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REVENUE AND TAXATION Taxation of Intangibles: Modify the Manner of Calculating the State Occupancy Tax on Depository Financial Institutions; Provide Definitions Applicable to Taxation of Financial Institutions and Intangible Personal Property Tax; Modify Carry-Over of Unused Credits with Respect to Income Taxation of Corporations

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REVENUE AND TAXATION

Taxation of Intangibles: Modify the Manner of Calculating the State Occupancy Tax on Depository Financial Institutions; Provide Definitions Applicable to Taxation of Financial Institutions and Intangible Personal Property Tax; Modify Carry-Over of Unused Credits with Respect to Income Taxation of Corporations

CODE SECTIONS:	O.C.G.A. §§ 48-6-20, -90 (amended), -90.1 (new) -91, -93, -95, 48-7-21, -31, 7-1-601 (amended)
BILL NUMBER:	HB 1638
ACT NUMBER:	602
GEORGIA LAWS:	1996 Ga. Laws 181
SUMMARY:	This Act provides a basis for the proper taxation of financial institutions conducting business within the state. The Act allows the state to tax a financial institution's percentage of business conducted within the state. The Act eliminates the requirement that the financial institution be domiciled in the state in order to be properly taxed. The Act also requires a report from the state revenue commissioner to ensure that the resulting taxation changes under this Act are revenue-neutral.
EFFECTIVE DATE:	March 29, 1996[1]

History

When the U.S. Congress passed the Riegle-Neal Interstate Banking and Branching Efficiency Act[2] in September 1994, the banking industry was freed from its historic intrastate restrictions and allowed to freely conduct interstate banking.[3] The historic restrictions on interstate banking had led to a chameleon-like form of interstate

1. The Act became effective upon approval by the Governor.

2. Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Pub. L. No. 103-328, 108 Stat. 2338; *see Legislative Review*, 12 GA. ST. U. L. REV. 1 (1995) (noting other changes to Georgia law necessitated by the Riegle-Neal Act).

3. Telephone Interview with Rep. Larry Parrish, House District No. 144 (May 6, 1996) [hereinafter Parrish Interview];. Interview with Michael Petrik and Lisa Katz, attorneys at Alston & Bird, who drafted the specific language of the bill at the bequest of the sponsors of HB 1638, in Atlanta (May 9, 1996) [hereinafter Petrik Interview].

banking.[4] In order to conduct interstate banking, a multistate financial institution would establish a holding company to own individual banks chartered under the requirements of individual states.[5] The Riegle-Neal Act allows a single bank to acquire or establish branches in other states without being part of a holding company.[6]

As a result, however, of the long-standing ban against multistate banking, the State tax code developed under an implicit understanding that "banks" and "branches" of banks operate exclusively in one state.[7] The Riegle-Neal Act itself addressed one aspect of the taxation dynamic by allowing the host state to impose upon the "proportionate amount of the value of the shares of the out-of-State bank . . . any bank shares tax levied or imposed by the host State, or any political subdivision of such host State that imposes such tax based upon a method adopted by the host State."[8]

Because its tax code did not address the taxation of a multistate financial institution,[9] Georgia's failure to remedy this omission before the June 1, 1997 effective date may have resulted in revenue loss.[10] In anticipation of the problems that would be caused by Georgia's tax code, the Georgia General Assembly directed a group of affected parties to draft modifications to stay in step with the Riegle-Neal Act.[11] The Act's language reflects the General Assembly's attempt to address the concerns of the affected constituents and attempts to provide a revenue-neutral, balanced approach to the taxation of financial institutions.[12]

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4. Petrik Interview, *supra* note 3.

5. *Id.*

6. *The Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994: The Challenges for the States*, THE CONFERENCE OF STATE BANK SUPERVISORS, 1994, at iii [hereinafter *Challenges for the States*]. Branches of the parent bank located in other states are offices of the parent bank for purposes of the Riegle-Neal Act. *Id.*

7. *Id.; see also* Memorandum from Michael Petrik to the Georgia Municipal Association, Inc. (Feb. 8, 1996) [hereinafter Petrik Memorandum] (available in the Georgia State University College of Law Library).

8. Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Pub. L. No. 103-328, 108 Stat. 2338, 2347.

9. Parrish Interview, *supra* note 3.

10. *See Challenges for the States, supra* note 6, at 43.

