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Affirmative Litigation:
City of Philadelphia
Tax and Water Collection Cases

Philadelphia, July 14, 2016

The Tax Unit brings the following Affirmative Legal Actions on behalf of the City and/or School District of Philadelphia:

1. Sheriff Sale Actions
2. Sequestration Actions
3. Non-Filer Actions
4. Non-real estate Delinquent Collection Actions
5. Trustee *Ex Maleficio* Actions
6. Responsible Person Actions
7. Water Collections Actions
8. Bankruptcy Actions
9. Future Actions

TAX UNIT AFFIRMATIVE LITIGATION ACTIONS

Real estate tax enforcement in Philadelphia is governed by the Municipal Claims and Tax Liens Act of May 16, 1923, P.L. 207, as amended. MCTLA is the complete and exclusive system by which the City of Philadelphia may assert a tax or municipal claim against real property.

Sheriff Sale Action - Authority

53 P.S. Section 7283 is the provision of the Act that authorizes the City to initiate foreclosure on tax delinquent properties. Pursuant to Section 7283, the City files its Petition to Sell Free and Clear of All Encumbrances with the Court of Common Pleas. Petition must be accompanied by a title search showing the names and addresses of all interested parties, including record owners, mortgagees, ground rents, or any other charges on, or estates in the land.

Foreclosure Process

Upon filing the petition, the Court grants a Rule to Show Cause why the premises should not be sold free and clear of all encumbrances.

Under §7193.2, the City currently serves the interested parties by posting a true and correct copy of the Petition and Rule on the most public part of the property and by certified and first class mail.

Foreclosure Actions continued

If, at the hearing to Show Cause, it is determined that the real estate taxes are outstanding, and that proper notice has been given to all parties, the Court will issue a decree scheduling the property for sale.

Foreclosure Actions continued

Once a decree is entered by the Court, notice of the sale must be sent to all interested parties – including all judgment creditors – by first class mail. City also purchases an updated tax information certificate, called a bring down, to identify any new interested parties that may need notice of the sale. Although not required by the provisions of MCTLA, the sheriff also posts the premises with handbill similar to those required by the Pa. Rules of Civil Procedure for private foreclosures.

Foreclosure Actions continued

FY15	Tax Unit	Co-counsels	Total
Number Properties Petitions Filed	4,768	8,060	12,828
Number Properties Listed for Sale	2,021	4,403	6,424
Number of Properties Sold	806	1,896	2,702

Sheriff Sale Activity

Municipal Claim and Tax Lien Act, specifically Section 24 of Act of May 16, 1923, P.L. 207, 53 P.S. § 7275, authorizes the City to petition the court for appointment of a Sequestrator for any property on which a municipal lien has been placed for at least twenty days. The statute gives the Sequestrator power to take possession of the property.

Sequestration Action – What is it?

Once appointed, the Sequestrator has control of the property and the right to collect all rents. In order to make that control meaningful, the Sequestrator has the right to evict tenants for non-payment and to enter into new leases for up to one year. The Sequestrator also may make any repairs necessary to keep the property in operating condition. After paying the expenses of the property, including her own fee, the Sequestrator gives any profit to the City to be applied to the tax delinquency.

Sequestrator's Authority

The Court will end the Sequestration as soon as the City's claim is satisfied – either because the owner pays or because the Receiver has collected enough rent. Of course, the owner can recover control of the property at any time by paying the City's claim.

Sequestration - Termination

Although the statutory authority for Sequestration dates back to 1923, Philadelphia has only used this tool intermittently. Before the current revival of these Actions in 2014, the most recent program was a short-lived program in the 1990s.

Sequestration is an ideal tool for collecting delinquent real estate taxes from occupied rental properties. In those cases, it is preferable to selling the property at Sheriff Sale (the primary MCTLA remedy), both because it is faster and because it imposes lower administrative expenses that ultimately increase the taxpayer's bill. In most cases, the mere filing of the Sequestration action is sufficient to make the taxpayer pay.

Sequestration Actions - Strategy

FISCAL YEAR	SEQUESTRATION COLLECTIONS
FY2014	\$ 8,624,014
FY2015	\$ 17,526,242
FY2016	\$ 20,473,229
Total	\$ 46,623,485

Sequestration - Results

FY15	Tax Unit	Co-counsel	Total
Collections Pre-Sheriff Sale	\$ 22,277,162	\$ 20,035,419	\$ 42,312,581
Collections from Actual Sheriff Sale	\$ 12,875,710	\$ 29,621,500	\$ 42,497,210
Sequestration Collections	\$ 17,526,242		\$ 17,526,242
Total Real Estate Tax Collections	\$ 52,679,114	\$ 49,656,919	\$ 102,336,033

Delinquent Real Estate Tax Collections

With the exception of City real estate tax, the rest of our major taxes are self-assessed. Section 19-509 of the Philadelphia Code provides that anyone who “fails or refuses to file any report or return” is subject to a fine of not more than \$300.00 for each offense. A separate offense shall be deemed to occur on the first day of each month that conduct continues. See Philadelphia Code § 19-509(5)(b), (d).

Law Department policy is to cap fines authorized pursuant to § 19-509 at \$5,000 for each unfiled tax return.

Section 19-510 of Phila. Code provides that any suit to recover any tax authorized or imposed, other than real estate taxes, shall be begun within 6 years after such tax is due or within 6 years after a return or a report has been filed, whichever date is later. This limitation does not apply in cases where the taxpayer has failed to file the return or report required under the provisions of this Title. See Philadelphia Code § 19-510(1)(a).

A photograph of a city skyline at dusk, with various skyscrapers and buildings illuminated against a blue and orange sky. The buildings are silhouetted against the sky, with some lights visible on their facades.

