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## REVENUE AND TAXATION Ad Valorem Taxation of Property: Provide for the Ad Valorem Taxation of Timber and Current Use Valuation / Taxation of Bona Fide Conservation Use Property and Bona Fide Residential Transitional Property

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## REVENUE AND TAXATION

### *Ad Valorem Taxation of Property: Provide for the Ad Valorem Taxation of Timber and Current Use Valuation/Taxation of Bona Fide Conservation Use Property and Bona Fide Residential Transitional Property*

CODE SECTIONS: O.C.G.A. §§ 12-2-4 (amended), 20-2-164 (amended), 48-5-1, -2, -6, -7, -7.1 (amended), 48-5-7.4, -7.5 (new), 48-5-32 (amended), 48-5-32.1 (new), 48-5-33, -269, -274 (amended)

BILL NUMBER: HB 283

ACT NUMBER: 592

SUMMARY: The Act allows taxation of standing timber when it is cut or sold. The Act also allows certain qualifying properties to be valued according to current use rather than fair market value to preserve the aesthetic beauty of the State of Georgia and to allow property owners to keep large pieces of property that were previously unaffordable due to high taxes.

EFFECTIVE DATE: January 1, 1992

#### *History*

House Resolution 836 passed the General Assembly in 1990.<sup>1</sup> In July 1990, Ways and Means Committee members and support staff<sup>2</sup> began work on enabling legislation for Amendment 3 to the Georgia Constitution.<sup>3</sup> That Amendment, which contained the Timber Tax Break, was approved by voters in November 1990 by a margin of three to one.<sup>4</sup> The Resolution required HB 283 to be drawn by the House Ways and Means Committee and thrown into the hopper.<sup>5</sup>

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1. Interview with Monnie Sellars, Research Analyst, Ways and Means Committee (Apr. 2, 1991) [hereinafter Sellars Interview]. Ms. Sellars played a significant part in the research for this legislation. *Id.*

2. Rep. Terry Coleman, Deputy Legislative Counsel Joe Scheuer, and Ways and Means Research Analyst Monnie Sellars.

3. Ways and Means End of Session Report, 1991 Ga. Gen. Assem., at 6.

4. Sellars Interview, *supra* note 1.

5. *Id.*

The changes provided by the Act are nothing new to the House Ways and Means Committee Chairman.<sup>6</sup> The Chairman has been looking at this issue for the past seventeen years.<sup>7</sup> A mechanism was needed to make it possible to hold family property together since property taxes were unreasonable.<sup>8</sup> The problem was expanding throughout the State of Georgia and especially affected family farms.<sup>9</sup> The Chairman pointed out that in rural Georgia "taxation transcends the concept of the monetary value of holding land."<sup>10</sup> Property taxes had become excessively high because of artificial fair market values and inflated sales due to speculative real estate ventures and transactions.<sup>11</sup> The demand for infrastructure in many areas was so great that local officials were becoming more concerned about development than the quality of life.<sup>12</sup>

### *HB 283*

The Timber Tax Break Act provides relief for taxpayers who own land upon which timber is grown for sale, and for taxpayers who use property in specific ways.<sup>13</sup> The intention of the Act is to ensure that Georgia landowners will pay less in taxes on their property when the property is held for certain bona fide purposes.<sup>14</sup> The Act also allows property owners who grow timber for purposes of sale to be taxed on that timber at the time of cut or sale.<sup>15</sup>

The Act is broken down into three separate areas of benefit or exemption for taxpayers.<sup>16</sup> The first is for preservation and conservation lands.<sup>17</sup> A covenant can be entered into to have certain agricultural and timber land valued for tax purposes at current use instead of fair market value.<sup>18</sup> The land is taxed as usual; however, the timber is exempt until cut or sold.<sup>19</sup>

The second change is for residential transitional property.<sup>20</sup> A covenant can be entered into by certain homeowners eligible to have their

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6. Interview with Rep. William J. Dover, Chairman, House Ways and Means Committee (Apr. 2, 1991) [hereinafter Dover Interview].

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. O.C.G.A. §§ 48-5-1 to -7.5 (1991).

