

CHAPTER 64

TAXATION

SENATE BILL 19-035

BY SENATOR(S) Court, Fields, Tate, Todd;
also REPRESENTATIVE(S) Benavidez, Galindo, Mullica.

AN ACT

CONCERNING ENFORCEMENT MEASURES AVAILABLE TO THE DEPARTMENT OF REVENUE FOR THE COLLECTION OF DELINQUENT TAXES, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

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

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

39-21-107. Limitations. (2) In the case of an income tax imposed by article 22 of this ~~title~~ TITLE 39, unless such time is extended by waiver and except as provided in SUBSECTION (2.5) OF THIS SECTION AND section 39-22-601 (6)(e), the assessment of any tax, penalties, and interest shall be made within one year after the expiration of the time provided for assessing a deficiency in federal income tax or changing the reported federal taxable income of a partnership, limited liability company, or fiduciary, including any extensions of such period by agreement between the taxpayer and the federal taxing authorities; except that a written proposed adjustment of the tax liability by the department shall extend the limitation of this subsection (2) for one year after a final determination or assessment is made and except that, if the taxpayer has been audited by the department for the year in question and the issues raised in the audit have been settled by agreement for payment or payment of deficiencies arising therefrom, then any additional assessment shall be limited to deficiencies arising as a result of adjustments made by the commissioner of internal revenue in the final determination of federal taxable income. An assessment of income taxes having been made according to law shall be good and valid and collection thereof may be enforced at any time within six years from the date of said assessment.

(2.5) ANY LIMITATIONS APPLICABLE TO TAXES, PENALTIES, INTEREST, FINES, OR

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

CHARGES WITHIN THE SCOPE OF THIS ARTICLE 21, AS SET FORTH IN SECTION 39-21-102, ARE SUSPENDED:

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

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

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

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

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

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

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

39-21-114.5. Surrender of property subject to levy - definition. (1) FOR ANY PERSON IN POSSESSION OF PROPERTY OR RIGHTS TO PROPERTY OWNED BY OR OWING TO A TAXPAYER THAT IS SUBJECT TO LEVY:

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

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

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

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

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

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

SURRENDER OR PAYMENT.

SECTION 4. Appropriation. For the 2019-20 state fiscal year, \$6,750 is appropriated to the department of revenue for use by the division of motor vehicles. This appropriation is from the Colorado DRIVES vehicle services account in the highway users tax fund created in section 42-1-211 (2)(b)(I), C.R.S. To implement this act, the division may use this appropriation for DRIVES maintenance and support.

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

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

Approved: March 28, 2019