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THE OLD AND THE NEW PENNSYLVANIA TAX SALE PROCEDURE

By

LEO H. MCKAY*

On February 1, 1948, the Real Estate Tax Sale Law of 1947¹ became effective in those second to eighth class counties in which the county commissioners failed to adopt a resolution refusing to accept it. Fifteen counties accepted the act.² Others have indicated an interest in accepting it later if privileged to do so. It is understood that an amendment will be introduced in the 1949 legislature to permit other counties to accept the act.

This act makes such a marked departure from the former procedure for returns and sales of real estate for taxes in the counties that accept it that it merits the study of every lawyer and every local official.

It is proposed in the present article to compare the procedure for tax sales under the old and the new acts, and to indicate the reasons why, in the opinion of the writer, the new act is to be preferred.

The Procedure Under Present Acts

Prior to the adoption of the Act of 1947, and, in counties which as yet have not accepted that act, there was no one procedure for tax sales. In fact, there are four kinds of sales, each under a different act.

They are: City Treasurers' sales in second and third class cities;³ Sheriffs' sales for taxes under the Municipal Claims and Tax Liens Act;⁴ County Treasurers' sales of seated lands under the Act of 1931;⁵ and County Treasurers' sales of unseated lands under the Act of 1815.⁶

Under City Treasurers' sale procedure, the City Treasurer sells land for taxes on the first Monday of June following the year for which the tax is levied—first

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¹ Act 1947, July 7, P. L. 1368, 72 P. S. 5860.

² Carbon, Chester, Clarion, Clinton, Fayette, Greene, Juniata, Lehigh, Luzerne, Mercer, Mifflin, Montour, Northampton, Schuylkill and Washington.

³ Act 1903, March 30, P. L. 106, 53 P. S. 10111; Act 1931, June 23, P. L. 932, sec. 2575; 53 P. S. 12198-2575; and Act 1947, July 5, P. L. 1258, sec. 1 et seq., 53 P. S. 10201. The Act of 1903 applied to both second and third class cities. The Act of 1931 repealed the Act of 1903 as to third class cities and re-enacted the same tax sale procedure for third class cities. The Act of 1947 repealed the Act of 1903 as to second class cities and re-enacted the same tax sale procedure for second class cities. The procedure under all three acts is essentially the same.

⁴ Act 1923, May 16, P. L. 207, as amended; 53 P. S. 2021 et seq.

⁵ Act 1931, June 23, P. L. 932, 53 P. S. 12198.

⁶ Act 1815, March 15, P. L. 177, 6 Sm. L. 299; 72 P. S. 5981.

advertising the sale once a week for three weeks in two newspapers.⁷ He reports the sale to the Court of Common Pleas for confirmation,⁸ after which he executes a deed to the purchaser.⁹ As in all tax sales, a two year redemption period is allowed, and bonds are required for the surplus of the bid above the taxes and costs. This procedure has the advantage of simplicity and promptness of sale, but being available for the collection of city taxes alone, it cannot be used as a comprehensive method of tax sales.

Another tax sale procedure is provided for in the Municipal Claims and Tax Liens Act.¹⁰ Under this act, tax liens are entered by the taxing district within three years of the close of the calendar year for which the tax is levied.¹¹ Tax sales are held by the sheriff in execution of a *levari facias* after a *scire facias* entered on a tax lien has been reduced to judgment.¹² This method has the advantage of permitting the filing of liens as late as three years after the tax year. Its chief disadvantage lies in the expense of the sale, for sheriffs' sales are costlier than other tax sales. As a result, the liens are often permitted to lie uncollected for several years. After five years, they lose their lien unless they are revived.

