

This handbook is an on-line publication of the Vermont League of Cities and Towns Municipal Assistance Center.

Please be aware that the electronic versions of VLCT handbooks are not exact reproductions of the paper versions. Page numbers may have changed. Use the Bookmarks or the PDF search function to find information. If printing, use the page numbers from the PDF navigation at the bottom of the screen – not the numbers from the physical paper version.

Subject to the copyright provisions outlined below, this handbook can be downloaded and saved (open and “save as”) onto individual computers to facilitate faster access and convenience. Once a handbook is saved to an individual computer, on-line time will be cut down and printing all or part of a handbook can occur on an as-needed basis.

Copyright © 2008 by the Vermont League of Cities and Towns. All rights reserved. Except as permitted under the Copyright Act of 1976, no part of this publication may be reproduced or distributed in any form or by any means or stored in a database or retrieval system without the prior written permission of the Vermont League of Cities and Towns; however, municipal officials in the state of Vermont are granted permission to store, reproduce and distribute this publication for official use.

## CHAPTER 4 TAX COLLECTION METHODS

### A. GENERALLY

Generally, delinquent tax collectors are able to establish agreements with the majority of the delinquent taxpayers for the payment of the overdue taxes. However, in some instances the delinquent taxpayer will be unwilling or unable to enter into such an agreement. In other cases, delinquent taxpayers who have agreed to pay the taxes over a period of time will fail to live up to their obligation to pay the back taxes. In all of these examples, the delinquent tax collector must take further action to collect the delinquent taxes.

As outlined in Chapter V, Section A above, following receipt of the list of unpaid taxes from the treasurer, the collector of delinquent taxes must provide ten days written notice to each resident delinquent taxpayer (twenty days for taxpayers residing outside the town) of the time and place where payment of the taxes and fees may be made. After the notice is given, the collector may proceed to collect the taxes by one of the processes authorized by statute. 32 V.S.A. §§ 4874, 4842.

There are four methods for collecting delinquent taxes when voluntary agreement fails: **foreclosure, distraint, action at law and tax sale**. In most instances, the tax sale is the most useful mechanism for the collection of delinquent taxes. However, the other methods provide valuable alternatives that should not be overlooked.

**The various methods for collecting delinquent taxes are not exclusive, but may be used cumulatively. Thus, choice of one method of collection will not bar the delinquent tax collector from taking advantage of the other methods if they become necessary. *Town of Highgate v. Missisquoi Lime Works, Inc., et al.*, 104 Vt. 526 (1932).**

### B. FORECLOSURE

A foreclosure action is a legal action brought in superior court to allow real property to be attached and sold to satisfy the debt to the town. 2 V.S.A. § 5061(b). A foreclosure action must be brought in the same manner as an action for foreclosing a mortgage, which means that a lawsuit must be filed in superior court and all other mortgage and lien holders must be notified in accordance with the requirements set out in 12 V.S.A. §§ 4523 et seq. **A foreclosure action can be brought to satisfy delinquent taxes because taxes are a lien on the taxpayer's property. 32 V.S.A. § 5061. Because the taxes are a first lien on the property, all other liens and mortgages are secondary and will no longer exist after foreclosure or tax sale.**<sup>6</sup>

---

<sup>6</sup> Note that the lien holders and mortgage holders can still go after the individual for payment on the note, even though they can no longer foreclose on the property after tax sale or foreclosure action by the town. Because the lien holder and mortgage holder's interest is at stake in a foreclosure action, it is very important that the lien holders and mortgage holders are notified of the foreclosure and tax sale actions.

The statutes provide that a foreclosure action may only be brought after the taxes are overdue for two years. 32 V.S.A. § 5061. In addition, tax liens are only good for fifteen years. Thus, a foreclosure action must be brought within fifteen years from the date the taxes were assessed.<sup>7</sup>

The problem with using foreclosure as a method of collecting delinquent taxes is that it may take a year or more for a foreclosure action and attachment process to be completed. However, the judicial supervision involved in a foreclosure action will likely obviate the Vermont Supreme Court's abiding objection to selling more of the taxpayer's property than is necessary to satisfy the delinquent account. Foreclosure actions should be considered in cases in which the delinquent taxpayer's real property has no value and cannot be sold at tax sale.

### C. DISTRAINT

1. **Generally.** Distraint is the oldest method for collecting delinquent taxes<sup>8</sup>, although in modern times it is used almost exclusively for the collection of personal property taxes.

**Black's Law dictionary defines distraint as "The seizure of personal property to enforce payment of taxes, to be followed by its public sale if the taxes are not paid voluntarily." *Black's Law Dictionary*, 5th ed., p 426.**

Thirty-two V.S.A. section 5191 provides that, after the expiration of the tax due date (or sooner, in the case of a person whom the delinquent collector has reason to know is about to leave town), the delinquent tax collector may take goods, chattels and capital stock in a corporation of a person whose tax is not paid.

#### 2. Property Subject to Distraint.

- **Person about to leave town.** If the delinquent tax collector has reason to believe that a person is about to "remove from town," then he or she may distraint any of the goods, chattels and capital stock of the person whose tax is not paid. 32 V.S.A. § 5191.
- **Delinquent real estate taxes.** When the delinquent tax is on the real estate (rather than delinquent personal property tax) the statutes provide that the delinquent tax collector may not distraint "apparel, bedding, household furniture necessary for supporting life, and one sewing machine not exceeding \$25.00 in value."<sup>9</sup> 32 V.S.A. § 5191.

---

<sup>7</sup> Taxes become a lien on the property as soon as they are assessed. Thus, the 15-year period must be calculated from the time of assessment rather than the time of delinquency.

<sup>8</sup> Chapter 25 of the Laws of the State of Vermont, 1797, section 4, page 337, provides that goods and chattels may be distrained and sold for the payment of taxes. Section 5 provides that if there are no goods and chattels that can be distrained "the constable may take the body of the person or persons neglecting or refusing to make payment ... [and to place them in debtor's prison] until the taxes and costs have been paid." The obvious problem of how one can raise money to pay the taxes while in jail led the Vermont courts to determine that debtor's prison was unconstitutional. However, the most interesting aspect of this old law is that it permits the sale of distrained property in the same manner, and with the same time limits as the modern law.

<sup>9</sup> The numerous exemptions from attachment set forth in Title 12 will not apply to distraint, allowing a great deal more property to be taken and sold for the payment of taxes than under traditional foreclosure law. *Hackett v. Amsden*, 11 Vt. 201 (1833).

- **Property subject to a lease.** Property subject to a lease may not be distrained. *Bartlett v. Wilson*, 60 Vt. 644 (1888).
- **Property not owned by taxpayer.** Property belonging to a third party cannot be levied upon for taxes due by the taxpayer, even if the property formerly belonged to the taxpayer, and is still in the possession of the taxpayer. *Daniels v. Nelson*, 41 Vt. 161 (1868).
- **Exempt property.** Certain property is exempt from attachment and execution under normal foreclosure law. However, according to old case law, these exemptions will not apply to distrained property. *Hackett v. Amsden*, 56 Vt. 201 (1883). However, recent case law that has held distraint by a landlord to be unconstitutional would indicate that the town is in a much better position if the exemptions set forth in 12 V.S.A. § 2740 were followed when distraining property to pay for delinquent taxes.

