

SENATE BILL 2128

By Johnson

AN ACT to amend Tennessee Code Annotated, Title 30, Chapter 2 and Title 67, Chapter 5, relative to delinquent property taxes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 30-2-310, is amended by deleting from the second sentence of subsection (b) the word "state".

SECTION 2. Tennessee Code Annotated, Section 30-2-317(a)(3), is amended by adding the language "and including city and county governments" after the language "pursuant to § 71-5-116".

SECTION 3. Tennessee Code Annotated, Section 67-5-513, is amended by deleting the existing section and substituting instead the following:

67-5-513.

(a) If any taxpayer operating for the purpose of making a profit as a business or profession, partnership, joint venture, corporation, limited liability company, manufacturer or other legal entity having personal property, tangible or intangible, assessable by the county assessor or other authority, sells the business, relocates it outside the jurisdiction or terminates it, the taxpayer shall notify the assessor and trustee and make payment within fifteen (15) days after the date of selling, relocating or terminating the business, of any taxes, interest and penalties due and owing and the taxes of the current year in accordance with the assessment records, which shall be based on the last assessment and rate fixed, according to law. The assessor shall certify the assessment to the appropriate collecting officials and the collecting official shall then send a notice of taxes due based on the certification from the assessor and shall accept payment of the

amount determined to be owing. Additional taxes due as the result of the certification assessment shall not be deemed delinquent until thirty (30) days after the date notice of the assessment is sent to the taxpayer. Upon the expiration of thirty (30) days the collecting official may pursue collection of such delinquent personal property taxes as provided in § 67-5-2003.

(b)

(1) The successor, successors or assigns shall be required to withhold a sufficient amount of the purchase money to cover the amount on the assessment records for the current year determined as set forth in subsection (a), and any amount of such taxes, interest and penalties due and unpaid, until such former owner produces a certificate from the assessor stating that such former owner does or does not appear on the assessor's assessment records for the current year and a receipt from the trustee and municipal collector showing that all taxes, interest and penalties have been paid, or a certificate stating that no taxes, interest or penalties are due.

(2) If the purchaser of a business fails to withhold the purchase money as provided in subdivision (b)(1), the purchaser shall not be an innocent purchaser and shall be personally liable, together with the prior owner, for the payment of all personalty taxes, interest and penalties accruing and unpaid on account of the operation of the business by any former owner, owners or assigns, and for any assessment for the current year based on the last made assessment and the tax rate fixed according to law, and the trustee shall accept tender of the amount determined to be owing.

SECTION 4. Tennessee Code Annotated, Section 67-5-2010, is amended by adding the following subsection (d) at the end of the section:

(d) For purposes of any claim in a bankruptcy proceeding pertaining to delinquent property taxes, the assessment of penalties determined pursuant to this section constitutes the assessment of interest.

SECTION 5. Tennessee Code Annotated, Section 67-5-2103, is amended by designating the present language as subsection (a) and by adding the following as new subsections thereto:

(b) All interested persons are made parties to the proceedings by virtue of the seizure of the parcel occurring upon the filing of a complaint for the purpose of enforcement of the first lien provided for in § 67-5-2101.

(c) The filing of a complaint for the purpose of enforcement of the first lien provided for in § 67-5-2101, shall create a lien lis pendens as to each parcel which is included in the proceeding, during the pendency of the proceeding, affecting all subsequent owners, without the recording of any copy or abstract thereof in the office of the register of deeds.

SECTION 6. Tennessee Code Annotated, Section 67-5-2405, is amended by adding the following new subsections:

(e)

(1) If a plaintiff has reasonable cause to believe that an interested person owning an interest in a parcel is a minor or a person who is incompetent and that the person has no spouse, parent, child, guardian or best friend suitable to represent the person's interest, nor any appointed representative, the plaintiff shall make that fact known to the court. The court shall determine whether the interests of justice require the appointment of a guardian ad litem or attorney ad litem to represent the interests of the person. Otherwise, notice to such spouse, parent, child, guardian, best friend, or appointed representative, shall constitute notice to the interested person.

(2) It is not necessary for unborn, unfound or unknown owners to have a guardian ad litem, attorney ad litem, or other representative, appointed to

represent their interests in the proceedings except as provided in subdivision (e)(1).

SECTION 7. Tennessee Code Annotated, Section 67-5-2411, is amended by deleting the existing section and substituting instead the following:

67-5-2411.

