
HOUSE BILL No. 1256

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-8.1-8.

Synopsis: Court enforceability of state tax liens. Specifies that a tax lien that attaches to property in conformity with the statutory procedure is enforceable without the entry of a judgment by a court.

Effective: July 1, 2000.

Linder

January 10, 2000, read first time and referred to Committee on Ways and Means.

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Second Regular Session 111th General Assembly (2000)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1999 General Assembly.

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HOUSE BILL No. 1256



A BILL FOR AN ACT to amend the Indiana Code concerning civil law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 6-8.1-8-2 IS AMENDED TO READ AS
 2 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 2. (a) Except as
 3 provided in IC 6-8.1-5-3, the department must issue a demand notice
 4 for the payment of a tax and any interest or penalties accrued on the
 5 tax, if a person files a tax return without including full payment of the
 6 tax or if the department, after ruling on a protest, finds that a person
 7 owes the tax before the department issues a tax warrant. The demand
 8 notice must state the following:

9 (1) That the person has ten (10) days from the date the department
 10 mails the notice to either pay the amount demanded or show
 11 reasonable cause for not paying the amount demanded.
 12 (2) The statutory authority of the department for the issuance of
 13 a tax warrant.
 14 (3) The earliest date on which a tax warrant may be filed and
 15 recorded.
 16 (4) The remedies available to the taxpayer to prevent the filing
 17 and recording of the lien.



1 If the department files a tax warrant in more than one (1) county, the
2 department is not required to issue more than one (1) demand notice.

3 (b) If the person does not pay the amount demanded or show
4 reasonable cause for not paying the amount demanded within the ten
5 (10) day period, the department may issue a tax warrant for the amount
6 of the tax, interest, penalties, collection fee, sheriff's costs, clerk's costs,
7 and fees established under section 4(b) of this chapter when applicable.
8 When the department issues a tax warrant, a collection fee of ten
9 percent (10%) of the unpaid tax is added to the total amount due.

10 (c) When the department issues a tax warrant, it may not file the
11 warrant with the circuit court clerk of any county in which the person
12 owns property until at least twenty (20) days after the date the demand
13 notice was mailed to the taxpayer. The department may also send the
14 warrant to the sheriff of any county in which the person owns property
15 and direct the sheriff to file the warrant with the circuit court clerk:

- 16 (1) at least twenty (20) days after the date the demand notice was
17 mailed to the taxpayer; and
18 (2) no later than five (5) days after the date the department issues
19 the warrant.

20 (d) When the circuit court clerk receives a tax warrant from the
21 department or the sheriff, the clerk shall record the warrant by making
22 an entry in the judgment debtor's column of the judgment record,
23 listing the following:

- 24 (1) The name of the person owing the tax.
25 (2) The amount of the tax, interest, penalties, collection fee,
26 sheriff's costs, clerk's costs, and fees established under section
27 4(b) of this chapter when applicable.
28 (3) The date the warrant was filed with the clerk.

29 (e) When the entry is made, the total amount of the tax warrant
30 becomes a judgment lien against the person owing the tax **without the**
31 **entry of a judgment or other proceedings of the court. The entry**
32 **has the same effect as the entry of a judgment.** The judgment lien for
33 taxes attaches to all the person's interest in any:

- 34 (1) chose in action in the county; and
35 (2) real or personal property in the county;

36 excepting only negotiable instruments not yet due.

37 (f) A judgment lien obtained under this section is valid for ten (10)
38 years from the date the lien is filed. The department may renew a lien
39 for additional ten (10) year periods by filing an alias tax warrant with
40 the circuit court clerk of the county in which the lien previously
41 existed.

