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In the Court of Appeals of Georgia

A15A0298. BALLARD et al. v. NEWTON COUNTY BOARD OF TAX ASSESSORS. BO-014

BOGGS, Judge.

This appeal presents an issue of first impression: whether a tax sale qualifies as an "arm's length, bona fide sale" under OCGA § 48-5-2. The trial court concluded that it does not so qualify. We agree with the trial court and therefore affirm.

"The interpretation of a statute is a question of law. As such, we do not defer to the trial court's ruling, and we apply the 'plain legal error' standard of review." (Citations, punctuation and footnote omitted.) *Clayton County Bd. of Tax Assessors v. City of Atlanta*, 299 Ga. App. 233, 234 (682 SE2d 328) (2009). The record reveals that during various months in 2012, W.D. Ballard and Nancy Mock purchased 22 parcels of real property in Newton County at tax sales ("the property"). In April 2013,

the county tax assessors office sent Ballard and Mock assessments of the 2013 tax value of the property as outlined in its "Appraisal Procedure Manual." "The assessors did not set the 2013 value at the 2012 tax sale purchase price." Ballard and Mock appealed the property tax assessment, but the Board of Tax Assessors ("the Board") concluded that the value placed on the property represented "fair market value and uniformity."

Ballard and Mock appealed to the Newton County Board of Equalization ("the BOE"), which agreed with the valuation as determined by the tax assessor. They then appealed to the superior court, claiming that "the one-year purchase price cap established by OCGA § 48-5-2 (3) should apply" to the assessed value of the property. Following the filing of the parties' cross-motions for summary judgment, the trial court granted summary judgment to the Board.

The court concluded that because the purchaser at a tax sale does not receive fee simple title to the property and does not enjoy the right of possession or the right to collect rents if the right of redemption exists, the property owner has the right to redeem the property and divest the purchaser of any rights, and the owner of the property sold at a tax sale is not a participant in the sale, there is no arm's length, bona fide sale under OCGA § 48-5-2 (.1). Therefore, the trial court reasoned, the tax

sale does not qualify for the one-year purchase price freeze under OCGA § 48-5-2 (3). It is from this order that Ballard and Mock appeal.

"In interpreting statutes, our rules of statutory construction provide that the ordinary signification of words shall apply, 'except words of art or words connected with a particular trade or subject matter.' OCGA § 1-3-1 (b)." *Nat. City Mtg. Co. v. Tidwell*, 293 Ga. 697, 698 (1) (749 SE2d 730) (2013). OCGA § 48-5-2 (3) provides in part: "Notwithstanding any other provision of this chapter to the contrary, the transaction amount of the most recent *arm's length, bona fide sale* in any year shall be the maximum allowable fair market value for the next taxable year." (Emphasis supplied.) This amounts to a freeze on the ad valorem tax value of property for one year. See, e. g., *Columbus Bd. of Tax Assessors v. Yeoman*, 293 Ga. 107, 108 (1) (744 SE2d 18) (2013). For purposes of the Code Section, "'arm's length, bona fide sale' means a transaction which has occurred in good faith without fraud or deceit carried out by unrelated or unaffiliated parties, as by a willing buyer and a willing seller, each acting in his or her own self-interest, including but not limited to a distress sale, short sale, bank sale, or sale at public auction." OCGA § 48-5-2 (.1).

Ballard and Mock claim that even though OCGA § 48-5-2 (.1) does not specifically list tax sale as an example of an arm's length, bona fide sale, their tax sale

purchase is entitled to the one-year purchase price freeze set forth in OCGA § 48-5-2 (3), because it was an arm's length sale at public auction between unrelated parties, a willing buyer and a willing seller, each acting in their own self-interest. But "the cardinal rule in construing a legislative act, is to ascertain the legislative intent and purpose in enacting the law, and then to give it that construction which will effectuate the legislative intent and purpose." (Citation punctuation and footnote omitted.) *Carringer v. Rodgers*, 276 Ga. 359, 363 (578 SE2d 841) (2003). "Moreover, in construing language in any one part of a statute, a court should consider the entire scheme of the statute and attempt to gather the legislative intent from the statute as a whole." (Citation, punctuation and footnote omitted.) *Maxwell v. State*, 282 Ga. 22, 23-24 (1) (644 SE2d 822) (2007). Therefore, as certain terms are not defined in OCGA § 48-5-2 (.1), such as "willing seller" and "transaction," and the examples listed, bank sale, distress sale, and short sale, are distinguishable from a tax sale as the former involve the sale of property by an owner, we look to the legislature's intent and the Georgia Tax Code as a whole.

OCGA § 48-5-1 provides: "The intent and purpose of the tax laws of this state are to have all property and subjects of taxation returned at the value which would be realized from the cash sale, but not the forced sale, of the property and subjects as

such property and subjects are usually sold except as otherwise provided in this chapter." And OCGA § 48-5-2 (3) provides that the "[f]air market value of property" from which to determine taxation "means the amount a knowledgeable buyer would pay for the property and a willing seller would accept for the property at an arm's length, bona fide sale." Thus, the legislative intent is to place a value upon property that it would receive under a customary sale of property, not an atypical transaction. Foreclosure sales, for example, are forced sales "conducted under conditions that differ from the ordinary market for the property in question, [and] notoriously fail to bring the true market price of the property." *Georgia Ltd. Partners, LLC v. City Nat. Bank*, 323 Ga. App. 766, 767 (748 SE2d 131) (2013) (physical precedent only); *Gutherie v. Ford Equip. Leasing Co.*, 206 Ga. App. 258, 261 (1) (424 SE2d 889) (1992). Accordingly, the legislature saw fit to remove consideration of foreclosure sales in a 2010 amendment to OCGA § 48-5-2 (3) (B) (iv) (criteria for tax assessor in determining fair market value of property).

> In Georgia, when property is sold for unpaid taxes, the tax sale purchaser obtains a deed to the property. This deed, however, does not provide the tax sale purchaser with absolute title to the property, but rather gives the purchaser a defeasible fee interest therein with the title remaining subject to encumbrance for at least one year after purchase due to other interested parties' statutory rights of redemption.

(Citations and punctuation omitted.) *Land USA, LLC v. Georgia Power Co.*, ___ Ga. ___ slip op. at 4-5 (1) (Case No. S15A0406; decided June 1, 2015); see also OCGA §§ 48-4-1 (tax sales generally), 48-4-2 (assessment); 48-4-6 (validity of deed). As previously outlined by the Georgia Supreme Court,

> after the tax sale, the delinquent taxpayer or any other party holding an interest in or lien on the property may redeem the property by paying to the tax sale purchaser the purchase price plus any taxes paid[1] and interest. If the property is redeemed, the tax sale is essentially rescinded and a quitclaim deed is executed by the tax sale purchaser back to the owner of the property at the time of levy and sale. This right of redemption, however, may be terminated by the tax sale purchaser anytime after one year following the tax sale. After that year has run, the tax sale purchaser may terminate, foreclose, divest, and forever bar all rights to redeem the property by giving notice under OCGA § 48-4-40, et seq., (the barment statutes) to all parties with redemption rights. The barment statutes apply to all persons having any right, title or interest in, or lien upon the subject property.

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[1] "While it is true that the title which the tax deed purchaser acquires in consequence of a tax sale is not a perfect, fee-simple title, but is a defeasible title which terminates upon redemption within the time prescribed by statute, until redeemed, the tax deed purchaser acquires an interest in the property even during the time within which it might be redeemed, *which is sufficient to render him liable for taxes accruing upon the property*." (Citation and punctuation omitted; emphasis in original.) *Iglesia Del Dios Vivo Columna &c. v. Downing*, 321 Ga. App. 778, 781 (742 SE2d 742) (2013).

(Citations and punctuation omitted.) *Land USA*, supra, slip op. at 5 (1); see also OCGA §§ 48-4-40 (person entitled to redeem; time for redemption), 48-4-42 (amount payable for redemption), 48-4-43 (effect of redemption).

A tax sale is for the purpose of collecting unpaid taxes, see *Nat. Tax Funding, L.P. v. Harpagon Co.*, 277 Ga. 41, 42 (1) (586 SE2d 235) (2003), and would therefore be a forced sale similar to a foreclosure sale, not a sale under normal conditions. And what the tax sale purchaser receives is not fee simple title, but rather a *defeasable fee interest* evidenced by a tax deed. See *Brown Investment Group, LLC v. Mayor of Savannah*, 303 Ga. App. 885, 886 (695 SE2d 331) (2010) (tax sale conveys an inchoate or defeasible title subject to the right of the owner). "Fair market value of property" is defined as the amount a willing buyer would pay to purchase the property, and a willing seller would accept for the property, which implies the passing of title as the examples of bona fide sales listed in OCGA § 48-5-2 (.1) demonstrate. Because "fair market value of property" is not defined as the amount a buyer would pay to purchase, and willing seller would accept, for a *defeasable interest* in property, a tax sale does not qualify as an arm's length, bona fide sale such that the one-year freeze of OCGA § 48-5-2 (3) would apply. For this reason, the trial court did not err

in granting summary judgment to the Newton County Board of Tax Assessors, and in denying Ballard and Mock's cross-motion on this ground.

While Ballard and Mock also assert as error the trial court's ruling on the proper assessment of the fair market value, the court expressly limited its ruling to the issue of whether a tax sale is an arm's length, bona fide sale under OCGA § 48-5-2. The issue of the proper assessment therefore remains pending below.

Judgment affirmed. Phipps, C. J. and Doyle, P. J., concur.

FOURTH DIVISION
DOYLE, P. J.,
MCFADDEN and BOGGS, JJ.

March 3, 2014

In the Court of Appeals of Georgia

A13A2068. BARTOW COUNTY v. SOUTHERN DO-104 DEVELOPMENT, III, L.P.

A13A2069. BARTOW COUNTY v. SOUTHERN DO-105 DEVELOPMENT, III, L.P.

DOYLE, Presiding Judge.

These interlocutory appeals stem from the same case in which Southern Development, III, L. P. ("Southern"), sued Bartow County seeking payment of excess funds following a tax sale. The County appeals from the denial of its summary judgment motion (Case No. A13A2069) and the grant of Southern's motion to add the Bartow County Tax Commissioner as a party (Case No. A13A2068). For the reasons that follow, we reverse in Case No. A13A2069 and dismiss as moot Case No. A13A2068.

> Summary judgment is proper when there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law. A de novo standard of review applies to an appeal from a grant of summary judgment, and we view the evidence, and all reasonable conclusions and inferences drawn from it, in the light most favorable to the nonmovant.[1]

So viewed, the record shows that in 2004, Southern conveyed a parcel of property to James and Sandra Wade, and Southern was granted a security deed in the property. Both deeds were recorded in 2004. According to Southern, the Wades defaulted on their loan agreement with Southern, and Southern foreclosed on the property in a non-judicial foreclosure sale in May 2009. Southern did not record the deed under power of sale until January 2011.

Meanwhile, as a result of unpaid taxes on the property, in September 2009 the Bartow County Tax Commissioner sent notices of a tax levy and sale to persons believed to have an ownership interest, including to the address listed for Southern on a website maintained by the Georgia Secretary of State. The Tax Commissioner received a signed return receipt of the notice, but Southern disputes receiving any

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[1] (Citation omitted.) *Matjoulis v. Integon Gen. Ins. Corp.*, 226 Ga. App. 459 (1) (486 SE2d 684) (1997).

notice of the tax levy or sale. A tax sale was held in November 2009, and a third party bought the property for $31,000 and recorded the tax sale deed in January 2010.

Also in January 2010, the Tax Commissioner issued a check to the County for $26,052.31 in excess funds from the tax sale. The Tax Commissioner sent notice of this to Southern's address on file with the Secretary of State, but Southern maintains that it never received the notice.

In July 2010, the Wades (or their daughter) inquired about claiming the excess funds and filled out paperwork to claim the funds from the County. A week later, the Wades visited the County offices, presented identification, filled out paperwork averring that there were no other legal claimants, and claimed the excess funds.

Thereafter, Southern learned of the excess funds, and in May 2011 sent an anti-litem notice to the County demanding payment of the excess funds. The County refused, citing its payment to the Wades, and Southern filed suit against the County in February 2012. The County answered, asserting a sovereign immunity defense, and following discovery, moved for summary judgment. Following a hearing, the trial court denied summary judgment in a one-sentence order and issued a certificate of immediate review. The trial court also granted a motion filed by Southern to add the

Tax Commissioner as a party. This Court granted the County's application for interlocutory review, giving rise to these appeals.

Case No. A13A2069

1. The County contends that the trial court erroneously denied its summary judgment motion because the present action against the County is barred by sovereign immunity. We agree.

Southern's complaint asserts a single claim for excess funds (plus attorney fees) pursuant to OCGA § 48-4-5, which Code section provides as follows, in relevant part:

> (a) If there are any excess funds after paying taxes, costs, and all expenses of a sale made by the tax commissioner, tax collector, or sheriff, or other officer holding excess funds, the officer selling the property shall give written notice of such excess funds to the record owner of the property at the time of the tax sale and to the record owner of each security deed affecting the property and to all other parties having any recorded equity interest or claim in such property at the time of the tax sale. Such notice shall be sent by first-class mail within 30 days after the tax sale. The notice shall contain a description of the land sold, the date sold, the name and address of the tax sale purchaser, the total sale price, and the amount of excess funds collected and held by the tax commissioner, tax collector, sheriff, or other officer. The notice shall state that the excess funds are available for distribution to the owner or

> owners as their interests appear in the order of priority in which their interests exist.

Based on this, Southern's complaint alleged that the County breached its statutory duty by failing to notify Southern that excess funds from the tax sale were available for distribution and by disbursing the funds to the Wades.

In response, the County answered and asserted sovereign immunity among its defenses. When it later moved for summary judgment, the County did not brief the issue, but it raised it three times at the hearing on the motion. Southern, on appeal and below, has not addressed the merits of the sovereign immunity defense, but merely argues that the defense was not sufficiently asserted below such that it needed to respond. In light of the County's answer and explicit argument at the summary judgment hearing, Southern misconstrues the parties' burdens in this case.

> [S]overeign immunity extends to the [S]tate and all of its departments and agencies[, including counties.][2] The sovereign immunity of the [S]tate and its departments and agencies can only be waived by an Act of the General Assembly which specifically provides that sovereign immunity is thereby waived and the extent of such waiver. . . Furthermore, OCGA § 36-1-4 provides that "a county is not

[2] See generally *Gilbert v. Richardson*, 264 Ga. 744, 747 (2) (452 SE2d 476) (1994).

> liable to suit for any cause of action unless made so by statute." [Thus, a] county's immunity is thus complete unless waived by statute.[3]

Further,

> sovereign immunity is not an affirmative defense (see OCGA § 9-11-8 (c)) that must be established by the party seeking its protection. Instead, immunity from suit is a privilege that is subject to waiver by the State, and *the waiver must be established by the party seeking to benefit from the waiver*. Thus, [Southern], not [the County], had the burden of establishing [a waiver of] sovereign immunity.[4]

Here, Southern has pointed to no statute creating a waiver or any factual scenario warranting a waiver with respect to the claim it brought in its complaint. For example, a county sheriff, which could be liable in a money rule petition brought under OCGA § 15-13-3, is subject to the explicit statutory waiver of immunity under OCGA § 15-13-2 providing that "[a]ny sheriff shall be liable to an action for damages . . . whenever it appears that the sheriff has injured the party by . . . [n]eglecting to pay

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[3] (Citation and punctuation omitted.) *Rutherford v. DeKalb County*, 287 Ga. App. 366, 367-368 (1) (651 SE2d 771) (2007), citing Ga. Const. of 1983, Art. I, Sec. II, Para IX (e).

[4] (Citation omitted; emphasis supplied.) *Ga. Dept. of Human Resources v. Poss*, 263 Ga. 347, 348 (1) (434 SE2d 488) (1993), overruled on other grounds by *Hedquist v. Merrill Lynch &c. Inc.*, 272 Ga. 209, 211 (1) (528 SE2d 508) (2000).

over to the plaintiff or his attorney any moneys collected by the sheriff by virtue of any fi. fa. or other legal process. . . ."[5] By contrast, there is no such waiver of immunity in OCGA § 48-4-5, particularly with respect to the County itself.[6] Accordingly, Southern has failed to meet its burden to show waiver of immunity on the part of the County with respect to the claim stated in Southern's complaint. Thus, the trial court erred by denying the County's motion for summary judgment.

Case No. A13A2068

2. In light of our holding in Case No. A13A2069 resolving the controversy between the parties to this appeal, the County's challenge to the motion to add the Tax Commissioner[7] is moot.[8] Accordingly, Case No. A13A2068 is dismissed.

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[5] See *Barrett v. Marathon Investment Corp.*, 268 Ga. App. 196, 199 (4) (601 SE2d 516) (2004).

[6] See *Currid v. DeKalb State Court Probation Dept.*, 285 Ga. 184, 187 (674 SE2d 894) (2009) ("without specific statutory language providing for (1) a waiver of sovereign immunity and (2) the extent of such waiver, no waiver can be shown") (emphasis omitted).

[7] See generally *Scott v. Vesta Holdings I, LLC*, 275 Ga. App. 196, 197, n. 3 (620 SE2d 447) (2005) (noting that the tax commissioner was an ex-officio sheriff pursuant to OCGA § 48-5-137).

[8] See *Nuvell Nat. Auto Finance, LLC v. Monroe Guar. Ins. Co.*, 319 Ga. App. 400, 410 (3) (736 SE2d 463) (2012).

Judgment reversed in Case No. A13A2069; Case No. A13A2068 is dismissed. McFadden and Boggs, JJ., concur.

FOURTH DIVISION
BARNES, P. J.,
RAY and MCMILLIAN, JJ.

November 17, 2015

NOT TO BE OFFICIALLY REPORTED

In the Court of Appeals of Georgia

A15A1086. CHEROKEE COUNTY BOARD OF TAX ASSESSORS v. MASON.

RAY, Judge.

The Cherokee Board of Tax Assessors (the "Board") appeals from the Superior Court of Cherokee County's determination, after a bench trial, that the property owned by appellee Milford Mason qualified for a renewal of a Conservation Use Valuation Assessment ("CUVA") for tax year 2013 under OCGA § 48-5-7.4. For the following reasons, we vacate the trial court's order and remand the case for further consideration consistent with this opinion.

The facts are as follows. Mason is the owner of a parcel of property located on Old Batesville Road in Canton (the "Property"). The Property is a 9.56 acre lot that includes a rental home, a trailer, and a small garden. Mason rents the home to

unrelated tenants for $600 per month and has used the one-quarter acre garden to grow various row crops for the past four or five years. The remainder of the Property is wooded with "various sizes of trees seemingly incidental or unkept with underbrush and undergrowth." Mason testified that, at some point after 2003, he sold poplar trees from the Property and was paid approximately $14,000 for the timber. He anticipates harvesting additional trees from the Property in about 15 years. However, Mason was unable to produce any records pertaining to his previous sale of the timber and was unable to identify the year in which the timber was sold.

On March 12, 2013, Mason filed an application for a renewal of a CUVA exemption for tax year 2013 for this Property. The application was denied by the Cherokee County Board of Tax Assessors, and that decision was affirmed by the Cherokee County Board of Equalization. Mason then appealed the decision to the superior court.

Mason did not attach any receipts from timber sold or for any work he exerted to "maxim[ize] the potential timber growth." Mason further testified that he had previously applied for and was awarded the CUVA in1993 and 2003, and that there had been no change in his use of the wooded area of the Property since 2003. However, he had never conducted accepted forestry practices on the Property, such

as consulting with a forester or obtaining a timber cruise or forestry management plan.

Trey Stephens, a Senior Rural Appraiser and the Conservation Program Manager at the Cherokee County Tax Appraiser's Office, testified that he personally inspected the Property the week before the case appeared before the Board of Equalization. He also testified that a field appraiser had conducted the initial field check when evaluating the Property after Mason's CUVA application was filed. Stephens explained that, during his inspection, he noticed that the wooded area of the Property exhibited "substantial undergrowth[,]" and that there did not appear to be any plan to clear the undergrowth, or to provide access via a logging road or access road into the Property in order to harvest the timber. He also did not believe that the timber had been planted in any sort of pattern to maximize its yield.

Stephens testified that the tax assessor typically requests an applicant seeking a CUVA exemption on fewer than ten acres of property to "provide a timber cruise, a management plan from a registered forester, receipts or contracts with a logging company, [or] . . . the timber tax form." Stephens recommended that Mason have the property reviewed by a certified forester, but Mason did not do so.

The Board denied Mason's application to renew the CUVA exemption, and that decision was affirmed by the Cherokee County Board of Equalization. Mason then appealed the decision to the superior court. After a bench trial, the superior court reversed the decision of the Board and held that Mason's property was eligible for the CUVA tax exemption under OCGA § 48-5-7.4 (a) (1). The Board appeals from that decision.

"The court is the trier of fact in a bench trial, and its findings will be upheld on appeal if there is any evidence to support them. The plain legal error standard of review applies where the appellate court determines that the issue was of law, not fact." (Citation and punctuation omitted.) *Simmons v. Bd. of Tax Assessors of Effingham County*, 268 Ga. App. 411, 411 (1) (602 SE2d 213) (2004).

The bona fide conservation use statute is OCGA § 48-5-7.4. Under that statute,

> owners of "bona fide conservation use property," including property used for certain agricultural purposes and meeting other statutory criteria and conditions, may apply to the county board of tax assessors for "current use assessment" of their property for purposes of calculating ad valorem taxes. If the application is granted, the property is assessed for tax purposes at 40 percent of its "current use value" instead of 40 percent of its "fair market value," OCGA § 48-5-7(a), (c.2), resulting in tax savings.

(Citation omitted.) *Morrison v. Claborn*, 294 Ga. App. 508, 509, n. 1 (669 SE2d 492) (2008). When a CUVA application is granted, "the landowner receives a significant tax advantage, and a portion of the tax burden is shifted to other land owners, so the qualifying landowner must make substantial promises and covenants." (Citation and punctuation omitted.) *Terrell County Bd. of Tax Assessors v. Goolsby*, 324 Ga. App. 535, 356 (751 SE2d 158) (2013).

A taxpayer seeking exemption from certain ad valorem property taxes "must carry the burden of proof to show entitlement, and the exemption statute is strictly construed against the person claiming the exemption." (Citations omitted.) *Lamad Ministries, Inc. v. Dougherty County Bd. of Tax Assessors*, 268 Ga. App. 798, 801 (1) (602 SE2d 845) (2004).

OCGA § 48-5-7.4 (a) (1) defines "bona fide conservation use property," in pertinent part, as:

> Not more than 2,000 acres of tangible real property of a single owner, the *primary purpose of which is any good faith production*, including but not limited to, subsistence farming or commercial production, from or on the land of agricultural products or *timber*[.]

(Emphasis supplied).

"Good Faith Production" is defined as "[a] *viable utilization* of the property for the primary purpose of any good faith production, including, but not limited to, subsistence farming or commercial production, from or on the land of agricultural products or timber[.] The primary use of the property shall include, but not be limited to . . . [p]roduction of . . . forestry . . . products[.]" (Emphasis supplied.) Ga. R. & Regs. 560-11-6-.02 (d) (1), (2) (iv).

> Factors which may be considered in determining if such property is qualified [as being used primarily for good faith production of timber] may include, but not be limited to: (i) The nature of the terrain; (ii) The density of the marketable product on the land; (iii) The past usage of the land; (iv) The economic merchantability of the agricultural product; and (v) The utilization or nonutilization of recognized care, cultivation, harvesting, and like practices applicable to the product involved and any implemented plans thereof[.]

OCGA § 48-5-7.4 (a) (1) (D) (i) - (v). Accord Ga. R. & Regs. 560-11-6-.02 (d) (3).

The statute further provides for a heightened evidentiary burden for taxpayers, such as Mason, whose land totals less than ten acres. OCGA § 48-5-7.4 (b) (2) provides that a taxpayer filing a CUVA application for a tract of land totaling less than ten acres shall "submit additional relevant records regarding proof of bona fide conservation use for qualified property. . . . [and that] [p]rior to a denial of eligibility

under this paragraph, the tax assessor shall conduct and provide proof of a visual on-site inspection of the property."

1. The Board contends that the trial court erred in holding that the un-managed growth of trees on Mason's property qualifies it under OCGA § 48-5-7.4 (a) (1) as a good faith production of timber as a matter of law.

In its order, the trial court held that, under the statute,

> if the primary purpose of the property is producing trees which can be used for timber, the use may qualify as forestry, as there is no limitation that the growth of the trees has to be managed in any way. Notably, the law provides no restrictions on the quality of the timbering effort. Therefore, [Mason's] use of his property qualifies for the exemption if he utilizes the property for the primary purpose of the good faith production of timber, even if he does not manage the growth of his trees and allows them to grow naturally.

The trial court's order further held that the Board

> essentially argues that the relevant law permits an inquiry into the quality of the timbering effort by the taxpayer and that a denial may be justified according to this inquiry. However, the [c]ourt agrees with [Mason] that the issue is limited to whether [Mason] is engaged in a good faith production of timber, not whether he is doing it "the right way" or 'the best way." The [c]ourt finds that . . . Mason has provided

sufficient proof that he is engaged in the good faith production of timber.

"[T]he interpretation of a statute is a question of law. As such, we do not defer to the trial court's ruling, and we apply the 'plain legal error' standard of review." (Footnote omitted.) *Clayton County Bd. of Tax Assessors v. City of Atlanta*, 299 Ga. App. 233, 234 (682 SE2d 328) (2009). In the case sub judice, we find that the trial court erred in applying OCGA § 48-5-7.4 (a) (1) to the extent that the Board was not able to consider Mason's management of the timber on the Property as evidence that he was not engaged in the "good faith production" of timber. Although OCGA § 48-5-7.4 does not dictate that a taxpayer must "manage" his property in any way to quality for a CUVA exemption, the statute, however, does specifically permit the county board of tax assessors to inquire into the quality of a taxpayer's productive efforts in determining whether the primary purpose of a tract of land is being utilized for the good faith production of timber.

In evaluating the landowner's good faith production, the Board is instructed to consider the following statutory factors to determine if a viable utilization of the land exists: "(i) The nature of the terrain; (ii) The density of the marketable product on the land; (iii) The past usage of the land; (iv) The economic merchantability of the

agricultural product; and (v) The utilization or nonutilization of recognized care, cultivation, harvesting and like practices applicable to the product involved and any implemented plans thereof[.]" OCGA § 48-5-7.4 (a) (1) (D). See also Ga. Comp. R. & Regs. 560-11-6-.02 (d) (3). To the extent the trial court's order failed to recognize that the Board was allowed to apply all the aforementioned factors in its determination of whether the primary purpose of Mason's property was the "good faith production" of timber, including an inquiry into the methods of care, cultivation, and harvesting Mason used to produce timber on his property, we find that it erred.

We further disagree with any assumption that the Property would automatically qualify for a renewal of the CUVA exemption because there was no testimony that the usage of the Property changed between the prior awards of the CUVA exemption to Mason's property and his 2013 application. The Board was entitled to examine "past usage" of the Property as a factor in its determination of whether there was a good faith usage of the Property to cultivate timber, but it is not the only factor to be considered. The General Assembly in drafting the statute clearly intended that the Board would evaluate each property on a case-by-case basis and apply the aforementioned factors in determining whether a taxpayer's property qualified as being used primarily for the good faith production of timber. To hold otherwise

would be to render the factors set forth in the statute "mere surplusage." See *State of Ga. v. Free At Last Bail Bonds*, 285 Ga. App. 734, 738 (647 SE2d 402) (2007). See also *Morrison,* supra at 513 (2).

Further, the General Assembly's addition of OCGA § 48-5-7.4 (b) (2) supports our conclusion that it did not intend for any tract of property with incidental tree growth to *automatically* qualify under CUVA. OCGA § 48-5-7.4 (b) (2) requires taxpayers, such as Mason, who apply for CUVA exemption for tracts of land totaling less than ten acres to submit "additional relevant records regarding proof of bona fide conservation use." Taxpayers are relieved of this obligation if they can provide proof that they filed certain agriculturally-related federal tax forms with the Internal Revenue Service. Id. Furthermore, the statute requires a tax assessor, prior to denial of eligibility under this section, to "conduct and provide proof of a visual onsite inspection of the property."

Legislative exceptions in taxation statutes are to be strictly construed in favor of the taxing authority and should be applied only so far as their language fairly warrants. Thus, OCGA § 48-5-7.4 must be construed in the Board's favor. *Morrison*, supra at 512 (2). "In interpreting the statute, we look to the intent of the legislature and construe the statute to effect that intent. We are also required to give words,

except those of art, their ordinary significance." (Citation omitted.) *Boone v. Sheriff of Lowndes County*, 232 Ga. App. 601, 603 (502 SE2d 535) (1998). OCGA § 48-5-7.4 (b) (2), which *requires* a taxpayer with less than ten acres to provide additional "relevant records" with his CUVA application, was added a year after the current use statute was adopted. See Ga. L. 1993, p. 947, §2. Accordingly, it is a fair presumption that the General Assembly determined that there was the potential for abuse of the CUVA exemption by taxpayers with small acreage tracts and sought a remedy by placing an additional burden on such taxpayers to prove that the property was subject to a bonafide conservation use. The General Assembly clearly would not have imposed this additional requirement if it intended any parcel of property with incidental tree growth to automatically receive the tax benefits under CUVA.

Based upon the above, it is clear that a taxpayer's entitlement to the CUVA exemption depends upon more than an expectation that the land will eventually produce timber in marketable quantities. The trial court erred in concluding that OCGA § 48-5-7.4 does not allow "an inquiry into the quality of the timbering effort" by a taxpayer as part of the Board's determination as to whether his property qualifies under CUVA. Accordingly, we vacate the trial court's order and remand the case to

the trial court for further consideration of all of the factors set forth in OCGA § 48-5-7.4 (a) (1) (D).[1]

2. As a result of our holding in Division 1 of this opinion, we need not address the Board's remaining enumeration of errors.

Judgment vacated and case remanded with direction. Barnes, P. J., and McMillian, J., concur.

[1] With this opinion we do not intend to limit the trial court's discretion in reaching the final decision upon remand.

FOURTH DIVISION
BARNES, P. J.,
RAY and MCMILLIAN, JJ.

March 22, 2016

In the Court of Appeals of Georgia

A15A2407. COLUMBUS, GEORGIA, BOARD OF TAX ASSESSORS v. THE MEDICAL CENTER HOSPITAL AUTHORITY.

BARNES, Presiding Judge.

The Board of Tax Assessors for Columbus, Georgia ("Tax Board") appeals the trial court's grant of summary judgment to The Medical Center Hospital Authority. The trial court found that eight parcels of real estate owned by the Hospital Authority were exempt from ad valorem property taxes for the years 2009 through 2012. The Tax Board argues that the trial court erred in concluding that the parcels were "public property" exempt from taxation regardless of how the property was being used. For the reasons that follow, we affirm.

