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State and Local Taxation

L.O. Buckland

Gary B. Andrews

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By L. O. Buckland* and Gary B. Andrews**

This survey covers the cases decided over the past two years, since the state and local tax section was omitted in the last annual survey. The principal activity during this period concerned ad valorem taxation, but the nature of many of these cases permits them to be noted in summary fashion. If this and previous surveys are any indication, the concern of property owners over rising ad valorem taxes is more likely to be aired in court than their concern over any other form of taxation.

As in previous surveys, this review divides the cases into the major tax areas for discussion. A section on remedies has been added because the cases are applicable to several types of taxes.

I. Ad Valorem Taxes

A. Assessment

Expression of taxpayer dissatisfaction in court has reached unusual proportions in this state during the past few years. Most common were class actions seeking equitable relief with respect to the manner, means, and results of local valuation determinations and the state revenue commissioner's involvement therein.[1] The most significant developments in ad valorem taxation during the survey period signal at least a change of direction for this type litigation if not an end to it.

In *Tax Assessors of Gordon County v. Chitwood*,[2] five individuals and the "Gordon County Citizens for Fair Taxation" brought a class action against various county officials and the state revenue commissioner seeking to void the tax digest and enjoin increased valuations and tax collections thereon. In support of the relief sought, the taxpayers alleged certain infirmities in the methods and results of property valuations. The trial court granted the relief sought, and the supreme court reversed. In reversing, the court held that the plaintiffs had an adequate remedy at law

* Partner in Goodman, Whitmer, Buckland & Andrews, Atlanta, Georgia. Emory University (J.D., 1970). Member of the Georgia Bar.

** Partner in Goodman, Whitmer, Buckland & Andrews, Atlanta, Georgia. University of Georgia (J.D., 1971). Member of the Georgia Bar.

1. For example, see the cases of Herring v. Ferrell found at 234 Ga. 620, 216 S.E.2d 862 (1975); 233 Ga. 1, 209 S.E.2d 599 (1974); 137 Ga. App. 156, 223 S.E.2d 213 (1976); 133 Ga. App. 445, 211 S.E.2d 366 (1974); 130 Ga. App. 431, 203 S.E.2d 617 (1973).

2. 235 Ga. 147, 218 S.E.2d 759 (1975).

through the county board of tax equalization,[3] and equity jurisdiction was thus lacking.

The ruling in *Chitwood* was subsequently followed, and perhaps expanded,[4] in *Chilivis v. Backus*,[5] *Chilivis v. Kell*,[6] and *Butts County v. Briscoe*.[7] This trilogy makes it clear that judicial review of the state revenue commissioner's actions in equalizing the various county tax digests may be initiated only by the county, and not by individual taxpayers.[8]

Although *Chitwood*, *Backus*, *Kell* and *Briscoe* all turned on the issue of jurisdiction, the court also made various other rulings of interest in the area of ad valorem taxation. In these decisions the Georgia Supreme Court held: defective notices of changed assessments may be corrected by the county without affecting the validity of the assessment;[9] the statutory definition of "fair market value" is not too vague and indefinite to be enforced;[10] "actual use," as opposed to "highest and best use," is a factor to be considered in determining fair market value, but is not the exclusive factor;[11] utilization of different methods in arriving at fair market value does not violate the uniformity provision of the Georgia Constitution;[12] and, there is no lack of uniformity in the laws pertaining to individual taxpayers who return their property to the county, and railroads and public utilities who make their returns to the state revenue commissioner.[13]

For those taxpayers who chose to pursue their differences with the county tax officials through the board of equalization, the results were mixed. In *Peagler v. Georgetown Associates*[14] and *Tift v. Tift County Board of Tax Assessors*,[15] the taxpayers failed to timely perfect their appeals, and the court held that neither implied nor expressed extensions of time for filing notices of appeal are authorized. Where procedural hurdles were overcome, the taxpayers had uniform success in the court of appeals in cases where reversals of jury verdicts were sought on appeal to the superior court from the board of equalization. These cases, *Murray v. Richardson*,[16] *Aldon Industries, Inc. v. Gordon County Board of Tax Assessors*,[17] *Hodson*

3. *See* GA. CODE ANN. §92-6912 (1974).

