

House Bill 661

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 Titles 15, 44, and 48 of the Official Code of Georgia Annotated, relating to courts,
2 property, and revenue and taxation, respectively, so as to revise provisions relating to the
3 transmittal, filing, recording, access to, and territorial effect of tax liens issued by the
4 Department of Revenue; to provide for electronic record keeping relating to the filing and
5 public access to state tax liens; to provide for duties and responsibilities of the Georgia
6 Superior Court Clerks' Cooperative Authority; to provide for related matters; to provide for
7 an effective date; to repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

10 Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is
11 amended by revising subsections (e) and (f) of Code Section 48-2-56, relating to priority of
12 liens for taxes, as follows:

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

15 (1) Arise and attach to all property of the taxpayer ~~within the state~~ as of the time a tax
16 execution for these taxes is filed with the clerk of superior court of the county of the last
17 known address of the taxpayer appearing on the records of the department at the time the
18 state tax execution is filed; and

19 (2) ~~Not attach to the interest of a prior bona fide purchaser where a certificate of~~
20 ~~clearance is required and has been obtained or where a certificate of clearance is not~~
21 ~~required pursuant to Code Section 44-1-18, nor be superior to the lien of a prior recorded~~
22 instrument securing a bona fide debt.

23 Before the lien provided for in this subsection shall attach to real property, an execution
24 shall be filed with the clerk of superior court in the county where the real property is
25 located.

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

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

31 (2) ~~Not attach to the interest of a prior bona fide purchaser where a certificate of~~
32 ~~clearance is required and has been obtained or where a certificate of clearance is not~~
33 ~~required pursuant to Code Section 44-1-18, nor be superior to the lien of a prior recorded~~
34 instrument securing a bona fide debt; and

35 (3) Not attach to the interest of a subsequent bona fide purchaser ~~where a certificate of~~
36 ~~clearance is required and has been obtained or where a certificate of clearance is not~~
37 ~~required pursuant to Code Section 44-1-18, nor be superior to the lien of a lender for~~
38 value recorded prior to the time the execution for the tax has been filed in the office of
39 the clerk of superior court of the county of the last known address of the taxpayer
40 appearing on the records of the department at the time the state tax execution is filed.
41 Before the lien provided for in this subsection shall attach to real property, an execution
42 shall be filed with the clerk of superior court in the county where the real property is
43 located."

44 SECTION 2.

45 Said title is further amended by revising subsections (a) and (b) of Code Section 48-3-13,
46 relating to procedures for petitions to reduce execution to judgment, as follows:

47 "(a) When an execution for state taxes remains unsatisfied ~~and an entry of nulla bona has~~
48 ~~been duly entered on the execution within the immediately preceding 30 day period~~ and the
49 commissioner has reason to believe that the defendant in fi. fa. may have or may come into
50 ownership of assets outside this state, the commissioner may petition the superior court of
51 the county in which the defendant in fi. fa. maintains in this state a known residence, place
52 of business, or agent to receive service for a rule to show cause why the unsatisfied tax
53 execution should not be reduced to a final judgment of the superior court.

54 (b) The petition shall name the defendant in fi. fa. as respondent in the action, shall set
55 forth the jurisdiction of the superior court, and shall allege that an execution for state taxes
56 has been duly issued by the commissioner or his deputy on behalf of this state, ~~that an entry~~
57 ~~of nulla bona has been duly entered on the execution within the immediately preceding 30~~
58 ~~day period~~; and that the commissioner has reason to believe that the respondent may have
59 or may come into ownership of assets outside this state. The petition shall demand that
60 process issue to cause the respondent to appear and answer why the tax execution should
61 not be reduced to a final judgment of the court; that the tax execution including, but stated

62 separately, interest and penalties be reduced to a final judgment of the court; and, in the
 63 event that the final judgment is entered, that costs of the action be assessed against the
 64 respondent. A true copy of the tax execution shall be attached as an exhibit to the petition
 65 and the petition shall be verified under oath by the commissioner to the best of his
 66 knowledge and belief."

67 SECTION 3.

68 Said title is further amended by revising Code Section 48-3-21, relating to nonresident
 69 procedures for petitions to reduce execution to judgment, as follows:

70 "48-3-21.

