

SENATE WAYS AND MEANS COMMITTEE SUBSTITUTE FOR
SENATE BILL 424

**44TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION,
2000**

AN ACT

RELATING TO TAXATION; PROVIDING FOR THE COLLECTION OF
DELINQUENT PROPERTY TAXES BY A CLASS A OR CLASS B COUNTY;
PERMITTING USE OF AN AUTHORIZED PRIVATE ATTORNEY IN A CLASS A
OR CLASS B COUNTY; AMENDING AND ENACTING SECTIONS OF THE NMSA
1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 7-38-48 NMSA 1978 (being Laws 1973,
Chapter 258, Section 88, as amended) is amended to read:

"7-38-48. PROPERTY TAXES ARE A LIEN AGAINST [REAL]
PROPERTY FROM JANUARY 1--PRIORITIES--CONTINUANCE OF TAXING
PROCESS.--Taxes on [real] property are a lien against the
[real] property from January 1 of the tax year for which the
taxes are imposed. The lien runs in favor of the state and
secures the payment of taxes on the [real] property and any
penalty and interest that [becomes] become due. The lien

.132515.1

underscoring material = new
~~[bracketed material] = delete~~

1 continues until the taxes and any penalty and interest are
2 paid. The lien created by this section is a first lien and
3 paramount to any other interest in the property, perfected or
4 unperfected. The annual taxing process provided for in the
5 Property Tax Code shall continue as to any particular
6 property regardless of prior tax delinquencies or of pending
7 protests, actions for refunds or other tax controversies
8 involving the property, including a sale for delinquent
9 taxes."

10 Section 2. Section 7-38-50 NMSA 1978 (being Laws 1973,
11 Chapter 258, Section 90, as amended) is amended to read:

12 "7-38-50. DELINQUENT TAXES--CIVIL PENALTIES.--

13 A. If property taxes become delinquent, a penalty
14 of one percent of the delinquent taxes for each month or any
15 portion of a month they remain unpaid shall be imposed, but
16 the total penalty shall not exceed five percent of the
17 delinquent taxes except that, when the penalty determined
18 under the foregoing provisions of this subsection is less
19 than five dollars (\$5.00), the penalty to be imposed shall be
20 five dollars (\$5.00). A county may suspend for a particular
21 tax year application of the minimum penalty requirements of
22 this subsection by resolution of its county commissioners
23 adopted not later than September 1 of that tax year. A copy
24 of any such resolution shall be forwarded to the county
25 treasurer.

B. If property taxes become delinquent because of
an intent to defraud by the property owner, fifty percent of

1 the property taxes due or fifty dollars (\$50.00), whichever
2 is greater, shall be added as a penalty.

3 C. An additional penalty to defray costs of
4 collection shall be imposed if the county electing to collect
5 delinquent taxes on real property referred the collection of
6 the delinquent taxes, penalties and interest to a private
7 attorney and if the taxes due are at least sixty days
8 delinquent. The additional penalty shall be thirty percent
9 of the amount of taxes, interest and other penalties due.
10 Any penalty assessed pursuant to this subsection shall become
11 the property of the private attorney employed by the county
12 upon collection from the delinquent taxpayer of the taxes,
13 penalties and interest.

14 D. Any civil penalty assessed pursuant to
15 Subsection C of this section shall become the property of the
16 private attorney employed by the county upon collection from
17 the delinquent taxpayer of the taxes, penalties and
18 interest."

19 Section 3. Section 7-38-51 NMSA 1978 (being Laws 1973,
20 Chapter 258, Section 91, as amended) is amended to read:

21 "7-38-51. NOTIFICATION TO PROPERTY OWNER OF DELINQUENT
22 PROPERTY TAXES.--

23 A. In respect to any tax that is delinquent for
24 more than thirty days as of June 30 of each year, the county
25 treasurer shall mail a notice of delinquency to:

(1) the owner of the property as shown on
the property tax schedule at the address of the owner as

.132515.1

1 shown on the most recent property tax schedule; and

2 (2) any person other than the owner to whom
3 the tax bill on the property was sent.

