

## STATE OF MICHIGAN

## COURT OF APPEALS

**CITY OF MONROE,**  
a Michigan Municipal Corporation,

Plaintiff-Appellee,

Court of Appeals No. 246128

Lower Court No. 02-14835-CZ

vs.

**MBT FINANCIAL CORP., INC.,**  
a Michigan Corporation, and  
**MONROE BANK & TRUST,**  
a wholly owned subsidiary of  
MBT Financial Corp., Inc.,

Defendants-Appellants

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Christina D. Hills (P48687)  
Michael L. Heller (P24920)  
READY, SULLIVAN & READY, LLP  
Attorneys for Plaintiff-Appellee  
204 South Macomb Street  
Monroe, Michigan 48161  
(734) 242-7600

Barry E. Savage (P19916)  
Attorneys for Defendants-Appellants  
500 Madison Avenue, Suite 315  
Toledo, Ohio 43604  
(419) 255-3557

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Kester K. So (P31783)  
DICKINSON WRIGHT PLLC  
Attorneys for Amicus Curiae  
Michigan Municipal League  
215 S. Washington Square  
Suite 200  
Lansing, Michigan 48933  
(517) 371-1730

**BRIEF AMICUS CURIAE  
OF THE  
MICHIGAN MUNICIPAL LEAGUE**

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## **ISSUES PRESENTED**

WHETHER A PERSONAL PROPERTY TAX LIEN ARISING UNDER SECTION 40 OF THE GENERAL PROPERTY TAX ACT HAS PRIORITY OVER AN EXISTING SECURITY INTEREST IN THE SAME PERSONAL PROPERTY?

City of Monroe (Plaintiff-Appellee) presumably says "yes."

Defendants-Appellants presumably say "no."

Amicus Curiae Michigan Municipal League says "yes."

**BRIEF AMICUS CURIAE  
OF THE  
MICHIGAN MUNICIPAL LEAGUE**

**I. INTRODUCTION**

The Michigan Municipal League is a nonprofit Michigan corporation whose purpose is the improvement of municipal government and administration through cooperative effort. Its membership is comprised of 511 Michigan cities and villages of which 430 are also members of the Michigan Municipal League Legal Defense Fund. The Michigan Municipal League operates the Legal Defense Fund through a board of directors. The purpose of the Legal Defense Fund is to represent the member cities and villages in litigation of statewide significance. This brief amicus curiae is authorized by the Legal Defense Fund's board of directors whose membership includes: the President and Executive Director of the Michigan Municipal League and the officers and directors of the Michigan Association of Municipal Attorneys: Philip A. Balkema, city attorney, Grand Rapids; William B. Beach, city attorney, Rockwood; John E. Beras, city attorney, Southfield; Randall L. Brown, city attorney, Portage; Ruth Carter, corporation counsel, Detroit; Catherine R. Ginster, city attorney, Saginaw; Andrew J. Mulder, city attorney, Holland; Clyde Robinson, city attorney, Battle Creek; Debra A. Walling, corporation counsel, Dearborn; Eric D. Williams, city attorney, Big Rapids; and William C. Mathewson, general counsel, Michigan Municipal League.

In City of Monroe v MBT Financial Corp, Inc, Lower Court No. 02-14835-CZ, the Honorable Michael W. LaBeau for the Circuit Court for the County of Monroe issued an Order Granting Summary Disposition, dated November 1, 2002 ("Circuit Court Order") in favor of the

City of Monroe ("City"), in which the Court held that a lien arising under Section 40 of the General Property Tax Act, 1893 PA 206, MCL 211.40 on certain personal property of a taxpayer as a result of delinquent personal property taxes ("Tax Lien"), had priority over a preexisting security interest of Monroe Bank & Trust in the same personal property.

The Circuit Court Order merely restates a well-established and widely recognized proposition of law -- that a Tax Lien created under Section 40 has priority over any other lien or encumbrance on the same property irrespective of whether such other lien or encumbrance was preexisting or arose after the date the personal property taxes were assessed.

The pertinent provisions of Section 40 of the General Property Tax Act are plain and simple and need no interpretation:

... The tax liens take **precedence over** all other claims, encumbrances, and liens on that personal property . . . The personal property taxes levied or assessed by any city or village are a **first lien, prior, superior, and paramount to any other claims, liens, or encumbrances of any kind upon the personal property assessed** as provided in this act, any provisions in the charter of cities or villages to the contrary notwithstanding (emphasis supplied).

Thus, under the plain wording of the statute, personal property taxes levied or assessed by the City "take precedence over" and are a "first lien, prior, superior, and paramount to any other claims, liens, or encumbrances of any kind upon the personal property assessed . . ." *regardless* of whether the competing lien or encumbrance was preexisting or arose subsequent to the City's Tax Lien.

Appellants MBT Financial Corp., Inc. and Monroe Bank & Trust argue that amendments made to Section 40 of the General Property Tax Act in 1994 abrogated the priority and paramount nature of a municipality's Tax Lien over a preexisting security interest in the same

personal property. Without citation to any case law or authority whatsoever, they take the position that a Tax Lien arising under Section 40 now takes priority over only subsequently created liens or encumbrances. If Appellants' arguments are adopted by this Court, it would overturn over a half a century of jurisprudence in this State. Moreover, the public policy implications of such a decision could be far reaching. It could adversely and significantly impact the ability of municipalities to effectuate collection of personal property taxes and other taxes that are validly due and owing to municipalities.

## **II. STATEMENT OF FACTS AND PROCEDURAL BACKGROUND**

The Michigan Municipal League adopts the Counter-Statement of Facts set forth in the City of Monroe's Brief on Appeal dated April 8, 2003.

## **III. ARGUMENT**

### **A. A PERSONAL PROPERTY TAX LIEN ARISING UNDER SECTION 40 OF THE GENERAL PROPERTY TAX ACT HAS PRIORITY OVER AN EXISTING SECURITY INTEREST IN THE SAME PERSONAL PROPERTY**

#### **1. A Plain Reading Of Section 40 Of The General Property Tax Act Gives Priority To A Personal Property Tax Lien Arising Thereunder Over Any Other Competing Liens**

Section 40 of the General Property Tax Act which authorizes personal property Tax Liens for unpaid taxes<sup>1</sup> A version of Section 40 has been in existence since at least the late 1800s.

The present day version of Section 40 provides:

Notwithstanding any provisions in the charter of any city or village to the contrary, all taxes become a debt due to the township, city, village, or county from the owner or person otherwise assessed on the tax day provided for in sections 2 and 13. The amounts assessed for state, county, village, or township taxes on any interest in real property shall become a lien on the real property on December 1, on a day provided for by the charter of a city or village, or on the day provided for in section 40a. The lien for those amounts, and for all interest and charges on those amounts, shall continue until paid. Each tax statement and receipt for taxes on real property sent or given by any county, township, city, or village treasurer shall contain a printed, stamped, or written statement setting forth the date of the commencement and ending of the fiscal year of each taxing unit of government during which general taxes included on the tax statement or receipt will defray the costs of governmental services rendered by that local governmental unit. All personal taxes levied or assessed for state, county, village, or township taxes are also a **first lien, prior, superior, and paramount**, on all personal property of the persons assessed on December 1, on a day provided for by the charter of a city or village, or on the day provided for in section 40a. The lien for those amounts, and for all interest and charges on those amounts, shall continue until paid. **The tax liens take precedence over all other claims, encumbrances, and liens on that personal property, whether created by chattel mortgage, title retaining contract, execution, any final process of a court, attachment, replevin, judgment, or otherwise.** A transfer of personal property assessed for taxes does not divest or destroy the lien, except where the personal property is actually sold in the regular course of retail trade. **The personal property taxes levied or assessed by any city or village are a first lien, prior, superior, and paramount**

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<sup>1</sup> The General Property Tax Act governs taxation of property (real and personal) in the State of Michigan. Unless exempted, all personal property within the State of Michigan is subject to taxation. See, MCL 211.1. Personal property includes all goods, chattels and effects within the State and all other personal property not enumerated in the statute and not especially exempted by law. MCL 211.8. Generally, if the owner is known, the personal property taxes are assessed to the owner of the personal property. MCL 211.3. After personal property taxes have been assessed against the owner, if they remain unpaid, the municipality assessing the tax has a Tax Lien under Section 40. MCL 211.40. Under Section 40, this Tax Lien has priority over any competing liens or encumbrances, *no matter when the competing liens or encumbrances arose.* MCL 211.40.

**to any other claims, liens, or encumbrances of any kind upon the personal property assessed as provided in this act, any provisions in the charter of cities or villages to the contrary notwithstanding.**

Section 40 specifically addresses the question of the priority of personal property taxes *vis-à-vis* other competing liens and claims. Under Section 40, a municipal Tax Lien "takes precedence over" and is a "... first lien, prior, superior, and paramount to any other claims, liens, or encumbrances of any kind..." This is true no matter when the competing lien arose. A cardinal rule of statutory construction<sup>2</sup> is that a statute must be construed to effect the intention of the Legislature. And where a statute is clear, judicial construction is neither necessary nor permitted. Dep't of Transportation v Thrasher, 196 Mich App 320, 323; 493 NW2d 457 (1992); *aff'd* 446 Mich 61; 521 NW2d 214 (1994). This statute cannot be any clearer. Under Section 40, the priority accorded to and the superiority of the municipal Tax Lien is manifest and undisputed.

In reviewing substantially similar versions of Section 40, modern day courts have universally held that a municipality's Tax Lien is superior to any other competing liens. *In re Ever Krisp Food Products Co*, 307 Mich 182; 11 NW2d 852 (1943); Chrysler Corp v Long & Long, Inc 171 F Supp 541 (ED Mich, 1958); *In re Rite-Way Tool & Mfg Co*, 333 Mich 551, 556; 53 NW2d 373 (1952); *In re Reef Petroleum Corp*, 92 BR 741 (Bankr. WD Mich 1988). Courts have so held even in situations where the competing lien existed *before* the municipal Tax Lien arose. *See, Michigan Nat'l Bank v Auburn Hills*, 193 Mich App 109; 483 NW2d 436 (1992), *app den* 441 Mich 911; 496 NW2d 294 (1993).

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<sup>2</sup> 1963 Const, art VII, § 34 requires that the construction and laws relating to municipalities shall be liberally construed in their favor.

**2. Appellants' Claim That The 1994 Amendment To Section 40 Totally Changed The Priority Rights Established Under Section 40 Is Erroneous And Misplaced**

Appellants apparently argue that certain amendments to Section 40 made by the Michigan Legislature in 1994 somehow drastically changed and altered the priority of liens rights that have been in existence since the late 1920's and early 1930's. However, a careful reading of the legislation and the amendments thereto demonstrates that Appellants' arguments are totally without merit.

**a) Pre 1920's/30's Version of Section 40**

Appellants point to a deletion of words in the 1994 amendments to support their contention that the 1994 amendments somehow did away with the priority given to the municipal Tax Lien. No cases are cited in support of their position. Since Section 40 has been amended on several occasions, in order to appreciate why Appellants' arguments are misplaced, it may be useful to trace the language contained in Section 40 since its inception to see how the language of Section 40 has actually changed over the century it has been in existence. Copies of Section 40 since its inception and all amendments thereto have been included for ease of reference as Exhibit A.

First enacted in 1893, the early versions of Section 40 did impose a priority in time element to property tax liens. At that time, the unpaid assessment became a lien on personal property on December 1 of each year, and took precedence over "any sale, assignment or chattel mortgage, levy or other lien, on such personal property, *executed or made after said first day of December . . .*" 1893 PA 206 (emphasis supplied).

However, in a significant and marked departure from then existing policy, Section 40 was substantively amended in 1929 and again in 1934 to provide that the municipal Tax Lien, no matter when established, had priority over all competing preexisting or subsequently arising liens. The 1929 version of Section 40 provided, in pertinent part:

And all personal taxes shall also be a first [1<sup>st</sup>] lien on all personal property of such persons so assessed from and after the first [1<sup>st</sup>] day of December in each year and so remain until paid, which said lien shall take precedence over all other claims, encumbrances and liens upon said personal property whatsoever, whether created by chattel mortgage, execution levy, judgment or otherwise and whether arising before or after the assessment of said personal taxes, and no transfer of personal property assessed for taxes thereon shall operate to divest or destroy such lien, except where such personal property is actually sold in the regular course of retail trade. 1929 PA 107 (emphasis supplied).

