About the Fiscal Research Center (FRC)

Non-partisan academic think tank that leverages the Andrew Young School of Policy Studies’ public finance expertise to assist Georgia’s state and local policy-makers on questions of tax and economic policy.

- **Technical assistance to state government:**
  - “Fiscal notes”
  - Georgia Tax Expenditure Report
    [http://opb.georgia.gov/tax-expenditure-reports](http://opb.georgia.gov/tax-expenditure-reports)
- **Technical assistance to local governments:**
  - Incorporation studies
  - Revenue forecasting
- **Technical assistance projects outside Georgia**
- **Academic research**

[fcg.gs.edu](http://fcg.gs.edu)
Annual publications
Annual publications: Georgia’s Taxes

STATE & LOCAL REVENUE SOURCES

State General Fund Tax Collections
Fiscal Year Ending June 30, 2015

- Personal Income: 51%
- General Sales and Use: 28%
- Corporate Income and License: 5%
- Motor Fuels: 6%
- Insurance Premium: 2%
- Other: 8%

frc.gsu.edu
Annual publications: Georgia’s Taxes

For each state and local tax:

- Tax Base and Rate Structure
- Major Exemptions and Special Provisions (if any)
- Administrative Responsibilities and Payment Dates
- History of Major Changes
- Revenue Production (5 years)
- Comparisons with Other States
- Georgia Code References

frc.gsu.edu
Annual publications: Georgia’s Rankings Among the States

### Per Capita State & Local Taxes, FY 2013

<table>
<thead>
<tr>
<th>RANK</th>
<th>STATE</th>
<th>IN $</th>
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Fiscal Notes

O.C.G.A. § 28-5-42:
For any proposed legislation having a significant impact on state revenues or expenditures of any state department, agency or other body, a fiscal note is required before the bill may be considered by the state Senate or House of Representatives.
Fiscal Notes

- Analysis of impact of proposed legislation on the state budget.
- Responsibility of the Office of Planning and Budget (OPB) and the State Auditor (Audits).
- For revenue related fiscal notes, the state contracts with the FRC for the analysis and estimates necessary.
- The FRC has been preparing such revenue fiscal notes since 2005.
Tax Policy in the 2017 Legislative Session

*Tax bills that were adopted*

- Purpose of the bill
- What it changed in the tax code
- How it affects the state budget

*Select bills that were not*

*Also, a legal perspective on sales tax issues*
Tax Policy in the 2017 Legislative Session

Adopted Legislation, by Tax and Purpose:

- **Income tax, targeted incentives**
  - HB 155 – Georgia Musical Investment Act
  - HB 199 – Interactive entertainment and post-production credits
  - HB 237 – Public Education Innovation Fund credit

- **Income tax, broader investment and jobs incentives**
  - HB 73 – Revitalization zone investment and jobs credits
  - HB 265 (part) – Quality Jobs Tax Credit (amendments)
  - SB 133 (part) – GA Agribusiness and Rural Jobs Act
Adopted Legislation, by Tax and Purpose:

- **Sales tax, targeted incentives/relief**
  - HB 125 – Partial exemption for major boat repairs
  - HB 247 – Expand mfg. exemption to concrete mixing
  - HB 265 (part) – Exempt theater renovation expenses and certain arts admissions

- **Other taxes, targeted or general relief**
  - HB 340 – TAVT, revise taxation of leased vehicles
  - SB 133 (part) – CNWT exemption for smaller corporations
Tax Policy in the 2017 Legislative Session

Noteworthy Legislation Not Adopted:

- **Income tax, reform/relief**
  - *HB 329 – House- and Senate-passed versions, other options, ended in conference*

- **Sales tax, reforms**
  - *HB 61 – “Economic Nexus” bill*
  - *HB 225 – “Uber” bill*

- **Other**
  - *HB 118 – Registered Fantasy Contest Operators Act*
Tax Policy in the 2017 Legislative Session

- **HB 155 – Georgia Musical Investment Act**
  - *Tax credit for the production of certain live musical or theatrical performances, or recorded musical performances.*
  - *Credit = 15% of qualified expenditures*
    - + 5% for productions in Tier 1 and Tier 2 counties
  - *Subject to:*
    - minimum expenditure thresholds of $100k to $500k, depending on type of production
    - annual cap of $5 million in CY 2018, increasing to $10 million for CY 2019 and $15 million for CY 2020-22
  - *Expires Dec. 31, 2022*