The Medical Center Hospital Authority in Columbus submitted to the Muscogee County Board of Tax Assessors a "Request for Non-Taxability" for eight parcels of real estate for the years 2009 through 2012. The Tax Board denied the

requests. The Hospital Authority appealed the denial of non-taxability to the Muscogee County Board of Equalization, which granted the request as to one parcel, and denied it as to the other seven parcels. The Tax Board appealed the single grant of non-taxability to the superior court and the Hospital Authority appealed the denial of the other seven parcels to the superior court, which consolidated all of the actions. Following a hearing, the superior court granted the Hospital Authority's motion for summary judgment, holding that "[a]ll eight of the parcels of real property . . . whose taxability for ad valorem property tax purposes was properly before this court, are determined to be exempt from ad valorem property taxation."

The Tax Board argues that the trial court erred by holding that all of the parcels at issue were "'public property' exempt from ad valorem property taxation, regardless of how these parcels are used by the Authority, its lessee Doctors Hospital, and a private, for-profit sublessee." The Board also argues that the trial court erred in holding that the medical office building occupied by a for-profit clinic was tax-exempt.

The trial court's holding was not as specific as the Tax Board's description, however. While the court outlined the parties' arguments — the Hospital Authority's that its real property was exempt as "public property" under OCGA § 48-5-41 (a) (1)

(A), and exempt for the operation of facilities similar to those of cities and counties under OCGA § 31-7-72 (e) (1), and the Tax Board's argument that the property was not being used for a hospital or related purpose — the court simply concluded that the properties were exempt from ad valorem property taxation without explicating its reasons.

We conduct a de novo review of the law and the evidence when considering a trial court's grant or denial of a motion for summary judgment, and affirm the court's grant of the motion if it is right for any reason. *Alta Anesthesia Assocs. of Ga. v. Bouhan, Williams & Levy*, 268 Ga. App. 139, 142-143 (1) (601 SE2d 503) (2004).

As early as 1877, Georgia's constitution allowed our legislature to exempt "public property" from taxation. *Penick v. Foster*, 129 Ga. 217, 222 (58 SE 773) (1907). This exemption "rests upon the most fundamental principles of government, being necessary in order that the functions of government be not unduly impeded, and that the government be not forced into the inconsistency of taxing itself in order to raise money to pay over to itself, which money could be raised only by other taxation." Id. at 225.

The 1983 Georgia Constitution preserved all existing ad valorem tax exemptions "until otherwise provided for by law." Ga. Const. Art. VII, § II, Para. IV.

One such pre-existing statutory exemption in the Georgia Public Revenue Code provides that "all public property" is exempt from "all ad valorem property taxes in this state." OCGA § 48-5-41 (a) (1) (A). The Hospital Authority Law contains another pre-existing statutory ad valorem tax exemption, granting to Authorities "the same exemptions and exclusions from taxes as are now granted to cities and counties for the operation of facilities similar to facilities to be operated by hospital authorities as provided for under this title." OCGA § 31-7-72 (e) (1).

The first question framed by the Tax Board in this appeal is whether *all* real property owned by a hospital authority is automatically exempt from ad valorem taxes "regardless of the factual circumstances surrounding how these parcels are used." The second question is whether a medical office building leased to a for-profit clinic, which is located on the same parcel of property occupied by a non-profit hospital, was subject to ad valorem taxes. To answer these questions, we must review the statutes and case law.

Hospital authorities are quasi-governmental entities first created by statute 75 years ago.

> In 1941, the State of Georgia amended its Constitution to allow political subdivisions to provide health care services. 1941 Ga. Laws p. 50. The

> State concurrently enacted the Hospital Authorities Law ..., Ga. Code Ann. § 31-7-70 et seq. (2012), 'to provide a mechanism for the operation and maintenance of needed health care facilities in the several counties and municipalities of the state.' § 31-7-76 (a). The purpose of the constitutional provision and the statute based thereon was to create an organization which could carry out and make more workable the duty which the State owed to its indigent sick. As amended, the Law authorizes each county and municipality, and certain combinations of counties or municipalities, to create "a public body corporate and politic" called a "hospital authority." §§ 31-7-72 (a), (d). Hospital authorities are governed by 5- to 9-member boards that are appointed by the governing body of the county or municipality in their area of operation. §31-7-72 (a).

(Citation and punctuation omitted.) *Federal Trade Commission v. Phoebe Putney Health System, Inc.*, ___ U.S. ___ (133 SCt 1003, 1007; 185 LE2d 43) (2013) (holding that State's grant of general corporate powers to hospital authorities does not include permission to use those powers anti-competitively).

In 1964, the Georgia legislature amended the Hospital Authorities Law to grant to hospitals run by hospital authorities the same tax relief granted to hospitals run by the government. *Undercofler v. Hospital Auth*., 221 Ga. 501, 503-504 (1) (145 SE2d 487) (1965) (specifically addressing exemption from sales and use tax); OCGA § 31-7-72 (e) (1). Our Supreme Court determined that the 1964 legislation "was intended

as a remedy for the evil of the law as [previously] construed by the Court of Appeals whereby this means of protecting the health of cities and counties[, (services provided by hospital authorities),] was made to pay taxes while the identical services by cities and counties were exempt." *Undercofler*, 221 Ga. at 504 (1).

Five years later, the Georgia Supreme Court found no constitutional restraint upon a hospital authority's ability to issue revenue anticipation certificates to finance the construction of a new hospital, then lease it to a non-profit hospital that would repay the debt from its revenue. *Bradfield v. Hospital Authority of Muscogee County*, 226 Ga. 575 (176 SE2d 92) (1970). That year, the court also addressed the issue squarely before us in this case, and held that real property owned by a hospital authority that produces income used to further the authority's mission is exempt from ad valorem taxes, in *Hospital Authority of Albany v. Stewart*, 226 Ga. 530 (175 SE2d 857) (1970). Specifically, the Supreme Court considered the following certified question from the Court of Appeals: whether

> real property held and owned by a public hospital authority, created under and by virtue of the Hospital Authorities, [is] "public property" within the meaning of the Constitution of 1945, Art. VII, Sec. I, Par. IV (Code Ann. § 2-5404) and Ga. L. 1946, p. 12, as amended (Code Ann. § 92-201) so as to be exempt from ad valorem taxation, where the property itself is not a part of the hospital but its income is properly

> devoted to public purposes (hospital operations) in the furtherance of the legitimate functions of the hospital authority.

Id. at 531-532.

Comparing the situation before it to that in *Undercofler*, 221 Ga. 501, the Supreme Court in *Stewart* reasoned as follows: "While that case dealt with the Sales and Use Tax Act[,] the same reasoning would apply as to ad valorem taxes. The exemption to cities and counties is because their property is public property. The same exemption for a hospital authority of necessity would be because its property is public property." 226 Ga. at 538; OCGA § 31-7-72 (e) (1).

The Tax Board in this case points out that *Stewart* does not expressly hold that a hospital authority's use of its property was wholly irrelevant to its tax exempt status. While we agree that *Stewart* does not expressly so hold, it does hold that a hospital authority's use of income from property that was not part of the hospital is relevant to the taxability of that property. The opinion itself contains little information about the nature of the property at issue, but the certified question indicated that the property was not part of the hospital, and that its income was "devoted to public purposes (hospital operations) in the furtherance of the legitimate functions of the

hospital authority." 226 Ga. at 531.[1] The Supreme Court concluded that, because the income was used to operate the hospital, the property from which the income was derived was "public property" exempt from ad valorem taxes.

In this case, the record establishes that only one of the eight parcels at issue generated any income during the tax years in question, that being the parcel on which both Doctors Hospital and the Columbus Clinic were located. The Hospital Authority leased the property to the non-profit Doctors Hospital, which subleased a portion to the for-profit Columbus Clinic. The issue as to that parcel was whether, consistent with *Stewart*, the income it produced was devoted to hospital operations "in the furtherance of the legitimate functions of the hospital authority." *Stewart*, 221 Ga. at 531. If it was, the parcel was not taxable.

The other seven parcels produced no income. The issue as to those parcels was whether their use, rather than any income derived from their use, was devoted to public purposes in furtherance of the Hospital Authority's legitimate functions. If

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[1]The Supreme Court revealed in a later case that the hospital authority property found exempt from taxation in *Stewart* consisted of "several city lots, some pecan groves and some farming acreage." *Teachers' Retirement System of Ga. v. City of Atlanta*, 249 Ga. 196 (288 SE2d 200) (1982). In *Teachers'*, the Court held that property owned by a public corporation for income-producing purposes was public property exempt from taxation.

they were, then the authority owed no ad valorem taxes to the Tax Board and the trial court did not err.

1. While the Tax Board argues that the superior court granted summary judgment "without any consideration of how the Authority is using any of the eight parcels at issue" and that "fact issues exist" as to the Authority's use, it has not identified what those factual issues might be. In its motion for summary judgment, the Hospital Authority argued that "real property owned by a Georgia hospital authority is wholly exempt from ad valorem property taxation because it is 'public property,'" but it also submitted evidence describing how the parcels were used. The Tax Board produced no evidence that the properties were being used in a different manner.

To support its motion for summary judgment, the Hospital Authority submitted the affidavit of its assistant treasurer, who stated that the Authority has no employees and does not actively manage or operate the healthcare facilities it owns, but instead leases them to entities who are then responsible for the facilities' management. The Authority is exempt from federal income taxes as both a governmental entity and a non-profit company under § 501 (c) (3) of the Internal Revenue Code. The Hospital Authority financed the 2008 purchase of these eight parcels of real property by

issuing income-tax-exempt debt instruments. Seven of the parcels were purchased from Columbus Doctors Hospital, Inc. One parcel, which the Authority leases to the non-profit Doctors Hospital, Inc., contains both Doctors Hospital and a medical office building containing the for-profit Columbus Clinic. Doctors Hospital, Inc., manages and operates the hospital and sublets the medical office building to the Columbus Clinic. A multi-level parking deck is located on four of the parcels, produces no income, and is available to patients, visitors, and employees of both the hospital and clinic. The last two parcels are paved parking lots that are also available at no charge to patients, visitors, and employees.

The eighth parcel at issue is one of three conveyed to the Hospital Authority when it bought Hughston Hospital in 2008 and is a wooded area with walking trails that is part of the hospital grounds. That parcel generates no income. According to the assistant treasurer, the Tax Board granted the Hospital Authority's Request for Nontaxibility on the other two parcels, one containing Hughston Hospital itself and the other also containing the wooded walking trails.

In its motion for summary judgment, the Hospital Authority argued its property was exempt from ad valorem taxation as long as the property or any income produced by it was "properly devoted to public purposes, and to the furtherance of the

legitimate functions of a hospital authority." The Authority also argued that all of the parcels supported and complemented the provision and receipt of medical services, although it also argued that their use need not be related to the provision of medical services to be exempt. In response, the Tax Board argued that exemptions from taxation must be strictly construed, and that the Authority had failed to demonstrate that the parcels — which included "undeveloped acreage" next to Hughston Hospital or the remote parking lots near Doctors Hospital — were being used to further its legitimate functions.

Clearly, the mere fact that property is owned by a Hospital Authority does not exempt it from property taxes. Also clearly, under *Stewart*, 226 Ga. at 531, the property need not actually contain a healthcare facility to be exempt, as long as the use of the property or its income furthers "the legitimate functions of the hospital authority." Id. The Tax Board endorses a reading of the law that would require a Hospital Authority to justify its use of property as a free benefit to patients that might otherwise generate income, but that is not required. No evidence in the record creates an issue of fact regarding the usage of the properties, but rather the evidence establishes as a matter of law that all of the parcels at issue in this case further the legitimate function of the Hospital Authority. None of the properties are used for a

purpose "wholly unrelated" to the Hospital Authority's function. The parking lots obviously further the function of the hospital by providing free parking for Doctors Hospital patients, visitors, and employees, and one parcel contains the hospital itself. Further, the walking trails in the wooded lot on the Hughston Hospital grounds are available to patients, visitors, and employees. The trial court did not err in finding that the parcels were exempt from ad valorem taxation.

2. The Tax Board also argues that the trial court should not have granted summary judgment to the Hospital Authority on the taxability of the parcel on which both Doctors Hospital and the Columbus Clinic were located.

While OCGA § 31-7-72 (e) (1) grants the property tax exemption to hospital authorities as described earlier, § 31-7-72 (e) (2) provides that the property tax exemption does not apply to any real property in which 50 percent or more of the floor space is leased to a for-profit entity. The Tax Board argues that if the Authority had complied with its request to divide the parcel containing both the hospital and the clinic when it bought the property, then the portion on which the clinic was located would clearly have been taxable, because 100 percent of the floor space was occupied by a for-profit company.

But when the Hospital Authority bought the parcel, it already contained both facilities. The Authority did not merge two parcels and then argue that it was entitled to an exemption because the clinic was less than half the size of the hospital. And to support its motion for summary judgment, the Hospital Authority included the affidavit of a registered land surveyor establishing that the square footage of the clinic was less than half of the hospital's square footage. While the Tax Board argues that the two buildings are separate and that the Authority should not be allowed to exclude the property from taxation by "artful line-drawing," it cites to no record evidence regarding that issue. And under the plain terms of the statute, the exemption was not lost, because less than 50 percent of the floor space on that parcel of land was leased to a for-profit company. Accordingly, the trial court did not err in finding the parcel exempt from ad valorem property taxes.

Judgment affirmed. Ray and McMillian, JJ. concur.

FOURTH DIVISION
BARNES, P. J.,
RAY and MCMILLIAN, JJ.

May 27, 2015

In the Court of Appeals of Georgia

A15A0582. DICKEY v. FULTON COUNTY BOARD OF TAX ASSESSORS.

RAY, Judge.

Patricia Dickey ("taxpayer") appeals from the superior court's order finding that it was without jurisdiction to consider her untimely appeal from the Fulton County Board of Equalization's decision regarding her ad valorem tax appeal. For the following reasons, we affirm.

This is a residential property tax appeal for tax year 2011 for property located at Tuxedo Road in Atlanta. The taxpayer appealed the 2011 tax assessment for the property to the Fulton County Board of Assessors. The Board of Equalization heard the tax appeal on March 5, 2012. The Board of Equalization then sent its decision letter to the taxpayer via certified mail on March 14, 2012. Instructions for how to

appeal to the superior court were included with the Board of Equalization's decision letter, which informed the taypayer that "a written Notice of Appeal must be filed within thirty (30) days of the date of this notice[.]" The taxpayer's appeal was not filed until April 16, 2012, which was 33 days after the notice of the Board's decision had been mailed to her. The superior court granted the Fulton County Board of Tax Assessors' motion for summary judgment on the grounds that it lacked jurisdiction to hear the matter because the appeal was not timely filed.

1. The taxpayer contends that the "time period for filing a notice of appeal is merely directory." This argument is without merit. The "statutory limitation on the period of time in which an appeal from a judicial decision may be taken is jurisdictional." (Citation omitted.) *Webb v. Bd. of Tax Assessors of Madison County*, 142 Ga. App. 784, 784 (236 SE2d 925) (1977). The version of OCGA § 48-5-311 (g) (2) in effect at the time of the trial court's decision[1] provides that the taxpayer's notice of appeal "shall be mailed or filed within thirty (30) days from the date on which the decision of the county board of equalization or hearing officer is mailed [to the taxpayer]." Failure to file an appeal within the statutory 30 days bars any further

[1] OCGA § 48-5-311 was recently amended, effective July 1, 2014. See Ga. L. 2014, Act 612, §4.

right of appeal. See *Hall County Bd. of Tax Assessors v. Avalon Hills Partners,* 307 Ga. App. 520, 522, n. 7 (705 SE2d 674) (2010). Accord *Webb*, supra (right of appeal barred when notice of appeal filed one day late); *Camden County Bd. of Tax Assessors v. Proctor*, 155 Ga. App. 650, 650 (271 SE2d 902) (1980) (taxpayer lost the right to appeal when the taxpayer's notice of appeal was mailed on the last day for filing an appeal under the statutory provision, but was not received until two days after expiration of appeal period). The taxpayer's appeal, filed 3 days late, bars her right to appeal from the Board of Equalization's decision.

2. Further, contrary to the taxpayer's contention, the evidence shows that the Board of Equalization sent notice according to the statutory requirements. OCGA § 48-5-311 (e) (6) (D) (i) provides that "[n]otice of the [Board of Equalization] decision shall be given to each party by sending a copy of the decision by registered or certified mail or statutory overnight delivery *to the appellant* and by filing the original copy of the decision with the county board of tax assessors." However, "[w]hen a taxpayer authorizes *an attorney* in writing to act on the taxpayer's behalf, all notices required to be provided to the taxpayer regarding hearing times, dates, certifications, or official actions shall instead be provided to such attorney." (Emphasis supplied.) OCGA § 48-5-311 (o).

The taxpayer argues throughout her brief that Property Tax Advisers, LLC ("PTA") should have been served notice of the Board's decision under OCGA § 48-5-311 (o) because it was her "attorney-in-fact," despite the fact that it is not a law firm and there is no evidence that any of its members are licensed attorneys. This argument is without merit. Here, the taxpayer hired PTA, a business that assists taxpayers in appealing their county tax valuations and assessments, to assist in her appeal. Peter Curnin, the managing member of PTA, filed a notice of appeal to the Board on that taxpayer's behalf, and such notice stated that PTA had "been retained and authorized to act on behalf of" the taxpayer and requested that "[a]ll correspondence, notices or other writings related to this appeal should be addressed to [PTA]." However, PTA is not a law firm and Curnin is not an attorney.

When applying the rules of statutory construction[2] to OCGA § 48-5-311 (o), it is important to note that OCGA § 48-5-311 distinguishes between a taxpayer's employee (such as an agent or representative) and a taxpayer's attorney, providing

[2] The fundamental rules of statutory construction "require us to construe the statute according to its terms, to give words their plain and ordinary meaning, and to avoid a construction that makes some language mere surplusage. While doing so, we must seek to effectuate the intent of the legislature." (Punctuation and footnote omitted.) *Ga. Transmission Corp. v. Worley*, 312 Ga. App. 855, 856 (720 SE2d 305) (2011).

that "[p]roof of service [of a notice of appeal to the Board of Assessors] may be made . . . by certificate of the *taxpayer, the taxpayer's attorney, or the taxpayer's employee* by written admission or by affidavit." (Emphasis supplied.) OCGA § 48-5-311 (n). This distinction is also made in the statute in the context of arbitration: "[a]t the time of certification of the appeal [to arbitration], the county board of tax assessors shall serve the *taxpayer and the taxpayer's attorney of record, if any, or employee with a copy of the certification*[.]" (Emphasis supplied.) OCGA § 48-5-311 (f) (3) (A). The Statute also specifically provides that a non-attorney can appear on the taxpayer's behalf during a hearing on the notice of appeal: "A taxpayer may appear before the board concerning any appeal in person, *by his or her authorized agent or representative, or both*. The taxpayer shall specify in writing to the board the name of any such agent or representative prior to any appearance . . . before the board." OCGA § 48-5-311 (e) (6) (A). Applying the rules of construction to the statute, and giving the "plain and ordinary meaning" to the word "attorney" in OCGA § 48-5-311 (o), it is clear that the legislature intended there to be a distinction between a taxpayer's employee (such as PTA) and a taxpayer's attorney.[3] Accord *Grand*

[3] This finding is further bolstered by the fact that there is an unrelated chapter of the Georgia code governing "Attorneys" which sets forth rules governing those admitted to practice law in this state. See OCGA § 15-19-1 *et seq.* OCGA § 15-19-30

Partners Joint Venture I v. Realtax Resource, Inc., 225 Ga. App. 409, 411 (1) (a) (483 SE2d 922) (1997) (finding that the word "representative" does not mean "attorney" for the purpose of harmonizing OCGA § 48-5-311 (e) (6) (A) with the statutory prohibition against the unauthorized practice of law because representation does not necessarily involve the practice of law).

The legislature elected to permit non-lawyer representation before the county boards of equalization, but it did not elect to require the Board of Equalization to send notice of its decision to such non-lawyer representatives. The taxpayer "would have us add [an alternate] phrase into a subsection when the legislature, faced with a choice, did not do so. A statute shall be construed so as to give full force and effect to all its provisions and so as to reconcile any apparent conflicts." (Citation and punctuation omitted.) *Dept. of Human Resources v. Hutchinson*, 217 Ga. App. 70, 72 (1) (456 SE2d 642) (1995).

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recognizes that "attorneys are officers of the courts of this state; that they have the exclusive right to practice law and represent members of the public in connection with their legal affairs. . . ." Although the legislature has specifically defined the word "Attorney" to include the phrase "attorney-in-fact" elsewhere in the Georgia code, it declined to do so here. See OCGA § 33-17-1 (1) (governing insurance law) ("As used in this chapter, the term . . . 'Attorney' means the attorney in fact of a reciprocal insurer. The attorney may be an individual, firm, or corporation").

Here, the notice of the Board of Equalization's findings was sent to the taxpayer as statutorily required via certified mail on March 14, 2012. The taxpayer admitted that she received a copy of this notice in her responsive pleading before the trial court. The taxpayer asserts that the trial court erred in relying upon an inadmissible and uncertified copy of the Board's decision letter. However, the trial court expressly states that it relied upon the taxpayer's admission in judicio that she did, in fact, receive the certified letter. See *Wahnschaff v. Erdman*, 232 Ga. App. 77, 78 (1) (502 SE2d 246) (1998).

Because the trial court correctly concluded that it was without jurisdiction to consider the taxpayer's untimely appeal from the Board of Equalization's decision, we affirm.

Judgment affirmed. Barnes, P. J., and McMillian, J., concur.

SECOND DIVISION
ANDREWS, P. J.,
MILLER and BRANCH, JJ.

July 16, 2015

In the Court of Appeals of Georgia

A15A0356. FULTON COUNTY BOARD OF TAX ASSESSORS v. PIEDMONT PARK CONSERVANCY.

BRANCH, Judge.

Appellant Fulton County Board of Tax Assessors ("the Board") denied appellee Piedmont Park Conservancy ("the Conservancy") a charitable tax exemption as to a building in the Atlanta park owned by the Conservancy but occupied in part by lessees operating two restaurants. The Conservancy appealed to the Fulton County Board of Equalization, which also denied the exemption, and then to the superior court, which granted the Conservancy a tax exemption as to those portions of the building not occupied by the restaurants. On this appeal, the Board asserts that the superior court erred when it granted the Conservancy the proportional tax exemption

because such exemptions are not authorized by law and because the Conservancy has failed to prove that it is entitled to such an exemption. We find no error and affirm.

The relevant facts are not in dispute. The Conservancy, which is recognized by the Internal Revenue Service and the Georgia Secretary of State as a Section 501 (c) (3) charitable corporation, purchased the property at issue, which includes one building, from the American Legion in 1999. In March of that year, the Conservancy applied for a tax exemption for the property on the basis of the Conservancy's status as a "purely public charity"[1] and represented to the Board that a portion of the building would be provided to the City of Atlanta police as a precinct "without charge." The Conservancy also stated that fees arising from activities held at the property, such as evening courses, "would only cover expenses associated with programs" and "[would] not constitute a 'lease' or 'rent.'" On the basis of these representations, the Board granted the Conservancy a full tax exemption as to the building in 1999. The police did not use any portion of the building as a precinct, however, and soon vacated the space given to them.

In 2001, after learning that visitors to the Park sought food services there, the Conservancy leased 18.57% of the building to Willy's Mexicana Grill for ten years

[1] See OCGA § 48-5-41 (a) (4).

in exchange for more than $50,000 annual rent and a profit-sharing arrangement under which the Conservancy would receive 6% of gross sales in excess of $1,000,000. In 2002, the Conservancy leased an additional 9.73% of the building to a second restaurant for ten years in exchange for more than $28,000 annual rent and 6% of gross sales in excess of $850,000. All of the income received by the Conservancy from the restaurants during the years at issue has been devoted to the Conservancy's charitable purposes, which include the preservation and enhancement of the park and the provision of recreational and educational services to the public; no part of the Conservancy's earnings is distributed to private persons or shareholders. The portion of the building not leased to the restaurants, amounting to 71.7% of its square footage and known as the Piedmont Park Community Center, consists of office space for the Conservancy, an environmental education center, and a room used for Conservancy events and community meetings. The Conservancy also uses the Center for events including summer camp programs and an open-air community market.

In 2005, and in response to an inquiry from the Board, the Conservancy represented that it continued to use the property for charitable purposes. In January 2013, after an appraiser observed the restaurants in operation at the property, the

Board notified the Conservancy that its entire tax exemption as to the property was denied for the tax years 2010, 2011, and 2012, and requested that the Conservancy complete an exemption application concerning its use of the property for the tax years 2010 and 2011. The Conservancy did not complete the application; instead, it appealed to the Board of Equalization, which also denied the exemption. The Conservancy then appealed to the superior court, which granted an exemption as to the 71.7% of the building not leased to the restaurants.

On appeal from this ruling, the Board argues that Georgia law does not authorize a tax exemption for any portion of a property owned by a charitable organization engaged in commercial activities on that same property. The Board also argues that the Conservancy did not present evidence as to the charitable use of the remainder of the property. We disagree with these contentions.

OCGA § 48-5-41 (a) (4) provides an exemption for "all ad valorem property taxes" to "[a]ll institutions of purely public charity." Under the Georgia Constitution of 1945 and a 1946 amendment to it, charitable institutions were authorized to use a portion of their property to generate income as long as the property's "primary purpose" remained charitable. See Ga. Const. of 1945, Art. VII, Sec. I, Par. IV; Ga. L. 1946, p. 13, § 1 (a), now codified as OCGA § 48-5-41 (d) (1); *Nuci Phillips Mem.*

Foundation v. Athens-Clarke County Bd. of Tax Assessors, 288 Ga. 380, 389-390 (2) (703 SE2d 648) (2010) (Nahmias, J., concurring specially). As subsections (c) and (d) (1) of the same statute explain:

> (c) The property exempted by this Code section . . . *shall not be used for the purpose of producing private or corporate profit and income distributable to shareholders* in corporations owning such property or to other owners of such property, and *any income from such property shall be used exclusively for religious, educational, and charitable purposes* or for either one or more of such purposes and for the purpose of maintaining and operating such religious, educational, and charitable institutions.
>
> (d) (1) *Except as otherwise provided in paragraph (2) of this subsection* [quoted below], this Code section . . . *shall not apply to real estate or buildings which are rented, leased, or otherwise used for the primary purpose of securing an income thereon and shall not apply to real estate or buildings which are not used for the operation of religious, educational, and charitable institutions.* Donations of property to be exempted shall not be predicated upon an agreement, contract, or other instrument that the donor or donors shall receive or retain any part of the net or gross income of the property.

(Emphasis supplied.) OCGA § 48-5-41 (c), (d). And the Supreme Court of Georgia has long granted tax exemptions to charities even when the commercial activity at those charities' properties have generated income, as long as that income is used

exclusively for religious, educational, or charitable purposes." In *Elder v. Henrietta Egleston Hosp. for Children*, 205 Ga. 489 (53 SE2d 751) (1949), for example, our Supreme Court upheld an ad valorem exemption for a hospital that charged patients for varying proportions of their medical care, but used all of the income generated for charitable purposes, on the ground that such charges did not destroy the hospital's status as a "purely public charity," with "the fact that patients who are able to pay are charged for services rendered" not altering "its character as such." Id. at 490-491 (citing the 1947 predecessor of OCGA § 48-5-41). Likewise, in *Church of God of the Union Assembly v. City of Dalton*, 216 Ga. 659 (119 SE2d 11) (1961), the Court upheld an ad valorem exemption for a church building containing a restaurant used primarily to feed members of the church, visiting church personnel, and persons in need, but which was also open to paying customers. Because the evidence "demanded a verdict so exempting" the building, including the restaurant, the Court ordered that a verdict be modified so as to grant the building an exemption. Id. at 660, 662 (citing the 1947 and 1953 predecessors to OCGA § 48-5-41).

In *Peachtree on Peachtree Inn v. Camp*, 120 Ga. App. 403 (170 SE2d 709) (1969), this Court held that although a small portion of a building owned by the Georgia Baptist Convention and used by two retail stores "would not be tax exempt"

because "[t]he area where the stores are located is being used to gain rental [income] and not for the primary purpose of operating the [home]," that portion of the same building actually used as a home for the aged was tax-exempt, even though its residents paid rent. Id. at 411. Thus, and although prior precedent had recognized that income-producing operations could occur on a property without destroying the charitable status of any part of that property, see *Elder*, 205 Ga. at 490-491; *Church of God of the Union Assembly*, 216 Ga. at 660-662, *Peachtree on Peachtree* ratified a charitable tax exemption as to those portions of a property not used to produce income. 120 Ga. App. at 411 (citing predecessor statute to OCGA § 48-5-41 as well as *Church of God*, supra).

In 1991, the Supreme Court of Georgia reaffirmed that OCGA § 48-5-41 authorized ad valorem tax exemptions for property owned by a "purely public charity" under a three-part test: "First, the owner must be an institution devoted entirely to charitable pursuits; second, the charitable pursuits of the owner must be for the benefit of the public; and third, the use of the property must be exclusively devoted to those charitable pursuits." *York Rite Bodies of Freemasonry of Savannah v. Bd. of Equalization of Chatham County*, 261 Ga. 558 (2) (408 SE2d 699) (1991). In the wake of *York Rite*, this Court continued to hold that proportional exemptions

as to those portions of a property not engaged in income-producing activities were consistent with OCGA § 48-5-41's provision of exemptions to "purely public charities." See, e.g., *Lamad Ministries v. Dougherty Cty. Bd. of Tax Assessors*, 268 Ga. App. 798, 804-806 (4) (602 SE2d 845) (2004) (reversing trial court's denial of exemption as to home for the aged when the court's aggregation of property "deprived that portion of the property used primarily as a place of worship from tax exemption"; tax assessors were "fully capable of separating the tax exempt property from nonexempt property" and assessing each accordingly) (footnote omitted).

In *Nuci Phillips*, decided in 2010, a plurality of the Supreme Court of Georgia summarized the history of OCGA § 48-5-41 through 2006 as follows:

> Under the exemption statutes from 1946 to 2006, those institutions that qualified as purely public charities were allowed to use their property to produce income *as long as the primary purpose of the property was not to secure income, the income-producing activity was consistent with its charitable activities, and the income was used exclusively for the institution's charitable purposes*. As long as these three income rules were satisfied, then a charitable organization that raised income would be considered as using its property "exclusively" for its charitable purposes and thus remain a purely public charity.

