

BILL ANALYSIS

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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. As proposed, S.B. 880 clarifies these provisions and deletes outdated provisions of the Property Tax Code.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 Section 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. Repealer: Section 33.04 (Notice of Delinquency), Tax Code, as amended by Chapter 1481, Acts of the 76th Legislature, Regular Session 1999.

SECTION 3. Amends Section 33.06(a) and (d), Tax Code, as follows:

(a) Makes conforming changes.

(d) Provides that a tax lien remains on the property and interest continues to accrue during the period collection of taxes is deferred under this section. Makes a conforming change. 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 signed are preserved. Provides that a penalty is not incurred under Section 33.01 during a deferral period and deletes text concerning the prohibition against imposing penalties. Authorizes the additional penalty provided by Section 33.07 to be imposed during the deferral period. Authorizes the additional penalty to be collected only under certain conditions.

SECTION 4. Amends Section 33.065(g), Tax Code, to make conforming changes.

SECTION 5. 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 6. Amends Section 33.21, Tax Code, by adding Subsection (d), to define “personal property.”

SECTION 7. Amends Section 33.23(c), Tax Code, to require the collector or the peace officer, after a tax warrant is issued, to take possession of the property pending its sale. Requires a person against whom a tax warrant is issued or another person having possession of personal property of the person against whom a tax warrant is issued to surrender the property on demand. 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, it may be removed by the collector or peace officer to some other more convenient location. Provides that another person having possession of personal property of the person against whom a tax warrant is issued and who surrenders the property on demand has no liability to any person as a result of making the surrender. Requires the collector, at the time of surrender, to furnish to the other person a sworn receipt describing the property surrendered. Prohibits this subsection from being construed so as to create any obligation on the part of another person that exceeds, or materially differs from, that person’s obligation to the person against whom a tax warrant is issued.

SECTION 8. Amends Subsections (a) and (c), Section 33.25, Tax Code, 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 of the character defined under subparts (2), (3), (4), or (5), of Subsection (d), Section 33.21 of this code, to apply the seized property toward the payment of all taxes, penalties, and interest included in the application for warrant and all costs of seizure.

SECTION 9. 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 collecting of the tax at a later time, except as provided by Section 34.04(c)(2)

SECTION 10. Amends Section 33.48(a) and (b), 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 the item of expense specified by Subpart (4) of Subsection (a) is a charge against the property and secured by lien, regardless of whether a suit is pending, so long as taxes on that property were delinquent at the time the item of expense was incurred. Provides that, in any action brought by a taxing unit for the sole purpose of enforcing its lien for expenses incurred under Subpart (4), it is an affirmative defense available to the defendant 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 judgement is not affected by the entry of the judgement or a tax sale conducted under that judgement, 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. 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 includes the costs of advertising, an additional amount not to exceed \$40.00 incurred in any physical inspection of the property, and deed recording fees anticipated by 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, including 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 signing of the judgment are extinguished as to that property, and the taxes or other claims secured by those liens are canceled and forever 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) Authorizes the taxing unit that requested the order of sale to elect to prepare a deed for execution by the officer, in which case the officer is required to execute that deed. Requires the officer, as soon as practicable after the execution, 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, which is required to file the deed for recording with the county clerk.

(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), Tax Code, to a person described by Section 11.181 or 11.20 for less than the lesser of those amounts. Deletes text referring to Subsection (j) and to the tax warrant amount or the market value of the property. 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 in court, 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, if a sufficient bid is not received by the officer making the sale, to bid the property off to a taxing unit in the same manner and subject to the same provisions as specified in Subsection (j). 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 at the county courthouse where sales under this section are to take place and requires the court to record any such designation in the real property records of the county. Requires all sales to occur in the designated area. If no area is designated by the commissioners court in this section, 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. Reenacts Section 34.015, Tax Code, as amended by Chapters 181 and 817, Acts of the 76th Legislature, Regular Session, 1999.

SECTION 16. Reenacts Section 34.04, Tax Code, as amended by Chapters 1185 and 1481, Acts of the 76th Legislature, Regular Session, 1999, and amends said section 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 17. Amends Section 34.05(d) and (e), Tax Code, as follows:

(d) Require the notice of the sale to contain a description of the property to be sold, the sufficiency of which is met if the description is stated in the manner provided by Section 34.01(f), the number and style of the suit under which the property was sold at the tax foreclosure sale, and the date of the tax foreclosure sale. Makes conforming changes regarding the taxing unit that requested the sale.
Deletes text regarding a legal description.

