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TESTIMONY ON SB 777
PRESENTED TO THE HOUSE FINANCE COMMITTEE

By Kristen Goshorn, Government Relations Manager

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Good afternoon. My name is Kristen Goshorn, and I am the Government Relations Manager for the County Commissioners Association of Pennsylvania (CCAP). CCAP is a non-profit, non-partisan association providing legislative, education, research, insurance, technology and other services on behalf of all the Commonwealth's 67 counties.

Thank you for the opportunity to appear before you to present our concerns regarding SB 777.

CCAP opposes SB 777 as currently drafted. However, I want to be particularly clear that CCAP does not oppose third party collection of delinquent taxes. Counties themselves are also authorized under existing law to utilize third party collectors. Some of these third party collectors seek the ability to collect taxes on behalf of municipalities exclusively under the jurisdiction of the Municipal Claim and Tax Lien Act (MCTLA) while others operate seamlessly with the Real Estate Tax Sale Law (RETSL), in essence acting as a privatized tax claim bureau. For example, Blair County currently operates under this type of arrangement, where tax liens have been sold in bulk to a third party collector through a negotiated contract. That third party collector follows all the procedures that would normally be followed by the tax claim bureau, and fees charged are consistent with RETSL.

By way of background, I would like to provide some history of the Real Estate Tax Sale Law (RETSL), as documented by the Local Government Commission. RETSL was enacted subsequent to the Municipal Claim and Tax Lien Act (MCTLA), and has been amended over time until a tax claim bureau was required to be created in all counties except Allegheny and Philadelphia. According to the Local Government Commission, the RETSL was developed out of a need to consolidate all delinquent real estate tax claims into one agency. The Tax Claim Bureau's sale procedure under RETSL replaced a myriad of sales procedures used by county and city treasurers. All counties except Philadelphia and Allegheny County are currently required by law to maintain a tax claim bureau. RETSL is also intended to be a means for assuring that properties can be turned over to responsible taxpayers while ensuring due process for the delinquent taxpayer. If you review the law, you will see that tax claim bureaus have a very prescriptive set of procedures and timelines they must follow to collect delinquent property taxes, which also impacts their collection rate.

The county is responsible for the expense of operating the Tax Claim Bureau. This includes salaries and benefits for staff, bonds for employees, mailing and advertising costs. Section 206 of RETSL is the matter of controversy with other local governments, which allows the county to receive a 5% commission for the county, as well as interest generated while the money is held. Section 206 was originally developed to reimburse the county for the expense of operating the Bureau by requiring a five percent commission. Despite the controversy this has generated among some municipalities utilizing third party collectors who argue that the county should not be entitled to a 5% commission on delinquent real estate taxes it did not collect, the General Assembly realized at the time of enactment of RETSL that without a funding source, the Tax Claim Bureau would be a huge unfunded mandate for county government.

SB 777 will allow municipalities using third party collectors to bypass entirely the 5% commission. Yet those municipalities will continue to receive a benefit from the tax claim bureau, which is the entity that most frequently takes the property to sale when tax claims cannot be settled. Since real property taxes are a priority lien, the municipality ultimately receives its tax revenue regardless of whether its third party collector is responsible for collection.

Some proponents of this legislation have argued that the bill gives municipalities the ability to utilize third party collectors. This ability already exists under current law. In fact, the General Assembly amended the Real Estate Tax Sale Law in 2004 to clarify this ability. Act 168 of 2004 allows a taxing district to assign tax claims to a third party collector. In order to allow assignment, the legislature had to grant a claim docketed by the County Tax Claim bureau to be divisible. The assignee then is able to act as the municipality to collect and enforce tax claims. Act 168 also clearly allows the county to assign claims while either retaining operation of the bureau or assigning duties to the third party collector. Act 168 specifically states that assignment under RETSL does not affect the 5% commission on tax claim collections and reimbursement of county charges, so as recently as 2004 the legislature has reaffirmed its intent that county tax claim bureaus not become an unfunded mandate.

Integrity of the public record is also an important component of RETSL, by assuring purchasers of real estate that the property is being sold free and clear of liens. The county historically is the body which holds records for tax liens, mortgages, deeds, etc. However, this central repository of information, which is essential to the business of real estate and title searchers, as well as necessary to maintain the public record, has been threatened by municipalities utilizing third party collectors who have failed to make returns to the county in order to avoid the 5% commission. This failure to make a return also means that county tax records are not up to date.

