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SENATE BILL 184

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

INTRODUCED BY

Lidi o G. Rainaldi

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 (1) prepared and transferred to the  
22 department by a county that has not elected, pursuant to  
23 Section 7-38-61.1 NMSA 1978, to assume authority for the  
24 collection of delinquent taxes; or

25 (2) prepared by a county that has elected,

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1 pursuant to Section 7-38-61.1 NMSA 1978, to assume authority  
2 for the collection of delinquent taxes but identified by the  
3 county to the department as delinquent taxes that the county  
4 desires the department to collect.

5 B. Property taxes, penalties and interest  
6 collected shall be receipted and accounted for in accordance  
7 with law and regulations of the department of finance and  
8 administration.

9 C. Any payments received by the treasurer or the  
10 department as payments for property taxes, penalties or  
11 interest shall be first applied to the oldest outstanding  
12 unpaid property taxes, penalties or interest accrued in prior  
13 property tax years on the property identified and described in  
14 the property tax bill for which payment is tendered or, if the  
15 payment cannot be identified with a particular year's property  
16 tax bill, then the payment shall be applied first to the  
17 oldest liability for property taxes, penalties and interest  
18 shown in the treasurer's records under the name of the paying  
19 taxpayer. In applying the foregoing requirements for  
20 applications of payments and in the adoption of any  
21 regulations to implement those provisions, the following  
22 additional rules shall apply:

23 (1) applications of payments to prior year's  
24 delinquent taxes, penalties and interest shall not be made for  
25 more than ten years prior to the year of payment unless the

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1 treasurer's records show that the property for which taxes are  
2 delinquent has been deeded to the state of New Mexico and that  
3 property has not been sold by the state pursuant to applicable  
4 law;

5 (2) after application of payment received, if  
6 all or part of the payment has been applied to a prior year's  
7 delinquent taxes, penalties or interest, the receipting  
8 authority shall issue a receipt to the paying taxpayer showing  
9 the application of the payment and indicating any balance due  
10 for taxes, penalties or interest to bring the property tax  
11 payment status current; and

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

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

23 "7-38-48. PROPERTY TAXES ARE A LIEN AGAINST REAL  
24 PROPERTY FROM JANUARY 1--PRIORITIES--CONTINUANCE OF TAXING  
25 PROCESS.--Taxes on real property are a lien against the real

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1 property from January 1 of the tax year for which the taxes  
2 are imposed. The lien runs in favor of the [state] collecting  
3 authority and secures the payment of taxes on the real  
4 property and any penalty and interest that [~~becomes~~] become  
5 due. The lien continues until the taxes and any penalty and  
6 interest are paid. The lien created by this section is a  
7 first lien and paramount to any other interest in the  
8 property, perfected or unperfected. The annual taxing process  
9 provided for in the Property Tax Code shall continue as to any  
10 particular property regardless of prior tax delinquencies or  
11 of pending protests, actions for refunds or other tax  
12 controversies involving the property, including a sale for  
13 delinquent taxes."

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

16 "7-38-50. DELINQUENT TAXES--CIVIL PENALTIES.--

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

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1 subsection by resolution of its county commissioners adopted  
2 not later than September 1 of that tax year. A copy of any  
3 such resolution shall be forwarded to the county treasurer.

4 B. If property taxes become delinquent because of  
5 an intent to defraud by the property owner, fifty percent of  
6 the property taxes due or fifty dollars (\$50.00), whichever is  
7 greater, shall be added as a penalty.

8 C. An additional penalty to defray costs of  
9 collection shall be imposed if the county has elected,  
10 pursuant to Section 7-38-61.1 NMSA 1978, to assume authority  
11 for the collection of delinquent taxes and has referred the  
12 collection to a qualified private attorney. The additional  
13 penalty shall equal the amount agreed to between the county  
14 and the attorney but shall not exceed thirty percent of the  
15 amount of taxes, penalties, interest and costs otherwise due  
16 at the time of collection."

