

HOUSE TAXATION AND REVENUE COMMITTEE SUBSTITUTE FOR
HOUSE BILL 36

45TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2002

AN ACT

RELATING TO TAXATION; PROVIDING AN OPTION FOR COUNTIES TO
ENFORCE COLLECTION OF DELINQUENT PROPERTY TAXES ON REAL
PROPERTY.

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

Section 1. Section 7-35-2.1 NMSA 1978 (being Laws 1995,
Chapter 12, Section 5) is amended to read:

"7-35-2.1. ADDITIONAL [DEFINITION] DEFINITIONS. -- As used
in the Property Tax Code:

A. "costs" means the expenses incurred by the
[department] collecting authority in connection with
collecting delinquent taxes. As applied to a particular
property, "costs" may be, in the discretion of the
[department] collecting authority, either the sum of the
expenses incurred specifically in connection with that

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1 property or the uniform charge applied to the class of
2 delinquent properties of which the property is a member; and

3 B. "collecting authority" means:

4 (1) the department, when exercising authority
5 granted pursuant to Section 7-38-62 NMSA 1978; or

6 (2) a county, when exercising authority
7 granted pursuant to Section 7-38-61.1 NMSA 1978. "

8 Section 2. Section 7-38-42 NMSA 1978 (being Laws 1979,
9 Chapter 343, Section 1) is amended to read:

10 "7-38-42. COLLECTION AND RECEIPT OF AND ACCOUNTING FOR
11 PROPERTY TAXES--APPLICATION OF RECEIPTS TO DELINQUENT TAXES.--

12 A. The county treasurer has the responsibility and
13 authority for collection of taxes and any penalties or
14 interest due under the Property Tax Code except [~~for the~~
15 ~~collection of delinquent taxes, penalties and interest~~
16 ~~authorized to be collected by the department under Section~~
17 ~~7-38-62 NMSA 1978] that, pursuant to Section 7-38-62 NMSA
18 1978, the department has the responsibility and exclusive
19 authority to collect delinquent taxes, penalties and interest
20 for the delinquent taxes shown on a tax delinquency list
21 prepared and transferred to the department by a county that
22 has not elected, pursuant to Section 7-38-61.1 NMSA 1978, to
23 assume authority for the collection of delinquent taxes.~~

24 B. Property taxes, penalties and interest
25 collected shall be receipted and accounted for in accordance

1 with law and regulations of the department of finance and
 2 administration.

3 C. Except as provided in Section 7-38-61.4,
 4 7-38-69 or 7-38-71 NMSA 1978, any payments received by the
 5 treasurer or the department as payments for property taxes,
 6 penalties or interest shall be first applied to the oldest
 7 outstanding unpaid property taxes, penalties or interest
 8 accrued in prior property tax years on the property identified
 9 and described in the property tax bill for which payment is
 10 tendered or, if the payment cannot be identified with a
 11 particular year's property tax bill, then the payment shall be
 12 applied first to the oldest liability for property taxes,
 13 penalties and interest shown in the treasurer's records under
 14 the name of the paying taxpayer. In applying the foregoing
 15 requirements for applications of payments and in the adoption
 16 of any regulations to implement those provisions, the
 17 following additional rules shall apply:

18 (1) applications of payments to prior year's
 19 delinquent taxes, penalties and interest shall not be made for
 20 more than ten years prior to the year of payment unless the
 21 treasurer's records show that the property for which taxes are
 22 delinquent has been deeded to the state of New Mexico and that
 23 property has not been sold by the state pursuant to applicable
 24 law;

25 (2) after application of payment received, if

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1 all or part of the payment has been applied to a prior year's
2 delinquent taxes, penalties or interest, the receipting
3 authority shall issue a receipt to the paying taxpayer showing
4 the application of the payment and indicating any balance due
5 for taxes, penalties or interest to bring the property tax
6 payment status current; and

7 (3) the failure of a receipting authority to
8 apply a payment as required under this subsection or the
9 failure to issue a required receipt to the taxpayer of the
10 status of his account shall not relieve the taxpayer of
11 liability for taxes, penalties or interest he would otherwise
12 be required to pay nor does action or inaction by the
13 receipting authority act to estop the collecting authority
14 from taking any action to collect or enforce the payment of
15 taxes, penalties and interest legally due. "

