

House Bill 912

By: Representatives Williamson of the 115th, Powell of the 171st, and Harrell of the 106th

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 48 of the Official Code of Georgia Annotated, relating to revenue and
2 taxation, so as to provide for a state Tax Execution Registry; to provide for definitions,
3 limitations, and procedures; to amend Title 11 of the Official Code of Georgia Annotated,
4 relating to the Uniform Commercial Code, so as to include the Tax Execution Registry; to
5 amend Title 44 of the Official Code of Georgia Annotated, relating to property, so as to
6 conform the clerk's duties to the Tax Execution Registry; to provide a short title; to provide
7 for related matters; to provide for an effective date; to repeal conflicting laws; and for other
8 purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 style="text-align:center">**SECTION 1.**

11 This Act shall be known and may be cited as the "Georgia Uniform State Tax Execution
12 Registry Act."

13 style="text-align:center">**SECTION 2.**

14 Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is
15 amended by revising Code Section 48-2-56, relating to priority of liens for taxes, as follows:
16 "48-2-56.

17 (a) Except as otherwise provided in this Code section, liens for all taxes due the state or
18 any county or municipality in the state shall arise as of the time the taxes become due and
19 unpaid and all tax liens shall cover all property in which the taxpayer has any interest from
20 the date the lien arises until such taxes are paid.

21 (b) Except as otherwise provided in this Code section, liens for taxes are superior to all
22 other liens and shall be paid before any other debt, lien, or claim of any kind. Liens for
23 taxes shall rank among themselves as follows:

- 24 (1) Taxes due the state;
25 (2) Taxes due counties of the state;

26 (3) Taxes due school and other special tax districts of the state; and

27 (4) Taxes due municipal corporations of the state.

28 (c) The lien for taxes imposed by Article 1 of Chapter 9 of this title, relating to motor fuel
29 taxes, shall not have priority as against:

30 (1) Any bona fide mortgagee, holder, or transferee of a deed to secure debt; or

31 (2) Any pledgee, judgment creditor, or purchaser of or from persons liable for the tax
32 imposed by Article 1 of Chapter 9 of this title

33 where the rights of such mortgagee, holder, or transferee of a deed to secure debt, pledgee,
34 judgment creditor, or purchaser have attached prior to the time ~~notice~~ of the lien has been
35 filed by the commissioner in the ~~office of the superior court of the county in which the~~
36 ~~principal place of business is located or in the county where property of the person liable~~
37 ~~for payment of the motor fuel tax is located~~ Tax Execution Registry.

38 (d)(1) Liens for any ad valorem taxes shall cover the property of taxpayers liable to tax
39 from the time fixed by law for valuation of the property in each year until such taxes are
40 paid and shall cover the property of tax collectors or tax commissioners and their sureties
41 from the time of giving bond until all the taxes for which they are responsible are paid.

42 (2) The lien for any ad valorem tax shall not be superior to the title and operation of a
43 security deed when the tax represents an assessment upon property of the taxpayer other
44 than property specifically covered by the title and operation of the security deed.

45 (3) When real property located within this state is transferred between the date on which
46 any ad valorem tax lien on the property vests and the date on which the tax evidenced by
47 the tax lien becomes due and payable, the ad valorem tax lien on the transferred property
48 shall not extend to cover any other real property of the transferor.

49 (e) The lien for taxes imposed by the provisions of Article 2 of Chapter 7 of this title,
50 relating to certain income taxes, shall:

51 (1) Arise and ~~cover~~ attach to all property of the taxpayer within the state as of the time
52 a tax execution for these taxes is entered ~~upon the general execution docket~~ in the Tax
53 Execution Registry; and

54 (2) Not be superior to the lien of a prior recorded instrument securing a bona fide debt.
55 ~~Before the lien provided for in this subsection shall attach to real property it shall be~~
56 ~~recorded in the county where the real property is located.~~

57 (f) The lien for taxes imposed by the provisions of Article 5 of Chapter 7 of this title,
58 relating to withholding taxes, shall:

59 (1) Arise and attach to all property of the defaulting employer or other person required
60 to deduct and withhold on the date of the assessment of the taxes by operation of law or
61 by action of the commissioner;

62 (2) Not be superior to the lien of a prior recorded instrument securing a bona fide debt;
63 and

64 (3) Not be superior to the lien of a subsequent bona fide purchaser or lender for value
65 recorded prior to the time the execution for the tax has been entered ~~on the general~~
66 ~~execution docket in the office of the superior court of the county in which the property~~
67 ~~affected is located~~ in the Tax Execution Registry.

