

REAL ESTATE TAX CERTIFICATE LIENS

(House Bill 371)

**SUMMIT COUNTY FISCAL OFFICE BEGAN IMPLEMENTING THE
NEW DELINQUENT PROPERTY TAX COLLECTION METHOD IN
1998**

The information contained within will help explain procedures used by the Summit County Fiscal Office in an effort to collect delinquent real estate taxes prior to the passage of House Bill 371.

It will also give details on the internal workings of Real Estate Tax Certificates, which will be provided in a question and answer format. Many of these same questions have been asked by taxpayers and interested parties with some knowledge of certificate sales in other states. While this may not address every possible scenario regarding this method of collecting delinquent taxes, the intent is to give a better understanding regarding the purpose and ultimate goal of recovering delinquent tax revenues currently owed to the taxing districts in Summit County.

With the passage of any new statewide legislation comes interpretation of the law. The Ohio Department of Taxation has and will continue to provide invaluable assistance regarding implementation of this legislation. We are grateful for their assistance.

Special thanks to Ohio State Representative Rick Hodges, who sponsored House Bill 371 and to Senators Leigh Herington and Roy Ray of the Summit County delegation, who greatly assisted in the Ohio State Senate.

INTRODUCTION

As your Summit County Fiscal Officer, I am very excited about continuing the opportunity to implement a needed enhancement to our current Delinquent Tax Department. The passage of House Bill 371 provides for the sale of Tax Certificates in Ohio. This has been made possible with the combined efforts of the Ohio Treasurer's Association, business leaders, local governments, former treasurer John A. Donofrio and the State Legislature.

Ohio has now joined approximately 30 other states in offering Tax Certificate sales, which is a unique way of collecting all delinquent property taxes owing at one time.

House Bill 371 provides an optional procedure under which county treasurers can collect delinquent property taxes by selling tax certificates on delinquent properties to private parties by public auction. This method is an effective tool in collecting the majority of delinquent taxes and it will reduce foreclosure costs. However, it will not stop delinquencies from occurring, nor will it solve every delinquent tax collection problem in the future.

Summit County held its first Tax Certificate Sale in late October 1998. We have held subsequent sales annually in October and collected over \$73 million in delinquencies through year 2010.

Tax Certificate Sales insure that taxing districts entitled to revenues from property tax collections will receive those tax dollars needed for their operations.

Because of Summit County's Charter form of government, we were able to address local concerns and issues in the area of tax collection. By utilizing the "Home Rule", we continue to offer needed and improved services to our taxpayers without the need of legislative action in Columbus.

**KRISTEN M. SCALISE CPA, CFE
Fiscal Officer, County of Summit**

PROCEDURES PRIOR TO PASSAGE OF HOUSE BILL 371

Before the passage of House Bill 371, the only method of collecting delinquent taxes was a payment plan and/or foreclosure. Payment plans are effective in many cases and were designed to assist taxpayers who face short-term financial difficulties. They set aside potential foreclosure action. However, there are just as many cases of taxpayers on payment plans who abuse the program. These taxpayers bog down the system and ultimately slow the process of returning those delinquent dollars to the taxing districts that need the money for operations.

Foreclosures are done through the Prosecutor's Office, Tax Division, on behalf of the county fiscal officer. The county prosecutor has a difficult job determining what properties should be sold at a foreclosure sale. It is not cost effective to attempt foreclosure on vacant or strips-of-land parcels. These parcels have a slim chance of selling and may leave a county with hundreds or even thousands of parcels with delinquencies unsold, unpaid and remaining on the books of the county treasurer.

Foreclosure is the last method used to recover delinquent taxes and can be very effective. But the effectiveness is based on the delinquent properties sold at a foreclosure sale. Properties that don't sell at the first sale can be offered at a second sale. If the property remains unsold after two sales, the State of Ohio takes ownership.

Once the State of Ohio takes possession of the property, in Summit County, the fiscal officer conducts an Auditor's Forfeited Land Sale. At the Forfeited Land Sale, delinquent parcels are sold to the highest bidder. This is how it works: A parcel with tax delinquencies of \$2000 did not sell at a first and second foreclosure sale. At the Forfeited Land Sale, the property sold to the highest bidder for \$200. The remaining \$1800 delinquent tax dollars were not paid and cannot be collected.

