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John F. Connolly

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REVENUE AND TAXATION

Ad Valorem Taxation of Property: Create an Appeal Process for Fulton County and the City of Atlanta

CODE SECTIONS:	O.C.G.A. § 48-5-311 (amended); 1992 Ga. Laws 1676 (uncodified)
BILL NUMBERS:	HB 1114, HB 1118
ACT NUMBERS:	1271, 1088
SUMMARY:	The Acts create a new system for appeals of ad valorem taxes in the City of Atlanta and Fulton County. First, the Acts require that the Atlanta-Fulton Joint Board of Tax Assessors hear appeals and review assessments in accordance with the general laws of the State of Georgia. Second, the Acts provide for the creation of boards of equalization for every 10,000 parcels of property within the city and county. Third, the Acts require that through 1996, the City of Atlanta must contract with Fulton County to provide for the assessment of ad valorem taxes and hear and dispose of all appeals of such assessments for property within the City of Atlanta which is located in DeKalb County. Finally, it allows the City of Atlanta to contract with Fulton County for such services after 1996.
EFFECTIVE DATES:	April 15, 1992, 1992 Ga. Laws 1676; July 1, 1992, O.C.G.A. § 48-5-311

History

From February through April, 1991, the first county-wide reassessment of real property in Fulton County in two decades occurred.¹ The appraised value of land in Atlanta and Fulton County

1. See David Corvette, *Fulton Mailing Out First of Reappraisal Notes to Residents*, ATLANTA CONST., Feb. 22, 1991, at C1; Mark Sherman, *Tax Man Means Business with Today's Notices*, ATLANTA CONST., Mar. 29, 1991, at A1. In 1988, the General Assembly passed an Act with the stated purpose of establishing a procedure to equalize county property tax digests both between counties and within counties. 1988 Ga. Laws 1763. The 1988 reform eliminated factoring, a method utilized by the State to equalize disproportionate local digests. *Id.*; Telephone Interview with Monnie Sellars, Research Analyst, House Ways & Means Committee (Apr. 9, 1992) [hereinafter Sellars Interview]. Under the old system, the State determined the

rose nearly fifty percent because of the mass reappraisal.² The sudden jump in assessments and the resultant increase in taxes led to a revolt by a contingent of Fulton County taxpayers.³

shortfall in the assessment of fair market value in the local digest and simply added a set value to raise the assessment to fair market value. *Id.* This system allowed counties to undervalue appraisals and then blame the State for higher assessments. *Id.* The 1988 reform was designed to create more local accountability, but many counties failed to progressively introduce the new assessments. *Id.* The tax revolt may well have been a result of the county's sudden introduction of assessments at the true fair market value after years of failing to do so. *Id.* Many counties also complained about the current State digest review system. Telephone Interview with Rep. William J. Dover, House District No. 11 (Apr. 9, 1992). Rep. Dover is the Chairman of the Ways and Means Committee. The efforts of these counties led to the passage of HB 1595, which created a three year evaluation cycle instead of the current one year cycle. *Id.*; see O.C.G.A. §§ 48-5-341 to -342.1, -343 to -346, -348, -349.2 (Supp. 1992). This Act gives counties a more realistic time frame to come into compliance with the state mandate. Sellars Interview, *supra*. Some within the House even suggested that ad valorem taxation should be abolished altogether. *Id.* Rep. Dover, House Speaker Tom Murphy, and others introduced HR 655, which would have abolished ad valorem property taxes as the basis of school funding. *Id.*; see HR 655, as introduced, 1992 Ga. Gen. Assem. That proposal was retained in Committee, but the House leadership is committed to adopting alternative revenue sources in the future. Sellars Interview, *supra*.

2. Mark Sherman, *Atlanta-Fulton Appraisals Hike Land Values 50%*, ATLANTA CONST., Mar. 27, 1991, at C1. One Fulton County resident saw the appraised value of a tract of undeveloped land rise from \$1725 to \$454,600, an increase of 26,353%. Tracy Wilson & Actor Cordell, *Taxpayers Keep Pressure Up*, ATLANTA CONST., Mar. 28, 1991, at H1.

