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Chapter No. 412
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HOUSE BILL NO. 487

Originated in House  Clerk

HOUSE BILL NO. 487

AN ACT TO CREATE A UNIFORM STATEWIDE SYSTEM FOR FILING NOTICES OF TAX LIENS MAINTAINED BY THE DEPARTMENT OF REVENUE THAT ARE IN FAVOR OF OR ENFORCED BY THE DEPARTMENT OF REVENUE; TO PROVIDE THAT THIS ACT IS LIMITED TO TAX LIENS IN REAL PROPERTY AND PERSONAL PROPERTY, TANGIBLE AND INTANGIBLE, OF TAXPAYERS OR OTHER PERSONS AGAINST WHOM THE DEPARTMENT OF REVENUE HAS LIENS PURSUANT TO LAW FOR UNPAID FINALLY DETERMINED TAX LIABILITIES ADMINISTERED BY THE DEPARTMENT OF REVENUE; TO PROVIDE THE REQUISITES FOR ENROLLMENT OF NOTICES OF TAX LIENS; TO PROVIDE THE EFFECT OF ENROLLMENT OF A NOTICE OF TAX LIEN; TO PROVIDE THAT A NOTICE OF TAX LIEN FILED BY THE DEPARTMENT OF REVENUE SHALL BE A LIEN UPON THE DEBTOR'S PROPERTY FOR A PERIOD OF SEVEN YEARS FROM THE DATE OF ENROLLMENT UNLESS IT IS SOONER RELEASED BY THE DEPARTMENT OR THE DEPARTMENT REENROLLS THE NOTICE OF TAX LIEN BEFORE THE EXPIRATION OF THE SEVEN YEARS; TO PROVIDE THAT IN THE EVENT THAT A NOTICE OF TAX LIEN LAPSES UPON THE EXPIRATION OF SEVEN YEARS, THE NOTICE OF TAX LIEN MAY, IN THE SOLE DISCRETION OF THE DEPARTMENT, BE REENROLLED; TO PROVIDE FOR RELEASES OF NOTICES OF TAX LIENS; TO PROVIDE THE MANNER IN WHICH NOTICES OF TAX LIENS SHALL BE MAINTAINED BY THE DEPARTMENT OF REVENUE; TO PROVIDE FOR THE ACCESS OF TAX LIEN REGISTRY INFORMATION; TO PROVIDE FOR THE BULK SALE OF TAX LIEN REGISTRY INFORMATION; TO PROHIBIT THE USE OF TAX LIEN REGISTRY INFORMATION FOR SURVEY, MARKETING OR SOLICITATION PURPOSES; TO AUTHORIZE AN ACTION TO ENJOIN THE UNLAWFUL USE OF TAX LIEN REGISTRY INFORMATION; TO AMEND SECTIONS 27-7-55 AND 27-13-29, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT FILING OF NOTICES OF TAX LIENS FOR INCOME AND FRANCHISE TAX PENALTIES AND INTEREST WITH THE CIRCUIT CLERK ON THE JUDGMENT ROLL OF THE COUNTY IN WHICH THE TAXPAYER RESIDES OR OWNS PROPERTY, SHALL BE OPTIONAL; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. This act may be cited as the Mississippi Uniform State Tax Lien Registration Act.

SECTION 2. (1) The purpose of this act is to provide a uniform statewide system for filing notices of tax liens to be maintained by the Department of Revenue that are in favor of or enforced by the Mississippi Department of Revenue.

(2) The scope of this act is limited to tax liens in real property and personal property, tangible and intangible, of taxpayers or other persons against whom the Mississippi Department of Revenue has liens pursuant to law for unpaid finally determined tax liabilities administered by the Mississippi Department of Revenue.

SECTION 3. As used in this act:

(a) "Commissioner" means the Commissioner of Revenue of the Mississippi Department of Revenue.

(b) "Debtor" and "judgment debtor" means a taxpayer or other person against whom there is an unpaid finally determined tax liability collectible by the Mississippi Department of Revenue.

(c) "Department" means the Mississippi Department of Revenue.

