



General Assembly

February Session, 2010

Raised Bill No. 445

LCO No. 2282

02282_____FIN

Referred to Committee on Finance, Revenue and Bonding

Introduced by:
(FIN)

**AN ACT ENHANCING THE ABILITY OF THE DEPARTMENT OF
REVENUE SERVICES TO COLLECT OUTSTANDING TAXES.**

Be it enacted by the Senate and House of Representatives in General
Assembly convened:

1 Section 1. (NEW) (*Effective July 1, 2010*) (a) (1) "Commissioner"
2 means the Commissioner of Revenue Services.

3 (2) "Department" means the Department of Revenue Services.

4 (3) "Issuance of a license" means the granting, renewing, amending
5 or supplementing of a license.

6 (4) "License" means the whole or part of any public agency permit,
7 certificate, approval, registration, charter or similar form of permission
8 to engage in a profession, trade, business or occupation and any
9 notification required to be made to any public agency that a
10 profession, trade, business or occupation is being engaged in or is
11 expected to be commenced.

12 (5) "License applicant" means the person making application for
13 issuance of a license and any other person that is required to be
14 included in such application.

15 (6) "Person" means an individual, partnership, society, association,
16 joint stock company, corporation, limited liability company, estate,
17 receiver, trustee, assignee, referee or any other person acting in a
18 fiduciary or representative capacity, whether appointed by a court or
19 otherwise, or any combination of the foregoing.

20 (7) "Public agency" means any department within the executive
21 branch of state government as listed in section 4-38c of the general
22 statutes. "Public agency" includes the Department of Education, the
23 Department of Higher Education, the Department of Information
24 Technology and the Division of Criminal Justice.

25 (8) "Taxes due to this state" means taxes, including additions to tax
26 for penalties and interest, which are imposed under the laws of this
27 state, which are finally due and payable to the commissioner, and with
28 respect to which any administrative or judicial remedies, or both, have
29 been exhausted or have lapsed. "Taxes due to this state" does not
30 include taxes with respect to which a payment agreement, not in
31 default, has been entered into by a taxpayer and the department.

32 (b) The Commissioner of Revenue Services may adopt regulations,
33 in accordance with the provisions of chapter 54 of the general statutes,
34 in consultation with the commissioner of another public agency that
35 issues licenses. Such regulations shall provide that (1) before the
36 issuance of a license to a license applicant, such applicant shall, as part
37 of the application process, submit proof that such applicant owes no
38 taxes to this state, (2) if an applicant owes taxes to this state, the
39 Commissioner of Revenue Services shall provide notice and an
40 opportunity for a hearing to such applicant, which hearing shall be
41 limited to verifying whether such applicant owes taxes to this state,
42 and (3) if it is established to the satisfaction of the commissioner that
43 an undue hardship would otherwise result to a license applicant, a
44 license shall be issued to the license applicant, notwithstanding the fact
45 that such applicant owes taxes due to this state. Such regulations may
46 also provide that, if such license applicant is not an individual, proof

47 that there are no taxes due to this state shall also be required from the
48 principals of a business entity, as defined in such regulations. The sole
49 right to any hearing authorized pursuant to regulations adopted under
50 this section shall be to the commissioner and not to the public agency
51 issuing the license.

52 Sec. 2. Section 12-35 of the general statutes is repealed and the
53 following is substituted in lieu thereof (*Effective July 1, 2010*):

54 (a) Wherever used in this chapter, unless otherwise provided: [.]

55 (1) ["state"] "State collection agency" includes the Treasurer, the
56 Commissioner of Revenue Services and any other state official, board
57 or commission authorized by law to collect taxes payable to the state
58 and any duly appointed deputy of any such official, board or
59 commission;

60 (2) ["tax"] "Tax" includes not only the principal of any tax but also all
61 interest, penalties, fees and other charges added thereto by law; and

62 (3) ["serving"] "Serving officer" includes any state marshal, constable
63 or employee of such state collection agency designated for such
64 purpose by a state collection agency and any person so designated by
65 the Labor Commissioner.

