

DEPARTMENT OF TAXATION

2014 Fiscal Impact Statement

1. **Patron** Richard H. Stuart

3. **Committee** Senate Finance

4. **Title** Real Property Tax Lien; Third Party
Agreements to Assign Lien

2. **Bill Number** SB 483

House of Origin:

 X **Introduced**

 Substitute

 Engrossed

Second House:

 In Committee

 Substitute

 Enrolled

5. **Summary/Purpose:**

This bill would authorize a taxpayer owning real estate subject to a lien for unpaid local taxes to enter into an agreement with a third-party for the payment of the taxes and to allow assignment of the lien to the third party. Taxpayers with a preexisting escrow account with a financial institution to pay the real property taxes would not be eligible. The bill would also set forth the process for assigning the lien and recording the assignment. In addition, the bill would authorize the local treasurer to impose a fee of up to \$25 for processing the assignment. Finally, the bill would impose a \$25 tax on the recordation of the memorandum of the third-party tax payment.

Under current law, local treasurers are authorized to enter into agreements with third parties in order to enable the third parties to assume payment of a taxpayer's outstanding tax bill, including the local taxes, charges, fees, delinquent taxes, penalties, interest, and other obligations due and owing the locality.

The effective date of this bill is not specified.

6. **Budget amendment necessary:** No.

7. **Fiscal Impact Estimates are:** Not available. (See Line 8.)

8. **Fiscal implications:**

As this bill would authorize the imposition of local processing fees to process the agreements and assignments, the bill could result in a minimal local revenue increase for the locality processing the assignment. Further, because the bill imposes a \$25 recordation tax on the recordation of the memorandum agreement, the bill would increase General Fund revenues by an unknown amount.

9. **Specific agency or political subdivisions affected:**

All localities
Department of Taxation

10. Technical amendment necessary: No.

11. Other comments:

Recordation Taxes on Leases

Currently, the recordation tax for recording a lease is 25 cents for every \$100 of the consideration or value contracted. Flat rates are imposed for the recordation of certain specific leases, including, for example, the recordation of leases of oil and gas rights (\$25), leases of coal and other mineral rights (\$50), leases of outdoor advertising signs owned by those engaged in the business of outdoor advertising licensed by the Virginia Department of Transportation (\$25), leases of communications towers or a communications tower site (\$75), and leases to affix communications equipment or antenna to such towers or other structures (\$15).

Other Third Party Agreements

Under current law, local treasurers are authorized to enter into agreements with third parties in order to enable the third parties to assume payment of a taxpayer's outstanding tax bill, including the local taxes, charges, fees, delinquent taxes, penalties, interest, and other obligations due and owing the locality. Under these agreements, the taxpayer must subsequently reimburse the third party in installments over a maximum period of twenty-four months. The third party is authorized to charge the taxpayer interest and fees.

If the third party can demonstrate that a good-faith effort to collect payment from the taxpayer was made, and that the taxpayer is more than thirty days delinquent in his obligations to the third party, the third party is entitled to a refund from the locality for any funds, exclusive of interest and fees, owed to the third party. Once the locality reimburses the third-party, the amount of the reimbursement must be recorded in the tax rolls of the locality as delinquent taxes, and the taxpayer must be notified within five days of reinstatement. If the taxpayer fails to remit full payment by the ordinary due date, the treasurer may apply penalties and interest.

Proposal

This bill would authorize a taxpayer owning real estate subject to a lien for unpaid local taxes to enter into an agreement with a third-party for the payment of the taxes and to allow assignment of the lien to the third party. Taxpayers with a preexisting escrow account with a financial institution to pay the real property taxes would not be eligible. The payment agreement could cover all amounts secured by the lien, including 1) the amount of real property taxes and associated penalties, interest, and other charges paid by the third party; 2) up to \$500 of the transaction costs reasonably and necessarily incurred by the third party related to the agreement, excluding the recordation costs for recording the memorandum of assignment, as well as any processing costs; 3) interest at an annualized rate, not to exceed sixteen percent, on the amount paid by the third party; 4) the taxpayer's reimbursement of the third party in installments over a maximum ten-year period; and 5) the third party's reasonable and necessary costs to enforce the agreement or tax lien, such as attorney's fees.

The bill would also set forth the process for assigning the lien and recording the assignment. The third party would need to submit a copy of the signed memorandum authorizing the tax lien assignment to the treasurer of the locality in which the real estate is located, together with payment for the real property taxes and associated penalties, interest, and charges due on the property covered under the agreement. Local treasurers would be authorized to require a blanket performance bond or letter of credit in an amount not to exceed \$25,000 from the proposed third-party assignee, and to charge a \$25 processing fee for the assignment. Under the terms of the bill, the assignment of the lien would not alter the lien's priority.

Unlike third party agreements under current law, under this bill, if a taxpayer who is party to a payment agreement does not meet his contractual obligations to reimburse the third party, there would be no recourse for payment through the locality; however, the third party would be able to pursue legal remedies to collect the delinquency. Further, if the treasurer determines the third party violated any state law regarding the agreement or assignment of the lien, the treasurer would be authorized to revoke the third-party assignment.

The bill would require the third party to submit a copy of the memorandum of the taxpayer's authorization for the tax lien assignments and a copy of the receipt to record in the land records in the locality in which the property is located. Once every requirement is satisfied under the tax payment agreement, the third party would be required to record a release in the land records of the circuit court in the locality in which the real estate is located. The result is that the third party becomes lien-holder of the property, and is entitled to all legal remedies to enforce the lien.

Finally, the bill would impose a \$25 tax on the recordation of the memorandum of the third-party tax payment.

The effective date of this bill is not specified.

Similar Legislation

House Bill 772 is identical to this bill.

cc : Secretary of Finance

Date: 1/17/2014 KP
DLAS File Name: SB483F161