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STATE GOVERNMENT

Georgia Tax Tribunal Act of 2012: Amend Titles 48 and 50 of the Official Code of Georgia Annotated, Relating, Respectively, to Revenue and Taxation and State Government, so as to Create the Georgia Tax Tribunal as an Independent and Autonomous Division within the Office of State Administrative Hearings Operating under the Sole Direction of a Chief Tribunal Judge; Repeal Provisions Relating to the Department of Revenue Holding Hearings When Demanded by Aggrieved Taxpayers; Correct Cross-References; Provide for a Short Title; Provide for Legislative Findings; Provide for the Appointment, Terms of Office, Designation, and Removal of Judges; Provide for the Qualification, Oath of Office, and Prohibition Against Other Employment of Judges; Provide for the Principal Office, Locations, and Facilities of the Tax Tribunal; Provide for the Appointment of Staff and Expenditures of the Tax Tribunal; Provide for the Jurisdiction of the Tax Tribunal; Provide for the Commencement of Cases, Pleadings, and Service of Pleadings; Provide a Stay of Enforcement and Collection Action; Provide for Filing and Other Fees; Provide Procedures for Hearings and Decisions of the Tax Tribunal; Establish and Provide the Jurisdiction and Procedures for a Small Claims Division of the Tax Tribunal; Provide for Appeals from Tax Tribunal Decisions; Provide for Representation in the Tax Tribunal; Provide for Service; Authorize the Tax Tribunal to Promulgate Rules of Practice and Procedure and Forms; Provide for Powers, Duties, and Authority of the Tax Tribunal and the Small Claims Division; Provide for Procedures, Conditions, and Limitations; Provide for Related Matters; Provide for Effective Dates; Provide for Dual Applicability; Repeal Conflicting Laws; and for Other Purposes

CODE SECTIONS:	O.C.G.A. §§ 48-2-18, -35, -36, -50, -59 (amended); 48-3-1 (amended); 48-5-519 (amended); 48-6-7, -76 (amended); 48-7-31, -165 (amended); 50-13-12, -13, -42 (amended); 50-13A-1 to -20 (new)

BILL NUMBER:	HB 100
ACT NUMBER:	609
GEORGIA LAWS:	2012 Ga. Laws 318
SUMMARY:	The Act creates the Georgia Tax Tribunal, a separate and autonomous division of the Office of State Administrative Hearings, which can, concurrently with superior courts, hear and resolve the tax-related disputes of individuals and businesses. A chief tribunal judge, who must be a licensed attorney and who has specialized in tax law for at least eight years, will head the tribunal. The Act allows for individuals and businesses to petition the tax tribunal for relief from the Department of Revenue under various circumstances. Persons or businesses aggrieved by a judgment of the tax tribunal may appeal that ruling to the Superior Court of Fulton County. The Act also creates a small claims division of the tax tribunal that can hear claims regarding amounts below a certain threshold.
EFFECTIVE DATE:	O.C.G.A. §§ 50-13A-1 to -20, July 1, 2012; §§ 48-2-18, -35, -36, -50, -59, Jan. 1, 2013; §§ 48-3-1; 48-5-519; 48-6-7, -76; 48-7-31, -165; 50-13-12, -13, -42, Jan. 1, 2013

History

In 2010, the Special Council on Tax Reform and Fairness for Georgians (Special Council), as part of a larger tax reform effort in Georgia, issued several recommendations to Georgia's General Assembly designed to increase the consistency, predictability, and

efficiency of the tax dispute resolution system.[1] One such recommendation was the creation of a Georgia tax court.[2] The Special Council found that the current system of resolving tax disputes in Georgia was both inefficient and unpredictable.[3] Prior to the creation of the Georgia Tax Tribunal, taxpayers, whether individuals or businesses, that wished to dispute their tax assessments had two options: the taxpayer could file a petition in superior court or file an appeal with the Office of State Administrative Hearings (OSAH), where an administrative law judge would hear the case.[4] Both options, however, were flawed. If the taxpayer brought the action in superior court, a substantial likelihood existed that neither the judge nor the jury would possess the specialized tax knowledge necessary to resolve the matter fairly and properly.[5] If the taxpayer chose to bring his appeal before an administrative law judge within OSAH, the Revenue Commissioner could overturn the judge's ruling and reinstate the initial tax assessment without explanation.[6] Further, regardless of whether the taxpayer was before the superior court or OSAH, these tax law decisions were often inconsistent from county to county and from incident to incident—the system was largely unpredictable.[7] This unpredictability was principally a byproduct of judges' and other parties' lack of specialized tax knowledge and an absence of published opinions to guide dispute resolution.[8] For businesses with complex tax matters, the results of the existing system were often frustrating.[9] For individuals with smaller tax disputes, facing the Department of Revenue was often regarded as too time consuming or too costly.[10] Consequently, taxpayers accepted

1. Telephone Interview with Rep. Stacey Abrams (D-84th) (Apr. 22, 2012) [hereinafter Abrams Interview]; Telephone Interview with Rep. Allen Peake (R-137th) (Apr. 4, 2012) [hereinafter Peake Interview]; Video Recording of House Proceedings (PM-1), Mar. 7, 2012 at 43 min., 53 sec. (remarks by Rep. Allen Peake (R-137th)), http://www.gpb.org/lawmakers/2012/day-30 [hereinafter House Video].

2. *See* Peake Interview, *supra* note 1.

3. *See id.*; Abrams Interview, *supra* note 1.

4. Video Recording of Senate Proceedings, Mar. 27, 2012 at 1 hr., 47 min., 44 sec. (remarks by Sen. Bill Cowsert (R-46th)), http://www.gpb.org/lawmakers/2012/Day-39 [hereinafter Senate Video].

5. *See* Abrams Interview, *supra* note 1.

6. House Video, *supra* note 1, at 43 min., 26 sec.

7. *See* Abrams Interview, *supra* note 1.

8. *See id.*; *see also* House Video, *supra* note 1, at 43 min., 47 sec.

9. *See* House Video, *supra* note 1, at 43 min., 30 sec.; Peake Interview, *supra* note 1.

