer tax cannot be levied on any transaction to which a national bank is a party. National banks are still instrumentalities of the United States government which, together with all of the government's agencies and instrumentalities, is immune from state taxation unless Congress consents to such taxation. 1968 Op. Att'y Gen. No. 68-360 (decided under former Code 1933, Ch. 92-8).

Applicability to property acquired by Department of Transportation. — Tax on transfer of real property does not apply to property acquired by the Department of Transportation under the authority of Ga. L. 1973, p. 947, § 1 (see now O.C.G.A. Art. 1, Ch. 3, T. 32). 1974 Op. Att'y Gen. No. U74-56 (decided under former Code 1933, Ch. 92-8).

Taxation of exchange of realty. — Real estate transactions which involve an exchange of realty and in which no cash or monetary consideration changes hands are subject to the transfer tax. 1968 Op. Att'y Gen. No. 68-71 (decided under former Code 1933, Ch. 92-8).

Basis for computation of tax on long-term lease. — Computation of the real estate transfer tax on a long-term lease is based on the consideration (rent) when it is definite in amount, or may be definitely determined and on the value of the interest conveyed when the consideration is indefinite or is left open to be fixed by future contingencies. 1968 Op. Att'y Gen. No. 68-519 (decided under former Code 1933, Ch. 92-8).

RESEARCH REFERENCES

ALR.

Life insurance as affecting transfer or succession tax, 63 A.L.R. 394; 92 A.L.R. 943; 118 A.L.R. 324; 150 A.L.R. 1268.

"Business situs" for purposes of property taxation of intangibles in state other than domicile of owner, 143 A.L.R. 361.

Computation of tax upon conveyance to mortgagee upon foreclosure, or upon direct conveyance by mortgagor to mortgagee, 73 A.L.R.2d 157.

48-6-1. Transfer tax rate.

There is imposed a tax at the rate of $1.00 for the first $1,000.00 or fractional part of $1,000.00 and at the rate of 10¢ for each additional $100.00 or fractional part of $100.00 on each deed, instrument, or other writing by which any lands, tenements, or other realty sold is granted, assigned, transferred, or otherwise conveyed to or vested in the purchaser or purchasers, or any other person or persons by his or their direction, when the consideration or value of the interest or property conveyed (exclusive of the value of any lien or encumbrance existing prior to the sale and not removed by the sale) exceeds $100.00.

History.

Ga. L. 1967, p. 788, § 1; Ga. L. 1971, p. 266, § 1; Code 1933, § 91A-3001, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1998, p. 1012, § 1.

Editor's notes.

The 1998 amendment was contingent on approval of the constitutional amendment (Ga. L. 1998, p. 1684) creating the Land, Water, Wildlife, and Recreation Heritage Fund which was defeated at the November, 1998, general election and was not given effect.

Administrative rules and regulations.

Substantive Regulations, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Local Government Services Division, Rule 560-11-2-.01 et seq.

Intangible recording tax, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Revenue, Local Government Services Division, Chapter 560-11-8.

Law reviews.

For article surveying developments in Georgia local government law from mid-1980 through mid-1981, see 33 Mercer L. Rev. 187 (1981).

For article surveying developments in Georgia real property law from mid-1980 through mid-1981, see 33 Mercer L. Rev. 219 (1981).

JUDICIAL DECISIONS

Nature of tax. — Intangible tax imposed by O.C.G.A. § 48-6-61 is analogous to the real estate transfer tax imposed by O.C.G.A. § 48-6-1, both being based on increments in the value of the instrument being recorded and being calculated in the same manner. Bankers Trust Co. v. Jackson, 236 Ga. App. 490, 512 S.E.2d 378.

Real estate tax is an excise tax on transactions involving the sale of property. Bankers Trust Co. v. Jackson, 236 Ga. App. 490, 512 S.E.2d 378.

Because Georgia's ad valorem taxation scheme is contained in its own chapter, entirely separate from the chapter that describes the real estate transfer tax, the definition of taxable property in O.C.G.A. § 48-5-3 did not support an argument regarding the nature of the transfer tax in O.C.G.A. § 48-6-1 et seq. Athens-Clarke County Unified Gov't v. Fed. Hous. Fin. Agency, 945 F. Supp. 2d 1401, 2013 U.S. Dist. LEXIS 68225 (M.D. Ga. 2013), aff'd, 776 F.3d 1247, 2015 U.S. App. LEXIS 705 (11th Cir. 2015).

Recordation of deed and effect as notice when tax not paid. — Warranty deed which shows on the deed's face both that the deed was for a consideration in excess of $100.00, and that no tax has been paid is not entitled to be recorded nor can such a deed serve as constructive notice to a later buyer. Higdon v. Gates, 238 Ga. 105, 231 S.E.2d 345, 1976 Ga. LEXIS 1116 (1976).

Municipal Electric Authority of Georgia is exempt from the transfer tax imposed by this statute. Thompson v. Municipal Elec. Auth., 238 Ga. 19, 231 S.E.2d 720, 1976 Ga. LEXIS 1077 (1976).

Florida public authority not entitled to exemption. — Florida public authority's action under O.C.G.A.

§ 48-6-7(b), protesting the denial by the Revenue Commissioner of the State of Georgia of the authority's request for a refund of real estate transfer tax, paid pursuant to O.C.G.A. § 48-6-1, was denied when it was found that the exemption provided in O.C.G.A. § 48-6-2(a)(3) did not apply to the out-of-state public authority; the commissioner's determination that the exemption did not apply to such an entity was entitled to deference pursuant to the principles of O.C.G.A. § 48-2-12. Hicks v. Fla. State Bd. of Admin., 265 Ga. App. 545, 594 S.E.2d 745, 2004 Ga. App. LEXIS 179 (2004).

Federal mortgage companies exempt. — Exemptions from state taxation in 12 U.S.C. §§ 1452(e), 1723a(c)(2), and 4617(j)(2) apply to specific entities, not property, and include excise taxes; thus, imposition of Georgia's real estate transfer tax, O.C.G.A. § 48-6-1 et seq., on these federal mortgage companies' real estate transactions in Georgia was precluded. Athens-Clarke County Unified Gov't v. Fed. Hous. Fin. Agency, 945 F. Supp. 2d 1401, 2013 U.S. Dist. LEXIS 68225 (M.D. Ga. 2013), aff'd, 776 F.3d 1247, 2015 U.S. App. LEXIS 705 (11th Cir. 2015).

Exemption of Fannie Mae, Freddie Mac, and the Federal Housing Finance Agency from "all taxation" applies to Georgia's real estate transfer tax and the exception allowing taxation of real property does not extend to transfer taxes, which are excise taxes and not taxes imposed on the property itself. Montgomery County Comm'n v. Fed. Hous. Fin. Agency, 776 F.3d 1247, 2015 U.S. App. LEXIS 705 (11th Cir. 2015).

OPINIONS OF THE ATTORNEY GENERAL

Conveyances pursuant to AT&T divestiture. — Conveyances of real estate from Southern Bell to Southern States, Southeast, and AT&T Information Systems, Inc. in connection with the divestiture of AT&T are subject to the Georgia real estate transfer tax. 1983 Op. Att'y Gen. No. 83-81.

Easements acquired by public utilities through condemnation. — Real estate transfer tax applies to easements acquired by public utilities through condemnation. 1998 Op. Att'y Gen. No. 98-19.

Exemption of transactions to which political subdivision is party. — Statute does not specifically impose a tax on transactions in which a political subdivision is a party. Accordingly, when a political subdivision is a party, it is not subject to the transfer tax. The other party is not subject to the tax on the transaction since, when the party primarily liable for the tax is not subject to it, the tax cannot be imposed on the party secondarily liable. 1968 Op. Att'y Gen. No. 68-65.

National banks, regardless of the location of their principal offices, are subject to the documentary tax imposed by Ga. L. 1967, p. 788 (see now O.C.G.A. Art. 1, Ch. 6, T. 48). 1970 Op. Att'y Gen. No. 70-52.

Foreclosure is a sale and is subject to the transfer tax. 1968 Op. Att'y Gen. No. 68-67.

Deed given in lieu of foreclosure is a sale. — Transaction involving a deed from a mortgagor to a mortgagee in lieu of foreclosure is subject to Ga. L. 1967, p. 788 (see now O.C.G.A. Art. 1, Ch. 6, T. 48). 1968 Op. Att'y Gen. No. 68-89.

Deed from the administrator of an intestate estate to the heirs of the intestate is not a taxable transfer under Ga. L. 1967, p. 788 (see now O.C.G.A. Art. 1, Ch. 6, T. 48). 1969 Op. Att'y Gen. No. 69-225.

Deed of gift. — Statute applies only to realty sold, and a deed of gift is not a sale. 1968 Op. Att'y Gen. No. 68-67.

Estate for years. — Real estate transfer tax is applicable to conveyance of an estate for years. 1968 Op. Att'y Gen. No. 68-474.

Lease may be subject to the transfer tax when the lease may be construed to convey an interest in realty. 1968 Op. Att'y Gen. No. 68-157.

Person holding a contract permitting the person to cut and remove timber during a stated period

is obligated to pay ad valorem taxes on the standing timber as the person's interest therein may appear on January 1 of the tax year. A contract to remove timber is in the nature of a deed rather than a lease. 1973 Op. Att'y Gen. No. U73-96.

Cemetery deed not taxable. — Cemetery deed for interment rights is only an easement in the soil for the purpose of the grant. Since an easement in land is a mere license and does not convey an interest in land, no land has been sold and no real estate transfer tax is due. 1968 Op. Att'y Gen. No. 68-78.

Exchange of corporate stocks. — Tax is due when stock of one corporation is exchanged for property of another, even when both are owned by the same people. 1969 Op. Att'y Gen. No. 69-515.

When promissory note secured by deed is an encumbrance existing at time of sale. — Promissory note secured by a deed to secure debt given as part of the consideration in a sale of real estate is a lien or encumbrance remaining on the property at the time of sale within the meaning of this statute, when such promissory note and deed to secure debt are executed and delivered prior to the delivery of the warranty deed by the vendor to the purchaser. 1968 Op. Att'y Gen. No. 68-203.

RESEARCH REFERENCES

ALR.

Discrimination between notes or obligations secured by real estate mortgage, and those unsecured, as regards property taxation or exemption therefrom, 129 A.L.R. 682.

48-6-2. Exemption of certain instruments, deeds, or writings from real estate transfer tax; requirement that consideration be shown.

(a) The tax imposed by Code Section 48-6-1 shall not apply to:

(1) Any instrument or writing given to secure a debt;

(2) Any deed of gift;

(3) Any deed, instrument, or other writing to which any of the following is a party: the United States; this state; any agency, board, commission, department, or political subdivision of either the United States or this state; any public authority; or any nonprofit public corporation;

(4) Any lease of lands, tenements, standing timber, or other realty or any lease of any estate, interest, or usufruct in any lands, tenements, standing timber, or other realty;

(5) Any transfer of real estate between a husband and wife in connection with a divorce case;

(6) Any order for year's support awarding an interest in real property as provided in former Code Section 53-5-11 as such existed on December 31, 1997, if applicable, or Code Section 53-3-11;

(7) Any deed issued in lieu of foreclosure if the deed issued in lieu of foreclosure is for a purchase money deed to secure debt that has been in existence and properly executed and recorded for a period of 12 months prior to the recording of the deed in lieu of foreclosure;

(7.1) The deed from the debtor to the first transferee at a foreclosure sale;

(8) Transfer of property which is acquired as provided in Code Sections 32-3-2 and 32-3-3;

(8.1) Any deed that seeks to return any property sold at a tax sale back to the defendant in fi. fa.;

(9) Any deed of assent or distribution by an executor, administrator, guardian, trustee, or custodian; any deed or other instrument carrying out the exercise of a power of appointment; and any other instrument transferring real estate to or from a fiduciary; provided, however, that the exemption provided under this paragraph shall apply only if the transfer is without valuable consideration;

(10) Any deed, instrument, or other writing which effects a division of real property among joint tenants or tenants in common if the transaction does not involve any consideration other than the division of the property; and

(11)(A) Any deed, instrument, or other writing through which real property is transferred from one or more individual owners to a corporation, partnership, or other entity if the individual owner or owners of the real property also have a majority ownership interest in the corporation, partnership, or other entity to which the property is transferred; or

(B) Any deed, instrument, or other writing through which real property is transferred from a corporation, partnership, or other entity to one or more individuals if the individual or individuals to whom the property is transferred also have a majority ownership interest in the corporation, partnership, or other entity by which the property is transferred.

(b) In order to exercise any exemption provided in this Code section, the total consideration of the transfer for real and personal property conveyed shall be shown on the form prescribed in subsection (c) of Code Section 48-6-4.

History.

Ga. L. 1967, p. 788, § 3; Ga. L. 1968, p. 1102, § 1; Ga. L. 1969, p. 109, § 1; Ga. L. 1975, p. 782, § 1; Ga. L. 1976, p. 1059, § 3; Ga. L. 1977, p. 680, § 1; Code 1933, § 91A-3003, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 52A; Ga. L. 1980, p. 491, § 2; Ga. L. 1984, p. 936, § 1; Ga. L. 1991, p. 965, § 1; Ga. L. 1996, p. 736, § 1; Ga. L. 1998, p. 128, § 48; Ga. L. 2003, p. 874, § 1; Ga. L. 2006, p. 770, § 7/SB 585; Ga. L. 2011, p. 752, § 48/HB 142; Ga. L. 2015, p. 1219, § 24/HB 202.

Editor's notes.

Ga. L. 2006, p. 770, § 8/SB 585, not codified by the General Assembly, provides the amendment by that Act shall apply to all executions transferred on or

after July 1, 2006, and executions transferred prior to July 1, 2006, shall not be affected.

Law reviews.

For annual survey of administrative law, see 56 Mercer L. Rev. 31 (2004).

JUDICIAL DECISIONS

Florida public authority not entitled to exemption. — Florida public authority's action under O.C.G.A. § 48-6-7(b), protesting the denial by the Revenue Commissioner of the State of Georgia of its request for a refund of real estate transfer tax, paid pursuant to O.C.G.A. § 48-6-1, was denied since it was found that the exemption provided in O.C.G.A. § 48-6-2(a)(3) did not apply to the out-of-state public authority; the Commissioner's determination that the exemption did not apply to such an entity was entitled to deference pursuant to the principles of O.C.G.A. § 48-2-12. Hicks v. Fla. State Bd. of Admin., 265 Ga. App. 545, 594 S.E.2d 745, 2004 Ga. App. LEXIS 179 (2004).

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Conveyance of right of way to Department of Transportation. — Conveyance of property as a right of way by the urban renewal agency of a city to the State Highway Department (now Department of Transportation) is not subject to the real estate transfer tax. 1969 Op. Att'y Gen. No. 69-145.

Exemption of deeds to which director of veterans service is party. — Deeds in which the administrator of veterans affairs (now director of veterans service) is either the grantor or the grantee are not subject to taxation. 1968 Op. Att'y Gen. No. 68-72.

Exemption of deeds under power of sale by director of veterans service. — Deeds under power of sale by the administrator of veterans affairs (now director of veterans service) as attorney-in-fact for a mortgagor who has obtained a direct loan are not subject to taxation under Ga. L. 1967, p. 788 (see now O.C.G.A. Art. 1, Ch. 6, T. 48) if the property is bid in by the administrator (now director). 1968 Op. Att'y Gen. No. 68-72.

Person holding a contract permitting person to cut and remove timber during a stated period is obligated to pay ad valorem taxes on the standing timber as the person's interest therein may appear on January 1 of the tax year. A contract to remove timber is in the nature of a deed rather than a lease. 1973 Op. Att'y Gen. No. U73-96.

