TAXATION

By JAMES H. WILSON, JR.*

The increasing expenditures and revenues of the State Government continued to be reflected during the period June 1, 1954, to May 31, 1955, by a considerable amount of legislation and litigation in the field of taxation. There were no major legislative changes in the tax system during the survey period, which closed before the convening of the special session of the legislature in June, 1955, for the purpose of raising additional revenue. Nor were any decisions of sweeping effect rendered by the Georgia appellate courts in the field of taxation during the year. However, the enhanced importance of revenue laws due to the increased state budget continued to require numerous amendments to clarify ambiguities, improve collection procedures, and correct defects and inequities, as well as quite a few court decisions with respect to tax statutes.

Developments during the survey period are summarized in the following sections on the various types of taxes.

INCOME TAX

The only new legislation in the income tax field during the period was directed toward conforming the Georgia law to certain changes made in the Federal income tax law by the Internal Revenue Code of 1954. The Georgia amendments were proposed by the Board of Governors of the Georgia Bar Association, on the recommendation of the Association's Committee on Taxation headed by Harold S. Willingham, who also served as Speaker pro tem of the House of Representatives at the 1955 regular session of the General Assembly. The Bar Association's proposals were approved and supported by the Department of Revenue, and the necessary bills were passed in an encouraging demonstration of how the bar, the tax authorities and legislators can cooperate in the improvement of the tax laws.

One of the changes designed to effect more uniformity with the new Federal income tax law was an amendment of section 92-3210 of the Code of Georgia to change the due date for Georgia income tax returns and initial tax payments from March 15 to April 15 with respect to returns for calendar years and to the 15th day of the fourth

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month after the close of fiscal years.[1] The Georgia amendment went further than the new Federal Code in making the change applicable not merely to individuals but also to corporations. The act also amended Code section 92-3301 (b) to limit the privilege of paying the tax in three installments to cases where the tax exceeds $30.

The other change[2] conforming to a revision of the federal income tax law was an amendment of Code section 92-3109 (f) which, effective for all taxable years ending after December 31, 1953, authorizes use for purposes of the Georgia income tax of the new methods of computing the deduction for depreciation of certainly newly-acquired property which are permitted by section 167 (b) of the Federal Internal Revenue Code of 1954.

Two cases decided by the Supreme Court of Georgia during the survey period probably were the last of the series of cases involving the question as to when a foreign corporation was "doing business" in Georgia (and thus subject to Georgia income tax) within the meaning of Code section 92-3113 prior to its amendment in 1950 to define that term.[3] Previously the Supreme Court of Georgia had held, in *Redwine v. Dan River Mills, Inc.*,[4] and again on somewhat different facts in *Redwine v. United States Tobacco Company*,[5] that a foreign corporation which engaged in Georgia merely in the solicitation of orders and related promotional activities, the orders being subject to acceptance or rejection at an office of the foreign corporation outside Georgia and being filled if accepted by interstate shipment of goods from factories outside Georgia by common carrier to the Georgia purchasers, was not "doing business" in Georgia within the meaning of the pre-1950 income tax statute and therefore was not liable under that statute for a Georgia income tax. In 1951 the Attorney General of Georgia rendered an official opinion to the State Revenue Commissioner that the *Dan River Mills* decision had no application to the case of foreign distilling corporations selling distilled spirits to licensed Georgia wholesalers, although the foreign distillers' representatives in Georgia engaged merely in soliciting orders and promotional activities, the orders were subject to acceptance or rejection at the distillers' offices outside Georgia, and the orders were filled by shipments from outside Georgia via common carrier to Georgia wholesalers at state warehouses operated and controlled by the Department

1. Ga. Laws Jan.-Feb. Sess. 1955, p. 193.
2. Ga. Laws Jan.-Feb. Sess. 1955, p. 481.
3. Ga. Laws 1950, pp. 299, 300 GA. CODE ANN. § 92-3113 (Supp. 1951).
4. 207 Ga. 381, 61 S.E. 2d 771 (1950).
5. 209 Ga. 725, 75 S.E. 2d 556 (1953).

