

House Bill 931

By: Representatives Willard of the 49th and Tumlin of the 38th

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 48 of the Official Code of Georgia Annotated, relating to revenue, so as to
2 change the penalty for failure to pay ad valorem taxes; to provide for definitions; to provide
3 for the transfer of tax executions; to provide for certain notices to taxpayers; to provide for
4 the payment of such executions; to provide for certain procedures relative to such tax
5 executions; to provide for the collection of such executions; to provide for certain charges;
6 to prohibit the purchase of tax executions by certain persons; to provide for the manner of
7 paying tax executions held by absentee transferees; to provide for related matters; to provide
8 an effective date; to repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 style="text-align:center">**SECTION 1.**

11 Title 48 of the Official Code of Georgia Annotated, relating to revenue, is amended by
12 striking subsection (b) of Code Section 48-2-44, relating to penalty and interest on failure to
13 pay ad valorem tax, and inserting in lieu thereof a new subsection (b) to read as follows:

14 "(b)(1) In any instance in which any person willfully fails, on or after July 1, 2005, to
15 pay, before the delinquency date, any ad valorem tax owed the state or any local
16 government, such person shall pay a penalty of 3 percent of the amount of tax due and
17 not paid on or before the time prescribed by law.

18 (2) In any instance in which any such person willfully fails, on or after July 1, 1981, to
19 pay, within 90 days of the due date when due, any such ad valorem tax owed the state or
20 any local government, he such person shall pay, in the absence of a specific statutory civil
21 penalty for the failure, a an additional penalty of 10 7 percent of the amount of the tax
22 due and not paid on or before the time prescribed by law, together with interest as
23 specified by law. This However, none of the 10 percent total penalty shall not, however,
24 apply in the case of:

25 (A) Ad valorem taxes of \$500.00 or less on homestead property as defined in Part 1 of
26 Article 2 of Chapter 5 of this title; or

1 (B) With respect to tax year 1986 and future tax years, ad valorem taxes of any amount
 2 on homestead property as defined in Part 1 of Article 2 of Chapter 5 of this title, if the
 3 homestead property was during the tax year acquired by a new owner who did not
 4 receive a tax bill for the tax year and who immediately before acquiring the homestead
 5 property resided outside the State of Georgia and if the taxes are paid within one year
 6 following the due date.

7 ~~(2) Any city or county authorized as of April 22, 1981, by statute or constitutional~~
 8 ~~amendment to receive a penalty of greater than 10 percent for failure to pay an ad~~
 9 ~~valorem tax is authorized to continue to receive that amount.~~

10 ~~(3) With respect to all penalties and interest received by the tax commissioner on or after~~
 11 ~~July 1, 1998, unless otherwise specifically provided for by general law, the tax~~
 12 ~~commissioner shall distribute penalties collected and interest collected or earned as~~
 13 ~~follows:~~

14 ~~(A) Penalties collected for failure to return property for ad valorem taxation or for~~
 15 ~~failure to pay ad valorem taxes, and interest earned by the tax commissioner on taxes~~
 16 ~~collected but not yet disbursed, shall be paid into the county treasury in the same~~
 17 ~~manner and at the same time the tax is collected and distributed to the county, and they~~
 18 ~~shall remain the property of the county; and~~

19 ~~(B) Interest collected on delinquent ad valorem taxes shall be distributed pro rata based~~
 20 ~~on each taxing jurisdiction's share of the total tax on which the interest was computed."~~

21 SECTION 2.

22 Said title is further amended by striking Code Section 48-3-19, relating to tax executions,
 23 and inserting in its place a new Code Section 48-3-19 to read as follows:

24 "48-3-19.

25 (a) As used in this Code section, the term:

26 (1) 'Delinquent taxpayer' means the person or persons against whom an execution has
 27 been issued.

28 (2) 'Execution' means an execution issued for the collection of any ad valorem taxes,
 29 fees, penalties, interest, or collection costs due the state or any political subdivision
 30 thereof.

31 (3) 'Governing authority' means the county governing authority when the tax executions
 32 have been issued for state and county taxes or a combination of state, county, and city
 33 taxes; or the municipal governing authority when the tax executions have been issued for
 34 city taxes alone.

35 (4) 'Transferee' means a person paying for any execution for the purpose of having all
 36 the rights to enforce collection thereof transferred to him or her.

1 (5) 'Transferor' means the official holding the tax executions and authorized to collect
 2 or transfer such tax executions.

3 (b)(1) Before a governing authority may agree to the transfer of executions, it shall notify
 4 the delinquent taxpayers of its intention to authorize such transfer. Such notice shall be
 5 sent by regular mail and shall advise the delinquent taxpayers against whom the
 6 executions have been issued that the delinquent taxpayers have 30 days in which to pay
 7 the transferor the amount of the execution plus any penalties, interest, and costs that may
 8 have accrued or the executions may be transferred to a private company for collection.
 9 In the event that such notice sent by regular mail is returned undelivered or the identity
 10 of the delinquent taxpayer is unknown to the governing authority, the governing authority
 11 shall publish such notice not less than once a week for three weeks in the legal organ of
 12 the county in which the execution was entered on the general execution docket of the
 13 superior court. In either event, the transferor shall not be authorized to transfer the
 14 executions until this notice has been made and the 30 day period has transpired.

