

Legislative Analysis



OVERDUE LESSEE-USER TAXES

Mitchell Bean, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 5551 as introduced
Sponsor: Rep. Chris Ward
Committee: Tax Policy
First Analysis (6-3-04)

BRIEF SUMMARY: The bill would allow delinquent lessee-user taxes to be collected in the same manner as delinquent personal property taxes under the General Property Tax Act.

FISCAL IMPACT: The bill would have no significant state or local fiscal impact.

THE APPARENT PROBLEM:

Public Act 189 of 1953 provides that, with certain exceptions, if real property exempt from ad valorem property taxation is leased, loaned, or otherwise made available to and used in connection with a for-profit business, the lessee or user of the property is subject to taxation (the so-called lessee-user tax) in the same amount and to the same extent as if the lessee or user owned the real property. The lessee-user tax is not an ad valorem tax per se, but it is a specific tax (levied as if it were an ad valorem tax) for the privilege of using the property. The act further provides that when the tax is due, it is considered a "due debt" from the lessee or user and is recoverable by court action. The action is against a specific person, rather than the property itself. The actual property owner is not liable for the payment of the tax nor is the property itself subject to any lien if the tax becomes delinquent. (After all, the property is owned by a tax-exempt entity that is not liable for the tax.)

Reportedly, Milford Charter Township in Oakland County has encountered some difficulties when it tried to collect the lessee-user tax from a golf course located within the township limits on land owned by the City of Dearborn. The city owns Camp Dearborn located in Milford Township. Some years ago, the Mystic Creek Golf Club and Banquet center was constructed on land within the camp. The club is privately run, and the land is leased from the city. The golf club pays the lessee-user tax to the township and other taxing units. However, the golf club failed to pay its taxes for tax years 1997 through 2002. In order to collect the delinquent taxes (and penalties), which totaled more than \$400,000 for all taxing units and approximately \$3,800 to the township, the township had to file a petition in court. It is believed requiring municipalities to go to court to recover delinquent taxes is rather burdensome and costly.

THE CONTENT OF THE BILL:

The bill would amend Public Act 189 of 1953 (MCL 211.182) to add that delinquent lessee-user taxes shall be collected at the same time and in the same manner as *personal* property taxes levied and collected under the General Property Tax Act.

BACKGROUND INFORMATION:

Under Sections 46 and 47 of the General Property Tax Act (MCL 211.46 and 211.47), local treasurers are required to demand the payment of any personal property taxes that remain unpaid as of February 15th. The tax becomes delinquent if it remains unpaid after March 1st (see MCL 211.45). If a person, firm, or corporation refuses or neglects to pay the personal property tax, the township or city treasurer (or state treasurer when collecting the six-mill State Education Tax) may collect the delinquent tax by seizing the personal property of that person, firm, or corporation in an amount sufficient to pay the tax. The property may be sold at a public auction at the place where the property was sold or in the city or township (or anywhere in the state if seized by the state treasurer). Notice of the sale must be posted at least five days before the sale. If a township or city treasurer sells property in an amount in excess of the amount necessary to pay the tax, the excess shall be returned to the property owner. However, if the state sells more property than is necessary to pay the state's portion, the excess balance is distributed among the other taxing units.

ARGUMENTS:

For:

The bill aims to ease the burden on local taxing collecting units of collecting delinquent lessee-user taxes. Under current law, these taxes may only be collected pursuant to a court order. Moreover, the act does not specify what taxing entity has authority to file such an action for the payment of the tax. This problem is recognized in Attorney General Opinion No. 4746 of 1972, when Attorney General Kelley noted, "... each governmental unit to whom taxes are due under Act 189 may institute legal action to recover the 'debt' which is due them...The foregoing conclusion may conceivably lead to a multiplicity of suits for taxes imposed by 1953 PA 189, against the beneficial users of government-owned or otherwise exempt property." The costs necessary to bring legal action to compel to payment of this tax may very well dissuade many smaller municipalities and other taxing units from even considering bringing such an action. By allowing municipalities to sell seized property as a means of recovering delinquent taxes, the bill adds some enforcement "teeth" to the Public Act 189. Absent such an enforcement mechanism, these taxes will likely go unpaid in those instances where a business flatly refuses to pay the tax, and the taxing authorities do not have the financial wherewithal to bring an action to compel the payment of the tax.

POSITIONS:

Milford Charter Township supports the bill. (6-2-04)

The Michigan Townships Association supports the bill. (6-2-04)

The Michigan Municipal League supports the bill. (6-2-04)

The Michigan Association of Counties supports the bill. (6-2-04)

The Michigan Association of County Treasurers supports the bill. (6-2-04)

Legislative Analyst: Mark Wolf
Fiscal Analyst: Rebecca Ross

■ 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.