

## LEGISLATIVE BILL 89

Approved by the Governor March 23, 1971

Introduced by Roland A. Luedtke, 28th District

AN ACT relating to tax liens; to provide for filing of notices of federal liens on personal property with the register of deeds; to provide a fee for filing notices of lien and certificates of discharge for sales, use, and income tax; to amend sections 52-1001, 52-1003, 77-2712, and 77-27,105, Revised Statutes Supplement, 1969; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 52-1001, Revised Statutes Supplement, 1969, be amended to read as follows:

52-1001. (a) Notices of liens upon real property for taxes payable to the United States, and certificates and notices affecting the liens shall be filed in the office of the register of deeds of the county in which the real property subject to a federal tax lien is situated.

(b) Notices of liens upon personal property, whether tangible or intangible, for taxes payable to the United States and certificates and notices affecting the liens shall be filed in the office of the ~~county-clerk~~ register of deeds where the taxpayer resides at the time of filing the notice of lien or, in the case of corporations and partnerships, in the office of the ~~county-clerk~~ register of deeds of the county where the principal executive office in this state is located.

Sec. 2. That section 52-1003, Revised Statutes Supplement, 1969, be amended to read as follows:

52-1003. (a) If a notice of federal tax lien, a refiling of a notice of tax lien, or a notice of revocation of any certificate described in subsection (b) is presented to the ~~filing-officer~~ register of deeds, and:

~~{1}-He-is-the-Secretary-of-State,-he-shall-cause-the-notice-to-be-marked,-held-and-indexed-in--accordance-with-the-provisions-of-subsection-(4)-of-section--9-403, of-the-Uniform-Commercial-Code-as-if-the-notice-were--a-financing-statement-within-the-meaning-of-that-Code,-or~~

~~{2} He is any other officer described in section 52-1001, he shall endorse thereon his identification and the date and time of receipt and forthwith file it alphabetically or enter it in an alphabetical index showing the name and address of the person named in the notice, the date and time of receipt, the serial number of the District Director and the total unpaid balance of the assessment appearing on the notice of lien.~~

~~{b} If a certificate of release, nonattachment, discharge or subordination of any tax lien is presented to the Secretary of State for filing he shall:~~

~~{1} Cause a certificate of release or nonattachment to be marked, held and indexed as if the certificate were a termination statement within the meaning of the Uniform Commercial Code, except that the notice of lien to which the certificate relates shall not be removed from the files, and~~

~~{2} Cause a certificate of discharge or subordination to be held, marked and indexed as if the certificate were a release of collateral within the meaning of the Uniform Commercial Code.~~

~~{c} {b} If a refiled notice of federal tax lien referred to in subsection (a) or any of the certificates or notices referred to in Subsection {b} is presented for filing with any other filing officer the register of deeds as specified in section 52-1001, he shall permanently attach the refiled notice or the certificate to the original notice of lien and shall enter the refiled notice or the certificate with the date of filing in any alphabetical federal tax lien index on the line where the original notice of lien is entered.~~

~~{d} {c} Upon request of any person, the filing officer register of deeds shall issue his certificate showing whether there is on file, on the date and hour stated therein, any notice of federal tax lien or certificate or notice affecting the lien, filed on or after January 1, 1970, naming a particular person, and if a notice or certificate is on file, giving the date and hour of filing of each notice or certificate. The fee for a certificate is one dollar. Upon request the filing officer register of deeds shall furnish a copy of any notice of federal tax lien or notice or certificate affecting a federal tax lien for a fee of one dollar per page.~~

Sec. 3. That section 77-2712, Revised Statutes Supplement, 1969, be amended to read as follows:

77-2712. (1) (a) If any person is delinquent in the payment of any sales or use tax required under the provisions of sections 77-2701 to 77-27,135 to be paid by him or in the event a determination has been made against him which remains unpaid, the Tax Commissioner may, not later than three years after the payment became delinquent or within three years after the last recording of a certificate under subsection (2) of this section, give notice thereof personally or by registered or certified mail to all persons, including any officer or department of the state or any political subdivision or agency of the state, having in their possession or under their control any credits or other personal property belonging to the delinquent, or owing any debts to the delinquent or person against whom a determination has been made which remains unpaid, or owing any debts to the delinquent or such person.

