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Madeline E. McNeeley

Joshua H. Dorminy

Spencer P. Mead

Caitlyn B. Clark

Stephn G. Lowry

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# Commercial Transportation

**Madeline E. McNeeley\***

**Joshua H. Dorminy\*\***

**Spencer P. Mead\*\*\***

**Caitlyn B. Clark\*\*\*\***

**Stephen G. Lowry\*\*\*\*\***

## I. INTRODUCTION

Commercial transportation involves all the significant forms of passenger and freight transportation across the United States. This Article surveys significant judicial, regulatory, and legislative developments in Georgia commercial transportation law from June 1, 2021 through May 31, 2022.<sup>1</sup>

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\*Partner, Harris Lowry Manton LLP. University of Tennessee (B.A. & B.S., magna cum laude, 1999); University of Maryland, College Park (M.S., 2001); University of Tennessee College of Law (J.D., summa cum laude, 2008). Member, State Bars of Georgia and Tennessee.

\*\*Associate, Harris Lowry Manton LLP. Shorter University (B.A., summa cum laude, 2012); University of Georgia School of Law (J.D., 2015). Member, State Bar of Georgia.

\*\*\*Associate, Harris Lowry Manton LLP. Clemson University (B.S.E.E., 2011); University of Richmond School of Law (J.D., 2015). Member, State Bars of Georgia and North Carolina, Registered Patent Attorney.

\*\*\*\*Associate, Harris Lowry Manton LLP. University of West Georgia (B.A., 2015); Savannah Law School (J.D., cum laude, 2019). Member, State Bars of Georgia and South Carolina.

\*\*\*\*\*Partner, Harris Lowry Manton LLP. University of Maryland Baltimore County (B.A., magna cum laude, 1995); Lewis and Clark College Northwestern School of Law (J.D., cum laude, 1998). Member, State Bar of Georgia.

1. For an analysis of commercial transportation law during the prior survey period, see Madeline E. McNeeley et al., *Commercial Transportation, Annual Survey of Georgia Law*, 73 MERCER L. REV. 47 (2021), [https://digitalcommons.law.mercer.edu/jour\\_mlr/vol73/iss4/8/](https://digitalcommons.law.mercer.edu/jour_mlr/vol73/iss4/8/) [<https://perma.cc/9K7X-XWQ9>].

## II. TRUCKING AND OTHER COMMERCIAL MOTOR VEHICLES

A. *Regulatory Changes*

On January 12, 2022, the Georgia Department of Driver Services Board approved an update to the rules that deal with commercial driver training.<sup>2</sup> The purpose of the amendment was to align the rule with 49 Code of Federal Regulation §§ 383 and 384,<sup>3</sup> which include the requirement of Federal Motor Carrier Safety Administration approved entry-level driver training (ELDT) for entry-level commercial drivers.<sup>4</sup> The amendment added the requirement of ELDT for entry-level commercial drivers effective February 7, 2022.<sup>5</sup> Entry-level commercial drivers are defined as any person who:

- (i) seeks to obtain a new Class A or Class B commercial driver's license;
- (ii) seeks to upgrade any existing commercial driver's license to a higher Class commercial driver's license;
- (iii) seeks to obtain a new school bus (S), passenger (P), or hazardous materials (H) endorsement; or
- (iv) is otherwise subject to the entry-level driver training requirements set forth in 49 C.F.R. Parts 383 and 384.<sup>6</sup>

The amendment lists the persons who do not require ELDT, which include:

- (i) commercial drivers who hold a valid commercial driver's license or an S, P, or H endorsement that was issued prior to February 7, 2022;
- (ii) commercial drivers who obtained a commercial learner's permit prior to February 7, 2022, and upgrade to a commercial driver's license before the commercial learner's permit expires; or
- (iii) any person who is exempted from taking a skills test pursuant to 49 C.F.R. Part 383.<sup>7</sup>

The steps required to add a hazardous materials endorsement to a commercial driver's license on or after February 7, 2022, are also included in the rule change:

Effective February 7, 2022, in order to add a hazardous materials (H) endorsement to a commercial driver's license, the driver must:

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2. GA. COMP. R. & REGS. 375-5-3-.17 (2022).  
3. 49 C.F.R. §§ 383–384 (2022).  
4. GA. COMP. R. & REGS. 375-5-3-.17(8); *see also* 49 C.F.R. §§ 383–384.  
5. GA. COMP. R. & REGS. 375-5-3-.17(8)(a).  
6. GA. COMP. R. & REGS. 375-5-3-.17(8)(a)(i)–(iv).  
7. GA. COMP. R. & REGS. 375-5-3-.17(8)(b)(i)–(iii).