RESEARCH REFERENCES

ALR.

Validity of tax on land trust certificates, 100 A.L.R. 804.

Discrimination between notes or obligations secured by real estate mortgage, and those unsecured, as regards property taxation or exemption therefrom, 129 A.L.R. 682.

Gift tax, 133 A.L.R. 986; 141 A.L.R. 452; 60 A.L.R.2d 1304.

Power to remit, release, or compromise tax claim, 28 A.L.R.2d 1425.

Presumption of consideration from revenue stamps on deed, 51 A.L.R.2d 1004.

Valuation of gift property for purposes of gift tax, 60 A.L.R.2d 1304.

Legislative power to exempt from taxation property, purposes, or uses additional to those specified in constitution, 61 A.L.R.2d 1031.

48-6-3. Persons required to pay real estate transfer tax.

The tax imposed by Code Section 48-6-1 shall be paid by the person

who executes the deed, instrument, or other writing or by the person for whose use or benefit the deed, instrument, or other writing is executed.

History.
Ga. L. 1967, p. 788, § 2; Code 1933, § 91A-3002, enacted by Ga. L. 1978, p. 309, § 2.

OPINIONS OF THE ATTORNEY GENERAL

When deed granted by federal agency is exempt, grantee also exempt. — When a deed from the secretary of housing and urban development to an individual or corporation, which deed conveys real property which previously has been acquired under mortgage insurance, is not taxable to the federal agency, the grantee, who is secondarily responsible, would not be liable for the tax on the exempt transaction. 1968 Op. Att'y Gen. No. 68-37.

RESEARCH REFERENCES

ALR.
"Business situs" for purposes of property taxation of intangibles in state other than domicile of owner, 143 A.L.R. 361.

48-6-4. Payment of tax prerequisite to filing deed, instrument, or other writing; certification of payment; recording certification with deed.

(a) It is the intent of the General Assembly that the tax imposed by this article be paid to the clerk of the superior court or his or her deputy, and that the actual consideration of real and personal property conveyed shall be shown separately on the form prescribed in subsection (c) of this Code section, prior to and as a prerequisite to the filing for record of any deed, instrument, or other writing described in Code Section 48-6-1.

(b) No deed, instrument, or other writing described in Code Section 48-6-1 shall be filed for record or recorded in the office of the clerk of the superior court or filed for record or recorded in or on any other official record of this state or of any county until the tax imposed by this article has been paid and until the actual consideration of real and personal property conveyed has been shown separately on the form prescribed in subsection (c) of this Code section; provided, however, that any such deed, instrument, or other writing filed or recorded which would otherwise constitute constructive notice shall constitute such notice whether or not such tax was in fact paid.

(c) The amount of tax to be paid on a deed, instrument, or other writing shall be determined on the basis of written disclosure of the actual consideration of the interest in the property granted, assigned, transferred, or otherwise conveyed. The disclosure of the amount of tax and the actual consideration shall be made on a form or in electronic

format prescribed by the commissioner and provided by the clerk of the superior court. By the fifteenth day of the month following the month the deed, instrument, or other writing is recorded, a physical or electronic copy of each disclosure shall be forwarded or made available electronically to the state auditor and to the tax commissioner and the board of tax assessors in the county where the deed, instrument, or other writing is recorded.

(d) Upon payment of the correct amount of tax, the clerk of the superior court or his or her deputy shall enter upon or attach to the deed, instrument, or other writing a certification of the fact that the tax as imposed by this article has been paid, the date, and the amount of the tax. The certification shall be signed by the clerk or deputy clerk receiving the tax. The certification may also be attested to electronically by the clerk or deputy clerk in such manner as may be prescribed by the commissioner.

(e) The certificate entered upon or attached physically or electronically to the deed, instrument, or other writing shall be recorded with the deed, instrument, or other writing and shall be in the physical or electronic form required by the commissioner. In each case, however, the certificate shall bear the signature of the clerk or his or her deputy. The certificate may be relied upon by subsequent purchasers or lenders as evidence that the proper tax has been paid. In the event any deed, instrument, or other writing upon which tax is imposed by this article is required to be recorded in more than one county, the required tax shall be prorated among all applicable counties and the amount paid to the clerk or his or her deputy of the county in which the deed, instrument, or other writing is recorded shall be that proportion of the total tax due calculated by applying the ratio of the value of the real property in such county as it bears to the total value of the real properties in all counties described in the deed, instrument, or other writing to the total tax due. Such proportions shall be calculated pursuant to the most recently determined fair market valuations of the property as determined by the county board of tax assessors. All such values shall be disclosed on the face of the deed, instrument, or other writing or, alternatively, may be submitted in the form of an affidavit by the holder presenting the deed, instrument, or other writing for recording. The original or a duplicate original executed copy or counterpart of such deed, instrument, or other writing shall be presented for recording in all counties in which the real property is located, and the clerk or the clerk's deputy of each county may rely upon the sworn original or a duplicate original certification of values in determining the amount of tax due and payable in that county and collect such portion of the tax imposed by Code Section 48-6-1 and enter the same upon the deed, instrument, or other writing.

History.

Ga. L. 1967, p. 788, § 5; Ga. L. 1971, p. 266, § 3; Code 1933, § 91A-3005, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1983, p. 725, § 1; Ga. L. 1990, p. 1843, § 1; Ga. L. 2003, p. 874, § 2; Ga. L. 2010, p. 526, § 1/HB 1192; Ga. L. 2015, p. 1219, § 25/HB 202.

Law reviews.

For annual survey of law on real property, see 62 Mercer L. Rev. 283 (2010).

JUDICIAL DECISIONS

Recordation of deed and effect as notice when tax not paid. — Warranty deed which shows on the deed's face both that the deed was for a consideration in excess of $100.00, and that no tax has been paid is not entitled to be recorded nor can such a deed serve as constructive notice to a later buyer. Higdon v. Gates, 238 Ga. 105, 231 S.E.2d 345, 1976 Ga. LEXIS 1116 (1976).

Property valuation. — In the Rails-to-Trails takings action, the plaintiffs were entitled to just compensation pursuant to the Fifth Amendment based on the diminution in value between the "before" and "after" conditions. Although determination of the remaining property rights was a question of law, determining the value was a question of fact, and any nominal property rights in the burdened land could not affect the just compensation analysis because the rights had no pecuniary value. In determining property value, the court considered tax assessor data because it is verified data and data maintained by the tax assessors is more reliable than data provided by parties to a transaction several years after the fact. Hardy v. United States, No. 14-388L, 141 Fed. Cl. 1, 2018 U.S. Claims LEXIS 1701 (Fed. Cl. Dec. 14, 2018).

OPINIONS OF THE ATTORNEY GENERAL

Confidentiality of tax information. — Information obtained from real estate transfer tax forms and included on county tax assessors' property record cards is not confidential. 1990 Op. Att'y Gen. No. U90-25.

Access to tax disclosure forms not limited to officials of state or political subdivisions. — It is not the intention of the General Assembly to deny to federal internal revenue agents, or to all tax administrators other than those employed by either the Department of Revenue or Georgia's political subdivisions, access to real estate transfer tax disclosure forms. 1976 Op. Att'y Gen. No. U76-48.

RESEARCH REFERENCES

ALR.

Discrimination in state taxation of national banks or national bank shares, 87 A.L.R. 846.

Tax on bank stock as payable out of assets of insolvent bank or trust company, 87 A.L.R. 1018.

"Business situs" for purposes of property taxation of intangibles in state other than domicile of owner, 143 A.L.R. 361.

48-6-5. Clerks of superior courts responsible for tax collecting; fees.

(a) Each clerk of the superior court shall be responsible for collecting the tax provided in this article. Each clerk may affix certificates to the deeds, instruments, or other writings with respect to which a tax is required to be paid pursuant to this article. Each clerk shall also perform the duties provided in this article.

(b) In the performance of the duties imposed by this article, each clerk of the superior court shall be entitled to a fee in addition to all other fees provided by law of 50¢ for each deed, instrument, or other writing with respect to which a tax is required to be paid as provided in this article and filed for record and recorded in the county in which the clerk of the court holds office. The fee shall be withheld from the funds received in payment of the tax. Fees withheld by a clerk shall be distributed as follows:

(1) In the event the clerk withholding the fees is compensated on a salary basis, the amount of the fees withheld shall be paid into the treasury of the county; or

(2) In the event the clerk is not compensated on a salary basis, the amount of the fees withheld shall be retained by the clerk as compensation for the duties performed under this article.

History.
Ga. L. 1967, p. 788, § 4; Ga. L. 1971, p. 266, § 2; Code 1933, § 91A-3004, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2003, p. 874, § 3.

OPINIONS OF THE ATTORNEY GENERAL

General Assembly did not contemplate the creation of an employer-employee relationship between the department and clerks of the superior courts in Ga. L. 1967, p. 788 (see now O.C.G.A. Art. 1, Ch. 6, T. 48). 1969 Op. Att'y Gen. No. 69-168.

Clerks of the superior courts and staff may not elect to come under the Employees' Retirement System of Georgia by virtue of Ga. L. 1967, p. 788 (see now O.C.G.A. Art. 1, Ch. 6, T. 48). 1969 Op. Att'y Gen. No. 69-168.

RESEARCH REFERENCES

C.J.S.
21 C.J.S., Courts, § 338 et seq.

48-6-6. Annual report of tax distribution.

Within 60 days of the end of each calendar year, the clerk of the superior court shall file with the commissioner a report showing the total amount of tax distributed among the state, county, and municipalities during the preceding calendar year.

History.
Ga. L. 1967, p. 788, § 8; Code 1933, § 91A-3006, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2003, p. 874, § 4.

RESEARCH REFERENCES

C.J.S.
21 C.J.S., Courts, § 342.

48-6-7. (For effective date, see note.) Refund of erroneously or illegally collected tax; procedure for filing claim; action for refund in superior court upon denial of claim; manner of paying refund.

(a) In any case in which the clerk of superior court erroneously or illegally collects the tax imposed by this article and remits the tax to the commissioner, the taxpayer from whom the tax was collected may file a claim for refund with the commissioner at any time within one year after the date of collection. Each claim for refund shall be made in writing and shall be accompanied by evidence supporting the claim that the collection was erroneous or illegal. The commissioner or his delegate shall consider the information contained in the taxpayer's claim for refund and other available information, shall approve or disapprove the claim, and shall notify the taxpayer of the decision.

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

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

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

(c) If a claim for refund is allowed by the commissioner as provided in subsection (a) of this Code section or if the taxpayer obtains a final judgment as provided in subsection (b) of this Code section, the commissioner shall refund the amount erroneously or illegally collected from funds remitted by the clerk of superior court who collected the tax.

The refund shall be paid and charged in the same proportion that the disputed tax was originally distributed by the commissioner as provided in this article.

History.

Ga. L. 1971, p. 266, § 4; Code 1933, § 91A-3007, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2012, p. 318, § 8/HB 100; Ga. L. 2024, p. 888, § 3-13/HB 1267, see notes for effective date.

Delayed effective date.

Ga. L. 2024, p. 888, § 4-1(a)/HB 1267, provides that the 2024 amendment shall only become effective on July 1, 2026 upon ratification of a resolution by the voters at the November, 2024, state-wide general election that amends the Constitution to provide that the Georgia Tax Court shall have state-wide jurisdiction as provided by law and that decisions of such court shall be appealed to the Court of Appeals, subject to review by the Supreme Court of Georgia. However, if such a Constitutional amendment is not so ratified, then the amendments to this Code section shall stand repealed on January 1, 2025. This Code section, as set out above, does not reflect the amendment by that Act owing to the delayed effective date. Upon ratification, paragraph (b)(1) will read: "(b)(1) A taxpayer whose claim for a refund is denied by the commissioner or the commissioner's delegate or with respect to whose claim no decision is rendered by the commissioner or the commissioner's delegate within one year from the date of filing the claim shall have the right to bring an action for a refund in the superior court of the county where the disputed tax was originally collected or in the Georgia Tax Court in accordance with Chapter 5B of Title 15, the 'Georgia Tax Court Act of 2025.' The taxpayer shall bring the action for refund against the clerk of superior court of the county which collected the disputed tax. The commissioner in the commissioner's official capacity shall be made a party defendant to the action in order that the interests of the state may be represented in the action. The Attorney General shall represent both defendants in the action. If it is determined in the action that an amount claimed by the taxpayer was erroneously or illegally collected, the taxpayer shall be entitled to judgment against the defendant clerk of the superior court in the clerk's official capacity for the amount erroneously or illegally collected, without interest to the date of judgment."

Amendments.

The 2024 amendment substituted "Georgia Tax Court in accordance with Chapter 5B of Title 15, the 'Georgia Tax Court Act of 2025.'" for "Georgia Tax Tribunal in accordance with Chapter 13A of Title 50." at the end of the first sentence in paragraph (b)(1). For effective date of this amendment, see the delayed effective date note.

Editor's notes.

Ga. L. 2012, p. 318, § 16(b)/HB 100, not codified by the General Assembly, provides, in part, that: "Sections 1 through 14 of this Act shall become effective on January 1, 2013, provided that cases pending on January 1, 2013, shall continue to be governed by the law in effect on December 31, 2012, until the conclusion of the case."

Ga. L. 2024, p. 888, § 4-1(a)/HB 1267, not codified by the General Assembly, provides that the 2024 amendment to this Code section is subject to an amendment to the Constitution to provide that the Georgia Tax Court shall have state-wide jurisdiction as provided by law and that decisions of such court shall be appealed to the Court of Appeals, subject to review by the Supreme Court of Georgia, that is ratified by the voters at the November, 2024, state-wide general election. If such a Constitutional amendment is not so ratified, then the amendment to this Code section shall stand repealed on January 1, 2025.

Law reviews.

For note as to the voluntary payment doctrine in Georgia, see 16 Ga. L. Rev. 893 (1982).

For article on the 2012 amendment of this Code section, see 29 Ga. St. U. L. Rev. 70 (2012).

JUDICIAL DECISIONS

Florida public authority not entitled to exemption. — Florida public authority's action under O.C.G.A. § 48-6-7(b), protesting the denial by the Revenue Commissioner of the State of Georgia of its request for a refund of real estate transfer tax, paid pursuant to O.C.G.A. § 48-6-1, was denied since it was found that the exemption provided in O.C.G.A. § 48-6-2(a)(3) did not apply to the out-of-state public authority; the Commissioner's determination that the exemption did not apply to such an entity was entitled to deference pursuant to the principles of O.C.G.A. § 48-2-12. Hicks v. Fla. State Bd. of Admin., 265 Ga. App. 545, 594 S.E.2d 745, 2004 Ga. App. LEXIS 179 (2004).

RESEARCH REFERENCES

Am. Jur. 2d.

72 Am. Jur. 2d, State and Local Taxation, § 965 et seq.

ALR.

Retrospective operation of statute enlarging or shortening period for claim of tax refund, 163 A.L.R. 778.

When right to refund of state or local taxes accrues, within statute limiting time for applying for refund, 46 A.L.R.2d 1350.

Recovery of tax paid on exempt property, 25 A.L.R.4th 186.

48-6-8. Distribution of tax revenues among state and other tax jurisdictions and districts.

At least once every 30 days, all revenues derived from the tax imposed by this article shall be distributed among the state and municipalities in which the real property is situated and the county in which the real property is situated in the same proportion that revenues derived from the taxes imposed by Article 3 of this chapter are divided. If the real property is situated in more than one county, the appropriate portion of the tax shall be equitably divided among the counties by the clerk of the superior court.

