

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 788

Short Title: Attachment of Escheat Fund.

(Public)

Sponsors: Senator Smith.

Referred to: Finance.

April 5, 1989

A BILL TO BE ENTITLED

AN ACT TO PERMIT THE DEPARTMENT OF REVENUE AND LOCAL TAX COLLECTORS TO ATTACH THE ESCHEAT FUND.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-242(b) reads as rewritten:

"(b) Bank deposits, rents, salaries, wages, and all other choses in action or property incapable of manual levy or delivery, including property held in the Escheat Fund, hereinafter called the intangible, belonging, owing, or to become due to any taxpayer subject to any of the provisions of this Subchapter, or which has been transferred by such taxpayer under circumstances which would permit it to be levied upon if it were tangible, shall be subject to attachment or garnishment as herein provided, and the person owing said intangible, matured or unmatured, or having same in his possession or control, hereinafter called the garnishee, shall become liable for all sums due by the taxpayer under this Subchapter to the extent of the amount of the intangible belonging, owing, or to become due to the taxpayer subject to the setoff of any matured or unmatured indebtedness of the taxpayer to the garnishee; provided, however, the garnishee shall not become liable for any sums represented by or held pursuant to any negotiable instrument issued and delivered by the garnishee to the taxpayer and negotiated by the taxpayer to a bona fide holder in due course, and whenever any sums due by the taxpayer and subject to garnishment are so held or represented, the garnishee shall hold such sums for payment to the Secretary of Revenue upon the garnishee's receipt of such negotiable instrument, unless such instrument is presented to the garnishee for payment by a bona fide holder in due course in which event such sums may be paid in accordance with such instrument to such holder in due course. To effect

1 such attachment or garnishment the Secretary of Revenue shall serve or cause to be  
2 served upon the taxpayer and the garnishee a notice as hereinafter provided, which  
3 notice may be served by any deputy or employee of the Secretary of Revenue or by any  
4 officer having authority to serve summonses. Provided, if the taxpayer no longer  
5 resides within North Carolina or cannot be located therein the notice may be served  
6 upon the taxpayer by registered or certified mail, return receipt requested, and such  
7 service shall be conclusively presumed to have been made upon the exhibition of the  
8 return receipt. Said notice shall show:

- 9 (1) The name of the taxpayer, and if known his Social Security  
10 number or federal tax identification number and his address;
- 11 (2) The nature and amount of the tax, and the interest and penalties  
12 thereon, and the year or years for which the same were levied or  
13 assessed, and
- 14 (3) Shall be accompanied by a copy of this subsection, and thereupon the  
15 procedure shall be as follows:

16 If the garnishee has no defense to offer or no setoff against the taxpayer, he shall  
17 within 10 days after service of said notice, answer the same by sending to the Secretary  
18 of Revenue by registered or certified mail a statement to that effect, and if the amount  
19 due or belonging to the taxpayer is then due or subject to his demand, it shall be  
20 remitted to the Secretary with said statement, but if said amount is to mature in the  
21 future, the statement shall set forth that fact and the same shall be paid to the Secretary  
22 upon maturity, and any payment by the garnishee hereunder shall be a complete  
23 extinguishment of any liability therefor on his part to the taxpayer. If the garnishee has  
24 any defense or setoff, he shall state the same in writing under oath, and, within 10 days  
25 after service of said notice, shall send two copies of said statement to the Secretary by  
26 registered or certified mail; if the Secretary admits such defense or setoff, he shall so  
27 advise the garnishee in writing within 10 days after receipt of such statement and the  
28 attachment or garnishment shall thereupon be discharged to the amount required by  
29 such defense or setoff, and any amount attached or garnished hereunder which is not  
30 affected by such defense or setoff shall be remitted to the Secretary as above provided  
31 in cases where the garnishee has no defense or setoff, and with like effect. If the  
32 Secretary shall not admit the defense or setoff, he shall set forth in writing his objections  
33 thereto and shall send a copy thereof to the garnishee within 10 days after receipt of the  
34 garnishee's statement, or within such further time as may be agreed on by the garnishee,  
35 and at the same time he shall file a copy of said notice, a copy of the garnishee's  
36 statement, and a copy of his objections thereto in the superior court of the county where  
37 the garnishee resides or does business where the issues made shall be tried as in civil  
38 actions.

