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SB 766 - OPPOSED

Dear Committee Members,

I am an attorney whose law practice focuses almost entirely on tax sales and am a member of the Maryland Tax Sale Participants Association (MTSPA). I have been doing tax sale work for over 20 years. I am one of the largest tax sale foreclosure filers in the State of Maryland. My clients give millions of dollars to the City of Baltimore each year at the annual tax sale. This bill seeks wholesale change the current tax sale system to an In Rem system. It is poorly drafted, contains conflicts, would lead to litigation, is unconstitutional, and would cost the city millions of dollars in new bureaucracy costs - the exact opposite of the fund raising goal of tax sale. This bill is a red herring - it purports to seek to protect homeowners, but it is really an assault on capitalism, the private sector, tax lien investors, and persons like myself who do tax lien work for a living.

I, my tax sale clients, and the MTSPA membership all want to protect vulnerable and low income property owners, but this proposed In Rem law is a rushed attempt at a bad solution. As drafted, there are many sections and subsections that are conflicting, do not make sense, and are constitutionally invalid. The proposed law is a HUGE change to the current system and should not be rushed into law. This law goes directly against the recommendations of the 2017 State Tax Sale Task Force, which was created by the State Legislature to study the existing Maryland Tax Sale process and recommend any needed changes - **and a change to an In Rem system was not recommended**. Housing advocates already tried to pass this broad In Rem legislation in 2019 under HB 1209, and it was denied. The City Director of Finance, Prior City Administration, and MACO both were against an In Rem system. A compromise was reached and In Rem was enacted to only apply to vacant and blighted properties where the liens exceeded the property value, not the entire tax sale. This is because there is no loss of revenue doing In Rem foreclosures on upside down properties where no one is ever going to pay the taxes. The issue of In Rem for the entire tax sale has been studied, examined, discussed, already been determined by many different sources not to be beneficial, and was therefore not enacted in 2019.

Significant and important changes have already made to the tax sale laws leading up to the 2017 Tax Sale Task Force and thereafter. This long laundry list of reforms, which have all been supported by the MTSPA and private party tax sale participants, is attached. Homeowner occupants are fully protected and it is now virtually impossible for a homeowner occupant to lose their home to tax sale foreclosure.

Almost all of the properties sold at the City tax sale are non-owner occupied properties, so why change to In Rem? In a normal tax sale year, where homeowner occupied properties are included, of the 26,0000 properties advertised for tax sale, only about 5% of the properties sold to private investors are homeowner occupied properties. See the City's own statistics from FY 2021 in the attached chart. Why is the City overhauling a system to allegedly protect vulnerable legacy homeowner occupants when 95% of the properties in tax sale are investor properties, and only 2.5% are legacy residents who are possibly vulnerable? The Mayor removed all homeowner occupied properties from the tax sale in 2022, so the issue of protecting homeowner occupants is moot. By seeking In Rem for the entire tax sale, the City is trying to solve a problem of protecting homeowners that does not exist! This is not about protecting homeowners, it is about shutting down the private sector in a power grab to create more bureaucratic bloat, and is shortsighted proposal that will cost the city tens of millions of dollars a year.

In addition, the City Administration analyzed converting to a full In Rem tax sale process after a detailed In Rem study and CCP report in 2017, and determined that going to a full In Rem tax sale was a bad idea at the time. See the draft CCP Report response from the prior Administration, attached. There were too many unknowns about the fiscal impact, and to date no one has done a detailed fiscal analysis. No one is for an In Rem system except for a few activists who have a political agenda. The Director of Finance, MACO, and the prior City administration ALL said that going to a full In Rem system is a bad idea. What we do know is that if the current tax sale system is abolished, the annual $20 million paid to the City in one day will vanish, which is a big problem. Even the current Chief of the City's Bureau of Revenue and collections recently echoed the same position in the recent Baltimore Banner news article"

> "Carla Nealy, chief of the city's Bureau of Revenue Collections, defended the system, noting that revenues from the tax sale generate $10 million to $20 million a year, representing 0.5% to 1% of the city's budget. In fiscal year 2022, the tax sale generated $12 million for the city, the majority from residential properties."

