

House Bill 982 (AM)

By: Representative O'Neal of the 146th

A BILL TO BE ENTITLED
AN ACT

To amend Titles 48 and 50 of the Official Code of Georgia Annotated, relating, respectively, to revenue and taxation and state government, so as to provide for comprehensive provisions regarding administrative garnishment; to provide for procedures, conditions, and limitations; to provide for powers, duties, and authority of the state revenue commissioner and the Department of Revenue; to provide for an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is amended by adding a new paragraph in subsection (c) of Code Section 48-2-55, relating to attachment and garnishment, to read as follows:

"(3) Within at least six months of, and no less than 30 days before, a levy, the commissioner shall provide a balance due notice to the taxpayer by first-class mail addressed to the taxpayer's last known address as shown on the records of the department. The notice shall identify the state tax executions issued against the taxpayer, state the total amount necessary to fully satisfy the tax executions as of the date of the notice, provide the taxpayer an opportunity to pay the total amount due within a certain time period not less than 30 days, and state that the department may levy and seize the taxpayer's property and rights to property if full payment is not received within that time period."

SECTION 2.

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

"(g)(1) Notwithstanding any other provision of this Code section which provides for the attachment, garnishment, or levy against property, rights to property, or money, the

department may use the administrative garnishment process established in this subsection to collect from a delinquent taxpayer any delinquent taxes, fees, license fees, penalties, interest, or collection costs due the state that are imposed by this title or which the commissioner or the department is responsible for collecting under any other law.

(2)(A) The department may initiate an administrative garnishment to have property or rights to property belonging to the delinquent taxpayer, or wages or other compensation due the delinquent taxpayer, assigned by the garnishee to the department up to the amount of the full debt to be collected by the department.

(B) Notwithstanding this Code section, the exemptions from garnishment required or allowed by law, including, but not limited to, exemptions provided by Code Sections 18-4-20 and 18-4-22, shall be applicable to an administrative garnishment.

(3)(A) The department shall send a summons of administrative garnishment to the garnishee no earlier than 30 days after the delinquent taxpayer has waived or exhausted administrative or judicial remedies regarding the underlying tax assessment. Such summons shall be sent by registered or certified mail or statutory overnight delivery, return receipt requested. The return receipt indicating receipt by the garnishee shall be deemed notice to the garnishee. If the garnishee refuses to accept such service, the summons may be served under any other method of lawful service, and the garnishee shall be personally liable to the commissioner for a sum equal to the actual costs incurred to serve the summons of garnishment, which shall be assessed and collected in the same manner as other taxes administered by the department.

(B) Not more than three business days after the summons of administrative garnishment is sent to the garnishee, the department shall send a written notice of the summons to the delinquent taxpayer at the taxpayer's last known address by registered or certified mail or statutory overnight delivery, return receipt requested. Either the return receipt indicating receipt by the taxpayer or evidence of the taxpayer's refusal to accept such registered or certified mail or statutory overnight delivery addressed to the taxpayer shall be deemed notice to the taxpayer. The department may also effect service on the taxpayer using one of the methods set forth in Code Section 18-4-64.

(4)(A) Upon receipt of a notice of administrative garnishment from the department, a garnishee shall immediately give effect to the administrative garnishment and hold whatever property, rights to property, or money belonging to the delinquent taxpayer to the extent of the debt indicated in the notice from the department.

(B) Unless notified by the department of an appeal of the administrative garnishment by the delinquent taxpayer, the garnishee shall send the department a response stating what money or other property is subject to the garnishment and shall begin forwarding to the department the delinquent taxpayer's property, rights to property, or money, to

the extent required in the notice, no later than 45 days after the garnishee receives the summons of administrative garnishment.

