

JONES DAY

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September 13, 2007

BY OVERNIGHT DELIVERY:

Gerald M. Edenfield, Esq.
President
State Bar of Georgia
Edenfield, Cox, Bruce & Classens, P.C.
115 Savannah Ave.
P. O. Box 1700
Statesboro, GA 30459-1700

BY OVERNIGHT DELIVERY:

Matthew H. Patton, Esq.
Chairman
Advisory Committee on Legislation
State Bar of Georgia
Kilpatrick Stockton LLP
1100 Peachtree St., N.E., Suite 2800
Atlanta, GA 30309-4530

BY OVERNIGHT DELIVERY:

Jeffrey O. Bramlett, Esq.
President-Elect
State Bar of Georgia
Bondurant, Mixson & Elmore
1201 W. Peachtree St., N.W., Suite 3900
Atlanta, GA 30309-3417

Re: Georgia Tax Court Act of 2008

Dear Messrs. Edenfield, Bramlett and Patton:

Pursuant to Rule 1.02(a)(1) of State Bar Standing Board Policy 100, the Taxation Law Section of the State Bar of Georgia submits to the Advisory Committee on Legislation, the President, the President-Elect and each member of the Executive Committee for consideration the proposed "Tax Court Act of 2008". Pursuant to this submission, enclosed please find a binder that contains the following:

1. Exhibit A - the text of the proposed legislation;
2. Exhibit B - a summary of existing law and reasons to support the Tax Court Act of 2008; and
3. Exhibit C - a listing of committees and other sections of the State Bar which may have an interest in the legislation, along with documentation demonstrating that such committees and sections have been provided a copy of the proposed legislation prior to this transmission.

The enclosed legislation was the result of the hard work and dedication of the following members of the Taxation Law Section's Georgia Tax Court Task Force:

ATI-2287830v1

ATLANTA • BEIJING • BRUSSELS • CHICAGO • CLEVELAND • COLUMBUS • DALLAS • FRANKFURT • HONG KONG • HOUSTON
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John M. Allan, Chair
Mary T. Benton
T. Jerry Jackson
Richard C. Litwin

E. Kendrick Smith
Peter G. Stathopoulos
W. Scott Wright

The Georgia Tax Court Task Force worked and communicated with representatives from the Georgia Department of Revenue, the Attorney General's office and the Georgia Society of CPAs. There are no known other proponents, or any opponents, of the proposed legislation.

The Executive Committee of the Taxation Section of the State Bar recommends that the State Bar recommend and support the enactment of the Tax Court Act of 2008.

One or more representatives from the Georgia Tax Court Task Force, on behalf of the Taxation Law Section, will be present at the meeting of the Advisory Committee on Legislation on September 28th and the Board of Governors meeting on November 2, 2007.

We appreciate the opportunity to submit this recommendation and would welcome the opportunity to offer any additional assistance that may be desired.

Sincerely,

Edward M. Manigault
Chairperson
Taxation Law Section

cc: Executive Committee (via electronic mail c/o Johanna B. Merrill)

S. Lester Tate III, Esq.
Bryan M. Cavan, Esq.
J. Vincent Cook, Esq.
Elena Kaplan, Esq.
Joshua Clark Bell, Esq.
Jonathan Andrew Pope, Esq.
C. Wilson DuBose, Esq.
Phyllis J. Holmen, Esq.
David S. Lipscomb, Esq.
A. Thomas Stubbs, Esq.
N. Harvey Weitz, Esq.
Kenneth L. Shigley, Esq.
Ms. Wanda Segars

Exhibit A

Proposed Text of Tax Court Act of 2008

**A BILL TO BE ENTITLED
AN ACT**

To amend Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, so as to establish a tax court in the executive branch of government for de novo appeals of decisions of the state revenue commissioner and the department of revenue; to state legislative findings for the need for a tax court; to provide for the appointment, term of office, and removal of judges; to provide for the qualification, oath of office, and prohibition against other employment of judges; to provide for the principal office, locations, and facilities of the tax court; to provide for the appointment of staff and expenditures of the tax court; to provide the jurisdiction of the tax court; to provide for the commencement of cases, pleadings and service of pleadings; to provide a stay of enforcement and collection action; to provide for filing and other fees; to provide for discovery and stipulations; to provide procedures for hearings and decisions of the tax court; to establish and provide the jurisdiction and procedures for a small claims division of the tax court; to provide for appeals from tax court decisions; to provide for representation in the tax court; to provide for service; to authorize the tax court to promulgate rules of practice and procedure and forms; to make conforming amendments; to revise the procedure for filing appeals of tax assessments in superior court; to amend Title 50 of the Official Code of Georgia, relating to administrative procedure, to repeal section 50-13-13 relating to Department of Revenue hearings, and to make other conforming amendments; to amend Title 9 of the Official Code of Georgia, relating to civil practice act, to provide that the rules therein for discovery and depositions do not apply to tax court proceedings; to amend Title 5 of the Official Code of Georgia, relating to appeal and error, to provide that appeals from the tax court do not require application; and to provide for an effective date.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA

SECTION 1.

This Act shall be known and may be cited as the “Tax Court Act of 2008.”

SECTION 2.

