

**COMMENTS TO
THE SPECIAL COUNCIL ON TAX REFORM
AND FAIRNESS FOR GEORGIANS**



GEORGIA SOCIETY OF CPAS

The Georgia Society of Certified Public Accountants (GSCPA) is a professional organization of Certified Public Accountants (CPAs) in the state of Georgia. The Society of over 10,000 members offers training, networking opportunities and legislative representation on issues of importance to the public and the accounting profession.

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GSCPA TAXATION SECTION

The Taxation Section serves the interest of its members and the public by advocating sound tax policy, fostering public trust, and assisting its members in being highly competent providers of tax services.

This commentary regarding House Bill 1405 is being provided through the work and efforts of many members, including but not limited to the following members:

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Introduction

Through discussions with CPAs across the state the GSCPA is offering suggestions regarding Income Taxation (personal, corporate and other), Sales Taxation, Tax Administration and other tax matters.

Tax Administration

I. Georgia DOR Tax Guidance Needs Competitive Improvements

a. *Advice Memoranda*¹

Where there are issues of “clarity” in Georgia’s tax law, regulation or procedures (many of which may have been addressed in the past by Georgia DOR (Department of Revenue), the information should be placed in the public domain with respect to the position that Georgia takes on the issue, so others may benefit from this information. These “advice memos” might not have the force of law, but provide very useful guidance, and would obviate the need for many appeals. Florida DOR’s practice provides useful guidance:

i. “No Name” Letter Rulings

In Florida a Letter Ruling may be obtained without identifying the party who is actually asking for the ruling. In this case the ruling is published, but is not binding on the party seeking the ruling.

ii. “Named” Letter Rulings

Florida will also issued “Named” letter rulings where the requesting party has self identified, and in this case, the Letter Ruling is binding on the applicant.

iii. Publication of Letter Rulings

In both cases, “No Name” Letter Rulings and “Named” Letter Rulings are publicized. Putting “sunshine” on these rulings avoids a lot of appeals and litigation. Georgia should adopt such a “letter ruling” policy.

b. *Administrative Judge Rulings*²

Georgia DOR does not publish these rulings. These rulings are the result of litigation before an Administrative Law Judge. “Sunshine” would help here as well. When the Georgia DOR has access to these rulings and the public does not have access to them, the Georgia DOR not only has an actual advantage in litigation, Georgia DOR also appears biased to the public. Administrative Rulings should be made available to the public in order to be fair to the public, improve the image of Georgia DOR and reduce the incidence of tax disputes.

c. *Ambiguity in Georgia Tax Law*³

i. Default Standard

When an ambiguity occurs in the tax law and there is no apparent resolution found in Georgia law, cases, rulings etcetera, the taxpayer should be authorized to use another body of law (for example, federal tax law) to resolve the ambiguity.

- ii. Resolution of Unresolved Ambiguity
Taxing Authorities (General Assembly and Georgia DOR) are obliged to be clear, precise and concise. When they are not, unresolved ambiguity should always be resolved in favor of the taxpayer.

II. Collection of Delinquent Tax Liabilities

a. *Payment Plan Procedure*

Establish a realistic, practical, efficient Payment Plan Procedure for Delinquent Tax Payers. Georgia DOR's practices do not reflect the needs of the economic environment and are rigid, rendering the terms virtually impossible for any taxpayer to meet. (The DOR will generally allow only 12 months to fully pay the liability, sometimes 18 months with a financing statement, while the IRS will pretty readily allow up to 60 months.)⁴ This can force taxpayers to take the option of paying none of the liability and taking the chance that the DOR will not enforce collection. Also, the rigid payment terms required by the DOR drive some taxpayers to seek protection under federal bankruptcy laws instead of establishing a payment plan. When someone files a tax return, that means that they are trying to "do the right thing;" if they don't pay the tax with the return, it probably means "they can't pay the tax;" when they file a tax return and know they can't pay the tax, they are trying hard "to do the right thing." The DOR should endeavor to get as many delinquent accounts as possible in an "active payment plan" status by providing flexible payment terms.⁵

b. *Offers in Compromise*

Establish a realistic, practical, efficient Offer in Compromise Process for Delinquent Taxpayers. Georgia DOR's practices are too restrictive. It takes a very long time for DOR to respond to an Offer in Compromise and usually denies the offer. After filing an Offer in Compromise, the DOR continues to enforce collection via garnishments, liens, via collection agencies, etcetera.⁶ Collection efforts should be "tolled" by the DOR while an Offer in Compromise is in process. The DOR will only allow a taxpayer to file one Offer in Compromise each 10 years⁷, while the DOR has the right to and does renew Georgia tax liens indefinitely.