_Est’d state revenue impact, FY18-22: -$48.3 mil_
Tax Policy in the 2017 Legislative Session

- **HB 199 – Interactive entertainment and post-production credits**
  - Amends the Georgia Entertainment Industry Investment Act
    - Expands existing tax credit for interactive entertainment production
    - Creates new tax credit for post-production activities
  - Interactive entertainment (IE) credit = 20% of investment
    - + 10% bonus credit for a “qualified Georgia promotion”
    - Subject to $250,000 payroll and investment thresholds, and $12.5 million annual cap
    - No sunset

IE est’d state revenue impact, FY18-22: -$33 mil
Tax Policy in the 2017 Legislative Session

- **HB 199 – Interactive entertainment and post-production credits (continued)**
  - **Post-production (PP) credit = 20% of qualified expenditures**
    - + 10% if original production made in Georgia and + 5% for qualified expenditures in Tier 1 or 2 counties
    - Subject to $500,000 qualified expenditure threshold and $10 million annual cap
  - **Small PP company credit = 20% of qualified expenditures**
    - w/o bonus credits
    - subject to $100,000 expenditure threshold (up to $500,000) and separate $1 million annual cap
  - **Both sunset January 1, 2023**

*PP est’d state revenue impact, FY18-22: -$72 to -$74 mil*
Tax Policy in the 2017 Legislative Session

- **HB 237 – Public Education Innovation Fund (PEIF) credit**
  - Authorizes the state-chartered PEIF Foundation to accept private donations and make grants
  - Creates income tax credit for donations to the fund
  - Credit = 100% of amount donated, subject to
    - Annual per-taxpayer caps, depending on type of filer, and
    - Annual aggregate cap of $5 million
  - Sunsets January 1, 2021

*Est’d state revenue impact, FY18-22: -$15 mil*
Tax Policy in the 2017 Legislative Session

- **HB 73 – Revitalization zone (RZ) tax credits**
  - **Up to ten new RZs designated per year**
    - Local jurisdictions w/ < 15,000 population
    - Demonstrated economic distress
    - Concentration of historic commercial structures
  - **Three credits available**
    - **Certified entity credit** for new businesses creating 2+ FTE jobs
      - $2,000 per FTE job per year, up to $40,000 over five years
    - **Certified investor (CI) credit** for acquisition and development of commercial property w/in RZ
      - 25% of purchase price, up to $125,000 maximum credit
    - **Qualified rehabilitation expenditure credit** for rehab. of CI property
      - 50% of expenditures, up to $75,000 maximum credit
  - **Sunsets January 1, 2028**

*Est’d state revenue impact, FY18-22: -$15 mil*
Tax Policy in the 2017 Legislative Session

- **HB 265 – Two parts**
  - **Quality Jobs (QJ) Tax Credit amendments**
    - Extends period for reaching 50 job threshold for existing credit to 2 years
    - Creates additional 7-yr job-creation period
      - Subject to $2.5 qualified investment requirement
  
  Est’d state revenue impact, FY18-22: NA

- **Sales tax exemptions for**
  - theater renovation expenses; sunsets Jan. 1, 2019
  - certain arts admissions; sunsets July 1, 2020

  Est’d state revenue impact, FY18-22: -$9 to -$14 mil
Tax Policy in the 2017 Legislative Session

- **SB 133 – Two parts**
  - **Georgia Agribusiness and Rural Jobs Act**
    - *Creates income tax credit for investment in a qualifying rural fund making investments in rural GA*
    - RBIC or SBIC, $100 mil invested to date nationally
    - Credit = 15%/yr of $ invested, allowed in years 3-6 (60% total)
    - Cumulative cap of $100 million
    
    *Est’d state revenue impact, FY18-22: -$11 to -$23 mil*

- **CNWT exemption for smaller corporations**
  - $100,000 or less net worth
  
  *Est’d state revenue impact, FY18-22: -$19 mil*
Tax Policy in the 2017 Legislative Session

