

Senate Bill 97 Provisions
Enacted by 2003 Georgia General Assembly
Effective July 1, 2003

SB 97, enacted by the Georgia General Assembly in 2003, makes substantial changes to statutes pertaining to real estate transfer (RETT) and intangible recording taxes (IRT). Most significantly, the bill requires that, on or after July 1, 2003, real estate transfer taxes shall be collected and disbursed in the same manner currently provided for collection and disbursement of intangible recording taxes—i.e., that the clerk of superior court shall disburse the IRT to taxing entities based on a formula using the percentage each local taxing entity receives from the local millage rate.

The governor did not sign or veto the bill by the timeline established by law for doing so. Therefore, the bill will become effective on July 1, 2003.

Provisions of Bill

SECTION 1.

Section 1 added to O.C.G.A. § 48-6-2 two new circumstances in which persons are exempt from paying real estate transfer tax. The exemptions are codified in subparagraphs (a) (10) and (11) of O.C.G.A. § 48-6-2 and are shown in red text, as follows:

“Chapter 6 of Title 48 of the Official Code of Georgia Annotated, relating to intangible taxes, is amended by striking Code Section 48-6-2, relating to exemptions, and inserting in its place a new Code section to read as follows:

‘48-6-2. (a) The tax imposed by Code Section 48-6-1 shall not apply to:

- (1) Any instrument or writing given to secure a debt;
- (2) Any deed of gift;
- (3) Any deed, instrument, or other writing to which any of the following is a party: the United States; this state; any agency, board, commission, department, or political subdivision of either the United States or this state; any public authority; or any nonprofit public corporation;
- (4) Any lease of lands, tenements, standing timber, or other realty or any lease of any estate, interest, or usufruct in any lands, tenements, standing timber, or other realty;
- (5) Any transfer of real estate between a husband and wife in connection with a divorce case;
- (6) Any order for year’s support awarding an interest in real property as provided in Code Section 53-5-11 of the ‘Pre-1998 Probate Code,’ if applicable, or Code Section 53-3-11 of the ‘Revised Probate Code of 1998’;
- (7) Any deed issued in lieu of foreclosure if the deed issued in lieu of foreclosure is for a purchase money deed to secure debt that has been in existence and properly executed and recorded for a period of 12 months prior to the recording of the deed in lieu of foreclosure;
- (7.1) The deed from the debtor to the first transferee at a foreclosure sale;
- (8) Transfer of property which is acquired as provided in Code Sections 32-3-2 and 32-3-3;
- (9) Any deed of assent or distribution by an executor, administrator, guardian, trustee, or custodian; any deed or other instrument carrying out the exercise of a power of appointment; and any other instrument transferring real estate to or from a fiduciary; provided, however, that the exemption provided under this paragraph shall apply only if the transfer is without valuable consideration; ~~and~~
- (10) Any deed, instrument, or other writing which effects a division of real property among joint tenants or tenants in common if the transaction does not involve any consideration other than the division of the

property; and

(11)(A) Any deed, instrument, or other writing through which real property is transferred from one or more individual owners to a corporation, partnership, or other entity if the individual owner or owners of the real property also have a majority ownership interest in the corporation, partnership, or other entity to which the property is transferred; or

(B) Any deed, instrument, or other writing through which real property is transferred from a corporation, partnership, or other entity to one or more individuals if the individual or individuals to whom the property is transferred also have a majority ownership interest in the corporation, partnership, or other entity by which the property is transferred.

(b) In order to exercise any exemption provided in this Code section, the total consideration of the transfer shall be shown."

Implications for Clerks of Superior Court

- When deeds enumerated in subparagraph (10) and (11) are presented for filing, the party shall be required to disclose upon affidavit (on the PT-61 form) that the deed, instrument, or other writing presented for filing is not subject to the tax imposed by O.C.G.A. § 48-6-1.
- The clerk of superior court shall not be required to collect the RETT upon such instrument when such disclosure is made.

SECTION 2.

Section 2 amended O.C.G.A. § 48-6-4 to provide that disclosure of the amount of real estate transfer tax owed on a deed, instrument or other writing described in O.C.G.A. § 48-6-1 may be made electronically in a format prescribed by the commissioner of the Department of Revenue. This provision facilitates online creation and remittance of PT-61 forms. Specific text of Section 2 is as follows (with amendments shown in red text):

"Said chapter is further amended by striking Code Section 48-6-4, relating to payment of real estate transfer tax, certification of payment, and recording of deed, in its entirety and inserting in its place a new Code Section 48-6-4 to read as follows:

'48-6-4. (a) It is the intent of the General Assembly that the tax imposed by this article be paid to the clerk of the superior court or his or her deputy prior to and as a prerequisite to the filing for record of any deed, instrument, or other writing described in Code Section 48-6-1.

