

NON-BINDING ARBITRATION

Since tax year 1995, a taxpayer has had the option of going to non-binding arbitration rather than to a board of equalization hearing. See O.C.G.A. § 48-5-311(f)(1) and (3). Prior to an appeal, a taxpayer needs to discuss with an attorney which avenue, arbitration or a board of equalization hearing, will be the most effective and economic means of accomplishing the taxpayer's appeal goals. In non-binding arbitration, the rules of evidence and the discovery procedures of the superior court apply, so this is an important decision regarding legal rights and procedures.

A taxpayer must file a written notice of arbitration with the board of tax assessors. The notice must specifically state the grounds for arbitration and it must be filed within the same deadlines for the filing of an appeal of a tax assessment notice which is thirty (30) days in some counties and forty-five (45) days in most counties. Thus, the decision as to whether to have a board of equalization hearing or to go to arbitration must be made when the appeal is first filed. This decision will need to be made because the costs for a board of equalization hearing.

The board of tax assessors must certify the notice of arbitration to the clerk of the superior court and any other papers specified by the taxpayer. Then, within fifteen (15)

days of the filing of the certification, a judge of the superior court must issue an order authorizing the arbitration and appointing a referee who must be an attorney.

The arbitration is as to the correctness of the decision of the board of tax assessors, and the arbitration is conducted pursuant to O.C.G.A. §§9-9-60 through 83, which is the statutory procedure for the arbitration of a medical malpractice claim, with the following exceptions:

1. a single arbitrator can be used and the referee appointed by the judge can serve as the single arbitrator if the taxpayer and the board of tax assessors agree;
2. if the parties do not agree on a single arbitrator, then three (3) arbitrators are to be appointed as provided in O.C.G.A. §9-9-67, and, if one or both parties are unable to select an arbitrator, the arbitration is conducted by a single arbitrator appointed by the judge pursuant to §9-9-67;
3. an arbitrator must be at least a registered real estate appraiser as classified by the Georgia Real Estate Appraisers Board;
4. the arbitrator or arbitrators must render a decision within thirty (30) days of their appointment regarding the correctness of the decision of the board of tax assessors, and if a correction is required, the extent and manner in which the decision should be corrected must be stated. The arbitration decision can be appealed to the superior court in the same manner as a board of equalization decision;
5. arbitration fees and costs are divided between the tax assessors and taxpayer; and
6. the tax assessors have the burden of proving their value by a preponderance of the evidence. O.C.G.A. § 48-5-311(f)(3)(A)-(F).

The procedures for appeals to the superior court are set forth in O.C.G.A. § 48-5-311(g).

An appeal to a superior court from a decision of a board of equalization must be filed within thirty (30) days of the date on which the decision of the board of equalization is mailed. However, the appeal to a superior court from an arbitration

decision must be filed within thirty (30) days of the date on which the arbitration decision is rendered. O.C.G.A. § 48-5-311(g)(2).

Space does not permit a thorough examination of the ramifications of non-binding arbitration as a taxpayer's alternative to a board of equalization hearing. However, some aspects of the medical malpractice arbitration statute should be considered by a taxpayer and a taxpayer's attorney prior to selecting non-binding arbitration as an alternative to a board of equalization hearing. Some of those aspects are, as follows:

1. A referee is appointed to conduct the arbitration proceeding and the referee must be an active member of the State Bar of Georgia (O.C.G.A. § 9-9-66);
2. The judge of the superior court appoints a court reporter to take down and transcribe, if necessary, the arbitration proceedings (O.C.G.A. § 9-9-64);
3. The referee serves as a non-voting member of the panel of arbitrators if the referee is not the single arbitrator (O.C.G.A. § 9-9-66);
4. The examination of witnesses and the admission of evidence in an arbitration is governed by the rules applicable to the superior courts (O.C.G.A. § 9-9-76);
5. The referee has the power to administer oaths to witnesses and to administer all other oaths that may be necessary for the arbitration (O.C.G.A. § 9-9-77);
6. The referee must meet with the parties or their representatives, or both, prior to the arbitration and assist the parties in preparing an arbitration submission which must contain the following:
 - (a) a clear and accurate statement of the matters in controversy;
 - (b) an agreement as to the payment of the costs of the arbitration;
 - (c) the procedures to be followed in the arbitration;
 - (d) a list of the witnesses whose testimony the parties desire to present to the arbitrators;

- (e) the names of the arbitrators chosen by each party;
 - (f) the time and place of meeting of the arbitrators; and
 - (g) any other matters that may be pertinent to the arbitration (O.C.G.A. § 9-9-65(a)(1) through (7));
7. The arbitration submission must be in writing and be signed by the parties or their representatives and, when signed, it is irrevocable except by consent of all the parties (O.C.G.A. § 9-9-65(b));
 8. The arbitrators must make a written finding on each matter in controversy as contained in the arbitration submission, and if all the arbitrators fail to agree, then any two can make the finding (O.C.G.A. § 9-9-78);
 9. The parties to the arbitration may obtain discovery in the same manner as provided by law for discovery in civil cases in the superior courts (O.C.G.A. § 9-9-72);
 10. The referee has all the powers of the superior courts to issue subpoenas and to compel the attendance of witnesses for the arbitration (O.C.G.A. § 9-9-73); and
 11. The referee has all the powers of the superior courts to compel parties to produce books and all other papers which may be deemed necessary and proper for the investigation of the matters submitted to arbitration pursuant to such notice as is required in the superior courts for the production of papers (O.C.G.A. § 9-9-74).

The statute on the arbitration of medical malpractice claims provides, in part, as follows:

However, no agreement to arbitrate a medical malpractice claim shall be enforceable unless the agreement was made subsequent to the alleged malpractice and after a dispute or controversy has occurred and unless the claimant is represented by an attorney-at-law at the time the agreement is entered into. O.C.G.A. § 9-9-62 (Emphasis added).

It is unclear as to whether the emphasized portion of § 9-9-62 applies to a property tax appeal such that a non-binding arbitration cannot be conducted unless the taxpayer is represented by an attorney-at-law. However, since such an arbitration is supervised by the superior court and the rules of evidence and discovery apply, it would appear that only an attorney can represent a taxpayer in non-binding arbitration. Thus, there may be a question as to whether a taxpayer can file an appeal requesting non-binding arbitration unless at that time the taxpayer is represented by an attorney.

Also, it appears that the review by a board of tax assessors, which is the first level of appeal, is skipped if a notice of non-binding arbitration is filed by a taxpayer. It should be noted that the notice of arbitration must be filed when the original appeal of a tax assessment notice is filed. Also, the role of the referee in the arbitration must be considered as well as the expenses of the referee. The referee must be an attorney and a question exists as to whether an attorney can be the single arbitrator, if the attorney is not classified as a registered real estate appraiser by the Georgia Real Estate Appraisers Board.