- (i) complete [ELDT] prior to taking the knowledge exam for the hazardous materials (H) endorsement;
- (ii) complete the Hazardous Material Endorsement Threat Assessment Program administered by the Transportation Security Administration (TSA);
- (iii) pass the knowledge exam for the hazardous materials (H) endorsement; and
- (iv) renew their commercial driver's license to have the H or X (Tank Vehicles and Hazardous Material) endorsement added.<sup>8</sup>

Also effective February 7, 2022, was a rule change concerning Georgia First Lady Marty Kemp's initiative against human trafficking.<sup>9</sup> The change requires every commercial driver training school and every commercial driver license third-party tester "certified by the [Georgia] Department [of Driver Services] [to] provide, prior to administering a third-party skills test or as part of its instructional curriculum, a human trafficking awareness and prevention course that is administered to every student it tests and/or trains."<sup>10</sup> Theoretical and practical instruction must be in accordance with 49 C.F.R. §§ 383 and 384.<sup>11</sup>

Other updates to the Georgia Rules include raising the minimum grade a student must score to pass the written exam in order to successfully complete a course from seventy (70) to eighty (80).<sup>12</sup> Further, the mandatory maneuvers for range training were updated to current federal regulations and Georgia Department of Driver Services practices.<sup>13</sup> The maneuvers now required during driver testing include: off-set left and right backing, sight and blind side parallel parking, and 45° and ninety 90° alley docking.<sup>14</sup>

### B. Case Law

In *Golden Peanut Co. v. Miller*,<sup>15</sup> the Georgia Court of Appeals reviewed two issues related to commercial motor vehicles.<sup>16</sup> This case dealt with a collision between a tractor-trailer driven by the defendant driver and a passenger vehicle driven by the plaintiff. The collision occurred when the defendant pulled through an intersection causing the

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8. GA. COMP. R. & REGS. 375-5-3-.17(8)(c)(i)–(iv).

9. GA. COMP. R. & REGS. 375-5-3-.17(9).

10. *Id.*

11. GA. COMP. R. & REGS. 375-5-3-.17(1).

12. GA. COMP. R. & REGS. 375-5-3-.17(5).

13. GA. COMP. R. & REGS. 375-5-3-.17(7).

14. GA. COMP. R. & REGS. 375-5-3-.17(7)(a)–(d).

15. 363 Ga. App. 384, 870 S.E.2d 511 (2022).

16. *Id.* at 385, 386–87, 870 S.E.2d at 513, 515.

plaintiff to collide with the trailer that the defendant was transporting. The trailer was owned by Golden Peanut Company, LLC, and its parent company, Golden Peanut. The plaintiff filed suit asserting that Golden Peanut was liable under theories of common law vicarious liability and as a statutory employer under the Federal Motor Carrier Safety Regulations (FMCSR). Golden Peanut filed a motion for summary judgment arguing that (1) it had no right to control the defendant's driver's work and therefore vicarious liability was inapplicable and (2) that it was not liable as a statutory employer under the FMCSR. The motion for summary judgment was denied by the Gwinnett County State Court, and Golden Peanut appealed.<sup>17</sup>

The court of appeals reviewed the record for evidence that would support the plaintiff's claim for vicarious liability.<sup>18</sup> The evidence showed that the defendant driver was a sole proprietorship, owned the tractor involved in the collision, paid his own expenses, and was engaged to haul for Golden Peanut by a brokerage service which paid the defendant driver a flat fee. The evidence further showed that Golden Peanut did not tell the defendant driver which route to take or have any control over when the freight was delivered. The plaintiff argued that Golden Peanut employees gave instruction to the defendant driver as to where to park to unload the freight and how to unload the freight.<sup>19</sup> In reversing the trial court's denial of summary judgment, the court of appeals held that there was no evidence in the record of any relationship between the defendant driver and Golden Peanut that would convert him from an independent contractor to an employee.<sup>20</sup> The court of appeals further held that "merely taking steps to see that the contractor carries out his agreement . . . is not such interference and assumption of control as will render the employer liable."<sup>21</sup>

Next, Golden Peanut argued that the statutory employment theory was no longer legally viable, but the court of appeals did not address this issue as the argument was not made before the trial court.<sup>22</sup> Golden Peanut argued that it was not the statutory employer of the defendant driver and therefore the trial court erred in denying its motion for summary judgment.<sup>23</sup> Citing to 49 C.F.R. § 390.5T,<sup>24</sup> the court of appeals

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17. *Id.* at 385, 870 S.E.2d at 513.