10. House Video, *supra* note 1, at 44 min., 21 sec.

assessments they believed to be incorrect rather than fight their assessments.[11]

In an effort to remedy these problems, to attract business to the state, and to facilitate the resolution of smaller, individual disputes, House Bill (HB) 100, "The Georgia Tax Court Bill," was introduced.[12] State legislators, after identifying the specific contours of Georgia's needs, looked generally at the United States Tax Court as well as other states' tax tribunals and adopted structural and substantive features that would best suit the needs of Georgia's taxpayers.[13] The General Assembly, with an eye toward increasing efficiency and taxpayer confidence in the dispute resolution system, sought to create a court where taxpayers would have the option to bring their disputes before judges with substantial experience and knowledge in the field of tax law.[14] The final result of this bill was the creation of the Georgia Tax Tribunal, an independent and autonomous division of OSAH.[15]

Bill Tracking of HB 100

Consideration and Passage by House

Representatives Allen Peake (R-137th), Roger Williams (R-4th), Edward Lindsey (R-54th), David Knight (R-126th), Stacey Abrams (D-84th), and Jay Powell (R-171st) sponsored HB 100.[16] The House read the bill for the first time on January 31, 2012.[17] The House read the bill for the second time on February 1, 2012.[18] Speaker of the House David Ralston (R-7th) assigned the bill to the House Judiciary Committee, which favorably reported a House Committee substitute on February 29, 2012.[19] The House Committee substitute

11. *See id.*
12. *See id.*; Abrams Interview, *supra* note 1; Peake Interview, *supra* note 1; Senate Video, *supra* note 4, at 1 hr., 48 min., 02 sec.
13. Abrams Interview, *supra* note 1; Peake Interview, *supra* note 1.
14. Abrams Interview, *supra* note 1; Peake Interview, *supra* note 1; House Video, *supra* note 1, at 43 min., 47 sec.
15. Peake Interview, *supra* note 1; House Video, *supra* note 1, at 42 min., 50 sec.
16. HB 100, as introduced, 2012 Ga. Gen. Assem.
17. State of Georgia Final Composite Status Sheet, HB 100, May 10, 2012.
18. *Id.*
19. *Id.*

transformed the "Georgia Tax Court," which had been a project of limited duration, into the "Georgia Tax Tribunal," which would be a permanent body.[20]

Although both versions of the bill provided that tribunal judges must be practicing attorneys, the House bill, as introduced, provided that such judges must have "substantial knowledge of and experience in state tax law," whereas the House Committee substitute provided the judges must have practiced primarily in tax law for at least eight years.[21] The House bill, as introduced, provided that tribunal judges would receive a salary no less than that provided for judges of the court of appeals; the House Committee substitute provided that tribunal judges should receive a salary no less than that of the chief administrative law judge of OSAH.[22] The House Committee substitute also added a provision allowing tribunal judges, when their dockets are not full, to hear nontax cases pending before OSAH.[23]

The House Committee substitute removed the House bill's provisions regarding service of initial petitions and required that they be served via certified mail or statutory overnight delivery.[24] Whereas the House bill, as introduced, provided for specific methods of discovery, the House Committee substitute provided that the "Georgia Civil Practice Act" would govern discovery and depositions before the tribunal.[25] The House Committee substitute also added a provision allowing tribunal judges to punish noncompliant witnesses or parties by certifying the facts of their disobedience to the superior court, which could then make a finding of contempt.[26] In addition, the House Committee substitute provided that hearings before the tribunal would be open to the public.[27] Whereas the House bill, as introduced, provided that appeals of tribunal decisions would be

20. *Compare* HB 100, as introduced, § 1, p. 2, ln. 38–40, 2012 Ga. Gen. Assem., *with* HB 100 (HCS), § 15, p. 9, ln. 268–71, 2012 Ga. Gen. Assem.

21. *Compare* HB 100, as introduced, § 1, p. 3, ln. 84–87, 2012 Ga. Gen. Assem., *with* HB 100 (HCS), § 15, p. 10, ln. 318–21, 2012 Ga. Gen. Assem.

22. *Compare* HB 100, as introduced, § 1, p. 3, ln. 56–61, 2012 Ga. Gen. Assem., *with* HB 100 (HCS), § 15, p. 9, ln. 294–97, 2012 Ga. Gen. Assem.

23. HB 100 (HCS), § 15, p. 10–11, ln. 330–37, 2012 Ga. Gen. Assem.

24. *Compare* HB 100, as introduced, § 1, p. 5, ln. 138–48, 2012 Ga. Gen. Assem., *with* HB 100 (HCS), § 15, p. 18, ln. 612–15, 2012 Ga. Gen. Assem.

25. *Compare* HB 100, as introduced, § 1, p. 7, ln. 190–215, 2012 Ga. Gen. Assem., *with* HB 100 (HCS), § 15, p. 14, ln. 448–49, 2012 Ga. Gen. Assem.

26. HB 100 (HCS), § 15, p. 15, ln. 478–86, 2012 Ga. Gen. Assem.

27. *Id.*, § 15, p. 15, ln. 488–91.

made to the court of appeals or the Georgia Supreme Court, the House Committee substitute provided that appeals should be made to the Superior Court of Fulton County.[28] Lastly, the House Committee substitute dropped the House bill's provisions empowering the tribunal to make declaratory judgments.[29]

The House read the House Committee substitute on March 7, 2012.[30] No amendments were offered during floor debate. The House adopted the House Committee substitute by a vote of 165 to 0.[31]

Consideration and Passage by Senate

Senator Bill Cowsert (R-46th) sponsored HB 100 in the Senate, and the bill was first read on March 7, 2012.[32] Lieutenant Governor Casey Cagle (R) assigned the bill to the Senate Judiciary Committee.[33] The Senate Judiciary Committee favorably reported a Senate Committee substitute on March 20, 2012.[34] The Senate Committee substitute did not make any substantive changes to the bill.[35] The bill was read a second time in the Senate on March 21, 2012, and was read a third time on March 27, 2012.[36] Also on March 27, 2012, the Senate passed the Senate Committee substitute by a vote of 45 to 0 and transmitted it back to the House of Representatives, where the House unanimously agreed to the Senate Committee substitute.[37]