By far the most commonly used tax sale act is the Act of 1931¹³ for the sale of seated lands. Under it the tax collector returns the unpaid taxes to the office of the County Commissioners on or before the first Monday of May following the tax year.¹⁴ The commissioners enter the claim in a docket, index it and certify it to the County Treasurer for collection and sale.¹⁵ Not earlier than the first Monday of August of the second year thereafter, and not later than five years after the final date for filing, the County Treasurer sells the property at public sale after advertisement and notice to the owner by registered mail.¹⁶ Following the sale, the treasurer makes a return of the sale to the Court of Common Pleas, which confirms the return *nisi*, and, if no exceptions are filed, the return is confirmed finally by the prothonotary.¹⁷ The owner, or a lien creditor, may redeem the property within two years,¹⁸ or, if the county is the purchaser, he can redeem it as long as it is unsold.¹⁹ If no bid is made sufficient to cover all the

⁷ Act 1931, June 23, P. L. 932, sec. 2577, 53 P. S. 12198-2577 (As to third class cities. The procedure as to second class cities is the same.)

⁸ Id. sec. 2582, 2583; 53 P. S. 12198-2582, 2583.

⁹ Id. sec. 2585; 53 P. S. 12198-2585.

¹⁰ Act 1923, May 16, P. L. 207; 53 P. S. 2021.

¹¹ Id. sec. 9; 53 P. S. 2029.

¹² Id. sec. 28; 53 P. S. 2048.

¹³ Act 1931, May 29, P. L. 280; 72 P. S. 5971. While the law still recognizes the difference between seated and unseated lands, the tendency of assessors and tax collectors is to assess and return practically all properties as seated. Except in the sparsely settled counties, there are few properties today that cannot be lawfully classed as seated lands.

¹⁴ Act 1931, May 29, P. L. 280, sec. 1; 72 P. S. 5971a.

¹⁵ Id. sec. 2, 3; 72 P. S. 5971b.

¹⁶ Id. sec. 7, as amended, 72 P. S. 5971g.

¹⁷ Id. sec. 12, as amended, 72 P. S. 5971i.

¹⁸ Id. sec. 15, as amended, 72 P. S. 5971 n, o.

¹⁹ At the option of the county commissioners, without penalties, under Act 1935, July 17, P. L. 1091, sec. 1, 72 P. S. 5879; or, as a matter of right, with penalties, under Act 1941, July 28, P. L. 535; 72 P. S. 6105. Indiana County Petition, 360 Pa. 244.

taxes, the county buys the property; and after two years, the county commissioners may sell it either at ordinary public sale,²⁰ at public sale after order of court, free and divested of liens,²¹ or at private sale upon approval of court.²² The act contains a *clause of incontestability* of title.²³

The procedure for the sale of unseated lands under the Act of 1815²⁴ is, in general, similar to that under the Act of 1931.²⁵ The principal differences are that in the unseated sale act there is no provision for a notice to the owner prior to sale, nor for a return and confirmation of the sale, nor is there a statement as to incontestability of title.

It is also interesting to note that when the county is the bidder at the treasurer's sale and subsequently undertakes to sell the property at public sale, it need advertise the property for only three weeks if it is seated,²⁶ but the advertisement must be for six weeks if it is unseated.²⁷

Criticism Of The Present Procedure

The present procedure is unsatisfactory in many ways. In the first place, the procedure involves too many systems and officers. Under the Act of 1931, the records in both the Commissioners' and Treasurer's office must be examined to ascertain what taxes are filed, and these independent offices having separate records, the results are not necessarily identical. In addition, a title examiner must check for taxes filed in the Prothonotary's office under the Act of 1923 (where a tax lien may possibly, through error, be indexed against a property under a name other than that of the owner). He must inquire of the secretary of the school board and of the borough, city or township supervisors, as the case may be, for, under the Act of 1923, these taxing districts have three years within which to file liens in the Prothonotary's office. In addition, if the property lies in a third class city, he must check the City Treasurer's records, for that official may not have filed the city taxes in either of the county offices, intending to sell the property at City Treasurer's sale. There ought to be one system of filing tax liens and one office in which all the records of filed taxes can be found.

Further, there is no reason for having one procedure for sales of seated and another for sales of unseated land. The requirement of a six weeks advertisement of a Public Commissioner's sale of unseated lands makes the sale unduly expensive. There would seem to be no justification for it to cost twice as much for the Commissioners to sell relatively worthless unimproved property as to sell a valuable house and lot.

²⁰ Act 1931, May 29, P. L. 280, sec. 10, as amended; 72 P. S. 5971j.

