

# HOUSE BILL No. 1126

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 6-8.1-8-2.

**Synopsis:** Tax administration. Provides that if the department of state revenue issues a demand notice to a taxpayer for the payment of a tax and any interest or penalties on the tax, the taxpayer has 30 days after the date on which the demand notice is issued to pay the amount demanded or show reasonable cause for not paying the amount demanded.

**Effective:** July 1, 2017.

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January 5, 2017, read first time and referred to Committee on Ways and Means.

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First Regular Session of the 120th General Assembly (2017)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2016 Regular Session of the General Assembly.

## HOUSE BILL No. 1126

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A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 6-8.1-8-2, AS AMENDED BY P.L.181-2016,  
2 SECTION 29, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2017]: Sec. 2. (a) Except as provided in IC 6-8.1-5-3 and  
4 sections 16 and 17 of this chapter, the department must issue a demand  
5 notice for the payment of a tax and any interest or penalties accrued on  
6 the tax, if a person files a tax return without including full payment of  
7 the tax or if the department, after ruling on a protest, finds that a person  
8 owes the tax before the department issues a tax warrant. The demand  
9 notice must state the following:  
10 (1) That the person has ~~twenty (20)~~ **thirty (30)** days from the date  
11 the department mails the notice to either pay the amount  
12 demanded or show reasonable cause for not paying the amount  
13 demanded.  
14 (2) The statutory authority of the department for the issuance of  
15 a tax warrant.  
16 (3) The earliest date on which a tax warrant may be filed and  
17 recorded.



1 (4) The statutory authority for the department to levy against a  
2 person's property that is held by a financial institution.

3 (5) The remedies available to the taxpayer to prevent the filing  
4 and recording of the judgment.

5 If the department files a tax warrant in more than one (1) county, the  
6 department is not required to issue more than one (1) demand notice.

7 (b) If the person does not pay the amount demanded or show  
8 reasonable cause for not paying the amount demanded within the  
9 ~~twenty (20)~~ **thirty (30)** day period, the department may issue a tax  
10 warrant for the amount of the tax, interest, penalties, collection fee,  
11 sheriff's costs, clerk's costs, and fees established under section 4(b) of  
12 this chapter when applicable. When the department issues a tax  
13 warrant, a collection fee of ten percent (10%) of the unpaid tax is added  
14 to the total amount due.

15 (c) When the department issues a tax warrant, it may not file the  
16 warrant with the circuit court clerk of any county in which the person  
17 owns property until at least ~~twenty (20)~~ **thirty (30)** days after the date  
18 the demand notice was mailed to the taxpayer. The department may  
19 also send the warrant to the sheriff of any county in which the person  
20 owns property and direct the sheriff to file the warrant with the circuit  
21 court clerk:

22 (1) at least ~~twenty (20)~~ **thirty (30)** days after the date the demand  
23 notice was mailed to the taxpayer; and

24 (2) no later than five (5) days after the date the department issues  
25 the warrant.

26 (d) When the circuit court clerk receives a tax warrant from the  
27 department or the sheriff, the clerk shall record the warrant by making  
28 an entry in the judgment debtor's column of the judgment record,  
29 listing the following:

30 (1) The name of the person owing the tax.

31 (2) The amount of the tax, interest, penalties, collection fee,  
32 sheriff's costs, clerk's costs, and fees established under section  
33 4(b) of this chapter when applicable.

34 (3) The date the warrant was filed with the clerk.

35 (e) When the entry is made, the total amount of the tax warrant  
36 becomes a judgment against the person owing the tax. The judgment  
37 creates a lien in favor of the state that attaches to all the person's  
38 interest in any:

39 (1) chose in action in the county; and

40 (2) real or personal property in the county;

41 excepting only negotiable instruments not yet due.

42 (f) A judgment obtained under this section is valid for ten (10) years



1 from the date the judgment is filed. The department may renew the  
2 judgment for additional ten (10) year periods by filing an alias tax  
3 warrant with the circuit court clerk of the county in which the judgment  
4 previously existed.

5 (g) A judgment arising from a tax warrant in a county shall be  
6 released by the department:

7 (1) after the judgment, including all accrued interest to the date of  
8 payment, has been fully satisfied; or

9 (2) if the department determines that the tax assessment or the  
10 issuance of the tax warrant was in error.

