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Testimony on H. 629
Scheduled for February 16, 2024

My name is Kevin O'Toole. I am an attorney and resident of Dorset, Vermont. Since 1988, I have helped delinquent tax collectors conduct tax sales in Andover, Arlington, Danby, Dorset, Hartford, Hartland, Ira, Jamaica, Landgrove, Londonderry, Middletown Springs, Mount Holly, Mount Tabor, North Bennington, Pawlet, Peru, Readsboro, Rupert, Sandgate, Searsburg, Shaftsbury, Stamford, Sunderland, Tinmouth, Wallingford, Wells, Weston, Winhall, and Woodford, Vermont.

H.629, as proposed, would significantly changes how municipal tax sales are conducted in Vermont. My testimony will be from a practical standpoint as someone who has been in the trenches.

Set forth below are my comments on the draft issued on 2/15/2024 at 9:18 a.m.

§5252(a) [Page 5, Lines 4-7]

Tax sales should be viewed by tax collectors as a last resort to enforce a statutory mandate to collect amounts owed to the municipality by individuals and entities. When conducted in accordance with the requirements of 32 V.S.A. §§5251 *et seq.,* and in keeping with a consistent, public policy for collection of taxes, scheduled tax sales can reinforce the public's confidence that every property owner will be required to meet his or her financial obligation. When the public knows that the tax collector means business, the amount of delinquencies diminishes and the need to conduct actual tax sales becomes less and less frequent.

A fair collection policy allows for some individual setbacks, but does not permit delinquents to get in too deep. On its face, the one-year threshold is a good compromise. The existing minimum threshold is sixty days.

Turning to the proposed language changes to Section 5252, even the compromise of one year raises some issues that I did not raise in the roundtable discussion. Let me explain.

In, say, the Town of Dorset, property taxes become due in equal installments on or about September 10th and on or about March 10th. Let us say that the taxpayer is delinquent for taxes for the fiscal year beginning July 1, 2022. A tax sale normally would not be scheduled to occur until June of 2024 so that the tax sale would be for the 2022-2023 fiscal year and also for the 2023-2024 fiscal year, which become delinquent as of March 11, 2024. Otherwise, at the end of the one-year redemption period, would receive a Tax Deed, as well as <u>two</u> years of delinquent tax

bills instead of just one. Under current law, the required sixty day period is covered. Does the proposed language do this? I would suggest a change in the language to:

"When the collector of taxes of a town or municipality within it has for collection a tax assessed against real estate in the town and the taxpayer is delinquent for a period longer than one year, the collector may extend a warrant on such lands for all then delinquent taxes."

As a practical matter, no bidder wants to be met with more than one delinquent tax bill when receiving title and no taxpayer that redeems wants to know that not only are they on the hook for the taxes that became during the redemption period, but for taxes that became delinquent before the tax sale as well.

§5252(a)(3) & (4) [Page 6, Lines 4-8, Lines 8-11]

This provision would extend the notification period by certified mail to a taxpayer from 10 to 20 days to 30 days. While this would be cumbersome, it would simply force the Collector to schedule the tax sale further out.

What is objectionable is requiring an attempt at personal service if the certified mailing is returned unclaimed.

In *Jones v. Flowers*, 547 U.S. 220 (2006), the United States Supreme Court, citing the Due Process Clause of the Fourteenth Amendment, overturned an Arkansas tax sale in which a certified letter was returned "unclaimed." Writing for the majority, Chief Justice Roberts noted that if the notice of sale had been also sent via First Class Mail, the process would have passed constitutional muster, as the municipality was only required to take steps reasonably calculated to provide notice, even if actual notice was not obtained.

In *Hogaboom v. Jenkins v. Town of Milton*, 2014 Vt. 11 (filed February 21, 2014), the Vermont Supreme Court affirmed a decision by the trial court, voiding a tax sale of property in Milton, Vermont. In doing so, it echoed the holding in *Jones v. Flowers*. In *Hogaboom,* notice by certified mail was returned unclaimed almost two weeks prior to the tax sale. No notice of the sale was provided by First Class Mail, although after the sale, a notice was mailed to the taxpayer, informing the taxpayer of the one-year redemption period. The Court concluded that "once notice of a tax sale is returned unclaimed, a town must take additional steps to apprise the taxpayer of the impending tax sale before the sale occurs. This notice must be more than a "mere gesture" and must be reasonably calculated to provide the taxpayer notice of the impending sale." The Court, citing *Jones v. Flowers*, identified re-sending the notice by regular mail as one such reasonable step.

On May 2, 2018, Governor Scott signed into law H.300, which became effective as of July 1, 2018. Among other things, it essentially codified the Vermont Supreme Court's requirements in *Hogaboom***.**

Many taxpayers are not Vermont residents. Many municipalities simply do not have the resources to retain process servers in other states in order to initiate tax sale proceedings. In Wallingford a few years ago, on behalf of the Collector, I had to send out 31 certified letters to the heirs of a couple that died some twenty years before and to the heirs of the couple's seven deceased children. Attempting personal service in that instance would have been a nightmare and would not have added much. The family knew all about the sale.