(C) Any garnishee who willfully fails or refuses to surrender any property, rights to property, or money subject to administrative garnishment shall be personally liable to the commissioner for a sum equal to the value of the property, rights to property, or money not so surrendered but not exceeding the amount of the tax, interest, and penalties for the collection of which such administrative garnishment has been made, together with costs and interest at the rate specified in Code Section 48-2-40 from the date of such garnishment. The liability imposed in this subparagraph shall be paid upon notice and demand by the commissioner or the commissioner's delegate and shall be assessed and collected in the same manner, with the same protest and appeal rights, as other taxes administered by the commissioner. Any amount other than costs recovered under this subparagraph shall be credited against the delinquent taxpayer's liability for the collection of which such garnishment was made.

(D) Any garnishee who, upon service of an administrative garnishment by the commissioner or the commissioner's authorized representative, surrenders such property, rights to property, or money or otherwise discharges such obligation to the commissioner or the commissioner's authorized representative shall be discharged from any obligation or liability to the delinquent taxpayer with respect to such property, rights to property, or money arising from such surrender or payment.

(5)(A) A delinquent taxpayer shall have 15 days from receipt of the notice of summons to either administratively appeal the garnishment in writing to the department or to appeal to the superior court under Code Section 48-2-59.

(B) Upon receipt of a written administrative appeal, the department shall review the facts of the administrative garnishment and, if requested by the taxpayer, hold a hearing. Only a mistake of fact, including, but not limited to, a mistake in the identity of the delinquent taxpayer or a mistake in the amount owed to or being collected by the department shall be considered as a reason to dismiss or modify the administrative garnishment.

(C) The department shall have ten days after receipt of a written administrative appeal and hearing, if applicable, to issue a final determination. The delinquent taxpayer may appeal any final determination to the superior court under Code Section 48-2-59 within 30 days of receipt of the final determination.

(D) A challenge to an administrative action under this subsection shall not extend or reopen the statute of limitations to protest other departmental actions or to contest the amount or validity of the tax.

(6)(A) A summons of administrative garnishment given to the delinquent taxpayer is effective without the serving of another notice until the earliest of either the date that the debt owed to the department is paid in full or the date that the delinquent taxpayer receives notice that the garnishment shall cease.

(B) Cessation of the administrative garnishment shall not affect the delinquent taxpayer's duties and liabilities respecting the property already withheld pursuant to the administrative garnishment."

SECTION 3.

Title 50 of the Official Code of Georgia Annotated, relating to state government, is amended by revising paragraph (1) of Code Section 50-13-2, relating to definitions regarding administrative procedure, to read as follows:

"(1) 'Agency' means each state board, bureau, commission, department, activity, or officer authorized by law expressly to make rules and regulations or to determine contested cases, except the General Assembly; the judiciary; the Governor; the State Board of Pardons and Paroles; the State Financing and Investment Commission; the State Properties Commission; the Board of Bar Examiners; the Board of Corrections and its penal institutions; the State Board of Workers' Compensation; all public authorities except as otherwise expressly provided by law; the State Personnel Board (Merit System); the Department of Administrative Services or commissioner of administrative services; the Technical College System of Georgia; the Department of Revenue when conducting hearings relating to alcoholic beverages or administrative garnishments; the Georgia Tobacco Community Development Board; the Georgia Higher Education Savings Plan; any school, college, hospital, or other such educational, eleemosynary, or charitable institution; or any agency when its action is concerned with the military or naval affairs of this state. The term 'agency' shall include the State Board of Education and Department of Education, subject to the following qualifications:

(A) Subject to the limitations of subparagraph (B) of this paragraph, all otherwise valid rules adopted by the State Board of Education and Department of Education prior to January 1, 1990, are ratified and validated and shall be effective until January 1, 1991, whether or not such rules were adopted in compliance with the requirements of this chapter; and

(B) Effective January 1, 1991, any rule of the State Board of Education or Department of Education which has not been proposed, submitted, and adopted in accordance with the requirements of this chapter shall be void and of no effect."

133 **SECTION 4.**

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

136 **SECTION 5.**

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