S T A T E O F N E W Y O R K

2858

2011-2012 Regular Sessions

I N A S S E M B L Y

January 20, 2011

Introduced by M. of A. PRETLOW -- read once and referred to the Committee on Real Property Taxation

AN ACT to amend the real property tax law, in relation to the payment of delinquent taxes; and to repeal subdivision 2 of section 962 of the real property tax law relating to the qualifications of certain corporations or banking institutions to lend money pursuant to the provisions of title 4 of article 9 of the real property tax law and section 968 of the real property tax law relating to tax sale provisions under such title

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Legislative findings. The legislature hereby finds and declares that many taxing jurisdictions are owed millions of dollars annually in unpaid property taxes and that these taxing jurisdictions should be given the opportunity to utilize as many collection methods as possible in an effort to collect as much in unpaid taxes as possible. Such uncollected taxes adversely impact the taxing jurisdictions' ability to meet their operating expenditures and provide for the delivery of necessary and essential local governmental services, amplifying the risk of future real property tax increases and negatively impacting those taxpayers who timely remit payment. It is hereby further declared that limited means exist for taxing jurisdictions to expedite the collection of such delinquent taxes and that it is in the public interest to increase the number of methods available to taxing jurisdictions to expedite such collections and to provide their constituents as many payment methods as possible. It is further declared that many delinquencies often remain unpaid, thereby creating a lien against the affected real property, and that the taxpayers should have alternative methods of making payments to taxing jurisdictions for the payment of their taxes which will in turn enable taxing jurisdictions to expedite the receipt of anticipated revenues and provide a funding source, which will enable

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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taxing jurisdictions more effectively to carry out their public purposes, especially at this time when many taxing jurisdictions have significant budgetary problems.

S 2. The title heading of title 4 of article 9 of the real property tax law is amended to read as follows:

ACCEPTANCE OF TAXES FROM CERTAIN [LOAN CORPORATIONS] ENTITIES

S 3. Section 960 of the real property tax law is amended to read as follows:

S 960. Payment of taxes by loan corporations. 1. Any [municipal corporation may] TAXING JURISDICTION OR ITS ASSIGNEE SHALL, as provided in this title, accept payment of taxes, including special ad valorem levies and special assessments, on real property from any [corporation organized under the laws of the state of New York for the purpose of extending loans to taxpayers for the payment of taxes] ENTITY, UPON RECEIPT OF AN AFFIDAVIT FROM A PROPERTY OWNER AUTHORIZING THE ENTITY MAKING THE LOAN TO PAY THE TAXES OR DELINQUENT TAXES AND PENALTIES, INTEREST, COURT COSTS OR OTHER FEES ON SUCH PROPERTY OWNER'S BEHALF AND CONTAINING A LEGAL DESCRIPTION OF THE PROPERTY AND THE STREET ADDRESS THEREOF, IF APPLICABLE. FOR THE PURPOSES OF THIS TITLE, "ENTITY" SHALL MEAN ANY CORPORATION, LIMITED LIABILITY COMPANY OR PARTNERSHIP REGISTERED TO DO BUSINESS IN THIS STATE.

2. Upon such a payment, a conditional tax receipt shall be issued and the amount thereof conditionally credited by the [municipal corporation] TAXING JURISDICTION against the taxes due on the property for which payment is made, but such payment shall not extinguish the tax lien existing against such property until the conditional tax receipt is surrendered for cancellation to the [municipal corporation] TAXING JURISDICTION BY THE ENTITY LENDING THE MONEY TO THE TAXPAYER. IN ADDITION, THE AUTHORIZED REPRESENTATIVE OF THE TAXING JURISDICTION SHALL CERTIFY BY AFFIDAVIT THAT PAYMENT OF THE TAXES AND PENALTIES, INTEREST, COURT COSTS OR OTHER FEES ON THE DESCRIBED PROPERTY HAS BEEN MADE BY THE LENDING ENTITY AND NOT THE PROPERTY OWNER RESPONSIBLE FOR THE PAYMENT OF SUCH TAXES AND THAT THE TAXING JURISDICTION'S TAX LIEN IS TRANSFERRED TO THE LENDING ENTITY THAT PAID THE TAXES AND PENALTIES, INTEREST, COURT COSTS OR OTHER FEES. THE TAXING JURISDICTION SHALL ATTACH TO THE DOCUMENT THE COLLECTOR'S SEAL OF OFFICE, IF THERE IS SUCH A SEAL, AND DELIVER THE DOCUMENT TO THE LENDING ENTITY THAT PAID THE TAXES AND PENALTIES, INTEREST, COURT COSTS OR OTHER FEES WITHIN THIRTY DAYS OF RECEIPT OF PAYMENT. THE TAXING JURISDICTION SHALL KEEP A RECORD OF ALL TAX LIENS TRANSFERRED AS PROVIDED BY THIS SECTION. A PROPERTY OWNER AUTHORIZING A LENDING ENTITY TO PAY THE TAXES IMPOSED BY A TAXING JURISDICTION ON SUCH PROPERTY OWNER'S REAL PROPERTY MUST FILE WITH THE TAXING JURISDICTION AN AFFIDAVIT CONTAINING SUCH AUTHORIZATION, THE NAME OF THE ENTITY AUTHORIZED TO PAY THE TAXES AND PENALTIES, INTEREST, COURT COSTS OR OTHER FEES, A LEGAL DESCRIPTION OF THE PROPERTY AND THE STREET ADDRESS THEREOF, IF APPLICABLE.