When the property involves a building, people generally can be tracked down. When it is just land, it becomes much more difficult. People move and do not always, as they should, let the municipality know of a forwarding address. The recording of the notice in the land records and publication in the local newspaper provide other ways for the taxpayer to learn of the sale. Several times, I have encountered taxpayers who first learned of a pending tax sale from a neighbor who read about it in the newspaper.

This added requirement of attempted service also will add to the taxpayer's costs under 32 V.S.A. §5258. Hiring a process server in, say, Arizona, may not be cheap.

I suggest the following language in the existing statute be retained:

"If the notice by certified mail is returned unclaimed, notice shall be provided to the taxpayer by resending the notice by first class mail or by personal service pursuant to Rule 4 of the Vermont Rules of Civil Procedure."

§5252(a)(6) [Page 7, Lines 1-11]; §5253 [Page 8, Lines 17-20]

This provision requires, among other things, that specific wording in the notice of tax sale be provided to the taxpayer "with directions to a resource translating the notice into the five most common languages used in this State, with every notice required under this section and with every delinquent tax notice."

This is another unnecessary burden on the municipality. Moreover, wording in the notice of tax sale is kept to a minimum because the taxpayer ultimately must pay for publication costs under 32 V.S.A. §5258. This would add to the taxpayer's costs because the notice in the newspaper will be that much longer. Moreover, a simple notice of tax sale will get someone's attention. Once published or mailed, my office begins to receive telephone calls.

I strongly recommend that the language in the draft specifically exclude the requirement for Sections 2 and 5. That way, the taxpayer receives the information in the certified letter but it will not cost the taxpayer an arm and a leg by having to appear in the newspaper as well. The one sentence about redemption rights being added to the Notice of Tax Sale is fine, but the additional paragraph would be too much.

I suggest the following language in the draft on Page 7, Lines 1-4, be changed to read as follows:

"The tax collector shall enclose the following statement with directions to a resource translating the notice into the five most common languages used in this State, with every notice required under this section, *except subsections (2) and (5)* and with every delinquent tax notice." [italics added]

§5260(a) [Page 9, Line 12]

Interest during the redemption period currently is one percent per month or fraction thereof. It should remain so. This draft would change that to a calculation of one-half percent per month, period. Bidders, who relieve municipalities of immediate tax burdens, need an incentive to bid and interest is all they receive in most instances. A bid at a tax sale carries a great deal of risk, such as the taxpayer filing for bankruptcy and the bid being stuck in court for up to five years. Moreover, the current interest rate provides delinquent taxpayers with an incentive to redeem at their earliest opportunity.

Most towns charge an interest rate of at least one percent per month. So, what is the justification for charging a lesser interest rate to taxpayers in the redemption period following a tax sale and a full one percent per month for taxpayers who are delinquent but have properties that have not gone to tax sale?

Even eliminating the language "or fraction thereof" causes unintended mischief. Using that language, I tell bidders and taxpayers that to redeem, they must pay the purchase price plus 12% interest on the purchase price, divided by the per diem rate multiplied by the number of days from date of sale to date of redemption. Deleting that language denies the Collector the right to charge less than a full one percent per month.

§5260(c) [Page 10, Lines 17-20]

Section 5260(b) requires the Collector, again with directions to a resource translating certain included language into at least five languages, to send a certified letter to the delinquent taxpayer at least 90 days before the end of the redemption period.

This places a significant onus on the municipality. Moreover, how can it charge for the fees accrued doing so pursuant to 32 V.S.A. §5258 once the tax sale has already happened? To fix this glitch, Lines 17-20 should instead read as follows:

"To redeem the property and avoid losing your legal interest, you must pay (dollar amount due for redemption). The amount you must pay to redeem the property increases every month *or fraction thereof* due to interest *and costs of mailing or personal service*. [italics added]

Section 7 [Page 15, Lines 14-17] (Creation of Working Group)

This language presupposes that a goal of the working group would establish a process to recoup equity for taxpayers whose properties have been conveyed to third party purchasers after the expiration of the redemption period. This language should be deleted.

First, be aware that if the Town is the purchaser, after the one-year redemption period has expired, any excess proceeds must be returned to the taxpayer. *See Bogie v. Town of Barnet*, 129 Vt. 46 (1970). The Vermont Supreme Court's decision in *Bogie* was confirmed by the United States Supreme Court in *Tyler v. Hennepin County, Minnesota, et al*, 598 U.S. _____ (May 25, 2023). In a unanimous decision, the Court found that retaining the excess proceeds from a tax sale conducted by Hennepin County, Minnesota violated the Takings Clause of the United States Constitution.

So this provision only affects the private purchaser. It removes much of the incentive for bidders to bid: getting a good deal. Without private bidders, towns will accumulate more and more properties, properties it does not want. If private bidders are allowed a profit, they may renovate them, sell them and put the properties back on the tax rolls. The working group would be much better served establishing ways for residents to fully take advantage of the "prebate" availability, among other things. The statute should not establish a working group to come to a conclusion, and then state what the conclusion will be.

Conclusion:

As currently drafted, this bill may stop any tax sales from being initiated and municipalities will have lost a valuable tool that may be used as a last resort. The current law is not really broken and was revisited only six years ago, when the statute of limitations to challenge a tax sale was shortened. Without the recommended changes, this bill should be defeated.