

BILL ANALYSIS

Senate Research Center
77R13812 JD-F

C.S.H.B. 490
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Intergovernmental Relations
5/2/2001
Committee Report (Substituted)

DIGEST AND PURPOSE

Currently, procedural and technical corrections are necessary for provisions within the Tax Code regarding certain property appraisals, property taxes, and delinquent taxes. C.S.H.B. 490 clarifies these provisions and deletes outdated provisions of the Tax Code.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 Section 6.035(a), Tax Code, to provide that an individual is ineligible to serve on an appraisal district board of directors and is disqualified from employment as chief appraiser if the individual owns property on which delinquent taxes have been owed to a taxing unit for more than 60 days after the date the individual knew or should have known of the delinquency unless the delinquent taxes and any penalties and interest are being paid under an installment payment agreement under Section 33.02, or a suit to collect the delinquent taxes is deferred or abated under Section 33.06 or 33.065.

SECTION 2. Amends Section 6.24, Tax Code, by amending Subsection (b) and adding Subsection (c), as follows:

(b) Adds an exception.

(c) Authorizes a contract entered into under Subsection (b) to exclude from the taxes the other unit or the district is required to assess and collect taxes the county is required to assess and collect under one or more certain stated provisions.

SECTION 3. Amends Section 6.41(f), Tax Code, to add to grounds for removal from the board of the appraisal district a violation of Section 41.66(f) or 41.69.

SECTION 4. Amends Section 6.412(a), Tax Code, to make conforming changes.

SECTION 5. Amends Section 22.27(b), Tax Code, to authorize information made confidential by this section to be disclosed to a taxing unit or its legal representative that is engaged in the collection of delinquent taxes on the property that is the subject of the information.

SECTION 6. Amends Section 25.25, Tax Code, by amending Subsection (b) and adding Subsections (n) and (o), as follows:

(b) Authorizes 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.

(n) Provides that after a chief appraiser certifies a change under Subsection (b) that corrects multiple appraisals of a property, the liability of a taxing unit for a refund of taxes under Section 26.15(f), and any penalty or interest on those taxes, is limited to taxes paid for the tax year in which the appraisal roll is changed and the four tax years preceding that year.

(o) Provides that the failure or refusal of a chief appraiser to change an appraisal roll under Subsection (b) is not: an action that the appraisal review board is authorized to determine under this section; an action that may be the subject of a suit to compel filed under Subsection (g); an action that a property owner is entitled to protest under Section 41.41; or an action that may be appealed under Chapter 42.

SECTION 7. Amends Section 26.15(f), Tax Code, to add an exception as provided by Section 25.25(n).

SECTION 8. Amends Section 31.11, Tax Code, by adding Subsection (g), to provide that if a taxpayer submits a payment of taxes that exceeds by \$5 or more the amount of taxes owed for a tax year to a taxing unit, the collector for the taxing unit, without charge, is required to mail to the taxpayer or the taxpayer's representative a written notice of the amount of the overpayment accompanied by a refund application form.

SECTION 9. Amends Chapter 31, Tax Code, by adding Section 31.111, as follows:

Sec. 31.111. REFUNDS OF DUPLICATE PAYMENTS. (a) Requires the collector of a taxing unit who determines that a person erred in making a payment of taxes because the identical taxes were paid by another person to refund the amount of the taxes to the person who erred in making the payment.

(b) Requires a refund under Subsection (a) to be made as soon as practicable after the collector discovers the erroneous payment. Requires the refund to be accompanied by a description of the property subject to the taxes sufficient to identify the property. Requires the collector to include an account number if the property is assigned an account number.

(c) Requires the collector, each month, to inform the auditor of each appropriate taxing unit of refunds of taxes made under Subsection (a) during the preceding month.

SECTION 10. Amends Sections 31.12(a) and (b), Tax Code, to provide that if a refund of a tax provided by Section 31.111 is paid on or before a certain date, no interest is due on the amount refunded. Provides that liability for a refund arises if the refund is required by Section 31.111, on the date the collector for the taxing unit determines that the payment was erroneous.