(Citation omitted; emphasis supplied.) 288 Ga. at 381-382 (1). As the *Nuci Phillips* plurality also noted, subsection (d) (2) was added to OCGA § 48-5-41 in 2006, providing that

> real estate or buildings which are owned by a charitable institution that is exempt from taxation under Section 501(c) (3) of the federal Internal Revenue Code and used by such charitable institution for the charitable purposes of such charitable institution may be used for the purpose of securing income so long as such income is used exclusively for the operation of that charitable institution.

Ga. L. 2006, pp. 376, 377, § 1. Only one year later, however, the legislature replaced this version of subsection (d) (2) with one providing that

> *a building which is owned by a charitable institution that is otherwise qualified as a purely public charity* and that is exempt from taxation under Section 501(c)(3) of the federal Internal Revenue Code *and which building is used by such charitable institution exclusively for the charitable purposes* of such charitable institution, and not more than 15 acres of land on which such building is located, *may be used for the purpose of securing income so long as such income is used exclusively for the operation of that charitable institution*.

Ga. L. 2007, p. 341, § 1 (emphasis supplied); *Nuci Phillips*, 288 Ga. at 382 (1).

The *Nuci Phillips* special concurrence noted that "[t]he only substantial change made by the 2007 amendment was to limit – to the building owned by the charity and not more than 15 acres on which the building sits – the extent of property that may be used *primarily* to generate income." 288 Ga. at 394 (4) (Nahmias, J., concurring) (emphasis supplied). "The reason for this limitation is not apparent from the statute, but its effect is to prevent a charity from receiving the tax exemption if it owns a large amount of income-producing land." Id. Notwithstanding these observations, an outright majority of the *Nuci Phillips* Court agreed that with the 2006 and 2007 amendments to the statute, "the General Assembly intended to *broaden* the ability of charitable institutions to use their property to raise income." 288 Ga. at 383 (1) (plurality); see also id. at 392 (3) (Nahmias, J., concurring) (the 2006 amendment to OCGA § 48-5-41 (d) "*expanded* the existing tax exemption" by deleting the "'primary' purpose qualifier present in the old subsection (d)") (emphasis supplied).

In the face of this legislative and interpretative history, the Board argues that the plain language of subsections (c) and (d) (2) of the statute forbids the Conservancy from using any portion of the property at issue for income-producing activity while maintaining tax-exempt status. This argument runs contrary to at least forty years of Georgia law.

We remain bound by our Supreme Court's decision in *York Rite* as applied by the plurality in *Nuci Phillips*, to the effect that "three factors must be considered and must coexist" in order for a court to conclude that "property qualifies as an institution of 'purely public charity'" under OCGA § 48-5-41 (a) (4): "First, the owner must be an institution devoted entirely to charitable pursuits; second, the charitable pursuits of the owner must be for the benefit of the public; and third, the use of the property must be exclusively devoted to those charitable pursuits." *York Rite*, 261 Ga. at 558 (2). As the *York Rite* Court also noted, "the requirements of OCGA § 48-5-41 (c) and (d) must also be complied with by any institution that qualifies under subsection (a) (4) as an institution of purely public charity in order to entitle that institution to exemption from ad valorem taxation." Id. at 559 n. 3 (3) (a). Specifically, an institution seeking an ad valorem tax exemption as to a property must show that "any income from such property shall be used exclusively for religious, educational, and charitable purposes," OCGA § 48-5-41 (c); that the property is not "rented, leased, or otherwise used for the primary purpose of securing an income thereon," id. at (d) (1); and that any income earned by that property "is used exclusively for the operation of that charitable institution." Id. at (d) (2).

Here, the Conservancy remains "devoted entirely" to its mission of furthering recreational and educational activities in the Park, and these activities continue to be undertaken "for the benefit of the public," such that the first two requirements of *York Rite* are satisfied. See *York Rite*, 261 Ga. at 558 (2), citing OCGA § 48-5-41 (a) (4). Further, the Conservancy's use of income generated at the property is "used exclusively for the operation" of the Conservancy such that *York Rite*'s third requirement is satisfied. *York Rite*, 261 Ga. at 558 (2). Specifically, any income earned by the Conservancy is used in furtherance of its "religious, educational, and charitable purposes," OCGA § 48-5-41 (c); 71.7% of the building at issue remains "exclusively devoted to" the Conservancy's charitable purposes, such that the property's "primary purpose" remains charitable, id. at (d) (1); and such income earned by the Conservancy is used "exclusively for the operation of" the Conservancy. Id. at (d) (2); see also *York Rite*, 261 Ga. at 558 (2). In the language of the *Nuci Phillips* plurality, the tax-exempt status of the Conservancy building at issue is not abrogated simply because a part of that property is used to produce income because the property has never been used "'for the *primary purpose* of securing an income thereon.'" Id. at 385 (emphasis supplied), quoting OCGA § 48-5-41 (d) (1). Rather, and because the statute "permits the securing of income by non-charitable

activities if used exclusively for the operation of the charitable institution," *Nuci Phillips*, 280 Ga. at 387 (2), the Conservancy is entitled to a proportional tax exemption concerning the building at issue. Id.; see also id. at 398 (7) (Nahmias, J., concurring) (foundation's property was "exclusively devoted to those charitable pursuits" when income from the property was "used exclusively for the operation of the charitable institution") (citations and punctuation omitted). Compare *First Congregational Church v. Fulton County Bd. of Tax Assessors*, 320 Ga. App. 868, 878 (2) (c) (740 SE2d 798) (2013) (physical precedent only) (church was not entitled to exemption as to its parking lot used to produce income approximately 85% of the time); *H.O.P.E. Through Divine Interventions v. Fulton County Bd. of Tax Assessors*, 318 Ga. App. 592, 598-599 (734 SE2d 288) (2012) (charity that did not use any of the subject property for its stated charitable purposes during the two-year period at issue was not entitled to an exemption for that period).

The Board also argues that the Conservancy is not entitled to a proportional exemption under the circumstances of this case because it failed to provide evidence of the charitable use of that portion of the building not occupied by the restaurants and because the restaurants are turning a profit, generating "more income than what is paid for rent." The first of these contentions is belied by the record, which includes

an unrefuted affidavit stating that the Community Center occupies 71.7% of the building at issue and that the Center is used for purposes consistent with the Conservancy's charitable mission. And the profitability of the tenant restaurants has no bearing on the question whether the Conservancy is entitled to a proportional exemption as to the space *not* occupied by these tenants.

Citing the *Nuci Phillips* special concurrence,[2] the Conservancy argues that it is entitled to a charitable exemption as to 100% of the building at issue. We have no jurisdiction over this question, however, because the Conservancy did not cross-appeal the trial court's imposition of ad valorem tax on the 28.3% of the building dedicated to income-producing activities. See OCGA § 5-6-38 (a) (a civil appellee

[2] The *Nuci Phillips* special concurrence suggested that income-generating activities having the "sole purpose of raising funds to be used for [an] organization's charitable services" should not bar that organization from an exemption "even if the property were used for the primary purpose of securing such income." 288 Ga. at 398 (Nahmias, J., concurring specially). By contrast, the plurality continued to consider whether the "primary purpose" of the property was "not to raise income but to provide services for those seeking mental health assistance." 288 Ga. at 386 (2). We also note that the General Assembly has not accepted our Supreme Court's invitation in *Nuci Phillips* to amend OCGA § 48-5-41 (d) (2). See 280 Ga. at 398-399 (8) (plurality's imposition of "primary" purpose restriction on "non-charitable" and "charitable" income-producing activities "will be our effective precedent, governing the outcome of future cases raising this issue"); Ga. L. 2014, Act 613, § 1, eff. Jan. 1, 2015 (amending only subsection (a) (1) (F) as to private property "primarily used for student housing or parking" by the Board of Regents of the University System of Georgia).

may institute a cross appeal "by filing notice thereof within 15 days from service of the notice of appeal by the appellant," thus presenting "for adjudication on the cross appeal all errors or rulings adversely affecting him"); *Reliance Ins. Co. v. Cobb County*, 235 Ga. App. 685, 686 (510 SE2d 129) (1998) (dismissing appellee's direct appeal in light of availability of both interlocutory and cross-appeal procedures).

For all these reasons, the trial court did not err when it construed OCGA § 48-5-41 as authorizing a proportional tax exemption for that portion of the building at issue not devoted to producing income for the Conservancy.

Judgment affirmed. Andrews, P. J., and Miller, J., concur.

FIRST DIVISION
DOYLE, C. J.,
PHIPPS, P. J., and BOGGS, J.

November 16, 2015

In the Court of Appeals of Georgia

A15A1522, A15A1523, A15A1524. GLYNN COUNTY, GEORGIA
v. COLEMAN, et al. (three cases).

BOGGS, Judge.

In these consolidated appeals, Glynn County ("the County") appeals from orders certifying three related class actions brought by Elizabeth and J. Matthew Coleman, IV ("the Colemans"). In each of these cases, the County asserts that the trial court erred by granting the class certification. In Case No. A15A1522, the County also asserts that the trial court should have considered and granted its motion to dismiss the class allegations in the Colemans' complaint. For the reasons explained below, we affirm.

The record shows that the Colemans filed three class action lawsuits against the County seeking a refund of ad valorem taxes under OCGA § 48-5-380, a declaratory judgment, as well as equitable, injunctive, and mandamus relief. In Case

No. A15A1522, the trial court certified four classes: (1) taxpayers for whom an exemption was miscalculated in any year between 2001 and 2007; (2) taxpayers for whom an exemption was miscalculated in 2008; (3) taxpayers for whom an exemption was miscalculated in 2009; and (4) taxpayers for whom an exemption was miscalculated in 2010. In Case No. A15A1523, the trial court certified a class for tax years 2011 and 2012, and in Case No. A15A1524, the trial court certified a class for tax years 2013 and 2014. The County appeals from these class certification orders. In Case No. A15A1522, it also appeals from the trial court's denial of its motion to dismiss the class allegations in the Colemans' complaint.

As a preliminary matter, we note that "[o]n appellate review of a trial court's decision on a motion to certify a class, the discretion of the trial judge in certifying or refusing to certify a class action is to be respected in all cases where not abused." (Citation and punctuation omitted.) *State Farm Mut. Auto Ins. Co. v. Mabry*, 274 Ga. 498, 499-500 (1) (556 SE2d 114) (2001).

> When a court determines the propriety of a class action, the first issue to be resolved is not whether the plaintiffs have stated a cause of action or may ultimately prevail on the merits but whether the requirements of OCGA § 9-11-23 have been met. Any assertion that the named plaintiff cannot prevail on [his] claims does not comprise an appropriate basis for denying class certification. Further, any argument that [plaintiff] is not

> an adequate representative because [he] will not ultimately prevail on [his] claim does not comprise an appropriate basis for denying class certification.

(Citations and punctuation omitted.) *Peck v. Lanier Golf Club*, 298 Ga. App. 555, 556 (680 SE2d 595) (2009).

1. In Case No. A15A1522, the County contends the trial court erred in denying its motion to dismiss as premature. The record shows that the County filed a motion to dismiss "all class action allegations in plaintiff's Complaint pursuant to OCGA § 9-11-12 (b) (6). This Motion is based upon the record in this case and is made for the reasons set forth in the brief filed contemporaneously herewith." On the same day, the County filed a "Supplemental Response to Plaintiffs' Motion to Certify Suit as Class Action and in Support of Motion to Dismiss." In this brief, the County asserted that class actions are not generally available in tax refund cases and that the only available remedy is the tax refund statute. It also asserted that a class should not be certified based upon the doctrine of sovereign immunity, asserted limitation periods that would apply to the Colemans, both individually and as representatives of a class, and pointed to alleged flaws in the Colemans' claims for non-monetary relief.

In its orders certifying the class actions, the trial court addressed the County's claim that class actions are not generally available in tax refund cases, and, for the reasons explained below, properly concluded that class actions are permissible in cases involving refunds under OCGA § 48-5-380, and also that class actions, in general, may assert claims for non-monetary relief. The trial court did not, however, address any other portion of the County's motion to dismiss. In a footnote, it stated, "Defendant's remaining arguments against class certification are merits based arguments which will be addressed in this Court's Order on Defendant's Motion to Dismiss."

The trial court's order denying the County's motion to dismiss states, in its entirety: "Defendant filed a Motion to Dismiss Named Plaintiff's class allegations under OCGA § 9-11-12 (b) (6). For the reasons set forth in *Whitaker v. Department of Human Resources of State of Georgia*, 86 FRD 689, 692 (ND Ga. 1980), the motion is premature and therefore is DENIED."

In *Whitaker*, supra, the Northern District of Georgia ruled as follows:

> The other pending motions relate to the issue of class certification. They are defendant's motion for partial dismissal of class allegations and defendant's motion to strike class allegations, and plaintiff's motion for class determination. The court DENIES defendant's motion for partial

> dismissal of class allegations relating to discrimination on the basis of sex. The defendant does not state which of the Federal Rules of Civil Procedure forms the basis of the motion for partial dismissal of class allegations. One leading commentator has stated that "one opposing the class action may move for an order determining that the action may not be maintained as a class suit." 3B Moore's Federal Practice P 23.50, p. 23-421. Professor Moore points out in a footnote that "[t]he proper way to test class action treatment is a motion under Rule 23 (c) (1), not a motion to dismiss . . . under Rule 12 (b) (6)." The court finds that the motion dismiss class allegations, filed with defendant's answer, is premature. The motion is DENIED.

Id. at 693.

It is well-established that [in determining whether a class action should proceed under OCGA § 9-11-23, "the first issue to be resolved is not whether the plaintiffs have stated a cause of action or may ultimately prevail on the merits, but whether the requirements of OCGA § 9-11-23 (a) have been met." (Citations and punctuation omitted.) *MCG Health, Inc. v. Perry*, 326 Ga. App. 833, 835 (1) (755 SE2d 341) (2014). Here, the County's motion sought to dismiss only the class action allegations in the complaint based upon legal theories that would apply to *both* the individual and class action claims of the Colemans. In essence, the County asked the trial court to dismiss only the class action claims because the complaint generally was subject to

dismissal based upon sovereign immunity, limitation periods in the refund statute, and alleged flaws with the Colemans' claims for non-monetary relief. As the trial court apparently recognized when it denied the motion to dismiss the class allegations in the Colemans' complaints, this is not the proper procedure to avoid certification of a class under OCGA § 9-11-23.

While a defendant can certainly seek a ruling on a dispositive motion before certification of a class, it cannot use a dispositive motion as a vehicle to deny class certification. See 5-23 Moore's Federal Practice - Civil § 23.81 [2] (court may rule on dispositive motion before deciding whether to certify class); *Village Auto Ins. Co. v. Rush*, 286 Ga. App. 688, 692 (2) (649 SE2d 862) (2007) ("merit-based disputes are not ripe for resolution at the class certification stage"). We therefore affirm the trial court's denial of the County's motion to dismiss only the class allegation portions of the Colemans' complaint. We express no opinion about whether the certified class actions are subject to dismissal for the reasons asserted in the motion to dismiss that have not yet been considered by the trial court. See *Taylor Auto Group v. Jessie*, 241 Ga. App. 602, 604 (2) (527 SE2d 256) (1999) (refusing to consider merits of defense in appeal from order certifying a class action).

2. In each of the three cases before us, the County asserts that trial court erred by granting the Colemans' motion for class certification because class action certification is generally improper in a tax refund lawsuit. As the trial court ruled on this issue in its certifcation order, we will consider it.

In support of its argument that class certification is improper in a tax refund action, the County relies upon the Supreme Court of Georgia's decisions in *Sawnee Elec. Membership Corp. v. Ga. Dept. of Revenue*, 279 Ga. 22 (608 SE2d 611) (2005) and *Henderson v. Carter*, 229 Ga. 876 (195 SE2d 4) (1972), as well as a 2003 amendment to a different tax refund statute, OCGA § 48-2-35. The Colemans assert that the Supreme Court's decisions in *City of Atlanta v. Barnes*, 276 Ga. 449 (578 SE2d 110) (2003) (*Barnes I*) and *Barnes v. City of Atlanta*, 281 Ga. 256 (637 SE2d 4) (2006) (*Barnes II*), expressly authorize class actions for refund claims under the statute at issue here, OCGA § 48-5-380. The trial court reviewed this body of law in its orders certifying the classes and correctly concluded that class actions can be maintained in tax refund cases involving OCGA § 48-5-380.

In *Henderson*, supra, the Supreme Court concluded that a statute authorizing a tax refund against the State

> provides the method by which refunds and suits for refunds may be made by taxpayers. It does not provide for the bringing of a class action in either instance. The State has waived her sovereign immunity only to the extent provided by the express terms of this statute. It follows that a class action in the instant case is not authorized.

229 Ga. at 879 (2). In *Barnes I*, the Supreme Court reconsidered its decision in *Henderson*, and concluded, in a case involving a tax refund claim under the same statute at issue here (OCGA § 48-5-380):

> When a statute provides the right to bring an action for a tax refund against a governmental body, that statute provides an express waiver of immunity and establishes the extent of the waiver (the amount of the refund), but does not purport to provide for the form of action to be utilized. By participating as a plaintiff in a class action that includes a claim for a tax refund, a taxpayer is unquestionably bringing an action for a refund, which is what the statute permits. We conclude, therefore, that the holding in *Henderson* that there can be no class actions brought for tax refunds was error.

276 Ga. at 452 (3).

Following the Supreme Court's decision in 2003 to overrule *Henderson*, in *Barnes I*, the General Assembly amended OCGA § 48-2-35, the statute governing tax refunds sought from the Georgia Department of Revenue, to expressly prohibit class

actions under that Code provision. See OCGA § 48-2-35 (c) (1) (D) ("A claim for refund may not be submitted by the taxpayer on behalf of a class consisting of other taxpayers who are alleged to be similarly situated."). The General Assembly did *not* make a similar amendment to OCGA § 48-5-380, the statute governing the procedures for obtaining ad valorem tax refunds that was at issue in *Barnes I*.

In its 2005 *Sawnee* decision, the Supreme Court held that an Electrical Member Corporation could not bring a lawsuit on behalf of its 108,000 members against the Georgia Department of Revenue for a tax refund under OCGA § 48-2-35. 279 Ga. at 24-25 (3). After observing that the particular claim before it was barred by the express prohibition against bringing tax refund actions on behalf of other taxpayers in OCGA § 48-2-35, the Supreme Court stated in a footnote that this prohibition "was passed during the 2003 legislative session and constitutes a legislative overruling of this Court's holding in *City of Atlanta v. Barnes*, supra, 276 Ga. at 449 (3), that a class action was a permissible means for a taxpayer to pursue a tax refund action." *Sawnee*, supra, 279 Ga. at 25 (3) n. 1.

One year later, in *Barnes, II*, a case involving OCGA § 48-5-380, the Supreme Court clarified its footnote in *Sawnee* and explained:

In [*Barnes I*], . . . we held that OCGA § 48-5-380 does not "provide for the form of action to be utilized. By participating as a plaintiff in a class action that includes a claim for a tax refund, a taxpayer is unquestionably bringing an action for a refund, which is what the statute permits." *Barnes I*, supra at 452 (3). Compare *Sawnee Elec. Membership Corp. v. Ga. Dept. of Revenue*, 279 Ga. 22, 25 (3), fn. 1 (608 SE2d 611) (2005) (former OCGA § 48-2-35 (b) (5), now designated subsection (c) (5), superseded *Barnes I* only as to refund claims against the State). Thus, any taxpayer whom the named plaintiffs represent and who does not ultimately opt out of the class action is considered to have brought suit for a refund at the same time as the named plaintiffs. Although OCGA § 48-5-380 is applicable to that suit, so too are those principles which apply generally in class actions, including that which permits a representative to act on behalf of an entire class. Where, as here, "exhaustion of administrative remedies is a precondition for suit, the satisfaction of this requirement by the class plaintiff normally will avoid the necessity for each class member to satisfy this requirement individually." 2 Newberg on Class Actions § 5:15, p. 438 (4th ed. 2002). Decisions to the contrary, such as *U.S. Xpress v. N.M. Taxation & Revenue Dept.,* 136 P3d 999 (N.M. 2006), are "based on genuinely unique statutory requirements." 2 Newberg, supra at 440. OCGA § 48-5-380, unlike certain tax refund statutes, neither prohibits utilization of a class action, nor expressly requires individual exhaustion of administrative remedies. See *Arizona Dept. of Revenue v. Dougherty*, 29 P3d 862, 869 (B) (Ariz. 2001). Compare OCGA § 48-2-35 (c) (5).

Based upon *Barnes II* and the General Assembly's failure to preclude class actions under OCGA § 48-5-380 following the Supreme Court's decision in *Barnes I*, we conclude that a class action for a tax refund can be maintained under OCGA § 48-5-380. See *Nuci Phillips Mem. Foundation v. Athens-Clarke County Bd. of Tax Assessors*, 288 Ga. 380, 383 (1) (703 SE2d 648) (2010) (courts should presume that General Assembly has full knowledge of existing condition of statutory and case law at time statute is enacted). Cf. *Bd. of Regents &c. v. Rux*, 260 Ga. App. 760, 764 (2) (580 SE2d 559) (2003) (waiver of sovereign immunity for contract cases generally allows for class action even though no explicit waiver for class actions in a contract case). We therefore find no merit in the County's claim on appeal that the Colemans were precluded from maintaining a class action for a tax refund under OCGA § 48-5-380.

3. In each of the cases before us, the County asserts that the trial court erred by certifying class action claims for injunctive relief, mandamus, and declaratory judgment. In its orders certifying the classes, however, the trial court did not address the merits of the County's specific claims with regard to the relief available. Instead, it merely held that non-monetary relief can be sought in class actions generally. As this is a correct conclusion generally, *State Farm Mut. Automobile Ins. Co. v. Mabry*,

274 Ga. 498, 499-500 (1) (556 SE2d 114) (2001), we affirm the trial court's class certification orders, but only as to this general principle. We express no opinion about whether the certified class actions are subject to dismissal based upon the doctrine of sovereign immunity, limitation periods within the tax refund statute, or alleged fatal flaws with the Colemans' claims for non-monetary relief, as these issues have not yet been ruled upon by the trial court. See *Luyando v. Bowen*, 124 FRD 52, 56 (III) (C) (SDNY 1989) (refusing to address merits of sovereign immunity when considering motion for class certification).

For all of the above-stated reasons, we affirm the trial court's orders certifying classes in Case No. A15A1522, Case No. A15A1523, and Case No. A15A1524, as well as the trial court's order denying the County's motion to dismiss in Case No. A15A1522.

Judgments affirmed. Doyle, C. J. and Phipps, P. J., concur.

IN THE SUPERIOR COURT OF TERRELL COUNTY
STATE OF GEORGIA

FILED IN OFFICE AT 12:05 P M
THIS 30 DAY OF October 2012
Brandi Stokes
DEPUTY CLERK, SUPERIOR COURT CLERK
TERRELL COUNTY GEORGIA

JASON GOOLSBY and BRIAN GOOLSBY,	*	
Appellants,	*	
	*	**Civil Action Number**
vs.	*	**10-CV-117**
TERRELL COUNTY BOARD OF TAX ASSESSORS	*	
Appellee,	*	

ORDER

This Court held a hearing on Jason and Brian Goolsby's appeal of a decision by the Terrell County Board of Tax Assessors pursuant to O.C.G.A 48-5-7.4 and O.C.G.A 48-5-311. The parties stipulated the following facts:

1.

Appellants are long-time local farmers who own real property located in Land Lots 7, 8, and 26 of the Third Land District and 246 and 247 of the Twelfth Land District of Terrell County, Georgia containing approximately 448.5 acres, references in the Terrell County Tax Assessor's office as Tax Parcel ID Number 61-004 (hereinafter referenced to as the "subject property").

2.

Appellants, pursuant to OCGA § 48-5-7.4, applied for an application to enroll said property in a conservation use covenant. Said property was accepted as qualifying for a conservation use assessment of agricultural property by Appellee, the Terrell County Board of Tax Assessors. The covenant period began on January 1, 2007 and ends on December 31, 2016.

3.

Before and since the beginning of the covenant, Appellant's have been in the business of 1) buying and raising livestock; 2) buying, growing, harvesting, and storing agricultural products from and on the subject property, including grain and wheat; 3) selling livestock and agricultural products, including grain and wheat. Some of the agricultural products are used to feel livestock and some are later sold; the subject property supports approximately 50 bulls, 550 cows, and 550 calves. The subject property is primarily used for raising livestock and raising and harvesting agricultural products, including grain and wheat. Jason Goolsby and Brian Goolsby formed Goolsby Farm Supply to conduct some of the activities described in this paragraph.

4.

On or about March 12, 2009, Goolsby Farm Supply received an Occupational Tax Certificate (business license) through the Terrell County, Georgia Code Enforcement Office (See attached Exhibit "B"). This occupational tax certificate was set to expire on December 31, 2010. On or about March 31, 2010, Goolsby Farm Supply filed a Business Personal Property Tax Return with the Terrell County Tax Assessor's Office.

5.

Goolsby Farm Supply maintains a separate Tax Identification Number and maintains a website at www.goolsbyfarmsupply.com. It also is listed in the Yellow Pages as a grain dealer.

6.

The commercial operations of Goolsby Farm Supply are located on the property which is subject to the Conservation Use Covenant.

7.

On or about March 3, 2010, the Terrell County Board of Tax Assessors notified Appellants that they were in violation of their Conservation Use covenant.

8.

On or about March 31, 2010, the Terrell County Board of Tax Assessors received a certified letter from the Appellants' attorney stating that they would like to appeal said alleged breach. Said appeal was forwarded to the Terrell County Board of Equalization on or about April 15, 2010. On or about May 17, 2010, the Terrell County Board of Equalization upheld the decision of the Terrell County Board of Tax Assessors.

9.

Appellants properly appealed said decisions to this Court.

10.

OCGA § 48-5-311(e)(3) provides that this appeal is a de novo action with the burden of proof upon the board of assessors who much prove their opinions of value and the validity of its proposed assessment by a preponderance of the evidence.

11.

Appellee, Board of Assessors, contends that the Appellants, Jason Goolsby and Brian Goolsby, breached the conservation use permit by 1) obtaining a business license for a business operated on a portion of the subject property; 2) storing crops not produced on the subject property; and 3) selling crops not grown on the subject property.

12.

No statutory authority or case law was cited by Appellee to prove that procuring or even operating a business on the subject property would result in a breach of the conservation use

covenant, particularly when the business is consistent with the primary purpose of the subject property which is "good faith" production of agricultural products.

This Court finds that the Appellants acquired a conservation use tax status on their nearly 450 acres of land in 2007. Appellants have been in business of agriculture and farming as well as buying and raising livestock since at least 2006. The parties stipulated that the original application was filed properly, and no challenge to its validity has been made. Appellants stated in the same application that the "property described and the primary use of said property is good faith production from or on the land of agricultural products." (Appellant's Exhibit A) There is no mention of prohibiting individuals owning a business upon the land in question in the statute or in case law; the statute is concerned with owners of the land and their use of it.

This Court finds that because the land was undisputedly designated for conservation use under O.C.G.A 48-5-7.4 for agricultural purposes, and the land has continued to be used for such purposes regardless of how the Appellants structure their personal businesses for taxes, there has been no violation of the conservation use permit. Therefore, this motion is hereby DENIED.

SO ORDERED THIS 30th DAY OF October, 2012.

Joe C. Bishop, Chief Judge Superior Court
Pataula Judicial Circuit

IN THE SUPERIOR COURT OF TERRELL COUNTY
STATE OF GEORGIA

FILED IN OFFICE AT 12:05 PM
THIS 30 DAY OF October 2012
Brandi Starks
DEPUTY CLERK, SUPERIOR COURT CLERK
TERRELL COUNTY GEORGIA

JASON GOOLSBY and BRIAN GOOLSBY,	*	
Appellants,	*	
	*	**Civil Action Number**
vs.	*	**10-CV-117**
TERRELL COUNTY BOARD OF TAX ASSESSORS	*	
Appellee,	*	

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a true and correct copy of the foregoing order upon attorneys for both parties, Edward R. Collier and Jonathan L. Morris, by depositing the same in an envelope in the United States mail, first class postage prepaid to the following address:

Jonathan L. Morris
Perry & Walters LLP
P.O. Box 71209
Albany, GA 31708

Edward R. Collier
Collier & Gamble, LLC
P.O. Box 377
Dawson, GA 39842

This the 30th day of October, 2012.

Judge Joe C. Bishop, Chief Judge
P.O. Box 759
Dawson, GA 39842

FOURTH DIVISION
DOYLE, P. J.,
MCFADDEN and BOGGS, JJ.

November 7, 2013

In the Court of Appeals of Georgia

A13A0981. TERRELL COUNTY BOARD OF TAX ASSESSORS
v. GOOLSBY et al.

MCFADDEN, Judge.

The Terrell County Board of Tax Assessors ("the board") appeals the decision of the superior court that Jason and Brian Goolsby did not breach a conservation use covenant. As to the threshold issue of jurisdiction, we reject the Goolsbys' argument that the notice of appeal was untimely; the superior court properly extended the appeal deadline.

As to the merits, the board contends that the Goolsbys breached the covenant by operating a commercial grain business on the property, notwithstanding that the property otherwise qualified as a bona fide conservation use property. The superior court rejected the board's contention, holding that procuring or operating a business

on the subject property cannot constitute a breach of the covenant. In so holding the superior court erred. But if use of the property in a business is incidental, occasional, intermediate or temporary and not detrimental to or in conflict with its primary, qualifying use of the property, procuring or operating a business on otherwise qualified property is not a breach of the agreement and does not prevent the property from being classified as bona fide conservation use property. Because the superior court's analysis was founded on an erroneous construction of the bona fide conservation use covenant statute, we vacate the judgment and remand to the superior court for reconsideration.

The parties entered a stipulation of facts. The superior court conducted a hearing and made additional findings of fact, which the parties do not dispute. "On appeal, the application of law to undisputed facts is subject to de novo review." *Wheeler County Bd. of Tax Assessors v. Gilder*, 256 Ga. App. 478 (568 SE2d 786) (2002) (citation omitted).

The bona fide conservation use covenant statute is OCGA § 48-5-7.4. Under that provision,

> owners of "bona fide conservation use property," including property used for certain agricultural purposes and meeting other statutory

> criteria and conditions, may apply to the county board of tax assessors for "current use assessment" of their property for purposes of calculating ad valorem taxes. If the application is granted, the property is assessed for tax purposes at 40 percent of its "current use value" instead of 40 percent of its "fair market value," OCGA § 48-5-7 (a), (c.2), resulting in tax savings.