Five years later, Section 40 was amended again in 1934. The 1934 amendments maintained the "precedence over" language, deleted the "whether arising before or after" language and instead, reinforced the concept that municipal Tax Liens were superior to all competing liens *by adding specific language to that effect earlier in that sentence and to the last sentence of section 40*. The 1934 amendments also made it clear that the municipal Tax Lien was superior to a competing lien regardless of whether the *competing lien* arose prior to the effective date of the act or subsequent thereto.<sup>3</sup> The 1934 amendments to Section 40 provided:

And all personal taxes hereafter levied or assessed shall also be a **first lien, prior, superior and paramount**, on all personal property of such persons so assessed from and after the first day of December in each year for state, county, village or

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<sup>3</sup> The portion of the 1934 amendments which added the language ". . . and whether such [competing] liens . . . become effective prior to the effective date of this act or subsequent thereto . . ." was in response to the Court's holding in Detroit Trust Co v City of Detroit, 269 Mich 81; 256 NW 811 (1934), which was decided prior to the effective date of the 1934 amendments. There, the Court held that the 1929 amendments were *not* retroactive in effect and therefore, the priority established and given to municipals for the first time in the 1929 amendments did not control the question of whether a preexisting chattel mortgage had priority over a municipal tax lien. The added language made it clear it did not matter when the *competing lien* became effective.

township taxes or upon such day as may be heretofore or hereafter provided by charter of a city, and so remain until paid, which said tax liens shall take **precedence over** all other claims, encumbrances and liens upon said personal property whatsoever, whether created by chattel mortgage, title retaining contract, execution, or upon any other final process of a court, attachment, replevin, judgment or otherwise, and whether such liens, claims and encumbrances created by chattel mortgage, title retaining contract, execution or upon any other final process of a court, attachment, replevin, judgment or otherwise, become effective prior to the effective date of this act or subsequent thereto, and no transfer of personal property assessed for taxes thereon shall operate to divest or destroy such lien, except where such personal property is actually sold in the regular course of retail trade. **The personal property taxes hereafter levied or assessed by any city shall be a first lien, prior, superior and paramount to any other claims, liens and encumbrances whatsoever upon the personal property assessed as herein provided, any provisions in the charter of such cities to the contrary notwithstanding.**

In the 1934 amendments, the Legislature made two things abundantly clear: (i) by retaining the "precedence over" language and adding the language earlier in that sentence and to the end of Section 40, Tax Liens had, consistent with the 1929 amendments, absolute priority over all competing liens; and (ii) this held true irrespective of whether the competing liens or encumbrances came into existence before or after the effective date of that amendment.

Since at least 1943, the Michigan Supreme Court has expressly recognized that the rule first announced in Lucking v Ballantyne, 132 Mich 584; 94 NW 8 (1903) and Dunitz v Albert Pick & Co, 241 Mich 55; 216 NW 382 (1927) which interpreted the original version of Section 40 that had a first-in-time element, had been overturned by the changes to Section 40 made in the 1929 and 1934 amendments. See, In re Ever Krisp, 307 Mich 182, 208-209; 11 NW2d 852 (1943). There, the Supreme Court recognized:

Since the effective date of Act No. 38, Pub. Acts 1934 (1st Ex.Sess.), personal property taxes have been and now are a first lien superior to all other claims, encumbrances and liens whether prior or not. Id.

The Michigan Supreme Court has since reaffirmed the notion that municipal Tax Liens have priority over and are superior to chattel mortgages, citing to Cooley on Taxation:

Not only is it competent for the State to charge property with a lien for the taxes imposed thereon, but the legislature may, if it shall deem it proper or necessary to do so, make the lien a first claim on the property, with precedence of all other claims and liens whatsoever, whether created by judgment, mortgage, execution, or otherwise, and whether arising before or after the assessment of the tax. \* \* \* This statutory priority generally extends to prior mortgage liens so as to subordinate such liens to tax liens. So the priority may be given to liens for a personal property tax.

In re Rite-Way Tool & Mfg Co, 333 Mich 551, 556; 53 NW2d 373 (1952) citing to 3 Cooley on Taxation (4th ed), § 1240.

Both state and federal courts applying Michigan law since 1952 when In re Rite-Way was decided have agreed that a municipal Tax Lien has absolute priority over all competing liens. See, Chrysler Corp v Long & Long, Inc, 171 F Supp 541, 544 (ED Mich 1958) and Michigan Nat'l Bank v Auburn Hills, 193 Mich App 109; 483 NW2d 436 (1992). In Michigan Nat'l Bank, the lender loaned money to Merit Stainless Steel, a Michigan corporation on December 2, 1987, which loan was secured by a security agreement that included all assets of Merit Steel and was perfected by a filing with the Secretary of State. Merit Steel was later assessed personal property taxes on December 31, 1987. After Merit Steel defaulted on the loan, the bank executed its lien and took possession of all of Merit Steel's assets. Under the version of Section 40 in existence at the time, a municipal Tax Lien arose on December 1, 1988 (December 1 of the following year) by virtue of the non-payment by Merit Steel of the personal property taxes previously assessed. When the city went to enforce its Tax Lien, the lender, in an attempt to prevent a seizure, tendered a check to the municipality in the amount of the personal property taxes owed the municipality --- and then brought an action for a refund of the tendered amount.

Even though the lender's security interest in the personal property was created prior to the existence of the Tax Lien, the Court of Appeals held that the municipality's Tax Lien had priority over the lender's security interest. In so holding, the Court of Appeals reviewed the 1929 and 1934 amendments:

Arguably, "the intent of the legislature in passing Act 107 of the public acts of 1929 was to change the then existing law in relation to tax liens on personal property to make them prior liens to 'other claims, encumbrances and liens upon said personal property . . . whether arising before or after the assessment of said personal taxes.' The legislature possesses the power to subordinate mortgages, liens and encumbrances to tax liens, and under the existing law the tax lien which comes into being on December first is a prior and superior lien to all other mortgages, liens and encumbrances which have been placed on the personal property before or after December first." OAG, 1931-1932, p 107. In contrast, conveyances of interests of a lesser degree than complete ownership, such as mortgages and liens, would not take free and clear from any obligation to pay the taxes. OAG, 1931-1932, p 109.

In 1934, the statute was amended again to specify that "all personal taxes hereafter levied or assessed shall also be a first lien, prior, superior and paramount . . . which said tax liens shall take precedence over all other claims, encumbrances and liens . . . whether such liens, claims and encumbrances . . . become effective prior to the effective date of this act or subsequent thereto, and no transfer of personal property assessed for taxes thereon shall operate to divest or destroy such lien, except where such personal property is actually sold in the regular course of retail trade." 1934 PA 38. Since the enactment of Act 38, "personal property taxes have been and now are a first lien superior to all other claims, encumbrances and liens whether prior or not." In re Ever Krisp Food Products Co., 307 Mich 182, 209; 11 NW2d 852 (1943).

Id., at 113-114. Consequently, under facts substantially similar to this case, the rule of law announced and followed in In re Ever Crisp, In re Rite-Way, Chrysler Corporation and Michigan Nat'l Bank is controlling here and the City's Tax Lien must have priority over any competing liens pursuant to Section 40.

Subsequent amendments to the General Property Tax Act in the 1940's and 1950's did nothing to change this new priority scheme established in the 1929 and 1934 amendments. The

1994 and 1995 amendments to Section 40 likewise did nothing to change the priority scheme *vis-à-vis* competing liens -- perhaps more importantly, the amendments actually reinforced the notion that the Tax Lien was designed and intended to afford municipalities more flexibility in the imposition and realization of tax liens.<sup>4</sup>

The 1994 and 1995 amendments changed Section 40 in two ways: (i) they provided a general and more comprehensive and expansive description of what category of encumbrance could become a competing lien and removed unnecessary language describing when a *competing lien* arose; and (ii) they provided for acceleration of what is referred to as "tax day" by providing that "tax day" could be December 31 of the year prior to the year in which taxes are levied -- this would enable municipalities to avoid the eleven-month gap period between the end of the tax year in which property (real or personal) is assessed and the following December 1, in the context of a bankruptcy of the owner of the property being assessed. More importantly, however, the

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<sup>4</sup> The 1994 amendments to Section 40 accelerated the designation of "tax day" to December 31 of the year preceding the year in which the property taxes were assessed. Prior thereto, the lien did not arise for bankruptcy purposes until 11 months later or December 1 of the year in which the assessment was actually made. The 1994 amendments and the 1995 amendments were designed to provide municipalities with added protection against delinquent taxpayers by reducing the period of time when the tax lien came into effect (previously December 1) for bankruptcy purposes. The 1995 amendments to the General Property Tax Act amended more than Section 40. It also added a Section 40a, which authorized the acceleration of the designation of "tax day" under Sections 2 (real property) and 13 (personal property) in those situations where a taxpayer could potentially have financial difficulties paying his or her taxes. This was done to give municipalities more flexibility and protection *vis-à-vis* delinquent taxpayers. Under Section 40a, "tax day" under Sections 2 and 13 could be accelerated when (i) the owner files for bankruptcy, (ii) a secured lender has brought an action to foreclose a security interest, (iii) the owner has liquidated or is attempting to liquidate the personal property, (iv) the property is subject to receivership, (v) the owner has assigned the property for the benefit of creditors, (vi) the property has been seized by federal, state or local authorities, and (vii) a judicial action has been commenced that may impair the ability of the taxing authority to collect any tax due. So for bankruptcy or receivership purposes, the municipality no longer had to wait until December 31 of the preceding year before a "tax day" could be designated if one of these events existed.

sanctity of the priority of the municipal Tax Lien over competing liens remained unchanged. See, Exhibit A for the text of the 1994 and 1995 amendments and Exhibit B for the legislative history of the 1994 and 1995 amendments.

Appellants claim that the 1994 amendments which deleted the words "... whether such [competing] liens ... became effective prior to the effective date of this act or subsequent thereto ..." from the 1934 version somehow changed the entire priority scheme because apparently, in their view, these words were "words of subordination."<sup>5</sup>

Appellants' claims are unfounded for at least two reasons. First, they conveniently ignore the fact that the 1934 amendments retained ("precedence over" language) and then added specific priority rights earlier in that sentence and to the last sentence of Section 40, a version which remains substantively unchanged today. Courts have held this language gives municipal Tax Liens absolute priority over all competing liens no matter when they arose. The operative and relevant language addressed by the Court of Appeals in Michigan Nat'l Bank is virtually the same today and remains unchanged.

Second, the purported "words of subordination" which were added by the 1934 amendments and subsequently deleted in 1994 have absolutely nothing to do with the priority of the municipal Tax Lien, but instead were added in 1934 to clarify that municipal Tax Liens had absolute priority over all competing liens and should be effective *even if the competing lien arose before the effective date of the amendment*. The words which were added in 1934 and deleted in 1994 applied to and focused solely on the *competing lien* to determine whether the new priority given municipal Tax Liens in the 1929 amendments or the old priority-in-time rules

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<sup>5</sup> Appellants totally ignore the priority language contained elsewhere and in the last sentence of Section 40 which was added first by the 1934 amendments and continues today in virtually identical form.

would apply. That language is wholly unnecessary today since the language according absolute priority to the municipal Tax Lien was included and has been in effect since at least 1929 and there is, and can no longer be, a dispute now nearly 75 years later over whether Section 40 should operate prospectively or retroactively. Contrary to Appellants' assertions, the language deleted in 1994 has absolutely nothing to do with "subordination" of rights. If the Legislature had intended to revert back to a priority-in-time scheme – it could have by adding back the specific language contained in the 1893 version of Section 40 (which was eliminated in 1929 and thereafter). It did not. And nothing in the legislative history for the 1994 amendment even remotely suggests an intent to again radically change the priority rights from what was put in place in 1929. Appellants' assertions are simply unfounded in fact and in law.

