

CTC-97-5

Notice Number

New Jersey Department of Community Affairs
Division of Local Government Services

10/31/97

Date

LOCAL FINANCE NOTICE

CHRISTINE TODD WHITMAN
GOVERNOR

JANE M. KENNY
COMMISSIONER

BETH GATES
DIRECTOR

NOTE TO READERS

This past summer, Governor Whitman enacted into law a two bill package that provide municipalities with additional options to manage its cash flow and property tax revenues; the ability to "sell" its tax levy, and the option of selling its tax liens in the current year, instead of the following year. In addition, Chapters 99 and 190 of the Laws of 1997 also clarify a number of technical issues regarding the sale of tax liens and other tax collection practice issues. Because of the scope and complexity of the changes, the Division is issuing three Local Finance Notices to assist local officials in managing their impact. The Notices are:

- MC-97-5 Tax Lien and Tax Levy Sale Law - Information for Elected Officials
- CTC-97-4 Tax Billing and Tax Lien Law Changes
- CTC-97-5 Tax Levy Sale Procedures

MC-97-5 is being distributed to Mayors and Governing Body members through the municipal clerk and to tax collectors; the two CTC Notices are being sent directly to tax collectors, and collectors are directed to provide the chief financial officer with a copy. CTC-97-4 will also include a copy of both laws showing the statutory changes.

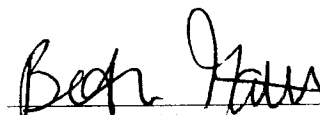
Summary of P.L. 1997, c. 99 — Tax Levy Sale Law Provisions

The most well known aspect of P.L. 1997, c. 99 is the ability of a municipality to "sell" its property tax levy to an outside investor, the proceeds of which allow the municipality to substantially reduce or eliminate its reserve for uncollected taxes, and has the potential to provide improved revenue and cash flow management.

This Local Finance Notice provides local officials with an outline of the provisions of the law. It is organized by subject matter to make it easier to understand the process and its many provisions. Local officials interested in pursuing a tax levy sale are urged to carefully review this Notice, the enclosed outline, the copy of the law itself (a copy is provided as part Local Finance Notice CTC-97-4), educational material provided by the Tax Collectors and Treasurers Association, information provided by those willing to buy tax levies, and local legal counsel and local finance professionals.

Because of the complexity and range of issues needed to conduct and implement a tax levy sale, the municipality should have a team of officials participating in the work. Among others, that team should include the chief financial officer and certified tax collector, to ensure that all operational issues are carefully anticipated and considered. The Division should be advised of plans to sell a tax levy as soon as a decision to move forward has been made.

Finally, while the Division intends to adopt a series of regulations that clarify and elaborate on several sections of the law, the attached Directive details actions to be followed until formalized by rule. Please provide a copy of this Notice to your Chief Financial Officer.



Beth Gates, Director
Division of Local Government Services

Enclosures

Distribution: Municipal Tax Collectors

Director's Office
(609) 292-6613

Local Government
Research
(609) 292-6110

Financial Regulation
and Assistance
(609) 292-4806

Local Finance
Board
(609) 292-4537

Local Management
Services
(609) 292-7842

Authority Regulation
(609) 984-0133

Fax
(609) 984-7388

Directives Regarding Tax Levy Sale Provisions of P.L. 1997, c. 99

I. Meaning of "sunset" pursuant to N.J.S.A. 54:5-113.6(g)

"Sunset provision" means a clause in a tax levy sale contract that eliminates or modifies a provision in the contract that obliges a tax levy purchaser to pay all subsequent taxes on properties for which the purchaser has acquired tax lien certificates.

II. Maintenance of Records

The municipality shall implement an appropriate system of records and internal controls (i.e., a subsidiary ledger) to track delinquent payments made by property owners or others for those parcels on which a tax levy buyer has provided payment of taxes. The system shall track payments made by and to the tax levy purchaser.

III. Meaning of "face value" when a tax sale certificate is issued to a tax levy buyer

"Face value" shall be the total of principal (total of taxes and any other obligations), interest, and any allowed costs that equals the total amount of the certificate issued to the levy buyer.