(d) "Finally determined tax liabilities" means any state tax, fee, penalty, and/or interest owed by a person to the Mississippi Department of Revenue where the assessment of the

liability is not subject to any further timely filed administrative or judicial review.

(e) "Last-known address of the debtor" means the address of the debtor appearing on the records of the department at the time the notice of tax lien is enrolled in the Uniform State Tax Lien Registry.

(f) "Person" means an individual, organization or legal entity.

(g) "Uniform State Tax Lien Registry" or "Tax Lien Registry" means the public database maintained by the department wherein tax liens enrolled in favor of and enforced by the department are filed.

SECTION 4. (1) If any person refuses to pay any finally determined tax liabilities, the commissioner may enroll in the tax lien registry a notice of tax lien for the finally determined tax liabilities due.

(2) The notice of tax lien file shall include:

- (a) The name and last-known address of the debtor;
- (b) The name and address of the department;
- (c) The tax lien number assigned to the lien by the

department; and

(d) The basis for the tax lien, including, but not limited to, the amount owed as of the date of enrollment in the tax lien registry.

SECTION 5. (1) When a notice of tax lien is enrolled by the department in the tax lien registry, the tax lien is perfected and shall be attached to all of the existing and after-acquired property of the debtor, both real and personal, tangible and intangible, which is located in any and all counties within the State of Mississippi.

(2) The perfected tax lien shall be valid as against mortgagees, pledges, entrusters, purchasers, judgment creditors, and other persons from the time of enrollment in the tax lien registry.

(3) The amount of the tax lien shall be a debt due the State of Mississippi and shall remain a lien upon all property and rights to property belonging to the debtor, both real and personal, tangible and intangible, which is located in any and all counties within the State of Mississippi, including choses in action, with the same force and like effect as any enrolled judgment of a court of record. Interest and penalty shall accrue on the tax lien at the same rate and with the same restrictions, if any, as specified by statute for the accrual of interest and penalty for the type of tax or taxes for which the tax lien was issued.

(4) The notice of tax lien shall serve as authority for issuance of writs of execution, writs of attachment, writs of garnishment, or other remedial writs. In addition to those writs, the notice of tax lien shall also serve as authority for the

commissioner to issue warrants under Sections 27-7-57, 27-13-31 and 27-65-59 for the collection of the tax lien. The tax lien enrolled in the tax lien registry shall constitute the judgment enrolled for the payment of the amount of tax, penalties, and interest referred to in Sections 27-7-57, 27-13-31 and 27-65-59, but the warrant issued for a tax lien enrolled on a tax lien registry shall direct and authorize the special agent to seize and sell the real and personal property found anywhere within this state that belongs to the taxpayer against whom the tax lien was enrolled and not just property in a specific county. Once issued, the execution of the warrants shall be in accordance with Section 27-3-33(4) for the levy on salaries, compensation or other monies due the delinquent taxpayer; Sections 27-7-61 through 27-7-67 in regard to income tax and withholding tax; Sections 27-13-35 through 27-13-41 for franchise tax; and Sections 27-65-63 through 27-65-69 for sales tax and any other tax or fee administered by the department that utilizes the administrative provisions of the sales tax law in the administration of the tax or fee. Under warrants issued for the tax liens enrolled in the tax lien registry, any property, real or personal, within the State of Mississippi is subject to levy under Section 27-3-33(4) if the person that owes the salary, compensation or other monies to the debtor is subject to service of process in this state.

SECTION 6. Beginning with calendar year 2015 and each year thereafter, on January 15 and July 15 of each year, the department

shall pay to the Mississippi circuit clerks an amount equal to half of the yearly average amount paid for the three (3) fiscal year periods ending June 30, 2011, 2012 and 2013, to each county for the enrollment, reenrollment, and/or release of the tax liens under this act. The payment shall be used for the service provided to citizens that request assistance from circuit clerks for researching and providing lien information, whether such information is on the lien registry or included in historical documents. The clerks shall report the number of citizens assisted to the department on or before June 30 of each year. The commissioner is authorized to pay the clerks out of funds appropriated by the Legislature to defray expenses of the department.

