Department of Legislative Services
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FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 484 (Senators Ferguson and Miller)
Budget and Taxation Ways and Means

Tax Liens - Expiration

This bill alters or establishes the expiration date of specified tax liens including (1) liens related to unpaid taxes; (2) liens on personal property; and (3) liens on real property. **The bill takes effect July 1, 2019.**

Fiscal Summary

State Effect: General fund revenues decrease, likely significantly, for the Comptroller beginning in FY 2020 due to the inability to enforce liens after 20 years.

Local Effect: Baltimore City revenues may decrease, as discussed below. **The bill may impose a mandate on a unit of local government.**

Small Business Effect: None.

Analysis

Bill Summary/Current Law:

Tax Liens

In General: The bill specifies that a lien that arises on the date of notice that the tax is due and may continue until the earlier of when the lien is satisfied, released, or *20 years after the date of assessment*.

Generally, under current law, unpaid tax and interest and penalties on the tax are, from the due date, the personal debt of the person required to pay the tax. Unless another date is specified, a lien arises on the date of notice that the tax is due, and continues to the date on which the lien is satisfied or released by the tax collector because the lien is unenforceable by reason of lapse of time, or uncollectible.

Inheritance Tax Lien: The bill increases, from 4 to 20 years, the length of time that a lien for unpaid inheritance tax remains in effect. The bill also increases, from 4 to 20 years, the length of time a lien on property subject to a special valuation under § 7-211 of the Tax General Article remains in effect.

Generally, under current law, the person responsible for paying the inheritance tax may elect to value real property, for purposes of the inheritance tax (1) at its most recent real property assessment plus any inflation allowance under specified circumstances, or (2) based on its actual use on the date of the decedent's death if the real property qualifies as National Register property by a listing in the National Register of Historic Places, whether as a separate property or as a part of a listed district. To make such an election, the person responsible for paying the inheritance tax must file with the register a statement containing specified information.

Tax Liens on Real Property

In General: The bill newly specifies that a lien on real property terminates 20 years after the date that the lien attaches to the real property. Under current law, all unpaid taxes on real property must be, until paid, liens on the real property. The liens are imposed from the date they become payable. No general termination date is specified.

Personal Property: The bill specifies that a lien on personal property or real property terminates 20 years after the date that the lien attaches to the property. Under current law, all unpaid tax on personal property is a lien on the personal property and on the real property of the owner of the personal property in the same manner in which taxes on real property are liens on the real property. A lien attaches to real property after notice has been recorded and indexed among the records in the office of the clerk of the circuit court in the county where the land lies, or is recorded and indexed on the tax rolls of the subdivision.

Lien Consisting of County Property Tax Deferred: The bill specifies that a lien on property consisting of county property tax deferred under § 10-201 of the Tax Property Article terminates 20 years after the date that the lien attaches to the property.

Generally, under § 10-201 of the Tax Property Article, the governing bodies of the counties of Montgomery, Anne Arundel, Howard, Baltimore, or Prince George's may authorize, by law, a payment deferral of county property tax for residential real property occupied as the principal residence of the owner. Statute contains other specified authorizations and limitations on the deferral of property taxes.

A property tax deferral authorized by the counties of Montgomery, Anne Arundel, Howard, Baltimore, or Prince George's must be calculated on any increase in assessment that results directly from a change in zoning classification to a higher intensity use and that was initiated by a government. The governing bodies of Montgomery, Anne Arundel, Howard, Baltimore, or Prince George's counties may limit the time period during which the payment of county property tax may be deferred.

Lien Consisting of Prince George's County Property Tax Deferred: The bill specifies that a lien on property consisting of county property tax deferred under § 10-202 of the Tax Property Article terminates 20 years after the date that the lien attaches to the property.