3. Wilson & Cordell, *supra* note 2; Mark Sherman & Charles Haddad, *Tax Office Braces for Businesses' Screams*, ATLANTA CONST., Mar. 29, 1991, at E1; David Corvette & Doug Lavin, *Court to Expedite Appeal in Fulton Tax System Case*, ATLANTA J., May 17, 1991, at E1. A group of taxpayers formed an organization called Rollback Increase of Taxes (RIOT) which scheduled marches and other forms of protests against the reappraisals. Wilson & Cordell, *supra* note 2. Taxpayers also started a campaign to recall Fulton County Commission Chairman Michael L. Lomax. Corvette & Lavin, *supra*. Fulton County taxpayers were not the only ones to revolt. One of Gwinnett County's largest developers challenged that county's reappraisal process. Robert J. Vickers, *Suit Challenges Gwinnett Reappraisal Process*, ATLANTA CONST., Jan. 25, 1992, at B1. The suit alleges that Gwinnett's system denies due process and is unconstitutional. *Id.* Many legislators heard the cry and introduced bills designed to alleviate some of the problems associated with appeals. HB 1124 would have prevented counties from using outside consultants on tax appeals. HB 1124, as introduced, 1992 Ga. Gen. Assem. Only those consultants who helped prepare the assessment would have been allowed to be involved in the appeal. *Id.* SB 502 would have required counties to include the criteria used to make an assessment in the notice of an increased appraisal. SB 502, as introduced, 1992 Ga. Gen. Assem. HB 1966 would have required a county to pay a taxpayer's fees if her appeal was successful. HB 1966, as introduced, 1992 Ga. Gen. Assem. Other legislation was less generous to angry taxpayers. For instance, HB 1428 would have required individuals and corporations to pay disputed taxes pending an appeal. HB 1428, as introduced, 1992 Ga. Gen. Assem.

On April 2, 1991, Barbara Watkins Lee, a Sandy Springs homeowner, filed suit seeking to overturn the mass reappraisal of Atlanta and Fulton County property.⁴ A Fulton County Superior Court ruled that the 1952 statute⁵ authorizing the Joint City-County Board of Tax Assessors (Joint Board) was invalid on five independent grounds.⁶ The court held that the Joint Board was a nullity and that the 1991 assessments conducted by that Board were void.⁷ The court consequently enjoined the Board from collecting any taxes based on the 1991 assessments.⁸

The Georgia Supreme Court heard an expedited appeal⁹ and reversed in part and affirmed in part the decision of the superior court.¹⁰ The supreme court held that the Joint Board was legally established but that the arbitration appeal procedure utilized by the Board was enacted without legal authority.¹¹ The court noted that the legislature may not pass a special local act involving a matter "which provision has been made by an existing general law."¹² Since the General Assembly mandated boards of equalization by general law in 1972, the 1952 statute was ruled not to grant authority to provide for any procedure to contest a real estate assessment other than by a board of appeals and equalization.¹³

4. Mark Sherman, *Fulton Suit Challenges Reappraisal of Property*, ATLANTA J., Apr. 3, 1991, at A1.

5. 1952 Ga. Laws 2825 (uncodified). The 1952 statute was intended to be part of a larger plan, later abandoned, to consolidate the governments of Fulton and Atlanta. Interview with Robert Proctor, attorney, in Atlanta, Georgia (Apr. 13, 1992) [hereinafter Proctor Interview]. Mr. Proctor filed and argued *Lomax v. Lee* and was also influential in the drafting and passage of HB 1114, HB 1117, and HB 1118. *Id.*

6. The trial court ruled the 1952 statute was invalid as applied to Fulton County because: 1) the 1952 statute was repealed by the Georgia Constitution of 1976, which repealed the constitutional amendment, 1952 Ga. Laws 591, which had authorized the statute; 2) the Georgia Constitution of 1983 repealed the 1952 amendment and the 1952 statute because a 1986 bill to continue the 1952 amendment was fatally defective; 3) certain amendments to the 1952 statute establishing arbitration as the method of appeal from the assessment of the Joint Board were unconstitutional because they conflicted with the 1952 amendment; 4) the 1952 statute was rendered inapplicable to Fulton County by population amendments that were enacted in 1971 and 1981; and 5) the 1952 amendment was not properly ratified since a separate calculation for Fulton County and for all of the City of Atlanta was not conducted. *Lomax v. Lee*, 408 S.E.2d 788, 790-93 (Ga. 1991); Brief of Appellees at 2, *Lomax v. Lee*, 408 S.E.2d at 788 (No. S91A1113).