66 (b) Upon the failure of any person to pay any tax, except any tax
67 under chapter 216, due the state within thirty days from its due date,
68 the state collection agency charged by law with its collection shall add
69 thereto such penalty or interest or both as are prescribed by law,
70 provided, if any statutory penalty is not specified, there may be added
71 a penalty in the amount of ten per cent of the whole or such part of the
72 principal of the tax as is unpaid or fifty dollars, whichever amount is
73 greater, and provided, if any statutory interest is not specified, there
74 shall be added interest at the rate of one per cent of the whole or such
75 part of the principal of the tax as is unpaid for each month or fraction
76 thereof, from the due date of such tax to the date of payment.

77 (c) Upon the failure of any person to pay any tax, except any tax
78 under chapter 216, due within thirty days of its due date, the state
79 collection agency charged by law with the collection of such tax may
80 make out and sign a warrant directed to any serving officer for
81 distraint upon any property of such person found within the state,
82 whether real or personal. An itemized bill shall be attached thereto,
83 certified by the state collection agency issuing such warrant as a true
84 statement of the amount due from such person. Such warrant shall
85 have the same force and effect as an execution issued pursuant to
86 chapter 906. Such warrant may be levied on any real property or
87 tangible or intangible personal property of such person, and sale made
88 pursuant to such warrant in the same manner and with the same force
89 and effect as a levy of sale pursuant to an execution. In addition
90 thereto, if such warrant has been issued by the Commissioner of
91 Revenue Services, [his] such commissioner's deputy, the Labor
92 Commissioner, the executive director of the Employment Security
93 Division or any person in the Employment Security Division in a
94 position equivalent to or higher than the position presently held by a
95 revenue examiner four, said serving officer shall be authorized to place
96 a keeper in any place of business and it shall be such keeper's duty to
97 secure the income of such business for the state and, when it is in the
98 best interest of the state, to force cessation of such business operation.
99 In addition, the Attorney General may collect any such tax by civil
100 action. The state collection agency may collect any such tax by civil
101 action, if such civil action is to be brought in the appropriate courts of
102 another state, and, when the state collection agency is the prevailing
103 party in such an action, the state collection agency shall be entitled to
104 recover all costs, fees and expenses in connection with such action,
105 including collection costs and reasonable attorney's fees.

106 (d) Each serving officer so receiving a warrant shall make a return
107 with respect to such warrant to the appropriate collection agency
108 within a period of ten days following receipt of such warrant. Each
109 serving officer shall collect from such person, in addition to the
110 amount shown on such warrant, [his] such serving officer's fees and

111 charges, which shall be twice those authorized by statute for serving
112 officers, provided the minimum charge shall be five dollars and money
113 collected pursuant to such warrant shall be first applied to the amount
114 of any fees and charges of the serving officer. In the case of an
115 employee of the state acting as a serving officer the fees and charges
116 collected by such employee shall inure to the benefit of the state. For
117 the purposes of this section, "keeper" means a person who has been
118 given authority by an officer authorized to serve a tax warrant to act in
119 the state's interest to secure the income of a business for the state and,
120 when it is in the best interest of the state, to force the cessation of such
121 business's operation, upon the failure of such business to pay taxes
122 owed to the state.

123 [(b)] (e) (1) Any such warrant on any intangible personal property of
124 any person may be served by mailing a certified copy of such warrant
125 by certified mail, return receipt requested, to any third person in
126 possession of, or obligated with respect to, receivables, bank accounts,
127 evidences of debt, securities, salaries, wages, commissions,
128 compensation or other intangible personal property subject to such
129 warrant, ordering such third person to forthwith deliver such property
130 or pay the amount due or payable to the state collection agency which
131 has made out such warrant, provided such warrant may be issued only
132 after the state collection agency making out such warrant has notified
133 the person owning such property, in writing, of its intention to issue
134 such warrant. The notice of intent shall be: (A) Given in person; (B) left
135 at the dwelling or usual place of business of such person; or (C) sent by
136 certified mail, return receipt requested, to such person's last known
137 address, not less than thirty days before the day the warrant is to be
138 issued.

139 (2) Any such warrant on any intangible personal property of any
140 person may be served by electronic mail or facsimile machine on any
141 third person in possession of, or obligated with respect to, receivables,
142 bank accounts, evidences of debt, securities, salaries, wages,
143 commissions, compensation or other intangible personal property

144 subject to such warrant, ordering such third person to forthwith
145 deliver such property or pay the amount due or payable to the state
146 collection agency which has made out such warrant provided such
147 warrant may be issued only after the state collection agency making
148 out such warrant has notified the person owning such property, in
149 writing, of its intention to issue such warrant. The notice of intent shall
150 be: (A) Given in person; (B) left at the dwelling or usual place of
151 business of such person; or (C) sent by certified mail, return receipt
152 requested, to such person's last-known address, not less than thirty
153 days before the day the warrant is to be issued.

