

## **School District Real Property Tax Installment Payments Chapter 15 of the Taxpayer Relief Act**

Similar to the Local Tax Collection Law,<sup>1</sup> Chapter 15 of the Taxpayer Relief Act<sup>2</sup> permits school districts to adopt installment payment plans for the collection of school real property taxes.<sup>3</sup> However, the Taxpayer Relief Act also *requires* that school districts adopt a resolution by June 30, 2007, which provides owners of homestead and farmstead property the option of paying school real property taxes in installments for calendar year 2007 and thereafter.<sup>4</sup> Taxpayers elect to use the installment plan by making the first installment payment before it is due.<sup>5</sup>

Installment payments may be collected by a tax collector or school districts can assign the installments to a third party or contract with an independent tax bureau to collect the installments. In addition, school districts may authorize the collection of installment payments by electronic fund transfer or credit card.<sup>6</sup> If installment payments are assigned or outsourced or collected via electronic fund transfer or credit card, coordination will be needed between the school district, the assignee or tax bureau, and the tax collector, who is responsible for collecting, keeping and reconciling records of real property taxes collected under the Local Tax Collecting Law.<sup>7</sup>

Tax collectors may request that school districts consider increasing their compensation for the additional administrative costs incurred by the tax collector.

Descriptions of the basic provisions which must be included in the resolution establishing the installment payment plan; the conditions under which installment payments can be outsourced or assigned; and school district consideration of an increase in a tax collector's compensation follow.

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<sup>1</sup> Section 11 of the Local Tax Collection Law, the act of May 25, 1945, No. 394, P.L. 1050 (72 P.S. § 5511.11), permits counties, school districts and municipalities to establish real property tax installment payment plans.

<sup>2</sup> Act of June 27, 2006, Special Session 1, No. 1, P.L. \_\_\_\_, 53 P.S. §§ 6926.1501 – 6926.1505; Taxpayer Relief Act, Chapter 15.

<sup>3</sup> Excludes interim and delinquent real property taxes.

<sup>4</sup> 53 P.S. § 6926.1502(b), Taxpayer Relief Act, Section 1502(b). 53 P.S. § 6926.1502(c), Taxpayer Relief Act, Section 1502(c) sets forth the parameters for the mandatory program.

<sup>5</sup> 53 P.S. § 6926.1502(c)(2)(i); Taxpayer Relief Act, Section 1502(c)(2)(i).

<sup>6</sup> 53 P.S. § 6926.1503(b); Taxpayer Relief Act, Section 1503(b). Electronic fund transfers must be made to the school district's depository bank and credit card payments must be made through the school district's depository bank or another bank designated by the school district.

<sup>7</sup> Under Chapter 15, the first installment payment could be made to either the tax bureau, a tax collector, an assignee, or the school district's depository bank. Consequently, coordination will be needed regarding the due date for the first installment, notification procedures, collection schedules, and payments received, so that all parties are fully informed as to the status of a taxpayer's account. Section 25 of the Local Tax Collection Law (72 P.S. § 5511.25) requires that, unless more frequent reports are required pursuant to resolutions adopted by school districts, tax collectors must file reports to districts on the 10th day of each month for the prior month.

## **Contents of Resolution**

School districts are given discretion in how they provide for installment payments; however, the resolution required by Act 1 must include the following provisions:

- All taxpayers who have been approved for a homestead or farmstead exclusion<sup>8</sup> are eligible to make installment payments.<sup>9</sup>
- School districts must notify taxpayers on their tax bill regarding the installment payment option and the dates that installments are due and delinquent.<sup>10</sup>
- Installment payment dates cannot be established more than monthly. School districts must establish at least three installment payments, which can be set until right before delinquent taxes must be turned over to the county tax claims bureau.<sup>11</sup>
- Taxpayers elect to make installment payments by making the first payment before it is due.<sup>12</sup>
- If taxpayers elect to make installment payments, the discount and penalty periods do not apply.<sup>13</sup>
- Installment payments that are received after the due date are subject to a penalty of up to 10%.<sup>14</sup> Payments received should be applied first to the earliest required installment and penalties.<sup>15</sup>
- Taxpayers who elect the installment payment option and are delinquent by more than ten days on more than two installment payments become ineligible for the installment payment option in the following school fiscal year.<sup>16</sup>

## **Outsourcing of the Collection of Installment Payments**

School districts are permitted to contract with an independent tax bureau for collection of the installments.<sup>17</sup> Tax collectors are responsible and accountable to the school district for

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<sup>8</sup> Only the primary residence of a property owner may receive the homestead exclusion (53 Pa.C.S. § 8401) or a farmstead exclusion (53 Pa.C.S. § 8582).

