

DEC 22, 2023 08:59 AM

Mandy Harrison
Mandy Harrison, Clerk
McIntosh County, Georgia

IN THE SUPERIOR COURT OF MCINTOSH COUNTY
STATE OF GEORGIA

TROY and TARYN NIXON)
)
 Plaintiff,) **CIVIL ACTION NO. SUV2023000081**
)
 v.)
)
 CITY OF DARIEN, GEORGIA)
)
)
 Defendant.)

**APPLICATION FOR ATTORNEY’S FEES, REIMBURSEMENT OF EXPENSES AND
SERVICE AWARD TO CLASS REPRESENTATIVE
WITH MEMORANDUM OF LAW IN SUPPORT**

Lead counsel, James L. Roberts, IV of Roberts Tate, LLC, who represents Plaintiffs Troy and Taryn Nixon (“Named Plaintiffs”), individually and on behalf of all persons similarly situated, respectfully submits this Application for Attorney’s Fees, Reimbursement of Expenses and Service Award to Class Representative (the “Application” or the “Motion”) with Memorandum of Law in Support representing to the Court as follows:

I. INTRODUCTION

The present Motion seeks compensation for Class Counsel for the time and expense invested by Class Counsel in this class action lawsuit (the “Lawsuit”). Class Counsel has invested a substantial number of hours and all expenses necessary for the prosecution of the case on behalf of the Class Members and at the expense of other paying legal work without receiving any payment in return. After conducting early, informal discovery into the facts and legal basis for this Lawsuit, filing the Complaint, a First Amended Complaint and a Motion for Class Certification with Memorandum in Support, Class Counsel and counsel for Defendant City of Darien (the “City”) began settlement negotiations. See Affidavit of James L. Roberts, IV (the “Roberts Aff.”) attached

hereto as Exhibit (“Ex.”) “A” at ¶¶11-17. Ultimately the Parties were able to reach a settlement (the “Settlement”). Id. at ¶17. The Settlement is memorialized in the [Proposed] Consent Judgment on Aggregate Refund and Order (the “[Proposed] Consent Judgment”). Id.

The Parties filed a Joint Motion for Preliminary Approval of Class Action Settlement (“Preliminary Approval”) on September 8, 2023. This Court granted preliminary approval of the Settlement and entered the First Amended Preliminary Approval Order on October 17, 2023. As a result of the commitment by Class Counsel and the Class Representatives, the Class Members stand to receive a lump sum payment in the amount of \$200,000.00 (the “Aggregate Refund Fund”). Each Qualified Class Member will receive his or her pro-rata share of his or her calculated refund up to 100% of the total refund due. Id. at ¶¶20, 22.

The City vigorously defended this Lawsuit. Id. at ¶35. The dedication and persistence of Class Counsel caused the City to enter into the Settlement to refund the Class Members for taxes paid for 2016 through 2022 based on the incorrect application of the City of Darien homestead exemption for municipal purposes found in House Bill 1197 (“HB 1197”) (the “Homestead Exemption”). A copy of HB 1197 is attached as Exhibit “B”.

Throughout this litigation, Class Counsel has not received any compensation or payment for their work on behalf of the Class Members or reimbursement for the expenses advanced on their behalf. Id. at ¶31. As its fee in this litigation, Class Counsel requests the payment of eighty thousand dollars (\$80,000.00) (the “Proposed Class Counsel Fee”), which represents 40% of the Aggregate Refund Fund. Id. at ¶43. Importantly, this is the same percentage awarded by this Court in Mary A. Bailey v. McIntosh County, Georgia, Superior Court of McIntosh County, Georgia, SUV2021000009, Order on Attorney’s Fees and Costs and Service Award (May 5, 2022). Bailey involved the McIntosh homestead exemption that contains the exact same language as the

Homestead Exemption in this case. See Ex. A, Roberts Aff. at ¶15. It is also the same percentage that the Superior Court of Glynn County awarded in 2019 in a similar tax refund class action styled Coleman v. Glynn County, CE12-01785-063, CE13-01480-063 and CE14-00750-063, Superior Court of Glynn County, Order on Attorney’s Fees and Costs and Service Award (Nov. 8, 2019). It is the same percentage awarded in 2020 in two (2) similar tax refund cases – one in the Superior Court of Wayne County and one in the Superior Court of Charlton County. See Altamaha Bluff, LLC, et al. v. Thomas, et al., 14CV0376, Superior Court of Wayne County, Order on Attorney’s Fees and Costs and Service Award (Oct. 19, 2020); Toledo Manufacturing Co., et al. v. Charlton County, SUCV201900232, Superior Court of Charlton County, Order on Attorney’s Fees and Costs and Service Award (Dec. 10, 2020). It is the same percentage awarded in 2021 in a case involving the collection of illegal fees in the Superior Court of Chatham County. See Old Town Trolley Tours of Savannah, Inc. v. The Mayor and Aldermen of The City of Savannah, Civil Action No. SPCV20-007667-MO, Superior Court of Chatham County, Amended Order on Attorney’s Fees and Costs and Service Award (Feb. 23, 2021). And even more recently, in VTAL Real Estate, LLC v. Mayor and Aldermen of the City of Savannah, Civil Action Number SPCV21-00789-CO, Superior Court of Chatham County, Order on Attorney’s Fees and Service Award (Sept. 15, 2023).

Class Counsel also requests that a service award be awarded to Named Plaintiffs as the Class Representative in the amount of \$5,000.00 (the “Proposed Service Award”). In addition to the Proposed Class Counsel Fee and the Proposed Service Award, Class Counsel requests reimbursement for its actual costs and expenses in the amount of \$320.97. See Ex. A, Roberts Aff. at ¶54.¹

¹ The City takes no particular position in favor or against the Proposed Class Counsel Fee and the Proposed Service Award and defers such decision to the judgment and discretion of the Court. See [Proposed] Consent Judgment at Section F.

II. OVERVIEW OF THE LAWSUIT AND PROPOSED CONSENT JUDGMENT

Named Plaintiffs filed this Lawsuit on behalf of herself and all taxpayers similarly situated seeking refunds under O.C.G.A. § 48-5-380 (the “Refund Statute”) for taxes paid for 2016 through 2022. The Lawsuit alleges that the City assessed and collected ad valorem taxes based on the incorrect application of the City’s homestead exemption for taxes for municipal purposes the Homestead Exemption. See Ex. B, HB 1197. This is a refund class action under O.C.G.A. § 48-5-380 (the “Refund Statute”).

The Homestead Exemption provides that “[e]ach resident of the City of Darien is granted an exemption on that person’s homestead from City of Darien ad valorem taxes for municipal purposes in an amount equal to the amount by which the current year assessed value of that homestead exceeds the base year assessed value of the homestead.” Id. The Homestead Exemption Section 1(a)(2) states that “Base Year” is “the taxable year immediately preceding the taxable year in which the exemption under [the Homestead Exemption] is first granted to the most recent owner of such homestead.” Id. at Section 1(a)(2). In short, the Homestead Exemption provides for exemption from ad valorem taxes for municipal purposes on the increase in value of property over the Base Year Value. Upon information and belief, McIntosh County set the Homestead Exemption amount for the City for each year from 2016 through 2022.

Named Plaintiffs are residents of the City of Darien, McIntosh County, Georgia and the owners of City of Darien Tax Parcel Number D011A0024 located at 102 Haven Court, Darien, Georgia 31305 (the “Subject Parcel”). Named Plaintiffs applied for and were granted the Homestead Exemption. Despite the plain language of the Homestead Exemption stating that the “Base Year” should be the tax year “immediately preceding” the tax year that the Homestead Exemption was granted to the most recent owner, the City treated the year the exemption was

granted as the Base Year rather than the immediately preceding year.

The language of the Homestead Exemption is the exact same language as the Glynn County, Georgia homestead exemption for county and school taxes known as the “Scarlett Williams Exemption” enacted May 1, 2000 pursuant to House Bill 1690 (“HB 1690”) and House Bill 1691 (“HB 1691”). A copy of HB 1690 attached as Exhibit “C” and a copy of HB 1691 is attached as Exhibit “D”. Compare HB 1197 Section 1(a)(2) and (b) with HB 1690 Section 1(a)(2) and (b). The Georgia Court of Appeals interpreted the term “Base Year” in the Scarlett Williams Exemption (which is defined exactly the same way as it is defined in HB 1197) and held that “[b]ased on the plain language of the Act, the base year is merely the taxable year immediately preceding the taxable year in which the applicant was the owner of the property on January 1 – in other words, the year prior to the year in which the homestead exemption was granted.” Coleman, et al. v. Glynn County, Georgia, et al., 344 Ga. App. 545, 549, 809 S.E.2d 383, 387 (2018). Class Counsel was lead counsel in Coleman. See Ex. A, Roberts Aff. at ¶14.

The language of the Homestead Exemption is also the exact language as the McIntosh County, Georgia homestead exemption for county taxes found in House Bill 382 (“H.B. 382”) and House Bill 450 (“H.B. 450”) (the “McIntosh County Homestead Exemption”). A true and correct copy of HB 382 is attached as Exhibit “E” and a true and correct copy of HB 450 is attached as Exhibit “F”. Upon information and belief, based at least in part on the Georgia Court of Appeals’ decision in Coleman, the Board of Commissioners of McIntosh County approved a policy to refund taxpayers for the illegal and erroneous assessment of taxes based on the incorrect application of the Base Year by using the year in which the Homestead Exemption was first granted rather than the immediately preceding year. The policy approved for refund by the Board of Commissioners of McIntosh County did not comply with Georgia law, resulting in McIntosh County being sued

in a class action lawsuit in 2021 based on McIntosh County's incorrect application of the term Base Year. See Mary A. Bailey v. McIntosh County, Georgia, Superior Court of McIntosh County, Civil Action No. SUV2021000009. Ultimately, McIntosh County settled the class action lawsuit in 2022 acknowledging the improper application of the McIntosh County Homestead Exemption and agreeing to refund illegally and erroneously assessed taxes from 2016 through 2020 with the Court granting final approval to the settlement on May 5, 2022. See <http://mcintoshcountyga.com/214/Tax-Refund-Case>. Class Counsel was lead counsel in Bailey. See Ex. A, Roberts Aff. at ¶15.

The Refund Statute provides that “each county ... *shall* refund to taxpayers any and all taxes [w]hich are determined to have been erroneously or illegally assessed and collected from the taxpayers ... or [w]hich are determined to have been voluntarily or involuntarily overpaid by the taxpayers.” O.C.G.A. § 48-5-380(a) (emphasis supplied). The Georgia Court of Appeals ruled that the statute of limitation under the Refund Statute is five (5) years. The Court ruled that under O.C.G.A. § 48-5-380(g) the Refund Statute “allows for the filing of a suit against a county ... for a tax refund within five years of the date the disputed taxes were paid.” Hojeij Branded Foods, LLC v. Clayton County, Georgia, et al., 355 Ga. App. 222, 228, 843 S.E.2d 902, 907 (2020) (cert denied Dec. 7, 2020).

On May 31, 2023 Named Plaintiffs commenced this lawsuit. See Ex. A, Roberts Aff. at ¶10. On June 1, 2023 Named Plaintiffs filed a Motion and Memorandum in Support thereof to Certify Suit as Class Action. Id. at ¶11. Thereafter on June 21, 2023 Named Plaintiffs filed a First Amended Verified Class Action Complaint. Id. at ¶12. The City on July 21, 2023 filed an Answer to Named Plaintiffs' First Amended Verified Class Action Complaint raising numerous defenses. Id. at ¶13.