154 Sec. 3. Section 12-414a of the general statutes is repealed and the
155 following is substituted in lieu thereof (*Effective from passage*):

156 (a) Each person, other than a retailer, who is required, on behalf of a
157 retailer, to collect, truthfully account for and pay over the tax imposed
158 on such retailer under this chapter and who is referred to in this
159 section as a "responsible person" and who wilfully fails to collect such
160 tax or truthfully account for and pay over such tax or who wilfully
161 attempts in any manner to evade or defeat the tax or the payment
162 thereof, shall, in addition to other penalties provided by law, be liable
163 for a penalty equal to the total amount of the tax evaded, or not
164 collected, or not accounted for and paid over, including any penalty or
165 interest attributable to such wilful failure to collect or truthfully
166 account for and pay over such tax or such wilful attempt to evade or
167 defeat such tax, provided such penalty shall only be imposed against
168 such person in the event that such tax, penalty or interest cannot
169 otherwise be collected from the retailer itself in accordance with
170 section 12-420.

171 (b) The amount of such penalty with respect to which a person may
172 be personally liable under this section shall be collected in accordance
173 with said section 12-420 and any amount so collected shall be allowed
174 as a credit against the amount of such tax, penalty or interest due and
175 owing from the retailer. The amount of such penalty with respect to

176 which a person may be personally liable under this section shall not be
177 subject to waiver under section 12-419.

178 (c) The dissolution of the retailer shall not discharge any person in
179 relation to any personal liability under this section for wilful failure to
180 collect or truthfully account for and pay over such tax or for a wilful
181 attempt to evade or defeat such tax prior to dissolution, except as
182 otherwise provided in this section.

183 (d) (1) For purposes of this section, ["person"] "responsible person"
184 includes any individual, corporation, limited liability company or
185 partnership and any officer or employee of any corporation, including
186 a dissolved corporation, and a member or employee of any partnership
187 or limited liability company who, as such officer, employee or
188 member, is under a duty to file a tax return under this chapter on
189 behalf of a retailer or to collect or truthfully account for and pay over
190 the tax imposed under this chapter on behalf of a retailer.

191 (2) For purposes of this section, "wilfully" shall have the same
192 meaning as the term "willfully" in Section 6672 of the Internal Revenue
193 Code of 1986, or any subsequent internal revenue code of the United
194 States, as from time to time amended.

195 (e) For purposes of section 12-418, a person against whom a penalty
196 is imposed under this section may file a petition for reassessment,
197 provided, if the retailer has filed a petition for reassessment for the
198 same period or periods, the petition for reassessment that may be filed
199 by the person against whom a penalty is imposed under this section
200 shall be limited to the issue of whether the person is a responsible
201 person.

202 (f) A person against whom a penalty is imposed under this section
203 shall be entitled to recover a payment made by such person pursuant
204 to this section from the retailer.

205 Sec. 4. Section 12-458e of the general statutes is repealed and the

206 following is substituted in lieu thereof (*Effective from passage*):

207 (a) Each person, other than a distributor, who is required, on behalf
208 of a distributor, to collect, truthfully account for and pay over the tax
209 imposed on such distributor under this chapter and who is referred to
210 in this section as a "responsible person" and who wilfully fails to
211 collect such tax or truthfully account for and pay over such tax or who
212 wilfully attempts in any manner to evade or defeat the tax or the
213 payment thereof, shall, in addition to other penalties provided by law,
214 be liable for a penalty equal to the total amount of the tax evaded, or
215 not collected, or not accounted for and paid over, including any
216 penalty or interest attributable to such wilful failure to collect or
217 truthfully account for and pay over such tax or such wilful attempt to
218 evade or defeat such tax, provided such penalty shall only be imposed
219 against such person in the event that such tax, penalty or interest
220 cannot otherwise be collected from the distributor itself in accordance
221 with section 12-475.

222 (b) The amount of such penalty with respect to which a person may
223 be personally liable under this section shall be collected in accordance
224 with said section 12-475 and any amount so collected shall be allowed
225 as a credit against the amount of such tax, penalty or interest due and
226 owing from the distributor. The amount of such penalty with respect
227 to which a person may be personally liable under this section shall not
228 be subject to waiver under section 12-458.