7. *Lomax*, 408 S.E.2d at 789.

8. *Id.*

9. *Corvette & Lavin*, *supra* note 3.

10. *Lomax*, 408 S.E.2d at 789.

11. *Id.*

12. *Id.* at 791 (quoting GA. CONST. art. III, § VI, ¶ IV).

13. *Id.* at 792. Fulton County was the only county in the State of Georgia that used the Board of Tax Assessors to oversee appeals, which made property owners

The supreme court remanded the issue of the appropriate remedy for Fulton County and Atlanta taxpayers who have no constitutionally established process in place to contest their real estate assessments.¹⁴ On remand, the trial court ordered that: all appeals from assessment actions by the Joint Board be governed exclusively by the provisions of 1952 Georgia Laws 2825;¹⁵ all notices of assessment actions must comply with Code section 48-5-306, and since the 1991 assessment notices did not comply they were void and of no effect; and, any and all pending arbitration proceedings be terminated.¹⁶

After the *Lomax v. Lee* litigation, the appeal process for Fulton County and Atlanta, while constitutional, was unsatisfactory.¹⁷ For instance, Georgia law calls for one board of equalization per county, although the county may elect to have one additional county board of equalization for each 25,000 parcels of real property in the county.¹⁸ Local officials felt that the statewide law did not provide enough boards for a county as densely populated as Fulton.¹⁹ In response to these concerns, HB 1114, HB 1117, and HB 1118 were introduced to create a new system for appeals of ad valorem taxes in Atlanta and Fulton County.²⁰

who appealed their assessment pay for half of the cost of arbitration. Mark Sherman, *Arbitration Called Too Expensive For Most Homeowners*, ATLANTA CONST., Mar. 6, 1991, at D2. The average cost of arbitration was \$400. *Id.* Moreover, hiring outside representation meant a fee to the homeowner, which on the average was fifty percent of the savings. *Id.* Every other county uses a board of equalization to hear appeals, and there is no cost to the property owner for filing the appeal. *Id.*

14. *Lomax*, 408 S.E.2d at 793.

15. The court noted that the provision of the original 1952 statute providing for appeals to a board of tax appeals and equalization was the last constitutional act of the General Assembly on the topic and therefore governs the method of appeals for Fulton and Atlanta. *Lee v. Lomax*, Civil Action No. D86221 (Ga. Super. Ct. Oct. 1991). The court stressed that "[a]ppeals from the Joint Board are *not* governed by the general statutory provisions of O.C.G.A. § 48-5-311." *Id.*

16. *Lee v. Lomax*, Civil Action No. D86221 (Ga. Super. Ct. Oct. 1991).

17. Telephone Interview with Rep. Dorothy Felton, House District No. 22 (Apr. 10, 1992) [hereinafter Felton Interview].

18. O.C.G.A. § 48-5-311(a)(1) (Supp. 1992).

19. *Quicker Remedy Sought on Reappraisal Appeals*, ATLANTA CONST., Feb. 7, 1992, at C3.

20. Robert Proctor, one of the two lawyers who filed and argued *Lomax v. Lee*, drafted the initial versions of the bills. The three bills were part of a package which also included HB 1537, which did not pass. Proctor Interview, *supra* note 5; see HB 1537, as introduced, 1992 Ga. Gen. Assem.

