

Tax Assessment: Recapping Georgia's Legislative Session

By Jonathan Feldman and Alla Raykin (May 21, 2024, 5:31 PM EDT)

The Georgia General Assembly passed several significant tax bills during the 2023-2024 legislative session, which adjourned on March 28.

Among them was the creation of a tax court in the judicial branch, a reduction of the individual and corporate income tax rates, limitations on income tax credit carryforwards, and the suspension of the data center sales tax exemption.

Bills that were considered but did not ultimately pass included limitations on the film tax credit. Because this was the final year of the two-year legislative session, any legislation not adopted this year will have to be reintroduced next legislative session.

Bills described below that passed both chambers of the General Assembly before the end of the session were transmitted to the governor.

The governor had 40 days — until May 7 — to either sign or veto the legislation, or allow it to become law without any action. Constitutional referendums automatically go on the prescribed ballot without action by the governor.

Passed Both Chambers

Georgia Tax Court

Two bills, H.R. 598 and H.B. 1267, collectively create the Georgia Tax Court, transitioning the Georgia Tax Tribunal from an administrative court within the executive branch to a judicial branch court.

H.R. 598 places a referendum question on the November ballot asking whether to amend the Constitution of Georgia to vest the Georgia Tax Court with the judicial power of the state and jurisdiction concurrent with the state's superior courts.

If the referendum passes, H.B. 1267 provides the enabling legislation for the new Georgia Tax Court, which would begin operations on Jan. 1, 2026, and receive cases on Aug. 1, 2026. Gov. Brian Kemp signed H.B. 1267 on May 6, 2024.

The Georgia Tax Tribunal began operating in 2013 to hear appeals from the Georgia Department of Revenue and was housed within the Georgia Office of State Administrative Hearings. As an



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administrative court, Tax Tribunal decisions must be appealed first to the Fulton County Superior Court, and those decisions may then be appealed by application to the Georgia Court of Appeals.

The Georgia Tax Court would have broader jurisdiction over constitutional questions and all legal claims arising from a Department of Revenue assessment or action.

However, taxpayers would continue to have the right to choose to appeal Department of Revenue actions directly to superior court, with prepayment of the tax in controversy — as is the status quo with the Tax Tribunal.

Income Tax

Reduce Individual Income Tax Rate

H.B. 1015 expedites the state's planned reduction of the individual income tax rate by lowering the rate from 5.49% to 5.39% for tax years beginning on or after Jan. 1, 2024. Kemp signed this bill into law on April 18

Match Corporate Income Tax Rate to Individual Income Tax Rate

H.B. 1023 matches the tax rate that every domestic and foreign corporation will pay on Georgia taxable income to the rates prescribed for individual income tax — as proposed to be reduced in H.B. 1015 — and also applies the same rates to pass-through entity owners that elect to be taxed at the entity level.

The time a corporation may file its return is also extended by one month after the Internal Revenue Service filing deadline, although the date for payment of taxes does not change. Kemp signed this bill into law on April 18.

Although both income tax rate bills are effective for the entirety of the 2024 tax year, the legislation does not go into effect until July 1. Thus, taxpayers making estimated quarterly payments for quarter one of 2024 would have paid tax based on the existing tax rate, and would true up the total tax due based on the new rate after July 1.

The Georgia Department of Revenue is expected to issue guidance on the implementation of the rate change before the July 1 effective date.

Annual Internal Revenue Code Conformity

H.B. 1162, Georgia's annual income tax conformity bill, conforms Georgia's revenue code to the federal Internal Revenue Code as of Jan. 1, 2024. No additional decoupling from federal tax law is within this legislation. Kemp signed this bill on April 22.

Income Tax Credit Carryforward Period Reduction and Exemption/Credit Sunset

This bill reduces the carryforward period for most income tax credits. For example, the carryforward period for the research and development credit, jobs tax credit, and investment tax is reduced from 10 years to five years, although the ability to apply certain of those excess credits against payroll withholding is not affected.

Furthermore, the carryforward period for the student scholarship organization and similar credits in exchange for donations, or film, gaming, video or digital production credit, and the post-production credit is reduced from five years to three years.

The carryforward period changes apply only to credits earned after the effective date of the legislation — Jan. 1, 2025, and not to those credits that taxpayers have already earned. Taxpayers with unused credits earned prior to Jan. 1, 2025, can continue to carry forward credits for the prior, longer carryforward period.

Additionally, the bill adds sunset dates for several existing incentives and sales tax exemptions in 2029. This legislation is a result of the Joint Tax Credit Review Panel, which held numerous hearings around the state during 2023. Kemp signed this bill on May 5.

Nontaxability of Federal Telecom Grants

S.B. 344, formerly related to a sales tax exemption for firearms, was stripped and replaced with the text of former H.B. 814. The bill excludes from Georgia taxable net income any federal grants and sub-grants received under the federal Broadband Equity Access and Deployment Program or the American Rescue Plan Act for making investments in broadband infrastructure.

While the Georgia House passed a bill that would have made this change effective for tax years on or after Jan. 1, 2022, the version of the bill that passed changed the first affected tax year to 2024. Kemp signed this bill on May 6.

Sales Tax

Sunset for Data Center Exemption

H.B. 1192 would have paused the data center exemption in the Official Code of Georgia, Section 48-8-3(68.1) for the period beginning July 1, 2024, and ending June 30, 2026.

H.B. 1192 prohibits the issuance of new certificates of exemption during that period for eligible high-technology data center equipment, except for high-tech data center tenants of an ongoing project that had contracts with the data center before July 1.

Legislation was proposed, but failed to pass, which would have allowed new tenants of an approved data center to still obtain new certificates — see the discussion of H.B. 101, below.

