Bill Analysis

Bethany Boyd *Legislative Service Commission*

Sub. H.B. 672

123rd General Assembly
(As Passed by the House)

Reps. Peterson, Schuler, Mottley, Perry, Hartnett, Grendell, Tiberi, Bender, Terwilleger, Taylor, Hoops, Amstutz, Cates

BILL SUMMARY

- Prescribes tax collection procedures for manufactured and mobile homes that are similar to those governing the collection of real property.
- Otherwise aligns procedures for taxing manufactured and mobile homes with real property taxation procedures.
- Specifies the dates when certain recently enacted changes in how manufactured homes are taxed begin to apply.
- Exempts manufactured and mobile homes from sales and use taxes if the sale is made to the U.S. Government or to the State of Ohio or any of its political subdivisions.
- Excludes refundable wheel and axle deposits from the taxable price of a manufactured or mobile home.
- Makes a variety of technical and corrective amendments in the manufactured home tax law.
- Provides for the monitoring of county treasurers' compliance with continuing education requirements.
- Provides for the suspension of a county treasurer's investment authority if the treasurer does not complete continuing education requirements.

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CONTENT AND OPERATION

Background--S.B. 142

Senate Bill 142 of the 122nd General Assembly changed the manner in which manufactured and mobile homes are taxed. Prior law required most manufactured and mobile homes to be taxed as personal property on the basis of a percentage of the depreciated cost of the home, under the so-called "manufactured home tax" (although prior law did not preclude a manufactured home from being taxed as real property if the home was determined to have assumed the attributes of real property-- i.e., it was permanently affixed to the ground or a permanent foundation). Under S.B. 142, homes first placed in Ohio after January 1, 2000, must be taxed like real property if they are affixed to a permanent foundation on the homeowner's land and satisfy roof pitch and dimensional criteria and certain federal safety and construction standards. Homes located in Ohio before January 1, 2000, continue to be taxed under the manufactured home tax unless the owner elects to have the home taxed like real property, and the home is affixed to a permanent foundation on the homeowner's land and satisfies the specified criteria and standards.

A system of procedures was enacted to govern the transition from treating manufactured and mobile homes as personal property to their treatment as real property. For example, since ownership of a manufactured or mobile home is evidenced by a certificate of title, a procedure was enacted to provide for how such certificates are surrendered when a home becomes taxable as real property.

For the purposes of this analysis, "current law" refers to the law as amended or enacted by S.B. 142. References to the bill refer to H.B. 672.

Manufactured home tax collection procedures

(secs. 4503.06 and 4503.061)

The bill prescribes procedures for the collection of manufactured home taxes that are similar to procedures for the collection of real property taxes. These procedures apply to manufactured and mobile homes that are not taxable as real property under S.B. 142.

Semiannual settlement

(secs. 321.24(H), 323.156, and 4503.061(I))

The bill prescribes semiannual settlements for manufactured and mobile home taxes between the county auditor and county treasurer. The first settlement must occur by April 15 and the second by September 15. The date may be extended if the tax due date is extended. As with real property tax settlements, these settlements serve to ensure that the county auditor's manufactured home tax list and the county treasurer's duplicate of that list are consistent in reflecting the amount of taxes charged on the list and the amount collected on the duplicate.

Tax billing, payment

(secs. 4503.06(D)(3), (6), and (7), 4503.06(F), 4503.061(D)(2), 4503.063, and 4503.067)

The bill makes the procedure for billing manufactured home taxes similar to the procedure for billing real property taxes. The county auditor must deliver a duplicate of the manufactured home tax list to the county treasurer by January 15, unless the Tax Commissioner determines that an emergency prevents delivery by that date (an emergency includes the death or disability of an official, strikes, and office equipment failures). If an emergency is declared, the date of delivery may be extended for up to 15 days, and the days on which tax bills are sent and taxes are payable are extended accordingly.