(b) No deed, instrument, or other writing described in Code Section 48-6-1 shall be filed for record or recorded in the office of the clerk of the superior court or filed for record or recorded in or on any other official record of this state or of any county until the tax imposed by this article has been paid; provided, however, that any such deed, instrument, or other writing filed or recorded which would otherwise constitute constructive notice shall constitute such notice whether or not such tax was in fact paid.

(c) The amount of tax to be paid on a deed, instrument, or other writing shall be determined on the basis of written disclosure of the consideration or value of the interest in the property granted, assigned, transferred, or otherwise conveyed. The disclosure shall be made on a form or in electronic format prescribed by the commissioner and provided by the ~~commissioner~~ clerk of the superior court. By the fifteenth day of the month following the month the deed, instrument, or other writing is recorded, a physical or electronic copy of each disclosure shall be forwarded or made available electronically to the state auditor and to the tax commissioner and the board of tax assessors in the county where the deed, instrument, or other writing is recorded.

(d) Upon payment of the correct amount of tax, the clerk of the superior court or his or her deputy shall enter upon or attach to the deed, instrument, or other writing a certification of the fact that the tax as imposed by this article has been paid, the date, and the amount of the tax. The certification shall be signed by the clerk or deputy clerk receiving the tax. The certification may also be attested to electronically by the clerk or deputy clerk in such manner as may be prescribed by the commissioner.

(e) The certificate entered upon or attached physically or electronically to the deed, instrument, or other

writing shall be recorded with the deed, instrument, or other writing and shall be in the physical or electronic form required by the commissioner. In each case, however, the certificate shall bear the signature of the clerk or his or her deputy. The certificate may be relied upon by subsequent purchasers or lenders as evidence that the proper tax has been paid. In the event any deed, instrument, or other writing upon which tax is imposed by this article is required to be recorded in more than one county, the required tax shall be paid to the clerk or his or her deputy of the county in which the deed, instrument, or other writing is first recorded."

Implications for Clerks of Superior Court

- The Georgia Superior Court Clerks' Cooperative Authority and the Georgia Department of Revenue are currently working on a project whereby PT-61 forms may be accessed and completed online by parties filing instruments requiring disclosure on the PT-61 form. The project, when completed, would enable parties to complete the forms from their offices or from a terminal in the office of each clerk of superior court. The clerk would receive a computer-generated, verified form, indicating that the PT-61 form information had been provided on the statewide, web-based system. That form would be relied upon by the clerk for verifying disclosure information required by law. A system would be established for "linking" real estate data and PT-61 form information, thus providing even more data about property conveyances to taxing authorities.
- Data entered on the online PT-61 form would be transmitted immediately to the Authority for storage. The data would be available to all taxing entities (Department of Revenue and local tax commissioners and tax assessors), providing each entity any information that has been collected. For example, a local tax assessor would be able to receive a report of all PT-61 form information completed for property in his or her county. The information would be in electronic format, enabling the tax assessor to query the data or to compile it into a desired format. Paper and carbon copies of PT-61 forms would no longer be produced.
- Until the web-based system is developed and operable, filing parties will continue to use paper PT-61 forms for disclosure purposes.

SECTION 3.

Section 3 provides that each clerk of superior court shall be responsible for collecting real estate transfer taxes. The provisions of Section 3 are as follows:

"Said chapter is further amended by striking Code Section 48-6-5, relating to the collection of real estate transfer tax and fees, in its entirety and inserting in its place a new Code Section 48-6-5 to read as follows:

'48-6-5. (a) Each clerk of the superior court is designated as an agent of the commissioner for the purpose of shall be responsible for collecting the tax provided in this article. Each clerk may affix certificates to the deeds, instruments, or other writings with respect to which a tax is required to be paid pursuant to this article. Each clerk shall also perform the duties provided in this article.

(b) In the performance of the duties imposed by this article, each clerk of the superior court shall be entitled to a fee in addition to all other fees provided by law of 50¢ for each deed, instrument, or other writing with respect to which a tax is required to be paid as provided in this article and filed for record and recorded in the county in which the clerk of the court holds office. The fee shall be withheld from the funds received in payment of the tax ~~and remitted to the commissioner as provided in this article~~. Fees withheld by a clerk shall be distributed as follows:

(1) In the event the clerk withholding the fees is compensated on a salary basis, the amount of the fees withheld shall be paid into the treasury of the county; or

(2) In the event the clerk is not compensated on a salary basis, the amount of the fees withheld shall be retained by the clerk as compensation for the duties performed under this article."

