

**First Regular Session
Seventy-second General Assembly
STATE OF COLORADO**

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 19-0571.01 Esther van Mourik x4215

SENATE BILL 19-035

SENATE SPONSORSHIP

Court,

HOUSE SPONSORSHIP

Benavidez,

Senate Committees
Finance

House 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.

SENATE
2nd Reading Unamended
January 25, 2019

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

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

3 (2.5) ANY LIMITATIONS APPLICABLE TO TAXES, PENALTIES,
4 INTEREST, FINES, OR CHARGES WITHIN THE SCOPE OF THIS ARTICLE 21, AS
5 SET FORTH IN SECTION 39-21-102, ARE SUSPENDED:

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

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

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

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

26 (2) (b) In all cases of sale, the agent making the sale shall issue a
27 certificate of sale to each purchaser, and ~~such~~ THE certificate ~~shall be~~ IS

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

1 (11) IN ADDITION TO ANY OTHER REMEDIES AVAILABLE TO THE
2 DEPARTMENT, ANY DISTRICT COURT IN THE STATE HAS JURISDICTION AND
3 VENUE TO MAKE AND ISSUE ORDERS AS MAY BE NECESSARY FOR THE
4 COLLECTION OF ANY TAX, INTEREST, OR PENALTY, INCLUDING, UPON EX
5 PARTE APPLICATION BY AN EMPLOYEE, AGENT, OR REPRESENTATIVE OF
6 THE DEPARTMENT AND A SHOWING OF PROBABLE CAUSE, WARRANTS TO
7 SEARCH PREMISES TO DISTRAIN, SEIZE, AND SELL THE TAXPAYER'S
8 PERSONAL PROPERTY.

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

11 **39-21-114.5. Surrender of property subject to levy - definition.**

12 (1) FOR ANY PERSON IN POSSESSION OF PROPERTY OR RIGHTS TO
13 PROPERTY OWNED BY OR OWING TO A TAXPAYER THAT IS SUBJECT TO
14 LEVY:

15 (a) (I) EXCEPT AS PROVIDED IN SUBSECTION (1)(a)(II) OF THIS
16 SECTION, A PERSON SHALL, UPON DEMAND OF THE EXECUTIVE DIRECTOR,
17 SURRENDER THE PROPERTY OR THE RIGHTS TO THE PROPERTY SUBJECT TO
18 LEVY TO THE EXECUTIVE DIRECTOR.

19 (II) A PERSON IS NOT REQUIRED TO SURRENDER THE PROPERTY OR
20 THE RIGHTS TO THE PROPERTY BELONGING TO THE TAXPAYER THAT IS
21 SUBJECT TO LEVY TO THE EXECUTIVE DIRECTOR IF THE PERSON, AT THE
22 TIME OF THE DEMAND, HAS A VALID RIGHT OF SETOFF OR AN INTEREST
23 SUPERIOR TO THE DEPARTMENT'S.

24 (b) IF THE PERSON IS A BANK OR OTHER FINANCIAL INSTITUTION,
25 THE BANK OR OTHER FINANCIAL INSTITUTION SHALL SURRENDER ANY
26 DEPOSITS IN THE BANK OR FINANCIAL INSTITUTION WITHIN TWENTY-ONE
27 DAYS AFTER SERVICE OF THE LEVY.

1 (c) IF THE PERSON IS AN EMPLOYER, THE EMPLOYER SHALL
2 SURRENDER SALARY OR WAGES WITHIN TWENTY-ONE DAYS AFTER THE
3 END OF THE TAXPAYER'S PAY PERIOD. THE EFFECT OF A LEVY ON SALARY
4 OR WAGES PAYABLE TO OR RECEIVED BY A TAXPAYER IS CONTINUOUS
5 FROM THE DATE THE LEVY IS FIRST MADE UNTIL THE DEPARTMENT
6 RELEASES THE LEVY. THE LEVY FOR ANY PAY PERIOD MAY NOT EXCEED
7 TWENTY-FIVE PERCENT OF THE TAXPAYER'S DISPOSABLE EARNINGS. FOR
8 PURPOSES OF THIS SECTION, "DISPOSABLE EARNINGS" HAS THE SAME
9 MEANING AS SET FORTH IN SECTION 13-54-104 (1).

10 (2) ANY PERSON WHO FAILS TO OR REFUSES TO SURRENDER
11 PROPERTY OR RIGHTS TO PROPERTY OWNED BY OR OWING TO A TAXPAYER
12 THAT IS SUBJECT TO LEVY UPON DEMAND BY THE EXECUTIVE DIRECTOR IS
13 LIABLE TO THE STATE FOR A SUM EQUAL TO THE VALUE OF THE PROPERTY
14 OR THE RIGHTS TO THE PROPERTY THAT IS NOT SURRENDERED, NOT TO
15 EXCEED THE AMOUNT OF THE LIABILITY FOR WHICH THE LEVY WAS MADE.
16 ANY AMOUNT RECOVERED UNDER THIS SUBSECTION (2) IS CREDITED
17 AGAINST THE LIABILITY FOR WHICH THE LEVY WAS MADE.

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

27 **SECTION 4. Act subject to petition - effective date -**

1 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
2 the expiration of the ninety-day period after final adjournment of the
3 general assembly (August 2, 2019, if adjournment sine die is on May 3,
4 2019); except that, if a referendum petition is filed pursuant to section 1
5 (3) of article V of the state constitution against this act or an item, section,
6 or part of this act within such period, then the act, item, section, or part
7 will not take effect unless approved by the people at the general election
8 to be held in November 2020 and, in such case, will take effect on the
9 date of the official declaration of the vote thereon by the governor.

10 (2) This act applies to assessments of tax and the levying of
11 property or rights to property for payment of delinquent taxes on or after
12 the effective date of this act.