

Property Tax Updates: A Review of the 2010 Georgia Legislative Session

Updated May, 2010

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Updated May 2010

In late February and April of 2010, Thomson Reuters provided an overview of Senate Bill 346 and its implications for the Georgia property tax system. Since that time, Senate Bill 346 has progressed through the majority of the legislative process. The following timeline provides a short overview of how it has developed since the initial February update:

March 8, 2010: Senate read and referred
March 9, 2010: Senate read second time
March 11, 2010: Senate read third time; Senate passed/adopted
March 16, 2010: House first readers
March 17, 2010: House second readers
April 14, 2010: House committee favorably reported.

On April 21, the House voted overwhelmingly to approve the bill. Due to minor changes made by the House, the bill was required to return to the Senate for another vote. As these developments have occurred over the last few months, the content of the bill has also evolved. While most of the major provisions remain, the details below have been updated to reflect the content of the revised bill through May, 2010.

Introduction

In 2008 and 2009, property tax legislation was a hot topic in the Georgia legislative sessions. In 2008, House Speaker Glen Richardson proposed House Bill 900, which would have abolished ad valorem taxation in Georgia. Although this mass reform never garnered significant support, it did raise the awareness of inefficiencies and inequity within the property tax system.

In 2009, House Republicans proposed House Resolution 1, which was an amendment to the Georgia Constitution. If enacted and ratified, it would have limited valuation increases of real property to an aggregate of 9% over any three-year period. House Resolution 1 failed in 2009 because it did not have the super-majority vote required for a constitutional amendment. However, proponents were able to pass a substitute bill, House Bill 233, which implemented a temporary moratorium on increases in real property assessments through 2011. House Bill 233 was enacted as Georgia Code § 48-5B-1 and became effective on May 5, 2009.

The passage of House Bill 233 did not quell the momentum surrounding the reform of Georgia's property tax system. House Resolution 1 was re-introduced in 2010, but did not receive the support necessary to move it through the legislative process.

Representative Chip Rogers chaired a 2010 committee focused on proposing legislation which would continue to reform the system. Over the past several months, the committee has received public comment on three occasions. The public has provided a number of comments through individual taxpayers and groups focused on this issue. Based on these comments, the committee has proposed a sweeping change of property tax law in Georgia. The following is a short overview of the recently-released Senate Bill 346 which the Committee has created to implement the proposed property tax changes. The bill provides proposed changes to Title 48 of the Georgia Code, which can be categorized as outlined below. If the bill becomes law (and it appears that it will), a majority of its provisions become effective January 1, 2011. However, the arbitration provisions (discussed below under part 3 of the "Appeals" section), would become effective immediately upon the Act becoming law.

Topics Addressed by Senate Bill 346

Assessment Notices

- Requires the county board of tax assessors to provide an annual notice of property tax value, instead of only providing a notice when the value changes; the notice must be provided to the taxpayer by July 1st;
- Requires the notice to conform to state-wide uniform notice form (to be established by the commissioner);
- Requires the notice to contain a statement providing that the documents and records used to establish the current value are available upon request;
- Provides that the taxpayer may file an appeal of the value within 45 days of the date of the notice (instead of 30 days);
- Requires the commissioner to establish uniform state-wide dates for the mailing of the annual notice;

Board of Equalization and County Staff

- Two or more counties may establish regional boards of equalization;
- The Board oath was changed to reflect impartiality;
- The Clerk of the Superior Court will have oversight over and supervision of all hearing officers and boards of equalization of the county. The oversight includes a number of new duties including duties pertaining to appointment of members of the county board, processing the appointments, maintaining associated records and scheduling hearings.
- The Department of Revenue will prepare, instruct, operate and administer courses necessary to provide training to all local tax officials and staff;
- The courses of instruction will be made available to taxpayers and/or representatives of taxpayers upon request and the payment of reasonable fees;

Appeals

- Appeal options from the county board of tax assessors are as follows: (1) Appeal to a hearing officer (only if the appeal involves non-homestead, real property with a fair market value in excess of \$1 million); (2) Appeal to the county board of equalization; or, (3) Appeal to an arbitrator. Specific changes or amendments to each option are as follows:

1. Appeal to Hearing Officers:

- Hearing officers must be either state certified general real property appraisers or state certified residential real property appraisers;
- With regards to appeals to hearing officers, the appeal is filed with the county board of tax assessors within 45 days of the date of mailing the notice of assessment. The county board of tax assessors may have up to 90 days to review the taxpayer's written appeal and make changes. If changes are made and, within 30 days of the mailing of such notice to the taxpayer, the taxpayer notifies the county board of tax assessors in writing that such changes are not acceptable, the board has 30 days to deliver the notice of appeal to the clerk of the superior court.
- At the hearing before the hearing officer, the board of tax assessors has the burden of proving its opinion of value by a preponderance of the evidence.
- If the taxpayer and county execute a written agreement of value prior to the conclusion of an appeal before a hearing officer, such agreement becomes final and subject to the provisions of OCGA 48-5-299.

2. Appeal to the County Board of Equalization

- If the taxpayer and county board of tax assessors execute a signed agreement as to valuation, the appeal terminates as of the date of the agreement; however, in all other cases (if changes or no changes are made), the board shall send written notice to the taxpayer and the board of equalization establishing the taxpayer's appeal without the taxpayer's need to file any additional notice;
- The commissioner of the Department of Revenue must establish uniform rules and procedures for the board in determining appeals;
- If the determination of value occurs after August 1 of the year of appeal, the taxpayer shall receive the resulting deduction or be liable for the resulting increase on the taxes for the year in question and the deduction or increase shall be reflected on the taxpayer's next tax bill;
- If the county board of tax assessors and the taxpayer agree to a value at any time during the appeal process, the board of equalization shall enter the agreed upon amount into the record as the fair market value, and the appeal shall be closed;

3. Binding Arbitration

- Notice of arbitration may be filed within 45 days of the date of mailing the annual value notice;
- Non-binding arbitration was removed as an avenue for appeal; SB 346 provides only for binding arbitration;
- There are now numerous methods to "file" the notice of arbitration, as that term is defined in the code;
- Regarding arbitration, the taxpayer must provide a certified appraisal and confirmation of filing fees within 45 days of filing the arbitration notice to be able to continue;
- If the board of tax assessors fails to make a determination of value within a 45-day period, the taxpayer's certified appraisal value becomes final;
- All property owned by one taxpayer and under appeal may be consolidated into one hearing;
- As noted above, these particular provisions relating to arbitration, would become effective immediately upon the bill becoming law (as opposed to the remainder of the bill, which would not become effective until January 1, 2011).

Returns

- No returns will be required for real property (personal property returns will still be required);

Value

- The term “Arm’s Length Bona Fide Sale” was defined to mean “a transaction which has occurred in good faith without fraud or deceit carried out by unrelated or unaffiliated parties, as by a willing buyer and a willing seller, each acting in his or her own self-interest, including but not limited to a distress sale, short sale, bank sale or sale at public auction.” (Thus, bank sales, foreclosures and other similar transactions are considered to be sales for the purpose of determining the fair market value of property)
- Revenue generation shall be considered when determining the assessed value of commercially-zoned property;
- The sales price of an arm’s length transaction shall be the maximum allowable assessed value for a period of one-year following the transaction;
- The tax assessor shall apply (not just consider) foreclosure sales and other statutory factors when determining fair market value;
- The existing zoning, and not the future highest use, shall be considered when determining value;
- The current use of property, and not the highest and best use, shall be used to determine current assessed value;
- The “view factor” shall not be considered when making any assessments;
- In determining the fair market value of real property, the tax assessor may not include the value of intangible assets used by a business, including patents, trade names, customer agreements or merchandising agreements.

Payments

- Installment due dates are no longer established by statute, they are established by a resolution or ordinance;
- A county may refund to the taxpayer any taxes which have been paid and which have been appealed;
- Counties may elect to receive any form of payment for property taxes;

Millage Rate

- Changes were made with regard to how notice of millage rate tax changes is announced and other technical provisions.

Conclusion

SB 346 provides sweeping reform of the law governing Georgia property tax. It affects notices, the board of equalization, appeal procedures, arbitration, the return process, determination of value, payment procedure and millage rate setting. A great majority of these changes appear to benefit the taxpayer by providing a more transparent and efficient system.

There do not appear to be any other areas of the bill that would be of significant concern for taxpayers. Further, it does not appear that any other significant property-tax specific bills are close to being created or (in the case of previously failed bills) renewed in the current legislative session.

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