

LOCAL FINANCE NOTICECHRISTINE TODD WHITMAN
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COMMISSIONERBETH GATES
DIRECTOR**CURRENT ISSUES IN TAX COLLECTION
TAX REFUNDS AND TAX SALES**

Over the last several months, there have been several decisions and policy actions taken by the State's Supreme Court Committee on Taxation that affect municipal tax appeal refund processing and payment practices. In addition, a recent State law dealing with environmental cleanup of industrial properties requires critical actions of tax collectors. This Local Finance Notice is intended to review the impact of these actions and advise local governments of steps they should take regarding them. The assistance of the Tax Collectors and Treasurers Association in the preparation of this Notice is greatly appreciated.

Information regarding the following is included in this Notice:

- I. Distribution of Tax Judgments
- II. Timing of making tax appeal refunds
- III. Allocation of payments and who should receive the refund
- IV. Providing governing bodies information relating to appeals
- V. Recipients of tax appeal notices
- VI. Industrial Site Recovery Act - Tax Sales
- VII. Interest accrual on refunds

I. DISTRIBUTION OF TAX JUDGMENTS

Over the last few years, the system designed to notify the tax collector of tax appeal judgments has not worked as well as expected. With the goals of creating efficiency and reducing workload on the Courts, over the last few months the State Supreme Court Committee on Taxation has studied this issue. With input from the Tax Collectors and Treasurers Association and the Division of Local Government Services, the Committee has authorized a pilot project designed to ensure that all relevant local officials receive copies of judgments.

Under this project, which is effective immediately, the Clerk of the Tax Court will mail copies of all judgments to the tax collector, municipal attorney, plaintiffs attorney, and County tax administrator. Upon receipt, the tax collector is to *immediately* provide a copy to the tax assessor, municipal clerk, and any others, as required by the governing body. In doing so, local procedures should be

established to recommend to the governing body acceptance or further appeal, with notice of the decision of the governing body provided to the tax collector.

This new system has been created because, prior distribution systems, though well intended, did not work well. This model ensures that all the key players receive copies, while minimizing workload on tax Court personnel.

The participation of tax collectors to ensure success of this system is important. Where one of the deficiencies of the previous system was that the collector did not always receive a copy, under this model receipt is assured, the trade-off being that the collector must *immediately* provide others a copy of the judgment. *The TCTA President, Executive Director, General Counsel*, and I feel this is an equitable solution to the problem and are confident that collectors will find this a useful approach.

II. TIMING OF TAX APPEAL REFUNDS

Current law provides that refunds stemming from successful tax appeals must be paid within 60 days from the time the judgment is entered. However, both the plaintiff and municipality have 45 days from the judgment in which to file an appeal. In order to prevent refunds being made if the parties are going to make an appeal, refunds of taxes stemming from a judgment should **not** be made until the 46th day after the judgment has been entered.

Thus, the collector should place judgments into some form of follow-up folder until the 46th day. At that time, because the municipal attorney and tax assessor are notified of any appeals by the plaintiff, and the attorney will know of decisions by the governing body to appeal, the collector should then consult with them to affirmatively determine if there is going to be an appeal. If there is none, the collector should then act to ensure the refund is processed within the 60 day limit.

Where a governing body resolution is required to make the refund, careful planning is required to ensure the resolution is passed in time to meet the 60 day deadline. Where a governing body may not meet within the time period, an appropriate resolution with contingent language may be passed prior to the 45 day point with the instruction that if an appeal is not filed, the collector may make the refund as appropriate. A sample of this type of resolution is enclosed.

Ideally, The municipality should utilize a form similar to the one included with this Notice to document the appeal status of a judgment, and to serve as documentation on which the issuance of a refund can be justified and be made within the statutorily allowed 60 days. Upon receipt of a judgment, the tax collector should fill out the form, keep a follow-up file of judgments and circulate the form. **Each municipality should create a mechanism to determine if the assessor or attorney should notify the tax collector if a further appeal of the judgment will be taken.**

III. ALLOCATION OF PAYMENTS AND WHO SHOULD RECEIVE THE REFUND

Once it is ascertained a refund is appropriate, the collector must then allocate the payment and provide the information to the appropriate municipal official for preparation of the resolution.

