

§ 1141. Proceedings to recover tax. (a) Whenever any person required to collect tax shall fail to collect or pay over any tax, penalty or interest imposed by this article as therein provided, or whenever any customer shall fail to pay any such tax, penalty or interest, the attorney general shall, upon the request of the tax commission, bring or cause to be brought an action to enforce the payment of the same on behalf of the state of New York in any court of the state of New York or of any other state or of the United States.

(b) As an additional or alternate remedy, the tax commission may issue a warrant, directed to the sheriff of any county commanding him to levy upon and sell the real and personal property of any person liable for the tax, which may be found within his county, for the payment of the amount thereof, with any penalties and interest, and the cost of executing the warrant, and to return such warrant to the tax commission and to pay it the money collected by virtue thereof within sixty days after the receipt of such warrant. The sheriff shall within five days after the receipt of the warrant file with the county clerk a copy thereof, and thereupon such clerk shall enter in the judgment docket the name of the person mentioned in the warrant and the amount of the tax, penalties and interest for which the warrant is issued and the date when such copy is filed. Thereupon the amount of such warrant so docketed shall become a lien upon the title to and interest in real and personal property of the person against whom the warrant is issued. Such lien shall not apply to personal property unless such warrant is filed in the department of state. The sheriff shall then proceed upon the warrant, in the same manner, and with like effect, as that provided by law in respect to executions issued against property upon judgments of a court of record and for services in executing the warrant he shall be entitled to the same fees, which he may collect in the same manner. In the discretion of the tax commission a warrant of like terms, force and effect may be issued and directed to any officer or employee of the department of taxation and finance, and in the execution thereof such officer or employee shall have all the powers conferred by law upon sheriffs, but shall be entitled to no fee or compensation in excess of the actual expenses paid in the performance of such duty. Upon such filing of a copy of a warrant, the tax commission shall have the same remedies to enforce the amount due thereunder as if the state had

recovered judgment therefor.

(c) Whenever a person required to collect tax shall make a sale, transfer, or assignment in bulk of any part or the whole of his business assets, otherwise than in the ordinary course of business, the purchaser, transferee or assignee shall at least ten days before taking possession of the subject of said sale, transfer or assignment, or paying therefor, notify the tax commission by registered mail of the proposed sale and of the price, terms and conditions thereof whether or not the seller, transferrer or assignor, has represented to, or informed the purchaser, transferee or assignee that he owes any tax pursuant to this article, and whether or not the purchaser, transferee, or assignee has knowledge that such taxes are owing, and whether any such taxes are in fact owing.

Whenever the purchaser, transferee or assignee shall fail to give notice to the tax commission as required by the preceding paragraph, or whenever the tax commission shall inform the purchaser, transferee or assignee that a possible claim for such tax or taxes exists, any sums of money, property or choses in action, or other consideration, which the purchaser, transferee or assignee is required to transfer over to the seller, transferrer or assignor shall be subject to a first priority right and lien for any such taxes theretofore or thereafter determined to be due from the seller, transferrer or assignor to the state, and the purchaser, transferee or assignee is forbidden to transfer to the seller, transferrer or assignor any such sums of money, property or choses in action to the extent of the amount of the state's claim. Within ninety days of receipt of the notice of the sale, transfer, or assignment from the purchaser, transferee or assignee, the tax commission shall give notice to the purchaser, transferee or assignee and to the seller, transferrer, or assignor of the total amount of any tax or taxes which the state claims to be due from the seller, transferrer, or assignor to the state, and whenever the tax commission shall fail to give such notice to the purchaser, transferee, or assignee and the seller, transferrer, or assignor within ninety days from receipt of notice of the sale, transfer, or assignment, such failure will release the purchaser, transferee or assignee from any further obligation to withhold any sums of money, property or choses in action,

or other consideration, which the purchaser, transferee or assignee is required to transfer over to the seller, transferrer or assignor, except that with respect to pending matters such ninety day periods shall not begin to run until ninety days after the effective date of this provision. For failure to comply with the provisions of this subdivision the purchaser, transferee or assignee, in addition to being subject to the liabilities and remedies imposed under the provisions of article six of the uniform commercial code, shall be personally liable for the payment to the state of any such taxes theretofore or thereafter determined to be due to the state from the seller, transferrer or assignor, except that the liability of the purchaser, transferee or assignee shall be limited to an amount not in excess of the purchase price or fair market value of the business assets sold, transferred or assigned to such purchaser, transferee, or assignee, whichever is higher, and such liability may be assessed and enforced in the same manner as the liability for tax under this article. Upon receipt within the ninety days as aforesaid of the notice of the total amount of the state's claim from the tax commission, and demand for payment thereof, the purchaser, transferee or assignee may make payment of such claim to the state from any sums of money, property, or choses in action withheld in accord with the provisions of this paragraph, except that such payment shall be limited to an amount not in excess of the purchase price or fair market value of the business assets sold, transferred, or assigned to such purchaser, transferee, or assignee, whichever is higher, and upon making the payment, such purchaser, transferee, or assignee shall be relieved of all liability for such amounts to the seller, transferrer, or assignor, and such amounts paid to the state shall be deemed satisfaction of the tax liability of the seller, transferrer, or assignor to the extent of the amount of such payment.

Where the liability of a purchaser, transferee or assignee, for the payment to the state of any such taxes determined to be due from the seller, transferrer or assignor, has been wholly paid or satisfied or no longer exists, the tax commission shall mail to such purchaser, transferee or assignee a notice, addressed to his last known address, setting forth that such liability has been wholly paid or satisfied or no longer exists. The tax commission shall include in such notice the

following additional information:

(1) the name and last known address of the purchaser, transferee or assignee;

(2) the amount of the lien paid, satisfied or vacated; and

(3) a statement to the effect that consumer reporting agencies must delete from a credit file any reference to the particular tax lien within thirty days of receipt from the purchaser, transferee or assignee of such notice. Provided, however, no order or decree in a bankruptcy proceeding shall be construed as giving rise to the requirement that the notice provided for in this paragraph be given.