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A BRIEF HISTORY OF THE PROPERTY TAX IN GEORGIA

I. Introduction

This Policy Brief presents a brief chronology of the development of the property tax system that currently exists in Georgia. A more detailed history can be found in Fiscal Research Center Report 182. The property tax as it now exists in Georgia has its origins in state legislation passed in 1852 and became effective in 1853. While the general structure of the pre-1852 taxes existed well before the beginning of the 19th Century (Schmeckebier 1900), the Tax Act of 1804 established the structure of tax rates that were used until 1853.

The Tax Act of 1804 established a set of specific tax rates on property for state tax purposes.¹ The state tax rates varied by the type and location of property, with some tax rates specified as a percent of value and others as dollars per unit, e.g., per acre. This structure was essentially the tax structure used until 1852.

For both the property tax that has existed since 1852 and its precursor, the state defined what property is taxed by the state and local governments, and the procedures for administering the tax. Thus, the discussion of the evolution of the property tax is really a discussion of state legislation. Only for those few provisions that apply differentially to local governments

does the following discussion refer to local governments. Note that in 1852 the tax on property was the principal source of government revenue since there was no income tax in Georgia until 1929 or general sales tax until 1951.

II. The Adoption of the General Property Tax of 1852

In the years leading up to the adoption of the 1852 legislation there was a national debate over property taxation, and in particular over the issues of universality and uniformity. The argument was made that all property should be taxed (universality) and taxed at the same percentage of value (uniformity). The debate in Georgia regarding the structure of taxes was largely over the issue of uniformity.² A Commission appointed by the Legislature argued in 1839 that taxation should “be fair and equal, in proportion to the value of property, so that no one class of individuals, and no one species of property, may be unequally or unduly assessed.”³ Under the 1804 Act tax uniformity did not exist.

A shift from the tax rate structure established in 1804 to a general ad valorem property tax would shift the burden of taxation. Thus, the fight over a new property tax was a political one between the

“winners” (town lots and merchants) and “losers” (rural land owners) of a shift to a general property tax.

The 1852 legislation imposed a uniform tax on the market value of all real and personal property, including both tangible and intangible property. Certain property was exempted, and while the wording has changed over time, the list of exempt property has been retained to today.

III. Post-1853 Changes in the General Property Tax

Since the implementation of the general property tax in 1853, the state has made many changes to the structure of the property tax. We focus on the changes since 1900, and consider three categories of change: the administration of the property tax, particularly the assessment process; moves away from the principle of universality, and; moves away from the principle of uniformity. We consider each of these in turn, and then discuss several miscellaneous changes.

Administration of the Property Tax⁴

At the end of the 19th Century the property tax was essentially an exercise in self assessment. Taxpayers were required to file a return listing their property subject to the property tax and the value of the property. In making his annual return of property the owner was required to answer a set of questions regarding ownership of various types of property and the value of the property owned.⁵ This system of self assessment led, as one would expect, to under-reporting of value and to inequities in tax burdens. Furthermore, substantial amounts of certain types of property, particularly personal property, both tangible and intangible, escaped taxation.

As a result, in 1913, the state legislature created the position of Tax Commissioner whose duty was to equalize the returns from the different counties. (This legislation led to tax digests being rejected by the state.⁶ However, by 1920 the state took the position that it was not required to reject tax digests, and thus ceased to do so until the 1960s.) In addition, each county was directed by the 1913 legislation to appoint three tax assessors who had the responsibility to supervise returns and to search for concealed property (Brooks 1972 c1913, p. 359). The taxpayer could appeal through a 3-person arbitration panel, with the taxpayer appointing one member, the tax-receiver appointing a second, and the two appointees selecting the third. (This appeals procedure remained in place until 1972.) The

valuation established by the panel was final, i.e., the taxpayer could not appeal to the courts. It wasn't until the 1937-38 extra legislative session that the state legislature added an appeal to the courts as part of the appeals process.

A series of significant changes to the administration of the property tax began in the mid 1960s. As a part of a new, basic foundation program for school funding, the State Auditor in 1965 conducted the first state-wide sales ratio study, a study mandated for each county by the state legislature in 1964. The study revealed wide variations in the ratio of assessed value to market value across and within counties.

The significant amount of statistical data available on actual assessment ratios and the heightened awareness of the shortcomings in the assessment process led to a lawsuit challenging the variation in assessment ratios as a violation of the uniformity provision of the Constitution. The linchpin for the suit was the language of the uniformity provision requiring all taxation to be uniform within the limits of the jurisdiction levying the tax, and since the state levied a tax of one-quarter of a mill, statewide uniformity was required. The Court ruled in 1965 in favor of the plaintiffs and by ruling directed the State Tax Commissioner to equalize all county assessments at the same level.

