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# Some Observations on the Louisiana Property Tax Collection System

JEFFERSON B. FORDHAM\* AND WALLACE A. HUNTER\*\*

Property tax law and administration have been so highly imperfect that many defects and irregularities are matters of common knowledge. In Louisiana the system is nowhere more vulnerable than at the collection stage. The legal sanction supporting collection is the familiar tax sale. That device has been so thoroughly emasculated by a combination of lenient positive law, judicial coddling of tax debtors and lax and inefficient administration as to render it a poor and ineffectual thing indeed. Nor is that all. Failure as a sanction is but one of two serious counts in the indictment against the Louisiana tax sale. The other is that the accused is responsible for serious insecurity in land titles.

During the current high-income period property tax collection problems are not acute. Neither the government nor the taxpayer is suffering in any sense comparable to the experience of depression years. Yet, both have a vital interest in the subject. Government must go on, but you cannot get blood out of a turnip. People pay up pretty well in the fat years. The test comes in the lean ones. It seems to us that there could be no better time than now to subject the Louisiana system of property tax collection to an overhauling which will give the structure both the strength and flexibility to stand the strain of the lean years.

The general property tax now cuts but a modest figure in state finance. It produces less than ten per centum of total state revenues.<sup>1</sup> It continues, however, to be the mainstay of the local units of government. The municipalities have found the tax, as presently administered, inadequate to support the expanding

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1. In 1943, for example, the percentage was 7.7. See Preliminary Report of the Louisiana Revenue Code Commission, April 10, 1946, 37 et seq. As indicated in that report, the net yield to the state is inconsequential since the operations of the Property Tax Relief Fund, in making up to the local units other than municipalities (New Orleans excepted) out of state revenues the tax loss to such units attributable to homestead exemptions, feed out of the treasury almost as much as the property tax inflow.

business of urban government. Nor has the state been so generous with them as with the parishes in sharing state revenues or providing other sources of revenue. All this but emphasizes the point that, at the local level, the general property tax on immovables is likely to continue to be very much a part of the scheme of things.

The outlook for reform is encouraging. The Louisiana Revenue Code Commission is currently re-examining the entire tax structure with a view to substantive and procedural improvements and to orderly articulation of the tax laws in a revenue code. The Louisiana Law Institute is engaged in preparing a draft of a new state constitution for consideration by a constitutional convention. Much of the existing tax system is imbedded in the constitution. Perhaps the Commission and the Institute will be able so to coordinate their work as to have the draft of constitution reflect the organic tax changes suggested by the Commission's study.

It is the purpose of this paper to present as clear a statement as the subject permits of the existing law of property tax collection in Louisiana as a basis for informed consideration of possible changes.

The collection of ad valorem taxes on movables is a subject beyond the purview of this paper, but it deserves brief mention here by way of relating it to the treatment of immovables. Section 11 of Article X of the constitution covers the ground. Collection is effected by seizure and sale of any movables of the tax debtor, whether assessed or not, sufficient for the purpose. The collector may proceed against incorporeal rights only if he can find no corporeal movables of the delinquent to seize.<sup>2</sup> There is no redemption. A tax sale of a movable, in which the collector stipulated a right to redeem, was declared invalid at the instance of the holder of a chattel mortgage on the theory that the condition was a material element which might have deterred bidders.<sup>3</sup>

In the case of movables, tangible and intangible, the property tax breaks down far short of the collection stage. With limited exceptions, notably merchandise inventories, railroad rolling stock and business furnishings, assessment is not seriously attempted.<sup>4</sup> The only effective way of getting intangibles on the

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2. While the constitutional provision does not, in terms, impose personal liability for taxes on movables, the decisions appear to give it substantially that effect. See Fordham and Lob, *Some Plain Talk about the Louisiana General Property Tax* (1942) 4 *LOUISIANA LAW REVIEW* 469, 496.

3. *Liquid Carbonic Corporation v. Crow*, 177 La. 379, 148 So. 442 (1933).

4. See Preliminary Report, *supra* note 1, at 85 et seq.

assessment rolls is classification according favored treatment for that class of property. This could be done under the present constitution.<sup>5</sup>

We believe that consideration might well be given to the abolition of ad valorem taxation of movables. As a practical matter most movables not employed in business activity are not taxed anyway. It is proper for the tax burden upon business to include something to cover the cost of governmental services and protection for movables used in business, but perhaps that can be worked out better through indirect taxation. Productive intangibles can be reached through the income tax.<sup>6</sup>

It will be remembered that the property tax calendar is geared to the calendar year. Fiscal years of levying units may or may not be. January 1 is tax day. The various steps in the process, including listing and assessment, review, equalization, levy and delivery to the collector of the assessment rolls upon which state and county taxes have been extended, are supposed to have been taken in time for the collectors to begin collection in October.<sup>7</sup> Taxes become delinquent and interest starts running with the new year. The State Tax Commission finally determines assessments, however, and the process has, at times, been so retarded that one's assessment did not become fixed until after the delinquency date. It will be borne in mind that the collector may not even receive the assessment rolls from the assessor until the Tax Commission has completed its work and may not undertake collection until authorized by the Commission to do so.<sup>8</sup>

Section 11 of Article X of the constitution proscribes forfeiture for taxes. It plainly excludes personal liability. The only recourse, in case of immovables, is the particular property upon which the taxes in question were imposed. The section ordains that the collector, at the expiration of the tax year and after notice to the tax debtor as provided by statute, proceed to advertise and sell the least quantity which will produce the amount of taxes,

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5. Fordham and Lob, *supra* note 2, at 476 et seq.

6. New York, which has had a relatively high state income tax does not subject personalty to ad valorem taxation. N. Y. Tax Law, § 3 (McKinney's Consol. Laws of N. Y. Ann., Book 59, § 3).

7. The various steps in the process are considered in more detail in Fordham and Lob, *supra* note 2. It should be noted that equalization exists only in name. There is no longer any statutory provision for intraparish equalization and the statutory requirement that the State Tax Commission equalize as between parishes has long been a dead letter. This obviously makes for serious inequality, especially as to the state tax.

8. *Id.* at 497.

interest and costs. The delinquent is afforded an opportunity to point out the portion to be sold. Sale is made without appraisal and subject to redemption within three years. Section 11 is framed with reference to sale to private purchasers; nothing is said about what is to be done if no one bids the minimum figure. That area is occupied by statute. In default of private purchasers at a sale for state, parish and district taxes, the collector bids in the property to the state. This is the familiar adjudication to the state. Municipalities collect their taxes separately and conduct their own tax sales but they are governed by the constitutional provisions regulating the collection of state taxes.

#### REDEMPTION

By a constitutional amendment, initiated by Act 147 of 1932, the period of redemption from tax sale was extended from one to three years. The one-year provision had originated with Article 210 of the Constitution of 1879. The change, a product of the depression, has survived through years of better times.

The constitutions of 1879, 1898 and 1913 made provision for redemption at any time "for the space of one year" without specifying the event or circumstance which marked the beginning of the period. As early as 1880 the legislature fixed the date from which the redemption period would run as that of filing of a tax deed for record.<sup>9</sup> By Act 224 of 1910 it was ordained that the period should begin to run only after both recordation of the tax deed and service, by the tax purchaser, of notice of the sale upon the tax debtor. In 1919 this act was successfully attacked on the ground that the constitutional provision was self-executing.<sup>10</sup> Judge Provosty, for the majority, found merit in the long-accepted legislative interpretation, which made the date of recording the starting point, but viewed that as a matter of interpretation and not of legislative authority to regulate the subject. Then, in 1921, Section 11 of Article X of the new constitution was made to speak to the point; it makes date of recordation govern. There can be no doubt that it is self-executing.<sup>11</sup>

"Date of recordation" is deemed to refer to the actual time of inscription in the conveyance records, not to that of filing for

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9. La. Act 77 of 1880, § 44. See *Gonzales v. Sanx*, 119 La. 657, 44 So. 332 (1907).

10. *State ex rel. Curtis v. Ross*, 144 La. 898, 81 So. 386 (1919). Judges O'Niell and Dawkins dissented.

11. *Scott v. Ratcliff*, 167 La. 237, 119 So. 33 (1928).

recordation.<sup>12</sup> If a substantial error is made by the collector in the official record of a sale the period may be reckoned from the day the record is corrected. So it was in *Green v. Thrash*,<sup>13</sup> decided under the old one-year redemption pattern. There the original record recited that the sale had been for city taxes. A correction to show sale for parish taxes was made over a year later. The tax debtor was permitted to redeem within a year of the correction without any showing that he was in any way prejudiced by the error.

