

Office of Legislative Research

Analysis of Public Act 13 – 276 (formerly known as SB 965)

Effective October 1, 2013 (unless otherwise noted)

AN ACT CONCERNING CHANGES TO MUNICIPAL REVENUE COLLECTION STATUTES

Summary:

This bill (1) makes numerous changes to the municipal tax collection statutes and (2) modifies a requirement that municipalities include a notice of community-based resources for foreclosure mediation with certain statements they send to property owners.

Among other things, the bill:

1. broadens how special taxing districts and their treasurers may enforce tax liens (§ 2);
2. allows municipal officers to inspect, for tax collection purposes, commercial and financial information included in personal property declarations, which are not open for public inspection under existing law (§ 3);
3. gives tax liens issued under one property tax deferral program the same precedence as other tax liens;
4. allows tax collectors to deny a property tax refund if a taxpayer is delinquent in other taxes or has other debt;
5. modifies the time limit for municipalities to give property tax refunds under certain circumstances;
6. eliminates a requirement that tax collectors include, as part of tax bills, a statement of the year and amount of any back taxes due (§ 11);
7. eliminates specific tax collector fees;
8. specifies that, for tax collection purposes, tax amounts include any interest, penalties, fees, and charges, including collection agency fees, attorney's fees, and tax collector fees (§ 18);
9. modifies the order in which tax collectors must apply property tax payments, giving priority to expenses incurred related to the tax and delinquency-related charges before the principal on the oldest outstanding tax;
10. authorizes a municipality's legislative body to waive property taxes that total less than \$ 25 after they are due;

11. expands the circumstances under which municipalities and district health departments may withhold or revoke a license or permit if a business owes taxes that are at least one year delinquent;

12. allows a person to stop a tax sale under the same process that currently applies to a person contesting the sale's validity;

13. explicitly bars tax collectors from (a) compromising or releasing any tax amount without legal authority to do so and (b) knowingly submitting a false report to the motor vehicles commissioner to remove a motor vehicle from the delinquent tax list (§§ 37-38);

14. eliminates various obsolete provisions (a) requiring tax collectors to use duplicate record-receipt books and maintain certain records and (b) allowing a deceased tax collector's estate executor or administrator to assume the collector's duties (§§ 1, 14, 25-27, 35 & 43); and

15. makes other minor, technical, and conforming changes.

*Senate Amendment "A" clarifies the time limit for municipalities to give property tax refunds.

EFFECTIVE DATE: October 1, 2013

MUNICIPAL TAX COLLECTION STATUTES

§ 4 — Acquisition of Taxable Property

Under current law, taxable property acquired by a town is tax exempt as of the date the town's chief executive officer (CEO) notifies the town's tax collector of its receipt. The bill instead makes it exempt as of the date of its receipt. It also specifies that the town's tax assessor, rather than its collector, must declare the property tax-exempt.

Current law requires the CEO to notify the town tax collector whenever the town acquires taxable property. The bill requires him or her to also notify the town assessor.

§ 5 — Court Appeals from Action of the Board of Assessment Appeals

The law allows a taxpayer aggrieved by a board of assessment appeals' decision to appeal to the Superior Court. Under current law, if the court reduces the taxpayer's assessment, the town must reimburse the taxpayer or grant a tax credit for the overpayment, plus interest and costs. The bill excludes from this reimbursement or tax credit fees assessed by the (1) tax collector for preparing the tax lien certificate and (2) town clerk for recording the liens on the land records.

§§ 6 & 8 — Approval for Certain Tax Abatements or Waivers

The bill requires a municipality to obtain approval from its standing abatement committee or, if it does not have such a committee, the Office of Policy and Management secretary, before abating or waiving taxes or interest assessed on (1) people who are poor and cannot pay; (2) railroad companies in bankruptcy reorganization; and (3) private, nonprofit water suppliers.

