

House Bill 1038

By: Representatives Dreyer of the 59th, Silcox of the 52nd, Jones of the 25th, Paris of the 142nd, Barr of the 103rd, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Part 2 of Article 5 of Chapter 5 of Title 48 of the Official Code of Georgia
2 Annotated, relating to county boards of tax assessors, so as to provide a new exception to the
3 two-year assessment freeze; to require production of certain documents regarding appeals
4 related to commercial real estate; to repeal procedures related to payment of tax bills during
5 appeals; to limit awards of attorney's fees; to exclude certain parcels from evaluation; to
6 provide for valuation methods; to provide a definition; to provide for related matters; to
7 repeal conflicting laws; and for other purposes.

8 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

9 **SECTION 1.**

10 Part 2 of Article 5 of Chapter 5 of Title 48 of the Official Code of Georgia Annotated,
11 relating to county boards of tax assessors, is amended in Code Section 48-5-299, relating to
12 ascertainment of taxable property; assessments against unreturned personal property; penalty
13 for unreturned property; changing real property values established by appeal in prior year or
14 stipulated by agreement, by revising subsection (c) as follows:

15 "(c) When the value of real property is reduced or is unchanged from the value on the
16 initial annual notice of assessment or a corrected annual notice of assessment issued by the
17 board of tax assessors and such valuation has been established as the result of an appeal
18 decision rendered by the board of equalization, hearing officer, arbitrator, or superior court
19 pursuant to Code Section 48-5-311 or stipulated by written agreement signed by the board
20 of tax assessors and taxpayer or taxpayer's authorized representative, the new valuation so
21 established by appeal decision or agreement may not be increased by the board of tax
22 assessors during the next two successive years, unless otherwise agreed in writing by both
23 parties, subject to the following exceptions:

24 (1) This subsection shall not apply to a valuation established by an appeal decision if the
25 taxpayer or his or her authorized representative failed to attend the appeal hearing or

26 provide the board of equalization, hearing officer, or arbitrator with some written
 27 evidence supporting the taxpayer's opinion of value;

28 (2) This subsection shall not apply to a valuation established by an appeal decision or
 29 agreement if the taxpayer files a return at a different valuation during the next two
 30 successive years;

31 (3) Unless otherwise agreed in writing by both parties, if the taxpayer files an appeal
 32 pursuant to Code Section 48-5-311 during the next two successive years, the board of tax
 33 assessors, the board of equalization, hearing officer, or arbitrator may increase or
 34 decrease the value of the real property based on the evidence presented by the taxpayer
 35 during the appeal process; ~~and~~

36 (4) The board of tax assessors may increase or decrease the value of the real property if,
 37 after a visual on-site inspection of the property, it is found that there have been substantial
 38 additions, deletions, or improvements to such property or that there are errors in the board
 39 of tax assessors' records as to the description or characterization of the property, or the
 40 board of tax assessors finds an occurrence of other material factors that substantially
 41 affect the current fair market value of such property; and

42 (5) This subsection shall not apply when the board of tax assessors demonstrates that a
 43 change in an income approach valuation of the property would result in an increase of 15
 44 percent over the frozen value due to changed market conditions."

45 SECTION 2.

46 Said part is further amended by revising subsection (a), subdivision (e)(6)(D)(iii)(I),
 47 subdivision (g)(4)(B)(ii)(III), subsection (g.1), and by adding a new subparagraph to
 48 paragraph (1) of subsection (e) of Code Section 48-5-311, relating to creation of county
 49 boards of equalization, duties, review of assessments, and appeals, to read as follows:

50 "(a) **Definition.** As used in this Code section, the term:

51 (1) ~~'appeal~~ Appeal administrator' means the clerk of the superior court.

52 (2) 'Commercial real estate' means any real estate with a fair market value in excess of
 53 \$5 million as shown on the taxpayer's annual notice of current assessment under Code
 54 Section 48-5-306 other than real estate containing one to four residential units; real estate
 55 on which no buildings or structures are located and which is not zoned for nor available
 56 for commercial or retail use; or real estate classified as agricultural or forest land for tax
 57 assessment purposes."

58 "(A.3)(i) Any taxpayer filing an appeal regarding commercial real estate shall include
 59 with such appeal copies of:

60 (I) Any related bond transaction agreement with a development authority or similar
 61 agreement estimating the fair market value of a taxpayer's leasehold interest in the
 62 property;

63 (II) All independent appraisals in the payer's possession prepared in the last three
 64 calendar years;

65 (III) Financial statements showing the total income and expenses of the property,
 66 not including nonrecurring maintenance and capital expenses; and

67 (IV) And any statements of value submitted to the Securities and Exchange
 68 Commission.

