

# STATE AND LOCAL TAXATION

By WILLIAM L. HARPER\*\*

State and local tax burdens increased during the fiscal year 1968. Nationally the per capita burden has increased \$29.00, and it has been reported that the increase in Georgia was \$20.00 per capita.<sup>1</sup> The newspapers have reported "taxpayer revolts" and yet the cost of goods and services has increased, few taxpayers favoring less governmental services.

## PROPERTY TAXES

Ten cases reached the appellate courts in Georgia concerning property taxation. Those who sought to enjoin the collection of taxes without first making a tender of the taxes admitted to be due were unsuccessful. A summary judgment for Gilmer County was affirmed in the case of *Kiker v. Hefner*.<sup>2</sup> Mr. Kiker's continuing difficulty with the officials of the county has previously been covered in the *Annual Survey of Georgia Law*.<sup>3</sup> Property tax relief had been requested from the federal courts by Mr. Kiker based primarily on the theory that he was unable to obtain relief in state court. The federal courts did, however, refuse such relief,<sup>4</sup> citing the Johnson Act prohibition.<sup>5</sup>

Other taxpayers who sought injunctive relief without tender also failed.<sup>6</sup> However, the court sustained an attack on a tax statute which created a county tax board where the aggrieved taxpayers did not tender taxes or pray for an injunction to enjoin collection of taxes.<sup>7</sup>

The Supreme Court upheld the State Revenue Commissioner's order seeking equalization of the county tax digest in *Hawes v. Conner*.<sup>8</sup> In

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\* 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. The Weekly Bond Buyer, September 2, 1969.

2. 224 Ga. 511, 162 S.E.2d 731 (1969).

3. Harper, *State and Local Taxation, Annual Survey of Georgia Law*, 20 MERCER L. REV. 237 (1969).

4. *Kiker v. Hefner*, 409 F.2d 1067 (5th Cir. 1969).

5. 28 U.S.C. § 1341 (1964) provides that United States District Courts shall not enjoin the collection of state taxes where there is a plain and speedy remedy in the state courts.

6. *Adcock v. Sutton*, 224 Ga. 505, 162 S.E.2d 732 (1968).

7. *Dobson v. Brown*, 225 Ga. 73, 166 S.E.2d 22 (1969).

8. 224 Ga. 567, 163 S.E.2d 724 (1968). See also Harper, *State and Local Taxation, Annual Survey of Georgia Law*, 20 MERCER L. REV. 237, 238 (1969).

that case taxpayers made an attack on the Commissioner's order requiring all values to be increased although the same taxpayers failed to complain of valuations or of local uniformity problems prior to the Commissioner's order. The court held that such inequities could have been remedied in arbitration. Generally, an individual taxpayer must seek local uniformity prior to the submission of the county digest to the state for approval.

Arbitration has not been entirely satisfactory to all concerned. The contention that the Arbitration Act<sup>9</sup> deprived the county of "due process" was decided adverse to such contention when the Supreme Court of Georgia held that so long as arbitration provides a review of the assessment by an unbiased board it meets the constitutional due process standard.<sup>10</sup> The court held in another case that close relationship of the arbitrators to the taxpayer was a disqualification.<sup>11</sup> In that case the appointed arbitrators were the husband of one taxpayer and the son-in-law of the other.

Assessments based on the fact that certain farms had a tobacco allotment were reversed in a divided opinion where the majority held that a tobacco allotment may not be used as the basis to fix value of property, although the court recognized that a farm with a tobacco allotment would sell for a higher price than one without such an allotment.<sup>12</sup>

The law with respect to filing tax returns was amended so as to relieve taxpayers of the annual chore of filing returns the previous year.<sup>13</sup> Generally taxpayers who either returned or paid on property for the previous year are deemed to have returned the same property at the same values for current years.

The Attorney General advised the Department of Revenue in an official opinion dated June 4, 1969, that persons claiming homestead exemptions for persons 65 years of age or older must file annually an affidavit concerning such claim.

A limited right of appeal from tax arbitration was provided by the 1969 General Assembly<sup>14</sup> should the chosen arbitrators return a valuation that differs from the value assessed by the sum of \$1,000.00.

