GEORGIA

DEPARTMENT OF REVENUE

LOCAL GOVERNMENT SERVICES DIVISION

2016

CURRENT AD VALOREM

EDICTS AND TRENDS

May 17-19, 2016

For Educational Purposes Only: The material within is intended to give the course participant a solid understanding of general principles in the subject area. As such, the material may not necessarily reflect the official procedures and policies of the Georgia Department of Revenue or the Department's official interpretation of the laws of the State of Georgia. The applicability to specific situations must be determined on a case-by-case basis.

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SPECIAL PRESENTATIONS

AGRICULTURE IN GEORGIA

Dr. Kent Wolfe

Director
Center for Agribusiness & Economic Development
College of Agricultural & Environmental Sciences
University of Georgia

- Ph.D., Agricultural Economics, University of Tennessee, 1994
- M.S., Agricultural Economics, University of Tennessee, 1990
- B.S.A., Agricultural Economics, University of Georgia, 1988

Kent is a Marketing Analyst and Director of the Center for Agribusiness and Economic Development. His primary responsibility is performing market analysis for proposed feasibility projects. The market analysis includes target market identification, estimating market potential, product positioning, developing marketing strategies and identifying marketing channels. In addition, Kent has experience with a wide variety of value-added agribusiness ventures. He also assists in evaluating the effectiveness of marketing and promotional campaigns.

AGRICULTURE IN GEORGIA

Sharon P. Kane

Senior Public Service Associate/Economist
Center for Agribusiness & Economic Development
College of Agricultural & Environmental Sciences
University of Georgia

- M.S. Economics, University of Kentucky
- B.S. Economics, University of Tennessee at Chattanooga

Ms. Kane has performed a variety of economic research in both the private and public sectors, with areas of expertise including research design and project development, economic data analysis, creation and implementation of customized statistical tools, economic impact studies, and community research projects. Prior to joining the University of Georgia, Ms. Kane was an economist for a Fortune 500 corporation, focusing on econometric analysis and economic education. Before relocating to Georgia, she was a Research Assistant for the Center for Business and Economic Research (CBER) at the University of Kentucky. In addition, Ms. Kane has over 10 years of experience in the mortgage banking industry, specializing in federally insured and bond issue loans.

Anthony A. Rowell

Partner
Tifton Office

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Overview

Anthony A. Rowell (Tony) is managing partner of Hall Booth Smith, P.C. Tifton office. Tony received his Juris Doctor Degree in 1990 from the Walter F. George School of Law at Mercer University. He was admitted to the Georgia State Bar the same year. Before attending law school, Tony attended Valdosta State College where he graduated Magna Cum Laude with a B.A. in Economics and a minor in Philosophy. Tony also has a degree in Agri-Business with Applied Sciences. He grew up in Douglas, Georgia, working in the family dry cleaning business. After graduation from high school, he worked for the United States Postal Service where he continued to be employed during law school.

Tony is "AV® Preeminent™" rated by Martindale-Hubbell, an independent peer review organization. "AV® Preeminent™" is the highest rating bestowed on attorneys by such an organization. He practices in the areas of local government, governmental liability, medical malpractice defense, risk management, insurance law, business litigation, premises and retail liability, motor vehicle liability, common carrier liability, contractual liability, construction litigation, and employment law. He has maintained a significant trial practice since 1990. Tony has tried over 75 jury trials in many different areas of the law. He has extensive appellate practice experience. In the last 20 years, he has made approximately 50 appearances in either the Supreme Court of Georgia, the Georgia Court of Appeals, or the Eleventh Circuit Court of Appeals. He also has mediated hundreds of cases and has extensive experience with alternative dispute resolution.

Tony also writes newsletter articles and conducts seminars on local government, governmental liability, medical malpractice, and risk management. He often is called upon to help his clients avoid business losses from unnecessary employment and liability claims. He practices in all State and Federal Courts in Georgia and is admitted to the Georgia Court of Appeals, the Supreme Court of Georgia, and the Eleventh Circuit Court of Appeals. Tony is a member of the State Bar of Georgia, Defense Research Institute, Association of County Commissioners of Georgia, Georgia Hospital Association, US Law, and maintains firm membership in the Tift and Coffee County Chambers of Commerce.

ANTHONY A. ROWELL

Practice Groups

Professional Negligence

Tony has extensive experience litigating medical malpractice lawsuits. He represents both physicians and hospitals, and is a zealous advocate for the medical industry and his medical clients. Presently, Tony has the privilege of representing many doctors and hospitals throughout Georgia.

Retail Liability

Tony has extensive experience litigating and trying retail liability cases. Tony has had the privilege of representing national retailers on many different issues. He is familiar with liability issues facing retailers, as well as, familiar with retail business models which make those companies successful. Tony believes in risk management and prevention as a primary means of reducing damage and loss to property as well as injury to customers and employees.

Governmental Liability

Tony now serves as the County Attorney for Coffee County, Ware County, and Tift County. Tony brought to those positions his extensive experience representing governmental entities in a wide array of liability settings. In his private practice, Tony has had to "pick up the pieces" and litigate cases after legally significant mistakes had been made by governmental employees. As County Attorney, he now brings a large dose of "preventative medicine" to County government. He recognizes liability pitfalls and is able to assist the County in avoiding those mistakes that result in litigation.

Transportation

Tony has extensive experience handling both liability and cargo claims for trucking entities. Tony makes himself available to perform on-site investigation at any hour, and has extensive contacts with accident reconstructionists and law enforcement officials through out the state. In addition to being familiar with all liability issues surrounding tractor-trailer accidents, Tony is also familiar with the federal regulations which govern, and often impact, the liability picture in many cases.

Health Care

Tony represents a variety of health care providers and managed care organizations on a broad range of issues including medical staff credentialing, business transactions and contract management. Tony is extremely accessible and frequently travels to medical facilities to do in-service training of it employees.

Education

Juris Doctor Degree, 1990, Walter F. George School of Law, Mercer University, Macon, GA
Summer Law Program, 1989, University of Notre Dame, London Law Center, London, England
Bachelor of Arts in Economics, Minor in Philosophy, 1987, Valdosta State College, Valdosta, GA
Associate Degree in Agri-Business and Applied Sciences, 1985, South Georgia College, Douglas, GA

ANTHONY A. ROWELL

Admitted

Georgia
All Georgia State and Federal Courts
U.S. District Courts for the Southern, Middle, and Northern Districts of Georgia
Georgia Court of Appeals, the Supreme Court of Georgia, and the Eleventh Circuit Court of Appeals

Membership

American Bar Association
State Bar of Georgia
Atlanta Bar Association
Tifton Bar Association
Douglas Bar Association
Defense Research Institute
Georgia Hospital Association and the Tift and Coffee County Chambers of Commerce

Awards

Super Lawyers 2009, 2012, 2013, 2014, 2015, 2016
AV® Preeminent™ Peer Review Rated by Martindale-Hubbell

Jennifer Dorminey Herzog

Associate
Tifton Office

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Overview

Jennifer Dorminey Herzog is a native of Tifton, Georgia, and returned to her home town to be an associate in our Tifton office. She graduated Summa Cum Laude from Presbyterian College in 2003 with a double major in English, with an emphasis in creative writing, and Religion/ Philosophy. In 2006, she graduated from the University of Georgia School of Law. During her time at UGA, Jennifer was a member of the Georgia Journal of International and Comparative Law wherein she received the Notes Editor of the Year Award for 2005-2006.

Jennifer focuses her practice in the area of government liability and serves as County Attorney for Berrien County. She also serves as Assistant County Attorney for Coffee County, Tift County, and Ware County. Jennifer has represented a number of counties in tax appeal litigation, as well as small businesses with employment and contract issues, individuals involved in auto accidents, and individuals and entities involved in general liability matters. Jennifer is trained in general mediation, domestic mediation, arbitration, and is a registered mediator in Georgia. She and her husband Scott Herzog reside with their daughter in an historic home they renovated in the heart of Tifton.

Practice Groups

General Liability

Jennifer has represented such clients as individuals involved in auto accidents, retail store owners, and other individuals and entities involved in general liability matters.

Education

Jennifer assists Brent Hyde in his role as local school board counsel. She has also served as counsel for school boards in a variety of areas, including but not limited to, open meetings, open records, freedom of speech and religion, search and seizure, and equal protection.

Correctional Health Care

Jennifer has successfully settled and litigated numerous cases involving lawsuits on a variety of claims brought by inmates, including the in the 11th Circuit Court of Appeals. Many of these cases were able to be resolved through dispositive motion, saving the clients much time and expense.

JENNIFER DORMINEY HERZOG

Governmental Liability

Jennifer focuses her practice in the area of government liability and daily assists Tony Rowell, managing partner of the Tifton office, with his duties as County Attorney for Coffee County, Tift County and Ware County. Jennifer brings to these positions extensive experience representing governmental entities in a wide array of liability settings. Jennifer has attended hundreds of county meetings during her time with Hall Booth, including Board of Commissioners, Board of Elections, Board of Tax Assessors, Board of Health, etc. Jennifer has been called upon to address a variety of issues impacting county government. Some of these issues include:

- Roads and Highways
- Competitive Bidding
- Zoning and Land Use Planning
- Solid Waste
- Inter-Governmental Agreements
- Open Meetings
- Department of Justice Investigations
- County Water Works Project
- Employment Issues
- Human Resource Issues
- Real Property Law
- Governmental Liability
- Tax Equity Issues
- Paving Contracts
- S.P.L.O.S.T. Referendum
- S.P.L.O.S.T. Law
- Local Ordinances
- Elections/Election Litigation
- Open Records
- Construction Projects
- Local Legislation
- Civil Rights
- Contract and Construction Law
- Code Enforcement
- L.O.S.T. Negotiations
- Tax Appeals

Jennifer has also served as counsel for governmental entities on a variety of issues in litigation, including open records, employment, and state and federal anti-discrimination laws. Jennifer has also represented governmental entities in defense of claims alleging constitutional deprivations brought under U.S.C. 1983.

Employment

Jennifer is committed to helping employers avoid, resolve, and prevail in employment disputes involving the full range of employment and labor issues. This includes litigation in state and federal courts and the representation of employers before administrative agencies over claims including: discrimination, harassment, retaliation, accommodation, and state torts such as negligent supervision and hiring, intentional and negligent infliction of emotional distress, defamation, invasion of privacy, and wrongful discharge allegations. Jennifer represents local business and industry, and governmental entities, in a wide variety of employment related matters, including policy and procedure implementation and revision, issues concerning state and federal anti-discrimination laws, and other employment issues. She also represents employers with matters involving the EEOC.

Alternative Dispute Resolution/Arbitration

Jennifer is trained in general mediation, domestic mediation, arbitration, and is a registered mediator in Georgia. Her practice has included experience in a multitude of mediation settings as an advocate. She has also handled a variety of cases as a mediator. Through those experiences, she is able to offer cost efficient alternatives to litigation in an environment which facilitates effective compromise and decision making empowerment for the parties.

Education

Bachelor of Arts 2003, Presbyterian College
J.D. 2006, University of Georgia School of Law

JENNIFER DORMINEY HERZOG

Admitted

All State and Superior Courts in Georgia
Georgia Court of Appeals
Georgia Supreme Court
U.S. District Courts: Southern, Middle, and Northern Districts of Georgia
Eleventh Circuit Court of Appeals
Supreme Court of the United States

Membership

State Bar of Georgia
Tifton Bar Association, Past-President (2008); Received the State Bar of Georgia 2008 Award of Merit and Best New Entry Award for Tifton Judicial Circuit Bar Association.

Activities

First Baptist Church of Tifton, GA Leader

Diversified Enterprises, Board Member (2007-2014)

Court Appointed Special Advocate, Coastal Plains Division, Board Member (2008-2014), Vice Chair (2009-2010), Chair (2010-2011)

Tift County Foundation for Educational Excellence, Board Member (2009-2014)

Friends of the Georgia Museum of Agriculture, Board Member (2012- present); Chair (2013-2014)

Awards

AV® Preeminent™ Peer Review Rated by Martindale-Hubbell
AVVO Rated- 8.9 out of 10

Special Presentation - GASB #77

Joe Huddleston

Ernst & Young - Indirect Tax Division
Executive Director

ERNST & YOUNG

Ernst & Young is a global leader in advisory service to state and local government entities. They recognize the unique requirements and needs of government and play a critical role in insuring sustainable economic development, a safe environment, more transparency, and increased accountability.

JOE HUDDLESTON

Joe Huddleston is an Executive Director for EY Indirect Tax in the National Tax office in Washington, where he regularly consults with some of the largest national and multi-national corporations. Prior to joining EY Joe served for ten years as Executive Director of the Multistate Tax Commission. In 2011 he was named by Tax Analysts as one of the top 10 individuals who influence state tax policy and practice, and in 2012 received the eleventh annual award for Outstanding Achievement in State and Local Taxation from New York University. In 2015 he received from Bloomberg BNA the Franklin C. Latcham award for Distinguished Service in State and Local Taxation.

He also worked as vice president of tax solutions for Liquid Engines Inc., a tax software firm focused on advanced state income tax planning models and methodologies for multi-state and multi-national companies. Huddleston joined Liquid Engines from a national accounting and management consulting firm, where he was a partner and nation director for state and local tax.

He served as Commissioner of the Tennessee Department of Revenue from 1987 to 1995. Huddleston was responsible for development of a multi- million dollar integrated tax system (RITS) for the state of Tennessee. Additionally he served on the State Board of Equalization for six years and presiding officer for three years. During his tenure as Commissioner, he was president of both the Federation of Tax Administrators and the Southeast Association of Tax Administrators.

Immediately after leaving the Tennessee Department of Revenue, Huddleston became chief financial officer for the Metropolitan Government of Nashville and Davidson County. In that position, he was responsible all of the city's financial affairs, including more than $1 billion in annual expenditures.

Huddleston launched his legal career after stints as an Internal Revenue Service revenue officer in Chattanooga, TN., and Columbia, S.C. He entered private practice in Nashville before working from 1984-1987 as an Asst. District Attorney General in Cookeville, TN. He is a founding trustee of both the Paul Hartman Tax Forum at Vanderbilt University Law School in Nashville, Tennessee and the New England State and Local Tax Forum in Boston.

A graduate of the University of South Carolina, he received his J.D. from the Nashville School of Law and was awarded his Doctor of Laws by the University of South Carolina in 2009. Huddleston is a member of both the Tennessee and American Bar Associations and their respective tax sections.

