

State Bar Position on Taxing of Legal Services

The State Bar of Georgia opposes that portion of H.R. 900 that would impose a sales and use tax on legal services. The Bar is concerned that the Resolution, as presently drafted, could interfere with the client-lawyer relationship. If enforcement statutes currently in place are applied to this new tax, it appears that the Georgia Department of Revenue, under its audit authority, would have access to attorney records setting out the names of clients and the fees paid. The Department might even claim access to detailed client billing records. Such information is considered confidential under Georgia Rule of Professional Conduct 1.6. The Resolution creates a conflict between the lawyer's traditional confidentiality obligations to clients and the requirement to respond to audit requests.

The State Bar of Georgia believes that the taxation of legal services in Georgia could either discourage individuals from seeking legal assistance or drive them to seek untaxed services outside of the State.

The exemption of business from the imposition of sales and use tax means that only individuals will carry this burden. Thus in a transaction involving both a business and an individual where both use the services of a lawyer only the individual will be taxed. This creates a disincentive for individuals to protect their rights by the use of legal representation while placing no similar impediment on business. This disparate treatment raises concerns about both the fundamental fairness and constitutionality of the tax.