CCAP COUNTY COMMISSIONERS ASSOCIATION OF PENNSYLVANIA
Serving Counties Since 1886

CENTRAL OFFICE
17 North Front Street, Harrisburg, PA 17101-1624
phone (717) 232-7554 • fax (717) 232-2162

NORTH OFFICE
PO Box 60769, Harrisburg, PA 17106-0769
phone (717) 526-1010 • fax (717) 526-1020

TESTIMONY ON HOUSE BILL 1409
DELINQUENT PROPERTY TAX COLLECTION/SALES

PRESENTED TO THE
HOUSE URBAN AFFAIRS COMMITTEE

BY

LISA SCHAEFER
GOVERNMENT RELATIONS MANAGER

November 12, 2013
Harrisburg, PA

On behalf of the County Commissioners Association of Pennsylvania (CCAP), I want to thank Chairman Gillespie, Chairman Harhai and members of the House Urban Affairs Committee for the opportunity to speak to you today regarding House Bill 1409, legislation which seeks to update the state's Real Estate Tax Sale Law. The CCAP is a non-profit, non-partisan association providing legislative and regulatory representation, education, research, insurance, technology, and other services on behalf of all of the Commonwealth's 67 counties.

The Real Estate Tax Sale Law (RETSL), which was originally enacted in 1947, was developed out of a need to consolidate all delinquent real estate tax claims into one agency, the county tax claim bureaus. Under RETSL, local elected tax collectors each year make a return to the county bureaus of county, municipal and school district property taxes, including a list of all properties on which taxes remain unpaid from the prior year. The bureaus must keep record of these delinquent tax claims and all activity, including any satisfaction of the claim, assuring the integrity and accuracy of this central repository of information, which is essential not only to property owners but also to the business of real estate and title searchers.

While the primary function of the bureaus is to collect delinquent property taxes to ensure taxing districts ultimately receive the tax revenues they are owed, 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. Therefore, the bureaus also administer upset tax sales and judicial sales, including providing statutorily mandated notices to owners, advertising, handling payment plans, managing bankruptcies and foreclosures, maintaining the repository of unsold properties and other critical tasks.

Under the law, 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. This set of timelines means that it takes 21 months from the time a delinquent tax claim is returned to a bureau until a property is exposed to an upset sale, which transfers the property subject to all remaining recorded obligations and liens not included in the upset sale price. Only after a property goes through the upset sale process can it be exposed for judicial sale, at which point it is sold free and clear of all liens. Again, though, the goal of the bureau is to attempt to collect delinquent taxes before any sale occurs.

In 2004, the General Assembly approved legislation which offered taxing districts the option to assign claims to a third party collector, and thus use the provisions of the Municipal Claims and Tax Lien Law (MCTLL) to pursue collection of the delinquent taxes. Over the past nine years since this provision was enacted, counties in which taxing districts have assigned claims have experienced difficulty, sometimes considerable, in maintaining accurate records for delinquent properties and a clear and consistent collection process for delinquent taxpayers.

The goal of House Bill 1409, then, is to update the commonwealth's delinquent tax collection and tax sale statutes to assure that delinquent tax collection is occurring in a way that promotes uniformity and equity for all taxpayers, since any time tax revenues are forgone or lost because they are not paid, the burden shifts to other property taxpayers who are then forced to make up the difference. At the same time, House

Bill 1409 also seeks to recognize that when it becomes necessary to take a property to tax sale, such sales must be conducted in a timely, fair and efficient manner while providing appropriate due process for property owners. Finally, improving the delinquent tax collection process will have benefits for all taxing districts by improving the rate at which they receive the revenues they are owed and getting properties back on the active tax rolls as efficiently as possible before they become abandoned or blighted. This goal of creating one streamlined statute has the potential to improve collection, make it more efficient for counties to maintain the public record and reduce confusion for taxpayers.

CCAP has been actively involved in the discussions with the bill's sponsor and we continue to work to develop a bill that achieves these goals. However, we would like to raise a few concerns that we believe still need to be addressed about the amendment draft currently before the committee to make the process one that can actually be implemented by counties. To start with, in this most recent draft amendment, language has been included which would allow a taxing district to elect to follow MCTLL, and if it chooses to do so, to do so exclusive of nearly all of the provisions of House Bill 1409 except certain notification provisions. CCAP would oppose House Bill 1409 should this language remains in the final bill for the committee's consideration, for several reasons.