GASB 77: Tax Abatement Disclosure and Required Governmental Considerations

CAVEAT
Athens, Georgia
19 May 2016

Presenter: Joe Huddleston

EY
Building a better working world

Agenda

- Overview of GASB 77
- Disclosure requirements
- Reporting considerations
- Q&A

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EY

Overview of GASB 77

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EY

Tax abatement disclosures

- **What?** The Governmental Accounting Standards Board (GASB) issued Statement 77, which requires disclosures about a government's tax abatement agreements
- **Why?** Information about revenues that governments forgo is essential to understanding financial position and economic condition, interperiod equity, sources and uses of financial resources, and compliance with finance related legal or contractual requirements
- **When?** Effective for periods beginning after December 15, 2015*

* Applies to notes to the financial statements for all periods presented

Statement No. 1, *Objectives of Financial Reporting*

- **Four objectives that are relevant to tax abatements:**

a) Determining whether current-year revenues were sufficient to pay for current-year services (interperiod equity)

b) Compliance with finance-related legal and contractual obligations

c) Providing information about sources and uses of financial resources, and

d) Providing information about the financial position and economic condition of a governmental entity

What is a "tax abatement?"

A reduction in tax revenues that results from an **agreement** between one or more governments and an individual or entity in which (a) one or more governments **promise to forgo tax revenues** to which they are otherwise entitled ***and*** (b) the individual or entity **promises to take a specific action after the agreement has been entered into** that contributes to economic development or otherwise benefits the governments or the citizens of those governments [emphasis added]

Statement 77 scope

Applicable to transactions that include three key characteristics:

1. **Purpose**
   - Utilized as part of economic development programs OR
   - Programs that benefit a government or its citizens
2. **Revenues are reduced**
   - Non-exchange transaction: lacks an equal exchange of value between willing parties
3. **Existence of an agreement**
   - A promise by the government to reduce the individual's or entity's taxes and a promise from the individual or entity to subsequently perform a certain beneficial action

Attributes of a tax abatement

- Tax abatement vs. general tax expenditure programs
  - Tax expenditure programs may include exemptions, deductions, credits, rebates, loans, transfers of capital assets
  - Less emphasis on overall tax policy
  - More emphasis on individual decisions to accept less revenue for something of value from an individual or entity
- Substance over form determination
- May or may not include tax increment financings, payments in lieu of taxes, or as-of-right agreements

The primary focus is on the amount of revenue not collected as a result of the tax abatement agreements

Disclosure requirements

Agreements by governments

In the notes to financial statements, governments should disclose the following information related to tax abatement agreements they enter into:

- Brief descriptive information, including:
  - Names and purposes of the tax abatement programs
  - Specific taxes being abated
  - Authority under which tax abatement agreements are entered into
  - Criteria that make a recipient eligible to receive a tax abatement
  - Mechanism by which the taxes are abated
  - Provisions for recapturing abated taxes
  - Types of commitments made by the recipients of the tax abatements

Agreements by governments (continued)

- The gross dollar amount, on an accrual basis, by which the government's tax revenues were reduced during the reporting period as a result of tax abatement agreements
- If amounts are received or receivable from other governments in association with the foregone tax revenue:
  - The names of the governments
  - The authority under which the amounts were or will be paid
  - The dollar amount received or receivable from other governments

Agreements by governments (continued)

- If the government made commitments other than to reduce taxes as part of a tax abatement agreement, a description of:
  - The types of commitments made
  - The most significant individual commitments made
  - Information about a commitment other than to reduce taxes should be disclosed until the government has fulfilled the commitment
- For abatement agreements disclosed individually, a brief description of the quantitative threshold the government used to determine which agreements to disclose individually

Agreements by other governments

The disclosure requirements for tax abatement agreements **entered into by other governments** and that reduce the reporting government's tax revenue:

- Essentially the same requirements as Agreements by Governments
- However, the brief descriptive information regarding the incentive abatement programs is limited to:
  - The names of the governments entering into the tax abatement agreement
  - The specific taxes being abated

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General disclosure principles

- Disclosures should distinguish between tax abatements resulting from:
  a) Agreements that are entered into by the reporting government, and
  b) Agreements that are entered into by other governments and that reduce the reporting government's tax revenues
- Tax abatement disclosure information may be provided individually or in the aggregate
- Should be organized by each major tax abatement program
- Disclosure should begin in the period in which a tax abatement agreement is entered into and continue until the tax abatement agreement expires
  - If a government made commitments other than to reduce taxes, disclosure should continue until the government has fulfilled the commitment

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What is not required for disclosure?

- Information that is legally prohibited from disclosure
  - However, must describe the general nature of information omitted and the source of the legal prohibition
- Names of tax abatement recipients
- The number of tax abatement agreements entered into and in effect at the end of the reporting period
- Future amounts to be abated under existing agreements
- Duration of tax abatements
- Recipient compliance with commitments
- Amount of abated taxes recaptured during the reporting period or eligible for recapture as of the end of the reporting period

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Reporting considerations

Implementation and compliance challenges

- Computation of the tax revenue forgone
- Differing level of record keeping and/or incomplete records due to disparate locations
- Coordination of required information
- Level of detail in disclosure and initial presentation
- Computation of tax revenue forgone for other government units
- Subjective computations

Questions from the audience

Q & A

Biography – Joe Huddleston

Joe Huddleston is an Executive Director for EY Indirect Tax in the National Tax office in Washington, where he regularly consults with some of the largest national and multi-national corporations. Prior to joining EY Joe served for ten years as Executive Director of the Multistate Tax Commission. In 2011 he was named by Tax Analysts as one of the top 10 individuals who influence state tax policy and practice, and in 2012 received the 11th annual award for Outstanding Achievement in State and Local Taxation from New York University. In 2015 he received from Bloomberg BNA the Franklin C. Latcham award for Distinguished Service in State and Local Taxation.

He also worked as vice president of tax solutions for Liquid Engines Inc., a tax software firm focused on advanced state income tax planning models and methodologies for multi-state and multi-national companies. Huddleston joined Liquid Engines from a national accounting and management consulting firm, where he was a partner and nation director for state and local tax.

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A graduate of the University of South Carolina, he received his J.D. from the Nashville School of Law and was awarded his Doctor of Laws by the University of South Carolina in 2009. Huddleston is a member of both the Tennessee and American Bar Associations and their respective tax sections.

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Local EY Credits & Incentives contacts

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COURT CASES

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

NOTICE: Motions for reconsideration must be *physically received* in our clerk's office within ten days of the date of decision to be deemed timely filed.
http://www.gaappeals.us/rules/

June 16, 2015

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.

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CUVA: The Not so Good, the Bad, and the Ugly

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May 17, 2016

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"In 1790, the nation which had fought a revolution against taxation without representation discovered that some of its citizens weren't much happier about taxation with representation."

– Lyndon B. Johnson

I. INTRODUCTION

The Georgia conservation use program under O.C.G.A. § 48-5-7.4, commonly referred to as CUVA, is a tax relief program designed to promote agricultural development and ecological conservation in Georgia. This program accounts for more than ten billion dollars of assessed value removed from the tax digest annually. While one might commonly address certain conservation use provisions in practice, the conservation use statute is constantly evolving and its provisions are often quite complex. Given the program's impact and complexity, the conservation use statute serves as a prime candidate for analysis and discussion. This paper explores and provides guidance to more precisely delineate the conservation use program, including: its historical context, legislative history, and the application of its provisions in conjunction with enabling regulations and judicial interpretation.

II. HISTORICAL CONTEXT

"In all interpretations of statutes, the courts shall look diligently for the intention of the General Assembly, keeping in view at all times the old law, the evil, and the remedy."[1]

The historical context of the conservation program is critical to an understanding of the public policy objectives expressed through the language of the Code. In essence, Georgia's conservation use program, O.C.G.A. § 48-5-7.4, is a tax incentive program designed to encourage agriculture and environmental conservation in Georgia through a reduction in the fair market value of qualified properties. More importantly, however, it is a program designed to protect family farms from what many saw as confiscatory ad valorem taxation resulting from the rapid increases in fair market values due to real estate development and speculation in the 1980s.[2] This sentiment is expressed clearly in a Court of Appeals opinion written in the years leading up to the adoption of O.C.G.A. § 48-5-7.4 and discusses the impact of the computation of fair market value on the viability of family farms:

> Thus, at issue is valuation of rural land in an urban setting where virtually no rural land is sold for agricultural purposes, but for industrial, commercial, or housing developments. Such sales reflect the speculative value of the land-or its highest and best use. However, the "existing use" in some cases-particularly where it is agricultural, represents low income land when compared to tax assessments. Whereas timberland and cattle grazing land may not produce $1 in income in any given year, or where drought, sub-freezing temperatures, or other types of severe weather can cause the farmer to suffer a loss for any given year, or series of years-if the

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[1] O.C.G.A. § 1-3-1(a).

[2] Susan L. Daniels, 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, 183 (1991). (Available at: http://warnell.forestry.uga.edu/service/library/agecon95-039/agecon95-039.pdf).

> tax assessor gives significant weight to the "highest and best use" factor of these rural lands in an urban setting, i.e., shopping center, office complex, or housing complex, the resulting higher assessment and taxation would be grossly disproportionate to income derived from the existing agricultural use. The end effect is either a forced sale of the land if the owner desires to pursue his chosen livelihood, or confiscation through taxation. Taxation amounting to confiscation exceeds legitimate taxing authority.[3]

The Georgia General Assembly responded to this problem in 1991[4] through the implementation of O.C.G.A. § 48-5-7.4, offering Georgia landowners a mechanism through which they could maintain the integrity of their farms while also preserving quality of life through ecological conservation. The significant tax advantage afforded under this program, however, shifts a portion of the tax burden to other land owners, and consequently, qualifying landowners are required to make substantial promises and covenants in return.[5]

In order for the CUVA program to effectuate its purpose of ensuring the viability of Georgia's family farms and promoting ecological conservation, it must be broad enough to include all good faith agricultural and conservation uses, while being narrow enough to exclude speculative investments. Because the conservation program creates tax incentives by decreasing the fair market value of qualifying properties relative to unqualified properties, an over inclusive program diminishes the relative benefit to the intended land owners. The complexity of O.C.G.A. § 48-5-7.4 reflects the General Assembly's ongoing attempt to walk the fine line between encouraging agricultural

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[3] Sibley v. Cobb Cnty. Bd. of Tax Assessors, 171 Ga. App. 65, 68, 318 S.E.2d 643, 646 (1984).
[4] Ga. L. 1991, p. 1903.
[5] See Terrell Cnty. Bd. of Tax Assessors v. Goolsby, 324 Ga. App. 535, 536, 751 S.E.2d 158,160 (2013), (quoting Daniels, supra, at 186.)

production and ecological conservation, while ensuring that the class of qualifying properties remains small enough to create the necessary incentives.

III. LEGISLATIVE HISTORY

As noted above, O.C.G.A. § 48-5-7.4 allows owners of *bona fide conservation use property* to apply to their county board of tax assessors to obtain favorable tax treatment: if the owner and property satisfy numerous statutory criteria and conditions, the property will be assessed at 40 percent of its "current use value" instead of at the standard assessment of 40 percent of the property's "fair market value."[6] Although this paper assumes a general familiarity with Section 48-5-7.4, it will be helpful to recount a few of the statute's core provisions. In general, properties eligible for current use assessment (sometimes called "conservation use properties") include environmentally sensitive properties and properties used for certain agricultural purposes.[7] A single owner may not obtain conservation use valuation on more than 2,000 acres of real property,[8] and owners must enter into a conservation covenant with their local taxing authority pursuant to which the owner agrees to maintain the property in a bona fide qualifying use for a ten-year period.[9] A severe penalty awaits an owner who breaches such a covenant: the owner must pay twice the amount of tax savings he or she derived from current use assessment over the life of the covenant.[10] Numerous exceptions to the penalty provision exist, however.[11]

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[6] See Morrison v. Claborn, 294 Ga. App. 508, 509 n.1 (2008) (describing operation of Section 48-5-7.4).
[7] O.C.G.A. §§ 48-5-7.4(a)(1), (2).
[8] Id.
[9] O.C.G.A. § 48-5-7.4(d).
[10] O.C.G.A. § 48-5-7.4(l).
[11] See generally, O.C.G.A. §§ 48-5-7.4(n), (o), (p), (q).

Enacted in 1991,[12] Section 48-5-7.4 has undergone over two dozen amendments since its inception, an average of roughly one amendment per year. Broadly speaking, these amendments fall into three categories: (1) those that expand or restrict an owner's or a property's eligibility for conservation use treatment; (2) those that modify the administration of conservation use applications or covenants; and (3) those that create new exceptions to the statute's penalty and covenant breach provisions. This section summarizes: Section 48-5-7.4's extensive legislative history by first analyzing the amendments enacted in the statute's early years in Part III.A., then examining each of the three broad categories noted above in Parts III.B.1., 2., and 3.. Finally, Part III.C. takes a look back at the fiscal impact of current use valuation over time.

A. The Early Years

The legislature intended for Section 48-5-7.4 to encourage conservation of agricultural land and environmentally sensitive areas, yet immediately after the statute went into effect, there were concerns that unauthorized tracts were taking advantage of the current use valuation.[13] Thus, only one year after its effective date, Section 48-5-7.4 underwent its first major amendment in 1993. The 1993 amendment tightened eligibility by prohibiting family farm corporations owning more than 3,000 acres of real property in Georgia from participating; mandating that parcels smaller than ten acres in size provide evidence of eligibility; and rendering properties ineligible to apply for conservation use status where such properties were subject to a restrictive covenant

[12] Ga. L. 1991, p. 1903, § 6.

[13] For additional history of Section 48-5-7.4's early years, see generally Dangerfield, Jr., C.D.; Izlar, B.; Ray, Jr., R.; *County Ad Valorem Taxes Affecting Agriculture and Forestry: History, Trends, Legislation, and Related Issues in Georgia*, AG. ECON 95-039 (May 1995)., available at http://warnell.forestry.uga.edu/service/library/agecon95-039/agecon95-039.pdf.

prohibiting any one the qualified uses listed in subparagraph (a)(1)(E).[14] The amendment further provided that a local board of tax assessors cannot deny current use assessment simply because the county lacked a soil map; yet if the county lacked a soil map, the board could require an applicant to provide a certified soil survey or a comparable method of determining soil type.[15] In addition, the amendment expanded the Commissioner of Revenue's conservation use program reporting requirements and, to better advertise the conservation use program, the amendment required local tax authorities to post notices summarizing the conservation use program's requirements.[16]

Importantly, the 1993 amendment added subsection (u) to the statute. Although now defunct, this subsection contemplated a significant change in the State's method of drawing and assessing conservation use districts. Prior to the 1993 amendment, the State allocated counties into 28 different "conservation use valuation areas" (or "CUVAs," for short); following the 1993 amendment, counties were divided into nine larger CUVAs.[17] In adding subsection (u), the legislature permitted owners who had entered into a conservation use covenant during 1992 (appropriately termed a "92 Style" covenant) to terminate their 92 Style covenant and enter into a new covenant during 1993.[18] For the next ten years, both 92 Style covenants and "93-Style" covenants existed.