Title 48 of the Official Code of Georgia Annotated, related to revenue and taxation, is amended by inserting a new chapter, to be designated as Chapter 2A, to read as follows:

“CHAPTER 2A

48-2A-1. Statement of Purpose for Tax Court.

The General Assembly finds that there is a need for an independent quasi-judicial agency separate and apart from the Department of Revenue to resolve disputes between the Department and taxpayers in order to increase public confidence in the fairness of the state tax system, to streamline procedures for more efficient resolution of tax disputes, and to increase uniformity in the administration of state and local taxes.

48-2A-2. Establishment of Tax Court.

- (a) The Georgia Tax Court is hereby established as a quasi-judicial agency in the executive branch of government. The office shall be assigned for administrative purposes only, as that term is defined in Code Section 50-4-3, to the Department of Administrative Services.
- (b) The Tax Court shall be separate from and independent of the authority of the Commissioner and the Department.
- (c) The Tax Court shall have a seal engraved with the words “Georgia Tax Court.” The Tax Court shall authenticate all of its orders, records, and proceedings with the seal, and the courts of this state shall take judicial notice of the seal.
- (d) The Tax Court shall be a court of record.

48-2A-3. Appointment of Judges; Term of Office; Removal.

- (a) The Tax Court shall consist of at least one full-time judge. If there is more than one judge, each shall exercise the powers of the Tax Court.
- (b) The judge[s] of the Tax Court shall be appointed by the Governor, with the consent of the Senate, for a term of six years. If the Tax Court has more than one judge, the judges initially appointed should be given terms of different lengths not exceeding five years, so that all judges' terms do not expire in the same year.
- (c) Each judge of the Tax Court shall receive an annual salary no less than that provided by law for a Judge of the Court of Appeals under O.C.G.A. § 15-3-5, and such salary shall not be reduced during the judge's term of appointment. Each judge shall have a right to reimbursement of travel expenses as provided for superior court judges under O.C.G.A. § 15-6-30 and the right to reimbursement of expenses for attending educational programs as provided for superior court judges under O.C.G.A. § 15-6-32.
- (d) Once appointed and confirmed, each judge shall continue in office until his or her term expires and a successor has been appointed and confirmed. A judge may be appointed for successive terms.
- (e) A vacancy in the Tax Court occurring other than by expiration of term shall be filled for the unexpired term in the same manner as an original appointment.
- (f) If more than one judge is appointed, the judges of the Tax Court shall at least biennially designate one of the members to act as chief judge, in this chapter referred to as the "Chief Judge." The Chief Judge shall be the executive of the Tax Court, shall have sole charge of the administration of the Tax Court and shall apportion among the judges all causes, matters and proceedings coming before the Tax Court.
- (g) The Governor may remove a judge, after notice and an opportunity to be heard, for neglect of duty, inability to perform duties, malfeasance in office, or other good cause, with the consent of the Senate.
- (h) Whenever the Tax Court trial docket or business becomes congested or any judge of the Tax Court is absent, is disqualified or for any other reason is unable to perform his or

her duties as judge, and it appears to the Governor that it is advisable that the services of an additional judge or judges be provided, the Governor may appoint a judge, or judges, *pro tempore* of the Tax Court. Any person appointed judge *pro tempore* of the Tax Court shall have the qualifications set forth in subsections (a) and (b) of O.C.G.A. § 48-2A-4 and shall be entitled to serve for a period no longer than six months.

(i) A judge may disqualify himself or herself on his or her own motion in any matter, and may be disqualified for any of the causes specified in O.C.G.A. § 15-1-8.

48-2A-4. Qualifications of Judges; Oath of Office; Prohibition Against Other Gainful Employment.

(a) Each judge of the Tax Court must be a citizen of the United States and, during the period of service, a resident of this State. No person shall be appointed as a judge unless at the time of appointment the individual is an attorney licensed to practice in this State and has substantial knowledge and experience in state tax law.

(b) Before entering upon the duties of office, each judge shall take and subscribe to an oath or affirmation that he or she will faithfully discharge the duties of the office, and such oath shall be filed in the office of the Secretary of State.

(c) Each judge shall devote his or her full time during business hours to the duties of the Tax Court. A judge shall not engage in any other gainful employment or business that interferes with or is inconsistent with his or her duties as a judge, and shall not hold another office or position of profit in a government of this State, any other State or the United States.

48-2A-5 Principal Office; Locations; Facilities.

(a) The Tax Court's principal office shall be located in Fulton County, Georgia and shall be located in a building that is separate and apart from any building in which the Commissioner or the Department has an office.

(b) The Tax Court shall conduct hearings at its principal office. The Tax Court may also hold hearings at any place within the State, with a view toward securing to taxpayers a reasonable opportunity to appear before the Tax Court with as little inconvenience and expense as practicable. When the Tax Court holds hearings outside of its principal office, it shall do so in a location that is physically separated from facilities regularly occupied by the Commissioner or the Department.

(c) The State Department of Administrative Services shall provide hearing rooms, chambers and offices for the Tax Court at its principal office and shall arrange for hearing rooms, chambers and offices or other appropriate facilities when hearings are held elsewhere.

48-2A-6. Appointment of Staff; Expenditures of the Tax Court.

