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 application of applicability to specific situations of the theories, techniques, and approaches discussed herein must be determined on a case-by-case basis.

The statutory materials reprinted or quoted verbatim on the following pages are taken from the Official Code of Georgia Annotated, Copyright 2016 by the State of Georgia, and are reprinted with the permission of the State of Georgia. All rights reserved.

When Diplomacy Fails: Keeping A Firm Hand on The Wheel

Anthony A. Rowell, Esq.
aar@hallboothsmith.com
Nicholas A. Kinsley, Esq.
nkinsley@hallboothsmith.com
1564 King Road
Tifton, Georgia 31793
(229) 382-0515 – phone
(229) 382-1676 - fax

They Can't Tell Me How to Do My Job! Or Can They?

A Better Title:

Building Better Relationships with the Governing Authority of My County

Do We Abandon Diplomacy When It Fails?

<u>NO!</u>

What is Diplomacy?

- "Diplomacy – The art of saying 'Nice Doggie' til you can find a rock." (Wynn Catlin)
- "All diplomacy is a continuation of war by other means." (Chou En Lal)
- "To jaw-jaw is always better than to war-war." (Churchill, 1954)

What is Diplomacy?

"Let us never negotiate out of fear. But let us never fear to negotiate."

-Kennedy, 1961

Or, maybe:

Let us never fear to negotiate, but let us never negotiate out of fear.

What is Our Goal?

- Our Goal is to Help you Negotiate Not From Fear, But From a Place of Confidence
- No Trying to Pick a Fight
- Just Trying to do Our Job

What Topics Are Germaine To Our Objective

- A Historical Perspective
- It's A Slow Road: The Painful Pace of Recovery
- Ancestory.com: Who Am I?
- Know Your Rights: A Legal Analysis Regarding The Basis of Board of Assessor Authority
- Defining the Essential Appraisal Function

A Historical Perspective

A. Uniformity

- 1732: Established as a colony
- Jan. 2, 1788: Ratified U.S. Constitution – 4th State in Union
- 1804: 16 years later established 1st property tax
- 1852: Pass a system of property tax that is basis for current tax system

A Brief History of the Property Tax in Georgia, David L. Sjoquist, FRC Report No. 182, August 2008, Pg. 1, 2, 5, 6

A Historical Perspective

A. Uniformity cont.

- Uniformity is a key area of debate
- Taxation should be "fair and equal, in proportion to the value of property, so that no one class of individuals, and no one species of property, may be unequally or unduly assessed." Legislative Commission, 1839

A Brief History of the Property Tax in Georgia, David L. Sjoquist, FRC Report No. 182, August 2008, Pg. 1, 2, 5, 6

A Historical Perspective

A. Uniformity cont.

- 1852: Legislation imposed a uniform tax on the market
- Uniformity is a Constitutional requirement today

A Brief History of the Property Tax in Georgia, David L. Sjoquist, FRC Report No. 182, August 2008, Pg. 1, 2, 5, 6

A Historical Perspective

B. Administration of the Property Tax

- Prior to 1913: Taxpayers performed a "self-assessment" of their property
- 1913: State Tax Commissioner to equalize returns from counties
- 1920 – 1960s: No will to oversee by State

A Brief History of the Property Tax in Georgia, David L. Sjoquist, FRC Report No. 182, August 2008, Pg. 9, 10, 11

A Historical Perspective

B. Administration of the Property Tax, cont.

- Early 1960s, school funding emerged as primary state objective
- 1965: 1st statewide sales ratio
- Average ratio of assessed value to FMV was only 21.3%

A Brief History of the Property Tax in Georgia, David L. Sjoquist, FRC Report No. 182, August 2008, Pg. 9, 10, 11

A Historical Perspective

B. Administration of the Property Tax, cont.

- 1966: Legislation requiring equalization between counties and across classes of property
- 1966: Hiram Undercofler set 40% ratio; adopted into Legislation in 1968

A Brief History of the Property Tax in Georgia, David L. Sjoquist, FRC Report No. 182, August 2008, Pg. 11, 12, 13

A Historical Perspective

B. Administration of the Property Tax, cont.

- 1972:
  - Minimum number of appraisers
  - Continuous Training
  - County Boards of Equalization

A Brief History of the Property Tax in Georgia, David L. Sjoquist, FRC Report No. 182, August 2008, Pg. 11, 12, 13

A Historical Perspective

B. Administration of the Property Tax, cont.

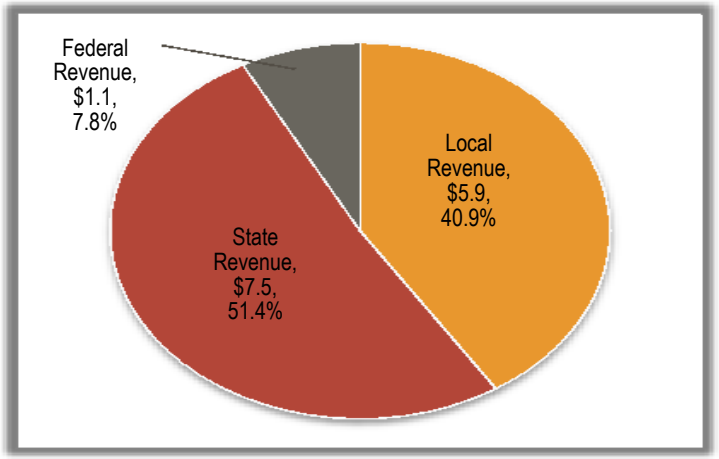
- 1988: State Commissioner charged with ensuring uniformity and equalization between and within counties
- 1992: 3 year cycle for systematic review

A Brief History of the Property Tax in Georgia, David L. Sjoquist, FRC Report No. 182, August 2008, Pg. 11, 12, 13

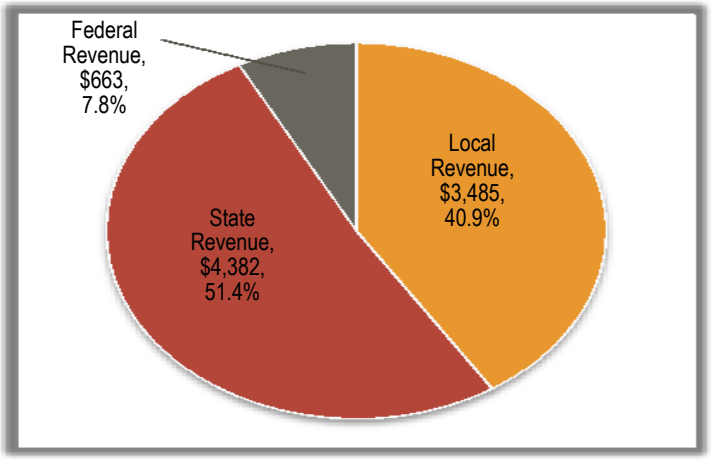
A Historical Perspective

D. Is It All About Education?

FY 2014
Total Revenue Share
($ in billions)



