

BILL ANALYSIS

Senate Research Center
76R9992 JD-F

H.B. 3549
By: Heflin (Wentworth)
Finance
5/11/1999
Committee Report (Amended)

DIGEST

The Tax Code contains provisions governing redemptions in delinquent tax suits, procedures to be followed in collecting delinquent taxes, tax sales, and procedures from tax sales. Over the past few years, case law has determined that some of these procedures outlined in the Tax Code are not explicit enough in directing parties in property tax cases. Some current practices in this area are more accurately governed by case law, rather than statutory law. H.B. 3549 would establish conditions regarding the administration and collection of ad valorem taxes and certain local standby fees.

PURPOSE

As proposed, H.B. 3549 establishes conditions regarding the administration and collection of ad valorem taxes and certain local standby fees.

RULEMAKING AUTHORITY

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends 26.05, Tax Code, to require real property that is subject to an installment contract of sale to be listed in the name of the seller if the installment contract is not filed of record in the real property records of the county.

SECTION 2. Amends Chapter 31, Tax Code, by adding Section 31.081, as follows:

Sec. 31.081. PROPERTY TAX WITHHOLDING ON PURCHASE OF BUSINESS OR INVENTORY. Provides that this section applies only to a person who purchases a business, or inventory of a business from a person who is liable for the payment of taxes imposed on personal property used in the operation of that business. Requires the purchaser to withhold from the purchase price an amount sufficient to pay all of the taxes imposed in the personal property of the business, plus any penalties and interest incurred, until the seller provides the purchaser with certain documentation. Provides that a purchaser who fails to withhold the required amount is liable for that amount to a certain extent, regardless of whether the purchaser has been required to make any payments on that note. Authorizes the purchaser to request each appropriate collector to issue a tax certificate or a statement of the amount of taxes, penalties, and interest that are due on to each taxing unit for which the collector collects taxes. Requires the collector to issue the certificate or statement before the 10th day after the date the request is made. Provides that the purchaser is released from the duties and liabilities in connection with the taxes, penalties, and interest, if a collector does not timely provide or mail the certificate or statement. Requires any action to enforce a duty or liability imposed on a purchaser to be brought before the fourth anniversary of the effective date of the purchase. Establishes that an action to enforce the purchaser's duty or liability is subject to a limitation plea. Provides that this section does not release a person who sells a business or the inventory of a business from any personal liability imposed on the person for the payment of taxes imposed on the personal property of the business or for penalties or interest on taxes. Sets forth certain conditions of this section regarding a person who is considered to have purchased a business or the inventory of a business.

SECTION 3. Amends Section 32.01, Tax Code, by redesignating Subsection (c) as Subsection (d) and adding a new Subsection (c), to provide that if an owner's real property is described with certainty by metes and bounds in one or more instruments of conveyance and part of that property is the owner's residence homestead separately and apart from the remainder of the property, each of the liens that secures

the imposed taxes on the homestead and on the remainder of that property extends in solido to all real property described in the instrument or instruments of conveyance.

SECTION 4. Amends Section 32.015(b), Tax Code, to set forth conditions by which any lien for which the notice is not filed by a specific date is unenforceable. Makes conforming and nonsubstantive changes.

SECTION 5. Amends Section 32.05(c), Tax Code, to provide that a tax lien is not inferior to a claim providing certain conditions. Makes conforming changes.

SECTION 6. Amends Section 32.07(e), Tax Code, to make conforming changes.

SECTION 7. Amends Section 32.07, Tax Code, by adding Subsection (h), to provide that a person is considered to be an owner of property subject to an installment contract of sale if a person fulfills certain conditions.

SECTION 8. Amends Section 33.011(a), Tax Code, to authorize the governing body of a taxing unit to delegate certain authority and impose certain limitations.

SECTION 9. Amends Section 33.04, Tax Code, to require the collector for each taxing unit in each year divisible by five to deliver by mail a written notice of delinquency to certain persons. Authorizes each notice to be delivered to the same person for more than one year or on more than one property to be included in a single notice. Requires interest and penalties on a tax to be reinstated and to be collected if the collector delivers the notice in any subsequent year divisible by five. Provides that the interest and penalties on the tax are reinstated prospectively and begin to accrue on a specific date. Sets forth conditions of presumption of delivery. Makes conforming and nonsubstantive changes.