To account for the 92 Style covenants, the legislature amended Section 48-5-7.4 again in 1994 by adding subsection (v), which required the Commissioner of Revenue to

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[14] Ga. L. 1993, p. 947, §§ 1-3 (amending O.C.G.A. §§ 48-5-7.4(a)(1)(C)(iv) and (b)(2), and adding O.C.G.A. § 48-5-7.4(b)(5), respectively).
[15] Id., § 3 (adding O.C.G.A. § 48-5-7.4 (b)(6)).
[16] Id., §§ 5, 6 (amending OC.G.A. § 48-5-7.4(s) and adding O.C.G.A. § 48-5-7.4(t)).
[17] Compare Ga. L. 1991, p. 1903, § 10, with Ga. L. 1993, p. 947, § 9 (amending O.C.G.A. § 48-5-269).
[18] Ga. L. 1993, p. 947, § 6 (adding O.C.G.A. § 48-5-7.4(u)).

compute values under O.C.G.A. Section 48-5-269 for 92 Style covenants.[19] Based on a complicated formula, the 1994 amendment further allowed certain counties to permit 92-Style covenant from 1994 until the original 92-Style covenants were set to expire in 2001.[20] In other words, although a 93-Style covenant would last for the full ten-year period regardless of the year it was entered into, a 92-Style covenant entered into from 1994 onward would last for a decreasing number of years until the 92-Style covenants were completely phased out. Once all 92-Style covenants expired at the end of 2001, the legislature struck subsections (u) and (v) as no longer needed.[21]

B. Further Changes to Eligibility Provisions

As noted above, Section 48-5-7.4 has been amended numerous times to expand or restrict eligibility for conservation use treatment. Such amendments can be further broken down into those amendments primarily addressing agricultural property eligibility under paragraph (a)(1), environmentally sensitive property eligibility under paragraph (a)(2), general eligibility requirements under subsection (b), and miscellaneous eligibility amendments.

1. Changes to agricultural property provisions under paragraph (a)(1)

From 1996 to 2000, the legislature amended Section 48-5-7.4(a)(1)(C) to expand the entities authorized to apply for conservation use status for agricultural property. Originally, the statute authorized only the following types of owners: (i) natural and naturalized citizens; (ii) an estate of which the devisees or heirs of which are naturalized citizens; (iii) a trust of which the beneficiaries are natural or naturalized citizens; (iv) a family owned farm corporation of which the controlling interest is held by natural or

[19] Ga. L. 1994, p. 428, § 2 (adding O.C.G.A. § 48-5-7.4(v)).
[20] Id.
[21] Ga. L. 2003, p. 271, § 2.

naturalized persons related to one another within four degrees of civil reckoning, or (v) a nonprofit organization designated under I.R.C. § 501(c)(3).[22]

In 1996, the term "family owned farm corporation" was changed to "family owned farm entity," thus expanding eligibility to entities such as family partnerships, family limited liability companies, and family limited partnerships.[23] Perhaps to limit this expansion, the 1996 amendment modified the "controlling interest" language to require that "all of the interest" of the entity be owned by natural or naturalized citizens.[24]

Next, in 1999, the legislature extended conservation use treatment to bona fide clubs organized for pleasure, recreation, or other nonprofit purposes pursuant to I.R.C. § 501(c)(7),[25] and it also eliminated the 3,000 state-wide acreage cap applicable to family farm entities that was added in 1993.[26]

In 2000, the legislature amended the family farm entities language yet again to clarify that family relations may be by blood or marriage; further, the general partner of a family limited partnership could now be a corporation, limited partnership, limited company, or limited liability company, but such entity must hold no more than 5% of the family limited partnership; and the amendment also addressed the method of calculating gross income for family farm entities.[27]

While subparagraph (a)(1)(C) provides for the *types of persons and entities* who may apply for current use valuation, subparagraph (a)(1)(E) enumerates the *types of*

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[22] Ga. L. 1991, p. 1903, § 6.
[23] Ga. L. 1996, p. 1021, § 1 (amending O.C.G.A. § 48-5-7.4(a)(1)(C)(iv)).
[24] See id.
[25] Ga. L. 1999, p. 590, § 1 (adding O.C.G.A. § 48-5-7.4(a)(1)(C)(vi)).
[26] Ga. L. 1999, p. 656, § 1.
[27] Ga. L. 2000, p. 1338, § 1 (amending O.C.G.A. § 48-5-7.4(a)(1)(C)(iv)).

property uses that qualify for good faith production of agricultural products or timber. Such uses include, but are not limited to growing crops; raising livestock; and producing "plants, trees, fowls, or animals." In 2004, this subparagraph was amended to expand the meaning of "producing plants, trees, fowl, or animals" to include the production of fish or wildlife by maintaining at least 10 acres of wildlife habitat in its natural state or under management but expressly excluding commercial fishing or fish production.[28]

In the mid-2000s, the legislature sought to codify and expand upon the result reached in Effingham County Bd. of Tax Assessors v. Samwilka, Inc., 278 Ga. App. 521 (2006), in which the Georgia Court of Appeals concluded that the owners of a family owned farm entity each had a beneficial interest in the entity's conservation use property proportional to their interest in the entity (rather than an undivided interest). Thus, the legislature added subparagraph (a)(1)(A.1), which provides rules to determine a person's beneficial interest in conservation use property.[29] Stated briefly, subparagraph (a)(1)(A.1) provides that where a person owns a partial interest in a family owned farm entity, and the entity owns conservation use property, then the person is deemed the owner of a proportional percentage of the conservation use property.[30] For example, a person owning a 20% interest in a family owned farm entity that owns 2,000 acres of conservation use property is deemed to own 20% of the entity's conservation use property, or 400 acres. This subsection further provides that where a person owns a partial interest in a family owned farm entity, he or she may elect to allocate to the family owned farm entity the lesser of the following: (1) the unused portion of his or her individual 2,000 acre limitation, or (2) his or her percent interest in the entity,

[28] Ga. L. 2004, p. 362, § 1 (amending O.C.G.A. § 48-5-7.4(a)(1)(E)).
[29] Ga. L. 2007, p. 608, § 1.
[30] Id.

multiplied by the total number of acres owned by the entity.[31] This means a family owned farm entity could have current use assessment for more than 2,000 acres of conservation use property.[32]

More recently, the legislature amended subparagraph (a)(1)(B) -- which excludes the value of a residence on conservation use property -- to further exclude the value of any property underlying the residence.[33] In particular, the amendment defines "underlying property" to mean either the minimum lot size required for residential construction (as required by local zoning codes), or two acres (whichever is less).[34] This provision only applies to a new covenant or a renewal of a covenant (i.e., not partway through a normal 10-year covenant period).[35]

Further, the legislature recently added subparagraph (a)(1)(F), which creates a new requirement that the primary purpose set forth in paragraph (a)(1) "includes land conservation and ecological forest management in which commercial production of wood and wood fiber products may be undertaken primarily for conservation and restoration purposes rather than financial gain."[36]

2. Changes to environmentally sensitive property under paragraph (a)(2)

In addition to expansions and restrictions for good faith agricultural and timber production property, the legislature has enacted several amendments modifying eligibility for environmentally sensitive property.

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[31] Id.
[32] Id.
[33] Ga. L. 2012, p. 763, § 1.
[34] Id.
[35] Id.
[36] Ga. L. 2013, p. 655, § 1.

Notably, Section 48-5-7.4 was substantially revised in 2003 to add constructed storm-water wetlands as a qualifying environmentally-sensitive property.[37] Specifically, the amendment extends eligibility to land used to control or abate pollution of state surface or ground waters by storm-water runoff or otherwise enhancing the water quality of surface or ground waters of the state.[38] However, to maintain eligibility for this use, an owner must file an annual inspection from a licensed engineer certifying that the property is properly maintained to accomplish its design objectives.[39] The amendment also adds language elsewhere in the statute to allow any person to own constructed storm-water wetlands,[40] and to require local governments to certify to a board of assessors whether property qualifies as constructed storm-water wetlands.[41] A local government may not certify a property unless the site is inspected before, during, and after construction, and the owner submits to the local government a plat, an engineer's certification, and information on the actual construction costs and estimated operating costs of the storm-water wetlands.[42]

In 2004, the legislature amended subparagraph (a)(2)(F) to add river and stream buffers as an eligible environmentally sensitive property.[43] Also in 2004, the legislature added paragraph (a)(2.1) – later changed to subsection (a.1) – which provides that if a property qualifies for conservation use valuation solely because the property is maintained as a wildlife habitat in its natural state or under management, then such use

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[37] See generally, Ga. L. 2003, p. 271, § 2.
[38] O.C.G.A. § 48-5-7.4(a)(2)(G).
[39] Id.
[40] O.C.G.A. § 48-5-7.4(a)(1)(C)(vii).
[41] O.C.G.A. § 48-5-7.4(k)(2).
[42] Id.
[43] Ga. L. 2004, p. 361, § 1.

is considered to be a good faith agricultural use rather than an environmentally sensitive use, and a local board of tax assessors must accept it as a qualifying use.

3. Changes to general eligibility requirements under subsection (b)

Section 48-5-7.4(b) provides general eligibility requirements for conservation use property to qualify for current use assessment, and the legislature has amended this section several times. In 2002, the legislature amended paragraph (b)(1) to provide that using a property for hunting purposes (rather than simply for a lease of hunting rights, as the original statute provided) shall not constitute "another type of business" that would disqualify the property.[44] Later, in 2005, the legislature again amended paragraph (b)(1) to provide that "The charging of admission for use of the property for fishing purposes shall not constitute another type of business."[45]

To prevent the result in Morrison v. Claborn, 294 Ga. App. 508 (2008), in which the Court of Appeals interpreted paragraph (b)(5) to conclude that a property failed to qualify as bona fide conservation use property because it was subject to a restrictive covenant that prohibited some – but not all – of the activities listed on Section 48-5-7.4(a)(1)(E), the legislature modified paragraph (b)(5)'s language to clarify that a restrictive covenant will disqualify a property only if it prohibits the qualifying use for which the qualification is sought.[46]

In 2012, the legislature amended paragraph (b)(2) to provide that, for first-time conservation covenants or renewals of conservation covenants, property owner no longer need to provide additional records regarding proof of bona fide conservation use if the owner proves that he or she has filed with the Internal Revenue Service a Schedule

[44] Ga. L. 2002, p. 1031, § 2.
[45] Ga. L. 2005, p. 222, § 1.
[46] Ga. L. 2008, p. 1149, § 2.

E (farm related income or loss), Schedule F, with a Form 1040, or Form 4835.[47] The amendment further provides that the board of assessors shall conduct and provide proof of a visual on-site property inspection before denying eligibility under this paragraph.[48] It is unclear, however, whether a board of tax assessors *must* accept the Forms as proof, no questions asked, or whether the board of tax assessors may deny an application in spite of the Forms so long as they first perform and provide proof of an on-site inspection of the property.

4. Miscellaneous eligibility changes under O.C.G.A. §§ 48-5-7.4

Finally, there have been three miscellaneous modifications of Section 48-5-7.4 all of which relate to property size. The legislature added paragraph (a)(3) in 2008 to allow a county government to set a minimum acreage on conservation use properties, so long as the minimum acreage did not exceed 25 acres.[49] Shortly thereafter, however, the legislature struck this provision in 2012.[50]

At the same time that it struck paragraph (a)(3), the legislature added a new provision to subsection (i) so that where a tract is divided by a county line, natural boundary, land lot line, public right-of-way, easement, road, or railroad track, then an applicant may make a one-time election to treat the property as contiguous despite the boundary.[51] The amendment defines "contiguous property" as real property within a county that abuts, joins, or touches and has the same undivided common ownership.[52] Further, this provision allows an owner who already has conservation use property and

[47] Ga. L. 2012, p. 763, § 1.
[48] Id.
[49] Ga. L. 2008, p. 1149, § 1.
[50] Ga. L. 2012, p. 763, § 1.
[51] Id.
[52] Id.

subsequently acquires additional, adjacent qualified property to enter the newly-acquired property into the original covenant for the remainder of the 10-year period so long as the newly-acquired property is less than 50 acres.[53]

C. Changes to Administrative Provisions

In 1998, the statute was amended to provide that where a conservation use application is approved, the local board of tax assessors must file the approved application in the local county superior court.[54] Applications made prior to 1998 would be filed without a fee, but from 1998 onward, the local board of tax assessors is required to charge the owner a fee and then pay to have the application filed.[55] If the application is denied, the board would return the fee, and if an application were not recorded as required, then a transferee would not be bound to the conservation covenant or subject to penalty if the covenant were breached.[56] Subsection (w) was first added at this time to provide that that if a conservation covenant expires or property ceases to qualify as a conservation use property, then the owner must apply to release the property from conservation use.[57] Local boards of tax assessors must approve such release applications after verifying that any applicable taxes or penalties have been paid.[58] Although subsection (w) initially provided for fee to file the release (to be paid by the owner), a later amendment eliminated the filing fee for releases.[59]

The legislature also amended subsection (d) in 2003 and 2004 to modify its provisions regarding renewal and expiration of conservation covenants. In 2003,

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[53] Id.
[54] Ga. L. 1998, p. 553, § 3 (amending O.C.G.A. § 48-5-7.4(j)).
[55] Id.
[56] Id.
[57] Ga. L. 1998, p. 553, § 4.
[58] Id.
[59] Ga. L. 1999, p. 589, § 2 (amending O.C.G.A. § 48-5-7.4(w)).

subsection (d) was amended to allow an owner to enter into a renewal contract in the ninth year of a covenant so that the contract continues without lapse for an additional ten years.[60] In 2004, the legislature again amended this subsection to require local boards of tax assessors to provide written notice of an impending covenant expiration via first class mail at least 60 days prior to the expiration date.[61]

As additional administrative measures, the legislature empowered the Commissioner of Revenue to issue regulations to enforce Section 48-5-7.4 in 2006.[62] It further prohibited county governing authorities from promulgating information inconsistent with Chapter 5 of Title 48.[63]

D. Changes to Penalty and Breach Exceptions

In 1993, a year after Section 48-5-7.4 went into effect, the legislation added paragraph (p)(3), creating a new breach exception where an owner allows all or part of a conservation use property to lie fallow due to economic hardship, so long as the owner notifies his or her local board of tax assessors on or before last day to file tax returns and the land is not left fallow more than 2 years in any 5-year period.[64] Shortly thereafter in 1994, the legislature added paragraph (p)(4), creating another breach exception where an owner transfers up to 25 acres of property to a place of religious worship, burial, or purely public charity exempt from ad valorem taxation; however, any use by the transferee that would violate its tax exempt status would breach the conservation covenant.[65]

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[60] Ga. L. 2003, p. 565, § 1.
[61] Ga. L. 2004, p. 360, § 1.
[62] Ga. L. 2006, p. 819, § 1 (adding O.C.G.A. § 48-5-7.4(y)).
[63] Ga. L. 2012, p. 763, § 1 (adding O.C.G.A. § 48-5-7.4(z)).
[64] Ga. L. 1993, p. 947, § 4.
[65] Ga. L. 1994, p. 428, § 1.