There are properties that don't sell at the Forfeited Land Sale. In these cases, the full delinquent amount becomes unpaid. Since the State of Ohio owns the property, no further tax revenues are realized because of the state's exempt status. The loss to the tax districts owed these moneys is considerable.

With Tax Certificate Lien Sales, a county treasurer can initiate a sale that will include not only the desirable parcels of property, but make it necessary for buyers of the certificates to accept the undesirable parcels as well. This can be accomplished through the “bundling” of parcels, meaning selling as one unit the entire delinquent parcel list or offering smaller bundles in sizes such as 20 parcels per bundle or 40 parcels per bundle. As an example, the county treasurer decides to bundle ten very saleable parcels with ten not so desirable vacant land parcels. That total of twenty parcels would be sold as one bundle. Summit County bundles the entire delinquent list into one unit. The successful bidder purchases one tax certificate.

Tax certificate liens can also be sold through a negotiated sale. Summit County collects the full amount of delinquent taxes owed per parcel through a negotiated sale but bidding on the sale may be submitted electronically to the county.

The “certificate purchase price” is defined as the amount of delinquent taxes, assessments, penalties, fees and interest owed on the properties at the time of sale.

It should be noted that House Bill 371 was designed as another vehicle in the pursuit of collecting delinquent taxes. It will continue to be used by the Summit County fiscal office in collecting delinquent taxes from individuals and businesses that are not willing to address their delinquent problems. **Current law requires that a county treasurer offer one payment plan to owner-occupied property owners. However, the Summit County fiscal office will continue to assist those taxpayers willing to help themselves and make every effort to provide them with payment plans to fit their budget and avoid a Tax Certificate Sale of their property.**

INFORMATION REGARDING TAX CERTIFICATE LIEN SALES

1. WHAT ARE TAX CERTIFICATES?

A tax certificate transfers the state's first and superior lien on a delinquent parcel to the purchaser of the certificate. The purchaser of a tax certificate holds only the lien against the property, has no legal right of ownership and has no contact with the property owner. The delinquent property taxes are offered by sale by selling tax certificates at a public auction. The person bidding the lowest rate of interest is the successful bidder. The tax certificate is valid for six years from the purchase date. If it has not been redeemed or no action has been taken within the six years, the certificate expires and the holder loses all rights associated with the tax certificate.

2. WHAT PROPERTIES ARE SOLD AT A TAX CERTIFICATE SALE?

Any property the county treasurer offers for a tax certificate sale must be certified delinquent for a least one year under current law. Properties that are in bankruptcy or foreclosure will not be offered at the tax certificate sale. Property owners who participate in a Delinquent Tax Payment Plan and have paid their current taxes will not be a part of the tax certificate sale. A county treasurer has full discretion to select and remove a parcel or parcels set for sale. The treasurer also determines the method in which delinquent parcels are sold.

3. WHICH OHIO COUNTIES CAN OFFER TAX CERTIFICATE SALES?

House Bill 371 provides that any of Ohio's 88 counties can collect delinquent property taxes by selling tax certificates at a public auction or through a negotiated sale.

4. HOW OFTEN ARE TAX CERTIFICATE SALES HELD?

A county treasurer must first determine the necessity for a tax certificate sale, and then may conduct as many as deemed necessary. Summit County holds one sale each year, usually at the end of each October.

5. WHEN ARE TAX CERTIFICATE SALES HELD?

It is up to the county treasurer to determine when to hold a sale. Once a decision has been reached to conduct a sale, the county treasurer is required to send written notice by certified or registered mail either to the owner or to all interested parties of each parcel selected for a tax certificate sale.

6. WHO CONDUCTS THE SALES?

The county treasurer or a designee of the county treasurer must conduct the sale of tax certificates at a public auction. In Summit County, it is the fiscal officer or his designee who must conduct the sale.

Registered bidders submit their bids electronically at a Negotiated Tax Certificate Lien Sale. The Fiscal office reviews all bids and makes the final determination as to who is the successful bidder.

7. WHAT ARE THE METHODS OF SELLING THE CERTIFICATES; HOW ARE PARCELS SOLD?

The county fiscal officer is responsible for deciding which method will best serve the county and collect the most revenues. We have included three examples in which a county may offer parcels at a tax certificate sale.

