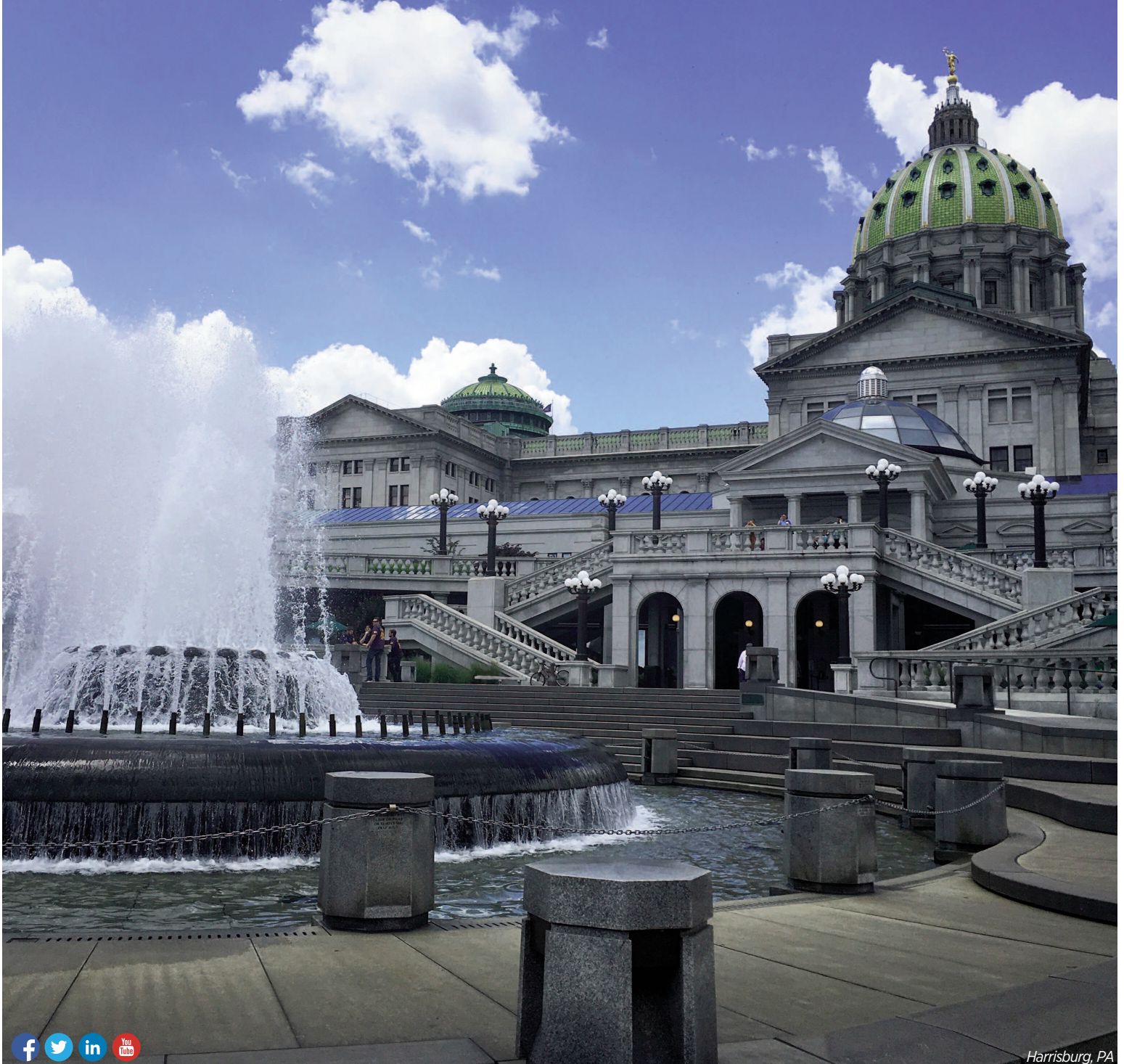


# TAX COLLECTOR'S MANUAL

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# Forward

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This manual is issued for the guidance and assistance of the elected tax collectors of Pennsylvania. It contains information on the powers and duties of the office and the restrictions placed by law on the exercise of those powers. The material presented applies only to tax collectors of third class cities, boroughs and townships in their role as collectors of county, municipal and school real estate taxes and per capita and occupation taxes levied under the municipal codes. References to collection of per capita and occupation taxes levied under the Local Tax Enabling Act have been included because the elected tax collector is often designated the agent to collect these taxes.

Descriptions of the office of tax collector and its powers and duties relate solely to those jurisdictions operating under the municipal codes. In home rule municipalities, each home rule charter will designate the office responsible for collection of taxes and provide for the duties and responsibilities of the office. As home rule counties are free to make their own arrangements for tax collection, local elected tax collectors in the municipal units within those counties may or may not continue to be responsible for collection of county taxes.

The material contained in this manual is for informational purposes only. It does not constitute legal opinion and should not be construed as such. Tax collectors seeking legal opinions on matters relating to their offices should contact the solicitors for their taxing districts.

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# I. Designation of Tax Collector

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The local tax collector is the municipal officer designated to collect municipal and school real estate and personal taxes levied under the municipal codes, and in most cases county real estate and personal taxes. In boroughs and second class townships, the office is designated as tax collector; in third class cities and first class townships, the elected treasurer is designated tax collector.<sup>1</sup> In home rule municipalities, the home rule charter or administrative code designates the officer to collect local taxes. Some home rule charters provide for an elected tax collector or treasurer, while others have appointed tax-collecting officers.

Municipal tax collectors collect school taxes levied under the authority of the Public School Code, including school real estate taxes.<sup>2</sup> There is no authority for a school district to collect these taxes through its own employees; this function has been assigned to the municipal tax collectors.<sup>3</sup>

**Unseated Lands.** In seventh and eighth class counties, taxes on unseated lands are paid to the county treasurer who distributes them among the taxing districts entitled to these taxes. In other counties, taxes on unseated lands are collected in the same manner and at the same time as taxes on seated lands.<sup>4</sup> Unseated lands include tracts lacking a residence or those not cultivated or improved, usually wild or mountain land.

## County Taxes

In the majority of counties, municipal tax collectors collect county real estate, per capita and occupation taxes. Under special legislation, county taxes in Allegheny County are collected by the county treasurer.<sup>5</sup> Other special local laws enacted in the nineteenth century and which are still in effect make the county treasurer the collector of county taxes in Beaver, Chester, Greene, Lawrence and Washington counties.<sup>6</sup> Counties adopting home rule charters may opt to collect their own taxes. Currently, Delaware, Lackawanna and Northampton counties collect their own taxes under their home rule authority.

**Third Class Cities; Home Rule Municipalities.** In third through eighth class counties, the county commissioners may provide for the collection of county taxes levied in third class cities by the county treasurer. In municipalities adopting home rule charters or optional plans where the office of tax collector is no longer elective, the county commissioners may provide for the billing and collection of county taxes by the county treasurer. In municipalities where an employee or official collects the municipality's taxes because of a vacancy in the office of tax collector, the county commissioners may provide for the collection of county taxes by the county treasurer, the municipality or a tax collector in a neighboring municipality.<sup>7</sup>

## Act 511 Taxes

The Local Tax Enabling Act (*Act 511 of 1965*) authorizes municipalities and school districts to provide their own arrangements for collecting taxes levied under the Act.<sup>8</sup> The authorization in Act 511 supersedes any statement in the municipal codes designating the tax collector/treasurer as the sole collector of taxes.<sup>9</sup>

School districts and municipalities with powers to levy taxes under the Local Tax Enabling Act have discretion to appoint the elected tax collector to collect some or all of their Act 511 taxes. When so appointed, the tax collector must collect these taxes.<sup>10</sup>

In most local units, the elected tax collector is not designated collector for all Act 511 taxes. Act 511 per capita and occupation taxes are most often collected by the elected tax collector since these are billed and collected once a year, usually with the jurisdiction's real estate and code per capita and occupation taxes. Earned income taxes are usually collected by specialized bureaus or private collection agencies. Mercantile, business privilege and amusement taxes are often collected by municipal licensing agencies.

## **Municipal Assessments**

In second class townships, the tax collector is responsible for collecting assessments for street lights and fire hydrants and for garbage collection levied in special districts of the township.<sup>11</sup> In first class townships, the treasurer collects assessments for street lights and for ornamental street lighting systems.<sup>12</sup>

### **REFERENCES**

1. 53 P.S. 37532; Third Class City Code, Section 2532; 53 P.S. 46086; Borough Code, Section 1086; 53 P.S. 55805; First Class Township Code, Section 805; 53 P.S. 66001; Second Class Township Code, Section 1001.
2. *Bogdan v. School District of Coal Township*, 85 A.2d 139,369 Pa. 143, at 151, 1952; *City of Carbondale v. Neary*, 85 D.&C. 597, C.P. Lackawanna Co., 1953.
3. *Abington School District v. Yost* 397 A.2d 453, 40 Pa. Cmwlth. 312, at 320, 1979; *Penn-Delco School District v. Schukraft* 506 A.2d 956, 95 Pa. Cmwlth. 619, 1986.
4. 72 P.S. 5511.23; Local Tax Collection Law, Section 23.
5. 72 P.S. 5527; 1929 P.L. 134, Section 1.
6. 1853 P.L. 5, 1868 P.L. 595, 1855 P.L. 528, 1852 P.L. 197; *Lawrence County v. Horner*, 281 Pa. 336, 1924.
7. 16 P.S. 1701.1; County Code, Section 1701.1.
8. 53 P.S. 6910; Local Tax Enabling Act, Section 10; *Sullivan v. Peters*, 265 A.2d 799, 438 Pa. 460, 1970.
9. *Jennings v. Lackawanna Township* 70 D.&C. 342, at 343, Lackawanna Co., 1942.
10. *Borger v. Pleasant Valley School District*, 551 A.2d 648, 122 Pa. Cmwlth. 187, 1988.
11. 53 P.S. 68301; Second Class Township Code, Section 3301.
12. 53 P.S. 56513; First Class Township Code, Section 1502.XIII.



## II. Qualifying for Office

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There are only minimal qualifications for candidates for local tax collector. In third class cities, the city treasurer must be a competent accountant, 21 years of age or more, and a resident of the city for a year before the election.<sup>1</sup> Status as a public accountant or certified public accountant is not necessary; an individual can be a qualified accountant through training and experience.<sup>2</sup> In first class townships, the only qualification is being a registered voter of the municipality. In boroughs and second class townships, the tax collector must have resided in the municipality for one year before the election and continue to reside there during the term of office.<sup>3</sup>

### Incompatible Offices

All tax collectors are prohibited from simultaneously holding the offices of district attorney<sup>4</sup> and school director.<sup>5</sup> City treasurers may not serve as election officers.<sup>6</sup> In boroughs and townships, the tax collector may hold no other elective municipal office.<sup>7</sup> In boroughs with populations with more than 3,000, the tax collector may not also serve as a borough employee.<sup>8</sup> In first class townships, the treasurer is prohibited from holding any other township office, but in second class townships the tax collector is not prohibited from holding other appointive offices. For instance, a second class township secretary could become tax collector either through election or appointment to fill a vacancy.

### Ethics Law Disclosure Statements

Candidates for the office of tax collector or treasurer must file a Statement of Financial Interest with their municipal office before filing nomination petitions. In addition, a copy of the statement must be attached to the petitions. No successful candidate is permitted to take the oath of office, enter upon its duties or receive compensation unless the disclosure statement has been filed. Incumbent tax collectors and treasurers must file a new statement for the prior calendar year by May 1 of each year. Statements of incumbent officials are filed only with the municipality.<sup>9</sup>

### Election

The tax collector is elected for a 4 year term at the municipal election in odd-numbered years. City treasurers are not all elected at the same municipal election, but all borough and township tax collectors are elected in 2001 and at 4 year intervals following.

In cities, the treasurer must present a certificate of election at the organization meeting of council; this certificate is filed among the city archives.<sup>10</sup> In boroughs, certificates of election are filed with the borough secretary and retained for 6 years.<sup>11</sup>

### Oath

All candidates for elective office must file an oath or affirmation with the nomination petitions or papers. The candidate must swear or affirm to support, obey and defend both federal and state constitutions and exercise the duties of office with fidelity.<sup>12</sup> Appointees to vacancies must file a similar oath.

City treasurers must take the oath prescribed in Article VI, Section 3 of the Pennsylvania Constitution before entering office.<sup>13</sup> In boroughs and townships, the tax collector must take an oath and file it with the clerk of courts before entering office.<sup>14</sup> Township treasurers and tax collectors must take an oath to support the state and federal constitutions and to perform the duties of office with fidelity. A copy of this oath must be filed with the township secretary within 10 days in first class townships and before assuming office in second class townships.<sup>15</sup>

Tax collectors should take a new oath at the beginning of each term of office. Oaths may be administered by a number of officials, including district justices and notaries public. A logical official to administer the oath is the one with whom the oath is filed. The city clerk has power to administer oaths in city affairs and the clerk of courts can also administer oaths.

## **Municipal Tax Collector Qualification Program**

Act 48-2015 requires tax collectors to attend training and complete testing to become qualified tax collectors.<sup>16</sup> This program was created to increase the knowledge and professionalism of tax collectors, and is a useful tool to help tax collectors sharpen their skills as municipal tax collectors.

Each qualified tax collector must attend 2 hours of continuing education by the end to maintain their status as a qualified tax collector. Continuing education courses will focus on accounting, auditing, computerization, ethics, procedures for collecting taxes, recent court decisions affecting tax collectors, and local tax collection laws and other tax-related statutes.

### **REFERENCES**

1. 53 P.S. 36401; Third Class City Code, Section 1401.
2. *Conte Nomination Petition*, 49 Delaware 115, at 116, 1962.
3. 53 P.S. 45801; Borough Code, Section 801; 53 P.S. 65406; Second Class Township Code, Section 406.
4. 16 P.S. 1401; County Code, Section 1401.
5. 24 P.S. 3-322; Public School Code, Section 322; *Kurtz v. Steinhart*, 60 D.&C. 345, at 358, C.P. Northumberland Co., 1947.
6. 25 P.S. 2672; Election Code, Section 402; *Armstrong Township Tax Collector Election*, 27 D.&C.2d 333, C.P. Lycoming Co. 1962.
7. 53 P.S. 45801; Borough Code, Section 801; 53 P.S. 55511; First Class Township Code, Section 511; 53 P.S. 65407; Second Class Township Code, Section 407.
8. 53 P.S. 46104; Borough Code, Section 1104.
9. 65 Pa.C.S.A. 1101.1.
10. 53 P.S. 35704; Third Class City Code, Section 704.
11. 53 P.S. 45803; Borough Code, Section 803.
12. 65 P.S. 224; Pennsylvania Loyalty Act, Section 14.
13. 53 P.S. 35905; Third Class City Code, Section 905.
14. 72 P.S. 5511.4; Local Tax Collection Law, Section 4; 53 P.S. 55806; First Class Township Code, Section 806.
15. 53 P.S. 55601; First Class Township Code, Section 601; 53 P.S. 65501; Second Class Township Code, Section 501.
16. 72 P.S.5511.(f).

### III. Term of Office

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All tax collectors are elected for 4-year terms beginning the first Monday in January following the municipal election. In cities and first class townships, the treasurer serves until a successor is elected or appointed and qualifies.<sup>1</sup> In the event no treasurer is elected, or a newly-elected treasurer fails to qualify, the incumbent treasurer remains in office until the governing body appoints an individual to fill the vacancy.

In boroughs and second class townships, tax collectors only serve until the first Monday in January 4 years after their election.<sup>2</sup> If for any reason a successor is not elected or fails to qualify, the position remains vacant until the governing body appoints an individual to fill the vacancy.

#### Collecting Taxes After Term Expires

Tax collectors are the only elected officials to retain responsibilities of office after their terms officially expire. Except for city treasurers, tax collectors remain responsible for any duplicates currently in their possession at the time their terms expire.<sup>3</sup> Since the duplicate remains in force until settlement, taxing authorities may choose to extend the tax collector's authority and obligation to collect taxes on the duplicates in their possession beyond their elective term.<sup>4</sup> Tax collectors would continue to collect the taxes on their duplicates until settlement is made. Tax collectors continue to receive compensation for these duties at the rate set before their election. Tax collectors resigning in the middle of their terms must continue to collect taxes from any duplicates in their possession until settlement. Any new duplicates are issued to the appointed replacement.

At the expiration of their terms, treasurers in third class cities turn over any duplicates with unpaid taxes in their possession to their successors after their accounts have been audited and adjusted. The new treasurer proceeds to collect any taxes remaining unpaid on the duplicate.<sup>5</sup>

#### Removal From Office

In 1995, the Pennsylvania Supreme Court struck down all legislative provisions for removal of an elected official for failure to perform the duties of office, and clarified that the only constitutional method for removal of an elected official is contained in Article VI, Section 7 of the Pennsylvania Constitution.<sup>6</sup>

Under the Pennsylvania Constitution, elected officers hold their offices only during good behavior. Tax collectors can be removed from office: (1) by impeachment in the General Assembly; (2) by the Governor for reasonable cause after due notice and full hearing on the address of two thirds of the Senate; or (3) by the courts after conviction of misbehavior in office or of any infamous crime.<sup>7</sup>

#### Vacancies

Vacancies in the office of tax collector are filled by the municipal governing body.<sup>8</sup> In cities, council appoints a person to fill the vacancy to serve until a successor is elected at the next municipal election occurring at least 200 days after the vacancy occurs.<sup>9</sup> If there is more than two years remaining in the term, the person elected serves to the remainder of the original term. If the original term expires at the next municipal election, the successor is elected for a full term as treasurer. If council fails to act, citizens can appeal to the court.