4. An examination of the allegations made in these cases leads to the conclusion that it would be a rare grievance which would not be addressable by the board of equalization.

5. 236 Ga. 88, 222 S.E.2d 371 (1976).

6. 236 Ga. 226, 223 S.E.2d 117 (1976).

7. 236 Ga. 233, 223 S.E.2d 199 (1976).

8. *See, e.g.*, Chilivis v. Kell, 236 Ga. 226, 229, 223 S.E.2d 117, 120 (1976).

9. Chilivis v. Backus, 236 Ga. 88, 90, 222 S.E.2d 371, 374 (1976).

10. *Id.*

11. *Id.*

12. *Id.*

13. Chilivis v. Kell, 236 Ga. 226, 228, 223 S.E.2d 117, 119 (1976).

14. 232 Ga. 848, 209 S.E.2d 186 (1974).

15. 234 Ga. 155, 215 S.E.2d 3 (1975).

16. 134 Ga. App. 676, 215 S.E.2d 715 (1975).

17. 136 Ga. App. 598, 222 S.E.2d 42 (1975), *cert. granted.*

v. Duckett,[18] and *Board of Tax Assessors, Richmond County v. Gardner*,[19] should be closely reviewed by any attorney involved in this type litigation.

It should be noted that in *Boyton v. Lenox Square, Inc.*,[20] the court held that arbitration is still available in Fulton County and that a board of equalization is not required to be established in that county. In light of this decision, the applicability of *Chitwood* to actions arising in Fulton County is unsettled at this time.

B. Exemptions

The practice of encouraging industrial development through the grant of tax exemptions is not uncommon in our taxation laws.[21] One such plan, however, was struck down as unconstitutional in *Wasden v. Rusco Industries, Inc.*[22] The court found a 1925 statute[23] unconstitutional where it authorized a five year ad valorem tax exemption to certain industries upon referendum approval.[24] The effect of *Wasden* upon local development efforts is speculative at this time.

Two other cases relating to exemptions from ad valorem taxation were decided during the survey period. The first, *Leggett v. Macon Baptist Ass'n*,[25] held that the administrative office of the Macon Baptist Association was not used primarily as a place of religious worship within the meaning of the constitutional and statutory exemptions[26] of such property. In *Adams v. Dawn Memorial Park*,[27] the county tax commissioner sought to recover back taxes on property which had received a cemetery exemption[28] for a number of years but had been sold for commercial purposes. The supreme court held that the summary-judgment evidence required a finding that the land had been held in good faith[29] for cemetery purposes.

C. Miscellany

The statute authorizing the state revenue commissioner to adjust county valuations also requires that a proportionate adjustment of millage rate

18. 135 Ga. App. 922, 219 S.E.2d 634 (1975).

19. 135 Ga. App. 939, 219 S.E.2d 609 (1975).

20. 232 Ga. 456, 207 S.E.2d 446 (1974).

21. For example, new and expanded manufacturing industries receive certain sales and use tax benefits. GA. CODE ANN. §92-3403aC(2)(n)(1974).

22. 233 Ga. 439, 211 S.E.2d 733 (1975).

23. GA. CODE ANN. §92-206 (1974).

24. The court reasoned that since the exception was not enumerated in GA. CONST. art. VII, §1, ¶ 4, GA. CODE ANN. §2-5404 (1973), the statute was unauthorized.

25. 232 Ga. 27, 205 S.E.2d 197 (1974).

26. GA. CONST. art. VII, §1, ¶ 4, GA. CODE ANN. §2-5404 (1973); GA. CODE ANN. §92-201 (1973).

27. 234 Ga. 105, 214 S.E.2d 542 (1975).

