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Subject: Report of Act 106 (2024) Working Group on Tax Abatement and Tax Sales
Attachments: Act 106 -2024- Report Tax Abatement and Tax Sales.pdf

Greetings:

Originating Agency, Department, Office: NONE - this was an ad hoc group created by Act 106 of the 2024 Session.

Name of the Report: Act 106 Working Group Report - Tax Abatement and Tax Sales

Author of Report - Act 106 Working Group (contact James Knapp, jkvtlaw@outlook.com)

Report Submitted to: House Committee on Ways & Means, House Committee on Government Operations & Military Affairs, Senate Finance Committee, Senate Government Operations Committee

Date of Submission: January 6, 2025

Statutory Reference: Act 106 of 2024 Session, Section 7

Respectfully Submitted

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Act 106 Working Group Report

Tax Sales and Tax Abatement

Submitted to:

House Committee on Ways and Means,
House Committee on Government Operations and Military Affairs,
Senate Committee on Finance, and
Senate Committee on Government Operations

Introduction

Act 106 of the 2024 Legislative Session created a working group to address seven issues related to tax sale procedures and the tax abatement process.

The assignment for the Working Group was set forth in Section 7 of Act 106.

Sec. 7. WORKING GROUP ON VERMONT'S ABATEMENT AND TAX SALE PROCESSES

(a) Creation. There is created the Working Group on Vermont's Abatement and Tax Sale Processes to assess how Vermont may balance fairness for delinquent taxpayers with the needs of municipalities.

(b) Membership. The Working Group shall be composed of the following members:

- (1) a representative, appointed by Vermont Legal Aid;
- (2) a representative, appointed by the Vermont League of Cities and Towns;
- (3) a representative, appointed by the Vermont Banker's Association;
- (4) a representative, appointed by the Vermont Housing Finance Agency;
- (5) a representative, appointed by the Vermont Municipal Clerk's and Treasurer's Associations;
- (6) a representative, appointed by the Neighborworks Alliance of Vermont;
- (7) a representative, appointed by the Champlain Valley Office of Economic Opportunity Mobile Home Project;
- (8) a representative, appointed by the Vermont Assessors and Listers Association; and
- (9) a representative, appointed by the Vermont Bar Association, with experience practicing real estate law.

(c) Powers and duties. The Working Group shall offer recommendations relating to the following:

- (1) whether the State should change the law to allow a delinquent taxpayer whose property is transferred by a tax collector's deed, or a tax-lien foreclosure sale, to recoup all or part of the equity in the taxpayer's property in excess of the tax debt, fees, and interest for which the taxpayer's property is sold;

- (2) whether further changes are needed to standardize the abatement process across Vermont municipalities;
- (3) whether the State should require a minimum amount of tax debt before a tax sale can be initiated;
- (4) whether the State should allow a tax sale to be initiated for blighted or dilapidated real estate that has been abandoned when taxes are delinquent for less than one year;
- (5) a reasonable percent rate of monthly interest paid by delinquent taxpayers during the redemption period;
- (6) whether the purchaser of a property at a tax sale should be allowed to secure the property against illegal activity, damage from exposure to the elements, deterioration, and potential fire prior to acquiring title to the property; and
- (7) a process for statewide collection of data relating to tax sales, including to whom the data could be reported, the values of properties sold at tax sales, the amounts and types of debts underlying tax sales, and descriptive data for properties subject to tax sales.

Members of the Act 106 Working Group

- Vermont Legal Aid – Grace Pazdan, Esq.
- Vermont Housing Finance Agency – George Demas, Esq.
- Vermont Association of Listers and Assessors: Linda Sherman
- CVOEO – Ryan Gerrity
- (Neighborworks) Windsor / Windham Housing Trust – Bruce Whitney
- Vermont Municipal Clerks and Treasurers Association: Tim Arsenault
- Vermont League of Cities and Towns: Kevin O'Toole
- Vermont Bankers Association: Christopher D'Elia
- Vermont Bar Association: James Knapp

At the initial meeting of the Working Group, the consensus was to group issues by related topic and to have subgroups meet to discuss the issues. As a result, the subgroups created were as follows:

Issues 1, 3, and 5 were combined to account for common elements in the questions. Generally the subgroup addressed the questions related to: (1) should taxpayers whose

property is sold at tax sale recover their equity; (3) should there be a minimum amount of tax debt before a tax sale can be initiated; (5) reasonable percent rate to be paid by delinquent taxpayers on past due amounts.

Issue 2. Are further changes needed to standardize abatement proceedings across the state

Issues 4 and 6 – (4) timing of commencement of tax sale on blighted properties; and (6) should a purchaser at tax sale be allowed to secure the property during the redemption period.

