AN ANALYSIS OF FRANCHISE FEES IN GEORGIA

Bruce A. Seaman

FRP Report No. 34
August 1999
ACKNOWLEDGMENTS

The assistance of BellSouth, Georgia Power, Atlanta Gas and Light, the Georgia Electric Membership Corporation, the Cable Association of Georgia, the Department of Community Affairs, and the Georgia Municipal Association was important in preparing this report.
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>I. Introduction</td>
<td>1</td>
</tr>
<tr>
<td>II. A Description of the Current Situation in Georgia</td>
<td>3</td>
</tr>
<tr>
<td>III. Why Study Franchise Fees at this Time? The Key Issues</td>
<td>7</td>
</tr>
<tr>
<td>IV. Alternative Possible Solutions and Other State Approaches</td>
<td>10</td>
</tr>
<tr>
<td>V. Criteria for Evaluation and Final Overview</td>
<td>13</td>
</tr>
</tbody>
</table>
AN ANALYSIS OF FRANCHISE FEES IN GEORGIA

I. Introduction

Firms providing electricity, natural gas, and the various telecommunications services are subject to a variety of state and local taxes and fees that differ substantially across states. The list of such potential taxes and fees includes:

- Property taxes
- Gross receipts taxes
- Corporate income taxes
- Consumption taxes
- Sales taxes
- Use taxes
- Commodity taxes
- Payments in lieu of taxes (PLT)
- Regulatory or public service consumer fees
- Business license fees
- Franchise taxes
- Franchise fees

This report focuses on franchise fees and those alternative fees and taxes most closely linked to franchise fees both in structure and in the public debate that is occurring in other states. The purposes of this report are to describe the current structure of these fees and taxes, to present issues raised by changes in these industries, and to discuss options for addressing these issues. A full evaluation of utility tax policy in Georgia, or any state, requires an assessment of the structure and effects of all such taxes and fees.

Franchise fees are typically implemented as part of a service agreement executed between local governments and a utility company, or other enterprises such as cable companies which utilize public rights-of-way. They are intended to reimburse local governments for the use of public rights-of-way and for other public services associated with the functioning of these enterprises and the maintenance of these rights-of-way. Traditionally, such fees were also viewed as compensation for
the awarding by local governments of exclusive rights to specific public utility companies to provide such services within specific service areas. Within Georgia, cities have legally had two sources of franchise power: local statutory powers (charter powers) and general statutory powers (such as the 1962 Home Rule Act).

Franchise fees are to be distinguished from franchise taxes. Franchise taxes are generally based on either the net worth of the corporation or on the taxable net income earned by the corporation, and are specifically imposed by some states on public utilities. Such taxes are not considered in this report.

However, franchise fees are commonly labeled "franchise taxes," in part because the base upon they are frequently assessed is some measure of "gross receipts," or "gross revenues." Therefore, while such fees may be authorized under distinct and separate legal authority from such taxes such as sales taxes, consumption taxes, and gross receipts taxes, they may be functionally nearly identical to such taxes, and also nearly identical to business license fees and user taxes/fees that also use gross receipts or revenues as the tax base. For example, electric utilities in Alabama pay the following distinct taxes based upon gross receipts: a 3 percent gross receipts tax to cities, a state utility service use tax (ranging from 2 to 4 percent of gross receipts; 4 percent for phone companies, with no rebate back to local governments), and a business license tax of 2.2 percent of gross receipts. Franchise fees in Alabama, per se, apply to cable (at the federally allowed 3 to 5 percent tax rate on gross receipts collected by municipalities), and to some telecommunications services at 3-5 percent

1 For a further analysis of these issues, see the report on franchise fees by the Georgia Municipal Association, Inc. 1997.

2See "Introduction to Electric Industry Taxation," National Conference of State Legislatures. Information also from conversations with Alabama Municipal Authority personnel.

The terminological distinctions created by these closely related, gross receipts based fees and taxes are often difficult to maintain. Thus, the annual reports of local government finances for Georgia municipalities compiled by the Department of Community Affairs (DCA) identifies "franchise payments taxes" under Section C - "Excise and Special Use Taxes." The very helpful and complete documentation of franchise fees paid prepared for this report by BellSouth, Georgia Power, Atlanta Gas Light, the Cable TV Association of Georgia, and the Georgia Electric Membership Corporation (GEMC) displays similar terminological variation. GEMC identifies its "1997 Franchise Taxes Paid;" Georgia Power cites its "1997 Franchise Paid;" Atlanta Gas Light documents its "Franchise Payments;" and BellSouth identifies its "License Payments" in one document and separates "Municipal License" and "Municipal Franchise" at another source. Such variability is potentially more than a terminological curiosity. For example, as discussed below, one of the issues for public policy discussion is the extent to which one should focus primarily on the revenues to be generated, the jurisdiction (state or local) at which the tax / fee should be collected and redistributed, and the "competitive neutrality" of some form of gross receipts tax or fee on these industries, without "excessive" regard for whether such a tax or fee is called a franchise fee, a gross consumption tax, an excise tax, a user fee, or a business license fee.

