

2001 DRAFTING REQUEST

Bill

Received: **01/26/2001**

Received By: **jkreye**

Wanted: **As time permits**

Identical to LRB:

For: **Michael Lehman (608) 267-2367**

By/Representing: **andrew**

This file may be shown to any legislator: **NO**

Drafter: **jkreye**

May Contact:

Alt. Drafters:

Subject: **Tax - miscellaneous**

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Duration of tax warrant liens

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	jkreye 02/07/2001	wjackson 02/07/2001	jfrantze 02/08/2001	_____	lrb_docadmin 02/08/2001	lrb_docadminState 02/14/2001	

FE Sent For:

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FE Sent For:

<END>

FROM THE DESK OF

Michael (Mickey)
Lehman

State Representative • 58th Assembly District



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Madison, Wisconsin 53708-8952
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1317 Honeysuckle Road
Hartford, Wisconsin 53027
(414) 673-3967

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Joe,

This past WOR info sheet
is what we want to do. If
you have questions, please let
me know.

Andrew

Wisconsin Department of Revenue
Income, Sales and Excise Tax Division
October 27, 1998

TITLE: Duration of Department of Revenue Tax Warrant Liens

DESCRIPTION OF LAW AND PROBLEM: Under section 71.91(4), Wis. Stats., effective July 30, 1981, a tax lien attaches to a delinquent taxpayer's property and shall continue until full payment is made. Therefore, for a tax warrant docketed after the effective date of the law, there is no time limitation on the duration of the tax lien derived from the warrant. In accord: Wisconsin Attorney General Opinion dated May 24, 1993(OAG 7-93).

For tax warrants docketed prior to July 30, 1981, the lien resulting from the tax warrant attaches to property for a 10-year period.

The Wisconsin Land Title Association has identified problems for its members in researching and finding old tax warrants going back many years, given this unlimited duration.

RECOMMENDATION: Amend section 71.91(4) to provide that a tax warrant docketed with the clerks of circuit court after the effective date of the amendment shall have a duration of 20 years, and may be renewed by the Department of Revenue at no expense to the State of Wisconsin through a re-filing of the tax warrant for an additional 20-year period.

FISCAL/ADMINISTRATIVE IMPACT: The Department of Revenue would incur moderate expense in implementing the proposed amendment. It is anticipated that title insurers and abstractors would experience a positive administrative impact, and that the responsibilities of the clerks of circuit court would be clarified.

DRAFTING INSTRUCTIONS: See Recommendation above. Provide that the amendment is prospective in nature, and that tax warrants as of record prior to the effective date shall retain their duration as set forth under existing law. Provide for a re-filing process where the Department of Revenue has a window of six months prior to the expiration of the tax warrant to effect a warrant re-filing. State that a re-filed warrant retains its priority from its initial docketing date.

Specifically state in the amended statute itself that the 20-year duration and re-filing process applies solely to tax warrants docketed after a date certain. This is important because otherwise a reading of the amended statute by itself might lead to the erroneous conclusion that a tax warrant docketed after July 31, 1981 and before the effective date of the amendment only has a 20-year duration (subject to re-filing), as opposed to an indefinite duration.

EFFECTIVE DATE: Day after publication, and see Drafting Instructions, above.

CONTACT PERSONS: Andrew Nowlan - Rep M. Lehman
7-2367



State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-2269/7
JK&MES:.....

WJ
RMK

2-7-01

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1 AN ACT ...; relating to: tax warrants and liens on property.

Analysis by the Legislative Reference Bureau

Under current law, if a person who is liable to pay any income or franchise tax to this state fails to pay such a tax, the amount of the unpaid tax becomes a lien on the person's property. The lien remains in effect until the person pays the amount of the unpaid tax. The department of revenue (DOR) must file a tax warrant with the circuit court clerk in the county where the person's property is located. The clerk files the warrant and enters it on the court's judgment and lien docket. The clerk also charges DOR a fee for filing the warrant. The tax warrant directs the county sheriff to sell as much of the person's property within the county as necessary to pay the amount of the unpaid tax.

Under this bill, a lien on a person's property, related to unpaid income or franchise taxes, remains in effect for 20 years or until the person pays the amount of the unpaid tax, whichever comes first. DOR may renew the lien by filing a new warrant with the circuit court clerk in the county where the person's property is located. Under the bill, the clerk does not charge DOR a fee for filing a warrant to renew a lien. The renewed lien remains in effect for 20 years or until the person pays the amount of the unpaid tax, whichever comes first.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

2 SECTION 1. 71.91 (4) of the statutes is amended to read:

SECTION 1

1 71.91 (4) UNPAID TAX IS PERFECTED LIEN ON PROPERTY. If any person liable to pay
 2 any income or franchise tax neglects, fails² or refuses to pay the tax, the amount,
 3 including any interest, addition to tax, penalty³ or costs, shall be a perfected lien in
 4 favor of the department of revenue upon all property and rights to property. The lien
 5 is effective at the time taxes are due or at the time an assessment is made and shall
 6 continue until the liability for the amount to be paid or for the amount so assessed
 7 is satisfied, except that liens related to warrants entered under sub. (5) (b) 1. after
 8 the effective date of this subsection⁴... [revisor inserts date] shall continue for 20⁵
 9 years, subject to renewal under sub. (5) (dm), or until the liability for the amount to
 10 be paid or for the amount so assessed is satisfied, whichever comes first. The
 11 perfected lien does not give the department of revenue priority over lienholders,
 12 mortgagees, purchasers for value, judgment creditors⁶ and pledges whose interests
 13 have been recorded before the department's lien is recorded.