First, allowing the use of MCTLL completely undermines the point of the entire bill to create one statute that would be followed by all jurisdictions, and creates numerous other problems for the operation of the county tax claim bureaus. If there are elements of MCTLL that are believed to improve the delinquent tax collection and tax sale process, those elements should be discussed as part of the broader concept of House Bill 1409, rather than continuing the current practice of using two different statutes to collect delinquent taxes.

To illustrate some of the problems the county tax claim bureaus have faced with two different statutes in place, we point to the 2006 Commonwealth Court ruling in *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 assign its claims to a third party collector under MCTLL to collect delinquent school taxes did not relieve the school district or its third party collectors of its responsibility to make returns to the tax claim bureau as required under RETSL. The court reasoned that because counties who opt to use other methods of collection, including MCTLL, 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." In other words, the use of MCTLL by a taxing district does not relieve the taxing district from its responsibility to still follow RETSL and return records to the county tax claim bureau at any point in the collection process. CCAP believes the court's ruling was correct and upholds the legislature's intent.

The MCTLL language in the House Bill 1409 amendment, however, appears likely to reverse the court's decision by requiring the taxing district to choose to use only the provisions of MCTLL or this chapter, but not both. It is unclear which notification requirements the taxing district would still be required to follow if it chose to use MCTLL, and thus unclear whether taxing districts would even have to make the initial return of delinquent taxes to the bureau. This would do nothing to solve the fragmentation of the system that has already occurred with operation under two different laws and would make it virtually

impossible for the bureaus to maintain the integrity of the public record for which they remain responsible.

Further, under the current system, there is no mechanism to assure that efforts are actually undertaken to pursue collection when a taxing district assigns a claim, which can lead to chronic delinquencies. In Montgomery County, for instance, one school district that used MCTLL had 500 properties two years or more in delinquency – some as long as nine years – largely because they were never actively pursued for collection or listed for sale, nor were they required to be. The tax claim bureaus, on the other hand, are required to automatically commence the tax sale process in the second year of delinquency.

The use of MCTLL also creates inequity for both the taxing districts and the delinquent taxpayer. For the taxing district, when the tax claim bureau takes a property to sale, it is required by RETSL to distribute the proceeds proportionately to the county, municipality and the school district – regardless of whether the municipality or school district has assigned its claim to a third party. But, when a third party collector takes a property to a sheriff sale on its claim, all tax liens, including those of the other taxing districts, are extinguished and those other taxing districts are not entitled to a share of the proceeds from the sale. Montgomery County recently petitioned the local court to require a taxing district to split the proceeds from a sheriff sale, but the petition was denied and the property was transmitted to the buyer free and clear of all claims and liens – meaning the municipality and county had no opportunity to recover the taxes due them. This is an inequitable situation which would only be perpetuated by allowing MCTLL as an option to House Bill 1409.

For the delinquent taxpayer, if a claim from more than one taxing district is attached to a property but only one is assigned, this means that there are two different collection and sale processes going on simultaneously, further leading to confusion for a delinquent taxpayer who wants to satisfy his claim. Also, many of the private third party collectors are not able to provide the same opportunities for repayment at the same low cost as the tax claim bureau. We have seen evidence of a delinquent real estate tax of $186.58 for a school district in Berks County, assigned to a third party collector, which ballooned to a total of $552.40 due by the taxpayer once interest ($6.32), attorney fees ($335, retained by the third party) and other charges and expenses ($24.50) were added – almost three times the face value of the taxes. Assuming a full year of delinquency, had the tax claim bureau been responsible for collection, the taxpayer would have had a balance of $186.58 plus the penalty of $18.65 plus interest of $16.79, for a total of $222.02. Even if the bureau added allowable charges of up to $45 for the filing of the lien, satisfaction of the lien and original notice, the maximum the delinquent taxpayer would be responsible for is $267.02, less than half of what the taxpayer was responsible for under the third party collector. This system cannot be permitted to continue unchecked.