²¹ *Id.* Sec. 9, as re-enacted and amended; 72 P. S. 5971g.

²² Act 1933, May 25, P. L. 1019, sec. 1, as amended 72 P. S. 5970; or under the Act of 1937, May 21, P. L. 787, sec. 2, as amended, 72 P. S. 5878.

²³ Act 1931, May 29, P. L. 280, sec. 12, as amended; 72 P. S. 5971 i.

²⁴ Act 1815, March 15, P. L. 177, 6 Sm. L. 299; 72 P. S. 5981.

²⁵ Appeal of Andrews Land Corporation, 149 Pa. Super. Ct. 212, 1942.

²⁶ Act 1931, May 29, P. L. 280, sec. 10, as amended; 72 P. S. 5971j.

²⁷ Act 1929, May 9, P. L. 1693, sec. 1; 72 P. S. 5874.

Again, under the Acts of 1815 and 1931, there are too many mistakes in tax liens and there is no practical way to correct them. In particular, descriptions often contain wrong boundaries and wrong lot numbers. The reason for this is that the liens are prepared by tax collectors who do not have ready access to the records. They wait as long as possible before returning their liens, and then on or about the first Monday of May, they hastily prepare the liens and file them in bundles. The Commissioners take them as they are, docket them, and certify them to the County Treasurer, who docket them and eventually sells the properties with the errors perpetuated. The tax liens should be prepared by a competent clerk with the help of a lawyer and there should be provision for correcting errors when they are discovered.

In addition, there are too many officials concerned in the sales. Under the Acts of 1815 and 1931, the County Treasurer keeps a duplicate record of the liens and conducts the sales. The law not providing him with a solicitor, the County Treasurer inevitably makes some errors. (Not that lawyers are infallible, but it is submitted that conducting, returning, and advertising sales, and drawing and checking deeds is work that requires legal assistance.) The sale should be handled by the same office that prepares and handles the claim, under the guidance of the County Solicitor, and there should be only one tax sale—not two.²⁸

Again, there is too great a delay between the return of the tax and the final sale. Granted that the owner should have every opportunity to redeem, it would seem that there is still no justification for a two and a half to five years delay before the sale, and a two year redemption period after that—a total of seven years. If there is to be a sale of land for unpaid taxes at all, the sale should be held within a reasonable time.

Finally, the titles given at tax sales are often doubtful. The Act of 1931 makes a reasonable provision for a good title to be given by the treasurer at a seated land sale,²⁹ but there is never any certainty as to unseated lands. And if the seated land is purchased by the commissioners, who later sell it at public sale for less than all the taxes, whether the unpaid portion of the taxes is still a lien on the land is questioned by some title lawyers. The law should be explicit as to the title conferred by a tax sale so that a purchaser will know what he is buying.

The Act of 1947

The procedure set out in the 1947 Act,³⁰ outlined as far as possible by dates of procedural steps, is as follows:

1. On February 1, 1948, the Act became effective in those counties adopting it, except that third class cities and school

²⁸ Under the Acts of 1931 and 1815, when the bid does not cover the taxes and costs, the County Treasurer sells the property to the County. Subsequently, the County sells it again.

²⁹ The courts are now inclined to sustain these titles where possible. *Thompson vs. Frazier*, 159 Pa. Super. Ct. 395.

³⁰ Act 1947, July 7, P. L. 1368; 72 P. S. 5860. The numbers of the sections of the Act appear as corresponding decimals to the Purdon number.

districts in those cities could elect whether to adopt it as late as the first day of May.⁸¹ A tax bureau is created in the office of the County Commissioners with a bonded director in charge.⁸² This office becomes the sole tax office for filed real estate taxes in the county.

2. *About March 1st*, the tax collector returns his unpaid real estate taxes, without distinguishing between seated and unseated lands, to the taxing district.⁸³

3. On or before the first Monday of May, the taxing district returns a list of properties on which taxes are unpaid, described as on the tax duplicate, to the Tax Claim Bureau. The lien is lost if the taxes are not returned in time.⁸⁴ The first year, the district also returns any old taxes that are still a lien and not reduced to judgment.⁸⁵ If the owner is paying on the instalment plan, the taxes are not returned until they are in default.