14. Dover Interview, *supra* note 6.

15. O.C.G.A. § 48-5-7.5 (1991).

16. Sellars Interview, *supra* note 1.

17. O.C.G.A. § 48-5-7.4(a) (1991).

18. O.C.G.A. § 48-5-7.1(s) (1991).

19. O.C.G.A. §§ 48-5-7(c.2), -7.5 (1991).

20. O.C.G.A. § 48-5-7.1(c.3) (1991).

property assessed for tax purposes based on current use instead of fair market value.<sup>21</sup>

The third change is for timber land.<sup>22</sup> Timber is exempt from ad valorem tax until it is cut down or sold.<sup>23</sup> If the land on which the timber grows is under a covenant, the timber is tax exempt until it is cut down or sold, at which time it is subject to a one-time tax based on its fair market value.<sup>24</sup> The Act also provides for "Truth in Tax" to ensure that local people are informed if there will be tax increases, and to provide a rational basis for such increases.<sup>25</sup>

Under the amended Code sections, all property will be taxed at the fair market value, which is the value which would be realized from an arm's-length cash sale, except as otherwise provided in Chapter 5.<sup>26</sup> Article 2 provides definitions of current use values as they relate to bona fide conservation use property and residential transitional property.<sup>27</sup> Of the utmost importance is how these current use values are treated under this Act as a whole. It is still important to know the value of the sale of such property in an arm's-length negotiation; however, the value is based upon a continuing use of the property under existing conditions.<sup>28</sup>

New Code section 48-5-7.4 provides guidelines as to what qualifies for bona fide conservation use property.<sup>29</sup> Under this section, parcels of land held by a single owner may qualify if the land does not exceed 2,000 acres of tangible real property.<sup>30</sup> The primary purpose of owning the land must be any good faith production such as farming or commercial production of agricultural products or timber.<sup>31</sup> When such property is valued, the value includes tangible property that is permanently affixed to the real property and is directly connected to the production, storage, and processing of the agricultural products or timber.<sup>32</sup> The ad valorem tax value of the property excludes the value of any residence located on the property.<sup>33</sup>

The Act provides factors to be considered in determining whether property is qualified.<sup>34</sup> They are "(i) the nature of the terrain; (ii) the

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21. *Id.*

22. O.C.G.A. § 48-5-7.5 (1991).

23. *Id.*

24. *Id.*

25. O.C.G.A. § 48-5-32 (1991).

26. O.C.G.A. §§ 48-5-1, -2, -6 (1991).

27. O.C.G.A. § 48-5-2 (1991).

28. *Id.*

29. O.C.G.A. § 48-5-7.4(a) (1991).

30. O.C.G.A. § 48-5-7.4(a)(1) (1991).

31. *Id.*

32. O.C.G.A. § 48-5-7.4(a)(1)(A) (1991).

33. O.C.G.A. § 48-5-7.4(a)(1)(B) (1991).

34. O.C.G.A. § 48-5-7.4(a)(1)(D) (1991).

density of the marketable product on the land; (iii) the past usage of the land; (iv) the economic merchantability of the agricultural product; and (v) the utilization or nonutilization of recognized care, cultivation, harvesting, and like practices applicable to the product involved and any implemented plans thereof."<sup>35</sup>

Article 7.4 of the Act also provides that environmentally sensitive property, which is certified as such by the Department of Natural Resources,<sup>36</sup> may qualify for the conservation use covenant.<sup>37</sup> Those properties include properties that are in the mountain regions, wetland areas, significant ground water recharge areas, undeveloped barrier islands, areas containing threatened or endangered species, and river corridors.<sup>38</sup>

Article 7.4(b) provides additional rules for conservation use property.<sup>39</sup> For example, the entire tract of property need not qualify.<sup>40</sup> Rather, as long as fifty percent or more of the area of a single tract of real property is used for a qualifying purpose, then the entire tract qualifies for current use assessment unless some other kind of business is being operated on the unused portion.<sup>41</sup> Leasing the unused portion for hunting rights is not "another type of business."<sup>42</sup> If the acreage is less than ten acres, the owner may be required by the tax assessor to submit proof of bona fide conservation use.<sup>43</sup> If the property is leased to a person or entity that would not be entitled to the conservation use assessment, then the property will not qualify as a bona fide conservation use property.<sup>44</sup>

Article 7.4 also sets guidelines for qualifying as a bona fide residential transitional property.<sup>45</sup> Basically, subsection (c) states that if a single owner of private single-family residential owner-occupied land owns five acres or less in an area that is being developed into commercial use, the classification for current use value applies.<sup>46</sup> The transitional change may be evidenced by "recent zoning changes, purchase by a developer, affidavits of intent, or close proximity to property which has undergone a change from single-family residential use."<sup>47</sup> The valuation must be affected by the proximity to such a transitional area.<sup>48</sup>