SECTION 10. Amends Section 33.07, Tax Code, as follows:

Sec. 33.07. New heading: **ADDITIONAL PENALTY FOR COLLECTION COSTS FOR TAXES DUE BEFORE JUNE 1.** Authorizes a taxing unit to assess a penalty for taxes that become delinquent on or after February 1 of a year but not later than May 1 of that year and that remain delinquent on July 1 of the year in which they became delinquent.

SECTION 11. Amends Chapter 33A, Tax Code, by adding Section 33.08, as follows:

Sec. 33.08. **ADDITIONAL PENALTY FOR COLLECTION COSTS FOR TAXES DUE ON OR AFTER JUNE 1.** Sets forth provisions by which this section applies only to a taxing unit or appraisal district. Authorizes the governing body of a taxing unit or appraisal district to provide that taxes that become delinquent on or after June 1 under certain sections incur an additional penalty to defray the costs of collection. Prohibits the amount of the penalty from exceeding 15 percent of the amount due. Requires a notice of the delinquency and penalty to be sent to the property owner by the collector. Sets forth the first day the penalty is incurred. Provides that a tax lien attaches to the property on which the tax is imposed to secure payment of the additional penalty. Prohibits a taxing unit or appraisal district from recovering attorney's fees in a suit to collect delinquent taxes subject to the penalty.

SECTION 12. Amends Section 33.43(a), Tax Code, to delete text regarding taxes imposed on property for the current tax year.

SECTION 13. Amends Section 33.47(a), Tax Code, to provide that certain documentation including the amount of tax and penalties imposed and the amount of interest accrued constitute prima facie evidence that each person charged with a duty relating to the imposition of the tax has complied with all requirements and are in correct amounts.

SECTION 14. Amends Section 33.50, Tax Code, by adding Subsection (c), to require the order of sale to specify that the property may not be sold to a person owning interest in the property or to a person who is a party to the suit other than the taxing unit unless certain conditions exist.

SECTION 15. Reenacts and amends Section 33.52, Tax Code, as follows:

Sec. 33.52. New heading: TAXES INCLUDED IN JUDGMENT. Authorizes only delinquent taxes to be included in the amount recoverable under the judgment by the taxing units that are parties to the suit. Authorizes the judgment to establish make certain provisions in lieu of stating as a liquidated amount that aggregate total of taxes, penalties, and interests due. Sets forth presumptions included for the purposes of calculating penalties and interests due. Provides that a taxing unit's claim for taxes that become delinquent after the date of the judgment is not affected by the entry of the judgment or a tax sale conducted under that judgment. Authorizes those judgments to be collected by any provided remedy. Deletes text regarding foreclosure on any unpaid tax on the property for that current year; recovery of and foreclosure on the amount of tax imposed on the preceding year; and a judgment that does provide for recovery of certain imposed taxes.

SECTION 16. Amends Section 33.53, Tax Code, to require the district clerk to prepare an order to an officer authorized to conduct execution sales ordering the sale of the property. Authorizes the taxing unit, if more than one parcel of property is included in the judgment, to specify particular parcels to be sold. Authorizes a taxing unit to request more than one order of sale as necessary to collect all amounts due under the judgment. Sets forth requirements for an order of sale. Provides that a judgment or a bill of costs attached to the order of sale is not required to be certified. Makes a conforming change.

SECTION 17. Amends Section 34.01, Tax Code, to require property seized or ordered sold pursuant to foreclosure of a tax lien to be sold by the officer charged with selling the property, unless certain conditions exist. Requires the sale to be conducted in the manner similar property is sold under execution. Sets forth requirements for the officer charged with selling the property. Authorizes a collector, to assist the officer in making the required calculation, to provide the officer with a certified tax statement showing the amount due to that taxing unit as of the date of the proposed sale. Requires the officer, if the certified statement is received, to rely on the amount included in the statement and is not responsible or liable for the accuracy of the application portion of the calculation. Sets forth individuals to which the officer must give written notice of sale. Requires the officer to advertise the time and place of the sale by publishing the notice in the county by a certain date. Provides that an officer's failure to send written notice of sale or a defendant's failure to receive that notice is insufficient by itself to invalidate the sale or the title conveyed by sale. Authorizes the notice of sale to include certain provisions. Requires a notice of sale to comply with this subsection. Sets forth inclusions required in the notice. Provides that a notice of sale is not required to include field notes describing the property. Sets forth provisions regarding a sufficient description of the property. Authorizes a newspaper to charge a certain rate for publishing a notice of sale. Sets forth requirements for the officer regarding publication of the notice of sale if a newspaper is not published in the county or will not comply with the approved rate. Prohibits the owner from specifying more than four portions or a portion that divides a building or other contiguous improvement. Requires the request to be delivered to the officer not later than the 7th day before the date of sale. Authorizes a taxing unit that established a tax lien in the suit to continue to enforce collection of any amount for which a former owner of property is bid off to a taxing in any other manner provided by law. Authorizes the taxing unit that requested the order of sale to elect to prepare a deed for execution by the officer. Requires the officer to execute the deed and either file the deed for recording or deliver the executed deed to the taxing unit that requested the order of sale, which shall file the deed for recording. Requires the county clerk to file and record each deed filed after the recording shall return the deed to the grantee. Sets forth provisions regarding a sale of property to a purchaser other than a taxing unit. Requires a sale of real property to take place at the county courthouse in the county in which the land is located. Requires the sale to occur in the same location in the courthouse that is designated by the commissioners court of the county for the sale of real property. Provides that to the extent conflicts between this section and a provision of the Texas Rules of Civil Procedure that relates to an execution, this section controls. Makes conforming and nonsubstantive changes.

