

TAXATION—INTANGIBLE PROPERTY TAX—AN EVALUATION OF INTANGIBLE TAX IN GEORGIA

The average Georgia taxpayer has lost confidence in the existing ad valorem tax system. . . . The rapid rise in property taxes is not the only factor contributing to this lack of confidence. The confidence crisis is also due to: (1) antiquated property tax laws (including the intangible tax laws). . . .¹

The Intangible Tax Laws² in Georgia have received considerable criticism, review and study in recent years. Concern has been raised by Governor Carter, taxpayers, lawmakers and newsmen. The criticism and concern raised is not without justification as indicated by a study of the Intangible Tax Laws Study Committee.³ Two of the findings of the committee show the situation in the intangible tax area at the present time. The committee found that “[t]he intangible tax, as it is presently written, it is not reasonably enforceable at this time . . . [and paradoxically] . . . [i]t is virtually impossible, from a practical point to repeal the intangible tax.”⁴

The three main reasons for the unenforceability of the tax are: (1) it is impractical to collect all the tax due, (2) many taxpayers willfully evade the payment of these taxes as they know they will not be detected, and (3) many taxpayers are unaware of the existence of this tax.⁵ The basic intangible tax law was put into effect in 1937.⁶ This act classified personal property for taxation into property subject to the general property tax and property subject solely to the act. In 1953, the act was reenacted setting up rates and classifications and both laws remain in effect today.⁷

The tax itself is in the nature of a specific annual excise tax on intangible property. Also provided for is a recording tax on long-term notes secured by real estate.⁸ This tax is imposed on residents and non-resi-

1. Statement by Governor Jimmy Carter to the House Ad Valorem Tax Study Committee, Sept. 10, 1971.

2. GA. CODE ANN. §§ 92-101 *et seq.* (Rev. 1961) are directly applicable to intangible taxes.

3. Intangible Tax Laws Study Committee, H.R. No. 945, Jan. 1971.

4. *Id.* at 1.

5. Atlanta Journal and Constitution, April 18, 1971, at 8-C, col. 3. The article stated it would cost more than \$1.9 million to collect the known \$400,000 that is going uncollected each year. *Id.* at col. 3.

6. Ga. Laws, 1937, p. 156.

7. Ga. Laws, 1953, p. 453.

8. GA. CODE ANN. § 92-163 (Rev. 1961). The tax on long-term notes must be paid to the tax commissioner prior to presenting the instrument to the clerk for recording; this type of tax collection is more effective than the annual assessment tax. GA. CODE ANN. § 92-164 (Rev. 1961).

dents.⁹ The holder of the intangible is liable and the holder may be an individual, partnership, association, fiduciary or a corporation.¹⁰ Intangible personal property include money and deposits, accounts receivable, long-term notes securing realty (which is in the nature of a recording tax), other notes and obligations securing realty, corporate securities, broker's loans, patents, copyrights, and franchises. Particular items in some of these categories are exempted.¹¹ Such exempt intangibles include federal obligations, stock in domestic corporations and intangibles taxed in other states.¹² A few of the exempt entities are religious, education and charitable institutions and nonprofit cooperatives.¹³ The general tax rate unless otherwise established is ten cents per \$1000 and the assessment date for most intangibles is the first day of January.¹⁴ Every person who owns intangible property must file a return.¹⁵ Every domestic corporation as well as every foreign corporation doing business or owning property in the state, whose bonds and stocks are subject to tax under the act, must file an information report giving names and addresses of persons in Georgia who held its registered bonds or shares of preferred stock on January 1 next preceding.¹⁶ The intangible taxes are payable to local tax collectors at the time other real and tangible property taxes are paid.¹⁷ Anyone subject to the act, who refuses to comply with its provisions may be compelled to do so by the superior court.¹⁸ Failure to list property subject to the tax will subject the owner thereof to a penalty equal to 25 per cent of the amount of the tax.¹⁹ Willful violations of the law are punished as misdemeanors.²⁰ As to appeals and protests of the tax assessment, the general administrative provisions apply.²¹

