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MOTOR VEHICLES AND TRAFFIC Registration and Licensing of Motor Vehicles and Ad Valorem Taxation: Issue License Plates to Vehicle Owners Instead of Vehicles; Allow License Plates to be Transferred Between Vehicles Successively Owned by the Same Person; Amend Laws Concerning Ad Valorem Taxation of Motor Vehicles

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MOTOR VEHICLES AND TRAFFIC

Registration and Licensing of Motor Vehicles and Ad Valorem Taxation: Issue License Plates to Vehicle Owners Instead of Vehicles; Allow License Plates to be Transferred Between Vehicles Successively Owned by the Same Person; Amend Laws Concerning Ad Valorem Taxation of Motor Vehicles

CODE SECTIONS: O.C.G.A. §§ 40-1-1, 40-2-6, -8, -20 to -21, -31 to -33, -40 to -43, -45, -47, -49, -61 to -62, -65 to -68, -70 to -71, -73 to -75, -77 to -80, -83 to -86, 48-2-61, 48-5-440, -471 to -474, 48-10-5, -7 (amended)

BILL NUMBER: HB 205

ACT NUMBER: 42

GEORGIA LAWS: 1997 Ga. Laws 419

SUMMARY: The Act changes certain provisions of title 40 of the Georgia Code, by defining terms to eliminate confusion, by providing that license plates and revalidation decals be issued to vehicle owners instead of assigned to vehicles, by providing that license plates and revalidation decals be transferred between vehicles in certain circumstances, and by making various other administrative changes concerning the registration and licensing of vehicles. The Act also changes certain provisions of title 48 of the Code, relating to revenue and taxation, by defining terms to eliminate confusion, by changing certain provisions relating to motor vehicles subject to ad valorem taxation, by changing certain provisions relating to ad valorem taxation on motor vehicles held in inventory for resale by dealers, and by making various other administrative changes.

EFFECTIVE DATE: May 1, 1997

History

Before 1995, Georgia was one of the few states that had not enacted a twelve-month staggered vehicle registration system. Rather, under


pre-1995 legislation, if a Georgia resident owned a vehicle on January 1 of a given year, he or she had to register the vehicle and pay ad valorem taxes within the first four months of that year.\textsuperscript{3} Depending upon where in the alphabet a resident's name fell, residents registered their vehicles and paid ad valorem taxes in the month of either January, February, March, or April.\textsuperscript{4}

Because a large number of Georgia residents waited until the last minute before paying ad valorem taxes or renewing their registration, many residents had to stand in long lines at various vehicle registration offices.\textsuperscript{5} This was especially true in urban counties. To accommodate the flood of last minute registration renewals and payment of taxes, the county governments had to hire a significant number of temporary employees to ensure that the local tag and title offices serviced as many citizens as possible before the registration periods in either January, February, March, or April expired.\textsuperscript{6} This need to hire temporary employees strained county budgets.\textsuperscript{7}

To alleviate this problem, the General Assembly enacted a staggered vehicle registration system in 1995.\textsuperscript{8} Under this new staggered system, natural persons registered their vehicles and paid ad valorem taxes within a thirty-day period immediately preceding their dates of birth.\textsuperscript{9} According to Representative Alan Powell, the purpose of the 1995 Act was to eliminate the long lines and alleviate the need to hire temporary employees at the various tag and title offices by expanding the period of time within which citizens renewed their registration and paid their ad valorem taxes.\textsuperscript{10} Citizens could no longer wait until the last few days

