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Legislative Document

No. 1672

S.P. 684

In Senate, March 23, 2016

An Act To Improve Priority of Tax Liens and the Collection of Sales Taxes

Reference to the Committee on Taxation suggested and ordered printed.

A handwritten signature in cursive script, reading "Heather J.R. Priest".

HEATHER J.R. PRIEST
Secretary of the Senate

Presented by Senator McCORMICK of Kennebec. (GOVERNOR'S BILL)
Cosponsored by Representative: GOODE of Bangor.

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

2 **PART A**

3 **Sec. A-1. 36 MRSA §175-A, sub-§1**, as amended by PL 1999, c. 699, Pt. D, §26
4 and affected by §30, is further amended to read:

5 **1. Filing.** ~~If~~ Before August 1, 2016, if any tax imposed by this Title or imposed by
6 any other provision of law and authorized to be collected by the bureau is not paid when
7 due and no further administrative or judicial review of the assessment is available
8 pursuant to law, the assessor may file in the registry of deeds of any county, with respect
9 to real property, or in the office of the Secretary of State, with respect to property of a
10 type a security interest in which may be perfected by a filing in such office under Title
11 11, Article 9-A, a notice of lien specifying the amount of the tax, interest, penalty and
12 costs due, the name and last known address of the person liable for the amount and, in the
13 case of a tax imposed by this Title, the fact that the assessor has complied with all the
14 provisions of this Title in the assessment of the tax. The lien arises at the time the
15 assessment becomes final and constitutes a lien upon all property, whether real or
16 personal, then owned or thereafter acquired by that person in the period before the
17 expiration of the lien. The lien imposed by this section is not valid against any
18 mortgagee, pledgee, purchaser, judgment creditor or holder of a properly recorded
19 security interest until notice of the lien has been filed by the assessor, with respect to real
20 property, in the registry of deeds of the county where such property is located and, with
21 respect to personal property, in the office in which a financing statement for such
22 personal property is normally filed. Notwithstanding this subsection, a tax lien upon
23 personal property does not extend to those types of personal property not subject to
24 perfection of a security interest by means of the filing in the office of the Secretary of
25 State. The lien is prior to any mortgage or security interest recorded, filed or otherwise
26 perfected after the notice, other than a purchase money security interest perfected in
27 accordance with Title 11, Article 9-A. In the case of any mortgage or security interest
28 properly recorded or filed prior to the notice of lien that secures future advances by the
29 mortgagee or secured party, the lien is junior to all advances made within 45 days after
30 filing of the notice of lien, or made without knowledge of the lien or pursuant to a
31 commitment entered into without knowledge of the lien. Subject to the limitations in this
32 section, the lien provided in this ~~section~~ subsection has the same force, effect and priority
33 as a judgment lien and continues for 10 years from the date of recording unless sooner
34 released or otherwise discharged. The lien may, within the 10-year period, or within 10
35 years from the date of the last extension of the lien in the manner provided in this
36 subsection, be extended by filing for record in the appropriate office a copy of the notice
37 and, from the time of filing, that lien must be extended for 10 years unless sooner
38 released or otherwise discharged.

39 This subsection applies to assessments made before August 1, 2016.

40 **Sec. A-2. 36 MRSA §175-A, sub-§1-A** is enacted to read:

41 **1-A. Filing of tax lien.** Beginning August 1, 2016, if any tax imposed by this Title
42 or any tax imposed by any other provision of law and authorized to be collected by the