11. Petrik Interview, *supra* note 3; Parrish Interview, *supra* note 3. Representative Parrish drew attention to the extensive drafting aid given to the General Assembly by Michael Petrik. Parrish Interview, *supra* note 3.

12. Parrish Interview, *supra* note 3; Petrik Interview, *supra* note 3.

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Definitions

The Act defines the terms "bank," "depository financial institution," and "savings and loan association" to include Georgia as well as non-Georgia institutions.[13] The definitions were included in Code section 48-6-90 in order to make the section on the taxation of financial institutions self-contained.[14] Similarly, Code section 7-1-601 relating to branch banks was modified to reflect the changes to Code sections 48-6-90 and -90.1 for consistency.[15]

While not specifically relating to a definitional change, the Act strikes a provision of Code section 48-6-91 that related to the taxation of foreign depository financial institutions subject to state and local taxation as foreign corporations.[16] This change reflects the Act's extension of the tax to most foreign institutions doing business in Georgia.[17] The definitions included in Code section 48-6-90 made the original provision for the taxation of a foreign financial institution redundant, and removal was appropriate for Code consistency.[18]

Income Tax

Prior to the Act, there were two theoretical applicable Georgia income tax code provisions for the taxation of multistate financial institutions.[19] The first provision set forth a method applicable to companies that make their profits from dealing with intangible property.[20] The second provision establishes a method that applies to companies that do not earn their profits from the holding or sale of either intangible property or tangible personal property.[21] The two alternative methods presented a practical problem for financial

13. O.C.G.A. § 48-6-90 (Supp. 1996). The Act does not reach institutions formed under the laws of a foreign government. Petrik Interview, *supra* note 3.

14. *See* O.C.G.A. § 48-6-90 (Supp. 1996); Petrik Interview, *supra* note 3.

15. Petrik Interview, *surpa* note 3. *Compare* 1970 Ga. Laws 954, § 3, at 957 (formerly found at O.C.G.A. § 7-1-601(b) (1995)) *with* O.C.G.A. § 7-1-601(b) (Supp. 1996).

16. *Compare* 1983 Ga. Laws 1350, § 6, at 1355 (formerly found at O.C.G.A. § 48-6-91 (1995)) *with* O.C.G.A. § 48-6-91 (Supp. 1996).

17. Petrik Interview, *supra* note 3. The underlying rationale of the Riegle-Neal Act allows a multistate corporation to operate without being considered a "foreign" corporation for tax purposes. *Id.*

18. *Id.*

19. *Id.*

20. *Id. Compare* 1987 Ga. Laws 191, § 2, at 199 (formerly found at O.C.G.A. § 48-7-21 (1995)) *with* O.C.G.A. § 48-7-21(b)(10) (Supp. 1996).

21. Petrik Interview, *supra* note 3. *Compare* 1987 Ga. Laws 191, § 2, at 199 (formerly found at O.C.G.A. § 48-7-21 (1995)) *with* O.C.G.A. § 48-7-21(b)(10) (Supp. 1996).

institutions as they could never be sure that their selection would not be challenged by the Department of Revenue, who could recompute the tax due using the most favorable option available to the state.[22]

The drafters of the bill first attempted to retain the dual character of the Code by attempting to develop a definition of "financial institution" that would clarify that such institutions should file under the second provision.[23] This was not an effective solution as the affected constituents could not agree on an acceptable definition of "financial institution" for purposes of the income tax code.[24]

The drafters of the bill next considered whether to require the use of the second method by repeal of the first method.[25] The Department of Revenue conceded that it was exceedingly rare for companies to file under the first method and that the Department preferred filing under the other applicable method.[26]

As no constituency publicly advocated the retention of taxation based on dealings with intangible property, the bill was drafted with the intention of striking the provision that previously allowed multistate dealings in intangibles to apportion income under the first method.[27] This change forces multistate financial institutions filing with the state to use the lone remaining applicable Code section, which sets forth the second method.[28] The provisions under Code section 48-7-31 relating to taxation of intangible property were stricken in their entirety.[29]

In order to preserve accumulated gross receipts tax credits for an acquiring bank or corporation, the General Assembly modified Code section 48-7-21.[30] This section now allows the acquiring entity to fully utilize any credit accumulated by the previous entity for tax purposes.[31]