4 B. The notice required by this section shall be in
5 a form and contain the information prescribed by ~~[division]~~
6 department regulations and shall include at least the
7 following:

8 (1) a description of the property upon which
9 the property taxes are due;

10 (2) a statement of the amount of property
11 taxes due, the date on which they became delinquent, the rate
12 of accrual of interest and any penalties that may be charged;

13 (3) a statement that, if the property taxes
14 due on real property are not paid within three years from the
15 date of delinquency, the real property will be sold and a
16 deed issued by the ~~[division; and]~~ department;

17 (4) a statement that if property taxes due
18 on personal property are not paid, the personal property may
19 be seized and sold for taxes under authority of a demand
20 warrant; and

21 (5) a statement that, if the delinquent
22 taxes have been referred for collection to a private attorney
23 pursuant to Section 7-38-61.1 NMSA 1978, an additional civil
24 penalty of thirty percent of the taxes will be incurred if
25 the taxes are not paid."

Section 4. Section 7-38-53 NMSA 1978 (being Laws 1973,
Chapter 258, Section 93) is amended to read:

1 "7-38-53. COLLECTION OF DELINQUENT PROPERTY TAXES ON
2 PERSONAL PROPERTY--ASSERTION OF CLAIM AGAINST PERSONAL
3 PROPERTY.--A county treasurer may collect delinquent property
4 taxes on personal property by asserting a claim against the
5 owner's personal property for which taxes are delinquent. A
6 claim shall be asserted by service of a demand warrant by the
7 county treasurer, an employee of his office designated by
8 him, a private attorney retained by the county pursuant to
9 Section 7-38-61.1 NMSA 1978 or the county sheriff upon any
10 person in possession of the personal property subject to the
11 claim."

12 Section 5. Section 7-38-61 NMSA 1978 (being Laws 1973,
13 Chapter 258, Section 100, as amended) is amended to read:

14 "7-38-61. REAL PROPERTY TAXES DELINQUENT FOR MORE THAN
15 TWO YEARS--TREASURER TO PREPARE DELINQUENCY LIST--NOTATION ON
16 PROPERTY TAX SCHEDULE.--

17 A. By July 1 of each year, the county treasurer
18 shall prepare a property tax delinquency list of all real
19 property for which taxes have been delinquent for more than
20 two years. The tax delinquency list shall contain the
21 information and be in a form prescribed and submitted by the
22 date required by department regulations. The county
23 treasurer shall record the tax delinquency list in the office
24 of the county clerk. There shall be no recording fee for
25 recordation of the tax delinquency list. The updated final
property tax sale list shall be recorded with the office of
the county clerk the day following the sale of the property.

.132515.1

1 There shall be no recording fee for recordation of the final
2 property tax sale list.

3 B. Except for accounts the county is collecting
4 pursuant to an election under Section 7-38-61.1 NMSA 1978,
5 the county treasurer shall make a notation on the property
6 tax schedule indicating that the account has been transferred
7 to the department for collection at the time the tax
8 delinquency list is mailed to the department."

9 Section 6. A new section of the Property Tax Code,
10 Section 7-38-61.1 NMSA 1978, is enacted to read:

11 "7-38-61.1. [NEW MATERIAL] COUNTY ELECTION TO COLLECT
12 DELINQUENT TAXES ON REAL PROPERTY--AUTHORITY TO USE PRIVATE
13 ATTORNEY TO COLLECT DELINQUENT TAXES.--

14 A. For the 2001 and subsequent property tax years,
15 a class A or B county may elect to assume authority for
16 collection of delinquent property taxes due on real property
17 in the county, including authority to sell the property
18 pursuant to the provisions of Sections 7-38-65 and 7-38-66
19 NMSA 1978; provided that the department retains authority to
20 collect delinquent taxes, penalty, interest and costs on
21 property submitted on a tax delinquency list until the taxes,
22 penalty, interest and costs are collected or the property is
23 sold pursuant to Sections 7-38-65 and 7-38-66 NMSA 1978. To
24 make the election, the board of county commissioners shall
25 adopt a resolution to assume the authority and shall deliver
or mail a copy of the resolution to the department prior to
the July 1 immediately preceding the property tax year to

.132515.1

1 which the resolution first applies.

2 B. A county that has assumed authority under
3 Subsection A of this section is authorized to retain a
4 private attorney to collect delinquent taxes and interest and
5 penalties due thereon that are owed to the county or taxing
6 jurisdictions for which the county collects the taxes.

