



April 11, 2011

**ENGROSSED
SENATE BILL No. 155**

DIGEST OF SB 155 (Updated April 11, 2011 1:31 pm - DI 107)

Citations Affected: IC 6-8.1; IC 32-28.

Synopsis: Tax liens. Requires the department to release a judgment if: (1) it has been fully satisfied; or (2) the tax assessment or issuance of the tax warrant was erroneous. Provides that a tax lien on real property is void if the person owing the tax provides written notice to the department to file an action to foreclose the lien, and the department fails to file an action to foreclose the lien not later than 180 days after receiving the notice. Specifies that a complaint to foreclose a homeowners association lien may not be filed earlier than 90 days after recording, unless a person files a notice to foreclose the lien, or another person files an action to foreclose the property that is the subject of the lien.

Effective: July 1, 2011.

Steele, Tallian, Randolph
(HOUSE SPONSORS — FOLEY, UBELHOR)

January 5, 2011, read first time and referred to Committee on Judiciary.
January 13, 2011, amended, reported favorably — Do Pass.
January 20, 2011, read second time, amended, ordered engrossed.
January 21, 2011, engrossed.
January 24, 2011, read third time, passed. Yeas 49, nays 1.

HOUSE ACTION

March 28, 2011, read first time and referred to Committee on Judiciary.
April 11, 2011, reported — Do Pass.

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April 11, 2011

First Regular Session 117th General Assembly (2011)

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 2010 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 155



A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

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

- 1 SECTION 1. IC 6-8.1-8-2, AS AMENDED BY P.L.111-2006,
- 2 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 3 JULY 1, 2011]: Sec. 2. (a) Except as provided in IC 6-8.1-5-3, the
- 4 department must issue a demand notice for the payment of a tax and
- 5 any interest or penalties accrued on the tax, if a person files a tax return
- 6 without including full payment of the tax or if the department, after
- 7 ruling on a protest, finds that a person owes the tax before the
- 8 department issues a tax warrant. The demand notice must state the
- 9 following:
- 10 (1) That the person has ten (10) days from the date the department
- 11 mails the notice to either pay the amount demanded or show
- 12 reasonable cause for not paying the amount demanded.
- 13 (2) The statutory authority of the department for the issuance of
- 14 a tax warrant.
- 15 (3) The earliest date on which a tax warrant may be filed and
- 16 recorded.
- 17 (4) The statutory authority for the department to levy against a

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1 person's property that is held by a financial institution.
 2 (5) The remedies available to the taxpayer to prevent the filing
 3 and recording of the judgment.
 4 If the department files a tax warrant in more than one (1) county, the
 5 department is not required to issue more than one (1) demand notice.
 6 (b) If the person does not pay the amount demanded or show
 7 reasonable cause for not paying the amount demanded within the ten
 8 (10) day period, the department may issue a tax warrant for the amount
 9 of the tax, interest, penalties, collection fee, sheriff's costs, clerk's costs,
 10 and fees established under section 4(b) of this chapter when applicable.
 11 When the department issues a tax warrant, a collection fee of ten
 12 percent (10%) of the unpaid tax is added to the total amount due.
 13 (c) When the department issues a tax warrant, it may not file the
 14 warrant with the circuit court clerk of any county in which the person
 15 owns property until at least twenty (20) days after the date the demand
 16 notice was mailed to the taxpayer. The department may also send the
 17 warrant to the sheriff of any county in which the person owns property
 18 and direct the sheriff to file the warrant with the circuit court clerk:
 19 (1) at least twenty (20) days after the date the demand notice was
 20 mailed to the taxpayer; and
 21 (2) no later than five (5) days after the date the department issues
 22 the warrant.
 23 (d) When the circuit court clerk receives a tax warrant from the
 24 department or the sheriff, the clerk shall record the warrant by making
 25 an entry in the judgment debtor's column of the judgment record,
 26 listing the following:
 27 (1) The name of the person owing the tax.
 28 (2) The amount of the tax, interest, penalties, collection fee,
 29 sheriff's costs, clerk's costs, and fees established under section
 30 4(b) of this chapter when applicable.
 31 (3) The date the warrant was filed with the clerk.
 32 (e) When the entry is made, the total amount of the tax warrant
 33 becomes a judgment against the person owing the tax. The judgment
 34 creates a lien in favor of the state that attaches to all the person's
 35 interest in any:
 36 (1) chose in action in the county; and
 37 (2) real or personal property in the county;
 38 excepting only negotiable instruments not yet due.
 39 (f) A judgment obtained under this section is valid for ten (10) years
 40 from the date the judgment is filed. The department may renew the
 41 judgment for additional ten (10) year periods by filing an alias tax
 42 warrant with the circuit court clerk of the county in which the judgment

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1 previously existed.

2 (g) A judgment arising from a tax warrant in a county ~~may~~ **shall** be

3 released by the department:

4 (1) after the judgment, including all accrued interest to the date of

5 payment, has been fully satisfied; or

6 (2) if the department determines that the tax assessment or the

7 issuance of the tax warrant was in error.

