

**REAL ESTATE TAX SALE LAW**  
**(Act 542 of 1947)**

**Commentary for Proposed Amendments**  
**1984**



General Assembly of the Commonwealth of Pennsylvania  
**LOCAL GOVERNMENT COMMISSION**

Harrisburg, Pennsylvania  
September 19, 1984

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The Local Government Commission was created by Act of 1935, May 29, P.L. 244, as amended, as a continuing agency to provide research and advice to the General Assembly of the Commonwealth of Pennsylvania on matters affecting political subdivisions and municipal governments.

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## REAL ESTATE TAX SALE LAW

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Richard E. Kidd, Treasurer, Huntingdon County  
Frederick F. Martsolf, Esquire  
Thomas Rose, Tax Claim Bureau Director, Berks County  
Elizabeth Vogely, League of Women Voters

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James B. Allen, Former Director, Pennsylvania State Association  
of County Commissioners  
Franklin C. Baer, Director, Lehigh County Tax Claim Bureau  
LaVern Dunbar, Director, Butler County Tax Claim Bureau  
Norma Duttonhoffer, Director, Dauphin County Tax Claim Bureau  
Edward Hussie, Esquire, House Legal Counsel  
Nancy Olinger, Director, McKean County Tax Claim Bureau

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The Pennsylvania Real Estate Tax Sale Law, (P.L. 1368, No. 542), with the active support of The Local Government Commission, the Pennsylvania Economy League, and the Tax Advisory Committee of the Joint State Government Commission, was enacted in 1947. A primary purpose of the act was to promptly return properties with delinquent real estate taxes to the productive tax rolls, as well as to provide a uniform system of handling such property, and to help eliminate the frequent title disputes that arose from the existing systems.

Although the act did not immediately become operative throughout the Commonwealth, the evident success it had in the areas of the State in which it was used gradually expanded its use, through either legislative mandate or voluntary participation. By 1977 only two counties, one city and one school district, each specifically exempted by law, were outside its jurisdiction.

Changes have been made over the years by legislative amendment on several occasions as they were perceived to be necessary. In the 1980's, because of court decisions, including decisions expanding constitutional protections and guarantees of property owners and several widely publicized sales, major amendments were made to the act, some of which sharply increased administrative costs of the tax claim bureaus. Consequently, sentiment for a general review of the act became evident.

The Local Government Commission, aware of the need for review of this act, created a Task Force in 1983 to study the strengths and weaknesses of the existing law. During the course of this review, the Task Force determined there was a need to (1) update and modernize existing procedures; (2) consider and control the costs of administering the program; (3) examine and adequately protect the constitutional guarantees of the homeowner; (4) develop a method of returning unmarketable properties acquired by the counties to the tax rolls; (5) eliminate obsolete or contradictory language; and (6) eliminate, as far as possible, language or conditions which created unnecessary hardship or would precipitate an undue amount of litigation.

After nearly a year and a half of intense work, a proposed redraft of the Real Estate Tax Sale Law has been put into legislative form for introduction into the House. This proposed bill meets the conditions laid down by the Local Government Commission in creating the Task Force. This commentary is a section by section evaluation of the proposed changes, the rationale behind the proposed changes, and an explanation of the reasons for all additions or deletions.

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ARTICLE I  
SHORT TITLE - DEFINITIONS

Section 102. Definitions.

"Absolute" - This definition was added to clarify that terms such as "absolute," "claim absolute," "absolute claim," "tax absolute," "absolute tax" mean that the taxpayer shall no longer be allowed to challenge the levy, imposition or amount of the tax, the assessment of the tax or the method of collection of the tax by the taxing body or its officers or agents after December 31 of the year in which the taxpayer receives notice of the delinquent tax return to and entry of claim by the tax claim bureau.

"Actual Sale" - This definition was added because the act bases a series of actions on the sale, but does not indicate whether this is the scheduled sale, the day of the sale, a realized sale, a continued sale, etc. No provisions are included to cover an offer to purchase (bid) which has not been executed or settled by payment of the price. Under this definition, all rights, title and interests in the property which may be created, terminated or otherwise affected by an upset sale shall be determined only at the time of payment. With this definition, all actions or conditions generated by the sale will begin only at the time of payment.

"County" - This definition is added to clarify that the act applies to the enumerated counties, including home rule counties.

"County Commissioners" - This definition is added to include home rule county executives who may not otherwise be known as county commissioners.

"Discharge of Tax Claim Period" - This is a new term used to replace the concept of "redemption". The discharge of tax claim period is an exact period of time terminating upon actual sale rather than a condition for estoppel of the sale and is divided into several phases as described in Article V. This term has been added with the intent to clarify the right of the owner or other interested party to remove the property from sale up until the time of actual sale.

"Owner" - The purpose of this amendment is to clarify the definition of owner to include any person whose name appears on a record deed. This clarification was necessary because the existing definition merely refers to a registered owner who may not be the record owner. Some confusion and legal problems have arisen, particularly in the notice of sale procedures, due to the previous definition of owner.

"Owner-Occupant" - This amendment intends to limit the definition of owner-occupant to only owners who reside on the property to which the tax bill is sent.

"Taxes" and "Taxing Districts" - Changes to these definitions were imperative because of the final recent exemption of the second class county from the provisions of this act. When this was done, these definitions were changed improperly, by not clearly excluding municipal subdivisions within this county. The new definitions define taxes to include all taxes upon real estate which are legitimately levied by all authorized taxing districts, plus any accrued interest and penalties, and define taxing districts to clearly exclude those located within an exempt county. This amendment also deletes obsolete transitional language for implementation of the act since all taxing districts except those permanently exempt have been under the provisions of the act since 1/1/76, except certain 4th class counties which became subject to the act in 1979.

ARTICLE II  
TAX CLAIM BUREAU

Section 201. Creation of Bureaus.

The amendment to this section intends to conform this section to the definition of county and to clarify that a Tax Claim Bureau is created only in counties of the following classes: 2A, 3rd, 4th, 5th, 6th, 7th and 8th and home rule charter counties.

Section 202. Appointment and Compensation of Personnel.

This amendment conforms this section to the definition of county.

Section 203. Bonds.