The legislature softened the harsh penalty provision somewhat in 1998 when it added subsection (x) to the statute. Subsection (x) provides that in any case where a renewal covenant is breached by the original covenantor or a transferee who is related to the original covenantor, the penalty provision under O.C.G.A. § 48-5-7.4(l) will not apply if the breach occurs during the sixth through tenth years of the renewal covenant.[66] If the covenant is breached during the latter half of the ten-year period, the penalty will be the amount by which the conservation use valuation reduced taxes that otherwise would have been due (rather than twice that amount), plus interest.[67]

Further, since the early 2000s, the legislature enacted half a dozen new exceptions to the penalty and breach provisions. In 2002, the legislature added paragraph (q)(3), which allows an owner aged 65 or older to escape penalty where he or she discontinues a qualifying use, has renewed the conservation covenant at least once without an intervening lapse, has kept the property in its qualifying use for at least three years, and files a written election with the local board of tax assessors.[68]

In 2005, the legislature added paragraphs (p)(5) and (p)(6) to the breach exceptions. Exception Number 5 allows an owner to lease a maximum of six acres of otherwise qualifying property to place a cell tower on the property (such property ceases to be subject to the covenant and will be subject to taxation at fair market value as of the date of the lease's execution).[69] Exception Number 6 allows an owner to host a corn

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[66] Ga. L. 1998, p. 574, § 1.
[67] Id.
[68] Ga. L. 2002, p. 1031, § 3.
[69] Ga. L. 2005, p. 222, § 2.

maze on the property without breaching a conservation covenant, so long as the remainder of the corn is harvested.[70]

In 2006, subsection (q) received its most recent new exception in paragraph (q)(4), which creates another penalty exception where an owner elects to discontinue a qualifying use, such owner entered into a covenant for the first time after reaching age 67, and either:

1. owned the property for 15 years, or
2. inherited the property and kept it in a qualifying use for at least three years.[71]

The election must be in writing and filed with the local board of tax assessors to be effective.[72]

Next, in 2007, the legislature added breach exception Number 7, which allows all or part of a property to be used for agritourism, which the amendment defines as charging admission for people to visit, view, or participate in the operation of, or purchase products during a visit to, a farm or dairy.[73]

The legislature added certain procedural requirements before a local taxing authority could seek to assess penalties for breach of a conservation covenant in 2008. Specifically, the legislature added subsection (k.1), which provides that if a local board of tax assessors alleges that an owner has breached a covenant, then the board of tax assessors shall first give written notice to the owner.[74] The owner then has 30 days from the date of notice to cease the activity or activities alleged to be in violation of the

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[70] Id.
[71] Ga. L. 2006, p. 685, § 1.
[72] Id.
[73] Ga. L. 2007, p. 90, § 1 (adding O.C.G.A. § 48-5-7.4(p)(7)).
[74] Ga. L. 2008, p. 1149, § 3.

covenant or to correct the condition(s) alleged to be in breach of the covenant.[75] Following the 30-day grace period, the board of tax assessors must perform a physical inspection of the property and notify the owner whether the activity has or has not ceased and/or whether the condition has or has not been corrected.[76] Finally, if the owner appeals the board of tax assessors' findings, such appeal is in the same manner as other property tax appeals made pursuant to O.C.G.A. § 48-5-311.[77]

Finally, the most recent amendment to Section 48-5-7.4 adds breach exceptions Numbers 8 and 9: Number 8 provides an exception where property is used as the site for farm weddings, so long as the property has been subject to a covenant for at least one year, and Number 9 provides an exception where property is used to host "not for profit equestrian performance events to which spectator admission is not contingent upon an admission fee but which may charge an entry fee from each participant" (again, the property must have been subject to a covenant for at least one year).[78]

E. Growing Pains

Pursuant to Section 48-5-7.4 subsection (s), the Commissioner of Revenue is required to prepare an annual report that shows, among other things, the fiscal impact of conservation use properties on counties throughout the State.[79] By examining these reports, we can gain certain insights into the expansion of the conservation use program over time.

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[75] Id.
[76] Id.
[77] Id.
[78] Ga. L. 2013, p. 683, § 1 (adding O.C.G.A. §§ 48-5-7.4(p)(8) and (p)(9)).
[79] Copies of the Commissioner's property tax administration annual reports dating back to the year 2000 are available at http://dor.georgia.gov/property-tax-administration-annual-report (last accessed on April 19, 2016).

Table 1, below, shows the assessed value and revenue lost each year to conservation use properties throughout the state from 1993 to 2011; it further shows the number of parcels in the conservation use program, where such information is available.

Table 1

Year	Assessed Value Lost (in Billions)	Revenue Lost (in Millions)	Parcel Count (where available)
1993	0.65	15.8	
1994	0.81	20.4	
1995	0.92	24	
1996	1.04	27	
1997	1.19	31.9	
1998	1.47	37.9	
1999	1.98	50.53	60,116
2000	2.28	57.69	66,016
2001	2.83	72	75,646
2002	3.6	90.1	84,289
2003	4.3	110.1	93,477
2004	5.1	110.1	103,325
2005	5.1	127.3	111,618
2006	7.2	180.7	121,875
2007	9.2	228.6	133,485
2008	10.8	267.4	146,834
2009	11.6	292.1	168,673
2010	11.5	295.1	166,206
2011	10.8	283.2	173,089
2012	10.1	269.1	178,798
2013	9.6	261.3	183,665

As Table 1 shows, aside from very recent years, the assessed value lost and revenue lost has risen every year since Section 48-5-7.4's inception. Similarly, aside from a slight dip in 2010, the number of parcels entered into the conservation use program has steadily increased each year. (Note, however, that the number of parcels can be somewhat misleading, as a parcel count does not reflect the size or value of any particular parcel).

Viewed in chart form, these changes are even more readily apparent. Charts 1, 2, and 3 depict the annual change in assessed value lost, revenue lost, and number of parcels in the conservation use program, respectively.

Chart 1

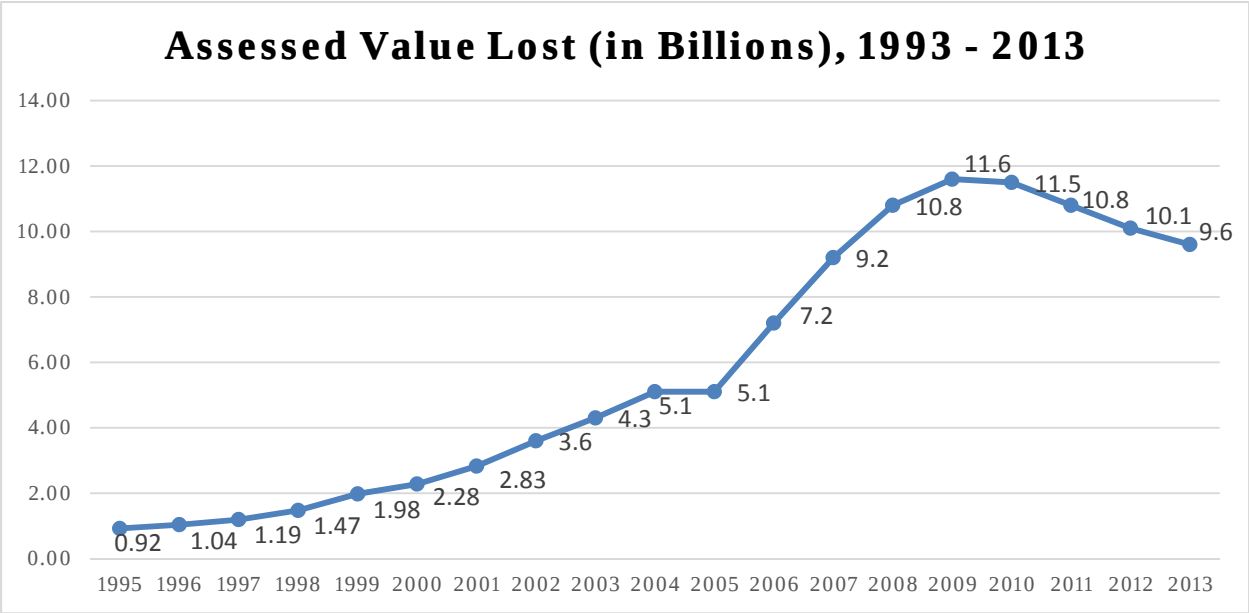


Chart 2

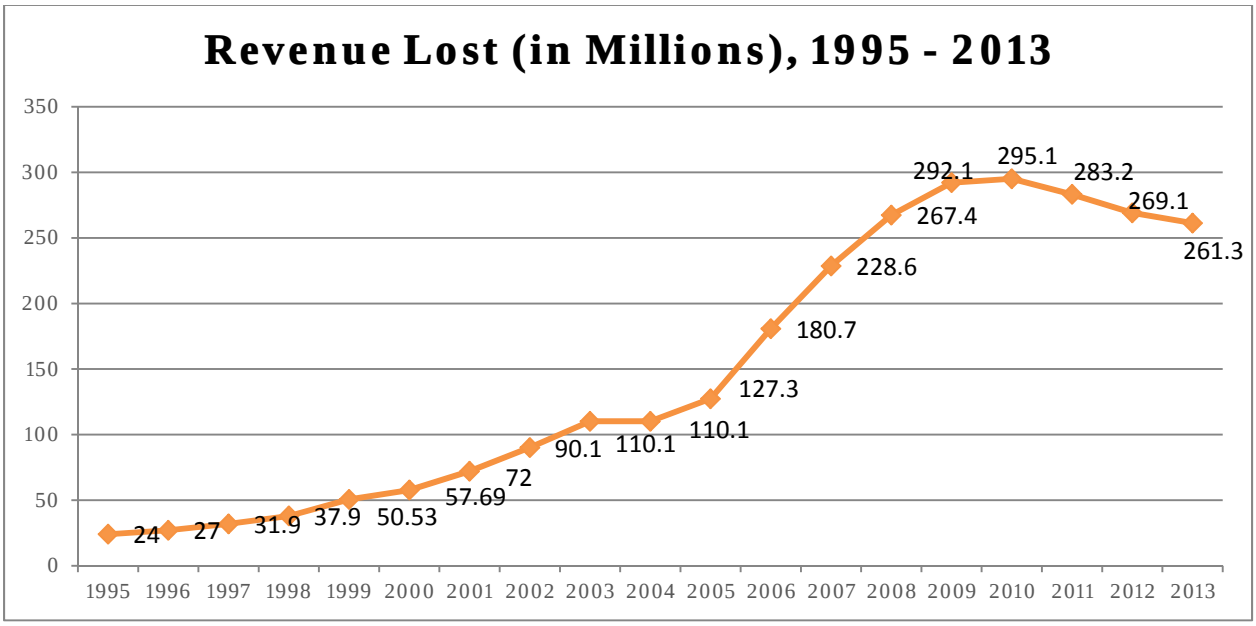
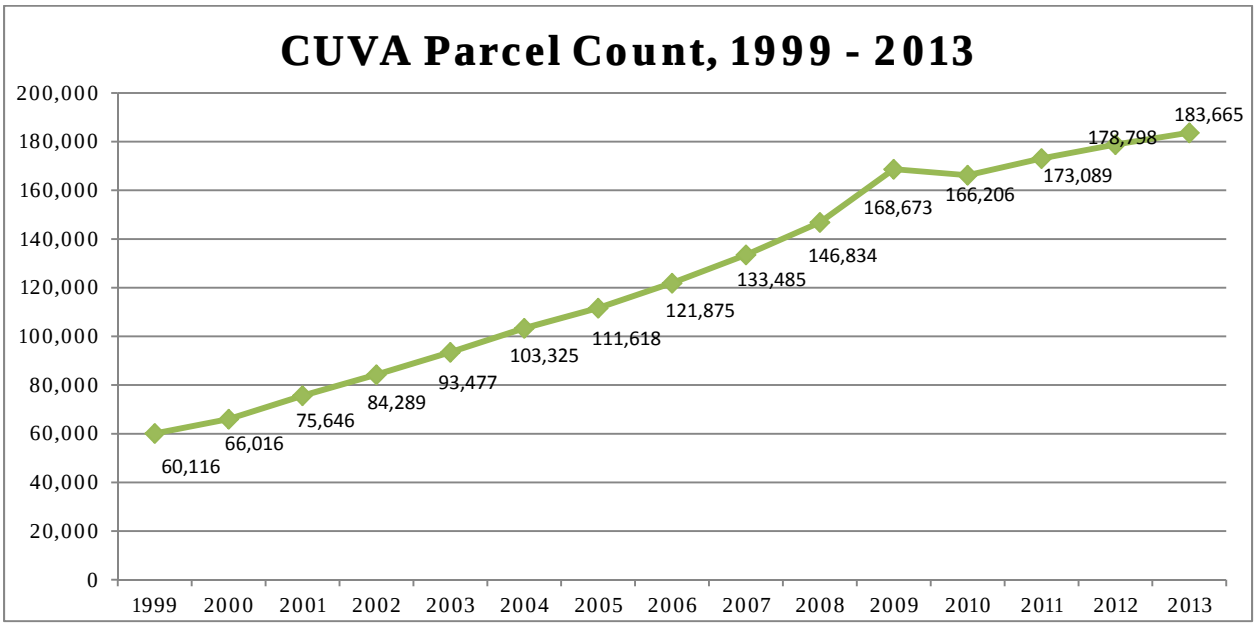


Chart 3



We can make a number of observations about this data. Both *assessed value lost* and *revenue lost* increased at a gradual pace between 1993 and 1998, increased at a slightly quicker pace between 1999 and the mid-2000s, at which time they flat-lined. Yet as Charts 1 and 2 show, both *assessed value lost* and *revenue lost* rose dramatically in the late 2000s, only to taper off and fall somewhat in more recent years. Further, from Chart 3 we can see that 2009 experienced a sharp increase in the number of parcels in the conservation use program, although this number actually fell in 2010 before rebounding in 2011.