### **3. Section 40 Controls Priority of Liens, Not The City Charter**

Appellants claim that under the City's Charter, the City's tax lien has priority over *subsequent* liens. See, Section 146 of the City of Monroe Charter. The City's Charter was initially adopted in 1913 and remains essentially unchanged today. The language included in Section 146 of the Charter mirrored the priority-in-time element then embodied in the 1897 version of Section 40. The 1929 and 1934 amendments, as seen above marked a radical change in the parties' priority rights. The City's Charter was never amended to reflect this change.

As a matter of law, it did not need to be changed. First, Section 40 contemplated potential conflicts with existing charters because many municipal corporations in Michigan were in their formation stages during this same time period. It specifically provided that the municipal Tax Lien would have priority over competing liens ". . . any provisions in the charter of cities or

village to the contrary notwithstanding." See, the last sentence of Section 40. In fact, in Chrysler Corp v Long & Long, Inc., supra, a similar claim was made against the City of Hamtramck which had a similar charter provision. The federal court there, applying Michigan law, held that the provision of Section 40 controlled over the City of Hamtramck's charter.

Second, in Michigan, even in the event of a conflict, general laws, such as the General Property Tax Act will be read into a municipal's charter and should prevail over the conflicting charter provision. See, City of Hazel Park v Municipal Finance Commission, 317 Mich 582, 604; 27 NW2d 106 (1947).

#### IV. CONCLUSION

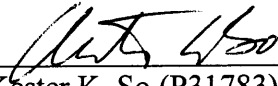
Unless the Circuit Court Opinion is upheld, this Court's decision would have a major adverse impact on the financial condition of many municipalities and their ability to collect on delinquent taxes owed to them and would result in a significant departure from long-standing legal precedent (at least since 1929) and commonly accepted practice.

The wording of Section 40 of the General Property Tax Act since at least 1929 is clear and unambiguous. Section 40 gives priority to municipal Tax Liens over all competing liens or encumbrances. No other reasonable interpretation can be given it. State and federal courts have universally agreed. The changes to Section 40 made in the 1994 and 1995 amendments did not add any new restrictions or limitations to it, nor more importantly, did it change the priority rights afforded municipal lienholders. Under Section 40, Municipal Tax Liens continue to have priority over all other competing liens or encumbrances.

For the foregoing reasons, the Michigan Municipal League respectfully requests that this Court of Appeals affirm the Circuit Court Order and grant such further relief as may be warranted under the circumstances.

Respectfully submitted,

DICKINSON WRIGHT PLLC,  
Attorneys for Amicus Curiae  
Michigan Municipal League

By:   
Kester K. So (P31783)

Business Address:  
215 S. Washington Square, Ste. 200  
Lansing, MI 48933  
Telephone: 517-371-1730

Dated: May 27, 2003

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**THE GENERAL PROPERTY TAX ACT (EXCERPT)****Act 206 of 1893****211.40 Lien for taxes; priority; statement and receipts for taxes to show taxing unit's fiscal year.****Sec. 40.**

Notwithstanding any provisions in the charter of any city or village to the contrary, all taxes become a debt due to the township, city, village, or county from the owner or person otherwise assessed on the tax day provided for in sections 2 and 13. The amounts assessed for state, county, village, or township taxes on any interest in real property shall become a lien on the real property on December 1, on a day provided for by the charter of a city or village, or on the day provided for in section 40a. The lien for those amounts, and for all interest and charges on those amounts, shall continue until paid. Each tax statement and receipt for taxes on real property sent or given by any county, township, city, or village treasurer shall contain a printed, stamped, or written statement setting forth the date of the commencement and ending of the fiscal year of each taxing unit of government during which general taxes included on the tax statement or receipt will defray the costs of governmental services rendered by that local governmental unit. All personal taxes levied or assessed for state, county, village, or township taxes are also a first lien, prior, superior, and paramount, on all personal property of the persons assessed on December 1, on a day provided for by the charter of a city or village, or on the day provided for in section 40a. The lien for those amounts, and for all interest and charges on those amounts, shall continue until paid. The tax liens take precedence over all other claims, encumbrances, and liens on that personal property, whether created by chattel mortgage, title retaining contract, execution, any final process of a court, attachment, replevin, judgment, or otherwise. A transfer of personal property assessed for taxes does not divest or destroy the lien, except where the personal property is actually sold in the regular course of retail trade. The personal property taxes levied or assessed by any city or village are a first lien, prior, superior, and paramount to any other claims, liens, or encumbrances of any kind upon the personal property assessed as provided in this act, any provisions in the charter of cities or villages to the contrary notwithstanding.

**History:** 1893, Act 206, Eff. June 12, 1893 ;--CL 1897, 3863 ;--CL 1915, 4035 ;--Am. 1929, Act 107, Eff. Aug. 28, 1929 ;--CL

1929, 3429 ;--Am. 1934, 1st Ex. Sess., Act 38, Imd. Eff. Mar. 28, 1934 ;--Am. 1941, Act 44, Eff. Jan. 10, 1942 ;--CL 1948, 211.40 ;--Am. 1949, Act 110, Eff. Sept. 23, 1949 ;--Am. 1958, Act 209, Eff. Sept. 13, 1958 ;--Am. 1994, Act 80, Imd. Eff. Apr. 11, 1994 ;--Am. 1994, Act 279, Imd. Eff. July 11, 1994 ;--Am. 1995, Act 143, Eff. Oct. 9, 1995 .

**Compiler's Note:** Section 2 of Act 279 of 1994 provides: "This amendatory act is curative and intended to express the original intent of the legislature concerning the application of Act No. 80 of the Public Acts of 1994 to taxes levied before 1995."

**Popular Name:** Act 206

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**COMPILATION OF PRIOR VERSIONS  
AND  
AMENDMENTS TO SECTION 40**

county and the various township purposes, each tax being kept distinct, one of which he shall deliver to the county treasurer, and the other to the supervisor of the proper township: *Provided*, That if said clerk fail to make such certificate, the supervisor shall take official notice of all certificates, statements, papers and records in the office of the township and county clerk relating to the levy of taxes in his township, and of the action of the board of supervisors thereon.

## TAXES—HOW TO BE ASSESSED.

Assessment,  
how made.

97 596

*Provido.*

Several taxes  
entered separ-  
ately.

Total to be ex-  
tended.

112 601

Taxes and  
charges a lien  
after Dec. 1.

Precedence of  
tax lien.

Assessor to foot  
roll.

Duties of town-  
ship clerk.

SEC. 39. The supervisor of each township or ward, and the assessing officer of each city or village, as provided by law, shall proceed to assess the taxes apportioned to his township, or assessment district, according and in proportion to the valuations entered by the board of review in the assessment roll of the township, ward, village or city of the year: *Provided*, That if the board of review make no such entry, then on the valuation therein as entered by the supervisor or assessor. For the purpose of avoiding fractions in computation, the assessor may add to the amount of the several taxes to be raised not more than one per cent; said excess shall belong to the contingent fund of the township; such taxes shall be entered in separate columns, as follows: All school taxes and the one mill tax in one column, highway taxes in another, township taxes in another, county taxes in another, and the State taxes in another column; and if other taxes are at any time required to be raised, they shall be placed in separate columns. The total of all the taxes assessed against any one valuation or parcel of property shall be added and carried out in the last column upon the right hand side of such roll.

SEC. 40. The taxes thus assessed shall become at once a debt to the township, ward or city from the persons to whom they are assessed, and the amounts assessed on any interest in real property shall, on the first day in December, become a lien upon such real property, and the lien for such amounts, and for all interest and charges thereon, shall continue until payment thereof. And all personal taxes shall also be a lien on all personal property of such persons so assessed from and after the first day of December in each year, and shall take precedence of any sale, assignment or chattel mortgage, levy or other lien, on such personal property, executed or made after said first day of December, except where such property is actually sold in the regular course of trade.

SEC. 41. Before the supervisor or assessing officer shall deliver such roll to the township treasurer or city collector he shall carefully foot the several taxes thereon levied, and shall give to the township or city clerk of his township or city a statement thereof and of each tax, in writing, and such clerk shall immediately charge the amount of such taxes to the township treasurer or city collector.

tion left in the individual supervisor, but to assess the taxes as determined by the board.—U. Sch. Dist. v. Farris, 97/596-7. As to assessment of highway taxes.—Mich. Land, etc., Co. v. L'Anse, 63/700. As to overseers' lists of unpaid highway assessments, see Hamilton, etc., Co. v. L'Anse Twp., 65 N. W. 332, and note to Section 4171. School taxes on tax rolls.—Pt. Huron Bd. of Ed. v. Treasurer, 57/46. The taxes are assessed upon the valuations in the roll as they were before equalization.—Tweed v. Metcalf, 4/589. The failure of a supervisor to extend the taxes levied in his township upon the corrected assessment roll received from the board of supervisors after equalization is fatal to the validity of such taxes and of tax-deeds issued on sales for the non-payment thereof.—Seymour v. Peters, 67/415; Fowler v. Campbell, 100/398. And when the supervisors apportion an increase in the valuation of the lands on the assessment roll, it will avoid the tax if the supervisor distributes the increase upon the real estate only and not on the personally also.—Sinclair v. Learned, 51/335. As to whether a supervisor may refuse to levy a tax which he knows to be illegal, even though certified to, see Wall v. Trumbull, 16/240; Smith v. Crittenden, 16/152; People v. Blackman Twp., 14/336. But mandamus, being a discretionary writ, was denied, to compel a supervisor to spread a portion of the county tax purporting to have been voted to purchase a poor farm, but really intended to aid in securing a location for a tannery.—Cheboygan Supervisors v. Supervisor, 94/326. When a dollar-mark is not necessary.—Bird v. Perkins, 33/28. The time has gone by, if it ever was, when the proceedings of taxing officers are to be criticised with microscopic nicety and the exact time and method of every step examined to detect a departure from the law, however insignificant or unintentional. The policy of the law is that parties shall pay legal taxes even though there may be some irregularity in demanding them and that they shall complain to the courts of those errors only which may injure them.—Stockle v. Silsbee, 41/615, 618.

**SEPARATE COLUMNS:** This provision is mandatory. It was intended for the benefit of the taxpayer, to enable him to distinguish the different species of taxes he should be called upon to pay and their respective amounts.—Case v. Dean, 16/31; Tillotson v. Webber, 96/155. And a tax is invalid if it appears only upon a roll to which it does not belong

and is omitted from a roll to which the law expressly assigns it.—Folkerts v. Power, 42/253. But a bounty tax required to be levied with the township taxes was held valid though placed in a column by itself headed "township taxes."—Wall v. Trumbull, 16/240. A township tax levy for highway purposes is properly included with the regular highway tax, and need not be placed in the column for township taxes.—Silsbee v. Stockle, 44/561; Tillotson v. Webber, 96/155. Each tax stands on its own basis. Legal taxes are not invalidated by illegal ones in the same roll, if distinguishable and separable therefrom.—Clark v. Axford, 5/181; Conway v. Waverly Twp. Bd., 15/257; Pillsbury v. Aud. Gen., 25/245.

**SUPERVISOR'S LIABILITY:** The supervisor is not liable in trespass on account of any errors or defects in the description of real estate in the assessment roll as certified to him nor for levying illegal sums properly certified to him; but if the entire roll be void the supervisor may become liable for attaching his warrant and commanding the levy of the tax.—Clark v. Axford, 5/190. See Atwell v. Zeluff, 26/115. He acts only ministerially in levying the taxes properly certified to him, and is not liable where the precept or order comes from the proper source and is within the apparent authority of the body or officer making it. Even if he has knowledge, outside of the certificate, of facts constituting an illegality alleged, the rule is the same.—Wall v. Trumbull, 16/233-4. See Bird v. Perkins, 33/28; Mathews v. Denmore, 43/463, and cases cited.