History.

Ga. L. 1967, p. 788, § 9; Code 1933, § 91A-3008, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1996, p. 117, § 2; Ga. L. 1996, p. 130, § 2; Ga. L. 1997, p. 523, § 1; Ga. L. 2003, p. 874, § 5.

Editor's notes.

Ga. L. 1996, p. 130, § 9, not codified by the General Assembly, provides that the 1996 amendment enacted by that Act becomes effective on January 1, 1997, and shall be applicable to all taxable years beginning on or after January 1, 1996, upon the ratification of House Resolution 734 (Ga. L. 1996, p. 1665) at the November, 1996, general election; if such resolution is not ratified, the amendment shall not become effective and shall stand repealed on January 1, 1997. In 1996, House Resolution 734 was ratified and this Code section became effective.

Ga. L. 1996, p. 117, § 9, provides that the Act shall not repeal any provision of Ga. L. 1996, p. 130 if Ga. L. 1996, p. 130 is passed at the 1996 regular session of the General Assembly, becomes law, and becomes effective.

Ga. L. 1996, p. 130, § 9, not codified by the General Assembly, provides, in part, that the provisions of the Act shall not repeal but shall supersede and control over any conflicting provisions of any other Act enacted at the 1996 regular session, including, but not limited to, Ga. L. 1996, p. 117.

RESEARCH REFERENCES

C.J.S.
81A C.J.S., States, § 392 et seq.

48-6-9. Failure to collect, account for, and pay over tax imposed by article; penalty.

(a) It shall be unlawful for any person required by this article to collect, account for, and pay over any tax imposed by this article willfully to fail to collect or truthfully account for and pay over the tax.

(b) Any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor.

History.
Ga. L. 1967, p. 788, § 10; Code 1933, § 91A-9914, enacted by Ga. L. 1978, p. 309, § 2.

48-6-10. Evasion of tax imposed by article; penalty.

(a) It shall be unlawful for any person willfully to evade or defeat in any manner any tax imposed by this article or the payment of such tax.

(b) Any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor.

History.
Ga. L. 1967, p. 788, § 11; Code 1933, § 91A-9915, enacted by Ga. L. 1978, p. 309, § 2.

ARTICLE 2

INTANGIBLE PERSONAL PROPERTY TAX

48-6-20 through 48-6-44. [Reserved].

History.
Code 1882, § 798; Civil Code 1895, § 762; Civil Code 1910, § 998; Ga. L. 1913, p. 122, § 1; Ga. L. 1919, p. 82, § 1; Code 1933, § 92-201; Ga. L. 1937-38, Ex. Sess., p. 156, §§ 1–8, 10, 11, 13; Ga. L. 1937-38, Ex. Sess., p. 170, § 1; Ga. L. 1939, p. 100, § 1; Ga. L. 1943, p. 105, § 1; Ga. L. 1943, p. 348, § 1; Ga. L. 1946, p. 12, § 1; Ga. L. 1947, p. 1183, §§ 1, 2; Ga. L. 1949, p. 1050, §§ 1, 2; Ga. L. 1950, p. 74, § 1; Ga. L. 1953, Jan.-Feb. Sess., p. 453, § 1; Ga. L. 1953, Nov.-Dec. Sess., p. 379, §§ 1, 2; Ga. L. 1955, p. 262, § 1; Ga. L. 1964, p. 715, § 1; Ga. L. 1965, p. 182, § 1; Ga. L. 1973, p. 924, §§ 2, 3; Ga. L. 1973, p. 934, § 1; Ga. L. 1976, p. 405, §§ 1, 3; Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, §§ 54–56, 58; Ga. L. 1980, p. 332, §§ 1–4; Ga. L. 1983, p. 1350, §§ 1–3; Ga. L. 1986, p. 679, §§ 1–4; Ga. L. 1987, p. 191, § 9; Ga. L. 1987, p. 266, §§ 1–3; Ga. L. 1988, p. 13, § 48; Ga. L. 1988, p. 1404, § 1; Ga. L. 1990, p. 8, § 48; Ga. L. 1990, p. 1353, § 1; Ga. L. 1990, p. 1483, §§ 2, 3; Ga. L. 1992, p. 1183, § 1; Ga. L. 1993, p. 1647, § 2; Ga. L. 1996, p. 130, § 3; Ga. L. 1996, p. 181 § 1; repealed by Ga. L. 1996, p. 117, § 6, effective March 21, 1996.

Editor's notes.
This article consisted of Code Sections 48-6-20 through 48-6-26, 48-6-26.1, 48-6-27 through 48-6-44.

Ga. L. 1996, p. 117, § 6, repealed and reserved this article, effective March 21, 1996.

Ga. L. 1996, p. 117, § 9, provides that the Act shall not repeal any provision of Ga. L. 1996, p. 130 if Ga. L. 1996, p. 130 is passed at the 1996 regular session of the General Assembly, becomes law, and becomes effective.

Ga. L. 1996, p. 130, § 3, repeals and reserves this article effective on January 1, 1997, applicable to all taxable years beginning on or after January 1, 1996, upon the ratification of House Resolution 734 (Ga. L. 1996, p. 1665) at the November, 1996, general election; if such resolution is not ratified, the repeal shall not become effective and shall stand repealed on January 1, 1997. House Resolution 734 was ratified in 1996.

Ga. L. 1996, p. 130, § 9, provides, in part, that the provisions of the Act shall not repeal but shall supersede and control over any conflicting provisions of any other Act enacted at the 1996 regular session, including, but not limited to, Ga. L. 1996, p. 117.

ARTICLE 3

INTANGIBLE RECORDING TAX

OPINIONS OF THE ATTORNEY GENERAL

Applicability of refund provisions. — Ga. L. 1937-38, Ex. Sess., p. 77, § 34 (see now O.C.G.A. § 48-2-35), which authorizes a refund procedure whether paid voluntarily or involuntarily, applies only to taxes paid to the state and has no application to the recording tax. 1960-61 Ga. Op. Att'y Gen. 521.

RESEARCH REFERENCES

Am. Jur. 2d.

72 Am. Jur. 2d, State and Local Taxation, §§ 569, 586, 587.

ALR.

"Business situs" for purposes of property taxation of intangibles in state other than domicile of owner, 143 A.L.R. 361.

48-6-60. Definitions.

As used in this article, the term:

(1) "Collecting officer" means the clerk of the superior court of the county; provided, however, that, in each county of this state having a population of 50,000 or less according to the United States decennial census of 1990 or any future such census, at the discretion of the clerk of the superior court of the county, "collecting officer" may mean the tax collector or tax commissioner of the county.

(2) "Instrument" or "security instrument" means any written document presented for recording for the purpose of conveying or creating a lien or encumbrance on real estate for the purpose of securing a long-term note secured by real estate.

(3) "Long-term note secured by real estate" means any note representing credits secured by real estate by means of mortgages, deeds to secure debt, purchase money deeds to secure debt, bonds for title, or any other form of security instrument, when any part of the

principal of the note falls due more than three years from the date of the note or from the date of any instrument executed to secure the note and conveying or creating a lien or encumbrance on real estate for such purpose.

(4) "Short-term note secured by real estate" means any note which would be a long-term note secured by real estate were it not for the fact that the whole of the principal of the note falls due within three years from the date of the note or from the date of any instrument executed to secure the note.

History.

Ga. L. 1953, Nov.-Dec. Sess., p. 379, § 3; Code 1933, § 91A-3201, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1990, p. 1843, § 4; Ga. L. 1994, p. 1767, § 1; Ga. L. 1998, p. 1656, § 1; Ga. L. 2024, p. 1052, § 5(24)/SB 448, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, revised punctuation in paragraph (1).

Cross references.

Mortgages, conveyances to secure debt, and liens, T. 44, C. 14.

Administrative rules and regulations.

Intangible recording tax, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Revenue, Local Government Services Division, Chapter 560-11-8.

Law reviews.

For comment, "If It Quacks Like a Duck: In Light of Today's Financial Environment, Should Credit Unions Continue to Enjoy Tax Exemptions?," see 28 Ga. St. U.L. Rev. 1367 (2012).

JUDICIAL DECISIONS

In taxing intangibles, this state recognizes a distinction between bonds and notes secured by real estate, in that the tax on bonds is at a different rate from the tax on long-term notes secured by real estate. Cosgro v. Quinn, 219 Ga. 272, 133 S.E.2d 343, 1963 Ga. LEXIS 429 (1963).

Credit card debt did not fit the definition of a long term note secured by real estate. In re Felker, 181 B.R. 1017, 1995 Bankr. LEXIS 714 (Bankr. M.D. Ga. 1995).

Renewal of pre-existing note. — Renewal of a pre-existing note is a new note and does not become a long term note by piecing together, in serial fashion, all pre-existing and subsequent notes for the purposes of O.C.G.A. § 48-6-77. NationsBank v. Tucker, 231 Ga. App. 622, 500 S.E.2d 378.

No statutory authority for right of appeal. — There is no statutory authority that gives an appellant a right of direct appeal from a review by the superior court of the state revenue commissioner's denial of a refund of an intangible recording tax. Bankers Trust Co. v. Jackson, 236 Ga. App. 490, 512 S.E.2d 378.

OPINIONS OF THE ATTORNEY GENERAL

Constitutionality. — Intangible property tax on long-term notes secured by real estate is not unconstitutional. 1970 Op. Att'y Gen. No. 70-56.

Legislative intent as to taxation of bonds and long-term notes. — It is clearly the legislative intent of Ga. L. 1953, Nov.-Dec. Sess., p. 379, §§ 3 and 4 (see now O.C.G.A. §§ 48-6-60 and 48-6-61) to tax long-term notes at a rate different from that on bonds. The definition of "long-term notes" is possibly

broad enough to include bonds and would possibly include bonds were it not for the fact that Ga. L. 1953, Nov.-Dec. Sess., p. 379, § 2 (see now O.C.G.A. § 48-6-23) imposes a different annual tax on bonds. 1957 Ga. Op. Att'y Gen. 300.

Distribution of tax based on property location. — Distribution of the intangibles tax levied under Ga. L. 1953, Nov.-Dec. Sess., p. 379 (see now O.C.G.A. Arts. 2 and 3, Ch. 6, T. 48) will be based solely on the location of the property. 1954-56 Ga. Op. Att'y Gen. 581.

How short-term and long-term notes distinguished. — Note secured by real estate is to be classified as a short-term note or a long-term note as of the time of the note's execution, according to the maturity date stated therein. The note remains in this classification as long as the note remains outstanding, notwithstanding that the indulgence of the creditor allows the indebtedness to extend beyond a three-year period. If the creditor takes a renewal note in payment thereof, the renewal note is to be classified according to the note's own terms and without regard to the period of indebtedness under the original note. 1960-61 Ga. Op. Att'y Gen. 519.

Whether instrument is bond or long-term note is a fact question. — Determination of whether an instrument is a bond or a long-term loan secured by real estate for purposes of determining which intangibles tax provisions shall apply is a fact question. 1954-56 Ga. Op. Att'y Gen. 772.

Length of period rather than number of notes determines classification of notes. — Intent of this statute is to impose a tax upon the entire long-term debt secured by real estate. It is not a tax upon the mortgage, but a tax upon the principal amount of the long-term debt as evidenced by the notes. If the debt secured by the real estate and evidenced by the loan deed is in the form of a series of notes payable in staggered annual dates over a long-term period rather than one note payable in a series of annual installments, the holder of such series of notes maturing at staggered terms cannot, by this separation of the single debt into several notes, escape the intangible tax imposed by this statute on those notes falling due in less than three years. 1954-56 Ga. Op. Att'y Gen. 773.

When notes secured by real estate are all part of a single transaction representing one loan, some payable within three years and some payable after a longer period, the notes are all to be considered long-term notes secured by real estate and taxable within the meaning of this statute. 1962 Ga. Op. Att'y Gen. 531.

Mortgage to secure a sublease agreement is a long-term note secured by real estate within the meaning of this statute. 1962 Ga. Op. Att'y Gen. 527.

Sales contract for purchase of a house and lot is a long-term note secured by real estate within the meaning of this statute. 1963-65 Ga. Op. Att'y Gen. 272.

Taxation of long-term notes on which taxes not paid due to former exception. — There is no obligation on banking associations currently holding long-term notes upon which no recording taxes have been paid, due to the former exception for banking associations, to pay the recording tax on previously recorded deeds. 1975 Op. Att'y Gen. No. 75-125.

Notes held by nonresidents when not secured by realty nor connected with business. — Notes held by a nonresident, which notes are not secured by real estate nor connected with any business done in Georgia, are not subject to ad valorem taxation in this state; mere notice of promissory notes creating no lien on property is not subject to being recorded. 1970 Op. Att'y Gen. No. U70-52.

Long-term notes secured by real estate held by the Georgia Development Authority are public property so as to be exempt from intangible taxes imposed by Ga. L. 1953, Nov.-Dec. Sess., p. 379 (see now O.C.G.A. Arts. 2 and 3, Ch. 6, T. 48). 1973 Op. Att'y Gen. No. U73-40.

RESEARCH REFERENCES

Am. Jur. 2d.
71 Am. Jur. 2d, State and Local Taxation, § 519.

48-6-61. Filing instruments securing long-term notes; procedure; intangible recording tax; rate; maximum tax.

Every holder of a long-term note secured by real estate shall, within 90 days from the date of the instrument executed to secure the note, record the security instrument in the county in which is located the real estate conveyed or encumbered or upon which a lien is created to secure the note and shall present, prior to presenting the instrument to the clerk of superior court for recording, the security instrument to the collecting officer of the county in which the real estate is located. The collecting officer shall determine from the face of the security instrument the date of execution of the instrument, the maturity date of the note, and the principal amount of the note. There is imposed on each instrument an intangible recording tax at the rate of $1.50 for each $500.00 or fraction thereof of the face amount of the note secured by the recording of the security instrument. The collecting officer shall collect the tax due on the security instrument from the holder of the instrument; provided, however, that, the holder may pass on the amount of such tax to the borrower or mortgagor but the amount of such tax passed to the borrower or mortgagor shall not be considered or treated as part of any finance charge imposed by the holder in connection with the loan transaction. If the security instrument reflects an amount greater than the principal amount of the note and, at the time the security instrument is presented for recording, the holder of the note also presents for recording with the security instrument said holder's sworn statement itemizing the principal amount of the note and the other charges included within the amount shown on the face of the security instrument, the collecting officer shall determine the principal amount of the note from the sworn statement. The maximum amount of any intangible recording tax payable as provided in this Code section with respect to any single note shall be $25,000.00.

History.
Ga. L. 1953, Nov.-Dec. Sess., p. 379, § 4; Ga. L. 1955, p. 288, § 1; Ga. L. 1977, p. 635, § 1; Code 1933, § 91A-3202, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1981, p. 1857, § 33; Ga. L. 1990, p. 1843, § 4; Ga. L. 1994, p. 1767, § 2; Ga. L. 1995, p. 224, § 1; Ga. L. 2024, p. 1052, § 5(25)/SB 448, effective July 1, 2024.

Amendments.
The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, revised language and punctuation in the fourth sentence. See the Editor's note.

Editor's notes.
Ga. L. 2024, p. 1052, § 5(25)/SB 448, did not engross the addition of the word "that"

following "however," in the fourth sentence.

JUDICIAL DECISIONS

Section is constitutional. — Statute is a proper and constitutional exercise of the state's right to tax the transactions described therein. Columbia Bank for Coops. v. Blackmon, 232 Ga. 344, 206 S.E.2d 424, 1974 Ga. LEXIS 946 (1974).