Because there are numerous intervening factors that may dilute or delay an amendment's impact on the number of conservation use properties, Section 48-5-7.4's legislative history can only serve as a partial guide. Nonetheless, it is worth noting that there were no amendments to the statute between 2009 and 2012, a time during which the *assessed value lost*, *revenue lost*, and number of parcels began to taper off and even

fall somewhat. This suggests that the steadily-broadening exceptions to the breach and penalty provisions or the expansion of current use valuation eligibility have indeed played a strong role in the rise of the conservation use program's popularity and have a direct impact on the effective tax cost of this program on Georgia counties and taxpayers.

IV. APPLYING GEORGIA'S CONSERVATION USE PROGRAM

This section explores the application of O.C.G.A. § 48-5-7.4 in conjunction with enabling regulations propounded by the Georgia Department of Revenue and, where available, judicial interpretation.

A. Qualified Property Uses Eligible for Current Use Valuation

O.C.G.A. § 48-5-7.4 authorizes a current use valuation for three classes of property: (1) property used primarily for the good faith production of agricultural products or timber, (2) property that has been certified as environmentally sensitive by the Department of Natural Resources and primarily used for ecological conservation or storm water management, and (3) owner occupied single-family residential property in areas transitioning from single-family use to commercial, agricultural, or industrial use.[80] The first two classes are broadly classified as "conservation use properties" and are subject to numerous restrictions relating to the ownership and use of the property. The third class, bona fide residential transitional properties, is entitled to current use valuation based on the ownership and use of surrounding properties and is limited to five acres. As discussed in greater detail below, owners of all three classes of properties

[80] O.C.G.A. §§ 48-5-7.4(a) and (c).

are required to enter into ten year covenants to continue the qualifying use of the property and are subject to significant penalties in the event of a breach.

1. Good Faith Production of Agricultural Products or Timber

Pursuant to O.C.G.A. § 48-5-7.4(a)(1), current use valuation for agricultural production is authorized where "[n]ot 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 subsistence farming or commercial production, from or on the land of agricultural products or timber".[81] Paragraph (a)(1)(E) provides that qualifying agricultural uses include, but are not limited to: (1) raising, harvesting, or storing crops; (2) feeding, breeding, or managing livestock or poultry; and (3) the production of aquaculture, horticulture, floriculture, forestry, dairy, livestock, poultry, and apiarian products.[82] While this definition of agricultural use is broad enough to include all agricultural activity, the actual use of such property must meet a basic level of production in order to satisfy the good faith standard.

The Georgia Department of Revenue defines "good faith production" as a "viable utilization of the property" for production.[83] Presumably, this good faith and viability requirement implies that the property owner's utilization of the land must be commercially reasonable in that the land must be capable of either subsistence farming or commercial production of the product and that the land owner is going about his business in a reasonable manner. These two prongs are reflected in the five factors, which the board of assessors may consider when evaluating the CUVA application: (1) the nature of the terrain, (2) the density of marketable product on the land, (3) the past

[81] O.C.G.A. § 48-5-7.4(a)(1) (emphasis supplied).
[82] O.C.G.A. § 48-5-7.4(a)(1)(E).
[83] Ga. Comp. R. & Regs. 560-11-6-.02(d)(1).

usage of the land, (4) the economic merchantability of the product, and (5) the utilization or nonutilization of recognized practices and any implemented plans thereof.[84] These factors do not draw a hard line between qualified and unqualified use, but allow the board of assessors the discretion to make determinations of the good faith of landowners based on experience and judgment.

In addition to a good faith, viable enterprise, the qualifying use must also be the "primary purpose" of the property, which is distinguished from an "incidental, occasional, intermediate or temporary use" and requires a "devotion to and utilization of the property for the full time necessary and customary to accommodate the predominant use, e.g. the growing season, the crop cycle or planting to harvest cycle."[85] The primary purpose requirement is reflected in the five factors listed above to a certain extent, but this requirement is more so reflected in the prohibitions on the operation of an unrelated business[86] and allowing the land to lie fallow.[87] Pursuant to O.C.G.A. § 48-5-7.4(b)(1), property would not be disqualified if a portion of the property is not devoted to the qualifying property so long as at least half of it is. The property will be disqualified, however, if "some other type of business is being operated on the unused portion" or if the unused portion is not "minimally managed so that it does not contribute significantly to erosion or other environmental or conservation problems."[88] Pursuant to O.C.G.A. § 48-5-7.4(p)(2) and (3), a property owner may only allow the land to lie fallow as part of a conservation program, federal agricultural assistance program, agricultural management purposes, or, in the event of financial hardship, the land may

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[84] O.C.G.A. §§ 48-5-7.4(a)(1)(D)(i)-(v).
[85] Ga. Comp. R. & Regs. 560-11-6-.02(g).
[86] See O.C.G.A. § 48-5-7.4(b)(1).
[87] See O.C.G.A. § 48-5-7.4(p)(2) and (3).
[88] Id.

lie fallow for up to two years within any five year period. Viewed as a whole, if the property owner is utilizing the property for an unrelated business or allowing it to lie fallow for extended periods, then the good faith production of agriculture or timber is clearly not the "primary purpose" of the property.

a) Conservation of *Non-Environmentally Sensitive Land* Pursuant to O.C.G.A. § 48-5-7.4(a)(1)

In addition to the good faith production of agriculture, O.C.G.A. § 48-5-7.4(a)(1) authorizes current use valuation for conservation purposes. Unlike the "environmentally sensitive" properties defined in paragraph (a)(2), paragraph (a)(1) conservation use properties need not be certified by the Department of Natural Recourses as environmentally sensitive.

O.C.G.A. § 48-5-7.4(a)(1)(E)(iii) provides that "[p]roducing plants, trees, fowl, or animals, including without limitation the production of fish or wildlife by maintaining not less than ten acres of wildlife habitat either in its natural state or under management, which shall be deemed a type of agriculture; provided, however, that no form of commercial fishing or fish production shall be considered a type of agriculture". Additionally, O.C.G.A. § 48-5-7.4(a)(1)(F) provides that "[t]he primary purpose described in this paragraph includes land conservation and ecological forest management in which commercial production of wood and wood fiber products may be undertaken primarily for conservation and restoration purposes rather than financial gain". Construing these paragraphs together, it is clear that despite the good faith production requirement stated in paragraph (a)(1), property may qualify for current use valuation when left idle or under management, provided such property is greater than ten acres and the owner does not engage in the removal of timber for profit. Landowners

qualifying for such use, however, may use such properties for hunting and fishing and may lease these rights to others.[89]

b) Special Considerations for Forestry or Timber Production on Property Less than Ten Acres

One of the many question for which the appellate courts have not yet *officially* weighed in on is whether natural timber growth on a tract of less than ten acres qualifies as bona fide good faith production. As discussed above, O.C.G.A. § 48-5-7.4(a)(1) requires a *viable, good faith* production of agriculture or timber. Given the slow growth cycle of timber and the fact that most land will produce some timber if left to run its course, it may be difficult to distinguish between good faith productive efforts and idle land with incidental timber growth. Moreover, this statute does not clearly delineate what minimum efforts on the part of the landowner are required when the agricultural product grows naturally on the land. The property owner would likely argue that the "good faith production of agricultural products or timber" is not measured by sweat of the landowner's brow, but by the actual production of the land and that idle land should qualify regardless of whether the owner actively encourages growth, so long as growth occurs naturally. Although this question must ultimately be decided by the courts, construing O.C.G.A. § 48-5-7.4 as a whole provides some guidance.

Interpreting natural timber growth on a small acreage tract appears inconsistent with several provisions of the O.C.G.A. § 48-5-7.4. First, preserving land in its natural state is already defined as a type of agriculture, but only where the property is at least

[89] O.C.G.A. § 48-5-7.4(b)(1).

ten acres.[90] Defining natural, or incidental, timber growth on a tract less than ten acres as "good faith production" renders this ten acre requirement meaningless.

Additionally, natural growth appears insufficient to satisfy most of the factors that the taxing authority is instructed to consider, including: (1) the nature of the terrain, (2) the density of marketable product, (3) the past usage of the land, (4) the economic merchantability of the product, and (5) the utilization or nonutilization of recognized practices and any implemented plans thereof.[91] With the exception of the nature of the terrain, these factors are within the landowner's control and imply a minimum level of effort or skill on the part of the landowner. Land left to develop naturally would tend to fare worse under these four factors than a tract of land under management.

Finally, it is difficult to imagine any undeveloped land in Georgia that would not qualify for current use valuation if the only requirement was that the land must be capable of eventually producing timber when left in its natural state. Interpreting natural growth as bona fide production would render the entirety of O.C.G.A. § 48-5-7.4(a)(2) meaningless by providing the same tax benefits to properties without requiring that such properties be certified by the Department of Revenue as environmentally sensitive. In an unreported (i.e. not precedential) opinion on this topic, the Court of Appeals recently opined that "the General Assembly [...] did not intend for any tract of property with incidental tree growth to automatically [...] receive the tax benefits under

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[90] See O.C.G.A. § 48-5-7.4(a)(1)(E)(iii) ("Producing plants, trees, fowl, or animals, including without limitation the production of fish or wildlife by maintaining not less than ten acres of wildlife habitat either in its natural state or under management, which shall be deemed a type of agriculture") (emphasis supplied).
[91] O.C.G.A. §§ 48-5-7.4(a)(1)(D)(i)-(v).

CUVA."[92] Additionally, the Court held that "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" and that O.C.G.A. § 48-5-7.4 requires "an inquiry into the quality of the [taxpayer's] timbering effort."[93] While this opinion is nonbinding, the Court's conclusions are undoubtedly implied by the good faith requirement and reflected in the five statutory factors.

2. Conservation of Environmentally Sensitive Land

Pursuant to O.C.G.A. § 48-5-7.4(a)(2), current use valuation for conservation of environmentally sensitive land is authorized where "[n]ot more than 2,000 acres of tangible real property, [...] of the types of environmentally sensitive property specified in this paragraph and certified as such by the Department of Natural Resources, if the primary use of such property is its maintenance in its natural condition or controlling or abating pollution of surface or ground waters of this state by storm-water runoff or otherwise enhancing the water quality of surface or ground waters of this state [...]". For the purpose of this subsection, natural condition means "the flora, fauna, soil, and water conditions that would develop on a specific tract of land if all human interference were to be removed."[94] The conditions for each type of natural habitat are documented thoroughly in Charles H. Wharton, Georgia Geologic Survey Bulletin 114, The Natural Environments of Georgia (1978). Additionally, the land must have been undisturbed for

[92] Cherokee County Board of Tax Assessors v. Mason, No. A15A1086, p. 10 (Ga. App. Nov. 17, 2015).
[93] Id. at 11-12.
[94] Ga. Comp. R. & Regs. 391-3-18-.02(d).

a sufficient period of time for natural processes to dominate or will require management to restore the land.[95]

Qualifying environmentally sensitive areas include: (A) crests, summits, and ridge tops with a slope greater than 25 percent; (B) wetlands as defined pursuant to Section 404 of the Federal Clean Water Act; (C) significant ground-water recharge areas as identified by the Department of Natural Resources; (D) undeveloped barrier islands as defined by the Federal Coastal Barrier Resources Act; (E) habitats as certified by the Department of Natural Resources as containing species that have been listed as either endangered or threatened under the federal Endangered Species Act of 1973; (F) river and stream corridors or buffers within the 100 year flood plain or within buffer zones established by local ordinance where land-disturbing activity is prohibited; or (G) constructed storm-water wetlands.[96] Applicants under this section are required to provide additional relevant documents including maps, reports and certificates as listed in Ga. Comp. R. & Regs. 391-3-18-.04.

3. Bona Fide Residential Transitional Properties

Residential property qualifies for current use valuation as bona fide residential transitional property when located in a transitional developing area.[97] A transitioning area is one which is undergoing a shift in use from single family residential properties to agricultural, commercial, industrial, office-institutional, multifamily, or utility use or a combination of such uses.[98] Evidence of this transition may be shown through recent zoning changes, the purchase of land by a developer, affidavits of intent from other

[95] Ga. Comp. R. & Regs. 391-3-18-.02(d).
[96] O.C.G.A. §§ 48-5-7.4(a)(2)(A)-(G); Ga. Comp. R. & Regs. 391-3-18-.03.
[97] O.C.G.A. § 48-5-7.4(c).
[98] Id.

owners, or the actual change in use by properties in close proximity to the applicant.[99] Such property must be devoted to use by a single family and occupied more or less continually by the owner as the primary place of abode and for which the owner is eligible to claim a homestead exemption.[100] The current use valuation applies to the residential improvements and up to five contiguous acres of underlying land.[101]

B. Ownership Requirements and Limitations

In order to qualify for current use valuation as property devoted to the production of agriculture or conservation, such property must be owned by one or more natural or naturalized citizens, a family owned farm entity owned by natural or naturalized citizens related by blood or marriage within the fourth degree of civil reckoning,[102] an estate or trust of which the devisees, heirs or beneficiaries are one or more natural or naturalized citizens, or a 501(c)(3) or (c)(7) nonprofit entity organized for the purpose of conservation or recreation.[103] Additionally, in order to qualify as family owned farm entities, such entities must have derived eighty percent or more of the previous year's gross income from bona fide conservation uses, including earnings on investments directly related to past or future bona fide conservation uses.[104]

1. Ownership Restrictions on Residential Transitional Properties

O.C.G.A. § 48-5-7.4(c) does not, on its face, apply the natural and naturalized citizen requirement to owners of residential transitional properties. Nevertheless, such restriction is applied through Ga. Comp. R. & Regs. 560-11-6-.03(c), which states that an

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[99] Id.
[100] Ga. Comp. R. & Regs. 560-11-6-.03(c).
[101] Id.
[102] The fourth degree of civil reckoning includes children, parents, siblings, grandchildren and grandparents. O.C.G.A. §§ 53-2-1(c)(3)-(6).
[103] O.C.G.A. §§ 48-5-7.4(a)(1)(C) and (a)(2).
[104] O.C.G.A. § 48-5-7.4(a)(1)(C)(iv).

