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PROPERTY TAX COLLECTION PROCEDURE IN WASHINGTON*

DOUGLAS H. ELDRIDGE

One of the concomitants of the 1930-40 economic depression was a sharp and severe increase in property tax delinquency. The failure during this decade of state and local governments to collect large proportions of anticipated property tax revenues revealed "an amazing fiscal inadequacy"¹ of the heavily relied upon, and heretofore stable source of governmental income.

With the partial economic recovery since 1933 the general level of personal incomes has risen, and property tax delinquency has abated. Nevertheless, although less critical, the problem of only partial collection of property taxes remains. For example, at the end of 1940 the proportions of the current property taxes delinquent in the State of Washington ranged from 22.1 per cent in Okanogan County to 3.7 per cent in Garfield County.² The average for the whole state was delinquency of 8.4 per cent of the taxes levied to be collected in 1940. Accumulated tax arrears remain on the various county tax rolls in the amount of \$15,964,539. In Island, Jefferson, and Okanogan Counties these accumulated delinquencies exceed the amount of the current tax levies, and in nine other counties³ accumulated uncollected property taxes still amount to more than 60 per cent of the current levy.

In Washington, as in other states, there is still need for improvement in the prompt and complete collection of property taxes. Further, it seems highly desirable that steps be taken to prevent the recurrence of the crucial tax delinquency situation which developed in 1931-35.

Because of the severity of the situation resulting from delayed and partial property tax collections in recent years, various tax commissions, federal agencies, civic leagues, tax associations, and private bureaus

*For a discussion of the assessment of property, equalization of valuations, and levying of property taxes in Washington, see Douglas H. Eldridge, *The Determination of Property Taxes in Washington* (1941) 16 WASH. L. REV. 13.

¹ H. L. LUTZ, *PUBLIC FINANCE* (1936), 312.

² Statement of the Washington State Tax Commission.

³ Chelan, 81.1%; Clallam, 92.6%; Douglas, 67%; Ferry, 65.6%; Grays Harbor, 85.9%; Pacific, 60.1%; Snohomish, 61.3%; Thurston, 64.9%; Wahkiakum, 71.7%.

instituted investigations seeking a remedy. One of the conclusions generally reached by investigators of property tax delinquency throughout the country has been that much of tax arrears can be attributed to "the methods that are ordinarily employed in collection."⁴ Specifically the phases of property tax collection methods which have been impugned as being conducive to delinquency are:⁵ a legal procedure neither carefully devised with the purpose of requiring prompt payment nor designed to meet the strain placed upon it by the economic depression; elective officials whose lack of competence and whose subservience to political influences serve to make them tax receivers instead of tax collectors; lack of efficient, modern methods of billing taxpayers and sending tax notices, of recording receipts, and handling office routine; failure to adjust the tax calendar so that the time and manner of payment is best suited to the convenience of taxpayers and the needs of government; the delay involved in the long period of time elapsing between assessment of property, the date of delinquency, and the enforcement of collection; the ineffectualness of penalties to promote prompt tax payments; the difficulty of obtaining a valid title to tax-reverted property; and the mistaken legislative and administrative leniency to delinquent taxpayers which often has weakened the effectiveness of enforcement.

The following discussion of legal and administrative machinery for property tax collection in Washington should be viewed in the light of these criticisms, although all of them are not pertinent in this state.

The county treasurer is the receiver and collector of all taxes, current and delinquent, standing upon the property tax rolls of the county, whether levied for state, county, city, school, bridge, road, or other purposes.⁶ He begins the collection of these taxes on the February 15 following the levy of the tax, after having given notice once in each of three consecutive weeks in some newspaper having general circulation in the county that the tax books have been turned over to him for collection of taxes. The treasurer is required to notify each taxpayer in the county of the amount of tax due on his real and personal prop-

⁴ F. R. Fairchild, *The Problem of Tax Delinquency* (1934) 24 PROCEEDINGS, AM. ECON. ASS'N 143. At the 1934 conference of the National Tax Association, in giving the report of the Committee on Tax Delinquency, Fairchild said: ". . . every member of this committee is convinced that the ultimate solution of the delinquency problem rests more than on any other circumstance upon regular, definite or rigid methods of collection." Another authority on local finance reports that, "Nearly all of the commissioners and individuals engaged in the study of tax delinquency have concluded that poor administration of the tax laws is one of the major difficulties." Carl H. Chatters, *Painless Extraction of Tax Dollars* (1933) 22 NAT. MUN. REV. 9.

⁵ Cf. *Preliminary Report of the Committee on Tax Delinquency* (1932) 25 PROCEEDINGS, NAT. TAX ASS'N 305; H. D. Simpson, *Tax Delinquency—Economic Aspects* (1933) 28 ILL. L. REV. 151; L. D. Upson, *Tax Delinquency: Administration and Legislation* (1934) 27 PROCEEDINGS, NAT. TAX ASS'N 357.

⁶ REM. REV. STAT. § 11244.

erty.⁷ If any taxpayer pays in full the tax on real or personal property in one payment on or before the fifteenth of March prior to the date of delinquency he is allowed a three per cent rebate.⁸ Otherwise the full amount of the tax may be paid in two installments. One-half of all real and personal property taxes are payable on or before May 31 in each year. If not paid at that time, one-half of the taxes due become delinquent and interest at the rate of ten per cent per annum is charged upon such taxes from the date of delinquency until paid.⁹ The other one-half of property taxes is due on November 13, and if it is not paid to the treasurer by that time, likewise becomes delinquent and subject to an interest charge of ten per cent per annum from the date of delinquency.

⁷ Wash. Laws 1941, c. 32. See discussion, *infra*, p 124, relative to notice of real property taxes.

⁸ REM. REV. STAT. § 11244. Although there has been no Washington case sustaining the constitutionality of this provision, similar statutes were held constitutional in the following cases: *Buchanan v. West Kentucky Coal Co.*, 218 Ky. 259, 291 S. W. 32 (1927); *Norfolk Southern Ry. Co. v. Lacy*, 187 N. C. 615, 122 S. E. 763 (1924); *Board of Education v. Sea*, 167 Ky. 772, 181 S. W. 670 (1916); *Merchant's and M. Nat. Bank v. Pennsylvania*, 167 U. S. 461 (1897); *Morden v. South Dufferin*, 6 Manitoba L. Rep. 515 (1890). In the *Pennsylvania* case the court said: "It is common practice in the states to offer a discount for payment before the specified time and impose penalties for nonpayment at such time. This, of course, results in inequality of burden, but it does not invalidate the tax. The inequality of result comes from the election of certain taxpayers to avail themselves of privileges offered to all." Cf. Note (1927) 51 A. L. R. 286. Whenever extraordinary conditions have caused such a delay in the taxation procedure that any county treasurer has found it impossible to give timely notice to taxpayers of the amount of taxes due, and there is a likelihood that a considerable number of taxpayers will be deprived of the rebate privilege for lack of notice and through no fault of their own, the State Tax Commission, upon investigation, may extend the rebate period for such time as it deems appropriate, but in no event, for more than sixty days. REM. REV. STAT. § 11244-10. This last provision seems particularly open to criticism. It is the purpose of the rebate to induce full payment of taxes early in the year so that funds will be available for the various governmental units, not to give taxpayers opportunity to reduce their tax liability. While the present offer of rebates in Washington is supposed to be a practical means of stimulating tax payments, it may be questioned on the grounds, first, that property taxes are the forced contributions of property owners to government and it should not be necessary for the tax collector to bargain for prompt payment; second, that rebates do not prevent delinquency, since, for the most part, they induce early payment only from those who otherwise would pay their taxes when due; and, third, the rebates represent a considerable expense to the taxing districts, and the unpredictability of that expense hampers proper budgetary procedure.

⁹ REM. REV. STAT. § 11244. Statutory provision is necessary in order to charge interest on delinquent taxes. *Henry v. McKay*, 164 Wash. 526, 3 P. (2d) 145 (1931); *New Whatcom v. Roeder*, 22 Wash. 570, 61 Pac. 767 (1900). Interest upon delinquent taxes is not a part of the taxes, nor is it consideration for the forbearance of money; rather, it is a penalty for failure to make prompt payment. *First Thought Mines v. Sup'r Court*, 93 Wash. 433, 161 Pac. 77 (1916). See also *Northern Pacific Ry. Co. v. Franklin County*, 118 Wash. 117, 203 Pac. 27 (1921). It seems that the purpose of inducing prompt payment of taxes by a penalty would be served more amply by a combination of a flat penalty which becomes due at delinquency and an interest charge, as was used in Washington from 1895 to 1897. Wash. Laws 1895, c. 176, § 14. For example, the immediate imposition of a flat

Further to insure collection, the law provides that if the one-half of the taxes due on personal property is not paid when the first installment is due, the whole amount becomes delinquent. Also where the tax on real property payable by one person is two dollars or less, or where the personal property tax is less than ten dollars, all such taxes are delinquent if not paid by May 31, and are subject to the ten per cent per annum interest penalty.

When the treasurer receives payment of any tax he issues a receipt to the person making the payment specifying the property as described on the tax rolls, the year for which the tax was levied, and the amount paid. The owners of property against which there are delinquent taxes have the right to pay the current taxes without paying the delinquent taxes, but upon issuing a receipt to such a taxpayer the county treasurer must endorse upon the face of the receipt a memorandum of all delinquent taxes against the property therein described.¹⁰ On the first Monday of January of each year the county treasurer balances the tax rolls with which he is charged in the accounts of the county auditor and reports to the auditor the amounts collected and the amounts remaining delinquent on the tax rolls.¹¹

The procedures for enforcing collection of delinquent taxes upon real and personal property differ. The taxes charged against each item of personal property are a lien upon that property from and after the date the property is listed and valued by the assessor.¹² This lien is in no way affected by the transfer or sale of the property, providing the specific property assessed can be identified in the possession of a subsequent owner. Further, the tax levied upon personal property becomes the personal obligation of the person assessed and becomes a lien on every item of his personal property. The tax assessed upon personal property is also a floating lien upon the real property of the person assessed. If it becomes necessary, in the opinion of the county treasurer, to charge the

5 per cent penalty upon delinquent taxes provides a stronger incentive to pay taxes before delinquent than does merely the charging of interest from the date of delinquency; if, in addition, interest is charged on delinquent taxes at the rate of 1 per cent a month, a continuing inducement to pay after delinquency is also provided. Seventeen of the states now impose such a combination of flat rate and varying penalty on delinquent property taxes. C. C. H., *TAX SYSTEMS* (1940), 125. Cf. the penalties imposed upon delinquent sales and excise taxes under the Washington Revenue Act of 1935, as amended. REM. REV. STAT. §§ 8370-188, 8370-192, 8370-193.