The Act

The Act amends Titles 48 and 50 of the Official Code of Georgia Annotated with the purpose of creating a new Georgia Tax Tribunal

28. *Compare* HB 100, as introduced, § 1, p. 9, ln. 287–92, *with* HB 100 (HCS), § 15, p. 17, ln. 557–60, 2012 Ga. Gen. Assem.
29. *Compare* HB 100, as introduced, § 2, p. 11–12, ln. 352–68, 2012 Ga. Gen. Assem., *with* HB 100 (HCS), 2012 Ga. Gen. Assem.
30. State of Georgia Final Composite Status Sheet, HB 100, May 10, 2012.
31. Georgia House of Representatives Voting Record, HB 100 (Mar. 7, 2012).
32. State of Georgia Final Composite Status Sheet, HB 100, May 10, 2012.
33. *Id.*
34. *Id.*
35. HB 100 (SCS), 2012 Ga. Gen. Assem.
36. State of Georgia Final Composite Status Sheet, HB 100, May 10, 2012.
37. Georgia Senate Voting Record, HB 100 (Mar. 27, 2012); Georgia House of Representatives Voting Record, HB 100 (Mar. 29, 2012).

and modifying current procedures for tax claims heard before the Georgia Department of Revenue and the Superior Court of Fulton County.[38] Sections 1 through 14 of the Act modify existing tax claim procedures, and section 15 details the operation of the new tax tribunal.[39]

Section 1 of the Act amends Code section 48-2-18 by changing any references to the "Chairman" of the State Board of Equalization to the "Chairperson."[40] The Act also provides an additional option for taxpayers who wish to dispute the amount of their property tax assessments.[41] While taxpayers formerly could only file appeals of those assessments in the Superior Court of Fulton County, taxpayers can now appeal such assessments in the tribunal created by the Act.[42] Section 1 provides that in appeals to the superior court, taxpayers shall have the right of discovery as provided in the Georgia Civil Practice Act.[43] Discovery in the tribunal is covered in section 15 of the Act.[44]

Section 2 of the Act provides a new right of appeal to the Georgia Tax Tribunal for taxpayers whose refund claims have been denied by the Revenue Commissioner; such taxpayers previously could only file appeals in the superior court of the county of residence.[45] Section 2 also extends this new right of appeal to public utilities and nonresident taxpayers; these taxpayers previously could only file appeals in the superior court of the county of the taxpayer's principal place of business or the county where the taxpayer's chief or highest corporate officer or employee resident maintained an office.[46] Lastly, section 2 provides that nonresident individuals or foreign corporations with no place of business or no officer or employee

38. O.C.G.A. §§ 48-2-18(c), 48-2-35(c)(4), 48-2-36(c)(3), 48-2-59, 48-3-1, 48-5-519(b), 48-6-7(b), 48-6-76(e)(1), 48-7-31(d)(2)(C), 48-7-165(b), 50-13-12, 50-13-13(c), 50-13-42(c), 50-13A (Supp. 2012).

39. *Id.* §§ 48-2-18(c), 48-2-35(c)(4), 48-2-36(c)(3), 48-2-59, 48-3-1, 48-5-519(b), 48-6-7(b), 48-6-76(e)(1), 48-7-31(d)(2)(C), 48-7-165(b), 50-13-12, 50-13-13(c), 50-13-42(c), 50-13A.

40. *Compare* O.C.G.A. § 48-2-18(c) (Supp. 2012), *with* O.C.G.A. § 48-2-18(c) (2011).

41. O.C.G.A. § 48-2-18(c) (Supp. 2012).

42. *Id.*

43. *Id.*

44. *Id.*

45. *Compare* O.C.G.A. § 48-2-35(c)(4) (Supp. 2012), *with* O.C.G.A. § 48-2-35(c)(4) (2011).

46. *Compare* O.C.G.A. § 48-2-35(c)(4)(A) (Supp. 2012), *with* O.C.G.A. § 48-2-35(c)(4)(A) (2011).

resident maintaining an office in Georgia can bring an action for refund in the tribunal.[47]

Section 3 establishes that the Revenue Commissioner may grant an extension for filing a petition with the superior court, OSAH as well as with the Georgia Tax Tribunal.[48] Section 4 provides that the Commissioner's tax assessments may be reviewed and that trial courts may have jurisdiction of proceedings to question such assessments, as provided for later in the Act.[49]

Section 5 provides that any party can appeal any other ruling, order, or finding of the Revenue Commissioner to the Georgia Tax Tribunal.[50] Such appeals were previously limited to the superior court of the taxpayer's county of residence.[51] The new right of appeal also applies to public utilities, nonresidents, and foreign corporate taxpayers.[52] Furthermore, parties who appeal to the tribunal are relieved from the requirements that apply to parties filing appeals with the superior court.[53] Specifically, taxpayers filing appeals with the superior court must file a statement agreeing to pay all taxes, on the day they become due, for which the taxpayer has admitted liability.[54] Parties appealing to the superior court must also file a surety bond or security conditioned to pay any tax found to be due by a final judgment of the court.[55]

Section 6 provides that, when the Revenue Commissioner issues a writ of execution for the collection of any tax, penalty, interest, or collection cost with respect to a tax, the taxpayer may file a petition in the tax tribunal to obtain a determination of whether any such amounts are legally due.[56] Section 7 creates a new right of appeal for railroad equipment companies contesting their proposed property tax assessment.[57] Whereas such companies could only bring appeals in

47. O.C.G.A. § 48-2-35(c)(4)(B) (Supp. 2012).
48. *Id.* § 48-2-36(c)(3).
49. *Id.* § 48-2-50(a).
50. *Id.* § 48-2-59(a).
51. O.C.G.A. § 48-2-59(a) (2011).
52. O.C.G.A. § 48-2-59(a)(1)–(2) (Supp. 2012). The previous rights of non-refund appeals for these entities are the same as those discussed in the text accompanying footnotes 35–36.
53. *Id.* § 48-2-59(c).
54. *Id.* § 48-2-59(a)–(c).
55. *Id.*
56. *Id.* § 48-3-1.
57. *Id.* § 48-5-519(b).