Implications for Clerks of Superior Court

- Nothing new is required of clerks of superior court by this section.
- The 50¢ commission provided for in O.C.G.A. § 48-6-5 (a) is collectable when RETT is paid on an instrument. **It is the only commission to which clerks of superior court are entitled for collecting RETT.** It is collected from the amount of RETT paid before other disbursements of RETT are made to taxing entities (see Section 5 below for more information).
- The 6% commission payable for collection of intangible recording taxes is not collected, retained, and paid out to the governing authority for the collection of RETT (as provided for in O.C.G.A. § 48-6-73, for collecting IRT).
- The 50¢ commission should not be confused with the 50¢ due and payable to the Superior Court Clerks' Retirement Fund of Georgia. That amount is collected for each real estate instrument filed in a clerk's office, as provided for in O.C.G.A. § 47-14-51 (b), requiring, "In addition to all other legal costs, the sum of 50 cent(s) shall be charged and collected in addition to any other fees or costs for the processing of all instruments pertaining to real estate filed in the superior courts." **The 50¢ payable to the Superior Court Clerks' Retirement Fund is deducted from the filing fee, not from RETT paid.**

SECTION 4.

Section 4 repeals previous requirements of O.C.G.A. § 48-6-6 in which clerks of superior court were mandated to remit a report of monies collected for real estate transfer taxes (RETT) every 30 days. The amendment provides that clerks of superior court need only file an annual report to the commissioner of the Department of Revenue of RETT collections "within 60 days of the end of each calendar year. Actual text of Section 4 is as follows:

"Said chapter is further amended by striking Code Section 48-6-6, relating to reports of real estate transfer tax, in its entirety and inserting in its place a new Code Section 48-6-6 to read as follows:

'48-6-6. Within 60 days of the end of each calendar year, the clerk of the superior court shall file with the commissioner a report showing the total amount of tax distributed among the state, county, and municipalities during the preceding calendar year. ~~Each clerk of superior court shall remit to the commissioner at least once every 30 days and at more frequent intervals as the commissioner may direct all funds collected by the clerk in payment of the tax imposed by this article and shall make appropriate reports as the commissioner requires."~~

Implications for Clerks of Superior Courts

- This provision is intended to streamline reporting required of clerks of superior court.
- At the end of each calendar year, a report of the total amount of tax distributed to each taxing entity (i.e., the state, county and municipalities and state) must be sent to the Georgia Department of Revenue within 60 days.
- Clerks of superior court no longer are required to send the Department of Revenue a monthly report of RETT distributions.

SECTION 5.

Section 5 changes how real estate transfer taxes (RETT) are distributed by clerks, conforming procedures to those currently employed for distribution of intangible recording taxes (IRT). All clerks of superior court will be required, on or after July 1, 2003 to distribute RETT collected using the methods provided in Code Section for IRT. Additionally, when RETT is paid on property situated in more than one county, the tax shall be “equitably divided among the counties by the clerk of the superior court.” Previously, it was the duty of the Department of Revenue to divide the tax among such counties when the real property was situated in more than one county.

Actual provisions of Section 5 are as follows (with amendments shown in red text):

“Said chapter is further amended by striking Code Section 48-6-8, relating to the distribution of real estate transfer tax, in its entirety and inserting in its place a new Code Section 48-6-8 to read as follows:

‘48-6-8. All At least once every 30 days, all revenues derived from the tax imposed by this article shall be distributed among the state and municipalities in which the real property is situated and the county in which the real property is situated in the same proportion that revenues derived from the taxes imposed by Article 3 of this chapter are divided. If the real property is situated in more than one county, the appropriate portion of the tax shall be equitably divided among the counties by the ~~commissioner~~ clerk of the superior court.”