16 Section 3. Section 7-38-48 NMSA 1978 (being Laws 1973,
17 Chapter 258, Section 88, as amended) is amended to read:

18 "7-38-48. PROPERTY TAXES ARE A LIEN AGAINST REAL
19 PROPERTY FROM JANUARY 1--PRIORITIES--CONTINUANCE OF TAXING
20 PROCESS.--Taxes on real property are a lien against the real
21 property from January 1 of the tax year for which the taxes
22 are imposed. The lien runs in favor of the ~~[state]~~ collecting
23 authority and secures the payment of taxes on the real
24 property and any penalty and interest that ~~[becomes]~~ become
25 due. The lien continues until the taxes and any penalty and

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

9 Section 4. Section 7-38-50 NMSA 1978 (being Laws 1973,
 10 Chapter 258, Section 90, as amended) is amended to read:

11 "7-38-50. DELINQUENT TAXES--CIVIL PENALTIES.--

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

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

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

3 C. An additional penalty to defray costs of
4 collection shall be imposed if the county has elected,
5 pursuant to Section 7-38-61.1 NMSA 1978, to assume authority
6 for the collection of delinquent taxes and has referred the
7 collection to a qualified private attorney. The additional
8 penalty shall equal the amount agreed to between the county
9 and the attorney but shall not exceed fifteen percent of the
10 amount of taxes due at the time of collection."

11 Section 5. Section 7-38-51 NMSA 1978 (being Laws 1973,
12 Chapter 258, Section 91, as amended) is amended to read:

13 "7-38-51. NOTIFICATION TO PROPERTY OWNER OF DELINQUENT
14 PROPERTY TAXES. --

15 A. In respect to any tax that is delinquent for
16 more than thirty days as of June 30 of each year, no later
17 than August 1, the county treasurer shall, by certified mail,
18 mail a notice of delinquency to:

19 (1) the owner of the property as shown on the
20 property tax schedule at the address of the owner as shown on
21 the most recent property tax schedule; and

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

24 B. The notice required by this section shall be in
25 a form and contain the information prescribed by ~~division~~

1 department regulations and shall include at least the
2 following:

3 (1) a description of the property upon which
4 the property taxes are due;

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

8 (3) if the county has elected, pursuant to
9 Section 7-38-61.1 NMSA 1978, to assume authority for the
10 collection of delinquent taxes, a statement informing the
11 property owner of his right to enter into an installment
12 agreement with the county for payment of delinquent taxes,
13 penalties, interest and costs, in accordance with Section
14 7-38-68 NMSA 1978;

15 (4) information on the name and phone number
16 of the individual in the county the taxpayer can contact to
17 arrange for an installment agreement in accordance with
18 Section 7-38-68 NMSA 1978;

19 [~~(3)~~] (5) a statement that if the property
20 taxes due on real property are not paid within three years
21 from the date of delinquency, the real property will be sold
22 and a deed issued by the [~~division and~~] collecting authority;

23 [~~(4)~~] (6) a statement that if property taxes
24 due on personal property are not paid, the personal property
25 may be seized and sold for taxes under authority of a demand

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1 warrant; and

2 (7) if the county has elected, pursuant to
3 Section 7-38-61.1 NMSA 1978, to assume authority for the
4 collection of delinquent taxes, a statement that, if the taxes
5 are not paid before September 1, the delinquent taxes may be
6 referred to a qualified private attorney and that an
7 additional civil penalty of up to fifteen percent of the taxes
8 due will be incurred."

9 Section 6. Section 7-38-53 NMSA 1978 (being Laws 1973,
10 Chapter 258, Section 93) is amended to read:

11 "7-38-53. COLLECTION OF DELINQUENT PROPERTY TAXES ON
12 PERSONAL PROPERTY--ASSERTION OF CLAIM AGAINST PERSONAL
13 PROPERTY.--A county treasurer may collect delinquent property
14 taxes on personal property by asserting a claim against the
15 owner's personal property for which taxes are delinquent. A
16 claim shall be asserted by service of a demand warrant by the
17 county treasurer, an employee of his office designated by him,
18 a qualified private attorney retained by the county pursuant
19 to Section 7-38-61.1 NMSA 1978 or the county sheriff upon any
20 person in possession of the personal property subject to the
21 claim "