(a) The Tax Court shall appoint a clerk of court and a court reporter and may appoint such other employees, including staff attorneys and clerical assistants, and make such other expenditures, including expenditures for library, publications and equipment, as are necessary to permit it to efficiently execute its functions.

(b) The court reporter shall be subject to the provisions of O.C.G.A. § 15-14 et seq. as if appointed by a judge of a superior court, except where such provisions are in conflict with this Act.

(c) No employee of the Tax Court shall act as attorney, representative or accountant for others in a matter involving any tax imposed or levied by this State or county or municipality of this State.

(d) In addition to the services of the official reporter, the Tax Court may contract the reporting of its proceedings and, in the contract, fix the terms and conditions under which transcripts will be supplied by the contractor to the Tax Court and to other persons and agencies.

48-2A-7 Jurisdiction of the Tax Court

- (a) Any person may appeal to the Tax Court from any order, ruling or finding of the Commissioner or the Department, including assessments issued pursuant to O.C.G.A. §§ 48-2-47, 48-2-48 and 48-2-51, denials of refund claims pursuant to O.C.G.A. §§ 48-2-35, 48-6-7 and 48-6-76 and any other final order, ruling or finding of the Commissioner or the Department related to any taxes administered by the Commissioner or the Department pursuant to Title 48 of the Official Code of Georgia.
- (b) The Tax Court shall have concurrent jurisdiction with the Superior Courts over all such appeals set forth in subsection (a) of this section.
- (c) The Tax Court shall not have jurisdiction to hear any matters arising under the laws regulating motor vehicles, O.C.G.A. § 40-2-1, *et seq.*
- (d) The Tax Court shall have jurisdiction over actions seeking declaratory judgments related to statutes and regulations governing the taxes administered by the Commissioner and the Department pursuant to Title 48 of the Official Code of Georgia.

48-2A-8 Commencement of Case; Pleadings; Service of Pleadings.

- (a) Except with respect to appeals from denials of refund claims, any person may commence a proceeding in the Tax Court by filing a written petition with the Tax Court within 45 days from the date that the order, ruling, or finding of the Commissioner is mailed to the taxpayer. Appeals with respect to refund claims shall be commenced by filing written petition with the Tax Court within the time periods prescribed in O.C.G.A. §§ 48-2-35, 48-6-7 or 48-6-76 respectively. The petitioner shall serve a copy of the petition on the Commissioner and attach a certificate of service to the petition filed with the Tax Court.
- (b) The Commissioner or the Department shall file its answer in the Tax Court no later than 30 days after the service of the petition. Upon written request, the Tax Court may grant up to 15 additional days to file an answer. The Commissioner or the Department shall serve a copy on the petitioner's representative or, if the petitioner is not represented, on the petitioner, and shall file a certificate of such service with the answer. Material

facts alleged in the petition, if not expressly admitted or denied in the answer, shall be deemed admitted. If the Commissioner or the Department fails to answer within the prescribed time, all material facts alleged in the petition shall be deemed admitted.

(c) Within 30 days of the filing of the answer, the Tax Court shall schedule a pre-hearing conference.

48-2A-9 Stay of Enforcement and Collection Action.

The filing of petition with the Tax Court operates as a stay of any enforcement or collection action by the Commissioner and the Department with respect to any tax, penalty, or interest that is disputed in the petition until the Tax Court decision is finalized including through appeals to any appellate court.

48-2A-10 Fees.

(a) Upon filing a petition, the petitioner shall pay to the clerk a fee as determined by the rules established by the Tax Court.

(b) A similar fee shall be paid by other parties making an appearance in the proceeding, except that no fee shall be charged to a government body or government official appearing in a representative capacity.

(c) The Tax Court may fix a fee, not in excess of the fees charged and collected by the clerks of the superior courts of this State, for comparing, or for preparing and comparing, a transcript of the record, or for copying any record, entry or other paper and the comparison and certification thereof.

48-2A-11. Discovery and Stipulations.

(a) The parties to a proceeding shall make every effort to achieve discovery by informal consultation or communication, before invoking the discovery mechanisms authorized by this section.

(b) The parties to a proceeding shall stipulate all relevant and non-privileged matters to the fullest extent to which complete or qualified agreement can or fairly should be reached. Neither the existence nor the use of the discovery mechanisms authorized by this section shall excuse failure to comply with this provision.

(c) Subject to reasonable limitations prescribed by the Tax Court, taking into account the time and expense incurred by the parties, a party may obtain discovery by written interrogatories; requests for the production of returns, books, papers, documents, correspondence or other evidence; depositions of parties, testifying non-party witnesses and experts; and requests for admissions. The Tax Court may provide for other forms of discovery. Depositions of persons who are not parties or witnesses identified for testimony at the hearing shall only be allowed by leave of the Tax Court.

(d) Disclosure of Expert Testimony.

(1) A party shall disclose to other parties the identity of any person who may be used at trial to present expert testimony.

(2) Except as otherwise stipulated or directed by the court, this disclosure shall, with respect to a witness who is retained or specially employed to provide expert testimony in the case or whose duties as an employee of the party regularly involve giving expert testimony, be accompanied by a written report prepared and signed by the witness if one has been prepared or will be offered at the hearing.