II. A Description of The Current Situation in Georgia

Table I provides a basic overview of the municipal (and only in the case of cable, the county) franchise fee and the state and local sales tax structure in Georgia for the various relevant industries. (County government in Georgia receive franchise fees only from cable companies.)
### Table 1 - Overview of Sales Tax and Franchise Fee Structure in Georgia

<table>
<thead>
<tr>
<th>Service</th>
<th>Sales Tax</th>
<th>Sales Tax Base</th>
<th>Franchise Fee</th>
<th>Franchise Fee Base</th>
<th>Identified on Customer Bills</th>
</tr>
</thead>
<tbody>
<tr>
<td>Telephone (Wired):</td>
<td>4% - 7% State</td>
<td>Basic local + most optional</td>
<td>3% to municipalities</td>
<td>Gross receipts for &quot;recurring local service&quot; only; i.e. not applied to pay phone, optional service access, etc.</td>
<td>Sales: Yes</td>
</tr>
<tr>
<td>BellSouth; Independent Phone Companies</td>
<td>+ Local fee; not basic service</td>
<td></td>
<td></td>
<td>Franchise No</td>
<td></td>
</tr>
<tr>
<td>Other telecommunications; Paging, PCS, net access; conferencing etc.</td>
<td>None</td>
<td>Not applicable</td>
<td>None</td>
<td>Not applicable</td>
<td>Not applicable</td>
</tr>
<tr>
<td>Cable TV</td>
<td>4% - 7% State</td>
<td>Converter rental fee; not basic service</td>
<td>3-5% to counties and municipalities</td>
<td>Full basic service + converter rental revenue</td>
<td>Sales: Yes Franchise: Yes</td>
</tr>
<tr>
<td>Satellite TV*</td>
<td>None</td>
<td>Not applicable</td>
<td>None</td>
<td>Not applicable</td>
<td>Not applicable</td>
</tr>
<tr>
<td>Electricity: GA</td>
<td>4% - 7% State</td>
<td>Monthly usage per customer</td>
<td>4% to municipalities</td>
<td>Total electricity sales receipts</td>
<td>Sales: Yes Franchise No</td>
</tr>
<tr>
<td>Natural Gas: Atlanta Gas Light; United Cities; ATMOS Energy</td>
<td>4% - 7% State</td>
<td>Monthly usage per customer</td>
<td>3% to municipalities</td>
<td>Total gas sales receipts excluding interruptible, i.e. industrial customers**</td>
<td>Sales: Yes Franchise No</td>
</tr>
</tbody>
</table>
The total dollar amounts of franchise fees paid by the various industries to municipal, and in the case of cable, also county governments, are provided in Table 2. The data are based on information provided by Georgia Power, BellSouth, Atlanta Gas Light, the Cable TV Association of Georgia, the GEMC, and the Georgia Municipal Association (GMA). We note in the table where the amounts differ by source. Further analysis of the importance of such franchise fees to particular local governments is provided utilizing the government finance survey data from DCA.

Table 2. Total Franchise Fees Paid to Municipalities And Counties: 1996 - 1997

<table>
<thead>
<tr>
<th>Source of Payment</th>
<th>Time Period</th>
<th>Amount Paid</th>
<th>Percent of Total Franchise Fees Paid</th>
</tr>
</thead>
<tbody>
<tr>
<td>Georgia Power</td>
<td>Net paid in 1998 for 1997</td>
<td>$ 85,845,941</td>
<td>45.62%</td>
</tr>
<tr>
<td>GEMC</td>
<td>1997</td>
<td>$ 5,943,291</td>
<td>3.16%</td>
</tr>
<tr>
<td>BellSouth</td>
<td>1997</td>
<td>$ 22,009,272</td>
<td>11.70%</td>
</tr>
<tr>
<td>Other Telecos</td>
<td>1997</td>
<td>$ 9,015,000</td>
<td>4.79%</td>
</tr>
<tr>
<td></td>
<td>est. by BellSouth; est. by GMA = $5 million</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Atlanta Gas Light</td>
<td>Calendar 1996</td>
<td>$ 13,097,223</td>
<td>6.96%</td>
</tr>
<tr>
<td>United Cities Gas</td>
<td>1997</td>
<td>$1,000,000</td>
<td>.53%</td>
</tr>
<tr>
<td></td>
<td>est. by GMA</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cable Companies (paid to municipalities)</td>
<td>1997</td>
<td>$ 35,520,000</td>
<td>18.87%</td>
</tr>
<tr>
<td></td>
<td>based upon data provided by the Cable TV Association of Georgia; GMA provided a much lower estimate of $11,000,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Municipality</td>
<td>1996-1997</td>
<td>$172,430,727</td>
<td>91.63% of total fees</td>
</tr>
<tr>
<td>Cable Companies paid to Counties</td>
<td>1997</td>
<td>$15,748,000</td>
<td>8.37% of total fees; 100% of county fees</td>
</tr>
</tbody>
</table>
An "audit" of DCA’s municipality data found numerous examples of incorrect reporting of zero in franchise fees, so further verification of these reports is required.

| Total All Franchise Fees | $188,178,727 | 91.63% paid to cities |

The relative importance of such franchise fee revenues to specific local government jurisdictions varies very widely. When calculated as a percentage of what the DCA identifies as "tax revenue," franchise fees represent an average of only 0.021 percent of total tax revenues for the counties in Georgia. Of the 154 counties actually reporting in the 1996 DCA survey (missing are Atkinson, Berrien, Muscogee, Wilkinson, and Clarke), 50 counties (i.e. 32.5 percent of the 154) report zero franchise fee revenues. Polk County reports the highest relative importance for franchise fees at 0.255 percent ($304,891), followed by Catoosa County at 0.112 percent ($87,060). Major metro counties such as Fulton, DeKalb, and Gwinnett reported zero franchise fees. Cobb County reported $2,602,807 (0.084 percent of total tax revenues). Since counties are limited to assessing franchise fees upon cable companies only, it is not surprising that no county reports franchise fees as high as even 1.0 percent of total tax revenues.