SECTION 7. (1) A notice of tax lien shall be a lien upon the debtor's property located anywhere in the state for a period of seven (7) years from the date of enrollment unless:

(a) It is sooner released by the department; or

(b) The department reenrolls the notice of tax lien before the expiration of the seven (7) years. There shall be no limit upon the number of times that the department may reenroll notices of tax liens.

(2) In the event that a notice of tax lien lapses on the expiration of seven (7) years, the notice of tax lien may, at any time thereafter and in the sole discretion of the department, be reenrolled. A notice of tax lien that is reenrolled pursuant to



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this subsection shall be fully enforceable as of the date of reenrollment; however, any notice of tax lien that is reenrolled after the lapse of the seven-year period shall lose the priority it had prior to its expiration. There shall be no limit upon the number of times that the department may reenroll notices of tax liens in this manner.

(3) If the department reenrolls a notice of tax lien, the notice of tax lien in regard to that reenrollment shall contain the following information:

- (a) The name and last-known address of the debtor;
- (b) The name and address of the department;
- (c) An indication that the notice of tax lien is for a previously enrolled lien;
- (d) The tax lien number assigned to the lien by the department; and
- (e) The basis for the tax lien, including, but not limited to, the amount owed as of the date of reenrollment in the tax lien registry.

(4) The reenrollment of a tax lien in the tax lien registry within the seven-year period shall constitute a continuation of the tax lien appearing on the judgment roll of the county as it relates to real and personal property belonging to the debtor in that county; however, the reenrolled tax lien shall attach to all property and all rights to property belonging to the debtor, both real and personal, tangible and intangible, located in any and all

counties within the state as of the date of the reenrollment in the tax lien registry. A notice of release of tax lien filed in the tax lien registry shall constitute a release of tax lien within the department, the tax lien registry, and/or the county in which the tax lien was previously enrolled. The information contained on the tax lien registry shall be controlling, and any inconsistencies found between the tax lien registry and the judgment roll of any county shall be superseded by the tax lien registry.

SECTION 8. Within two (2) working days from the date the department discovers an administrative issue in the filing of a notice of tax lien in the tax lien registry, it may cancel a notice of tax lien from the tax lien registry and file a notice of release of the tax lien due to administrative correction. The notice of tax lien shall be treated as though never enrolled.

SECTION 9. (1) Within fifteen (15) working days from the receipt by the department of full payment of a tax lien enrolled in the tax lien registry, including payment of any additionally accruing interest, penalty, fees and/or costs, the department shall file in the tax lien registry a notice of release of the tax lien being paid.

(2) In the event that a notice or release of tax lien is issued in error by the department and enrolled in the tax lien registry; or the form of payment received by the department is not honored and/or the transfer of payment to the department is not

completed for any reason after the notice of release of tax lien is enrolled in the tax lien registry; or the department is required to return and/or turn over the payment received to the taxpayer or other person due to bankruptcy, a court order, or other proceedings after the notice of release of the tax lien issued is enrolled in the tax lien registry; the department, in its sole discretion, may enroll a new tax lien for the finally determined tax liabilities represented in the tax lien for which the tax lien was issued, including any additional accruing interest, penalty and/or fees to the date of the new enrollment. A notice of tax lien that is enrolled pursuant to this provision shall be fully enforceable as of the date of the new enrollment.

SECTION 10. (1) The department shall maintain notices of tax liens filed in the tax lien registry after the effective date of this act in its information management system in a form that permits them to be readily accessible in an electronic form through the Internet and to be reduced to printed form. The electronic and printed form shall include the following information:

- (a) The name of the taxpayer as judgment debtor;
- (b) The name and address of the department;
- (c) The tax lien number assigned to the lien by the department;
- (d) Whether the enrollment is the first enrollment of the tax lien or a reenrollment of the tax lien;

(e) The amount of the taxes, penalties, interest, and fees indicated due on the notice of tax lien received from the department; and

(f) The date and time of enrollment or reenrollment.