- **HB 125 – Partial exemption for major boat repairs, a.k.a. the “yacht repair” bill**
  - Exemption for repair and replacement parts and materials used in major boat repairs
  - Caps state and local sales taxes due on any major repair at $35,000
  - Sunsets July 1, 2025

*Est’d state revenue impact, FY18-22: -$3 to -$4 mil*
Tax Policy in the 2017 Legislative Session

- **HB 247 – Expand sales tax exemption for manufacturing to concrete mixing industry**
  - Exempts only maintenance and repair parts for concrete mixing trucks and equipment
  - Sunsets July 1, 2020

*Est’d state revenue impact, FY18-22: -$3 to -$4 mil*
Tax Policy in the 2017 Legislative Session

- **HB 340 – Title Ad Valorem Tax (TAVT) revisions**
  - Revises taxation of leased vehicles
    - Old law taxed full FMV
    - Revised to tax only the sum of the lease payments

*Est’d state revenue impact, FY18-22: -$168 mil*
## Tax Policy in the 2017 Legislative Session

### Adopted Legislation – Projected revenue impact

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<thead>
<tr>
<th></th>
<th>FY 2018</th>
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<th>FY 2020</th>
<th>FY 2021</th>
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<td>HB 265**</td>
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<td>($4.3)</td>
<td>($6.1)</td>
<td>($10.0)</td>
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<td><strong>($74.9)</strong></td>
<td><strong>($99.9)</strong></td>
<td><strong>($103.8)</strong></td>
<td><strong>($101.3)</strong></td>
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* midpoint of low and high estimates

** arts exemptions only
Tax Policy in the 2017 Legislative Session
What wasn’t adopted:

- HB 118 – Registered Fantasy Contest Operators Act (a.k.a. “fantasy sports” bill)
  - Creates state regulatory structure for fantasy contest operators
  - Imposes annual registration fees and tax on revenues
    - Tiered registration fees from $5,000 to $15,000
    - Entry fees less prizes paid taxed at 6%

*Est’d state revenue impact, FY18-22: $168 mil*
Tax Policy in the 2017 Legislative Session

What wasn’t adopted:

- **HB 225 – The “Uber” bill**
  - *Initial bill targeted only ride-sharing services*
  - *Expanded to cover other facilitators and brokers*
    - Lodging networks (e.g. Airbnb)
    - Auction sites and marketplaces (e.g. Ebay)

*Est’d state revenue impact, FY18-22: $301 mil*
Tax Policy in the 2017 Legislative Session

What wasn’t adopted:

- **HB 61 – Economic nexus bill**
  - Objective is to increase collection of taxes already owed on online sales.
  - Sets sales volume and transactions thresholds above which a seller of taxable property or services is deemed to have nexus in the state and thus an obligation to collect and remit sales tax to the state.
  - Estimated untaxed online sales in Georgia:
    - Approx. $5.1 billion in FY 2016
    - Representing $204 million in lost state revenues
  - Projected to grow > 8% per year through FY 2022
A Legal Perspective on HB 61
Georgia’s Proposed Economic Nexus Legislation

Prof. Lucia Smeal
School of Accountancy
Robinson College of Business

May 16, 2017
CAN STATES REQUIRE OUT-OF-STATE SELLERS TO COLLECT AND REMIT SALES AND USE TAX?

Yes, if the remote seller has ‘nexus’ with the taxing state. This is a *complex* legal and constitutional question.

**WHAT IS ‘NEXUS’?**

From Latin, *nexus* means ‘a binding together.’

**In State Taxation:**

Connection a taxpayer has with a state that allows the state to exercise its taxing powers.
SALES AND USE TAX NEXUS

The difference between a sales tax and a use tax:

▪ Sales tax is imposed on the retailer—the seller.
▪ A use tax is the equivalent of a sales tax but is imposed on the buyer/consumer.

U.S. Constitution’s Commerce Clause grants power to the federal government to regulate interstate commerce.

▪ Supreme Court has ruled that this implies that states cannot interfere with interstate commerce unless Congress explicitly permits them to do so.