22 Section 7. Section 7-38-60 NMSA 1978 (being Laws 1973,
23 Chapter 258, Section 101, as amended) is amended to read:

24 "7-38-60. NOTIFICATION TO PROPERTY OWNER OF DELINQUENT
25 TAXES.--By June 10 of each year, the county treasurer shall,

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1 by certified mail, mail a notice to each property owner of
2 property for which taxes have been delinquent for more than
3 two years. The notice shall be in a form and contain the
4 information prescribed by department regulations and shall
5 include the following:

6 A. a description of the property upon which the
7 taxes are due;

8 B. a statement of the amount of property taxes
9 due, the date on which they became delinquent, the rate of
10 accrual of interest and any penalties or costs that may be
11 charged;

12 C. if the county has elected, pursuant to Section
13 7-38-61.1 NMSA 1978, to assume authority for the collection of
14 delinquent taxes, a statement informing the property owner of
15 his right to enter into an installment agreement with the
16 county for payment of delinquent taxes, penalties, interest
17 and costs, in accordance with Section 7-38-68 NMSA 1978;

18 D. information on the name and phone number of the
19 individual in the county the taxpayer can contact to arrange
20 for an installment agreement in accordance with Section
21 7-38-68 NMSA 1978;

22 [~~C.~~] E. if the county has not elected, pursuant to
23 Section 7-38-61.1 NMSA 1978, to assume authority for the
24 collection of delinquent taxes, a statement that the
25 delinquent tax account on real property will be transferred to

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1 the department for collection;

2 ~~[D.]~~ F. a statement that if taxes due on real
3 property are not paid within three years from the date of
4 delinquency, the real property will be sold and a deed issued;
5 and

6 ~~[E.]~~ G. a statement that if taxes due on personal
7 property are not paid, the personal property may be seized and
8 sold for taxes under authority of a demand warrant. "

9 Section 8. Section 7-38-61 NMSA 1978 (being Laws 1973,
10 Chapter 258, Section 100, as amended) is amended to read:

11 "7-38-61. REAL PROPERTY TAXES DELINQUENT FOR MORE THAN
12 TWO YEARS--TREASURER TO PREPARE DELINQUENCY LIST--NOTATION ON
13 PROPERTY TAX SCHEDULE. --

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

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1 sale list.

2 ~~[B. The county treasurer shall make a notation on~~
3 ~~the property tax schedule indicating that the account has been~~
4 ~~transferred to the department for collection at the time the~~
5 ~~tax delinquency list is mailed to the department.]~~

6 B. If the county has not elected, pursuant to
7 Section 7-38-61.1 NMSA 1978, to assume authority for the
8 collection of delinquent taxes, the county treasurer shall
9 mail the tax delinquency list to the department and make a
10 notation on the property tax schedule indicating that the
11 account has been transferred to the department for
12 collection. "

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

15 "7-38-61.1. [NEW MATERIAL] COUNTY OPTION TO COLLECT
16 DELINQUENT TAXES-- AUTHORITY TO CONTRACT FOR THE COLLECTION OF
17 DELINQUENT TAXES. --

18 A. A class A county with a population, according
19 to the most recent federal decennial census, of greater than
20 four hundred thousand may elect to assume authority for
21 collection of delinquent property taxes due on real property
22 in the county, including authority to sell the property
23 pursuant to the provisions of the Property Tax Code. To make
24 the election, the board of county commissioners, with the
25 express concurrence in writing of the county treasurer, shall

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1 adopt a resolution to assume the authority and shall deliver
2 or mail a copy of the resolution to the department no later
3 than thirty days after its adoption and at least thirty days
4 prior to January 1 of the tax year to which the resolution
5 first applies.

6 B. A county that has assumed authority to collect
7 delinquent taxes pursuant to Subsection A of this section may
8 take all actions allowed by law to collect delinquent taxes,
9 penalties and interest, including:

10 (1) filing suit pursuant to Section 7-38-61.2
11 NMSA 1978;

12 (2) selling the real property on which taxes
13 have become delinquent pursuant to Sections 7-38-65 through
14 7-38-67 and 7-38-70 through 7-38-72 NMSA 1978; and

15 (3) entering into installment agreements
16 pursuant to Sections 7-38-68 and 7-38-69 NMSA 1978.