the Superior Court of Fulton County, they now may also file appeals in the tribunal.[58]

Section 8 deals with appeals of denied refunds for real estate transfer actions.[59] In addition to the previous option of bringing an action in the superior court of the county where the disputed tax was originally collected, taxpayers can now bring an action for a refund in the Georgia Tax Tribunal.[60] Section 8 also provides a sixty-day time limit, beginning the day the taxpayer's refund is denied, for all refund actions.[61] Also, a failure by the Commissioner to grant or deny a claim within one year is now considered a constructive denial of that claim.[62]

Section 9 amends Code section 48-6-76(e)(1) by allowing taxpayers, whose claims for refund have been denied entirely or for whom no decision has been made for thirty days, to bring an action for refund in the tribunal; such actions previously could only be brought in the superior court of the county whose official collected the tax.[63] Appeals under Code section 48-7-31(d)(2)(C), involving petitions to the Revenue Commissioner regarding allocation and apportionment of corporate income, must now be filed within thirty days of the date of the Commissioner's notice of denial.[64] Section 11 states that the hearing procedure for adjustments of incorrect debts will continue to follow the old procedure[65] where written applications are submitted to the claimant agency, which must then grant a hearing.[66] Section 12 of the Act repeals Code section 50-13-12, "relating to Department of Revenue hearings for aggrieved taxpayers and election of remedies."[67] Section 13 provides that the notice, hearing, and record requirements of Code section 50-13-13(a) do not apply to cases subject to a subsequent hearing in the tax tribunal.[68] Likewise, section 14 provides that the provisions of Code section

58. *Compare* O.C.G.A. § 48-5-519(b) (Supp. 2012), *with* O.C.G.A. § 48-5-519(b) (2011).
59. O.C.G.A. § 48-6-7(b) (Supp. 2012).
60. *Compare* O.C.G.A. § 48-6-7(b)(1) (Supp. 2012), *with* O.C.G.A. § 48-6-7(b)(1) (2011).
61. O.C.G.A. § 48-6-7(b)(2) (Supp. 2012).
62. *Id.*
63. *Compare* O.C.G.A. § 48-6-76(e)(1) (Supp. 2012), *with* O.C.G.A. § 48-6-76(e)(1) (2011).
64. O.C.G.A. § 48-7-31(d)(2)(C) (Supp. 2012).
65. *Id.* § 48-7-165(b).
66. O.C.G.A. § 48-7-165(a) (2011).
67. O.C.G.A. § 50-13-12(d)(2)(C) (Supp. 2012).
68. *Id.* § 50-13-13(c).

50-13-42(b), regarding review by OSAH, shall not apply to any matter in which an aggrieved party may file a petition with the tribunal.[69]

Section 15 of the Act, which creates the Georgia Tax Tribunal, adds an entirely new chapter, Chapter 13A, to Title 50 of the Official Code of Georgia Annotated.[70] This chapter is titled the "Georgia Tax Tribunal Act of 2012."[71] The Act begins with finding a need for an "independent specialized agency separate and apart from the Department of Revenue to resolve disputes between the department and taxpayers in an efficient and cost-effective manner."[72] The Act is designed to "[i]mprove the utilization of judicial resources," "[i]ncrease the uniformity of decision making in tax cases," "[i]mprove the equal access of all parties to court process," and "[i]ncrease public confidence in the fairness of the state tax system."[73]

Code section 50-13A-3 defines the Georgia Tax Tribunal as an independent and autonomous division within OSAH, which will operate under the sole direction of the chief tribunal judge.[74] The tribunal will also have a small claims division.[75] Code section 50-13A-5 provides that the tribunal shall consist of at least one full-time administrative law judge and that the Governor will appoint initial judges.[76] If only one judge is initially appointed, he or she will be the chief tribunal judge and serve for four years; if more than one judge is initially appointed, one judge will be appointed for four years, and another judge will be appointed chief tribunal judge with a six-year term.[77] After the initial appointments, the Governor will make all reappointments with the consent of the Senate, with reappointment terms lasting four years.[78] The Governor may remove tribunal judges, with the consent of the Senate, for "neglect of duty, inability to perform duties, malfeasance in office, or other good

69. *Id.* § 50-13-42(c).
70. *Id.* § 50-13A.
71. *Id.* § 50-13A-1.
72. *Id.* § 50-13A-2.
73. O.C.G.A. § 50-13A-2(1)–(4) (Supp. 2012).
74. *Id.* § 50-13A-3.
75. *Id.* § 50-13A-16(a).
76. *Id.* § 50-13A-5(a)–(b).
77. *Id.* § 50-13A-5(b).
78. *Id.* § 50-13A-5(c).

cause."[79] At the time of their appointment, tribunal judges must be licensed to practice law in Georgia and have practiced primarily in the area of tax law for at least eight years.[80]

The Act provides that the tribunal's principal location will be in Fulton County, in a building separate and apart from any building in which the Revenue Commissioner has an office.[81] The tribunal may also hold hearings across the state, "with a view toward securing to taxpayers a reasonable opportunity to appear before the tribunal with as little inconvenience and expense as practicable," so long as those hearings are in a place that is physically separate from facilities regularly occupied by the Revenue Commissioner.[82] In another provision aimed at securing the independence of the tribunal, Code section 50-13A-8(c) provides that "[n]o employee of the tribunal shall act as attorney, representative, or accountant for others in a matter involving any tax imposed or levied by" the state or a county or municipality of the state.[83]

Code section 50-13A-9 details the matters over which the tribunal will have jurisdiction.[84] Specifically, the tribunal will have jurisdiction over matters set forth in Code sections 48-2-18, 48-2-35, 48-2-59, 48-3-1, 48-5-519, 48-6-7, 48-6-76 and 48-7-31(d)(2)(C), as well as actions for declaratory judgment under section 50-13-10(a) involving rules applicable to the Commissioner under Title 48.[85] The tribunal will begin hearing cases January 1, 2013.[86] Petitions must include a summary statement of facts and law upon which the taxpayer relies in seeking relief, and the Commissioner and any other respondents are given thirty days to respond with an answer.[87] The provisions of the Georgia Civil Practice Act governing discovery and depositions will apply to tribunal proceedings.[88] However, "the parties to a proceeding shall make every effort to conduct discovery