This amendment conforms this section to the definition of county and makes editorial changes.

Section 204. County Bureau to Collect Taxes.

Changes in this section are merely editorial.

Section 205. System of Accounting and Distribution.

This amendment is intended to clarify and substantively revise the accounting and distribution system of monies collected by the bureau pursuant to this act by subdividing this section into several subsections.

Subsections (a) & (b). These subsections clarify the duty of the bureau to establish an accounting and distribution system and to maintain separate and accurate accounts of monies collected.

Subsection (c). This subsection clarifies and supplements the requirement that taxing districts (including counties) be reimbursed for all costs, fees and expenses which may have been advanced to the bureau before any monies collected by the bureau are distributed. Then, the bureau may retain from the remaining monies five percent (5%) of all monies collected as a commission for administrative costs. In addition the bureau is also newly authorized to retain, as reimbursement for administrative costs, any interest earned on any monies invested prior to distribution. It is the intent of this subsection that the bureau first repay to the taxing districts all monies which may have been advanced by them and second, retain the administrative commission to which it is entitled under this subsection prior to any distribution of monies pursuant to subsection (d) of this section.

Subsection (d). This subsection establishes the priority of distribution of all monies which remain in each account after reimbursement payments and retentions required by subsection (c) have been made. It is the intent of this amendment that the bureau distribute the entire balance remaining in each account at least once every three months in order to prevent the bureau from retaining money for the sole purpose of earning interest which the bureau is now authorized by this section to retain. Distribution shall be made first to the Commonwealth for satisfaction of tax liens of the Commonwealth but (a) only if, and to the extent that, the purchase price paid includes all or a portion of said liens or (b) only if the property is sold at judicial sale. The Commonwealth shall not be entitled to any distribution of monies collected or received by the bureau at a private sale under Section 613, from an installment payment under Section 603, from a payment discharging tax liens under Section 501, from sequestration payments under Article IV, or from any other payment on a sale or transfer of a property under this Act where the payment does not include tax liens of the Commonwealth, since such liens are not divested by any of these sales or transactions. (See Section 609 for non-divestiture of Commonwealth tax liens.) Distribution shall then be made in the following priority: the taxing districts for taxes; the taxing districts or municipal authorities for municipal claims; mortgagees and other lien holders according to their recorded priority; the owner of the property.

Subsection (e). This subsection reaffirms and restates the authority of the bureau to distribute monies to the taxing districts pro rata which remain unclaimed for a period of three years from the date of sale, and directs that interest earned on such monies be retained by the county.

#### Section 206. Costs, Fees and Expenses.

No changes have been made to this section.

Section 207. Reimbursement of County; Charges.

This section reaffirms the county's right to a 5% commission and the interest earned on money pursuant to Section 205, and increases maximum charges for enumerated bureau services. This amendment also changes the descriptive title for the service of searching various courthouse records from "title search" to "review of records" in order to limit the search to a review of such records which would be less comprehensive than the search necessary to certify or insure good, marketable and legal title. It also adds actual cost of postage as a separate and distinct cost. This amendment also makes necessary conforming editorial changes.

Section 208. Agent of Taxing Districts; Lien Certificates.

This section has been amended to increase the fee (to a maximum of \$5.00) chargeable by the bureau for a lien certificate and clarifies that such a fee shall be payable to the county.

ARTICLE III

LIEN OF TAXES - FILING OF TAX RETURNS - ADJUDICATION

Section 301. Taxes, a First Lien.

Changes in this section are editorial, or made to conform to provisions in other sections of the act, and also clarify the priority of Commonwealth tax liens over real property tax liens by reference to the priority of payments established in Section 205.

Section 302. Lien Entitlement.

Changes are editorial.

Section 303. Property Subject to or Exempt from Claim.

Changes are editorial or made to conform to changes made in other sections of the act.

Section 304. Tax Liens and Municipal Claims Divested by Sale.

This section describes the manner, nature and extent of divestment of tax liens and municipal claims if a property is sold at an upset sale. All taxes, as defined in the act, and all municipal claims are divested, but only if the purchase price received for the property is equal to or greater than the sum of all taxes required to be included in the upset price (see Section 605), Commonwealth tax liens to the extent that they are accorded priority of payment by Section 205, all municipal claims which are required by Section 605 to be certified to the bureau, and

costs of the sale. The purpose of this section is to reaffirm that municipal taxes and municipal claims are divested only to the extent that they are included in the upset price and collected by the bureau at upset sale. However, the changes made to this section also 1) reaffirm the intent of the drafters to accord Commonwealth liens no greater priority than their priority of payment under this act and that payment of Commonwealth tax liens is not a condition precedent to divestment of municipal taxes and claims except only to the extent that the bureau has included all or part of them in the upset price (see Section 205 and 301 and commentary thereto); and 2) limit divestment of municipal claims to claims certified to the bureau and included in the upset price (see Section 605 and commentary).

A portion of this section was excised because the subject matter is now covered in Section 205 and for editorial reasons.

Section 305. Claims Against Property Owned by Joint Tenants  
and Tenants in Common.

No amendment has been made to this section.

Section 306. Return of Property and Delinquent Taxes;  
Interest; Settlements by Tax Collectors.

Subsection (a). This section is extensively changed to correct what appear to be serious inequities in the act. Under the existing act, returns are made to the bureau by the tax collector at a time of his choice, but may not be made later than the first Monday in May. Some collectors, anxious to close their books, make returns before the end of December of the calendar year, thereby forcing taxpayers who wish to pay taxes by the end of the calendar year to make payment to the bureau rather than to the collector. They then risk additional charges (entry of claim - see Section 207(b)(1)) and are perhaps caused additional inconvenience. In addition, the date of the first Monday in May obviously varies from year to year, perhaps causing uncertainty to the taxpayer.

The proposed amendment prohibits a tax return by the tax collector to the bureau before the first of January, or later than the last day of April. This establishes a definite period, still at the option of the collector, during which he must make his return. The return must be made on forms provided by or acceptable to the county, and must contain the information enumerated in this section.