The constitution is silent as to who may redeem. By statute the right is extended to the "owner" or to any other person interested personally, as heir, legatee or creditor of the owner, or otherwise.<sup>14</sup> A free interpretation of such a statute opens the way to redemption by any one. Thus, an adverse possessor, who plainly was a stranger to the tax debtor's title, has been accorded standing to redeem as "owner" from a private tax purchaser.<sup>15</sup> The court relied, in part, upon the theory that a stranger may interpose, as *negotiorum gestor*, in behalf of the tax debtor. This will not do as to an adverse possessor; he acts for himself. A public administrator who had filed his final accounting on the vacant succession of a deceased insane person was allowed to redeem during the year allowed for assertion of their interests by possible heirs.<sup>16</sup>

Prior to 1932 the constitutional terms of redemption were payment of the "price given, including costs and twenty per cent thereon." The 1921 constitution, doubtless by inadvertence, dropped the comma after "costs," which had appeared in the 1898 and 1913 instruments. A 1932 amendment changed the clause to read: "price given, including costs and five per cent penalty thereon, with interest at the rate of one per cent per month." This is a confusing provision. Literally, the penalty is computed with

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12. *MacLeod v. Hoover*, 159 La. 244, 105 So. 305 (1925). In this case a redemption tender made over a year after filing but a day less than a year after actual recordation was held to be timely. The tax deed was filed for registry September 1, 1922, and recorded September 6, 1922. The debtor tendered the redemption price on September 5, 1923.

13. 174 La. 56, 139 So. 757 (1932).

14. La. Act 170 of 1898, § 62, as amended by La. Act 175 of 1934, § 1 [Dart's Stats. (1939) § 8466] (adjudicated lands); La. Act 170 of 1898, § 67, as amended by La. Act 158 of 1934, § 1 [Dart's Stats. (1939) § 8494] (lands sold to private tax purchasers). The latter provision is addressed, in terms, to piecemeal redemption where there are several lots or parcels, but presumably would cover unitary redemption.

15. *Bentley v. Cavallier*, 121 La. 60, 46 So. 101 (1908).

16. *State ex rel. Hickey's Succession v. Hickey, Recorder of Mortgages*, 1 So. (2d) 415 (La. App. 1941).

reference to costs alone. The term "including" is misleading since, actually, the penalty was not a part of the price given. The statutes, quite characteristically, lag far behind constitutional change. The statutory form of advertisement covering sale of property shown on the consolidated delinquent tax list still recites that the redemption period is one year and that the price is that given "including costs and twenty per cent thereon."<sup>17</sup>

Prior to the adoption of Act 133 of 1928 redemption payment could be made to the tax collector only if the tax purchaser could not be found or refused to accept. That act clearly authorized payment to either the purchaser or the collector, at the unqualified option of the one redeeming.<sup>18</sup>

#### PREScription—PRIVATE PURCHASERS

The present condition of insecure tax titles and large public holdings of tax adjudicated lands is not a new problem in Louisiana. A similar situation existed half a century ago. The members of the Constitutional Convention of 1898 addressed themselves to the subject and produced what was hoped would quiet attacks on tax titles. They inserted a provision limiting the time in which suits to annul or set aside tax sales might be brought. Two grounds of attack were excepted from the limitation: dual assessment and actual payment of the tax prior to the date of sale. The scheme was an interesting one. As soon as the redemption period had run notice of sale might be served upon the tax debtor. An annulment suit not brought within six months after service of the notice was barred. In the event no notice was given the period of limitation was three years from the date of recordation of the tax deed. It was expressly left to the legislature to prescribe the manner of notice and the form of proceeding to quiet tax titles. The legislature discharged this responsibility by enacting Act 101 of 1898.

Suits to quiet tax titles are now governed by an act of 1934.<sup>19</sup> "Under the terms of this act the tax purchaser may institute suit against the former proprietor of the property, notifying him that the title will be confirmed unless a proceeding to annul the sale is instituted within six months from the date of service of the

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17. La. Act 170 of 1898, § 53, as amended by La. Act 235 of 1928, § 1 [Dart's Stats. (1939) § 8441].

18. *Laughlin v. Hayes*, 189 La. 707, 180 La. 494 (1938).

19. La. Act 106 of 1934 [Dart's Stats. (1939) § 8502].

petition and citation. Such a suit does not put at issue the validity of the tax title. It merely invites an attack upon it, which may be made either by a separate, independent suit to annul the tax sale or by reconventional demand. It has been held that the plaintiff may be permitted to file an answer to the defendant's reconventional demand in a suit to cancel a tax sale.<sup>20</sup>

In *Ashley Company v. Bradford*,<sup>21</sup> decided in 1902, Judge Blanchard made some pertinent remarks about the limitation provision. He observed:

"The great majority of the members of the constitutional convention were lawyers familiar with the tax laws, the adjudications of the courts thereon and the doubt and uncertainty surrounding and attaching to tax titles.

"They meant to put an end to this uncertainty and did so by the adoption of article 233. By its enactment they intended to give warning to owners of property that they must look after and keep up with the same in respect to assessment for taxes and payment of taxes, and that if they failed to do so and the property appeared upon the assessment rolls, was proceeded against for nonpayment of taxes and sold and the title of the purchaser recorded, the owner must, at his peril, bring his suit within the time prescribed to set it aside, and if he did not he must forever thereafter hold his peace, except as to the two causes which the article excludes from the operation of the prescriptive limit."

The factor of possession promptly broke down the limitation scheme. The court did, it is true, arrive at the important conclusion in the *Ashley* case that, were neither the tax purchaser nor the tax debtor in actual possession, the period would run as well as where the tax purchaser were in actual possession.<sup>22</sup> There was decided on the same day, however, another case involving actual possession by the tax debtor.<sup>23</sup> The court decided that the constitutional provision did not apply. It went further; it declared, obiter, that a statute of repose which applied as against a tax debtor in possession would deny due process of law.

The constitution does not ordain that possession is nine points

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20. *Fordham and Lob*, supra note 2, at 498. See *Regina Lumber Co. v. Perkins*, 175 La. 15, 142 So. 785 (1932); *Green v. Thrash*, 174 La. 56, 139 So. 757 (1932); *Fellman v. Kay*, 147 La. 953, 86 So. 406 (1920).

21. 109 La. 641, 655, 33 So. 634, 640 (1902).

22. There is no question but that this is still the law. *Stone v. Kimball's Heirs*, 199 La. 240, 5 So. (2d) 758 (1942).

23. *Carey v. Cagney*, 109 La. 77, 33 So. 89 (1902).



of the law. The section in question categorically sets a time limit on tax sale annulment suits, and requires that the period limited be reckoned from the date the tax deed was recorded. Nothing is said of possession. This would appear to put the onus upon the tax debtor, whether in possession or out. It is not evident that due process stands in the way if adequate notice of the tax sale be given.<sup>24</sup> The general scheme of property taxation tells anyone who is sensitive to the obligations of citizenship practically all he needs to know. A man does not expect his insurance to carry itself. Taxes are just as well-understood a current charge as is insurance. Any talk of surprise by a defaulter in either case is not at all convincing, barring very unusual circumstances.

The Court of Appeal for the Second Circuit has frankly referred to the rule as to possession by the tax debtor as an additional exception to the prescription provision which has been "read into" it by the supreme court.<sup>25</sup>

It must be conceded that even though the judicial interpretation of the constitution as to the factor of possession was erroneous when made there have been ample opportunities for positive correction, which have not been used. Since 1902 there have been two revisions of the constitution and literally hundreds of amendments, but no change has been made with respect to the point in question.

The cases turning on possession indicate that the period for bringing a suit to annul is treated as one of prescription, not of peremption. Judicial references to the period as preemptive have not been uncommon, however.<sup>26</sup>

For present purposes possession by a tenant or co-owner is, in effect, that of the tax debtor.<sup>27</sup> It has been decided, however, that occupancy by a tenant of a tax debtor of a part of a large tract, which the tax debtor had platted and subdivided into blocks and lots, and units of which had been sold by reference to the plat, did not make out possession of the whole; the property

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24. The minimum requirement of the statute is newspaper publication and that should suffice for a proceeding in rem, even though administrative and not judicial, especially where there is ample time to raise legal questions in an independent suit after the sale. See *Leigh v. Green*, 193 U.S. 79, 24 S.Ct. 390, 48 L.Ed. 613 (1904).

25. *Morris v. Hankins*, 185 So. 518, 521 (1938). The judgment in this case was affirmed by the supreme court, 192 La. 504, 188 So. 155 (1939).

26. See *Fordham and Lob*, supra note 2, at 499.

27. *Pill v. Morgan*, 186 La. 329, 172 So. 409 (1936); *Terrell v. Buckner*, 176 So. 666 (La. App. 1937), writ of certiorari and review, denied by supreme court.

occupied may well have been cut off by streets from the bulk of the original tract.<sup>28</sup> Corporeal possession has been found to exist where the tax debtor merely fenced the land.<sup>29</sup> Surveying it was said, however, to be insufficient.