IV. Filing of fiscal analysis for tax levy sale

The three year fiscal analysis required by N.J.S.A. 40A:4-40.3 shall only be required the first time a municipality utilizes a tax levy sale. In calculating the succeeding year's amounts, the current year's value shall be used for Net Value Taxable and Total Appropriations. In addition, if once the cycle has started and there is a year when the revenue is not anticipated, it shall also be required in the year when the revenue is next utilized.

V. Procedure to use when a taxpayer pays the delinquency on a property that received payment from a tax levy sale buyer

When a taxpayer makes a payment for a delinquency on a property that received payment from a tax levy sale buyer, the tax collector shall:

1. After determining the actual amount due, record the receipt as current taxes and interest to the taxpayers account and post it to the appropriate account (master record).
2. Offset the principal with a reversal of the internal control document entry of the payment by the levy purchaser.
3. To refund the interest to the levy purchaser, offset the related interest on the master record with a refund transaction.
4. Upon preparation of a voucher, detailing the transaction, and certified by the tax collector, a check shall be issued according to law.

VI. Handling of current taxes on municipally held liens when a tax levy is purchased

Municipally held tax title liens shall only be sold through the assignment sale process (N.J.S.A. 54:5-112 et seq.) and shall not be included in the total tax levy sale, unless the sale process includes such an assignment sale. Subsequent taxes continue to accrue to the liens for all municipally held liens.

VII. Calculation of amount to reduce reserve for uncollected taxes

Municipalities considering a tax levy sale should contact the Division to discuss the mechanism to reduce the reserve for uncollected taxes. As a guide, a simple calculation to estimate the reduction in the first year would be to utilize the previous year's amount realized Receipts from Delinquent Taxes (Budget Sheet 11, line 4), increased by the percentage increase in the total tax levy from the previous year to the current year. For subsequent years, because of the variety of ways tax levy sales may be structured, the Division will work with each municipality to determine the appropriate formula to utilize. Generally, it will reflect the difference between the total collected levy and the total collection utilizing the underlying collection rate (the collection rate utilizing the total collected up to the time of the tax sale). Calculations utilizing any other formula should be reviewed by Division staff prior to inclusion in the budget. The Annual Financial Report shall reflect the final calculation.

VIII. Calculation of tax collection rate

For financial reporting purposes, the Annual Financial Statement shall reflect the deduction of the proceeds of the tax levy sale for the calculation of the collection rate, and show both the underlying collection rate and the true collection rate. For the purposes of the annual audit, the true collection rate shall be shown, and there shall be a footnote indicating the underlying collection rate and that the true collection rate includes the proceeds of a tax levy sale.

IX. Tax Sale Notice Text

If the contract with a tax levy purchaser provides the option or requires the levy purchaser to take delivery of any or all tax sale certificates at the time of a tax sale, all notices published or mailed relating to the tax sale shall include a statement that the tax sale includes the provisions to that effect, whichever may be the case.

Division of Local Government Services

Summary of P.L. 1997, c. 99

Tax Levy Sale Law Provisions

(statutory references in parenthesis)

I. General rule - any practices not changed by these provisions remain intact.

II. Tax Levy Sales - General

A. General Conditions

1. A municipality may sell its total property tax levy to a third party at public sale, which may be by sealed bid or public auction.
2. The terms of the levy sale may include a requirement for the levy purchaser to purchase the subsequently created tax lien certificates.
3. The sale must be to the highest bidder subject to terms and conditions of the sale. The sale must be advertised 14 days in advance in legal newspaper circulating in the municipality.
4. A levy sale may also be concluded in the final month of the fiscal year. (54:5-113.5)
5. The governing body must pass a resolution authorizing the sale.

