

CONNECTICUT GENERAL ASSEMBLY
March 8, 2016

TESTIMONY OF ADAM J. COHEN
TO THE BANKING COMMITTEE
ON SENATE BILL 409, “AN ACT CONCERNING THE
ASSIGNMENT OF CERTAIN LIENS AND EXPANDING
HOMEOWNER PROTECTIONS UNDER THE EMERGENCY
MORTGAGE ASSISTANCE PROGRAM”

My name is Adam J. Cohen and I am an attorney with the law firm of Pullman & Comley in Bridgeport. I have advised and represented approximately seventy towns in Connecticut, plus dozens of taxing districts and similar municipal entities, with respect to their revenue collection efforts and practices. I also serve as general counsel to the Connecticut Tax Collectors Association, a trade group primarily devoted to educating municipal revenue collectors and standardizing the procedures they use to fulfill their responsibilities.

Tax collectors have no authority over tax policy, rates, or programs. They do not decide who is responsible to pay or how much. Instead, their function is purely ministerial: they collect taxes and other charges in the amounts and manner as they are directed by assessors and legislators. They are in the unique position of working on a daily basis with the laws which set forth the procedures by which municipal taxes and other types of assessments are paid, both voluntarily and as recovered through litigation, garnishments, and similar mechanisms.

I urge this Committee to reject Senate Bill 409, “An Act Concerning the Assignment of Certain Liens and Expanding Homeowner Protections Under the Emergency Mortgage Assistance Program.” This bill would prohibit assigning tax liens of \$5,000 or less, require purchasers of tax liens to “evaluate” a delinquent homeowner’s “willingness and ability to repay the debt,” and cap the attorney’s fees and pre-assignment interest awardable to them. It would also require both assignees and municipalities themselves to participate in a pre-foreclosure mediation program administered by the Connecticut Housing Finance Authority designed for defaulted mortgages.

A number of Connecticut municipalities, especially larger cities like Hartford, Bridgeport, and Danbury, rely on the municipal option to assign tax liens under General Statutes Section 12-195h as their primary method for recovering delinquent tax accounts. It is also a particularly important device whenever bankruptcy proceedings, environmental contamination, or other special circumstances make direct enforcement by the municipality itself impossible or impractical. Tax liens are often purchased by institutional investors under municipal contracts containing protections for delinquent taxpayers and then foreclosed in court. In nearly all cases, the sole reason investors are interested in purchasing these liens is the post-assignment interest accruals they earn – both as profit and to compensate for the significant time, expense, and risk of assuming responsibility for collection efforts.

The overwhelming majority of annual real estate tax liens on residential properties in Connecticut are below \$5,000 in principal. Imposing this as a minimum, retroactively reducing pre-assignment interest, and capping attorney's fees to the unrealistic amounts in this bill regardless of the assignees' actual expenditures would effectively repeal General Statutes Section 12-195h and deprive municipalities of a key method on which they depend for ensuring that their budgets are funded. Moreover, courts already police attorney's fees by scrutinizing hourly rates and limiting awards for reasonableness as in every foreclosure.

Senate Bill 409 would also impose excessive burdens and costs on municipalities for undertaking routine tax enforcement. First, it would require municipalities to send every delinquent taxpayer a pre-suit demand by return-receipt mail, which currently costs at least \$6.74, rather than by first-class mail for \$0.49 as is currently required by General Statutes Section 12-155. This is a more than thirteen-fold cost increase for mailings which can easily number in the thousands in larger municipalities every year. Second, it would require municipalities to conduct in-person or telephonic mediations with each taxpayer to "restructure" the debt in a manner acceptable to CHFA, requiring additional staff and wages plus training in this new job duty. Third, it would prohibit the entry of a foreclosure judgment while the delinquent taxpayer applies for a CHFA loan, increasing the time during which the municipality's budget remains underfunded. All of this would constitute a series of unfunded mandates to municipalities likely to exceed tens or hundreds of thousands of dollars in losses and expenses every year. Unlike most mortgageholders, municipalities are not for-profit entities equipped to administer these functions and absorb these costs. Municipalities would instead need to raise revenue for them by increasing taxes on everyone else who pays their tax bills on time. Senate Bill 409 would also take the unprecedented step of imposing liability against municipalities for compensatory and punitive damages plus attorney's fees under the Connecticut Unfair Trade Practices Act for failure to comply with these new mandates, forcing municipalities to defend lawsuits brought for perceived violations of a law which was designed for, and is currently limited to, the entrepreneurial aspects of business enterprises.

Various state and local relief programs are already available for delinquent taxpayers. The elderly, disabled, low-income, veterans, and others with demonstrated need are eligible for several types of tax and foreclosure relief. In 2013, Public Act 13-276 (which was written and supported by the Connecticut Tax Collectors Association) authorized town abatement committees to delay and reduce liability for taxes and/or interest in cases of individual need, and also incentivized mortgageholders to redeem properties slated for tax sale on behalf of delinquent homeowners. Although state law wisely prohibits tax collectors from waiving or compromising individual tax debts, nearly every tax collector in Connecticut actively attempts to informally negotiate term-based payment plans for persons with arrearages before referring their accounts for enforcement action. Unlike private mortgagees, municipalities and officials are also constrained by constitutional due process requirements which provide enhanced protections to delinquent taxpayers during every stage of tax assessment and collection.

Simply put, taxes are not the same as mortgages. While mortgages involve consensual loans of money by private entities for profit, taxes are mandatory contributions to governmental administration overseen by public officials who have no personal profit incentive for abuse. Tax collections are regulated by their own strict set of procedural laws which allow local

governments to collect the funds they need to operate and already provide reasonable protections to taxpayers. While private lenders are free to negotiate principal, interest, and other loan terms with their customers, municipalities are legally obligated to impose and collect taxes consistently and uniformly, and to do so solely for the benefit of their communities.

Senate Bill 409 would impose unnecessary and extremely undesirable changes to the tax collection laws which would detrimentally impact Connecticut's municipalities and the ability of their personnel to effectively perform their duties. I urge you to please reject Senate Bill 409.