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REVENUE AND TAXATION

Stock: Provide for Definitions and Exemptions

CODE SECTIONS:	O.C.G.A. §§ 48-6-20 (amended), 48-6-22 (amended), 48-6-25 (amended)
BILL NUMBER:	HB 724
ACT NUMBER:	180
SUMMARY:	The Act adds a definition to the Revenue Code for "domesticated foreign corporation," amends the Code section relating to taxation of personal property exempting stock of a foreign subsidiary held by a foreign parent corporation, and adds an exemption from the intangible property tax by adding a new subsection exempting stock held in a foreign corporation which was a party to a reorganization with a Georgia corporation.
EFFECTIVE DATE:	July 1, 1987

History

Article 2 of Chapter 6 of Title 48 of the Georgia Revenue and Taxation Code provides for the taxation of intangible personal property.¹ The Code classifies stock, for the purposes of ad valorem taxation, as intangible personal property.² O.C.G.A. § 48-6-25 provides that "[e]very resident and nonresident person is subject to the tax imposed" on property "acquired in the conduct of, or incident to, business carried on . . . in this state."³ There are, however, some general exemptions from this tax.⁴ Included as an exemption is "[s]tock of a domesticated foreign corporation . . . if the corporation pays to this state or its political subdivisions all taxes as provided by law."⁵

In 1937 and 1938, an extra session of the Georgia Legislature passed an intangible personal property tax,⁶ which provided that stock of corpora-

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1. O.C.G.A. § 48-6-25 (Supp. 1987).
 2. O.C.G.A. § 48-6-21 (Supp. 1987).
 3. O.C.G.A. § 48-6-25 (Supp. 1987).
 4. O.C.G.A. § 48-6-22 (Supp. 1987) (exempting certain intangible properties from taxation under the Code).
 5. O.C.G.A. § 48-6-22(7) (Supp. 1987).
 6. 1937-38 Ga. Laws, Ex. Sess., 156, 162-63.

tions created under Georgia law (Georgia corporations) was exempt from the tax so long as the corporation paid all taxes required by law.⁷ In *Head v. Rich*,⁸ the Georgia Supreme Court construed this exemption to apply as well to the stock of "duly domesticated" foreign corporations.⁹ The Code provided for the status of a domesticated foreign corporation, therefore the court concluded that, upon becoming domesticated, the domesticated corporation and its stockholders were entitled to "the same powers, privileges, and immunities as similar corporations created under the laws of this State."¹⁰ The court reasoned that the exemption from tax of stock in Georgia corporations was an "immunity." Therefore, the stock of a domesticated foreign corporation was entitled to the same exemption,¹¹ provided that the corporation paid all tax obligations required by law.¹²

O.C.G.A. § 14-2-310 requires all foreign corporations to secure a certificate of authority from the Secretary of State in order to transact business in the state.¹³ This section eliminated the choice which foreign corporations previously had either to conduct business as an undomesticated corporation or to become a domesticated corporation.¹⁴ A grandfather clause was provided, however, for those foreign corporations which had been domesticated prior to April 1, 1969.¹⁵ Such corporations were allowed "perpetual existence as a domesticated foreign corporation" unless the status of the corporation changed in some other way.¹⁶ Beginning in 1986, the Department of Revenue took the position that if a corporation held domesticated foreign status prior to April 1, 1969, the exemption for stock held in such corporation still existed; however, if a corporation did not hold that status, there was no provision to allow the exemption.¹⁷ Accordingly, in 1986, the Department began taxing stock held in domesticated foreign corporations, which were not covered by the grandfather clause.¹⁸

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The Act was introduced in response to the new interpretation by the Revenue Department and represents an effort to encourage foreign corpo-

7. *Id.*

8. 190 Ga. 680, 10 S.E.2d 183 (1940).

9. *Id.* at 681, 10 S.E.2d at 184.

10. *Id.* (quoting GA. CODE ANN. § 22-1601 (Harrison 1938)).

11. 190 Ga. at 681, 10 S.E.2d at 184-85.

12. *Id.*

13. O.C.G.A. § 14-2-310 (1982).

14. See comment following O.C.G.A. § 14-2-310 (1982); see also *Roberts v. Lipson*, 231 Ga. 142, 200 S.E.2d 722 (1973) (1968 Ga. Laws 565 revised the corporations code and eliminated the provisions for domestication of foreign corporations).

15. O.C.G.A. § 14-2-330(a) (1982).

16. *Id.*

17. Telephone interview with Representative Steve Thompson, House District No. 20, Post 4 (May 1, 1987) [hereinafter Thompson Interview].

18. *Id.*

rations to do business in Georgia by abrogating the threat that they will be taxed twice, both as a corporation and as stockholders.¹⁹ Section 1 of the Act amends O.C.G.A. § 48-6-20 by creating a new paragraph, (3.1), which provides a definition of domesticated foreign corporation. A domesticated foreign corporation is either one domesticated by the proper procedure prior to April 1, 1969, or a foreign corporation "which has procured a certificate of authority to transact business in this state from the Secretary of State and which maintains its corporate headquarters in this state."²⁰ Section 1 was included in the original version of HB 724 and was unchanged during the legislative process.

Section 2 of the Act amends O.C.G.A. § 48-6-25 by adding to the section imposing tax on intangible personal property acquired in the conduct of one's business, a statement of what is not considered such property. The new section provides that stock held in a "foreign subsidiary corporation" by a foreign parent company having its corporate headquarters in this state is not considered to have been acquired either in the conduct of business, or incident to the conduct of business, carried on in this state. The stock does not have a "taxable situs" in this state.²¹ This section was added to the original version of HB 724 by a House committee substitute.²²

Section 3 of the Act, also added by the House committee substitute, amends O.C.G.A. § 48-6-22 by adding a new paragraph (16), pertaining to stock held in a foreign corporation, which participated in a "reorganization" with a Georgia corporation before January 1, 1986. If the stock of the Georgia corporation was exempt from the intangible property tax before the reorganization, the stock of the "reorganized" foreign corporation is exempt from the intangible property tax as well.²³ This section was modified by the Senate Committee on Banking and Finance, which qualified it by adding that the reorganization must be "under the provisions of Part 19 of Article 2 of Chapter 1 of Title 7."²⁴ This modification was incorporated into the final version of the Act.²⁵

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19. *Id.*

20. O.C.G.A. § 48-6-20(3.1) (Supp. 1987).

21. O.C.G.A. § 48-6-25 (Supp. 1987). This section was added to the Code in response to concerns of large corporations, such as Home Depot and RJR Nabisco, which were concerned that under prior Georgia law their out-of-state subsidiaries would be subject to the Georgia tax. Thompson Interview, *supra* note 17.

22. O.C.G.A. § 48-6-25 (Supp. 1987).

23. O.C.G.A. § 48-6-22(16) (Supp. 1987).

24. *Id.*

25. *Id.* This section was added in response to concerns of interstate banks that had merged with Georgia banks prior to January 1, 1986 and would have been excessively taxed under prior law. Thompson Interview, *supra* note 17.