79. O.C.G.A. § 50-13A-5(g) (Supp. 2012).
80. *Id.* § 50-13A-6(a).
81. *Id.* § 50-13A-7(a).
82. *Id.* § 50-13A-7(b).
83. *Id.* § 50-13A-8(c).
84. *Id.* § 50-13A-9(a)–(b).
85. O.C.G.A. § 50-13A-9(a)–(b) (Supp. 2012).
86. *Id.* § 50-13A-10(a).
87. *Id.* § 50-13A-10(a)–(b).
88. *Id.* § 50-13A-13(a).

by informal consultation or communication."[89] Witnesses, evidence, and findings of contempt are also modeled after Georgia law.[90] Hearings before the tribunal will be conducted de novo, without a jury, and will be open to the public.[91] Tribunal judges must adhere to the principle of stare decisis.[92]

The tribunal judge may remand a matter to the Revenue Commissioner "upon motion by all parties . . . , for good cause shown on the motion of any party, or sua sponte when the tribunal judge reasonably determines that circumstances warrant" a remand.[93] However, such remands do "not divest the tribunal of jurisdiction, and . . . any party . . . shall be entitled to have such matter returned to the tribunal."[94] Except in the case of jeopardy assessments, filing a petition with the tribunal operates "as a stay of any enforcement or collection action" by the Revenue Commissioner "with respect to any tax, penalty, interest, or any collection costs that are disputed in the petition"; the stay expires when the tribunal decision is finalized and any appeals have been resolved.[95] All final judgments of the tribunal, other than those of the small claims division, will be indexed, published for the public, and will constitute the official reports of the tribunal.[96] Any party may appeal a final judgment of the tribunal, other than those of the small claims division, to the Superior Court of Fulton County.[97]

Appellate hearings will be confined to the tribunal record and will be conducted without a jury.[98] Upon request, the superior court will hear oral argument and receive written briefs.[99] The court will then

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89. *Id.*

90. *Id.* § 50-13A-13(b)–(g); O.C.G.A. § 50-13A-14(c) (Supp. 2012). "Tribunal judges shall apply the rules of evidence as applied in the trial of civil nonjury cases in the superior courts." *Id.* § 50-13A-14(c). In the small claims division, "when necessary to ascertain facts not reasonably susceptible of proof under such rules, [tribunal judges may] consider evidence not otherwise admissible thereunder if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs." *Id.*

91. *Id.* § 50-13A-14(a). However, if any party can show good cause for protecting information from becoming public, "the tribunal judge may issue a protective order" or close the hearing to the public. *Id.*

92. *Id.* § 50-13A-15(c).

93. O.C.G.A. § 50-13A-10(f) (Supp. 2012).

94. *Id.*

95. *Id.* § 50-13A-11(a).

96. *Id.* § 50-13A-15(d).

97. *Id.* § 50-13A-17(a)–(b). Appeals must be filed within thirty days after the service of the tribunal's final judgment. *Id.*

98. O.C.G.A. § 50-13A-17(f) (Supp. 2012).

99. *Id.*

affirm, reverse, or modify the tribunal's judgment or remand the case for further proceedings within ninety days.[100] The superior court may not "substitute its judgment for that of the tribunal's as to the weight of the evidence on questions of fact."[101] However, the court may reverse or modify the judgment if:

> substantial rights of the petitioner have been prejudiced because the tribunal judge's findings, inferences, conclusions, or judgments are: (1) [i]n violation of constitutional or statutory provisions; (2) [i]n excess of the statutory authority of the tribunal; (3) [m]ade upon unlawful procedure; (4) [a]ffected by other error of law; (5) [c]learly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or (6) [a]rbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.[102]

Superior court rulings are appealable to the court of appeals or the Georgia Supreme Court, as provided by Georgia law.[103]

Taxpayers may elect to have their claims heard by the small claims division if the amount in controversy is less than a threshold amount, which will be determined by the tribunal.[104] In proceedings before the small claims division, accountants and other tax return preparers may "accompany and appear with the taxpayer in order to provide factual information regarding positions taken on" the taxpayer's returns; however, these tax professionals are not considered official advocates or representatives of the taxpayer.[105] Taxpayers in the small claims division may dismiss a proceeding, without prejudice, at any time prior to entry of judgment.[106] Hearings in the small claims division will be conducted consistently with the proceedings of magistrate court hearings, and its judges may receive evidence they believe is appropriate.[107] Judgments of the small claims division are

100. *Id.*
101. *Id.* § 15-13A-17(g).
102. *Id.* § 50-13A-17(g).
103. *Id.* § 50-13A-17(h).
104. O.C.G.A. § 50-13A-16(c) (Supp. 2012).
105. *Id.* § 50-13A-16(d).
106. *Id.* § 50-13A-16(e).
107. *Id.* § 50-13A-16(f).

"conclusive upon all parties," "may not be appealed," and will "not be considered or cited as precedent."[108]

Analysis

Prior to the passage of the Act, both Georgia's tax code and tax administration system were consistently criticized as being antiquated, inefficient, and unfair to the taxpayer.[109] In addition to frustrating individuals, the tax system deterred businesses that otherwise may have chosen to conduct business in Georgia.[110] One of the principal goals of state tax reform, as evidenced by the Special Council's report, was to alleviate the frustrations of individual taxpayers while simultaneously making Georgia a more attractive state in which to do business.[111] The Georgia legislature realized the severity of the state's tax problems and unanimously voted to move towards a solution.[112] The Act takes Georgia one step closer to its goals. Although the Act does not affect the tax code, it modernizes Georgia's tax administration system by implementing crucial recommendations that bring Georgia in line with other states' tax resolution procedures.[113] The Act implements features that are designed to increase fairness, efficiency, and consistency in tax dispute resolution in hopes of inspiring taxpayer confidence in the system and attracting business to the state.[114]

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108. *Id.* § 50-13A-16(g).

