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SENATE BILL 497

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Phil A. Griego

AN ACT

RELATING TO TAXATION; PROVIDING OPTIONS FOR CLASS A COUNTIES TO ENFORCE COLLECTION OF DELINQUENT PROPERTY TAXES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 7-35-2.1 NMSA 1978 (being Laws 1995, Chapter 12, Section 5) is amended to read:

"7-35-2.1. ADDITIONAL DEFINITION. -- As used in the Property Tax Code:

A. "collecting authority" means:

(1) the department, when exercising authority granted pursuant to Section 7-38-62 NMSA 1978; or

(2) a class A county, when exercising authority granted pursuant to Section 7-38-61.1 NMSA 1978;

B. "collection costs" means the expenses incurred by the [department] collecting authority in connection with

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1 collecting delinquent taxes. As applied to a particular
2 property, "collection costs" may be, in the discretion of the
3 [~~department~~] collecting authority, either the sum of the
4 expenses incurred specifically in connection with that property
5 or the uniform charge applied to the class of delinquent
6 properties of which the property is a member; and

7 C. "qualified private attorney" means an attorney
8 licensed to practice law who carries professional liability
9 insurance in an amount determined adequate by the board of
10 county commissioners. "

11 Section 2. Section 7-38-42 NMSA 1978 (being Laws 1979,
12 Chapter 343, Section 1) is amended to read:

13 "7-38-42. COLLECTION AND RECEIPT OF AND ACCOUNTING FOR
14 PROPERTY TAXES--APPLICATION OF RECEIPTS TO DELINQUENT TAXES.--

15 A. The county treasurer has the responsibility and
16 authority for collection of taxes and any penalties or interest
17 due under the Property Tax Code except [~~for the collection of~~
18 ~~delinquent taxes, penalties and interest authorized to be~~
19 ~~collected by the department under Section 7-38-62 NMSA 1978]~~
20 that, pursuant to Section 7-38-62 NMSA 1978, the department has
21 the responsibility and exclusive authority to collect
22 delinquent taxes, penalties and interest for the delinquent
23 taxes shown on a tax delinquency list prepared and transferred
24 to the department by a county that has not elected, pursuant to
25 Section 7-38-61.1 NMSA 1978, to assume authority for the

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1 collection of delinquent taxes.

2 B. Property taxes, penalties and interest collected
3 shall be receipted and accounted for in accordance with law and
4 regulations of the department of finance and administration.

5 C. Except as provided in Section 7-38-61.4, 7-38-69
6 or 7-38-71 NMSA 1978, any payments received by the treasurer or
7 the department as payments for property taxes, penalties or
8 interest shall be first applied to the oldest outstanding
9 unpaid property taxes, penalties or interest accrued in prior
10 property tax years on the property identified and described in
11 the property tax bill for which payment is tendered or, if the
12 payment cannot be identified with a particular year's property
13 tax bill, then the payment shall be applied first to the oldest
14 liability for property taxes, penalties and interest shown in
15 the treasurer's records under the name of the paying taxpayer.
16 In applying the foregoing requirements for applications of
17 payments and in the adoption of any regulations to implement
18 those provisions, the following additional rules shall apply:

19 (1) applications of payments to prior year's
20 delinquent taxes, penalties and interest shall not be made for
21 more than ten years prior to the year of payment unless the
22 treasurer's records show that the property for which taxes are
23 delinquent has been deeded to the state of New Mexico and that
24 property has not been sold by the state pursuant to applicable
25 law;

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1 (2) after application of payment received, if
2 all or part of the payment has been applied to a prior year's
3 delinquent taxes, penalties or interest, the receipting
4 authority shall issue a receipt to the paying taxpayer showing
5 the application of the payment and indicating any balance due
6 for taxes, penalties or interest to bring the property tax
7 payment status current; and

8 (3) the failure of a receipting authority to
9 apply a payment as required under this subsection or the
10 failure to issue a required receipt to the taxpayer of the
11 status of his account shall not relieve the taxpayer of
12 liability for taxes, penalties or interest he would otherwise
13 be required to pay nor does action or inaction by the
14 receipting authority act to estop the collecting authority from
15 taking any action to collect or enforce the payment of taxes,
16 penalties and interest legally due. "

17 Section 3. Section 7-38-48 NMSA 1978 (being Laws 1973,
18 Chapter 258, Section 88, as amended) is amended to read:

19 "7-38-48. PROPERTY TAXES ARE A LIEN AGAINST REAL PROPERTY
20 FROM JANUARY 1--PRIORITIES--CONTINUANCE OF TAXING PROCESS.--
21 Taxes on real property are a lien against the real property
22 from January 1 of the tax year for which the taxes are imposed.
23 The lien runs in favor of the [state] collecting authority and
24 secures the payment of taxes on the real property and any
25 penalty and interest that [~~becomes~~] become due. The lien

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1 continues until the taxes and any penalty and interest are
2 paid. The lien created by this section is a first lien and
3 paramount to any other interest in the property, perfected or
4 unperfected. The annual taxing process provided for in the
5 Property Tax Code shall continue as to any particular property
6 regardless of prior tax delinquencies or of pending protests,
7 actions for refunds or other tax controversies involving the
8 property, including a sale for delinquent taxes. "

9 Section 4. Section 7-38-51 NMSA 1978 (being Laws 1973,
10 Chapter 258, Section 91, as amended) is amended to read:

11 "7-38-51. NOTIFICATION TO PROPERTY OWNER OF DELINQUENT
12 PROPERTY TAXES. --

13 A. In respect to any tax that is delinquent for
14 more than thirty days as of June 30 of each year, the county
15 treasurer shall mail no later than August 1 a notice of
16 delinquency to:

17 (1) the owner of the property as shown on the
18 property tax schedule at the address of the owner as shown on
19 the most recent property tax schedule; and

20 (2) any person other than the owner to whom
21 the tax bill on the property was sent.

