

**THE EFFECT OF THE TECHNICAL AMENDMENTS
TO THE TAX SALE LAW CONTAINED WITHIN A1619**

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On January 18, 2010, Governor Jon Corzine signed into law Assembly Bill 1619 which are technical amendments to the Tax Sale Law. The purpose of this legal opinion is to outline those technical changes to the Tax Sale Law. It is important to note that these are technical changes that were requested by the Tax Collectors and Treasurers Association of New Jersey. Accordingly, we are in a unique position of being able to place into this opinion the actual intent of these changes.

Section 1 of A1619 simply rewrites N.J.S.A. 54:5-19 to clarify same. When the law was amended to create the accelerated tax sale, the statute became confusing. Numerous tax collectors had confusion over the prior wording of the statute and the sole change in this law is to clarify same and not change the prior law.

Section 2 of A1619 amends N.J.S.A. 54:5-21 to clarify the dates for preparation of the list of properties subject to the tax sale to reflect the date for the standard sale and the date for an accelerated tax sale.

Section 3 of the Bill will allow a list of properties subject to the tax sale be maintained in either book form as the prior statute provided or be satisfied by a copy of a computer generated list. When the original Tax Sale Law was written, there were no computer generated lists. Now, municipalities utilize computer generated lists. Prior to the change in the law, it was a technical violation of the law. Simply stated, this technical change is simply to reflect current practices and current technology.

Section 4 of A1619 simply clarifies the technical wording of the Tax Sale Law. It simply replaces the current phrase “set of notices” with the word “notice” since the current phrase has created some confusion for tax collectors with respect to the mailing of notices of tax sale as permitted by the statute. The proposed change will clarify that the cost of the mailing of a notice of tax sale, either by regular or certified mail, to each interested party may not exceed \$25.00 for each notice or mailing, given to an interested party. The cost of mailing may be added to the cost of the tax sale as a municipal charge, allowing municipalities to recoup the cost of the mailings from the purchaser of the lien.

Section 5 of A1619 adds the term “interest” and a statutory reference to N.J.S.A. 54:5-38 to the language contained in N.J.S.A. 54:5-29 which authorizes the tax collector, at any time prior to the sale of the tax lien, to receive payment of the amount due on a property, together with interest and costs. The new language clarifies that the interest, together with all of the applicable costs set forth in N.J.S.A. 54:5-38 must be satisfied in order to remove the lien from the tax sale.

Section 6 of A1619 amends N.J.S.A. 54:5-32 to allow a tax collector to sell a municipal lien at zero percent interest. Under the prior law, zero percent was not allowed, but many tax collectors would still sell same and place same on tax sale certificates. The purpose of this is simply to reflect the current practice and to allow tax sale certificates to be sold at zero percent.

Section 7 of A1619 amends N.J.S.A. 54:5-33 to provide that the five year time period wherein a premium would escheat to the municipality will be extended in the event of a bankruptcy. When a bankruptcy is filed, there is an automatic stay that prevents the lienholder from pursuing a foreclosure. It is the foreclosure that forces a redemption. There are different legal opinions on whether or not a bankruptcy would stay the five years. This amendment

clarifies this issue by providing that for every day the bankruptcy filing prevents the foreclosure from proceeding, a day is added to the five year period. In most cases, it will be the automatic stay that prevents the foreclosure from proceeding. When a tax collector is now presented with the issue of determining how to calculate the five years, the tax collector will need to find out when the bankruptcy was filed and how long the bankruptcy precluded the foreclosure from proceeding. In most instances, it will be the automatic stay that prevents the foreclosure action from proceeding. The most obvious examples of when the five years will start calculating again is when relief from the automatic stay is obtained by the lienholder, when the bankruptcy Trustee abandons the property or the bankruptcy is dismissed. The tax collector will have to obtain a copy of the bankruptcy docket from the bankruptcy website in order to make this determination.

Section 8 of A1619 amends N.J.S.A. 54:5-38 to clearly fix a date in both a standard tax sale and an accelerated tax sale for the payment of fees by the purchaser of a tax lien of the costs incurred by the municipality. The amendment provides that in the case of the standard tax sale, it is the 50th calendar day prior to the tax sale. In the case of an accelerated tax sale, it is the 11th day of the eleventh month of the current fiscal year.

Section 9 of A1619 amends N.J.S.A. 54:5-51 to place the burden on the third party lienholder to provide to the municipality a copy of the recorded tax sale certificate showing the book, page, date and cost of recording to the tax collector. The intent of this language is to provide this information to the tax collector so that a certificate of redemption of the tax lien may be issued upon the payment of the full amount of the lien. This information is needed by the tax collector in order to execute the certificate of redemption.