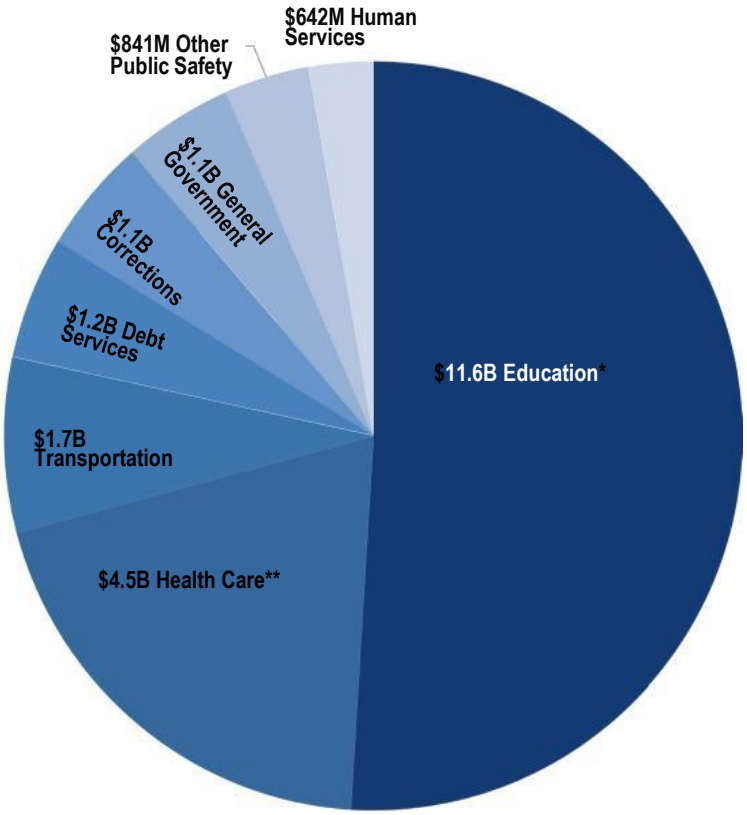
FY 2014
Total Revenue Share Per FTE



A Historical Perspective

D. Is It All About Education? cont.

Education and Health Care Dominate General Fund Spending 2017 Fiscal Year State General Fund and Motor Fuel Funds Budget: $22.7 Billion



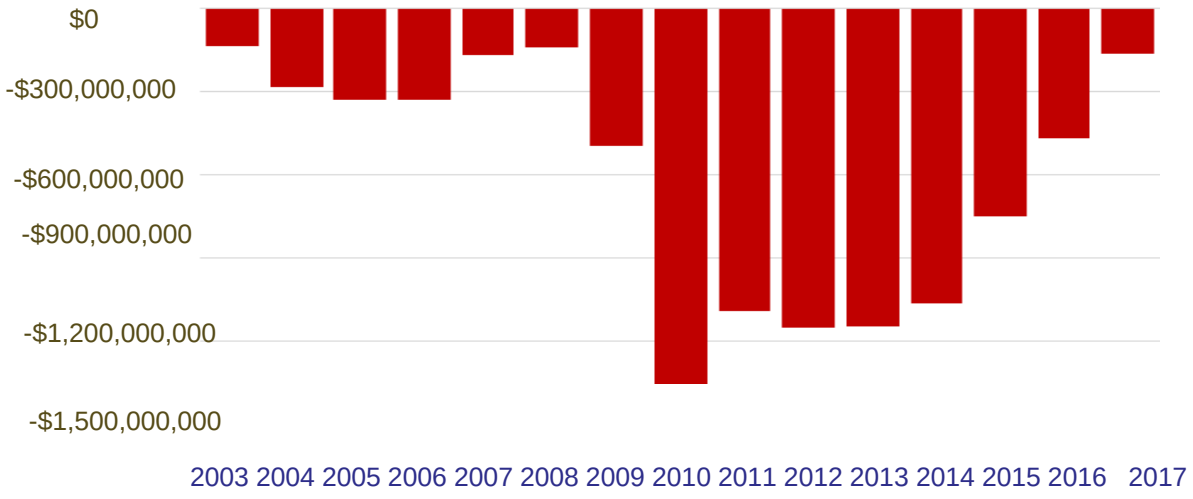
**Education spending details: Georgia's 2017 budget for K-12 is $ 8.9 billion, for the University System of Georgia is $2.1 billion, the Technical College System of Georgia is $350 million. Also includes Georgia Student Finance Commission's $91 million and the Dept. of Early Care and Learning's $55.6 million*

*** Health care spending details include tobacco funds: Georgia's 2017 budget for Medicaid and PeachCare is $3 billion; for Behavioral Health & Developmental Disabilities is $1 billion; for Public Health is $243 million; and for other health care is $174 million*

A Historical Perspective

D. Is It All About Education? cont.

Georgia's 15 Years of Underfunding its Education Formula

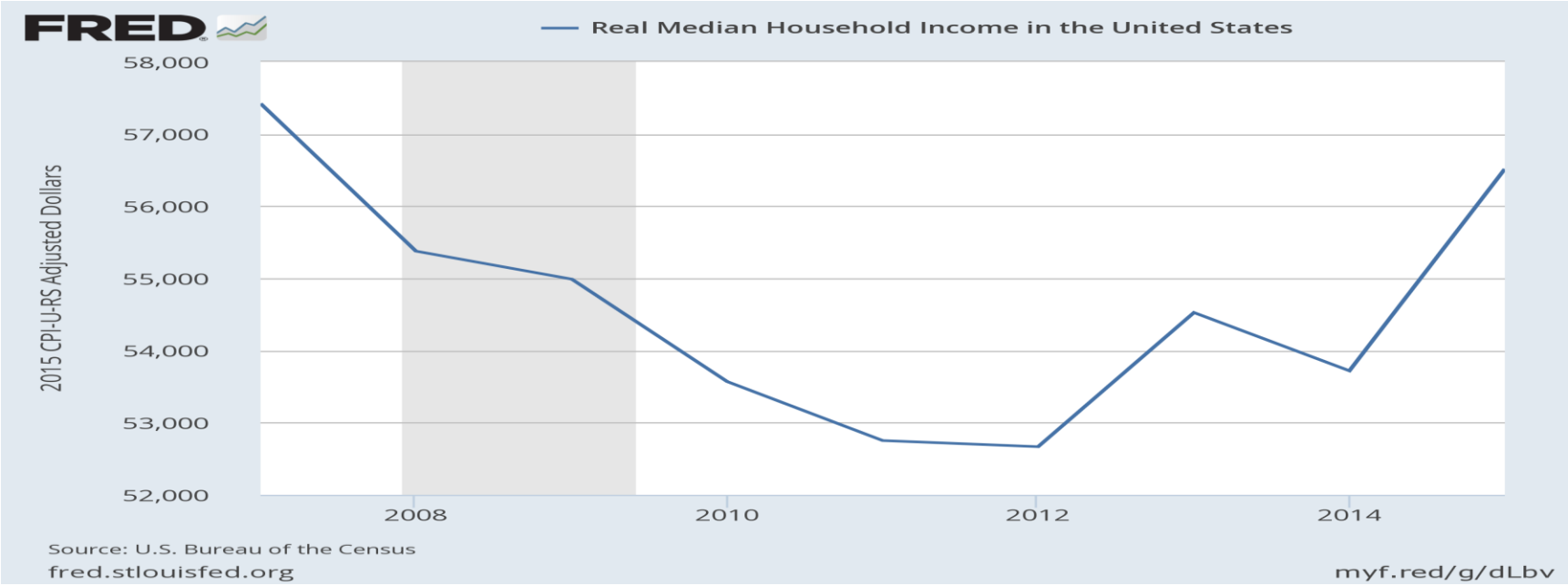


Source: Georgia Department of Education, Midterm Allotment Sheets, fiscal years 2003-2016; Email from Georgia Dept. of Education Jan. 19, 2016

