SENATE BILL NO. 22

INTRODUCED BY R. ARTHUN

BY REQUEST OF THE DEPARTMENT OF REVENUE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAW GOVERNING WARRANTS FOR DISTRAINT; PROVIDING FOR THE FILING OF WARRANTS FOR DISTRAINT WITH THE SECRETARY OF STATE BY ELECTRONIC MEANS; PROVIDING FOR THE FILING OF LIENS BY ELECTRONIC MEANS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 15-1-701, 15-1-704, AND 15-1-706, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 15-1-701, MCA, is amended to read:

"15-1-701. Warrant for distraint. (1) A warrant for distraint is an order, under the official seal of the department or of the department of transportation, directed to a sheriff of a county of Montana or to an agent authorized by law to collect a tax. The order commands the recipient to levy upon and sell the real and personal property of a delinquent taxpayer.

(2) Upon filing ~~the~~ a warrant for distraint as provided in ~~15-1-704~~ 15-1-704(1), there is a lien against all real and personal property of the delinquent taxpayer located in the county where the warrant is filed. Upon filing a warrant for distraint as provided in 15-1-704(2), there is a statewide lien against all personal property of the delinquent taxpayer. The resulting lien ~~is treated in the same manner as~~ has the full effect of a properly docketed judgment lien, the department is a judgment lien creditor, and the department may collect delinquent taxes and enforce the tax lien in the same manner as a judgment is enforced, except that the department may enforce the judgment lien at any time within 10 years of its creation or effective date, whichever is later.

(3) A warrant for distraint may be issued for the amount of unpaid tax plus accumulated penalty, if any, and accumulated interest. The lien is for the amount indicated on the warrant for distraint plus accrued penalty and interest from the date of the warrant. The priority date of the tax lien created by filing the warrant for distraint is the date the tax was due as indicated on the warrant ~~for distraint~~.

(4) The accelerated priority date provided for in subsection (3) is not valid against purchasers, holders of security interests, judgment lien creditors, and those lienholders identified in Title 71, chapter 3, parts 3 through

15, whose interest is recorded prior to the filing of the warrant for distraint."

Section 2. Section 15-1-704, MCA, is amended to read:

"15-1-704. Filing with district court and secretary of state. (1) After issuing a warrant for distraint, the department may ~~file~~ perfect its lien by filing the warrant with the clerk of a district court by electronic or other means. The clerk shall file the warrant for distraint in the judgment docket, with the name of the taxpayer listed as the judgment debtor.

(2) After issuing a warrant for distraint on personal property, the department may perfect its lien on a statewide basis by filing the warrant with the secretary of state by electronic or other means in accordance with procedures established by the secretary of state.

~~(2)~~(3) ~~A~~ After filing the warrant for distraint pursuant to this section, the department may send a copy of the ~~filed~~ warrant ~~may be sent~~ by ~~the department~~ electronic or other means to the sheriff or agent authorized to collect the tax.

~~(3)~~(4) A judgment lien filed pursuant to ~~this section~~ subsection (1) may be renewed for another 10-year period, upon motion, or by judgment for that purpose founded upon supplemental pleadings.

(5) The department may renew a warrant for distraint on personal property filed with the secretary of state pursuant to subsection (2) for another 10-year period upon written verification that there is unpaid tax, penalty, or interest and that a valid warrant has been issued."

Section 3. Section 15-1-706, MCA, is amended to read:

"15-1-706. Execution upon warrant. (1) Upon receipt of a copy of the filed warrant for distraint and notice from the department by electronic or other means that the applicable hearing provisions have been complied with, the sheriff or agent authorized to collect the tax shall proceed to execute upon the warrant in the same manner as prescribed for execution upon a judgment.

(2) A notice of levy may be made by means of a certified letter or, upon written consent of the recipient, by electronic means by an agent authorized to collect the tax. An agent is not entitled to any fee or compensation in excess of actual expenses incurred in enforcing the warrant for distraint.

(3) When issued, a notice of levy has the same ~~force and~~ effect as a writ of execution. A levy upon earnings continues in effect for 120 days or until the judgment is satisfied, whichever occurs first. The levy applies to all pay periods beginning during the 120-day period.

(4) A sheriff or agent shall return a warrant for distraint, along with any funds collected, within 90 days of the date of the warrant.

(5) If the warrant for distraint is returned not satisfied in full, the department has the same remedies to collect the deficiency as are available for any civil judgment."

NEW SECTION. **Section 4. Rulemaking.** The department shall adopt rules governing the use of electronic means for filing and releasing warrants for distraint.

NEW SECTION. **Section 5. Codification instruction.** [Section 4] is intended to be codified as an integral part of Title 15, chapter 1, part 7, and the provisions of Title 15, chapter 1, part 7, apply to [section 4].

NEW SECTION. **Section 6. Effective date.** [This act] is effective July 1, 2013.

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