The legislation also would have made changes to the new job requirement for data centers, and created the Special Commission on Data Center Energy Planning to, among other things, review and make recommendations regarding a data center and its use of electricity and energy, for the scheduled revival of the exemption beginning July 1, 2026.

On May 7, Kemp vetoed this bill. His veto message stated that only two years ago, the legislature extended this tax exemption for an additional three years — through July 1, 2031 — and the proposed pause beginning July 1, 2024, would undermine the investments made by high-technology data center operators, customers and other stakeholders that relied on the recent extension.

Additionally, he said the pause would inhibit important infrastructure and job development.

Property Tax

Tangible Personal Property Ad Valorem Exemption

H.B. 808 increases the ad valorem tax exemption for all tangible personal property in a county from \$7,500 to \$20,000. Taxpayers with total tangible personal in a county with a fair market value of less than \$20,000 are exempt from ad valorem tax. Kemp signed this bill on May 6.

Homestead Exemption

H.B. 1019 would have raised the statewide homestead tax exemption from \$2,000 to \$4,000 upon voter approval through a referendum on the November ballot.

On May 7, Kemp vetoed this legislation. His veto message stated that last minute changes to the bill created a conflict between the statutory language and the proposed referendum language, which precludes implementation of H.B. 1019.

H.B. 1022 puts a constitutional referendum relating to allowing homestead exemptions to limit increases in the assessed value of homesteads, but allows local governments to opt out of such exemptions upon the completion of certain procedures.

Homestead Exemption and Flexible Penny Local Option Sales Tax

H.B. 581 relates to capping homestead valuations based on inflation, addresses property tax notices, and additionally incorporates former H.B. 1115 — a new sales tax authorization for flexible penny local option sales tax.

The bill introduces a new flexible penny local option sales tax, in addition to the existing homestead option sales tax and local option sales tax in exchange for additional property tax relief.

The local sales tax rates are generally capped at 3%. Kemp signed this bill on April 18, allowing a decision on whether to amend Georgia's Constitution to allow counties to provide for the statewide homestead valuation increase limitations, to be voted on during the November statewide ballot.

Incentive Audit Process

Tax Expenditures Transparency Act

S.B. 366 expands the existing tax incentive audit process, under prior legislation in 2021, S.B. 6, requiring a listing of state revenue sources and tax credit spending in the budget, increasing the number of annual audits, setting criteria to determine which incentives to audit, and requiring certain content to be included within each audit report. Kemp signed this bill on April 22.

Did Not Pass General Assembly

Omnibus Tax Legislation

H.B. 101 was omnibus tax legislation that would have made several changes involving rural hospital

income tax credits, qualified education donation income tax credits, and historic properties ad valorem taxes.

It also proposed a change to the data center exemption bill in H.B. 1192 to clarify that new tenants of data centers approved before July 1 could still apply for a data center certificate.

Film Tax Credit Limitations

H.B. 1180 would have made several significant changes to the film tax credit. Under the bill, there would have been separate statutes and tax credits for production companies and qualified interactive entertainment production companies.

The bill added additional criteria to be eligible for the 10% additional credit, when at least four of those criteria were met. Additionally, the bill would have capped the amount of credits that could be sold or transferred for a percentage of the corresponding fiscal year's budget.

This legislation was a result of the review of state tax incentives by the state's joint tax credit review panel. Although the Senate committee considered the bill and the Senate Finance Committee favorably reported on it, the Senate ultimately did not take up a vote on the bill.

Interactive Entertainment Tax Credit Limitations

The House stripped a property tax bill in a separate attempt to enact changes to the film tax credit limitation. S.B. 349 created a separate tax credit for interactive entertainment companies, but also contained limitations similar to H.B. 1180.

Concluding Thoughts

Kemp accomplished his stated goal of accelerating income tax cuts. While recent tax rate cuts had only applied to personal income, this year's reductions also apply to the corporate income tax and those electing to pay as a pass-through entity.

The General Assembly furthered the joint tax credit review panel's work analyzing Georgia's tax exemptions and credits by introducing a number of bills addressing certain sales tax exemptions, and both business and personal income tax credits. However, it appears that pushback from the corporate development community saved the data center sales tax exemption for at least another year.

Given the legislative push toward limitations on credits and exemptions, taxpayers should consider how to benefit from the credits sooner rather than later. For example, this year's legislation cut the carryforward period for many of the state's lucrative income tax credits such as the jobs tax credit and the investment tax credit.

While the legislative change does not affect taxpayers who already earned the credits, corporate taxpayers claiming credits for prospective tax years should focus on ways to utilize the benefit of these credits within half of the time frame.

Because these credits are generally capped at 50% of a taxpayer's income, this may prove challenging for some taxpayers. However, several of these credits may be used against a taxpayer's withholding tax, under certain circumstances, or assigned to affiliates.

While controversial amendments to the film tax credit did not clear the final legislative hurdles this year, we expect to see similar efforts to address this credit during the next legislative session.

Prior to the 2025 legislative session, the House Ways and Means and Senate Finance chairpersons will collectively request the Department of Audits and Accounts to perform an economic analysis for up to 12 different incentives costing more than \$20 million annually, prioritizing those incentives with the soonest sunset or planned repeal.

Taxpayers should take note of which incentives are reviewed, as this may provide some insight as to which incentives could be either extended or slashed.

Lastly, there will be a number of tax related constitutional amendments on the November statewide ballot to which voters and businesses should pay special attention. Specifically, the constitutional referendum to create a Georgia Tax Court would create an independent forum to review tax cases and make the tax appeals process more efficient for taxpayers.

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