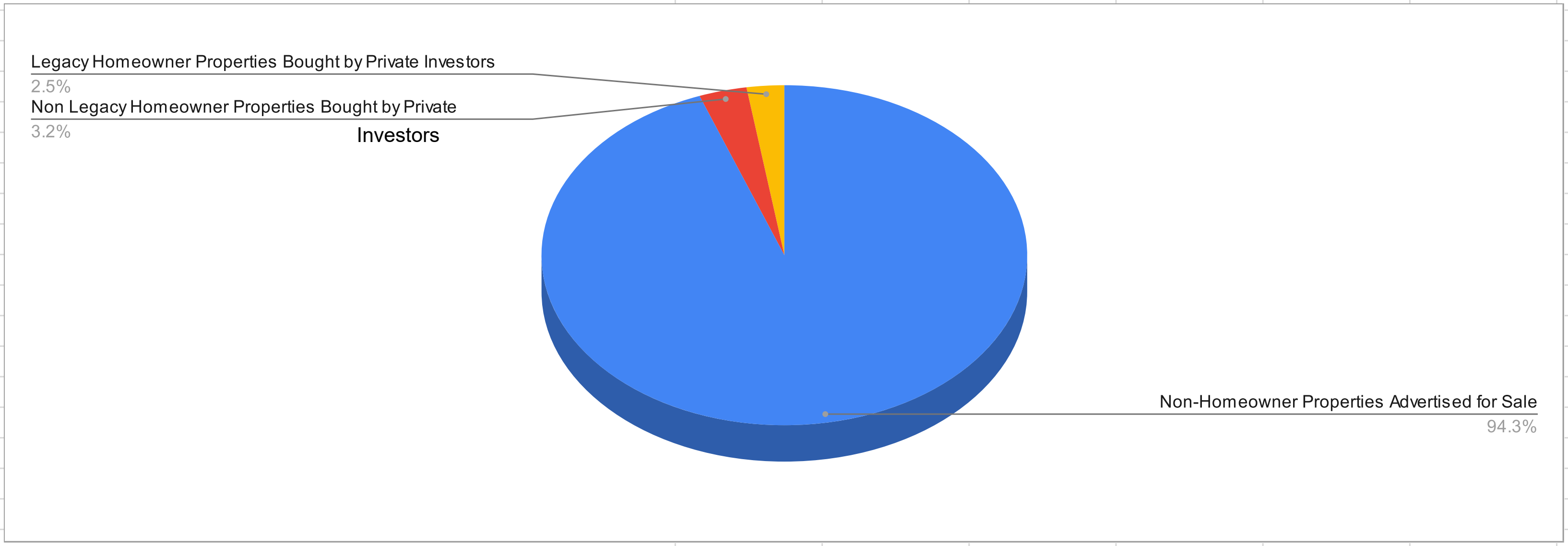
If the few activist supporters of this bill feel that such further drastic changes are needed to overhaul the entire tax sale system to an In Rem process, despite the in-depth study of the 2017 Task Force, the previous reforms that have been implemented, the 2019 denial of In Rem, and the opinions of the prior Administration, the prior Director of Finance, MACO, and the current Chief of Bureau of Revenue Collections, then the bill should be tabled to a later date so that the MTSPA, housing advocates, legislators, Director of Finance, and other stakeholders can give the law a thorough and detailed review to make sure that it is drafted correctly, is Constitutional, and will be the right long-term solution.

Very truly yours,

J Scott Morse

J. Scott Morse, Esq

FY 2021 Total Properties Advertised for Tax Sale Auction	15622
FY 2021 Properties Sold to Private Investors - Non Legacy Owner Occupied	527
FY 2021 Properties Sold to Private Investors - Legacy Property Owner Occupied	414



Many, many new laws and reforms, meetings, work groups, task forces, etc, have been done that relate to only a very small portion of the properties in tax sale. Less than half of the 5% of the homeowner occupied properties that are sold to investors at tax sale are owned by legacy residents (living in the property for 25 +years), so a very, very small number of the properties sold at tax sale are possibly vulnerable owners who need additional considerations. **Almost all the tax sale is non-owner occupied properties**.

Tax sale is a valuable revenue tool that has generated $50 million+ in revenue for the city FY18-20 just from the tax sale, not to mention the est. additional $30 million per year collected before the auction. The tax sale system should not be abandoned or wholesale replaced with an In Rem system because of the very small number of homeowner occupied properties that go into tax sale.

The facts are the 95% of the properties sold to private investors at tax sale are non-owner occupied, landlord owned, rental, and commercial properties where taxes are overdue and need to be collected.

Robert Cenname

FROM	NAME & TITLE	Robert Cenname, Budget Director
	AGENCY NAME & ADDRESS	Bureau of the Budget and Management Research Room 432, City Hall (410) 396-4774
	SUBJECT	City Council Bill 20-0593—Tax Sales-Properties Exempt From Sale

CITY of BALTIMORE

MEMO

TO

DATE:

The Honorable President and
Members of the City Council
City Hall, Room 400

August 26, 2020

Position: Oppose

The Department of Finance is herein reporting on City Council Bill 20-0593, Tax Sales-Properties Exempt From Sale, the purpose of which is to prohibit certain properties from tax sale.

Background

Each year, Baltimore City holds an annual tax sale to collect delinquent real property taxes and other unpaid charges owed to the City, which are liens against the property. An owner-occupied property is eligible for tax sale if the combined total of city liens is $750 or more and a non-owner-occupied property is eligible at the threshold of $250. These liens include, but are not limited to, unpaid real property taxes, clean and board, environmental control, and residential registration charges and fees. The Maryland General Assembly passed legislation in 2015 that increased the threshold for owner-occupied properties from $250 to $750 and in 2019 that prohibits the inclusion of properties that are only delinquent water bills in the $750 tax sale eligibility threshold for owner-occupied properties.

The proposed legislation exempts certain properties from tax sale and requires annual reporting on the number of properties and outstanding taxes owed under this provision. The legislation specifically applies to properties that have an assessed value of $250,000 or less, the homeowner has resided in the dwelling for at least three years, and the homeowner either has a combined income of less than $40,000 or is at least 65 years old or is receiving disability benefits in some form.

Fiscal Impact

Historically, the City collects between one and two percent, or $8 million to $15 million, of real property tax revenues at tax sale. However, the Department of Finance is able to collect higher rates of delinquent taxes through the various stages of the tax sale process. For example, approximately 35% of the City real property tax revenues is collected after the first delinquent notice is sent. Property taxes are a major source of General Fund revenue for the City, almost 53% in Fiscal 2021, and the Department of Finance's Bureau of Revenue Collection (BRC) has averaged a 98% collection rate for real property taxes with tax sale. In addition, when properties enter the tax sale process, the City receives payment of liens by many mortgage companies in order to prevent properties from moving further in the process.

It is important to note that in the Fiscal 2018 and Fiscal 2019 tax sales, approximately 53.6%, or 6,468 properties, of the outstanding lien certificates were purchased by third party investors and 46.4%, or 5,600 properties, were acquired by the Mayor and City Council. Of the total $550.8 million of outstanding lien values during these years, the purchases by third party investors totaled $43 million, or 7.9% of the total outstanding lien values, while the other $507.8 million, or 92.1% of total outstanding lien values, were acquired by the Mayor and City Council.

