

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE BILL 1451
House Committee Substitute Favorable 6/27/06

Short Title: Delinquent Property Tax/Inventory/Study.

(Public)

Sponsors:

Referred to:

May 17, 2006

A BILL TO BE ENTITLED

AN ACT TO ENFORCE COLLECTION OF PROPERTY TAXES ON REAL PROPERTY AGAINST THE RECORD OWNER AS OF THE DATE THE TAXES BECOME DELINQUENT, TO CODIFY THE PRORATION OF TAXES ON REAL PROPERTY, TO REQUIRE A TAX COLLECTOR TO TAKE REASONABLE ADDITIONAL STEPS TO NOTIFY A PROPERTY OWNER OF A TAX SALE UNLESS THE TAX COLLECTOR HAS AFFIRMATIVE KNOWLEDGE THAT THE MAILED NOTICE REACHED THE RECIPIENT, TO AMEND THE DEFINITION OF INVENTORIES TO INCLUDE DISPLAY MODULAR HOMES, AND TO STUDY THE VALUATION OF PROPERTY AT ITS PRESENT-USE VALUE FOR PROPERTY TAX PURPOSES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-273(17) reads as rewritten:

"§ 105-273. Definitions.

When used in this Subchapter (unless the context requires a different meaning):

...

(17) "Taxpayer" means any person whose property is subject to ad valorem property taxation by any county or municipality and any person who, under the terms of this Subchapter, has a duty to list property for taxation. For purposes of collecting delinquent ad valorem taxes assessed on real property under G.S. 105-366 through G.S. 105-375, "taxpayer" means the owner of record on the date the taxes become delinquent and any subsequent owner of record of the real property if conveyed after that date.

SECTION 2. G.S. 105-369 reads as rewritten:

"§ 105-369. Advertisement of tax liens on real property for failure to pay taxes.

(a) Report of Unpaid Taxes That Are Liens on Real Property. – In February of each year, the tax collector must report to the governing body the total amount of unpaid taxes for the current fiscal year that are liens on real property. A county tax collector's

1 report is due the first Monday in February, and a municipal tax collector's report is due
2 the second Monday in February. Upon receipt of the report, the governing body must
3 order the tax collector to advertise the tax liens. For purposes of this section, district
4 taxes collected by county tax collectors shall be regarded as county taxes and district
5 taxes collected by municipal tax collectors shall be regarded as municipal taxes.

6 (b) Repealed by Session Laws 1983 (Regular Session, 1984), c. 1013.

7 (b1) Notice to Owner. – After the governing body orders the tax collector to
8 advertise the tax liens, the tax collector must send a notice to the ~~listing owner and to~~
9 ~~the~~ record owner of each affected parcel of property, as determined as of ~~December 31~~
10 ~~of the fiscal year for which the taxes are due.~~the date the taxes became delinquent. The
11 notice must be sent to ~~each~~the owner's last known address by first-class mail at least 30
12 days before the date the advertisement is to be published. The notice must state the
13 principal amount of unpaid taxes that are a lien on the parcel to be advertised and
14 inform the owner that the ~~names~~name of the ~~listing owner and~~ the record owner as of
15 the date the taxes became delinquent will appear in a newspaper advertisement of
16 delinquent taxes if the taxes are not paid before the publication date. Failure to mail the
17 notice required by this section to the correct ~~listing owner or~~ record owner does not
18 affect the validity of the tax lien or of any foreclosure action.

19 (c) Time and Contents of Advertisement. – A tax collector's failure to comply
20 with this subsection does not affect the validity of the taxes or tax liens. The county tax
21 collector shall advertise county tax liens by posting a notice of the liens at the county
22 courthouse and by publishing each lien at least one time in one or more newspapers
23 having general circulation in the taxing unit. The municipal tax collector shall advertise
24 municipal tax liens by posting a notice of the liens at the city or town hall and by
25 publishing each lien at least one time in one or more newspapers having general
26 circulation in the taxing unit. Advertisements of tax liens shall be made during the
27 period March 1 through June 30. The costs of newspaper advertising shall be paid by
28 the taxing unit. If the taxes of two or more taxing units are collected by the same tax
29 collector, the tax liens of each unit shall be advertised separately unless, under the
30 provisions of a special act or contractual agreement between the taxing units, joint
31 advertisement is permitted.