¹⁰ REM. REV. STAT. § 11246.

¹¹ REM. REV. STAT. § 11259.

¹² REM. REV. STAT. § 11265. Whereas the tax lien on realty is inchoate and floating at the date of assessment and levy, the lien on personalty attaches as an immediate enforceable remedy at the time of assessment. *State v. Snohomish County*, 71 Wash. 320, 128 Pac. 667 (1912). For succinct summaries of court decisions, opinions of the Attorney General, and tax commission rulings, relative to property tax liens and their enforcement, see WASHINGTON STATE TAX COMMISSION, *ANNOTATED CODE OF PROPERTY TAX LAWS* (1939) §§ 156, 238-240.

tax on personal property against real property in order to collect the tax, the treasurer may select and designate a particular tract or lot against which the personal property tax is to be charged. The tax then becomes a specific lien upon the designated real property and may be enforced in the same manner as a lien upon real property for delinquent real property taxes.

In the event that the county treasurer is unable to collect personal property taxes, he is required to distrain without demand or notice sufficient goods and chattels to pay the taxes, interest, and accruing costs, and to post written notices of the tax sale of such personal property.¹³ Unless the taxes and other charges are paid before the date appointed for the sale, which, with some exceptions, may not be less than ten days after the taking of the property, the county treasurer must proceed to sell the distrained property at public auction. Any returns arising from the sale in excess of taxes, interest, and costs are to be returned to the owner. Various other provisions of the statute insure the collection of the amount of personal property taxes.¹⁴ Penalties are provided for failure of transient traders to notify the county assessor of merchandise brought into the state to be sold within the year,¹⁵ for removal of timber upon which taxes are delinquent,¹⁶ for the removal of personalty from the state, or the public sale of personalty without paying the property tax.¹⁷ The lien of the personal property tax attaches to and follows any insurance there may be upon such property so that in the event the property is destroyed the taxes must be paid by the insurer.¹⁸

If, however, the various administrative devices to enforce collection of personal property taxes are of no avail, the tax laws provide that uncollectible personal property taxes may be cancelled from the tax rolls.¹⁹ In some instances it may be that the county treasurer is unable, for want of chattels or realty of the person taxed, to collect the personal

¹³ REM. REV. STAT. § 11247. The duty of the county treasurer in respect to distraint is purely ministerial. Our Court has held that the treasurer cannot grant extensions of time for the payment of taxes which, by the terms of the statute, become delinquent. The treasurer may exercise no discretion in this regard, even though he believes the immediate enforcement of payment will ruin the business of the taxpayer, whereas, if more time were permitted, the taxpayer might be able to improve his financial position and pay his taxes fully. *State ex rel Spokane County v. De Graff*, 162 Wash. 107, 298 Pac. 339 (1931). Notice of tax sale of distrained personalty is required by statute, to insure a fair sale. *J. K. Lumber Co. v. Ash*, 104 Wash. 388, 176 Pac. 550 (1918).

¹⁴ For a discussion of the county treasurer's discretion in making jeopardy distraint of personal property which is about to be removed or dissipated, see *Hughes v. Carr*, 101 Wash. 109, 172 Pac. 224 (1918).

¹⁵ REM. REV. STAT. § 11266-7. See *Spaulding v. Adams County*, 89 Wash. 193, 140 Pac. 367 (1914); *Nathan v. Spokane County*, 35 Wash. 26, 76 Pac. 521 (1904); *Johnston v. Whatcom County*, 27 Wash. 95, 67 Pac. 569 (1902).

¹⁶ REM. REV. STAT. §§ 11115, 11247-1.

¹⁷ REM. REV. STAT. § 11249.

¹⁸ REM. REV. STAT. § 11248.

¹⁹ REM. REV. STAT. § 11255.

property tax by distress or otherwise. Then the treasurer may file with the county auditor a list of those uncollectible personal property taxes accompanied by an affidavit stating that he has made "diligent search and inquiry for goods and chattels wherewith to make such taxes, and was unable to make or collect the same." The county auditor delivers the list of taxes and the affidavit to the board of county commissioners, and they may cancel those taxes which they are satisfied can not be collected. The object of this procedure apparently is to adjust the tax receivables of the taxing districts so that the tax rolls reflect the actual potential collections for purposes of credit ratings and budgeting. Despite this cancellation, the power and duty to collect any tax due and unpaid continues in and devolves upon the county treasurer and his successors indefinitely.²⁰ To insure close observance of the procedure prescribed by statute, in addition to a civil penalty for failure to perform his duties, the county treasurer is liable personally for any taxes charged upon personal property which he willfully refuses or neglects to collect.²¹

It would seem that only a very minor part of any county's delinquent rolls would be comprised of unpaid taxes on personalty. For one reason, much of the personal property in the state is exempt from taxation. Household goods in use and personal effects are not taxable, and an additional three hundred dollars exemption (actual value) is allowed the head of each household.²² Intangibles and some other types of personalty are exempt.²³ Since 1937 one of the largest remaining classes of personalty, private motor vehicles, has been taxed by a state excise tax and exempted from property taxation.²⁴ In addition, few personal property delinquencies should remain on the tax rolls because the pow-

²⁰ REM. REV. STAT. § 11257. This section was literally applied in Puget Sound National Bank v. King County, 9 Wash. 608, 38 Pac. 810 (1894). On the other hand, the continuing power of successive county treasurers to collect taxes apparently may be curbed by the ruling in Graves v. Stone, 76 Wash. 88, 135 Pac. 810 (1913), although there is no statute of limitations on the obligation for property taxes. In the latter case the court discussed the general doctrine that lapse of time after the maturity of a debt with no demand for payment on the part of the creditor raises a presumption of payment. This doctrine was applied to liability for taxes. It was reasoned that if the debt in question had been owed by the taxpayer to a private individual, the longest period of limitation which could have applied would have been six years. By analogy, where the taxpayer was morally certain he had paid his taxes, the fact that ten years had elapsed from the accruing thereof, during which time the county had neither demanded payment nor attempted enforcement by distraint or other legal process, created a conclusive presumption that the tax had been paid.

²¹ REM. REV. STAT. § 11256. According to the court, this section aids the presumption of payment after lapse of years, because it is not to be presumed that the treasurer elected to incur this penalty. Graves v. Stone, *supra* note 20. Within the knowledge of the present officials of the State Tax Commission, however, this provision has never been invoked.

²² REM. REV. STAT. § 11111-7.

²³ REM. REV. STAT. §§ 11111, 3717-86, 11130-5.

²⁴ REM. REV. STAT. § 6312-106.

ers of collection invested in the administrative officials should assure speedy enforcement.

The collection of personal property taxes in practice, however, is seldom as prompt and rigorous as the provisions of the statutes and pertinent court decisions seem to indicate.²⁵ Despite the fact that the duties of the treasurer in respect to tax collection by distraint are ministerial and not discretionary, strict enforcement of personal taxes in Washington generally has not been considered politic by the elective collection officials. The usual means employed to collect personal taxes consist of mailing several notices and perhaps a letter tactfully reminding the delinquent of his obligation. Some of the counties employ a tax collector who makes personal calls on delinquents. But with the exception of King County and a few other counties, the various personal tax enforcement instruments provided by statute are rarely aggressively employed. Further, the provision for adjusting the tax rolls by cancellation of personal property taxes deemed uncollectible is often ignored. In several of the counties the officials seem to feel this adjustment is unnecessary since it remains the duty of the treasurer to collect these taxes anyway.

The procedure for the collection of delinquent real property taxes is not as prompt as the collection of personal property taxes. Much more time is required before enforcement action can be taken, and the procedure involves (1) the issuance of a certificate of delinquency either (a) by sale to a private person, or (b) by issuance to the county, and (2) the foreclosure of the lien by the certificate holder.

Whereas the personal property tax may be the personal obligation of the owner of the personalty, the property tax on real estate is imposed solely upon the realty itself. When personal property is assessed the name of the person listing it must be taken by the assessor, but the

²⁵ According to State Tax Commission statistics relative to aggregate property tax delinquencies, Thurston County might be taken as typical of Washington counties. In that county, at the end of 1940, many thousands of dollars of delinquent personal property taxes were outstanding for years since 1925 (\$12,610 from the 1930 roll, \$12,047 from the 1931 roll, \$12,974 from the 1932 roll, \$5,544 from the 1933 roll, etc.). Vigorous efforts to collect these taxes by distraint or otherwise had not been made, nor had any of these uncollected taxes been cancelled from the tax rolls. At the end of 1940 approximately one-fifth of the total delinquent property tax rolls in Thurston County were personal property taxes.

Another illustration that the amount of personal property tax delinquency may be substantial is the fact that from February, 1934, to the end of 1940, King County, by strict enforcement, collected \$1,440,361 in principal of personal property tax delinquencies. Interest on these taxes would probably average an additional 25 per cent. At least one-half of the principal sum collected had been cancelled as uncollectible and presumably worthless under former treasurers. The King County tax collectors recently successfully collected delinquent personal property taxes by distraint proceedings on the delinquent rolls of 1924 and 1925.

name of the owner of realty is not essential to the assessment of real property. Likewise, the procedure for enforcing the collection of real estate taxes in Washington is a proceeding *in rem*.

"The whole procedure, including assessment, foreclosure, and sale, is for the purpose of establishing and enforcing a lien for public revenue, which, under the policy of the state, is chargeable to the property only, and not personally to the owner. It is the land itself with which the state is concerned, and its dominion over land for revenue purposes exists without regard to who may be the owner."²⁶

The relation of the owner of real estate to the taxing jurisdiction is different from his relation to ordinary contractual obligation. In *Williams v. Pittock*, the Supreme Court has described the tax responsibility of the realty owner as follows:

"The primary duty rests upon him to see that the taxes are paid, if he would prevent his land from being sold therefor. He is chargeable with knowledge of every step in the tax procedure, including the listing by the assessor, the sitting of the board of equalization, the completion of the rolls, their delivery to the treasurer, and the issuance of the certificates of delinquency. He must also know that, after the lapse of the statutory period, the right of redemption will be foreclosed. With such knowledge and after his neglect to pay the taxes within the long period which the state has graciously given him, he cannot complain."²⁷

Because the enforcement of real estate taxes is by a proceeding *in rem*, failure of the county treasurer to send notice to a realty owner does not affect the validity of the tax. Hence, notifying each taxpayer of his realty tax bill has not been considered by local tax collectors or the state courts as an essential part of the collection procedure.²⁸ Prior to 1939 the tax laws provided that after the tax rolls had been taken over by the county treasurer for collection, he should, "when requested, notify each taxpayer in his county, at the expense of the county" of taxes due on these owners' property. Under this law the usual procedure in many counties was as follows: when a tax, either current or delinquent, was paid on real property in any year, the name

²⁶ *Williams v. Pittock*, 35 Wash. 271, 77 Pac. 385 (1904). See also *Colby v. Himes*, 171 Wash. 83, 17 P. (2d) 606 (1932); *McGuire v. Bean*, 151 Wash. 474, 276 Pac. 555 (1929); *Sparks v. Standard Lumber Co.*, 92 Wash. 584, 93 Pac. 211 (1908); *Allen v. Peterson*, 38 Wash. 599, 90 Pac. 849 (1905); *Washington Timber & Loan Co. v. Smith*, 34 Wash. 625, 76 Pac. 267 (1904).

