Mercer Law Review

Volume 32
Number 1 *Annual Survey of Georgia Law*

Article 12

12-1980

State and Local Taxation

Thomas J. Harrold Jr.

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By Thomas J. Harrold, Jr.*

I. Introduction

The new Public Revenue Code became effective at the beginning of this year and is the most important development in recent years in the area of state and local taxation in Georgia.[1] The new Code is designed to streamline and modernize Georgia tax statutes, but is not intended to make any substantive changes in the law. A few oversights and inadvertent omissions have been corrected by an act passed by the 1980 general assembly.[2] An undertaking of this magnitude inevitably leaves a few cracks and crevices and promises to stir lively litigation during the next few years.

In addition to the 1980 Technical Corrections Act, the general assembly enacted a potpourri of new laws of general interest in the tax area. The Georgia Supreme Court has also added numerous interpretations to the old statutes, and validated the concept of the local option sales tax which has become an essential revenue source for eighty-two Georgia counties and the cities located in those counties.[3]

Property taxpayers had a better than average year, winning several cases that were more than mere "moral victories". However, little has been done to remove the subjective aspects of property tax assessment, or to assuage the frustrations of Georgia taxpayers. Sales and use tax cases have become more and more prevalent and have replaced property tax challenges on the appellate level as the most litigated area of Georgia state and local taxation.

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* Partner, Cofer, Beauchamp, Hawes & Brown, Atlanta, Georgia. Columbia University (B.A., 1966); University of Georgia (J.D., 1969). Member of the State Bar of Georgia. The author gratefully acknowledges the research assistance of William E. Ward. Emory University (B.A., 1978). Duke University (J.D., to be awarded 1981).

1. Ga. Code Ann. §§ 91A-101 to 9944.1 (1980) (replaced Ga. Code Ann. §§ 92-101 to 9983 (1974)). Since title 91A did not become effective until January 1, 1980, it is possible that title 92 will still be the applicable law in some cases.

2. Ga. Code Ann. § 91A (1980).

3. The State Revenue Department has indicated that the total amount returned to the counties (82 counties to this point) includes $133,893,446.58.

II. Sales and Use Tax

The 1980 session of the Georgia General Assembly enacted several important amendments to the sales and use tax section of the Public Revenue Code. The provision of the Code relating to the payment of sales and use tax for the purchase of services which fall within the definition of a "retail sale" was expanded to include the "receiving" of such services within the state.[4] There is no statutory definition of "receiving", but the law was designed to eliminate any question about the tax applying to tickets for athletic events sold outside the state.

Georgia automobile dealers may now sell to residents of other states without requiring purchasers to pay Georgia sales tax or pursue the charade of having vehicles "delivered" outside the state.[5] To be exempt from the sales tax, an out-of-state purchaser must sign an affidavit affirming that he is a nonresident and that the vehicle will be registered in another state.

Contrary to prior law, the new Public Revenue Code did not require prior certification in order to qualify for the exemption from the state sales tax for the purchase of air and water pollution control equipment. This oversight in the new Code has now been corrected and the prior system reinstated.[6]

Several amendments were added to the Code establishing the requirements to obtain a standing extension of time for filing sales tax returns.[7] A number of large retail stores have traditionally enjoyed a ten day extension from the customary filing date on the twentieth day of the month to allow accounting procedures to be computerized on a monthly basis. The new amendments will continue to allow these extensions if the taxpayer makes an "estimated payment" and does not realize a "windfall" use of collected state funds. Finally, the assessment period for sales tax may be extended by six months if a claim for refund of taxes is instituted within the last six months of the three year statute of limitations.[8]

A 1979 amendment to the Public Revenue Code virtually integrated the state tax system by authorizing the Revenue Department to set off any tax liability against any claim for refund of the taxpayer.[9] Also the Revenue Department has aggressively undertaken to hold individual owners of businesses personally liable for failure to remit sales and use taxes previ-