22 B. The notice required by this section shall be in
23 a form and contain the information prescribed by [~~division~~]
24 department regulations and shall include at least the
25 following:

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1 (1) a description of the property upon which
2 the property taxes are due;

3 (2) a statement of the amount of property
4 taxes due, the date on which they became delinquent, the rate
5 of accrual of interest and any penalties that may be charged;

6 (3) a statement informing the property owner
7 of the owner's right to enter into an installment agreement
8 with the collecting authority for payment of delinquent taxes,
9 penalties, interest and collection costs in accordance with
10 Section 7-38-68 NMSA 1978 and information on the name and phone
11 number of the individual in the collecting authority that the
12 taxpayer can contact to arrange for an installment agreement in
13 accordance with Section 7-38-68 NMSA 1978;

14 [~~3~~] (4) if the county has not elected,
15 pursuant to Section 7-38-61.1 NMSA 1978, to assume authority
16 for the collection of delinquent taxes, a statement that if the
17 property taxes due on real property are not paid [within three
18 years from the date of delinquency] or an installment agreement
19 entered into and complied with, the real property will be sold
20 and a deed issued by the [division; and] collecting authority;

21 (5) if the county has elected, pursuant to
22 Section 7-38-61.1 NMSA 1978, to assume authority for the
23 collection of delinquent taxes, a statement that, if the taxes
24 are not paid before September 1 or an installment agreement
25 entered into and complied with, the delinquent taxes may be

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1 referred to a qualified private attorney and that, if referred,
2 an additional cost will be incurred and that, if not referred,
3 the real property will be sold and a deed issued by the
4 collecting authority; and

5 [~~(4)~~] (6) a statement that if property taxes
6 due on personal property are not paid, the personal property
7 may be seized and sold for taxes under authority of a demand
8 warrant.

9 C. If a county that has elected, pursuant to
10 Section 7-38-61.1 NMSA 1978, to assume authority for the
11 collection of delinquent taxes refers the taxes to a qualified
12 private attorney for collection, the property owner shall be
13 notified of the referral no later than fifteen days after the
14 referral. "

15 Section 5. Section 7-38-53 NMSA 1978 (being Laws 1973,
16 Chapter 258, Section 93) is amended to read:

17 "7-38-53. COLLECTION OF DELINQUENT PROPERTY TAXES ON
18 PERSONAL PROPERTY-- ASSERTION OF CLAIM AGAINST PERSONAL
19 PROPERTY.-- A county treasurer may collect delinquent property
20 taxes on personal property by asserting a claim against the
21 owner's personal property for which taxes are delinquent. A
22 claim shall be asserted by service of a demand warrant by the
23 county treasurer, an employee of his office designated by him,
24 a qualified private attorney retained by the county pursuant to
25 Section 7-38-61.1 NMSA 1978 or the county sheriff upon any

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1 person in possession of the personal property subject to the
2 claim "

3 Section 6. Section 7-38-60 NMSA 1978 (being Laws 1973,
4 Chapter 258, Section 101, as amended) is amended to read:

5 "7-38-60. NOTIFICATION TO PROPERTY OWNER OF DELINQUENT
6 TAXES. --

7 A. By June 10 of each year, the county treasurer of
8 each county not electing, pursuant to Section 7-38-61.1 NMSA
9 1978, to assume authority for the collection of delinquent
10 taxes shall mail a notice to each property owner of property
11 for which taxes have been delinquent for more than two years.
12 The notice shall be in a form and contain the information
13 prescribed by department regulations and shall include the
14 following:

15 [~~A.~~] (1) a description of the property upon
16 which the taxes are due;

17 [~~B.~~] (2) a statement of the amount of property
18 taxes due, the date on which they became delinquent, the rate
19 of accrual of interest and any penalties or collection costs
20 that may be charged;

21 (3) a statement that the property owner may
22 enter into an installment agreement pursuant to Section 7-38-68
23 NMSA 1978 with the collecting authority for payment of
24 delinquent taxes, penalties, interest and collection costs due
25 on real property or manufactured homes and information on the

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1 name and phone number of the individual in the collecting
2 authority that the taxpayer can contact to arrange for an
3 installment agreement;

4 [E.] (4) a statement that the delinquent tax
5 account on real property will be transferred to the department
6 for collection;

7 [D.] (5) a statement that if taxes due on real
8 property are not paid [~~within three years from the date of~~
9 ~~delinquency~~] or if an installment agreement is not entered into
10 and complied with, the real property will be sold and a deed
11 issued; and

12 [E.] (6) a statement that if taxes due on
13 personal property are not paid, the personal property may be
14 seized and sold for taxes under authority of a demand warrant.

15 B. By June 10 of each year, the county treasurer of
16 each county electing, pursuant to Section 7-38-61.1 NMSA 1978,
17 to assume authority for the collection of delinquent taxes
18 shall mail a notice to each property owner of property for
19 which taxes have been delinquent for more than two years if the
20 taxes have not been referred to a qualified private attorney.
21 The notice shall contain the information set forth in
22 Paragraphs (1) through (3), (5) and (6) of Subsection A of this
23 section and, if the taxes are to be referred to a qualified
24 private attorney, a statement that the taxes will be referred
25 to the qualified private attorney and that, if referred,

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1 additional costs may be incurred."