Morrison v. Claborn, 294 Ga. App. 508, 509 n. 1 (669 SE2d 492) (2008) (citation omitted). When such an application is granted, "the landowner receives a significant tax advantage, and a portion of the tax burden is shifted to other land owners, [so] the qualifying landowner must make substantial promises and covenants." Daniels, Susan L., *Ad Valorem Taxation of Property: Provide for the Ad Valorem Taxation of Timber and Current Use Valuation/Taxation of Bona Fide Conservation Use Property and Bona Fide Residential Transitional Property*, 8 Ga. St. U. L. R. 181, 186 (1991). (Available at: http://scholarworks.gsu.edu/gsulr/vol8/iss1/34).

In pertinent part, the statute defines "bona fide conservation use property" to mean:

> Not more than 2,000 acres of tangible real property of a single person, the primary purpose of which is any good faith production, including but not limited to . . . commercial production, from or on the land of agricultural products . . . , subject to the following qualifications: (A) Such property includes the value of tangible property permanently

> affixed to the real property which is directly connected to such owner's production of agricultural products . . . and which is devoted to the storage and processing of such agricultural products . . . from or on such real property[.]

OCGA § 48-5-7.4 (a) (1). "Primary purpose" means the principal use to which the property is devoted. Ga. Comp. R. & Regs. r. 560-11-6-.02 (e). An "incidental, occasional, intermediate or temporary use [of the property] for some other purpose not detrimental to or in conflict with its primary purpose" does not prevent otherwise qualified property from being classified as bona fide conservation use property. Id. Permissible primary purposes include using the property for raising, harvesting, or storing crops; feeding, breeding, or managing livestock or poultry; producing plants or animals; and producing horticulture, dairy and livestock products. OCGA § 48-5-7.4 (a) (1) (E) (i) - (iv). OCGA § 48-5-7.4 (b) (1), which sets out additional rules for the qualification of conservation use property for current use assessment, provides in pertinent part, "[w]hen one-half or more of the area of a single tract of real property is used for a qualifying purpose, then such tract shall be considered as used for such qualifying purpose *unless some other type of business is being operated on the unused portion.* . . ." (Emphasis supplied.)

In order to obtain current use assessment, the owner of property that qualifies as bona fide conservation use property must "agree[] by covenant with the appropriate taxing authority to maintain the eligible property in bona fide qualifying use for a period of ten years . . . ." OCGA § 48-5-7.4 (d). Failure to maintain the property in qualifying use status breaches the covenant. OCGA § 48-5-7.4 (d). If a covenant is breached, the property is no longer eligible for current use assessment and the taxpayer must pay a penalty. OCGA § 48-5-7.4 (h), (l).

The Goolsbys own 448.5 acres in Terrell County. In order to obtain certain tax advantages, effective January 1, 2007, they applied for current use assessment and entered the property in a 10-year "conservation use assessment of agricultural property covenant agreement" under OCGA § 48-5-7.4. After entering the covenant, the Goolsbys began Goolsby Farm Supply, a commercial grain business, on a portion of the property. It maintains a website and is listed in the Yellow Pages as a grain dealer. The nature of Goolsby Farm Supply is not clear from the record before us; the bench trial at which Jason Goolsby testified about the business apparently was not recorded. In any event, no transcript of that trial was included in the appellate record.

The board notified the Goolsbys that they were in violation of their conservation use covenant, specifying that they "applied for a business license on 12/9/09 and a commercial business constitutes a breach of [their] covenant."

The Goolsbys appealed the board's decision to the Terrell County Board of Equalization, which upheld the decision. The Goolsbys then appealed to the superior court, which ruled that they had not violated the conservation use covenant. The board filed this appeal.

1. *Timeliness of the notice of appeal.*

The Goolsbys argue that we lack jurisdiction over the appeal because the board's notice of appeal is untimely. The superior court entered its order finding no breach of the covenant on October 30, 2012. The board filed a timely notice of appeal on November 6, 2012. But on November 9, 2012, the board expressly dismissed the notice of appeal in order to file a motion for reconsideration, and filed such a motion that same day. The superior court denied the motion for reconsideration on November 21, 2012. On November 28, 2012, within the 30-day period for filing a notice of appeal from the October 30 order, the board moved for an extension of time to file its notice of appeal. The superior court granted the board's motion for extension of time

until December 29, 2012 "to file the appropriate [n]otice of [a]ppeal." The board filed a notice of appeal on December 27, 2012.

The Goolsbys argue that because the order extending the time for filing the notice of appeal did not specify to which of the orders the extension applied, it is defective. But the superior court had the authority under OCGA § 5-6-39 (a) (1) and (c) to grant one 30-day extension of the time for filing the notice of appeal, and nothing in that statute required the court to specify precisely to which order the extension applied. The board's November 28 motion for an extension of time to file a notice of appeal was timely filed from the directly appealable October 30 order. OCGA § 5-6-39 (d). If, on the other hand, the board's motion for extension is construed, as the Goolsbys suggest, to have been a motion for extension of time to appeal from the denial of the motion for reconsideration, the motion would have been futile and the order granting it would be a nullity. See *Jim Ellis Atlanta v. Adamson*, 283 Ga. App. 116 (640 SE2d 688) (2006) (order denying motion for reconsideration not directly appealable). We therefore construe the superior court's grant of the motion for extension to render timely the December 27 notice of appeal.

We are required to "liberally construe[the Appellate Practice Act] so as to bring about a decision on the merits of every case appealed and to avoid dismissal of

any case or refusal to consider any points raised therein." OCGA § 5-6-30. With this principle in mind, we conclude that the notice of appeal was timely from the directly appealable October 30 order, given the OCGA § 5-6-39 extension.

2. *The commercial grain business.*

(a) The board argues that under OCGA § 48-5-7.4 (b) (1), the Goolsbys breached the conservation use covenant by operating "some other type of business," the commercial grain business, on the property. The Goolsbys counter that they have not breached the covenant because the primary use of their property remains the good faith production of agricultural products, a qualifying purpose under the statute. See OCGA § 48-5-7.4 (a) (1). They contend that because the operation of the commercial business does not conflict with their production of agricultural products -- the primary purpose -- they have not breached the covenant. See Ga. Comp. R. & Regs. r. 560-11-6-.02 (e). In effect, they argue that Goolsby Farm Supply is simply an "incidental . . . use for some other purpose not detrimental to or in conflict with its primary purpose," and thus is permissible. Id.

In order to determine whether the operation of Goolsby Farm Supply breached the covenant, we are required to construe the meaning of OCGA § 48-5-7.4 (b) and Ga. Comp. R. & Regs. r. 560-11-6-.02 (e).

> [C]ourts should construe a statute to give sensible and intelligent effect to all of its provisions and should refrain, whenever possible, from construing the statute in a way that renders any part of it meaningless.. . . [A] court's duty is to reconcile, if possible, any potential conflicts between different sections of the same statute, so as to make them consistent and harmonious. . . . [I]n construing language in any one part of a statute, a court should consider the entire scheme of the statute and attempt to gather the legislative intent from the statute as a whole. We apply the same principles of construction to administrative rules and regulations.

Prince v. Bailey Davis, LLC, 306 Ga. App. 59, 61-62 (701 SE2d 492) (2010) (citations omitted). And "OCGA § 48-5-7.4 creates an exception to the general rule in Georgia that tangible property value is assessed at 40 percent of fair market value, and, as such, the statute must be construed in the [b]oard's favor." *Morrison*, 294 Ga. App. at 512-513 (2) (citation omitted).

Addressing this issue, the superior court wrote, "No statutory authority or case law was cited by [the board] to prove that procuring or even operating a business on the subject property would result in a breach of the covenant, particularly when the business is consistent with the primary purpose of the subject property which is 'good faith' production of agricultural products." To the extent the superior court concluded that operating a business on the property never breaches a covenant, it erred. As

noted, OCGA § 48-5-7.4 (b) (1) provides, "[w]hen one-half or more of the area of a single tract of real property is used for a qualifying purpose, then such tract shall be considered as used for such qualifying purpose unless some other type of business is being operated on the unused portion." The statute does not expressly state what happens when "some other type of business is being operated on the unused portion," but the clear implication is that then, the "tract shall [not] be considered as used for" the qualifying purpose. Id. Yet an "incidental, occasional, intermediate or temporary use for some other purpose not detrimental to or in conflict with its primary purpose" does not prevent otherwise qualified property from being classified as bona fide conservation use property. Ga. Comp. R. & Regs. r. 560-11-6-.02 (e). Construing these provisions together, we conclude that if the taxpayer is operating "some other type of business," a business separate and apart from the commercial production from or on the land of agricultural products, and the business is not "incidental, occasional, intermediate or temporary" but is "detrimental to or in conflict with [the property's] primary purpose," then the land does not qualify for current use assessment under the statute. See OCGA § 48-5-7.4 (a) (1) ("'bona fide conservation use property' means property . . . the primary purpose of which is . . . commercial production, from or on

the land of agricultural products . . . ."). To the extent the superior court based its judgment on a different construction, it erred.

(b) The Goolsbys argue that even if OCGA § 48-5-7.4 (b) (1) prohibits the operation of a commercial business, that prohibition applies only when a taxpayer seeks to enroll his property in a conservation use covenant in the first instance. We disagree. OCGA § 48-5-7.4 (d) requires that, in order for property to qualify for current use assessment,

> the owner of such property [must] agree[ ] by covenant with the appropriate taxing authority *to maintain the eligible property in bona fide qualifying use* for a period of ten years beginning on the first day of January of the year in which such property qualifies for such current use assessment and ending on the last day of December of the final year of the covenant period.

(Emphasis supplied.) OCGA § 48-5-7.4 (g) provides, "no property shall maintain its eligibility for current use assessment under this Code section unless a valid covenant remains in effect and unless the property is continuously devoted to an applicable bona fide qualifying use during the entire period of the covenant." Similarly, Ga. Comp. R. & Regs. r. 560-11-6-.06 (3) provides that a "breach shall be deemed to occur upon the occasion of any event which would otherwise disqualify the property

from receiving the benefit of current use valuation." These provisions make clear that the qualifying use of the property must be continued for a taxpayer to retain the benefit of current use assessment.

Because the judgment in the Goolsbys' favor may have been based on an erroneous construction of OCGA § 48-5-7.4 (b) (1), we vacate that judgment and remand for reconsideration not inconsistent with this opinion.

Judgment vacated and case remanded. Doyle, P. J., conurs. Boggs, J., concurs fully and specially.

A13A0981. TERRELL COUNTY BOARD OF TAX ASSESSORS

v. GOOLSBY et al.

BOGGS, Judge, concurring fully and specially.

I agree with the majority that this case is properly before us, and that it must be remanded for clarification of the trial court's order. I write separately to note that in the absence of a transcript we must presume that the factual findings in the trial court's order are supported by the evidence.

The majority notes that one sentence of the trial court's order appears to incorrectly state that under no set of circumstances could the case or statutory law support a finding in favor of the appellant. And because we cannot discern from the record whether this incorrect statement of the law affected the trial court's factual findings, a remand is appropriate.

While the majority correctly notes that we apply a de novo standard of review to stipulated facts, we must defer to a trial court's factual findings unless clearly erroneous. *Lamad Ministries v. Dougherty County Bd. of Tax Assessors*, 268 Ga. App. 798, 806 n.3 (3) (602 SEd2 845) (2004). Some of the facts relied upon by the trial court were included in a stipulation. But, as the majority acknowledges, a hearing at which the appellees gave substantial testimony as to the nature of their farming operations was not reported.

There is a presumption in favor of the regularity and legality of all proceedings in the trial court, *Stegeman v. Heritage Bank*, 304 Ga. App. 172, 174 (1) (695 SEd2 340) (2010), and in the absence of a transcript or a statutory substitute, this court must assume that the evidence presented at the hearing supported the trial court's decision. *Siratu v. Diane Investment Group*, 298 Ga. App. 127, 128-129 (679 SE2d 359) (2009). We therefore must assume evidence was presented that "Goolsby Farm Supply" was a business "directly connected" with the "primary purpose" of the stipulated land use under OCGA § 48-5-7.4 and Ga. Comp. R. & Regs., r. 560-11-6-

.02: "raising livestock and raising and harvesting agricultural products, including grain and wheat."[1]

No evidence before us shows that the Goolsbys' business was a retail establishment such as the classic "farm supply" store selling everything from bridles and buckets to chicken feed and western wear. The missing transcript could have included testimony that, for example, the Goolsbys' purchase and sale of other farmers' agricultural products was a result of the varying feed requirements of their substantial herd of cattle. If the Goolsbys entered into output or requirements contracts with their neighbors, see OCGA § 11-2-306, and purchased more feed than their cattle consumed, they would necessarily sell that surplus; similarly, if they underestimated their herd's requirements or failed to grow sufficient feed, they would purchase the remainder. As the Goolsbys contended below and before this court, production of livestock would be impractical without the ability to buy, sell, and store animal feed on the property.

[1]Likewise, we must presume that the record supports the trial court's finding that the Goolsbys' occasional rental of their office for a banquet was "an incidental, occasional, intermediate or temporary use" within the meaning of Ga. Comp. R. & Regs., r. 560-11-6-.02 (e).

For these reasons, in the absence of the legal conclusion in the trial court's order, this court would be required to affirm.

Court of Appeals
of the State of Georgia

ATLANTA, December 04, 2015

The Court of Appeals hereby passes the following order:

A15A1210. GOOLSBY et. al v. TERRELL COUNTY BOARD OF TAX ASSESSORS.

Upon consideration of Appellant's motion for reconsideration of this Court's opinion of SEPTEMBER 21, 2015, the same is hereby DENIED.

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta, 12/04/2015
I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.
Witness my signature and the seal of said court hereto affixed the day and year last above written.

Stephen E. Castlen, *Clerk.*

THIRD DIVISION
ELLINGTON, P. J.,
DILLARD and MCFADDEN, JJ.

March 23, 2016

In the Court of Appeals of Georgia

A15A2136. PARK SOLUTIONS, LLC v. DEKALB COUNTY BOARD OF TAX ASSESSORS.

MCFADDEN, Judge.

The issue in this appeal is whether a sheriff's sale of certain real property was an "arm's length, bona fide" sale under OCGA § 48-5-2 (3) so that the sale price constituted the property's maximum allowable fair market value for the next taxable year. Because we find that the sheriff's sale was such an arm's length, bona fide sale, the superior court's ruling to the contrary was erroneous and must be reversed.

On June 4, 2013, Park Solutions, LLC bought a tract of land for $25,000 at a sheriff's sale in DeKalb County. The sheriff's deed provided that Mollye Devault and Robert Christopher Taylor were the owners of the property; that the owners made the deed by and through the DeKalb County sheriff, acting in his official capacity; that

the sheriff conducted the sale to satisfy a default judgment of $37,796 obtained by DRST Holdings LTD; that the sale was held "at the usual place for conducting [s]heriff's sales in DeKalb [C]ounty before the [c]ourthouse door;" and that Park Solutions was the highest bidder at the "public outcry."

After the sale, the county appraised the value of the property as $146,900 for the 2014 tax year, and Park Solutions appealed that valuation to the DeKalb County Board of Tax Assessors. The board of tax assessors issued a decision finding that the fair market value of the property was $137,700. Park Solutions appealed that decision to the DeKalb County Board of Equalization, which upheld the county tax assessor's fair market value finding of the property as $137,700. Park Solutions then appealed to the superior court, asserting that pursuant to OCGA § 48-5-2 (3), the maximum allowable fair market value of the property for the 2014 tax year was the $25,000 price that it had paid at the sheriff's sale. The trial court rejected the argument, finding that the sheriff's sale was not an arm's length, bona fide sale under that statute because such "judicial foreclosure sales are not mentioned in the statute and also the parties to the sale are related and affiliated." The trial court concluded that the county had accurately determined the fair market value of the property as of January 1, 2014, to be $137,700. Park Solutions appeals from the superior court's final order.

1. *Sheriff's sale.*

Park Solutions asserts that the trial court erred in finding that the sheriff's sale in this case was not governed by OCGA § 48-5-2 (3) because such judicial foreclosure sales are not mentioned in the statute. We agree with the assertion.

OCGA § 48-5-2 (3), which is part of the code governing ad valorem taxation of property, provides, in pertinent part:

> "Fair market value of property" means the amount a knowledgeable buyer would pay for the property and a willing seller would accept for the property at an arm's length, bona fide sale. . . . Notwithstanding any other provision of this chapter to the contrary, the transaction amount of the most recent arm's length, bona fide sale in any year shall be the maximum allowable fair market value for the next taxable year.

The term "arm's length, bona fide" sale as used in this code section is defined as "mean[ing] 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.*" OCGA § 48-5-2 (.1) (emphasis supplied).

Thus, OCGA § 48-5-2 (3) "provides the method for assessing [fair market] value as of [January 1 of the applicable tax year] . . ., with its focus on the actual

market-determined value of property on the actual date the property was acquired, rather than its value as much as a year later[.]" *Columbus Bd. of Tax Assessors v. Yeoman*, 293 Ga. 107, 109 (2) (744 SE2d 18) (2013). "This amounts to a freeze on the ad valorem tax value of property for one year. [Cit.]" *Ballard v. Newton County Bd. of Tax Assessors*, 332 Ga. App. 521, 522 (773 SE2d 780) (2015).

In finding that this freeze on the value of the property did not apply to the sheriff's sale in this case, the trial court relied on OCGA § 48-5-1, which provides that "[t]he intent and purpose of the tax laws of this state are to have all property and subjects of taxation returned at the value which would be realized from the cash sale, *but not the forced sale*, of the property and subjects as such property and subjects are usually sold except as otherwise provided in this chapter." (Emphasis supplied.) The trial court then reasoned that foreclosure sales are considered to be forced sales and therefore "[r]eading [OCGA] § 48-5-2 (.1) to include judicial foreclosure sales would be contrary to the expressed intent of Title 48 to exclude values realized as a result of the forced sale of a property."

However, the trial court overlooked the plain language in OCGA § 48-5-1 providing that it applies "except as otherwise provided in this chapter." Likewise, the controlling portion of OCGA § 48-5-2 (3) itself expressly provides that it applies

"[n]otwithstanding any other provision of this chapter to the contrary[.]" We must construe these statutes together and harmonize them to ascertain the legislative intent. *Aimwell, Inc. v. McLendon Enterprises*, 318 Ga. App. 394, 397 (1) (734 SE2d 84) (2012). In so doing, even if we assume, without deciding, that there is some inconsistency between them, it is apparent from the plain language of both code sections that, notwithstanding anything to the contrary, the legislative intent was to allow the specific provision of a one-year freeze on ad valorem tax value set forth in § 48-5-2 (3) to control over the general expression of purpose set forth in § 48-5-1. See *Hubert Properties, LLP v. Cobb County*, 318 Ga. App. 321, 323 (1) (733 SE2d 373) (2012) (specific statute will prevail over a general statute to resolve any inconsistency between them).

Moreover, the trial court also erred in concluding that the absence of the term "foreclosure sale" from OCGA § 48-5-2 (.1) indicates that such sales were excluded by the legislature from that code section's definition of an arm's length, bona fide sale. As recited above, OCGA § 48-5-2 (.1) defines an arm's length, bona fide sale as "*including but not limited to* a distress sale, short sale, bank sale, or sale at public auction." (Emphasis supplied.) Contrary to the trial court's interpretation of this code section, the legislature's use of the phrase "including but not limited to" is not

restrictive or exclusive, and instead "reflects broad language of illustration or enlargement. [Cit.]" *Hendry v. Hendry*, 292 Ga. 1, 2 (1), n. 2 (734 SE2d 46) (2012).

Indeed, two of the examples of the types of sales expressly included in the definition of an arm's length, bona fide sale set forth in OCGA § 48-5-2 (.1) - distress sales and public auctions - clearly include the foreclosure sale executed by the sheriff in this case. "The statute does not define the . . . terms ['distress sale' or 'public auction,'] and we therefore look to their plain and ordinary meanings as defined by dictionaries." *Skelhorn v. State*, 332 Ga. App. 782, 787 (3) (b) (773 SE2d 782) (2015) (citation and punctuation omitted). Black's Law Dictionary (10th ed. 2014), defines the term "distress sale" as "[a] form of liquidation in which the seller receives less for the goods than what would be received under normal sales conditions," and as a "foreclosure . . . sale." Under this ordinary meaning of the phrase, the sheriff's foreclosure sale in this case was a distress sale as contemplated by the statute.

Furthermore, Black's Law Dictionary (10th ed. 2014) defines the word "auction" as being "[a] public sale of property to the highest bidder," and it defines the term "public sale" as meaning "[a] sale made after public notice, as in an auction or sheriff's sale." Consistent with this dictionary definition, another statute in our official code provides that "the term 'public sale' means any sale, the notice of which

must by law in any manner be given to the public." OCGA § 9-13-160 (a). Thus, under these definitions, the sheriff's sale in this case was a public auction at which Park Solutions was the high bidder.

"OCGA § 48-5-2 (.1) expressly defines an arm's length, bona fide sale to include those types of transactions where the seller might suffer a financial loss[,] including distress sales . . . or sales at public auction[]." *CPF Investments v. Fulton County Bd. of Assessors*, 330 Ga. App. 744, 749 (769 SE2d 159) (2015) (punctuation omitted). Here, because the sheriff's sale of the subject property was a distress sale and public auction, it was an arm's length, bona fide sale under the plain terms of OCGA § 48-5-2 (.1). Consequently, the board of tax assessors could not "assess the property at a higher value in the year following the sale, regardless of whether the [b]oard believe[d] the sale price reflect[ed] the actual fair market value of the property." *CPF Investments*, supra at 747, n. 4. The trial court's findings to the contrary with regard to the sheriff's sale in this case were erroneous and must be reversed. Compare *Ballard*, supra at 525 (holding that a tax sale purchaser receives only a defeasible fee interest and since fair market value "is not defined as the amount a buyer would pay to purchase, and a willing seller accept, for a *defeasible interest*

in property, a tax sale does not qualify as an arm's length, bona fide sale such that the one-year freeze of OCGA § 48-5-2 (3) would apply.") (emphasis in original).

2. *Parties to the sale.*

The trial court also found that the sheriff's sale was not an arm's length transaction under OCGA § 48-5-2 (.1) because the parties to the 2013 sheriff's sale were DRST and Park Solutions and those parties were related in that the president of DRST and the manager of Park Solutions were, respectively, father and son. However, regardless of the relationship between the father and son and the respective corporate entities, the factual premise of the trial court's ruling is flawed because DRST was *not* a party to the sale.

As the sheriff's deed plainly shows, the parties to the sale were the sheriff as the grantor, acting in his official capacity on behalf of the property owners, and Park Solutions as the grantee after being the highest bidder for the property at the public auction. See *Associates Financial Svcs. Co. v. Johnson*, 128 Ga. App. 712, 713 (197 SE2d 764) (1973) (sheriffs who are legally authorized to make sales at a public outcry represent the sellers of the property). Thus, contrary to the trial court's finding, DRST simply was not a party to the sheriff's sale, which instead was an arm's length sale between the unrelated and unaffiliated parties of the grantor sheriff and the grantee

Park Solutions. Accordingly, the trial court's finding that the transaction was not an arm's length sale was erroneous. "In light of the foregoing [errors], the [final] order of the trial court . . . is reversed." *CPF Investments*, supra at 750.

Judgment reversed. Ellington, P. J., concurs and Dillard, J., concurs in the judgment only.

A15A2136. PARK SOLUTIONS, LLC v. DEKALB COUNTY BOARD OF TAX ASSESSORS.

DILLARD, Judge, concurring in judgment only.

I concur in judgment only because I do not agree with all that is said in the majority opinion. As a result, the majority's opinion decides only the issues presented in the case sub judice and may not be cited as binding precedent. See Court of Appeals Rule 33 (a).

FOURTH DIVISION
BARNES, P. J.,
RAY and MCMILLIAN, JJ.

February 24, 2016

In the Court of Appeals of Georgia

A15A1747. RAW PROPERTIES, INC. v. LAWSON, TAX COMMISSIONER, et al.

MCMILLIAN, Judge.

Raw Properties, Inc. ("RPI") appeals the trial court's order holding that RPI's claims for damages against Claudia G. Lawson, DeKalb County Tax Commissioner ("Tax Commissioner"), and DeKalb County (collectively "Defendants") are barred by the doctrine of sovereign immunity. For the reasons set forth below, we find no error and affirm.

"We review de novo a trial court's ruling on a motion to dismiss based on sovereign immunity grounds, which is a matter of law. Factual findings are sustained if there is evidence supporting them, and the burden of proof is on the party seeking

the waiver of immunity." (Citation and punctuation omitted.) *Ga. Dept. of Cmty. Health v. Neal*, 334 Ga. App. 851, 852 (780 SE2d 475) (2015).

In 2005, RPI acquired title to a piece of commercial property located in DeKalb County (the "Property"). At that time, RPI's address of record was 5350 Snapfinger Woods Dr., Decatur, Georgia 30035 ("Decatur Address"). RPI later relocated to Sparta, Georgia, and in 2008, RPI returned a property tax installment payment for the Property with written notice that its address had changed to 407 Mill House Road, Sparta, Georgia 31087 ("Sparta Address"). In 2008, 2009, and 2010, RPI received its tax statements and bills for the Property at the Sparta Address.

RPI concedes that it did not timely pay the 2010 DeKalb County property taxes for the Property. And in May 2011, the DeKalb County Tax Commissioner sold the Property at a tax sale after the taxes remained unpaid. Although RPI was able to reclaim its Property from the tax sale purchaser, it was required to pay approximately $26,000 in expenses, including the statutory redemption premium. In February 2012, RPI filed suit against DeKalb County and Lawson in her official capacity as the Tax Commissioner, seeking damages for the expenses incurred in reclaiming the Property and for attorney fees. Specifically, RPI alleged that the Tax Commissioner's office failed to comply with several statutory requirements by failing to properly send: (1)

a notice of intent to issue a fi. fa. pursuant to OCGA § 48-3-3;[1] (2) an entry and notice of levy pursuant to OCGA §§ 48-3-9 (a)[2] and 9-13-13;[3] and (3) final notice of the

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[1] At the time RPI filed its action, OCGA § 48-3-3 provided, in pertinent part:

> (b) The tax collector or tax commissioner shall issue executions for nonpayment of taxes collectable by the tax collector or tax commissioner at any time after 30 days have elapsed since giving notice as provided in subsection (c) . . .
>
> (c) As soon as the last day for the payment of taxes has arrived, the tax collector or tax commissioner shall notify in writing the taxpayer of the fact that the taxes have not been paid and that, unless paid, an execution shall be issued; provided, however, that notice shall not be required for taxes due on personal property and executions may be issued on the day next following the day when taxes are due.
>
> . . .
>
> (e) (1) Whenever technologically feasible, the tax collector or tax commissioner, at the time tax bills or any subsequent delinquent notices are mailed, shall also mail such bills or notices to any new owner that at that time appear in the records of the county board of assessors. The bills or notices shall be mailed to the address of record as found in the county board of assessors' records.

[2] OCGA § 48-3-9 (a) provides:

impending tax sale pursuant to OCGA § 48-4-1[4] (collectively the "Notices"). RPI also

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> Whenever any real estate is levied upon by the sheriff for taxes, it shall be the sheriff's duty before proceeding to advertise the property for sale as provided by law to give 20 days' written notice of the levy to the record owner of the property and the record owner of each security deed and mortgage affecting such property as provided in subsection (b) of this Code section. The period of 20 days shall begin to run from the time the notice is personally delivered or, when delivered by registered or certified mail or statutory overnight delivery as provided in this Code section, from the date of its mailing. The notice shall contain a description of the land levied upon, the name of the owner of the land, the year or years for which the taxes were assessed, and a statement of the amount of the taxes due, together with the accrued cost. The notice shall be delivered to the owner and any secured parties entitled to notice either in person or by registered or certified mail or statutory overnight delivery, with return receipt requested, at the address given on the list. The sheriff shall keep a copy of the notice on which he or she shall enter the date the notice was delivered and how, where, and to whom the notice was delivered.

[3] OCGA § 9-13-13 (b) states that an officer "levying on land under an execution, within five days thereafter, shall leave a written notice of the levy with the tenant in possession of the land, if any." However, "if the defendant is not in possession, the officer shall also leave a written notice with the defendant if he is in the county or shall transmit the notice by mail to the defendant within the time aforesaid." Id.

[4] OCGA § 48-4-1 provides, in pertinent part:

alleged that one or more employees of the Tax Commissioner entered the Sparta

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> (a) (1) Except as otherwise provided in this title, when a levy is made upon real or personal property, the property shall be advertised and sold in the same manner as provided for executions and judicial sales. Except as otherwise provided in this title, the sale of real or personal property under a tax execution shall be made in the same manner as provided for judicial sales; provided, however, that in addition to such other notice as may be required by law, in any sale under a tax execution made pursuant to this chapter, the defendant shall be given ten days' written notice of such sale by registered or certified mail or statutory overnight delivery. The notice required by this Code section shall be sent:
>
> (A) In cases of executions issued by a county officer for ad valorem taxes, to the defendant's last known address as listed in the records of the tax commissioner of the county that issued the tax execution;
>
> (B) In cases of executions issued by a municipal officer for ad valorem taxes, to the defendant's last known address as listed in the records of the municipal officer of the municipality that issued the tax execution; or
>
> (C) In cases of executions issued by a state officer, to the defendant's last known address as listed in the records of the department headed by the issuing officer.

Address on the certified mail receipt for one of the Notices, despite evidence that the notice had actually been mailed to the Decatur Address.

Defendants concede that, due to some undetermined cause, the address in the records of the Tax Commissioner was outdated, reflecting the Decatur Address rather than the Sparta Address; therefore, most, if not all, of the Notices were mailed to the Decatur Address. However, Defendants allege that beginning in March 2011, an employee in the Tax Commissioner's office contacted RPI's CEO via telephone regarding RPI's delinquent property taxes and pending tax sale and continued to speak with him and/or leave messages on his voicemail through the end of April 2011. Thus, Defendants claim that RPI had actual notice of the unpaid taxes and pending tax sale.[5]

Following discovery, the parties filed cross-motions for summary judgment. In March 2013, the trial court conducted a hearing on the motions before entering an order in July 2013 granting summary judgment in favor of Defendants. RPI timely appealed from that order. On appeal, Defendants asserted, for the first time, that RPI's

[5] The Defendants also assert that they advertised the pending tax sale in the Champion newspaper for four consecutive weeks prior to the tax sale. And on May 2, 2011, an agent of the Tax Commissioner posted notice of the pending tax sale at the Property affixed to the sign in front of the building.

claims were barred by the doctrine of sovereign immunity. Because the trial court had not considered the issue, this Court remanded the action to the trial court to resolve the Defendants' assertion of sovereign immunity.[6] Following a hearing , the trial court issued a final order finding that the Defendants are immune from suit on RPI's claims. This appeal followed.

1. RPI asserts that the trial court erred in finding that its claims against the Defendants are barred by the doctrine of sovereign immunity. The doctrine of sovereign immunity applies "to the state and all of its departments and agencies," Ga. Const. of 1983, Art. I, Sec. II., Par. IX (e), including counties. *Gilbert v. Richardson*, 264 Ga. 744, 747 (2) (452 SE2d 476) (1994). "And county officers sued in their official capacities – since a suit against a county officer in her official capacity *is* a suit against the county itself – enjoy the same sovereign immunity." (Citation omitted; emphasis in original.) *Layer v. Barrow County*, 297 Ga. 871, 871 (1) (778 SE2d 156) (2015). This immunity "can only be waived by an Act of the General Assembly which specifically provides that sovereign immunity is thereby waived and

[6] Although Defendants did not raise the issue in the trial court before the first appeal, this failure does not constitute a waiver. Because sovereign immunity implicates the trial court's subject matter jurisdiction to try the case, it cannot be waived and may be raised at any time either in the trial court or on appeal. See *Dept. of Transp. v. Kovalcik*, 328 Ga. App. 185, 190 (1) (b) (761 SE2d 584) (2014).

the extent of such waiver." Ga. Const. of 1983, Art. I, Sec. II., Par. IX (e). See *Currid v. DeKalb State Court Probation Dept.*, 285 Ga. 184, 186 (674 SE2d 894) (2009) (no waiver found in the Community Service Act as it failed both prongs of the constitutional test).

Here, none of the notice provisions relied upon by RPI include any language whatsoever regarding a waiver of sovereign immunity. See OCGA §§ 48-3-3; 48-3-9 (a); 48-4-1. However, RPI asserts that the General Assembly nonetheless has waived sovereign immunity with respect to its claims against the Defendants by pointing to a number of other statutes that describe how tax commissioners are authorized to act as ex officio sheriffs and how sheriffs may be held liable for making a "false return" or neglecting to make a "proper return."

RPI turns first to OCGA § 48-5-137 (a), which grants tax collectors and tax commissioners the authority to act as "ex officio sheriffs insofar as to enable them to collect taxes due the state and county by levy and sale under tax execution." This statute further provides:

> In carrying out this Code section, tax collectors or tax commissioners shall have the power and authority to appoint one or more deputies with all the powers of the tax collectors or tax commissioners while acting as ex officio sheriffs in the levy and collection of taxes. Each deputy shall

> be required to give bond as may be required by the tax collectors or tax commissioners under the law. *Each tax collector or tax commissioner shall be responsible for the acts of the deputy or deputies in the same manner and to the same degree as sheriffs are liable for the acts of their deputies*.

OCGA § 48-5-137 (d) (emphasis added).

Relying on the last sentence of OCGA § 48-5-137, RPI next draws our attention to OCGA § 15-13-2 (1) and (5), which expressly waives sovereign immunity for sheriffs in an action for damages for the following specific claims:

> (1) Making a false return;
>
> . . .
>
> (5) Neglecting to make a proper return of any writ, execution, or other process put into the hands of the sheriff.

Thus, construing OCGA §§ 48-5-137 (a) and (d) and 15-13-2 (1) and (5) together, RPI argues that the Tax Commissioner is liable as an ex-officio sheriff, whose sovereign immunity is waived because the "deputies" in her office failed to mail the Notices to the correct address prior to the tax sale of the Property, and the failures to mail the Notices to the correct address and to keep accurate records of the mailings

are either a "false return" or a neglect to make a "proper return" pursuant to OCGA § 15-13-2 (1) and (5).[7]

Defendants counter that OCGA § 48-5-137 (d) does not waive the sovereign immunity for a tax commissioner acting as ex officio sheriff because the statute only provides that tax commissioners shall be "*responsible*" for the acts of their deputies to the same degree as sheriffs are "*liable*" for the acts of their deputies. According to Defendants, responsibility is much different than liability, and thus this language does not provide for a specific waiver of sovereign immunity with respect to tax commissioners. Pretermitting whether this language passes both prongs of the constitutional test required to find a waiver of sovereign immunity[8] for a tax commissioner acting as an ex officio sheriff, we find that the acts complained of here

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[7] RPI also asserts that in *Brooks v. Rooney*, 11 Ga. 423 (1852), our Supreme Court held that a sheriff may be liable for damages for neglect of laws in the advertisement of a sale of property. However, under our current Georgia Constitution, only an act of the General Assembly can waive the sovereign immunity of the state and its departments and agencies. See Ga. Const. of 1983, Art. I, Sec. II., Par. IX (e). See *Ga. Dept. of Natural Resources v. Center for a Sustainable Coast, Inc.*, 294 Ga. 593, 597-98 (2) (755 SE2d 184) (2014) (setting out history of sovereign immunity in Georgia).

[8] See *Currid*, 285 Ga. at 186 ("sovereign immunity is waived by any legislative act which *specifically* provides that sovereign immunity is waived *and* the extent of such waiver") (citation and punctuation omitted; emphasis in original).

– improperly addressed Notices and a certified mail receipt with an address where the notice was not mailed – do not fall within the categories of acts for which the General Assembly has expressly waived sovereign immunity for sheriffs.

Because statutes that provide for a waiver of sovereign immunity, such as OCGA § 15-3-2, are in derogation of the common law, they "are to be strictly construed *against* a finding of waiver." (Citation and punctuation omitted; emphasis in original.) *Bd. of Comm. of Putnam County v. Barefoot*, 313 Ga. App. 406, 409 (1) (721 SE2d 612) (2011). See also *State Bd. of Ed. v. Drury*, 263 Ga. 429, 430 (1) (437 SE2d 290) (1993) ("In this state, sovereign immunity has constitutional status and that doctrine cannot be abrogated by this court.") (citation and punctuation omitted). Here, RPI has pointed to no authority that an improperly addressed notice is the legal equivalent of a "false return," and we find none. Cf. *Fain v. Hutto*, 236 Ga. 915, 918 (3) (225 SE2d 893) (1976) (finding difference between a false return of service and service that is legally insufficient). Nor do we find authority that an improperly addressed notice constitutes legal neglect to make a "proper return."

To the contrary, although the statutes relied upon by RPI do not define the term "return," we find that a "return" as used in this context is a term of art. We note that OCGA § 15-13-2 (5) limits its scope to returns "of any writ, execution, or other

process put into the hands of the sheriff." Moreover, OCGA § 15-16-10 (1) provides that it is a sheriff's duty "[t]o execute and return the processes and orders of the courts and of officers of competent authority, if not void, with due diligence, when delivered to him for that purpose, according to this Code." Likewise, OCGA § 15-13-14 provides that "[i]f any sheriff or other officer fails to make a proper return of all writs, executions, and other processes put into his hands . . ., he shall be liable for contempt and may be fined, imprisoned, or removed from office in the manner prescribed by the Constitution and laws of this state." See also OCGA § 15-16-15 (allowing sheriff or other executing officer to amend returns to conform to facts of case); OCGA § 15-16-16 (when sheriff or other executing officer fails to make an official return, court may order entry or return nunc pro tunc to conform to the facts at the time entry should have been made); OCGA § 15-16-21 (b) (5), (13), and (c) (setting out sheriff's fees for search and return of nulla bona, taking and returning counter-affidavit when summary process to dispossess tenant or intruder is resisted, and executing and returning any warrant or serving a citation).

Thus, a review of the statutory obligations of sheriffs with respect to "returns" reveals that in context, OCGA § 15-13-2 (1) and (5) refer to the return of processes and other orders of the court, not simply mailing notices to an incorrect address or

inputting an address on a certified mail receipt that does not reflect where the notice was actually mailed. See also Black's Law Dictionary (defining "return" as "[t]he act of a sheriff, constable, or other ministerial officer, in delivering back to the court a writ, notice, or other paper, which he was required to serve or execute, with a brief account of his doings under the mandate, the time and mode of service or execution, or his failure to accomplish it, as the case may be").

Accordingly, guided by our Supreme Court's directive that "implied waivers of governmental immunity should not be favored," we find that under the circumstances of this case, RPI has not met its burden of proof to establish a waiver of the Defendants' sovereign immunity.[9] (Citation and punctuation omitted.) *Currid*, 285 Ga. at 186. The trial court did not err in finding that RPI's claims against Defendants are barred by the doctrine of sovereign immunity.

2. RPI also reasserts its enumerations of error set forth in its prior appeal in Case No. A14A0175. However, because we affirm the trial court's order finding the

[9] Although RPI argues that if the trial court's decision is affirmed, tax authorities in Georgia will have no obligation or incentive to follow the statutory requirements governing the seizure and sale of property for taxes, RPI is not without other recourse. On remand, the trial court permitted RPI to amend its complaint to add Lawson as a defendant in her individual capacity. In addition, sovereign immunity is not a bar to an unconstitutional taking claim. See, e.g., *Layer*, 297 Ga. at 872-73 (2). We offer no opinion as to the merits of any further action that RPI might take.

Defendants are immune to RPI's claims for the reasons set forth in Division 1, we need not address those remaining enumerations.

Judgment affirmed. Barnes, P. J., and Ray, J., concur.

THIRD DIVISION
BARNES, P. J.,
BOGGS and BRANCH, JJ.

July 16, 2014

In the Court of Appeals of Georgia

A14A0710. SLIVKA v. NELSON et al.

BOGGS, Judge.

Gene Slivka appeals from the superior court's order granting summary judgment in favor of the McIntosh County Board of Commissioners and Wanda Nelson, the tax commissioner for McIntosh County (collectively "the County"). She contends that the trial court erred by concluding that the conservation use covenant was breached and by failing to conclude that the County's breach of covenant determination was void based upon a lack of notice. For the reasons explained below, we affirm.

"Summary judgment is appropriate when no genuine issues of material fact remain and the movant is entitled to judgment as a matter of law. We review a trial court's grant of summary judgment de novo, construing the record and all reasonable

inferences in favor of the nonmoving party." (Citation and punctuation omitted.) *Effingham County v. Samwilka, Inc.*, 278 Ga. App. 521 (629 SE2d 501) (2006). So viewed, the record shows that in 2004, Slivka applied for and was granted a conservation use covenant[1] for a tract of land. On June 6, 2007, the McIntosh County Board of Commissioners approved Slivka's request to rezone the property from Residential Agricultural District ("AR") to a Single Family Residential District ("R-1").

On July 12, 2007, Slivka conveyed the property to Greenfields Investments LLC ("Greenfields"), and the warranty deed was recorded on July 13, 2007. On the same day the warranty was recorded, the County sent a notice to Slivka and Greenfields of a "breach of covenant penalty." On August 8, 2007, the County sent a document titled "Calculation of Breach of Conservation Use Penalty" to Slivka and

[1] Under OCGA § 48-5-7.4, qualified property owners can enter into a covenant with the taxing authority to maintain the property for conservation use for a period of ten years. OCGA § 48-5-7.4 (d) This Code section "does not confer complete immunity from ad valorem taxes but instead only allows the taxpayer the benefit of preferential assessment." *Morrison v. Claborn*, 294 Ga. App. 508, 512 (2) (669 SE2d 492) (2008). It "creates an exception to the general rule that the tangible property value is assessed at 40 percent of fair market value." Id. at 513 (2). Instead, the property is assessed at 40 percent of its current use value. OCGA § 48-5-7 (c.2).

Greenfields which listed the date of the breach as July 12, 2007.[2] On August 16, 2007, Slivka wrote the County the following in response to the notice of penalty:

> Please be advised under article #6 of the conservation use agreement that transfer of property does not create a breach of the covenant as long as the entity to which it is transferred maintains its conservation use. Greenfields, LLC, the new owner, is assuming our conservation usage, They will continue to maintain the property in its present state. They are aware that should they develop the property they will breach the covenant and be subject to a breach of covenant penalty. . . . I request that the "penalty notice" be withdrawn

Greenfields, however, paid the penalty in full before Slivka's letter was sent to the County.

On June 2, 2009, Slivka foreclosed on the security deed used by Greenfields to purchase the property. On November 8, 2010, the County approved Slivka's application for a conservation use covenant for the land at issue. In February 2011, the County issued a "Delinquent Tax Notice" for the years 2008, 2009, and 2010 to

[2] In a later-filed discovery response, the County asserted that it "did not take any position that a breach had occurred due to a mere transfer of ownership. The county took the position that a breach occurred because Greenfields took affirmative steps to develop the property into residential subdivisions."

Slivka. The notice stated that an execution would be issued if the delinquent taxes were not paid.[3] Slivka paid the overdue amount under protest.

After Slivka received no response to his subsequent request for refund, he filed a complaint seeking a refund under OCGA § 48-5-380 (c), prejudgment interest, and attorney fees and expenses under OCGA § 13-6-11. Both parties subsequently moved for summary judgment in their favor, and the trial court granted summary judgment in the County's favor based upon the following reasoning:

> Slivka contends that no breach of covenant occurred because the land itself was never disturbed and the actual use of the property never changed. However, Slivka sold the property to a limited liability company in 2007, which is not an eligible owner of conservation use property. OCGA § 48-5-7.4 (a) (1) (C) and 48-5-7.4 (i). This court does not believe that the county is estopped from relying upon these provisions because it did not cite these provisions in its notice of breach of covenant penalty, or otherwise inform Greenfields that these provisions were applicable.

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[3] A lien for delinquent ad valorem taxes arises at the time the taxes become due and are unpaid, OCGA § 48-2-56 (a), and subsequent owners are not protected from a writ of fieri facias (or tax execution) on the property for the delinquent ad valorem taxes of a previous owner. See OCGA § 48-3-3; OCGA § 48-5-127 (6); *Nat. Tax Funding v. Harragon Co.*, 277 Ga. 41, 42 (1) (586 SE2d 235) (2003).

> Slivka also contends that he is entitled to summary judgment for the separate and independent reason that the county in 2007 failed to provide him notice of his right to appeal, as required by OCGA § 48-5-306 (b) (2). However, Greenfields voluntarily paid the penalty in 2007, and Greenfields owned the property between July 12, 2007 and June 2, 2009. When Slivka obtained the property by foreclosure, he took it subject to all unpaid taxes.
>
> Finally for the reasons explained by [the] County in its brief, it is entitled to summary judgment because the taxes and penalties involved were not "erroneously or illegally assessed and collected." OCGA § 48-5-380.

1. Slivka contends that the trial court erred by concluding that his complaint for a refund does not fall within the ambit of OCGA § 48-5-380. The County asserts that Slivka should have asserted an appeal through OCGA § 48-5-311.

> Taxpayers generally have two avenues for challenging an improper tax assessment: (1) the appeal process in OCGA § 48-5-311, and (2) the refund procedure in OCGA § 48-5-380. These distinct remedies, however, serve different purposes. An appeal under OCGA § 48-5-311 provides "the most expeditious resolution of a taxpayer's dissatisfaction with an assessment, preferably before taxes are paid." In contrast, an OCGA § 48-5-380 refund action has been described as a "procedure to protect taxpayers from later-discovered defects in the assessment process which have resulted in taxes being erroneously or illegally

> assessed and collected." Moreover, the refund procedure is available only to correct errors of fact or law that caused erroneous or illegal taxation. It cannot be used to address "a claim based on mere dissatisfaction with an assessment, or on an assertion that the assessors, although using correct procedures, did not take into account matters which the taxpayer believes should have been considered."

(Citations, punctuation and footnotes omitted.) *Fulton County v. Marani*, 299 Ga. App. 580, 585 (4) (a) (683 SE2d 136) (2009).

The Supreme Court of Georgia has held "while the appeal process of § 48-5-311 is available to address *any* asserted error in an ad valorem real property tax assessment, the refund process established by § 48-5-380 is intended *only* to correct errors of fact or law which have resulted in erroneous or illegal taxation." (Emphasis supplied.) *Gwinnett County v. Gwinnett Ltd. Partnership*, 265 Ga. 645, 646-647 (458 SE2d 632) (1995). The rationale for this holding is that making "the two very different procedures available in every case without regard to the underlying basis of the taxpayer's challenge would render the appeal process under OCGA § 48-5-311, with its short time periods, meaningless." Id. at 646. Therefore,

> the determinative factor in deciding whether an action seeking a refund of ad valorem real property taxes may be maintained is not the general nature of the ground asserted, but the underlying facts supporting the

> asserted ground. If the taxpayer alleges that the assessment is based on matters of fact in the record which are inaccurate, or that the assessment was reached by the use of illegal procedures, then the taxpayer has asserted a claim that the taxes were "erroneously or illegally assessed and collected," which is what § 48-5-380 addresses.

Id. at 647. The Supreme Court has further explained:

> An illegal tax assessment is one imposed without authority or in violation of federal or state law. An erroneous tax assessment is harder to define; it includes clerical errors, assessments of tax-exempt property, and assessments based on the wrong millage rate, but not assessments based on the county's failure to consider every relevant fact in establishing an assessed value.

(Citation and punctuation omitted.) *Nat. Health Network v. Fulton County*, 270 Ga. 724, 727 (2) (514 SE2d 422) (1999). Other examples of appropriate cases for a tax refund claim under OCGA § 48-5-380 include, but are not limited to: taxes assessed in violation of federal or state law; duplicate payments; payment to wrong taxing authority; collection of taxes for property located in another county; and collection of taxes for property owned by a different person. Id. at 727-728 (2).

After carefully considering the nature of Slivka's claim, we conclude that he has not brought a cognizable claim for an "erroneous or illegal" tax assessment under

OCGA § 48-5-380.[4] He does not claim that the assessment was based upon inaccurate facts in the record. Instead, he asserts that the County "did not take into account matters which [he] believes should have been considered," *Gwinnett County*, supra, 265 Ga. at 647, in determining whether a breach of the conservation use covenant occurred; specifically, whether the actual use of the property changed, as well as the County's failure to investigate Greenfields' ownership structure. And his arguments regarding notice fail to establish an "erroneous or illegal" tax assessment.[5] See OCGA

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[4] As the issue is not before us, we express no opinion as to whether Slivka has a right to appeal under OCGA § 48-5-311. See *Oconee County v. Thomas*, 282 Ga. 422, 423 (1) (651 SE2d 45) (2007).

[5] Slivka makes no allegation that Greenfields relied upon any defect in the County's notice of penalty to its detriment. See *Oxford v. City of Waycross*, 241 Ga. 159, 160-161 (2) (243 SE2d 881) (1978) ("failure of the board to comply strictly with the requirements for the contents of the notice does not invalidate the notice, unless the defect in the notice in fact misled the taxpayer to his detriment"). And the revenue regulation cited by Slivka did not apply to the particular notice at issue in this case. See Ga. Comp. R. & Reg. § 560-11-6-.04 (applies to failure to apply for a continuation of use assessment in the year following the transfer of ownership). Finally, the cases Slivka relies upon do not establish an erroneous or illegal assessment based upon the facts of this particular case. Our decision in *Morgan County v. Ward*, 318 Ga. App. 186, 191 (733 SE2d 470) (2012), addressed a notice requirement enacted in 2008, and the notice at issue in this case was provided in 2007. Compare OCGA § 48-5-7.4 (k.1) and OCGA § 48-5-7.4 (2007). And in *Oconee County*, supra, the Supreme Court of Georgia held merely that a board of a tax assessors cannot refuse to consider a taxpayer's untimely appeal when it failed to provide information about appeal procedures in its notice. 282 Ga. at 424-425 (2).

§ 48-5-380. We therefore affirm the trial court's grant of summary judgment in favor of the County. See id. (affirming trial court's grant of summary judgment to the County on ground that plaintiff's claim was "not one cognizable as a refund action under OCGA § 48-5-380"); *Nat. Health Network*, supra (affirming trial court's grant of summary judgment to County because plaintiff did not present a claim for erroneous or illegal assessment under OCGA § 48-5-380).

Judgment affirmed. Barnes, P. J., and Branch, J., concur.

SECOND DIVISION
ANDREWS, P. J.,
MILLER and BRANCH, JJ.

June 10, 2015

In the Court of Appeals of Georgia

A15A0218. SURETTE et al. v. HENRY COUNTY BOARD OF TAX ASSESSORS.

BRANCH, Judge.

John and Marla Surette appealed their residential property valuation for the year 2011 to the Superior Court of Henry County. That court eventually signed a consent order and judgment between the Surettes and the Henry County Board of Tax Assessors that expressly established the value of the Surettes' property as $153,000 for that year and for 2012 and 2013, as well, but subject to certain statutory law:

> [T]he parties have expressly agreed, as indicated by their respective signatures hereto, that as of January 1, 2011, the fair market value of the real property and all improvements thereon . . . for tax purposes was $153,000.00. . . . By further agreement and stipulation of the parties and subject to the provision of OCGA § 48-5-299 (c), the fair market value for January 1, 2012 and January 1, 2013, shall be $153,000.

Nevertheless, two years later the Surettes sought to appeal the 2013 valuation established by the consent order on the grounds that the value of the property had fallen significantly since the time of that order. The Board of Assessors concluded that the 2013 value should remain at $153,000, and it certified the Surettes' appeal to the Board of Equalization, which affirmed the decision of the Board of Assessors. The Surettes then appealed to the Superior Court of Henry County, but the Board of Assessors moved to dismiss based on the 2011 consent order and judgment. The superior court granted the motion "due to Plaintiffs' prior stipulation of value entered in [the earlier consent order]." The Surettes appeal the dismissal of their appeal. We affirm.

"On appeal, we review a trial court's decision to grant or deny a motion to dismiss de novo." *Liberty County School Dist. v. Halliburton*, 328 Ga. App. 422, 423 (762 SE2d 138) (2014) (citation omitted). "In reviewing the grant of a motion to dismiss, an appellate court must construe the pleadings in the light most favorable to the appellant with all doubts resolved in the appellant's favor." *Ewing v. City of Atlanta*, 281 Ga. 652, 653 (2) (642 SE2d 100) (2007) (punctuation and footnotes omitted).

1. The Surettes obviously agreed in a consent order that the value of the property for 2011, 2012, and 2013 would be $153,000. Without an exemption or exception to that agreement, the Surettes are bound to what they agreed to:

> Parties to stipulations and agreements entered into in the course of judicial proceedings are estopped from taking positions inconsistent therewith, and no litigant will be heard to complain unless it be made plainly to appear that the consent of the complaining party was obtained by fraud or mistake.

Wright v. Stuart, 229 Ga. App. 50, 51 (1) (494 SE2d 212) (1997) (citation and punctuation omitted).

2. The Surettes argued below and argue on appeal that the consent order was obtained in part by fraud because counsel for the appellee told them that they could appeal in the years following the 2011 tax year if their property lost significant value. The Surettes, however, did not introduce any admissible evidence to support this assertion in response to the motion to dismiss. Moreover, the terms of the consent judgment and the meaning of OCGA § 48-5-299 (c) completely control their right to appeal the assessed value of their property for tax years 2012 and 2013. As for the consent order, its meaning is not vague or uncertain. As for the statute at issue, the Surettes are charged with notice of the law of this state. *Ga. State Licensing Bd. for*

Residential & Gen. Contractors v. Allen, 286 Ga. 811, 817 (2) (692 SE2d 343) (2010) ("OCGA § 1-3-6 provides that: 'After they take effect, the laws of this state are obligatory upon all the inhabitants thereof. Ignorance of the law excuses no one.' Thus, . . . the plaintiffs were charged with notice of the . . . law.") (citation omitted).

3. In their remaining argument, the Surettes contend they are entitled to challenge the 2013 value of their property because the 2011 consent order states that it is "subject to" OCGA § 48-5-299 (c), which provides that resolution of a tax appeal for one year establishes the value of the relevant property for the following two years except under certain circumstances, including the filing of a "return" by the taxpayer at a different value in one of the two following years:

> Real property, the value of which was established by an appeal in any year, that has not been returned by the taxpayer at a different value during the next two successive years, may not be changed by the board of tax assessors during such two years for the sole purpose of changing the valuation established or decision rendered in an appeal to the board of equalization or superior court.

OCGA § 48-5-299 (c). The Surettes argue that they in fact filed a return at a different value for the tax year 2013 by appealing the valuation of their property for that year.

But, as explained below, the Surettes did not file a return for 2013 and therefore cannot take advantage of the cited statute.

When interpreting relevant statutes, we look to the plain meaning of the statutes; "[w]here the language of an Act is plain and unequivocal, judicial construction is not only unnecessary but is forbidden." *Cullum v. Chatham County Bd. of Tax Assessors*, 243 Ga. App. 865, 866 (534 SE2d 535) (2000) (citation and punctuation omitted).

Ad valorem tax returns must be filed between January 1 and April 1 of each year. See OCGA § 48-5-18 ("Each tax commissioner and tax receiver shall open his or her books for the return of real or personal property ad valorem taxes on January 1 and shall close those books on April 1 of each year."); OCGA § 48-5-103 ("It shall be the duty of the tax receiver to . . . [r]eceive all tax returns within the time and in the manner prescribed by law."). Also, such returns must "contain or be verified by" a specific "written declaration." OCGA § 48-5-19 (a).[1] And "returns must state the

[1] The declaration is set forth in the statute as follows:

> "I do solemnly swear that I have carefully read (or have heard read) and have duly considered the questions propounded in the foregoing tax list, and that the value placed by me on the property returned, as shown by the list, is the true market value thereof; and I

taxable property's fair market value. See OCGA § 48-5-6." *Intl. Auto Processing v. Glynn County*, 287 Ga. App. 431, 433 (1) (651 SE2d 535) (2007). Tax assessment appeals, however, are a separate process from filing a return. See OCGA § 48-5-306; Ga. Comp. R. & Regs. 560-11-10-.09. And appeals must be filed within 45 days from the date of the mailing of tax assessment notice by the county board of tax assessors. See OCGA §§ 48-5-311 (e) (2) (A); 48-5-306.

The Surettes contend that their appeal of the 2013 assessment constitutes a "return" for the 2013 tax year. But the Surettes filed their appeal on May 3, 2013, outside of the time required to file returns; they did not include the declaration required in a return; and their appeal did not state the fair market value of the property. It is clear from the facts and the relevant law that the Surettes filed an appeal of the county assessment, not a return, for the tax year 2013. Under Georgia

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> further swear that I returned, for the purpose of being taxed thereon, every species of property that I own in my own right or have control of either as agent, executor, administrator, or otherwise; and that in making this return, for the purpose of being taxed thereon, I have not attempted either by transferring my property to another or by any other means to evade the laws governing taxation in this state. I do further swear that in making this return I have done so by estimating the true worth and value of every species of property contained therein."

law, when a taxpayer fails to file a return for one tax year, he or she shall be deemed to have returned the property for the same value as the preceding year:

> Any taxpayer of any county who returned or paid taxes in the county for the preceding tax year and who fails to return his property for taxation for the current tax year as required by this chapter shall be deemed to have returned for taxation the same property as was returned or deemed to have been returned in the preceding tax year at the same valuation as the property was finally determined to be subject to taxation in the preceding year.

OCGA § 48-5-20 (a) (1). See also Ga. Comp. R. & Regs. 560-11-10-.09 (2) (b) (2) ("[T]he appraisal staff shall deem any property owner that does not file a return by the deadline as returning for taxation the same property as was returned or deemed to have been returned in the preceding tax year at the same valuation as the property was finally determined to be subject to taxation in the preceding year.").

Because the Surettes did not file a return for 2013, they are deemed to have returned their property for the value from 2012, which was the same value from 2011, i.e., $153,000. Thus, the Surettes did not trigger the exception found in OCGA § 48-5-299 (c) that might have allowed them to contest the assessed value of their property for the 2013 tax year despite having entered into the consent order two years earlier. And given that the Surettes agreed in the 2011 consent order that the fair market

value of their property for January 1, 2013 would be $153,000, they are thereby bound to that amount for the purposes of an appeal of the county assessment for that tax year. It follows that the trial court properly granted the Board's motion to dismiss.

Judgment affirmed. Andrews, P. J., and Miller, J., concur.

SECOND DIVISION
BARNES, P. J.,
MILLER and RAY, JJ.

January 15, 2014

In the Court of Appeals of Georgia

A13A1852; A13A1853. PORCHE, IN HIS CAPACITY AS THE TAX COMMISSIONER/COLLECTOR FOR THE CITY OF WOODSTOCK, GEORGIA v. NORIEGA et al.

MILLER, Judge.

In these consolidated cases, Robert Porche, the Tax Commissioner for the City of Woodstock (the "City"), appeals from the superior court's order denying the City's petitions for ad valorem tax lien foreclosure of adjoining townhomes owned by Juan Pablo Noriega, Emilio Rafael Noriega and Ana Lilian Noriega. Porche contends that the superior court erred in (1) holding that the petitions were not in compliance with OCGA § 48-4-78, and (2) the City's nuisance ordinance is unenforceable under OCGA § 41-2-9. Discerning no error, we affirm.

When, as here, a question of law is at issue we owe no deference to the superior court's ruling and apply a de novo standard of review. See *Artson, LLC v. Hudson*, 322 Ga. App. 859 (747 SE2d 68) (2013).

The record shows that Ana Noriega is the owner of a townhome located at 137 Woodberry Court in Woodstock, Georgia - Lot 17 Woodberry Field Subdivison. Juan and Emilio Noriega own a townhome located at 139 Woodberry Court - Lot 18 Woodberry Field Subdivison. In June 2010, the City filed a municipal court nuisance complaint seeking abatement of a cross-tie retaining wall spanning the back of five lots (Lots 17-21) in the Woodberry Field Subdivision, including the Noriegas' townhomes.

Following a hearing in August 2010, the municipal court entered an order finding that the retaining wall was a nuisance and should be abated by the owners of the five lots. The municipal court ordered the abatement of the nuisance according to the following time constraints: submission of a plan for remediation to the City for approval within 30 days; commencement of construction pursuant to the remediation plan within 30 days of the City's approval of the plan; and completion of the remediation plan within 90 days of commencement of the physical construction process.

Approximately 10 months later, the municipal court entered a second order (hereinafter the "Final Nuisance Order") finding that the nuisance had not been abated and again ordered the lot owners to remediate the nuisance within similar time constraints.

After the lot owners failed to comply with the Final Nuisance Order, the City hired a contractor to abate the nuisance. Thereafter, on October 31, 2012, the City recorded abatement liens against the Noriegas' property (Woodberry Field Subdivision Lots 17-18) in the amount of $66,478.69, including $44,750 paid to abate the nuisance and $21,728.69 in attorney fees and expenses.

On November 15, 2012, Porche filed petitions against the Noriegas in the Superior Court of Cherokee County for in rem ad valorem tax foreclosure of the abatement liens. The petitions named the Noriegas because they were the owners of 137 and 139 Woodbury Court, but did not name the actual properties as respondents. The Noreigas responded to the City's petitions. Following a hearing, the superior court denied the petitions, finding that they were not brought against the property to be foreclosed as statutorily required.[1]

[1] The superior court also found that the abatement liens were void because they were based on City Code sections that do not comply with the provisions of OCGA § 41-2-9, which is the only means by which counties and municipalities may place

1. Porche contends that the superior court erred in finding that the petitions were not brought in compliance with OCGA § 48-4-78. We disagree.