²⁷ *Supra* note 26.

²⁸ *Spokane County ex rel Sullivan v. Glover*, 2 Wn. (2d) 162, 97 P. (2d) 628 (1940). Notice is required for personal property taxes, but the whole personalty taxing procedure lends itself to that end. The assessor is required, in making assessment lists of personal property, to give name and post office address of the person listing property for assessment. It is then a simple process for the treasurer to mail notices of taxes due to those persons.

and address of the person paying was taken down and subsequently entered upon the tax roll opposite the description of land upon which the tax was paid. The next year this information was used by the treasurer to send notices to all such persons and notices were also sent to any others who made requests therefor. But if no tax on a particular parcel of property was paid in any one year, no notice was sent to the reputed owner the following year unless a request for notice had been made. Thus all those property holders whose taxes were more than a year delinquent, and who failed to request notice, received no reminder of their tax obligations.²⁹

It has been generally recognized by tax administrators and students of public finance that notices sent to property owners concerning tax liability have a most salutary effect upon collections of both current and delinquent taxes.³⁰ Periodic reminders might be sent out to all property owners of record, stating the amount of taxes due, when and where payments are to be made, penalties for delinquency, measures that will be taken to enforce collection, and in addition an itemized list might be included of the taxing government's expenditures for various functions, so that the relationship between education, road building, protection of life and property, etc., and the tax dollar would be clear to all taxpayers.

To require the sending of tax bills to all owners of taxed property, the section of the tax law concerning tax notices was amended in 1939.³¹ The words "when requested" were omitted so that the phraseology reads: "the treasurer shall notify each taxpayer in his county" of his taxes due, etc.

In several of the counties compliance with the amended law was relatively simple, for the office of county treasurer had an index de-

²⁹ In Spokane County *ex rel* Sullivan v. Glover, *supra* note 29, it was stated that in 1940 there were approximately 10,000 owners of realty in Spokane County alone to whom no notices were sent.

A property tax collection system which permits the accumulation of delinquent taxes is one of the factors which fosters further delinquency. Usually the taxes for one or two years represent such a small portion of the value of the property that an owner would seldom permit the forfeiture of his property rather than pay the current tax bill. It is the amassed tax arrears for several years, plus delinquent penalty charges, that make an oppressive burden. Then the property owner forfeits his property either because he cannot raise the money or because he feels that the property is not worth the total tax debt of principal and penalties. The mistaken leniency and neglect of the collection system, in this manner, permits small tax delinquencies to accumulate into severe tax obligations that may bring about the tax-reversion of properties to the taxing jurisdiction.

³⁰ See Carl H. Chatters, *Methods That Have Proved Successful in Collecting Delinquent Taxes* (1933) 48 AMER. CITY 36; Reginald Parnell, *Tax Paying Drive Successfully Organized* (1933) 48 AMER. CITY 58; G. W. Vanaman, *Trenton Tackles Taxes* (1933) 23 NAT. MUN. REV. 40; R. M. Greer, *An Approach to a System of "Perfect" Municipal Tax Collections* (1936) 3 LAW & CONTEMP. PROB. 439.

³¹ Wash. Laws 1939, c. 206, § 41.

partment which kept files on the recorded ownership of real property. In King County, for example, even prior to 1939, tax notices were sent to all property owners of record as revealed by a current transfer file which was maintained from day to day. But in other counties, Spokane for example, no attempt has been, or is, made to identify property owners, other than by entry on the tax rolls when payments are made within a current year.³²

In *Spokane County ex rel. Sullivan v. Glover*,³³ the treasurer took the extreme position that, under the 1939 amendment, it was his mandatory duty to make a complete and exhaustive search each year and to notify all the real owners and taxpayers of each parcel of realty, else as to those owners who had not been notified, the tax might be held void. The court held that the duty of the treasurer to send notice was directory rather than mandatory,³⁴ and that it was sufficient if "the treasurer should make every reasonable effort, based upon information in his office, to notify the last known owners of the property assessed." Thus, the statutory "each taxpayer" was construed to mean only those who paid their taxes during the preceding year and the inadequate and customary notification of only those property owners was "a sufficient compliance with the statute as now amended."

The 1941 state legislature was not satisfied with the vitiating interpretation of the law in the *Glover* case. It provided:

"That the term 'taxpayer' as used in this section shall mean any person charged, or whose property is charged, with property tax; and the person to be notified is that person whose name appears on the tax roll herein mentioned; *Provided further*, That if no name so appears the person to be notified is that person shown by the treasurer's tax rolls or duplicate tax receipts of any preceding year as the payer of the tax last paid on the property in question."³⁵

It should be neither extremely expensive nor difficult for all property tax collectors to comply with this statute. The replacement of the present antiquated systems of tax accounting employed in some Washington counties by modern business methods of billing and bookkeeping, with the aid of mechanical equipment, probably would reduce administra-

³² It long has been the practice of the office of the Spokane County Treasurer to construe strictly the concept of proceeding *in rem*. Unless an inquiring taxpayer is someone the officials particularly desire to accommodate, or unless he has paid his taxes in the preceding year, that taxpayer can not get information about the taxes he owes by merely inquiring what taxes are due from him. Instead, to determine his real property tax liability he must know the description of each parcel of realty and inquire about each parcel.

³³ *Supra* note 28.

³⁴ *Id.* "A mandatory provision in a statute is one which, if not followed, renders the proceeding to which it relates illegal and void; a directory provision is one the observance of which is not necessary to the validity of the proceeding."

³⁵ Wash. Laws 1941, c 32.

tive costs, save time, prevent errors and facilitate the making of tax statements.³⁶

Perhaps departments similar to the King County Treasurer's index department could be established to provide a current record of ownership of taxable real estate in each county. The offices of county auditor and assessor could supply information which would be helpful to the treasurer in this respect. From the standpoint of both government and property owners, the following of the bare requirements of a proceeding *in rem* is not the most satisfactory means of real property tax administration. It would seem that a more business-like procedure which would invite prompt payment of all taxes and which would periodically remind all property owners to meet their payments would foster more complete tax collections than have prevailed.³⁷

The taxes charged against real property are a lien upon that property, and this lien attaches on the first day of January of the year in which the taxes are levied.³⁸ If the taxes are not paid on May 31 and November 30, as described above, they become delinquent. On the first business day after the expiration of eleven months following the delinquent date, the board of county commissioners determines whether the county should continue to carry the delinquent taxes on the books of the county, or whether certificates of delinquency should be sold to private individuals.³⁹ If it is deemed advisable to have a sale of such tax liens, notice is published in the official newspaper of the county that on the first day of the following month the county treasurer will issue certificates of delinquency to any person who pays the taxes and interest due upon delinquent real property.

The purchaser of a certificate of delinquency from the county does not get title to the delinquent property. He obtains a tax lien upon the realty, a statement of the property assessed, the years for which assessed, the amount of tax and interest due, the name of the owner,

³⁶ What has been done to improve property tax administration in some states has been described as follows: "During the past few years, with the development and improvements in tax accounting and statistical methods, better, quicker and less expensive procedures have been developed and are in successful operation. Systems have been simplified and wise uses have been made of mechanical equipment to accomplish the required results in an accurate, expeditious and economical manner. Superfluous work and details have been eliminated, short-cut methods have been put into use, and the efficiency of personnel and service have generally increased, while unit costs have been reduced." J. L. Jacobs, *Administration of The Property Tax* (1936) 183 ANNALS OF AMER. ACAD. POL. & SOC. SCI. 205. See also Fred Bradburn, *Tax Accounting and Billing By Machine* (1938) 53 AMER. CITY 65; R. W. Latham, *Machine Accounting Brings Quick New Service to Taxpayer* (1938) 52 AMER. CITY 49.

³⁷ See REPORT, CONN. STATE TEMP. COMM. TO STUDY TAX LAWS (1934), 328.

³⁸ See *supra* note 12.

³⁹ REM. REV. STAT. § 11274. For a summary of cases pertaining to certificates of delinquency, see ANNOTATED CODE, *supra* note 12, at §§ 241-258.

the time a deed may be had if not redeemed, and a guarantee of the county to which the tax is due that if the certificate be void the holder will be repaid the face value plus interest at the rate of 6 per cent per annum. Otherwise the certificate bears interest at the rate of 12 per cent per annum from the date of issue until redeemed.⁴⁰ The purchaser of the lien must pay the taxes that accrue on the property subsequent to the issuance of the certificate. The delinquent owner of the property (or others having an interest in the property) may redeem the property by paying to the county treasurer (for the benefit of the owner of the certificate of delinquency) the amount for which the certificate was sold plus interest at 12 per cent per annum thereon from the date of issuance.⁴¹ If a payment for redemption is made by other than the owner of the property, the payment inures to the benefit of the person having legal title, subject, however, to the right of the person making the redemption payment to be reimbursed by the person benefited.

The delinquent owner of property, against which certificates of delinquency have been issued to private investors, also has the right, any time before the expiration of three years from the original date of delinquency, to pay taxes and delinquent interest due for one or more subsequent years. If those taxes which accrue after the issuance of a certificate have been paid by the holder of the certificate, the county treasurer must forward the amount of payment made by the delinquent property owner to the holder of the certificate. The payment, of taxes which were imposed subsequent to the issuance of the certificate of delinquency, by the property owner, extends the time of foreclosure of the particular certificate of delinquency one year for each subsequent year's taxes paid.⁴²

At any time after the expiration of three years from the original date of delinquency, providing the delinquent owner has not paid subsequent taxes, the holder of the tax lien may notify the owner of the property that he is applying to the superior court of the county in which the property is located for a judgment foreclosing the lien against the property.⁴³ Upon request of the holders of certificates of delinquency,

⁴⁰ REM. REV. STAT. § 11275. An earlier provision for 15 per cent interest, Wash. Laws 1897, c. 71, was unsuccessfully challenged as usurious in *State ex rel American Savings Union v. Whittlesey*, 17 Wash. 447, 50 Pac. 119 (1897).