As set forth in the First Amended Verified Class Action Complaint, Motion to Certify Suit as Class Action and for the reasons set forth in the Memorandum in Support of the Motion to Certify Suit as Class Action filed on June 1, 2023, the Settlement Class is defined as taxpayers similarly situated, who like Named Plaintiffs, own property in the City of Darien, Georgia who received the Homestead Exemption in the calculation of their tax bill in 2016, 2017, 2018, 2019, 2020, 2021 or 2022 for whom the City of Darien used the year in which the Homestead Exemption was first granted as the Base Year (the “Incorrect Base Year”) rather than the immediately preceding year (the “Correct Base Year”) in calculating the exemption amount under the Homestead Exemption for property tax bills in 2016, 2017, 2018, 2019, 2020, 2021 or 2022 and for whom the value frozen in the year in which the Homestead Exemption was first granted is greater than the value in the immediately preceding year (hereinafter the “Class”). The Parties stipulated to the certification of this Class in the Settlement. See [Proposed] Consent Judgment at Section B.

Ultimately, the parties were able to reach a settlement (the “Settlement”). The Settlement is memorialized in the [Proposed] Consent Judgment. See Ex. A, Roberts Aff. at ¶17. The [Proposed] Consent Judgment executed by the Parties was negotiated at arm’s length without collusion. Id. at ¶18. The terms of the Settlement (which still must be approved by the Court at a Final Approval Hearing as set forth in the First Amended Preliminary Approval Order dated October 17, 2023) are set forth in the [Proposed] Consent Judgment and covers refunds for taxes paid for 2016 through 2022. Id. at ¶19.

The direct benefits to the Class Members include the creation of a cash fund in the amount of \$200,000.00 (the “Aggregate Refund Fund”). Id. at ¶20. The City will pay the Aggregate Refund Fund within fourteen (14) days of final approval of the Consent Judgment. In the event

that the City fails to make the payment into the Aggregate Refund Fund, post judgment interest shall accrue at the rate of 7.0% per annum as set by O.C.G.A. §7-4-2(a)(1)(A) on said amount until paid in full. Id. at ¶21.

Under the terms of the [Proposed] Consent Judgment each Qualified Class Member (as defined in the [Proposed] Consent Judgment) will receive his or her pro-rata share of his or her calculated tax refund up to 100% of the total calculated refund due from the Aggregate Refund Fund less Fees and Expenses (as defined in the [Proposed] Consent Judgment). This is called the “Pro-Rata Tax Refund”. Id. at ¶22. “Pro-rata” means the proportion each Qualified Class Member’s Pro-Rata Refund bears to the total Aggregate Refund Fund. Id. at ¶23. This percentage shall be used to calculate each Qualified Class Member’s pro rata share of the Fees and Expenses. Upon identification of all Qualified Class Members and determination of the Pro-Rata Tax Refund for each and determination of all Fees and Expenses, the Aggregate Refund Fund shall be divided by the sum of the Pro-Rata Tax Refund for each Qualified Class Member. The resulting percentage shall be each Qualified Class Member’s portion of the Fees and Expenses (“Pro-Rata Percentage of Fees and Expenses”). Id. at ¶24. The product of the Pro-Rata Percentage of Fees and Expenses times the Fees and Expenses shall be deducted from the sum of each Qualified Class Member’s Pro-Rata Tax Refund and the remainder will be the amount distributed to each Qualified Class Member as set forth in the [Proposed] Consent Judgment. Id. at ¶25.

Under the [Proposed] Consent Judgment, within thirty (30) days of the later of the expiration of the period for objecting to individual refund amounts or a final ruling by the Special Master on any individual refund calculation, the Administrators shall identify to the Nixon QSF Administrator the amount of refund due each taxpayer and the address to which the refund is to be mailed to the Category 1 Class Members (as defined in the [Proposed] Consent Judgment). The

Nixon QSF Administrator shall issue refund checks from available funds in the Aggregate Refund Fund to the Category 1 Class Members within thirty (30) days of receipt of such notice. Id. at ¶26. Under the [Proposed] Consent Judgment, within thirty (30) days following the expiration of the period to submit claims forms, the Administrators shall identify to the Nixon QSF Administrator Category 2 Class Members who have properly filled out and returned claims forms, the amount of the refund due each taxpayer and the address to which the refund is to be mailed. The Nixon QSF Administrator shall issue refund checks from available funds in the Aggregate Refund Fund to the Category 2 Class Members within thirty (30) days of receipt of such notice. Id. at ¶27. The \$200,000.00 Aggregate Refund Fund provides for an immediate cash benefit for the Class Members as set forth in the [Proposed] Consent Judgment. Id. at ¶28.

Our firm conducted early, informal discovery into the facts and the legal basis for this Lawsuit prior to filing the Complaint and before conducting settlement discussions with the City. Id. at ¶16. Significantly, Class Counsel was lead counsel in both Coleman and Bailey which were cases involving homestead exemptions that contain the exact same language as the Homestead Exemption in this case. See Ex. A, Roberts Aff. at ¶¶1

Class Counsel spent a substantial number of hours investigating the refund claims. Id. at ¶32. We reviewed property record cards, tax bills, tax digests and detailed City spreadsheets. Id. at ¶33. All of this information was essential to our ability to understand the facts, scope of the refund claims and the amount of potential refunds owed to the Class. Id. at ¶34. All told, Class Counsel invested no less than 140 hours, plus actual expenses of not less than \$2,591.83. Id. at ¶¶52, 54.

III. APPROVAL OF ATTORNEY'S FEES AND EXPENSES

A. The Court Should Approve the Attorney's Fees and Costs Requested

The Proposed Class Counsel Fee should be approved by the Court. Fee requests for common fund class actions such as this are analyzed under the factors set forth in Camden I Condominium Association, Inc., et al v. Dunkle, 946 F.2d 768 (11th Cir. 1991) (the “Camden I Factors”). As set forth below, in consideration of the Camden I Factors, including the extraordinary relief obtained for the Class Members, the Court should conclude that the Proposed Class Counsel Fee is appropriate, fair, and reasonable and should be approved. See In re Cardizem CD Antitrust Litigation, 218 F.R.D. 508, 534 (E.D. Mich. 2003) (“Society’s stake in rewarding attorneys who can produce such benefits in complex litigation such as in the case at bar counsels in favor of a generous fee.”) (Ellipsis and quotation marks omitted)).

1. The Law Provides That Class Counsel Fees Are to be Awarded from the Common Fund Created Through Their Efforts.

Under Georgia law, tax refund actions under the Refund Statute, such as this case, are considered common fund cases. See Barnes v. City of Atlanta, 281 Ga. 256, 260, 637 S.E.2d 4, 7 (2006). See also Coleman v. Glynn County, CE12-01785-063, CE13-01480-063 and CE14-00750-063, Superior Court of Glynn County, Order on Attorney’s Fees and Costs and Service Award (Nov. 8, 2019) at ¶2; Altamaha Bluff, LLC, et al. v. Thomas, et al., 14CV0376, Superior Court of Wayne County, Order on Attorney’s Fees and Costs and Service Award (Oct. 19, 2020) at ¶2; Toledo Manufacturing Co., et al. v. Charlton County, SUCV201900232, Superior Court of Charlton County, Order on Attorney’s Fees and Costs and Service Award at ¶2 (Dec. 10, 2020); Old Town Trolley Tours of Savannah, Inc. v. The Mayor and Aldermen of The City of Savannah, Civil Action No. SPCV20-007667-MO, Superior Court of Chatham County, Amended Order on Attorney’s Fees and Costs and Service Award at ¶2 (Feb. 23, 2021); and Mary A. Bailey v. McIntosh County, Georgia, Superior Court of McIntosh County, SUV2021000009, Order on Attorney’s Fees and Costs and Service Award at (May 5, 2022). Where a common fund is

generated in litigation for the benefit of persons other than the named plaintiff, reasonable attorney's fees are paid from the fund. Similar to this Lawsuit, the Barnes case was a class action under the Refund Statute that sought a refund of occupation taxes imposed by the City of Atlanta on attorneys. In that context, the Supreme Court of Georgia explained that:

a person who at his own expense and for the benefit of persons in addition to himself, maintains a successful action for the preservation, protection or creation of a common fund in which others may share with him is entitled to reasonable attorney fees from the fund as a whole.

Id. at 260 (internal citations omitted). Accord Coleman, supra; Altamaha Bluff, LLC, supra; Toledo Manufacturing Co., et al., supra; Old Town Trolley Tours of Savannah, Inc., supra; Bailey, supra.

The United States Supreme Court and the Eleventh Circuit have also recognized that a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to reasonable attorney's fees from the fund as a whole. See Boeing Co. v. Van Gemert, 444 U.S. 472, 478 (1980) (“[A] lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney’s fee from the fund as a whole.”). See also Camden I, 946 F.2d at 771 (“Attorneys in a class action in which a common fund is created are entitled to compensation for their services from the common fund, but the amount is subject to court approval.”). As explained by the United States District Court for the Northern District of Georgia, adequate compensation promotes the availability of counsel for aggrieved persons. See Lunsford v. Woodforest Nat’l Bank, 2014 U.S. Dist. LEXIS 200716 (N.D. Ga. 2014).

The controlling authority for awarding attorney’s fees in common fund cases in the Eleventh Circuit is Camden I.² See In re Equifax, Inc. Customer Data Security Breach Litigation, 2020 WL 256132, at *31 (N.D. Ga. Mar. 17, 2020), aff’d in part, rev’d in part and remanded by In re Equifax, Inc. Customer Data Security Breach Litigation, 999 F.3d 1247 (11th Cir. 2021). Georgia courts rely on Camden I when awarding fees in a common fund case. See Friedrich v. Fidelity Nat’l Bank, 247 Ga. App. 704, 545 S.E.2d 107 (2001). In Camden I, the Eleventh Circuit held that:

the percentage of the fund approach [as opposed to the lodestar approach] is the better reasoned in a common fund case. Henceforth in this circuit, attorneys’ fees awarded from a common fund shall be based upon a reasonable percentage of the fund established for the benefit of the class.

Camden I, 949 F.2d at 774. See also McGaffin, et al. v. Argos USA, LLC, 2020 WL 3491609, at *8 (S.D. Ga. Jun. 26, 2020) (“In the Eleventh Circuit, the calculation of attorneys’ fees in class actions is done under the percentage method.”); In re Checking Account Overdraft Litig., 830 F. Supp. 2d 1330, 1362 (S.D. Fla. 2011) ([T]he Eleventh Circuit made clear in *Camden I* that percentage of the fund is the exclusive method for awarding fees in common fund class actions.”); accord Barnes, 275 Ga. App. 385 (awarding a percentage of the common fund as attorneys’ fees in a tax refund case under the Refund Statute). Thus, the only question before the Court is: what percentage constitutes a reasonable percentage of the fund established for the benefit of the class.

2. Application of the *Camden I* Factors Supports the Requested Fee

² Since its enactment in 1966 Georgia courts have read the state class action statute (O.C.G.A. § 9-11-23) to track the Federal Rule 23, and in 2003 O.C.G.A. § 9-11-23 was in fact modified to conform to the federal rule. Thus, Georgia courts rely on federal cases interpreting Federal Rule 23 when interpreting O.C.G.A. § 9-11-23. See Sta-Power Indus., Inc., v. Avant, 134 Ga. App. 952-953 (1975) (“Since there are only a few definitive holdings in Georgia on [O.C.G.A. § 9-11-23], we also look to federal law to aid us.”). Similarly, it is appropriate to look to federal law when considering an approval of attorney’s fees and costs in a class action.

As a general rule, the Eleventh Circuit has provided a set of factors the Court should use to determine a reasonable percentage to award class action counsel:

- (1) the time and labor required;
- (2) the novelty and difficulty of the relevant questions;
- (3) the skill required to properly carry out the legal services;
- (4) the preclusion of other employment by the attorney as a result of his acceptance of the case;
- (5) the customary fee;
- (6) whether the fee is fixed or contingent;
- (7) time limitations imposed by the clients or the circumstances;
- (8) the results obtained, including the amount recovered for the clients;
- (9) the experience, reputation, and ability of the attorneys;
- (10) the “undesirability” of the case;
- (11) the nature and the length of the professional relationship with the clients; and
- (12) fee awards in similar cases.