17 C. A county that has assumed authority pursuant to
18 Subsection A of this section may request competitive proposals
19 pursuant to the Procurement Code from qualified private
20 attorneys and may execute a professional services contract
21 with a successful offeror for the collection of delinquent
22 taxes, penalties and interest due thereon that are owed to the
23 county or governmental units for which the county collects the
24 taxes. Pursuant to the contract and upon the referral of
25 delinquent taxes from the county to the qualified private

1 attorney, the attorney may take such actions to collect the
2 taxes, penalties, interest and costs on behalf of the county
3 as are allowed by law.

4 D. An assumption of collection authority adopted
5 pursuant to Subsection A of this section may be revoked by a
6 subsequent resolution of the board of county commissioners,
7 provided that the effective date of the revocation shall be
8 the beginning of the tax year commencing on or after eighteen
9 months after the department receives written notification of
10 the revocation.

11 E. The department may prepare and require the use
12 of model resolutions for use of the counties in assuming and
13 revoking authority as provided in this section.

14 F. As used in this section, "qualified private
15 attorney" means an attorney licensed to practice in New Mexico
16 who carries professional liability insurance in an amount
17 determined adequate by the board of county commissioners,
18 which amount shall be specified in the request for proposals."

19 Section 10. A new section of the Property Tax Code,
20 Section 7-38-61.2 NMSA 1978, is enacted to read:

21 "7-38-61.2. [NEW MATERIAL] SUIT TO COLLECT DELINQUENT
22 TAXES AND INTEREST AND PENALTIES.--At any time after a tax on
23 property becomes delinquent, a county that, pursuant to
24 Section 7-38-61.1 NMSA 1978, has elected to assume the
25 authority to collect delinquent taxes or its qualified private

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1 attorney may file suit seeking a personal judgment against the
2 taxpayer. The suit shall be filed in a court of competent
3 jurisdiction for the county in which the tax was or is
4 imposed. "

5 Section 11. A new section of the Property Tax Code,
6 Section 7-38-61.3 NMSA 1978, is enacted to read:

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

9 A. If successful in a suit to collect a delinquent
10 tax pursuant to Section 7-38-61.2 NMSA 1978, in addition to
11 other costs authorized by law, a county or its qualified
12 private attorney is entitled to recover from the delinquent
13 taxpayer the following costs:

- 14 (1) court costs;
- 15 (2) costs of filing for record any notice of
16 lis pendens against property;
- 17 (3) expenses of a tax sale; and
- 18 (4) reasonable expenses that are incurred by
19 the county or its qualified private attorney in determining
20 the name, identity and location of necessary parties and in
21 procuring necessary legal descriptions of the property on
22 which a delinquent tax is due.

23 B. Each item specified by Subsection A of this
24 section is a charge against the property and a personal
25 obligation of the property owner and shall be collectible in

1 the same manner as the taxes, penalties, interest and costs
2 due by the owner. "

3 Section 12. A new section of the Property Tax Code,
4 Section 7-38-61.4 NMSA 1978, is enacted to read:

5 "7-38-61.4. [NEW MATERIAL] DISTRIBUTION OF PROCEEDS
6 RECEIVED. -- Except for proceeds from the sale of real property
7 distributed pursuant to Section 7-38-71 NMSA 1978 and amounts
8 collected under installment agreements distributed pursuant to
9 Section 7-38-69 NMSA 1978, delinquent taxes, penalties,
10 interest and costs received by a county after a matter has
11 been referred by the county to a qualified private attorney
12 pursuant to Subsection C of Section 7-38-61.1 NMSA 1978 shall
13 be distributed as follows:

14 A. first, that portion equal to the costs incurred
15 by the county, including any amount owed to a qualified
16 private attorney under a contract entered into pursuant to
17 Section 7-38-61.1 NMSA 1978, and the penalties and interest
18 due shall be deposited in the general fund of the county; and

19 B. second, the remaining balance shall be
20 distributed by the county treasurer to the governmental units
21 in accordance with the law and regulations of the department
22 of finance and administration. "

23 Section 13. Section 7-38-62 NMSA 1978 (being Laws 1973,
24 Chapter 258, Section 102, as amended) is amended to read:

25 "7-38-62. AUTHORITY OF DEPARTMENT TO COLLECT DELINQUENT

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1 PROPERTY TAXES [~~AFTER RECEIPT OF TAX DELINQUENCY LIST~~] -- USE OF
2 PENALTIES, INTEREST AND COSTS. -- [~~After the receipt of the tax~~
3 ~~delinquency list~~]

4 A. The department has the responsibility and
5 exclusive authority to take all action necessary to collect
6 [~~delinquent taxes shown on the list~~] delinquent taxes shown on
7 a tax delinquency list prepared and transferred to the
8 department by a county that has not elected to assume the
9 authority to collect taxes pursuant to Section 7-38-61.1 NMSA
10 1978.