One of the drivers of this piece of legislation is the Commonwealth Court ruling in *The Pennsylvania Land Title Association v. East Stroudsburg Area School District*. In this decision, the court upheld the lower court's ruling that the school district's choice to use a third party collector under the MCTLA to collect delinquent school taxes does not relieve the school district or its third party collectors of its responsibility to make returns to the Tax Claim Bureau as required under the Real Estate Tax Sale Law (RETSL). The practice of not making returns to the county at the very least requires title searchers to go to multiple sources for tax certifications. In the Monroe County case, it is documented that the third party collector would charge \$25 to \$50 for unsigned written reports identified as tax certifications. Real estate attorneys and title agents lost money due to inaccuracy in the status of school taxes in county records caused by failure of the school district to report. Another interesting twist is that because MCTLA requires the third party collector to lien into the prothonotary's office, and this is reportable by the prothonotary's office to the credit rating agencies, individuals were negatively impacted by the school district's failure to update records when they applied for credit.

In response to public record concerns, Section 26 of SB 777 attempts to set a process whereby the county records can be updated annually based on reports from municipalities

using third party collectors. However, this will not be a real time process, and whereas before title searchers or the public could walk into the tax claim bureau and have instant access to records, the county will now only be able to provide this access for jurisdictions on whose behalf they are collecting delinquent taxes. To get the most up to date record from other taxing bodies, the title searcher will have to seek a certification from the municipality's third party collector.

CCAP remains opposed to Section 42 of SB 777. The language in this section broadly exempts entities collecting taxes under the MCTLA from complying with RETSL. One of the supporting arguments in the East Stroudsburg case was that the two laws are designed to operate in conjunction with one another and are not mutually exclusive. The court reasoned that because counties who opt to use other methods of collection, including the MCTLA, must at the same time comply with RETSL, "it stands to reason that other taxing authorities like the School Districts, who have opted to use the MCTLA provisions, would likewise be required to comply with the RETSL provisions." CCAP believes that the court's ruling was correct and upholds the legislature's intent.

Finally, I would like to point out other provisions in this legislation that have not been widely discussed. The MCTLA authorizes municipalities to recover reasonable fees, including attorney's fees by passing them along to taxpayers. While the legislation states that the municipality determines the fee by ordinance, in actuality the municipality will lose money if it does not pass along the entire amount of the fee that a third party collector charges. The reasonable standard of the law leaves this open to challenge by individual taxpayers through the court system, and it is likely that rather than third party collectors being challenged directly on the reasonableness of their fees, the municipality will instead assume liability and find themselves in the role of defendant in suits challenging the reasonableness of the fees.

Also relevant to this discussion on a taxpayer's recourse under the MCTLA, SB 777 removes a current standard of judgment to be taken into consideration, which is the amount of the delinquent account. This means a judge will not be able to take into account whether the claim was \$15 or \$500 when determining whether the attorney's fee of \$160 for issuance of a demand letter is reasonable. The Senate considered an amendment on the floor which would limit attorney's fees to 20% of the face and penalty amount, but this amendment was defeated by a vote of 24-26. In addition to fees that are currently authorized under the MCTLA, SB 777 allows a reasonable fee paid to satisfy notice requirements under the Act. Currently this expense is borne by the taxing district. One example fee schedule we obtained indicated that there is a charge of \$40 to issue a notice to all delinquent property owners by certified mail, plus the cost of the certified mailing.

In closing, CCAP would like to acknowledge concerns raised by boroughs, cities and school districts regarding the 5% commission that RETSL entitles the counties to. As the only local government entity that is solely reliant on the property tax, we understand the need to recover every penny. Our association is willing to offer its resources to work with the General Assembly in achieving an acceptable solution that addresses their concerns, while assuring that the county Tax Claim Bureau not become an unfunded mandate. We also suggest that the Tax Claim Bureaus may be better able to serve the municipalities and school districts with

an update of the Real Estate Tax Sale Law in general. However, we strongly emphasize that existing problems with RETSL need to be addressed by amending RETSL, not by granting a blanket exemption to RETSL for those municipalities authorizing third party collection under the MCTLA.

Thank you for the opportunity to address our position on this legislation. I would be happy to answer your questions at this time.