

BILL ANALYSIS

Senate Research Center

H.B. 490
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Intergovernmental Relations
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Engrossed

DIGEST AND PURPOSE

Currently, procedural and technical corrections are necessary for provisions within the Texas Property Tax Code regarding multiple appraisals of a property; notices of delinquency; penalties and interest on deferred taxes; additional penalty on delinquent taxes against property that escaped taxation in previous years; definitions of personal property subject to seizure; notices of sale of seized personal property and real property; excess proceeds of tax sales; costs and expenses incurred in delinquent tax suits; post judgment taxes; vacating void tax judgments and tax sales; costs of tax sale; remedies of purchaser at void tax sale; redemptions; and reenactment of duplicate or overlapping provisions. H.B. 490 clarifies these provisions and deletes outdated provisions of the Property Tax Code.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 25.25(b) and (c), Tax Code, to authorize the chief appraiser to change the appraisal roll at any time to correct a name or address, a determination of ownership, a description of property, multiple appraisals of property, or a clerical error or other inaccuracy as prescribed by board rule that does not increase the amount of tax liability. Authorizes the appraisal review board, on motion of the chief appraiser or of a property owner, to direct by written order changes in the appraisal roll to correct: certain errors if the board orders the change for such corrections before the end of five years after January 1 of the tax year for which the correction is sought, and multiple appraisals of a property at any time. Makes conforming changes.

SECTION 2. Amends Sections 33.06(a), (d), and (e), Tax Code, as follows:

(a) Makes nonsubstantive changes.

(d) Provides that a tax lien remains on the property and interest continues to accrue during the period collection of taxes is deferred or abated under this section. Makes conforming changes. Provides that all interest and penalties that accrued or were incurred or imposed under Sections 33.01 and 33.07 prior to the filing of an affidavit for deferral or prior to the date on which a judgment or order of abatement is entered are preserved. Provides that a penalty is not incurred under Section 33.01 during a deferral or abatement period and deletes text concerning the prohibition against imposing penalties. Authorizes the additional penalty under Section 33.07 to be imposed during the deferral or abatement period. Authorizes the additional penalty to be collected only under certain conditions.

(e) Makes a conforming change.

SECTION 3. Amends Section 33.065(g), Tax Code, to make conforming changes.

SECTION 4. Amends Section 33.08(b), Tax Code, to authorize the governing body of the taxing unit or appraisal district, in the manner required by law for official action, to provide that taxes that become delinquent on or after June 1 under Section 26.15(e) incur an additional penalty to defray costs of collection.

SECTION 5. Amends Section 33.21, Tax Code, by adding Subsection (d), to define “personal property.”

SECTION 6. Amends Section 33.23(c), Tax Code, by amending Subsection (c) and adding Subsections (d) and (e), as follows:

(c) Requires the collector or the peace officer, after a tax warrant is issued, to take possession of the property pending its sale. Authorizes the property to be secured by the collector and the peace officer at the premises where it is seized pending its sale, or, alternatively, to be removed by the collector or peace officer to another location.

(d) Provides that a person who possesses personal property owned by the person against whom a tax warrant is issued and who surrenders the property on demand is not liable to any person for the surrender. Requires the collector, at the time of surrender, to provide the person surrendering the property a sworn receipt describing the property surrendered.

(e) Provides that Subsection (d) does not create an obligation on the part of a person who surrenders property owned by the person against whom a tax warrant is issued that exceeds or materially differs from that person’s obligation to the person against whom the tax warrant is issued.

SECTION 7. Amends Section 33.25, Tax Code, by amending Subsection (a) and adding Subsection (c), as follows:

(a) Requires the collector, except as provided by Subsection (c), to make a reasonable inquiry after a seizure of personal property in order to determine the identity and ascertain the address of any person having an interest in the property other than the person against whom the tax warrant is issued. Makes conforming changes. Requires notice of sale to be delivered in a manner authorized by Rule 21a, Texas Rules of Civil Procedure.

(c) Requires the collector, after a seizure of personal property defined by Sections 33.21(d)(2)-(5), to apply the seized property toward the payment of the taxes, penalties, and interest included in the application for warrant and all costs of the seizure.

SECTION 8. Amends Section 33.42(c), Tax Code, to prohibit the taxing unit, if a tax required by this section to be included in a suit is omitted from the judgement in the suit, from enforcing the collection of the tax at a later time, except as provided by Section 34.04(c)(2).