Scope of state's power to levy this tax. — Reach of this taxing power by the state may extend to objects of the taxation beyond the borders of the state to tax such intangible property of nonresidents if it is derived from or is used as an incident of property owned or a business conducted by such nonresident or the nonresident's agent in this state. Columbia Bank for Coops. v. Blackmon, 232 Ga. 344, 206 S.E.2d 424, 1974 Ga. LEXIS 946 (1974).

It is the conduct of business in this state which furnishes the taxable connection, not merely the location of an office in this state. Columbia Bank for Coops. v. Blackmon, 232 Ga. 344, 206 S.E.2d 424, 1974 Ga. LEXIS 946 (1974).

Taxable situs must be in Georgia. — For this state to impose such a tax, the taxable situs of the note or notes must be in Georgia. First Fed. Sav. & Loan Ass'n v. Abbott, 231 Ga. 864, 204 S.E.2d 594, 1974 Ga. LEXIS 1262 (1974).

Basis of tax. — Intangible tax imposed by O.C.G.A. § 48-6-61 is analogous to the real estate transfer tax imposed by O.C.G.A. § 48-6-1, both being based on increments in the value of the instrument being recorded and being calculated in the same manner. Bankers Trust Co. v. Jackson, 236 Ga. App. 490, 512 S.E.2d 378.

Nature of tax. — Intangible taxes imposed on long term notes secured by real estate are excise taxes, not ad valorem taxes, since the taxes are paid for the privilege of filing a document to protect the note secured by the recording of the security instrument, and the fact that it is based on the value of the property is only ancillary. Bankers Trust Co. v. Jackson, 236 Ga. App. 490, 512 S.E.2d 378.

Trusts liable for tax even if federally exempt. — Assessment under Ga. L. 1953, Nov.-Dec. Sess., p. 379, § 4 (see now O.C.G.A. § 48-6-61) on long-term notes secured by real estate was not included in the exemption given by Ga. L. 1937-38, Ex. Sess., p. 156, § 4(a) (see now O.C.G.A. § 48-6-22) to trusts which are exempt from federal taxes pursuant to § 401 of the Internal Revenue Code. Warestores, Inc. v. Nash, 125 Ga. App. 210, 186 S.E.2d 806, 1971 Ga. App. LEXIS 1415, 1971 Ga. App. LEXIS 1431, 1971 Ga. App. LEXIS 783 (1971).

Party exempt from tax may compel recordation by writ of mandamus. — When a bank chartered under the laws of this state, not being subject to the payment of an ad valorem recording fee for the recording of a deed to real estate, secures a note having a maturity date in excess of three years, it is error to sustain a general demurrer (now motion to dismiss) to the bank's petition for a writ of mandamus to require the clerk of the superior court to record a security deed given to secure the payment of a long-term note without payment of the recording fee. Washington Loan & Banking Co. v. Golucke, 212 Ga. 98, 90 S.E.2d 575, 1955 Ga. LEXIS 560 (1955).

Credit card debt did not fit the definition of a long term note secured by real estate. In re Felker, 181 B.R. 1017, 1995 Bankr. LEXIS 714 (Bankr. M.D. Ga. 1995).

OPINIONS OF THE ATTORNEY GENERAL

Intangible property tax on long-term notes secured by real estate is not unconstitutional. 1970 Op. Att'y Gen. No. 70-56.

Legislative intent as to taxation of bonds and long-term notes. — It is clearly the legislative intent of Ga. L. 1953, Nov.-Dec. Sess., p. 379, §§ 3 and 4

(see now O.C.G.A. §§ 48-6-60 and 48-6-61) to tax long-term notes at a rate different from that on bonds. The definition of "long-term notes" is possibly broad enough to include bonds and would possibly include bonds were it not for the fact that Ga. L. 1953, Nov.-Dec. Sess., p. 379, § 2 (see now O.C.G.A. § 48-6-22) imposes a different annual tax on bonds. 1957 Ga. Op. Att'y Gen. 300.

Construction with other provisions. — Tax imposed by this statute is not independent of Ga. L. 1937-38, Ex. Sess., p. 156, § 1 et seq. (see now O.C.G.A. Arts. 2 and 3, Ch. 6, T. 48), but is to be read as supplementing it. 1958-59 Ga. Op. Att'y Gen. 368.

Construction with exemption provisions. — Ga. L. 1953, Nov.-Dec. Sess., p. 379, § 4 (see now O.C.G.A. § 48-6-61) is not complete and exhaustive within its own terms of the law relative to this tax on long-term real estate notes, but that the statute must be read along with, and be subject to, exemptions theretofore prescribed by statutes such as Ga. L. 1937-38, Ex. Sess., p. 156, §§ 4(a) and 7 (see now O.C.G.A. § 48-6-22). 1954-56 Ga. Op. Att'y Gen. 797.

Meaning of "real estate." — Term "real estate" as it appeared in Ga. L. 1953, Nov.-Dec. Sess., p. 379, § 4 (see now O.C.G.A. § 48-6-61) should be given the meaning ascribed to it by former Code 1933, § 85-201 (see now O.C.G.A. § 44-1-2). 1958-59 Ga. Op. Att'y Gen. 379.

What constitutes a security instrument covering real estate. — Deed to secure debt conveying "all the trees and timber now standing or growing, or down, and all hereafter growing or to grow" on certain tracts of land described therein is a security instrument covering real estate, within the purview of this statute. The fact that the subject security deed embraces trees and timbers which are down, as well as those standing or growing, does not alter the deed's effect insofar as the intangibles tax is concerned, but merely means that the holder has the additional protection of personal property as security for the holder's loan. 1958-59 Ga. Op. Att'y Gen. 379.

Tax exempt transferee of note may not record until original holder pays intangible recording tax. — When, subsequent to execution, a "graduated payment adjustable mortgage loan" is assigned by the original holder to an entity which is exempt from the payment of intangible recording tax, the transfer by assignment or otherwise does not relieve the original holder of the note of the holder's liability for intangible recording tax and the tax commissioner may properly refuse to record the security instrument until the tax is paid. 1983 Op. Att'y Gen. No. 83-22.

Tax due from tax-exempt transferee is amount original holder would have paid. — When, subsequent to execution, a "graduated payment adjustable mortgage loan" is assigned by the original holder to an otherwise tax-exempt entity which presents the security instrument for recording, the intangible recording tax should be computed as though the note had not been transferred by the original holder; i.e., on the total extension of credit contemplated under the terms of the note. 1983 Op. Att'y Gen. No. 83-22.

Tax collector or tax commissioner is required to determine principal amount of a long-term debt solely from the face of the security deed, without resorting to any other information. Furthermore, when two or more notes are secured by the same security deed, one must determine whether the notes represent portions of the same debt, or whether the notes represent distinct and separate debts. 1980 Op. Att'y Gen. No. 80-141.

Georgia intangible recording tax must be imposed on the total extension of credit contemplated under the terms of so-called "graduated payment adjustable mortgage loans" and the total extension of credit contemplated must be shown on the face of the document presented for recording. 1983 Op. Att'y Gen. No. 83-22.

Tax held applicable. — Intangible recording tax imposed by O.C.G.A. § 48-6-61 is applicable to a long-term note secured by real estate held by a lender who was enabled to make the loan through the deposit of the proceeds of revenue bonds issued by a local housing authority and which deposit was

conditioned upon the lender making the loan. 1984 Op. Att'y Gen. No. 84-17.

Distribution of tax based on property location. — Distribution of the intangible tax levied under the provisions of Ga. L. 1953, Nov.-Dec. Sess., p. 379 (see now O.C.G.A. Arts. 2 and 3, Ch. 6, T. 48) will be based solely on the location of the property. 1954-56 Ga. Op. Att'y Gen. 581.

Tax based on amount of indebtedness. — Recording tax levied by this statute is imposed upon the amount of the indebtedness, the total amount of the note. The tax is not upon the instrument securing the note, nor upon the value of the real estate security. It is upon long-term notes which are the subject of the debt secured by real estate, and is not a tax upon the security instrument evidencing the debt on the clerk's records. 1954-56 Ga. Op. Att'y Gen. 787; 1960-61 Ga. Op. Att'y Gen. 519.

This tax is due on the entire amount of the loan whether it is evidenced by one note or a series of notes, some of which mature within a three-year period. 1960-61 Ga. Op. Att'y Gen. 519.

Classification of demand notes as short-term notes. — For the purposes of classification for intangibles taxation of notes secured by real estate, a true demand note is always a short-term note, and may be classified as such by a statement in the instrument to be filed that the note may fall due within three years from the date of the note or from the date of the instrument to be filed. If a maturity date is set out in the instrument to be filed, the note, regardless of the note's recitals, is not a demand note, and the tax collector or tax commissioner must classify the note by the date as set out. 1970 Op. Att'y Gen. U70-9.

When any of debt is repayable more than three years from date, it is all long-term and subject to the rates applicable thereto. 1960-61 Ga. Op. Att'y Gen. 519.

Burden of paying the recording tax is upon the holder of the notes. Therefore, it is the holder of the long-term note rather than the borrower or maker who is required to pay the tax. 1954-56 Ga. Op. Att'y Gen. 787.

Responsibility for collection of this tax is upon the clerk of the superior court of the county in which is situated the real estate conveyed or encumbered, or upon which a lien is created to secure such note. 1954-56 Ga. Op. Att'y Gen. 787.

Effect of clerk's failure to charge recordation fee. — If a financial institution submits a security deed for recordation and the county clerk does not charge the recordation fee as is incumbent upon the clerk, the bank's lien would be jeopardized. 1975 Op. Att'y Gen. No. 75-125.

Tax based on principal when that portion clearly shown. — When a note on a security instrument clearly indicates what portion of the face amount of the note is principal and what portion is interest, the amount of the principal indebtedness determines the base of the tax, and the amount designated as interest does not figure in the computation. 1957 Ga. Op. Att'y Gen. 300; 1967 Op. Att'y Gen. No. 67-263.

Tax basis when principal and interest not separately indicated. — When the instrument does not disclose clearly the amount of the debt by virtue of a failure to separate the payments into principal and interest, the tax has been held to apply to the amount obtained by multiplying the stated payments by the number of monthly installments due. 1967 Op. Att'y Gen. No. 67-263.

Tax on original indebtedness and new or additional indebtedness. — Original indebtedness on which the tax is paid when the instrument securing it is recorded is not a tax-free line of secured credit but is reduced in amount as the note or notes evidencing it are paid in, total or partially. Any long-term note secured by real estate evidencing indebtedness beyond the remaining balance of the original indebtedness is subject to the tax imposed by this statute on the amount of the new or additional indebtedness. 1963-65 Ga. Op. Att'y Gen. 654.

Taxation of new note and security instrument issued upon cancellation of existing note. — Even though the intangibles tax has been paid upon a long-term note secured by real estate, when such note is cancelled and a new note and security instrument are executed

as to the same property by a new maker, such new note is subject to the intangibles tax. 1970 Op. Att'y Gen. No. U70-58.

Payment of an insufficient tax has been held to be constructive notice as to the pro rata portion of the note upon which the tax has been paid. 1967 Op. Att'y Gen. No. 67-263.

It has been held that even though an insufficient tax has been paid, the record constitutes notice when the amount paid was the amount demanded by the tax official. 1967 Op. Att'y Gen. No. 67-263.

Exemption of notes held by nonresidents when not secured by realty nor connected with business. — Notes held by a nonresident, which notes are not secured by real estate nor connected with any business done in this state, are not subject to ad valorem taxation in this state. Mere notice of promissory notes creating no lien on property is not subject to being recorded. 1970 Op. Att'y Gen. No. U70-52.

Long-term notes secured by real estate held by the Georgia Development Authority are public property so as to be exempt from intangible taxes imposed by Ga. L. 1953, Nov.-Dec. Sess., p. 379 (see now O.C.G.A. Arts. 2 and 3, Ch. 6, T. 48). 1973 Op. Att'y Gen. No. U73-40.

Imposition of this tax upon national banking associations as holders is without authority and such associations are immune from this tax. It is of no difference by what name the tax is designated. 1954-56 Ga. Op. Att'y Gen. 776.

Immunity granted to national banks not transferrable. — Immunity of a national bank to the tax on a long-term note secured by real estate does not attach itself to the instrument. When a nonexempt building and loan association becomes the owner and holder of this instrument as transferee, the association thereby becomes liable under this statute. 1963-65 Ga. Op. Att'y Gen. 605.

Original holder not relieved of tax obligation upon transfer to national bank. — Transfer by assignment or otherwise of long-term notes secured by real estate to a national bank does not relieve the original holder of the holder's tax obligation and does not change the tax status of the instrument. 1963-65 Ga. Op. Att'y Gen. 511.

48-6-62. Certification of payment of tax; alternate procedure for filing new or modified note.

(a)(1) Upon payment of the correct tax as disclosed from the information recited on the face of the security instrument, the collecting officer shall enter upon or attach to the security instrument a certification that the intangible recording tax as provided by Code Section 48-6-61 has been paid, the date, and the amount of the tax. The certificate shall be signed by the collecting officer or said officer's deputy. The holder of a security instrument upon which the tax has been paid as provided by this article may then present the security instrument together with the certificate to the clerk of superior court of the county in which the real property is located, who may then file the security instrument for record. It is the intention of the General Assembly that the intangible tax levied by Code Section 48-6-61 shall be paid to the collecting officer prior to and as a prerequisite to the filing for record of the real property instrument securing the note with the clerk of superior court and that the clerk shall not be permitted to file the instrument for record unless the security instrument discloses on its face the principal amount of the note, the date executed, the due date, and the certificate of the collecting officer

or said officer's deputy showing that the tax has been paid on the instrument. Presentation for recording of a sworn statement as to the principal amount of the note, as authorized in Code Section 48-6-61, shall suffice for purposes of permitting the filing of a security instrument which is in compliance with this paragraph other than for the fact that the security instrument does not disclose the principal amount of the note.

(2) However, any instrument otherwise in a form sufficient for recording and actually recorded by the clerk of superior court shall constitute legal notice of the interest and title of the holder of the note in and to the real estate which, under the instrument, secures a long-term note; and this paragraph shall apply even if the intangible tax, interest, and penalty, if any, required by this article have not been paid.

(3) The certificate entered upon or attached to the security instrument shall be recorded with the security instrument, shall be in the form required by the commissioner, and shall in each instance bear the signature of the collecting officer or said officer's deputy.

(b) In the case of a new note or modification of a preexisting note, when the instrument securing the new note or modification is taxable under Code Section 48-6-61 and is secured by a previously recorded instrument which requires no further recording, the holder of the instrument, in lieu of recording a new or amended instrument as provided for in subsection (a) of this Code section, may elect alternatively to execute a sworn affidavit in the form required by the commissioner, which affidavit shall set forth the information required by Code Section 48-6-66. The holder of the instrument shall present the sworn affidavit to the collecting officer of the county in which the real estate is located. The tax collector or tax commissioner shall collect from the holder the tax due under Code Section 48-6-61 and upon payment of the tax shall enter upon or attach to the affidavit the certification provided for in subsection (a) of this Code section. The certification shall evidence the payment of the required tax with respect to the new instrument or modification.

History.

Ga. L. 1953, Nov.-Dec. Sess., p. 379, § 5; Ga. L. 1955, p. 288, § 2; Ga. L. 1973, p. 271, § 1; Ga. L. 1977, p. 635, § 2; Code 1933, § 91A-3203, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1981, p. 1857, § 34; Ga. L. 1990, p. 1843, § 4; Ga. L. 1994, p. 1767, § 3; Ga. L. 2024, p. 1052, § 5(26)/SB 448, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substituted "intangible" for "intangibles" in paragraph (a)(2).