68 ~~Before the lien provided for in this subsection shall attach to real property it shall be~~
69 ~~recorded in the county where the real property is located.~~

70 (g)(1) The lien of a specific or occupation tax shall not be superior to the title and
71 operation of a security deed recorded prior to the time the execution for the tax has been
72 entered in the Tax Execution Registry or on the general execution docket in the office of
73 the clerk of the superior court of the county in which the affected property is located.

74 (2) As used in this subsection, the term 'specific or occupation tax' means all state,
75 county, and municipal taxes and all state licenses and fees except:

76 (A) The taxes imposed by Article 1 of Chapter 9 of this title;

77 (B) Ad valorem taxes;

78 (C) The taxes imposed by Article 2 of Chapter 7 of this title; and

79 (D) The taxes imposed by Article 5 of Chapter 7 of this title.

80 The term includes, but is not limited to, sales and use taxes, corporate net worth taxes,
81 estate taxes, ~~real-estate~~ real estate transfer taxes, taxes on financial institutions, alcohol
82 and tobacco taxes, road taxes on motor carriers, excise taxes, license fees, tax liabilities
83 of corporate officers and business successors, and tax collections of a person who is a
84 dealer under Chapter 8 of this title relating to sales and use taxation.

85 (h) Liens for taxes existing prior to July 1, 1983, shall not be changed by this Code section.
86 On and after July 1, 1983, this Code section shall govern the time of creation of all tax liens
87 and the priority of all tax liens."

88 **SECTION 3.**

89 Said title is further amended by revising subsection (b) of Code Section 48-2-59, relating to
90 appeals to the Georgia Tax Tribunal, as follows:

91 "(b) The taxpayer shall commence an appeal by filing a petition with the Georgia Tax
92 Tribunal in accordance with Chapter 13A of Title 50 or the superior court within 30 days
93 from the date of decision by the commissioner or at any time after the department records
94 a state tax execution pursuant to Code Section 48-3A-2."

95 **SECTION 4.**

96 Said title is further amended by repealing Code Section 48-3-1, relating to the issuance of
97 state tax executions, and designating it as "Reserved."

98 **SECTION 5.**

99 Said title is further amended by revising Code Section 48-3-21, relating to the statute of
100 limitations for tax executions, as follows:

101 "48-3-21.

102 All ~~state~~, county, municipal, or other tax executions, before or after legal transfer and
103 record, shall be enforced within seven years from:

104 (1) The date of issue; or

105 (2) The time of the last entry upon the tax execution by the officer authorized to execute
106 and return the execution if the execution and entry are properly entered or reentered upon
107 the execution docket or books in which executions issued on judgments and entries on
108 executions issued on judgments are required to be entered or reentered."

109 **SECTION 6.**

110 Said title is further amended by repealing Code Section 48-3-23, relating to nulla bona and
111 tolling of the statute of limitations, and designating it as "Reserved."

112 **SECTION 7.**

113 Said title is further amended by revising Code Section 48-3-28, relating to entry of
114 satisfaction on the execution docket, as follows:

115 "48-3-28.

116 An entry of satisfaction shall be made on the execution docket as soon as reasonably
117 possible after a tax execution has been fully satisfied, except as otherwise provided in
118 Chapter 3A of this title."

119 **SECTION 8.**

120 Said title is further amended by repealing Code Section 48-3-29, relating to the publication
121 of state tax execution information, and designating it as "Reserved."

