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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.