18. *Id.* at 386–87, 870 S.E.2d at 514.

19. *Id.* at 387, 870 S.E.2d at 515.

20. *Id.*

21. *Id.*

22. *Id.* at 388, 870 S.E.2d at 515.

23. *Id.*

24. 49 C.F.R. § 390.5T (2022).

held that an employer is “any person engaged in a business affecting interstate commerce who owns or leases a commercial motor vehicle in connection with that business, or assigns employees to operate it.”<sup>25</sup> Thus, “the existence of a lease between the defendant and owner of the vehicle involved in an accident is the defining element in creating a statutory employment relationship under the FMCSRs.”<sup>26</sup> As there was no evidence of any lease agreement between the defendant driver and Golden Peanut, the court held that Golden Peanut was not a statutory employer, and therefore, the trial court erred in denying its motion for summary judgment.<sup>27</sup>

### III. AVIATION

Commercial aviation is generally controlled by federal authority, but there are several important areas related to aviation that are within state jurisdiction.<sup>28</sup> In Georgia, there is substantial importance in providing and regulating emergency medical services, such as air ambulances,<sup>29</sup> and the legislature has placed this responsibility with the Department of Public Health (DPH).<sup>30</sup> The DPH promulgated new rules and regulations last year<sup>31</sup> that clarified that air ambulances must have current Federal Aviation Administration (FAA) approval to operate in Georgia<sup>32</sup> and must maintain current Clinical Laboratory Improvement Amendments (CLIA) certification as a laboratory that is permitted to perform waived tests.<sup>33</sup> Further, the new rules removed the records-keeping requirements for air ambulance providers.<sup>34</sup>

Similarly, regulating airports is of substantial importance at the state level because operating airports without regulation of minimum and uniform safety requirements endangers the lives and property of those located within the state.<sup>35</sup> To this end, Georgia provides for the licensing of airports based on rules and regulations<sup>36</sup> promulgated by the

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25. *Golden Peanut Co.*, 363 Ga. App. at 388, 870 S.E.2d at 516; 49 C.F.R. § 390.5T.

26. *Golden Peanut Co.*, 363 Ga. App. at 388, 870 S.E.2d at 516.

27. *Id.* at 389, 870 S.E.2d at 516.

28. *Georgia Aviation Authority*, Georgia.Gov, <https://georgia.gov/organization/georgia-aviation-authority> (last visited Aug. 22, 2021) [<https://perma.cc/Q5QA-NKLD>].

29. See O.C.G.A. § 31-11-1(a)(1) (2022).

30. O.C.G.A. § 31-11-5 (2022).

31. GA. COMP. R. & REGS. 511-9-2-.01–.19 (2022).

32. GA. COMP. R. & REGS. 511-9-2-.06(4).

33. GA. COMP. R. & REGS. 511-9-2.06(7)(a).

34. GA. COMP. R. & REGS. 511-9-2.06(5); *accord* GA. COMP. R. & REGS. 511-9-2.06(5) (2016).

35. See O.C.G.A. § 32-9-8(b) (2022).

36. See O.C.G.A. §§ 32-9-8(b)–(d).

Department of Transportation (DoT),<sup>37</sup> and the legislature passed a bill last year amending the licensing requirements for airports.<sup>38</sup>

Subsection (i) of the Official Annotated Code of Georgia section 32-9-8<sup>39</sup> was amended to clarify that it is unlawful to operate an airport without obtaining a license from the DoT.<sup>40</sup> When the DoT is made aware of an airport operating without a license, the DoT is authorized to issue an initial cease and desist order requiring the airport to cease operations.<sup>41</sup> The initial cease and desist order will be final twenty (20) days after issuance, unless the unauthorized airport provides the proper license or evidence of exemption from the licensing requirements.<sup>42</sup> After becoming final, the DoT may, through the Attorney General, petition the superior court in the county where the unlicensed airport is located to obtain an order instructing the unauthorized airport to cease operations.<sup>43</sup> Should the airport continue to operate in violation of an issued order, the unauthorized airport can be assessed a penalty of up to \$1,000 per day.<sup>44</sup> The DoT will take into consideration the appropriateness of the penalty relative to the gravity of the violation, as well as any other contributing factors or circumstances.<sup>45</sup> All penalties and fines recovered under O.C.G.A. § 32-9-8(i)(4) shall be paid to the general fund of the State, but the DoT has the discretion to remit the net cost of recovery.<sup>46</sup> Any person that is assessed a civil penalty under O.C.G.A. § 32-9-8 shall have the right to request a hearing as provided for in Chapter 13 of Title 50, the Georgia Administrative Procedure Act.<sup>47</sup>

