

# Quick Takes

September 2007

*Quick Takes:* The state of tax reform in Georgia- “The Devil is in the details”

The title of this issue of *Quick Takes* includes the old proverb: “The Devil is in the details.” The proverb historically is really a play on an actual quotation from Gustave Flaubert, who said: “God is in the details.” It’s interesting that what started out as one man’s reference to good things, ended being remembered by posterity for bad things.

That same tension typifies the state of tax reform in Georgia.

What’s this all about? Well, before the end of the 2007 Session of the Georgia General Assembly, Speaker Richardson introduced H.R. 900. This proposed amendment to Georgia’s Constitution provided for a flat tax to be known as the “fair tax.” The bill was also signed by Majority Leader Jerry Keen, Speaker Pro Tempore Mark Burkhalter, Ways and Means Chairman Larry O’Neal, and Majority Whip Barry Fleming, among others. So, it has to be taken seriously.

But much of H.R. 900 has been superseded by post-Session pronouncements by Speaker Richardson and others. So, the plan is a moving target. The release of a new draft was expected before the end of the year. Now it is very possible that the plan’s final details will first be unveiled when a new fast-track bill is filed for the 2008 General Assembly Session.

The Association County Commissioners of Georgia has said that this “could very well be the biggest change ever proposed in Georgia, and could forever change this state.” ACCG is right.

The issue is whether this will be a change for the better or not. There are a lot of unanswered questions about this plan. In its present form, it has serious implications for economic development in particular.

In this issue of *Quick Takes*, we will review the tax reform plan at a high level. Following issues will take a detailed look at how economic development and finance in Georgia are carried out now, and how they will be impacted if this plan becomes law. All comments are subject to change as the tax reform plan itself changes.

These are the highlights of the plan-

1. The plan's most important goal is to eliminate all **property taxes** and substitute for them **sales and use taxes** that have practically no exemptions and that apply to services as well as goods. Local control over property tax abatement as an incentive will be lost. The familiar sales and use tax exemptions used to locate projects will no longer exist. An important reason for a community to pursue economic development will also be lost in the absence of property taxes, since local revenues will not benefit from them when a project locates there. The plan would still permit local sales and use taxes of up to 4% in the aggregate. However, a 60% positive vote would be required to pass a referendum to implement local sales and use taxes.

2. This is **tax transfer, not tax relief**. However, local governments are concerned that there will be revenue shortfalls, and unpredictable revenue fluctuations, on the community level.

3. **Income redistribution** is involved, and includes both State and local revenues. Virtually all taxes will go to the State, which will return certain revenues to the communities according to a formula pegged to a 2006 base level (the "**local revenue guarantee**"). Any new local revenues from expansion of the sales and use tax base will offset and reduce the community's local revenue guarantee from the State. The State will have discretion over revenues above the 2006 level (subject to some as-yet-undefined form of escalator of the 2006 base). Some communities will be, in effect, subsidizing other communities. A procedure-heavy process, requiring action on the State level, for communities to use bond financing will be provided. State and local bond ratings could be negatively affected by the new tax system.

4. In its most recent form, the tax reform plan does not envision changes to the income tax code. This presumably would leave **job tax credits** and **other tax credits** used in economic development unaffected by tax reform. However, the State already needs changes to its statutory incentives, in order to make them meaningful. And, as an alternative to eliminating property taxes, Governor Perdue has recently suggested cutting personal and corporate income tax rates.

5. Other taxes are left in place, which would include **hotel/motel taxes**.

6. **Development authorities** would be treated like private corporations for most state tax purposes under the plan. HR 900 eliminates the exemption from taxation for development authority "obligations, properties, activities, [and] income". An example

of obligations that would be subjected to tax is development authority revenue bonds. An industrial park is an example of development authority property that would be subjected to tax (even assuming all other property taxes were abolished, taxes for pre-existing bonded indebtedness would continue). An example of development authority income that would be subjected to tax would be a development authority's financing fees. Development authorities would lose much of their financing fee income anyway, since bond issues, which in Georgia are linked to property tax abatement programs, would diminish after tax reform. Development authorities, whose parent governments provide millage to them to finance their economic development programs, would lose that financial support as well, as a result of elimination of property taxes. (Pledged millage connected with bonded indebtedness should be "grandfathered".)