⁴¹ REM. REV. STAT. § 11279. The persons who, besides the owner, are generally permitted to make property tax payments include any who may have been assessed for the tax and any others whose interests would be affected injuriously by a sale, either because of liens they may have, or because of contract relations. The Court has held that a bona fide claim of an interest in the property taxed is sufficient to entitle one to pay taxes assessed thereon. *Childs v. Smith*, 51 Wash. 457, 99 Pac. 304 (1909); *Burget v. Caroline*, 31 Wash. 62, 71 Pac. 724 (1903).

⁴² REM. REV. STAT. § 11274.

⁴³ REM. REV. STAT. § 11276.

the county prosecuting attorney furnishes forms of application for judgment and prosecutes to final judgment all the actions brought for the foreclosure of tax liens.⁴⁴ Of course, the lien holder may employ additional counsel or foreclose by himself if he desires to do so. The foreclosure of the tax lien gives the holder of the certificate tax title to the land upon which the certificate was held.

The sale of certificates of delinquency to private investors appears to have many advantages. The interests of taxing districts are served: first, because tax receivables are converted into revenues available for government expenditure by the substitution of private credit for the public credit forced by delinquency; second, because payment of delinquent taxes by property owners is stimulated, since property owners apparently do not care to have the lien on their property fall into private hands;⁴⁵ and, third, because the payment of current taxes by either the lien holder or the property owner is assured. The lien buyer receives a lucrative rate of interest for paying delinquent taxes and interest charges and the risk of his investment usually is not great. The rights of the delinquent property tax owner are not prejudiced except insofar as the rate of interest for the certificate of delinquency is higher than the governmental penalty for delinquency and the period before foreclosure of the lien is shorter than when held by the county.

Nevertheless, discussion with various county tax collecting officials indicates that the law providing for sales of certificates of delinquency to individuals is generally regarded as a "dead letter". Such certificates are rarely sold. In a study of tax delinquency of rural real estate in seven Washington counties, it was discovered that during five years, 1928-1932, such tax liens were sold on less than 10 per cent of the delinquent acreage.⁴⁶ In the years since 1933 it appears that almost no certificates have been sold to individuals.⁴⁷

The failure in recent years of the private sales of tax liens to function as a part of property tax collection procedure may be attributed to several elements of the local fiscal situation. In some counties probably ample funds have been available, and thus there has been no need to realize immediate revenue from delinquent tax receivables. Much more significant has been the reluctance of county officials to make these sales because they felt it more advisable to let the interest on delinquent property taxes accrue to the taxing units rather than to pri-

⁴⁴ REM. REV. STAT. § 11277.

⁴⁵ S. E. Leland, *Delinquency in Illinois* (1935) 28 PROCEEDINGS, NAT. TAX ASS'N 267, 275; A. U. Rodney, *The Tax Lien Investor's Relation to the Collection of Delinquent Taxes* (1936) 3 LAW & CONTEMP. PROB. 432.

⁴⁶ U. S. BUREAU OF AGRICULTURAL ECONOMICS, *TAX DELINQUENCY OF RURAL REAL ESTATE IN SEVEN WASHINGTON COUNTIES, 1928-33* (1935), 1-3.

⁴⁷ WASHINGTON STATE PLANNING COUNCIL, *REPORT OF SUBCOMMITTEE ON LAND SETTLEMENT* (1938) 9.

vate individuals.⁴⁸ In some instances such sales have not been made because the local officials have not been fully aware of their powers in this respect. On the other hand, a factor limiting sale of tax liens has been a relative dearth of buyers. In part this lack of investors may be ascribed to the general credit stringency of depression years. More important in curtailing the demand for certificates has been the fear of the lien buyers that they would get the delinquent property rather than reimbursement of the loan. Few lien buyers have wanted tax title to delinquent property which may be deflated in value, or burdened with more special assessments than its current value justifies.

Despite the weaknesses in this phase of real property tax collection procedure, it seems desirable that the device of selling private certificates of delinquency be continued and encouraged. During much of its history, this method of realizing tax revenues has operated successfully.⁴⁹ It should not be the purpose of the tax collecting government to benefit from the delinquency of property through high interest charges. The government rather should be concerned with the adequacy of its collection machinery to produce punctual and complete tax collections.

Inasmuch as certificates of delinquency are rarely issued at the present time to private investors, the measures provided for the enforcement of an individual certificate holder's lien are seldom employed. Usually the liens against delinquent real property remain in the possession of the county. After the property remains on the tax rolls for five years from the date of delinquency, the county treasurer issues certificates of delinquency on such property to the county.⁵⁰ These liens are foreclosed in the name of the county in the same proceedings that are had for an individual certificate holder. The county, however, may use one general certificate for delinquency and give one general notice for all

⁴⁸ This attitude arose when it became apparent that tax-lien investors were selecting only those delinquent properties which seemed certain to be redeemed before foreclosure, and were leaving the less desirable delinquent properties to the counties. In this way the private buyers of tax liens were usually reimbursed for their investment plus 12 per cent per annum, either through redemption by the property owner or by foreclosure. Meanwhile, the poorer pieces of property under long-run delinquency which were left to the counties went unredeemed, and often could not be sold for the amount of taxes and interest at foreclosure sale. As a result, county officials felt that the best interest of the county would be served by keeping the liens on the more valuable delinquent parcels. That the amount of interest collected for the county current expenses on county-held liens is often substantial is illustrated by the following collections of interest in King County: 1937, \$534,000; 1938, \$520,000; 1939, \$335,000.

⁴⁹ See W. H. WINFREE, *DELINQUENT TAXES AND TAX TITLES* (1925). For a recent discussion of the advantages of selling tax liens, see R. S. Cushman, *Receivership Versus Sales as a Collection Device*, *ILLINOIS TAX PROBLEMS* (1940), 210.

⁵⁰ REM. REV. STAT. § 11278.

property by publication.⁵¹ All persons interested in any of the property involved are made co-defendants in the action. Under the statute, the court is directed to proceed in a summary manner in these cases, although the taxpayers may present any defense which they may have. The proceedings in the superior court proceed to judgment for the amount of taxes due, interest, and costs, together with an order of sale of the property. The county treasurer, after receiving the order and judgment of the court, gives notice of tax sale⁵² and proceeds to sell the real property to the highest bidder at a public sale.⁵³ The holder of the tax lien is paid principal and interest, and to the purchaser of the real property the treasurer issues a tax deed.⁵⁴

The various steps of Washington property tax procedure which have been discussed are presented in a chronological summary in the following table. This calendar shows the bare minimum of time in which the various phases of the administration could be achieved in accordance with the tax law. In practice there is often a lapse of time between the date when a particular measure legally can be put into effect and the date when the private individual or the administrative machinery is prepared to perform that function.⁵⁵ For that reason the period of collection, from the date when taxes become delinquent to the issuance of a tax title on delinquent property, is generally somewhat in excess

⁵¹ *Id.* Notice and summons may be served, or notice may be given exclusively by publication in the official newspaper of the county in one general notice, which describes the property in the manner described on the tax rolls. The county treasurer also mails a copy of the published summons, within fifteen days after its first publication, to the treasurer of each city or town within which any property involved in a tax foreclosure is situated.

⁵² REM. REV. STAT. § 11281. To insure a fair sale, the treasurer gives notice of the time and place where the sale is to be made for ten days successively, by posting notice thereof in three public places in the county, one of which must be in the office of the treasurer.

⁵³ Prior to 1937, the sale was made to the person offering to pay the amount of the court order for the least quantity of land from the easterly side of the tract or lot, and the remainder was discharged from the lien. The law is now amended so that any area may be sold as a unit to the best bidder, and the excess over the amount ordered is returned to the recorded owner. Wash Laws 1937, c. 118, § 1, REM. REV. STAT. § 11281. See OPS. ATT'Y GEN. (1937-38), 366.

⁵⁴ Real property upon which certificates of delinquency have been issued to the county may be redeemed any time before the issuance of a tax deed by the payment (for the benefit of the person owning the property) of the delinquent taxes, interest, costs incurred for publication, etc. REM. REV. STAT. § 11279. Special provisions are made for property of minors and insane. REM. REV. STAT. § 11280. Appeals from the judgment of the superior court may be taken to the State Supreme Court. REM. REV. STAT. § 11282. As to redemption by city of county tax-title land before resale by the county, see REM. REV. STAT. § 9393.

⁵⁵ King County is one of the Washington counties which has most expeditiously enforced tax collections during the past few years. Ralph Stacy, County Treasurer, told the author that no certificates of delinquency have been sold in recent years to private persons. King County foreclosed in 1940 on the delinquent real property tax rolls of 1932 and 1933. In 1941, King County foreclosed on the 1934 and prior delinquent rolls. In

of three years for privately held tax liens and in excess of five years for county held liens.

ILLUSTRATIVE PROPERTY TAX CALENDAR

<i>Date</i>	<i>Act</i>
1939 January 1	Assessment of real and tangible personal property. Personal property and lien attaches to specific personality at time of listing and valuation by assessor.
1939 July, 1st Monday	County Board of Equalization reviews assessments of property within county.
1939 August 15	State Board of Equalization adjusts county assessment ratios and assesses interstate and intercounty utilities, and levies state property taxes.
1939 October, 2nd Monday	Board of County Commissioners certify to county assessor the amount of taxes levied in county.
1939 December 15	County assessor delivers tax rolls to county auditor.
1940 January, 1st Monday	County auditor delivers tax rolls to county treasurer.
1940 February 15	County treasurer proceeds to collect taxes; sends tax statements.
1940 March 15	Taxpayers who pay current tax in full on or before this date receive a 3 per cent rebate.
1940 May 31	One-half of real and personal property taxes are due. If real property tax is \$2.00 or less, or if personal property tax is less than \$10.00, all of these taxes are due. If one-half of realty taxes are not paid, one-half becomes delinquent with interest at 10 per cent per annum. If one-half of the personal property tax is not paid, all the taxes upon that personal property become delinquent with interest at 10 per cent per annum. Personal property may be distrained immediately when personal property taxes become delinquent.
1940 November 30	Second half of taxes is due and payable. If not paid tax becomes delinquent with interest at 10 per cent per annum.
1941 January, 1st Monday	County treasurer balances tax rolls and reports to the county auditor the amount of taxes collected and delinquent and the personal property taxes deemed uncollectable.
1941 May, 1st business day*	County commissioners determine whether sale of certificates of delinquency on unpaid realty taxes to private investors is in the best interest of the county. Certificates bear 12 per cent interest from issuance to redemption or foreclosure lien.