69 (ii) The board of tax assessors may request other documents reasonably relevant to
 70 the value of the property. Furthermore, any such taxpayer shall include a report
 71 itemizing and valuing any personal property and fixtures located on such commercial
 72 real estate."

73 ~~"(iii)(I) If the county's tax bills are issued before an appeal has been finally~~
 74 ~~determined, the county board of tax assessors shall specify to the county tax~~
 75 ~~commissioner the lesser of the valuation in the last year for which taxes were finally~~
 76 ~~determined to be due on the property or 85 percent of the current year's value,~~
 77 ~~unless the property in issue is homestead property and has been issued a building~~
 78 ~~permit and structural improvements have occurred, or structural improvements have~~
 79 ~~been made without a building permit, in which case, it shall specify 85 percent of~~
 80 ~~the current year's valuation as set by the county board of tax assessors. Depending~~
 81 ~~on the circumstances of the property, this amount shall be the basis for a temporary~~
 82 ~~tax bill to be issued; provided, however, that a nonhomestead owner of a single~~
 83 ~~property valued at \$2 million or more may elect to pay the temporary tax bill which~~
 84 ~~specifies 85 percent of the current year's valuation; or, such owner may elect to pay~~
 85 ~~the amount of the difference between the 85 percent tax bill based on the current~~
 86 ~~year's valuation and the tax bill based on the valuation from the last year for which~~
 87 ~~taxes were finally determined to be due on the property in conjunction with the~~
 88 ~~amount of the tax bill based on valuation from the last year for which taxes were~~
 89 ~~finally determined to be due on the property, to the tax commissioner's office. Only~~
 90 ~~the amount which represents the difference between the tax bill based on the current~~
 91 ~~year's valuation and the tax bill based on the valuation from the last year for which~~
 92 ~~taxes were finally determined to be due will be held in an escrow account by the tax~~
 93 ~~commissioner's office. Once the appeal is concluded, the escrowed funds shall be~~
 94 ~~released by the tax commissioner's office to the prevailing party. The taxpayer may~~
 95 ~~elect to pay the temporary tax bill in the amount of 100 percent of the current year's~~
 96 ~~valuation if no substantial property improvement has occurred. The county tax~~

97 ~~commissioner shall have the authority to adjust such tax bill to reflect the 100~~
 98 ~~percent value as requested by the taxpayer. Such tax bill issued by the county tax~~
 99 ~~commissioner shall be accompanied by a notice to the taxpayer that the bill is a~~
 100 ~~temporary tax bill pending the outcome of the appeal process. Such notice shall~~
 101 ~~also indicate that, upon resolution of the appeal, there may be additional taxes due~~
 102 ~~or a refund issued."~~

103 "(III) If the final determination of value on appeal is 85 percent or less of the
 104 valuation set by the county board of equalization, hearing officer, or arbitrator as to
 105 any real property, the taxpayer, in addition to the interest provided for in subsection
 106 (m) of this Code section, shall recover costs of litigation and reasonable attorney's
 107 fees incurred in the action. Any appeal of an award of attorney's fees by the county
 108 shall be specifically approved by the governing authority of the county. An award
 109 of attorney's fees shall be limited to 50 percent of the difference between the tax
 110 liability of the final determination of valuation on appeal and the valuation being
 111 appealed, but no greater than \$30,000.00. No attorney's fees shall be awarded to
 112 any taxpayer upon a showing by a preponderance of the evidence that such taxpayer
 113 failed to produce all documentation as required by this part."

114 "(g.1)(1) **Valuation.** The provisions in subsection (c) of Code Section 48-5-299 shall
 115 apply to the valuation, unless otherwise waived in writing by both parties, as to:

116 (1) ~~(A)~~ (A) The valuation established or announced by any county board of equalization,
 117 arbitrator, hearing officer, or superior court; and

118 ~~(2)~~ (B) Any written agreement or settlement of valuation reached by the county board
 119 of tax assessors and the taxpayer as permitted by this Code section.

120 (2) No parcel to which the provisions in subsection (c) of Code Section 48-5-299 are
 121 applicable at the time of an appeal pursuant to this Code section shall be considered in
 122 the rendering of a final determination of value on appeal.

123 (3) Any valuation method, including comparative sales of commercial real estate, may
 124 be considered in the rendering of a final determination of value on appeal."

125 SECTION 3.

126 All laws and parts of laws in conflict with this Act are repealed.