Implications for Clerks of Superior Court

- EVERY clerk of superior court in Georgia is required to distribute real estate transfer taxes (RETT) in the same manner established by law for distribution of intangible recording taxes.
- The provisions of SB 97 are mandatory, not discretionary, so each clerk of superior court must comply with its provisions.
- This means that, by July 1, 2003 every clerk should have a system for accurately collecting and distributing the RETT. The most efficient and simplest system that may be used for this purpose is a computer-based accounting system. Most vendors doing business with clerks of superior court in Georgia and that provide real estate, lien, plat or case-management systems have a computer-based accounting system that calculates distributions automatically once the total amount of RETT is received. So, clerks of superior court should seriously consider contracting with a vendor for this purpose. Clerks that already use a computer-based system will need to make or have their vendor make programming changes to accommodate automated distribution of RETT.
- Article 3 of Chapter 6 of Title 48 of the Official Code of Georgia Annotated contains laws relative to collection of intangible recording taxes (IRT).
- A training guide relative to the collection and distribution of IRT was provided to clerks of superior court in 1988. Clicking the following link provides access to the guide: ***http://www.libertyco.com/intangible_tax_guide_revised.pdf***.
- O.C.G.A. § 48-6-72 (c) contains the procedure that clerks of superior court must use for distribution of both IRT and RETT on the effective date of SB 97, requiring: “(c) The collecting officer, on the basis of the tax commissioner’s or tax collector’s records and of certificates which shall be supplied by each school district, municipality, or other tax district in the county, shall distribute at least monthly the revenue collected under this article (Article 3 of Chapter 6 of Title 48 of the Official Code of Georgia Annotated).

Each year the millage rates used in the distributions of revenue under this Code section shall be based upon the immediately preceding year’s millage rate of each participating tax authority as provided in this article.” This means that each clerk of superior court, prior to July 1, 2003 must ascertain the millage rates of each taxing entity in his or her county [including the county commission, municipalities that levy a tax, the local school board, industrial and/or other authorities that levy taxes, and the State of Georgia (.25%)]. These millage rates may be calculated using the formula shown on the above-referenced training guide (click link to view the guide).

- Effective July 1, 2003, distributions of sums collected for each taxing entity must be made “at least once every 30 days,” meaning that each entity should receive a check monthly of the amount due that entity.
- If the real property is situated in more than one county, the appropriate portion of the tax shall be equitably divided among the counties by the [clerk of the superior court](#). Thus, when a disclosure is made on real property situated in more than one county, the clerk should calculate the percentage of property situated in each county and disburse to the clerk of superior court of other counties the pro rata portion of RETT paid.

Example A		
Sample Real Estate Transfer Tax Collection with Fee Deduction		
For Property Situated in a Municipality that Levies a Tax on Property		
A warranty deed is presented to the clerk of superior court for filing, conveying property in the City of Hinesville, which is a taxing entity as defined in O.C.G.A. § 48-6-8. The PT-61 form indicates that the consideration for the instrument is \$100,000.00 and that the instrument is subject to assessment of the Real Estate Transfer Tax (i.e., the instrument is not exempt from payment of the tax).		
RETT due on \$100,000.00 instrument (at a rate of \$1.00 per \$1,000 consideration)	\$100.00	O.C.G.A. § 48-6-1
Less RETT collection fee (payable to county governing authority unless clerk is on fee system)	(\$0.50)	O.C.G.A. § 48-6-5(b)
Net RETT to be distributed to taxing entities	\$95.50	

Example B

Sample Real Estate Transfer Tax Collection with Fee Deduction

For Property Situated in an Unincorporated Area of County

A warranty deed is presented to the clerk of superior court for filing, conveying property in an unincorporated area of Liberty County. PT-61 form indicates that the consideration for the instrument is \$35,000.00 and that the instrument is subject to assessment of the Real Estate Transfer Tax (i.e., the instrument is not exempt from payment of the tax).

RETT due on \$100,000.00 instrument (at a rate of \$1.00 per \$1,000 consideration)	\$35.00	O.C.G.A. § 48-6-1
Less RETT collection fee (payable to county governing authority unless clerk is on fee system)	(\$0.50)	O.C.G.A. § 48-6-5(b)
Net RETT to be distributed to taxing entities	\$34.50	

Example C

Calculation of Factors for Making RETT Distribution and Example of Distributions to Taxing Entities for Property in Municipality that Levies a Tax

(As Shown in Example A Above)

Item	Entity	Millage	Factor	To Calculate RETT Due Each Taxing Entity, Multiply Factor Times RETT Paid (Less 50¢ Collection Fee)		
				RETT Tax Amount to be Distributed = \$95.50	RETT Due Per Entity	
1.	City of Hinesville	10.30	.2633598	X	\$95.50	\$ 25.15
2.	County Gov. Auth.	10.46	0.3631	X	\$95.50	\$ 25.54
3.	Hospital Auth.	2.00	0.0694	X	\$95.50	\$ 4.88
4.	Industrial Auth.	2.00	0.0694	X	\$95.50	\$ 4.88
5.	School Bond	.20	0.0069	X	\$95.50	\$ 0.49
6.	School System	13.90	0.4825	X	\$95.50	\$ 33.94
7.	State of Georgia	0.25	0.0087	X	\$95.50	\$ 0.61
8.	Total	39.11	100.00			\$95.50

A factor is the percentage of an entity's millage of the total millage for all taxing entities. In Example A above, the total millage is for all unincorporated taxing entities and a municipality, the City of Hinesville. To calculate the factor for each entity, divide the entity's millage by the total millage. For example, the City of Hinesville's factor is produced by dividing 10.3 (millage) by 39.11 (total millage) or $10.3/39.11 = .2633598$. Factors can be "carried out" to as many decimal places as desired.