- 1943 June 1* Private holders of certificates of delinquency may institute foreclosure proceedings for satisfaction of tax lien.
- 1945 June 1* County may institute foreclosure proceedings to satisfy tax liens being held by the county. Floating lien for real property taxes attaches at time of levy.

*Assuming real property taxes due May 31, 1940, become delinquent.

As to statutory procedure, one serious defect which limits the effectiveness of tax enforcement is that the period for determination of tax liability and for collection of taxes is too long drawn out. This unnecessary extension of time appears at almost every stage of the procedure. Reference to the above calendar of property tax procedure will show that for one-half of taxes on property generally a period of 17 months, and for the other half a period of 23 months, elapses between the initiation of assessment and delinquency. The length of these periods is more than is required for the proper performance of the functions included therein. At least 22 of the 48 states specify nine months or less from the time of assessment to the time taxes are due, and taxes generally become delinquent at least within a year of the assessment date.⁵⁶

An earlier writer has very succinctly indicated the fallacies in the theory behind the longer periods allowed in some states such as Washington:

“Implicit in the long tax-determination interval is the assumption that the tax, once levied, is safe for the treasury, because of the lien on the property. Relying upon this safety, the administration could proceed by leisurely stages, and protect itself by interest and penalties high and heavy enough to reimburse it for interest paid on money borrowed to offset the deferred payment or non-payment of delinquent taxes. But the lien is in fact not safe, on any class of property. Taxes on personal property, tangible as well as intangible, remain unpaid in large amounts because the property, present at the assessment, has been moved away before the delinquent day. Real estate may be ‘skinned,’ by removing timber or minerals during the interval; laws making such skinning illegal are difficult to enforce, and in any case touch only the most obvious cases. Even in case of land and fixtures, the value, the essence of property for purposes of taxation, may vanish, as is all too frequently demonstrated in the taxes unpaid. Shortening the tax-determining interval would reduce

Spokane County, according to Chief Deputy G. F. De Graff, there was no county foreclosure of tax liens during 1941. In 1942 the county will foreclose on 1934 and prior delinquencies. Other Washington counties probably are no more prompt in the foreclosure of county-held tax liens. Grays Harbor is an extreme example of delay in county foreclosure. Between 1931 and 1939 no foreclosure sales were held. Thus, taxes delinquent since 1926 were not foreclosed upon until 1939.

⁵⁶ TAX SYSTEMS, *supra* note 9, at 125.

these hazards to the tax lien.

"What is a reasonable interval for the determination of the tax liability of individual taxpayers, with respect to particular parcels of real property? If two months be allowed for the assessment, one for the local review, one for the preparation of the abstract for delivery to the state board of equalization, two for the extension of the taxes on the roll, and one for payment prior to the delinquent date, all the necessary functions of the tax-determination process would seem to be allowed for, and the total time amount to only nine months. This happens to be about the interval used in Wisconsin, and would seem ample, if the frills be eliminated. A number of states do the job in less time."⁵⁷

The State of Oregon recently modified its property tax procedure by an act which was strongly supported by the tax commission of that state. The essence of the measure was a shortening and adjustment of the periods of time involved in administration to the following calendar: property assessed as of January 1; the county boards of equalization convene on the second Monday in May; the state board of equalization convenes on the second Monday in June; all tax levies made by July 31; taxes collected in quarterly installments on November 15, in the same calendar year as the January 1 assessment date, and February 15, May 15 and August 15 of the following year.⁵⁸ This revision was designed to change the leisurely tax procedure evolved in the "horse and buggy" days to one more in harmony with modern conditions of transportation, communication and tax accounting technique.⁵⁹

Property tax procedure in Washington might be made more effica-

⁵⁷ Jens P. Jensen, *The Tax Calendar and the Use of Installment Payments* (1936) 3 LAW & CONTEMP. PROB. 354. See also C. P. White, *Tax Delinquency in Tennessee—Legislative Aspects* (1934) 12 TENN. L. REV. 71; CONN. STATE TEMP. COMM., *supra* note 37, at 332: "Experience shows that the assumption that a tax secured by lien is as good as a collected tax is entirely unwarranted."

⁵⁸ Ore. Laws, 1941, c. 440. This proposal, in its essential particulars, is in conformity with the recommendations for a model tax collecting procedure of the Committee of the National Tax Association on Tax Delinquency, (1932) 25 PROCEEDINGS, NAT. TAX ASS'N 326, and with the Model Real Property Tax Collection Law drawn up by a committee of the National Municipal League, (1939) 24 NAT. MUN. REV. 291. Cf. CARL H. CHATERS, *THE ENFORCEMENT OF REAL ESTATE TAX LIENS* (1928).

⁵⁹ Charles V. Galloway, chairman of the Oregon State Tax Commission, commented upon this law prior to its enactment, in an unpublished statement, as follows: "All the important features of House Bill No. 107 were recommended unanimously by the Interim Commission on State and Local Revenues, in its report to the governor and the Fortieth Legislative Assembly. Further, this bill is recommended by the Association of Oregon Counties, by county assessors and tax collectors, by the Legislative Committee of the Portland Realty Board and by other groups and individuals who have given thoughtful and unbiased consideration to its provisions.

"From 22 years of intimate contact with property tax legislation and administration in Oregon, and from close studies of such legislation and administration covering a much longer period, let me say, seriously and categorically, that this House Bill No. 107, if enacted, will straighten more

cious by adopting a similarly shortened tax calendar with the effective dates carefully geared to the fiscal needs of the taxing jurisdictions. There is a considerable body of opinion among tax students and administrators holding, not only that intervals of time between successive phases of procedure be shortened, but also that collections would be expedited by provision for optional payment of current taxes by quarterly installments.⁶⁰ By proper synchronization of payment dates to government needs it would be possible to provide for a fairly even flow of incoming funds, which would start with or slightly before the beginning of the government fiscal year and at the same time obviate the need for the present 3 per cent rebate for early payment. More frequent payments would also be in accord with the principle of convenience for the taxpayer.⁶¹ A large proportion of property owners receive their annual income on a monthly or weekly basis rather than at one particular time of the year. Generally, it is more convenient for taxpayers receiving monthly income to pay their taxes in several installments instead of in an annual lump payment. While quarterly property tax payments would involve extra administrative work and cost, it has been demonstrated that these disadvantages can be minimized by the introduction of modern, mechanized systems for recording, billing, collecting and receipting.⁶²

The shortening of the tax determining and collection intervals probably should be accompanied by a reduction of the time required in Washington for the enforcement of the tax lien following delinquency. The three-year period for privately held liens and five years for county-held liens between delinquency and foreclosure seems excessive. Only five other states permit liens to run as long before foreclosure as do county-held liens in Washington.⁶³ Eleven of the states provide only one year during which delinquent property can be redeemed following

kinks and avoid more detours in property tax administration than ever has been accomplished by any measure or combination of measures presented to any legislative assembly in this state. It represents the most constructive effort that has ever been made in Oregon to tune the property tax machine to its maximum present possibility of equity and efficiency and put it out for operation, not on the present crooked and rutty road, but on a broad, straight, smooth highway in property taxation."

⁶⁰ See Carl H. Chatters, *Installment and Other Tax Collection Methods*, ILLINOIS TAX PROBLEMS (1940), 255; T. R. Sargeant, *Installment Payment of Taxes* (1938) 11 MUN. FINANCE 75; P. B. Aex, *Rochester Collects Its Taxes* (1937) 10 MUN. FINANCE 8; Jensen, *supra* note 56, at 361; Raymond Edmonds, *Installment Payment of Taxes* (1936) 9 MUN. FINANCE 25; CONN. TEMP. COMM., *supra* note 37; JENS P. JENSEN, *PROPERTY TAXATION IN THE UNITED STATES* (1931), 312.

⁶¹ This principle is clearly recognized in provisions for the collection of Federal Social Security and income taxes and of Washington sales and other excise taxes.

⁶² Edmonds, *supra* note 60; H. L. Lutz, *Some Essentials of Good Tax Administration* (1936) 29 PROCEEDINGS, NAT. TAX ASS'N 325; Upson, *supra* note 5. See also, *supra* note 36.

⁶³ TAX SYSTEMS, *supra* note 9, at 125.

private purchase of the tax lien.⁶⁴

One keen student of the problem recommends that all tax liens be sold two and one-half months after the date of delinquency of the final installment of property taxes.⁶⁵ One year after purchase of the lien, the holder would be permitted to institute proceedings to foreclose upon it, the foreclosure sale being held two months later. After two more months all right of redemption from tax sale would be barred except for fraud, previous payment of taxes, or illegal assessment. All right of redemption would be completely barred after ten more months, or within two years and four and one-half months of the delinquency date of the final installment of taxes.

The Committee of the National Tax Association on Tax Delinquency recommended that the delinquent property itself, rather than a lien, should be sold through a foreclosure sale six months following the delinquency date of the final tax installment.⁶⁶ The former owner would be given six more months to redeem or bring suit for error. Thus one year after the last installment of property taxes became delinquent the enforcement procedure would be completed.

A MODEL REAL PROPERTY TAX COLLECTION LAW drawn up by a committee of the National Municipal League, provides for a "sale of the property" (actually the tax lien) five months after the date of delinquency of the fourth and final installment.⁶⁷ The property may be redeemed at any time within one year of the tax sale. At the end of that year the lien holder may bring action to foreclose the right of redemption. Hence, under this law, the delinquent property owner

⁶⁴ *Id.* One writer has described the need for a "reasonably prompt foreclosure" in the following manner: "If one owns property the original cost of which has not been recovered or property which is not yielding an annual income, his promptness in paying taxes is likely to be determined more by the diligence with which collections are prosecuted than by his financial circumstances. A reasonably prompt foreclosure would force him to decide whether to raise the taxes or surrender the property. Even where delinquency is involuntary, less hardship would result from prompt and vigorous enforcement of the tax lien than might be supposed. Taxes on productive property could generally be paid out of income if the owner knew in advance that there was no alternative and made preparations. The owners of unproductive or deferred-yield property must, of course, pay the taxes out of other income or out of capital. Presumably he expected to do this when he acquired the property. If his resources fail him in a particular year, he should have no difficulty in borrowing the amount of the taxes with the property as security. If the property were already encumbered, the mortgage holder would, of course, have to advance the taxes to protect his equity. The government would either get the taxes or the property; it would cease being an extender of credit. The effect viewed from the taxpayer's angle would be that some properties owned by people operating on a shoe-string would be transferred to stronger shoulders and some deferred-yield properties would revert to the state or county." Paul W. Wager, *Utilization of Reverted Tax Delinquent Lands in Rural Areas* (1936) 3 LAW & CONTEMP. PROB. 454.

