

TAXATION

By T. BALDWIN MARTIN, JR.*

DECISIONS

Georgia tax litigation during the year just passed concerned itself with a diversity of subjects. Chief among these and of importance to educators was a recognition by the Georgia Supreme Court that the properties of the State School Building Authority were those of a "purely public charity," and therefore exempt from all state taxes.¹ A procedural weakness in the appellate rights of taxpayers was reflected in the case of *Georgia Railroad and Banking Company v. Redwine*,² wherein the court held that the taxpayer Railroad Company had no right of appeal to the Superior Court of Richmond County from a final decision of the State Revenue Commission. It is interesting to note that no appellate rights were outlined for these type taxpayers, and this glaring inequity drew a strong dissent.³

The remaining decisions were of little significance⁴ with the possible exception of *Crawley v. Selby*,⁵ wherein the holder of the tax deed refused to accept a tender from the delinquent owner on the basis that the matter "was in her attorney's hands." The court found that this constituted a refusal of tender and dispensed with the formality of further tender.

The net result of the 1952 legislative efforts and decisions was to formulate complexity upon complexity and to further co-ordinate state and federal taxing statutes. It is with annual regularity that recognition by taxing authorities lends credence to an ancient quotation: "Every man has by nature the right to possess property—(But) it is one thing to have a right to possession of money and another to have the right to use money as one wills."⁶

LEGISLATION

Tax legislation in 1952 reared its prolific head on thirteen occasions, thereby encompassing such standard tax objectives as corporations,⁷ banks,⁸

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1. *Sheffield v. State School Building Authority*, 208 Ga. 575, 68 S.E.2d 590 (1952).
2. 208 Ga. 261, 66 S.E.2d 234 (1951).
3. Chief Justice Duckworth, Justice Atkinson and Judge Pharr (presiding for Justice Head).
4. *Morrison v. Smith*, 208 Ga. 521, 67 S.E.2d 577 (1951), wherein the taxpayer's action was thwarted by a plea in bar where attempt made to enjoin collection of tax.
5. 208 Ga. 530, 67 S.E.2d 775 (1951).
6. GIACCHINO PECCI, *THE GREAT ENCYCLICAL LETTERS OF POPE LEO XIII*, 210-221 (Benziger Bros., New York (1903)).
7. The spread for computing corporate business tax was reduced, producing a more equitable assessment. Ga. Laws 1952, p. 371; see prior rates, Ga. Laws 1951, p. 167.
8. Ga. Laws 1952, p. 46. State banks being brought to an equal position taxwise with national banks. Taxation to be on "same basis, same manner, and same extent."

and to keep abreast of the times, Korean Veterans.⁹ There was reflected a sporadic loosening of the all enveloping sales tax provisions,¹⁰ and a refund benefit was extended to consumers of aviation gasoline.¹¹ Attention was also given the homestead exemption statute extending its applicability and reducing its formalities.¹² Chief among taxing statutes, however, were those directed toward income.

The Acts pertaining to income taxation reflect a trend toward imitation of the federal taxing statutes. Additional exemptions were promulgated providing a \$500 exemption for those over sixty-five years of age¹³ and those who are blind;¹⁴ exemption recognition was also extended to non-profit agricultural associations organized under the provision of the Co-operative Marketing Act of 1921.¹⁵ A revamping of deductions also took place in line with the federal definition, authority being given for deduction of medical expense in excess of five per cent of gross income less business expense. An optional standard deduction of ten percent of gross income less business expense, in lieu of other deductions was also offered,¹⁶ and at the same time belated recognition was given the distinction between long and short term capital gains and losses.¹⁷ Provision was further made for carry-overs and carry-backs,¹⁸ involuntary conversion,¹⁹ and sales of real estate.²⁰ All of these steps were patterned along the line of the federal taxing statutes.

The foregoing additions were also accompanied by certain changes in existing taxing statutes. These changes dealt primarily with assessments and collections. Returns are now presumed to have been filed on the last day prescribed by law,²¹ thus extending the statutory period for a re-determination. New periods of limitation on assessments were promulgated, providing a period of eighteen months following a request for assessment

9. Extended time for returns to be filed six months following return to Continental United States, penalties and interest waived. Ga. Laws 1952, p. 92.
10. Executive orders of Governor suspending collection of sales and use tax on school lunches, religious papers, and state banks confirmed. See n.2 *supra*. Ga. Laws 1952, p. 43. See Ga. Laws 1952, p. 334, wherein monthly returns of dealer were pronounced due on the "20th day" of the preceding month, instead of last day. Extension and collection procedure outlined.
11. Ga. Laws 1952, p. 214.
12. Ga. Laws 1952, p. 265; Ga. Laws 1952, p. 317. Only one application now necessary for exemption so long as taxpayer remains in residence. Exemption of members of U. S. armed forces to apply during service (formerly during time of war).
13. Also \$500 exemption to taxpayer's spouse who has no gross income and is dependent on no other taxpayer. Ga. Laws 1952, p. 273, § 1.
14. *Id.* § 2.
15. *Id.* § 3. Note parallel with federal treatment of cooperatives.
16. Ga. Laws 1952, p. 405, § 3, amending GA. CODE § 92-3109, provides for maximum of \$1000 (\$500 for married person filing separate return).
17. Treatment patterned along federal lines, authorizes deductions to same extent as federal limits and provides for loss carry-over in excess of \$1000 for five year period. Ga. Laws 1952, p. 409, § 4.
18. Permits net operating loss carry-over for five years and carry-back for two year period. Carry-overs limited to loss accruing after February 14, 1952. Ga. Laws 1952, p. 426, § 10 (a).
19. Ga. Laws 1952, p. 415, § 4 (e).
20. Non-recognition of gain from sale of residence applied to purchase of new residence within a year. No recognition given loss from such sale. Ga. Laws 1952, p. 405, § 4 (f).
21. Ga. Laws 1952, p. 422, § 5 (a), amending GA. CODE ANN. § 92-3303 (Supp. 1951).

on estates,²² a six year period where over twenty-five percent gross income omitted,²³ and five years on funds received in corporative liquidations.²⁴ Where a return is false or there is a failure to file, there exists no limitation as to time.²⁵ The harried taxpayer must also report changes in federal tax liability within two years of said change. All of these limitations are also applicable to years remaining open under Code section 92-3303²⁶ prior to the above amendment.

The all important interest provisions received consideration, delinquent installments being assessed at six percent, as well as unpaid tax on extensions granted by the commissioner.²⁷ A small reduction on interest was also granted on deficiencies, the rate being cut from one percent per month to six percent per annum.²⁸ Provision was likewise made to prohibit payment of interest on refunds to veteran taxpayers based upon credits against state taxes arising out of federal tax payments.²⁹

22. Said request must be in writing. Ga. Laws 1952, p. 423, § 5 (b) (1).

23. *Id.* § 5 (b) (2).

24. *Id.* § 5 (b) (3).

25. *Id.* § 5 (b) (4).

26. The practical effect of Code § 92-3303 as interpreted *Forrester v. Americus Oil Co.*, 66 Ga. App. 743, 19 S.E.2d 328 (1942), was to impose no statute of limitation in which the taxpayer could take refuge.

27. Ga. Laws 1952, p. 425, § 6.

28. *Id.* § 8. Amending GA. CODE § 92-3305 (1933).

29. *Id.* § 10 (c).