SPECIAL CONTRIBUTIONS

Clarification Needed in Georgia Retail Sales and Use Tax Statute

by William Thomas Haywood, III*

With the increased emphasis in Georgia and other states on the utilization of sales and use tax statutes to increase tax revenues has come uncertainty among business men and women regarding what transactions are presently taxable and what transactions may be taxable in the future. The state legislatures have written the sales and use tax statutes very broadly with the stated legislative purpose of exercising full and complete power to tax retail purchases, retail sales, rental, storage, use, and consumption of tangible personal property and related services. The broad language of the statutes creates uncertainty regarding not only what types of transactions are taxable but also who is liable for collection and payment of the tax.

This Article addresses the specific uncertainty in Georgia law regarding personal service and brokerage transactions and legal tender coin transac-

* Sole Practitioner, William Thomas Haywood, III, P.C., Macon, Georgia. University of Georgia (B.A., 1977); Walter F. George School of Law, Mercer University (J.D., 1981). Member, State Bar of Georgia. Instructor of Business Law, Stetson School of Business, Mercer University (1982-1989).

tions. The courts have been unable to resolve the uncertainties for a variety of reasons. The legislature, therefore, is called on to amend the Georgia statute in order for citizens to engage in business and consumer transactions with a greater degree of certainty regarding tax consequences.

I. STATUTORY HISTORY

In 1951 the Georgia General Assembly enacted the Georgia Retailers' and Consumers' Sales and Use Tax Act (the "Act").[1] The Act imposes a tax on the sale, use, consumption, or storage of personal property bought or used in Georgia.[2] The General Assembly amended the Act in 1960 (the "Amendment")[3] to clarify who is liable for payment of the tax.[4] The Amendment specifically states that the intent of the legislature is to impose the tax upon the purchaser of personal property.[5] It further provides the definition of a retailer and dealer[6] and provides only three exceptions in which a dealer bears responsibility for payment of the tax.[7]

Under the Act, it was generally believed the tax "was on the consumer and merely collected by the seller."[8] In *Williams v. Bears' Den, Inc.*,[9] however, the Georgia Supreme Court held that the tax is "on the seller for the privilege of engaging in the business of selling."[10] The Amendment provides that the dealer is only a tax collector and that the consumer is liable for the tax.[11] Under the Amendment and subsequent codifications, the purchaser is responsible for paying the tax.[12] The dealer is required to collect the tax from the purchaser upon sale to the purchaser, unless the dealer obtains a resale certificate.[13] The dealer is liable for payment of the tax if he fails to collect it from the purchaser, if the full amount of tax

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1. 1951 Ga. Laws 360 (codified as amended at O.C.G.A. tit. 48, ch. 8 (1982 & Supp. 1989)).
2. *Id.* at 362 (codified as amended at O.C.G.A. § 48-8-1 (1982)).
3. 1960 Ga. Laws 153 (codified as amended at O.C.G.A. § 48-8-33 (1982)).
4. *Id.*
5. *Id.* at 154.
6. *Id.* at 156-57 (codified as amended at O.C.G.A. § 48-8-2 (1982)).
7. *Id.* at 156 (codified as amended at O.C.G.A. § 48-8-35 (1982)). *See* Shackelford & Ellis, *Georgia Sales and Use Tax from Viewpoint of Practicing Attorney*, 9 GA. ST. B.J. 45, 46 (1972) [hereinafter Shackelford & Ellis].
8. Shackelford & Ellis, *supra* note 7, at 46.
9. 214 Ga. 240, 104 S.E.2d 230 (1958).
10. Shackelford & Ellis, *supra* note 7, at 46 (citing *Williams*, 214 Ga. at 240, 104 S.E.2d at 230).
11. 1960 Ga. Laws at 156 (codified as amended at O.C.G.A. §§ 48-8-30, 33 (1982 & Supp. 1989)).
12. *Id.* (codified as amended at O.C.G.A. § 48-8-30 (1982 & Supp. 1989)).
13. 1951 Ga. Laws at 370 (codified as amended at O.C.G.A. § 48-8-38 (1982)).

due on his receipts is not collected, and if he uses property purchased for resale.[14] The Official Code of Georgia Annotated ("O.C.G.A.") section 48-8-34(b) requires a dealer to pay the tax if he imports tangible personal property for his own use.[15] Section 48-8-34 makes no mention of a broker who provides consultation services to a purchaser or who performs the service of getting the seller and the purchaser together.[16]