11 B. This authority includes bringing collection
12 actions in the district courts based upon the personal
13 liability of the property owner for taxes as well as the
14 actions authorized in the Property Tax Code for proceeding
15 against the property subject to the tax for collection of
16 delinquent taxes. Payment of delinquent taxes listed and any
17 penalty, interest or costs due in connection with those taxes
18 shall be made to the department if occurring after the
19 [~~receipt by the department of the tax delinquency list~~]
20 authority to collect those delinquent taxes has been granted
21 to the department pursuant to Subsection A of this section;
22 however, the department may authorize county treasurers to act
23 as its agents in accepting payments of taxes, penalties,
24 interest or costs due. Penalties, interest and costs due
25 received by the department under this section shall be

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1 retained by the department for use, subject to appropriation
 2 by the legislature, in the administration of the Property Tax
 3 Code. "

4 Section 14. Section 7-38-65 NMSA 1978 (being Laws 1973,
 5 Chapter 258, Section 105, as amended by Laws 2001, Chapter
 6 253, Section 1 and by Laws 2001, Chapter 254, Section 1) is
 7 amended to read:

8 "7-38-65. COLLECTION OF DELINQUENT TAXES ON REAL
 9 PROPERTY-- SALE OF REAL PROPERTY. --

10 A. The ~~[department]~~ collecting authority may
 11 collect delinquent taxes on real property by selling the real
 12 property on which the taxes have become delinquent. The sale
 13 of real property for delinquent taxes shall be in accordance
 14 with the provisions of the Property Tax Code. Real property
 15 may be sold for delinquent taxes at any time after the
 16 expiration of three years from the first date shown on the tax
 17 delinquency list on which the taxes became delinquent. Real
 18 property shall be offered for sale for delinquent taxes either
 19 within four years after the first date shown on the tax
 20 delinquency list on which the taxes became delinquent or, if
 21 the ~~[department]~~ collecting authority is barred by operation
 22 of law or by order of a court of competent jurisdiction from
 23 offering the property for sale for delinquent taxes within
 24 four years after the first date shown on the tax delinquency
 25 list on which the taxes became delinquent, within one year

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1 from the time the [~~department~~] collecting authority determines
2 that it is no longer barred from selling the property, unless:

3 (1) all delinquent taxes, penalties, interest
4 and costs due are paid by 5:00 p. m. of the day prior to the
5 date of the sale; or

6 (2) an installment agreement for payment of
7 all delinquent taxes, penalties, interests and costs due is
8 entered into with the [~~department~~] collecting authority by
9 5:00 p. m. of the day prior to the date of the sale pursuant to
10 Section 7-38-68 NMSA 1978.

11 B. Failure to offer property for sale within the
12 time prescribed by Subsection A of this section shall not
13 impair the validity or effect of any sale which does take
14 place.

15 C. The time requirements of this section are
16 subject to the provisions of Section 7-38-83 NMSA 1978. "

17 Section 15. Section 7-38-66 NMSA 1978 (being Laws 1973,
18 Chapter 258, Section 106, as amended by Laws 2001, Chapter
19 253, Section 2 and by Laws 2001, Chapter 254, Section 2) is
20 amended to read:

21 "7-38-66. SALE OF REAL PROPERTY FOR DELINQUENT TAXES--
22 NOTICE OF SALE.--

23 A. At least twenty days but not more than thirty
24 days before the date of the sale for delinquent taxes, the
25 [~~department~~] collecting authority shall notify by certified

1 mail, return receipt requested, to the address as shown on the
2 most recent property tax schedule, each property owner whose
3 real property will be sold that the owner's real property will
4 be sold to satisfy delinquent taxes, unless:

5 (1) all delinquent taxes, penalties, interest
6 and costs due are paid by 5:00 p.m. of the day prior to the
7 date of the sale; or

8 (2) an installment agreement for payment of
9 all delinquent taxes, penalties, interest and costs due is
10 entered into with the [~~department~~] collecting authority by
11 5:00 p.m. of the day prior to the date of sale in accordance
12 with Section 7-38-68 NMSA 1978.