In boroughs and townships, the governing body must take official action to accept the resignation of the tax collector and fill the vacancy by appointment within 30 days. If the governing body fails to act within 30 days the vacancy board, consisting of the governing body and a chairman appointed at the organization meeting, fills the vacancy within 15 additional days. After that time, the court may be petitioned to fill the vacancy. The tax collector appointed to a vacancy holds office, if the term continues so long, until the first Monday in January after the first municipal election occurring more than 60 days after the vacancy occurs. At this election, an eligible person will be elected for the remainder of the term.<sup>10</sup>

A provision in the Public School Code allowing the board of school directors to appoint a tax collector in the event of vacancy in the office of municipal tax collector is obsolete in view of the detailed provisions added to the municipal codes by the General Assembly to ensure vacancies in elective municipal offices are filled in a timely manner.<sup>11</sup> The court had previously held this provision was merely supplementary to the power conferred on municipal governing bodies to fill vacancies in the office of tax collector.<sup>12</sup> The court found it was a settled legislative policy to have a single tax collector, elected by the people, to collect local taxes. Primary authority resides in the municipal governing body, rather than the school district, to fill any vacancies in this elective office.

When a vacancy exists, the governing body of a taxing district may, by ordinance or resolution, enter into an agreement with an adjoining or conveniently located taxing district for the joint collection of taxes. Two or more taxing districts may enter into the agreement.<sup>13</sup>

Act 115-2011 allows county treasurers in third through eighth class counties to collect municipal taxes following an agreement between the municipal governing body and the county commissioners, if the office of municipal tax collector is vacant.<sup>14</sup>

## **Collecting Taxes After Death or Default of Tax Collector**

If the tax collector defaults on remitting taxes within the required time period, it is the responsibility of the taxing districts to notify the surety of the default. The surety for the bond may demand the duplicates from the tax collector. If the tax collector does not turn over the duplicates, the surety can petition the court for an order. Delinquency or default must be found as a fact by the court before an order is made. The court will consider proper credits and exonerations and whether a good reason in law exists for the absence of a return. The surety has the right to appoint a collector to collect remaining taxes on the duplicate. The taxing bodies can issue an additional warrant to the collector of these delinquent taxes on the request of the surety. This provision allows taxing districts, through pressure of the surety, to get rid of defaulting or delinquent tax collectors and forms an additional resource for ensuring taxes are collected.<sup>15</sup>

Death does not relieve the tax collector's responsibility for collecting the taxes on the duplicate. In the event of the death of a tax collector, the executors or the administrators of the estate have the same powers to enforce collection of unpaid taxes as the tax collector would have if living. Tax collectors should name a responsible party in their wills. The executors or administrators may employ a tax collector to collect the remaining taxes on any unsettled duplicate in possession of the deceased collector.<sup>16</sup> If no executor or administrator has been appointed to administer the estate within 15 days after the tax collector's death, the surety may petition the court to take over the duplicates. The surety proceeds to collect unpaid taxes until an executor or administrator is appointed. However, even where an executor takes over the duplicate with a new bond, the original surety is not relieved of responsibility for the duplicate of a deceased tax collector.<sup>17</sup>

When a resignation occurs, the courts have held that the surety is responsible for the entire shortage declared by the tax collector at the time of resignation, but the surety may recoup monies collected during the tax collector's term of office but paid over to the local government after the tax collector's resignation.<sup>18</sup>

## **REFERENCES**

1. 53 P.S. 35904; Third Class City Code, Section 904; 53 P.S. 55502; First Class Township Code, Section 502.
2. 53 P.S. 45804; Borough Code, Section 804; 53 P.S. 65406; Second Class Township Code, Section 406.
3. 72 P.S. 551.1.29; Local Tax Collection Law, Section 29.
4. *Heald v. Conneaut School District* 9 D.&C.3d 703, at 710, C.P. Crawford Co., 1979.
5. 72 P.S. 5511.28; Local Tax Collection Law, Section 28; 53 P.S. 36407; Third Class City Code, Section 1407.
6. *In re Petition to Recall Reese*, 665 A.2d 1162, 542 Pa. 114, Sup. 1995.
7. Constitution of Pennsylvania, Article VI, Sections 6 and 7.
8. *Dahl v. Wooster*, 11 D.&C.2d 682, C.P. Lawrence Co., 1957.
9. 53 P.S. 35802; Third Class City Code, Section 802.

10. 53 P.S. 45901; Borough Code, Section 901; 53 P.S. 55530; First Class Township Code, Section 530; 53 P.S. 65407; Second Class Township Code, Section 407.
11. 24 P.S. 6-683; Public School Code, Section 683.
12. *Commonwealth ex rel. Davis v. Blume*, 161 A. 551, 307 Pa. 406, at 417, 1932.
13. 72 P.S. 5511.4.2; Local Tax Collection Law, Section 4.2.
14. 72 P.S. 5511.4d
15. 72 P.S. 5511.40; Local Tax Collection Law, Section 40; *American Surety Company's Case*, 181 A. 364, 319 Pa. 549, at 552, 1935.
16. 72 P.S. 5511.30; Local Tax Collection Law, Section 30.
17. 72 P.S. 5511.40; Local Tax Collection Law, Section 40(b-1); *Commonwealth v. Long*, 167 A.509, 110 Pa. Super.1, at 4, 1933.
18. *Central Bucks School District v. Cogan*, 719 A.2d, 130 Ed. Law Rep. 220, Pa Cmwlth, 1998.

## IV. Bonds

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A bond is a legal promise of a personal or corporate surety to be responsible for and to reimburse the taxing district for the losses of the tax collector, up to the amount of the bond, from causes stipulated on the bond. Since 1953, tax collectors have been required to give corporate surety with a surety company authorized to act as a surety. All tax collectors must provide a bond to secure the respective taxing districts against any losses of tax funds. There are two types of bonds. A fidelity bond makes the surety liable only for losses resulting from acts of dishonesty by the tax collector. A performance bond makes the surety liable for the tax collector's failure to collect and pay over the whole amount assessed and charged on the duplicate.

Traditionally, the tax collector secured the bond from a surety company, with only city councils given the right to exercise some authority over the designation of the bonding company.<sup>1</sup> The surety company must be authorized to do business in Pennsylvania by the State Insurance Commissioner. The Local Tax Collection Law was amended in 1977 to authorize county commissioners to require joint bidding for bonds of local tax collectors within the county.<sup>2</sup> Where joint county bonding is in effect, the local tax collector no longer has a role in choosing the bonding company. Where instituted, joint bidding becomes mandatory for all county, borough, township and school district taxes. Cities have the option of participating in joint county bidding with all other taxing districts for tax collector bonds.

Failure of the tax collector to give bond creates a vacancy in boroughs and second class townships.<sup>3</sup> In cities and first class townships, failure to give bond results in a failure to qualify for office. Certainly, no unbonded treasurer can proceed to collect taxes.

### Third Class City Treasurers

The city treasurer is required to give a fidelity bond with a surety company authorized to do business in Pennsylvania.<sup>4</sup> The bond must cover all moneys received in the capacity of city treasurer and as collector of city, school and, where applicable, county taxes. The amount of the bond is set by city council, but any taxing district served by the treasurer may petition the court to increase the amount of the bond up to a maximum of 100% of the taxes on its duplicate. The treasurer furnishes a single bond for the entire four-year term of office to cover all duties. In addition, the treasurer must furnish insurance coverage against loss from fire, theft or forgery.

The bond and insurance premium costs are shared by the taxing districts in proportion to the amount of taxes collected on their respective duplicates of the previous year.<sup>5</sup> Deputies, clerks and assistants of the treasurer must also be bonded, with the premium shared on a proportional basis by the taxing districts.

### First Class Township Treasurers

The bond for first class township treasurers is a fidelity bond in an amount set by ordinance or resolution, not less than 50 percent of the annual duplicate but not more than 100 percent.<sup>6</sup> The surety company must be authorized to do business in Pennsylvania. The bond must cover the treasurer's responsibilities as township treasurer, as well as collector of township, school and, where applicable, county taxes. The treasurer is bonded once to cover all responsibilities for the full term of office, but signs an annual renewal of the bond. Any taxing district can require additional bond coverage at its own expense. Each taxing district shares the cost of the bond premium in proportion to the amount of taxes in its duplicate.<sup>7</sup>

### Borough and Township Tax Collectors

In boroughs and second class townships, the tax collector is bonded with a single surety (performance) bond to cover municipal, school and, where applicable, county taxes.<sup>8</sup> The amount is set by the court, but cannot exceed the combined annual duplicates. At the option of the tax collector, the bond can be for a single year, or cover the entire term. Any taxing district can appeal to the court if it feels the amount of the bond is not sufficient. The

premium of the bond is paid by the taxing districts in an amount proportional to their share of the total annual duplicates of the tax collector.<sup>9</sup> The bond must be filed in the office of the clerk of courts before the tax collector enters on the duties of office, but no later than the fifteenth of March. Tax collectors appointed to fill a vacancy must meet the same bonding requirements as elected tax collectors.

## **REFERENCES**

1. 53 P.S. 36402; Third Class City Code, Section 1402.
2. 72 P.S. 5511.4; Local Tax Collection Law, Sections 4(a) and 4(b),
3. 53 P.S. 45901; Borough Code, Section 901; 53 P.S. 65406; Second Class Township Code, Section 406.
4. 72 P.S. 5511.4; Local Tax Collection Law, Section 4(a); 53 P.S. 36402; Third Class City Code, Section 1402.
5. 72 P.S. 5511.33; Local Tax Collection Law, Section 33.
6. 53 P.S. 55801; First Class Township Code, Section 801.
7. 72 P.S. 5511.4; Local Tax Collection Law, Section 4(b.1).
8. 72 P.S. 5511.4; Local Tax Collection Law, Section 4(b).
9. 72 P.S. 5511.4; Local Tax Collection Law, Section 4(b.1).

## V. Compensation

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Compensation of the tax collector is fixed by the taxing districts and paid by them. However, the tax collector's relationship with the taxing district is not contractual. As a public officer, the right of the tax collector to receive the compensation of the office is legislative, not contractual.<sup>1</sup>

### Setting Compensation

City treasurers are paid an annual salary for collecting taxes, set before the election of the treasurer.<sup>2</sup> The salary is fixed by joint action. The city council, school board and, where applicable, county commissioners are each given one vote. Each taxing authority's vote is divided into equal fractions for each of its members. The compensation is determined by a majority of the fractional votes.

Compensation for treasurers in first class townships is set independently by the taxing districts.<sup>3</sup> Compensation as township treasurer and tax collector is set by an ordinance of the township commissioners; total compensation for township duties is not to exceed \$10,000 a year.<sup>4</sup> If the commissioners have not established a rate by ordinance, the treasurer receives the statutory rate of 5 percent of taxes collected and 1 percent of other township funds received, subject to the \$10,000 maximum. The school board sets compensation for collection of school taxes at a salary or commission not to exceed 5 percent of the amount of taxes collected. When the treasurer collects county taxes, the county commissioners set a salary or commission for collection of county taxes at a rate not to exceed 5 percent of the amount of taxes collected.

In boroughs and second class townships, the compensation for the tax collector is set independently by each taxing district.<sup>5</sup> Borough council, township supervisors, school directors and where applicable, county commissioners, fix the compensation in the form of a salary, wages or a commission, with the total compensation not to exceed 5 percent of the amount of taxes collected for each unit except for second class townships with populations less than 3,000, where it is not to exceed 10 percent.

In fixing tax collector compensation, a taxing district shall provide a method whereby a tax collector will receive additional remuneration for work related to collection efforts with regard to taxes levied and assessed upon a duplicate issued after an interim assessment. The additional compensation required may be based on the issuance of an interim bill or calculated in any other manner permitted by this act.

### Method of Compensation

Third class city treasurers receive a salary and cannot be paid on a commission basis. In boroughs and townships, the tax collector may be compensated on a salary, commission or mixed basis. When a school district covers more than one municipality, the school board can set a separate commission rate based on the difficulty of collecting taxes in each municipality.<sup>6</sup> The courts have also upheld sliding scale compensation schedules, based on the extent various collection responsibilities are voluntarily delegated to the school district or to a deputized bank.<sup>7</sup> In these cases, the school district resolution requested, but did not mandate, delegation of certain functions. The amount of compensation was based on the number of functions retained by the tax collector.

When compensation is on a commission basis, the taxing district can set a lower rate for taxes collected during the discount period. In 1913, boroughs and townships were given flexibility to set the commission within the 5 percent limit, and in 1961 they were given the power to set a salary or wage scale for the tax collector.

The commission does not apply to lien taxes, except where the tax collector serves as delinquent tax collector; the commission received for the collection of delinquent taxes is established by the taxing district.<sup>8</sup> The tax collector receives no compensation for taxes returned to the county tax claim bureau.<sup>9</sup>



## Challenging Compensation Level

While the legislature has given taxing districts the power to set the tax collector's compensation, this power is not absolute. Courts can intervene in cases of abuse of discretion.<sup>10</sup> The public interest is affected whether the collector's compensation is grossly excessive or entirely inadequate; both constitute capricious action on the part of the taxing body. Courts can both raise and lower compensation levels set by the taxing districts.

The courts can intervene in setting the tax collector's salary where the governing body is guilty of a misapplication of law, a clear abuse of discretion or arbitrary and capricious action resulting in an unlawful expenditure of public funds. Intervention is not warranted by a mere difference in opinion on the judgment exercised by the taxing body.<sup>11</sup>

Compensation levels should be challenged by citizens or candidates for the office of tax collector immediately after they are set. Candidates have been advised to file a statement with the clerk of courts indicating they do not agree with the compensation level. They should subsequently seek legal assistance, either on their own or with other persons affected by the compensation level set by the taxing body. In cases where tax collectors were aware of the change in compensation, stood as candidates and were elected, sworn into office, accepted duplicates and collected taxes, these actions were seen as tacit acceptance of the compensation level as set.<sup>12</sup> Appeals to the court after taking office must prove clear abuse of discretion by the taxing body. In a case where tax collectors demonstrated the new rate of compensation set by a school district would be financially detrimental to them, the court held this did not establish bad faith or lack of authority on the part of the district.<sup>13</sup> The tax collectors failed to present evidence that the district acted with improper motive or intent, but solely differed on what they considered adequate compensation.

## Changing Compensation

Any action by a taxing district to raise or reduce the compensation of the tax collector must be finally passed or adopted prior to the fifteenth day of February of the year of the municipal election where the office is filled.<sup>14</sup> The intent of this section is to prevent a change in the arrangement a taxing body has with its tax collector during the term of office. Where compensation is set on a commission basis, the actual amount can vary depending on the size of the duplicate, as long as the commission rate is unchanged.<sup>15</sup> A special exception enacted in 1996 allows supervisors of second class townships with a population of less than 3,000 to increase the commission level of the tax collector during the term of office to prevent the compensation from dropping when the millage rate is cut.<sup>16</sup>

The February 15 deadline for changing compensation has also been extended to taxing district actions to alter fringe benefits and other costs, including office space, telephone, hospitalization insurance and the employer's share of Social Security.<sup>17</sup> A recent court decision found that a township treasurer's receipt of rent-free office space from the school district for 23 years, in conjunction with his duties as tax collector for the school district, constituted compensation of the office of township treasurer, which could only be withdrawn by ordinance or resolution before the February 15th deadline.<sup>18</sup> The taxing district's termination of payment for these items was held to reduce indirectly the compensation of the tax collector.

The term of office of an elected official ends when a vacancy occurs. The taxing body may change the tax collector's compensation before the vacancy is filled by appointment. The new rate would apply to the newly appointed tax collector.<sup>19</sup> When a first class township treasurer is incapacitated and unable to serve, the township board of commissioners can petition the court to appoint a deputy to serve instead. When a deputy treasurer is appointed, compensation is fixed by the court and deducted from the amount otherwise payable to the elected treasurer.<sup>20</sup>

In cases where tax collectors have been reelected and their compensation has been changed for the succeeding term, they should receive their previous term's compensation for finishing out the final school tax duplicate from their previous term, even though this activity may continue several months after the new term begins on the first Monday of January. Payment on the basis of the new compensation schedule begins with the issuance of the first duplicate of the succeeding term.

## Paying Compensation

The tax collector is prohibited from deducting any compensation from the taxes collected.<sup>21</sup> All funds collected and any interest accrued must be paid over to the taxing districts.<sup>22</sup> All compensation must be paid directly by the taxing district with proper warrant or orders drawn upon its treasurer. Before any compensation is paid on the basis of a new duplicate, the tax collector must submit an affidavit affirming that the taxpayers have been properly notified.<sup>23</sup>

City treasurers are paid on a monthly or semi-monthly basis, the same as other officers of the city.<sup>24</sup> Arrangements for paying the salary are made by joint agreement between the city, school district and, where applicable, county. There is no legal stipulation on how tax collectors are paid in boroughs and townships. Commissions were customarily paid when the tax collector's monthly or periodic reports of collections were received. Salaries can be paid in even intervals throughout the year, even though the bulk of the work comes at certain times of the year. A taxing district should not be arbitrary and capricious when making payment to the tax collector. Payment should occur on a reasonable and timely basis. Taxing bodies must withhold federal, state and local income taxes from compensation payments to elected tax collectors.<sup>25</sup>

## Commissions on Noncode Taxes

If the elected tax collector is appointed to collect one or more Act 511 taxes, the taxing authority has full power to set the compensation and alter it at any time.<sup>26</sup> The tax collector acts as an appointed official when collecting Act 511 taxes and protections guaranteed by the Local Tax Collection Law to elected tax collectors do not apply to this role.

