



COLORADO
Department of Revenue

HB18-1304

Department of Revenue Enforcement Measures Collection of Tax Owed

Sponsors: Representative B navez, Senator Court

Concerning Enforcement Measures Available to the Colorado Department of Revenue (CDOR) for the Collection of Delinquent Taxes.

What Would This Bill Do?

HB18-1304 modernizes tax collection procedures, aligns with Internal Revenue Service (IRS) practices, and clarifies tolling periods for tax collection. Additionally, the bill harmonizes conflicting statutes and enhances protections for taxpayers, financial institutions, and employers. ***The referenced tax collection methods are only used by CDOR after the tax deficiency has been fully adjudicated (including appeals) and all voluntary collection remedies (e.g., agreements to pay) have been fully exhausted.***

Why is it Necessary?

HB18-1304 provides greater clarity for taxpayers, financial institutions, employers, and CDOR regarding tax collection procedures and aligns collection practices the IRS and civil remedies.

Definitions:

- **Certificate of Tax Sale:** A certificate issued by CDOR transferring ownership of tangible personal property to a purchaser at a tax sale.
- **Tax Seizure:** CDOR may, after all other methods of collection have failed, take possession of taxpayer's tangible personal property. The vast majority of tax seizures are against businesses that have misappropriated trust fund taxes (e.g., sales tax and wage withholding).
- **Trust Fund Tax:** Tax collected or withheld by a retailer or employer that remains public money and is required to be held in trust for the sole use and benefit of the State of Colorado (e.g., sales tax and wage withholding taxes).
- **Toll Collection Period:** Pausing or delaying the running of the statute of limitations for CDOR to collect a tax liability while taxpayer's assets are under the control of a state or federal court.
- **Warrant or Writ of Entry:** Order issued by a district court authorizing CDOR to effectuate a seizure of tangible personal property.

Background:¹

Bankruptcy cases can last 5 years or longer, with an automatic federal stay on collection which prohibits CDOR from collecting delinquent taxes (which are typically non-dischargeable). Due to Colorado law and the duration of the bankruptcy cases, tax delinquencies may go immediately out of the statute of limitations upon dismissal of the bankruptcy case and thus prevent CDOR from collecting taxes owed.

Colorado statute states that a certificate of tax sale transfers to the purchaser "*all right, title, and interest (e.g., ownership) of such delinquent [taxpayer] in and to the property sold,*" but is silent as to the rights of private lienholders whose rights are superior to the rights of the taxpayer but junior to the rights of CDOR. In general,

¹ Section 39-21-107, C.R.S.: Tolling of tax collection; Section 39-21-114(2)(b), C.R.S.: Certificate of tax sale; 39-21-114(1), C.R.S.: Authority for administrative levies (distrain).

26 U.S.C.A. § 7402(a): Model federal code authorizing jurisdiction of district courts to issue warrants and writs.

26 U.S.C.A. § 6339: Model federal code - legal effect of certificate of sale of personal property and deed of real property; 26 U.S.C.A. § 6332: Model federal code - surrender of property subject to levy; 26 U.S.C.A. § 6331: Model federal code - continuous levy and distrain provisions; 26 U.S.C.A. § 6503: Model federal code - suspension of running of period of limitation.

Colorado statute mirrors federal statute however, language in the federal statute pertaining to junior lienholders and the transfer of title to motor vehicles, was omitted from Colorado statute.

In the event a business misappropriates trust fund taxes, CDOR is authorized to levy against taxpayer's property owned or used in its trade or business. It is unclear whether a district court has clear statutory authority to issue a warrant or writ of entry authorizing the seizure of the businesses property to satisfy the liability created by the misappropriation of trust fund taxes. The federal courts have specific statutory authority to issue writs of entry in favor of the IRS.

Levies on a delinquent taxpayer's financial accounts and wages are a primary tool for enforcing collection from noncompliant delinquent taxpayers. Financial institutions and employers are absolved of liability for complying with civil collection orders. This bill would provide the same protections to financial institutions and employers when complying with distraint warrants issued by CDOR.

If Denied:

- Differing rights between CDOR and the IRS, and a collection process different than the process for private creditors, leads to taxpayer and creditor confusion.
- Continuing uncertainty regarding compliance by financial institutions and employers with CDOR's authority to levy against bank accounts and wages.
- Continued confusion regarding whether property purchased at a tax sale is free and clear of all other liens.
- Continue to allow tax debts to go out of statute simply due to the filing of bankruptcy, during which CDOR is prohibited from collecting tax.

Support: CDOR

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