OCGA §§ 48-4-76 et seq. sets forth the statutory procedures for judicial in rem tax foreclosure of delinquent ad valorem taxes. In rem actions are proceedings primarily against the property itself, even though they are subject to the claims of persons owning an interest therein. See *Ga. Dept. of Transp. v. Woodard*, 254 Ga. 587, 589 (331 SE2d 557) (1985) (condemnation proceedings are in rem, against the property itself, and failure to give notice to true owner of property did not void completed proceeding); *Stroupper v. McCauley*, 45 Ga 74, 76 (1872 Ga. LEXIS 162) (1872) (in rem judgments are founded on proceedings against the thing or the subject matter itself, not against the person).

OCGA § 48-4-78 provides that the petition for in rem ad valorem tax foreclosure shall by filed in the superior court of the county in which the property is located, and the petition "shall have form and content *substantially identical* to that form as provided in subsection (g) of this Code section." (Emphasis supplied.) OCGA § 48-4-78 (b). The statute further provides that such petitions shall be filed *against the property* for which taxes are delinquent. (Emphasis supplied.) OCGA § 48-4-78

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abatement liens against private property.

(c). Finally, the statute provides that in rem ad valorem tax foreclosure petitions shall be brought against the following respondents: "__ ACRES OF LAND LYING AND BEING IN LAND LOT __, DISTRICT __, _____ COUNTY, GEORGIA" and the owner(s) of the property. OCGA § 48-4-78 (g).

Porche argues that the petitions substantially complied with OCGA § 48-4-78 (g) because they were brought against the Noriegas as owners of the properties. Where a statute is plain, unambiguous and susceptible to only one reasonable construction, however, this Court must construe the statute according to its terms and "the legislature's clear intent will not be thwarted by invocation of the rule of 'substantial compliance.' " (Citations and punctuation omitted.) *Cook v. NC Two LP*, 289 Ga. 462, 464 (712 SE2d 831) (2011).

Here, OCGA § 48-4-78 clearly and unambiguously requires petitions for in rem ad valorem tax foreclosure to be brought against the property for which the taxes are delinquent. The petitions show on their face that they failed to comply with the clear and unambiguous requirements of OCGA § 48-4-78, because they were filed against the Noriegas as owners of the properties, rather than being filed against the properties for which the taxes were delinquent. Accordingly, the trial court properly found that the petitions were not in compliance with OCGA § 48-4-78.

2. In light of our holding in Division 1, we need not address Porche's remaining enumerations of error.

Judgment affirmed. Barnes, P. J., and Ray, J., concur.

In the Supreme Court of Georgia

Decided: February 22, 2016

S15A1638. TDGA, LLC v. CBIRA, LLC et al.

MELTON, Justice.

This case requires a determination of whether conventional actions for quiet title, see OCGA § 23-3-40 et seq., where the State of Georgia asserts an interest in the property at issue, are barred by the doctrine of sovereign immunity. For the reasons set forth below, we find that they are barred and affirm the ruling of the trial court. We further find, however, that in rem actions for quiet title, see OCGA § 23-3-60 et seq., are not barred by sovereign immunity.

The underlying facts of this case are not in dispute. TDGA, LLC acquired a certain piece of property from another entity that had purchased the property at a tax sale. Afterwards, TDGA followed the non-judicial process of foreclosing any right of redemption to the property in accordance with OCGA § 48-4-45 and OCGA § 48-4-46. TDGA provided notice of the foreclosure of

redemption rights to all interested parties in the property, including the Georgia Department of Revenue and the Georgia Department of Labor (Departments), each of which held recorded tax liens against the property. Following the completion of this procedure, which the Departments do not contest, TDGA filed the current quiet title action pursuant to OCGA § 23-3-40, conventional quia timet, again naming all parties with any recorded interest in the underlying property. TDGA took this action to obtain a ruling that all redemption rights had been properly foreclosed, which, in turn, TDGA would use to show that it held marketable title for title insurance purposes.[1] After being served with the quiet title action, the Departments, which have not released their respective liens, filed a joint motion to dismiss, arguing that the suit was barred by sovereign immunity. In its ruling, the trial court determined that, although TDGA had properly foreclosed the right of redemption of all parties, including those of the Departments, the suit was nonetheless barred by sovereign immunity pursuant

[1] Although OCGA § 48-4-45 provides that tax lienholders who receive proper statutory notice are divested of any interest in the property following the expiration of the redemption period, it appears that title insurance companies require the completion of a successful quiet title action to consider title truly marketable and insurable.

to Ga. Dept. Nat'l Res. v. Ctr. For Sustainable Coast, 294 Ga. 593 (2) (755 SE2d 184) (2014) (sovereign immunity is a bar to injunctive relief). Sustainable Coast does require this result in the context of a conventional quiet title action in which the State must be named as a party and the action may be brought against the State.

First, some settled law must be set forth. The Georgia Constitution states:

> Except as specifically provided in this Paragraph, sovereign immunity extends to the state and all of its departments and agencies. The sovereign immunity of the state and its departments and agencies can only be waived by an Act of the General Assembly which specifically provides that sovereign immunity is thereby waived and the extent of such waiver.

Ga. Const. Art. I, Sec. II, Par. IX (e). Sovereign immunity is immunity "from suit," involving "actions or claims against the state and its departments, agencies, officers, and employees." Ga. Const. Art. I, Sec. II, Par. IX (a). "'In construing a constitutional provision, the ordinary signification shall be applied to words.'" (Citation omitted.) Blum v. Schrader, 281 Ga. 238, 239 (1) (637 SE2d 396) (2006). Furthermore,

> this Court must honor the plain and unambiguous meaning of a constitutional provision. Our duty is to construe and apply the Constitution as it is now written. Where the natural and reasonable meaning of a constitutional provision is clear and capable of a

> natural and reasonable construction, courts are not authorized either to read into or read out that which would add to or change its meaning.

(Citations and punctuation omitted). Id. at 239–40 (2). Therefore, in the greatest general sense, the State and its agencies are immune from suit unless the legislature specifically states otherwise. Neither the statutory provisions regarding foreclosure of the right of redemption nor conventional quiet title actions contain an explicit waiver of sovereign immunity. For this reason, the State and its agencies are immune from suit under OCGA § 23-3-40

This does not mean, however, that there is no mechanism for quieting title against all potential claimants, including the State. OCGA § 23-3-60 provides such a mechanism. A quiet title action under this statute is in rem. It is not, in fact or effect, an action against the State or any other person or entity. It is an action against the underlying property, itself, and its purpose is to remove any and all clouds on the title of that property.[2] In an "action in rem," "the named

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[2] OCGA § 23-3-61 provides:
> Any person, which term shall include a corporation, partnership, or other association, who claims an estate of freehold present or future or any estate for years of which at least five years are unexpired, including persons holding lands under tax deeds, in any land in this state, whether in the actual and peaceable possession thereof or not

defendant is real or personal property." Black's Law Dictionary (10th ed. 2014). Any person who claims an interest in that property/defendant must affirmatively assert that claim against the property/defendant in the quiet title action. So, by its very nature, an in rem quiet title action is not subject to sovereign immunity because it does not involve a claim against the State, though the State may certainly make a claim to the property in question during the pendency of the quiet title action.

Although we do not base our conclusion in this case on Eleventh Amendment principles, precedent in that area of law supplies a persuasive theoretical underpinning for this result. In Tanner v. Brasher, 254 Ga. 41, 42 (1) (326 SE2d 218) (1985), we considered the Eleventh Amendment[3] analysis set

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> and whether the land is vacant or not, may bring a proceeding *in rem* against all the world to establish his title to the land and to determine all adverse claims thereto or to remove any particular cloud or clouds upon his title to the land, including an equity of redemption, which proceeding may be against all persons known or unknown who claim or might claim adversely to him, whether or not the petition discloses any known or possible claimants.

(Emphasis supplied.)

[3] The Eleventh Amendment provides that the "Judicial power of the United States shall not be construed to extend to any suit ... commenced or prosecuted against one of the . . . States" by citizens of another State. U.S. Const., Amdt. 11.

forth in United States v. Lee, 106 U.S. 196 (1 SCt 240, 27 LE 171) (1882). Based on Lee, we wholly rejected the contention that "[s]overeign immunity [enables] state officials to prove the state's ownership of land simply by saying that the state owns the land." Tanner, supra, 254 Ga. At 43 (1). We further explained:

> To hold otherwise would throw the constitutional doctrine of sovereign immunity in conflict with the constitutional provision for separation of powers. 1983 Const. of Georgia, Art. I, § II, Para. III. This court held in Dougherty v. Bethune, 7 Ga. 90, 92 (1849), "Whether facts upon which rights depend, are true or false, is an inquiry for the Courts to make, under legal forms; it belongs to the judicial department of the government. By the Constitution the legislative, [executive,] and judicial departments are distinct." As the legislature was denied the power to legislate the truth of facts in Dougherty, here we must deny the executive branch the power to conclusively establish facts by pleading them.

Id. at 43-44 (1).

This, of course, makes fundamental sense. For purposes of clearing title to any piece of property, it is necessary to include a full consideration of the State's rights, if any, because "title to all lands originates from . . . the state," OCGA § 44-5-1, and "[a]ll realty in this state is held under the state as the original owner thereof." OCGA § 44-5-2. But the State cannot assert title to otherwise privately-held land simply by issuing an edict or imposing a lien that

cannot be effectively challenged and impairs the marketability of the property. In rem quiet title actions, in which the property is the only defendant and sovereign immunity is not applicable, prevent this problem.[4]

Therefore, for all of the reasons set forth above, we find that sovereign immunity does bar a conventional quiet title action against the State, OCGA § 23-3-40, but sovereign immunity is not applicable to an in rem quiet title action against all the world. See OCGA § 23-3-60.

Judgment affirmed. All the Justices concur.

[4] Other forms of in rem actions are not in issue here, and we do not reach the application of sovereign immunity to them in this opinion.

S15A1638. TDGA, LLC v. CBIRA, LLC et al.

NAHMIAS, Justice, concurring.

I join the Court's opinion in full, but I think it is important to note that there is a second type of proceeding in rem to quiet title where the State or its agencies may have claims, as well as another argument that supports the Court's conclusions.

The little-known and now little-used Land Registration Law of 1917, OCGA §§ 44-2-40 to 44-2-253, is found in the Property Code rather than in the Equity Code with other quiet title proceedings. See generally 3 Daniel F. Hinkel, Pindar's Georgia Real Estate Law and Procedure §§ 24:1 to 24:66 (7th ed. updated 2015) ("Ga. Real Estate Law"). The Land Registration Law – Georgia's version of the "Torrens Acts" that were adopted in many states a century ago – established a proceeding "in rem against the land" at issue, with the court's decree operating directly on the land and establishing title to the land as to all those who are parties either "by name or under the general designation of 'whom it may concern.'" OCGA § 44-2-61. The statutory language regarding who is bound by the judgment in such a proceeding is broad and

expressly includes the State. OCGA § 44-2-83 ("Every decree rendered as provided in this article shall bind the land and bar all persons claiming title thereto or interest therein, shall quiet the title thereto, and shall be forever binding and conclusive upon and against all persons, *including this state*, whether mentioned by name in the order of publication or included under the general description 'whom it may concern.'" (emphasis added)). See also §§ 44-2-69 (providing for service of the petition upon the State or a county or municipality), 44-2-73 (stating that the notices provided for by the law "shall be conclusive and binding on all persons so notified and on all the world").

As the Court's opinion correctly explains, such an in rem proceeding against land does not implicate sovereign immunity, because it is not an "action or claim against the state" (or against any department, agency, officer, or employee of the State). Ga. Const. of 1983, Art. I, Sec. II, Par. IX (a). But it is also apparent from the text of the Land Registration Law that the General Assembly intended that any claims the State may have to the land at issue would be subject to adjudication by the court.

The same cannot be said of conventional quiet title actions, see OCGA § § 23-3-40 to 23-3-44, which pre-date the Land Registration Law, are not

brought in rem, and operate on particular instruments allegedly casting a cloud on title. But the same *can* be said of actions under the Quiet Title Act of 1966, OCGA § 23-3-60 to § 23-3-73, which was "designed to adapt the 'title-laundry' function of the land registration proceeding to a simpler, speedier form of action." 3 Ga. Real Estate Law § 25:11 (footnote omitted). See also id. § 24:1 ("Land registration proceedings in Georgia have been largely discontinued since the enactment of the Quiet Title Act of 1966, which serves the same purpose.").

The General Assembly clearly stated that the proceedings established by the Quiet Title Act are meant to determine *all* claims to the land at issue, so that there would be *no* uncertainty as to title that would render land in this State unmarketable:

> The purpose of this part is to create a procedure for removing *any* cloud upon the title to land, including the equity of redemption by owners of land sold at tax sales, and for readily and conclusively establishing that certain named persons are the owners of *all* the interests in land defined by a decree entered in such proceeding, so that there shall be no occasion for land in this state to be unmarketable because of *any* uncertainty as to the owner of *every* interest therein.

OCGA § 23-3-60 (emphasis added). The proceeding is expressly in rem, and its scope is expressed in exceptionally broad terms, operating "against *all the*

world to establish [the petitioner's] title to the land and to determine *all adverse claims thereto* . . . , which proceeding may be against *all persons known and unknown who claim or might claim adversely to him*, whether or not the petition discloses any known or possible claimants." OCGA § 23-3-61 (emphasis added).

As the Court's opinion notes, all title to land in Georgia originates from the State, see OCGA §§ 44-5-1 and 44-5-2, so the State has a possible adverse claim of title that will be determined in virtually every action to quiet title against the world, and innumerable such actions also will involve tax claims of the State and its agencies and subdivisions of the sort at issue in this case. While the Quiet Title Act (unlike the Land Registration Law) does not include an express reference to binding "the state," interpreting the Quiet Title Act to exclude claims that the State raises or could raise would contradict the statute's against-all-the-world scope and purpose. Thus, as with the Land Registration Law, even if sovereign immunity had some import for this sort of in rem proceeding, it is clear that the General Assembly meant for any claims the State might assert against the land to be adjudicated by the court. See 3 Ga. Real Estate Law § 25:11 n.4 ("The [Quiet Title Act of 1966] itself does not expressly

provide the necessary consent of the State to be sued, but the action is against 'all the world,' which includes even a sovereign state, and its provisions for determining the validity of tax sales necessarily require that the state be made a party. In permitting 'persons holding lands under tax deeds' to bring the action (O.C.G.A. § 23-3-61), tax claims of [the] state, county, or city must be examined and adjudicated, and this would be impossible without making proper parties."). Cf. Colon v. Fulton County, 294 Ga. 93, 95-96 (751 SE2d 307) (2013) (explaining that "'[i]mplied waivers of governmental immunity should not be favored,' [but t]his does not mean . . . that the Legislature must use specific 'magic words' such as 'sovereign immunity is hereby waived' in order to create a specific statutory waiver of sovereign immunity," as the operation of the statute at issue may necessarily imply such a meaning (citations omitted)).

In my view, these additional considerations leave no doubt that the Court's opinion reaches the correct conclusions.

I am authorized to state that Justice Blackwell joins in this concurrence.

House Bill 51 (AS PASSED HOUSE AND SENATE)

By: Representatives Benton of the 31st, Stephens of the 164th, and Werkheiser of the 157th

A BILL TO BE ENTITLED

AN ACT

To amend Article 3 of Chapter 4 of Title 48 of the Official Code of Georgia Annotated, relating to redemption of property sold for taxes, so as to change provisions relating to the amount payable at redemption; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article 3 of Chapter 4 of Title 48 of the Official Code of Georgia Annotated, relating to redemption of property sold for taxes, is amended by revising Code Section 48-4-40, relating to persons entitled to redeem land sold under tax execution, as follows:

"48-4-40.

Whenever any real property is sold under or by virtue of an execution issued for the collection of state, county, municipal, or school taxes or for special assessments, the defendant in fi. fa. or any person having any right, title, or interest in or lien upon such property may redeem the property from the sale by the payment of ~~the redemption price or~~ the amount required for redemption, as fixed and provided in Code Section 48-4-42:

(1) At any time within 12 months from the date of the sale; and

(2) At any time after the sale until the right to redeem is foreclosed by the giving of the notice provided for in Code Section 48-4-45."

SECTION 2.

Said article is further amended by revising Code Section 48-4-42, relating to the amount payable for redemption, as follows:

"48-4-42.

(a) The amount required to be paid for redemption of property from any sale for taxes as provided in this chapter~~, or the redemption price,~~ shall with respect to any sale made after

July 1, 2002, be the amount paid for the property at the tax sale, as shown by the recitals in the tax deed, plus: ~~any~~

(1) Any taxes paid on the property by the purchaser after the sale for taxes~~, plus any~~;

(2) Any special assessments on the property~~, plus a~~; and

(3) A premium of 20 percent of the amount for the first year or fraction of a year which has elapsed between the date of the sale and the date on which the redemption payment is made and 10 percent for each year or fraction of a year thereafter.

(b) If redemption is not made until more than 30 days after the notice provided for in Code Section 48-4-45 has been given, there shall be added to the ~~redemption price~~ sums set forth in subsection (a) of this Code section the sheriff's cost in connection with serving the notice and the cost of publication of the notice, if any.

(c) With respect to any sale made after July 1, 2016, there shall be added to the sums set forth in subsections (a) and (b) of this Code section any sums:

(1) Paid from the date of the tax sale to the date of redemption to a property owners' association, as defined in Code Section 44-3-221, in accordance with Code Section 44-3-232;

(2) Paid to a condominium association, as defined in Code Section 44-3-71, in accordance with Code Section 44-3-109; or

(3) Paid to a homeowners' association established by covenants restricting land to certain uses related to planned residential subdivisions.

(d) All of the amounts required to be paid by this Code section shall be paid in lawful money of the United States to the purchaser at the tax sale or to the purchaser's successors."

SECTION 3.

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

House Bill 364 (AS PASSED HOUSE AND SENATE)

By: Representatives Knight of the 130th, Harbin of the 122nd, Harrell of the 106th, Stephens of the 164th, Powell of the 171st, and others

A BILL TO BE ENTITLED

AN ACT

To amend Chapter 5 of Title 48 of the Official Code of Georgia Annotated, relating to ad valorem taxation of property, so as to revise and change certain provisions regarding the approval of tax digests by the commissioner; to impose sanctions for including nontaxable properties on the tax digests; to provide for procedures, conditions, and limitations; to provide for refunds of taxes improperly collected; to amend Chapter 13A of Title 50 of the Official Code of Georgia Annotated, relating to tax tribunals, so as to provide for additional jurisdiction for the Georgia Tax Tribunal; to provide for an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 5 of Title 48 of the Official Code of Georgia Annotated, relating to ad valorem taxation of property, is amended in Code Section 48-5-342, relating to the review of county tax digests by the Commissioner of Revenue, by adding a new subsection to read as follows:

"(e)(1) The commissioner may, upon his or her own initiative or upon complaint by a taxpayer, examine the itemizations of properties appearing on the digest, and if in the judgment of the commissioner any properties are illegally appearing on the digest and should not be subject to taxation under this chapter, the commissioner shall strike such items from the digest and return the digest to the county for removal of such items and resubmission to the commissioner. The commissioner shall provide by rule and regulation procedures by which the county board of tax assessors may appeal such finding to the commissioner. If appealed by the board of tax assessors, the commissioner shall, after reviewing such appeal, issue a final order and include a finding as to the taxability of the digest items in dispute and shall finalize the digest in accordance therewith.

(2) If a property has been found by the commissioner to not be subject to taxation under this chapter and again appears on the digest at any time within five years of the initial

determination of nontaxability and is again determined to be nontaxable, the commissioner shall strike such item from the digest and return the digest to the county for removal of such item and resubmission to the commissioner. The commissioner shall notify the Department of Community Affairs in writing of his or her finding and, upon receipt of such notice, the qualified local government status of such county shall be revoked for a period of three years following the receipt of such notice by the Department of Community Affairs unless reinstated earlier pursuant to this subsection. Upon such revocation, the governing authority of such county, without regard to any limitation of Code Section 48-5-295, shall be specifically authorized to remove immediately every member of the board of tax assessors and reappoint new members who shall serve for the unexpired terms of the removed members. The county governing authority shall provide written notification of such removal and new appointment to the commissioner. Upon certification of the corrected digest, the commissioner shall notify in writing the Department of Community Affairs, and upon receipt thereof, the Department of Community Affairs shall immediately reinstate the qualified local government status of such county.

(3) If a property has been found by the commissioner to not be subject to taxation under this chapter and if such nontaxable property has appeared on a county digest in any year within the preceding five-year period, then the taxpayer shall be entitled to file a petition directly with the Georgia Tax Tribunal for a refund of all such taxes illegally collected or taxes paid, interest equal to the bank prime loan rate as posted by the Board of Governors of the Federal Reserve System in statistical release H. 15 or any publication that may supersede it plus 3 percent calculated from the date of payment of such taxes, and attorney's fees in an amount of not less than 15 percent nor more than 40 percent of the total of the illegally charged taxes and accrued interest. Such petition shall name the board of tax assessors and the tax receiver or tax commissioner of the county as the respondent in their official capacities and shall be served upon such board and tax receiver or tax commissioner. Service shall be accomplished by certified mail or statutory overnight delivery. The petition shall include a summary statement of facts and law upon which the petitioner relies in seeking the requested relief. The respondents shall file a response to the petitioner's statement of facts and law which constitutes their answer with the tribunal no later than 30 days after the service of the petition. The respondents shall serve a copy of their response on the petitioner's representative or, if the petitioner is not represented, on the petitioner and shall file a certificate of service with such response. If in any case a response has not been filed within the time required by this paragraph, the case shall automatically become in default unless the time for filing the response has been extended by agreement of the parties, for a period not to exceed 30

days, or by the judge of the tribunal. The default may be opened as a matter of right by the filing of a response within 15 days of the day of the default and payment of costs. At any time before the final judgment, the judge of the tribunal, in his or her discretion, may allow the default to be opened for providential cause that prevented the filing of the response, for excusable neglect, or when the tribunal judge, from all the facts, determines that a proper case has been made for the default to be opened on terms to be fixed by the tribunal judge. The tribunal judge shall proceed to hear and decide the matter and may grant appropriate relief under the law and facts presented."

SECTION 2.

Chapter 13A of Title 50 of the Official Code of Georgia Annotated, relating to tax tribunals, is amended in Code Section 50-13A-9, relating to petitions for relief, jurisdiction, and bonds, by adding a new subsection to read as follows:

"(e) The tribunal shall also have jurisdiction over refund petitions filed pursuant to Code Section 48-5-342."

SECTION 3.

This Act shall become effective on July 1, 2016.

SECTION 4.

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

House Bill 547 (AS PASSED HOUSE AND SENATE)

By: Representatives Fleming of the 121st, Powell of the 171st, and Willard of the 51st

A BILL TO BE ENTITLED

AN ACT

To amend Chapter 3 of Title 53 of the Official Code of Georgia Annotated, relating to year's support, so as to change provisions relating to taxes and tax liens; to provide for a definition; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 3 of Title 53 of the Official Code of Georgia Annotated, relating to year's support, is amended by revising Code Section 53-3-4, relating to taxes and tax liens, as follows:

"53-3-4.

(a) As used in this Code section, the term 'homestead' shall have the same meaning as set forth in Code Section 48-5-40.

(b)(1) In solvent and insolvent estates, all taxes and liens for taxes accrued for years prior to the year of the decedent's death against the ~~real property~~ homestead set apart and against any equity of redemption applicable to the ~~real property~~ homestead set apart shall be divested as if the entire title were included in the year's support. Additionally, as elected in the petition, property taxes accrued in the year of the decedent's death or in the year in which the petition for year's support is filed or, if the petition is filed in the year of the decedent's death, in the year following the filing of the petition~~,~~ shall be divested if the ~~real property~~ homestead is set apart for year's support.

(2) In solvent and insolvent estates, if the homestead is not claimed, all taxes and liens for taxes accrued for years prior to the year of the decedent's death against the real property set apart and against any equity of redemption applicable to the real property set apart shall be divested as if the entire title were included in the year's support. Additionally, as elected in the petition, property taxes accrued in the year of the decedent's death or in the year in which the petition for year's support is filed or, if the petition is filed in the year of the decedent's death, in the year following the filing of the petition shall be divested if the real property is set apart for year's support."

SECTION 2.

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

House Bill 579 (AS PASSED HOUSE AND SENATE)

By: Representatives McCall of the 33rd, Dickey of the 140th, Taylor of the 173rd, England of the 116th, Roberts of the 155th, and others

A BILL TO BE ENTITLED

AN ACT

To amend Article 13 of Chapter 6 of Title 40 of the Official Code of Georgia Annotated, relating to special provisions for certain vehicles with regard to uniform rules of the road, so as to permit the operation of certain vehicles on roads when used for agricultural or silvicultural purposes; to provide for restrictions and limitations; to provide for local restrictions; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article 13 of Chapter 6 of Title 40 of the Official Code of Georgia Annotated, relating to special provisions for certain vehicles with regard to uniform rules of the road, is amended by adding a new part to read as follows:

"Part 1A

40-6-305.

(a) As used in this part, the term:

(1) 'Farmer' means the owner of a commercial agricultural or silvicultural operation or an employee thereof. Such term shall also include any spouse, child, sibling, parent, grandparent, or grandchild of the owner of such operation.

(2) 'Farm use vehicle' means an all-terrain vehicle or personal transportation vehicle.

(b) A farmer who is 16 years of age or older may operate a farm use vehicle on any public road or highway of this state so long as:

(1) Such vehicle has a properly affixed emblem conforming to the requirements of Code Section 40-8-4; and

(2) Such vehicle is actively being operated by such farmer to transport:

(A) Agricultural products, livestock, farm machinery, or farm supplies to or from a farm; or

(B) Such farmer between his or her residence and the farm at which he or she works or between properties of such farm.

40-6-306.

Every person operating a farm use vehicle shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of any other vehicle under this chapter except as to special regulations in this part and except as to the provisions of this chapter which by their nature can have no application.

40-6-307.

Any municipality may prohibit or limit the operation of farm use vehicles on public roads and highways within its jurisdiction if it is determined that such operation endangers the safety of the traveling public.″

SECTION 2.

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

House Bill 736 (AS PASSED HOUSE AND SENATE)

By: Representatives Atwood of the 179th, Jones of the 167th, Petrea of the 166th, Stephens of the 164th, Wilkinson of the 52nd, and others

A BILL TO BE ENTITLED

AN ACT

To amend Article 3 of Chapter 2 of Title 40 of the Official Code of Georgia Annotated, relating to prestige license plates and special plates for certain persons and vehicles, so as to provide for a special license plate for women veterans; to provide for definitions; to provide for the issuance of a special license plate to the spouse of an eligible person under certain circumstances; to provide for special license plates for the Omega Psi Phi Fraternity, Inc.; and Hampton University; to provide for special license plates for Zeta Phi Beta Sorority, Inc., to provide for a special license plate to support the law enforcement division of the Department of Natural Resources; to provide for a special license plate promoting marine habitat conservation; to provide for a special license plate for the Georgia Pet Foundation; to provide for related matters; to provide for an effective date; to require a two-thirds' majority vote for passage of certain provisions in accordance with constitutional requirements; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article 3 of Chapter 2 of Title 40 of the Official Code of Georgia Annotated, relating to prestige license plates and special plates for certain persons and vehicles, is amended by revising Code Section 40-2-85.1, relating to special and distinctive license plates for veterans, as follows:

"40-2-85.1.

(a) For purposes of this Code section, the term:

(1) 'Military medal award' means the following medals, decorations, or other recognition of honor for military service awarded by a branch of the United States military:

(A) Medal of Honor;

(B) Bronze Star Medal;

(C) Silver Star Medal;

(D) Distinguished Service Cross;

(E) Navy Cross;

(F) Air Force Cross;

(G) Defense Distinguished Service Medal;

(H) Homeland Security Distinguished Service Medal;

(I) Distinguished Service Medal;

(J) Navy Distinguished Service Medal;

(K) Air Force Distinguished Service Medal;

(L) Coast Guard Distinguished Service Medal;

(M) Defense Superior Service Medal;

(N) Legion of Merit;

(O) Distinguished Flying Cross;

(P) Purple Heart; ~~and~~

(Q) Air Medal; and

(R) Soldier's Medal.

(2) 'Served during active military combat' means active duty service in World War I, World War II, the Korean War, the Vietnam War, Operation Desert Storm, the Global War on Terrorism as defined by Presidential Executive Order 13289, Section 2, the war in Afghanistan, or the war in Iraq, which includes either Operation Iraqi Freedom or Operation Enduring Freedom.

(3) 'Veteran' means a former member of the armed forces of the United States who is discharged from the armed forces under conditions other than dishonorable.

(4) 'Woman veteran' and 'women veterans' means former members of the armed forces of the United States who are female and discharged from the armed forces under conditions other than dishonorable.

(b)(1) Motor vehicle and trailer owners who are veterans ~~of the armed forces of the United States,~~ or women veterans, who have received a military medal award, or ~~persons~~ who served during active military combat shall be eligible to receive special and distinctive vehicle license plates for private passenger cars, motorcycles, trucks, or recreational vehicles used for personal transportation. Such license plates shall be issued in compliance with the state motor vehicle laws relating to registration and licensing of motor vehicles as prescribed in Article 2 of this chapter.

(2)(A) Motor vehicle and trailer owners who are veterans or women veterans, who have received a military medal award, or who served during active military combat shall be issued upon application for and upon compliance with the state motor vehicle laws relating to registration and licensing of motor vehicles a veteran's license plate, a woman veteran's license plate, a military medal award recipient license plate, or a commemorative service license plate for service during active military combat. One

such license plate shall be issued without the requisite registration fee, manufacturing fee, or annual registration fee.

(B) Each member or former member of the armed forces of the United States listed in this subsection shall be entitled to no more than one such free license plate at a time; provided, however, that upon payment of a manufacturing fee of $25.00, a member shall be entitled to one additional such license plate. For each additional license plate for which a $25.00 manufacturing fee is required, there shall be an additional annual registration fee of $25.00, and such ~~which~~ fee shall be collected by the county tag agent at the time of collection of other registration fees and shall be remitted to the state as provided in Code Section 40-2-34.

(c) The commissioner shall design a veteran's license plate, a woman veteran's license plate, a military medal award recipient license plate, and a license plate to commemorate service with the United States armed forces during active military combat. The commissioner shall promulgate such rules and regulations as may be necessary to enforce compliance with all state license laws relating to the use and operation of private passenger cars, motorcycles, trucks, and trailers before issuing ~~these~~ such license plates in lieu of the regular Georgia license plates. The manufacturing fee for such special and distinctive license plates shall be $25.00. The commissioner is specifically authorized to promulgate all rules and regulations necessary to ensure compliance in instances where such vehicles have been transferred or sold. Except as provided in subsection (e) of this Code section, such plates shall be nontransferable.

