

STATE AND LOCAL TAXATION*

By WILLIAM L. HARPER**

PROPERTY TAXES

Property taxation is the major source of revenue for local government in this state.¹ The never ending need for additional revenue has in recent years stepped up the litigation in this area and attracted the attention of legislators.

Local government continues to examine the claims made for tax exempt status. Property is exempt from taxation when the property in question is in fact used for purely public charity. The Supreme Court of Georgia held that even if the owner of the property in question was a nonprofit benevolent institution its property is taxable unless used for purely public charity.²

The courts have recognized that local government is dependent upon the property tax. Such a tax is an annual charge supporting local services. Any needless disruption of such funds would, of course, be catastrophic. A citizen who disputes the taxability of his property can raise that question by petition in equity,³ although he must be aware of some of the pitfalls involved in such a cause. Questions of property value can be determined in arbitration including the right to have taxpayers' property assessed for taxation in harmony with the systematic custom of assessments.⁴

A taxpayer's equitable petition which admits some amount of tax is owed but which fails to allege payment or tender of the amount admitted to be due fails to state a cause of action even when the tax rate has not been fixed.⁵ Such an admission that taxes are legally due at least in part, may be made either expressly or impliedly.⁶

A timely petition is also required especially where the taxpayer seeks not only to enjoin collection as to his property but seeks to involve the entire tax digest. In these circumstances it appears that suit must be

*The opinions expressed in this article are not made by the author in his official capacity. The article should be construed accordingly.

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1. GEORGIA TAX REVISION STUDY COMMISSION, INTERIM REPORT, JANUARY, 1968, at 40-41, 75.
2. *Historic House Museum Corp. v. Camp*, 223 Ga. 510, 156 S.E.2d 361 (1967).
3. GA. CODE ANN. §92-6704 (Rev. 1961); GA. CODE ANN. §92-6807 (Rev. 1961); *See also Church of God of the Union Assembly, Inc. v. City of Dalton*, 213 Ga. 76, 97 S.E.2d 132 (1957).
4. *Whitehead v. Henson*, 223 Ga. 329, 155 S.E.2d 391 (1967).
5. *Hobbs v. Nichols*, 223 Ga. 639, 157 S.E.2d 294 (1967), *Hutchins v. Nash*, 223 Ga. 874, 158 S.E.2d 924 (1968).
6. *Freeman v. Keaton*, 223 Ga. 505, 156 S.E.2d 347 (1967).

brought prior to the time the digest is approved by the State Revenue Commissioner.⁷

During the survey period Judge Marion T. Pope, Jr. in the case of *Kiker v. Hefner*⁸ held that the Revenue Commissioner did not abuse his discretion when he required property to be assessed at 40 per cent of its fair value. The appellate courts of Georgia did not consider Mr. Kiker's allegation that property must be assessed at 100 per cent, however, the General Assembly adopted a requirement that property be returned at its fair value and assessed at 40 per cent thereof.⁹

Charlton County has pending in the Supreme Court of Georgia a question involving the constitutionality of Georgia's equalization laws. The State Revenue Commissioner after an examination of the 1967 digest for Charlton County rejected it and ordered the tax values to be increased by a fixed per centum of 1.32 or 32 percent. The tax official complied, however, a group of citizens with whom the County aligned attacked the order as unconstitutional. The trial court held the Commissioner's actions to be unconstitutional and enjoined him from ordering any increases in that county's digest for either 1967 or 1968. This case has been argued and a decision is expected in the fall.¹⁰

Government has always been limited as to how it could spend or dispose of tax funds once collected.¹¹ The Supreme Court of Georgia held that the expenditure of funds in support of the school lunch program is not an expenditure for educational purposes.¹²

SALES AND USE TAX

Sales and Use Tax collections are the largest single source of revenue for the State, however, the tax base shrinks with each meeting of the General Assembly.¹³

A use tax question was presented to the courts as a result of the construction of the Atlanta Stadium. Ingalls Iron Works Company furnished and erected the structural steel used in the stadium and paid a use tax based on the price paid for such steel when purchased out-state from the rolling mills. However, when Ingalls brought the material into the state it was not in the same form that it was when purchased at the mills. The

7. *Kiker v. Worley*, 223 Ga. 736, 157 S.E.2d 745 (1967).

8. *Kiker v. Hefner*, 224 Ga. 511, 162 S.E.2d 731 (1968).