OPINIONS OF THE ATTORNEY GENERAL

Intangible property tax on long-term notes secured by real estate is not unconstitutional. 1970 Op. Att'y Gen. No. 70-56.

Tax exempt transferee of note may not record until original holder pays intangible recording tax. — When, subsequent to execution, a "graduated payment adjustable mortgage loan" is assigned by the original holder to an entity which is exempt from the payment of an intangible recording tax, the transfer by assignment or otherwise does not relieve the original holder of the note of the holder's liability for intangible recording tax and the tax commissioner may properly refuse to record the security instrument until the tax is paid. 1983 Op. Att'y Gen. No. 83-22.

Tax due from tax-exempt transferee is amount original holder would have paid. — When, subsequent to execution, a "graduated payment adjustable mortgage loan" is assigned by the original holder to an otherwise tax-exempt entity which presents the security instrument for recording, the intangible recording tax should be computed as though the note had not been transferred by the original holder; i.e., on the total extension of credit contemplated under the terms of the note. 1983 Op. Att'y Gen. No. 83-22.

"Graduated payment adjustable mortgage loans." — Georgia intangible recording tax must be imposed on the total extension of credit contemplated under the terms of so-called "graduated payment adjustable mortgage loans" and the total extension of credit contemplated must be shown on the face of the document presented for recording. 1983 Op. Att'y Gen. No. 83-22.

Effect of clerk's failure to charge recordation fee. — If a financial institution submits a security deed for recordation and the county clerk does not charge the recordation fee as is incumbent upon the clerk, the bank's lien would be jeopardized. 1975 Op. Att'y Gen. No. 75-125.

Original holder not relieved of tax obligation upon transfer to national bank. — Transfer by assignment or otherwise of long-term notes secured by real estate to a national bank does not relieve the original holder of the holder's tax obligation and does not change the tax status of the instrument. 1963-65 Ga. Op. Att'y Gen. 511.

RESEARCH REFERENCES

ALR.

Mortgage tax as applied to supplementary or amendatory instruments, 6 A.L.R.2d 306.

48-6-63. [Reserved] Ad valorem taxation of short-term notes secured by real estate; rate; exemptions.

History.

Ga. L. 1953, Nov.-Dec. Sess., p. 379, § 12; Code 1933, 91A-3211, enacted by Ga. L. 1978. p. 309, § 2; Ga. L. 1983, p. 1350, § 4; Ga. L. 1990, p. 1834, § 4; repealed by Ga. L. 1996, p. 117, § 4, effective March 21, 1996, and Ga. L. 1996, p. 130, § 4, effective January 1, 1997.

Editor's notes.

Ga. L. 1996, p. 117, § 9, provided that the Act shall not repeal any provision of Ga. L. 1996, p. 130 if Ga. L. 1996, p. 130 is passed at the 1996 regular session of the General Assembly, becomes law, and becomes effective.

Ga. L. 1996, p. 130, § 4, repealed and reserved this Code section effective January 1, 1997, applicable to all taxable years beginning on or after January 1, 1996, upon the ratification of House Resolution 734 (Ga. L. 1996, p. 1665) at the November, 1996, general election; if such resolution is not ratified, the repeal shall not become effective and shall stand repealed on January 1, 1997. House Resolution 734 was ratified in 1996.

Ga. L. 1996, p. 130, § 9, not codified by the General Assembly, provides, in part, that the provisions of the Act shall not repeal but shall supersede and control over any conflicting provisions of any other Act enacted at the 1996 regular session, including, but not limited to, Ga. L. 1996, p. 117.

48-6-64. Tax imposed on long-term and short-term notes secured by realty.

(a) The tax required by this article to be paid on instruments securing long-term notes secured by real estate shall be exclusive of all other taxes on the notes. Such intangible property shall not be taxed in any manner other than as provided in this article by the state, any county, or any municipality, nor shall the owner or holder of the property be required to pay any other tax on the property.

(b) Nothing contained in this Code section shall be construed to exempt any owner or holder of property taxed pursuant to this article from the payment of income taxes otherwise due on account of income derived from the property.

History.

Ga. L. 1953, Nov.-Dec. Sess., p. 379, § 13; Code 1933, § 91A-3212, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1990, p. 1843, § 4; Ga. L. 1996, p. 117, § 5; Ga. L. 1996, p. 130, § 5.

Editor's notes.

Ga. L. 1996, p. 117, § 9, not codified by the General Assembly, provided that the Act shall not repeal any provision of Ga. L. 1996, p. 130 if Ga. L. 1996, p. 130 is passed at the 1996 regular session of the General Assembly, becomes law, and becomes effective.

Ga. L. 1996, p. 130, § 9, not codified by the General Assembly, provided, in part, that the provisions of the Act shall not repeal but shall supersede and control over any conflicting provisions of any other Act enacted at the 1996 regular session, including, but not limited to, Ga. L. 1996, p. 117.

Ga. L. 1996, p. 130, § 9, not codified by the General Assembly, provided that the 1996 amendment enacted by that Act becomes effective on January 1, 1997, and shall be applicable to all taxable years beginning on or after January 1, 1996, upon the ratification of House Resolution 734 (Ga. L. 1996, p. 1665) at the November, 1996, general election; if such resolution is not ratified, the amendment shall not become effective and shall stand repealed on January 1, 1997. That resolution passed at the November 1996 general election, so the amendment took effect on January 1, 1997.

OPINIONS OF THE ATTORNEY GENERAL

Intangible property tax on long-term notes secured by real estate is not unconstitutional. 1970 Op. Att'y Gen. No. 70-56.

Construction with other exclusivity provisions. — Prohibition in Ga. L. 1953, Nov.-Dec. Sess., p. 379, § 13 (see now O.C.G.A. § 48-6-64) against further state, county, and city taxation of long-term real estate notes appears merely to supplement a similar provision in Ga. L. 1937-38, Ex. Sess., p. 156, § 3(c), which applied to other classes of intangible property. 1954-56 Ga. Op. Att'y Gen. 805.

48-6-65. Extension, transfer, assignment, modification, or renewal of instrument; exemption for amount of note refinanced.

(a) No tax other than as provided for in this article shall be required to be paid on any instrument which is an extension, transfer, assignment, modification, or renewal of, or which only adds additional security for, any original indebtedness or part of original indebtedness secured by an instrument subject to the tax imposed by Code Section 48-6-61 when:

(1) It affirmatively appears that the tax as provided by this article has been paid on the original security instrument recorded; provided, however, that the tax required by Code Section 48-6-61 shall be due on any portion of the instrument which is an additional advance of indebtedness secured by a previously recorded instrument, without regard to whether the original security instrument has been assigned; or

(2) The original instrument or the holder of the original instrument was exempt from the tax provided for in Code Section 48-6-61 by virtue of any other law.

(b) No tax shall be collected on that part of the face amount of a new instrument securing a long-term note secured by real estate which represents a refinancing by the original lender of unpaid principal on a previous instrument securing a long-term note secured by real estate if:

(1) All intangible recording tax due on the previous instrument has been paid or the previous instrument was exempt from intangible recording tax; and

(2)(A) The new instrument contains a statement of what part of its face amount represents a refinancing of unpaid principal on the previous instrument; or

(B) The holder of the new instrument submits an affidavit as to what part of the face amount of the new instrument represents a refinancing of unpaid principal on the previous instrument.

History.
Ga. L. 1953, Nov.-Dec. Sess., p. 379, § 15; Ga. L. 1955, p. 288, § 5; Ga. L. 1977, p. 635, § 5; Code 1933, § 91A-3213, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1981, p. 775, § 1; Ga. L. 1990, p. 1843, § 4; Ga. L. 2018, p. 209, § 2/HB 729.

OPINIONS OF THE ATTORNEY GENERAL

Intangible property tax on long-term notes secured by real estate is not unconstitutional. 1970 Op. Att'y Gen. No. 70-56.

Statute is an exemption from the payment of intangibles taxes in that the statute exempts any extension, transfer, assignment, modification, or

renewal of an instrument otherwise subject to the tax and upon which the clerk has made an entry showing payment. 1954-56 Ga. Op. Att'y Gen. 808.

No intangibles tax is due on note which is merely unpaid balance of old note on which the tax was paid. 1954-56 Ga. Op. Att'y Gen. 783.

Taxation of renewed mortgage. — If a mortgage is renewed, based upon a previously recorded security deed, this is considered a new mortgage subject to an additional tax even though a new security deed is not taken. If a new security deed is taken and recorded, the tax is payable. 1975 Op. Att'y Gen. No. 75-125.

48-6-66. Showing correct amount and due date on instruments conveying, encumbering, or creating a lien upon real estate.

Every instrument conveying, encumbering, or creating a lien upon real estate shall set forth in words and figures the correct amount of the note secured by the instrument and the date upon which the note falls due. When the note falls due within three years from the date of the note or from the date of any instrument executed to secure the note, a statement of that fact in lieu of specifying the date upon which the note falls due may be made in the security instrument and shall constitute sufficient compliance with this Code section. The inclusion in the instrument of a provision that the instrument secures all other indebtedness then existing or thereafter incurred shall not require the setting forth in the instrument of existing indebtedness for loans not made on the security of the instrument.

History.

Ga. L. 1953, Nov.-Dec. Sess., p. 379, § 6; Ga. L. 1955, p. 293, § 1; Code 1933, § 91A-3204, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1990, p. 1843, § 4.

OPINIONS OF THE ATTORNEY GENERAL

Intangible property tax on long-term notes secured by real estate is not unconstitutional. 1970 Op. Att'y Gen. No. 70-56.

Purpose. — Reason for the requirement that the terms of the note be stated is to enable the clerk of the court and the state revenue commissioner to determine whether the note secured by the instrument presented to the clerk for filing is a long-term or a short-term note, and thus enable the clerk to ascertain and collect the tax. 1954-56 Ga. Op. Att'y Gen. 787.

Classification of demand notes as short-term notes. — For the purposes of classification for intangibles taxation of notes secured by real estate, a true demand note is always a short-term note, and may be classified as such by a statement in the instrument to be filed that the note may fall due within three years from the date of the note or from the date of the instrument to be filed. If a maturity date is set out in the instrument to be filed, the note, regardless of the note's recitals, is not a demand note, and the tax collector or tax commissioner must classify the note by the date as set out. 1970 Op. Att'y Gen. U70-9.

RESEARCH REFERENCES

C.J.S.
26A C.J.S., Deeds, § 159 et seq. 59 C.J.S., Mortgages, § 248 et seq.

48-6-67. Violation of Code Section 48-6-66; penalty.

(a) It shall be unlawful for any person willfully to violate Code Section 48-6-66.

(b) Any person who violates Code Section 48-6-66 shall be guilty of a misdemeanor.

History.
Ga. L. 1953, Nov.-Dec. Sess., p. 379, § 16; Code 1933, § 91A-9917, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1990, p. 1843, § 4.

48-6-68. Bond for title in absence of security deed; recording and tax.

Any seller of real estate who retains title to the real estate as security for the purchase price and who does not convey title to the purchaser or take back a deed to secure debt shall execute and deliver to the purchaser a bond for title which shall correctly set forth the unpaid portion of the purchase price and the maturity of the indebtedness. If any part of the purchase price falls due more than three years from the date of the instrument, the seller shall have the instrument recorded before delivery of the bond for title in the county where the land is located and shall pay the tax required by this article for the recording of the instrument.

History.
Ga. L. 1953, Nov.-Dec. Sess., p. 379, § 7; Code 1933, § 91A-3205, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1990, p. 1843, § 4.

JUDICIAL DECISIONS

Impact of bankruptcy. — With respect to a mobile home the debtor purchased through an installment note, because the transaction was akin to a bond for title under Georgia law, giving the debtor possessory interest and equitable interest in the property, and the debtor's interests were not foreclosed by legal proceeding prepetition, those interests became part of the bankruptcy estate subject to an automatic stay. In re Guyton, 518 B.R. 681, 2014 Bankr. LEXIS 4129 (Bankr. S.D. Ga. 2014).

RESEARCH REFERENCES

C.J.S.
26A C.J.S., Deeds, §§ 7, 161.

48-6-69. Encumbered real property located in more than one county; encumbered real property located within and outside state and secured by instrument held by nonresident.

(a) If any instrument required to be recorded by this article conveys, encumbers, or creates a lien upon real property located in more than one county, the tax imposed by this article shall be prorated among all applicable counties; and the amount paid to the collecting officer of each county shall be that proportion of the total tax due calculated by applying the ratio of the value of the real property in such county as it bears to the total value of the real properties in all counties described in the instrument to the total tax due. Such proportions shall be calculated pursuant to the most recently determined fair market valuations of the property as determined by the county board of tax assessors or comparable assessing entity in any affected state. All such values shall be disclosed on the face of the instrument or, alternatively, may be submitted in the form of an affidavit by the holder presenting the instrument for recording. The original or a duplicate original executed copy or counterpart of such instrument shall be presented for recording in all counties in which the real property is located, and the collecting officer of each county may rely upon the sworn original or a duplicate original certification of values in determining the amount of tax due and payable in that county and collect such portion of the tax imposed by Code Section 48-6-61 and enter the same upon the security instrument.

(b) If any instrument conveying, encumbering, or creating a lien on real property located within and outside this state as security for a long-term note is held by a nonresident of this state when presented for recording pursuant to this article, the tax required by this article shall be that proportion of the tax which would otherwise be required under this article that the value of the real property within this state bears to the total value of all the real property within and outside this state as described in the instrument. All such values shall be certified under oath by the holder presenting the instrument for recording.

History.

Ga. L. 1953, Nov.-Dec. Sess., p. 379, § 9; Ga. L. 1955, p. 288, § 4; Code 1933, § 91A-3207, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1990, p. 1843, § 4; Ga. L. 1994, p. 1767, § 4; Ga. L. 2010, p. 528, § 1/HB 1191.

JUDICIAL DECISIONS

Section applicable to long-term notes. — Intangible taxes imposed on long term notes secured by real estate are excise taxes, not ad valorem taxes, since the taxes are paid for the privilege of filing a document to protect the note secured by the recording of the security instrument, and the fact that it is based on the value of

the property is only ancillary. Bankers Trust Co. v. Jackson, 236 Ga. App. 490, 512 S.E.2d 378.

OPINIONS OF THE ATTORNEY GENERAL

Section applicable to long-term notes. — Statute would be applicable in determining the amount of tax due by the holder of a long-term note. 1954-56 Ga. Op. Att'y Gen. 801.

48-6-70. Encumbered real property located outside state and secured by instrument held by resident.

Every resident holder of an instrument securing a long-term note secured by real property located outside of this state including, but not limited to, domestic corporations and foreign corporations having their principal places of business in this state shall file, in lieu of recording the instrument securing any such note, at such periodic intervals as the commissioner by regulation may designate, a memorandum of the instrument with the commissioner on forms prescribed by the commissioner. At the same time as the memorandum is filed, the holder of the instrument shall pay to the commissioner the amount of the tax required by this article with respect to the instrument. The revenue from each instrument shall be distributed to the state, counties, and municipalities as if the real property securing the instrument were located in the county of the domicile of the taxpayer or, if the taxpayer is a corporation, in the county of the principal place of business of the taxpayer.

History.

Ga. L. 1953, Nov.-Dec. Sess., p. 379, § 10; Code 1933, § 91A-3208, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1990, p. 1843, § 4.

