

House Finance Committee

Testimony of Jane Roach Maughan, Esquire

Counsel to the Tax Claim Bureau Association of Pennsylvania

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On behalf of my client, the Tax Claim Bureau Association of Pennsylvania. I thank the Committee for the opportunity to testify on House Bill 1877, Printer's number 2438. My name is Jane Roach Maughan. I am a lawyer and I practice in Monroe County. I thank Representative Scavello and Tamara Fox for their assistance in creating this opportunity for the Tax Claim Bureau Directors to be heard.

The Association's members are the Tax Claim Bureau directors of the 65 Pennsylvania counties with county Tax Claim Bureaus; Philadelphia and Pittsburgh do not have county tax claim bureaus.

HB 1877 seeks to amend the Real Estate Tax Sale Law, usually referred to as "RETSL." The proposed amendments include the diversion of payment records and information from the county tax claim bureaus, the elimination of the bureaus' 5% commission and the extension of discretion to school districts, townships, counties, boroughs and cities to direct the tax claim bureaus not to collect taxes.

It is wise for us to consider briefly the history of the Act at issue. RETSL was the product

of difficult economic times. In 1947, in response to the collapse of real estate tax collection across the Commonwealth following the Great Depression, this Legislature enacted RETSL to centralize and to solidify responsible government collection of delinquent real estate taxes.

Prior to RETSL, each separate taxing district had to sue property owners to secure and enforce liens to collect delinquent taxes and small taxing districts did not have the resources to pursue collection effectively or efficiently.

And so RETSL created a Tax Claim Bureau in each county except Pittsburgh and Philadelphia "in the office of the county commissioners." 72 P.S. §5860.201. RETSL centralized collection, defined the powers of a central office called "the tax claim bureau," in each county, and firmly established that delinquent real estate taxes are a first lien on real estate. Pennsylvania delinquent tax liens move ahead of mortgages and prior judgments. With the exception of liens held by the Commonwealth, real estate tax liens are the most powerful liens at law.

As you know, the current year taxes, the non-delinquent taxes, are collected in the 65 counties by elected Tax Collectors from each township, borough or city. These numerous elected Tax Collectors must stop their collection activities on December 31" each year and must "make a return" of all unpaid real estate taxes to the central county Tax Claim Bureaus. My clients are the directors of those bureaus.

RETSL requires that all the records of each of the municipal Tax Collectors be turned over to the county Tax Claim Bureaus annually. This established system has provided for the

safekeeping of real estate tax records in public county offices across the Commonwealth for 60 years until recently.

Since approximately 1999, a growing number of Pennsylvania municipalities have chosen to supplement the collection efforts of the county Tax Claim Bureaus by hiring private counsel or collection entities to pursue private collection efforts. The Municipal Claims and Tax Liens Act, sometimes referred to as MCTLA, provides generally for the collection and enforcement of municipal liens. The act was substantially amended in 1996 and in 2003 to expand the ability of taxing districts to use municipal liens to collect taxes, including real estate taxes. Following those amendments in 1996 and 2003, several law firms and collection entities commenced private collection of delinquent taxes on behalf of as many as several hundred school districts and municipalities.

In many of those municipalities, the complete body of public records of paid *and* unpaid real estate taxes have been unlawfully diverted away from the county Tax Claim Bureaus in violation of RETSL and now are in the control of private collection counsel. In many of those municipalities, public sheriff sales have been utilized aggressively to rapidly sell of delinquent parcels, despite the fact that MCTLA does not permit sheriff sales until the lien is over a year old and an upset sale has been attempted and failed.

The promises of fast collection by private collection entities are appealing to school districts and municipalities, but those school districts and municipalities have not been

sufficiently energetic or sophisticated to hold the private collection entities to the mandates of the law.

The unlawful diversion of public records from the tax claim bureaus by private collection entities clearly violates RETSL. It has been largely corrected as a result of protracted litigation brought by the state title insurance association against two local school districts in Monroe County and by ongoing litigation brought by Carbon County against a local school district in Carbon County. But in some counties the tax claim bureaus still have not recovered the records because they can't afford to litigate to do so.

HB 1877 is part of the continued attempt by private collection entities to make more money for themselves, not for school districts and municipalities.

In the approximately 150 municipalities where taxes are collected by private firms, the routine practice has been that the status of the tax lien is available for a fee and is not part of the public record. Collection entities have a history of charging \$25 to \$50 to fax a taxpayer notice of the status of his or her real estate taxes. The tax records taken outside the public domain and for which these fax charges are being imposed include *both* the records of timely paid real estate taxes and the records of delinquent taxes. When a school district, borough, city or county retains a private collection entity, the county tax claim bureau no longer has current and accurate information on the taxes for all the residents in that school district, borough, city or county. Thus, property owners who consistently pay their real estate taxes on time pay \$25 to \$50 to a private collection entity when they sell or refinance their property.