(e) A judge or the clerk of the Tax Court, on the request of any party to the proceeding, shall issue subpoenas requiring the attendance of witnesses and giving of testimony and subpoenas *duces tecum* requiring the production of evidence or things.

(f) Any employee of the Tax Court designated in writing for the purpose by the judge [Chief Judge] may administer oaths.

(g) Any witness subpoenaed or whose deposition is taken shall receive the same fees and mileage as a witness in a superior court of this State.

(h) In the case of disobedience to or neglect of any subpoena or subpoena duces tecum served on any person, or the refusal of any witness to testify to any matter regarding which he or she may be lawfully interrogated, the superior court of the county in which the hearing is being held, or the Superior Court of Fulton County, upon application of a judge of the Tax Court, may compel obedience by attachment proceedings for contempt as in the case of disobedience of the requirements of a subpoena of subpoena duces tecum issued from the superior court for a refusal to testify therein.

48-2A-12 Hearings

(a) Proceedings before the Tax Court shall be tried *de novo* without a jury.

(b) Except as set forth in this Act or otherwise precluded by law, the Tax Court shall take evidence, conduct hearings and issue final and interlocutory decisions.

(c) Hearings shall be open to the public and shall be conducted in accordance with such rules of practice and procedure as the Tax Court may promulgate. Notwithstanding the foregoing, on motion of either party the Tax Court shall issue a protective order or an order closing part or all of the hearing to the public, if the party shows good cause to protect certain information from being disclosed to the public.

(d) The Tax Court shall not be bound by the rules of evidence applicable to civil cases in the superior courts of this State. The Tax Court shall exclude irrelevant and unduly repetitious evidence. Notwithstanding the foregoing, the rules of privilege recognized by law shall apply.

(e) Testimony may be given only on oath or affirmation.

(f) The petition and other pleadings in the proceeding shall be deemed to conform to the proof presented at the hearing, unless a party satisfies the Tax Court that presentation of the evidence would unfairly prejudice the party in maintaining its position on the merits or unless deeming the taxpayer's petition to conform to the proof would confer

jurisdiction on the Tax Court over a matter that would not otherwise come within its jurisdiction.

(g) Except for hearings of small claims as provided in O.C.G.A. § 48-2A-___, all hearings before the Tax Court shall be recorded by means acceptable for use in courts of this State unless waived by all parties. All parties shall receive notice that the hearing will be recorded and that each is entitled to receive a transcript of the recording at cost.

(h) Upon appeal under O.C.G.A. § 48-2A-___, a verbatim transcript and copy of written exhibits shall be prepared for submission to the appellate court with the cost paid by the party taking the appeal or by both parties equally if both parties appeal.

48-2A-13 Decisions

(a) The Tax Court shall render its decision in writing, including therein a concise statement of the facts found and the conclusions of law reached. The Tax Court's decision shall, subject to law, grant such relief, invoke such remedies and issue such orders as the Tax Court deems appropriate to carry out its decision.

(b) The Tax Court shall render its decision no later than six months after submission of the last brief filed subsequent to completion of the hearing or, if briefs are not submitted, then no later than six months after completion of the hearing. The Tax Court may extend the six-month period, for good cause, up to three additional months.

(c) If the Tax Court fails to render a decision within the prescribed period, either party may institute a mandamus proceeding in the Superior Court of Fulton County to compel the issuance of such decision.

(d) The Tax Court's decision shall finally decide the matters in controversy, unless any party to the matter timely appeals the decision as provided in O.C.G.A. § 48-2A-___.

(e) The Tax Court's decision shall have the same effect, and shall be enforced in the same manner, as a judgment of a superior court of this State.

(f) The Tax Court shall adhere to the principle of *stare decisis*. The Tax Court's interpretation of a taxing statute subject to contest in one case shall be followed by the

Tax Court in subsequent cases involving the same statute, and its application of a statute to the facts of one case shall be followed by the Tax Court in subsequent cases involving similar facts, unless the Tax Court's interpretation or application conflicts with that of an appellate court or the Tax Court provides satisfactory reasons for reversing prior precedent.

(g) Except for decisions issued by the Small Claims Division, the Tax Court shall index and publish its final decisions in such print or electronic form as it deems best adapted for public convenience. Such publications shall be made permanently available and constitute the official reports of the Tax Court.

48-2A-14 Small Claims Division: Establishment; Jurisdiction

(a) There is hereby established a Small Claims Division of the Tax Court.

(b) The judge[s] of the Tax Court shall sit as the judge[s] of the Small Claims Division.

(c) If the taxpayer elects within 90 days of filing its petition, the Small Claims Division shall have jurisdiction over any proceeding with respect to which the amount of tax and penalties in controversy, exclusive of interest, is less than a threshold amount determined by the rules of the Tax Court. A taxpayer may not revoke an election to proceed in the Small Claims Division after this 90-day period.

(d) At any time prior to entry of judgment, a taxpayer may dismiss a proceeding in the Small Claims Division by notifying the clerk of the Tax Court in writing. Such dismissal shall be without prejudice.

(e) Hearings in the Small Claims Division shall be informal, and the judge may receive such evidence as the judge deems appropriate for determination of the case. Testimony shall be given under oath or affirmation.