Under existing law, interest payments on taxes paid after the expiration of the flat rate period are calculated by the tax collector only to the end of the calendar year. The bureau is authorized to charge interest only after the first Monday in May of the year of the return, leaving a period of several months during which no additional interest is accrued. This works to the disadvantage of the taxing district, since all incentive for the delinquent taxpayer to pay delinquent taxes during this period is removed.

The proposed amendment requires that interest start to be charged on the first day of the month following the return which should encourage delinquent taxpayers to pay their taxes as soon as possible. This will, of course, possibly result in different periods of interest charges for different taxing districts within a county, since the date of return is (within the established parameters), at the discretion of the tax collector. Proposed changes in new Section 306(c), discussed below, address this problem.

The present law sets the interest rate at 6%, a long time realistic and traditional amount, but unrealistic when compared to existing rates. This low rate encourages the sophisticated investor or developer to withhold taxes until the date of sale, since he can today earn more than 6% on the taxes withheld. The taxing district is therefore deprived of budgeted income, and taxpayers paying promptly are penalized by a reduction of services, or money spent by the taxing body to borrow funds to cover the unrealized tax money. On the other hand it is an equally valid fact that a truly needy person unable to pay his taxes when due, is aided by the low interest rate. To compromise between these two positions, an interest rate of 9% is proposed. Rates as high as 16% were suggested, but the 9% was adopted, first, because it works out to an even 3/4% per month, making interest calculation relatively easy, and second, represents a compromise between the high and low suggested rates.

Original Subsection (b). This subsection is excised because it concerns transitional problems no longer germane.

Original Subsection (c). No change, but has been renumbered as (b).

New Subsection (c). As noted in the discussion in 306(a) above, when the tax collector has the power to make returns within the designated parameters, at his discretion, there can be variations in the interest periods, etc. To remedy this condition, this subsection proposes an entirely new provision which would allow the county commissioners, in their wisdom, to preempt the power of determining the date of return, and by resolution, establish, county-wide, the dates during which the returns may be made. Presumably, they would make this period fall within the first to the last day of a prescribed month, so that the interest period would be uniform throughout the county beginning on the first day of the month following the return. The commissioners would have the flexibility to permit a longer or shorter interest free period in any given year, perhaps depending on economic conditions of both the taxing districts and the taxpayer. It is intended that this provision and the authority of the county commissioners to act under it be an alternative to subsection (a) but only at the discretion of the county commissioners by resolution.

A good deal of discussion was held on the question requiring one, or permitting two, return dates (for school and county/local taxes) under this subsection, but it was decided that the commissioners, if electing to control the return dates, should require one date, uniform throughout the county, for the return of all tax bills, i.e., school and county/local taxes between the January 1st and April 30th dates.

Original Subsection (d). This subsection is excised because it has been preempted by revisions to this section.

#### Section 307. Filing Claims.

Obsolete or transitional language for implementation of the act has been excised, and editorial changes made.

#### Section 308. Notice of Filing of Return and Entry of Claims.

After extensive study and discussion, the drafters made numerous changes to this section. Included are new concepts, changes to conform to current practices, changes made to clarify procedures and due process rights, and editorial revisions.

Subsection (a). Because of steadily rising mailing costs, and the need to protect the property rights of all persons involved in a delinquent property tax situation, this subsection was amended to specifically require only one notice of tax delinquency to be mailed, for each delinquent taxable property, sent to the owner or owners in one envelope to the address listed on the tax duplicate. Existing law appears to require a separate notice to each listed owner, which can be a costly and time consuming problem in rural counties which have numerous recreational and vacation properties owned by more than one person. This change requires one notice for each delinquent taxable property rather than separate notice to each listed owner, but the notice shall list the names of each owner.

Language has been added to cover a property owned by joint tenants, tenants in common, or husband and wife as tenants by the entirety, to provide for notice to one address.

Another addition, requested by the bureau directors, relieves them of posting a property if the property owner is already aware of the delinquency and has entered into a payment agreement with the bureau pursuant to Section 603.

Other changes in this section editorially conform this section to other provisions and amendments of this act; but see specifically Section 501 for a discussion of "discharge of tax claim" and the definition of "actual sale" in Article I.

The owner's right to apply for an extension of the discharge of tax claim period for up to 12 months is first stated in this subsection.



Original Subsection (b). Excised because it applied to obsolete transitional conditions for implementation of the act.

Original Subsection (c). (Renumbered subsection (b)).

Subsection (b). A new phrase is added to the warning notice to clearly advise the owner that he may remove his property from sale up to the time of actual sale, but that his name and a description of his property may appear on advertised sale lists if paid after July 1 of the year of the sale. This explicit advice is included to eliminate taxpayers' confusion that the July 1 date appearing in the original act prohibited retrieval of their properties after July 1. This amendment insures that the taxpayer is given notice that his property may appear on sale notices and advertisements of sale if delinquent tax obligations are not cleared by July 1.

Since some counties do not have legal aid services, and phone numbers are frequently changed, the notice now directs a taxpayer to the county lawyer referral service, whose phone number usually appears in the telephone directory.

Original Subsection (d). (Renumbered subsection (c)).

Subsection (c). Editorial change only.

Section 309. Contents of Claims Entered.

No purpose seemed to be served by waiting for 10 years if the owner of a property is unknown, so throughout the act the period is reduced to 5 years before any indicated activity is triggered.

Section 310. Property Included in Claims.

No amendment has been made to this section.

Section 311. Claims Become Absolute.

Transitional language for implementation of the act is excised.

Section 312. Lien Lost if Not Returned to Bureau.

Transitional language for implementation of the act is excised.

Section 313. Substitution of Defendants.

No amendment has been made to this section.

Section 314. Proceeding to Attack Validity of Claim.

Editorial changes only.

Section 315. Claims; Dockets; Satisfaction.

No amendment has been made to this section.

ARTICLE IV  
SEQUESTRATION

The only change in this article is editorial, except for changing "may" to "shall" in Section 405, which requires the sale of property returned by the sequestrator to the owner.

