

House Bill 982

By: Representative O`Neal of the 146th

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

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

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

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

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

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

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

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

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

92 (C) The department shall have ten days after receipt of a written administrative appeal
93 and hearing, if applicable, to issue a final determination. The delinquent taxpayer may
94 appeal any final determination to the superior court under Code Section 48-2-59 within
95 30 days of receipt of the final determination.

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

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

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

106 **SECTION 3.**

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

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

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

130 (B) Effective January 1, 1991, any rule of the State Board of Education or Department
 131 of Education which has not been proposed, submitted, and adopted in accordance with
 132 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.