Once the county treasurer receives the list, the treasurer must send out manufactured home tax bills to owners or their designated agents (such as banks), as is the case currently with real property tax bills. The form of tax bills is to be prescribed by the Tax Commissioner, and must show the amount of taxes due and indicate that collection proceedings may be filed if the taxes are not paid on time. If the home is taxed as real property, the tax bill also must indicate the effective tax rate and notify owners that their homes may be entitled to the 2-1/2% rollback. The tax bill also must notify owners that a penalty may be imposed if the home is receiving the 2-1/2% rollback but is not entitled to receive it. The tax bills replace the "advance payment certificates" issued by county auditors which, under current law, function like tax bills.

Manufactured home taxes may be paid in two installments. Under current law, the first installment is due January 31, and the second is due July 31. The bill changes the first installment due date to March 1. The bill also provides for extensions of the due date when the preparation of the tax list is delayed due to an emergency.

Delinquencies

(secs. 4503.06(G) and (H) and 4503.061(E))

Under current law, once manufactured home taxes have become delinquent, the county auditor enters the delinquency on a delinquent manufactured home tax list. A lien attaches to each manufactured or mobile home to secure payment of manufactured home taxes. The lien continues until taxes, interest, and penalties have been paid in full.

The bill clarifies that the list applies to taxes payable for 2000 and thereafter. The bill also specifies that the list must be updated and published annually, and that the county auditor must deliver the list to the county treasurer within 30 days after the September tax settlement. The cost of publishing the list is to be apportioned among the taxing districts in the county in proportion to the amount of taxes each district is entitled.

If an owner transfers a manufactured home to another person, all outstanding and delinquent taxes must be paid before the county auditor endorses the transfer. The bill clarifies that once those taxes are paid, the county auditor must remove the taxes from the delinquent tax lists and the county treasurer must release any liens. Once the county auditor endorses the transfer, the clerk of courts must issue the certificate of title to the new owner.

Foreclosures

(sec. 4503.06(H)(3))

A civil action is to be filed against the owner of a manufactured or mobile home to enforce the collection of delinquent manufactured home taxes. The bill specifies that the civil action may be filed only if the owner does not pay the delinquency within 60 days after the delinquent tax list is delivered to the county treasurer by the county auditor. The bill also specifies that interest may be sought in the civil action.

Delinquent tax payment agreements

(sec. 323.31(A))

Owners of manufactured homes who are delinquent in the payment of manufactured home taxes, like owners of real property, are entitled to enter into an agreement with the county treasurer under which the owner pays the delinquency in installments. The bill clarifies that an owner must enter into such an agreement at any time before a civil action is filed to collect the delinquency.

Collection of taxes through third party

(sec. 323.611)

Currently, boards of county commissioners are authorized to enter into agreements with financial institutions whereby the institution collects and processes real property tax payments on behalf of the county treasurer. The bill extends this authority to manufactured home taxes.

Change in tax treatment

(secs. 4503.06(D)(4) and 4505.11(H)(4))

The bill specifies a date--December 1--by which the owner of a manufactured or mobile home qualifying to be taxed as real property must elect that tax treatment for the following year. No date is specified under current law. Before the election takes effect, all manufactured home taxes previously charged against the home must be paid.

The bill also allows the owner of a manufactured or mobile home that is taxed as real property to instead have the home taxed under the manufactured home tax, but only if the home is no longer affixed to a permanent foundation or is no longer located on land owned by the home's owner. To change the tax treatment, the owner must apply to the clerk of court for reactivation of the

certificate of title. But the clerk may not reactivate the certificate of title unless the application includes the endorsement of the county treasurer that all real property taxes have been paid, and the endorsement of the county auditor that the home will be removed from the real property tax list. The application must also include proof that there are no outstanding mortgages or other liens, or that the creditor consents to reactivation of the certificate of title.

Appraisal of manufactured homes

(sec. 4503.06(L)(3))

Current law requires manufactured and mobile homes that are taxed as real property to be appraised once every six years.

