

House Bill 986

By: Representative O`Neal of the 146th

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 2 of Chapter 2 of Title 48 of the Official Code of Georgia Annotated,
2 relating to the administration of revenue and taxation, so as to provide for notification,
3 attachment, and seizure of funds held by financial institutions; to provide for definitions,
4 procedures, conditions, and limitations; to provide for powers, duties, and authority of the
5 state revenue commissioner and the Department of Revenue; to provide for related matters;
6 to provide for an effective date; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Article 2 of Chapter 2 of Title 48 of the Official Code of Georgia Annotated, relating to the
10 administration of revenue and taxation, is amended by adding a new Code section to read as
11 follows:

12 "48-2-63.

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

14 (1)(A) 'Account' means:

15 (i) Any funds from a demand deposit account, checking account, negotiable order of
16 withdrawal account, savings account, time deposit account, money market mutual
17 fund account, or certificate of deposit account; and

18 (ii) Any funds or property held by a financial institution.

19 (B) 'Account' shall not include:

20 (i) An account or portion of an account to which an obligor does not have access due
21 to the pledge of the funds as security for a loan or other obligation;

22 (ii) Funds or property deposited to an account after the time that the financial
23 institution initially attaches the account;

24 (iii) An account or portion of an account to which the financial institution has a
25 present right to exercise a right of setoff;

- 26 (iv) An account or portion of an account that has an account holder of interest named
 27 as an owner on the account; or
- 28 (v) An account or portion of an account to which the obligor does not have an
 29 unconditional right of access.
- 30 (2) 'Account holder of interest' means any person, other than the obligor, who asserts an
 31 ownership interest in an account.
- 32 (3) 'Obligor' means a person whose property is subject to a state tax lien.
- 33 (b)(1) The commissioner may request not more than four times a year from a financial
 34 institution, or as otherwise agreed to by the financial institution, the information set forth
 35 in paragraph (2) of subsection (c) of this Code section concerning any obligor who is
 36 delinquent in the payment of taxes.
- 37 (2) A request for information by the commissioner under paragraph (1) of this subsection
 38 shall:
- 39 (A) Contain the full name of the obligor and any other names known to be used by the
 40 obligor and the social security number, federal employer identification number, or other
 41 taxpayer identification number of the obligor; and
- 42 (B) Be transmitted to the financial institution in an electronic format.
- 43 (c)(1) Within 30 days after a financial institution receives a request for information under
 44 subsection (b) of this Code section, or as otherwise agreed to by the financial institution,
 45 the financial institution may, with respect to each obligor whose name the commissioner
 46 submitted to the financial institution, submit a report to the commissioner.
- 47 (2)(A) Except as provided in subparagraph (B) of this paragraph, the report described
 48 in paragraph (1) of this subsection shall contain, to the extent reflected in the records
 49 of the financial institution:
- 50 (i) The full name of the obligor;
- 51 (ii) The address of the obligor;
- 52 (iii) The social security number, federal employer identification number, or other
 53 taxpayer identification number of the obligor;
- 54 (iv) Any other identifying information needed to ensure positive identification of the
 55 obligor; and
- 56 (v) For each account of the obligor, the obligor's account number and balance.
- 57 (B) For a financial institution that submits reports through the federal parent locator
 58 service under 42 U.S.C. Section 666(a)(17), the report described in paragraph (1) of this
 59 subsection may contain information that meets the specifications required for financial
 60 data match reports under the federal parent locator service.
- 61 (3) A report submitted under paragraph (1) of this subsection shall be provided to the
 62 commissioner in machine readable form.

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

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

67 (d) A financial institution that complies with a request from the commissioner by
68 submitting a report to the commissioner in accordance with subsection (c) of this Code
69 section shall not be liable under state law to any person for any:

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

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

73 (e) A financial institution furnishing a report to the commissioner under this Code section
74 shall be prohibited from disclosing to an obligor that the name of that obligor has been
75 received from or furnished to the commissioner. A violation of this subsection shall result
76 in the imposition of a civil penalty of \$1,000.00 for each instance of unauthorized
77 disclosure by a financial institution.