of Revenue. In fact the liquor regulations promulgated by the State Revnue Commissioner provided that all alcoholic beverages shipped by distillers to a wholesale licensee at a state warehouse would be deemed to be the property of the wholesale licensee at the time they were shipped by the distiller and would be held and stored in the state warehouse by the Commissioner and his agents for the Georgia wholesaler as his property; and the foreign distillers did not hold licenses authorizing them to engage in Georgia in the sale of distilled spirits. Nevertheless the Attorney General ruled that the *Dan River Mills* decision did not apply to the distillers because he interpreted the Revenue Commissioner's liquor regulations as requiring them to "do business" in Georgia as a condition of the privilege of shipping their products into Georgia.[6] The Commissioner's regulations on which the Attorney General relied required the distillers to do the following things:

(1) Obtain permits for resident and non-resident representatives to solicit orders from Georgia dealers.

(2) Accept only such orders from Georgia wholesale licensees as had been filed with the Department of Revenue by the wholesale licensee and forwarded by the Department to the distiller.

(3) Fill orders from Georgia wholesalers only by shipments to the wholesaler at a state warehouse.

(4) Obtain approval of the State Revenue Commissioner of all brands of distilled spirits shipped to Georgia customers.

Several foreign distilling corporations sued for refund of Georgia income taxes paid under the pre-1950 statute. The *Schenley*[7] and *Browne-Vintners*[8] cases were argued at the same time in the Supreme Court of Georgia, with the distillers relying on the *Dan River Mills* and *United States Tobacco* decisions and the State contending that those cases were not controlling because of the privileged and regulated nature of the business of selling whiskey. On June 14, 1954, the supreme court held that the distillers were not "doing business" in Georgia within the meaning of section 92-3113 (prior to the 1950 amendment) and hence were not subject to the income tax for the years involved. In the court's opinion in the *Schenley* case, Chief Justice Duckworth reasoned that the distillers' business transactions were in all material respects precisely the same as those in the *Dan River Mills* and *United States Tobacco* cases, with the exception that the commodities involved were different, and that the fact that the com-

6. OPS. ATTY. GEN. 1950-51, pp. 367, 369.
7. Redwine v. Schenley Industries, Inc., 210 Ga. 769, 83 S.E. 2d 16 (1954).
8. Redwnie v. Browne-Vintners Co., Inc., 210 Ga. 779, 83 S.E. 2d 22 (1954).

modity involved was whiskey had no effect in determining whether the corporations were "doing business" within the meaning of the statute.[9]

The question has not been decided whether foreign corporations engaged in activities in Georgia such as those involved in the *Dan River Mills* and *United States Tobacco Company* cases are subject to the Georgia income tax for years since the amendment of section 92-3113 in 1950 to define "doing business" very broadly.[10] However, the point is now before the Georgia courts. Two test suits were filed in Fulton Superior Court in March, 1955, by Stockham Valves & Fittings, Inc.,[11] raising some of the constitutional questions which were also raised by the pleadings in the *Dan River Mills* and *United States Tobacco Company* cases but which were not reached in those cases because of the Supreme Court's holding that the corporations were not subject to the income tax for the years involved as a matter of statutory construction. The two petitions of Stockham Valves & Fittings, one a suit for refund of 1949 Georgia income tax and the other a suit for refund of 1950 Georgia income tax,[12] challenge the constitutionality of the 1950 amendment of section 92-3113 in subjecting to

9. In the *Schenley* case, the state filed a plea of estoppel in bar based on an agreement executed by Schenley and by Fred L. Cox as "Deputy Director, Department of Revenue, Income Tax Unit." The agreement recited, among other things, that in consideration of the waiver of penalties by the Revenue Commissioner for Schenley's failure to file returns and pay taxes for the years 1938-1947 when due, Schenley agreed to be forever barred from reopening the question of its income tax liability for those years. The supreme court held that this plea was properly dismissed on demurrer, since the law of Georgia does not empower the "Deputy Director, Department of Revenue, Income Tax Unit" to execute such a contract on behalf of the state. Chief Justice Duckworth pointed out that the state's contention that a deputy officer can perform all duties of the principal was not reached, because the instrument was executed by neither the Revenue Commissioner nor a Deputy Commissioner. He added that the General Assembly obviously construed the statute in the same manner as the court, for otherwise there would have been no need for the 1951 amendment by which the office of Deputy Commissioner was created and given powers broad enough to include the contract in question. Ga. Laws 1951, pp. 614, 616. Mr. Justice Head dissented in the *Schenley* and *Browne-Vintners* cases.