### 3. Process for Distraint.

- **Identifying and taking property.** The first step for the delinquent tax collector when using distraint is to identify property to take. The statutory authority that permits taking the taxpayer’s property does not authorize the collector to do so by breaking the law. Thus, the collector may not trespass onto the taxpayer’s property to take items subject to distraint. For example, one delinquent tax collector was able to avoid the issue of trespass by distraining a vending machine that was located on city property and locking it up to until the company paid the back taxes. The collector did not have to sell the vending machine, since the removal of the machine and its contents was sufficient to convince the company to pay its taxes.

**Be sure to notify the town’s insurance agent when property is being distrained!**

- **Notice of sale.** When using distraint as a method for tax collection, the delinquent tax collector must wait four days after seizing the property. The sale must be noticed for at least six days prior to the sale. 32 V.S.A. § 5193. This means that the delinquent tax collector must allow ten days from seizure to sale of the property at public auction. See Appendix Z for a sample notice of distraint. **The delinquent tax collector is not required to hold the sale at the end of the ten-day period, but must do so “within a reasonable time” after the ten days have expired.** *Clemons v. Lewis*, 36 Vt. 673 (1864).
- **Conducting the sale.** The sale must be at “public auction.” This means that the sale must be held at a place that is readily accessible by the public (although not necessarily a public building), such as a particular barn or shed, or even at a particular rock or tree within the town. *Austin v. Soule*, 36 Vt. 645 (1864).
- **Passing title.** The title of the property will pass to the new owner “by law.” *Id.*

- **Returning profit.** If the sale of the distrained property generates more than the amount of taxes, interest, penalty and costs due, the excess must be returned to the taxpayer with an accounting of the sale. 32 V.S.A. § 5193. Note that the statute requiring that the excess be paid to the delinquent taxpayer says that this should be done on demand. However, a court would probably require the return of any profit even if the taxpayer failed to demand it.

#### 4. Pitfalls of Distrain.

**Trespass.** Although the delinquent tax collector is entitled to take and sell the taxpayer’s property, as mentioned above, the collector may not break the law to do so. Thus, the delinquent tax collector who is able to use distraint without exposing him or herself to liability must be able to “take” the property without trespassing onto the delinquent taxpayer’s property.



**Invalid Sale.** Case law indicates that a tax sale of distrained property will be illegal unless the tax collector strictly and literally complied with all of the requirements of the statute with respect to notice and sale. *Cummings v. Holt*, 56 Vt. 384 (1883).

**Loss or Damage.** It is unclear who bears the risk of loss to the distrained property as a result of fire or some other casualty. Thus, if distrained property is destroyed while the town is in possession of it, the town may be liable for the damages.

#### D. ACTION AT LAW

The delinquent tax collector may choose to collect taxes by an “action at law.” An action at law occurs when the town brings suit in court against the delinquent taxpayer, for the payment of the overdue taxes. 32 V.S.A. §§ 5222 et seq. According to statute, the “[taxes] imposed or assessed ... and all fees accruing or accrued against the taxpayer on account of delinquency may be recovered with costs in an action brought in the name of the town or municipality ... to which such taxes are due.” 32 V.S.A. § 5222. This suit could take many forms. However, because bringing a case to superior court is costly and involves hiring an attorney, most “actions at law” are brought in small claims court.

## SMALL CLAIMS COURT

Small claims court is found in the Vermont district courthouses. Upon request, small claims court will send the delinquent tax collector forms to fill out to initiate the action. Such forms should be filled out clearly and explicitly. Many judges have little experience in property tax matters, so the more exact the information they receive, the more likely the tax collector will win the case. Be sure to provide the correct address of the taxpayer, as the clerk of the court will need it in order to serve the taxpayer with notice.

There is a small filing fee for bringing an action in small claims court; however, the delinquent taxpayer will pay this fee since the person who loses in small claims court must bear the court costs. It is not necessary to hire an attorney to bring an action in small claims court as the forms and process are designed for use by people who are not represented by counsel.

When a small claims court judgment remains unpaid for 30 days, the court can order the taxpayer to appear and disclose information relating to his or her ability to pay the judgment. After a hearing, the court can order the taxpayer to make payments toward the outstanding debt. Failure to make these payments can be considered civil contempt of court. 12 V.S.A. § 5537.

Small claims court will only consider matters that involve \$3500 or less. Thus, actions on tax bills that involve more than \$3500 must be brought in superior court. 12 V.S.A. Chapter 187.

If the delinquent tax collector decides not to bring an action in small claims court, and instead decides to pursue an action in superior court, the collector must notify the town agent or other officer whose duty it is to prosecute and defend actions on behalf of the town. The delinquent tax collector should also go before the selectboard to discuss hiring an attorney and payment of the filing fee for initiating the superior court action.

It may take a year or more to get an order from the court granting the town judgment. However, once judgment is obtained, the superior court can allow the town to use the remedy of trustee process<sup>10</sup> to garnish the taxpayer's wages, stock dividends or other income to pay the debt to the town. In some cases the court will only allow the town to recover taxes through trustee process if it can show that the defendant has no personal property in state with value sufficient to pay the tax. *Bartlett v. Wilson*, 60 Vt. 644 (1888). If the tax collector decides not to use trustee process, he or she may still ask the court to let the town attach the delinquent taxpayer's property for payment of the debt.

The tax collector can also record a copy of the judgment order – whether obtained in superior court or small claims court – in the land records in any town where the taxpayer owns real

---

<sup>10</sup> Trustee process is when the court summons a person or corporation who has possession of the goods or credits of the defendant, and orders them to pay the party entitled to judgment in the action out of those goods or credits. 32 V.S.A. § 5224.

property. The recorded judgment order will become a lien against any real property located in the town where the judgment is recorded. 12 V.S.A. §§ 2001 *et seq.*

When a delinquent tax collector uses an action at law to collect the delinquent taxes, the court can, when it deems it just and reasonable (even if the town has not recovered all of the outstanding taxes), require the defendant to pay the costs of bringing the action, not including attorney's fees. *Montpelier v. Central Vermont R.R.*, 89 Vt. 36 (1915). Note that, when bringing the action, the town is not required to furnish recognizance<sup>11</sup> or other security for costs in the proceeding, but the court can assess costs against the town if it deems it just. 32 V.S.A. § 5223.

According to case law, in order to prevail with an action at law, the taxpayer must have been given notice of the delinquency and an opportunity to voluntarily pay the tax. *Williamstown v. Williamstown Co.*, 101 Vt. 419 (1929). In addition, in order to recover with an action at law the town must provide evidence of the existence of a valid tax bill. *Brattleboro v. Carpenter*, 104 Vt. 158 (1932); *Williamstown v. Williamstown Co.*, 101 Vt. 419 (1929). However, according to 32 V.S.A. § 5226, a tax bill that is "regular on its face" which has been placed in the hands of the delinquent tax collector "shall be *prima facie* evidence that the taxes therein standing against the name of the defendant were lawfully assessed against him." **As a practical matter, towns often use small claims court or file actions in superior court when the property involved has no value, such as a run down mobile home or property that may be environmentally contaminated. (In this case, tax sale cannot satisfy the debt.)**

In addition, some collectors will pursue a matter in small claims court if the taxpayer fails to abide by a payment arrangement previously agreed to with the delinquent tax collector. Finally, an action at law is useful for collecting delinquent taxes in situations in which the taxpayer is disputing the validity of the tax.

In any event, collectors who use an action at law to collect delinquent taxes often find that merely filing the action provides sufficient incentive to the taxpayer to voluntarily pay the delinquency.