The tax collector in second class townships receives the same compensation for collecting street lighting and fire hydrant assessments as paid for township taxes, and where garbage collection assessments are levied in a village district the tax collector receives the same commission as for collecting per capita taxes.<sup>27</sup> A first class township treasurer collecting street light assessments is compensated at the same rate as for collecting taxes.<sup>28</sup>

## Fringe Benefits

**Health/Hospitalization Insurance.** Under the terms of the Public School Code, the power of the school board to provide health and hospitalization insurance is limited to school employees.<sup>29</sup> Similar clauses in the borough and township codes limit coverage to employees and elected members of the governing bodies and the mayor.<sup>30</sup> Tax collectors are excluded from the authorization to provide health and hospitalization insurance. The authorization for cities to purchase life, health, hospitalization, medical or accident insurance specifically includes elected officers, making the city treasurer eligible for participation.<sup>31</sup>

**Social Security.** The Federal Omnibus Budget Reconciliation Act of 1990 brought certain classes of public officials, including elected tax collectors, under Social Security and Medicare coverage. In 1991, the Social Security Administration adopted the Internal Revenue Service's definition of wages to include commissions paid to tax collectors. All tax collectors' compensation is subject to withholding for Social Security and Medicare and the taxing districts are responsible for the employer's share of these taxes. Elected tax collectors are no longer considered self-employed for Social Security purposes.

**Retirement.** Salaries of the city treasurer and assistants as tax collectors are considered compensation for the purpose of the city retirement plan. The taxing bodies share in the employer's contribution to the pension fund on a pro rata basis.<sup>32</sup> In boroughs and townships, tax collectors are not eligible for municipal retirement plans, since they are elected officers.<sup>33</sup> However, if the municipality has joined the Pennsylvania Municipal Retirement System, it can determine whether membership for elected officers is optional, required or prohibited.<sup>34</sup>

Elected tax collectors may be eligible to participate in the Public School Employees Retirement System if they meet a series of tests. The law defines a school employee as any person engaged in work relating to a public school receiving regular remuneration as an officer, administrator or employee, excluding independent contractors or persons compensated on a fee basis. The test used to determine whether an individual is an independent

contractor or an employee includes the following questions: who controls the manner of work; who is responsible for the result; who supplies the tools; is payment by time or by job; is work part of employer's regular business; and does the employer possess the right to terminate employment at any time.<sup>35</sup>

For a tax collector who did meet the test, evidence established that the tax collector worked under supervision and control of the city, which contributed to his employee benefits and work supplies.<sup>36</sup> However, in other cases, the Commonwealth Court held that the tax collector was an independent contractor because he hired, paid, and supervised his own employees, did not receive employee benefits, controlled his own schedule and was not subject to traditional at-will termination.<sup>37</sup>

## Association Memberships

The governing bodies of municipalities select delegates to county, regional and state association meetings from elected and appointed officials. City and township treasurers and borough and township tax collectors may be appointed as delegates and receive authorized expenses for attending the meetings.

Township tax collectors are expected, whenever possible, to attend the annual meetings of the county township association. Specific sessions for tax collectors are often conducted at these meetings. Tax collectors attending these meetings are entitled to \$35 plus payment of the registration fee, mileage or actual transportation expense and all other actual expenses the township board of supervisors agrees to pay.<sup>38</sup>

Elected tax collectors have their own statewide association. In addition, there is an association of earned income tax officers open to membership by those tax collectors appointed to collect the earned income tax.

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## VI. Office Administration

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State law contains relatively few details concerning the tax collector's office. In most places, administrative practice follows local customs and expectations. Residual powers given to municipal governing bodies in the codes grant them power to organize and regulate all municipal offices, including tax collectors. Because tax collectors also work for the school district and sometimes the county, their offices are usually operated on a somewhat independent basis from the rest of municipal operations. For cities and first class townships in which the tax collector is also the treasurer and has other municipal duties, these officers are more closely integrated into the municipal government.

### Office Facilities

Third class cities are required to furnish the treasurer suitable office space as well as light, heat, furniture and janitorial service. Taxes are collected at the same office occupied as city treasurer.<sup>1</sup> Usually the treasurer is provided office space in the city hall or municipal building.

There are no stipulations concerning office space for tax collectors in other jurisdictions. In first class townships, treasurers frequently have offices at the municipal building since they have responsibility for receiving and accounting for all township funds. Large boroughs and second class townships sometimes provide office space for the tax collector in the municipal building; in smaller jurisdictions, tax collectors usually work out of their own residences or businesses.

Expenses for maintaining an office on private property must be paid out of the tax collector's total compensation. A recent court decision found that a township treasurer's receipt of rent-free office space from the school district for 23 years, in conjunction with his duties as tax collector for the school district, constituted compensation of the office of township treasurer which could only be withdrawn by ordinance or resolution adopted prior to February 15th of the year of the municipal election.<sup>2</sup>

Tax collectors often maintain their offices in their own homes. When this is the case, tax collectors are advised to consult with their insurance agents to ensure they are adequately covered for personal and property liability insurance and burglary, theft and fire insurance to cover their home offices. In some cases, homeowners insurance covers these risks associated with a home office; in other cases, it does not. Costs of insurance coverage on home offices are the responsibility of the individual tax collectors.

In 1995, Commonwealth Court ruled a tax collector's home office was subject to the provisions of the state Fire and Panic Act.<sup>3</sup> This law gives the state Department of Labor and Industry the power to issue regulations and enforce rules relating to the safety of various classes of building. In this case, a portion of the tax collector's garage was remodeled as an office that was visited by more than 400 persons each year to pay taxes. The tax collector was cited for not having an occupancy permit, approved plans, fire extinguisher and the lack of an exit sign over the door. Although tax collectors were required to comply with the Fire and Panic Act, this act was repealed following implementation of the regulations for the Uniform Construction Code (UCC). The UCC now applies to all new and renovated buildings.<sup>4</sup>

Tax collectors with home offices are also subject to the Americans with Disabilities Act.<sup>5</sup> It also applies to tax collectors with offices in their businesses. This federal law protects individuals with disabilities from discrimination on the basis of their disability in the services, programs and activities of state and local governments. All forms of disabilities are covered by the Act, including being wheelchair-bound, blind, speech impaired and hearing impaired.

Ideally, the tax office should be made accessible to the disabled. This may require structural alteration of the facility. If financial costs related to making the facility accessible to the disabled can be shown to be prohibitive, nonstructural changes can be used to achieve accessibility. For example, a tax collector could make arrangements to meet a taxpayer at the municipal building or even go to the home of the taxpayer. Tax collectors might simply meet disabled taxpayers at the bottom of the steps to their home office.

Tax collectors must ensure that communications with persons with disabilities are as effective as communications with nondisabled people. However, this obligation does not require a tax collector to take any action which would result in alteration of service or undue financial and administrative burdens. In order to provide equal access, tax collectors should be prepared to make available auxiliary aids and services to ensure effective communication. Examples include a qualified interpreter for the deaf or large print materials for the visually impaired.

Tax collectors must make taxpayers aware of the availability of arrangements for the disabled. The most effective way to do this is by a statement on the tax notice or separate inserts mailed with the tax notice stating that the tax office is accessible to the disabled or that people with disabilities will be accommodated after reasonable notice has been given. Tax notices also are subject to the requirement for effective communication. Thus, when requested by individuals with vision impairments, tax notices must be made available in a form that is usable by them.

## **Office Supplies**

The expenses of printing and postage for the tax collector are to be paid by the taxing districts.<sup>6</sup> This is in addition to the tax collector's stipulated compensation. In many counties, real estate duplicates are kept on computers capable of printing out individual tax bills. Taxing bodies may contract with the county to print out the tax bills, relieving the secretary from the duty of preparing the duplicate and the tax collector from the duty of preparing the tax bills. Data processing costs should be borne by the taxing districts. Although the Local Tax Collection Law, enacted in 1945, did not foresee such data processing capability, computer calculation and printing of tax bills fall most closely under the category of printing, an expense paid by the taxing district.

However, in areas where data processing capability becomes available, taxing districts can adjust the compensation of tax collectors in future terms if they are no longer required to prepare tax bills by hand.

In third class cities, printing and stationery supplies are furnished by the taxing districts. The cost of stationery, supplies, printing, notices, postage, telephone service, office equipment and incidental expenses necessarily incurred in collecting taxes is paid by the taxing districts on a proportional basis.<sup>7</sup> These expenses are determined by a board consisting of one representative appointed by each taxing authority.

In first class townships, the treasurer is allowed actual expenses for printing, postage, books, blanks and forms needed for collecting taxes.<sup>8</sup> Expense accounts are to be adjusted at the time of auditing the treasurer's accounts.

In boroughs and second class townships, tax collectors are to be allowed actual expenses for printing, postage, books, blanks and forms necessary for collecting taxes.<sup>9</sup>

The tax collector is prohibited by law from deducting the costs of expenses due from tax moneys collected for the taxing districts.<sup>10</sup> All expenses must be paid out by proper orders or warrants drawn on the treasurer of the taxing body. This can either be done by the taxing district paying bills directly to the vendor, through a vouchered expense allowance or on a reimbursement basis.

## **Office Hours**

The Local Tax Collection Law requires the tax collector, or some other duly authorized person, to be available for receiving and receipting taxes on at least 3 days of each of the last 2 weeks of the discount period at the place designated in the tax notice.<sup>11</sup> These are only minimum requirements; most tax collectors are very accommodating in making themselves available to taxpayers.

Third class city treasurers' offices must be kept open for receipt of taxes during regular business hours.<sup>12</sup> Usually, the treasurer's office keeps the same hours as other offices in the municipal building, sometimes with additional evening hours at the end of the discount period.

The tax notice must state a place and time where taxes are to be paid.<sup>13</sup> Borough and township tax collectors must file a notice of where taxes are to be received, office hours and the taxing districts served by the county treasurer.<sup>14</sup>

This requirement is often met by filing a copy of the current tax notice with the county treasurer. The information is recorded in the Tax Collectors' Address Book, kept in the county treasurer's office and open to public inspection during office hours.

## Deputies and Assistants

A tax collector may appoint one or more deputy tax collectors with the approval of the taxing district and the surety.<sup>15</sup> Persons so appointed must be deputized in writing. Deputy tax collectors are authorized to receive and collect taxes with the same authority as the appointing tax collector. There are no particular qualifications for a deputy. Obviously the person must have the confidence of the tax collector, the taxing districts and the surety. The law makes the tax collector responsible for all taxes collected and received by any deputies appointed. Act 48-2015 requires property tax collectors to appoint deputies that will serve in case of incapacitation. The municipality and surety must approve.<sup>16</sup>

In third class cities, the treasurer appoints all necessary deputies, clerks and assistants.<sup>17</sup> The number of assistants and their salaries are fixed by the taxing districts in the same manner they set the compensation for the treasurer. All employees must be bonded with a fidelity bond. The city treasurer appoints assistants and employees of the treasurer's office, but their number and compensation are set by council. The appointing power of the treasurer can be modified by the terms of a collective bargaining agreement.<sup>18</sup>

There are no specific provisions for assistants other than deputies in other jurisdictions. However, in large municipalities the tax collector clearly needs clerical assistance to perform the duties. At least one court approved the receiving, receipting and entering taxes paid in a ledger by clerks not appointed as deputies.<sup>19</sup> This appears to be acceptable practice as long as it is done under the direct supervision of the tax collector or a duly appointed deputy. It is more desirable for these functions to be performed directly by the tax collector or a deputy. There is no provision for taxing districts to appoint deputies, except in first class townships. If the township treasurer is unable to perform the duties of office and does not appoint a deputy, the board of commissioners can petition the court to appoint a deputy to serve until the treasurer is again able to function.<sup>20</sup> The court fixes the compensation of the deputy, which is deducted from the amount otherwise payable to the treasurer. The deputy must be bonded.

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## VII. Records and Reports

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Because of the critical nature of the work, it is incumbent upon the tax collector to keep clear and accurate records. Mistakes by the tax collector can jeopardize the property rights of landowners within the jurisdiction. Good records form the basis for clear and accurate reports.

### Accounts

The tax collector is required to keep a correct account of all funds collected as taxes. At a minimum, the tax collector must record each tax payment on the duplicate, by marking "paid" with the amount and date opposite the taxpayer's name.<sup>1</sup> The tax collector will find other accounts useful, such as daily and weekly summaries of taxes collected, expenses incurred and others.

A Collection Journal records the daily and weekly details of the tax collection process. This journal includes the date of collection, tax notice number, payer's name, amount received, discounts, penalties and overpayments. A Cash Disbursements Journal is used to summarize checkbook information for a particular period of time. This journal is useful when completing reconciliations and reports. A Record of Unremitted Taxes is a worksheet used to monitor the outstanding and unremitted taxes throughout the year. It carries a running balance of the tax collector's obligation of taxes to collect and remit. The worksheet is useful during the year-end settlement process to determine the amount of taxes outstanding.

**Public Inspection.** The duplicates of the tax collector are open to inspection by any taxing district at any time.<sup>2</sup>

A 2001 Commonwealth Court case found that a township tax collector was not an "agency" subject to the disclosure requirements of the Right-to-Know Act and that although the tax collector's records are public information, they could eventually be obtained through the appropriate taxing district. Because the statutory duties of a tax collector are limited to issuing tax bills, receiving taxes and paying them over to the municipality and the tax collector does not have power to enact ordinances or adopt resolutions, the tax collector is not an "agency" as defined by the law.<sup>3</sup>

The court also found that when a request for information under the Right-to-Know Act is received, the agency is not required to compile lists of information that are not already compiled. Although a tax collector's records are public information, the tax collector is not required to provide access to these records.<sup>4</sup>

Act 50 of 1998 imposed strict confidentiality requirements on all Act 511 taxes, per capita taxes, occupation, occupation assessment or occupational privilege taxes, taxes levied on income or a privilege, gross receipts taxes, amusement taxes, earned income taxes and net profits taxes. This includes any information gained as a result of a return, report, investigation, hearing, or verification. Violation of this provision will result in a maximum fine of \$2,500.<sup>5</sup>

**Retention.** Retention and disposition of tax collectors' records are governed by the Municipal Records Retention and Disposition Schedule promulgated under the Municipal Records Act of 1968.<sup>6</sup> The municipality must first declare its intent to follow the schedule by ordinance or resolution. Each individual act of disposition must be authorized by resolution of the municipal governing body. For more information on retention of tax records, tax collectors may contact the Pennsylvania Historical and Museum Commission at (717) 783-9874. A tax collector, during the time he holds the office of tax collector, shall maintain and have legal custody of tax collection records that are not in the custody of a taxing district. Nothing in this section shall prevent a person who formerly held the office of Tax Collector from maintaining copies of tax collection records that may be necessary for purposes of any subsequent audit, tax certification or other required service, or for defending against claims for liability that may be made against the former tax collector, unless a court, upon a rule to show cause, shall extend the time, copies of tax collection records shall not be retained by a person who formerly held the office of tax collector or his representative, for more than five years from the completion of the final audit for the last year in which the person who formerly held the office of tax collector was responsible for the collection records held by the former tax collector or his representative shall be returned to the taxing district within the time period provided for in this subsection.<sup>7</sup>



## Reports to Taxing District

The tax collector is required to make periodic reports to the taxing district.<sup>8</sup> These reports are due by the tenth day of each month for the previous month's activity, but may be required more frequently by the taxing district by ordinance or resolution. All reports must be made on a form approved by the Department of Community and Economic Development (DCED). A taxing district may require the tax collector to include supplemental information not included on the DCED form.

The monthly statement must list all taxes collected for the taxing district for the reporting period. This report must list the names of taxpayers and amount collected from each, including discounts and penalties and must carry a total of all taxes collected with discounts and penalties for the reporting period.

The monthly statement must include a reconciled tax collector's report. The reconciled report must include each type of tax collected for each taxing district, reconciled from the tax duplicates to the amount of taxes remaining to be collected.

If the monthly reports are not filed on time, the taxing district may impose late filing fees, not to exceed \$20 for each business day for the first 6 days the reports are overdue. After 6 days, the late fee cannot exceed \$10 for each additional business day up to a maximum fee of \$250 per overdue report.

If the taxing district determines that there is a reasonable cause for failure to file the reports, the fee may be waived. The reports will not be considered filed until the late filing fee is received, but no further fees will be incurred.<sup>9</sup>

The report is to be accompanied by payment of the funds collected for which the tax collector is to be given a receipt. In some instances, taxing districts require a more frequent payment over of taxes collected.

## Notice for Sheriff Sales

The sheriff is responsible for the sale of property to satisfy many kinds of debts other than taxes. Any sheriff's sale divests the lien of all taxes. It is the duty of the tax collector to notify the sheriff of any unpaid taxes outstanding against any property advertised for sale by the sheriff.<sup>10</sup>

When a sheriff's sale produces sufficient funds to cover outstanding tax liens, those liens where notice has been provided, take priority over claims of other judgment creditors. The sheriff pays the taxes out of the proceeds immediately after payment of the costs of the sale.