The Department of Finance's analysis presents two scenarios and is based on tax sale data from 2018 and 2019. The first scenario reflects the homeowners who entered the 2018 and 2019 tax sale processes and would qualify to be removed from the process under this legislation. The second scenario reflects all homeowners eligible under this legislation, based on the number of homeowners who receive the City's Supplemental Homeowners' Tax Credit, who receive initial final bills and legal notices about delinquent property taxes. Currently, the homeowners reflected in the second scenario may not enter tax sale due to receipt of tax credits, assistance programs from the City or nonprofits, or personal payments as a result of receipt of these bills and notices.

	Scenario 1	**Scenario 2**
Eligible Homeowners and Properties	35	5,014
Average Assessment Value of Eligible Properties	$110,072	$113,900
Average Value of Liens of Eligible Properties (Property Taxes)	$2,474	$2,561
Total Value of Liens of Eligible Properties	$86,590	$12,841,000
Annual Impact (Real Property Tax Revenue Loss)	**$100,035**	**$13,767,000**

Based on these two scenarios, the City could face real property tax revenue loss ranging from $100,035 from 35 eligible properties to $13.7 million from over 5,000 eligible properties. The Department of Finance acknowledges that not all homeowners eligible under this legislation will stop paying property taxes; however, this legislation increases the City's exposure for lost revenue due to the number of homeowners who will not face this enforcement measure for not paying property taxes and may decide to not pay delinquent taxes.

Other Considerations

The Department of Finance supports the intentions of this legislation to maintain residents in their homes, specifically homeowners who are seniors, low-income, and/or receiving disability benefits. In addition, the Department is supportive of further studying the issue with partners to assess the problem and identify strategies and solutions that the City can support and invest in. However, the Department of Finance believes there are other actions that can and should be taken before making large exemptions to the tax sale program. In addition, there are several concerns related to the implementation of the legislation that should be discussed further before moving forward with this legislation.

Prevention Programs

There are several programs currently available to homeowners to reduce the burden of property taxes and decrease the likelihood of entering tax sale. The City has several programs to aid homeowners as well. The Baltimore City Department of Housing and Community Development's has a Tax Sale Coordination and Prevention Services program, which assists homeowners in avoiding tax sale and in understanding the tax sale process. The Baltimore City Health Department's Office of Aging and CARE Services reviews the tax sale list to identify seniors and works with them to prevent tax sale of their properties.

In addition, there is the State of Maryland Homeowners' Property Tax Credit Program, which sets a limit on the amount of property taxes a homeowner must pay based on income and is specifically for households that earn less than $60,000 in income. The City provides a supplemental to the Homeowners' Tax Credit Program to homeowners that are at least 62 years old, have resided in the property for at least

10 years, and have a combined income of less than $40,000. In fact, many of the homeowners that would qualify under this legislation qualify for the State and City program already. The Department of Finance believes that efforts can be made to raise awareness about these programs. As outlined in the fiscal impact section, many homeowners who qualify for these programs drastically reduce their property tax bill, some to the point of $0.

Implementation

BRC does not have access to the demographic data needed to make the qualification outlined in the legislation. Currently, BRC receives reports from Maryland State Department of Assessments and Taxation (SDAT) stating which properties that receive the State's Homeowners' Tax Credit are eligible for the City's supplemental credit program. It is possible a similar report about these criteria can be provided by SDAT and used to identify properties, based on those receiving the Homeowners' Tax Credit, that meet these criteria and remove them from the tax sale process. However, due to the short timeframe of this bill being introduced and the hearing scheduled, the agency has not been able to confirm this option.

Beyond agency operations, the Department of Finance has additional implementation concerns. The legislation's broad exemptions for certain populations eliminate the City's enforcement authority. The intent of the legislation is to address the needs of certain homeowners who are struggling to pay their current property taxes. However, this legislation enables homeowners who qualify under this law and are able to pay their property taxes to walk away from that responsibility. Additionally, while the properties may not enter into tax sale, the liens will continue to increase and may sit unpaid for years. This can result in a major tax burden for families if a homeowner dies and has not paid these taxes, or make it cost prohibitive for the property to be sold or developed because the liens are greater than the assessed value.

Conclusion

The Department of Finance supports the intention of the legislation to reduce the burden on homeowners, but opposes the current structuring of this legislation and what it means for the City's revenue and operations. The tax sale process is very complicated and there are several factors to consider when making changes like these, such as ability to implement, unintended consequences of broad exemptions, and impact on the City's revenue. The Department of Finance requests that the City Council hold work sessions on this legislation and continue to work with the Department to develop strategies and solutions that meet the intention of the bill, while maintaining the City's ability to enforce and collect property taxes.

For the reasons stated above, the Department of Finance opposes City Council Bill 20-0593.

cc: Henry Raymond
Matthew Stegman
Nina Themelis

MARYLAND Association of COUNTIES

House Bill 1209

Property Tax - Collection of Unpaid Taxes and Tax Sales

MACo Position: **OPPOSE**

To: Ways & Means Committee

Date: March 5, 2019

From: Kevin Kinnally

The Maryland Association of Counties (MACo) **OPPOSES** HB 1209. This bill deprives counties of the opportunity to use an effective tool for enforcement – tax sale – by requiring counties to enact a law implementing judicial in rem tax foreclosure procedures for specified properties.

Counties are concerned that this legislation would result in significant revenue losses due to the bill's limitations on the use of tax sales to enforce liens. Specifically, HB 1209 would require counties to enact specified judicial in rem tax foreclosure legislation, including a requirement that the dwelling of an eligible homeowner not be subject to foreclosure and sale unless the tax on the dwelling (1) has been delinquent for at least 2 years; and (2) exceeds $1,000.