## E. TAX SALE

**1. Generally.** The most common method of collecting delinquent taxes from taxpayers who will not pay voluntarily is by selling the property at tax sale. Vermont statutes are very specific about the steps a collector must take to bring a property to tax sale, and the statutes even include the forms for some of the required paperwork.

While there is no requirement that an attorney be used to assist in a tax sale, the collector who undertakes a tax sale without professional assistance does so at significant risk. It should be remembered that taking and selling property to recover delinquent taxes is one of the most potent authorities exercised by municipal government. It is not something that should be undertaken lightly.

---

<sup>11</sup> Recognizance is money put in escrow by the plaintiff to pay the defendant's costs in defending the action (not including attorney's fees) if the suit is deemed frivolous.

The allowable costs of the sale include legal expenses actually and reasonably incurred up to a maximum of 15 % of the uncollected tax. 32 V.S.A. § 5258. If the anticipated legal fees appear to exceed that amount, the collector should consult with the selectboard before authorizing the expense.

It generally takes 40 days or more to bring a particular property to tax sale. In order to bring a property to sale, the delinquent tax collector must send out notices of delinquency to the taxpayer and lien holders of a property. After notice has been sent, if the delinquent taxpayer or a lien holder fails to make satisfactory arrangements, the collector may sell as much land as is necessary to recover the delinquent taxes, interest, and fees. **All delinquent tax collectors should have a collection policy to provide guidance as to when a particular property should be put up for sale.**

Because the tax sale of a person's property deprives that person of a constitutionally protected property interest, the delinquent tax collector must closely follow the provisions of the statute, to ensure that the delinquent taxpayer is afforded the necessary due process. Failure to abide by statutory requirements may void the sale but perfection isn't required. For example, when notice of sale was given to a landowner by registered and first class mail, and notice was posted and published for two consecutive weeks, the collector's failure to publish for the third week did not negate the authority to hold a tax sale. *Turner v. Spera*, 140 Vt. 19 (1981). It has also been held that an improper description of the property in the notices, which gave the proper lot numbers but an erroneous reference to the wrong warranty deed, did not constitute improper notice and did not void the tax sale. *Chester Motors Inc. v. Koledo*, 146 Vt. 357 (1985).

While ample caution is advised, tax collectors should not be afraid to hold tax sales when necessary. When conducted in accordance with the statutory requirements and a local tax collection policy, tax sales reinforce public confidence in the idea that every property owner must meet his or her tax obligations. Regularly held tax sales can reduce delinquencies and ultimately the need conduct more sales.

**Under federal law, property belonging to a person on active duty with the military can be sold at tax sale only by permission of a court. If the property is sold at tax sale, the owner has a right of redemption up until six months after leaving the military. Interest on the overdue tax accrues at a rate of six percent per annum and no other penalties or interest may be charged. 50 U.S.C. § 560.**

- 2. Notice of Tax Sale.** The first step in the tax sale process is to notify the taxpayer and any lien holders or mortgagees of the impending sale of the property. This gives them an opportunity to pay the outstanding taxes in order to avoid the sale and the attendant costs associated with redemption of the property. Sample notices of tax sale are included in the Appendix to this handbook.

If the taxpayer has not already been informed of the right to ask for tax abatement, he or she should be informed at this time. It is probably a good idea to remind the taxpayer of this in writing, even if he or she was given notice before. Taxpayers must also be given notice that,

if the value of the property significantly exceeds the amount of tax due, they have a right to designate what portion of the property shall be offered at tax sale. They must also provide certification that the portion identified meets zoning and Act 250 criteria for subdivision. Of course, they should be informed that if the portion identified by them to be sold cannot be sold for taxes and costs, the tax collector may proceed to sell the entire property. This notice to the taxpayer should be in writing and should be accompanied by a copy of the statute. 32 V.S.A. § 5254 (b).

### NOTICE OF TAX SALE

**File in clerk's office.** The delinquent tax collector must file in the town clerk's office a copy of the warrant, a description of the land, and a statement that he or she will proceed with a tax sale to collect the unpaid taxes. 32 V.S.A. § 5252 (1).

**Advertise sale.** The delinquent tax collector must advertise the sale for three weeks in a newspaper of general circulation in the community. The last publication must be at least 10 days prior to the sale. 32 V.S.A. § 5252 (2). The form of the advertisement is found in 32 V.S.A. § 5253 and is also included in Appendix R. When calculating the ten-day period, do not include weekends or holidays. Adding some additional days is recommended to ensure that the notice is published in a timely fashion.

**Notice to taxpayer.** The delinquent tax collector must notify the delinquent taxpayer of the sale in writing, by registered mail, return receipt requested. This notice is sent to the property owner's last known address, and must include the time, date and place of the sale. The notice must be sent at least 10 days prior to the sale (and 20 days prior to the sale for taxpayers who are nonresidents of the town). 32 V.S.A. § 5252 (3). A sample notice is included in the Appendix. Again, do not include weekdays or holidays in calculating these time periods. Adding a few additional days will ensure that the deadlines are met even if the mail is delayed.

It is not the delinquent tax collector's responsibility to ensure that the delinquent taxpayer actually receives the notice. A taxpayer's refusal to accept the certified mail will not prevent the delinquent tax collector from proceeding with the tax sale. On the other hand, the delinquent tax collector must take reasonable steps to ensure that, whenever possible, the taxpayer receives actual notice of the sale. *Jones v. Flowers*, 545 U.S. \_\_\_ (2006). Many delinquent tax collectors send a copy of the notice in an unmarked envelope, first class mail, at the same time the registered mail is sent. Consider sending a copy to "Occupant" at the property owner's last known address and to the property, if the two addresses differ. Finally, try posting a copy of the tax sale notice on the front door of the property or some other readily visible location on the property. Of course, this should be done in such a way as to ensure that the peace will not be breached and that your safety will not be jeopardized.

**Notice to mortgagees and lien holders.** The delinquent tax collector must notify all mortgagees or lien holders of the tax sale proceedings by registered mail, return receipt requested, at least 10 (resident) or 20 (nonresident) days prior to the sale. 32 V.S.A. § 5252 (4).

**Post notice in public place.** The delinquent tax collector must post a notice of the tax sale in at least one public place in the municipality (generally the clerk's office). 32 V.S.A. § 5253 (5). The required form of the notice is set out in 32 V.S.A. § 5253 and is provided in the Appendix.

### 3. Preparing for Tax Sale.

- a. Title search of property to identify lien holders.* The first thing the delinquent tax collector should do to prepare for a tax sale is to do a quick title search of the property. This search is not for the purpose of establishing the chain of title to the property, but is to identify all mortgage holders and lien holders with an interest in the property. Failure to notify a lien holder or mortgagee of a tax sale could result in the lien not being extinguished after the sale. This means that the purchaser at the sale will be obligated to pay what is owed to the lien holder or mortgagee or would risk losing the property in a foreclosure action. **Municipal property tax liens generally take priority over federal liens on the same property. Therefore, it is very important to include the appropriate federal agency (depending on the kind of lien that is on the property) when you notify the lien holders of the tax sale of the property.**
- b. Determine what is to be sold.* Not less than 24 hours prior to the sale, the owner of property being sold for taxes may request in writing that a portion of the property be sold. The request must clearly identify the portion of the property to be sold and must be accompanied by a certification from the Act 250 district commission and the town zoning administrator that the portion identified may be subdivided and meets the applicable minimum lot size requirements. In the event that the portion identified by the taxpayer cannot be sold for the tax and costs, then the entire property may be sold. 32 V.S.A. § 5254(b). In any case, any monies collected in excess of the tax, costs and fees must be returned to the delinquent taxpayer when the final settlement occurs after the redemption period. *Bogie v. Town of Barnet*, 129 Vt. 46 (1970).
- c. Send out notices of the tax sale.* After the parcel to be sold is identified, the delinquent tax collector must post, publish, and send out notices of the sale to the delinquent taxpayer and any lien holders as described above. The purpose of the notice is two-fold: (1) to inform the taxpayer and lien holders that the property is to be sold, and that the sale can be avoided by the payment of the taxes due; and (2) to advise prospective purchasers that the land is to be sold. *Chester Motors v. Koledo*, 148 Vt. 357 (1985). So long as these purposes are met “substantial compliance,” rather than exact compliance, with the notice requirements will be sufficient. Nevertheless, it is important to comply with the statutory requirements as exactly as possible to avoid a later challenge to the sale. Sample notices and advertisement of sale are included in the Appendix.
- d. Preparing for the sale.* To prepare for the sale, the delinquent tax collector must prepare a final accounting which sets forth the amount of taxes due, interest to the date of sale, the eight percent fee, and the fees and costs authorized under 32 V.S.A. § 5258. The total of taxes, interest and fees establishes a minimum acceptable bid at sale.