SECTION 11. Amends Section 33.04, Tax Code, to delete text regarding notice of delinquency.

SECTION 12. 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. 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 and collected only if the taxes for which collection is deferred or abated remain delinquent on or after a certain date. Makes conforming changes.

(e) Makes a conforming change.

SECTION 13. Amends Section 33.065(g), Tax Code, to make conforming changes.

SECTION 14. Amends Section 33.07(a), Tax Code, to prohibit the amount of a certain penalty from exceeding the amount of the compensation specified in the contract with the attorney to be paid in connection with the collection of the delinquent taxes, rather than 15 percent of the amount of taxes, penalty, and interest due.

SECTION 15. 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 26.07(f) or 26.15(e) incur an additional penalty to defray costs of collection. Makes conforming changes.

SECTION 16. Amends Chapter 33A, Tax Code, by adding Section 33.09, as follows:

Sec. 33.09. TRANSFER OF DELINQUENT COUNTY EDUCATION DISTRICT TAXES IN CERTAIN COUNTIES. (a) Limits application of this section to a county with a population of less than 22,000.

(b) Defines “county education district taxes.”

(c) Authorizes the successor-in-interest to a county education district to transfer to the component school districts of the county education district all delinquent county education district taxes. Requires the amount transferred to each school district to be in proportion to the ratio that the school district’s weighted average daily attendance for the 1992-1993 school year bears to the weighted average daily attendance of all school districts in the county education district for that year. Defines “weighted average daily attendance.

(d) Sets forth the responsibilities of a school district to which delinquent county education district taxes are transferred under this section.

(e) Provides that this section expires February 1, 2014.

SECTION 17. Amends Section 33.21, Tax Code, by adding Subsection (d), to define “personal property.”

SECTION 18. Amends Section 33.23, 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 19. 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. Requires the collector to provide in writing the name and address of each other person the collector identifies as having an interest in the property to the peace officer charged with executing the warrant. Requires the peace officer to deliver as soon as possible a written notice stating the time and place of the sale and briefly describing the property seized to the person against whom the warrant is issued and to any other person having an interest in the property whose name and address the collector provided to the peace officer. Requires the posting of the notice and sale of the property to be conducted by the peace officer in the manner required for the sale under execution of personal property. Makes conforming changes.

(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 20. Amends Section 33.41, Tax Code, by adding Subsections (d)-(h), as follows:

(d) Requires a court, in a suit brought under this section, to grant a taxing unit injunctive relief on a showing that the personal property on which the taxing unit seeks to foreclose a tax lien is about to be removed from the county in which the tax was imposed, or transferred to another person and the other person is not a buyer in the ordinary course of business.

(e) Requires injunctive relief granted under Subsection (d) to meet certain conditions.

(f) Provides that a taxing unit is not required to file a bond as a condition to the granting of injunctive relief under Subsection (d).

(g) Authorizes the taxing unit, in a petition for relief under Subsection (d), to also seek to secure the payment of taxes for a current tax year that are not delinquent and requires the taxing unit to estimate the amount due if those taxes are not yet assessed.

(h) Provides that the tax lien attaches to any amounts paid into the court's registry with the same priority as for the property on which taxes are owed.

SECTION 21. 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 22. 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 23. Amends Section 33.48(a), Tax Code, to provide 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.

SECTION 24. 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 25. 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 26. Amends Sections 34.01 (b), (m), (o), (p), and (r), Tax Code, as follows:

(b) Provides that costs of the sale include the costs of advertising 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.

(m) Requires the officer, if the taxing unit prepares the deed, to execute that deed. Provides that an officer who executes a deed prepared by the taxing unit is not responsible or liable for any inconsistency, error, or other defect in the form of the 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, with the consent of the collector who applied for the tax warrant, to offer property seized under Chapter 33E (Seizure of Real Property) to a person described by Section 11.181 or 11.20 for less than that amount. Provides that if the property is offered to a person described by Section 11.181 or 11.20, the officer making the sale is required to reopen the bidding at the amount of that person's bid and bid off the property to the highest bidder. Deletes text referring to Subsection (j). 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 27. Amends Section 34.04, Tax Code, by amending Subsection (c) and adding Subsections (e)-(i), as follows:

(c) Requires 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.