§ 7 — Deferral of Taxes Exceeding 8% of Homeowner's Income

The law allows municipal legislative bodies to vote to defer property taxes for any owner-occupied residence if the tax exceeds 8% of the owner's income for a given year. Deferred taxes are a lien on the property and must be paid with interest, when the homeowner dies or the property is sold. Current law prohibits these liens from taking precedence over any previously recorded mortgage on the property. The bill instead gives them the same precedence as other tax liens.

§ 9-10 — Property Tax Refunds

Under current law, the time limit for municipalities to give property tax refunds is generally either (1) three years after the tax due date or (2) the extended deadline the municipality has established by ordinance. The bill instead makes the time limit the later of (1) these deadlines or (2) 90 days after the (a) deletion of a tax assessment by a final court order, (b) reduction of an assessment by a board of assessment appeals, or (c) removal of property from a taxpayer's personal property declaration discovered during an audit.

The bill specifies that a taxpayer's refund application must be delivered or postmarked by the applicable deadline, rather than just made by the deadline.

The bill allows the tax collector to deny a refund application if the taxpayer is delinquent in other taxes or has other debt. It also specifies that any property tax refund for which no timely application is made or granted is the municipality's permanent property, including refunds of veterans' property taxes that are not claimed within the statutory timeframe.

§ 11 — Property Tax Bills

By law, the failure to send out a tax bill or statement does not invalidate the tax. The bill adds that the failure to receive any such bill or statement also does not invalidate the tax.

§ 13 — Assigning Numbers to Tax Accounts

The bill conforms the law to current practice by requiring the tax assessor or rate maker, rather than the town clerk or rate maker, to assign a number for each tax account.

§ 16 — Reporting Assessment Mistakes

By law, tax collectors must report to town clerks all taxable property that is not assessed or is assessed to the wrong parties as soon as they know it. The bill requires them to also notify tax assessors of this information.

§ 17 — Tax Collector Fees

The bill eliminates the following specific tax collector fees for tax levies and sales:

1. for real property, 20 cents;
2. for each notice posted, filed, published, or mailed as required by law, 25 cents;

3. for each mile of travel from the collector's residence to the farthest point where he or she is legally required to take a notice (and return once), 20 cents;
4. for sale of real property, \$ 4; and
5. for each deed or bill of sale, \$ 2.

The bill instead requires delinquent taxpayers, or others required under the tax sale process, to pay all reasonable and necessary costs the town incurs, instead of specific enumerated costs. The bill also makes delinquent taxpayers responsible for paying (1) recording fees and (2) fees paid to any federal, state, or local government entity or agency by the municipality.

§ 19 — Credit Card Fees

Current law authorizes municipalities to (1) allow taxpayers to pay tax bills by credit card and (2) charge a service fee for doing so, which may not exceed the credit card issuer's charge. The bill specifies that the fee may not exceed either the credit card issuer's or service provider's charge.

§§ 20 & 43 — Order of Applying Property Tax Payments

Under current law, tax collectors must apply (1) tax payments on any specific property to the oldest outstanding tax and (2) partial tax payments or installments on any assessment list containing both real and personal property to the personal property tax first, unless the person making the payment directs otherwise in writing.

The bill eliminates these requirements and instead requires tax collectors to apply all tax payments first to outstanding unsecured taxes (i. e. , personal property taxes) and then to outstanding secured taxes (i. e. , real property taxes). The tax payments for these respective taxes apply as follows:

1. first to expenses, including attorney's fees, collection expenses, recording fees, collector's fees, and other expenses and charges related to a taxpayer's delinquency;
2. next to accrued interest; and
3. lastly, to principal, in chronological order.

The bill also specifies that a municipality is not bound by any notation accompanying a tax payment that (1) purports to be payment in full, (2) proposes to waive any of the municipality's rights or powers, or (3) directs the application of the payment in any manner that contradicts applicable law.

§ 21 — Waiving Taxes Under \$ 25

By law, a municipality's legislative body may waive property taxes that total less than \$ 25 before they are due. The bill allows the legislative body to waive such taxes regardless of their due date.

