

1 AN ACT regarding taxes.

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

4 Section 5. The Retailers' Occupation Tax Act is amended
5 by changing Sections 5a, 5b, and 5c as follows:

6 (35 ILCS 120/5a) (from Ch. 120, par. 444a)

7 Sec. 5a. The Department shall have a lien for the tax
8 herein imposed or any portion thereof, or for any penalty
9 provided for in this Act, or for any amount of interest which
10 may be due as provided for in Section 5 of this Act, upon all
11 the real and personal property of any person to whom a final
12 assessment or revised final assessment has been issued as
13 provided in this Act, or whenever a return is filed without
14 payment of the tax or penalty shown therein to be due,
15 including all such property of such persons acquired after
16 receipt of such assessment or filing of such return. The
17 taxpayer is liable for the filing fee incurred by the
18 Department for filing the lien and, upon payment by the
19 taxpayer of the tax and penalty covered by the lien plus any
20 interest that may be due, the fee for filing of a release of
21 the lien.

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

30 Upon the granting of a rehearing or departmental review
31 pursuant to Section 4 or Section 5 of this Act after a lien

1 has attached, such lien shall remain in full force except to
2 the extent to which the final assessment may be reduced by a
3 revised final assessment following such rehearing or review.

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

25 If the Department finds that a taxpayer is about to
26 depart from the State, or to conceal himself or his property,
27 or to do any other act tending to prejudice or to render
28 wholly or partly ineffectual proceedings to collect such tax
29 unless such proceedings are brought without delay, or if the
30 Department finds that the collection of the amount due from
31 any taxpayer will be jeopardized by delay, the Department
32 shall give the taxpayer notice of such findings and shall
33 make demand for immediate return and payment of such tax,
34 whereupon such tax shall become immediately due and payable.

1 If the taxpayer, within 5 days after such notice (or within
2 such extension of time as the Department may grant), does not
3 comply with such notice or show to the Department that the
4 findings in such notice are erroneous, the Department may
5 file a notice of jeopardy assessment lien in the office of
6 the recorder of the county in which any property of the
7 taxpayer may be located and shall notify the taxpayer of such
8 filing. Such jeopardy assessment lien shall have the same
9 scope and effect as the statutory lien hereinbefore provided
10 for in this Section.

11 If the taxpayer believes that he does not owe some or all
12 of the tax for which the jeopardy assessment lien against him
13 has been filed, or that no jeopardy to the revenue in fact
14 exists, he may protest within 20 days after being notified by
15 the Department of the filing of such jeopardy assessment lien
16 and request a hearing, whereupon the Department shall hold a
17 hearing in conformity with the provisions of this Act and,
18 pursuant thereto, shall notify the taxpayer of its findings
19 as to whether or not such jeopardy assessment lien will be
20 released. If not, and if the taxpayer is aggrieved by this
21 decision, he may file an action for judicial review of such
22 final determination of the Department in accordance with
23 Section 12 of this Act and the Administrative Review Law.

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

1 no jeopardy to the revenue.

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

10 Nothing in this Section shall be construed to give the
11 Department a preference over the rights of any bona fide
12 purchaser, holder of a security interest, mechanics
13 lienholder, mortgagee, or judgment lien creditor arising
14 prior to the filing of a regular notice of lien or a notice
15 of jeopardy assessment lien in the office of the recorder in
16 the county in which the property subject to the lien is
17 located: Provided, however, that the word "bona fide", as
18 used in this Section shall not include any mortgage of real
19 or personal property or any other credit transaction that
20 results in the mortgagee or the holder of the security acting
21 as trustee for unsecured creditors of the taxpayer mentioned
22 in the notice of lien who executed such chattel or real
23 property mortgage or the document evidencing such credit
24 transaction. Such lien shall be inferior to the lien of
25 general taxes, special assessments and special taxes
26 heretofore or hereafter levied by any political subdivision
27 of this State.

28 In case title to land to be affected by the notice of
29 lien or notice of jeopardy assessment lien is registered
30 under the provisions of "An Act concerning land titles",
31 approved May 1, 1897, as amended, such notice shall be filed
32 in the office of the Registrar of Titles of the county within
33 which the property subject to the lien is situated and shall
34 be entered upon the register of titles as a memorial or

1 charge upon each folium of the register of titles affected by
2 such notice, and the Department shall not have a preference
3 over the rights of any bona fide purchaser, mortgagee,
4 judgment creditor or other lien holder arising prior to the
5 registration of such notice: Provided, however, that the word
6 "bona fide" shall not include any mortgage of real or
7 personal property or any other credit transaction that
8 results in the mortgagee or the holder of the security acting
9 as trustee for unsecured creditors of the taxpayer mentioned
10 in the notice of lien who executed such chattel or real
11 property mortgage or the document evidencing such credit
12 transaction.

