# PUBLICATION

## Spotlight on Georgia: Tax Reform Bill Passed

**March 27, 2012**

In the space of five days from introduction in the Georgia House to the anticipated signing by Governor Deal, Georgia has embraced a tax reform act (the Act). The Act contains a potpourri of seemingly unrelated provisions, intended to close loopholes and make Georgia more competitive in job creation. Some of those provisions are summarized below.

**Summary**

Motor Vehicle Taxation. Under Georgia's present system of taxation of motor vehicles, a motor vehicle purchased at retail from a dealer is subject to a sales tax (casual sales being exempt). All motor vehicles are also subject to an annual ad valorem tax payable on the birthday of the registered owner, if a natural person, or the anniversary of the date of initial registration if not a natural person.

The General Assembly perceived that neither initial sales tax nor annual ad valorem taxes were being paid on enough motor vehicles. For example, many individuals registered motor vehicles in counties with a lower tax rate than their county of residence or, in some cases, out of state.

The Act will eventually replace the sales tax and the annual ad valorem tax with a one-time title fee of 7 percent of the initial purchase price of the motor vehicle, regardless of the manner of acquisition (6.5 percent in 2013 and 6.75 percent in 2014). The more important exceptions are:

1. Rentals. Motor vehicles purchased by car rental companies (which do not currently pay sales tax) will be subject to a 1.5 percent title fee. Sales tax will continue to apply to rental fees;
2. New Residents. Persons moving into Georgia will pay 50 percent of the title fee upon moving into the state and the remaining 50 percent within 12 months; and
3. Grandfather. Motor vehicles titled prior to March 1, 2013 will continue to pay ad valorem taxes until transferred with the ability to opt in to the new system in 2013.

Personal Exemption. Effective January 1, 2013, the individual personal exemption, as to the Georgia income tax, for married persons filing jointly will be increased to $7,400 from $5,400 ($3,700 and $2,700 for married filing separately) and will continue to be $2,700 for unmarried persons. The exemption for dependents will continue to be $3,000. The ostensible reason for this increase is to reduce the marriage penalty.

Retirement Income Exclusion. The act will freeze the retirement income exclusion under the state's income tax for persons age 62 or older or persons who are permanently and totally disabled at the $35,000 per person level effective for 2011. Retirement income includes, in addition to passive income, up to $4,000 in earned income. Social security is exempt without regard to the retirement income exclusion.

Conservation Easement Credit. The Act limits the availability of the income tax credit for donations of land for conservation purposes in the following respects:

4. Requirements Defined. The threshold requirement of a conservation purpose is spelled out;
5. Transfers. The transferability of a credit is limited to one transfer;

6. Cap. The aggregate amount of credit allocated to all partners of a partnership is capped at $500,000 (the same as the limit for a corporation);
7. Prohibitions. Prohibitions on construction must be present in the conservation easement;
8. Stricter Approvals. The approval process is made more strict; and
9. Fees. User fees are imposed.

The changes are effective January 1, 2013. Presumably, credits earned prior to that date and not used prior to 2013 will be entitled to the carryover rules applicable to the year in which they were earned.

Film Exemption Sales Tax. The present exemption from sales and use taxes for the sale or lease of production equipment or production services for use by a certified film producer or certified film production company is eliminated effective July 1, 2012. The film income tax credit is continued.

Manufacturing and Agriculture Exemptions. The current manufacturing and agricultural sales tax exemptions are replaced by new exemption language as follows:

10. Manufacturing. The Act codifies existing regulations regarding the integrated plant theory as to the sales and use tax exemption for manufacturers. Rather than attempting to identify every process which might be manufacturing, the exemption adopts a broad brush approach to defining manufacturing. The new exemption is generally effective January 1, 2013. A new exemption for energy used in manufacturing and mining is phased in over four years beginning in 2012.
11. Agriculture. The Act replaces the current sales tax exemptions with cleaner exemption language. The Act also defines the term "qualified agriculture producer" and specifies that, to be entitled to the sales tax exemption, one must be certified by the Commissioner of Agriculture as a "qualified agriculture producer." The Act contemplates that an applicant must prove it is legitimately in the business of farming. The new rules are effective January 1, 2013.

Energy Excise Tax. So that local governments do not lose revenue as a result of the Act, local governments may impose an excise tax on energy purchases. Such excise tax may be imposed by local ordinance. The effective date of any such excise tax is generally phased in in the same manner as the phase out of the sales tax on energy purchases, i.e. January 1, 2012.

Construction Materials Exemption. Effective January 1, 2012 through June 30, 2014, sales taxes may be eliminated on materials incorporated in a "competitive product of regional significance." The Commissioner of Economic Development is required to promulgate regulations outlining the guidelines to be applied in determining what projects will qualify. Presumably, the Commissioner of Economic Development has the final say on what projects are entitled to this exemption possibly with no right of review.

Jet Fuel Exemption. Effective July 1, 2012, the sale of jet fuel to airlines is exempt from 1 percent of the 4 percent state sales and use tax. Curiously, there is an exemption from a county local option sales tax imposed on sales of jet fuel at a "qualifying airport" which is defined as any airport that has had more than 750,000 takeoffs and landing during a calendar year (which presumably is only the Atlanta airport) to a "qualifying airline" which is an airline that would have, in the absence of this exemption, had a sales tax liability of more than $15,000,000 (which presumably includes only the major airlines).

Internet Sales. Effective October 1, 2012, many internet sales will be subject to Georgia sales tax under the Act. Affected sales include:

12. Acts of Others. Sales of tangible personal property or services that are taxable in Georgia if another person (other than a common carrier) who has a substantial nexus in Georgia:

Delivers, installs, assembles or performs maintenance services for such person's Georgia customers;

Facilitates the seller's delivery of property to Georgia customers by allowing the Georgia customers to pick up property at a facility in Georgia;

Conducts any other activity in Georgia significantly associated with the Seller's ability to maintain a market in Georgia.

13. Referrals. Sales where the seller has an agreement with a Georgia resident under which the Georgia resident, for a consideration, refers potential customers to the seller, whether by a link on a website, telemarketing or personal contact, if cumulative gross receipts from all such persons is in excess of $50,000 during the preceding 12 months.

Curiously, there is a provision to the effect that no agreement with any person in the executive branch purporting to say that a person is not obligated to collect sales tax is valid unless approved by both branches of the General Assembly.

Sales Tax Holiday. The "back to school" sales tax holiday is reinstated.

**Conclusion**

As stated earlier, this Alert only reviews some of the tax provisions in the Act. Should you wish to discuss these or any of the Act's other provisions, please contact any attorney in the Firm's Tax Department.