In *Strickland v. W.E. Ross & Sons, Inc.*,[17] however, the Georgia Supreme Court recognized three different classes of taxpayers:

> The Department of Revenue has defined three pertinent classes of taxpayer pursuant to the Sales and Use Tax Act . . . . These taxpayers are classified according to the taxable transactions in which they engage and their classification determines at what point in the chain of commercial transactions, from distribution of raw material to consumption of a finished product, taxes are levied. "Dealers" are those who sell at retail tangible personal property on which the tax has not yet been paid . . . . When such person sells the item of tangible personal property, sales tax liability accrues based on the sales price.[18]

O.C.G.A. § 48-8-1 states that the intention of the General Assembly is "to exercise its full and complete power to tax the retail purchase, retail sale, rental, storage, use, and consumption of tangible personal property and the services described in this article . . . except to the extent of specific exemptions provided in this article."[19] O.C.G.A. § 48-8-34 addresses the causation issue and states that a dealer is liable for the tax if the personal property was "caused to be imported" and "used" by him.[20] In *Dittler Bros. v. AMR International, Inc.*,[21] the Georgia Court of Appeals ruled that the intent of this code section is to hold the seller responsible for the collection of the tax and that a dealer is liable for payment of the tax if the property was caused to be imported and used by him.[22]

O.C.G.A. § 48-8-3 contains the specified exemptions from liability for the sales and use taxes.[23] Although the statute does not include the term "broker" or any definition or description of brokering, it does specifically

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14. *Id.* at 373 (codified as amended at O.C.G.A. § 48-8-35 (1982)).
15. O.C.G.A. § 48-8-34(b) (1982).
16. *See id.* § 48-8-34.
17. 251 Ga. 324, 304 S.E.2d 719 (1983).
18. *Id.* at 325, 304 S.E.2d at 720 (citations omitted).
19. O.C.G.A. § 48-8-1 (1982). *See id.* § 48-8-2(3) (defining dealer, importing, and soliciting); *Id.* § 48-8-2(8) (defining sale); *Id.* § 48-8-2(12) (defining use); *Id.* § 48-8-2(13) (specifying what is included in the term "use tax").
20. *Id.* § 48-8-34(b).
21. 142 Ga. App. 570, 236 S.E.2d 544 (1977).
22. *Id.* at 570, 236 S.E.2d at 545.
23. O.C.G.A. § 48-8-3 (1982).

exempt personal service transactions from the tax requirements.[24] Georgia courts have recognized numerous types of exempt personal service transactions that involve the purchase of skilled services of professionals.[25] In *Hawes v. Dimension, Inc.*,[26] the Georgia Court of Appeals ruled on the taxation of transactions involving the purchase of skilled services of professionals:

> Where the stipulation of fact shows that the items sought to be taxed as tangible personal property . . . constitute personal service transactions in which the skilled service in the preparation thereof is purchased more than the inconsequential elements for which no separate charges are made, the same is exempt by the Georgia Retailers and Consumers Sales and Use Tax Act, as amended.[27]

Under the Act,

> [t]he definition of "dealer" is quite broad and can include either party to a retail sale . . . . The use tax is not an additional tax but is merely a policing agent over property coming in from states which do not have a sales tax . . ., or do not tax outgoing goods . . . . The decision as to when a retail sale takes place can be a troublesome question, especially where there is a strong element of personal service involved in the final transfer of the property.[28]

Confusion results when there is a combination of personal services in conjunction with the transfer of tangible personal property. The Tax Commissioner (the "Commissioner") has regarded these transactions as being primarily the transfer of property, with the personal service as only an incidental element. This is particularly true when a purchaser employs a broker to advise him about the goods sought to be purchased. Such advice may involve an opinion regarding the quality of the goods, an opinion regarding where to purchase the goods, and assistance in contracting with the seller and receiving shipment from the seller, including inspection of the goods. The Commissioner has taken the position that any activity on the part of the broker in negotiating the contract makes him an agent of the seller and purchaser, requiring him to collect the sales tax or pay it if he fails to collect it. Further, any activity in receiving the goods, even for the limited purpose of inspection, makes the broker

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24. *Id.* § 48-8-3(22).

25. *See, e.g.*, Hawes v. Dimension, Inc., 122 Ga. App. 190, 192, 176 S.E.2d 602, 604 (1970).