229 (c) The dissolution of such distributor shall not discharge any
230 person in relation to any personal liability under this section for wilful
231 failure to collect or truthfully account for and pay over such tax or for a
232 wilful attempt to evade or defeat such tax prior to dissolution, except
233 as otherwise provided in this section.

234 (d) (1) For purposes of this section, ["person"] "responsible person"
235 includes any individual, corporation, limited liability company or
236 partnership and any officer or employee of any corporation, including
237 a dissolved corporation, and a member or employee of any partnership

238 or limited liability company who, as such officer, employee or
239 member, is under a duty to file a tax return under this chapter on
240 behalf of a distributor or to collect or truthfully account for and pay
241 over the tax imposed under this chapter on behalf of a distributor.

242 (2) For purposes of this section, "wilfully" shall have the same
243 meaning as the term "willfully" in Section 6672 of the Internal Revenue
244 Code of 1986, or any subsequent internal revenue code of the United
245 States, as from time to time amended.

246 (e) A person against whom a penalty is imposed under this section
247 may apply to the commissioner, in writing, for a hearing, as provided
248 in section 12-461 in the case of a distributor aggrieved by the action of
249 the commissioner, provided, if the distributor has applied to the
250 commissioner, in writing, for a hearing for the same period or periods,
251 the hearing that may be applied for by the person against whom a
252 penalty is imposed under this section shall be limited to the issue of
253 whether such person is a responsible person.

254 (f) A person against whom a penalty is imposed under this section
255 shall be entitled to recover a payment made by such person pursuant
256 to this section from the distributor.

257 Sec. 5. Section 12-547a of the general statutes is repealed and the
258 following is substituted in lieu thereof (*Effective from passage*):

259 (a) Each person, other than a taxpayer, who is required, on behalf of
260 a taxpayer, to collect, truthfully account for and pay over the tax
261 imposed on such taxpayer under this chapter and who is referred to in
262 this section as a "responsible person" and who wilfully fails to collect
263 such tax or truthfully account for and pay over such tax or who
264 wilfully attempts in any manner to evade or defeat the tax or the
265 payment thereof, shall, in addition to other penalties provided by law,
266 be liable for a penalty equal to the total amount of the tax evaded, or
267 not collected, or not accounted for and paid over, including any
268 penalty or interest attributable to such wilful failure to collect or

269 truthfully account for and pay over such tax or such wilful attempt to
270 evade or defeat such tax, provided such penalty shall only be imposed
271 against such person in the event that such tax, penalty or interest
272 cannot otherwise be collected from the taxpayer itself in accordance
273 with section 12-555a.

274 (b) The amount of such penalty with respect to which a person may
275 be personally liable under this section shall be collected in accordance
276 with said section 12-555a and any amount so collected shall be allowed
277 as a credit against the amount of such tax, penalty or interest due and
278 owing from the taxpayer. The amount of such penalty with respect to
279 which a person may be personally liable under this section shall not be
280 subject to waiver under section 12-548.

281 (c) The dissolution of such taxpayer shall not discharge any person
282 in relation to any personal liability under this section for wilful failure
283 to collect or truthfully account for and pay over such tax or for a wilful
284 attempt to evade or defeat such tax prior to dissolution, except as
285 otherwise provided in this section.

286 (d) (1) For purposes of this section, ["person"] "responsible person"
287 includes any individual, corporation, limited liability company or
288 partnership and any officer or employee of any corporation, including
289 a dissolved corporation, and a member or employee of any partnership
290 or limited liability company who, as such officer, employee or
291 member, is under a duty to file a tax return under this chapter on
292 behalf of a taxpayer or to collect or truthfully account for and pay over
293 the tax imposed under this chapter on behalf of a taxpayer.

294 (2) For purposes of this section, "wilfully" shall have the same
295 meaning as the term "willfully" in Section 6672 of the Internal Revenue
296 Code of 1986, or any subsequent internal revenue code of the United
297 States, as from time to time amended.

298 (e) A person against whom a penalty is imposed under this section
299 may apply to the commissioner, in writing, for a hearing, as provided

300 in section 12-553 in the case of a taxpayer aggrieved by the action of
301 the commissioner, provided, if the taxpayer has applied to the
302 commissioner, in writing, for a hearing for the same period or periods,
303 the hearing that may be applied for by the person against whom a
304 penalty is imposed under this section shall be limited to the issue of
305 whether the person is a responsible person.

