

**ASSESSMENT PROCEDURE, NOTICE REQUIREMENTS
AND APPEALS UNDER THE PROPERTY TAX
ASSESSMENT AND REFORM BILL OF 2010 (S. 346)**

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BASIC GEORGIA PROPERTY TAXATION

Senate Bill 346 was signed by former Governor Sonny Perdue on June 4, 2010. Two parts went into effect on the date of signing, and eleven parts of this thirteen-part act went into effect on January 1, 2011. Together, the act makes fifty different changes to Title 48, Chapter 5 of the Official Code of Georgia, representing the most significant revision of property tax law since the adoption of the Taxpayer's Bill of Rights in 1999.

Following the enactment of Senate Bill 346 ("SB 346"), the basic property tax system with which we are familiar remains in effect. Pursuant to O.C.G.A. § 48-5-6, all property shall be returned for taxation at its fair market value except as otherwise provided in Chapter 5. Property, both real and personal, is then assessed at 40 percent of its fair market value. O.C.G.A. § 48-5-7. Each respective tax jurisdiction may then make a levy against this 40 percent value. With respect to tangible property, this levy is in the form of a millage rate which is expressed in terms of dollars of taxes per \$1,000.00 of assessed value.

The millage rate for each county and municipality in the State of Georgia can be found at <https://etax.dor.ga.gov/ptd/cds/csheets/millrate.aspx>.

IMPORTANT DEADLINES IN GEORGIA PROPERTY TAXATION

The property tax system is heavily dependent on a series of deadlines which bind both taxpayer and tax official alike.

The first time consideration is that the fair market value for real and personal property is set for a given tax year as of January 1st for that year. Therefore, the tax assessors will not consider any factor to influence the fair market value of property unless that factor is present at some point prior to said January 1st deadline.

Second, SB 346 standardized the window within which taxpayers file property tax returns. No longer will a handful of counties impose a March 1 deadline for filing property tax returns. “Each tax commissioner and tax receiver shall open his or her books for the return of real or personal property ad valorem taxes on January 1 and shall close those books on April 1 of each year.” O.C.G.A. § 48-5-18.

April 1st is an important deadline for other reasons: it is the last possible date on which a taxpayer may apply for the array of tax exemptions available, including the homestead exemption, the charitable exemption, the conservation use exemption (CUVA), the forest land conservation exemption (FLPA), or any other exemption provided for by law. However, in the case of property which may be qualified for CUVA or FLPA, where the property is the subject of reassessment by the board of tax assessors, an application for current use assessment or Forest land conservation use property may

be filed in conjunction with or in lieu of an appeal of the reassessment. O.C.G.A. §48-5-7.4(j)(1), O.C.G.A. §48-5-7.4(j)(1).

Third, SB 346 as codified in O.C.G.A. § 48-5-306 now requires all Georgia counties to issue annual assessment notices for real property no later than July 1st of every year. In previous years, assessment notices were only sent to taxpayers in the event of a change in the fair market value of real property or of a change or rejection of taxpayer's submitted property tax return. Since taxpayers only have the right to appeal property for which they receive an assessment notice, this practice severely curtailed taxpayers' ability to appeal their fair market values. By the time a taxpayer showed up at your office complaining about a high property tax bill, it was too late to do anything except counsel the client to file a timely appeal in the following year.

Now, assessment notices will be sent annually to every owner of real property, meaning in practice that the value of every piece of real property in the state may be contested every year. Moreover, pursuant to SB 346, every assessment notice will display an estimate of the property tax bill based on the fair market value. O.C.G.A. § 48-5-306(b)(2)(A). The final tax bill may be higher or lower than this estimate, since the estimate is calculated using the previous year's millage rate and may not reflect all exemptions on the property. Nevertheless, it will help the taxpayer to understand when it is prudent to appeal the newly assessed fair market value.

In a final effort to stop the different county tax assessors from issuing conflicting and confusing assessment notices, and pursuant to SB 346, the Department of Revenue has adopted the below standard assessment notice form. This form has been designated PT-306 and must be used by every county, with exception allowed only if an alteration or deviation has received written approval from the Commissioner of the Department of

Revenue prior to use by a county board of tax assessors. Georgia Rule 560-11-2-.55. A copy is included in Appendix 1.

SB 346'S CHANGES TO BASIC PROPERTY TAXATION

As of January 1, 2011, the basic property tax law has been modified by SB 346 in many important ways.

The statutory definition of fair market value for both personal and real property has been changed as follows:

Fair market value of property means the amount a knowledgeable buyer would pay for the property and a willing seller would accept for the property at an arm's length, bona fide sale. The income approach, if data is available, shall be considered in determining the fair market value of income-producing property. Notwithstanding any other provision of this chapter to the contrary, the transaction amount of the most recent arm's length, bona fide sale in any year shall be the maximum allowable fair market value for the next taxable year. With respect to the valuation of equipment, machinery, and fixtures when no ready market exists for the sale of the equipment, machinery, and fixtures, fair market value may be determined by resorting to any reasonable, relevant, and useful information available, including, but not limited to, the original cost of the property, any depreciation or obsolescence, and any increase in value by reason of inflation. Each tax assessor shall have access to any public records of the taxpayer for the purpose of discovering such information.

O.C.G.A. § 48-5-2(3). This new definition includes two important new provisions.

First, the income approach, if data is available, shall be considered in determining the fair market value of income-producing property. This provision was introduced due to the stubborn refusal of boards of assessors to use the income approach to value property when the comparable sales approach resulted in a higher fair market value. This, despite the prevalent use of the income approach by purchasers and sellers in appraising income-producing property such as timberland, farms, commercial buildings, and shopping centers. In order to take advantage of this new mandate,

however, a taxpayer should submit revenue and expense information to the board of assessors. Although no deadline is specified, as a practical matter this information should be submitted no later than April 1 of the tax year.

Second, the transaction amount of the most recent arm's length, bona fide sale in any year shall be the maximum allowable fair market value for the next taxable year. For the purposes of this section, an arm's length, bona fide sale has been defined to mean

a transaction which has occurred in good faith without fraud or deceit carried out by unrelated or unaffiliated parties, as by a willing buyer and a willing seller, each acting in his or her own self-interest, including but not limited to a distress sale, short sale, bank sale, or sale at public auction.

O.C.G.A. § 48-5-2(.1).

Transactions included in the statutory language above result in a maximum allowable fair market value for the next taxable year. Transactions must occur prior to the statutory date of valuation (January 1st) in order to be considered for this provision. The maximum allowable fair market value applies to the real estate which has been exchanged in the transaction. Non-real estate property components, such as timber or personal property, should be extracted from the gross sale price in order to determine the real-estate adjusted sale price.

Example: An arm's length, bona fide property sale occurs on February 14th, 2012 for a subdivision lot for the price of \$50,000. Then, the property buyer completes the construction of a residence on the property in August 2012 with a "sticks and bricks" value of \$150,000. The property sold was the land only; therefore, the maximum allowable fair market value for the lot for tax year 2013 is

\$50,000. The full value of the residence may be added. The total fair market value for the property as of the 2013 tax year is \$200,000.

The Georgia Department of Revenue anticipates that this provision will create a great deal of litigation, as various types of new additions, new improvements, remodeling and renovations influence the maximum allowable fair market value. A newly issued regulation, Rule 560-11-10-.02(n), will limit the parameters as follows:

- With respect to changes in the exchanged real estate components since the time of exchange (sale date), the value of the following are added to the sale price:
 - New Improvements;
 - Additions to existing improvements included in the exchange (footprint of structure has changed);
 - Adjustments to land due to tract consolidation, new surveys, zoning changes, land use changes, etc.; and
 - Major remodeling/renovations to existing structures (footprint has not been altered).

Recognizing that “major remodeling and renovations” represents a gray area within which the county boards of assessors may make mischief, Rule 560-11-10-.02(n) further adopts the following definition:

The term major shall be construed such that both the property owner and the board of assessors would reasonably conclude a major remodel or renovation has occurred. If either party, acting reasonably, could debate that the remodel or renovation was not major in nature, the remodel or renovation does not qualify and shall not be added to the sales price.

In addition to the two provisions discussed above, SB 346 clarified and strengthened the limitations on “fair market value” set out in Section (3)(B) of O.C.G.A. § 48-5-2. Previously, the criteria under this section had to only be “considered” by tax

assessors. In practice, this turned into a loop hole whereby tax assessors could claim to “consider” one of the criteria but decide to ultimately reject it. Now, the tax assessors “shall apply” – leaving less wiggle room – the following criteria, as set out at O.C.G.A. § 48-5-2(3)(B):

- (i) Existing zoning of property;
- (ii) Existing use of property, including any restrictions or limitations on the use of property resulting from state or federal law or rules or regulations adopted pursuant to the authority of state or federal law;
- (iii) Existing covenants or restrictions in deed dedicating the property to a particular use;
- (iv) Bank sales, other financial institution owned sales, or distressed sales, or any combination thereof, of comparable real property;
- (v) Decreased value of the property based on limitations and restrictions resulting from the property being in a conservation easement; and
- (vi) Any other existing factors provided by law or by rule and regulation of the Commissioner deemed pertinent in arriving at fair market value.

Of particular note is the final criterion, “any other existing factors provided by law or by rule and regulation of the Commissioner deemed pertinent in arriving at fair market value.” This is the latest version of a criterion originally formulated as “any other factors deemed pertinent in arriving at fair market value.” Georgia courts interpreted this last criterion as a “catchall phrase” that allowed tax assessors to consider “highest and best use” in determining fair market value, despite recognizing that “highest and best use” is “a much more speculative assigned value than existing use.” Dotson v. Henry County Bd. of Tax Assessors, 155 Ga. App. 557, 558, 271 S.E.2d 691 (1980). The General Assembly effectively eliminated “highest and best use” as a consideration by amending this language in 2009 to “existing factors,” and then again constrained the tax assessors’

freedom to pigeonhole any desired factors into this provision by limiting the factors to those provided by “law or by rule and regulation of the Commissioner.”

SB 346 AND PROPERTY TAX RETURNS

Georgia law has historically required every owner of real property to file a property tax return (Georgia Department of Revenue Form PT-50R). Needless to say, most Georgia owners did not so file property tax returns. Thus, the Georgia General Assembly adopted O.C.G.A. § 48-5-20, which provides that a property tax return is deemed filed under certain circumstances. This seemed a better solution than enforcing the requirement that owners file property tax returns or face a ten percent penalty for failure to file. An owner who does not return property is deemed to file a property tax return for the current tax year at the value finally determined for the property for the prior tax year if the owner returned the property or paid the taxes in the county for the prior tax year.

Filing a property tax return has historically been useful, in that it was one of the only ways a property owner could ensure the right to appeal. However, as noted above, the usefulness of property tax returns has been curtailed by SB 346’s provision for the annual issuance of assessment notices with the concomitant right to appeal. A taxpayer may still want to file a property tax return for the following reasons:

1. The taxpayer acquired real property during the prior year, or the taxpayer’s real property is subdivided or consolidated during the prior year;
2. The real property is improved, or the improvements on real property are changed;
3. If anything affects the fair market value of real property as defined above by O.C.G.A. § 48-5-2(3), i.e. modification, recent arm’s length, bona fide

sale setting a maximum fair market value, provision of income data in order to avail oneself of the income approach.

Finally, if a taxpayer does not submit a property tax return, there is an open question as to whether boards of assessors will attempt to use the “deemed return” value to argue taxpayers should be estopped from challenging the assessed fair market value. This question will be answered as the implications of SB 346 play out this year and the next, but in the meantime I recommend and advise taxpayers to file returns based on the lowest defensible fair market value as that term is defined by Georgia law, rules and regulations, case law, and as shown by the particular facts regarding a specific property.

The PT-50R property tax form is available online in an editable format at <https://etax.dor.ga.gov/ptd/adm/forms/pt50r/index.aspx>. Several counties – notably, Fulton County – have made their own versions of this form available on the board of assessors’ web site.

SB 346’S IMPACT ON THE APPEAL PROCESS

O.C.G.A. § 48-5-311, the code section governing property tax appeals, has undergone substantial changes, nearly all to the benefit of the taxpayer. The property tax valuation appeal process still commences with issuance and mailing of the O.C.G.A. § 48-5-306 assessment notice, from which the 45-day deadline runs for the taxpayer to submit his or her notice of appeal; as noted above, the exact date of the appeal deadline will be printed on the notice. Pursuant to SB 346, a notice of appeal is now deemed filed as of the date of the United States Postal Service postmark, receipt of delivery by statutory overnight delivery, or, if the board of tax assessors has adopted a written policy consenting to electronic service, by transmitting a copy to the board of tax

assessors via e-mail in portable document format using all e-mail addresses provided by the board of tax assessors and showing in the subject line of the e-mail message the words 'STATUTORY ELECTRONIC SERVICE' in capital letters. O.C.G.A. § 48-5-311(n).

One other useful change in SB 346 provides that “when a taxpayer authorizes an attorney in writing to act on the taxpayer’s behalf, all notices required to be provided to the taxpayer regarding hearing times, dates, certifications, or official actions shall instead be provided to such attorney.” O.C.G.A. § 48-5-311(o). In order to facilitate this provision, an entry of appearance or other authorization should be filed at the initial point of representation before the board of assessors or superior court.

As a general practice, any property tax return or notice of appeal should be accompanied with authorization from the taxpayer for the attorney to act on the taxpayer’s behalf.

The below chart summarizes the options for appealing property tax valuation as set by SB 346. As the chart makes clear, there is now a dizzying array of appeal options from which a taxpayer must select. In addition to the Board of Equalization, a taxpayer may submit an appeal to a hearing officer, binding arbitration, or directly to the superior court. The Department of Revenue has promulgated a new standard appeal form, use of which is optional but certainly will ease the process. It is attached hereto as Appendix 6 and is available online at https://etax.dor.ga.gov/ptd/adm/forms/PT311A/LGS_Appeal_of_Assessment_Revision_2010_PT311A.pdf.