In 1968, legislation was passed setting 40 percent as the required ratio of assessed value to fair market value for state and county property taxes; the legislation did not apply to municipalities. In 1972, legislation was passed that required municipalities to adopt the 40 percent assessment rate, unless the municipality had used a higher assessment rate in 1971; there were 12 such municipalities.

Substantial changes in the administration of the property tax were legislated in 1972. First, the legislation removed municipalities from the assessment business by requiring municipalities to use the assessed value determined by the county. Second, the state established criteria for the minimum number of appraisers each county must employ (the number is based on the number of parcels in the county) and for the initial and continuous training of assessors and appraisers and their certification. Third, county boards of equalization were created to hear and adjudicate property tax assessment appeals. This replaced the arbitration procedure that had been in place since 1913. Fourth, a procedure known as factoring was imposed in order to ensure that the property tax digest in each county was assessed at 40 percent of fair market value.

The continuing concern over the equities in assessments lead in 1988 to another significant set of legislative changes in the

administration of the property tax. This legislation specified new procedures for reviewing and approving property tax digests and charged the State Revenue Commissioner with ensuring uniformity and equalization between and within counties. The Commissioner was given the responsibility to measure the quality of the assessment based on three factors: how close the actual assessment ratio was to 40 percent, the amount of variance in the actual assessment ratios across parcels within each property class, and the amount of bias in assessments. The legislation went on to specify that if the Commissioner disapproved the digest, i.e., if the Commissioner ruled that a county's digest was not appropriately valued, then the county was required to correct the digest by the following year.

In 1992, the review procedures were modified by the legislature. The legislation established a three-year cycle for conducting a systematic review of each county's property tax digest. The legislation specified that if the actual assessment ratio was less than 40 percent, the county would be required to pay the difference between the actual property tax revenue the state collects from its 0.25 mill property tax rate and what the state would have collected if the digest had been assessed at 40 percent. If the county did not fix the deficiencies by the following year, then in addition to withholding certain grants the Commissioner was further authorized to impose a \$5 per parcel penalty.

Since 1852, and particularly since 1972, the state has greatly improved the administration of the property tax. Concerns regarding under-reporting of property values and the resulting inequities in the taxes imposed on properties of similar value led to much greater state oversight of the assessment process. These legislative changes, along with advances in the ability to conduct mass appraisals, have led to substantial improvements in the equity of assessments.

Universality

One of the principles that drove the structure of the 1852 legislation was that, with a few exemptions, all property should be subject to the property tax. During the first 100 years or so after the property tax was established the state largely clung to that principle. But changes were made, particularly after 1945.

Consider first the list of explicitly exempted property. While some of the language changed, there were relative few changes to the list of exempt property between 1853 and 1945. Since 1945, several addition exemptions have

been approved by the voters. These additions and the year in which the legislation was enacted include the following:

- property of nonprofit hospitals (1947);
- single-family residences owned by religious groups (1955);
- air and water pollution control equipment (1966);
- nonprofit home for the aged (1977);
- nonprofit home for the mentally disabled (1984);
- the state headquarters of the PTA (1984);
- property owned by and used for a headquarters, post home or similar facility of a veteran's organization, i.e., VFW (1994);
- property owned by the Masons and used for charitable and fraternal purposes (1995);
- property owned and used by an organization that refurbishes historic military aircraft (2006);
- building and up to 15 acres of land owned and used exclusively by a public charity for securing income so long as the income is used exclusively for the operation of the charitable institution (first passed in 2006, revised in 2007).

Farm products remaining in the hands of the producer for up to one year remain exempt, but 2000 and 2006 referenda added farm tractors, combines, and all other farm equipment other than motor vehicles; these exemptions apply only to family owned farms.

There were other changes that affected property that is partially exempted. The original 1853 legislation exempted \$300 of household items. A 1937 Constitutional amendment provided the following exemption: "All personal clothing, household and kitchen furniture, personal property used and included within the home, domestic animals and tools, and implements of trade of manual laborers, but not including motor vehicles, are exempted from all State, County, Municipal and School District ad valorem taxes, in an amount not to exceed \$300.00 in actual value."

In 1970, this provision was changed. The new constitutional provision allowed the General Assembly to exempt all personal clothing and effects, household furniture, furnishings, equipment, appliances and other personal property used within the home, if not held for sale, rental or other commercial use.⁷ The \$300 exemption was retained for "tools and implements of trade of manual laborers and domestic animals." But in 2000, "tools and implements of trade of manual laborers" was carved off and the exemption limit increased to \$2,500. The \$300 exemption limit continued to apply, but only to domestic animals.