4. On or before the first Monday of May, 1948, the County Treasurer returns to the bureau all uncollected old taxes previously certified to him under the Act of 1931.⁸⁶ The bureau checks these and weeds out the defective liens, files written findings and gives notice to the taxing districts involved.⁸⁷ The taxing districts may file exceptions with the bureau within fifteen days and may later appeal from its ruling to the court.

5. On or before *June 30th*, the bureau gives notice of the return to the taxable by registered mail — or posts it on the premises if the mailed notice is not received.⁸⁸

The notice

- (a) sets forth information as to the tax claim.
- (b) states that if payment is not made before December 31st — or exceptions filed — the claim will become absolute.
- (c) states that on July 1st the one year of redemption begins to run and if redemption is not made during that year,

⁸¹ Id. Sec. 102.

⁸² Id. Sec. 201. If they reject the act, the Tax Lien Act of 1923 and the provisions of the Third Class City Code remain in effect for school or city taxes as the case may be. The Act of 1947 would still be in effect as to county taxes.

⁸³ The act does not fix a date for the settlement of the tax duplicate. It leaves this to the taxing district. However, since Act 1947, June 5, P. L. 453, sec. 1, 72 P. S. 5511. 3 requires that the tax collector's bond be filed by March 15th, the return of the prior year's uncollected taxes should precede that date.

⁸⁴ Act 1947, sec. 306. Note that it is the taxing district that returns the tax and not the Tax Collector. Under the unseated sale acts and the Seated Sale Act of 1931, it is the Tax Collector who returns unpaid taxes to the commissioners' office. Under the Act of 1947, the School Board, the Council, or the Board of Supervisors make their return.

⁸⁵ Id. Sec. 306b.

⁸⁶ Id. Sec. 307b.

⁸⁷ Id. Sec. 307c.

⁸⁸ Id. Sec. 308.

the property will be sold and there will be no redemption after the sale.

6. On or before *June 30th*, the bureau makes up a tax claim, enters it in a claim docket, and indexes it. The claim covers the taxes due all districts for one year; or may include the taxes for several years. The claim may be amended by leave of the bureau upon notice to the defendant as the bureau may require.

The claim sets forth the name of the taxing district, the name of the owner, and a description of the property.³⁹ The description may be by reference to a recorded deed, by reference to a number and plan, by reference to a number and block by street and number, or by acreage and one adjoining owner, plus notation of its use, as vacant lot, farm and buildings, etc. The claim also sets forth the year and amount of the tax with penalty and interest to the date of filing, and that due notice was given to the owner of the return. It is signed by, or bears the facsimile stamp, of the director of the bureau. The bureau certifies a copy of the claim to the treasurer for collection, who collects and disburses the taxes.⁴⁰

7. On January 1, the claim becomes absolute if no exceptions are filed.⁴¹ Prior to January 1, or thereafter if exceptions are filed, the bureau may set aside or reduce the claim, but only upon the ground that the taxes have been paid. If exceptions are filed, the bureau notifies the taxing district and holds a hearing. It may strike off or reduce the claim, or disallow the exceptions. The defendant may appeal within fifteen days after notice to the Court of Common Pleas, by petition setting forth his reason or defense. The court grants a rule on the taxing district. An answer is filed and the issue is tried by a jury, or by the court if jury trial is waived.

Prior to the claim becoming absolute, the claim may be set aside or reduced by the court on appeal for any lawful reason which constitutes a valid defense except want of notice of the return and entry of the claim or for any dispute in the amount of the claim which involves the amount of the assessed valuation or the validity of the tax levied. After the claim becomes absolute, the taxpayer may petition the Court of Common Pleas to open the claim, but for only two grounds: payment of the tax involved, or failure to receive notice. An appeal is allowed to the Supreme and Superior Court. Upon final order, the return becomes absolute. If the claim is struck off or reduced, a note is made on the docket and index.

