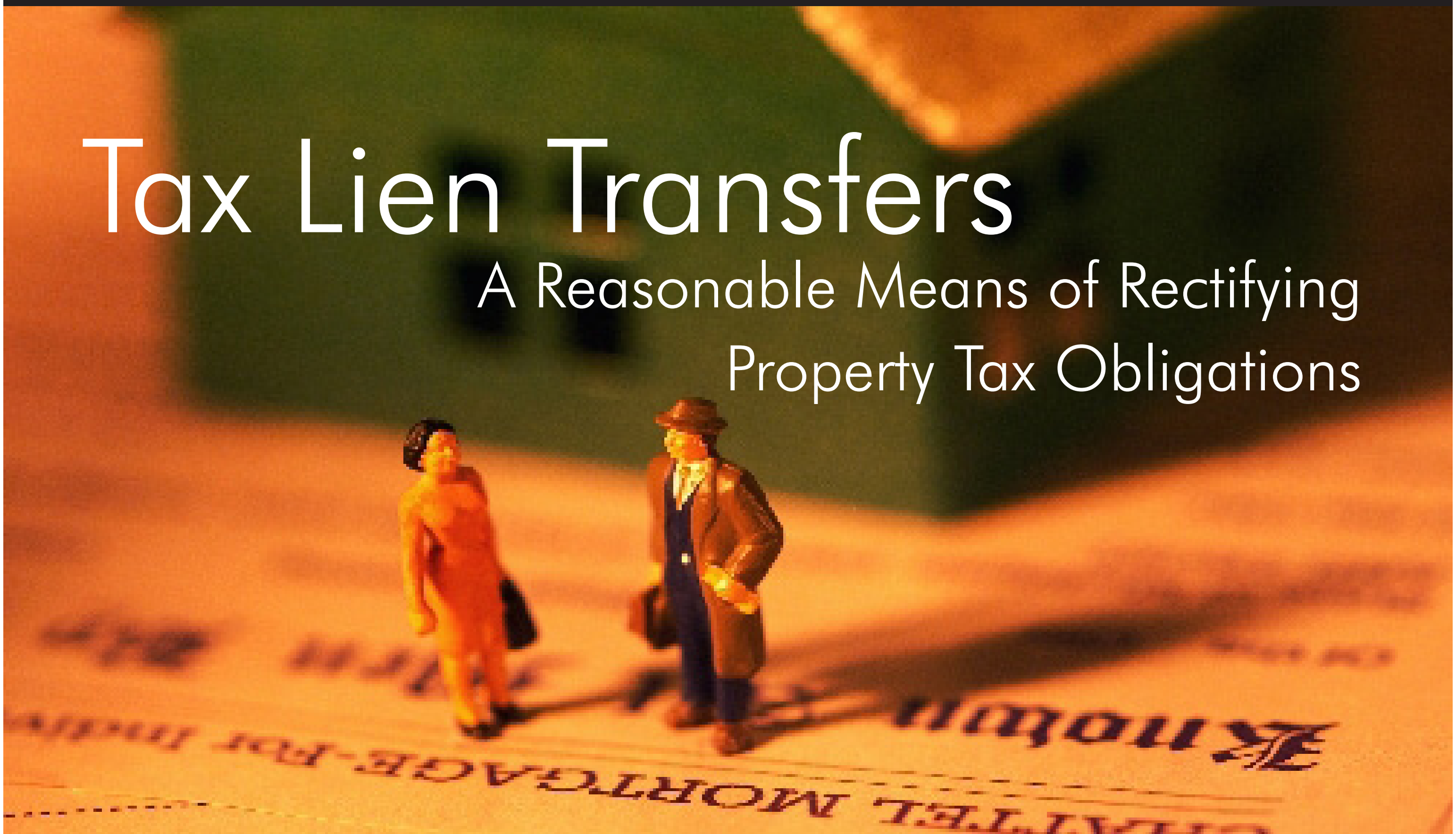
Texas Public Policy Foundation



Tax Lien Transfers

A Reasonable Means of Rectifying Property Tax Obligations

Kathleen Hunker

December 2014

Texas Public Policy Foundation
Celebrating 25 Years

December 2014

Texas Public Policy Foundation
by Kathleen Hunker

Table of Contents

Tax Lien Transfers

A Reasonable Means of Rectifying Property Tax Obligations

by Kathleen Hunker

Executive Summary

Texans commonly jest that the only certainties in life are death and taxes, but few ever contemplate what happens to those unable to meet their tax burden due to a financial hardship. Unfortunately, for thousands of Texas property owners each year, not being able to pay their property taxes is a harsh reality that could result in the loss of their home or business.

Despite the state's reputation for low taxes, Texas has the 15th highest property taxes in the nation,[1] capturing nearly 5 percent (approx. $2,500) of an average household's earnings each year—and that burden has only grown heavier.[2] Over the last two decades, Texas residents have seen local property tax levies jump by 205 percent,[3] almost three-times faster than the median household income.[4] As a consequence, real estate taxes have come to represent a greater percentage of a property owner's household income, which, in turn, has made property owners much more sensitive to financial bumps and has put a growing strain on their ability to pay their taxes.

Failure to pay property taxes on time triggers a series of severe and progressive penalties that can add as much as 50 percent to a property owner's tax obligation in just one-year of delinquency.[5] These penalties could soon overwhelm property owners' efforts to pull themselves onto firm financial footing, pushing them farther into debt, if not threatening foreclosure.

For these reasons, there has been a steady demand in Texas for readily available alternatives to delinquency, such as property tax lending. A Texas invention, this competitive industry allows property owners to manage their tax obligation through a third party "lender" that pays the taxes for them. Texas law then allows the lender to acquire the government's first priority tax lien that was already attached to the property, the transfer of which makes the transaction much less risky for the company and allows the property owner to obtain a much lower interest rate on the "loan." The property owner then pays off the lien through a payment schedule that was negotiated at the start of the transaction, until the tax obligation is ultimately satisfied. Also termed a 'tax lien transfer,' this practice is accredited with saving the homes and businesses of thousands of Texas property owners.

It is also controversial. Over the last few years, there have been several debates in the Texas Legislature on whether tax lien transfers hurt or help taxpayers, whether they disrupt other financial industries—namely banks and mortgage holders—and whether the state government should restrict the practice. The House Committee on Business and Industry has recently held a hearing to review the matter, suggesting that the future of lien lending will be a live question during the next legislative session.

In view of that upcoming debate, this paper seeks to explore the practice of tax lien transfers in Texas and illustrate the role that it plays in enabling property owners to escape the high costs of delinquency. More specifically, it seeks to compare the costs of utilizing a tax lien transfer with other alternatives so as to assess the impact addition-

Key Points

- Tax lien transfers offer Texas property owners a reasonable and cost-effective means of rectifying their tax obligation.
- The demand for tax lien transfers is driven in part by the Texas' overreliance on property taxes as a main source of public revenue.
- Denying Texas property owners access to tax lien transfers will not eliminate demand but merely push them into an expensive delinquency process.

al regulations would have on the ability of Texas property owners to control their tax obligation. For many Texans, tax lien transfers have come to represent an important way of satisfying their tax obligations without paying the penalties that accompany delinquency, fulfilling a demand that the government's existing options, such as payment schedules, cannot replace. Considering that demand and the negative repercussions delinquency has on property owners, Texas policymakers should refrain from any regulation that attempts to eliminate or restrict the practice.

What is a Tax Lien Transfer?

Tax lien transfers refer to a niche lending practice that offers Texas property owners a market-based way to take control of their delinquent property taxes. Part of an energetic industry, tax lien transfers act as a contingency arrangement for cash-strapped property owners who wish to satisfy their tax obligation but do not qualify for or cannot meet the terms of the government's offered payment plans.