10. "Every such corporation shall be deemed to be doing business within this State if it engages within this State in any activities or transactions for the purpose of financial profit or gain, whether or not such corporation qualifies to do business in this State and whether or not it maintains an office or place of doing business within this State, and whether or not any such activity or transaction is connected with interstate or foreign commerce." Ga. Laws 1950, pp. 299, 300, GA. CODE ANN. § 92-3113 (Supp. 1951).

11. Stockham Valves & Fittings, Inc., v. Williams, Nos. A-48097, A-48098, Super. Ct. Fulton County, Ga.

12. The petition in the suit for 1949 alleges that during that year the plaintiff had no office in Georgia but had an employee resident in Georgia. The suit for 1950 alleges that during that year the plaintiff maintained a small office in Atlanta for the convenience of its employees.

the Georgia income tax a foreign corporation engaged in Georgia merely in promotional activities and in receiving orders for transmission to the corporation's principal office in Alabama, where they were subject to approval and acceptance, with accepted orders being filled by shipments from factories or warehouses outside Georgia by common carrier f.o.b. shipping point. The *Stockham Valves & Fittings* suits rely only on federal constitutional provisions—the commerce cause and the due process clause of the fourteenth amendment. However, other refund suits[13] have since been filed which not only plead the federal constitutional provisions but also challenge the constitutionality of the 1950 amendment under the due process clause of the Constitution of Georgia[14] and contend that as applied to the taxable year 1949 the 1950 amendment violates the express prohibition in the Georgia Constitution against retroactive laws.[15]

In *Williams v. American Refrigerator Transit Co.*,[16] the question raised by the foreign corporation's affidavit of illegality was whether it was subject to Georgia income taxes for the years 1931 through 1949, which the Commissioner was seeking to collect by levy of a fieri facias. Therefore both the pre-1950 version of Code section 92-3113 and the 1950 amendment, which provides that it shall apply to returns for the calendar year 1949, were involved. The court of appeals had no difficulty in concluding that American Refrigerator Transit Company was not "doing business" in Georgia during any of the years involved, since it had no office or other place of business in Georgia and had no employees engaged in any activities in this state. The more difficult question was whether the corporation could be subjected to tax because of its ownership of property in Georgia. It leased refrigerated railroad cars to various railroads for use by them in their business, and from time to time the lessee railroads brought such cars into Georgia in serving shippers. Both before and since its amendment in 1950, section 92-3113 has provided that the income tax shall apply to the net income of every foreign corporation "owning property or doing business in this State." However, from its construction of the entire statute, including the provisions for apportionment of income in their successive versions over the years involved, the court of appeals concluded in an opinion written by Judge Nichols that the legislature did not intend

13. American Snuff Company v. Williams, No. 19555, Super. Ct. DeKalb County, Ga.; George W. Helme Company v. Williams, No. A-49724, Super. Ct. Fulton County Ga.; United States Tobacco Company v. Williams, No. A-49725, Super. Ct. Fulton County, Ga.
14. GA. CONST. art. 1, § 1, ¶ 3, GA. CODE ANN. § 2-103 (1948 Rev.).
15. GA. CONST., art 1, § 3, ¶ 2, GA. CODE ANN. § 2-302 (1948 Rev.).
16. 91 Ga. App. 522, 86 S.E. 2d 336 (1955).

to tax the business income of a foreign corporation unless it is "doing business" in Georgia and has some "business income" in the state. Therefore the judgment of Fulton Superior Court sustaining the taxpayer's affidavit of illegality was affirmed.[17]

