

# The Georgia Tax Tribunal Act of 2012

by Richard C. Litwin and John Masters

**O**n April 19, 2012, Georgia Gov. Nathan Deal signed into law House Bill 100 (HB 100 [2011-12 Reg. Session]), cited as the Georgia Tax Tribunal Act of 2012 (the Act). The Act established a specialized tribunal in the executive branch of government to hear state tax disputes.

Starting Jan. 1, 2013, taxpayers seeking to contest a state tax liability can petition to the Georgia Tax Tribunal. This article examines the methods by which a taxpayer can challenge a state tax liability under current tax procedure and highlights the advantages of using the new Georgia Tax Tribunal instead. This article also addresses key provisions of the Act.

## Background—Limits Under Current System Accentuates Need for a Tax Tribunal

Under the Commissioner of Revenue's authority set out in Georgia tax procedure,<sup>1</sup> the Georgia Department of Revenue (the Department) issues an Official Assessment and Demand for Payment

(Official Assessment) to notify a taxpayer of the Department's final assessment of tax, penalty and interest. If a taxpayer wants to challenge the Official Assessment, then the taxpayer has four options for doing so, but limitations and conditions tied to these options restrict their utility. First, the taxpayer can file a tax appeal in superior court within 30 days of the date of the Official Assessment. With a few exceptions, the appeal is filed in the county of the taxpayer's residence, but to use this option, the taxpayer must "pay-to-play."<sup>2</sup> Specifically, the taxpayer must post a surety bond (not a bail bond) to cover the entire tax, penalty and interest. Although, the taxpayer can avoid the bond requirement if the taxpayer has an interest in real estate sufficient to cover the liability,<sup>3</sup> the "bond requirement" discourages many taxpayers from putting their tax case before a superior court judge.<sup>4</sup>

Second, the taxpayer can challenge the Official Assessment by filing with the Commissioner of Revenue a demand for hearing under the Georgia Administrative Procedures Act.<sup>5</sup> The taxpayer's case is heard by an administrative law judge at the Office of State Administrative Hearings (OSAH). This remedy is a pre-deprivation remedy, to wit: the taxpayer is not forced to make a financial sacrifice as a condition to using the remedy. Nonetheless, after the administrative law judge issues his initial decision, the Commissioner of Revenue can

overturn the administrative law judge's initial decision.<sup>6</sup>

Georgia law requires that the taxpayer act within 30 days of the date of the Official Assessment to file a tax appeal (first option) or a demand for hearing (second option). If the taxpayer fails to act within this 30-day period, then the Commissioner of Revenue can issue a State Tax Execution and begin collection proceedings.<sup>7</sup>

Third, the taxpayer can contest the Official Assessment by paying the amount assessed and filing a refund claim with the Department.<sup>8</sup> If the refund claim is denied, then the taxpayer can file a complaint for refund in superior court,<sup>9</sup> but the taxpayer must pay the liability before the taxpayer can file his complaint for refund in superior court.

Fourth, a taxpayer who fails to challenge the Official Assessment within the 30-day period can wait for the Department to issue the state tax execution. After the state tax execution is issued, the taxpayer can file an affidavit of illegality of tax execution.<sup>10</sup> The "surety bond" barrier exists here as well. As a condition to bringing the action, the taxpayer must post a surety bond (not a bail bond) to ensure payment of the tax, penalty and interest, in the event that the taxpayer loses the case.<sup>11</sup>

The limitations on the various options for challenging an Official Assessment have left many practitioners and their clients frustrated by the system. To compound taxpayer angst tied to the system for contesting a state tax liability, substantive case law on Georgia state taxation is scarce. Decisions issued by superior courts are often unpublished and as result are difficult to access. Further, decisions issued by OSAH are confidential, and therefore they cannot be leveraged effectively as precedent. Moreover, appellate review by the Court of Appeals of Georgia of both OSAH decisions and superior court decisions is obtainable only by application and is subject to discretionary review procedures.<sup>12</sup>

Recognizing the growth of tax courts and tax tribunals in other states, practitioners gathered, caucused and shared ideas for several years to develop a solution. Their efforts led to the Georgia Tax Tribunal Act of 2012.

The Act creates a specialized Tax Tribunal to replace the demand-for-hearing option provided under the Administrative Procedure Act (the APA). Indeed, the demand for hearing prescribed in the APA (at O.C.G.A. § 50-13-12) is repealed.<sup>13</sup> The Act also provides that a taxpayer can file a petition in the Tax Tribunal as an alternative to filing a tax appeal in superior court. The Act contains various provisions aimed at ensuring efficient and fair resolutions to state tax disputes. Key provisions of the Act are examined below.

