ENGROSSED HOUSE
BILL NO. 2740

By: Wallace, Hilbert, Boles, Hardin (David) and Sanders of the House

and

Pederson, Thompson and Rader of the Senate

An Act relating to revenue and taxation; amending 68 O.S. 2011, Sections 3102, 3103, 3104, 3105 and 3106, as amended by Section 1, Chapter 39, O.S.L. 2017 (68 O.S. Supp. 2019, Section 3106), which relate to procedures for the collection of delinquent taxes; providing exceptions to certain procedural requirements under certain conditions; amending 68 O.S. 2011, Section 3148, which relates to official duties connected with delinquent tax sales and tax resales; requiring postponement of required delinquent tax sales, notices and publications under certain conditions; requiring designation of postponement length by certain official; limiting postponement length; requiring advertisement under certain standard for postponement details periodically for certain period; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 68 O.S. 2011, Section 3102, is amended to read as follows:

Section 3102. ~~Within~~ Except for periods governed by the provisions of subsection C of Section 3148 of this title, within sixty (60) days after taxes on personal property shall become delinquent as of April 1, the county treasurer shall mail notice to the last-known address of such delinquent taxpayer and cause a general notice to be published one time in some newspaper of general circulation, published in the county, giving the name of each person owing delinquent personal property taxes, stating the amount thereof due, and stating that such delinquent personal property taxes, within thirty (30) days from date of this publication, shall be placed on a personal property tax lien docket in the office of the county treasurer and the homestead exemption of such taxpayer shall be canceled pursuant to Section 2892 of this title. Such liens are superior to all other liens, conveyances or encumbrances filed subsequent thereto, on real or personal property. The tax lien shall be a lien on all real and personal property of the taxpayer in the county for a period of seven (7) years, except as otherwise provided in subsection B of Section 3103 of this title. From and after the entry of the tax upon the tax lien docket, any person claiming any interest in any land or personal property can sue the county treasurer and board of county commissioners in the district court to determine the validity or priority of the lien.

SECTION 2. AMENDATORY 68 O.S. 2011, Section 3103, is amended to read as follows:

Section 3103. A. ~~Within~~ Except for periods governed by the provisions of subsection C of Section 3148 of this title, within thirty (30) days after publication of the general notice required in the provisions of Section 3102 of this title, the county treasurer shall cause a personal property tax lien record to be made in a docket for such purpose, showing the names and addresses of all persons, firms, and corporations owing delinquent personal property taxes, setting forth the delinquent years and amounts due and unpaid, together with penalty and costs as provided for by Section 2913 of this title. The liens are superior to all other liens, conveyances or encumbrances filed subsequent thereto, on real or personal property. The tax lien shall be a lien on all personal and real property of the person, firm, or corporation owing the delinquent tax for a period of seven (7) years from the date of the tax lien, except as otherwise provided in subsection B of this section. If such a lien is not collected within seven (7) years from the date upon which such tax became due and payable, the unpaid personal property taxes shall cease to be a lien upon any real or personal property of the person, firm, or corporation owing the tax. The provisions of this section shall not apply to taxes which became due or payable prior to January 1, 1971.

B. A tax lien on real property of a business arising from delinquent personal property taxes of the business may be released for purposes of a sale of such real property upon application to and approval of the county treasurer. No lien shall be released unless all excess proceeds of the sale are paid to the county treasurer in payment of the personal property taxes which are the subject of the lien. If a county treasurer determines that such a lien should be released, the county treasurer shall make an entry in the county treasurer's tax records indicating that the lien has been removed from the real property to be sold. The tax lien shall remain valid as to all other property of the taxpayer. As used in this subsection, "excess proceeds" means all proceeds over those needed to satisfy any liens on the property which have priority over the personal property tax lien of the county.

C. It shall be the duty of the county treasurer to collect all delinquent personal taxes due and unpaid, together with penalties and costs, as provided for by Section 2913 of this title, and costs and lien fee in the amount of Five Dollars ($5.00), and, upon receiving the same, shall release the lien on the personal property tax lien docket.

D. The county treasurer shall keep a personal property tax lien docket in the form prescribed by the State Auditor and Inspector and shall enter on the docket the names and addresses of delinquent taxpayers along with the other information required by the provisions of this section.

E. Upon compliance with the provisions of this section and Section 3102 of this title, the county treasurer may enter in the personal property tax lien docket the following statement:

"All unpaid items contained in this tax roll have been transferred to the personal property tax lien docket for this year." No further entries are required and the personal property tax roll for that year may be closed. The provisions of this section apply to all personal property tax rolls after 1970. Except as otherwise provided by subsection B of this section, all unpaid personal property taxes shall become a lien on any real estate owned by the taxpayer.

