

Senate Bill 185

By: Senators Hatchett of the 50th, Kennedy of the 18th, Cowser of the 46th, Kirkpatrick of the 32nd, Hufstetler of the 52nd and others

AS PASSED SENATE

A BILL TO BE ENTITLED

AN ACT

1 To amend Chapter 2 of Title 48 of the Official Code of Georgia Annotated, relating to state
2 administrative organization, administration, and enforcement of revenue and taxation, so as
3 to require that all questions of law decided by a court or the Georgia Tax Tribunal on matters
4 arising from the state board of equalization and matters arising from refunds and appeals of
5 state administration of Title 48 be decided without deference to determinations or
6 interpretations of the Department of Revenue except without any effect on the judicial
7 standard of deference given to rules promulgated pursuant to Chapter 13 of Title 50, the
8 "Georgia Administrative Procedure Act"; to amend Chapter 13A of Title 50 of the Official
9 Code of Georgia Annotated, relating to tax tribunals, so as to require that all questions of law
10 decided by the Georgia Tax Tribunal be decided without deference to determinations or
11 interpretations of the Department of Revenue except without any effect on the judicial
12 standard of deference given to rules promulgated pursuant to Chapter 13 of Title 50, the
13 "Georgia Administrative Procedure Act"; to provide for related matters; to provide an
14 effective date; to provide for applicability; to repeal conflicting laws; and for other purposes.

15 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

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SECTION 1.

Chapter 2 of Title 48 of the Official Code of Georgia Annotated, relating to state administrative organization, administration, and enforcement of revenue and taxation, is amended by revising subsection (c) of Code Section 48-2-18, relating to the State Board of Equalization and duties, 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 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."

SECTION 2.

Said chapter is further amended by adding a new paragraph to subsection (c) of Code Section 48-2-35, relating to refunds, to read as follows:

"(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.'"

SECTION 3.

Said chapter is further amended by adding a new subsection to Code Section 48-2-59, relating to appeals, payment of taxes admittedly owed, bond, and costs, to read as follows:

"(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.'

SECTION 4.

Chapter 13A of Title 50 of the Official Code of Georgia Annotated, relating to tax tribunals, is amended by revising subsection (a) of Code Section 50-13A-14, relating to conduct of trials, evidence, and recordings, as follows:

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

SECTION 5.

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.

SECTION 6.

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