

COMMITTEE OF CONFERENCE 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:

8 **SECTION 1.**

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

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."

21 **SECTION 2.**

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

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.

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

60 (4)(A) Upon receipt of a summons of administrative garnishment from the department,
61 a garnishee shall immediately give effect to the administrative garnishment and hold

62 whatever property, rights to property, or money belonging to the delinquent taxpayer
63 to the extent of the debt indicated in the summons from the department.

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

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

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

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

98 48-2-59, as taxes administered by the commissioner, except as otherwise provided
99 under subparagraph (G) of this paragraph.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

173 **SECTION 3.**

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

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

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

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

200 **SECTION 4.**

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

203

SECTION 5.

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