APPEAL PROCESS GRID (revised pursuant to SB346)

BOARD OF TAX ASSESSORS (BTA)
<p>PROPERTY OWNER IS MAILED ANNUAL NOTICE OF ASSESSMENT. (O.C.G.A. 48-5-306)</p> <p>PROPERTY OWNER FILES WRITTEN APPEAL WITHIN 45 DAYS OF DATED NOTICE.</p> <p>PROPERTY OWNER MUST ELECT METHOD OF APPEAL (1) BOARD OF EQUALIZATION, (2) HEARING OFFICER, OR (3) ARBITRATION.</p> <p>APPEAL HEARINGS ARE OPEN TO THE PUBLIC AND MAY BE RECORDED.</p> <p>IF ARBITRATION IS ELECTED - SKIP THE NEXT FEW STEPS AND GO DIRECTLY TO ARBITRATION BOX.</p> <p>IF BOARD OF EQUALIZATION OR HEARING OFFICER IS ELECTED - HAVE STAFF APPRAISER REVIEW PROPERTY VALUE AND ANY OWNER CONCERNS MENTIONED IN LETTER OF APPEAL. (within 180 days for Board of Equalization AND within 90 days for Hearing Officer)</p> <p>IF BTA CHANGES THE VALUE, THE PROPERTY OWNER (IF DISSATISFIED) MAY APPEAL TO BOARD OF EQUALIZATION OR HEARING OFFICER WITHIN 30 DAYS AFTER NOTIFICATION</p> <p>IF BTA DOES NOT CHANGE VALUE, APPEAL IS AUTOMATICALLY FORWARDED TO BOE OR TO HEARING OFFICER. HOWEVER, IF BOTH PARTIES AGREE, THE APPEAL MAY GO DIRECTLY TO SUPERIOR COURT.</p>

BOARDS OF EQUALIZATION <i>Any Property</i> <i>Value, Uniformity, Taxability, Denial</i>
<p>THE CLERK OF SUPERIOR COURT HAS OVERSIGHT & SUPERVISION REGARDING SCHEDULING HEARINGS, GIVING NOTICE OF HEARINGS AND DECISIONS TO PROPERTY OWNERS AND BTA.</p> <p>PROPERTY OWNER OR AUTHORIZED AGENT MAY APPEAR TO PRESENT CASE</p> <p>THE BOARD OF EQUALIZATION SHALL RENDER DECISION AT THE CONCLUSION OF THE HEARING</p> <p>PROPERTY OWNER NOTIFIED IN WRITING OF DECISION.</p> <p>OCGA 48-5-299(c) APPLIES.</p> <p>DECISION CAN BE APPEALED TO SUPERIOR COURT BY EITHER PARTY</p>

HEARING OFFICER <i>Non-homestead Real Property \$1,000,000</i> <i>Value and Uniformity</i>
<p>THE CLERK OF SUPERIOR COURT HAS OVERSIGHT & SUPERVISION REGARDING SCHEDULING HEARINGS, GIVING NOTICE OF HEARINGS AND DECISIONS TO PROPERTY OWNERS AND BTA.</p> <p>PROPERTY OWNER OR AUTHORIZED AGENT MAY APPEAR TO PRESENT CASE</p> <p>THE HEARING OFFICER SHALL RENDER DECISION AT THE CONCLUSION OF THE HEARING</p> <p>PROPERTY OWNER NOTIFIED IN WRITING OF DECISION.</p> <p>OCGA 48-5-299(c) APPLIES.</p> <p>DECISION CAN BE APPEALED TO SUPERIOR COURT BY EITHER PARTY</p>

ARBITRATION <i>Any Property - Value</i>
<p>BTA MUST SEND NOTICE OF RECEIPT WITHING 10-DAYS.</p> <p>WITHIN 45 DAYS OF FILING THE NOTICE OF APPEAL, THE TAXPAYER MUST PROVIDE A CERTIFIED APPRAISAL.</p> <p>WITHIN 45 DAYS OF RECEIVING THE TAXPAYER'S CERTIFIED APPRAISAL, THE BTA MUST ACCEPT THE TAXPAYER'S APPRAISAL VALUE OR REJECT AND CERTIFY THE APPEAL TO THE CLERK OF SUPERIOR COURT.</p> <p>THE TAXPAYER IS RESPONSIBLE FOR THE COST OF CERTIFIED APPRAISAL.</p> <p>WITHIN 15 DAYS OF FILING WITH THE CLERK, THE JUDGE SHALL ISSUE AN ORDER AUTHORIZING ARBITRATION</p> <p>WITHIN 30 DAYS, THE ARBITRATOR SCHEDULES HEARING.</p> <p>THE ARBITRATOR SHALL RENDER DECISION AT THE CONCLUSION OF THE HEARING. (Must choose between the Taxpayer's Value or the BTA Value)</p> <p>THE "LOSER" MUST PAY THE COST OF THE ARBITRATOR AND COURT FEES.</p> <p>THE DECISION OF THE ARBITRATOR IS FINAL. OCGA 48-5-299(c) APPLIES.</p>

SUPERIOR COURT
<p>THE APPEAL TO SUPERIOR COURT IS A JURY TRIAL AND APPELLANT MAY WISH TO CONSIDER ENGAGING AN ATTORNEY.</p> <p>APPEAL MUST BE FILED WITH BOARD OF TAX ASSESSORS BY THE OWNER OR HIS/HER ATTORNEY.</p> <p>APPELLANT PAYS FILING FEE.</p>

As you can see, the property tax valuation appeal process remains a three level framework. The first level of appeal is to the board of assessors. If the appeal is to the board of equalization or to a hearing officer, the board of assessors will review the matter and decide if any changes should be made to the property. Some boards of tax assessors provide the taxpayer an opportunity to meet with the tax assessors, or staff, in an effort to resolve the appeal. In any event, the board of assessors will send the taxpayer a new notice of assessment advising the taxpayer of the results of the review. If the board of assessors makes a change or correction to the initial fair market value, the taxpayer now has 30 days, instead of the 21 days under previous law, to reassert his appeal to the board of equalization or to a hearing officer. If the taxpayer or his attorney does not timely respond to the thirty day letter, the appeal is terminated. As before, if the board of assessors makes no changes or corrections, the appeal is automatically forwarded to the forum of the taxpayer's choice.

The second level of appeal has seen the most fundamental alteration. SB 346 eliminated the process of non-binding arbitration, formerly O.C.G.A. § 48-5-311(f)(3). A taxpayer may now appeal to the board of equalization, a hearing officer, binding arbitration, or directly to the local superior court. Depending on the nature of the property and the grounds for appeal, one or another forum may or may not be available. If binding arbitration is demanded, the first level of appeal is omitted and the appeal goes straight to binding arbitration, which is done under the supervision of the local superior court. An appeal directly to the local superior court may only be initiated with the consent of the board of assessors, so its use is expected to be limited. O.C.G.A. § 48-5-311(g)(1).

Finally, the third level of appeal is to the local superior court, which is a de novo, or new trial, proceeding. An appeal can be taken to this third level from a board of equalization or hearing officer decision.

The grid set out above is a reproduction of the State Department of Revenue's guidance on the appeal process. This grid has subsequently been amended by the adoption of the policy statement set forth in Appendix No. 3.

BOARD OF EQUALIZATION HEARING

A hearing before a county board of equalization is expected to remain the most widely-exercised option for an appeal. It is the only forum within which a taxpayer may appeal value, uniformity, the denial of a request for exemption, or any other ground specified by the taxpayer without charge. Moreover, unless the board of assessors consents to a direct appeal to the superior court, Georgia case law still demands a taxpayer first exhausts his or her administrative remedies in the board of equalization before bringing the matter before the superior court. Hooten v. Thomas, 297 Ga. App. 487, 677 S.E.2d 670 (2009), cert. denied (Oct. 5, 2009), reconsideration denied (Apr. 14, 2009). The changes wrought by SB 346 to boards of equalization are mostly procedural in nature.

First, SB 346 provides for the establishment of regional boards of equalization by intergovernmental agreement of the governing authorities of two or more counties. O.C.G.A. § 48-5-311(a)(4). It is thought that a regional board of equalization may remove some of the "chumminess" county boards of equalization develop with tax assessors, but experience will bear this out.

Second, SB 346 establishes a new oath that every member of the board of equalization must execute in writing, as follows:

I, _____, agree to serve as a member of the board of equalization of the County of _____ and will decide any issue put before me without favor or affection to any party and without prejudice for or against any party. I will follow and apply the laws of this state. I also agree not to discuss any case or any issue with any person other than members of the board of equalization except at any appeal hearing. I shall faithfully and impartially discharge my duties in accordance with the Constitution and laws of this state, to the best of my skill and knowledge. So help me God.

O.C.G.A. § 48-5-311(c)(5).

Third, in order to remedy a lack of control over county boards of equalization, the clerks of the superior court now shall have oversight over and supervision of all boards of equalization of the county. O.C.G.A. § 48-5-311(e)(4)(a). The Clerk of Court will be responsible for ensuring that enough members are appointed to field at least one panel, for scheduling of hearings, giving notice of the date, time, and place of hearings to the taxpayers and the county board of tax assessors and giving notice of the decisions of the county board of equalization. The Clerk of Court also will maintain any county records from the hearings until the deadline to file any appeal to the superior court expires.

Fourth, SB 346 created a procedure to facilitate settling property tax appeals prior to a hearing before the board of assessors.

If at any time during the appeal process to the county board of equalization and after certification by the county board of tax assessors to the county board of equalization, the county board of tax assessors and the taxpayer mutually agree in writing on the fair market value, then the county board of tax assessors, or the county board of equalization, as the case may be, shall enter the agreed amount in all appropriate records as the fair market value of the property under appeal, and the appeal shall be concluded.

O.C.G.A. § 48-5-311(e)(9). Further, unless waived by both parties, O.C.G.A. 48-5-299(c) shall apply and the settlement values will be locked for the proceeding two years.

Finally, SB 346 mandated that the Department of Revenue adopt uniform procedures and standards which shall be followed by county boards of equalization.

O.C.G.A. § 48-5-311(e)(1)(D). Prior to SB 346, each county board of equalization set its own rules and procedures, some allowing cross-examination, etc., and some not. Now, Rules 560-11-12-.01 through 560-11-12-.01-.09 have been implemented to standardize the conduct of the hearing. The complete regulations are included in Appendix No. 2, but some of the notable provisions are as follows:

- The parties have a right to obtain, not less than 5 days prior to the date of the hearing, the documentary evidence and the names and addresses of the witnesses to be used at the hearing by making a written request to the Board of Equalization and to the other party not less than 10 days prior to the date of the hearing. Any such documentary evidence or witnesses not provided upon a timely request may be excluded from the hearing at the discretion of the Board of Equalization;
- The parties shall also have the right to respond and present evidence on all issues involved and to cross examine all witnesses;
- The county board of tax assessors shall present its case first, unless a taxpayer elects to present first; and
- The rules of evidence as applied in the trial of civil non-jury cases in the superior courts shall be followed as far as practicable.

APPEAL TO A HEARING OFFICER

SB 346 sets up a new framework in which a taxpayer may appeal to a hearing officer “for any dispute involving the value or uniformity of a parcel of nonhomestead real property with a fair market value in excess of \$1 million.” O.C.G.A. § 48-5-311(e.1).

Hearing officers must be either state certified general real property appraisers or state certified residential real property appraisers as classified by the Georgia Real Estate Commission and the Georgia Real Estate Appraisers Board, which is charged with publishing a list of qualified and approved hearing officers for Georgia. The process of an appeal to a hearing officer should play out substantially in the following manner. The taxpayer must file with the county board of tax assessors a notice of appeal to a hearing officer within 45 days from the date of mailing the notice of assessment, with the allowance that a written objection to an assessment of real property received by a county board of tax assessors stating the taxpayer's election to appeal to a hearing officer and showing the location of the real property contained in the assessment notice shall be deemed a notice of appeal by the taxpayer.

The county board of tax assessors may for no more than 90 days review the taxpayer's written appeal, and if changes or corrections are made by the county board of tax assessors, the board shall notify the taxpayer in writing of such changes. If within 30 days of the mailing of such notice the taxpayer notifies the county board of tax assessors in writing that such changes or corrections are not acceptable, the county board of tax assessors shall, within 30 days of the date of mailing of such taxpayer's notification, send or deliver the notice of appeal and all necessary papers to the clerk of the superior court.

The clerk of superior court will randomly select from the list supplied by the Georgia Real Estate Appraisers Board a hearing officer who shall have experience or expertise in hearing or appraising the type of property that is the subject of appeal to hear the appeal, unless the taxpayer and the county board of tax assessors mutually agree upon a hearing officer from such list.

For the conduct of the hearing, the Department of Revenue has distributed a training manual to each hearing officer and promulgated regulations, included in Appendix No. 4 and Appendix No. 5, respectively. In sum, the hearing officer is empowered by O.C.G.A. § 48-5-311(e.1)(7) to determine the fair market value of the real property based upon the testimony and evidence presented during the hearing. Any issues other than fair market value and uniformity are to be preserved for appeal to the superior court. At the conclusion of the hearing, the hearing officer shall notify both parties of the decision verbally and shall send the taxpayer the decision in writing. The taxpayer or the board of tax assessors may appeal the decision of the hearing officer to the superior court as provided in O.C.G.A. § 48-5-311(g).

Hearing officers will be compensated by the county. O.C.G.A. § 48-5-311(e.1)(10). Thus, an appeal to a hearing officer can be taken as cheaply as an appeal to the board of equalization, but the odds of success to the taxpayer are greatly improved by having the appeal decided by a (hopefully competent) fee appraiser who will not approach the case with any bias in favor of the county boards of tax assessors. Also, appeals to hearing officers can be taken for significantly less cost than an appeal to binding arbitration, which require a taxpayer to go to the considerable trouble and expense of obtaining a property appraisal and to potentially be on the hook for the fees of the arbitrator and court costs. For these reasons, if taxpayers meet the threshold for appealing to a hearing officer I will always recommend this option over the board of equalization, and possibly over binding arbitration, as well.

BINDING ARBITRATION

As stated above, non-binding arbitration has been eliminated in favor of binding arbitration under O.C.G.A. § 48-5-311(f). This method was introduced by SB 240 in 2009 and was not fundamentally altered by SB 346. Binding arbitration still works much like baseball player arbitration. The taxpayer presents a certified appraisal to the county board of tax assessors. If it is accepted, then the appeal is over and that valuation is final. If the tax assessors do not accept the taxpayer's appraisal, then the appeal goes before a single arbitrator. The taxpayer presents a valuation and the tax assessors present a valuation. The single arbitrator must select either the taxpayer's valuation or the tax assessors' valuation. The valuation selected is the final valuation and neither the taxpayer nor the tax assessors can appeal to the local superior court.

There are a few changes in this basic procedure that do have important ramifications for the taxpayer.

First, to clear up what became a source of much confusion and litigation, the term "certified appraisal" has now been defined as "an appraisal or appraisal report given, signed, and certified as such by a real property appraiser as classified by the Georgia Real Estate Commission and the Georgia Real Estate Appraisers Board." O.C.G.A. § 48-5-311(f)(1). References to the taxpayer submitting "a copy of the value" have also been eliminated and replaced with instructions for the taxpayer to submit the certified appraisal as defined above.

Binding arbitration proceeds as follows. The taxpayer elects this avenue in the notice of appeal, submitted within 45 days of the issuance of the assessment notice. Within ten days of receipt of a taxpayer's notice of arbitration appeal, the board of tax assessors shall send to the taxpayer an acknowledgment of receipt of the appeal (a "10-day notice"), a notice that the taxpayer must, within 45 days from the date the county

board of tax assessors mails its notice to the taxpayer or taxpayer's attorney at law, submit to the board of assessors for consideration a copy of a certified appraisal; and a confirmation of the amount of the filing fees, if any, required under Code Section 15-6-77 and notice that within such 45 days the taxpayer shall pay to the clerk of the superior court the fees. Failure of the taxpayer to provide such certified appraisal and filing fees within such 45 days shall terminate the appeal unless the taxpayer within such 45 day period elects to have the appeal forwarded to the board of equalization. O.C.G.A. § 48-5-311(f)(3)(A). Department of Revenue Policy Statement, September 22, 2011, Appendix No. 3.

This language is somewhat ambiguous as to whether the certified appraisal and filing fee should be submitted within 45 days of submission of the taxpayer's notice of appeal or within 45 days of issuance of the 10-day notice by the board of tax assessors. However, in my experience, many counties have not sent the mandatory 10-day notice. For this reason, I recommend that, if possible, the certified appraisal be submitted within 45 days of filing the taxpayer's notice of appeal. Further, I have taken the position that if the counties do not send the 10-day notice, the taxpayer does not owe any filing fee to the Clerk of Court. This contention has not been tested, and I would advise proceeding with caution.

Within 45 days of receiving the taxpayer's certified appraisal, the board of assessors must act to either accept the taxpayer's appraisal or reject the taxpayer's appraisal. If accepted, the value becomes final; if rejected, the tax assessors must certify within 45 days the appeal to the clerk of the superior court of the county in which the property is located. Under previous law, if the county board of tax assessors neither accepted nor rejected the appraisal, the taxpayer was in limbo. A taxpayer could file a

mandamus to compel the tax assessors to respond to the appraisal, but that added another layer of expense. SB 346 corrects this problem by providing that “in the event that the county board of tax assessors neither accepts nor rejects the value set out in the certified appraisal within such 45 day period, then the certified appraisal shall become the final value.” If the tax assessors do not send notice within this 45 days that they have rejected the appraisal, submit an Open Records Request to the tax assessors for the minutes from all meetings of their board during this period. If the board minutes do not reflect any action on the appraisal, then the tax assessors should be instructed that the appraisal values must be entered as the final values, or in the alternative, file a petition for mandamus.

In the event the appraisal is properly rejected, an arbitrator should be appointed who is a state certified general real property appraiser or state certified residential real property appraiser pursuant to the rules and regulations who has experience or expertise in appraising the type of property that is the subject of the arbitration. Any and all of the procedures in the statute may be waived by the agreement of the parties. Whichever party prevails is responsible for both the fees and costs of the arbitrator and the court costs, if any. O.C.G.A. § 48-5-311(f)(3)(B).

SB 346 AND BEYOND:
WHAT’S WORKING, WHAT’S NOT, AND WHAT’S NEXT

The following recently-decided cases, and proposed legislation, will affect the practice of property tax litigation.

I. CASES

A. GENERAL PROCEDURE

Fitzpatrick v. Madison County Bd. of Tax Assessors, S12A1435, 2012 WL 5834447 (Ga. Nov. 19, 2012)

A taxpayer instigating an appeal from a county board of equalization to the superior court pursuant to OCGA § 48–5–311(g) must first pay the filing fee of the superior court clerk.

What the case does not say: when must the filing fee be paid by the taxpayer? To whom must it be delivered? Does this case allow the Tax Assessors to act as a “gatekeeper” and therefore conflict with **Fulton County Bd. of Tax Assessors v. Boyajian, 271 Ga. 881, 525 S.E.2d 687, 688 (2000)**?

Douglas County Bd. of Assessors v. Denyse, 314 Ga. App. 266, 268, 723 S.E.2d 705, 707 (2012)

This case elaborates on the limiting principle that the Tax Assessors are “empowered by OCGA § 48–5–299(a) to issue a new assessment notice to correct [an] obvious and undisputed clerical error.” This holding is important because it reinforces at length the strict reading of what is a “clerical error,” subject to correction by a new notice, versus a reassessment which may not be corrected. For the seminal discussion of the distinction between clerical errors and new assessments, see *Fulton County Board of Tax Assessors v. Dean*, 219 Ga. App. 137, 464 S. E. 2d 257 (1995).

In **Denyse**, the Tax Assessors issued three assessment notices, claiming that the second and third notices were issued to correct “clerical errors.” The supposed clerical error justifying the additional notices of assessment was cited on the latter notices of assessment as “2008 Value Reinstated Pending Court Decision.” The court held these notices

were not sent merely to remedy a clerical error. Rather, they were sent to revise the BOA's view of the proper value of the property during a pending appeal of the prior year valuation. This difference in value was not the result of a clerical error, such as the omission of a digit or the transposition of numbers, but it went to the substantive valuation decision made by the BOA.

314 Ga. App. at 269.

This case makes two important points.

First, the reasons for assessment provided on the notice of assessment are important, despite what may on first blush appear to simply be boilerplate. Courts will hold the Tax Assessors to the reasons cited.

Second, unless a clearly-defined clerical error is later discovered, the initial notice of assessment is the Tax Assessors' only chance to set the value (notwithstanding the 30-day notice that can be sent in the context of a pending appeal). This case adds an important new dimension in holding that even if the taxes have not been paid, it is too late for the Tax Assessors to try to reassess property until the next tax year.

B. ATTORNEY'S FEES

Denyse has important implication for attorney's fees under O.C.G.A. 48-5-311(g)(4)(B)(ii). That section provides for attorney's fees/costs where "the final determination of value on appeal" is 80 percent or less of the valuation set by the county board of tax equalization or hearing officer as to commercial property, or 85 percent or less of the valuation set by the county board of tax assessors as to all other property.

Regarding the "all other property" valuation, the benchmark for attorney's fees has been interpreted as the board of tax assessors' valuation, which "has the effect of placing the burden on the board of assessors to accurately value property at the outset (or at the latest upon receipt of a notice of appeal from a taxpayer), rather than placing

the burden on the taxpayer to appeal an excessive property valuation. See: **Fulton County Bd. of Tax Assessors v. White, 302 Ga. App. 512, 691 S.E.2d 341, 342 (2010).**

In conjunction with Denyse, the Tax Assessors are now prohibited from issuing a second or third assessment notice to artificially lower the “benchmark” value for attorney’s fees.

Fulton County Bd. of Tax Assessors v. LM Atlanta Airport, LLC, 313 Ga. App. 439, 441, 721 S.E.2d 640, 642 (2011)

Furthering the topic of attorney’s fees, this case reiterates the finding in **Fulton County Bd. of Tax Assessors v. Lamb, 298 Ga.App. 618, 680 S.E.2d 656 (2009)** that in nearly all cases where an appeal is litigated by a taxpayer, and the 85 or 80 percent benchmarks are met, attorney’s fees will be awarded.

LM Atlanta Airport, LLC and **Lamb** represent a rejection of the Tax Assessors’ contention that there must be an “independent” final determination of value in order for attorney fees and costs to be authorized. For example, a tax appeal prosecuted to enforce the provisions of OCGA § 48–5–299(c) (the three-year value lock in) meets the requirement, despite the “final determination of value” for the year in question being the value reached in the previous year.

C. JURISDICTION

We, the Taxpayers v. Bd. of Tax Assessors of Effingham County, S12A0700, 2012 WL 5833535 (Ga. Nov. 19, 2012)

The Georgia Supreme Court held the board of equalization is “the appropriate forum for deciding the taxpayer's constitutional and procedural issues as well as questions of uniformity, valuation and taxability.” Accordingly, the failure to pursue the

administrative remedy afforded by OCGA § 48–5–311 (through the board of equalization) regarding constitutional and procedural issues as well as questions of uniformity, valuation and taxability precludes a suit in superior court for equitable or any other relief. Similarly, failure to pursue the administrative remedy precludes the issuance of a writ of mandamus.

This is not a new holding, but it illustrates a major pitfall for unwary taxpayers. Despite the board of equalization’s general incompetence to decide a constitutional challenge, for example, that issue must be heard first in the administrative forum, and that issue should be specifically set out as a ground for appeal in the notice of appeal.

The exception to the prohibition of initiating a civil action – which is becoming more and more frequently encountered – is where the Tax Assessors do not allow the taxpayer to pursue its administrative remedy. For example, the Tax Assessors refuse to certify an appeal to the board of equalization because they allege there is a procedural defect, or simply will not send a case to Superior Court. In this event, a declaratory judgment action or petition for writ of mandamus is available and probably will be necessary.

Further, attorney’s fees are recoverable in the successful prosecution of a mandamus action, under Robinson v. Glass, 302 Ga.App. 742, 691 S.E.2d 620 (2010).

Hall County Bd. of Tax Assessors v. Ne. Georgia Health Sys., Inc., 730 S.E.2d 715 (Ga. Ct. App. 2012)

In a similar vein, the Court of Appeals affirmed the general rule that only those decisions of the Board of Equalization on questions presented to it or incident thereto may be relitigated in the superior court.

A new, and somewhat troubling, development in this case is the Court of Appeals' treatment of a revision to the law introduced by SB 346, codified as O.C.G.A. § 48–5–311(g)(1). This section provides that the taxpayer and the Tax Assessors may agree to waive appeal to the board of equalization and proceed directly to Superior Court.

In **Ne. Georgia Health Sys., Inc.**, the Court held that if this waiver provision is utilized, then only those issues specifically cited in the taxpayer's notice of appeal may be litigated in Superior Court. Their reasoning is that "because value and uniformity have never been litigated before the Board [of Assessors]; hence, there was no Board [of Assessors] decision concerning value and uniformity that could have been appealed to the BOE. Consequently, there was no appeal to the BOE on those issues that could have been waived by mutual agreement and initiated, instead, in the superior court, pursuant to the statute."

The takeaway from this decision is that the prudent taxpayer should include any and all potential grounds for appeal – including constitutionality, procedural defects, uniformity, taxability, etc. – whether they appear to be relevant at first glance or not.

A related question is: may the initial "administrative" notice of appeal to the Board of Tax Assessors be amended prior to a hearing? This issue has not been directly decided by Georgia Courts. However, the holding in the case of **Shropshire v. Alostar Bank of Commerce, 314 Ga. App. 310, 724 S.E.2d 33, 35 (2012)** arguably applies by implication.

Although **Shropshire** is not a property tax appeal case, it stands for the proposition that the purpose of contemporaneous filing requirements is to afford the other side adequate notice and opportunity to respond to evidence. Accordingly, a filing

not made simultaneously should generally be allowed, provided the amendment is not unreasonably delayed and there is no prejudice to the other party.

The inference from this case is that the Tax Assessors should permit notices of appeal to be amended by the taxpayer provided the Tax Assessors are afforded notice and opportunity to defend against the grounds cited in the amendment.

D. EXEMPTIONS

Morgan County Bd. of Tax Assessors v. Ward, 2012 WL 5233657, Ga. Ct.

App.

The issue in this case was assessment of the penalty for breach of a conservation use (CUVA) covenant. This covenant, like the Forest Land Protection Act (FLPA) covenant, restricts the use of property for a period of years in exchange for a property tax abatement. Breaching the covenant in any of the years results in a considerable, and punitive, penalty.

The taxpayer in this case appealed the determination that she was in breach of a CUVA covenant and that she would be assessed a penalty. The court held that the county board of tax assessors failed to meet its threshold obligation to provide taxpayer with notice and opportunity to cure the alleged breach of conservation use covenant. Therefore, the imposition of the penalty was rescinded.

Aside from a useful reminder that taxpayers must be provided an opportunity to cure the breach prior to the assessment of the penalty, this case is interesting for another point. The court held the taxpayer could litigate question of taxability in superior court's de novo review of the county board of equalization's decision, including whether lack of notice barred imposition of any penalty, despite the taxpayer not

litigating in the board of equalization the specific issue of the tax assessors' failure to grant her an opportunity to cure.

This holding appears to contradict our earlier discussion, but the distinction the court makes is that since the board of equalization acknowledged the issue before it was “breach with penalty,” the broader issue of taxability was before the board of equalization, and the sub-issue of proper notice was at least “incident to” decision of board of equalization. Therefore, a taxpayer may conclude that arguing before the board of equalization the broad grounds for appeal of “taxability” and “procedure,” etc., will preserve any subsequently discovered issues “incident to” those questions.

Note that this decision will apply to breaches of the FLPA covenant as well, as the statutory language is identical.

Nuci Phillips Memorial Foundation, Inc. v. Athens-Clarke County Board of Tax Assessors, 288 Ga. 380, 703 S.E.2d 648 (2010)

A charitable organization's property, which was devoted entirely to charitable purposes, was exempt from ad valorem taxation, although building was also used for rehearsal space and party rental and organization worked primarily with musicians and artists. This case affirms that property may be used to generate income and maintain its charitable exemption, provided the income is used for the “sole purpose of raising income to be utilized in furtherance of the organization's charitable purposes.” Such income-generating activities now qualify as activities exclusively devoted to the institution's charitable pursuits.

This holding reversed the decision of the Court of Appeals in **Athens-Clarke County Bd. of Tax Assessors v. Nuci Phillips Mem'l Found., 300 Ga. App.**

754, 686 S.E.2d 371, 372 (2009). The Court of Appeals had reached the opposite conclusion regarding income-generating activities.