71 ~~All~~ Except for executions issued by the commissioner, all county, municipal, or other tax
 72 executions, before or after legal transfer and record, shall be enforced within seven years
 73 from:

74 (1) The date of issue; or

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

79 SECTION 4.

80 Said title is further amended by revising Code Section 48-3-28, relating to entry of
 81 satisfaction duly recorded on lien docket, as follows:

82 "48-3-28.

83 ~~An entry of satisfaction shall be made on the lien docket in the office of the clerk of~~
 84 ~~superior court as soon as reasonably possible after a tax execution has been fully satisfied,~~
 85 ~~except as otherwise provided in this chapter. The department shall file a release of any~~
 86 ~~state tax execution as soon as reasonably possible after a tax execution has been fully~~
 87 ~~satisfied. All such releases shall be filed in the office of the clerk of superior court where~~
 88 ~~the execution was originally filed.~~

89 SECTION 5.

90 Said title is further amended by revising Article 2 of Chapter 3, relating to uniform system
 91 for filing state tax executions, as follows:

"ARTICLE 2

92

93 48-3-40.

94 (a) The purpose of this article is to provide a uniform state-wide system for filing notices
 95 of state tax executions issued by the commissioner that are in favor of or enforced by the
 96 department.

97 (b) This article shall only be applicable to state tax executions and to the liens of state tax
 98 executions as against real and personal property which arise pursuant to Code Section
 99 48-2-56 for tax liabilities administered by the department.

100 (c) As used in this article, the term:

101 (1) 'Authority' ~~shall mean~~ means the Georgia Superior Court Clerks' Cooperative
 102 Authority.

103 ~~(2) 'Certificate of clearance' shall mean a document issued by the department affirming~~
 104 ~~that a proper search has been conducted by the department and has yielded no active liens~~
 105 ~~associated with an individual or entity.~~

106 ~~(3)~~(2) 'Delinquent taxpayer' means a person owing an unpaid tax liability ~~that is~~
 107 ~~collectable~~ for which an execution has been filed by the department, unless such
 108 execution is released, withdrawn, or expired.

109 ~~(4)~~(3) 'Execution' ~~shall mean~~ means either a state tax execution or a renewed state tax
 110 execution, as applicable.

111 ~~(5)~~(4) 'Last known address of the delinquent taxpayer' means the address of the
 112 delinquent taxpayer appearing on the records of the department at the time the state tax
 113 execution is filed with the superior court clerk.

114 ~~(6)~~(5) 'Renewed state tax execution' means any tax execution properly filed by the
 115 department prior to January 1, 2018, that is refiled upon implementation of this article.

116 ~~(7)~~(6) 'State tax execution' means any execution issued by the department for the
 117 collection of any tax, fee, license, penalty, interest, or collection costs due the state.

118 ~~(8) 'URPERA' shall mean the Uniform Real Property Electronic Recording Act found~~
 119 ~~at Code Section 44-2-35, et seq.~~

120 ~~(9) 'URPERA rules' shall mean the rules adopted by the Georgia Superior Court Clerks'~~
 121 ~~Cooperative Authority pursuant to the Uniform Real Property Electronic Recording Act.~~

122 48-3-41.

123 The department may issue an execution for the collection of any tax, fee, license, penalty,
 124 interest, or collection costs due the state once a lien has arisen pursuant to Code Section
 125 48-2-56. ~~An execution shall be a lien in favor of the department upon all property and right~~

126 ~~to property, whether real or personal, within the State of Georgia, belonging to the~~
 127 ~~delinquent taxpayer named on the execution.~~

128 48-3-42.

129 (a) On or after January 1, 2018, the execution shall be effective as provided by law when
 130 such execution is filed by the department with the appropriate superior court clerk.

131 (b) All executions or writs of fieri facias issued by the department filed or recorded on the
 132 general execution docket or lien docket of any county shall be invalid as of December 31,
 133 2017. Any such execution or writs of fieri facias which the department does not show as
 134 satisfied, issued in error, or otherwise withdrawn and which was last recorded or rerecorded
 135 on the general execution docket within seven years before January 1, 2018, may be
 136 renewed for a period of ten years upon the department's filing a renewed state tax execution
 137 with the clerk of superior court ~~on or after~~ between January 1, 2018, and February 15,
 138 2018. For priority purposes, a filed renewed state tax execution shall retain its original date
 139 of filing ~~on the general execution docket or lien docket~~. All renewed state tax execution
 140 documents shall reflect the original date of filing.

