

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 18-1041.01 Esther van Mourik x4215

HOUSE BILL 18-1304

HOUSE SPONSORSHIP

Benavidez,

SENATE SPONSORSHIP

(None),

House Committees

Finance

Senate Committees

A BILL FOR AN ACT

101 CONCERNING ENFORCEMENT MEASURES AVAILABLE TO THE
102 DEPARTMENT OF REVENUE FOR THE COLLECTION OF
103 DELINQUENT TAXES.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill specifies that the period of time wherein a tax must be assessed is extended in the case of a taxpayer whose assets are in the control or custody of a court or in the case of a taxpayer who has filed bankruptcy proceedings.

The bill also provides clarifications regarding:

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

- ! The department of revenue's authorization to sell a delinquent taxpayer's motor vehicle;
- ! Other remedies that a district court has available in the case of a delinquent taxpayer; and
- ! When property or rights to property must be surrendered to the executive director of the department of revenue and what the penalties are for failing to surrender such property.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 39-21-107, **amend**
3 (2); and **add** (2.5) as follows:

4 **39-21-107. Limitations.** (2) In the case of an income tax
5 imposed by article 22 of this ~~title~~ TITLE 39, unless such time is extended
6 by waiver and except as provided in SUBSECTION (2.5) OF THIS SECTION
7 AND section 39-22-601 (6)(e), the assessment of any tax, penalties, and
8 interest shall be made within one year after the expiration of the time
9 provided for assessing a deficiency in federal income tax or changing the
10 reported federal taxable income of a partnership, limited liability
11 company, or fiduciary, including any extensions of such period by
12 agreement between the taxpayer and the federal taxing authorities; except
13 that a written proposed adjustment of the tax liability by the department
14 shall extend the limitation of this subsection (2) for one year after a final
15 determination or assessment is made and except that, if the taxpayer has
16 been audited by the department for the year in question and the issues
17 raised in the audit have been settled by agreement for payment or
18 payment of deficiencies arising therefrom, then any additional assessment
19 shall be limited to deficiencies arising as a result of adjustments made by
20 the commissioner of internal revenue in the final determination of federal
21 taxable income. An assessment of income taxes having been made

1 according to law shall be good and valid and collection thereof may be
2 enforced at any time within six years from the date of said assessment.

3 (2.5) THE LIMITATIONS IN THIS SECTION SHALL BE SUSPENDED:

4 (a) FOR ANY PERIOD DURING WHICH THE TAXPAYER'S ASSETS ARE
5 IN THE CONTROL OR CUSTODY OF A COURT IN ANY PROCEEDING BEFORE
6 ANY COURT OF THE UNITED STATES OR ANY STATE, AND FOR SIX MONTHS
7 THEREAFTER; OR

8 (b) IN A CASE UNDER TITLE 11 OF THE UNITED STATES CODE, FOR
9 ANY PERIOD DURING WHICH THE DEPARTMENT IS PROHIBITED BY REASON
10 OF THE CASE FROM COLLECTING, AND FOR SIX MONTHS THEREAFTER.

11 **SECTION 2.** In Colorado Revised Statutes, 39-21-114, **amend**
12 (1) introductory portion and (2)(b); and **add** (11) as follows:

13 **39-21-114. Methods of enforcing collection.** (1) The executive
14 director of the department of revenue may issue a warrant executed either
15 with his OR HER manual signature or with his OR HER facsimile signature
16 in accordance with the "Uniform Facsimile Signature of Public Officials
17 Act", article 55 of title 11, ~~C.R.S.~~, directed to any employee, agent, or
18 representative of the department, sometimes in this section referred to
19 collectively as "agent", commanding ~~him~~ THE AGENT to distrain, seize,
20 ~~and~~ sell, OR OTHERWISE LEVY UPON the personal property of the taxpayer,
21 except such personal property as is exempted from execution and sale by
22 any statute of this state, for the payment of the tax due, together with any
23 penalties and interest accrued thereon and the cost of execution:

24 (2) (b) In all cases of sale, the agent making the sale shall issue a
25 certificate of sale to each purchaser, and ~~such~~ THE certificate ~~shall be~~ IS
26 prima facie evidence of the right of the agent to make ~~such~~ THE sale and
27 conclusive evidence of the regularity of ~~his~~ THE proceedings in making

1 the sale and ~~shall transfer~~ TRANSFERS to the purchaser all right, title, and
2 interest of ~~such~~ THE delinquent TAXPAYER in and to the property sold
3 FREE AND CLEAR OF ALL LIENS AND ENCUMBRANCES JUNIOR TO THE
4 DEPARTMENT; and, where such property consists of certificates of stock
5 in the possession of the agent, the certificate of sale ~~shall be~~ IS notice,
6 when received, to any corporation, company, or association of ~~said~~ THE
7 transfer, and ~~said~~ THE certificate of ~~such~~ THE sale ~~shall be~~ PROVIDES THE
8 authority for such corporation, company, or association to record the
9 transfer on its books and records; and, where the subject of sale is
10 securities or other evidences of debt in the possession of the agent, the
11 certificate of sale ~~shall be~~ PROVIDES THE HOLDER WITH good and valid
12 evidence of title ~~in the person holding the same~~, as against any other
13 person; AND, WHERE THE SUBJECT OF THE SALE IS A MOTOR VEHICLE, THE
14 CERTIFICATE OF SALE IS NOTICE, WHEN RECEIVED, TO ANY PUBLIC OFFICIAL
15 CHARGED WITH THE REGISTRATION OF TITLE TO MOTOR VEHICLES, OF THE
16 TRANSFER, GRANTS AUTHORITY TO THE PUBLIC OFFICIAL TO RECORD THE
17 TRANSFER ON THE BOOKS AND RECORDS IN THE SAME MANNER AS IF THE
18 CERTIFICATE OF TITLE TO SUCH MOTOR VEHICLE WERE TRANSFERRED OR
19 ASSIGNED BY THE HOLDER OF THE CERTIFICATE OF TITLE, AND RENDERS
20 VOID ALL PREVIOUSLY ISSUED TITLES TO SUCH MOTOR VEHICLE. Any
21 surplus remaining above the taxes, penalties, interest, costs, and expenses
22 of making the seizure and of advertising the sale ~~shall~~ MUST be returned
23 to the owner or ~~such~~ ANY other person having a legal right thereto, and,
24 on demand, the executive director ~~of the department of revenue~~ shall
25 render an account in writing of the sale.

26 (11) IN ADDITION TO ANY OTHER REMEDIES AVAILABLE TO THE
27 DEPARTMENT, ANY DISTRICT COURT IN THE STATE HAS JURISDICTION TO

1 MAKE AND ISSUE WARRANTS, WRITS OF ENTRY, OR ANY OTHER WRITS OR
2 ORDERS AS MAY BE NECESSARY FOR THE COLLECTION OF ANY TAX,
3 INTEREST, OR PENALTY.

4 **SECTION 3.** In Colorado Revised Statutes, **add** 39-21-114.5 as
5 follows:

6 **39-21-114.5. Surrender of property subject to levy - definition.**

7 (1) FOR ANY PERSON IN POSSESSION OF PROPERTY OR RIGHTS TO
8 PROPERTY BELONGING TO A TAXPAYER THAT IS SUBJECT TO LEVY:

9 (a) (I) EXCEPT AS PROVIDED IN SUBSECTION (1)(a)(II) OF THIS
10 SECTION, A PERSON SHALL, UPON DEMAND OF THE EXECUTIVE DIRECTOR,
11 SURRENDER THE PROPERTY OR THE RIGHTS TO THE PROPERTY SUBJECT TO
12 LEVY TO THE EXECUTIVE DIRECTOR.