32 The posted notice and newspaper advertisement shall set forth the following
33 information:

34 (1) ~~In the case of property that the listing owner has not transferred after~~
35 ~~January 1 preceding the fiscal year for which the tax liens are~~
36 ~~advertised, the name of each person to whom is listed real property on~~
37 ~~which the taxing unit has a lien for unpaid taxes, in alphabetical order.~~

38 (1a) ~~In the case of property that the listing owner has transferred after~~
39 ~~January 1 preceding the fiscal year for which the tax liens are~~
40 ~~advertised, the name of the record owner as of December 31 of each~~
41 ~~parcel on which the taxing unit has a lien for unpaid taxes, in~~
42 ~~alphabetical order, followed by a notation that the property was~~
43 ~~transferred to the record owner and a notation of the name of the~~
44 ~~listing owner.~~The name of the record owner as of the date the taxes

1 became delinquent for each parcel on which the taxing unit has a lien
2 for unpaid taxes, in alphabetical order.

3 (1b) After the information required by subdivision ~~(1)~~ or (1a) of this
4 subsection for each parcel, a brief description of each parcel of land to
5 which a lien has attached and a statement of the principal amount of
6 the taxes constituting a lien against the parcel.

7 (2) A statement that the amounts advertised will be increased by interest
8 and costs and that the omission of interest and costs from the amounts
9 advertised will not constitute waiver of the taxing unit's claim for those
10 items.

11 (3) In the event the list of tax liens has been divided for purposes of
12 advertisement in more than one newspaper, a statement of the names
13 of all newspapers in which advertisements will appear and the dates on
14 which they will be published.

15 (4) A statement that the taxing unit may foreclose the tax liens and sell the
16 real property subject to the liens in satisfaction of its claim for taxes.

17 (d) Costs. – Each parcel of real property advertised pursuant to this section shall
18 be assessed an advertising fee to cover the actual cost of the advertisement. Actual
19 advertising costs per parcel shall be determined by the tax collector on any reasonable
20 basis. Advertising costs assessed pursuant to this subsection are taxes.

21 (e) Payments during Advertising Period. – At any time during the advertisement
22 period, any parcel may be withdrawn from the list by payment of the taxes plus interest
23 that has accrued to the time of payment and a proportionate part of the advertising fee to
24 be determined by the tax collector. Thereafter, the tax collector shall delete that parcel
25 from any subsequent advertisement, but the tax collector is not liable for failure to make
26 the deletion.

27 (f) Listing and Advertising in Wrong Name. – No tax lien is void because the
28 real property to which the lien attached was listed or advertised in the name of a person
29 other than the person in whose name the property should have been listed for taxation if
30 the property was in other respects correctly described on the abstract or in the
31 advertisement.

32 (g) Wrongful Advertisement. – Any tax collector or deputy tax collector who
33 willfully advertises any tax lien knowing that the property is not subject to taxation or
34 that the taxes advertised have been paid is guilty of a Class 3 misdemeanor, and shall be
35 required to pay the injured party all damages sustained in consequence."

36 **SECTION 3.** G.S. 105-374(c) reads as rewritten:

37 "(c) Parties; Summonses. – The listing taxpayer owner of record as of the date the
38 taxes became delinquent and spouse (if any), ~~the current owner,~~ any subsequent owner,
39 all other taxing units having tax liens, all other lienholders of record, and all persons
40 who would be entitled to be made parties to a court action (in which no deficiency
41 judgment is sought) to foreclose a mortgage on such property, shall be made parties and
42 served with summonses in the manner provided by G.S. 1A-1, Rule 4.

43 The fact that the listing taxpayer owner of record as of the date the taxes became
44 delinquent, any subsequent owner, or any other defendant is a minor, is incompetent, or

1 is under any other disability shall not prevent or delay the tax lien sale or the foreclosure
2 of the tax lien; and all such persons shall be made parties and served with summons in
3 the same manner as in other civil actions.

4 Persons who have disappeared or who cannot be located and persons whose names
5 and whereabouts are unknown, and all possible heirs or assignees of such persons, may
6 be served by publication; and such persons, their heirs, and assignees may be designated
7 by general description or by fictitious names in such an action."

