

SENATE SUBSTITUTE TO HB 982

AS PASSED SENATE

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 change certain provisions relating to procedural requirements for
 6 adoption, amendment, or repeal of rules, limitation on action to contest rule, and legislative
 7 override of agency rules; to provide for legislative stay of agency rules; to provide for an
 8 effective date; to repeal 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 adding a new paragraph in subsection (c) of Code Section 48-2-55, relating to
 12 attachment and garnishment, to read as follows:
 13

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

SECTION 2.

23 Said title is further amended in said Code section by adding a new subsection to read as
 24 follows:
 25

26 “(g)(1) Notwithstanding any other provision of this Code section which provides for the
27 attachment, garnishment, or levy against property, rights to property, or money, the
28 department may use the administrative garnishment process established in this subsection
29 to collect from a delinquent taxpayer any delinquent taxes, fees, license fees, penalties,
30 interest, or collection costs due the state that are imposed by this title or which the
31 commissioner or the department is responsible for collecting under any other law.

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

36 (B) Notwithstanding this Code section, the exemptions from garnishment required or
37 allowed by law, including, but not limited to, exemptions provided by Code Sections
38 18-4-20 and 18-4-22, shall be applicable to an administrative garnishment.

39 (3)(A) The commissioner or the commissioner's authorized representative shall serve
40 the summons of administrative garnishment upon the garnishee and shall file a return
41 of service with the department. In addition to any other methods of service, the
42 summons of administrative garnishment may be served by the commissioner or the
43 commissioner's authorized representative to the garnishee by registered or certified mail
44 or statutory overnight delivery, return receipt requested. Either the return receipt
45 indicating receipt by the garnishee or the envelope bearing the official notification from
46 the United States Postal Service of the garnishee's refusal to accept delivery of such
47 registered or certified mail or statutory overnight delivery shall be filed with the
48 department. If statutory overnight delivery was accomplished through a commercial
49 firm as provided under paragraph (1) of subsection (b) of Code Section 9-10-12, the
50 return receipt indicating receipt by the garnishee or the envelope bearing the official
51 notification from such commercial firm of the garnishee's refusal to accept delivery
52 shall be filed with the department.

53 (B) Not more than three business days after the summons of administrative
54 garnishment is served on the garnishee, the department shall send a written notice of
55 the summons to the delinquent taxpayer at the taxpayer's last known address by
56 registered or certified mail or statutory overnight delivery, return receipt requested.
57 Either the return receipt indicating receipt by the taxpayer or evidence of the taxpayer's
58 refusal to accept such registered or certified mail or statutory overnight delivery
59 addressed to the taxpayer shall be deemed notice to the taxpayer. The department may
60 also effect service on the taxpayer using one of the methods set forth in Code Section
61 18-4-64.

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

66 (B) Except as provided in subparagraph (C) or (D) of this paragraph, the garnishee
67 shall send the department an answer stating what money or other property is subject to
68 the garnishment and shall forward to the department the delinquent taxpayer's property,
69 rights to property, or money, to the extent required in the summons, no sooner than 30
70 days and not later than 45 days after the garnishee receives service of the summons of
71 administrative garnishment. The garnishee may deduct \$50.00 from the amount of the
72 property transferred to the department as reimbursement for reasonable expenses in
73 making a true answer of garnishment.

74 (C) Under circumstances where the delinquent taxpayer has been an employee of the
75 garnishee, the delinquent taxpayer is no longer employed by the garnishee, and the
76 garnishee has no money or property of the delinquent taxpayer subject to garnishment,
77 the garnishee may immediately send an answer; however, such answer shall be sent not
78 later than 45 days after the service of the summons.

79 (D) If the delinquent taxpayer appeals the administrative garnishment pursuant to
80 paragraph (5) of this subsection, the department shall notify the garnishee and require
81 that the garnishee hold all money or other property subject to garnishment until the
82 conclusion of the appeal, but the garnishee shall continue to answer the department in
83 the manner provided for in this subsection. Upon final determination of the delinquent
84 taxpayer's appeal of the administrative garnishment, the department shall notify the
85 garnishee that the administrative garnishment has either been dismissed, modified, or
86 upheld and, if modified or upheld, shall notify the garnishee to forward the money or
87 other property subject to garnishment to the department.

88 (E) If the garnishee fails to answer or fails to surrender any property, rights to property,
89 or money subject to administrative garnishment by the forty-fifth day after service of
90 the summons of administrative garnishment, the garnishee shall automatically be
91 assessed a sum equal to the taxpayer's liability as stated on the summons of
92 administrative garnishment. Within 15 days of the date of the assessment, the
93 assessment may be cured as a matter of right by the filing of an answer, and
94 surrendering any property belonging to the delinquent taxpayer not to exceed the total
95 amount of the assessment. If the assessment has not been cured by the expiration of the
96 15 day period, the garnishee shall be issued an official assessment. The liability
97 imposed in this subparagraph shall be paid upon notice and demand by the
98 commissioner or the commissioner's authorized representative and shall be assessed and

99 collected in the same manner, with the same right of appeal under Code Section
100 48-2-59, as taxes administered by the commissioner, except as otherwise provided
101 under subparagraph (G) of this paragraph.

102 (F) If the garnishee serves its answer on the department as provided for in this
103 subsection, the department shall reply to the answer within 15 days after it is served or
104 the liability imposed by the summons shall be discharged. The department shall have
105 15 days from the filing of the reply to set a date for a hearing on the garnishee's answer
106 and the reply of the department. The garnishee may appeal any final administrative
107 ruling to superior court under Code Section 48-2-59 within 30 days from receipt of the
108 final administrative ruling.

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

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

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

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

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

131 (5)(A) A delinquent taxpayer shall have 15 days from receipt of the notice of summons
132 of the administrative garnishment to appeal the administrative garnishment in writing
133 to the department or to appeal to superior court under Code Section 48-2-59. Upon the
134 filing of an appeal the delinquent taxpayer shall be a party to all further proceedings
135 upon the administrative garnishment.

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

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

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

149 (6)(A) At any time before a final administrative ruling pursuant to this subsection is
150 entered on the garnishee's answer or money or other property subject to garnishment is
151 distributed, any person other than the delinquent taxpayer may file a claim in writing
152 under oath stating that such person has a claim superior to that of the department to the
153 money or other property in the possession of the garnishee subject to the process of
154 administrative garnishment. The claimant shall be a party to all further proceedings upon
155 the administrative garnishment.

156 (B) The department shall have ten days to set a hearing date from the later of (i) the date
157 that the claim is filed, or (ii) the date when appeals, if any, have been finally determined
158 under both subparagraph (F) of paragraph (4) of this subsection and under paragraph (5)
159 of this subsection.

160 (C) The department shall have the burden of proving that its claim to the money or other
161 property subject to the garnishment proceeding is superior to that of the claimant. No
162 money or other property subject to the garnishment and upon which the claimant has filed
163 its claim shall be distributed until the hearing is held and an administrative ruling has
164 been issued by the department. To the extent that the administrative ruling is in favor of
165 the claimant, such money or other property to that extent shall be retained by or restored
166 to the garnishee and any claim thereto by the claimant shall be made directly on the
167 garnishee.

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

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

175 **SECTION 3.**

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

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

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

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

202 **SECTION 4.**

203 Said title is further amended in Code Section 50-13-4, relating to procedural requirements
 204 for adoption, amendment, or repeal of rules, limitation on action to contest rule, and
 205 legislative override of agency rules, by revising paragraph (2) of subsection (f) as follows:

