

House Bill 353

By: Representative O`Neal of the 146th

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 48 of the Official Code of Georgia Annotated, relating to revenue and
2 taxation, so as to provide for offsets against unclaimed property; to provide for the
3 notification, attachment, and seizure of funds held by financial institutions; to provide for the
4 service of summons of garnishment; to provide for the service of subpoenas; to change
5 certain provisions regarding the attachment, priority, and perfection of state tax liens; to
6 change certain provisions regarding the disclosure of confidential tax information; to provide
7 an effective date; to repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is
11 amended by revising paragraph (4) of subsection (a) of Code Section 48-2-8, relating to the
12 state revenue commissioner's authorization to issue subpoenas, as follows:

13 "(4) Subpoena the attendance of witnesses and require the production of books, papers,
14 records, and documents and, subject to the rights of the taxpayer as to rights of privacy
15 guaranteed to ~~him~~ the taxpayer by the Constitution and laws of this state, may examine
16 such items and the books, records, inventories, or business of any taxpayer or of any
17 fiduciary, bailee, or other person having knowledge of the tax liability of any taxpayer
18 or knowledge pertinent to the investigation or inquiry. The subpoena may be served by
19 the commissioner or the commissioner's authorized representative to a person at the
20 person's last known address by registered or certified mail or statutory overnight
21 delivery, return receipt requested. The person's refusal to accept such registered or
22 certified mail or statutory overnight delivery addressed to such person shall be deemed
23 notice to the person."

1 accomplished through a commercial firm as provided under paragraph (1) of subsection
 2 (b) of Code Section 9-10-12, the return receipt indicating receipt by the garnishee or the
 3 envelope bearing the official notification of such commercial firm of the garnishee's
 4 refusal to accept delivery shall be filed with the clerk of the court in which garnishment
 5 is pending. The garnishee's refusal to accept such registered or certified mail or statutory
 6 overnight delivery addressed to garnishee shall be deemed notice to garnishee."

7 "(g) If an apparent owner or other person entitled to any property paid or delivered under
 8 Article 5 of Chapter 12 of Title 44, the 'Disposition of Unclaimed Property Act,' is subject
 9 to a writ of execution issued under Code Section 48-3-1, the commissioner may offset the
 10 execution against the property. Prior to the offset, the commissioner shall notify the
 11 apparent owner or other person entitled to the property in writing at the owner's last known
 12 address as shown on the records of the department that the state intends to offset the
 13 person's delinquent state tax liability against the person's interest in or claim to the
 14 property."

15 SECTION 4.

16 Said title is further amended by revising subsections (a), (e), and (f) and by adding a new
 17 subsection in Code Section 48-2-56, relating to creation and priority of tax liens, to read as
 18 follows:

19 "(a) Except as otherwise provided in this Code section, liens for all taxes due the state or
 20 any county or municipality in the state shall arise as of the time the taxes become due and
 21 unpaid and all tax liens shall ~~cover~~ attach to all property in which the taxpayer has any
 22 interest from the date the lien arises until such taxes are paid."

23 "(e) The lien for taxes imposed by the provisions of Article 2 of Chapter 7 of this title,
 24 relating to certain income taxes, shall:

25 (1) Arise and ~~cover~~ attach to all property of the taxpayer as of the time a tax execution
 26 for these taxes is entered upon the general execution docket; and

27 (2) Not be superior to the lien of a prior recorded instrument securing a bona fide debt.

28 ~~Before the lien provided for in this subsection shall attach to real property it shall be~~
 29 ~~recorded in the county where the real property is located.~~

30 (f) The lien for taxes imposed by the provisions of Article 5 of Chapter 7 of this title,
 31 relating to withholding taxes, shall:

32 (1) Arise and attach to all property of the defaulting employer or other person required
 33 to deduct and withhold on the date of the assessment of the taxes by operation of law or
 34 by action of the commissioner;

35 (2) Not be superior to the lien of a prior recorded instrument securing a bona fide debt;

36 and

1 (3) Not be superior to the lien of a subsequent bona fide purchaser or lender for value
 2 recorded prior to the time the execution for the tax has been entered on the general
 3 execution docket in the office of the superior court of the county in which the property
 4 affected is located.