## Certifications for Real Estate Sales

In some counties, it is the practice of attorneys to request the local tax collector to provide a certification of taxes paid on real estate involved in a sale. There is no legal requirement for tax collectors to perform this service, nor is there any statutory basis for them to charge a fee for these certifications.

In a 1988 decision, the Commonwealth Court ruled a tax collector had violated the State Ethics Act by charging a \$10 fee for tax certifications.<sup>11</sup> The decision upheld a ruling of the Ethics Commission. In this case charging the fee had been a long-standing practice of the incumbent and former tax collectors, but had not been authorized by a municipal ordinance.

In the absence of statutory authorization, certification fees for tax collectors may be established by enactment of an ordinance by the municipal governing body.<sup>12</sup> Because tax collectors are municipal officers, the municipality has power to establish fees for services of its officers. The fee established should be reasonable. A good guideline is the \$5 fee established for lien certificates issued by county tax claim bureaus under the Real Estate Tax Sale Law.<sup>13</sup>

## Fees for Other Tax Collector Services

Tax collectors are often requested to provide duplicate bills, data on disk or copies of other information. Often, mortgage service companies will request duplicates for a sizeable number of parcels. Growth of demand for this service has led to institution of charges. Similar to the real estate sales certification, a municipal ordinance should be enacted to establish the fees for these services by the tax collector. Similarly, any charge for returned checks should be authorized by a municipal ordinance.

## Mobile Home Removal Permits

The state assessment laws require owners of mobile homes to obtain a permit from the local tax collector before removing the mobile home from the taxing district. Tax collectors are authorized to charge a fee of \$2 for the permits, issuable after all taxes levied on the mobile home have been paid.<sup>14</sup>

## REFERENCES

1. 72 P.S. 5511.25; Local Tax Collection Law, Section 25.
2. 72 P.S. 5511.25, Local Tax Collection Law, Section 25; 53 P.S. 37535; Third Class City Code, Section 2535.
3. *Current Status, Inc. v. Hykel*, 778 A.2d 781 (Pa Cmwlth. 2001).
4. *Current Status, Inc. v. Hykel*, 778 A.2d 781 (Pa Cmwlth. 2001); *Scranton Times, L.P. v. Scranton Single Tax Office*, 736 A.2d 711 (Pa Cmwlth. 1999), affirmed, 564 Pa. 30, 764 A.2d 17 (2000).
5. 53 Pa.C.S.A. 8437; *Scranton Times, L.P. v. Scranton Single Tax Office*, 736 A.2d 711 (Pa Cmwlth. 1999), affirmed, 564 Pa. 30, 764 A.2d 17 (2000).
6. 46 Pa. Code 15.51.
7. 46 Pa. Code 15.1.
8. 72 P.S. 5511.25; Local Tax Collection Law, Section 25.
9. 72 P.S. 5511.25; Local Tax Collection Law, Section 25.
10. 53 P.S. 7105; 1895 P.L. 111, No. 84, Section 2, *Pivrotto v. Starusko*, 440 A.2d 637, 64 Pa.Cmwlth, 346 at 358, 1982, *Berkey v. Johnson*, 45 D.&C.3d 201, C.P. Somerset Co., 1987.
11. *Allen v. State Ethics Commission*, Opinion and Order filed at No. 1790 C.D. 1988, Pa. Commonwealth Court; Pennsylvania State Ethics Commission, Order 612-R, June 10, 1988.
12. Allen, supra, at 3.
13. 72 P.S. 5860. 208; Real Estate Tax Sale Law, Section 208.
14. 72 P.S. 5020-407; General County Assessment Law, Section 407; 72 P.S. 5453.617a; Fourth to Eighth Class County Assessment Law, Section 617.I.

## VIII. Tax Duplicate

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The tax duplicate is the basic tool of the tax collector. It is the official list of all properties and persons taxable for the current year, indicating the amount of tax due on each. It also contains spaces to record the payment of taxes and the disposition of all unpaid taxes. The duplicate may be in paper, electronic, or any other format from which accurate reproductions can be made.<sup>1</sup>

The tax duplicate, when issued to the tax collector, constitutes a personal warrant for the collection of taxes levied in the duplicate.<sup>2</sup> The warrant is the legal authority issued to the tax collector by the taxing district to proceed to collect the taxes listed on the duplicate and empowering the tax collector to apply statutory procedures to enforce collection. The warrant remains in force until the complete settlement of all taxes in the duplicate with the taxing district.

Warrants are issued solely to the individual named and cannot be used by another person, unless the individual is appointed a deputy. The tax collector is prohibited from collecting taxes that do not appear on the duplicate.<sup>3</sup> Tax collectors have no duty or power to alter duplicates placed in their charge for collection of taxes.<sup>4</sup> Any alteration or addition to the duplicate must come from the taxing district.

The tax duplicate is prepared by the taxing district. Usually, the clerk or secretary computes the amount of tax due on each taxable on the assessment roll by applying the jurisdiction's tax rate to the assessed value of property or occupations. In counties with computerized assessment operations, the county often can provide a duplicate as well as an assessment roll for each jurisdiction saving considerable clerical effort. In the past, some districts have simply turned over the assessment roll to the tax collector to prepare the duplicate. While not strictly illegal, the courts have frowned on this procedure as dangerous practice and bad business judgment.<sup>5</sup>

### Delivery of Duplicate

Duplicates for county taxes are issued by the county commissioners. Duplicates must be delivered within 30 days after adoption of the county budget.<sup>6</sup> However, the county commissioners have the option to deliver tax duplicates no later than July 1 if delivering the duplicate by this later date will result in cost savings and the county commissioners adopt a resolution to this effect. Most counties now bill taxes in January or February so revenues will be received early in their fiscal year.

Duplicates for municipal taxes are issued by the city, borough and township governing bodies. Duplicates must be issued to the tax collector within 30 days of the adoption of the budget or 30 days after receipt of the assessment roll from the county, whichever is later.<sup>7</sup> Since municipal fiscal years begin January 1, municipal taxes are usually billed in January or February.

Duplicates for school taxes must be furnished to the local tax collector by July 1 of each year.<sup>8</sup> This ensures that the billing of school taxes occurs soon after the school fiscal year begins on July 1.

The taxing district must make settlement with the tax collector for the current year's duplicate before the duplicate of any succeeding year can be delivered to the tax collector. The oath stipulated in Section 26 of the Local Tax Collection Law as part of the settlement process is a mandatory provision which must be met before a new duplicate is delivered.<sup>9</sup>

### Interim Real Estate Taxes

Additions to the duplicate may be made during the year after major improvements to a parcel have been completed.<sup>10</sup> The county assessment board certifies the assessment change to the taxing district. The taxing district sends the additions to the duplicate to the tax collector.

All affected taxpayers must be sent interim tax notices by the tax collectors within 10 days after receipt of duplicate additions. The additional valuation is taxed at the jurisdiction's tax rate reduced proportionately to the number of months remaining in the fiscal year. Interim taxes are supplemental to the original duplicate. They must be accounted for separately. Interim taxes will have different discount, face and penalty periods than the original duplicate.

If the full amount is paid within 2 months after the notice, a discount of at least 2 percent applies. If the full amount is paid within 4 months of the tax notice, no penalty may be imposed and the taxes cannot be considered delinquent, even if payment occurs after December 31.

If the taxes due from an interim assessment remain unpaid by December 31 and less than 4 months have elapsed since the date of the tax notice, the taxing district must reissue the duplicate to the elected tax collector to allow the taxpayers a full 4 months to pay the taxes before a penalty may be imposed or the taxes declared delinquent.<sup>11</sup>

## **Adding Names to Duplicate**

If tax collectors or deputy tax collectors discover a resident of the taxing district over 18 years of age whose name is not on the duplicate, they are to report it to the assessor responsible.

The assessor then certifies the name to the taxing district which in turn certifies the name to the tax collector to be added to the duplicate. The taxing district may also add names to the duplicate by resolution with proper notice to the county assessment board and certification to the tax collector to add the names to the duplicate.<sup>12</sup> Persons added to the duplicate can be liable for personal taxes for the current year and up to 2 preceding years, where applicable, at the determination of the taxing district.

## **REFERENCES**

1. 72 P.S. 5511.2; Local Tax Collection Law, Section 2.
2. 72 P.S. 5511.5; Local Tax Collection Law, Section 5.
3. 72 P.S. 5511.15; Local Tax Collection Law, Section 15.
4. *Gorson v. Lackawanna County Board of Commissioners*, 455 A.2d 703, 77 Pa. Cmwlth. 140, at 149, 1983.
5. *In re Appeal from Baden Auditors' Report*, 21 Beaver 128, at 138, 148, 1960.
6. 16 P.S. 1782.2; County Code, Section 1782.2.
7. 53 P.S. 37535; Third Class City Code, Section 2535; 53 P.S. 46305; Borough Code, Section 1305; 53 P.S. 56712; First Class Township Code, Section 1712; 53 P.S. 68209; Second Class Township Code, Section 3209.
8. 24 P.S. 6-681; Public School Code, Section 681.
9. 72 P.S. 5511.31; Local Tax Collection Law, Section 31; *Litchfield Township Supervisors*, 65 D.&C. 108, at 128, Q.S. Bradford Co., 1948.
10. 16 P.S. 1770.1; County Code, Section 1770.1; 53 P.S. 37516.1; Third Class City Code, Section 2516.1; 53 P.S. 46306; Borough Code, Section 1306; 53 P.S. 56709.1; First Class Township Code, Section 1709.1; 53 P.S. 68210; Second Class Township Code, Section 3210; 24 P.S. 6-677.1; Public School Code, Section 677.1.
11. 72 P.S. 5511.5a; Local Tax Collection Law, Section 5.1.
12. 72 P.S. 5511.16; Local Tax Collection Law, Section 16.

## IX. Tax Notice

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The tax notice is the second important document in the tax collector's duties. It is the official notice to the taxpayer that taxes for the current year are due and payable.

### Form of Tax Notice

Within 30 days after receiving a tax duplicate from a taxing district, the tax collector must mail tax notices to every person appearing on the duplicate. This time limit can be extended by the taxing district. A tax notice must be sent to each taxpayer by July 1, following receipt of the duplicate, or no later than 15 days after the duplicate is delivered to the tax collector if delivery is after June 16. Home rule municipalities may establish a different date for sending out tax notices.

The tax notice must contain the following information.<sup>1</sup>

- (1) Date of the tax notice.
- (2) Rate or rates of taxation.
- (3) Valuation and identification of the real property of the taxpayer.
- (4) Occupation valuation of the taxpayer, if any.
- (5) The several amounts of real and personal property and personal taxes the taxpayer is billed for the current year.
- (6) The total amount of taxes the taxpayer owes for the current year.
- (7) A statement that the taxes are due and payable.
- (8) A request for payment of the taxes.
- (9) Statement of the time and place where taxes can be paid.
- (10) Dates for discount, face and penalty periods.
- (11) an example of the wording to whom the payment must be made, including the name of the account established under section 5.2, but not in the name of an individual only.<sup>2</sup>

School districts which implement homestead and farmstead exclusions pursuant to Act 72 of 2004 shall provide the following additional information itemizing the homestead and farmstead exclusion on tax bills sent to homestead and farmstead owners:

- (12) An indication of the original amount of tax liability.
- (13) An indication of the amount of the exclusion.
- (14) An indication of the net amount of tax due after the exclusion has expired.

The tax bill shall be easily understandable and include a notice which, at a minimum, shall take the following form:

*Your enclosed tax bill includes a tax reduction for your homestead and/or farmstead property. As an eligible homestead and/or farmstead property owner, you have received tax relief through a homestead and/or farmstead exclusion, which has been provided under the Taxpayer Relief Act, a law passed by the Pennsylvania General Assembly designed to reduce your property taxes.<sup>3</sup>*

The tax notice should also include a statement that the tax office is accessible to the disabled or that arrangements will be made to accommodate the disabled.

The law specifically allows taxes from more than one taxing district to be included on a single tax notice. Personal taxes may be included on a property tax notice. Duplicates from the individual taxing districts must be delivered to the tax collector at the same time to be combined in a single notice. It is now common for county and municipal taxes to be included on one notice in January or February and school taxes to be sent out on a separate notice in July.

If a single taxpayer owns more than one parcel of real estate within a taxing district, a separate tax notice must be sent for each parcel.

In order to save postage costs, tax notices may be sent out using presorted first class mail. If this method is used, there will be no postmark on the envelopes. Tax collectors must retain a postage receipt to verify the date bills were mailed.

The legislature has determined that property tax notification is a critical step in the tax collection process. Before tax collectors may receive any compensation, they must file a sworn statement that they have complied with the requirements of the Local Tax Collection Law relating to notification of taxpayers. Notices are required for the protection of the taxpayer and to aid taxing districts in the prompt collection of the maximum amount of the tax duplicate.

## **Opening Accounts: Act 38 of 2017<sup>4</sup>**

- (a) (1) Within 60 days of January 1, 2018, a tax collector shall open an account which includes the name of an office, title or position and may include the name of the municipality for which the tax collector was elected or appointed. No payment of taxes shall be deposited into an account bearing only an individual's name.
- (2) An account opened under clause (1) may not be opened using an individual's Social Security number.
- (3) AN ACCOUNT OPENED UNDER CLAUSE (1) SHALL BE USED FOR TAXES COLLECTED BY A TAX COLLECTOR UNDER THE ACT OF DECEMBER 31, 1965 (P.L. 1257, NO. 511), KNOWN AS "THE LOCAL TAX ENABLING ACT".
- (b) Within 60 days of January 1, 2018, the tax collector shall transfer any money that has already been collected into the account required by subsection (a) unless the account already administered by the tax collector meets the criteria of subsection (a).
- (c) A tax collector for a joint tax collection district established under section 4.2 may open one account to which payment of all taxes being collected by the joint tax collection district shall be made, if the account includes the name of the joint tax collection district and does not bear the name of an individual.
- (d) A county treasurer collecting taxes under an agreement under section 4.4 may open one account to which payment of all taxes being collected by the agreements shall be made, provided that the account includes the name of an office, title or position and does not bear the name of an individual.

## **Local Taxpayers Bill of Rights**

Enacted in 1998, the Local Taxpayers Bill of Rights requires special notification and disclosure statements for eligible taxes.<sup>5</sup> These requirements do not apply to real estate taxes,<sup>6</sup> but do apply to any tax levied under Act 511, the Local Tax Enabling Act, any per capita, occupation, occupational assessment or occupational privilege tax and any tax levied on income.<sup>7</sup>

Special notices must be included in any correspondence sent to a taxpayer regarding an eligible tax, including tax notices. The notice must conform to the following format:

*You are entitled to receive a written explanation of your rights with regard to the audit, appeal, enforcement, refund and collection of local taxes by calling (name of tax administrator) at (telephone number) during the hours of (hours of operation).*

The taxing district must designate a contact person for each eligible tax, who will likely be the collector of the tax. The contact person must provide a copy of a disclosure statement to any taxpayer upon request at no charge. The disclosure statement must be prepared by the taxing district and provided to the contact person.<sup>8</sup>

## Billing Utility Charges

There is no legal prohibition against billing municipal utility service charges, such as sewer, water or garbage collection, on tax notices. However, it usually is not a good practice. Except for cities and first class townships, utility charges are usually paid to a different agent than the tax collector.

In first class townships where the treasurer collects street light assessments, and in second class townships, where the tax collector collects street light, fire hydrant or garbage collection assessments, 30 days' written notice must be given that the assessments are due and payable, stating the due date on each notice.<sup>9</sup> Notice can be made by personal service or mailing to the last known post office address of the property owner.

## Identification of Taxpayer

The registered owner of real property at the time when the taxes were assessed against the property is liable for the payment of taxes on the property. Upon written request, the county recorder of deeds must furnish each tax collector a record of all transfers of real estate within their jurisdictions within 60 days of the time of transfer.<sup>10</sup>

The tax notice must be mailed or delivered to the last known post office address of each of the taxables.<sup>11</sup> The tax collector's responsibilities for giving notice end when this action has been taken. Failure to receive a tax notice does not relieve any taxpayer from liability for prompt payment of taxes imposed by the taxing district.<sup>12</sup> All taxpayers are charged with their taxes as though they had received notice and all necessary enforcement steps are taken to ensure payment.

Any joint tenant, tenant in common or coparcener of real estate has the right to pay the proportionate share of the amount of taxes due on real estate held jointly.<sup>13</sup> The tax collector must receive these partial payments and provide a receipt. The interest of any such part owner is then not affected by any proceeding or sale to enforce payment of taxes by the other persons holding interest in the property.

## Discounts and Penalties

The Local Tax Collection Law establishes the discount and penalty schedule.<sup>14</sup> Calculation of the cutoff date for the discount and face periods is determined by the postmark date on the envelopes.

**Discount:** At least 2 percent if the whole amount of the tax is paid within 2 months after the date of the tax notice.

**Payment at Face:** The full amount of tax if paid during the 2 months following the end of the discount period.

**Penalty:** Up to 10 percent added to the face amount for all taxes not paid within 4 months after the date of the tax notice.