42 (g) A judgment lien in a county may be released by:

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- 1 (1) the department or by the county sheriff after the lien,
 2 including all accrued interest to the date of payment, has been
 3 fully satisfied; or
 4 (2) the department if the department determines that the tax
 5 assessment or the issuance of the tax warrant was in error.
 6 (h) If the department determines that the filing of a tax warrant was
 7 in error, the department shall mail a release of the judgment lien to the
 8 taxpayer and the circuit court clerk of each county where the warrant
 9 was filed. The department shall mail the release as soon as possible but
 10 no later than seven (7) days after:
 11 (1) the determination by the department that the filing of the
 12 warrant was in error; and
 13 (2) the receipt of information by the department that the lien has
 14 been recorded under subsection (d).
 15 (i) If the department determines that a judgment lien described in
 16 subsection (h) is obstructing a lawful transaction, the department shall
 17 mail a release of the lien to the taxpayer and the circuit court clerk of
 18 each county where the lien was filed immediately upon making the
 19 determination.
 20 (j) A release issued under subsection (h) or (i) must state that the
 21 filing of the tax warrant was in error. Upon the request of the taxpayer,
 22 the department shall mail a copy of a release issued under subsection
 23 (h) or (i) to each major credit reporting company located in each county
 24 where the lien was filed.
 25 (k) The commissioner shall notify each state agency or officer
 26 supplied with a tax warrant list of the issuance of a release under
 27 subsection (h) or (i).
 28 (l) If the sheriff collects the full amount of a tax warrant, the sheriff
 29 shall disburse the money collected in the manner provided in section
 30 3(c) of this chapter and then release the lien. If a lien has been partially
 31 or fully satisfied by a person's surety, the surety becomes subrogated to
 32 the department's rights under the lien and the sheriff may not release
 33 the lien until the surety's rights under the lien have been satisfied by the
 34 person. If a sheriff releases a judgment lien:
 35 (1) before the lien is fully satisfied;
 36 (2) before the sheriff has properly disbursed the amount collected;
 37 or
 38 (3) after the sheriff has returned the tax warrant to the department;
 39 the sheriff commits a Class B misdemeanor and is personally liable for
 40 the part of the lien not remitted to the department.
 41 SECTION 2. IC 6-8.1-8-8 IS AMENDED TO READ AS
 42 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 8. After a tax warrant

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1 becomes a judgment lien under section 2 of this chapter or a tax
2 warrant is returned uncollected to the department under section 3 of
3 this chapter, the department may take any of the following actions
4 without judicial proceedings **or through execution, attachment,**
5 **garnishment, or other proceedings supplemental, without the entry**
6 **of a judgment against the taxpayer:**

7 (1) The department may levy upon the property of the taxpayer
8 that is held by a financial institution by sending a claim to the
9 financial institution. Upon receipt of a claim under this
10 subdivision, the financial institution shall surrender to the
11 department the taxpayer's property. If the taxpayer's property
12 exceeds the amount owed to the state by the taxpayer, the
13 financial institution shall surrender the taxpayer's property in an
14 amount equal to the amount owed. After receiving the
15 department's notice of levy, the financial institution is required to
16 place a sixty (60) day hold on or restriction on the withdrawal of
17 funds the taxpayer has on deposit or subsequently deposits, in an
18 amount not to exceed the amount owed.

19 (2) The department may garnish the accrued earnings and wages
20 of a taxpayer by sending a notice to the taxpayer's employer. Upon
21 receipt of a notice under this subdivision, an employer shall
22 garnish the accrued earnings and wages of the taxpayer in an
23 amount equal to the full amount that is subject to garnishment
24 under IC 24-4.5-5. The amount garnished shall be remitted to the
25 department. The employer is entitled to a fee in an amount equal
26 to the fee allowed under IC 24-4.5-5-105(5). However, the fee
27 shall be borne entirely by the taxpayer.

28 (3) The department may levy upon and sell property and may:

29 (A) take immediate possession of the property and store it in
30 a secure place; or

31 (B) leave the property in the custody of the taxpayer;
32 until the day of the sale. The department shall provide notice of
33 the sale in one (1) newspaper, as provided in IC 5-3-1-2. If the
34 property is left in the custody of the taxpayer, the department may
35 require the taxpayer to provide a joint and several delivery bond,
36 in an amount and with a surety acceptable to the department. At
37 any time before the sale, any owner or part owner of the property
38 may redeem the property from the judgment by paying the
39 department the amount of the judgment. The proceeds of the sale
40 shall be applied first to the collection expenses and second to the
41 payment of the delinquent taxes and penalties. Any balance
42 remaining shall be paid to the taxpayer.

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