(f) A judgment of the Small Claims Division shall be conclusive upon all parties and may not be appealed. A judgment of the Small Claims Division shall not be considered or cited as precedent in any other case, hearing or proceeding.

48-2A-15 Appeals

(a) Either party shall be entitled to appeal a final judgment of the Tax Court, except for judgments of the Small Claims Division, to the Court of Appeals or the Supreme Court in accordance with the procedure for appeal from a decision of a superior court of this State. The taxpayer or the Commissioner or the Department may obtain judicial review of an interlocutory decision of the Tax Court under the same conditions and in the same manner as an interlocutory decision of a superior court except for cases in the Small Claims Division.

(b) The record on appeal shall include the decision of the Tax Court, the stenographic transcript of the hearing before the Tax Court, the pleadings, briefs, and all exhibits and documents admitted into evidence.

48-2A-16 Representation

(a) A person may be represented in the Tax Court by an attorney or by any other person provided for in the rules of the Tax Court.

(b) Nothing in this section may be construed to permit the unlicensed practice of law as defined under Georgia law.

(c) The Commissioner or Department shall be represented by the State Law Department.

48-2A-17 Service.

(a) Mailing by first class or certified or registered mail, postage prepaid, to the address of the taxpayer given on the taxpayer's petition, or to the address of the taxpayer's representative of record, if any, or to the usual place of business of the Commissioner or Department, shall constitute personal service on the other party. The Tax Court may by rule prescribe that notice by other means shall constitute personal service and may in a particular case order that notice be given to additional persons or by other means.

(b) Mailing by registered or certified mail and delivery by a private delivery service approved by the Internal Revenue Service in accordance with Section 7502(f) of the Internal Revenue Code of 1986 [or equivalent OCGA provision], as amended, shall be

deemed to have occurred, respectively, on the date of mailing and the date of submission to the private delivery service.

48-2A-18 Rules and Forms

The Tax Court shall adopt rules of practice and procedure in accordance with O.C.G.A. §§ 50-13-3 and 50-13-4 and adopt all reasonable rules and forms as may be necessary or appropriate to carry out the intent and purposes of this Act.”

SECTION 3.

Said Title is further amended by adding paragraph (27) to Code Section 48-1-2, relating to definitions, as follows:

(27) “Tax Court” means the tax court established by O.C.G.A. § 48-2A-1 *et seq.*

SECTION 4.

Said Title is further amended by revising paragraph (c)(4) of Code Section 48-2-35, relating to refunds, as follows:

(4) Any taxpayer whose claim for refund is denied by the commissioner or his or her delegate or whose claim is not decided by the commissioner or his or her delegate within one year from the date of filing the claim shall have the right to bring an action for a refund in the **Tax Court or in the** superior court of the county of the residence of the taxpayer, except that:

(A) If the taxpayer is a public utility or a nonresident, the taxpayer shall have the right to bring an action for a refund in the **Tax Court or in the** superior court of the county in which is located the taxpayer's principal place of doing business in this state or in which the taxpayer's chief or highest corporate officer or employee resident in this state maintains his or her office; or

(B) If the taxpayer is a nonresident individual or foreign corporation having no place of doing business and no officer or employee resident and maintaining his or her office in this state, the taxpayer shall have the right to bring an action for a refund in the **Tax**

Court or in the Superior Court of Fulton County or in the superior court of the county in which the commissioner in office at the time the action is filed resides.

SECTION 5.

Said Title is further amended by revising paragraph (a) of Code Section 48-2-50, relating to review of assessments, as follows:

(a) The commissioner's assessments shall not be reviewed except by the procedure provided in this chapter or chapter 2A of this Title. No trial court shall have jurisdiction of proceedings to question the assessments, except as provided in this chapter or chapter 2A of this Title.

SECTION 6.

Said Title is further amended by revising Code Section 48-2-59, relating to appeals, payment of taxes admittedly owed, bonds, and costs, as follows:

(a) Except with respect to claims for refunds, either party may appeal from any order, ruling, or finding of the commissioner to the Tax Court or the superior court of the county of the residence of the taxpayer, except that:

(1) If the taxpayer is a public utility or nonresident, the appeal of either party shall be to the Tax Court or the superior court of the county in which is located the taxpayer's principal place of doing business or in which the taxpayer's chief or highest corporate officer residing in this state maintains his office; or

(2) If the taxpayer is a nonresident individual or a foreign corporation having no place of doing business and no officer or employee residing and maintaining his office in this state, the taxpayer shall have the right to appeal to the Tax Court or the Superior Court of Fulton County or to the superior court of the county in which the commissioner in office at the time the action is filed resides.

(b) The **taxpayer shall commence an appeal under the procedures and time periods provided in Chapter 2A or by filing a petition with the superior court** and necessary records shall be certified by the commissioner and shall be filed with the clerk of the superior court within 30 days from the date of decision by the commissioner. The procedure provided by law for applying for and granting appeals from the probate court to the superior court shall apply as far as suitable to the appeal authorized by this Code section, except that the appeal authorized by this Code section may be filed within 30 days from the date of decision by the commissioner.