(a) The proceedings shall be automatically dismissed without the entry of any order of a court, as to a defendant's property, upon the payment of the amount of taxes due from the defendant, together with interest and penalty, and such court costs as may have accrued against the defendant in consequence of the filing of the proceedings. In the event the payment is made by a method such as a check which fails to clear, counterfeit money or other method which results in a failure of the payment, the payment and any receipt issued therefor, shall be void and the proceedings shall be automatically reinstated without further order of a court.

(b) The securing of an official tax receipt by use of a method of payment which results in a failure of payment, shall be prima facie evidence of an intent to defraud if a third party is damaged or changes the party's position to the party's detriment in reliance upon the issued tax receipt.

(c) The securing of an official tax receipt by use of a method of payment which results in a failure of payment shall constitute criminal contempt of the court in which is pending a proceeding to collect delinquent property taxes owing against the parcel.

SECTION 8. Tennessee Code Annotated, Section 67-5-2415, is amended by deleting the existing section and by substituting instead the following:

67-5-2415.

(a) The court shall have jurisdiction to award personal judgment against an owner upon the claim for the debt upon determining that proper process has been

served upon such owner. The court shall have jurisdiction to award a judgment enforcing the lien by a sale of the parcel upon determining that any the following actions have occurred as to each owner:

(1) That proper process has been served upon an owner;

(2) That the owner has actual notice of the proceedings by mail or otherwise; or

(3) That constructive notice by publication pursuant to §§ 21-1-203 and 21-1-204, except as modified in this section, utilizing a description of the parcel in accord with § 67-5-2502(a)(1), has been given to unborn, unfound and unknown owners and that the plaintiff has made or will make a diligent effort prior to the confirmation of the sale of the parcel to give actual notice of the proceedings to persons owning an interest in the parcel, as identified by the searches described in § 67-5-2502(c)(2).

(b) Notice shall also be sufficient if received by an owner in time to afford the owner a reasonable period to prevent the loss of owner's interest in the parcel. Such loss shall be deemed to occur upon the expiration or termination of the redemption period established by part 27 of this chapter.

(c) Notice of the pendency of the proceedings as to a parcel constitutes notice of the pending sale of the parcel and vice versa.

(d) If process is to be served upon a defendant, the defendant does not have to receive a copy of the complaint or exhibits. The plaintiff may in lieu thereof furnish to the defendant a notice identifying the proceedings sufficiently for the defendant to determine the parcel which is subject to the delinquent taxes for which the defendant is being sued.

(e) A defendant may file a pleading alleging specific facts establishing any of the following defenses:

- (1) That the parcel is not subject to sale for the taxes;
- (2) That the taxes have been paid; or
- (3) That there has been substantial noncompliance with mandatory statutory provisions relating to the proceedings.

(f) Process may be served either by an authorized process server or forwarded by certified or registered mail, return receipt requested, or by any alternative delivery service as authorized by Section 7503 of the Internal Revenue Code, codified in 26 U.S.C. § 7502.

(g) The return of the receipt signed by the defendant, spouse, or other person deemed appropriate to receive summons or notice as provided for in the Rules of Civil Procedure, or its return marked “refused”, “unclaimed”, or other similar notation, as evidenced by appropriate notation of such fact by the postal authorities, and filed as a part of the record by the clerk shall be evidence of actual notice.

(h) Prior to confirming the sale of a parcel, the court shall determine that a diligent effort has been made to give actual notice of the proceedings to all interested persons, as identified by the searches described in § 67-5-2502(c)(2).

SECTION 9. Tennessee Code Annotated, Section 67-5-2502(a)(1), is amended by inserting after the language “a complete legal description of the property” the language “or the official property number as provided by § 67-5-806”; and is further amended by inserting after the language “by correct reference to a deed book and page” in the last sentence the language “or the official property number as provided by § 67-5-806.”

SECTION 10. Tennessee Code Annotated, Section 67-5-2502, is amended by deleting subsection (c) and inserting the following:

(c)

(1) For the purposes of this chapter, unless the context requires otherwise:

(A) “Diligent effort to give actual notice of the proceedings” means a reasonable effort to give notice which is reasonably calculated, under all the circumstances and conditions, to apprise interested persons of the pendency of the proceedings in time to afford them an opportunity to prevent the loss of their interest in the parcel. Such effort shall be such as one desirous of actually informing the persons might reasonably adopt to accomplish it. Such effort does not, however, require that an interested person receive actual notice. Nor does it require the plaintiff to search records or sources of information in addition to that information available in the specific offices listed in subdivision (c)(2);

