

## Questions and Answers About Provisions of Senate Bill 97

Q - Who in the heck got this dumb bill passed?

A - The Association County Commissioners of Georgia (hereinafter called “ACCG”) and the Georgia Department of Revenue (hereinafter called “DOR”) collaborated with legislators to enact SB 97. ACCG was interested the bill after having conversations with clerks of superior court over the years about how real estate transfer taxes (hereinafter called “RETT”) were paid to DOR by clerks, with counties and other taxing entities having to wait almost a year before DOR disbursed RETT funds to those entities. The purpose of the bill is to: 1) speed up payment to taxing entities; 2) to cut down on reporting and copying clerks of superior court have to do under existing laws; 3) to facilitate electronic generation and collection of transfer tax disclosure information; and 4) to eliminate duplication of data entry required of clerks, state and county tax officials, and the Georgia Department of Audits.

Q - What major changes does SB 97 provide in terms of the way clerks collect and distribute RETT?

A - As far as the procedures clerks of superior court currently employ for **collecting** RETT, there are almost no substantive changes. Section 1 of the bill provides two new situations in which parties filing a deed are not required to pay RETT (see subparagraph 11 of the bill): 1) when individual owners of a corporation, partnership, or other entity also have a majority ownership interest in the corporation, partnership, or other entity to which the property is transferred; and 2) when a corporation, partnership, or other entity transfers real property to one or more individuals who have a majority ownership interest in the corporation, partnership, or other entity.

The most important changes required by SB 97 relate to distribution and reporting of RETT collections. Notable changes are:

1. Section 2 of the bill enables creation and transmittal of PT-61 form information in electronic format. This is a project that the Council of Superior Court Clerks of Georgia (hereinafter called “Council”) and the Georgia Superior Court Clerks’ Cooperative Authority (hereinafter called “Authority”) have been collaborating on with the Department of Revenue (hereinafter called “DOR”). The plan is to create a web-based system for generating and collecting data pertaining to PT-61 forms. Filing parties would be required to use a web-based application to create a PT-61 form. Upon creation, the data on the form would be sent to the Clerk’s Authority for storage and distribution to DOR and the Department of Audits and locally to tax commissioners and tax assessors. Paper forms would no longer be used. Clerks’ real estate data and the electronic PT-61 form data would be “linked” by way of a unique identifier that would be created on a printout the filing party would receive and file along with the real estate instrument being filed in the clerk’s office (in lieu of a paper form). On the automated real estate system the clerk uses for indexing deeds, the unique identifier would be entered to “link” the clerk’s index data to the data created from the web-based PT-61 form system. This

would eliminate the need for clerks to copy deed instruments for tax assessors and tax commissioners locally, since the PT-61 form system would enable parties using the system to access actual deed images and copy them (for official purposes only). Actual PT-61 form data would be sent electronically to the state auditor.

2. Section 2 also enables clerks to electronically certify the payment of RETT, thus eliminating the need for clerk's office staff having to enter the data on a paper form.
3. Section 4 eliminates monthly reporting to DOR of the amount collected for RETT. The new provision requires the clerk of superior court to file a report "showing the total amount of tax distributed among the state, county, and municipalities during the preceding year" within 60 days of the end of each calendar year.
4. Section 5 radically changes how clerks distribute RETT. Instead of sending RETT collections to DOR on a monthly basis, each clerk of superior court will be required to distribute RETT collections "in the proportion that revenues derived from (intangible recording taxes) are derived." This means that the clerk of superior court must distribute RETT to each entity that levies or causes to levy taxes on real property or intangible personal property in the county in which the clerk holds office. More information is provided about this topic below.
5. Section 5 also specifies that, when real property is situated in more than one county, the "appropriate portion of (RETT) shall be equitably divided among the counties by the clerk of superior court." What this means is, for example, when a warranty deed is filed in which real estate in more than one county is conveyed, the clerk of superior court must determine how much property is situated in each county and ensure that the clerk of the superior court of each county in which property exists receives the percentage of RETT paid corresponding to the percentage of property in each county. (Note: these issues will need to be addressed further during the next legislative session).

Q - When is SB 97 effective?

A - If not vetoed by the governor, the bill would become effective on July 1, 2003.

Q - I do not collect intangible recording taxes (IRT). Does SB 97 still apply to my office?

A - SB 97 applies to every clerk of superior court in the state, whether a clerk collects IRT or not.

Q - Does SB 97 require clerks to distribute RETT collections in the same manner as IRT is distributed?

A - Yes. Section 5 of the bill specifically states that clerks of superior court will use the procedures for distributing IRT for distributing RETT.

Q - Doesn't SB 97 put a lot of extra work on clerks of superior court?