To interrupt the running of prescription it is not necessary that the tax debtor be in possession at the time of the tax sale and so continue. It is enough that he take possession before the period has run. In one case the tax deed had been recorded on June 7, 1920. A successor in title of the tax debtor took possession on April 13, 1923. It was determined that this defeated the application of the three-year prescriptive period.<sup>30</sup> The delinquent may give up possession after the tax deed is recorded. If so, the prescriptive period runs from the time his corporeal possession ends.<sup>31</sup>

Possession by the tax debtor may not control where the tax purchaser, who has a good title of record, mortgages or sells to one who has no knowledge of unrecorded equities existing against the tax purchaser.<sup>32</sup>

Prescription does not run against defects deemed to strike at the legal existence of tax sales. A description so imperfect as not to identify the property even with the benefit of extrinsic aids falls in that category.<sup>33</sup> A like result has been reached as to complete absence of an assessment.<sup>34</sup> The express exception as to actual payment of taxes is applied where there has been a part payment.<sup>35</sup>

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28. *Levenberg v. Shanks*, 165 La. 419, 115 So. 641 (1928).

29. *Zahn v. Ferraro*, 17 La. App. 167, 134 So. 289 (1931).

30. *Kivlen v. Horvath*, 163 La. 901, 113 So. 140 (1927).

31. *Calcasieu Inv. Co., Inc. v. Corbello's Heirs*, 175 So. 101 (La. App. 1937).

It should be noted that the delinquent's possession must be hostile to prevent prescription from running. If he recognizes the title of the tax purchaser his physical possession avails him not. *Board of Com'rs for Atchafalaya Basin Levee Dist. v. Sperling*, 205 La. 494, 17 So. (2d) 720 (1944).

32. *Bell v. Canal Bank and Trust Co.*, 193 La. 142, 190 So. 359 (1939).

33. *Morris v. Hankins*, 192 La. 504, 188 So. 155 (1939). Louisiana has a not uncommon statutory declaration that no assessment or tax sale shall be set aside for any error in description so long as the property can reasonably be identified. La. Act 170 of 1898, § 67, as amended by La. Act 158 of 1934, § 1 [*Dart's Stats.* (1939) § 8494].

34. *Guillory v. Elms*, 126 La. 560, 52 So. 767 (1910). In *Board of Com'rs for Fifth Louisiana Levee Dist. v. Concordia Land and Timber Co.*, 141 La. 247, 74 So. 921 (1917), however, it was held that prescription did run where a tax sale covered taxes for two years in one of which there was no assessment.

35. *Board of Com'rs for Fifth Louisiana Levee Dist. v. Concordia Land and Timber Co.*, supra note 34. This was distinguished from the situation where the sale was for two years, in one of which there was no assessment, on the ground that payment of taxes was an express exception from the prescription provision.

A large share of the numerous legal attacks upon tax sales has rested, at least in part, upon asserted defective notice. The primary statutory requirement as to notice is that it shall be given by registered mail, but in cities of over fifty thousand there may be personal or domiciliary service.<sup>36</sup> Resort may be made to service by publication only after the tax collector has made use of all sources of information at his command to ascertain the address of the tax debtor.<sup>37</sup>

The judicial predilection for tax debtors shows up at once on this sector. The scheme of notice by registered mail is "sacramental"; proof of actual written notice has been rejected.<sup>38</sup>

The constitution leaves it to the legislature to determine the manner of giving notice to the "delinquent." The law requires notice to each taxpayer who has not paid the taxes assessed against him.<sup>39</sup> What the decisions exact is notice to the owners at the time of sale, not of assessment. It does not matter who was owner at the time of assessment. Ordinarily, service upon the owners of record is what is required.<sup>40</sup> If the owner shown of record is deceased, service must be made upon the real owner.<sup>41</sup> In *Genella v. Vincent*,<sup>42</sup> a tax sale was invalidated where the notice ran to a deceased lady whose husband, as her heir, had continued to permit assessment in her name. Judge Blanchard, who dissented, saw no merit in the majority's position. Nor do we. It places an unwarranted burden upon the tax collector and permits reliance upon technical refinements without show of genuine prejudice.

Notice to only one of several joint owners will not get by. So it was with a notice addressed to John Doe "et al."<sup>43</sup> and with a card addressed to two owners and sent to a city where only

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36. La. Act 170 of 1898, §§ 50 and 51, as amended by La. Act 194 of 1932, § 1 [Dart's Stats. (1939) §§ 8438 and 8439].

37. *Messina v. Owens*, 207 La. 967, 22 So. (2d) 286 (1945). See also *Salsman v. Bloom*, 172 La. 238, 133 So. 760 (1931); *Hargrove v. Davis*, 178 So. 198 (La. App. 1938).

38. *Calcasieu Mercantile Co., Inc. v. Frank*, 161 So. 201, 202 (La. App. 1935). In that case evidence that actual written notice was served upon the debtor was rejected.

39. La. Act 170 of 1898, § 50 [Dart's Stats. (1939) § 8438].

40. *Spears v. Spears*, 173 La. 294, 136 So. 214 (1931); *Spikes v. O'Neal*, 193 So. 487 (La. App. 1940).

41. *Riddell v. Rice*, 128 La. 241, 54 So. 785 (1911); *Genella v. Vincent*, 50 La. Ann. 956, 24 So. 690 (1898).

42. *Supra* note 41.

43. *LeBlanc v. Babin*, 197 La. 825, 2 So. (2d) 225 (1941); *Adsit v. Park*, 144 La. 934, 81 So. 430 (1919).

one of them resided.<sup>44</sup> Notice to a usufructuary is not enough.<sup>45</sup>

The judicial insistence upon service being effected by registered mail has produced some questionable results. A World War I veteran remained in Paris after the War to fill a position there. A sale of his property for 1922 city taxes was set aside because notice was not mailed to him.<sup>46</sup> This was done at the instance of a co-owner, who had remained at home. The latter had paid the taxes regularly down to 1922. There was some indication that he had been made the agent or attorney of the absentee.<sup>47</sup> Does the statute exact extra effort on the part of the tax collector to offset the neglect of the delinquent or his representative? Is the registered mail requirement applicable no matter where the delinquent may be?

In *Messina v. Owens*<sup>48</sup> a tax sale was set aside in behalf of a tax debtor who had been obtaining homestead exemption in prior years by deliberately filing a false certification that he resided on the locus. It appeared that the tax collector could have determined the true address of the delinquent, after delivery of notice by registered mail to him at the locus failed, and that notice was not published. The decision has already been criticized in the pages of this review.<sup>49</sup> We cannot believe that any court is bound to come to the aid of a delinquent tax debtor whose very petition to annul a tax sale discloses a deliberate fraud upon the public revenues, the fruits of which he now asks the court to preserve for him.

A very recent case involving notice deserves special comment. During the depression years the legislature enacted a series of indulgent temporary measures designed to enable tax debtors whose property had been adjudicated to the state to redeem by paying the delinquent taxes in annual instalments. Act 161 of 1934 was such a law. It provided that failure to pay any instalment when due would accelerate the maturity of all and render the property subject to sale by the tax collector in the manner provided by law for tax sales. The right to redeem down to the

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44. *Hodges v. Kranz*, 120 So. 677 (La. App. 1929).

45. *Mire v. LaSalle Realty Co. of Louisiana, Ltd.*, 176 La. 663, 146 So. 326 (1933).

46. *Salsman v. Bloom*, 172 La. 238, 133 So. 760 (1931).

47. The co-owner did not live in the levying city. The court thought that the collector could readily have determined the co-owner's address and, from him, ascertained the address of the veteran.

48. 207 La. 967, 22 So. (2d) 286 (1945).

49. *Work of the Louisiana Supreme Court for the 1944-1945 Term—II*. Public Law (1946) 6 LOUISIANA LAW REVIEW 521, 541, 558.

very moment of sale was reserved to the tax debtor. *La Plaq Realty, Incorporated v. Vaughan*<sup>50</sup> involved a sale under the 1934 act. A verified petition attacking the tax sale alleged that no notice was served upon the delinquents. There was a general denial. In addition the defendants contended that notice beyond the regular publication of the notice of sale was not required. The court accepted the verified petition as enough to rebut the presumption of regularity. The conclusion is supported by reasoning which is quite unique. The chief justice maintained, for the court, that since the value of the property had been shown to be many times the amount of the taxes it was naturally to be assumed that the delinquents would pay the trivial sum to prevent adjudication. But does this excuse last-ditch delinquency? We think not. The probability is, in any case, that the value of the property will far exceed the amount of the taxes involved, yet there are many delinquencies. In this case there was double delinquency and the second one occurred under a pattern of easy instalment payments. The truth of the matter seems to be, not that a man will not put up a little money to safeguard a valuable asset, but that the coddling of tax debtors in Louisiana gives the delinquent very substantial assurance that he can get away with murder. The constitutional provision that tax deeds shall be received in evidence as prima facie valid sales is little more than an empty shell.<sup>51</sup>

Another area of attack is tax sale advertisement. When twenty days have elapsed since the service of notice upon the delinquents the tax collector must advertise for sale the consolidated delinquent tax list under one form. This is done as provided for judicial sales of immovable property and covers all immovables on which the taxes are due.<sup>52</sup> Judicial sales of real estate are advertised for thirty days.<sup>53</sup> This means that thirty days must intervene between the date of first publication and date of sale.<sup>54</sup> The presumption of regularity avails little. In *Regina Lumber Company v. Perkins*,<sup>55</sup> a suit to quiet a tax title,

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50. 209 La. 481, 24 So. (2d) 870 (1945).

