

RETURN OF PROPERTY TAXES COLLECTED

Mitchell Bean, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bills 5724-5726 as enrolled
Public Acts 441-443 of 2004
Sponsor: Rep. Brian Palmer
House Committee: Tax Policy
Senate Committee: Finance

Second Analysis (12-27-04)

BRIEF SUMMARY: The bills amend various tax acts to ensure the return of property taxes erroneously collected or required to be returned as a result of a bankruptcy proceeding filed after December 31, 1999.

FISCAL IMPACT: In the few instances in which the circumstances described by the bill occur, revenues that have been erroneously collected or that have been ordered refunded by a court would be transmitted from one level of government to another.

THE APPARENT PROBLEM:

A rather unusual situation from Bruce Township has arisen. On December 5, 2000, Plastco Inc., based in the township, filed for Chapter 7 bankruptcy in the U.S. Bankruptcy Court for the Eastern District of Michigan. The following day, the company paid Bruce Township approximately \$35,000 for its summer 2000 property taxes. Following state law, the township distributed the taxes to various local units. The township also forwarded approximately \$17,000 from the industrial facilities tax, which is levied under the Plant Rehabilitation and Industrial Development Act (PA 198), to the state. In December 2002, a complaint was brought against Bruce Township by the bankruptcy trustee requesting the return of the property taxes collected in December 2000, on the grounds that the taxes were paid after the taxpayer had filed for bankruptcy. The township agreed to return the money, and each local unit returned its share to Bruce Township. The state, however, did not return its portion. The township then sought to recover the state's share from the State Tax Commission. Refusing to return the money, the state maintained that it had not been named in the proceeding and that if it had, it could have raised a viable defense to defeat the request for relief, which would have meant the taxes would not need to have been returned. Or, if the state had been a defendant, the court could have ordered the state to return the taxes collected. The State Tax Commission notified the township in July 2003 that it would not grant its request for the return of the taxes collected, stating that neither the tax commission nor the state are under any legal obligation to do so. A memorandum from the Department of Attorney General has supported this position.

THE CONTENT OF THE BILLS:

House Bill 5724 would amend the General Property Tax Act (MCL 211.52a) to require local tax collecting units to return to other local taxing units or to the state treasurer any amount of tax erroneously collected or an amount required to be returned by court order in a bankruptcy proceeding filed after December 31, 1999, upon the request of the taxing unit or state treasurer.

House Bill 5726 would amend the State Education Tax Act (211.905) to require the state treasurer to return, upon request, any amount of taxes erroneously collected or an amount required to be returned by court order in a bankruptcy proceeding filed after December 31, 1999 to local tax collecting units, school districts, or intermediate school districts.

House Bill 5725 would amend the Plant Rehabilitation and Industrial Development Act, commonly known as P.A. 198. Under that act, local governmental units may provide new, renovated, or expanded industrial facilities with property tax abatements for up to 12 years. Facilities are exempt from general property taxes, but pay a specific tax (the industrial facilities tax). The amount of the industrial facilities tax due is a lien on the property until the tax is paid.

The act provides, however, that foreclosure proceedings may begin only after the local unit files with the county register of deeds a certificate of nonpayment of taxes and affidavit of proof of service of the certificate to the property owner.

House Bill 5725 would eliminate the current language (MCL 207.563) about foreclosure proceedings and instead provide that the industrial facilities tax becomes a lien on the property on the date the tax is levied, except in circumstances described by the bill. Under the bill, the treasurer of the county, township, city, or village could designate “tax day” (December 31 of the preceding year) as the day on which the industrial facilities tax becomes a lien by filing an affidavit with the county register of deeds and by attesting at least one of the following has occurred: (1) the owner or person assessed has filed a bankruptcy petition under the federal bankruptcy code, (2) a secured lender has brought a foreclosure action to enforce an interest secured by the property, (3) personal property has been liquidated or is in the process of being liquidated, (4) the property is subject to receivership under state or federal law, (5) the property has been assigned for the benefit of creditors, (6) the property has been seized by local, state, or federal authorities, or (6) there is an ongoing judicial action that could impair the ability of the taxing unit to collect taxes due in the absence of a lien.

In addition, the bill specifies that the affidavit would have to include the year the taxes were levied, the date on which the taxes were assessed, the names of the owner and other persons identified in the tax roll, and the tax identification number of the real and personal property assessed.

ARGUMENTS:

For:

The bills are necessary to correct an anomaly in state tax law, and ensure that Bruce Township is reimbursed the state's share of the amount of taxes the local unit returned as a result of bankruptcy proceedings.

Legislative Analyst: Mark Wolf
Fiscal Analyst: Rebecca Ross

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.