⁶⁵ Chatters, *supra* note 58.

⁶⁶ *Supra* note 58.

⁶⁷ *Id.*

might lose his property in slightly more than 18 months from the time he should have paid the fourth installment of his taxes.

On the other hand, a period of only two years or less before foreclosure of tax liens appears to some tax administrators unduly to prejudice the interest of delinquent property owners. Tax Commissioner T. S. Hedges, who has specialized in property tax administration during his eight years on the Washington State Tax Commission and who, as a wheat farmer, has an agrarian point of view, believes that a fairly long redemption period should be afforded delinquent taxpayers. Commissioner Hedges emphasizes that the recent tax delinquency crisis was in large part the result of the high level of property taxation prevailing in the early part of the last decade and of the shrinkage of income from agriculture and other occupations. There is no direct relationship between current income of property owners and their property taxes. A lien enforcement procedure as summary as that proposed by the National Tax Association might deprive some owners of their property, whereas a longer period of grace might permit them to strengthen their financial position and prevent the tax reversion of their holdings.

In any event, contrast between these model programs and the present procedure in Washington for the enforcement of property tax liens is striking. It is suggested that the shortening of the time required for the foreclosure of both county-held and privately held tax liens in this state probably would be a helpful step in creating a more effective collection procedure. Unless inability to pay taxes when due is the result of an emergency which is not likely to recur next year and the following year, postponement of payment can be of no real, permanent help to the owner. If that inability is attributable to such an emergency, special treatment may be provided rather than to have the regular collection procedure lax enough to cover all such cases.

A tax deed executed by the county treasurer at a tax judgment sale is declared by the statute to be *prima facie* evidence that the tax was properly imposed and was not paid before the issuance of the deed, that the real property had not been redeemed and had been sold for taxes, that the grantee in the deed was the purchaser or assignee of the purchaser, and that the sale was conducted according to law.⁶⁸ The judgment for the deed to real property sold for delinquent taxes estops all parties from raising any objections thereto that existed prior to the judgment and which could have been presented as a defense to the application for judgment. Under this section of the law, as interpreted by the courts, the policy is to make a tax title a favored title equivalent to a decree quieting title.⁶⁹ Only by proof that the tax had been paid

⁶⁸ REM. REV. STAT. § 11288. See ANNOTATED CODE, *supra* note 12, at § 255, for brief summaries of court decisions interpreting this statute.

⁶⁹ Sparks v. Standard Lumber Co., 92 Wash. 584, 159 Pac. 712 (1916).

or that the property was not liable for the tax may the conclusive effect of tax foreclosure judgment be overcome.⁷⁰

At all sales of property for which certificates of delinquency are held by the county and at which no other bids are received, the county is considered the bidder for the full area of each parcel to the amount of all taxes, interest and costs due thereon.⁷¹ In these instances the county acquires title to the property as absolutely as if purchased by an individual. This property is then exempt from further taxation.⁷²

⁷⁰ Shultz v. Kolb, 189 Wash. 187, 64 P. (2d) 72 (1937).

⁷¹ REM. REV. STAT. § 11290.

⁷² REM. REV. STAT. § 11292. Notwithstanding this section, in view of provisions of the irrigation statute, property acquired by county for general taxes is held liable for future irrigation district assessments. *State ex rel Clancy v. Columbia Irr. Dist.*, 121 Wash. 79, 208 Pac. 27 (1922). See REM. REV. STAT. § 4439-4 for disposition of tax-title property acquired subject to drainage, diking and sewerage assessments. The general situation regarding priorities between governmental liens on property has been summarized by Donald Simpson, a member of the Washington State Bar, as follows: The priorities of liens for general taxes varies inversely with the time sequence of their creation. The last general tax lien to arise is superior to any prior general tax lien. *Whatcom County v. Black*, 90 Wash. 280, 155 Pac. 1071 (1916). As between local assessment liens, apparently there are no priorities. The court ruled in *Hollenbeck v. Seattle*, 136 Wash. 508, 240 Pac. 916 (1925) that all local assessment liens are of equal validity. The reason that the inverse-priority rule does not obtain with respect to local assessment liens is that special assessments are not made for the purpose of raising money to sustain the government. The rule of priority between local improvement assessment liens and general tax liens has varied. Prior to 1911, a general tax lien held absolute superiority over a local assessment lien. Not only did the cases support the right of the holder of a certificate of delinquency for general taxes to foreclose his certificate without first paying local assessments, *McMillan v. Tacoma*, 26 Wash. 358, 67 Pac. 68 (1901); *Keene v. Seattle*, 31 Wash. 202, 71 Pac. 769 (1903); *State ex rel Craver v. McConnaughey*, 31 Wash. 207, 71 Pac. 770 (1903), but the court held that the foreclosure sale of a certificate of delinquency wiped out the local assessment lien on the land. *Ballard v. Way*, 34 Wash. 116, 74 Pac. 1067 (1904); *Ballard v. Ross*, 38 Wash. 209, 80 Pac. 439 (1905). A clean tax title was also created by resale after the county had bid in the property at its own foreclosure sale. *Penn Co. v. Tacoma*, 36 Wash. 656, 79 Pac. 306 (1905). The Local Improvement Act of 1911 included a provision that individual certificate holders should either pay all local assessments and include them within the foreclosure action or foreclose their certificates subject to the lien for local improvement assessments. Wash. Laws 1911, c. 98, § 40, REM. REV. STAT. § 9393. In the face of constitutional objections this statute was held valid as applicable to certificates of delinquency for general taxes issued before 1911. *Holzman v. Spokane*, 91 Wash. 418, 157 Pac. 1086 (1916); *Everett v. Adamson*, 106 Wash. 355, 180 Pac. 144 (1919). The effect of this statute was to give the local assessment lien superiority over the lien of the holder of a certificate of delinquency for general taxes. *Lawrence v. Tacoma*, 103 Wash. 86, 173 Pac. 1017 (1918); *Seattle v. Everett*, 125 Wash. 39, 215 Pac. 337 (1923) (general taxes became delinquent first); *Seattle v. Equitable Bond Co.*, 126 Wash. 111, 217 Pac. 721 (1923) (local improvement taxes became delinquent first); *Investment Co. v. Tacoma*, 132 Wash. 645, 233 Pac. 287 (1925) (local improvement bond holders brought their own action to foreclose). The local assessment lien, in the same manner, became superior to a tax title depending upon the foreclosure decree of the individual certificate. *Schroeder v. Raymond*, 117 Wash. 238, 200 Pac. 1092, 204 Pac. 180 (1921). The local assessment lien also holds priority over a tax title purchased from the county at the county's foreclosure sale. *Tacoma v. Fletcher Realty Co.*, 150 Wash.

The disposition of the real estate to which a county has taken tax title as a result of enforcing a property tax lien is also part of the taxing process.⁷³ Tax-title property in the possession of a county is considered to be held in trust for the state and the various taxing districts. The proceeds that come to the county through the sale, lease, or other disposition of this property are to be justly apportioned to the various taxing districts, within which the property lies.⁷⁴

Management of realty that has tax-reverted to a county is entrusted to the county commissioners. Should the county commissioners deem it for the best interest of the county, they may order property sold any time after a county receives a tax deed to real property.⁷⁵ The commissioners may combine any lots or tracts that are subject to sale into reasonable units which will work to the advantage of the county. The commissioners designate which lots are to be sold, establish a minimum price for each unit and direct the county treasurer to sell. Notice of the sale of the property and of the minimum price is published by the treasurer.⁷⁶ The property is then sold to the highest bidder at the sale, the purchaser receiving a deed to the property.⁷⁷

The method used in King County to return tax-title property to private ownership is illustrative of an effective system which may be worked out in conformity with the tax statutes. King County Com-

33, 277 Pac. 43 (1928) *rev'g*, 146 Wash. 671, 264 Pac. 997 (1928). But once the county itself bids in the land at its own foreclosure sale, it may resell the land for any price it wishes, *State ex rel Friedlander v. Dunning*, 132 Wash. 622, 233 Pac. 8 (1925), completely free from local assessment liens, *Maryland Realty Co. v. Tacoma*, 121 Wash. 230, 209 Pac. 1 (1922); *Collins v. Spokane*, 123 Wash. 156, 212 Pac. 150 (1923); *State ex rel Friedlander v. Dunning*, *supra*; *Moe v. Brumfield*, 182 Wash. 608, 47 P. (2d) 847 (1935), provided, of course, that the proper procedure has been followed in the action to foreclose the county certificates. In respect to this property procedure see: *Everett v. Morgan*, 133 Wash. 225, 233 Pac. 317 (1925); *Perkins v. Kennewick*, 143 Wash. 691, 254 Pac. 458 (1927); *Wilbur v. Van Vechten*, 167 Wash. 22, 8 P. (2d) 426 (1932). Cf. *First National Bank v. Pasco*, 138 Wash. 309, 244 Pac. 975, 246 Pac. 304 (1926). See also *State ex rel Spokane v. DeGraff*, 143 Wash. 326, 255 Pac. 371 (1927); *Spokane County v. Certain Lots in Spokane*, 153 Wash. 462, 279 Pac. 724 (1929); *Spokane County v. Certain Lots in Spokane*, 156 Wash. 393, 287 Pac. 673 (1930); *Tacoma v. Pierce County*, 1 Wn. (2d) 310, 95 P. (2) 1029 (1939).

⁷³ REM. REV. STAT. § 11294. For a discussion of the powers of the county over tax-reverted lands, see *Sasse v. King County*, 196 Wash. 242, 82 P. (2d) 536 (1938).

⁷⁴ REM. REV. STAT. § 11293. Any surplus remaining after general tax funds and those special funds entitled to a share in the proceeds are fully satisfied does not belong to the former owner of the property, but should be distributed to the general tax funds on the above-quoted basis. ORS. ATT'Y GEN. (1938). See ANNOTATED CODE, *supra* note 12, at § 264.