A - This question can only be answered subjectively. Clerks responsible for collecting and disbursing IRT have reported no significant increase in their workload since all use automated systems for accounting for funds. Once set up properly, a computer-based accounting system automatically distributes receipted funds on a percentage basis to each taxing entity entitled to RETT proceeds. On the other hand, a clerk who distributes RETT

manually would expect an increased workload. The key to cutting down on work required by SB 97 is to use a computer-based accounting system. Other provisions of the bill are designed to cut down on the amount of reporting and copying for which clerks of superior court have long been responsible.

Q - I am not one of the counties in which the clerk of superior court collects IRT, so I do not have a computer-based accounting system. How do I get such a system and who is going to pay for it?

A - SB 97 did not address the kind of system a clerk should use, nor does it provide funding for clerks of superior court to obtain a computer-based accounting system. Local funds will have to be used for this purpose since no other funds are available. Since counties and other taxing entities entitled to receive RETT proceeds will start receiving monthly RETT distributions (as opposed to yearly disbursements), clerks of superior court that do not have an automated system should consider asking for funding from their county governing authority for accounting software on the basis that: 1) SB 97 is an unfounded mandate requiring specialized services from the clerk; and 2) that, since the clerk is facilitating faster payment of RETT to counties and other taxing entities, acquisition of accounting software will enable the clerk to more accurately and expeditiously perform the duties required of him or her to ensure prompt payment of RETT funds. Computers provided by the authority for real estate and personal property projects may be used for accounting, so the only costs counties will have to bear is for accounting software. Most vendors doing business with clerks in Georgia provide accounting software at a minimal cost.

Q - Are all computer-based software programs designed to accommodate automated distribution of RETT?

A - Most are. Some are better than others. Some are expensive. Some are not. Some are complicated, while others are simple to use. When deciding which accounting software program is best for this purpose, it is wise to see the programs in action and to get referrals from clerks of superior court using a particular program. Do not blindly purchase or contract for usage of a computer-based accounting program without doing your homework.

Q - Once SB 97 becomes effective, are we going to abandon usage of paper PT-61 forms completely?

A - That is what is planned; however, as previously stated, the answer to this question depends on several factors—primarily how quickly the Authority, Council and DOR complete the web-based PT-61 form system. Each agency is working diligently to facilitate completion of the system as soon as possible. Although time is of essence, everyone working on the project—DOR, the Council and the Authority—realize that the system absolutely must ensure accurate and timely collection of data that will be utilized by all state and local taxing officials. The goal is to have an integrated system that eliminates the duplication of data entry at all levels.

Q - Will my vendor have to change my real estate indexing program as a result of establishment of the web-based PT-61 form system?

A - Probably. However, changes should be minor. In designing the web-based PT-61 form

system, everyone has diligently tried to limit the amount of work required of clerks and their staff locally relative to data entry. The most probable programming change will be the addition of a single field in which the clerk or his or her staff will enter the unique identifier produced by the web-based PT-61 form system once the filing party has created the form online. A printed form will be generated upon completion online and will be presented to the clerk at the time of filing a real estate instrument upon which RETT is due and payable will contain the unique identifier. The idea is to include the unique identifier number in the clerk's automated real estate indexing system, thereby linking the local indexing system to the PT-61 form data created at the authority.

Q - If we go to a web-based PT-61 form system, will I still need to copy all deeds upon which RETT is paid for my tax assessor and/or tax commissioner?

A - Working with DOR, the system should eliminate the need for copying deeds for tax assessors and/or tax commissioners. Hopefully, the PT-61 form system will be provided online to both local tax agencies and will link PT-61 form data to the statewide real estate information system so that, when looking at a particular PT-61 form, a tax assessor could view and print, for example, actual deed images on the Authority's server. This would eliminate the need for copying real estate instruments.

Q - What costs will there be clerks and counties have to bear once the web-based PT-61 form gets off the ground?

A - None. Actually, the web-based system should be a cost-saver for counties, since it will eliminate duplicate entry of RETT and other deed-related data. Currently, the clerk of superior court and tax assessor are entering identical data derived from PT-61 and real estate conveyances. The system will provide tax assessors electronic PT-61 form data that the filing party created and existing electronic real estate information system data stored on the Authority's servers, thus eliminating the need for the tax assessor's office having to key data previously entered by the clerk's office (and vice versa). The only foreseeable additional costs that may occur would be purchasing additional computer terminals for public PT-61 form creation purposes.

Q - I am worried that I will not know everything I need to know about SB 97 in time. Is there going to be any formal training about the bill anytime soon?

A - The leadership of the Council and the Association, as well as members of the Superior Court Clerks' Training Council, have been discussing the best time to conduct training on SB 97. At this time, it appears the earliest time for training will be during the Summer meeting at Brasstown, on the week of June 6. If enough clerks of superior court want training on SB 97 prior to this time, they should contact Linda Hays, Clerk of the Superior Court of Newton County, who is chairperson of the training council, and urge her to facilitate an earlier training session.