



General Assembly

**Substitute Bill No. 445**

February Session, 2010

\* SB00445FIN\_\_040110\_\_ \*

**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) As used in this section:
- 2 (1) "Commissioner" 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 any commissioner of another public agency that  
35 issues licenses, to ensure that no license shall be issued to an applicant  
36 until such applicant has paid all taxes due to this state. Such  
37 regulations shall (1) establish a means for such public agency, prior to  
38 the issuance of a license, to verify that an applicant has no taxes due to  
39 this state, (2) provide that, if an applicant has taxes due to this state,  
40 the Commissioner of Revenue Services shall provide notice and an  
41 opportunity for a hearing to such applicant, which hearing shall be  
42 limited to verifying whether such applicant has taxes due to this state,  
43 and (3) provide that, if it is established to the satisfaction of the  
44 commissioner that an undue hardship would otherwise result to a  
45 license applicant, a license shall be issued to the license applicant,  
46 notwithstanding the fact that such applicant has taxes due to this state.  
47 Such regulations shall also provide that, if such license applicant is not  
48 an individual, there shall be a means for such public agency, prior to  
49 the issuance of a license, to verify that the principals of a business

50 entity, as such is defined in such regulations, have no taxes due to this  
51 state. The sole right to any hearing authorized pursuant to such  
52 regulations shall be to the commissioner and not to the public agency  
53 issuing the license.

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 Section 12-35 of the general statutes is repealed and the  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

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

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

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

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

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

79 (c) Upon the failure of any person to pay any tax, except any tax

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

107 (d) Each serving officer so receiving a warrant shall make a return  
108 with respect to such warrant to the appropriate collection agency  
109 within a period of ten days following receipt of such warrant. Each  
110 serving officer shall collect from such person, in addition to the  
111 amount shown on such warrant, [his] such serving officer's fees and  
112 charges, which shall be twice those authorized by statute for serving  
113 officers, provided the minimum charge shall be five dollars and money

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

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

140 (2) Any such warrant on any intangible personal property of any  
141 person may be served by electronic mail or facsimile machine on any  
142 third person in possession of, or obligated with respect to, receivables,  
143 bank accounts, evidences of debt, securities, salaries, wages,  
144 commissions, compensation or other intangible personal property  
145 subject to such warrant, ordering such third person to forthwith  
146 deliver such property or pay the amount due or payable to the state  
147 collection agency which has made out such warrant provided such

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

155 Sec. 3. Section 12-414a of the general statutes is repealed and the  
156 following is substituted in lieu thereof (*Effective July 1, 2010*):

157 (a) For purposes of this section:

158 (1) "Responsible person" means any individual, corporation, limited  
159 liability company or partnership and any officer or employee of any  
160 corporation, including a dissolved corporation, and a member or  
161 employee of any partnership or limited liability company who, as such  
162 officer, employee or member, is under a duty to file a tax return under  
163 this chapter on behalf of a retailer or to collect or truthfully account for  
164 and pay over the tax imposed under this chapter on behalf of a retailer;

165 (2) "Wilfully" shall be treated as the term "willfully" is described in  
166 Section 6672 of the Internal Revenue Code of 1986, or any subsequent  
167 corresponding internal revenue code of the United States, as amended  
168 from time to time.

169 (b) Each responsible person, other than a retailer, who is required,  
170 on behalf of a retailer, to collect, truthfully account for and pay over  
171 the tax imposed on such retailer under this chapter and who wilfully  
172 fails to collect such tax or truthfully account for and pay over such tax  
173 or who wilfully attempts in any manner to evade or defeat the tax or  
174 the payment [thereof] of such tax, shall, in addition to other penalties  
175 provided by law, be liable for a penalty equal to the total amount of  
176 the tax evaded, or not collected, or not accounted for and paid over,  
177 including any penalty or interest attributable to such wilful failure to  
178 collect or truthfully account for and pay over such tax or such wilful  
179 attempt to evade or defeat such tax, provided such penalty shall only

180 be imposed against such person in the event that such tax, penalty or  
181 interest cannot otherwise be collected from the retailer itself in  
182 accordance with section 12-420.