§ 22 — Posting Notice of Taxes Due

The bill requires tax collectors to post notice of the time and place at which they will receive taxes on a signpost, bulletin board, or the municipality's website. Under current law, they must post the notice on a signpost located in the municipality, or, if there is no such signpost,

(1) on a signpost located in the town within which the municipality is located or (2) at some other exterior place near the town clerk's office.

§ 23 — Delinquent Tax Payments

The bill conforms the law to current practice by:

1. allowing tax collectors to accept a partial payment for a delinquent tax that is less than the total accrued interest on the principal;
2. eliminating provisions that specify how interest accrues on delinquent taxes for which taxpayers have made a partial payment, thus requiring all delinquent taxes to accrue interest from the first day of the month;
3. specifying that the minimum \$ 2 interest charge on delinquent tax payments applies to each installment of the tax;
4. allowing a municipality's legislative body to require any delinquent taxes, rather than just those for motor vehicle taxes, to be paid in cash or by certified check or money order.

§ 24 — Withholding or Revoking Licenses or Permits for Delinquent Taxes

Current law allows municipalities and district health departments to withhold or revoke a license or permit if a business owes taxes on personal property it uses that are at least one year delinquent. The bill allows them to do so for taxes due on any property the business owns or uses, not just personal property.

§ 29 — Demand for Unpaid Taxes and Water and Sewer Charges

Under existing law, if municipal taxes or water or sewer charges are not paid within 30 days after their due date, the tax collector or his or her appointed agent can make personal or written demand for the tax or charges at the taxpayer's last-known residence. If that demand fails, the collector may take steps to collect the delinquent taxes and charges by using a tax warrant or alias tax warrant or sell the person's personal or real property.

The bill allows the tax collector to take such steps to proceed with the tax warrant or tax sale without making a demand for the payment if the assessor is unable to identify the owner or persons responsible for the delinquent taxes or charges after making reasonable efforts to do so.

The bill also allows tax collectors from two municipalities to jointly conduct collection efforts for delinquent taxes.

§§ 30-34 — Tax Sales

Notice of the Tax Sale. The law requires a tax collector selling property through a tax sale to provide a series of notices of the sale. Under current law, the notices must contain specific information, including the (1) taxpayer's name, (2) legal description of the real property, (3) address upon which the taxes are due, (4) amount of taxes due, and (5) time and place of the sale.

The bill requires the notices to additionally contain (1) the property's street address only if it has one, (2) an assessor's map or other public document identifying the property's boundaries, and (3) the date of the sale. It also allows the notices to include a citation to an instrument in the land records, instead of the property's legal description.

Under current law, the tax collector must mail various notices to the owner, mortgagee, lienholder, and others with a recorded interest in the property that would be affected. The bill (1) specifies that the other interested parties must have a choate interest in the property (i. e. , one that is recorded in the land records rather than merely a potential interest) and (2) allows the collector to mail the notices to a person's estate or its fiduciary if the collector knows that he or she is deceased. If the person is a corporation, limited partnership, or other legal entity, the bill allows the collector to mail the notice to any other address he or she believes will give notice of the levy or sale.

Current law also requires the collector to (1) file a notice with the town clerk, who must record it in the land records; (2) post it on a signpost in the town where the real estate is located, if any, or at some other exterior place near the town clerk's office; and (3) publish it at least once a week for three consecutive weeks in a newspaper published in the town, or, if one is not available, in a newspaper published in the state having general circulation in the town. The bill (1) specifies that the recording serves as constructive notice equivalent to a *lis pendens* for all purposes; (2) requires the collector to post the notice on a bulletin board in or near his or her office, rather than on a signpost; and (3) allows the collector to publish the notice in either type of newspaper.

Apportioning Tax Sale Costs. By law, the tax collector (1) may sell the property at public auction and retain auctioneers, clerks, and others to assist in the sale and (2) must add the cost of conducting the sale to the taxes due from the delinquent taxpayer. Under current law, if the sale involves more than one property, the costs must be apportioned equally among the properties. The bill specifies that only shared costs are apportioned.