The first claim on the refund, however, is for any existing delinquency on the subject property only. Other properties of the same owner cannot be considered. The collector should first calculate the amount of principal and interest on the delinquency, and apply the necessary portion of the refund toward it (interest first, then principal). In the view of the Division, the current state of the law prohibits the application of refund proceeds toward taxes not yet due unless specifically authorized by the owner.

When the plaintiff's attorney is on the record, the payment is to be made to the attorney on behalf of the plaintiff, with the check made out to both the attorney and the plaintiff.

IV. PROVIDING GOVERNING BODIES INFORMATION RELATING TO APPEALS

Each municipality should establish a procedure to ensure the Governing Body and Chief Financial Officers are aware of the status of appeals and to ensure appropriate reserves are established for refunds that may be required. Some form of regular reporting is advised.

CFO's are reminded of the importance of creating these reserves. Sound accounting practice requires the creation of reserves in order to properly reflect the municipality's fiscal condition at any point in time. It also highlights the need for cash reserves to make the necessary payments without delay and to avoid accumulation of interest. Timely and prudent establishment of reserves is a critical action.

V. RECIPIENTS OF TAX APPEAL NOTICES

N.J.S.A. 54:2-40 and 54:5A-51 grants the municipal governing body the responsibility of determining the individuals who are to receive copies of tax appeals. The law also provides that Municipal Clerks shall give copies of appeal to tax collectors. If your governing body has *not* considered which municipal officials should receive copies of appeals, it is certainly appropriate for them to do so.

VI. INDUSTRIAL SITE RECOVERY ACT — TAX SALES

The Industrial Site Recovery Act (R.S.13:1K-6) provides a wide range of incentives and powers to property owners and State government in dealing with industrial environmentally contaminated properties. In doing so, the law addresses several issues affecting tax sales.

Specifically, the law requires that the Department of Environmental Protection be notified whenever a property classified as industrial (MOD IV Class 4B) is going to be sold for delinquent taxes. It also requires that bidders at a tax sale be advised that any such property classified as industrial, as such, may be subject to the application of the various statutes.

To meet this requirement, the Division recommends that tax collectors take the following actions as part of their tax sale procedures:

- Include the following statement in tax sale notices, public advertisements, and in the notice to the delinquent taxpayer:

Industrial Properties may be subject to the Spill Compensation and Control Act (N.J.S.A. 58:10-23.11 et seq.), the Water Pollution Control Act (N.J.S.A. 58:10A-1 et seq.), and the Industrial Site Recovery Act (N.J.S.A. 13:1K-6 et seq.) In addition, the municipality is precluded from issuing a tax sale certificate to any prospective purchaser who is or may be in any way connected to the prior owner or operator of the site.

- At the time of the sale, publicly make that same statement as published in the Notice of Sale.
- At the same time the Notice is published, send a copy to the Department of Environmental Protection (by certified mail) at:

Negotiation/Enforcement Section
Division of Responsible Party Site remediation
CN 028
Trenton, NJ 08625-0028
(609) 984-4447

- Contemporary tax collection practice dictates that collectors should be using a form on which all successful bidders provide relevant information, such as the bidders name, address, telephone number, and Federal tax ID number. These forms should be modified to certify that, in the case of industrial properties, the bidder is not the owner of the property. A model form is included with this Notice. Though not shown on the form, the name of the municipality should be added above the title at the top of the page.

VI. ACCRUAL OF INTEREST ON REFUNDS

With the filing date for tax appeals changed to April 1, many tax appeal judgments are received before the third and fourth quarter installments are due, thus overpayment of taxes are minimal. After a tax judgment is received and the 45 day counterappeal time limit has been reached, the tax levy has to be adjusted and a refund of taxes made accordingly.