ARTICLE V  
DISCHARGE OF TAX CLAIM BEFORE SALE

The existing Article V used the term, and described the concept of, "redemption of property". This term was not defined, and was used a number of times in differing contexts throughout the act and apparently was subject to numerous interpretations. In some cases it meant removal of the property from the sale list and in others actual redemption after the property had been sold to a buyer. Actual redemption after sale is a concept carried over from the old Treasurer's sale, which permitted a property owner to void a sale and defeat title of a purchaser by payment of delinquent taxes within two years after the sale. This historic concept of "redemption" has been abolished in the Real Estate Tax Sale Law. At the very most, it appears that in 1947 the intent of the drafting of the Real Estate Tax Sale Law was to limit just until the time of sale the period of time during which a property owner may prevent the sale of real property for delinquent taxes. In order to avoid confusion created by use of the term "redemption" and to clarify the meaning and intent of the concept, the terms "discharge of tax claim" and "removal from sale" have been substituted (as appropriate) for the term "redemption".

Section 501. Discharge of Tax Claims.

Subsection (a). The term and concept of "discharge of tax claim" is substituted for the term and concept of "redemption" and is specifically described. "Discharge of tax claim" is intended to mean that a delinquent taxpayer may cause a property to be removed from exposure to sale either prior to advertisement for sale or before actual sale by full payment of all absolute and returned taxes and costs. This right of the property owner to make payment of taxes due and thereby prevent sale of the property is intended (by definition of "actual sale" and the provisions of Section 606 for payment of the purchase price) to include the right to make such payment (even after the auction hammer has fallen) up to the time

the successful bidder makes actual payment of the bid price to the bureau. Also, the drafters did not intend to require the bureau to accept a successful bidder's money if the owner is, at the same time, prepared to pay all delinquent taxes and charges (pursuant to Section 501) or cause the property to be removed from the sale list (pursuant to Section 603), or stay the sale of the property by agreement to make installment payments (pursuant to Section 603). In these cases, the intent of the act to protect the owner should govern and the bureau should not accept the successful bidder's money.

Obsolete or transitional language for implementation of the act is removed, as well as the requirement that the bureau director personally sign the claim record to note its discharge. The bureau is required to acknowledge receipt of payment and provide a certificate of discharge to the payor. The earlier requirement to distribute funds to the affected taxing district within three months is added for emphasis.

Subsection (b). The changes to this subsection are editorial.

Subsection (c). Emphasizes that no redemption shall take place after actual sale. Here, the word redemption is intended to mean the return of property to the original owner after the actual sale. (See definition of Actual Sale).

Section 502. Option of County to Extend Discharge of  
Tax Claim Period.

Changes are editorial and accommodate the substitution of wording for "redemption".

Section 503. Extension of Discharge of Tax Claim Period.

Changes are editorial and accommodate the substitution of wording for "redemption".

ARTICLE VI  
SALE OF PROPERTY

Numerous changes, including many substantive changes, have been made to Article VI. Because this article deals with the sale of delinquent tax property, some changes address issues concerning constitutional safeguards. Other revisions are intended to eliminate vague or debatable provisions without changing the intent or meaning of the present act.

Each type of sale is identified by the addition of the sub-chapter headings: Upset Sale, Judicial Sale, Private Sale and General Provisions. While no formal definitions of these sales are included in

the act, the specific sub-chapter discussion indicates that the upset sale is the first sale conducted by the tax claim bureau. It establishes a minimum sale price and generally includes all charges and claims against the property. Only claims or charges in the upset price are discharged by this sale. Judicial sale is described as a final sale ordered by the court, taxing district, or required to be held after a designated time. This sale discharges all claims against the property and it is transferred free and clear to the new owner. A private sale is a negotiated sale and discharges only tax claims and municipal claims. A number of safeguards are added in this Article, to insure that both the bureau, the public, the owner and the buyer are thoroughly protected.

(a) UPSET SALE

Section 601. Date of Sale.

This section has been further divided into additional subsections to facilitate understanding and interpretation.

Subsection (a). Existing law requires the sale to be scheduled no earlier than the second Monday in September, but no later than the end of the year. Allowance is made for adjournments, readjournments and continuances, but because these terms are not defined, actual practice and usage have encouraged creative interpretations which may not necessarily be consistent with legislative intent. The time table in existing law also promotes confusion, particularly since other time requirements listed in the next several sections of Article VI do not properly dovetail, but instead create time overlaps or time gaps. These conditions also cause problems involving notice of sale to the delinquent taxpayer.

The amendments to this section require the sale to be scheduled no earlier than the second Monday of September or later than the 30th day of September and allows such sale to be adjourned, readjourned or continued as long as the sale is conducted by the end of the calendar year. No additional notices are required during this period. By making these changes, including the deletion of dates, there is no need to define the terms adjournment, readjournment and continued, and an upset sale is assured before the end of the calendar year. Transitional language is also deleted.

Most of the changes in sub-subsection (1) are editorially necessary because of other changes in the act. However, some language referring to property held under Article VII, has been excised. This is necessary because of changes in Article VII, which will be discussed under that heading.

Sub-subsection (2) has been carried forward from the old law and renumbered.

The general intent of sub-subsection (3) continues to be personal service of notice of sale to the owner-occupant, but some changes have been made to address and correct problems of timely and

effective service of this notice by the sheriff. After lengthy discussion of various alternatives, the Task Force agreed to the following proposal. The county commissioners may, at their discretion, continue to allow the sheriff to serve the notice, or alternatively may appoint a legally competent person of their choice to perform the service. A sheriff's return or specified proof of service of the notice is required and shall include specifically an attachment of a copy of the notice served. No change has been made to the option of the bureau to petition the court to waive the personal service notice if personal service cannot be made in 25 days.

Subsection (b). No changes have been made to this subsection.

Subsection (c). No changes have been made to this subsection.

#### Section 602. Notice of Sale.

Subsection (a)-(g). Most of the proposed changes in subsections (a) thru (g) are necessary to conform this section to changes made elsewhere in the act, or for editorial reasons, or for clarity. These changes also intend to provide for the facilitation of administrative procedures such as the substitution of proof of mailing for first class mail to eliminate the much more expensive mailing requirements in subsection(e) (2), where the administrative need for this second mailing is doubtful, but serves to protect due process rights.