- a. Sell selected delinquent parcels at a public auction one parcel at a time.
- b. Sell selected delinquent parcels at a public auction in various bundles, such as five parcels in one bundle; ten parcels in another bundle; thirty parcels in another bundle and so on.
- c. Sell selected delinquent parcels at a public auction in one bundled sale. That is, all delinquent parcels to be sold as one unit. Bidder buys all.

Counties also have the option of conducting a Negotiated Tax Certificate Lien Sale. A negotiated sale is where we send our pending delinquent tax lien file to all interested parties such as banking institutions, members of the National Tax Lien Association and other interested parties.

Under a negotiated sale, delinquent taxes may be sold at a discount or at a premium. Summit County always collects the full amount of delinquent taxes owing. Since the inception of the program in 1998, Summit County has never sold a tax certificate at a discount or a premium.

8. WHAT IS THE PROCEDURE FOR SALE BY NEGOTIATED TAX LIEN?

A county treasurer may negotiate the sale or transfer of any number of tax certificates with one or more interested parties.

Any bidder who is interested in purchasing tax certificates must file a completed Bidder Registration form, along with a \$500 registration fee. All bidders must present a 10% deposit of their intended bid and a letter of financial standing.

Bidders must submit an affidavit of compliance with the applicable eligibility criteria the day of sale; any bidder who fails to submit such an affidavit will be ineligible to purchase tax certificates.

If a bidder doesn't purchase a tax certificate, their deposit will be refunded

The successful bidder's registration fee is applied to the deposit; the bidder must pay the balance of the certificate purchase price within 5 days after the sale.

SPECIFICATIONS: Parcels must be purchased for par value – discounts and premiums will not be accepted. Bidders must submit an intended rate of interest for the tax certificate with their qualifying bid. The rate of interest cannot exceed 18% per annum, calculated as simple interest per ORC 5721.41.

The certificate holder shall be the collector of all redemption payment plans. The property owner must contact the purchaser of the lien for payment information. A certificate holder at the end of one year and not later than six years may file a request for foreclosure as long as the tax lien has not yet been redeemed.

Interest will accrue on the tax certificate purchase price at the rate of interest awarded upon delivery of the tax certificates.

Payment options include paying the lien in full or enrolling in a redemption payment plan with the certificate holder. Failure to pay the lien in full or enter into a payment plan may result in the lien holder requesting a foreclosure action.

Tax Certificates are valid for six years from the day of sale. If the certificate holder takes no action, the tax certificate expires.

9. WHAT IS THE PROCEDURE FOR SALE BY PUBLIC AUCTION?

A tax certificate sale by public auction may be conducted any time after completion of the county fiscal officer's advertising of the sale.

Bidders at the auction are required to file a completed bidder registration form with the fiscal officer prior to the start of the auction, along with a \$500 registration fee and a tax identification number (or social security number) of the registrant. All bidders must have 10% of the purchase price and a letter of financial standing. The registration fee has to be paid in cash, a certified check, a money order, a bank draft or an electronic transfer of funds. The registration fee is refundable at the end of the bidding on the day of the auction, unless the registrant is a winning bidder.

Next, the sale would begin. A certificate purchase price means the amount equal to delinquent real estate taxes, assessments, penalties and interest and any other charges/fees charged against the parcel or parcels.

At the auction, the county treasurer or the treasurer's designee is to begin the bidding at 18% per year simple interest and can accept lower bids in increments of 0.25% until a bid is accepted. The certificate is awarded to the person bidding the lowest certificate rate of interest.

The successful bidder is required to pay the fiscal officer a cash deposit (or certified check, money order, bank draft or electronic transfer of funds) of at least 10% of the certificate purchase price on the day of the sale. The bidder's registration fee is applied toward the deposit. The balance and fiscal officer's administrative fee must be paid within five business days after the day on which the certificate is sold. If the bidder fails to pay the balance and fee within five days, the deposit is forfeited and the treasurer retains the certificate.

If a bidder doesn't purchase a tax certificate, their deposit will be refunded.

10. IF A PURCHASER OF A TAX CERTIFICATE IS SUCCESSFUL WITH A BID OF 9.5%, HOW IS THE INTEREST APPLIED TO THE TAX CERTIFICATE?

The purchaser pays the fiscal officer the tax certificate purchase price. Annual simple interest is applied the first day of each month from the purchase date.

Example: \$2700 purchase price, which includes treasurer's administrative fee and advertising cost of \$150

Tax Certificate Purchase Price	\$2700.00
Bid interest rate of 9.5%	256.50 (yearly interest)
Amount applied first of each month	21.37

\$21.37 would be added to the certificate purchase price on a monthly basis until the property owner redeems the tax certificate or until foreclosure action is initiated.