13 (II) A PERSON IS NOT REQUIRED TO SURRENDER THE PROPERTY OR
14 THE RIGHTS TO THE PROPERTY BELONGING TO THE TAXPAYER THAT IS
15 SUBJECT TO LEVY TO THE EXECUTIVE DIRECTOR IF SUCH PERSON, AT THE
16 TIME OF THE DEMAND, HAS A VALID RIGHT OF SETOFF OR AN INTEREST
17 SUPERIOR TO THE DEPARTMENT'S.

18 (b) IF SUCH PERSON IS A BANK OR OTHER FINANCIAL INSTITUTION,
19 THE BANK OR OTHER FINANCIAL INSTITUTION SHALL SURRENDER ANY
20 DEPOSITS IN THE BANK OR FINANCIAL INSTITUTION WITHIN TWENTY-ONE
21 DAYS AFTER SERVICE OF THE LEVY; AND

22 (c) IF SUCH PERSON IS AN EMPLOYER, THE EMPLOYER SHALL
23 SURRENDER SALARY OR WAGES WITHIN TWENTY-ONE DAYS AFTER THE
24 END OF THE TAXPAYER'S PAY PERIOD. THE EFFECT OF A LEVY ON SALARY
25 OR WAGES PAYABLE TO OR RECEIVED BY A TAXPAYER IS CONTINUOUS
26 FROM THE DATE THE LEVY IS FIRST MADE UNTIL THE DEPARTMENT
27 RELEASES THE LEVY. THE LEVY FOR ANY PAY PERIOD MAY NOT EXCEED

1 TWENTY-FIVE PERCENT OF THE TAXPAYER'S DISPOSABLE EARNINGS. FOR
2 PURPOSES OF THIS SECTION, "DISPOSABLE EARNINGS" HAS THE SAME
3 MEANING AS SET FORTH IN SECTION 13-54-104 (1).

4 (2) ANY PERSON WHO FAILS TO OR REFUSES TO SURRENDER
5 PROPERTY OR RIGHTS TO PROPERTY BELONGING TO A TAXPAYER THAT IS
6 SUBJECT TO LEVY UPON DEMAND BY THE EXECUTIVE DIRECTOR IS LIABLE
7 TO THE STATE FOR A SUM EQUAL TO THE VALUE OF THE PROPERTY OR THE
8 RIGHT TO THE PROPERTY THAT IS NOT SURRENDERED, NOT TO EXCEED THE
9 AMOUNT OF THE TAX LIABILITY FOR WHICH THE LEVY WAS MADE. ANY
10 AMOUNT RECOVERED UNDER THIS SUBSECTION (2) IS CREDITED AGAINST
11 THE TAX LIABILITY FOR WHICH THE LEVY WAS MADE.

12 (3) ANY PERSON IN POSSESSION OF PROPERTY OR RIGHTS TO THE
13 PROPERTY BELONGING TO A TAXPAYER THAT IS SUBJECT TO LEVY AND
14 UPON WHICH A LEVY HAS BEEN MADE, WHO, UPON DEMAND BY THE
15 EXECUTIVE DIRECTOR, SURRENDERS SUCH PROPERTY OR RIGHTS TO THE
16 PROPERTY TO THE EXECUTIVE DIRECTOR OR WHO PAYS THE LIABILITY
17 REQUIRED UNDER SUBSECTION (2) OF THIS SECTION IS DISCHARGED FROM
18 ANY OBLIGATION OR LIABILITY TO THE DELINQUENT TAXPAYER AND ANY
19 OTHER PERSON WITH RESPECT TO THE PROPERTY OR RIGHTS TO THE
20 PROPERTY ARISING FROM THE SURRENDER OR PAYMENT.

21 **SECTION 4. Applicability.** This act applies to assessments of
22 tax and the levying of property or rights to property for payment of
23 delinquent taxes on or after the effective date of this act.

24 **SECTION 5. Safety clause.** The general assembly hereby finds,
25 determines, and declares that this act is necessary for the immediate
26 preservation of the public peace, health, and safety.