## COSTS OF SALE

Levy and extending of warrant	\$10.00
Recording levy and extending of warrant	\$10.00 (to town clerk)
Notices	Actual cost
Publication	Actual cost
Travel	At state employee rate
Attending and holding sale	\$10.00
Making return	\$10.00
Recording return	\$10.00 (to town clerk)
Collector's deed	\$30.00
Collector's fee	8%
Legal Assistance	Expenses actually and reasonably incurred (and authorized by the selectboard) up to a maximum of 15% of the uncollected tax.

- 4. Settling Before Sale.** In many cases, notice that you intend to sell the property is sufficient to nudge the taxpayer into paying the delinquent taxes. Note that even if you do not complete the sale, you may add the costs incurred up to the point, including costs of publication and legal fees, to the bill. 32 V.S.A. § 5142(a).

If the notice of sale does not provide an incentive for the taxpayer to pay the delinquencies, it is often sufficient incentive for the bank (mortgagee) or a lien holder to pay the outstanding amounts. Many banks will call upon receipt of the notice of sale to find out the exact amount owed. Many delinquent tax collectors use this as an opportunity to let the bank know that if it pays the delinquencies by a particular date the advertising costs and legal fees can be avoided. However, some banks try to convince the collector to put off the sale by promising to pay the delinquencies at a later date. Most collectors agree, however, that it is best to conduct the sale (particularly if the notice has already been posted and published) since the bank may redeem the property at any time within the one-year period following the sale. FDIC and RTC sometimes take the position that, since they are the assignee of the original mortgagee, their liability extends only to the net tax due. In accepting account payments from FDIC or RTC either before tax sale or during the redemption period, the tax collector should insist on payment of the *entire* account balance.

### **5. Conducting the Tax Sale.**

- a. Location of sale.** The actual conduct of the sale can be a very lonely experience, as often there is no one present to bid except a representative of the town. In a few instances, however, there may be a number of bidders and bystanders at a tax sale. Tax sales can take place at any location, public or private, so long as it is open to the public (and not unreasonably difficult to find or get to).
- b. Informing bidders.** Prior to commencing bidding on the property, it is advisable for the collector to determine the exact amount owed as of the date of sale. If appropriate, potential bidders should be informed that the town will bid this amount if no third party

does so at the sale. Bidders should also be informed that the taxpayer, mortgagees and lien holders have a year to redeem the property by paying the purchase price paid at the sale, plus interest; if the property is not redeemed, they will receive whatever title the delinquent had at the time of sale, less any liens and mortgages acquired during the delinquent's ownership. Finally, bidders should be made aware that the delinquent taxpayer remains liable for property taxes during the redemption period, and that if the property is not redeemed, the successful purchaser is very likely to take the property subject to a lien for delinquent taxes, penalty, and interest that accrued during the redemption period.

- c. Accepting bids.* The delinquent tax collector, the attorney for the collector, or an auctioneer may conduct the tax sale. The bidding begins with the collector (or attorney or auctioneer) announcing which property is up for bid (reading the description of the property, or portion of the property to be sold), and then stating the minimum acceptable bid for the property (the taxes, interest, fees and costs). Once bidding has ended, and a final price and bidder are identified, that information should be recorded by the delinquent tax collector. The auction is then final and no more bids can be accepted.
- d. Tender of payment.* Most delinquent tax collectors require successful bidders to tender payment in cash or certified check at the time of the tax sale. This will prevent tax sales from having to be conducted a second time because the purchaser's check has bounced, or because a purchaser has failed to tender the funds, as promised, at a later date. There is no requirement, however, that a delinquent tax collector not accept personal checks, assurances or letters of credit. No matter what the tax collector wishes to do about accepting payments, it is most important that his or her policy is explicitly stated in the delinquent tax collection policy to prevent unequal treatment of bidders.
- e. Municipal bids.* In order for the town to bid on a property the selectboard must pass a resolution authorizing its agent to make the purchase and a record of this authorization should be kept in the delinquent tax collector's records. This means that the delinquent tax collector should be sure to give the board advance notice of upcoming sales so that the issue of bidding on the properties can be included on the agenda of the regular or a special meeting of the board. The agent for the town should not be the collector of delinquent taxes, as that may be perceived as a conflict of interest. Likewise, the collector should not personally bid on the property or have someone else bid for him or her. *Chandler v. Moulton*, 33 Vt. 245 (1860)

At the tax sale the town may buy the property for the amount of taxes, interest, fees and costs due, and once purchased, may hold, lease, sell and convey the property like other real estate belonging to the municipality.<sup>12</sup> 32 V.S.A. § 5259. Indeed, in some instances, the town is the only bidder at tax sales. **Note that the town is not required to bid on property that is up for a tax sale even if there is no one else bidding on the property.**

---

<sup>12</sup> A municipality's authority to bid at a tax sale is its ultimate recourse to protect itself against any conspired attempts to avoid sale by discouraging all bidding. However, the town is not permitted to hold the property, or retain the proceeds of a resale greater than the amount of delinquent taxes, interest, fees, and costs. *Bogie v. Town of Barnet*, 129 Vt. 46 (1970).

**In fact, in some cases it is best for the town not to bid on a particular property. (For example, if it contains hazardous waste, or if there are other costs associated with ownership of the property.)**

Some selectboards issue a blanket policy authorizing bidding at all tax sales in which there are no other bidders. This is inadvisable since it may result in the town owning properties that create potential liability for the town. (They may contain hazardous waste, have no or negative value, or involve a health hazard.) Instead, selectboards should evaluate whether or not the town should bid at tax sale on a case-by-case basis.

If the town is the successful bidder, be sure to have the selectboard sign a warrant authorizing the treasurer to deliver a check to the tax collector for processing as in the case of any other tax sale.

- f. Sale of land that is being leased.* Land that is being leased may be “distrained” (sold) to pay outstanding taxes on the property, subject to the existence of the lease. 32 V.S.A. § 5256. This means that if the property is not redeemed, all of the rights and obligations under the lease will run to the new owner (e.g., rental payments will be paid to the new owner). In such a case, the delinquent tax collector must not only send a notice of the sale to the owner and the lien holders and mortgagees, but also to the lessee of the property.

After the sale has been completed, a copy of the warrant, along with the report of sale, giving a description of the taxes, of the property and of the lessor’s interests, must be delivered to the lessor and the lessee.