\begin{itemize}
\item \textsuperscript{3} \textit{See} 1994 Ga. Laws 352, § 1 (formerly found at O.C.G.A. § 40-2-20(a)(1) (1994)) (stating that owners must register their vehicles before May 1); 1990 Ga. Laws 2048, § 2, at 2064 (formerly found at O.C.G.A. § 40-2-21 (1994)) (stating that owners must register their vehicles in either January, February, March, or April, depending upon what letter begins owner's name); 1993 Ga. Laws 1678, § 4, at 1681 (formerly found at O.C.G.A. § 48-5-473(a) (1993)) (stating that ad valorem taxes are due when an owner applies for registration and purchases a license plate or "at the time of the first sale or transfer of the motor vehicle after December 31 or on May 1, whichever occurs first"); \textit{see also} Powell Interview, \textit{supra} note 2.
\item \textsuperscript{4} \textit{See} 1990 Ga. Laws 2048, § 2, at 2064 (formerly found at O.C.G.A. § 40-2-21 (1994)).
\item \textsuperscript{5} \textit{See} Powell Interview, \textit{supra} note 2.
\item \textsuperscript{6} \textit{See id.; see also} 1990 Ga. Laws 2048, § 2, at 2064 (formerly found at O.C.G.A. § 40-2-21 (1994)).
\item \textsuperscript{7} \textit{See} Powell Interview, \textit{supra} note 2.
\item \textsuperscript{8} \textit{See} 1995 Ga. Laws 809.
\item \textsuperscript{9} \textit{See id.} § 2, at 810 (formerly found at O.C.G.A. § 40-2-20 (1996)); \textit{id.} § 3, at 812 (formerly found at O.C.G.A. § 40-2-21 (1996)); \textit{id.} § 17, at 825 (formerly found at O.C.G.A. § 48-5-471 (1996)); \textit{id.} § 19, at 826 (formerly found at O.C.G.A. § 48-5-473 (1996)). \textit{But see id.} § 3 (formerly found at O.C.G.A. § 40-2-21(a)(1)(a)(ii), (a)(1)(C) (1996) (providing different registration schedules for entities other than natural persons, and counties electing not to have staggered registration periods).
\item \textsuperscript{10} Powell Interview, \textit{supra} note 2. \textit{But see} Telephone Interview with Rep. Bart
of January, February, March, or April because, under the new system, they had to renew their registration and pay their taxes at different times throughout a twelve-month period.\textsuperscript{11}

The 1995 Act designated 1997 as the transition year in which the staggered vehicle registration system would take effect.\textsuperscript{12} In 1996, the General Assembly amended the language of the 1995 Act, but no major substantive changes were made.\textsuperscript{13} However, when the effective date for the 1995 legislation was closing in, the General Assembly realized that the 1995 Act contained several problems that needed correction.\textsuperscript{14} Thus, in 1997, HB 205 was introduced to meet this need.\textsuperscript{15}

\textbf{HB 205}

\textit{Introduction}

In 1995, the General Assembly enacted a staggered vehicle registration system, which extensively revised the procedures for licensing, registering, and paying ad valorem taxation for motor vehicles owned throughout the State.\textsuperscript{16} In 1997, the General Assembly amended the 1995 legislation primarily to eliminate double taxation problems that existed under the 1995 Act.\textsuperscript{17} Some of the more important changes enacted in 1997 include assigning license plates to vehicle owners rather than to the vehicles themselves\textsuperscript{18} and allowing vehicle owners to transfer their license plates and registration from one vehicle to another vehicle successively acquired during the same registration period.\textsuperscript{19} The 1997 Act also states that ad valorem taxation cannot "be collected more than once per calendar year with respect to the same motor vehicle."\textsuperscript{20}

Furthermore, the General

\begin{flushleft}
\begin{footnotesize}
\textsuperscript{12} See id. § 21, at 821 (denoting Jan. 1, 1997 as effective date).
\textsuperscript{14} See Powell Interview, supra note 2.
\textsuperscript{15} See id.
\textsuperscript{17} See, e.g., O.C.G.A. §§ 40-2-20 to -21, -31, -42, 48-5-471 to -473 (1997).
\textsuperscript{18} See id. § 40-2-31(a).
\textsuperscript{19} See id. § 40-2-42(a).
\textsuperscript{20} Id. §§ 48-5-471, -473.
\end{footnotesize}
\end{flushleft}
Assembly modified some of the language of the 1995 Act concerning a tax exemption for vehicles held in inventory for sale or resale by automobile dealers.21 Although several statutes have been affected by the 1997 Act, many of the changes are administrative, and this Peach SheetTM will discuss in detail only those changes that substantively affect former law.

Definitions

Before examining the effect of the 1997 Act on prior versions of the staggered vehicle registration system, several terms need to be defined. “Vehicle” is defined under the 1997 Act as any motor vehicle, including tractors, motorcycles, and trailers, that are “required to be registered and licensed under Code Section 40-2-20.”22 The Act defines “owner” as “a person, other than a lienholder or security interest holder, having property in or title to a vehicle” or who is “entitled to the use and possession of a vehicle subject to a security interest in or lien by another person.”23 The term “owner” also includes “a lessee of a vehicle when the vehicle is operated under a lease agreement,”24 but it does not include “a lessee under a lease not intended as security.”25