Using a combination of the DCA data and the reported payments of franchise fees by the companies themselves, it is clear that franchise fees are much more important sources of revenue to municipalities. For the 525 municipal governmental units in the DCA data, franchise fees represented an average of 6.66 percent of total tax revenues. Note that GMA has recently estimated that franchise fees represent 5.6 percent of city general revenues, and identifies such fees as the fifth largest source of revenue "excluding enterprise funds" (data submitted August 7, 1998). Using either figure, franchise fees are less important that the 11 percent of total tax revenue identified for them in the previously cited 1977 GMA report on franchise fees.

3 An "audit" of DCA’s municipality data found numerous examples of incorrect reporting of zero in franchise fees, so further verification of these reports is required.
The variability in the importance of franchise fees to cities and other municipalities is impressive, ranging in the DCA data from zero (true in 11 cases, even after double-checking utility payment records, which by contrast identified $2,960,761 paid to over 20 cities which had originally reported zero in the DCA survey), to 100 percent in the unique, possibly misreported case of the city of Between (reporting $1,734 in franchise fees and total tax revenues). Six municipalities reported that franchise fees were over 80 percent of their total tax revenues, and 26 reported that such fees represented at least 25 percent of total tax revenue in their jurisdictions. While such cases typically represent special circumstances with relatively small populations "housing" a public utility production facility, the more common experience is for franchise fees to constitute less than 4.0 percent of total tax revenues (which is the case for 66.3 percent of the 525 cities in the DCA data). Furthermore, 47 percent of these 525 cities reported franchise fees of less than 2.0 percent of total tax revenue. The overall average amount of franchise fees per municipality was $235,717 in 1996, although of the 17.7 percent of the cities who reported such fees as representing over 10 percent of their revenues, the per city average was only $51,642.

Our best estimate of the total franchise fees paid to municipalities for 1996-97 is $172,430,727 (Table 2). However, there are some inconsistencies between the data from DCA and firm-level data. Relying on DCA data yields a somewhat smaller value.

III. Why Study Franchise Fees at this Time? The Key Issues

For the following reasons, a re-evaluation of the role and structure of franchise fees is timely:

- Section 253 of the 1996 Telecommunications Reform Act (TRA96) specifies that barriers to entry to local telecommunications competition be removed and requires states and local governments to manage rights of way and require compensation for those rights on a "competitively neutral and nondiscriminatory basis."
• Ongoing technological developments in addition to the movement toward deregulation fostered by TRA96 continues to redefine the boundaries of telecommunications and dramatizes the inconsistent treatment of franchise fees identified in Table 1 of wireless (paging, cellular and personal communication services, PCS) vs. wired, and cable vs. satellite technologies, and requires a consistent treatment of potential new entrants into local markets, as well as an assessment of how to treat cable companies that provide phone service, phone companies that provide television services, and other variations in an era in which "monopoly franchises" cease to be meaningful.

• Financial and tax audits in Georgia cities such as Rome, Albany and Warner Robins are generating increased pressure among local governments to re-evaluate the justification for limiting the base for the assessment of franchise fees in phone service (even without any consideration of de-regulation in this industry) to gross receipts for "recurring local service," as opposed to expanding that base to include long distance access fees to local telcos, pay phone revenues, and revenues from the wide variety of optional local services such as call waiting, caller-ID, etc.

• Such potential local governmental variations in the structuring of franchise fee agreements threaten to create even larger administrative burdens on companies paying such fees, which are already high as a result of having to negotiate and contract with up to 525 municipalities and 159 counties. Except in the case of cable, any rights-of-way issues in unincorporated areas of counties are dealt with via the purchase of easements or the compensation for specific property as opposed to the payment of a fee linked to gross receipts.

• County governments are increasingly concerned that, despite judicial rulings that have limited their authority to collect franchise fees, their limited income from such fees may well constitute an unconstitutional giveaway to private interests. For example, Wayne Hill of the Gwinnett County Commission estimates that the total cost to his county of all right-of-way maintenance is as high as $16 million per year (a total of $80 million since 1993), despite the fact that Gwinnett estimates its cable franchise fee revenues at only $2.25 million per year (in testimony provided on behalf of the Association of County Commissioners of Georgia (ACCG) to the Georgia Legislative Study Committee). He further estimates that the county, if legally able to receive its "justified" franchise fees, could generate as much as $30-35 million per year (which would constitute about 4.7 percent of its $693 million annual budget). The ACCG also argues that many residents of counties are essentially "double-taxed" - firstly in county taxes to pay for right-of-way maintenance, and secondly through their utility bills since the franchise fee burdens incorporate such expenses into the utilities’ rate base (even though the municipal base for the calculation of franchise fees is limited to the municipal customer base). Thus, county unhappiness with the current franchise fee structure is growing.