- g. How to proceed if no one purchases a property.* Many delinquent tax collectors have had instances in which the town is unwilling to purchase a particular property for which there are no other bidders. In such a case, the property is not sold and the delinquent tax collector must decide whether to hold another sale for the property at a later date, or to try to collect the unpaid taxes, interest, penalty and costs using one of the other collection methods discussed above (distrain, foreclosure, action at law).

- h. FDIC property.* Federal law protects property of the FDIC from levy, attachment, garnishment, foreclosure, or any involuntary liens. 12 U.S.C. § 1825 (b)(2). This means that unless the FDIC consents, the municipality may not foreclose its tax lien or bring the property to tax sale. Note, however, that if the FDIC takes ownership of a property after it is sold at tax sale but prior to the expiration of the redemption period, the sale may be completed as required, with the issuance of a collector’s deed.

- 6. Report of Sale.** Within 30 days after a tax sale has been completed, the delinquent tax collector must record a Report of Sale in the town clerk’s office. The form is specified in 32 V.S.A. § 5255, and is reproduced on page 74. You must include in the report of sale the same legal description of the property that was contained in the notice of sale. Once a report of sale is recorded in the clerk’s office, it creates a presumption that the facts contained in the report occurred as recorded. *Richardson v. Dorr*, 5 Vt. 9 (1833).

Note that although no property transfer tax is imposed when a municipality purchases a property, there may be one payable when another party purchases a property. 32 V.S.A. §§ 9602-3.

7. **Treatment of Sale Proceeds.** When the delinquent tax collector receives payment from the successful bidder at the tax sale, he or she should divide the money into two accounts. The collector should first make a payment to the town of all taxes, interest, fees and costs owed by the taxpayer. Any balance can be placed in an interest bearing escrow account for the one-year redemption period. Such account will earn interest at the current market rate. The one percent per month, which must be returned to the buyer in case the property is redeemed, does not apply here. **The money in the escrow account is held so that if the taxpayer wishes to redeem his or her property, this money can be applied to the amount of money required for redemption. On the other hand, if the delinquent taxpayer does not intend to redeem the property, the delinquent tax collector can release the money to the taxpayer. Doing so will make it harder for the taxpayer to redeem the property at the end of the one-year period, since the entire purchase price (and interest) will have to be raised by the taxpayer. After the redemption period is concluded, the escrowed money must be released to the delinquent taxpayer if he or she fails to redeem.**

The town treasurer should then write a check to pay the collector his or her fees, minus any withholding for income tax and FICA, and for any costs paid by the collector that were charged to the delinquent taxpayer's account.

## 8. Redemption.

- a. *How a taxpayer/mortgagee redeems.* Pursuant to 32 V.S.A. § 5260, the delinquent taxpayer, or the mortgagee of the lands, or his or her representative or assigns, may redeem property sold at tax sale within one year from the day of the sale by paying the sales price, plus interest of 1% per month, or fraction thereof from the day of sale to the day of payment. 32 V.S.A. § 5260. (Any amount that the taxpayer must tender should be reduced by the amount of the excess proceeds from the tax sale that has been held in the escrow account, including any interest that has been earned on the account.) The exception to this general rule is that a person on active military duty has until six months after leaving the military to redeem property sold at tax sale. In addition, interest on such property accrues at a rate of six percent per year. 50 U.S.C. § 560.

The payment must be made to the delinquent tax collector who conducted the sale; however, if the collector is no longer living in the town, or has died, the payment may be made to the town clerk. **The delinquent tax collector has no discretion to accept less than a full payment when a taxpayer wishes to redeem the property. Thus, unless full payment of the sales price plus the applicable interest is tendered, no redemption has occurred.**

Finally, title to the redeemed property is unaffected by the fact that it went through tax sale, as no tax collector's deed was ever issued. Notice of redemption should be given to the town clerk for recording in the land records.

- b. **Repaying the purchaser.** Upon redemption, the money paid by the delinquent taxpayer must be paid over to the purchaser.
- c. **Current taxes during the redemption period.** During the one-year redemption period, the delinquent taxpayer retains title to the land, and will continue to be held responsible for the tax bill. If those taxes are not paid and the property is redeemed, the delinquent taxpayer will be risking another tax sale of the property. If the property is not redeemed, the purchaser at the tax sale will be required to pay the overdue taxes, and any interest or penalties which might have resulted, or risk sale of the property. **The treatment of current taxes during the redemption period is troubling to many people, and we recommend that you advise potential purchasers carefully so that they are not surprised when they receive a notice of overdue taxes along with the collector's deed.**<sup>13</sup>

**9. Collector's Deed and Property Transfer Tax.** If the delinquent taxpayer or mortgagees fail to redeem the property during the one-year period, the delinquent tax collector must execute a tax collector's deed to pass title from the delinquent taxpayer to the purchaser. 32 V.S.A. § 5261. This deed will extinguish all mortgages and interest in the property held by people who claim under the delinquent taxpayer. Although there is no statutory deadline set, the tax collector should execute the deed as soon as possible after the redemption period has expired in order to clear the books of any escrow monies or accumulated interest due or payable. **The collector's deed should not be made out in the form of a warranty deed since the town cannot warrant good title, and is only passing to the purchaser any rights and title in the property held by the delinquent taxpayer. A sample deed is included in the Appendix to this handbook.**

Generally, a property transfer tax based on the value of the property is imposed by the state when real property title changes. 32 V.S.A. § 9602. However, when property is transferred to the United States, the State of Vermont or any instrumentality, agency or subdivision thereof, no tax is due. 32 V.S.A. § 9603. When property is transferred to the purchaser by collector's deed after the redemption period has expired, it is the responsibility of the purchaser to pay the transfer tax and to file a property transfer return when the deed is filed with the town clerk. 32 V.S.A. §§ 9604-6.

**10. Report to Clerk.** Within 30 days from the expiration of the redemption period, the delinquent tax collector must provide the town clerk with a list of the lands that have not been redeemed. 32 V.S.A. § 5262. A strict reading of that statute and 24 V.S.A. § 1154 indicates that the clerk should record such information in the land records. However, failure to make this report (and presumably failure of the clerk to record it) will not affect the title of the purchaser.

**11. Accounting to Taxpayer.** After a tax deed has been made out transferring the property to the purchaser, any amounts remaining in the tax sale proceeds escrow account should be remitted

---

<sup>13</sup> In one case, the purchaser paid the current taxes in an attempt to avoid owing the fee and interest. The owner later redeemed the property, and was not required to repay the purchaser.

to the delinquent taxpayer. In addition, if the town purchases the property at tax sale and later sells the property for a profit, any amounts received exceeding the town's original purchase price at tax sale plus costs should be remitted to the delinquent taxpayer. *Bogie v. Town of Barnet*, 129 Vt. 46 (1970). Costs could include those of maintaining, insuring and protecting the property during the time the town held title, lost tax revenue, attorney's fees, and costs of advertisement and resale.

In many cases, the town does not resell property purchased at tax sale until a much later date from the sale. In such cases, it may be difficult to locate the delinquent taxpayer. If the town makes a reasonable effort to locate the delinquent taxpayer, but fails, the town may proceed by placing the funds in an escrow account for five years, after which it may be considered abandoned and, as such, should be reported to the state treasurer. 27 V.S.A. §§ 1217, 1120.