In response to the O.C.G.A. § 32-9-8 amendments, the DoT amended the Rules and Regulations for Licensing of Certain Open-to-the-Public Airports,<sup>48</sup> and specifically included the new enforcement procedure.<sup>49</sup> The DoT modified several definitions including what constitutes an airport,<sup>50</sup> which facilities are not considered an airport,<sup>51</sup> the meaning of

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37. O.C.G.A. § 32-2-2 (2022).

38. Ga. H.R. Bill 577, Reg. Sess., 2021 Ga. Laws 526.

39. O.C.G.A. § 32-9-8(i) (2022).

40. O.C.G.A. § 32-9-8(i)(1).

41. O.C.G.A. § 32-9-8(i)(2).

42. *Id.*

43. O.C.G.A. § 32-9-8(i)(3).

44. O.C.G.A. § 32-9-8(i)(4)(A).

45. O.C.G.A. § 32-9-8(i)(4)(B).

46. O.C.G.A. § 32-9-8(i)(5).

47. O.C.G.A. § 32-9-8(i)(4)(C).

48. GA. COMP. R. & REGS. 672-9-.01 through .05 (2022).

49. GA. COMP. R. & REGS. 672-9-.04(J)(4)(i)–(iv).

50. GA. COMP. R. & REGS. 672-9-.01(c).

51. GA. COMP. R. & REGS. 672-9-.01(c)(1)–(3).

a person as used within the rule,<sup>52</sup> the runway object free area,<sup>53</sup> and repealed a rule that previously identified airports not required to be licensed.<sup>54</sup> The DoT also modified the specific dimensions required for runways as determined by runway length, while explaining that if the FAA provides for shorter lengths or widths of the runways, then the FAA-provided standards will be the standard for determining airport licensure.<sup>55</sup> The DoT clarified that an airport in existence on July 1, 1978, would not be denied a license for failure to meet the required geometric layout of the airport as it relates to the runway, taxiway, and aircraft parking areas.<sup>56</sup> Further, the DoT changed the procedure for reinstating a revoked license to require the airport owner to reapply and meet all qualifications for licensure,<sup>57</sup> whereas previously the airport license was reinstated once the DoT confirmed that the necessary corrective action had been completed by the owner.<sup>58</sup>

#### IV. RAILROADS

Regulatory action at the state level regarding railroads is infrequent, as federal legislation is the primary source for regulation in this area and often preempts any state law.<sup>59</sup> This interplay between federal and state action was demonstrated this Survey period when a bill proposed in the Georgia House was not passed, but instead, a resolution was introduced agreeing to urge the Federal Railroad Administration (FRA) to take action.<sup>60</sup>

In response to Georgia residents' expressed concerns regarding the blocking of railroad crossings by trains, House Bill 1473<sup>61</sup> was introduced in February 2022 to address instances of blocking for longer than fifteen consecutive minutes.<sup>62</sup> The Bill proposed additions to the language of O.C.G.A. § 46-8-197,<sup>63</sup> which exempts railroad employees from being found guilty for violating laws and regulations intended to "regulate the occupying or blocking of any street, road, or highway grade crossing by

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52. GA. COMP. R. & REGS. 672-9-.01(t).

53. GA. COMP. R. & REGS. 672-9-.01(x).

54. GA. COMP. R. & REGS. 672-9-.05 (repealed eff. Jan. 3, 2022).

55. GA. COMP. R. & REGS. 672-9-.03(B)–(C).

56. GA. COMP. R. & REGS. 672-9-.03(I).

57. GA. COMP. R. & REGS. 672-9-.04(I).

58. GA. COMP. R. & REGS. 672-9-.04(I).

59. See McNeeley et al., *Commercial Transportation*, 73 MERCER L. REV. 47.

60. Ga. H. Res. 1023, Reg. Sess. (2022).

61. Ga. H.R. Bill 1473, Reg. Sess. (2022) (unenacted).

62. *Id.*

63. O.C.G.A. § 46-8-197 (2022).



engines or passenger or freight cars” upon proof that they were following orders or instructions from their supervisor or employer.<sup>64</sup> The Bill not only proposed additions directly prohibiting any railroad common carrier from blocking a crossing for longer than fifteen minutes, but also imposed civil monetary penalties upon the common carrier determined to have done so.<sup>65</sup> The proposed language of the Bill went on to add that “[a]ny civil monetary penalty assessed pursuant to this subsection shall be \$500.00 for every five minutes a train blocks or occupies a street, road, or highway grade crossing beyond the time allowed.”<sup>66</sup>