The Act also contains two types of registration periods.26 The first type of registration period, known as the “initial registration period,” concerns the period of time during which an owner must register a newly purchased vehicle.27 If an owner acquires a new or used vehicle, he or she must register the vehicle within thirty days immediately following the date of purchase or acquisition.28 The second type of

22. Id. § 40-2-21(a)(2). The following vehicles do not require registration and licensing and are not subject to Code section 40-2-20: (1) any motor vehicle owned by the state or a municipality and exclusively used “for governmental functions except to the extent provided by Code Section 40-2-37”; (2) “any tractor or three-wheeled motorcycle used only for agricultural purposes”; (3) any trailer that has no springs and is used to haul “unprocessed farm products to their first destination”; (4) any trailer that has no springs, is pulled from a tongue, and is primarily used “to transport fertilizer to a farm”; (5) any motorized cart; or (6) any moped. Id. § 40-2-20(b). Code section 40-2-47 discusses the registration and licensing requirements for trailers. Id. § 40-2-47 (stating that certain trailers may obtain permanent registration and license plates in lieu of annual registration and license plates). Former Code section 40-2-79, which defined “trailer,” has been stricken and designated as “[t]hree-wheeled motor vehicle with its own engine and designed to transport agricultural products.” Compare 1990 Ga. Laws 2048, § 2, at 2102 (formerly found at O.C.G.A. § 40-2-79 (1994)), with O.C.G.A. § 40-2-79 (1997).
24. Id. § 40-2-21(a)(2).
25. Id. § 40-1-1(39).
27. See id. § 40-2-21(a)(1).
28. See id.
registration period, known simply as the “registration period,” is the period of time during which an owner must renew his or her vehicle registration. This registration period applies to vehicles that were registered by their owners during the last registration period, rather than to newly acquired vehicles, and thus, the owners must renew their registration if they want to continue legally operating their vehicles on public thoroughfares. Under the Act, natural persons must renew their registration within “the 30 day period ending at midnight on the birthday of the owner.”

For ad valorem taxation purposes, the Act defines “owner,” “initial registration period,” and “registration period” in the same manner. However, it defines “motor vehicle” as any vehicle “designed primarily for use upon the public roads,” but this term does “not include heavy-duty equipment . . . owned by a nonresident and operated in this state.”

Changes to Former Law

As stated before, one of the primary purposes of the 1995 Act was to create a staggered vehicle registration system in which each owner registered his or her vehicle within the thirty-day period immediately preceding his or her birthday. The 1995 legislation mandated that ad valorem taxes be paid when an owner applied for registration and purchased a license plate. If an owner acquired a new or used vehicle without a current and valid registration, the owner had to register the vehicle and obtain a license to operate it within twenty-one days after the date of acquisition. If the owner came into possession of such a vehicle before his or her birthday, the owner again had to renew his or

29. See id. § 40-2-21(a)(1).
30. See id. §§ 40-2-20 to -21.
31. Id. § 40-2-21(a)(1)(A)(i). This Code section also delineates the registration period for entities other than natural persons, vehicles in excess of 26,000 pounds, and counties that have chosen a four-month staggered registration period rather than a twelve-month staggered registration period. See id. § 40-2-21(a)(1)(A)(ii)-(iii), (a)(1)(B).
32. See id. § 48-5-440.
33. Id. § 48-5-440(4).
34. See 1995 Ga. Laws 809, § 3, at 812 (formerly found at O.C.G.A. § 40-2-21(a)(1)(A)(i) (1996)). Although the 1995 and 1997 Acts both provide different registration schedules for entities other than natural persons, vehicles in excess of 26,000 pounds, and counties electing a four-month staggered registration period, this article will discuss the effects of these Acts only as they pertain to natural persons subject to a 12-month staggered registration period. See O.C.G.A. § 40-2-21(a)(1)(A)(ii)-(iii), (a)(1)(B) (1997); 1995 Ga. Laws 809, § 3, at 812 (formerly found at O.C.G.A. § 40-2-21(a)(1)(A)(ii)-(iii), (a)(1)(B) (1996)).
35. See 1995 Ga. Laws 809, § 19, at 826 (formerly found at O.C.G.A. § 48-5-473(a) (1996)).
36. See id. § 2, at 810 (formerly found at O.C.G.A. § 40-2-20(a)(1) (1996)).
her registration on his or her birthday even if the amount of time that elapsed since the initial registration was less than twelve months.\textsuperscript{37} In 1996, the General Assembly expanded the twenty-one day period for registering newly acquired vehicles to thirty days.\textsuperscript{38}