## 12. Challenges to Deed.

- a. *Burden of proof.*** According to case law, the purchaser at a tax sale has the burden of proving every act necessary to the validity of the tax, levy and sale of the property for which his title is being challenged. *Peterson v. Moulton*, 120 Vt. 439 (1958). The collector's return (the report filed with the town clerk after the sale) creates a presumption that the facts contained therein are true, so a properly filed return will greatly ease the purchaser's burden of proof.
- b. *Statutes of limitations.*** Thirty-two V.S.A. section 5263 limits the period of time in which a collector's deed may be challenged to three years following the issuance of the deed. (In other cases the statute of limitations for challenging a deed is 15 years.) However, in order to have the three-year limitation apply, the new owner must be in possession of the property, indicating his ownership by paying the taxes on the property, for the three years. Thus, case law has indicated that when the purchaser does not take possession of the property (by evicting the delinquent taxpayer), his claim to title may be challenged after the three-year period has elapsed. *Downer v. Tarbell*, 61 Vt. 530 (1889).
- c. *Liability of town.*** If a deed is held to be invalid, the town may be liable to the purchaser for the purchase price, plus interest. *Saulters v. Templeton*, 61 Vt. 119 (1888).
- d. *Taxpayer's defenses.*** There are a few, specific defenses that a taxpayer can use to invalidate the sale of his or her property. One defense is the failure to conform with the statutory requirements of notice, reporting and sale. However, so long as the purpose of the notice requirements has been met, the failure to strictly comply with the notice requirements will not void the sale. (See Notice of Tax Sale in Section E.2. of this chapter.)

The taxpayer cannot dispute the validity of a tax sale by disputing the validity of the tax or assessment process. The statutes are clear that a taxpayer who disputes the validity of a tax must file an objection to the tax in the town clerk's office within two months of November 15 of each year that the tax is assessed. 32 V.S.A. §§ 5291, 5292. If the taxpayer objects to the lack of notice and opportunity to be heard, with respect to the

levying of the tax, including the making of the appraisal and the setting of the grand list, this defense must be asserted within six months from the date that the tax may first be collected against him or her (one year for non-residents). 32 V.S.A. § 5293.

According to 32 V.S.A. § 5294, a taxpayer has one year from distraint or tax sale to bring a suit questioning the actions of a treasurer with respect to the tax assessed, the tax bill, or the warrant.

## CHAPTER 5 PERSONAL PROPERTY

### A. GENERALLY

Collection of delinquent personal property taxes poses a significant challenge to delinquent tax collectors. This is partly due to the nature of the property taxed, since it is easily removed from the town; and partly due to the cumbersome requirements unique to the collection of personal property delinquencies. This section describes the delinquent tax collector's obligations when dealing with delinquent personal property taxes.

### B. THE LIEN ON PERSONAL PROPERTY

Liens on personal property differ from tax liens on real property, which are automatic. A lien on personal property does not exist until the tax collector exercises discretionary authority to act with respect to a particular taxpayer, and files a notice of tax lien. *In re Summit Ventures*, 135 B.R. 483 (Bankruptcy D. Vt. 1991).

1. **Filing the lien.** When a tax is due on personal property, the tax collector, with the approval of the legislative body, may file a lien on the property. 32 V.S.A. § 5071. The lien must be filed in the personal property records in the town clerk's office after April 1 in the year that the tax is assessed.<sup>14</sup>
2. **Notice.** Notice of the lien must be given to the taxpayer, or to the owner of the property, and to all persons having a duly recorded lien on the property. The notice must be sent to the last known post office address of each person by registered or certified mail, return receipt requested.<sup>15</sup> Failure to comply with statutory notice requirements will result in the property being unencumbered by the tax lien.
3. **Form of Lien.** The tax lien notice must contain a description of each article of personal property upon which a lien is claimed, and the name and address of the taxpayer or owner of the property and of all other persons having an interest in the property. A form for a personal property lien is set forth in 32 V.S.A. § 5073, and is included in Appendix K.
4. **Effect of Lien.** The tax lien is good for two years from the date it is filed. **This means that any collection action must take place within this two-year period.** During the time that the tax lien exists, the lien will have priority over all others, meaning that other liens on the same property may be satisfied only after the taxes are paid or otherwise discharged (by

---

<sup>14</sup> The town clerk should keep a separate book for recording personal property liens, a brief statement of the substance of the lien, index the recordbook alphabetically and file the notice chronologically in a separate file. Tax liens that affect title to real property should be noted in the grantor/grantee index. *1974 Op. Att. Gen 214*.

<sup>15</sup> If the taxpayer or property owner or lien holder is a partnership, notice must be given to one of the partners. If the taxpayer, owner or lien holder is a corporation, notice must be given to the president or treasurer of the corporation.

abatement). Personal property that is subject to a tax lien may not be sold, mortgaged, exchanged or pledged.<sup>16</sup> 32 V.S.A. 5072.

5. **Bona Fide Purchaser.** The personal property tax lien will not be enforceable against a *bona fide* owner who has purchased the property for value without actual notice of the lien. This means that an innocent purchaser will not be obligated to pay the outstanding personal property taxes if he or she buys property subject to the tax lien without knowing of the lien's existence. Note that the fact that the lien has been filed with the town clerk will not impute constructive knowledge of the lien onto the purchaser. 32 V.S.A. § 5072.

### C. COLLECTION OF DELINQUENT PERSONAL PROPERTY TAX

If delinquent personal property taxes are not voluntarily paid, these delinquencies may be collected using distraint or by an action at law (usually small claims court). **Any action to distraint the personal property or to collect the tax through an action at law must be instituted within two years from the filing of the tax lien.** 32 V.S.A. § 5075. (The action does not have to be completed within the two years, since otherwise the taxpayer would have a great incentive to delay proceedings until the lien expires.) Many delinquent tax collectors simply include the delinquent personal property amounts in a tax sale or other collection action taken against the taxpayer for nonpayment of his or her real property tax.

1. **Distraint.** Distraint involves taking the property to be sold, holding it while the collector notices its sale, then selling the property at auction, and returning to the taxpayer any proceeds in excess of the amounts owed to the municipality. For more detailed information on distraint, see Chapter 4, Section C.
2. **Action at Law.** An action at law involves initiating a collection action in court. Generally, delinquent tax collectors will choose to pursue the collection of delinquent personal property taxes in small claims court if they are unable to take possession of the personal property subject to the lien.<sup>17</sup> See Chapter 4, Section D for more information on using an action at law for the collection of delinquent taxes.
3. **Notice of Collection.** Under 32 V.S.A. § 5075, the delinquent tax collector must give notice that a distraint action or an action of law has commenced “to all persons except the taxpayer mentioned in section 5071 of this title, in the manner therein prescribed.” This means that notice by registered or certified mail, return receipt requested, must be sent to the owner of the property (if it is not the taxpayer), and to any other person having a duly recorded lien on the property. The statute also specifies how to send notice to a corporation and partnership.

---

<sup>16</sup> A person who sells, mortgages, pledges or exchanges personal property subject to a tax lien can be fined up to double the amount of the lien on the property. Half of the fine is paid to the town. 32 V.S.A. § 5072. A person who induces another to buy the personal property may be fined up to \$100.00. 32 V.S.A. § 5074.

<sup>17</sup> An action at law is a common tool for the collection of personal property taxes, since the tax collector must avoid breaking the law when distraining personal property, which greatly limits the effectiveness of distraint as a tool for collection of delinquent taxes.