owner cannot qualify property as residential transitional property unless such owner would also qualify for the homestead exemption under O.C.G.A. § 48-5-44. Applicants for the homestead exemption must be state residents and, consequently, "either a United States citizen or an alien with legal authorization from the U.S. Immigration and Naturalization Service."[105]

2. Maximum Acreage Per Owner

The current use valuation for agricultural or conservation use properties for any single owner is limited to a maximum of 2,000 acres.[106] The 2,000 acre limit applies to total agricultural and conservation use properties combined.[107] However, where a family owned farm entity is jointly owned by multiple persons, each owner is only allocated acreage towards his 2,000 acre limit in proportion to their ownership interest in the entity.[108]

3. Special Considerations Related to the Legal Ownership of Property

Several CUVA breach penalties are contingent upon the age,[109] disability,[110] death,[111] or relational status[112] to the property "owner." Because estates, trusts, family corporations, partnerships, LLCs, and nonprofit 501(c)(3) and 501(c)(7) groups may be qualified "owners," a frequent question is whether a natural person may utilize these owner-contingent penalty exemptions when the true legal owner of the property is an artificial legal entity. For example, in a partnership, legal title to partnership property is

[105] O.C.G.A. §§ 48-5-40(1)(B) and 40-5-1(15).
[106] O.C.G.A. §§ 48-5-7.4(a)(1) and (a)(2).
[107] O.C.G.A. § 48-5-7.4(e).
[108] O.C.G.A. § 48-5-7.4(A.1)(i) (codifying the decision in Effingham Cnty. Bd. of Tax Assessors v. Samwilka, Inc., 278 Ga. App. 521, 629 S.E.2d 501 (2006)).
[109] O.C.G.A. § 48-5-7.4(q)(3) and (4).
[110] O.C.G.A. § 48-5-7.4(q)(2).
[111] O.C.G.A. § 48-5-7.4(n)(3).
[112] O.C.G.A. § 48-5-7.4(o)(1) and (x).

vested in the partnership itself, not the individual partners.[113] The partners own an interest in the partnership; they do not have an ownership interest in the property. The question, then, is whether a partner, who satisfies the conditions for an early termination on account of his age, disability, etc. could utilize those provisions when title to the property is legally held by the partnership. Like most issues that arise under the CUVA statute, the appellate courts have not weighed in on this question. Nevertheless, the CUVA statute provides some clues in this regard and the courts have provided guidance in similar circumstances. Construing these sources together, a reasonable interpretation of these owner-contingent exemptions is that they are unavailable when the property is legally owned by an artificial entity.

The first rule of statutory interpretation is to look to the literal text of the statute.[114] Each of the owner-contingent penalty exemptions specifically state that the requirements apply to the "owner." For example, O.C.G.A. § 48-5-7.4(q)(3) states that an owner may terminate a covenant early when "***such owner*** *[1] has renewed without an intervening lapse at least once the covenant for bona fide conservation use, [2] has reached the age of 65 or older, and [3] has kept the property in a qualifying use under the renewal covenant for at least three years.*" To be eligible for this provision, the property owner must satisfy all three requirements.

Because O.C.G.A. § 48-5-7.4 does not expressly define an "owner," we must look to other provisions of Georgia law for guidance. The most obvious definition of the term is that an owner is the person or entity who holds record title to the property. In our example, the partnership would be the property owner. The partner, however, would

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[113] See e.g. O.C.G.A. § 14-9-701.
[114] Coffman Grading Co., Inc. v. Forsyth County, 303 Ga. App. 836, 838-39, 695 S.E.2d 310, 312 (2010).

likely argue that the term "owner" does not have a precise legal meaning in this context, and includes all persons exercising dominion and control over the property.[115]

The Georgia Supreme Court addressed this question in the context of the homestead exemption and held that shareholders of a housing co-op were not "owners" for the purpose of the homestead exemption because title to the property was vested in the co-op.[116] The Court noted that although the shareholders possessed "some elements of ownership," laws granting exemption from taxation must be narrowly construed and the shareholders did not actually own the property.[117] Applying that same rationale in the CUVA context, it is reasonable to conclude that the legal entity is the actual owner of the property and, because legal entities do not age or suffer physical disabilities, properties owned by them are ineligible for the owner-contingent penalty exemptions.

Additionally, the text of the statute recognizes a difference between ownership of the land and an ownership interest in a legal entity that owns the land. O.C.G.A. § 48-5-7.4(a)(1)(C) includes legal entities within the list of qualifying "owners." In contrast, O.C.G.A. § 48-5-7.4(a)(1)(A.1)(i) and (ii) refers to natural persons as "a person who owns an interest in a family owned farm entity," clearly delineating the person from the legal entity. Given that this statute recognizes a distinction between the "owner" and the person with an interest in a legal entity that owns the property, it is a fair conclusion that the term "owner" is meant to be strictly defined in this context.

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[115] See Evans Theatre Corp. v. De Give Inv. Co., 79 Ga. App. 62, 64-65, 52 S.E.2d 655, 657 (1949) (holding that the owner of an estate for years, who does not have fee simple title to the property, is the owner of the property for "all intents and purposes"); see also 73 C.J.S. Property § 39.

[116] Brandywine Townhouses, Inc. v. Joint City-County Bd. of Tax Assessors, 231 Ga. 585, 586, 203 S.E.2d 222, 223 (1974).

[117] Id.

C. Use Restrictions for Agricultural and Conservation Use Properties

For both agricultural uses pursuant to O.C.G.A. § 48-5-7.4(a)(1) and conservation uses pursuant to paragraph (a)(2), the qualifying use must be the "primary purpose" of the property. The Georgia Department of Revenue defines primary purpose or primary use to mean "the principal use to which the property is devoted, as distinct from an incidental, occasional, intermediate or temporary use for some other purpose not detrimental to or in conflict with its primary purpose".[118] Nevertheless, it is unnecessary for the entire tract of land to be used for the qualifying purpose provided that: (1) at least fifty percent of the land is used for such purpose, (2) the unused portion is "minimally managed" so that it does not contribute to erosion or other environmental problems, and (3) no other type of business is operated on the property.[119] Paragraph (b)(1) further provides that "the lease of hunting rights or the use of the property for hunting purposes shall not constitute another type of business."

O.C.G.A. § 48-5-7.4(b)(1) does not define the "other type of business" prohibited. The Court of Appeals, however, has interpreted this restriction to mean that owners may operate a business on the property provided that the secondary, or unqualified use, is "incidental, occasional, intermediate or temporary" and not "separate and apart from the commercial production from or on the land of agricultural products" or "detrimental to or in conflict with the property's primary purpose".[120]

In Terrell Cnty. Bd. of Tax Assessors v. Goolsby, the Court of Appeals held that the trial court erred in holding that the operation of a business on otherwise qualified

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[118] Ga. Comp. R. & Regs. 560-11-6-.02(g).
[119] O.C.G.A. § 48-5-7.4(b)(1).
[120] Terrell Cnty. Bd. of Tax Assessors v. Goolsby, 324 Ga. App. 535, 540, 751 S.E.2d 158, 162 (2013).

property could never constitute a breach, but remanded the case back to the trial court rather than render a decision based on an incomplete record.[121] However, in a special concurrence, Judge Boggs stated that, depending on the facts, the owner's operation of a grain store on the property and occasionally renting out the office for banquets may not constitute a breach.[122] Judge Boggs stated:

> "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 O.C.G.A. § 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."[123]

D. Exceptions to the Primary Use Requirement

Although O.C.G.A. § 48-5-7.4 requires the qualifying use to be the "primary purpose" and prohibits the operation of unrelated business on the property, O.C.G.A. § 48-5-7.4(p) provides a list of several activities that have been specifically authorized on current use property. Such activities include: (1) mineral exploration of agricultural or timber producing property, provided the qualifying use continues; (2) allowing all or part of the property subject to the covenant to lie fallow or idle for specified agricultural and conservation programs; (3) allowing all or part of the property subject to the covenant to lie fallow or idle due to economic or financial hardship, provided the owner gives notice and does not allow the land to lie fallow or idle for more than two years of

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[121] Id. at 540, 751 S.E.2d at 163.
[122] Id. at 541-42, 751 S.E.2d at 164 (Boggs, J., concurring).
[123] Id.

any five-year period; (4) transferring up to twenty-five acres of property to a place of religious worship or burial or a public charity, provided the transferee's use would qualify for exemption pursuant to O.C.G.A. § 48-5-41(a); (5) the lease of up to six acres for the purpose of placing a cellular telephone transmission tower on the property; (6) allowing all or part of the property subject to the covenant on which a corn crop is grown to be used for the purpose of constructing and operating a maze so long as the remainder of such corn crop is harvested; (7) allowing all or part of the property subject to the covenant to be used for agritourism purposes, which is defined as charging admission for persons to visit, view, or participate in the operation of a farm or dairy or production of farm or dairy products for entertainment or educational purposes or selling farm or dairy products to persons who visit such farm or dairy; (8) allowing all or part of the property which has been subject to a covenant for at least one year to be used as a site for farm weddings; and (9) allowing all or part of the property which has been subject to a covenant for at least one year to be used to host not for profit equestrian performance events to which spectator admission is not contingent upon an admission fee but which may charge an entry fee from each participant.[124]

E. Additional Relevant Proof Requirements

In addition to the ownership and use restrictions discussed above, landowners may be required to provide additional relevant proof depending upon the qualifying use of the property.

[124] O.C.G.A. § 48-5-7.4(p)

1. Less than Ten Acres Used for the Good Faith Production of Agriculture and Timber

Pursuant to O.C.G.A. § 48-5-(b)(2), "[t]he owner of a tract, lot, or parcel of land totaling less than ten acres shall be required by the tax assessor to submit additional *relevant records* regarding proof of bona fide conservation use for qualified property that on or after May 1, 2012, is either first made subject to a covenant or is subject to a renewal of a previous covenant."[125] Ga. Comp. R. & Regs. 560-11-6-.03(b) requires that the minimum size lot for any residential improvements be subtracted from the total prior to determining whether the property is below the ten acre threshold. O.C.G.A. § 48-5-(b)(2) continues, however, providing that "[i]f the owner of the subject property provides proof that such owner has filed with the Internal Revenue Service a Schedule E, reporting farm related income or loss, or a Schedule F, with Form 1040, or, if applicable, a Form 4835, pertaining to such property, *the provisions of this paragraph, requiring additional relevant records regarding proof of bona fide conservation use, shall not apply*" 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."[126]

2. Environmentally Sensitive Properties

Owners applying for current use valuation for the conservation of environmentally sensitive properties must provide a certificate by the Department of Natural Resources certifying that the specific property is environmentally sensitive.[127] Such certificate may be filed within thirty days after the last day for filing the current use

[125] O.C.G.A. § 48-5-(b)(2) (emphasis supplied).
[126] O.C.G.A. § 48-5-(b)(2) (emphasis supplied).
[127] Ga. Comp. R. & Regs. 560-11-6-.03(d).

application.[128] Additionally, the board of tax assessors may require evidence showing: (1) the legal ownership of the property; (2) that the property has not been developed, significantly altered, or otherwise rendered unfit for its natural environmental purpose; and (3) that the property has been and will continue to be maintained in its natural condition.[129]

3. Constructed Storm Water Wetlands

Owners applying for current use valuation of constructed storm water wetlands must have the property certified by the local governing authority.[130] The owner is required to provide: (1) a plat of the tract in question prepared by a licensed land surveyor; (2) a certification by a licensed professional engineer that the specific design used for the constructed storm-water wetland was recommended by the engineer as suitable for such site after inspection and investigation; and (3) information on the actual cost of constructing and estimated cost of operating the storm-water wetland, including without limitation a description of all incorporated materials, machinery, and equipment.[131] Additionally, the constructed wetlands must be inspected by an authorized employee or agent of the local governing authority before, during, and after construction.[132] Finally, owners must file an annual inspection report from a licensed professional engineer certifying that the property is being maintained in a proper state of repair so as to accomplish the objectives for which it was designed.[133]

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[128] Ga. Comp. R. & Regs. 560-11-6-.04(4).
[129] Ga. Comp. R. & Regs. 560-11-6-.03(d).
[130] O.C.G.A. § 48-5-7.4(k)(2).
[131] O.C.G.A. § 48-5-7.4(k)(2)(A); Ga. Comp. R. & Regs. 560-11-6-.03(e).
[132] O.C.G.A. § 48-5-7.4(k)(2)(B); Ga. Comp. R. & Regs. 560-11-6-.04(5).
[133] Ga. Comp. R. & Regs. 560-11-6-.03(f).