While House Bill 1473 certainly addressed the concerns of Georgia residents, the Bill died in committee and no additions were enacted.<sup>67</sup> Instead, the House introduced a resolution to urge the FRA to take action regarding the issue.<sup>68</sup> The resolution acknowledged that the FRA oversees freight railroad safety and advises railroads to “work cooperatively with state and local officials to eliminate or minimize the impact of blocked crossings whenever possible.”<sup>69</sup> While the state legislature recognized that the FRA had no specific regulation limiting how long a train could block a crossing, they still avoided enacting law to further regulate in this area. Instead, the resolution stated that the members would “urge the Federal Railroad Administration to take action to regulate blocked railroad crossings in the metropolitan areas.”<sup>70</sup>

## V. TRANSPORTATION FOR HIRE: LIVERY AND RIDESHARE SERVICES

### A. *Taxation of Limousine Services*

In *Executive Limousine Transportation, Inc. v. Curry*,<sup>71</sup> the Georgia Court of Appeals addressed a matter of first impression regarding the meaning and application of the Georgia Limousine Carrier Act (the Act),<sup>72</sup> and whether O.C.G.A. § 40-1-168,<sup>73</sup> which bars local governments from imposing excise taxes on limousine carriers, also bars collecting sales tax for rides performed by limousine carriers.<sup>74</sup>

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64. *Id.*

65. Ga. H.R. Bill 1473, Reg. Sess.

66. *Id.*

67. Ga. H.R. Bill 1473, Reg. Sess.

68. Ga. H. Res. 1023, Reg. Sess.

69. *Id.*

70. *Id.*

71. 361 Ga. App. 626, 865 S.E.2d 217 (2021).

72. O.C.G.A. § 40-1-150 (2022).

73. O.C.G.A. § 40-1-168 (2022).

74. *Id.*; *Executive*, 361 Ga. App. at 629, 865 S.E.2d at 220.

Executive Limousine Transportation (Executive), a licensed limousine operator, applied to the Commissioner of the Georgia Department of Revenue (DoR) for a refund of previously remitted state and local option sales taxes, as well as a declaration that Executive would not owe these taxes in the future.<sup>75</sup> The DoR denied Executive's application, which Executive appealed to the Georgia Tax Tribunal (Tribunal) arguing that limousine carriers are not subject to sales tax because sales tax constitutes an impermissible excise tax.<sup>76</sup> The Tribunal ruled against Executive and held that "notwithstanding the fact that 'excise tax' is not defined anywhere in Georgia Statute[s], no authority is cited by either [Executive or the DoR] that demonstrates that local sales tax is an excise tax as that term is used in Georgia law."<sup>77</sup> Further, the Tribunal "held that Executive 'has not overcome the presumption' that the applicable regulation, Ga. Comp. R. & Regs. r. 560-12-2-.84 [], 'is valid and that Executive is subject to sales tax under the Rule's plain language.'"<sup>78</sup> Thus, the Tribunal agreed with the DoR and ruled against Executive.<sup>79</sup>

Executive petitioned the Fulton County Superior Court for review, arguing that limousine services do not constitute sales, and even if limousine services are considered sales, the sales were exempted because Executive provides professional or personal services to its customers.<sup>80</sup> Executive also argued that the DoR "violated Executive's right to equal protection by not forcing ride-share companies like Uber to collect sales tax and that Executive is not subject to local sales tax under O.C.G.A. §§ 40-1-116 and 40-1-168."<sup>81</sup> The superior court upheld the Tribunal's decision and adopted the bulk of the Tribunal's order finding that Executive and other for-hire car services are subject to sales tax under Georgia law.<sup>82</sup> The superior court granted DoR's motion for summary judgment, and Executive appealed to the court of appeals, which affirmed the superior court's ruling.<sup>83</sup>

The court of appeals explained that Georgia law has defined a retail sale broadly since the first adoption of a state sales tax in 1951; under current law, a sale is defined as "any sale, lease, or rental for any purpose other than for resale, sublease, or subrent," which includes the sale of

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75. *Executive*, 361 Ga. App. at 627, 865 S.E.2d at 218–19.

76. *Id.* at 627, 865 S.E.2d at 219.