8. After *January 20th*, the Tax Claim Bureau can petition the court to be appointed Sequestrator of the rents. It then takes

³⁹ Id. Sec. 309.

⁴⁰ Id. Sec. 204.

⁴¹ Id. Sec. 311.

charge of the property, rents it, applies the rents to the taxes, and returns it to the owner.⁴²

9. Before *July 1st*, the owner (or heirs or lien creditor) may redeem the property by paying all taxes due and costs, whereupon the director signs a satisfaction on the docket.⁴³ If a person interested for the benefit of an owner or a lien creditor redeems, the Tax Claim Bureau gives him a certificate showing the amount of the redemption money paid, which may be entered by him against the owner as a judgment with first priority.

10. Commencing on the second Monday of July (one year after the claim is required to be filed), a public sale for a fixed price is held by the bureau.⁴⁴ The bureau first fixes an upset price, i.e., a price sufficient to cover all costs, taxes (filed or unfiled) and municipal claims. All taxing districts having municipal claims must certify them to the bureau. The sale is advertised once a week for three weeks in two newspapers. The bureau also notifies the owner by registered mail. If the notice is not delivered, it is posted on the premises. The notice also informs the owner that he still has the right to pay the taxes and other claims in four installments within a year by signing an agreement and paying twenty-five percent, whereupon the sale will be stayed. If the sale is stayed by an agreement and the owner later defaults, the bureau proceeds within ninety days of the default to sell again.

11. Within one year of the exposure to sale, the bureau may sell at private sale in case the upset price is not bid. The upset price sale is continued from month to month for three months.⁴⁵ The bureau gives the taxing districts notice of the proposed private sale and advises them of their right to petition the court within fifteen days to disapprove it. The court, after notice to owner, bureau and purchaser, hears all interested parties and confirms or disapproves the sale. If it disapproves the sale, the court fixes a price below which the property shall not be sold. If an offer is received and the bureau disapproves the price, a taxing district may still instruct the bureau to submit the proposed sale to the court for approval.

12. If the upset price is bid, the bureau makes a consolidated return of the sales to the Court of Common Pleas.⁴⁶ The procedure is similar to the procedure under the Act of 1931 where the County Treasurer makes a return which is confirmed *in nisi*, advertised and finally confirmed by the prothonotary after sixty days. If no exceptions are filed, or if filed and overruled, the validity of the sale cannot thereafter be in-

⁴² Id. Sec. 401.

⁴³ Id. Sec. 501.

⁴⁴ Id. Sec. 601.

⁴⁵ Id. Sec. 513.

⁴⁶ Id. Sec. 607.

quired into and the sale shall be deemed to "pass a good and valid title", "free from any liens except those specifically saved herein" (viz., first mortgages recorded before the taxes became a lien).

13. If within one year of the exposure to sale the upset price is not bid and a private sale is not held, the bureau is required to petition the court for an order to sell the property free of all liens.⁴⁷ It attaches a title search and a list of liens and serves a rule on all interested parties or, if they cannot be found by it, by registered mail to their last known address.

14. After thirty days notice the court holds a hearing and if the petition is supported, orders a sale free of all liens (except ground rents separately taxed).⁴⁸ If the order is within three months of the former sale, the court directs that no further advertisement is required; otherwise, one insertion is made, thirty days prior to the sale, of the time, place, term, and purpose of the sale and a reference to the prior advertisement.

15. Within ten months after the first sale, the bureau must obtain the consent of all taxing districts to hold a sale divesting liens. During the next two months, it must proceed without their consent being required.⁴⁹

After sales are held, the Tax Claims Bureau delivers deeds to the purchasers. The bureau, as trustee for the taxing district, is the grantor. If the sale is a public sale, for an upset price, the title given is in fee simple and free of all liens except first mortgages recorded before the tax became due and ground rents.⁵⁰ If the sale is a public sale after order of court divesting all liens, the title is in fee simple and free of all liens except ground rents separately taxed.⁵¹ If the sale is a private sale, the title is in fee simple, but free of tax liens.⁵²

Properties already owned by the county from previous sales are turned over to the Tax Claim Bureau and are owned by the county as trustee, the bureau being the agent for all taxing districts.⁵³ The bureau may lease or sell them at private sale, or upon request by any taxing district, the bureau may sell any property at public sale for the upset price. If not so requested, the bureau may, and, by June 1, 1951, must, after petition to court, sell the property free and divested of all liens.

