HOUSE RESEARCH ORGANIZATION bill analysis | 5/11/2005 | HB 3071 Goodman (CSHB 3071 by Elkins, et al.)

SUBJECT: Property tax collection revisions

COMMITTEE: Local Government Ways and Means — Favorable, as substituted

VOTE: 4 ayes — Hill, Hamilton, Puente, Quintanilla

0 nays

1 present not voting — Elkins

2 absent — Laubenberg, Uresti

WITNESSES: For — None

Against — George Christian, Texas Taxpayers and Research Association

DIGEST: CSHB 3071 would make procedural and technical changes to Tax Code, Property Code, and Civil Practice and Remedies Code concerning property tax collection.

Tax Code. The bill would authorize a tax assessor-collector, rather than the chief appraiser, to collect late personal property rendition penalties. Such penalties would be added to the total property tax due and listed on the property tax bill, with a lien securing payment of the penalty. The collector would be required to remit 5 percent of the total penalty collected to the appraisal district to cover the cost of administering the rendition and reporting procedures. Tax liens also could be attached to property to secure payment of late-correction penalties.

CSHB 3071 would waive a court appointed attorney for defendants in delinquent tax cases when their addresses were unknown and when the delinquent taxes, penalties, interest, and attorney fees exceed the appraised value of the property. It would provide for more expedited foreclosure proceedings against those same properties, plus other properties with taxes that had been delinquent for 10 or more years. Notice of this type of tax foreclosure, rather than formal citations or summons, would be mailed to all persons identified as having interest in the property. Notice also would be posted and published in a county newspaper for two weeks. A person could contest the foreclosure and file for a hearing on the foreclosure.

The bill would provide for waivers of penalty and interest and extend its coverage to more than just one year's tax in cases of religious organizations acquiring delinquent property. The religious organization would waive penalties and interest if the organization paid the principal amount of taxes and requested a waiver within one year of the property acquisition.

When a property owner of condemned property paid the pro-rated current year estimated taxes based upon the previous year's taxes, the payment would be final and ineligible for either a refund or a supplemental tax bill, regardless of the amount of tax actually later imposed for that year.

A tax lien on delinquent taxes, penalties, and taxes would take priority over most other liens, including liens held by a property owner, homeowner, condominium owner associations, or other restrictive covenant or similar agreement that provides for maintenance fees against property. A tax lien, regardless of when imposed, also would take priority over any future right to a property, including rights of remainder and reverter.

After a taxing unit foreclosed on the property and collected the taxes through tax sale, any other subordinate liens on the property would be removed or extinguished.

A tax lien would remain inferior to a claim for a survivor's allowance, funeral expenses, or certain illness-related expenses of a decedent made against the estate of a decedent. In addition, except with regard to liens securing maintenance fees that accrued prior to a tax sale, a tax lien also would remain inferior to restrictive covenants applied to the property before January 1 of the year the tax lien was applied.

The bill would allow a taxing unit, when seizing personal property for failure to pay delinquent taxes, to recover attorney fees associated with filing a tax warrant application, if the fee recovery request was verified by affidavit and included in the application and if the taxing unit contracted with an attorney under the same guidelines for a standard judicial foreclosure suit.

When an attorney representing the taxing unit also was an employee of the taxing unit, the recovered fees could not exceed 15 percent of the total delinquent taxes.

Technical changes would include:

- requiring tax certificates to reflect, in addition to amount of delinquent taxes, interest, and penalties, the amount of any court costs and associated attorney fees; and
- allowing any tax collector to enter contractual installment payment agreements, regardless of whether the taxing unit collected its own taxes.

Property Code. Changes to the Property Code would include:

- relieving a taxing unit that had acquired real property for public use from the requirement of attaching an original tax certificate to a plat or replat of a subdivision; and
- prohibiting a court from disbursing funds to a person whose property was condemned until evidence of payment of all property taxes was on file with the court.

Civil Practice and Remedies Code. Changes to the Civil Practice and Remedies Code would include:

- making nonresident lien holders on delinquent property subject to the same delinquent tax suit procedures regarding service of process as nonresident owners.

The bill would take effect September 1, 2005.

SUPPORTERS SAY:

CSHB 3071 would allow all local taxing units to more efficiently and expeditiously collect ad valorem taxes. It would clarify confusing provisions that have led to misinterpretation of statutes and to litigation. In addition, the committee substitute addressed concerns about a provision in the original bill that would have allowed an additional penalty on delinquent taxes for business real property.

The introduction of provisions to recover attorney fees and court costs in instances where there was no funding mechanism for litigation expenses would reduce barriers for taxing units collecting delinquent taxes, penalties, and interest. Collecting delinquencies can involve lengthy litigation, deterring taxing units from carrying out procedures if there is no funding in place.

The bill would strengthen enforcement of special late-rendition and late-correction penalty payments. By adding the amount of penalties due on tax bills and securing payment with a lien on the property for that additional amount, the bill would provide taxing units with improved cost-recovery.

In cases where there was no real equity in chronically delinquent real estate, the bill would allow taxing units to file suit and avoid the costs of court-appointed attorneys and formal service of process. At the same time, the property owner's right to notice and to defend would be preserved.

Religious organizations no longer would have to pay past penalties on properties with delinquent taxes. Affording this relief to organizations would provide significant cost savings.

Absolving the taxing unit of any refund liability for pro-rated taxes on condemned property would finalize those payments of estimated current year taxes more quickly than under current law. It would treat taxpayers and taxing units equally regardless of whether pro-rated taxes were underestimated or overestimated. Instead of letting those claims linger, taxing units would finalize the transactions upon receipt.

The bill would clarify that tax liens take precedence over all privately held liens, preserving a taxing unit's right to sue for delinquent taxes and extinguish preexisting liens upon the sale of properties.

Tax collectors, regardless of whether they were collecting for one or more taxing units, would be able to establish tax payment plans with property owners, which could make tax bill payments more manageable for property owners and generate more revenue for taxing units.

OPPONENTS SAY: No apparent opposition.

NOTES: The committee substitute differs from the bill as introduced in that it:

- removed provisions on the perfection of personal property tax liens on other property and provisions to allow an additional penalty on delinquent taxes for business real property;
- would remit 5 percent of a late personal property rendition penalty to the appraisal district to recover administrative costs;
- specified that upon certain sales of a property, other tax liens would expire;
- authorized a collector of a taxing unit that was an officer or employee of the taxing unit to collect attorney fees of 15 percent; and
- included provisions designed to ensure due diligence and property notice to property owners prior to foreclosures.