3. Payments made pursuant to this section BY THE LENDING ENTITY may be used by the [municipal corporation] TAXING JURISDICTION in the same manner as if PAYMENT WERE made directly by the taxpayer.

S 4. Subdivision 1 of section 962 of the real property tax law is amended to read as follows:

1. [Municipal corporations may] TAXING JURISDICTIONS OR THEIR ASSIGNEES SHALL accept [such] payments from [a corporation] AN ENTITY extend-

ing loans for [such] THE purpose[, if the loan corporation has a paid-up capital of at least one million dollars and charges not more than four per centum interest on unpaid balances on moneys loaned, nor more than two per centum of the amount of the loan as a service charge in connection therewith; provided, however, that in the event of a default in the payment of such a loan, the loan corporation may charge six per centum interest per annum on all sums in default. The loan corporation shall, within three days after receiving the same, deposit the conditional tax receipt with a banking institution, trust company, state bank, national bank, or federal reserve bank of the district in which the municipal corporation is located] OF PAYING TAXES AND DELINQUENT TAXES AND PENALTIES, INTEREST, COURT COSTS OR OTHER FEES. AN ENTITY MAKING A LOAN SHALL HAVE THE RIGHT TO CHARGE REASONABLE AND CUSTOMARY LOAN FEES AND INTEREST, AND SUCH INTEREST SHALL NOT EXCEED THE RATE OF ONE AND ONE-QUARTER PERCENT PER MONTH OR FRACTION THEREOF. THE LOAN DOCUMENT SHALL PROVIDE FOR THE NOTIFICATION OF PAYMENT DUE DATES AND AN ACKNOWLEDGMENT BY THE BORROWER OF THE INTEREST RATE TO BE PAID, AND SUCH ACKNOWLEDGMENT SHALL BE SWORN TO. THE INTEREST RATE, IRRESPECTIVE OF ANY STATE LAW, SHALL NOT EXCEED THE RATE OF ONE AND ONE-QUARTER PERCENT PER MONTH OR FRACTION THEREOF. IN CALCULATING THE EFFECTIVE RATE OF INTEREST, ONLY THOSE FEES IN EXCESS OF TEN PERCENT OF THE FACE AMOUNT OF THE LOAN SHALL BE INCLUDED FOR SUCH CALCULATION.

S 5. Subdivision 2 of section 962 of the real property tax law is REPEALED and two new subdivisions 2 and 3 are added to read as follows:

2. TO BE ENFORCEABLE, A TAX LIEN TRANSFERRED AS PROVIDED BY SECTION NINE HUNDRED SIXTY OF THIS TITLE MUST BE RECORDED IN THE OFFICE OF THE CLERK OR REGISTER OF EACH COUNTY IN WHICH THE PROPERTY ENCUMBERED BY THE LIEN IS LOCATED.

3. AN ENTITY HOLDING A TAX LIEN TRANSFERRED AS PROVIDED BY SECTION NINE HUNDRED SIXTY OF THIS TITLE MAY CHARGE REASONABLE AND CUSTOMARY LOAN FEES AND RECOVER THE COSTS OF CLOSING THE LOAN AND RECORDING EXPENSES PAID TO ACQUIRE AND RECORD THE LIEN BY ADDING THESE COSTS TO THE AMOUNT OF THE LIEN.