⁴⁷ Id. Sec. 610.

⁴⁸ Id. Sec. 612.

⁴⁹ Id. Sec. 616.

⁵⁰ Id. Sec. 608. 9.

⁵¹ Id. Sec. 612.

⁵² Id. Sec. 615.

⁵³ Id. Sec. 701.

The act also provides that the county shall receive two per cent for handling the claims in addition to the costs and expenses incurred by it;⁵⁴ that certificates of liens shall be furnished by the bureau at a charge of \$1.00;⁵⁵ that amendments may be made to the claim upon notice to the defendant;⁵⁶ that after sale, errors in description, name, petition or deed may be amended by order of court on petition;⁵⁷ and that there can be no redemption after sale.⁵⁸

Appraisal of the Act

The Real Estate Tax Sale Act of 1947 meets the objections to the present procedure.

It provides for one system of returns and sales. While third class cities and school districts have the option not to use the Act, yet, if they adopt it, there will be only one method of returning and selling land for unpaid taxes. There will be one office at which to search for tax liens and a certificate can be obtained that will protect a title examiner.

The new act does not distinguish between seated and unseated lands.

The claims are more likely to be correct and can be easily amended. Under the Act of 1947, the tax claim is prepared by the bureau itself. The employees of the bureau are at the court house. They can examine the assessment records and the deeds in the recorder's office. They have the assistance of the county solicitor or an assistant.⁵⁹ If errors are detected later, the bureau is empowered by the act to amend the claims upon notice to owner.

There is only one tax sale, the sale by the Tax Claim Bureau.

The new act provides for a reasonably prompt sale, at the same time making ample provision for notice to the owner and for redemption. The final sale is held within two and a half years of the end of the tax year.

On the other hand, the act undoubtedly contains many defects which will require remedying amendments. For example, the provision for setting aside claims that are obviously invalid is now limited to one reason, viz, that the taxes were paid,⁶⁰ whereas, the claims may be invalid for many reasons. If invalidity of a claim for any lawful reason is conceded by the director of the bureau, he should be authorized to set it aside after notice to the taxing districts concerned and opportunity to be heard.

⁵⁴ Id. Sec. 207. A proportionate share of the cost of administering the bureau may be taxed as costs.

⁵⁵ Id. Sec. 208.

⁵⁶ Id. Sec. 307d.

⁵⁷ Id. Sec. 617.

⁵⁸ Id. Sec. 501.

⁵⁹ The act provides for assistant county solicitor sec. 202.

⁶⁰ Id. Sec. 314.

Again, while the provision for private sale of county owned properties has proved to be simple and practical and has helped many of the counties to dispose of many such properties, the procedure provided for public sales is unduly complicated and expensive. It requires that in all cases an upset price shall be fixed, sufficient to cover all taxes and costs, and if the property does not bring that amount, and it is not sold at private sale, a petition must be presented to sell it free and divested of liens.

This procedure is appropriate in some cases, as where the property has substantial value but is encumbered by a mortgage. But in many instances, properties do not sell for the amount of the taxes at public sale because they are not worth that amount. In most counties, there are hundreds of relatively worthless vacant lots which were previously sold to the counties under former acts and now belong to the bureaus. The Act, as now operative, not only requires that a petition to sell free of liens be filed for each such property if it does not bring the upset price at a public sale, but makes it mandatory that every county owned property be sold before June 1, 1951, whether anyone will buy it or not.⁶¹ This requirement is obviously unrealistic and administratively impractical.

The Act should be amended to eliminate the provision for a mandatory public sale by a fixed date and to make the provisions for an upset price and for a petition to sell free of liens optional instead of mandatory.

Doubtless other defects will appear as additional experience in administering the Act is obtained. In the main, however, the Act represents a distinct advance in one of the most critical subjects of local government.

⁶¹ Id. Sec. 703.