Issue 7 – Recommend a statewide process for collection of data regarding tax sales.

Administrative Issues

Based upon the analysis undertaken by the Secretary of State and the Attorney General's Office, at the request of the working group, it was determined that the working group and each subgroup of the working group was required to comply with the open meeting law provisions of statute. No administrative agency support was assigned to the working group. As a result, much of the initial effort of the group focused on the need to create agendas, notify the public of meetings, hold public meetings, and create formal written elements of each meeting. The lack of administrative support hampered the work of the working group.

One entire meeting was dedicated to training for the members of the group, most of whom had little or no experience dealing with the requirements for operating under the open meeting law.

As a result of this experience, the working group strongly recommends that any future groups created to study policy issues that do not involve legislators as members have an administrative agency assigned to assist with the administrative and technological requirements related to the process.

Executive Summary / Working Group Recommendations

Issue 1 - Recoup equity following tax sale or foreclosure of property tax lien

A majority of the Working Group recommends that the Legislature develop a process to ensure a taxpayer can access the equity in property that is transferred pursuant to a tax sale deed. The committee did not reach a consensus on the process to achieve this result.

Issue 2 - Standardization of abatement practices across state

- The working group recommends that the Legislature establish a comprehensive statewide education program and resource system for property tax collection processes. This program should include mandatory training for municipal officials, standardized public education materials explaining both tax sale and abatement processes, and centralized resources available to municipalities, residents, and service providers. Materials and training should be regularly updated to reflect current law and best practices.
- The working group recommends that the Legislature establish requirements for municipalities to develop and maintain clear protocols for working with service providers assisting residents with tax delinquency. These protocols must include points of contact, procedures for acknowledging service provider involvement, and requirements for regular status updates about assisted properties.

Issue 3 - Require minimum amount of tax debt before proceeding with tax sale

- The Working Group recommends that the Legislature impose a requirement that the tax debt (delinquent taxes only, excluding penalties, interest, fees) equal or exceed \$1,500 before a tax sale warrant be issued.
- The Working Group recommends that the Legislature create a process to notify municipal officials that a taxpayer has applied for public assistance or programs and while those applications are in process suspend the tax sale proceedings until a final resolution is achieved.

Issue 4 - Tax sales of blighted or dilapidated properties

The Working Group recommends against adopting a shortened timeframe to commence a tax sale of blighted or dilapidated properties on the basis that the one year time frame is adequate and the standards for determining whether a property is dilapidated or blighted are unclear.

Issue 5 - Interest rate for delinquent taxes

The Working Group was unable to reach a consensus on this issue. The positions of Vermont Legal Aid and Vermont League of Cities and Towns are set out in Appendix 1 and Appendix 2.

Issue 6 - Should tax sale purchaser be allowed to secure property during redemption

The Working Group recommends against allowing the successful bidder at the tax sale to have early access to the tax sale property to take action to secure the property against potential loss or to mitigate illegal activity.

Issue 7 - Data collection and reporting of tax sale data

The Working Group recommends that the Legislature adopt legislation to create a process to register tax sales including identifying a responsible party to create and operate the registration

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- The working group recommends that the Legislature establish requirements for municipalities to develop and maintain clear protocols for working with service providers assisting residents with tax delinquency. These protocols must include points of contact, procedures for acknowledging service provider involvement, and requirements for regular status updates about assisted properties.

Issue 3 - Require minimum amount of tax debt before proceeding with tax sale

The issue presented was: *whether the State should require a minimum amount of tax debt before a tax sale can be initiated.*

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Issue 4 - Tax sales of blighted or dilapidated properties

The question presented was: *whether the State should require a minimum amount of tax debt before a tax sale can be initiated.*

Key points made during discussion

- Adding a new standard for instituting a tax sale is rife with issues.
- “Blighted” and “Dilapidated” are not clear standards, there is no easy definition that can be universally applied.
- Some properties that are involved in tax collection process fall into disrepair due to the economic challenges affecting the property owners. Using “blighted” or “dilapidated”

would unfairly affect persons of lower economic means that were unable to maintain their properties as a result of what might be temporary issues.

- It can be very hard to accurately collect information about properties given the limited circumstances in which town officials are allowed to enter into a property without obtaining consent or a warrant. The burden on town officials to pursue an analysis of the condition of the property and then apply unclear standards does not create a scenario in which all properties across the state would be treated equally.
- The requirement that taxes be delinquent for a minimum of one year is adequate to address all the issues around timing and conditions.
- Municipalities have other remedies in statute for dilapidated or dangerous properties and implementing a tax sale is not an appropriate remedy for those circumstances

The Working Group recommends against adopting a shortened timeframe to commence a tax sale of blighted or dilapidated properties on the basis that the one year time frame is adequate and the standards for determining whether a property is dilapidated or blighted are unclear.