Aside from the issues surrounding the inclusion of the MCTLL language, there are a few elements of the language in the underlying amendment language which render the bill impossible for counties to implement on a practical level and are in need of additional discussion. For example, requiring current information on tax delinquent properties to be posted to a publicly accessible website would make the information more transparent and more readily available to delinquent taxpayers, and in some cases families and caregivers who may then be able to offer assistance to those individuals. While a laudable goal, though, the language needs to be written in a way to ensure counties are actually able to implement

it. Current law requires counties to maintain as a public record a list of all properties against which taxes were levied and the whole or part of which remain unpaid. The draft amendment to House Bill 1409, on the other hand, requires counties not just to maintain this public list, but to also do so online and to maintain information concerning the tax status of each parcel within its jurisdiction. There are many counties that already offer websites maintained by software providers or an in-house IT department, but there will likely need to be programming changes to existing sites to keep an up-to-date website, and many others do not have a website at this time. To build a new website (or make upgrades to existing sites) and enter the volume of information required will require significant upfront resources that counties have not planned for at this time, and to be frank, the needed development cannot be accomplished in the 60-day effective date window.

House Bill 1409 further seeks to streamline the tax sale process by sending properties straight to judicial sale and eliminating the initial upset sale. While this is in and of itself not necessarily a bad thing, the amendment as written creates unrealistic, and we believe unintended, costs and burdens for county tax claim bureaus, most notably as a result of the level and amount of notice required and the timeframes involved. Let me first say that counties absolutely want to ensure appropriate due process for property owners and other parties, such as mortgage holders or other lien holders, whose financial interest in the property stands to be lost in the event the property is sold. Not only do counties not want to be in the place of putting a property up for sale unnecessarily, but notice is also often the point on which an appeal of a tax sale will focus. Therefore, it is critical that due process be adequately provided in this bill.

With that said, counties also recognize the difficult balance between the necessary due process and notice requirements with the costs of such notice in terms of frequency, timing and volume. The proposed amendment would require direct, mailed notice to owners and interested parties and posting of the properties at the beginning of judicial action, followed by service of the rule to owners and interested parties once the rule is granted by the court (but not once the sale is scheduled). In addition, the bureau would be required to advertise in at least two newspapers and the legal journal at the commencement of judicial action, one newspaper and one legal journal at the time of the service of the rule, and two newspapers and the legal journal at least 15 days prior to the sale. Again, while notice is absolutely critical, each notice and each advertisement does come with a significant cost, and while the bill allows those costs to be recouped, there is no need to be unnecessarily adding costs to a delinquent property.

We should also note that in order to take a property to judicial sale, which will divest all prior liens and encumbrances, a full title search is conducted to ascertain all lienholders. Title searchers are generally hired to perform these as it is a very labor intensive, and therefore costly, process. Under the existing process, a bureau can literally have thousands of delinquent taxes returned to it annually, but after the collection and upset sale process, may have just a few hundred to take to judicial sale. However, even the title searches on those properties can take several months and cost tens of thousands of dollars. In order to be prepared to send the first round of notices to all owners and interested parties in January, the bureau would be forced to undertake the title searches much earlier in the process, when fewer individuals have satisfied their delinquent claims. Also, there is no upset sale in the House Bill 1409 process to further reduce the number of properties going to judicial sale. With significantly more properties to notice, the costs of these searches will skyrocket – assuming enough title searchers can be found to undertake this volume of work. In addition, note that the sheriffs will also be responsible for posting these properties in a

very small window, which may simply be impractical. Note for instance that now, even in a smaller county, it can take as much as five weeks for the sheriff's office to do personalized service and posting, while in larger counties it can take at least 75 days to post fewer properties than anticipated under this bill.

We suggest that the initial notice may need to go only to owners; while it makes sense for interested parties to be included in the service of the rule, given the number of title searches needed to determine those interested parties, there should be a mechanism in place to provide an initial notice to owners and give them a chance to come forward to pay their delinquent taxes first. This would be consistent with existing practice, where notice for an upset sale, which does not affect other interests in the property, is required to go only to owners. It is only after the upset sale, when the number of remaining delinquent properties becomes much smaller, that the title search and service of the rule to all interested parties is required.