SECTION 9. Amends Section 33.43(a), Tax Code, to provide that a petition initiating a suit to collect a delinquent property tax is sufficient if it alleges that the taxing unit is entitled to recover each penalty that is incurred and all interest that accrues on delinquent taxes imposed on the property from the date of the judgment to the date of the sale under Section 253.010, Local Government Code (redesignated later in the bill from Section 34.015, Tax Code), as applicable, if the suit seeks to foreclose a tax lien.

SECTION 10. Amends Section 33.48, Tax Code, as follows:

(a) Provides that, in addition to other costs authorized by law, a taxing unit is entitled to recover certain stated costs and expenses in a suit to collect a delinquent tax.

(b) Provides that an expense described by Subsection (a)(4) is a charge against the property and secured by lien, regardless of whether a suit is pending, if taxes on that property were delinquent at the time the item of expense was incurred. Provides that, in an action brought by a taxing unit for the sole purpose of enforcing its lien for expenses incurred under Subsection (a)(4), the defendant may allege as an affirmative defense that the amount of those expenses is unreasonable.

SECTION 11. Amends Section 33.49(a), Tax Code, to provide that, except as provided by Subsection (b), a taxing unit is not liable in a suit to collect taxes for court costs, including an attorney ad litem, and is prohibited from being required to post security for the costs.

SECTION 12. Amends Section 33.52(d), Tax Code, to provide that, except as provided by Section 34.01(1), 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, and those taxes may be collected by any remedy provided by this title.

SECTION 13. Amends Section 33.56, Tax Code, to authorize any taxing unit that was party to the judgment, if, in a suit to collect a delinquent tax, a court renders a judgment for a foreclosure of a tax lien on behalf of a taxing unit, to file a petition to vacate the judgment on certain stated grounds. Prohibits the taxing unit from filing a petition if a tax sale of the property has occurred unless certain requirements are met. Sets forth method by which consent of the purchaser to a petition may be shown. Requires a copy of the petition to be served, in a manner authorized by Rule 21a, Texas Rules of Civil Procedure, on each party to the delinquent tax suit. Requires the court, if it grants the petition, to enter an order making certain stated provisions.

SECTION 14. Amends Sections 34.01 (b), (l), (m), (o), (p), and (r), Tax Code, as follows:

(b) Provides that costs of the sale include the costs of advertising, an amount not to exceed \$40 incurred in any physical inspection of the property, and deed recording fees anticipated to be paid in connection with the sale of the property. Authorizes the collector of any taxing unit that is party to the judgment, in order to assist the officer in making the calculation, to provide the officer with a certified tax statement showing the amount of the taxes included in the judgment that remain due that taxing unit, and all penalties, interest and attorney's fees provided by the judgment as of the date of the proposed sale. Provides that a certified tax statement given under this subsection need not be sworn and is sufficient so long as it is signed by the tax collector or the collector's deputy.

(l) Provides that all of a taxing unit's existing liens of any character that are not included and foreclosed in a tax foreclosure judgment or that attach to the foreclosed property after the date the judgment is signed are extinguished as to that property, and the taxes or other claims secured by those liens are canceled and barred, given certain conditions. Deletes text authorizing 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 the property is liable to the taxing unit.

(m) Requires the officer, if the taxing unit prepares the deed, to execute that deed. Requires the officer, as soon as practicable after a deed is executed by the officer, to either file the deed for recording with the county clerk or deliver the executed deed to the taxing unit that requested the order of sale.

(o) Authorizes the officer making the sale, if a bid sufficient to pay the lesser of the amounts specified under Subsection (p) is not received, to bid off property seized under Chapter 33E (Seizure of Real Property) to a person described by Section 11.181 or 11.20 for that amount or the market value of the property. Deletes text referring to

Subsection (j) and to the tax warrant amount. Provides that the acceptance of a bid by the officer under this subsection is conclusive and binding on the question of its sufficiency. Prohibits an action to set aside the sale on the grounds that the bid is insufficient from being sustained, except that a taxing unit that participates in distribution of proceeds of the sale is authorized to file an action before the first anniversary of the date of the sale to set aside the sale on the grounds of fraud or collusion between the officer making the sale and the purchaser.