28. GA. CONST. art. VII, §1, ¶ 4, GA. CODE ANN. §2-5403 (1973); GA. CODE ANN. §92-201 (1974).

29. Suttles v. Hill Crest Cemetery, Inc., 87 Ga. App. 343, 73 S.E.2d 760 (1952).

occur such that "the adjusted county digest will produce an amount of revenue reasonably equivalent to that amount of revenue which would have been produced had no adjustment been made to the county valuations."[30] Since the millage rate is required to be submitted to the state revenue commissioner along with the digest,[31] many county school systems found themselves setting a rate at the constitutional maximum[32] and actually collecting on a somewhat lower rate. In *Board of Commissioners of Newton County v. Allgood*,[33] the court held that the board of education is entitled to set its millage rate based upon the digest finally approved by the state revenue commissioner.

In broad perspective, probably the most important case decided in the area of ad valorem taxation during the survey period was *Wages v. Michelin Tire Corp.*,[34] which ultimately made new law in the U. S. Supreme Court.[35] However, an adequate discussion of the holding and implications of *Michelin* is not within the scope of this article.

II. Sales Tax

Construction and application of exemptions continued to be the most active area of sales tax litigation during the survey period. Three such cases were decided by the appellate courts. Each resulted in a denial of the exemption sought, and all three presented rather narrow issues for decision.

In *Blackmon v. Screven County Industrial Development Authority*,[36] the taxpayer sought an exemption for climate-control equipment used in its textile manufacturing plant on the basis that such equipment was "used directly" in its process within the meaning of the statute.[37] Again rejecting an "essentiality" test,[38] the court held that the equipment was taxable. In a case which is probably of more interest to lexicographers than attorneys, the supreme court held in *Blackmon v. Dixon*[39] that tobacco drying units were not used in "harvesting" so as to qualify for the exemption sought.[40]

30. Ga. Code Ann. §92-7001(c) (1974).
31. Ga. Code Ann. §92-7002.1 (1974).
32. Ga. Const. art. VIII, §12, ¶ 1; Ga. Code Ann. §2-7501 (1973).
33. 234 Ga. 9, 214 S.E.2d 522 (1975).
34. 233 Ga. 712, 214 S.E.2d 349 (1975).
35. Michelin Tire Corp. v. Wages, ___ U.S. ___, 96 S.Ct. 535 (1976).
36. 131 Ga. App. 265, 205 S.E.2d 497 (1974).
37. Ga. Code Ann. §92-3403aC(2)(n) (1974) exempts, *inter alia*: "The sale of machinery which is used directly in the manufacture of tangible personal property when such machinery is incorporated for the first time into a new manufacturing plant located in this State."
38. *See* Hawes v. Custom Canners, 121 Ga. App. 203, 173 S.E.2d 400 (1970).
39. 234 Ga. 703, 217 S.E.2d 283 (1975), *rev'g* 134 Ga. App. 184, 213 S.E.2d 513 (1975).
40. Ga. Code Ann. §92-3403aC(2)(v) (1974) exempts, *inter alia*: "The sale, to persons engaged primarily in producing farm crops for sale, . . . equipment used exclusively in harvesting such crops."

In *Gainesville-Hall County Economic Opportunity Organization, Inc. v. Blackmon*,[41] the court held that a statutory exemption for private elementary and secondary schools[42] does not apply to a private eleemosynary corporation which, with certain minor exceptions, services different age groups and offers programs different from those of the public schools. Of more general interest is the holding in this case that the proof of payment of sales tax by a purchaser to a seller relieves the purchaser from any further responsibility. The statute is quite ambiguous on this point.[43]

Richs, Inc. v. Blackmon[44] foreclosed the use of what could have been a very effective sales and use tax avoidance device. A prior case, *Colonial Pipeline Co. v. Undercofler*,[45] had suggested that an otherwise non-taxable item, specifically transportation charges, could be removed from the sales and use tax base by the parties to the transaction if they contracted for it separately from the taxable item, tangible personal property. Rather than follow the dictum of *Undercofler*, however, the court in *Rich's* adopted a "moment of purchase" test from Florida[46] "whereby freight charges incurred before the consummation of the transaction were included within the cost price of the property and freight charges incurred after the consummation of the sale were excluded from the cost price of the property."[47] Presumably this test will be applied to other items which are similar to freight charges.