(c) Before the superior court shall have jurisdiction to entertain an appeal filed by any aggrieved taxpayer, the taxpayer shall file with the clerk of the superior court a written statement whereby the taxpayer agrees to pay on the date or dates the taxes become due all taxes for which the taxpayer has admitted liability. Additionally, the taxpayer shall file with the clerk of the superior court within 30 days from the date of decision by the commissioner, except where the value of the appellant's title or interest in real property owned in this state is in excess of the amount of the tax in dispute, a surety bond or other security in an amount satisfactory to the clerk, conditioned to pay any tax over and above that for which the taxpayer has admitted liability and which is found to be due by a final judgment of the court, together with interest and costs. It shall be ground for dismissal of the appeal if the taxpayer fails to pay all taxes admittedly owed upon the due date or dates as provided by law. **This paragraph (c) shall not apply to appeals filed with the Tax Court.**

(d) (1) If the final judgment of the court places upon the taxpayer any tax liability which has not already been paid and if the tax or any part of the tax has:

(A) Not become due on the date of the final judgment of the court, then the taxpayer shall pay the amount of the unpaid tax liability on the due date or dates as provided by law; or

(B) Already become due at the time of final judgment of the court, the taxpayer shall

immediately pay the tax or as much of the tax as has already become due, with interest.

(2) In the event the final judgment of the court is adverse to the taxpayer, he shall pay the court costs regardless of whether the tax or any part of the tax has or has not become due at the time of the final judgment of the court.

SECTION 7.

Title 50 of the Official Code of Georgia Annotated, related to administrative procedure, is amended by repealing Code Section 50-13-12, relating to Department of Revenue hearings and election of remedies.

SECTION 8.

Said Title is further amended by revising Code Section 50-13-16, relating to proposals for decisions in contested cases, as follows:

When in a contested case a majority of the officials of the agency who are to render the final decision have not heard the case or read the record, the decision, if adverse to a party to the proceeding other than the agency itself, shall not be made until a proposal for decision is served upon the parties and an opportunity is afforded to each party adversely affected to file exceptions and present briefs and oral argument to the officials who are to render the decision. The proposal for decision shall contain a statement of the reasons therefor and of each issue of fact or law necessary to the proposed decision, prepared by the person who conducted the hearing or one who has read the record. The parties by written stipulation may waive compliance with this Code section. **This Section shall not apply to contested cases decided in the Georgia Tax Court.**

SECTION 9.

Said Title is further amended by adding paragraph (e) to Code Section 50-13-17, relating initial decisions and review of initial decisions, as follows:

(e) This Section shall not apply to decisions by the Georgia Tax Court.

SECTION 10.

Said Title is further amended by adding paragraph (i) to Code Section 50-13-19, relating to judicial review of contested cases, as follows:

(i) This Section shall not apply to decisions by the Georgia Tax Court which are to be appealed under O.C.G.A. § 48-2A-15.

SECTION 11.

Said Title is further amended by adding revising paragraph (a) of Code Section 50-13-42, relating the applicability of Article 2 of Title 50, as follows:

(a) In addition to those agencies expressly exempted from the operation of this chapter under paragraph (1) of Code Section 50-13-2, this article shall not apply to the Commissioner of Agriculture, the Public Service Commission, the Health Planning Review Board, **the Georgia Tax Court**, or the Department of Community Health or to the Department of Labor with respect to unemployment insurance benefit hearings conducted under the authority of Chapter 8 of Title 34. Such exclusion does not prohibit such office or agencies from contracting with the Office of State Administrative Hearings on a case-by-case basis.

SECTION 12.

Title 9, relating civil practice, is amended by revising Code Section 9-11-81, relating to applicability of the civil practice act, as follows:

This chapter shall apply to all special statutory proceedings except to the extent that specific rules of practice and procedure in conflict herewith are expressly prescribed by law; but, in any event, the provisions of this chapter governing the sufficiency of pleadings, defenses, amendments, counterclaims, cross-claims, third-party practice, joinder of parties and causes, making parties, discovery and depositions, interpleader, intervention, evidence, motions, summary judgment, relief from judgments, and the

effect of judgments shall apply to all such proceedings, **except that the provisions of this chapter governing discovery and depositions shall apply to proceedings in the Georgia Tax Court only to the extent provided in O.C.G.A. § 48-2A-11 or in the rules of the Georgia Tax Court.**

SECTION 13.

Title 5, relating to appeal and error, is amended by revising paragraph (a)(1) of Code Section 5-6-35, relating to cases requiring application for appeal, as follows:

(a) Appeals in the following cases shall be taken as provided in this Code section:

(1) Appeals from decisions of the superior courts reviewing decisions of the State Board of Workers' Compensation, the State Board of Education, auditors, state and local administrative agencies, and lower courts by certiorari or de novo proceedings; provided, however, that this provision shall not apply to decisions of **the Georgia Tax Court,** the Public Service Commission and probate courts and to cases involving ad valorem taxes and condemnations;

SECTION 14.

Sections 1 and 2 of this Act shall become effective on the Act's approval by the Governor or upon its becoming law without such approval and shall be applicable to all actions and proceedings commenced on or after January 1, 2009. Section 3 through 13 of this Act shall become effective on January 1, 2009.