(2) The department shall not charge for the access to information on the enrollment of tax liens by name of judgment debtor or by tax lien number. The department is, however, authorized to charge for the certification of any record or lack of records appearing on the tax lien registry. The department shall determine the process by which such tax lien registry certification can be requested, including a charge for such certification that shall cover at least the cost of providing the certification. The payment of the charge for a tax lien registry certification shall be retained by the department as reimbursement of its cost to provide the certification.

(3) The department is authorized to sell at bulk the information appearing on the tax lien registry. In selling the information, the department shall determine the process by which the information will be sold and the media or method by which it will be available to the purchaser and shall set a price for the information that will at least cover the cost of producing the information. The proceeds from the sale of bulk information shall be retained by the department and used to cover its cost to produce the information sold and to maintain the tax lien registry.

(4) Tax lien registry information, whether access by name of judgment debtor or by tax lien number at no charge, through a bulk sale of information or by other means, will not be used for a survey, marketing or solicitation purposes. Survey, marketing or solicitation purpose shall not include any action by the department or its authorized agent to collect a debt represented by a tax lien appearing in the tax lien registry. The department or the Attorney General is hereby authorized to bring an action to enjoin the unlawful use of tax lien registry information for a survey, marketing or solicitation purpose and to recover the cost of such action, including reasonable attorney's fees.

SECTION 11. All tax liens currently enrolled appearing on the judgment rolls of the counties of this state as of the effective date of this act and which the department does not show as satisfied or as issued in error and which were last enrolled or reenrolled on the judgment rolls within seven (7) years before the effective date of this act shall be immediately enrolled on the tax lien registry on the effective date of this act, and shall have the force and effect of a judgment on all real and personal property belonging to the debtor anywhere in the state for a duration of seven (7) years effective from the date of the enrollment on the tax lien registry unless and until such time as either the notice of tax lien is released or the department reenrolls the tax lien in the tax lien registry.

SECTION 12. The department shall have the authority to promulgate rules and regulations, not inconsistent with this act, as it may deem necessary to enforce its provisions.

SECTION 13. Section 27-7-55, Mississippi Code of 1972, is amended as follows:

27-7-55. If any taxpayer, liable for the payment of income taxes, penalties or interest, fails or refuses to pay them after receiving the notice and demands as provided in Sections 27-7-49, 27-7-51 and 27-7-53, and if the taxpayer has not filed a timely appeal to the board of review as provided by law, the commissioner * * * may file a notice of tax lien for the income taxes, penalties and interest with the circuit clerk of the county in which the taxpayer resides or owns property, which shall be enrolled on the judgment roll. Immediately upon receipt of the notice of tax lien for income taxes, penalties and interest, the circuit clerk shall enter upon the judgment roll, in the appropriate columns, the name of the taxpayer as judgment debtor, the name of the commissioner or * * * Department of Revenue as judgment creditor, the amount of the taxes, penalties and interest, and the date and time of enrollment. The judgment shall be valid as against mortgagees, pledgees, entrusters, purchasers, judgment creditors, and other persons from the time of filing with the clerk. The amount of the judgment shall be a debt due the State of Mississippi and remain a lien upon all property and rights to property belonging to the taxpayer, both real and

personal, including choses in action, with the same force and like effect as any enrolled judgment of a court of record, and shall continue until satisfied; however, the judgment shall not be a lien upon the property of the taxpayer for a longer period than seven (7) years from the date of the filing of the notice of tax lien for income taxes, penalties and interest unless an action is brought on the lien before the expiration of such time or unless the commissioner refiles the notice of tax lien before the expiration of such time. The judgment shall be a lien upon the property of the taxpayer for a period of seven (7) years from the date of refiling such notice of tax lien unless an action is brought on the lien before the expiration of such time or unless the commissioner refiles such notice of tax lien before the expiration of such time. There shall be no limit upon the number of times that the commissioner may refile notices of tax liens. The judgment shall serve as authority for the issuance of writs of execution, writs of attachment, writs of garnishment or other remedial writs. The commissioner may issue warrants for collection of income taxes from such judgments in lieu of the issuance of any remedial writ by the circuit clerk.