4. Ga. Code Ann. § 91A-4502 (Supp. 1980).
5. Ga. Code Ann. § 91A-4503(rr) (Supp. 1980).
6. Ga. Code Ann. § 91A-4503(kk) (Supp. 1980).
7. Ga. Code Ann. §§ 91A-4521 to 4524 (Supp. 1980).
8. Ga. Code Ann. § 91A-4535 (Supp. 1980).
9. Ga. Code Ann. § 91A-245(c) (1980).

ously collected.[10] Several retail businesses in recent years have collected sales tax from their customers and applied the "state's money" for the payment of other debts — or for personal uses. This trend prompted the passage of a new statute exposing a corporate officer to criminal liability for unlawful conversion, with the punishment varying from a misdemeanor to a maximum of ten years imprisonment for conversion of tax funds in excess of two hundred dollars.[11]

Two minor bills were passed which will exempt from the sales tax paper purchased for the manufacture of catalogues to be sent outside the state, and purchases made by blood banks which are deemed tax exempt for federal purposes under I.R.C. section 501(c)(3).[12]

Several cases during the survey period involved the collection and remittance of sales tax, and further reflect the Revenue Department's determination to prohibit merchants from diverting tax monies for personal use. In *Bunge v. State*,[13] the Revenue Department sought a criminal conviction against a defendant accused of converting sales taxes for his own use. The court of appeals generally agreed with the State's arguments and attached liability to the time when the nonpayment of the taxes occurred.[14] The court further extended the dealer concept through the corporate shield to the individual owner who controlled the funds.[15] The case was remanded for new trial on a technical matter. This decision and the 1980 amendments combine to increase the exposure of corporate officers to personal liability for the nonpayment of state taxes.

In *City of Chattanooga v. State*,[16] the supreme court ruled that a mu-

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10. GA. CODE ANN. § 91A-251 (Supp. 1980).

11. GA. CODE ANN. §§ 91A-251(a) to 9901.1 (Supp. 1980).

12. GA. CODE ANN. § 91A-4503(ss), (tt) (Supp. 1980).

13. 149 Ga. App. 712, 256 S.E.2d 23 (1979).

14. *Bunge* relied upon GA. CODE ANN. § 92-3451(a) (1974), which provided that the liability for failure to collect and pay the tax as prescribed in the Code should be paid upon notice and demand by the commissioner and collected in the same manner as the tax in connection with which the act, or failure to act under the section occurred. This provision is now embodied in GA. CODE ANN. § 91A-251(b) (1980). In *Bunge*, it was argued unsuccessfully that the liability for the payment of the delinquent taxes did not attach until the dealer received notice of delinquency and demand for payment.

15. GA. CODE ANN. § 92-3404a(4) (1974) provided that every person who has sold "at retail" in Georgia was a dealer. This section is now found in GA. CODE ANN. § 91A-4501(c) (1979). The court relied upon Bailey v. State, 84 Ga. App. 839, 67 S.E.2d 830 (1951), to hold that Bunge could not assert that an act was not his merely because he carried it out through the instrumentality of the corporation.

16. City of Chattanooga v. State, No. 35846 (Ga. Sup. Ct. July 1, 1980). GA. CODE ANN. § 91A-4503(a) (1980), provides an exemption from the sales and use tax for sales to the United States government, the State of Georgia, any county or municipality of the state or any bona fide department of such government when purchased directly by warrant or appropriated government funds. The statute was interpreted as including an exemption for foreign municipalities entering the state to provide services to Georgia residents. Accord-

nicipality located in Tennessee which provides electrical power to several counties in Georgia was exempt from sales and use tax on tangible personal property purchased and used in Georgia. The court found the purchaser to be a "municipality" as defined under sales tax statutes and was therefore entitled to the governmental sales exemption.