One of the initial problems identified by the 1997 General Assembly was that the 1995 Act could potentially result in double taxation.\textsuperscript{39} Prior to the effective date of the 1995 Act, the Georgia Department of Revenue (DOR) was asked to interpret the Act with respect to the payment of ad valorem taxation.\textsuperscript{40} Relying on the advice of the Attorney General's Office, the DOR issued a ruling, stating that if an owner came into possession of a newly acquired vehicle prior to his or her birthday, the owner had to register the vehicle and pay ad valorem taxes within thirty days after the date of acquisition.\textsuperscript{41} Then, when the owner's birthday arrived, he or she had to renew his or her registration and pay ad valorem taxes again.\textsuperscript{42} This ruling would have led to double taxation because an owner of such a vehicle would have paid ad valorem taxes twice within the same twelve month registration period.\textsuperscript{43}

To eliminate this possibility, the 1997 General Assembly made changes to several Code sections.\textsuperscript{44} First, to avoid confusion as to when an owner had to register his or her vehicle, the General Assembly

\textsuperscript{37} See id. Although the language of this subsection is somewhat ambiguous, it appears to support the proposition that if an owner acquired a new or used vehicle before his or her birthday, the owner had to register the vehicle twice within the same twelve month period. See id. (stating that an owner of a newly acquired vehicle had to register his or her vehicle within twenty-one days of the purchase and had to "obtain a license to operate it for the period remaining until such person's next registration period") (emphasis added).


\textsuperscript{39} See Powell Interview, supra note 2.

\textsuperscript{40} See id.

\textsuperscript{41} See id. Former Code section 48-5-473 stated that an owner should pay ad valorem taxes "at the time the owner applies for registration of the motor vehicle" and purchases a license plate. 1995 Ga. Laws 809, \& 19, at 826 (formerly found at O.C.G.A. \& 48-5-473(a) (1996)). Because an owner was required to apply for registration when he or she acquired a new or used vehicle, the DOR's conclusion that ad valorem taxes were also due at this time was not unreasonable. See id. \& 2, at 810 (formerly found at O.C.G.A. \& 40-2-20(a)(1) (1996)).

\textsuperscript{42} See Powell Interview, supra note 2. Again, because an owner had to apply for registration within thirty days before his or her birthday, requiring an owner to pay ad valorem taxes for a second time during this registration period appeared to be the only plausible interpretation of the 1995 act. See 1995 Ga. Laws 809, \& 2, at 810 (formerly found at O.C.G.A. \& 40-2-20(a)(1) (1996)); id. \& 19, at 826 (formerly found at O.C.G.A. \& 48-5-473(a) (1996)).

\textsuperscript{43} See Powell Interview, supra note 2.

\textsuperscript{44} See id.
added the term “initial registration period” to Code section 40-2-21.45 As previously discussed, the term “initial registration period” means the thirty day period immediately following the date of acquisition of a new or used vehicle.46 The Act states that when an owner acquires a new or used vehicle, he or she must register that vehicle within thirty days after the date of acquisition, and then, he or she must renew his or her registration during the thirty day period immediately preceding his or her birthday, even if the next registration period falls within the same calendar year as the initial registration period.47 However, to eliminate the possibility of double taxation, the General Assembly added a subparagraph to Code section 48-5-473, stating that no ad valorem taxes are due during the initial registration period unless the date of acquisition happens to fall within the thirty-day period preceding the owner’s birthday.48 Thus, even though an owner may have to register a newly acquired vehicle within the thirty-day period following the date of acquisition, he or she does not have to pay ad valorem taxes on that vehicle until thirty days before his or her birthday.49

Furthermore, the General Assembly decided that license plates should be assigned to vehicle owners rather than to the vehicles themselves.50 Also, an owner of a vehicle can transfer a license plate or revalidation decal from one vehicle to another vehicle of the same class that is subsequently acquired during the same registration period.51 This constitutes a significant change to former law because it allows