7. A number of communities have taken advantage of the "**regional facilities**" amendment to Georgia's Constitution to jointly develop projects (like an industrial park) and share the resulting tax revenues. Under HR 900, the participating communities could still agree among themselves regarding "allocating the proceeds of the local revenue guarantee" and "the allocation of other revenues generated from such regional facilities". In order to support a regional facility, would communities really agree to share their local revenue guarantees? These would be like a community's "general fund."

8. Likewise, the local revenue guarantee would be the only source for repayment of tax allocation district ("**TAD**") bonds, called "tax increment finance", or TIF, bonds in some other states. These bonds finance redevelopment within the district, and facilitate "redevelopment paying for itself". TAD bonds are meant to be repaid with property taxes from the increment resulting from an increase in the tax digest in the district. Using the local revenue guarantee would be like using a community's "general fund" to pay for redevelopment of a blighted area.

9. **Enterprise zones** would be totally eliminated by HR 900.

10. Increasingly, communities have been taking advantage of the "self-taxation" tool represented by community improvement districts ("**CID**'s") to address localized issues such as transportation. Both urban and rural communities have done so. Under HR 900, CID's would not be able to use property taxes for this effort, only fees and assessments. These fees and assessments would be capped by a general law yet to be drafted.

11. Constitutional authorization for infrastructure development districts ("**IDD**'s") will be addressed in a November 2008 statewide referendum. IDD's would be able to issue bonds to finance infrastructure. These bonds would be repayable through special assessments on the property within the district, and not by property taxes. Thus, IDD's might survive tax reform. This would likely benefit new commercial and residential development.

As you can see, there is a lot to tax reform. We will drill deeper into this in upcoming issues of *Quick Takes*. If you have feedback meanwhile, on these or any other topics, please let me hear from you.

Dan

Daniel M. McRae, Partner  
Seyfarth Shaw LLP  
Suite 700  
1545 Peachtree St., N.E.  
Atlanta, GA 30309  
404.888.1883  
404.892.7056 fax  
dmcrae@seyfarth.com  
[dan@danmcrac.info](mailto:dan@danmcrac.info)

General note: This issue of *Quick Takes* is a quick-reference guide for economic developers, participants in the real estate and financial industries, company executives and managers, and their advisors. The information in this issue is general in nature. Various points that could be important in a particular case have been condensed or omitted in the interest of readability. Specific professional advice should be obtained before this information is applied to any particular case.

Visit Dan McRae's website, [danmcrac.info](http://danmcrac.info), for: White Papers; *Quick Takes* newsletters; Current Bond Rates; Bond Cost of Issuance Estimates; "What's New" blog; and Workshops and Training.

GET "THE INFO" AT DANMCRAE.INFO!

Subscribe to *Quick Takes* at [danmcrac.info](http://danmcrac.info).

---

**Atlanta Boston Chicago Houston Los Angeles New York Sacramento  
San Francisco Washington, D.C. Brussels**

CURRENT BOND RATES	
EFFECTIVE SEPTEMBER 21, 2007	
<b>Interest Rates:</b>	
<b>tax-exempt-</b>	<b>floating: 3.89%</b> <b>fixed: 3.95%</b>
<b>taxable-</b>	<b>floating: 5.18%</b> <b>fixed: 5.43%</b>
<p>General notes:</p> <ol style="list-style-type: none"> <li>1. Rates are posted weekly. These rates are for the effective date indicated above, or as otherwise indicated. For intra-week rates, <u>Contact Dan.</u></li> <li>2. These are interest rates on revenue bonds that are variable rate demand bonds; i.e., floating. These can be synthetically fixed via interest rate swaps, as noted below.</li> <li>3. Tax-exempt rates are for industrial development revenue bonds (IDB's") that are subject to the AMT and are 7 day general market quotes.</li> <li>4. Taxable rates are for taxable IDB's or for taxable "corporate bonds".</li> <li>5. Fixed rates are for 10 year terms via swaps.</li> <li>6. All rates are market extracted and approximations, and are not guaranteed.</li> <li>7. These rates do not reflect all-in costs; e.g., annual letter of credit fees are not included.</li> </ol>	