

The House Committee on Ways and Means offers the following substitute to HB 353:

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 change and add provisions relative to enforcement and collection of taxes;  
3 to provide for offsets against unclaimed property; to provide for the notification, attachment,  
4 and seizure of funds held by financial institutions; to provide for the service of summons of  
5 garnishment; to provide for the service of subpoenas; to change certain provisions regarding  
6 the attachment, priority, and perfection of state tax liens; to change certain provisions  
7 regarding the disclosure of confidential tax information; to provide effective dates; to repeal  
8 conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**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

14 "(4) Subpoena the attendance of witnesses and require the production of books, papers,  
15 records, and documents and, subject to the rights of the taxpayer as to rights of privacy  
16 guaranteed to ~~him~~ the taxpayer by the Constitution and laws of this state, may examine  
17 such items and the books, records, inventories, or business of any taxpayer or of any  
18 fiduciary, bailee, or other person having knowledge of the tax liability of any taxpayer  
19 or knowledge pertinent to the investigation or inquiry. The subpoena may be served by  
20 the commissioner or the commissioner's authorized representative to a person at the  
21 person's last known address by registered or certified mail or statutory overnight  
22 delivery, return receipt requested. If a person refuses to accept service of a subpoena by  
23 registered or certified mail or statutory overnight delivery, the subpoena shall be served  
24 by the commissioner or the commissioner's authorized representative under any other  
25 method of lawful service and the person shall be personally liable to the commissioner  
26 for a sum equal to the actual costs incurred to serve the subpoena. This liability shall be

1 paid upon notice and demand by the commissioner or the commissioner's delegate and  
 2 shall be assessed and collected in the same manner as other taxes administered by the  
 3 commissioner."

#### 4 SECTION 2.

5 Said title is further amended by revising Code Section 48-2-15.1, relating to the disclosure  
 6 of confidential taxpayer information or records, as follows:

7 "48-2-15.1.

8 Notwithstanding Code Section 48-7-60 and the prohibition against disclosure of income  
 9 tax information contained in any report or return under that Code section and  
 10 notwithstanding any other provision of law to the contrary, confidential taxpayer  
 11 information or records with respect to which the taxpayer has granted express written  
 12 authorization to the commissioner or an officer or employee of the department may be  
 13 disclosed to or discussed with another party."

#### 14 SECTION 3.

15 Said title is further amended in Code Section 48-2-55, relating to attachment and  
 16 garnishment, by revising paragraph (2) of subsection (b) and by adding a new subsection to  
 17 read as follows:

18 "(2) The commissioner or ~~his~~ the commissioner's authorized representative may use  
 19 garnishment to collect any tax, fee, license, penalty, interest, or collection costs due the  
 20 state which are imposed by this title or which the commissioner or the department is  
 21 responsible for collecting under any other law. Garnishment may be issued by the  
 22 commissioner or ~~his~~ the commissioner's authorized representative against any person  
 23 whom ~~he~~ the commissioner believes to be indebted to the defendant or who has property,  
 24 money, or effects in ~~his~~ such person's hands belonging to the defendant. The summons  
 25 of garnishment shall be served by the commissioner or ~~his~~ the commissioner's authorized  
 26 representative, shall be served at least 15 days before the sitting of the court to which the  
 27 summons is made returnable, and shall be returned to either the superior court or the state  
 28 court of the county in which the garnishee is served. The commissioner or ~~his~~ the  
 29 commissioner's authorized representative shall enter on the execution the names of the  
 30 persons garnished and shall return the execution to the appropriate court. All subsequent  
 31 proceedings shall be the same as provided by law regarding garnishments in other cases  
 32 when judgment has been obtained or execution issued. In addition to any other methods  
 33 of service, the summons of garnishment may be served by the commissioner or the  
 34 commissioner's authorized representative to the garnishee by registered or certified mail  
 35 or statutory overnight delivery, return receipt requested. Either the return receipt

1 indicating receipt by the garnishee or the envelope bearing the official notification from  
 2 the United States Postal Service of the garnishee's refusal to accept delivery of such  
 3 registered or certified mail or statutory overnight delivery shall be filed with the clerk of  
 4 the court in which the garnishment is pending. If statutory overnight delivery was  
 5 accomplished through a commercial firm as provided under paragraph (1) of subsection  
 6 (b) of Code Section 9-10-12, the return receipt indicating receipt by the garnishee or the  
 7 envelope bearing the official notification of such commercial firm of the garnishee's  
 8 refusal to accept delivery shall be filed with the clerk of the court in which garnishment  
 9 is pending. If a garnishee refuses to accept service of a summons of garnishment by  
 10 registered or certified mail or statutory overnight delivery, the summons of garnishment  
 11 shall be served by the commissioner or the commissioner's authorized representative  
 12 under any other method of lawful service and the garnishee shall be personally liable to  
 13 the commissioner for a sum equal to the actual costs incurred to serve the summons of  
 14 garnishment. This liability shall be paid upon notice and demand by the commissioner  
 15 or the commissioner's delegate and shall be assessed and collected in the same manner  
 16 as other taxes administered by the commissioner."

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

#### 25 **SECTION 4.**

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

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

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

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

1 (2) Not be superior to the lien of a prior recorded instrument securing a bona fide debt.  
 2 ~~Before the lien provided for in this subsection shall attach to real property it shall be~~  
 3 ~~recorded in the county where the real property is located.~~

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

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

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

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

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

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

### 33 SECTION 5.

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

35 "48-2-62.