A consumer-initiated transaction, the transfer begins when a property owner elects to enter into a written contract, which authorizes a third party—commonly called a property tax lender—to pay the owner's delinquent taxes in exchange for a multi-year payment agreement secured by the government's priority tax lien on the property. Once the lien has been assigned, the property tax lender directly pays the local tax assessor all the property owner's outstanding taxes, fees, and penalties, removing the property owner from the delinquent tax roll. The owner then pays off the lien using a flexible payment schedule that was negotiated at the start of the transaction. If the property owner does not make payments, the property tax lender retains the option of using the tax lien to foreclose on the property and secure payment ahead of most other creditors, such as banks, mortgage-holders and credit card companies. However, as a legislative report by the Finance Commission of Texas showed, the foreclosure option is rarely exercised.[6]

Because of the industry's competitive nature, tax lien transfers, like most market transactions, generally work to the benefit of both contracting parties. Property owners have an opportunity to meet their tax obligations on their own terms, whereas tax lending companies can earn a profit by charging a competitive interest rate on what is essentially a small, short-term loan. Local taxing units also benefit since they receive their tax revenue earlier and sidestep the need to contract with debt collectors.[7]

In short, tax lien transfers impose no new obligation on Texas property owners, nor do they affect or alter the secured interests of other creditors. They simply allow property owners to restructure their existing debt in a way that better reflects their financial situation. Texas law automatically attaches a lien onto private property on January 1st each year in order to secure payment.[8] The law also enforces a payment schedule, which designates the tax bill as delinquent if it is not paid by February 1st.[9] While the government does allow for alternative payment plans, they have limited flexibility and only apply to certain taxpayers, so a substantial number of property owners could find themselves quickly overwhelmed by the expensive and progressive penalties that follow delinquency.

Here's where tax lien transfers come in. By having the option of a private lender to pay their tax obligation, property owners can negotiate more favorable payment terms than those offered by the government, such as smaller monthly statements or longer repayment periods. This grants property owners much needed flexibility.

Of course, property owners pay interest when they take out the loan, but they can assess these costs and determine whether a tax lien transfer meets their financial needs better than remaining in delinquency or utilizing another market option, such as paying the tax with their credit card. Thus, although tax lien transfers are not without costs, for many property owners, especially those facing temporary financial troubles, the transfers prove to be a manageable and cost-effective means of satisfying their tax obligations without risking the penalties, collection fees, and foreclosure proceedings that accompany delinquency.

Who Utilizes Tax Lien Transfers?

Efforts to restrict property tax lending appear to be fueled by the assumption that the industry's customer-base mostly consists of under-protected populations, who are particularly vulnerable to hard-hitting business practices. Also assumed is the idea that government needs to intervene on behalf of these property owners in order to shelter them from the dangers of the market.[10] However, contrary to popular opinion, individuals who seek tax lien transfers are not undereducated or underemployed; rather, they are normal individuals who need a flexible payment agreement either to help see them through temporary financial troubles or, in the case of commercial customers, to free up capital for other expenses.

Take Watus Cooper for example. Watus is a physician's assistant and retired military, who purchased a home in the Fort Worth area. After the U.S. Air Force reassigned him to California, Watus decided to rent out his property for additional income but started having trouble meeting his property taxes once he retired from the Air Force and his mortgage was paid off and his escrow account expired. Not wanting to lose his $106,000 house over a tax bill of around $3,400, Watus elected to utilize a tax lien transfer and spread the payments outs like an installment plan. Meaningfully, Watus had paid the government's delinquency fees in previous years before he learned about tax lien transfers. He reasoned that the tax lien transfer was the better alternative since it allowed him to avoid the collateral consequences of delinquency.[11]

Sally Souers is another Texas property owner who benefited from a tax lien transfer. A life-long resident of El Paso, Sally inherited a mid-century home after her mother passed away in March 2009. Seeing potential in the property, she decided to sell it and use her earnings to move to the Fort Worth area. Right before the sale, and after four-years of investment and renovation, Sally discovered that the property was misclassified since her mother had qualified for 65-years-and-older exempt status and Sally had inadvertently failed to reregister the property. This meant that Sally owed the government back taxes; she even owed a set of assessed penalties. Sally, however, was able to utilize the services of a property tax lender who covered her unpaid balance, enabling her to proceed with the sale. She accredits this tax lien transfer with making it possible for her to close on the property and move cross-state.[12]

Homeowners like Watus Cooper and Sally Souers are not the only property owners to profit from having the option of a tax lien transfer. Business owners have also found it helpful to have access to another line of liquid capital.

According to the Finance Commission, a good-sized number of landowners have come to utilize tax lien transfers, not to protect their homestead, but to help advance an economic opportunity.

Bernard Weiner, for example, started a partnership in 1988 that builds shopping centers around the country. After the 2009 economic recession caused 65 percent of his tenants to vacate a Dallas property, Bernard and his partners were left with a choice: pay a lump sum of $20,000 in property taxes or invest that money back into the property to solicit new tenants. Recognizing that his business would benefit from additional capital, Bernard made the informed decision of taking out a tax lien transfer with manageable monthly payments.[13] His property taxes were paid on time, and his company was able to repopulate the now refurbished shopping center, creating jobs.

These three stories help illustrate a very important point: namely, that the property tax industry does not fit the narrow profile it has been assigned but instead offers a specialized service that appeals to a large, diverse customer-base.

The numbers bear this out. According to the Finance Commission, a good-sized number of landowners have come to utilize tax lien transfers, not to protect their homestead, but to help advance an economic opportunity. As an example, commercial landowners represent over 14 percent of the number of tax lien transfers made in 2011, up from 9 percent in 2008.[14] What's more, these loans made up a disproportionate percentage of the amount borrowed. In 2011, the average commercial tax lien transfer was $35,006; the average residential transfer was only $8,810.[15]

In addition, as part of its legislative study, the Finance Commission surveyed a random sampling of 1,087 tax lien transfers, both commercial and residential, in order to capture a snapshot of the impact that servicing costs, paying habits, and enacted legislation have had on the market. The Commission also conducted an examination of transaction files, applications, deeds of trust, along with other

Once a practice unique to the Lone Star State, property tax lien transfers have existed since 1933 when the Texas Legislature first permitted third parties to payoff another's current or delinquent property taxes as a means of avoiding foreclosure.

documents to determine whether the property was owner-occupied or non-owner occupied. Of those sampled, it found that around 20 percent were non-owner occupied. It also found that Texans with non-owner occupied properties typically borrowed in higher amounts with an average lien amount of $17,707 as compared to $7,773 for owner-occupied properties.[16] Although no concrete conclusions can be draw from this second survey—the Finance Commission cautions that the sampling frames may have influenced the types of loans included—the numbers are instructive. They show that there are portions of the lending market where Texans are not merely relying on a tax lien transfer as a last resort but as a way of actively promoting and protecting their investments, such as second homes, inherited land, store fronts, and rentable properties. There is considerable demand for tax lien transfers, and that demand does not arise from a single story.

Regulatory History of Tax Lien Transfer in Texas

Once a practice unique to the Lone Star State, property tax lien transfers have existed since 1933 when the Texas Legislature first permitted third parties to payoff another's current or delinquent property taxes as a means of avoiding foreclosure.[17] The Texas Legislature then codified the lending practice into Section 32.06 of the Texas Tax Code in 1979. From all accounts, these transfers were rare and typically involved transactions with the property owner's family members or employers.[18]

Several developments, however, have since transformed the industry from private contracts between individuals with a known and personal relationship to specialized companies that transfer thousands of tax liens each year. First, the Texas Legislature made significant changes to the tax code in 1995 that made property tax transfers more commercially viable. It increased the permitted interest rate from 10 percent to 18 percent, and it permitted non-judicial foreclosures, speeding up the process considerably.[19] This enlarged the potential profit margin tax lenders could earn for each transfer while at the same time diminishing the expenses needed to redeem the loan when property owners defaulted. Second, Texas property taxes have increased both in sheer value and as compared to personal income, not only raising the cost of owning property in Texas, but also rendering property owners more sensitive to bumps in their financial status.[20] This increased the demand for property tax relief—a demand which was not met by the existing payment schedules offered by local tax assessors.