**EXCESSIVE LEVY:** Renders tax void.—Lacey v. Davis, 4/140; Case v. Dean, 16/32; Hall v. Kellogg, 16/135; Edwards v. Tallafiero, 34/13; Att'y Gen. v. Bay Supervisors, 34/46; Wattles v. Lapeer, 40/621; Connors v. Detroit, 41/128; Railroad Co. v. Aud. Gen., 41/635; Silsbee v. Stockle, 44/561; Hammontree v. Lott, 40/150; Burroughs v. Goff, 64/465-8; Boyce v. Sebring, 66/219; Seymour v. Peters, 67/415; Rogers v. White, 68/10; Sage v. Aud. Gen., 72/638; Gamble v. Aud. Gen., 75/302. And collection fees added by the supervisor vitiated a sale for taxes.—Buel v. Irwin, 24/145. The collection of a tax levy can be restrained so far as it is excessive.—Moss v. Cummings, 44/351; Merrill v. Humphrey, 24/150. But one who seeks to vacate a tax sale because the tax was excessive must first pay or offer to pay what is equitable.—Sinclair v. Learned, 51/347.

Assessing taxes

(3863) SEC. 40. The taxes thus assessed shall become at once a debt to the township, ward or city from the persons to whom they are assessed, and the amounts assessed on any interest in real property shall, on the first day in December, become a lien upon such real property, and the lien for such amounts, and for all interest and charges thereon, shall continue until payment thereof. And all personal taxes shall also be a lien on all personal property of such persons so assessed from and after the first day of December in each year, and shall take precedence of any sale, assignment or chattel mortgage, levy or other lien, on such personal property, executed or made after said first day of December, except where such property is actually sold in the regular course of trade.

**DEBT DUE:** A resident has always been personally liable for the tax on lands assessed to him, from the time of its levy, but not until 1855 was the owner of non-resident lands made personally liable, nor could his property be taken therefor. The object of making the tax a charge against the person was to put

residents and non-residents on the same footing.—See Tweed v. Metcalf, 4/579; Harrington v. Hilliard, 27/271. But the provision making the tax a personal charge is in favor of the public only. It creates no liability in favor of an owner purchasing after the tax becomes a charge and does not enable the latter to

Taxes and charges a lien after Dec. 1	112 601
	116 584
	123 275 350
Precedence of tax lien	137 276
	133 547
	169 320

Taxes and  
charges a lien  
after Dec. 1.

Precedence of  
tax lien.

(4035) SEC. 40. The taxes thus assessed shall become at once a debt to the township, ward or city from the persons to whom they are assessed, and the amounts assessed on any interest in real property shall, on the first day in December, become a lien upon such real property, and the lien for such amounts, and for all interest and charges thereon, shall continue until payment thereof. And all personal taxes shall also be a lien on all personal property of such persons so assessed from and after the first day of December in each year, and shall take precedence of any sale, assignment or chattel mortgage, levy or other lien, on such personal property, executed or made after said first day of December, except where such property is actually sold in the regular course of trade.

HISTORY: C. L. '97, 3863.

DEBT DUE: A resident has always been personally liable for the tax on lands assessed to him, from the time of its levy, but not until 1858 was the owner of non-resident lands made personally liable, nor could his property be taken therefor. The object of making the tax a charge against the person was to put residents and non-residents on the same footing. See *Tweed v. Metcalf*, 4/579; *Harrington v. Hilliard*, 27/271. But the provision making the tax a personal charge is in favor of the public only. It creates no liability in favor of an owner purchasing after the tax becomes a charge, and does not enable the latter to compel the party liable to pay the tax. *Harrington v. Hilliard*, 27/271. When the law prescribes who shall be liable for the payment of taxes, and whose property may be levied upon therefor, it at the same time by implication forbids the officers to seize the property of others, or by act or omission to make the tax a charge upon such property. *Raynsford v. Phelps*, 43/345-6. The taxes are a debt which it is the duty of the person assessed to pay. *West Michigan Lumber Co. v. Dean*, 73/462; *Muskegon v. S. K. Martin Lbr. Co.*, 86/629. The liability of the party assessed to pay the tax becomes fixed when the tax is extended upon the original assessment roll. *West Mich. Lbr. Co. v. Dean*, 73/462. Under this section and Compilers' Section 2115, a township can, in a suit authorized by its supervisor, collect a tax due which the treasurer has failed to collect. *Bangor Twp. v. Transp. Co.*, 112/601; *Menominee v. Lbr. Co.*, 119/201. But a suit for the collection

of taxes can be brought only by the township treasurer during the life of the supervisor's warrant issued to him. *Twp. of Decatur v. Copley*, 133/546. Cities and townships are liable for the entire amount of state and county taxes levied on personal property therein, whether it is collected or not. *City of Muskegon v. County of Muskegon*, 123/272, 275. Suit must be brought by the city, and not by the ward. *St. Joseph v. Vall*, 137/276.

LIEN: Lands in this state have always been subject to a lien for the taxes levied thereon. The only object in fixing a day when the tax becomes a lien was to settle the question, as between successive owners of the land, which of them ought to pay the tax. *Harrington v. Hilliard*, 27/278. It was held that the corresponding provision in the law of 1889 did not apply to the city of Detroit, which is governed by special charter provisions. *Eaton v. Chesebrough*, 82/214. Lien on personal property. *Tousey v. Post*, 91/631. A decree holding taxes "illegal and void" destroys the statutory lien on the land and effectually removes the cloud thereby created. *Eddy v. Lee Twp.*, 73/123.

The purchaser of bank stock prior to December 1, takes it free from any lien for taxes. *National Bank v. Twp. of Ringham*, 113/203, 205. See also *Hdwc. Co. v. Atwood*, 127/338; *Lbr. Co. v. Scott*, 123/357.

CITED: *Aud. Gen. v. Sparrow*, 116/584; *Crawford v. Koch*, 169/380; Corresponding section of a former law cited in *Aud. Gen. v. Carpenter*, 138/871.

Assessor to  
foot roll.

Duties of  
clerk.

County clerk  
to file state-  
ment with  
Auditor  
General.

What to  
contain.

(4036) SEC. 41. Before the supervisor or assessing officer shall deliver such roll to the township treasurer or city collector he shall carefully foot the several columns of valuation and taxes, and make a detailed statement thereof, which he shall give the clerk of his township or city, and said clerk shall immediately charge the amount of taxes to the township treasurer or city collector. The clerk of each city and incorporated village shall report to the clerk of their respective counties all taxes levied in their respective cities or villages, and not included in the general tax levy, on or before the first day of October in each year. The county clerk shall, within thirty days after the close of the annual session of the board of supervisors in October in each year, forward to the auditor general, to be filed in his office, a statement showing the aggregate valuation of all property as assessed in each assessing precinct within the county during the current year. He shall include in such statement a detail of all taxes to be raised

of the various which he has of the proper certificate, s, papers g to the assessors there is authority and county tax 188. See B. 33 N. W. statute, certified and not town dated. Pillsbury

The supervisor each city proportioned tion to the of the town of review by the supervisor butation, the ed not more fund of the follows: All way taxes in and the state quired to be all the taxes e added and l.

ization is fatal of tax deeds thereof. See 35 N. W. 2308, 59 N. W. portion an assessment roll distributes in d not on per ned. 51 Mich. ther a supervisor which he knows d to. see Wall Smith v. Crittackman Twp. being a dis- compel a supervisor tax purchase a poor in securing a can Supra. v. 189. When Bird v. Perkins gone by. If of taxing office microscopic hed of every ture from the unintentional ies shall pay may be some and that they e errors only le v. Silsbee.

valuation by property in onal right of his property. corrected fol-

following year, plaintiff cannot be deemed to have been denied equal protection of laws. Good faith of taxing officers and validity of their actions are presumed. Sunday Lake Iron Co. v. Wakefield Twp., 247 U. S. 350, 38 S. Ct. aff'g 186 Mich. 620, 153 N. W. 14.

**BOARD OF REVIEW:** The term board of review in this section applies to local board, or to state board, as circumstances require. Bd. of State Tax Comrs. v. Quinn, 125 Mich. 128, 131, 84 N. W. 1.

Board of state tax commissioners abolished and powers and duties transferred to the state tax department, which in turn has been abolished and superseded by the state tax commission. See Compilers' §§ 3706 and 3712 respectively.

**SEPARATE COLUMNS:** This provision is mandatory. It was intended for benefit of taxpayer, to enable him to distinguish different species of taxes he should be called upon to pay and their respective amounts. Case v. Dean, 16 Mich. 12, 31; Tillotson v. Webber, 40 Mich. 144, 155, 55 N. W. 837. And a tax is invalid if it appears only upon a roll to which it does not belong and is omitted from a roll to which law expressly assigns it. Folkerts v. Power, 42 Mich. 263, 3 N. W. 857. But a bounty tax required to be levied with township taxes was held valid though placed in a column by itself headed "township taxes." Wall v. Trumbull, 16 Mich. 228, 240. A township tax levy for highway purposes is properly included with regular highway tax, and need not be placed in the column for township taxes. Silsbee v. Stockle, 44 Mich. 501, 7 N. W. 160, 367; Tillotson v. Webber, supra. Each tax stands on its own basis. Legal taxes are not invalidated by illegal ones in the same roll, if distinguishable and separable therefrom. Clark v. Axford, 5 Mich. 182, 191; Conway v. Waverly Twp. Bd., 15 Mich. 257; Pillsbury v. And. Gen., 20 Mich. 245. County road tax is part of county tax, and may be included in column containing county taxes. Garfield Twp. v. A. B. Kilse Lumber Co., 219 Mich. 31, 188 N. W. 450.

**SUPERVISOR'S LIABILITY:** The supervisor is not liable in trespass on account of any errors or defects in the description of real estate in assessment roll as certified to him

nor for levying illegal sums properly certified to him; but if entire roll be void supervisor may become liable for attaching his warrant and commanding levy of tax. Clark v. Axford, 5 Mich. 182, 190. See Atwell v. Zeluff, 26 Mich. 118. He acts only ministerially in levying taxes properly certified to him, and is not liable where precept or order comes from proper source and is within apparent authority of body or officer making it. Even if he has knowledge, outside of certificate, of facts constituting an illegality alleged, rule is the same. Wall v. Trumbull, 16 Mich. 228, 233-4. See Bird v. Perkins, 33 Mich. 28; Mathews v. Denmore, 43 Mich. 461, 463, 5 N. W. 600, and cases cited.

**EXCESSIVE LEVY:** Renders tax void. Lacey v. Davis, 4 Mich. 140; Case v. Dean, 16 Mich. 12, 32; Hall v. Kellogg, 16 Mich. 185; Edwards v. Tallifero, 34 Mich. 13; Atty Gen. v. Bay Supra., 34 Mich. 46; Wattles v. Lapeer, 40 Mich. 624; Connors v. Detroit, 41 Mich. 128, 1 N. W. 902; Flint & P. M. Ry. Co. v. Aud. Gen., 41 Mich. 635, 2 N. W. 835; Silsbee v. Stockle, 44 Mich. 501, 7 N. W. 160, 367; Hammonree v. Lott, 40 Mich. 190; Burroughs v. Goff, 64 Mich. 464, 408, 409, 31 N. W. 273; Boyce v. Sebring, 66 Mich. 210, 219, 33 N. W. 815; Seymour v. Peters, 67 Mich. 415, 35 N. W. 62; Rogers v. White, 68 Mich. 10, 35 N. W. 790; Sage v. Aud. Gen., 72 Mich. 638, 40 N. W. 919; Gamble v. Aud. Gen., 78 Mich. 302, 44 N. W. 329. And collection fees added by the supervisor vitiated a sale for taxes. Buell v. Irwin, 24 Mich. 146. The collection of a tax levy can be restrained so far as it is excessive. Moss v. Cummings, 44 Mich. 359, 361, 6 N. W. 843; Merrill v. Humphrey, 24 Mich. 170. But one who seeks to vacate a tax sale because tax was excessive must first pay or offer to pay what is equitable. Sinclair v. Learned, 51 Mich. 335, 347, 16 N. W. 672.

**CITED:** Corresponding section of law of 1889, cited in Jenner v. Twp. of Mussey, 121 Mich. 229, 232, 50 N. W. 2. See also Aud. Gen. v. Menominee Supra., 89 Mich. 552, 555, 51 N. W. 483; West Michigan Lumber Co. v. Dean, 73 Mich. 459, 462, 41 N. W. 504; Fells v. Barbour, 58 Mich. 49, 52, 24 N. W. 672; Rothchild v. Begole, 105 Mich. 388, 391, 63 N. W. 309.