In 1986, the state exempted personal property of a taxpayer, other than motor vehicles, mobile homes, and trailers, if the total fair market value was \$500 or less. The limit was increased to \$7,500 in 2003.

The changes in personal property exemption reflected several realities. First, inflation had eroded the value of the exemptions. Second, assessing household effects was very difficult. Third, many other states had exempted personal household effects.

Over time, a variety of exemptions for businesses were granted. In 1976, the Constitution was amended to provide for a Freeport exemption, which allows an exemption of some percentage of certain classes of inventory from the local property tax.⁸ In 1996, a Constitution amendment was passed that expanded what had been just a city of Atlanta enterprise zone program to the entire state.⁹

The 1877 Constitution provided an exemption of \$1,600 in real or personal property. In 1937, the state adopted the current \$2,000 homestead exemption. Since 1937, the state, through voter referenda, has adopted several additional homestead exemptions. Several of these new exemptions apply only to low income elderly home owners.¹⁰

Many local governments (counties, school systems, and municipalities) have been granted authority to adopt other homestead exemptions or modify the state homestead exemptions. Local government homestead exemptions require separate state legislation and then approval in a local referendum and only apply to the particular government's property tax. There is a wide variation in the nature of these local homestead exemptions, but some commonalities exist. An increasing number of jurisdictions have adopted "floating homestead exemption," which results in property being taxed on its value at the time of purchase.

Subsequent to the 1852 legislation, the state specified additional intangible properties that would be taxed. However, by the end of the century calls were being heard for the differential treatment of intangible property. Finally, in 1937, the Constitution was amended to allow intangible property to be treated as a separate category, and subsequently, intangible property was taxed at special state-wide rates.

But eventually the state began slowly reducing the intangible personal property assets that were subject to the tax

(Georgia Tax Reform Commission undated), until 1996, when the state completely eliminated the intangible tax. This was done in part because the intangible tax as it was then structured was declared unconstitutional.¹¹

Uniformity

The principle of uniformity, i.e., the principle of applying the same effective property tax rate on all property was generally held to until 1983. Since then there have been a few exceptions granted. The changes considered in this section are those that result in the ratio of assessed value to market value being different from 40 percent.

The first exception was provided for tangible real property used for bona fide agricultural uses, and was adopted in 1983. The provision applies to certain family farms and specifies that such farms are assessed at 75 percent of the value at which other property is assessed, i.e., at 30 percent rather than 40 percent.

A second exception was made in 1991, when certain property was allowed to be taxed on 40 percent of current use value,¹² rather than fair market value. The Conservation Use program applies to certain agricultural land, timberland, and environmentally sensitive land, while the Residential Transitional program applies to certain single-family properties. The owners have to agree not to change the use of the property for 10 years.

A third exception is the tax treatment of timber. It was reported (Association County Commissioners of Georgia 1990) that the income from tree harvesting would not cover the property taxes given a 20-year growing cycle. Furthermore, the proper appraising of the value of timber faced serious technical and administrative difficulties. In 1991, the state shifted from taxing timber based on 40 percent of current market value to taxing timber on 100 percent of fair market value at the time of harvesting.

A further special treatment was adopted in 1988 and relates to property that is declared to be historic. Finally, in 2002, legislation was passed under which brownfield property (i.e., contaminated property) is valued for 10 years at the lesser of the purchase price or the appraisal of fair market value.

Miscellaneous Changes

Over the last 156 years the state has imposed various tax rate limitations. In 1904, a Constitutional amendment imposed a state property tax limit of 5 mills. In 1951, the state adopted a sales tax and in the following year the state property tax rate was reduced to 0.25 mills. A 5 mill property tax limit for county school systems was imposed by a 1920 Constitutional amendment. The

limit did not apply to county school systems that were in existence before the 1877 Constitution. The limit was increased to 15 mills in the 1945 Constitution. In 1960, the Constitution was amended to increase the property tax rate limit for county school systems schools to the current 20 mill limit; the limit does not apply to dependent school systems. There are property tax limits for independent school systems that are lower than 20 mills.

Counties were subject to a tax limit well before 1852. Counties were authorized to level a tax of 100 percent of the state tax for accumulated debt and current expenses. In 1921, counties were allowed to levy an additional tax not to exceed 50 percent of the amount of the state tax, provided $\frac{2}{3}$ rds of the grand jury recommended such a tax. The state law was not clear as to what expenditures these limits applied to. As part of a complete rewrite of the public finance code in 1978, the two limits were changed to 5 mills and 2.5 mills. In 1981, the limitations were repealed.