In response to the evolving nature of the property tax lending market, the Texas Legislature has enacted a series of laws aimed at increasing regulation on the market. In 2005 the Legislature passed HB 2491, which limited the types of tax liens allowed and expanded the redemption rights of the property's other lienholders. Significantly, the legislation also introduced a two-tier system that singled out Texans with mortgaged properties for additional regulatory hoops. In a division that continues to this day, HB 2491 permitted Texas property owners to get a tax lien transfer after their taxes are due but before they are delinquent while requiring taxpayers with properties subject to another recorded lien to wait until their taxes turned delinquent before obtaining a loan. This means that Texans with mortgaged properties can only take actions to manage their property tax debt after they begin accumulating the penalties and fees associated with delinquency.

More changes were made by the Legislature in 2007. The Property Tax Lender License Act brought the industry under the oversight of the Office of Consumer Credit Commissioner (OCCC) and required for the first time that property tax lenders obtain a license before issuing a tax loan.[21] Additionally, SB 1520 required a disclosure statement prior to closing, mandated a 10-day notice of transfer to preexisting lienholders, and granted certain homesteaders a 3-day right of rescission. This last provision means that qualified property owners have three days to change their mind before being bound by the loan's terms. Furthermore, the legislation ordered the Finance Commission to adopt rules relating to the reasonableness of closing costs, fees, and other charges added to the transferred lien. When combined with the 18 percent interest rate cap, the legislation put a firm ceiling on the amount that Texas property owners could be charged for attempting to manage their tax obligation.

Despite these regulatory changes, the 83rd Texas Legislature considered no less than 9 bills aimed at curtailing tax lien transfers, two of which (SB 247 and HB 1597) passed. The first took a traditional approach and homed in on those mechanisms that the drafters felt were "taking advantage of property owners."[22] In particular, SB 247 prohibited lenders from transferring the tax lien to an unlicensed party in a secondary sale; it prohibited deceptive or misleading advertisements; and it prohibited lenders from arranging a tax lien transfer with persons 65 years or older whose property was exempt from taxation under Section 11.13(c) or with any property owners whose taxes were not yet due or delinquent. In addition, the legislation rolled back a lending company's foreclosures options. Non-judicial foreclosures were eliminated entirely, and companies were required to wait one year before initiating a judicial foreclosure unless the contract provided otherwise.

The second bill was more nuanced. Although the authors of HB 1597 felt that property owners "need[ed] adequate safeguards against unfair business practices," they also recognized that property owners "need[ed] a reasonable means to rectify tax delinquency,"[23] of which tax lien transfers played a principal role. The authors therefore looked at removing the demand for tax lien transfers by requiring local taxing units to provide sensible installment plans. This way struggling property owners would still be able to earn a respite from the ramifications of tax delinquency, but the number of Texans steered towards tax lien transfers might be less. While the full implications of this shift in strategy will be discussed in a later section, suffice it to say that the authors of HB 1597 struck upon an important insight that is typically overlooked: the demand for tax lien transfers is essentially an unintended consequence of the government's own tax policy and that attempts at overregulation threaten to undercut taxpayers' main source of relief without ever addressing why that relief was needed.

With the exception of HB 1597 however, most recent legislative initiatives surrounding property tax lending have been directed at interfering with the industry's ordinary business practices, often at the behest of other commercial constituencies. For example, one of the proposed bills in the 83rd legislative session, SB 1449, would have amended Section 32.06(d) of the Texas Tax Code to make a transferred lien "subordinate to any prior recorded encumbrance." This change would have eliminated the tax lien's superior priority in favor of a system that ranked secured interests based on the time they were attached to the property. It also would have effectively eliminated tax lien transfers as a sustainable commercial practice. Property tax lending represents a high risk venture, or at least it would if companies did not have access to a high priority lien to act as collateral where the property owner defaults. Without that security, companies could not offer the same attractive terms to clients, nor would they be able contract with many property owners who are experiencing temporary financial problems. The industry would cease to exist as a competitive marketplace with a viable option for property owners. Put differently, property owners in most need of liquid capital to pay off their tax obligation would lose access.

The legislation passed during the last few legislative sessions has not closed the debate. The House Committee on Business and Industry has released an interim charge to examine current laws governing tax lien transfers and identify improvements that will protect the interests of homeowners, lenders, and trustees. It also held a hearing on May 27th, 2014 to discuss the implementation of SB 247 and its impact on homeowners, taxing authorities, and lenders. These are good indications that the future of the industry will be a live issue during the 84th Legislative Session. The question is whether the legislative momentum will push policymakers towards more intervention in the market or towards more options for Texas property owners straining under a heavy tax load.

Demand for Property Tax Assistance Has Grown

The tax lien transfer industry has experienced steady growth over the last decade—although it has leveled out over recent years—evolving from small, intimate transactions into a mature, specialized lending practice handling thousands of customers each year. It has done so because Texas has imposed a mounting property tax burden that has outpaced its citizens' growth in personal wealth, causing many Texans to either fall into delinquency or forego important investments. This has created a sizeable demand for services that offer property tax assistance, which tax lien transfers provide.

Texans have a higher property tax burden than the average American. The Tax Foundation reports that the Lone Star State has the 15th highest property taxes in the nation[24] and the 12th highest when taxes are compared to median income[25]—this is all despite Texas' low tax reputation. Numbers from the U.S. Census Bureau seem to confirm these findings. According to its latest American Community Survey (ACS), the annual property tax bill for an owner-occupied housing unit in Texas came to $2,473 whereas the average American paid only $2,075.[26] This means that in 2012 the typical Texas homeowner paid 19 percent more in property taxes. Nor is the state's higher property taxes a recent trend. An examination of the survey's past finding shows that since 2005, the year ACS began keeping track, Texas' property taxes consistently have hovered about 19.6 percent above the U.S. average.[27]

What's more, Texans dedicate a greater share of their household income to property taxes, and they do so for houses with lower property value as compared to other U.S. regions. According the ACS's one-year estimates for 2012, Texans forfeited 4.8 percent of their household income to meet their tax quota; conversely, the average American forfeited only 4.1 percent. Likewise, taxes in the Lone Star State represented 1.9 percent of a homeowner's property value. Taxes nationwide only represented 1.2 percent of a homeowner's property value.

This tax regimen has only become more demanding over the last two decades as Texans have seen local property tax

Table 1: Property Tax Comparison: U.S. vs. Texas

	Property Taxes Paid[28]	Median Household Income[29]	Taxes as a % of Income*	Median Home Value[30]	Taxes as a % of Home Value*
U.S.	$ 2,075	$ 51,371	4.1%	$ 171,900	1.2%
Texas	$ 2,473	$ 50,740	4.8%	$ 129,200	1.9%

Source: U.S. Census Bureau, "2012 American Community Survey 1-Year Estimates; *Calculations done by author.

Figure 1: Annual Property Tax

levies climb at rates much faster than inflation, population, and personal income. Since 1991, Texas property owners have watched their property taxes jump an average of 6.3 percent per year, with some years experiencing an increase of 11 percent and higher. Altogether, property taxes have jumped 205 percent statewide, from $13.2 billion in 1991 to 40.2 billion in 2010.[31] By comparison, inflation has only inched up by an average of 2.6 percent per year[32] and household income by 2.7 percent per year.[33] Thus, even with an overall 70 percent increase in median household income between 1991 and 2010, Texans are still surrendering a higher percentage of their personal income towards property taxes today than they did 20 years ago.

Of course, it is difficult to prove for certain that the increase in property taxes has led to an increase in demand for property tax lending, but the fact that the two are occurring at the same time is indisputable.

