

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...". Therefore, 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. 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 protect a county or its retained attorney from liability in an unsuccessful suit to collect taxes, court costs and similar expenses.

Under the proposal, a county commission electing the option may subsequently decide to return authority for selling properties for delinquent taxes to the TRD -- without approval of county treasurers. However, commissions must notify TRD at least 18 months prior to the tax year in which the return of authority to sell properties is to apply.

FISCAL IMPLICATIONS

The measure would impose no significant impacts on state or local tax sources. However, since some penalty and interest associated with collecting delinquent taxes would go to the entity collecting the revenues, funding would shift from the state to counties electing the option provided by the proposal. This funding currently supports TRD's property tax division.

ADMINISTRATIVE IMPLICATIONS

The proposal would probably decrease total expenses of collecting delinquent property taxes by the TRD. Administrative functions and costs borne by counties would increase, however. Whether the net cost of administering 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.

TECHNICAL ISSUES

TRD makes the following comments:

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. It is also unclear who would be responsible for title research problems that may arise, for example when a former owner challenges the conveyance. And it is unclear who would be responsible for refunding the amount paid at auction to buyers in such cases, whether private attorneys would be required to refund their 30 percent and fees in these situations, or whether county treasurers office would be responsible for the entire refund.
2. Real properties are not sold until they are between 3 and 4 years delinquent. Hence sales conducted in 2002 stem from delinquencies in 1998. It would be good to clarify what year's

delinquencies this bill is to first apply. 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 the county.

3. Under the proposed measure, county treasurers would be allowed to select which accounts they wish to assign to attorneys and which would be assigned to the Property Tax Division. A number of properties on which taxes are delinquent are not purchased when offered for sale for reasons such as poor location, the size of the parcel, or lack of infrastructure (utilities, roads, public services). These properties are basically undesirable and the accounts must be re-offered for less than the original taxes due in order for anyone to consider purchasing them. What would likely occur in circumstances similar to the ones described is that the properties would be subsequently assigned to the State of New Mexico for collection, with the result that the state would bear much greater costs per parcel sold than is the case under current statutes. It would therefore seem appropriate to require counties to be responsible for collecting all delinquent property accounts within their boundaries if they elect to assume responsibility for collecting delinquent accounts.
4. Section 7-38-68 paragraphs F should be amended to keep the installments agreements in the collecting authority's office, not the secretary's office – page 21, line 22 of the proposal. Files containing information on accounts that are sold are public and must be kept as permanent records. It is not clear under the proposed measure how and where is this information will be stored.

OTHER SUBSTANTIVE ISSUES

TRD also notes that 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 may conflict with Article II, Section 18 of the New Mexico Constitution requiring equal protection of the law. Imposing a different set of fees depending on whether an account is collected by the state or a particular county may also be viewed as unfair by taxpayers -- and unconstitutional by attorneys.

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