<sup>9</sup> 53 P.S. § 6926.150 (c)(1); Taxpayer Relief Act, Section 1502(c)(1). School districts may allow other taxpayers to pay on an installment basis.

<sup>10</sup> 53 P.S. § 6926.1502(c)(4) and (d); Taxpayer Relief Act, Section 1502(c)(4) and (d).

<sup>11</sup> 53 P.S. § 6926.1502(c)(3); Taxpayer Relief Act, Section 1502(c)(3). Section 1502(c)(4) permits installment payments after December 31 but before the date established by the county for the turnover of delinquent taxes, which is usually January 15, but may be delayed by a county until April 30<sup>th</sup>. See 53 P.S. § 5860.306. Assuming that property tax bills are distributed by July 1, the first installment payment is due July 15 and the turnover date is January 15, the number of installments would vary between three and seven.

<sup>12</sup> 53 P.S. § 6926.1502 (c)(2)(i), Taxpayer Relief Act, Section 1502(c)(2)(i) provides that a taxpayer conclusively evidences intent to use the installment plan by making the first installment payment before it becomes delinquent. If a taxpayer does not evidence intent to make installment payments, section 1502 (c)(2)(ii) provides that the tax becomes due and payable and must be collected as provided in the Local Tax Collection Law.

<sup>13</sup> 53 P.S. § 6926.1502(c)(4), Taxpayer Relief Act, Section 1502(c)(4) provides that installment payments cannot be considered delinquent if paid on or before respective installment dates.

<sup>14</sup> 53 P.S. § 6926.1502(c)(4), Taxpayer Relief Act, Section 1502(c)(4) also provides that no further penalties may be added unless one or more installments remain unpaid and taxes are turned over to the county tax claims bureau or a lien is filed with the prothonotary for an unpaid installment.

<sup>15</sup> Penalties added to delinquent real property taxes become part of the tax due. Penalties are included in the base on which all other delinquent interest and penalties are collected. (*Hamilton v. Lawrence*, 167 A 509, 109 Pa. Super. 344, 1933.)

<sup>16</sup> 53 P.S. § 6926.1502 (c)(4), Taxpayer Relief Act, Section 1502(c)(4).

all taxes collected by the collector, and the final accounts and records, returns and payments and duplicate must be audited annually in the year in which the installments are collected.<sup>18</sup> The tax bureau may contract with tax collectors, who must be must be paid the same rate of compensation on installment payments as the school district pays generally.<sup>19</sup> Existing tax collector arrangements remain in effect unless they conflict with the provisions of Chapter 15 or a school district determines another arrangement is appropriate.<sup>20</sup>

### **Assignment of Installment Claims**

A school district may assign, either absolutely or as collateral security, some or all of its installment claims, even if the claim has not become delinquent.<sup>21</sup> The amount and terms of the assignment amount must be in writing and approved by resolution of the school district. Assignment is not considered a discharge or satisfaction of the installment claim or the underlying taxes.<sup>22</sup> A lien of the assigned installment claim and underlying taxes continues in favor of the assignee.

The assignee is entitled to the same rights, privileges and remedies as the school district with respect to the assigned installment claim and the underlying tax regarding the collection and enforcement of tax claims.<sup>23</sup> The assignee is also given the same rights and duties of the tax collector under the Local Tax Collection Law, except the bonding requirements and the responsibility for adding names to a duplicate.<sup>24</sup> An assignment of an installment claim is considered, unless otherwise provided in writing, an assignment of a claim or lien under section 33 of the Municipal Claim and Tax Lien Law<sup>25</sup> and section 316 of the Real Estate Tax Sale Law.<sup>26 27</sup> Property owners are provided with the same rights and defenses they had against a school district.<sup>28</sup> Assignees are permitted to further assign installment claims.<sup>29</sup>

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<sup>17</sup> 53 P.S. § 6926.1503(a)(1); Taxpayer Relief Act, Section 1503(a)(i).

<sup>18</sup> 53 P.S. § 6926.1503(a)(1); Taxpayer Relief Act, Section 1503(a)(i).

<sup>19</sup> 53 P.S. § 6926.1503(a)(1); Taxpayer Relief Act, Section 1503(a)(i). Tax collectors' compensation must be paid by the school district.

<sup>20</sup> 53 P.S. § 6926.1503(a)(2); Taxpayer Relief Act, Section 1503(a)(2).

<sup>21</sup> 53 P.S. § 6926.1504(a); Taxpayer Relief Act, Section 1504(a).