5 ~~Before the lien provided for in this subsection shall attach to real property it shall be~~
 6 ~~recorded in the county where the real property is located."~~

7 "(i) Before the liens provided for in this Code section for taxes imposed by the provisions
 8 of Article 2 of Chapter 7 of this title, relating to certain income taxes, and Article 5 of
 9 Chapter 7 of this title, relating to withholding taxes, shall attach to real property in which
 10 the taxpayer has any interest, the execution for these taxes shall be recorded with the clerk
 11 of the superior court of the taxpayer's last known residence as shown on the department's
 12 records or the county in which the taxpayer may own property. It shall then be the duty of
 13 the clerk of the superior court of the county in which the tax execution for these taxes or
 14 any other taxes due the state is filed to enter the execution upon the lien records of the
 15 superior court of said county, with the execution being recorded in the same manner and
 16 form as prescribed by the general laws of the State of Georgia relating to executions issued
 17 by a superior court of this state and processed and transmitted electronically for inclusion
 18 in the state-wide uniform automated information system for real and personal property
 19 records, as provided in Code Section 15-6-97. When the execution has been issued and
 20 docketed as required in this subsection, the lien shall be a perfected lien upon all property
 21 and rights to property of the taxpayer, both real and personal, in each county of this state."

22 SECTION 5.

23 Said title is further amended by adding a new Code section to read as follows:

24 "48-2-62.

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

26 (1)(A) 'Account' means:

27 (i) Any funds from a demand deposit account, checking account, negotiable order of
 28 withdrawal account, savings account, time deposit account, money market mutual
 29 fund account, or certificate of deposit account;

30 (ii) Any funds paid towards the purchase of shares or other interest in a financial
 31 institution, as defined in subparagraphs (B) and (C) of paragraph (3) of this
 32 subsection; and

33 (iii) Any funds or property held by a financial institution, as defined in subparagraph
 34 (D) of paragraph (3) of this subsection.

35 (B) 'Account' does not include:

1 (i) An account or portion of an account to which an obligor does not have access due
2 to the pledge of the funds as security for a loan or other obligation;

3 (ii) Funds or property deposited to an account after the time that the financial
4 institution initially attaches the account;

5 (iii) An account or portion of an account to which the financial institution has a
6 present right to exercise a right of setoff;

7 (iv) An account or portion of an account that has an account holder of interest named
8 as an owner on the account; or

9 (v) An account or portion of an account to which the obligor does not have an
10 unconditional right of access.

11 (2) 'Account holder of interest' means any person, other than the obligor, who asserts an
12 ownership interest in an account.

13 (3) 'Financial institution' means:

14 (A) A depository institution, as defined in the federal Deposit Insurance Act under 12
15 U. S. C. Section 1813(c);

16 (B) A federal credit union or state credit union, as defined in the federal Credit Union
17 Act under 12 U. S. C. Section 1752;

18 (C) A state credit union regulated under Title 7; or

19 (D) A benefit association, insurance company, safe deposit company, money market
20 mutual fund, or similar entity doing business in the state that holds property or
21 maintains accounts reflecting property belonging to others.

22 (4) 'Obligor' means a person whose property is subject to a state tax lien.

23 (b) The commissioner may request from a financial institution information and assistance
24 to enable the department to enforce the tax laws of the state.

25 (c)(1) The commissioner may request not more than four times a year from a financial
26 institution the information set forth in paragraph (2) of subsection (d) of this Code section
27 concerning any obligor who is delinquent in the payment of taxes.

28 (2) A request for information by the commissioner under paragraph (1) of this subsection
29 shall:

30 (A) Contain the full name of the obligor and any other names known to be used by the
31 obligor and the social security number, federal employer identification number, or other
32 taxpayer identification number of the obligor; and

33 (B) Be transmitted to the financial institution in an electronic format.

34 (d)(1) Within 30 days after a financial institution receives a request for information under
35 subsection (c) of this Code section, the financial institution shall, with respect to each
36 obligor whose name the commissioner submitted to the financial institution, submit a
37 report to the commissioner.

1 (2)(A) Except as provided in subparagraph (B) of this paragraph, the report described
2 in paragraph (1) of this subsection shall contain, to the extent reflected in the records
3 of the financial institution:

4 (i) The full name of the obligor;

5 (ii) The address of the obligor;

6 (iii) The social security number, federal employer identification number, or other
7 taxpayer identification number of the obligor;

8 (iv) Any other identifying information needed to ensure positive identification of the
9 obligor; and

10 (v) For each account of the obligor, the obligor's account number and balance.

