

The Senate Finance Committee offered the following substitute to HB 982:

A BILL TO BE ENTITLED
AN ACT

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

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

8 Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is
9 amended by adding a new paragraph in subsection (c) of Code Section 48-2-55, relating to
10 attachment and garnishment, to read as follows:
11

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

SECTION 2.

21 Said title is further amended in said Code section by adding a new subsection to read as
22 follows:
23

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

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

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

34 (B) Notwithstanding this Code section, the exemptions from garnishment required or
35 allowed by law, including, but not limited to, exemptions provided by Code Sections
36 18-4-20 and 18-4-22, shall be applicable to an administrative garnishment.

37 (3)(A) The commissioner or the commissioner's authorized representative shall serve
38 the summons of administrative garnishment upon the garnishee and shall file a return
39 of service with the department. In addition to any other methods of service, the
40 summons of administrative garnishment may be served by the commissioner or the
41 commissioner's authorized representative to the garnishee by registered or certified mail
42 or statutory overnight delivery, return receipt requested. Either the return receipt
43 indicating receipt by the garnishee or the envelope bearing the official notification from
44 the United States Postal Service of the garnishee's refusal to accept delivery of such
45 registered or certified mail or statutory overnight delivery shall be filed with the
46 department. If statutory overnight delivery was accomplished through a commercial
47 firm as provided under paragraph (1) of subsection (b) of Code Section 9-10-12, the
48 return receipt indicating receipt by the garnishee or the envelope bearing the official
49 notification from such commercial firm of the garnishee's refusal to accept delivery
50 shall be filed with the department. If a garnishee refuses to accept service of a
51 summons of administrative garnishment by registered or certified mail or statutory
52 overnight delivery, the summons of administrative garnishment shall be served by the
53 commissioner or the commissioner's authorized representative under any other method
54 of lawful service, and the garnishee shall be personally liable to the commissioner for
55 a sum equal to the actual costs incurred to serve the summons of administrative
56 garnishment. This liability shall be paid upon notice and demand by the commissioner
57 or the commissioner's authorized representative and shall be assessed and collected in
58 the same manner as other taxes administered by the commissioner.

59 (B) Not more than three business days after the summons of administrative
60 garnishment is sent to the garnishee, the department shall send a written notice of the
61 summons to the delinquent taxpayer at the taxpayer's last known address by registered
62 or certified mail or statutory overnight delivery, return receipt requested. Either the

63 return receipt indicating receipt by the taxpayer or evidence of the taxpayer's refusal to
64 accept such registered or certified mail or statutory overnight delivery addressed to the
65 taxpayer shall be deemed notice to the taxpayer. The department may also effect
66 service on the taxpayer using one of the methods set forth in Code Section 18-4-64.
67 (4)(A) Upon receipt of a summons of administrative garnishment from the department,
68 a garnishee shall immediately give effect to the administrative garnishment and hold
69 whatever property, rights to property, or money belonging to the delinquent taxpayer
70 to the extent of the debt indicated in the summons from the department.
71 (B) Except as provided in subparagraph (C) or (D) of this paragraph, the garnishee
72 shall send the department an answer stating what money or other property is subject to
73 the garnishment and shall forward to the department the delinquent taxpayer's property,
74 rights to property, or money, to the extent required in the summons, no sooner than 30
75 days and not later than 45 days after the garnishee receives service of the summons of
76 administrative garnishment. The garnishee may deduct \$50.00 from the amount of the
77 property transferred to the department as reimbursement for reasonable expenses in
78 making a true answer of garnishment.
79 (C) Under circumstances where the delinquent taxpayer has been an employee of the
80 garnishee, the delinquent taxpayer is no longer employed by the garnishee, and the
81 garnishee has no money or property of the delinquent taxpayer subject to garnishment,
82 the garnishee may immediately send an answer; however, such answer shall be sent not
83 later than 45 days after the service of the summons.
84 (D) If the delinquent taxpayer appeals the administrative garnishment pursuant to
85 paragraph (5) of this subsection, the department shall notify the garnishee and require
86 that the garnishee hold all money or other property subject to garnishment until the
87 conclusion of the appeal, but the garnishee shall continue to answer the department in
88 the manner provided for in this subsection. Upon final determination of the delinquent
89 taxpayer's appeal of the administrative garnishment, the department shall notify the
90 garnishee that the administrative garnishment has either been dismissed, modified, or
91 upheld and, if modified or upheld, shall notify the garnishee to forward the money or
92 other property subject to garnishment to the department.
93 (E) If the garnishee fails to answer or fails to surrender any property, rights to property,
94 or money subject to administrative garnishment by the forty-fifth day after service of
95 the summons of administrative garnishment, the garnishee shall automatically be
96 assessed a sum equal to the taxpayer's liability as stated on the summons of
97 administrative garnishment. Within 15 days of the date of the assessment, the
98 assessment may be cured as a matter of right by the filing of an answer, payment of
99 actual costs of service incurred by the department, and surrendering any property