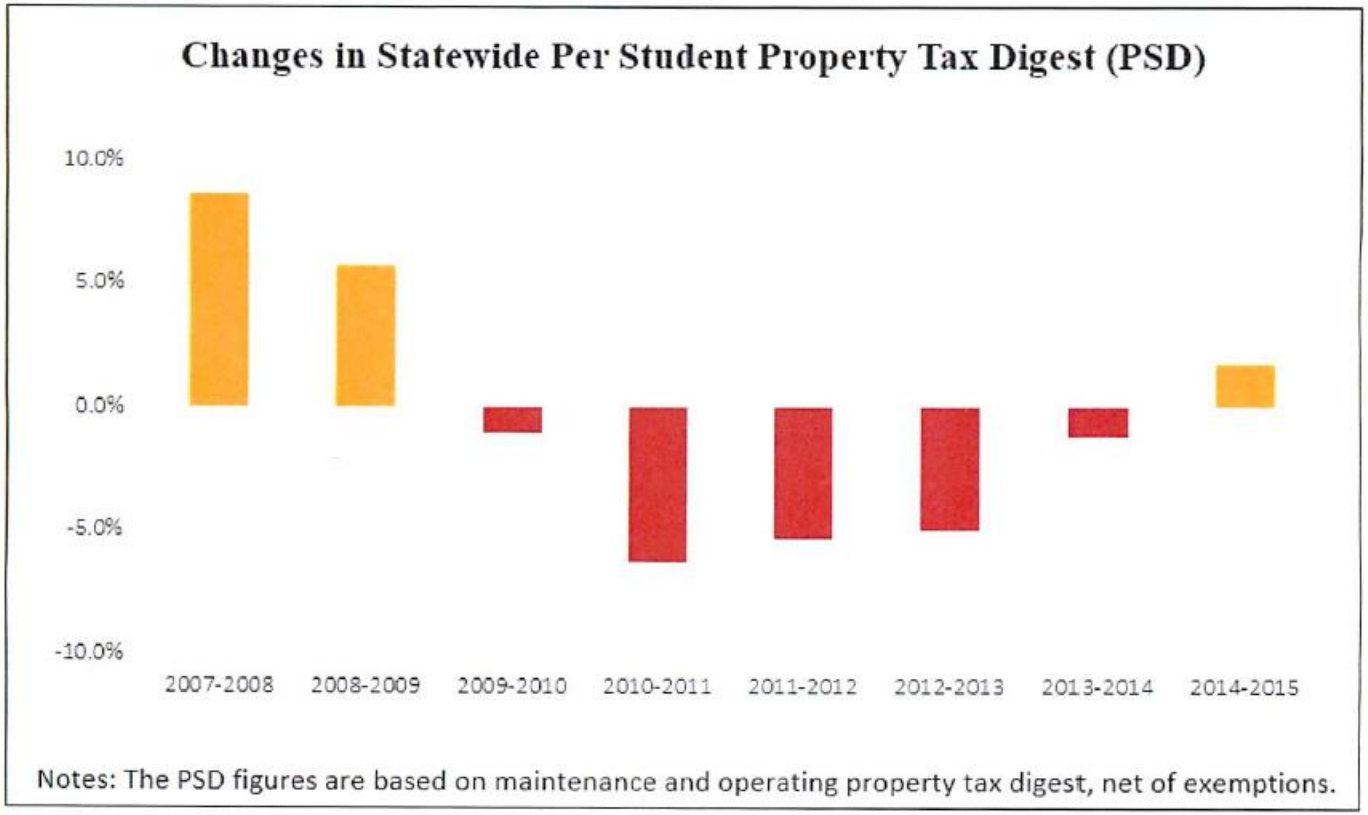
It's A Slow Road: The Painful Pace of Recovery

a. We Need Revenue

2015: **56,516** (+ more) 2015 CPI-U-RS Adjusted Dollars, Annually, Not Seasonally Adjusted
Updated: Sep 13, 2016