III. Local Option Sales Tax

This past year's most publicized event in the arena of state and local taxation was the invalidation and subsequent reenactment of the local option sales tax.[17] The provisions for this tax were first enacted in 1975 and were subsequently declared unconstitutional in two Georgia Supreme Court decisions.[18] The 1979 general assembly refused to abandon the tax which has become an essential source of revenue for many Georgia counties and municipalities. A new act was passed effective April 1, 1979, which was designed to avoid the constitutional infirmities of the prior statute.[19] The new statute provides that funds collected under the local option sales tax will be distributed to the county and each municipality located within the county on the basis of an agreement reached between those governmental bodies.[20] After selective forum shopping the new statute was challenged in the case of *Cooper v. Board of Commissioners*.[21] The superior court ruled the statute was unconstitutional essentially for

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ingly, the supreme court's judgment granting summary judgment for the state was reversed.

17. Ga. Code Ann. §§ 91A-4601 to 4616 (1980).

18. *See* Martin v. Ellis, 242 Ga. 340, 249 S.E.2d 23 (1978); City of Augusta v. Mangelly, 243 Ga. 358, 254 S.E.2d 315 (1979). In the *Ellis* decision, the supreme court held that the differential rollback provisions in the 1975 act violated the uniformity mandate of Ga. Code Ann. § 2-6102 (1971) which provides generally for the creation of special taxing districts. The court found the act constitutional upon severance of the offending section. The *Mangelly* decision finished what *Ellis* had started, holding that the imposition of county taxes for the purpose of sharing the proceeds with cities was not a legitimate public purpose under Ga. Code Ann. § 2-6202 (1977). As a result, the act could not be constitutionally justified.

19. Ga. Code Ann. §§ 91A-4601 to 4616 (1980). The improper purpose defect cited in *Mangelly* was corrected by the provisions in the new statute that the funds could only be distributed pursuant to an agreement between the county and its municipalities The county does not expressly allocate any funds to the municipalities. The nonuniformity objection cited in *Ellis* was handled by the provision that distribution of the tax to a political subdivision would not be allowed above the sum which, in the absence of the distribution, would be raised by other sources of revenue. In addition, the new act contains a mandated rollback provision which requires an adjustment of millage rates instead of a reduction of property taxes as specified in the 1975 legislation. Charles Tidwell, the Governor's legal counsel, deserves much of the credit for the drafting of the new act and for shepherding it through the general assembly.

20. Ga. Code Ann. § 91A-4604 (1980).

21. 245 Ga. 251, 264 S.E.2d 193 (1980).

the same reasons the supreme court struck down the old law. The Board of Commissioners appealed the decision to the Georgia Supreme Court, and affected mayors and county commissioners held their collective breaths until the Georgia Supreme Court issued its ruling. The court reversed the lower court and upheld the constitutionality of the new statute.[22] The court dismissed the contention that some taxpayers would receive greater benefit from the proceeds of the tax and found no fault with the local negotiation feature of the new statute.[23] The 1979 statute provided mandated rollbacks in millage rates rather than the direct reduction of property taxes per se. The *Cooper* case laid to rest the local option sales tax question for the immediate future; county and municipal governments continue to cooperate with each other. Local option taxes returned to the counties and cities should exceed $130,000,000 this year.[24]

IV. Ad Valorem Property Tax

The *ad valorem* property tax[25] remains a hotly contested area of Georgia taxation because the apparent inconsistencies of its application spur an abundance of litigation. Unfortunately, property owners lose most of these decisions even though this year witnessed a few taxpayer victories. For instance, in *Cobb County Board of Tax Assessors v. Sibley*,[26] the Georgia Supreme Court agreed with the taxpayer that the "existing use" of the subject property should be only one of several factors to be considered in the valuation process conducted by the assessors to arrive at a "fair market value" figure. The subject property was vacant timberland and had been originally assessed on the sole basis of its "highest and best use" which was commercial development. The case represents a significant victory for property taxpayers because it will inhibit assessors from seeking to tax unrealized appreciation of property located within rapidly developing areas.

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22. The court held:
> that the tax authorized by Code Ann. § 91A-4601 *et seq.* is constitutional whether viewed as a joint city-county tax which the General Assembly could and did authorize in the use of the state's inherent power to tax, or viewed as a special district tax authorized by Amendment 19. *Id.* at 255-56, 264 S.E.2d at 197.

