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State & Local Tax Advisory

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Georgia Legislation Roundup 2017: General Assembly Fails to Pass Economic Nexus Bill

When the Georgia General Assembly adjourned the 2017 legislative session on March 30, the biggest news was the bills it failed to pass. The legislature considered three major tax bills this session: HB 329, HB 225, and HB 283. All three bills would have significantly changed Georgia's tax laws, but only HB 283 was signed into law. Alston & Bird was closely monitoring these bills as they moved through the Georgia legislature and provided comments in coordination with the Georgia Chamber of Commerce.

HB 329

On the last day of the legislative session, the Georgia General Assembly failed to reach a compromise on HB 329, an omnibus tax bill that combined an income tax rate cut with an economic nexus provision that directly challenged *Quill*'s physical presence requirement, as well as a use tax reporting regime that the drafters based on a Colorado law recently upheld by the Tenth Circuit. The economic nexus and use tax reporting provisions originated in two separate bills but were combined into HB 61, which passed the House in mid-February. The Senate then tacked these provisions onto HB 329, which the House had passed as a flat-tax bill.

HB 329 would have required retailers to collect and remit sales tax if their Georgia sales in the prior year exceeded $250,000 or if they had 200 or more separate retail sales delivered electronically or physically into the state. The bill also would have required retailers that meet these sales thresholds but who do not collect and remit sales tax to comply with use tax notice and reporting requirements. Immediately before completing a sale, the retailer would have to notify each potential purchaser that he or she may owe Georgia use tax on the purchase. In addition, the retailer would have to mail an annual sales and use tax statement to each customer who spends $500 or more annually, with a copy sent to the Department of Revenue.

Besides being unconstitutional under *Quill*, HB 329's biggest problem was that the House combined two separate bills that attempted to tax remote sellers using contrary methods—economic nexus and use tax reporting—without resolving their contradictions. Although HB 329 appears to give remote sellers the choice between collecting sales tax or reporting the transactions to the department, in fact this is no option at all. Even if a retailer complied with the notice and reporting requirements, it would still be liable for sales tax (unless the purchaser pays it, which is unlikely). The reporting provisions were little more than a way to penalize retailers who refused to comply with the unconstitutional economic nexus provisions.

Ultimately, the House and Senate could not reach a compromise over the flat tax, and Georgia will have to wait until January 2018 to mount a challenge to *Quill*.

HB 225

As introduced, HB 225 was aimed at imposing sales tax on rideshare networks, like Uber and Lyft. But after multiple revisions in committee, the bill that passed the House expanded the scope of Georgia's sales tax to a "person that furnishes a service facilitating or brokering a retail sale" in Georgia and accepts payment for the sale, either directly or through a related member. The bill defined "facilitating" broadly to include activities such as advertising, taking orders, and "providing an internet platform" for sellers. Many criticized the bill's vague language and expansive scope, which potentially could have encompassed online marketplaces. The Senate reversed course and removed all "facilitating or brokering" language from HB 225. The final version, which failed to pass the Senate, would have eliminated sales taxes on all transportation services, including rideshare networks.

HB 283

On March 21, Governor Deal signed into law HB 283, the annual Internal Revenue Code reconciliation bill. While the final bill was unremarkable, HB 283, as introduced, would have adopted the IRS's new partnership audit regime. The House Ways and Means committee stripped the bill of the partnership audit provisions before approval—choosing to take a wait-and-see approach after the IRS's proposed partnership audit regulations were withdrawn earlier this year because of the Trump Administration's freeze on new regulations.

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