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# SENATE BILL No. 155

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 6-8.1-8-2.

**Synopsis:** Tax liens. 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 60 days after receiving the notice.

**Effective:** July 1, 2011.

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January 5, 2011, read first time and referred to Committee on Judiciary.

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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.

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**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



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 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           **(1) The person owing the tax provides written notice to the**  
 2           **department to file an action to foreclose the lien.**  
 3           **(2) The department fails to file an action to foreclose the lien**  
 4           **not later than sixty (60) days after receiving the notice.**  
 5           **(n) A person who gives notice under subsection (m) by**  
 6           **registered or certified mail to the department may file an affidavit**  
 7           **of service of the notice to file an action to foreclose the lien with the**  
 8           **recorder of the county in which the property is located. The**  
 9           **affidavit must state the following:**  
 10           **(1) The facts of the notice.**  
 11           **(2) That more than sixty (60) days have passed since the notice**  
 12           **was received by the department.**  
 13           **(3) That no action for foreclosure of the lien is pending.**  
 14           **(4) That no unsatisfied judgment has been rendered on the**  
 15           **lien.**  
 16           **(o) Upon receipt of the affidavit described in subsection (n), the**  
 17           **recorder shall:**  
 18           **(1) record the affidavit of service in the miscellaneous record**  
 19           **book of the recorder's office; and**  
 20           **(2) certify on the face of the record any lien that is fully**  
 21           **released.**  
 22           **When the recorder records the affidavit and certifies the record**  
 23           **under this subsection, the real property described in the lien is**  
 24           **released from the lien.**

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