TAX

MICHIGAN PROPERTY TAX AND CIVIL TAX COLLECTION SUITS
by Robert F. Rhoades

Civil suits to collect property taxes as an *in personam* debt are now limited to the person who owned the property when the tax became due, but the Michigan act does not completely prevent collection of property taxes as an in personam debt even after the properties returned to the County and sold.

The 2017 Amendment:

Public Act 189 of 2017, effective November 17, 2017, amends Sections 47 and 89a of the General Property Tax Act which permit a local treasurer to bring civil suits to collect property taxes as a debt of person to whom the tax is assessed. In 2016, one city filed hundreds of suits targeted at banks and investors, which were the party assessed, but not necessarily the owner of the property when the taxes became due. The new act limits such suits to persons who were assessed and the actual owner or occupant at the time of the assessment and any claim that the person sued was not the owner or occupant can be raised in the suit:

> 4) Notwithstanding any other provision in this act or charter to the contrary, a person is not subject to personal liability for any unpaid property tax levied on real property unless that person owned the real property on the tax day for the year in which the unpaid tax was levied. A person contesting personal liability under this subsection may raise the issue in an enforcement action in the trial court regardless of whether the person previously raised the issue with the local board of review. As used in this subsection, "trial court" means any district court, probate court, municipal court, small claims court, appellate court, or other tribunal in which the issue of personal liability is litigated.
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> (5) As used in this section, "person" means an individual, partnership, corporation, association, limited liability company, or any other legal entity.

The city referenced above essentially sought deficiency judgments when tax foreclosed properties were sold for less than the taxes due. The lender-defendants were generally not the owners when the taxes were levied. The new act should prevent suits unless the defendant is both the party assessed and the owner when the taxes at issue were assessed.

Further limitations should be considered.

The new act does not prevent local treasurers from pursuing *in personam* suits even after the delinquent taxes have been returned to the county for collection and the property has been foreclosed upon and sold. Perhaps it should.

Throughout most of the history of the Michigan property tax, the property tax was considered an *in rem* tax. If the taxpayer did not pay, it would lose the property, but nothing more. In 1929 – 30 OAG p 426, the attorney general opined that despite statutes that provided taxes as a debt and the distraint provision that allowed personal property to be seized and sold, the act did not provide for personal liability for taxes levied against real property. The distraint provision (MCL 211.47) specifically allowed the taxpayer to deliver a deed to the property which would stop the seizure and sale process. Thus, if the property were worth less than the taxes, one could limit the liability to the value of the property by deeding the property to the state. (See MCL 1979 211.47). In 1987, Section 47 was amended to remove the option of tendering the property and added Section 2 to specifically allow civil suits to collect the tax.

In 1999, the entire tax sale procedure of the act was rewritten, replacing the tax sale with a forfeiture, foreclosure and auction system generally run by the County. The 1999 amendments made the time from nonpayment to loss of the property shorter and eliminated the former tax sale, which afforded a measure of protection for the tax debtor's equity in the property. Under the former system, a tax deed was auctioned to investors who would pay the amount of the taxes, interest and fees, for even lower share of the property. Thus, if the property were worth substantially more than the taxes, the taxpayer might come out of the tax sale with some remaining equity in the property. Since 1999, the tax foreclosure process does not return to the taxpayer his equity in the property. The County forecloses and sells the property. None of the sale price is returned to the taxpayer – even if the proceeds exceed the taxes, penalties and interest. Further, while many properties may sell for less than the tax, penalty and interest due, the present tax sale system allows some properties to be withheld from sale or sold in bundles or transferred to local government, making it difficult to compute how much deficiency should be charged to a taxpayer in an *in personam* suit.

Consider the possibility that a delinquent taxpayer who at the time of foreclosure owes substantial taxes, but the property's value should more than pay them. The taxpayer dutifully moves out after the foreclosure and the property is promptly vandalized. It sells at the county auction for less than the taxes. Why should the taxpayer be liable for the deficiency when the property, at the time he ceased to be the owner, would have satisfied the taxes and the decrease in value occurred during someone else' ownership – particularly when the subsequent owner is the government itself? Consider the situation in which the property is sold by the County in a bundle of many properties and whatever amount is allocated to the property is less than the taxes. Perhaps the taxpayer's property would have sold for the full amount of the taxes or more if it were sold separately. Consider the situation in which the county sale is delayed or when the property is transferred to a local unit and may not be sold for many years. A price lower than the taxes due may be attributable to a downturn in the market after the foreclosure. There is a certain irony in the creation of a tax foreclosure and collection system which takes the property faster with no protection of the owner's potential equity, keeps any profits while reserving the right to selectively seek deficiency judgments when the property sold does not satisfy the tax debt, even when the property would have been sufficient to pay the debt at the time it was taken.

These and other practical problems can be resolved by requiring any such suits to be filed before foreclosure and by returning to the practice of allowing a taxpayer to resolve the suit by delivering a quit claim deed. That would require further amendment of Sections 47 and 98a of the General Property Tax Act. Alternatively, if the present practice is to continue, local units bringing such suits should be required to specifically plead and prove that the value of the property was not sufficient to pay the tax debt at the time the owner and party assessed ceased to be the owner.

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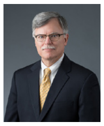

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