## Independence and Location of the Tax Tribunal

The Georgia Tax Tribunal's main location will be in Fulton County in offices separate from the Commissioner of Revenue (and, presumably, the Department of Revenue).<sup>14</sup> The Tax Tribunal will be part of OSAH but will be an independent and autonomous division of OSAH. The Tax Tribunal will operate under the sole direction of the chief tribunal judge.<sup>15</sup> The Tax Tribunal can hear cases in Fulton County at its main location or at any other place in Georgia.<sup>16</sup>

## Types of Cases Heard by the Tax Tribunal

Under the Act, the Tax Tribunal functions to resolve taxpayer disputes with the Georgia Department of Revenue.<sup>17</sup> To that end, it has jurisdiction to hear cases between a taxpayer and the Department of Revenue. The Tax Tribunal also has jurisdiction to hear a taxpayer refund action following the Commissioner of Revenue's denial of a taxpayer's claim for refund of sales taxes, income taxes, real

estate transfer taxes and intangible recording taxes.<sup>18</sup> The Tax Tribunal can also hear the traditional tax appeal, to wit: an appeal from "any order, ruling, or finding of the Commissioner of Revenue."<sup>19</sup> This type of tax appeal arises typically following the issuance of an Official Assessment.<sup>20</sup>

In addition, the Tax Tribunal has jurisdiction to hear the Commissioner of Revenue's denial of corporation's petition for alternative apportionment under Georgia income tax laws.<sup>21</sup> The Tax Tribunal can hear appeals of special taxpayers (such as public utilities and railroads) whose property, for ad valorem property tax purposes, is centrally assessed by the Commissioner of Revenue.<sup>22</sup> The Tax Tribunal can also hear a declaratory judgment action challenging the Commissioner of Revenue's adoption of a Department of Revenue regulation.<sup>23</sup>

Finally, the Tax Tribunal can hear a petition filed to challenge a state tax execution.<sup>24</sup> As noted above, under current law, only a superior court has jurisdiction over an affidavit of illegality and cannot hear the case, unless that taxpayer posts a surety bond to cover an adverse judgment. But the Act explicitly dispenses with the bond (or other security) requirement as a condition to bringing the appeal before the Tax Tribunal.<sup>25</sup> Thus, in contrast to current law, a taxpayer that fails to appeal an Official Assessment within 30 days of the date of the Official Assessment is not barred from bringing an action in the Tax Tribunal to challenge the liability asserted in the State Tax Execution.

Notably, however, the Tax Tribunal cannot hear every tax-related challenge. It cannot hear challenges tied to the Department's administration of the state alcoholic beverages laws, under Title 3, or motor vehicle laws, such as the issuance of car titles, under Title 40.<sup>26</sup> Further, the Tax Tribunal cannot hear ad valorem property tax cases. In addition, a taxpayer seeking to challenge an assessment of value

on real or personal property must follow the procedures set out in O.C.G.A. § 48-5-311(e).<sup>27</sup> Finally, the Tax Tribunal does not have jurisdiction to rule on constitutional issues.<sup>28</sup>

## Concurrent Jurisdiction with Superior Courts

Under the Act, superior courts retain jurisdiction to hear all matters over which superior courts have jurisdiction currently, but the taxpayer now has a choice.<sup>29</sup> He can file the action in superior court (in which case, the same conditions for jurisdiction, such as the bond requirement, apply), or he can file a petition in the Tax Tribunal. The Act does not allow the taxpayer to move the case from superior court to the Tax Tribunal or vice-versa.

## Tax Tribunal Judges—Qualifications and Term of Office

A chief objective of the Act is to resolve a dispute through a specialized tribunal. Consistent with this objective, the Act imposes guidelines for qualified candidates for the position of Tax Tribunal judge. First, the candidate must be a U.S. citizen and a Georgia resident during his term in office. Second, the candidate must be an attorney licensed to practice in Georgia. Finally, as a condition to the appointment, the candidate must have practiced primarily in tax law for eight years prior to serving as judge.<sup>30</sup>

The Tax Tribunal's initial judge(s) shall be appointed by the governor.<sup>31</sup> Term of office for the judges depends upon the number of judges appointed initially. If the tribunal has only one judge initially, then the judge shall serve a term of four years and shall be chief tribunal judge. If the tribunal has more than one judge initially, then the chief tribunal judge is appointed for an initial term of six years and the other judge (or judges) is appointed for a term of four years. After the appointment of the initial judge or judges, subsequent appointments



# 22nd Annual Fiction Writing Competition

## Deadline Jan. 18, 2013

Past winners include:

“A Defense of the Heart”

by Lt. Col. Leonard M. Cohen (2012)

“Old Friends”

by Greg Grogan (2011)

“Out From Silence”

by Cynthia Lu Tolbert (2010)

“Death Tax Holiday”

by Lawrence V. Starkey Jr. (2009)

“The Dark Part of the Road”

by Lisa Smith Siegel (2008)

“Life for Sale”

by Lisa Smith Siegel (2007)

“Treasure of Walker County”

by Thomas Ellis Jordan (2006)

“Doubting Thomas”

by Gerard Carty (2005)

“First Tuesday”

by Gerard Carty (2004)

“The Devil Came Down to Georgia”

by Bradley M. Elbein (2003)

If you would like to read one of the past entries that you might have missed, you can obtain a copy from the State Bar's Communications Department by calling 404-527-8792.

For more information,  
see the inside back cover.

of all judges will be for a term of four years. As stated in the Act, the initial staggered terms remove the possibility that all tribunal judges leave office in the same year.