**3429 Taxes, charges lien after December 1; precedence of lien, exception.**  
**SEC. 40.** The taxes thus assessed shall become at once a debt due to the township, ward or city from the persons to whom they are assessed, and the amounts assessed on any interest in real property shall, on the first [1st] day of December, become a lien upon such real property, and the lien for such amounts, and for all interest and charges thereon, shall continue until payment thereof. And all personal taxes shall also be a first [1st] lien on all personal property of such persons so assessed from and after the first [1st] day of December in each year and so remain until paid, which said lien shall take precedence over all other claims, encumbrances and liens upon said personal property whatsoever, whether created by chattel mortgage, execution levy, judgment or otherwise, and whether arising before or after the assessment of said personal taxes, and no transfer of personal property assessed for taxes thereon shall operate to divest or destroy such lien, except where such personal property is actually sold in the regular course of retail trade.

**HISTORY:** C. L. '97, 3863;—C. L. '15, 4035;—Am. 1929, p. 253, Act 107, Eff. Aug. 28.

**SIMILAR PROVISIONS:** See Compilers' § 4122.

**DEBT DUE:** A resident has always been personally liable for tax on lands assessed to him, from time of its levy, but not until 1858 was owner of non-resident lands made personally liable, nor could his property be taken therefor. The object of making tax a charge against person was to put residents and non-residents on same footing. See Tweed v. Met-

calif. 4 Mich. 579; Harrington v. Hilliard, 27 Mich. 271. But provision making tax a personal charge is in favor of public only. It creates no liability in favor of an owner purchasing after tax becomes a charge, and does not enable the latter to compel the party liable to pay the tax. Harrington v. Hilliard, supra. When law prescribes who shall be liable for payment of taxes, and whose property may be levied upon therefor, it at the same time by implication forbids officers to seize property of others, or by act or omission to make tax a charge upon such property. Raynsford v.

in anywise contravening any of the provisions of this act," being section three thousand four hundred twenty-nine of the compiled laws of nineteen hundred twenty-nine.

*The People of the State of Michigan enact:*

**Section amended.**

Section 1. Section forty of act number two hundred six of the public acts of eighteen hundred ninety-three, entitled "An act to provide for the assessment of property and the levy (and collection) of taxes thereon, and for the collection of taxes heretofore and hereafter levied; making such taxes a lien on the lands taxed, establishing and continuing such lien, providing for the sale and conveyance of lands delinquent for taxes, and for the inspection and disposition of lands bid off to the state and not redeemed or purchased; and to repeal act number two hundred of the public acts of eighteen hundred ninety-one, and all other acts and parts of acts in anywise contravening any of the provisions of this act," being section three thousand four hundred twenty-nine of the compiled laws of nineteen hundred twenty-nine, is hereby amended to read as follows:

**3429 Property taxes; lien after December 1; precedence of lien, exception, city personal property tax lien.**

Sec. 40. The taxes thus assessed shall become at once a debt due to the township, city, village and county from the persons to whom they are assessed, and the amounts assessed on any interest in real property shall, on the first day of December, for state, county, village or township taxes or upon such day as may be heretofore or hereafter provided by charter of a city, become a lien upon such real property, and the lien for such amounts, and for all interest and charges thereon, shall continue until payment thereof. And all personal taxes hereafter levied or assessed shall also be a first lien, prior, superior and paramount, on all personal property of such persons so assessed from and after the first day of December in each year for state, county, village or township taxes or upon such day as may be heretofore or hereafter provided by charter of a city, and so remain until paid, which said tax liens shall take precedence over all other claims, encumbrances and liens upon said personal property whatsoever, whether created by chattel mortgage, title retaining contract, execution, or upon any other final process of a court, attachment, replevin, judgment or otherwise, and whether such liens, claims and encumbrances created by chattel mortgage, title retaining contract, execution or upon any other final process of a court, attachment, replevin, judgment or otherwise, become effective prior to the effective date of this act or subsequent thereto, and no transfer of personal property assessed for taxes thereon shall operate to divest or destroy such lien, except where such personal property is actually sold in the regular course of retail trade. The personal property taxes hereafter levied or assessed by any city shall be a first lien, prior, superior and paramount to any other claims, liens and encumbrances whatsoever upon the personal property assessed as herein provided, any provisions in the charter of such cities to the contrary notwithstanding.

**Severing clause.**

Sec. 2. Should the court declare any section, part or clause of this act invalid for any reason, then such decision shall affect only the section, part or clause so declared to be invalid and shall not affect any other section, part or clause of this act.

**Declaration of emergency and necessity.**

Sec. 3. Because certain properties are not bearing their just proportion of the cost of government and because of the delinquency in the collection of taxes, the continuance of necessary public services is threatened and therefore

this act is,  
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This act is  
Approved

AN ACT to  
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Revenue  
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(b) The  
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## [No. 44.]

AN ACT to amend section 40 of Act No. 206 of the Public Acts of 1893, entitled as amended "An act to provide for the assessment of property and the levy and collection of taxes thereon, and for the collection of taxes heretofore and hereafter levied; making such taxes a lien on the lands taxed, establishing and continuing such lien, providing for the sale and conveyance of lands delinquent for taxes and for the inspection and disposition of lands bid off to the state and not redeemed or purchased; and to repeal Act No. 200 of the Public Acts of 1891, and all other acts and parts of acts in anywise contravening any of the provisions of this act," as amended by Act No. 38 of the Public Acts of the First Extra Session of 1934, being section 3429 of the Compiled Laws of 1929.

*The People of the State of Michigan enact:***Section amended.**

Section 1. Section 40 of Act No. 206 of the Public Acts of 1893, entitled as amended "An act to provide for the assessment of property and the levy and collection of taxes thereon, and for the collection of taxes heretofore and hereafter levied; making such taxes a lien on the lands taxed, establishing and continuing such lien, providing for the sale and conveyance of lands delinquent for taxes and for the inspection and disposition of lands bid off to the state and not redeemed or purchased; and to repeal Act No. 200 of the Public Acts of 1891, and all other acts and parts of acts in anywise contravening any of the provisions of this act," as amended by Act No. 38 of the Public Acts of the First Extra Session of 1934, being section 3429 of the Compiled Laws of 1929, is hereby amended to read as follows:

3429 [7.81] **Property taxes; lien after December 1; priority; lien for personal property taxes of cities and villages.**

Sec. 40. The taxes thus assessed shall become at once a debt due to the township, city, village and county from the persons to whom they are assessed, and the amounts assessed on any interest in real property shall, on the first day of December, for state, county, village or township taxes or upon such day as may be heretofore or hereafter provided by charter of a city or village, become a lien upon such real property, and the lien for such amounts, and for all interest and charges thereon, shall continue until payment thereof. And all personal taxes hereafter levied or assessed shall also be a first lien, prior, superior and paramount, on all personal property of such persons so assessed from and after the first day of December in each year for state, county, village or township taxes or upon such day as may be heretofore or hereafter provided by charter of a city or village, and so remain until paid, which said tax liens shall take precedence over all other claims, encumbrances and liens upon said personal property whatsoever, whether created by chattel mortgage, title retaining contract, execution, or upon any other final process of a court, attachment, replevin, judgment or otherwise, and whether such liens, claims and encumbrances created by chattel mortgage, title retaining contract, execution or upon any other final process of a court, attachment, replevin, judgment or otherwise, become effective prior to the effective date of this act or subsequent thereto, and no transfer of personal property assessed for taxes thereon shall operate to divest or destroy such lien, except where such personal property is actually sold in the regular course of retail trade. The personal property taxes hereafter levied or assessed by any city or village shall be a first lien, prior, superior and paramount to any other claims, liens and encumbrances whatsoever upon the personal property assessed as herein

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provided, any provisions in the charter of such cities or villages to the contrary notwithstanding.

Approved April 9, 1941.

[No. 45.]

AN ACT to provide for the use by the township, for township purposes, of any building or buildings owned by the said township, but located at the present time within the corporate limits of any incorporated village or city, which includes within its limits, lands upon which said building or buildings are located and formerly forming a part of said township.

*The People of the State of Michigan enact:*

[5.2378] Township buildings located in cities; authority of township to continue use of.

Section 1. Whenever a township in this state shall be the owner of lands within said township upon which are located building or buildings used for township purposes, which lands subsequent to the erection of said building or buildings were included within the limits of any incorporated village or city, the said township is hereby authorized and empowered to use said building or buildings for any and all township purposes, including elections, and any and all resolutions or actions by the said township, or any of its officers, in said building or buildings shall be as legal in all respects as though said building or buildings were located within the corporate limits of said township.

Approved April 16, 1941.

[No. 46.]

AN ACT to amend the title and section 1 of Act No. 254 of the Public Acts of 1919, entitled "An act to authorize boards of supervisors to raise money for the collection or publication of historical material, bearing upon their county and to foster the historical interest thereof," being section 1179 of the Compiled Laws of 1929.

*The People of the State of Michigan enact:*

**Title and section amended.**

Section 1. The title and section 1 of Act No. 254 of the Public Acts of 1919, entitled "An act to authorize boards of supervisors to raise money for the collection or publication of historical material, bearing upon their county and to foster the historical interest thereof," being section 1179 of the Compiled Laws of 1929, are hereby amended to read as follows:

**TITLE**

An act to authorize boards of supervisors to raise money for the collection, publication, housing or displaying of historical material, bearing upon their county and to foster the historical interest thereof.

**1179 [5.491] County historical material; authority of board of supervisors to make appropriation.**

Sec. 1. The board of supervisors of any county in this state is hereby authorized to raise and appropriate a sum not exceeding \$600.00 in any 1 year for the purpose of collecting, publishing, housing or displaying historical materials bearing on the history of the county and for the fostering of any movement tending to further the historical interests of the county.

Approved April 16, 1941.

211.40 Property taxes; lien, priority; statement and receipt for taxes to show fiscal year of taxing unit.

Sec. 40. The taxes thus assessed shall become at once a debt due to the township, city, village and county from the persons to whom they are assessed, and the amounts assessed on any interest in real property shall, on the first day of December, for state, county, village or township taxes or upon such day as may be heretofore or hereafter provided by charter of a city or village, become a lien upon such real property, and the lien for such amounts, and for all interest and charges thereon, shall continue until payment thereof. Each statement and receipt for taxes on real estate sent or given by any county, township, city or village treasurer shall contain a statement, which shall be printed, stamped or written thereon, setting forth the fiscal year of such county, township, city or village. And all personal taxes hereafter levied or assessed shall also be a first lien, prior, superior and paramount, on all personal property of such persons so assessed from and after the first day of December in each year for state, county, village or township taxes or upon such day as may be heretofore or hereafter provided by charter of a city or village, and so remain until paid, which said tax liens shall take precedence over all other claims, encumbrances and liens upon said personal property whatsoever, whether created by chattel mortgage, title retaining contract, execution, or upon any other final process of a court, attachment, replevin, judgment or otherwise, and whether such liens, claims and encumbrances created by chattel mortgage, title retaining contract, execution or upon any other final process of a court, attachment, replevin, judgment or otherwise, become effective prior to the effective date of this act or subsequent thereto, and no transfer of personal property assessed for taxes thereon shall operate to divest or destroy such lien, except where such personal property is actually sold in the regular course of retail trade. The personal property taxes hereafter levied or assessed by any city or village shall be a first lien, prior, superior and paramount to any other claims, liens and encumbrances whatsoever upon the personal property assessed as herein provided, any provisions in the charter of such cities or villages to the contrary notwithstanding. (As Am. 1949, Act 110, Eff. Sept. 23.)

211.41a Statement of land conveyance furnished to township supervisors.

Sec. 41a. In such counties of this state in which the board of supervisors by a majority vote of the members shall vote in favor thereof, the register of deeds of any such county, within 30 days of the recording of any instrument conveying an interest in land, shall furnish the supervisor or supervisors of the township or townships in which the parcel or parcels of land are situated, a statement giving the names of the parties to the instrument recorded, a description of the parcel or parcels of land covered by the instrument recorded, and the interest in land conveyed. (Added 1951, Act 86, Eff. Sept. 28.)

211.43 Notice to township treasurer of apportionment of taxes; bond, exception; township tax roll; maximum amount of taxes on hand.

