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Georgia Introduces an Independent Tax Tribunal

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The Georgia Tax Tribunal (the “Tax Tribunal” or the “Tribunal”) was created by Georgia House Bill 100 and signed into law by Governor Nathan Deal. The act creates a new Chapter 13A under Title 50 of the Official Code of Georgia Annotated, effective July 1, 2012.

Overview - Benefits and Purpose

The Tribunal was created as an independent and autonomous division within the Office of State Administrative Hearings. The Tribunal will:

- (1) Improve the utilization of judicial resources by resolving tax cases in a more streamlined and efficient manner;
- (2) Increase the uniformity of decision making in tax cases;
- (3) Improve the equal access of all parties to court process; and
- (4) Increase public confidence in the fairness of the state tax system.

Independent tax courts established in other United States jurisdictions have brought similar benefits to the administration of state taxes.

Administration and Operation

The Tax Tribunal was created within the executive branch of the state’s government and, for administrative purposes only, has been assigned to the Department of Administrative Services. The Tribunal will be funded through appropriations by the Georgia General Assembly to the Department of Administrative Services. Cases may be heard before the Tribunal starting January 1, 2013.

The Tribunal’s principal location will be in Fulton County, Georgia, in a building separate and apart from any building in which the Georgia Commissioner of Revenue (the “Commissioner”) has an office. The Tribunal may, but is not required to, conduct hearings at its principal location. It may also hold hearings at any place within Georgia, with the purpose of

offering taxpayers a reasonable opportunity to appear before the Tribunal with as little inconvenience and expense as possible. When it holds hearings outside its principal Fulton County location, the Tribunal will do so in a place that is physically separate from any building regularly occupied by the Commissioner.

On and after January 1, 2013, the Tax Tribunal will have concurrent jurisdiction over tax matters with the superior courts. The purpose of providing concurrent jurisdiction with the superior courts is to ensure that taxpayers have access to the judicial court system while having the additional option of pursuing tax claims with a specialty court. The Tribunal will not have jurisdiction over matters arising under Title 3 (Alcoholic Beverages) or Title 40 (Motor Vehicles & Traffic) of the Georgia Code.

No Pay-to-Play Requirement

Taxpayers may bring claims before the Tribunal without being required to pay any assessed taxes as a prerequisite. A taxpayer will not be required to provide a surety bond or other security for any amounts that may be in dispute before the Tribunal.

The types of taxes that may be appealed to the Tax Tribunal include the following:

- Centrally assessed real property taxes
- Sales and use taxes
- Corporate income taxes
- Personal income taxes
- Real estate transfer taxes
- Intangible recording taxes

In addition to the regular division, the Tax Tribunal will have a small claims division. A taxpayer may, within 90 days of filing a petition for relief with the Tribunal, elect to have the small claims division have jurisdiction over its case if the amount of tax and penalties at issue, exclusive of interest, is less than a threshold amount that will be determined by the Tribunal's rules.

A taxpayer may designate accountants and other tax return preparers to accompany and appear with the taxpayer before the small claims division to provide factual information regarding positions taken on tax returns. Such accountants and other tax return preparers will not be deemed to be acting as advocates of the taxpayer.

Judges

Appointment and Tenure

The Tribunal will have at least one full-time administrative law judge. The initial Tribunal judges will be appointed by the Governor, and if there is initially only one judge, that individual will be appointed for a four-year term and will be the chief Tribunal judge. If, however, there is initially more than one judge, the chief Tribunal judge will be appointed for a six-year term and the other judges for a four-year term. Initial Tribunal judges may be reappointed for successive terms, each of which will be four years. After the initial appointments are made, future appointments will be made by the Governor with the consent of the Senate.

Each Tax Tribunal judge will receive an annual salary that is no less than that of the chief administrative law judge of the Office of State Administrative Hearings. The total salary of a Tribunal judge may not be reduced during such judge's term of appointment. A Tribunal judge may be removed by the Governor, with the consent of the Senate, after notice and an opportunity to be heard, for inability to perform duties, malfeasance, neglect of duty, or other good cause.

Qualifications and Duties

Each Tax Tribunal judge must be a United States citizen and, during the term of appointment, must reside in Georgia. Each judge must be an attorney licensed to practice in Georgia and, at the time of appointment, must have practiced primarily in the area of tax law for at least eight years.

A Tribunal judge must devote his or her full time to the duties of the Tribunal. A judge may not engage in any other gainful employment or business that interferes with or is inconsistent with his or her Tribunal duties. During the appointment term, the judge may not hold another office or position of profit in any government of Georgia or any other state or within the federal government.

If a Tribunal judge does not have a full docket of tax cases, the chief Tribunal judge may, at his or her sole discretion, petition the chief administrative law judge of the Office of State Administrative Hearings to allow such Tribunal judge to hear nontax cases pending before the Office of State Administrative Hearings. The chief Tribunal judge, the Tribunal judge in question, and the chief administrative law judge of the Office of State Administrative Hearings will mutually agree upon the number and types of such cases, taking into account the particular Tribunal judge's qualifications and background.



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