2 Section 7. Section 7-38-61 NMSA 1978 (being Laws 1973,
3 Chapter 258, Section 100, as amended) is amended to read:

4 "7-38-61. REAL PROPERTY TAXES DELINQUENT FOR MORE THAN
5 TWO YEARS--TREASURER TO PREPARE DELINQUENCY LIST--NOTATION ON
6 PROPERTY TAX SCHEDULE. --

7 A. By July 1 of each year, the county treasurer
8 shall prepare a property tax delinquency list of all real
9 property for which taxes have been delinquent for more than two
10 years. The tax delinquency list shall contain the information
11 and be in a form prescribed and submitted by the date required
12 by department regulations. The county treasurer shall record
13 the tax delinquency list in the office of the county clerk.
14 There shall be no recording fee for recordation of the tax
15 delinquency list. The updated final property tax sale list
16 shall be recorded with the office of the county clerk the day
17 following the sale of the property. There shall be no
18 recording fee for recordation of the final property tax sale
19 list.

20 ~~[B. The county treasurer shall make a notation on~~
21 ~~the property tax schedule indicating that the account has been~~
22 ~~transferred to the department for collection at the time the~~
23 ~~tax delinquency list is mailed to the department.]~~

24 B. If the county has not elected, pursuant to
25 Section 7-38-61.1 NMSA 1978, to assume authority for the

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1 collection of delinquent taxes, the county treasurer shall mail
2 the tax delinquency list to the department and make a notation
3 on the property tax schedule indicating that the account has
4 been transferred to the department for collection. "

5 Section 8. A new section of the Property Tax Code,
6 Section 7-38-61.1 NMSA 1978, is enacted to read:

7 "7-38-61.1. [NEW MATERIAL] COUNTY OPTION TO COLLECT
8 DELINQUENT TAXES--AUTHORITY TO CONTRACT FOR THE COLLECTION OF
9 DELINQUENT TAXES. --

10 A. A class A county may elect to assume authority
11 for collection of delinquent property taxes due on real
12 property in the county, including the authority to sell the
13 property pursuant to the provisions of the Property Tax Code.
14 To make the election, the board of county commissioners shall
15 adopt a resolution to assume the authority and shall deliver or
16 mail a copy of the resolution to the department no later than
17 thirty days after its adoption and at least thirty days prior
18 to January 1 of the tax year to which the resolution first
19 applies. Any resolution adopted under this subsection may
20 adopt by reference the applicable provisions of the Property
21 Tax Code.

22 B. A county that has assumed authority to collect
23 delinquent taxes pursuant to Subsection A of this section may
24 take all actions allowed by law to collect delinquent taxes,
25 penalties, interest and collection costs, including:

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1 (1) filing suit pursuant to Section 7-38-61.2
2 NMSA 1978 and selling property pursuant to final judgments made
3 in such suits;

4 (2) selling the real property on which taxes
5 have become delinquent pursuant to Sections 7-38-65 through
6 7-38-67 and 7-38-70 through 7-38-72 NMSA 1978; and

7 (3) entering into installment agreements
8 pursuant to Sections 7-38-68 and 7-38-69 NMSA 1978.

9 C. A county that has assumed authority to collect
10 delinquent taxes pursuant to Subsection A of this section may
11 enter into professional service contracts with qualified
12 private attorneys to collect the delinquent taxes, penalties,
13 interest and collection costs, provided that the county may
14 include conditions on the use of specified collection
15 techniques and procedures. The county shall exclude the
16 collection of delinquent taxes on owner-occupied, single-
17 family, primary residential properties whose valuation for
18 property taxation purposes is less than an amount specified in
19 the contract. The county shall consider excluding and may
20 exclude the collection of delinquent taxes owed by owners of
21 owner-occupied, single-family, primary residential properties
22 based on age and income criteria specified in the contract.
23 The county may request competitive proposals pursuant to the
24 Procurement Code from qualified private attorneys. The amount
25 of professional liability insurance determined to be adequate

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1 by the board shall be set forth in the request for proposals.
2 The board may execute a professional services contract with a
3 successful offeror for the collection of delinquent taxes,
4 penalties, interest and collection costs due on real property,
5 personal property or both that are owed to the county or
6 governmental units for which the county collects the taxes.
7 Pursuant to the contract and upon the referral of delinquent
8 taxes from the county to the qualified private attorney, the
9 attorney may take such actions to collect the taxes, penalties,
10 interest and collection costs on behalf of the county as are
11 allowed by law and authorized by the contract.

12 D. An assumption of authority to collect delinquent
13 taxes adopted pursuant to Subsection A of this section may be
14 revoked by a subsequent resolution of the board of county
15 commissioners, provided that the effective date of the
16 revocation shall be the beginning of the tax year commencing on
17 or after eighteen months after the department receives written
18 notification of the revocation.

19 E. The county may use model resolutions prepared by
20 the department in assuming or revoking the authority provided
21 in this section. The department may not require use of such
22 model resolutions."