The tax sale process, or more specifically the potential for a property to go to tax sale, presents a much-needed tool of last resort to ensure that property owners remit payment for their fair share of taxes and charges connected to public services. Most counties in Maryland send properties to tax sale solely to enforce utility liens. This bill removes this leverage for all counties, and undoubtedly would create many more deficient accounts for utility bills from lack of enforcement – leading to increased rates on residents who properly pay.

All property owners deserve full and adequate notice of any collection efforts to collect taxes or charges assessed on the property – and as such, every county has procedures to ensure ample notice is provided prior to tax sale. Additionally, property owners have the right to redeem property within six months from the date of any tax sale by paying the amount owed. The tax sale process includes multiple checks and balances to ensure that local governments can collect overdue fees without unjustly depriving taxpayers of due process.

HB 1209 undermines local governments' most effective collection tool, and would lead to greater delinquency and default on utility bills, which would result in higher rates on other ratepayers. For these reasons, MACo **OPPOSES** HB 1209 and urges an **UNFAVORABLE** report.

POSSIBLE DRAFT RESPONSE TO IN REM PROPOSAL FROM BALIMORE CITY IN 2017

In March of 2016, the Mayor and City Council of Baltimore was one of three governments selected for the Technical Assistance Scholarship Program ("TASP") by the Center for Community Progress. The TASP application was submitted by the City's Department of Finance in partnership with the Baltimore City Tax Sale Working Group, which consists of community leaders committed to improving the tax sale process. The partners recognized the value of City real property tax revenue to all citizens and agreed to three goals in the application:

1. Improving the tax sale process while supporting revenue collection,
2. Reducing vacant and abandoned properties in the city, and
3. Protecting vulnerable owners who reside in their properties

We want to acknowledge with gratitude the hard work of Kim Graziani and Frank Alexander of the Center for Community Progress. We view their final TASP Report as an opportunity to consider new ways to fulfill our three goals.

Our response reflects consolidated feedback from the City's Departments of Finance, Law, Housing and Community Development, and Public Works, but not the Tax Sale Working Group. The format for our response follows the Key Observations in the Report.

We have not responded to every statement, finding, observation, or recommendation in the Report because we had a limited period of time. Our failure to respond to any such item should not be construed as either a rejection of or agreement with any item.

Overall Goals of the Report

Beginning on page 15, the Report identifies three hallmarks of an optimum tax sale system: that it is equitable, efficient, and effective. We agree.

As stated in the Report, an equitable system is premised on a fair assessment system. In Maryland, personal and real property assessments are performed by the State and the City has no authority over them. The parties responsible for assessments and for tax rates deliberately are kept separate to protect the taxpayers and to foster confidence in the fairness of the tax system.

The Report points out that an efficient system provides clarity and predictability about the priority of liens, the amount of liens, and the time frames for payment in a manner consistent with local governments' budgets and revenue processes. While the Report states that the current tax sale system creates inefficiencies, it does not point to actual evidence that its recommendations would produce a better result. The Report acknowledges that the City does very well collecting liens in the time period between the Final Bills and Legal Notices in February and the May tax sale. In addition, a substantial number of tax sale certificates are redeemed after tax sale but many certificates end up held by the City because there are no private bidders.

An effective system yields the maximum tax revenue and, in the event of nonpayment, results in the transfer of the property to a new responsible owner through an insurable and marketable title. While not perfect, the current revenue process, including tax sale, collects the vast majority of taxes and municipal charges and removes the City from the business of suing citizens, evicting them from their homes, and garnishing and attaching their personal property. Current State law elevates municipal liens to a “super priority” status, ahead of private mortgages. Even though we have not encountered a general problem with "uninsurable titles" or "clouds on titles" resulting from a tax sale, these problems may have occurred and we just were not aware of them because they occurred after the City’s involvement in the tax sale process ended for the involved properties. Certainly, as a general rule, when the City forecloses on tax sale certificates to vacant and abandoned properties, the resulting titles have been insurable and marketable.

In light of the three goals of the Report, we agree that our processes can be improved and we look forward to implementing the best tax sale practices as used by other jurisdictions, if the practices are compatible with the City’s objectives and capacities.

The Report’s Major Recommendation

The final TASP Report’s Key Observation 3.2 on page 23 recommends changing the current tax sale system from a sale of liens in exchange for a certificate that, unless redeemed, can be used to transfer ownership of the property from the current owner to the certificate purchaser to a single-step, actual sale of the property after the City has completed judicial proceedings to obtain orders of sale for each property. The winning bidder would receive a clear, fee simple, title to the property and, if there were no bids, then the City would receive title. Key Observations 2.4, 2.5, 2.6, 4.7, and 4.8. There would be no redemptions. Key Observation 2.2.

Changing the tax sale system could require the City to sue *in rem* on all properties eligible for tax sale each year. Key Observations 2.7 and 3.13. The City would have to provide a level of Constitutionally required notice to the holders of any interest in the property under *Mennonite Board of Missions v. Adams,* 462 U.S. 791 (1983). Key Observation 2.8. Redemption could be allowed only until the City completes foreclosure and obtains title. Key Observation 2.9

Related to these recommendations is the suggestion that they could be accomplished by passing enabling legislation at the State level. Appendix C. The legislation would permit, but not require, local jurisdictions to conduct tax sales in this manner. They would be free to continue conducting tax sales of certificates unless they enacted local laws to make the change.