Amendment 19 is embodied in Ga. Code Ann. § 2-6102 (1977) and authorizes the levying of taxes in special districts.

23. The court commented that "[I]nequality among taxpayers in the same taxing authority with respect to the distribution of benefits is not unconstitutional." *Id.* at 257, 264 S.E.2d at 198. The court also validated the local negotiation feature, stating, "the local negotiation feature does not delegate the power to tax as such; it merely allows the taxing authority to distribute the proceeds within its boundaries and this is unobjectionable." *Id.*

24. *See* note 3 *supra*.

25. Ga. Code Ann. §§ 91A-1001 to 2415 (1980).

26. 244 Ga. 404, 260 S.E.2d 313 (1979).

The application of the property tax was at issue in the case of *Allright Parking of Georgia, Inc. v. Joint City-County Board of Tax Assessors.*[27] The issue in this case was whether Allright's interest in the real estate was taxable as an estate for years or was a nontaxable usufruct. The court concluded that the many restrictions placed on Allright's lease qualified it as a nontaxable usufruct.[28]

The case of *Great Northern Nekoosa Corporation v. Board of Tax Assessors*[29] originated because the county increased the company's property tax assessment to reflect the cost and increased value of a new plant expansion. The taxpayer argued that it was exempt from the tax by reason of a 1962 local amendment to the Georgia Constitution which provided:

> Any person . . . who may after January 1, 1962 in Early County, build, equip, establish, complete, or enlarge a plant . . . *may*, as to such . . . enlargement or equipment, *be exempt* from all county, incorporated town or city, and school districts ad valorem taxes for five (5) years from the date of the first use of the building, equipment or enlargement of such plants.[30]

In a surprising decision, the court upheld the constitutionality of this amendment and drew a distinction between "tax exemptions" and expenditures of public funds for private purposes.[31] The court further ruled that the Board of Tax Assessors had no discretion in allowing the tax exemption, and confirmed that the word "may" used in the amendment was mandatory.[32] This case may generate competition among counties seeking to attract new industry by offering "property tax holidays". On the state level, Georgia has traditionally resisted this type of incentive which is common in other Southeastern states.[33]

The taxpayer in *Martin v. Liberty County Tax Assessors*[34] was not so fortunate. In this case the court decided that a long term timber lease on

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27. 244 Ga. 378, 260 S.E.2d 315 (1979).

28. The lease term was for 34 years, which raised an inference under Georgia law that the lease was an estate for years. GA. CODE ANN. § 61-101 (1979).

29. 244 Ga. 624, 261 S.E.2d 346 (1979). The new plant expansion in this case involved some $6,429,329.00.

30. GA. CODE ANN. § 2-5405 (1977) (emphasis added).

31. The trial court relied upon Smith v. State, 222 Ga. 552, 150 S.E.2d 861 (1966), which held a local amendment permitting the spending of public funds for private purposes unconstitutional. The court easily distinguished the two cases.

32. *See* Birdsong & Sledge v. Brooks, 7 Ga. 88 (1849); Independent Banker Ass'n v. Dunn, 230 Ga. 345, 197 S.E.2d 129 (1973).

33. *See* Dempsey, *Legal and Economic Incentives for Foreign Investment in the Southeastern United States*, 9 VAND. J. TRANSNAT'L L. 247 (1976). The article notes that Alabama, Louisiana, Mississippi, and South Carolina have enacted extensive property tax incentive programs.

34. 152 Ga. App. 340, 262 S.E.2d 609 (1979).

the subject property should not be considered by the assessor in determining the property's fair market value. The lessor retained the obligation to pay the taxes, and the court concluded that the existence of the separate estates would only affect the tax assessment if the tax liability was divided between the lessor and the lessee.[35] Without doubt, this tantalizing statement by the court will be the subject of future lease negotiations.

