

1 SENATE BILL 424

2 **44TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION,**
3 **2000**

4 INTRODUCED BY

5 Manny M. Aragon
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11 AN ACT

12 RELATING TO TAXES; PROVIDING FOR THE COLLECTION OF DELINQUENT
13 PROPERTY TAXES THROUGH THE USE OF AN AUTHORIZED PRIVATE
14 ATTORNEY IN CLASS A COUNTIES; AMENDING AND ENACTING SECTIONS
15 OF THE NMSA 1978.
16

17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:
18

19 Section 1. A new section of the Property Tax Code,
20 Section 7-38-47.1 NMSA 1978, is enacted to read:

21 "7-38-47.1. [NEW MATERIAL] AUTHORITY OF COUNTY TO
22 RETAIN A PRIVATE ATTORNEY TO COLLECT DELINQUENT TAXES.--A
23 class A county is authorized to retain a private attorney to
24 collect delinquent taxes and interest and penalties due
25 thereon that are owed to the county or taxing units for which
the county collects the taxes."

Section 2. Section 7-38-48 NMSA 1978 (being Laws 1973,
Chapter 258, Section 88, as amended) is amended to read:

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1 "7-38-48. PROPERTY TAXES ARE A LIEN AGAINST [REAL]
2 PROPERTY FROM JANUARY 1--PRIORITIES--CONTINUANCE OF TAXING
3 PROCESS.--Taxes on [~~real~~] property are a lien against the
4 [~~real~~] property from January 1 of the tax year for which the
5 taxes are imposed. The lien runs in favor of the state and
6 secures the payment of taxes on the [~~real~~] property and any
7 penalty and interest that [~~becomes~~] become due. The lien
8 continues until the taxes and any penalty and interest are
9 paid. The lien created by this section is a first lien and
10 paramount to any other interest in the property, perfected or
11 unperfected. The annual taxing process provided for in the
12 Property Tax Code shall continue as to any particular
13 property regardless of prior tax delinquencies or of pending
14 protests, actions for refunds or other tax controversies
15 involving the property, including a sale for delinquent
16 taxes."

17 Section 3. Section 7-38-50 NMSA 1978 (being Laws 1973,
18 Chapter 258, Section 90, as amended) is amended to read:

19 "7-38-50. DELINQUENT TAXES--CIVIL PENALTIES.--
20 A. If property taxes become delinquent, a penalty
21 of one percent of the delinquent taxes for each month or any
22 portion of a month they remain unpaid shall be imposed, but
23 the total penalty shall not exceed five percent of the
24 delinquent taxes except that, when the penalty determined
25 under the foregoing provisions of this subsection is less
than five dollars (\$5.00), the penalty to be imposed shall be
five dollars (\$5.00). A county may suspend for a particular

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

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

10 C. All delinquent taxes, plus penalties and
11 interest, for all prior years that remain delinquent sixty
12 days after the delinquency date provided for in accordance
13 with Subsection D of Section 7-38-46 NMSA 1978 incur an
14 additional penalty to defray costs of collection if the
15 county has referred the collection of the delinquent taxes,
16 penalties and interest to a private attorney. The additional
17 penalty shall be thirty percent of the amount of taxes,
18 penalties, interest and costs due.

19 D. Any civil penalty assessed pursuant to
20 Subsection C of this section shall become the property of the
21 private attorney employed by the county upon collection from
22 the delinquent taxpayer of the taxes, penalties and
23 interest."

24 Section 4. Section 7-38-51 NMSA 1978 (being Laws 1973,
25 Chapter 258, Section 91, as amended) is amended to read:

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

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

4 (1) the owner of the property as shown on
5 the property tax schedule at the address of the owner as
6 shown on the most recent property tax schedule; and

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

9 B. The notice required by this section shall be in
10 a form and contain the information prescribed by [~~division~~]
11 department regulations and shall include at least the
12 following:

13 (1) a description of the property upon which
14 the property taxes are due;

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

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

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

(5) a statement that, if the delinquent
taxes have been referred for collection to a private attorney

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1 pursuant to Section 7-38-47.1 NMSA 1978, an additional civil
2 penalty of thirty percent of the taxes will be incurred if
3 the taxes are not paid."