(p) Prohibits, except as provided by Subsection (o), property seized under Chapter 33E from being sold for an amount that is less than the lesser of the market value of the property as specified in the warrant or the total amount of taxes, penalties, interest, costs, and other claims for which the warrant was issued. Requires the officer making the sale, if a sufficient bid is not received by the officer, to bid off the property to a taxing unit in the manner specified by Subsection (j) and subject to the other provisions of that subsection. Provides that a taxing unit that takes title to property under this subsection takes title for the use and benefit of that taxing unit and all other taxing units that established tax liens in the suit or that, on the date of the seizure, were owed delinquent taxes on the property.

(r) Authorizes the commissioners court to designate the area in the county courthouse where sales under this section are to take place and requires the court to record any designated area in the real property records of the county. Requires a sale to occur in the designated area if there is a designated area. If no area is designated by the commissioners court, the sale is required to occur in the same area in the courthouse that is designated by the commissioners court of the county for the sale of real property under Section 51.002 (Sale of Real Property Under Contract Lien), Property Code.

SECTION 15. Amends Section 34.04(c), Tax Code, to require the court, at the hearing, to order that the proceeds be paid according to certain stated priorities to each party that establishes its claim to the proceeds.

SECTION 16. Amends Section 34.05(d) and (e), Tax Code, as follows:

(d) Provides that the description of the property in the notice is sufficient if it is stated in the manner provided by Section 34.01(f). Requires the officer to execute a deed if the taxing unit prepares the deed. Requires the officer, as soon as is practicable after a deed is executed by the officer, to either file the deed or deliver the executed deed. Deletes text regarding a legal description and the execution of a deed.

(e) Requires the presiding officer of a taxing unit selling real property under Subsection (h) or (i), under Section 34.051, or under Section 253.010, Local Government Code, or the sheriff or constable selling real property under Subsections (c) and (d), to execute a deed to the property conveying to the purchaser the right, title, and interest acquired or held by each taxing unit that was a party to the judgment foreclosing tax liens on the property.

SECTION 17. Amends Section 34.051(b), Tax Code, to authorize any taxing unit to enter into an interlocal agreement with the municipality for the resale of tax foreclosed properties to be used for a purpose consistent with the municipality's urban redevelopment plans or affordable housing policy. Makes conforming changes.

SECTION 18. Amends Section 34.07, Tax Code, by amending Subsection (d) and adding Subsection (f), as follows:

(d) Authorizes a purchaser at a void tax sale or tax resale, in lieu of pursuing the

subrogation rights provided by this section to which a purchaser is subrogated, to elect to file an action against the taxing units to which proceeds of the sale were distributed to recover an amount from each taxing unit equal to the distribution of taxes, penalties, interest, and attorney's fees it received. Deletes text referring to the amount paid at the sale. Authorizes the purchaser, in a suit filed under this subsection, to include a claim for, and provides that the purchaser is entitled to recover, any excess proceeds of the sale that remain on deposit in the registry of the court or, alternatively, have judgment against any party to whom the excess proceeds have been distributed. Provides that this subsection applies only to an original purchaser at a tax sale or resale and who has not subsequently sold the property to another person.

(f) Prohibits a suit against the taxing units under Subsection (d) from being maintained unless the action is instituted before the first anniversary of the date of sale or resale. Defines the "date of sale" and "date of resale."

SECTION 19. Amends Section 34.21(b), Tax Code, to provide that if property that was used as the owner's residence homestead or was land designated for agricultural use when the suit or the application for the warrant was filed is bid off to a taxing unit under Section 34.01(j) or (p) and has not been resold by the taxing unit, the owner having a right of redemption is authorized to redeem the property on or before the second anniversary of the date on which the deed of the taxing unit is filed for record by paying the taxing unit a certain stated amount.

SECTION 20. Amends Section 42.02, Tax Code, to provide that the chief appraiser, on written approval of the local appraisal district board of directors, is entitled to appeal an order of the appraisal review board determining certain protests and filed motions.

SECTION 21. Redesignates Section 34.015, Tax Code, as amended by Chapters 181 and 817, Acts of the 76th Legislature, Regular Session, 1999, as Section 253.010, Local Government Code, and amends it to conform to the changes made by those chapters, as follows:

Sec. 253.010. SALE OF REAL PROPERTY TO CERTAIN NONPROFIT OR RELIGIOUS ORGANIZATIONS. (a) Authorizes the governing body of a municipality, notwithstanding any other provision of law, to provide for the manner in which any land acquired by the municipality may be sold if the land is sold to certain nonprofit or religious corporations and organizations.