Judges can serve for successive terms. They can be reappointed by the governor with the consent of the Senate and for a term of four years.<sup>32</sup>

Finally, the Tax Tribunal will have an administrative staff and other accommodations needed to function effectively.<sup>33</sup>

## Filing an Action in the Tax Tribunal—Petition, Response and Default

Actions may be filed with the Tax Tribunal beginning Jan. 1, 2013.<sup>34</sup> All actions must be filed within the time periods prescribed by law. Thus, if the time allowed to appeal an Official Assessment is 30 days, then the petition must be filed with the Tax Tribunal within 30 days of the date of the Official Assessment.<sup>35</sup>

Like a tax appeal filed in superior court, a petition filed in the Tax Tribunal must include a summary statement of facts and law upon which the petitioner relies in seeking the relief. The petition must name the Commissioner of Revenue as respondent (in his official capacity).<sup>36</sup>

The taxpayer must pay a filing fee at the time that the taxpayer files the petition.<sup>37</sup> In most cases, the taxpayer is not required to post a surety bond as a condition to filing the petition in the Tax Tribunal.<sup>38</sup> When a taxpayer challenges a “jeopardy assessment,” the Commissioner of Revenue can require a bond.<sup>39</sup>

Within 30 days after service of the petition, the Commissioner of Revenue must file and serve a response (an answer) to the petition.<sup>40</sup> If the Commissioner of Revenue’s response is not filed timely, then the case is placed in default. Default will not occur if the parties agree to extend the time period.<sup>41</sup> To open default as a matter of right, the Commissioner of

Revenue must (1) file the response within 15 days of the default date and (2) pay costs.<sup>42</sup> Otherwise, the judge may open default in his/her discretion prior to final judgment.<sup>43</sup>

## Filing an Action in the Tax Tribunal—Amendment, Service of Pleadings and Remand

Pleadings can be amended and/or supplemented as per the Georgia Civil Practice Act.<sup>44</sup> Thus, a party can amend its pleadings at any time and without leave of court before entry of the pretrial order. After the pretrial order is entered, the party can amend only by leave of court or by agreement of the adverse party.<sup>45</sup>

A party may supplement its pleading to address transactions or occurrences or events that arise after the date of the pleading sought to be supplemented.<sup>46</sup> The party must serve other items required to be served, including pleadings, motions, responses or statements, by first-class mail or by hand-delivery.<sup>47</sup>

The Act specifies the date that a document is deemed filed with the Tax Tribunal. The deemed-filed rule applies to any pleading, motion, response, statement or documents required (by law, rule or regulation) to be received or filed with the Tax Tribunal. Such item is deemed received or filed on the earlier of (1) the date the document is actually received by the Tax Tribunal, (2) the official postmark date that such document was mailed, properly addressed with postage prepaid, by certified or registered mail or (3) the date on which the document was delivered to a commercial delivery company for statutory overnight delivery, as per O.C.G.A. § 9-10-12 and as evidenced by the receipt issued by the delivery company.<sup>48</sup>

Personal service on the taxpayer is effected by mailing or delivering to the taxpayer’s address noted on the petition or the address of the taxpayer’s attorney of record.<sup>49</sup>

Service on the Commissioner of Revenue is effected by mailing or delivering the item to the usual place of business for the Commissioner of Revenue.<sup>50</sup> Presumably, the Commissioner of Revenue’s usual place of business is the Georgia Department of Revenue’s headquarters in Atlanta.<sup>51</sup>

The tribunal judge must schedule a prehearing conference as soon as reasonably practicable.<sup>52</sup> At the prehearing conference, the judge must address discovery issues and deadlines, scheduling and other matters.<sup>53</sup>

The judge may remand the case to the Commissioner of Revenue for further consideration. Remand can occur based upon a motion by either party, for good cause shown on motion by one party, or sua sponte, when the judge determines that the case should be remanded.<sup>54</sup> For instance, the taxpayer may have failed to resolve the matter at the Department level before filing the petition, or the dispute may focus on a computational error, misunderstanding or misapplication of payments by the Department.

## Filing an Action in the Tax Tribunal—Stay of Collection

Perhaps the most important provision of the Act is the “stay.” Filing a petition with the Tax Tribunal operates as a stay of enforcement or collection action. Specifically, the Commissioner of Revenue cannot proceed with collection of taxes, penalties, interest or any collection costs disputed in the petition after the petition is filed.<sup>55</sup> The “stay” remains in place until the case is finalized.<sup>56</sup> Nevertheless, upon good cause shown by the Commissioner of Revenue (and by motion), the judge may lift the stay.<sup>57</sup>

## The Proceeding—Discovery and Stipulation of Facts

Although the Georgia Civil Practice Act applies to cases in the

Tax Tribunal,<sup>58</sup> several exceptions are intended to streamline the proceeding and minimize costs for all parties.

First, under the Act, the parties must make every effort to conduct discovery by informal consultation or communication.<sup>59</sup> A party may use formal discovery processes (interrogatories, requests for documents, depositions). Upon motion by a party, the judge can limit the frequency or extent of the formal discovery.<sup>60</sup> The discovery period (beginning and ending date) shall be determined either by the rules of the Tax Tribunal or by order in the specific case.<sup>61</sup>

Second, and in accord with the Act's objective to streamline the case, the parties must stipulate to all relevant and nonprivileged matters<sup>62</sup> upon completion of discovery. Service of discovery by one party does not excuse the other party from entering into the stipulation.

## The Proceeding—Trials

All trials shall be de novo bench trials (without a jury).<sup>63</sup> Thus, the parties must make their record (for possible review by an appellate court) at the Tax Tribunal level.