c. *Tax Lien Renewals*

Abolish DOR's right and practice to renew state tax liens in perpetuity. Replace that practice with a law more in line with the Federal statute allowing a lien of limited duration (perhaps 10 years as in Federal law) with the right to renew the lien in limited circumstances only one time.

- i. **Collection of Stale Cases**
Abolish the practice of periodically restarting collection efforts on old cases, sometimes 10, 15 or 20 years old, unless the Department of Revenue documents in advance the validity of the liability shown. Applying the same collection standards to the Department of Revenue that apply to the rest of the Georgia business community will prevent this problem. These old balances often result from erroneous data in the records of the Georgia Department of Revenue.
- ii. **Delivery of Official Assessment and Demand for Payment**
Require “delivery” of the notice of Official Assessment and Demand for Payment to the taxpayer by certified mail, instead of simply requiring “mailing” of the notice (to the last address in the DOR’s records, which has often become an “old” address). Changing the standard to “delivery” reflects the increased mobility of the population, improves fair treatment of taxpayers and reduces administrative overhead of taxpayers and Georgia DOR. (OCGA 48-2-45)⁸

d. *Voluntary Disclosure Agreements*

The Voluntary Disclosure Agreement procedure has worked well for several years. This procedure encourages taxpayers to come forward voluntarily, without contact from the DOR. This procedure is an “administrative” procedure and is not part of the Georgia Statutes. This procedure does not currently apply to payment of existing delinquent tax liabilities, but could be adapted to profitably collect currently delinquent tax liabilities.

III. Tax Appeals

a. *Establish a Georgia Tax Court*

Georgia does not have an effective, efficient or fair appeals process. The procedures available to appeal tax assessments are expensive in relation to the amount of tax assessed, thereby rendering the appeals procedures ineffective. (The Tax Section of the Georgia Society of Certified Accountants has issued a Position Paper unanimously approved by the Tax Section Leadership Team, requesting the creation of a Georgia Tax Court.)⁹

b. *Accountability and Liability of Elected Officials, Tax Officials and Employees in Public Fiduciary Capacity*

Employees, elected officials and contractors involved in the assessment, collection, and administration of the tax laws of Georgia and its municipalities should be held to the same standards as the standards imposed by the Georgia General Assembly upon other “professionals” providing “tax services” to the public. This would help ensure proper treatment of Georgia Taxpayers, thus partially eliminating the need for a Georgia Tax Court.

i. Georgia Right to Regulate Actions of Municipalities

The Georgia General Assembly established each municipality in Georgia, and should have the right (and the obligation) to require and enforce the proper administration of each municipality.

c. *Appeals Procedure Modifications*

i. Eliminate the requirement for a taxpayer to post a bond in order to bring an action in court to challenge a state tax execution. (OCGA 48-3-1)¹⁰ Taxpayers should have a right to challenge a state tax execution at any time in court.

ii. Increase the time allowed to file a tax appeal (OCGA 48-2- 59(b))¹¹ from 30 days to 60 or 90 days in order to

1. Conform to practices in other states

2. Allow adequate time to make informed decisions about whether to appeal, thus eliminating many needless appeals.

d. *Application of Tax Payments made by Taxpayer*

The Georgia Code should be changed to direct the Department of Revenue to “apply payments made by a taxpayer to the specific tax, tax period, tax principal, interest and/or penalty, as directed by taxpayer” (if the taxpayer provides instructions). Currently the Department of Revenue is not required to follow taxpayers payment instructions and applies payments at the discretion of the DOR. When a payment is made on a state tax execution, the DOR applies the payment first to the oldest state tax, then state penalty, then interest. Making this change will often allow municipalities to share in “sales and use tax collected” sooner when taxpayers direct that their payments be applied first to an existing “tax” liability. (OCGA 48-2-30(c))¹²