26. 122 Ga. App. 190, 176 S.E.2d 602 (1970).

27. *Id.* at 190, 176 S.E.2d at 603.

28. Drake, *The Scope and Effect of the Georgia Retail Sales and Use Tax, Its Weaknesses and Needed Changes*, 17 GA. ST. B.J. 319, 321 (1954-1955).

liable for collection or payment of the use tax for storage and the sales tax for causing the goods to be imported from another state.[29]

II. The Procedural Problem

The courts have been unable to reach the issues raised herein, primarily because of the statutory procedure for challenging tax assessments which are based on the Commissioner's interpretation of the statute. The taxpayer has available four means of obtaining judicial review of the assessment.[30] In cases in which the issue is one of first impression, the only practical procedure is to file an appeal under O.C.G.A. § 48-2-59, which requires a de novo determination in superior court.[31] This procedure requires the taxpayer to post a bond or have his real estate placed under a tax lien pending a final determination on appeal.[32] The taxpayer must commit his resources to maintaining a civil lawsuit against a well-funded Attorney General's Office defense. Since the burden is on the taxpayer as plaintiff to prove the assessment invalid,[33] the commitment of resources can be very substantial. For most taxpayers it makes more sense to settle with the Commissioner prior to expending money on litigation in excess of the assessment amount. Consequently, most parties settle before an appellate court can interpret the statute.

An additional problem is that the plaintiff must file a direct and a discretionary appeal from summary judgment to the court of appeals[34] to protect his interests.[35] The court of appeals must then transfer these appeals to the supreme court for determination.[36] The appellant must pay for two records of the case.

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29. The author has inferred these conclusions as a result of his work with the case of Bashinski v. Collins, Civil Action No. 30736-M, Bibb Superior Court; Appeal Case No. A89A1596, Georgia Court of Appeals; Appeal No. S89A0056, Georgia Supreme Court. For a discussion of *Bashinski*, *see infra* Part III of this Article.

30. For a thorough analysis of the methods for review, *see* Buckland, *State Taxpayer Remedies*, 27 Mercer L. Rev. 309 (1975), which clearly shows the confusion the taxpayer and legal practitioner face in seeking an adequate review of a tax assessment.

31. *See* O.C.G.A. § 48-2-59(a) (1982).

32. *Id.* § 48-2-59(c).

33. Blackmon v. Ross, 123 Ga. App. 89, 179 S.E.2d 548 (1970).

34. Ga. Const. art. 6, § 5, para. 3; *see* O.C.G.A. § 5-6-34(b) (1982 & Supp. 1989).

35. Confusion among practitioners regarding what constitutes a final determination of the case and what types of cases are currently required to be handled through the discretionary appeal procedure is notorious. A brief survey of recent appellate cases will demonstrate the large number of cases dismissed for failure to file a discretionary appeal. After this Article was written, the Georgia Supreme Court, in Miles v. Collins, Case No. S89A0536, decided Sept. 29, 1989, dismissed a direct appeal by the plaintiff from a summary judgment and held that the discretionary appeal procedure is required.

36. Collins v. State, 239 Ga. 400, 403, 236 S.E.2d 759, 761 (1977).

III. A Case In Point

The author's concern in this matter arises from a voluminous unreported appellate case that attempted to resolve these issues, *Bashinski v. Collins*,[37] which demonstrates both the factual and legal problems in getting the court to resolve these matters. The case resulted from a March 19, 1987 revenue assessment. After administrative appeal, plaintiff filed a civil action pursuant to O.C.G.A. § 48-2-59 in Bibb Superior Court on April 17, 1987. The court granted defendant's motion for summary judgment on March 17, 1989. The *Bashinski* case made its way to the court of appeals and supreme court before the parties entered a settlement agreement on or about June 1, 1989. Although the parties filed briefs in the appellate courts, the settlement precluded any construction of the statutes by the courts.

In *Bashinski*, the Commissioner audited Bashinski's business records and found receipts dating over a four year period that Bashinski reported for income tax purposes but not for sales tax purposes. The receipts listed commissions relating to the transfer of precious metal coins and bullion. The Commissioner assessed a four percent sales and use tax based on a sales amount estimated from the stated commission amount. Bashinski filed suit to challenge the assessment, alleging that the transactions were brokerage transactions which he had been advised were not taxable and that legal tender coins are not taxable as personal property.