**Although the statute specifically states that notice of the institution of collection actions is not sent to the taxpayer, it may make sense in some instances to notify the taxpayer of the intent to institute an action against him or her, but only if it is certain he or she won't move the property out of town. Such notice may provide an incentive for the taxpayer to voluntarily pay the delinquencies to avoid the added costs and expenses of defending an action.**

- 4. Costs.** In addition to the taxes, interest and fees, the delinquent tax collector may add any costs of collection that are just and reasonable. *Montpelier v. Central Vermont R.R.*, 89 Vt. 36 (1915). This includes \$0.50 plus postage for every notice sent out. In addition, the tax collector and the town clerk shall each be paid \$6.00 for making and recording the notice. 32 V.S.A. §§ 5075, 5078.
- 5. Discharge of Lien.** The personal property lien may be discharged upon sale or redemption of the property. The distrained property may be redeemed by a lien holder. In all cases, the delinquent tax collector must discharge the record of lien upon payment of the amounts due to the town.<sup>18</sup> 32 V.S.A. § 5076.
- 6. Abatement of Personal Property Taxes.** Many delinquent tax collectors have experienced instances in which personal property that is subject to a tax lien has been removed from town, along with the taxpayer (who has left no forwarding address). In such situations, collection of the tax is virtually impossible. This creates a bookkeeping problem for the collector who may not like the idea of carrying the delinquent taxes on his or her books indefinitely. Unfortunately, the only way the taxes can be removed from the collector's records is if the town's board of abatement decides to abate the taxes.



---

<sup>18</sup> Payments of \$3.00 each to the town clerk and delinquent tax collector for the filing of the lien and discharge shall be paid by the town if the selectboard so orders it.

## CHAPTER 6 MOBILE HOMES

### A. HOW MOBILE HOMES ARE TAXED

1. **When Due.** According to statute, taxes assessed against a mobile home are considered due as of the date of transfer, sale, trade or removal of the mobile home from the town. 32 V.S.A. 5079(e). This means that at the time when ownership of a mobile home changes through sale, trade or transfer or when the mobile home is removed from town, assessed taxes are due. If such assessed taxes are not paid at that time, applicable interest and penalties will accrue, beginning on the date of the sale, trade, transfer or removal. If ownership of the mobile home does not change or if the mobile home is not removed from town, the usual due date will apply. 32 V.S.A. § 5079 (b).
2. **Taxed as Real Property.** The statutes are silent as to whether mobile homes must be treated as personal property or real property for the purpose of taxation. However, a 1989 opinion of the Vermont Department of Taxes states that all mobile homes, even those not hooked up or set on a foundation, should be treated as real property unless they are registered by the department of motor vehicles to be moved. However, since mobile homes are easy to move, the Vermont Legislature has created a safeguard designed to ensure that the property taxes on mobile homes are paid up before a mobile home is sold or moved from the town. 32 V.S.A. § 5079.
3. **Mobile Homes on Rented Lots.** The treatment of a mobile home as real property is complicated for the delinquent tax collector because frequently mobile homes sit on property that is owned by another person. Therefore, any mobile home that is sold at a tax sale must be removed by the purchaser after the period of redemption is concluded, or the new owner will be liable to pay rent to the owner of the land.

An additional complication arises because the mobile home owner that is delinquent in the payment of property taxes may also be delinquent on his or her rental payments to the mobile home park owner. The park owner cannot evict or remove the mobile home without a signed mobile home bill of sale that states that the taxes are current.

### B. UNIFORM BILL OF SALE

Thirty-two V.S.A. section 5079 requires all owners of mobile homes, except those held solely for sale by a manufacturer, to file a uniform bill of sale with the municipal clerk. (See 9 V.S.A. § 2602(c) for information on the uniform bill of sale.) The mobile home may not be sold, traded, or transferred without the owner filing a new mobile home bill of sale that has been endorsed by the clerk of the municipality “indicating that all property taxes assessed with regard to the mobile home, but not the mobile home site, have been paid.”<sup>19</sup> The mobile home bill of sale must then

---

<sup>19</sup> Before the clerk can endorse a mobile home bill of sale, the current taxes must be paid, even if the taxes are not actually due until a later date. Although this seems unfair to many mobile home owners, the law is clear about this requirement. See 32 V.S.A. § 5079 (b). If a tax rate has not yet been set, a common practice among towns is to estimate the taxes due based on last year’s tax bill.

be filed with the clerk of the municipality in which the mobile home is located within ten days after the sale, transfer or relocation of the mobile home into a new municipality. Failure to comply with these provisions can result in a fine of up to \$300.00.



In addition, if a mobile home is sold, transferred or removed from the town and a uniform bill of sale has not been endorsed by the clerk as required, then the delinquent tax collector, or any sheriff, constable, police officer, town treasurer or the commissioner of taxes (if the new location of the mobile home is known) may “take

it into possession,” and then deliver it to the delinquent tax collector.

A mobile home may only be taken without judicial process if it can be done without a breach of peace.<sup>20</sup> 32 V.S.A. § 5079(d). Most delinquent tax collectors are reluctant to take possession of a mobile home because they are unsure what actions might constitute a breach of the peace. In addition, most collectors are not interested in paying the expense to move the home or to store it in a safe location until a tax sale could be conducted and the redemption period has ended. Instead, once the home is located, many collectors proceed to collect the outstanding taxes by filing an action at law (usually in small claims court).

### **C. MOBILE HOMES THAT HAVE DISAPPEARED**

It is not uncommon for a mobile home to disappear from town without having the bill of sale endorsed by the town clerk. If the delinquent tax collector does not know where the mobile home has gone, the collector must notify the Director of Property Valuation and Review of its removal and provide all information that might aid in the mobile home’s identification (a serial number is helpful). If the director discovers that the mobile home has appeared in another town, he or she will notify the delinquent tax collector so the collector can proceed with collection of the delinquent taxes. 32 V.S.A. § 5079 (f).

In many cases, however, the mobile home is never located, and the collector must attempt to have the outstanding taxes abated so that the delinquencies might eventually be removed from his or her records.

---

<sup>20</sup> The statutes discussing breach of the peace can be found in 13 V.S.A. Chapter 19, and include riots, assaults, drunkenness, etc.

## **CHAPTER 7 BANKRUPTCY**

### **A. GENERALLY**

The bankruptcy of a delinquent taxpayer poses an interesting challenge for delinquent tax collectors, primarily because the rules and procedures of the bankruptcy process are confusing, and also because there is a great deal of variation as to what can be expected at the outcome of the proceedings. Following is a very brief discussion of the effect of bankruptcy on collection of taxes. **The best overall advice we can provide is to consult an attorney knowledgeable about bankruptcy when questions arise, because not only are there are several types of bankruptcy, but bankruptcy law is very complex, each situation is different and the outcome frequently turns on the unique facts of a particular case.**

### **B. AUTOMATIC STAY**

When an individual or corporation files a petition for bankruptcy in the bankruptcy court, the law will impose an automatic stay to prevent any further collection of any debts which the petitioner had accrued prior to filing. This means that once a delinquent taxpayer has filed for bankruptcy, the delinquent tax collector must stop all of his or her collection actions against the taxpayer. A creditor who violates the automatic stay by continuing to try to collect a debt, despite the filing of the bankruptcy petition, can be subject to penalties including damages, costs, attorney's fees and punitive damages.

Because of the automatic stay, once the municipality receives notice of the bankruptcy (regardless of the source of the notice), the delinquent tax collector must not contact the taxpayer about the taxes owed before the petition was filed. (A bill for current taxes may still be sent out.) If it is necessary to communicate with the taxpayer, the municipality should contact his or her attorney. However, if a taxpayer who is going through bankruptcy offers to voluntarily pay his delinquencies, the tax collector may accept such payment without risking penalties for violating the stay. In such a case, it is very important that the offer from the taxpayer did not result from any pressure brought to bear by the tax collector or any other town official.