47. Id. § 40-2-20(a)(1). But see infra text accompanying notes 52-53 (discussing legislative changes that allow an owner to transfer his or her license plate and registration to a vehicle subsequently acquired during same registration period).
51. Compare 1992 Ga. Laws 779, § 3, at 780 (formerly found at O.C.G.A. § 40-2-42(a) (1994)) (prohibiting transfer of license plates and revalidation decals from one vehicle to another), with O.C.G.A. § 40-2-42 (1997) (mandating transfer of license plates and revalidation decals from one vehicle to another vehicle of same class subsequently acquired by same owner during same registration period). The 1997 Act amends several former Code sections concerning special or prestige license plates by substituting the word “shall” for the word “may” when discussing the transfer of license plates from one vehicle to another. See O.C.G.A. §§ 40-2-32, -61 to -62, -65 to -68, -70 to -71, -73 to -75, -77 to -78, -80, -86 (1997). However, the 1997 Act prohibits the transfer of license plates or revalidation decals from one vehicle to a ‘salvage’ or ‘rebuilt’ motor vehicle as defined in chapter 3 of title 40. Id. § 40-2-45 (1997).
registration to follow the owner rather than the vehicle.\textsuperscript{62} It also prevents the possibility that an owner must pay ad valorem taxes twice within the same twelve month registration period.\textsuperscript{53}

Under the 1997 Act, an owner must register his or her vehicle and pay ad valorem taxes within the thirty-day period immediately preceding his or her birthday.\textsuperscript{54} After his or her birthday, if the owner sells the vehicle to purchase another model, the owner can transfer the license plate and registration to the new vehicle, as long as the transfer occurs within the same twelve-month registration period.\textsuperscript{55} The owner is not obligated to renew the registration until his or her next birthday, and the possibility of paying ad valorem taxes for a second time during the same registration period does not arise.\textsuperscript{56} Although Code section 40-2-20 states that any newly acquired vehicle must be registered within the thirty-day period immediately following the date of acquisition, it also allows a license plate to be transferred from one vehicle to another vehicle of the same class subsequently acquired within the same registration period.\textsuperscript{57} In order to avoid a conflict in the statute, the requirement that an owner register a vehicle within thirty days after the date of acquisition should most likely apply to owners who have acquired a vehicle of a different class or who have not previously owned a vehicle.\textsuperscript{58}

In its effort to eliminate double taxation, the General Assembly inadvertently created a tax lapse, which is not addressed in the 1997 Act.\textsuperscript{59} As previously stated, if an owner acquires a new or used vehicle after his or her birthday, the owner can transfer the license plate and revalidation decal to that vehicle and does not have to pay ad valorem taxes on that vehicle until his or her next birthday.\textsuperscript{59} Thus, if after his or her birthday, an owner acquires a vehicle that is more expensive than the one he or she previously owned, the owner does not have to

\begin{footnotes}
\item[52] See Powell Interview, supra note 2; Ladd Interview, supra note 10.
\item[53] See Powell Interview, supra note 2; Ladd Interview, supra note 10.
\item[55] See O.C.G.A. §§ 40-2-31(a), -42 (1997); Powell Interview, supra note 2; Ladd Interview, supra note 10.
\item[56] See O.C.G.A. §§ 40-2-31(a), -42 (1997); Powell Interview, supra note 2; Ladd Interview, supra note 10.
\item[57] O.C.G.A. § 40-2-20(a)(1) (1997) ("[O]btain or transfer as provided in this chapter a license. . . .").
\item[58] This is the only logical conclusion; otherwise, Code section 40-2-42 has no effect. Compare id. § 40-2-42, with id. § 40-2-20(a)(1). If an owner must obtain, within 30 days after the date of acquisition, a license and registration for every replacement vehicle that he or she purchases, then why allow owners to transfer license plates and revalidation decals to vehicles that are subsequently acquired during the same twelve month registration period? See id.
\item[59] See Powell Interview, supra note 2.
\end{footnotes}
pay ad valorem taxes on the difference in value between the two vehicles until the following year. As a result, the state suffers a loss of tax revenue. Because of this discrepancy, a prudent investor should wait until after his or her birthday before purchasing a new vehicle because he or she can defer part of the tax liability until the following year.

**Various Versions of HB 205**

After HB 205 was introduced, the House Motor Vehicles Committee and the Senate Transportation Committee reviewed it and made several changes. For example, the original version of HB 205 failed to correct a loophole that existed under the 1995 Act, but the House Motor Vehicles Committee amended the original version of HB 205 in an effort to close that loophole. Under the 1995 Act, an owner could avoid paying ad valorem tax on a vehicle by transferring ownership of the vehicle, before the arrival of the owner's registration renewal period, to a friend or relative with a later birthday. After the owner's registration renewal period passed, but before the arrival of the registration period for the friend or relative, the owner could reclaim possession of the vehicle. Because the owner would not have had possession of the vehicle upon the arrival of his or her registration renewal period, the owner would have owed no tax on the vehicle. To prevent such an occurrence, the House Motor Vehicles Committee added language to Code section 48-2-61, stating that "transfers of titles to motor vehicles . . . for the purpose of avoiding payment of taxes shall be null and void."