PROPERTY TAXES

Exemption of certain tangible property from ad valorem taxation was the subject of a number of laws adopted at the 1955 regular session of the General Assembly. One act[18] amended the statute listing types of property exempt from taxation[19] by providing for the exemption of property owned by religious groups which is used only for single-family residences and from which no income is derived, as authorized by a recent constitutional amendment.[20] Another new statute[21] broadened the definition of the extent of the interest which an applicant for homestead exemption must have in real property in order to be entitled to the exemption. The amendment makes the exemption applicable to property held under an occupancy agreement by a stockholder of a non-profit cooperative ownership housing corporation, which corporation owns the property or is lessee thereof under a 99-year lease, subject to a mortgage insured by the Federal Housing Administration under section 213 (a) (1) of the National Housing Act.[22] Although the amending statute is effective only on and after January 1, 1955, another act passed at the 1955 regular session of the General Assembly[23] ratifies and confirms an executive order promulgated by the Governor on December 7, 1954, and effective January 1, 1954, suspending collection of ad valorem taxes with respect to property occupied as a residence and held under an occupational agreement as above described to the extent that such taxes would be eliminated by application to such property of the homestead exemption.

A method by which counties, municipalities and districts in which branch banks of national banking associations are located can receive

17. Chief Judge Felton concurred specially on the ground that to construe the statutes as levying the tax would make them violative of the fourteenth amendment and that is the court's duty to construe ambiguous statutes as being constitutional. He thought the imposition of the tax would violate due process requirements because "Income from personal tangible property is intangible property, and such property is taxable only to its owner at his or its domicile unless it has become an integral part of some local business in the taxing state or was closely connected therewith."
18. Ga. Laws Jan.-Feb. Sess. 1955, p. 262.
19. Ga. Laws 1946, p. 12, as amended by Ga. Laws 1947, p. 1183 GA. CODE ANN. §92-201 (Supp.) 1951).
20. Ga. Laws Nov.-Dec. Sess. 1953, p. 70, GA. CODE ANN. § 2-5404 (Supp. 1954).
21. Ga. Laws Jan.-Feb. Sess. 1955, p. 122.
22. 64 STAT. 54, 12 U.S.C. § 1715 (e) (1952).
23. Ga. Laws Jan.-Feb. Sess. 1955, p. 157.

a portion of the tax levied on the shares of the bank's stockholders was provided by another statute passed at the 1955 regular session.[24] This statute amends section 92-2406 of the Code of Georgia to provide that a bank or banking association which has branches shall return each year for taxation in each county, municipality and district in which its main office or a branch is located that proportion of the shares of its stockholders which the total deposits on January 1 originating in accounts attributable to the main office or branch situated in such taxing subdivision bear to the grand total of all deposits on such date. Previous provisions of section 92-2406 which purported to tax branch banks on the value of the capital employed in their operation in the counties, municipalities and districts in which located were held void as applied to branches of national banks by the Supreme Court of Georgia in *Goodwin v. Citizens & Southern National Bank*.[25] The ground of this decision was that federal law[26] permits a state to tax the shares of stockholders of national banking associations but that Congress has not consented to state taxation of national banks on their capital.[27]

The Intangible Property Tax Act of 1953 was amended in several respects at the 1955 regular session. One amendment requires payment of the so-called "recording tax" on long-term notes secured by real estate to the tax collector or tax commissioner of the county in which the real estate is located prior to presenting the security instrument to the clerk of superior court for recording,[28] rather than payment to the clerk as heretofore provided.[29] Although the main purpose of this amendment was to change collection procedures, it also provides that the filing for record of a real estate instrument securing a long-term note without payment of the "recording tax" shall not constitute legal notice to anyone.[30] Another 1955 amendment[31] pro-