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

19 "7-38-51. NOTIFICATION TO PROPERTY OWNER OF DELINQUENT  
20 PROPERTY TAXES. --

21 A. In respect to any tax that is delinquent for  
22 more than thirty days as of June 30 of each year, no later  
23 than August 1, the county treasurer shall mail a notice of  
24 delinquency to:

25 (1) the owner of the property as shown on the

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1 property tax schedule at the address of the owner as shown on  
2 the most recent property tax schedule; and

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

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

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

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

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

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

22 (5) if the county has elected, pursuant to  
23 Section 7-38-61.1 NMSA 1978, to assume authority for the  
24 collection of delinquent taxes, a statement that, if the taxes  
25 are not paid before September 1, the delinquent taxes may be

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1 referred to a qualified private attorney and that an  
2 additional civil penalty of up to thirty percent of the taxes,  
3 penalties, interest and costs otherwise due will be incurred."

4 Section 6. Section 7-38-60 NMSA 1978 (being Laws 1973,  
5 Chapter 258, Section 101, as amended) is amended to read:

6 "7-38-60. NOTIFICATION TO PROPERTY OWNER OF DELINQUENT  
7 TAXES. --By June 10 of each year, the county treasurer shall  
8 mail a notice to each property owner of property for which  
9 taxes have been delinquent for more than two years. The  
10 notice shall be in a form and contain the information  
11 prescribed by department regulations and shall include the  
12 following:

13 A. a description of the property upon which the  
14 taxes are due;

15 B. a statement of the amount of property taxes  
16 due, the date on which they became delinquent, the rate of  
17 accrual of interest and any penalties or costs that may be  
18 charged;

19 C. if the county has not elected, pursuant to  
20 Section 7-38-61.1 NMSA 1978, to assume authority for the  
21 collection of delinquent taxes, a statement that the  
22 delinquent tax account on real property will be transferred to  
23 the department for collection;

24 D. a statement that if taxes due on real property  
25 are not paid within three years from the date of delinquency,

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1 the real property will be sold and a deed issued; and

2 E. a statement that if taxes due on personal  
3 property are not paid, the personal property may be seized and  
4 sold for taxes under authority of a demand warrant. "

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

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

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

23 ~~[B. The county treasurer shall make a notation on~~  
24 ~~the property tax schedule indicating that the account has been~~  
25 ~~transferred to the department for collection at the time the~~

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1 ~~tax delinquency list is mailed to the department.]~~

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

8 C. If the county has elected, pursuant to Section  
9 7-38-61.1 NMSA 1978, to assume authority for the collection of  
10 delinquent taxes but the county treasurer desires that the  
11 department collect one or more designated delinquent taxes,  
12 the treasurer shall identify the designated delinquencies and  
13 properties to the department and make a notation on the  
14 property tax schedule indicating that the account for those  
15 taxes has been transferred to the department for collection."

16 Section 8. A new section of the Property Tax Code,  
17 Section 7-38-61.1 NMSA 1978, is enacted to read:

18 "7-38-61.1. [NEW MATERIAL] COUNTY OPTION TO COLLECT  
19 DELINQUENT TAXES ON REAL PROPERTY--AUTHORITY TO CONTRACT FOR  
20 THE COLLECTION OF DELINQUENT TAXES.--

21 A. Commencing in the 2003 tax year, a county may  
22 elect to assume authority for collection of delinquent  
23 property taxes due on real property in the county, including  
24 authority to sell the property pursuant to the provisions of  
25 the Property Tax Code. To make the election, the board of

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1 county commissioners, with the express concurrence in writing  
2 of the county treasurer, shall adopt a resolution to assume  
3 the authority and shall deliver or mail a copy of the  
4 resolution to the department no later than thirty days after  
5 its adoption and at least thirty days prior to January 1 of  
6 the tax year to which the resolution first applies.

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

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

13 (2) selling the real property on which taxes  
14 have become delinquent pursuant to Sections 7-38-65 through  
15 7-38-67 and 7-38-70 through 7-38-72 NMSA 1978; and

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

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

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

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

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

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

20 Section 9. A new section of the Property Tax Code,  
21 Section 7-38-61.2 NMSA 1978, is enacted to read:

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

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1 authority to collect delinquent taxes or its qualified private  
2 attorney may file suit seeking a personal judgment against the  
3 taxpayer. The suit shall be filed in a court of competent  
4 jurisdiction for the county in which the tax was or is  
5 imposed. "

