AAP Journal
Assessors Association of Pennsylvania

Issue 5 Volume 2 Spring 2004

FROM ASSESSMENT TO TAX SALE AND BACK AGAIN

by Edward Rupert, CPE, Butler County

Recently the process of collecting taxes and making tax claims for non-payment has made the news. Some cases have achieved "high profile" status in the media. As a result, there may be some confusion in the public about how the process works.

In a typical county, the county assessor begins the process by establishing a value for all real estate, which is commonly known as the assessment or the assessed value. The real estate tax bill for that property is established by multiplying the taxing authority's millage rate(s) (that is one tenth of one percent) by the assessed value. This amount is printed on a tax bill and delivered to the property owner/taxpayer and/or the company that may hold the property's taxes in escrow. The taxpayer has 60 days in which to pay the tax levy at a discounted rate, 60 more days to pay at the face amount, and until the end of the calendar year (or before the unpaid accounts are returned to the Tax Claim Bureau for collection) to pay the face amount plus a penalty charge. Approximately 92% of current year taxes are paid to the local tax collectors.

After the penalty period, if taxes are not paid, the tax amount is returned or turned over to the Tax Claim Bureau (except in Allegheny and Philadelphia Counties) for collection. The bureau enters the claim as a tax lien against the real estate. A filing fee sometimes referred to as bureau cost is added to the penalty amount of tax. The "notice of the claim" process begins.

First, the bureau sends a certified letter to the owner of record. This certified letter must state that if the owner fails to pay this tax or take legal action to challenge the claim, the property will be sold without the owner's consent as payment of the claim. This letter must be sent to the owner(s) on or before July 31st of the year the tax was returned to the bureau. This letter also provides notice to property owners when possibly the tax was to be paid by an escrow company and was not.

If for some reason the certified notice is not successfully delivered in the mail, the same notice shall be physically posted on the property affected. Tax claim bureaus may also send reminder letters during the year. Every effort is made to make sure the property owner is clearly notified of the tax claim against the property.

If by January 1st of the following year the tax remains unpaid, the claim (lien) becomes absolute and cannot be challenged…this time period between the return of the claim and the claim becoming absolute prevents the property from being sold in the same year in which the unpaid tax was returned to the bureau. Inaction by the owner puts the sale process into motion.

The first sale (for an unpaid claim) to which the property will be exposed is known as the "upset sale." The statute requires that property owner(s) have actual notice of the pending upset sale before the property can be first exposed for sale. Notice of the upset sale shall be given by the bureau at least 30 days before the date of the sale by United States certified mail, restricted delivery, return receipt requested, postage prepaid, to each owner or reputed owner as defined by the Real Estate Tax Sale Law Act of 1947, P.L. 1368, No. 542, as amended.



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President's Message....



You know the saying, "Time flies when you're having fun." I can hardly believe that my year as president is over. It has been fun; an honor and a privilege to serve as President of the Assessor's Association. I am so glad that I had the opportunity. Thank you.

When I was asked to run for the position of Secretary, I asked myself what I had to give our organization and quite honestly, I ask myself today, "Did I give anything to our organization?" I hope that I did. However, I gained a lot going up through the chairs, in having the opportunity to get to know more of you and work closely with many of you.

Our membership is always willing to jump in and lend a hand. Every member I asked to help in some way always gave 100%, did so willingly and usually asked what else they could do. I would like to thank all of you for your help and support during this past year. I would like to thank the Board Members, Committee Chairpersons and Committee Members for their time and help during my year as President. You all made my job a lot easier.

I would like to thank Doug Hill and the CCAP/AAP Staff, who were always courteous and went out of their way to help in any way they could. I would especially like to thank Terry Cochran. I had the opportunity to work more closely with her; she was always two steps ahead, thinking of everything we needed at the board meetings, conferences and various other meetings. It is comforting to know that such competent individuals are directing us. It was truly a pleasure to work with all of you.

I enjoyed representing you at the CCAP Conferences and had an opportunity to meet many of your Commissioners. They all had positive things to say about their assessment offices and staff.

