

**THE EFFECT OF CHAPTER 317 OF THE LAWS OF 2021 AND THE  
EXTENSION OF THE MORATORIUM ON SELLING TAX SALE  
CERTIFICATES ON WATER AND/OR SEWER**

**By: Keith Bonchi, Esquire, Association Counsel**

**OPINION NO: 2022-0002**

I had previously issued legal Opinion No. 2020-0001 and legal Opinion No. 2021-0001 explaining the implication of Executive Order No. 190 as extended by Executive Order No. 229 and further extended by Executive Order No. 246. As indicated in Opinion No. 2021-0001, my legal opinion is subject to newly enacted legislation which actually occurred in this matter.

It is important to note from the outset, that a legal opinion by the undersigned is simply educational guidance to a tax collector. Ultimately, a tax collector should check with his or her municipal attorney for legal advice in this matter. As you are aware, only your municipal attorney can provide you legal advice but I am attempting to utilize the resources of the TCTA to help educate you so that you can better perform your duties as a tax collector.

On December 21, 2021, Governor Murphy signed into law Chapter 317 of the Laws of 2021. This new law extended the grace period for residential customers for certain electric, sewer or water service through March 15, 2022. The moratorium on water was extended to sewer from January 1, 2022, through March 15, 2022. Therefore, a municipality may not place unpaid water charges into a tax sale but it also cannot include sewer in its tax sale prior to March 15, 2022.

The new law also extends the grace period wherein the municipality cannot charge interest on water until after March 15, 2022. In addition, no municipality may charge or collect interest on unpaid sewer charges that accrued between January 1, 2022, and March 15, 2022. Hence, the new law only provides an extended grace period for sewer for the limited time between January 1, 2022 and March 15, 2022.

For those few municipalities that provide electricity, the new law states that you cannot charge interest on residential customers from the beginning of Executive Order No. 103 through March 15, 2022. In addition, the municipality cannot place into its tax sale any unpaid electric charges accrued prior to March 15, 2022.

Before you can place a delinquent charge for water, sewer or electric that accrued between March 9, 2020 and March 15, 2022 into a tax sale or allow a third-party lienholder to pay outstanding utilities as a subsequent payment, you must first offer residential ratepayers the opportunity to enter into an installment payment plan. Please note this only applies to residential ratepayers and not commercial ratepayers. You must provide written notification to the delinquent individual to give that individual 30 days to agree to enter into an installment payment plan.

The installment payment plan should be no less than twelve months in duration. You cannot require a deposit or reconnection cost. Please note that you cannot charge interest or penalties during the moratorium. However, you are required to charge statutory interest during the life of the installment payment plan at the delinquency rate which should be amortized into the plan.

However, for arrearages on said utilities occurring between March 9, 2020 and March 15, 2022, residential customers may be offered a more generous installment plan for a length greater than twelve months not exceeding five years or a combined installment and payment forgiveness plan. The plan may be less than twelve months in duration if it includes a forgiveness of at least 50% of the outstanding arrearages between March 9, 2020 and March 15, 2022. Installment plans greater than twelve months or plans of less than twelve months but forgiving at least 50% of the individual residential ratepayers outstanding arrearages shall only be authorized by the governing body.

This authorization may be done two ways. First, on a case-by-case basis. Or, the governing body may pass a resolution directing a responsible official. In the case of a municipality, this should be the tax collector or designated collector of relevant charges. By way of example, a governing body may adopt a resolution requiring all residential customers to be offered installment plans of 24 months instead of the statutory minimum twelve months. Alternatively, a resolution may grant a tax collector the discretion to offer payment plans greater than twelve months, but not more than 24 months, if a residential ratepayer can demonstrate that their financial circumstances warrant such an extension.

Any installment plan must have equal monthly payments and the delinquency rate of interest must be amortized during the life of the plan. In addition, the residential customer must not only make timely payments on the arrearages but must also pay their current charges which would include property taxes and local assessments. If the residential ratepayer does not pay their arrearages/current charges within 30 days of the due date, then the installment payment plan is void and you can return to all lawful methods of enforcement including a tax sale.

If a residential customer does not agree to an installment plan within 30 days of being offered a plan, you may then seek to have enforcement and place the delinquency into your next tax sale. Starting on March 16, 2022, you will charge interest as you have done in the past and normal enforcement will go back into effect.

The Division strongly encourages regular monitoring of all installment plans including at least monthly reporting. Finally, any rationale involving any discretionary extensions should be provided in writing and provided to the residential customer. This would include your decision to grant an extension or deny an extension. If you deny an extension, I would be very careful with the wording since you have to send it out to a customer who is not going to be very happy.

I would urge anyone to consult Local Finance Notice 2022-09 for any additional guidance in this matter.