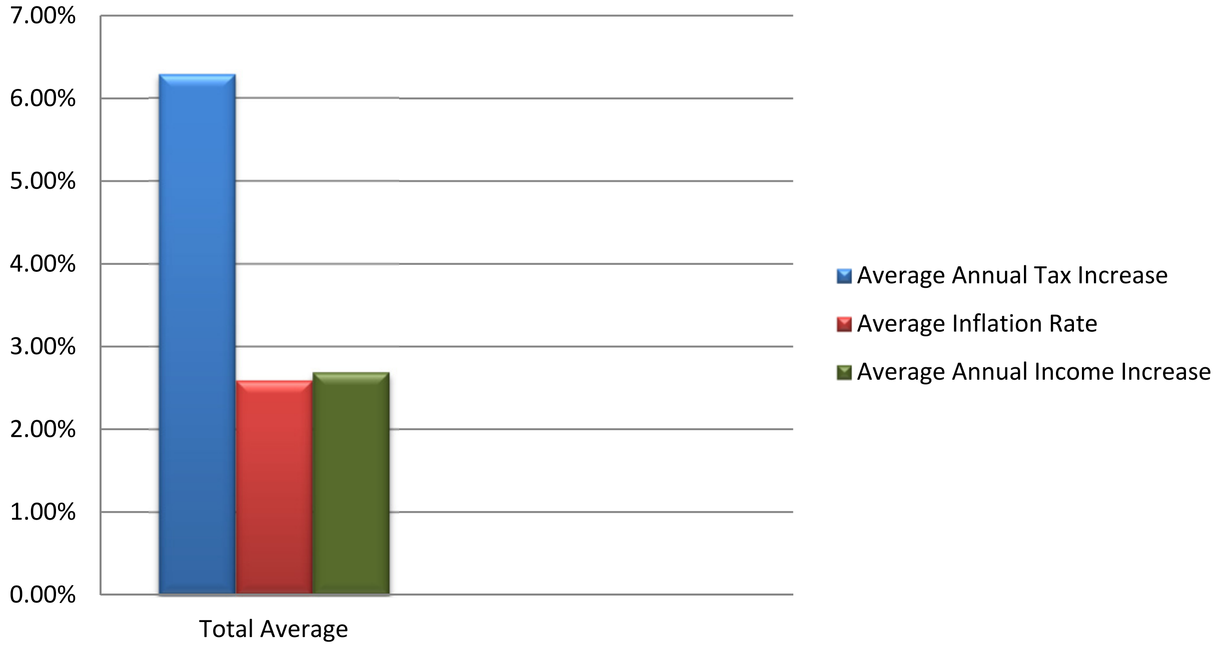
As referenced above, the Texas Legislature placed the property tax lending industry under oversight of the Office of Consumer Credit (OCCC) with the Property Tax Lender License Act directly in response to the industry's expansion. The OCCC began tracking the size and growth of the property tax lending industry the following year. Since previous records were kept at the county level, the OCCC's reports offered for the first time a state-wide assessment of the industry, including the number of loans made, the average amount borrowed, the number of licensed lenders, along with the breadth and makeup of participating property owners.

Table 2: Statewide Property Tax Compared to Inflation & Household Income, 1991-2010

Year	Property Tax[34]	Average Annual Tax Increase*	Average Inflation Rate[35]	Median Household Income[36]	Average Annual Income Increase*
1991	$ 13,223,308,862	10.9%	4.3%	$ 27,773	-1.6%
1992	$ 13,981,099,671	5.7%	3.0 %	$ 27,953	0.6%
1993	$ 14,757,008,016	5.6%	3.0%	$ 28,727	2.8%
1994	$ 15,450,334,456	4.7%	2.6 %	$ 30,755	7.1%
1995	$ 15,957,915,486	3.2%	2.8 %	$ 32,039	4.2%
1996	$ 16,847,150,930	5.5%	2.9 %	$ 33,072	3.2%
1997	$ 17,659,512,519	4.8%	2.3 %	$ 35,075	6.1%
1998	$ 19,058,035,582	7.9%	1.6 %	$ 35,783	2.0%
1999	$ 20,278,208,086	6.4%	2.2 %	$ 38,688	8.1%
2000	$ 22,513,229,571	11.1%	3.4 %	$ 38,609	-0.2%
2001	$ 25,310,416,025	12.4%	2.8 %	$ 40,860	5.8%
2002	$ 27,319,767,524	7.9%	1.6 %	$ 40,149	-1.7%
2003	$ 28,893,411,036	5.8%	2.3 %	$ 39,271	-2.1%
2004	$ 30,973,635,241	7.2%	2.7 %	$ 41,399	5.4%
2005	$ 33,478,989,315	8.1%	3.4 %	$ 41,422	0.1%
2006	$ 35,552,907,030	6.2%	3.2 %	$ 43,307	4.6%
2007	$ 35,114,596,621	-1.2%	2.9 %	$ 46,053	6.3%
2008	$ 38,979,969,545	11.0%	3.9 %	$46,490	0.9%
2009	$ 40,034,355,798	2.7%	-0.3 %	$ 47,475	2.1%
2010	$ 40,273,271,906	0.6%	1.6 %	$ 47,266	-0.4%
Total Average		**6.3%**	**2.6%**		**2.7%**

Sources: Texas Comptroller of Public Accounts, "Annual Property Tax Report: Tax Years 2002-2009"; Texas Comptroller of Public Accounts, "Biannual Property Tax Report: Tax Years 2010-2011;" "Historical Inflation Rate;" U.S. Census Bureau, "Median Household Income by State: 1984 to 2012;" *Calculations done by author.

Figure 2: Total Average Increase (1991-2010): Property Tax Inflation Rate & Personal Income



According to these annual reports, the property tax lending market experienced persistent growth and a steady demand since 2008, the first year that the OCCC kept track. The OCCC informs that 72 companies were licensed to transfer tax liens in 2012 as compared to 44 companies in 2008.[37] These companies issued a total of 14,526 loans in 2012 compared to 12,078 loans in 2008.[38] What's more, the dollar value of loans made increased even in years where the number of loans stabilized. In 2008, the average size of the transferred lien was $9,878, and the total value of loans made was $119,304,201. By 2012, those numbers had risen to $12,039 and $174,885,982 respectively.[39]

Furthermore, the demand for tax lien transfers has diversified as commercial landowners have come to recognize the utility of tax lien transfers in maintaining their businesses. The number of commercial transferred tax liens has more than doubled in a four year span, from 841 tax loans in 2008 to 1828 loans in 2011.[40] The average amount borrowed also saw a sizeable increase. The average commercial tax loan was only $18,352 in 2008; it rose to $35,006 by 2011.[41] A significant number of Texans have come to rely on tax lien transfers, and that number could increase if property taxes continue to rise.

Tax Lien Transfers Are Cost-Effective Alternative to Delinquency

The inefficiencies of the property tax system, and its tightened grip on household budgets, has made it more difficult for Texans to meet their property tax obligations on time; however, this growing demand for tax assistance, on its own, is not enough to account for the popularity of tax lien transfers among property owners. Texans, after all, have multiple avenues before them when facing an unpayable tax bill, such as credit cards, escrow accounts, or even remaining in delinquency. Why then have thousands of Texas property owners elected to use a tax lien transfer to resolve their tax obligation? The answer is that these Texans have looked at the costs, terms and risks of a tax lien transfer and have reasoned that it represents a cheaper and more adaptable option than trudging through the delinquency process or other lines of credit.