▪ This “dormant” or “negative” Commerce Clause allows the U.S. Supreme Court to overturn state tax laws that discriminate against interstate commerce or interfere with it.
An out-of-state seller must have a “physical presence” in a state to establish sufficient nexus for requiring the seller to collect and remit sales tax on goods sold within the state.

Interpreted to mean that businesses must have a “bricks and mortar” operation in the state to be subject to state taxation.

Rules for income tax nexus differ.
EVOLUTION OF SALES TAX NEXUS

Advancements in technology and the dramatic rise in internet sales have called the physical presence test into question.

States have developed new legal theories of nexus to try and capture uncollected sales and use taxes from remote sellers.

- Economic Nexus and Notification Requirements
  - Georgia HB 61
- Click-through Nexus
- Affiliate Nexus/Attributional Nexus
- Agency Nexus
GEORGIA’S SUBSTANTIAL ECONOMIC PRESENCE TEST

HB 61 would expand “nexus” concept by relying on a substantial economic presence test for remote sellers.

Businesses would be subject to the nexus rule if they have

- $250,000 of in-state sales in total in the previous year

OR

- 200 or more in-state transactions

- Sellers would be required to collect and remit Georgia sales tax or notify purchasers in Georgia that they must file and pay the use tax.
- Annual sales and use tax statements would go to buyers and must be filed with the GA Department of Revenue.
- Direct challenge to *Quill’s* physical presence test.
- Legal uncertainty about the enforceability of any future version of the Georgia bill.
THE ‘KILL QUILL’ MOVEMENT

States have been systematically passing laws to develop a test case to challenge *Quill* in the Supreme Court, called “Amazon legislation.”

- Estimated $26 billion in uncollected sales tax revenue attributed to online sales.

In 2010, Colorado enacted an economic presence/notice and reporting requirement that was upheld by the 10th Circuit Court of Appeals in *Direct Mktg. Ass’n v. Brohl* (2016). The law takes effect July 2017. (parties settled)

U.S. Supreme Court declined to review the constitutional nexus issue in that case but did rule on a procedural matter. In that review, Justice Anthony Kennedy invited a challenge to *Quill*, suggesting it was time to revisit the physical presence test.
• “...a serious, continuing injustice faced by Colorado and many other States.”

• “…dramatic technological and social changes...in our increasingly interconnected economy. There is a powerful case to be made that a retailer doing extensive business within a State has a sufficiently substantial nexus to justify imposing some minor tax-collection duty, even if that business is done through mail or the Internet.”

• “When the Court decided *Quill*, mail order sales in the United States totaled $180 billion. ...But in 1992, the Internet was in its infancy. By 2008, e-commerce sales alone totaled $3.16 trillion per year in the United States.”
STATE STRATEGIES AFTER QUILL
(from Vermont Legislative Counsel’s January 2017 Presentation)

• Support federal legislation
• Streamlined Sales and Use Tax Agreement
• Click through legislation
• Increase use tax compliance
• Notification legislation
• Set up a state challenge to Quill
Georgia, HB 61 (not enacted)

South Dakota, SB 106: The South Dakota law was effective May 1, 2016, but in March 2017 was found to be unconstitutional by a state circuit court. The bill acknowledges possibility of constitutional challenge. Still in litigation. State is trying to get case to the U.S. Supreme Court.

Alabama, SB 96, Ala. Admin. Code r. 810-6-2-.9.03(1), Takes effect July 1, 2017. (currently under Administrative appeal)

Ohio: Supreme Court of Ohio upheld imposition of the Commercial Activity Tax, a gross receipts tax, on out of state taxpayers with at least $500,000 of annual sales to Ohio. (parties settled)

Other states with notification laws in place:
Vermont, Oklahoma, Kentucky, Louisiana, Tennessee (administrative rule)

Other efforts:
Arkansas S.B. 140
Hawaii S.B. 620, S.B. 622 and H.B. 345
Indiana S.B. 545
Maryland H.B. 1213 and S.B. 545
Mississippi H.B. 480
New Mexico H.B. 202 and S.B. 123
North Carolina S.B. 81
North Dakota S.B. 2298
Utah S.B. 110
Wyoming H.B. 19.
CLICK-THROUGH NEXUS

Defines an out-of-state business as having nexus in the state if sales are referred by an in-state business. About 20 states have click-through nexus.