The original version of HB 205 also contained a potential double taxation problem that was not addressed until the bill underwent committee review. The Act states that ad valorem taxes are due

61. See Powell Interview, supra note 2.
62. Cf. id.
63. See Ladd Interview, supra note 10.
64. See Final Composite Status Sheet, Mar. 28, 1997.
66. See Powell Interview, supra note 2.
67. See id.
68. See id.
during the thirty-day period immediately preceding an owner's birthday, which is also the period of time during which an owner applies for registration and purchases a license plate. Because owners pay taxes at different times throughout the year, as previously drafted, HB 205 might have allowed a vehicle to be taxed multiple times during the same calendar year. For example, if an owner paid ad valorem taxes on his or her birthday and one month later sold the vehicle to someone with a later birthday, upon the arrival of the birthday of the transferee owner, the transferee owner would again pay ad valorem taxes on the same vehicle even though taxes had already been paid for that vehicle for that calendar year. Under this system, a vehicle theoretically could be taxed as many times as it could be sold during a calendar year.

To eliminate this multiple taxation, both the House Motor Vehicle Committee and the Senate Transportation Committee added language to the original version of HB 205. The House Motor Vehicle Committee amended Code section 48-5-471 by adding the clause: "Under no circumstances shall ... ad valorem taxation be collected more than one time per calendar year with respect to the same motor vehicle." For the sake of clarity, the Senate Transportation Committee added an identical clause to Code section 48-5-473. By the terms of these amendments, a vehicle can be taxed only one time per calendar year even though it might have several owners during the course of that year.

72. See Powell Interview, supra note 2. Compare HB 205, as introduced, 1997 Ga. Gen. Assem. (containing no clause prohibiting collection of ad valorem taxation more than once per calendar year with respect to same vehicle) with O.C.G.A. § 48-5-471 (Supp. 1997) (containing a clause that prohibits collection of ad valorem taxes more than once per calendar year with respect to same vehicle).
73. See Powell Interview, supra note 2.
74. See Ladd Interview, supra note 10.
78. See O.C.G.A. §§ 48-5-471, -473(a)(3) (Supp. 1997). These amendments seem to create another tax lapse problem. For example, if an owner's birthday is in January, he pays ad valorem tax on his vehicle in January. See id. § 48-5-473(a); see also id. §§ 40-2-20(a)(1), -21(a)(1)(A)(i) (1997). If in March the owner sells his vehicle to a second owner, whose birthday is in June, under the original version of HB 205, the transferee owner would pay ad valorem taxes for the same vehicle for a second time in June. See HB 205, as introduced, 1997 Ga. Gen. Assem. However, by the terms of these amendments, the transferee owner does not have to pay ad valorem taxes in...
Constitutionality of the Property Tax Exemption for Vehicles Held in Inventory for Sale or Resale by Automobile Dealers

Opponents of the 1995 Act and the 1997 Act claim that both pieces of legislation create an unconstitutional property tax exemption for automobile dealers. Under the general tax system as it existed prior to 1995, vehicles held in inventory for sale or resale by automobile dealers, as of January 1 of each year, were subject to ad valorem taxation at a rate of 75% of their assessed value. However, in 1995, lobbyists pushed for a change in the ad valorem tax law in order to create an exemption for inventory vehicles owned by automobile dealers. In 1995, the General Assembly complied with the lobbyists' request and enacted an ad valorem tax exemption for automobile dealers. Under the 1995 Act, vehicles owned and held in inventory for sale or resale by automobile dealers were not subject to ad valorem taxation until they were sold, after which point the consumer paid the tax. This created an exemption that did not exist under pre-1995 legislation.

June because the transferor owner already paid them in January. See O.C.G.A. §§ 48-5-471, 473(a)(3) (Supp. 1997). Thus, it would appear that the transferee owner avoids paying ad valorem taxes until June of the following year, which is approximately one and a half years after the last payment of ad valorem taxes on that vehicle. See Powell Interview, supra note 2.