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9. GA. CODE ANN. § 92-6912 (Rev. 1961).

10. *Stewart County v. Thompson*, 224 Ga. 303, 161 S.E.2d 877 (1968).

11. *Board of Tax Assessors of Muscogee County v. Heard*, 118 Ga. App. 550, 164 S.E.2d 312 (1968).

12. *O'Quinn v. Ellis*, 224 Ga. 328, 161 S.E.2d 832 (1968).

13. Ga. Laws, 1969, p. 960, *amending* GA. CODE ANN. § 92-6001 (Rev. 1961). *See also* the same effect of a Population Act in Ga. Laws, 1969, p. 738.

14. Ga. Laws, 1969, p. 942, *amending* GA. CODE ANN. § 92-6912 (Rev. 1961).

If such a difference should occur, either the taxpayer or the Board of Assessors may appeal to the Superior Court.

A tax exemption was provided by the General Assembly for certain personal property which is brought into the state and assembled, processed, or stored.<sup>15</sup> This appears to be an attempt to extend the old "original package" doctrine which developed under the United States Import-Export cases.<sup>16</sup> This statute may raise difficult constitutional questions as our State Constitution prohibits all but enumerated exemptions, and the United States Supreme Court seems to have abandoned the old "original package" doctrine.<sup>17</sup>

Exemption also was extended to issuance by savings and loan associations of long term notes secured by real estate.<sup>18</sup>

### SALES AND USE TAX

The general sales tax is the most important revenue source for many states including Georgia. The Georgia Act<sup>19</sup> specifically provides that this revenue source is to be reserved for the state. The General Assembly struggled with proposals not only to increase the rate of taxation but also to share a portion of such revenue with local governments. Some legislators wanted the state to collect the revenue and then to return a part thereof to the cities and counties although there was never a consensus as to the basis of such return. Others, apparently fearing a "hat in hand" allocation of their "share", wanted no part of a state collected tax. All these proposals for an amendment failed, but proponents of each have not abandoned the hope that these ideas will meet with approval at a later date.

The judicial activity was somewhat limited with only four cases reaching the appellate level. As in the legislative field, the most troublesome decision involved state-local relations.<sup>20</sup> This decision, by an 8 to 2 majority, determined that a city-county water authority is a

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15. Ga. Laws, 1969, p. 980, amending GA. CODE ANN. § 92-201 (Rev. 1961).

16. 51 Am. Jur. *Taxation* § 105 (1944). The "original package" doctrine was developed to protect foreign importers from state levied duties on shipments received in the same condition as shipped. *Brown v. Maryland*, 25 U.S. (12 Wheat.) 419 (1827). See also *Sonneborn Bros. v. Cureton*, 262 U.S. 506 (1922).

17. *Whitfield v. Ohio*, 297 U.S. 431, 440 (1936). "Even without such action by Congress the unbroken package doctrine, as applied to interstate commerce, has come to be regarded, generally at least, as more artificial than sound." [citing *Sonneborn Bros. v. Cureton*, 262 U.S. 506, 508-09 (1922)].

18. *Atlanta Fed. Sav. and Loan Ass'n v. Simmons*, 224 Ga. 483, 162 S.E.2d 342 (1968).

19. GA. CODE ANN. § 92-3446a (Rev. 1961).

20. *Hawes v. Lockheed Aircraft Corp.*, 118 Ga. App. 222, 162 S.E.2d 896 (1968).

political sub-division under the Georgia Sales & Use Tax Act,<sup>21</sup> and as such, sales of "tap water" by it are not subject to the tax. This decision will not, however, have a very far reaching effect because the sale of water falls within the statutory exemption for "political sub-divisions".<sup>22</sup> The general exemption provided for in the Act as far as government is concerned deals only with "Sales to the United States of America, the State of Georgia, or any county or municipality of said State . . ." and not with "political sub-divisions".<sup>23</sup>

The case of *Hawes v. Higgins-McArthur Co.*<sup>24</sup> is a case involving the printing industry which announces no new law, but adheres to the result reached in *Undercofler v. Foote & Davies, Inc.*<sup>25</sup> *Undercofler* stated that printers who purchase lithoplates for resale to their customers and for use in fulfilling the printing orders of such customers, are purchasing for resale. The sale of the plates is made along with the printing matter. Lump sum billing of printed matter and plates was approved by the court in *Hawes*, as it was in *Foote & Davies*. The distinction between the cases was the introduction in evidence of a published printing custom to the effect that lithoplates are the property of the printer and not the customer. The court found in the *Hawes* case that the printer did not follow the custom.