23 Section 9. A new section of the Property Tax Code,
24 Section 7-38-61.2 NMSA 1978, is enacted to read:

25 "7-38-61.2. [NEW MATERIAL] SUIT TO COLLECT DELINQUENT

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1 TAXES AND INTEREST AND PENALTIES-- SALE OF PROPERTY. --

2 A. At any time after a tax on property becomes
3 delinquent, a county that, pursuant to Section 7-38-61.1 NMSA
4 1978, has elected to assume the authority to collect delinquent
5 taxes or its qualified private attorney may file suit seeking a
6 judgment against the taxpayer and against the property;
7 provided that only the county attorney may file suit with
8 respect to delinquent taxes excluded from contracts with
9 qualifying private attorneys pursuant to Subsection C of
10 Section 7-38-61.1 NMSA 1978. The suit shall be filed in a
11 court of competent jurisdiction for the county in which the tax
12 was or is imposed not later than two years after the end of the
13 month in which the notice required by Section 7-38-51 NMSA 1978
14 is sent.

15 B. A sale of property to satisfy a judgment
16 rendered in favor of the collecting authority in a suit
17 authorized by this section is distinct from a sale of real
18 property pursuant to Sections 7-38-65 through 7-38-67 NMSA 1978
19 or of personal property pursuant to Sections 7-38-53 through
20 7-38-59 NMSA 1978. The provisions of Sections 7-38-53 through
21 7-38-57 and 7-38-65 through 7-38-67 NMSA 1978 do not apply to
22 any sale of property pursuant to this section."

23 Section 10. A new section of the Property Tax Code,
24 Section 7-38-61.3 NMSA 1978, is enacted to read:

25 "7-38-61.3. [NEW MATERIAL] RECOVERY OF COSTS IN

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1 COLLECTION SUIT. --

2 A. If successful in a suit to collect a delinquent
3 tax pursuant to Section 7-38-61.2 NMSA 1978, in addition to
4 other costs authorized by law, a county or its qualified
5 private attorney is entitled to recover from the delinquent
6 taxpayer the following costs:

- 7 (1) court costs;
- 8 (2) costs of filing for record any notice of
9 lis pendens against property;
- 10 (3) expenses of a tax sale; and
- 11 (4) reasonable expenses that are incurred by
12 the county or its qualified private attorney in determining the
13 name, identity and location of necessary parties and in
14 procuring necessary legal descriptions of the property on which
15 a delinquent tax is due.

16 B. Each item specified by Subsection A of this
17 section is a charge against the property and a personal
18 obligation of the property owner and shall be collectible in
19 the same manner as the taxes, penalties and interest due by the
20 owner. "

21 Section 11. A new section of the Property Tax Code,
22 Section 7-38-61.4 NMSA 1978, is enacted to read:

23 "7-38-61.4. [NEW MATERIAL] ALL PROCEEDS TO COUNTY--
24 DISTRIBUTION OF PROCEEDS RECEIVED. --

25 A. All delinquent taxes, interest, penalties and
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1 collection costs collected by a qualifying private attorney
2 from an action to collect delinquent taxes, penalties, interest
3 and collection costs shall be turned over to the county.

4 B. Except for proceeds from the sale of real
5 property distributed pursuant to Section 7-38-71 NMSA 1978 and
6 amounts collected under installment agreements distributed
7 pursuant to Section 7-38-69 NMSA 1978, delinquent taxes,
8 penalties, interest and collection costs received by a county
9 after a matter has been referred by the county to a qualified
10 private attorney pursuant to Subsection C of Section 7-38-61.1
11 NMSA 1978 shall be distributed as follows:

12 (1) first, that portion equal to the
13 collection costs incurred by the county, including any amount
14 owed to a qualified private attorney under a contract entered
15 into pursuant to Section 7-38-61.1 NMSA 1978, and the penalties
16 and interest due shall be deposited in the general fund of the
17 county;

18 (2) second, that portion equal to the taxes
19 due shall be distributed by the county treasurer to the
20 governmental units in accordance with the law and rules of the
21 department of finance and administration; provided that if the
22 amount available for distribution under this subsection is less
23 than the sum of the taxes, then each governmental unit shall
24 receive an amount equal to the proportion that the taxes due it
25 bear to the total taxes due; and

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1 (3) the balance, if any, shall be paid to the
2 former owner of the property or to any other person designated
3 by order of the court. "

4 Section 12. Section 7-38-62 NMSA 1978 (being Laws 1973,
5 Chapter 258, Section 102, as amended) is amended to read:

6 "7-38-62. AUTHORITY OF DEPARTMENT TO COLLECT DELINQUENT
7 PROPERTY TAXES [~~AFTER RECEIPT OF TAX DELINQUENCY LIST~~] -- USE OF
8 PENALTIES, INTEREST AND COLLECTION COSTS. -- [~~After the receipt~~
9 ~~of the tax delinquency list~~]

10 A. The department has the responsibility and
11 exclusive authority to take all action necessary to collect
12 delinquent taxes shown on [~~the list~~] a tax delinquency list
13 prepared and transferred to the department by a county that has
14 not elected to assume the authority to collect taxes pursuant
15 to Section 7-38-61.1 NMSA 1978 and retains responsibility and
16 exclusive authority to take all action necessary to collect
17 delinquent taxes shown on a tax delinquency list prepared and
18 transferred to the department by a county in a prior year on
19 which the department has not completed collection action.