Please stay involved in our association. An organization's success is based largely on its membership. We have a great group of members that have a tremendous wealth of experience and knowledge. Together, I feel we can accomplish great things by working to find ways of improving our organization and helping it to continue to grow on a professional level.

As an appropriate ending to this letter, I would especially like to single out my fellow AAP Officers. We have some very competent people running our organization in the upcoming years. I want to thank them for their help and support during this past year and ask that the membership give them the support that you have all given me. Enjoy the next couple of years, guys, it goes very fast. If any of you need help, please call me. Best wishes to our new President, Ed Rupert. I leave the membership in very good hands!

Thanks again!

Barb Walter
AAP President

UPCOMING EVENTS & CHAPTER NOTES



SOUTHEAST CHAPTER

The South East Chapter AAP had elections at its annual meeting, held March 24, 2004. The results are as follows:

SECAAP Officers

President: Bob Bozena--Bucks
President Elect: Sandy Marosek--Montgomery
Vice President: Marian Chiliberti -- Philadelphia
Secretary: J. P. Fox -- Lehigh
Treasurer: "Sis" Squillace -- Montgomery

Board Representatives

Philadelphia: Mary Shefsky
Bucks: Bill Gains
Chester: Cheryl Cummings
Delaware: Walt Miles
Berks: Mary Rossi
Lehigh: Richard Kutz
Montgomery: Mike Sando

SECAAP Reps. to the AAP.

Bill Fogle -- Lehigh
Michael Piper -- Philadelphia

Education Committee Chairman

Mark Jackowski

Nomination Committee Chairman

Michael Piper

T-shirt Committee

Richard Kutz and Sandy Marosek

SOUTH CENTRAL CHAPTER

York County – Congratulations to Kim Shifflett, CPE who was recently appointed Assistant Chief Assessor

The next South Central Chapter Meeting will be held June 4, 2004 at the Adams County Agricultural and Natural Resources Center in Gettysburg.

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DEADLINE for the SUMMER 2004 issue is July 5, 2004.

Article ideas and submissions are welcome. Send them to:

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SOLICITORS' COLUMN

The Solicitors' Column is published in the AAP Journal for information purposes only. All legal matters pertaining to your county should be consulted with your solicitor.

Changes in the Valuation of Subsidized Housing

On December 2, 2003, Governor Ed Rendell signed into law HB 1854 which is now Act No. 39 of 2003. This law now prohibits consideration of State and Federal income tax credits which are attributable to ownership of publicly-funded housing developments. These projects are not typical public housing projects. Rather, they are privately-owned apartments and townhouses that are financed by low-interest loans, grants, and income tax credits in cooperation with the Pennsylvania Housing Finance Agency (PHFA). The developer enters into a PHFA Regulatory Agreement and restrictive covenants that limit the right of the owner to rent only to tenants that meet certain income standards. Typically, the rent is limited to one-third of a resident's income which must not exceed low-income or moderate-income levels. Some of these developments are also age-restricted and sometimes provide their elderly residents with a nurse on staff and/or transportation to doctor's appointments.

Act 39 amends the General County Assessment Law by requiring that any rent restrictions, affordability requirements or other restrictions be considered when arriving at the actual value of the property. However, Act 39 goes further to prohibit the consideration of any State or Federal income tax credits in determining the value of these properties. This is true even though the income tax credits are specific to the property in question and pass to any subsequent purchasers.

Prior to Act 39, the Commonwealth Court ruled in *Parkside Townhomes Associates v. Board of Assessment Appeals of York County*, 711 A.2d 607 (1998) that federal income tax credits could be considered by the court in determining the fair market value of a low-income housing development. The Commonwealth Court reasoned that it was appropriate for the court to consider the "economic realities" associated

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LEGISLATIVE UPDATE



There is bad news and there is good news. The bad news is that there really hasn't been any meaningful movement in any of the existing assessment related legislation that has been introduced by the General Assembly during the 2003-2004 legislative session. That means that there is not much to write about in order to fill up the pages of the Journal unless you want me to talk about how I broke my leg in multiple pieces and how my wife almost ran over me in the driveway afterwards. No? Well, I understand, no one else wants to hear about it either. The good news is that there are no new legislative Acts to discuss that affect the assessment profession. That's good, right? However, there is one old Act from 1999 that is going to affect us rather significantly. But, we'll talk more about that later.

