GENERAL INFORMATION ABOUT TAX SALES
IMPORTANT – PLEASE READ

This memorandum answers frequently-asked questions about tax sales for people who have received a notice or are interested in bidding on properties. It is for informational use only. This is not legal advice, and does not interpret or modify applicable law. Since municipalities and their attorneys cannot represent your interests or give you legal advice, you are strongly advised to consult a lawyer about how tax sales work and what your rights and duties are.

Why did I receive this notice?

This notice was sent to you because you or someone you represent are listed in public records as either owing or having an encumbrance in real estate which has been slated for public auction to pay delinquent taxes. You may be an owner or occupier, or may have recorded a mortgage or judgment lien against the property. This notice will also be given to any member of the public who inquires about the auction.

What is a "tax sale"?

A tax sale is a public auction of property, the purchase price of which goes to paying delinquent taxes or similar assessments. It can be conducted on any real estate owned by an individual or business which has failed to pay any kind of tax, sewer charge, or similar debt (whether it was assessed on that real estate or not) owed to a city, town, borough, taxing district, or other municipal authority.

Is a tax sale a lawsuit?

No. A tax sale is not a traditional "foreclosure," and does not mean that the owner of the property is being sued. Instead, the tax collector of the municipality arranges and conducts the tax sale personally, or through an attorney or other agent, without the involvement of a court. However, if the public auction does not bring in enough money to pay the delinquent taxes, the municipality can make further collection efforts to recover the difference, which might include suing the taxpayer.

How is a tax sale started?

The usual first step is that the taxpayer is mailed a letter demanding payment of the total tax delinquency at his or her last known address. After that, three notices are mailed over a twelve-week period to everyone who has recorded an interest in the property in the town clerk's office. Notices of the tax sale are advertised in a local newspaper three times, and are also posted near the property or the clerk's office. All notice and delinquency information is available to the public on request.

What is a tax warrant?

A tax warrant is a tax collector's official notice of an effort to collect taxes. It describes the amount owed, who owes it, and how it will be collected. The tax warrant is sent to interested people and, in the case of a tax sale, recorded in the clerk's office of the town in which the property is located. By law, a tax collector has all of the powers of a state marshal in issuing and enforcing tax warrants.

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Can the property be sold before the auction?

The municipality has no power to sell the property to anyone before the auction itself, even to someone who offers to pay the taxes in full. Paying someone else's tax debt does not transfer ownership. On the other hand, the property's owner does remain free to sell the property, but the tax sale will proceed as scheduled unless someone also pays the taxes in full to the municipality.

What happens at the auction?

The auction usually takes place at the municipality's headquarters or at the property itself. The notices will specify the exact location. A sign is posted at the auction explaining the total delinquency, and rules are announced for how the auction will be conducted. The property is then auctioned to the highest bidder. The municipality itself can bid on the property if nobody bids at least the total amount owed. Often, several tax-delinquent properties are auctioned on the same day, one at a time. The tax collector may postpone the auction of any property to another date or time for any reason.

Who can participate in the auction?

Registration takes place at the time and place of the auction, not before. Any member of the public (other than the owner and encumbrancers) may bid on the property so long as he or she submits a nonrefundable deposit in a minimum amount announced by the tax collector. The deposit must be in cash or certified funds; personal checks are not acceptable. Bidders must also bring government-issued ID and be prepared to provide a social security number (if bidding in their own name) or federal tax identification number (if bidding for an entity). Any member of the public may attend and observe the auction, but only those who register can bid.

Can people inspect the property before bidding?

People interested in bidding may research public records such as assessment maps, field cards, land records, and similar documents, or look at the property from the road or sidewalk. They may also hire an appraisal service to conduct a "drive by" estimate of its value. No one, however, may trespass onto the property itself, or violate the privacy rights of anyone living there. The municipality has no power to let interested bidders enter a property being auctioned at any time.

How does the bidding work?

The minimum bid will be an amount determined by the municipality; it is usually the total amount of taxes, interest, and fees due plus the expenses of the auction. Bidding will increase in an orderly fashion and as appropriate to maximize the final price. When someone is declared the highest bidder, he or she submits the deposit and must pay the rest of the bid (also in cash or certified funds) by a fixed deadline. Otherwise, the deposit is forfeited, and the next-highest bid might be accepted instead depending on the rules announced at the auction. All unsuccessful bidders get their deposits back immediately. (Some bidders name themselves as alternative payees – such as, "John Smith OR Pullman & Comley, Trustee" – to make it easier to get their money back from their bank.)

Where does the money go?

The winning bid is immediately used to pay (in this order): the costs of the sale, the oldest fees and accrued interest on the delinquency, the oldest principal taxes, and then the most recent fees, interest, and principal taxes up through any jeopardy collections. Any money left over is put in a

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separate bank account, and the municipality keeps the interest it bears. On the other hand, if the winning bid is less than the total delinquency, the taxpayer continues to owe the difference, and the municipality might litigate to collect it.

What is a "jeopardy collection"?