(b) Authorizes a municipality operating under this section by ordinance to determine the individuals and families who qualify as low-income individuals and families under Subsection (a)(1) or (2). Requires the municipality, in adopting an ordinance under this subsection, to consider median income of individuals and median family income in the area.

Deletes text regarding an alternate manner of sale.

SECTION 22. Repealer: Section 33.04 (Notice of Delinquency), Tax Code.

SECTION 23. Effective date: September 1, 2001.

SECTION 24. Provides that the repeal of Section 33.04, Tax Code, by this Act does not apply to taxes subject to a delinquent tax suit pending before the effective date of this Act. Provides that the repeal of Section 33.04, Tax Code, by this Act applies to all other taxes that became delinquent before the effective date of this Act or that become delinquent on or after that date. Provides that penalties and interest on a delinquent tax are not canceled under Section 33.04, Tax Code, for failure to deliver any notice under that section as it existed immediately before the effective date of this Act. Provides that a delinquent tax that is the subject of a collection suit filed before the effective date of this Act is

governed by Section 33.04, Tax Code, as that section existed immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

SECTION 25. Provides that Sections 33.06 and 33.065, Tax Code, as amended by this Act, apply to penalties and interest that accrued on a delinquent tax before September 1, 2001, or that accrue on or after that date, regardless of whether the deferral or abatement period under the applicable section of that code began before September 1, 2001, or begins on or after that date.

SECTION 26. Provides that Sections 33.21, 33.23, and 33.25, Tax Code, as amended by this Act, apply only to a case in which an application for a tax warrant under Chapter 33B, Tax Code, is filed on or after September 1, 2001. Provides that a case in which the application for a tax warrant was filed under that subchapter before September 1, 2001, is governed by the law in effect on the date the application for the tax warrant was filed, and the former law is continued in effect for that purpose.

SECTION 27. Provides that Sections 33.42 and 34.04, Tax Code, as amended by this Act, apply to the disposition of excess proceeds from a property tax foreclosure or a summary sale of seized property, regardless of the date on which the judgment was rendered, the tax sale was conducted, or the deposit of proceeds with the court was made.

SECTION 28. Provides that Sections 33.48 and 33.49, Tax Code, as amended by this Act, apply to a suit that was filed before September 1, 2001, or that is filed on or after that date, and to a judgment on the merits that is entered on or after that date.

SECTION 29. Provides that Section 33.56, Tax Code, as amended by this Act, applies to a tax foreclosure judgment that was rendered before September 1, 2001, or that is rendered on or after that date.

SECTION 30. (a) Provides that Sections 34.01(b), (m), (o), (p), and (r), Tax Code, as amended by this Act, apply to each tax sale that is conducted on or after September 1, 2001, regardless of whether the judgment on which the sale is based was entered before, on, or after that date.

(b) Provides that Section 34.01(l), Tax Code, as amended by this Act, applies only to taxes and claims, or a lien securing those taxes or claims, that remain unpaid on or after September 1, 2001, and that are canceled or extinguished under that section, as amended by this Act, regardless of the date on which the tax sale was conducted.

(c) Provides that, for purposes of this section, the date on which a tax sale was conducted is considered to be the first Tuesday of the month in which the public auction sale occurs.

SECTION 31. (a) Provides that Section 34.05, Tax Code, as amended by this Act, applies to a resale of property that is conducted on or after September 1, 2001, regardless of whether the judgment was signed before that date or is signed on or after that date.

(b) Provides that, for purposes of this section, the date on which a resale is conducted is considered to be:

(1) the date on which a public sale occurs under Section 34.05(c), Tax Code; or

(2) for a sale under Section 34.051 or 34.05(h) or (i), Tax Code, or under Section 253.010, Local Government Code, as added by this Act, the date on which the grantor's acknowledgment was taken or, if multiple grantors, the latest date of acknowledgment of those grantors.

SECTION 32. Provides that Section 34.07, Tax Code, as amended by this Act, applies to a suit by the purchaser at a void tax sale or tax resale filed on or after September 1, 2001, regardless of the date

of the tax sale or tax resale. Provides that a suit filed by a purchaser before September 1, 2001, is governed by Section 34.07, Tax Code, as that law existed immediately before that date, and the former law is continued in effect for that purpose.

SECTION 33. Provides that Section 34.21, Tax Code, as amended by this Act, applies to a redemption of property sold for taxes under a judgment rendered or tax warrant that was issued before September 1, 2001, or that is rendered or issued on or after that date.