109. *See, e.g.*, Alan Essig, *A 1930s Tax Code Can't Cut It in 2010*, ATLANTA J.-CONST., Aug. 27, 2010, http://www.ajc.com/opinion/a-1930s-tax-code-601340.html; Douglas L. Lindholm & Fredrick J. Nicely, *The Best and Worst of State Tax Administration*, COUNCIL ON ST. TAX'N (2010), *available at* http://www.cost.org/uploadedFiles/State_Tax_Library/COST_Studies_Articles_and_Special_Reports/Final-TheBestandWorstofStateTaxAdministration.pdf (grading Georgia's tax administration system as a "C -").

110. *See* A.D. FRAZIER, 2010 SPECIAL COUNCIL ON TAX REFORM AND FAIRNESS FOR GEORGIANS, RECOMMENDATIONS 8 (Jan. 7, 2011), *available at* http://fiscalresearch.gsu.edu/taxcouncil/downloads/FINAL_REPORT_Jan_7_2011.pdf (pointing out that, by some measures, Georgia has the twenty-fifth "most business-friendly tax system"); *see also* House Video, *supra* note 1, at 44 min., 48 sec.

111. *See generally* FRAZIER, *supra* note 110, at 32; House Video, *supra* note 1, at 44 min., 48 sec.

112. Georgia Senate Voting Record, HB 100 (Mar. 27, 2012); Georgia House of Representatives Voting Record, HB 100 (Mar. 29, 2012).

113. *See generally* Clark R. Calhoun & Timothy A. Carlson, *The Trend Toward Independent State Tax Tribunals: Good for Taxpayers and the States*, J. MULTISTATE TAX'N & INCENTIVES 14 (2012).

114. *See* Peake Interview, *supra* note 1; House Video, *supra* note 1, at 43 min., 50 sec.

Features of the Tribunal and their Advantages

Currently, over twenty states have independent tax courts or tribunals that are organized in a variety of ways.[115] The various systems implement frequently recommended ideas that were ultimately formalized by the American Bar Association (ABA) in its Model State Administrative Tax Tribunal Act (Model Act).[116] In addition to the generalized concept of a state "tax court," a number of features pervade the ABA's and other organizations' recommendations.[117] Features commonly recommended include: (1) a forum independent from the agency that administers taxes; (2) judges who are "well-versed" in the tax laws of their state; and (3) published opinions of the "court" or tribunal.[118] These features, which are all included in the Act, bring a variety of advantages, including the elimination of bias against aggrieved taxpayers, increased efficiency, increased consistency, and increased transparency.[119]

Forum for Tax Disputes Independent of Department of Revenue

One of the principal problems with Georgia's tax dispute resolution system prior to the Act was that aggrieved taxpayers who wished to dispute their tax assessments had limited and unappealing

115. *See* Peake Interview, *supra* note 1; *see also* Calhoun & Carlson, *supra* note 113, at 16.

116. Calhoun & Carlson, *supra* note 113, at 16.

117. *See* FRAZIER, *supra* note 110, at 32 (recommending an independent tax court and published decisions); Garland Allen & Craig B. Fields, *The Model State Administrative Tax Tribunal Act: Fairness for All Taxpayers*, 10 ST. & LOC. TAX LAW. 83, 86–88 (2005) (stating that the Model Act recommends independent review and written and published opinions); Lindholm & Nicely, *supra* note 109, at 3 (recommending an "independent tax tribunal" and "[t]ribunal judges with specific training and experience in tax law").

118. *See, e.g.*, Allen & Fields, *supra* note 117, at 86–88; Lindholm & Nicely, *supra* note 109, at 1.

119. *See* FRAZIER, *supra* note 110, at 32; House Video, *supra* note 1, at 43 min., 50 sec. Although the creation of tax tribunals can bring certain advantages such as eliminating perceived bias against the taxpayer, they have been criticized for "layer[ing] costs and complexity onto systems that already are slow and cumbersome, helping tax lawyers perhaps more than their clients." Nanette Byrnes, *Heard in More States: See You in Tax Court!*, REUTERS.COM (May 25, 2012), http://www.reuters.com/article/2012/05/25/us-usa-tax-state-courts-idUSBRE84O0BW20120525. Supporters of tax tribunals, however, seem to vastly outweigh the critics. *See generally, e.g.*, Allen & Fields, *supra* note 117; Calhoun & Carlson, *supra* note 113.

options.[120] If a taxpayer did not want to bring his or her dispute in front of the superior court, where the judges may lack the expertise necessary to properly resolve the dispute, he or she was limited to requesting a hearing with OSAH.[121] Decisions by OSAH, however, were not binding and were ultimately reviewable by the Department of Revenue.[122] If a taxpayer chose the latter route, the party that originally created and assessed the tax, the Department of Revenue, retained final authority over the disposition of the case.[123] Consequently, a taxpayer could never be certain he had received unbiased adjudication of his dispute.[124] This type of system creates a number of problems. Rather than relying on inherently biased systems, states should attempt to "avoid a situation in which the only hearing a taxpayer receives before someone knowledgeable about state tax 'is in front of an employee of the state revenue department that made the determination being challenged.'"[125]

The Georgia Tax Tribunal helps to eliminate bias in the tax dispute resolution system, whether actual or imagined.[126] With the new system, taxpayers will have the opportunity to bring their disputes before an autonomous decision maker who makes judgments without influence from the party who originally assessed the taxes, the Department of Revenue.[127] Although still a branch of OSAH, judges appointed by the governor will hear disputes, and their decisions will be appealable to the superior courts rather than to the Revenue Commissioner.[128] Disputes are resolved completely independently of the Department of Revenue. This feature serves to increase public confidence in tax dispute resolutions "by providing a forum 'that insures both the appearance and the reality of due process and fundamental fairness.'"[129] Confidence in the fairness of tax

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120. GA. SOC'Y OF CPAS, *Georgia Tax Court Position Paper* 1 (2009), *available at* http://www.gscpa.org/Content/Files/Sections/Taxation/Tax%20Court%20Position%20Paper_Nov%202009.pdf.

121. *See* Senate Video, *supra* note 4, at 1 hr., 47 min. 40 sec.

122. *Id.*

123. *Id.*

124. *See* Calhoun & Carlson, *supra* note 113, at 16.