11 (B) For a financial institution that submits reports through the federal parent locator
12 service under 42 U.S.C. Section 666(a)(17), the report described in paragraph (1) of this
13 subsection may contain information that meets the specifications required for financial
14 data match reports under the federal parent locator service.

15 (3) A report submitted under paragraph (1) of this subsection shall be provided to the
16 commissioner in machine readable form.

17 (4) The commissioner shall pay the financial institution a reasonable fee, not to exceed
18 the actual costs incurred by the financial institution to comply with the requirements of
19 this Code section.

20 (5) The commissioner may institute civil proceedings to enforce this Code section.

21 (e) A financial institution that complies with a request from the commissioner by
22 submitting a report to the commissioner in accordance with subsection (d) of this Code
23 section is not liable under state law to any person for any:

24 (1) Disclosure of information to the commissioner under this Code section; or

25 (2) Other action taken in good faith to comply with the requirements of this Code
26 section.

27 (f) A financial institution furnishing a report to the commissioner under this Code section
28 is prohibited from disclosing to an obligor that the name of that obligor has been received
29 from or furnished to the commissioner.

30 (g)(1)(A) The commissioner may send notice of a tax lien to any financial institution
31 that the commissioner reasonably believes holds property subject to a tax lien.

32 (B) The notice to be sent under this paragraph shall be provided by:

33 (i) First-class mail, under the postmark of the United States Postal Service, at the
34 address designated for this purpose by the financial institution or, if no address has
35 been designated, to the principal office of the financial institution;

36 (ii) An electronic format agreed on by the commissioner and the financial institution;

37 or

1 (iii) Any other reasonable manner as agreed on by the commissioner and the financial
2 institution.

3 (2) The notice to be sent by the commissioner to a financial institution under
4 paragraph (1) of this subsection shall contain:

5 (A) The name of the obligor;

6 (B) The amount of the tax lien;

7 (C) The last known address of the obligor;

8 (D) The social security number, federal employer identification number, or other
9 taxpayer identification number of the obligor; and

10 (E) A notice to immediately seize and attach from one or more accounts held by the
11 financial institution in the name of the obligor an aggregate amount equal to the lesser
12 of the amounts in all accounts or the amount of the tax lien.

13 (h)(1) On receipt of the notice described in subsection (g) of this Code section, the
14 financial institution promptly shall seize and attach from one or more of the accounts of
15 the obligor held by the financial institution an aggregate amount equal to the lesser of:

16 (A) The total of the amounts in all the accounts of the obligor held by the financial
17 institution; or

18 (B) The amount stated in the notice sent under subsection (g) of this Code section.

19 (2) Within 15 days after the financial institution receives the notice directing it to seize
20 and attach accounts of the obligor, the financial institution shall send notice to the
21 commissioner, in the manner specified in subsection (g) of this Code section, specifying
22 the aggregate amount held under this subsection.

23 (3)(A) The financial institution may assess a fee against the accounts of the obligor in
24 addition to the amount identified in the notice under subsection (g) of this Code section.

25 (B) In the case of insufficient funds to cover both the fee and the amount identified in
26 the notice under subsection (g) of this Code section, the financial institution may first
27 deduct and retain the fee from the amount seized and attached as provided in this Code
28 section.

29 (4) The financial institution may not be held liable to any person, including the
30 commissioner, the obligor, or any account holder of interest, for wrongful dishonor or for
31 any other claim relating to the seizure and attachment of an account or other actions taken
32 in compliance with this Code section.

33 (i)(1) Within ten business days after the commissioner has received notice from the
34 financial institution under paragraph (2) of subsection (h) of this Code section, the
35 commissioner shall send a notice to the obligor, by regular mail, to the obligor's last
36 known address.

1 (2) The notice shall contain the following information, to the extent known by the
2 commissioner:

3 (A) The address of the commissioner;

4 (B) The telephone number, address, and name of a contact person at the office of the
5 commissioner;

6 (C) The name and social security number, federal employer identification number, or
7 other taxpayer identification number of the obligor;

8 (D) The address of the obligor;

9 (E) For each account of the obligor, the name of the financial institution that has seized
10 and attached amounts as required by this Code section;

11 (F) The total amount of the tax lien owed by the obligor;

12 (G) The date the notice is being sent;

13 (H) A statement informing the obligor that the commissioner has directed the financial
14 institution to seize and attach the amount of the tax lien owed by the obligor from one
15 or more of the accounts of the obligor and, on subsequent notice by the commissioner,
16 to forward the amount to the commissioner; and

17 (I) A statement informing the obligor that, unless a timely challenge is made by the
18 obligor or an account holder of interest under subsection (l) of this Code section, the
19 commissioner shall notify the financial institution to forward the amount seized and
20 attached by the financial institution to the commissioner.