If a tax judgment indicates the interest is waived on the refund of an overpayment, the five percent interest is not calculated. If the judgment does not indicate anything about interest, interest is calculated at five percent on the amount of the overpayment, *when such overpayment occurs on an annual basis*, from the date of the overpayment to the date the refund is made to the taxpayer. This refund of taxes and interest must be done by resolution of the governing body.

The adjustment to the levy should first be made to the fourth quarter taxes and, if there is still a balance, the third quarter taxes. Keep in mind a levy adjustment cannot be calculated until there is a certified tax rate.

Collectors in municipalities operating under the calendar fiscal year must remember to adjust the first and second quarter installments for the subsequent year when there is an adjustment to the current year levy. In addition, the appropriate adjustments must be made to the MOD IV system. An adjusted tax bill will have to be sent to the taxpayer and mortgage company that escrows taxes.

Under the State fiscal year, collectors must remember to adjust all quarters in MOD IV and send out adjusted tax bills when appropriate to the taxpayer and mortgage company that escrows taxes.

It is important that tax collectors maintain the MOD IV program when levy adjustments are done. If this is not done, subsequent tax bills will not be calculated correctly and there will possibly be a problem proving the tax levy in your revenue system to the extended tax duplicate.

Thank you for your attention to these issues. Collectors are asked to provide a copy of this Notice to the Municipal Clerk and Chief Financial Officer, and are urged to discuss the relevant sections with them. Copies should also be provided to legal counsel as appropriate.

Beth Gates, Director
Division of Local Government Services

Distribution: Municipal Tax Collectors (to distribute to Municipal Clerk and Chief Finance Officer)

RELEASE OF TAX OVERPAYMENT AND LEVY ADJUSTMENT
(pursuant to tax judgment)

Section A: Appeal Information (completed by tax collector)

1. Type of judgment: **State Tax Court:** **County Board of Taxation:**
2. Docket Number: _____ Year: _____
3. Date Entered: _____ Appeal Deadline _____
4. Block: _____ Lot: _____ Qualification Code: _____
Street Address: _____
5. Plaintiff Name: _____
Address: _____
6. Attorney's Name: _____
7. Is interest calculated at 5% Yes: No:
8. Is interest waived by taxpayer if refund is paid within 60 days. Yes: No:

Section B: Results (completed by Tax Assessor or Attorney and returned to tax collector)

1. Appeal filed: **No:** **Yes** If yes, date filed: _____
2. Additional Information:

Signature: _____ Date Completed: _____

Section C: Optional Information (completed by tax collector)

Date resolution prepared: _____ Date Approved: _____
Date paid: _____ Check #: _____ Amount: _____

TAX SALE BIDDER INFORMATION SHEET

Instructions: Complete the following information to assist the tax office in the preparation and redemption of tax sale certificate(s). Submit it with the payment of the certificates purchased. One form must be prepared for each person in whose name a certificate is issued.

1. Name of person bidding on property: _____

2. The name and address of the person to whom the Tax Sale Certificate is to be issued is:

Name: _____

Mailing Address: _____

Federal Tax Identification (or Social Security) Number: _____

3. Person to contact if there are any questions pertaining to the preparation of the tax sale certificate(s).

Name: _____

Telephone: _____ Fax Phone: _____

4. How do you wish to obtain your Tax Sale Certificates? Pickup at tax office: Mail:

REQUIRED NOTICE AND DISCLOSURE

Certificate purchasers are herewith advised, pursuant to N.J.S.A. 13:1K-6, that industrial property may be subject to the "Environmental Clean Up Responsibility Act," the "Spill Compensation and Control Act," or the "Water Pollution Control Act." These laws preclude the municipality from issuing a tax sale certificate to any purchaser who is or may be in any way connected to the previous owner or operator of such sites. By signing below, the person bidding the property certifies that he does not represent, is not connected to, and is not such a property owner or operator of any such parcel for which a certificate is issued. **I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.**

Date: _____ Signature: _____

For Tax Collector Use Only:

Block	Lot	Qual. Code	% Bid	Premium Amount	Amount of Sale