As you are certainly aware, the title insurance, lending and banking industry relies on current title search and certification when real estate is sold or refinanced. At practically every real estate closing on any property in each of the 150 municipalities that have diverted tax records to private collection counsel, taxpayers are paying for access to records that by law should be in the public domain. The vast bulk of the records diverted away from the Tax Claim Bureaus have no connection to the collection of delinquent taxes. Instead, these records of timely real estate tax payments by your constituents are becoming a money making machine for private collection entities. Not a penny of the \$25 to \$50 fax charges goes back to the taxing municipalities or in any way supplements the collection of delinquent taxes. And at trial in Carbon County it emerged that one collection law firm, over a period of about six years, earned \$6 million in fax fees alone, in addition to the attorney fees imposed on the delinquent taxpayers as part of the collection process.

The passage of HB 1877 will reinvigorate this abusive process of the sale of public records by private entities. The bill changes a critical provision of RETSL. The bill takes control of the payment stream away from the bureaus. Once the payment stream is controlled by private collection entities, only they have the accurate information on the status of the tax lien, only they have the accurate information on the payoff and they can and will sell that information at a profit.

In addition to creating serious problems in access to public records, HB 1877 seeks to cut off the 5% commission owed to the tax claim bureaus on all delinquent taxes. The bureaus need the 5% commissions to open their doors on a daily basis to the public—to property owners, title

searchers, lenders, lawyers and realtors.

In centralizing tax collection at the county level in 1947 this Legislature wisely provided for permanent funding for the central tax claim bureaus. There are two separate and distinct funding mechanisms we should examine briefly to understand the potential impact of HB 1877.

The Act describes the first mechanism as, "reimbursement" through a mandatory 5% commission:

In order to reimburse the county for the actual costs and expenses of operating the bureau created by this act, the county shall receive and retain *out of all moneys collected or received ~~tinder the provisions of this act,~~* five per centum (5%) thereof, which ~~percentage~~ shall be deducted by the bureau before paying over moneys to the respective taxing districts entitled thereto.

\$5860.207 (emphasis added),

The implicit intention is obvious; this Legislature intended to create and fund a public archive in each county of the records of the powerful liens created by RETSL, liens that move ahead of mortgages and all other judgments and encumbrances in priority.

The mandatory 5% commission is not linked to the bureaus' collection activities. In fact, even if every delinquent tax claim were paid early in the collection cycle, and the bureaus never had to hold upset or judicial sales, the bureaus nevertheless would remain entitled to the mandatory 5% commission on all monies.

The second revenue mechanism is not mandatory, as is the 5% commission. The second revenue mechanism is discretionary.

The tax claim bureaus are authorized in RETSL to charge back certain enumerated costs to the delinquent taxpayers. The chargeable costs are limited and are specifically enumerated. They include costs for the entry of claims, for the satisfaction of claims, for the preparation of sale documents, for the review of public records, for the preparation of deeds, and for postage.

By mandating the counties to withhold a 5% "reimbursement" and permitting them to shift significant costs of collection and sale operations to delinquent taxpayers, the Legislature recognized that the overall fiscal needs of the bureaus go beyond collection costs. The first revenue stream, the mandatory 5% commission, is described as "reimbursement" by the taxing districts, ostensibly for all the bureaus' services, including the maintenance of a public archive of delinquent tax records. The second revenue stream, the discretionary recovery of costs of operations, is described as a charge for reasonable collection of costs of collection of taxes directly from delinquent taxpayers.

This Legislature was wise and responsible in establishing a 5% commission for the bureaus. Our Commonwealth has struggled and continues to struggle with unfunded federal mandates, we know better than to burden the counties with unfunded state mandates. Requiring that a very small 5% commission be retained by the bureaus insures their fiscal health and permits them to open their doors every morning to the public. In removing the commission, HB 1877 essentially ignores the fact that the bureaus have regular recurring expenses related to their service as the public archive of real estate tax records.

In addition to cutting off funding to the tax claim bureaus, HB 1877 removes the control

of collection from the bureaus by removing the language that mandates that all delinquent taxes are payable only to the bureaus. This is unwise and frankly, unnecessary.

Removing the control of payments from the bureaus will create more and continued chaos. Many of the tax claim bureaus are still in the process of recovering and absorbing records diverted after the commencement of private collection, a diversion not solved until the conclusion of litigation in 2007. The government office that serves as the archive of real estate tax records must above all have accurate information. If multiple private collection agencies and law firms all have their hands in the pot, the work of the bureaus to collect accurate data on the payments of delinquent taxes will be unmanageable. An archive without accurate payment information is a useless archive of public records.

As of the 1996 amendments to the MCTLA, taxing districts — schools, counties, cities, townships and boroughs—call lawfully pursue private collection efforts under MCTLA. But RETSL should remain unchanged. Successful private collection efforts should conclude with the taxpayer paying the public, government office for central collection. The private collection entities can then manage their books and records of collection as lawyers, title agents, realtors and taxpayers always have—by getting a copy of the public record that proves the lien is paid in full. The opposite is dangerous and unwieldy—no public government office should have to ask a law firm or title agent if a public tax has been paid.