6 Section 10. A new section of the Property Tax Code,  
7 Section 7-38-61.3 NMSA 1978, is enacted to read:

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

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

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

24 B. Each item specified by Subsection A of this  
25 section is a charge against the property and a personal

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1 obligation of the property owner and shall be collectible in  
2 the same manner as the taxes, penalties, interest and costs  
3 due by the owner. "

4 Section 11. A new section of the Property Tax Code,  
5 Section 7-38-61.4 NMSA 1978, is enacted to read:

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

15 A. first, the amount owed to the qualified private  
16 attorney under a contract entered into pursuant to Section  
17 7-38-61.1 NMSA 1978 shall be paid to that attorney;

18 B. second, that portion equal to the costs  
19 incurred by the county, exclusive of the amount paid pursuant  
20 to Subsection A of this section, and the penalties and  
21 interest due shall be deposited in the general fund of the  
22 county; and

23 C. third, that portion equal to the delinquent  
24 taxes due shall be distributed by the county treasurer to the  
25 governmental units in accordance with the law and regulations

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1 of the department of finance and administration. "

2 Section 12. Section 7-38-62 NMSA 1978 (being Laws 1973,  
3 Chapter 258, Section 102, as amended) is amended to read:

4 "7-38-62. AUTHORITY OF DEPARTMENT TO COLLECT DELINQUENT  
5 PROPERTY TAXES [~~AFTER RECEIPT OF TAX DELINQUENCY LIST~~] -- USE OF  
6 PENALTIES, INTEREST AND COSTS. -- [~~After the receipt of the tax  
7 delinquency list~~]

8 A. The department has the responsibility and  
9 exclusive authority to take all action necessary to collect  
10 [~~delinquent taxes shown on the list~~]:

11 (1) delinquent taxes shown on a tax  
12 delinquency list prepared and transferred to the department by  
13 a county that has not elected to assume the authority to  
14 collect taxes pursuant to Section 7-38-61.1 NMSA 1978; and

15 (2) delinquent taxes identified by a county  
16 that has elected to assume authority for the collection of  
17 delinquent taxes, pursuant to Section 7-38-61.1 NMSA 1978, as  
18 delinquent taxes that the county desires the department to  
19 collect.

20 B. This authority includes bringing collection  
21 actions in the district courts based upon the personal  
22 liability of the property owner for taxes as well as the  
23 actions authorized in the Property Tax Code for proceeding  
24 against the property subject to the tax for collection of  
25 delinquent taxes. Payment of delinquent taxes listed and any

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1 penalty, interest or costs due in connection with those taxes  
2 shall be made to the department if occurring after the  
3 ~~[receipt by the department of the tax delinquency list]~~  
4 authority to collect those delinquent taxes has been granted  
5 to the department pursuant to Subsection A of this section;  
6 however, the department may authorize county treasurers to act  
7 as its agents in accepting payments of taxes, penalties,  
8 interest or costs due. Penalties, interest and costs due  
9 received by the department under this section shall be  
10 retained by the department for use, subject to appropriation  
11 by the legislature, in the administration of the Property Tax  
12 Code. "

13 Section 13. Section 7-38-65 NMSA 1978 (being Laws 1973,  
14 Chapter 258, Section 105, as amended by Laws 2001, Chapter  
15 253, Section 1 and by Laws 2001, Chapter 254, Section 1) is  
16 amended to read:

17 "7-38-65. COLLECTION OF DELINQUENT TAXES ON REAL  
18 PROPERTY--SALE OF REAL PROPERTY. --

19 A. The ~~[department]~~ collecting authority may  
20 collect delinquent taxes on real property by selling the real  
21 property on which the taxes have become delinquent. The sale  
22 of real property for delinquent taxes shall be in accordance  
23 with the provisions of the Property Tax Code. Real property  
24 may be sold for delinquent taxes at any time after the  
25 expiration of three years from the first date shown on the tax

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1 delinquency list on which the taxes became delinquent. Real  
2 property shall be offered for sale for delinquent taxes either  
3 within four years after the first date shown on the tax  
4 delinquency list on which the taxes became delinquent or, if  
5 the ~~[department]~~ collecting authority is barred by operation  
6 of law or by order of a court of competent jurisdiction from  
7 offering the property for sale for delinquent taxes within  
8 four years after the first date shown on the tax delinquency  
9 list on which the taxes became delinquent, within one year  
10 from the time the ~~[department]~~ collecting authority determines  
11 that it is no longer barred from selling the property, unless:

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

15 (2) an installment agreement for payment of  
16 all delinquent taxes, penalties, interests and costs due is  
17 entered into with the ~~[department]~~ collecting authority by  
18 5:00 p. m. of the day prior to the date of the sale pursuant to  
19 Section 7-38-68 NMSA 1978.