Redemption Procedures. Within six months of the tax sale, the law allows the delinquent taxpayer, mortgagee, lienholder, or other entity holding a recorded interest in the property to redeem it. Under current law, the person or entity must pay the taxes, interest, and charges that were due at the time of the sale, plus 18% annual interest on the total purchase price paid by the purchaser. The bill requires them to also pay any taxes, debts, and fees owed to the municipalities that were not recovered by the sale.

By law, the collector must give the paying party a certificate of satisfaction, and the paying party must record it on the land records in order to pursue any claim against the delinquent taxpayer. Under the bill, the party's claim has the same precedence or priority over other encumbrances but not over any tax that was not yet due and payable when the collector first published notice of the levy. As under existing law, the party's claim does not affect the interests of other parties.

Disposition of Tax Sale Receipts. By law, if the sale produces more than the back taxes, penalties, interest, fees, and costs due on the property, the remainder must be placed in an escrow account. If the property is redeemed, the excess is paid to the tax sale purchaser within 10 days. If the property is not redeemed, under current law, the town may use the excess to pay the delinquent taxes, interest, penalties, fees, and other costs due from the former owner for other property he or she owns in town. The bill allows the excess sale proceeds to also be used to pay (1) costs on the property sold and (2) taxes on property located in other towns.

Under existing law, within specified timeframes after the tax sale, the tax collector must (1) pay the escrow account funds to the clerk of the court for the judicial district in which the property is located and (2) notify all interested parties of their right to apply to the court for the money. These parties may then apply for the money's return. The bill prohibits the municipality from being added as a party to such action to recover the money without its consent.

Enjoining Tax Sale Proceedings. The bill allows a person to seek to enjoin a tax sale under the same process that applies under current law to a person contesting the validity of a sale.

Tax Collector's Deed. The bill (1) eliminates the requirement that a collector's deed identify the mill rate for the taxes recovered by a tax sale and (2) shortens the statute of limitations on challenges to the validity of a tax collector's deed on grounds other than fraud. Under current law, the limit is one year from the date the deed was recorded or two years from the date of the tax sale, whichever is longer. The bill makes the limit one year from either action, whichever is longer.

§ 35 — Uncollectable Taxes

The law requires tax collectors to prepare a municipal suspense book that details unpaid property tax balances that they believe to be uncollectible, thus allowing the municipality to remove the delinquent properties from the tax roll and avoid treating them as assets. The bill eliminates the requirement that the book include, for each rate bill, (1) unpaid property tax balances remaining after a lien sale and (2) the name of the tax collector who transferred the tax to the book.

§ 39 — Taxes Due On Weekends And Holidays

By law, when a tax payment deadline falls on a Saturday, Sunday, or legal holiday, taxpayers have until the following business day to make a payment without interest or penalty. The bill specifies that this extension also applies to any installment of the tax.

§ 40 — Assignment Of Tax Liens

The law permits municipalities to assign their tax liens to third parties. The bill allows the assignee to recover the municipality's expenses for preparing and recording the assignment.

The law already allows the assignee to recover the collection fees and expenses. By law, the assignee has the same rights to enforce the lien as any private party holding a lien on real property. The bill specifies that this includes the right to foreclose and sue on the debt.

§ 41 — Privacy Of Individual Billing Records Held By Municipal Utility Companies

The law prohibits use of the Freedom of Information Act to force a municipal utility to disclose records that identify or could lead to identification of individual customers' utility usage or billing records. The bill specifies that this prohibition does not bar municipalities from disclosing information on account delinquencies and enforcement actions.

§ 42 — Notice Of Community-Based Resources

PA 12-1, June 12 Special Session, required municipalities to include the Judicial Branch's form on community-based resources for people involved in foreclosure mediation with any statement sent to a homeowner about a public sewer, water service, or property tax arrearage. The bill instead requires them to include the form with any complaint to judicially foreclose such arrearages