Camden I, 946 F.2d at 772, n.3 (citing factors originally set forth in Johnson v. Georgia Highway Express, Inc., 488 F.2d 714, 717-19 (5th Cir. 1974)).

a. Class Counsel Achieved an Excellent Result for the Class

The eighth Camden I Factor looks to the amount involved in the litigation with particular emphasis on the monetary results achieved in the case by class counsel. See Allapattah Servs., Inc. v. Exxon Corp., 454 F. Supp. 2d 1185 (S.D. Fla. 2006). As one court explained, in common fund cases “the monetary amount of the victory is often the true measure of [counsel’s] success.” Swedish Hosp. Corp. v. Shalala, 1 F.3d 1261, 1269 (D.C. Cir. 1993).

Here, the result obtained provides for the recovery of the illegal assessment of taxes for 2016 through 2022 by the City. See Ex. “A”, Roberts Aff. ¶9. The direct benefits to the Class Members include immediate cash payments from the \$200,000.00 Aggregate Refund Fund. Id. at ¶20. Each Qualified Class Member (as defined in the [Proposed] Consent Judgment) will receive his or her pro-rata share of his or her calculated tax refund up to 100% of the total calculated refund due from the Aggregate Refund Fund, less Fees and Expenses (as defined in the [Proposed] Consent Judgment). Id. at ¶¶22-25. See Creed v. Benco Dental Supply Co., No. 3:12-CV-01571, 2013 WL 5276109, at *4 (M.D. Pa. Sept. 27, 2013) (“Settling for close to the amount of full liability represents a respectable victory for the class members”); accord Barnes, 281 Ga. at 260 (upholding the use of the common fund doctrine as a matter of policy on the grounds that allowing class members to obtain the benefit of a lawsuit without contributing to its cost are unjustly enriched at the successful litigant’s expense). However, courts regularly find settlements to be fair even where “[p]laintiffs have not received the optimal relief.” Warren v. City of Tampa, 693 F. Supp. 1051, 1059 (M.D. Fla.1988).

The outcome in the [Proposed] Consent Judgment is truly an extraordinary result for the Class Members and weighs strongly in favor of awarding the Proposed Class Counsel Fee. See Williams v. Naples Hotel Grp., LLC, No. 6:18-cv-422-Orl-37DCI, 2019 WL 3804930, at *4 (M.D. Fla. July 29, 2019) (“The result achieved is a major factor in making a fee award.”).

b. The Time and Labor Required, Preclusion from Other Employment and the Time Limits Imposed

The first, fourth and seventh Camden I Factors – the time labor, preclusion of other employment, and the time limitations imposed – support Class Counsel’s fee request. In short, Class Counsel engaged in this Lawsuit against worthy, highly competent adversaries representing the City. See Ex. “A”, Roberts Aff. at ¶40.

Class Counsel spent a substantial number of hours investigating the refund claims in this Lawsuit. Id. at ¶32. On May 31, 2023 Named Plaintiffs commenced this Lawsuit. Id. at ¶10. On June 1, 2023 Named Plaintiffs filed a Motion and Memorandum in Support thereof to Certify Suit as Class Action. Id. at ¶11. On June 7, 2023 Named Plaintiffs filed a First Amended Verified Class Action Complaint. Id. at ¶12.

We expended significant resources researching and developing the legal theories and claims presented in the First Amended Class Action Complaint. Id. at ¶32. The proposed class exceed 170 members for each of the seven (7) years at issue. For many of these taxpayers we reviewed property tax record cards, tax bills and detailed City spreadsheets identifying every parcel that received the Homestead Exemption and providing specific parcel information including, among other things, the base year, year the Exemption was granted, the value in the current frozen year and the valuation in the prior year. We also reviewed tax digests. Id. at ¶33. All of this information was essential to our ability to understand the facts, scope of the refund claims and the amount of potential refunds owed to the Class. Id. at ¶34.

Additionally, we devoted significant time and effort to preparing a comprehensive damage analysis and calculation of the aggregate total refund owed. Id. at ¶37. The comprehensive damage analysis and calculation of the aggregate total refund owed was integral to negotiating the Settlement with the City. Id. at ¶38.

Although Class Counsel was able to reach the Settlement in this Lawsuit more efficiently than in some other cases (e.g., Altamaha Bluff, LLC, et al. v. Thomas, et al., supra (case pending for six (6) years) and Coleman v. Glynn County, supra (case pending for seven (7) years)) this reflects Class Counsel's experience in handling tax refund matters. Class Counsel was lead counsel in two (2) other refund class actions – Coleman and Bailey – where homestead exemptions

containing the exact same language as the Homestead Exemption in this case were litigated. Class Counsel knew the work and investigation that was required in order to reach a fair, adequate and reasonable Settlement wherein Class Members would receive up to 100% of the total calculated refund due. Moreover, based on lead Class Counsel's experience with tax refund cases, Class Counsel knew the issues they faced at every stage in the Lawsuit, knew the potential refund recovery to be had and the chance of achieving it. Similarly, this experience enabled Class Counsel to convince the City not only that Class Counsel were adequate to the task and willing to do what it took to achieve an excellent result, but that they genuinely understood – for both sides – what the case was worth given the law, facts and risks.

In sum, the total number of hours invested by Class Counsel and their staff on this Lawsuit is not less than 140. See Ex. "A", Roberts Aff. at ¶52. Obviously, this Lawsuit took an enormous amount of Class Counsel's time and frequently required prioritizing this Lawsuit over other work and/or required turning down new work that would have interfered with the vigorous prosecution of this Lawsuit. Id. at ¶53. See Yates v. Mobile Cnty. Pers. Bd., 719 F.2d 1530, 1535 (11th Cir. 1983) (finding that the expenditure of time necessarily had some adverse impact upon the ability of counsel for plaintiff to accept other work, and this factor should raise the amount of the award); see also Stalcup v. Schlage Lock Co., 505 F. Supp. 2d 704, 708 (D. Colo. 2007) (noting that priority of work that delays an attorney's other work is entitled to a premium). Significantly, Class Counsel expended this time and effort without any assurance that they would ever be compensated for their hard work. The amount of time and labor invested by Class Counsel at the expense of other work (and without assurance of compensation) weighs heavily in favor of the Proposed Class Counsel Fee.

c. **The Lawsuit Involved Difficult Issues and Presented Risk of Nonpayment**

The second, sixth and tenth Camden I Factors – the novelty and difficulty of the issues, whether the fee is contingent, and the “undesirability” of the case – support Class Counsel’s fee request. In undertaking to prosecute this complex Lawsuit entirely on a contingent fee basis, Class Counsel assumed a significant risk of non-payment or underpayment. See Ex. “A”, Roberts Aff. ¶31. That risk warrants an appropriate Class Counsel fee. Indeed, as the District Court for the Northern District of Georgia recently explained, “[a] contingency fee arrangement often justifies an increase in the award of attorneys’ fees. A large award is justified because if the case is lost a lawyer realizes no return for investing time and money in the case.” Equifax, 2020 WL 256132, at *33 (internal quotations and citation omitted). See also Lunsford v. Woodforest Nat’l Bank, 2014 U.S. Dist. LEXIS 200716, at *14 (“a contingency fee arrangement often justifies an increase in the award of attorney’s fees.”) (Internal citations omitted). See also In re Continental III. Sec. Litig., 962 F.2d 566 (7th Cir. 1992) (holding that when a common fund case has been prosecuted on a contingent fee basis, plaintiffs’ counsel must be adequately compensated for risk of non-payment). “Lawyers who are to be compensated only in the event of victory expect and are entitled to be paid more when successful than those who are assured of compensation regardless of result.” Jones v. Diamond, 636 F.2d 1364, 1382 (5th Cir. 1981) overruled on other grounds by International Woodworkers of America, et al. v. Champion Intentional Corp. 790 F.2d 1174 (5th Cir. 1986). This is so because of the risk that after investing a substantial number of hours class counsel may receive no compensation whatsoever.

Furthermore, the risks of contingent litigation are highlighted by cases that have been lost after thousands of hours have been invested in successfully opposing motions to dismiss and pursuing discovery. “Precedent is replete with situations in which attorneys representing a class

have devoted substantial resources in terms of time and advanced costs yet have lost the case despite their advocacy.” In re Xcel Energy, Inc. Sec., Derivative & ERISA Litig., 364 F. Supp. 2d 980, 994 (D. Minn. 2005).

Public policy concerns also support the requested fee. Class Counsel’s prosecution of this Lawsuit not only vindicates the current Class Members’ individual refund claims now but also ensures the continued availability of experienced and capable counsel to represent classes of plaintiffs who hold valid but small individual claims also supports the requested fee. See Ex. “A”, Roberts Aff. ¶42. As the United States District Court for the Northern District of Georgia recently recognized:

Generally, the contingency retainment must be promoted to assure representation when a person could not otherwise afford the services of a lawyer.... A contingency fee arrangement often justifies an increase in the award of attorney’s fees. This rule helps assure that the contingency fee arrangement endures. If this “bonus” methodology did not exist, very few lawyers could take on the representation of a class client given the investment of substantial time, effort, and money, especially in light of the risks of recovering nothing.

George v. Academy Mortg. Corp., 369 F. Supp. 3d 1356, 1373-74 (N.D. Ga. 2019). The District Court for the Southern District of Florida also explicitly recognized in a recent class action lawsuit that “[g]iven the positive societal benefits to be gained from attorneys’ willingness to undertake this kind of difficult and risky, yet important, work, such decisions must be properly incentivized.” In Re: Checking Account Overdraft Litigation, 2020 WL 4586398, at *20 (S.D. Fla. Aug. 10, 2020).

The history of this Lawsuit reveals the inherent risk faced by Class Counsel in accepting it on a contingency fee basis. For example, Class Counsel faced numerous risks throughout the pendency of this Lawsuit including the inherent risk of failing to obtain class certification or having the Lawsuit dismissed at the pleadings stage or upon a motion for summary judgment. Because

the Lawsuit involved a municipality, there were also risks concerning sovereign immunity.

Despite Class Counsel's efforts in litigating this Lawsuit, Class Counsel remains uncompensated for the time invested and uncompensated for the expenses advanced on behalf of the Class. Id. at ¶31. There can be no doubt that this Lawsuit entailed a substantial risk of nonpayment for Class Counsel and involved difficult issues. The assumption of this risk and investment by Class Counsel without assurance of payment weighs heavily in favor of the Proposed Class Counsel Fee.

d. Requested Fee Comports with Fees Awarded in Similar Cases

The fifth and twelfth Camden I Factors – the customary fee and awards in similar cases – supports approval of Class Counsel's fee request. The Eleventh Circuit explained that “[t]here is no hard and fast rule mandating a certain percentage of a common fund which may reasonably be awarded as a fee because the amount of any fee must be determined upon the facts of the case.” Camden I, 946 F.2d at 774. See also Equifax, 2020 WL 256132, at *31 (confirming Camden I does not require any particular percentage). However, the Camden I noted that “an upper limit of 50% of the fund may be stated as a general rule, although even larger percentages have been awarded.” Camden I, 946 F.2d at 774-75 (internal citations omitted). In other words, the Court could award as much as 50% of the Aggregate Refund Fund as fees. Class Counsel, however, is seeking an award of fees that is much less than this upper limit.

While the Eleventh Circuit set the upper limit at 50% for common fund cases, the Georgia Supreme Court established what should be considered a floor of 33.3% for class counsel fees in the particular context of a tax refund class action under the Refund Statute. See e.g., Barnes, et al v. City of Atlanta, 275 Ga. App. 385, 620 S.E.2d 846 (2005), rev'd on other grounds, Barnes, 281 Ga. 256 (2006) (awarding 33.3%). Notably, however, this fee was set in a case that started more

than twenty years ago in 1999 when 33.3% was the customary contingency percentage. See e.g., Gaskill v. Gordon, 942 F. Supp. 382, 387-88 (N.D. Ill. 1996), aff'd, 160 F.3d 361 (7th Cir. 1998) (finding that 33% is the norm, but still awarding 38% of settlement fund). Today, 40% is the customary contingency percentage in standard contingency cases while 50% is the customary contingency fee for tax refund and tax appeal cases. See Ex. A, Roberts Aff. at ¶¶44-46.