S 6. Section 964 of the real property tax law, subdivision 2 as amended by chapter 733 of the laws of 1959, is amended to read as follows:

S 964. Deposit and delivery of conditional tax receipts. 1. [Immediately upon] WITHIN THIRTY DAYS OF the execution of the loan contract between the [taxpayer] PROPERTY OWNER and the [loan corporation, the loan corporation] ENTITY MAKING THE LOAN, SUCH ENTITY shall pay to the [municipal corporation] TAXING JURISDICTION, OR ITS ASSIGNEE, the moneys provided for therein. The [taxpayer] PROPERTY OWNER shall make payments on the loan to the [banking institution with which the conditional tax receipt has been deposited for the account of the loan corporation] ENTITY MAKING THE LOAN OR ITS SUCCESSOR IN INTEREST DIRECTLY OR IN SUCH MANNER AS DIRECTED BY THE ENTITY. THE ENTITY MAKING THE LOAN SHALL HAVE THE RIGHT TO PAY SUBSEQUENT YEARS' DELINQUENT TAXES AND ADD THESE TAXES TO THE ORIGINAL CONDITIONAL TAX RECEIPT. ADVANCES MADE TO PAY SUBSEQUENT YEARS' DELINQUENT TAXES SHALL EARN INTEREST AT THE RATE SPECIFIED IN THE ORIGINAL CONTRACT BETWEEN THE ENTITY MAKING THE LOAN AND THE PROPERTY OWNER.

2. [When made, such payments shall be entered and acknowledged by the banking institution upon the conditional tax receipt, which receipt shall remain in the possession of the banking institution until either the loan is fully discharged or a default occurs thereon.] In the event the loan is fully discharged, the conditional tax receipt shall be

endorsed "paid" and TWO COPIES OF THE CONDITIONAL RECEIPT ENDORSED "PAID" SHALL BE delivered, ONE to the [taxpayer or person making the payment. In the event of default, the conditional tax receipt shall be returned to the loan corporation at its option] PROPERTY OWNER AND ONE TO THE TAXING JURISDICTION THAT ISSUED THE CONDITIONAL TAX RECEIPT.

S 7. Subdivision 1 of section 966 of the real property tax law is amended to read as follows:

1. Upon the surrender of the conditional tax receipt evidencing the discharge of the obligation created by the loan contract in connection with which it was issued, the [municipal corporation] TAXING JURISDICTION shall replace it with a receipted tax bill. Such receipted tax bill shall bear the date of the conditional tax receipt and no interest or penalty shall be charged to the [taxpayer] PROPERTY OWNER BY THE TAXING JURISDICTION for the period between the date of the issuance of the conditional tax receipt and the date of its surrender. All [penalties and interest imposed by the municipal corporation for tax default shall be added to the tax lien until the discharge of the obligation created by the loan contract in connection with which the conditional tax receipt was issued, and such penalties and interest shall be cancelled and be deemed satisfied upon the discharge of such obligation provided such obligation is discharged prior to the disposition of the tax lien as provided in section nine hundred sixty-eight of this chapter] LIENS CREATED AND TRANSFERRED SHALL STAY IN EFFECT UNTIL THE LOAN OBLIGATION IS FULLY SATISFIED AND DISCHARGED.

S 8. The real property tax law is amended by adding two new sections 965 and 967 to read as follows:

S 965. DEFINITIONS; APPLICABILITY. FOR THE PURPOSES OF THIS TITLE, THE TERM "TAXING JURISDICTION" INCLUDES A MUNICIPAL CORPORATION, A SPECIAL DISTRICT AND, WHERE APPLICABLE, A COUNTY TAX COLLECTION AGENCY AS PROVIDED FOR IN TITLE FOUR-A OF THIS ARTICLE. THE PROVISIONS OF SECTION NINE HUNDRED NINETY-SIX OF THIS ARTICLE SHALL NOT BE APPLICABLE FOR THE PURPOSES OF THIS TITLE.

S 967. FORECLOSURE OF A CONDITIONAL TAX RECEIPT. 1. EXCEPT AS OTHERWISE PROVIDED BY THIS SECTION, THE TRANSFEREE OF A TAX LIEN PURSUANT TO SUBDIVISION TWO OF SECTION NINE HUNDRED SIXTY OF THIS TITLE, AND ANY SUCCESSOR IN INTEREST, IS SUBROGATED TO AND IS ENTITLED TO EXERCISE ANY RIGHT OR REMEDY POSSESSED BY THE TRANSFERRING TAXING JURISDICTION AND IS ENTITLED TO FORECLOSE THE LIEN IN THE EVENT OF A DEFAULT, AS DEFAULT IS DEFINED IN THE CONTRACT BETWEEN THE PARTIES, IN THE MANNER PROVIDED FOR IN ARTICLE THIRTEEN OF THE REAL PROPERTY ACTIONS AND PROCEEDINGS LAW FOR THE FORECLOSURE OF A MORTGAGE.