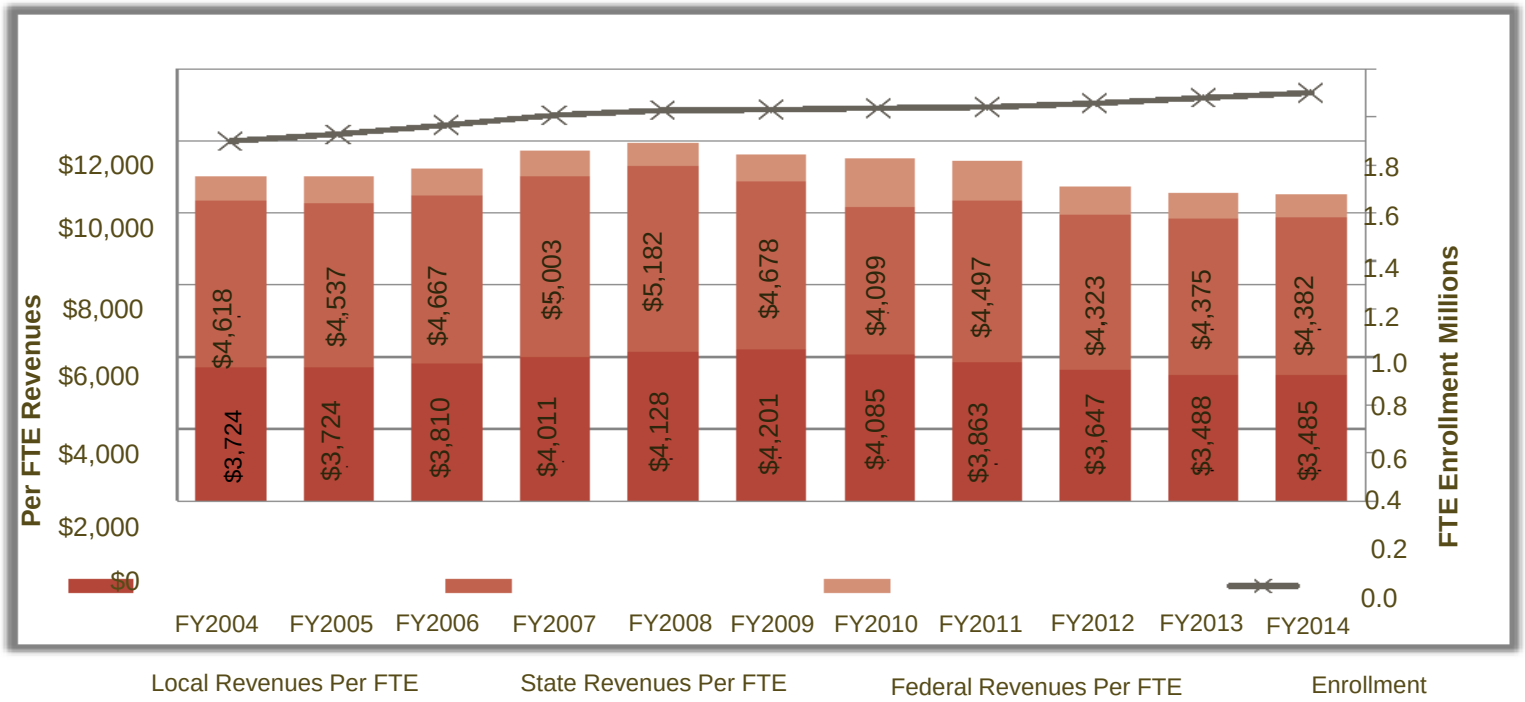


Statewide Digest



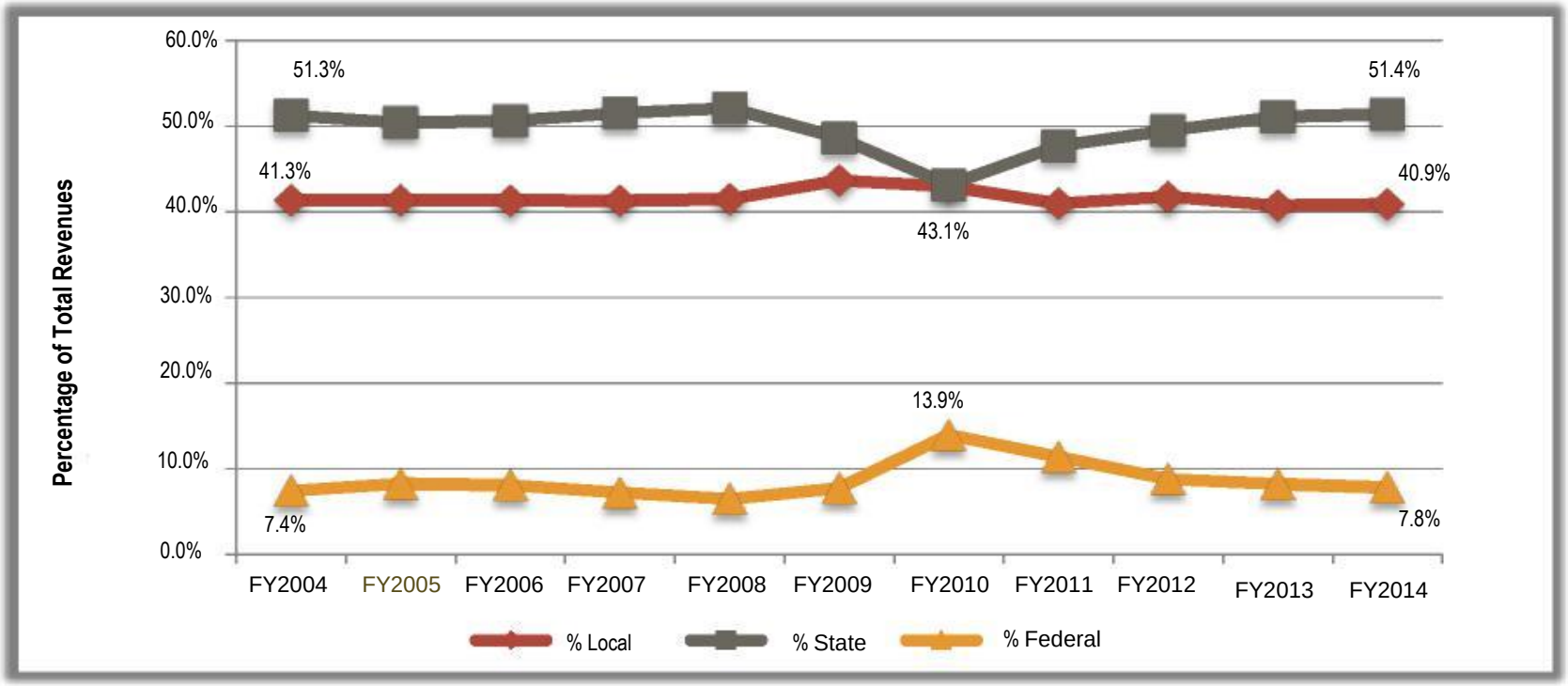
(http://cslf.gsu.edu/files/2015/12/Nick-Blog.jpg)

Real Revenue Per FTE and Enrollment, 2004-2014 (2014 Dollars)



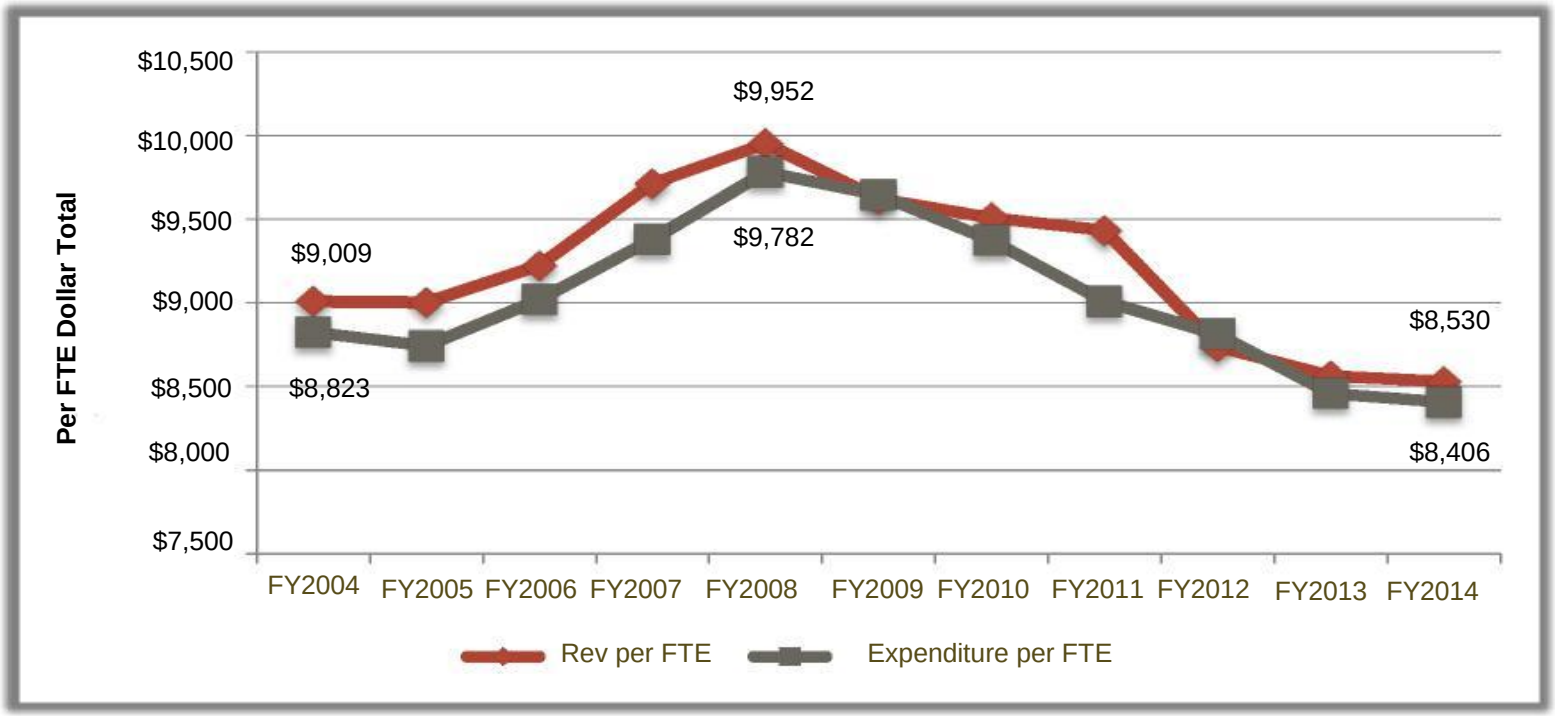
Source: Georgia Department of Education

Changes in the Share of School District Revenue Sources, 2004-2014 (2014 Dollars)