e. *Claims for Refunds*

Clarify the Claim for Refund Statute. Filing a “claim for a refund” is an alternative to filing an “appeal” when the amount of “tax” is in dispute. Sometimes filing a “claim for a refund” is the only alternative available to the taxpayer. This is a harsh process if 100% of the tax must be paid by the taxpayer before a taxpayer is allowed to file a “claim for a refund” of the disputed tax. The law is unclear whether a taxpayer must pay all, or only some, of the tax in dispute before filing a “claim for refund.” The “claim for refund” statute should be revised to affirmatively state the amount of the disputed tax, if any, that must be paid in advance of filing a “claim for refund.” (OCGA 48-2-35)¹³

f. *Penalties*

i. Penalties should not be used as a State Budget item. Penalties should not be used to “raise” revenues. Penalties should only be used when

encouragement to comply with the state revenue laws have not been successful. Human engineering used in this arena could improve compliance, reduce delinquencies and improve the public image of the Department of Revenue, and it would cost little or nothing to implement.

- ii. The current statute “authorizing” the Commissioner of DOR to waive penalties, vests too much discretion in the hands of the Commissioner. The statute should be changed to “Require” the Commissioner to waive penalties where “reasonable cause” is shown, rather than “authorizing” the Commissioner to waive penalties where “reasonable cause” is shown. (OCGA 48-8-66)¹⁴

IV. Department of Revenue Internal Accounting Deficiencies

- a. *Many of the problems in the appeals arena are caused, directly or indirectly, by the lack of an adequate Accounts Receivable Accounting System.*
 - i. Historically, when W2s were filed by employers with the state of Georgia, the information, including Georgia Income Tax Withheld, was not recorded in a data base of any kind. Instead the W2s were stored somewhere and if an issue arose requiring the information, someone had to go to the storage area to search for and retrieve the W2 or W2s needed. With the advent of electronic filing, that situation might have recently improved somewhat. This deficiency exists with other taxes, too, especially with older tax periods.
 - ii. The result of this kind of accounting deficiency is that there is no DOR “payment history” record to examine to verify the accuracy (or inaccuracy) of a balance the DOR claims is due. Taxpayers do not usually keep records sufficient to argue about a new bill for something that happened 10 years ago. In the commercial community, a bill that old would simply be non collectible. Suppose that the XYZ Company receives a bill from the Georgia DOR for \$5,310.12 for withholding taxes for the 3rd quarter of 1989 and the XYZ Company believes that it does not owe that amount. The DOR must go through the records manually to create a payment history for this period in order to create a payment history for XYZ Company to examine. This takes a lot of time and the burden becomes the taxpayer’s to resolve. The DOR should be prohibited from sending out “old” bills to a taxpayer unless they have first done their homework to determine that the amount is correct and has not been previously paid.

Personal Income Tax

I. Filing Requirements

Raise the Standard Deduction and Personal Exemption to eliminate non cost-effective returns and cut administrative costs to reduce the tax burden. The tax law that was established in the 1930s appears surprisingly appropriate with respect to the calculation process. If the Personal Income Tax process is to be retained, the process should be returned closer to the original process.

a. *Standard Deduction*

The Standard Deduction should represent the least that it would typically cost to maintain a household. That number may not be known, but can be determined. A reasonable estimate is \$20,000. An increase to this amount would be a substantial increase from the current standard deduction of \$3,000 (varies from \$1,500-\$3,000 + depending on Filing Status and age).

b. *Personal Exemption*

The personal exemption should represent the typical minimum that it costs annually for one person to live, which now might be \$10,000 per year. An increase of the personal exemption to \$10,000 would be a substantial increase from the current amount of \$2,700.

c. *Minimum Filing Requirements*

If the Georgia Taxable Income is less than \$30,000 a tax return should not be required.