PLEASE NOTE: it has come to our attention that many Tax Assessors attempt to rely on the Court of Appeals' version of **Nuci**, as it is more restrictive; further, at last check, the Georgia Department of Revenue is still including the reversed **Nuci** case in its exemption workshop for counties. Ensure that the appraisal staff involved in any charitable exemption request are aware of the holding in the Supreme Court **Nuci** case. **H.O.P.E. Through Divine Interventions, Inc. v. Fulton County Bd. of Tax Assessors, A12A1100, 2012 WL 5859671 (Ga. Ct. App. Nov. 16, 2012)**

This case makes no new law, but is included as a recently-decided opinion denying the taxpayer's request for charitable exemption. The Court of Appeals denied the exemption for years during which vacant property was being developed as a non-charitable use; however, once construction was completed the exemption was granted.

E. VALUE

GCCFC 2007-GGP Abercorn St. Ltd. P'ship v. Abercorn Common, LLP, 316 Ga. App. 879, 730 S.E.2d 589, 592 (2012)

Although this appeal concerned confirmation of a foreclosure sale, its holding on determining the value of commercial property may be utilized in a property tax appeal. The Court of Appeals held that a "leased fee" value, while not equivalent to the market value, "would almost always be relevant to market value."

This is a question that often comes up in appraising for ad valorem tax purposes property subject to a lease, whether that be a timberland tract, a retail center, or an office. The case used most often by Tax Assessors is **Martin v. Liberty County Bd. of Tax Assessors, 152 Ga. App. 340, 262 S.E.2d 609, 611 (1979)**, cited for the

proposition that “the existence or nonexistence of a leasehold in his property would have no bearing on appellant's ultimate tax liability. That liability is based, in the final analysis, on the sum total of the respective “fair market values” of the taxable estates in the property. Thus, appellant's tax liability is predicated upon the “fair market value” of the fee the unity of his and his lessee's interests in the property without consideration of its division into constituent estates.

Tax Assessors rely on the **Martin** case to argue, among other things, that a restraint on alienability from a long-term timber lease has no bearing on the tax value. This and other readings of **Martin** can be challenged by **GCCFC**, where the court upholds the trial court’s findings of fact which were based in part on the following testimony:

the Tax Assessor's Office estimates a market value for the fee simple interest. I estimated a market value for the leased fee interest. The fee simple interest, the valuation of the fee simple interest typically assumes a stabilized occupancy and that the tenant spaces are leased at market rent levels.... [I]f all things were equal, a valuation of the fee simple interest would likely be higher than the valuation of the leased fee interest. So it is correct that the Tax Assessor's Office estimated a higher value, but they estimated a value for the fee simple interest in the property, assuming everything was rented at market rates and that it had attained a stabilized occupancy. I didn't estimate that in the appraisal. I estimated the value of the leased fee interest.

316 Ga. App. at 882-883. (*emphasis in the original*)

Similarly, in the following two cases, trial courts confirmed foreclosure sales on the strength of expert opinion which depended in large part on appraisal methodology widely accepted in the fee appraiser community, but which in most situations is deemed “irrelevant” by county boards of tax assessors.

Battle Properties, Inc. v. Branch Banking & Trust Co., 310 Ga. App. 217, 218, 712 S.E.2d 625, 626 (2011)

Here, the Court of Appeals upheld the trial court's finding that the most accurate method of appraising multiple lots was as one consolidated "bulk" transaction, and further that the expert who took the depressed real estate market conditions into consideration when assessing the properties' value was more credible.

Metro Land Holdings Investments, LLC v. Bank of Am., N.A., 311 Ga. App. 498, 499, 716 S.E.2d 566, 567 (2011)

Similarly, the Court of Appeals here upheld the trial court's finding that an expert who appraised multiple lots utilizing a rate of absorption was justified in adjusting the rate in his initial appraisal downward following his review of subsequent market activity which showed "minimal demand and ... excess supply" of residential lots in that area.

II. HIGHLIGHTS OF PROPOSED LEGISLATION

Senate or House Bill 034

- Legislation is currently being drafted by the Property Tax Legislative Advisory Committee, which is advising Georgia State Legislators and staffed by attorney G. Roger Land, co-chairman; Steve Swindell, co-chairman, deputy chief appraiser of Cherokee County, and president of the Georgia Association of Assessing Officials; and an assortment of county chief appraisers, tax commissioners, and various lobbyists and interested parties.
- Legislation will be introduced in the 2013 session to clarify and expand on Senate Bill 234, which was introduced in the 2012 session, passed multiple chambers but which expired on the last day of the Session (a copy of the legislation and its various permutations a at http://www1.legis.ga.gov/legis/2011_12/sum/sb234.htm).
- The proposed purpose is:

To amend Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, so as to provide for the comprehensive revision of provisions relating to ad valorem taxation, assessment, and appeal; to extensively revise procedures for assessment appeals and arbitration; to provide for recovery of certain interest, costs, attorney's fees, and other amounts by taxpayers who appeal successfully under certain circumstances; to provide for mailings and payments on nontax related fees or assessments; to change certain provisions relating to joint county appraisal staffs and contracting for advice and assistance; to change certain provisions relating to ascertainment of taxable property and assessments and penalties against unreturned property; to change certain provisions relating to annual notice of current assessment; to change certain provisions relating to county boards of equalization and ad valorem tax appeals; to change certain provisions relating to county tax digests and deviations from certain assessment ratios; to change certain provisions relating to conditionally approving certain subsequent county tax digests; to change certain provisions relating to refunds of certain taxes and license fees by counties and municipalities; to change certain provisions relating to real estate transfer tax exemptions; to change certain provisions relating to real estate transfer tax payment as certain filing prerequisites; to provide for powers, duties, and authority of the Department of Revenue and the state revenue commissioner; to provide for related matters; to provide for an effective date and applicability; to repeal conflicting laws; and for other purposes.

- Please feel free to contact me with ideas for improving the legislation or for addressing other sins of omission or commission in the Georgia property tax code

Notice Date:
This is not a tax bill Do not send payment
Last Date To File Appeal:
County property records are available online at: www.hallcounty.org
Official Tax Matter - <DigestYear> Assessment

The amount of your ad valorem tax bill for the year shown above will be based on the appraised (100%) and assessed (40%) values specified in this notice. You have the right to appeal these values to the County Board of Tax Assessors. All documents and records used to determine the current value are available upon request.

At the time of filing your appeal you must select one of the following:

- (1) Appeal to the County Board of Equalization with appeal to the Superior Court. (value, uniformity, denial of exemption)
- (2) To arbitration without an appeal to the Superior Court (valuation is the only grounds that may be appealed to arbitration)
- (3) For a parcel of non-homestead property with a FMV in excess of \$1 million, to a hearing officer with appeal to the Superior Court.

If you wish to file an appeal, you must do so in writing no later than 45 days after the date of this notice. If you do not file an appeal by this date, your right to file an appeal will be lost. Appeal forms are available at <insert forms availability location here>

For further information on the proper method of filing an appeal, you may contact the county Board of Tax Assessors which is located at 100 E Main St Suite 102 Warrenton, GA 30828 and which may be contacted by telephone at: 7064653321. Your staff contacts are n and n

Account Number	Property ID Number	Acreage	Tax Dist	Covenant Year	Homestead
Property Description					
Property Address					
Fair Market Value	Returned Value	Previous Year Value	Current Year Value	Other Value - <Code>	
100% Fair Market Value					
40% Assessed Value					
REASONS FOR NOTICE					
<p>The estimate of your ad valorem tax bill for the current year is based on the previous year's net millage rate and the fair market value contained in this notice. The actual tax bill you receive may be more or less than this estimate. This estimate may not include all eligible exemptions.</p>					
Taxing Authority	Other Exempt	Homestead Exempt	Net Taxable Value	Previous Millage	Estimated Tax

RULES
OF
DEPARTMENT OF REVENUE
LOCAL GOVERNMENT SERVICES DIVISION

CHAPTER 560-11-12
COUNTY BOARD OF
EQUALIZATION HEARINGS

560-11-12-.01 Applicability of Rules.

(1) The rules in this Chapter shall apply to and govern ad valorem tax assessment appeal hearings held by the county boards of equalization including those formed by intergovernmental agreement.

(2) The actions, decisions and orders of a county's board of equalization are:

(a) Subject to the appeals procedures as provided in this section.

(b) Empowered to exercise the same degree of authority and perform the same actions as hearing officers under O.C.G.A. § 50-13-13.

Authority: O.C.G.A. §§ 48-2-7, 48-2-12, 48-5-311(e)(1)(D).

RULES
OF
DEPARTMENT OF REVENUE
LOCAL GOVERNMENT SERVICES DIVISION

CHAPTER 560-11-12
COUNTY BOARD OF
EQUALIZATION HEARINGS

560-11-12-.02 Nature of the Proceeding; Hearing Procedure; Burden of Proof.

The hearings held under these Regulations shall only be as formal as is necessary to preserve order and be compatible with the principles of justice.

(1) Parties shall have the right to be represented by legal counsel.

(2) The parties have a right to obtain, not less than 5 days prior to the date of the hearing, the documentary evidence and the names and addresses of the witnesses to be used at the hearing by making a written request to the Board of Equalization and to the other party not less than 10 days prior to the date of the hearing. Any such documentary evidence or witnesses not provided upon a timely written request may be excluded from the hearing at the discretion of the Board of Equalization.

(3) The parties shall also have the right to respond and present evidence on all issues involved and to cross examine all witnesses.

(4) The standard of proof on all issues in the hearing shall be a preponderance of the evidence. A preponderance of

the evidence is established when one party's evidence is of greater weight or is more convincing than the evidence offered in opposition to it, in that, the evidence, when taken as a whole, shows that the fact in dispute has been proven by one party to be more probable than not.

(5) When a hearing is being held regarding a county's board of tax assessors' tax assessment, the county board of tax assessors shall have the burden of proof in regards to value, not taxability.

(a) If a hearing is being held regarding a property tax exemption, then the party seeking the property tax exemption shall have the burden of proving entitlement.

(6) The county board of tax assessors shall present its case first, unless a taxpayer elects to present first.

Authority: O.C.G.A. §§ 48-2-7, 48-2-12.

RULES
OF
DEPARTMENT OF REVENUE
LOCAL GOVERNMENT SERVICES DIVISION

CHAPTER 560-11-12
COUNTY BOARD OF
EQUALIZATION HEARINGS

560-11-12-.03 Evidence; Official Notice.

(1) The rules of evidence in hearings covered by this Chapter shall be substantially as follows:

(a) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded;

1. The rules of evidence as applied in the trial of civil non-jury cases in the superior courts shall be followed as far as practicable.

2. Evidence not admissible under superior court rules may be admitted when necessary to discover facts not reasonably understood from the previously admitted evidence.

3. Except where precluded by statute, if the evidence presented it is of a type commonly relied upon by reasonably prudent persons, the county board of equalization has discretion as to whether to admit the evidence or not.

(b) Documentary evidence may be received in the form of copies or excerpts if the original is not readily available;

1. Upon request, parties shall be given an opportunity to compare the copy with the original or have it established as documentary evidence according to the rules of evidence applicable to the superior courts of Georgia;

(c) A party may conduct such cross-examination as required for a full and true disclosure of the facts;

(d) Official notice may be taken of judicially recognizable facts and generally recognized technical facts or records within the agency's specialized knowledge.

1. The parties shall be notified of any material so noticed and shall be afforded the opportunity to contest such material at the hearing.

Authority O.C.G.A. §§ 48-2-7, 48-2-12.

RULES
OF
DEPARTMENT OF REVENUE
LOCAL GOVERNMENT SERVICES DIVISION

CHAPTER 560-11-12
COUNTY BOARD OF
EQUALIZATION HEARINGS

560-11-12-.04 Continuances and Postponements.

(1) Matters set for hearing may be continued or postponed within the sound discretion of the Board of Equalization upon timely motion by either party.

(2) The Board of Equalization may on his own motion continue or postpone the hearing.

Authority O.C.G.A. §§ 48-2-7, 48-2-12.

RULES
OF
DEPARTMENT OF REVENUE
LOCAL GOVERNMENT SERVICES DIVISION

CHAPTER 560-11-12
COUNTY BOARD OF
EQUALIZATION HEARINGS

560-11-12-.05 Subpoena Forms; Service.

(1) Either party may obtain subpoena forms from the Board of Equalization by making a timely request.

(2) Service, proof of service and enforcement of subpoenas shall be as provided by Georgia law and shall be the responsibility of the party requesting the subpoena.

Authority O.C.G.A. §§ 48-2-7, 48-2-12.

RULES
OF
DEPARTMENT OF REVENUE
LOCAL GOVERNMENT SERVICES DIVISION

CHAPTER 560-11-12
COUNTY BOARD OF
EQUALIZATION HEARINGS

560-11-12-.06 Transcripts of Hearing.

(1) Any party may request that the hearing be conducted before a court reporter, or recorded in audio and/or video.

(2) The request shall be in writing and include an agreement by the requesting party that he or she shall pay the costs incurred by the request or that he or she shall procure at his or her own cost and on his or her own initiative, the court reporting or recording services for the hearing.

(3) Regardless of who makes the arrangements or requests the transcript, or tape or video record be made, the original transcript, or tape or video record of the proceedings shall be submitted to the board of equalization chairman prior to the close of the hearing record if the transcript, or tape or video is to be made part of the record.

Authority: O.C.G.A. §§ 48-2-7, 48-2-12.

RULES
OF
DEPARTMENT OF REVENUE
LOCAL GOVERNMENT SERVICES DIVISION

CHAPTER 560-11-12
COUNTY BOARD OF
EQUALIZATION HEARINGS

560-11-12-.07 Case Presentment.

In accordance with the Georgia Administrative Procedure Act, a party shall be entitled to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

Authority: O.C.G.A. §§ 48-2-7, 48-2-12, 50-13-13.

RULES
OF
DEPARTMENT OF REVENUE
LOCAL GOVERNMENT SERVICES DIVISION

CHAPTER 560-11-12
COUNTY BOARD OF
EQUALIZATION HEARINGS

560-11-12-.08– Ruling; Decision.