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

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

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

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

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

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

90 (A) The name of the obligor;

91 (B) The amount of the tax lien;

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

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

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

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

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

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

104 (2) Within 15 days after the financial institution receives the notice directing it to seize
 105 and attach accounts of the obligor, the financial institution shall send notice to the
 106 commissioner, in the manner specified in subsection (f) of this Code section, specifying
 107 the aggregate amount held under this subsection.

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

110 (B) In the case of insufficient funds to cover both the fee and the amount identified in
 111 the notice under subsection (f) of this Code section, the financial institution may first
 112 deduct and retain the fee from the amount seized and attached as provided in this Code
 113 section.

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

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

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

124 (A) The address of the commissioner;

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

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

129 (D) The address of the obligor;

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

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

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

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

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

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

146 (i)(1) If a timely challenge is not made by the obligor or an account holder of interest
 147 under subsection (k) of this Code section, the commissioner shall send a notice to the
 148 financial institution, in the manner specified in subsection (f) of this Code section,
 149 directing the institution to:

150 (A) Forward the amount seized and attached by the financial institution to the
 151 commissioner;

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

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

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

160 (j) The commissioner shall apply the amount seized and forwarded by the financial
 161 institution to the obligor's tax lien obligation.

162 (k)(1) An obligor or an account holder of interest may challenge the actions of the
 163 commissioner under this Code section by filing a motion with the commissioner within
 164 ten days of the date of the notice sent under paragraph (1) of subsection (h) of this Code
 165 section.

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

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

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

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

171 (D) A mistake in the amount of the lien obligation due.
 172 (3) An obligor or an account holder of interest shall not challenge the actions of the
 173 commissioner based on a mistake or error in the original tax assessment underlying the
 174 tax lien against the obligor.
 175 (4) The commissioner's denial of an obligor or an account holder of interest's motion
 176 challenging the actions of the commissioner under this Code section shall not be a
 177 contested case under Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.'
 178 (1)(1) The commissioner may withdraw the notice to seize and attach accounts by
 179 sending notice to the financial institution, in the manner specified in subsection (f) of this
 180 Code section, directing the financial institution to release the attachment on the accounts.
 181 (2) If a determination is made by the commissioner that the account or accounts of the
 182 obligor should not have been held, the commissioner shall notify the financial institution,
 183 in the manner specified in subsection (f) of this Code section, to release the amount
 184 seized and attached by the financial institution.
 185 (3) If a determination is made by the commissioner, pursuant to a challenge under
 186 subsection (k) of this Code section, to reduce the amount seized and attached by the
 187 financial institution, the commissioner shall notify the financial institution, in the manner
 188 specified in subsection (f) of this Code section, to revise the amount as stated, forward
 189 the revised amount to the commissioner, and release the excess amount seized and
 190 attached by the financial institution.
 191 (4)(A) If a challenge made under subsection (k) of this Code section is denied by the
 192 commissioner, the commissioner shall notify the financial institution, in the manner
 193 specified in subsection (f) of this Code section, to forward the amount seized and
 194 attached by the financial institution to the commissioner.
 195 (B) A financial institution that complies with a notice from the commissioner sent
 196 under this Code section shall not be liable under state law to any person for:
 197 (i) Any disclosure of information to the commissioner under this Code section;
 198 (ii) Seizing and attaching any amounts from an account or sending any amount seized
 199 and attached by the financial institution to the commissioner; or
 200 (iii) Any other action taken in good faith to comply with the requirements of this
 201 Code section.
 202 (m) A financial institution shall have no obligation to reimburse fees assessed as a result
 203 of the commissioner instituting an action under this Code section or as otherwise permitted
 204 by law or authorized by contract.
 205 (n) This Code section shall not be construed to prohibit the commissioner from collecting
 206 taxes due from the obligor in any other manner authorized by law."

207 **SECTION 2.**

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

210 **SECTION 3.**

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