• The natural gas deregulation in Georgia (following passage of SB 215 in 1997) raises similar issues of how to apply sales or use taxation and design franchise fees for
potential new competitors and/or their customers, including non-Georgia firms for whom legal nexus issues could be severe, as such de-regulation applies at least to the generation and sales level, if not to the transmission and distribution levels (or "transportation" level) of natural gas provision.\textsuperscript{4}

- Similar de-regulatory developments in the electricity industry, while not as immediately pending, will raise similar issues of how to apply state and local taxes and fees to non-Georgia firms generating electricity to local industrial, commercial and residential customers so as to avoid serious revenue losses to those governments and to ensure non-discriminatory treatment of all competitors in a newly competitive environment.

- All of these issues raise the specter of potential revenue loss from all gross receipts based taxes and fees as a result of (1) a reduction of price for these services and a possible resulting reduction in total revenues (if demand is not price sensitive), and (2) a further potential loss of a portion of these taxable revenues to the extent that customers switch to non-Georgia companies for whom tax nexus cannot be established.\textsuperscript{5}

\textsuperscript{4}The legal issues surrounding nexus are complex, but based on the \textit{Quill} precedent are thought to usually require some form of "physical presence" in order for out-of state firms to have sufficient nexus with the state of Georgia to be required to collect or pay Georgia taxes. On the other hand, the Supreme Court's unwillingness to consider the differing \textit{Geoffrey} decision in South Carolina (where intangible property was found to provide sufficient nexus for state and local taxation) has confused the issue, and allowed some to interpret \textit{Quill} as only applying to sales and use taxes, possibly excluding franchise fees interpreted as a non-tax fee for the use of municipal rights of way. These issues remain to be resolved.

\textsuperscript{5}A useful example of the potential for franchise fee revenue loss is provided on p. 24 of the 1997 GMA report. The City of Gainesville received $1,392,089 in such fees from Georgia Power in fiscal 1997. Assuming (1) 22.5 percent of such fees stemmed from generation, which would be subject to new competition, and 77.5 percent stemmed from distribution, which would remain under local utility provision, (2) a 20 percent drop in the overall revenues due to price reductions after deregulation, and (3) a 30 percent "diversion" of business to non-Georgia generating companies lacking local nexus, the potential loss of franchise fee revenues is $353,591, or 25.4 percent. That is, the $313,220 of such fees stemming from generation is reduced first by 20 percent and then again by 30 percent to yield $175,403. Meanwhile the $1,078,869 of such fees stemming from distribution falls only by the 20 percent drop in overall revenues, not subject to further loss to non-Georgia companies, for a resulting $863,095. This totals $1,038,498, or a loss of $353,591.
IV. Alternative Possible Solutions and Other State Approaches

Two primary types of policy options seem to provide at least partial solutions to the problems identified in the previous section:

Option #1: Strengthen and Supplement Franchise Fees

One option is to retain and modify the franchise fee system so as to (1) condition the entrance into Georgia of new suppliers of electricity, natural gas and telecommunications services on their agreement to pay franchise fees to municipalities, and (2) as a possible extension of this approach, extend the base for franchise fees in telecommunications to include services beyond "recurring local service."

Some examples of the first part (1) of this approach include:

- **Pennsylvania.** In Pennsylvania, out-of-state as well as in-state generators and marketers of electricity must obtain a license from the Pennsylvania Public Utility Commission prior to being allowed to sell electricity within the state; before a license is granted the marketer must certify that it will pay the franchise fee, as well as collect and remit all sales and use taxes imposed by the state.

- **North Carolina.** In North Carolina, attempts are being made to change the definition of a "utility" to include out-of-state marketers and generators in the natural gas industry by including as a utility "a business entity that sells piped natural gas," which would include non-North Carolina companies using the local distribution company's pipelines. Such companies would then pay the 3 percent franchise fee.

- **Florida.** In Florida, steps are being taken to develop franchise fee ordinances that would require electricity providers, whether regulated or unregulated generators or marketers, to first "obtain a franchise" with the particular city, which in turn requires that the electricity provider agree to pay a franchise fee.

- **South Carolina.** South Carolina, has adopted a variation on these approaches that "strengthens" the franchise system by supplementing it in telecommunications with a business license tax of 3 percent (equivalent to the BellSouth franchise fee rate) of gross revenues, payable by all long distance phone service providers and resellers who are not paying franchise fees.
Option #2: Eliminate Franchise Fees and Substitute Alternative Tax(es) Such as a "Communications Excise Tax," an "Energy Consumption Tax," a "Gross Receipts Tax," a "Business License Fee," or a "Use Tax"

By eliminating the franchise fee system entirely, an alternative tax at the state level (current Georgia law limits the ability of municipalities to impose these alternative taxes) with provisions to rebate revenues to local jurisdictions so as to hold each jurisdiction harmless could (1) reduce administrative costs upon those paying franchise fees by eliminating the requirement to negotiate franchise agreements with a large number of separate local jurisdictions, and increase the predictability of the taxes to be collected or paid by firms; (2) avoid the erosion of the tax base by applying the tax uniformly to all suppliers of services, including a possibly greatly expanded definition of taxable services that would actually expand the tax base (see Table 1 for examples of what is not included in the current franchise fee "tax base"); and (3) by applying the tax uniformly to all potential competitors, achieve the goal of a "level playing field," or technological and competitive neutrality that is a goal of the TRA96 and a key principle of efficient taxation.