Trials will be open to the public. Nevertheless, any party may move the court for an order excluding the public from attending all or a portion of the trial by showing a

need to protect against disclosure of certain information.<sup>64</sup>

All testimony shall be given by oath or affirmation.<sup>65</sup> Further, except for proceedings in the Small Claims Division, all Tax Tribunal hearings shall be recorded by a tribunal court reporter.<sup>66</sup>

The Tax Tribunal judge generally must apply the rules of evidence that are used in civil nonjury trials in superior courts.<sup>67</sup> In cases heard in the Small Claims Division (see below), the Tax Tribunal judge may relax the rules and consider facts that may otherwise be excluded under the evidence rules.<sup>68</sup>

## Decisions and Publication of Decisions

The Tax Tribunal judge must issue final judgments and interlocutory orders in writing.<sup>69</sup> Final judgments and interlocutory orders must include findings of fact and conclusions of law.<sup>70</sup> The method by which confidentiality is maintained is left to the chief tribunal judge who must draft rules that address confidentiality of taxpayer information.<sup>71</sup>


To ensure uniformity of decisions, tribunal judges must follow the principle of stare decisis.<sup>72</sup> Prior decisions are precedent, and the Tax Tribunal should adhere to cases decided previously.<sup>73</sup>

Finally, except for cases in the Small Claims Division (see below), all final judgments of the Tax Tribunal must be indexed and published in a print or electronic form.<sup>74</sup> The publications will be considered the official reports of the Tax Tribunal.<sup>75</sup>

## Small Claims Division

Within 90 days of filing a petition, the taxpayer can elect to have the case heard in the Tax Tribunal's Small Claims Division. To qualify for the Small Claims Division, the total of the tax and penalty (but not interest) in controversy cannot exceed a threshold amount.<sup>76</sup> Once the "small claims" election is made, the taxpayer cannot revoke the election.<sup>77</sup>

Small Claims Division proceedings are informal.<sup>78</sup> The tribunal judge can consider hearsay testimony or review an unauthenticated document when he/she deems such is necessary to gather the facts. But the evidence must be a "type commonly relied upon by reasonably prudent persons" in conducting their affairs.<sup>79</sup> Further, the taxpayer may bring his/her accountant or tax return preparer to the hearing to provide facts about positions taken on a tax return.<sup>80</sup> All Small Claims Division decisions are final and cannot be appealed.<sup>81</sup>



# Lawyers' Professional Liability Insurance

Let us guide you through the rough waters of today's volatile market. Daniels-Head Insurance offers guidance when navigating your professional liability coverage. You don't have to do anything "wrong" to be sued, and malpractice claims are expensive to defend in both time and money.

Attorneys in business today need the protection that professional liability insurance offers. Let us put your mind at ease with a financially sound and stable insurance carrier to protect your business.

WE ALSO OFFER PROFESSIONAL LIABILITY COVERAGE FOR:  
Title Agents • Real Estate Agents • Accountants • Dentists  
AS WELL AS THE FOLLOWING PRODUCTS:  
Commercial Packages • Workers Compensation • Bonds

Call 800.950.0551  
or visit [www.danielshead.com](http://www.danielshead.com)

**DHIA** Daniels-Head  
Insurance  
Agency


## Appeals

Any party can appeal a final judgment issued by the Tax Tribunal. The appeal is heard in the Superior Court of Fulton County.<sup>82</sup> The appealing party is not required to ask the Commissioner of Revenue to review an Initial Decision.<sup>83</sup>

The party must file the appeal with the Superior Court of Fulton County within 30 days after service of the Tax Tribunal's final judgment.<sup>84</sup> The party must state the grounds for the appeal.<sup>85</sup>

Review by the superior court is confined to the record as established at the Tax Tribunal level.<sup>86</sup> Any further appeal is by discretionary review to the appellate courts.<sup>87</sup>

## Conclusion

Georgia's new Tax Tribunal faces many logistical tasks before the first case is filed after Jan. 1, 2013. The Tax Tribunal must adopt rules of practice and procedure. The Tax Tribunal also must obtain office space at the Office of State Administrative Hearings. Further, the Tax Tribunal judge must hire a clerk, a court reporter, a law clerk and administrative staff. When such tasks are completed, the Georgia Tax Tribunal promises to benefit all Georgia taxpayers by providing a much needed logical and understandable procedure for resolving Georgia state tax controversies. 



Richard C. Litwin, an Atlanta attorney who specializes in state and local taxation, served on the Georgia Tax

Tribunal Task Force of the State Bar of Georgia's Taxation Law Section. Litwin earned his B.S. in Economics, cum laude, from the University of South Carolina, and his law degree from Emory University. Litwin is a former chair of the State Bar of Georgia's Taxation Law Section and the Atlanta Bar Association's Tax & Fiduciary Law Section. He is current co-chair of

the Georgia Department of Revenue Attorney Liaison Committee. From 1990 to 1995, Litwin was an assistant attorney general in the Tax Section of the State Law Department.



John Masters, CPA, attorney at law, graduated from Georgia Tech, B.S.E.E. 1969; University of Chicago, M.B.A. 1975; and Woodrow Wilson, J.D. 1979.