141 (c) On or after January 1, 2018, any execution and any related releases, cancellations, or
 142 other documents submitted by the department for filing with the clerk of superior court
 143 shall be submitted for filing electronically.

144 (d) An execution filed after January 1, 2018, pursuant to this Code section shall be a lien
 145 against and attach to all existing and after-acquired property of the delinquent taxpayer,
 146 both real and personal, tangible and intangible, ~~located in any county and in all counties~~
 147 ~~within the State of Georgia~~, with the same force and effect as any recorded judgment on
 148 the lien docket of the superior court clerk.

149 (e) An execution electronically transmitted to the authority pursuant to this Code section
 150 shall be deemed filed and perfected upon its receipt by the authority for transmission to the
 151 applicable clerk of superior court. The authority shall provide to the department
 152 confirmation of receipt of an execution. Absent evidence of such confirmation there shall
 153 be no presumption of filing. Executions filed shall have priority as provided by law.

154 (f) The lien of an execution filed pursuant to this Code section shall continue in effect until
 155 released or withdrawn by the department or until the execution has expired.

156 (g) The department shall file an execution within five years of the date of a final
 157 assessment. An execution filed after January 1, 2018, shall expire ten years from the date
 158 of filing and shall not be subject to renewal by nulla bona or otherwise. ~~Said expiration~~
 159 ~~period~~ The periods of limitation set forth in this subsection shall be tolled and suspended
 160 for:

- 161 (1) The duration of an installment agreement between the taxpayer and the commissioner
 162 for any tax liabilities contained within an execution plus an additional 90 days;
 163 (2) If a timely proceeding in court for the imposition or collection of a tax is commenced,
 164 the duration of the period until the liability for the tax or a judgment against the taxpayer
 165 arising from such liability is satisfied or becomes unenforceable;
 166 (3) The duration of any enforcement action to collect the liability contained within an
 167 execution initiated prior to the expiration of the period of limitations and released after
 168 such period of limitations;
 169 (4) In a case under Title 11 of the United States Code, the running of the period of
 170 limitations provided in this Code section shall be suspended and tolled for the period
 171 during which the commissioner is prohibited from collecting any tax liability and six
 172 months thereafter; or
 173 (5) The period during which a taxpayer's offer-in-compromise is under consideration by
 174 the commissioner.

175 (h) All executions filed by the department on or after the effective date of this Act shall
 176 only attach to real property in the county in which the execution has been filed. After the
 177 effective date of this Act, no execution previously filed by the department shall be
 178 considered to have state-wide attachment to all real property within the state and shall only
 179 attach to real property in the county in which the execution has been filed.

180 48-3-43.

- 181 (a) The department shall maintain information on executions in its information
 182 management system in a form that permits information related to executions to be readily
 183 accessible in an electronic form via the Internet and available to the public. The following
 184 shall be available within such system at no charge to the public:
- 185 (1) Search by delinquent taxpayer name, execution number, last four digits of the
 186 taxpayer's social security number, or, when applicable, federal employee identification
 187 number;
 - 188 (2) Search by identification number assigned to the execution by the department;
 - 189 (3) The basis for an execution, including, but not limited to, the amount of the taxes,
 190 penalties, interest, and fees owed, and the tax periods and relevant assessment dates of
 191 the taxes owed;
 - 192 (4) The place, date, and time of the filing of the execution;
 - 193 (5) The status of the execution as defined in subsection (b) of this Code section;
 - 194 (6) The present balance of the execution;
 - 195 (7) Provision of official electronic copies of an execution; and