51. La. Const. of 1921, Art. X, § 11.

52. La. Act 170 of 1898, § 53, as amended by La. Act 235 of 1928, § 1 [Dart's Stats. (1939) § 8441].

53. Art. 670, La. Code of Practice of 1870.

54. In *Winsor v. Taylor*, 167 La. 169, 118 So. 876 (1928), the notice had been first published on July 8. Sale was made on August 7. Those two days excluded, the period was only 29 days. The sale was annulled. Obviously there could be no prejudice in a case like this; the delinquent was simply standing on the letter of the law.

55. 175 La. 15, 142 So. 785 (1932).

there was no positive showing either way as to publication. The newspaper publisher was able to produce copies of his issues for but three of the five dates in question. Publication of the paper had been irregular. He testified, however, that he had always gotten the paper out regularly when publishing official advertisements. The tax debtor prevailed because the tax purchaser had not made out publication in compliance with the statute. It is our view that the onus should definitely be upon him who attacks a tax title.

Needless to say, any invalidating circumstance, such as prior payment of taxes, which is not silenced by prescription, may be relied upon during the prescriptive period.<sup>56</sup> A tax sale made for an amount in excess of or less than the amount due may be annulled. A sale where a four dollar recording charge and a two dollar collection charge had been improperly added to the amount otherwise due has been set aside.<sup>57</sup> In another case a sale made for an amount three dollars and sixty-four cents less than the correct amount due was invalidated.<sup>58</sup>

That property has not been assessed is, of course, ground for annulment of a tax sale. Failure to take into account a reduction in assessment is also an invalidating circumstance.<sup>59</sup>

No judgment annulling a tax sale may take effect until "the price and all taxes and costs are [sic] paid, with ten per centum per annum interest on the amount of the price and taxes paid from date of respective payments, be previously paid to the purchaser. . . ."<sup>60</sup> This garbled provision is designed to assure the tax purchaser reimbursement of (1) the original price he paid, (2) costs, (3) taxes he has paid on the property<sup>61</sup> and (4) ten per

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56. In *Harris v. Deblieux*, 115 La. 147, 38 So. 946 (1905), it was held that sale of property for a small tax bill, which included a poll tax that had already been paid, was a nullity and not protected by prescription. There was obviously no basis for sale to collect a poll tax but the court rested its decision simply on the fact of payment of part of the taxes covered by the tax bill.

57. *Jackson v. Lamb*, 4 La. App. 523 (1926).

58. *Carey v. Cagney*, 109 La. 77, 33 So. 89 (1902).

59. *Hansen v. Mauberret*, 52 La. Ann. 1565, 28 So. 167 (1900). In that case the tax debtor sought injunctive relief which would quiet him in the possession of the land. For years he had neglected to pay his taxes although he knew what they were under certain reduced assessments. The property had been sold for taxes without taking into account the reduction. The court declared the sale invalid but conditioned its decree upon the delinquent paying the taxes computed on the basis of the reduced assessment.

60. La. Const. of 1921, Art. X, § 11. See *Fordham and Lob*, supra note 2, at 498-499.

61. *Gottlieb v. Babin*, 197 La. 802, 2 So. (2d) 218 (1941); *LeBlanc v. Babin*, 197 La. 825, 2 So. (2d) 225 (1941).

centum interest on the price and taxes paid running from the dates of the respective payments. It is expressly inapplicable where the ground of annulment is payment of the taxes prior to sale. In that situation the purchaser who has paid the sale price and subsequently paid taxes on the land is without effective recourse. In *Lisso and Brother v. Police Jury of Parish of Natchitoches*,<sup>62</sup> tax purchasers sued the police jury for the price and for taxes subsequently paid on the ground that title had failed because the tax debtor had paid the taxes before sale on some of the land, part of it was doubly assessed, part was public land and part lay outside the parish. Plaintiffs lost. With respect to the purchase price they were met with *caveat emptor*. As for the taxes they had paid, they were barred by the rule as to voluntary payment.<sup>63</sup> The purchasers were stigmatized as speculators. Apart from the factor of unjust enrichment at the purchaser's expense, this result tends to discourage bidding at tax sales and to stress hazards which prevent the bidding of adequate prices when bids are ventured.<sup>64</sup> There would be complications, however, in applying a judicial rule of public liability since budgetary factors should be considered and several taxing units may have shared in the money received from the purchaser. It is, then, an appropriate subject for statutory treatment covering both authorization and procedure of refund. In a number of states such legislation has been enacted.<sup>65</sup>

#### REDEMPTION OF ADJUDICATED PROPERTY

In 1935 the supreme court interpreted the constitutional redemption provision to apply only to sale to private purchasers to the exclusion of tax adjudications.<sup>66</sup> The context, as the chief justice observed, plainly indicated that the provision had to do with actual sales. He found "no limitation in the Constitution upon the authority of the Legislature to say what disposition shall be made of property adjudicated to the state for nonpayment of

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62. 127 La. 283, 53 So. 566 (1910).

63. A recent application of this rule will be found in *Central Savings Bank and Trust Co. v. City of Monroe*, 194 La. 743, 194 So. 767 (1940). The budgetary implications suggest the appropriateness of legislation to protect the taxpayer.

64. See the dissenting opinion in *Howerton v. Board of Com'rs of Tulsa County*, 191 Okla. 169, 171, 127 P. (2d) 173, 175 (1942).

65. References to the statutes of a number of states may be found in 61 C.J. 1464.

66. *Police Jury of Parish of Jefferson Davis v. Grace*, 182 La. 64, 161 So. 22 (1935). See also *Perrin v. Kevlin*, 198 La. 636, 3 So. (2d) 900 (1941).

taxes." In 1944 the court in deed, although not in word, repudiated this proposition.<sup>67</sup> In a case in which judgment could have been rested entirely on another ground, the redemption provision was treated as so far applicable to adjudications that the state's title was merely inchoate until the three-year period had run its course. As distinguished in this case, the earlier decision does survive as authority that the legislature may permit redemption from the state as long as the state retains title. This is a curious situation. As to actual sales the redemption provision could not be extended by statute. If we are to say that it applies to adjudications, then, must we not apply it as we find it? If the legislature is bound by it at all, why is it not fully controlled by it as to the length of the redemptive period?

An administrative practice, since confirmed by statute,<sup>68</sup> of permitting redemption from the state long after the period fixed by statute, was given the judicial blessing in 1915 over the emphatic dissent of Judge Provosty.<sup>69</sup> He did not believe that any authority short of the legislature could extend the period. The majority, however, expressed the most tender solicitude for the "unfortunate tax debtor." The state, they contended merely wanted its taxes paid, not the delinquent's land. No suggestion was made to counter the obvious point that if one may redeem at any time the general sanction of a tax sale is largely emasculated. The delinquent can even redeem piecemeal. Thus a marginal real estate "developer" can plat a subdivision, ignore his taxes, suffer tax adjudication to the state and then come in and effect redemption of particular lots as opportunities arise to sell them.<sup>70</sup> This is true even though the tract had been assessed as a unit. The statute makes express provision for piecemeal redemption. The scheme is not hazardous. Under the statute governing sales by the state of adjudicated lands the tax debtor can step into the picture at any time right up to the last minute and effect redemp-

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67. *Westwego Canal and Terminal Co. v. Lafourche Basin Levee Dist.*, 206 La. 270, 19 So. (2d) 133 (1944); discussed in *Work of the Louisiana Supreme Court for the 1944-1945 Term—II. Public Law (1946) 6 LOUISIANA LAW REVIEW* 521, 541, 560.

68. La. Act 170 of 1898, § 62, as amended by La. Act 175 of 1934, § 1 [Dart's Stats. (1939) § 8466].

69. *Charbonnet v. Forschler*, 138 La. 279, 70 So. 224 (1915).