⁷⁵ REM. REV. STAT. § 11294.

⁷⁶ *Id.* Notice is to be published once a week for three consecutive weeks in a county newspaper.

⁷⁷ The sale is held at the front door of the county court house between 9 a.m. and 4 p.m. and may be adjourned from day to day. The sale may be for cash, or on a contract requiring 20 per cent in cash and the balance in ten annual installments, with interest of 6 per cent per annum on deferred payments.

missioner R. H. Fluent wrote early in 1940 that "during the past decade some 50,000 parcels of tax-title property have accumulated in the possession of King County, and another 12,000 parcels will be added this year."⁷⁸ To cope with this large volume of tax-reverted real estate, the county commissioners, in cooperation with the treasurer's office, established a King County Property Department. As a result, "in 1939 this department sold 6,910 parcels of land for \$1,262,917, more in one year than in all the previous 20 years combined."⁷⁹ In the first four years of its operation, August, 1937, to August, 1941, this department disposed of 23,606 parcels of tax-reverted property for \$4,198,508.40. These receipts amounted to \$1,135,566.53 more than the taxes and interest which the county bid in at the foreclosure of these properties.

The procedure for transferring these properties to private owners is in all instances started by the person or persons wishing to acquire the county-held property. An application indicating the property desired is made to the Property Department with an offer of the amount the person is willing to pay for the real estate. The particular property is appraised by agents of the Property Department, or, in the case of more valuable business property, by an independent three-man realty board. If the offer made by the person applying for that property equals or exceeds the appraised value, or if that person is willing to raise the offer to the appraised value, the application is sent to the board of county commissioners for approval. The latter board determines whether the property should be put up for sale, although it generally approves the decision of the Property Department. The county treasurer sells the property in the manner previously discussed. The average lapse of time between application by an interested party and sale by the treasurer to the highest bidder is about six weeks.

While under this plan for disposing of county tax-title realty, the prospective purchaser must take the initiative before any property is offered for sale, the Property Department has fostered sales of tax-reverted property by acquainting the public with the opportunity to buy tax-title lands. Signs have been posted on county tax lands, lists have been mimeographed describing property up for sale, and maps have been prepared and distributed which identify tax-title lands in various districts.⁸⁰

Nevertheless, there are large numbers of tax-title parcels remaining in the possession of King County on which no applications have been

⁷⁸ R. H. FLUENT, *HOW TO ACQUIRE KING COUNTY TAX TITLE REAL ESTATE* (1940), 2. For the experience of Portland, Oregon, with a real estate department, see R. E. Riley, *Getting Delinquent Properties Back on the Tax Roll* (1938) 11 *MUN. FINANCE* 80. See also Wade S. Smith, *Increased City Land Holdings Present Management Problem* (1936) 25 *NAT. MUN. REV.* 621.

⁷⁹ Fluent, *supra* note 78, at 3.

⁸⁰ *Id.* at 13.

made and which, under the prevailing system, apparently will not be ordered sold by the board of county commissioners. More than 35,000 parcels of real estate remained in the ownership of the county in September, 1941, some of them having been county-owned since 1901.⁸¹

The method employed in King County is followed in a general way by the other counties, although none of the others have gone as far in establishing a separate real estate department, nor in the encouragement of sales of tax-title lands. In all counties the sale of tax-reverted property depends upon application for purchase by some interested person.

In addition to the authority to sell tax-title property, the county commissioners of any Washington county may lease such property when it is suitable for mining if they deem it to be in the best interest of the county.⁸² A lease is made to the highest bidder at a public auction, with or without option to purchase, and requiring the payment of royalties upon terms set by the county commissioners.

Provision also has been made for certain tax-reverted lands in the ownership of Washington counties to be acquired by the state. If these lands fall within the classification described by statute as suitable for state forest lands, and if the State Forest Board deems those lands necessary in the development of its forestry program, the counties, upon the demand of the State Board, must deed those properties to that Board.⁸³ Lands thus acquired from counties are held in trust and administered by the State Board. After expenses of administration and a ten per cent allotment for forest development are taken out, the remaining income derived from the lease of these lands or sale of products therefrom is returned to the counties.

The disposal of tax-reverted real estate is the final step in the enforcement of the property tax-lien. If the enforcement procedure runs its full course, generally a period of eight or nine years, and often longer, elapse between the date when the tax lien attaches and the date when the taxes levied against property are finally available to the taxing governments.

During the tax delinquency crisis of the 1930-40 economic depression the usual methods of enforcing property taxes in Washington were temporized by several laws designed to afford relief to delinquent property owners as well as to stimulate the payment of tax arrears. This type of relaxation of collection procedures was not confined to Wash-

⁸¹ Estimated by I. L. Sunde, King County Treasurer's office. With the exception of property in the Denny Regrade, on which the county commissioners have refused to accept bids, the remainder of the tax-reverted property is, in the main, undesirable land of little value. From this land the county probably will not be able to recoup the amount of delinquent taxes for which the land was bid in at foreclosure.

⁸² REM. REV. STAT. § 11312. At least 30 days' notice of the time and place where the lease will be offered must be given by two publications in some weekly county newspaper.

⁸³ REM. REV. STAT. § 5812-3b.

ington. By 1933 twenty-seven of the states had adopted some sort of so-called remedial legislation.⁸⁴ These laws were generally tax collection moratoria which fall more or less regularly into the following groups: "laws extending the original due date, laws extending the date the penalty attaches, laws reducing the amount of the penalty or interest or both, laws postponing tax sales, laws authorizing installment payment of back taxes, laws adjusting the date and terms of redemption after sale but prior to foreclosure, laws altering the terms of foreclosure, and laws compromising the amounts due."⁸⁵

The Washington Legislature that met in January, 1933, enacted a moratorium providing that no county should institute or further prosecute any tax foreclosure proceedings until after March 1, 1934.⁸⁶ Since very few certificates of delinquency were being sold to private investors, this law practically stopped proceedings against delinquent real property to enforce tax collection. Another provision was passed by this legislature which remitted all of the accrued interest on delinquent real and personal property taxes for 1931 and prior years if the taxes for one or more of these years, or one-half of the taxes for any of these years, were paid in full at any one time prior to March 1, 1934.⁸⁷ An additional allowance of a five per cent rebate was made for the full payment by November 30, 1933, of any delinquent tax for 1931 or any prior year or years. Thus, any property owner whose taxes had been delinquent five years or more was granted an additional period of grace in which he might redeem his property before foreclosure. If, before December, 1933, any delinquent taxpayer could pay delinquent taxes for years prior to 1932 he would not only escape any penalty for delayed payment, but would also receive a rebate of five per cent of his delinquent taxes.

The regular session of the Legislature in 1933 also provided an easy-payment plan for the liquidation of real property tax arrears. The county treasurers were authorized to accept signed agreements from property owners who had realty taxes more than six months delinquent. These agreements, commonly called twenty-payment contracts, stipulated that the property owner should pay his 1933 and subsequent current taxes before they became delinquent, and also pay, on or before May 31, 1933, not less than one-twentieth of the total taxes which were delinquent on his property. Interest of six per cent per annum was to run against the unpaid balance of delinquent taxes from the date of the agreement. The remaining unpaid balance of delinquent taxes, plus

⁸⁴ Note, *Tax Delinquency* (1934) 1 TAX POLICY 5.

⁸⁵ Wade S. Smith, *Recent Legislative Indulgences to Delinquent Taxpayers* (1936) 3 LAW & CONTEMP. PROB. 371.

⁸⁶ Wash. Laws 1933, c. 53.

⁸⁷ *Id.* This provision did not apply to property against which a judgment had been entered or on which a certificate of delinquency was held by a person other than the county.

the interest, was to be paid in nineteen semi-annual installments. All other penalties and interest upon these delinquent taxes were suspended. If two successive payments of the delinquent taxes were not paid on or before the dates they were due, or if any installment of current taxes became delinquent for twelve months, the agreement was void. If the agreement became void, the original tax and interest charge for delinquency were to be restored to the tax rolls and the county was to institute foreclosure proceedings. However, as long as the terms of the twenty-payment contract were met, the county was prohibited from foreclosing.

Besides mitigating the statutory requirements pertaining to the payment of delinquent taxes, the 1933 Legislature also extended the time in which a rebate should be given for paying current taxes.⁸⁸ If the full amount of taxes due on property in 1933 were paid in one payment any time before, or on, May 15, instead of March 15, the taxpayer would receive a three per cent rebate.

The extraordinary session of the Washington Legislature which met in the latter part of 1933 granted further leniencies to delinquent taxpayers. The moratorium on county foreclosures to enforce tax liens was continued until November 30, 1934.⁸⁹ The period in which delinquent interest charges would be remitted for the payment of real or personal taxes, or one-half of the taxes, delinquent for 1931 or any prior years, was prolonged to May 31, 1934. The remission of all interest would also be granted if delinquent taxes for 1931 and/or any prior years, were fully paid on or before November, 1934. However, if these taxes were paid between May 31 and November 30, 1934, ten per cent per annum interest would have to be paid on the principal amount of such delinquent taxes from May 31, 1934, to date of payment.

The privilege of entering into a twenty-payment contract for the installment payment of real estate taxes more than six months delinquent was also extended by the extraordinary session to November 30, 1934. A further provision was made for the installment payment of personal property taxes.⁹⁰

If a property owner had fifty dollars or more of personal property taxes more than six months delinquent, he might make an agreement with the treasurer of the county in which the property was taxed to liquidate this obligation in six semi-annual installments. The agreement had to be entered into on or before May 31, 1934. All interest charges for delinquency were suspended, but the taxpayer was charged interest of six per cent per annum on the unpaid balance of the agreement from the time the contract was executed until fully paid. If the county treasurer believed that the personal property was not adequate security for

⁸⁸ Wash. Laws 1933, c. 82.

⁸⁹ Wash. Laws Ex. Sess. 1933, c. 51.

⁹⁰ *Id.* c. 53.

the amount of delinquent taxes he could refuse to accept this type of agreement. Or if an agreement was made and the county treasurer at any time believed that the personal property was being removed from the county or its value dissipated he could abrogate the installment contract. This type of contract also became void if two successive installments were not paid when due, or if current taxes on the property became twelve months delinquent.

