

SB2378



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

SB2378

Introduced 2/15/2013, by Sen. Melinda Bush

SYNOPSIS AS INTRODUCED:

35 ILCS 5/1101
35 ILCS 120/5a

from Ch. 120, par. 11-1101
from Ch. 120, par. 444a

Amends the Illinois Income Tax Act and the Retailers' Occupation Tax Act. Provides that the time limitation period on the Department of Revenue's right to file a notice of lien shall not run during the term of a repayment plan that taxpayer has entered into with the Department, as long as taxpayer remains in compliance with the terms of the repayment plan. Effective immediately.

LRB098 10625 HLH 40902 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning State government.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Income Tax Act is amended by
5 changing Section 1101 as follows:

6 (35 ILCS 5/1101) (from Ch. 120, par. 11-1101)

7 Sec. 1101. Lien for Tax.

8 (a) If any person liable to pay any tax neglects or refuses
9 to pay the same after demand, the amount (including any
10 interest, additional amount, addition to tax, or assessable
11 penalty, together with any costs that may accrue in addition
12 thereto) shall be a lien in favor of the State of Illinois upon
13 all property and rights to property, whether real or personal,
14 belonging to such person.

15 (b) Unless another date is specifically fixed by law, the
16 lien imposed by subsection (a) of this Section shall arise at
17 the time the assessment is made and shall continue until the
18 liability for the amount so assessed (or a judgment against the
19 taxpayer arising out of such liability) is satisfied or becomes
20 unenforceable by reason of lapse of time.

21 (c) Deficiency procedure. If the lien arises from an
22 assessment pursuant to a notice of deficiency, such lien shall
23 not attach and the notice referred to in this section shall not

1 be filed until all proceedings in court for review of such
2 assessment have terminated or the time for the taking thereof
3 has expired without such proceedings being instituted.

4 (d) Notice of lien. The lien created by assessment shall
5 terminate unless a notice of lien is filed, as provided in
6 section 1103 hereof, within 3 years from the date all
7 proceedings in court for the review of such assessment have
8 terminated or the time for the taking thereof has expired
9 without such proceedings being instituted. Where the lien
10 results from the filing of a return without payment of the tax
11 or penalty shown therein to be due, the lien shall terminate
12 unless a notice of lien is filed within 3 years from the date
13 such return was filed with the Department. For the purposes of
14 this subsection (d), a tax return filed before the last day
15 prescribed by law, including any extension thereof, shall be
16 deemed to have been filed on such last day. The time limitation
17 period on the Department's right to file a notice of lien shall
18 not run (1) during any period of time in which the order of any
19 court has the effect of enjoining or restraining the Department
20 from filing such notice of lien, or (2) during the term of a
21 repayment plan that taxpayer has entered into with the
22 Department, as long as taxpayer remains in compliance with the
23 terms of the repayment plan.

24 (Source: P.A. 97-507, eff. 8-23-11.)

25 Section 10. The Retailers' Occupation Tax Act is amended by

1 changing Section 5a as follows:

2 (35 ILCS 120/5a) (from Ch. 120, par. 444a)

3 Sec. 5a. The Department shall have a lien for the tax
4 herein imposed or any portion thereof, or for any penalty
5 provided for in this Act, or for any amount of interest which
6 may be due as provided for in Section 5 of this Act, upon all
7 the real and personal property of any person to whom a final
8 assessment or revised final assessment has been issued as
9 provided in this Act, or whenever a return is filed without
10 payment of the tax or penalty shown therein to be due,
11 including all such property of such persons acquired after
12 receipt of such assessment or filing of such return. The
13 taxpayer is liable for the filing fee incurred by the
14 Department for filing the lien and the filing fee incurred by
15 the Department to file the release of that lien. The filing
16 fees shall be paid to the Department in addition to payment of
17 the tax, penalty, and interest included in the amount of the
18 lien.

19 However, where the lien arises because of the issuance of a
20 final assessment or revised final assessment by the Department,
21 such lien shall not attach and the notice hereinafter referred
22 to in this Section shall not be filed until all proceedings in
23 court for review of such final assessment or revised final
24 assessment have terminated or the time for the taking thereof
25 has expired without such proceedings being instituted.

1 Upon the granting of a rehearing or departmental review
2 pursuant to Section 4 or Section 5 of this Act after a lien has
3 attached, such lien shall remain in full force except to the
4 extent to which the final assessment may be reduced by a
5 revised final assessment following such rehearing or review.

6 The lien created by the issuance of a final assessment
7 shall terminate unless a notice of lien is filed, as provided
8 in Section 5b hereof, within 3 years from the date all
9 proceedings in court for the review of such final assessment
10 have terminated or the time for the taking thereof has expired
11 without such proceedings being instituted, or (in the case of a
12 revised final assessment issued pursuant to a rehearing or
13 departmental review) within 3 years from the date all
14 proceedings in court for the review of such revised final
15 assessment have terminated or the time for the taking thereof
16 has expired without such proceedings being instituted; and
17 where the lien results from the filing of a return without
18 payment of the tax or penalty shown therein to be due, the lien
19 shall terminate unless a notice of lien is filed, as provided
20 in Section 5b hereof, within 3 years from the date when such
21 return is filed with the Department: Provided that the time
22 limitation period on the Department's right to file a notice of
23 lien shall not run (1) during any period of time in which the
24 order of any court has the effect of enjoining or restraining
25 the Department from filing such notice of lien, or (2) during
26 the term of a repayment plan that taxpayer has entered into

1 with the Department, as long as taxpayer remains in compliance
2 with the terms of the repayment plan.