20 B. This authority includes bringing collection
21 actions in the district courts based upon the personal
22 liability of the property owner for taxes as well as the
23 actions authorized in the Property Tax Code for proceeding
24 against the property subject to the tax for collection of
25 delinquent taxes. Payment of delinquent taxes listed and any

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1 penalty, interest or collection costs due in connection with
2 those taxes shall be made to the department if occurring after
3 the [~~receipt by the department of the tax delinquency list~~]
4 authority to collect those delinquent taxes has been granted to
5 the department pursuant to Subsection A of this section;
6 however, the department may authorize county treasurers to act
7 as its agents in accepting payments of taxes, penalties,
8 interest or collection costs due. Penalties, interest and
9 collection costs due received by the department under this
10 section shall be retained by the department for use, subject to
11 appropriation by the legislature, in the administration of the
12 Property Tax Code. "

13 Section 13. Section 7-38-65 NMSA 1978 (being Laws 1973,
14 Chapter 258, Section 105, as amended by Laws 2001, Chapter 253,
15 Section 1 and by Laws 2001, Chapter 254, Section 1) is amended
16 to read:

17 "7-38-65. COLLECTION OF DELINQUENT TAXES ON REAL
18 PROPERTY--SALE OF REAL PROPERTY.--

19 A. The [~~department~~] collecting authority may
20 collect delinquent taxes on real property by selling the real
21 property on which the taxes have become delinquent. The sale
22 of real property for delinquent taxes shall be in accordance
23 with the provisions of the Property Tax Code. Real property to
24 be sold pursuant to Sections 7-38-65 through 7-38-67 NMSA 1978
25 may be sold for delinquent taxes at any time after the

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1 expiration of three years from the first date shown on the tax
2 delinquency list on which the taxes became delinquent. Real
3 property to be sold pursuant to Sections 7-38-65 through
4 7-38-67 NMSA 1978 shall be offered for sale for delinquent
5 taxes either within four years after the first date shown on
6 the tax delinquency list on which the taxes became delinquent
7 or, if the [~~department~~] collecting authority is barred by
8 operation of law or by order of a court of competent
9 jurisdiction from offering the property for sale for delinquent
10 taxes within four years after the first date shown on the tax
11 delinquency list on which the taxes became delinquent, within
12 one year from the time the [~~department~~] collecting authority
13 determines that it is no longer barred from selling the
14 property, unless:

15 (1) all delinquent taxes, penalties, interest
16 and collection costs due are paid by 5:00 p.m. of the day prior
17 to the date of the sale; or

18 (2) an installment agreement for payment of
19 all delinquent taxes, penalties, interests and collection costs
20 due is entered into with the [~~department~~] collecting authority
21 by 5:00 p.m. of the day prior to the date of the sale pursuant
22 to Section 7-38-68 NMSA 1978.

23 B. Failure to offer property for sale within the
24 time prescribed by Subsection A of this section shall not
25 impair the validity or effect of any sale [~~which~~] that does

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1 take place.

2 C. The time requirements of this section are
3 subject to the provisions of Section 7-38-83 NMSA 1978. "

4 Section 14. Section 7-38-66 NMSA 1978 (being Laws 1973,
5 Chapter 258, Section 106, as amended by Laws 2001, Chapter 253,
6 Section 2 and by Laws 2001, Chapter 254, Section 2) is amended
7 to read:

8 "7-38-66. SALE OF REAL PROPERTY FOR DELINQUENT TAXES--
9 NOTICE OF SALE. --

10 A. At least twenty days but not more than thirty
11 days before the date of the sale for delinquent taxes pursuant
12 to Sections 7-38-65 through 7-38-67 NMSA 1978, the [department]
13 collecting authority shall notify by certified mail, return
14 receipt requested, to the address as shown on the most recent
15 property tax schedule, each property owner whose real property
16 will be sold that the owner's real property will be sold to
17 satisfy delinquent taxes, unless:

18 (1) all delinquent taxes, penalties, interest
19 and collection costs due are paid by 5:00 p.m. of the day prior
20 to the date of the sale; or

21 (2) an installment agreement for payment of
22 all delinquent taxes, penalties, interest and collection costs
23 due is entered into with the [department] collecting authority
24 by 5:00 p.m. of the day prior to the date of sale in accordance
25 with Section 7-38-68 NMSA 1978.

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B. The notice shall also:

- (1) state the amount of taxes, penalties, interest and collection costs due;
- (2) state the time and place of the sale;
- (3) describe the real property that will be sold;
- (4) inform the property owner of his right to enter into an installment agreement with the [~~department~~] collecting authority for payment of delinquent taxes, penalties, interest and collection costs, in accordance with Section 7-38-68 NMSA 1978;
- (5) provide information on the name and phone number of the individual in the [~~department~~] collecting authority the taxpayer can contact to arrange for an installment agreement in accordance with Section 7-38-68 NMSA 1978; and
- (6) contain any other information that the department may require by regulation.

C. At the same time a notice required by Subsection A of this section is sent to the owner of the property, a notice containing the information set out in Subsection B of this section shall also be sent to each person holding a lien or security interest of record in the property if an address for such person is reasonably ascertainable through a search of the property records of the county in which the property is

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1 located.

2 D. Failure of the [~~department~~] collecting authority
3 to mail a required notice by certified mail, return receipt
4 requested, shall invalidate the sale; provided, however, that
5 return to the [~~department~~] collecting authority of the notice
6 of the return receipt shall be deemed adequate notice and shall
7 not invalidate the sale.

8 E. Proof by the taxpayer that all delinquent taxes,
9 penalties, interest and collection costs had been paid by 5:00
10 p.m. of the day prior to the date of sale shall prevent or
11 invalidate the sale.