183 (c) The amount of such penalty with respect to which a responsible  
184 person may be personally liable under this section shall be collected in  
185 accordance with said section 12-420 and any amount so collected shall  
186 be allowed as a credit against the amount of such tax, penalty or  
187 interest due and owing from the retailer. The amount of such penalty  
188 with respect to which a responsible person may be personally liable  
189 under this section shall not be subject to waiver under section 12-419.

190 (d) The dissolution of the retailer shall not discharge any  
191 responsible person in relation to any personal liability under this  
192 section for wilful failure to collect or truthfully account for and pay  
193 over such tax or for a wilful attempt to evade or defeat such tax prior  
194 to dissolution, except as otherwise provided in this section. [For  
195 purposes of this section, "person" includes any individual, corporation,  
196 limited liability company or partnership and any officer or employee  
197 of any corporation, including a dissolved corporation, and a member  
198 or employee of any partnership or limited liability company who, as  
199 such officer, employee or member, is under a duty to file a tax return  
200 under this chapter on behalf of a retailer or to collect or truthfully  
201 account for and pay over the tax imposed under this chapter on behalf  
202 of a retailer.]

203 (e) For purposes of section 12-418, a person against whom a penalty  
204 is imposed under this section may file a petition for reassessment,  
205 provided, if the retailer has filed a petition for reassessment for the  
206 same period or periods, the petition for reassessment that may be filed  
207 by the person against whom a penalty is imposed under this section  
208 shall be limited to the issue of whether the person is a responsible  
209 person.

210 (f) A responsible person against whom a penalty is imposed under  
211 this section shall be entitled to recover a payment made by such person

212 pursuant to this section from the retailer.

213 Sec. 4. Section 12-458e of the general statutes is repealed and the  
214 following is substituted in lieu thereof (*Effective July 1, 2010*):

215 (a) For purposes of this section:

216 (1) "Responsible person" means any individual, corporation, limited  
217 liability company or partnership and any officer or employee of any  
218 corporation, including a dissolved corporation, and a member or  
219 employee of any partnership or limited liability company who, as such  
220 officer, employee or member, is under a duty to file a tax return under  
221 this chapter on behalf of a distributor or to collect or truthfully account  
222 for and pay over the tax imposed under this chapter on behalf of a  
223 distributor;

224 (2) "Wilfully" shall be treated as the term "willfully" is described in  
225 Section 6672 of the Internal Revenue Code of 1986, or any subsequent  
226 corresponding internal revenue code of the United States, as amended  
227 from time to time.

228 (b) Each responsible person, other than a distributor, who is  
229 required, on behalf of a distributor, to collect, truthfully account for  
230 and pay over the tax imposed on such distributor under this chapter  
231 and who wilfully fails to collect such tax or truthfully account for and  
232 pay over such tax or who wilfully attempts in any manner to evade or  
233 defeat the tax or the payment [thereof] of such tax, shall, in addition to  
234 other penalties provided by law, be liable for a penalty equal to the  
235 total amount of the tax evaded, or not collected, or not accounted for  
236 and paid over, including any penalty or interest attributable to such  
237 wilful failure to collect or truthfully account for and pay over such tax  
238 or such wilful attempt to evade or defeat such tax, provided such  
239 penalty shall only be imposed against such person in the event that  
240 such tax, penalty or interest cannot otherwise be collected from the  
241 distributor itself in accordance with section 12-475.

242 (c) The amount of such penalty with respect to which a responsible

243 person may be personally liable under this section shall be collected in  
244 accordance with said section 12-475 and any amount so collected shall  
245 be allowed as a credit against the amount of such tax, penalty or  
246 interest due and owing from the distributor. The amount of such  
247 penalty with respect to which a responsible person may be personally  
248 liable under this section shall not be subject to waiver under section 12-  
249 458.