8 (h) If the department determines that the filing of a tax warrant was

9 in error, the department shall mail a release of the judgment to the

10 taxpayer and the circuit court clerk of each county where the warrant

11 was filed. The department shall mail the release as soon as possible but

12 no later than seven (7) days after:

13 (1) the determination by the department that the filing of the

14 warrant was in error; and

15 (2) the receipt of information by the department that the judgment

16 has been recorded under subsection (d).

17 (i) If the department determines that a judgment described in

18 subsection (h) is obstructing a lawful transaction, the department shall

19 mail a release of the judgment to the taxpayer and the circuit court

20 clerk of each county where the judgment was filed immediately upon

21 making the determination.

22 (j) A release issued under subsection (h) or (i) must state that the

23 filing of the tax warrant was in error. Upon the request of the taxpayer,

24 the department shall mail a copy of a release issued under subsection

25 (h) or (i) to each major credit reporting company located in each county

26 where the judgment was filed.

27 (k) The commissioner shall notify each state agency or officer

28 supplied with a tax warrant list of the issuance of a release under

29 subsection (h) or (i).

30 (l) If the sheriff collects the full amount of a tax warrant, the sheriff

31 shall disburse the money collected in the manner provided in section

32 3(c) of this chapter. If a judgment has been partially or fully satisfied

33 by a person's surety, the surety becomes subrogated to the department's

34 rights under the judgment. If a sheriff releases a judgment:

35 (1) before the judgment 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 judgment not remitted to the department.

41 **(m) A lien on real property described in subsection (e)(2) is void**

42 **if both of the following occur:**

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(1) The person owing the tax provides written notice to the department to file an action to foreclose the lien.

(2) The department fails to file an action to foreclose the lien not later than one hundred eighty (180) days after receiving the notice.

(n) A person who gives notice under subsection (m) by registered or certified mail to the department may file an affidavit of service of the notice to file an action to foreclose the lien with the circuit court clerk in the county in which the property is located.

The affidavit must state the following:

(1) The facts of the notice.

(2) That more than one hundred eighty (180) days have passed since the notice was received by the department.

(3) That no action for foreclosure of the lien is pending.

(4) That no unsatisfied judgment has been rendered on the lien.

(o) Upon receipt of the affidavit described in subsection (n), the circuit court clerk shall make an entry showing the release of the judgment lien in the judgment records for tax warrants.

SECTION 2. IC 32-28-14-8, AS AMENDED BY P.L.167-2009, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 8. (a) A homeowners association may enforce a homeowners association lien by filing a complaint in the circuit or superior court of the county where the real estate that is the subject of the lien is located. The complaint:

(1) may not be filed earlier than ~~one (1)~~ year ninety (90) days, unless:

(A) another person files a foreclosure action on the property that is the subject of the lien; or

(B) a person files written notice to file an action to foreclose the lien under section 9(a)(1) of this chapter; and

(2) must be filed not later than five (5) years;

after the date the statement and notice of intention to hold a lien was recorded under section 6 of this chapter.

(b) If a lien is not enforced within the time set forth in subsection (a), the lien is void.

(c) If a lien is foreclosed under this chapter, the court rendering judgment shall order a sale to be made of the real estate subject to the lien. The officers making the sale shall sell the real estate without any relief from valuation or appraisal laws.

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COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 155, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 3, line 2, strike "may" and insert "**shall**".

Page 4, line 4, delete "sixty (60)" and insert "**one hundred eighty (180)**".

Page 4, line 11, delete "sixty (60)" and insert "**one hundred eighty (180)**".

and when so amended that said bill do pass.

(Reference is to SB 155 as introduced.)

BRAY, Chairperson

Committee Vote: Yeas 8, Nays 0.

SENATE MOTION

Madam President: I move that Senate Bill 155 be amended to read as follows:

Page 4, after line 25, begin a new paragraph and insert:

"SECTION 2. IC 32-28-14-8, AS AMENDED BY P.L.167-2009, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 8. (a) A homeowners association may enforce a homeowners association lien by filing a complaint in the circuit or superior court of the county where the real estate that is the subject of the lien is located. The complaint:

(1) may not be filed earlier than ~~one (1)~~ **year ninety (90) days, unless:**

(A) another person files a foreclosure action on the property that is the subject of the lien; or

(B) a person files written notice to file an action to foreclose the lien under section 9(a)(1) of this chapter; and

(2) must be filed not later than five (5) years;

after the date the statement and notice of intention to hold a lien was recorded under section 6 of this chapter.

(b) If a lien is not enforced within the time set forth in subsection (a), the lien is void.

(c) If a lien is foreclosed under this chapter, the court rendering



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judgment shall order a sale to be made of the real estate subject to the lien. The officers making the sale shall sell the real estate without any relief from valuation or appraisal laws."

(Reference is to SB 155 as printed January 14, 2011.)

TALLIAN

SENATE MOTION

Madam President: I move that Senate Bill 155 be amended to read as follows:

Page 4, line 9, delete "recorder of" and insert "**circuit court clerk in**".

Page 4, line 18, delete "recorder shall:" and insert "**circuit court clerk shall make an entry showing the release of the judgment lien in the judgment records for tax warrants.**".

Page 4, delete lines 19 through 25.

(Reference is to SB 155 as printed January 14, 2011.)

STEELE

COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred Senate Bill 155, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

FOLEY, Chair

Committee Vote: yeas 8, nays 0.

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