The taxpayer in *Carling Brewing Co. v. Blackmon*[48] was a manufacturer and wholesaler of malt beverages who also supplied point of sale advertising materials to its retail dealers. The state revenue commissioner had assessed the taxpayer for its purchase and use of the advertising materials, and the assessment was opposed on the ground that the materials were purchased for resale to the retail dealers. The court of appeals held for the commissioner for two reasons. First, the nature of the transfer between the taxpayer and the retailer was not a sale within the meaning of the act. Second, even if the transfer were to be considered a sale, it was not a sale for resale and it occurred in Georgia.

It should finally be noted that the constitutionality of the successor liability statute[49] was upheld in *Richards v. Blackmon*.[50] In *Richards*, the court also held that compliance with the bulk transfer laws does not relieve a taxpayer from compliance with the sales tax statute.

41. 233 Ga. 507, 212 S.E.2d 341 (1975).
42. GA. CODE ANN. §§92-3403aC(2)(m),(u) (1974).
43. GA. CODE ANN. §92-3402a(e) (1974).
44. 133 Ga. App. 665, 211 S.E.2d 916 (1975).
45. 115 Ga. App. 58, 153 S.E.2d 592 (1967).
46. *See* United States Gypsum Co. v. Green, 110 So.2d 409 (Fla. 1959), and Whitehead & Kales Co. v. Green, 113 So. 2d 732 (Fla. 1959).
47. 133 Ga. App. 665, 669, 211 S.E.2d 916 (1975).
48. 131 Ga. App. 211, 205 S.E.2d 492 (1974).
49. GA. CODE ANN. §92-3422a (1974).
50. 233 Ga. 739, 213 S.E.2d 638 (1975).

III. Income Taxes

The similarity of the state and the federal income tax laws substantially removes most of the areas of income tax conflict between taxpayers and the state.[51] The state, however, has jurisdictional limitations on its power to tax that are not faced by the federal government. These jurisdictional limitations are inherent in most state income tax questions. For example, these limitations require the income of a taxpayer doing business both in Georgia and in other states to be apportioned among Georgia and the other states. As a result, the primary areas of conflict revolve around apportionment of the income—whether the income should be apportioned, and how it is to be apportioned.

In 1967, the Georgia Court of Appeals set forth the rule that the same standards used to determine whether a foreign corporation was doing business in Georgia were to be used to determine whether a domestic corporation was doing business outside Georgia.[52] If, under these standards, the domestic corporation was deemed to have been doing business outside Georgia, it could apportion its income for tax purposes. This rule was applicable even if the corporation did not pay any tax in the other state.

The Georgia Supreme Court extended this line of reasoning through its holding in *Blackmon* v. *Habersham Mills, Inc.*[53] Significantly, in reaching its decision, the supreme court rejected *Oxford v. Tom Huston Peanut Co.*[54] and specifically disapproved of the language in *Oxford* which stated: "If the plaintiff [taxpayer] is not doing business in other States so as to be subject to their jurisdiction for taxing purposes, it is not entitled to apportion its income in Georgia."[55]

Habersham Mills substantially increased the possibilities for domestic corporations to apportion income out of Georgia. Prior to the *Habersham Mills* decision, it had been necessary to establish that the domestic corporation was at least subject to the taxing jurisdiction of the other state under the Georgia jurisdictional standards. If a corporation desired to minimize its state income taxes, sufficient contacts had to be maintained in the other states which would make the corporation subject to the taxing jurisdiction of the other states under the Georgia standards, but at the same time those contacts had to be maintained at a level low enough to permit the protection of 15 U.S.C.A. §§381-84[56] to come into play. The supreme

51. For example, the holding in Chilivis v. Studebaker Worthington, Inc., 137 Ga. App. 337, 223 S.E.2d 747 (1976), governing pre-1969 net operating loss carryovers, is of limited value because the deduction of such losses now follows the provisions of federal law. If they are deductible under federal law, they are deductible under Georgia law.