(1) The decision of the County Board of Equalization shall clearly state the Board of Equalization's ruling regarding the property's value, uniformity, or taxability, where applicable.

(2) The decision of the County Board of Equalization shall be rendered pursuant to O.C.G.A. § 48-5-311 (e)(6)(D)(i).

(3) When a taxpayer authorizes an attorney in writing to act on the taxpayer's behalf, the decision of the County Board of Equalization shall be provided to such attorney pursuant to O.C.G.A. § 48-5-311(o).

Authority: O.C.G.A. §§ 48-2-7, 48-2-12.

RULES
OF
DEPARTMENT OF REVENUE
LOCAL GOVERNMENT SERVICES DIVISION

CHAPTER 560-11-12
COUNTY BOARD OF
EQUALIZATION HEARINGS

560-11-12-.09– Hearing Location.

A hearing conducted by a county's board of equalization under this Chapter, shall be held in the county where the property is located unless all parties agree to hold the hearing at a mutually agreed upon location.

Authority: O.C.G.A. §48-5-311.



Douglas J. MacGinnitie
Commissioner

State of Georgia
Department of Revenue
1800 Century Blvd.
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Vicki Lambert
Director

POLICY STATEMENT

This is the policy of the Department and is applicable to all open tax years.

Please note: The purpose of a policy statement is to provide interpretative guidance to county tax assessors, county clerks, and governmental employees. A policy statement is a position statement, which provides interpretation, details, or supplementary information concerning the application of the law. Relevant statute, case law, or rules and regulations, as well as subsequent policy statements may modify or negate any or all of the provisions of any policy statements.

Issue Date: September 22, 2011

RE: Timeline for filing certified appraisal in binding arbitration

Issue: When does the taxpayer's 45 day deadline for submitting the certified appraisal and payment for filing fees commence?

Answer: The taxpayer has 45 days from the date the county board of tax assessors mails its notice to the taxpayer or taxpayer's attorney at law to submit the certified appraisal and pay the filing fees. This notice from the county board of tax assessors is mailed within 10 days of receipt of a taxpayer's notice of arbitration appeal.

Discussion: SB 346 introduced a new procedural framework to govern binding arbitration property tax appeals.

Under the new law, O.C.G.A. § 48-5-311(f)(3)(A) requires that the board of tax assessors must send the taxpayer a notice within 10 days of receipt of the notice of arbitration appeal ("10-day notice"). This 10-day notice is mailed within 10 days of receipt of a taxpayer's notice of arbitration appeal and is intended to inform the taxpayer of the deadline for filing the certified appraisal and of the amount of, and deadline for paying, the filing fees.

This section of the law contains an ambiguity. The Law appears to direct taxpayers to submit the certified appraisal within 45 days of filing the notice of arbitration appeal.

Concurrently, the Law seems to direct taxpayers to submit payment for the arbitration related filing fee(s) within 45 days of the 10-day notice from the board of tax assessors.

The ambiguity arises because the law refers to these different timelines as being the same 45 days. Accordingly, it is not clear from the law whether the certified appraisal and payment for filing fees are due 45 days from the notice of appraisal appeal or 45 days from the 10-day notice.

Pursuant to Georgia law, this ambiguity should be resolved in favor of the taxpayer. Fayette County Bd. of Tax Assessors v. Georgia Utilities Co., 186 Ga. App. 723, 724, 368 S.E.2d 326, 327 (1988). The board of tax assessors must instruct taxpayers that the certified appraisal and payment for the filing fee are due within 45 days of the date the county board of tax assessors mailed the 10-day notice.

It is recommended that the 45 day deadline date be calculated and included on the 10-day notice in the same fashion that deadlines for appeal are set out in the O.C.G.A. § 48-5-306 notices of a assessment.

Authority:

- O.C.G.A. § 48-5-311(f)(3)(A)
- O.C.G.A. § 48-5-311(o)
- Fayette County Bd. of Tax Assessors v. Georgia Utilities Co., 186 Ga. App. 723, 724, 368 S.E.2d 326, 327 (1988)



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HEARING OFFICER'S MANUAL

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O.C.G.A. § 48-5-311

O.C.G.A. § 48-5-311 establishes the role, defines the scope, and sets forth qualifications of a **Hearing Officer**.

The Role:

- O.C.G.A. § 48-5-311(e)(1)(A)(iii) allows a taxpayer or property owner to appeal a board of tax assessor's assessment of their property to a hearing officer regarding "matters of value and uniformity for a parcel of nonhomestead real property with a fair market value in excess of \$1 million."

The Scope:

- The scope of issues to be decided by a hearing officer include:
 1. "Any dispute involving the value or uniformity of a parcel of nonhomestead real property with a fair market value in excess of \$1 million." O.C.G.A. § 48-5-311(e.1)(1). And,
 2. Any taxpayer or property owner having property (fair market value in excess of \$1 million) that is located within a municipality, in which the boundaries of the municipality extend into more than one county, may appeal their assessment to a hearing officer concerning matters of uniformity of assessment of such property with other properties located within such municipality. If any uniformity adjustments to the assessment result from the appeal, then those adjustments shall apply only for municipal ad valorem tax purposes. O.C.G.A. § 48-5-311(e)(1)(B).

Qualifications:

- "Individuals desiring to serve as hearing officers and who are either state certified general real property appraisers or state certified residential real property appraisers as classified by the Georgia Real Estate Commission and the Georgia Real Estate Appraisers Board shall complete and submit an application, a list of counties the hearing officer is willing to serve, disqualification questionnaire, and resume and be approved by the Georgia Real Estate Commission and the Georgia Real Estate Appraisers Board to serve as a hearing officer." O.C.G.A. § 48-5-311(e.1)(2).

Sections of O.C.G.A. § 48-5-311 Relating to Hearing Officers:

- Pursuant to O.C.G.A. § 48-5-311(d)(4), "the clerk of the superior court shall have oversight and supervision of all...hearing officers." A clerk of the superior court will provide the notice of the date, time, and place of the hearing to the taxpayer(s) and the county board of tax assessors. The clerk will also provide

notice of the hearing officer's decision to the taxpayer(s) and county board of tax assessors.

- The clerk of the superior court shall randomly select a hearing officer to hear the appeal, unless the taxpayer and the county board of tax assessors mutually agree upon a hearing officer. O.C.G.A. § 48-5-311(e.1)(6).
- “The hearing officer shall swear in all witnesses, perform the powers, duties, and authority of a county or regional board of equalization, and determine the fair market value of the real property based upon the testimony and evidence presented during the hearing. Any issues other than fair market value and uniformity raised in the appeal shall be preserved for appeal to the superior court.” O.C.G.A. § 48-5-311(e.1)(7).
- “The board of tax assessors shall have the burden of proving its opinion of value and the validity of its proposed assessment by a preponderance of evidence.” O.C.G.A. § 48-5-311(e.1)(7).
- “At the conclusion of the hearing, the hearing officer shall notify both parties of the decision verbally and shall send the taxpayer the decision in writing.” O.C.G.A. § 48-5-311(e.1)(7).
- If at any time before or during the appeal, the taxpayer and the county board of tax assessors “execute a signed written agreement on the fair market value and any other issues raised, the appeal shall terminate as of the date of such signed agreement and the fair market value as set forth in such agreement shall become final.” O.C.G.A. § 48-5-311(e.1)(9).
- Each hearing officer “shall be paid at a rate of not less than \$25.00 per hour as determined by the county governing authority.” O.C.G.A. 48-5-311(e.1)(10).

March 2011

STATE OF GEORGIA
DEPARTMENT OF REVENUE

HEARING OFFICER'S MANUAL

CHAPTER 1.
DUE PROCESS

A. Basic Requirements

Hearings must meet the basic requirements of due process. Due process of law means that basic protections are in place to prevent unreasonable and abusive government action. Courts have often said that the procedures necessary to due process are somewhat flexible, but the essential elements are:

- Notice of the proposed County action must be given to the parties whose interests are affected;
- The affected parties are entitled to present arguments or evidence in support of their position; and
- The decision maker must be unbiased.
- A right to cross-examine.

B. Representation of a Party

A party may appear on his or her own behalf or through a representative. Generally, this representative would be an attorney, although statutes governing certain proceedings specifically allow a non-attorney representative. Although a respondent has a right to be represented by counsel, there is no right to appointed counsel in administrative proceedings. The Department uses the Administrative Procedure Act ("APA") as a guideline for hearing procedures in order to ensure due process is achieved. Under the APA, the respondent's counsel is not limited to only advising the respondent; rather counsel must be permitted to question witnesses and make arguments on behalf of the respondent.

CHAPTER 2. GETTING STARTED

A. Communicating with the Parties

Taking into consideration the prohibition on ex parte communications, the hearing officer should make communication between the parties, and between the parties and the hearing officer, as easy as possible. The hearing officer should encourage the use of fax, e-mail, telephone conferencing, and other modern modes of communication. Copies of all documents should be given to both parties.

Parties who represent themselves frequently forget the necessity to copy the opposing parties with communications with the hearing officer. The hearing officer should be diligent to ascertain that each communication received has been copied to opposing parties.

Occasionally, a party represented by counsel will attempt to contact the hearing officer directly. When that happens, the party should be immediately advised that contact may only be made through counsel. The hearing officer should advise the party's counsel of the client's attempted contact. If the communication is in writing, the hearing officer should supply all parties with a copy of the communication.

B. Interested Parties

Sometimes "interested parties," other than the parties to the hearing, may actively participate in and receive documents from an administrative hearing. It is within the discretion of the hearing officer to determine whether an interested party may intervene.

C. Prior to Hearing

1. Notice. After the county clerk has appointed a hearing officer, the hearing officer sets the date, time, and place of the hearing, and may do so after conferring with the parties. The hearing officer should give the parties reasonable advance notice of the conference, at least ten (10) days. The notice may include an agenda for the conference. The notice of hearing, containing certain information, as discussed below, must be sent to all parties at least ten (10) days before the hearing.

2. Agenda. The hearing officer may prepare, and circulate to the parties in advance, a list of the issues to be addressed.

a. Narrow Issues. The parties and the hearing officer should identify the issues in dispute to be resolved at the hearing.

b. Deadlines for Prehearing Activities. Prior to the hearing, the hearing officer should set deadlines for the exchange of discovery, filing witness lists, filing fact stipulations, and submission of any briefs. The hearing officer should determine whether

all exhibits should be exchanged in advance of the hearing, or whether they can be presented at the hearing. In establishing requirements and deadlines, the hearing officer should keep in mind the overall goal of an administrative proceeding: to be expeditious and therefore less expensive for the parties than a formal trial, while still providing both parties with due process and a just resolution.

CHAPTER 3. PREHEARING ACTIVITY

A. Discovery

When a party has discovery rights, or when due process requires an opportunity to investigate the adversary's case, the hearing officer has broad discretion to determine what discovery mechanisms should be allowed.

When considering requests for discovery, a hearing officer should remember the basic policy that administrative hearings should be decidedly less complicated than judicial proceedings.

B. Depositions

Depositions may be allowed with good cause shown or upon stipulation of the parties. An example of "good cause" for ordering a deposition could be the expectation that a witness's testimony will be so specialized or technical that the adverse party needs to know the substance in advance of hearing to prepare a rebuttal.

C. Interrogatories

Interrogatories (also known as requests for further information) are a formal set of written questions propounded by one litigant and required to be answered by an adversary, in order to clarify matters of fact and help to determine in advance what facts will be presented at any trial in the case.

D. Request for Production of Documents

Request for Production is a legal request for documents, electronically stored information, or other tangible items. During the discovery, a party may request that another party provide any documents that it has that pertain to the subject matter of the hearing.

E. Deadlines

It is the hearing officer's responsibility to move matters along and to set deadlines. The hearing officer has the responsibility to issue prompt decisions on prehearing issues and respond timely to inquiries by the parties

CHAPTER 4. HEARING

A. Mechanics of the Hearing

The hearing should move as rapidly as possible, consistent with the fundamentals of fairness, impartiality, and thoroughness.

1. Hearing Location and Facilities. Comfortable and functional hearing facilities assist in developing a good record. The hearing should be conducted in a location convenient to the public, including those with disabilities. If possible, the hearing officer should inspect the hearing room before the hearing. The hearing officer should check the noise level, heating or air conditioning, lighting, furniture arrangement, seating facilities, and sound system. The witness chair should be arranged so that everyone in the room can see and hear the witnesses, and the recording device (or reporter) should be placed where an accurate record of the testimony of all witnesses and the comments of all participants can be achieved. A nearby location where persons can confer in private is also helpful.

The hearing officer should ensure that the hearing room and furniture stays in the condition in which they originated. Smoking in the hearing room should be prohibited regardless of whether the hearing is in session.

If the hearing officer wants the county clerk to arrange for the hearing facility or for recording, the hearing officer should promptly notify the county clerk.

2. Hours. Hearing hours may coincide with local court hours or can be set at a convenient time for the hearing officer and parties. Hearings should be scheduled during evenings or weekends only in extraordinary circumstances.

3. Recesses and Promptness. Short recesses should be taken whenever it might enable the hearing to progress more smoothly. For example: when the participants tire, or to allow an expert witness to set up an exhibit. The hearing officer should call a recess if a witness or counsel requires a break from the proceeding to regain composure and participate more effectively.

The hearing officer should establish a time for convening each session and enforce it. The hearing officer should also notify the parties that they are responsible for scheduling witnesses so that the allotted time from beginning to end is fully utilized.

The times fixed for recess or adjournment should be flexible. For example, if a witness finishes his or her testimony five or ten minutes before the scheduled adjournment time for lunch, it might be convenient to recess; if counsel is in the midst of a complicated cross-examination at the end of the day, adjournment may be delayed so as to permit the cross-examination to conclude.

4. Recording. Hearings may be recorded by a phonographic reporter or recorder, or other adequate means of assuring an accurate record, pursuant to Department of Revenue Regulation 560-11-13-.06.

Although any type of recording may be used (shorthand, stenotype, etc.), tape recording is usually the least expensive method. Any recording equipment shall be operated by the hearing officer to ensure that an accurate record is kept of the full proceeding. A hearing officer may discuss other arrangements with the parties.