II. Tax Credits

All tax credits should be reviewed, especially refundable credits. For low income taxpayers, it cost society more to implement the “credit” process than the benefit realized by the benefited taxpayers. By increasing the “standard” deductions and “minimum filing requirements” as a substitute, a better result would occur at a lower administrative cost. Georgia taxpayers are likely to generate additional gross domestic product by spending their time in pursuits other than learning about tax credits. A better result is to simplify the tax system, reduce the tax rates rather than implementing credits, and thereby reduce administrative costs. Credits do have the dubious advantage of directing the benefit to favored groups.

III. Social Elections on the Tax Returns to Apply Part of Refund to Charitable Orgs

Remove these elections from the Tax Returns. They clutter up the return, have nothing to do with taxation, and require DOR resources to manage—resources the DOR does not have to spare.

Corporate Income Tax

I. Taxation of Different Types of Business Organizations

a. Regular Corporations (C Corporations) Businesses

Georgia's corporate income and net worth taxes, from a regional perspective, appear to be relatively competitive with its surrounding states.¹⁵

b. S Corporations, Partnerships, LLCs, Sole Proprietorships Businesses

Georgia is at a disadvantage with respect to Florida, which does not tax business income that is generated by 'pass-through' entities (Corporations, Partnerships, LLCs, Sole Proprietorships)¹⁶

c. Corporate Net Worth Tax

- i. The corporate net worth tax impacts businesses in the state unevenly. It is imposed on 'regular' C and on S Corporations, but is not imposed on other 'pass through' businesses (partnerships and LLCs), nor is it imposed on sole proprietorships. More than half of the corporations in Georgia that are subject to the net worth tax pay the minimum tax of only \$10.
- ii. Eliminating the corporate net worth tax would cost the state little in lost revenue, would simplify the tax law, forms and procedures, and be fairer to all Georgia business entities.

d. Tax Credits of Business Entities (Georgia currently has more than 30)

- i. Almost all credits are complex, time consuming for the taxpayer to utilize, and expensive for the state to administer. A cost/benefit analysis of credits should be performed by the state to evaluate the effectiveness of each credit. The Special Tax Council guidelines could then be used to determine which credits, if any, should be maintained.
- ii. Unless the perceived benefit of claiming a credit is relatively large, credits for which a business may be eligible are usually not claimed. The practical result is that many of the state's smaller businesses do not benefit from these credits and therefore pay more in income taxes than they probably should. Larger businesses can and do take advantage of available credits and pay proportionately less in tax.
- iii. Elimination of most of these credits would simplify and promote greater fairness in the "business" income tax system.

II. Unitary Filing Requirement

Georgia does not have a Unitary Filing Requirement although about half of the other states do have such a requirement. Such a requirement would apply to business organizations with multiple entities operating in multiple states. Failure to have such a requirement allows the opportunity for the business organizations to shift taxable

income away from Georgia purely for tax reasons. (Several of the more aggressive tax planning opportunities have been addressed by Georgia.)

III. Georgia Conformity with Federal Tax Law

As Federal Tax Law has become more legislatively volatile, it has become more difficult for Georgia to maintain a stable corporate tax revenue stream. A method to remove this volatility is needed if Georgia maintains its corporate tax structure. Since many of the conformity issues relate to “depreciation” and “credits,” applying the Corporate Tax Rate to:

- a. “Federal Taxable Income with Conformity Adjustments” as is presently done, appears to be the fairest way to address the amount of tax calculated among taxpayers.
- b. Moving the Tax Calculation further up the income calculation chain (and adjusting the rate downward) is another possibility, such as taxing “Gross Revenues” or “Gross Receipts,” but these alternatives generate different “fairness” issues in different industries, since different industries have vastly different profit margins and would result in competitive disadvantages for some industries operating in Georgia. In addition, taxing “Gross Revenues” or “Gross Receipts” would capture revenue from businesses that have sales in Georgia but do not have “nexus” in Georgia for income tax purposes.
- c. Georgia desperately needs a faster way to address the customary annual ritual of the General Assembly passing a “Conformity” law each year to define the Tax Law that Georgia taxpayers must use to calculate and file their prior year tax returns. The problem exists because the Georgia General Assembly convenes in January each year. Tax returns for the prior year must be filed (in most cases) by April 15th of the current year. Congress has been passing several substantial tax bills each year for several years. The General Assembly must decide which of the federal tax laws passed during the prior year will also apply to Georgia Tax Returns filed for the prior tax year. In 2010 the Conformity Bill was not passed until after April 15th. What was a taxpayer to do?
 - i. (When the 2010 General Assembly began their session, the last Conformity Bill that had been passed was during the 2009 Session of the General Assembly and applied to 2008 returns filed during 2009). In 2010 a taxpayer could file a 2009 return using the law in effect in 2008 as specified in the 2009 Conformity Bill, the last known Georgia Tax Law. Then when the 2010 General Assembly passed the new Conformity Bill during the 2010 Session, the taxpayer could have filed an amended return to make the original return conform to the (now known) 2009 tax law. This generates several problems. First the original return is inaccurate, so “is the taxpayer (and or tax preparer) liable for penalties for filing an inaccurate return?” Second, it requires the taxpayer to incur the time and expense of filing a return twice. Third, the DOR must deal with

