



Sub. H.B. 127

125th General Assembly
(As Reported by H. Ways and Means)

Reps. Jolivette, Young, Price, S. Patton, Hartnett, Seitz, Widowfield, Olman, Hagan, Carano, Hollister, Koziura, Hughes, Niehaus, McGregor, Collier, Latta, Taylor, Schaffer, Ujvagi, Hartnett, Kilbane

BILL SUMMARY

- Permits municipal corporations and townships to acquire tax-delinquent real estate before the foreclosure proceeding begins without necessarily assuming the entire tax debt.
- Extinguishes the tax debt to the extent other taxing districts waive their claim to delinquent taxes on the property.
- Exempts acquired property from further taxation for as long as it is owned by the municipal corporation or township.
- If the municipal corporation or township later sells the property, requires net proceeds from the sale to be spent for redevelopment.
- Exempts from municipal income taxation all of an S corporation shareholder's income from the corporation regardless of whether the income arises from the corporation's activities in Ohio or elsewhere, except for income from Ohio-based activities that represents compensation.
- Rounds homestead exemption tax reduction amounts to the nearest \$10, rather than \$100, when the reduction amounts are indexed for inflation.

CONTENT AND OPERATION

Acquiring tax-delinquent property without acquiring tax liens--generally

(R.C. 5722.21)

The bill authorizes municipal corporations and townships to acquire tax-delinquent real property without necessarily incurring the entire tax debt, and before substantial costs are undertaken by the county in proceeding with the foreclosure. The tax debt is discharged to the extent that overlapping taxing units (school districts, etc.) release their claims on the delinquent taxes. Under current law, municipal corporations, counties, and townships generally may acquire tax-delinquent property on relatively favorable terms only after the property has been offered for sale at public auction, and only after most of the costs of the foreclosure proceedings have been assumed; even then, the tax debt remains with the property, to be discharged, at least in part, from the eventual sale of the property by the local government. The bill's proposed law and current law are described in more detail below.

Proposed law

Local implementing legislation

(R.C. 5722.21(B))

In order to acquire tax-delinquent property under the bill's terms, the legislative authority of a municipal corporation or a board of township trustees must adopt legislation declaring that acquiring such property is for the public purpose of redevelopment or rendering such property suitable for productive, tax-paying use. The municipal corporation or township then may purchase or otherwise acquire "eligible" delinquent property (described below) in a voluntary transaction; the property may not be acquired through eminent domain proceedings. Once acquired, the municipal corporation or township holds title to the property free and clear of prior property tax liens to the extent that other taxing units consent to release their claim to their respective shares of the delinquent taxes. If a taxing unit does not consent to release its claim, the lien continues to the extent of that taxing authority's share of the delinquency. Other liens and encumbrances, such as mortgages or federal tax liens, are not affected.

Release of claims

(R.C. 5722.21(C))

A taxing unit may consent to release its claims for delinquent taxes on an individual, parcel-by-parcel basis, or on a "blanket" basis whereby the release applies prospectively to all parcels acquired by the municipal corporation or township or to a specified number of parcels. The release for individual parcels must be obtained in writing from the taxing unit or an authorized officer of the taxing unit. The release may be obtained either before or after the municipal corporation or township takes title to the parcel.

A taxing unit may grant prospective or "blanket" release through an agreement with the municipal corporation or township. The agreement must provide for any terms or conditions on the release of the claim as are mutually agreeable to the taxing unit and municipal corporation or township. The agreement may, but need not, provide for the following:

- Prior notice to the taxing unit of property acquisitions.
- An option for the taxing unit to revoke its release regarding a parcel before the release takes effect.
- The manner in which the taxing unit notifies the municipal corporation or township of its revocation under that option.

The bill specifies that a taxing authority's blanket consent does not prevent it from revoking its consent to release its claim for any particular parcel, as long as it does so before the municipal corporation or township enters into an agreement to acquire the parcel.

"Eligible" delinquent land

(R.C. 5722.21(A))

A parcel of delinquent real property may be acquired under the bill's terms only if it has been listed on the county delinquent tax list (or delinquent vacant tax list in counties maintaining such a list) and has been certified to be delinquent, as evidenced by the county auditor certifying a copy of the delinquent land list to the county treasurer. Since the delinquent tax list must be published in a newspaper twice within 60 days after the copy of the list is delivered to the county treasurer, inclusion in the delinquent tax list ensures that at least two publications of the delinquency occur before a municipal corporation or township may seek to acquire a delinquent parcel under the bill's terms.

In counties that sell the right to collect delinquent taxes to private parties through the "tax certificate" process, any parcel that has been selected for such treatment may not be acquired by a municipal corporation or township under the bill's terms.

Property tax exemption for acquired property

(R.C. 5721.21(E))

Property acquired by a municipal corporation under the bill's terms is entitled to exemption from property taxation for as long as it is owned by the municipal corporation or township.

Subsequent sale of property

(R.C. 5721.22(F))

If a municipal corporation or township sells property acquired under the bill's terms, the net proceeds from the sale must be used for the municipal corporation's or township's redevelopment purposes, as directed by the municipal legislative authority or board of township trustees.