8 **SECTION 4.** G.S. 105-375(b) reads as rewritten:

9 "(b) Docketing Certificate of Taxes as Judgment. – In lieu of following the
10 procedure set forth in G.S. 105-374, the governing body of any taxing unit may direct
11 the tax collector to file with the clerk of superior court, no earlier than 30 days after the
12 tax liens were advertised, a certificate showing the following: the name of the
13 taxpayer~~listing real property on which the taxes are a lien,~~ as defined in
14 G.S. 105-273(17), for each parcel on which the taxing unit has a lien for unpaid taxes,
15 together with the amount of taxes, penalties, interest, and costs that are a lien thereon;
16 the year or years for which the taxes are due; and a description of the property sufficient
17 to permit its identification by parol testimony. The fees for docketing and indexing the
18 certificate shall be payable to the clerk of superior court at the time the taxes are
19 collected or the property is sold."

20 **SECTION 5.** G.S. 105-375(c) reads as rewritten:

21 "(c) Notice ~~Listing to~~ Taxpayer and Others. –

22 (1) Notice required. – The tax collector filing the certificate provided for
23 in subsection ~~(b), above,~~ (b) of this section, shall, at least 30 days prior
24 to docketing the judgment, send notice of the tax lien foreclosure a
25 registered or certified letter, return receipt requested, to the ~~listing~~
26 ~~taxpayer at his~~taxpayer, as defined in G.S. 105-273(17), at the
27 taxpayer's last known address, and to all lienholders of record who
28 have a lien against the ~~listing taxpayer or against any subsequent~~
29 ~~owner of the property~~ (including any liens referred to in the
30 conveyance of the property to the taxpayer). ~~listing taxpayer or to the~~
31 ~~subsequent owner of the property), stating that the judgment will be~~
32 ~~docketed and the execution will be issued thereon in the manner~~
33 ~~provided by law. A notice stating that the judgment will be docketed~~
34 ~~and that execution will be issued thereon shall also be mailed by~~
35 ~~certified or registered mail, return receipt requested, to the current~~
36 ~~owner of the property (if different from the listing owner) if: (i) a deed~~
37 ~~or other instrument transferring title to and containing the name of the~~
38 ~~current owner was recorded in the office of the register of deeds or~~
39 ~~filed or docketed in the office of the clerk of superior court after~~
40 ~~January 1 of the first year in which the property was listed in the name~~
41 ~~of the listing owner, and (ii) the tax collector can obtain the current~~
42 ~~owner's mailing address through the exercise of due diligence.~~

43 (2) Contents of notice. – All notice required by this subsection shall state
44 that a judgment will be docketed and the proposed date of the

1 docketing, that execution will be issued as provided by law, a brief
2 description of the real property affected, and that the lien may be
3 satisfied prior to judgment being entered.

4 (3) Service of notice. – The notice required by this subsection shall be sent
5 to the taxpayer by registered or certified mail, return receipt requested.

6 (4) Additional efforts may be required. – If within 10 days following the
7 mailing of said ~~letters of the~~ notice, a return receipt has not been
8 received by the tax collector indicating receipt of the ~~letter, notice,~~
9 then the tax collector shall ~~have~~ do both of the following:

10 a. Make reasonable efforts to locate and notify the taxpayer and
11 all lienholders of record prior to the docketing of the judgment
12 and the issuance of the execution. Reasonable efforts may
13 include posting the notice in a conspicuous place on the
14 property, or, if the property has an address to which mail may
15 be delivered, mailing the notice by first-class mail to the
16 attention of the occupant.

17 b. Have a notice published in a newspaper of general circulation in
18 said ~~the~~ county once a week for two consecutive weeks directed
19 to, and naming, all unnotified lienholders and the listing
20 taxpayer that a judgment will be docketed against the listing
21 taxpayer. ~~The notice shall contain the proposed date of such~~
22 ~~docketing, that execution will issue thereon as provided by law,~~
23 ~~a brief description of the real property affected, and notice that~~
24 ~~the lien may be paid off prior to judgment being entered.~~

25 (5) Costs of notice added to lien. – All costs of mailing and publication,
26 plus a charge of fifty dollars (\$50.00) to defray administrative costs,
27 shall be added to the amount of taxes that are a lien on the real
28 property and shall be paid by the taxpayer to the taxing unit at the time
29 the taxes are collected or the property is sold."