Delinquency Proves to be Very Expensive for Property Owners

Part of this appeal stems from the hefty costs and lack of flexibility attendant to the delinquency process. The Texas Tax Code traditionally has not shown much leniency to

Table 3: Volume of Property Tax Lending, 2008-2012

Year	Licensed Lenders	Loans Made	Dollar Value of Loans Made	Average Loan Amount
2008	44	12,078	$ 119,304,201	$ 9,878
2009	61	13,703	$ 151,588,701	$ 11,062
2010	73	12,951	$ 174,508,567	$ 13,475
2011	76	12,847	$ 177,621,715	$ 13,826
2012	72	14,526	$ 174,885,982	$ 12,039

Source: OCCC's Property Tax Lending Consolidated Volume Report, Calendar Years 2008-2012.

property owners grappling with a heavy tax burden. Rather, outside of a few narrow exemptions, the tax code prescribes a fixed payment schedule that requires real estate owners to turn over all outstanding property taxes upfront and in one lump sum.[42] Moreover, the tax code automatically executes a tax lien on the property in order to secure that tax obligation regardless of owner's ability to pay and, once a tax bill is declared delinquent, imposes a series of progressive penalties until handed off to a collection agency for possible foreclosure proceedings.[43]

Delinquency penalties can quickly increase a property owners' tax bill. According to the Texas Tax Code Section 31.02, "taxes are due on receipt of the tax bill and are delinquent if not paid before February 1 of the year following the year in which imposed."[44] At this point, taxes begin accruing interest at a rate of 1 percent for each month (or 12 percent per annum) in order to compensate the taxing unit for the lost revenue.[45] Taxing units also affix a penalty of 6 percent of the tax amount, plus one percent for each additional month the tax is left unpaid; this periodic increase continues until July 1st, when all overdue taxes incur a 12 percent penalty irrespective of when they became delinquent.[46] On top of these charges, taxing units often rely on private law firms to pursue taxes that remain delinquent past July 1st, which can add another 15 to 20 percent in collecting fees. The adjoining chart was taken from the Finance Commission's legislative report; it shows exactly how this penalty schedule applies.[47]

Table 4: Regular Penalty, Interest, and Collection Penalties for Delinquent Taxers

On the 1st of Each Month	Regular Penalty	Interest	Collection Penalties	Total Amount Due if Paid in Full in Respective Month
February	6%	1%		7%
March	7%	2%		9%
April	8%	3%		11%
May	9%	4%		13%
June	10%	5%		15%
July	12%	6%	15-20%	35.7%-41.6%
August		7%	15-20%	36.85%-42.8%
September		8%	15-20%	38%-44%
October		9%	15-20%	39.15%-45.20%
November		10%	15-20%	40.3%-46.4%
December		11%	15-20%	41.45%-47.6%
January of next year		12%	15-20%	42.6%-48.8%

Putting these penalties together, a property owner will have accumulated 12 percent in interest, 12 percent in late penalties, and up to 20 percent in collecting fees after one year of delinquency—leaving a balance almost 50 percent higher, in just 12 months.

Putting these penalties together, a property owner will have accumulated 12 percent in interest, 12 percent in late penalties, and up to 20 percent in collecting fees after one year of delinquency—that leaves a balance almost 50 percent higher, in just 12 months.

The costs only continue to mount as a taxpayer remains in delinquency. In its legislative report on property tax lending, the Finance Commission calculated what fiscal impact these charges would have on a property owner over a five-year period, using an $8,000 tax bill as a model. The Commission learned that delinquency charges could double a property owner's original tax debt in just five years, turning that $8,000 tax bill into an outstanding balance between $16,608 and $17,088—and this is excluding the secondary costs that accompany delinquency.[48] Significantly, of the four payment options the report measured, remaining in delinquency was among the most costly option since the lowest point of its financial impact ($16,608) was considerably higher than the other payment methods.

When one considers this long-term financial cost, it becomes clear that property owners have every incentive to avoid the delinquency process.

Alternative Payment Plans Are Limited

One way Texans can avoid delinquency is by turning to an alternative government payment plan. Recently expanded by the 83rd Texas Legislature, government payment plans allow certain property owners to cover their taxes through installments over a fixed period of time, which can ease the tax burden for those unable to afford a lump sum payment.

Many officials have come to view alternative payment plans as the answer to the perceived drawbacks presented by tax lien transfers because they reduce the demand for such transactions without obstructing a property owner's access to liquid capital. They can also be cheaper. The Finance Commission found a tax payment plan would only raise an $8,000 tax bill to a final statement somewhere between $10,012 and $12,652. That was the lowest increase of the four payment methods analyzed.[49]

However, despite their apparent advantages, existing payment plans hit two distinct snags that make them unsuitable for certain property owners.

First, even with the recent expansion, only some Texans qualify for the payment plan. Prior to the passage of HB 1597, Texas law only mandated that local taxing units offer an installment option to certain disabled veterans and their unmarried, surviving spouse. Local units had the freedom to give other Texas property owners an installment plan, but its availability varied considerably county to county. This meant that a government backed alternative was an unrealistic option for many Texans struggling to pay off their tax obligation.

House Bill 1597 attempted to change that by amending Section 33.02(a) to read,

> *"[t]he collector for a taxing unit shall, on request by a person delinquent in the payment of the tax on a residence homestead, enter into an agreement with the person for payment of the tax, penalties, and interest in installments if the person has not entered into an installment agreement with the collector for the taxing unit under this section in the preceding 24 months."*

Although these changes represented an enlargement in the number of qualified property owners, a quick analysis of the language reveals the amendment's limitations. For example, the section excludes any property owner who utilized an installment plan within the preceding two years. In addition, the section specifically states that the payment plans only apply to taxes on a "residence homestead"—what the Texas Comptroller defines on its website as the owner's principle residence.[50]

Thinking back to earlier examples, this would mean that property owners like Watus Cooper, Bernard Weiner, and

Sally Souers could not rely on the government's installment plans for help since the taxes they fell behind on were not for their residence homesteads, but rather for properties that they rented out, used for commercial development, or inherited from a relative.

Second, the payment plans have fixed terms that do not always sync up with the fiscal needs of qualified property owners. For instance, Section 33.02(a) expressly stipulates that all alternative plans must have a payment period of at least 12 months and a maximum length of 36 months. It also stipulates that all payments be made in equal installments. While not unreasonable, these terms may still prove too limited for property owners with unique circumstances—individuals who may prefer, if not need, smaller monthly payments over a longer repayment period or perhaps an uneven reimbursement schedule that permits lighter payments when funds are low but accepts larger payments when finances improve. As aforementioned, the reasons individuals find themselves in need for tax assistance are varied. Negotiation in a competitive market allows property owners to tailor their repayment plans to match these varied circumstances; a predesigned schedule does not.

The above observations were not made with the intention of criticizing the existing installment plans, far from it. House Bill 1597 offers property owners a viable alternative to the high cost of delinquency when they fall behind on their taxes. Additionally, the bill's limitations and structure make sense in light of the policy concerns underwriting the legislation. One of the principal fears driving HB 1597 was a concern that struggling Texans would lose their family homes because of an inability to pay their taxes.[51] At the same time, lawmakers wanted to avoid institutional incentives that discouraged property owners from paying their taxes on time and worried that a too lenient or far-reaching exemption could deny taxing units anticipated public funds. It therefore reasonably limited the release valve to those property owners that they felt were most vulnerable to and most harmed by the delinquency process. There is a limit as to how lenient a taxing unit can be before it risks deliberate non-payment. The limits of HB 1597 signify how much ground the Legislature thought it could concede before the incentive to avoid paying property taxes overcame the economic pressure to comply.

That said, understanding lawmakers' motivations does not remove the demand for tax assistance among property owners excluded from the government's installment program. It simply means that these property owners must resort to market-based options like a tax lien transfer when they find themselves in temporary fiscal straits.

Tax Lien Transfers Are Competitively Priced

Alternative payment plans do not provide a full solution to those who have defaulted on their tax obligation. Fortunately, where government options have fallen short, property tax lending has stepped-in to offer Texas property owners an easily accessible way to take back control of their finances and escape what otherwise would become a fast descent into debt, collecting fees, and possible foreclosure. More significant, it has done so in a manner that has limited foreclosure risks and is competitively priced.