70. La. Act 170 of 1898, § 62, as amended by La. Act 175 of 1934, § 1 [Dart's Stats. (1939) § 8466]. As a matter of fact, the delinquent may redeem piecemeal from a private purchaser. La. Act 170 of 1898, § 67, as amended by La. Act 158 of 1934, § 1 [Dart's Stats. (1939) § 8494].



tion.<sup>71</sup> Consider another type of case. In 1900 a tract of land was adjudicated to the state for a small tax bill. In 1947 oil is discovered in the area and redemption is hurriedly made. A tax system which permits that sort of thing could hardly be more effectively designed to encourage delinquency.

While the cases bearing upon the application of the constitutional redemption provision to land adjudicated to the state or a municipality for taxes are quite recent, the profession has long proceeded on the assumption that the constitutional prescription ran against such land.<sup>72</sup>

#### ADMINISTRATION OF ADJUDICATED PROPERTY

One might suppose that the three cardinal considerations of policy governing adjudicated property would be (1) recovery of the taxes for which adjudication was made, (2) return of property suitable for private use as promptly as possible to normal private ownership and control and (3) devotion of the remaining property to public use or adaptation of such property for ultimate return to private uses. None of these considerations has found effective expression in Louisiana law. Administration, moreover, lags behind the statutes.

At a tax sale for state, parish and district taxes, when no bid is received for the amount of delinquent taxes, interest and costs, the tax collector bids in the property to the state. It is the "imperative" duty of the collector to notify the tax debtor as soon as possible after such an adjudication that he will take possession within thirty days.<sup>73</sup> The statute authorizes him to require the assistance of the district attorney in gaining possession. Once in possession the collector must notify the register of the state land office. It is the duty of the latter officer to let the property and pay the rent received into the general fund of the state treasury. This statutory scheme is completely ignored. The sheriff never takes the initial step; the tax debtor is left in possession.

To appreciate the consequences of this disregard of the statute

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71. La. Act 237 of 1924, § 4, as amended by La. Act 296 of 1944, §1 [Dart's Stats. (Supp. 1946) § 8483]. The transaction takes the form of a sale to the delinquent.

72. *Bradley v. City of New Orleans*, 153 La. 281, 95 So. 718 (1923); *Carey v. Cagney*, 109 La. 77, 33 So. 89 (1902). See *Chapman-Storm Lumber Co., Inc. v. Board of Com'rs. for Atchafalaya Basin Levee Dist.*, 196 La. 1039, 200 So. 455 (1941).

73. La. Act 170 of 1898, § 59, as amended by La. Act 315 of 1910, § 3 [Dart's Stats. (1939) § 8464].

it is necessary to bear in mind that, under the cases, the prescriptive period against suits attacking a tax title does not run so long as the tax debtor remains in actual possession.<sup>74</sup> Under this state of the law, to leave the tax debtor in possession is to leave him in complete mastery of the situation with unlimited time to redeem or attack the tax sale as he might see fit.

It is provided by statute, enacted in 1910, that adjudicated land shall be assessed in the name of the owner as of the date of adjudication for one year thereafter. The period of one year was employed to match the period of redemption. A later amendment conforms the period to the present three-year redemption span.<sup>75</sup> No tax may be collected on such assessment nor sale made under it while it remains in an adjudicated status, but it is expressly ordained that the erroneous continuation of assessment and receipt of taxes in subsequent years shall not estop the state in asserting its title to the property. This statute governs adjudications to municipalities, in view of Section 14 of Article X of the Constitution.<sup>76</sup> Thus, if adjudicated lands are assessed after the first year and actually sold for taxes, the sale is ineffectual against the state or municipality, as the case may be.<sup>77</sup> If, however, the original adjudication was void because, for example, the taxes involved had been paid prior to the sale,<sup>78</sup> the purchaser at a sale for taxes of subsequent years will prevail.<sup>79</sup>

While adjudicated property may not lawfully be assessed after the redemptive period has run, the statutory requirement that redemption from the state shall be subject to payment of all state, parish, district and municipal taxes "due up to the date of redemption" has been taken to exact payment, for each tax year subsequent to that for the taxes of which sale had been made, of an amount equal to the taxes of that year with interest, penalties and costs.<sup>80</sup> We understand the actual judgment in the case cited to require payment for the intervening years to cover taxes of only such taxing units as were covered by an adjudication to the state. (This would exclude municipal taxes, although

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74. *Carey v. Cagney*, 109 La. 77, 33 So. 89 (1902).

75. La. Act 170 of 1898, § 61, as amended by La. Act 315 of 1910, § 5, and La. Act 111 of 1938, § 1 [Dart's Stats. (1939) § 8465]. See *McCall v. Blouin*, 138 So. 528 (Orl. App. 1931), writ of certiorari denied by supreme court 1932.

76. *McCall v. Blouin*, 18 La. App. 717, 138 So. 528 (1931).

77. *Ibid.*

78. La. Const. of 1921, Art. X, § 11.

79. *Johnson v. Chapman*, 190 La. 1034, 183 So. 285 (1938).

80. *St. Bernard Syndicate v. Grace, Register of State Land Office*, 169 La. 666, 125 So. 848 (1930).

within the language of the statutory provision relied upon by the court.) The situation becomes most anomalous. After the redemption period has run the state as owner does not assess adjudicated land. An assessment is normally essential to property tax liability. How, then, could there be any taxes "due" on the state-owned land for the intervening period? Rates of levy may vary from year to year, yet the court takes those of the year, for the taxes of which the property was sold, in determining what was "due" for subsequent years. The provision made sense when cut to the normal pattern of redemption, but it is not coherent under a system, which permits redemption so long as the state holds title.

By the Constitution of 1921 the state abolished the old system of separate assessments for state and local purposes. The state assessment now serves for all purposes. Section 6 of Article X authorizes the legislature to provide for collection of municipal taxes by the parish tax collectors. The power has not been exercised. Quite apart from the duplication involved in separate collection, we find that it complicates an already badly confused tax collection system. There may be two tax purchasers, or there may be two adjudications, one to the state and one to a municipality covering tax years prior to the first adjudication. The state's title primes that of the municipality and it is only by redemption from the state or annulment of the sale under which it claims that the municipality's title can be perfected. If the municipality. After land has been adjudicated to the state, there may be a later adjudication to a municipality covering tax years prior to the first adjudication. The state's title primes that of the municipality and it is only by redemption from the state or annulment of the sale under which it claims that the municipality's title can be perfected. If the state sells the land after the redemptive period has passed the municipality's interest is simply cut off.<sup>81</sup>

We have made a limited inquiry into municipal adjudications and have gained the impression that the municipalities are little disposed to have property adjudicated to themselves.<sup>82</sup> Perhaps, in view of the subordinate position of the municipal adjudication, the process is not generally worth the bother.

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81. *Jones v. Town of Pineville*, 200 So. 38 (La. App. 1941).

82. It is of interest that there have been no adjudications to the City of Alexandria for over ten years.

*Gamet's Estate v. Linder*<sup>83</sup> has been cited as authority that after land is adjudicated to the state it may subsequently be assessed and sold for city taxes.<sup>84</sup> That case, however, involved a city sale for taxes for the same year, 1904, as the taxes for which it was adjudicated to the state. There was, then, no element of city assessment for any tax years subsequent to the adjudication. The purchaser at the city sale later redeemed from the state in the name of the tax debtor. His title was upheld under attack by the successors of the tax debtor. The interesting feature of the case was that a tax purchaser, whose interest was antagonistic to that of the tax debtor, was allowed to redeem from the state, after the normal period had run, for his own benefit in the name of the tax debtor. It was in that way that he perfected the inchoate title he held under the sale from the city.

Since there is only one assessment for all purposes and since the same rules apply to the collection of state and municipal taxes, we believe the correct position to be that there is no authority for the levy and collection of either state or municipal taxes on adjudicated lands for tax years subsequent to the redemptive period.

The situation as to the control and disposition of property adjudicated to the state for unpaid taxes is well-nigh unbelievable. While the statute charges the register of the state land office with responsibility for adjudicated property, that officer is given no authority to make sales on his<sup>85</sup> own initiative. The initiative must come from a prospective purchaser. Upon the filing of a written application supported by a deposit of thirty-five dollars, to cover the cost of advertisement and sale,<sup>86</sup> the register must have the indicated property put up for sale. Except for so-called "stamp lots" or "subdivision lots" laid out for mineral development, the minimum price at the sale is the amount of the assessment under which the land was adjudicated to the state. The proceeds of sale are required to be applied, first, to cover the taxes, interest and costs due to the state and all local taxing units at the time of adjudication and, second, to cover all taxes, interest

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83. 159 La. 658, 106 So. 22 (1925).

84. *Johnson v. Chapman*, 190 La. 1034, 183 So. 285, 287 (1938).