The “date of the tax notice” stipulated in Section 10 has been interpreted to mean the date the notice is mailed to the taxpayer, not the date printed in the notice if it is different. The court held that each taxpayer is entitled to a two-month opportunity to pay at discount, otherwise a taxing body might be tempted to withhold tax notices until the face or penalty period.<sup>15</sup>

The 2 percent discount for early payment of taxes has been found constitutional by the courts.<sup>16</sup> It was enacted for the welfare of taxing bodies and can be treated as a collection fee, since it has the effect of producing immediate revenue for local government purposes.

The penalty added to the tax after 4 months becomes part of the tax due.<sup>17</sup> It is included in the base on which all other delinquent interest and penalties are calculated.

The discount and penalty schedule applies to all real estate, per capita (non-Act 511) and occupation taxes, except for county taxes collected under the terms of special local legislation.<sup>18</sup>

A 2006 amendment requires the tax collector to send special notices to taxpayers who have not paid the real estate tax within 4 months of notification.<sup>19</sup> The notice must be sent by first class mail, in 18 point or larger text, and read:

**“YOUR REAL ESTATE TAXES HAVE NOT BEEN PAID ON TIME AND A PENALTY HAS BEEN ADDED TO THE AMOUNT YOU OWE. IF NOT PAID BY DECEMBER 31, YOUR REAL ESTATE TAXES WILL BE DELINQUENT. IF YOU HAVE ANY QUESTIONS PLEASE CONTACT (NAME OF TAX COLLECTOR) BY MAIL AT (ADDRESS) OR BY TELEPHONE AT (TELEPHONE NUMBER). IF YOUR REAL ESTATE TAXES ARE TO BE PAID FROM AN ESCROW ACCOUNT ESTABLISHED IN CONNECTION WITH YOUR MORTGAGE, YOU SHOULD CONTACT THE COMPANY MANAGING YOUR ESCROW ACCOUNT.”**

Failure to receive this notice does not relieve taxpayers from their responsibility to pay the taxes due.

Taxing districts enacting taxes under the Local Tax Enabling Act may prescribe discount and penalty periods for collection of these taxes, with the sole exception of the earned income tax.<sup>20</sup> Usually, per capita and occupation taxes enacted under the Local Tax Enabling Act are collected by the elected tax collector and billed on the same notice as per capita and occupation taxes adopted under the municipal codes with the same discount and penalty period applied.

Discounts are not permitted on taxes paid on an installment basis.<sup>21</sup> Taxes on unseated lands in seventh and eighth class counties do not carry a discount and penalty provision. Interest at the rate of 6 percent is added if the taxes are not paid within the year.

Tax collectors must apply the penalty amount after the 4 month period has elapsed. They have no authority to excuse penalties where tax notices have not been received, nor where assessments are being contested by the property owner.<sup>22</sup> The taxing district, of course, has power to grant exonerations for mistakes, and must make refunds where property assessments are lowered upon appeal. These actions emanate from the taxing body itself; the tax collector has no authority to make these decisions.

## **Tax Escrow Accounts Held By a Homeowner’s Mortgage Company**

Many residential mortgage companies require the borrowing homeowner to include in their monthly mortgage payment an installment of real property taxes equal to approximately one-twelfth of the annual taxes. These payments are placed in an escrow account, which is held by an escrow servicer and paid to the tax collector when taxes are due. It is common for the escrow servicer to send the tax collector a request, signed by the taxpayer, asking that tax bills be sent directly to the escrow servicer. Although the tax collector is under no obligation to comply with such requests, they may choose to do so as a courtesy to the taxpayer.



Tax collectors should be aware that tax escrow accounts on federally-related mortgages are governed by Regulation X<sup>23</sup> promulgated by the United State Department of Housing and Urban Development under the Real Estate Settlement Procedures Act. These regulations provide, in part:

The escrow account servicer must make the tax payments in a timely manner, that is, on or before the deadline to avoid a penalty, as long as the taxpayer's payment to the escrow servicer is not more than 30 days overdue.

If the taxing jurisdiction offers a choice between annual and installment payments, but neither option includes a discount for payments on a lump sum annual basis nor any additional charge or fee for installment payments, the escrow account servicer must make payments on an installment basis.

If the taxing jurisdiction offers a discount for payments on a lump sum annual basis or imposes any additional charge or fee for installment payments, the escrow account servicer may, at the escrow servicer's discretion, make lump sum annual payments in order to take advantage of the discount for the taxpayer or avoid the additional charge or fee for installments.

An escrow account servicer and taxpayer may mutually agree, on an individual case basis, to a different payment basis (installment or annual) or payment date for property taxes.

Taxpayers who have issues with the administration of their escrow funds for taxes and insurance may contact the Pennsylvania Department of Banking at 1-800-PABANKS.

## REFERENCES

1. 72 P.S. 5511.6; Local Tax Collection Law, Section 6.
2. Act 1 of SS2006, P.L. (Taxpayer Relief Act), Section 343.
3. 72 P.S. §5511.6
4. 72 P.S. §5511.5b
5. 72 P.S. 5511.8; Local Tax Collection Law, Section 8, *Litchfield Township Supervisors*, 65 D.&C. 108, at 125, Q.S. Bradford Co., 1948.
6. 53 Pa.C.S.A. 8421.
7. 53 Pa.C.S.A. 8438.
8. 53 Pa.C.S.A. 8422.
9. 53 Pa.C.S.A. 8423.
10. 53 P.S. 56513; First Class Township Code, Section 1502.XIII; 53 P.S. 68301; Second Class Township Code, Sections 3301.
11. 16 P.S. 9706; 1955 P.L. 579, No. 148.
12. 72 P.S. 5511.6; Local Tax Collection Law, Section 6.
13. 72 P.S. 5511.7; Local Tax Collection Law, Section 7; *Lal v. West Chester Area School District*, 455 A.2d 1240,71 Pa. Cmwlth. 236, at 239, 1983.
14. 72 P.S. 5511.12; Local Tax Collection Law, Section 12; *Mifflin Township v. Macey*, 7 A.2d 509, 136 Pa.Super. 463, at 466, 1939; *Lohr's Estate*, 200 A. 135, 132 Pa.Super. 125, at 128, 1938.
15. 72 P.S. 5511.10; Local Tax Collection Law, Section 10.
16. *Appeal from Aliquippa Auditor's Report*, 24 Beaver 142, at 145, 1963.
17. *Keator v. Lackawanna County*, 141 A. 37, 292 Pa. 269, at 274, 1928.
18. *Hamilton v. Lawrence*, 167 A. 509, 109 Pa. Super. 344, 1933.
19. 72 P.S. 5563; 1050 P.L. 394.
20. 72 P.S. 5511.10; Local Tax Collection Law, Section 10.
21. 72 P.S. 5111.11
22. 72 P.S. 5511.10
23. 24 CFR Section 3500.17

## X. Payment of Taxes

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Taxes are due and payable as of the date of the tax notice.<sup>1</sup> At that time they become a legal obligation of the taxpayer.

From the seventeenth through the nineteenth century, township taxes could be discharged by a taxpayer's labor on the public roads. However this practice has been prohibited since 1911. There is no authority for a tax collector to receive any commodities or an individual's promissory note in payment of taxes. The only exception is the authority of the taxing district to deduct any delinquent taxes owed by an individual from any payment of claims against the district.<sup>2</sup>

Ordinarily, personal checks or money orders are accepted by tax collectors in payment of taxes. Acceptance of a check from a taxpayer is at most only a conditional payment of taxes; the taxes are not considered fully paid until the check has cleared.<sup>3</sup> The lien of taxes continues until the check has been honored by the paying bank. Although the majority of taxes are now paid by check, the practice of accepting checks does not constitute valid payment of taxes until the check is paid. When the tax collector gives a receipt for payment of taxes by check, the validity of the receipt is dependent upon the check being honored and the funds paid into the collector's account.<sup>4</sup> Tax collectors should adopt a policy for handling checks returned for insufficient funds. Any charge for returned checks should be authorized by ordinance of the municipal governing body.

### Tax Receipts

The Local Tax Collection Law requires the tax collector to furnish a receipt for all payments.<sup>5</sup> But where payment is made by mail, a receipt is required only when the taxpayer encloses with the payment a self-addressed stamped envelope for the return of the receipt.

The receipt must be furnished either from a book containing a stub, from a bill with a stub attached or from a bill with a carbon copy. Where tax bills are manually prepared, bills with carbon copies are generally used since this eliminates additional copying. Where printed by a computer, bills with detachable stubs containing the required information become practical. In all cases, receipt forms are furnished at the expense of the taxing district.

Each receipt must be numbered. It must contain the name of the taxpayer, district levying the tax and identification of the real property. The receipt must be marked with the date of payment and the amount of real estate and personal taxes paid, stated separately. A separate receipt must be issued for each parcel of real property. The tax collector must keep a record of each receipt on the bill or stub, with the same information given in the receipt. Duplicate receipts should include the name of the person paying, number of the check and should be stamped with the word "copy."

Giving receipts is considered to be an important part of the tax collector's duties. The legislature has provided a specific penalty for failure to comply with requirements concerning tax receipts.<sup>6</sup>

### Installment Payments

A taxing district may implement a procedure for payment of taxes by installments through passage of an ordinance or resolution.<sup>7</sup> The ordinance or resolution is to set up a plan for payment in not more than 4 installments and stipulate the dates when each installment is due. No discount is allowed on installment payments, but a penalty of up to 10 percent is added to each installment on the date it becomes delinquent.

When an installment plan is established, payment of the first installment by the taxpayer before the delinquent date is evidence of intention to pay on the installment plan, otherwise the taxes are due and payable in a lump sum.

A taxing district may set installment payment dates after December 31.<sup>8</sup> The unpaid installments will not be considered delinquent if paid on or before the installment dates established by ordinance or resolution. If an installment plan permits payments after December 31, a taxpayer must make a first payment before December 31 or must notify the tax collector in writing of his intent to make installment payments if the first payment is due after December 31.

Installment payments are collected by the elected tax collector, who shall be allowed a credit for all uncollected, nonlienable installments not required to be paid by December 31. This amount is identified and carried forward on the reporting form as nonlienable installments to be collected by the tax collector after the taxing district issues an additional warrant for the installment payments. The elected tax collector must be paid the same compensation as for the collection of other taxes.

A 1932 law authorizes tax collectors and other officials designated to collect delinquent taxes to accept installment payments.<sup>9</sup> These payments must be at least 10 percent of the face amount of the tax. Acceptance of installments does not preclude the delinquent tax collector or taxing districts from any further action to collect the balance due.

In the absence of a local ordinance or resolution to establish installment payments, there is nothing in the law authorizing the tax collector to take partial payments. As a convenience to the taxpayer, many tax collectors allow complete payment of one or more specific taxes included on a tax bill as a partial payment.

## **Installment Payments of School Real Property Taxes under the Taxpayer Relief Act**

Similar to the Local Tax Collection Law, Chapter 15 of the Taxpayer Relief Act<sup>10</sup> permits school districts to adopt installment payment plans for the collection of school real property taxes.<sup>11</sup> However, the Taxpayer Relief Act requires that school districts adopt a resolution which provides owners of homestead and farmstead property the option of paying school real property taxes in installments for calendar year 2007 and thereafter.<sup>12</sup> Taxpayers elect to use the installment plan by making the first installment payment before it is due.<sup>13</sup>

Installment payments may be collected by a tax collector or school districts can assign the installments to a third party or contract with an independent tax bureau to collect the installments. In addition, school districts may authorize the collection of installment payments by electronic fund transfer or credit card.<sup>14</sup> If installment payments are assigned or outsourced or collected via electronic fund transfer or credit card, coordination will be needed between the school district, the assignee or tax bureau, and the tax collector, who is responsible for collecting, keeping and reconciling records of real property taxes collected under the Local Tax Collecting Law.<sup>15</sup>

Tax collectors may request that school districts consider increasing their compensation for the additional administrative costs incurred by the tax collector.

### **Contents of Resolution**

School districts are given discretion in how they provide for installment payments; however, the resolution required by Act 1 must include the following provisions:

- All taxpayers who have been approved for a homestead or farmstead exclusion<sup>16</sup> are eligible to make installment payments.<sup>17</sup>
- School districts must notify taxpayers on their tax bill regarding the installment payment option and the dates that installments are due and delinquent.<sup>18</sup>
- Installment payment dates cannot be established more than monthly. School districts must establish at least three installment payments, which can be set until right before delinquent taxes must be turned over to the county tax claims bureau.<sup>19</sup>
- Taxpayers elect to make installment payments by making the first payment before it is due.<sup>20</sup>
- If taxpayers elect to make installment payments, the discount and penalty periods do not apply.<sup>21</sup>
- Installment payments that are received after the due date are subject to a penalty of up to 10%.<sup>22</sup> Payments received should be applied first to the earliest required installment and penalties.<sup>23</sup>
- Taxpayers who elect the installment payment option and are delinquent by more than ten days on more than two installment payments become ineligible for the installment payment option in the following school fiscal year.<sup>24</sup>

## Outsourcing of the Collection of Installment Payments

School districts are permitted to contract with an independent tax bureau for collection of the installments.<sup>25</sup> Tax collectors are responsible and accountable to the school district for all taxes collected by the collector, and the final accounts and records, returns and payments and duplicate must be audited annually in the year in which the installments are collected.<sup>26</sup> The tax bureau may contract with tax collectors, who must be paid the same rate of compensation on installment payments as the school district pays generally.<sup>27</sup> Existing tax collector arrangements remain in effect unless they conflict with the provisions of Chapter 15 or a school district determines another arrangement is appropriate.<sup>28</sup>

## Assignment of Installment Claims

A school district may assign, either absolutely or as collateral security, some or all of its installment claims, even if the claim has not become delinquent.<sup>29</sup> The amount and terms of the assignment amount must be in writing and approved by resolution of the school district. Assignment is not considered a discharge or satisfaction of the installment claim or the underlying taxes.<sup>30</sup> A lien of the assigned installment claim and underlying taxes continues in favor of the assignee.

The assignee is entitled to the same rights, privileges and remedies as the school district with respect to the assigned installment claim and the underlying tax regarding the collection and enforcement of tax claims.<sup>31</sup> The assignee is also given the same rights and duties of the tax collector under the Local Tax Collection Law, except the bonding requirements and the responsibility for adding names to a duplicate.<sup>32</sup> An assignment of an installment claim is considered, unless otherwise provided in writing, an assignment of a claim or lien under section 33 of the Municipal Claim and Tax Lien Law<sup>33</sup> and section 316 of the Real Estate Tax Sale Law.<sup>34</sup> <sup>35</sup>Property owners are provided with the same rights and defenses they had against a school district.<sup>36</sup> Assignees are permitted to further assign installment claims.<sup>37</sup>

## Consideration of an Increase in Compensation of Tax Collector

Tax collectors may request that a school district consider increasing their compensation to account for increased administrative costs of installment payments by sending a certified letter to the school district within 15 days of the board's adoption of a resolution adopting an optional real property tax installment payment plan. The school district is required to consider the request within 45 days of receiving the letter.<sup>38</sup> School districts may notify tax collectors that their compensation may be adjusted for the increased costs until January 31, 2009<sup>39</sup> by sending a certified letter to the collector within 15 days of the board's adoption of the resolution adopting installment payments. The school district is required to consider the adjustment within 45 days of sending the letter.<sup>40</sup>

## Payment by the Tax Collector

The Local Tax Collection Law recognizes the practice of tax collectors personally paying taxes under certain circumstances. This occurs at the end of the year to enable the tax collector to receive the duplicate for the following year. If tax collectors pay personal taxes without having collected them, they can collect these taxes as long as their warrants remain in force.<sup>41</sup> Unpaid real estate taxes must be returned to the county tax claim bureau.

## Errors in Duplicate

If the amount of tax listed on the duplicate is incorrect, the tax collector has no authority to correct the error. The tax collector must accept in payment the exact amount shown on the duplicate. Refunds of taxes paid in error may only be made by the taxing district. Checks for the amount of the refund must be issued directly by the treasurer of the taxing district. The tax collector has no authority to make refunds from the tax collection account.<sup>42</sup> The tax collector is not personally liable for taxes collected in error as long as it is done under a proper warrant from the taxing district.<sup>43</sup>

Any taxpayer who discovers an error in their tax bill has the right to recover any excess paid plus interest. The full amount of the tax on the bill should be paid under protest, and a written claim filed with the taxing district.<sup>44</sup> This claim must be filed within 3 years of the tax payment.

## Assessment Appeals

Assessment appeals do not halt the timely collection of real estate taxes on the basis of the current value listed in the duplicate.<sup>45</sup> The taxpayer may pay the amount billed under protest, and in this case the tax collector must deliver the note of written protest to the taxing district. If the assessment is reduced on appeal, the excess must be returned to the taxpayer by the taxing districts.

