

MAINE STATE LEGISLATURE

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FIRST SPECIAL SESSION

ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 2147

H. P. 1959

House of Representatives, January 30, 1976

Referred to the Committee on Taxation. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Drigotas of Auburn.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-SIX

AN ACT Providing for Administrative Corrections in Tax Laws.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. 36 MRSA § 1285, 3rd sentence is amended to read:

Such action shall be brought in ~~the Superior Court~~ a court of competent jurisdiction in the county where such unorganized townships are located, and the Attorney General may begin and prosecute such actions when requested by the State Tax Assessor.

Sec. 2. 36 MRSA § 1760, sub-§ 31, as enacted by PL 1973, c. 580, § 1 and as amended by PL 1973, c. 794, is further amended to read:

31. **New machinery and equipment.** Sales of new machinery and equipment for use by the purchaser directly and primarily in the production of tangible personal property **by manufacturing, processing, assembling or fabricating**, which property is intended to be sold or leased ultimately for final use or consumption ~~by manufacturing, processing, assembling or fabricating~~.

Sec. 3. 36 MRSA § 1961 is repealed and the following enacted in place thereof:

§ 1961. Lien of tax

If any amount required to be paid to the State under chapters 211 to 225 is not paid when due, the Tax Assessor may file in the office of the registry of deeds of the county where such property is located with respect to real property or fixtures and in the office in which a security or financing statement or notice with respect to personal property would be filed a notice of lien specifying the amount of tax, interest, penalty and costs due, the name and last

known address of the person liable for the amount and the fact that the Tax Assessor has complied with all the provisions of chapters 211 to 225 in the assessment of the tax. From the time of the filing, the amount set forth in the certificate constitutes a lien upon all property of the person liable in the county then owned by him or thereafter acquired by him in the period before the expiration of the lien. In the case of any prior mortgage on any real or personal property so written as to secure a present debt and also future advances by the mortgagee to the mortgagor, the lien herein provided, when notice thereof has been filed in the proper office, shall be subject to the prior mortgage unless the Tax Assessor also notifies the mortgagee of the recording of the lien in writing, in which case any indebtedness thereafter created from the mortgagor to the mortgagee shall be junior to the lien herein provided for. The lien provided herein has the same force, effect and priority as a judgment lien and shall continue for 5 years from the date of filing unless sooner released or otherwise discharged. The lien may, within said 5-year period or within 5 years from the date of the last extension of the lien in the manner provided in this section, be extended by filing for record in the appropriate office a notice of extension of lien and from the time of such filing, the lien shall be extended for 5 years unless sooner released or otherwise discharged.

Sec. 4. 36 MRSA § 1962, 4th ¶ from end is repealed as follows:

~~“And for want of money, goods or chattels of said debtor, to be by him shown unto you, or found in your precinct, to the acceptance of the Attorney General of the State of Maine, to satisfy the sums aforesaid, we command you to take the body of said debtor, and commit him unto any of our jails in said counties, and there detain in your custody, until he shall pay the full sums aforesaid, with your fees, or be discharged by said State of Maine, or otherwise by order of law~~

Sec. 5. 36 MRSA § 1963, as last amended by PL 1971, c. 622, § 127, is repealed.

Sec. 6. 36 MRSA § 1965 is enacted to read:

§ 1965. Enforcement of lien

The lien provided for by section 1961 may be enforced at any time after the tax liability with respect to which the lien arose becomes collectable under section 1959 by a civil action brought by the Attorney General in the name of the State of Maine in the Superior Court of the county in which the property is located to subject any property, of whatever nature, of the person liable, or in which he has any right, title or interest, to the payment of such tax or liability. The court shall, after the parties have been duly notified of the action, proceed to adjudicate all matters involved therein and finally determine the merits of all claims to and liens upon the property, and, in all cases where a claim or interest of the State of Maine therein is established, may decree a sale of such property, by the proper officer of the court, and a distribution of the proceeds of such sale according to the findings of the court. If the property is sold to satisfy a lien held by the State of Maine, the State of Maine may bid at the sale such sum, not exceeding the amount of such lien with expenses of sale, as the Tax Assessor directs.