HB 1114

The Act amends Code section 48-5-311 of the Ad Valorem Taxation of Property chapter of the Revenue and Taxation title.²¹ This section establishes boards of equalization within each county of the state.²²

The Act provides for the creation of boards of equalization for every 10,000 parcels of property within Fulton County.²³ The Act states "any county of this state having a population of 400,000 or more according to the United States decennial census of 1990 or any future such census . . . may elect to have selected one additional county board of equalization for each 10,000 parcels of real property."²⁴ Although the Act does not mention Fulton County by name, the population requirements of this law are designed to encompass that county.²⁵

The primary purpose for adopting the Act was to replace Fulton County's method of arbitrating property tax appeals,²⁶ which was

21. See O.C.G.A. § 48-5-311 (Supp. 1992). HB 1117, which was passed in the same version as introduced, repealed the prior Code section 48-5-311(a)(3) which was declared unconstitutional in *Lomax v. Lee*, 408 S.E.2d 788 (Ga. 1991). HB 1117, as introduced, 1992 Ga. Gen. Assem. In *Lomax v. Lee*, the Georgia Supreme Court noted that the 1952 amendment to the Georgia Constitution authorized the establishment of a board of tax assessors in "all counties having therein a greater part of a city with a population of 300,000 or more." *Id.* at 792-93 (emphasis added) (citation omitted). The prior Code section enacted to implement the 1952 amendment, however, provided that it would be applicable "in counties having a population of 550,000 or more." *Id.* (emphasis added) (quoting 1981 Ga. Laws 3283). The court held that since the prior Code section fell outside of the scope of the 1952 amendment's authorization, the old Code section was unconstitutional and void. *Id.* After O.C.G.A. § 48-5-311(a)(3) was repealed by HB 1117, HB 1114 amended that section of the Georgia Code. The Georgia Constitution states:

No law or section of the Code shall be amended or repealed by mere reference to its title or to the number of the section of the Code; but the amending or repealing Act shall distinctly describe the law or Code section to be amended or repealed as well as the alteration to be made.

GA. CONST., art. III, § V, ¶ IV. This paragraph has been interpreted to require that an Act could not both repeal and amend the Code; consequently, HB 1117 formally repealed the old Code section, and HB 1114 amended the Code. An alternative bill, HB 2041, would have amended the old Code section instead of abolishing it, but it was defeated in lieu of HB 1114 and HB 1117. HB 2041, as introduced, 1992 Ga. Gen. Assem.; Proctor Interview, *supra* note 5.

22. O.C.G.A. § 48-5-311 (Supp. 1992). The number of boards of equalization for each county is determined by population. These "population requirements" allow the General Assembly to write general laws that affect only certain localities. *Id.*; Proctor Interview, *supra* note 5.

23. O.C.G.A. § 48-5-311(a)(3) (Supp. 1992).

24. *Id.*

25. Felton Interview, *supra* note 17.

26. Proctor Interview, *supra* note 5; Ken Foskett, *Despite Appeals, Joint Atlanta-Fulton Tax Board Remains*, ATLANTA CONST., Apr. 3, 1992, at E5.

declared unconstitutional in *Lomax v. Lee*.²⁷ A second purpose was to conform the tax appeal process in Fulton County to the general laws of Georgia.²⁸ The population requirements of the prior Code section were no longer met by the City of Atlanta, nor were they applicable to Fulton County; consequently, Fulton County assessments and appeals were not governed by the general laws of Georgia but by the 1952 statute.²⁹

A third purpose of the Act was to codify the assessment and appeal process of Fulton County.³⁰ The appeal process allowed by the *Lomax* trial court fell under 1952 Georgia Laws 2825, which is not codified and which the average taxpayer is unable to find.³¹

A fourth purpose of the Act is to create enough boards of equalization to provide sufficient contact with taxpayers for a county which has as many property owners as Fulton County.³² The statewide law would have allowed Fulton County nine to ten boards, but local officials felt that Fulton County needed more boards to properly handle its assessments and appeals.³³

Two alternatives to HB 1114 were introduced. One, HB 1123,³⁴ would have reestablished arbitration as the statewide method for tax appeals.³⁵ The other, HB 1653,³⁶ would have established joint city-county boards of equalization which would hear appeals more or less in uniformity with the rest of the state but not directly in accordance with the state-wide general law established in Code section 48-5-311.³⁷

The Act requires that through 1996 the City of Atlanta must contract with Fulton County to provide for the assessment of ad valorem taxes and hear and dispose of all appeals of such assessments for property within the City of Atlanta located in DeKalb County.³⁸ This provision

27. 408 S.E.2d 788 (Ga. 1991).