In deposition, plaintiff testified that purchasers paid him to provide skilled consultation services in the purchase of coins and bullion from out-of-state dealers. He testified that this service included advising the purchaser of the different quality in goods, searching with his computer system for the best quality goods at the best price, recommending a seller based on the search, placing the order for the purchaser through the computer system, and in some instances taking delivery for the purpose of inspecting the quality for the purchaser. The purchaser paid the out-of-state dealer directly for the goods, and paid plaintiff separately for his services. He further testified that he had no business relationship with the dealers and received no fee from them, but unfortunately had listed his separate fee as a commission on his invoices.

Plaintiff testified that in a prior audit, a Department of Revenue field agent advised him that he was not liable for payment or collection of sales and use taxes in these transactions. Plaintiff testified that he also

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37. Bashinski v. Collins, Civil Action No. 30736-M, Bibb Superior Court; Appeal Case No. A89A1596, Georgia Court of Appeals; Appeal No. S89A0056, Georgia Supreme Court. The author represented plaintiff in this matter. The following material represents his thoughts and recollection of the events leading to the revenue assessment and attempts to resolve the matter through the appellate process.

had received the same advice from lawyers and accountants. Plaintiff filed an expert affidavit from a former Department of Revenue agent, now a certified public accountant, stating that, in his opinion, the statutes did not authorize plaintiff to collect sales and use taxes on these transactions. Attorneys for both parties stipulated in argument that there were no statutes or Department of Revenue regulations governing this type of brokerage activity, that the case was one of first impression, and that clarification of the law was needed in the area.

The Commissioner maintained that plaintiff was a dealer who solicited these transactions, who actually purchased the goods for resale to the customer, and who took possession and title to the goods. He further asserted that plaintiff was in physical contact with the parties throughout the transaction and had an opportunity to collect the tax. The Commissioner also maintained that plaintiff's activity caused the goods to be imported into the state, thus making him liable for collection and payment of the sales tax. The Commissioner asserted in his brief that because plaintiff's activity in receiving shipment of the goods for inspection amounted to storage, he should be liable for collection and payment of the use tax.

By the time the case reached the supreme court, plaintiff had spent substantial sums of money, but had achieved no clarification in the law. After paying the revised assessment agreed upon in the settlement negotiations, plaintiff had spent a total amount nearly equivalent to the original assessment. This expense of time and money was particularly frustrating since he sincerely believed, on good advice, that he owed no tax.

IV. GEORGIA CASES

There are no reported Georgia cases that define or clarify tax liability for brokerage activities under the sales and use tax statutes. The reported cases regarding the transactions state that the court must look at the actual substance rather than the appellation given by either the Commissioner or the plaintiff. In *Undercoffler v. Whiteway Neon Ad, Inc.*,[38] the court held that the owner of personal property, as described in a written contract, is liable for collection and remittance of the sales tax.[39] The designated user, the person with a limited right to possess the property, is not liable for collection and remittance.[40] In *Grantham Transfer Co. v. Hawes*,[41] the court stated that neither party's characterization of the

38. 114 Ga. App. 644, 152 S.E.2d 616 (1966).
39. *Id.* at 644-45, 152 S.E.2d at 617-18.
40. *Id.*
41. 225 Ga. 436, 169 S.E.2d 290 (1969).

transaction was controlling.[42] *Hawes* involved a written lease that left no issue of fact regarding the nature of the transaction.[43] The court applauded the effort of every taxpayer to structure his business transactions to minimize tax consequences.[44] In *Footpress Corp. v. Strickland*,[45] the court overruled the Commissioner's attempt to characterize a written agreement as a lease rather than a loan.[46] In finding the transaction not taxable,[47] the court concluded that "the trial court erred in granting summary judgment to the commissioner and denying summary judgment" to the plaintiff.[48]

V. Other States

The sales and use tax statutes of other states vary considerably. Some specifically address the brokerage issue, some have been followed by Department of Revenue regulations, and some have been interpreted by the state courts. A detailed survey of the various state statutes and regulations is beyond the scope of this Article. The following cases, however, provide authority for the proposition that each state legislature views this topic in a different light.