In 1935, the Washington Legislature reenacted much of this legislation. The time in which current property taxes could be paid in full and a three per cent rebate received was extended to May 15, for 1935 only.⁹¹ Provision was made for the remission of interest charges on delinquent property taxes for 1932 or any prior year if all or half of any such year's tax was paid on or before November 30, 1935.⁹² An additional allowance of a five per cent rebate was made if the tax for any of these years was paid in full by that date.⁹³ A moratorium on tax foreclosure proceedings was established until after May 31, 1936.⁹⁴ And the county treasurers were authorized to make agreements prior to November 30, 1935, to accept payment of delinquent real property taxes for 1933 and prior years in twenty semi-annual payments on terms similar to the previous twenty-payment contracts.

Again in 1937 laws were passed to favor delinquent taxpayers as presumed encouragement to the payment of delinquent taxes. The issuance of deeds to purchasers at pending or contemplated sales pursuant to judgments in general county tax foreclosure proceedings was postponed until July 1, 1937. This act, accordingly, extended the period of redemption of tax liens to that date.⁹⁵ Provision was made for the cancellation of interest charges on delinquent taxes for any year prior to 1933, if the payment of the principal of that tax was matched by the payment of 1933 or any subsequent year's taxes with interest.⁹⁶ The privilege of installment payment of delinquent real estate taxes which had been granted under earlier acts was extended to November 30, 1937. The twenty-payment contract plan was also made available for delinquent personal property taxes.⁹⁷ Foreclosure and distraint pro-

⁹¹ Wash. Laws 1935, c. 79.

⁹² *Id.* c. 166.

⁹³ In a five-to-four decision in *Vance Lumber Co v. King County*, 184 Wash. 402, 51 P. (2d) 623 (1935), the court held that it could not be said as a matter of law that provisions for the remission of interest on delinquent taxes and for a rebate of 5 per cent on the principal contravened the sections of the state constitution pertaining to special privileges and immunities, in view of the public benefit from the restoration of delinquent property to the tax rolls. It was further held that neither the county nor the county treasurer could raise the question of constitutionality. Lack of uniformity of taxes can be asserted only by a taxpayer who suffers therefrom.

⁹⁴ Wash. Laws 1935, c. 30.

⁹⁵ Wash. Laws 1937, c. 4.

⁹⁶ Wash. Laws 1937, c. 57, § 2.

⁹⁷ *Id.*

ceedings were to be withheld as long as the signer of a twenty-payment contract complied with its terms.

By 1939 the legislative policy of leniency had about run its course. Only the installment plan for the payment of delinquent real estate taxes was reenacted.⁹⁸ The twenty-payment contracts under the 1939 law embraced taxes for 1935 and prior years without interest and delinquent taxes for 1936 and 1937 with accrued interest. The terms of these agreements were similar to those under the preceding installment payment acts. The 1941 legislature, in effect, renewed the opportunity to enter, any time prior to November 30, 1941, an agreement like that permitted by the laws of 1939, except that the principal of the contract was to be (a) delinquent taxes for 1935 and prior years without interest, and (b) delinquent taxes for 1936, 1937, 1938 and 1940 with any accrued interest thereon.⁹⁹

Thus, during the current economic depression the Washington legislatures have attempted both to reduce and to prevent the large accumulation of tax arrears by a series of measures designed to ease the payment of property taxes and to remove the element of compulsion from the tax procedure. The only means Washington counties had of enforcing realty tax collections, namely, tax foreclosure proceedings, was arrested from time to time by the legislature. The payment of taxes apparently was to be encouraged by offering the current and delinquent taxpayers concessions for payment. Not only were penalties for delinquency cancelled or remitted, but rebates upon the principal of taxes due were granted for the payment of taxes.

The treasurers of Washington counties, to whom were entrusted the administration of these remedial tax delinquency laws, generally did not approve of this legislation. Late in 1933 the State Tax Commission submitted a questionnaire pertaining to the number of contract payments which had been written in each county. Included in the questionnaire was the following: "We would be pleased to have your opinion of the twenty-payment tax plan. Do you think its provisions should be extended or modified in any manner?" All of the county treasurers who answered this part of the questionnaire (eighteen in number) were opposed to any extension of the contract payment plan and expressed disapproval of it. Answers ranged from curt "No's" and comments that this type of legislation was "the bunk" to statements that, "As a county official I feel that legislation of this sort is unfair to the real taxpayers who have sacrificed and made considerable effort to keep their taxes paid each year. Many of our taxpayers, both large and small, have complained of the situation and I feel that if any more leniency is shown the delinquent taxpayers it will have a serious effect on future

⁹⁸ Wash. Laws 1939, c. 105, § 1.

⁹⁹ Wash. Laws 1941, c. 144.

collections."¹⁰¹

These opinions have been corroborated in large part by recent discussions with county tax collecting officials. But on the other hand, there are several tax administrators, including officials of the Washington State Tax Commission, who believe that the twenty-payment contracts have been extremely helpful in liquidating accumulated tax arrears and at the same time have prevented substantial amounts of tax reversion. In the opinion of this last group, the improvement of local fiscal positions attained with the aid of these installment payments have more than offset the disadvantages involved, and the effectiveness of collecting procedure will not have been seriously weakened if no further leniency is granted.

Some of the disadvantages of these moratoria are suggested in the following paragraphs. Although the remedial legislation may have been inspired by sympathy for the delinquent taxpayers, it was not well considered from the standpoint of practicability. The bookkeeping methods employed in many of the counties did not lend themselves readily to the complexities of the twenty-payment contract laws, and no adequate provisions for administration were ever written into these laws.

The laws arresting foreclosure proceedings, remitting interest charges and allowing rebates on delinquent taxes were unjust to those taxpayers who paid promptly. Their neighbors and their competitors who permitted their taxes to go delinquent had the use of these funds during the interval between delinquency and final payment without suffering any penalties or interest charges for delayed payment. If the delinquent property owner took advantage of the 5 per cent rebate, he was, in effect, additionally rewarded for not having discharged his tax obligation when it was due.

Since the penalties generally imposed for delinquency are designed in part to offset the costs of delayed payments to public treasuries, it would seem that the cancelling of interest and the granting of rebates on delinquent taxes would mean the realization of less revenues than had been anticipated by budgeting officials. To the extent that these deficiencies in governmental revenues were made up by additional property tax levies in following years, the taxes which should have been paid by delinquents were partially shifted to the prompt taxpayers.

Experience in several parts of the United States has shown that this type of so-called remedial legislation has operated to retard tax collections rather than improve them. One writer, in a discussion of this problem, stated:

"Altogether, legislation of this kind has done great harm by discriminating against taxpayers who pay promptly and by

¹⁰¹ M. B. Schumacher, Mason County.

holding out as an inducement not to pay promptly the hope that existing penalties may be reduced or repealed by the legislature or simply not enforced by the administrative officer. This has been found to be a potent cause of delinquency all over the United States."¹⁰²

The Minnesota Tax Commission, in its *Fifteenth Biennial Report*, 1936, discussing a Minnesota law which offered owners a chance to redeem their lands from delinquent taxes by partial payment of the original tax, concluded:

"In so far as the collection of any delinquent taxes was concerned by the operation of this law, it was a failure, and this act, as well as other acts providing for bargain-counter sales of land for delinquent taxes have been a means of promoting delinquency rather than the restoring of lands to the tax rolls."¹⁰³

The Oregon State Planning Board has reported similarly:

"While laws delaying foreclosure doubtless permitted many property owners to retain possession of their property, delinquencies were encouraged that might not otherwise have occurred. As a general rule, moderation of tax laws results in stemming rather than accelerating the flow of tax dollars into public treasuries."¹⁰⁴

The effect of, and often the legislative intent behind, these laws to remedy the tax delinquency situation has been to subsidize existing property ownership. Without these laws much property would have passed more quickly to new owners, either directly through foreclosure or after it was held for a while by the counties. Other properties, such as cut-over lands, would have reverted to the State to be incorporated in reforestation and land use programs. The moratoria kept properties in the possession of the delinquent owners without examining the wisdom or necessity for doing so.

The blanket remedial laws are objectionable also because they fail to differentiate between short-run and long-run delinquency. Apparently in the opinion of many people legislation which is designed to help a property owner in an emergency caused by curtailment of his income is justified. But the same legislation prevents the liquidation of delinquencies on lands which even in good times are unprofitable to private owners.¹⁰⁵ In fact, moratoria on tax enforcement in Washington worked more to the benefit of long-run delinquents and specu-

¹⁰² Raphael Zon, *Tax Delinquency and The Cut-Over Land Problem in Northern Minnesota*, in R. G. BLAKEY, *TAXATION IN MINNESOTA* (1932), 139. See also Wade S. Smith, *Emergency "Remedies" Hindering Tax Collection* (1934) 23 NAT. MUN. REV. 39.

¹⁰³ MINN. TAX COMM., *FIFTEENTH BIENNIAL REPORT* (1936). See also Wade S. Smith, *Minnesota Advised to Drop Tax Bargain Policies* (1935) 24 NAT. MUN. REV. 275.

¹⁰⁴ OREGON STATE PLANNING BOARD, *MANAGEMENT OF TAX REVERTED LANDS IN OREGON* (1938), 67.

¹⁰⁵ *Id.*

lators than to those temporarily in financial distress. Laws that stayed county foreclosures helped only those who were five or more years delinquent. It is interesting to note in this connection that the Washington laws to aid tax delinquents were introduced in the legislature by, and obtained their major support from, groups interested in real estate development, although the State Grange and some other groups also favored this legislation after its introduction. In general the greater part of long-run delinquency in this State is on submarginal farm land, cut-over land, and prematurely subdivided lands. Preventing the economic adjustment of these properties to uses for which they are better suited would seem contrary to the best interests of the State.

Furthermore, legislative tinkering with the property tax collection laws injects another element of uncertainty into the Washington economy. The probability that the legislature will grant indulgences to delinquent property owners, and change the collection procedure from time to time, increases the risks, and thus the costs, of business enterprise. The subsidizing of property ownership on the basis of tax delinquency is not only "fraught with dangers to normal tax collection"¹⁰⁶ but is also a deterrent to sound economic development.

The object of the whole tax administrative process is the collection of the public revenue. Therefore, in the interest of economy, justice, and a higher respect for government on the part of the citizens, this phase of the tax process should be as simple, regular, and undeviating as possible. A private business could not survive if it showed the same leniency toward its debtors that many municipal governments have extended to their taxpayers, including those well able to pay. Basic to the adequacy of tax collection enforcement is the recognition of the necessity for promptness and impartial firmness in order that a tradition of punctual meeting of tax obligations be established. Emphasis should be placed upon stabilized legal procedure designed to assure timely and complete tax collections, and upon the progressive improvement of administrative methods to implement that procedure.

¹⁰⁶ Smith, *supra* note 85.