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Senator Ruth Hardy, Chair
Government Operations Committee
Vermont Senate, Montpelier, Vermont

Re: H.629 - Municipal Tax Sales

Dear Senator Hardy,

I understand that your committee is reviewing H.629. I am reaching out to share my concerns about this bill with your committee.

I am a municipal tax sale investor. I have been participating in that process here in Vermont for over a decade. I have researched, prepared for and attended at least 100 municipal tax sales. I have been the winning bidder on approximately 30 properties and have acquired 9 properties through the process. I think it is important for your committee's consideration of H.629 that you hear from all of the key participants in the process including that of a tax sale investor.

As a very brief background, I have been an attorney in Vermont for ~30 years, I served in the Legislature for 3 terms back in the 90's and purchase distressed properties to rehabilitate them. I also serve as Chair of Burlington's Board of Tax Appeals where I have heard and written decisions on over 350 property valuation appeals.

The issues I'd like to address are:

Interest Rate for Tax Sale Redemption

The current 1% per month is the most appropriate rate. The proposal to reduce the rate to one-half percent per month is too low and will not incentivize me or other tax lien investors to invest in municipal tax sales.

When setting a policy for delinquent tax sales, you would want to consider two competing concerns: Minimizing the cost to redeem if a taxpayer is going to redeem, and maximizing the return of equity for a taxpayer who is not going to redeem. Incentivizing overbids maximizes the amount of equity a taxpayer who does not redeem recovers from their property. Taking away the incentive to overbid results in tax sales where it costs less money for a taxpayer to redeem. For the taxpayer, the current 1% per month result looks like this:

		Larger Overbid?	
		No	Yes
Redeem?	Yes	Better	Worse
	No	Worse	Better

At the proposed .5 % interest per month, the result for the taxpayer looks like this:

		Smaller Overbid?	
		No	Yes
Redeem?	Yes	Better	Worse
	No	Worse	Worse

In order to maximize the funds paid to a taxpayer who does not redeem, you will want to maximize the interest paid to the investor. If a taxpayer does not redeem by paying their back taxes and interest, the Town sends them the amount of any overbid from the tax sale. (ie. Taxes due: \$10,000, sale price \$90,000, \$80,000 is paid to the taxpayer) Incentivizing tax sale investors to overbid maximizes the amount paid to a taxpayer that does not redeem. At 1% per month I have an incentive to bid as high as I safely can to maximize my interest return. Any reduction in the rate of interest, reduces any incentive to bid close to fair market value for the property. At 6% per year, I would be far better off leaving my money in a money market account that currently earns 5+% , has instant liquidity, completely scalable for the amount I have available to invest and zero risk of loss. If investors don't have any incentive to invest, the burden will fall on the other taxpayers as there will be no one besides the Town to purchase the property. At 12%, an investor has an incentive to bid higher, resulting in a larger overbid sent to the taxpayer if they don't redeem. It is also the rate paid to the municipality before tax sale and the default rate of interest applied to all money due under 9 V.S.A. §41a(a).

Personal Service of the Notice of Sale

The goal in providing notice of an impending tax sale should be to assure that the taxpayer gets meaningful advance notice of the pending sale. "Actual notice" is preferred because it guarantees the taxpayer the best chance of knowing about the impending action. Actual notice is not always possible. "Constructive notice" is designed to ensure appropriate steps have been taken that should make the taxpayer aware of the impending procedure. The current established protocol of certified mail followed by or along with first class mail to the taxpayer, along with publishing for 3 weeks in the local newspaper has generally worked well. The bill proposes changing notice to "personal service pursuant to Rule 4 of the Vermont Rules of Vermont Rules of Civil Procedure" which does not guarantee actual notice, or any better notice than first-class mail. Rule 4 service can include leaving the notice with someone else at the taxpayer's home, tacking it to the door or by publication in a local newspaper for 2 weeks.

The existing statute already requires publication of the notice of tax sale for 3 weeks in the same local newspaper as Rule 4. Many tax sales concern properties where the taxpayer has deceased and there is no estate opened. In such a case, in order to comply with Rule 4, the Town would be required to open a Probate estate, hire and pay an administrator and have that person served under Rule 4. That is the same procedure as a bank currently must follow to foreclose a mortgage on property of a decedent.

Municipal Tax Sale Study Group

If the Legislature really wants to thoughtfully re-evaluate whether or not to change the existing municipal tax sale system, it should consider establishing a group that is charged with carefully studying the existing practices in Vermont and elsewhere, prepare a well thought out menu of options to consider and make any changes from a less rushed and more sound perspective.

Making piecemeal changes without better research will most likely cause the existing system to fail, where it has worked for over a hundred years.

I recommend that you scrap the tax sales provisions of H.629 with the exception of the study group. There is no urgency that requires you to act before being thoughtful on this issue. If you enact H.629 as written, you will be reducing the excess equity currently being returned to taxpayers through the existing system by hundreds of thousands of dollars each year.

Thank you for taking the time to consider these perspectives as you continue your work. I would welcome an opportunity to meet with your committee and answer any questions that you may have and provide concrete examples from the actual municipal tax sale process.

If I can be of any further assistance to you, please do not hesitate to contact me.

Sincerely Yours,

/s/ Alan Bjerke

Alan Bjerke, Esq.