The problems and criticisms of this type of taxation have not been restricted to recent years. In 1888, a researcher studying state and local taxation made criticisms of a similar procedure used to collect personal property tax. He recommended certain intangible property to be tax exempt "which are paid for the most part only by the unfortunate and

9. GA. CODE ANN. § 92-121 (Rev. 1961).

10. GA. CODE ANN. § 92-113 (Rev. 1961).

11. GA. CODE ANN. § 92-113 (Rev. 1961).

12. GA. CODE ANN. § 92-161 (Rev. 1961).

13. GA. CODE ANN. § 92-103 (Rev. 1961).

14. GA. CODE ANN. § 92-161 (Rev. 1961).

15. GA. CODE ANN. § 92-122 (Rev. 1961).

16. GA. CODE ANN. § 92-133 (Rev. 1961).

17. GA. CODE ANN. § 92-144 (Rev. 1961).

18. GA. CODE ANN. § 92-138 (Rev. 1961).

19. GA. CODE ANN. § 92-129 (Rev. 1961).

20. GA. CODE ANN. § 92-9946 (Rev. 1961).

21. GA. CODE ANN. ch. 92-84 (Rev. 1961).

extremely conscientious.”²² In 1937, the year Georgia passed its intangible tax act, a comment was made about the nation’s intangible tax laws to the effect that, “the unfairness of both law and administration and the consequent resentment of taxpayers have admittedly made a joke of the tax.”²³ The evasion of the intangible tax was so pronounced that, even where there was a tax on bonds, the field was still relatively tax free.²⁴ The commentator recommended that personal property tax, both tangible and intangible, be replaced with a personal income tax wherever possible.²⁵

Looking at the nation as a whole, the intangible tax as a source of revenue has not been very productive. One authority states:

The overall estimate, then, is that personal property taxes yielded \$2.5 billion in 1957, 19.7 per cent of the total property tax revenues of \$12.9 billion. Of the 19.7 per cent, 17.7 per cent was from tangible personal property, and 2.0 per cent, or about \$250 million, was from intangibles. As noted earlier, a comparable estimate for intangibles for 1961 is about \$300 million, or about 1.5 per cent of total tax collections.²⁶

The author further stated that the 1.5 per cent represents only about 0.03 per cent of the \$1,100 billion worth of deposits, corporate stocks and bonds, and mortgages owned by individuals and business subject to the property tax.²⁷

The trend of personal property taxation in recent years has been towards the elimination of the taxation of intangibles.²⁸ Intangible tax withdrawal has been more notable because “[i]ntangibles present the extreme case, for they are either readily concealed or highly mobile (or both) and thus hard to locate on assessment day. Moreover, the incentive to evade or avoid the assessor is substantial, since investment in the form of intangibles frequently yields considerably lower rates of return than comparable investment in tangible assets.”²⁹ These problems prompted one authority to state in 1966:

22. R. ELY, *TAXATION IN AMERICAN STATES AND CITIES* 166 (1888). In this book Mr. Ely stated: “Another gentlemen, with almost equal facilities for careful observation told that no one paid any attention to the personal property tax. ‘There is, for example,’ said he, ‘a tax on watches, but there are not ten men in Savannah who own watches.’ This last was said laughingly.”

23. C. SHOUP, *FACING THE TAX PROBLEM* 349 (1937).

24. *Id.* at 549 note 1.

25. *Id.* at 433.

26. D. NETZER, *ECONOMICS OF THE PROPERTY TAX* 150 (1966).

27. *Id.* at 143.

28. *Id.* at 140. The author stated that the progressive withdrawal of particular classes of personal property from the scope of the general property tax represents a surrender to reality.

29. *Id.* at 140-141.

Consequently, all intangible property is part of the legal base for local general property taxation in only nine states (plus Alaska, at local option). An additional five states legally subject certain types of intangibles to local general property taxation. Even in these fifteen states, in practice, as is to be expected, coverage is far from complete, only in West Virginia are intangibles a really significant element of the tax base. . . . In fifteen other states, intangibles have been completely exempted from the property tax. In the remaining twenty states, intangibles are partly or wholly subject to special types of property taxes, usually low flat rate of less than one half of one percent, thus in effect offering taxpayers to be honest at a relatively modest price.³⁰

Thus, taking a nationwide view of the intangible tax as a source of revenue, its importance as a tax producing source is not as significant as other sources.