125. *Id.*

126. *Id.*

127. *See* Peake Interview, *supra* note 1; *see also* Senate Video, *supra* note 4, at 1 hr., 48min, 16 sec.

128. O.C.G.A. § 50-13A-5(b) (Supp. 2012); Senate Video, *supra* note 4, at 1 hr., 48 min., 25 sec.

129. Calhoun & Carlson, *supra* note 113, at 16.

resolutions can improve individual perceptions of the government and help attract business to the state—one of the Act's primary goals.[130]

Judges with Specialized Tax Knowledge

The next feature advantageous to Georgia taxpayers is the requirement that tax tribunal judges have a minimum of eight years of experience specializing in tax law.[131] Under the current system, if an aggrieved taxpayer elects to file his petition in superior court rather than with OSAH, he cannot be sure, even with the best efforts of the judges, that his issue is being properly resolved.[132] A superior court judge, while well-versed in a variety of legal disciplines, simply may not have the expertise necessary to fully comprehend complex tax issues.[133] This lack of assurance that an issue has been properly resolved, like the existence of perceived bias, can reduce public confidence in the legal system.[134] In contrast, the presence of a judge who has substantial experience dealing with tax issues can "have a huge impact on taxpayers' confidence in the system."[135] Having experienced tax attorneys adjudicate disputes can also increase the consistency and efficiency with which tax disputes are resolved.[136] Currently in Georgia, there are 159 superior courts with varying numbers of judges all tasked with occasionally resolving tax disputes.[137] The tax tribunal will be staffed by fewer decision makers—the actual number of whom is left to the discretion of the Governor—meaning there will be fewer discrepancies in the resolution of disputes from jurisdiction to jurisdiction and from county to county.[138] Fewer judges with more expertise should increase consistency in the resolution of disputes.[139] Further,

130. *See id.* at 18–19; House Video, *supra* note 1, at 44 min., 48 sec.
131. O.C.G.A. § 50-13A-6(a) (Supp. 2012).
132. *See* Abrams Interview, *supra* note 1.
133. *Id.*
134. Calhoun & Carlson, *supra* note 113, at 17.
135. *Id.*
136. *Id.*
137. Georgia Society of CPAs, *supra* note 120.
138. O.C.G.A. § 50-13A-5 (Supp. 2012); *see also* Calhoun & Carlson, *supra* note 113, at 17; Abrams Interview, *supra* note 1.
139. Calhoun & Carlson, *supra* note 113, at 17.

mandating that judges have a minimum level of expertise should increase efficiency.[140] Whereas before the Act, a judge with minimal expertise was forced to spend hours learning the relevant law and educating himself or herself as to how that law applies to the given facts and arguments, under the Act, a tax expert will already possess the requisite knowledge, thus reducing the amount of time a taxpayer must wait before his matter is resolved.[141] The result is, again, increased confidence that disputes are being resolved fairly and efficiently.[142] Consequently, both individuals and businesses should be attracted to live in and transact business within Georgia.

Publication of Tribunal Opinions

The Special Council also recommended to the General Assembly that the opinions of the new tax tribunal be published and made available to the public.[143] A primary goal of the new Act was to increase transparency in the resolution of tax disputes.[144] Prior to the Act, when a tax dispute was resolved, whether by the superior court or by the Department of Revenue, the taxpayer was left in the dark as to the reasoning behind the decision, what law was applied, and whether he or she could rely on courts rendering similar decisions in the future.[145] The result was a system that was untrustworthy, inconsistent, and unpredictable; taxpayers had no way of knowing in advance whether their grievances were meritorious or whether they would be immediately dismissed.[146] Publication of opinions aims to remedy these problems. The ABA as well as other organizations, such as the Special Council, believe the publication of opinions to be one of the "[t]he most desirable attributes for an independent state tax appeal forum."[147]

Publishing opinions of the tax tribunal will create an abundance of case law that both individual and corporate taxpayers can use to

140. *Id.*
141. *Id.*
142. *See id.*; *see also* House Video, *supra* note 1, at 43 min., 50 sec.
143. FRAZIER, *supra* note 110, at 32.
144. *Id.*; Abrams Interview, *supra* note 1.
145. *See* Calhoun & Carlson, *supra* note 113, at 18.
146. *See id.*
147. *Id.* at 16; FRAZIER, *supra* note 110, at 32; Allen & Fields, *supra* note 117, at 88.

make decisions regarding their tax disputes.[148] With more published law, the number of frivolous or unmeritorious tax disputes should decrease because people presented with certain factual scenarios will know in advance that their appeal will likely be denied.[149] Furthermore, the judges tasked with making decisions regarding tax disputes, rather than reaching a decision by combing through the tax code, can consult the tax reporters, which should make for quicker and more consistent decisions.[150] "Over time, the existence of a body of well-reasoned tax law should increase taxpayers' confidence in the tribunal and, by extension, the fairness of the state's tax system as a whole."[151]

The Model Act requires publication of all tax tribunal decisions except those rendered in a small claims division.[152] The Act has, in this regard, adhered to the Model Act's recommendations;[153] all tax tribunal decisions will be published except for those opinions rendered by the tribunal's small claims division.[154] Currently, there are no hard line rules for publishing tribunal opinions; decisions regarding publication procedures appear to be left to the discretion of the chief tribunal judge.[155] If, however, the tribunal-created publication procedures prove inadequate, further legislation could be adopted implementing more stringent publication rules.[156]

Other Features

Small Claims Division

Many features of the new Georgia Tax Tribunal are common across states with independent tax appeal forums.[157] Because

148. Calhoun & Carlson, *supra* note 113, at 18; House Video, *supra* note 1, at 43 min., 49 sec.
149. Calhoun & Carlson, *supra* note 113, at 18.
150. *Id.*
151. *Id.*
152. *See* Allen & Fields, *supra* note 117, at 87–88.
153. *See* O.C.G.A. § 50-13A-15(a) (Supp. 2012) ("Except with regard to proceedings in the small claims division of the tribunal pursuant to Code Section 50-13A-16, the tribunal judge shall render all final judgments and interlocutory orders in writing . . . .").
154. *Id.*
155. *Id.*; *see also* Calhoun & Carlson, *supra* note 113, at 46.
156. Calhoun & Carlson, *supra* note 113, at 46.
157. *See, e.g.*, KAN. STAT. ANN. § 74-2433 (2012) (requiring publication of opinions the court deems to be of sufficient importance); N.Y. TAX LAW § 2004 (McKinney 2012) (requiring tribunal members to