24. Ga. Laws Jan.-Feb. Sess. 1955, p. 450.
25. 209 Ga. 908, 76 S.E. 2d 620 (1953).
26. REV. STAT. § 5219 (1875), as amended, 12 U.S.C. § 548 (1952).
27. See Saye, *Constitutional Law*, 6 MERCER L. REV. 32, 41 (1954); Drake, *Taxation*, 6 MERCER L. REV. 152, 155 (1954).
28. Ga. Laws Jan.-Feb. Sess. 1955, p. 288.
29. Ga. Laws Nov.-Dec. Sess. 1953, pp. 379, 383, GA. CODE ANN. § 92-164 (Supp. 1954).
30. Section 8 of the Intangible Property Tax Act of 1953, as amended by the 1955 statute described in the text, no longer provides for remission of the tax by the collecting officer to the State Revenue Commissioner. Another statute enacted at the 1955 session purports "to express and effectuate the original intent of the General Assembly in enacting the Intangible Tax Act of 1953" by providing that the "recording taxes" on long-term notes secured by real estate collected by clerks of the Superior Courts shall not be remitted to the State Revenue Commissioner but shall be remitted directly to the tax collector or tax commissioner of the county in which collected and distributed by him as provided by law.
Ga. Laws Jan.-Feb. Sess. 1955, p. 730.

vides that, where notes secured by real estate fall due within three years from their date or from the date of the security instrument, it shall be a sufficient compliance with Section 6 of the Intangible Property Tax Act of 1953[32] to state that fact in the security instrument in lieu of specifying the dates upon which such note or notes fall due.

Sales and Excise Tax

The Sales and Use Tax Act [33] was amended at the 1955 regular session to close possible loopholes in the law as applied to contractors and to tighten the measures for collection of the tax from contractors. The amendment [34] adds to the act a new section 4 (a) which makes the following provisions:

(1) Any person who contracts to furnish tangible personal property and perform services thereunder in Georgia shall be deemed to be the consumer of the tangible personal property and shall pay the sales tax at the time of purchasing such property. If such person fails to pay the sales tax at the time of the purchase or makes the purchase outside Georgia, he shall be liable for payment of the sales or use tax; but this does not relieve any dealer under the Act who made the sale from his liability to collect and pay the tax on purchases by a contractor.

(2) Any person who contracts to perform services in Georgia and is furnished by the person for whom the contract is performed, for use under the contract, with tangible property on which a sales or use tax has not been paid to Georgia by the latter shall be deemed to be the consumer of such property and shall pay a use tax based on its fair market value, irrespective of whether any interest in the property becomes vested in the contractor.

(3) Any person who contracts to perform a service, the principal part of which is the furnishing of machinery which will not be under the exclusive control of the contractor, shall be liable to collect a sales tax on the rental value of the machinery so used. If labor and other charges are not separated from the rental charge, the contractor shall be liable to collect a sales tax on the entire contract price.

(4) A subcontractor is liable under the Sales and Use Tax Act as a general or prime contractor, but the general or prime contractor shall withhold up to 3% of the payments due to the subcontractor until

31. Ga. Laws Jan.-Feb. Sess. 1955, p. 293.
32. Ga. Laws Nov.-Dec. Sess. 1953, pp. 379, 384, GA. CODE ANN. § 92-166 (Supp. 1954).
33. Ga. Laws 1951, p. 360, as amended, GA. CODE ANN. Ch. 92-34A (Supp. 1951, 1954).
34. Ga. Laws Jan.-Feb. Sess. 1955, p. 389.

the subcontractor either furnishes a certificate from the State Revenue Commissioner that all sales taxes accruing by reason of the contract have been paid or posts a bond with the Commissioner. Failure of the general contractor to withhold as required renders him liable for any sales or use taxes due by the subcontractor.