1 bureau is not paid when due and no further administrative or judicial review of the
2 assessment is available pursuant to law, the amount of the assessment, including the tax,
3 interest, penalties and costs, is a lien in favor of the assessor. The lien arises at the time
4 the assessment is made and constitutes a lien upon all property, whether real or personal,
5 owned by the person liable for the assessment at the time the lien arises or acquired by
6 that person in the period after the lien arises until the expiration of the lien. The assessor
7 may file in the registry of deeds of any county, with respect to real property, or in the
8 office of the Secretary of State, with respect to property of a type for which a security
9 interest may be perfected by a filing in such office under Title 11, Article 9-A, a notice of
10 lien specifying the amount of the tax, interest, penalties and costs due, the name and last
11 known address of the person liable for the amount and, in the case of a tax imposed by
12 this Title, the fact that the assessor has complied with all the provisions of this Title in the
13 assessment of the tax. Filing of the lien by the assessor constitutes notice of lien for, and
14 secures payment of, both the original assessment and all subsequent assessments of tax
15 against the same person, until such time as the lien is released or otherwise discharged as
16 provided for in this section. The lien imposed by this section is not valid against any
17 mortgagee, pledgee, purchaser, judgment creditor or holder of a properly recorded
18 security interest until notice of the lien has been filed by the assessor, with respect to real
19 property, in the registry of deeds of the county where such property is located and, with
20 respect to personal property, in the office in which a financing statement for such
21 personal property is normally filed. Notwithstanding this subsection, a tax lien upon
22 personal property does not extend to those types of personal property not subject to
23 perfection of a security interest by means of the filing in the office of the Secretary of
24 State. The lien is prior to any mortgage or security interest recorded, filed or otherwise
25 perfected after the notice, other than a purchase-money security interest perfected in
26 accordance with Title 11, Article 9-A. In the case of any mortgage or security interest
27 properly recorded or filed prior to the notice of lien that secures future advances by the
28 mortgagee or secured party, the lien is junior to all advances made within 45 days after
29 filing of the notice of lien, or made without knowledge of the lien or pursuant to a
30 commitment entered into without knowledge of the lien. Subject to the limitations in this
31 section, the lien provided in this subsection has the same force, effect and priority as a
32 judgment lien and continues for 10 years from the date of recording unless sooner
33 released or otherwise discharged. The lien may, within the 10-year period, or within 10
34 years from the date of the last extension of the lien in the manner provided in this
35 subsection, be extended by filing for record in the appropriate office a copy of the notice
36 and, from the time of filing, that lien must be extended for 10 years unless sooner
37 released or otherwise discharged. If the lien is extended within the 10-year period, or
38 within 10 years from the date of the last extension of the lien as provided for in this
39 subsection, the extended lien relates back to the date the lien was first filed.

40 This subsection applies to assessments made on or after August 1, 2016.

41 **Sec. A-3. 36 MRSA §175-A, sub-§3**, as amended by PL 1997, c. 526, §10, is
42 further amended to read:

43 **3. Enforcement.** The lien provided for by subsection 1 or subsection 1-A may be
44 enforced at any time after the tax liability with respect to which the lien arose becomes
45 collectible under section 173, subsection 1 by a civil action brought by the Attorney

1 General in the name of the State in the Superior Court of the county in which the property
2 is located to subject any property, of whatever nature, in which the taxpayer has any right,
3 title or interest, to the payment of such tax or liability. The court shall, after the parties
4 have been duly notified of the action, proceed to adjudicate all matters involved in the
5 action and finally determine the merits of all claims to and liens upon the property and, in
6 all cases where a claim or interest of the State therein is established, may decree a sale of
7 the property by the proper officer of the court and a distribution of the proceeds of such
8 sale according to the findings of the court. If the property is sold to satisfy a lien held by
9 the State, the State may bid at the sale such sum, not exceeding the amount of that lien
10 plus expenses of sale, as the assessor directs.

11 **Sec. A-4. 36 MRSA §175-A, sub-§4**, as corrected by RR 1997, c. 1, §28, is
12 amended to read:

13 **4. Recording fees part of tax liability.** Fees paid by the assessor to registrars of
14 deeds for recording notices of lien pursuant to subsection 1 or subsection 1-A and notices
15 of release of a lien pursuant to subsection 2 may be added to the tax liability that gave rise
16 to the lien and, in the case of a tax imposed by this Title, may be collected by all the
17 methods provided for in chapter 7. In the case of other obligations owed to the State and
18 authorized to be collected by the bureau, the fees may be collected by any collection
19 method authorized by this section or section 176-A.