A jeopardy collection is an accelerated tax debt. Although taxes usually become due in separate installments at fixed dates throughout the year, a tax collector who believes that a future installment is unlikely to be paid on time can collect it early. This is often done when a taxpayer has missed several payments in a row, so that the future taxes can be recovered at the same time as the back-taxes. If budgets or mill rates have not yet been fixed, an estimate is used for the amount of the jeopardy tax to be collected, and any balance can be reflected on the next tax bill.

What guarantees are given to the auction's highest bidder?

None, other than that the auction is conducted according to the proper legal procedures. The property itself is sold "as is" in every way. There is no guarantee that the property is up to code, useable for any purpose, or worth the money paid for it. In other words, it is completely the buyer's responsibility to figure out what he or she is getting. The highest bidder must usually sign paperwork confirming the transaction. At this point, the buyer does not have any legal interest in the property other than an "expectancy" of acquiring title later.

What happens after the auction?

After the sale, a notice identifying the highest bidder and price is sent to the taxpayer and everyone else with a recorded interest in the property. This is also published in a local newspaper. The tax collector signs a deed transferring the property to the highest bidder, but holds it in the clerk's office for six months. Nothing else happens during this time. The taxpayer continues to own and use the property; the highest bidder still cannot enter, change, or sell it. If the highest bidder wants to, he or she may buy insurance to protect the property.

When does the highest bidder acquire title?

Six months after the auction, the deed which the tax collector signed is officially recorded in the land records. The highest bidder owns the property "free and clear" of other liens and encumbrances at that time, except certain kinds such as easements and other taxes. For example, the purchaser would not have to pay off the property's mortgage bank and judgment liens (unlike in some court foreclosures). It is solely up to the purchaser to evict any "holdovers" – like the former owner – by legal methods. The purchaser can ask the tax collector to put an affidavit in the land records explaining the details of the tax sale, which may be needed to get title insurance.

What about the property's other encumbrancers?

When the highest bidder acquires the property six months after the auction, most other recorded interests in the property are wiped out. This means that mortgages, liens, and other monetary encumbrances – even federal and state liens – will become totally unenforceable against the property and its new owner, except as the notice might otherwise exempt them. (One exception is to the extent the property is being auctioned for taxes assessed on the debtor's *other* property, for which most encumbrances are unaffected and the buyer must pay them). The warrants might identify additional

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liens which will survive the auction. If the municipality is holding extra money because the winning bid exceeds the total amount owed, the difference (less any other taxes owed by the same taxpayer) is sent to the local superior court. The former owner and any other person with a recorded interest in the property has 90 days to apply for a share of the money, and the court decides how to distribute it.

Can the tax sale be "undone" after it happens?

Yes. The owner or anyone else with a recorded interest in the property can "void" the auction up to six months after it happens, which is why the deed sits in the clerk's office for that period. This is called a redemption. He or she pays the total delinquency as of the sale date, including the costs of the auction, plus interest on the winning bid. If this happens, the highest bidder gets back his or her bid (including the deposit) plus interest at 1.5% per month. The owner keeps the property, and notices are mailed explaining that the sale has been undone. If the redemption was paid by an encumbrancer, the municipality will issue a certificate authorizing that encumbrancer to sue the owner to be reimbursed. If the IRS has liened the property, it has an additional 120 days to redeem, in which case the buyer will lose title but will also get the bid refund although with only 0.5% monthly interest.

What kinds of expenses are charged to the property owner?

By law, all expenses of arranging and conducting the tax sale are charged to the property's owner. These usually include fees for title searches, attorney's hourly rates, newspaper advertising, filings in the land records, certified mailings, and similar costs. This is in addition to the lien fees and 1.5% monthly interest which attach to all tax delinquencies, plus any jeopardy collections. Obviously, these expenses increase significantly as the process moves along. They usually total a few thousand dollars, on top of the taxes themselves, and are not negotiable.

How can I prevent the tax sale?

The tax sale can be stopped before it happens if the owner pays the total amount owed including interest, fees, jeopardy collections, and expenses. Notices are mailed out to announce the cancellation, and collection efforts cease. (Partial payments, scheduled closings, and promises to pay do <u>not</u> stop the auction procedure.) Other people with recorded interests in the property can also prevent the sale by paying the delinquency for the owner. They usually do this to keep their liens from being wiped out (although they cannot "buy" the property outright this way). If this happens, the municipality will issue a certificate authorizing that encumbrancer to sue the owner to be reimbursed. A "payoff" figure is public information and will be given to anyone who requests it, but payoffs cannot be accepted from members of the public with no recorded interest in the property, and need not be paid by auction bidders (since the delinquencies will be paid out of the winning bid itself). Bidders are strongly advised to call the phone number below a day or two before the auction to ask whether any property in which they are interested has been de-listed due to payment.

How can I find out more about this tax sale?

For more information about tax sales generally or your legal rights and duties, you should speak with your attorney. If you have questions about the rules, scheduling, or payoff amount for the specific tax sale for which you received this notice, contact Adam J. Cohen, Esq. at Pullman & Comley, LLC, 850 Main Street in Bridgeport, CT 06601-7006, or (203) 330-2230. If you would like to join a mailing list for future tax sales, send an e-mail to ajcohen@pullcom.com.

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