306 (f) A person against whom a penalty is imposed under this section
307 shall be entitled to recover a payment made by such person pursuant
308 to this section from the taxpayer.

309 Sec. 6. Section 12-736 of the general statutes is repealed and the
310 following is substituted in lieu thereof (*Effective from passage*):

311 (a) Any person, [required] other than an employer or payer, as
312 defined in section 12-707 who is required, on behalf of an employer or
313 payer, to collect, truthfully account for and pay over the tax imposed
314 under this chapter and who is referred to in this section as a
315 "responsible person" and who wilfully fails to collect such tax or
316 truthfully account for and pay over such tax or who wilfully attempts
317 in any manner to evade or defeat the tax or the payment thereof, shall,
318 in addition to other penalties provided by law, be liable for a penalty
319 equal to the total amount of the tax evaded, or not collected, or not
320 accounted for and paid over, including any penalty or interest
321 attributable to such wilful failure to collect or truthfully account for
322 and pay over such tax or such wilful attempt to evade or defeat such
323 tax, provided such penalty shall only be imposed against such person
324 in the event that such tax, penalty or interest cannot otherwise be
325 collected from the employer or payer in accordance with section 12-
326 734.

327 (b) The amount of such penalty with respect to which a person may
328 be personally liable under this section shall be collected in accordance
329 with section 12-734 and any amount so collected shall be allowed as a
330 credit against the amount of such tax, penalty or interest due and
331 owing from the employer or payer. The amount of such penalty with

332 respect to which a person may be personally liable under this section
333 shall not be subject to waiver under section 12-735.

334 (c) The dissolution of such employer or payer shall not discharge
335 any person in relation to any personal liability under this section for
336 wilful failure to collect or truthfully account for and pay over such tax
337 or for a wilful attempt to evade or defeat such tax prior to such
338 dissolution, except as otherwise provided in this section.

339 (d) (1) For purposes of this section, "responsible person" includes
340 any individual, corporation, limited liability company or partnership
341 and any officer or employee of any corporation, including a dissolved
342 corporation, and a member or employee of any partnership or limited
343 liability company who, as such officer, employee or member, is under
344 a duty to file a tax return under this chapter on behalf of an employer
345 or payer or to collect or truthfully account for and pay over the tax
346 imposed under this chapter on behalf of an employer or payer.

347 (2) For purposes of this section, "wilfully" shall have the same
348 meaning as the term "willfully" in Section 6672 of the Internal Revenue
349 Code of 1986, or any subsequent internal revenue code of the United
350 States, as from time to time amended.

351 (e) A person against whom a penalty is imposed under this section
352 may protest the imposition of the penalty, as provided in section 12-
353 729 in the case of a taxpayer's protest against a proposed assessment,
354 provided, if the employer or payer has filed a protest for the same
355 period or periods, the protest that may be filed by the person against
356 whom a penalty is imposed under this section shall be limited to the
357 issue of whether such person is a responsible person.

358 (f) A person against whom a penalty is imposed under this section
359 shall be entitled to recover a payment made by such person pursuant
360 to this section from the employer or payer.

361 [(b)] (g) Any person who with fraudulent intent shall fail to pay, to

362 deduct or to withhold and pay any tax, to make, render, sign or certify
 363 any return or to supply any information within the time required by or
 364 under this chapter shall be subject to a penalty of not more than one
 365 thousand dollars, in addition to any other amounts required under this
 366 chapter to be imposed, assessed and collected by the commissioner.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2010</i>	New section
Sec. 2	<i>July 1, 2010</i>	12-35
Sec. 3	<i>from passage</i>	12-414a
Sec. 4	<i>from passage</i>	12-458e
Sec. 5	<i>from passage</i>	12-547a
Sec. 6	<i>from passage</i>	12-736

Statement of Purpose:

To make certain changes increasing the ability of the Department of Revenue Services to collect outstanding taxes, including allowing the department, by regulation, to require license applicants to obtain a tax clearance from the department before being allowed to obtain a license, allowing the department to recoup its collections costs and attorney's fees when it is the prevailing party in a civil action brought in the courts of another state, and creating a "responsible person" concept for the trust taxes, i.e. sales and use tax, admissions and dues tax, motor vehicle fuels tax and employer withholding tax.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]