77. *Id.*

78. *Id.* at 627, 865 S.E.2d at 219; *see* GA. COMP. R. & REGS. 560-12-2-.84 (2022).

79. *Executive*, 361 Ga. App. at 627, 865 S.E.2d at 219.

80. *Id.* at 627, 865 S.E.2d at 219.

81. *Id.* at 627–28, 865 S.E.2d at 219.

82. *Id.* at 628, 865 S.E.2d at 219.

83. *Id.* at 628, 865 S.E.2d at 219–20.

transportation “when made to any purchaser for purposes other than resale.”<sup>84</sup> Additionally, the Georgia General Assembly made clear in enacting the tax code that its intent was “to exercise its full and complete power to tax the retail purchase, retail sale, rental, storage, use, and consumption of tangible personal property and the services described in this article,”<sup>85</sup> which led the Supreme Court of Georgia to articulate “the maxim that ‘taxation is the rule, and exemption from taxation the exception.’”<sup>86</sup> “In accordance with this statutory scheme, Rule 560-12-2-.84, first adopted in 1965 and amended in 1983 and 1991, declares that for-hire cars are subject to sales tax.”<sup>87</sup> Thus, “the sale of transportation by hired car has been subject to sales tax ever since that tax’s introduction into Georgia law[,] . . . [and] [i]t is against this backdrop that the Georgia General Assembly enacted the Georgia Limousine Carrier Act.”<sup>88</sup>

Executive’s argument focused on § 40-1-168 of the Act,<sup>89</sup> which states, in part, that “[n]o subdivision of this state, including cities, townships, or counties, shall levy any excise, license, or occupation tax of any nature” on a limousine carrier.<sup>90</sup> Of import, the General Assembly did not use the term “sales tax” in the Act, which is a choice of omission that the court must respect given that Georgia law distinguishes between an excise tax, a tax imposed earlier in the stream of commerce (i.e., at the wholesale level), versus sales taxes, a tax imposed later in the stream of commerce (i.e., at the retail level).<sup>91</sup> Based on this authority, the court of appeals agreed with the superior court’s determination that “no part of the Act, including O.C.G.A. § 40-1-168, bars the imposition and collection of state or local-option sales taxes from for-hire car services such as Executive for the rental of its limousines or cars” because the plain language of the statute only relieves Executive from collecting excise, license, and occupation taxes, but not sales tax.<sup>92</sup> The court of appeals also disagreed with Executive’s argument that its drivers were professional or personal services because for-hire drivers and limousine carriers are not identified as professionals or personal services in the Act itself nor other statutes

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84. O.C.G.A. § 48-8-2(31)(A) (2022).

85. O.C.G.A. § 48-8-1 (2022).

86. *Executive*, 361 Ga. App at 629–30, 865 S.E.2d at 220 (quoting *Georgia Dep’t of Revenue v. Owens Corning*, 283 Ga. 489, 489, 660 S.E.2d 719, 720 (2008)).

87. *Executive*, 361 Ga. App. at 630, 865 S.E.2d at 221.

88. *Id.* at 631, 865 S.E.2d at 221.

89. O.C.G.A. § 40-1-168.

90. *Id.*

91. *Executive*, 361 Ga. App at 632, 865 S.E.2d at 221–22.

92. *Id.* at 633, 865 S.E.2d at 222.

related to regulating professions.<sup>93</sup> Further, the court of appeals determined that the retail sale by a limousine carrier to a customer “is at the core of what a for-hire driver and service sells to its customers,” and such a sale cannot be considered an inconsequential element of the ride for which no separate charges are made.<sup>94</sup> Accordingly, the court of appeals affirmed the superior court’s grant of summary judgment to DoR.<sup>95</sup> Therefore, the DoR has the authority to collect sales tax on rides provided by for-hire services.<sup>96</sup>

### *B. Rules and Regulations Regarding Transportation Services Tax*

The Department of Treasury (Treasury) promulgated new rules and regulations this year related to the transportation service tax imposed pursuant to Title 48, Chapter 13, Article 8 of the O.C.G.A.,<sup>97</sup> and the rules and regulations went into effect on April 14, 2022.<sup>98</sup> The new rules and regulation impose an excise tax on for-hire ground transport trips and shared for-hire ground transport trips.<sup>99</sup> The Treasury will adjust the rate of the excise tax each year on April 1 based on annual inflation or deflation.<sup>100</sup> This excise tax is a debt from the passenger to be collected by the for-hire ground transport service.<sup>101</sup> If the transportation service provider fails or refuses to collect the excise tax, the transportation service provider is liable for the fee.<sup>102</sup> The Treasury allows for exemptions to the excise tax,<sup>103</sup> as well as refunds for erroneously or illegally collected taxes.<sup>104</sup> The Treasury has clarified that, while according to *Executive Limousine Services*, the Treasury is allowed to collect sales tax on for-hire transportation services, the Treasury exempted for-hire and shared for-hire ground transport trips from state and local sales and use taxes.<sup>105</sup> However, for-hire transportation services are still required to pay sales and uses taxes on property used and consumed in the performance of the trips, including fuel and

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93. *Id.* at 633, 865 S.E.2d at 222–23.