7 C. Having assumed authority to collect delinquent
8 taxes due on real property, the county may elect to return
9 that authority to the department. To make this election, the
10 board of county commissioners shall adopt a resolution
11 returning the authority and shall deliver or mail a copy of
12 the resolution to the department at least eighteen months
13 prior to the beginning of the property tax year to which the
14 return of authority is to apply.

15 D. The department may prepare and require the use
16 of model resolutions for use of the counties in assuming and
17 returning authority as provided in this section."

18 Section 7. A new section of the Property Tax Code,
19 Section 7-38-61.2 NMSA 1978, is enacted to read:

20 "7-38-61.2. [NEW MATERIAL] SUIT TO COLLECT DELINQUENT
21 TAXES AND INTEREST AND PENALTIES.--

22 A. At any time after a tax on property becomes
23 delinquent, a class A county or its retained private attorney
24 may file suit to foreclose a lien securing payment of the tax
25 or seeking a personal judgment against the taxpayer. The
suit must be in a court of competent jurisdiction for the
county in which the tax was or is imposed.

.132515.1

1 B. In a suit brought under Subsection A of this
2 section, a county may foreclose any other property tax lien
3 on the property in favor of the county."

4 Section 8. A new section of the Property Tax Code,
5 Section 7-38-61.3 NMSA 1978, is enacted to read:

6 "7-38-61.3 [NEW MATERIAL] RECOVERY OF COSTS AND
7 EXPENSES IN COLLECTION SUIT.--

8 A. In addition to other costs authorized by law, a
9 class A county or its retained private attorney is entitled
10 to recover the following costs and expenses in its efforts to
11 collect a delinquent tax:

12 (1) all usual court costs, including the
13 cost of serving process;

14 (2) costs of filing for record any notice of
15 lis pendens against property;

16 (3) expenses of tax sale;

17 (4) reasonable expenses that are incurred by
18 the county or its attorney in determining the name, identity
19 and location of necessary parties and in procuring necessary
20 legal descriptions of the property on which a delinquent tax
21 is due; and

22 (5) in cases where Subsection C of Section
23 7-38-50 NMSA 1978 is not applicable, reasonable attorney fees
24 of the total amount of thirty percent of the total amount of
25 taxes, penalties and interest due.

 B. Each item specified by Subsection A of this
section is a charge against the property and shall be

1 collectible in the same manner as the taxes, penalties,
 2 interest and costs due by the tax debtor and is subject to
 3 collection by foreclosure in a suit or as otherwise provided
 4 by law and shall be collected out of the proceeds of sale of
 5 the property."

6 Section 9. A new section of the Property Tax Code,
 7 Section 7-38-61.4 NMSA 1978, is enacted to read:

8 "7-38-61.4. [NEW MATERIAL] LIABILITY FOR COSTS--COUNTY
 9 AND ITS PRIVATE ATTORNEY.--

10 A. Except as provided by Subsection B of this
 11 section, a class A county or its retained private attorney is
 12 not liable in a suit to collect taxes for court costs,
 13 including any fees for service of process, costs or fees of
 14 opposing counsel, arbitration or mediation and shall not be
 15 required to post security for costs.

16 B. A class A county or its retained private
 17 attorney shall pay the cost of publishing citations, notices
 18 of sale or other notices. The county is entitled to
 19 reimbursement from other taxing units that are parties to the
 20 suit for their proportionate share of the publication costs
 21 on satisfaction of any portion of the tax indebtedness before
 22 further distribution of the proceeds. A county shall not be
 23 required to pay a word or line rate for publication of
 24 citation or other required notice that exceeds the rate that
 25 the newspaper publishing the notice charges private entities
 for similar classes of advertising."

Section 10. Section 7-38-62 NMSA 1978 (being Laws 1973,

.132515.1

1 Chapter 258, Section 102, as amended) is amended to read:

2 "7-38-62. AUTHORITY OF DEPARTMENT TO COLLECT DELINQUENT
3 PROPERTY TAXES AFTER RECEIPT OF TAX DELINQUENCY LIST--USE OF
4 PENALTIES, INTEREST AND COSTS.--

5 A. After the receipt of the tax delinquency list,
6 the department has the responsibility and exclusive authority
7 to take all action necessary to collect delinquent taxes
8 shown on the list unless the county has assumed authority
9 pursuant to Section 7-38-61.1 NMSA 1978 to collect delinquent
10 taxes due on real property. In that case, the county and, if
11 the county has retained a private attorney pursuant to
12 Subsection B of Section 7-38-61.1 NMSA 1978, its attorney
13 have the same authority as that granted by the department in
14 Subsection B of this section.

