

AN ACT concerning State government.

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

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

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

Sec. 1101. Lien for Tax.

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

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

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

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

(d) Notice of lien. The lien created by assessment shall terminate unless a notice of lien is filed, as provided in section 1103 hereof, within 3 years from the date all proceedings in court for the review of such assessment have terminated or the time for the taking thereof has expired without such proceedings being instituted. Where the lien results from the filing of a return without payment of the tax or penalty shown therein to be due, the lien shall terminate unless a notice of lien is filed within 3 years from the date such return was filed with the Department. For the purposes of this subsection (d), a tax return filed before the last day prescribed by law, including any extension thereof, shall be deemed to have been filed on such last day. The time limitation period on the Department's right to file a notice of lien shall not run (1) during any period of time in which the order of any court has the effect of enjoining or restraining the Department from filing such notice of lien, or (2) 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.

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

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

changing Section 5a as follows:

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

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

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

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

The lien created by the issuance of a final assessment shall terminate unless a notice of lien is filed, as provided in Section 5b hereof, within 3 years from the date all proceedings in court for the review of such final assessment have terminated or the time for the taking thereof has expired without such proceedings being instituted, or (in the case of a revised final assessment issued pursuant to a rehearing or departmental review) within 3 years from the date all proceedings in court for the review of such revised final assessment have terminated or the time for the taking thereof has expired without such proceedings being instituted; and where the lien results from the filing of a return without payment of the tax or penalty shown therein to be due, the lien shall terminate unless a notice of lien is filed, as provided in Section 5b hereof, within 3 years from the date when such return is filed with the Department: Provided that the time limitation period on the Department's right to file a notice of lien shall not run (1) during any period of time in which the order of any court has the effect of enjoining or restraining the Department from filing such notice of lien, or (2) 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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