Upon failure to pay the taxes imposed under this article by any taxpayer who has executed any bond, the commissioner shall give notice of the failure to the sureties of the bond and demand payment of the tax, penalties and interest within ten (10) days. If the sureties of the taxpayer's bond shall fail or refuse to pay

the penal sum demanded within the ten (10) days allowed, the commissioner * * * may file a notice of tax lien with the circuit clerk of the county in which the sureties reside or own property, which shall be enrolled upon the judgment roll, and the commissioner may proceed to collect from the sureties as * * * provided in this section for collecting from any judgment debtor.

The commissioner is hereby authorized to pay the clerk's fee for enrolling certificates of indebtedness and any court costs that may be adjudged against the * * * department or commissioner out of funds appropriated by the Legislature to defray expenses of the * * * Department of Revenue.

SECTION 14. Section 27-13-29, Mississippi Code of 1972, is amended as follows:

27-13-29. If any taxpayer, liable for the payment of franchise taxes, penalties or interest, fails or refuses to pay them after receiving the notice and demands as provided in Section 27-13-23 or 27-13-25, and if such taxpayer has not filed a timely appeal to the board of review as provided by law, the commissioner * * * may file a notice of tax lien for the franchise taxes, penalties, and interest with the circuit clerk of the county in which the taxpayer resides or owns property, which, shall be enrolled on the judgment roll. Immediately upon receipt of the notice of tax lien for franchise taxes, penalties and interest, the circuit clerk shall enter upon the judgment roll, in the appropriate columns, the name of the taxpayer as judgment

debtor, the name of the commissioner or * * * Department of Revenue as judgment creditor, the amount of the taxes, penalties and interest, and the date and time of enrollment. The judgment shall be valid as against mortgagees, pledgees, entrusters, purchasers, judgment creditors, and other persons from the time of filing with the clerk. The amount of the judgment shall be a debt due the State of Mississippi and remain a lien upon all property and rights to property belonging to the taxpayer, both real and personal, including choses in action, with the same force and like effect as any enrolled judgment of a court of record, and shall continue until satisfied. Such judgment shall serve as authority for the issuance of writs of execution, writs of attachments, writs of garnishment or other remedial writs. The commissioner may issue warrants for collection of franchise taxes from such judgments in lieu of the issuance of any remedial writ by the circuit clerk.

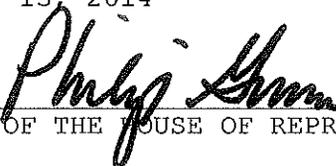
Upon failure to pay the taxes imposed under this chapter by any taxpayer who has executed any bond, the commissioner shall give notice of the failure to the sureties of such bond and demand payment of the tax, penalties and interest within ten (10) days. If the sureties of the taxpayer's bond shall fail or refuse to pay the penal sum demanded within the ten (10) days allowed, the commissioner * * * may file a notice of tax lien with the circuit clerk of the county in which the sureties reside or own property, which shall be enrolled upon the judgment roll, and the

commissioner may proceed to collect from the sureties as provided in this section for collecting from any judgment debtor.

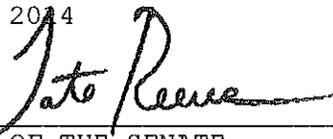
The commissioner is hereby authorized to pay the clerk's fee for enrolling certificates of indebtedness and any court costs that may be adjudged against the * * * department or commissioner out of funds appropriated by the Legislature to defray expenses of the * * * Department of Revenue.

SECTION 15. This act shall take effect and be in force from and after January 1, 2015.

PASSED BY THE HOUSE OF REPRESENTATIVES
February 13, 2014


SPEAKER OF THE HOUSE OF REPRESENTATIVES

PASSED BY THE SENATE
March 12, 2014


PRESIDENT OF THE SENATE

APPROVED BY THE GOVERNOR


GOVERNOR
3/21/2014 10:54am