Georgia Gross Receipt Tax

Code sections 48-6-93 and -95 underwent extensive modifications to provide Code consistency and, more importantly, to provide for the appropriate taxation and apportionment of receipts derived from multistate financial institutions conducting business within the state.[32]

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22. Petrik Interview, *supra* note 3.
23. *Id.*
24. *Id.*
25. *Id.*
26. *Id.*
27. *Id.*
28. *Id.*
29. *Compare* 1987 Ga. Laws 191, § 2, at 212 (formerly found at O.C.G.A. § 48-7-31 (1995)) *with* O.C.G.A. § 48-7-31 (Supp. 1996).
30. *Compare* 1987 Ga. Laws 191, § 2, at 199 (formerly found at O.C.G.A. § 48-7-21 (1995)) *with* O.C.G.A. § 48-7-21(b)(10) (Supp. 1996).
31. *See* O.C.G.A. § 48-7-21(b)(10) (Supp. 1996); Petrik Interview, *supra* note 3.
32. Petrik Interview, *supra* note 3. *Compare* 1983 Ga. Laws 1350, §§ 8-9, at 1356-

Code section 48-6-95, as enacted, provides the means of calculating the state occupation tax on depository financial institutions.[33] The Act incorporates many minor changes into the Code in order to comply with the multistate environment brought about by the Riegle-Neal Act.[34] Further, there was one major addition: the Act provides for a definition of "Georgia gross receipts."[35] The chosen apportionment method employs the same receipt factors that are used by the institution for income tax apportionment purposes under Code section 48-7-31.[36] This method was attractive as the factors would already have been computed for income tax purposes and because it would provide internal consistency in the Code.[37]

Additionally, the Act moves language from Code section 48-6-93 dealing with deductions from gross receipts to Code section 48-6-95.[38] This was done to unify Code section 48-6-95 by placing both the calculation of gross receipts due and any other applicable gross receipt tax provisions in the same tax section.[39]

Once Georgia gross receipts have been determined under Code section 48-6-95, they must be allocated among the appropriate counties and municipalities.[40] Code section 48-6-93 provides for this allocation.[41]

In addition to moving the gross receipts deductions to Code section 48-6-95, the drafters of the bill incorporated numerous definitional changes relating to the locations that are subject to tax.[42] These changes were required because the old statutory language had no application to new multistate institutions.[43] The definitional changes are "neither intended nor expected to have a significant substantive effect."[44]

The minor changes that the House Committee on Ways and Means made to the original bill[45] addressed a small number of inadvertent

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61 (formerly found at O.C.G.A. §§ 48-6-93, -95 (1995)) *with* O.C.G.A. §§ 48-6-93, -95 (Supp. 1996).

33. O.C.G.A. § 48-6-95 (Supp. 1996).

34. Petrik Interview, *supra* note 3; Parrish Interview, *supra* note 3.

35. O.C.G.A. § 48-6-95(b) (Supp. 1996).

36. *Id.; see* 1987 Ga. Laws 191, § 2, at 211 (formerly found at O.C.G.A. § 48-7-31 (1995)); *see also Legislative Review*, 12 GA. ST. U. L. REV. 347 (1995).

37. Petrik Interview, *supra* note 3.

38. *Compare* 1983 Ga. Laws 1350, § 8, at 1356-58 (formerly found at O.C.G.A. § 48-6-93 (1995)) *with* O.C.G.A. § 48-6-95 (Supp. 1996).

39. Petrik Interview, *supra* note 3.

40. *See* O.C.G.A. § 48-6-93(d) (Supp. 1996).

41. *Id.*

42. *See id.* § 48-6-95; Petrik Memorandum, *supra* note 7.

43. Petrik Memorandum, *supra* note 7.

44. *Id.*

45. *Compare* HB 1638, as introduced, 1996 Ga. Gen. Assem. *with* HB 1638 (HCS),

stylistic errors and oversights relating to conformity with other statutes.[46] These changes were an extension of the other small definitional changes incorporated into Code section 48-6-93 that allowed for the proper apportionment of gross receipt revenue to the deserving counties and municipalities in a multistate environment.[47]

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1996 Ga. Gen. Assem.

46. Petrik Interview, *supra* note 3.

47. *See* Letter from Michael Petrik to G. Joseph Scheuer, Deputy Legislative Counsel for the General Assembly (Feb. 8, 1996) (available in Georgia State University College of Law Library).