(e) Provides that an order under this section is appealable.

(f) Prohibits a person from taking an assignment of an owner's claim to excess proceeds unless certain conditions are met.

(g) Provides that an assignee who obtains excess proceeds without complying with Subsection (f) is liable to the assignor for the amount of excess proceeds obtained plus attorney's fees and expenses.

(h) Requires an assignee who files a petition setting forth a claim to excess proceeds to attach a copy of the assignment document and produce the original of the assignment document in court at the hearing on the petition. Requires the assignee, if the original assignment document is lost, to obtain the presence of the assignor to testify at the hearing.

(i) Prohibits a fee charged to obtain excess proceeds for an owner from being greater than 25 percent of the amount obtained or \$1,000, whichever is less.

SECTION 28. 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. Provides that an officer who executes a deed prepared by the taxing unit is not responsible or liable for any inconsistency, error, or other defect in the form of 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 29. 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 30. 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 31. 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 32. 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 33. 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.

SECTION 34. Amends Section 17.091(a), Civil Practice and Remedies Code, to delete text regarding the first day of a tax year for which taxes have not been paid and to make nonsubstantive changes.

SECTION 35. Effective date: September 1, 2001.

SECTION 36. Makes the change in law to Section 6.035(a), Tax Code, made by this Act, prospective.

SECTION 37. Makes application of Section 6.24, Tax Code, as amended by this Act, prospective.

SECTION 38. Makes the change in law to Section 6.412(a), Tax Code, made by this Act, prospective.

SECTION 39. Makes the changes in law made by this Act to Sections 31.11 and 31.12, Tax Code, and Section 31.111, Tax Code, as added by this Act, prospective to a tax year that begins on or after January 1, 2002.

SECTION 40. Provides that Section 33.04, Tax Code, as amended by this Act, does not apply to taxes subject to a delinquent tax suit pending before the effective date of this Act. Provides that Section 33.04, Tax Code, as amended by this Act, applies to all other taxes that became delinquent before the effective date of this Act or that became 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 41. 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 42. 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 the effective date of this Act. Provides that a case in which the application for a tax warrant was filed under that subchapter before the effective date of this Act, 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 43. Provides that Section 33.41, Tax Code, as amended by this Act, applies to a suit that was filed before, on, or after September 1, 2001.

SECTION 44. Makes application of Sections 33.42 and 34.04, Tax Code, as amended by this Act, retroactive.

SECTION 45. 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 46. Makes Section 33.56, Tax Code, as amended by this Act, applicable to a tax foreclosure judgment that was rendered before, on, or after September 1, 2001.

SECTION 47. (a) Provides that Section 34.01, Tax Code, as amended by this Act, applies 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, 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 48. (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 49. 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 the effective date of this Act, regardless of the date of the tax sale or tax resale. Provides that a suit filed by a purchaser before the effective date of this Act 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 50. 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.

SECTION 51. Provides that Section 17.091, Civil Practice and Remedies Code, as amended by this Act, applies to a suit that was filed before, on, or after September 1, 2001.

SUMMARY OF COMMITTEE CHANGES

Differs from the original as follows:

- Adds the provisions proposed in SECTIONS 1-5, 7-11, 14, 16, 20, 34, 36-40, 46, and 51.
- Deletes the provisions in previously proposed SECTIONS 12, 22, and 24.
- Redesignates previously proposed SECTIONS as follows: 1 as 6, 2 as 12, 3 as 13, 4 as 15, 7 as 19, 10 as 23, 14-16 as 26-28, 26 as 42, 27 as 44, 30 as 47, and 32 as 49, with changes.
- Redesignates previously proposed SECTIONS as follows: 5 as 17, 6 as 18, 8 as 21, 9 as 22, 11 as 24, 13 as 25, 17-21 as 29-33, 23 as 35, 25 as 41, 28 as 45, 29 as 46, 31 as 48, and 33 as 50, with no changes.