SECTION 3. AMENDATORY 68 O.S. 2011, Section 3104, is amended to read as follows:

Section 3104. A. Except for periods governed by the provisions of subsection C of Section 3148 of this title:

1. The county treasurer shall issue tax warrants for the collection of delinquent personal taxes upon demand of any person, or whenever the treasurer shall deem it advisable, on a form prescribed by the State Auditor and Inspector, to the sheriff of the county in which the real or personal property is located for the collection of such delinquent personal taxes.

2. The tax warrant shall be issued or directed against any person or legal entity who had possession, control or an interest in personal property at the time the taxes were assessed.

3. The tax warrant shall command the sheriff to collect the amount due for unpaid taxes, penalties and interest thereon, cost of advertising, sheriff's collection fees and any other lawful fees on personal property belonging to the person to whom such taxes were assessed, and if no personal property is found, then upon any real property such person owns or in which such person has an interest.

B. Except for periods governed by the provisions of subsection C of Section 3148 of this title:

1. The sheriff, upon receiving a tax warrant, shall levy said warrant and sell the property of the taxpayer in the manner and form as provided for the sale of personal and/or real property on execution.

2. The sheriff shall pay the total amount received from the sale of personal and/or real property to the county treasurer.

3. The tax warrant shall be returned by the sheriff within sixty (60) days after its issuance.

4. Failure to collect or return the tax warrant as provided in this section, shall subject the sheriff to the same penalties as provided by law for the failure to collect or return execution.

5. The sheriff shall be entitled to the same fees as are provided by law for like sales on execution.

SECTION 4. AMENDATORY 68 O.S. 2011, Section 3105, is amended to read as follows:

Section 3105. A. The county treasurer shall in all cases, except those provided for in subsection B of this section and except for periods governed by the provisions of subsection C of Section 3148 of this title, where taxes are a lien upon real property and have been unpaid for a period of three (3) years or more as of the date such taxes first became due and payable, advertise and sell such real estate for such taxes and all other delinquent taxes, special assessments and costs at the tax resale provided for in Section 3125 of this title, which shall be held on the second Monday of June each year in each county. The county treasurer shall not be bound before so doing to proceed to collect by sale all personal taxes on personal property which are by law made a lien on realty, but shall include such personal tax with that due on the realty, and shall sell the realty for all of the taxes and special assessments.

B. In counties with a population in excess of one hundred thousand (100,000) persons according to the most recent federal decennial census, the county treasurer shall not conduct a tax sale of such real estate where taxes are a lien upon real property if the following conditions are met:

1. The real property contains a single-family residential dwelling;

2. The individual residing on the property is sixty-five (65) years of age or older or has been classified as totally disabled, as defined in subsection C of this section, and such individual owes the taxes due on the real property;

3. The real property is not currently being used as rental property;

4. The individual living on the property has an annual income that does not exceed the HHS Poverty Guidelines as established each year by the United States Department of Health and Human Services

that are published in the Federal Register and in effect at the time that the proposed tax sale is to take place; and

5. The fair market value of the real property as reflected on the tax rolls in the office of the county assessor does not exceed One Hundred Twenty-five Thousand Dollars ($125,000.00).

C. As used in this section, a person who is "totally disabled" means a person who is unable to engage in any substantial gainful activity by reason of a medically determined physical or mental impairment which can be expected to last for a continuous period of twelve (12) months or more. Proof of disability may be established by certification by an agency of state government, an insurance company, or as may be required by the county treasurer. Eligibility to receive disability benefits pursuant to a total disability under the Federal Social Security Act shall constitute proof of disability for purposes of this section.

D. It shall be the duty of the individual owning property subject to the provisions of subsection B of this section to make application to the county treasurer for an exemption from a tax sale prior to the property being sold. It shall also be the duty of the individual to provide evidence to the county treasurer that the individual meets the financial requirements outlined in paragraph 4 of subsection B <u>of this section</u> and all other requirements of this section to qualify for the exemption. Any individual claiming the exemption provided in this section shall establish eligibility for the exemption each year the exemption is claimed.

E. Taxes, interest and penalties will continue to accrue while the exemption is claimed. The exemption from sale of property described in this section shall no longer be applicable and the county treasurer shall proceed with the sale of such real estate if any of the conditions prescribed in this section are no longer met.