Generally, under current law, the governing body of Prince George's County may authorize by law a payment deferral of the county property tax for the owner of undeveloped land that is rezoned for industrial or commercial use under a staged-development zoning classification if (1) the industrial or commercial land in the proposed development is at least 25 acres; (2) as determined by the supervisor, the county property tax deferred for each taxable year does not exceed the county property tax on any increase in assessment that would otherwise result directly from the change in zoning classification; and (3) the deferred payment of county property tax is not for land in the proposed development that is zoned for other than industrial or commercial use. Statute limits the length of any deferral period, and specifies the due date of any required payment.

Background: For information on the tax sale process, the process typically used by counties and municipalities to enforce liens for unpaid taxes, see the **Appendix – Tax Sale Process**.

State Fiscal Effect: General fund revenues decrease significantly beginning in fiscal 2020 to account for the inability of the Comptroller to enforce specified liens after 20 years. The Comptroller advises there are currently $39 million worth of liens owed to the State that would be immediately affected. While the amount of the decrease in general funds is not quantifiable because it is unknown what proportion of the $39 million in active liens older than 20 years would ever be satisfied under current law, any decrease is expected to be significant. Any increase in revenues as a result of the increased period that specified liens related to unpaid inheritance tax may be collected will likely not offset lost revenue.

Additionally, general fund revenues decrease each year as additional liens reach the 20-year limit. The Comptroller advises there are $138 million worth of *additional* liens owed to the State that are older than 12 years. As these liens reach the 20-year limit, and become unenforceable, general fund revenues decline further.

Local Revenues: Local revenues may decrease to the extent that specified liens would not be eligible to be sold at tax sale after 20 years. While other jurisdictions have advised that the bill has no impact, Baltimore City advises that it holds 38 liens on real property for unpaid real property tax totaling approximately $629,500 that are 20 years old or older (with one property representing $439,000 of that total). Such liens are included in the tax sale each year, but have never been sold. The decrease in revenue is not quantifiable because it is unknown what proportion of the $629,500 in active liens that are older than 20 years would ever be satisfied under current law. However, Baltimore City revenues decrease further each year as additional liens reach the 20-year limit. Baltimore City advises that it holds approximately 5,850 *additional* liens that are older than 12 years, representing an additional $1.6 million in revenues. As these liens reach the 20-year limit, and become unenforceable, revenues decline further. The aggregate decrease in Baltimore City revenues is likely significant.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore City; Montgomery County; Comptroller's Office; Judiciary (Administrative Office of the Courts); Register of Wills; Maryland Tax Court; State Department of Assessments and Taxation; Department of Legislative Services

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Appendix – Tax Sale Process

In general, a tax collector must sell, at an auction, not later than two years from the date the tax is in arrears, all property in the county on which the tax is in arrears. However, this requirement does not apply in Baltimore City, and statute is silent as to any timeline for the sale. The time for the tax sale is established by local law. Failure of the collector to sell the property within the two-year period does not affect the validity or collectability of any tax or the validity of any sale subsequently made.

The tax collector sets specified terms for the auction and publishes public notice of the tax sale, including requirements for potential bidders.

When a property is purchased at a tax sale, the purchaser must pay to the tax collector any delinquent taxes, penalties, sale expenses, and a high-bid premium except as otherwise specified. Except for agricultural property, when a bidder at a tax sale purchases a property in Baltimore City and Prince George's County under specified circumstances, the bidder must pay a high-bid premium that is the greater of 20% of the amount by which the highest bid exceeds the lien amount or 40% of the property's full cash value. The terms for payment of the purchase price and high-bid premiums, if any, are determined by the collector.

Generally, the property owner has the right to redeem the property within six months from the date of the tax sale by paying the total lien amount on the property, delinquent taxes, penalties, interest, and certain expenses of the purchaser. If the owner redeems the certificate, the purchaser is refunded the amounts paid to the collector plus the interest and expenses. If the owner does not redeem the certificate, the purchaser has the right to foreclose on the property after the six-month right of redemption period has passed. Under most circumstances, if the right to foreclose is not exercised by the purchaser within two years, the certificate is void, and the purchaser is not entitled to a refund of any monies paid to the collector.