The bill specifies that the appraisal of such homes must occur in the same year real property in the county is appraised, and that the appraised values be updated in the third year after reappraisal, as are real property values. The bill also clarifies that appraisals apply to a home located in Ohio before January 1, 2000, if the home qualifies to be taxed as real property and the owner has elected to have the home taxed as real property.

Complaints against tax appraisals

(sec. 4503.06(L)(5))

Current law grants owners of manufactured or mobile homes the same right to file a complaint against tax appraisals as real property owners possess.

The bill states that certain other interested parties (e.g., spouses, nonattorney representatives, corporate officers) also may file a complaint, as is allowed in the case of real property, and specifies that complaints against an appraisal for the current year must be filed by March 31 of that same year (see **COMMENT)** .

Certificate of title fees

(sec. 4505.06(H))

Upon acquiring a manufactured or mobile home, the owner must obtain a certificate of title from the clerk of the court of common pleas, since the home is considered a motor vehicle until it becomes fixed to a permanent foundation and otherwise qualifies to be taxed as real property. Currently, a $5 fee is charged for the clerk to issue the certificate of title.

The bill specifies that this $5 fee is in addition to another $5 fee that is charged for issuing a certificate of title for any kind of motor vehicle.

County auditor's transfer fees

(sec. 319.54(F))

The bill specifies that the existing 50¢ fee that county auditors must charge for making land transfers or entries in county property records applies to transfers or entries of used manufactured or mobile homes occurring in 2000 or thereafter.

The bill also specifies that the 50¢ transfer fee and the existing conveyance fee of 10¢ per $100 in the value of a used manufactured and mobile home must be paid in the county where the home was located immediately *before* the transfer. The county auditor is prohibited from endorsing a transfer unless the fees are paid.

2-1/2% tax reduction

(sec. 323.153; Section 3)

Under current law, manufactured and mobile homes that are taxed as real property and are occupied by the homeowner qualify for the same 2-1/2% rollback in taxes as other owner-occupied residences. For real property, an application for the rollback is incorporated into deed transfer forms to simplify application and make it less likely that qualified homeowners will inadvertently forgo the rollback.

The bill requires that forms used to transfer ownership of used manufactured and mobile homes also incorporate an application for the rollback, and specifies that owners who elect to have their homes taxed as real property may apply at the time of making that election.

The bill also specifies that the rollback first applies to manufactured and mobile homes taxed as real property in tax year 2000 (affecting taxes billed in 2001).

Homestead exemption

(sec. 319.202(A); Section 3)

Under current law, when ownership of a residence is transferred, the seller must indicate to the buyer whether the home qualifies for the homestead exemption, and the buyer must acknowledge that the seller has done so and that the current taxes to be apportioned between the seller and buyer reflects the tax savings resulting from the exemption.

The bill extends this requirement to manufactured and mobile homes that are taxed as real property.

The bill also specifies that the homestead exemption first applies to manufactured and mobile homes taxed as real property in tax year 2000 (affecting taxes billed in 2001).

When a manufactured home "acquires situs" in Ohio

(sec. 4501.01(NN))

The time at which a manufactured or mobile home becomes located in Ohio ("acquires situs") determines its status for tax purposes. The manufactured home tax applies to homes acquiring situs in Ohio on or after January 1 each year, unless the home is to be taxed as real property.

Currently, a home acquires situs in Ohio when it becomes located in this state "pursuant to the issuance of a certificate of title" and is placed on real property. The bill removes the criterion that a certificate of title is issued.

Registration

(sec. 4503.061(C) and (D))

When a manufactured or mobile home acquires situs in a county, the owner must register the home with the county auditor by presenting the certificate of title (or certified copy or memorandum of the certificate) and proof that the owner is current in paying manufactured home taxes. If the owner is current in paying taxes, the county auditor issues a registration certificate and decal to the owner to evidence that the home is properly registered and that taxes have been paid.