13 B. The notice shall also:

14 (1) state the amount of taxes, penalties,
15 interest and costs due;

16 (2) state the time and place of the sale;

17 (3) describe the real property that will be
18 sold;

19 (4) inform the property owner of his right to
20 enter into an installment agreement with the [~~department~~]
21 collecting authority for payment of delinquent taxes,
22 penalties, interest and costs, in accordance with Section
23 7-38-68 NMSA 1978;

24 (5) provide information on the name and phone
25 number of the individual in the [~~department~~] collecting

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1 authority the taxpayer can contact to arrange for an
2 installment agreement in accordance with Section 7-38-68 NMSA
3 1978; and

4 (6) contain any other information that the
5 department may require by regulation.

6 C. At the same time a notice required by
7 Subsection A of this section is sent to the owner of the
8 property, a notice containing the information set out in
9 Subsection B of this section shall also be sent to each person
10 holding a lien or security interest of record in the property
11 if an address for such person is reasonably ascertainable
12 through a search of the property records of the county in
13 which the property is located.

14 D. Failure of the [~~department~~] collecting
15 authority to mail a required notice by certified mail, return
16 receipt requested, shall invalidate the sale; provided,
17 however, that return to the [~~department~~] collecting authority
18 of the notice of the return receipt shall be deemed adequate
19 notice and shall not invalidate the sale.

20 E. Proof by the taxpayer that all delinquent
21 taxes, penalties, interest and costs had been paid by 5:00
22 p.m. of the day prior to the date of sale shall prevent or
23 invalidate the sale.

24 F. Proof by the taxpayer that the taxpayer has, by
25 5:00 p.m. of the day prior to the date of sale, entered into

1 an installment agreement to pay all delinquent taxes,
 2 penalties, interest and costs as provided in Section 7-38-68
 3 NMSA 1978 and that timely payments under such agreement are
 4 being made shall prevent or invalidate the sale.

5 G. The time requirements of this section are
 6 subject to the provisions of Section 7-38-83 NMSA 1978. "

7 Section 16. Section 7-38-67 NMSA 1978 (being Laws 1973,
 8 Chapter 258, Section 107, as amended by Laws 2001, Chapter
 9 253, Section 3 and by Laws 2001, Chapter 254, Section 3) is
 10 amended to read:

11 "7-38-67. REAL PROPERTY SALE REQUIREMENTS. --

12 A. Real property may not be sold for delinquent
 13 taxes before the expiration of three years from the first date
 14 shown on the tax delinquency list on which the taxes on the
 15 real property became delinquent.

16 B. Notice of the sale shall be published in a
 17 local newspaper within the county where the real property is
 18 located or, if there is no local county or municipal
 19 newspaper, then a newspaper published in a county contiguous
 20 to or near the county in which the real property is located,
 21 at least once a week for the three weeks immediately preceding
 22 the week of the sale. For more generalized notice, the
 23 [~~department~~] collecting authority may choose to publish notice
 24 of the sale also in a newspaper not published within the
 25 county and of more general circulation. The notice shall

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1 state the time and place of the sale and shall include a
2 description of the real property sufficient to permit its
3 identification and location by potential purchasers.

4 C. Real property shall be sold at public auction
5 either by the ~~[department]~~ collecting authority or an
6 auctioneer hired by the ~~[department]~~ collecting authority.
7 The auction shall be held in the county where the real
8 property is located at a time and place designated by the
9 ~~[department]~~ collecting authority.

10 D. If the real property can be divided so as to
11 enable the ~~[department]~~ collecting authority to sell only part
12 of it and pay all delinquent taxes, penalties, interest and
13 costs, the ~~[department]~~ collecting authority may, with the
14 consent of the owner, sell only a part of the real property.

15 E. Before the sale, the ~~[department]~~ collecting
16 authority shall determine a minimum sale price for the real
17 property. In determining the minimum price, the ~~[department]~~
18 collecting authority shall consider the value of the property
19 owner's interest in the real property, the amount of all
20 delinquent taxes, penalties and interest for which it is being
21 sold and the costs. The minimum price shall not be less than
22 the total of all delinquent taxes, penalties, interest and
23 costs. Real property may not be sold for less than the
24 minimum price unless no offer met the minimum price when it
25 was offered at an earlier public auction. A sale properly

1 made under the authority of and in accordance with the
 2 requirements of this section constitutes full payment of all
 3 delinquent taxes, penalties and interest that are a lien
 4 against the property at the time of sale, and the sale
 5 extinguishes the lien.