Here, the Proposed Class Counsel Fee, which is 40% of the Aggregate Refund Fund, falls within the range of reasonable fee awards for both class actions and in the market generally. Significantly, courts ruling on class action fee petitions have held that “[t]he percentage method of awarding fees [i.e., fees in common fund cases] in class actions is consistent with, and is intended to mirror, practice in the private marketplace where attorneys typically negotiate percentage fee arrangements with their clients.” Pinto v. Princess Cruise Lines, Ltd d/b/a Princess Cruises, 513 F. Supp. 2d 1334, 1340 (S.D. Fla. 2007).

In fact, the fees sought in this action is the exact percentage that was awarded in Coleman, supra, Altamaha Bluff, LLC, et al., supra, Toledo Manufacturing Co., et al. supra, Old Town Trolley Tours of Savannah, Inc., supra, Bailey, supra and VTAL supra. All of these cases were class action refund cases. Finally, class counsel fees of 40% or more of a common fund are routinely approved by Courts across the Country. See, e.g. In re Ampicillin Antitrust Litig., 526 F. Supp. 494, 498 (D.D.C. 1981) (45% of the common fund); Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp., 480 F. Supp. 1195, 1199 (S.D.N.Y. 1979), aff'd, 622 F.2d 1106 (2d Cir. 1980) (approximately 53% of the common fund); Zinman v. Avemco Corp., 1978 WL 5686 (E.D. Pa. Jan. 18, 1978) (50%); Howes v. Atkins, 668 F. Supp. 1021 (E.D. Ky. 1987) (40% of the common fund). The record here leaves no doubt that the Proposed Class Counsel Fee is

appropriate and comports with attorney's fees awarded in similar cases and, accordingly, this factor favors the proposed fee award.

e. **The Lawsuit Required a High Level of Skill**

The third, ninth and eleventh Camden I Factors – the skill, experience, reputation and ability and nature and length of professional relationship with the client – also support approval of Class Counsel's fee request. The Class Members were represented in this Lawsuit by competent counsel with extensive experience. See Ex. "A", Roberts Aff. at ¶¶3-8, 47-49. Class Counsel have conferred a significant benefit on the Class. The outcome was made possible by Class Counsel's extensive experience in tax law and tax refund matters as well as experience with complex litigation. Id. See In Re: Checking Account Overdraft Litigation, 2020 WL 4586398, at *19 ("In the private market place, counsel of exceptional skill commands a significant premium. So too should it be [for class actions].").

In evaluating the quality of representation by Class Counsel, the Court should also consider the quality of opposing counsel. See Camden I, 946 F.2d 772 n.3. See also Equifax, 2020 WL 256132, at *33. In this Lawsuit the City was well-represented by extremely capable counsel including Samuel G. Oliver, Esquire and Richard E. Braun, Jr., Esquire. See Ex. "A", Roberts Aff. at ¶40. Mr. Oliver and Mr. Braun were worthy, highly competent and professional adversaries. Id. The City through its counsel mounted a vigorous defense and the Settlement was only reached after extensive negotiations concerning the parameters and provisions of a fair, reasonable and adequate settlement. Id. at ¶42. See Warner Commc'ns. Secs. Litig., 618 F. Supp. 735, 749 (S.D.N.Y. 1985) ("The quality of opposing counsel is also important in evaluating the quality of plaintiffs' counsels' work."); In re WorldCom, Inc. Secs. Litig., 388 F. Supp. 2d 319, 357-58 (S.D.N.Y. 2005) (finding counsel "obtained remarkable settlements for the Class while

facing formidable opposing counsel”). The highly skilled defense counsel that Class Counsel faced also weighs in favor of approval of the fee request.

3. The Expense Request is Appropriate

Class Counsel requests approval of reimbursement from the Aggregate Refund Fund of \$2,591.83 in litigation costs and expenses advanced by Class Counsel. See Ex. “A”, Roberts Aff. ¶54. This sum corresponds to certain actual out-of-pocket costs and expenses that Class Counsel necessarily incurred and paid in connection with the prosecution and settlement of this Lawsuit. Id. Documentation supporting the fees incurred is attached as Exhibit “1” to the Roberts Affidavit.

Under the common fund doctrine, class counsel is entitled to reimbursement of all reasonable out of pocket litigation expenses and costs in the prosecution of claims and in obtaining settlement. “Expense awards are customary when litigants have created a common settlement fund for the benefit of a class.” In re F & M Distributors, Inc. Sec. Litig., 1999 U.S. Dist. LEXIS 11090, at *20 (E.D. Mich. June 29, 1999) (approving reimbursement of \$584,951.20 in expenses). Courts have found that when class counsel has advanced litigation expenses on behalf of the class and has necessarily lost the use of that money, the expenses are considered reasonable and necessary. See George, 369 F.Supp.3d at 1386 (“Because Class Counsel has lost the use of this money for nearly three years, the expenses required are reasonable and necessary” (citing McLendon v. PSC Recovery Sys., No. 1:06-CV-1770-CAP, 2009 WL 10668635, at *3 (N.D. Ga. June 2, 2009))). Here, Class Counsel has lost the use of the advanced litigation costs.

In order to determine if the expenses are compensable in a common fund case, the court considers whether the particular costs are the type routinely billed by attorneys to paying clients in similar cases. See Cardizem, 218 F.R.D. at 535. The litigation costs sought in this Lawsuit by Class Counsel are the type routinely charged by Roberts Tate, LLC to their hourly fee-paying

clients. See Ex. “A”, Roberts Aff. ¶54. Accordingly, the Court should award Class Counsel reimbursement of Class Counsel’s costs and expenses in the amount of \$320.97.

B. The Court Should Approve Payment to the Class Representative

Georgia courts have consistently found service awards to be an efficient and productive way to encourage members of a class to become a class representative. For example, in Coleman v. Glynn County, CE12-01785-063, CE13-01480-063 and CE14-00750-063, Superior Court of Glynn County, Order on Attorney’s Fees and Costs and Service Award (Nov. 8, 2019) the Glynn County Superior Court awarded the Class Representatives \$350,000.00 as a service award. In Altamaha Bluff, LLC, et al. v. Thomas, et al., 14CV0376, Superior Court of Wayne County, Order on Attorney’s Fees and Costs and Service Award (Oct. 19, 2020) the Wayne County Superior Court awarded the Class Representatives a total class service award of \$40,000.00. Similarly, in Toledo Manufacturing Co., et al. v. Charlton County, SUCV201900232, Superior Court of Charlton County, Order on Attorney’s Fees and Costs and Service Award (Dec. 10, 2020), the Charlton County Superior Court awarded Class Representatives a total class service fee award of \$40,000.00; Old Town Trolley Tours of Savannah, Inc. v. The Mayor and Aldermen of The City of Savannah, Civil Action No. SPCV20-007667-MO, Superior Court of Chatham County, Amended Order on Attorney’s Fees and Costs and Service Award (Feb. 23, 2021) the Chatham County Superior Court awarded the Class Representative a service award of \$55,000.00; and VTAL Real Estate, LLC v. Mayor and Aldermen of the City of Savannah, Civil Action Number SPCV21-00789-CO, Superior Court of Chatham County, Order on Attorney’s Fees and Service Award (Sept. 15, 2023) the Chatham County Superior Court awarded the Class Representative a service award of \$87,500.00. This Court awarded \$25,000.00 to the Class Representative in Mary

A. Bailey v. McIntosh County, Georgia, Superior Court of McIntosh County, SUV2021000009, Order on Attorney's Fees and Costs and Service Award (May 5, 2022).

Here, Class Representatives were active in this Lawsuit and has provided invaluable assistance to counsel by, among other things, locating relevant documents, participating in conferences with Class Counsel and remained ready to provide testimony in this Lawsuit on behalf of themselves and the Class Members. In doing so, the Named Plaintiffs were integral to forming the theory in this Lawsuit and reaching the [Proposed] Consent Judgment. See Ex. "A", Roberts Aff., at ¶29. It took the filing and prosecution of this Lawsuit for the City to refund Named Plaintiffs and Class Members the illegally assessed and collected taxes for 2016 through 2022.

Class Representative requests a service payment in the total amount of \$5,000.00 (the "Service Payment"). The Service Payment represents approximately 2.5% of the Aggregate Refund Fund. Id. at ¶30. See Coleman v. Glynn County, CE12-01785-063, CE13-01480-063 and CE14-00750-063, Superior Court of Glynn County, Order on Attorney's Fees and Costs and Service Award (Nov. 8, 2019) (class representatives' fee approximately 2% of the aggregate refund fund when future tax savings considered); Altamaha Bluff, LLC, et al. v. Thomas, et al., 14CV0376, Superior Court of Wayne County, Order on Attorney's Fees and Costs and Service Award (Oct. 19, 2020) (class representatives' fee approximately 2.3% of the aggregate refund fund); Toledo Manufacturing Co., et al. v. Charlton County, SUCV201900232, Superior Court of Charlton County, Order on Attorney's Fees and Costs and Service Award (Dec. 10, 2020) (awarding 3.07% of aggregate refund as service payment); Old Town Trolley Tours of Savannah, Inc. v. The Mayor and Aldermen of The City of Savannah, Civil Action No. SPCV20-007667-MO, Superior Court of Chatham County, Amended Order on Attorney's Fees and Costs and Service Award (Feb. 23, 2021) (awarding 2% of aggregate refund as service payment); VTAL

Real Estate, LLC v. Mayor and Aldermen of the City of Savannah, Civil Action Number SPCV21-00789-CO, Superior Court of Chatham County, Order on Attorney’s Fees and Service Award (Sept. 15, 2023) (awarding 2.5% of the aggregate refund as a service payment); and Mary A. Bailey v. McIntosh County, Georgia, SUV2021000009, Superior Court of McIntosh County, Order on Attorney’s Fees and Costs and Service Award (May 25, 2022) (awarding 2.5% of aggregate refund as service payment).

The Court should find that the Class Representatives deserve to be compensated for their efforts on behalf of the Class Members. The magnitude of the relief that the Class Representatives obtained on behalf of the Class alone justifies their requested service payment.

IV. CONCLUSION

For the reasons set forth herein, Class Counsel requests that the Court grant their Application for Attorney’s Fees, Reimbursement of Expenses and Service Award as reasonable under all applicable circumstances and factors.

Respectfully submitted this the 22nd day of December 2023.

ROBERTS TATE, LLC

/s/ James L. Roberts, IV
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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I, James L. Roberts, IV, of Roberts Tate, LLC attorneys for Plaintiffs, Troy and Taryn Nixon, do hereby certify that, on this date, I served a copy of the foregoing APPLICATION FOR ATTORNEY'S FEES, REIMBURSEMENT OF EXPENSES AND SERVICE AWARD TO CLASS REPRESENTATIVE WITH MEMORANDUM OF LAW IN SUPPORT to counsel of record for all parties by hand delivering a copy of the same and delivering via statutory electronic service to:

Samuel G. Oliver, Esquire
Georgia Bar No. 552590
200 Walnut Street
P.O. Box 495
Darien, GA 31305

Richard E. Braun, Jr. CPM, Esquire
City Manager/City Attorney
Richard.braun@cityofdarienga.com

ATTORNEYS FOR DEFENDANT

This the 22nd day of December, 2023.

/s/ James L. Roberts, IV
James L. Roberts, IV

Exhibit “A”

**IN THE SUPERIOR COURT OF MCINTOSH COUNTY
STATE OF GEORGIA**

TROY and TARYN NIXON)	
)	
Plaintiff,)	CIVIL ACTION NO. SUV2023000081
)	
v.)	
)	
CITY OF DARIEN, GEORGIA)	
)	
)	
Defendant.)	

AFFIDAVIT OF JAMES L. ROBERTS, IV

STATE OF GEORGIA)
)
COUNTY OF GLYNN)

PERSONALLY APPEARED before me, an officer duly authorized by law to administer oaths, JAMES L. ROBERTS, IV, who after first being duly sworn states:

1.