### **C. PROOF OF CLAIM**

A municipality will receive a formal "Notice of Bankruptcy" when the taxpayer files a petition for bankruptcy that includes the name of the municipality as a creditor (someone the taxpayer owes money to). The bankruptcy court will send a "Proof of Claim" form to the town clerk of the municipality that sometimes serves as the first notice that a bankruptcy petition has been filed.<sup>21</sup> It is important for the delinquent tax collector to ask the clerk to notify him or her in the event that a "Proof of Claim" or "Notice of Bankruptcy" is received by the clerk. This will prevent the delinquent tax collector from inadvertently violating the stay because he or she was never notified that the town received the notice of bankruptcy.

---

<sup>21</sup> The formal notice that a bankruptcy petition has been filed is the "Notice of Bankruptcy" that the court will send to every creditor listed by the petitioner as a creditor.

The proof of claim form requires the municipality to file a sworn statement with the bankruptcy court, indicating the amount, source and type of debt owed by the taxpayer/debtor to the town. Failure to file such a claim can affect the town's ability to recover the delinquent taxes from the taxpayer's bankruptcy estate.

To ensure that it will receive notice of a chapter 7 or 13 bankruptcy, municipalities may wish to annually file a notice of address with the bankruptcy court. 11 U.S.C. § 432(f)(1).

#### **D. TYPES OF MUNICIPAL CLAIMS**

The bankruptcy code sets forth the order in which creditors' claims are to be paid by establishing classes of claims and creditors. Those creditors with a class of claim that has a higher priority than others get paid first, and lesser claims get paid only if there is money remaining in the bankruptcy estate after the higher priority claims have been paid. Thus, in order to establish whether and to what extent the municipal claim will be paid, it is important to determine the type of claim the municipality has.

There are two types of municipal tax claims in bankruptcy. First, current taxes are treated as administrative expenses of the bankruptcy estates, and paid in the ordinary course of a bankruptcy proceeding. 11 U.S.C. § 503(b)(1)(B)(i). A municipality is not required to request payment of current taxes in order for them to be paid as an administrative expense. 11 U.S.C. § 503(b)(1)(D). Pre-petition delinquent taxes, in contrast, are considered to be either secured or priority claims, which are paid only after the administrative expenses and federal taxes have been paid.

Vermont law creates an automatic statutory lien on real property when the grand list is lodged on April 1st of each year. 32 V.S.A. § 5061. This lien is also, by statute, senior to all other liens and mortgages on the property.<sup>22</sup> In recent case law, the bankruptcy court determined that delinquent property taxes were secured claims even though the petition was filed before the grand list was lodged, but after the tax status day of April 1st. In *In re Summit Ventures*, 135 B.R. 483 (Bankr. D. Vt. 1991), the court reasoned that the town had a secured interest in the property taxes as of the tax status date, such that the filing of the grand list, which perfected the lien, would relate back to the April 1st date. In this case the court allowed the town to recover the delinquent taxes and interest, but no penalties. **Because the bankruptcy court is sometimes confused as to the proper treatment of liens for delinquent real property taxes, to maximize the municipality's likelihood of recovery, the delinquent tax collector should record real property tax liens whenever the delinquent tax collector believes that a taxpayer may be filing for bankruptcy, or whenever the amount owed is sufficiently great that the added protection of the recorded lien would be advisable.**<sup>23</sup>

---

<sup>22</sup> This is in contrast to personal property liens, which do not exist automatically but only come into being upon the filing of a lien with the town clerk.

<sup>23</sup> The notice of tax lien should include the taxpayer's name, a legal description of the property, the time period for which the taxes are due and the amount of delinquent taxes including penalties and interest, the statutory authority for the lien and the signature of the delinquent tax collector. The notice of lien must be filed in the land records, and a copy should be sent to the delinquent taxpayer by certified mail. The lien can be discharged after the taxes are paid by filing a discharge that refers to the lien by volume and page number of where it appears in the land records.

Note that delinquent personal property taxes will not be a secured lien unless the lien has been recorded in the town clerk's office before the bankruptcy petition has been filed. *In re New England Carpet*, 26 B.R. 934 Bankr. D. Vt. 1983).

#### **E. OUTCOME OF PROCEEDINGS**

If the tax lien is considered by the bankruptcy court to be a secured lien, it is probable that, after a very long wait for the proceedings to be completed, the town will be paid at least the overdue taxes, and the penalty and interest owed.

In some cases the bankruptcy court has determined that the tax lien is unsecured because no record of the lien was filed in the land records. In such cases, this lien is only paid after all secured creditors are paid, which might mean that the town receives little or none of the taxes owed. Because the final act of the bankruptcy court is to discharge all remaining debts, the taxpayer will no longer owe the town any of the taxes, interest or penalties that were included in the bankruptcy petition. However, none of the taxes which accrue *after* the filing of the petition will be discharged as part of the bankruptcy proceeding. Therefore, if they are not paid as current expenses, once the bankruptcy proceedings are complete, ordinary collection methods may be used to collect those post-petition taxes, interest and the penalty. **Note that when a bankruptcy petition is filed after a tax sale, but before the redemption period has expired, the redemption period is tolled until the case is concluded. This means that if the redemption period has run for three months at the time that the bankruptcy petition is filed, it will stop running at that time and will start to run again (the other nine months) only after the bankruptcy proceeding is completed.** *In Re L.H. & A. Realty Co., Inc.*, 57 BR 265 (Bkrcty, D.Vt. 1986).

## **CHAPTER 8 CONCLUSION**

The responsibility of collecting the town's delinquent taxes is not easy, and each collector has his or her own style of doing so. Some pride themselves on their firmness, others on their willingness to accommodate the taxpayer. However, no matter what personal style the collector has, and no matter what type of collection policy the delinquent tax collector adopts, collectors have had the most success when they abide by the following basic principles:

- Remember that the delinquent tax collector is a public official, and as such, has a duty to serve the people. This means that the collector should make sure that each delinquent taxpayer understands what the delinquent tax collector will do to collect the tax, and what options are available to him or her.
- The delinquent tax collector should adopt a uniform policy to insure that all taxpayers are treated fairly. A copy of this policy should be given to each delinquent taxpayer.
- Delinquent tax collectors have the most success when they approach each delinquent taxpayer with respect, and attempt to find a mutually satisfactory settlement of the delinquency before using more formal collection methods.
- The initial notice of delinquency and any subsequent notices should emphasize the conciliatory nature of the process, and the collector's willingness to discuss payment plans.

Note, however, that the delinquent tax collector holds the ultimate authority to determine whether and how to accommodate a taxpayer. Therefore, when more congenial methods of collection fail, the delinquent tax collector should not feel timid about using the statutory collection methods including selling the property at tax sale or bringing an action at law.

- Finally, the delinquent tax collector should become familiar with the various programs designed to benefit taxpayers who are having difficulty paying their property taxes. In addition, the collector should remember to inform delinquent taxpayers of their ability to request abatement of taxes (24 V.S.A. § 1535) and of the exceptions for those on active military duty regarding tax sales and redemption. (50 USCA §§ 501 et seq.)

The problems facing Vermont's delinquent tax collectors are ever changing. When questions arise that are not covered in this handbook, remember that VLCT is here to help! Call us at 800/649-7915.