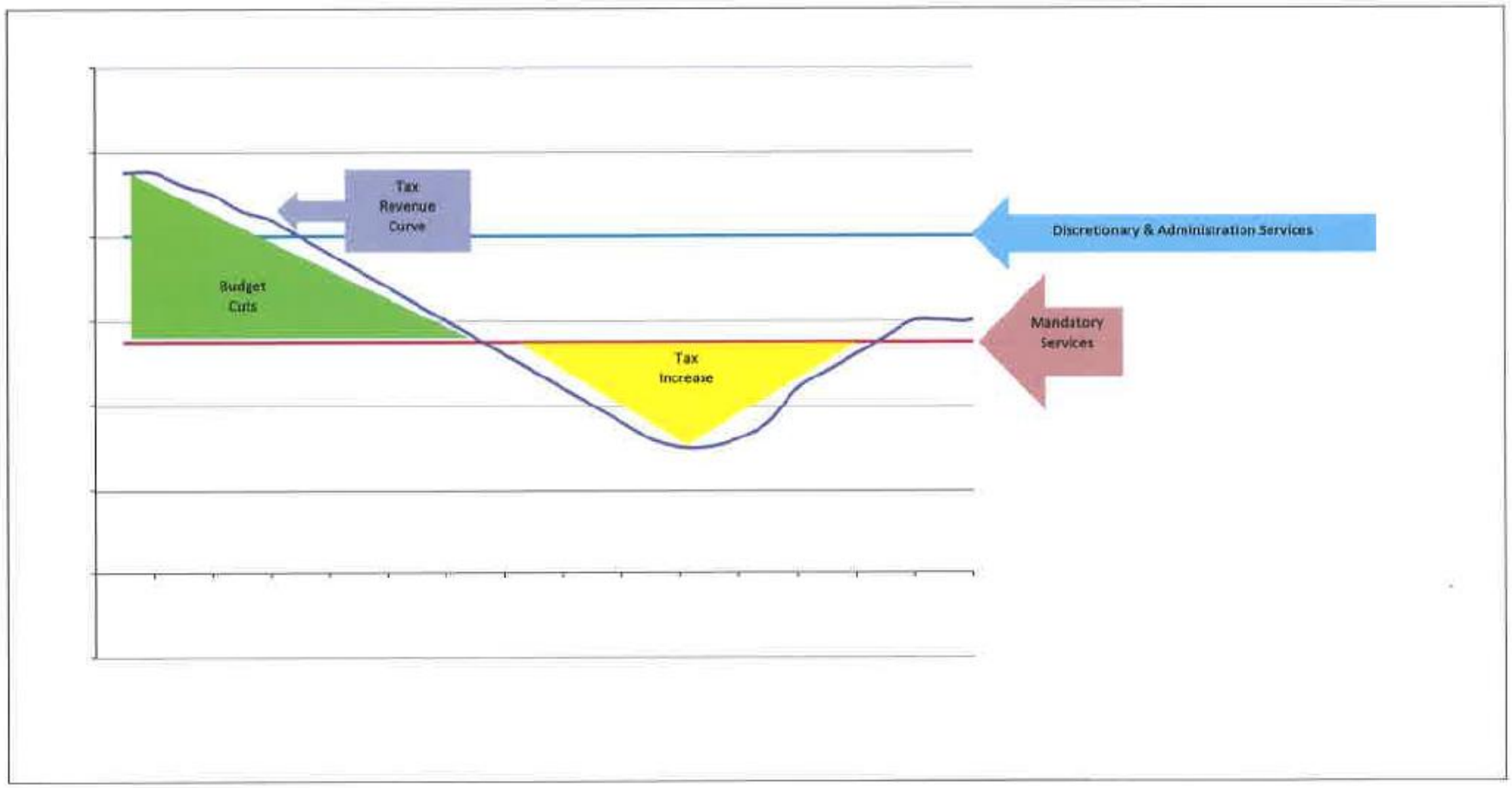


Source: Georgia Department of Education

Georgia K-12 Revenue and Expenditures Per FTE, 2004-2014 (2014 Dollars)