39 If judgment is entered in favor of the Secretary of Revenue by default or after  
40 hearing, the garnishee shall become liable for the taxes, interest and penalties due by the  
41 taxpayer to the extent of the amount over and above any defense or setoff of the  
42 garnishee belonging, owing, or to become due to the taxpayer, but payments shall not be  
43 required from amounts which are to become due to the taxpayer until the maturity  
44 thereof, nor shall more than ten percent (10%) of any taxpayer's salary or wages be

1 required to be paid hereunder in any one month. The garnishee may satisfy said  
2 judgment upon paying said amount, and if he fails to do so, execution may issue as  
3 provided by law. From any judgment or order entered upon such hearing either the  
4 Secretary of Revenue or the garnishee may appeal as provided by law. If, before or  
5 after judgment, adequate security is filed for the payment of said taxes, interest,  
6 penalties, and costs, the attachment or garnishment may be released or execution stayed  
7 pending appeal, but the final judgment shall be paid or enforced as above provided. The  
8 taxpayer's sole remedies to question his liability for said taxes, interest, and penalties  
9 shall be those provided in this Subchapter, as now or hereafter amended or  
10 supplemented. If any third person claims any intangible attached or garnished  
11 hereunder and his lawful right thereto, or to any part thereof, is shown to the Secretary,  
12 he shall discharge the attachment or garnishment to the extent necessary to protect such  
13 right, and if such right is asserted after the filing of said copies as aforesaid, it may be  
14 established by interpleader as now or hereafter provided by law in cases of attachment  
15 and garnishment. In case such third party has no notice of proceedings hereunder, he  
16 shall have the right to file his petition under oath with the Secretary at any time within  
17 12 months after said intangible is paid to him and if the Secretary finds that such party  
18 is lawfully entitled thereto or to any part thereof, he shall pay the same to such party as  
19 provided for refunds by G.S. 105-267.1, and if such payment is denied, said party may  
20 appeal from the determination of the Secretary under the provisions of G.S. 105-241.4;  
21 provided, that in taking an appeal to the superior court, said party may appeal either to  
22 the Superior Court of Wake County or to the superior court of the county wherein he  
23 resides or does business. The intangibles of a taxpayer shall be paid or collected  
24 hereunder only to the extent necessary to satisfy said taxes, interest, penalties, and costs.  
25 Except as hereinafter set forth, the remedy provided in this section shall not be resorted  
26 to unless a warrant for collection or execution against the taxpayer has been returned  
27 unsatisfied: Provided, however, if the Secretary is of opinion that the only effective  
28 remedy is that herein provided, it shall not be necessary that a warrant for collection or  
29 execution shall be first returned unsatisfied, and in no case shall it be a defense to the  
30 remedy herein provided that a warrant for collection or execution has not been first  
31 returned unsatisfied.

32 This subsection shall be applicable with respect to the wages, salary or other  
33 compensation of officials and employees of this State and its agencies and  
34 instrumentalities, officials and employees of political subdivisions of this State and their  
35 agencies and instrumentalities, and also officials and employees of the United States  
36 and its agencies and instrumentalities insofar as the same is permitted by the  
37 Constitution and laws of the United States. In the case of State or federal employees,  
38 the notice shall be served upon such employee and upon the head or chief fiscal officer  
39 of the department, agency, instrumentality or institution by which the taxpayer is  
40 employed. In case the taxpayer is an employee of a political subdivision of the State, the  
41 notice shall be served upon such employee and upon the chief fiscal officer, or any  
42 officer or person charged with making up the payrolls, or disbursing funds, of the  
43 political subdivision by which the taxpayer is employed. Such head or chief officer or  
44 fiscal officer or other person as specified above shall thereafter, subject to the

1 limitations herein provided, make deductions from the salary or wages due or to become  
2 due the taxpayer and remit same to the Secretary until the tax, penalty, interest and costs  
3 allowed by law are fully paid. Such deductions and remittances shall, pro tanto,  
4 constitute a satisfaction of the salary or wages due the taxpayer."

5           Sec. 2. G.S. 105-368(a) reads as rewritten:

6           "(a) Subject to the provisions of G.S. 105-356 governing the priority of the lien  
7 acquired, the tax collector may attach wages and other compensation, rents, bank  
8 deposits, the proceeds of property subject to levy, or any other intangible personal  
9 ~~property~~ property, including property held in the Escheat Fund, in the circumstances and  
10 to the extent prescribed in G.S. 105-366(b), (c), and (d)."

11           Sec. 3. This act is effective upon ratification.