(B) “Interested person”, “person owning an interest in a parcel” and “owner” means a person, including any governmental entity, that owns an interest in a parcel and includes a person, including any governmental entity, that holds a lien against a parcel or is the assignee of a holder of such a lien. However, a person named as a trustee under a deed of trust, contract lien or security instrument, is not included in such definition unless the person has a separate interest in the parcel;

(C) “Parcel” means a tract or item of real or personal property which is the subject of a judicial proceeding to obtain a personal judgment for the taxes owing or to enforce the lien securing the payment of delinquent property taxes by a sale of the tract or item; and

(D) “Proceeding” and “proceedings” means a judicial proceeding filed by a governmental entity for the purpose of collecting delinquent

property taxes owing the entity or including the enforcement of the first lien securing such taxes. The court shall have jurisdiction to determine all issues arising in the proceedings including issues arising before and after the confirmation of the sale of a parcel, including redemption, disposition of excess proceeds and all issues arising pursuant to § 67-5-2507.

(2) The delinquent tax attorney shall make a reasonable search of the public records in the offices of the assessor of property, trustee, the register of deeds and the local office where wills are recorded, seeking to identify and locate all persons owning an interest in a parcel. The court shall set a reasonable attorneys fee for the services required by this subsection (c) which shall become an additional expense of the proceedings for the purposes of § 67-5-2410(d) and shall be secured by the first lien in favor of the tax entity as costs accruing on the taxes pursuant to § 67-5-2101(a).

(3) The delinquent tax attorney shall make a diligent effort to give actual notice of the proceedings to all interested persons, as identified by the searches described in subdivision (c)(2).

SECTION 11. Tennessee Code Annotated, Section 67-5-2504(b), is amended by adding after the language “A tax deed of conveyance” the language “or an order confirming the sale”; and is further amended by adding after the language “paid before the sale”, the following language: “or that there was substantial noncompliance with mandatory statutory provisions relating to the proceedings in which the parcel was sold;”; and is further amended by adding the following sentence at the end of the subsection:

An action seeking to invalidate any tax title to a parcel shall allege specific facts establishing the grounds set out in herein and proof of compliance with subsection (c) prior to the filing of the complaint.

SECTION 12. Tennessee Code Annotated, Section 67-5-2505, is amended by deleting such section in its entirety.

SECTION 13. Tennessee Code Annotated, Section 67-5-2512, is amended by deleting such section in its entirety.

SECTION 14. Tennessee Code Annotated, Section 67-5-2513, is amended by deleting such section in its entirety.

SECTION 15. Tennessee Code Annotated, Section 67-5-2514, is amended by deleting such section in its entirety.

SECTION 16. Tennessee Code Annotated, Section 67-5-2515, is amended by deleting the language “a court decree” and substituting instead the language “an order of confirmation of sale”.

SECTION 17. Tennessee Code Annotated, Title 67, Chapter 5, Part 27, is amended by deleting sections 67-5-2701 through 67-5-2706 and substituting instead the following new section:

67-5-2701.

(a) “A person entitled to redeem a parcel” means all interested persons as defined in this chapter 5 as of the date of the sale and the date the motion to redeem is filed. Upon entry of an order confirming a sale of a parcel, a right to redeem shall vest in all interested persons. The right to redeem must be exercised within one (1) year from the entry of the order confirming the sale.

(b) In order to redeem a parcel, the person entitled to redeem shall file a motion to such effect in the proceedings in which the parcel was sold. The motion shall describe the parcel, the date of the sale of the parcel, the date of the entry of the order confirming the sale and shall contain specific allegations establishing the right of the person to redeem the parcel. Prior to the filing of the motion to redeem, the movant shall

pay to the clerk of the court an amount equal to the total amount of delinquent taxes, penalty, interest, court costs, and interest on the entire purchase price paid by the purchaser of the parcel. The interest shall be at the rate of one percent (1%) per month, levied beginning on the date of sale and thereafter on the first day of each month and continuing until thirty (30) days after the filing of the motion to redeem. If the entire amount owing is not timely paid to the clerk or if the motion to redeem is not timely filed, the redemption shall fail.

(c) Upon the filing of the motion to redeem and the payment of the required amount, the clerk shall within ten (10) days send a notice of the filing of the redemption motion to the purchaser and all persons entitled to redeem the parcel. The notice of redemption shall state the amount paid at the time of the filing of the motion and refer the persons to the provisions of this section.