Financial institutions that paid personal property taxes in 1975 will find the case of *Citizens and Southern National Bank v. Fulton County*[36] most interesting. The supreme court was asked to construe the phrase in the Bank Shares Tax Act which states "[n]o tax shall be assessed upon the *capital* of banks or banking associations . . . ."[37] The bank argued that "capital" means all capital assets, exempting all property of the bank, except real property, from the tax. The local government asserted that the exemption applies only to exempted capital stock. The court agreed with the bank.[38] The general assembly in 1976 clarified this point by specifically exempting personal property.[39] Unfortunately, the statute of limitations for filing a claim for refund has now run for any financial institution that paid taxes on personalty in 1975.

A new law was enacted this year that provides for Georgia's first deferral of *ad valorem* taxes for persons sixty-two years of age or older whose gross household income does not exceed $15,000 per year.[40] Taxes based on a maximum of $50,000 of assessed value may be deferred, but will bear interest until paid. The tax and accrued interest will become due when the property "ceases to qualify", which presumably will occur when it is sold or the property owner dies.[41] This statute will be applicable for all tax years beginning after January 1982.

Railroad companies came under scrutiny in the general assembly, and several statutes were enacted affecting the proportional *ad valorem* taxa-

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35. *See* Real Estate v. Union City, 177 Ga. 55, 164 S.E.2d 301 (1933). *See also* GA. CODE ANN. § 91A-1001(b)(1)(B) (1980).

36. 245 Ga. 441, 265 S.E.2d 559 (1980).

37. GA. CODE ANN. § 92-2406 (Supp. 1979) (repealed by Title 91A) (emphasis added).

38. The court held that the 1975 act referred to capital assets and therefore exempted all of the bank's personal property from taxation, reasoning that

> [i]f the General Assembly had intended to alter the long standing effect of the "no tax on capital" clause, it no doubt would have done so in clear and express terms. By using the historical language, it evidenced its intent that banks be given the same treatment they historically had received.

245 Ga. at 444, 265 S.E.2d at 561.

39. GA. CODE ANN. § 92-2406 (Supp. 1979) (repealed by Title 91A).

40. GA. CODE ANN. §§ 91A-2401 to 2415 (Supp. 1980).

41. GA. CODE ANN. § 91A-2403 (Supp. 1980).

tion of their equipment based on track mileage.[42] The Technical Corrections Statute also provides for allocation of the property of railroad companies between municipalities and counties for purposes of assessment.[43]

V. Income Tax

This year's most important development in the area of state income taxation occurred on the national level but there were several cases of interest decided by the Georgia Supreme Court. In the case of *Chattanooga Glass Co. v. Strickland*,[44] the court was asked to determine the extent of activities in Georgia necessary to subject a foreign corporation to Georgia corporate income tax. The court found that the company's service manager traveled the state to deal with customer problems and that the company maintained containers in Georgia for storing newly purchased glass. The company argued that its activities in Georgia were minimal and constituted mere "solicitation,"[45] but these "contacts" were sufficient to make the company subject to Georgia's taxing jurisdiction. The court broadly interpreted the statutory phrase "doing business" to include practically any activity or transaction pursued within the state for financial profit or gain.[46]

The U.S. Supreme Court rendered two extremely important decisions in the area of state income taxation during 1980 in *Mobil Oil Co. v. Commissioner of Vermont*[47] and *Exxon Corp. v. Department of Revenue*.[48] These two cases came on the heels of *United States Steel Corp. v. Multistate Tax Commission*[49] which upheld the multistate tax compact. These three cases brought bad news to multistate and multinational corporations. In the *Mobil Oil Co.* decision, the Court upheld a statute that included in the state's apportionment formula the dividend income received by a nondomiciliary domestic corporation from its foreign subsidiaries. The Court ruled that Mobil was unable to disassociate its dividend in-

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42. Ga. Code Ann. § 91A-2209 (Supp. 1980).

43. *Id.*

44. 244 Ga. 603, 261 S.E.2d 599 (1979).