12 F. Proof by the taxpayer that the taxpayer has, by
13 5:00 p.m. of the day prior to the date of sale, entered into an
14 installment agreement to pay all delinquent taxes, penalties,
15 interest and collection costs as provided in Section 7-38-68
16 NMSA 1978 and that timely payments under such agreement are
17 being made shall prevent or invalidate the sale.

18 G. The time requirements of this section are
19 subject to the provisions of Section 7-38-83 NMSA 1978."

20 Section 15. Section 7-38-67 NMSA 1978 (being Laws 1973,
21 Chapter 258, Section 107, as amended by Laws 2001, Chapter 253,
22 Section 3 and by Laws 2001, Chapter 254, Section 3) is amended
23 to read:

24 "7-38-67. REAL PROPERTY SALE REQUIREMENTS. --

25 A. Real property to be sold pursuant to Sections

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1 7-38-65 through 7-38-67 NMSA 1978 may not be sold for
2 delinquent taxes before the expiration of three years from the
3 first date shown on the tax delinquency list on which the taxes
4 on the real property became delinquent.

5 B. Notice of the sale shall be published in a local
6 newspaper within the county where the real property is located
7 or, if there is no local county or municipal newspaper, then a
8 newspaper published in a county contiguous to or near the
9 county in which the real property is located, at least once a
10 week for the three weeks immediately preceding the week of the
11 sale. For more generalized notice, the ~~[department]~~ collecting
12 authority may choose to publish notice of the sale also in a
13 newspaper not published within the county and of more general
14 circulation. The notice shall state the time and place of the
15 sale and shall include a description of the real property
16 sufficient to permit its identification and location by
17 potential purchasers.

18 C. Real property shall be sold at public auction
19 either by the ~~[department]~~ collecting authority or an
20 auctioneer hired by the ~~[department]~~ collecting authority. The
21 auction shall be held in the county where the real property is
22 located at a time and place designated by the ~~[department]~~
23 collecting authority.

24 D. If the real property can be divided so as to
25 enable the ~~[department]~~ collecting authority to sell only part

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1 of it and pay all delinquent taxes, penalties, interest and
2 collection costs, the [~~department~~] collecting authority may,
3 with the consent of the owner, sell only a part of the real
4 property.

5 E. Before the sale, the [~~department~~] collecting
6 authority shall determine a minimum sale price for the real
7 property. In determining the minimum price, the [~~department~~]
8 collecting authority shall consider the value of the property
9 owner's interest in the real property, the amount of all
10 delinquent taxes, penalties and interest for which it is being
11 sold and the collection costs. The minimum price shall not be
12 less than the total of all delinquent taxes, penalties,
13 interest and collection costs. Real property may not be sold
14 for less than the minimum price unless no offer met the minimum
15 price when it was offered at an earlier public auction. A sale
16 properly made under the authority of and in accordance with the
17 requirements of this section constitutes full payment of all
18 delinquent taxes, penalties and interest that are a lien
19 against the property at the time of sale, and the sale
20 extinguishes the lien.

21 F. Payment shall be made in full by the close of
22 the public auction before an offer may be deemed accepted by
23 the [~~department~~] collecting authority.

24 G. Real property to be sold pursuant to Sections
25 7-38-65 through 7-38-67 NMSA 1978 not offered for sale may be

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1 offered for sale at a later sale, but the requirements of this
2 section and Section 7-38-66 NMSA 1978 shall be met in
3 connection with each sale. "

4 Section 16. Section 7-38-68 NMSA 1978 (being Laws 1973,
5 Chapter 258, Section 108, as amended) is amended to read:

6 "7-38-68. INSTALLMENT AGREEMENTS. --

7 A. The [~~division~~] collecting authority may enter
8 into an installment agreement for the payment of all delinquent
9 property taxes, penalties, interest and collection costs due
10 with respect to either real property or a manufactured home
11 with the owner of the real property or manufactured home whose
12 taxes have become delinquent [~~and whose account for all or part~~
13 ~~of the delinquent taxes has been transferred for collection to~~
14 ~~the division~~]. Execution of an installment agreement under
15 this section by a property owner is an irrevocable admission of
16 liability for all taxes, penalties, interest and collection
17 costs that are the subject of the agreement. The installment
18 agreement shall be in writing and shall not extend for a period
19 of more than thirty-six months. Interest shall accrue on the
20 unpaid balance during the period of the installment agreement.
21 The rate of interest shall be one percent a month, and no other
22 interest on that portion of the principal representing unpaid
23 taxes shall accrue while an installment agreement is in effect.
24 The [~~division~~] collecting authority shall not enter into an
25 installment agreement with a property owner on or after the

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1 date of the initial sale of real property or ~~manufactured home~~
2 for delinquent taxes whether or not the real property or
3 ~~manufactured home~~ is sold and a deed issued as a result of that
4 sale. The [~~division~~] collecting authority shall promulgate
5 regulations establishing requirements for a ~~minimum~~ down
6 payment and substantially equal monthly payments for
7 installment agreements.

8 B. An installment agreement prevents any further
9 action to collect the delinquent taxes stated in the agreement
10 as long as the terms of the agreement are met.

11 C. The [~~division~~] collecting authority may proceed
12 under the Property Tax Code to collect the property taxes,
13 penalties, interest and collection costs due and unpaid if:

14 (1) installment payments are not made on or
15 before the dates specified in the agreement;

16 (2) the property owner fails to pay other
17 property taxes when required; or

18 (3) any other condition contained in the
19 agreement is not met.