20 B. Failure to offer property for sale within the  
21 time prescribed by Subsection A of this section shall not  
22 impair the validity or effect of any sale which does take  
23 place.

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

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1           Section 14. Section 7-38-66 NMSA 1978 (being Laws 1973,  
2 Chapter 258, Section 106, as amended by Laws 2001, Chapter  
3 253, Section 2 and by Laws 2001, Chapter 254, Section 2) is  
4 amended to read:

5           "7-38-66. SALE OF REAL PROPERTY FOR DELINQUENT TAXES--  
6 NOTICE OF SALE.--

7           A. At least twenty days but not more than thirty  
8 days before the date of the sale for delinquent taxes, the  
9 [department] collecting authority shall notify by certified  
10 mail, return receipt requested, to the address as shown on the  
11 most recent property tax schedule, each property owner whose  
12 real property will be sold that the owner's real property will  
13 be sold to satisfy delinquent taxes, unless:

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

17                   (2) an installment agreement for payment of  
18 all delinquent taxes, penalties, interest and costs due is  
19 entered into with the [department] collecting authority by  
20 5:00 p.m. of the day prior to the date of sale in accordance  
21 with Section 7-38-68 NMSA 1978.

22           B. The notice shall also:

23                   (1) state the amount of taxes, penalties,  
24 interest and costs due;

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

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1 (3) describe the real property that will be  
2 sold;

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

8 (5) provide information on the name and phone  
9 number of the individual in the [~~department~~] collecting  
10 authority the taxpayer can contact to arrange for an  
11 installment agreement in accordance with Section 7-38-68 NMSA  
12 1978; and

13 (6) contain any other information that the  
14 department may require by regulation.

15 C. At the same time a notice required by  
16 Subsection A of this section is sent to the owner of the  
17 property, a notice containing the information set out in  
18 Subsection B of this section shall also be sent to each person  
19 holding a lien or security interest of record in the property  
20 if an address for such person is reasonably ascertainable  
21 through a search of the property records of the county in  
22 which the property is located.

23 D. Failure of the [~~department~~] collecting  
24 authority to mail a required notice by certified mail, return  
25 receipt requested, shall invalidate the sale; provided,

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1 however, that return to the [~~department~~] collecting authority  
2 of the notice of the return receipt shall be deemed adequate  
3 notice and shall not invalidate the sale.

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

8 F. Proof by the taxpayer that the taxpayer has, by  
9 5:00 p.m. of the day prior to the date of sale, entered into  
10 an installment agreement to pay all delinquent taxes,  
11 penalties, interest and costs as provided in Section 7-38-68  
12 NMSA 1978 and that timely payments under such agreement are  
13 being made shall prevent or invalidate the sale.

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

16 Section 15. Section 7-38-67 NMSA 1978 (being Laws 1973,  
17 Chapter 258, Section 107, as amended by Laws 2001, Chapter  
18 253, Section 3 and by Laws 2001, Chapter 254, Section 3) is  
19 amended to read:

20 "7-38-67. REAL PROPERTY SALE REQUIREMENTS. --

21 A. Real property may not be sold for delinquent  
22 taxes before the expiration of three years from the first date  
23 shown on the tax delinquency list on which the taxes on the  
24 real property became delinquent.

25 B. Notice of the sale shall be published in a

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1 local newspaper within the county where the real property is  
2 located or, if there is no local county or municipal  
3 newspaper, then a newspaper published in a county contiguous  
4 to or near the county in which the real property is located,  
5 at least once a week for the three weeks immediately preceding  
6 the week of the sale. For more generalized notice, the  
7 ~~[department]~~ collecting authority may choose to publish notice  
8 of the sale also in a newspaper not published within the  
9 county and of more general circulation. The notice shall  
10 state the time and place of the sale and shall include a  
11 description of the real property sufficient to permit its  
12 identification and location by potential purchasers.