My name is JAMES L. ROBERTS, IV, and I am competent in all respects to testify regarding the matters set forth herein. I have personal knowledge of the facts stated herein and know them to be true. This Affidavit is given voluntarily.

2.

This Affidavit is given in support of the Application for Attorney’s Fees and Reimbursement of Expenses in the above referenced class action (the “Lawsuit”).

Introduction and Background

3.

I am a founding member and partner in the law firm of Roberts Tate, LLC. Roberts Tate, LLC is Class Counsel to Plaintiffs Troy and Taryn Nixon (“Named Plaintiffs”) and the Class in the Lawsuit. I am the primary and supervising attorney in this Lawsuit.

4.

I am an experienced litigator and I am intimately familiar with this Lawsuit.

5.

I have been practicing law since 2001. Prior to forming Roberts Tate, LLC I was a partner with the law firm of Gilbert, Harrell, Sumerford & Martin, P.C. and prior to that I served as Law Clerk to the late Judge Anthony A. Alaimo.

6.

As part of my practice, I litigate large class action cases and in addition to serving as Class Counsel in this Lawsuit I have served as class counsel in numerous class and collective action cases including, but not limited to, the following: Vanover et al v. West Telemarketing, Southern District of Georgia, 2:06CV0098; Clairday v. Tire Kingdom, Inc., et al, Southern District of Georgia, 2:07cv0020; Kerce v. West Telemarketing Corp, et al, Southern District of Georgia 2:07cv0081; Hamilton v. Montgomery County, Superior Court of Montgomery County, Superior Court of Montgomery County, 13CV159; Altamaha Bluff, LLC, et al. v. Thomas, et al., Superior Court of Wayne County, 14-CV-0376; Coleman v. Glynn County, CE12-01785-063, CE13-01480-063; and CE14-00750-063, Superior Court of Glynn County; Toledo Manufacturing Co., et al. v. Charlton County, SUCV201900232, Superior Court of Charlton County; Old Town Trolley Tours of Savannah, Inc. v. The Mayor and Aldermen of The City of Savannah, Superior Court of Chatham County, Civil Action No. SPCV20-007667-MO; VTAL Real Estate, LLC v. The Mayor and Aldermen of The City of Savannah, Superior Court of Chatham County, Civil

Action No. SPCV21-00789-CO; and Mary A. Bailey v. McIntosh County, Georgia, SUV2021000009, Superior Court of McIntosh County.

7.

I have extensive experience in tax law, including property tax law, and litigation having handled tax appeals and tax refund matters for thousands of parcels in over 60 counties in the State of Georgia as well as Florida, Virginia, Alabama and North Carolina at the administrative, trial court, and appellate court levels. I serve on the Board of Governors of the State Bar of Georgia, am a past President of the Glynn County Bar Association and rated "Preeminent", the highest legal rating available from the leading legal rating service, Martindale Hubbell. I was named a Rising Star by in 2006, 2009-2011 and 2014-2016 and a Super Lawyer for 2017-2023 by Super Lawyers Magazine.

8.

I regularly provide advice and counsel to clients on matters related to taxation and to the valuation of property for taxation, exemption and special use valuation programs.

The Lawsuit

9.

Named Plaintiff retained Roberts Tate, LLC and agreed to be a class representative in this Lawsuit against Defendant City of Darien (the "City" or "Defendant") to recover tax refunds for taxes paid for 2016 through 2022 based on the incorrect application of the City of Darien homestead exemption for taxes for municipal purposes found in House Bill 1197("H.B. 1197") (the "Homestead Exemption") for themselves and on behalf of all similarly situated taxpayers.

10.

On May 31, 2023 Named Plaintiffs commenced this Lawsuit.

11.

On that June 1, 2023, Named Plaintiffs filed a Motion and Memorandum in Support thereof to Certify Suit as Class Action.

12.

On June 7, 2023 Named Plaintiffs filed a First Amended Verified Class Action Complaint.

13.

On July 21, 2023 the City filed an Answer to Named Plaintiffs' First Amended Verified Class Action Complaint, raising numerous defenses.

14.

I was lead counsel in Coleman, et al. v. Glynn County, Georgia, et al., 344 Ga. App. 545, 549, 809 S.E.2d 383, 387 (2018) which involved the Glynn County, Georgia homestead exemption. The Glynn County homestead exemption contains the exact same language as the Homestead Exemption in this case.

15.

I was also lead counsel in Mary A. Bailey v. McIntosh County, Georgia, SUV2021000009, Superior Court of McIntosh County which involved the McIntosh County homestead exemption. The McIntosh County homestead exemption contains the exact same language as the Homestead Exemption in this case.

16.

Our firm conducted early, informal discovery into the facts and the legal basis for this Lawsuit prior to filing the Complaint and before conducting settlement discussions with the City.

17.

Ultimately, the parties were able to reach a settlement (the “Settlement”). The Settlement is memorialized in the [Proposed] Consent Judgment on Aggregate Refund and Order (the “[Proposed] Consent Judgment”).

Summary of the [Proposed] Consent Judgment

18.

The [Proposed] Consent Judgment executed by the Parties was negotiated at arm’s length without collusion.

19.

The terms of the Settlement (which still must be approved by the Court at a Final Approval Hearing as set forth in the First Amended Preliminary Approval Order dated October 17, 2023) are set forth in the [Proposed] Consent Judgment. The Settlement covers refunds for taxes paid for 2016 through 2022.

20.

The direct benefits to the Class Members include the creation of a cash fund in the amount of \$200,000.00 (the “Aggregate Refund Fund”).

21.

The County will pay the Aggregate Refund Fund within fourteen (14) days of final approval of the Consent Judgment. In the event that the County fails to make the payment into the Aggregate Refund Fund, post judgment interest shall accrue at the rate of 7.0% per annum as set by O.C.G.A. §7-4-2(a)(1)(A) on said amount until paid in full.

22.

Under the terms of the [Proposed] Consent Judgment each Qualified Class Member (as defined in the [Proposed] Consent Judgment) will receive his or her pro-rata share of his or her

calculated tax refund up to 100% of the total calculated refund due from the Aggregate Refund Fund less Fees and Expenses (as defined in the [Proposed] Consent Judgment). This is called the “Pro-Rata Tax Refund”.

23.

“Pro-rata” means the proportion each Qualified Class Member’s Pro-Rata Refund bears to the total Aggregate Refund Fund.

24.

This percentage shall be used to calculate each Qualified Class Member’s pro rata share of the Fees and Expenses. Upon identification of all Qualified Class Members and determination of the Pro-Rata Tax Refund for each and determination of all Fees and Expenses, the Aggregate Refund Fund shall be divided by the sum of the Pro-Rata Tax Refund for each Qualified Class Member. The resulting percentage shall be each Qualified Class Member’s portion of the Fees and Expenses (“Pro-Rata Percentage of Fees and Expenses”).

25.

The product of the Pro-Rata Percentage of Fees and Expenses times the Fees and Expenses shall be deducted from the sum of each Qualified Class Member’s Pro-Rata Tax Refund and the remainder will be the amount distributed to each Qualified Class Member as set forth in the [Proposed] Consent Judgment.

26.

Under the [Proposed] Consent Judgment, within thirty (30) days of the later of the expiration of the period for objecting to individual refund amounts or a final ruling by the Special Master on any individual refund calculation, the Administrators shall identify to the Nixon QSF Administrator the amount of refund due each taxpayer and the address to which the refund is to be

mailed to the Category 1 Class Members (as defined in the [Proposed] Consent Judgment). The Nixon QSF Administrator shall issue refund checks from available funds in the Aggregate Refund Fund to the Category 1 Class Members within thirty (30) days of receipt of such notice.

27.

Under the [Proposed] Consent Judgment, within thirty (30) days following the expiration of the period to submit claims forms, the Administrators shall identify to the Nixon QSF Administrator Category 2 Class Members who have properly filled out and returned claims forms, the amount of the refund due each taxpayer and the address to which the refund is to be mailed. The Nixon QSF Administrator shall issue refund checks from available funds in the Aggregate Refund Fund to the Category 2 Class Members within thirty (30) days of receipt of such notice.

28.

The \$200,000.00 Aggregate Refund Fund provides for an immediate cash benefit for the Class Members as set forth in the [Proposed] Consent Judgment.

Service Award to Class Representative

29.

As class representatives, Named Plaintiffs were active in this Lawsuit and provided invaluable assistance to counsel by, among other things, locating relevant documents, participating in conferences with Class Counsel and remained ready to provide testimony in this Lawsuit on behalf of themselves and the Class Members. In doing so, the Named Plaintiffs were integral to forming the theory in this Lawsuit and reaching the [Proposed] Consent Judgment.

30.

Class Representatives requests a service payment in the amount of \$5,000 which represents 2.5% of the Aggregate Refund Fund.

Attorney's Fees and Costs

31.

In undertaking to prosecute this complex case entirely on a contingent fee basis, Class Counsel assumed a significant risk of nonpayment or underpayment. Despite our effort in litigating this Lawsuit, we remain completely uncompensated for the time invested and expenses advanced in this Lawsuit.

32.

We spent a substantial number of hours investigating the refund claims based on the incorrect application of the Homestead Exemption.

33.

The proposed class exceed 170 members for each of the seven (7) years at issue. For many of these taxpayers we reviewed property tax record cards, tax bills and detailed City spreadsheets identifying every parcel that received the Homestead Exemption and providing specific parcel information including, among other things, the base year, year the Exemption was granted, the value in the current frozen year and the valuation in the prior year. We also reviewed tax digests.

34.

All of this information was essential to our ability to understand the facts, scope of the refund claims and the amount of potential refunds owed to the Class.

35.

The City through its counsel mounted vigorous defenses.

36.

We expended resources researching and developing the legal theories and claims presented in the First Amended Class Action Complaint.

37.

Additionally, we devoted time and effort to preparing a comprehensive damage analysis and calculation of the aggregate total refund owed.

38.

The comprehensive damage analysis and calculation of the aggregate total refund owed was integral to negotiating the Settlement with the City.

39.

The time and resources we devoted to prosecuting and settling this Lawsuit readily justifies the requested fee. Each of the above-described efforts taken was essential to achieving the Settlement and the excellent results for the Class.

40.

The County is represented by extremely capable counsel including Samuel G. Oliver, Esquire and Richard E. Braun, Jr., Esquire. Mr. Oliver and Mr. Braun were worthy, highly competent and professional adversaries.

41.

The County's attorneys mounted vigorous defenses and the Settlement was only reached after extensive negotiations concerning the parameters and provisions of a fair, reasonable and adequate settlement.

42.

Ensuring the continued availability of experienced and capable counsel to represent classes of plaintiffs holding valid but small individual claims also supports the requested fee.

43.

Class Counsel requests the payment of \$80,000.00 which represents 40% of the Aggregate Refund Fund.

44.

When analyzing the 40% in fees sought in relation to the Aggregate Refund Fund, the percentage falls below the standard contingency fee arrangement for tax refunds and tax appeal matters throughout Georgia.

45.

Based on my extensive experience in handling tax refund cases throughout Georgia, the typical contingency agreement is for 50% of the refund obtained in tax refund cases and 50% of the tax savings in tax appeal cases.

46.

Moreover, approval of Class Counsel's 40% fee of the Aggregate Refund Fund falls within the range of the private marketplace where contingent fee arrangements of 40% of the recovery are typical.

47.

Attorney Marsha Flora Schmitter worked on this Lawsuit.

48.

Marsha Flora Schmitter is Of Counsel with Roberts Tate, LLC. Ms. Schmitter is an experienced litigator with a focus on class actions and complex litigation including property tax, commercial, construction and products liability including representing General Motors Corporation (GM), Suzuki Motor Corporation (SMC), GM of Canada Limited and CAMI Automotive Inc. in product liability cases throughout the world. Ms. Schmitter has extensive experience coordinating, managing and defending national litigation. She is a former shareholder

in the prominent Philadelphia law firm of Lavin, O'Neil, et al and has served as Of Counsel with the construction litigation law firm of Powell, Trachtman, et al in King of Prussia, Pennsylvania.