30 **SECTION 6.** G.S. 105-375(i) reads as rewritten:

31 "(i) Issuance of Execution. – At any time after three months and before two years
32 from the indexing of the judgment as provided in subsection (b), above, execution shall
33 be issued at the request of the tax collector in the same manner as executions are issued
34 upon other judgments of the superior court, and the real property shall be sold by the
35 sheriff in the same manner as other real property is sold under execution with the
36 following exceptions:

37 (1) No debtor's exemption shall be allowed.

38 (2) In lieu of personal service of notice on the ~~owner of the property,~~
39 ~~taxpayer, the sheriff shall send notice by registered or certified mail~~
40 ~~mail, return receipt requested, notice shall be mailed to the listing~~
41 ~~owner taxpayer at the listing owner's taxpayer's last known address at~~
42 ~~least 30 days prior to the day fixed for the sale. The notice must also~~
43 ~~be mailed to the current owner by registered or certified mail if notice~~
44 ~~was required to be mailed to the current owner pursuant to subsection~~

~~(e) of this section.~~ If within 10 days following the mailing of the notice, a return receipt has not been received by the sheriff indicating receipt of the notice, then the sheriff shall make additional efforts to locate and notify the taxpayer and all lienholders of record of the sale under execution in accordance with subdivision (4) of subsection (c) of this section.

(3) The sheriff shall add to the amount of the judgment as costs of the sale any postage expenses incurred by the tax collector and the sheriff in foreclosing under this section.

(4) In any advertisement or posted notice of sale under execution, the sheriff may (and at the request of the governing body shall) combine the advertisements or notices for properties to be sold under executions against the properties of different taxpayers in favor of the same taxing unit or group of units; however, the property included in each judgment shall be separately described and the name of the ~~listing~~ taxpayer specified in connection with each.

The purchaser at the execution sale shall acquire title to the property in fee simple free and clear of all claims, rights, interests, and liens except the liens of other taxes or special assessments not paid from the purchase price and not included in the judgment."

SECTION 7. Chapter 39 of the General Statutes is amended by adding the following new Article to read:

"Article 10.

"Real Property Tax Proration.

"§ 39-60. Property tax proration on sale of real property.

Unless otherwise provided by contract, property taxes on the real property being sold shall be prorated between the seller and buyer of the real property on a calendar-year basis."

SECTION 8. G.S. 105-273(8a) reads as rewritten:

"(8a) "Inventories" means (i) goods held for sale in the regular course of business by manufacturers, retail and wholesale merchants, and contractors, and (ii) goods held by contractors to be furnished in the course of building, installing, repairing, or improving real property. As to manufacturers, the term includes raw materials, goods in process, and finished goods, as well as other materials or supplies that are consumed in manufacturing or processing, or that accompany and become a part of the sale of the property being sold. The term also includes a modular home as defined in G.S. 105-164.3(21b) that is used exclusively as a display model and held for eventual sale at the retail merchant's place of business. The term also includes crops, livestock, poultry, feed used in the production of livestock and poultry, and other agricultural or horticultural products held for sale, whether in process or ready for sale. The term does not include fuel used in manufacturing or processing, nor does it include materials or supplies not used directly in manufacturing or processing. As to retail and

1 wholesale merchants and contractors, the term includes, in addition to
2 articles held for sale, packaging materials that accompany and become
3 a part of the sale of the property being sold."

4 **SECTION 9.** The Revenue Laws Study Committee shall study and
5 recommend any changes to the special class of property taxed on the basis of the value
6 of the property at its present use. The study shall include an evaluation of the
7 following:

8 (1) Expanding the present-use value system to include wildlife land and
9 other conservation land.

10 (2) Adding more specific land resource management criteria to the sound
11 management programs required for lands enrolled in the present-use
12 value system.

13 The Committee shall make a report of its findings and recommendations to
14 the 2007 General Assembly.

15 **SECTION 10.** Section 7 of this act becomes effective for contracts entered
16 into on or after October 1, 2006. Section 9 of this act is effective when it becomes law.
17 The remainder of this act is effective for taxes imposed for taxable years beginning on
18 or after July 1, 2006.