SECTION 18. Amends Section 34.015(a), Tax Code, to authorize the governing body of a municipality to provide for the manner in which land acquired by the municipality following the seizure of the land or the foreclosure of a tax lien in favor of the municipality to be sold if the land is sold to certain entities.

SECTION 19. Amends Section 34.02, Tax Code, to require the amount included under each subdivision of Subsection (b) to be fully paid before any of the proceeds may be applied to the amount included under the subsequent subdivision. Sets forth entities to which the proceeds shall be applied. Deletes text regarding the distribution of proceeds. Makes a conforming changes.

SECTION 20. Amends Section 34.04, Tax Code, to authorize a person including a taxing unit, to file a

petition in the court that ordered the seizure or sale setting forth a claim to the excess proceeds. Requires the petition to be filed before the second anniversary, rather than within 7 years, of the date of sale of the property. Provides that the petition is not required to be filed as an original suit separate from the underlying suit for seizure of the property or foreclosure of a tax lien on the property but may be filed under the cause number of the underlying suit. Sets forth the date by which a copy of the underlying action shall be served. Sets forth requirements for the court to order the proceeds to be paid according to certain priorities to each party that establishes its claim to the proceeds. Deletes text regarding a county or district attorney; a claimants entitlement to recover excess proceeds; and prohibiting a claim for excess proceeds after certain expiration.

SECTION 21. Reenacts Section 34.05(a), Tax Code, as amended by Chapters 906 and 1111, Acts of the 75th Legislature, Regular Session, 1997.

SECTION 22. Amends Sections 34.05(c) and (d), Tax Code, to authorize a taxing unit purchasing the property by resolution of its governing body to request the sheriff or a constable to sell the property at a public sale. Makes conforming and nonsubstantive changes.

SECTION 23. Amends Section 34.05(h), Tax Code, redesignated as Section 34.05(g) and amended, to make a nonsubstantive change.

SECTION 24. Amends Section 34.06, Tax Code, by amending Subsections (b) and (c) and adding Subsections (d), (e), and (f), to require the proceeds of the resale to be distributed as required by Subsections (c)-(e). Requires the purchasing taxing unit to first retain an amount from the proceeds to reimburse the unit for certain reasonable costs incurred by the unit. Provides that after retaining the authorized amount the purchasing taxing unit shall then pay certain costs. Requires the remaining balance of the proceeds to be paid to each participating taxing unit in amounts equal to the unit's participation and interest adjudged to be due all participants in the sale. Makes conforming changes. Deletes text requiring the purchasing tax unit to pay all court costs and expenses.

SECTION 25. Amends Section 34.07, Tax Code, to provide that the purchaser at a void or defective tax sale or tax resale is subrogated to the rights of the taxing unit in whose behalf the property was sold or resold to a certain extent. Requires the court expressly to provide certain conditions in its final judgment, if the purchaser prevails in a filed suit. Makes conforming and nonsubstantive changes.