Subsection (h). This subsection addresses the issue of whether so-called silent tax liens of the Commonwealth should be included in the upset price and the procedure to facilitate determination and inclusion of such liens. Silent tax liens of the Commonwealth are tax liens which are levied upon the property of a corporation, limited partnership or joint stock association which may not be recorded in the office of the Prothonotary, and the existence and amount of which is usually documented and recorded only at the Department of Revenue in Harrisburg. The bureau's knowledge of such liens depends upon information to be provided by the Department of Revenue. Amendments to this subsection are intended to address issues limited to these silent tax liens of the Commonwealth.

Several years ago a general judicial reform bill eliminated a portion of Section 1402 of the Fiscal Code, referred to in this subsection. In their attempt to determine a substitute reference, the Task Force discovered several serious and complex procedural, substantive and administrative problems. These problems included:

- a) lack of mutual notification by the bureau and the Department of Revenue concerning the upset sale of properties subject to Commonwealth liens;
- b) failure of some bureaus to include the amount of Commonwealth tax liens in the upset sale price;
- c) the effect of inclusion or exclusion of Commonwealth tax

liens on the upset sale price, and saleability of the property;

- d) whether distribution of proceeds of the upset sale must be made first to the Commonwealth for satisfaction of Commonwealth tax liens in all cases;
- e) chronic failure of the Department of Revenue to actively pursue satisfaction of Commonwealth tax liens; and
- f) whether any or all Commonwealth tax liens are divested by an upset sale.

After lengthy research, conferences with Department of Revenue personnel, and general debate, an apparently acceptable compromise was reached which requires the following actions: 1) At least 30 days prior to an upset sale the bureau is required to forward to the Department of Revenue by certified mail, return receipt requested, on a form supplied by the Department, a list (and other specified information) of all properties of corporations, limited partnerships or joint stock associations advertised for upset sale; 2) At least seven days prior to the sale, the Department of Revenue must forward to the bureau by certified mail, return receipt, a written notice which sets forth the date of sale, the amount of all tax claims which should be included in the upset price of the property; 3) The bureau, if no list has been received by the day of sale, must call a telephone number designated by the Department of Revenue to determine if this list had been mailed. If mailed by the Department but not yet received, the bureau may either reschedule the sale or sell the property subject to the Commonwealth's tax lien and insure that the Department's claim is included in the upset price. If the Department has failed to send any information, the bureau shall sell the property divested of all Commonwealth claims and liens.

While a penalty provision for a bureau's failure to report to the Department was discussed, it was agreed that the Legislature could consider a penalty provision at some later date if the reporting requirement imposed on the bureaus would be pervasively and capriciously disregarded. Moreover, the issue of remedies for such failure is addressed in the proposed provisions of this act in that the sale of such properties would be made subject to Commonwealth tax liens under Section 609 and the bureaus would be required to distribute the proceeds of such sale to the Commonwealth under Section 205.

While Section 609 saves from divestiture all Commonwealth tax liens not included in the upset price, it is the intent of this subsection that no Commonwealth tax liens, notwithstanding Section 609, shall be saved from divestiture whenever the Department of Revenue fails to give notice of such liens to the bureau in the manner required by this subsection.

Subsection (i). Editorial change only.

Section 603. Removal from Sale; Agreements to Stay Sale.

The amendment to Section 603 introduces several new concepts for the removal of a property from upset sale by adding substantive provisions

and clarifying existing provisions for (installment) agreements to stay sale. It also differentiates between the concept of removal from sale and the concept of an agreement to stay sale.

It is intended that every property may be removed from sale or that an installment agreement to stay the sale be permitted only at the option of the bureau and only prior to the actual sale. For an explanation of actual sale see commentary for Section 102 and Section 501. While consideration was given to a provision which would mandate a bureau to accept a payment for removal from sale or an (installment) agreement to stay sale at the option and upon request of the owner, the Task Force decided that the final draft proposal should clearly set forth that a bureau be neither required nor prohibited from accepting such payments or making such agreements.

A property may be removed from sale by the remittance of a single payment of the sum of all taxes which have become absolute and all charges and interest thereon. This payment would remove the property from immediate sale for delinquent taxes which have become absolute but will not remove the property from exposure to subsequent sale for delinquent taxes which have been returned but have not yet become absolute.

An agreement to stay sale is an installment payment plan. The total amount due under this plan shall be the total amount of all tax claims returned to the bureau to date, whether absolute or not, and tax judgements and interest and costs attributable to such tax claims and judgements. Under this provision for an installment agreement the bureau may negotiate or require the total number of installments (not to exceed 3 in addition to the initial installment) and the amount of each installment, but the first installment must be at least 25% of the total amount due. The agreement must state that full payment is due within one year and the dates on or before which any installment is due and the amount of each installment. Every payment shall be applied against the oldest delinquent tax accounts first. If there is a default in the agreement but sufficient payment has been made to discharge all absolute tax claims, with interest and costs, the property shall not be sold but may be exposed to subsequent sale for all taxes returned which are delinquent but not yet absolute. If payment is not sufficient to discharge all absolute tax claims with interest and costs, upon default the property shall be sold at either the next scheduled upset sale or at a special upset sale, either of which must be held at least 90 days after such default.

In order to prevent abuse of the installment payment provision, the bureau is prohibited from making any further agreements with a person in default of a prior agreement within three years of the default.

#### Section 604. Sales of Property of Quasi-Public Corporation.

No amendment has been made to this section.

#### Section 605. Upset Sale Price.

Because many tax claim bureaus have complained that municipalities or municipal authorities sometimes are not cooperative in making

available a list of their claims in sufficient time to be included in the advertised upset sale price, an amendment to this section has been added which requires the municipality or municipal authority to certify to the bureau prior to August 30 of the year of the scheduled sale, a list of all claims which became a claim before August 1 of that year. If the municipality or municipal authority fails to certify such a list prior to August 30, the claims shall be divested by the upset sale.

This amendment also reaffirms that every upset sale must be held, and shall not be continued, beyond the end of the calendar year, and further requires that no private or judicial sale may be held unless the property has first been exposed to upset sale, but has not sold because of insufficient bid.

