Alan Bjerke, Esq.

February 15, 2024

Representative Carl Demrow
Ways & Means Committee
Vermont House of Representatives
Montpelier, Vermont

Re: H.629 - Municipal Tax Sales

Dear Representative Demrow,
I understand that you are coordinating your Committee's work on H.629. I am reaching out to you in the hopes that you can share my concerns with the rest of 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 own less than a dozen units of residential rental units in Chittenden County. 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. 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 amount 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).

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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. Removing the first-class mail requirement actually affords the taxpayer less notice, but at a much greater cost to the Town. 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.

Filing Notice of Sale with VHCB
Most Notices of Tax Sale do not result in actual sales. Of 100 tax sales advertised, probably less than 15 actually go to auction. If the goal is to get some notice to someone to help the taxpayer keep their property, filing a copy of the Report of Sale issued under 32 V.S.A. §5255 would be much more meaningful. Those are the people who are far more at risk of actually losing their property.

Equity to Taxpayer Study Group
If the Committee really wants to come up with a workable system to maximize the dollar amount that a taxpayer who does not redeem is able to recoup from the property it makes the most sense to have a tax sale investor at the table. If you don't know what the critical issues are for an investor to invest in municipal tax sales as opposed to elsewhere, you will likely end up with a situation where no one invests - which only leaves the other taxpayers in the Town to pick up the bill.

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,

Alan Bjerke, Esq.