He worked eight years in the computer, aerospace and electronics industries prior to becoming a member of the State Bar of Georgia and earning his CPA certificate. Masters is a member of the ABA, AICPA and the Civil Air Patrol; serves on the Georgia Society of CPAs (GSCPA) Professional Ethics Committee; served as chairman of the GSCPA Tax Section; has taught, sponsored and participated in high school, college, civic, professional, media and governmental programs (including those of the Georgia Special Council on Taxation). Masters practices taxation, accounting and related fields, and represents taxpayers before administrative bodies and tax tribunals. He can be reached at johnmasters@mindspring.com.

## Endnotes

1. O.C.G.A. § 48-2-47 (2012). The Commissioner of Revenue may also issue the less formal Notice of Proposed Assessment to give the taxpayer an informal process by which to challenge the assertion of tax. See O.C.G.A. § 48-8-46 (2012). The Commissioner of Revenue typically issues a Proposed Assessment before issuing an Official Assessment. The taxpayer has 30 days to protest the Proposed Assessment. *Id.*
2. O.C.G.A. § 48-2-59(a) (2012). If the taxpayer is a nonresident business with an office in Georgia or a public utility, then the tax

appeal must be filed in the county of the taxpayer's principal place of business or in the county in which the highest corporate officer residing in Georgia maintains his/her office. O.C.G.A. § 48-2-59(a)(1) (2012). If the taxpayer is a nonresident individual or foreign corporation with no place of business in Georgia and no officer or employee residing and maintaining his/her office in Georgia, then the appeal must be filed in the Superior Court of Fulton County or to the superior court of the county in which the Commissioner of Revenue resides. O.C.G.A. § 48-2-59(a)(2) (2012). Some confusion exists surrounding filing the tax appeal. Georgia tax procedure indicates that the tax appeal must be filed with the Commissioner of Revenue, who then certifies the appeal to superior court. O.C.G.A. § 48-2-59 (2012). As a practical matter, and to be safe, some tax practitioners file the original tax appeal in superior court and also serve the Commissioner of Revenue with a service copy.

3. O.C.G.A. § 48-2-59(c) states that the bond must be posted before the superior court has jurisdiction to hear the case. If the taxpayer's interest in real property in Georgia exceeds the liability, then the taxpayer is not required to post the bond.
4. The taxpayer must also meet other conditions. For instance, the taxpayer must agree in writing to pay all taxes admittedly owed. *Id.* If the taxpayer does not meet the conditions, then the tax appeal is subject to dismissal for lack of subject-matter jurisdiction. See O.C.G.A. § 48-2-50 (2012) (only the procedures prescribed in the Georgia Code can be used to challenge an assessment); *Undercofler v. Ernhardt*, 111 Ga. App. 598, 142 S.E.2d 317 (1965). See also *Ingalls Iron Works Co. v. Blackmon*, 133 Ga. App. 164, 210 S.E.2d 377 (1974).
5. O.C.G.A. § 50-13-12 (2012).
6. In particular, after the administrative hearing, the administrative law judge issues an Initial Decision. The Department of Revenue has 30 days after the issuance of the Initial Decision to reject or

modify the decision. O.C.G.A. § 50-13-41(e) (2012). Thus, the Commissioner of Revenue can overturn the Initial Decision. If the Initial Decision is adverse to the taxpayer, then the taxpayer must appeal the Initial Decision to the Department of Revenue for review by the Commissioner of Revenue. O.C.G.A. § 50-13-17 (2012). This layer of appeal (to the Commissioner of Revenue) adds costs and another layer of concern for the taxpayer.

7. The Official Assessment becomes final if no action is taken within 30 days. O.C.G.A. § 48-2-45(a)(1) (2012).
8. O.C.G.A. § 48-2-35 (2012).
9. O.C.G.A. § 48-2-35(4) (2012).
10. Collection action begins, in earnest, by the issuance of a State Tax Fi. Fa., also known as a State Tax Lien or State Tax Execution (and will be referred to as a "State Tax Execution"). A typical creditor trying to collect a delinquent account must first obtain an order from a court of law (state or superior) and then request the clerk of court to issue the fi. fa. Before a judgment creditor can get a fi. fa., the creditor must file a civil action in court and get a judgment. The creditor will then record the fi. fa. in any county in which the debtor owns real property. The recorded fi. fa. clouds title and is a lien on the debtor's property. Unlike other creditors, the Department of Revenue is not required to get a court order from a judge as a condition to getting the fi. fa. Indeed, when a taxpayer fails to challenge an Official Assessment, the Department of Revenue has the power to issue and prepare the State Tax Execution. The Department can then file the State Tax Execution with the clerk of superior court in the taxpayer's county of residence. O.C.G.A. § 48-3-21 (2012). See *Oxford v. Generator Exchange*, 99 Ga. App. 290, 295, 178, 108 S.E.2d 174 (1959) (to be enforceable the tax fieri facias must, among other things, be recorded on the general execution docket of the county of the residence of the defendant in fi. fa. within seven years from the date of the assessment).
11. O.C.G.A. § 48-3-1 (2012). Further,

the taxpayer's case is heard by a judge without a jury. The Department of Revenue can also issue a "jeopardy assessment," which empowers the Department of Revenue to begin collection proceedings immediately. Currently, a taxpayer can challenge a "jeopardy assessment" only through an appeal to superior court. The taxpayer must post a surety bond to cover the liability. Otherwise, the superior court cannot hear the case. O.C.G.A. § 48-2-51 (2012).