Comparative Chart

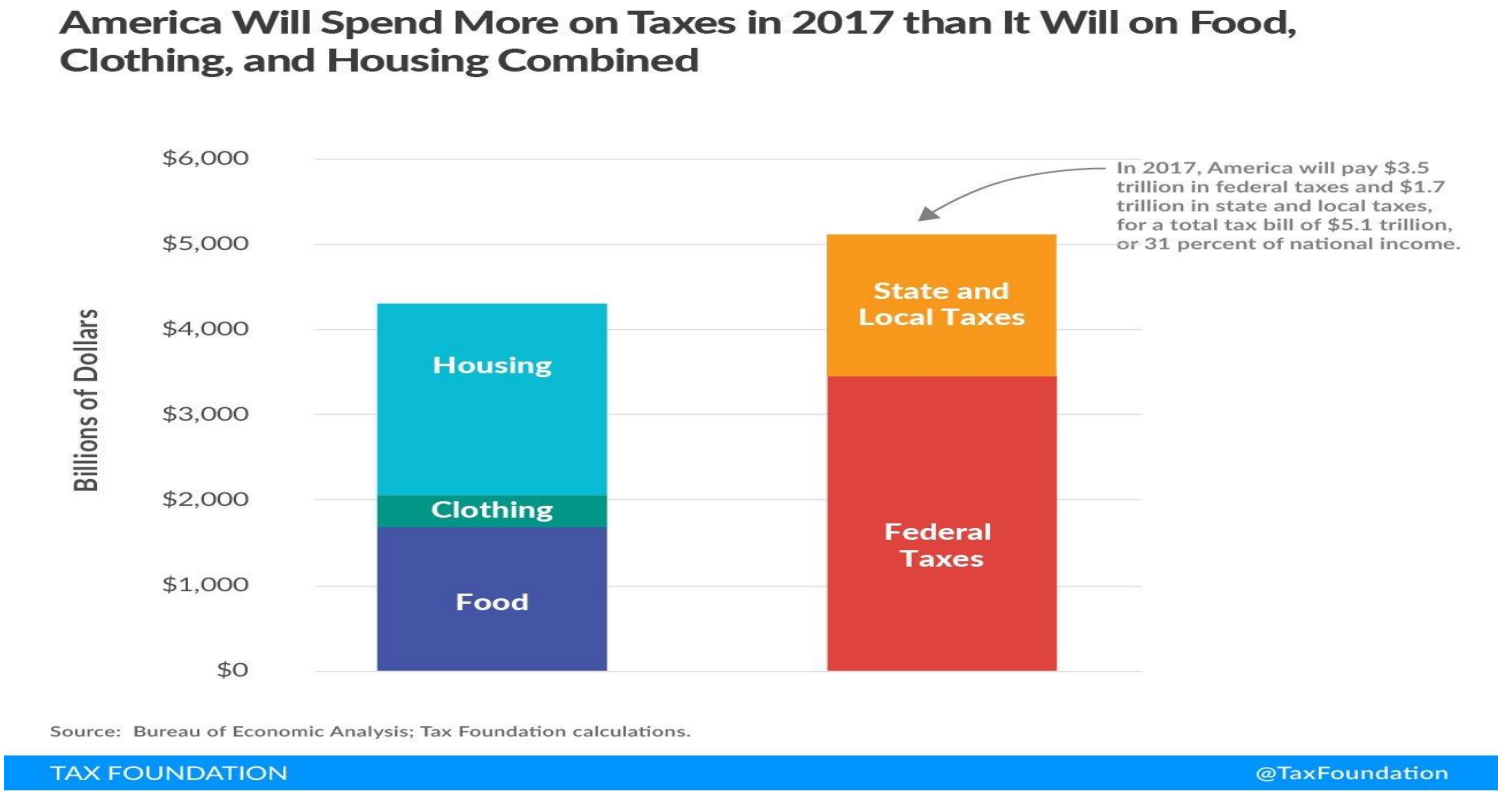


b. The Politics of Taxation

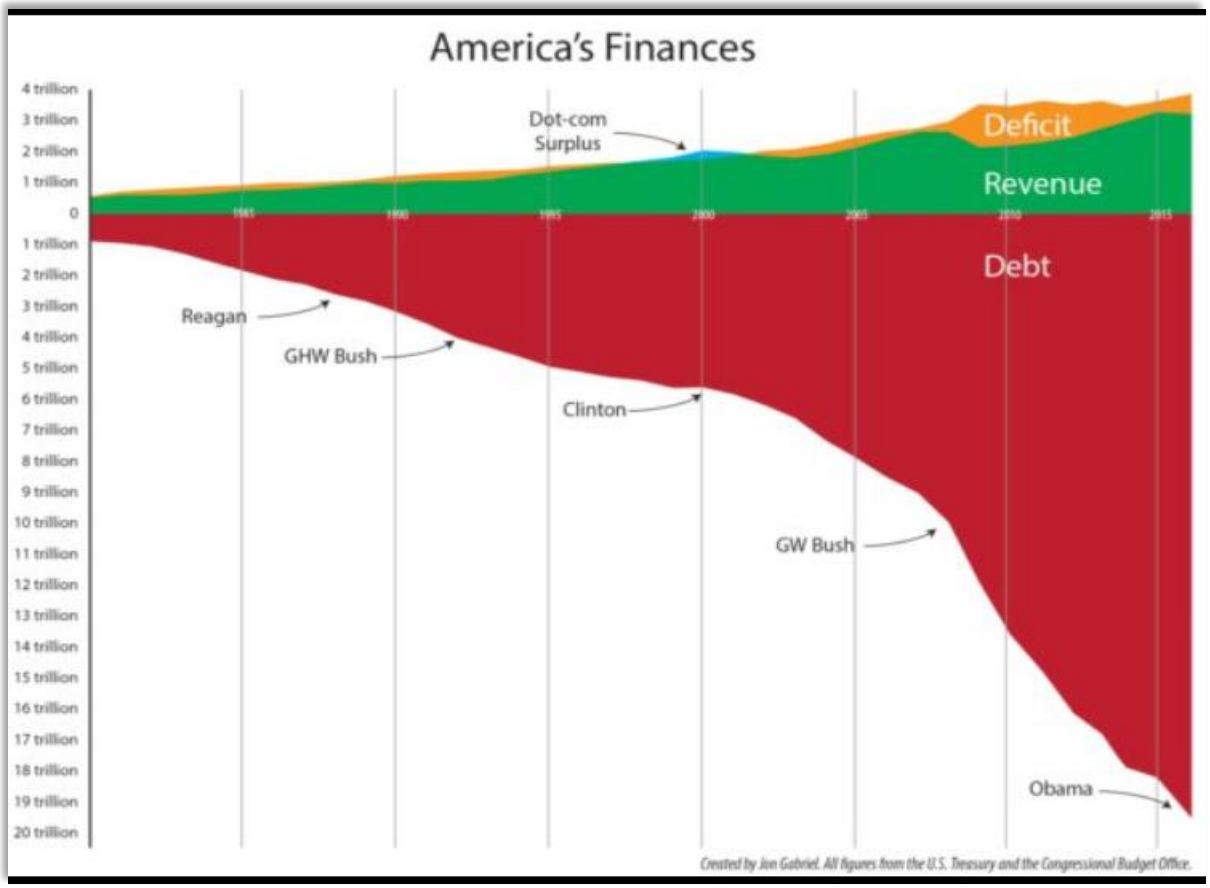
Property tax is often identified as “the most hated tax.”

[1]Nicely, Fredrick J., Turner, Douglas J. (May 2011). *The Best and Worst of Property Tax Administration*. COST Scorecard on State Property Tax Administrative Practices. Council on State Taxation (COST). Retrieved from www.cost.org

b. The Politics of Taxation



b. **The Politics of Taxation, cont.**



b. The Politics of Taxation

Case Study in South Carolina (1992)

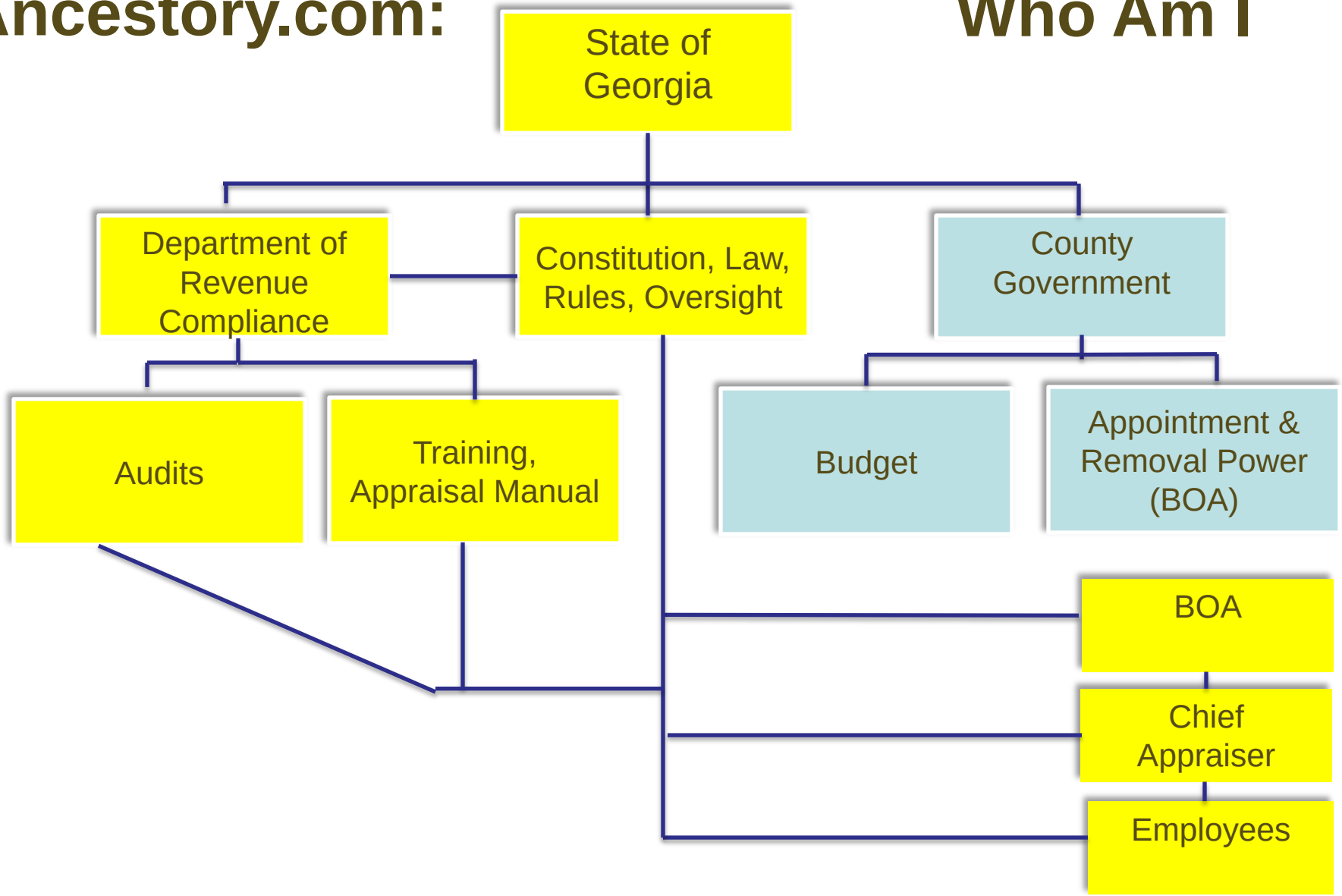
County	Years b/w reappraisal	Appeals	Re-Election
Lexington	10+	17,000	100% incumbent defeat
Richland	4	Very Few	No change

Tyer, Charlie B. (1993). "The Property Tax: Why It Persists," *The South Carolina Policy Forum Magazine*, Vol. 4, No. 2 (Spring 1993): 12-21

Ancestry.com: Who Am I

- Am I A County Department?
- Am I A State Agency?
- Am I More Like A County Constitutional Officer?

Ancestory.com: Who Am I



Know Your Rights: A Legal Analysis Regarding The Basis of the Board of Assessors Authority

Where Do You Get Your Authority

- (a) Express Authority
- (b) Implied Authority

Where Do You Get Your Authority

(a) Express Authority

- GA CONST Art. 7, § 1, ¶ III
  - All taxes shall be levied and collected under general laws and for public purposes only. Except as otherwise provided in subparagraphs (b), (c), (d), (e), and (f) of this Paragraph, all taxation shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax.
- O.C.G.A. 48-5-290 et. seq.
  - There is established a county board of tax assessors in each of the several counties of this state.

Where Do You Get Your Authority, cont.

(a) Express Authority, cont.

- Appraisal Manual: Ga Comp. R. & Regs. 560-11-10-.01 et. seq.

  This appraisal procedures manual has been developed in accordance with Code section 48-5-269.1 which directs the Revenue Commissioner to adopt by rule, subject to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," and maintain an appropriate procedural manual for use by the county property appraisal staff in appraising tangible real and personal property for ad valorem tax purposes.

