

State Tax Liens

The Alabama Department of Revenue may issue a tax lien against all property or rights to property of an individual, corporation, partnership or other entity who fails to pay the taxes required by state law.¹

A tax lien is not an assessment or a seizure of property. It is, however, an encumbrance against the property of a debtor. The property becomes security for payment of a tax debt. It is through such a tax lien that the state gives public notice of its potential "secured interest" in the tax debtor's property and the potential claim on the property as collateral.

The primary purpose for filing a tax lien is to determine payment priority between creditors, as well as to inform potential buyers that the property may be subject to seizure for payment of the seller's debt.

If a tax debtor owes several debts, it is important that some equitable method be established for determining who gets paid in what order of priority from the sale of collateral. The determination of priorities is established primarily with the time of filing of the notices by each creditor or the time that the buyer may record a purchase of the debtor's property. In most circumstances, there is a "first in time, first in rights" rule.

(See *Code of Alabama 1975*, § 40-29-22 (a)). However, certain "super priorities" are given to transactions that may supersede a tax lien that may have been filed first. (See *Code of Alabama 1975*, § 40-29-22 (b)).

The filing procedure for a tax lien varies according to the type of property involved. If the tax debtor owns real property, the lien is filed in the probate office of the county where the real property is located. If he owns real property in more than one county, the lien must be filed in each individual county of property

location. (See *Code of Alabama 1975*, § 40-29-22 (f)).

If the tax debtor owns personal property (other than motor vehicles), the lien is filed in the office of the Secretary of State Uniform Commercial Code (UCC) Division, and applies to personal property located anywhere in the state.

However, for property relating to farm operation, timber to be cut, and fixtures, a tax lien must be filed in the probate office of the county of the property location.

The tax lien arises at the time the taxes become due, and it is effective from the time the notice of lien is filed. According to Alabama law, the lien is usually valid for ten years, the statute of limitation for collecting a final assessment.

Although the lien indicates an amount of tax liability that may be owed, it does not establish the amount of tax debt (i.e., taxes, penalties and interest to date.) The amount of the tax debt is established by a final assessment which is entered by the department. This final assessment is the result of an administrative due process wherein the taxpayer may contest the amount the department claims he owes. If unchallenged, this final assessment is commensurate to a court judgment.

After a final assessment has been rendered, the state may "levy" or "execute" on the tax debtor's property, thus giving the sheriff or other official an order to confiscate the property, hold a public sale, and give the sale proceeds to the department. The levy is based on the final assessment and not the tax lien.

The sale of real estate by a landowner may often reveal the presence of a tax lien, and thus result in the payment of the tax debt. A title search of real property at the courthouse by an attorney will discover that a tax lien may have encumbered the real estate that is being sold. Before the sale can be closed to the satisfaction of both the

buyer and his lender, the seller of the property may be required to pay off the tax debt in order to remove the tax lien encumbrance. The buyer does not want to purchase property encumbered by a tax lien which he might be required to pay himself, even though it is not his tax debt.

Similarly, a tax lien may affect the taxpayer and his personal property, and also result in the payment of the tax debt. Unlike real property, there is no title or deed on file at the courthouse. The UCC Division of the Secretary of State's office maintains records of all security interests and all state tax liens that have been filed. These records are often researched by lenders and can have an effect on a taxpayer's credit history. Again, a tax debt may be paid by a taxpayer in order to clear his personal property from encumbrances, thus allowing him to obtain a loan and use personal property as collateral.

A tax lien can be withdrawn and released by the Department if an approved bond is submitted conditioned on payment in full.

Once a tax debt is paid, a release of the tax lien is recorded in the same jurisdiction as the original filing of the tax lien.

The Department of Revenue normally files notice of tax lien thirty days after final assessment of the taxes owed. In the case of an appeal of the final assessment with the Administrative Law Division the lien is not filed until a final order is issued by the Administrative Law Judge. However, a notice of lien may be filed earlier, even before a final assessment, if circumstances exist that may jeopardize the collection of a tax liability.

¹ Taxes other than ad valorem taxes. See § 40-29-20 *Code of Alabama 1975*.