

Legislative Analysis



OVERDUE LESSEE-USER TAXES

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House Bill 5551 as enrolled
Public Act 573 of 2004
Sponsor: Rep. Chris Ward
House Committee: Tax Policy
Senate Committee: Finance

Second Analysis (1-6-05)

BRIEF SUMMARY: The bill would allow delinquent lessee-user taxes to be collected in the same manner as delinquent personal property taxes under the General Property Tax Act.

FISCAL IMPACT: The bill would have no significant state or local fiscal impact.

THE APPARENT PROBLEM:

Public Act 189 of 1953 provides that, with certain exceptions, when real property exempt from ad valorem property taxation is leased, loaned, or otherwise made available to and used in connection with a for-profit business, the lessee or user of the property is subject to taxation (the so-called lessee-user tax) in the same amount and to the same extent as if the lessee or user owned the real property. The lessee-user tax is not an ad valorem tax per se, but is a specific tax (levied as if it were an ad valorem tax) for the privilege of using the property. The act provides that when the tax is due, it is considered a "due debt" from the lessee or user and is recoverable by court action. The action is against a specific person, rather than the property itself. The property owner is not liable for the payment of the tax, nor is the property itself subject to any lien if the tax becomes delinquent, because the property is owned by a tax-exempt entity.

Reportedly, Milford Charter Township in Oakland County encountered some difficulties trying to collect the lessee-user tax from a golf course located within the township limits on land owned by the City of Dearborn. The city owns Camp Dearborn located in Milford Township. Some years ago, the Mystic Creek Golf Club and Banquet center was constructed on land within the camp. The club is privately run, and the land is leased from the city. The golf club pays the lessee-user tax to the township and other taxing units. However, the golf club reportedly failed to pay its taxes for tax years 1997 through 2002. In order to collect the delinquent taxes (and penalties), which totaled more than \$400,000 for all taxing units and approximately \$3,800 to the township, the township had to file a petition in court. It is believed requiring municipalities to go to court to recover delinquent taxes is unnecessarily burdensome and costly.

THE CONTENT OF THE BILL:

The bill would amend Public Act 189 of 1953 (MCL 211.182) to add that delinquent lessee-user taxes shall be collected at the same time and in the same manner as *personal*

property taxes levied and collected under Sections 46 and 47 the General Property Tax Act. (See Background Information below.)

BACKGROUND INFORMATION:

Under Sections 46 and 47 of the General Property Tax Act (MCL 211.46 and 211.47), local treasurers are required to demand the payment of any personal property taxes that remain unpaid as of February 15th. The tax becomes delinquent if it remains unpaid after March 1st (see MCL 211.45). If a person, firm, or corporation refuses or neglects to pay the personal property tax, the township or city treasurer (or state treasurer when collecting the six-mill State Education Tax) may collect the delinquent tax by seizing the personal property of that person, firm, or corporation in an amount sufficient to pay the tax. The property may be sold at a public auction at the place where the property was sold or in the city or township (or anywhere in the state if seized by the state treasurer). Notice of the sale must be posted at least five days before the sale. If a township or city treasurer sells property in an amount in excess of the amount necessary to pay the tax, the excess shall be returned to the property owner. However, if the state sells more property than is necessary to pay the state's portion, the excess balance is distributed among the other taxing units.

ARGUMENTS:

For:

House Bill 5551 aims to ease the burden on local tax collecting units of collecting delinquent lessee-user taxes. Under current law, these taxes may only be collected under to a court order. Moreover, the act does not specify which taxing entity has authority to file such an action for the payment of the tax. This problem is recognized in Attorney General Opinion No. 4746 of 1972, when then-Attorney General Frank Kelley noted, "... each governmental unit to whom taxes are due under Act 189 may institute legal action to recover the 'debt' which is due them...The foregoing conclusion may conceivably lead to a multiplicity of suits for taxes imposed by 1953 PA 189, against the beneficial users of government-owned or otherwise exempt property." The costs necessary to bring legal action to compel payment may dissuade many smaller municipalities and other small taxing units from bringing such an action. By allowing municipalities to sell seized property as a means of recovering delinquent taxes, the bill adds teeth to the enforcement of Public Act 189. Absent such an enforcement mechanism, these taxes will likely go unpaid in those instances where a business refuses to pay, and the taxing authorities do not have the financial wherewithal to bring a legal action.

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