80. See 1978 Ga. Laws 309, § 2, at 311 (formerly found at GA. CODE ANN. § 91A-1904 (Harrison 1996)).
81. See Ladd Interview, supra note 10.
82. See 1995 Ga. Laws 809, § 18, at 825 (formerly found at O.C.G.A. § 48-5-472(b) (1995)). The 1995 act stated:

Motor vehicles which are owned by a dealer are not included within the distinct classification of tangible property made by this article for all other motor vehicles. The procedures prescribed in this article for returning motor vehicles for ad valorem taxation, determining the applicable rates for taxation and collecting the ad valorem taxes imposed on motor vehicles do not apply to motor vehicles which are owned by a dealer. Motor vehicles which are owned by a dealer shall not be returned for ad valorem taxation, shall not be taxed, and no taxes shall be collected on such motor vehicles until they become subject to taxation as provided in Code Section 48-5-471. No vehicle held by a dealer in inventory for resale shall be subject to ad valorem tax.

Id. Once a vehicle came into the possession of a consumer, the vehicle was subject to taxation during the consumer's registration period. See id. § 17 (formerly found at O.C.G.A. § 48-5-471 (1995)); id. § 19 (formerly found at O.C.G.A. § 48-5-473(a) (1995)).
83. See id. § 18, at 825 (formerly found at O.C.G.A. § 48-5-472(b) (1995)); see also id. § 17, at 825 (formerly found at O.C.G.A. § 48-5-471 (1995)); id. § 19, at 826 (formerly found at O.C.G.A. § 48-5-473(a) (1995)).
84. See infra note 101. Compare 1995 Ga. Laws 809, § 18, at 825 (formerly found
In 1997, the General Assembly amended the 1995 Act in order to clarify that dealer-owned vehicles, as discussed in the 1995 legislation, refer to vehicles held in inventory for sale or resale. In an effort to conform the language of the 1995 Act to the mandates of the Georgia Constitution, the 1997 Act also clarifies that dealer inventory vehicles constitute a separate subclassification of motor vehicles for ad valorem taxation purposes. Furthermore, it adds a clause to the 1995 legislation, stating that the registration and licensing requirements under Code section 40-2-20 do not apply to dealer inventory vehicles.

On February 28, 1997, William R. Lowry, a resident of Cobb County, filed suit to challenge the constitutionality of the 1995 Act. The Georgia Constitution provides that “[e]xcept as authorized in or pursuant to this Constitution, all laws exempting property from ad valorem taxation are void.” It further provides:

Except as otherwise provided in this Constitution, no property shall be exempted from ad valorem taxation unless the exemption is approved by two-thirds of the members elected to each branch of the General Assembly in a roll-call vote and by a majority of the qualified electors of the state voting in referendum thereon.

The crux of Lowry’s claim is that the tax exemption for dealer inventory vehicles is invalid because it was not approved by voters in a referendum.

In support of his claim, Lowry also relied on a Georgia Supreme Court case, Hawes v. Cordell Ford Co., for the proposition that the Constitution mandates uniformity in assessing taxation on all motor vehicles. The Court in Hawes noted that “if the Act... should place


89. GA. CONST. art. VII, § 2, ¶ 1.

90. Id. ¶ 2(a)(1).


93. See id.; see also Plaintiff’s Brief in Support of Petition at 3-4, Lowry v.
a valuation based upon the identity of the owner or the purpose for which the motor vehicles are held then a lack of uniformity in valuation would appear which would be clearly unconstitutional.\textsuperscript{94} Because the 1995 Act created an exemption for all vehicles held in inventory by automobile dealers, which was an exemption “based upon the identity of the owner [and] the purpose for which the motor vehicles [were] held,” the 1995 Act violated the Constitutional mandate that all vehicles be taxed at a uniform rate.\textsuperscript{95}

In response to Lowry’s allegations, the Tax Commissioner of Cobb County and the acting Commissioner of the Georgia Department of Revenue (Commissioners) defended the validity of the 1995 and 1997 Acts, by claiming that both pieces of legislation comply with the requirements of the Georgia Constitution.\textsuperscript{96} First, they argued that neither piece of legislation creates an exemption because, “while motor vehicles are not taxed as they sit, unregistered, in dealer lots, they are taxed in full when they are purchased and registered” by consumers.\textsuperscript{97} The Constitution only forbids the general law enactment of statutes that exempt “property” from ad valorem taxation, and because dealer inventory vehicles constitute property that is eventually taxed, the 1995 and 1997 Acts do not create an exemption.\textsuperscript{98} Furthermore, new Code section 48-5-473 states that an owner does not pay ad valorem taxation until he or she registers his or her vehicle during his or her registration period.\textsuperscript{59} Thus, no tax is due on dealer inventory vehicles because, under Code section 40-2-20, automobile dealers are not required to register vehicles held in inventory.\textsuperscript{100}

\textsuperscript{94} Hawes, 223 Ga. at 261, 154 S.E.2d at 601 (rejecting a constitutional challenge by automobile dealers to 1966 legislation that created original system of ad valorem taxation).