#### Section 606. Payments by Purchasers at Sales.

The amendment to this section authorizes the bureau to establish at its discretion the time for payment of the purchase price at any time on the date of the sale but no later than one hour before the close of business on such day, and requires that the purchaser make full payment at such time to close the sale. It is intended that the time of payment set by the bureau be announced at the sale as a condition of sale. In the event that the purchaser fails to make payment as required by this section, the property must be exposed to sale again, if possible, at either the same sale or at the continued, adjourned or readjourned sale. See commentary for Section 501 for discussion of the rights of purchasers and owners until actual sale and the definition of actual sale in Article I.

#### Section 607. Bureau's Consolidated Return to Court; Notice; Confirmation; Appeal.

Most changes in this section are either editorial or made to conform to changes made in other sections of this act. Certain changes were made to the times listed in the act to avoid time lapses or overlaps. All time changes in this section, and throughout this article, have been made to permit an orderly and non-conflicting sequence of actions which have not changed the existing basic time sequences or order in which actions occur.

In order to insure that any owner whose property has been sold will have adequate notice of the sale and opportunity to enter objections or exceptions to such sale with the court, an amendment has been inserted to prevent the bureau from providing a consolidated return to the court prior to notification to the owner, of the sale. Time sequences have also been adjusted to allow the owner a minimum of at least 30 days to file such objections with the court, this period to begin on confirmation nisi by the court of the consolidated return. Confirmation nisi could take as long as 90 days after the sale. This would provide the owner with a maximum of 120 days, or an absolute minimum of about 30 days, to file objections. He is further warned of the need for prompt action in the warning notice, which time sequence has again been modified to fit the sequence in the existing act. To further protect the owner, the bureau is required to publish within 10 days of confirmation nisi by the



court, in a local newspaper and in the designated legal journal, a notice that the court has confirmed the consolidated return nisi, and that any objections or exceptions must be filed within 30 days of the confirmation date, or an absolute confirmation will be made.

Changes to time sequences have in no manner reduced the time permitted to the owner to challenge the sale, but have merely corrected obvious conflicting sequences in the existing act. Additional protections have been mandated to ensure that the owner enjoys all the protection and consideration the law allows, including the opportunity to file objections and exceptions out of time if a notice of sale under this section is defective. This will prevent a court from invalidating a sale solely for the reason of a defective sale notice.

#### Section 608. Deed.

Editorial changes only.

#### Section 609. Nondivestiture of Liens.

The changes in this section represent a major reversal of policy. Under original law, all obligations, claims, liens or estates, including mortgages, were discharged by an upset sale, except mortgages or ground rents recorded prior to the time taxes became a lien on the property and prior to all other liens (except other mortgages and ground rents). United States and Pennsylvania Supreme Court cases imposed a judicial requirement that mortgagees be given the same notice of an upset tax sale given to owners under Section 602 of this act.

The Supreme Court of Pennsylvania held in the case of First Pennsylvania Bank v. Della Becker, et. al., \_\_\_ Pa \_\_\_, 470 A2d 938 (1983), that this section violates the due process rights of mortgagees guaranteed by the Fourteenth Amendment to the U.S. Constitution because it does not provide notice of the sale to mortgagees. In reaching its decision, the Pennsylvania Supreme Court followed and cited as authority the decision of the Supreme Court of the United States in the case of Mennonite Board of Missions v. Adams, 462 U.S., 103 S.Ct. 2706 (1983), wherein the Court held that a similar Indiana statute was unconstitutional for failure to provide record mortgagees notice of tax sale. The rationale of the Court is that record mortgagees have a constitutionally protected property interest which cannot be deprived or denied without due process of law. In both Mennonite and Della Becker the touchstone is deprivation of property without due process. Following these decisions, there was no doubt that the sale of any property encumbered by a mortgage which had been recorded would be declared invalid if the mortgagee had not been give notice of the sale by mail or personal service.

This requirement, in the opinion of the tax claim bureaus, would add tremendous costs to the upset sale price, to say nothing of the severe problem of sheer manpower needs since each property would require the equivalent of a title search. These charges would, of course, be added to the cost of sale of the property or to the cost of retrieval by the owner. The thrust of the Real Estate Tax Sale Law is 1) to protect the owner and help him to retain his home by paying the delinquent taxes and

costs; 2) to give the local municipality its justly due revenues by collecting payment of delinquent taxes; and 3) return of the property to the tax rolls as soon as possible. These court decisions make this goal more difficult to attain.

The Legislature solved this problem by eliminating the divestiture provision at the upset sale by passage of Act 79 of 1984, which made each upset sale subject to all recorded liens, mortgages, estates, obligations, claims and ground rents.

This section is now further amended to save Commonwealth tax liens from divestiture if the amount of any such liens is not received as part of the proceeds of the upset sale. The purpose of this provision is to preserve Commonwealth tax liens from divestiture whenever the bureau does not advertise and sell the property at a price which includes the amount of unpaid Commonwealth tax liens. However, this provision is not intended to save from divestiture Commonwealth tax liens of which the Department of Revenue is required to give notice to the tax claim bureau prior to upset sale under the provisions of Section 602(h); and all such tax liens are specifically divested under the authority of Section 602(h) if the Department of Revenue does not comply with Section 602(h). See commentary to Section 602(h) for a further discussion of this issue.

#### (b) JUDICIAL SALE

##### Section 610. Petition for Judicial Sale.

Changes in this section are editorial or are intended to make this section conform with changes made in other provisions of this act. The term "judicial sale" has been introduced to describe the immediate subsequent stage of the proceedings to occur under the act if a property is not sold at upset or private sale. While this term is not defined in the act, it is intended that whenever the term "judicial sale" is used throughout the act it describes and includes the processes the bureau is required to utilize in conducting such a sale and the legal effect of such a sale.

Under the provisions of this section, the bureau may in its discretion petition the court to sell the property in a manner more specifically described in Section 612. The bureau must file a petition if directed by any taxing district having an interest in taxes due on the property. Upon the presentation of the petition, the court is required to issue a rule to show cause on all parties who appear to have an interest in the proceedings, why the sale should not discharge every tax and municipal claim, every lien, mortgage and charge and estate (except ground rents if they are separately taxed) against the property. If the court decides that the property should be sold at judicial sale, it shall be sold to the highest bidder at any price bidder may offer.