85. "His" is used generically. Actually, of course, the office is occupied by Miss Lucille May Grace, who is one of the best known people in Louisiana public life.

86. La. Act 237 of 1924, as amended by La. Act 296 of 1944, § 1 [*Dart's Stats.* (Supp. 1946) § 8480]. If the property is sold to another the deposit is returned.

and costs due the state and all local taxing units for subsequent years up to the date of sale. A penalty of twenty per cent of these taxes is added. Any balance is paid over to the tax debtor or his successors. Speculators can exploit this provision by obtaining quitclaim deeds from tax debtors or their successors, having the state put the property up for sale and then claiming any overplus received at the sale.

We understand that, in practice, no effort is made to collect delinquent municipal taxes other than those of New Orleans when adjudicated lands are sold. New Orleans tax collections are geared to those of the state.<sup>87</sup>

Record-searchers intent upon fancy bargains can play over the field to their heart's content but not one move can be made in the public interest. In bad times the amount of adjudicated property simply piles up; there are few sales by the state. In a period such as that we are now experiencing, the records are combed and many properties called up for sale. Of administrative planning and discretion directed toward effective control and disposition of adjudicated properties this system is completely barren.

No one knows what the state's holdings of adjudicated property are. The collectors send in the required reports of adjudications and they are preserved on file in the register's office but the law does not require an inventory of adjudicated property and no attempt is made in actual administration to analyze and classify this data, whether as to character of property, location, value or otherwise. Back in 1936 a compilation by parishes was made as a WPA project. The value of the WPA work was rather limited, at best, because the data given was both meagre and unclassified. Its value has been largely dissipated. The assembling of the material ended with the project; nothing has been done since.

Some adjudicated lands have been held by the state for periods of a generation or more. We have seen recent official advertisements concerning the sale of lands, which had been adjudicated to the state during the first decade of the century. Think of it—this marks a long enough span of years for the nation to fight two World Wars and move all the way from the horse and buggy to the atomic age and for the state to have adopted two new constitutions and initiate action on a third.<sup>88</sup>

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87. La. Act 151 of 1926, § 7 [Dart's Stats. (1939) § 8462].

88. *Lovell v. Dulac Cypress Co., Ltd.*, 117 F. (2d) 1 (C.C.A. 5th, 1941), involved land which had been redeemed in 1938 from a tax adjudication of 1895.

It is obvious that had both the law and the records been adequate the state could have been taking effective advantage of the current seller's market to minimize its holdings of adjudicated lands, as to which the redemption period had run. The situation should be changed at the earliest possible time. Certainly as to all properties with respect to which the constitutional redemptive period has run the state can cut off all statutory redemption privileges. It can end the senseless plan of initiating sales of adjudicated lands and place the initiative in the hands of appropriate officers with ample authority to effectuate a policy of getting the bulk of such property back into private ownership as soon as possible and on terms not disadvantageous to the state and other taxing units concerned.

#### REGISTRY ACT LEVERAGE

There is a special sanction for the property tax which deserves consideration. Louisiana has long had a statute which requires that a certificate, showing payment of taxes due, be filed with an act of sale of land submitted for recordation.<sup>89</sup> Notaries and recorders passing acts of sale without the requisite certificate are subject to penalties. It is not considered that violation of the act would affect the validity of a sale.<sup>90</sup> It may be suggestive that there are no reported cases involving the enforcement of the penal provisions of the statute. Strict enforcement might well render the act a potent sanction supporting the property tax on immovables.

#### CONCERNING REFORM

A good tax collection system is one which efficiently produces public revenue when and in the amounts needed with justice to the taxpayer. In the case of the ad valorem property tax, there is the important secondary objective of maintaining the security of land titles. It should not be difficult to devise a system which would further these ends much more effectively than that which now obtains.

We would say at once that the subject should be left entirely

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89. La. Act 170 of 1898, § 74, as amended by La. Act 235 of 1940, § 1 [Dart's Stats. (Supp. 1946) § 8449].

90. Putnam & Norman, Ltd. v. Cooper, 127 La. 498, 53 So. 731 (1910) (dictum).

to the legislature. While there are other provisions in the present constitution more obviously legislative in character than the tax collection sections, the latter are no more organic law material than income and excise tax procedure. If the state is to have representative government it is not evident why responsibility for the formulation of tax collection policy should not be left entirely in legislative hands.

Competent students of our subject have forcefully emphasized that different considerations bear upon tax payment procedure, on the one hand, and tax enforcement methods on the other.<sup>91</sup> The harsher the plan of payment the less vigorous is likely to be the administration of methods of enforced collection. Louisiana experience suggests that a mere stiffening of enforcement methods is likely to meet defeat in the judicial forum with unfortunate effects on tax titles. If, however, every consideration is shown the taxpayer by the plan of payment, the justice of speedy, decisive action against a delinquent becomes plain enough.

In good times and out local government needs a fairly even inflow of revenues to meet current expenses. If property taxes are payable at one time, as is true of Louisiana local government with the exception of certain municipalities, and are not collectible in advance, the likelihood is that in every fiscal year revenue anticipation borrowing will be necessary to meet current charges. This problem is dealt with by the fiscal agency statute.<sup>92</sup> That act is such an unhappy bit of drafting that its meaning is none too clear. It is manifest, however, that the policy adopted embraces revenue-anticipation borrowing as the means of providing current funds. The possibility of obviating, or at least minimizing, such borrowing by a system of instalment payments of taxes seems not to have been considered. As a result the local units continue to borrow at high interest costs to provide for routine operating expenses.

The antiquated fiscal agency statute requires a local unit to invite the banks in the parish or congressional district to bid on an annual fiscal agency contract under the terms and conditions

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91. See Simpson and Baker, *Tax Delinquency* (1933) 28 Ill. L. Rev., 147, 159.

92. La. Act. 39 of 1934 [Dart's Stats. (Supp. 1946) § 6632.1 et seq.]. The repealer clause of La. Act 77 of 1938 [Dart's Stats. (1939) § 6632.22 et seq.]. A measure relating to deposits of funds of the state and state agencies, covered all laws in conflict with that act and "especially Act 39 of 1934." The attorney general has ruled, however, that this did not repeal Act 39 of 1934 as applied to local units.

of a proposed contract. The unit must allocate to each bank qualifying deposits of unit funds in proportion to its capital and declared surplus. Notwithstanding the fact that the interest rate on savings accounts has dropped as low as one per centum per annum, the act still ordains that local units require fiscal agency banks to pay two per centum per annum on public deposits. Each bank must also be bound by the contract to lend the unit, if otherwise empowered to borrow,<sup>93</sup> an amount equal to seventy-five per centum of the average deposit the unit may have kept with each such bank during the three months immediately preceding the application for a loan. The maximum interest rate is six per centum. We understand that even in the current period of extraordinarily low interest rates, especially on short-term public borrowing, Louisiana local units have been paying the banks three or four per centum. It will be borne in mind that the funds borrowed remain on deposit with the lender and are only withdrawn piecemeal as needed. The loans are secured by pledge of the uncollected revenues for the then current year; it is not indicated how separate pledges to several fiscal agency banks are to be made. The provisions outlined do not apply to depositing authorities located in parishes or municipalities of over one hundred thousand. Municipalities are depositing authorities. So it would appear that municipalities in parishes of over one hundred thousand would be excepted. Any unit in the excepted class may negotiate private contracts for deposits or loans, or both, with banks within or without Louisiana. Even in that case, however, a Louisiana bank which signifies in advance its desire to participate and the extent of participation desired will be entitled to participate to that extent on the same terms as other participating banks, and the minimum interest on deposits and maximum interest on loans are the same as under public contracts.

The fiscal agency statute was obviously drawn in the interest of the banks, not that of local government. Certainly we cherish no animus against the banks but we are not naive enough to suppose that there is any real competitive bidding under such a system. The local units should be emancipated from the present fiscal agency system and be given genuine freedom in choos-

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93. Revenue-anticipation borrowing by municipalities is authorized by La. Act 79 of 1916 [Dart's Stats. (1939) §§ 5742-5745]. Similar authority is extended to parishes by La. Act 52 of 1924 [Dart's Stats. (1939) §§ 6436-6439]. As to Lawrason Act municipalities see La. Act 136 of 1898, § 15, § 17, as amended by La. Act 231 of 1924, § 1 [Dart's Stats. (1939) § 5422].



ing depositaries, which meet general legal standards, and in placing revenue anticipation loans on the best terms available.<sup>94</sup>

More important, the instalment method of paying property taxes should be adopted. The only argument against that method rests on the belief that costs of collection may be increased but it is reasonable to suppose that improved collections would at least equal the increase. In other states instalment payments vary from two to twelve per year.<sup>95</sup> We do not suggest a definite number for Louisiana.<sup>96</sup> We merely repeat that the idea is to effect a fairly even inflow of revenue through a fiscal period and, at the same time, afford the taxpayer the benefit of having his payments spread.<sup>97</sup>

Consideration for the taxpayer may also be shown by requiring the tax collector to deliver tax bills to all known owners of property assessed by mail or otherwise. In 1946 the Louisiana legislature enacted a brief measure, which imposes a duty upon the parish tax collectors to give such notice by mail.<sup>98</sup> It expressly provides that failure of a collector to give the required notice will not affect the validity of any tax or proceedings for its collection. The more complete the information the tax bill furnishes concerning due dates, penalties and enforcement sanctions the stronger the position of the levying units.<sup>99</sup>

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94. La. Act 308 of 1946 is significant. It grants the governing body of the City of New Orleans wide discretion in the selection of fiscal agency banks.