Sec. 43. The supervisor of each township, on or before the 5th day of November in each year, shall notify the township treasurer of the amount of the state, county and school taxes as apportioned to his township, and such treasurer, on or before the 28th day of November, shall give to the county treasurer a bond running to the county in the actual amount of state, county and school taxes, except such school taxes as are collected through a city treasurer, with sufficient sureties to be approved by the supervisor of the township and the county treasurer, conditioned that he will pay over to the county treasurer as required by law all state and county taxes, and pay over to the respective school treasurers all school taxes, which he shall collect during each year of his term of office and duly and faithfully perform all the other duties of his office: Provided, however, That if corporate surety bond be provided then the bond to be approved only by the county treasurer: Provided, That when said bond is furnished by a surety company authorized to transact business under the laws of this state it shall be sufficient that said bond be equal to 40 per cent of the amount of state, county and school taxes: Provided further, That when said bond is

therefor, a certified photostatic copy of the will may be admitted if secured through the office of any United States consul for such foreign country, or the estate may be administered as an intestate estate.

The will of any deceased person domiciled without the state of Michigan leaving any estate within the state of Michigan which shall not have been filed or presented for probate and allowance in the jurisdiction of the domicile of such deceased person, may be delivered into the probate court of any county in this state in which there may be an estate of such deceased person to be administered, and thereupon the same proceedings may be had in relation to the probate of such will and the administration of such estate as though such deceased person had been an inhabitant of or resident in such county, and with like force and effect as to all estate of such deceased person within the state of Michigan.

Approved May 17, 1949.

[No. 110.]

AN ACT to amend section 40 of Act No. 206 of the Public Acts of 1893, entitled as amended "An act to provide for the assessment of property and the levy and collection of taxes thereon, and for the collection of taxes heretofore and hereafter levied; making such taxes a lien on the lands taxed, establishing and continuing such lien, providing for the sale and conveyance of lands delinquent for taxes and for the inspection and disposition of lands bid off to the state and not redeemed or purchased; to define and limit the jurisdiction of the courts in proceedings in connection therewith; to limit the time within which actions may be brought; to provide penalties for the violation of this act; and to repeal all acts and parts of acts in anywise contravening any of the provisions of this act," as last amended by Act No. 44 of the Public Acts of 1941, being section 211.40 of the Compiled Laws of 1948.

*The People of the State of Michigan enact:*

**Section amended.**

Section 1. Section 40 of Act No. 206 of the Public Acts of 1893, as last amended by Act No. 44 of the Public Acts of 1941, being section 211.40 of the Compiled Laws of 1948, is hereby amended to read as follows:

**211.40 Property taxes; lien, priority; statement and receipt for taxes to show fiscal year of taxing unit. [M.S.A. 7.81]**

Sec. 40. The taxes thus assessed shall become at once a debt due to the township, city, village and county from the persons to whom they are assessed, and the amounts assessed on any interest in real property shall, on the first day of December, for state, county, village or township taxes or upon such day as may be heretofore or hereafter provided by charter of a city or village, become a lien upon such real property, and the lien for such amounts, and for all interest and charges thereon, shall continue until payment thereof. Each statement and receipt for taxes on real estate sent or given by any county, township, city or village treasurer shall contain a statement, which shall be printed, stamped or written thereon, setting forth the fiscal year of such county, township, city or village. And all personal taxes hereafter levied or assessed shall also be a first lien, prior, superior and paramount, on all personal property of such persons so assessed from and after the first day of December in each year for state, county, village or township taxes or upon such day as may be heretofore or hereafter provided by charter of a city or village, and so remain until paid, which said tax liens shall take precedence over all other claims, encumbrances and liens upon said personal property whatsoever, whether created by chattel mortgage, title retaining contract, execution, or upon any other final process of a court, attachment, replevin, judgment or otherwise, and whether such liens, claims and encumbrances created by chattel mortgage, title retaining contract, execution or upon any other final process of a court, attachment, replevin, judgment or otherwise, become effective

prior to the effective date of this act or subsequent thereto, and no transfer of personal property assessed for taxes thereon shall operate to divest or destroy such lien, except where such personal property is actually sold in the regular course of retail trade. The personal property taxes hereafter levied or assessed by any city or village shall be a first lien, prior, superior and paramount to any other claims, liens and encumbrances whatsoever upon the personal property assessed as herein provided, any provisions in the charter of such cities or villages to the contrary notwithstanding.

Approved May 17, 1949.

[No. 111.]

AN ACT to amend section 8 of Act No. 151 of the Public Acts of 1923, entitled as amended "An act to create a state hospital commission, and to define the powers and duties thereof; to provide for the transfer to said commission of certain powers and duties now vested by law in certain commissions and officers of the state, and for the abolishing of the commissions and offices the powers and duties of which are hereby entirely transferred; to revise and consolidate the laws organizing hospitals for the insane, homes and schools for the feeble-minded and epileptic, institutions for the discovery and treatment of mental disorders; to regulate and provide for the care, management and use thereof; to provide for the licensing, visitation and supervision of privately owned hospitals, homes and institutions for the care and treatment of such mentally diseased persons; to provide for the apprehension of persons believed to be insane, feeble-minded, or epileptic, and their commitment, to provide for their care, custody, parole and discharge; to provide for the return of escaped and paroled patients to hospitals; to provide for the warrant therefor; to provide protection from civil liability for peace officers executing such warrants; to provide for the accompanying of female patients to such hospitals by matrons; to provide penalties and to repeal certain acts or parts of acts contrary to the provisions hereof," as amended by Act No. 104 of the Public Acts of 1937, being section 330.18 of the Compiled Laws of 1948, and to add to said act a new section 8a.

*The People of the State of Michigan enact:*

**Sections amended and added.**

Section 1. Section 8 of Act No. 151 of the Public Acts of 1923, as amended by Act No. 104 of the Public Acts of 1937, being section 330.18 of the Compiled Laws of 1948, is hereby amended and a new section 8a is hereby added to said act, said amended and added sections to read as follows:

**330.18 Detention of patients in hospitals and institutions for insane, etc., only on commitment orders; addicts. [M.S.A. 14.808]**

Sec. 8. No person who is a resident of this state shall be detained as a public or private patient in any institution, public or private, or in any institution, home or retreat for the care or treatment of the insane, feeble-minded or epileptic except upon an order for commitment and admission as hereinafter provided: Provided, That such persons as may have been or may hereafter be adjudged to be so addicted to the excessive use of intoxicating liquors, or narcotics or noxious drugs, as to be in need of medical and sanitary treatment or care, may upon petition of his guardian, or his next of kin, or some other suitable person designated by the probate judge, supported by the certificate of 2 qualified physicians under oath, and by the issuance of a commitment order of the probate court, be taken to or restrained in any suitable institution or hospital for treatment and care of the insane, including such hospitals of this state as may be designated therefor by the state hospital commission. All proceedings for the commitment to and release or discharge from such hospital shall comply with the general provisions of this act relating to the commitment, care and discharge of mentally diseased persons.

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Approved May

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7. All carriages and other vehicles, and sleighs kept for pleasure or hire, and their value;
8. All mechanical and agricultural implements and tools, and their value;
9. All machinery not affixed to real property, and its value;
10. All ships, boats and vessels, whether at home or abroad, and their value;
11. All merchandise and stock in trade, including grain in elevators, and its value;
12. All logs, timber, lumber, posts and ties, and their value, where the same is situated on December 31, as near as may be, and the distinctive marks thereon, if any, and place of destination in this state;
13. All other goods, chattels and personal property not heretofore specifically mentioned, and their value, except property specifically exempt from taxation;
14. All goods and chattels which are exempt from taxation;
15. All tangible personal property held as assignee, attorney, executor, guardian or agent, liable to taxation under the laws of this state;
16. The number of dogs of all kinds over 6 months old;
17. The value of all elevators, warehouses and improvements on lands, the title to which is vested in any railroad corporation, and the value of the contents.

**211.40 Lien for taxes, priority; statement and receipt for taxes to show taxing unit's fiscal year. [M.S.A. 7.81]**

Sec. 40. Notwithstanding any provisions in the charter of any city or village to the contrary, all taxes shall become a debt due to the township, city, village and county from the owner or person otherwise to be assessed on the tax day provided for in sections 2 and 13 of this act, and the amounts assessed on any interest in real property shall, on the first day of December, for state, county, village or township taxes or upon such day as may be heretofore or hereafter provided by charter of a city or village, become a lien upon such real property, and the lien for such amounts, and for all interest and charges thereon, shall continue until payment thereof. Each statement and receipt for taxes on real estate sent or given by any county, township, city or village treasurer shall contain a statement, which shall be printed, stamped or written thereon, setting forth the date of the commencement and ending of the fiscal year of each taxing unit of government during which general taxes stated thereon will defray the costs of governmental services rendered thereby. And all personal taxes hereafter levied or assessed shall also be a first lien, prior, superior and paramount, on all personal property of such persons so assessed from and after the first day of December in each year for state, county, village or township taxes or upon such day as may be heretofore or hereafter provided by charter of a city or village, and so remain until paid, which said tax liens shall take precedence over all other claims, encumbrances and liens upon said personal property whatsoever, whether created by chattel mortgage, title retaining contract, execution, or upon any other final process of a court, attachment, replevin, judgment or otherwise, and whether such liens, claims and encumbrances created by chattel mortgage, title retaining contract, execution or upon any other final process of a court, attachment, replevin, judgment or otherwise, become effective prior to the effective date of this act or subsequent thereto, and no transfer of personal property assessed for taxes thereon shall operate to divest or destroy such lien, except where such personal property is actually sold in the regular course of retail trade. The personal property taxes hereafter levied or assessed by any city or village shall be a first lien, prior, superior and paramount to any other claims, liens and encumbrances whatsoever upon the personal property assessed as herein provided. Any provisions in the charter of such cities or villages to the contrary notwithstanding.

**211.53a Recovery of excess payments not made under protest. [M.S.A. 7.97(1)]**

Sec. 53a. Any taxpayer who is assessed and pays taxes in excess of the correct and lawful amount due because of a clerical error or mutual mistake of fact made by the assessing officer and the taxpayer may recover the excess so paid, without interest, if suit is commenced within 3 years from the date of payment, notwithstanding that the payment was not made under protest.

Approved May 5, 1958.

and political subdivisions of this state; to provide for certain reimbursements of certain expenses incurred by units of local government; to provide penalties for the violation of this act; and to repeal certain acts and parts of acts in anywise contravening any of the provisions of this act," being section 211.40 of the Michigan Compiled Laws.

*The People of the State of Michigan enact:*

**Section amended; general property tax act.**

Section 1. Section 40 of Act No. 206 of the Public Acts of 1893, being section 211.40 of the Michigan Compiled Laws, is amended to read as follows:

**211.40 Lien for taxes; priority; statement and receipts for taxes to show taxing unit's fiscal year. [M.S.A. 7.81]**

Sec. 40. Notwithstanding any provisions in the charter of any city or village to the contrary, all taxes become a debt due to the township, city, village, or county from the owner or person otherwise to be assessed on the tax day provided for in sections 2 and 13, and the amounts assessed on any interest in real property shall become a lien on the real property on the tax day provided for in section 2 for state, county, village, or township taxes or upon a day provided for by the charter of a city or village. The lien for those amounts, and for all interest and charges on those amounts, shall continue until paid. Each tax statement and receipt for taxes on real estate sent or given by any county, township, city, or village treasurer shall contain a printed, stamped, or written statement setting forth the date of the commencement and ending of the fiscal year of each taxing unit of government during which general taxes included on the tax statement or receipt will defray the costs of governmental services rendered by that local governmental unit. All personal taxes levied or assessed shall also be a first lien, prior, superior, and paramount, on all personal property of the persons so assessed from and after the tax day provided for in section 2 in each year for state, county, village, or township taxes or upon a day provided for by the charter of a city or village, and shall remain until paid. The tax liens shall take precedence over all other claims, encumbrances, and liens upon that personal property, whether created by chattel mortgage, title retaining contract, execution, upon any final process of a court, attachment, replevin, judgment, or otherwise. A transfer of personal property assessed for taxes shall not operate to divest or destroy the lien, except where the personal property is actually sold in the regular course of retail trade. The personal property taxes hereafter levied or assessed by any city or village shall be a first lien, prior, superior, and paramount to any other claims, liens, or encumbrances of any kind upon the personal property assessed as provided in this act, any provisions in the charter of cities or villages to the contrary notwithstanding.