94. *Id.* at 633–34, 865 S.E.2d at 223.

95. *Id.* at 634, 865 S.E.2d at 223.

96. *Id.* at 627, S.E.2d at 219.

97. GA. COMP. R. & REGS. 560-13-3-.01 (2022); *see* O.C.G.A. § 48-13-8 (2022).

98. *Id.*

99. GA. COMP. R. & REGS. 560-13-3-.01(3)(a).

100. GA. COMP. R. & REGS. 560-13-3-.01(4)(b).

101. GA. COMP. R. & REGS. 560-13-3-.01(3)(e).

102. GA. COMP. R. & REGS. 560-13-3-.01(3)(f).

103. GA. COMP. R. & REGS. 560-13-3-.01(6)(a)–(d).

104. GA. COMP. R. & REGS. 560-13-3-.01(13).

105. GA. COMP. R. & REGS. 560-13-3-.01(7)(a).

automobile parts or accessories.<sup>106</sup> The Treasury also provided several examples to assist for-hire transportation services with implementing this rule.<sup>107</sup>

#### VI. AUTONOMOUS VEHICLE TECHNOLOGY

As fully autonomous, or “self-driving,” vehicles become increasingly common across the country, Georgia legislative and judicial developments will become crucial. While the first legislative action in this arena was taken in 2017 to allow for the testing of autonomous vehicles on public roads,<sup>108</sup> the legislature passed another bill in 2021, Georgia Senate Bill 165, amending Chapter 8, Title 40 of the O.C.G.A.<sup>109</sup> Georgia Senate Bill 165 became effective on July 1, 2021, modifying O.C.G.A. § 40-8-1(b) with the intent of exempting “certain autonomous vehicles from certain equipment standards.”<sup>110</sup> Specifically, this amendment added the following language as an exception to the article:

Unless otherwise required by federal law, rule, or regulation, a fully autonomous vehicle that is designed to be operated exclusively by the automated driving system for all trips shall not be subject to any provisions of this article that relate to or support motor vehicle operation by a human driver and are not relevant to the operation of an automated driving system.<sup>111</sup>

Similarly, House Bill 249<sup>112</sup> proposed to add similar exemption language to each specific section of the article that addresses the safety requirements from which autonomous vehicles would be exempt.<sup>113</sup> In particular, if passed, fully autonomous vehicles would be excused from statutory requirements such as speedometers, multi-beam headlights, unobstructed rear view, and windshield wipers.<sup>114</sup> While originally introduced in February 2021, this proposed legislation was not addressed over this Survey period. Nevertheless, the Bill forecasts possible further attempts at regulatory exemptions as autonomous vehicles become more numerous on Georgia roads.<sup>115</sup>

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106. GA. COMP. R. & REGS. 560-13-3-.01(7)(b).

107. GA. COMP. R. & REGS. 560-13-3-.01(3)(a)(1)–(2).

108. Ga. S. Bill 219, Reg. Sess., 2017 Ga. Laws 549.

109. Ga. S. Bill 165, Reg. Sess., 2021 Ga. Laws 456.

110. *Id.*

111. O.C.G.A. § 40-8-1(b) (2022).

112. Ga. H.R. Bill 249, Reg. Sess. (2021) (unenacted).

113. *Id.*

114. *Id.*

115. *Id.*

VII. SHAREABLE DOCKLESS MOBILITY DEVICES  
AND PERSONAL DELIVERY DEVICES

As businesses continue to develop automated and contactless methods of delivering goods to consumers, the Georgia legislature amended Title 40 of the O.C.G.A. to address the operation of “personal delivery devices” on roads and sidewalks.<sup>116</sup> A “personal delivery device” is defined in the new provisions of the Code as “a powered vehicle that utilizes an automated driving system to transport cargo, is not designed to transport passengers, and has a maximum unladen weight of 500 pounds or a maximum weight of 600 pounds when carrying any cargo.”<sup>117</sup> Similar to electric assisted bicycles and electric personal assisted mobility devices (EPAMDs), personal delivery devices are excluded from the definition of “motor vehicles.”<sup>118</sup>