3 If the Department finds that a taxpayer is about to depart
4 from the State, or to conceal himself or his property, or to do
5 any other act tending to prejudice or to render wholly or
6 partly ineffectual proceedings to collect such tax unless such
7 proceedings are brought without delay, or if the Department
8 finds that the collection of the amount due from any taxpayer
9 will be jeopardized by delay, the Department shall give the
10 taxpayer notice of such findings and shall make demand for
11 immediate return and payment of such tax, whereupon such tax
12 shall become immediately due and payable. If the taxpayer,
13 within 5 days after such notice (or within such extension of
14 time as the Department may grant), does not comply with such
15 notice or show to the Department that the findings in such
16 notice are erroneous, the Department may file a notice of
17 jeopardy assessment lien in the office of the recorder of the
18 county in which any property of the taxpayer may be located and
19 shall notify the taxpayer of such filing. Such jeopardy
20 assessment lien shall have the same scope and effect as the
21 statutory lien hereinbefore provided for in this Section.

22 If the taxpayer believes that he does not owe some or all
23 of the tax for which the jeopardy assessment lien against him
24 has been filed, or that no jeopardy to the revenue in fact
25 exists, he may protest within 20 days after being notified by
26 the Department of the filing of such jeopardy assessment lien

1 and request a hearing, whereupon the Department shall hold a
2 hearing in conformity with the provisions of this Act and,
3 pursuant thereto, shall notify the taxpayer of its findings as
4 to whether or not such jeopardy assessment lien will be
5 released. If not, and if the taxpayer is aggrieved by this
6 decision, he may file an action for judicial review of such
7 final determination of the Department in accordance with
8 Section 12 of this Act and the Administrative Review Law.

9 On and after July 1, 2013, protests concerning matters that
10 are subject to the jurisdiction of the Illinois Independent Tax
11 Tribunal shall be filed with the Tribunal, and hearings on
12 those matters shall be held before the Tribunal in accordance
13 with the Illinois Independent Tax Tribunal Act of 2012. The
14 Tribunal shall notify the taxpayer of its findings as to
15 whether or not such jeopardy assessment lien will be released.
16 If not, and if the taxpayer is aggrieved by this decision, he
17 may file an action for judicial review of such final
18 determination of the Department in accordance with Section 12
19 of this Act and the Illinois Independent Tax Tribunal Act of
20 2012.

21 With respect to protests filed with the Department prior to
22 July 1, 2013 that would otherwise be subject to the
23 jurisdiction of the Illinois Independent Tax Tribunal, the
24 taxpayer may elect to be subject to the provisions of the
25 Illinois Independent Tax Tribunal Act of 2012 at any time on or
26 after July 1, 2013, but not later than 30 days after the date

1 on which the protest was filed. If made, the election shall be
2 irrevocable.

3 If, pursuant to such hearing (or after an independent
4 determination of the facts by the Department without a
5 hearing), the Department or the Tribunal determines that some
6 or all of the tax covered by the jeopardy assessment lien is
7 not owed by the taxpayer, or that no jeopardy to the revenue
8 exists, or if on judicial review the final judgment of the
9 court is that the taxpayer does not owe some or all of the tax
10 covered by the jeopardy assessment lien against him, or that no
11 jeopardy to the revenue exists, the Department shall release
12 its jeopardy assessment lien to the extent of such finding of
13 nonliability for the tax, or to the extent of such finding of
14 no jeopardy to the revenue.

15 The Department shall also release its jeopardy assessment
16 lien against the taxpayer whenever the tax and penalty covered
17 by such lien, plus any interest which may be due, are paid and
18 the taxpayer has paid the Department in cash or by guaranteed
19 remittance an amount representing the filing fee for the lien
20 and the filing fee for the release of that lien. The Department
21 shall file that release of lien with the recorder of the county
22 where that lien was filed.

23 Nothing in this Section shall be construed to give the
24 Department a preference over the rights of any bona fide
25 purchaser, holder of a security interest, mechanics
26 lienholder, mortgagee, or judgment lien creditor arising prior

1 to the filing of a regular notice of lien or a notice of
2 jeopardy assessment lien in the office of the recorder in the
3 county in which the property subject to the lien is located:
4 Provided, however, that the word "bona fide", as used in this
5 Section shall not include any mortgage of real or personal
6 property or any other credit transaction that results in the
7 mortgagee or the holder of the security acting as trustee for
8 unsecured creditors of the taxpayer mentioned in the notice of
9 lien who executed such chattel or real property mortgage or the
10 document evidencing such credit transaction. Such lien shall be
11 inferior to the lien of general taxes, special assessments and
12 special taxes heretofore or hereafter levied by any political
13 subdivision of this State.

14 In case title to land to be affected by the notice of lien
15 or notice of jeopardy assessment lien is registered under the
16 provisions of "An Act concerning land titles", approved May 1,
17 1897, as amended, such notice shall be filed in the office of
18 the Registrar of Titles of the county within which the property
19 subject to the lien is situated and shall be entered upon the
20 register of titles as a memorial or charge upon each folium of
21 the register of titles affected by such notice, and the
22 Department shall not have a preference over the rights of any
23 bona fide purchaser, mortgagee, judgment creditor or other lien
24 holder arising prior to the registration of such notice:
25 Provided, however, that the word "bona fide" shall not include
26 any mortgage of real or personal property or any other credit

1 transaction that results in the mortgagee or the holder of the
2 security acting as trustee for unsecured creditors of the
3 taxpayer mentioned in the notice of lien who executed such
4 chattel or real property mortgage or the document evidencing
5 such credit transaction.

6 Such regular lien or jeopardy assessment lien shall not be
7 effective against any purchaser with respect to any item in a
8 retailer's stock in trade purchased from the retailer in the
9 usual course of such retailer's business.

10 (Source: P.A. 97-1129, eff. 8-28-12.)

11 Section 99. Effective date. This Act takes effect upon
12 becoming law.