12. O.C.G.A. § 5-6-35(a)(1) (2012).
13. See H.B. 100, 151st Gen. Assem., Reg. Sess., §§ 12, 13, 14 (Ga. 2012).
14. O.C.G.A. § 50-13A-7(a) (2012).
15. O.C.G.A. § 50-13A-3 (2012).  
Indeed, the Tax Tribunal will have a seal engraved with the words "Georgia Tax Tribunal." The Tax Tribunal will authenticate its orders, records and proceedings with the seal, and Georgia courts shall take judicial notice of the seal. O.C.G.A. § 50-13A-4 (2012).
16. O.C.G.A. § 50-13A-7(b) (2012).  
This flexibility gives the taxpayer opportunity to appear before the Tax Tribunal at minimum inconvenience and expense. As such, the Tax Tribunal can hear a case anywhere in the state. Naturally, rules and regulations must be adopted to address logistics on asking for an alternative hearing location.
17. See O.C.G.A. § 50-13A-2 (2012).
18. O.C.G.A. § 50-13A-9(a) (2012); H.B. 100, 151st Gen. Assem., Reg. Sess., § 2, (income and sales and use taxes), § 8 (real estate transfer taxes) and § 9 (intangible recording taxes) (Ga. 2012). O.C.G.A. § 50-13A-9(a) lists, by identifying the Code Sections, those actions for which relief can be sought by filing a petition with the Tax Tribunal.
19. O.C.G.A. § 50-13A-9(d) (2012); H.B. 100, 151st Gen. Assem., Reg. Sess., § 5 (Ga. 2012).
20. O.C.G.A. § 48-2-59 addresses appeal rights and the procedure for filing a tax appeal in superior court. The statute contains the surety bond requirement traditionally associated the proverbial brick wall that for many years prevented a taxpayer from access to superior court. The amendment to O.C.G.A. § 48-2-59, found in H.B. 100, specifically

removes the bond requirement for appeals filed with the Tax Tribunal. See H.B. 100, 151st Gen. Assem., Reg. Sess., § 5 (Ga. 2012). A taxpayer seeking to file a tax appeal in superior court must post a surety bond or demonstrate that he owns an interest in real property that is sufficient to cover the liability in the event that he loses.

21. O.C.G.A. § 48-7-31(d)(2)(C) (2012). See H.B. 100, 151st Gen. Assem., Reg. Sess., § 10 (Ga. 2012).
22. H.B. 100, 151st Gen. Assem., Reg. Sess., §§ 1, 7 (Ga. 2012).
23. O.C.G.A. § 50-13A-9(a) (2012).
24. Id.; H.B. 100, 151st Gen. Assem., Reg. Sess., § 6 (Ga. 2012).
25. O.C.G.A. § 50-13A-9(d) (2012).  
Should the taxpayer seek to challenge a jeopardy assessment issued under O.C.G.A. § 48-2-51, the Commissioner of Revenue can require that the taxpayer post a surety bond. O.C.G.A. § 50-13A-9(d) (2012).
26. O.C.G.A. § 50-13A-9(c) (2012).
27. As noted above, utilities that are centrally-assessed under O.C.G.A. § 48-2-18 and railroad equipment companies assessed under O.C.G.A. § 48-5-519 may seek relief in the Tax Tribunal.
28. A ruling on the constitutionality of a statute is beyond the scope of the executive branch tribunal and would exceed the scope of the Tax Tribunal's authority under the Act. See O.C.G.A. § 50-13A-17(g) (2012).
29. O.C.G.A. § 50-13A-9(b) (2012).  
Thus, after January 1, 2013, a taxpayer may still file in superior court (1) a tax appeal, (2) a complaint for refund, or (3) a declaratory judgment action.
30. O.C.G.A. § 50-13A-6(a) (2012).
31. O.C.G.A. § 50-13A-5(b) (2012).
32. O.C.G.A. § 50-13A-5(c) (2012).
33. O.C.G.A. § 50-13A-8(a) authorizes the chief tribunal judge to appoint a court reporter, staff attorneys and clerks. Also, the Act authorizes the chief tribunal judge to buy items necessary to operate the office, such as a library and equipment.
34. O.C.G.A. § 50-13A-10(a) (2012).  
The Act specifically prohibits the transfer to the Tax Tribunal of any matters pending before OSAH. But on or after January 1, 2013, if a taxpayer files a demand for hearing under the