122 **SECTION 9.**

123 Said title is further amended by adding a new chapter to read as follows:

124 "CHAPTER 3A

125 48-3A-1.

126 (a) Purpose. The purpose of this chapter is to provide a uniform state-wide system for
 127 filing notices of state tax executions maintained by the department that are in favor of or
 128 enforced by the department.

129 (b) Scope. This chapter is only applicable to state tax executions against real and personal
 130 property which arise pursuant to Code Section 48-2-56 for tax liabilities administered by
 131 the department.

132 (c) Definitions. As used in this chapter, the term:

133 (1) 'Delinquent taxpayer' means a person owing an unpaid finally determined tax liability
 134 that is collectable by the department.

135 (2) 'Last known address of the delinquent taxpayer' means the address of the delinquent
 136 taxpayer appearing on the records of the department at the time the state tax execution
 137 is recorded in the Tax Execution Registry.

138 (3) 'State tax execution' means any execution for the collection of any tax, fee, license,
 139 penalty, interest, or collection costs due the state.

140 (4) 'Tax Execution Registry' means the public data base maintained by the department
 141 to record, file, and maintain state tax executions for tax liabilities due to the state, as
 142 defined in Code Section 48-3A-2.

143 48-3A-2.

144 The department shall issue a state tax execution for the collection of any tax, fee, license,
 145 penalty, interest, or collection costs due the state once a lien has arisen pursuant to Code
 146 Section 48-2-56. A state tax execution shall be a lien in favor of the department upon all
 147 property and right to property, whether real or personal, within the State of Georgia,
 148 belonging to the delinquent taxpayer named on the state tax execution.

149 48-3A-3.

150 (a) The department shall create and maintain the Tax Execution Registry as a uniform state
 151 registry for the recording of state tax executions for liabilities arising under the
 152 department's jurisdiction.

153 (b) The department shall maintain state tax executions filed in the Tax Execution Registry
 154 as of January 1, 2017, in its information management system in a form that permits state
 155 tax executions to be readily accessible in an electronic form through the Internet and
 156 reduced to printed form. The electronic printable form of state tax executions shall include
 157 the following information:

- 158 (1) The name and last known address of the delinquent taxpayer;
159 (2) The name and address of the department;
160 (3) The identification number assigned to the state tax execution by the department;
161 (4) The basis for the state tax execution, including, but not limited to, the amount of the
162 taxes, penalties, interest, and fees owed, and the tax periods and relevant assessment dates
163 of the taxes owed;
164 (5) The date and time of the recording of the tax execution on the Tax Execution
165 Registry;
166 (6) The status of the state tax execution as defined in subsection (g) of this Code section;
167 and
168 (7) The present balance of the state tax execution.
- 169 (c) The Tax Execution Registry shall constitute a public record and shall redact
170 information in accordance with Code Section 9-11-7.1.
- 171 (d) The Tax Execution Registry, at no charge, shall:
- 172 (1) Be available to the public to access and search for information on the recording of
173 tax executions by delinquent taxpayer name or by state tax execution number;
174 (2) Provide official electronic copies of the state tax execution; and
175 (3) Provide date and time stamped certifications of a lack of records for specified search
176 inputs.
- 177 (e) Tax Execution Registry information shall not be used for survey, marketing, or
178 solicitation purposes. Survey, marketing, or solicitation purposes shall not include any
179 action by the department or its authorized agents to collect a debt on a state tax execution
180 recorded in the Tax Execution Registry. The Attorney General is hereby authorized to
181 bring an action to enjoin the unlawful use of Tax Execution Registry information for a
182 survey, marketing, or solicitation purpose and to recover the costs of such action, including
183 reasonable attorney's fees.
- 184 (f) All state tax executions currently recorded on the general execution docket of any
185 county shall be invalid as of January 1, 2017. Any such state tax execution which the
186 department does not show as satisfied, issued in error, or otherwise withdrawn and which
187 was last recorded or rerecorded on the general execution docket within seven years before
188 January 1, 2017, shall be immediately rerecorded on the Tax Execution Registry to expire
189 within the time frame provided in Code Section 48-3A-5 from January 1, 2017. For
190 priority purposes, such a rerecorded state tax execution shall retain its original date of
191 recording on the general execution docket.
- 192 (g) State tax executions shall hold one of the following statuses on the Tax Execution
193 Registry and such status shall be visible through a search, except as provided below, and
194 on the electronic printable forms of state tax executions:

- 195 (1) **Active.** The state tax execution is perfected and enforceable.
- 196 (2) **Withdrawn.** The state tax execution was issued in error and is not enforceable.
 197 Within two working days from the date the department discovers an error in the filing of
 198 a state tax execution, it shall change the status of the state tax execution to withdrawn.
 199 Such state tax execution shall be treated as though it was never recorded. Although an
 200 electronic copy will bear the withdrawn status, such state tax executions shall not appear
 201 in searches of the Tax Execution Registry.
- 202 (3) **Released.** The state tax execution has been canceled and is no longer enforceable.
 203 Within 15 working days from the department's receipt of payment in full of a state tax
 204 execution recorded in the Tax Execution Registry, the department shall change the status
 205 of the state tax execution to released. Additionally, the department may release a state
 206 tax execution that has not been paid but that the department determines is not legally or
 207 practically collectable.
- 208 (A) **Rerecorded.** If a state tax execution is released in error, the department may
 209 record a new state tax execution for any outstanding finally determined tax liability to
 210 bear an active status as of the date of the new recording.
- 211 (4) **Expired.** The state tax execution has expired pursuant to Code Section 48-3A-5 and
 212 is unenforceable.
- 213 (h) The commissioner shall issue regulations or other guidance providing for the
 214 maintenance, reliability, accessibility, and use of the Tax Execution Registry. Such
 215 regulations or guidance shall address, among other matters, the authenticity of the
 216 electronic printable state tax executions and issues related to periods during which the Tax
 217 Execution Registry may be unavailable for use due to routine maintenance or other
 218 activities.
- 219 48-3A-4.
- 220 (a) When a state tax execution is recorded in the Tax Execution Registry, the state tax
 221 execution is perfected and attaches to all existing and after-acquired property of the
 222 delinquent taxpayer, both real and personal, tangible and intangible, which is located in any
 223 and all counties within the State of Georgia, with the same force and effect as any recorded
 224 judgment on the general execution docket.
- 225 (b) A perfected state tax execution shall be valid as against mortgagees, pledgees,
 226 purchasers, judgment creditors, and other persons from the time of recording in the Tax
 227 Execution Registry, except as provided for the relevant tax type in Code Section 48-2-56.

228 48-3A-5.

229 State tax executions shall attach to all property within the State of Georgia at the time of
 230 recording in the Tax Execution Registry and shall continue until the state tax execution is
 231 released or expires. All state tax executions expire within ten years of the date of recording
 232 on the Tax Execution Registry.

233 48-3A-6.

234 A state tax execution bearing the released status shall constitute a release of the state tax
 235 execution within the department, the Tax Execution Registry, the general execution docket,
 236 and the county in which the state tax execution was previously recorded. The department
 237 shall send the delinquent taxpayer a notice of the release of the state tax execution."

238 **SECTION 10.**

239 Title 11 of the Official Code of Georgia Annotated, relating to the Uniform Commercial
 240 Code, is amended by revising Code Section 11-9-333, relating to the priority of certain liens,
 241 as follows:

242 "11-9-333.

243 (a) **Year's support; property taxes; other state taxes; other taxes or judgments.**

244 Except as is expressly provided to the contrary elsewhere in this article and in subsection
 245 (b) of this Code section, a perfected security interest in collateral takes priority over each
 246 and all of the liens, claims, and rights described in Code Section 44-14-320, relating to the
 247 establishment of certain liens, as now or hereafter amended; former Code Section 53-7-91
 248 as such existed on December 31, 1997, if applicable; and Code Section 53-7-40, relating
 249 to the priority of debts against the estate of a decedent, as now or hereafter amended;
 250 provided, nevertheless, that:

251 (1) Year's support to the family, duly set apart in the collateral prior to the perfection of
 252 the subject security interest, takes priority over such security interest;

253 (2) A lien for property taxes duly assessed upon the subject collateral, either prior or
 254 subsequent to the perfection of the subject security interest, takes priority over security
 255 interest;

256 (3) A lien for all ~~other~~ state taxes takes priority over such security interest, except where
 257 such security interest is perfected by filing a financing statement relative thereto prior to
 258 such time as the execution for such state taxes shall be entered on the ~~execution docket~~
 259 Tax Execution Registry in the place and in the manner provided by law; provided,
 260 nevertheless, that, with respect to priority rights between such tax liens and security
 261 interests where under this article the same are perfected other than by filing a financing
 262 statement, the same shall be determined as provided by law prior to January 1, 1964; and

263 (4) A lien for other unpaid taxes or a duly rendered judgment of a court having
 264 jurisdiction shall have the same priority with regard to a security interest as it would have
 265 if the tax lien or judgment were a conflicting security interest within the meaning of Code
 266 Section 11-9-322 or an encumbrance within the meaning of Code Section 11-9-334,
 267 which conflicting security interest was perfected by filing or which encumbrance arose
 268 at the time the tax lien or judgment was duly recorded in the place designated by statute
 269 applicable thereto.

270 (b) **Mechanics' liens on farm machinery.** A mechanics' lien on farm machinery or
 271 equipment arising on or after July 1, 1985, shall have priority over any perfected security
 272 interest in such farm machinery or equipment unless a financing statement has been filed
 273 as provided in Code Section 11-9-501 and unless the financing statement describes the
 274 particular piece of farm machinery or equipment to which the perfected security interest
 275 applies. Such description may include the make, model, and serial number of the piece of
 276 farm machinery or equipment. However, such description shall be sufficient whether or
 277 not it is specific if it reasonably identifies what is described and a mistake in such
 278 description shall not invalidate the description if it provides a key to identifying the farm
 279 machinery or equipment."

280

SECTION 11.

281 Title 44 of the Official Code of Georgia Annotated, relating to property, is amended by
 282 revising Code Section 44-2-2, relating to the duties of clerks to record property transactions,
 283 as follows:

284 "44-2-2.

285 (a)(1) The clerk of the superior court shall file, index on a computer program designed
 286 for such purpose, and permanently record, in the manner provided constructively in Code
 287 Sections 15-6-61 and 15-6-66, the following instruments conveying, transferring,
 288 encumbering, or affecting real estate and personal property:

289 (A) Deeds;

290 (B) Mortgages;

291 (C) Liens of all kinds, except those provided for in Chapter 3A of Title 48; and

292 (D) Maps or plats relating to real estate in the county.

293 (2) For the purpose of this subsection, 'liens' shall be defined as provided in Code
 294 Sections 15-19-14, 44-14-320, and 44-14-602 and shall include all liens provided by state
 295 or federal statute.

296 (3) When indexing liens, the clerk shall enter the names of debtors in the index in the
 297 manner provided for names of grantors conveying real estate in subsection (b) of Code

298 Section 15-6-66 and the names of creditors or claimants in the manner as provided therein
299 for names of grantees making such conveyances.

300 (4) When indexing maps or plats relating to real estate in the county, the clerk of superior
301 court shall index the names or titles provided in the caption of the plat, as required by
302 paragraph (2) of subsection (b) of Code Section 15-6-67, as both the grantor and grantee.

303 (b) Deeds, mortgages, and liens of all kinds which are required by law to be recorded in
304 the office of the clerk of the superior court and which are against the interests of third
305 parties who have acquired a transfer or lien binding the same property and who are acting
306 in good faith and without notice shall take effect only from the time they are filed for
307 record in the clerk's office.

308 (c) Nothing in this Code section shall be construed to affect the validity or force of any
309 deed, mortgage, judgment, or lien of any kind between the parties thereto."

310 **SECTION 12.**

311 This Act shall become effective on July 1, 2016.

312 **SECTION 13.**

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