- 196 ~~(8) Provision and issuance of official statements of lien pursuant to Code Section~~
 197 ~~44-1-18;~~
- 198 ~~(9) Provision and issuance of official certificates of clearance pursuant to Code Section~~
 199 ~~44-1-18;~~
- 200 ~~(10) Search by identification number assigned to certificates of clearance; and~~
 201 ~~(11)(8) Notwithstanding Code Sections 48-2-15 and 48-7-60, provision~~ Provision and
 202 issuance of official payoff information as to any execution pursuant to Code Section
 203 ~~44-1-18.~~
- 204 (b) An execution shall hold one of the following official statuses on the department
 205 information system and such status shall be available, except as provided below, and on the
 206 electronic printable forms of state tax executions:
- 207 (1) Active — The execution is perfected and enforceable;
- 208 (2) Withdrawn — The execution was issued in error and is not enforceable. Within two
 209 business days from the date the department discovers an error in the filing of an
 210 execution, it shall change the status of the execution to withdrawn. Such execution shall
 211 be treated as though it was never filed;
- 212 (3) Released — The execution has been released ~~or canceled~~ and is no longer
 213 enforceable. Within 15 business days from the department's receipt of payment in full
 214 of an execution, the department shall change the status of the execution to released. The
 215 department may release an unpaid execution that the department determines is not legally
 216 or practically collectable;
- 217 (4) Refiled — If an execution is released in error, the department may file a new
 218 execution for any outstanding, finally determined tax liability to bear an active status as
 219 of the date of the new recording; and
- 220 (5) Expired — The execution has expired pursuant to Code Section 48-3-42 and is
 221 unenforceable.
- 222 (c) The department shall provide to the authority such electronic linking data elements as
 223 may be required by the authority to link filed executions found in the authority's state-wide
 224 uniform automated information system for real and personal property records to the
 225 matching data related to the execution in the department's information management system.
- 226 (d) The department's information management system as provided for in this Code section
 227 shall constitute a public record and the department shall redact information in accordance
 228 with Code Section 9-11-7.1.
- 229 (e) The department's information management system as provided for in this Code section
 230 shall not be used for survey, marketing, or solicitation purposes. Survey, marketing, or
 231 solicitation purposes shall not include any action by the department or its authorized agents
 232 to collect a debt on an execution. The Attorney General is hereby authorized to bring an

233 action at law or in equity to address the unlawful use of such information for a survey,
 234 marketing, or solicitation purpose and to recover the costs of such action, including
 235 reasonable attorney's fees.

236 (f) The commissioner may adopt reasonable rules and regulations providing for the
 237 maintenance, reliability, accessibility, and use of the department's information management
 238 system. Such rules and regulations may address, among other matters, the authenticity of
 239 the electronic printable executions and issues related to periods during which the
 240 information system may be unavailable for use due to routine maintenance or other
 241 activities.

242 48-3-44.

243 ~~(a)~~ An execution bearing a 'Released' status on the department's information management
 244 system shall constitute a complete release of the execution by the department and ~~of the~~
 245 department shall also timely file the release of the lien in the office of the clerk of superior
 246 court where the execution was filed as required by Code Section 48-3-28.

247 ~~(b) A certificate of clearance issued by the department shall be deemed an effective release~~
 248 ~~of an execution. The department shall provide to the delinquent taxpayer, within 30 days~~
 249 ~~of the date of payment, a notice of the release of the execution and shall cause a release of~~
 250 ~~the execution to be filed with the applicable superior court clerk."~~

251 **SECTION 6.**

252 Title 15 of the Official Code of Georgia Annotated, relating to courts, is amended by revising
 253 Code Section 15-6-97.3, relating to revision of automated information system for state tax
 254 execution data and regulatory authority, as follows:

255 "15-6-97.3.

256 (a) The Georgia Superior Court Clerks' Cooperative Authority or its designated agent shall
 257 revise the state-wide uniform automated information system for real and personal property
 258 records as provided for in Code Section 15-6-97 to provide for the inclusion in such system
 259 functionality as provided in this Code section for state tax executions and renewed state tax
 260 executions electronically filed with clerks of superior court as provided for in Article 2 of
 261 Chapter 3 of Title 48.

262 (b) As used in this Code section, the term 'state tax execution' shall be inclusive of the term
 263 'renewed state tax execution.'