Section 10 of A1619 revises N.J.S.A. 54:5-54 to place a limitation on the number of free redemption calculations that a party entitled to redeem may obtain in a calendar year. Under the

prior law, a tax collector had no ability to limit the number of free redemption requests that could be obtained in a calendar year. In certain limited circumstances, distressed property owners would ask tax collectors on a weekly basis to recalculate the redemption figures. The tax collector had no ability to control these requests. Under the statutory amendment, a municipality may now pass an Ordinance authorizing a tax collector to charge a fee not to exceed \$50.00 for redemption calculations that are requested after the two free redemption calculations are provided in a given calendar year. It is important to note that the two free redemption calculations applies to each party entitled to redeem. Hence, the property owner can obtain two free redemption calculations, the mortgagee can obtain two free redemption calculations and a prior lienholder can obtain two free redemption calculations. In addition, once a calendar year is over, the parties entitled to redeem can obtain another two free redemption calculations. However, upon the third request by any of those individual parties, the tax collector, upon the passing of an Ordinance, may charge a fee not to exceed \$50.00.

Section 11 of A1619 amends N.J.S.A. 54:5-97.1 to allow a municipality to pass an Ordinance authorizing a tax collector to charge a third party lienholder a fee not to exceed \$50.00 for redemption calculations. Under the existing law, there was no basis to charge a fee, other than under the Open Public Records Act. Most of the institutional lienholders have their own software and do not require municipalities to provide redemption calculations. However, to the extent that a third party lienholder now requires a redemption calculation from a municipality, upon the passing of an Ordinance, the municipality may charge said fee. In addition, the statute provides that neither the tax collector nor the municipality has any liability if the redemption calculation is incorrect. Finally, the amendment also requires that a request for redemption calculations be made in writing.

Section 12 of A1619 is now contained in N.J.S.A. 54:5-_____. This technical amendment provides that where the lien is less than \$100.00, it shall now be discretionary with the tax collector as to whether or not the property shall be advertised and sold for enforcement of the lien. The tax collector shall have discretion as to whether or not to sell this for up to five years. Upon the fifth year, the tax collector shall then be required to sell this lien.

Section 13 of A1619 is now codified within N.J.S.A. 54:5-_____. Under the existing law, a tax collector will notify a third party lienholder when its lien has been redeemed. The lienholder will not receive its redemption money until it surrenders the original tax sale certificate. If the original tax sale certificate is lost, the lienholder must obtain a duplicate tax sale certificate and surrender same. There are numerous situations throughout the state where third party lienholders, for unknown reasons, simply never surrender tax sale certificates. These monies sit in the tax collector's redemption accounts and the tax collector has no statutory authority to turn these monies over to the general fund of the municipality. This technical amendment now indicates that after five years from being notified of the redemption, if the third party lienholder fails to surrender the tax sale certificate within the five years, the redemption monies shall escheat to the municipality.

Section 14 of A1619 provides that all redemptions shall be made through the tax collector's office unless authorized by court order or pursuant to a federal bankruptcy. It provides a penalty that any lienholder who knowingly causes a redemption to be made outside of the tax collector's office in violation of this section shall forfeit the tax sale certificate to the redeeming party. This technical amendment was placed into the Bill as a result of issues that arose in various cases where there were class action suits against lienholders accusing them of overcharging in the redemption. It was the belief of the Executive Board of the TCTA that,

whenever possible, redemption should be made through the tax collector's office. There were two basis reasons that were set forth for this. First, there was a portion of the Executive Board that believed that distressed property owners were being taken advantage of in certain limited circumstances and being required to pay more than they would have to pay if redemption was made through the tax collector's office. It was the belief that by requiring redemptions to be made through the tax collector's office when possible, the tax collector would be acting as a neutral gatekeeper and would provide the real redemption figures for any distressed property owners. In addition to the above, there was a portion of the Executive Board that supported this technical amendment because they wanted the records of a tax collector's office to be accurate at all times. When a private redemption is made outside the tax collector's office, it means that the tax collector's records are not accurate. For example, if there was a private redemption where 50% of the redemption monies were paid outside the tax collector's office, if a redemption request was made to the tax collector, the tax collector would require the full amount even though part of the monies were paid. The exception to the above cited amendment is when a bankruptcy is involved. Federal bankruptcy law overrides state law and therefore, in instances such as a Chapter 13 where there is a payment plan, those payments would be made outside the tax collector's office. In addition, if a court order provides otherwise, that is exempt from the above cited statute.

It is the hope and desire of the TCTA that the above stated technical amendments will improve the Tax Sale Law. All of the amendments were designed to make a good law a better law.