F. Calculation of the Current Use Value of Qualified Property

The current use value of qualifying property means "the amount a knowledgeable buyer would pay for the property with the intention of continuing the property in its existing use and in an arm's length, bona fide sale".[134] Bona fide sales are transactions occurring "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."[135]

In addition to the benefit of having qualified property valued at its current use, rather than the fair market value, such properties are also shielded from inflation during the covenant period. The current use value cannot be increased or decreased from year to year by more than three percent or by more than 34.39 percent for the entire covenant period.[136]

The calculation of bona fide conservation use properties, including properties used primarily for agriculture, timber and conservation are calculated based on tables provided by the Department of Revenue.[137] The Department of Revenue divides agriculture and timberland into nine soil productivity classes used to estimate the net income from the property.[138] Sixty-five percent of the current use value is attributable to the capitalization of such income and the remaining thirty-five percent is attributable to sales data of comparable property.[139] Environmentally sensitive properties and

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[134] O.C.G.A. §§ 48-5-2(1) and (2).
[135] O.C.G.A. § 48-5-2(.1).
[136] O.C.G.A. § 48-5-269(c); Ga. Comp. R. & Regs. 560-11-6-.07(i).
[137] O.C.G.A. 48-5-7.4(1).
[138] Ga. Comp. R. & Regs. 560-11-6-.07(a).
[139] Ga. Comp. R. & Regs. 560-11-6-.07(c) and (d).

constructed storm water wetland conservation use properties are classified within the timber land use group and valued accordingly.[140]

Furthermore, the current use valuation of bona fide agricultural use properties applies to tangible property permanently affixed to the real property which is directly connected to such owner's production of agricultural products, such as chicken houses and grain silos.[141] All residential improvements and underlying land, however, are valued at their fair market value.[142] The amount underlying land excluded from current use valuation is the lesser of two acres or the minimum lot size required for residential construction by local zoning ordinances.[143] Additionally, trees, shrubs or vines utilized for an orchard or vineyard are considered an improvement to the land and valued separately.[144]

The taxing authority is instructed to calculate the current use value of residential transitional property based on the annual productivity and sales of comparable property sold for single-family residential use.[145]

G. Breach of Covenant

Prior to receiving a current use valuation, the property owner must enter into a covenant with the taxing authority to maintain the property in bona fide qualifying use for a period of ten years.[146] Applications for current use valuation are required to be filed and indexed with the clerk of superior court and transferees are not bound by the

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[140] Ga. Comp. R. & Regs. 560-11-6-.07(e).
[141] O.C.G.A. § 48-5-7.4(a)(1)(A).
[142] O.C.G.A. § 48-5-7.4(a)(1)(B).
[143] Id.
[144] Ga. Comp. R. & Regs. 560-11-6-.07(g).
[145] O.C.G.A. § 48-5-2(2); Ga. Comp. R. & Regs. 560-11-6-.07.
[146] O.C.G.A. § 48-5-7.4(d).

covenant or subject to penalty for its breach unless so recorded.[147] Additionally, the taxing authority is required to index and maintain covenants in a manner sufficient to allow the public to locate any covenant affecting property subject to current use assessment.[148]

Properties enjoying current use valuation are required to maintain the property in its qualifying use continuously during the entire period of the covenant.[149] Any event which would otherwise disqualify the property from receiving the current use valuation shall be deemed a breach of the covenant and a lien will attach against the property for penalties and interest as of the date of such disqualifying event.[150] Owners are authorized to change the qualifying use of the property at any time without penalty, provided that the owner gives notice of such change to the taxing authority.[151] Because the current use value of the property is calculated based on the type of qualifying use, a change without notice could result in lower values than the property would otherwise qualify for and a penalty for breach will be assessed against the property. In the event of a breach, the existing covenant is terminated after notice and an opportunity to cure.[152]

1. Penalty

The penalty assessed for the breach of a conservation use covenant applies to the entire tract subject to the covenant regardless of whether the breach occurs only on a portion of the property.[153] The penalty is twice the difference between the total amount of tax paid pursuant to current use valuation and the total amount of taxes which would

[147] O.C.G.A. § 48-5-7.4(j)(1).
[148] O.C.G.A. § 48-5-7.4(r).
[149] O.C.G.A. § 48-5-7.4(g).
[150] Ga. Comp. R. & Regs. 560-11-6-.06(3).
[151] O.C.G.A. § 48-5-7.4(g).
[152] O.C.G.A. §§ 48-5-7.4(h) and (k.1).
[153] O.C.G.A. § 48-5-7.4(l).

otherwise have been due for each completed or partially completed year of the covenant period and bears interest at a rate of one percent per month from the date of the breach.[154] Penalties and interest resulting from a breach of covenant are collected in the same manner as unpaid ad valorem taxes.[155]

2. Penalty Reduction

In certain cases of age, illness, or foreclosure, the penalty for breach of covenant is limited to the amount by which the current use assessment has reduced taxes for the year in which the covenant is breached.[156] Where the breach occurs as a result of the foreclosure of a deed to secure debt or the property is conveyed to the lienholder without compensation and in lieu of foreclosure, owners are required to provide additional proof that the deed to secure and loan were part of a bona fide commercial transaction and not intended for the purpose of carrying out a transfer which would otherwise be subject to penalty.[157] Likewise, an owner unable to continue the qualifying use due to a medically demonstrable illness or disability must provide the taxing authority with satisfactory evidence clearly demonstrating such illness or disability.[158] Otherwise, owners may elect to discontinue the qualifying use only when the owner has renewed a ten year covenant at least once, reached the age of sixty-five, and fulfilled the renewed covenant for at least three years, or when the owner entered into the first covenant after reaching the age of sixty-seven, inherited the property or owned the property for at least fifteen years, and fulfilled at least three years of the covenant.[159]

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[154] Id.; O.C.G.A. § 48-2-40.
[155] O.C.G.A. § 48-5-7.4(m).
[156] O.C.G.A. § 48-5-7.4(q).
[157] O.C.G.A. §§ 48-5-7.4(q)(1)(A)-(C).
[158] O.C.G.A. § 48-5-7.4(q)(2).
[159] O.C.G.A. §§ 48-5-7.4(q)(3) and (4).

Alternatively, the penalty for renewal covenants breached after the fifth year by the original owner or a transferee related within the fourth degree is limited to the amount of tax savings over the life of the renewal covenant rather than double the amount of savings as it would have been otherwise.[160]

Finally, no penalty is applied in the event of a breach as a result of the death of a party to the covenant, the acquisition of all or part of the property under the power of eminent domain, or the sale of all or part of the property to a public or private entity with the power of eminent domain.[161]

3. Transfer of Property Subject to Bona Fide Conservation Covenant

The sale or lease of conservation use properties is restricted. Such properties may be sold or leased only to other qualified persons or entities.[162] Transferees are required to maintain the original covenant for the remainder of the term and file an application for a continuing covenant before the last date for filing tax returns in the year following the sale.[163] The sale to an unqualified purchaser or the failure of the transferee to maintain the qualifying use or file a timely application constitutes a breach of the original covenant, which is deemed to have occurred on all of the property subject of the original covenant and assessed pro rata against each party in proportion to the tax benefit enjoyed during the life of the original covenant.[164]

Transfers of up to five acres to a related person are not subject to the continuing use or application requirements provided that the property is used for single-family

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[160] O.C.G.A. § 48-5-7.4(x); Ga. Comp. R. & Regs. 560-11-6-.06(4).
[161] O.C.G.A. § 48-5-7.4(n).
[162] O.C.G.A. §§ 48-5-7.4(b)(4) and (i)(1).
[163] O.C.G.A. §§ 48-5-7.4(b)(4) and (i)(1).
[164] Ga. Comp. R. & Regs. 560-11-6-.06(2); see also Ga. Comp. R. & Regs. 560-11-6-.04(8) and (9).

residential purposes and continuously occupied by a person who is related to the owner within the fourth degree.[165]

H. Notice and Opportunity to Cure

Landowners are entitled to notice regarding the change in current use valuation of the property.[166] The county board of assessors is also required to provide notice to the owner at least sixty days prior to the expiration date of a covenant.[167] Furthermore, prior to the assessment of a penalty for the breach of covenant, the board of assessors is required provide the owner a cease and desist notice stating the specific grounds of the breach and provide thirty days to correct the same.[168] The Court of Appeals has held that notice must be given to all taxpayers who would be subject to penalty for the breach even where it is not practicable for the taxpayer to correct an alleged breach.[169]

I. Appeal

If the board of tax assessors determines that a breach has occurred and the owner has not corrected the situation within the thirty day period, the taxpayer has the right to appeal the board of assessors' determination in the same manner and with the same time requirements as provided in other ad valorem tax appeals under O.C.G.A. § 48-5-311.[170] Likewise, this right of appeal extends to a denial of an application for current use valuation by the board of assessors, the board's initial current use valuation, and any subsequent increase in such valuation of the property as well.[171] On appeal, the owners

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[165] O.C.G.A. § 48-5-7.4(o).
[166] Ga. Comp. R. & Regs. 560-11-6-.08(3).
[167] O.C.G.A. § 48-5-7.4(d).
[168] O.C.G.A. § 48-5-7.4(k.1); Ga. Comp. R. & Regs. 560-11-6-.06(5).
[169] Morgan Cnty. Bd. of Tax Assessors v. Ward, 318 Ga. App. 186, 191, 733 S.E.2d 470, 474 (2012).
[170] O.C.G.A. § 48-5-7.4(k.1).
[171] Ga. Comp. R. & Regs. 560-11-6-.08(1)-(3).

may challenge the property's soil classification, the valuation of improvements, the assessment ratio, and the application of the tables and standards of value prescribed by the Department of Revenue.[172] The owner, however, may not appeal the tables or standards of value themselves.[173]

1. Presumption in Favor of the Taxing Authority

The Court of Appeals has consistently held that "laws granting an exemption from taxation must be construed strictly in favor of the taxing authority, and all doubts must be resolved against the taxpayer. Consequently, no exemption will be allowed unless the exemption is clearly and distinctly intended by the legislature."[174] The preferential assessment pursuant to O.C.G.A. § 48-5-7.4 has been interpreted as a tax exemption and applied consistent with the principle of strict construction.[175]

2. Burden of Proof

Ordinarily, the board of assessors bears the burden of proving its opinion of value and the validity of its proposed assessment by a preponderance of evidence.[176] Consistent with the principal of strict construction, however, the taxpayer bears the

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[172] Ga. Comp. R. & Regs. 560-11-6-.08(4).
[173] Id.
[174] Muscogee Cnty. Bd. of Tax Assessors v. Pace Indus., Inc., 307 Ga. App. 532, 534, 705 S.E.2d 678, 681 (2011); Hicks v. Florida State Bd. of Admin., 265 Ga. App. 545, 550, 594 S.E.2d 745, 749 (2004) ("Taxation is the rule, and exemption from taxation the exception [...] And exemptions are made, not to favor the individual owners of property, but in the advancement of the interests of the whole people.") (citations omitted).
[175] See Morrison v. Claborn, 294 Ga. App. 508, 511, 669 S.E.2d 492, 495 (2008) (relying on the principle of strict construction against tax exemption to resolve ambiguity regarding a restrictive covenant on landowner's property preventing swine and poultry operations); see also Effingham Cnty. Bd. of Tax Assessors v. Samwilka, Inc., 278 Ga. App. 521, 522, 629 S.E.2d 501, 502 (2006).
[176] See Gilmer Cnty. Bd. of Tax Assessors v. Spence, 309 Ga. App. 482, 483, 711 S.E.2d 51, 53 (2011) (quoting O.C.G.A. § 48-5-311(g)(3)).

burden of proving an entitlement to any tax exemption.[177] Therefore, as the party seeking the exemption provided pursuant to O.C.G.A. § 48-5-7.4, taxpayers bear the burden of proving their entitlement to current use valuation.[178]

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[177] Lamad Ministries, Inc. v. Dougherty Cnty. Bd. of Tax Assessors, 268 Ga. App. 798, 801, 602 S.E.2d 845, 849 (2004) ("Under O.C.G.A. § 48–5–41, anyone seeking exemption must carry the burden of proof to show entitlement, and the exemption statute is strictly construed against the person claiming the exemption. *Other than such burden to prove the exemption,* the Board of Tax Assessors has the burden of proof by a preponderance of evidence that its assessment is correct.") (citations omitted; emphasis supplied); see also Nuci Phillips Mem'l Found., Inc. v. Athens-Clarke Cnty. Bd. of Tax Assessors, 288 Ga. 380, 401, 703 S.E.2d 648, 662 (2010) ("[The] facts of each case must be viewed as a whole and [the] property owner has the burden of proving entitlement to tax exemption.")

[178] See Morrison, *supra*, (construing O.C.G.A. § 48-5-7.4 as a tax exemption).

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

NOTICE: Motions for reconsideration must be *physically received* in our clerk's office within ten days of the date of decision to be deemed timely filed.
http://www.gaappeals.us/rules

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.

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[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.

NOTICE: Motions for reconsideration must be *physically received* in our clerk's office within ten days of the date of decision to be deemed timely filed.
http://www.gaappeals.us/rules

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.

NOTICE: Motions for reconsideration must be *physically received* in our clerk's office within ten days of the date of decision to be deemed timely filed.
http://www.gaappeals.us/rules/

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

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[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.

NOTICE: Motions for reconsideration must be *physically received* in our clerk's office within ten days of the date of decision to be deemed timely filed.
http://www.gaappeals.us/rules/

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

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[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.

NOTICE: Motions for reconsideration must be *physically received* in our clerk's office within ten days of the date of decision to be deemed timely filed.
http://www.gaappeals.us/rules

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.

Edward R Collier

Edward Collier is veteran lawyer with over 20 years experience. He is a member of the Georgia State Supreme Court and Court of Appeals, as well as a member of the United State District Court, Middle District of Georgia, United States Court of Appeals, Eleventh Circuit as well as the United States Supreme Court.

Mr. Collier began his career as the Assistant District Attorney for the Northeastern Judicial Circuit in 1990. However, the following year, he joined Collier & Gamble as a partner in 1991. During that time, he has also served as County Attorney for both Calhoun and Terrell Counties. In 1995, he was appointed Juvenile Court Judge for the Pataula Judicial Circuit, where he still serves today.

He is a 1986 graduate (A.B.) from the University of Georgia and a 1990 graduate of Mercer University. (Juris Doctor J.D.)

In his spare time, he has served as a member of several civic clubs including the Boys & Girls Club of Terrell County, Better Hometown Task Force, Downtown Dawson Development Authority, Terrell County Airport Authority, Dawson Rotary Club and currently serves as a member of the Board of Trustees for Deerfield-Windsor School.

In 2003, he graduated from Leadership Georgia. In 2013, he was elected to the Board of Governors, State Bar of Georgia.

Ed is married to Beth. They have 3 children, Marli, MaryJohn and Baker. The Colliers are members of the First Baptist Church in Dawson.

IN THE SUPERIOR COURT OF TERRELL COUNTY
STATE OF GEORGIA

FILED IN OFFICE AT 12:05 P M
THIS 30 DAY OF October 20 12
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 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,	*	

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.

NOTICE: Motions for reconsideration must be *physically received* in our clerk's office within ten days of the date of decision to be deemed timely filed.
http://www.gaappeals.us/rules/

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.

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[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.

NOTICE: Motions for reconsideration must be *physically received* in our clerk's office within ten days of the date of decision to be deemed timely filed.
http://www.gaappeals.us/rules

March 25, 2016

In the Court of Appeals of Georgia

A15A1901. MONROE COUNTY BOARD OF TAX ASSESSORS
v. WILSON et al.

MCFADDEN, Judge.

The Monroe County Board of Tax Assessors filed a declaratory judgment action against George Wilson and other taxpayers who had filed notices of ad valorem tax appeals to the superior court, requesting a declaration that the appeals stand as dismissed with prejudice due to the failure to pay court filing fees. The board also sought attorney fees. After a hearing, the superior court granted the board's request in part by declaring that the ad valorem tax appeals of those taxpayers who had not paid any filing fees should be dismissed, and denied the request in part by refusing to declare that the appeals of those taxpayers who had paid the $206 filing

fee established by a prior court order should be dismissed. The trial court also denied the board's request for attorney fees.

The board appeals, claiming that the trial court erred in failing to declare that all the landowners' tax appeals should be dismissed for failure to be tried at the first available term of court after filing as required by OCGA § 48-5-311 (g) (4). However, the appeals have not yet been filed in superior court and thus that code section does not apply. The board also claims that the trial court erred in finding that the filing fee is $206 per appeal. But the board has failed to show error as that finding was based on a prior court order that the board failed to include in the record. The board finally contends that the trial court erred in denying its request for attorney fees. However, the board failed to make any proffer as to the amount of such fees. Accordingly, we affirm.