processing two returns and collecting tax and or paying a refund twice. This is not a palatable solution to the taxpayer's dilemma.

- ii. The taxpayer can assume that the federal laws will be adopted by the Georgia General Assembly in its 2010 Conformity Bill. Professional Ethics say that a tax preparer who does this has prepared a "frivolous" tax return. No Professional Tax Preparer wants to adopt this procedure for dealing with this problem.
- iii. The taxpayer can simply get an extension. That sounds good, but an extension only applies to the time to file the return; it does not extend the time to pay the tax. But how can a taxpayer pay his tax liability on time if he doesn't even know how much (he/she/or it) owes? What about penalties for paying late? Yes, penalties will be assessed.
- iv. This matter has been addressed by the DOR and the General Assembly, but to date no solution to this problem has been enacted.

IV. Georgia's "Corporate Tax Rate"

Georgia's Corporate Tax Rate could be adjusted to accommodate a different base upon which to calculate the tax as in *III. b.* above. Further,

- a. The Corporate Tax Rate could be applied to all "business income" instead of just C Corporation income, to achieve uniform treatment of all "business" income regardless of who earns it;
- b. The Corporate Tax Rate could be adjusted to 0%, as has been suggested in some circles, to eliminate the Corporate Tax altogether, to become more competitive in the Southeastern Region of the US.¹⁷

Sales Tax

I. Compliance

a. Streamlined Sales Tax Program

Comply with the Streamlined Sales Tax Program. This will allow the state to collect taxes on out-of-state purchases that should be subject to Georgia Sales Taxes.¹⁸

b. Contract Auditors

Hire Contract Auditors to increase Audit Coverage in (i) areas of known non compliance, and (ii) random audits to estimate amount of non compliance and identify areas of significant non compliance, while avoiding over burdening existing DOR staff and adding to DOR staff.¹⁹

c. Revise Auditors' Function

Auditor's function should be revised to include educating taxpayers during the audit, so they will better understand, and thereby increase compliance with, the Sales and Use Tax statutes.²⁰

d. Reduce Penalties for Voluntary Compliance.

Some taxpayers who do not have sufficient nexus in Georgia could voluntarily collect Georgia sales tax, but choose not to do so, because of the potential exposure to Georgia's very high penalties.²¹

e. Fix the e-file system

Simplify the e-file system, update the current e-file software, provide competent trained customer service representatives to assist taxpayers with all e-file problems, and never roll out a new system without prior beta testing. The 2010 debacle was faulty from legislation (setting the deadlines and e-filing requirements) to implementation (rolling out inadequate software without beta testing and without adequate numbers of adequately trained support personnel).²²

II. Sales Tax Base

a. Exemptions

Retain and expand exemptions for expenditures for tangible and intangible personal property that is used directly or indirectly "in further processing," such as manufacturing inputs and agricultural inputs, to maintain parity with other states and countries, because Georgia competes with other countries as well as the states surrounding Georgia.²³

b. Sales Tax on Services

Sales Tax on "all" services should not be implemented. To do so would vastly increase the number of businesses (including the kid who cuts the grass) subjected to sales tax collecting, reporting and remitting the sales tax collected.