(d) The purchaser may within thirty (30) days after the mailing of the notice of redemption, file a response seeking additional funds to be paid by the proposed redeemer to compensate the purchaser for amounts expended by the purchaser for the purposes set out in subsection (e). The response shall specifically set out the basis for each category of additional funds claimed. The response may also allege that the motion to redeem was not properly or timely filed. If no response is timely filed, the redemption shall be complete and the court shall cause an order to be entered declaring the same.

(e) Additional sums to be paid by the proposed redeemer at the demand of the purchaser, shall include the following:

(1) Additional ad valorem taxes, penalty, interest and court costs paid by the purchaser secured by a lien against the parcel;

(2) Reasonable payments made by the purchaser for insurance on the parcel and any improvements thereon;

(3) Reasonable cost paid by the purchaser to avoid permissive waste of the parcel;

(4) Reasonable expenses paid by the purchaser as a result of a judicial or administrative order requiring the purchaser to immediately bring the property into compliance with applicable building code or zoning regulations;

(5) Reasonable payments by the purchaser for homeowner's association dues or obligations resulting from covenants running with the land which are secured by a lien against the parcel; and

(6) Additional interest at the rate set out in subsection (b). However, such interest shall be allowed only if the court determines that the purchaser has not delayed consideration of the motion to redeem and that any response filed by the purchaser for additional funds was based upon a reasonable expectation that the expenditures of the purchaser were reimbursable pursuant to this section.

(f) If the court determines that additional funds are owing by the proposed redeemer, the same shall be paid to the clerk prior to the later of the following dates:

(1) The date of the expiration of the redemption period; or

(2) Thirty (30) days after the entry of the order allowing additional funds.

(g) If the court determines that no additional funds are owing, the court shall declare that the property has been redeemed.

(h) If the proposed redeemer fails to timely pay the full amount of any additional funds ordered by the court, the redemption shall fail and any funds paid by the proposed redeemer shall be refunded to him less the clerk's fee and any other court costs.

(i) In the event a person tenders the full amount owing in the proceeding at a time after the date of sale and prior to the entry of an order confirming the sale, the person shall also pay interest computed as established by subsection (b) on the total purchase price paid by the purchaser.

(j) The court in which the proceedings are pending may order that any proposed redeemer shall also pay to the clerk the amount necessary to record any orders of the court in the office of the register of deeds. Such payment may be required to be paid upon the filing of the motion to redeem or upon determining whether any additional funds are to be allowed.

(k) Upon any order pertaining to redemption becoming final, the clerk shall make such disbursements as are provided in the order.

(l) In the event the court directs the delinquent tax attorney or an attorney ad litem to participate in the redemption portion of the proceedings as an assistance to the court, the court may allow a reasonable attorneys fee to be paid by either the movant or the purchaser as directed by the court.

(m) In the event all parties to the action waive their right to appeal all issues in the cause, the clerk shall immediately disburse all amounts owing.

(n) Upon the court declaring that the redemption is complete, the redeemer shall be vested with the interest in the property that was held by the redeemer prior to the sale. Any lienholder who redeems the parcel may thereafter proceed to foreclose upon the parcel or otherwise enforce such lien.

SECTION 18. Tennessee Code Annotated, Section 67-5-2707, is amended by adding the following new subsections:

(d) A person who claims to be the owner of an interest in a parcel, which is the subject of a motion to claim any excess proceeds from a delinquent tax sale shall record

the document effecting such ownership, or an abstract thereof, or an affidavit of heirship, in the office of the register of deeds for the county in which the parcel is located, prior to thirty (30) calendar days before the day on which the motion is scheduled to be heard. A person who fails to timely record such document shall not be entitled to notice of the motion to claim excess proceeds as referred to in subsection (a).

(e) In the event an owner who failed to receive notice of the motion to claim excess proceeds, absent any fault on the owner's part, claims that a person has received excess proceeds in error or in excess of the person's correct share to the detriment of the owner, the owner shall have a right of action against such person for the recovery of such excess proceeds as may have been paid in error. Such right of action shall be the exclusive remedy of such an owner.

SECTION 19. Tennessee Code Annotated, Title 67, Chapter 5, Part 28, is amended by adding the following new section:

67-5-2803.

In order to promote equality and uniformity of taxation, except as provided in this part 28, § 67-5-1806 or § 67-5-2507, no person, public official, governmental entity or court shall have the power or authority to waive, compromise, remit, prorate, apportion or release property taxes, penalty, interest or court costs nor the first lien securing the same.

SECTION 20. This act shall take effect July 1, 2014, the public welfare requiring it.