The amending statute provides further that it shall not be construed to affect or limit the resale exemption or the industrial materials exemption or to impose any sales or use tax with respect to the use in performance of contracts with the United States of tangible personal property owned by the United States which is not actually used up and consumed in such performance. However, the statute adds that tangible personal property incorporated in real property construction which loses its identity as tangible personal property shall be deemed to be used and consumed. This careful language presumably is designed to escape conflict with the decision of the Supreme Court of the United States in *Kern-Limerick Inc. v. Scurlock*,[35] holding that the purchase by a contractor, as purchasing agent for the Navy Department, of a tractor for use in performing a contract with the Navy could not be subjected to an Arkansas sales tax because of the doctrine of sovereign immunity. The rationale of that decision was that the legal incidence of the tax was on the purchaser, which was the United States. The draftsmen of the above Georgia statute apparently hope that the Supreme Court of the United States will consider that the legal incidence of the Georgia tax is on the contractor with respect to materials furnished by the United States and used up by the contractor in performing the contract.

Although the Georgia appellate courts rendered no decisions under the Sales and Use Tax Act during the survey period, numerous questions under that law were involved in administrative proceedings and cases in the lower courts. One very interesting question which arose was whether the state's unrecorded lien for unpaid sales or use tax is superior to the lien of a recorded bill of sale to secure debt. In *State v. Atlanta Provision Company*,[36] the court of appeals reasoned that the state's lien for sales taxes attaches on the day on which the dealer's return and remittance are due, that recording the tax fi. fa. on the general execution docket is not a condition precedent to the lien attaching, and that the only effect of a failure to record the lien is that as against innocent purchasers the lien will be lost.[37] However, the court held in that case only that the state's failure to record its

35. 347 U.S. 110, 98 L.Ed. 546, 74 S.Ct. 403 (1954).
36. 90 Ga. App. 147, 82 S.E.2d 145 (1954).
37. See Drake, *Taxation*, 6 MERCER L. REV. 152, 154 (1954).

lien for sales taxes did not relegate it to the position of a general creditor in a receivership proceeding. In *Scott v. Oglethorpe Super Market, Inc.*,[38] the state contended in a receivership proceeding that its claim for unpaid sales and use taxes should be allowed priority over a bill of sale to secure debt which was executed and recorded before the tax liability accrued. Judge Walter C. Hendrix denied the state's contention without opinion. The state did not appeal, but it is not known what position the state will take in the future in such cases or in the more difficult case where the bill of sale to secure debt is given after the tax accrues but is recorded before the tax fi. fa. is recorded.

Turning to other excise taxes, the General Assembly at the 1955 regular session repealed the 1937 act[39] taxing the sale of cigars and cigarettes and previous amendments thereto and adopted a revised act effecting some minor rate changes.[40] It also amended the section of the Motor Fuel Tax Law dealing with issuance of refund permits to dealers with respect to losses in evaporation and expenses in collecting the tax[41] to eliminate the provision that such permits shall be issued on an annual basis and shall expire at the end of each fiscal year.[42]

Unemployment Compensation Tax

In two cases decided during the survey period, the court of appeals reaffirmed its holding in *Young v. Bureau of Unemployment Compensation*[43] that in determining whether unemployment contributions are due under the Georgia Employment Security Law with respect to compensation for services it makes no difference whether under the general law the relationship between the parties would be considered that of master and servant or the person performing the services would be deemed an independent contractor. The test is whether the status falls within the meaning of "employment" as defined by the act. The broad statutory definition of "employment"[44] includes all services performed by an individual for "wages" (which in turn is defined broadly as meaning "all remuneration for per-

38. No. A-41628, Super. Ct. Fulton County, Ga.
39. Ga. Laws 1937, p. 83, Ga. Code Ann. Ch. 92-22.
40. Ga. Laws Jan.-Feb. Sess. 1955, p. 268.
41. Ga. Laws 1947, p. 1115, Ga. Code Ann. § 92-1407 (E) (Supp. 1951).
42. Ga. Laws, Jan.-Feb. Sess. 1955, p. 380.
43. 63 Ga. App. 130, 10 S.E.2d 412 (1940).
44. Ga. Laws 1937, pp. 806, 843, as amended, Ga. Code Ann. § 54-657(h) (Supp. 1951).

sonal services, including commissions and bonuses")[45] unless it is shown to the satisfaction of the Commissioner of Labor that (1) the individual is free from control or direction over the performance of the services, both under his contract of service and in fact, (2) such service is either outside the usual course of the business for which such service is performed or performed outside all the places of business of such enterprise, and (3) the individual is customarily engaged in an independently established trade, occupation, profession or business. Applying the statutory test the court of appeals held in the two recently decided cases that the act covered "dealers" selling monuments on a commission basis[46] and owner-drivers operating trucks for a carrier under lease agreements,[47] since in each case the individuals performing the services were by the terms of their contracts of service subject to control and direction by the taxpayer.