(d) The special and distinctive vehicle license plates shall be as prescribed in Article 2 of this chapter for private passenger cars, motorcycles, trucks, recreational vehicles, and trailers used for personal transportation. Such plates shall contain such words or symbols, in addition to the numbers and letters prescribed by law, so as to identify distinctively the owners ~~as~~ who are veterans ~~of the armed forces of the United States~~, who are recipients of a military medal award, or ~~persons~~ who served during active military combat and shall additionally identify distinctly the owner as a ~~veteran~~ current or former member of one of the following branches of the armed forces of the United States: Army, Navy, Marines, Air Force, or Coast Guard.

(e) The license plate issued pursuant to this Code section shall be transferred between vehicles as provided in Code Section 40-2-80. The spouse of a deceased veteran ~~of the armed forces of the United States~~ or of a deceased person who received a military medal award or who served during active military combat shall continue to be eligible to be issued a distinctive personalized license plate as provided in this Code section for any vehicle owned by such ~~veteran~~ person, ownership of which is transferred to the surviving spouse or for any other vehicle owned by such surviving spouse either at the time of the qualifying

~~veteran's~~ person's death or acquired thereafter, so long as such ~~person~~ surviving spouse does not remarry.

(e.1) The spouse of any person eligible to be issued a special license plate under this Code section shall also be eligible for such license plate, provided that no motor vehicle is registered in the name of the eligible person and all other requirements relating to registration and licensing relative to motor vehicles as prescribed in Article 2 of this chapter have been satisfied.

(f) Special license plates issued under this Code section, except as provided in subparagraph (b)(2)(A) of this Code section, shall be renewed annually with a revalidation decal as provided in Code Section 40-2-31 without payment of an additional $25.00 annual registration fee."

SECTION 2.

Said article is further amended in Code Section 40-2-86 of the Official Code of Georgia Annotated, relating to special license plates promoting certain beneficial projects and supporting certain worthy agencies, funds, or nonprofit corporations with proceeds disbursed to the general fund and the agency, fund, or nonprofit corporation, by adding three new paragraphs to subsection (l), adding a new paragraph to subsection (m), and revising subsection (n) as follows:

"(52) A special license plate honoring the Omega Psi Phi Fraternity, Inc. The funds raised by the sale of this special license plate shall be disbursed to the Georgia State Omega Psi Phi Foundation.

(53) A special license plate honoring Hampton University. The funds raised by the sale of this special license plate shall be disbursed to the Hampton University Atlanta Chapter Alumni Association.

(54) A special license plate honoring Zeta Phi Beta Sorority, Inc. The funds raised by the sale of this special license plate shall be disbursed to the Zeta National Education Foundation, Inc."

(13) A special license plate to support the law enforcement division of the Department of Natural Resources in its protection of wildlife and natural and cultural resources of this state, enforcement of boating, litter, and waste laws, teaching of hunter and boater education classes, and provision of other public safety services to the citizens of this state. The funds raised by the sale of this special license plate shall be disbursed as provided in paragraph (1) of this subsection to the Department of Natural Resources for use by the law enforcement division for the purposes provided for in this paragraph."

"(n)(1) The General Assembly recognizes that Code Section 12-3-600 mandates that the best interests of the state are served by providing for the conservation of nongame species

of wildlife and has determined that the following special license plates supporting the agencies, funds, or nonprofit corporations listed in this subsection shall be issued for the purposes indicated. The special license plates listed in this subsection shall be subject to a special license plate fee and a special license plate renewal fee. The revenue disbursement for the special license plates listed in this subsection shall be as follows:

(A) Special license plate fee – $25.00 of which $5.00 is to be deposited into the general fund, $1.00 is to be paid to the local county tag agent, and $19.00 is to be dedicated to the sponsoring agency, fund, or nonprofit corporation; and

(B) Special license plate renewal fee – $25.00 of which $5.00 is to be deposited into the general fund and $20.00 is to be dedicated to the sponsoring agency, fund, or nonprofit corporation.

(2) ~~Special license plates~~ A special license plate promoting the Nongame-Endangered Wildlife Program of the Department of Natural Resources. The funds raised by the sale of ~~these~~ this special license ~~plates~~ plate shall be disbursed to the Nongame Wildlife Conservation and Wildlife Habitat Acquisition Fund of the Department of Natural Resources for the purposes enumerated in subsection (b) of Code Section 12-3-602. Such license ~~plates~~ plate shall not include a space for a county name decal but shall instead bear the legend 'Give Wildlife a Chance' in lieu of the name of the county of issuance.

(3) A special license plate promoting conservation and enhancement of trout populations. The funds raised by the sale of this special license plate shall be disbursed to the Wildlife Resources Division of the Department of Natural Resources to supplement trout restoration and management programs.

(4) A special license plate supporting the Bobwhite Quail Restoration Initiative. The funds raised by the sale of this special license plate shall be disbursed to the Wildlife Resources Division of the Department of Natural Resources to conduct programs designed to enhance the bobwhite quail population in this state. Such programs may include the creation of habitat demonstration areas on state managed wildlife lands, education programs, technical assistance to private landowners in the creation and maintenance of bobwhite quail habitats on their lands, and projects to encourage public support for the license plate and the activities it funds. The Department of Natural Resources may enter into such contractual agreements as may be appropriate to further the objectives of the Bobwhite Quail Restoration Initiative, including entering into contractual agreements whereby private landowners, public agencies, or corporate entities create, preserve, or enhance habitat for bobwhite quail in return for the payment of incentives. Such license plate shall not include a space for a county decal but shall instead bear the legend 'Support Wildlife' in lieu of the name of the county of issuance.

(5) A special license plate promoting marine habitat conservation, restoration, and enhancement. The funds raised by the sale of this special license plate shall be disbursed to the Coastal Resources Division of the Department of Natural Resources to supplement marine habitat conservation, restoration, and enhancement projects undertaken to increase the abundance of marine fish and invertebrate species.

(6) A special license plate promoting a dog and cat reproductive sterilization program for a nonprofit corporation. The funds raised by the sale of this special license plate shall be disbursed to the Georgia Pet Foundation to be used for dog and cat reproductive sterilization, including, but not limited to, grants to nonprofit corporations and vouchers for discounted veterinary sterilization services."

SECTION 3.

(a) This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval, except as otherwise provided in subsection (b) of this section.

(b) In accordance with the requirements of Article III, Section IX, Paragraph VI(n) of the Constitution of the State of Georgia, Section 2 of this Act amending subsections (l), (m), and (n) of Code Section 40-2-86 of the Official Code of Georgia Annotated shall not become law unless it receives the requisite two-thirds' majority vote in both the Senate and the House of Representatives.

SECTION 4.

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

House Bill 769 (AS PASSED HOUSE AND SENATE)

By: Representatives Hawkins of the 27th, Rogers of the 29th, Houston of the 170th, Dunahoo of the 30th, Jones of the 167th, and others

A BILL TO BE ENTITLED

AN ACT

To provide ad valorem exemptions for certain motor vehicles; to amend Part 7 of Article 10 of Chapter 5 of Title 48 of the Official Code of Georgia Annotated, relating to watercraft held in inventory, so as to provide for an exemption from ad valorem taxation for certain watercraft and all-terrain vehicles held in inventory for sale or resale; to provide for related matters; to provide for an effective date and applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Part 7 of Article 10 of Chapter 5 of Title 48 of the Official Code of Georgia Annotated, relating to watercraft held in inventory, is amended by revising Code Section 48-5-504.40, relating to watercraft held in inventory for resale exempt from taxation for limited period of time, as follows:

"48-5-504.40.

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

(1) 'All-terrain vehicle' means any motorized vehicle designed for off-road use which is equipped with four low-pressure tires, a seat designed to be straddled by the operator, and handlebars for steering.

~~(1)~~(2) 'Dealer' means any person who is engaged in the business of selling watercraft or all-terrain vehicles at retail.

~~(2)~~(3) 'Watercraft' means any vehicle which is self-propelled or which is capable of self-propelled water transportation, or both.

(b) Watercraft and all-terrain vehicles owned by a dealer and held in inventory for sale or resale shall constitute a separate classification of tangible property for ad valorem taxation purposes. The procedures prescribed in this chapter for returning watercraft or all-terrain vehicles for ad valorem taxation, determining the application rates for taxation, and collecting the ad valorem taxes imposed on watercraft or all-terrain vehicles do not apply

to watercraft or all-terrain vehicles owned by a dealer and held in inventory for sale or resale. ~~For the period commencing January 1, 2016, and concluding December 31, 2019,~~ ~~such~~ Such watercraft or all-terrain vehicles owned by a dealer and held in inventory for sale or resale shall not be returned for ad valorem taxation and shall not be taxed, and no taxes shall be collected on such watercraft or all-terrain vehicles until ~~it is~~ they are transferred and then otherwise, if at all, ~~becomes~~ become subject to taxation as provided in this chapter.″

SECTION 2.

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval and shall apply to all tax years beginning on and after January 1, 2017.

SECTION 3.

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

House Bill 862 (AS PASSED HOUSE AND SENATE)

By: Representatives Knight of the 130th, Powell of the 171st, Harrell of the 106th, Hitchens of the 161st, and Houston of the 170th

A BILL TO BE ENTITLED

AN ACT

To amend provisions of the Official Code of Georgia Annotated relating to disabled veterans; to amend Chapter 2 of Title 40 of the Official Code of Georgia Annotated, relating to registration and licensing of motor vehicles, so as to clarify the definition of disabled veteran; to amend Chapter 5 of Title 48 of the Official Code of Georgia Annotated, relating to ad valorem taxation of property, so as to clarify the definition of disabled veteran; to provide for related matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 2 of Title 40 of the Official Code of Georgia Annotated, relating to registration and licensing of motor vehicles, is amended by revising subsection (a) of Code Section 40-2-69, relating to free license plates and revalidation decals for disabled veterans, as follows:

"(a) Any disabled veteran who is a citizen and resident of this state shall, upon application therefor, be issued a free motor vehicle license plate. As used in this Code section, the term 'disabled veteran' ~~means any veteran who was discharged under honorable conditions and who has been adjudicated by the United States Department of Veterans Affairs as being 100 percent totally disabled or as being less than 100 percent totally disabled but is compensated at the 100 percent level due to individual unemployability and is entitled to receive a statutory award from the United States Department of Veterans Affairs for:~~

~~(1) Loss or permanent loss of use of one or both feet;~~

~~(2) Loss or permanent loss of use of one or both hands;~~

~~(3) Loss of sight in one or both eyes; or~~

~~(4) Permanent impairment of vision of both eyes of the following status: central visual acuity of 20/200 or less in the better eye, with corrective glasses, or central visual acuity of more than 20/200 if there is a field defect in which the peripheral field has contracted to such an extent that the widest diameter of visual field subtends on angular distance no~~

~~greater than 20 degrees in the better eye~~ shall have the same meaning as that term is defined in paragraph (1) of subsection (a) of Code Section 48-5-48.″

SECTION 2.

Chapter 5 of Title 48 of the Official Code of Georgia Annotated, relating to ad valorem taxation of property, is amended by revising paragraph (1) of subsection (a) of Code Section 48-5-48, relating to the homestead exemption for disabled veterans, as follows:

″(a) As used in this Code section, the term 'disabled veteran' means:

(1) Any veteran who is a citizen and a resident of this state who was discharged under honorable conditions and who has been adjudicated by the United States Department of Veterans Affairs as having a service related disability that renders such veteran as being 100 percent totally disabled or as being less than 100 percent totally disabled but is compensated at the 100 percent level due to individual unemployability ~~and~~ or is entitled to receive a statutory award from the United States Department of Veterans Affairs for:

(A) Loss or permanent loss of use of one or both feet;

(B) Loss or permanent loss of use of one or both hands;

(C) Loss of sight in one or both eyes; or

(D) Permanent impairment of vision of both eyes of the following status: central visual acuity of 20/200 or less in the better eye, with corrective glasses, or central visual acuity of more than 20/200 if there is a field defect in which the peripheral field has contracted to such an extent that the widest diameter of visual field subtends on angular distance no greater than 20 degrees in the better eye;″

SECTION 3.

Said chapter is further amended by revising subsection (a) of Code Section 48-5-478, relating to the exemption from ad valorem taxation for motor vehicles owned or leased by a disabled veteran, as follows:

″(a) A motor vehicle owned by or leased to a disabled veteran who is a citizen and resident of this state and on which such disabled veteran actually places the free disabled veteran motor vehicle license plate he or she receives pursuant to Code Section 40-2-69 is hereby exempted from all ad valorem taxes for state, county, municipal, and school purposes. As used in this Code section, the term 'disabled veteran' ~~means any veteran who was discharged under honorable conditions and who has been adjudicated by the United States Department of Veterans Affairs as being 100 percent totally disabled or as being less than 100 percent totally disabled but is being compensated at the 100 percent level due to individual unemployability and is entitled to receive service connected benefits and any~~

~~veteran who is receiving or who is entitled to receive a statutory award from the United States Department of Veterans Affairs for:~~

~~(1) Loss or permanent loss of use of one or both feet;~~

~~(2) Loss or permanent loss of use of one or both hands;~~

~~(3) Loss of sight in one or both eyes; or~~

~~(4) Permanent impairment of vision of both eyes of the following status: central visual acuity of 20/200 or less in the better eye, with corrective glasses, or central visual acuity of more than 20/200 if there is a field defect in which the peripheral field has contracted to such an extent that the widest diameter of visual field subtends on angular distance no greater than 20 degrees in the better eye~~ shall have the same meaning as that term is defined in paragraph (1) of subsection (a) of Code Section 48-5-48.″

SECTION 4.

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

SECTION 5.

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

House Bill 935 (AS PASSED HOUSE AND SENATE)

By: Representatives Harrell of the 106th, Powell of the 171st, Stephens of the 164th, Knight of the 130th, Duncan of the 26th, and others

A BILL TO BE ENTITLED

AN ACT

To amend Part 1 of Article 2 of Chapter 5 of Title 48 of the Official Code of Georgia Annotated, relating to exemptions from ad valorem tax, so as to add certain fulfillment centers to properties eligible for a freeport exemption; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Part 1 of Article 2 of Chapter 5 of Title 48 of the Official Code of Georgia Annotated, relating to exemptions from ad valorem tax, is amended by revising subsection (b) of Code Section 48-5-48.1, relating to an exemption for tangible personal property inventory, as follows:

"(b) The application for the level 1 freeport exemption shall provide for:

(1) A schedule of the inventory of goods in the process of manufacture or production which shall include all partly finished goods and raw materials held for direct use or consumption in the ordinary course of the taxpayer's manufacturing or production business in the State of Georgia;

(2) A schedule of the inventory of finished goods manufactured or produced within the State of Georgia in the ordinary course of the taxpayer's manufacturing or production business when held by the original manufacturer or producer of such finished goods; ~~and~~

(3) A schedule of the inventory of finished goods which on January 1 are stored in a warehouse, dock, or wharf, whether public or private, and which are destined for shipment outside the State of Georgia and the inventory of finished goods which are shipped into the State of Georgia from outside this state and which are stored for transshipment to a final destination outside this state. The information required by Code Section 48-5-48.2 to be contained in the official books and records of the warehouse, dock, or wharf where such property is being stored, which official books and records are required to be open to the inspection of taxing authorities of this state and political

subdivisions thereof, shall not be required to be included as a part of or to accompany the application for such exemption; and

(4) A schedule of the stock in trade of a fulfillment center which on January 1 are stored in the fulfillment center. The information required by Code Section 48-5-48.2 to be contained in the official books and records of the fulfillment center where such property is being stored, which official books and records are required to be open to the inspection of the taxing authorities of this state and political subdivisions thereof, shall not be required to be included as a part of or to accompany the application for such exemption."

SECTION 2.

Said part is further amended by revising Code Section 48-5-48.2, relating to the level 1 freeport exemption, as follows:

"48-5-48.2.

(a) This Code section shall be known and may be cited as the 'Level 1 Freeport Exemption.'

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

(1) 'Destined for shipment to a final destination outside this state' means, for purposes of a level 1 freeport exemption, that portion or percentage of an inventory of finished goods which the taxpayer can establish, through a historical sales or shipment analysis, either of which utilizes information from the preceding calendar year, or other reasonable, documented method, is reasonably anticipated to be shipped to a final destination outside this state. Such other reasonable, documented method may only be utilized in the case of a new business, in the case of a substantial change in scope of an existing business, or in other unusual situations where a historical sales or shipment analysis does not adequately reflect future anticipated shipments to a final destination outside this state. It is not necessary that the actual final destination be known as of January 1 in order to qualify for the exemption.

(2) 'Finished goods' means, for purposes of a level 1 freeport exemption, goods, wares, and merchandise of every character and kind but shall not include unrecovered, unextracted, or unsevered natural resources or raw materials or goods in the process of manufacture or production or the stock in trade of a retailer.

(3) 'Foreign merchandise in transit' means, for purposes of a level 1 freeport exemption, any goods which are in international commerce where the title has passed to a foreign purchaser and the goods are temporarily stored in this state while awaiting shipment overseas.

(4) 'Fulfillment center' means, for purposes of a level 1 freeport exemption, a business location in Georgia which is used to pack, ship, store, or otherwise process tangible

personal property sold by electronic, Internet, telephonic, or other remote means, provided that such a business location does not allow customers to purchase or receive goods onsite at such business location.

(5) 'Raw materials' means, for purposes of a level 1 freeport exemption, any material, whether crude or processed, that can be converted by manufacture, processing, or a combination thereof into a new and useful product but shall not include unrecovered, unextracted, or unsevered natural resources.

(6) 'Stock in trade of a fulfillment center' means, for purposes of a level 1 freeport exemption, goods, wares, and merchandise held by one in the business of making sales of such goods when such goods are held or stored at a fulfillment center.

~~(5)~~(7) 'Stock in trade of a retailer' means, for purposes of a level 1 freeport exemption, finished goods held by one in the business of making sales of such goods at retail in this state, within the meaning of Chapter 8 of this title, when such goods are held or stored at a business location from which such retail sales are regularly made. Goods stored in a warehouse, dock, or wharf, including a warehouse or distribution center which is part of or adjoins a place of business from which retail sales are regularly made, shall not be considered stock in trade of a retailer to the extent that the taxpayer can establish, through a historical sales or shipment analysis, either of which utilizes information from the preceding calendar year, or other reasonable, documented method, the portion or percentage of such goods which is reasonably anticipated to be shipped outside this state for resale purposes.

(c) The governing authority of any county or municipality may, subject to the approval of the electors of such political subdivision, exempt from ad valorem taxation, including all such taxes levied for educational purposes and for state purposes, all or any combination of the following types of tangible personal property:

(1) Inventory of goods in the process of manufacture or production which shall include all partly finished goods and raw materials held for direct use or consumption in the ordinary course of the taxpayer's manufacturing or production business in this state. The exemption provided for in this paragraph shall apply only to tangible personal property which is substantially modified, altered, or changed in the ordinary course of the taxpayer's manufacturing, processing, or production operations in this state. For purposes of this paragraph, the following activities shall constitute substantial modification in the ordinary course of manufacturing, processing, or production operations:

(A) The cleaning, drying, pest control treatment, or segregation by grade of grain, peanuts or other oil seeds, or cotton;

(B) The remanufacture of aircraft engines or aircraft engine parts or components, meaning the substantial overhauling or rebuilding of aircraft engines or aircraft engine parts or components; and

(C) The blending of fertilizer bulk materials into a custom mixture, whether performed at a commercial fertilizer blending plant, retail outlet, or any application site;

(2) Inventory of finished goods manufactured or produced within this state in the ordinary course of the taxpayer's manufacturing or production business when held by the original manufacturer or producer of such finished goods. The exemption provided for in this paragraph shall be for a period not exceeding 12 months from the date such property is produced or manufactured; ~~or~~

(3) Inventory of finished goods which, on January 1, are stored in a warehouse, dock, or wharf, whether public or private, and which are destined for shipment to a final destination outside this state and inventory of finished goods which are shipped into this state from outside this state and stored for transshipment to a final destination outside this state, including foreign merchandise in transit. The exemption provided for in this paragraph shall be for a period not exceeding 12 months from the date such property is stored in this state. Such period shall be determined based on application of a first-in, first-out method of accounting for the inventory. The official books and records of the warehouse, dock, or wharf where such property is being stored shall contain a full, true, and accurate inventory of all such property, including the date of the receipt of the property, the date of the withdrawal of the property, the point of origin of the property, and the point of final destination of the same, if known. The official books and records of any such warehouse, dock, or wharf, whether public or private, pertaining to any such property for which a freeport exemption has been claimed shall be at all times open to the inspection of all taxing authorities of this state and of any political subdivision of this state; or

(4) Stock in trade of a fulfillment center which, on January 1, are stored in a fulfillment center and which are made available to remote purchasers who may make such purchases by electronic, Internet, telephonic, or other remote means, and where such stock in trade of a fulfillment center will be shipped from the fulfillment center and delivered to the purchaser at a location other than the location of the fulfillment center. The exemption provided for in this paragraph shall be for a period not exceeding 12 months from the date such property is stored in this state. Such period shall be determined based on application of a first-in, first-out method of accounting for the inventory. The official books and records of the fulfillment center where such property is being stored shall contain a full, true, and accurate inventory of all such property, including the date of the receipt of the property and the date of the withdrawal of the property. The official books and records

of any such fulfillment center pertaining to any such property for which a freeport exemption has been claimed shall be at all times open to the inspection of all taxing authorities of this state and of any political subdivision of this state.

(d) Whenever the governing authority of any county or municipality wishes to exempt such tangible property from ad valorem taxation, as provided in this Code section, the governing authority thereof shall notify the election superintendent of such political subdivision, and it shall be the duty of said election superintendent to issue the call for an election for the purpose of submitting to the electors of the political subdivision the question of whether such exemption shall be granted. The referendum ballot shall specify as separate questions the type or types of property as defined in this Code section which are being proposed to be exempted from taxation. The election superintendent shall issue the call and shall conduct the election on a date and in the manner authorized under Code Section 21-2-540.

(e) The governing authority of any county or municipality wherein an exemption has been approved by the voters as provided in this Code section may, by appropriate resolution, a copy of which shall be immediately transmitted to the state revenue commissioner, exempt from taxation 20 percent, 40 percent, 60 percent, 80 percent or all of the value of such tangible personal property as defined in this Code section; provided, however, that once an exemption has been granted, no reduction in the percent of the value of such property to be exempted may be made until and unless such exemption is revoked or repealed as provided in this Code section. An increase in the percent of the value of the property to be exempted may be accomplished by appropriate resolution of the governing authority of such county or municipality, and a copy thereof shall be immediately transmitted to the state revenue commissioner, provided that such increase shall be in increments of 20 percent, 40 percent, 60 percent, or 80 percent of the value of such tangible personal property as defined in this Code section, within the discretion of such governing authority.

(f)(1) If more than one-half of the votes cast on such question are in favor of such exemption, then such exemption may be granted by the governing authority commencing on the first day of any ensuing calendar year; otherwise, such exemption may not be granted. This paragraph is intended to clearly provide that following approval of such exemption in such referendum, such exemption may be granted on the first day of any calendar year following the year in which such referendum was conducted. This paragraph shall not be construed to imply that the granting of such exemption could not previously be delayed to any such calendar year.

(2) Exemptions may only be revoked by a referendum election called and conducted as provided in this Code section, provided that the call for such referendum shall not be issued within five years from the date such exemptions were first granted and, if the

results of said election are in favor of the revocation of such exemptions, then such revocation shall be effective only at the end of a five-year period from the date of such referendum.

(g) Level 1 freeport exemptions effected pursuant to this Code section may be granted either in lieu of or in addition to level 2 freeport exemptions under Code Section 48-5-48.6.

(h) The commissioner shall by regulation adopt uniform procedures and forms for the use of local officials in the administration of this Code section."

SECTION 3.

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

House Bill 960 (AS PASSED HOUSE AND SENATE)

By: Representatives Kelley of the 16th, Sims of the 123rd, Dempsey of the 13th, Harrell of the 106th, Houston of the 170th, and others

A BILL TO BE ENTITLED

AN ACT

To amend Chapter 2 of Title 48 of the Official Code of Georgia Annotated, relating to state administration and collection of revenue, so as to provide for confidentiality of certain tax information; to provide for an interest rate on delinquent payments that adjusts to reflect changes in the prime rate; to adjust the penalties for nonpayment of ad valorem taxes to offset the reduction in interest rate; to provide for the distribution of penalties between taxing jurisdictions; to provide for additional procedures, conditions, and limitations; to provide for notice to political subdivisions upon the filing of certain tax refund requests; to provide for confidentiality of taxpayer information; to amend Chapter 13A of Title 50 of the Official Code of Georgia Annotated, relating to tax tribunals, so as to provide for automatic transfer to the Georgia Tax Tribunal in certain cases; to provide for related matters; to provide for an effective date and applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 2 of Title 48 of the Official Code of Georgia Annotated, relating to state administration and collection of revenue, is amended by revising subsection (b) and adding a new subsection to Code Section 48-2-15, relating to confidential information, to read as follows:

"(b) This Code section shall not:

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

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

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

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

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

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

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

SECTION 2.

Said chapter is further amended by revising subsections (a) and (f) and adding new subsections in Code Section 48-2-35, relating to refunds of taxes and fees determined to have been erroneously or illegally assessed and collected, to read as follows:

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

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

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

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

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

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

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

(3) Any information supplied to a political subdivision designee pursuant to this subsection shall retain, in the hands of the local official, its privileged and confidential nature to the same extent and under the same conditions as such information is privileged and confidential in the hands of the commissioner, pursuant to Code Section 48-2-15. It shall be the responsibility of the political subdivision designee, and not the department, to protect privileged and confidential information received under this subsection. Any person who divulges any tax information obtained under this subsection shall be subject to the same civil and criminal penalties as provided for divulgence of tax information by employees of the department. Though privileged and confidential information shall not be disclosed, the political subdivision designee may make reasonable budgetary

recommendations to elected officials, city managers, and tax officials in political subdivisions based on the confidential information furnished. The department shall not be subject to any criminal or civil liability for the unauthorized divulgence of privileged and confidential information by a political subdivision designee. Notwithstanding the foregoing, in the event all or any portion of the refund claim of local significance is for a tax levied under Part 1 of Article 3 of Chapter 8 of this title, the affected county shall not be in violation of this confidential provision if it notifies all municipal political subdivision designees in the county that such notification has been received from the department.

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

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

SECTION 3.

Said chapter is further amended by revising Code Section 48-2-40, relating to the rate of interest on past due taxes, as follows:

″48-2-40.

Except as otherwise expressly provided by law, taxes owed the state or any local taxing jurisdiction shall bear interest ~~at the rate of 1 percent per month~~ at an annual rate equal to the bank prime loan rate as posted by the Board of Governors of the Federal Reserve System in statistical release H. 15 or any publication that may supersede it, plus 3 percent, to accrue monthly. Such annual interest rate shall be determined for each calendar year based on the first weekly posting of statistical release H. 15 on or after January 1 of each calendar year. Interest shall begin to accrue from the date the tax is due until the date the tax is paid. For the purposes of this Code section, any period of less than one month shall be considered to be one month. This Code section shall also apply to alcoholic beverage taxes.″

SECTION 4.

Said chapter is further amended by revising subsection (b) of Code Section 48-2-44, relating to penalties and interest on failure to file return or timely pay taxes held in trust for the state, as follows:

"(b)(1) In any instance in which any person willfully fails, on or after July 1, 1981, to pay, within ~~90~~ 120 days of the date when due, any ad valorem tax owed the state or any local government, such person shall pay, in the absence of a specific statutory civil penalty for the failure, a penalty of ~~10~~ 5 percent of the amount of tax due and not paid at the time such penalty is assessed, together with interest as specified by law. ~~This 10 percent penalty~~ After 120 days from the imposition of the initial penalty, an additional penalty of 5 percent of any tax amount remaining due shall be imposed, together with interest as specified by law. If any tax amount remains due after 120 days from the imposition of such additional penalty, a penalty of 5 percent shall be imposed, together with interest as specified by law. Should any tax amount remain due 120 days after such date, a penalty of 5 percent shall be imposed, together with interest as specified by law. The aggregate amount of penalties imposed pursuant to this subsection shall not exceed an amount equal to 20 percent of the principal amount of the tax originally due. These penalties shall not, however, apply in the case of:

(A) Ad valorem taxes of $500.00 or less on homestead property as defined in Part 1 of Article 2 of Chapter 5 of this title; or

(B) With respect to tax year 1986 and future tax years, ad valorem taxes of any amount on homestead property as defined in Part 1 of Article 2 of Chapter 5 of this title, if the homestead property was during the tax year acquired by a new owner who did not receive a tax bill for the tax year and who immediately before acquiring the homestead property resided outside the State of Georgia and if the taxes are paid within one year following the due date.

(2) Any city or county authorized as of April 22, 1981, by statute or constitutional amendment to receive a penalty of greater than 10 percent for failure to pay an ad valorem tax is authorized to continue to receive that amount.

(3) With respect to all penalties and interest received by the tax commissioner on or after July 1, 1998, unless otherwise specifically provided for by general law, the tax commissioner shall distribute penalties collected and interest collected or earned as follows:

(A) Penalties collected for failure to ~~return property for ad valorem taxation or for failure to pay ad valorem taxes, and interest earned by the tax commissioner on taxes collected but not yet disbursed,~~ pay ad valorem taxes attributable to the Board of Education or independent school district shall be paid into the county treasury in the

same manner and at the same time the tax is collected and distributed to the county, and they shall remain the property of the county; ~~and~~

(B) Interest earned by the tax commissioner on taxes collected but not yet disbursed shall be distributed pro rata based on each taxing jurisdiction's share of the total amount upon which the interest was computed; and

~~(B)~~(C) Except as otherwise provided in subparagraph (A) of this paragraph, penalties collected for failure to return property for ad valorem taxation or failure to pay ad valorem taxes, and interest ~~Interest~~ collected on delinquent ad valorem taxes, shall be distributed pro rata based on each taxing jurisdiction's share of the total tax on which the penalty or interest was computed."

SECTION 5.

Chapter 13A of Title 50 of the Official Code of Georgia Annotated, relating to tax tribunals, is amended by adding a new Code section to read as follows:

"50-13A-19.1.

(a) The tribunal shall docket the declaratory judgments of the revenue commissioner pursuant to subsection (h) of Code Section 48-2-35 as actions in the tribunal without the filing of a petition for relief.

(b)(1) The tribunal shall determine by interlocutory order the party at fault for the delay in finally determining a claim for refund.