If adopted by the City through local ordinances, then these recommendations would result in a fundamental change to the way tax sales are conducted in the city. However, it is not possible to determine from the Report whether the change would be revenue-neutral. While some expenses, such as the Law department’s costs for filing civil actions to recover real property taxes and the Housing department’s costs for citing owners for code violations, would be reduced, it is clear that other expenses would increase.

Under the current tax sale process, when the City sells liens that are likely to be redeemed, it is paid immediately for the uncollected taxes. It appears from the Report that the new system would create a delay in collecting this revenue. This delay has a cost. In the City’s 2015 tax sale, it collected over $21,000,000 on such certificates and, upon redemption investors collected about

$1,000,000 in interest. Collecting $21,000,000 on a single day may be more valuable to the City than collecting $22,000,000 over an extended period of time.

Neither the cost reductions nor increases as the result of acquisition and maintaining the acquired properties are quantified in the Report. However, a cursory analysis of the projected expenses for acquisition can be performed using the data from the City's most recent tax sale and estimated costs.

In the May 2016 tax sale, the City offered 9,892 properties on the day of the online auction. The Report would have required the City to obtain a comprehensive title report, to provide *Mennonite*-level notice to all interested parties, to post an additional notice, and to file an *in rem* judicial action seeking an order to sell each property in the auction. The City would have incurred substantial, costs, not recoverable costs under current law.

Had the Report's major recommendation been in place, it is doubtful that the Law department's present staff would have been large enough to file 9,892 *in rem* actions in one year. Additional staff or outside counsel would have had to have been employed. Current law allows private parties to charge between $500 and $1,500 in attorneys' fees for tax sale foreclosures. MD. TAX-PROP. ART., §14-843. The attorneys' fees for 9,892 actions could have been between $4,946,000 and $14,838,000. Disregarding volume discounts, the average cost of a title report is about $150. Current tax law allows up to $250 for a title search fee. MD. TAX-PROP. ART., §14-833. If enough title researchers could be found, then the title reports for 9,892 properties alone could have cost the City between $1,483,800 and $2,473,000. Certified and restricted mailing costs for *Mennonite*- level notice and the staff time to provide it generally run about $77 per property, another cost of almost $761,700. Even a quick calculation of the expenses of acquisition demonstrates that the costs are likely to exceed the savings.

In the 2016 tax sale, there were no bidders on 4,176 properties and the City took possession of their certificates. After completing the *in rem* judicial actions for those properties, the City would then have had to maintain them until suitable buyers could be found. The 4,176 included occupied properties and the City would have had to evict the owners. The Report does not quantify the costs of maintaining the newly acquired properties. It notes that the City already spends time and monetary resources citing and securing properties without the rights of full ownership. However, full ownership of a large inventory of distressed properties would multiply the expenses and create new civil liability for the City, such as for lead paint contamination. Each year, the City exhausts its property maintenance budget in shoring up or razing City-owned properties causing damage to neighboring, privately-owned properties. For full ownership, another massive investment by the City would be required that is not measured in the Report.

Further related to the City's acquiring properties with unsold liens is Key Observation 3.1 in which the Report recommends that the City retain the certificates most likely to redeem, certificates that now are purchased by investors. It points out that between about $1,000,000 and $2,000,000 in interest paid to investors could be paid to the City. Any increased revenue from redemption interest does not appear large enough to offset the expenses of acquisition and maintenance. However, a more detailed evaluation is necessary.

After acquiring and maintaining the new properties, the City would need to identify uses for them. Many are isolated, significantly deteriorated, or too small in area to develop. The City would become the landlord for other properties, responsible for collecting rent and making repairs until a buyer could be found. The Report does not identify uses or estimate how long resale would take. Even if the City had the resources to acquire and to maintain another 4,176 properties, there currently is no comprehensive plan to handle such a large inventory.

In the decade prior to the current decade, the City's Project 5000 project resulted in the City owning over 5,000 vacant and abandoned properties in the city. The lessons learned from that effort – and the costs and challenges that came with owning that many properties without a solid plan for what to do with them – led the City leadership, including the Housing department and the Mayor's Office, to develop the Vacants to Value initiative, which emphasizes, among other measures, the streamlined sale of City-owned properties and the use of receiverships. It is possible for the City to gain title to vacant properties without switching to a one-step tax sale system. As Project 5000 demonstrated, a surge in court proceedings can result in City ownership of a significant portion of the vacant properties in the city regardless of whether a one-step or the standard certificate process is used. However, just the 2016 tax sale would have almost doubled the size of the City-owned portfolio.

Under the current State law, a tax sale certificate is void unless a judicial action to foreclose the right of redemption and to transfer the property is filed within two years after the sale. Many unsold and unforeclosed certificates from the 2015 tax sale will not be eligible for tax sale again until 2017. As a result, we can expect another large number of unsold certificates in the 2017 tax sale. Had the report's recommendation been in force, we would have expected another round of about 10,000 properties for filing and another 4,000 properties to maintain and to sell in 2017.

More generally, the Report consistently identifies the tax sale process as contributing to the problem of vacant buildings. For example, it states on page 10 that by selling tax liens, the City loses leverage in the collection process which may lead to investors choosing to hold the liens and to speculate on future interest rather than foreclosing and selling to a responsible party. The Report also observes that properties with liens in excess of their fair market value, "upside down", continually recycle through tax sales in successive years. In both circumstances, the Report assumes, without proving, that there is a cause and effect between tax sales and vacancy. In fact, the City's experience suggests that weak and failing markets are directly responsible for vacancy and that the tax sale itself is not a contributing cause of vacancy. As with other conclusions contained in the Report, the hypothesis that the recycling of certificates actually contributes to vacancy, rather than merely being correlated with vacancy, would be strengthened by data.