- i. A business should not be required to comply with the sales tax law when the administrative costs (by both the state government and business entity) exceed the sales tax collectable by the business entity.
- ii. Collecting, reporting, and remitting sales tax is a disproportionately large burden for small, new, low barrier of entry type businesses such as yard maintenance, carpentering, home repair services, door to door sales, etc. These are the kinds of jobs many unemployed people seek when unable to find traditional “employment.” Sales Tax Compliance would be a substantial new barrier of entry for these low level businesses. Enacting a Sales Tax compliance obligation on these low level businesses would result in fewer new businesses started, low levels of compliance by those who do enter these businesses, high costs of enforcement, and substantial problems by a large percentage of those who enter these fields and attempt unsuccessfully to comply.²⁴
- iii. One way to reduce non compliance and reduce the cost of enforcement, is to raise the threshold for requiring compliance with the sales tax laws, i.e., change the law to reduce the number of people required to comply (which is a much more palatable solution for taxpayers than other alternatives).
- iv. To date, States that have tried Sales Tax on Services have been unsuccessful. Since Georgia DOR is already challenged by their requirement to enforce the existing laws to tax the sale of goods (and some services), adding sales tax on all services (and adding a vast number of new business entities to the “sales tax rolls”) will add materially to their administrative and compliance difficulties.
- v. Many services are now, and more are becoming, available on line (or in the cloud) making Sales Tax on Services a serious disadvantage for Georgia service businesses engaged in IT related businesses. Also, businesses located in “border counties” would surely lose business to competitors in “bordering states” which have no such tax on services.
- vi. For “Sales Tax on Services” to work, it seems incumbent on the legislature to find a way to “sell” this idea to the public in order for the public to “buy in” to this program. In today’s environment, few people are sympathetic with the state about having a tight budget, when the taxpayers are themselves losing their jobs, their cars, their houses, the value of their retirement plans, etc.

III. Collecting, Reporting, Paying and Obtaining Refunds of Sales Tax ²⁵

a. Lack of Adequate Web Site Reporting and Payment Support

Inadequate (or no) telephone assistance when problems arise with the electronic filing system (set up to issue numbers, file returns and pay the sales taxes) is a major shortcoming because the web site has had serious faults. No matter what else the DOR does, it should always provide adequate support to taxpayers to

enable them to comply with the rules set up by the DOR and the Georgia General Assembly; otherwise compensation should be paid to the inconvenienced taxpayers.

b. Sales Tax Credit Refunds

- i. Claiming, and obtaining sales tax credits (when sales reported in a prior period were returned during the current reporting period, where a sale has occurred and the receivable has become a “bad debt”, etc.) is not allowed on a sales tax return. A separate “refund claim” has to be filed, which is processed very slowly. A credit should be allowed for such items directly on a sales tax return instead of requiring a separate filing to obtain a refund. Why is it that the DOR is not required to process refund claims as fast as taxpayers are required to file sales returns? Taxpayers must pay penalties for late performance. The DOR should be required to pay taxpayers a penalty when the DOR does not do its job just as timely. The “equal dignity” rule should apply.
- ii. The DOR can currently audit a refund claim using sampling techniques; however the DOR will not accept a refund claim unless each transaction is listed in detail. Listing the transactions can be simple if there are only a few individual transactions. However, there can be hundreds or thousands of small transactions giving rise to the refund claim. Requiring all of the transactions in such a case is not reasonable. The DOR should allow refund claims to be filed using the same technique that it uses to audit the claim.²⁶

c. Various Sales Tax Rates in 159 counties, plus all of the municipalities, is a problem for businesses operating in multiple jurisdictions of Georgia.

Local Issues Affecting Business Enterprises

I. Registration, Licensing, and Filing Property Tax Returns for each Teleworker²⁷

a. Registration

Counties require registration of each tele-worker in the county in order to issue a business license (and charge a fee) for that location.

b. Property Tax Return

Counties and municipalities require an annual Property Tax Return for each tele-worker location in the county or municipality.

c. Exemption

Different Counties have different views of the interpretation of the \$7,500 exemption; ie, is it one \$7,500 exemption for each individual and office in the county, or is it \$7,500 applied against the aggregate number of individuals and offices located in the county? If a. and b. above are to be continued, the exemption issue should be clarified by the general assembly.

d. Industrial Development Bonds

There is no known method to abate the property tax without the use of Industrial Development Bonds, which is not a practical solution.

e. A “pro employment,” “pro employee” solution is to prohibit counties and municipalities from requiring individual licenses, registration and property tax return filing requirements for “employees” working out of their homes. Failure to address this issue will drive jobs to other states or overseas; after all, this is “tele-working” and a tele-worker can work anywhere with telephone service.