The case of *Hawes v. Foster*<sup>26</sup> is to the tax litigant a significant decision even though it is of no concern to the tax advisor. The result was, of course, inevitable, for the court only followed statutory law.<sup>27</sup> The court held that the Commissioner's assessment is prima facie correct and is sufficient, without more, to support a motion for summary judgment. The burden is then on the taxpayer to prove his case and here he did not do so.

The last case reported during the survey period involved only a question of appellate court jurisdiction.<sup>28</sup> The Georgia Supreme Court held that when a tax case involving jurisdiction to tax because of a

21. GA. CODE ANN. § 92-3401a (Rev. 1961).

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

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

24. 117 Ga. App. 738, 161 S.E.2d 915 (1968).

25. 115 Ga. App. 341, 154 S.E.2d 454 (1967).

26. 118 Ga. App. 296, 163 S.E.2d 351 (1968).

27. GA. CODE ANN. § 92-3427(a) (Rev. 1961) provides that if a dealer makes a grossly incorrect report or one that is false or fraudulent, it is the duty of the Commissioner to make an estimate for the taxable period of retail sales of the dealer, an estimate of the cost price of all articles imported by dealer for use, consumption or distribution, . . . "assess and collect tax and interest, plus penalty, if such have accrued, on the basis of such assessment, which shall be considered prima facie correct, and the burden to show the contrary shall be upon the dealer."

28. *Independent Publishing Co. v. Hawes*, 224 Ga. 728, 164 S.E.2d 559 (1968).

claim of interstate commerce involvement is presented, such case presents only a question of application of a plain and unambiguous provision of the Constitution. Such cases are of course within the jurisdiction of the Court of Appeals. This is a very interesting case and while the final decision is properly to appear in next year's survey, those advising multi-state sellers may want to look it up. As of this date the final opinion is unreported but the Court of Appeals held for the state and certiorari was denied by the Georgia Supreme Court.

### INCOME TAX

There were no appellate cases reported during the survey period pertaining to income taxation. Significant changes were made, however, in the law. The administration recommended changes which would adopt the federal tax law for state purposes as recommended by a study commission report. The General Assembly of Georgia refused to pass these changes in the area of personal income taxation but did pass a new income tax law for corporations.<sup>29</sup> Basically, this law now requires corporations to file their return based on their federal return for the same period, and such taxable income is taxed at six percent or an increase of one percent. Also, certain adjustments which deal with local-state problems are incorporated in the act.<sup>30</sup> Another significant change was made in the apportionment of corporate income by the adoption of the uniform formula. Georgia has in the past used an inventory ratio<sup>31</sup> while the uniform law, and now the present Georgia law, uses a property ratio.

A notable change<sup>32</sup> which applies to individuals as well as corporations provides that no penalty for lateness will be incurred if the taxpayer obtained an extension to file his federal return if a copy of such extension is filed with the state return and within the limits of the federal extension. This addition to the law lessens the burden of filing in that the taxpayer no longer must apply to the Commissioner for the extension.

Special exemptions were provided for persons serving in the armed forces in a combat zone.<sup>33</sup> Income earned by a serviceman who dies as a result of causes which occurred in a combat zone is exempted from taxation.<sup>34</sup>

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29. Ga. Laws, 1969, p. 114, *amending* GA. CODE ANN. § 92-3102 (Rev. 1961).