Georgia's Tax Tribunal closely follows the ABA's Model Act in that it serves as an independent tax dispute resolution forum, its judges are required to have specialized tax knowledge, and its opinions are published.[158] The Act further mirrors the Model Act as it calls for the creation of a small claims division, a feature that many other states have also adopted.[159] Similar to the United States Tax Court, which has a "small case division" where taxpayers who owe less than $50,000 per year to the Internal Revenue Service can bring claims, the small claims division of the Georgia Tax Tribunal will hear cases from individuals with disputes falling below a certain monetary threshold, the exact amount of which will be determined by the tribunal.[160]

The small claims division will allow taxpayers to bring cases without legal assistance.[161] For example, a taxpayer could appear in front of the small claims division assisted by his Certified Public Accountant (CPA).[162] Prior to the passage of the Act, a taxpayer with a relatively small tax assessment may elect to pay the disputed debt rather than file a petition because filing a petition would be too time consuming and hiring an attorney would be too costly.[163] If an individual, however, can dispute an assessment without having to retain an attorney and without having to wade through the litigation process, he or she is more likely to make the effort to dispute the assessment.[164] The result, again, is increased taxpayer confidence in the system's fairness and in the state's government as a whole. As Representative Peake (R-137th) stated, "[the small claims division is] going to be a huge asset to the citizens across the state who in the past really had no recourse for dealing with the . . . Department of Revenue."[165]

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be "knowledgeable on the subject of taxation and [] skillful in matters pertaining thereto").

158. *See generally* O.C.G.A. §§ 50-13A-2, -6, -15 (Supp. 2012); FRAZIER, *supra* note 110, at 32.

159. *See, e.g.*, KAN. STAT. ANN. § 74-2433f (2012) (creating a small claims and expedited hearing division); N.Y. TAX LAW § 2012 (McKinney 2012) (creating a small claims unit); Allen & Fields, *supra* note 117, at 88.

160. O.C.G.A. § 50-13A-16 (Supp. 2012); Peake Interview, *supra* note 1; *The Small Case Division of the Federal Tax Court*, USLEGAL.COM (2010), http://taxes.uslegal.com/irs-audits/the-small-case-division-of-the-federal-tax-court/.

161. O.C.G.A. § 50-13A-16 (Supp. 2012); House Video, *supra* note 1, at 44 min., 21 sec.

162. Peake Interview, *supra* note 1.

163. House Video, *supra* note 1, at 44 min., 21 sec.

164. *Id.*

165. Peake Interview, *supra* note 1.

Roving Feature

The Georgia Tax Tribunal will be located in Fulton County.[166] Although a majority of Georgia's citizens currently live in the Metropolitan Atlanta Statistical Area, over 4,000,000 citizens, many of whom will need to resolve disputes with the Department of Revenue, live in other parts of the state, some over 200 miles away.[167] Because the tax tribunal's primary goal is alleviating taxpayer frustration for everyone, not just those in the metro Atlanta area, the Georgia legislature included a provision in the Act that allows the tribunal to convene in different counties across the state to hear taxpayers' disputes.[168] The Act provides: "The tribunal may also hold hearings at any place within this state, with a view toward securing to taxpayers a reasonable opportunity to appear before the tribunal with as little inconvenience and expense as practicable."[169]

Although the feature will presumably become active when the tribunal begins hearing cases in January 2013, its specific parameters have yet to be solidified.[170] The concept is modeled after the Federal Tax Court, which allows judges to travel to various designated cities nationwide to hear taxpayers' disputes.[171] With this feature, a taxpayer would be able to appear before the tribunal in whichever county the taxpayer resides.[172] This feature, like all the others, is designed to facilitate the resolution of tax disputes, alleviate taxpayer frustration with the current system, and attract business to the state.[173]

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166. O.C.G.A. § 50-13A-7 (Supp. 2012).

167. Atlanta Convention & Visitors Bureau, *Atlanta Population and Atlanta Demographics*, ATLANTA.NET (2012), http://www.atlanta.net/visitors/population.html; *Business Amenities*, THE SEEDS BUSINESS RESOURCE CENTER (2010), http://www.seedsbusinessresourcecenter.com/business-amenities.htm; U.S. Dep't of Commerce, U.S. Census Bureau, *State and County Quickfacts: Atlanta, Georgia*, U.S. CENSUS BUREAU, http://quickfacts.census.gov/qfd/states/13/1304000.html (last visited June 6, 2012).

168. Abrams Interview, *supra* note 1.

169. O.C.G.A. § 50-13A-7 (Supp. 2012).

170. Peake Interview, *supra* note 1.

171. Abrams Interview, *supra* note 1; *About the Court*, U.S. TAX CT. (May 25, 2011), https://www.ustaxcourt.gov/about.htm.

172. Peake Interview, *supra* note 1.

173. *See id.*; *see also* Abrams Interview, *supra* note 1.

Conclusion

The need for substantial tax reform in Georgia was and continues to be well-documented. Although many legislators are split as to how tax reform should proceed, the entire General Assembly was in agreement that the tax administration system needed to be reformed.[174] Consequently, the bill met no opposition in either the House or the Senate.[175] By creating an independent tax tribunal, Georgia begins the modernization of its antiquated tax system. Taxpayers should now feel confident that their disputes are being resolved fairly, accurately, and in a timely manner. Although the creation of the tribunal is just one step, it is a step in the right direction.

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174. Georgia Senate Voting Record, HB 100 (Mar. 27, 2012); Georgia House of Representatives Voting Record, HB 100 (Mar. 29, 2012).

175. Georgia Senate Voting Record, HB 100 (Mar. 27, 2012); Georgia House of Representatives Voting Record, HB 100 (Mar. 29, 2012).