95. See the Municipal Year Book 1946 (International City Managers Ass'n.) Table XII, p. 195 et seq.

96. Payment in two instalments is quite common. Perhaps the four-instalment plan of Section 10 of the Model Real Property Tax Collection Act comes nearer the mark. That act is reproduced in (1935) 24 Nat. Mun. Rev. 293.

97. If revenue-anticipation borrowing is to be minimized the first instalment should be due very early in the fiscal year. A uniform instalment basis, moreover, would not work to best advantage unless fitted to a uniform fiscal year for local units.

98. La. Act 250 of 1946. No doubt some of the collectors were troubled by the enactment of the measure, due not so much to the additional administrative burden it imposes as to the fact that it entails extra expense without making provision for funds to cover the cost.

99. Section 9 of the model act, cited in note 96, supra, bears quoting:

"Section 9. *Description of tax bill.* Each tax bill shall contain a statement of the valuation of the property against which the tax is levied, the full amount of the tax for the year, the amount payable as each instalment, the due dates thereof, the penalties for delinquency, and the remedies available against the taxpayer. There shall be a detachable stub for each instalment, containing the amount thereof, its number, and a place for receipt when the instalment is paid. Each tax bill shall also have printed thereon a brief tabulation showing the distribution of the amount raised by taxation in the taxing district, in such form as to disclose the number of cents in each tax dollar applicable to the payment of state, county, and school taxes, when included in the bill, and to local expenditures. The last named item may be further subdivided so as to show the amount applicable to the several departments of the government of the taxing district."

In addition to the type of deferment within a fiscal period involved in a regular scheme of instalment payment, deferment running over a period of years may be brought into play in times of stringency. Provision for that type of deferment is grounded on the assumption that tax delinquency is usually involuntary. The idea is to face economic facts and reduce current payments to the taxpayer's financial level during the dark days. To counter any disposition to abuse the plan interest may be added to the payments. The over-all deferment period should probably not exceed five years. There is no reason why some flexibility should not exist within that limit in order that a deferment plan may, in operation, be patterned to the times. Such postponement poses a problem for the taxing unit, for if payment of as much as four-fifths of a taxpayer's taxes until subsequent years is to be allowed the units current income will not cover budgeted outgo. Perhaps revenue anticipation borrowing may be unavoidable in depression years.<sup>100</sup> The deferred payment plan might well help a unit to borrow on satisfactory terms because it is calculated to improve the prospects of ultimate payment of the taxes involved. During the last depression the state legislators simply outdid themselves in granting indulgences to property taxpayers.<sup>101</sup> Excessive concessions undermine taxpayer morale. Is it not better to have a permanent tax code which makes guarded provision for the effect of lean years upon taxpaying capacity?

Once a liberal tax payment plan were placed in effect the moral position of the delinquent would be very weak in all but the most exceptional cases. The tax collector, on the other hand, would stand greatly fortified. The way would be opened for the employment of prompt and decisive enforcement methods.

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100. Local unit borrowing is not the only possibility. Suppose private credit facilities were provided which enabled the taxpayer to borrow, on favorable terms, the funds needed to pay his tax bills? That alternative was developed in New York in 1935 by the legislative enactment of the so-called Orlove Plan. N. Y. Tax Law §§ 97 and 97a et seq. (McKinney's Cons. Laws of N.Y. Ann. Book 59, §§ 97 and 97a et seq.). See Studenski, *A New Plan for the Private Financing of Delinquent Tax Payments* (1936) 3 *Law and Contemp. Prob.* 362; Traynor (now Mr. Justice Traynor of the Supreme Court of California), the *Model Real Property Tax Collection Law* (1935) 24 *Calif. L. Rev.* 98, 100. The Orlove Plan contemplates the chartering of special lending corporations with authority to make tax loans to taxpayers for maximum periods of twelve months. The loans are to be evidenced by a series of notes payable monthly and carrying four per centum interest plus a two per centum service charge. The lender receives a conditional tax receipt from the taxing unit and the tax lien remains unaffected until surrender of that receipt for a final receipted tax bill. If a loan is defaulted, the lender is entitled to payment out of the proceeds of a tax lien sale.

101. Smith, *Recent Legislative Indulgences to Delinquent Taxpayers* (1936) 3 *Law and Contemp. Prob.* 371.

The first step toward this end is establishment of unified collection of the taxes of all levying units assessed against the same property. Separate collection of municipal taxes involves needless expense, not the least item of which is the preparation of municipal tax rolls by taking the necessary data from the parish rolls.<sup>102</sup> Unified collection logically embraces consolidation of tax liens at the enforcement stage. Enforcement should be freed from the complicating drag of separate municipal and state tax sales.

While one is given to think of ad valorem taxes as burdens upon the property assessed, the ultimate fact is that they are imposed upon people. The ad valorem device is a means of apportioning the burden of financing governmental services. It may be that under the standing law, as is now the case in Louisiana, resort can be had only to the particular property assessed, but essentially that is a matter of method in the enforcement process. There is, in fact, a choice of sanctions. We believe that it should include personal liability of property owners for property taxes. So did the draftsmen of the Model Real Property Tax Collection Law. The provision of the model act reaches resident landowners only. The difficulty in applying this sanction to non-residents lies, of course, in the necessity of acquiring personal jurisdiction in order to fix personal liability.<sup>103</sup> It has been suggested that, perhaps, the state has a strong enough public interest to enable it to gain personal jurisdiction along the familiar lines of statutes relating to actions against non-resident motorists.<sup>104</sup> A separable provision covering non-residents might well be given a trial; nothing could be lost by its inclusion.<sup>105</sup> Personal liability widens the reach of tax collection processes and vigorous enforcement should have the effect of obviating resort to sanctions in many cases.

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102. Unified collection may be provided by the legislature under La. Const. of 1921, Art. X, § 6.

103. We are not unaware of the doctrine that a state is entirely without legislative jurisdiction to subject a non-resident to personal liability for taxes. That doctrine derives support from the opinion in *Dewey v. Des Moines*, 173 U.S. 193, 19 S.Ct. 379, 43 L.Ed. 665 (1899), in which it was declared that a state could not impose a personal liability upon a non-resident to pay special assessments laid to finance a public improvement. There, however, the taxpayer was not personally served and the statute made no provision for such service. It is not evident why legislative jurisdiction is to be deemed wanting where personal liability is to be enforced only after personal jurisdiction of the non-resident has been gained. We are not persuaded that rigid territorial theories of jurisdiction will prevail in the determination of questions of this sort.

104. See Rubin, *Collection of Delinquent Real Property Taxes by Action in Personam* (1936) 3 *Law and Contemp. Prob.* 410, 422-426.

105. Traynor, *supra* note 100, at 104-105.

The tax receivership was born in Tennessee in 1921.<sup>106</sup> During the recent depression it became a potent tax collection sanction in several states.<sup>107</sup> Doubtless, the threat of the device, more than its actual employment, is what brings in the money.<sup>108</sup> It is, in a legal sense, less drastic than sale;<sup>109</sup> if property is of an income-producing character a receivership may result in satisfaction of the tax bill from income without loss of the *res*. There should not be an enforced receivership of residential or farm property, to the extent occupied by the owner, but voluntary receivership in such cases has been put forward as an advantage to the tax debtor.<sup>110</sup> As an optional method of enforcement provision might well be made for tax receiverships in the draft of a Louisiana Revenue Code. Under the model act the collector may petition the proper court to be appointed receiver of any real property at any time after taxes thereon have been delinquent for more than six months. This period seems adequate. That act requires that the collector obtain the approval of the governing body of the taxing district, the taxes of which are delinquent. If there is to be unified collection, this would not work in Louisiana because state taxes and those of various local units would be delinquent at the same time. As a possible alternative the collector might resort to receivership either (1) on his own initiative or (2) when requested to do so by the governing body of a local taxing unit or an appropriate state official concerned with state property tax collections.<sup>111</sup>

The function of the purchaser at a tax sale is to step in between the levying units and the tax debtor and provide the needed public revenue without excessive delay by taking over a lien upon or defeasible title to the land of the tax debtor. The inducement to the tax purchaser is the prospect of economic gain. A common procedure in other states is to enforce by sale the tax lien, which has attached to the property at some stage in the process. A tax

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106. Tenn. Pub. Acts, 1921, c. 115, § 2 [Tenn. Code Ann. (Williams, Supp. 1943) § 1602].