28. Proctor Interview, *supra* note 5.

29. *Lee v. Lomax*, Civil Action No. D86221 (Ga. Super. Ct. Oct. 1991); *see also Lomax v. Lee*, 408 S.E.2d 788, 790-93 (Ga. 1991); Robert Proctor & Mitch Skandalakis, Brief of Appellees at 3-7, *Lomax v. Lee*, 408 S.E.2d at 788 (No. S91A1113).

30. Proctor Interview, *supra* note 5.

31. *Id.* The average lawyer probably couldn't find it either. *Id.*

32. *Quicker Remedy Sought on Reappraisal Appeals*, *supra* note 19, at E5. Fulton County will have ten three-member boards and ten alternate boards. Felton Interview, *supra* note 17.

33. Proctor Interview, *supra* note 5; *Quicker Remedy Sought on Reappraisal Appeals*, *supra* note 19, at E5; *see also* O.C.G.A. § 48-5-311(a)(1) (Supp. 1992).

34. HB 1123, as introduced, 1992 Ga. Gen. Assem.

35. Arbitration panels were once the statewide process for appeals of assessments, but in 1972 the General Assembly changed the general law and mandated boards of equalization. *Lomax v. Lee*, 408 S.E.2d 788, 792 (Ga. 1991).

36. HB 1653, as introduced, 1992 Ga. Gen. Assem.

37. O.C.G.A. § 48-5-311 (Supp. 1992).

38. *Id.* § 48-5-311(a)(4) (Supp. 1992).

also allows the City of Atlanta to contract with Fulton County for such services after 1996.³⁹

This provision of the Act was a floor amendment added in the Senate.⁴⁰ The primary purpose of this provision is to clarify where assessments and appeals will be conducted for residents of the City of Atlanta inside DeKalb County.⁴¹ Fulton and DeKalb utilize different methods in their assessments, and many Atlanta-DeKalb residents wished to take advantage of the traditionally lower rates of Fulton.⁴²

Some legislators, however, expressed concern about the validity of this provision after HB 1537 did not pass.⁴³ HB 1537 would have eliminated the Joint Board for a solely county board in which Atlanta would not directly participate.⁴⁴ Since a single board was not created, Atlanta, as a member of the Joint Board, has no need to contract with Fulton for tax assessments.⁴⁵ Moreover, this provision of the Act may be construed as a special law, one that applies only to Atlanta, and