Example D						
Calculation of Factors for Making RETT Distribution and Example of Distributions to Taxing Entities for Property in Unincorporated Area of County						
(As Shown in Example B Above)						
Item	Entity	Millage	Factor	To Calculate RETT Due Each Taxing Entity, Multiply Factor Times RETT Paid (Less 50¢ Collection Fee)		
				RETT Tax Amount to be Distributed = \$34.50	RETT Due Per Entity	
1.	City of Hinesville	0.0	0.0	X	\$34.50	\$0.0
2.	County Gov. Auth.	10.46	0.363068	X	\$34.50	\$ 12.53
3.	Hospital Auth.	2.00	0.06942	X	\$34.50	\$ 2.39
4.	Industrial Auth.	2.00	0.06942	X	\$34.50	\$ 2.39
5.	School Bond	.20	0.006942	X	\$34.50	\$ 0.24
6.	School System	13.90	0.482471	X	\$34.50	\$ 16.65
7.	State of Georgia	0.25	0.008678	X	\$34.50	\$ 0.30
8.	Total	28.81	100.00			\$34.50

To view a sample daily journal for distribution of Real Estate Recording Taxes, see Example E on page 9.

SECTION 6.

Section 6 provides that the effective date of SB 97 is July 1, 2003.

Example E

Sample Journal of Distributions of Real Estate Transfer Tax (including Millage Rates and Factors)

Instrument Information		RETT Due (Multiply Consideration X .0010)	Collect. Fee	Sub. RETT to Distribute	Entity	State/ Ga.	School	County	School Bond	Indust. Auth.	Hosp. Auth.	Hinesville	Total
Grantee Name	Consideration (Amt. Paid for Property)				Millage	.25	13.90	10.46	.20	2.00	2.00	10.30	39.11
					Unicorp. Factor	.00868	.48247	.36307	.00694	.06942	.06942	0.0	100.0
					Municip. Factor	.00639	.35541	.26745	.00511	.05114	.05114	.26336	100.0
Willis	\$77,600.00	\$77.60	\$.50	\$77.10	Unincorp.	\$0.67	\$37.20	\$27.99	\$0.54	\$5.35	\$5.35	\$0.00	\$77.10
Wilson	\$120,000.00	\$120.00	\$.50	\$119.50	Unincorp.	\$1.04	\$57.66	\$43.39	\$0.83	\$8.30	\$8.30	\$0.00	\$119.50
Goad	\$66,198.00	\$66.20	\$.50	\$65.70	Unincorp	\$0.57	\$31.70	\$23.85	\$0.46	\$4.56	\$4.56	\$0.00	\$65.70
Moran	\$131,070.00	\$131.10	\$.50	\$130.57	Unincorp	\$1.13	\$63.01	\$47.42	\$0.91	\$9.07	\$9.07	\$0.00	\$130.60
Martin	\$66,700.00	\$66.70	\$.50	\$66.20	Hinesville	\$0.42	\$23.53	\$17.71	\$0.34	\$3.39	\$3.39	\$17.43	\$66.20
Ulrey	\$20,000.00	\$20.00	\$.50	\$19.50	Unincorp	\$0.17	\$9.41	\$7.08	\$0.14	\$1.35	\$1.35	\$0.00	\$19.50
Ball	\$57,950.00	\$58.00	\$.50	\$57.45	Unincorp	\$0.50	\$27.74	\$20.88	\$0.40	\$3.99	\$3.99	\$0.00	\$57.50
Charles	\$97,920.00	\$98.00	\$.50	\$97.42	Unincorp	\$0.85	\$47.04	\$35.40	\$0.68	\$6.77	\$6.77	\$0.00	\$97.50
Yaztek	\$57,000.00	\$57.00	\$.50	\$56.50	Unincorp	\$0.49	\$27.26	\$20.51	\$0.39	\$3.92	\$3.92	\$0.00	\$56.50
Total	\$694,438.00	\$694.60	\$4.50	\$689.94	Unincorp	\$5.84	\$324.54	\$244.22	\$4.67	\$46.70	\$46.70	\$17.43	\$690.10