To make certain that the record is complete, the hearing officer should announce when the reporting is interrupted for a change in tape (make a note in the record of such a change), or a recess, and should announce when the proceedings are resumed. If a person continues to speak after the reporting stops, the hearing officer should catch the speaker's attention, and then ask the speaker to repeat the portion that was lost after the reporting resumes. The hearing officer may frequently have to ask participants to speak louder. The hearing officer should always speak in a tone audible throughout the hearing room. The hearing officer should not turn off the recording equipment until the parties have left the room.

If matters of substance happen to be discussed off-record, the hearing officer should memorialize those discussions on the record.

5. Use of Interpreters. If a party or witness has requested the assistance of an interpreter, the hearing officer should discuss the request with the court clerk and make appropriate arrangements. Generally, the party requesting foreign language interpretive services would be expected to bear the expense of the interpreter. If the request is made to accommodate a disability, the hearing officer should review the Americans with Disabilities Act requirements. The hearing officer, or reporter, if any, should administer an interpreter oath such as the following:

"Do you solemnly swear or affirm that you will truthfully and accurately translate all questions put and all answers given, to the best of your ability?"

Hearing officers should give specific instructions to an interpreter, on the record, such as the following:

- The interpreter is to give word-for-word translations of only what is asked and what is answered;
- The interpreter is not to engage in discussions with the witness in order to clarify what the witness means or for any other reason; and
- The interpreter should interrupt long passages in order to translate several shorter statements rather than one long one.

The parties should also be directed to ask their questions directly to the witness (*e.g.*, "Did you go to the store?") rather than giving the interpreter directions as to what to ask (*e.g.*, "Ask him if he went to the store.").

6. Public Hearings. All hearings are a matter of public record and shall be held open to the public.

B. Witnesses

Witnesses may appear in person or provide testimony by telephone.

1. Evidence by Affidavit. A party may introduce as evidence an appraiser's affidavit regarding the issue to be decided at the hearing. The affidavit is treated as oral evidence with the right to cross-examine waived unless the other party:

- Was not made aware of this evidence before the hearing, or
- Timely requested an opportunity to cross-examine the affiant.

A pro se party may not fully understand that an affidavit from a witness is not sufficient if another party wishes to cross-examine the affiant's testimony. The affiant must be produced for cross-examination. If not, then the affidavit must be withdrawn. In some cases, a pro se party may need to be informed by the hearing officer to subpoena a witness whose affidavit, alone, will not suffice.

2. Compelling Testimony / Subpoenas.

a. *Who Issues.* Hearing officers may issue subpoenas upon the request of a party pursuant to Department of Revenue Regulation 560-11-13-.05.

b. *When Appropriate.* A subpoena may only be used to compel testimony, or the production of documents, at the hearing.

A party may not use a subpoena to obtain documents before a hearing.

A subpoena for appearance at the hearing is generally issued at the request of one party to compel a third party or witness to appear and testify. However, if the subpoena is for a person not on a required witness list or the hearing officer has already determined that the witness may not be called, the hearing officer may refuse to issue the subpoena unless opposing parties have been given notice and an opportunity to object. Otherwise, the hearing officer need not discuss the issuance of a subpoena with other parties before it is served.

Sometimes a subpoena will be requested for material that the hearing officer has previously ruled need not be produced. If the hearing officer observes this, the hearing officer should deny the request unless there is some reason to change the earlier ruling.

c. *Lack of Subpoena Power.* Because hearing officers lack subpoena enforcement power, a hearing officer may order witnesses within the control of a party (e.g. employees of the party) to testify or produce documents. However, if a non-party witness

is outside of the control of the parties and refuses to testify or produce documents, the hearing officer does not have authority to compel document production or witness attendance at the hearing. In such instance, the hearing officer may choose to send a letter to the non-party explaining the need for the testimony or documents and requesting their cooperation.

3. Presumptions from Failure to Testify / Claim of Privilege.

a. *Refusal to Testify.* If a witness refuses to answer a question, or to testify at all, the hearing officer should ask the parties for their input as to what actions are appropriate. Before taking any action, the hearing officer should first determine whether the evidence sought is relevant and non-duplicative in compliance with Department Regulation 560-11-13-.03. Among the hearing officer's options is to suggest that the party seeking the testimony request assistance of the appropriate Superior Court to compel the testimony. If the witness refuses to answer questions on cross-examination, the hearing officer can choose to strike their direct testimony. If the witness is a party, or a person within the party's control, the hearing officer may choose to make a presumption that the testimony on that point would be adverse to the party.

b. *Claim of Privilege.* With one possible exception, the exercise of an evidentiary privilege may not be commented upon by a party or the hearing officer and no inference may be drawn.

4. *Witness Exclusion.* Upon motion of a party or upon the hearing officer's own motion, a prospective witness may be excluded from the hearing room while another witness is testifying. The testimony of a prospective witness may be more credible if that witness has not heard another witness testifying about the same or similar matters. However, a party to the proceeding should never be excluded. If the party is an entity, such as an agency, the hearing officer can require the party to designate one person (other than the party's attorney) who will not be excluded. Unless the hearing officer finds that a party would be unfairly prejudiced, a witness whose presence is shown by a party to be important to the presentation of that party's case (e.g., certain experts) should not be excluded.

C. Handling of Exhibits

It is a good idea to have the parties furnish the hearing officer, and each other, with copies of their exhibits in advance of the hearing so that objections and other matters can be summarily decided beforehand, thus saving time at the hearing. Exchange of exhibits will also avoid surprise and delay.

1. *Marking the Exhibits.* The hearing officer should establish a method for exhibit identification. Exhibits may be marked using any logical system that will allow easy retrieval of the exhibits during the hearing and will allow a reviewing authority to easily retrieve and review the exhibits and understand which party submitted them.

Additionally, the hearing officer should require each party to submit an exhibit list with the party's proposed exhibits.

In cases where there are a large number of exhibits, the hearing officer may require the parties to consult beforehand so as to prevent duplicate exhibits being introduced. The hearing officer may wish to require that documentary evidence be tabbed and placed in three-ring binders, or otherwise provided in a manageable form. At the hearing, enough copies of the documentary exhibits should be available so that the hearing officer, the witness, and each party have a separate copy.

If sufficient copies of an exhibit are not available at the hearing, the original should be given to the party offering it so that it can be reproduced and returned to the hearing officer, with copies to all parties. If this course is decided upon, it should be so reflected in the record.

2. **Demonstrative Exhibits.** A demonstrative exhibit is not "real" evidence in the sense that it is not a document prepared during an event in question. Demonstrative exhibits are useful in analyzing or illustrating other evidence. Demonstrative evidence includes charts and drawings prepared by a witness while testifying. Before the witness is excused, the hearing officer should inquire whether the party intends to have the document received into the record as demonstrative evidence. The hearing officer has greater discretion to determine whether to admit demonstrative evidence, as opposed to "real" evidence. The hearing officer should admit the exhibit if it is more helpful than not, taking into consideration accuracy, confusion, and unfair surprise to opposing parties. Demonstrative exhibits should be marked and admitted in the same manner as other exhibits.

3. **Receipt of Exhibits.** Simply marking an exhibit for identification does not make the exhibit part of the record. It must be admitted into evidence. If objections or other questions involving an exhibit have been resolved before the hearing, then the hearing officer should expressly admit the exhibit during the hearing officer's opening statement. If all objections have not been resolved, then the party proposing to add an exhibit to the record must attempt to do so at the hearing and any opponent must be given an opportunity to object at the time the exhibit is offered. The hearing officer should record whether each exhibit is "admitted" or "rejected" by writing on the exhibit list or on the exhibit itself.

When an exhibit is offered into evidence, the hearing officer should consider any objections. The hearing officer should take careful note of the material objected to and the basis of objection. A party should be permitted to respond to the objection. The hearing officer should weigh the arguments, perhaps during a short recess, and rule on the admissibility of all challenged material. Motions to strike an exhibit may be entertained later if required by further developments at the hearing.

As an alternative to the above procedure, in cases involving large numbers of documents or other exhibits, the hearing officer may provide by prehearing order that all

exhibits referred to or used in the hearing will be deemed admitted unless specific objection to admission is made by one of the parties at the hearing. If such a procedure is used, the hearing officer should also order an exchange of exhibits between the parties well in advance of the hearing so that the parties will be prepared to offer objections. This procedure shortens the overall hearing and allows for smoother presentation of evidence.

If a party has pre-filed an exhibit, but not offered it into evidence, the exhibit may be returned to the party or destroyed. It is not part of the record. The exhibit list should be notated that the exhibit was withdrawn or not offered.

4. Excluded Evidence. Excluded material should not be physically removed from the record. Instead, after it is marked "rejected," it should be attached to the record but segregated from admitted material so that there is no confusion or inadvertent consideration of rejected material. This rejected material is not considered part of the record to be considered by the agency except to rule on the correctness of its exclusion. During the hearing, the hearing officer should provide and note a reason why the evidence is being excluded from the record. The hearing officer should direct the parties to mark "rejected" on their own copies of offered exhibits as well.

5. New Exhibits. If a party brings in new, surprise exhibits that should have been exchanged before the hearing, the hearing officer should determine whether it would be fairer to exclude the evidence, or to allow the opposing party a continuance to review the evidence before proceeding.

D. Opening Statements

1. Hearing Officer's Opening Statement. The hearing officer should call the hearing to order, identify himself or herself, and give any preliminary instructions concerning decorum, procedure, and hearing hours. In addition, a basic opening statement should include the following:

- the title of the case;
- the date, time, and place of hearing;
- the persons present at the hearing or who will participate by telephone; and
- the statutes and regulations under which the hearing is being conducted

The opening should be adapted to the type of case and the circumstances. If all affected persons are represented by knowledgeable and experienced counsel, the opening statement may be brief. If members of the public are present, some counsel are unacquainted with the hearing procedure, or one or more parties are not represented by counsel, the hearing officer should briefly describe the subject of the case and the procedures to be followed.

If the parties have stipulated to facts or the admission of exhibits, this should be noted at the beginning of the hearing and should be disclosed to the hearing officer and made part of the record. A stipulation is an agreement made between opposing parties

prior to a pending hearing or trial. For example, both parties might stipulate to certain facts, and therefore not have to argue those facts in court. Any materials of which the hearing officer will take official notice should also be cited.

2. Parties' Opening Statements. The parties may be required or permitted to make an opening statement. That statement is not subject to cross-examination.

Opening statements should normally be permitted unless waived by a party. The hearing officer may place a reasonable time limit on opening statements. What constitutes a reasonable time limit depends upon the complexity of the case and the number of issues involved.

Pro se parties often misunderstand the function of an opening statement. Prior to the hearing, it may be helpful to explain to the pro se party that the opening statement is merely intended as an outline of the party's case, what testimony and documents that the party expects to introduce, and what facts the party intends to prove.

E. Motions During Hearing

At the beginning of the hearing, the hearing officer should explicitly request that any preliminary motions be made and then either dispose of them or take them under advisement. Motions relating to hearing procedures, such as a motion concerning the order of presenting evidence, should be disposed of promptly.

When, a motion is made or an objection to evidence is raised, during a hearing, the hearing officer may permit oral argument in support of, and in opposition to, the motion or objection. In some circumstances, the hearing officer may also request written memoranda on disputed points. In allowing argument or requesting a briefing, however, the hearing officer should try to avoid unnecessary expense and delay.

F. Development of the Record

1. Burden of Proof / Standard of Proof. The standard of proof for the hearings shall be a preponderance of the evidence pursuant to Department of Revenue Regulation 560-11-13-.02. A preponderance of the evidence is established when one party's evidence is of greater weight or is more convincing than the evidence offered in opposition to it, in that the evidence, when taken as a whole, shows that the fact in dispute has been proven by one party to be more probable than not.

2. Order of Presentation. Generally, the party with the burden of proof goes forward first. The order of presentation during the hearings shall be followed pursuant to Department of Revenue Regulation 560-11-13-.02.

3. Witness Testimony.

a. *Witness Order.* The party presenting its case calls witnesses, who are then sworn in by the hearing officer. The following form for administering the oath is suggested:

“Do you solemnly swear or affirm that the testimony you will give will be the truth, the whole truth, and nothing but the truth?”

Direct examination should then begin. Exhibits identified by witnesses should be offered in evidence before each witness is released for cross-examination. Cross-examination and redirect examination would then follow until the testimony of that witness is presented in full. A witness should be excused after giving testimony, subject to recall at the hearing officer's discretion. Normally, all of a party's witnesses (except rebuttal witnesses as discussed below) should be called and examined before the next party begins to call its witnesses.

The hearing officer may allow witness testimony to be taken out of order to accommodate scheduling needs. In multi-party proceedings, witnesses for a category of parties may be heard as a group or in any other convenient sequence.

b. *Cross-examination.* Cross-examination is the questioning of one party's witness by an opposing party or that party's counsel. If there are several parties, the hearing officer should determine the order of cross-examination that will effectuate a clear and accurate record. Ordinarily, priority is given to the party who will have the most extensive cross-examination or who has the greatest interest in the direct testimony to be given. Generally, a party should not be permitted to interject questions during cross-examination by another party. However, the hearing officer may permit this when clarification would be time-saving.

c. *Redirect.* Following cross-examination, redirect examination by the party who initially called the witness should be permitted, but confined to matters brought out on cross-examination. A short conference between a party and the witness may be allowed before redirect examination.

d. *Rebuttal Witnesses.* After the conclusion of the respondent's evidence, the petitioner may rebut adverse evidence. Rebuttal testimony should be limited to new issues raised in the respondent's evidence.

Evidence that could have been introduced in a party's direct case should not be introduced in rebuttal. After the petitioner presents rebuttal evidence, the hearing officer should allow the respondent to rebut factual issues raised for the first time in the petitioner's rebuttal. The hearing officer may recess the hearing briefly to permit a party to prepare to rebut new matters.

4. *Actions by the Hearing Officer to Develop the Record.* Throughout the proceeding, the hearing officer should take action to develop an accurate record. The hearing officer may call attention to gaps in the evidence and ask whether they will be filled. The hearing officer should direct the parties to discuss, in oral argument, any points the

hearing officer thinks are germane. It is important to develop a complete record of the proceedings for any further review. The hearing officer may assist when the witness and counsel are at cross-purposes, when the record may not reflect with clarity what the witness intends to convey, or when, for some other reason, assistance is needed to assure orderly development of the record. The hearing officer may question the witness to clarify any confusing or ambiguous testimony or to develop additional facts that the hearing officer considers are necessary to decide the case.