(b) After receiving the notice provided for in subdivision (1) (a) of this section, the person so notified shall neither transfer nor make any other disposition of the credits, other personal property, or debts in their possession or under their control at the time they received the notice until the Tax Commissioner consents to a transfer or disposition, or until sixty days elapse after the receipt of the notice, whichever period expires earlier.

(c) All persons so notified shall, within twenty days after receipt of the notice, report in writing to the Tax Commissioner all such credits, other personal property, or debts in their possession, under their control, or owing by them.

(d) If such notice seeks to prevent the transfer or other disposition of a deposit in a bank or other credits or personal property in the possession or under the control of a bank, the notice, in order to be effective, shall be delivered or mailed to the office of such bank at which such deposit is carried or at which such credits or personal property is held.

(e) If, during the effective period of the notice to withhold, any person so notified makes any transfer or disposition of the property or debts required to be withheld under the provisions of this subsection, he shall be liable to the state to the extent of the value of the property or the amount of the debts thus transferred or paid for any indebtedness due under the provisions of sections 77-2701 to 77-27,135 from the person with respect to whose obligation the notice was given.

(2) (a) If any sales or use tax amount required to be paid to the state under sections 77-2701 to 77-27,135 is not paid when due, the Tax Commissioner may, within three years after the amount is due, file for record in the office of any county register of deeds a certificate specifying the amount, interest, and penalty due, the name and address as it appears on the records of the Tax Commissioner of the person liable for the same, and the fact that the Tax Commissioner has complied with all provisions of sections 77-2701 to 77-27,135 in the determination of the amount required to be paid.

(b) (i) When the certificate provided for in subdivision (2) (a) of this section is filed with any register of deeds it shall constitute a lien from the time of filing upon all real property of the named individual located in such county. Upon the filing of such certificate, the register of deeds shall enter the same in an alphabetical state tax lien index, showing on one line the name and residence of the taxpayer named in such notice, the Tax Commissioner's serial number of such notice, the date and hour of filing, and the amount due. The fee for filing and indexing each notice of lien shall be one dollar. All original notices shall be retained in numerical order in a file designated state tax lien notices; and

(ii) When a certificate of discharge of any tax lien issued by the Tax Commissioner is filed in the office where the original notice of lien is filed, the appropriate county official shall enter the same with the date of filing in the state tax lien index on the line where notice of the lien so discharged is entered, and shall permanently attach the original certificate of discharge to the original notice of lien. The fee for filing and indexing each certificate of discharge shall be fifty cents.

(c) From the time of the filing for record, the amount required to be paid together with interest and penalty shall constitute a lien upon all real property in the county owned by the person or afterwards and before the lien expires acquired by him. The lien shall have the force, effect, and priority of a judgment lien and shall continue for five years from the time of the filing of the certificate unless sooner released or otherwise discharged.

(d) The lien may, within five years from the date of the filing of the certificate or within five years from the date of the last extension of the lien in



the manner provided in this subsection, be extended by filing for record a new certificate in the office of the county register of deeds of any county, and from the time of such filing, the lien shall be extended to the real property in such county for five years, unless sooner released or otherwise discharged. The fee for filing and indexing each new certificate shall be one dollar.

(e) The Tax Commissioner may at the request of the person involved at any time release all or any portion of the property subject to any lien provided for in sections 77-2701 to 77-27,135 from the lien or subordinate the lien to other liens and encumbrances if he determines that the amount, interest, and penalties have been paid or are secured sufficiently by a lien on other property or that the release or subordination of the lien will not jeopardize the collection of the amount, interest, and penalties. The fee for filing and indexing each certificate of release shall be one dollar.

(f) The register of deeds of each county shall bill the Tax Commissioner on a quarterly basis for fees for documents filed by him for the Tax Commissioner.

(g) A certificate by the Tax Commissioner to the effect that any property has been released from the lien, or that the lien has been subordinated to other liens and encumbrances, shall be conclusive evidence that the property has been released, or that the lien has been subordinated as provided in the certificate.

(3) (a) At any time within three years after any amount of sales or use tax to be collected under the provisions of sections 77-2701 to 77-27,135 becomes due and payable or within three years after the last recording of a certificate under subsection (2) of this section, the Tax Commissioner may bring an action in the courts of this state, or any other state, or of the United States, in the name of the people of the State of Nebraska, to collect the amount delinquent together with penalties and interest.

(b) The Attorney General shall prosecute the action, and the rules of civil procedure relating to service of summons, pleadings, proofs, trials, and appeals shall be applicable to the proceedings.