Of course not all the critics feel that the intangible tax should be eliminated. In 1935, Mr. Orville Park argued in favor of retention of the tax in an address given in Atlanta to the Ten Club. Mr. Park stated:

Georgia's experience with the general property tax is the same as that of all the other states and foreign countries that have tried it. Everywhere the tax has become little more than a tax on real estate. Everywhere intangible wealth has escaped. . . .³¹

Notwithstanding this equitable argument of sharing the burden of taxes, is there an advantage to not having an intangible tax law over having a partially unenforceable tax law that is causing great concern to the state? It would appear so.

Governor Carter recently put forth another reason for retaining the intangible tax. Speaking of the property tax on the whole he stated that the state income tax would have to be tripled in order to bring in the same revenue the property tax now does.³² Doing away with the intangible tax alone would not have such significant effect on the income tax. However, despite the inevitable effect on the income tax, intangibles have been exempted in a number of states, particularly as state income taxes have developed.³³ One authority writing in 1937 recommended that "the tax on personal property, both tangible and intangible, be repealed when-ever the personal income tax can be called on to replace the revenue."³⁴

30. *Id.* at 141-142.

31. Address by Orville A. Park before the Ten Club in Atlanta, Georgia, March 19, 1935.

32. Statement by Governor Jimmy Carter to the House Ad Valorem Tax Study Committee, Sept. 10, 1971.

33. J. HELLERSTEIN, *STATE AND LOCAL TAXATION* 160 (1969).

34. C. SHOUP, *FACING THE TAX PROBLEM* 343 (1937). See K. QUINDRY, *STATE AND LOCAL*

Another reason for this tax is that there is a concentration of wealth in some intangibles. This is especially true of the wealth in corporations and their security holders.³⁵ However, the taxing in this case may be double taxation "on underlying real and tangible personal property, which is itself subject to the same levy."³⁶

Not all the critics of the present intangible tax laws in Georgia feel it need be retained. In fact, some lawmakers have recently submitted recommendations to do away with the tax altogether.³⁷ Other lawmakers would exempt such items as patents, copyrights, collateral loans and certain other categories.³⁸ These categories are often described as "nuisances"³⁹ or "no money items"⁴⁰ as the amount of revenue obtained does not make the effort worthwhile. Some other recommendations would be to exempt any person whose intangible tax would amount to \$10.00 or less from being required to file an intangible tax return;⁴¹ to exempt a person who owes \$5.00 or less or even possibly \$2.00 or less;⁴² and to require financial institutions to withhold intangible taxes due on deposits.⁴³ These individual recommendations for reform will have to be care-

REVENUE POTENTIAL 30 (1969), where the author indicates that Georgia was collecting approximately three-fourths of the potential income revenues.

35. In 1970, the tax assessment on returns amounted to \$4,919,985.49 and additionally \$3,-487,537.12 was collected on long-term mortgage notes for a total of over \$8,000,000.00, approximately \$4,000,000.00 was from stocks. See Intangible Tax Unit, Georgia Department of Revenue, Comparison Report Intangible Tax 1968, 1969, and 1970 (1971).

36. J. HELLERSTEIN, *STATE AND LOCAL TAXATION* 153 (1969). The author further states:

Conceivably, there may be sound reasons for this type of taxation in view of difference in ownership of the securities and the underlying property, the advantages of incorporation, and the concentration of wealth in corporations and their security holders . . . [however] . . . [t]he virtually inseparable difficulties in ferreting out intangibles by the tax collector, the double taxation problem and other considerations have caused many fiscal authorities to urge that intangibles be withdrawn from ad valorem taxation altogether, a recommendation which more than a third of the states have adopted.

37. Atlanta Journal and Constitution, April 18, 1971, at 8-C, col. 3. There the reporter stated that "[a] measure that could do just that came out of the powerful House of Representatives Ways and Means Committee this year, but emerged too late to get on the calendar for debate during the session of the legislature."