B. Tax Levy Sale - Bid Specifications (and contract) Terms and Conditions (54:5-113.6(_))

1. Municipality may set a minimum bid price, which may be expressed in dollars, percent of levy, or both and may include a premium or discount from the levy amount, and may reject any or all bids if the sale price is inadequate. (a)
2. The contract may require the levy sale payment to be made quarterly, or in one lump sum at the end of the year. If paid in installments, they are due not earlier than 10 days, or no later than 30 days after the quarterly due date. (c)
3. The contract may provide that if the levy purchaser fails to make the required payment within five business days from the time the collector's statement is received, the municipality may charge a penalty not to exceed three times the maximum delinquent rate of interest permitted by statute, until the required payment is made in full. (c)
4. Bid specifications may require the levy purchaser to pay all subsequent taxes, municipal liens and municipal charges on each certificate they acquire, until it is redeemed or foreclosed. Specifications may require that failure to make payments, as required, shall result in forfeiture of certificates and amounts due, and require assignment back to the municipality. The specifications and contract may also include a sunset (release from the obligation to pay) or other provisions relating to the rights or obligations to make these payments. (g)
5. Specifications and contracts may also contain provisions:

- i. relating to resolution of tax appeals on properties that the levy purchaser has acquired tax sale certificates. (h)
 - ii. permitting the municipality to conduct a public tax sale and reimburse the levy purchaser from those proceeds. (i)
 - iii. At closing of the levy sale, provide the purchaser the right, but not obligation, to acquire, by assignment, all tax lien certificates held by the municipality, excluding those with known or suspected environmental contamination. This can be exercised only if the purchaser's bid is greater than 98% of the value of the levy and full redemptive value of the certificates assigned. (k)
- C. The tax collector remains responsible and obligated for all collection and enforcement of taxes and preparation of redemption statements and discharge of tax lien certificates. (e)
- D. Purchasers must provide reports as requested by the municipality. (f)
- E. Professional service resolution and certificate of availability of funds requirements must be met for all contracted professionals assisting the municipality in conducting a levy sale. There is no provision for paying professionals from proceeds of a sale.

III. Total Property Tax Levy Sales - Payment Process

- A. Levy sale payments process (54:5-113.6)
 1. Installment payments are due upon presentation of a certification from the tax collector to the levy purchaser containing:
 - i. the total amount of levy due for the period;
 - ii. the amount delinquent;
 - iii. a list of the delinquent properties, including block, lot, and name of owner; and,
 - iv. the amount due and payable for the period, pursuant to the contract
 2. Certification must be delivered to the levy purchaser within five business days following 10 days after the tax due date.
 3. Because the levy purchaser is buying the entire levy, to offset the obligation, the payments of current taxpayers are received, the purchaser receives credit against his obligation in the amount of the taxes paid.
- B. Bid security
 1. Successful bidders shall be required to post a bond or irrevocable letter of credit to secure payment. The municipality may elect to require a bond, letter of credit, or either one.
 2. For contracts that require the payment to be made quarterly, the security cannot be less than 105% of the uncollected taxes remaining at the end of the previous fiscal year; or if the levy purchaser purchased the levy in the prior year, 105% of the amount paid in that year; whichever is greater.
 3. For contracts when payment is made at the end of the fiscal year, the security must equal 105% of the value of the delinquency in the previous fiscal year.

4. Security for quarterly payments may have the amount reduced during the year, based on proportionate reduction in the obligation. Security must be provided prior to the sale becoming effective. (b)
- C. If specified in the contract, the payment may be made at the end of the year, instead of by quarterly installment. (54:5-113.5)
- D. Even though the levy is purchased, and even if a tax sale certificate is issued to the levy purchaser, properties with unpaid taxes, assessments, or municipal charges remain delinquent, for the purposes of all aspects of tax lien certificates, or for filing a tax appeal. This means that full delinquency obligations, including any tax sale certificates, must be paid prior to any appeal being filed. (54:4-67.1)
- E. Levy purchasers receive only interest amounts attributable to properties in the sale and collected by the collector, at rates normally charged by the municipality. This excludes any delinquent interest collected by the collector prior to time levy payment is made. (54:4-67(c))
- F. Prepayment discounts by the levy purchaser are not authorized. (54:4-67)
- G. In order to maintain proper internal control of levy sale transactions, collectors will have to maintain a control mechanism to track tax payments and refunds from levy payments.