The private collection entities want control of the payment stream for one reason. If they get paid first, there is no public record of payment. Then the private collection entity has the only

evidence of payment. Then the private collection entity can sell that information, can make money on it. \$6 million was paid over approximately 6 years on the sale of public access to diverted records of real estate tax payments to just one collection firm.

As long as Pennsylvania law provides for two separate collection systems, the tax claim bureau liens pursuant to RETSL and the private liens pursuant to MCTLA, only one entity can receive the payments. The superior and more trustworthy entity, the entity that will cost your constituents the least money, are the *tax* claim bureaus.

The final amendatory language of HB 1877 will further aggravate the conflict between the two statutory schemes. It is on the last page of the bill. The provision permits taxing districts to direct the bureaus to suspend all collection. It creates an ambiguity regarding the responsibility of the tax collectors to make returns. Taxing districts should not be given the authority to direct the operations of the tax claim bureaus. When taxing districts hire private collectors, those collectors have cherry picked valuable properties for enforcement and left many properties in limbo. The tax claim bureaus must remain the central, public, government entity responsible for orderly delinquent tax collection. They must remain responsible to open a claim on every delinquent tax parcel every year and follow the procedures of RETSL. If private collection efforts parallel that process and accelerate the process, collection is accomplished. But because private collection entities may come and go, and their history has been to cherry pick, one central entity is critical to efficient statewide collection.

Real estate taxes continue to rise and to burden your most vulnerable constituents, the

poor, young families and our senior citizens who have paid off their mortgages and no longer have the safety net of mortgage escrow accounts managed by lenders to pay their real estate taxes.

Private collection has been a disaster for tax payers and has not brought any significant relief to admittedly desperate school districts and municipalities in need of cash flow. With current interest rates at a historic low, the time value of money is negligible to non-existent — school districts and municipal governments collect money a bit faster through private collection, but the speedier collection does not benefit them significantly as they simply don't earn anything on that money.

Your constituents have suffered. In private collection practices, an \$800 annual tax bill, if not paid by December 31st, explodes to \$2,000 to \$3,000 by the fall of the following year. The rapid explosion of the amount owed in private collection schemes is almost entirely tied to the attorneys fees that are passed on to the taxpayers. RETSL has no attorneys fees for taxpayers. The same collection, over the same period of time, by the tax claim bureaus, does not increase the taxes owed with the exception of 9% interest and the allowable costs.

Your constituents have been fooled. They have been subjected to early, untimely, unlawful forced sales by collection entities. Tax claim bureau directors follow the law, they are law abiding. They don't game the sale deadlines. Private collection entities have consistently violated the MCTLA one-plus year limit on scheduling forced sales. The own clients, the school districts and municipalities, are either unaware of the law, or equally reprehensible in their

violation of the law. The courts have recognized over the decades that the dominant purpose of RETSL is not simply to "strip the taxpayer of his property but, rather, to collect taxes."

As this Legislature continues to examine and improve real estate taxes and real estate tax collection, the trend seems to be toward centralized systems. Everyone seems to agree that the election of separate tax collectors in each municipality is no longer practical in light of modern communication and electronic information management. The trend should stay toward centralization. This Legislature markedly improved delinquent tax collection when it centralized it in a government office at the county level across the Commonwealth in 1947.

The growth of private collection has been chaotic and has been marked by private collection entities disregarding the most basic and obvious principles of law. Your constituents should not be left to litigate periodically, in class actions or as individuals, to rein in the tactics of private collection entities. Tax claim bureau directors are law abiding.

The debate about the role of government is a lively one right now in our country. Opinions are held strongly, by D's and R's, by 1% and 99%, by tea partiers and by college partiers. We are a nation polarized by those strong opinions about government and drawn to a dialog daily. Some may think we should not *be* taxed, but even *they* agree that if taxes are to be collected, it is a government function. In this sometimes angry debate about government, everyone seems able to agree that government should maintain roads, collect taxes and declare war. The collection of taxes by private corporate entities is not a positive or wise trend. It is an invasion of an essentially governmental function.

I have solutions. I'm not just here to complain.

RETSL and MCTLA overlap and conflict in practice. The MCTLA needs to be fine tuned and conformed to RETSL. The 1996 amendments of MCTLA never contemplated the chaos that would ensue.

The stream of payment and the control of the public records must remain, as is now provided very clearly by RETSL, in the tax claim bureaus.

Taxing districts that wish to pursue private collection must be required, in MCTLA, to make all payments to the bureaus and to pay a commission to support the operation of the bureaus as archives.

HB 1877 makes the chaos that unexpectedly followed the 1996 MCTLA amendments worse, not better, and should not be enacted by this Legislature.