45. The corporation cited 15 U.S.C. § 381 (1976), which provides: "No state . . . shall have power to impose . . . a net income tax on the income derived within such State by any person from interstate commerce if the only business activities within such State by or on behalf of such person during such taxable year [is] . . . the solicitation of orders. . . ."

46. *See* Ga. Code Ann. § 92-2401 (1974) (current version at Ga. Code Ann. § 91A-6302 (1980)). Under the court's liberal interpretation, the corporation easily satisfied the requirement for "doing business" in this situation.

47. 100 S. Ct. 1223 (1980).

48. 100 S. Ct. 2109 (1980).

49. 434 U.S. 452 (1978).

come from its integrated petroleum business.[50] This case could ignite a legislative challenge to Georgia specific foreign source dividend exclusion found under Georgia Code Ann. section 91A-3602.

In *Exxon*, the Supreme Court stated that the Wisconsin Tax Commissioner was authorized to consider the company's world-wide income in computing its taxable income for Wisconsin purposes.[51] This case could jeopardize the practice of many multistate and multinational corporations that shift income to low tax states or to tax havens using arbitrary intracompany pricing schemes.

Other minor 1980 income tax statutes provided the following: those persons making less than $5,000 per year are not required to file Georgia returns;[52] a taxpayer whose annual tax credits exceed his expected tax liability is not required to file estimated tax returns;[53] and pension and retirement programs which qualify for exemption from state income tax are now specified by statute.[54] The legislature also passed a statute prohibiting a municipality from levying an "employment" tax for the privilege of working within its corporate limits.[55] Business and license taxes in existence on January 1, 1980 are not affected.[56]

VI. General Taxes

A. *Intangibles Tax.*

One of the most progressive statutes passed by the 1980 general assembly provides that Georgia citizens will not be required to file intangibles tax returns if their tax liability is less than $5.00.[57] This removes a wasteful administrative burden from the Revenue Department and legalizes the nonfiling practice of Georgia taxpayers who own small savings accounts and a modest portfolio of stock. Beginning next year, intangibles tax revenue returned to local governments will be distributed between municipalities and independent school districts.[58]

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50. The Court held that Mobil failed to prove that the dividend increase was not derived from Mobil's unitary business entity. The foreign source of the dividend income did not disconnect this nexus.

51. The facts in this case were similar to the Mobil situation and the Supreme Court reached identical conclusions.

52. Ga. Code Ann. § 91A-3704 (Supp. 1980).

53. Ga. Code Ann. § 91A-3915 (Supp. 1980).

54. Ga. Code Ann. § 91A-3607 (Supp. 1980).

55. Ga. Code Ann. § 91A-6014 (Supp. 1980).

56. *Id.*

57. Ga. Code Ann. § 91A-3108 (Supp. 1980).

58. Ga. Code Ann. § 91A-3120 (Supp. 1980).

B. Transfer Tax.

Under the revised intangibles tax statute, transfer tax will not apply to deeds or other instruments of conveyance if the federal, state, or any local government is either the grantor or grantee.[59] The statute also exempts from transfer tax conveyances between spouses arising from divorce settlements, deeds in lieu of foreclosure, and transfers relating to an award of year's support.[60]

C. Motor Fuel Tax.

There were several amendments to the Code involving the motor fuel tax specifically relating to aviation fuels and refunds from the motor fuel excise tax.[61] Bonds for motor fuel dealers were increased.[62] The three percent tax on the sale of gasoline, previously collected as a sales tax, has now become the "[Second] Motor Fuel Tax" and is now allocated to the Department of Transportation for highway and bridge repair and construction.[63]

D. Alcohol and Tobacco Tax.

A 1980 amendment to the tobacco tax law eliminates the provision, previously declared unconstitutional, that prohibited a dealer from selling cigarettes below cost.[64]

The general assembly completed the enactment of a recodification of the alcohol beverage control statutes which will not take effect until July 1, 1981.[65] The new statutes incorporate substantially the same substantive features of prior law with a few notable exceptions. Primary enforcement responsibility has been moved to the Georgia Bureau of Investigation, making the historical "revenue agent" a thing of the past.[66]