IV. Levy Purchases and Tax Sales

- A. Rules related to advertisement and notice of a tax sale apply to all delinquent properties in order to give property owners the opportunity to avoid creation of a tax sale certificate. Further, since contract requirements may vary, all sale provisions are subject to the contract, including the right of the levy purchaser to purchase subsequent delinquencies. (54:4-67.1)
- B. The rights of a taxpayer to make a delinquent tax payment or redeem a tax sale certificate are not changed by the law.
- C. All laws related to tax sale notice and redemption apply when a levy sale has been executed; except that, if required in the contract, the municipality shall issue and the levy buyer shall accept any tax lien certificates for parcels that remain unpaid at the commencement of the sale. In this case, the tax sale notice shall include a statement that only the levy buyer shall have the right to purchase the tax sale certificates. Levy buyers have full rights to purchase subsequent liens upon payment of full amount of principal and interest. (54:4-67.1)
- D. In addition, the continuing resolution under which tax sales are already held may have to be amended to reflect the provisions of the levy sale contract.
- E. On issuance of a tax sale certificate, the levy purchaser may also pay subsequent taxes, municipal liens, and charges subject to limitations in the specifications and contract. (54:5-113.6(d)) Once in possession of the certificate, the levy purchaser has rights to foreclose *in personam* in two years, pursuant to 54:5-86.
- F. When a tax sale certificate is issued to a tax levy purchaser, the purchaser is credited with the total of the face amount (the full value of the certificate on the day it is issued) of the certificate. This ensures that the purchaser, who originally paid the principal of

the obligation, is credited with the principal and any interest accrued as of the date of the sale, and will receive it upon redemption. (54:5-113.6(j))

- G. Tax sale certificates must be prepared, ready for delivery, within 10 days (the first day being the sale day) following tax sale and after final tax payment, pursuant to the contract.
1. When the parcel is part of a bankruptcy, a resolution of entitlement to a tax sale certificate must be provided to the levy purchaser. When bankruptcy proceedings are resolved, the certificate must be dated the date of the next tax sale and the certificate shall not be released until the lien buyer surrenders the resolution of entitlement. (54:5-49).
- H. Once a taxpayer makes a required payment, the levy purchaser shall be paid, upon collection by the collector, all delinquent taxes and other municipal charges that are owing, due and payable and subject to any contract provisions regarding tax appeals. A governing body resolution will be required to remit the payment to the levy buyer within 30 days, unless the contract has another requirement. (54:5-113.6(d))

V. Budget Law - Tax Levy Sales

- A. Anticipated payments from a tax levy sale may reduce the reserve for uncollected taxes, as long as the contract is executed prior to adoption of the annual budget. (40A:4-40.1)
- B. If reducing the reserve for uncollected taxes through a tax levy sale for the first time, the municipal CFO or RMA must provide the governing body with a fiscal analysis of the impact of the action. DLGS has promulgated a standard for the analysis, which shall be a public record. (40A:4-40.3)
- C. No levy sale contracts shall be executed, unless DLGS has reviewed the fiscal impact of the sale. The municipality shall forward a copy of the proposed contract and a fiscal analysis of the sale to the Division, which shall approve or disapprove the contract within 15 days of receipt. The director may condition approval on budget actions to be taken by the municipality. (40A:4-40.3)
- D. The calculation to reduce the reserve for uncollected taxes shall be based on reducing the normally calculated reserve (using the underlying collection rate), by the amount expected from the levy sale. AFS sheet 25A will reflect the allowable amount.
- E. Costs related to a levy sale are exempt from the budget cap. (40A:4-45.3(ii))
- F. Municipalities that sell tax levies are ineligible for local budget examination.

VI. DLGS responsibilities (54:5-113.7)

- A. Director may adopt rules and regulations necessary for the act.
- B. DCA shall prepare a biennial report on the results of the tax levy sale process in municipalities.