Two measures adopted at the 1955 regular session amended the Employment Security Act in several respects which affect contributions by employers. One act, among other things, modified the experience rating provisions and, effective January 1, 1956, extended coverage to employers with four or more employees.[48] This broadening of coverage, which at present is limited to employers of eight or more persons,[49] conforms to a change in the federal law.[50] The other act made the emergency war-risk rates inapplicable to wages payable for employment during the calendar year 1955.[51]

License and Occupation Taxes

The 1955 regular session of the General Assembly made a number of changes in the statutes with respect to various types of motor vehicle licenses. Motor vehicle license plates for 1956, except certain truck and special tags, will be issued by the tax collectors or tax commissioners of the various counties[52] rather than at the state capitol as heretofore; and each applicant for a 1956 motor vehicle license plate must

45. Ga. Laws 1937, pp. 806, 846, as amended, GA. CODE ANN. § 54-657(n) (Supp. 1951).
46. McNeel, Inc. v. Redwine, 90 Ga. App. 345, 83 S.E.2d 33 (1954). Chief Judge Felton said in the court's opinion that it did not matter that the Federal Employment Security Agency had construed the contract as not bringing the parties under the federal law.
47. Redwine v. Refrigerated Transport Co., Inc., 90 Ga. App. 784, 84 S.E.2d 478 (1954).
48. Ga. Laws Jan.-Feb. Sess. 1955, p. 553.
49. Ga. Laws 1937, pp. 806, 842, as amended, GA. CODE ANN. § 54-657(g) (Supp. 1951).
50. INT. REV. CODE of 1954 § 3306(a), as amended by 68 STAT. 1130 (1954).
51. Ga. Laws Jan.-Feb. Sess. 1955, p. 420.
52. Ga. Laws Jan.-Feb. Sess. 1955, p. 659.

present an affidavit showing payment of all ad valorem taxes on the vehicle for the previous year, or if the applicant did not own the vehicle on January 1 of the previous year, showing payment of such taxes on the vehicle owned by him on that date.[53] Another act provided for expiration of drivers' licenses which previously were permanent.[54] The legislature also ratified and enacted into law an executive order issued by the Governor on August 10, 1954, which suspended the collection of annual license fees for the operation of motor buses used as common carriers for hire in excess of $700 per vehicle so as to limit the fees to amounts commensurate with those charged by neighboring states.[55]

The Supreme Court of Georgia held, in *City of McCaysville v. Tri-State Electric Cooperative*,[56] that a cooperative, non-profit, membership corporation incorporated under the laws of a sister state for the purpose of engaging in rural electrification and subsequently domesticated in Georgia for the conduct of its corporate purpose in Georgia is entitled to the tax immunity granted to such corporations organized under the laws of Georgia by the Constitution of Georgia[57] and enabling legislation adopted thereunder.[58] Therefore a Georgia municipality could not collect a license fee from a domesticated corporation of that type for the privilege of selling and distributing electric power within the city limits. The court's opinion, written by Mr. Justice Candler, based the decision on the provision of Code section 22-1601 that a domesticated corporation shall have the same powers, privileges and immunities as a similar corporation created under the laws of Georgia,[59] and on the reasoning that a construction of the immunity provision in the Constitution of Georgia as applicable only to cooptive non-profit, membership corporations incorporated under the laws of Georgia for the purpose of engaging in rural electrification and not to such corporations incorporated in another state but domesticated in Georgia and engaged in rural electrifacation here would be offensive to various provisions of the Constitutions of the United States and of Georgia.

