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Texas Tax Code

Unique Provisions Shelter Property Owners

By Judon Fambrough

With a rise in real estate market values comes a corresponding rise in property taxes. People scheme and dream of ways to avoid paying taxes, but these efforts generally fail.

Texas landowners, however, might take advantage of the unique provisions in the Texas Tax Code–legally. The provisions may not lower the tax bill, but they do apprise landowners of their rights and alternatives.

First, some basic information. Property taxes create a personal obligation (liability) for the owner each January 1. Subsequent sale of the property does not remove the liability. If the property is residential and held by a trust qualifying for the homestead tax exemption, both the trust and trustor (the person who transferred the property to the trust) are jointly liable for the tax.

The assessors for each taxing unit mail tax bills to landowners by October 1 or soon thereafter. Each taxing unit may allow a discount for early payment. The discounts, if permitted, are 3 percent if paid in October, 2 percent in November and 1 percent in December. Different discounts are permitted if the tax bills are mailed after September 30. The taxes are delinquent if not paid by February 1.

Delinquent taxes incur a penalty of 6 percent the first month plus 1 percent for each additional month they remain unpaid until July 1. After this date, the taxes incur a 12 percent penalty regardless of the length of delinquency. In addition to the penalties, the delinquent taxes accrue 1 percent interest each month.

Waivers of penalties and interest are permitted in limited circumstances. For example, waivers were granted to eligible persons serving on active duty during the Persian Gulf War. The other circumstances entail mistakes caused by the taxing unit or appraisal district, such as mailing the tax bill to the wrong address. Generally, taxpayers must file a formal request for the waiver within six months of the delinquency.

In addition to penalties and interest, the taxing units are entitled to recover certain other costs and expenses in a suit to collect delinquent taxes:

- usual court costs, including service of process,
- costs for filing *lis pendens* against the property,
- expenses of the foreclosure sale,
- reasonable expenses incurred in determining the name, identity and location of necessary parties and also in procuring the legal description of the property, and
- reasonable attorney's fees, not to exceed 15 percent of the total amount of taxes, penalties and interest due.

All real property not subject to an exemption is appraised for tax purposes at its market value on January 1 of each year. Generally accepted appraisal techniques must be used. However, if the property is located in an area later declared a natural disaster by the governor, the taxing unit may authorize reappraisal of damaged property at the market value immediately following the disaster.

Restrict Use, Save Taxes

The tax code describes several special appraisal techniques for qualifying property. Open-space and agricultural use are the two most popular. A lesser known technique exists for property subject to deed restrictions. Here are the requirements.

An owner of at least five acres may restrict the use of the property to recreational, park or scenic purposes. To do so, the owner must file with the county clerk a written instrument in the form and manner of a deed. The term length, a minimum of ten years, must be stated in the filed document. **Note.** The phrase "recreational, park or scenic use" is defined in the tax code.

The owner then is entitled to have the property valued subject to the restriction if four conditions are met.

1. The owner devoted the land exclusively to the restricted use during the preceding year.
2. The owner files a formal application for the special valuation with the chief appraiser before May 1.
3. The owner intends to use the land in compliance with the deed restriction for the duration of the current year.
4. The owner does not generate a financial gain in excess of the reasonable allowances for salaries or other compensable services.

The ownership of an undivided surface interest and an undivided mineral interest is listed differently

on the tax rolls. Undivided surface interests are listed jointly while undivided mineral interests are listed separately. However, either can be listed the other way if a formal request is made to the appraisal office before May 1.

After the taxes become delinquent (February 1), the taxing unit may file a lawsuit to collect the taxes, penalties, interest and costs due. The lawsuit may seek to foreclose the tax lien on the property or to acquire a personal judgment against the owner, or both.

Special Treatment for Foreclosure Sales

The tax code affords special treatment to co-owners (owners of an undivided interest) facing a tax foreclosure sale. One or more of the owners may have the property partitioned as prescribed by law. The court apportions the taxes, penalties, interest and costs among the various owners according to their undivided interest. As part of the costs, the court allows reasonable attorney's fees and other expenses associated with the partitioning. An owner may be dismissed from the lawsuit by paying his or her apportioned share.

Taxing units contemplating the foreclosure of a tax lien must determine the priority of the lien over other existing liens on the property. The highest priority lien is satisfied first with the proceeds from the sale. All subordinate liens are eliminated. Here are the rules:

- If a federal tax lien exists on the property, federal law dictates priority. In the absence of federal law, the taxing unit's lien takes priority.
- If the property is the taxpayer's homestead, the tax lien prevails over any homestead interest.
- If property is subject to a creditor's lien, secured or unsecured, the tax lien takes priority. All creditors' claims are extinguished against the property by the tax sale.

A tax lien, however, is inferior to claims for any survivor's allowance, funeral expenses or expenses from the last illness. Similarly, the lien is inferior to any recorded restrictive covenant running with the land or any valid easement, as long as either was recorded before the inception of the tax lien on January 1.