OPINIONS OF THE ATTORNEY GENERAL

Intangible property tax on long-term notes secured by real estate is not unconstitutional. 1970 Op. Att'y Gen. No. 70-56.

Notes held by nonresidents when not secured by realty nor connected with business. — Notes held by a nonresident, which notes are not secured by real estate nor connected with any business done in this state, are not subject to ad valorem taxation in this state. Mere notice of promissory notes creating no lien on property is not subject to being recorded. 1970 Op. Att'y Gen. No. U70-52.

48-6-71. Determinations by commissioner of whether tax is payable; determinations to be public record; effect of nonpayment in reliance on determination.

The commissioner upon his own motion or upon the written request of one or more holders of instruments securing notes secured by real property shall render publicly and in writing his determination of whether the intangible recording tax provided in this article is payable

with respect to a particularly described real property instrument or class of real property instruments or modifications of such instruments. The determination may be in the form of administrative regulations if applicable to a class of real property instruments. A copy of all such determinations shall be retained in the files of the department as a permanent and public record. Nonpayment of the tax provided for in this article, with respect to a real property instrument filed for record, in reliance upon a determination rendered by the commissioner pursuant to this Code section shall not constitute a bar, as provided in Code Section 48-6-77, to the collection of the indebtedness secured by any such instrument.

History.
Ga. L. 1973, p. 271, § 3; Ga. L. 1976, p. 405, § 5; Ga. L. 1977, p. 635, § 4; Code 1933, § 91A-3210, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1990, p. 1843, § 4.

OPINIONS OF THE ATTORNEY GENERAL

How determinations to be made. — State revenue commissioner is not limited to the face of the security deed in considering determination requests under this statute, and such determinations may be in the form of administrative regulations if applicable to a class of real estate instruments. 1980 Op. Att'y Gen. No. 80-141.

Intangible property tax on long-term notes secured by real estate is not unconstitutional. 1970 Op. Att'y Gen. No. 70-56.

48-6-72. Collection and distribution of revenues.

(a) The intangible recording tax imposed by Code Section 48-6-61 upon instruments securing long-term notes secured by real property shall be collected by the collecting officer of each county and said officer shall make the distributions in the manner provided for in this Code section.

(b) The governing authority of each county shall take into consideration any increase or decrease in the duties and responsibilities of the offices of the tax commissioner and the clerk of the superior court required by this article in establishing the annual budget for each such office and, where applicable, the affected officers shall cooperate fully in any transferring of responsibilities required under this Code section.

(c) The collecting officer, on the basis of the tax commissioner's or tax collector's records and of certificates which shall be supplied by each school district, municipality, and other tax district in the county, shall distribute at least monthly the revenue collected under this article. Each year the millage rates used in the distributions of revenue under this Code section shall be based upon the immediately preceding year's millage rate of each participating tax authority as provided in this article.

(d) Revenue derived from taxes under this article shall be divided among the state and all other tax jurisdictions and districts including, but not limited to, county and municipal districts, which levy or cause to be levied for their benefit a property tax on real and tangible personal property having the same taxable situs as the real property which is the subject of the intangible tax. The distribution shall be made according to the proportion that the millage rate levied for the state and each other tax jurisdiction or district respectively bears to the total millage rate levied for all purposes applicable to real and tangible personal property having the same taxable situs as the subject of the intangible tax. The revenue distributed to municipalities having independent school systems supported by taxes levied by the municipality shall be divided between the municipality and the independent school system according to the proportion that the millage rate levied by the municipality for nonschool purposes and the millage rate levied for school purposes bear to the total millage rate levied by the municipality for all purposes. The tax levied by this article shall be deemed to be levied by the participating tax authorities in the proportion that the millage rate of each participating tax authority bears to the aggregate millage rate of all the participating tax authorities.

(e) In the event any distribution or part of a distribution as provided in this article is adjudged to be invalid for any reason, such distribution or part of a distribution shall be paid into the general fund of the state in the same manner and for the same purposes as provided in this article for the state's share of the revenues derived from the tax imposed by this article.

History.

Ga. L. 1955, p. 730, § 1; Code 1933, § 91A-3217, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1990, p. 1843, § 4; Ga. L. 1994, p. 1767, § 5; Ga. L. 1996, p. 117, § 6; Ga. L. 1996, p. 130, § 6; Ga. L. 1997, p. 523, § 2.

Editor's notes.

Ga. L. 1996, p. 117, § 9, provides that the Act shall not repeal any provision of Ga. L. 1996, p. 130 if Ga. L. 1996, p. 130 is passed at the 1996 regular session of the General Assembly, becomes law, and becomes effective.

Ga. L. 1996, p. 130, § 9, not codified by the General Assembly, provides, in part, that the provisions of the Act shall not repeal but shall supersede and control over any conflicting provisions of any other Act enacted at the 1996 regular session, including, but not limited to, Ga. L. 1996, p. 117.

Ga. L. 1996, p. 130, § 9, not codified by the General Assembly, provides that the 1996 amendment enacted by that Act becomes effective on January 1, 1997, and shall be applicable to all taxable years beginning on or after January 1, 1996, upon the ratification of House Resolution 734 (Ga. L. 1996, p. 1665) at the November 1996 general election; if such resolution is not ratified, the amendment shall not become effective and shall stand repealed on January 1, 1997. That resolution passed at the November 1996 general election, so the amendment took effect on January 1, 1997.

48-6-73. Reports and distributions by collecting officer; failure to distribute as breach of duty and bond; commissions; long-term notes not entered on property tax digest.

Each collecting officer shall make a report to the commissioner by the tenth day of each month on forms prescribed by the commissioner of all sums collected and remitted under this article for the preceding month. The collecting officer shall retain 6 percent of the tax collected as compensation for said officer's services in collecting the tax. All such taxes shall be deemed to have been collected by the collecting officer in said officer's official capacity. Failure to collect and distribute the tax as provided by law shall constitute a breach of the official duty and of the official bond of the collecting officer. In each county in which the collecting officer is on a salary, the 6 percent commission allowed by this Code section shall be paid into the county treasury and shall become county property. The long-term notes secured by real property upon which this tax is based shall not be placed upon the property tax digest prepared and maintained by the tax receiver. It is the intention of the General Assembly that the 6 percent commission permitted under this article for the collection and distribution of this tax by the collecting officer shall be the only compensation permitted to any collecting officer with respect to this tax.

History.

Ga. L. 1953, Nov.-Dec. Sess., p. 379, § 8; Ga. L. 1955, p. 288, § 3; Code 1933, § 91A-3206, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1990, p. 1843, § 4; Ga. L. 1992, p. 1686, § 1; Ga. L. 1994, p. 1767, § 6; Ga. L. 2000, p. 1376, § 1; Ga. L. 2002, p. 1294, § 1; Ga. L. 2012, p. 738, § 1/HB 851.

OPINIONS OF THE ATTORNEY GENERAL

Commission paid to tax official in county where instrument first recorded. — Commission provided for in this statute is to be retained by the tax collector or tax commissioner (now collection officer) of the county where the security instrument is first recorded and to whom the intangibles tax is paid. That the tax collector or tax commissioner collecting the tax is to retain the entire commission is borne out by the provisions of this statute. 1963-65 Ga. Op. Att'y Gen. 96.

Commission as to property lying in both 4 percent and 6 percent counties. — Properties covered by a security instrument can lie in both 4 percent and 6 percent counties. Since no specific recognition was given to this possible situation by this statute in the way of prorating the commission among the tax collectors and tax commissioners (now collection officers) of the various counties involved, it must have been the intent of the General Assembly that the rate of commission be determined by the size of the county in which the instrument was first recorded and that the tax collector and tax commissioner collecting the tax in that county retain the entire commission. 1963-65 Ga. Op. Att'y Gen. 96.

Commission allowed on long-term notes even when portion of tax revenues used for school purposes. — Six percent commission allowed tax commissioner or tax collector (now collection officer) on long-term notes secured by real estate is applicable even when a portion of tax revenues is used for

school purposes. 1962 Ga. Op. Att'y Gen. 567.

48-6-74. Distribution of revenues from intangible recording tax; procedure when real property located in more than one county.

All revenues derived from the intangible recording tax imposed by this article including, but not limited to, revenues from any imposition of the tax upon intangible trust property shall be distributed among the state, county, and municipality in which the real property is located in the same proportion that revenues derived from the intangible taxes imposed by Article 3 of this chapter are distributed. If the real property is located in more than one county, the appropriate portion of the intangible recording tax shall be distributed equitably by the commissioner among the affected counties.

History.

Ga. L. 1953, Nov.-Dec. Sess., p. 379, § 17; Code 1933, § 91A-3214, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1990, p. 1843, § 4; Ga. L. 1996, p. 117, § 7; Ga. L. 1996, p. 130, § 7; Ga. L. 1997, p. 523, § 3.

Editor's notes.

Ga. L. 1996, p. 117, § 9, provides that the Act shall not repeal any provision of Ga. L. 1996, p. 130 if Ga. L. 1996, p. 130 is passed at the 1996 regular session of the General Assembly, becomes law, and becomes effective.

Ga. L. 1996, p. 130, § 9, not codified by the General Assembly, provides, in part, that the provisions of the Act shall not repeal but shall supersede and control over any conflicting provisions of any other Act enacted at the 1996 regular session, including, but not limited to, Ga. L. 1996, p. 117.

Ga. L. 1996, p. 130, § 9, not codified by the General Assembly, provides that the 1996 amendment enacted by that Act becomes effective on January 1, 1997, and shall be applicable to all taxable years beginning on or after January 1, 1996, upon the ratification of House Resolution 734 (Ga. L. 1996, p. 1665) at the November 1996 general election; if such resolution is not ratified, the amendment by that Act shall not become effective and shall stand repealed on January 1, 1997. That resolution passed at the November 1996 general election, so the amendment took effect on January 1, 1997.

OPINIONS OF THE ATTORNEY GENERAL

Intangible property tax on long-term notes secured by real estate is not unconstitutional. 1970 Op. Att'y Gen. No. 70-56.

Distribution based on property location. — Distribution of the intangible tax levied under the provisions of Ga. L. 1953, Nov.-Dec. Sess., p. 379 (see now O.C.G.A. Arts. 2 [repealed] and 3, Ch. 6, T. 48) will be based solely on the location of the property. 1954-56 Ga. Op. Att'y Gen. 581.

RESEARCH REFERENCES

C.J.S.

81A C.J.S., States, §§ 283, 291.

48-6-75. Collection procedures in absence of collecting officer.

In the event the collecting officer required to collect the tax imposed by Code Section 48-6-61 is temporarily absent from said officer's office for reasons of health, vacation, or otherwise, said officer shall designate another qualified person to collect the intangible recording tax in said officer's absence. In the event of the death of the collecting officer, the county governing authority shall immediately designate another qualified person to collect the tax until a new collecting officer qualifies for the position as required by law.

History.
Ga. L. 1955, p. 288, § 6; Code 1933, § 91A-3215, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1990, p. 1843, § 4; Ga. L. 1994, p. 1767, § 7.

RESEARCH REFERENCES

C.J.S.
21 C.J.S., Courts, § 338 et seq.

48-6-76. (For effective date, see note.) Procedure for protesting intangible recording tax; payment under protest; special escrow fund; filing claim; approval or denial by commissioner; action for refund.

(a) If a taxpayer files with the collecting officer at the time of payment of tax as provided in Code Section 48-6-61 a written protest in duplicate of the collection or any part of the collection of the tax as erroneous or illegal, the collecting officer receiving the payment under written protest shall be deemed to have made a conditional collection of the protested amount of the payment. Each protested collection shall be effective to discharge any duty of the taxpayer to pay the tax and to require the collecting officer to enter upon or attach to the instrument securing the obligation upon which the tax is claimed to be due a certification in the form prescribed in Code Section 48-6-62 of the fact that the intangible recording tax as provided by Code Section 48-6-61 has been paid. Each collection as provided in this Code section shall be subject to the conditions set forth in this article as to refund upon determination by the commissioner or by final judgment in a refund action that the collection was erroneous or illegal.

(b) A collecting officer receiving a payment under written protest shall deposit the protested amount of the payment in a separate account in a bank approved as a depository for state funds, shall hold the protested amount as a special escrow fund for the purposes provided in this article, and, except as provided in this Code section, shall not distribute the amount under Code Section 48-6-74 or retain from the amount or pay into the county treasury any commission under Code Section 48-6-73. Immediately upon receiving a payment under written

protest, the collecting officer shall forward to the commissioner one executed copy of the protest.

(c) The taxpayer making a payment under written protest may file at any time within 30 days after the date of the payment a claim for refund of the protested amount of the payment with the commissioner. Each claim shall be in writing, shall be in the form and contain such information as the commissioner requires, and shall include a summary statement of the grounds upon which the taxpayer relies in contending that the collection of the amount was erroneous or illegal. A copy of the claim shall be filed by the taxpayer within the 30 day period with the collecting officer or said officer's successor who collected the protested amount.

(d) The commissioner shall consider the claim for refund and shall approve or deny it and shall notify the taxpayer and the collecting officer or said officer's successor who collected the protested amount of said officer's action. If the commissioner approves the claim in whole or in part, the collecting officer or said officer's successor shall forthwith pay to the taxpayer the amount so approved, without interest, from the special escrow fund held by said officer, and no appropriation or further authorization shall be necessary to authorize and require the payment to the taxpayer from the special escrow fund.

(e)(1) Any taxpayer whose claim for refund is denied entirely or in part by the commissioner or with respect to whose claim no decision is rendered by the commissioner within 30 days from the date of filing the claim shall have the right to bring an action for refund of the amount so claimed and not approved against the collecting officer or said officer's successor who collected the amount, in said officer's official capacity, in the superior court of the county whose official collected the amount or in the Georgia Tax Tribunal in accordance with Chapter 13A of Title 50.

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

(3) For the purposes of this Code section, a failure by the commissioner to grant or deny the taxpayer's claim for refund within the 30 day period shall not constitute a constructive denial of the claim.

(f) The commissioner in said commissioner's official capacity shall be made a party defendant to each action for refund in order that the interests of the state may be represented in the action, and the Attorney General shall represent the defendants in each action. If it is determined in the action that the amount claimed by the taxpayer was erroneously or illegally collected from the taxpayer, the taxpayer shall be entitled to judgment against the defendant county tax official in said

tax official's official capacity for the amount erroneously or illegally collected, without interest to the date of judgment. Court costs charged against the defendant in such an action and any interest payable on a judgment in favor of the taxpayer in such an action for a period before the judgment becomes final shall be paid by the commissioner as part of the expenses of administering this article. The principal amount of a final judgment in favor of the taxpayer in such an action, exclusive of court costs, shall be paid forthwith to the taxpayer by the defendant county tax official from the special escrow fund, and no appropriation or further authorization shall be necessary to authorize and require the payment of a judgment from the special escrow fund.

(g)(1) Upon expiration of the period for filing a claim for refund of a protested payment without any claim being filed, upon expiration of the period for filing an action for refund of a protested payment without any action being filed, upon dismissal of such an action, or upon final judgment in such an action, whichever event occurs first, the collecting officer holding the protested amount in a special escrow fund shall retain from that portion of the amount which is not payable to the protesting taxpayer or shall pay into the county treasury, as provided in Code Section 48-6-73, the percentage of such portion which is allowed by Code Section 48-6-73 as compensation for such collecting officer's services in collecting the tax.

(2) The balance of the portion after the deduction provided in paragraph (1) of this subsection shall be distributed as provided in Code Section 48-6-74 with respect to revenues derived, for the year during which the amount was paid by the taxpayer, from the intangible recording tax imposed by this article.