In addition to not quantifying costs, the Report does not mention ground rents. Maryland has a long, historic use of ground rents that has been reformed in recent years. Any major change in the tax sale system must consider the effect on the rights of ground rent owners.

Another issue that we encounter but is unaddressed in the Report is the failure to probate properties. It is not unusual for children whose parents die to keep the property in the deceased's names. Bills and notices continue to be mailed to the deceased, not the children who may or may not pay all the taxes and other municipal charges but who may continue to reap the benefit of the parents' tax credits that would not apply to them if the property were probated. We would like to learn how other jurisdictions deal with this issue with respect to tax sales.

The Report appears to assume that few, if any, certificates held by the City are ever redeemed and states in Key Observation 3.5 that the City should not account for upside down liens as receivables. The City already has accounted for them for many years. In fact, some City-held certificates are redeemed and the City received the interest. Not all today's upside down properties always remain upside down as contemplated in the Report.

While not common, the City may ultimately be paid for liens even on properties whose present lien amounts exceed their fair market value. A lien remains a lien on a property until paid and must be paid when the property transfers. BALTO. CITY CHARTER, ART. VII, §13; BALTO. CITY CODE, ART. 28, §2-6. There is no statute of limitations on paying liens. Over time, a property's value may sufficiently increase due to external factors to become attractive to a buyer in spite of the liens.

In conclusion, any change to the tax sale system as radical as the major recommendation in the Report should not be implemented without careful consideration and measured steps. Any implementation of the suggestions would have to be undertaken over time. <u>City agencies and other stakeholders would have to evaluate each suggestion to determine the cost of implementation, the additional assets required, and the impact on revenue. The agencies may decide that they need a work group to coordinate their ideas and efforts so that the improvement of the tax sale process does not inadvertently impair the other missions of the agencies</u>. Because the Report recommends State enabling legislation and then local adopting legislation, we conclude that the implementation of any recommendations, <u>if approved by the City</u>, be made over the course of several years, perhaps using a phased-in or pilot approach.

Other Recommendations in the Report

In Key Observation 2.3 and 3.7, the Report recommends reducing lien amounts to the fair market value of the property to encourage private sales and to prevent recycling of properties through multiple tax sales. We have long recognized this problem, as have realtors, developers, and the business and banking communities.

The City has a "vendor lien" program which allows the assignment of individual City-owned tax sale certificates to a private party for the greater of the unpaid flat taxes and water charges or the appraised value of the property. The Board of Estimates reviews the specific proposed reductions and approves the sale. In effect, the Report proposes a general "vendor lien" reduction of the liens on all tax-delinquent properties for which the liens exceed the value.

We agree that a solution to the recycling problem is needed but a radical change to the tax sale system is not necessary for a fix. A sudden, wholesale abatement of liens would benefit scofflaw owners by permitting them to re-purchase their own properties at tax sale free of their prior obligations. The City can explore ways of gradually reducing liens while ensuring owners do not obtain a windfall. In addition, the liens have been reported in the City's budgets as receivables and in the City's bond disclosures. Any solution needs to consider the City's accounting and bond obligations, issues not addressed in the Report.

Key Observation 3.10 recommends amending State law to permit the City, when it holds the tax sale certificates, immediately to initiate foreclosure on all properties other than those that are owner-occupied. State law already allows the City immediately to foreclose on all vacant properties or improved properties subject to vacant building notices. MD. TAX-PROP. ART. §14-833. The proposed change would allow the City to foreclose on certificates to many properties that are occupied by tenants. The City would be reluctant to exercise its right to foreclose on such properties because it would be faced with either relocating lawful occupants or becoming the landlord for rental properties.

The Report also recommends replacing the annual State Homeowners Tax Credit ("HTC") with a blanket $50,000 assessment exemption, regardless of the annual income or net worth of the owner. Key Observation 5.1. The dollar amount was an example and not supported by a financial analysis. A lesser or greater amount may ensure revenue-neutrality. However, any amount of such a credit would be regressive and provides high income owners with the same tax reduction as low income owners. It also may raise questions of equal treatment if some local jurisdictions prefer to keep the current credit.

Once again, study is needed. Perhaps a more targeted low-income credit would be more effective with fewer problems. For example, an assessment credit could be applied only to owners who already qualify for the HTC or only to owners over the age of 65 who otherwise already qualify for the HTC. Such targeted relief would have the administrative burdens and costs that the Report seeks to reduce but it may be preferable to carry administrative costs than to make the City's tax system more regressive. Similar ideas are found in the Report's Key Observation 5.2

The Report's Key Observation 5.3 suggests that the City submit electronic data to the State Department of Assessments and Taxation of all mortgage foreclosure deeds as a presumptive trigger for loss of the HTC and Homestead Tax Credit. The City does not have the data. Only the Circuit Court, a State agency, has it. We have some tax sale foreclosure data but no mortgage foreclosure data. However, the Finance department's Tax Integrity unit can explore this suggestion.

Key Observation 5.4 recommends excluding all owner-occupied properties from tax sale. Unfortunately, approximately half of the properties in the City's annual tax sale are owner-occupied. The City can ill-afford such a loss or delay of revenue. Moreover, as the Report correctly points out, the pre-tax sale notices from February through April generate many times the amount of revenue than the May tax sale generates. It is the threat of tax sale that is most effective.

Finally, Key Observation 5.5 recommends providing vulnerable owners or owners who reside in their own properties with greater notice, longer timelines for bill payment, or direct legal services. In 2015, the City championed changes to State tax sale laws in House Bill 1035. The enactment lengthened the deadlines for filing foreclosures on owner-occupied properties, raised the lien threshold from $350 to $750 for such properties, authorized redemption payment plans, and created a tax sales ombudsperson position. This year, the City enacted City Council Bill 16-0614 which reduced the redemption interest rate from 18% to 12% for owner-occupied properties. Because tax sale certificates remain viable for two years after issue, we need time to determine the effectiveness of all these changes on vulnerable owners.