### REFERENCES

1. 72 P.S. 5511.6; Local Tax Collection Law, Section 6.
2. 53 P.S. 7232; 1937 P.L. 2611, Section 2.
3. *Paxtang Borough School District v. Martin*, 50 Dauphin 240, at 241, 1941; *McKinley v. Powell*, 29 Delaware 61, at 64, 1939.
4. *City of Erie v. Piece of Land*, 162 A. 445, 308 Pa. 454, at 457, 1932.
5. 72 P.S. 5511.14; Local Tax Collection Law, Section 14.
6. 72 P.S. 5511.42; Local Tax Collection Law, Section 42.
7. 72 P.S. 5511.11; Local Tax Collection Law, Section 11.
8. 72 P.S. 5511.11; Local Tax Collection Law, Section 11.
9. 72 P.S. 5671; 1932 Ex.Sess. P.L. 101.
10. Act of June 27, 2006, Special Session 1, No.1, P.L., 53 P.S. §§ 6926.1501 - 6926.1505; Taxpayer Relief Act, Chapter 15.
11. Excludes interim and delinquent real property taxes.
12. 53 P.S. § 6926.1502 (b), Taxpayer Relief Act, Section 1502 (b). 53 P.S. § 6926.1502(c), Taxpayer Relief Act, Section 1502(c) sets forth the parameters for the mandatory program.
13. 53 P.S. § 6926.1502(c)(2)(I), Taxpayer Relief Act, Section 1502(c)(2)(I).
14. 53 P.S. § 6926.1503(b); Taxpayer Relief Act, Section 1503(b). Electronic fund transfers must be made to the school district's depository bank and credit card payments must be made through the school district's depository bank or another bank designated by the school district.
15. Under Chapter 15, the first installment payment could be made to either the tax bureau, a tax collector, an assignee, or the school district's depository bank. Consequently, coordination will be needed regarding the due date for the first installment, notification procedures, collection schedules, and payments received, so that all parties are fully informed as to the status of a taxpayer's account. Section 25 of the Local Tax Collection Law (72 P.S. § 5511.25) requires that, unless more frequent reports are required pursuant to resolutions adopted by school districts, tax collectors must file reports to districts on the 10th day of each month for the prior month.
16. Only the primary residence of a property owner may receive the homestead exclusion (53 Pa.C.S. § 8401) or a farmstead exclusion (53 Pa.C.S. § 8582).
17. 53 P.S. § 6926.1502(c)(1); Taxpayer Relief Act, Section 1502(c)(1). School districts may allow other taxpayers to pay on an installment basis.
18. 53 P.S. § 6926.1502(c)(4) and (d); Taxpayer Relief Act, Section 1502 (c)(4) and (d).
19. 53 P.S. § 6926.1502(c)(3); Taxpayer Relief Act, Section 1502(c)(3). Section 1502(c)(4) permits installment payments after December 31 but before the date established by the county for the turnover of delinquent taxes, which is usually January 15, but may be delayed by a county until April 30th. See 52 P.S. § 5860.306. Assuming that property tax bills are distributed by July 1, the first installment payment is due July 15 and the turnover date is January 15, the number of installments would vary between three and seven.
20. 53 P.S. § 6926.1502(c)(2)(I), Taxpayer Relief Act, Section 1502(c)(2)(I) provides that a taxpayer conclusively evidences intent to use the installment plan by making the first installment payment before it becomes delinquent. If a taxpayer does not evidence intent to make installment payments, section 1502(c)(2)(ii) provides that the tax becomes due and payable and must be collected as provided in the Local Tax Collection Law.
21. 53 P.S. § 6926.1502(c)(4), Taxpayer Relief Act, Section 1502(c)(4) provides that installment payments cannot be considered delinquent if paid on or before respective installment dates.
22. 53 P.S. § 6926.1502(c)(4), Taxpayer Relief Act, Section 1502(c)(4) also provides that no further penalties may be added unless one or more installments remain unpaid and taxes are turned over to the county tax claims bureau or a lien is filed with the prothonotary for an unpaid installment.
23. Penalties added to delinquent real property taxes become part of the tax due. Penalties are included in the base on which all other delinquent interest and penalties are collected. (*Hamilton v. Lawrence*, 167 A 509, 109 Pa. Super. 344, 1933.)
24. 53 P.S. § 6926.1502(c)(4); Taxpayer Relief Act, Section 1502(c)(4).

25. 53 P.S. § 6926.1503(a)(1); Taxpayer Relief Act, Section 1503(a)(1).
26. 53 P.S. § 6926.1503(a)(1); Taxpayer Relief Act, Section 1503(a)(1).
27. 53 P.S. § 6926.1503(a)(1); Taxpayer Relief Act, Section 1503(a)(1). Tax collectors' compensation must be paid by the school district.
28. 53 P.S. § 6926.1503(a)(2); Taxpayer Relief Act, Section 1503(a)(2).
29. 53 P.S. § 6926.1504(a); Taxpayer Relief Act, Section 1504(a).
30. 53 P.S. § 6926.1504(a)(1); Taxpayer Relief Act, Section 1504(a)(1).
31. 53 P.S. § 6926.1504(a)(2); Taxpayer Relief Act, Section 1504(a)(2).
32. 53 P.S. § 6926.1504(a)(4); Taxpayer Relief Act, Section 1504(a)(4).
33. Where a tax claim is filed with the prothonotary or to be filed, Section 33 of the Municipal Claim and Tax Lien Law (53 P.S. § 7417) permits local taxing jurisdictions to assign real estate tax claims to third parties. Assignees are entitled to the same rights and remedies as taxing jurisdictions regarding the claim.
34. Section 316 of the Real Estate Tax Sale Law (72 P.S. § 5860.316) permits local taxing jurisdictions to assign delinquent real estate tax claims to third parties provided that an assignment is not effective until at least 30 days after delivery to the bureau by the taxing district of a resolution authorizing the assignment. Assignees are entitled to the same rights, remedies and responsibilities as taxing jurisdictions regarding the claim, including the taxing jurisdiction's portion of revenues collected or realized from a tax sale by a county tax claim bureau.
35. 53 P.S. § 6926.1504(a)(3); Taxpayer Relief Act, Section 1504(a)(3).
36. 53 P.S. § 6926.1504(a)(5); Taxpayer Relief Act, Section 1504(a)(5).
37. 53 P.S. § 6926.1504(b); Taxpayer Relief Act, Section 1504(b).
38. 53 P.S. § 6926.1505(a); Taxpayer Relief Act, Section 1505(a).
39. January 31, 2009 is when the collector's term ends.
40. 53 P.S. § 6926.1505(b); Taxpayer Relief Act, Section 1505(b).
41. 72 P.S. 5511.27; Local Tax Collection Law, Section 27.
42. *Gorson v. Lackawanna County Board of Commissioners*, 465 A.2d 703, 77 Pa. Cmwlth. 140, at 148, 1983.
43. *Buck v. Commonwealth*, 90 Pa. 110, 1879.
44. 72 P.S. 5566b; 1943 P.L. 349.
45. 72 P. S. 5020-518.1; General County Assessment Law, Section 518.1; 72 P.S. 5452.17; Second Class Assessment Law, Section 17; 72 P.S. 5350d; Third Class County Assessment Law, Section 13, 72 P.S. 5453.704; Fourth to Eighth Class County Assessment Law, Section 704; *Cedarbrook Realty v. Nahill*, 399 A.2d 374, 484 Pa. 441, at 447-52, 1979; *Connecticut General Life Insurance Co. v. Chartiers Valley School District*, 532 A.2d 41, 110 Pa. Cmwlth. 171, 1987, affirmed 555 A.2d 1293, 521 Pa. 480.

## **XI. Exonerations**

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The terms exemption, exoneration and abatement have been used incorrectly many times causing widespread confusion as to their meaning and their affect on taxes. Each is a different type of action with a different effect on the tax collection process.

An exemption is a state of immunity or freedom from a general tax or other public charge. Taxes are not levied against exempt persons or property. For instance, exempt real estate parcels do not appear on the duplicate of the tax collector. The assessment laws and the Local Tax Enabling Act grant taxing districts the authority to exempt persons whose income from all sources is less than \$5,000 from personal taxes. This action relieves the taxpayer from liability for these taxes. Because taxing districts frequently request local tax collectors to process exemption claims for per capita and occupation taxes, these exemptions have become confused with exonerations.

An exoneration is an official action of a taxing body to discharge the tax collector from the duty of collecting a particular tax. It is usually applied to personal taxes. Exoneration does not relieve the liability of the taxpayer. It simply means the tax collector will not be held accountable for that particular tax in settlement of the duplicate.

Abatement is the removal of responsibility to pay taxes after they have been assessed and levied. In Pennsylvania, abatements are authorized by the General Assembly, most often on the occasion of a major natural disaster causing extensive property damage, such as the floods of 1955, 1969, 1972, 1977 and 1996. Abatements usually require refunds from the taxing district after taxes have been paid for the year.

### **Granting Exonerations**

The power to exonerate the tax collector from responsibility for certain taxes rests with the local governing body levying the taxes.<sup>1</sup> Exonerations are granted under certain conditions "as seem justifiable to the taxing district." The taxing district may exercise its own discretion in deciding whether or not to grant exonerations.<sup>2</sup> Exonerations may be granted for: (1) uncollectible occupation and per capita taxes, (2) mistakes, (3) indigent persons, (4) unseated lands, (5) deaths and (6) removals. Exonerations were customarily thought to apply only to personal taxes, except for the categories of mistakes and unseated lands, because collection of delinquent real estate taxes could be enforced through sale of the parcel. However, one county court decision opened the possibility of taxing districts granting exonerations for real estate taxes owed by indigent persons.<sup>3</sup> The power to grant such exonerations rests with the discretion of the taxing bodies.

There appears to be no definite statement guaranteeing tax collectors exoneration for uncollected personal taxes. The courts have held exoneration is discretionary with the taxing districts. However, the Local Tax Collection Law states elsewhere that the tax collector shall be granted exoneration for uncollected occupation and per capita taxes at settlement when the tax collector provides an oath or affirmation that wage attachments have been made for these taxes.<sup>4</sup> If the taxing district fails to exonerate a tax collector for taxes which are uncollectible, the tax collector can appeal to the court of common pleas from any certificate of liability filed against them or their surety.<sup>5</sup> When exonerations are granted, the clerk or secretary of the taxing district enters the names of all taxpayers, reason for exoneration, amount of tax involved and date of action in a ledger.

Names of persons exonerated may be advertised in a local newspaper by the taxing district.<sup>6</sup> The clerk or secretary issues a certificate to the tax collector, stating the nature of tax and the amount exonerated for purposes of settlement.

### **Effect of Exoneration**

Exoneration does not in any way have the effect of discharging or limiting the liability of the taxpayer for the tax, but all methods of enforcing collection of the tax must be continued as if no exoneration had been made.<sup>7</sup> However, these enforcement procedures must be pursued by the taxing district, since the tax collectors are prohibited from collecting taxes from which they have been exonerated.<sup>8</sup> The taxing district may turn exonerated personal taxes over to its delinquent tax collector for collection.

Taxing districts wishing to excuse low-income persons from personal taxes should add exemption provisions to their per capita, occupation, occupational privilege or earned income tax ordinances as authorized by state law. It is a disservice to advertise an “exoneration” policy, misleading the taxpayers into thinking they will be relieved from liability for taxes if they qualify. A future governing body could proceed to enforce collection of such “exonerated” personal taxes.

## **Abatements**

Abatements refer to the action of the taxing district in excusing taxpayers from taxes already paid or owing. Abatements are allowed at any time for mistakes in the form of refunds from the taxing district if a written claim is filed within 3 years from the date of payment.<sup>9</sup> During the 1930s, the General Assembly frequently enacted laws abating penalties and interest on unpaid taxes of previous years. In the postwar period, such abatements have been limited to areas devastated by natural disasters. These abatement provisions rarely concern the tax collector because they generally apply to taxes not appearing on current duplicates.

## **REFERENCES**

1. 72 P. S. 5511.37; Local Tax Collection Law, Section 37.
2. *Borough of Rochester v. Geary*, 373 A.2d 138, 30 Pa. Cwlth. 493, at 496, 1977.
3. *Laws v. Chester* 16 D.&C.3d 432, at 441, C.P. Delaware Co., 1980.
4. 72 P.S. 5511.26; Local Tax Collection Law, Section 26.
5. 72 P.S. 5511.41 ; Local Tax Collection Law, Section 41.
6. 72 P.S. 5511.38; Local Tax Collection Law, Section 38.
7. 72 P.S. 5511.37; Local Tax Collection Law, Section 37; *Somerset Borough School District Auditor's Report*, 55 D.&C. 695, at 697, C.P. Somerset Co., 1945.
8. 72 P.S. 5511.15; Local Tax Collection Law, Section 15.
9. 72 P.S. 5566b; 1943 P.L. 349.



## **XII. Remedies for Collecting Delinquent Taxes**

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Taxes may be treated as delinquent for various purposes on different dates. From the point of view of the taxpayer, one's tax becomes delinquent 4 months after the date of the tax notice, when the penalty is added. Since this added charge serves to penalize the taxpayer for failure to pay within a prescribed time, taxes not paid within that period are considered delinquent. From the point of view of the taxing district, a tax is generally considered delinquent if it is not paid within the fiscal year that it is levied. At this time, it must be recorded as delinquent on the taxing district's accounts.

In third class cities, taxes are considered delinquent 30 days after the final deadline for payment of taxes in the current year. However, this only applies to the ability of the city treasurer to collect delinquent taxes through public sale.<sup>1</sup> The Real Estate Tax Sale Law was amended in 1998 to state that taxes shall be considered delinquent on December 31 of each calendar year for all taxing districts.<sup>2</sup>

The taxing district and the tax collector do not have to wait until the beginning of the penalty period before resorting to special methods of collecting taxes not paid voluntarily. Examples of these methods are wage attachment, rent sequestration, distress and sale of personal property, and set off against claims due by political subdivisions. Wage attachment against municipal officers and employees may only be made after the tax becomes delinquent, but the word "delinquent" is not defined. Suit in assumpsit may only be instituted after May 15 of the year subsequent to the tax notice. Return of unpaid real estate taxes to the county tax claim bureau is made by the last day of April of the following year.

From the tax collector's point of view, a tax is delinquent if it has not been collected at the time of settlement or the collector has not been exonerated from its collection. Tax collectors and their sureties can become liable for such unpaid taxes in cases where performance bonds are required. The Local Tax Collection Law provides the tax collector a number of remedies to enforce collection of delinquent taxes before the date of settlement. In collecting delinquent taxes, the tax collector may not add any additional fees to the tax bill unless expressly authorized by law.<sup>3</sup>

### **Distress and Sale of Personal Property**

Distress is seizure of personal property, through a legal process known as distraint, holding it to ensure payment of taxes and its subsequent sale to satisfy any unpaid taxes. The Local Tax Collection Law authorizes the tax collector to enforce collection of any tax not paid within 2 months by distress and sale of personal property of the taxpayer.<sup>4</sup>

An 1834 act makes it the duty of the tax collector to proceed with distress and sale for all taxes not paid within 30 days.<sup>5</sup> Language in the authorization in the Local Tax Collection Law appears to make the procedure discretionary on the part of the tax collector. Both acts state that any tax sales are not invalidated because the tax collector did not proceed with distraint to enforce collection of the unpaid tax. The Public School Code contains a provision requiring tax collectors to provide a certification of all unpaid real estate taxes accompanied with an affidavit affirming they could not find sufficient personal property on which to enforce collection of these taxes.<sup>6</sup>

The tax collector levies the amount of the tax, any penalty due and costs by distress and sale of personal property of the delinquent taxpayer, wherever these goods are located. Costs chargeable to the taxpayer for distress and sale cannot exceed fees allowed constables for similar services. These constable fees are set by state law and can be obtained from the district justice's office.<sup>7</sup>

The distraint levy must include a notice giving the taxpayer 10 days to appear at the office of the district justice to demand a hearing on the merits of the tax collector's claim. Public notice of sale must be given at least 20 days after the date of the levy and at least 10 days after any hearing by the district justice where the taxpayer is found delinquent. This notice must be made by posting 10 written or printed notices and by one advertisement in a newspaper of general circulation published in the county.

The tax collector may distraint and sell the personal property of any occupant of the real estate where taxes remain unpaid, following the same procedure for distress of the taxpayer's property.<sup>8</sup> In order to protect their personal property from sale, the tenants may pay the real estate taxes and recover them from the owner by legal action or deduct the amount of taxes paid from rent due to the landlord. This recourse is limited to taxes assessed and billed during the tenant's occupancy of the real estate.

Prior to 1935, taxpayers were subject to imprisonment when there was not sufficient personal property on which to levy. Imprisonment for failure to pay taxes is now prohibited. If there appears to be insufficient personal property to cover the taxes due, it appears to be impractical to follow this procedure where the entire tax debt is not extinguished.

## **Rent Sequestration**

Delinquent real estate taxes can be collected by a procedure known as sequestration of rents.<sup>9</sup> The tax collector issues written notification to the tenant in possession of the real estate that the owner has failed to pay taxes due on the property. The notice must contain a request for the tenant to pay the tax, penalty and interest due out of any rent money then or thereafter due and owing to the landlord. Upon receipt of the notice, the tenant must pay the amount due to the tax collector. The tax collector then provides a receipt for the sums paid by the tenant; this serves as a sufficient voucher to offset any claim for rent by the landlord.

If the tenant fails to pay over the amount due out of rent moneys, the tax collector can enforce payment through distress and sale of the personal property of the tenant found on the property.<sup>10</sup>

## **Wage Attachment**

Wage attachment is an order directing an employer to deduct delinquent taxes due to a political subdivision from the wages or other compensation of the employee named in the attachment order. Wage attachment is authorized only for delinquent per capita and occupation taxes.<sup>11</sup> Wage attachments may be made at any time after the tax notice has been sent, but in practice it is done only after the beginning of the penalty period. Wage attachment is a peremptory process; under the Local Tax Collection Law there is no provision for a hearing. Due process requirements are satisfied by the procedure for requesting a refund.<sup>12</sup>

A spouse's wages may be attached for a delinquent's taxes, but the tax collector must first pursue collection remedies against the delinquent or the delinquent's employer.<sup>13</sup> Wages of no other family members may be attached to collect delinquent taxes.