This act is ordered to take immediate effect.

Approved April 10, 1994.

Filed with Secretary of State April 11, 1994.

**[No. 81]**

**(HB 4444)**

AN ACT to amend sections 10, 10a, and 10c of Act No. 164 of the Public Acts of 1877, entitled as amended "An act to authorize cities, incorporated villages, and townships to establish and maintain, or contract for the use of, free public libraries and reading rooms,"

**211.40 Lien for taxes; priority; statement and receipts for taxes to show taxing unit's fiscal year. [M.S.A. 7.81]**

Sec. 40. Notwithstanding any provisions in the charter of any city or village to the contrary, all taxes become a debt due to the township, city, village, or county from the owner or person otherwise assessed on the tax day provided for in sections 2 and 13. The amounts assessed for state, county, village, or township taxes on any interest in real property shall become a lien on the real property on December 1, on a day provided for by the charter of a city or village, or on the day provided for in section 40a. The lien for those amounts, and for all interest and charges on those amounts, shall continue until paid. Each tax statement and receipt for taxes on real property sent or given by any county, township, city, or village treasurer shall contain a printed, stamped, or written statement setting forth the date of the commencement and ending of the fiscal year of each taxing unit of government during which general taxes included on the tax statement or receipt will defray the costs of governmental services rendered by that local governmental unit. All personal taxes levied or assessed for state, county, village, or township taxes are also a first lien, prior, superior, and paramount, on all personal property of the persons assessed on December 1, on a day provided for by the charter of a city or village, or on the day provided for in section 40a. The lien for those amounts, and for all interest and charges on those amounts, shall continue until paid. The tax liens take precedence over all other claims, encumbrances, and liens on that personal property, whether created by chattel mortgage, title retaining contract, execution, any final process of a court, attachment, replevin, judgment, or otherwise. A transfer of personal property assessed for taxes does not divest or destroy the lien, except where the personal property is actually sold in the regular course of retail trade. The personal property taxes levied or assessed by any city or village are a first lien, prior, superior, and paramount to any other claims, liens, or encumbrances of any kind upon the personal property assessed as provided in this act, any provisions in the charter of cities or villages to the contrary notwithstanding.

**211.40a Date on which taxes become lien; designation; affidavit. [M.S.A. 7.81(a)]**

Sec. 40a. (1) The treasurer of a county, township, city, or village may designate the tax day provided in section 2 as the date on which real or personal property taxes become a lien on the real or personal property assessed by filing an affidavit in the office of the register of deeds for the county in which the real or personal property is located attesting that 1 or more of the following events have occurred:

- (a) The owner or person otherwise assessed has filed a bankruptcy petition under the federal bankruptcy code, title 11 of the United States Code, 11 U.S.C. 101 to 1330.
- (b) A secured lender has brought an action to foreclose on or to enforce an interest secured by the real or personal property assessed.
- (c) For personal property only, the owner, the person otherwise assessed, or other person has liquidated or is attempting to liquidate the personal property assessed.
- (d) The real or personal property assessed is subject to receivership under state or federal law.
- (e) The owner or person otherwise assessed has assigned the real or personal property assessed for the benefit of his or her creditors.
- (f) The real or personal property assessed has been seized or purchased by federal, state, or local authorities.

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**House  
Legislative  
Analysis  
Section**

Olds Plaza Building, 10th Floor  
Lansing, Michigan 48909  
Phone: 517/373-6466

**TAX LIEN DATES**

House Bill 4935 as introduced  
First Analysis (10-19-93)

Sponsor: Rep. Willis Bullard, Jr.  
Committee: Taxation

RECEIVED

OCT 26 1993

**ARGUMENTS:**

LIBRARY OF MICH./LAW

***For:***

The bill's aim is to vastly improve the likelihood that property tax debts will be repaid when property owners are in bankruptcy proceedings. It lifts governmental units from the status of unsecured creditor to secured creditor by imposing a lien against property for the taxes due on tax day rather than nearly one year later.

***Against:***

Some people are uneasy about the idea of putting a lien against property well before the date when the taxes are expected to be paid.

**POSITIONS:**

A representative of the Oakland County Treasurer testified in support of the bill. (10-13-93)

**THE APPARENT PROBLEM:**

A representative from the Oakland County Treasurer's office and a bankruptcy law expert testified before the House Taxation Committee that local units of government were losing millions of dollars each year because the units are unsecured creditors in bankruptcy proceedings when there is no lien against the property for property taxes due. According to the testimony, the assessment date is the pivotal date for purposes of bankruptcy and that date is December 31 in the year prior to the year in which the tax is levied. State law provides for a lien to be placed against property on December 1 of the year in which the tax is levied (although a city charter can provide for a lien to be placed on property at an earlier date). To protect the interests of governmental units, say specialists, a lien should be placed against property on tax day. This would allow them to become secured creditors and be higher on the list of priority when creditors are paid.

**THE CONTENT OF THE BILL:**

The bill would amend the General Property Tax Act (MCL 211.40) to specify that taxes assessed on real property would become a lien on the property on tax day provided for state, county, village or township taxes, which is defined as December 31 of the year prior to year in which the taxes would be levied, or on a day provided for in the charter of a city or village. Currently, the act says the taxes become a debt due to the township, city, village, or county on tax day and become a lien on December 1 of the year in which they are levied.

**FISCAL IMPLICATIONS:**

The treasurer of Oakland County told the House Taxation Committee that millions of dollars are being lost to local units of government in bankruptcy cases because of the current lien date. (10-13-93)

House Bill 4935 (10-19-93)

Senate Fiscal Agency  
Box 30036  
Lansing, Michigan 48909-7536

**SFA**

BILL ANALYSIS

Telephone: (517) 373-5383  
Fax: (517) 373-1986  
TDD: (517) 373-0543

**RECEIVED**House Bill 4935 (as reported without amendment) **MAY 24 1994**

Sponsor: Representative Willis Bullard, Jr.

House Committee: Taxation

Senate Committee: Finance

LIBRARY OF MICH./LAW

Date Completed: 3-14-94

**RATIONALE**

Under the General Property Tax Act, taxes on real and personal property become a debt on "tax day" (December 31 of the year prior to the year taxes are levied), but they do not become a lien until December 1 of the year in which they are levied (or on a day as provided in a city or village charter). This gap of 11 months, it has been pointed out, can cause problems for local units of government when property taxes remain unpaid by a property owner who declares bankruptcy. If the taxes on property are unpaid and the owner declares bankruptcy before December 1, the taxes owed to the local unit can become extremely difficult to collect because the local unit, absent a lien, is an unsecured creditor. Since secured creditors are paid first in bankruptcy proceedings, apparently this often results in the local unit, like any other unsecured creditor, having nothing left to collect. It has been suggested that property taxes should become a lien on tax day, so that if a taxpayer declared bankruptcy while owing property taxes, the taxing units would become secured creditors.

**CONTENT**

The bill would amend the General Property Tax Act to provide that property taxes would become a lien on tax day (December 31 of the year prior to the year the taxes are levied), rather than on December 1 as currently required. (In effect, this would advance by 11 months the date upon which property taxes become a lien on a property.)

MCL 211.40

**ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

**Supporting Argument**

Reportedly, the incidence of bankruptcy has increased in recent years, and in turn this has resulted in increasing amounts of property taxes going unpaid to local units. While December 31, tax day, is the date upon which assessments for property are determined for the following tax year, the tax levied does not become a lien until the following December 1. This means that many local units have had to get in the back of the line in bankruptcy proceedings because, without a lien on unpaid taxes, they become unsecured creditors. The bill would correct this problem and allow local units to become secured creditors, and thus increase the likelihood that they could collect amounts due on unpaid property taxes.

**Opposing Argument**

The bill could increase voter confusion. In fact, the bill would put a lien on property for unpaid property taxes before the taxpayer even knew the size of the property tax bill, because rates and amounts are not finalized until late in the spring when tax rolls are prepared and valuations are equalized.

**Response:** The bill's aim is to improve the likelihood that property tax debts will be paid when property owners are in bankruptcy proceedings, not to use liens in any other manner. Placing a lien on unpaid property taxes as of December 31 would have no consequence

to taxpayers, other than those who declare bankruptcy. In fact, since taxes automatically become a lien on December 1 under current law, and many people don't pay their taxes until February 15 the following year, many taxpayers have had a lien placed on their property annually, with no ill effects whatsoever.

Legislative Analyst: G. Towne

### **FISCAL IMPACT**

The bill could increase property tax revenues for the State and some local governments. It would improve the ability of the State and county, village, and township governments to recover property taxes, including the new State property taxes imposed by the ballot and statutory school finance plans, from taxpayers in bankruptcy proceedings. The change in the lien date would make these governments secured creditors in bankruptcy proceedings for the purpose of recovering unpaid property taxes. Their position to recover the property taxes from the funds available for paying creditors would improve relative to that of unsecured creditors. Under the current lien date, bankruptcy could be filed before December 1, making the property taxes for that year an unsecured obligation.

The amount of property taxes that currently are uncollectible in bankruptcy cases is not known. The Oakland County Treasurer's office, however, has indicated that in Oakland County, there are approximately 800 bankruptcy cases from the last five years that involve uncollected real and personal property taxes estimated at \$12 million.

As an indicator of bankruptcy activity, the number of bankruptcy cases filed in Michigan totalled 19,379 in 1992 and 16,905 in 1993.

For city and school district taxes, the lien date would not be changed by the bill. The lien date for city taxes would continue to be set by city charter. The lien date applied to school district taxes is generally July 1 and would not be changed by the bill.

Fiscal Analyst: E. Pratt

### **H9394\S4935A**

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.

**HL**  
**AS**  
**House**  
**Legislative**  
**Analysis**  
**Section**

Olds Plaza Building, 10th Floor  
Lansing, Michigan 48909  
Phone: 517/373-6466

**TAX LIEN DATE AMENDMENT**

**RECEIVED**

**JUN 15 1994**

House Bill 5621 as introduced  
First Analysis (6-9-94)

Sponsor: Rep. Willis Bullard, Jr.  
Committee: Taxation

**THE APPARENT PROBLEM:**

Public Act 80 of 1994 (House Bill 4935) amended the General Property Tax Act to specify that property taxes would become a lien against property on tax day, that is, on December 31 of the year prior to the year in which the taxes would be levied. Prior to that act, property taxes became a lien on December 1 of the year in which the taxes were levied (although a city charter could provide for an earlier date); the act said the taxes became a debt on tax day. The lien date was moved up by 11 months to allow local units of government to become secured creditors in bankruptcy proceedings. The argument made was that the December 1 lien date put local units at the back of the line of creditors when property was involved in a bankruptcy because without a lien on the property, they were unsecured creditors. A representative from the Oakland County treasurer's office and a bankruptcy law expert testified at the time that local units were losing millions of dollars each year. However, this new act has reportedly caused problems with real estate transactions around the state, because there is confusion over the nature of the lien. Legislation has been introduced to delay the effectiveness of the new provision so that it does not affect taxes levied before 1995.

**THE CONTENT OF THE BILL:**

The bill would amend the General Property Tax Act to provide that property taxes would become a lien on real property on tax day (December 31) beginning with taxes levied in 1995. (It would retain the old December 1 date -- 11 months later -- for taxes levied before 1995.)

MCL 211.40

**FISCAL IMPLICATIONS:**

There is no information at present.

**ARGUMENTS:**

**For:**

The bill would delay the implementation of a new law regarding placing tax liens on real property to eliminate problems it would otherwise cause with real estate transactions this year. The new law took effect in April, and the existence of this new lien has complicated the buying and selling of property. The bill would provide time for people to adjust to the new law.

**Response:**

Some people would rather see the new law repealed. It imposes a lien on property for taxes well before the date when those taxes need to be paid.

