

**SUBJECT:** Resale of property purchased by a taxing unit at a tax sale

**COMMITTEE:** Business and Industry — committee substitute recommended

**VOTE:** 7 ayes — Deshotel, Orr, Bohac, Garza, Giddings, Quintanilla, Solomons  
0 nays  
2 absent — S. Miller, Workman

**WITNESSES:** For — Steve Fitzgibbons, City of Port Arthur; (*Registered, but not testifying*: Carl Parker, City of Port Arthur; Monty Wynn, Texas Municipal League; Duane Force, Linebarger Goggan Blair & Sampson)  
Against — None

**BACKGROUND:** Tax Code, ch. 34 sets forth the procedures for tax sales of abandoned property that has been foreclosed because of delinquent taxes and ordered sold. Sec. 34.05 governs resale of such property by a taxing unit.

**DIGEST:** CSHB would allow a taxing unit that had purchased a property at a tax foreclosure sale to sell the property at a private sale for the current appraised market value or greater, in lieu of selling the property at a public sale. These sales would be authorized if the judgment amount plus post-judgment taxes, penalties, and interest on the property exceeded the current market value and each taxing unit entitled to sale proceeds consented to the sale for that amount.

If a taxing unit did not consent to a sale, that taxing unit would be liable to the taxing unit that purchased the property for the pro rata share of the cost of maintaining it, beginning with the date the taxing unit did not give consent. The pro rata share would be equal to the percentage of the sale proceeds to which the nonconsenting unit would be entitled, multiplied by the incurred maintenance cost. This would include the costs of preventing the property from becoming a public nuisance, a danger to the public, or a threat to public health.

A private sale would discharge and extinguish all liens foreclosed by the judgment and all liens for post-judgment taxes that accrued from the date

of judgment through the date the taxing unit purchased the property, except for prorated tax for the current year. The resale purchaser would be liable for a prorated tax amount for the remainder of the current year in which the sale was made.

The presiding officer of a taxing unit selling the property under the provisions of the bill would be required to execute a deed to the property conveying to the purchaser the right, title, and interest acquired or held by each taxing unit that was a party to the judgment foreclosing tax liens on the property. The deed would have to recite that the liens foreclosed by the judgment and the post-judgment tax liens were discharged and extinguished by virtue of the conveyance. Any remaining right of redemption at the time of sale and the purchaser's obligation to pay the prorated taxes for the current year still would apply to the conveyed property.

The change in the law made by the bill would apply to real property sold to a taxing unit that was a party to a judgment to foreclose a tax lien regardless of whether the judgment was entered before, on, or after the effective date of the bill.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2011.

**SUPPORTERS  
SAY:**

CSHB 1118 would allow taxing units more easily to clear their inventory of foreclosed properties that were difficult to market. It would allow the taxing entities to resell property, which otherwise would not be sold, to a non-profit organization or a developer for the current value, free and clear of the post-judgment tax liens, so that the property could get back on the tax rolls producing tax revenue. This would result in a gain to local taxing units.

While the sale proceeds might not cover the total amount of the discharged liens, the liens, for the most part, would not otherwise be paid because the property would remain unsold. The former owner would remain liable for payment of those post-judgment taxes because the former owner still would have had the title during that period. The bill would not impair or in any way impede the former owner's right to redeem the property because current law regarding redemption would not be changed.

In many cases, these properties are distressed from the outset, and the post-judgment taxes that accrue prior to the tax sale only add to the burden of trying to sell this property. This has especially been a problem in areas that have property that was damaged or ruined by recent hurricanes. In many cases, the owners simply walked away from the property, leaving the back taxes unpaid and delinquent. Some cities have hundreds of these distressed and abandoned properties.

A typical scenario of this unique situation occurs when taxing entities have to sue for delinquent taxes on an abandoned property. In the court's judgment, the court determines the "adjudged" value of the property and orders the property to be sold at a tax sale, with a minimum bid requirement.

A tax or foreclosure sale may not occur right away for various reasons, including an appeal, installment agreements with the previous owner for payment of the taxes, or hazardous property conditions that warrant deferring a sale until the property is rendered safe. During that time, the post-judgment taxes have been accruing and constitute a lien against the property. A post-judgment tax is one that accrues between the signing of the judgment and the tax sale. During this same time, the actual value of the property has declined, according to the local appraisal district.

The tax sale is ultimately held at public auction with the minimum opening bid. If no bid is received from the public attending the auction, then the taxing entities acquire the title. To make matters worse, once the taxing entities take title to the property, it becomes tax exempt, producing no revenue and more often than not, actually costing the taxing entities in maintenance. They have no choice but to hold it for resale in order to recover the taxes. At this point, the amount that was determined by the court to be the "adjudged" value, plus the post-judgment taxes, exceed the current market value of the property, rendering the property unmarketable.

Under CSHB 118, as long as each taxing unit entitled to receive proceeds approved the sale, these properties would go from being liabilities to eventually income-producing.

OPPONENTS  
SAY:

No apparent opposition.

NOTES:

The committee substitute differs from the original version of the bill by establishing that a private sale of property previously purchased by a taxing unit at a tax sale would discharge and extinguish the liens for post-judgment taxes that accrued from the date of the judgment until the date the taxing unit purchased the property.