52. Hawes v. William L. Bonnell Co., 116 Ga. App. 184, 156 S.E.2d 536 (1967).

53. 233 Ga. 501, 212 S.E.2d 337 (1975), *aff'g* 131 Ga. App. 59, 205 S.E.2d 21 (1974).

54. 102 Ga. App. 714, 118 S.E.2d 204 (1960).

55. 102 Ga. App. at 727, 118 S.E.2d at 212.

56. 15 U.S.C.A. §§381-84 (1976). Pub. L. 86-272 essentially provides that a state cannot

court, however, held that even this was unnecessary and stated: "Whether a corporation is subject to the taxing jurisdiction of other states, as we read our statute on this subject, is immaterial."[57] The only criterion for apportionment indicated by the court is that the taxpayer be engaged in interstate business. It thus appears that a domestic corporation can apportion its income if its only contact is to make sales in another state. Establishing contacts other than mere sales with the other state would be risking taxation by the other state.

The court also addressed the question of apportionment in *Blackmon v. Henry C. Beck Co.*[58] where it held that if a non-manufacturing corporation derived income both from within and from without the State of Georgia, then apportionment was mandatory even though the income derived from the business done in Georgia could be determined from the taxpayers records. In arriving at its conclusion, the court overruled the decision in *Mexican Petroleum Corp. v. Head.*[59] Under *Mexican Petroleum*, if a corporation derived income from two or more states, but the business giving rise to the income derived in Georgia was separate from the business conducted in other states, then the Georgia income could not be apportioned. In *Beck*, however, the court rejected the separate business approach and looked only to see if the corporation had income both from within and from without the State of Georgia. The geographical source of income rather than the nature of the business which gave rise to the income is thus the determining factor.[60] This concentration on the geographical source of income, if adhered to strictly, raises the distinct possibility that the court would, for example, hold that apportionment of all income was required by a taxpayer that operated a warehousing business in California and a rug cleaning business in Georgia, even though the income derived from both businesses could be definitely established. The taxpayer would have income arising from doing business in two states, and the decision in *Beck* indicates that this fact alone is sufficient to require apportionment. Under the proper circumstances, a substantial amount of income could be apportioned to Georgia even though it had not been generated by business conducted in Georgia.

Whether this new interpretation by the supreme court meets the due process requirements of the federal and state constitutions has not been decided. In the absence of a binding decision and with no desire to litigate

impose an income tax on a corporation selling tangible personal property if its only contacts with the state amount to solicitation only.

57. 233 Ga. 501, 503, 212 S.E.2d 337, 338 (1975).

58. 233 Ga. 412, 211 S.E.2d 711 (1975), *aff'g* 131 Ga. App. 634, 206 S.E.2d 842 (1974).

59. 64 Ga. App. 529, 13 S.E.2d 887 (1941).

60. GA. CODE ANN. §92-3102 (Supp. 1976) provides that a corporation will pay an income tax on its Georgia taxable income, which is defined as "taxable income from property owned or from *business* done in Georgia" (emphasis added). The business income is determined by referring to the allocation and apprortionment provisions of GA. CODE ANN. §92-3113 (1974).

the constitutional issues, the safest course of action is to petition the state revenue commissioner to permit the filing of returns on a separate business basis. Theoretically, such filing would more clearly represent the amount of income arising from business conducted in Georgia.[61]

