

# PUBLICATION

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## Spotlight on Georgia: Certain Interesting Tax Developments

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As in past years, there have been numerous interesting tax-related developments over the last 12 months in the state of Georgia. Just a few of these recent developments are summarized below:

**Tax Exempt Property.** In *DeKalb County Board of Tax Assessors v. Presbytery of Greater Atlanta, Inc.*, a religious nonprofit corporation, not having a present need to use property it owned, leased that property for 20 percent of the market rental rate to another religious nonprofit corporation to be used as a place of religious worship by the leasing corporation. The DeKalb County Board of Tax Assessors withdrew the tax exemption of the property because the owner of the property was not the party using it for exempt purposes.

The Georgia Court of Appeals, after noting that the owner of the property did not make a profit, held that there is no statutory requirement that the owner of the property be the user. The Appeals Court noted that the result would be different if the primary purpose of the rental of the property is to secure an income from the property.

**Limited Liability Companies.** The Georgia Department of Revenue has issued a clarifying release stating that it treats limited liability companies the same as the Internal Revenue Service. Thus, a single member limited liability company is disregarded and a multiple member limited liability company is treated as a partnership -- unless, in either case, the limited liability company has elected to be treated as a corporation. Consistent with this view, a single member limited liability company is arguably not subject to the Georgia net worth tax.

**Sales Taxes/Out-of-State Sellers.** In October 2012, the Georgia Department of Revenue issued a release implementing House Bill 386 passed by the 2012 General Assembly.

Beginning October 1, 2012, an out-of-state seller must collect sales tax from Georgia customers if:

1. A related company located in Georgia sells similar products using a similar business name as the out-of-state seller, or the related company uses trademarks, service marks or trade names in Georgia similar to those used by the out-of-state seller; or
2. On behalf of the out-of-state seller, a person or entity located in Georgia delivers, installs or assembles the seller's product, performs maintenance services, or provides a customer pick-up service in Georgia, or performs other similar activities in Georgia on behalf of the seller.

Beginning December 31, 2012, an out-of-state seller must collect sales tax from Georgia customers if:

3. The out-of-state seller made more than \$50,000 of sales to Georgia customers in the preceding 12 months that were referred to the seller by Georgia residents, whether by a link on an internet website, an in-person presentation, telemarketing or otherwise; and
4. The seller pays a commission or other consideration to Georgia residents based on completed sales referred to them by the resident.

**Atlanta Airport.** In *City of Atlanta v. City of College Park*, the Georgia Supreme Court held that the City of College Park could properly levy an occupation tax on the City of Atlanta for its business operations located at the Hartsfield-Jackson Atlanta International Airport inside the corporate limits of College Park.

**Motor Vehicles.** The 2012 General Assembly drastically modified the manner in which motor vehicles are taxed. Under the old system, in addition to sales taxes paid on the acquisition from a dealer of a motor vehicle, the owner paid an ad valorem tax each year. In the case of individual owners, the registration was due to be renewed annually and an ad valorem tax paid on the owner's birthday. Hence, the tax was known as the "birthday tax."

The 2012 General Assembly changed this methodology to a one-time title registration fee on the initial acquisition of the vehicle, including casual sales, which formerly had not been subject to sales taxes. The General Assembly overlooked the law that requires a sales tax to be paid on rentals received from leased vehicles, thus exposing leased vehicles to double taxation.

The 2013 General Assembly passed legislation that exempts from sales and use taxes the leases of vehicles for more than 31 consecutive days for which a state and local title ad valorem tax is paid.

As stated above, these are only a few of the interesting tax-related developments in Georgia over the last 12 months. If you would like to discuss these or any other state and local tax developments or should you wish to discuss any tax planning opportunities involving state and local taxes, please do not hesitate to contact any one of the attorneys in the Firm's Tax Department.