Where Do You Get Your Authority, cont.

(b) Implied Authority

- Derived from defined legal duty
- That which is necessary to fulfill the Board's legal responsibility

Duty Defined, cont.

State's Duty: Georgia Code § 48-5-260 entitled "Purpose of Part" provides in relevant part:

> It is the purpose and intent of this part to:
>
> (1) Create, provide, and require a comprehensive system for the equalization of taxes on real property . . . the establishment of a competent, full-time staff for each county of this state to:
>
> (A) Assist the Board of Tax Assessors in each county in developing the proper information for setting tax assessments on property[;]
>
> (B) Maintain the tax assessment records for each county; and
>
> (C) Provide for state-wide duties and qualification standards for such staffs;
>
> (2) Provide for the examination of county tax digests in order to determine whether property valuation is uniform between the counties.

Drayton v. McIntosh County, Georgia, 2016 WL 3443919 (S.D.Ga. 2016)

Duty Defined, cont.

- Board of Tax Assessor's Duty:
  - The duties of a county board of tax assessors include valuation of real and personal property subject to taxation and collection of taxation.
    - Chambers v. Fulford, 268 Ga. 892, 893 (1998)

What Then Are The Essential Questions?

- Am I Independent in all aspects, or just some aspects?
- Am I more like a County Department or a Constitutional Officer?
- Is the groveling over?

Ballard v. Chattooga County Board of Tax Assessors (2015)

FACTS:

- Plaintiff sued under Title VII, FMLA, and § 1983
  - Employment cause of action
- Defendant BOA raised Eleventh Amendment immunity to Plaintiff's 1983 claims
- Title VII and FMLA require that the employer have a minimum number of employees for law to apply to claims. CCBOTA did not have 15 employees

Ballard v. Chattooga County Board of Tax Assessors, 615 Fed. Appx. 621 (11th Cir. 2015).

Ballard v. Chattooga County Board of Tax Assessors (2015)

ISSUES:

- Does BOA and County constitute a single employer entity satisfying the numerosity requirements of Title VII and FMLA?

- Is the Board of Tax Assessors an “arm of the state” thus entitled to Eleventh Amendment immunity?

Ballard v. Chattooga County Board of Tax Assessors (2015) cont.

Issue #1: Does BOA and County constitute a single employer entity satisfying the numerosity requirements of Title VII and FMLA?

Factors:

1. Interrelationship of operations and centralized control of labor operations
2. Authority to hire, transfer, promote, discipline or discharge
3. Authority to establish work schedules or direct work assignments
4. Obligation to pay or the duty to train the charging party

Ballard v. Chattooga County Board of Tax Assessors (2015), cont.

- "Application of the factors **overwhelmingly** indicates that it is the Board — not the County — which has "control over the fundamental aspects of the employment relationships."

- Chambers makes it clear that it is the Board — not the County — which has control of labor operations; the authority to hire, transfer, promote, discipline or discharge; and the authority to establish work schedules or direct work assignments.

Ballard v. Chattooga County Board of Tax Assessors (2015), cont.

- Georgia law clearly establishes the Board as a separate and independent entity.

- The obvious purpose of the state legislation was to equalize the assessment of property for ad valorem taxation statewide, and thus to subject the process to controls from the state level, independent of control by the local county-level government.

- Georgia's statutory scheme and its case law make clear that it is the Board —not the County —that has "control over the fundamental aspects of the employment relationships" with respect to these plaintiffs.

Ballard v. Chattooga County Board of Tax Assessors (2015), cont.

- O.C.G.A. § 48-5-290 creates a county board of assessors for each county in the State and O.C.G.A. § 48-5-262(c)(1) establishes the ***minimum*** tax appraiser staffing requirement for each county.
- The rate of compensation payable to a staff appraiser is determined by the state revenue commissioner and payable from county funds. O.C.G.A. § 48-5-263(c).
- In all matters dealing with county tax appraisers it is the board of tax assessors and not the board of commissioners which acts as the "governmental board which has the authority to act for the county."

Ballard v. Chattooga County Board of Tax Assessors (2015), cont.

- The authority to alter the duration of the employment contract remains with that body, not with the board of commissioners, which previously approved the contract.

- **From the foregoing recitation of Georgia law, it is clear that Georgia has established the Board as a separate entity, independent of the local county government, thus triggering the Lyes presumption.**

Ballard v. Chattooga County Board of Tax Assessors (2015), cont.

Issue # 2: Is the Board of Tax Assessors an "arm of the state" thus entitled to Eleventh Amendment immunity?

Factors:

1. How Georgia law defines the BOA
2. State's degree of control over the BOA
3. Where the BOA derives its funds
4. Who is responsible for judgments against the BOA

Ballard v. Chattooga County Board of Tax Assessors (2015), cont.

How Georgia Law Defines Boards of Assessors

- The Georgia statutory scheme obviously contemplates that its boards of assessors shall not only constitute a separate entity from the local county government, but the statutes reflect a clear intent that the boards of assessors shall be independent of the local county government.
- The independence of Georgia's boards of assessors is reflected in the Georgia cases holding that local county governments have no authority at all with respect to the discipline or termination of employees of the boards of assessors.

Ballard v. Chattooga County Board of Tax Assessors (2015), cont.

State's Degree of Control Over the BOA

- There is extensive state-level control over virtually every aspect of the work of Georgia's boards of assessors.
  - Minimum number of appraisers (O.C.G.A. § 48-5-262)
  - Qualifications, duties, and compensation thereof (O.C.G.A. § 48-5-263)
  - The training thereof (O.C.G.A. § 48-5-268)
  - The procedures to be followed (O.C.G.A. § 48-5-269)
  - State-level approval of the digest. (O.C.G.A. § 48-5-304)

Ballard v. Chattooga County Board of Tax Assessors (2015), cont.

Where the BOA Derives Its Funds

- The Georgia statutory scheme for funding its boards of tax assessors very closely parallels the funding scheme for sheriffs.
- Although the County "bears the major burden of funding," the Board is funded "because the State so mandates."
- State law determines the minimum number of appraisers for each county and sets their qualifications and duties.

Holding

- The court held that the BOA was acting as an "arm of the state" and entitled to Eleventh Amendment immunity.

Drayton v. McIntosh Co. (2016)

- Alleged BOA appraised property in a discriminatory manner
- Defendant raised Eleventh Amendment Immunity
- Plaintiff alleges the BOA was not a "state actor"
- The Drayton court held that Ballard was controlling and followed Ballard's legal analysis.

Drayton v. McIntosh County, Georgia, 2016 WL 3443919 (S.D.Ga. 2016).

Drayton v. McIntosh Co. (2016)

- However, it also expanded on Ballard:
  - "Though Ballard concerned a county board of tax assessors' 'employer' function, the Ballard Court's finding that state-level control over such boards is 'all encompassing,' in contrast to the lack of any control vested in the local county governments, applies equally – and perhaps with greater force –in the context of the Board of Tax Assessors' performance of its essential 'appraisal' function."

Drayton v. McIntosh Co. (2016)

- "Thus, as the Court in Ballard concluded, the similarities in the relevant facts and statutory schemes relating to Georgia's boards of tax assessors and sheriffs support – and, in some areas, 'point more overwhelmingly' – toward granting sovereign immunity in this case."

Drayton v. McIntosh Co. (2016)

- Drayton had nothing to do with hiring/firing of employees.
- Drayton was about the act of, or process of, appraising.
- Court held that the absence of county control was even greater in the areas of “appraisal” function.

When The Minimum Is Not Enough

O.C.G.A. § 48-5-262:

(d) The establishment of minimum staff requirements shall not preclude any county from employing additional appraisers in order to carry out this part.

(e) (1) As used in this subsection, the term "county civil service system" means any county civil service system, county merit system, county personnel plan or policy, or stated rules of work.