Other Comments to the Report

The Report concedes that it does not fully analyze the role that water liens play in the tax sale process. In the past, water bills and liens have come under intense scrutiny and we have high hopes that the new billing system and customer access will alleviate the problems. The City's water billing system is property, rather than account or customer, based like other cities mentioned in meetings with the Report's authors. Earlier studies by the Center for Community Progress include cities that directly allow for tenant-owned water bills, meaning that those charges would not be liens on the property.

The Report also does not describe the experiences of other jurisdictions that have a single-step tax sale process. We need to know those details before we can determine if the recommendations in the Report are the best practices.

Conclusion

In closing, we want to reiterate our appreciation for this opportunity to consider the Report recommendations and to implement changes to enhance the tax sale system. We view it as the starting point for an on-going investigation of ways to improve our tax sale process.

We recognize that the City's tax sale is supported by an aging computer system that ultimately must be replaced. The Finance department, with the Mayor's Office of Information Technology, has begun the groundwork for replacing the Mainframe computer that controls the real property, liens, and tax sale systems. A new system will allow us to take advantage of deeper data mining and a more comprehensive analysis of the costs and benefits of the final TASP Report.

WORKING TOGETHER

- The Maryland Tax Sale Participants Association (MTSPA) consists of Maryland citizens, community investors, neighborhood rehabilitation specialists, experienced attorneys, and business owners.
- We are focused on growing strong relationships with municipality taxing authorities, and being valuable partners in ensuring an equitable, efficient, and effective tax sale system throughout the State of Maryland.
- Baltimore City's Tax Sale System has been analyzed, examined, and studied repeatedly, and has been significantly reformed over the past 13 years for the benefit of owner occupants and vulnerable owners. Today, Baltimore City provides significant and sufficient safeguards and programs to protect homeowners and vulnerable citizens.
- Unfortunately, advocates for a Baltimore City Tax Sale overhaul have set forth a false narrative and misconstrued the data that will ultimately hurt the City of Baltimore.
- Tax Sale overhaul is unwise, costly, ineffective, and inefficient. Primary concerns and proposals set forth by overhaul advocates can be addressed and incorporated within the current programs. Better efforts are needed to raise awareness about available programs that can provide significant homeowner assistance, address advocacy concerns, and allow the City to still utilize tax sale as an effective collection tool.
- MTSPA members and affiliates are proven partners who have helped City budget concerns, while working with legislators and community advocates to help improve the current tax sale system.
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TAX SALE WORKS

→ The City's budget is hurting, and federal funds won't last long. Half of the City's budget comes from property taxes. The City received $18.8 million ***in one day*** through the 2021 Tax Sale.

→ The City relies on tax sale to recoup lost revenue from the non-payment of property taxes. Limiting tax sale as a tool creates two problems: (1) increases the tax burden on current taxpayers, and (2) will cut the funding to vital services needed to stabilize communities and avoid blight.

→ The Maryland Court of Special Appeals has stated: "Maryland's tax sale mechanism is an effective means of collecting property taxes for the state and is critical to the state's need to provide a source of revenue for a host of government services provided to its citizens." *Royal Plaza Cmty. Ass'n Bonds*, 389 Md. At 204-05 (2005) "Tax sale purchasers are regarded as performing a publics service." *Heartwood I*, 156 Md. App. at 364.

→ The Maryland Association of Counties (MACO) opposed HB 1209 in 2019, a bill that "deprives counties of the opportunity to use an ***effective for enforcement*** – tax sale…" When advocacy groups try to limit the use of tax sales to enforce liens, counties become concerned with "significant revenue losses." "The tax sale process, or more specifically the potential for a property to go to tax sale, presents a much-needed tool of last resort to ensure that property owners remit payments for their fair share of taxes and charges connected to public services." "The tax sale process includes multiple checks and balances to ensure that local governments can collect overdue fees ***without unjustly depriving taxpayers of due process***."

→ Tax Sale is an effective deterrent to tax delinquencies. In his 2020 written testimony, the City's Budget Director testified that 35% of the City real property tax revenues is collected after the first delinquent notice is sent. "Property taxes are a major source of General Fund revenue for the City, almost 53% in Fiscal 2021, and the Department of Finance's Bureau of Revenue Collection has ***averaged a 98% collection rate for real property taxes with tax sale***."

→ Many homeowners qualify for tax sale exemption, tax credits, and assistance programs. Limiting the tax sale even further "increases the City's exposure for lost revenue due to the number of homeowners who will not face this enforcement measure [tax sale] for not paying property taxes and may decide to not pay delinquent taxes." – 2020 written testimony from the City's Budget Director.

→ "Tax Sale is the process in which Baltimore City sells property liens to generate revenue. Baltimore City pre-tax notices prompt 20,000-25,000 property owners annually to pay overdue bills." – Alice Kennedy, Acting Housing Commissioner, 2021 written testimony for 21-0024R.