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

17 (Source: P.A. 86-905.)

18 (35 ILCS 120/5b) (from Ch. 120, par. 444b)

19 Sec. 5b. The recorder of each county shall procure a
20 file labeled "State Tax Lien Notices" and an index book
21 labeled "State Tax Lien Index". When notice of any lien or
22 jeopardy assessment lien is presented to him for filing, he
23 shall file it in numerical order in the file and shall enter
24 it alphabetically in the index. The entry shall show the name
25 and last known business address of the person named in the
26 notice, the serial number of the notice, the date and hour of
27 filing, whether it is a regular lien or a jeopardy assessment
28 lien, and the amount of tax and penalty due and unpaid, plus
29 the amount of interest due under Section 5 of this Act at the
30 time when the notice of lien or jeopardy assessment lien is
31 filed.

32 No recorder or registrar of titles of any county shall
33 require that the Department pay any costs or fees in

1 connection with recordation of any notice or other document
 2 filed by the Department under this Act at the time such
 3 notice or other document is presented for recordation. The
 4 recorder or registrar of each county, in order to receive
 5 payment for fees or costs incurred by the Department, shall
 6 present the Department with monthly statements indicating the
 7 amount of fees and costs incurred by the Department and for
 8 which no payment has been received.

9 A notice of lien may be filed after the issuance of a
 10 revised final assessment pursuant to a rehearing or
 11 departmental review under Section 4 or Section 5 of this Act.

12 When the lien obtained pursuant to this Act has been
 13 satisfied and the taxpayer has paid the Department in cash or
 14 by guaranteed remittance an amount representing the filing
 15 fee for the lien and the filing fee for the release of that
 16 lien, the Department shall issue a release of lien and file
 17 that release of lien with the recorder of the county where
 18 that lien was filed. The to-the-person,-or-his-agent,-against
 19 whom--the--lien--was--obtained-and-such release of lien shall
 20 contain in legible letters a statement as follows:

21 FOR THE PROTECTION OF THE OWNER, THIS RELEASE SHALL
 22 BE FILED WITH THE RECORDER OR THE REGISTRAR
 23 OF TITLES, IN WHOSE OFFICE, THE LIEN WAS FILED.

24 When a certificate of complete or partial release of lien
 25 issued by the Department is presented for filing in the
 26 office of the recorder or Registrar of Titles where a notice
 27 of lien or notice of jeopardy assessment lien was filed, the
 28 recorder, in the case of nonregistered property, shall
 29 permanently attach the certificate of release to the notice
 30 of lien or notice of jeopardy assessment lien and shall enter
 31 the certificate of release and the date in the "State Tax
 32 Lien Index" on the line where the notice of lien or notice of
 33 jeopardy assessment lien is entered.

34 In the case of registered property, the Registrar of

1 Titles shall file and enter upon each folium of the register
 2 of titles affected thereby a memorial of the certificate of
 3 release which memorial when so entered shall act as a release
 4 pro tanto of any memorial of such notice of lien or notice of
 5 jeopardy assessment lien previously filed and registered.

6 (Source: P.A. 84-221.)

7 (35 ILCS 120/5c) (from Ch. 120, par. 444c)

8 Sec. 5c. Upon payment by the taxpayer to the Department
 9 in cash or by guaranteed remittance of an amount representing
 10 the filing fee for the lien and the filing fee for the
 11 release of that lien, the Department shall issue a
 12 certificate of complete or partial release of the lien and
 13 file that complete or partial release of lien with the
 14 recorder of the county where the lien was filed:

15 (a) To the extent that the fair market value of any
 16 property subject to the lien exceeds the amount of the lien
 17 plus the amount of all prior liens upon such property;

18 (b) To the extent that such lien shall become
 19 unenforceable;

20 (c) To the extent that the amount of such lien is paid
 21 by the retailer whose property is subject to such lien,
 22 together with any interest which may become due under Section
 23 5 of this Act between the date when the notice of lien is
 24 filed and the date when the amount of such lien is paid;

25 (d) To the extent that there is furnished to the
 26 Department on a form to be approved and with a surety or
 27 sureties satisfactory to the Department a bond that is
 28 conditioned upon the payment of the amount of such lien,
 29 together with any interest which may become due under Section
 30 5 of this Act after the notice of lien is filed, but before
 31 the amount thereof is fully paid;

32 (e) To the extent and under the circumstances specified
 33 in Section 5a of this Act in the case of jeopardy assessment

1 liens;

2 (f) To the extent to which an assessment is reduced
3 pursuant to a rehearing or departmental review under Section
4 4 or Section 5 of this Act.

5 A certificate of complete or partial release of any lien
6 shall be held conclusive that the lien upon the property
7 covered by the certificate is extinguished to the extent
8 indicated by such certificate.

9 (Source: Laws 1965, p. 531.)