13 C. Real property shall be sold at public auction  
14 either by the ~~[department]~~ collecting authority or an  
15 auctioneer hired by the ~~[department]~~ collecting authority.  
16 The auction shall be held in the county where the real  
17 property is located at a time and place designated by the  
18 ~~[department]~~ collecting authority.

19 D. If the real property can be divided so as to  
20 enable the ~~[department]~~ collecting authority to sell only part  
21 of it and pay all delinquent taxes, penalties, interest and  
22 costs, the ~~[department]~~ collecting authority may, with the  
23 consent of the owner, sell only a part of the real property.

24 E. Before the sale, the ~~[department]~~ collecting  
25 authority shall determine a minimum sale price for the real

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1 property. In determining the minimum price, the ~~[department]~~  
2 collecting authority shall consider the value of the property  
3 owner's interest in the real property, the amount of all  
4 delinquent taxes, penalties and interest for which it is being  
5 sold and the costs. The minimum price shall not be less than  
6 the total of all delinquent taxes, penalties, interest and  
7 costs. Real property may not be sold for less than the  
8 minimum price unless no offer met the minimum price when it  
9 was offered at an earlier public auction. A sale properly  
10 made under the authority of and in accordance with the  
11 requirements of this section constitutes full payment of all  
12 delinquent taxes, penalties and interest that are a lien  
13 against the property at the time of sale, and the sale  
14 extinguishes the lien.

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

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

22 Section 16. Section 7-38-68 NMSA 1978 (being Laws 1973,  
23 Chapter 258, Section 108, as amended) is amended to read:

24 "7-38-68. INSTALLMENT AGREEMENTS. --

25 A. The ~~[division]~~ collecting authority may enter

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1 into an installment agreement for the payment of all  
2 delinquent property taxes, penalties, interest and costs due  
3 with respect to either real property or a manufactured home  
4 with the owner of the real property or manufactured home whose  
5 taxes have become delinquent [~~and whose account for all or~~  
6 ~~part of the delinquent taxes has been transferred for~~  
7 ~~collection to the division~~]. Execution of an installment  
8 agreement under this section by a property owner is an  
9 irrevocable admission of liability for all taxes that are the  
10 subject of the agreement. The installment agreement shall be  
11 in writing and shall not extend for a period of more than  
12 thirty-six months. Interest shall accrue on the unpaid  
13 balance during the period of the installment agreement. The  
14 rate of interest shall be one percent a month, and no other  
15 interest on that portion of the principal representing unpaid  
16 taxes shall accrue while an installment agreement is in  
17 effect. The [~~division~~] collecting authority shall not enter  
18 into an installment agreement with a property owner on or  
19 after the date of the initial sale of real property or  
20 manufactured home for delinquent taxes whether or not the real  
21 property or manufactured home is sold and a deed issued as a  
22 result of that sale. The [~~division~~] department shall  
23 promulgate regulations establishing requirements for a minimum  
24 down payment and substantially equal monthly payments for  
25 installment agreements.

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1           B. An installment agreement prevents any further  
2 action to collect the delinquent taxes stated in the agreement  
3 as long as the terms of the agreement are met.

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

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

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

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

13           D. For the purpose of computing the time when real  
14 property or a manufactured home may be sold for delinquent  
15 taxes, the date of original delinquency shall be used when the  
16 delinquent taxes have been the subject of an installment  
17 agreement that was subsequently breached by the property  
18 owner.

19           E. If an owner of real property or a manufactured  
20 home enters into an installment agreement and subsequently  
21 breaches the agreement under this section, the [~~division~~]  
22 collecting authority shall not enter into another installment  
23 agreement with that property owner for the payment of the  
24 delinquent taxes that were the subject of the installment  
25 agreement.



