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Tax Deed Tune-Up.

It's that time of year for municipalities to be tax deeding properties for which back taxes have not been paid. With the economy the way it is, New Hampshire towns and cities may be faced with more delinquencies of property taxes. The tax deeding requirements are complex, but doing a careful job at the outset can save time and money



in the end.

A municipality must comply with "due process of law" in order to obtain good title to real property through a tax deed. What does this mean as a practical matter? It means that municipalities must do what is "reasonable under the

circumstances" to notify the owner before a property is tax deeded. The municipality must comply with a complicated statutory process, plus the requirements of case law and bankruptcy law.

First, tax collectors should comply strictly with the requirements of RSA 80:77, Notice to Current Owner: send the notice to the current owner by certified mail, return receipt requested; if the receipt is returned and the letter accepted, good, but; if the letter is not accepted by the owner, the tax collector must follow up with additional steps to ensure notice, such as: sending the notice again by regular mail; posting the notice on the property; checking other municipal records for a more current address, and sending the notice again.

Second, tax collectors must notify all mortgagees pursuant to RSA 80:77-a. Municipalities are well served to notify all those who have recorded liens on the property in the last 35 years, not just mortgagees. Many older liens, attachments and mortgages are no longer enforceable, but it takes little time or effort to send the notice, and if

this results in the payment of back taxes, that is good.

Third, tax collectors should also keep track of bankruptcy notices received. If an owner is in bankruptcy, creditors, including municipalities owed real estate taxes, water or sewer fees, etc., are subject to an "automatic stay," meaning they cannot take any action against the bankrupt or the property of the bankrupt to collect the amount owed. To be sure the municipality has not misfiled a bankruptcy notice, we recommend that, shortly before properties are tax deeded, all municipalities check bankruptcy court filings in New Hampshire. If municipal officials have reason to believe that the owner has moved to another state, then they should check the bankruptcy court filings in that state as well.

Our office can assist you with making sure your notices and procedures are up to date. We can also check bankruptcy court filings.

For additional information or questions, please contact **Attorney Katherine Miller**.

COBRA Subsidy under the Economic Stimulus Legislation.

In February 2009, President Obama signed into law the America Recovery and Reinvestment Act of 2009 (“ARRA”). Included in the law are provisions for COBRA subsidies for employees who are involuntarily terminated between Sep-



tember 1, 2008 and December 31, 2009. This COBRA subsidy applies to all employers that maintain a group health plan.

Due to the retroactive

nature of this legislation, employers should carefully review all terminations since September 1, 2008 as well as those occurring through December 31, 2009. The COBRA subsidy requirements apply to all involuntary terminations. This includes layoffs, reductions in force, disability and terminations for cause. Terminations however, for gross misconduct will continue, as under COBRA itself, to disqualify an employee from receiving the subsidy.

The COBRA subsidy is equal to 65% of an employee’s monthly COBRA premiums, for medical, dental and vision benefits. The subsidy will continue until the earlier of nine months or the date the eligible individual becomes eligible for health coverage under another group health plan or Medicare benefits. The subsidy ends upon eligi-

bility while COBRA coverage ends when the individual is actually covered.

An employer is required to not only provide COBRA notice to terminating employees, but also notice of the right to the subsidy. The U.S. Department of Labor has issued a model notice for use by employers which can be found at www.dol.gov/ebsa/cobramodel/notice.html.

The employee may obtain reimbursement from the federal government for a COBRA premium subsidy through reduction in its payroll withholding tax obligations.

For additional information or questions, please contact **Attorney Douglas M. Mansfield**.

Tips on Evaluating Tax Appeals.

Especially in the current economic climate, municipalities may well be confronted with a higher than average number of tax abatements and requests for exemptions than usual. In handling this additional work load, Tax Assessors, Boards of Selectmen and Boards of Assessors may well react with a mixture of compassion for the plight of individuals and businesses and concern for adequate revenues to fund necessary services. The following points are offered to help avoid the additional expenses associated

with denying an appropriate application or granting an inappropriate one.



Abatement and exemption applications must be filed with the municipality by March 1st following the date of notice of tax per RSA 76:16, I and RSA 72:33, I, respectively. Applications filed after that

date are not valid and should be denied. Abatement and exemption applications must be filed by the owner of the subject property or their designated representative. However, for purposes of exemption applications, ownership is determined as of April 1st of the given tax year. Accordingly, municipalities should confirm that the owner listed on an application corresponds to the owner listed on the current tax card; and if there is a discrepancy, ownership should be confirmed via the appropriate deed recorded at

Tips on Evaluating Tax Appeals Cont.

the Registry of Deeds. It is the applicant's burden to prove that the applicant is entitled to the abatement or exemption. The abatement applicant must show "good cause," which includes, but is not limited to, errors in assessment calculation, disproportionate assessment, poverty, inability to pay or other special circumstances. Each exemption has its own set of statutory criteria, e.g. RSA 72:23, 23-k and :23-l concerning charitable organizations, RSA 72:28 concerning veterans' tax credits, and RSA 72:35 concerning service-connected total disability. All of the statutory criteria must be met to be eligible for the exemption. The abatement or exemption



application must be granted or denied by July 1st. If the municipality takes no action on the application, it is deemed denied. Appeals from the denial of an abatement or exemption may be brought either to the Board of Tax and Land Appeals or the

Superior Court; but such appeals must be brought on or before September 1 or they are barred by the terms of RSA 76:16-a or :17, respectively.

When faced with an unusual application, municipalities would be well advised to seek counsel of their attorneys early on in the process to chart a cost-effective evaluation of the application and the decision thereon.

For additional information or questions, please contact **Attorney Christopher L. Boldt**.

Scientific Evidence in Land Use Cases.

This case arises out of a dispute with the Litchfield Zoning Board of Adjustment, but it contains useful information for both zoning boards and planning boards. The dispute concerned the denial of a special exception to build a gravel access road located in the Wetlands Conservation District and which crossed a wetland and came within sixty-seven feet of a vernal pool. The denial, as referenced in the ZBA minutes, was based on a concern about the road's proximity to the vernal pool. The Court overturned the decision, based on a) the fact that the applicant provided evidence from two scientific experts in support of the application, b) that no scientific evidence specific to the application was presented

in opposition and c) the record contained no indication that the applicant's experts were challenged by board members.

The Court carefully reiterated that there is an important role for the personal judgment and experience of board members in rendering decisions, but that the board's decision must be based on more than personal opinion. Condos East Corp v. Town of Conway, 132 NH 431, 438 (1989). The Court also declined to answer the question of whether specialized scientific knowledge is needed for all applications where the land use regulation relates to areas of specialized knowledge.

Both zoning boards and planning boards should support their decision with a certified record which ade-

quately challenges disputed expert opinions, and where appropriate under RSA 673:16 and RSA 676:4,(I)(g), obtain expert testimony specific to the application to assist the board with their review.

For additional information or questions, please contact **Attorney Sharon Cuddy Somers**.



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