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ATTORNEY/COLLECTION FEES

House Bill 4472 (Substitute H-4) First Analysis (4-22-97)

Sponsor: Rep. Kirk A. Profit
Committee: Tax Policy

THE APPARENT PROBLEM:

Under the General Property Tax Act, a township or city treasurer can sue a person, firm, or corporation who has neglected or refused to pay taxes on property and garnishee any debtor or debtors of the person, firm, or corporation. (The state treasurer also has these powers in collecting the new state education tax.) This provision was put into statute as an alternative enforcement procedure to the seizure of a delinquent taxpayer's personal property by a local treasurer. Local governments also sometimes employ collection agencies to try to collect overdue taxes. Representatives of townships have requested legislation that would make the property owner liable for attorney fees or collection fees when these enforcement methods were used to collect personal property taxes and to allow local units to add such fees to the tax bill.

THE CONTENT OF THE BILL:

The bill would amend the General Property Tax Act to provide that if the treasurer of a local tax collecting unit or the state treasurer prevailed in an action brought to collect personal property taxes or if a collection agency prevailed in its effort to collect personal property taxes, the owner of the property would be liable for any reasonable attorney's fees or collection fees incurred and the amount would be added to the personal property tax assessment due. Attorney's fees or collection fees added to the amount due could not exceed 50 percent of the amount of taxes collected.

The bill also would specifically provide that a local treasurer or the state treasurer could contract with a collection agency licensed under Article 9 of the Occupational Code.

MCL 211.47

FISCAL IMPLICATIONS:

The House Fiscal Agency points out that the bill would reduce state and local costs associated with collecting delinquent taxes by an indeterminate amount. (Fiscal Note dated 4-3-97)

ARGUMENTS:

For:

The General Property Tax Act allows local units of government to sue delinquent property taxpayers as an alternative to seizing and selling personal property. Some local units hire collection agencies to try to collect delinquent property taxes. These approaches appear primarily to be used in the collection of delinquent personal property taxes. They are considered more cost-effective methods than seizure and they allow businesses to stay in business rather than losing property they need to continue operating. Local units have recommended that the cost of lawsuits or collection agencies be borne by the delinquent taxpayer and added to their tax bills. Reportedly, some judges have permitted this under current law, but some haven't. The bill would clarify the issue. It is only fair to make the party that caused the collection costs pay the collection costs. Otherwise, these costs are shared by other taxpayers. As the bill is currently written, the taxpayer would be liable for the attorney fees and collection fees only if the local unit (or the state) had prevailed in an action brought to collect the tax due or the collection agency had prevailed in its effort to collect the tax due. One supporter has said the bill will only penalize deadbeats and scofflaws.

Against:

Representatives of small business have expressed concern about the bill. They have said they are not confident that local units will use lawsuits and collection agencies as "a last resort" and won't use them in cases where there are honest disputes over taxes. Also, since there will be no cost to local units for employing lawyers or collection agencies, won't they be more likely to forego other methods and be quicker to use these more drastic approaches? Is it wise, in the case of collection agencies, to give this kind of authority to a unaccountable, private agency, let alone add the cost to a taxpayer's bill? The provision that allows lawsuits was enacted as a less cumbersome approach than that required to seize personal property from delinquent taxpayers. However, what is "cumbersome" to tax collectors is "due process" to taxpayers. A better approach to this issue, since unpaid taxes often involve relatively small amounts of personal property, would be

House Bill 4472 (4-22-97)

to eliminate personal property taxes on the first \$10,000 of personal property, as other proposed legislation would.

Response:

The personal property tax, in its entirety, is the subject of legislative scrutiny at present. However, the tax laws that are in place ought to be appropriately enforced. It should be noted that the bill limits the amount that can be charged for attorney's fees and collection agency fees.

Against:

It is wise to specify the percentage of fees that can be recovered by local units? Won't that establish a price level for these services (and one that is too high)?

Response:

The bill does not say how much attorney's fees or collection fees should be. It intends to limit the amount of any such fees that can be put on a property owner's tax bill.

POSITIONS:

The Michigan Townships Association supports the bill. (4-16-97)

The Michigan Municipal League supports the bill. (4-16-97)

A letter in support of the bill was submitted to the House Tax Policy Committee by the Credit Bureau of Ypsilanti, Inc. (4-2-97)

The Department of Treasury is opposed to the bill. (4-16-97)

The National Federation of Independent Business testified in opposition to the bill. (4-16-97)

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.

Analyst: C. Couch