There is little evidence to suggest that the risk of foreclosure is higher after a tax lien transfer than through the delinquency process or other lines of credit. Indeed, an investigation by the Finance Commission shows that the foreclosure option is rarely exercised within the industry. As an example, property tax lending companies oversaw 40,636 loans receivable in 2013 but only foreclosed on 103 properties, creating a foreclosure rate of just 0.25 percent.[52] To put this number in context, Cameron County alone auctioned nearly that many properties in one sale in March of 2014 to recover delinquent taxes, and there were 38,879 mortgage foreclosures in Texas in 2013.[53]

What's more, market forces have whittled down the prices of property tax lending. According to the findings of the Finance Commission, the costs and interest rates associated with completing a tax lien transfer have fallen appreciatively below the industry's mandated price caps. For example, the average residential property owner saw interest rates decline from 15.92 percent in 2008 to 12.80 percent in 2013, and the average commercial property owner saw rates fall from 15.01 percent to 11.86 percent during the same time period[54]—state law currently caps interest rates at 18 percent.[55]

Closing costs have declined for residential taxpayers in terms of the amount expended and their size relative to the amount borrowed. The average residential taxpayer witnessed their closing costs drop from $1,259.40 in 2008 to $707 in 2013, which translates into a 44 percent decrease over six years.

In addition, closing costs have declined for residential taxpayers in terms of the amount expended and their size relative to the amount borrowed. The average residential taxpayer witnessed their closing costs drop from $1,259.40 in 2008 to $707 in 2013, which translates into a 44 percent decrease over six years.[56] Since this drop coincided with an increase in the average loan amount, it also means that the size of closing costs as compared to the amount borrowed has decreased from 17.4 percent in 2008 to 8.9 percent in 2013.[57] Commercial property owners saw a similar drop in the size of closing costs as compared to the amount borrowed, from 7.9 percent to 5.2 percent.[58] In other words, over the last few years, both residential and commercial customers have negotiated for a higher valued service at a lower cost.

This drop in interest rates and closing costs has brought tax lien transfers within the price range of other popular payment options. The Finance Commission concluded that a property owner with an $8,000 tax bill would ultimately pay between $13,156 and $17,511 over a five year period.[59] While sometimes more expensive than the government's installment plans, this range could prove considerably cheaper than remaining in delinquency, whose financial impact ranged around $16,608 and $17,088.[60] More to the point, the cost of taking out a tax lien transfer was nearly identical to paying off property taxes with a credit card. The same Finance Commission study determined that the five-year financial impact of using a credit card to discharge an $8,000 tax bill was between $13,339 and $17,653, less than a $200 difference.[61] Given the above mentioned reductions in interest and closing costs in the tax lien transfer market since the Finance Commission conducted its study, tax lien transfers are now even more competitive as compared to other payment options.

Meaningfully, the comparable cost of tax lien transfers dispels many of the fears and criticisms boiling underneath the push for more restrictive regulation; it also helps explain why the tax lending remains popular among Texas property owners despite the industry's occasional bad press. A common fear directed against tax lien transfers is the alleged high cost that they exact from property owners. Another is that tax lending companies "only have their immediate financial self-interest at heart" and ignore "the interests and needs of taxpayers."[62] But, as their declining rates show, not only do tax lien transfers cost about the same as other prevalent payment options—significantly less than remaining in delinquency—but tax lending companies also have responded to the needs and demands of taxpayers just like other market players.

In fact, the companies couldn't compete with other market payment options otherwise. It's important to remember that property tax lenders provide a voluntary service in a competitive market. Their reception among property owners would sink dramatically if they obtained a reputation for having overstated prices or even a quick trigger finger with respect to foreclosures. Thus, as with any industry that depends on their reputation and long-term relationships to survive the challenges of the market, tax lenders soon learn that adapting to needs of their customers is their immediate financial self-interest. Competition and consumer choice act as the looked-for checks against industry excess, not restrictive regulations that could deny Texas property owners access to tax relief.

These last points are crucial in understanding the appeal behind tax lien transfers. The key advantage to a tax lien transfer is its responsiveness to consumers. Unlike the delinquency process, installment plans, credit cards, or even escrow accounts, property tax lending involves a personal negotiation between the property owner and the company that can have an appreciable bearing on the terms and prices that the property owner will ultimately pay. Property owners, therefore, can push for a bargain that matches their financial needs, and since tax lending companies will feel pressure to make some concessions because of aforesaid market forces, the process produces a tailored contract that offers both parties an optimal price for the service rendered.

Hence, in many ways, tax lien transfers represent a more accessible option for Texans struggling to meet their tax obligation because it adapts to them, sometimes in broad trends like the decline in interest rates, other times in specific concessions like the repayment period. In either case, they prove to be a flexible alternative to the stricture and expense of tax delinquency—one that Texans themselves have made the deliberate choice to trust and pursue.

Recommendations

Every year thousands of Texans find themselves in the unenviable position of falling behind on their property taxes either because of a temporary financial setback or because of some other lack in liquid capital. Fortunately, the competitive market has stepped-in to offer these property owners a way to satisfy their tax obligation through negotiable payment terms that better reflect their financial circumstances than the lump sum demanded by state law. Called a tax lien transfer, this lending practice offers Texas real estate owners a reasonable means to rectify their tax debt without having to tread through an expensive and inflexible delinquency process that could ultimately prompt the property's foreclosure.

There is a risk, however, that misperceptions of the tax lending industry and exaggerated fears of market abuse will cause the Legislature to interfere with, delay, or even block taxpayers' access to these financial services. Such actions would not protect Texas property owners as much as abandon them to the unforgiving attentions of the delinquency process. That is because with the exception of HB 1597, the legislative push for more regulations has largely ignored two very basic premises underpinning the tax lending market: 1) there remains a clearly defined need for market-based alternatives to financing a property owner's tax obligation; and 2) the demand for tax lien transfers closely shadows the government's own tax policy. Unless the Legislature assuages that demand and/or resolves its underlying causes—namely, the heavy property tax burden—then interventions in the tax lending market would foreclose what Texas taxpayers themselves have deemed to be necessary for their long-term financial stability, all without ever curing the hardship driving their decision. Property owners would still have the same tax obligation but would simply lack the means to afford it.

Consequently, the Texas Legislature should reorient its regulatory approach to tax lien transfers away from interventions that seek to corral the lending practice. It's important for the Legislature to recognize that Texas property owners find protection in the competitive tax lending market, both from unexpected bumps in their financial status and from costly and substandard practices as service providers compete for customers. Their interests will not be advanced by regulations that undercut or second guess their personal monetary decisions but by policies that preserve consumer choice and full access to the innovations of the market.

On that front, the Foundation offers three policy suggestions that work to keep tax lien transfers easily accessible to Texans.

Do Not Alter the Tax Lien's Priority

First and foremost, the Legislature should not amend Section 32.06 of the Texas Tax Code to eliminate or alter the tax lien's existing priority status after it's been transferred to a third party, as was proposed by SB 1449 during the 83rd legislative session. It's commonly noted that tax liens have superior priority than the secured interests of other creditors since they originate from the government's claim on the taxpayer's real estate. In simple terms, this means that the property tax lender has first claim on the property in the event of foreclosure, ahead of even the mortgage holder.[63]

Some worry that by "legally jump[ing] to the front of the line,"[64] property tax lenders unfairly disrupt the investment-backed expectations of these creditors, a concern regularly shared by the banking and mortgage industries.[65/66] However, while a mortgage-holder's wariness towards a superior claim is understandable, the transfer itself has no effect on creditors' rights since the tax lien already stands in front of the line, and that priority exists regardless of who holds the lien.[67] Nor has the tax lien transfer industry shown a taste for disrupting a creditor's interests through zealous and unnecessary foreclosures. As mentioned above, the Office of the Consumer Credit Commissioner showed that foreclosures represented

> Any attempt to change the priority of the tax lien would do more than just alter the order of which creditor is paid first. It would effectively patron the interests and earnings of one industry at the expense—read virtual ruin—of another.

less than one half of 1 percent of receivable property tax loans.[68]

Moreover, any attempt to change the priority of the tax lien would do more than just alter the order of which creditor is paid first. It would effectively patron the interests and earnings of one industry at the expense—read virtual ruin—of another. Property tax lending only exists as a sustainable commercial practice because the tax lien acts as collateral for the loan, a necessity when lending contracts are made to clients undergoing tough financial straits. Without that guarantee, companies could not offer the same terms that their clients found attractive, nor could they contract with much of their existing customer base because of the overhanging risk.