- old law, O.C.G.A. § 50-13-12, then the case will be sent to the Tax Tribunal automatically, as long as the matter falls within the Tax Tribunal's jurisdiction under O.C.G.A. § 50-13A-9 (2012).
35. O.C.G.A. § 50-13A-10(a) (2012).
36. O.C.G.A. § 50-13A-10(a) (2012). A copy of the petition must be served on the Commissioner of Revenue and on the Georgia Attorney General. The action must include a certificate of service. For an action seeking refund of real estate transfer taxes or intangible recording taxes, the taxpayer must also name the clerk of the respective superior court as a party and serve the clerk with a copy of the petition. Personal service of the petition is not required. Rather, service can be made by certified mail or by statutory overnight delivery. *Id.*
37. The amount of the fee will be determined by the rules of the Tax Tribunal. O.C.G.A. § 50-13A-12(a) (2012). At the time of this writing, no rules have been adopted or proposed.
38. O.C.G.A. § 50-13A-9(d) (2012).
39. Currently, pursuing a case in superior court requires that the taxpayer post a surety bond or otherwise show that he/she/it has an interest in real estate sufficient to cover an adverse judgment. This is commonly known as the "pay-to-play" rule. Dispensing with this rule is an important element of the Act. When, however, the Department of Revenue issues a jeopardy assessment under O.C.G.A. § 48-8-51, the taxpayer must post a surety bond. The statute does not allow the taxpayer "show of an interest in real estate" as an alternative to posting the bond.
40. O.C.G.A. § 50-13A-10(b) (2012).
41. The parties cannot extend the time period for more than 30 days. Also, the judge can agree to extend the time period. O.C.G.A. § 50-13A-10(b) (2012). Thus, if the parties cannot agree to an extension of the response time, the judge, presumably, when presented with a motion to extend, can extend the deadline for the response.
42. O.C.G.A. § 50-13A-10(b) (2012).
43. *Id.* The standards for opening default under O.C.G.A. § 9-11-55(b) (providential cause that prevented filing the response, excusable neglect) apply.
44. O.C.G.A. § 50-13A-10(c) (2012). The Georgia Civil Practice Act is found at O.C.G.A. § 9-11-1, et seq.
45. O.C.G.A. § 9-11-15(a) (2012). Amendments relate back to the original pleading.
46. O.C.G.A. § 9-11-15(d) (2012). A party must receive permission from the court, through a motion, to supplement pleadings.
47. O.C.G.A. § 50-13A-18 (2012).
48. O.C.G.A. § 50-13A-18(b) (2012).
49. O.C.G.A. § 50-13A-18(c) (2012).
50. *Id.*
51. The Georgia Department of Revenue's headquarters is located at 1800 Century Blvd., Atlanta, Georgia 30345. The Georgia Department of Revenue also has regional offices spread throughout the state. The Act is not clear that service can be effected on the Commissioner of Revenue by mailing or delivering to one of the regional offices. To that end, the practitioner should deliver the document to the 1800 Century Blvd. address or the address of the Commissioner of Revenue's legal counsel (once the Georgia Attorney General's Office appears in the case).
52. O.C.G.A. § 50-13A-10(e) (2012). The rules and regulations of the Tax Tribunal will likely address pretrial/prehearing proceedings.
53. *Id.*
54. O.C.G.A. § 50-13A-10(f) (2012). Remand does not divest the tribunal of jurisdiction. Indeed, the judge's remand order must provide that either party may, upon proper advance notice to the other parties, have the matter returned to the Tax Tribunal for resolution. *Id.*
55. O.C.G.A. § 50-13A-11(a) (2012). A taxpayer that challenges only a portion of the tax, penalty, interest or collection fee, therefore, should be prepared to pay the undisputed portion.
56. Collection cannot proceed until all appeals, including appeals to superior court and any appellate court, are completed. O.C.G.A. § 50-13A-11(a) (2012). Filing a petition does not stay the collection of a jeopardy assessment issued under O.C.G.A. § 48-2-51 (2012). O.C.G.A. § 50-13A-11(a) (2012).
57. O.C.G.A. § 50-13A-11(b) (2012). Current law provides no "automatic stay," so the Commissioner of Revenue is not barred from pursuing a collection action (by filing a state tax execution), even while the tax appeal is pending. However, such is not the standard practice of the Department of Revenue's current administration.
58. O.C.G.A. § 50-13A-13(a) (2012). Indeed, a party must disclose expert witnesses prior to the hearing. The disclosure must include a written report prepared and signed by the witness, if such a report has been prepared or will be used at the hearing. O.C.G.A. § 50-13A-13(c) (2012). At a party's request, the judge or clerk shall issue subpoenas for attendance of witnesses and giving testimony and subpoenas for the production of evidence or things. O.C.G.A. § 50-13A-13(d) (2012). Witnesses who are subpoenaed or whose depositions are taken receive the same fees as a witness in superior court. O.C.G.A. § 50-13A-13(f) (2012). Currently, the witness fee is \$25.00 per day and 20 cents per mile. O.C.G.A. § 24-10-24 (2012). The Tax Tribunal judge can compel a party or witness as provided for under the Georgia Civil Practice Act. O.C.G.A. § 50-13A-13(g) (2012). The power is limited. To hold the party or witness in contempt, the judge must refer the matter to the superior court of the county in which the contempt is committed. *Id.*
59. O.C.G.A. § 50-13A-13(a) (2012).
60. The judge, however, must find that the discovery is unduly burdensome or expensive based on the amount in controversy, limitations on the parties' resources and the importance of the issues in the case. O.C.G.A. § 50-13A-13(a) (2012).
61. O.C.G.A. § 50-13A-13(b) (2012).
62. *Id.* Such stipulation must be done to the fullest extent to which complete or qualified agreement can be reached or fairly should be reached. Thus, a heavy burden is imposed on both sides to enter into a stipulation of the facts in the case no later than the conclusion of the discovery period. The Act does not prevent the parties from stipulating to facts before the expiration of discovery.