Exhibit B

Summary of Existing Law and Reasons to Support the Georgia Tax Court Act of 2008

The establishment of a Georgia tax court would replace the current administrative hearings process under the Georgia Administrative Procedure Act (“APA”) as it applies to tax matters but would not affect other aspects of the current audit and appeals process. The **bolded** portions of the following summary highlight the aspects of the current audit and appeals process which would change due to the establishment of a tax court.

AUDITS

Currently, when a proposed assessment is issued by the Georgia Department of Revenue (“GDOR”), the taxpayer has 30 days to file a protest with the GDOR. O.C.G.A. § 48-2-45. If requested, a conferee, appointed by the GDOR Commissioner (“Commissioner”), will schedule and conduct an informal conference. O.C.G.A. § 48-2-46. After the conference, the conferee will issue a final determination that will either withdraw, amend or affirm the proposed assessment. The GDOR then issues a “Notice of Formal Assessment and Demand for Payment” (the “Final Assessment”). O.C.G.A. § 48-2-46, -47.

Once the Final Assessment has been issued, the taxpayer may do one of the following:

- **Demand an administrative review by the Office of Administrative Hearings under the APA within 30 days of receiving the Final Assessment. O.C.G.A. §§ 48-2-45, 50-13-12. Note that payment may still be required (this administrative review would be replaced with a review by the tax court);**
- Pay the tax and file a claim for refund (see below) within three years from payment or, in the case of income taxes, the later of the date of payment or the due date of the return (including extensions). O.C.G.A. § 48-2-35;
- File a statement agreeing to pay the uncontested amount, if any; post bond for the remaining amounts; and file suit in Superior Court of the county of the taxpayer’s residence (or in the county where real estate is located) within 30 days after receiving the Final Assessment. O.C.G.A. § 48-2-59; or
- Not pay and file an Affidavit of Illegality. O.C.G.A. § 48-3-1.
- **ADMINISTRATIVE REVIEW (WOULD BE REPLACED BY TAX COURT REVIEW)**

If the taxpayer requests an administrative review by the Office of Administrative Hearings under the APA, the Commissioner appoints a hearing officer who conducts a formal hearing. The formal hearing generally occurs about 30 days after the demand is filed. O.C.G.A. § 50-13-12. There is no discovery under the APA, and a hearing officer cannot decide whether a tax statute is valid, constitutional or consistent with other laws. Once the hearing officer conducts the formal hearing, he issues a determination. The

officer's determination may be appealed to the Commissioner for an executive review within 30 days of the determination. O.C.G.A. § 50-13-17. Once the Commissioner issues its final determination, the taxpayer may appeal such determination to the Superior Court where the taxpayer resides within 30 days. O.C.G.A. § 50-13-19.

The Superior Court conducts an on the record review with great deference to the administrative decision and issues a determination. This review is performed without a jury. The Superior Court's determination may be appealed by asking leave to either the Court of Appeals or the Supreme Court within 30 days of the Superior Court's decision. O.C.G.A. § 5-6-34.

SUITS FOR REFUNDS

If the filing a claim for refund, a taxpayer may also request a formal conference with the Commissioner. If the Commissioner denies the refund or if there is no action taken in response to the claim for refund in a year, the taxpayer may file a refund suit within 2 years in the Superior Court of the county of his residence. The Superior Court conducts a *de novo* trial, which may include a jury, and makes a final determination. The taxpayer's appeal options after the Superior Court's decision are the same as with an administrative review audit.

DIRECT APPEALS

After the Commissioner issues the Final Assessment, the taxpayer may pay the tax due and file suit in the Superior Court of the County of the taxpayer's residence (or in the county where real estate is located). The Superior Court conducts a *de novo* trial, which may include a jury. The Superior Court also follows the standard evidence rules. Once the court makes a final determination the taxpayer may appeal such determination, by asking leave, to either the Court of Appeals or the Supreme Court within 30 days of the Superior Court's decision. O.C.G.A. § 5-6-34, -37, -38.

REASONS TO SUPPORT THE TAX COURT ACT OF 2008

The Taxation Law Section of the State Bar of Georgia proposes the "Tax Court Act of 2008" which would establish a court with specialized tax knowledge to provide *de novo* hearings in all tax matters and render decisions related thereto. The proposed tax court would hear protests of all determinations related to taxes currently administered by the GDOR, including assessments, refunds, and applications for licenses, permits and registrations and would have jurisdiction over declaratory judgments relating to statutes and regulations. The proposed tax court would not replace existing procedures for administratively resolving disputes prior to the issuance of a final assessment but would replace the administrative hearings process under the APA and provide taxpayers with the option of appealing final assessments to the tax court or to the superior court under existing rules.

COSTS OF CURRENT APPEALS PROCESS

The current appeals process is very costly to all parties involved in the disputed tax matter (e.g., taxpayers, taxing authorities, taxpayer representatives, tax advisors, etc.) for several reasons. The Georgia Office of Administrative Hearings and superior courts do not have specialized tax knowledge which increases the time and effort required for them to hear cases and render decisions regarding tax matters before them. Furthermore, the current process does not provide taxpayers or tax advisors which much guidance regarding the status of tax controversies and the current state of Georgia tax law until matters reach the court of appeals level and become publicly available. In addition, the current process of appealing tax matters to the superior courts creates the potential for a lack of uniformity in the administration of state and local taxes due to inconsistent superior court decisions. Furthermore, the procedural rules for appealing a tax assessment to superior court are unsettled and can therefore lead to protracted litigation.