100 belonging to the delinquent taxpayer not to exceed the total amount of the assessment.
101 If the assessment has not been cured by the expiration of the 15 day period, the
102 garnishee shall be issued an official assessment. The liability imposed in this
103 subparagraph shall be paid upon notice and demand by the commissioner or the
104 commissioner's authorized representative and shall be assessed and collected in the
105 same manner, with the same right of appeal under Code Section 48-2-59, as taxes
106 administered by the commissioner, except as otherwise provided under subparagraph
107 (G) of this paragraph.

108 (F) If the garnishee serves its answer on the department as provided for in this
109 subsection, the department shall reply to the answer within 15 days after it is served or
110 the liability imposed by the summons shall be discharged. The department shall have
111 15 days from the filing of the reply to set a date for a hearing on the garnishee's answer
112 and the reply of the department. The garnishee may appeal any final administrative
113 ruling to superior court under Code Section 48-2-59 within 30 days from receipt of the
114 final administrative ruling.

115 (G) When an official assessment is issued against a garnishee under subparagraph (E)
116 of this paragraph, the garnishee may file a request to modify the official assessment as
117 a matter of right with the commissioner within 60 days from the date the garnishee
118 receives actual notice of the official assessment and upon payment of all actual costs
119 of service incurred by the department. The official assessment shall be modified so that
120 the amount of the assessment is reduced to an amount equal to \$50.00 plus:

121 (i) The amount by which the garnishee was indebted to the delinquent taxpayer at the
122 time of service; and

123 (ii) All money, other property, or effects belonging to the delinquent taxpayer which
124 came into the garnishee's hands from the time of service of the summons of
125 garnishment through the last day on which an answer and delivery of property could
126 have been made by the garnishee.

127 Such amount shall not exceed the taxpayer's liability as stated on the summons of
128 administrative garnishment. The garnishee may appeal the official assessment to
129 superior court under Code Section 48-2-59 within 30 days from the expiration of the
130 modification period.

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

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

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

146 (C) The department shall have 15 days from receipt of a written administrative appeal
 147 to set a hearing date for the appeal. The delinquent taxpayer may appeal any final
 148 administrative ruling to superior court under Code Section 48-2-59 within 30 days from
 149 the date of the final administrative ruling.

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

153 (6) At any time before an administrative ruling is entered on the garnishee's answer or
 154 money or other property subject to garnishment is distributed, any person may file a
 155 claim in writing under oath stating that such person has a claim superior to that of the
 156 department to the money or other property in the possession of the garnishee subject to
 157 the process of administrative garnishment. The claimant shall be a party to all further
 158 proceedings upon the administrative garnishment.

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

163 (B) In the event no summons of garnishment has been issued on an assessment for two
 164 years or more, the garnishment proceeding based on that assessment shall automatically
 165 stand dismissed."

166 **SECTION 3.**

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

170 "(1) 'Agency' means each state board, bureau, commission, department, activity, or
 171 officer authorized by law expressly to make rules and regulations or to determine
 172 contested cases, except the General Assembly; the judiciary; the Governor; the State

173 Board of Pardons and Paroles; the State Financing and Investment Commission; the State
174 Properties Commission; the Board of Bar Examiners; the Board of Corrections and its
175 penal institutions; the State Board of Workers' Compensation; all public authorities
176 except as otherwise expressly provided by law; the State Personnel Board (Merit
177 System); the Department of Administrative Services or commissioner of administrative
178 services; the Technical College System of Georgia; the Department of Revenue when
179 conducting hearings relating to alcoholic beverages or administrative garnishments; the
180 Georgia Tobacco Community Development Board; the Georgia Higher Education
181 Savings Plan; any school, college, hospital, or other such educational, eleemosynary, or
182 charitable institution; or any agency when its action is concerned with the military or
183 naval affairs of this state. The term 'agency' shall include the State Board of Education
184 and Department of Education, subject to the following qualifications:

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

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

193 **SECTION 4.**

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

196 **SECTION 5.**

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