39. *Id.*

40. HB 1114 (HCSFA), 1992 Ga. Gen. Assem.

41. Felton Interview, *supra* note 17.

42. Proctor Interview, *supra* note 5.

43. Felton Interview, *supra* note 17.

44. Scott Henry, *Confusion, Lobbyists Help Kill Felton's Tax Reform Bill*, THE NORTHSIDE NEIGHBOR, Apr. 8, 1992, at 3A. The logic behind HB 1537 was to place Fulton under the same system as the rest of the state. *Id.* Initially, the bill seemed destined to pass—the local delegation had informally agreed to pass the bill and the Fulton County Commission drafted a unanimous resolution in support of the bill. *Id.* However, after the bill passed the House, the coalition began to unravel. *Id.* The Senate tacked on an amendment which would have prevented Fulton from performing a standard department review of tax assessment employees after they were transferred over from the Joint Board. *Id.* Fulton also began to express concerns about whether it could absorb the cost of the transition. *Id.* Fulton County Commissioners Michael Lomax and Martin Luther King, III, thereafter lobbied against the bill. *Id.* The confusion left many legislators hesitant to support the bill, and it was defeated. *Id.* Robert Proctor suggested that the concerns raised by the Fulton Commission were a smokescreen designed to stall the creation of the single board. Proctor Interview, *supra* note 5. Mr. Proctor noted that the recent decision in *North by Northwest Civic Association, Inc. v. Joint City-County Board of Tax Assessors*, Civil Action D-93210 (Ga. Super. Ct. 1992), overturned the 1991 assessments on the merits. *Id.* Mr. Proctor further noted that with that decision, the earliest time that new assessments could be sent out was late 1993, or from a politician's perspective, shortly before local elections. *Id.* Mr. Proctor suggested that the Fulton Commission's motive in defeating HB 1537 was to prevent sending out new assessments until 1994 and thereby avoid holding an election shortly after new assessments had been mailed out. *Id.* The reform legislation is expected to pass next session. *Id.*; see also Henry, *supra*. Fulton County has stated its commitment to forming a single board by 1994. Felton Interview, *supra* note 17; Henry, *supra*. Robert Proctor asserted that a single board under the same laws as the rest of Georgia is also the goal of Fulton taxpayers. Proctor Interview, *supra* note 5. Only then would the work begun by the *Lomax v. Lee* suit be finished. *Id.*

45. Proctor Interview, *supra* note 5.

therefore one that violates the Constitution of Georgia, since a general law on tax boards exists.⁴⁶

HB 1118

The Act requires that the Joint Board hear appeals and review assessments in accordance with the general laws of Georgia.⁴⁷ The Act repeals the 1952 authorization to the Joint Board to conduct appeals, which remained after the current arbitration method was declared unconstitutional by the Supreme Court of Georgia.⁴⁸ In its stead, the Act provides that "[a]ll appeals from and review of assessments made by the joint board of tax assessors shall be done in accordance with the general laws of the State of Georgia pertaining to appeals and review of assessments."⁴⁹

The purpose of the Act is to abolish Atlanta and Fulton County's unique appeal procedure and to place it in conformity with the rest of the state.⁵⁰ When the Supreme Court of Georgia struck down the old arbitration process for appeals, the trial court re-instituted an archaic system to replace it.⁵¹ The trial court reinstated the 1952 appeal process because it was the last constitutionally valid process.⁵² Consequently, the need arose to create a modern appeal process, and one that conformed to the method used by the rest of the counties in Georgia was preferred.⁵³

Two alternatives to HB 1118 were introduced. One, HB 1123,⁵⁴ would have reestablished arbitration as the statewide method for tax appeals.⁵⁵ The other, HB 1653,⁵⁶ would have established joint city-county boards of equalization which would hear appeals more or less in uniformity with the rest of the state but not directly in accordance with the statewide general law established in Code section 48-5-311.⁵⁷ Both,

46. *Id.* Mr. Proctor expressed the opinion that Atlanta would simply ignore this portion of the Act. *Id.* O.C.G.A. § 48-5-311(e) established a statewide appeal process for ad valorem taxation of property. O.C.G.A. § 48-5-311(e) (Supp. 1992).

47. 1992 Ga. Laws 1676 (uncodified).

48. *Lomax v. Lee*, 408 S.E.2d 788, 791-92 (Ga. 1991); *see supra* text accompanying notes 15 & 16.

49. 1992 Ga. Laws 1676 (uncodified).

50. Proctor Interview, *supra* note 5.

51. *Lee v. Lomax*, Civil Action No. D86221 (Ga. Super. Ct. Oct. 1991); *see supra* text accompanying notes 11-16.

52. *Id.*

53. Felton Interview, *supra* note 17.

54. HB 1123, as introduced, 1992 Ga. Gen. Assem.

55. Arbitration panels were once the statewide process for appeals of assessments, but in 1972 the General Assembly changed the general law and mandated boards of equalization. *Lomax v. Lee*, 408 S.E.2d 788, 792 (Ga. 1991).

56. HB 1653, as introduced, 1992 Ga. Gen. Assem.

57. *Id.*

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however, were defeated because an appeal process that conformed to that currently in use in the rest of Georgia was preferred.⁵⁸

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58. Felton Interview, *supra* note 17.