RECENT CHANGES + CURENT PROGRAMS

- → **2015 Change:** Increased threshold under which homeowners are withheld from tax sale (was $250 now $750).
- → **2015 Change:** Decreased interest percentage for homeowners (was 18% now 12% in City).
- → **2015 Change:** Increased City homeowner's "grace period" from 4 to 7 months – allows homeowners to satisfy tax lien without paying costs incurred by tax lien holder.
- → **2019 Change:** Allowed Baltimore to exclude water bills from tax sale for homeowners
- → **2020 Change:** Created legislation allowing for jurisdictions to remove certain homeowners from tax sale – elderly, low income, and disabled.
- → **2020 Change:** Created Tax Sale Ombudsman at SDAT – creates annual reports, assists residents with the tax sale process, collects data, and on the City level.
- → **2020 Change:** Exempt certain homeowners from tax sale – up to $2 million in 2020.
- → **2020 Change:** Allowed installment payments for City property taxes.
- → **2021 Change:** Created legislation for the State of Maryland to purchase up to $750,000 in homeowner liens and work directly with the homeowners to pay down the debt.
- → **2021 Change:** Eliminated the requirement to pay current taxes at the same time when satisfying back taxes.
- → **2021 Change:** Requires itemization of tax bill and list of resources in the pre-tax sale notices.
- → **2022 Change:** Allows counties to withhold from tax sale owner-occupied residential property and requiring the property to meet certain criteria; allows counties to withhold from tax sale a residential property or property owned by a nonprofit organization that is enrolled in a certain payment program; and allowing a counties to cancel or postpone a tax sale during a state of emergency.
- → **Current Program:** Creation of the Division of Homeownership and Housing Preservation, Tax Sale Coordination within the City's DHCH, which assists homeowners in avoiding tax sale and in understanding the tax sale process by: promoting tax sale clinics, conducting community-based information sessions and connecting homeowners with additional resources such as state and city tax credits.
- → **Current Program:** City's Health Department's Office of Aging and CARE Services reviews the tax sale list to identify seniors and works with them to prevent tax sale.
- → **Current Program:** State of Maryland's Property Tax Credit Program, which sets a limit on the amount of property taxes a homeowner must pay based on income and is ***specifically for households that earn less than $60,000 in income***.

→ **Current Program:** City provides a supplemental to the Homeowner's Tax Credit Program to homeowner's that are at least 62 years old, have resided in the property for at least 10 years, and have a combined income of less than $40,000. "The Department of Finance believes that efforts can be made to raise awareness about these [the above] programs." – 2020 written testimony from City's Budget Director.

FALSE NARRATIVE

FALSE NARRATIVE: "Tax Sale is the predatory method of collecting delinquent property taxes, liens, and water bills that we have in Maryland." "An investor may purchase the lien and turn to the homeowner to get reimbursed in addition to legal fees and up to 12% interest. This is why it is predatory."

FACT: The Oxford Dictionary defines "predatory" as "seeking to exploit or oppress others." The City's Tax Sale does not *seek* to exploit or oppress anyone, and it does not differentiate between race, age, or employment – it's a much-needed tool of last resort to collect on tax delinquencies and ensure property owners remit payments for their share of taxes and charges connected to public services. Homeowners can avoid tax sale by paying their taxes or applying to many available programs designed to help homeowners avoid tax sale. If a homeowner is in tax sale, there are many programs available to assist in paying off the debt.

FALSE NARRATIVE: "In tax sale, a property whose taxes and liens are delinquent is sent to tax sale each May in Baltimore...Generally, the families who end up this situation are older adults who have paid off their home or are in the family home." "Tax sale is the predatory process of collecting taxes, liens and other fines, and generally older adults are the targets."

FACT: Vast majority of City properties that went to tax sale between 2018 and 2020 were ***NOT*** owner-occupied, let alone older adults who paid off their home. Only 15% were owner-occupied during this time (Source: page 6 of Presentation from City's Director of Finance Office for Informational Hearing on City Tax Sale, July 20, 2021)

FALSE NARRATIVE: "Poor families, seniors on fixed incomes and the disabled have lost their homes without compensation because of the tax sale. Instead of returning homes to the tax rolls, today's predatory system has left thousands of homes abandoned, driving struggling neighborhoods into decay."

FACT: The extreme vast majority of tax sale cases are ***paid off way before a foreclosure occurs***. Tax sale foreclosures ***rarely occur***, and if they do it's usually on a ***vacant property***. In fact, many tax lien holders have ***assisted*** poor families, seniors on fixed incomes and the disabled to avoid foreclosure and provide payment plans and debt forgiveness. Advocacy groups have used one-off cases to present a ***false narrative*** about the City's tax sale. Additionally, property owners are always entitled to the bid balance once a foreclosure occurs, which many times equals the property's market value or higher. Lastly, once a tax sale foreclosure occurs, the property is either sold to a marketable third party or renovated by the tax lien holder, thereby putting properties back on the tax rolls and ***preventing*** blight. Not having a tax sale would increase the chances of blight.

FALSE NARRATIVE: "The overwhelming majority of these homeowners [in tax sale] are concentrated in Baltimore's Black Butterfly and are low income and elderly." "…mostly Black, elderly, and low-income homeowners, whose homes are targeted by investors because they are more likely to pay than the speculators who have abandoned properties." "The tax sale penalizes poverty. Many of those paying this penalty are suffering from poor economic conditions created and maintained by racist government policies. It rewards investors for being willing to exploit the poor so the city can get some quick cash."

> **FACT**: Most City properties that went to tax sale between 2018 and 2020 were NOT owner-occupied, let alone older adults who paid off their home. Only 15% were owner-occupied during this time (Source: page 6 of Presentation from City's Director of Finance Office for Informational Hearing on City Tax Sale, July 20, 2021). "BCIT (Baltimore City Office of Information and Technology) can provide data about properties that are owner-occupied vs. non-owner occupied, and BCIT can distinguish those over that have owned their property for more than 25 years. However, BCIT is unable to provide any age-related information." The City's Tax Sale does not seek to exploit or oppress anyone, and it does not differentiate between race, age, or employment – it's a much-needed tool of last resort to collect on tax delinquencies and ensure property owners remit payments for their share of taxes and charges connected to public services.