Issue 5 - Interest rate for delinquent taxes

The question presented was: *a reasonable percent rate of monthly interest paid by delinquent taxpayers during the redemption period.*

Through several meetings, including input from a member of the public who is a tax sale investor / purchaser, the working group developed multiple points of view. The points of view were sufficiently divergent that the working group decided to identify the key points but was unable to reach a consensus.

The following is a summary of the points of view advocated by Vermont Legal Aid (VLA) and Vermont League of Cities and Towns. The memoranda submitted on these points are attached as Appendix 1 and 2.

The Point of View advocated by Vermont Legal Aid	The Point of View advocated by Vermont League of Cities and Towns
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<p>VLA believes that reducing the interest rate to one tied to the market would balance the competing interests of attracting tax-sale bidders while keeping the redemption amount within reach for struggling homeowners. For example, Maine sets a statutory maximum rate that municipalities can charge: "the prime rate as published in the Wall Street Journal on the first business day of the calendar year, rounded up to the next whole percent plus 3 percentage points." For 2024, that translated to an 8.5% rate.</p>	<p>The current interest rate charged during the 12-month redemption period is 12% of the high bid at tax sale. That rate represented a decrease from the 18% interest rate charged by many towns prior to tax sale and matches Vermont's statutory rate of interest for judgments.</p> <p>This interest rate should stay "as is."</p>
<p>Additionally, VLA urges the committee to consider explicitly excluding any overbid amount from the statutory interest due to redeem after tax sale. Requiring homeowners to pay interest on any overbid amount only serves to increase the likelihood that the home will be lost to tax sale without serving any reasonable public purpose. It simply penalizes the homeowner while increasing inventor's profits.</p>	

Issue 6 - Should tax sale purchaser be allowed to secure property during redemption

Key points made during the discussion

- Allowing the successful bidder to enter into and take action on a property:
- Is disruptive to the delinquent taxpayer, particularly if the delinquent taxpayer is in possession of the tax sale property
- Is inconsistent with recognized legal rights, even a landlord is not allowed to take such actions with regard to leased property except under extreme circumstances
- There is no control over what a third party might do while pursuing actions apparently authorized by the suggested language.
- If the delinquent taxpayer redeems, then any action taken by the bidder may have to be undone. It is also possible that the action by the bidder might have further altered the property in ways the taxpayer did not approve.
- There is no particularly strong policy reason to allow such actions on property that is still owned by the delinquent taxpayer and remains subject to a redemption right.

- Third parties, including bidders at tax sales, do not have an insurable interest in the tax sale property until the redemption period expires. That would result in a 3rd party entering on the property at their own risk, with the potential for causing injury to the occupants of the property without possibility of the protection of insurance.
- The underlying concern giving rise to the suggested expansion of rights for the bidder at the tax sale is the possibility of illegal activity on the property during the redemption period, i.e., squatters, or manufacture and/or sale of illegal substances.
- Unclear how a bidder at a tax sale would secure the property against such activities i.e., squatters, or manufacture and/or sale of illegal substances.
- There are other remedies available (e.g., law enforcement) at least for illegal activities.

The Working Group recommends against allowing the successful bidder at the tax sale to have early access to the tax sale property to take action to secure the property against potential loss or to mitigate illegal activity.

Issue 7 - Data collection and reporting of tax sale data

The issue presented was: a process for statewide collection of data relating to tax sales, including to whom the data could be reported, the values of properties sold at tax sales, the amounts and types of debts underlying tax sales, and descriptive data for properties subject to tax sales.

Proposed Solution / Recommendation

- I. Create a process requiring municipalities or attorneys acting on behalf of municipalities to register a tax sale when the warrant and levy for delinquent taxes have been recorded and procure a "Docket" number to tie future proceedings to the registered tax sale. The registration process would allow for the collection of relevant data regarding the delinquent taxes and property.
 - A. To create the registration process, the following would be required:
 1. A website/web portal with sufficient interactive features allowing for a municipality to register a tax sale including the information that is specified to be collected. The website would calculate and assign a docket number to the specific tax sale. All future correspondence and proceedings related to the tax sale would carry the assigned docket number.
 2. An entity, department or agency to host the website, manage and maintain the website, and prepare and issue reports based on the collected data.
 3. Possible operators of the website
 - a) Department of Taxes - Operates a number of portals to communicate with municipal officials (Transfer Tax, Current Use, Property Tax Management)