2. PRIOR TO THE INSTITUTION OF A SUIT TO FORECLOSE A TAX LIEN TRANSFERRED PURSUANT TO SUBDIVISION TWO OF SECTION NINE HUNDRED SIXTY OF THIS TITLE, A LENDING ENTITY SHALL PROVIDE NOTICE, VIA CERTIFIED MAIL, TO THE PROPERTY OWNER THAT SUCH LENDING ENTITY INTENDS TO COMMENCE A FORECLOSURE ACTION. SUCH NOTICE SHALL PROVIDE THE PROPERTY OWNER SIXTY DAYS FROM RECEIPT OF SUCH NOTICE TO CURE ANY DEFAULT, AS DEFAULT IS DEFINED IN THE LOAN AGREEMENT WITH THE LENDING ENTITY.

3. IF A SUIT TO FORECLOSE A TAX LIEN SO TRANSFERRED RESULTS IN THE FORECLOSURE OF SUCH LIEN, THE ENTITY FILING SUIT IS ENTITLED TO RECOVER ALL COSTS, DISBURSEMENTS, EXPENSES AND FEES AS PROVIDED FOR IN ARTICLE THIRTEEN OR FOURTEEN OF THE REAL PROPERTY ACTIONS AND PROCEEDINGS LAW FOR THE FORECLOSURE OF A MORTGAGE, THE SAME AS PROVIDED FOR IN THE CIVIL PRACTICE LAW AND RULES INSOFAR AS NOT COVERED BY THE REAL PROPERTY ACTIONS AND PROCEEDINGS LAW, AND ANY ADDITIONAL ALLOWANCES AUTHORIZED BY SECTIONS EIGHTY-THREE HUNDRED TWO AND EIGHTY-THREE HUNDRED THREE OF THE

CIVIL PRACTICE LAW AND RULES. ANY SURPLUS MONIES REMAINING SHALL BE PAYABLE TO THE PROPERTY OWNER.

4. SUBSEQUENT TO THE SALE OF THE PROPERTY AS PROVIDED IN THIS SECTION, THE PROPERTY OWNER IS ENTITLED TO REDEEM THE PROPERTY ON OR BEFORE THE (A) FIRST ANNIVERSARY OF THE DATE OF THE FORECLOSURE SALE BY PAYING THE PURCHASER OF THE FORECLOSED PROPERTY THE PURCHASE PRICE, PLUS COSTS AND INTEREST AT THE RATE OF EIGHTEEN PERCENT PER ANNUM, TO THE DATE OF REDEMPTION, OR ONE HUNDRED TWENTY-FIVE PERCENT OF THE PURCHASE PRICE, WHICHEVER IS LESS; OR (B) SECOND ANNIVERSARY OF THE DATE OF THE FORECLOSURE SALE BY PAYING THE PURCHASER THE PURCHASE PRICE, PLUS COSTS AND INTEREST AT THE RATE OF EIGHTEEN PERCENT PER ANNUM, TO THE DATE OF REDEMPTION, OR ONE HUNDRED FIFTY PERCENT OF THE PURCHASE PRICE, WHICHEVER IS LESS.

S 9. Section 968 of the real property tax law is REPEALED.

S 10. Section 970 of the real property tax law is amended to read as follows:

S 970. Examination of books of [loan corporations] LENDING ENTITIES. 1. Any [municipal corporation] TAXING JURISDICTION issuing conditional tax receipts shall keep a complete record thereof. Any [municipal corporation] TAXING JURISDICTION shall have the right to examine from time to time the [books] DOCUMENTS RELATING TO ANY OF THE LOANS of any [loan corporation] ENTITY to which it has issued conditional tax receipts [and]. ANY COUNTY IN WHICH CONDITIONAL TAX RECEIPTS ARE RECORDED may [make], IN ITS DISCRETION, PROMULGATE regulations not inconsistent with the provisions of this title for the better accomplishment of the purpose thereof and for the protection of the borrowing [taxpayer] PROPERTY OWNER.

2. Upon [proof to the municipal corporation of] A DETERMINATION OF, AFTER NOTICE AND AN OPPORTUNITY TO BE HEARD, any willful AND PERSISTENT violation of this title, or of the regulations [made] PROMULGATED pursuant thereto, by any [loan corporation] LENDING ENTITY to which [it] A TAXING JURISDICTION has issued conditional tax receipts, it shall cease the issuance of conditional tax receipts to such [loan corporation] LENDING ENTITY.

S 11. This act shall take effect on the one hundred eightieth day after it shall have become a law; provided that any and all rules and regulations and any other measures necessary to implement any provision of this act on its effective date may be promulgated and taken, respectively, on or before the effective date of such provision.