##### Section 611. Service of Rule.

This section has not been amended.

Section 612. Hearing and Order for Judicial Sale.

This section sets forth the procedural requirements for, and substantive effect of, a judicial sale. The amendments to this section are editorial and clarify provisions which are affected by other provisions of the act. These changes include a provision which is intended to accommodate home rule charter counties by authorizing the county commissioners to designate the office which must distribute the proceeds of the sale.

Section 612.1. County Commissioners May Bid and Purchase Property; Costs Paid by Taxing Districts.

This section provides authorization to the county commissioners to purchase, and thereafter manage or sell, property exposed to sale at a judicial sale and sets forth the terms and conditions and requirements for purchase and sale to the county commissioners. The amendment to this section is exclusively editorial.

(c) PRIVATE SALE

Section 613. Properties Not Sold Because of Insufficient Bid May be Sold at Private Sale.

Section 613 describes the procedures and substantive effect of a private sale. Title to any property sold at private sale pursuant to these provisions is freed, cleared and discharged of all tax claims and tax judgments, whether returned, filed or entered of record. See Section 615.

Subsection (a). This subsection authorizes the bureau to sell for a privately negotiated price any property which has not been sold at an upset sale. This private sale may be concluded at any time after the upset sale has been held and during any proceeding which may have been initiated to conduct a judicial sale pursuant to Section 610. The power of the bureau to sell is discretionary, but any taxing district which has a tax claim against a property may instruct the bureau to sell the property at a price which the bureau can approve as fair and reasonable.

In order to assure that the price received for the property is sufficient, existing provisions require that the owner and each taxing district having a tax claim against the property be given notice of the sale and opportunity to petition the court to disapprove the sale. Since no public notice of this private sale was required and the procedures for negotiation and final settlement of the sale provided opportunity for private gain at the expense of the public interest, this subsection was substantively amended to require that specific public notice of the proposed private sale be given at least two (2) times by publication in at least one newspaper, with full details of the proposed sale included in the

notice. The intent of the publication is to give any interested party, including any person interested in purchasing the property, the opportunity to object to the sale in the manner provided in this section.

This subsection was further amended to require that the court, if it disapproves the sale, direct that the bureau conduct an auction-style sale of the property for no less than a minimum price at which no person other than the parties to the petition (filed under this subsection) may submit bids. It is intended to limit participation in this auction-style sale because principles of equity and fairness should require that only persons who have demonstrated more than a frivolous interest in the property by investment of time, effort and money necessary to petition a court, be given preferential opportunity to make the best possible offer for the property which exceeds the minimum price set by the court. Finally, a provision was added to this subsection to require the court to also order that the property be sold at judicial sale (see commentary to Section 610 to 612.1) if no person entitled to purchase the property under this subsection offers the minimum sales price fixed by the court. This provision intends to insure that the property is placed back into the process intended by this act for the sale of all properties for non-payment of taxes.

Subsection (b). Merely editorial changes.

Section 614. Options.

This section has not been amended.

Section 615. Deeds.

This section has not been amended.

(d) MANDATORY JUDICIAL SALE

Section 616. Mandatory Judicial Sale.

This section has been amended to clarify and reaffirm the requirement that the bureau must expose to judicial sale every property which, within 10 months of the scheduled upset sale, has not been sold at upset sale or private sale or is not in the process of being sold at a judicial sale. (See discussion of judicial sale and private sale at Sections 610 to 613).

The sale required by this section must be conducted in the same manner as a judicial sale (see Section 610 - 612.1) and the petition for this sale must be filed no later than 12 months after the scheduled upset date. It is the intent of this amendment to remove any doubt or interpretation that a bureau is mandated to expose a property to judicial sale within one year of a scheduled upset sale.

(e) MISCELLANEOUS

Section 617. Errors as to Description; Names, etc.,  
May be Amended on Petition.

Amendments to this section are merely editorial.

Section 618. Repurchase by Owner.

Recently some bureaus have encountered the problem of property owners, particularly multiple home owners in inner city areas, allowing substandard properties to go to sale for delinquent taxes (usually substantial amounts) with the expectation that they will not be sold for the high upset sale price. They then repurchase them at a private or judicial sale at a minimal price, divested of all taxes and municipal claims and, as the case may be, other liens. In this manner, they abuse the law to avoid paying local taxes and service charges and to defraud creditors. This section was added to at least make this practice more difficult. Consideration was given to extending this prohibition to heirs and assigns, but enforcement problems make the proposed approach the most practical, and clearly authorizes the bureau director to refuse to sell such properties to the delinquent property owner.

(f) REPOSITORY FOR UNSOLD PROPERTY

The original Real Estate Tax Sale Law was enacted in 1947, to accomplish several purposes. One of the primary purposes was to return delinquent tax properties to the tax rolls as quickly as possible so that the affected local taxing districts would not be denied needed revenues or that the burden of taxation not be inequitably shifted to nondelinquent taxpayers. Over the years, as more and more taxing districts came under the provisions of this law, this purpose was well served. However, inevitably some properties, because of particular or unusual circumstances, did not sell and remained on the books of the bureau. The most common causes for this condition appear to be a loss of property value because of changes in road patterns, irregular size (such as 100' x 5'), inaccessibility, declining neighborhoods, or other similar reasons. The drafters concluded that in many instances, this type of property might have some limited value to an adjacent land owner, who might otherwise be inclined to purchase it but for the inevitable increase in taxes which would result from the purchase. Consequently, many suggestions have been offered to overcome this problem. The following proposed provisions were adopted by the Task Force as a reasonable way to solve at least a portion of this difficult impasse. A section by section discussion of these provisions follows.

Section 625. Purpose of Article.

This is a statement of purpose for the creation of a Repository for Unsold Property. The intent is to establish a procedure to minimize the

number of properties which the county, through the bureau, continues to retain for lack of saleability.

#### Section 626. Unsold Property Repository.

This section creates a repository for properties which have been exposed to upset and judicial sale prior to or subsequent to the effective date of these amendments and have remained unsold after the three year process provided for in this act has expired. Even though the property is deposited in the "repository", all existing liens, taxes, interest, and other charges remain on the property. The bureau would be required to keep a current list of properties assigned to this "repository" available at all times for public inspection, and, if the bureau finds it to be advisable, may publish a list of such properties from time to time. By making this list of properties known to the public, it is anticipated that the interest of potential buyers might be stimulated. Any costs generated by this section would be borne by the county (through the bureau) as an administrative cost.

