



Am. H.B. 301*

124th General Assembly
(As Reported by S. Ways & Means)

Reps. Hoops, Jolivette, Sykes, Latta, Widowfield, Niehaus, S. Smith, Coates, Evans, Buehrer, Schmidt, Sferra, Redfern, Carano, Allen, Lendrum, Barrett, Cirelli, Perry Barnes, Fedor, Sulzer, Distel, Flowers, G. Smith

BILL SUMMARY

- Prohibits subdivisions from charging interest to other subdivisions that wrongfully receive estate tax distributions.
- Provides a procedure whereby certain permanent municipal property tax levies can be converted into levies lasting for up to five years, subject to voter approval.

CONTENT AND OPERATION

Interest on erroneous estate tax distributions

(sec. 5731.49)

Eighty per cent of estate taxes are distributed to the township or municipal corporation in which the taxes are deemed to "originate."¹ (The rules governing origination are summarized below.) The remaining revenue is credited to the state General Revenue Fund or applied to the county's cost of administering the estate tax. Estate taxes are collected by the county treasurer and distributed from the county treasury to the townships and municipal corporation entitled to a share of the proceeds.

* This analysis was prepared before the report of the Senate Ways and Means Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

¹ The 80% figure applies to estates of decedents dying in 2002 or thereafter. For 2001, the percentage was 70%; before 2000, the percentage was 64%.

The bill specifies that if a township or municipal corporation--through some error--receives estate taxes that it is not entitled to under the origination rules, that township or municipal corporation may not be required to pay another subdivision any interest on the funds for the time that it held them. Under current law, there is no statutory authority for one subdivision to charge interest to another subdivision under these circumstances; therefore, the bill presumably has the effect of prohibiting any subdivision from asserting a claim for interest under a common law principle.

Estate tax origination rules

Where estate taxes originate depends on one or more of three factors: (1) the decedent's domicile at the time of death, (2) the kind of property in the estate, and (3) the location of the property when the decedent died. (For estate tax purposes, a decedent who was domiciled in Ohio at the time of death is a "resident"; others are nonresidents.)

- In the case of real property or tangible personal property located anywhere within Ohio, the tax attributable to the property originates in the subdivision (i.e., township or municipal corporation) where the property was located, regardless of whether the decedent was an Ohio resident. (Sec. 5731.50.)
- In the case of a resident decedent's tangible or intangible personal property that was *not* located in Ohio, the tax attributable to the property originates in the subdivision where the decedent was domiciled at the time of death. (Sec. 5731.51.)
- In the case of a nonresident's intangible personal property, the tax attributable to the property originates in the subdivision where the person holding the property is located (if the property consists of stocks, bonds, securities or similar financial assets), or where the principal place of business of the person holding the property is located or where that person resided (if the property consists of money on deposit, such as at a financial institution). (Sec. 5731.51.)

Converting permanent levies into five-year levies

(Sections 3 and 4)

Current law limits the maximum term of most property tax levies so that they expire after a certain number of years. The maximum term depends on one or both of the following factors: (1) the purpose for which the tax is levied, and (2) the kind of subdivision levying the tax. Property tax levies for most purposes, for most subdivisions, may last no longer than five years, but there are some

exceptions. Levies may continue indefinitely if they are devoted to expenses for public safety (police, fire, and related communications systems), public libraries, developing rail service, county juvenile detention homes, township roads, or school district operations. Levies to pay debt charges continue for as long as the debt is outstanding. And levies for certain human services expenditures or for zoological parks may last no longer than ten years (secs. 5705.19 and 5705.191). When a tax levy appears on an election ballot, the ballot indicates whether the tax is levied for a specific number of years or continues indefinitely.

The bill addresses situations in which a municipal corporation tax levy has appeared on a ballot indicating that the levy would continue indefinitely, and the levy was approved by voters--but the purpose of the levy is not one of those for which a continuing levy is permitted under the law. (In the bill, such a levy is referred to as a "qualifying continuing tax.") The bill permits such a levy to continue until the end of tax year 2003 at the latest, and provides a procedure for replacing the levy with another one that lasts only up to five years. Under this procedure, the municipal corporation may place the new, five-year levy on the ballot at any of the four election dates per year that occur no later than the November 2003 general election (as long as the date of the election is at least 75 days after the bill's effective date).

The existing levy expires at the end of 2003 at the latest. Thus, the last revenue from the levy will become collectible in 2004. If a new levy is approved by voters at any of the elections held in 2003, the new levy will first be charged to the 2004 real property tax lists and become collectible in 2005.² If a new levy is approved at an election in 2002, the existing levy expires at the end of 2002, and the last collection period will occur in 2003; the new levy will begin to be charged to the 2003 real property tax lists and the revenue becomes collectible in 2004.

The rate of the new levy may not exceed the rate of the levy that is being replaced. And, the total taxes charged under the new levy will not be greater than they would be under the existing levy, because the new levy would be treated as a renewal of the existing levy for the purpose of the "H.B. 920" tax reduction law.³

² *The new levy will first be charged upon the business tangible personal property tax lists in 2005 and be collectible in 2005.*

³ *Under the H.B. 920 tax reduction law, characterizing a levy as a "renewal" or, alternatively, as a "replacement" of an existing levy can make a significant difference in the amount of taxes charged by the new levy, even if the millage rate is the same. Replacement levies typically cause taxes to increase as compared to the levy being replaced, because the H.B. 920 reduction factors--which tend to increase over the life of a levy--are computed as if the replacement levy is a new levy. By contrast, renewal levies typically do not cause taxes to increase, because the reduction factors are essentially a continuation of those computed for the existing levy.*

(The bill's use of the term "replace" is used to indicate to voters that the revenue from the new levy is to supplant the revenue from the existing levy; it does not mean that the new levy is to be treated as a replacement levy under the H.B. 920 law.)

The bill's special procedure for placing the levy on the ballot is similar to the existing procedure. The municipal legislative authority must adopt a resolution of necessity and submit it to the county board of elections at least 75 days before the date of the election. The board of elections must publish notices of the election and conduct the election like any other election at which a tax levy question is submitted. There would be slight differences in the wording of both the ballot and the resolution to reflect the fact that the proposed levy is being substituted for an existing levy.

The bill does not require a municipal corporation to follow the special procedure; the existing procedure for having taxes approved by voters may be used in lieu of the special procedure. Thus, at any time, the legislative authority could place a levy on the ballot under existing law to substitute for the qualifying continuing levy. If the legislative authority does so before the end of 2004, the new levy could be characterized as a renewal levy, a replacement levy, or an "additional" levy. If the legislative authority places the tax on the ballot after 2004, the new tax could be characterized only as an "additional" levy. Moreover, since a levy placed on the ballot in a given year may be made collectible as soon as the following year, a levy approved at an election held in 2004 could allow the municipal corporation to avoid any interruption in its revenue stream without necessarily resorting to the special procedure.

The provisions governing the expiration of qualifying continuing levies and the special procedure for their replacement are set forth in uncodified law, which itself expires on January 1, 2004.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	06-19-01	p. 672
Reported, H. Ways & Means	10-23-01	pp. 970-972
Passed House (91-0)	10-25-01	pp. 986-987
Reported, S. Ways & Means	---	---

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