49.

I have personal knowledge of and I am very familiar with the work performed and hours expended by the attorneys and the paralegals in connection with this Lawsuit.

50.

All of the work performed by all the attorneys and the paralegals in this Lawsuit was at my direction and under my direct supervision. I directed, assisted, reviewed, edited, finalized and approved all work performed by all attorneys and paralegals in connection with this Lawsuit.

51.

Litigation in lawsuits such as these requires counsel highly trained in class action law and procedure as well as specialized knowledge of tax refunds and tax law.

52.

So far, the total number of attorney hours spent on this Lawsuit is not less than 112 and the total number of paralegal and staff hours spent on this Lawsuit is not less than 28 for a total of not less than 140.

53.

All of the work necessitated by this Lawsuit diverted time and resources from other matters and frequently required the prioritizing of this Lawsuit over other work and/or required the turning down of new work that would have interfered with the vigorous prosecution of this Lawsuit.

Advanced Litigation Expenses

54.

53.

All of the work necessitated by this Lawsuit diverted time and resources from other matters and frequently required the prioritizing of this Lawsuit over other work and/or required the turning down of new work that would have interfered with the vigorous prosecution of this Lawsuit.

Advanced Litigation Expenses

54.

Class Counsel's request for approval of reimbursement from the Aggregate Refund Fund of \$2,591.83 in litigation costs and expenses advanced by Roberts Tate LLC is reasonable and justified. This sum corresponds to certain actual out-of-pocket costs and expenses that Class Counsel necessarily incurred and paid in connection with the prosecution and settlement of this Lawsuit. These litigation costs are the type routinely charged by Roberts Tate, LLC to their hourly fee-paying clients. Copies of documentation supporting the fees incurred is attached as Exhibit "1".

FURTHER AFFIANT SAITH NOT.

This 22nd day of December, 2023.



James L. Roberts, IV

This 22nd day of December, 2023:

Carrie J. Toler

Notary Public

My Commission Expires Oct 16, 2027

(NOTARIAL SEAL)

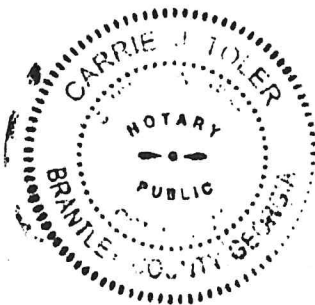


Exhibit “1”

<u>Client</u>	<u>Trans Date</u>	<u>Tkpr</u>	<u>H P</u>	<u>Tcode/ Task Code</u>	<u>Rate</u>	<u>Amount</u>	<u>Ref #</u>
Client ID 2254.00 City of Darien							
2254.00	05/31/2023	1	P	109		281.82	Filing fee Complaint 1
2254.00	06/01/2023	1	P	253		19.30	Postage Service copies of Mtn, Class Cert, and Prop Order 3
2254.00	06/07/2023	1	P	253		19.85	Postage Service copies of Amended Complaint 2
2254.00	11/03/2023	1	P	103		430.00	Publication Notice Darien News 4
2254.00	12/07/2023	1	P	103		1,134.90	Creative Printing for Class Action Mailers 5
2254.00	12/07/2023	1	P	253		705.96	Postage for Mailers at Creative Printing 6
Total for Client ID 2254.00					Billable	2,591.83	City of Darien Class Action
GRAND TOTALS							
					Billable	2,591.83	

Exhibit “B”

House Bill 1197 (AS PASSED HOUSE AND SENATE)

By: Representative Lane of the 167th

A BILL TO BE ENTITLED
AN ACT

1 To provide for a homestead exemption from City of Darien ad valorem taxes for municipal
2 purposes in an amount equal to the amount by which the current year assessed value of a
3 homestead exceeds the base year assessed value of such homestead; to provide for
4 definitions; to specify the terms and conditions of the exemption and the procedures relating
5 thereto; to provide for a referendum, effective dates, and automatic repeal; to repeal
6 conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 (a) As used in this Act, the term:

10 (1) "Ad valorem taxes for municipal purposes" means all municipal ad valorem taxes for
11 municipal purposes levied by, for, or on behalf of the City of Darien, including, but not
12 limited to, ad valorem taxes to pay interest on and to retire municipal bonded
13 indebtedness.

14 (2) "Base year" means the taxable year immediately preceding the taxable year in which
15 the exemption under this Act is first granted to the most recent owner of such homestead.

16 (3) "Homestead" means homestead as defined and qualified in Code Section 48-5-40 of
17 the O.C.G.A., as amended.

18 (b) Each resident of the City of Darien is granted an exemption on that person's homestead
19 from City of Darien ad valorem taxes for municipal purposes in an amount equal to the
20 amount by which the current year assessed value of that homestead exceeds the base year
21 assessed value of that homestead. This exemption shall not apply to taxes assessed on
22 improvements to the homestead or additional land that is added to the homestead after
23 January 1 of the base year. If any real property is added to or removed from the homestead,
24 the base year assessed value shall be adjusted to reflect such addition or removal and the
25 exemption shall be recalculated accordingly. The value of that property in excess of such
26 exempted amount shall remain subject to taxation.

1 (c) A person shall not receive the homestead exemption granted by subsection (b) of this
2 section unless the person or person's agent files an application with the governing authority
3 of the City of Darien, or the designee thereof, giving such information relative to receiving
4 such exemption as will enable the governing authority of the City of Darien, or the designee
5 thereof, to make a determination regarding the initial and continuing eligibility of such owner
6 for such exemption. The governing authority of the City of Darien, or the designee thereof,
7 shall provide application forms for this purpose.

8 (d) The exemption shall be claimed and returned as provided in Code Section 48-5-50.1 of
9 the O.C.G.A., as amended. The exemption shall be automatically renewed from year to year
10 as long as the owner occupies the residence as a homestead. After a person has filed the
11 proper application as provided in subsection (c) of this section, it shall not be necessary to
12 make application thereafter for any year and the exemption shall continue to be allowed to
13 such person. It shall be the duty of any person granted the homestead exemption under
14 subsection (b) of this section to notify the governing authority of the City of Darien, or the
15 designee thereof, in the event that person for any reason becomes ineligible for that
16 exemption.

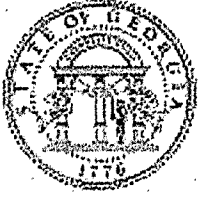
17 (e) The exemption granted by subsection (b) of this section shall not apply to or affect state
18 ad valorem taxes, county ad valorem taxes for county purposes, or county or independent
19 school district ad valorem taxes for educational purposes. The homestead exemption granted
20 by subsection (b) of this section shall be in addition to and not in lieu of any other homestead
21 exemption applicable to municipal ad valorem taxes for municipal purposes.

22 (f) The exemption granted by subsection (b) of this section shall apply to all taxable years
23 beginning on or after January 1, 2007.

24 **SECTION 2.**

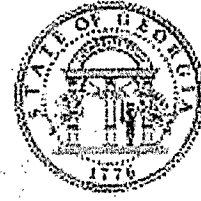
25 Unless prohibited by the federal Voting Rights Act of 1965, as amended, the municipal
26 election superintendent of the City of Darien shall call and conduct an election as provided
27 in this section for the purpose of submitting this Act to the electors of the City of Darien for
28 approval or rejection. The municipal election superintendent shall conduct that election on
29 the date of the state-wide general election in 2006, and shall issue the call and conduct that
30 election as provided by general law. The municipal election superintendent shall cause the
31 date and purpose of the election to be published once a week for two weeks immediately
32 preceding the date thereof in the official organ of McIntosh County. The ballot shall have
33 written or printed thereon the words:

Exhibit “C”



[Legislation](#) [Clerk's Office](#) [Members](#) [Committees](#) [Meetings](#) [Home](#) [Senate](#)

Georgia House of Representatives



HB 1690 - Glynn County; homestead exemption

Scarlett, Stephen G (174th) Tillman, Eugene C (173rd)

Status Summary HC: LLeg SC: SLGO FR: 03/07/00 LA: 05/01/00 Signed by Governor

First Reader Summary

A BILL to provide for a homestead exemption from certain Glynn County ad valorem taxes for county purposes in an amount equal to the amount by which the current year assessed value of that homestead exceeds the base year assessed value of that homestead; and for other purposes.

Page Numbers: 1 2 3

House	Action	Senate
3/7/00	Read 1st Time	3/13/00
3/8/00	Read 2nd Time	
3/9/00	Favorably Reported	3/15/00
3/9/00	Read 3rd Time	
3/9/00	Passed/Adopted	3/15/00
3/27/00	Sent to Governor	
5/1/00	Signed by Governor	
890	Act/Veto Number	
5/1/00	Effective Date	

Version by LC Number
LC 18 0108 As Introduced

HB 1690

LC 18 0108

A BILL TO BE ENTITLED
AN ACT

1- 1 To provide for a homestead exemption from certain Glynn
1- 2 County ad valorem taxes for county purposes in an amount
1- 3 equal to the amount by which the current year assessed value
1- 4 of that homestead exceeds the base year assessed value of
1- 5 that homestead; to provide for definitions; to specify the
1- 6 terms and conditions of the exemption and the procedures
1- 7 relating thereto; to provide for applicability; to provide
1- 8 for a referendum, effective dates, and automatic repeal; to
1- 9 repeal conflicting laws; and for other purposes.

1-10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

1-11 SECTION 1.

1-12 (a) As used in this Act, the term:

1-13 (1) "Ad valorem taxes for county purposes" means all ad
1-14 valorem taxes for county purposes levied by, for, or on
1-15 behalf of Glynn County, including, but not limited to,
1-16 any taxes to pay interest on and to retire county bonded
1-17 indebtedness.

1-18 (2) "Base year" means the taxable year immediately
1-19 preceding the taxable year in which the exemption under
1-20 this Act is first granted to the most recent owner of
1-21 such homestead.

1-22 (3) "Homestead" means homestead as defined and qualified
1-23 in Code Section 48-5-40 of the O.C.G.A., with the
1-24 additional qualification that it shall include only the
1-25 primary residence and not more than five contiguous
1-26 acres of land immediately surrounding such residence.

1-27 (b) Each resident of Glynn County is granted an exemption on
1-28 that person's homestead from all Glynn County ad valorem
1-29 taxes for county purposes in an amount equal to the amount
1-30 by which the current year assessed value of that homestead
1-31 exceeds the base year assessed value of that homestead. This
1-32 exemption shall not apply to taxes assessed on improvements
1-33 to the homestead or additional land that is added to the

-1-

2- 1 homestead after January 1 of the base year. If any real
2- 2 property is removed from the homestead, the base year
2- 3 assessed value shall be adjusted to reflect such removal and
2- 4 the exemption shall be recalculated accordingly. The value
2- 5 of that property in excess of such exempted amount shall
2- 6 remain subject to taxation.

2- 7 (c) A person shall not receive the homestead exemption
2- 8 granted by subsection (b) of this section unless the person
2- 9 or person's agent files an application with the tax
2-10 commissioner of Glynn County giving such information
2-11 relative to receiving such exemption as will enable the tax
2-12 commissioner to make a determination as to whether such
2-13 owner is entitled to such exemption.

2-14 (d) The tax commissioner of Glynn County shall provide
2-15 application forms for the exemption granted by subsection
2-16 (b) of this section which shall require such information as
2-17 may be necessary to determine the initial and continuing

2-18 eligibility of the owner for the exemption.

2-19 (e) The exemption shall be claimed and returned as provided
 2-20 in Code Section 48-5-50.1 of the O.C.G.A. The exemption
 2-21 shall be automatically renewed from year to year as long as
 2-22 the owner occupies the residence as a homestead. After a
 2-23 person has filed the proper application as provided in
 2-24 subsection (c) of this section, it shall not be necessary to
 2-25 make application thereafter for any year and the exemption
 2-26 shall continue to be allowed to such person. It shall be
 2-27 the duty of any person granted the homestead exemption under
 2-28 subsection (b) of this section to notify the tax
 2-29 commissioner of the county or the designee thereof in the
 2-30 event that person for any reason becomes ineligible for that
 2-31 exemption.