15 (2) Whenever any person other than the person against whom an execution has been
 16 issued for state, county, or municipal taxes pays such execution and proves compliance
 17 with subsection (c) of this Code section, the officer whose duty it is to enforce the
 18 execution, upon the request of the party paying the execution, shall transfer the execution
 19 to the party so paying. The transferee shall have the same rights as to enforcing the
 20 execution and priority of payment as might have been exercised or claimed by the
 21 transferor before the transfer, if, within 30 days of the transfer, the transferee has the
 22 execution entered on the general execution docket of the superior court of the county in
 23 which the execution was issued and, if the person against whom the execution was issued
 24 resides in a different county, has the execution entered on the general execution docket
 25 of the superior court in the county of such person's residence. In default of the required
 26 entry, the execution shall lose its lien upon any property which has been transferred.

27 (3)(A) It shall be unlawful for any tax official or his or her employees to pay a tax
 28 execution in order to obtain a transfer of the execution under this Code section. The tax
 29 officials covered by this paragraph are:

30 (i) County tax receivers, tax collectors, and tax commissioners;

31 (ii) Members of county boards of tax assessors;

32 (iii) Members of county boards of equalization; and

33 (iv) County tax appraisers.

34 (B) Any execution transferred in violation of subparagraph (A) of this paragraph shall
 35 be void and unenforceable by the person obtaining the execution and such person's
 36 successors in interest.

1 (C) Any tax official or employee of a tax official violating subparagraph (A) of this
2 paragraph shall upon conviction be guilty of a misdemeanor.

3 (c) No person may pay an execution issued for ad valorem property taxes and thereby
4 become the transferee of such execution as provided in paragraph (2) of subsection (b) of
5 this Code section if the person is not a lawful heir or an equity holder in such property
6 unless and until:

7 (1) Such person has notified the individual against whom the execution was issued by
8 certified mail or statutory overnight delivery, return receipt requested, and, with respect
9 to single-family residences and duplexes, notified the occupant thereof by first-class mail,
10 of such person's intention to pay such execution and unless and until 30 days have
11 elapsed since the giving of such notice; or

12 (2) In the event that such notice by certified mail or statutory overnight delivery, return
13 receipt requested, is returned undelivered, such person shall be required to publish such
14 notice not less than once a week for three weeks in the legal organ of the county in which
15 the execution was entered on the general execution docket of the superior court. Such
16 person shall be required to show proof to the tax official who issued the execution that
17 such notice was advertised in compliance with this paragraph.

18 (d) In the event any execution transferred is later determined to have been issued in error,
19 the transferee shall cease and desist from all collection efforts, remove the associated
20 entries from any execution dockets on which it has been entered, remove any negative
21 reports that may have been submitted to credit reporting agencies regarding the erroneous
22 execution, and return the execution to the transferor. In return, the transferor shall
23 reimburse the transferee the total amount paid for the execution including any penalties,
24 interest, and collection costs that may have been incurred by the transferee since the
25 transfer.

26 (e)(1) The transferee may begin collection proceedings immediately after the transfer;
27 however, the transferee shall, within 30 days after transfer of the execution, send a notice
28 to the delinquent taxpayer indicating the transferee is now holding such execution. The
29 notice shall include, but not be limited to, the payment amount necessary to settle the
30 execution, the rate of accumulation of additional charges authorized by law on the
31 execution, and the actions that will be taken by the transferee if the execution is not
32 settled in a timely manner.

33 (2) The transferee shall, immediately after the execution has been settled, indicate such
34 settlement on any execution dockets where the execution has been entered and submit a
35 statement indicating such settlement to any credit reporting agencies to which negative
36 reports were submitted by the transferee regarding the execution.

1 (f) The transferee or transferee's successor or assigns shall not charge the person against
 2 whom such execution was issued for the release or satisfaction of such execution more than
 3 the total of the amount paid on the tax execution plus interest from the date of such transfer
 4 in accordance with Code Section 48-2-40. In addition, the transferee may charge and
 5 collect recording fees actually expended in recording the transferred execution on the
 6 general execution docket of any county in which the transfer is recorded and such other
 7 penalties as are provided for in this title. Reserved."

8 SECTION 3.

9 Said title is further amended by adding a new Code Section 48-3-19.1 to read as follows:

10 "48-3-19.1.

11 (a) As used in this Code section, the term 'absent transferee' is a transferee, as defined in
 12 Code Section 48-3-19, who has not taken steps to collect on a tax execution he or she holds
 13 and who cannot be readily located for payoff.

14 (b) If a delinquent taxpayer wishes to pay off a tax execution held by a transferee, he or
 15 she shall place with the tax commissioner a certified check or money order in an amount
 16 calculated to pay off the tax execution, including penalties, interest, and other costs that
 17 may have accrued. The delinquent taxpayer shall then send notice by certified mail or
 18 statutory overnight delivery, return receipt requested, to the transferee's last address of
 19 record as shown in the office of the clerk of superior court of the county. The notice shall
 20 include the contact information of the delinquent taxpayer as well as that of the tax
 21 commissioner. If no response from the transferee is made to the tax commissioner's office
 22 within 45 days, the delinquent taxpayer, showing proof of notice sent, shall receive the full
 23 amount of the payoff amount previously deposited with the tax commissioner and the lien
 24 against his or her property shall be null and void.

25 (c) The provisions of Code Section 48-3-19 and this Code section shall exclusively govern
 26 the sale of tax executions."

27 SECTION 4.

28 This Act shall become effective upon its approval by the Governor or upon its becoming law
 29 without such approval.

30 SECTION 5.

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