In limited situations, another remedy is available to co-owners effective September 1, 1995. If one cotenant pays all the property taxes for any three of five years and is not reimbursed for at least half the amount, the cotenant may petition the district court to have the non-paying cotenant's interest sold.

However, other conditions must be satisfied:

- The co-owners—via another person's death—acquired the property: by inheritance; by will; by joint tenancy with right of survivorship; or by other types of survivorship agreements.
- The petitioner (the cotenant who paid the taxes) demanded reimbursement for the taxes paid on the other's behalf.
- The other cotenant reimbursed the petitioner less than half the amount owed.

Transferring the Tax Lien

A unique provision of the tax code permits the transfer of a tax lien from the collector of the taxing unit to a third party. To do so, the delinquent taxpayer must authorize another to pay the delinquent taxes, penalties and interest by filing a sworn document with the collector. The collector certifies the payment when received and transfers the tax lien to the third party (payor). The instrument transferring the lien must be recorded to be enforceable.

The payor is entitled to charge no more than 18 percent annually on the taxes, penalties, interest and recording fees paid on the property owner's behalf. If the property owner does not reimburse the payor within one year, unless the contract provides otherwise, the payor may foreclose on the tax lien. In this case, the payor may recover attorney's fees not to exceed 10 percent of the amount of the judgment.

The lien transfer vests existing lienholders with certain rights. Any pre-existing lienholder may purchase the tax lien within six months after the lien is transferred to the payor. Thereafter, the lienholder may foreclose on the tax lien in the same manner and time frame as the payor.

If the holder of the transferred lien forecloses, the tax code details exactly how the proceeds are distributed. First, the court costs are paid, followed by the judgment (with accrued interest) and attorney's fees. Second, the lienholders are paid in the order of their priority. And finally, any remaining proceeds go to the property owner.

Following the tax foreclosure sale, either the **first lienholder** or the **property owner** has one year to redeem the property. The redemption price is the lesser of the purchase price, costs and accrued interest on the judgment or 110 percent of purchase price. If the property owner redeems the property, existing liens not extinguished by the proceeds from the tax sale remain in effect.

Funds Kept Seven Years

If the taxing authorities foreclose rather than the transferee of a tax lien, the legal process remains unchanged. The procedure general creditors use to seize and sell a debtor's nonexempt property is followed. Generally, this entails the sheriff's conducting a public auction. However, the rights of the property owner and existing lienholders change in at least four significant ways when the taxing authorities foreclose.

First, upon the request of the property owner, only the amount of land necessary to cover the delinquent taxes, penalties, interest and costs is sold. The sheriff (party conducting the sale) divides the land accordingly for the sale.

Second, the highest bidder at the foreclosure sale receives title to the property subject to two exceptions. The tax code prohibits the sale to an owner of the property for less than its market value or the aggregate amount of the judgment against the land, whichever is less. Consequently, if the highest bid is from the owner but less than the specified amount, the highest bidder will not get the property.

The other exception is similar. If the highest bid is insufficient to cover the adjudged amount due (taxes, penalties, interest and costs), the sheriff bids the property for its market value or the adjudged amount due, whichever is less, on behalf of a taxing unit holding the lien. The taxing unit then receives title and may resell the property if not redeemed.

Third, the proceeds from the sale are handled differently. First, the costs of the sale are paid, followed by the tax liens held by the various taxing units. If the amount is insufficient to retire the liens, all taxing units share proportionately. If the amount is sufficient to retire the tax liens, however, the sheriff gives the excess to the clerk of the court ordering the sale.

The court clerk must keep the funds for seven years. During this time, any person having a claim may petition the court. If the claim is found valid, the court will order disbursement. No interest or costs are recoverable. The tax code mentions no priority among the claimants. Presumably lienholders would be paid before the property owner. If no petition is filed within seven years, the funds go to the taxing units.

Fourth, only the prior owner may redeem the property after the sale. Lienholders have no right of redemption. The redemptive period lasts from six months to two years, depending on the type of property.

New Provisions Effective September 1, 1997

The 75th Texas Legislature added several unique provisions to the tax code. The following is a synopsis of a few.

Because of the problem associated with hazardous wastes, the tax code was amended. If a taxing unit purchases property at a tax sale, it has the authority to clean up the property and recoup the costs in a subsequent sale (Section 34.06[c]). Before, this procedure was not allowed.

Another procedural correction regarded the redemption of property by an owner before the tax sale. Under prior law, no rules authorized the taxing authorities to grant the owner a release of the tax lien. This has now been corrected by amending the tax code (Section 33.53[b]).

The time allowed for challenging the irregularities of a tax sale has been altered. Under the prior law, the delinquent taxpayer who lost the property had three years to question the sale. Now the delinquent taxpayer has two years from the date the sheriff's deed was recorded to file suit for residential or agricultural land. One year is allowed for all other property, such as commercial.

Finally, Section 33.54 (b) was amended allowing the public sale of property at **any price**. Previously, the property could not be sold for less than the market value specified in the foreclosure judgment or the total amount of the judgments against the property, whichever was less. The limitations still apply, however, to property resold **at private sales** by taxing units. ⊞

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