S T A T E O F T E N N E S S E E
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August 1, 2006

Opinion No. 06-122

Proration of Ad Valorem Taxes on Real Property at Time of Sale

QUESTIONS

1. May the General Assembly enact a statute providing for the collection of taxes and extinguishment of the current year's tax lien at the time of the sale of real property using the most recently established tax rate and assessment?

2. If so, may such a statutory provision be implemented as a local option provision?

OPINIONS

1. No, such a statutory provision requiring collection of property taxes and extinguishment of the current year's tax lien would violate the Tennessee Constitution's uniform taxation provision because it could result in the under-taxation of property that is sold prior to establishment of the tax rate for that year.

2. Our answer to Question 1 renders this question moot.

ANALYSIS

The Tennessee Constitution provides that "[t]he ratio of assessment to value of property in each class or subclass shall be equal and uniform throughout the State, the value and definition of property in each class or subclass to be ascertained in such manner as the Legislature shall direct." Tenn. Const. art. II, § 28. As we understand the question presented, the proposed legislation would provide that, in the event real property is sold during a given tax year, the parties to the transaction would be required to pay the estimated taxes due on the property using the most recent tax rate and assessment information available. In our view, such a provision would violate the Tennessee Constitution's uniform taxation provision quoted above. In cases where the local legislative body increases the tax rate after the sale has occurred, the property sold effectively will be under-taxed for that year. Similarly, if the sale occurs in a reappraisal year prior to the property's reappraisal, the property sold will be under-taxed if, as is often the case, the reappraisal value is higher than the property's previous value. Under these circumstances, taxation of the property would not be equal

and uniform with other properties in the jurisdiction to which the new tax rates or reappraisal values are applied.

Of course, the General Assembly could enact a provision requiring the seller of the property to remit the seller's prorata portion of the estimated taxes on the property, which payment ultimately could be applied to the property's tax bill for that year; however, a provision which allows the seller and the purchaser to make such estimated payments prior to establishment of the new tax rate or reappraisal value, and thereby to extinguish any tax lien on the property for that year, inevitably would lead to the non-uniform taxation of property in that jurisdiction.

This Office is aware that the General Assembly has enacted other provisions allowing for the prorated payment of taxes when real property is transferred during a tax year. These provisions primarily involve transfers between non-exempt and exempt entities, however, and do not provide support for the legislation described in your request. *See* Tenn. Code Ann. §§ 67-5-201 & -203 (2003 & Supp. 2005). When property is transferred to an exempt entity, no further taxes are due on the property, and the Constitution's uniform taxation principles are not implicated. While uniform taxation is a constitutional requirement, the time requirements for making property tax assessments and payments are entirely statutory. When real property becomes tax-exempt through transfer to a governmental or other exempt entity, the Legislature properly may resolve any outstanding tax liability by applying the then current tax rate. In such a case, the transferred property incurs no additional tax liability for the remainder of the year, and the exempt entity acquiring the property is not required to make up the difference between the estimated tax payment and the actual tax bill that results from the newly-established rate. In contrast, in cases where two non-exempt entities are responsible for the entire year's tax bill and are permitted to discharge their respective liabilities at the former tax rate, the proposed legislation would result in the non-uniform taxation of the property transferred.

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