The Act modifies the definitions of “bicycle lane” and “bicycle path” to permit travel by personal delivery devices, and it provides that both personal delivery devices and EPAMDs may be operated on highways and on sidewalks that include a 48-inch clear path for access by persons with disabilities.<sup>119</sup> When operating personal delivery devices or EPAMDs on highways, the operators have the same rights and duties as those prescribed for drivers of motor vehicles.<sup>120</sup> When operating on sidewalks, the operators have the same rights and duties as those for pedestrians, with the caveat that the operators must yield the right-of-way on the sidewalk to any pedestrian or individual in a wheelchair whom the device encounters.<sup>121</sup> While users of EPAMDs on highways must use “separately striped bicycle lanes” or limit themselves to roads with speed limits of thirty-five miles per hour or less, personal delivery devices are subject to different restrictions.<sup>122</sup> Operation of personal delivery devices is restricted to “(A) [h]ighways which are not limited-access highways with a maximum speed limit of 45 miles per hour or less; and (B) [t]he bicycle lane, bicycle path, shared use path, shoulder, or as close as practicable to the extreme right of the roadway.”<sup>123</sup>

The Act also requires various safety features for personal delivery devices operating in Georgia, including: (1) a requirement that the

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116. Ga. H.R. Bill 1009, Reg. Sess., 2022 Ga. Laws 543.

117. O.C.G.A. § 40-1-1(43.1) (2022).

118. O.C.G.A. § 40-1-1(33) (2022).

119. Ga. H.R. Bill 1009, 2022 Ga. Laws 543.

120. *Id.*

121. *Id.*

122. *Id.*

123. *Id.*

personal delivery device “shall emit a sound when approaching and within six feet of a vehicle, person on foot, or individual in a wheelchair”; (2) various speed limitations depending on whether the device is operating on a bicycle lane, roadway, shoulder, sidewalk, shared-use path, safety zone, or crosswalk; (3) brakes and lights; (4) a prominently displayed unique identification number and a contact phone number for the owner that will be answered by an individual located in Georgia; (5) a prohibition on transporting hazardous materials; and (6) a requirement that the personal delivery device “be monitored by an individual who is capable of exercising control over [its] navigation and operation” whenever it is operating on highways or sidewalks.<sup>124</sup> Like EPAMDs, personal delivery devices may not be parked on roadways in a way that would “prevent the movement of a legally parked motor vehicle,” and they may only be parked on sidewalks if not restricted by local ordinance or traffic control devices, and if they will not prevent the movement of a wheelchair.<sup>125</sup> Parking restrictions are the same as those for motor vehicles, and parking violations are the responsibility of the owner or lessee of the personal delivery device or the owner of the EPAMD.<sup>126</sup>

Anticipating the liability issues that may arise from the operation of these automated devices among Georgia’s motorists, cyclists, and pedestrians, the Act requires the owner or lessee or a personal delivery device to maintain general liability coverage for any such device of at least \$250,000.<sup>127</sup> If an accident occurs that involves a personal delivery device, the device must remain on the scene, and its operator must promptly contact local law enforcement.<sup>128</sup> Violations of these provisions are not criminal offenses or moving-traffic violations, but they may subject the owner of the personal delivery device to civil penalties, with the issued citations to be adjudicated by whichever court has jurisdiction over motor-vehicle violations.<sup>129</sup>

Finally, the Act preempts nearly all local lawmaking with respect to personal delivery devices, except that local authorities are allowed to prohibit operation on sidewalks, bicycle lanes, bicycle paths, and shared-use paths during the night and to prohibit their operation on or

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124. *Id.*

125. *Id.*

126. *Id.*; see O.C.G.A. § 40-1-1(43.3) (2022) (including “lessee” in definition of “personal delivery device owner”).

127. Ga. H.R. Bill 1009, 2022 Ga. Laws 543.

128. *Id.*

129. *Id.* The jurisdiction provision also applies to violations related to EPAMDs.

near certain properties such as schools, hospitals, stadiums, and government buildings.<sup>130</sup>

#### VIII. CONCLUSION

Rapid technological developments seem to continuously alter how people and freight are moved across Georgia. A thorough understanding of developments in state law is essential to successfully navigating the world of commercial transportation, even in areas such as aviation, rail, and trucking that are heavily regulated at the federal level.

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130. *Id.*