The bill authorizes the county auditor to issue the registration certificate and decal even if the owner does not have a certificate of title (or certified copy or memorandum) at the time of applying for registration, but the owner must present the document to the county auditor within 14 days after obtaining it. The bill also specifies that the owner of a manufactured or mobile home who relocates the home from one county to another must register the home with the county auditor to which the home is being relocated.

Relocation notices

(sec. 4503.061(H))

Currently, the owner of a manufactured or mobile home who relocates the home within Ohio must obtain a relocation notice. The notice serves to ensure

that all taxes have been paid in the county from which the home is being moved. The notice includes the owner's name, the address to which the home is to be moved, and the home's registration number. Failure to obtain a relocation notice subjects an owner to a $100 penalty; the person who moved the home also is subject to a $100 penalty. The penalty is credited to the county real estate assessment fund.

The bill requires an owner to obtain a relocation notice if the owner moves the home within Ohio or moves it from Ohio to another place outside Ohio. The bill also specifies the term during which the notice is valid--until December 31 of the year in which it was issued. In lieu of the registration number being shown on the notice, the home's vehicle identification number may be shown (when the home has not yet been registered in the county to which it will be moved). Finally, the bill requires any $100 penalty for failure to obtain a notice to be credited to the county from which the home was relocated. Thus, if the penalty is imposed by the county where the home has been moved to, that county must pay the penalty over to the county from where the home was moved.

Treatment of manufactured and mobile homes as real property

(sec. 5701.02)

The bill alters how manufactured and mobile homes are incorporated into the definition of "real property" as used throughout Title 57. The effect of the alteration is to preclude certain trailers from being taxed as real property unless they meet the statutory definition of "manufactured home" or "mobile home" and satisfy both of the following: (1) they are affixed to a permanent foundation on land owned by the home's owner and (2) the certificate of title has been inactivated. Under the new definition, objects that satisfy the definition of "manufactured home" or "mobile home" and that satisfy (1) and (2) are "manufactured or mobile home buildings," which are classified as real property for the purposes of taxation. In a recent Board of Tax Appeals case, a trailer that did not satisfy the definition of manufactured home or mobile home was considered to be real property, even though it did not satisfy the criteria of (1) or (2).

Application of other laws to manufactured and mobile homes

(secs. 1317.13, 4513.01, 4517.01, 4517.03, and 4517.24)

The bill specifies that the definition of “motor vehicle” includes manufactured and mobile homes for the purposes of the laws governing the removal of abandoned motor vehicles and the licensing and regulation of motor vehicle dealers. The bill also affirms that a licensed dealer (of new or used vehicles) may sell new or used manufactured or mobile homes located in a

manufactured home park; but the dealer need not own the manufactured park in order to make such sales, as is required under current law. And the bill exempts multiple motor vehicle dealers selling manufactured or mobile homes in a single manufactured home park from an existing law requiring multiple dealers at the same location to assume joint, several, and personal liability for liabilities arising from engaging in business.

The bill also restores manufactured homes among the kinds of collateral (such as motor vehicles) that a secured party may take possession of when the purchaser defaults and the remaining balance due is less than 25% of the total transaction, under the Retail Installment Sales Act.

Sales tax treatment

(sec. 5739.0210)

Currently, new manufactured or mobile homes are subject to the state and county sales or use taxes at the point when the dealer purchases the home from the manufacturer or distributor. The final consumer is not liable for the tax, but the dealer may include the cost of the dealer's tax payment into the price paid by the consumer.

Exemption for sales to governments

The bill exempts sales of manufactured or mobile homes from the sales and use taxes if the sale is made to the United States Government, the State of Ohio, or any of the state's political subdivisions.

Exclude wheel/axle deposits from taxable price

The bill permits manufactured or mobile home dealers to avoid paying the sales or use tax on refundable deposits they pay for wheels and axles used to transport the homes. The deposits are not to be considered part of the taxable price to the extent that the deposits are actually refunded, provided they are separately stated on the sales agreement or invoice.