<sup>22</sup> 53 P.S. § 6926.1504(a)(1); Taxpayer Relief Act, Section 1504(a)(1).

<sup>23</sup> 53 P.S. § 6926.1504(a)(2); Taxpayer Relief Act, Section 1504(a)(2).

<sup>24</sup> 53 P.S. § 6926.1504(a)(4), Taxpayer Relief Act, Section 1504(a)(4).

<sup>25</sup> Where a tax claim is filed with the prothonotary or to be filed, Section 33 of the Municipal Claim and Tax Lien Law (53 P.S. § 7147) permits local taxing jurisdictions to assign real estate tax claims to third parties. Assignees are entitled to the same rights and remedies as taxing jurisdictions regarding the claim.

<sup>26</sup> Section 316 of the Real Estate Tax Sale Law (72 P.S. § 5860.316) permits local taxing jurisdictions to assign delinquent real estate tax claims to third parties provided that an assignment is not effective until at least 30 days after delivery to the bureau by the taxing district of a resolution authorizing the assignment. Assignees are entitled to the same rights, remedies and responsibilities as taxing jurisdictions regarding the claim, including the taxing jurisdiction's portion of revenues collected or realized from a tax sale by a county tax claim bureau.

<sup>27</sup> 53 P.S. § 6926.1504(a)(3). Taxpayer Relief Act, Section 1504(a)(3).

<sup>28</sup> 53 P.S. § 6926.1504(a)(5), Taxpayer Relief Act, Section 1504(a)(5).

<sup>29</sup> 53 P.S. § 6926.1504(b), Taxpayer Relief Act, Section 1504(b).

### **Consideration of an Increase in Compensation of Tax Collector**

Normally, if taxing authorities wish to establish or change tax collector compensation, action must be taken no later than February 15 of the municipal election year in which tax collectors are elected or re-elected, effective for the next term of office.<sup>30</sup> Most tax collectors<sup>31</sup> were elected to their current terms in the 2005 municipal election, terms that expire in January 2010. As a one-time exception, the Taxpayer Relief Act gives school boards the option of adjusting tax collectors' compensation during their current term to account for increased administrative costs due to the implementation of an installment payment plan.<sup>32</sup>

The Taxpayer Relief Act provides two ways to begin the process for adjusting compensation; one initiated by the tax collector, and the other initiated by the school board. A tax collector may send the school board a certified letter requesting adjustment within 15 days of school board action adopting an installment payment plan. Within 45 days of receiving that request, the school board must consider it.<sup>33</sup> Alternatively, within 15 days of its resolution adopting an installment plan, the school board may send a certified letter informing the tax collector that the board intends to consider adjusting compensation, and the board must "consider" any adjustment within 45 days after sending the letter.<sup>34</sup>

It is anticipated that in practice, regardless of who initiates the process, there will be further discussion between the school district officials and the tax collector to refine any proposal for adjustment. When initiated by the school board, any action adjusting compensation must take effect by January 31, 2009.<sup>35</sup>

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<sup>30</sup> 72 P.S. §5511.36a, Local Tax Collection Law, Section 36(a).

<sup>31</sup> All borough and township tax collectors, and some city treasurers.

<sup>32</sup> 53 P.S. §6926.1505, Taxpayer Relief Act, Section 1505.

<sup>33</sup> 53 P.S. § 6926.1505(a), Taxpayer Relief Act, Section 1505(a).

<sup>34</sup> 53 P.S. § 6926.1505(a), Taxpayer Relief Act, Section 1505(b). Under both subsections (a) and (b), Section 1505 requires the school board to "consider" the adjustment within 45 days, which is not necessarily the same as saying the board must formally take action within that period adopting a resolution altering the compensation or rejecting any proposed adjustment. This distinction may be significant in view of the ambiguity discussed in footnote 35.

<sup>35</sup> Subsection (b) of section 1505 states that the board's certified letter informs the tax collector that "compensation may be adjusted for installments until January 31, 2009," 53 P.S. § 6926.1505(b), which can be understood in at least three ways that vary greatly. One possible interpretation, which does not make sense, would mean that compensation adjustments expire on January 31, 2009, at the beginning of the final year of the tax collector's term of office despite the continuing need to process installment payments. (It is possible that the legislature intended the increased compensation to be authorized through the end of the current term, and mistakenly assumed the term expires in 2009 rather than in 2010.) That result is avoided if this language is understood to mean instead either that formal action adjusting the compensation must occur on or prior to January 31, 2009, or that any adjustment (or final increment if phased in) must take effect by that date. This limitation does not appear in subsection (a) with regard to adjustments requested by the tax collector.