History: 1987 a. 312, 411; 1989 a. 31 ss. 2102b, 2102f; 1991 a. 39, 31⁷; 1993 a. 205; 1995 a. 27, 274, 233, 428; 1997 a. 27, 237.

SECTION 2. 71.91 (5) (dm) of the statutes is created to read:

15 71.91 (5) (dm) The department of revenue may renew a lien that expires after
 16 20 years, as specified under sub. (4),⁸ by filing a warrant as provided under par. (ar)⁹
 17 within 6 months from the date that the lien expires. The clerk of circuit court shall
 18 enter the warrant as provided under par. (b) 1.,¹⁰ except that no fee shall be assessed
 19 for any warrant filed under this paragraph.¹¹ A lien that is the subject of a warrant
 20 filed under this paragraph¹² retains its priority for payment under the original¹³
 21 warrant and remains in effect for 20 years, subject to renewal under this paragraph,¹⁴
 22 or until the liability for the amount to be paid or for the amount so assessed is
 23 satisfied, whichever comes first.

(END)



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET
5TH FLOOR
MADISON, WI 53701-2037

STEPHEN R. MILLER
CHIEF

LEGAL SECTION: (608) 266-3561
LEGAL FAX: (608) 264-6948

February 8, 2001

MEMORANDUM

To: Representative M. Lehman

From: Joseph T. Kreye, Legislative Attorney

Re: LRB-2269 Duration of tax warrant liens

The attached draft was prepared at your request. Please review it carefully to ensure that it is accurate and satisfies your intent. If it does and you would like it jacketed for introduction, please indicate below for which house you would like the draft jacketed and return this memorandum to our office. If you have any questions about jacketing, please call our program assistants at 266-3561. Please allow one day for jacketing.

JACKET FOR ASSEMBLY JACKET FOR SENATE

If you have any questions concerning the attached draft, or would like to have it redrafted, please contact me at (608) 266-2263 or at the address indicated at the top of this memorandum.

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will request that it be prepared after the draft is introduced. You may obtain a fiscal estimate on the attached draft before it is introduced by calling our program assistants at 266-3561. Please note that if you have previously requested that a fiscal estimate be prepared on an earlier version of this draft, you will need to call our program assistants in order to obtain a fiscal estimate on this version before it is introduced.

Please call our program assistants at 266-3561 if you have any questions regarding this memorandum.



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET
P. O. BOX 2037
MADISON, WI 53701-2037

LEGAL SECTION: (608) 266-3561
REFERENCE SECTION: (608) 266-0341
FAX: (608) 266-5648

STEPHEN R. MILLER
CHIEF

April 9, 2001

MEMORANDUM

To: Representative Michael Lehman

From: Joseph T. Kreye, Legislative Attorney, (608) 266-2263
Marc E. Shovers, Sr. Legislative Attorney, (608) 266-0129

Subject: Technical Memorandum to **2001 AB-244** (LRB-2269/1)

We received the attached technical memorandum relating to your bill. This copy is for your information and your file. If you wish to discuss this memorandum or the necessity of revising your bill or preparing an amendment, please contact me.

MEMORANDUM

April 9, 2001

TO: Joseph Kreye
Marc Shovers
Legislative Reference Bureau

FROM: Dennis Collier
Department of Revenue

SUBJECT: Technical Memorandum on AB 244 – Duration of Tax Warrant Liens

The Department wishes to make several comments regarding AB 244:

1. The time period provided to renew the lien under sec. 71.91(5)(dm) is unclear. It appears to allow the Department to renew the expired lien by refiling it up to six months after the original lien expired. The proposal also states that the priority date of the refiled lien relates back to the filing date of the original lien. As a result, the lien priority would remain uncertain during the six month period after an original lien expired but before the Department refiled the lien. The sponsor may wish to insert language that requires the Department to refile its lien prior to the expiration date of the original lien.
2. The sponsor may wish to clarify sec. 71.91(5)(dm) to indicate whether liens may be renewed more than once.
3. The sponsor may wish to examine the cross references in sections 77.62 and 78.70(1) to sec. 71.91 to ensure that these sections either retain their original intent or are updated to include any changes made by the proposed legislation.

If you have questions regarding this technical memorandum, please contact Meredith Krejny at 261-8984.

DC:MK