(2) If the tribunal determines that the Department of Revenue is primarily at fault, the order shall require that the Department of Revenue pay all interest due to the taxpayer on the claim for refund, including the interest due on the local sales and use tax deemed to have been illegally or erroneously collected. The tribunal shall thereafter remand the matter back to the Department of Revenue for determination on the underlying claim for refund.

(3) If the tribunal determines that the taxpayer who made the claim for refund is primarily at fault, the order shall prohibit the accrual of any interest due to the taxpayer on the finally determined claim for refund. The tribunal shall thereafter remand the matter back to the Department of Revenue for determination on the underlying claim for refund.

(4) If the tribunal determines that the delay is justified, the order shall remand the matter back to the Department of Revenue for determination and for further hearings at the tribunal's discretion.

(c) The tribunal, at its discretion, may award reasonable attorneys' fees to either party in such proceedings.

(d) Orders of the tribunal issued pursuant to this Code section shall be excluded from the provisions of subsection (d) of Code Section 50-13A-15.

(e) Except as otherwise provided in this Code section, such actions shall follow the procedures and tribunal rules applicable to other proceedings within the tribunal."

SECTION 6.

(a) This Act shall become effective on July 1, 2016.

(b) The new penalty and interest rates provided in Sections 2, 3, and 4 of this Act shall apply to penalties and interest accrued on or after the effective date of this Act.

(c) The new notification requirement and the automatic transfer to the Georgia Tax Tribunal requirement contained in Section 2 of this Act regarding a refund claim of local significance shall apply to claims for refund received by the department on or after the effective date of this Act.

SECTION 7.

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

House Bill 987 (AS PASSED HOUSE AND SENATE)

By: Representatives McCall of the 33rd and Powell of the 171st

A BILL TO BE ENTITLED

AN ACT

To amend Code Section 48-5-7.4 of the Official Code of Georgia Annotated, relating to bona fide conservation use property, residential transitional property, application procedures, penalties for breach of covenant, classification on tax digest, and annual report, so as to provide a clarification of an existing exception to a breach of covenant for bona fide conservation use property; to provide for a new exception to a breach of covenant for bona fide conservation use property; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Code Section 48-5-7.4 of the Official Code of Georgia Annotated, relating to bona fide conservation use property, residential transitional property, application procedures, penalties for breach of covenant, classification on tax digest, and annual report, is amended by revising subsection (o) and by revising subsection (p) by deleting "or" at the end of paragraph (8), by deleting the period and inserting "; or" at the end of paragraph (9), and by adding a new paragraph to read as follows:

"(o) The transfer of a part of the property subject to a covenant for a bona fide conservation use shall not constitute a breach of a covenant if:

(1) The part of the property so transferred is used for single-family residential purposes, starting within one year of the date of transfer and continuing for the remainder of the covenant period, and the residence is occupied <u>within 24 months from the date of the start</u> by a person who is related within the fourth degree of civil reckoning to an owner of the property subject to the covenant; and

(2) The part of the property so transferred, taken together with any other part of the property so transferred to the same relative during the covenant period, does not exceed a total of five acres;

and in any such case the property so transferred shall not be eligible for a covenant for bona fide conservation use, but shall, if otherwise qualified, be eligible for current use

assessment as residential transitional property and the remainder of the property from which such transfer was made shall continue under the existing covenant until a terminating breach occurs or until the end of the specified covenant period."

"(10) Allowing all or part of the property subject to the covenant to be used to host a not for profit rodeo event to which spectator admission and participant entry fees are charged in an amount that in aggregate does not exceed the cost of hosting such event."

SECTION 2.

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

House Bill 991 (AS PASSED HOUSE AND SENATE)

By: Representatives Hitchens of the 161st, Powell of the 171st, and Williamson of the 115th

A BILL TO BE ENTITLED

AN ACT

To amend Article 4 of Chapter 5 of Title 48 of the Official Code of Georgia Annotated, relating to county taxation, so as to provide that a tax collector or tax commissioner shall waive the collection of penalties and interest incurred upon default that occurred due to a taxpayer's military service in a combat zone if the taxpayer pays the underlying tax liability within 60 days of the end of such military service; to provide a short title; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

This Act shall be known and may be cited as the "Returning Heroes Act."

SECTION 2.

Article 4 of Chapter 5 of Title 48 of the Official Code of Georgia Annotated, relating to county taxation, is amended by adding a new Code section to read as follows:

"48-5-243.

The tax collector or tax commissioner shall waive the collection of any amount due the taxing authorities for which taxes are collected, when such amount represents a penalty or an amount of interest assessed for failure to comply with the laws governing the assessment and collection of ad valorem taxes, if:

(1) The tax collector or tax commissioner determines that the default giving rise to such penalty or interest was due to a taxpayer's military service in the armed forces of the United States in an area designated by the President of the United States by executive order as a combat zone and not due to gross or willful neglect or disregard of the law or of regulations or instructions issued pursuant to the law; and

(2) The taxpayer makes full payment of taxes due, not including penalties and interest, within 60 days of such taxpayer's return from such military service."

SECTION 3.

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

Senate Bill 258

By: Senators Millar of the 40th and Albers of the 56th

AS PASSED

A BILL TO BE ENTITLED

AN ACT

To amend Article 1 of Chapter 8 of Title 31, Chapter 2 of Title 40, and Title 48 of the Official Code of Georgia Annotated, relating to hospital care for the indigent generally, registration and licensing of motor vehicles, and revenue and taxation, respectively, so as to approve rural hospital organizations which provide health care services to underserved areas in this state to receive contributions; to provide for definitions; to provide for tax credits for contributions to rural hospital organizations; to clarify the definition of disabled veteran; to change certain provisions regarding the changing values established by certain appeal or agreement; to provide that the assessed value of property for a taxable year may be lowered by the deciding body based upon the evidence before such body but shall not be increased beyond the assessment value established by the board of tax assessors; to provide an exception; to provide for the amount, nature, limits, and procedures for new tax credits for contributions to rural hospital organizations; to provide for related matters; to provide for automatic repeal, an effective date, and applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article 1 of Chapter 8 of Title 31 of the Official Code of Georgia Annotated, relating to hospital care for the indigent generally, is amended by adding a new Code section to read as follows:

"31-8-9.1.

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

(1) 'Critical access hospital' means a hospital that meets the requirements of the federal Centers for Medicare and Medicaid Services to be designated as a critical access hospital and that is recognized by the department as a critical access hospital for purposes of Medicaid.

(2) 'Rural county' means a county having a population of less than 35,000 according to the United States decennial census of 2010 or any future such census; provided, however, that for counties which contain a military base or installation, the military personnel and their dependents living in such county shall be excluded from the total population of such county for purposes of this definition.

(3) 'Rural hospital organization' means an acute care hospital licensed by the department pursuant to Article 1 of Chapter 7 of this title that:

(A) Provides inpatient hospital services at a facility located in a rural county or is a critical access hospital;

(B) Participates in both Medicaid and medicare and accepts both Medicaid and medicare patients;

(C) Provides health care services to indigent patients;

(D) Has at least 10 percent of its annual net revenue categorized as indigent care, charity care, or bad debt;

(E) Annually files IRS Form 990, Return of Organization Exempt From Income Tax, with the department, or for any hospital not required to file IRS Form 990, the department will provide a form that collects the same information to be submitted to the department on an annual basis;

(F) Is operated by a county or municipal authority pursuant to Article 4 of Chapter 7 of this title or is designated as a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code; and

(G) Is current with all audits and reports required by law.

(b)(1) By December 1 of each year, the department shall approve a list of rural hospital organizations eligible to receive contributions from the tax credit provided pursuant to Code Section 48-7-29.20 and transmit such list to the Department of Revenue.

(2) Before any rural hospital organization is included on the list as eligible to receive contributions from the tax credit provided pursuant to Code Section 48-7-29.20, it shall submit to the department a five-year plan detailing the financial viability and stability of the rural hospital organization. The criteria to be included in the five-year plan shall be established by the department.

(c)(1) A rural hospital organization that receives donations pursuant to Code Section 48-7-29.20 shall:

(A) Utilize such donations for the provision of health care-related services for residents of a rural county or for residents of the area served by a critical access hospital; and

(B) Report on a form provided by the department all contributions received from individual and corporate donors pursuant to Code Section 48-7-29.20 and show the

manner or purpose in which the contributions received were expended by the rural hospital organization.

(2) The department shall annually prepare a report compiling the information received pursuant to paragraph (1) of this subsection for the chairpersons of the House Committee on Ways and Means and the Senate Health and Human Services Committee."

SECTION 2.

Chapter 2 of Title 40 of the Official Code of Georgia Annotated, relating to registration and licensing of motor vehicles, is amended by revising subsection (a) of Code Section 40-2-69, relating to free license plates and revalidation decals for disabled veterans, as follows:

"(a) Any disabled veteran who is a citizen and resident of this state shall, upon application therefor, be issued a free motor vehicle license plate. As used in this Code section, the term 'disabled veteran' ~~means any veteran who was discharged under honorable conditions and who has been adjudicated by the United States Department of Veterans Affairs as being 100 percent totally disabled or as being less than 100 percent totally disabled but is compensated at the 100 percent level due to individual unemployability and is entitled to receive a statutory award from the United States Department of Veterans Affairs for:~~

~~(1) Loss or permanent loss of use of one or both feet;~~

~~(2) Loss or permanent loss of use of one or both hands;~~

~~(3) Loss of sight in one or both eyes; or~~

~~(4) Permanent impairment of vision of both eyes of the following status: central visual acuity of 20/200 or less in the better eye, with corrective glasses, or central visual acuity of more than 20/200 if there is a field defect in which the peripheral field has contracted to such an extent that the widest diameter of visual field subtends on angular distance no greater than 20 degrees in the better eye~~ shall have the same meaning as that term is defined in paragraph (1) of subsection (a) of Code Section 48-5-48."

SECTION 3.

Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is amended by revising paragraph (1) of subsection (a) of Code Section 48-5-48, relating to the homestead exemption for disabled veterans, as follows:

"(a) As used in this Code section, the term 'disabled veteran' means:

(1) Any veteran who is a citizen and a resident of this state who was discharged under honorable conditions and who has been adjudicated by the United States Department of Veterans Affairs as having a service related disability that renders such veteran as being 100 percent totally disabled or as being less than 100 percent totally disabled but is

compensated at the 100 percent level due to individual unemployability ~~and~~ or is entitled to receive a statutory award from the United States Department of Veterans Affairs for:

(A) Loss or permanent loss of use of one or both feet;

(B) Loss or permanent loss of use of one or both hands;

(C) Loss of sight in one or both eyes; or

(D) Permanent impairment of vision of both eyes of the following status: central visual acuity of 20/200 or less in the better eye, with corrective glasses, or central visual acuity of more than 20/200 if there is a field defect in which the peripheral field has contracted to such an extent that the widest diameter of visual field subtends on angular distance no greater than 20 degrees in the better eye;″

SECTION 4.

Said title is further amended by revising subsection (c) of Code Section 48-5-299, relating to ascertainment of taxable property and changing values established by certain appeal or agreement, as follows:

″(c) When the value of real property is reduced or is unchanged from the value on the initial annual notice of assessment or a corrected annual notice of assessment issued by the board of tax assessors and such valuation ~~is~~ has been established as the result of ~~either~~ an appeal decision rendered by the board of equalization, hearing officer, arbitrator, or superior court pursuant to Code Section 48-5-311 or stipulated by written agreement ~~of the parties to such an appeal that this subsection shall apply in any year~~ signed by the board of tax assessors and taxpayer or taxpayer's authorized representative, the new valuation so established by appeal decision or agreement may not be increased by the board of tax assessors during the next two successive years, unless otherwise agreed in writing by both parties, subject to the following exceptions:

(1) This subsection shall not apply to a valuation established by an appeal decision if the taxpayer or his or her authorized representative failed to attend the appeal hearing or provide the board of equalization, hearing officer, or arbitrator with some written evidence supporting the taxpayer's opinion of value;

(2) This subsection shall not apply to a valuation established by an appeal decision or agreement if the taxpayer files a return at a different valuation during the next two successive years;

(3) ~~If~~ Unless otherwise agree in writing by the parties, if the taxpayer files an appeal pursuant to Code Section 48-5-311 during the next two successive years, the board of tax assessors, the board of equalization, hearing officer, or arbitrator may increase or decrease the value of the real property based on the evidence presented by the ~~parties~~ taxpayer during the appeal process; and

(4) The board of tax assessors may increase or decrease the value of the real property if, after a visual on-site inspection of the property, it is found that there have been substantial additions, deletions, or improvements to such property or that there are errors in the board of tax assessors' records as to the description or characterization of the property, or the board of tax assessors finds an occurrence of other material factors that substantially affect the current fair market value of such property."

SECTION 5.

Said title is further amended in subsection (e) of Code Section 48-5-311, relating to creation of county boards of equalization, duties, review of assessments, and appeals, by adding a new paragraph to read as follows:

"(9) Notwithstanding any other provision of law to the contrary, on any real property tax appeal made under this Code section on and after January 1, 2016, the assessed value being appealed may be lowered by the deciding body based upon the evidence presented but cannot be increased from the amount assessed by the county board of tax assessors. This subsection shall not apply to any appeal where the taxpayer files an appeal during a time when subsection (c) of Code Section 48-5-299 is in effect for the assessment being appealed."

SECTION 6.

Said title is further amended by revising subsection (a) of Code Section 48-5-478, relating to the exemption from ad valorem taxation for motor vehicles owned or leased by a disabled veteran, as follows:

"(a) A motor vehicle owned by or leased to a disabled veteran who is a citizen and resident of this state and on which such disabled veteran actually places the free disabled veteran motor vehicle license plate he or she receives pursuant to Code Section 40-2-69 is hereby exempted from all ad valorem taxes for state, county, municipal, and school purposes. As used in this Code section, the term 'disabled veteran' ~~means any veteran who was discharged under honorable conditions and who has been adjudicated by the United States Department of Veterans Affairs as being 100 percent totally disabled or as being less than 100 percent totally disabled but is being compensated at the 100 percent level due to individual unemployability and is entitled to receive service connected benefits and any veteran who is receiving or who is entitled to receive a statutory award from the United States Department of Veterans Affairs for:~~

~~(1) Loss or permanent loss of use of one or both feet;~~

~~(2) Loss or permanent loss of use of one or both hands;~~

~~(3) Loss of sight in one or both eyes; or~~

~~(4) Permanent impairment of vision of both eyes of the following status: central visual acuity of 20/200 or less in the better eye, with corrective glasses, or central visual acuity of more than 20/200 if there is a field defect in which the peripheral field has contracted to such an extent that the widest diameter of visual field subtends on angular distance no greater than 20 degrees in the better eye~~ shall have the same meaning as that term is defined in paragraph (1) of subsection (a) of Code Section 48-5-48.″

SECTION 7.

Said title is further amended by adding a new Code section to Article 2 of Chapter 7, relating to imposition, rate, and computation of income taxes and exemptions, to read as follows:

″48-7-29.20.

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

(1) 'Qualified rural hospital organization expense' means the contribution of funds by an individual or corporate taxpayer to a rural hospital organization for the direct benefit of such organization during the tax year for which a credit under this Code section is claimed.

(2) 'Rural hospital organization' means an organization that is approved by the Department of Community Health pursuant to Code Section 31-8-9.1.

(b) An individual taxpayer shall be allowed a credit against the tax imposed by this chapter for qualified rural hospital organization expenses as follows:

(1) In the case of a single individual or a head of household, 70 percent of the actual amount expended or $2,500.00 per tax year, whichever is less; or

(2) In the case of a married couple filing a joint return, 70 percent of the actual amount expended or $5,000.00 per tax year, whichever is less.

(c) A corporation or other entity shall be allowed a credit against the tax imposed by this chapter for qualified rural hospital organization expenses in an amount not to exceed 70 percent of the actual amount expended or 75 percent of the corporation's income tax liability, whichever is less.

(d) In no event shall the total amount of the tax credit under this Code section for a taxable year exceed the taxpayer's income tax liability. Any unused tax credit shall be allowed the taxpayer against the succeeding five years' tax liability. No such credit shall be allowed the taxpayer against prior years' tax liability.

(e)(1) In no event shall the aggregate amount of tax credits allowed under this Code section exceed $50 million in 2017, $60 million in 2018, and $70 million in 2019.

(2)(A) No more than $4 million of the aggregate limit established by paragraph (1) of this subsection shall be contributed to any individual rural hospital organization in any taxable year. From January 1 to June 30 each taxable year, the commissioner shall only

preapprove contributions submitted by individual taxpayers in an amount not to exceed $2 million, and from corporate donors in an amount not to exceed $2 million. From July 1 to December 31 each taxable year, subject to the aggregate limit in paragraph (1) of this subsection and the individual rural hospital organization limit in this paragraph, the commissioner shall approve contributions submitted by individual taxpayers and corporations or other entities.

(B) In the event an individual or corporate donor desires to make a contribution to an individual rural hospital organization that has received the maximum amount of contributions for that taxable year, the Department of Community Health shall provide the individual or corporate donor with a list, ranked in order of financial need, as determined by the Department of Community Health, of rural hospital organizations still eligible to receive contributions for the taxable year.

(3) For purposes of paragraphs (1) and (2) of this subsection, a rural hospital organization shall notify a potential donor of the requirements of this Code section. Before making a contribution to a rural hospital organization, the taxpayer shall electronically notify the department, in a manner specified by the department, of the total amount of contribution that the taxpayer intends to make to the rural hospital organization. The commissioner shall preapprove or deny the requested amount with 30 days after receiving the request from the taxpayer and shall provide written notice to the taxpayer and rural hospital organization of such preapproval or denial which shall not require any signed release or notarized approval by the taxpayer. In order to receive a tax credit under this Code section, the taxpayer shall make the contribution to the rural hospital organization within 60 days after receiving notice from the department that the requested amount was preapproved. If the taxpayer does not comply with this paragraph, the commissioner shall not include this preapproved contribution amount when calculating the limits prescribed in paragraphs (1) and (2) of this subsection.

(4) Preapproval of contributions by the commissioner shall be based solely on the availability of tax credits subject to the aggregate total limit established under paragraph (1) of this subsection and the individual rural hospital organization limit established under paragraph (2) of this subsection.

(5) Notwithstanding any laws to the contrary, the department shall not take any adverse action against donors to rural hospital organizations if the commissioner preapproved a donation for a tax credit prior to the date the rural hospital organization is removed from the Department of Community Health list pursuant to Code Section 31-8-9.1, and all such donations shall remain as preapproved tax credits subject only to the donor's compliance with paragraph (3) of this subsection.

(f) In order for the taxpayer to claim the tax credit under this Code section, a letter of confirmation of donation issued by the rural hospital organization to which the contribution was made shall be attached to the taxpayer's tax return. However, in the event the taxpayer files an electronic return, such confirmation shall only be required to be electronically attached to the return if the Internal Revenue Service allows such attachments when the return is transmitted to the department. In the event the taxpayer files an electronic return and such confirmation is not attached because the Internal Revenue Service does not, at the time of such electronic filing, allow electronic attachments to the Georgia return, such confirmation shall be maintained by the taxpayer and made available upon request by the commissioner. The letter of confirmation of donation shall contain the taxpayer's name, address, tax identification number, the amount of the contribution, the date of the contribution, and the amount of the credit.

(g) No credit shall be allowed under this Code section with respect to any amount deducted from taxable net income by the taxpayer as a charitable contribution to a bona fide charitable organization qualified under Section 501(c)(3) of the Internal Revenue Code.

(h) The commissioner shall be authorized to promulgate any rules and regulations necessary to implement and administer the provisions of this Code section.

(i) This Code section shall stand automatically repealed on December 31, 2019."

SECTION 8.

(a) This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

(b) Sections 1 and 7 of this Act shall be applicable to all taxable years beginning on or after January 1, 2017.

SECTION 9.

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

Senate Bill 269

By: Senators Stone of the 23rd, Heath of the 31st, Thompson of the 14th, Ligon, Jr. of the 3rd, Martin of the 9th and others

AS PASSED

A BILL TO BE ENTITLED

AN ACT

To amend Code Section 36-80-23 of the Official Code of Georgia Annotated, relating to the prohibition on immigration sanctuary policies by local governmental entities, so as to require local governing bodies to provide certain entities with a certification of compliance with such Code section as a condition of funding; to amend Code Section 50-36-4 of the Official Code of Georgia Annotated, relating to requiring agencies to submit annual immigration compliance reports, so as to provide for reporting pursuant to Code Section 36-80-23; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Code Section 36-80-23 of the Official Code of Georgia Annotated, relating to the prohibition on immigration sanctuary policies by local governmental entities, is amended by revising subsection (d) as follows:

"(d) As a condition of funding, the ~~The~~ Department of Community Affairs, the Department of Transportation, or any other state agency that provides funding to local governing bodies ~~may~~ shall require certification pursuant to Code Section 50-36-4 as proof of compliance with this Code section ~~as a condition of funding~~."

SECTION 2.

Code Section 50-36-4 of the Official Code of Georgia Annotated, relating to requiring agencies to submit annual immigration compliance reports, is amended by revising subsections (b) and (d) as follows:

"(b) Each agency or political subdivision subject to any of the requirements provided in Code Sections 13-10-91, 36-60-6, 36-80-23, and 50-36-1 shall submit an annual immigration compliance report to the department by December 31 that includes the information required under subsection (d) of this Code section for the annual reporting period. If an agency or political subdivision is exempt from any, but not all, of the

provisions of subsection (d) of this Code section, it shall still be required to submit the annual report but shall indicate in the report which requirements from which it is exempt."

"(d) The immigration compliance report provided for in subsection (b) of this Code section shall contain the following:

(1) The agency or political subdivision's federal work authorization program verification user number and date of authorization;

(2) The legal name, address, and federal work authorization program user number of every contractor that has entered into a contract for the physical performance of services with a public employer as required under Code Section 13-10-91 during the annual reporting period;

(3) The date of the contract for the physical performance of services between the contractor and public employer as required under Code Section 13-10-91;

(4) A listing of each license or certificate issued by a county or municipal corporation to private employers that are required to utilize the federal work authorization program under the provisions of Code Section 36-60-6 during the annual reporting period, including the name of the person and business issued a license and his or her federally assigned employment eligibility verification system user number as provided in the private employer affidavit submitted at the time of application; ~~and~~

(5)(A) A listing of each public benefit administered by the agency or political subdivision and a listing of each public benefit for which SAVE program authorization for verification has not been received.

(B) As used in this paragraph, the terms 'public benefit' and 'SAVE program' shall have the same ~~meaning~~ meanings as set forth in Code Section 50-36-1; and

(6) The agency or political subdivision's certificate of compliance with Code Section 36-80-23."

SECTION 3.

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

Senate Bill 379

By: Senators Ginn of the 47th, Wilkinson of the 50th, Harper of the 7th, Mullis of the 53rd, Albers of the 56th and others

AS PASSED

A BILL TO BE ENTITLED

AN ACT

To amend Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, so as to change provisions relating to the amount payable at redemption; to provide for the distribution of certain proceeds of the alternative ad valorem tax on motor vehicles; to provide an exemption for fire districts which have elected governing bodies and are supported by ad valorem taxes; to provide for a limited period of time an exemption from state sales and use tax only with respect to certain sales to a qualified job training organization; to provide for procedures, conditions, and limitations; to provide for a sunset date; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is amended by revising Code Section 48-4-40, relating to persons entitled to redeem land sold under tax execution, as follows:

"48-4-40.

Whenever any real property is sold under or by virtue of an execution issued for the collection of state, county, municipal, or school taxes or for special assessments, the defendant in fi. fa. or any person having any right, title, or interest in or lien upon such property may redeem the property from the sale by the payment of ~~the redemption price or~~ the amount required for redemption, as fixed and provided in Code Section 48-4-42:

(1) At any time within 12 months from the date of the sale; and

(2) At any time after the sale until the right to redeem is foreclosed by the giving of the notice provided for in Code Section 48-4-45."

SECTION 2.

Said title is further amended by revising Code Section 48-4-42, relating to the amount payable for redemption, as follows:

″48-4-42.

(a) The amount required to be paid for redemption of property from any sale for taxes as provided in this chapter~~, or the redemption price,~~ shall with respect to any sale made after July 1, 2002, be the amount paid for the property at the tax sale, as shown by the recitals in the tax deed, plus ~~any~~:

(1) Any taxes paid on the property by the purchaser after the sale for taxes~~, plus any~~;

(2) Any special assessments on the property~~, plus a~~; and

(3) A premium of 20 percent of the amount for the first year or fraction of a year which has elapsed between the date of the sale and the date on which the redemption payment is made and 10 percent for each year or fraction of a year thereafter.

(b) If redemption is not made until more than 30 days after the notice provided for in Code Section 48-4-45 has been given, there shall be added to the ~~redemption price~~ sums set forth in subsection (a) of this Code section the sheriff's cost in connection with serving the notice and the cost of publication of the notice, if any.

(c) With respect to any sale made after July 1, 2016, there shall be added to the sums set forth in subsections (a) and (b) of this Code section any sums:

(1) Paid from the date of the tax sale to the date of redemption to a property owners' association, as defined in Code Section 44-3-221, in accordance with Code Section 44-3-232;

(2) Paid to a condominium association, that is an association, as defined in Code Section 44-3-71, in accordance with Code Section 44-3-109; or

(3) Paid to a homeowners' association established by covenants restricting land to certain uses related to planned residential subdivisions.

(d) All of the amounts required to be paid by this Code section shall be paid in lawful money of the United States to the purchaser at the tax sale or to the purchaser's successors.″

SECTION 3.

Said title is further amended in Code Section 48-5C-1, relating to definitions, exemption from taxation, allocation and disbursement of proceeds collected by tag agents, fair market value of vehicle appealable, and report, by revising subparagraph (c)(3)(A) as follows:

″(A) The tag agent of the county shall within 20 days following the end of each calendar month allocate and distribute to the county governing authority and to municipal governing authorities, the board of education of the county school district, ~~and~~ the board of education of any independent school district located in such county, the water and sewerage authority for which the county has levied an ad valorem tax in accordance with a local constitutional amendment, and in a county in which a sales and use tax is levied for purposes of a metropolitan area system of public transportation, as

authorized by the amendment to the Constitution set out at Ga. L. 1964, p. 1008, the governing body of the transportation authority created by the Metropolitan Atlanta Rapid Transit Authority Act of 1965, Ga. L. 1965, p. 2243, as amended, and the amendment to the Constitution set out at Ga. L. 1964, p. 1008, an amount of those proceeds necessary to offset any reduction in (i) ad valorem tax on motor vehicles collected under Chapter 5 of this title in the taxing jurisdiction of each governing authority, ~~and~~ school district, and water and sewerage authority from the amount of ad valorem taxes on motor vehicles collected under Chapter 5 of this title in each such governing authority, ~~and~~ school district, and water and sewerage authority during the same calendar month of 2012 and (ii) with respect to the transportation authority, the monthly average portion of the sales and use tax levied for purposes of a metropolitan area system of public transportation applicable to any motor vehicle titled in a county which levied such tax in 2012. Such amount of tax may be determined by the commissioner for counties which levied such tax in 2012, and any counties which subsequently levy a tax pursuant to a metropolitan area system of public transportation, as authorized by the amendment to the Constitution set out at Ga. L. 1964, p. 1008, the governing body of the transportation authority created by the Metropolitan Atlanta Rapid Transit Authority Act of 1965, Ga. L. 1965, p. 2243, as amended, and the amendment to the Constitution set out at Ga. L. 1964, p. 1008, the Commissioner may determine what amount of sales and use tax would have been collected in 2012, had such tax been levied. This reduction shall be calculated, with respect to (i) above, by subtracting the amount of ad valorem tax on motor vehicles collected under Chapter 5 of this title in each such taxing jurisdiction from the amount of ad valorem tax on motor vehicles collected under Chapter 5 of this title in that taxing jurisdiction in the same calendar month of 2012. In the event that the local title ad valorem tax fee proceeds are insufficient to fully offset such reduction in ad valorem taxes on motor vehicles or the portion of the sales and use tax described in (ii) above, the tag agent shall allocate a proportionate amount of the proceeds to each governing authority, ~~and to~~ the board of education of each such school district, the water and sewerage authority, and the transportation authority, and any remaining shortfall shall be paid from the following month's local title ad valorem tax fee proceeds. In the event that a shortfall remains, the tag agent shall continue to first allocate local title ad valorem tax fee proceeds to offset such shortfalls until the shortfall has been fully repaid; and"

SECTION 4.

Said title is further amended in Code Section 48-8-3, relating to exemptions from sales and use taxes, by revising paragraph (1), by deleting "or" at the end of paragraph (95), by

replacing the period with "; or" at the end of paragraph (96), and by adding a new paragraph to read as follows:

"(1) Sales to the United States government, this state, any county or municipality of this state, fire districts which have elected governing bodies and are supported by, in whole or in part, ad valorem taxes, or any bona fide department of such governments when paid for directly to the seller by warrant on appropriated government funds;"

"(97)(A) For the period beginning July 1, 2017, and ending June 30, 2020, sales of tangible personal property and services to a qualified job training organization when such organization obtains an exemption determination letter from the commissioner.

(B) For the purposes of this paragraph, the term 'qualified job training organization' means an organization which:

(i) Is located in this state;

(ii) Is exempt from income taxation under Section 501(c)(3) of the Internal Revenue Code;

(iii) Specializes in the retail sale of donated items;

(iv) Provides job training and employment services to individuals with workplace disadvantages and disabilities, including, but not limited to, reentry citizens who shall be persons released from incarceration, persons with disabilities, and veterans; and

(v) Uses a majority of its revenues for job training and placement programs.

(C)(i) For the purposes of this paragraph, the term 'local sales and use tax' means any sales tax, use tax, or local sales and use tax which is levied and imposed in an area consisting of less than the entire state, however authorized, including, but not limited to, such taxes authorized by or pursuant to constitutional amendment; by or pursuant to Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, the 'Metropolitan Atlanta Rapid Transit Authority Act of 1965'; or by or pursuant to Article 2, Article 2A, Part 1 or Part 2 of Article 3, Article 4, or Article 5 of this chapter.

(ii) The exemption provided for in subparagraph (A) of this paragraph shall not apply to any local sales and use tax levied or imposed at any time.

(D) Any qualified job training organization which is granted an exemption under this paragraph shall provide an annual report to the department which contains, but is not limited to, the following:

(i) The number of individuals trained in the program;

(ii) The number of individuals employed by the organization after receiving such training; and

(iii) The number of individuals employed in full-time positions outside the organization after such training.

Such data shall be compiled by the department and presented to the House Committee on Ways and Means and the Senate Finance Committee for consideration prior to any renewal or extension of the exemption provided by this paragraph.

(E) The commissioner shall promulgate any rules and regulations necessary to implement and administer this paragraph.″

SECTION 5.

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