264 (c) Effective January 1, 2018, the state-wide uniform automated information system for
 265 real and personal property records shall be revised to provide the following function and
 266 utility related to state tax executions:

267 ~~(1) Electronic query of the Georgia consolidated lien indexes for state tax execution~~
 268 ~~instrument types by direct party name to include state-wide results of all state tax~~
 269 ~~executions filed for such party regardless of any applied county limiting search filter;~~
 270 ~~(2) Electronic query of the Georgia consolidated lien indexes for all lien types by direct~~
 271 ~~party name to include state-wide results of all state tax executions filed for such party~~
 272 ~~regardless of any applied county limiting search filter;~~
 273 ~~(3) A secondary electronic query of the results returned by a search performed pursuant~~
 274 ~~to paragraphs (1) and (2) of this subsection by the last four digits of a social security~~
 275 ~~number or federal employer identification number which will render results of state tax~~
 276 ~~executions associated with such number;~~
 277 ~~(4)~~(1) An electronic link from an index data record of a state tax execution found in the
 278 system to the Department of Revenue information management system to provide users
 279 access to detailed information; and status; ~~and clearance certificates~~ from the department
 280 system. The Department of Revenue shall provide to the authority such electronic linking
 281 data elements as may be required by the authority to link filed executions found in the
 282 state-wide uniform automated information system for real and personal property records
 283 to the matching data on the execution in the Department of Revenue information
 284 management system; and
 285 ~~(5)~~(2) A searchable electronic filing submission docket or other means which allows a
 286 search by direct party name, as provided by the Department of Revenue, for state tax
 287 executions which have been submitted to the authority for filing with a clerk of superior
 288 court pending the inclusion of final index data for such execution into the Georgia
 289 consolidated lien indexes. Search features shall be available for an execution upon its
 290 receipt by the authority.
 291 (d) The Georgia Superior Court Clerks' Cooperative Authority shall have authority to
 292 promulgate rules and regulations necessary to develop and implement the provisions of this
 293 Code section."

294 **SECTION 7.**

295 Title 44 of the Official Code of Georgia Annotated, relating to property, is amended by
 296 repealing Code Section 44-1-18, relating to execution search prior to conveyance of property,
 297 and designating it as "Reserved."

298 **SECTION 8.**

299 Said title is further amended by revising Code Section 44-2-2, relating to the duties of clerks
 300 to record property transactions, as follows:

301 "44-2-2.

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

306 (A) Deeds;

307 (B) Mortgages;

308 (C) Liens as provided for by law; and

309 (D) Maps or plats relating to real estate in the county; and

310 (E) State tax executions and state tax execution renewals as provided for in Article 2
311 of Chapter 3 of Title 48.

312 (2) As used in this subsection, the term 'liens' shall have the same meaning as provided
313 in Code Sections 15-19-14, 44-14-320, and 44-14-602 and shall include all liens provided
314 by state or federal statute.

315 (3) When indexing liens, the clerk shall ~~enter~~ index the names of debtors in the index in
316 ~~the manner provided for names of grantors conveying real estate in subsection (b) of~~
317 ~~Code Section 15-6-66 and the names of creditors or claimants in the manner as provided~~
318 ~~therein for names of grantees making such conveyances. When indexing state tax~~
319 ~~executions and state tax execution renewals as provided by subparagraph (a)(1)(E) of this~~
320 ~~Code section, the clerk shall enter the names of the taxpayers in the manner provided for~~
321 ~~names of grantors conveying real estate in subsection (b) of Code Section 15-6-66 and~~
322 ~~the name 'GEORGIA STATE DEPT OF REVENUE' in the manner as provided therein~~
323 ~~for names of grantees making such conveyances. For state tax executions, the clerk shall~~
324 ~~also:~~

325 ~~(A) Index the last four characters of the taxpayer's social security number or the last~~
326 ~~four characters of the federal employer taxpayer number, as applicable to each~~
327 ~~taxpayer;~~

328 ~~(B) Index such state tax execution control number as provided by rule established by~~
329 ~~the Georgia Superior Court Clerks' Cooperative Authority;~~

330 ~~(C) Index using instrument types as provided by rule established by the Georgia~~
331 ~~Superior Court Clerks' Cooperative Authority; and~~

332 ~~(D) Transmit such data to the Georgia Superior Court Clerks' Cooperative Authority~~
333 ~~pursuant to the provisions of paragraph (15) of subsection (a) of Code Section 15-6-61~~
334 parties in the manner provided by such rules and regulations adopted by the Georgia
335 Superior Court Clerks' Cooperative Authority pursuant to the provisions of Code
336 Section 15-6-61 as authorized by Code Section 15-6-97.

337 (4) When indexing maps or plats relating to real estate in the county, the clerk of superior
338 court shall index the names or titles provided in the caption of the plat.

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

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

346 **SECTION 9.**

347 This Act shall become effective on February 15, 2018.

348 **SECTION 10.**

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