Examples of this approach include:

- **New Jersey.** While New Jersey’s approach is not entirely comparable since it eliminated its former 13 percent Gross Receipts and Franchise Tax, it has been an innovator in establishing a 6 percent "Energy Consumption Tax," with current utilities paying a transitional assessment for five years to ensure stability of revenue and followed by all providers, in state as well as out-of-state paying the same tax burden. The state has "guaranteed" cities that they will receive a total of $745 million in FY 1998, growing to a stable $750 million per year by 2002.

- **California.** California has substituted a consumption tax (SB 278) on all natural gas and electricity suppliers equal to the previous franchise fee rate. This plan differs from the New Jersey approach inasmuch as the tax is levied at the local level (allowable under California law).

- **Iowa.** While the particular tax being eliminated is not a franchise fee, Iowa (effective January 1, 1999, via SB2416) replaced property taxes on its 200 utility companies with a gross receipts tax that applies to in-state as well as out-of-state suppliers. In fact, the new tax is a bit more complicated than this simple description. There will actually be three taxes - a generation tax on kilowatt hours of energy generated by power plants in
the state; a transmission tax to be applied to the miles of transmission lines in Iowa, and a delivery tax to be based on the number of kilowatt hours delivered to customers. Only the generation tax will not apply to out-of-state companies. According to *Property Tax Alert* (July 1998), local energy experts in Iowa indicate that any non-Iowa company using an in-state utility's transmission line may be asked to reimburse the local utility for the tax paid on those transactions. Also, the facility delivering the energy to the final customer will owe the delivery tax, and any in-state payers of that tax can require out-of-state marketers to reimburse it for paying the tax on energy it delivers on behalf of the non-Iowa firm.

**Florida.** Two years ago Florida commissioned a "Telecommunications Task Force" to review the tax burden on that industry, including the gross receipts tax. The task force recommended a unified tax arrangement similar to a "telecommunications excise tax" as some percentage of gross revenues, including possible expansions of the tax base. There was some debate regarding the definition of the tax base related to the concept of "taxing capacity," but eventually the Florida legislature failed to enact the proposal due largely to apparent concerns about the change being perceived by the public as a "new tax," as opposed to a relatively revenue neutral change in the tax structure.

**Kentucky.** Kentucky passed legislation (effective July 15, 1998 via HB 266) that amends its utility gross receipts license tax to apply to any Kentucky purchaser of natural gas, electricity, cable, and "other items" when the provider/seller of such services is not subject to that utility gross receipts license tax (i.e. providers who were not utilities regulated by the Kentucky Public Service Commission). This change seems to make the local tax more similar to Kentucky's use tax on such items. Note that while this does not necessarily require that franchise fees be eliminated, it is an approach other than using franchise fees to maintain the tax base and revenues in the face of the structural changes affecting these industries. Note that Kentucky has also created the Electricity Restructuring Task Force (HJR 95), whose goal is to study electricity restructuring in the state, and has also created a related Task Force on Utility Tax Policy (HJR 89), with a due date for the report to the General Assembly by December 1, 1999.

**Georgia.** Finally, as noted by Richard Hawkins, in an article on natural gas deregulation in Georgia, in principle the possible erosion of the sales and the franchise fee tax bases following deregulation could be remedied by the enforcement of use taxes on natural gas purchasers, if all state and local sales and related taxes/fees have not been collected. In reality, he notes that the enforcement of such use taxes would be limited to businesses that

---

6 Information provided by personnel with the Florida League of Cities, Inc.


8 *State Tax Notes*, June 8, 1998.

are registered collectors of the Georgia sales tax, so that this solution would not recapture all potential lost revenues.

V. Criteria for Evaluation and Final Overview

In Georgia the urgency of dealing with the tax issues raised by de-regulation of electricity may not be as great as in some other states, since there is no pending structural change in that industry affecting the state. And at this time, the agreement between Atlanta Gas Light Company and the Georgia Municipal Association, referred to above, which seems to assure at least short term revenue neutrality by modifying the franchise fee base to a "capacity" standard (a variation of fixed throughput charges and a per-therm charge by usage), appears to have dealt at present with the challenges to be raised by having as many as 28 marketer/providers of natural gas selling to end users with the use of the pipeline system of the regulated Atlanta Gas transportation utility.

Telecommunications provides a serious challenge both in terms of ongoing issues related to the current franchise fee base of local recurring service as opposed to a broader base, the highly inconsistent franchise fee treatment of wireless and alternative technologies, and the likelihood of additional local competition in some form in the not too distant future (if not facility based, at least in the form of reselling).

In assessing the relative merits of the general types of alternative proposals discussed above, the following criteria are important:

- Assuring local jurisdictions that revenues will not decline, either relative to current levels, or projected future levels under the current system, or relative even to a potentially modified franchise fee system that expands the franchise fee base (or in the case of counties, modifies or fundamentally redefines the base in a way that allows them to legally qualify for expanded revenues related to what they consider services rendered to the utility and related industries, e.g., as arguably might be the case with a state-wide gross-receipts type "Option 2 utility tax," with revenues rebated to local governments).
Reducing the administrative and compliance costs upon those paying franchise fees, which despite the use of a relatively simple percent of gross revenues base (which may or may not comport closely to a more "cost based" approach linked to the actual problems imposed upon local governments by construction, road repairs, traffic delays, and other issues regarding easements and maintenance of rights-of-way) are still onerous given the number of such local jurisdictions in Georgia, and the potential threat of such jurisdictions “breaking away” from the previous common rate charges and base definitions to attempt to institute modifications that may vary across jurisdictions; these latter possibilities would also greatly increase the uncertainty regarding the costs of doing business in Georgia.

The avoidance of "unintended consequences" in the form of either excessive administrative costs in shifting to a state tax based system along with rebating revenues back to local jurisdictions, or a fundamental shift in the taxing and fee setting authority of local jurisdictions, who are wary of any policy change (regardless of its effects on revenues) that may challenge its traditional authority to assess franchise fees and be compensated for the use of its rights-of-way. Any such changes may, in fact, ultimately be deemed tolerable (or even desirable) if the other effects of a policy change are deemed to be sufficiently beneficial. However, care must be taken to assess these relative implications.

Consistency of any change with the fundamental principles of efficiency in taxation, i.e., limiting the distorting effects of taxes and fees on consumer decisions regarding suppliers and/or technologies so as to achieve a high level of tax "neutrality," as well as the achievement of the related "fairness" goal of a substantial amount of "horizontal equity," i.e. treating equals as similarly as possible. Both goals are consistent with the TRA96 goal of limiting barriers to entry, and the goal of assuring a "level playing field" for all potential competitors.

The perception of the consuming public as well as the business community regarding the changes being contemplated, most particularly the ease with which any change could be adequately explained as a structural improvement in how taxes and fees are imposed, as opposed to being merely a new or higher tax.

Fortunately, the major parties with an interest in these issues appear to be willing to communicate and compromise. Those paying franchise fees have not expressed any interest in lowering the overall revenues being provided to local governments, although the details of how such revenues can be maintained or redistributed from the state if any of the Option 2 proposals were to be adopted would have to be resolved. Similarly, local governments appear willing to listen to proposals to broaden the franchise base, or even substitute an alternative tax, and possibly lower the
rates in exchange, and to take steps to lower the administrative burdens upon those paying the fees.

They remain, however, wary of the implications of changes in the relative position of the state and local governments regarding the legal authority to assess fees and taxes, as well as with the status of counties in any modified arrangement. With a further analysis of these issues, the full implications of any possible modification to the current system can be better assessed.
ABOUT THE AUTHOR

Bruce A. Seaman is an Associate Professor of Economics and Senior Associate in the Policy Research Center of the Andrew Young School of Policy Studies at Georgia State University. He has a Ph.D. in Economics from the University of Chicago, has worked as an antitrust economist for the Federal Trade Commission, is a former Chair of the Economics Department at GSU, and is President-Elect of the Association for Cultural Economics, International. His research includes industrial organization and antitrust economics, cultural and sports economics, and public finance and impact study methodology. He has previously provided expert assistance to the State of Georgia regarding the issues of severance taxes, an excise tax on auto rentals and the regional impact of the Phillips arena, public services and taxation in Atlanta-in-DeKalb, and financing options for the Fernbank Museum of Natural History.
FISCAL RESEARCH PROGRAM

David L. Sjoquist, Director and Professor of Economics
Roy W. Bahl, Dean and Professor of Economics
Mary K. Burgegarner, Principal Associate
Richard W. Campbell, Principal Associate
Ronald G. Cummings, Professor of Economics
Dwight R. Doering, Research Associate
Kelly D. Edmiston, Assistant Professor of Economics
Dagney G. Faulk, Research Associate
Michael E. Foster, Associate Professor of Public Administration and Nursing
Martin F. Grace, Associate Professor of Risk Management and Insurance
Richard R. Hawkins, Principal Associate
Julie Hotchkiss, Associate Professor of Economics
L. Kenneth Hubbell, Principal Associate
Keith R. Ihlanfeldt, Professor of Economics
Ernest R. Larkin, Professor of Accountancy
Gregory B. Lewis, Professor of Public Administration and Urban Studies
Jorge L. Martinez-Vazquez, Professor of Economics
Julia E. Melkers, Assistant Professor of Public Administration
Jack Morton, Principal Associate
Lakshmi N. Pandey, Research Associate
Theodore H. Poister, Professor of Public Administration
Donald Ratajczak, Regents’ Professor of Economics
Ross H. Rubenstein, Assistant Professor of Public Administration and Educational Policy Studies
Francis W. Rushing, Professor of Economics
Benjamin P. Scafidi, Assistant Professor of Economics
Bruce A. Seaman, Associate Professor of Economics
Saloua Sehili, Principal Associate
Samuel L. Skogstad, Chair and Professor of Economics
William J. Smith, Research Associate
Stanley J. Smits, Principal Associate
Jeanie J. Thomas, Research Associate
Sally Wallace, Assistant Professor of Economics
Mary Beth Walker, Associate Professor of Economics
Thomas L. Weyandt, Senior Associate and Executive Director Research Atlanta Inc.
Laura Wheeler, Principal Associate
Katherine G. Willoughby, Associate Professor of Economics

Staff
Dorie Taylor, Associate to the Director
Margo Doers, Administrative Support

Graduate Research Assistants
Hsin-hui-Chui
Robbie Collins
Natalia Dymoyna
Kiran Hebbhar
John Matthews
Mary Kathleen Thomas
H. Christina Yang
RECENT PUBLICATIONS OF THE FISCAL RESEARCH PROGRAM
(All publications listed are available through the FRP)

An Analysis of Franchise Fees in Georgia.  (Bruce Seaman)
This report examines the current structure of franchise fees, identifies the associated problems, and describes options for addressing the problems.  FRP Report 34 (August 1999).