(e) Requires the presiding officer of a taxing unit selling real property pursuant to subsections (h) or (i) of this Section, Section 34.015, or Section 34.051, or the sheriff or constable selling real property pursuant to subsections (c) and (d) of this Section to execute a deed to the property conveying to the purchaser certain stated information.

SECTION 18. 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 19. 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) Authorizes a suit against the taxing units under Subsection (d) to be maintained unless the action is instituted before the first anniversary of the date of sale or resale. Defines the “date of sale” as used in this subsection.

SECTION 20. Amends Section 34.21(b), Tax Code, to Authorizes the owner having a right of redemption, 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 34.01(p) and has not been resold by the taxing unit, to redeem 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 amount.

SECTION 21. Amends Section 42.02, Tax Code, to provide that the chief appraiser, upon 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 22. Effective date: September 1, 2001.

SECTION 23. Provides that, except as to delinquent tax suits pending before the effective date of this Act, the change in law made by SECTION 2 of this Act applies to all taxes remaining delinquent on the effective date of this Act and that become delinquent thereafter; and all penalties 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 in its various forms before the effective date of this Act. Provides that a delinquent tax subject of a collection suit filed before the effective date of this Act is governed by Section 33.04, Tax Code, as it existed immediately before the effective date of this Act, and that version of Section 33.04 is continued in effect for that purpose.

SECTION 24. Provides that the change in law made by SECTIONS 3 and 4 of this Act applies to penalties and interest accrued before, on or after the effective date of this Act on taxes subject to deferral under Sections 33.06 and 33.065, Tax Code, without regard to whether the deferral period began before, or begins on or after, the effective date.

SECTION 25. Provides that the change in law made by SECTIONS 6, 7, and 8 of this Act applies to all cases in which the application for tax warrant was filed on or after the effective date of this Act. Provides that a case in which the application for tax warrant was filed before the effective date of this Act is governed by the law in effect before the effective date, and the prior law is continued in effect for that purpose.

SECTION 26. Provides that the change in law made by SECTIONS 9 and 16 of this Act applies 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 27. Provides that the change in law made by SECTIONS 10 and 11 of this Act applies to all suits filed before, on, or after the effective date of this act, and to judgments on the merits entered on or after the effective date of this Act.

SECTION 28. Provides that the change in law made by SECTION 13 of this Act applies to all tax foreclosure judgments rendered before, on, or after the effective date of this Act.

SECTION 29. Provides that the change in law made to Section 34.01(b), (m), (o), (p), and (r), Tax Code, under SECTION 14 of this Act applies to all tax sales conducted on or after the effective date

of this Act, whether the judgment on which the sale is based was entered before, on, or after the effective date. Provides that the change in law made to Section 34.01(l), Tax Code, under SECTION 14 of this Act applies only to those taxes and claims, together with the liens securing same, that remain unpaid on or after the effective date of this Act and that are canceled or extinguished under Section 34.01(l) as amended by this Act, regardless of the date on which the sale was conducted. 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 30. Provides that the change in law made by SECTION 17 of this Act applies to any resale of property conducted on or after the effective date of this Act, whether the judgment on which the sale is based was entered before, on, or after the effective date. Provides that, for the purposes of this section, the date on which a resale is conducted is considered to be the date on which a public auction sale occurs under Section 34.05(c), Tax Code, or in the case of a sale under Section 34.015, 34.051, or Section 34.05(h) or (i), Tax Code, the date on which the grantor's acknowledgment was taken or, if multiple grantors, the latest date of acknowledgment of the various grantors.

SECTION 31. Provides that the change in law made by SECTION 19 of this Act applies to any resale of property based on an original tax sale conducted on or after the effective date of this Act, and applies to a suit by a purchaser filed on or after the effective date of this act. Provides that a suit filed by a purchaser before the effective date of this Act is governed by the law in effect before the effective date, and the prior law is continued in effect for that purpose.

SECTION 32. Provides that a change in law made by SECTION 20 of this Act applies to any redemption of property sold for taxes under a judgment rendered or tax warrant issued before, on, or after the effective date of this Act.