63. O.C.G.A. § 50-13A-14(a) (2012). The tribunal judge will hear all evidence and neither party is precluded from introducing evidence that may not have been introduced at the Department of Revenue level, such as during the audit or during the protest phase after the Proposed Assessment.
64. *Id.* For example, a party may seek to prevent disclosure of a trade secret or other information required to be presented at the trial but otherwise kept confidential in the normal course of its business.
65. O.C.G.A. § 50-13A-14(d) (2012).
66. O.C.G.A. § 50-13A-14(f) (2012).
67. O.C.G.A. § 50-13A-14(c) (2012).
68. The rules for the Small Claims Division are discussed below.
69. O.C.G.A. § 50-13A-15(a) (2012). An interlocutory order is an order that may resolve an issue in the case but does not contain a ruling on the ultimate question in the case. Indeed, all orders that are merely preparatory to the final hearing are “interlocutory.” Interlocutory judgments do not dispose of the case. See Ruskell, Richard, Davis & Shulman’s *Georgia Practice and Procedure*, § 23:2 (2008-09 Ed.). For instance, the Tax Tribunal judge’s issuance of a protective order under O.C.G.A. § 50-13A-14(a), to close all or part of a hearing, may be considered “interlocutory” in nature. Also, a ruling on a motion (such as a motion in limine) is interlocutory. The Act includes no means by which a party can appeal an interlocutory order.
70. O.C.G.A. § 50-13A-15(a) (2012). Note that during the same legislative session that created the Georgia Tax Tribunal Act of 2012, H.B. 846 was also passed. This law adds O.C.G.A. § 48-2-15.2, which authorizes the Department to publish all letter rulings requested after May 1, 2012. Details of O.C.G.A. § 48-2-15.2 are beyond the scope of this article.
71. O.C.G.A. § 50-13A-15(b) (2012).
72. O.C.G.A. § 50-13A-15(c) (2012).
73. In particular, under the Act, the Tax Tribunal judge’s interpretation of a tax statute in one case shall be followed by the tribunal in future cases. Further, the judge’s application of a statute to facts of one case shall be followed by judges in later cases that have similar facts, unless the interpretation has been supplanted by an appellate decision or the judge gives satisfactory reasons for deviating from the prior ruling. O.C.G.A. § 50-13A-15(c) (2012).
74. The chief judge can decide which form is best suited for public convenience.
75. O.C.G.A. § 50-13A-15(d) (2012).
76. O.C.G.A. § 50-13A-16(c) (2012). The threshold amount is (and will be) determined by the rules of the Tax Tribunal.
77. O.C.G.A. § 50-13A-16(c) (2012). Although, “for good cause,” any party may move to have the case removed from the Small Claims Division. Also, the tribunal judge may on his/her own motion remove the case from the small claims division. Small Claims Division decisions are conclusive upon all parties, are not appealable, and cannot be cited as precedent in other cases. O.C.G.A. § 50-13A-16(g) (2012). Presumably, therefore, if the amount at issue is small but the underlying legal issue is significant, then a party (including the taxpayer) or the Tax Tribunal judge can remove the case from the Small Claims Division.
78. Hearings are conducted in a manner consistent with matters before magistrate courts, and the judge may receive evidence that he/she feels is appropriate in determining the case. O.C.G.A. § 50-13A-16(f) (2012).
79. O.C.G.A. § 50-13A-14(c) (2012).
80. O.C.G.A. § 50-13A-16(d) (2012). The accountant or tax return preparer “shall not be deemed” to serve as the taxpayer’s advocate or as representing the taxpayer before the Tax Tribunal. *Id.* The Act does not require the accountant or tax-return preparer to be the same person who prepared the subject return.
81. O.C.G.A. § 50-13A-16(g) and § 50-13A-17(b) (2012).
82. O.C.G.A. § 50-13A-17 (2012). As noted above, small claims division judgments are not appealable.
83. This requirement under the Administrative Procedure Act created a trap for the unwary. Under O.C.G.A. § 50-13-41, the aggrieved party had 30 days from the issuance of an Initial Decision to ask the Commissioner of Revenue to review the Initial Decision. If, however, the aggrieved party failed to make such a request, then the Initial Decision became the Final Decision of the Department as a matter of law and could not be reviewed by the superior court. See *Alexander v. Department of Revenue*, 728 S.E.2d 320 (Ga. App. 2012) (taxpayer who did not ask the Commissioner of Revenue to review of the Initial Decision of the administrative law judge failed to exhaust administrative remedies).
84. O.C.G.A. § 50-13A-17(b) (2012). If a rehearing has been requested, then the petition for appeal must be filed within 30 days of the decision on rehearing. A copy of the petition for appeal must be served on the Tax Tribunal and all parties of record. *Id.*
85. O.C.G.A. § 50-13A-17(b) and § 50-13A-17(g) (list of bases upon which the judgment can be reversed).
86. O.C.G.A. § 50-13A-17(f) (2012). Nevertheless, by application for leave to the superior court, a party may present additional evidence not presented at the tribunal level. The evidence must be material. Further, the party must provide “good reasons” for failing to present the evidence in the tribunal hearing. If the application is granted, the party presents the evidence before the tribunal (upon conditions determined by the superior court). The tribunal judge may then modify his/her findings and judgment based on the additional evidence and file the new findings or judgments with the superior court. O.C.G.A. § 50-13A-17(e) (2012).
87. O.C.G.A. § 50-13A-17(h) (2012).

Earn up to 6 CLE credits for authoring legal articles and having them published.

Submit articles to:  
 Bridgette Eckerson  
 Georgia Bar Journal  
 104 Marietta St. NW, Suite 100  
 Atlanta, GA 30303