History.

Ga. L. 1956, p. 720, § 1; Ga. L. 1977, p. 635, § 7; Code 1933, § 91A-3216, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1990, p. 1843, § 4; Ga. L. 1992, p. 6, § 48; Ga. L. 1994, p. 1767, § 8; Ga. L. 2012, p. 318, § 9/HB 100; Ga. L. 2024, p. 888, § 3-14/HB 1267, see notes for effective date.

Delayed effective date.

Ga. L. 2024, p. 888, § 4-1(a)/HB 1267, provides that the 2024 amendment shall only become effective on July 1, 2026 upon ratification of a resolution by the voters at the November, 2024, state-wide general election that amends the Constitution to provide that the Georgia Tax Court shall have state-wide jurisdiction as provided by law and that decisions of such court shall be appealed to the Court of Appeals, subject to review by the Supreme Court of Georgia. However, if such a Constitutional amendment is not so ratified, then the amendments to this Code section shall stand repealed on January 1, 2025. This Code section, as set out above, does not reflect the amendment by that Act owing to the delayed effective date. Upon ratification, paragraph (e)(1) will read: "(e)(1) Any taxpayer whose claim for refund is denied entirely or in part by the commissioner or with respect to whose claim no decision is rendered by the commissioner within 30 days from the date of filing the claim shall have the right to bring an action for refund of the amount so claimed and not approved against the collecting officer or said officer's successor who collected the amount, in said officer's official capacity, in the superior court of the county whose official collected the

amount or in the Georgia Tax Court in accordance with Chapter 5B of Title 15, the 'Georgia Tax Court Act of 2025.'"

Amendments.

The 2024 amendment substituted "Georgia Tax Court in accordance with Chapter 5B of Title 15, the 'Georgia Tax Court Act of 2025.'" for "Georgia Tax Tribunal in accordance with Chapter 13A of Title 50." at the end of paragraph (e)(1). For effective date of this amendment, see the delayed effective date note.

Editor's notes.

Ga. L. 2024, p. 888, § 4-1(a)/HB 1267, not codified by the General Assembly, provides that the 2024 amendment to this Code section is subject to an amendment to the Constitution to provide that the Georgia Tax Court shall have state-wide jurisdiction as provided by law and that decisions of such court shall be appealed to the Court of Appeals, subject to review by the Supreme Court of Georgia, that is ratified by the voters at the November, 2024, state-wide general election. If such a Constitutional amendment is not so ratified, then the amendment to this Code section shall stand repealed on January 1, 2025.

JUDICIAL DECISIONS

Nature of tax. — Intangible taxes imposed on long term notes secured by real estate were excise taxes, not ad valorem taxes, since the taxes were paid for the privilege of filing a document to protect the note secured by the recording of the security instrument, and the fact that the taxes were based on the value of the property was only ancillary. Bankers Trust Co. v. Jackson, 236 Ga. App. 490, 512 S.E.2d 378.

OPINIONS OF THE ATTORNEY GENERAL

Intangible property tax on long-term notes secured by real estate is not unconstitutional. 1970 Op. Att'y Gen. No. 70-56.

Purpose. — Purpose of this statute is to provide a way for a person to pay the tax for purposes of getting a prompt and unquestionable recordation of the person's security instrument, yet not pay the tax for purposes of distribution to the various local taxing districts, so that the payment could be available for refund upon an administrative or judicial decision that there is no liability. 1960-61 Ga. Op. Att'y Gen. 521.

Only authority for refunding of intangible taxes is that found in this statute; there is no other provision of law authorizing the refund of intangible taxes voluntarily paid. 1957 Ga. Op. Att'y Gen. 316.

48-6-77. Failure to pay intangible recording tax bars action on indebtedness; removal of bar; penalty; conditions under which penalty waived; acquisition of instrument by holder exempt from tax.

(a) Failure to pay the tax levied by this article shall constitute a bar to the collection by any action, foreclosure, the exercise of any power of sale, or otherwise of the indebtedness secured by any instrument required by this article to be recorded, whether the instrument is held by an original party to the instrument or by a transferee. However, failure to pay the tax levied by this article shall not affect or discharge the indebtedness and other obligations secured by such instrument or the debtor's liability on account thereof and, subject to the bar, such

instrument shall continue to secure the indebtedness and other obligations secured thereby and shall continue to encumber the collateral described therein. The bar may be removed by the payment of the required tax, plus interest at the rate specified in Code Section 48-2-40 from the time the tax was due, plus a penalty of 50 percent of the amount of the tax, after which the process to collect the indebtedness, including foreclosure, may proceed as if no bar ever existed. However, if an instrument required to be recorded fails to reflect on its face that the tax levied by this article is due and after a foreclosure has taken place it is discovered that the instrument securing the indebtedness is in fact subject to the tax, any deed given pursuant to the foreclosure or in lieu of foreclosure shall be imperfected but may be perfected by the payment of the required tax, plus interest at the rate specified in Code Section 48-2-40 from the time the tax was due plus a penalty of 50 percent of the amount of the tax. Once the tax, interest, and penalty as required in this subsection have been paid, the perfection of the deed will revert back to the date of the deed, and the deed shall retain its priority over any and all intervening liens or conveyances except those conveyances and liens made or created by the grantee, its successors, and assigns named in the foreclosure deed or deed in lieu of foreclosure. These provisions shall have no effect on any instrument subject to the tax on which the statute of limitations has expired.

(b) The failure to pay the tax shall not constitute a bar to the collection of the indebtedness as provided in subsection (a) of this Code section when the commissioner has determined that the tax is not payable.

(c) The commissioner may waive the penalty provided for in subsection (a) of this Code section if he determines that the failure to pay the tax was through ignorance of the law or inadvertence and that the failure did not occur out of bad faith.

(d) This Code section shall not apply to instruments acquired at a time when the holder of the instrument was otherwise exempt from the payment of the tax imposed by this article.

History.

Ga. L. 1953, Nov.-Dec. Sess., p. 379, § 11; Ga. L. 1973, p. 271, § 2; Ga. L. 1977, p. 635, § 3; Code 1933, § 91A-3209, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 59; Ga. L. 1980, p. 10, § 16; Ga. L. 1990, p. 1843, § 4; Ga. L. 1997, p. 547, § 1.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 92-171 are included in the annotations

for this Code section.

Effect of failure to pay taxes on confirmation action under § 44-14-161. — In an action to confirm a sale under O.C.G.A. § 44-14-161, the debtors were not permitted to raise the defense that intangible taxes had not been paid as required by O.C.G.A. § 48-6-77; alleged defenses to the original debt are not relevant to the confirmation proceeding. Guthrie v. Bank S., 195 Ga. App. 123, 393 S.E.2d 60, 1990 Ga. App. LEXIS 424 (1990), cert. denied, No. S90C0984, 1990 Ga. LEXIS 850 (Ga. May 9, 1990).

Section is designed primarily to assure collection of tax when due, not for the debtor's protection. Grant v. Oakey, 108 Ga. App. 759, 134 S.E.2d 499, 1963 Ga. App. LEXIS 767 (1963) (decided under former Code 1933, § 92-171).

O.C.G.A. § 48-6-77 does not provide protection to the debtor, but is a method to force the payment of intangible taxes when due. NationsBank v. Tucker, 231 Ga. App. 622, 500 S.E.2d 378.

Exempt party's transferee not barred from collection of debt. — When a bank is exempt from the payment of the recording tax and is not subject to the bar, provided for in this statute, against the collection of the debt, the bank's grantor cannot protest the sale of the property by the bank's transferee in reliance on the bar of this statute. Grant v. Oakey, 108 Ga. App. 759, 134 S.E.2d 499, 1963 Ga. App. LEXIS 767 (1963) (decided under former Code 1933, § 92-171).

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Intangible property tax on long-term notes secured by real estate is not unconstitutional. 1970 Op. Att'y Gen. No. 70-56.

Transfer does not relieve original holder of obligation. — Transfer by assignment or otherwise of long-term notes secured by real estate to the national bank does not relieve the original holder of the holder's tax obligation, and does not change the tax status of the instrument. 1963-65 Ga. Op. Att'y Gen. 511.

Waiver of penalty in absence of bad faith. — When the holders of the instrument mailed a check for the intangibles taxes shortly after acquiring the property but the tax commissioner, being unfamiliar with the commissioner's duties, held the check several months without presenting the check to the bank for payment, the state revenue commissioner is authorized to waive such penalty if the commissioner determines that the failure to pay the tax was through ignorance of the law or inadvertence, and not in bad faith. 1963-65 Ga. Op. Att'y Gen. 46.

ARTICLE 4

TAXATION OF FINANCIAL INSTITUTIONS

Editor's notes.

Ga. L. 1983, p. 1350, § 15, effective January 1, 1984, not codified by the General Assembly, provides that should subsection (e) of Code Section 48-6-93 or paragraph (11) of subsection (b) of Code Section 48-7-21 be declared invalid or unconstitutional, it is the intent of the General Assembly that the entire Act be held invalid and the method of taxation affected by the Act revert to the method in effect prior to January 1, 1984.

Ga. L. 1996, p. 181, § 10, not codified by the General Assembly, provides for a study and report by the state revenue commissioner regarding the effect of the Act on revenue received by the state, counties, and cities in 1997 and 1998 from the tax imposed by Article 4 of Chapter 6 of Title 48 of the Code.

RESEARCH REFERENCES

ALR.

Discrimination in state taxation of national banks or national bank shares, 87 A.L.R. 846.

Tax on bank stock as payable out of assets of insolvent bank or trust company, 87 A.L.R. 1018.

"Business situs" for purposes of property taxation of intangibles in state other than domicile of owner, 143 A.L.R. 361.

48-6-90. Definitions.

As used in this article, the term:

(1) "Bank" means any financial institution chartered under the laws of any state or under the laws of the United States which is authorized to receive deposits in this state and which has a corporate structure authorizing the issuance of capital stock.

(2) "Depository financial institution" means a bank or a savings and loan association.

(3) "Savings and loan association" means any financial institution, other than a credit union, chartered under the laws of any state or under the laws of the United States which is authorized to receive deposits in this state and which has a mutual corporate form.

History.

Code 1981, § 48-6-90, enacted by Ga. L. 1996, p. 181, § 2.

Editor's notes.

Ga. L. 1996, p. 181, § 2, renumbered former Code Section 48-6-90 as Code Section 48-6-90.1 and enacted this Code section and provided that it shall be applicable to all returns due on or after March 1, 1997.

Law reviews.

For review of 1996 revenue and taxation legislation, see 13 Ga. U.L. Rev. 294 (1996).

48-6-90.1. Depository financial institutions subject to state and local taxation as business corporations.

Except as is otherwise provided in this title, depository financial institutions shall be subject to all forms of state and local taxation in the same manner and to the same extent as other business corporations in Georgia.

History.

Ga. L. 1927, p. 56, § 11; Code 1933, § 92-2406; Ga. L. 1935, p. 11, § 11; Ga. L. 1955, p. 450, §§ 1, 2; Ga. L. 1959, p. 327, § 1; Ga. L. 1966, p. 284, § 1; Ga. L. 1973, p. 924, § 3; Code 1933, § 92-2406, enacted by Ga. L. 1975, p. 147, § 1; Ga. L. 1976, p. 405, § 7; Code 1933, § 91A-3301, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1983, p. 1350, § 5; Code 1981, § 48-6-90.1, as redesignated by Ga. L. 1996, p. 181, § 2.

Law reviews.

For article surveying legislative and judicial developments in Georgia local government law for 1978-79, see 31 Mercer L. Rev. 155 (1979).

For survey article on constitutional law, see 34 Mercer L. Rev. 53 (1982).

For survey article on local government law, see 34 Mercer L. Rev. 225 (1982).

For review of 1996 revenue and taxation legislation, see 13 Ga. U.L. Rev. 294 (1996).

JUDICIAL DECISIONS

Analysis

General Consideration
Persons and Entities Liable for Tax

General Consideration

Constitutionality of bank share tax scheme. — The 1975 Georgia bank share tax scheme did not subject banks to a tax classification that was so "palpably arbitrary" or "invidious" as to run afoul of the constitutional protections of the equal protection clause of the United States Constitution and the due process clauses of the United States and Georgia Constitutions. Roberts v. Gunter, 251 Ga. 276, 304 S.E.2d 369, 1983 Ga. LEXIS 757 (1983).

Former bank share tax statute, Ga. L. 1975, pp. 147-153 (see now O.C.G.A. § 48-6-90), passed in March 1975 and stating that it did "apply to all taxable years beginning on or after January 1, 1975," did not retroactively impose a tax on property held by a bank two and one-half months before the statute was enacted in violation of the constitutional prohibition that "no . . . retroactive law . . . shall be passed." Roberts v. Gunter, 251 Ga. 276, 304 S.E.2d 369, 1983 Ga. LEXIS 757 (1983).

State can lawfully tax national banks only as provided by federal law. Goodwin v. Citizens & S. Nat'l Bank, 209 Ga. 908, 76 S.E.2d 620, 1953 Ga. LEXIS 429 (1953).

To tax long-term notes separately would violate the declared policy of this state. Washington Loan & Banking Co. v. Golucke, 212 Ga. 98, 90 S.E.2d 575, 1955 Ga. LEXIS 560 (1955).

Intent of statute is that the state shall tax full value of shares, and no more. Georgia R.R. Bank & Trust v. Richmond County Bd. of Tax Assessors, 142 Ga. App. 417, 236 S.E.2d 95, 1977 Ga. App. LEXIS 1641 (1977).

Notice of assessment of bank share tax on solvent bank. — Since the bank was statutorily required to act as agent for the shareholders for purposes of the bank share tax, it was proper that notice of assessment be forwarded to the bank. It was not essential, however, that personal notice be sent to the individual shareholders. Roberts v. Gunter, 251 Ga. 276, 304 S.E.2d 369, 1983 Ga. LEXIS 757 (1983) (decided prior to 1983 amendment).

Notice of assessment of bank share tax on insolvent bank. — After a bank had ceased banking operations and was placed in receivership with the FDIC, the bank was no longer the agent of the shareholders for bank share tax purposes, and under these facts, notice of a bank share tax assessment to the receiver or the FDIC would not be notice to the shareholders. Roberts v. Gunter, 251 Ga. 276, 304 S.E.2d 369, 1983 Ga. LEXIS 757 (1983) (decided prior to 1983 amendment).

Bank exempt from recording tax on deed to realty and may compel recordation by mandamus. — Bank chartered under the laws of this state is not subject to payment of the ad valorem recording fee imposed under Ga. L. 1953, Nov.-Dec. Sess., p. 379, § 4 (see now O.C.G.A. § 48-6-61). It is error to sustain a general demurrer (now motion to dismiss) to the bank's petition for a writ of mandamus to require the clerk of the superior court to record a security deed given to secure the payment of a long-term note, without payment of the recording fee. Washington Loan & Banking Co. v. Golucke, 212 Ga. 98, 90 S.E.2d 575, 1955 Ga. LEXIS 560 (1955).

Persons and Entities Liable for Tax

Receiver of an insolvent bank is not liable for payment of bank share taxes assessed prior to insolvency, nor does the fact that the bank maintained a reserve account for payment of the taxes at the time the bank went into receivership distinguish the case since it does not appear that these funds had been set apart for the shareholders as dividends or otherwise designated as shareholder property. Roberts v. Gunter, 251 Ga. 276, 304 S.E.2d 369, 1983 Ga. LEXIS 757 (1983) (decided prior to 1983 amendment).