53. Ga. Laws Jan.-Feb. Sess. 1955, p. 639. This measure followed a recommendation of the Board of Governors of the Georgia Bar Association.
54. Ga. Laws Jan.-Feb. Sess. 1955, p. 662. At the extraordinary session of the General Assembly in June, 1955, the provisions on expiration of drivers' licenses were revised again and the license fees were changed. Ga. Laws June Ex. Sess. 1955, p. 35
55. Ga. Laws Jan.-Feb. Sess. 1955, p. 303.
56. 211 Ga. 5, 83 S.E.2d 598 (1954).
57. GA. CONST. art 7, § 1, ¶ 4, GA. CODE ANN. § 2-5404 (1948 Rev.)
58. Ga. Laws 1946, pp. 12, 14, GA. CODE ANN. § 34A-130.1 (Supp. 1951).
59. See Wilson, *Taxation*, 2 MERCER L. REV. 220, 231 (1950).

In holding in *Beard v. Atlanta*[60] that an ordinance of the city of Atlanta which attempted to regulate the barber trade was void as a special law infringing on a field covered by a general state law regulating the trade, in violation of the Constitution of Georgia,[61] the court of appeals rejected the city's contention that the fee imposed by the ordinance was authorized by a charter provision authorizing the city to levy occupation taxes. Judge Gardner reasoned that the fee required by the ordinance to be paid to the City Barbers' Board for its expenses of operation was not a mere occupation tax designed as a revenue measure, which would have been permissible under the City's charter, but a requirement for a license to practice a trade and hence invalid as an infringement on the general law of the state.

Procedure in Refund Suits

An important amendment of the statutory provisions for suits for refund of taxes erroneously or illegally collected by the State Revenue Commissioner was passed at the regular session of the General Assembly in 1955.[62] This measure, which was recommended by the Board of Governors of the Georgia Bar Association and approved by the Department of Revenue, made two procedural improvements along lines suggested by federal provisions, as follows:

(1) A taxpayer may now file suit one year after the filing of a claim for refund even though the claim has not been denied.[63] Prior to this amendment, denial of the claim was a condition precedent to a suit for refund.

(2) The period of limitations for filing a refund suit (two years after denial of the claim) may now be extended by written agreement between the taxpayer and the Commissioner during the two-year period or any extension thereof.[64] Under this provision a flood of suits on a point which will be decided in a pending suit can be avoided.

The amendment also provides a venue for a refund suit by a nonresident having no place of business in Georgia and no officer or employee maintaining an office in this State, authorizing such a taxpayer to sue in the Superior Court of Fulton County or in the county in which the Revenue Commissioner resides. Prior to the amendment,

60. 91 Ga. App. 584, 86 S.E.2d 672 (1955).

61. Ga. Const., art. 1, § 4, ¶ 1, Ga. Code Ann. § 2-401 (1948 Rev.).

62. Ga. Laws Jan.-Feb. Sess. 1955, p. 455.

63. Compare Int. Rev. Code of 1954, §6532(a) (1) (Refund suit may be filed 6 months after claim is filed though not yet denied).

64. Compare Int. Rev. Code of 1954, § 6532(a) (2).

no venue was provided for a statutory refund suit by such a non-resident, although for some years the Department of Revenue has been collecting income taxes from some foreign corporations having no office in Georgia.[65]

65. In his dissent in Redwine v. Schenley Industries, Inc., 210 Ga. 769, 777, 83 S.E.2d 16, 21 (1954), Mr. Justice Head reasoned that the Fulton Superior Court did not have jurisdiction of the refund suit under the statute prior to the 1955 amendment discussed in the text, because he interpreted the petition as showing that the plaintiff had no place of business in Fulton County and no corporate officer maintaining his office in Fulton County. He suggested that the only court which had jurisdiction was Fayette County, where the Revenue Commissioner then in office resided. Presumably the only type of suit which could have been brought successfully against the Commissioner in the county of his residence prior to the 1955 amendment was a common law suit against him individually rather than in his official capacity. Mr. Justice Head's comments in his dissenting opinion brought to the attention of the bar and the Department of Revenue the need for amending the refund suit statute.