Such a legislative amendment, therefore, would pose a threat to the fiscal wellbeing of Texas property owners since tax lien transfers would lose the accessibility and features that made them useful as an alternative to delinquency and the tightened market would offer fewer protections as the lack of choices pressured property owners either to accept substandard terms or to associate with less reputable companies. This is especially true for those property owners for whom a tax lien transfer represents the only real option outside of delinquency, such as Texans who own their land outright, have bad credit, and/or fall outside of the government's payment plans. Thus, beyond the thorny issue of whether the state government ought to favor one industry at the expense of another, eliminating the tax lien's priority status could lead to the very types of market abuse the legislature wished to ward against, if not deny Texas property owners a chance at escaping delinquency and regaining control of their finances altogether.

Eliminate Existing Limitations of Mortgaged Properties

The Legislature also should amend Section 32.06(a-2) of the Texas Tax Code to eliminate its two-tier treatment of taxpayers whose property is subject to a mortgage lien. At present, the Texas Tax Code grants property owners the authority to initiate a tax lien transfer once their property taxes are due, but only "if the property is not subject to a recorded mortgage lien."[69] Otherwise, the property owner must wait until their taxes become delinquent and therefore subject to both penalties and interest before arranging a transfer.

This disparate treatment of Texans with mortgaged properties, like the initiative to alter the tax lien's priority, originates from concerns at how a tax lien transfer will affect the investments and expectations of other creditors. However, there is little evidence to suggest that the benefits gained by this interruption offset the very real and tangible costs imposed on Texas property owners. Indeed, the value conferred to creditors is vague at best. As stated above, the transfer itself has no effect on creditors' rights seeing as the tax lien is automatically attached to property, and that lien has priority irrespective of who holds it.[70] Additionally, the restriction does not actually stop Texas property owners from taking out a tax lien transfer; it merely achieves a short delay by making property owners wait until February 1st when their taxes become delinquent and penalties begin to accrue.

More significant, mortgage-holders have multiple opportunities to protect their secured interests that don't involve inhibiting a property owner's access to tax relief. Sections 32.06(f) and 32.065(b-1) respectively grant the mortgage-holder the right to secure the lien's release after the tax loan has been delinquent for 120-days[71] and when the property tax lender has sent out a notice of acceleration.[72] Section 32.06(k) grants the mortgage-holder the right to redeem the property for up to two years after the foreclosure deed was recorded.[73] Mortgage-holders even have the option of arranging an escrow account for property taxes when the mortgage is issued, which would preempt their client's need for a tax lien transfer.[74] It's these options that allow creditors to protect their investments, not a month long delay that will only increase the amount property owners need to pay in order to release the loan.

Compare this with the definite costs Section 32.06(a-2) imposes on Texans with mortgaged properties. The tax code's restriction on mortgaged properties force these Texans to assume unnecessary expenses since it denies them a chance to proactively take charge of their tax debt and avoid the ramifications of delinquency. Instead, the rule demands that they shoulder at least a 7 percent increase (6 percent penalty, plus 1 percent interest) on their tax bill before taking action.[75] This is not a negligible charge. On an $8,000 tax bill, the delinquency fees would cost a property owner at least $560 in the first month alone. Plus, the property owner would now need to take an extra $560 on the tax loan in order to clear his or her obligation with the government—that's additional money on which the property owner will pay interest, compounding the tax loan's final expense.

Considering these facts, the Legislature needs to ask whether it's fair and reasonable for taxpayers to shoulder additional costs when the tax lien transfer has limited—or no—effect on a mortgage-holder's ability to profit from their secured interests. As it happens, mortgage-holders do not need the short delay to shelter their secured assets—the Tax Code already grants mortgage-holder multiple opportunities to protect their investments once a tax lien has been transferred—but Texas property owners often need quick and easy access to liquid capital if they are to avoid the ramifications of tax delinquency. The Texas Legislature, therefore, should amend tax code and strike the restriction that penalizes property owners for having a mortgage.

Avoid Additional Regulations that Restrict Access

In light of property owners' fixed tax obligation as well as the steady demand for market-based tax assistance, the Texas Legislature should steer clear of additional regulations that impede access to tax lien transfers. In particular, one discussed proposal would require property tax lenders to assess a property owner's ability to repay before approving a tax lien transfer, similar to the one now required by the Consumer Financial Protection Bureau for residential mortgage loans.[76] Some propose this out of the fear that not making this assessment could lead property owners to overstretch their finances and take on commitments that they cannot afford.[77]

In a free and competitive market, Texas property owners have the right to pursue mutual arrangements that allow them to dispel their pre-existing tax obligations with as little costs as possible.

However, not only is such a requirement unnecessary, it also has the potential to frustrate Texans in overcoming the fiscal obligations they already have. The proposal to implement an ability-to-repay requirement misidentifies the financial risk when it comes to tax lien transfers. Here, the hazard comes not from whether property owners have the resources to take on additional debt—the law already imposes the tax obligation regardless of their ability to pay—but from whether property owners have the option of settling a pre-existing debt in the manner that best aligns with their financial circumstances. As previously discussed, a tax lien transfer does not create a new obligation but instead merely provides an opportunity for landowners who for one reason or another cannot or would prefer not to pay off their tax bill on-time and in one lump sum. If that outlet were closed, then these property owners would be pushed towards more expensive alternatives like delinquency, which can add up to 50 percent to a tax bill in penalties and fees after only one year. Hence, the regulation would put a greater strain on Texans suffering from economic insecurity, potentially leading to an increase in the number of foreclosures within the taxing jurisdictions—exactly what ability-to-pay assessments are intended to prevent. In a free and competitive market, Texas property owners have the right to pursue mutual arrangements that allow them to dispel their pre-existing tax obligations with as little costs as possible. Lawmakers should make every effort not to obstruct this right lest the attempt to protect Texas property owners from pressing debt has the perverse consequence of digging them deeper into financial hardship.

Conclusion

Each year, Texas property owners face a mounting and inescapable tax obligation. As such, many property owners turn to tax lien transfers when a temporary bump in their finances and liquidity make them unable to meet the government's payment requirements. Through the competitive market, tax lien transfers offer Texans an opportunity to spread out their tax burden over several years through negotiated payment terms, all while avoiding the sizeable costs and foreclosure risks associated with tax delinquency. Taxpayers are therefore able to shape their tax obligation so that it better matches their financial situation—a service that current government installment plans cannot, and should not, reproduce.

Any attempt made by the Texas Legislature to delay, hinder, or deny access to tax lien transfers will impose significant costs onto Texas property owners who turn to property tax lending as a reasonable and cost-effective alternative to delinquency. Instead, the Texas Legislature should look towards eliminating restrictions that impose unnecessary costs on Texas property owners trying to manage their tax obligation.

Endnotes

1 The Tax Foundation, "2014 State Business Tax Climate Index," 3.

2 U.S. Census Bureau, 2012 American Community Survey 1-Year Estimates, "Mortgage Status by Median Real Estate Taxes Paid (Dollars)"; U.S. Census Bureau, 2012 American Community Survey 1-Year Estimates, "Median Income in the Past 12 Months."

3 Texas Comptroller of Public Accounts, "Annual Property Tax Report: Tax Years 2002-2009;" Texas Comptroller of Public Accounts, "Biannual Property Tax Report: Tax Years 2010-2011."

4 U.S. Census Bureau, "Median Household Income by State: 1984 to 2012."

5 Tex. Tax Code §§ 33.01(a), 33.01(c), and 33.08; also see, Eric Fancher, Karl Hubenthal, Huffman Lewis, Dennis Love, and William Purce, "Legislative Report Property Tax Lending Study," Finance Commission of Texas (Aug. 2012) 4.

6 Fancher, "Legislative Report Property Tax Lending Study," 19.

7 Thomas Bonura, "Misdirected Hostility: Are Criticisms of Texas Property Tax Lenders Justified?", 53 S. Tex. L. Rev. 569, 573, 577 & 578 (Spring 2012).