In *King & Boozer v. State*,[49] the court recognized brokerage transactions and found that a broker may contract on his own account or for another.[50] The court held that plaintiff was not acting for himself when he transferred title to the property, that he had no power of disposition of the property, and that his only interest was to determine if the goods were of satisfactory quality.[51] The court found that the Alabama statute did not allow taxing this transaction to the broker.[52]

In *American Locker Co. v. City of New York*,[53] the court provided the following applicable definition of possession giving rise to tax liability: "The purpose of the sales tax law is not to impose a tax on all transactions, but only on transactions which involve the passage or transfer of

42. *Id.* at 442, 169 S.E.2d at 295.
43. *Id.* at 439, 169 S.E.2d at 293.
44. *Id.* at 442, 169 S.E.2d at 295.
45. 242 Ga. 686, 251 S.E.2d 278 (1978).
46. *Id.* at 687-88, 251 S.E.2d at 279-80.
47. *Id.* at 687, 251 S.E.2d at 279.
48. *Id.*
49. 241 Ala. 557, 3 So. 2d 572 (1941).
50. 3 So. 2d at 580.
51. *Id.*
52. *Id.* at 581.
53. 308 N.Y. 264, 125 N.E.2d 421 (1955).

title, or transactions in which the actual, exclusive possession is transferred."[54]

In *Names In The News, Inc. v. New York State Tax Commissioner*,[55] the evidence on record showed that because the brokerage firm was actually leasing mailing lists from the list vendors, a clear agency relationship existed between the seller and the broker.[56] The court found the broker liable for collecting the tax from the seller, not the buyer, based on the clear agency status.[57] The court then proceeded to invalidate the Commissioner's assessment, which he based on an estimate of the sales rather than on plaintiff's books.[58]

In *Sherman v. Commissioner of Revenue*,[59] the court identified the issues of title, possession, compensation, and inspection as necessary to determine who is the seller.[60] The court found that plaintiff, though having some possession and control of the goods, was not a seller under the statute.[61] The court further held that "doubts in taxing statutes are resolved in favor of the taxpayer, [and] the right to tax is not extended by implication."[62]

In *Fridlund Securities Co. v. Minnesota Commissioner of Revenue*,[63] the Minnesota Supreme Court found clear evidence in the record that customers purchased precious metals directly from the brokerage firm, paying the purchase price directly to the broker.[64] Thus, the broker was actually the seller.[65] The court further held that imposition of the tax penalty would be inequitable since the broker had reasonable cause to believe the court might determine that no tax was due on sales of precious metals.[66]

VI. Are Legal Tender Coins Taxable Personal Property?

The O.C.G.A. and the Department of Revenue regulations do not address the status of legal tender as property subject to sales and use taxation. This situation poses a problem for sellers and purchasers of United

54. 125 N.E.2d at 422.
55. 75 A.D.2d 145, 429 N.Y.S.2d 755 (1980).
56. 429 N.Y.S.2d at 756.
57. *Id.*
58. *Id.*
59. 24 Mass. App. Ct. 64, 506 N.E.2d 160 (1987).
60. 506 N.E.2d at 162.
61. *Id.*
62. *Id.*
63. 430 N.W.2d 154 (Minn. 1988).
64. *Id.* at 159.
65. *Id.*
66. *Id.* at 166.

States and foreign money. Some states address this problem from the standpoint of whether the purchase is for money purposes or investment purposes, and a number of these states hold that legal tender purchased for investment purposes is personal property subject to sales and use taxes.[67] The cases hold, however, that the evidence must be clear regarding the purpose of the transaction.

In *Smith v. Department of Revenue*,[68] the Florida District Court of Appeals addressed directly the question of whether the sale of gold Krugerrands was properly taxable as a sale of tangible or intangible property under the Florida sales and use tax statute.[69] The court held that gold Krugerrands are not property subject to the sales and use tax because they are legal tender of a sovereign foreign nation.[70] The sales and use tax statute does not authorize taxation of a money exchange.[71] The court had to determine whether the sale of South African Krugerrands by a Florida dealer was a taxable transaction.[72] The court addressed the specific issue presented by the appellant: Whether the Commissioner may impose a sales tax upon the legal tender of a sovereign foreign nation absent specific authorization under the sales tax statute.[73] The statute specifically listed "money" as intangible personal property and, therefore, not taxable under the sales and use tax statute as tangible property.[74] The court held that the evidence showed no distinction between United States money and foreign money.[75] The court further found that the evidence presented did not allow the trial court to determine that a commodity exchange had occurred.[76]

Michigan National Bank v. Department of Treasury[77] addressed the brokerage issue and the legal tender issue.[78] The consumer paid the purchase price to the bank,[79] and the bank always placed the order and paid for the Krugerrands for the consumer.[80] The court determined that under the applicable statute, the bank was more than a mere conduit for

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67. *See infra* notes 77-99 and accompanying text.