6 F. Payment shall be made in full by the close of
 7 the public auction before an offer may be deemed accepted by
 8 the ~~[department]~~ collecting authority.

9 G. Real property not offered for sale may be
 10 offered for sale at a later sale, but the requirements of this
 11 section and Section 7-38-66 NMSA 1978 shall be met in
 12 connection with each sale. "

13 Section 17. Section 7-38-68 NMSA 1978 (being Laws 1973,
 14 Chapter 258, Section 108, as amended) is amended to read:

15 "7-38-68. INSTALLMENT AGREEMENTS. --

16 A. The ~~[division]~~ collecting authority may enter
 17 into an installment agreement for the payment of all
 18 delinquent property taxes, penalties, interest and costs due
 19 with respect to either real property or a manufactured home
 20 with the owner of the real property or manufactured home whose
 21 taxes have become delinquent ~~[and whose account for all or~~
 22 ~~part of the delinquent taxes has been transferred for~~
 23 ~~collection to the division]~~. 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

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

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

20 C. The ~~[division]~~ collecting authority may proceed
21 under the Property Tax Code to collect the property taxes,
22 penalties, interest and costs due and unpaid if:

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

25 (2) the property owner fails to pay other

1 property taxes when required; or

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

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

10 E. If an owner of real property or a manufactured
11 home enters into an installment agreement and subsequently
12 breaches the agreement under this section, the ~~[division]~~
13 collecting authority 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]~~ collecting authority and made available for
20 public inspection. "

21 Section 18. Section 7-38-69 NMSA 1978 (being Laws 1973,
22 Chapter 258, Section 109, as amended) is amended to read:

23 "7-38-69. DISTRIBUTION OF AMOUNTS COLLECTED UNDER
24 INSTALLMENT AGREEMENTS. -- Amounts collected under installment
25 agreements entered into by the ~~[department]~~ collecting

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

17 Section 19. Section 7-38-70 NMSA 1978 (being Laws 1973,
18 Chapter 258, Section 110, as amended) is amended to read:

19 "7-38-70. ISSUANCE OF DEEDS AS RESULT OF SALE OF REAL
20 PROPERTY FOR DELINQUENT TAXES--EFFECT OF DEEDS--LIMITATION OF
21 ACTION TO CHALLENGE CONVEYANCE. --

22 A. Upon receiving payment for real property sold
23 for delinquent taxes, the ~~division~~ collecting authority
24 shall execute and deliver a deed to the purchaser.

25 B. If the real property was sold substantially in

1 accordance with the Property Tax Code, the deed conveys all of
 2 the former property owner's interest in the real property as
 3 of the date the [~~state's~~] collecting authority's lien for real
 4 property taxes arose in accordance with the Property Tax Code,
 5 subject only to perfected interests in the real property
 6 existing before the date the property tax lien arose.

7 C. After two years from the date of sale, neither
 8 the former real property owner shown on the property tax
 9 schedule as the delinquent taxpayer nor anyone claiming
 10 through him may bring an action challenging the conveyance.

11 D. Subject to the limitation of Subsection C of
 12 this section, in all controversies and suits involving title
 13 to real property held under a deed from the [~~state~~] collecting
 14 authority issued under this section, any person claiming title
 15 adverse to that acquired by the deed from the [~~state-must~~]
 16 collecting authority shall prove, in order to defeat the
 17 title, that:

18 (1) the real property was not subject to
 19 taxation for the tax years for which the delinquent taxes for
 20 which it was sold were imposed;

21 (2) the [~~division~~] collecting authority
 22 failed to ~~mail~~ the notice required under Section 7-38-66 NMSA
 23 1978 or to receive any required return receipt;

24 (3) he, or the person through whom he claims,
 25 had title to the real property at the time of the sale and had

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1 paid all delinquent taxes, penalties, interest and costs prior
2 to the sale as provided in Subsection E of Section 7-38-66
3 NMSA 1978; or

4 (4) he, or the person through whom he claims,
5 had entered into an installment agreement to pay all
6 delinquent taxes, penalties, interest and costs prior to the
7 sale as provided in Section 7-38-68 NMSA 1978 and that all
8 payments due were made timely."