In a case which involved the granting of permission by the state revenue commissioner, the Georgia Supreme Court held that once permission was granted to a taxpayer to file returns in a certain manner, the permission could not thereafter be revoked by the commissioner for any of the years in which the taxpayer had filed a return. Additionally, the court held that the prohibition against revocation covered the year in which the commissioner had made the revocation decision, even though the return for that year had not been filed so long as the taxpayer had relied on the permission and organized its business accordingly.[62] The court stated: "The attempt to revoke these written permissions retroactively after the lapse of such an extended period of time, during which the taxpayer was allowed to conduct its business in reliance thereon, creates an inequity under the circumstances of this case."[63]

If permission can be obtained from the state revenue commissioner to file returns in some particular manner, it appears that a taxpayer does not have to be concerned about the effects of a subsequent audit as long as it can be established that the business was conducted in reliance upon the permission. Two such areas in which the legislature has granted the state revenue commissioner discretionary powers are: (1) the filing of consolidated returns by affiliated corporations when the corporations are not all doing business solely within Georgia;[64] and (2) the use of a taxpayer proposed method of apportionment to more clearly reflect the amount of income arising from doing business in Georgia.[65] Since the court based its decision on the equity of the situation, the possibility is raised that the revenue commissioner can be estopped from revoking the permission if the taxpayer can establish that its method of conducting business, adopted in reliance on the permission, could not be changed without substantial harm. The extent of the court's equitable approach in *Gable* can better be appreciated by understanding that the court found Georgia's pre-1969 law regarding the filing of consolidated returns followed the federal law, despite the inherent jurisdictional limitations existing in state taxation, the

61. GA. CODE ANN. §92-3114 (1974) permits a taxpayer to apply for permission to file returns based upon books of account which clearly reflect the amount of income attributable to the trade or business conducted within the state. GA. CODE ANN. §92-3115 (1974) permits a taxpayer to apply for permission to use a formula for apportionment different from the one set forth in GA. CODE ANN. §92-3113 (1974).

62. Gable Industries, Inc. v. Blackmon, 233 Ga. 542, 212 S.E.2d 328 (1975), *rev'g* Blackmon v. Gable Industries, Inc., 132 Ga. App. 354, 208 S.E.2d 101 (1974).

63. 233 Ga. at 544, 212 S.E.2d at 330.

64. GA. CODE ANN. §92-3102 (Supp. 1976).

65. See note 61, *supra*.

absence of substantive state law or regulation governing the filing of consolidated returns, and the lack of mention of consolidated returns in Georgia law.

Filing of state income tax returns is facilitated by the state's following federal tax law. It is, however, necessary to report any subsequent federal adjustments to the state revenue commissioner.[66] If the taxpayer fails to report the federal adjustments to the state revenue commissioner, the commissioner can make an assessment from any available information within five years after receiving notice from the federal government that a federal adjustment was made. This procedure was discovered by a taxpayer in *Blackmon v. Monroe*,[67] when the supreme court upheld the constitutionality of the statute and required the taxpayer to pay an assessment of additional state income taxes. This assessment was based upon information received from the Internal Revenue Service. A taxpayer should thus be aware of the state-income-tax implications whenever there is a controversy between the taxpayer and the federal taxing authorities, since they will, in all likelihood, be the same as the federal tax implications in this area.

IV. Miscellaneous Taxes

In *Brumby v. Brooks*,[68] the Georgia Supreme Court upheld the constitutionality of the statute imposing liability on a person required to file unemployment compensation tax returns[69] but held that a new trial on the personal liability of a corporate officer was necessary because of a misleading charge to the jury. Since there are few reported Georgia cases dealing with the personal liability of a corporate officer or employee for corporate taxes, this case is of particular interest. It is illustrative of the scope of Georgia's personal-liability statutes. The evidence established that the appellant had financial control over a number of different corporations, one of which went out of business without paying unemployment compensation taxes to the Georgia Department of Labor. In discussing the enumerations of error, the court stated that it was proper to focus the jury's attention on the appellant's control over the corporation's finances rather than on the appellant's proprietary interests.