A hearing officer may go so far as to request that specific evidence, including testimony from particular witnesses, be provided. When making such a request, the hearing officer should note the necessity for the evidence on the record. If evidence is not produced after being requested, an adverse inference may be drawn as a result.

Pro se parties may not understand the specifics involved in presenting direct evidence. One technique that may assist in the development of the record by a pro se party is to allow presentation of a narrative, guided by occasional questions from the hearing officer. A hearing officer may also find it necessary to ask questions to develop testimony on a particular issue or clarify conclusory statements or opinions. It may also be appropriate to intervene with clarifying questions when testimony is ambiguous or unclear. A pro se party also should be discouraged from asking leading questions, but the party may not easily be able to correct the practice. The hearing officer may need to assist in rephrasing questions so that they elicit independent and reliable responses.

On the other hand, **the hearing officer should not become the advocate for any party.** The party should be expected to meet whatever burden on proof is placed on the party. **The hearing officer should avoid any appearance of bias whatsoever.**

G. Rules of Evidence. The rules of evidence shall be followed to the degree in which the hearing merits. The hearing officer is to exclude irrelevant and unduly repetitious evidence.

1. Affidavits. Use of affidavit testimony as direct evidence is permitted if it is mailed or delivered to the opposing party at least seven (7) days before the hearing, together with a notice that the party may specifically request an opportunity to cross-examine the affiant. If the opposing party requests cross-examination at the hearing and the affiant is not made available, then the testimony provided in the affidavit testimony is considered to be hearsay.

2. Hearsay. Hearsay evidence may be admitted if it is considered reliable and useful. A hearing officer should exclude hearsay evidence if it appears untrustworthy. It may be used to supplement or explain direct evidence but it is not sufficient by itself to support a finding unless it would be admissible over objection in a civil action. This limitation on the use of hearsay testimony can present a challenge for the hearing officer. In a typically informal administrative hearing, a party may not realize the need to state a hearsay objection. In the absence of a hearsay objection, hearsay evidence is competent evidence which may be considered.

Therefore, the hearing officer should instruct the parties about their obligation to object to each item of hearsay testimony. If hearsay objections are then made, the hearing officer must rule and state whether the testimony is admitted:

- 1) As a recognized exception to the civil hearsay rule (and thus it may be used for any purpose); or
- 2) Solely under the relaxed administrative hearing hearsay rule (and therefore considered only to supplement or explain other evidence).

3. Authentication. The authenticity of documents should be presumed unless a direct challenge is made. Generally, a duplicate is equally admissible as an original unless there is good reason to question it.

If a genuine question is raised about the authenticity of a document, or if it would be unfair under the circumstances to admit the duplicate, the party may be required to establish that an exhibit is what the party claims it to be. Often it will be possible to avoid disputes over the admission of documents if the parties can stipulate to their authenticity before the hearing.

4. Exclusion of Evidence to Limit Scope of Hearing. Rulings on the admission and exclusion of evidence are a part of a hearing officer's function. A hearing officer may appropriately limit the scope of a hearing to only those matters that are within the scope of the hearing. Similarly, evidence that is unduly repetitious or cumulative should be excluded from the record.

5. Privileges. A claim of privilege may be asserted if information is sought about the substance of confidential communications. Evidentiary rules that protect privileged communications are effective in an administrative proceeding to the same extent as in a judicial proceeding.

6. Self-Incriminating Testimony. The Fifth Amendment right against self-incrimination is applicable to administrative proceedings. Failure to assert the Fifth Amendment's protection, however, may constitute a waiver.

7. Official Notice. A hearing officer has the authority to take official notice of a generally accepted technical or scientific matter within the agency's special field, or of a fact that is judicially recognized in the courts of the state.

It is important to provide notice to the parties and provide an opportunity to rebut the "noticed" facts. The hearing officer should attempt to provide written notice before the hearing or oral notice during the hearing of the facts to be officially noticed. Otherwise, written notification, allowing each party sufficient time to object, may be accomplished after the hearing and before the closing of the record.

8. Ruling on Objections. Generally, if an objection to evidence is not made at the time of the hearing, it is considered waived. The hearing officer can require the proponent of the evidence to “lay a foundation” for the admissibility of the evidence by, for example, asking preliminary questions.

A hearing officer must remember that if a decision is appealed, the court will examine the record to determine whether the evidence supports the agency's factual findings. The court generally will not reweigh the evidence, but will make a determination as to whether there is substantial evidence on the record to support the findings. The hearing officer's rulings on admissibility of evidence will be examined as part of the court's inquiry. However, a ruling that admits or excludes evidence will likely not result in a finding of abuse of discretion unless a substantial right of a party is affected.

The following principles are useful in ruling on some common objections:

a. *Relevance or Materiality.* Relevant evidence is evidence that has some tendency to prove or disprove an issue of fact in the case. A hearing officer may exclude irrelevant or immaterial evidence in order to make a clear record or to avoid weighing irrelevant evidence when deciding a case.

b. *Cumulative or Repetitive Evidence.* The probative value of repetitive or cumulative evidence is minimal and can cause undue delay or waste of time. A hearing officer shall have the right to exclude unduly repetitious evidence pursuant to Department of Revenue Regulation 560-11-13-.03.

c. *Lack of Foundation.* A lack of foundation objection may arise if the evidence offered has not been shown to be based upon personal knowledge or expertise. If the witness does not have personal knowledge or expertise regarding a factual question in the case, that witness cannot provide evidence on which “reasonable persons are accustomed to rely in the conduct of serious affairs.”

H. Bringing the Hearing to a Close

1. Closing Argument. The hearing officer may permit or require oral argument on the merits of the entire case or on specific issues. Oral arguments may be heard at the close of the hearing or before or after the filing of any post-hearing briefs, as the hearing officer directs. In most instances, the hearing officer should set time limits for closing argument. The hearing officer should set a reasonable time limit, considering the complexity of the case and the amount of evidence and testimony presented.

2. Closing the Record. The record may be closed at the conclusion of the oral hearing. However, if additional evidence is to be submitted after the hearing, the hearing officer should announce at the hearing, by letter or by other written communication, the date that the record will close. Based upon extraordinary circumstances, such as newly discovered evidence, the record may be reopened to extend hearing or to receive additional stipulated material.

3. Decision. At the conclusion of the hearing, the hearing officer shall notify both parties of the decision verbally and shall send the taxpayer and board of tax assessors the decision in writing. A copy of the decision shall also be sent to the clerk of the superior court.



State of Georgia

Department of Revenue

1800 Century Boulevard
Atlanta, Georgia 30345

Hearing Officer Procedural Form-1

1. At the start of the hearing, the Hearing Officer should clearly explain the procedures to be followed throughout the hearing.
2. The opening statement should include the:
 - (a) identification of the Hearing Officer;
 - (b) identification of the parties;
 - (c) names of the participants and witnesses of the hearing;
 - (d) date;
 - (e) place of hearing;
 - (f) determinations being appealed; and
 - (g) issues to be considered at the hearing.
3. The Hearing Officer shall:
 - (a) described and clearly mark all exhibits;
 - (b) allow parties to review the exhibits and offer objections;
 - (c) authenticate offered exhibits (to the extent possible) where questionable or challenged;
 - (d) receive all competent, relevant and reasonably available exhibits;
 - (e) give an explanation for the denial of any of the proposed exhibits; and
 - (f) rule on the admissibility of any documents read into the record as proposed exhibits.
4. Parties and Witnesses should be called and sworn, and the evidence developed, in a logical and efficient manner. The party who has the burden of proof should present their case first.
5. The evidence from each witness should be developed in a logical order. Each witness should be cross-examined by the opposing party after the witness has been questioned on direct.
6. The Hearing Officer must provide parties and representatives with a timely opportunity to question their own witnesses and to cross-examine the other party's witnesses.
7. Throughout the hearing, the Hearing Officer should use language that is clear and understandable, avoiding unnecessary legal phrases and technical language.
8. Each question by the Hearing Officer should express only one point.
9. The Hearing Officer should attempt to clarify statements which include conclusions, opinions, and ambiguous or unclear testimony. When the witness responds with an opinion or conclusion, the Hearing Officer

should make a reasonable effort to develop the factual basis for the opinion or conclusion. When the testimony is not entirely clear or was ambiguous, the Hearing Officer should question the witness(es) in a conscientious attempt to get specific, clear responses.

10. The Hearing Officer must afford a timely opportunity to cross-examine, properly control cross-examination, and provide appropriate assistance where necessary.

11. The Hearing Officer should control the undue extension or repetition of testimony so as to keep the hearing moving expeditiously. If a party is presenting repetitious testimony or evidence, the Hearing Officer should diplomatically inform the party that repetitious and prolonged testimony is not necessary and adds nothing to the hearing.

12. The Hearing Officer should not ask or permit improper leading questions on material issues during direct examination. A leading question is one which suggests the answer. Exceptions are made when a party's representative asks background questions relating to name, address, etc.

13. The Hearing Officer should, in as tactful a manner as possible, effectively respond to interruption of testimony and/or disruptive individuals at the hearing and refrain from inappropriate interruptions himself/herself.

14. In instances where an interpreter is necessary, the Hearing Officer should swear in the interpreter so as to affirm that the interpreter will truthfully interpret the questions and answers supplied. The Hearing Officer shall require that the interpretation be word for word to the extent possible as it would be spoken in the foreign language.

15. After the hearing has begun, the Hearing Officer should use good judgment as to allowing continuances. The Hearing Officer shall only grant those continuances requested by either party which are necessary, and should deny unwarranted continuances that unreasonably delay the disposition of the case.

16. The Hearing Officer should properly conclude the hearing by ascertaining whether the parties have anything to add. The Hearing officer should provide the parties ample opportunity to present all of the information pertinent to their case, keeping in mind the need to prevent unnecessary repetition of evidence and testimony.

17. The Hearing Officer must conduct the hearing within the scope of the issues raised by the notice of hearing, and within the issues as finally developed at the hearing, giving proper notice of new issues.

18. The Hearing Officer should not interfere with the development of the case by making gratuitous comments or observations. Hearing Officer shall conduct a hearing that is both fair in appearance and in substance.

19. The Hearing Officer shall conduct the hearing in a fair and impartial manner.

20. The Hearing Officer shall attempt to obtain the reasonably available, competent evidence necessary to resolve the issue(s) in the case.

21. The Hearing Officer is a fact-finder. It is the responsibility of the Hearing Officer to develop all the evidence that is reasonably available and to make a decision according to the dictates of the State law. "Reasonably available" means that evidence or testimony which is available at hearing and which is critical to the issues to be decided.

22. The Hearing Officer shall orally make a decision on the appeal at the end of the hearing. A written copy of the decision shall subsequently be forwarded to the parties, and/or their personal representatives within five (5) days of the hearing.
23. The statutory issues involved should be clearly and simply stated in the decision.
24. Accepting the Hearing Officer's judgment of credibility, unless it is manifestly without basis, the findings of fact must be supported by substantial evidence in the hearing record.
25. The Hearing Officer shall make all of the findings of fact necessary to resolve the issues and support the conclusions of law included in the decision.
26. The decision should contain the conclusions of law required to resolve the issue(s) in the case.
27. The decision shall state reasons and rationale that are logical.
28. The decision should be worded so that it is understandable to most claimants and employers and it should have a professional appearance.

RULES
OF
DEPARTMENT OF REVENUE
LOCAL GOVERNMENT SERVICES DIVISION

CHAPTER 560-11-13
COUNTY HEARING OFFICERS

560-11-13-.01 Applicability of Rules.

(1) The rules in this Chapter shall apply to and govern ad valorem tax assessment appeal hearings held by a county hearing officer, pursuant to O.C.G.A. § 48-5-311(3)(iii) & (e.1).

(2) The actions, decisions and orders of a county hearing officer are subject to the appeals procedures as provided in this section and O.C.G.A. § 48-5-311.

(3) The county hearing officer is empowered to exercise the same degree of authority and perform the same actions as hearing officers under O.C.G.A. § 50-13-13.

Authority: O.C.G.A. §§ 48-2-7, 48-2-12, 48-5-311.

RULES
OF
DEPARTMENT OF REVENUE
LOCAL GOVERNMENT SERVICES DIVISION

CHAPTER 560-11-13
COUNTY HEARING OFFICERS

560-11-13-.02 Nature of the Proceeding; Hearing Procedure; Burden of Proof.

The hearings held under these Regulations shall only be as formal as is necessary to preserve order and be compatible with the principles of justice.

(1) Parties shall have the right to be represented by legal counsel. Parties shall also have the right to obtain the appearance of witnesses and documentary evidence, provided that written notice is filed with the county hearing officer and the other party at least seven (7) days prior to a scheduled hearing.

(2) The parties shall also have the right to respond and present evidence on all issues involved and to cross-examine all witnesses.

(3) The standard of proof on all issues in the hearing shall be a preponderance of the evidence. A preponderance of the evidence is established when one party's evidence is of greater weight or is more convincing than the evidence offered in opposition to it, in that, the evidence, when taken as a whole, shows that the fact in dispute has been proven by one party to be more probable than not.

(4) When a hearing is being held regarding a county's board of tax assessors' tax assessment, the county board of tax assessors shall have the burden of proof in regards to fair market value and the validity of proposed assessment, not taxability.

(a) If a hearing is being held regarding a property tax exemption, then the party seeking the property tax exemption shall have the burden of proving entitlement.

(5) The county board of tax assessors shall present its case first, unless a taxpayer elects to present first and the hearing officer, in his or her discretion, allows it.

Authority: O.C.G.A. §§ 48-2-7, 48-2-12.

RULES
OF
DEPARTMENT OF REVENUE
LOCAL GOVERNMENT SERVICES DIVISION

CHAPTER 560-11-13
COUNTY HEARING OFFICERS

560-11-13-.03 Evidence; Official Notice.

(1) The rules of evidence in hearings covered by this Chapter shall be substantially as follows:

(a) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded;

1. The rules of evidence as applied in the trial of civil non-jury cases in the superior courts shall be followed as far as practicable.

2. Evidence not admissible under superior court rules may be admitted when necessary to discover facts not reasonably understood from the previously admitted evidence.