Right now, I would like to briefly discuss some new legislation that has been introduced since my last update. House Bill 2302 is a joint resolution proposing an amendment to the constitution prohibiting local taxation of homestead property. House Bill 2304 would prevent tax claim bureaus from collecting delinquent taxes on property that has been donated to a local municipality or local authority. House Bill 2390 would require all local political subdivisions to file a detailed annual report on all real property in their jurisdiction receiving tax abatement, reduction or exemption with the DCED. House Bill 2399 would eliminate property tax on homestead property, by referendum, to be replaced with an earned income tax. House Bill 2431 would require cities of the first class to provide tax relief to low-income, disabled, infirm or senior citizens. Senate Bill 1025 would prohibit tax claim bureaus from collecting delinquent taxes on real property owned and occupied by persons 70 years old or older until the property has been sold or transferred. And, finally, Senate Bill 1053 would municipalities the authority to deny permits to anyone who is delinquent in taxes, or not in code compliance, on the property for which the permit is requested.

Speaking of permits, it is now time to talk about that old Act from 1999 which would be Act 45 of 1999 amended by Act 43 of 2001 known as the Pennsylvania Construction Code Act. As of April 9, 2004, most of the building codes in the Commonwealth will be invalid. Those that meet or exceed the standards of the Act will survive but they are few and far between. All municipalities have the option of opting in or out of the Act. Those who opt out will not be issuing building permits. The Commonwealth will take over this chore through the Department of Labor and Industry. Those who opt in must revise their building codes to conform and establish a system of inspection and inspectors. Regardless of who is issuing permits, there are exclusions and exemptions from the code. This means that carports, residential garages, greenhouses and sheds under 500 square feet along with agricultural buildings will be excluded from the code. Manufactured housing and industrialized housing will be exempted from the code. Quite simply, there will be no building permits issued on these structures. To make it worse, there is House Bill 2149 that would exclude recreational cabins from the code. Without going into further detail, this will affect you greatly. We have all spent many years building relationships with various governmental officials so we know what's going on out there. That's all about to change. We won't be getting permits we need and we will be getting permits for a myriad of things, such as hot water heaters, that we don't need. The permits will come from different people if they come at all. Good luck!

If you are still keeping count of assessment related bills, there has been a total of 87 House Bills and 26 Senate Bills introduced this session, two of which have become official Acts. So, unless you want more information on House Bill 2479, that would make the oatmeal chocolate chip cookie the official cookie of the Commonwealth, I will be back next issue. If you need any more information about any of these bills, please contact Phil Light, Government Information Chairman, at 724-830-3411 or *plight@co.westmoreland.pa.us.*

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This sale notice is intended to notify the owner(s) of the date and place of the sale, a description of the property being sold, the amount of the upset price, which is the minimum bid of the amount of the claim. If the return receipt is not received from each owner, then at least 10 days before the sale the bureau must send a similar notice of the sale by first class mail with a proof of mailing to the last known post office address of the owner(s).

The tax claim bureau is further required to physically post a notice of tax sale on every property being offered for sale. The posting is required at least 10 days prior to the actual sale date, serving a two-fold purpose; first to again inform the owner of the impending sale, and secondly, to inform the public that the property will be offered for sale.

In addition, if the property is deemed to be owner-occupied, a copy of the sale notice is required to be personally served to an owner. If personal service cannot be accomplished, the bureau is required to petition the Court of Common Pleas to waive the personal service requirement.

Furthermore, at least 30 days prior to a scheduled upset sale, the bureau shall give notice in not less than two newspapers of general circulation (if so many are published) and once in the legal journal, if any, designated by the court for publication of legal notices.