9. GA. CODE ANN. §§92-5702, 5703 (Rev. 1961) amended by Ga. Laws 1968, p. 358.

10. (Ed. note) *Reversed*; taxpayer's failure to follow arbitration procedure as authorized by GA. CODE ANN. §92-6912 (Rev. 1961) and county's failure to appeal from the commissioner's order as provided by GA. CODE ANN. §92-8426, (Rev. 1961) leaves them both without standing to attack either the individual assessment or the commissioner's order. No. 24757, Georgia Supreme Court, Sept. 23, 1968.

11. GA. CONST. art. VII §2 ¶ 1, GA. CODE ANN. §2-5501 (Rev. 1945).

12. *Wright v. Absalom*, 224 Ga. 6, 159 S.E.2d 413 (1968).

13. GA. TAX REVISION STUDY COMMISSION, INTERIM REPORT, JANUARY, 1968 at 125.

Commissioner assessed the tax on the steel used, based on its fabricated value when brought into the state.

The Commissioner also made a use tax assessment on the erection equipment brought into the state for use on the job and later removed after use. The assessment was based on the market value of the equipment. Ingalls contended that the tax should be based on rental value, not market value. The Georgia Court of Appeals held that with respect to the structural steel used in the stadium the tax was to be based on its raw cost, not its fabricated value, but upheld the Commissioner's assessment on the value of the erection equipment. The court pointed out that the taxpayer was entitled to a credit for tax paid elsewhere on the same items.¹⁴

The General Assembly immediately amended the law adopting the fair market value at time of use (fabricated cost) as the tax base.¹⁵

The first judicial examination of the tax exemption for machinery for new or expanded industry¹⁶ resulted in a liberal construction of such exemption rather than the narrow view suggested by the Commission.¹⁷

The industrial materials exemption¹⁸ was construed by the Supreme Court of Georgia when the Commissioner contended that "spray oils" which were impregnated into textile products during manufacture and removed prior to sale were not exempt under the terms of the special exemption, because they were not resold as a part thereof. The court held simply they were industrial materials impregnated into the product at any state and therefore exempt even though washed out prior to sale.¹⁹

Lithoplates used by commercial printers in connection with retail printing orders were held to be purchased for resale with the printed product and therefore the sale by the manufacturer of the plate to the commercial printer was not a retail sale but was a sale for resale. The printer did not separately bill its customer for the plate, however, the court did not seem to think that was important.²⁰

The General Assembly gave tax exemptions for certain farm tractors and attachments;²¹ for public transportation facilities including charges made by them for public transportation;²² the sale of food consumed on the premises of private elementary and secondary schools;²³ the sale of property and services used exclusively for educational purposes by bona

14. *Hawes v. Ingalls Iron Works Co.*, 117 Ga. App. 15, 159 S.E.2d 434 (1968).

15. Ga. Laws 1968, p. 496.

16. GA. CODE ANN. §92-3403a C(2) n(1) (Supp. 1967).

17. *Hawes v. Institutional Packers of America*, 117 Ga. App. 243, 160 S.E.2d 459 (1968).

18. GA. CODE ANN. §92-3403a C(2) (Rev. 1961).

19. *Hawes, et al. v. Bibb Manufacturing Co.*, 224 Ga. 141, 160 S.E.2d 355 (1968).

20. *Undercofler v. Foot & Davies, Inc.*, 115 Ga. App. 341, 154 S.E.2d 454 (1967).

21. Ga. Laws 1968, p. 136.

22. Ga. Laws 1968, p. 201.

23. Ga. Laws 1968, p. 545.

fide private elementary and secondary schools and colleges;²⁴ extended the exemption for farmers to include sawdust, peanut hulls, fullers earth, straw and hay.²⁵

INCOME TAX

Doing business with respect to income taxation is always a subject of great concern to those advising clients with multi-state activities. Since the Supreme Court of the United States indicated that a state could constitutionally tax income based on activities²⁶ as opposed to limitations such as closed transactions, the questions have aroused even the interest of the Congress of the United States.²⁷

The Court of Appeals of Georgia has examined the present Georgia law on this question and construed the law without reference to the federal limitations. The result is simply that under Georgia law a Georgia company may be doing business in another state and therefore entitled to apportion its income even though under Public Law 86-272 it is not sufficient to permit the other state to tax any of its income. The court conceded that it may be bad tax policy to allow a corporation an exemption for certain activities which are not taxable in a foreign state, however, the court pointed out that such is a legislative matter.²⁸