**POSITIONS:**

A representative of the Michigan Association of Realtors testified in support of the bill before the House Taxation Committee. (6-8-94)

House Bill 5621 (6-9-94)



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**TAX LIEN DATE AMENDMENT**

House Bill 5621 as enrolled  
Second Analysis (8-3-94)

PA 279

Sponsor: Rep. Willis Bullard, Jr.  
House Committee: Taxation  
Senate Committee: Finance

**THE APPARENT PROBLEM:**

Public Act 80 of 1994 (House Bill 4935) amended the General Property Tax Act to specify that property taxes would become a lien against property on tax day, that is, on December 31 of the year prior to the year in which the taxes would be levied. Prior to that act, property taxes became a lien on December 1 of the year in which the taxes were levied (although a city charter could provide for an earlier date); the act said the taxes became a debt on tax day. The lien date was moved up by 11 months to allow local units of government to become secured creditors in bankruptcy proceedings. The argument made was that the December 1 lien date put local units at the back of the line of creditors when property was involved in a bankruptcy because without a lien on the property, they were unsecured creditors. A representative from the Oakland County treasurer's office and a bankruptcy law expert testified at the time that local units were losing millions of dollars each year. However, this new act has reportedly caused problems with real estate transactions around the state, because there is confusion over the nature of the lien. Legislation has been introduced to delay the effectiveness of the new provision so that it does not affect taxes levied before 1995.

application of [Public Act 80 of 1994, House Bill 4935] to taxes levied before 1995."

MCL 211.40

**FISCAL IMPLICATIONS:**

There is no information at present.

**ARGUMENTS:**

**For:**

The bill would delay the implementation of a new law regarding placing tax liens on real property to eliminate problems it would otherwise cause with real estate transactions this year. The new law took effect in April, although some legislators had not anticipated that it would, and the existence of this new lien has complicated the buying and selling of property. The bill would provide time for people to adjust to the new law.

**Response:**

Some people would rather see the new law repealed. It imposes a lien on property for taxes well before the date when those taxes need to be paid.

**THE CONTENT OF THE BILL:**

The bill would amend the General Property Tax Act to provide that property taxes would become a lien on real property on tax day (December 31) beginning with taxes levied in 1995. (It would retain the old December 1 date -- 11 months later -- for taxes levied before 1995.)

The bill includes the statement that "this amendatory act is curative and intended to express the original intent of the legislature concerning the

House Bill 5621 (8-3-94)



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LAW / ACQUISITIONS

**TAX LIENS; BANKRUPTCY**

House Bill 4843 (Substitute H-1)  
First Analysis (5-23-95)

Sponsor: Rep. Willis Bullard, Jr.  
Committee: Tax Policy

**THE APPARENT PROBLEM:**

Public Act 80 of 1994 (House Bill 4935) amended the General Property Tax Act to specify that property taxes would become a lien against property on tax day, that is, on December 31 of the year prior to the year in which the taxes would be levied. Prior to that act, property taxes became a lien on December 1 of the year in which the taxes were levied (although a city charter could provide for an earlier date); the act said the taxes became a debt on tax day. The lien date was moved up by 11 months to allow local units of government to become secured creditors in bankruptcy proceedings. The argument made was that the December 1 lien date put local units at the back of the line of creditors when property was involved in a bankruptcy because without a lien on the property, they were unsecured creditors. A representative from the Oakland County treasurer's office and a bankruptcy law expert testified at the time that local units were losing millions of dollars each year. However, the new act reportedly caused problems with real estate transactions around the state, because there was confusion over the nature of the lien. Subsequently, the legislature passed Public Act 279 of 1994 (House Bill 5621), which was intended to delay the application of the new law so that it would not affect taxes levied before 1995, thus providing more time for people to adjust to the change in the law.

However, since the provision has now taken effect, there continues to be much confusion among realtors, financial institutions, and people buying and selling homes about the law. It has created a situation in which there is now a tax lien on property well before the date when those taxes are due. This causes confusion and necessitates additional paperwork before home sales can be closed.

A recent change in federal bankruptcy law provides an opportunity to solve the original problem raised by county treasurers, without placing an additional burden on real estate transactions.

**THE CONTENT OF THE BILL:**

The bill would amend the General Property Tax Act to provide that property taxes would become a lien on real and personal property on December 1 of the year in which the taxes were levied, except where the property owner had filed for bankruptcy or in certain other instances (see below). Under those circumstances, a local treasurer could designate that taxes became a lien against property on tax day (December 31 of the prior year), by filing an affidavit with the register of deeds of the county in which the property was located. The affidavit would include the year for which the taxes were levied, the date the taxes were assessed, and the name and tax identification number of the owner and the property, and would attest that one of more of the following had occurred:

- \*\* The property owner had filed a bankruptcy petition under the federal bankruptcy code;
- \*\* The property was being foreclosed upon by a secured lender;
- \*\* In the case of personal property, the owner had liquidated or was attempting to liquidate the property;
- \*\* The property was subject to receivership under state or federal law;
- \*\* The owner had assigned the property for the benefit of his or her creditors;

**\*\* The property had been seized by federal, state, or local authorities;**

**\*\* A judicial action had been commenced that could impair the ability of the taxing authority to collect the taxes in the absence of a lien.**

The bill would take effect "90 days after the effective date" of the bill.

MCL 211.40

### ***FISCAL IMPLICATIONS:***

According to the Department of Treasury, the bill has no fiscal implications for the state. (5-19-95)

### ***ARGUMENTS:***

#### ***For:***

The number of businesses and individuals filing for bankruptcy has nearly doubled since the mid-1980s, and local tax collecting authorities have discovered that unpaid property taxes are close to the bottom of the list of creditors to be paid. Some counties complained they were losing millions of dollars in unpaid property taxes as more property owners sought to evade payment of taxes through filing bankruptcy. The legislature responded to this concern with the passage of Public Act 80 of 1994, which allows property taxes to become a lien against property at an earlier date, thus making the local unit of government a secured creditor with a higher priority in a bankruptcy proceeding. In doing so, however, the statute created problems for those involved in real estate transactions: the customary title search turns up a lien against every piece of property, even before the taxes are due to be paid. This necessitates an addendum to the purchase agreement, and some are concerned that realtors could be held responsible for unpaid property taxes if the paperwork is not done correctly, or if it is challenged by a buyer.

An October, 1994 change in federal bankruptcy law allows another approach to be taken. Under that change, taxing authorities are allowed to effect "post petition" liens on the property of a debtor (allowing a lien to be placed after the filing of a bankruptcy claim). The bill would implement this concept, allowing a lien to be placed on property to secure payment of property taxes in cases of bankruptcy, seizure of assets, liquidation of personal property, or other situations in which the ability to collect the

taxes is threatened. At the same time, the bill would return the tax lien date to where it was prior to the passage of Public Act 80, thus resolving the complications that act added to real estate transactions.

#### ***Against:***

Several concerns have been raised:

**\*\* The bill may inadvertently undo another beneficial feature of Public Act 80.** Prior to the passage of Public Act 80, the language of Section 40 of the act said (as it will under the bill) that taxes become a "debt due" on tax day (December 31 of the prior year), and become a lien on the property on December 1 of the year the taxes are due. Apparently, this language allows the federal government to escape paying property taxes in the first year it purchases a building. Under the language of Public Act 80, the act specified that there was a "lien" on the property as of tax day. A lien is ordinarily paid by federal government when it purchases property, but a "debt due" is not paid.

**\*\* Local treasurers have raised concerns that the bill would place additional administrative burdens on them.**

**\*\* The effective date language of the substitute is unclear.**

### ***POSITIONS:***

The Michigan Association of Realtors supports the bill. (5-18-95)

The Department of Treasury supports the bill. (5-19-95)

The Oakland County Treasurer's Office supports the bill. (5-19-95)

The Michigan Association of County Treasurers supports the bill, but has concerns about how the language would affect cases in which the federal government purchases real or personal property. (5-19-95)



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JUL 24 1995

LAW / ACQUISITIONS

House Bill 4843 as enrolled  
Public Act 143 of 1995  
Second Analysis (6-23-95)

**Sponsor: Rep. Willis Bullard, Jr.**  
**House Committee: Tax Policy**  
**Senate Committee: Finance (Discharged)**

### ***THE APPARENT PROBLEM:***

Public Act 80 of 1994 (House Bill 4935) amended the General Property Tax Act to specify that property taxes would become a lien against property on tax day, that is, on December 31 of the year prior to the year in which the taxes would be levied. Prior to that act, property taxes became a lien on December 1 of the year in which the taxes were levied (although a city charter could provide for an earlier date); the act said the taxes became a debt on tax day. The lien date was moved up by 11 months to allow local units of government to become secured creditors in bankruptcy proceedings. The argument made was that the December 1 lien date put local units at the back of the line of creditors when property was involved in a bankruptcy because without a lien on the property, they were unsecured creditors. A representative from the Oakland County treasurer's office and a bankruptcy law expert testified at the time that local units were losing millions of dollars each year. However, the new act reportedly caused problems with real estate transactions around the state, because there was confusion over the nature of the lien. Subsequently, the legislature passed Public Act 279 of 1994 (House Bill 5621), which was intended to delay the application of the new law so that it would not affect taxes levied before 1995, thus providing more time for people to adjust to the change in the law.

However, since the provision has now taken effect, there continues to be much confusion among realtors, financial institutions, and people buying and selling homes about the law. It has created a situation in which there is now a tax lien on property well before the date when those taxes are due. This causes confusion and necessitates additional paperwork before home sales can be closed.

A recent change in federal bankruptcy law provides an opportunity to solve the original problem raised by county treasurers, without placing an additional burden on real estate transactions.

### ***THE CONTENT OF THE BILL:***

The bill would amend the General Property Tax Act to provide that property taxes would become a lien on real and personal property on December 1 of the year in which the taxes were levied, except where the property owner had filed for bankruptcy or in certain other instances (see below). Under those circumstances, a local treasurer could designate that taxes became a lien against property on tax day (December 31 of the prior year), by filing an affidavit with the register of deeds of the county in which the property was located. The affidavit would include the year for which the taxes were levied, the date the taxes were assessed, and the name and tax identification number of the owner and the property, and would attest that one of more of the following had occurred:

- \*\* The property owner had filed a bankruptcy petition under the federal bankruptcy code;
- \*\* The property was being foreclosed upon by a secured lender;
- \*\* In the case of personal property, the owner had liquidated or was attempting to liquidate the property;
- \*\* The property was subject to receivership under state or federal law;
- \*\* The owner had assigned the property for the benefit of his or her creditors;

House Bill 4843 (6-23-95)

**\*\* The property had been seized or purchased by federal, state, or local authorities;**

**\*\* A judicial action had been commenced that could impair the ability of the taxing authority to collect the taxes in the absence of a lien.**

The bill would take effect 90 days after it was enacted.

MCL 211.40

### ***FISCAL IMPLICATIONS:***

According to the Department of Treasury, the bill has no fiscal implications for the state. (5-19-95)

### ***ARGUMENTS:***

#### ***For:***

The number of businesses and individuals filing for bankruptcy has nearly doubled since the mid-1980s, and local tax collecting authorities have discovered that unpaid property taxes are close to the bottom of the list of creditors to be paid. Some counties complained they were losing millions of dollars in unpaid property taxes as more property owners sought to evade payment of taxes through filing bankruptcy. The legislature responded to this concern with the passage of Public Act 80 of 1994, which allows property taxes to become a lien against property at an earlier date, thus making the local unit of government a secured creditor with a higher priority in a bankruptcy proceeding. In doing so, however, the statute created problems for those involved in real estate transactions: the customary title search turns up a lien against every piece of property, even before the taxes are due to be paid. This necessitates an addendum to the purchase agreement, and some are concerned that realtors could be held responsible for unpaid property taxes if the paperwork is not done correctly, or if it is challenged by a buyer.

An October, 1994 change in federal bankruptcy law allows another approach to be taken. Under that change, taxing authorities are allowed to effect "post petition" liens on the property of a debtor (allowing a lien to be placed after the filing of a bankruptcy claim). The bill would implement this concept, allowing a lien to be placed on property to secure payment of property taxes in cases of bankruptcy, seizure of assets, liquidation of personal property, or other situations in which the ability to collect the

taxes is threatened. At the same time, the bill would return the tax lien date to where it was prior to the passage of Public Act 80, thus resolving the complications that act added to real estate transactions.

#### ***Against:***

Local treasurers have raised concerns that the bill would place additional administrative burdens on them.