Road Construction and Regional Development.  (Felix Rioja)
This report investigates the effect of roads on economic development.  FRP Report/Brief 33 (July 1999).

Distribution of Public Education Funding in Georgia, 1992: Equity From a National Perspective.
(Ross H. Rubenstein, Dwight R. Doering and Michelle Moser)
This report compares the inter-district equity of school revenue in Georgia with that of all other states.  FRP Report/Brief 32 (April 1999).

The New Local Revenue Roller Coaster: Growth and Stability Implications for Increasing Local Sales Tax Reliance in Georgia.  (Richard Hawkins)
This report examines the relative growth and stability of the property tax and local sales tax bases across counties in Georgia.  FRP Report/Brief 31 (March 1999).

Results of Georgia Statewide Poll – Economic Development.  (Applied Research Center/Fiscal Research Program)
This report prepared for the Georgia Economic Developers Association presents results of a survey on economic development activities in the state.  FRP Report 30 (March 1999).

State and Local Government Taxation of Manufactured Housing (L. Kenneth Hubbell)
This report is a 50 state comparison of property and sales tax treatment of manufactured housing.  FRP Report 29 (February 1999)

A quick overview of all state and local taxes in Georgia.  FRP Annual Publication A(5) (January 1999)

Exemptions From Sales and Use Tax: Solid Fuels Used by Manufacturing Firms (William J. Smith)
This brief discusses the issues and revenue loss associated with exemptions in solid fuel from sales taxation.  FRP Brief 28 (January 1999)

Economic Development Policy (Keith Ihlanfeldt)
This report addresses five weaknesses in Georgia’s economic development program and recommends policies to overcome these weaknesses.  FRP Report/Brief 27 (January 1999)
The Manipulation of State Corporate Income Tax Apportionment Formulas As An Economic Development Tool (Kelly Edmiston)

This paper uses a simulation model to examine the effects of disproportionate sales factor weighting in state corporate income tax apportionment formulas on economic development, tax collections, and regional welfare.  FRP Brief 26 (November 1998)

The Impact of House Bill No. 129 on Funding for Central Administration in the School Districts of Georgia (Dwight R. Doering)

This report presents an analysis of the impact of HB 129 on the funding of the central administration function in Georgia’s school districts.  FRP Brief 25 (November 1998)

Revenue Losses from Exemptions of Goods from the Georgia Sales Tax (Mary Beth Walker)

This report presents estimates of the loss of revenue from exemptions of specific goods or classes of goods from the sales tax base.  FRP Brief 24 (November 1998)

The Equity of Public Education Funding in Georgia, 1988-1996 (Ross H. Rubenstein, Dwight R. Doering and Larry R. Gess)

A study of the effect of Quality Basic Education on the level of equity of public education funding in Georgia.  FRP Report/Brief 23 (October 1998)

An Analysis of the Barnes and Millner Property Tax Relief Proposals (David L. Sjoquist)

An analysis prepared for the Georgia Public Policy Foundation, FRP Report 22 (October 1998) also available from the Georgia Public Policy Foundation, Kelly McCutchen, 770/455-7600.

A Review of Georgia’s Quality Basic Education Formula Fiscal Year 1987 Through 1998 (Dwight R. Doering and Larry R. Gess)

A review of how funding per student for each formula component of Quality Basic Education (QBE) changed between 1987 and 1998.  FRP Brief 21 (September 1998)

Net Fiscal Incidence at the Regional Level: A Computable General Equilibrium Model with Voting (Saloua Sehili)

An analysis of the net incidence of expenditures and taxes in Georgia using a computable general equilibrium model.  FRP Report 20 (September 1998)

An Analysis of the Economic Consequences of Modifying the Property Tax on Motor Vehicles in Georgia: Alternative Proposals and Revenue Effects (Laura A. Wheeler)

An analysis of revenue effects and distribution consequences on eliminating tax on motor vehicles.  FRP Report/Brief 19 (September 1998)

The Taxation of Personal Property in Georgia (Dagney Faulk)

A policy option for changing how Georgia taxes personal property.  FRP Report/Brief 18 (August 1998)
RECENT FRP PUBLICATIONS (Continued)

*Insurance Taxation in Georgia: Analysis and Options* (Martin F. Grace)
An overview of issues associated with the taxation of the insurance industry in Georgia. FRP Report/Brief 17 (August 1998).

*The Structure of School Districts in Georgia: Economies of Scale and Determinants of Consolidation* (L.F. Jameson Boex and Jorge Martinez-Vasquez)

*Georgia’s Job Tax Credit: An Analysis of the Characteristics of Eligible Firms* (Dagney Faulk)
This report provides a review of Georgia’s Job Tax Credit and makes recommendations for improving the JTC program. FRP Report/Brief 8 (June 1998).

*Performance Based Budgeting Requirements in State Governments* (Julia Melkers and Katherine G. Willoughby)
This policy brief addresses the trend toward improving performance in state government through the use of performance-based budgeting. FRP Brief 7 (June 1998).

*Interdistrict School Choice in Georgia: Issues of Equity* (Dwight Robert Doering)
A description of the interdistrict school choice programs in Georgia with a focus on equity issues. FRP Report/Brief 6 (May 1998).

*A Comparative Analysis of Southeastern States Income Tax Treatment of Exporters* (Ernest R. Larkins, Jorge Martinez-Vasquez, and John J. Masselli)
This study analyzes the export-related provisions of tax laws and proposes policy changes. FRP Report 15 (May 1998).