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for Tax Litigation

**In FY16, the Tax Unit filed 3,238
Non-filer Actions in Municipal
Court.**

NON-FILER LAWSUITS

Where taxpayer has filed the required return but has failed to remit the tax, the Law Department will file a Collection Action in Municipal Court or the Court of Common Pleas. The venue will depend on the delinquent amount. Municipal Court for matters \$15,000 or less and Common Pleas for cases over \$15,000.

Section 19-510 provides that any suit to recover any tax authorized or imposed, other than real estate taxes, shall be begun within 6 years after such tax is due or within 6 years after a return or a report has been filed, whichever date is later. This limitation also does not apply in cases where the taxpayer has collected or withheld tax funds as agent of the City or the School District of Philadelphia, and has failed, neglected or refused to pay the amount so collected or so withheld to the City or the School District of Philadelphia. See Philadelphia Code § 19-510(1)(c).

Delinquent Collection Actions— Limitations

“Any person required to collect, truthfully account for, and pay over” the Wage Tax
“who fails to collect such tax, or truthfully account for and pay over such tax, or willfully attempts in any manner to evade or defeat any such tax . . . shall be liable for the full amount of such tax” § 19-1507(1) of the Philadelphia Code.

Responsible Person Actions – Wage Tax Only

What Makes Someone a Responsible Person?

“‘crucial inquiry is whether the person had the ‘effective power’ to pay the taxes—that is, whether he had the actual authority or ability, in view of his status within the corporation, to pay the taxes owed.’ City of Philadelphia v. GoInternet Net, Inc., 935 A.2d 586, 593 (Pa. Commw. Ct. 2007).

Responsible Person Actions - Continued

Common Law doctrine of *trustee ex maleficio* establishes personal liability for trust taxes

“One who collects taxes as agent for a city and fails to pay the same over to the city has long been held to be a trustee *Ex maleficio*.” City of Philadelphia v. Penn Plastering Corp., 434 Pa. 122, 125, 253 A.2d 247, 249 (1969).

Trustee *Ex Maleficio* Actions

Factors to be considered in determining whether substantial evidence exists to find trustee *ex maleficio* include physical presence on the premises at relevant times, ability to hire or fire employees, review and signing of tax returns, signing payroll checks, signing checks for expenses, obtaining loans, consulting the company's books and acting as an administrator or manager. *Brown v. Com.*, 670 A.2d 1222, 1225 (Pa. Commw. Ct. 1996).

	TOTAL COLLECTED	\$ INCREASE (DECREASE)	% INCREASE (DECREASE)
FY 15	\$13,304,055		
FY 16	\$16,854,519	\$3,550,464	27%

Note: In FY 16, the Tax Unit filed 3051 delinquent business tax collection actions in Common Pleas and Municipal Courts.

Delinquent Business Tax Collection Numbers

Delinquent water liabilities can arise from three separate charges: (a) usage, which includes water flowing to the property and the treatment of water exiting through the sewer system; (b) service, which is assessed when the property is connected to the City's infrastructure; and (c) storm water management and disposal, which includes the cost of treating runoff from precipitation and surfaces and collecting and conveying runoff through the sewer system

Water Collection Delinquencies

The Municipal Claims and Tax Lien Act (MCTLA) specifies that the City may proceed for the recovery and collection of municipal claims, including but not limited to water and sewer rates, against the owner or owners of the property at the time the water and sewer rates first became payable, thereby making the owner personally liable for the charges, regardless of who incurred the delinquency. See 53 P.S. § 7251.

Water Delinquent Collection - Authority

In addition to filing collection actions in Municipal Court to collect water receivables, the Law Department also files Liens every six months for delinquent water receivables. These liens attached to the property and survive subsequent sales of the property to good faith purchasers if the water receivable remains unpaid.

		YTD INCREASE (DECREASE)	% YTD INCREASE (DECREASE)
TOTAL FY 14	\$ 3,648,598.29		
TOTAL FY 15	\$ 4,817,462.64	\$ 1,168,864.35	24%
TOTAL FY 16	\$ 6,478,957.24	\$ 1,661,494.60	34%

In FY 16, Tax Unit filed 11,603 lawsuits in Municipal Courts for Delinquent water cases.

Water Delinquent Collection Numbers

The Bankruptcy Group files comprehensive Proof of Claims in in Federal Bankruptcy Court seeking payment for all City debts from debtor/taxpayer. While most of the issues in the bankruptcy cases involve taxes and/or water debt, we also handle cases where the City was the landlord, cases where the Debtor provided critical vender services to the City, streets department claims, L&I claims, environmental claims, etc.

BANKRUPTCY ACTIONS

The Bankruptcy group also bring other types of affirmative action (objections to confirmation of the bankruptcy plan, motions to dismiss, motions for relief). Some taxpayers use bankruptcy as a means to delay payment. In those cases, the Bankruptcy group seeks to get the bankruptcy case dismissed and to allow for the collection of the outstanding debt by revocation of the CAL license, sheriff sale, or further litigation in state court

BANKRUPTCY ACTIONS

In FY 17, the Tax Unit will commence three new affirmative litigation actions.

1. Water Sheriff Sales
2. Affirmative Assessment Appeals
3. Code Violation Actions

FUTURE ACTIONS

A photograph of a city skyline at dusk, featuring several prominent skyscrapers with illuminated windows and architectural details. The sky is a mix of blue and orange.

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Thank You

THE END

All defenses to the collection of any tax authorized or imposed by this Title shall be raised by appropriate petition to the Tax Review Board pursuant to Chapter 19-1700. See Philadelphia Code §19-510(2).