107. LeLong and O'Brien, *Tax Receiverships* (1936) 3 *Law and Contemp. Prob.* 382.

108. *Id.* at 394-396.

109. Traynor, *supra* note 100, at 101.

110. See the remarks of the Illinois Tax Commission quoted in DeLong and O'Brien, *supra* note 107, at 396.

111. It is believed that to give the collector discretion as to invoking this sanction would not be an invalid attempt to delegate legislative power. See *In re Taxes Delinquent, Washington County, Minn.*, 197 Minn. 266, 266 N.W. 867 (1936), appeal dismissed sub. nom. *Torinus v. Johnson*, 299 U.S. 508, 57 S.Ct. 44, 81 L.Ed. 376 (1936).

sale certificate may be issued to the purchaser to evidence his interest. It may be necessary that the certificate be recorded to protect the purchaser against the claims of third parties. If the delinquent does not take up the tax sale certificate during a fixed redemption period by paying the principal amount of the taxes, plus interest and costs, his equity may be closed out by issuing a tax deed without foreclosure. In several states there is an important variation. After the redemption period the lien is foreclosed in a judicial proceeding. This is the scheme of the model act. If there are no purchasers a certificate is issued to an appropriate local unit such as the county or the lien merely forfeited to the state.

In contrast with the system of offering delinquent tax liens to private purchasers is the plan of automatic public purchase of all such liens, which has been employed in a few states. Under this plan, the state or county (whichever takes the lien) liquidates the lien after a fixed period.<sup>112</sup>

It is evident that the Louisiana system of tax sales is pretty much in a class by itself. The initial sale is not a sale of a lien. It purports to cover title in fee, subject to the right of redemption. The purchaser's formal protection against title defects is the constitutional provision as to prescription, not a foreclosure decree.

We are not persuaded that initial sale to a tax purchaser is desirable. We do not have the statistical data to support a definite conclusion, but we hazard the opinion that in good times, when people are able to pay, the tax purchaser's role is a modest one at best. Prompt, decisive enforcement ought to minimize delinquency in prosperous periods. When the economic going gets rough, on the other hand, it is not likely that many tax purchasers will be at hand to relieve taxing units of the shock of heavy delinquency. The government may as well take the tax liens by default in all cases. That should happen, say, six months after taxes become delinquent. After that event the sanction of receivership should be available. The period of redemption, if extended for an additional span of eighteen months, or a total of twenty-four months, ought to be enough leeway for the conscientious taxpayer. During that period the taxpayer should be permitted to remain in possession, unless the property has been placed in receivership, and the property assessed as usual for current taxes.

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112. All of the systems mentioned in the text are more fully described elsewhere. See Allen, *Collection of Delinquent Taxes by Recourse to the Taxed Property* (1938) 3 *Law and Contemp. Prob.* 397, 401.

When the redemption period has run out the time will have come for drastic action. The only thoroughly effective way to remove title difficulties which we have encountered, is judicial foreclosure. The factors of expense, residence and division of ownership militate, moreover, strongly in favor of consolidated foreclosure proceedings in rem. The model act authorizes resort, in the alternative, to proceedings in personam and in rem. A type of proceeding in rem is contemplated by the novel Land Tax Collection Act, applicable to Jackson County, Missouri.<sup>113</sup> That act is of such unusual interest that it deserves somewhat extended consideration at this juncture.

The Jackson County plan employs the county collector for purposes of all levying units. It is required that lists of property, which has been delinquent for more than four years, be filed with the collector by the taxing units within the county and that they be combined by him with his own lists covering taxes collectible by him. The collector must deliver the combined list to a Delinquent Land Tax Attorney by a certain date in each year and the attorney must institute foreclosure proceedings within two months after that date. Upon the filing of the suits it becomes the duty of the attorney to have the notice of foreclosure published once on the same day of each of four successive weeks. The notice must contain a statement as to the filing of the suit, description of the land, serial number assigned by the collector to each parcel, the delinquent tax bills against each parcel and the name of the last person appearing on the records of the collector in whose name the tax bills were listed. Notification by mail to such persons is also required but failure to mail the notice does not affect the validity of the proceedings conducted under the act. There is a very sensible provision, which requires that affidavits of publication and mailing be filed with the clerk of court prior to trial. This device is appropriate in whatever type of enforcement proceeding publication of notice is required.

If the disability of parties in interest is called to the attention of the court it becomes his duty to have notice served by registered mail upon their guardians, or if there are no guardians, to appoint guardians ad litem. Error in this respect may be corrected by appeal, but does not ground collateral attack.

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113. Mo. Laws (1943) 1029 et seq. [Mo. Rev. Stat. (Supp. 1946) § 11201.1 et seq.]. Various objections to the statute, on constitutional grounds, were rejected in *Spitcaufsky v. Hatten*, 353 Mo. 94, 182 S.W. (2d) 86, 160 A.L.R. 990 (1944). For a detailed discussion of the Act see Kemp, *Municipalities and the Law in Action—1945* (Nat. Inst. of Mun. Law Officers) 166.

There are thoroughgoing provisions for joining numerous parcels in one suit and for consolidating suits. Sixty days are allowed, reckoned from first publication of the notice of foreclosure, for filing answers. Failure to answer within the time allowed is treated as a confession of the petition and judgment may be entered by default. In any instance in which an answer is filed a severance is granted as to the parcels affected by the answer and a separate trial held. The case otherwise goes on without delay. The proceeding is in equity and the trial is conducted without the aid of a jury.

If foreclosure is decreed the cause is continued with a view to sheriff's sale after a six months waiting period. During that period and right up to the time of foreclosure any interested party may redeem. The collector, moreover, may, during that interval, make a redemption agreement for payment in as many as twelve instalments over a maximum period of twenty-four months. Publication of advertisement of sheriff's sale is made once a week for four successive weeks and sale is made thirty days after first publication. The minimum sale price is the full amount of the taxes, interest, penalties, attorney's fees and costs. If sale to private bidders is not made the sheriff may adjourn the sale to another day and again to another on the same basis. Failure of private sale on the third day results in the land being awarded to a special public corporation, called the Land Trust, for the minimum price.

As a safeguard against sales at unconscionably low prices any interested party may cause the report of the sheriff on a sale of land to be set for hearing on confirmation. The court must confirm if he finds that adequate consideration has been paid. If not, the purchaser is given a chance to increase his bid to what the court would consider adequate. Should the purchaser decline this opportunity, a new sale must be held.

The Jackson County Land Trust is composed of three trustees, one appointed by the governing body of the county and one each by the governing bodies of the most populous city and school district in the county. Five years' residence in the county and ten years experience in the management or sale of real estate are the principal qualifications for the office.

In marked contrast with the present Louisiana system of administering tax adjudicated lands, the Jackson County Land Trustees are required by statute not only to assume possession

and control immediately but also to take further steps designed to enable them to make intelligent disposition of the land they hold in trust for the affected taxing units. They must make and maintain a perpetual inventory of the property. This is a *sine qua non*. They must appraise the parcels and classify them with respect to suitability for private or public use. It is their job to bestir themselves to get land suitable for private use back in private ownership as soon as possible and to offer land suitable for public use to any public body which might have use for it. They must recommend to the taxing units possible uses of land not then suitable for private or public use. The act gives them broad powers of management, maintenance, letting, sale, trade and exchange. Thus, they may assemble tracts for park or other public purposes. A significant gap in the scheme is the lack of any requirement that the trustees correlate their work with that of the official local planning agencies.

We believe that the Jackson County plan, subject to certain modifications, is worthy of serious study in Louisiana. The patient is too ill for us to put our faith in headache powder. Drastic measures are indicated. It is not evident, however, why delinquency of four years should have to drag out its fruitless course, as in Jackson County, before the foreclosure machinery is set in motion. The six-month waiting period, the publication requirements and the lesser time-consuming steps would combine to stretch the total span into five years. Provision for sale to private purchasers is also questioned for reasons previously stated. Effective use and disposition of lands taken over by the public for taxes depend upon adequate information and careful planning. Complete, classified "perpetual" inventories of the properties held is indispensable. Those charged with their administration can provide that material for themselves. Planning, however, is another matter. It has to do with a complex of interrelated public and private land uses. It would seem most appropriate, therefore, to require that the use and disposition of "adjudicated" lands be harmonized with the planning done by state, parish and municipal planning agencies.