3. Except where precluded by statute, if the evidence presented it is of a type commonly relied upon by reasonably prudent persons, a hearing officer has discretion as to whether to admit the evidence or not.

(b) Documentary evidence may be received in the form of copies or excerpts if the original is not readily available;

1. Upon request, parties shall be given an opportunity to compare the copy with the original or have it established as documentary evidence according to the rules of evidence applicable to the superior courts of Georgia;

(c) A party may conduct such cross-examination as required for a full and true disclosure of the facts;

(d) Official notice may be taken of judicially recognizable facts and generally recognized technical facts or records within the agency's specialized knowledge.

1. The parties shall be notified of any material so noticed and shall be afforded the opportunity to contest such material at the hearing.

Authority O.C.G.A. §§ 48-2-7, 48-2-12.

RULES
OF
DEPARTMENT OF REVENUE
LOCAL GOVERNMENT SERVICES DIVISION

CHAPTER 560-11-13
COUNTY HEARING OFFICERS

560-11-13-.04 Continuances and Postponements.

(1) Matters set for hearing may be continued or postponed within the sound discretion of the county hearing officer upon timely motion by either party.

(2) The county hearing officer may on his own motion continue or postpone the hearing.

Authority O.C.G.A. §§ 48-2-7, 48-2-12.

RULES
OF
DEPARTMENT OF REVENUE
LOCAL GOVERNMENT SERVICES DIVISION

CHAPTER 560-11-13
COUNTY HEARING OFFICER

560-11-13-.05 Subpoena Forms; Service.

(1) Either party may obtain subpoena forms from the county hearing officer by making a timely request.

(2) Service, proof of service and enforcement of subpoenas shall be as provided by Georgia law and shall be the responsibility of the party requesting the subpoena.

Authority O.C.G.A. §§ 48-2-7, 48-2-12.

RULES
OF
DEPARTMENT OF REVENUE
LOCAL GOVERNMENT SERVICES DIVISION

CHAPTER 560-11-13
COUNTY HEARING OFFICERS

560-11-13-.06 Transcripts of Hearing.

(1) Any party may request that the hearing be conducted before a court reporter, or recorded in audio and/or video.

(2) The request shall be in writing and include an agreement by the requesting party that he or she shall pay the costs incurred by the request or that he or she shall procure at his or her own cost and on his or her own initiative, the court reporting or recording services for the hearing.

(3) Regardless of who makes the arrangements or requests the transcript, or tape or video record be made, the original transcript, or tape or video record of the proceedings shall be submitted to the county hearing officer prior to the close of the hearing record if the transcript, or tape or video is to be made part of the record.

Authority: O.C.G.A. §§ 48-2-7, 48-2-12.

RULES
OF
DEPARTMENT OF REVENUE
LOCAL GOVERNMENT SERVICES DIVISION

CHAPTER 560-11-13
COUNTY HEARING OFFICERS

560-11-13-.07 Case Presentment.

In accordance with the Georgia Administrative Procedure Act, a party shall be entitled to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

Authority: O.C.G.A. §§ 48-2-7, 48-2-12, 50-13-13.

RULES
OF
DEPARTMENT OF REVENUE
LOCAL GOVERNMENT SERVICES DIVISION

CHAPTER 560-11-13
COUNTY HEARING OFFICERS

560-11-13-.08– Ruling; Decision.

(1) The decision of the county hearing officer shall clearly state the ruling regarding the property's value and uniformity, where applicable.

(2) The decision of the county hearing officers shall be rendered pursuant to O.C.G.A. § 48-5-311 (e.1)(1).

(3) When a taxpayer authorizes an attorney in writing to act on the taxpayer's behalf, the decision of the county hearing officer shall be provided to such attorney pursuant to O.C.G.A. § 48-5-311(o).

Authority: O.C.G.A. §§ 48-2-7, 48-2-12, 48-5-311.

RULES
OF
DEPARTMENT OF REVENUE
LOCAL GOVERNMENT SERVICES DIVISION

CHAPTER 560-11-13
COUNTY HEARING OFFICERS

560-11-13-.09– Hearing Location.

A hearing conducted by a county hearing officer under this Chapter, shall be held in the county where the property is located unless all parties agree to hold the hearing at a mutually agreed upon location.

Authority: O.C.G.A. §48-5-311.

RULES
OF
DEPARTMENT OF REVENUE
LOCAL GOVERNMENT SERVICES DIVISION

CHAPTER 560-11-13
COUNTY HEARING OFFICERS

560-11-13-.10– Swearing In Witnesses.

(1) Before a witness is allowed to testify at a hearing, the witness must first be sworn-in by swearing or affirming to tell the truth.

(a) The county hearing officer shall be responsible for swearing in all witnesses and must administer the following oath:

“Do you swear or affirm to tell the truth, the whole truth, and nothing but the truth, so help you god?”

Authority: O.C.G.A. §48-5-311.

RULES
OF
DEPARTMENT OF REVENUE
LOCAL GOVERNMENT SERVICES DIVISION

CHAPTER 560-11-13
COUNTY HEARING OFFICERS

560-11-13-.11– Hearing Officer Procedural Form.

A county hearing officer shall follow the procedures as outlined in Hearing Officer Procedure Form-1 when conducting an administrative hearing under this Chapter.

Authority: O.C.G.A. §48-5-311.

APPEAL OF ASSESSMENT FOR DIGEST YEAR :

Appeal No: _____

Home Phone	
Work Phone	
Email Address	_____

Property / Appeal Type (Check One)

Real
 Personal
 Motor Vehicle
 Manufactured Home

Property ID Number		Account Number	1
Property Description			

<p>Specify Grounds for Appeal:</p> <p style="text-align: center; border: 1px solid black; background-color: #e0f0ff;">Check all that apply</p> <table style="width: 100%;"> <tr><td>Value</td><td style="text-align: center;"><input type="checkbox"/></td></tr> <tr><td>Uniformity</td><td style="text-align: center;"><input type="checkbox"/></td></tr> <tr><td>Taxability</td><td style="text-align: center;"><input type="checkbox"/></td></tr> <tr><td>Exemption Denied</td><td style="text-align: center;"><input type="checkbox"/></td></tr> <tr><td>Breach of Covenant</td><td style="text-align: center;"><input type="checkbox"/></td></tr> <tr><td>Denial of Covenant</td><td style="text-align: center;"><input type="checkbox"/></td></tr> </table>	Value	<input type="checkbox"/>	Uniformity	<input type="checkbox"/>	Taxability	<input type="checkbox"/>	Exemption Denied	<input type="checkbox"/>	Breach of Covenant	<input type="checkbox"/>	Denial of Covenant	<input type="checkbox"/>	<p>You must select only one of the following options:</p> <p><input type="checkbox"/> BOE: appeal to the county board of equalization with appeal to the superior court (any / all grounds)</p> <p>* <input type="checkbox"/> ARBITRATION: to arbitration without an appeal to the superior court (valuation is only grounds that may be appealed to arbitration)</p> <p>* <input type="checkbox"/> HEARING OFFICER: for a parcel of nonhomestead property with a FMV in excess of \$1 million, to a hearing officer with appeal to superior court (value and uniformity only)</p> <p>* <input type="checkbox"/> SC: Directly to Superior Court (requires consent of BOA) (any / all grounds)</p> <p style="color: red;">* Additional Cost / Fees May apply</p>
Value	<input type="checkbox"/>												
Uniformity	<input type="checkbox"/>												
Taxability	<input type="checkbox"/>												
Exemption Denied	<input type="checkbox"/>												
Breach of Covenant	<input type="checkbox"/>												
Denial of Covenant	<input type="checkbox"/>												

Property Owner Comments: _____

Property Class Residential Commercial Industrial Agricultural Other _____

Signature of Property Owner or Agent _____

NOTE: if the appeal form is signed by an agent, a letter of authorization must accompany the filing of the appeal.

Agent's Address: _____ Agent's Phone #: _____

_____ Agent's Email Address: _____

NOTE: Filing of this document will create a review of the county's value of the property being appealed. Reasonable notice is hereby provided that an onsite inspection by a member of the county appraisal staff may be required.

	Previous Year Value	Taxpayer's Returned Value	Current Year Value
100%			
40%			

Date Received: _____	Received by: _____
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SENATE BILL 346 SUMMARY

SB 346, Part I

- Board of Assessors (“BOA”) must send assessment notice to all owners of real property every year
- Estimate of current year taxes based on current year proposed value and last year’s millage rate for all taxing jurisdictions required on the notice
- Statement regarding the estimated taxes must be included on the assessment change notice
- Notices mailed by July 1
- 45-day appeal period in *all* counties
- Statewide uniform Assessment Notice as prescribed by the Revenue Commissioner
- Notice to taxpayer of appeal path options
- Taxpayer can choose to receive notices via electronic transmission (if made available by BOA)
- Statement on notice that all records and data used to determine assessment available in BOA office
- List of undeliverable notices posted on courthouse or on county website.

SB 346, Part II

- Regional board of equalizations (“BOE”) can be established by intergovernmental agreement
- New oath for BOE members
- Clerk of Superior Court has “oversight” of BOE and hearing officers
- Clerk of Superior Court must maintain all records until time for filing appeal to superior court has expired
- Commissioner to prescribe state-wide appeal form
- When the appeal is filed the taxpayer must specify the appeal path
- Clerk of Court may grant more than one extension (or rescheduling of a hearing)

- Both parties may agree to a value and terminate the appeal
- 30 days to appeal a revision made by the BOA (21-day notice is now a 30-day notice)
- Revenue Commissioner to promulgate rules and regulations regarding procedures and policies which *shall* be followed by the Board of Equalization, hearing officer and arbitrators
- Revenue Commissioner to adopt a uniform appeal form which a taxpayer *may* use
- The owner of the property as of January 1 may file an appeal – or if the property sells after January 1 and prior to the last date for filing an appeal, the new owner has appeal rights

SB 346. Hearing Officers

- Hearing officer can decide appeals on non-homestead property with a value > \$1,000,000 and specified at time the appeal is filed
- Hear appeals on value and uniformity
- BOA has the burden of proof
- Hearing Officers approved by Georgia Real Estate Commission and the Georgia Real Estate Appraisers Board and certified as:
 - Certified general real estate appraiser, or
 - Certified residential real property appraiser
- Hearing officer may be mutually agreed to by both parties, but if not the hearing officer will be appointed by the superior court clerk
- Clerk of Superior Court will schedule hearings and notify both parties
- Hearing officer verbally renders decision at the conclusion of the hearing and is required to notify the taxpayer in writing
- Taxpayer and/or BOA may appeal to superior court
- Compensation of \$25/hour or more
- Rules and regulations promulgated by Department of Revenue for procedures, training, qualifications, etc.

SB 346. Appeal to Superior Court

- Decision of hearing officer or board of equalization may be appealed to superior court by taxpayer and/or county
- Appeal can be filed straight to superior court if both county and taxpayer agree
- All appeals to superior court to be placed on court's next available jury or bench trial calendar
- All proceedings can be recorded by audio and/or video
- Hearing officers can be disqualified for same cause as BOE members
- Added new definition for "Service of Notice" – date of post mark
- If county elects to accept appeal by email, the following must be the subject line of the email in capital letters: 'STATUTORY ELECTRONIC SERVICE'
- County is required to provide taxpayer's attorney copies of all notices of hearings times, dates, certification or official actions

SB 346, Part III, Section 1

- Amends O.C.G.A. § 48-5-18
- Return book close on April 1 in every county, eliminating the March 1 return deadline

SB 346, Part IV, Section 2

- Amends O.C.G.A. § 48-5-291
- BOA members must have a high school diploma or equivalent
- Experience no longer a substitute
- Changes the training requirements to reference new O.C.G.A. § 48-5-13

SB 346, Part IV, Section 3

- Amends reference for training requirements of BOE members in O.C.G.A. § 48-5-311 to new O.C.G.A. § 48-5-13

SB 346, Part V

- Amendments to O.C.G.A. § 48-5-2
- New definition of arm's length, bona fide sale

- Requires consideration of income approach, if data is available, on income-producing properties
- Transaction price (sales price) is the taxable value for the next tax year
- Change language from “consider” to “apply” for criteria to be considered in determining fair market value
- Takes out the language referring to “foreclosures”
- Revenue commissioner can designate other existing criteria the BOA may consider and apply
- Adds restriction on including value of intangible assets in determining the value of real property

SB 346, Part VI

- Non-binding arbitration eliminated
- Defines “certified appraisal”
- Allows for notification to taxpayers of all requirements for arbitration within 10 days of receipt of appeal
- Provides the taxpayer with 45 days to submit certified appraisal and superior court filing fee
- The BOA has 45 days to accept or reject appraisal
- If taxpayer does not provide appraisal and filing fees with 45 days appeal may be terminated unless taxpayer requests appeal be sent to board of equalization
- For appeals filed in 2009, if the board of assessors has failed to act and the taxpayer submitted the required appraisal, the appraisal value is deemed to be the final value
- Loser pays costs of superior court clerk and arbitrator
- Specifies the level of appraiser than can serve as an arbitrator
- Arbitrator required to announce decision at the conclusion of the hearing
- County not required to maintain FMV during moratorium period

- County cannot be assessed ¼ mill recovery or \$5/parcel penalty during moratorium period

SB 346, Parts VII & VIII

- Requires a county and/or municipality to refund taxes determined to have been overpaid
- Refund to be paid from funds of each of the taxing jurisdictions receiving the initial payment
- Requires the governing authority to adopt rules and regulations
- Allows county tax commissioner to bill the public utility companies based on 85% of prior year's tax bill in the event the current year values are not provided prior to August 1
- Corrected bill mailed when the final assessment is determined
- Does not subject Tax Commissioner to the \$2 for every \$1 collected penalty in O.C.G.A. § 48-5-135

SB 346, Parts IX – XII

- Changes contents of “Notice of Property Tax Increase” advertisement
- Specifies the rollback millage rate and estimates the increase in \$ as a result of the higher millage rate for both
 - Residential homestead property
 - Non-residential property
- Only required for M & O Levy
- Advertisement must be at least 30”
- Notice must also be posted on county and school Web sites
- Allows submission of tax digest to the Commissioner and an Order to Bill and Collect issued without regard to the value in dispute or the number of parcels appealed