• If an in-state, online business leads a customer via links (“clicking through”) to buy something from the out-of-state online seller.

• Minimum sales threshold, typically $10,000 to $50,000.

• Seller must make commission payments for website referrals.

• Georgia adopted this rule in 2012 for businesses with in-state referred sales of $50,000 over the previous 12 months.

• Courts have not constitutionally reviewed these statutes.
FEDERAL LEGISLATION

Many Members of Congress are persuaded by the fairness argument.

Main Street Fairness Act – S. 707
Marketplace Fairness Act of 2017 – S. 976
Remote Transactions Parity Act of 2017 – H.R. 2193

No Regulation Without Representation Act – H.R. 5893,
(Keep Quill Bill, 2016)
FEDERAL REQUIREMENTS

- States must simplify tax administration – adopt Streamlined Sales and Use Tax Agreement and provide software.
- Exemption for small online merchants ($1 million in remote sales)
- Audit protection

Two categories:
- Minority view: Tax based on Origin Sourcing
- Majority view: Tax based on Destination Sourcing
OUTLOOK

- Senate passed a bill in 2013, but House never took up the issue.
- President Trump said during the campaign, “Amazon is getting away with murder, tax-wise.” Vice President Mike Pence has expressed support for federal nexus legislation.
- National poll finds 7 out of 10 people support e-fairness legislation. (streamlinesalestax.org)
- Amazon has conceded. Amazon received large incentives in S.C. for establishing a book warehouse. (now closed)
  - Large sellers may follow Amazon and stop fighting.

Key Website: Marketplacefairness.org
Tax Policy in the 2017 Legislative Session

- **HB 329 – Personal income tax changes**
  - **House-passed version**
    - Replace current graduated tax rate structure (1% to 6%) with a single, flat tax rate of 5.4%
    - Eliminate itemized deduction for Georgia income taxes paid
    - Create a state earned income tax credit (EITC) equal to 10% of the federal EITC, nonrefundable
    - Index personal and dependent exemption amounts, and standard deduction amounts for inflation

*Est’d state revenue impact*, **FY18-22: -$78 mil**

* before inflation adjustments
Tax Policy in the 2017 Legislative Session

- **HB 329 – Personal income tax changes**
  - House-passed version
    - State EITC was an incomplete fix for the effects of the flat rate on low and middle-income taxpayers

**Tax Change for Non-Itemizers (w/o EITC)**
Tax Policy in the 2017 Legislative Session

- **HB 329 – Personal income tax changes**
  - *House-passed version*
    - *State EITC was an incomplete fix for the effects of the flat rate on low and middle-income taxpayers*

### EITC on Federal Returns from GA, TY 2014

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<td>670,190</td>
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<td>$10,000 to under $25,000</td>
<td>569,270</td>
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<tr>
<td>$25,000 to under $50,000</td>
<td>286,590</td>
<td>1,024,750</td>
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- Avg EITC
- EITC share of filers in group (right scale)
Tax Policy in the 2017 Legislative Session

- **HB 329 – Personal income tax changes**
  - Ways & Means revised version
    - Replace state EITC with a “work tax credit” (WTC) available to all, but phasing out at higher income levels
    - Other provisions generally the same
    - Considered various scenarios with different WTC amounts and phase-outs, and different flat rates to
      - Minimize redistributional effects while
      - Constraining revenue losses
    - Larger revenue loss

*Est’d state revenue effects varied; one late version est’d at -$156 mil for FY 2019, -$734 mil over 5 years*
Tax Policy in the 2017 Legislative Session

- **HB 329 – Personal income tax changes**
  - Senate-passed (Finance substitute) version
    - Reduce top bracket tax rate from 6% to 5.65%
    - Eliminate itemized deduction for Georgia income taxes paid
    - Increase personal exemptions by $300/taxpayer
    - Index for inflation all tax bracket thresholds, personal and dependent exemptions, and standard deduction amounts

*Est’d state revenue impact*, FY18-22: -$1.74 bil

* with inflation adjustments, assuming 2% inflation

- The Senate also combined into this bill all of HB 61, the economic nexus bill
Tax Policy in the 2017 Legislative Session

Questions?

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