#### Section 627. Sale of Property in Repository.

This section provides for the sale of such property. The bureau, either as a result of a private offer or as the result of any advertising of "repository" properties, as noted above, may accept any offer for such property on its own authority, without seeking court approval or publishing notice of the sale as might otherwise be required in Article VI. This sale, will divest the property of all claims of whatever kind in the same manner as if the property were sold at judicial sale. A title, free and clear of all tax and municipal claims, mortgages, liens, and charges and estates, except ground rents separately taxes, of whatever kind, will be provided and recorded by the bureau, but the recording charges must be paid by the purchaser.

#### Section 628. Assessment Restrictions on Property Sold from Repository.

This is the keystone to the success of these new provisions. In order to overcome what is perceived to be the major obstacle to the purchase of "repository" properties by adjacent owners, i.e., the fear of increased assessment when such a property is acquired, a new concept has been introduced. Applicable only to the class of property which has been placed in the bureau's "repository for unsold properties", and to the sale of such property only at the time of sale from such repository, the fair market value shall be considered to be the purchase price for purposes of assessment without regard to any other provisions of the various assessment laws to the contrary. This value shall remain the fair market value upon which the assessment shall be based, and the conditions under which it is established (i.e., this subsection) until any one of these events occur: (1) a general county wide reassessment is made; (2) the property is sold, either separately or as part of a combined parcel; or (3) the parcel, either in itself or as part of a

combined or contiguous property (owned by the same owner), is improved. Once any of these three conditions has occurred, the parcel, either separately or in conjunction with a combined parcel, may be reappraised on the basis of a new fair market value.

This section is intended to provide an incentive to certain individuals to acquire "repository" properties since, for a reasonable period of time, it protects the taxpayer against payment of taxes on a "repository" property which may exceed the actual value of the property. The taxing district and bureau are aided to the extent that the maintenance and administrative costs generated by unsold properties is eliminated. The taxing districts involved are further protected to the extent that, if the property as a result of fortuitous circumstances (such as the development of a shopping mall) becomes a part of a valuable property, it can then be reassessed to reflect its new value. Likewise, if the property is sold as a separate parcel or as part of a larger or combined parcel, the total price of the sale will then become the basis of a new assessment. Any general reassessment would include the "repository" property in its valuation of the full property to which it is attached (or contiguous).

#### Section 629. Notification of Sale.

This section requires that the bureau notify all affected taxing districts, the county assessor, and any affected tax collectors, of the sale of this "repository" property, and the conditions under which it may be taxed and appraised, so that the new owner is protected to the extent promised in this Article.

#### Section 630. Distribution of Monies Received.

Provides that any purchase money received from the sale of "repository" properties be distributed in the same manner as provided for other properties sold under this Act.

### ARTICLE VII

#### PROPERTY PURCHASE BY TAXING DISTRICT PRIOR TO THIS ACT

This article affects only properties which were acquired by the county commissioners prior to the time this act became effective on a particular county. Therefore, it was originally felt that this article could be excised from the act, since all counties except those originally or subsequently exempted have been under its provisions for at least 5 years, and the act appears to require that all such properties should have been exposed to sale shortly after the county became subject to the act. However, upon further investigation, it appears that some counties legitimately continue to hold properties in trust, and collect rents, and other revenues from such properties. Such properties could have been acquired under the old Treasurer's Sale concept, which provided that a

county, after exposing a property to sale, acquired the property by operation of statute if no one purchased it at such a sale. Under this circumstance, the county would appear to hold the property legitimately as trustee for the taxing districts. Other properties could also have been acquired by virtue of the fact that they may never have been exposed to sale, and are simply being held by the county. Thus ownership, responsibility for the property, rights to any revenue generated, etc., are vague and subject to debate. It is in this framework that Article VII was reappraised and the following amendments made to the existing section, with new sections added beginning with Section 704.

Section 701. Property Heretofore Purchased by Taxing Districts  
to be Turned Over to Bureau.

These changes largely eliminate the transitional language, make editorial changes, or attempt to clarify the existing section.

Section 702. Powers and Duties of Bureau as Agent.

No changes are made.

Section 703. Such Properties to be Sold Under Provisions of Article VI.

A change to excise a section relating to a property leased by the taxing district to a family receiving assistance from a public agency, has been made. After conversations with the Public Welfare Department, it was determined that this particular reference was vague and no longer applicable, and should be excised. A second change deleted the reference to Article VI relating to notices of sale, and replaced it with specific reference to those sections in Article VI which deal with the upset sale, since the notice referred to deals only with the upset sale. Also, the requirement that a sale be held "within 18 months of the effective date of this amending act" has been deleted because it is an obsolete transitional provision.

Sections 704 - 706.

Because it is perceived that some counties may never have exposed certain properties to sale under the provisions of statutes predating their inclusion under the Real Estate Tax Sale Law, and there is some question as to the legality of their continued administration of the property (particularly if they have retained funds generated from the administration of the property for county use), a series of sections has been added to legitimize the county position, provide for necessary corrections, exonerate them from action for damages, and describe county responsibility for future activity in this area.

The Task Force proposed the following section as a remedy for these perceived problems.



Section 704. Validation of Title.

This section gives the county the opportunity to establish the validity of the title of any property which may have been acquired by the county under provisions of Article VII. If the title of any property is validated pursuant to the provisions of this section, it may not subsequently be challenged or invalidated for any reason. If the title of any property is not validated, it must be exposed to sale under the provisions of Article VI.

Section 705. Exoneration from Damages.

This section exonerates any taxing district, officer, employee, or agent thereof, from any liability or damages with which he may be charged by virtue of his actions as a trustee or otherwise, for properties held under this article prior to the effective date of this act.

Section 706. Duty of County and Bureau; Enforcement Provision.

This section admonishes the counties to henceforth conduct their duties as a trustee of any property held under this section, in a manner which complies with all fiduciary duties imposed upon them by law.