E. Excise Taxes.

In the case of *DeKalb County v. Hinson*,[67] the Georgia Supreme Court declared that the revenues generated from the locally imposed mixed drinks tax in DeKalb County must be shared with the DeKalb County

59. GA. CODE ANN. § 91A-3003(a)(3) (Supp. 1980).
60. GA. CODE ANN. § 91A-3003 (1980).
61. GA. CODE ANN. § 91A-5005 (1980).
62. GA. CODE ANN. § 91A-5004 (1980).
63. GA. CODE ANN. § 91A-5015 (1980).
64. GA. CODE ANN. § 91A-5504 (Supp. 1980).
65. GA. CODE ANN. §§ 5A-101 to 9904 (Supp. 1980).
66. GA. CODE ANN. § 92A-304.1 (Supp. 1980).
67. 243 Ga. 623, 255 S.E.2d 722 (1979).

Board of Education.

F. Delinquent Taxes.

The interest rate on all past due taxes, including alcoholic beverage taxes, is now one percent per month (formerly nine percent per year) from the date the tax is due until the date the tax is paid.[68]

VII. CONCLUSION

Georgia taxpayers are still digesting the recodification of the Public Revenue Code which became effective on January 1, 1980. The 1980 Technical Corrections Act reflected further amendments and incorporated a few substantive changes.

On the horizon are several interesting cases that are expected to be finally adjudicated before the end of the year. A case pending in Fulton County Superior Court will decide the relative priority between a tax lien and the taxpayer's security interest.[69] Another case in Fulton County Superior Court involves the authority of the Revenue Department to make assessment sales tax on illegal drug sales based on tentative records obtained during a drug raid.[70]

For automobile dealers (and their families) the case of *Law Lincoln-Mercury v. Strickland*[71] presently pending before the Georgia Supreme Court, will decide if use tax applies to a demonstrator vehicle operated incidentally for personal use by a salesman or a member of the dealer's family. A land assessment case, *Dawson v. Henry County Board of Tax Assessors*,[72] transferred from the Georgia Supreme Court to the Georgia Court of Appeals, involves consideration of the existing use of real property for tax assessment purposes and should shed further light on the previously cited *Sibley* case.

The Revenue Department has taken a very hard-nosed approach in denying sales tax exemption requests for equipment installed in new manufacturing facilities.[73] The Department grants the exemption only for those items of equipment which are used directly in "the manufacturing pro-

68. GA. CODE ANN. § 91A-239.2 (Supp. 1980).

69. Associated Grocers Co-op, Inc. v. Strickland, No. C-62392 (Fulton Super. Ct. filed April 30, 1980).

70. Shipman and Mitchell v. Strickland, No. C-61728 (Fulton Super. Ct. filed March 31, 1980).

71. No. 36109 (Ga. Sup. Ct. filed February 18, 1980).

72. No. 60220 (Ga. Ct. of Appeals, transferred from Sup. Ct. April 22, 1980).

73. GA. CODE ANN. § 91A-4503(hh)(2) (1980) provides an exemption from sales and use tax for the purchase of machinery and equipment to be incorporated into a new manufacturing plant used directly in the manufacture of tangible personal property in Georgia.

cess".[74] Exemption requests will be denied for equipment and machinery which is used indirectly or tangentially in the manufacturing process. Extensive litigation is expected to arise over the Department's narrow interpretation of this statute which promises to be the highlight of next year's survey. The 1981 general assembly may actually do something other than "talk" about modernizing the tax system of Georgia because of far-reaching recommendations that are expected to be made by the Tax Reform Commission.

74. GA. CODE ANN. § 91A-4503(hh)(3) (1980) permits an exemption from sales and use tax for machinery used directly in the manufacture of tangible personal property incorporated for the first time into a manufacturing plant in Georgia when the machinery results in a substantial increase in the productive capacity of the plant.