250 (d) The dissolution of such distributor shall not discharge any  
251 responsible person in relation to any personal liability under this  
252 section for wilful failure to collect or truthfully account for and pay  
253 over such tax or for a wilful attempt to evade or defeat such tax prior  
254 to dissolution, except as otherwise provided in this section. [For  
255 purposes of this section, "person" includes any individual, corporation,  
256 limited liability company or partnership and any officer or employee  
257 of any corporation, including a dissolved corporation, and a member  
258 or employee of any partnership or limited liability company who, as  
259 such officer, employee or member, is under a duty to file a tax return  
260 under this chapter on behalf of a distributor or to collect or truthfully  
261 account for and pay over the tax imposed under this chapter on behalf  
262 of a distributor.]

263 (e) A person against whom a penalty is imposed under this section  
264 may apply to the commissioner, in writing, for a hearing, as provided  
265 in section 12-461 in the case of a distributor aggrieved by the action of  
266 the commissioner, provided, if the distributor has applied to the  
267 commissioner, in writing, for a hearing for the same period or periods,  
268 the hearing that may be applied for by the person against whom a  
269 penalty is imposed under this section shall be limited to the issue of  
270 whether such person is a responsible person.

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

274 Sec. 5. Section 12-547a of the general statutes is repealed and the

275 following is substituted in lieu thereof (*Effective July 1, 2010*):

276 (a) For purposes of this section:

277 (1) "Responsible person" means any individual, corporation, limited  
278 liability company or partnership and any officer or employee of any  
279 corporation, including a dissolved corporation, and a member or  
280 employee of any partnership or limited liability company who, as such  
281 officer, employee or member, is under a duty to file a tax return under  
282 this chapter on behalf of a distributor or to collect or truthfully account  
283 for and pay over the tax imposed under this chapter on behalf of a  
284 distributor;

285 (2) "Wilfully" shall be treated as the term "willfully" is described in  
286 Section 6672 of the Internal Revenue Code of 1986, or any subsequent  
287 corresponding internal revenue code of the United States, as amended  
288 from time to time.

289 (b) Each responsible person, other than a taxpayer, who is required,  
290 on behalf of a taxpayer, to collect, truthfully account for and pay over  
291 the tax imposed on such taxpayer under this chapter and who wilfully  
292 fails to collect such tax or truthfully account for and pay over such tax  
293 or who wilfully attempts in any manner to evade or defeat the tax or  
294 the payment [thereof] of such tax, shall, in addition to other penalties  
295 provided by law, be liable for a penalty equal to the total amount of  
296 the tax evaded, or not collected, or not accounted for and paid over,  
297 including any penalty or interest attributable to such wilful failure to  
298 collect or truthfully account for and pay over such tax or such wilful  
299 attempt to evade or defeat such tax, provided such penalty shall only  
300 be imposed against such person in the event that such tax, penalty or  
301 interest cannot otherwise be collected from the taxpayer itself in  
302 accordance with section 12-555a.

303 (c) The amount of such penalty with respect to which a responsible  
304 person may be personally liable under this section shall be collected in  
305 accordance with said section 12-555a and any amount so collected shall  
306 be allowed as a credit against the amount of such tax, penalty or

307 interest due and owing from the taxpayer. The amount of such penalty  
308 with respect to which a responsible person may be personally liable  
309 under this section shall not be subject to waiver under section 12-548.

310 (d) The dissolution of such taxpayer shall not discharge any  
311 responsible person in relation to any personal liability under this  
312 section for wilful failure to collect or truthfully account for and pay  
313 over such tax or for a wilful attempt to evade or defeat such tax prior  
314 to dissolution, except as otherwise provided in this section. [For  
315 purposes of this section, "person" includes any individual, corporation,  
316 limited liability company or partnership and any officer or employee  
317 of any corporation, including a dissolved corporation, and a member  
318 or employee of any partnership or limited liability company who, as  
319 such officer, employee or member, is under a duty to file a tax return  
320 under this chapter on behalf of a taxpayer or to collect or truthfully  
321 account for and pay over the tax imposed under this chapter on behalf  
322 of a taxpayer.]