When The Minimum Is Not Enough

O.C.G.A. § 48-5-262

(e) (2) The county governing authority shall be authorized, in its discretion and upon adoption of the appropriate resolution or ordinance, to provide that staff and employees of the county board of tax assessors shall be positions of employment covered by the county civil service system.

When The Minimum Is Not Enough

- Each County, except Class 1 counties, shall employ a minimum staff of appraisers."
- The word "county" as used in Code Ann. § 92-7004a and again in Code Ann. § 92-7005a is not a reference to the board of commissioners or the county administrator because in these matters it is the board of tax assessors through which the county acts.

Spell v. Blalock, 243 Ga. 459 (1979)

Where are we?

- **History**: The legislative history in Georgia explains why the BOA is more like a state agency than a county department. It affirms the state's commitment to uniformity and continued oversight.
- **Slow Recovery**: Budget constraints will continue to be a problem
- **Who Am I**: You are independent of the county government; and more like a constitutional officer
- **What Are My Rights**: You have the right to demand and procure the necessary funding to carry out the essential appraisal functions as mandated by law.

Defining the Essential Appraisal Function

I. Overview

- Legal duty mandates performance
- Failure to perform legally mandated duty is grounds for removal from BOA
- Then, must be provided means to fulfill duty
- However, budgeting is never empirical

Defining the Essential Appraisal Function

II. **What We Learn From The Treatment of Constitutional Officers**

(a) Budgeting:

- County Commissioners have authority to review, approve, and amend a constitutional officer's budget. O.C.G.A. § 36-5-22.1(a)(1), (7).
- Budgets must provide reasonably sufficient funds to allow a constitutional officer to discharge his or her legal duties; a county may not alter a constitutional officer's duties through the budgeting process. Chaffin v. Calhoun, 262 Ga. 202 (1992)

Jarrard, Ken. *Constitutional Officers: The Board of Commissioners and You*. November 16, 2016.

Defining the Essential Appraisal Function

(a) Budgeting, cont.:

- To be sufficient, the budget must allow the officer the equipment and personnel necessary to perform his or her duties. Wolfe v. Huff, 233 Ga. 162 (1974).
- A constitutional officer has discretion in how to spend his or her budget once the Board approves it. Griffies v. Coweta County, 272 Ga. 506 (2000).
- This discretion is not without limits: A County may sue to prevent an officer from spending taxpayer money illegally.

Jarrard, Ken. *Constitutional Officers: The Board of Commissioners and You*. November 16, 2016.

Defining the Essential Appraisal Function

(b) Personnel Issues and Control Over Employees:

- Under the Georgia Constitution, a county board's legislative powers "shall not be construed to extend to . . . [a]ction affecting any elective county office, the salaries thereof, or the personnel thereof [unless made subject to the county's jurisdiction]." Ga. Const. of 1983, Art. IX, Sec. II, Par. I(c)(1).
- Because a constitutional officer's employees are not employees of the county, the constitutional officer has sole power and authority to prescribe the duties and assignments of his or her employees. Newberry v. Balkom, 249 Ga. 347 (1982).
- Similarly, county boards lack authority to establish work regulations for a constitutional officer's employees. Mobley v. Polk County, 242 Ga. 798 (1979).

Jarrard, Ken. *Constitutional Officers: The Board of Commissioners and You*. November 16, 2016.

Defining the Essential Appraisal Function

(c) Indemnification:

- Where a constitutional officer, acting in his or her official capacity, is forced to hire outside counsel to assert a legal position that the county attorney cannot or will not assert, and the constitutional officer prevails in asserting that legal position, the county must pay his or her attorney fees. Gwinnett County v. Yates, 265 Ga. 504 (1995).
- O.C.G.A. § 45-9-15(e)(2), authorizes the chief judge of a judicial circuit to permit a constitutional officer to hire legal counsel and to require a county to pay the reasonable fees of such counsel if:
  - The case is a civil case;
  - The county governing authority denies the constitutional officer's written request for counsel; and
  - The chief judge determines that an ethical conflict exists.

Jarrard, Ken. *Constitutional Officers: The Board of Commissioners and You*. November 16, 2016.

Defining the Essential Appraisal Function

III. Practical Reality

- The governing authority cannot limit your budget if your budget, in every respect, is necessary for an essential appraisal function as mandated by law.

Defining the Essential Appraisal Function

PURCHASED/CONTRACT SERV.

100-5-1550-521120 COURT COSTS - OTHER
100-5-1550-521200 PROFESSIONAL SERVICES
100-5-1550-521235 MEDICAL - OTHER/MISC
100-5-1550-522200 BLDG/FACILITY R&M
100-5-1550-522202 COURTHOUSE
100-5-1550-522205 OTHER EQUIPMENT R&M
100-5-1550-522207 OTHER BUILDINGS
100-5-1550-522208 COMPUTER SYSTEM
100-5-1550-522210 VEHICLE/TRUCK R&M
100-5-1550-522310 RENT/LEASE - FACILITIE
100-5-1550-522320 RENT/LEASE - EQUIPMENT
100-5-1550-523000 CONTRACTUAL: OTHER
100-5-1550-523100 INSURANCE (NON-MEDICAL
100-5-1550-523210 UTIL: CELLULAR & PAGER
100-5-1550-523215 UTIL: TELEPHONES
100-5-1550-523220 POSTAGE & SHIPPING
100-5-1550-523300 ADVERTISING
100-5-1550-523400 PRINTING CHARGES
100-5-1550-523500 ED/TRAINING-TRAVEL COS
100-5-1550-523510 TRAVEL (NON TRAINING)
100-5-1550-523600 DUES PROFESSIONAL ORGS
100-5-1550-523620 SUBSCRIPTIONS
100-5-1550-523700 ED/TRAINING-SEMINAR CO

TOTAL PURCHASED/CONTRACT SERV.

Defining the Essential Appraisal Function

```
CAPITAL OUTLAY
100-5-1550-542300 FURNITURE, OFFICE/OTHE
100-5-1550-542410 COMPUTER EQUIPMENT
100-5-1550-542500 OTHER CAPITAL EQUIPMEN
   TOTAL CAPITAL OUTLAY
```

Defining the Essential Appraisal Function

SALARIES & WAGES

100-5-1550-511000 SALARIES - REGULAR

100-5-1550-511115 EMPLOYEE CHRISTMAS BON

100-5-1550-511120 SALARIES - PART TIME

100-5-1550-511125 PROMOTIONS & MERIT BON

100-5-1550-511180 BOARDS / SUPPLEMENTS

100-5-1550-511300 SALARIES - OVERTIME

TOTAL SALARIES & WAGES

Case List

- Spell v. Blalock, 243 Ga. 459 (1979)
- Richmond County v. Jackson, 234 Ga. 717 (1975)
- Chambers v. Fulford, 268 Ga. 892 (1998)
- Ballard v. Chattooga County Board of Tax Assessors, 615 Fed. Appx. 621 (11th Cir. 2015)
- Drayton v. McIntosh County, Georgia, 2016 WL 3443919 (S.D.Ga. 2016)
- Board of Com'rs of Dougherty County v. Saba, 278 Ga. 176 (2004)
- Chaffin v. Calhoun, 262 Ga. 202 (1992)
- Wolfe v. Hunt, 233 Ga. 162 (1974)
- Griffies v. Coweta County, 272 Ga. 506 (2000)
- Newberry v. Balkom, 249 Ga. 347 (1982)
- Mobley v. Polk County, 242 Ga. 798 (1979)
- Gwinnett County v. Yates, 265 Ga. 504 (1995)

Questions?

Anthony A. Rowell, Esq.
aar@hallboothsmith.com
Nicholas A. Kinsley, Esq.
nkinsley@hallboothsmith.com
1564 King Road
Tifton, Georgia 31793
(229) 382-0515 – phone
(229) 382-1676 - fax