8 Tex. Tax Code § 32.01.

9 Tex. Tax Code § 31.02.

10 Aamena Ahmed, "Property Tax Lending Industry Under Review Again," *The Texas Tribune* (9 Apr. 2014). Quoting Sen. Sylia Garcia.

11 Interview with Watus Cooper.

12 Sally Souers, testimony at May 27, 2014 hearing for House Committee on Business & Industry.

13 Interview with Bernard Weiner.

14 Fancher, "Legislative Report Property Tax Lending Study," 20.

15 Ibid., 21 & 23.

16 Ibid., 26-27.

17 Vernon's ANN. TX. CIV. STAT., Article 7345a.

18 Fancher, "Legislative Report Property Tax Lending Study," 10.

19 1995 Senate Bill 1387.

20 U.S. Census Bureau, "Median Household Income by State: 1984 to 2012;" Texas Comptroller of Public Accounts, "Annual Property Tax Report: Tax Years 2002-2009;" Texas Comptroller of Public Accounts, "Biannual Property Tax Report: Tax Years 2010-2011.

21 Tex. Finance Code §351.

22 Sen. John Carona and Sen. Juan Hinojosa, "Author's/ Sponsor's Statement of Intent," Senate Committee Report (1 Mar. 2013).

23 Rep. Naomi Gonzalez, "Author's/ Sponsor's Statement of Intent" (engrossed 14 May 2013).

24 The Tax Foundation, "2014 State Business Tax Climate Index," 3.

25 The Tax Foundation, "Property Taxes on Owner-Occupied Housing by State, 2004-2009."

26 U.S. Census Bureau, 2012 American Community Survey 1-Year Estimates, "Mortgage Status by Median Real Estate Taxes Paid (Dollars)."

27 U.S. Census Bureau, 2005-2012 American Community Survey 1-Year Estimates, "Mortgage Status By Median Real Estate Taxes Paid (Dollars)."

28 U.S. Census Bureau, 2012 American Community Survey 1-Year Estimates, "Mortgage Status by Median Real Estate Taxes Paid (Dollars)."

29 U.S. Census Bureau, 2012 American Community Survey 1-Year Estimates, "Median Income in the Past 12 Months."

30 U.S. Census Bureau, 2012 American Community Survey 1-Year Estimates, "Value: Owner-Occupied Housing Units."

31 Texas Comptroller of Public Accounts, "Annual Property Tax Report: Tax Years 2002-2009"; Texas Comptroller of Public Accounts, "Biannual Property Tax Report: Tax Years 2010-2011."

32 "Historical Inflation Rate" (15 Apr. 2014).

33 U.S. Census Bureau, "Median Household Income by State: 1984 to 2012."

34 Texas Comptroller of Public Accounts, "Annual Property Tax Report: Tax Years 2002-2009"; Texas Comptroller of Public Accounts, "Biannual Property Tax Report: Tax Years 2010-2011."

35 "Historical Inflation Rate" (15 Apr. 2014).

36 U.S. Census Bureau, "Median Household Income by State: 1984 to 2012."

37 Office of Consumer Credit Commissioner, "Property Tax Lending Consolidated Volume Report, Calendar Years 2008 & 2012."

38 Ibid.

[39] Ibid.
[40] Fancher, "Legislative Report Property Tax Lending Study," 20.
[41] Ibid., 23.
[42] Tex. Tax Code §§ 31.02, 32.01, and 33.01.
[43] Tex. Tax Code §§32.01, 33.01, 33.07, and 33.08.
[44] Tex. Tax Code § 31.02.
[45] Tex. Tax Code § 33.01(c).
[46] Tex. Tax Code § 33.01.
[47] Originally appeared in Fancher, "Legislative Report Property Tax Lending Study," 4.
[48] Fancher, "Legislative Report Property Tax Lending Study," 8.
[49] Fancher, "Legislative Report Property Tax Lending Study," 8.
[50] Texas Comptroller of Public Accounts, "Property Tax Exemptions: Residence Homestead" (accessed 21 May 2014).
[51] Rep. Naomi Gonzalez, "Background and Purpose," House Committee Report.
[52] Leslie Pettijohn, Written Testimony Before the House Business and Industry Committee (27 May 2014).
[53] "Cameron County Holds Auction to Collect Delinquent Taxes," KRGV.com (4 Mar. 2014); CoreLogic, "National Foreclosure Report"(Dec. 2013).
[54] Leslie Pettijohn, Written Testimony Before the House Business and Industry Committee (27 May 2014) 8, 10.
[55] Tex. Tax Code §32.06(e).
[56] Leslie Pettijohn, Written Testimony Before the House Business and Industry Committee (27 May 2014).
[57] Ibid., 7.
[58] Ibid., 9.
[59] Ibid., 8.
[60] Ibid.
[61] Ibid.
[62] Dale Buss, "Predatory Property-Tax Lenders Are Targeted in Texas Effort," *Forbes* (20 Jan. 2013).
[63] Thomas Bonura, "Misdirected Hostility," 579.
[64] Dale Buss, "Predatory Property-Tax Lenders Are Targeted in Texas Effort," *Forbes* (20 Jan. 2013).
[65] Stephen Scurlock, testimony at May 27th, 2014 hearing for House Committee on Business & Industry.
[66] John Fleming, testimony at May 27th, 2014 hearing for House Committee on Business & Industry.
[67] Tex. Tax Code § 32.05.
[68] Leslie Pettijohn, Written Testimony Before the House Business and Industry Committee (27 May 2014).
[69] Tex. Tax Code § 32.06(a-2).
[70] Tex. Tax Code § 32.05.
[71] Tex. Tax Code § 32.06(f).
[72] Tex. Tax Code § 32.065(b-1).
[73] Tex. Tax Code § 32.06(k).
[74] Tex. Tax Code § 31.072.
[75] Fancher, "Legislative Report Property Tax Lending Study," 4.
[76] Dodd-Frank Wall Street Reform and Consumer Protection Act §1411.
[77] J. Eric T. Sandberg Jr., "Law would address predatory nature of tax lien lending industry," *Houston Chronicle* (26 Mar. 2013); Caelainn Barr and Charlotte Keith, "A High Price to Pay: How property tax lenders prey on the state's most vulnerable homeowners," *Texas Observer* (9 July 2014).

About the Author

Kathleen Hunker is a policy analyst with the Center for Economic Freedom at the Texas Public Policy Foundation. She is also a managing editor of the Foundation's research and publications.

Prior to joining the Foundation, Hunker worked as a legal associate at the Cato Institute's Center for Constitutional Studies, where she conducted rigorous research and writing on a wide-range of federal and state cases in order to advance the Center's mission of a constitutionally limited government. She graduated in 2012 with a Juris Doctor (J.D.) from Columbia University School of Law and a Masters of Law (LL.M) from the University College London. A former editor for the *Columbia Journal of European Law,* Hunker has written for such publications as *Townhall.com, Ethika Politika, TheBelltowers.com*, and the *Harvard Journal of Law and Public Policy*, among others. She specializes in comparative constitutional law and natural rights..

About the Texas Public Policy Foundation

The Texas Public Policy Foundation is a 501(c)3 non-profit, non-partisan research institute. The Foundation's mission is to promote and defend liberty, personal responsibility, and free enterprise in Texas and the nation by educating and affecting policymakers and the Texas public policy debate with academically sound research and outreach.

Funded by thousands of individuals, foundations, and corporations, the Foundation does not accept government funds or contributions to influence the outcomes of its research.

The public is demanding a different direction for their government, and the Texas Public Policy Foundation is providing the ideas that enable policymakers to chart that new course.

Texas Public Policy
FOUNDATION
Celebrating 25 Years

900 Congress Ave., Suite 400 | Austin, Texas 78701 | (512) 472-2700 phone | (512) 472-2728 fax | www.TexasPolicy.com