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35. *Id.*

36. O.C.G.A. § 12-2-4(k) (Supp. 1991).

37. O.C.G.A. § 48-5-7.4(a)(2) (1991).

38. *Id.*

39. O.C.G.A. § 48-5-7.4(b) (1991).

40. O.C.G.A. § 48-5-7.4(b)(1) (1991).

41. *Id.*

42. *Id.*

43. O.C.G.A. § 48-5-7.4(b)(2) (1991).

44. O.C.G.A. § 48-5-7.4(b)(4) (1991).

45. O.C.G.A. § 48-5-7.4(c) (1991).

46. *Id.*

47. *Id.*

48. *Id.*

The importance of qualifying as a residential transitional property or a conservation use property is that the property is assessed for tax purposes at a current use value instead of a higher fair market value.<sup>49</sup> While the landowner receives a significant tax advantage, and a portion of the tax burden is shifted to other land owners, the qualifying landowner must make substantial promises and covenants.<sup>50</sup>

Article 7.4, subsection (d), sets forth requirements of the landowner's agreement to covenant the land with the appropriate taxing authority.<sup>51</sup> The covenant requires that the landowner maintain the property for the current use and purpose for ten years.<sup>52</sup> At the end of the ten years, the covenant may be renewed for an additional ten years.<sup>53</sup> If the landowner breaks the covenant by selling the residential transitional property or the conservation use property to an unqualified person, the landowner is penalized twice the taxes that had been saved by basing the tax on the current use valuation rather than the fair market valuation for each completed or partially completed year of the covenant.<sup>54</sup> Exceptions to this penalty include the taking of all or part of the property under eminent domain or the death of an owner who was a party to the covenant.<sup>55</sup> Also, if an owner is currently receiving preferential assessment under Code section 48-5-7.1, the owner may not receive the current use value unless and until the owner qualifies and elects to do so under this Act.<sup>56</sup>

Article 7.4, subsection (r), provides that property assessed according to current use will be classified separately from all other property on the tax digest.<sup>57</sup> Checks and balances of the new system are provided by the State Revenue Commissioner's submission of "an annual report to the Governor and the House Ways and Means, Natural Resources, and Agriculture and Consumer Affairs committees and the Senate Finance and Public Utilities, Natural Resources, and Agriculture committees," which includes the fiscal impact of the current use assessments in lieu of the fair market value assessments.<sup>58</sup>

The Timber Tax Break is found at Code section 48-5-7.5.<sup>59</sup> The tax break is given as a one-time fair market value assessment of standing

49. O.C.G.A. §§ 48-5-1 to -2 (1991); Dover Interview, *supra* note 6.

50. O.C.G.A. § 48-5-7.4(d) (1991); Dover Interview, *supra* note 6.

51. O.C.G.A. § 48-5-7.4(d) (1991).

52. *Id.*

53. *Id.*

54. O.C.G.A. § 48-5-7.4(l) (1991).

55. O.C.G.A. § 48-5-7.4(n) (1991).

56. O.C.G.A. § 48-5-7.4(f) (1991); Dover Interview, *supra* note 6.

57. O.C.G.A. § 48-5-7.4(r) (1991). Additional provisions are made for taxation for school purposes, O.C.G.A. § 48-5-274 (1991), and the calculation of "local fair share funds" under the Quality Basic Education Program. O.C.G.A. § 20-2-164 (Supp. 1991).

58. O.C.G.A. § 48-5-7.4(s) (1991).

59. O.C.G.A. § 48-5-7.5(a) (1991).

timber on the property.<sup>60</sup> The assessment is to be made in the county where the timber was grown.<sup>61</sup> The Act provides for the tax to be paid upon a "sale," which may be either a lump sum sale, a unit sale, or an owner harvest.<sup>62</sup> A lump sum sale occurs when standing timber is sold at arm's-length for a lump sum price and is to be harvested within three years.<sup>63</sup> "The fair market value of such timber for purposes of ad valorem taxation shall be the lump sum price paid by the purchaser . . ."<sup>64</sup> Once the seller receives the purchase price from the buyer, the seller must remit the amount of ad valorem tax due the buyer in the form of a negotiable instrument payable to the tax collector.<sup>65</sup> The buyer then has five days to remit the instrument to the tax collector.<sup>66</sup> If the buyer fails to do so, he is personally liable for the tax.<sup>67</sup>