At the same time, this initial notice would likely need to be moved to an earlier point in the process, and there may need to be further discussion on encouraging property owners to either satisfy their delinquent tax claims or enter a hardship payment plan in a timely fashion, prior to the commencement of judicial action. Most bureaus will tell you stories of long lines at their offices the day before an upset sale as individuals rush at the last minute to redeem their property from the sale, but a single notice may not be as compelling to bring delinquent taxpayers in to make arrangements for the payment of their tax claims. We also need to allow enough time prior to the commencement of judicial action for delinquent taxpayers to make payment arrangements, which will not only benefit the taxpayer to secure some type of payment plan, but also reduce the number of properties that need to be taken to sale. Ultimately, the goal should be to assist the bureaus in getting to a similar proportion of properties they now take to judicial sale, and to do so prior to the point at which the judicial searches must be conducted, so that title searches need only be done on those properties they can be reasonably sure will not be otherwise redeemed prior to the sale.

Along the same lines, the process outlined in the proposed amendment puts delinquent taxpayers at a disadvantage compared to the current process. Under current law, a property can be redeemed and removed from sale at any point prior to the actual sale (generally close of business the day before the sale), and as just indicated, these last days, weeks and months prior to the sale are usually when the bulk of the delinquent tax collections come into the bureau. However, under the draft amendment to House Bill 1409, all rights of redemption are extinguished at the entry of an order for sale – which occurs anywhere from 45 to 90 days prior to the sale itself. Even if a property owner comes in during that intervening time between the entry of order for sale and the sale itself, the bureau would not be able to accept payment and cannot stop the property from going to sale. The right of redemption is cut off well before the actual sale, a detriment to the taxpayer and to the taxing district which might otherwise have been able to collect on the taxes owed to it. The timing appears to also need some adjustment with regard to hardship payment plans, as the delinquent taxpayer is given 60 days from the date of mailing of the original notice, but only 30 days to enroll in a hardship protection plan.

The ability to assign delinquent taxes to third party collectors, although not included in versions of this legislation from prior sessions, has been included in House Bill 1409 and the draft amendment. While the county has control over assignment in this bill (as opposed to the taxing district as under current law), and thus theoretically a better ability to manage record keeping, costs imposed by third party collectors and

distribution of collections, we remain concerned that assignment has a role in this process at all. As noted earlier, the introduction of assignment in 2004 amendments to RETSL has resulted in a fragmented system in those counties where taxing districts use third party collectors. It also seems to be impractical to restrict the bureau from judicial sale action once a claim has been assigned, recalling the earlier example in which hundreds of assigned properties were never taken to sale and chronic delinquencies and abandoned properties became a problem. The county could, of course, simply terminate the assignment, or put a time limit on the assignment as a condition of the contract (after which it would be able to take the property to sale), but any assignment language which may end up in the final version of House Bill 1409 must be carefully reviewed to assure adequate protections for the bureau in managing this process. In addition, we would caution that consideration be given as to whether assignees should be given the authority to take a property to sale, again recalling the earlier example where the proceeds of a sheriff sale instituted by an assignee were not required to be distributed to other taxing districts with claims, but instead those claims were divested.

I would like to close with some thoughts regarding the transition process and the need to provide continuity from the current system to any new system. First, we would recommend that the new process be effective at the end of a specific tax year, instead of the middle of a tax year. Rather than trying to figure out where previously returned claims should be transitioned into a new process, this would allow counties to continue to collect on those claims using the existing process, and all those returned in the effective tax year would then be subject to the new process. Also, we have noted several times in discussions on this legislation that House Bill 1409 carries over some of the language from RETSL, but not all, and repeals only Article XI of RETSL (related to tax sales) absolutely. All other laws and parts of laws would be repealed "insofar as inconsistent." We ask that the language in RETSL that has not otherwise been carried over be examined and, if intended to carry over into the new delinquent tax collection process, be specifically included in House Bill 1409. Otherwise, counties will end up being forced again into a situation of having to work between two statutes, which does not improve efficiency or achieve the overall goal of streamlining the delinquent tax collection and tax sale process.

Again, counties stand ready to work with the General Assembly to update the Real Estate Tax Sale Law in a way that encourages collection of delinquent taxes, provides appropriate assistance and protections to taxpayers, assures that when tax sales are needed they are administered in a fair and open way, and maintains the integrity and centralization of the public record. We would also recommend that a small work group of county tax claim bureau directors be brought together to provide appropriate assistance in in working through some of the timing and logistical issues we have outlined here. I would be happy to discuss these comments further and answer any questions you may have at your convenience.