At the outset, we note that our review in this case is hampered by a deficient record. The board has referred to prior mandamus actions filed by several taxpayers, seeking to compel the board to certify their appeals to the superior court. Apparently the trial court denied all of those actions, after which some of those taxpayers appealed to our Supreme Court. See *Newton Timber Co. v. Monroe County Bd. of Tax Assessors*, 295 Ga. 29 (755 SE2d 770) (2014). At the declaratory judgment hearing

in this case, the board told the trial judge that it did not need to present evidence because most of the facts were in the record of those prior mandamus actions. However, the board failed to include any part of that record in this case. Our ability to properly review the matters raised on appeal is hindered when the appellant fails to ensure that the record is complete. *Apple Investment Properties v. Watts*, 220 Ga. App. 226, (469 SE2d 356) (1996). Nevertheless, we will address the claims of error based on the record before us.

1. *OCGA § 48-5-311 (g) (4) (A).*

The board contends that the trial court should have dismissed all of the appeals, including those of the taxpayers who have paid court filing fees because those appeals were not tried at the first available term of court as required by OCGA § 48-5-311 (g) (4) (A). However, the board's reliance on that code section is misplaced.

"OCGA § 48-5-311 (g) provides the means by which an aggrieved taxpayer may appeal to the superior court from a property tax ruling made by a county board of equalization." *Fitzpatrick v. Madison County Bd. of Tax Assessors*, 292 Ga. 74, 75 (734 SE2d 397) (2012). The version of OCGA § 48-5-311 (g) (2) that was in effect at the time of the trial court's ruling in this case provided that such an appeal by a taxpayer "shall be effected" by emailing, mailing or filing a notice of appeal with the

county board of tax assessors within 30 days from the date on which the board of equalization's decision was mailed.[1] That same code section further provided that the county board of tax assessors "shall certify to the clerk of the superior court the notice of appeal and any other papers specified by the person appealing[,]" and that at "the time of certification of the appeal, the [board] shall serve the taxpayer . . . with a copy of the notice of appeal and with the civil action file number assigned to the appeal." Former OCGA § 48-5-311 (g) (2).

Former OCGA § 48-5-311 (g) (4) (A), provided that such an "appeal shall be placed on the court's next available jury or bench trial calendar, at the taxpayer's election, following *the filing of the appeal* unless continued by the court upon a showing of good cause."[2] (Emphasis supplied.) The former code did not expressly define what constituted "the filing of the appeal" as that term was used in that section. The board, relying on *C. C. Leasing Corp. v. Bd. of Tax Assessors of Hall County*,

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[1] OCGA § 48-5-311 (g) was amended, effective January 1, 2016, to provide, among other things, more detailed procedures for both taxpayers and the board in appeals to the superior court.

[2] The current version of OCGA § 48-5-311 (g) (4) (A), effective January 1, 2016, omits the "upon a showing of good cause" language at the end of the sentence, and thus provides: "The appeal shall be placed on the court's next available jury or bench trial calendar, at the taxpayer's election, following the filing of the appeal unless continued by the court."

143 Ga. App. 520 (239 SE2d 204) (1977), claims that "the filing of the appeal" under former OCGA § 48-5-311 (g) (4) (A) meant the taxpayer's filing of the appeal with the board of tax assessors, not the board's subsequent filing of the appeal with the superior court. But contrary to the board's claim, *C. C. Leasing* held no such thing and provides no support for such a proposition. Indeed, that case did not even involve the issue of what constitutes "the filing of the appeal" that triggers the requirement that an ad valorem tax appeal be placed on the next available trial calendar under former OCGA § 48-5-311 (g) (4) (A) or its predecessor statute.

However, in *McCauley v. Bd. of Tax Assessors*, 243 Ga. 844 (257 SE2d 266) (1979), our Supreme Court addressed the issue and determined that it was the board's certification of the appeal, not the taxpayer's notice of appeal, that constituted the filing of the appeal in superior court. In applying an earlier version of the same provision set forth in former OCGA § 48-5-311 (g) (4) (A), the Supreme Court ruled that "the appeal was not officially filed in superior court until . . . the date of the board's certification of the notice of appeal and filing of the statutorily required documents. Therefore, any effort by the taxpayer to have the case heard before that [certification] date would have been premature." *McCauley*, supra at 845. The Supreme Court went on to hold that the taxpayer had complied with the statute "by

requesting a jury trial at the earliest opportunity after his appeal was certified" by the board, and that any delay "was caused by the board's tardiness in certifying the notice of appeal[.]" Id. at 846. Thus, as explained in *McCauley*, a county board of tax assessor's certification of an appeal to the superior court constituted "the filing of the appeal" which would trigger the requirement under former OCGA § 48-5-311 (g) (4) (A) that the appeal be placed on the superior court's next available trial calendar. See generally *Glynn County Bd. of Tax Assessors v. Paulding*, 270 Ga. App. 851 (608 SE2d 317) (2004) (affirming denial of motion to dismiss taxpayers' appeals, which board had certified to superior court, where taxpayers showed reasonable excuse for not securing a trial during first term after filing); *Haldi v. DeKalb County Bd. of Tax Assessors*, 178 Ga. App. 521, 525-526 (3) (344 SE2d 236) (1986) (affirming dismissal of taxpayer's appeal for failure to hold trial at first term after matter had been certified to the superior court and taxpayer failed to show excusable neglect).

a. *No certification of appeals.*

In the instant case, the board has neither claimed, nor pointed to any evidence in the record showing, that it certified any of the appeals in question to the superior court. Indeed, at the hearing before the trial judge and in its appellate briefs, the board acknowledges that it has not certified the taxpayers' appeals and that the appeals have

not been filed in the superior court. Consequently, absent certification of the appeals, the "filing of the appeal" under former OCGA § 48-5-311 (g) (4) (A) has not occurred and thus the requirement that the case be placed on the first available trial calendar has not yet been triggered.

As the board correctly notes, in the *Newton Timber* case mentioned above, the Supreme Court ruled that the taxpayers involved in that appeal must pay the filing fees before the board certifies their appeals. *Newton Timber*, supra at 36-37 (1) (755 SE2d 770) (2014). In so doing, the Supreme Court expressly overruled *Fayette County Bd. of Tax Assessors v. Oddo*, 261 Ga. App. 707 (583 SE2d 537) (2003), which had held that there was no requirement under OCGA § 48-5-311 (g) (2) that a superior court clerk receive its filing fee before a tax appeal could be certified by the county board of tax assessors. *Newton Timber*, supra at 37 (1), n. 10. Thus, based on that ruling, the board contends that the lack of certification of the appeals to superior court has been caused solely by the taxpayers' delay in paying the required filing fees. That contention ignores the ongoing dispute between the parties that led to those mandamus actions and the earlier appeal. But even if the board's contention is correct, it does not alter our analysis of the board's claim of error based on former OCGA § 48-5-311 (g) (4) (A).

As the board has acknowledged, the former version of OCGA § 48-5-311 (g) set forth no deadline by which a taxpayer was required to pay the court filing fee, and it did not provide for dismissal of an appeal based on failure to pay the fee within any specified time. Likewise, that code section provided no deadline by which the board was required to certify the appeal to the superior court. These gaps in the statutory scheme appear to have been addressed by the most recently modified version of OCGA § 48-5-311 (g) (2). But regardless of why there were delays in the payment of filing fees and the certification of appeals, the fact remains that the taxpayers' appeals have not been certified and filed in the superior court. Therefore, OCGA § 48-5-311 (g) (4) (A) simply does not apply, and its mandate that the appeals be placed on the next available trial calendar "following the filing" will not take effect until the appeals have been certified by the board to the superior court.

Where, as here, the issue is a question of law, we owe no deference to the trial court's ruling and apply a de novo standard of review. *Fuciarelli v. McKinney*, 333 Ga. App. 577 (773 SE2d 852) (2015). Because the board has failed to show any legal error based on the trial court's refusal to declare that the taxpayers' appeals stand dismissed pursuant to OCGA § 48-5-311 (g) (4) (A), this claim of error provides no basis for reversal of the trial court's judgment.

b. *Newton Entities.*

We note that one of the taxpayers specifically named in the trial court's order as having paid filing fees is called the "Newton entities." The name "Newton Entities" was also used to refer to "various entities and individual family members of the Newton family" in the prior Supreme Court case involving mandamus cited above, but it did not identify those specific entities and family members. *Newton Timber*, supra at 29. In that case, the Supreme Court stated that the Newton Entities' "tax appeals have been physically delivered to the superior court and . . . the superior court has ruled that such appeals have been certified to it." Id. at 37 (1). Thus, for any such certified appeals, the requirement of former OCGA § 48-5-311 (g) (4) (A) that they be placed on the next available trial calendar would apply.

However, the board has failed to show by the record that the Newton Entities in the instant case are the same taxpayers involved in that prior case. While the board has alluded to the same "Appellees" being involved in both cases, it has failed to support this factual assertion with citations to the record establishing which of the Newton Entities in our case are the same taxpayers discussed in the Supreme Court case. Moreover, as noted above, although at the hearing in this case the board expressly referred to facts allegedly appearing in the record of the mandamus cases,

it failed to include any of those records in the instant case. While some, or even all, of the Newton Entities in the instant case may be the same taxpayers involved in the prior case, it is the board's burden to support its factual assertions with citations to the record. See Court of Appeals Rule 25 (a) (1); *Cox v. Erwin*, 246 Ga. App. 439, 440 (1) (541 SE2d 69) (2000).

> When an appellant omits evidence necessary for determination of issues on appeal affirmation is required. It is well established that the burden is on the party alleging error to show it by the record and that where the proof necessary for determination of the issues on appeal is omitted from the record, an appellate court must assume that the judgment below was correct and affirm.

Griffin v. Travelers Ins. Co., 230 Ga. App. 665, 666 (497 SE2d 257) (1998) (citations and punctuation omitted).

Furthermore, even if we were to assume for purposes of this appeal that the Newton Entities are the same taxpayers in both cases, the board still has failed to carry its burden of showing by the record that the trial court abused its discretion in refusing to declare the appeals dismissed pursuant to OCGA § 48-5-311 (g) (4) (A). See *Glynn County*, supra at 853 (whether to dismiss for failure to obtain trial at the first available term is matter within the discretion of the trial court). Accordingly, we find no reversible error. "When there is nothing in the record to support the

contention of error, there is nothing presented to this court for review." *City of Atlanta v. Starke*, 192 Ga. App. 267, 269 (1) (c) 384 SE2d 419) (1989) (citation and punctuation omitted).

2. *Amount of filing fees.*

The board claims that the $206 filing fee set by the trial court was incorrect because the fee had increased to $207.50 approximately three months before the taxpayers paid their filing fees. "[B]ecause the question here turns on a factual issue resolved by the trial court after considering evidence presented . . . we will uphold the trial court's factual findings if there is any evidence to support them." *In re Estate of Huff*, 287 Ga. App. 614, 614-615 (652 SE2d 203) (2007) (citation and punctuation omitted). Here, in finding that the filing fee was $206 per tax appeal, the trial court expressly relied on a prior order of the court setting the fee as that amount. The board failed to include that prior order in the record on appeal.

"It is well established that the burden is on the party alleging error to show it affirmatively by the record, and that when the burden is not met, the judgment complained of is assumed to be correct and must be affirmed. We do not have before us all the material upon which the trial court relied." *Acker v. Jenkins*, 178 Ga. App. 393, 394 (1) (343 SE2d 160) (1986) (citations omitted). We therefore assume that the

missing order supported the trial court's finding of fact, and thus the court did not err in making that finding. See *City of Atlanta*, supra at 269 (1) (c) (under presumption of regularity of proceedings in a court of competent jurisdiction, we must assume the evidence supported the trial court's ruling).

3. *Attorney fees.*

The board complains that the trial court erred in failing to grant it an award of attorney fees. However, the board did not present any proffer as to the amount or reasonableness of the fees requested, and has not cited any such evidence in the record.

> An attorney cannot recover for professional services without proof of their value. Generally, a party will proffer the opinion testimony of his present counsel as well as that of other attorneys in an effort to show what constitutes a reasonable attorney fee in light of the litigation history of the case. An award of attorney fees is unauthorized if appellee failed to prove the actual costs of the attorney and the reasonableness of those costs.

Fiat Auto U. S. A. v. Hollums, 185 Ga. App. 113, 116 (5) (363 SE2d 312) (1987) (citations and punctuation omitted). Accordingly, the board has failed to show error in the trial court's denial of attorney fees.

Judgment affirmed. Ellington, P. J., and Dillard, J., concur.

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

NOTICE: Motions for reconsideration must be *physically received* in our clerk's office within ten days of the date of decision to be deemed timely filed.
http://www.gaappeals.us/rules

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).

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

NOTICE: Motions for reconsideration must be *physically received* in our clerk's office within ten days of the date of decision to be deemed timely filed.
http://www.gaappeals.us/rules/

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

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[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

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[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.

NOTICE: Motions for reconsideration must be *physically received* in our clerk's office within ten days of the date of decision to be deemed timely filed.
http://www.gaappeals.us/rules/

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

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[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.

LEGISLATION

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) <u>As a condition of funding, the</u> ~~The~~ Department of Community Affairs, the Department of Transportation, or any other state agency that provides funding to local governing bodies ~~may~~ <u>shall</u> require certification <u>pursuant to Code Section 50-36-4 as proof</u> 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, <u>36-80-23,</u> 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.

BREAK OUT SESSIONS

APPEALS PROCEDURE

Presented by the Georgia Department of Revenue
Mark Loyd
Tracy Thomas

Department staff will review recent statute changes regarding the ad valorem appeal process. Participants gain knowledge about the flow of records and newly adopted Department of Revenue regulations that apply to tax appeals. The class will discuss issues and best practices in working through tax appeals.

ETHICS IN GOVERNMENT

Presented by the Carl Vinson Institute of Government

Local government leaders examine the importance of ethical conduct in the administration of their public duties in this essential course. Participants gain knowledge about state ethics laws and regulations that apply to employees. They also discuss ethical dilemmas that often confront government employees and the value of strong local ethics ordinances.

INCOME APPROACH TO VALUE OVERVIEW

Presented by the Georgia Department of Revenue
Chuck Nazerian
Grant Hilton

Department staff provides an overview of the income approach to value including the development of capitalization rates. Participants gain knowledge regarding the application of various income approach methods and Department of Revenue regulations that apply to the valuation of property. The class will discuss appraisal problems and pitfalls that often confront county appraisers.