Any existing lien upon real property created pursuant to chapters 211 to 225 prior to the effective date of section 1961 may be enforced in the manner provided in this section.

Sec. 7. 36 MRSA § 5102, sub-§ 11, as enacted by P & SL 1969, c. 154, Section F and as last amended by PL 1975, c. 17, § 1, is further amended to read:

11. Meaning of terms. Any "term" used in this Part shall have the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required. Any reference in this Part to the laws of the United States shall mean the provisions of the Internal Revenue Code of 1954, and amendments thereto and other provisions of the laws of the United States relating to federal income taxes as of December 31, ~~1974~~ 1975. This amendment shall be effective as to items of income, deductions, loss or gain accruing in taxable years ending on or after January 1, 1975 but only to the extent such items have been earned, received, incurred or accrued on or after such effective date.

Sec. 8. 36 MRSA § 5312-A, as enacted by PL 1971, c. 37, § 3, and as amended by PL 1973, c. 21, § 2, is further amended to read:

§ 5312-A. Form and effect

The warrant shall have the force and effect of an execution issued upon a judgment in a civil action for taxes and may be in substantially the following form:

".....," ss. To the Sheriffs of our respective (name of county) counties or either of their Deputies,

"Whereas, the Attorney General has certified that, pursuant to the terms of Title 36, Section 5312 of the Revised Statutes the amount of income tax, assessed against of with interest and penalty, has become final as to law and fact, to wit:

or is due and owing based on a return filed by the taxpayer; to wit: (strike our inapplicable provision)

Income Tax	\$
Penalty	
Interest	
<hr/>	
Total	\$

and \$ costs of this proceeding, and the same is unpaid;

"We command you, therefore, that of the money, goods and chattels of said debtor, in your precinct, or the value thereof in money, you cause to be paid and satisfied unto the State of Maine said total and costs, and cents more for this warrant, together with your own fees.

~~“And for want of money, goods or chattels of said debtor, to be by him shown unto you, or found in your precinct, to the acceptance of the Attorney General of the State of Maine, to satisfy the sums aforesaid, we command you to take the body of said debtor, and commit him unto any of our jails in said counties, and there detain in your custody, until he shall pay the full sums aforesaid, with your fees, or be discharged by said State of Maine, or otherwise by order of law~~

“Hereof fail not, and make due return of this warrant, with your doings thereon, unto my office within one year from the date hereof.

.....
Clerk of Courts, County of
Date

Warrants shall be returnable within one year. New warrants may be issued on any such certificate within 2 years from the return day of the last preceding warrant for sums remaining unsatisfied.

Warrants shall be served by the sheriff of any county or by any of his deputies in the county where the person may be found.

Sec. 9. 36 MRSA § 5312-B, as enacted by PL 1971, c. 37, § 3 and as amended by PL 1971, c. 622, § 131, is repealed.

STATEMENT OF FACT

Section 1 permits the Attorney General to bring civil actions for collection of state taxes against owners of real estate in unorganized townships in District Courts as well as Superior Courts. Section 2 changes the order of phrases in the new machinery and equipment exemption of the Sales and Use Tax Law and clarifies the meaning of the exemption. Sections 3 and 6 permit the State to obtain liens for sales and use taxes against both real and personal property and provides for the more efficient procedure found in the State of Maine income tax law for the filing and enforcement of the liens. Sections 4 and 5 eliminate the warrant procedure for arresting and jailing taxpayers for failing to pay sales and use taxes. Section 7 brings the State of Maine Income Tax Law in conformity with Federal income tax laws for processing 1975 State of Maine income tax returns. Sections 8 and 9 eliminate the warrant procedure for arresting and jailing taxpayers for failing to pay State of Maine income taxes.