A timber sale may also be by unit price.<sup>68</sup> This occurs when a bona fide purchase is made in which the buyer purchases cut timber by the unit.<sup>69</sup> The buyer must report to the county tax assessors within forty-five days of the sale the total dollar value of standing timber paid to the sellers and the volume of timber harvested.<sup>70</sup> The fair market value of the timber for the ad valorem tax is the total dollar amount paid by the buyer.<sup>71</sup> The seller, again, pays the ad valorem tax.<sup>72</sup>

Owner harvest is also considered a sale.<sup>73</sup> This is where an owner of real property in Georgia harvests any standing timber from his own land.<sup>74</sup> The owner must report the volume to the tax assessor, and identify the tract from which the standing timber was harvested.<sup>75</sup>

A major point of opposition to the timber tax legislation was who would receive the burden of the tax shift.<sup>76</sup> The majority of the opposition was provided by the metro Atlanta representatives in the General Assembly.<sup>77</sup> They were concerned that their constituents' taxes would be used to heavily subsidize rural counties whose timber would be

60. *Id.*

61. *Id.*

62. O.C.G.A. § 48-5-7.5(b) (1991).

63. O.C.G.A. § 48-5-7.5(c) (1991).

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.*

68. O.C.G.A. § 48-5-7.5(d) (1991).

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.*

73. O.C.G.A. § 48-5-7.5(e) (1991).

74. *Id.*

75. *Id.*

76. Betsy White, *House OKs Property Tax Relief Bill*, ATLANTA J. & CONST., Feb. 13, 1991, at C3.

77. *Id.*

shielded from taxes.<sup>78</sup> While state officials maintained that they had no way to determine the impact of the bill,<sup>79</sup> the House Ways and Means Committee Chairman stated that although officials were afraid of a diluted tax base, the tax money belongs to the people of Georgia.<sup>80</sup> The burden would be shifted to those noncovenant holders who refuse to maintain their land in its present state, and instead retain the option to sell to high paying developers.<sup>81</sup> Supporters of the bill contended that this is the only way to preserve the aesthetic beauty of the State while protecting landowners from losing their property due to high taxes.<sup>82</sup> Also, the House Ways and Means Chairman pointed out that the current use valuation merely freezes the value of the land for assessment purposes for ten years.<sup>83</sup> The tax is still payable each year, but is based on the lower current use value rather than the fair market value.<sup>84</sup>

The bill, as introduced, served as a starting point for the enabling legislation, and significant changes were made before it passed.<sup>85</sup> The Senate added language to clarify that leased property is not eligible unless the lessee is herself qualified.<sup>86</sup> When the bill passed the Senate floor with that Amendment, the House disagreed with that version.<sup>87</sup> The Senate insisted on its position, and because of the disagreement, the bill was appointed to the Conference Committee.<sup>88</sup> After two days of negotiation and changes, the Conference Committee reached an agreement.<sup>89</sup> The changes made in the Conference Committee were (1) a capitalization formula to determine the value of bona fide conservation use properties based upon thirty-five percent sales/sixty-five percent income, and (2) reinstatement of the Uniform Truth in Taxation Act that the Senate had deleted.<sup>90</sup> This provided Georgia with the first uniform statewide application of Truth in Taxation, a substantive provision about notice for local property taxpayers.<sup>91</sup>

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78. *Id.*

79. *Id.*

80. Dover Interview, *supra* note 6. Rep. Dover stated that the "revenue's the folks", not the officials.'" *Id.*

81. *Id.*

82. *Id.*

83. *Id.*

84. *Id.*

85. Sellars Interview, *supra* note 1.

86. Report by Rep. Dover to House of Representatives, Mar. 15, 1991, at 2 [hereinafter Dover Report].

87. Sellars Interview, *supra* note 1.

88. *Id.* House members of the Conference Committee were Reps. Dover, Godbee, and Royal. Senate members were Sens. Starr, Turner, and Deal.

89. Sellars Interview, *supra* note 1.

90. Dover Report, *supra* note 86 at 2.

91. Sellars Interview, *supra* note 1.



One concern about the Act is providing notice to qualifying taxpayers that such tax breaks exist. Assurance was given by the Chairman that his media contacts and public speaking plans, as well as the Act's advocates such as the Georgia Forestry Commission and the Georgia Farm Bureau, will serve to alert Georgia taxpayers of the Act's purposes and benefits.<sup>92</sup>

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92. Dover Interview, *supra* note 6.