



Legal Alert: Here's the Deal: Georgia Governor Signs Several Significant Tax Bills

May 10, 2016

Following the conclusion of Georgia's 2016 legislative session, Governor Nathan Deal signed into law several tax bills touching on a wide range of tax matters, including sales and use taxes, property taxes, corporate income taxes and state tax credits.

Sales and Use and Other Taxes

H.B. 960

H.B. 960 contains the most substantial changes to Georgia tax law from the 2016 legislative session. As detailed in a prior [Sutherland Legal Alert](#), the legislation reduces Georgia's statutory interest rate and also creates new, unusual procedures for sales and use tax refund claims that are deemed to be of "local significance."

- **Interest Rate Reduction:** H.B. 960 amends Georgia's statutory interest rate applicable to all Georgia state and local taxes. For interest accrued on or after July 1, 2016, the rate for both tax assessments and refunds will now be a floating rate set at the federal prime rate plus three percentage points, updated annually.¹ Georgia's current statutory interest rate is a fixed 1% per month (12% annually). The current federal prime rate plus three percentage points is 6.50%.
- **Notification to Local Governments:** The Department will now be required to notify affected local political subdivisions of any "refund claim of local significance," defined as a sales and use tax refund claim that (as filed) amounts to 10% or more of the yearly distribution to the locality.² The notification will not include any taxpayer identifying information. H.B. 960 provides that localities may use the information to "make reasonable budgetary recommendations" to local tax officials, subject to Georgia's tax information confidentiality provisions.
- **Audits of (not by) the Department:** The Department's audit of refund claims of local significance may be subject to review by the Georgia Department of Audits and Accounts.³ In its review, the Department of Audits and Accounts will assess whether the Department "followed proper procedure and used appropriate methodology" in reaching its final determinations on the refund claims.
- **Tax Tribunal Review:** Refund claims of local significance pending with the Department for two years will automatically be transferred to the Georgia Tax Tribunal.⁴ The Georgia Tax Tribunal will determine the party "at fault" for the delay in processing the refund claim. If the Department is primarily at fault, the taxpayer will be entitled to the full amount of applicable refund interest. However, if the taxpayer is primarily at fault, the taxpayer will not be entitled to

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any interest. After the Tax Tribunal's determination, the matter will be remanded back to the Department for its determination of the underlying refund claim.

- **Electronic Filing/Local Allocation Reporting:** Taxpayers that are required to pay certain Georgia taxes electronically will now be required to file refund claims electronically through the Georgia Tax Center.⁵ The electronic filing requirement will apply to refunds for sales and use taxes, withholding taxes and motor fuel taxes.⁶ Additionally, taxpayers filing a sales and use tax refund claim must now submit an allocation of the local portion of the total refund amount by political subdivision.⁷ It is expected that the allocations will be reported in the aggregate amount attributable to each locality. The Department is currently reviewing methods for submitting the documentation electronically and is expected to publish guidance on this method via regulation or Policy Bulletin.
- **Effective Date:** H.B. 960 is effective July 1, 2016.⁸ The legislation provides that the new floating interest rate will only apply to interest accrued on or after July 1, 2016.⁹ The notification and automatic transfer requirements will only apply to claims received on or after July 1, 2016.¹⁰

Sutherland Observation: To avoid any unintentional delay or automatic transfer to the Georgia Tax Tribunal (a public forum), taxpayers should consider filing claims for refund only after collecting and gathering all relevant documentation. Moreover, taxpayers should carefully document any correspondence with the Department during the audit process in the event the refund claim remains outstanding for more than two years and is transferred to the Tax Tribunal for its determination of the party at fault for the delay.

Corporate Income Tax

H.B. 742

H.B. 742 extends reporting and payment deadlines for corporations filing returns in Georgia. For tax years beginning on or after January 1, 2016, Georgia corporate income tax returns, and corporate net worth tax returns, must be filed on or before April 15 (for calendar year taxpayers) or the fifteenth day of the fourth month following the end of the fiscal year.¹¹ Previously, Georgia corporate tax returns were due March 15, or the fifteenth day of the third month following fiscal year end. H.B. 742 also clarifies the deadline for Georgia partnership returns and S-Corporation returns remains March 15, or the fifteenth day of the third month after fiscal year end.¹²

H.B. 742 also updates Georgia's conformity to the I.R.C. as of January 1, 2016.¹³

Credits and Incentives

H.B. 922

H.B. 922 permits a taxpayer to aggregate jobs within its disregarded entities for purposes of the Georgia Quality Jobs Tax Credit. The credit is available for a “taxpayer establishing new quality jobs” in Georgia.¹⁴ H.B. 922 amends the definition of “taxpayer” to include jobs within disregarded entities owned by the regarded taxpayer in calculating the number of new quality jobs created by the taxpayer.¹⁵ The law change is applicable to tax years beginning on or after January 1, 2016.¹⁶

Sutherland Observation: While the Department has generally required taxpayers to qualify for tax credits on a separate company basis, some viewed prior law as being ambiguous regarding whether the employees of disregarded entities could be counted with those of the regarded parent when determining whether job creation thresholds were met.