4 Section 5. Section 7-38-53 NMSA 1978 (being Laws 1973,
5 Chapter 258, Section 93) is amended to read:

6 "7-38-53. COLLECTION OF DELINQUENT PROPERTY TAXES ON
7 PERSONAL PROPERTY--ASSERTION OF CLAIM AGAINST PERSONAL
8 PROPERTY.--A county treasurer may collect delinquent property
9 taxes on personal property by asserting a claim against the
10 owner's personal property for which taxes are delinquent. A
11 claim shall be asserted by service of a demand warrant by the
12 county treasurer, an employee of his office designated by
13 him, a private attorney retained by the county pursuant to
14 Section 7-38-47.1 NMSA 1978 or the county sheriff upon any
15 person in possession of the personal property subject to the
16 claim."

17 Section 6. A new section of the Property Tax Code,
18 Section 7-38-60.1 NMSA 1978, is enacted to read:

19 "7-38-60.1. [NEW MATERIAL] SUIT TO COLLECT DELINQUENT
20 TAXES AND INTEREST AND PENALTIES.--

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

B. In a suit brought under Subsection A of this

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1 section, a county may foreclose any other property tax lien
2 on the property in favor of the county."

3 Section 7. A new section of the Property Tax Code,
4 Section 7-38-60.2 NMSA 1978, is enacted to read:

5 "7-38-60.2. [NEW MATERIAL] RECOVERY OF COSTS AND
6 EXPENSES IN COLLECTION SUIT.--

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

- 11 (1) all usual court costs, including the
12 cost of serving process;
- 13 (2) costs of filing for record any notice of
14 lis pendens against property;
- 15 (3) expenses of tax sale;
- 16 (4) reasonable expenses that are incurred by
17 the county or its attorney in determining the name, identity
18 and location of necessary parties and in procuring necessary
19 legal descriptions of the property on which a delinquent tax
20 is due; and
- 21 (5) in cases where Subsection C of Section
22 7-38-50 NMSA 1978 is not applicable, reasonable attorney fees
23 of the total amount of thirty percent of the total amount of
24 taxes, penalties and interest due.

25 B. Each item specified by Subsection A of this
section is a charge against the property and shall be
collectible in the same manner as the taxes, penalties,

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

5 Section 8. A new section of the Property Tax Code,
6 Section 7-38-60.3 NMSA 1978, is enacted to read:

7 "7-38-60.3. [NEW MATERIAL] LIABILITY FOR COSTS--COUNTY
8 AND ITS PRIVATE ATTORNEY.--

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

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

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1 Section 9. Section 7-38-62 NMSA 1978 (being Laws 1973,
2 Chapter 258, Section 102, as amended) is amended to read:

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

6 A. Unless a county has retained a private attorney
7 to collect delinquent property taxes, after the receipt of
8 the tax delinquency list, the department has the
9 responsibility and exclusive authority to take all action
10 necessary to collect delinquent taxes shown on the list. If
11 the county has retained a private attorney pursuant to
12 Section 7-38-47.1 NMSA 1978, the county retains the authority
13 to pursue collection through its attorney and has the same
14 authority as that granted the department in Subsection B of
15 this section.

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

22 C. 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,

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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 10. 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 or a private attorney
12 retained by a class A county pursuant to Section 7-38-47.1
13 NMSA 1978 may enter into an installment agreement for the
14 payment of all delinquent property taxes, penalties, interest
15 and costs due with respect to either real property or a
16 manufactured home with the owner of the real property or
17 manufactured home whose taxes have become delinquent and
18 whose account for all or part of the delinquent taxes has
19 been transferred for collection to the ~~[division]~~ department
20 or the private attorney. Execution of an installment
21 agreement under this section by a property owner is an
22 irrevocable admission of liability for all taxes that are the
23 subject of the agreement. The installment agreement shall be
24 in writing and shall not extend for a period of more than
25 thirty-six months. Interest shall accrue on the unpaid
balance during the period of the installment agreement. The
rate of interest shall be one percent a month, and no other

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1 interest on that portion of the principal representing unpaid
2 taxes shall accrue while an installment agreement is in
3 effect. ~~[The division shall not enter into]~~ An installment
4 agreement with a property owner shall not be entered into on
5 or after the date of the initial sale of real property or
6 manufactured home for delinquent taxes whether or not the
7 real property or manufactured home is sold and a deed issued
8 as a result of that sale. The ~~[division]~~ department shall
9 promulgate regulations establishing requirements for a
10 minimum down payment and substantially equal monthly payments
11 for installment agreements.

