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FISCAL IMPACT REPORT

SPONSOR: HJC DATE TYPED: 03/12/01 HB 498/HJCS
 SHORT TITLE: Enforce Collection of Delinquent Property Taxes SB _____
 ANALYST: Williams

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY00	FY01			
		See Narrative		

(Parenthesis () Indicate Revenue Decreases)

Relates to HB138

SOURCES OF INFORMATION

LFC Files
 Taxation and Revenue Department (TRD)
 Department of Finance and Administration (DFA)

SUMMARY

Synopsis of Bill

The bill would authorize counties to enter into contracts with private attorneys to collect delinquent property taxes. Currently, properties are turned over to TRD for collection and sale after taxes have been delinquent for three years. The bill would allow counties to assume this responsibility. It also gives counties the authority to enter into installment agreements for payment of delinquent taxes. The substitute adds language to conform to current statutes. In addition, the substitute would not grant immunity to the county or its retained attorney for court and other costs when the county loses a suit.

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FISCAL IMPLICATIONS

The bill would not significantly impact state or local tax revenues. Currently, TRD collects delinquent property taxes, and penalties, interest and costs due are retained by TRD to administer the Property Tax Code. However, since some penalty and interest associated with collecting delinquent taxes go to the collecting agency, revenue would shift from the state to the counties who take responsibility for collections.

ADMINISTRATIVE IMPACT

TRD reports the proposal would probably decrease total expenses of collecting delinquent property taxes; however, administrative functions and costs borne by counties could increase. Whether the net cost of administrating property taxes would increase or decrease is uncertain. It would depend on fees charged by private attorneys under the proposed system, as well as how efficient counties would be at selling properties on which taxes are delinquent.

OTHER SUBSTANTIVE ISSUES

TRD reports the following:

- c The method whereby the decision to sell properties at the county level is a little unusual. County commissioners must adopt a resolution assuming authority to sell properties, but they may not do so without "...the express concurrence in writing of the county treasurer...". Hence, even when commissioners favor retaining the right to sell properties for delinquent taxes, county treasurers would be allowed to prevent them from doing so under the proposed measure.
- c The proposal would also impose an additional penalty against delinquent taxpayers -- of up to 30 percent of the amount of penalty, interest and taxes due under current statutes. Counties would be required to notify taxpayers that private attorneys have been retained for the purpose of collecting taxes, and that as a result, the owners will be subject to the additional penalties. The new penalties would be paid to private attorneys that collect delinquent taxes. The measure would allow counties to collect various costs associated with collecting delinquent taxes, including court costs, expenses of a tax sale and similar costs. However, the measure would prevent a county or its retained attorney from liability in an unsuccessful suit to collect taxes, court costs and similar expenses.
- c Under the proposal, a county commission electing the option may subsequently decide to return authority for selling properties for delinquent taxes to the Department -- without approval of county treasurers. However, they must notify the Department at least 18 months prior to the tax year in which the return of authority to sell properties is to apply.

TRD also noted the following:

- 1) Some counties have delinquent accounts with high amounts of delinquent tax. To prevent "cherry-picking" by the counties, the Department interprets the change in 7-38-62 (Section 12 of the proposal, page 13) to mean that if a county accepts responsibility for collecting delinquent tax on any property, it accepts responsibility for all properties.
- 2) Imposing a 30 percent penalty in addition to current penalties imposed under statute simply because a county decides to make use of private collection agents is arbitrary and may conflict with Article II, Section 18 of the New Mexico Constitution requiring equal protection of the law. It also demonstrates that privatization does not always lower costs or increase efficiency.
- 3) Since property taxes fund almost nothing but local governments, it is probably appropriate that local governments collect delinquent property taxes. A major advantage the state's doing the collecting, however, --aside from economies of scale-- is that someone outside county government regularly reviews activities in county property tax accounts.

DFA notes counties would have to hire additional staff to do the search work and conduct auctions, and the 30% penalty to offset the costs of a private attorney would not cover the additional costs to counties.

DFA comments on the reason for delinquent property taxes is that taxpayers cannot afford to pay; an additional 30% penalty “would make it impossible for a taxpayer to keep the property.”

TECHNICAL ISSUES

TRD identified the following:

- 1) The measure does not seem to specify whether private attorneys will be liable for title research mistakes they make, or whether counties bear these responsibilities.
- 2) Section 7-38-71 NMSA 1978 specifies how money received by the Department from the sale of property for delinquent taxes is distributed. The proposed measure makes no change to this portion of statute and thus contains no similar provisions for cases when counties sell properties for delinquent taxes.
- 3) Real properties are not sold until they are between 3 and 4 years delinquent. Hence the sales conducted in 2001 stem from delinquencies in 1997. It would be good to clarify what year’s delinquencies this bill is to first apply to. If it is meant to apply to all outstanding delinquencies, counties should be required to reimburse the state for all costs the state has incurred with respect to accounts turned over to them.

AW/njw:ar