All private employers and political subdivisions are subject to wage attachment orders. This was extended to the state government in 1963.<sup>14</sup> There is no authority for a local tax collector to issue wage attachments to the federal government. Social security payments cannot be attached for unpaid local taxes.

**Notice.** The tax collector must issue a written notice and demand to the employer containing the name of the delinquent taxpayer and the amount due. Notice means explicit information of the material facts necessary to impose liability upon the employer. The notice should be sufficiently clear and definite to enable the employer to examine and investigate the claim and determine whether it is correct or not.<sup>15</sup> Besides the name and amount, the notice should include the type of tax and year in which it is due, a statement of the taxpayer's delinquency and a statement that the employee is a resident and liable for the taxes.

The employer must deduct the taxes and costs shown on the attachment order from any wages, commission or earnings of the person named within 60 days. The employer must pay the money over to the tax collector within 60 days after the date of the notice. The tax collector is allowed to charge and collect costs for the presentation of the wage attachment demand. A sum of \$10 is a reasonable amount for such costs, since it is comparable to amounts allowed in the constables' fee schedule. This charge and all other fees levied by the tax collector should have proper authorization in the form of an ordinance of the municipal governing body. The employer is entitled to deduct from the monies collected from each employee an amount not to exceed 2 percent as reimbursement for

extra bookkeeping costs. This is not an additional charge on the employee, but is deducted from the amount turned over to the tax collector.

If any employers fail to attach the wages and pay over the money within 60 days, they forfeit the amount of taxes listed on the attachment plus a penalty of 10 percent. This amount may be recovered by an action of assumpsit by the tax collector or taxing district.

**Act 511 Taxes.** The Local Tax Enabling Act authorizes wage attachments for delinquent occupation, occupational privilege, per capita and earned income taxes.<sup>16</sup> The procedure is the same as under the Local Tax Collection Law, except the employer may not withhold more than 10 percent of the wages of the delinquent taxpayer or spouse at any one time. The other difference is that wage attachment for Act 511 personal taxes requires a prior notice to the taxpayer.<sup>17</sup> The tax collector must give at least 15 days notice to the delinquent taxpayer by certified or registered mail prior to submitting the wage attachment order to the employer.

The local tax collector must make wage attachments for all per capita and occupation taxes that are not paid voluntarily. No exoneration will be granted to tax collectors for uncollected personal taxes at settlement unless they swear or affirm they have made wage attachments for these taxes.<sup>18</sup> Wage attachment is mandatory, and failure to use it to recover unpaid taxes can render tax collectors or their surety liable.

## Payroll Deductions from Local Government Employees

All political subdivisions except Philadelphia and the Philadelphia School District are authorized to collect delinquent taxes from the wages of their officers and employees.<sup>19</sup> This authority is not limited to personal taxes as in the case of the general wage attachment authorization and may be used for any tax owing to the political subdivision.

The tax collector must notify the taxing district of all its officers and employees that owe delinquent taxes to the district, including a statement of the years the taxes are owed, the amount of taxes, penalties, interest and costs. The taxing districts may also take this step after settlement and after taxes are returned to the county tax claim bureau.

Before any deductions are made, the governing body must notify the employee or officer in writing of its intent to make payroll deductions for the delinquent taxes, unless the taxes, penalties, interest and costs are paid within a specified time. The taxing district can make payment arrangements with the delinquent taxpayer, retaining its right to make payroll deductions in case of failure to comply with the agreement.

The governing body then orders the disbursing officer to deduct an amount sufficient to pay the total sum. However, no more than 20 percent of the amount of compensation payable may be deducted at a single payroll. The taxing district treasurer pays the amount deducted to the tax collector. The tax collector credits the amount received on the tax duplicate and sends the taxpayer a receipt for the amount of the delinquent taxes, penalties and interest collected.

## Set Off Against Claims Due by Political Subdivision

All political subdivisions except Philadelphia are permitted to deduct any delinquent taxes owed to them from any payments they owe to the delinquent taxpayer.<sup>20</sup> Before paying any amount owed to any person or corporation, the local government may determine if the individual is delinquent on any taxes. If persons are delinquent, the local government may withhold all or part of the payment until they agree to payment of the delinquent taxes. The withheld funds may be kept until payment is made or provision for payment is made. If the delinquent taxes are not paid, the local government can petition the Court of Common Pleas to decree that the delinquent taxes be set off against the amount owed to the individual. The court holds a hearing within 90 days and, if satisfied, orders the amount set off and assigns costs.

## **Suit in Assumpsit**

A suit in assumpsit is a legal action to recover a debt (taxes in this case) founded on an implied promise of the defendant to pay what one is bound to pay. This action is based on the personal liability for taxes on real estate in Pennsylvania. That is, the property owner is personally responsible for any taxes levied on the property during one's tenure of ownership and unpaid taxes may be recovered by sale of any of the owner's real or personal property.<sup>21</sup> This personal liability exists only for seated land; it does not accrue for unseated lands, lands lacking a dwelling place or otherwise unimproved, uncultivated or unenclosed.<sup>22</sup>

Both the tax collector and the taxing district are granted the power to recover unpaid real estate taxes by filing suits in assumpsit.<sup>23</sup> Every suit to enforce personal liability of the owner for unpaid real estate taxes must begin within 5 years after the date the taxes become due.<sup>24</sup> These suits are brought before the district justice if the amount involved is less than \$8,000; otherwise, before the Court of Common Pleas.<sup>25</sup>

The tax collector may institute a suit in assumpsit for unpaid real estate taxes after May 15 of the year subsequent to their levy, unless the property has been returned to the tax claim bureau or a lien on the property has been entered (Allegheny County only). Since all unpaid real estate taxes must be returned to the county tax claim bureau by the last day of April of the subsequent year, a tax collector's use of this remedy would not normally occur.

Taxing bodies are authorized to institute suits in assumpsit to recover unpaid real estate taxes by attaching the personal property of the taxpayer, including any financial assets. A judgment entered against a delinquent taxpayer carries an additional penalty of 10 percent plus costs. The taxing district may institute a suit in assumpsit even though the property has been returned to the county tax claim bureau.<sup>26</sup>

However, the Real Estate Tax Sale Law now requires all taxes returned to the tax claim bureau to be payable only to the bureau. If the governing body's suit for delinquent taxes already returned to the bureau is successful, the funds must be paid into the bureau. If the governing body fails to have payment made directly to the bureau, it still remains liable for the accumulated costs and charges of the tax claim bureau.<sup>27</sup>

## **Delinquent Tax Collector**

School districts have specific authority to appoint annually special collectors of delinquent taxes.<sup>28</sup> On or before the first Monday of July, the board of school directors may appoint one or more delinquent tax collectors to collect all delinquent school taxes from which the regular tax collector has been exonerated, except for those taxes returned to the county tax claim bureau. The delinquent tax collector has all the powers of a regular tax collector. The compensation is set by the school district. There is no authority to exact an additional fee from the delinquent taxpayers to compensate for the services of the delinquent tax collector.<sup>29</sup> Any additional compensation must come from the tax receipts.

A 2000 amendment to the Local Tax Collection Law mandates all counties, cities of the third class, boroughs, towns and townships to appoint the elected tax collector as the delinquent tax collector by ordinance, with the same rights and responsibilities as school district special collectors of delinquent taxes.<sup>30</sup>

Third class city treasurers are to collect all unpaid taxes, including delinquent taxes turned over at the expiration of the term of the previous treasurer.<sup>31</sup>

As long as the elected tax collectors have the duplicate for real estate and code personal taxes, they remain responsible for their collection. However, after settlement the taxing district has the right to collect all unpaid taxes.

Taxing districts have full authority to provide for collection of Act 511 taxes, including delinquent taxes.

In the past, taxing bodies have added the costs for compensating the delinquent tax collector to the total taxes, penalties and charges assessed by the delinquent taxpayer. However, the Commonwealth Court has ruled there is no legal basis for imposing these costs on the taxpayer; such costs must be borne by the taxing district.<sup>32</sup>

## REFERENCES

1. 53 P.S. 37541; Third Class City Code Section 2541.
2. 72 P.S. 5860.102; Real Estate Tax Sale Law, Section 102.
3. *Brown v. LeSurer*, 27 A.2d 754, 149 Pa. Super. 192, at 195, 1942.
4. 72 P.S. 5511.17; Local Tax Collection Law, Section 17; *Kinney v. H.A. Berkheimer, Inc.*, 376 F.Supp. 49, D.C., 1974.
5. 72 P.S. 5641; 1834 P.L. 509, Section 21.
6. 24 P.S. 6-605; Public School Code, Section 605.
7. 42 Pa.C.S. 2950.
8. 72 P.S. 5511.18; Local Tax Collection Law, Section 18.
9. 72 P.S. 5511.19; Local Tax Collection Law, Section 19; *Cedarbrook Realty, Inc. v. Nahill*, 399 A.2d 374, 484 Pa. 441, at 458, 1979.
10. 72 P.S. 5511.18; Local Tax Collection Law, Section 18.
11. 72 P.S. 5511.20; Local Tax Collection Law, Section 20; *Martin v. Danko*, 143 Pa. Super. 106, at 110, 1940.
12. *Wetzel v. Harrisburg Steel Company*, 97 Dauphin 313, at 315, 1975.
13. 72 P.S. 5511.20; Local Tax Collection Law, Section 20; 24 P.S. 6-679; Public School Code, Section 679; *Hartman v. Columbia Malleable Castings Corporation*, 63 A.2d 406, 164 Pa. Super. 1, at 8, 1949.
14. 72 P.S. 5511.20a; Local Tax Collection Law, Section 20.1.
15. *Martin*, supra, at 113.
16. 53 P.S. 6919; Local Tax Enabling Act, Section 19.
17. 53 P.S. 6920.1; Local Tax Enabling Act, Section 20.1.
18. 72 P.S. 5511.26; Local Tax Collection Law, Section 26. 19.
19. 72 P.S. 5685; 1937 P.L. 316.
20. 53 P.S. 7231; 1937 P.L. 2611; *Equitable Gas Co. v. City of Pittsburgh*, 488 A.2d 270, 507 Pa. 53, at 59, 1985.
21. *Frailey Township School District v. Schuylkill Mining Company*, 64 A.2d 788, 361 Pa. 557, at 562, 1949.
22. *Hoverter Estate*, 50 Berks 171, at 172, 1959.
23. 72 P.S. 5511.21; Local Tax Collection Law, Section 21. 24.
24. 72 P.S. 5512; 1949 P.L. 908, No. 249.
25. 42 Pa.C.S.A. 1515; Judicial Code, Section 1515.
26. 72 P.S. 5511.21(b); Local Tax Collection Law, Section 21(b); *Walingford Swarthmore School District v. Kuyumjian*, 625 A.2d 1305, Pa.Cmwth., 1993, citing *Tremont Township School District v. Western Anthracite Coal Company*, 73 A.2d 670, 364 Pa. 591, 1950.
27. 72 P.S. 5860.204(b); Real Estate Tax Sale Law, Section 204(b); *Apollo Ridge School District v. Tax Claim Bureau of Indiana County*, 595 A.2d 217, 141 Pa.Cmwth. 111, 1991.
28. 24 P.S. 6-686; Public School Code, Section 686; *Newhard v. North Union Township School District*, 111 A.2d 367, 177 Pa. Super. 477, at 480, 1952.
29. *Brown*, supra, at 196.
30. 72 P.S. 5511.26a; Local Tax Collection Law, Section 26.1
31. 72 P.S. 5511.28; Local Tax Collection Law, Section 28.
32. *Selinsgrove Area School District v. Krebs*, 507 A.2d 906, 96 Pa. Cmwth. 303, 1986.

## XIII. Paying Over Tax Receipts

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At a minimum, the tax collector is required to pay over tax receipts to the treasurer of the taxing district on or before the tenth day of every month. The taxing district may require more frequent payments by ordinance or resolution.<sup>1</sup> In large jurisdictions, it is not unusual for the taxing district to require daily payment during periods of greatest activity, such as the end of the discount period. The minimum monthly payments are mandatory and must be required by the taxing district.<sup>2</sup>

Failure of the tax collector to make the required payments cannot result in forfeit of compensation. But, because commissions are often based on collections within a given period, compensation can be delayed.<sup>3</sup> Of course, any tax collector who illegally withholds funds owed to the taxing district becomes subject to criminal penalties and removal from office. The Pennsylvania Supreme Court recently held that an elected tax collector cannot be prosecuted for separate offenses under both the Crimes Code for theft and under the Local Tax Collection Law for embezzlement.<sup>4</sup>

All tax funds collected by the tax collector should be deposited in a bank account. Since bank services and fees vary, tax collectors should shop for a financial institution which can best serve them. The tax collector and ultimately the surety are responsible for these funds. The tax collector only serves as trustee of the funds; any interest earned on the tax monies belongs to the taxing district, not to the tax collector.<sup>5</sup> A tax collector should establish a separate account for depositing tax monies. Ideally, a separate account should be established for each taxing district, a tax collector for a joint district may open a joint account, if the account includes the name of the joint tax collection district and not the name of the collector. The EIN number of the taxing district should be used for identification purposes, not the Social Security number of the tax collector. No payment of taxes shall be deposited into an account bearing only an individual's name or SSN. All interest earned should be credited to the proper taxing district and paid over monthly or more frequently as the taxing district requires. In some jurisdictions, tax collectors deposit funds directly into the accounts of the taxing districts. This practice is quite acceptable.

City treasurers pay over to themselves all tax monies collected on behalf of the city. These must be deposited in the official depository as designated by city council. Compliance with the deposit requirements of the city ordinance relieves the treasurer and the surety from any liability for loss due to the insolvency or negligence of the depository institution.<sup>6</sup>

In first class townships, the treasurer is required to keep all township funds, including township taxes collected, in the official depository designated by the township board of commissioners.<sup>7</sup> Compliance with the depository regulations relieves the treasurer and the surety from any liability for loss due to the insolvency or negligence of the depository institution.

For borough and township tax collectors, no depository provisions exist. Since they are subject to a performance bond, the tax collectors and their sureties are responsible for all funds until they are paid over to the taxing district.

All funds should be deposited in institutions insured by federal depository insurance agencies. Accounts should be kept below the federal insurance maximum of \$100,000 to avoid any liability for loss due to insolvency or negligence of the financial institution. If funds on deposit do exceed \$100,000, tax collectors must obtain a letter of collateral from the financial institution. Tax collectors should avoid any substantial accumulation of funds for their own protection. If they find this occurring, they can suggest more frequent payments to the taxing district.

### REFERENCES

1. 72 P.S. 5511.25; Local Tax Collection Law, Section 25.
2. *Litchfield Township Supervisors*, 65 D.&C. 108, at 126, Q.S. Bradford Co., 1948.
3. *Newhard v. North Union Township School District*, 111 A.2d 367, 177 Pa. Super. 477, at 482, 1952; *Appeal from Aliquippa Auditors' Report*, 24 Beaver 142, at 145, 1963.
4. *Commonwealth v. Lussi*, 562 Pa. 621, 757 A.2d 361 (Pa. 2000).
5. 72 P.S. 5511.39; Local Tax Collection Law, Section 39; *Witherow v. Weaver*, 12 A.2d 92, 337 Pa. 488, at 492, 1940.
6. 53 P.S. 36406, 37536; Third Class City Code, Sections 1406 and 2536.
7. 53 P.S. 55808; First Class Township Code, Section 808.

## XIV. Closing Out Duplicate

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As the agent for the taxing district, the tax collector must make a final settlement of the tax duplicate by January 15 for the prior calendar year.<sup>1</sup> This involves settlement of all taxes on the duplicate, discharge of bond liability, audit and return of unpaid real estate taxes to the county tax claim bureau. Settlement for the current year must be made before the tax collector may receive a duplicate for the following year.

### Settlement of Accounts

At settlement, the tax collector presents the accounts to the representatives of the taxing district unless an earlier date is established by the board of county commissioners. They examine the accounts to determine if the tax collector has discharged all responsibilities. Circumstances surrounding all uncollected taxes are investigated to determine if exoneration of the tax collector is justified.

Settlement is made on an annual basis.<sup>2</sup> The taxing district designates the officer or officers who are to make settlement with the tax collector. Settlement of all taxes for the prior calendar year must occur no later than January 15.

The tax collector must also make a return of all unpaid real estate taxes to the county tax claim bureau by the last day of April of the year following the issuance of the duplicate unless an earlier date is established by the county commissioners.<sup>3</sup> Since any current duplicate must be settled before a new duplicate is issued, settlement for county and municipal taxes usually occurs around the end of the calendar year. When a tax collector is not re-elected, the taxing districts may wish to require settlement before the expiration of the incumbent's term.

At settlement, tax collectors are permitted a credit for the following: (1) all taxes collected and paid over; (2) all uncollected, nonlienable installment payments carried forward; (3) all unpaid taxes certified as delinquent taxes; (4) all unpaid taxes resulting from an interim assessment; (5) all unpaid real estate taxes returned to the county tax claim bureau; and (6) all occupation and per capita taxes where the tax collectors have been exonerated upon their oath that they have made wage attachments.<sup>4</sup> As part of the final settlement, tax collectors must sign an oath swearing they have made a true and just return of all taxes collected by them. The oath is administered by the officer making settlement with the taxing district and filed there. The tax duplicate belongs to the municipality. The tax collector's warrant should be surrendered to the municipality at settlement.