2-32 (f) The exemption granted by this Act shall not apply to or
 2-33 affect state ad valorem taxes, county school district ad
 2-34 valorem taxes for educational purposes, or municipal ad
 2-35 valorem taxes for municipal purposes. The homestead
 2-36 exemption granted by subsection (b) of this section shall be
 2-37 in addition to and not in lieu of any other homestead
 2-38 exemption applicable to county ad valorem taxes for county
 2-39 purposes.

2-40 (g) The exemption granted by subsection (b) of this section
 2-41 shall apply to all taxable years beginning on or after
 2-42 January 1, 2001.

-2-

3- 1 SECTION 2.

3- 2 Unless prohibited by the federal Voting Rights Act of 1965,
 3- 3 as amended, the election superintendent of Glynn County
 3- 4 shall call and conduct an election as provided in this
 3- 5 section for the purpose of submitting this Act to the
 3- 6 electors of Glynn County for approval or rejection. The
 3- 7 election superintendent shall conduct that election on the
 3- 8 date of the November, 2000, state-wide general election and
 3- 9 shall issue the call and conduct that election as provided
 3-10 by general law. The superintendent shall cause the date and
 3-11 purpose of the election to be published once a week for two
 3-12 weeks immediately preceding the date thereof in the official
 3-13 organ of Glynn County. The ballot shall have written or
 3-14 printed thereon the words:

3-15 " () YES Shall the Act be approved which provides a
 3-16 homestead exemption from certain Glynn County
 3-17 () NO ad valorem taxes for county purposes in an
 3-18 amount equal to the amount by which the
 3-19 assessed value of that homestead for the

- 3-20 current year exceeds the base year assessed
3-21 value of that homestead?"
- 3-22 All persons desiring to vote for approval of the Act shall
3-23 vote "Yes," and those persons desiring to vote for rejection
3-24 of the Act shall vote "No." If more than one-half of the
3-25 votes cast on such question are for approval of the Act,
3-26 Section 1 of this Act shall become of full force and effect
3-27 on January 1, 2001. If the Act is not so approved or if the
3-28 election is not conducted as provided in this section,
3-29 Section 1 of this Act shall not become effective and this
3-30 Act shall be automatically repealed on the first day of
3-31 January immediately following that election date.
- 3-32 The expense of such election shall be borne by Glynn County.
3-33 It shall be the election superintendent's duty to certify
3-34 the result thereof to the Secretary of State.
- 3-35 SECTION 3.
- 3-36 Except as otherwise provided in Section 2 of this Act, this
3-37 Act shall become effective upon its approval by the Governor
3-38 or upon its becoming law without such approval.
- 3-39 SECTION 4.
- 3-40 All laws and parts of laws in conflict with this Act are
3-41 repealed.

Exhibit “D”



Legislation Clerk's Office Members Committees Meetings Home Senate

Georgia House of Representatives



HB 1691 - Glynn County; homestead exemption

Scarlett, Stephen G (174th) Tillman, Eugene C (173rd)

Status Summary HC: LLeg SC: SLGO FR: 03/07/00 LA: 05/01/00 Signed by Governor

First Reader Summary

A BILL to provide for a homestead exemption from certain Glynn County School District ad valorem taxes for educational purposes in an amount equal to the amount by which the current year assessed value of a homestead exceeds the base year assessed value of such homestead; and for other purposes.

Page Numbers: 1 2 3

House	Action	Senate
3/7/00	Read 1st Time	3/13/00
3/8/00	Read 2nd Time	
3/9/00	Favorably Reported	3/15/00
3/9/00	Read 3rd Time	
3/9/00	Passed/Adopted	3/15/00
4/4/00	Sent to Governor	
5/1/00	Signed by Governor	
891	Act/Veto Number	
5/1/00	Effective Date	

Version by LC Number
LC 18 0109 As Introduced

HB 1691

LC 18 0109

A BILL TO BE ENTITLED AN ACT

- 1- 1 To provide for a homestead exemption from certain Glynn
- 1- 2 County School District ad valorem taxes for educational
- 1- 3 purposes in an amount equal to the amount by which the
- 1- 4 current year assessed value of a homestead exceeds the base
- 1- 5 year assessed value of such homestead; to provide for
- 1- 6 definitions; to specify the terms and conditions of the
- 1- 7 exemption and the procedures relating thereto; to provide
- 1- 8 for applicability; to provide for a referendum, effective
- 1- 9 dates, and automatic repeal; to repeal conflicting laws; and
- 1-10 for other purposes.

1-11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

1-12 SECTION 1.

1-13 (a) As used in this Act, the term:

1-14 (1) "Ad valorem taxes for educational purposes" means
1-15 all ad valorem taxes for educational purposes levied by,
1-16 for, or on behalf of the Glynn County School District,
1-17 including but not limited to taxes to pay interest on
1-18 and to retire school bond indebtedness.

1-19 (2) "Base year" means the taxable year immediately
1-20 preceding the taxable year in which the exemption under
1-21 this Act is first granted to the most recent owner of
1-22 such homestead.

1-23 (3) "Homestead" means homestead as defined and qualified
1-24 in Code Section 48-5-40 of the O.C.G.A., with the
1-25 additional qualification that it shall include only the
1-26 primary residence and not more than five contiguous
1-27 acres of land immediately surrounding such residence.

1-28 (b) Each resident of the Glynn County School District is
1-29 granted an exemption on that person's homestead from all
1-30 Glynn County School District taxes for educational purposes
1-31 in an amount equal to the amount by which the current year
1-32 assessed value of that homestead exceeds the base year
1-33 assessed value of the homestead. This exemption shall not

-1-

2- 1 apply to taxes assessed on improvements to the homestead or
2- 2 additional land that is added to the homestead after January
2- 3 1 of the base year. If any real property is removed from
2- 4 the homestead, the base year assessed value shall be
2- 5 adjusted to reflect such removal and the exemption shall be
2- 6 recalculated accordingly. The value of that property in
2- 7 excess of such exempted amount shall remain subject to
2- 8 taxation.

2- 9 (c) A person shall not receive the homestead exemption
2-10 granted by subsection (b) of this section unless the person
2-11 or person's agent files an application with the tax
2-12 commissioner of Glynn County giving such information
2-13 relative to receiving such exemption as will enable the tax
2-14 commissioner to make a determination as to whether such
2-15 owner is entitled to such exemption.

2-16 (d) The tax commissioner of Glynn County shall provide
2-17 application forms for the exemption granted by subsection
2-18 (b) of this section which shall require such information as
2-19 may be necessary to determine the initial and continuing
2-20 eligibility of the owner for the exemption.

2-21 (e) The exemption shall be claimed and returned as provided
2-22 in Code Section 48-5-50.1 of the O.C.G.A. The exemption
2-23 shall be automatically renewed from year to year as long as
2-24 the owner occupies the residence as a homestead. After a

2-25 person has filed the proper application as provided in
 2-26 subsection (c) of this section, it shall not be necessary to
 2-27 make application thereafter for any year and the exemption
 2-28 shall continue to be allowed to such person. It shall be
 2-29 the duty of any person granted the homestead exemption under
 2-30 subsection (b) of this section to notify the tax
 2-31 commissioner of the county or the designee thereof in the
 2-32 event that person for any reason becomes ineligible for that
 2-33 exemption.

2-34 (f) The exemption granted by this Act shall not apply to or
 2-35 affect state ad valorem taxes, county ad valorem taxes for
 2-36 county purposes, or municipal ad valorem taxes for municipal
 2-37 purposes. The homestead exemption granted by subsection (b)
 2-38 of this section shall be in addition to and not in lieu of
 2-39 any other homestead exemption applicable to county school
 2-40 district ad valorem taxes for educational purposes.

2-41 (g) The exemption granted by subsection (b) of this section
 2-42 shall apply to all taxable years beginning on or after
 2-43 January 1, 2001.

-2-

3- 1

SECTION 2.

3- 2 Unless prohibited by the federal Voting Rights Act of 1965,
 3- 3 as amended, the election superintendent of Glynn County
 3- 4 shall call and conduct an election as provided in this
 3- 5 section for the purpose of submitting this Act to the
 3- 6 electors of the Glynn County School District for approval or
 3- 7 rejection. The election superintendent shall conduct that
 3- 8 election on the date of the November, 2000, state-wide
 3- 9 general election and shall issue the call and conduct that
 3-10 election as provided by general law. The superintendent
 3-11 shall cause the date and purpose of the election to be
 3-12 published once a week for two weeks immediately preceding
 3-13 the date thereof in the official organ of Glynn County. The
 3-14 ballot shall have written or printed thereon the words:

3-15 " () YES Shall the Act be approved which provides a
 3-16 homestead exemption from certain Glynn County
 3-17 () NO School District taxes for educational purposes
 3-18 in an amount equal to the amount by which the
 3-19 assessed value of a homestead for the current
 3-20 year exceeds the base year assessed value of
 3-21 such homestead?"

3-22 All persons desiring to vote for approval of the Act shall
 3-23 vote "Yes," and those persons desiring to vote for rejection
 3-24 of the Act shall vote "No." If more than one-half of the
 3-25 votes cast on such question are for approval of the Act,
 3-26 Section 1 of this Act shall become of full force and effect
 3-27 on January 1, 2001. If the Act is not so approved or if the
 3-28 election is not conducted as provided in this section,
 3-29 Section 1 of this Act shall not become effective and this
 3-30 Act shall be automatically repealed on the first day of
 3-31 January immediately following that election date.

- 3-32 The expense of such election shall be borne by Glynn County.
3-33 It shall be the election superintendent's duty to certify
3-34 the result thereof to the Secretary of State.

3-35

SECTION 3.

- 3-36 Except as otherwise provided in Section 2 of this Act, this
3-37 Act shall become effective upon its approval by the Governor
3-38 or upon its becoming law without such approval.

3-39

SECTION 4.

- 3-40 All laws and parts of laws in conflict with this Act are
3-41 repealed.

-3-■

*Clerk of the House
Robert E. Rivers, Jr., Clerk
Last Updated on 05/04/00*

Exhibit “E”

House Bill 382 (AS PASSED HOUSE AND SENATE)

By: Representative Lane of the 167th

A BILL TO BE ENTITLED
AN ACT

1 To provide for a homestead exemption from McIntosh County ad valorem taxes for county
2 purposes in an amount equal to the amount by which the current year assessed value of a
3 homestead exceeds the base year assessed value of such homestead; to provide for
4 definitions; to specify the terms and conditions of the exemption and the procedures relating
5 thereto; to provide for applicability; to provide for a referendum, effective dates, and
6 automatic repeal; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 SECTION 1.

9 (a) As used in this Act, the term:

10 (1) "Ad valorem taxes for county purposes" means all ad valorem taxes for county
11 purposes levied by, for, or on behalf of McIntosh County, including, but not limited to,
12 any ad valorem taxes to pay interest on and to retire county bonded indebtedness.

13 (2) "Base year" means the taxable year immediately preceding the taxable year in which
14 the exemption under this Act is first granted to the most recent owner of such homestead.

15 (3) "Homestead" means homestead as defined and qualified in Code Section 48-5-40 of
16 the O.C.G.A., as amended.

17 (b) Each resident of McIntosh County is granted an exemption on that person's homestead
18 from McIntosh County ad valorem taxes for county purposes in an amount equal to the
19 amount by which the current year assessed value of that homestead exceeds the base year
20 assessed value of the homestead. This exemption shall not apply to taxes assessed on
21 improvements to the homestead or additional land that is added to the homestead after
22 January 1 of the base year. If any real property is added to or removed from the homestead,
23 the base year assessed value shall be adjusted to reflect such addition or removal and the
24 exemption shall be recalculated accordingly. The value of that property in excess of such
25 exempted amount shall remain subject to taxation.

