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## REVENUE AND TAXATION Tax Executions: Provide for Payment and Transfer

D. Johnson

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## REVENUE AND TAXATION

*Tax Executions: Provide for Payment and Transfer*

CODE SECTIONS:	O.C.G.A. §§ 48-3-3 (amended), 48-3-19 (amended)
BILL NUMBER:	HB 1280
ACT NUMBER:	1340
SUMMARY:	The Act requires the Tax Commissioner or collector to provide thirty-days' written notice to a taxpayer that an execution will be issued if delinquent taxes are not paid. The Act also provides that a third party, other than a tax official or employee, may pay the tax and receive a transfer of the execution provided he has notified the individual against whom the execution has issued.
EFFECTIVE DATE:	July 1, 1988

*History*

The common law concept of executions<sup>1</sup> has a long history as an enforcement procedure. This procedure enables creditors to attach the property of debtors in satisfaction of their debts.<sup>2</sup> Execution is also a mechanism for collecting tax arrearages from state residents.<sup>3</sup>

To facilitate tax collection by county or municipal authorities, the Code provides that third parties may purchase the executions.<sup>4</sup> The third party pays the delinquent tax and interest to the Tax Commissioner and then attempts to collect the debt from the taxpayer.<sup>5</sup> The legislature recognized that county and local governments need every available procedure to collect delinquent taxes.<sup>6</sup> The legislature also realized that tax officials

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1. A writ of execution is a "[f]ormal process issued by [the] court generally evidencing the debt of the defendant to the plaintiff and commanding the officer to take the property of the defendant in satisfaction of the debt." BLACK'S LAW DICTIONARY 510 (5th ed. 1979).

2. See Note, *Developments in Georgia Law—Debtor Creditor Rights*, 12 GA. L. REV. 814, 838 (1978).

3. O.C.G.A. §§ 48-3-1 to -28 (1982 & Supp. 1988).

4. O.C.G.A. § 48-3-19(a)(1) (Supp. 1988).

5. *Id.*

6. Telephone interview with Representative Tom Crosby, Jr., House District No. 150 (Apr. 17, 1988) [hereinafter Crosby Interview].

and their employees receive advance information concerning taxpayers who are delinquent in their payments. Those tax workers are in a position to purchase the executions and profit by the future collection.<sup>7</sup> While there is no indication that overreaching by tax officials or their employees has become a widespread or even frequent occurrence, the legislature enacted HB 1280 to avoid the appearance of impropriety and prevent potential problems.<sup>8</sup>

### HB 1280

HB 1280 was enacted to prevent tax employees from using inside information for personal profit.<sup>9</sup> In the Act's original form, HB 1280 amended Code section 48-3-19 to specify that certain tax officials or their employees who pay delinquent taxes and, in turn, receive executions are guilty of a misdemeanor.<sup>10</sup> The officials prohibited from buying executions are: "[c]ounty tax receivers, tax collectors, and tax commissioners; [m]embers of county boards of tax assessors; [m]embers of county boards of equalization; and [c]ounty tax appraisers."<sup>11</sup> HB 1280 also provided that violation of this section would result in a void and unenforceable execution.<sup>12</sup>

The Senate Finance and Banking Committee's substitute incorporated the original House amendments to section 48-3-19, added additional amendments of its own to that section, and amended section 48-3-3.<sup>13</sup> The Senate Committee substitute passed both houses virtually unopposed.<sup>14</sup>

O.C.G.A. § 48-3-3 empowers the Tax Commissioner to levy executions for nonpayment of taxes. The Act now requires that the execution not issue until thirty days after the taxpayer has been notified, in writing, that he is delinquent in his tax payment, and that an execution will be issued if the debt is not paid.<sup>15</sup>

The Act also adds important qualifications to the transfer of a tax execution. The potential transferee may not pay the delinquent tax and receive the execution until he has given the taxpayer thirty-days' notice, by certified mail, that he intends to pay the delinquent tax.<sup>16</sup> Finally, the

7. *Id.*

8. *Id.* A newspaper article in Representative Crosby's district alerted him to the possibility of overreaching by tax officials.

9. Crosby Interview, *supra* note 6.

10. HB 1280, as introduced, 1988 Ga. Gen. Assem.

11. *Id.* The list of officials remains intact in the Act's final version. O.C.G.A. § 48-3-19(a)(2)(A)(i)—(iv) (Supp. 1988).

12. HB 1280, as introduced, 1988 Ga. Gen. Assem.

13. HB 1280 (SCS), 1988 Ga. Gen. Assem.

14. O.C.G.A. §§ 48-3-3, -19 (Supp. 1988). The only significant opposition would have come from the Tax Commissioners Association; they did not object. Crosby Interview, *supra* note 6.

15. O.C.G.A. § 48-3-3 (Supp. 1988).

16. O.C.G.A. § 48-3-19(c) (Supp. 1988).

Act allows the transferee to charge the taxpayer the amount of delinquent taxes paid plus twelve percent interest.<sup>17</sup> The interest ceiling provision prevents the execution holder from "sitting on" the execution and later charging the taxpayer an exorbitant interest rate.<sup>18</sup> The bill's proponents were concerned that some taxpayers do not pay because they lack funds not because they are attempting to avoid the obligation. The interest ceiling prevents the eventual tax payment from taking the form of a penalty.<sup>19</sup>

*D. Johnson*

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17. O.C.G.A. § 48-3-19(d) (Supp. 1988).

18. Crosby Interview, *supra* note 6.

19. *Id.*