38. *Id.*

39. *Id.*

40. Statement by Governor Jimmy Carter to the House Ad Valorem Tax Study Committee, Sept. 10, 1971.

41. Atlanta Journal and Constitution, April 18, 1971, at 8-C, col. 5.

42. *Id.* The Intangible Tax Unit of the Georgia Department of Revenue has consistently recommended a minimum amount of \$5.00 as it is economically impractical to collect lesser amounts. Interview with John R. Giglio, Section Chief, Intangible Tax Unit, Georgia Department of Revenue, in Atlanta, Oct. 1, 1971.

43. Statement by Governor Jimmy Carter to the House Ad Valorem Tax Study Committee, Sept. 10, 1971.

fully studied before any are adopted. For example, as to the last recommendation made above, in areas where banks have been required to disclose information about their depositors, it has caused savers to deposit their money in other locations or to hide their deposits on assessment day, neither of which is desirable.⁴⁴

Why has there been a lack of reform in this area? No doubt the main reason is that the forceful effort needed to solve this problem has not been initiated.⁴⁵ Another reason is that there have been attempts to work around reformation of the law. The revenue department in 1970 put forth a large publicity campaign to make people aware of the tax, but indications are that returns only rose percentage-wise with the population.⁴⁶

Something needs to be done within a minimum of time. The tax as it now stands is a monument to the absurdity of the revenue system of Georgia. It would seem that if only the honest and the observed can be expected to totally comply with this tax, it is not a good system. Surely the problem is not insurmountable for the legislature, and no doubt the ends of obtaining needed revenue do not justify inequitable means.

The solution to the intangible tax problems in Georgia can only be formulated by an in depth study of the total intangible tax structure by a committee. A small number of recommendations by individuals will not solve such a complex problem. A possible solution to the problem would be to do away with intangible taxes altogether. However, I do not feel this is the best solution. The best solution to the problem would be to completely rewrite the law, making it enforceable and keeping the provisions which produce significant revenue along with an increase in

44. In D. NETZER, *ECONOMICS OF THE PROPERTY TAX* 141 (1966), he states, "Where bank deposits have been subject to the general property tax at the area wide rate, very large annual shifts of deposits to other states and into nontaxable U.S. Treasury securities have occurred regularly on the assessment date." The Georgia Intangible Tax Unit however feels that these taxes can be effectively enforced, for example, by having the banks withhold the amount due on the same days interest is figured. Due to the small amount of tax assessed, the depositor would rather pay the tax than lose the deposit and if there is an additional cost for the banks they could retain a percentage of the collections. The Unit feels if this system was in effect in 1969 it would have resulted in the collection of the one-half million dollars that went uncollected. Interview with John R. Giglio, Oct. 1, 1971.

45. Letter from John R. Giglio, Section Chief, Intangible Tax Unit, Georgia Department of Revenue, to Sylvia Haywood, student at Walter F. George School of Law, July 14, 1971. In this letter Mr. Giglio stated, "We have met with many Legislative committees and tax study groups. These parties have sometimes introduced house resolutions or house bills in an endeavor to modify the intangible tax law. Most of the presentments did not get too far because, as one newspaper reporter put it, "Trying to modify the intangible tax situation is like opening a can of worms." A resolution might strengthen one area of the law but would have an adverse effect on another."

46. *Atlanta Journal and Constitution*, April 18, 1971, at 8-C, col. 6.

rates where practical.⁴⁷ Governor Carter has in fact recently recommended a complete revision of the intangible tax laws.⁴⁸ The Governor said of the effort to revamp the revenue raising system of our state: "It will restore taxpayer confidence in our system of government and in the administration of the property tax laws of this state."⁴⁹

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47. The view of the Intangible Tax Unit is similar to this view. They feel that this \$8,000,000 is revenue needed for the counties and that by rewriting the intangible tax laws they can be made enforceable. They feel that certain other states such as North Carolina and Florida have effective intangible tax laws and that Georgia could also have an effective similar law. The Intangible Tax Unit feels that with these improvements and increases in the tax rate, the tax collected could possibly be doubled. Interview with John R. Giglio, Oct. 1, 1971.

48. Statement by Governor Jimmy Carter to House Ad Valorem Tax Study Committee, Sept. 10, 1971.

49. *Id.*