- 1 (c) A person shall not receive the homestead exemption granted by subsection (b) of this
 2 section unless the person or person's agent files an application with the tax commissioner of
 3 McIntosh County giving such information relative to receiving such exemption as will enable
 4 the tax commissioner to make a determination regarding the initial and continuing eligibility
 5 of such owner for such exemption. The tax commissioner of McIntosh County shall provide
 6 application forms for this purpose.
- 7 (d) The exemption shall be claimed and returned as provided in Code Section 48-5-50.1 of
 8 the O.C.G.A., as amended. The exemption shall be automatically renewed from year to year
 9 so long as the owner occupies the residence as a homestead. After a person has filed the
 10 proper application as provided in subsection (c) of this section, it shall not be necessary to
 11 make application thereafter for any year and the exemption shall continue to be allowed to
 12 such person. It shall be the duty of any person granted the homestead exemption under
 13 subsection (b) of this section to notify the tax commissioner of the county in the event that
 14 person for any reason becomes ineligible for that exemption.
- 15 (e) The exemption granted by subsection (b) of this section shall not apply to or affect state
 16 ad valorem taxes, county or independent school district ad valorem taxes for educational
 17 purposes, or municipal ad valorem taxes for municipal purposes. The homestead exemption
 18 granted by subsection (b) of this section shall be in addition to and not in lieu of any other
 19 homestead exemption applicable to county ad valorem taxes for county purposes.
- 20 (f) The exemption granted by subsection (b) of this section shall apply to all taxable years
 21 beginning on or after January 1, 2006.

22

SECTION 2.

23 Unless prohibited by the federal Voting Rights Act of 1965, as amended, the election
 24 superintendent of McIntosh County shall call and conduct a special election as provided in
 25 this section for the purpose of submitting this Act to the electors of McIntosh County for
 26 approval or rejection. The election superintendent shall conduct that election on the Tuesday
 27 after the first Monday in November in 2005 and shall issue the call and conduct that election
 28 as provided by general law. The election superintendent shall cause the date and purpose of
 29 the election to be published once a week for two weeks immediately preceding the date
 30 thereof in the official organ of McIntosh County. The ballot shall have written or printed
 31 thereon the words:

- 32 "() YES Shall the Act be approved which provides a homestead exemption from
 33 McIntosh County ad valorem taxes for county purposes in an amount equal
 34 () NO to the amount by which the current year assessed value of a homestead
 35 exceeds the base year assessed value of such homestead?"

1 All persons desiring to vote for approval of the Act shall vote "Yes," and all persons desiring
2 to vote for rejection of the Act shall vote "No." If more than one-half of the votes cast on
3 such question are for approval of the Act, Section 1 of this Act shall become of full force and
4 effect on January 1, 2006. If the Act is not so approved or if the election is not conducted
5 as provided in this section, Section 1 of this Act shall not become effective and this Act shall
6 be automatically repealed on the first day of January immediately following that election
7 date. The expense of such election shall be borne by McIntosh County. It shall be the
8 election superintendent's duty to certify the result thereof to the Secretary of State.

9 **SECTION 3.**

10 Except as otherwise provided in Section 2 of this Act, this Act shall become effective upon
11 its approval by the Governor or upon its becoming law without such approval.

12 **SECTION 4.**

13 All laws and parts of laws in conflict with this Act are repealed.

House Bill 450 (AS PASSED HOUSE AND SENATE)

By: Representative Lane of the 167th

A BILL TO BE ENTITLED
AN ACT

1 To provide for a homestead exemption from McIntosh County School District ad valorem
2 taxes for educational purposes in an amount equal to the amount by which the current year
3 assessed value of a homestead exceeds the base year assessed value of such homestead; to
4 provide for definitions; to specify the terms and conditions of the exemption and the
5 procedures relating thereto; to provide for applicability; to provide for a referendum,
6 effective dates, and automatic repeal; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 (a) As used in this Act, the term:

10 (1) "Ad valorem taxes for educational purposes" means all ad valorem taxes for
11 educational purposes levied by, for, or on behalf of the McIntosh County School District,
12 including, but not limited to, any ad valorem taxes to pay interest on and to retire county
13 school district bonded indebtedness.

14 (2) "Base year" means the taxable year immediately preceding the taxable year in which
15 the exemption under this Act is first granted to the most recent owner of such homestead.

16 (3) "Homestead" means homestead as defined and qualified in Code Section 48-5-40 of
17 the O.C.G.A., as amended.

18 (b) Each resident of the McIntosh County School District is granted an exemption on that
19 person's homestead from McIntosh County School District ad valorem taxes for educational
20 purposes in an amount equal to the amount by which the current year assessed value of that
21 homestead exceeds the base year assessed value of the homestead. This exemption shall not
22 apply to taxes assessed on improvements to the homestead or additional land that is added
23 to the homestead after January 1 of the base year. If any real property is added to or removed
24 from the homestead, the base year assessed value shall be adjusted to reflect such addition
25 or removal and the exemption shall be recalculated accordingly. The value of that property
26 in excess of such exempted amount shall remain subject to taxation.

- 1 (c) A person shall not receive the homestead exemption granted by subsection (b) of this
2 section unless the person or person's agent files an application with the tax commissioner of
3 McIntosh County giving such information relative to receiving such exemption as will enable
4 the tax commissioner to make a determination regarding the initial and continuing eligibility
5 of such owner for such exemption. The tax commissioner of McIntosh County shall provide
6 application forms for this purpose.
- 7 (d) The exemption shall be claimed and returned as provided in Code Section 48-5-50.1 of
8 the O.C.G.A., as amended. The exemption shall be automatically renewed from year to year
9 so long as the owner occupies the residence as a homestead. After a person has filed the
10 proper application as provided in subsection (c) of this section, it shall not be necessary to
11 make application thereafter for any year and the exemption shall continue to be allowed to
12 such person. It shall be the duty of any person granted the homestead exemption under
13 subsection (b) of this section to notify the tax commissioner of the county in the event that
14 person for any reason becomes ineligible for that exemption.
- 15 (e) The exemption granted by subsection (b) of this section shall not apply to or affect state
16 ad valorem taxes, county ad valorem taxes for county purposes, municipal ad valorem taxes
17 for municipal purposes, or independent school district taxes for educational purposes. The
18 homestead exemption granted by subsection (b) of this section shall be in addition to and not
19 in lieu of any other homestead exemption applicable to county school district ad valorem
20 taxes for educational purposes.
- 21 (f) The exemption granted by subsection (b) of this section shall apply to all taxable years
22 beginning on or after January 1, 2006.

23

SECTION 2.

24 Unless prohibited by the federal Voting Rights Act of 1965, as amended, the election
25 superintendent of McIntosh County shall call and conduct an election as provided in this
26 section for the purpose of submitting this Act to the electors of the McIntosh County School
27 District for approval or rejection. The election superintendent shall conduct that election on
28 the Tuesday after the first Monday in November in 2005 and shall issue the call and conduct
29 that election as provided by general law. The election superintendent shall cause the date and
30 purpose of the election to be published once a week for two weeks immediately preceding
31 the date thereof in the official organ of McIntosh County. The ballot shall have written or
32 printed thereon the words:

1 " YES Shall the Act be approved which provides a homestead exemption from
2 McIntosh County School District ad valorem taxes for educational
3 NO purposes in an amount equal to the amount by which the current year
4 assessed value of a homestead exceeds the base year assessed value of
5 such homestead?"
6 All persons desiring to vote for approval of the Act shall vote "Yes," and all persons desiring
7 to vote for rejection of the Act shall vote "No." If more than one-half of the votes cast on
8 such question are for approval of the Act, Section 1 of this Act shall become of full force and
9 effect on January 1, 2006. If the Act is not so approved or if the election is not conducted
10 as provided in this section, Section 1 of this Act shall not become effective and this Act shall
11 be automatically repealed on the first day of January immediately following that election
12 date. The expense of such election shall be borne by McIntosh County. It shall be the
13 election superintendent's duty to certify the result thereof to the Secretary of State.

14 **SECTION 3.**

15 Except as otherwise provided in Section 2 of this Act, this Act shall become effective upon
16 its approval by the Governor or upon its becoming law without such approval.

17 **SECTION 4.**

18 All laws and parts of laws in conflict with this Act are repealed.

Exhibit “F”

House Bill 450 (AS PASSED HOUSE AND SENATE)

By: Representative Lane of the 167th

A BILL TO BE ENTITLED
AN ACT

1 To provide for a homestead exemption from McIntosh County School District ad valorem
2 taxes for educational purposes in an amount equal to the amount by which the current year
3 assessed value of a homestead exceeds the base year assessed value of such homestead; to
4 provide for definitions; to specify the terms and conditions of the exemption and the
5 procedures relating thereto; to provide for applicability; to provide for a referendum,
6 effective dates, and automatic repeal; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 (a) As used in this Act, the term:

10 (1) "Ad valorem taxes for educational purposes" means all ad valorem taxes for
11 educational purposes levied by, for, or on behalf of the McIntosh County School District,
12 including, but not limited to, any ad valorem taxes to pay interest on and to retire county
13 school district bonded indebtedness.

14 (2) "Base year" means the taxable year immediately preceding the taxable year in which
15 the exemption under this Act is first granted to the most recent owner of such homestead.

16 (3) "Homestead" means homestead as defined and qualified in Code Section 48-5-40 of
17 the O.C.G.A., as amended.

18 (b) Each resident of the McIntosh County School District is granted an exemption on that
19 person's homestead from McIntosh County School District ad valorem taxes for educational
20 purposes in an amount equal to the amount by which the current year assessed value of that
21 homestead exceeds the base year assessed value of the homestead. This exemption shall not
22 apply to taxes assessed on improvements to the homestead or additional land that is added
23 to the homestead after January 1 of the base year. If any real property is added to or removed
24 from the homestead, the base year assessed value shall be adjusted to reflect such addition
25 or removal and the exemption shall be recalculated accordingly. The value of that property
26 in excess of such exempted amount shall remain subject to taxation.

1 (c) A person shall not receive the homestead exemption granted by subsection (b) of this
2 section unless the person or person's agent files an application with the tax commissioner of
3 McIntosh County giving such information relative to receiving such exemption as will enable
4 the tax commissioner to make a determination regarding the initial and continuing eligibility
5 of such owner for such exemption. The tax commissioner of McIntosh County shall provide
6 application forms for this purpose.

7 (d) The exemption shall be claimed and returned as provided in Code Section 48-5-50.1 of
8 the O.C.G.A., as amended. The exemption shall be automatically renewed from year to year
9 so long as the owner occupies the residence as a homestead. After a person has filed the
10 proper application as provided in subsection (c) of this section, it shall not be necessary to
11 make application thereafter for any year and the exemption shall continue to be allowed to
12 such person. It shall be the duty of any person granted the homestead exemption under
13 subsection (b) of this section to notify the tax commissioner of the county in the event that
14 person for any reason becomes ineligible for that exemption.

15 (e) The exemption granted by subsection (b) of this section shall not apply to or affect state
16 ad valorem taxes, county ad valorem taxes for county purposes, municipal ad valorem taxes
17 for municipal purposes, or independent school district taxes for educational purposes. The
18 homestead exemption granted by subsection (b) of this section shall be in addition to and not
19 in lieu of any other homestead exemption applicable to county school district ad valorem
20 taxes for educational purposes.

21 (f) The exemption granted by subsection (b) of this section shall apply to all taxable years
22 beginning on or after January 1, 2006.

23

SECTION 2.

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25 superintendent of McIntosh County shall call and conduct an election as provided in this
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7 to vote for rejection of the Act shall vote "No." If more than one-half of the votes cast on
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9 effect on January 1, 2006. If the Act is not so approved or if the election is not conducted
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13 election superintendent's duty to certify the result thereof to the Secretary of State.

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16 its approval by the Governor or upon its becoming law without such approval.

17 **SECTION 4.**

18 All laws and parts of laws in conflict with this Act are repealed.