*Reducing the Property Tax on Motor Vehicles in Georgia* (Laura Wheeler)
An analysis prepared for the Georgia Public Policy Foundation, FRP Report 14 (June 1998) also available from the Georgia Public Policy Foundation, Kelly McCutchen, 770/455-7600.

*Georgia’s Corporate Taxes: Should the Corporate Income Tax be Repealed?* (Martin F. Grace)

*The Georgia Individual Tax: Current Structure and Impact of Proposed Changes* (Barbara M. Edwards)

*A Georgia Sales Tax for the 21st Century* (Roy Bahl and Richard Hawkins)
RECENT FRP PUBLICATIONS (Continued)

Results of Georgia Statewide Poll -- Economic Development (Applied Research Center/Fiscal Research Program)
This report prepared for the Georgia Economic Developers Association presents results of a survey on economic development activities in the state. FRP Report 10 (April 1998).

Georgia’s Revenue Shortfall Reserve: An Analysis of its Role, Size and Structure (David L. Sjoquist)
This report explores Georgia’s “rainy day” fund. FRP Report/Brief 5 (March 1998).

Natural Gas Deregulation and State Sales Tax Collections in Georgia (Richard R. Hawkins)
This policy brief discusses the issues that will ultimately determine the impact on sales tax revenue in Georgia resulting from deregulation of the natural gas industry. FRP Brief 4 (February 1998).

Creating the Workforce of the Future: A Requirements Analysis (Francis W. Rushing and Stanley J. Smits)
This paper focuses on the theme of workforce preparation. FRP Report/Brief 3 (February 1998).

Economic and Community Development Research in Georgia Colleges and Universities, An Annotated Bibliography (Fiscal Research Program)
An annotation of work authored within the last ten years. FRP Report 9 (January 1998).

The Georgia Income Tax: Suggestions and Analysis for Reform (Sally Wallace and Barbara M. Edwards)
An examination of the state income tax and suggestions for reform. FRP Report/Brief 2 (November 1997).

The Sales Tax in Georgia: Issues and Options (Roy Bahl and Richard Hawkins)
An overview of the sales tax and policy options. FRP Report/Brief 1 (October 1997).

Economies of Scale in Property Tax Assessment (David L. Sjoquist and Mary Beth Walker)
An analysis of the relationship in Georgia between the cost of property tax assessment and county size. FRP Report 97.2 (September 1997).

Sales Taxation of Telecommunications Services in the State of Utah (Richard McHugh)
An analysis of the sales and use taxation of telecommunications services with specific reference to Utah. FRP Report 97.1 (February 1997).

Local Government Fiscal Effort (David L. Sjoquist)
An analysis prepared for the Georgia Future Communities Commission comparing the fiscal capability and actual revenues for Georgia counties and municipalities. FRP Report 96.5 (December 1996).

Georgia Banking: An Overview (Samuel Skogstad)
A description of the current Georgia regulatory environment for the banking industry. FRP Report 96.4 (May 1996).
RECENT FRP PUBLICATIONS (Continued)

*Telecommunication Taxation: The Georgia Case*  (Richard McHugh)
An examination and assessment of the current structure of telecommunications taxation in Georgia.  
**FRP Report 96.3** (May 1996).

*Local Government Fiscal Viability*  (David L. Sjoquist)
An analysis prepared for the Georgia Future Communities Commission of the fiscal capacity, expenditure needs and fiscal viability of counties across Georgia.  **FRP Report 96.2** (March 1996).

*Taxation and Economic Development: A Blueprint for Tax Reform in Ohio*  (Roy Bahl, ed.)
A collection of reports prepared for the Ohio Blue Ribbon Commission on Taxation and Economic Development.  **FRP Report 96.6** (1996) available only from Battelle Press, $44.95, 800/451-3543.

*Reflections on Privatization*  (Steve Hanke)
An overview of the economic and policy fundamentals of privatization.  **FRP Report 95.2** (March 1996).

*Reforming the Georgia Tax Structure*  (Roy Bahl)
The final report of the Joint Study Commission on Revenue Structure.  **FRP Report 95.1** (January 1995).

*For a free copy of any of the publications listed, call the FRP at 404/651-4342, or fax us at 404/651-2737.*
FORTHCOMING AND IN-PROCESS REPORTS

Changes in the Geographic Distribution of Income in Georgia (Robbie Collins)

The Changing Geographic Pattern of Retail Sales in Georgia (Joey Smith)

The Effect of Structural Changes in the Banking Industry on the Availability of Financing (Dileep Mehta)

The Fiscal Implications of Manufactured Housing (Ken Hubbell and David Sjoquist)

The Georgia Economy: A Long-Range View (Donald Ratajczak)

The Link Between the State Budget and State Policy (William Thomas)

Property Tax Assessment Limitations (David Sjoquist)

Property Tax Credits (David Sjoquist and Joey Smith)

Welfare-to-Work: Tracking the Budget Savings (James Wolk)
An Analysis of Franchise Fees in Georgia

**Publisher(s):** Fiscal Research Center of the Andrew Young School of Policy Studies

**Author(s):** Bruce Seaman

**Date Published:** 1999-08-01

**Rights:** Copyright 1999 Fiscal Research Center of the Andrew Young School of Policy Studies

**Subject(s):** Community and Economic Development