Another action against an individual was decided in favor of the taxpayer in *Wanthal v. City of Atlanta*.[70] The court of appeals held that a partner in an accounting firm was not required to obtain a business license for management consulting services when the partners of the firm individ-

66. Ga. Code Ann. §92-3303(f) (Supp. 1976).
67. 233 Ga. 656, 212 S.E.2d 827 (1975).
68. 234 Ga. 376, 216 S.E.2d 288 (1975).
69. Ga. Code Ann. §54-650.2 (1974).
70. 134 Ga. App. 419, 214 S.E.2d 694 (1975).

ually paid an occupation tax and management consulting was one of the services rendered by public accountants under the rules and regulations promulgated under the state licensing laws. The trial court had also decided that licensed professionals were not required to obtain a city business license, but this point was not cross-appealed. However, strict liability was imposed in *Scott v. Blackmon*.[71] A motor-fuel distributor failed to collect motor fuel taxes and the evidence established that a purchaser was a potential highway-user of the fuel.

In 1974, the supreme court declared the first uniform beer tax act unconsitutional.[72] Subsequently, the legislature enacted another uniform beer tax statute.[73] Upholding its constitutionality in *Chanin v. Bibb County*,[74] the supreme court held that the infirmities of the first statute were no longer present. However, a local ordinance, instituted during the period between the time the first statute was declared unconstitutional and the enactment of the second statute, was struck down because the county did not have the power to impose an excise tax. Other constitutional attacks against the statute, not resolved in *Chanin*, were rejected by the court in *State v. Golia*.[75]

V. REMEDIES

During the survey period, there were four appellate decisions relating to various remedies[76] available to taxpayers seeking judicial review of their state tax liabilities. Two of the cases rejected arguments that conditioning access to the courts upon payment of the liability asserted, or posting a bond, is violative of procedural due process requirements.[77] The other two cases involved amendments to the taxpayers' initial pleadings.

In *Ingalls Iron Works Co. v. Blackmon*,[78] the court of appeals held that an appeal from an assessment could not be amended so as to add a claim for refund. Amendment of an affidavit of illegality was, however, allowed in *Dalton Carpet Industries, Inc. v. Chilivis*.[79] The amendment was to correct what the court characterized as an "obvious typographical error."[80]

Formerly, payments of county and municipal taxes and license fees were not recoverable even though erroneously or illegally assessed and col-

71. 132 Ga. App. 578, 208 S.E.2d 589 (1974).
72. Blackmon v. Golia, 231 Ga. 381, 202 S.E.2d 186 (1973).
73. GA. CODE ANN. §58-706.1 (SUPP. 1976).
74. 234 GA. 282, 216 S.E.2d 250 (1975).
75. 235 Ga. 791, 222 S.E.2d 27 (1976).
76. *See*, Buckland, *State Taxpayer Remedies*, 27 Mer. L. Rev. 309 (1975).
77. Lee v. Chilivis, 234 Ga. 255, 216 S.E.2d 109 (1975); Gainesville-Hall County Econ. Opportunity Organization, Inc. v. Blackmon, 233 Ga. 507, 212 S.E.2d 341 (1975).
78. 133 Ga. App. 164, 210 S.E.2d 164 (1974).
79. 137 Ga. App. 266, 223 S.E.2d 460 (1976).
80. 137 Ga. App. at 267, 223 S.E.2d at 461.

lected.[81] This harsh rule was changed by legislation in 1975,[82] and payments made after July 1, 1975,[83] can be recovered pursuant to statutory grounds and procedures.

81. *See, e.g.*, Blackmon v. Ewing, 231 Ga. 239, 201 S.E.2d 138 (1973).

82. GA. CODE ANN. ch. 92-39A (Supp. 1976).

83. In Town of Lyerly v. Short, 234 Ga. 877, 218 S.E.2d 588 (1975), the court held that the statute cannot be given retrospective application.