BENEFITS OF A TAX COURT

Establishment of a tax court would streamline procedures for quicker and more cost effective resolutions of tax controversies. Tax court judges would be attorneys with specialized tax knowledge thereby enabling them to hear cases and render decisions more quickly and efficiently due to the decreased time required for them to become familiar with the tax principles and issues associated with the disputed tax matters. In addition, the tax court would have jurisdiction over actions seeking declaratory judgments related to tax statutes and regulations.

Tax court decisions would be public record. This public record would provide taxpayers and tax advisors with increased guidance regarding the status of current tax controversies and the current state of Georgia tax law. Furthermore, the publication of the tax court decisions and the requirement that the tax court adhere to the principle of *stare decisis* would create increased uniformity in the administration of state taxes thereby reducing the costs of that administration. Consistent with the goal of increased uniformity, tax court decisions would have the same effect and appeals would be in the same manner as of a state trial court. In addition, the procedural rules for appealing a tax assessment to the tax court would be simplified thereby reducing the uncertainty and potential increased costs of protracted litigation that exist under the current system.

To simplify and expedite the resolution of relatively small tax controversies, a Small Claims Division would be established and, at the taxpayer's option, would have jurisdiction over small tax controversies. Hearings in the Small Claims Division would be informal thereby simplifying the hearings process. Judgments of the Small Claims Division would be conclusive on all parties and would not be subject to appeal. In addition, judgments of the Small Claims Division would not be considered or be allowed to be cited as precedent in any other case, hearing or proceeding.

Exhibit C

State Bar of Georgia

Committees and Sections Potentially Interested in the Georgia Tax Court Act of 2008

The following sections and committees of the State Bar of Georgia may have an interest in the proposed Georgia Tax Court Act of 2008:

| Sections | Committees |
|--|---|
| Administrative Law Section | Judicial Procedure & Administration Committee |
| Appellate Practice Section | Statewide Judicial Evaluation Committee |
| Business Law Section | Uniform Rules Committee |
| Corporate Counsel Law Section | UPL Standing Committee |
| Dispute Resolution Section | Commission on Judicial Service |
| Fiduciary Law Section | Committee on the Judiciary |
| General Practice and Trial Law Section | |
| Government Attorneys Section | |
| Judicial Section | |
| Local Government Law Section | |
| Real Property Law Section | |

A copy of a draft version of the proposed text of the legislation was sent on August 24, 2007 by Johanna Merrill, State Bar Section Liaison, to the chairpersons of each of the sections listed above. A copy of that electronic mail transmission is attached hereto as Exhibit C-1.

A copy of the proposed text of the legislation was sent on September 24, 2007 by Johanna Merrill, State Bar Section Liaison, to the chairpersons of each of the committees listed above. A copy of that electronic mail transmission is attached hereto as Exhibit C-2.

Exhibit C-1



"Johanna Merrill"
<Johanna@gabar.org>

09/04/2007 01:40 PM

To <emmanigault@jonesday.com>

cc

bcc

Subject FW: Georgia Tax Court Task Force

History:

 This message has been replied to.

-----Original Message-----

From: Johanna Merrill

Sent: Friday, August 24, 2007 1:33 PM

To: Johanna Merrill

Cc: Sarah Coole; Sharon Bryant

Subject: FW: Georgia Tax Court Task Force - REVISED

To: Section Chairs

Re: Taxation Law Section proposed legislation

The Executive Committee of the Taxation Law Section on Aug. 23, 2007 reviewed and unanimously approved a proposal to create a Georgia Tax Court. The proposal was submitted by the Section's Georgia Tax Court Task Force in the form of the attached draft legislation.

The Taxation Law Section will submit the proposed legislation to the State Bar Advisory Committee on Legislation by Friday, Sept. 14, 2007.

If you or the other members of your Section have any questions or comments with respect to the proposed legislation, please contact John Allan, the chair of the task force (jmallan@jonesday.com, 404-581-8012).



Draft Georgia Tax Court Act of 2008.pdf

Exhibit C-2



"Johanna Merrill"
<Johanna@gabar.org>

09/04/2007 01:51 PM

To "Johanna Merrill" <Johanna@gabar.org>
cc "Sharon Bryant" <Sharon@gabar.org>, "Sarah Coole"
<Sarah@gabar.org>, <emmanigault@jonesday.com>
bcc

Subject Georgia Tax Court Task Force

History:  This message has been replied to.

To: Committee Chairs

The Executive Committee of the Taxation Law Section on Aug. 23, 2007, reviewed and unanimously approved a proposal to create a Georgia Tax Court.

The proposal was submitted by the Section's Georgia Tax Court Task Force in the form of the attached draft legislation. The Taxation Law Section will submit the proposed legislation to the State Bar Advisory Committee on Legislation by Friday, Sept. 14, 2007.

If you or the other members of your committee have any questions or comments with respect to the proposed legislation, please contact John Allan, the chair of the task force (jmallan@jonesday.com, 404-581-8012).

Johanna Merrill
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Draft Georgia Tax Court Act of 2008.pdf