Legislative Fiscal Bureau
One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

October 19, 2005

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Assembly Bill 129: Interest and Penalties Charged on Delinquent Property Taxes

Assembly Bill 129 would change the procedure for calculating interest and penalty charges on certain delinquent property tax amounts. The bill was introduced on February 22 and referred to the Assembly Committee on Ways and Means on the same day. The Committee on Ways and Means held a public hearing on the bill on Wednesday, April 27. On May 11, 2005, the Ways and Means Committee offered Assembly Substitute Amendment 1 to AB 129, and the Committee recommended adoption of ASA 1 by a vote of 10 to 0 on May 25, 2005. On the same day, ASA 1 to AB 129 was referred to the Joint Committee on Finance.

BACKGROUND

Property tax bills are mailed to taxpayers in December, but do not become payable until the following year. The basic payment schedule is established under s. 74.11 of the statutes and provides that taxes on real estate either be paid in full by January 31 or in two installments on or before January 31 and July 31. Each installment equals half of the net tax bill. Special assessments must be paid in full by January 31, unless the local government has adopted an ordinance authorizing installment payments.

State law (s. 74.12) permits local governments to adopt an ordinance allowing for the payment of property taxes in three or more installments. In these municipalities, taxes on real estate, special assessments, or both may be paid in full by January 31 or in installments with payments due on the last day of each month designated by the ordinance. Under the installment procedure, the first payment is due January 31, one-half of the total amount due must be paid by April 30, and any remaining amount due must be paid by July 31.

Although classified for property tax purposes as personal property, real property improvements that are located on leased land are treated like real estate for purposes of property tax payments. However, taxes on all other types of personal property, as well as special charges and special taxes, must be paid in full by January 31.

If the first tax installment is not paid on or before January 31, the entire amount of unpaid taxes is delinquent as of February 1. If the second or any subsequent installment is not paid by the due date, the entire amount of unpaid taxes is delinquent as of the first day of the month after the payment is due. If special assessments are not paid by the due date, the entire amount of remaining unpaid special assessments is delinquent as of the first day of the month after the payment is due. Special charges, special taxes, and personal property taxes not paid by January 31 are delinquent as of February 1.

Taxes, special assessments, and special charges that become delinquent accrue interest charges at the rate of 1% a month from the preceding February 1, as opposed to the day on which they become delinquent. As soon as any installment is late, the entire balance becomes due. Interest is charged not only for the time that the payment is late, but also back to February 1. A similar calculation is applied to all outstanding installments, even if not yet otherwise due. In addition, counties may impose a penalty charge of up to 0.5% a month. If taxes remain unpaid for two or more years, the property can be sold to pay the taxes.

The state statutes authorize a separate payment procedure for taxpayers in the City of Milwaukee. The provisions of AB 129 do not apply to the City.

Statutory provisions governing the payment of state taxes reflect both similarities to and differences from the property tax statutes. Statutes authorizing the income and franchise tax and the sales and use tax specify a 12% annual interest rate on unpaid amounts and a 1.5% monthly rate (18% annually) on delinquent amounts. These provisions omit the phrase "or fraction of a month," which is employed in the property tax statutes. As a result, the interest rate for state taxes always equals either 12% or 18%, while the effective interest rate assessed on delinquent property taxes depends on the day of the month that the late payment is made, as displayed in the following table:

Effective Annualized Interest and Penalty Rates on Delinquent Property Taxes Depending on the Number of Days After the Close of the Prior Month

Number of Days Late	Effective Rate Based on 12%	Effective Rate Based on 18%
1	365.00%	547.50%
5	73.00	109.50
10	36.50	54.75
15	24.33	36.50
20	18.25	27.38
25	14.60	21.90
30	12.17	18.25
31 *	11.77	17.66

* Assuming a month with 31 days.

While the statutes delineate the procedures for calculating interest and penalties on delinquent taxes, calculating the "real" cost of those charges may be subject to different interpretations. Interest calculations are based on the equation:

Interest = Principal x Rate x Time,

which implies that interest rates may be calculated as

Interest / (Principal x Time) = Rate.

A $4,000 tax bill payable in four installments at the end of January, April, May, and July would be subject to interest and penalties of $150 if the third installment is paid one month late. Local treasurers would calculate those charges by multiplying $2,000 in unpaid taxes (the third and fourth installments) by 1.5% interest for the five-month period from February through June. It could be argued that the charges equate to 18% interest because:

$150 / [$2,000 x (5/12)] = 18%.

However, it might also be argued that an interest rate of 180% results because the amount of the payment that is late equals only $1,000 and the payment is only one month late:

$150 / [$1,000 x (1/12)] = 180%.

Current interest and penalty provisions for the property tax were largely codified by 1987 Wisconsin Act 378, which reflects the recommendations of the Legislative Council's Special Committee on Property Tax Collection Laws. Prior to that law, interest on unpaid property taxes was charged from January 1, to reflect that taxes became payable when they were levied or billed. The 1987 act delayed that date to February 1, the day after the first statutory payment date, but retained an interest rate of 1% per month, or fraction of a month, as under prior law.

SUMMARY OF ORIGINAL BILL AND SUBSTITUTE AMENDMENT

AB 129, as introduced, would change the procedures for determining when payments are considered delinquent and calculating interest and penalties on delinquencies. Delinquencies would occur when installments become payable, and the delinquent amount would equal the installment amount that is payable, as opposed to the entire amount of outstanding liability. Interest and penalty amounts would be calculated on the delinquent amount from the preceding installment's due date. Therefore, the entire amount of a taxpayer's bill would not be considered delinquent if the taxpayer misses the first installment payment. This would afford taxpayers who have missed a payment date the option of paying their remaining taxes in installments.

ASA 1 to AB 129 would extend the delinquency and interest provisions in the original bill to some, but not all, delinquencies. In municipalities that that have not authorized multiple installment payments, the substitute amendment would allow taxpayers who do not make a payment by January 31 to make an installment payment prior to July 31. That payment would bear interest and penalty, if applicable, from February 1, but no interest or penalty would be calculated on the amount of the second installment, provided that installment is paid by July 31. If the first installment is paid on, or before, July 31 but the second installment is not paid by that date, the second installment would bear interest and penalty, if applicable, from August 1. If any amount of the first installment remains delinquent on August 1, the substitute amendment provides that the entire unpaid amount, including the amount due as the second installment, would bear interest and penalty, if applicable, from February 1.

The substitute amendment would make similar modifications to the payment provisions for municipalities that have authorized multiple installments. If a taxpayer fails to pay the first installment on a timely basis, interest and penalties would be charged only on the amount of the first installment, provided the taxpayer pays the first installment before the second installment's payment date. If a subsequent installment is not paid on a timely basis, interest and penalties would be charged from the due date for that installment (as opposed to February 1) and only on the amount of that installment, provided the taxpayer pays the installment before the subsequent payment date. If any portion of an installment is delinquent at the time of a subsequent installment's payment date, all unpaid amounts would become payable with interest and penalties charged from the day after the due date for the first installment. Finally, amounts unpaid as of September 1 would generate interest and penalties from February 1.

FISCAL EFFECT

Relative to the original bill, the Department of Revenue estimated that county and municipal revenues would decrease by an estimated $8.85 million annually. Of this decrease, $4.81 million is related to interest and penalties associated with the payment of delinquent first installments, and $4.04 million is related to interest and penalties associated with the payment of delinquent second installments. The Department's estimate is based on an analysis of "Tax District Treasurer's Settlement" forms filed for the 2003(04) property tax year. ASA 1 to AB 129 would result in a smaller, although unknown, revenue decrease.

Prepared by: Rick Olin