Continuing education for county treasurers

(secs. 135.22, 135.341, 321.46, and 321.47; Section 4)

Current law requires county treasurers to complete an initial 13-hour course of education upon assuming office and annual 12-hour courses of continuing education thereafter. The education is conducted by the Treasurer of State and the Auditor of State and covers such areas as cash management, tax collection

procedures, ethics, accounting, office management, investments, and portfolio reporting and compliance.

Currently, if a county treasurer does not complete the required education and is not excused for reasons of health or some other hardship, the treasurer is authorized to invest public money only in the state's investment pool managed by the Treasurer of State, in certificates of deposit, or in bank deposit accounts. A county treasurer who fails to complete the education requirements loses the authority to invest public money directly in U.S. Treasury bills and bonds, U.S. Government agency obligations, money market mutual funds investing in Treasury or U.S. Government agency obligations, repurchase agreements, commercial paper, and bankers' acceptances. Any county treasurer who does not comply with the education requirements, but who continues to invest public money in violation of the foregoing restrictions, is "subject to removal from office upon complaint and investigation" by the county prosecuting attorney, provided the board of county commissioners adopts a resolution approving the removal.

The bill provides a procedure for monitoring county treasurers' compliance with the education requirements. Each year by January 15, the Auditor of State must notify the Treasurer of State of the number of hours of education completed under the Auditor's supervision by each county treasurer in the preceding year. By January 31, the Treasurer of State must determine whether any county treasurer has failed to complete the required education and notify any treasurer who has not. The notification must include notices to the effect that the county treasurer has until March 31 to show that the Treasurer of State is in error, or to take additional courses to complete the education requirements. The notice also must indicate that the Treasurer of State may report the county treasurer to the county prosecuting attorney if the county treasurer does not fulfill the requirements by March 31.

The bill eliminates the sanction of removing a county treasurer from office for failing to complete the education requirements. And instead of limiting the investment authority of a county treasurer who has not completed the educational requirements, the bill requires the transfer of that investment authority to the county investment advisory committee until the county treasurer has satisfied the education requirements. (The county investment advisory committee consists of the county treasurer, two or three county commissioners, and, if a third county commissioner is a member, the clerk of the court of common pleas). Before the investment authority is transferred, the county prosecutor, upon receiving notice of a county treasurer's noncompliance from the Treasurer of State, must file a petition in the court of common pleas seeking an order to transfer the investment authority. A hearing must be scheduled not later than two weeks after the petition is filed, at which the county treasurer or the prosecutor may present evidence. If the court

finds that the county treasurer in fact has not complied with the education requirements, the court must issue an order transferring the treasurer's investment authority. If the county treasurer eventually does become current with the education requirements, the county treasurer may present proof thereof to the Treasurer of State, who, if satisfied with the proof, must notify the county prosecutor. The prosecutor must notify the court, and the court must issue an order restoring the investment authority to the county treasurer.

The continuing education provisions begin to apply in 2001.

COMMENT

Although R.C. §5715.19, as recently amended, states that the other nonattorney parties referred to in the analysis may file a complaint against tax appraisals, that amended statute has been held by the Eighth District Court of Appeals of Ohio, Cuyahoga County, to be unconstitutional. *C.R. Truman, L.P. v. Cuyahoga County Board of Revision*, *et al*., No. 76713, (8th Dist. Ct. of Appeals of Ohio, Cuyahoga County, July 27, 2000). The court reasoned that the Ohio Constitution vests in the Ohio Supreme Court the inherent power to regulate, control, and define the practice of law, and the Ohio Supreme Court has repeatedly held that filing a complaint before the Board of Revision constitutes the practice of law. See, e.g., *Sharon Village Ltd. v. Licking County Bd. of Revision*, 78 Ohio St.3d 479 (1997). The court held that by permitting nonattorneys to practice law, the statute violates the separation of powers between the judiciary and legislative branches and is unconstitutional.

HISTORY

ACTION	DATE	JOURNAL ENTRY	
Introduced	04-26-00	p.	1843
Reported, H. Ways & Means	09-19-00	p.	2254
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