An owner, or the lien creditor of the owner, has until the day and time of the sale to pay the tax due on any given property to remove it from the sale process. Although there is no "redemption" period in Pennsylvania, objections or exceptions to the sale of any specific property may be filed with Court of Common Pleas. These objections must be filed with the court within 30 days of the court's receipt of the consolidated return. These objections or exceptions result in a court ordered review to determine whether or not all notification and procedures were performed properly. The consolidated return is a listing of properties, both sold and unsold, provided to the court for confirmation of the upset sale. This return must be filed within 60 days of the actual date of the sale.

If a property is sold at the upset sale, within 30 days the bureau is required to send a certified notice to each owner at his last known address that the property was sold. The owner is informed that he or she may file objections or exceptions with the court no later than 30 days after the court has received the consolidated return.

If a property is not sold at the upset sale, it can be exposed free and clear of all liens and judgments at a judicial sale after proper notice and advertising. Sometimes properties receive no bids at the judicial sale either. They end up in the repository for unsold properties. These properties can usually be purchased "over the counter" at the bureau. If the property is sold, then the cycle starts over again with the assessor. Title 72 § 5860.628 states, "Notwithstanding any other provisions of the various assessment laws of this Commonwealth, the price for which property is sold under this act only, shall be deemed to be the fair market value of the property for tax assessment purposes."

The Real Estate Tax Sale Law starting in Title 72 § 5860.101 is specific about the due process of selling a person's home or property for nonpayment of tax due. The main thrust of the Tax Sale Law is to make sure the owner or reputed owner has actual notice of the pending sale.

Several court cases have been decided over the years that underscore how important it is for us to "get it right." In a Mercer County case the posting officer testified under oath that he attached the tax claim notice to a telephone pole on the property with masking tape. The property owner rebutted and stated that they did not see the notice.

The Trial Court decided the bureau did post the property, but did not prove that masking tape had "reasonably secured" the notice to the pole and therefore gave the property back to the owner. This case was appealed to the Commonwealth and the **decision was affirmed.** *(Mercer County case C.D. Judge Leavitt)*

Another case concerning posting the property is one where the property sat back 400 to 500 feet down a lane with no road frontage. According to testimony, the bureau drove back and posted the notice on the cottage. The county overturned the sale stating that the bureau should have also posted a notice out near the road (on someone else's property) to give notice of the sale to prospective buyers. *(Writers Note: I can't understand the reasoning on this one because the property was sold and someone other than the owner knew of the sale.)*

In a similar case in Erie County, the case was appealed to the Commonwealth because the Sheriff's deputy folded and posted the notice to the wooden door at the front of the house with a thumbtack. This action was overturned for two reasons: first and foremost, the notice was folded, and secondly, a storm door was installed over the front door blocking passersby from seeing the notice.

The result of the Pa Real Estate Tax Sale Law (RETSL) was to consolidate all delinquent real estate tax claims into one agency as a convenience to local officials, property owners, prospective purchasers, and title searchers. This consolidation greatly helps to eliminate the accumulation of delinquent taxes and the revival of liens permitted by prior lien laws. This law replaces the county treasurers' and city treasurers' sale by a single procedure under the Tax Claim Bureau. The RETSL provides a means of conveying better title to a purchaser at tax sale. The RETSL was designed to benefit local governments in the accelerated collection of delinquent real estate taxes without causing undue hardship on the delinquent property owner. To the extent that the RETSL reduces the amount of delinquent real estate taxes as a percentage of the market value of taxable property, it increases the total tax yield and also serves to reduce the share of total taxes born by those who promptly pay their taxes.

Counties have an important responsiblity to make sure this due process is followed closely. The goal is certainly not to evict people from their homes, but to make sure that local taxes are administered and collected fair and square for the entire community. Careful attention to the appropriate procedure is very critical.

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with these projects. This case has now been limited in its effect so that the only some of the "economic realities" associated with these properties can be considered. The "economic realities" that may still be considered are rent restrictions and low or no-interest financing. Another factor is that there is very little risk inherent in these projects because there is an almost guaranteed 90 to 95% occupancy rate and a constant income stream. Where there is a lower risk, a lower capitalization rate should be used which will result in reaching a higher value. These projects can be very lucrative for a developer who is experienced and well-versed in the peculiarities of governmental financing. Assessors and appraisers are well-advised to learn more about the unique nature of these projects.

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