12 B. An installment agreement prevents any further
13 action to collect the delinquent taxes stated in the
14 agreement as long as the terms of the agreement are met.

15 C. The ~~[division]~~ department or a private attorney
16 retained by a class A county pursuant to Section 7-38-47.1
17 NMSA 1978 may proceed under the Property Tax Code to collect
18 the property taxes, penalties, interest and costs due and
19 unpaid if:

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

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

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

D. For the purpose of computing the time when real
property or a manufactured home may be sold for delinquent

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1 taxes, the date of original delinquency shall be used when
2 the delinquent taxes have been the subject of an installment
3 agreement that was subsequently breached by the property
4 owner.

5 E. If an owner of real property or a manufactured
6 home enters into an installment agreement and subsequently
7 breaches the agreement under this section, neither the
8 ~~[division]~~ department nor a class A county retained private
9 attorney shall ~~[not]~~ enter into another installment agreement
10 with that property owner for the payment of the delinquent
11 taxes that were the subject of the installment agreement.

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

15 Section 11. Section 7-38-69 NMSA 1978 (being Laws 1973,
16 Chapter 258, Section 109, as amended) is amended to read:

17 "7-38-69. DISTRIBUTION OF AMOUNTS COLLECTED UNDER
18 INSTALLMENT AGREEMENTS.--Amounts collected under installment
19 agreements entered into by the department or a private
20 attorney retained by a class A county pursuant to Section
21 7-38-47.1 NMSA 1978 that represent delinquent taxes shall be
22 remitted to the county treasurer of the county to which the
23 net taxable value of the property is allocated for
24 distribution to the governmental units. Amounts collected
25 that represent penalties, interest and costs shall be
retained by the department in accordance with Section 7-38-71
NMSA 1978. Money collected shall be remitted at the times

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1 and in the manner required by applicable law and the
2 regulations of the department of finance and administration.
3 When the department has received payment in full of
4 delinquent taxes, penalties, interest and costs paid under an
5 installment agreement, the department shall notify the county
6 treasurer of that fact, and the county treasurer shall make
7 an entry on the property tax schedule indicating that the
8 delinquent property taxes, penalties and interest have been
9 paid."

10 Section 12. Section 7-38-71 NMSA 1978 (being Laws 1973,
11 Chapter 258, Section 111, as amended) is amended to read:

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

14 A. Money received by the department from the sale
15 of real or personal property for delinquent property taxes
16 shall be deposited in a suspense fund and distributed as
17 follows:

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

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

(3) third, that portion equal to the

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1 penalties provided for in Subsection C of Section 7-38-50
2 NMSA 1978 shall be paid over to the private attorney retained
3 by a class A county pursuant to Section 7-38-47.1 NMSA 1978;

4 [~~(3) third~~] (4) fourth, that portion equal
5 to the delinquent taxes due shall be remitted by the
6 department to the appropriate county treasurer for
7 distribution by the treasurer to the governmental units in
8 accordance with the law and the regulations of the department
9 of finance and administration; and

10 [~~(4)~~] (5) the balance shall be paid to the
11 former owner of the property sold or to any other person
12 designated by order directed to the department by a court of
13 competent jurisdiction; provided that the department may
14 first apply all or any portion of the balance to be paid
15 against the amount of any property tax, including any penalty
16 and interest related thereto, owed by the person to whom the
17 balance would otherwise be paid.

18 B. As a condition precedent to payment of the
19 balance of the sale amount received to the former owner of
20 the property, the department may require any person claiming
21 to be entitled to that payment to present sufficient evidence
22 of proof of former ownership of the property to the
23 department. The department shall adopt regulations providing
24 for the procedures to be followed by persons claiming sale
25 proceeds as former owners in those instances where
conflicting claims exist or the department requires proof of
ownership.

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

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

Section 13. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2000.