20 D. For the purpose of computing the time when real
21 property or a ~~manufactured home~~ may be sold for delinquent
22 taxes, the date of original delinquency shall be used when the
23 delinquent taxes have been the subject of an installment
24 agreement that was subsequently breached by the property owner.

25 E. If an owner of real property or a ~~manufactured~~

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1 home enters into an installment agreement and subsequently
2 breaches the agreement under this section, the [~~division~~]
3 collecting authority shall not enter into another installment
4 agreement with that property owner for the payment of the
5 delinquent taxes that were the subject of the installment
6 agreement.

7 F. Alphabetically indexed and serially numbered
8 records of installment agreements [~~must~~] shall be kept in the
9 office of the [~~director~~] collecting authority and made
10 available for public inspection. "

11 Section 17. Section 7-38-69 NMSA 1978 (being Laws 1973,
12 Chapter 258, Section 109, as amended) is amended to read:

13 "7-38-69. DISTRIBUTION OF AMOUNTS COLLECTED UNDER
14 INSTALLMENT AGREEMENTS.--Amounts collected under installment
15 agreements entered into by the [~~department~~] collecting
16 authority that represent delinquent taxes shall be remitted to
17 the county treasurer of the county to which the net taxable
18 value of the property is allocated for distribution to the
19 governmental units. Amounts collected that represent
20 penalties, interest and collection costs shall be [~~retained by~~
21 ~~the department~~] distributed in accordance with Section 7-38-71
22 NMSA 1978. Money collected shall be remitted at the times and
23 in the manner required by regulations of the department of
24 finance and administration. When the [~~department~~] collecting
25 authority has received payment in full of delinquent taxes,

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1 penalties, interest and collection costs paid under an
2 installment agreement, the [~~department~~] collecting authority
3 shall notify the county treasurer of that fact, and the county
4 treasurer shall make an entry on the property tax schedule
5 indicating that the delinquent property taxes, penalties and
6 interest have been paid. "

7 Section 18. Section 7-38-70 NMSA 1978 (being Laws 1973,
8 Chapter 258, Section 110, as amended) is amended to read:

9 "7-38-70. ISSUANCE OF DEEDS AS RESULT OF SALE OF REAL
10 PROPERTY FOR DELINQUENT TAXES--EFFECT OF DEEDS--LIMITATION OF
11 ACTION TO CHALLENGE CONVEYANCE. --

12 A. Upon receiving payment for real property sold
13 for delinquent taxes, the [~~division~~] collecting authority shall
14 execute and deliver a deed to the purchaser. If a county has
15 elected, pursuant to Section 7-38-61.1 NMSA 1978, to assume
16 authority for the collection of delinquent taxes, the county
17 shall notify the department of a sale by the county pursuant to
18 Section 7-38-67 NMSA 1978 within thirty days of issuance of the
19 deed; the notice shall contain the information required by the
20 department by regulation. The department shall maintain a
21 master list of all properties sold pursuant to Section 7-38-67
22 NMSA 1978 for each year.

23 B. If the real property was sold substantially in
24 accordance with the Property Tax Code, the deed conveys all of
25 the former property owner's interest in the real property as of

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1 the date the [~~state's~~] lien for real property taxes arose in
2 accordance with the Property Tax Code, subject only to
3 perfected interests in the real property existing before the
4 date the property tax lien arose.

5 C. After two years from the date of sale, neither
6 the former real property owner shown on the property tax
7 schedule as the delinquent taxpayer nor anyone claiming through
8 him may bring an action challenging the conveyance.

9 D. Subject to the limitation of Subsection C of
10 this section, in all controversies and suits involving title to
11 real property held under a deed from the [~~state~~] collecting
12 authority issued under this section, any person claiming title
13 adverse to that acquired by the deed from the [~~state must~~]
14 collecting authority shall prove, in order to defeat the title,
15 that:

16 (1) the real property was not subject to
17 taxation for the tax years for which the delinquent taxes for
18 which it was sold were imposed;

19 (2) the [~~division~~] collecting authority failed
20 to ~~mail~~ the notice required under Section 7-38-66 NMSA 1978 or
21 to receive any required return receipt;

22 (3) he, or the person through whom he claims,
23 had title to the real property at the time of the sale and had
24 paid all delinquent taxes, penalties, interest and collection
25 costs prior to the sale as provided in Subsection E of Section

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1 7-38-66 NMSA 1978; or

2 (4) he, or the person through whom he claims,
3 had entered into an installment agreement to pay all delinquent
4 taxes, penalties, interest and collection costs prior to the
5 sale as provided in Section 7-38-68 NMSA 1978 and that all
6 payments due were made timely. "

7 Section 19. Section 7-38-71 NMSA 1978 (being Laws 1973,
8 Chapter 258, Section 111, as amended) is amended to read:

9 "7-38-71. DISTRIBUTION OF AMOUNTS RECEIVED FROM SALE OF
10 PROPERTY. --

11 A. If the collecting authority is the department,
12 money received by the department from the sale of real or
13 personal property for delinquent property taxes shall be
14 deposited in a suspense fund and distributed as follows:

15 (1) first, that portion equal to the
16 collection costs shall be retained by the department for use,
17 subject to appropriation by the legislature, in administration
18 of the Property Tax Code;

19 (2) second, that portion equal to the
20 penalties and interest due shall be retained by the department
21 for use, subject to appropriation by the legislature, by the
22 department in administration of the Property Tax Code;

23 (3) third, that portion equal to the
24 delinquent taxes due shall be remitted by the department to the
25 appropriate county treasurer for distribution by the treasurer

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1 to the governmental units in accordance with the law and the
2 [~~regulations~~] rules of the department of finance and
3 administration; and

4 (4) the balance shall be paid to the former
5 owner of the property sold or to any other person designated by
6 order directed to the department by a court of competent
7 jurisdiction, provided that the department may first apply all
8 or any portion of the balance to be paid against the amount of
9 any property tax, including any penalty and interest related
10 thereto, owed by the person to whom the balance would otherwise
11 be paid.