68. 376 So. 2d 421 (Fla. Dist. Ct. App. 1979).

69. *Id.* (citing FLA. STAT. ANN. §§ 199.023(1), 212.02(12), 212.05 (Harrison 1979 & Supp. 1988)).

70. *Id.*

71. *Id.* at 423.

72. *Id.* at 421.

73. *Id.* at 422.

74. *Id.*

75. *Id.*

76. *Id.* at 422-23.

77. 127 Mich. App. 646, 339 N.W.2d 515 (1983).

78. 339 N.W.2d at 516-17.

79. *Id.* at 516.

80. *Id.*

the purchase,[81] stating that:

> there is no evidence of an agreement between the consumer and the out-of-state dealer; there is no evidence that the consumer knew of the existence or identity of the out-of-state dealer or that the dealer knew of the existence or identity of the consumer; the dealer charged the bank for the coins and delivered them to the bank and the bank in turn charged the consumer and was paid by the consumer, whereupon it delivered the coins to the consumer.[82]

The court found that there was an actual transfer of ownership from the dealer to the bank.[83] The record clearly indicates that plaintiff's customers acquired Krugerrands as investments in gold, not as money.[84] The court stated that the circumstances of the transfer determine whether Krugerrands will be treated as money or as tangible property.[85]

In *Scotchman's Coin Shop, Inc. v. Administrative Hearing Commission*,[86] the Missouri Supreme Court stated that it must examine the nature of the purchase of Krugerrands to determine the question of taxability.[87] The record showed that plaintiff purchased the coins for resale;[88] accordingly, there was no issue of brokerage services.

In *Thorne & Wilson, Inc. v. Utah State Tax Commissioner*,[89] the appellant broker sold precious metals to its investment customers.[90] The court stated that it must examine the essence of the transaction to determine whether it was a money or property sale.[91] The record indicated that the broker sold these metals to the consumer as investments.[92]

In *Association of Alabama Professional Numismatists v. Eagerton*,[93] the court had the luxury of interpreting not only the sales tax statute, but also specific rules of the Department of Revenue regarding purchases of gold from out-of-state and sales by agents.[94] The court found that the tax would apply if the sale of gold were made for investment purposes.[95]

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81. *Id.* at 518 (citing Michigan General Sales Tax Act, MICH. COMP. LAWS ANN. § 205.51(2) (West 1976 & Supp. 1989)).
82. *Id.*
83. *Id.* at 519.
84. *Id.* at 517.
85. *Id.*
86. 654 S.W.2d 873 (Mo. 1983).
87. *Id.* at 875.
88. *Id.* at 874.
89. 681 P.2d 1237 (Utah 1984).
90. *Id.* at 1238.
91. *Id.*
92. *Id.* at 1239.
93. 455 So. 2d 867 (Ala. Civ. App. 1984).
94. *Id.* at 868-69.
95. *Id.* at 871.

Lary v. Commissioner of Internal Revenue[96] concerned the valuation of property for income tax purposes.[97] The court held that gold and silver coins may be considered property under Internal Revenue Code section 1001(b) if they are not currently circulating legal tender and if the fair market value exceeds the face value.[98] The fact that plaintiff sold the coins to consumers was stipulated.[99]

VII. CONCLUSION

The Georgia General Assembly should amend the Sales and Use Tax statutes to clarify whether traditional brokerage activities are exempt from the sale and use taxes; whether such activities equate to importing goods into the state; and whether receipt of the goods for inspection purposes equates to storage for use tax purposes. The legislature should further amend the statutes to clarify whether legal tender coins are personal property for sales and use tax purposes. The regulations of the Commissioner do not address these issues, and the courts have been unable to resolve them. It is incumbent upon the legislature to clarify its intent in these areas. Commercial and consumer transactions will continue to operate in a confusing gray area until the law is clarified.

96. 842 F.2d 296 (11th Cir. 1988).
97. *See id.* at 298-99.
98. *Id.* at 299 (citing I.R.C. § 1001(b) (1989)).
99. *Id.* at 298.