30. Ga. Laws, 1969, p. 114, *amending* GA. CODE ANN. § 92-3102 (Rev. 1961).

31. GA. CODE ANN. § 92-3113(a) (Rev. 1961).

32. Ga. Laws, 1969, p. 719, *amending* GA. CODE ANN. § 92-9945 (Rev. 1961).

33. Ga. Laws, 1969, p. 638, *amending* GA. CODE ANN. § 92-8501 (Rev. 1961).

34. Ga. Laws, 1969, p. 647, *amending* GA. CODE ANN. § 92-8501 (Rev. 1961).

## OTHER TAXES

Occupation or business license taxes were employed in both the City of Atlanta and Richmond County to raise local revenue. The Atlanta tax was twice considered by the Supreme Court of Georgia during the survey period. The Atlanta Ordinance was a revenue measure based on gross income and number of employees. In striking it down,<sup>35</sup> the court stated that arbitrary classification of businesses does not conform to the requirement of uniformity of the law. More specifically it stated that the classification of manufacturer and non-manufacturer was unrelated to the revenue objective viz, to raise money based on ability to pay. By eliminating the discrimination and treating all the citizens alike, Atlanta perfected its ordinance, thus securing its constitutionality the second time before the court.<sup>36</sup>

Richmond County sought to impose a tax similar to the one passed in Atlanta; however, the court found that the county had no authority to impose such a tax.<sup>37</sup> The county contended that the constitutional home rule provisions authorized the tax, but the court held that the amendment specifically negates authority to tax and provides that taxing authority must be found elsewhere.

The General Assembly amended the limitations with respect to the amount of tax that may be imposed locally on lawyers, doctors and other professionals.<sup>38</sup> The new limit is \$200.00 per year.

In *Hawes v. Shepherd Construction Co.*<sup>39</sup> the court held that the activities of road-working machinery used by the taxpayer in building or repairing the highway is not a "highway use" and, therefore, not subject to the motor fuel tax. The motor fuel law has been amended,<sup>40</sup> however, and more litigation is expected on the same general grounds. The *Shepherd* case also held that the statute of limitations applicable to motor fuel refunds was three years.<sup>41</sup> The law as amended provides for an 18 month limitation when such fuel is used for agricultural purposes; prior to this amendment such claim had to be made within 12 months of purchase.<sup>42</sup>

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35. *Pharr Rd. Inv. Co. v. City of Atlanta*, 224 Ga. 403, 162 S.E.2d 333 (1968).

36. *Pharr Rd. Inv. Co. v. City of Atlanta*, 224 Ga. 752, 164 S.E.2d 803 (1968).

37. *Richmond County Business Ass'n v. Richmond County*, 224 Ga. 854, 164 S.E.2d 293 (1968).

38. Ga. Laws, 1969, p. 427, amending GA. CODE ANN. § 92-307 (Rev. 1961).

39. 117 Ga. App. 842, 162 S.E.2d 231 (1968).

40. Ga. Laws, 1969, p. 486, amending GA. CODE ANN. § 92-1403(1)(3)(a) (Rev. 1961).

41. 117 Ga. App. at 844, 162 S.E.2d at 233.

42. GA. CODE ANN. § 92-1403(1)(3)(a) (Rev. 1961).

The General Assembly amended the Act which taxes transfers of interest in real estate to provide for the exemption of long term leases.<sup>43</sup> Georgia law provides generally that leases for five years or longer are presumed to be an estate for years.<sup>44</sup> This provision has caused some concern among those involved in long term leases as well as those engaged in "timber leasing".<sup>45</sup>

The tax on wine was increased during the year and the tax preference for locally produced wine was narrowed this past session.<sup>46</sup> The cigarette law was amended so as to provide for stricter tax control measures and to provide for criminal penalties in addition to existing civil penalties.<sup>47</sup> Efforts to increase the tax failed.

The cases decided during the year do not for the most part appear to be significant. The legislative authority, however, assures us of important cases soon.

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43. Ga. Laws, 1969, p. 109.

44. *Ward v. McGuire*, 213 Ga. 563, 565, 100 S.E.2d 276, 278 (1957).

45. A timber lease is a deed conveying rights to trees on land. The time limit imposed is a concurrent license necessary to use the land. *McLendon Bros. v. Finch*, 2 Ga. App. 421, 58 S.E. 690 (1907).

46. Ga. Laws, 1969, p. 111, *amending* GA. CODE ANN. § 58-901 (Rev. 1961).

47. Ga. Laws, 1969, p. 710, *amending* GA. CODE ANN. § 92-2201 (Rev. 1961)