11 (h) Subject to subsections (p) and (q), if the department determines  
12 that the filing of a tax warrant was in error or if the commissioner  
13 determines that the release of the judgment and expungement of the tax  
14 warrant are in the best interest of the state, the department shall mail a  
15 release of the judgment to the taxpayer and the circuit court clerk of  
16 each county where the warrant was filed. The circuit court clerk of each  
17 county where the warrant was filed shall expunge the warrant from the  
18 judgment debtor's column of the judgment record. The department shall  
19 mail the release and the order for the warrant to be expunged as soon  
20 as possible but no later than seven (7) days after:

21 (1) the determination by the department that the filing of the  
22 warrant was in error; and

23 (2) the receipt of information by the department that the judgment  
24 has been recorded under subsection (d).

25 (i) If the department determines that a judgment described in  
26 subsection (h) is obstructing a lawful transaction, the department shall  
27 immediately upon making the determination mail:

28 (1) a release of the judgment to the taxpayer; and

29 (2) an order requiring the circuit court clerk of each county where  
30 the judgment was filed to expunge the warrant.

31 (j) A release issued under subsection (h) or (i) must state that the  
32 filing of the tax warrant was in error. Upon the request of the taxpayer,  
33 the department shall mail a copy of a release and the order for the  
34 warrant to be expunged issued under subsection (h) or (i) to each major  
35 credit reporting company located in each county where the judgment  
36 was filed.

37 (k) The commissioner shall notify each state agency or officer  
38 supplied with a tax warrant list of the issuance of a release under  
39 subsection (h) or (i).

40 (l) If the sheriff collects the full amount of a tax warrant, the sheriff  
41 shall disburse the money collected in the manner provided in section  
42 3(c) of this chapter. If a judgment has been partially or fully satisfied



1 by a person's surety, the surety becomes subrogated to the department's  
2 rights under the judgment. If a sheriff releases a judgment:

3 (1) before the judgment is fully satisfied;

4 (2) before the sheriff has properly disbursed the amount collected;

5 or

6 (3) after the sheriff has returned the tax warrant to the department;  
7 the sheriff commits a Class B misdemeanor and is personally liable for  
8 the part of the judgment not remitted to the department.

9 (m) A lien on real property described in subsection (e)(2) is void if  
10 both of the following occur:

11 (1) The person owing the tax provides written notice to the  
12 department to file an action to foreclose the lien.

13 (2) The department fails to file an action to foreclose the lien not  
14 later than one hundred eighty (180) days after receiving the  
15 notice.

16 (n) A person who gives notice under subsection (m) by registered  
17 or certified mail to the department may file an affidavit of service of the  
18 notice to file an action to foreclose the lien with the circuit court clerk  
19 in the county in which the property is located. The affidavit must state  
20 the following:

21 (1) The facts of the notice.

22 (2) That more than one hundred eighty (180) days have passed  
23 since the notice was received by the department.

24 (3) That no action for foreclosure of the lien is pending.

25 (4) That no unsatisfied judgment has been rendered on the lien.

26 (o) Upon receipt of the affidavit described in subsection (n), the  
27 circuit court clerk shall make an entry showing the release of the  
28 judgment lien in the judgment records for tax warrants.

29 (p) The department shall adopt rules to define the circumstances  
30 under which a release and expungement may be granted based on a  
31 finding that the release and expungement would be in the best interest  
32 of the state. The rules may allow the commissioner to expunge a tax  
33 warrant in other circumstances not inconsistent with subsection (q) that  
34 the commissioner determines are appropriate. Any releases or  
35 expungements granted by the commissioner must be consistent with  
36 these rules.

37 (q) The commissioner may expunge a tax warrant in the following  
38 circumstances:

39 (1) If the taxpayer has timely and fully filed and paid all of the  
40 taxpayer's state taxes, or has otherwise resolved any outstanding  
41 state tax issues, for the preceding five (5) years.

42 (2) If the warrant was issued more than ten (10) years prior to the



- 1 expungement.  
2 (3) If the warrant is not subject to pending litigation.  
3 (4) Other circumstances not inconsistent with subdivisions (1)  
4 through (3) that are specified in the rules adopted under  
5 subsection (p).  
6 (r) Notwithstanding any other provision in this section, the  
7 commissioner may decline to release a judgment or expunge a warrant  
8 upon a finding that the warrant was issued based on the taxpayer's  
9 fraudulent, intentional, or reckless conduct.  
10 (s) The rules required under subsection (p) shall specify the process  
11 for requesting that the commissioner release and expunge a tax  
12 warrant.  
13 SECTION 2. [EFFECTIVE JULY 1, 2017] **(a) IC 6-8.1-8-2, as**  
14 **amended by this act, applies only to demand notices issued by the**  
15 **department of state revenue after June 30, 2017.**  
16 **(b) This SECTION expires January 1, 2018.**