SECTION 26. Reenacts and amends Section 34.21, Tax Code, to require the owner to pay to the taxing unit to which the property was bid off an amount equal to the difference between the amount paid and the amount of the judgment. Requires the taxing unit to issue a receipt for a payment received and to distribute the amount received to each taxing unit that participated in the judgment and sale in an amount proportional to the unit's share of the total amount of the aggregate judgments of the participating taxing units. Requires the owner to deliver the receipt received from the taxing unit to the person from whom the property is redeemed. Defines "land designated for agricultural use" and redefines "costs" and "purchaser." Authorizes an owner entitled to redeem the property to request that the purchaser of the property, or the taxing unit to which the property was bid off, provide that owner a written itemization of all amounts spent by the purchaser or taxing unit in costs on the property. Sets forth requirements regarding written itemizations, the individuals to receive an itemization, and the method of delivery. Deletes text regarding certain definitions. Makes conforming and nonsubstantive changes.

SECTION 27. Amends Section 42.031(b), Tax Code, to make conforming changes.

SECTION 28. Amends Section 49.231, Water Code, by amending Subsections (j)-(l) and adding Subsections (o) and (p), to set forth requirements for the governing body of a district (board), including the imposition of certain penalties. Sets forth conditions regarding the amount of the penalty. Provides that this section applies only to the board of a district that has entered into a contract with an attorney for the collection of unpaid standby fees. Sets forth additional penalty for untimely payment and the conditions of that penalty.

SECTION 29. Amends Chapter I, Probate Code, by adding Section 5C, as follows:

Sec. 5C. ACTIONS TO COLLECT DELINQUENT PROPERTY TAXES. Sets forth provisions of a decedent's estate to which this section applies. Provides that a suit to foreclose the lien securing payment of the taxes or to enforce personal liability for the taxes must be brought under Section 33.41, Tax Code, in a court of competent jurisdiction in the county in which the

taxes were imposed. Sets forth requirements for the taxing unit, if the probate proceedings are pending in the county in which taxes were imposed. Sets forth requirements for the taxing unit with regards to a suit brought under Subsection (d).

SECTION 30. Amends Section 317(c), Probate Code, to prohibit the foregoing provisions relative to the presentment of claims from being so construed as to apply to a claim, including conditions regarding ad valorem taxes against a decedent's estate that is being administered in probate.

SECTION 31. Amends Section 801, Probate Code, to provide that Subsection (a) does not apply to a claim for delinquent ad valorem taxes against the estate of a ward that is being administered in probate in a county other than the county in which the taxes were imposed.

SECTION 32. Amends Article 1396-2.07, V.T.C.S., by adding Section D, as follows:

Sec. D. Sets forth the procedures for obtaining service of process on a corporation that loses its privileges by forfeiture or by involuntary dissolution.

SECTION 33. Amends Article 2.11, Texas Business Corporation Act, by adding Section D, as follows:

Sec. D. Sets forth the procedures for obtaining service of process on a corporation that loses its privileges by forfeiture or by involuntary dissolution.

SECTION 34. Amends Section 8.10, Texas Business Corporation Act, by adding Subsection E, as follows:

Sec. E. Sets forth the procedures for obtaining service of process on a corporation that loses its privileges by forfeiture or by involuntary dissolution.

SECTION 35. Repealers: Sections 33.51 and 34.05(g), Tax Code (regarding writ of possession).

SECTION 36. (a) Effective date: September 1, 1999, except as otherwise provided by Subsection (b).

(b) Effective date for SECTIONS 1-4, 6, 7, 9, and 28 of this Act: January 1, 2000.

SECTION 37. Makes application of SECTION 4 of this Act prospective to January 1, 2000.

SECTION 38. Makes application of SECTION 9 of this Act prospective to 2000.

SECTION 39. Makes application of SECTIONS 14 and 15 of this Act prospective to September 1, 1999.

SECTION 40. Makes application of SECTIONS 16 and 17 of this Act retroactive to September 1, 1999.

SECTION 41. Provides that changes in law made to SECTION 20 apply to the disposition of excess proceeds of a property tax foreclosure or summary sale paid into court regardless of the date on which the sale occurred or the date on which the proceeds were paid into the court.

SECTION 42. Makes application of SECTIONS 22 and 24 of this Act prospective to September 1, 1999.

SECTION 43. Makes application of SECTION 25 of this Act retroactive to September 1, 1999.

SECTION 44. Makes application of SECTION 26 of this Act prospective to September 1, 1999.

SECTION 45. Makes application of SECTIONS 29, 30, and 31 of this Act prospective to September 1, 1999.

SECTION 46. Makes application of SECTIONS 32, 33, and 34 of this Act prospective to September 1, 1999.

SECTION 47. Emergency clause.