\textsuperscript{96} See Pre-Hearing Brief of Defendant Jerry Jackson at 9, Lowry v. McDuffie, No. 97101679-28, Super. Ct. Cobb County (June 3, 1997).

\textsuperscript{97} See id. at 10.

\textsuperscript{98} See id. at 11 (citing Ga. CONST. art. VII, § 2, ¶¶ 1-2). The Commissioners relied on Richmond County Bd. of Tax Assessors v. Georgia R.R. Bank & Trust Co. for the proposition that “an unconstitutional exemption is not created when the legislature refuses to tax property for a second time.” Id. at 12 (citing Richmond, 242 Ga. 23, 247 S.E.2d 761 (1978)). Here, the General Assembly simply refused to tax the same vehicle on two separate occasions. See id.

\textsuperscript{99} O.C.G.A. § 48-5-473 (Supp. 1997) (stating that taxes are due “at the time the owner applies or is required by law to apply for registration . . . during the owner’s registration period”); see also Brief of Amicus Curiae Georgia Automobile Dealers Association and Metropolitan Atlanta Automobile Dealers Association in Support of Defendants at 9, Lowry v. McDuffie, No. 97101679-28, Super. Ct. Cobb County (June 3, 1997).

\textsuperscript{100} O.C.G.A. § 40-2-20(a)(1) (1997) (stating that “registration and licensing
Amicus Curiae Georgia Automobile Dealers Association and Metropolitan Atlanta Automobile Dealers Association also noted that a 1992 amendment to the Georgia Constitution allows the General Assembly to create separate subclassifications of motor vehicles and to assess different rates of taxation against those separate subclassifications of motor vehicles without having to resort to a referendum.101 Amicus argued that the General Assembly did not have to submit the 1995 and 1997 Acts to referendum because they simply re-categorized dealer inventory vehicles as a different subclassification of property that received a zero percent tax rate.102 However, Lowry contends that the 1992 amendment does not repeal the prohibition against general law enactments of tax exemptions because it does not explicitly or implicitly authorize the General Assembly to create such exemptions.103 The 1992 amendment “simply states that it would ‘authorize the General Assembly to provide by general law for the ad valorem taxation of motor vehicles,’” but nowhere does the amendment state that the General Assembly can create general law tax exemptions.104 Thus, Lowry maintains that because voters did not

requirement does not apply to a dealer which acquires a new or used motor vehicle and holds it for resale”); see also Brief of Amicus Curiae Georgia Automobile Dealers Association and Metropolitan Atlanta Automobile Dealers Association in Support of Defendants at 9, Lowry v. McDuffie, No. 97101679-28, Super. Ct. Cobb County (June 3, 1997).

101. Brief of Amicus Curiae Georgia Automobile Dealers Association and Metropolitan Atlanta Automobile Dealers Association in Support of Defendants at 12-14, Lowry v. McDuffie, No. 97101679-28, Super. Ct. Cobb County (June 3, 1997) (citing GA. CONST. art. VII, § 1, ¶ 3(b)(3)).

102. Id.; see 1995 Ga. Laws 809, § 18, at 825 (formerly found at O.C.G.A. § 48-5-472(b) (1995)) (stating that “[m]otor vehicles which are owned by a dealer are not included within the distinct classification of tangible property made by this article for all other motor vehicles”); O.C.G.A. § 48-5-472(b) (Supp. 1997) (stating that “[m]otor vehicles which are owned by a dealer and held in inventory for sale or resale shall constitute a separate subclassification of motor vehicles within the motor vehicle classification of tangible property for ad valorem taxation purposes”).


104. Id. (quoting GA. CONST. art. VII, § 2, ¶ 3(b)(3) (amended 1992)).
approve the ad valorem tax exemption created by the 1995 and 1997 Acts in a referendum, the exemption is both unconstitutional and invalid.\footnote{See Plaintiff’s Brief in Support of Petition, Lowry v. McDuffie, No. 97101679-28, Super. Ct. Cobb County (Mar. 17, 1997). The Superior Court of Cobb County should rule on Lowry’s constitutional challenge to the ad valorem tax exemption for dealer inventory vehicles sometime in the latter months of 1997.}

Corin McCarthy