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

- 1 (1)(A) 'Account' means:
- 2 (i) Any funds from a demand deposit account, checking account, negotiable order of  
3 withdrawal account, savings account, time deposit account, money market mutual  
4 fund account, or certificate of deposit account;
- 5 (ii) Any funds paid towards the purchase of shares or other interest in a financial  
6 institution, as defined in subparagraphs (B) and (C) of paragraph (3) of this  
7 subsection; and
- 8 (iii) Any funds or property held by a financial institution, as defined in subparagraph  
9 (D) of paragraph (3) of this subsection.
- 10 (B) 'Account' does not include:
- 11 (i) An account or portion of an account to which an obligor does not have access due  
12 to the pledge of the funds as security for a loan or other obligation;
- 13 (ii) Funds or property deposited to an account after the time that the financial  
14 institution initially attaches the account;
- 15 (iii) An account or portion of an account to which the financial institution has a  
16 present right to exercise a right of setoff;
- 17 (iv) An account or portion of an account that has an account holder of interest named  
18 as an owner on the account; or
- 19 (v) An account or portion of an account to which the obligor does not have an  
20 unconditional right of access.
- 21 (2) 'Account holder of interest' means any person, other than the obligor, who asserts an  
22 ownership interest in an account.
- 23 (3) 'Financial institution' means:
- 24 (A) A depository institution, as defined in the federal Deposit Insurance Act under 12  
25 U. S. C. Section 1813(c), having Georgia deposits greater than \$15 billion according  
26 to the Federal Deposit Insurance Corporation Summary of Deposits annual report as of  
27 June 30; or
- 28 (B) A benefit association, insurance company, safe deposit company, money market  
29 mutual fund, or similar entity doing business in this state that holds property or  
30 maintains accounts reflecting property belonging to others.
- 31 (4) 'Obligor' means a person whose property is subject to a state tax lien.
- 32 (b) The commissioner may request from a financial institution information and assistance  
33 to enable the department to enforce the tax laws of the state.
- 34 (c)(1) Not more frequently than once every calendar quarter or as otherwise agreed to  
35 by the financial institution, the commissioner may request from a financial institution the  
36 information set forth in paragraph (2) of subsection (d) of this Code section concerning  
37 any obligor who is delinquent in the payment of taxes.

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

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

6 (B) Be transmitted to the financial institution in machine readable form.

7 (d)(1) Within 30 days of a request from the commissioner, or as otherwise agreed to by  
8 the financial institution, for information under subsection (c) of this Code section, the  
9 financial institution shall, with respect to each obligor whose name the commissioner  
10 submitted to the financial institution, submit a report to the commissioner.

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

14 (i) The full name of the obligor;

15 (ii) The address of the obligor;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 (ii) An electronic format agreed on by the commissioner and the financial institution;  
11 or

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

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

16 (A) The name of the obligor;

17 (B) The amount of the tax lien;

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

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

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

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

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

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

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

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

36 (B) In the case of insufficient funds to cover both the fee and the amount identified in  
37 the notice under subsection (g) of this Code section, the financial institution may first

1 deduct and retain the fee from the amount seized and attached as provided in this Code  
2 section.

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

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

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

13 (A) The address of the commissioner;

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

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

18 (D) The address of the obligor;

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

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

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

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

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

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

35 (j)(1) If a timely challenge is not made by the obligor or an account holder of interest  
36 under subsection (l) of this Code section, the commissioner shall send a notice to the

1 financial institution, in the manner specified in subsection (g) of this Code section,  
2 directing the institution to:

3 (A) Forward the amount seized and attached by the financial institution to the  
4 commissioner;

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

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

9 (2) The commissioner may send the notice described in paragraph (1) of this subsection  
10 before the time for filing a timely challenge under subsection (l) of this Code section on  
11 agreement among the commissioner, the obligor, and, if the commissioner is aware of an  
12 account holder of interest, the account holder of interest.

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

15 (l)(1) An obligor or an account holder of interest may challenge the actions of the  
16 commissioner under this Code section by filing a motion with the commissioner within  
17 30 days of the date of the notice sent under paragraph (1) of subsection (i) of this Code  
18 section.

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

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

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

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

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

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

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

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

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

1 (3) If a determination is made by the commissioner, pursuant to a challenge under  
2 subsection (l) of this Code section, to reduce the amount seized and attached by the  
3 financial institution, the commissioner shall notify the financial institution, in the manner  
4 specified in subsection (g) of this Code section, to revise the amount as stated, forward  
5 the revised amount to the commissioner, and release the excess amount seized and  
6 attached by the financial institution.

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

11 (B) A financial institution that complies with a notice from the commissioner sent  
12 under this Code section is not liable under state law to any person for:

13 (i) Any disclosure of information to the commissioner under this Code section;

14 (ii) Seizing and attaching any amounts from an account or sending any amount seized  
15 and attached by the financial institution to the commissioner; or

16 (iii) Any other action taken in good faith to comply with the requirements of this  
17 Code section.

18 (n) A financial institution has no obligation to reimburse fees assessed as a result of the  
19 commissioner instituting an action under this Code section or as otherwise permitted by  
20 law or authorized by contract.

21 (o) This Code section may not be construed to prohibit the commissioner from collecting  
22 taxes due from the obligor in any other manner authorized by law."

## 23 SECTION 6.

24 (a) Except as otherwise provided in subsection (b) of this section, this Act shall become  
25 effective upon its approval by the Governor or upon its becoming law without such approval.

26 (b) Section 5 of this Act shall become effective on July 1, 2008.

## 27 SECTION 7.

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