12 B. If the collecting authority is a county, money
13 received by the county from the sale of real or personal
14 property for delinquent property taxes shall be distributed as
15 follows:

16 (1) first, that portion equal to the
17 collection costs incurred by the county, including any amount
18 owed to a qualified private attorney under a contract entered
19 into pursuant to Section 7-38-61.1 NMSA 1978, and the penalties
20 and interest due shall be deposited in the general fund of the
21 county;

22 (2) second, the balance, up to an amount equal
23 to the delinquent taxes due, shall be distributed by the county
24 treasurer to the governmental units in accordance with the law
25 and rules of the department of finance and administration; and

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1 (3) the balance shall be paid to the former
2 owner of the property sold or to any other person designated by
3 order directed to the county by a court of competent
4 jurisdiction, provided that the county may first apply all or
5 any portion of the balance to be paid against the amount of any
6 property tax, including any penalty and interest related
7 thereto, owed by the person to whom the balance would otherwise
8 be paid.

9 [~~B.~~] C. As a condition precedent to payment of the
10 balance of the sale amount received to the former owner of the
11 property, the [~~department~~] collecting authority may require any
12 person claiming to be entitled to that payment to present
13 sufficient evidence of proof of former ownership of the
14 property to the [~~department~~] collecting authority. The
15 department shall adopt [~~regulations~~] rules providing for the
16 procedures to be followed by persons claiming sale proceeds as
17 former owners in those instances where conflicting claims exist
18 or the [~~department~~] collecting authority requires proof of
19 ownership.

20 [~~C.~~] D. If no person claims the balance of sale
21 proceeds, whether the property was sold under the provisions of
22 the Property Tax Code or prior law, as the former owner of the
23 property within two years of the date of the sale and after a
24 reasonable search to determine the former owner is made by the
25 [~~department~~] collecting authority and no former owner is found,

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1 the balance of the sale proceeds shall be considered abandoned
2 property and deposited in accordance with the provisions of the
3 Uniform Unclaimed Property Act.

4 ~~[D.]~~ E. If the balance of proceeds from the sale
5 after paying a higher priority claim under Subsection A or B of
6 this section is insufficient to pay all of the next priority
7 claim, then the complete balance shall be applied to that next
8 priority claim as partial payment. "

9 Section 20. Section 7-38-72 NMSA 1978 (being Laws 1973,
10 Chapter 258, Section 112, as amended) is amended to read:

11 "7-38-72. NOTATION ON PROPERTY TAX SCHEDULE BY COUNTY
12 TREASURER WHEN PROPERTY SOLD FOR DELINQUENT TAXES. --When the
13 county treasurer receives written notification from the
14 ~~[division]~~ collecting authority of the sale of property for
15 delinquent taxes, ~~[he]~~ the treasurer shall make an entry on the
16 property tax schedule indicating that the delinquent property
17 taxes, penalties and interest are no longer a lien against the
18 property. "

19 Section 21. Section 7-38-74 NMSA 1978 (being Laws 1973,
20 Chapter 258, Section 114) is amended to read:

21 "7-38-74. OFFICERS AND EMPLOYEES ENGAGED IN THE
22 ADMINISTRATION OF THE PROPERTY TAX AND QUALIFIED PRIVATE
23 ATTORNEYS AND THEIR EMPLOYEES PROHIBITED FROM BUYING PROPERTY
24 SOLD FOR DELINQUENT PROPERTY TAXES--PENALTIES FOR VIOLATION--
25 SALES OF REAL PROPERTY IN VIOLATION DECLARED VOID. --

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1 A. Officers or employees of the state or of any of
2 its political subdivisions engaged in the administration of the
3 property tax, qualified private attorneys having a professional
4 services contract under Section 7-38-61.1 NMSA 1978 to collect
5 delinquent taxes and employees of such qualified private
6 attorneys may not, directly or indirectly, acquire an interest
7 in, buy or profit from any property sold by [~~the department~~]
8 any collecting authority for delinquent taxes except that an
9 officer, qualified private attorney or employee may purchase
10 property sold for delinquent taxes if he is the owner of the
11 property and was the owner of the property at the time the
12 taxes became delinquent.

13 B. Any officer, qualified private attorney or
14 employee violating this section is guilty of a fourth degree
15 felony and shall be fined not more than five thousand dollars
16 (\$5,000) or imprisoned for not less than one year nor more than
17 five years, or both. He shall also be automatically removed
18 from office, have his professional services contract canceled
19 or have his employment terminated upon conviction.

20 C. A real property sale in violation of this
21 section is void.

22 D. For the purposes of this section only, the terms
23 "officer", "qualified private attorney" and "employee" include
24 all persons related to the officer, qualified private attorney
25 or employee to the second degree of consanguinity and any

1 business in which the officer, qualified private attorney,
2 employee, related person or any combination thereof has a
3 majority interest."

4 Section 22. EFFECTIVE DATE. --The effective date of the
5 provisions of this act is July 1, 2003.

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