Tax collectors must settle the current year's duplicate before receiving the duplicate for the next year.<sup>5</sup> This applies to all county and school taxes, and to municipal taxes levied by boroughs and second class townships. However, this prohibition does not apply if the prior year was in a prior term; a newly reelected tax collector is entitled to a duplicate even if the duplicate for the last year of the prior term is outstanding.<sup>6</sup>

### Discharging Bond Liability

In boroughs and second class townships, the tax collector and surety are discharged from further liability on the bond for the taxes charged in the duplicate as soon as they are either: (1) collected and paid over to the taxing district, (2) returned to the county tax claim bureau, or (3) accounted for by exoneration in cases of uncollectible occupation and per capita taxes. Exoneration for per capita and occupation taxes must be granted only after an oath of the tax collector swearing wage attachments have been issued for them. The tax collector and surety are not discharged if the tax collector has actually collected the taxes, but has not paid them over to the proper taxing district. In this case, the tax collector had engaged in a fraudulent lapping scheme to defraud the borough and the county.<sup>7</sup>

City treasurers and their sureties are discharged from liability on any bond as tax collector as soon as all items on the duplicate are either: (1) collected and paid over (2) returned to the tax claim bureau or (3) in the case of personal taxes, a record of those remaining uncollected is filed with the taxing authority.<sup>8</sup>

First class township treasurers and their sureties are discharged from liability on any bond as tax collector as soon as all items on the duplicate are either: (1) collected and paid over to the taxing district (2) returned to the county tax claim bureau, (3) set forth in a schedule certified to the taxing district, or (4) in case of occupation or per capita taxes, accounted for by exoneration upon the oath of the treasurer wage attachments have been issued for them. Filing a list of uncollected personal taxes simply relieves the treasurer and surety from the obligation contained in the fidelity bond, but does not relieve the treasurer from all liability for collecting these taxes. This can only be done by exoneration by the taxing districts.<sup>9</sup> All suits and legal actions on a bond of the tax collector must be begun within four years after the cause for action occurred.<sup>10</sup>

This four-year statute of limitations for the taxing district to make a claim on a bond is to protect the public interest. It does not have any affect on the time allowed the surety company to proceed against any third parties to recover funds wrongfully paid.<sup>11</sup>

## **Audit**

The tax collector's accounts are audited by the duly authorized auditors of the taxing district, the elected auditors, controller or an independent appointed auditor. The taxing districts may agree to conduct one simultaneous audit for all taxing districts. If the audit is conducted by the controller or auditors of the taxing district, it must be conducted in accordance with the statutes governing that taxing district. If the audit is conducted by a certified public accountant, the audit must be conducted in accordance with generally accepted auditing standards. The audit includes the tax collector's final accounts and records, monthly or other periodic returns and payments and duplicates. The provisions for auditing in the Local Tax Collection Law supersedes any references to auditing of tax collector's accounts in the municipal codes.<sup>12</sup>

The auditors should review the internal controls, accounting and record keeping practices of the elected tax collector. These include methods of bank account reconciliations, recording cash receipts and disbursements, making deposits and tax duplicate control. Responsibility for settlement rests with the taxing district, and the auditors cannot enforce liability for exonerations validly made by the taxing district.<sup>13</sup>

In the event of a vacancy in the office of tax collector, whether by death, resignation, removal from the municipality or otherwise, the municipal codes require an interim audit of the tax collector's accounts. This interim audit may be used as the settlement of the outgoing tax collector's duplicate.

## **Certificate of Liability**

When in settlement or audit, the taxing district or its auditors finds any taxes due and unpaid for which a credit is not allowable, the tax collector becomes liable for those taxes. This is done by filing a certificate of liability in the office of the prothonotary, stating the amount due and unpaid by the tax collector.<sup>14</sup> The certificate must list the amounts due in detail. The taxing district must give notice of the filing by registered mail to the tax collector and the surety. When a certificate is filed, the surety becomes a defendant.<sup>15</sup>

The prothonotary enters the certificate on a docket and it has the same legal force and affect as a judgment of the court. The tax collector or surety may appeal to the court of common pleas within 30 days from the date of the notice after filing bond. The court then requires the taxing district to show cause why the judgment should not be opened or stricken. The taxing district has 30 days to respond. The issues raised on the appeal and answer are tried by a court and jury, unless a jury trial is waived by both parties.

If the liability of the tax collector is upheld, judgment can be enforced against the tax collector or surety. Any action against the surety must be begun within 4 years after the cause for action.<sup>16</sup> If the action had been filed within the statute of limitations, but where further audit uncovers more deficiencies, the original tax collector's certificate of liability may be amended to include the additional shortage discovered.<sup>17</sup> If any tax collector remains liable for taxes after settlement and after the warrant has expired, they may bring suit to collect these taxes from the delinquent taxpayers.<sup>18</sup>



## Sale of Real Estate for Unpaid Taxes

All unpaid taxes on real estate are returned by the tax collector to the county tax claim bureau on or before the last day of April of each year, but no earlier than the first day of January.<sup>19</sup> All unpaid taxes from the prior year's duplicates must be returned, except those being paid on an installment agreement. The county commissioners may establish a uniform return date for all taxes returnable to the tax claim bureau. When this is done, the return date becomes uniform for all taxing districts within the county. In counties with a uniform return date, all taxing districts must make settlement early enough to allow the tax collector to make the return to the tax claim bureau by the specified date. In counties without a uniform return date, settlement may be set by the taxing district at any date, as long as it is sufficiently early to allow the tax collector to make the return before April 30. Except for Allegheny County, all delinquent taxes are returned to the tax claim bureau and can no longer be filed as liens in the office of the prothonotary. The deadline for return supersedes any other deadline for settlement.

Returns must be typewritten on a form provided by or acceptable to the county. They include a list of all properties for which taxes remain unpaid as listed in the duplicate with the amounts owing to the end of the month of the return. The tax collector must sign an affidavit affirming the return is correct and complete. The tax collector's return must provide the following information to the tax claim bureau for each parcel.<sup>20</sup>

- (1) The name of the taxing district.
- (2) The name of the owner of the property, unless the name of the owner has been unknown for five or more years.
- (3) A description of the property sufficient to identify it.
- (4) The year or years for which the tax was levied; the amount of tax for each year; and the interest and penalties due at the time of filing.

The tax collector is not required to notify the property owner that a return has been made to the tax claim bureau. The tax claim bureau makes notice by July 31 that taxes have been returned and a claim entered.

After return to the tax claim bureau, the tax collector's responsibility for a real estate tax ceases. The tax collector receives no commission for any taxes collected thereafter by the tax claim bureau.

**Sheriff Sales.** The tax collector must keep a constant check of sheriff sales. The sheriff is responsible for the sale of property to satisfy many kinds of debts other than taxes. Any sheriff sale divests the lien of all taxes. It is the duty of the tax collector to notify the sheriff of any outstanding taxes against any land advertised to be sold by the sheriff.<sup>21</sup> The sheriff must pay the taxes due from the proceeds arising from the sale immediately after payment of the costs of the sale. If the tax collector fails to report delinquent taxes on any such property to the sheriff, these taxes will be unenforceable after the distribution, and the tax collector will be liable on the bond for those taxes. The tax collector should file a bill of taxes with the sheriff on all properties advertised for sheriff sale. There is no requirement to disclose tax liens to potential purchasers.

## REFERENCES

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2. 72 P.S. 5511.26; Local Tax Collection Law, Section 26.
3. 72 P.S. 5860.306(a); Real Estate Tax Sale Law, Section 306(a).
4. 72 P.S. 5511.26; Local Tax Collection Law, Section 26.
5. 72 P.S. 5511.31; Local Tax Collection Law, Section 31; 24 P.S. 6-685; Public School Code, Section 685.
6. *Bogdan v. School District of Coal Township*, 85 A.2d 139, 369 Pa. 143, at 152, 1952.
7. 72 P.S. 5511.4; Local Tax Collection Law, Section 4; *County of Somerset v. George*, 587 A.2d 360, 138 Pa.Cmwlt. 660, 1991, appeal denied 598 A.2d 285, 528 Pa. 632.
8. 53 P.S. 36402; Third Class City Code, Section 1402.
9. 53 P.S. 55801; First Class Township Code, Section 801; *School District of Cool Township v. Bogdan*, 84 D.&C. 95, at 101, C.P. Northumberland Co., 1952.

10. 42 Pa. C.S.A. 5525; Judicial Code, Section 5525.
11. *American Insurance Company v. Ford Motor Credit Company*, 648 A.2d 576, Pa.Super., 1994.
12. 72 P.S. 5511.26; Local Tax Collection Law, Section 26; *Audit Report of the Township of Bristol*, 57 D.&C.2d 18, C.P. Bucks Co., 1972; *Kennett Square Borough 1964 Financial Report*, 42 D.&C.2d 763, at 765, C.P. Chester Co., 1967.
13. *Somerset Borough School District Auditors' Report*, 55 D.&C. 695, at 697, C.P. Somerset Co., 1945.
14. 72 P.S. 5511.41; Local Tax Collection Law, Section 41; *County of Bucks v. Cogan*, 615 A.2d 810, 150 Pa.Cmwlth. 74, 1992, appeal denied 627 A.2d 181, 534 Pa. 650.
15. *Borough of Midland v. Trainer*, 33 Beaver 115, at 117, 1973.
16. 42 Pa. C.S.A. 5525; Judicial Code, Section 5525; *American Insurance Company*, supra.
17. *County of Somerset*, supra.
18. 72 P.S. 5645; 1848 P.L. 517, Section 3.
19. 72 P.S. 5860.306; Real Estate Tax Sale Law, Section 306.
20. 72 P.S. 5860.309; Real Estate Tax Sale Law, Section 309.
21. 53 P.S. 7105; 1895 P.L. 111, No. 84, Section 2; *Pivrotto v. Starusko*, 440 A.2d 637, 64 Pa.Cmwlth. 346, at 348, 1982; *Berkey v. Johnson*, 45 D.&C.3d 201, C.P. Somerset Co., 1987.

## XV. Tax Collector Liability

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Local tax collection in Pennsylvania, by design, creates a liability for local government and school district taxing authorities as well as the tax collector. In Pennsylvania, the taxing district levies the property tax on its residents but does not collect that tax. Rather, an independently elected tax collector is required by law to be the sole collector of property taxes.

Several issues relative to risk management and insurance need to be understood by the taxing district and the elected tax collector. The need for appropriate bonding is mandated by law, but the various laws are silent on other insurances. For example, if your taxing district does not provide office space for the tax collector and that collector operates from a private residence, the personal homeowners insurance should name the taxing body as an added named insured for purposes of tax collection only, and the taxing district should name the collectors' property as long as property of the taxing body is on the premises. This would provide coordinated coverage and remove any doubt as to whether or not coverage exists if it is ever needed. The policy should have business usage coverage to protect against loss of valuable records, theft, etc. The taxing body's policy should mention it has official operations and records off the premises since the homeowners policy probably will not cover business property of others which is stored in the tax collector's home.

With home rule and other charter differences, the role of the tax collector may vary greatly from municipality to municipality. Furthermore, contracts for service to collect taxes other than real estate may change the relationship. Check with your solicitor and ask for a determination about how Pennsylvania case law has treated the particular relationship between the tax collector and the taxing district, and in particular, under what circumstances has the tax collector been considered an "employee" and under what circumstances has the tax collector been considered an "independent contractor."

Since the tax collector independently serves more than one taxing jurisdiction, the prudent tax collector should consider obtaining a business package policy designed to cover exposures typically associated with any small business. A local independent insurance agent could recommend what coverages should be included in the business package depending upon the tax collector's special circumstances. Typically the package includes Commercial General Liability, Commercial Property and Commercial Auto insurance. Purchase of crime coverage should be considered if money and checks are stored on site. Also, the tax collector should seriously consider purchasing a separate Public Officials Liability (Errors and Omissions) policy to cover the errors and omissions exposure. This policy is important because it would pay for the defense costs incurred in the event a tax collector is sued and must provide a defense in court. It would be wise to check with the taxing district to determine whether or not elected tax collectors are included on the public official liability policy (the district may have to inquire with their agent) and if so, the collector need not purchase this policy.

The local tax collection law, 72 P.S. 5511, establishes the procedures for settlement of tax duplicates and the requirements for payment over to the taxing district. It also lists procedures for exonerations. Exonerations and the procedure for properly accounting for them are stated in this manual. However, tax collectors must ensure the taxing district, either the municipal secretary if a local government, or the appropriate official in a school district, by properly certifying in writing the name, amount and reason for each taxable not accounted for and for which the collector is being exonerated. This record must be presented at settlement so that a proper accounting of all monies can be made and the duplicate properly settled.

Finally, once settlement occurs, the tax records must be retained according to the Municipal Records Manual. These records are public documents and as such are the property of the municipal taxing district and should be maintained and stored by that district unless other arrangements are made with the collector. The Municipal Records Manual establishes the retention schedule for municipal records and the procedure municipalities must use to dispose of records legally. For more information on records retention and disposition and to obtain a copy of the Municipal Records Manual, contact the Division of Archival and Records Management Services at the Pennsylvania Historical and Museum Commission, P.O. Box 1026, Harrisburg, PA 17108-1026, (717) 783-9874.

## XVI. Act 48 Property Tax Collectors

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Act 48-2015 revises the training requirements of Act 164-2014 for property tax collectors. It makes the following updates to the Local Tax Collection Law:

- Eliminates the mandatory continuing education requirement for tax collectors effective December 31, 2016. In the interim, the basic training and continuing education programs for tax collectors are voluntary.
- Requires a basic training program and examination for newly elected tax collectors beginning January 1, 2017. Upon successful completion of the basic training program and exam, a newly elected tax collector will be issued a “qualified tax collector” certification by the Department of Community and Economic Development (DCED), and will be eligible to take office.
- Establishes that individuals holding the office of tax collector after the effective date of January 1, 2017, shall be known as “qualified tax collectors.”
- Requires DCED to notify municipalities when a qualified tax collector certificate has been issued to a current tax collector or to an individual who has been elected to serve as a tax collector and has successfully completed the basic training program and examination.
- Requires that, in addition to consulting with the Pennsylvania State Tax Collectors’ Association (“PSTCA”), DCED must consult with four tax collectors who are not members of PSTCA when developing and implementing programs for basic training, examination, and qualification of tax collectors.
- Adds the Real Estate Sale Tax Law, the Local Tax Enabling Act, and assessments curriculum to the list of courses that must be included in the basic training program for newly elected tax collectors.
- Provides that the fee for the basic training program and exam may not exceed \$250 in the aggregate.
- Establishes that organizations or individuals may offer basic education courses with approval by DCED ensuring compliance with required criteria.
- Requires DCED to develop, implement and maintain an online training and testing program as an alternative option for individuals in lieu of in-classroom instruction. DCED may contract with a third party to carry out this duty. DCED will bear the cost of this provision, and requires the Governor to annually recommend an appropriation to cover the costs incurred.
- Clarifies that an individual who is elected as a tax collector for the term of office beginning January 1, 2016, is required to submit a criminal history report to the municipality for which the tax collector was elected before taking the oath of office.
- Establishes that an individual running for a second or subsequent term of tax collector is not required to file a criminal history record check with his nominating petitions or papers.
- With exceptions for county treasurers and neighboring tax collectors, within thirty days of being appointed to fill a vacancy in the office of tax collector, the appointee shall provide a criminal history check to each taxing district serviced by that tax collector. If the appointee has not been a resident of the commonwealth for the two years immediately preceding the appointment, then the individual shall provide a federal criminal history check to each taxing district served by that tax collector.
- A provision is added requiring a tax collector’s surety bond to cover all taxes collected by a deputy tax collector.

- Specifies that a deputy tax collector shall collect taxes through the duration of an incapacitation of the tax collector, unless the taxing district determines that collection by the county treasurer or a neighboring tax collector is necessary.
- Clarification is added that nothing in the subsection prevents a quo warranto action against an incapacitated tax collector's right to hold office.
- A clarification is made that an appointed deputy tax collector must be approved by the municipality for which a tax collector was elected.

## **Continuing Education Requirements**

Act 48-2015 requires all qualified tax collectors to obtain two hours of mandatory continuing education during their four-year term of office. The topics for continuing education may include enumerated items such as procedures for collecting taxes, auditing, accounting, ethics, etc. DCED is required to inform qualified tax collectors of the continuing education requirement upon issuance of certificates.

The law also provides that the Pennsylvania State Tax Collectors' Association and any other organization or individual may offer continuing education courses that are reviewed and approved by the department. Attendance at an annual meeting of the PSTCA or a similar organization that includes an educational component qualifies as one hour of continuing education. Renewal of qualification shall be completed prior to the tax collector's final year in office. If the tax collector fails to complete the continuing education requirements, the tax collector shall be deemed ineligible to be placed on the ballot at the end of the tax collector's current term of office.

## Local Tax Collection Law

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Find the Local Tax Collection Law at: [www.lgc.state.pa.us/frequentlyCitedLaws.cfm](http://www.lgc.state.pa.us/frequentlyCitedLaws.cfm) and other local government laws at: [dced.pa.gov/local-government/local-government-laws/](http://dced.pa.gov/local-government/local-government-laws/)

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