The other cases involving income taxation dealt with procedural matters. The Supreme Court of Georgia holding that waivers executed by a taxpayer which provided that the statute was extended for a stated period of time plus the time during which the Revenue Department was prohibited from making an assessment and 30 days thereafter, extended the period until the taxpayer is notified of the denial of its petition for redetermination and for 30 days thereafter, because the Commissioner is prohibited from making an assessment while a petition for redetermination is pending.²⁹ The present law is similar to the waiver language used in this case.³⁰ This decision reversed the ruling made by the Court of Appeals of Georgia which had affirmed a trial court determination that the statute of limitations had run.³¹

The General Assembly amended the income tax act so as to adopt the federal provisions concerning non-recognition of gain on reorganization

24. Ga. Laws 1968, p. 559.

25. Ga. Laws 1968, p. 129.

26. *Northwestern States Portland Cement Co. v. Minnesota*, 358 U.S. 450 (1959).

27. 15 U.S.C. §381-384 (1964).

28. *Hawes v. William L. Bonnell Co.*, 116 App. 184, 156 S.E.2d 536 (1967).

29. *Hawes v. Nashville Chattanooga & St. Louis Ry.*, 223 Ga. 527, 156 S.E.2d 455 (1967).

30. GA. CODE ANN. §92-3302(a) (Rev. 1961). The last sentence of this code section was added in 1960.

31. *Hawes v. Nashville Chattanooga & St. Louis Ry.*, 115 Ga. App. 370, 154 S.E.2d 717 (1967).

under section 351 of the Internal Revenue Code including the provisions of section 357.³²

Increased deductions were allowed for charitable gifts including a five year carry over provision for certain gifts which exceeded the annual deduction maximum.³³

The income tax law was amended so as to allow a taxpayer who is the head of a household to claim a \$600 exemption for certain dependents who are students.³⁴

OTHER TAXES

The Georgia Agricultural Commodities Promotion Act³⁵ was upset when the Supreme Court of Georgia found the statute to be unconstitutional because the General Assembly granted the commodity commission the authority to make assessments to finance their operations. The General Assembly is not authorized to delegate its taxing power.³⁶

The willful failure to list any intangible property with the State Revenue Commissioner for taxation was held to be a bar to an action based upon that instrument.³⁷

The General Assembly extended the tax base for municipal taxation of life insurance companies. Cities have been authorized for some years to tax life insurance companies at a rate up to one per cent of their gross life insurance premiums. The 1968 amendment expanded the tax base so as to include all insurance issued by such companies.³⁸ Life insurance companies generally sell accident and health policies in addition to the regular life policies.

The state tax law on transfers of real property was amended so as to exempt from the tax any deed of gift, any transfer by the United States, the State of Georgia, or any of the political subdivisions or authorities. The amendment also exempts any transfer which conveys "no more than a leasehold interest in standing timber," however, the amendment does not define such instruments.³⁹

The Motor Carriers' Fuel Tax Act was extensively amended.⁴⁰ The most significant change deals with refunds to carriers. The previous law required the carrier to prove that he had paid a tax to another state in order to obtain a refund,⁴¹ whereas the new law authorizes a refund on

32. Ga. Laws 1968, p. 116.

33. Ga. Laws 1968, p. 539.

34. Ga. Laws 1968, p. 1037.

35. GA. CODE ANN. §5-2901 et seq. (Rev. 1962).

36. *Campbell v. Farmer*, 223 Ga. 605, 157 S.E.2d 276 (1967).

37. *Moore v. Todd*, 223 Ga. 702, 157 S.E.2d 587 (1967).

38. Ga. Laws 1968, p. 1396.

39. Ga. Laws 1968, p. 1102.

40. Ga. Laws 1968, p. 360.

41. Florida for example imposes no tax similar to Georgia's highway use assessment, therefore, a carrier using fuel in Florida which he purchases in Georgia would not under the old law be entitled to a refund.

fuel purchased tax paid in Georgia which was in excess of the amount used in Georgia.

Refunds are limited to carriers who accrue credits in excess of 2000 gallons a quarter but credits may be used in subsequent quarters if utilized no later than the succeeding two years.

There is a change in the definition of motor carriers so as to exclude pickup trucks pulling boat trailers and similar small use operations which were required to report under prior law. Generally the lessee rather than the lessor is the motor carrier under the new law. Provision is made for the lessor being the carrier if he supplies the fuel used.