Shareholders may ultimately be held liable for unpaid bank share taxes assessed prior to the insolvency of the shareholders' bank. Roberts v. Gunter, 251 Ga. 276, 304 S.E.2d 369, 1983 Ga. LEXIS 757 (1983) (decided prior to 1983 amendment).

Taxes payable after expenses of liquidation and claims of depositors. — State taxes are payable only after all costs and expenses of the administration of the liquidation or dissolution, and the payment of the claims of depositors. Roberts v. Gunter, 251 Ga. 276, 304 S.E.2d 369, 1983 Ga. LEXIS 757 (1983) (decided prior to 1983 amendment).

OPINIONS OF THE ATTORNEY GENERAL

Section prohibits levy of business license tax on state banks. — Since municipalities cannot levy a business license tax on national banks, municipalities are prohibited from levying such a tax on state banks. This is true regardless of any provision in a city charter giving the city the right to levy such a tax. 1954-56 Ga. Op. Att'y Gen. 699.

State revenue laws inapplicable to international banking corporations. — An international banking corporation whose sole contact with this state is the corporation's operation of an agency office licensed under Ga. L. 1974, p. 705, § 1 (see now O.C.G.A. Art. 5, Ch. 1, T. 7) is not a bank for purposes of state revenue statutes. 1976 Op. Att'y Gen. No. 76-105.

RESEARCH REFERENCES

Am. Jur. 2d.
71 Am. Jur. 2d, State and Local Taxation, § 351.

ALR.
State income tax in respect of income from national bank stock, 127 A.L.R. 941.

48-6-91. Exemption for domestic international banking facilities.

Domestic international banking facilities operating in this state pursuant to Article 5A of Chapter 1 of Title 7, the "Domestic International Banking Facility Act," and engaging only in those activities authorized pursuant to that article shall not be deemed to maintain a place of business in this state and shall not be subject to any state or local tax, license, or fee solely because of such activities.

History.
Ga. L. 1927, p. 56, § 12; Code 1933, § 92-2407; Ga. L. 1935, p. 11, § 12; Code 1933, § 92-2406.1, enacted by Ga. L. 1975, p. 147, § 2; Ga. L. 1976, p. 405, § 8; Code 1933, § 91A-3302, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1983, p. 1350, § 6; Ga. L. 1984, p. 22, § 48; Ga. L. 1996, p. 181, § 3.

RESEARCH REFERENCES

Am. Jur. 2d.
71 Am. Jur. 2d, State and Local Taxation, § 352.

48-6-92. [Reserved] Taxation of banks and building and loan associations under article exclusive; exception.

History.
Ga. L. 1937-38, Ex. Sess., p. 170, § 2; Ga. L. 1973, p. 924, § 3; Ga. L. 1976, p. 405, § 4; Ga. L. 1978, p. 1448, § 1; Code 1933, § 91A-3306, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 60; repealed by Ga. L. 1983, p. 1350, § 7, effective January 1, 1984.

Editor's notes.
Ga. L. 1983, p. 1350, § 7 repealed and reserved this Code section, effective January 1, 1984.

48-6-93. Local business license tax on depository financial institutions; tax rate based on Georgia gross receipts; return required; credits.

(a) Municipalities and counties may each levy and collect a business license tax from depository financial institutions having an office located within their respective jurisdiction at a rate not to exceed 0.25 percent of the Georgia gross receipts, as defined and allocated in Code Section 48-6-95 and this Code section, of said depository financial institutions. Municipalities and counties may provide that the minimum annual amount of such levy upon any depository financial institution shall be not more than $1,000.00.

(b) Reserved.

(c) Every depository financial institution subject to the tax authorized by this Code section shall file a return of its gross receipts with each applicable jurisdiction levying such tax by March 1 of the year following the year in which such gross receipts are measured. Said return shall be in the manner and in the form prescribed by the commissioner based on the allocation method set forth in subsection (d) of this Code section. The return shall provide the information necessary to determine the portion of the taxpayer's Georgia gross receipts to be allocated to each taxing jurisdiction in which such institution has an office. Each taxing jurisdiction which has enacted a business license tax pursuant to subsection (a) of this Code section shall assess and collect said tax based upon the information provided in the returns.

(d) A depository financial institution's Georgia gross receipts shall be allocated among each taxing jurisdiction in which such institution has an office as of December 31 of the year in which gross receipts are measured, as follows:

(1) Each jurisdiction shall be assigned the gross receipts attributable to the offices located within such jurisdiction; and

(2) In determining the amount of "gross receipts" attributable to each office, 20 percent of the institution's Georgia gross receipts shall be attributable to that institution's principal Georgia office, which for this purpose shall be the Georgia office to which the greatest amount

of deposits by value are attributable. The remaining 80 percent of Georgia gross receipts shall be attributable to the institution's other Georgia offices, pro rata according to the number of such offices. The term "office" as used in this Code section means a place of business of a depository financial institution at which the institution accepts deposits but shall not include unmanned automatic teller machines, point-of-sale terminals, or other similar unmanned electronic facilities at which deposits may be accepted. If there are fewer than five offices in addition to the principal Georgia office, the amount of gross receipts attributable to each such office shall be determined by dividing the Georgia gross receipts by the aggregate number of such offices.

(e) Any tax paid by a depository financial institution pursuant to this Code section shall be credited dollar for dollar against any state income tax liability of such institution for the tax year during which any business or occupation tax authorized by this Code section is paid. Such credit shall be subject to the provisions of Code Section 48-7-29.7.

(f) Except as authorized by this Code section, no municipality or county shall levy any form of business license tax, fee, franchise, or occupation tax on any depository financial institution.

History.

Ga. L. 1937-38, Ex. Sess., p. 156, § 2; Ga. L. 1949, p. 1050, § 1; Ga. L. 1973, p. 924, § 3; Ga. L. 1976, p. 405, § 1; Code 1933, § 91A-3303, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1983, p. 1350, § 8; Ga. L. 1984, p. 22, § 48; Ga. L. 1988, p. 13, § 48; Ga. L. 1996, p. 181, § 4; Ga. L. 2000, p. 1445, § 3.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2000, "Code Section 48-7-29.7" was substituted for "Code Section 48-7-29.4" at the end of subsection (e).

Editor's notes.

Ga. L. 1983, p. 1350, § 15, effective January 1, 1984, not codified by the General Assembly, provides that should subsection (e) of Code Section 48-6-93 or paragraph (11) of subsection (b) of Code Section 48-7-21 be declared invalid or unconstitutional, it is the intent of the General Assembly that the entire Act be held invalid and the method of taxation affected by the Act revert to the method in effect prior to January 1, 1984.

Ga. L. 2000, p. 1445, § 5, not codified by the General Assembly, provided in part that the Act shall be applicable to all taxable years beginning on or after January 1, 2001.

Law reviews.

For article, "Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government," see 28 Ga. St. U. L. Rev. 217 (2011).

OPINIONS OF THE ATTORNEY GENERAL

Construction with § 48-6-98. — O.C.G.A. § 48-6-98 operates to qualify or restrain the general terms of subsection (a) as applied to savings and loan associations. 1984 Op. Att'y Gen. No. 84-58.

RESEARCH REFERENCES

ALR.

Discrimination by state against foreign corporations in imposition of taxes and license fees, 49 A.L.R. 726; 77 A.L.R. 1490.

Constitutionality, construction, and application of state and local public-utility-gross-receipts-tax statutes modern cases, 58 A.L.R.5th 187.

48-6-94. Rate of taxation of moneyed capital competing with national banks.

All moneyed capital in the hands of individual citizens of this state coming into competition with the business of national banks shall be subject to taxation at the rate applicable to the national banks.

History.

Ga. L. 1937-38, Ex. Sess., p. 156, § 3; Ga. L. 1973, p. 924, § 3; Ga. L. 1976, p. 405, § 2; Code 1933, § 91A-3305, enacted by Ga. L. 1978, p. 309, § 2.

48-6-95. Special state occupation tax on depository financial institutions; tax rate based on Georgia gross receipts; return required; annual report; credits.

(a) There is imposed a special state occupation tax on each depository financial institution that conducts business or owns property in this state. The rate of this tax shall be 0.25 percent of the Georgia gross receipts, as defined in subsection (b) of this Code section, of the depository financial institution. This tax shall be in addition to any and all other taxes to which such depository financial institution is subject.

(b)(1) For purposes of this Code section, "Georgia gross receipts" means gross receipts as determined under paragraph (2) of this subsection, unless the taxpayer conducts business both within and outside this state in which case "Georgia gross receipts" means gross receipts as determined under paragraph (2) of this subsection multiplied by the taxpayer's Georgia gross receipts factor determined under paragraph (2) of subsection (d) of Code Section 48-7-31 for the year in which such gross receipts are measured.

(2) For purposes of this Code section, "gross receipts" means the total amount of revenue generated from the sources itemized in this paragraph and in paragraph (3) of this subsection during the calendar year immediately preceding the date on which the tax authorized by this Code section shall be due. Before determining gross receipts there shall be deducted:

(A) An amount equal to the amount of interest paid on all liabilities for the period;

(B) An amount equal to income derived from the authorized activities of any domestic international banking facility operating

pursuant to Article 5A of Chapter 1 of Title 7, the "Domestic International Banking Facility Act";

(C) An amount equal to any income arising from the conduct of a banking business with persons or entities located outside of the United States, its territories, or possessions; and

(D) To the extent that any deductions are made pursuant to subparagraphs (B) and (C) of this paragraph, any deductions taken under subparagraph (A) of this paragraph shall be reduced by the same proportion that the deductions in subparagraphs (B) and (C) of this paragraph bear to the gross receipts of the depository financial institution as calculated before making any deductions pursuant to subparagraphs (A) through (C) of this paragraph.

(3) The items to be included in the calculation of gross receipts with respect to banks are as follows:

(A) Interest and fees on loans less any interest collected on those portions of loans sold and serviced for others;

(B) Interest on balances with other depository financial institutions;

(C) Interest on federal or correspondent funds sold and securities purchased under agreement to resell;

(D) Interest on other bonds, notes, and debentures, excluding interest on obligations of the State of Georgia or its political subdivisions and obligations of the United States;

(E) Dividends on stock;

(F) Income from direct lease financing;

(G) Income from fiduciary activities;

(H) Service charges on deposit accounts;

(I) Other service charges, commissions, and fees; and

(J) Other income.

(4) The items to be included in the calculation of gross receipts with respect to savings and loan associations are as follows:

(A) Interest on mortgage loans less any interest collected on those portions of loans sold and serviced for others;

(B) Interest on mortgages, participations, or mortgage backed securities;

(C) Interest on real estate sold on contract;

(D) Discounts on mortgage loans purchased;

(E) Interest on other loans, excluding interest on obligations of the State of Georgia or its political subdivisions and obligations of the United States;

(F) Interest and dividends on investments and deposits;

(G) Loan fees;

(H) Loan servicing fees;

(I) Other fees and charges;

(J) Gross income from real estate owned operations;

(K) Net income from office building operations;

(L) Gross income from real estate held for investment;

(M) Net income from service corporations and subsidiaries;

(N) Miscellaneous operating income;

(O) Profit on sale of real estate owned operations, investment securities, loans, and other assets; and

(P) Miscellaneous nonoperating income.

(c) Each depository financial institution shall file with the commissioner a return of its gross receipts by March 1 of the year following the year in which such gross receipts are measured. Said return shall be in the manner and in the form prescribed by the commissioner. The tax imposed by this Code section shall be paid to the commissioner at the time of filing the return.

(d) The commissioner shall make an annual report to the Governor and to the chairpersons of the House and Senate Appropriations Committees of the amount of special state occupation tax on depository financial institutions collected.

(e) Any tax paid by a depository financial institution pursuant to this Code section shall be credited dollar for dollar against any state income tax liability of such institution for the tax year during which any business or occupation tax authorized by this Code section is paid. Such credit shall be subject to the provisions of Code Section 48-7-29.7.

History.

Ga. L. 1975, p. 154, § 3; Code 1933, § 91A-3304, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1983, p. 1350, § 9; Ga. L. 1996, p. 181, § 5; Ga. L. 2000, p. 1445, § 4; Ga. L. 2002, p. 415, § 48.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2000, "Code Section 48-7-29.7" was substituted for "Code Section 48-7-29.4" at the end of subsection (e).

Editor's notes.

Ga. L. 2000, p. 1445, § 5, not codified by the General Assembly, provided in part that the Act shall be applicable to all taxable years beginning on or after

January 1, 2001.

Law reviews.

For article, "Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government," see 28 Ga. St. U. L. Rev. 217 (2011).

48-6-96. Exemptions, credits, and deductions from taxation of depository financial institutions filing consolidated returns with parent organization.

No depository financial institution shall be deprived of the benefit of any exemption, deduction, or credit authorized by law as a consequence of its election to file otherwise lawful consolidated returns with its parent organization or any corporate subsidiaries with respect to any state or local tax levied against such depository financial institution.

History.

Code 1981, § 48-6-96, enacted by Ga. L. 1983, p. 1350, § 10.

48-6-97. Taxation of credit unions; legislative intent to tax state and federally chartered credit unions equally.

Except as otherwise provided by law, credit unions organized under the provisions of Chapter 1 of Title 7, the "Financial Institutions Code of Georgia," shall be subject to all forms of state and local government taxation authorized by the Congress of the United States for the taxation of federally chartered credit unions on January 1, 1984. It is the intent of the General Assembly of the State of Georgia that credit unions organized under the laws of this state and credit unions organized under the laws of the United States and domiciled within this state be subject to the same degree of taxation whether by the state or any of its political subdivisions in which such credit union maintains a place of business. It is further the intent of the General Assembly that in the event the Congress of the United States should change the manner in which federally chartered credit unions may be taxed by state and local governments, then to the extent that state legislative authority is not preempted by the Congress, state-chartered credit unions and federally chartered credit unions operating in this state shall be taxed to the same extent and in the same manner as state-chartered savings and loan associations operating in this state.

History.

Code 1981, § 48-6-97, enacted by Ga. L. 1983, p. 1350, § 10; Ga. L. 1984, p. 22, § 48.

48-6-98. Legislative intent to tax all depository financial institutions equally; interim special tax limitation for savings and loan associations.

It is the intent of the General Assembly of the State of Georgia that depository financial institutions shall be taxed in the same manner and to the same extent for purposes of state taxation. It is the further intent of the General Assembly of Georgia that depository financial institutions shall be taxed in the same manner and to the same extent by the individual political subdivisions in which they have an office or place of business; provided, however, that the following distinctions shall be made to recognize differences between banks and savings and loan associations:

(1) Any appropriate distinctions made elsewhere in this chapter; and

(2) For a period of three years from January 1, 1984, the aggregate gross receipts taxes payable by any savings and loan association under the provisions of this chapter shall not be in excess of an amount that would be raised by a current ad valorem tax imposed upon the net worth of said association. As used in this chapter, the term "net worth" means all surplus, undivided profits, and reserves exclusive of any reserve required by any federal or state statute or regulation in force as of January 1, 1980, which statute or regulation was applicable to such federal or state-chartered association, and minus the fair market value of all real estate or equity therein owned by the association.

History. Code 1981, § 48-6-98, enacted by Ga. L. 1983, p. 1350, § 10; Ga. L. 1984, p. 22, § 48.

OPINIONS OF THE ATTORNEY GENERAL

Effect on § 48-6-93(a). — O.C.G.A. § 48-6-98 operates to qualify or restrain the general terms of O.C.G.A. § 48-6-93(a) as applied to savings and loan associations. 1984 Op. Att'y Gen. No. 84-58.