H.B. 936

H.B. 936 addresses the wage threshold for new jobs to qualify for the Georgia Jobs Tax Credit; specifically, whether *each* new job must meet the threshold or whether the threshold is calculated as an average for *all* new jobs.¹⁷ The wage of “each new job created” must now meet the wage threshold. H.B. 936 is effective on July 1, 2016.¹⁸

Sutherland Observation: The statute for the regular Jobs Tax Credit, O.C.G.A. § 40-7-40, was amended in 2012 in a manner that appeared to require that each new job meet the wage threshold. See 2012 Ga. Laws, Act 767, § 1 (May 3, 2012). Although the statute for the special Jobs Tax Credit for jobs created in certain zones (e.g., less developed census tracts), O.C.G.A. § 48-7-40.1, was *not* amended in 2012, the Georgia Department of Community Affairs amended its regulations in 2013 in a manner suggesting that the jobs threshold applied to credits claimed under either statute. H.B. 936 now amends the special Jobs Tax Credit statute to apply the “per job” changes previously made in 2012 to the regular Jobs Tax Credit statute.

Property Tax

H.B. 364

H.B. 364 authorizes the Department to exercise greater oversight over counties’ taxation of real and personal property.¹⁹ Under current Georgia law, the Department reviews and approves property tax digests prepared by county boards of tax

assessors, but does so with limited oversight authority. H.B. 364 now requires the Department to strike from the tax digest—on an individual, per-property basis—any property where the Department finds that the property should not be subject to property tax under Georgia law.²⁰ The Department's examination may be initiated following a taxpayer's complaint or on its own initiative.²¹

If the Department strikes a property from the digest and the county attempts to tax it again within five years, the county loses its qualified local government status (an important requirement for state funding) for three years.²² The county's governing authority can regain its qualified local government status earlier by removing every member of the county's board of tax assessors and reappointing new members.

Taxpayers whose property has been found nontaxable by the Department can file a petition with the Georgia Tax Tribunal seeking a refund of any property taxes imposed by the county during the preceding five years, plus interest and attorneys' fees.²³

The bill is effective July 1, 2016.²⁴

H.B. 935

H.B. 935 amends Georgia's "Level One" freeport exemption to enable localities to adopt a personal property tax exemption for inventory held in an e-commerce fulfillment center.²⁵ The bill authorizes local governments to exempt the "stock in trade" of a "fulfillment center," defined as a business location "used to pack, ship, store or otherwise process" goods sold through the Internet or other remote means.²⁶ The exemption is applicable for goods stored less than one year at the fulfillment center.²⁷ The local governing authority of a county may adopt the exemption through a referendum.²⁸ The bill became effective upon the Governor's signature on May 3, 2016.

Sutherland Observation: Many counties in Georgia that adopt the "Level One" freeport exemption already interpret existing law to exempt the inventory of e-commerce fulfillment centers. At least one Georgia county, however, has recently taken the position that the freeport exemption does not apply to this type of inventory. H.B. 935 provides counties with an opportunity to make clear that inventory held at an e-commerce fulfillment center is entitled to the freeport exemption.

¹ H.B. 960 §§ 2 & 3 (amending O.C.G.A. §§ 48-2-35 & 48-2-40).

² *Id.* § 2 (adding O.C.G.A. § 48-2-35(h)).

³ *Id.*

⁴ *Id.* § 5 (adding O.C.G.A. § 50-13A-19.1).

⁵ *Id.* § 2 (adding O.C.G.A. § 48-2-35(g)).

⁶ O.C.G.A. § 48-2-32(f)(2.1).

⁷ *Id.*

⁸ H.B. 960, § 6(a).

⁹ *Id.* § 6(b).

¹⁰ *Id.* § 6(c).

¹¹ H.B. 742 §§ 2 & 6 (amending O.C.G.A. §§ 48-7-56 & 48-13-77).

¹² *Id.*

¹³ *Id.* § 1 (amending O.C.G.A. § 48-1-2(14)).

¹⁴ O.C.G.A. § 48-7-40.17(b).

¹⁵ H.B. 922 § 1 (adding O.C.G.A. § 48-7-40.17(a)(3)).

¹⁶ *Id.* § 2.

¹⁷ H.B. 936 § 1 (amending O.C.G.A. § 48-7-40(e)(1)).

¹⁸ *Id.* § 4(a).

¹⁹ H.B. 364 § 1 (adding O.C.G.A. § 48-5-342(e)).

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*; The bill correspondingly grants the Georgia Tax Tribunal jurisdiction over such refund petitions. H.B. 364 § 2 (amending O.C.G.A. § 50-13A-9).

²⁴ H.B. 364 § 3.

²⁵ H.B. 935 § 2 (amending O.C.G.A. § 48-5-48.2(b)).

²⁶ *Id.*

²⁷ *Id.*

²⁸ O.C.G.A. § 48-5-48.2(c).

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