(c) In the action a writ of attachment may issue, and no bond or affidavit previous to the issuing of the attachment shall be required.

(d) In the action a certificate by the Tax Commissioner showing the delinquency shall be prima facie evidence of the determination of such tax or the amount of such tax, the delinquency of the amounts set forth, and of the compliance by the Tax Commissioner with all the provisions of sections 77-2701 to 77-27,135 in relation to the computation and determination of the amounts.

(e) In any action relating to the use tax brought under the provisions of sections 77-2701 to 77-27,135, process may be served according to the rules of civil procedure or may be served upon any agent or clerk in this state employed by any retailer in a place of business maintained by the retailer in this state. In the latter case, a copy of the process shall forthwith be sent by registered or certified mail to the retailer at his principal or home office.

(f) (i) The sales and use tax amounts required to be paid by any person under the provisions of sections 77-2701 to 77-27,135 together with interest and penalties shall be satisfied first in any of the following cases: Whenever the person is insolvent; whenever the person makes a voluntary assignment of his assets; whenever the estate of the person in the hands of executors, administrators, or heirs is insufficient to pay all the debts due from the deceased; or whenever the estate and effects of an absconding, concealed, or absent person required to pay any amount under sections 77-2701 to 77-27,135 are levied upon by process of law; and

(ii) The state sales tax and the use tax shall be collected by the retailer, as agent for the State of Nebraska, on any transaction as set forth in section 77-2703, which taxes shall constitute a trust fund in the hands of the retailer and shall be owned by the state as of the time they are owing to the retailer.

(g) When a judgment has been obtained for the recovery of any sales or use tax, interest, and penalties as provided in sections 77-2701 to 77-27,135, the Tax Commissioner shall cause such judgment to be enforced and collected in the same manner as provided by the laws of this state for the enforcement and collection of other judgments for the recovery of money.

(4) (a) At any time within three years after any person is delinquent in the payment of any sales or use tax under the provisions of sections 77-2701 to 77-27,135, the Tax Commissioner may forthwith collect

the amount in the following manner: The Tax Commissioner shall seize any personal property, other than property exempt from execution under the laws of this state, of the person and sell the property, or a sufficient part of it, at public auction to pay the amount due together with any interest or penalties imposed for the delinquency and any costs incurred on account of a seizure and sale. Any seizure made to collect a sales tax due shall be only of property of the vendor not exempt from execution under the laws of this state.

(b) Notice of the sale and the time and place thereof shall be given to the delinquent person in writing at least twenty days before the date set for the sale in the following manner: The notice shall be enclosed in an envelope addressed to the person, in case of a sale for retail sales taxes due, at his last-known address or place of business, and, in case of a sale for use taxes due, at his last-known residence or place of business in this state. It shall be deposited in the United States mail, postage prepaid. The notice shall also be published for at least ten days before the date set for the sale in a newspaper of general circulation published in the county in which the property seized is to be sold. If there is no newspaper of general circulation in the county, notice shall be posted in three public places in the county twenty days prior to the date set for the sale. The notice shall contain a description of the property to be sold, a statement of the amount due, including interest, penalties, and costs, the name of the delinquent, and the further statement that unless the amount due, interest, penalties, and costs, are paid on or before the time fixed in the notice for the sale, the property, or so much of it as may be necessary, will be sold in accordance with law and the notice.

(c) At the sale the Tax Commissioner shall sell the property in accordance with law and the notice and shall deliver to the purchaser a bill of sale for the personal property. The bill of sale shall vest the interest or title of the person liable for the amount in the purchaser. The unsold portion of any property seized may be left at the place of sale at the risk of the person liable for the amount.

(d) Whenever any property which is seized and sold under the provisions of this subsection is not sufficient to satisfy the claim of the state for which distraint or seizure is made, the sheriff, constable, or deputy commissioner may thereafter, and as often as the

same may be necessary, proceed to seize and sell in like manner any other property liable to seizure of the taxpayer against whom such claim exists, until the amount due from such taxpayer, together with all expenses, is fully paid.