323 (e) A person against whom a penalty is imposed under this section  
324 may apply to the commissioner, in writing, for a hearing, as provided  
325 in section 12-553 in the case of a taxpayer aggrieved by the action of  
326 the commissioner, provided, if the taxpayer has applied to the  
327 commissioner, in writing, for a hearing for the same period or periods,  
328 the hearing that may be applied for by the person against whom a  
329 penalty is imposed under this section shall be limited to the issue of  
330 whether the person is a responsible person.

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

334 Sec. 6. Section 12-736 of the general statutes is repealed and the  
335 following is substituted in lieu thereof (*Effective July 1, 2010*):

336 (a) For purposes of this section:

337 (1) "Responsible person" means any individual, corporation, limited

338 liability company or partnership and any officer or employee of any  
339 corporation, including a dissolved corporation, and a member or  
340 employee of any partnership or limited liability company who, as such  
341 officer, employee or member, is under a duty to file a tax return under  
342 this chapter on behalf of an employer or payer or to collect or  
343 truthfully account for and pay over the tax imposed under this chapter  
344 on behalf of an employer or payer;

345 (2) "Wilfully" shall be treated as the term "willfully" is described in  
346 Section 6672 of the Internal Revenue Code of 1986, or any subsequent  
347 corresponding internal revenue code of the United States, as amended  
348 from time to time.

349 [(a)] (b) Any responsible person, [required] other than an employer  
350 or payer, as defined in subsection (e) of section 12-707 who is required,  
351 on behalf of an employer or payer, to collect, truthfully account for and  
352 pay over the tax imposed under this chapter who wilfully fails to  
353 collect such tax or truthfully account for and pay over such tax or who  
354 wilfully attempts in any manner to evade or defeat the tax or the  
355 payment [thereof] of such tax, shall, in addition to other penalties  
356 provided by law, be liable for a penalty equal to the total amount of  
357 the tax evaded, or not collected, or not accounted for and paid over,  
358 including any penalty or interest attributable to such wilful failure to  
359 collect or truthfully account for and pay over such tax or such wilful  
360 attempt to evade or defeat such tax, provided such penalty shall only  
361 be imposed against such person in the event that such tax, penalty or  
362 interest cannot otherwise be collected from the employer or payer in  
363 accordance with section 12-734.

364 (c) The amount of such penalty with respect to which a responsible  
365 person may be personally liable under this section shall be collected in  
366 accordance with section 12-734 and any amount so collected shall be  
367 allowed as a credit against the amount of such tax, penalty or interest  
368 due and owing from the employer or payer. The amount of such  
369 penalty with respect to which a responsible person may be personally  
370 liable under this section shall not be subject to waiver under section 12-

371 735.

372 (d) The dissolution of such employer or payer shall not discharge  
 373 any responsible person in relation to any personal liability under this  
 374 section for wilful failure to collect or truthfully account for and pay  
 375 over such tax or for a wilful attempt to evade or defeat such tax prior  
 376 to such dissolution, except as otherwise provided in this section.

377 (e) A person against whom a penalty is imposed under this section  
 378 may protest the imposition of the penalty, as provided in section 12-  
 379 729 in the case of a taxpayer's protest against a proposed assessment,  
 380 provided, if the employer or payer has filed a protest for the same  
 381 period or periods, the protest that may be filed by the person against  
 382 whom a penalty is imposed under this section shall be limited to the  
 383 issue of whether such person is a responsible person.

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

387 ~~[(b)]~~ (g) Any responsible person who with fraudulent intent shall  
 388 fail to pay, to deduct or to withhold and pay any tax, to make, render,  
 389 sign or certify any return or to supply any information within the time  
 390 required by or under this chapter shall be subject to a penalty of not  
 391 more than one thousand dollars, in addition to any other amounts  
 392 required under this chapter to be imposed, assessed and collected by  
 393 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>July 1, 2010</i>	12-414a
Sec. 4	<i>July 1, 2010</i>	12-458e
Sec. 5	<i>July 1, 2010</i>	12-547a
Sec. 6	<i>July 1, 2010</i>	12-736

**FIN**      *Joint Favorable Subst.*