F. Every notice of tax resale shall contain language approved by the Office of the State Auditor and Inspector informing the taxpayer of the provisions of this section.

SECTION 5. AMENDATORY 68 O.S. 2011, Section 3106, as amended by Section 1, Chapter 39, O.S.L. 2017 (68 O.S. Supp. 2019, Section 3106), is amended to read as follows:

Section 3106. A. ~~The~~ Except for periods governed by the provisions of subsection C of Section 3148 of this title, the county treasurer, according to the law, shall give notice of delinquent taxes and special assessments by publication once a week for two (2) consecutive weeks at any time after April 1, but prior to the end of September following the year the taxes were first due and payable, in some newspaper in the county to be designated by the county treasurer. Such notice shall contain a notification that all lands on which the taxes are delinquent and remain due and unpaid will be sold in accordance with Section 3105 of this title, a list of the lands to be sold, the name or names of the last record owner or owners as of the preceding December 31 or later as reflected by the records in the office of the county assessor, which records shall be updated based on real property conveyed after October 1 each year and the amount of taxes due and delinquent. If the sale involves property upon which is located a manufactured home the notice shall contain the following language: "The sale hereby advertised involves a manufactured home which may be subject to the right of a secured party to repossess. A holder of a perfected security interest in such manufactured home may be able to pay ad valorem taxes based upon the value of the manufactured home apart from the value of real property." In addition to said published notice, the county treasurer shall give notice by mailing to the record owner of said real property as of the preceding December 31 or later as reflected by the records in the office of the county assessor, which records shall be updated based on real property conveyed after October 1 each year, a notice stating the amount of delinquent taxes owed and informing the owner that the subject real property will be sold as provided for in Section 3105 of this title if the delinquent taxes are not paid and showing the legal description of the property of the owner being sold. Failure to receive said notice shall not invalidate said sale. The county treasurer shall charge and collect in cash, cashier's check or money order, in addition to the taxes, interest and penalty, the publication fees as provided by the provisions of Section 121 of Title 28 of the Oklahoma Statutes, and

Five Dollars ($5.00) plus postage for mailing the notice, which shall be paid into the county treasury or whatever fund the publication and mailing fee expenses came from, and the county shall pay the cost of the publication of such notice. But in no case shall the county be liable for more than the amount charged to the delinquent lands for advertising and the cost of mailing.

B. If personal property taxes become delinquent on a manufactured home which is located on property not owned by the owner of the manufactured home and the county treasurer provides notice pursuant to Sections 3102 and 3103 of this title, such notice shall also be sent to the last-known address of the owner of the real property on which the manufactured home is located.

SECTION 6. AMENDATORY 68 O.S. 2011, Section 3148, is amended to read as follows:

Section 3148. ~~(a)~~ A. Any county official charged with any duty in connection with the holding of delinquent tax sales and tax resales who fails to perform such duty, shall be guilty of malfeasance in office and upon conviction thereof shall be removed from office. In addition, any official who fails to perform such duty shall forfeit all salary or compensation for his or her services for a period of three (3) months after such failure might, with due diligence, have been discovered; and any official who approves, or votes to approve, a claim for salary or compensation, or issues, registers or pays a warrant for salary or compensation, in violation of the foregoing, shall be liable upon his or her official bond for the payment of such salary or compensation.

~~(b)~~ B. The provisions of this section relate to the duty of the board of county commissioners and the county excise board to provide funds for preparing and advertising delinquent tax sales and tax resales, and to the duty of the county treasurer to prepare, advertise and hold such delinquent tax sales and tax resales. However, no county official shall be held responsible for failure to hold a tax resale when prevented from doing so by prior failure to hold a delinquent tax sale, or for failure to provide more than a substantial portion of the funds necessary to pay the cost of advertising a tax resale.

C. In the event the Governor declares a Catastrophic Health Emergency pursuant to the Catastrophic Health Emergency Powers Act, the board of county commissioners, upon the written request of the county treasurer, shall postpone delinquent tax sales and related delinquent tax notices and publications. The county treasurer shall designate the period of postponement up to but not more than one (1) year. Upon postponement action by the board of county commissioners, the county treasurer shall advertise the details of the postponement in the same manner as other delinquent tax legal publications once per week for four (4) consecutive weeks.

SECTION 7. It being immediately necessary for the preservation of the public peace, health or safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the House of Representatives the 7th day of May, 2020.

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Presiding Officer of the House of Representatives

Passed the Senate the ___ day of __________, 2020.

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Presiding Officer of the Senate