9 Section 20. Section 7-38-71 NMSA 1978 (being Laws 1973,
10 Chapter 258, Section 111, as amended) is amended to read:

11 "7-38-71. DISTRIBUTION OF AMOUNTS RECEIVED FROM SALE OF
12 PROPERTY. --

13 A. If the collecting authority is the department,
14 money received by the department from the sale of real or
15 personal property for delinquent property taxes shall be
16 deposited in a suspense fund and distributed as follows:

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

21 (2) second, that portion equal to the
22 penalties and interest due shall be retained by the department
23 for use, subject to appropriation by the legislature, by the
24 department in administration of the Property Tax Code;

25 (3) third, that portion equal to the

1 delinquent taxes due shall be remitted by the department to
 2 the appropriate county treasurer for distribution by the
 3 treasurer to the governmental units in accordance with the law
 4 and the regulations of the department of finance and
 5 administration; and

6 (4) the balance shall be paid to the former
 7 owner of the property sold or to any other person designated
 8 by order directed to the department by a court of competent
 9 jurisdiction, provided that the department may first apply all
 10 or any portion of the balance to be paid against the amount of
 11 any property tax, including any penalty and interest related
 12 thereto, owed by the person to whom the balance would
 13 otherwise be paid.

14 B. If the collecting authority is a county, money
 15 received by the county from the sale of real or personal
 16 property for delinquent property taxes shall be distributed as
 17 follows:

18 (1) first, that portion equal to the costs
 19 incurred by the county, including any amount owed to a
 20 qualified private attorney under a contract entered into
 21 pursuant to Section 7-38-61.1 NMSA 1978, and the penalties and
 22 interest due shall be deposited in the general fund of the
 23 county;

24 (2) second, the balance, up to an amount
 25 equal to the delinquent taxes due, shall be distributed by the

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1 county treasurer to the governmental units in accordance with
2 the law and regulations of the department of finance and
3 administration; and

4 (3) the balance shall be paid to the former
5 owner of the property sold or to any other person designated
6 by order directed to the county by a court of competent
7 jurisdiction, provided that the county may first apply all or
8 any portion of the balance to be paid against the amount of
9 any property tax, including any penalty and interest related
10 thereto, owed by the person to whom the balance would
11 otherwise be paid.

12 ~~[B.]~~ C. As a condition precedent to payment of the
13 balance of the sale amount received to the former owner of the
14 property, the ~~[department]~~ collecting authority may require
15 any person claiming to be entitled to that payment to present
16 sufficient evidence of proof of former ownership of the
17 property to the ~~[department]~~ collecting authority. The
18 department shall adopt regulations providing for the
19 procedures to be followed by persons claiming sale proceeds as
20 former owners in those instances where conflicting claims
21 exist or the ~~[department]~~ collecting authority requires proof
22 of ownership.

23 ~~[C.]~~ D. If no person claims the balance of sale
24 proceeds, whether the property was sold under the provisions
25 of the Property Tax Code or prior law, as the former owner of

1 the property within two years of the date of the sale and
 2 after a reasonable search to determine the former owner is
 3 made by the ~~[department]~~ collecting authority and no former
 4 owner is found, the balance of the sale proceeds shall be
 5 considered abandoned property and deposited in accordance with
 6 the provisions of the Uniform Unclaimed Property Act.

7 ~~[D.]~~ E. If the balance of proceeds from the sale
 8 after paying a higher priority claim under Subsection A or B
 9 of this section is insufficient to pay all of the next
 10 priority claim, then the complete balance shall be applied to
 11 that next priority claim as partial payment. "

12 Section 21. Section 7-38-72 NMSA 1978 (being Laws 1973,
 13 Chapter 258, Section 112, as amended) is amended to read:

14 "7-38-72. NOTATION ON PROPERTY TAX SCHEDULE BY COUNTY
 15 TREASURER WHEN PROPERTY SOLD FOR DELINQUENT TAXES. --When the
 16 county treasurer receives written notification from the
 17 ~~[division]~~ collecting authority of the sale of property for
 18 delinquent taxes, ~~[he]~~ the treasurer shall make an entry on
 19 the property tax schedule indicating that the delinquent
 20 property taxes, penalties and interest are no longer a lien
 21 against the property. "

22 Section 22. EFFECTIVE DATE. --The effective date of the
 23 provisions of this act is July 1, 2002.

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