II. Property Tax

a. Property Tax on Business Inventory²⁸

Property tax on business inventory has been discussed at length in presentations by others. Property tax on inventory, as well as other business inputs, increases the cost of production and increases the cost of the end product, if the price of the output is elastic, by a multiple of the tax paid, and if the price of the product is not elastic, it reduces the profit of the producer. Taxing business inventory raises either the price to the consumer, the cost to the producer, or both. Many states do not levy a property tax on inventory. This practice by Georgia makes Georgia producers less competitive with other states (as well as foreign countries with lower overall production costs). Enterprise zones are helpful in some cases, but they add additional administrative layers rather than dealing with the issue directly. Eliminating the property tax on inventory will create pressure on the municipalities affected, but that issue can be resolved. Property tax on business inventory should be eliminated.

b. *Real Estate Ad Valorem Tax*²⁹

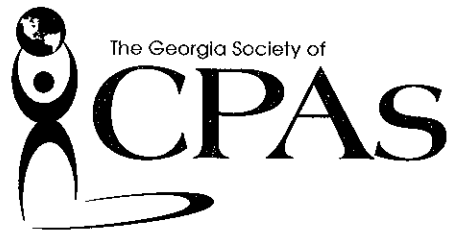
When a county does not revalue a parcel of real estate during a year, the county does not send a notice of assessment to the property owner. Property owners do not know the date that an appeal must be filed in this case. If the property owner does not agree with the existent property tax valuation, and does not have a notice of the time to appeal, and does not know the appeal deadline, the property owner will be stuck with the old assessment. Considering the aggressiveness of local property tax officials, property owners need an actual notice annually specifying their appeal rights and relevant appeal deadlines.

The Taxation Section Leadership Team will be pleased to respond to inquiries and requests for further information about the contents of this document.

Sincerely,



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Tax Section of the Georgia Society of CPAs
Georgia Tax Court Position Paper
November 3, 2009

Over the past few years, interest in establishing a Georgia Tax Court has intensified. At least two sets of proposed legislation to establish such a court have been widely circulated. This legislation has sparked considerable interest among the members of the Georgia Society of Certified Public Accountants in general and the members of the Tax Section of the Georgia Society of Certified Public Accountants in particular. The Tax Section of the Georgia Society of Certified Public Accountants has expended considerable energy in analyzing and evaluating the proposed legislation.

The Tax Section of the Georgia Society of Certified Public Accountants includes members who, cumulatively, have generated hundreds of years of experience addressing tax matters, including foreign, Federal, Georgia (as well as the other states), and local tax matters. The typical Georgia taxpayer facing a tax dispute can generally seek resolution of that dispute through one of three methods, with each method having major deficiencies. Specifically, after the taxing authority has issued its final assessment, the taxpayer can:

(1) file a tax appeal in the appropriate one of Georgia's 159 Superior Courts (not particularly tax savvy in the norm since the Superior Court Judges must also hear the most serious and complex social cases including murder and domestic relations; it is slow, expensive, and generally unfair because Superior Court decisions are not widely published, resulting in a knowledge advantage for the state), or

(2) file a demand for a hearing under the Administrative Procedures Act (generally biased for the state, expensive, and uniform results are not really possible due to the lack of publication of case decisions) or,

(3) pay the tax as determined by the taxing authority and file a claim for refund; if the claim for refund is denied, file a complaint for a refund (suit of illegality) in the county Superior Court. (This is an expensive process of which the typical Georgia taxpayer is unaware.)