If the tax certificate is not redeemed within the first year, simple interest will continue to be applied the first of each month for the life of the certificate, which is six years.

11. HOW LONG WILL INTEREST BE EARNED ON A CERTIFICATE PURCHASE?

The certificate holder is entitled to 9.5% interest earnings for the life of the certificate, which is six years.

The property owner has the right to enter into a Redemption Payment Plan within the first year. After a tax certificate is sold, the fiscal officer is required to send a written notice by certified mail to the owner of the certificate parcel. The notice must inform the owner that the tax certificate was sold, describe the owner's options to redeem the parcel, including entering into a redemption payment plan.

If a property owner wants to redeem the parcel, the following would occur:

- a. Appear in person at the fiscal office to sign the Redemption contract or it can be completed by mail. Only the owner of record may enter into the payment plan.
- b. Owner of property has an opportunity for a Redemption Payment Plan
- c. Payments are based on total purchase price divided by the eligible remaining months.

- d. Redemption plans are generally made within one year from the certificate purchase date.
- e. If the property owner redeems the certificate prior to the end of the contract, the certificate holder is only entitled to the interest from the purchase date to the redemption date, or 6% of the certificate purchase price, as applicable.

12. IF A PROPERTY OWNER DOES NOT MAKE FULL REDEMPTION PAYMENT WITHIN ONE YEAR, WHAT ARE THE OPTIONS OF THE CERTIFICATE HOLDER?

With respect to a tax certificate sold at public auction, a certificate holder at the end of one year and not later than six years may file a request for foreclosure as long as the parcel has not yet been redeemed with either the county prosecutor or private counsel.

The certificate holder must pay the county prosecutor's fees, which are currently \$2000, along with all other costs associated with foreclosure action including the certificate redemption prices of any other prior tax certificates sold on the parcel, any prior delinquent taxes, assessments, penalties, interest and charges against the parcel that are not covered by a tax certificate at the time of filing a request for foreclosure. A certificate interest rate of 18% now becomes the chargeable rate on the tax certificate until the property is sold at foreclosure.

If the property sells at the foreclosure sale, the certificate holder will receive:

- a. Tax certificate purchase price, the bid interest rate to date of foreclosure, plus 18% interest on the tax certificate purchase price from foreclosure request date until sale of property.
- b. Certificate redemption prices of all the tax certificates sold against the parcel and any premium paid by the certificate holder at the time of purchase.
- c. Reimbursement for all costs paid relative to foreclosure action.

If the property does not sell at the first foreclosure sale:

- a. The county sheriff will conduct a second sale within a reasonable time.
- b. If the property remains unsold after the second sale, the certificate holder receives ownership of the property.

13. CAN OWNERSHIP OF A TAX CERTIFICATE BE TRANSFERRED?

Yes, to any person without limitation for a prescribed fee of \$20 except the owners of the property or any corporation, partnership or association in which the owner may have an interest.

14. WHAT HAPPENS WHEN A TAX CERTIFICATE IS SOLD AND THE PROPERTY OWNER DOES NOT PAY THE NEXT CURRENT TAX BILL?

Per Ohio Revised Code, the certificate holder has the option to purchase a subsequent tax lien if the property owner fails to pay current taxes. If the certificate holder pays

the charges, it would represent an additional tax certificate for a new tax year and the certificate now has a fixed rate of 18% per annum.

15. DOES A CERTIFICATE HOLDER HAVE ANY RIGHTS TO A PROPERTY?

The certificate holder has no ownership rights to the property. The tax certificate vests the holder with the first lien of the state or its taxing authority superior to all liens and encumbrances on the parcel, with the exception of federal liens.

16. WHAT ABOUT REPAYMENT FOR VOID TAX CERTIFICATES?

A tax certificate is void if it is sold by the fiscal officer after the full amount of delinquent taxes and other amounts charged against the certificate parcel have been paid, or after the owner of the parcel has entered into an agreement with the fiscal officer to pay the delinquency in installments. The holder of the void certificate is entitled to a refund of the certificate purchase price and the fiscal officer's administrative fees.

If the fiscal officer discovers after 90 days from the date of the sale that the certificate is void, the holder is also entitled to interest at the rate of 5% per year.