15 B. This authority includes bringing collection
16 actions in the district courts based upon the personal
17 liability of the property owner for taxes as well as the
18 actions authorized in the Property Tax Code for proceeding
19 against the property subject to the tax for collection of
20 delinquent taxes.

21 C. For delinquent taxes being collected by the
22 department, payment of delinquent taxes listed and any
23 penalty, interest or costs due in connection with those taxes
24 shall be made to the department if occurring after the
25 receipt by the department of the tax delinquency list;
however, the department may authorize county treasurers to
act as its agents in accepting payments of taxes, penalties,

.132515.1

1 interest or costs due.

2 D. Penalties, interest and costs due, except the
3 penalty imposed pursuant to Subsection C of Section 7-38-50
4 NMSA 1978, received by the department under this section
5 shall be retained by the department for use, subject to
6 appropriation by the legislature, in the administration of
7 the Property Tax Code."

8 Section 11. Section 7-38-68 NMSA 1978 (being Laws 1973,
9 Chapter 258, Section 108, as amended) is amended to read:

10 "7-38-68. INSTALLMENT AGREEMENTS.--

11 A. The ~~[division]~~ department, a county having
12 authority pursuant to Section 7-38-61.1 NMSA 1978 to collect
13 delinquent taxes or, subject to ratification by the county, a
14 private attorney retained by a class A or class B county
15 pursuant to Section 7-38-61.1 NMSA 1978 may enter into an
16 installment agreement for the payment of all delinquent
17 property taxes, penalties, interest and costs due with
18 respect to either real property or a manufactured home with
19 the owner of the real property or manufactured home whose
20 taxes have become delinquent and whose account for all or
21 part of the delinquent taxes has been transferred for
22 collection to the ~~[division]~~ department, the county or the
23 county's private attorney. Execution of an installment
24 agreement under this section by a property owner is an
25 irrevocable admission of liability for all taxes that are the
subject of the agreement. The installment agreement shall be
in writing and shall not extend for a period of more than

.132515.1

1 thirty-six months. Interest shall accrue on the unpaid
2 balance during the period of the installment agreement. The
3 rate of interest shall be one percent a month, and no other
4 interest on that portion of the principal representing unpaid
5 taxes shall accrue while an installment agreement is in
6 effect. [~~The division shall not enter into~~] An installment
7 agreement with a property owner shall not be entered into on
8 or after the date of the initial sale of real property or
9 manufactured home for delinquent taxes whether or not the
10 real property or manufactured home is sold and a deed issued
11 as a result of that sale. The [~~division~~] department shall
12 promulgate regulations establishing requirements for a
13 minimum down payment and substantially equal monthly payments
14 for installment agreements.

15 B. An installment agreement prevents any further
16 action to collect the delinquent taxes stated in the
17 agreement as long as the terms of the agreement are met.

18 C. The [~~division~~] department, a county having
19 authority pursuant to Section 7-38-61.1 NMSA 1978 to collect
20 delinquent taxes or the county's private attorney retained
21 pursuant to Subsection B of Section 7-38-61.1 NMSA 1978 may
22 proceed under the Property Tax Code to collect the property
23 taxes, penalties, interest and costs due and unpaid if:

24 (1) installment payments are not made on or
25 before the dates specified in the agreement;

(2) the property owner fails to pay other
property taxes when required; or

1 (3) any other condition contained in the
2 agreement is not met.

3 D. For the purpose of computing the time when real
4 property or a manufactured home may be sold for delinquent
5 taxes, the date of original delinquency shall be used when
6 the delinquent taxes have been the subject of an installment
7 agreement that was subsequently breached by the property
8 owner.

9 E. If an owner of real property or a manufactured
10 home enters into an installment agreement and subsequently
11 breaches the agreement under this section, neither the
12 ~~[division]~~ department, the county or the county's retained
13 private attorney shall ~~[not]~~ enter into another installment
14 agreement with that property owner for the payment of the
15 delinquent taxes that were the subject of the installment
16 agreement.