21 (3) The commissioner shall not be obligated to send the notice described in
22 paragraphs (1) and (2) of this subsection if, prior to the time that the notice must be sent,
23 the commissioner and the obligor agree to an arrangement under which the obligor will
24 pay amounts owed under the tax lien.

25 (j)(1) If a timely challenge is not made by the obligor or an account holder of interest
26 under subsection (l) of this Code section, the commissioner shall send a notice to the
27 financial institution, in the manner specified in subsection (g) of this Code section,
28 directing the institution to:

29 (A) Forward the amount seized and attached by the financial institution to the
30 commissioner;

31 (B) Reduce the amount seized and attached by the financial institution to a revised
32 amount as stated, forward the revised amount to the commissioner, and release the
33 excess amount; or

34 (C) Release the amount seized and attached by the financial institution.

35 (2) The commissioner may send the notice described in paragraph (1) of this subsection
36 before the time for filing a timely challenge under subsection (l) of this Code section on

1 agreement among the commissioner, the obligor, and, if the commissioner is aware of an
2 account holder of interest, the account holder of interest.

3 (k) The commissioner shall apply the amount seized and forwarded by the financial
4 institution to the obligor's tax lien obligation.

5 (l)(1) An obligor or an account holder of interest may challenge the actions of the
6 commissioner under this Code section by filing a motion with the commissioner within
7 ten days of the date of the notice sent under paragraph (1) of subsection (i) of this Code
8 section.

9 (2) An obligor or an account holder of interest may challenge the actions of the
10 commissioner based on:

11 (A) A mistake in the identity of the obligor;

12 (B) A mistake in the ownership of the account;

13 (C) A mistake in the contents of the account; or

14 (D) A mistake in the amount of the lien obligation due.

15 (3) An obligor or an account holder of interest may not challenge the actions of the
16 commissioner based on a mistake or error in the original tax assessment underlying the
17 tax lien against the obligor.

18 (4) The commissioner's denial of an obligor or an account holder of interest's motion
19 challenging the actions of the commissioner under this Code section is not a contested
20 case under Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.'

21 (m)(1) The commissioner may withdraw the notice to seize and attach accounts by
22 sending notice to the financial institution, in the manner specified in subsection (g) of this
23 Code section, directing the financial institution to release the attachment on the accounts.

24 (2) If a determination is made by the commissioner that the account or accounts of the
25 obligor should not have been held, the commissioner shall notify the financial institution,
26 in the manner specified in subsection (g) of this Code section, to release the amount
27 seized and attached by the financial institution.

28 (3) If a determination is made by the commissioner, pursuant to a challenge under
29 subsection (l) of this Code section, to reduce the amount seized and attached by the
30 financial institution, the commissioner shall notify the financial institution, in the manner
31 specified in subsection (g) of this Code section, to revise the amount as stated, forward
32 the revised amount to the commissioner, and release the excess amount seized and
33 attached by the financial institution.

34 (4)(A) If a challenge made under subsection (l) of this Code section is denied by the
35 commissioner, the commissioner shall notify the financial institution, in the manner
36 specified in subsection (g) of this Code section, to forward the amount seized and
37 attached by the financial institution to the commissioner.

- 1 (B) A financial institution that complies with a notice from the commissioner sent
2 under this Code section is not liable under state law to any person for:
- 3 (i) Any disclosure of information to the commissioner under this Code section;
 - 4 (ii) Seizing and attaching any amounts from an account or sending any amount seized
5 and attached by the financial institution to the commissioner; or
 - 6 (iii) Any other action taken in good faith to comply with the requirements of this
7 Code section.
- 8 (n) A financial institution has no obligation to reimburse fees assessed as a result of the
9 commissioner instituting an action under this Code section or as otherwise permitted by
10 law or authorized by contract.
- 11 (o) This Code section may not be construed to prohibit the commissioner from collecting
12 taxes due from the obligor in any other manner authorized by law."

13 **SECTION 6.**

- 14 (a) Except as otherwise provided in subsection (b) of this section, this Act shall become
15 effective upon its approval by the Governor or upon its becoming law without such approval.
- 16 (b) Section 5 of this Act shall become effective on January 1, 2008.

17 **SECTION 7.**

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