20 **Sec. A-5. 36 MRSA §177, sub-§1**, as amended by PL 1999, c. 708, §9, is further
21 amended to read:

22 **1. Generally.** All sales and use taxes collected by a person pursuant to Part 3, all
23 taxes collected by a person under color of Part 3 that have not been properly returned or
24 credited to the persons from whom they were collected, all taxes collected by ~~or imposed~~
25 ~~on~~ a person pursuant to chapter 451 or 459, all fees collected pursuant to chapter 719 and
26 all taxes collected by a person pursuant to chapter 827 constitute a special fund in trust
27 for the State Tax Assessor. The liability for the taxes or fees and the interest or penalty
28 on taxes or fees is enforceable by assessment and collection, in the manner prescribed in
29 this Part, against the person and against any officer, director, member, agent or employee
30 of that person who, in that capacity, is responsible for the control or management of the
31 funds or finances of that person or is responsible for the payment of that person's taxes.
32 An assessment against a responsible individual pursuant to this section must be made
33 within 6 years from the date on which the return on which the taxes were required to be
34 reported was filed. An assessment pursuant to this section may be made at any time with
35 respect to a time period for which a return has become due but has not been filed.

36 **Sec. A-6. 36 MRSA §177, sub-§1-A** is enacted to read:

37 **1-A. Responsible individual liability for uncollected tax.** The liability for all sales
38 and use taxes required to be collected pursuant to Part 3 but not collected or paid and all
39 taxes imposed pursuant to chapter 451 or 459 but not collected or paid, along with the
40 interest or penalty on the taxes, is enforceable by assessment and collection against a
41 responsible individual in accordance with subsection 1.

1 \$140,000 amount used to calculate the numerator in this paragraph must be adjusted
2 for inflation in accordance with section 5403, subsection 4.

3 **Sec. B-4. 36 MRSA §5125, sub-§6** is enacted to read:

4 **6. Phase-out.** For tax years beginning on or after January 1, 2016, the total itemized
5 deductions of the taxpayer determined in accordance with subsections 1 to 4 must be
6 reduced by an amount equal to the total itemized deductions multiplied by the following
7 fraction:

8 A. For single individuals and married persons filing separate returns, the numerator
9 is the taxpayer's Maine adjusted gross income less \$70,000, except that the numerator
10 may not be less than zero, and the denominator is \$75,000. In no case may the
11 fraction contained in this paragraph produce a result that is more than one. The
12 \$70,000 amount used to calculate the numerator in this paragraph must be adjusted
13 for inflation in accordance with section 5403, subsection 4;

14 B. For individuals filing as heads of households, the numerator is the taxpayer's
15 Maine adjusted gross income less \$105,000, except that the numerator may not be
16 less than zero, and the denominator is \$112,500. In no case may the fraction
17 contained in this paragraph produce a result that is more than one. The \$105,000
18 amount used to calculate the numerator in this paragraph must be adjusted for
19 inflation in accordance with section 5403, subsection 4; or

20 C. For individuals filing married joint returns or surviving spouses, the numerator is
21 the taxpayer's Maine adjusted gross income less \$140,000, except that the numerator
22 may not be less than zero, and the denominator is \$150,000. In no case may the
23 fraction contained in this paragraph produce a result that is more than one. The
24 \$140,000 amount used to calculate the numerator in this paragraph must be adjusted
25 for inflation in accordance with section 5403, subsection 4.

26 **Sec. B-5. 36 MRSA §5242**, as amended by PL 1995, c. 639, §23, is further
27 amended to read:

28 **§5242. Information returns**

29 The State Tax Assessor may require returns of information to be made and filed on or
30 before ~~February 28th~~ January 31st of each year by a person making payment or crediting
31 in a calendar year the amounts of \$600 or more (\$10 or more in the case of interest or
32 dividends) to a person who may be subject to the tax imposed under this Part. The
33 returns may be required of a person, including lessees or mortgagors of real or personal
34 property, fiduciaries, employers and all officers and employees of this State, or of a
35 municipal corporation or political subdivision of this State, having the control, receipt,
36 custody, disposal or payment of dividends, interest, rents, salaries, wages, premiums,
37 annuities, compensations, remunerations, emoluments or other fixed or determinable
38 gains, profits or income, except interest coupons payable to bearer. A duplicate of the
39 statement as to tax withheld on wages, required to be furnished by an employer to an
40 employee, constitutes the return of information required to be made under this section
41 with respect to those wages.