17 F. Alphabetically indexed and serially numbered
18 records of installment agreements must be kept in the office
19 of the director and made available for public inspection."

20 Section 12. Section 7-38-69 NMSA 1978 (being Laws 1973,
21 Chapter 258, Section 109, as amended) is amended to read:

22 "7-38-69. DISTRIBUTION OF AMOUNTS COLLECTED UNDER
23 INSTALLMENT AGREEMENTS.--Amounts collected under installment
24 agreements entered into by the department, a county having
25 authority pursuant to Section 7-38-61.1 NMSA 1978 to collect
delinquent taxes or the county's private attorney retained
pursuant to Subsection B of Section 7-38-61.1 NMSA 1978 that

.132515.1

1 represent delinquent taxes shall be remitted to the county
2 treasurer of the county to which the net taxable value of the
3 property is allocated for distribution to the governmental
4 units. Amounts collected that represent penalties, interest
5 and costs shall be retained by the department in accordance
6 with Section 7-38-71 NMSA 1978. Money collected shall be
7 remitted at the times and in the manner required by
8 applicable law and the regulations of the department of
9 finance and administration. When the department has received
10 payment in full of delinquent taxes, penalties, interest and
11 costs paid under an installment agreement, the department
12 shall notify the county treasurer of that fact, and the
13 county treasurer shall make an entry on the property tax
14 schedule indicating that the delinquent property taxes,
15 penalties and interest have been paid."

16 Section 13. Section 7-38-71 NMSA 1978 (being Laws 1973,
17 Chapter 258, Section 111, as amended) is amended to read:

18 "7-38-71. DISTRIBUTION OF AMOUNTS RECEIVED FROM SALE OF
19 PROPERTY.--

20 A. Money received by the department from the sale
21 of real or personal property for delinquent property taxes
22 shall be deposited in a suspense fund and distributed as
23 follows:

24 (1) first, that portion equal to the costs
25 shall be retained by the department for use, subject to
appropriation by the legislature, in administration of the
Property Tax Code;

.132515.1

1 (2) second, that portion equal to the
2 penalties and interest due shall be retained by the
3 department for use, subject to appropriation by the
4 legislature, by the department in administration of the
5 Property Tax Code;

6 (3) third, that portion equal to the
7 penalties provided for in Subsection C of Section 7-38-50
8 NMSA 1978 shall be paid over to the private attorney retained
9 by a class A or class B county pursuant to Subsection B of
10 Section 7-38-61.1 NMSA 1978;

11 ~~[(3) third]~~ (4) fourth, that portion equal
12 to the delinquent taxes due shall be remitted by the
13 department to the appropriate county treasurer for
14 distribution by the treasurer to the governmental units in
15 accordance with the law and the regulations of the department
16 of finance and administration; and

17 ~~[(4)]~~ (5) the balance shall be paid to the
18 former owner of the property sold or to any other person
19 designated by order directed to the department by a court of
20 competent jurisdiction; provided that the department may
21 first apply all or any portion of the balance to be paid
22 against the amount of any property tax, including any penalty
23 and interest related thereto, owed by the person to whom the
24 balance would otherwise be paid.

25 B. As a condition precedent to payment of the
balance of the sale amount received to the former owner of
the property, the department may require any person claiming

.132515.1

1 to be entitled to that payment to present sufficient evidence
2 of proof of former ownership of the property to the
3 department. The department shall adopt regulations providing
4 for the procedures to be followed by persons claiming sale
5 proceeds as former owners in those instances where
6 conflicting claims exist or the department requires proof of
7 ownership.

8 C. If no person claims the balance of sale
9 proceeds, whether the property was sold under the provisions
10 of the Property Tax Code or prior law, as the former owner of
11 the property within two years of the date of the sale and
12 after a reasonable search to determine the former owner is
13 made by the department and no former owner is found, the
14 balance of the sale proceeds shall be considered abandoned
15 property and deposited in accordance with the provisions of
16 the Uniform Unclaimed Property Act.

17 D. If the balance of proceeds from the sale after
18 paying a higher priority claim under Subsection A of this
19 section is insufficient to pay all of the next priority
20 claim, then the complete balance shall be applied to that
21 next priority claim as partial payment."

22 Section 14. EFFECTIVE DATE.--The effective date of the
23 provisions of this act is July 1, 2000.