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1 F. Alphabetically indexed and serially numbered  
2 records of installment agreements must be kept in the office  
3 of the [~~director~~] secretary and made available for public  
4 inspection. "

5 Section 17. Section 7-38-69 NMSA 1978 (being Laws 1973,  
6 Chapter 258, Section 109, as amended) is amended to read:

7 "7-38-69. DISTRIBUTION OF AMOUNTS COLLECTED UNDER  
8 INSTALLMENT AGREEMENTS. -- Amounts collected under installment  
9 agreements entered into by the [~~department~~] collecting  
10 authority that represent delinquent taxes shall be remitted to  
11 the county treasurer of the county to which the net taxable  
12 value of the property is allocated for distribution to the  
13 governmental units. Amounts collected that represent  
14 penalties, interest and costs shall be [~~retained by the~~  
15 ~~department~~] distributed in accordance with Section 7-38-71  
16 NMSA 1978. Money collected shall be remitted at the times and  
17 in the manner required by regulations of the department of  
18 finance and administration. When the [~~department~~] collecting  
19 authority has received payment in full of delinquent taxes,  
20 penalties, interest and costs paid under an installment  
21 agreement, the [~~department~~] collecting authority shall notify  
22 the county treasurer of that fact, and the county treasurer  
23 shall make an entry on the property tax schedule indicating  
24 that the delinquent property taxes, penalties and interest  
25 have been paid. "

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

3           "7-38-70. ISSUANCE OF DEEDS AS RESULT OF SALE OF REAL  
4 PROPERTY FOR DELINQUENT TAXES-- EFFECT OF DEEDS-- LIMITATION OF  
5 ACTION TO CHALLENGE CONVEYANCE. --

6           A. Upon receiving payment for real property sold  
7 for delinquent taxes, the [~~division~~] collecting authority  
8 shall execute and deliver a deed to the purchaser.

9           B. If the real property was sold substantially in  
10 accordance with the Property Tax Code, the deed conveys all of  
11 the former property owner's interest in the real property as  
12 of the date the [~~state's~~] collecting authority's lien for real  
13 property taxes arose in accordance with the Property Tax Code,  
14 subject only to perfected interests in the real property  
15 existing before the date the property tax lien arose.

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

20           D. Subject to the limitation of Subsection C of  
21 this section, in all controversies and suits involving title  
22 to real property held under a deed from the [~~state~~] collecting  
23 authority issued under this section, any person claiming title  
24 adverse to that acquired by the deed from the [~~state-must~~]  
25 collecting authority shall prove, in order to defeat the

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1 title, that:

2 (1) the real property was not subject to  
3 taxation for the tax years for which the delinquent taxes for  
4 which it was sold were imposed;

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

8 (3) he, or the person through whom he claims,  
9 had title to the real property at the time of the sale and had  
10 paid all delinquent taxes, penalties, interest and costs prior  
11 to the sale as provided in Subsection E of Section 7-38-66  
12 NMSA 1978; or

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

18 Section 19. Section 7-38-71 NMSA 1978 (being Laws 1973,  
19 Chapter 258, Section 111, as amended) is amended to read:

20 "7-38-71. DISTRIBUTION OF AMOUNTS RECEIVED FROM SALE OF  
21 PROPERTY. --

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

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

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

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

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

23 B. If the collecting authority is a county, money  
24 received by the county from the sale of real or personal  
25 property for delinquent property taxes shall be distributed as

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1 follows:

2 (1) first, that portion, if any, owed to a  
3 qualified private attorney under a contract entered into  
4 pursuant to Section 7-38-61.1 NMSA 1978 shall be paid to that  
5 attorney;

6 (2) second, that portion equal to the costs  
7 incurred by the county, exclusive of any payment made pursuant  
8 to Paragraph (1) of this subsection, and the penalties and  
9 interest due shall be deposited in the general fund of the  
10 county;

11 (3) third, that portion equal to the  
12 delinquent taxes due shall be distributed by the county  
13 treasurer to the governmental units in accordance with the law  
14 and regulations of the department of finance and  
15 administration; and

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

24 ~~[B.]~~ C. As a condition precedent to payment of the  
25 balance of the sale amount received to the former owner of the

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1 property, the ~~[department]~~ collecting authority may require  
2 any person claiming to be entitled to that payment to present  
3 sufficient evidence of proof of former ownership of the  
4 property to the ~~[department]~~ collecting authority. The  
5 department shall adopt regulations providing for the  
6 procedures to be followed by persons claiming sale proceeds as  
7 former owners in those instances where conflicting claims  
8 exist or the ~~[department]~~ collecting authority requires proof  
9 of ownership.

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

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

24 Section 20. Section 7-38-72 NMSA 1978 (being Laws 1973,  
25 Chapter 258, Section 112, as amended) is amended to read:

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

Section 21. EFFECTIVE DATE. --The effective date of the  
provisions of this act is July 1, 2002.