Current "land reutilization" law

(R.C. 5722.01 to 5722.15)

Current law authorizes municipal corporations, counties, and townships to acquire tax-delinquent property under somewhat favorable terms (relative to a private buyer), but the tax liens must be satisfied out of the proceeds from the eventual sale of the property to the extent the sale price covers those liens after covering the acquiring subdivision's expenses. Alternatively, the property may be devoted to a public use instead of being sold, but current law appears to require all property acquired in this manner to be offered for sale after 15 years. This authority, known as "land reutilization" or "land banking," applies only to so-called "nonproductive land," which is property that has become subject to a foreclosure proceeding, that is unoccupied by people, and that either has no dwelling on it, has buildings on it that have been declared nuisances, or has buildings on it that the subdivision declares as necessary for effective reutilization.

Under the land reutilization law, a subdivision may acquire delinquent property directly from the owner before foreclosure (as proposed in the bill), but the tax lien remains with the property, and the other overlapping taxing districts are still entitled to their share of the proceeds when the subdivision sells the property.

Municipal taxation of S corporation shareholder income

(R.C. 718.01 and 718.14)

The bill expands the scope of the existing municipal income tax exemption for income flowing through an S corporation to a shareholder. Under existing law, S corporation income flowing to a shareholder is exempt from municipal income taxation if the income is attributable to the corporation's business activities outside Ohio.¹ However, such non-Ohio income is not exempt under either of two conditions: (1) the income represents compensation paid to the shareholder for services the shareholder performs for the corporation (more specifically, it satisfies the definition of "wages" under the federal Medicare withholding tax base), and (2) the municipal corporation taxed such non-Ohio income as of December 6, 2002, and municipal voters permit the continued taxation of that income at a referendum held at the 2003 general election.² Any S corporation income flowing to a shareholder that is attributable to the corporation's Ohio activities is taxable.

The bill requires municipal corporations to exempt all non-Ohio S corporation income flowing to a shareholder, even if it represents compensation. The bill also requires exemption of all Ohio-source S corporation income flowing to a shareholder, unless it represents compensation (i.e., Medicare wage base), or unless the municipal corporation already taxed such Ohio-source income as of December 6, 2002, and municipal voters vote to continue taxing Ohio-source income at the 2003 general election.

The bill also makes corrections to the municipal income tax credit that municipal corporations must provide to residents who are shareholders of an S corporation. Under existing law, municipal corporations may tax the income of S corporations, partnerships, limited liability companies, and any other pass-through business organizations at either the entity level or the individual owner level. If a municipal corporation taxes such income at the owner level, existing law requires

¹ *Whether income is attributed to activities inside or outside Ohio is determined under the same rules used to determine where a traditional corporation's income originates for Ohio corporation franchise tax purposes: i.e., operating income is apportioned on the basis of the percentage of the corporation's U.S. payroll, property, and sales within Ohio, and other income is allocated on the basis of where the income-producing property is located.*

² *December 6, 2002, is the day after the day House amendments to S.B. 180 of the 124th General Assembly were approved by a conference committee. Among other things, S.B. 180 limited the taxation of non-Ohio S corporation shareholder income as here described.*

the municipal corporation to grant a credit for at least some of any taxes the entity paid to another municipal corporation that taxes the entity's income at the entity level. In S.B. 180 of the 124th General Assembly, this credit provision was erroneously removed for S corporation shareholders. The bill reinstates the credit provision, but the credit likely will apply only to a very narrow portion of S corporation shareholder income, since the bill exempts almost all S corporation shareholder income from taxation. It appears the credit will apply only to municipal corporations that taxed Ohio-source S corporation income of individual shareholders on December 6, 2002, and only if voters approve the continued taxation of that income at the 2003 general election.

Homestead exemption inflation adjustments--rounding

(R.C. 323.152 and 4503.065; Section 3)

Under the homestead exemption, the property taxes charged against homes owned and occupied by elderly or disabled individuals with limited incomes are reduced. An individual's tax reduction amount for tax year 2003 is as follows:

| <u>Income</u> | <u>Tax reduction</u> (lesser of \$ or %) |
|----------------------|---|
| Up to \$12,800 | \$5,200 or 75% of taxable value |
| \$12,801 to \$18,700 | \$3,200 or 60% of taxable value |
| \$18,701 to \$24,700 | \$1,000 or 25% |

Both the income amounts and the dollar tax reduction amounts are indexed annually to account for general price inflation. Under current law, the inflation-adjusted income and tax reduction amounts both are rounded to the nearest \$100. This means that the \$5,200 and \$3,200 tax reduction amounts are likely to increase each year even at modest inflation rates, but the \$1,000 reduction amount will increase only at an inflation rate of more than 5%.

The bill requires the tax reduction amounts to be rounded to the nearest \$10 instead of the nearest \$100. The change begins to apply to real property taxes charged for tax year 2003 (i.e., taxes payable in 2004), and begins to apply to manufactured home taxes payable in 2004.

HISTORY

| ACTION | DATE | JOURNAL ENTRY |
|---------------------------|----------|---------------|
| Introduced | 03-18-03 | p. 258 |
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