Legislation passed in 1874 imposed a maximum tax rate for municipalities of $\frac{1}{2}$ percent, but this rate did not apply to expenditures for schools, roads and the payment of principal and interest on debt. An additional levy with no limitation was allowed if the $\frac{1}{2}$ mill tax was not sufficient to meet necessary expenses, but the rate had to be approved in a referendum by $\frac{2}{3}$ rds of the voters. Savannah was exempt from the limitation, and other municipalities were added to the exempt list over time. Furthermore, the municipal charters approved by the General Assembly allowed different maximum tax rates. Over time, as charters were rewritten, these tax rate limitations were typically removed, but not for all municipalities. The $\frac{1}{2}$ percent tax rate limit was repealed in 1977.

A property tax deferral program was adopted in 1980. Under this program, a homeowner aged 62 or over with a household income of \$15,000 or less, may defer property tax payments of the taxes on the first \$50,000 of assessed value.

In 1999, the legislature passed the Comprehensive Taxpayer Bill of Rights as an attempt to prevent so called “back-door” tax increases and to provide for a more informed public regarding property taxes. This legislation provided for increased notice through advertisement and public hearing when local governments levy ad valorem tax rates that result in increased revenue associated with property value appreciation.

IV. Summary

In 1851, Georgia adopted an ad valorem property tax that is foundation for the current property tax. It was founded on the principles that with few exceptions the property tax should be imposed on the market value of all property (universality) and that all property in a jurisdiction should be taxed at the same ad valorem tax rate (uniformity). These two principals have been expressed in all of the various constitutions that Georgia has adopted since 1851.

Over the past 156 years, the state has made many changes to the property tax system and its administration. It has greatly improved the administration of the property tax. In particular, the state has moved from a system under which the taxpayer largely self-reported property and its value, which led to substantial understatement of property value and large inequities in tax burdens, to one in which the government takes the lead in determining value and in ensuring uniformity in assessment across properties.

Over time, the state has increased the properties that are fully or partially exempt from the property tax, for example intangible property, various types of personal property, and homesteaded property through the homestead exemption. There has also been a divergence from the uniformity principle. The divergence from the principles of universality and uniformity has largely happened over the past 25 years. No one has attempted to quantify the magnitude of the effect of these changes on the value of the property tax digest, and thus it is not possible to judge the degree of divergence from the two principles.

While each of these changes can be justified or rationalized, with each change the property tax comes to resemble less and less the general ad valorem property tax built on the principles of universality and uniformity. Existing and proposal for exemptions, particularly of personal property, the adoption of current use value, and the expanded use of floating homestead exemptions that changes the basis of the property tax from current fair market value to historic purchase price, are moving the property tax further and further from congruence with the two founding principles. If this suggests that the state has rejected the principles of universality and uniformity, than perhaps it is time to articulate a set of new tax principles on which to base future changes to the structure of the property tax.

NOTES

¹The legislation is found in Cobb (1851, pp.1065-71).

²Wallenstein (1985) provides a history of the adoption of the ad valorem tax in Georgia.

³Quoted in Wallenstein (1985, p. 465).

⁴This section benefited from communications with Jack Morton, former Deputy Commissioner for the Department of Revenue.

⁵Schmeckebier (1900) provides the list of questions.

⁶Tax digest refers to a list of properties and property values in a jurisdiction. The digest is essentially the property tax base.

⁷This exemption was promoted by Governor Maddox as a form of property tax relief (Ball and Bennett 1969). It was reported that household furnishings were ignored in most counties (Undercofler 1965).

⁸See Coalson (1991) for a discussion of the Freeport exemption.

⁹There was failed attempt to pass this amendment in 1986. For a discussion of enterprise zones in Georgia, see Cavanagh (1985-86).

¹⁰Homestead exemptions that are means tested do not use a common definition of income.

¹¹The court ruled that the intangible tax violated the interstate commerce clause because of the special treatment of the stock of Georgia firms.

¹²Current use value is the price that a property would sell for if the future owner had to use the property in its current use, which may not be its highest and best use.

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ABOUT THE AUTHOR

David L. Sjoquist is Professor of Economics, holder of the Dan E. Sweat Distinguished Scholar Chair in Educational and Community Policy, and Director of the Fiscal Research Center of the Andrew Young School of Policy Studies at Georgia State University. He has published widely on topics related to state and local public finance and urban economics. He holds a Ph.D from the University of Minnesota.

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