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TAX LIENS; BANKRUPTCY

House Bill 4843 as enrolled
Public Act 143 of 1995
Second Analysis (6-23-95)

Sponsor: Rep. Willis Bullard, Jr.
House Committee: Tax Policy
Senate Committee: Finance (Discharged)

THE APPARENT PROBLEM:

Public Act 80 of 1994 (House Bill 4935) amended the General Property Tax Act to specify that property taxes would become a lien against property on tax day, that is, on December 31 of the year prior to the year in which the taxes would be levied. Prior to that act, property taxes became a lien on December 1 of the year in which the taxes were levied (although a city charter could provide for an earlier date); the act said the taxes became a debt on tax day. The lien date was moved up by 11 months to allow local units of government to become secured creditors in bankruptcy proceedings. The argument made was that the December 1 lien date put local units at the back of the line of creditors when property was involved in a bankruptcy because without a lien on the property, they were unsecured creditors. A representative from the Oakland County treasurer's office and a bankruptcy law expert testified at the time that local units were losing millions of dollars each year. However, the new act reportedly caused problems with real estate transactions around the state, because there was confusion over the nature of the lien. Subsequently, the legislature passed Public Act 279 of 1994 (House Bill 5621), which was intended to delay the application of the new law so that it would not affect taxes levied before 1995, thus providing more time for people to adjust to the change in the law.

However, since the provision has now taken effect, there continues to be much confusion among realtors, financial institutions, and people buying and selling homes about the law. It has created a situation in which there is now a tax lien on property well before the date when those taxes are due. This causes confusion and necessitates additional paperwork before home sales can be closed.

A recent change in federal bankruptcy law provides an opportunity to solve the original problem raised by county treasurers, without placing an additional burden on real estate transactions.

THE CONTENT OF THE BILL:

The bill would amend the General Property Tax Act to provide that property taxes would become a lien on real and personal property on December 1 of the year in which the taxes were levied, except where the property owner had filed for bankruptcy or in certain other instances (see below). Under those circumstances, a local treasurer could designate that taxes became a lien against property on tax day (December 31 of the prior year), by filing an affidavit with the register of deeds of the county in which the property was located. The affidavit would include the year for which the taxes were levied, the date the taxes were assessed, and the name and tax identification number of the owner and the property, and would attest that one of more of the following had occurred:

** The property owner had filed a bankruptcy petition under the federal bankruptcy code;

** The property was being foreclosed upon by a secured lender;

** In the case of personal property, the owner had liquidated or was attempting to liquidate the property;

** The property was subject to receivership under state or federal law;

** The owner had assigned the property for the benefit of his or her creditors;

** The property had been seized or purchased by federal, state, or local authorities;

** A judicial action had been commenced that could impair the ability of the taxing authority to collect the taxes in the absence of a lien.

The bill would take effect 90 days after it was enacted.

MCL 211.40

FISCAL IMPLICATIONS:

According to the Department of Treasury, the bill has no fiscal implications for the state. (5-19-95)

ARGUMENTS:

For:

The number of businesses and individuals filing for bankruptcy has nearly doubled since the mid-1980s, and local tax collecting authorities have discovered that unpaid property taxes are close to the bottom of the list of creditors to be paid. Some counties complained they were losing millions of dollars in unpaid property taxes as more property owners sought to evade payment of taxes through filing bankruptcy. The legislature responded to this concern with the passage of Public Act 80 of 1994, which allows property taxes to become a lien against property at an earlier date, thus making the local unit of government a secured creditor with a higher priority in a bankruptcy proceeding. In doing so, however, the statute created problems for those involved in real estate transactions: the customary title search turns up a lien against every piece of property, even before the taxes are due to be paid. This necessitates an addendum to the purchase agreement, and some are concerned that realtors could be held responsible for unpaid property taxes if the paperwork is not done correctly, or if it is challenged by a buyer.

An October, 1994 change in federal bankruptcy law allows another approach to be taken. Under that change, taxing authorities are allowed to effect "post petition" liens on the property of a debtor (allowing a lien to be placed after the filing of a bankruptcy claim). The bill would implement this concept, allowing a lien to be placed on property to secure payment of property taxes in cases of bankruptcy, seizure of assets, liquidation of personal property, or other situations in which the ability to collect the taxes is threatened. At the same time, the bill would return the tax lien date to where it was prior to the passage of Public Act 80, thus resolving the complications that act added to real estate transactions.

Against:

Local treasurers have raised concerns that the bill would place additional administrative burdens on them.