(e) If upon the sale the money received exceeds the total of all amounts, including interest, penalties, and costs due the state, the Tax Commissioner shall return the excess to the person liable for the amounts and obtain his receipts. If any person having an interest in or lien upon the property files with the Tax Commissioner prior to the sale notice of his interest or lien, the Tax Commissioner shall withhold any excess pending a determination of the rights of the respective parties thereto by a court of competent jurisdiction. If for any reason the receipt of the person liable for the amount is not available, the Tax Commissioner shall deposit the excess money with the State Treasurer, as trustee for the owner, subject to the order of the person liable for the amount, his heirs, successors, or assigns. No interest earned, if any, will become the property of the person liable for the amount.

(5) No injunction or writ of mandamus or other legal or equitable process shall issue in any suit, action, or proceeding in any court against this state to enjoin the collection under the provisions of sections 77-2701 to 77-27,135 of any tax or any amount of tax required to be collected.

Sec. 4. That section 77-27,105, Revised Statutes Supplement, 1969, be amended to read as follows:

77-27,105. (1) If any income tax, including any interest, penalty, or addition to such tax, and any tax or any interest, penalty, or addition to such tax which has been erroneously refunded, imposed by sections 77-2701 to 77-27,135 is not paid when due, the commissioner may within three years after the tax is due, file for record in the office of the register of deeds of any county in which property belonging to the taxpayer is situated a notice of lien specifying the year and the amount of the tax, interest, penalty, additional amount, or addition to such tax due. Such notice shall contain the name and last-known address of the taxpayer, an identification number, and a statement to the effect that the Tax Commissioner complied with all the provisions of sections 77-2701 to 77-27,135 in the determination of the amount required to be paid. From the time of filing for record, the amount set forth



in such notice shall constitute a lien upon all real property and rights to real property in the county then owned by the taxpayer, and upon all real property and rights to real property acquired by him thereafter and before the lien expires. The fee for filing and indexing each notice of lien shall be one dollar.

(2) The lien may, within five years from the date of filing for record of the notice of lien, be extended by filing for record a new notice. From the time of such filing the lien shall be extended for five years, unless fully released or otherwise discharged. The fee for filing and indexing each new notice shall be one dollar.

(3) When a notice of such lien is filed, the appropriate county official shall enter the same in an alphabetical state tax lien index, showing on one line the name and residence of the taxpayer named in such notice, the Tax Commissioner's serial number of such notice, the date and hour of filing, and the amount due. The fee for filing and indexing each notice of lien shall be one dollar. All original notices shall be retained in numerical order in a file designated state tax lien notices.

(4) When a certificate of discharge of any income tax lien issued by the Tax Commissioner is filed in the office where the original notice of lien is filed, the appropriate county official shall enter the same with the date of filing in the state tax lien index on the line where notice of the lien so discharged is entered, and shall permanently attach the original certificate of discharge to the original notice of lien. The fee for filing and indexing each certificate of discharge shall be fifty cents.

(5) The Tax Commissioner may at any time release from a lien all or any portion of the property subject thereto, or he may subordinate the lien if he determines (a) that the taxes, penalties, additions, or interest are sufficiently secured by a lien on other property of the taxpayer, (b) that the release or subordination of the lien will not endanger or jeopardize the collection of such taxes, penalties, additions, or interest, (c) that a surety bond or securities satisfactory to secure deposits of public funds has been posted, deposited, or pledged with the Tax Commissioner in an amount sufficient to secure the payment of such taxes, penalties, additions, or interest, or (d) all or a part of such taxes, penalties, additions, or interest have been paid. The fee for filing and indexing each

certificate of release shall be one dollar. A certificate by the Tax Commissioner to the effect that any property has been released from a lien, or that such lien has been subordinated, shall be conclusive evidence that such action has been taken.

(6) The register of deeds of each county shall bill the Tax Commissioner on a quarterly basis for fees for documents filed by him for the Tax Commissioner.

~~(6)~~ (7) In any case where there has been a refusal or neglect to pay any income tax, including interest, penalty, or addition to such tax, together with any costs that may accrue in addition thereto, the Tax Commissioner may file an action in the district court of the county in which such lien is filed to enforce the lien upon any real property and rights to real property or to subject any such property and rights to property owned by the delinquent, or in which he has any right, title, or interest, to the payment of such tax. Such action shall be commenced and pursued in like manner as is provided for the foreclosure of mortgages. Such action may be commenced at any time within five years following the date such lien arose or was last extended.

Sec. 5. That original sections 52-1001, 52-1003, 77-2712 and 77-27,105, Revised Statutes Supplement, 1969, are repealed.