As indicated above, neither of these options is efficient, cost effective or without bias. Moreover, Georgia tax law no longer follows the "simple" course as it generally did from its 1954 debut until about ten years ago. Georgia tax law has grown increasingly complex. In the last few years (particularly since the year 2000) it seems as if the Georgia Statutes have been designed to match the Federal Tax Code in complexity. As a result of this complexity, the need for adjudicators with superior tax knowledge grows daily. This fact, too, calls out for a specialized streamlined system of tax dispute resolution. Without adjudicators with sufficient

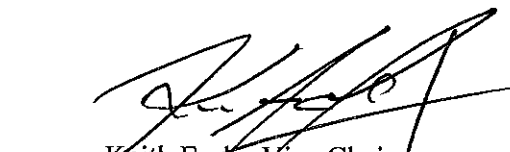
The GSCPA Tax Section serves the interest of its members and the public by advocating sound tax policy, fostering public trust, and assisting its members in being highly competent providers of tax services.

tax knowledge, the cost of resolving tax disputes becomes greater, and the time to resolve disputes becomes longer, neither of which bode well for the typical Georgia taxpayer.

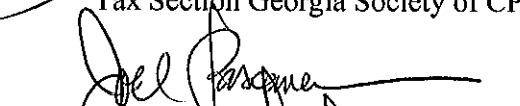
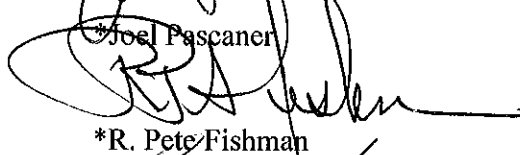
Therefore, the Tax Section of the Georgia Society of Certified Public Accountants hereby expresses its support for the establishment of a Georgia Tax Court at the earliest possible time, and its members are prepared to devote time and energy (and to support other organizations) in the pursuit of that endeavor.

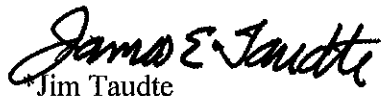
Sincerely,

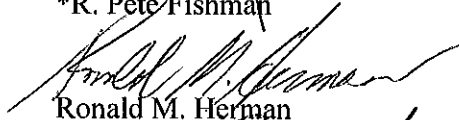

John Masters, Chairman
Tax Section Georgia Society of CPAs

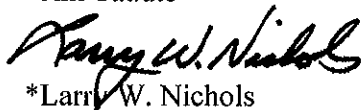

Keith Early, Vice Chairman
Tax Section Georgia Society of CPAs

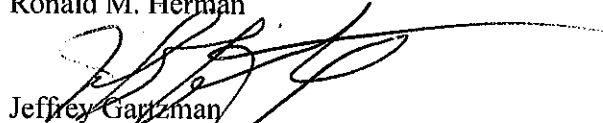

*Bradford C. Dickson

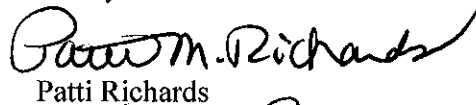

Joel Pascaner

*R. Pete Fishman

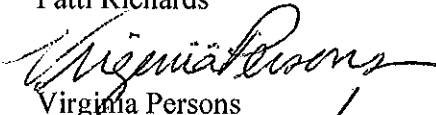

Jim Taudte

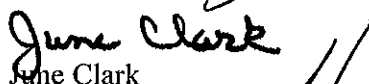

Ronald M. Herman

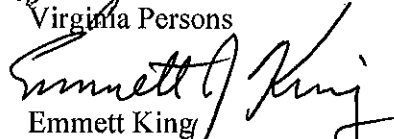

*Larry W. Nichols


Jeffrey Gartzman


Patti Richards


Virginia Persons


June Clark



Emmett King


William C. Harshman

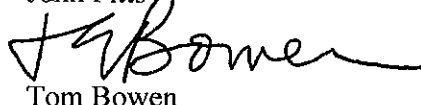

James Cline


Bo Jackson


Steve Bancroft


John Pitts


Jason Pease


Tom Bowen

*Past Chairman, Tax Section (formerly Tax Committee) of the Georgia Society of CPAs

End Notes

¹ WP 64

² WP 64

³ WP 64

⁴ WP 56

⁵ WP 48, WP 50

⁶ WP 57

⁷ WP 56

⁸ WP 46

⁹ Georgia Society of CPAs Tax Court Position Paper (Appendix A)

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