

STRATEGIC RECOVERY OF DELINQUENT ACCOUNTS

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No one likes taxes or fees, but everyone appreciates the services that the revenue provides. It is a hallmark of fiscal responsibility for a municipality not only to spend its resources wisely, but also to collect the delinquencies. To do otherwise increases the cost for those who pay because the shortfall has to be covered one way or the other.

There are three statutory methods available to a municipality to collect its delinquent claims. The first, and most common, is utilizing the *assumpsit* process. This is the exclusive process available for the collection of earned income and business privilege taxes, and is an alternate process for other types of debt. Under this method, the municipality files a complaint, typically in the local district court. The district court will schedule a hearing, at which time the municipality must appear and present evidence of the claim in order for a judgment to be entered. The mere filing of the claim may prompt resolution of the delinquency, but if it does not, the hearing becomes a time-consuming undertaking for the municipality. The benefit of any recovery is offset by the time incurred by municipal personnel to establish and prove the claim in court, in addition to any fees charged if a solicitor or third-party collector is hired to handle the work. Where possible, the better method for recovery of delinquent claims is the Municipal Claims and Tax Liens Act.

The Municipal Claims and Tax Liens Act, 53 P.S. § 7101 et seq., establishes a method for collection

of in rem claims. In rem claims include sewer and water bills, trash fees, real estate taxes, abatement of nuisance fees, and so on. There are two major advantages to the MCTLA. First, all costs of collection, including reasonable attorney's fees, may be charged to the delinquent property owner. Second, the burden of proof rests with the property owner. So in the event the delinquent property owner does not assert a defense after notice, the municipality perfects its claim. In order to trigger the fee shifting provisions of the statute, the municipality must enact an ordinance (or resolution for school districts and municipal authorities) providing for the same and send a letter by certified mail to the owner with a list of the fees to be charged at least 30 days prior to the assessment of any fees. The fees must be fair and reasonable. The statute provides a list of the factors to be considered in making this determination. Some collectors charge a percentage. Others charge flat fees or an hourly rate. One benefit of the fee shifting provision is that it allows the municipality to receive 100% of its delinquent claim. A second benefit is that it has a deterrent effect on future delinquencies. In order to avoid the prospect of additional collection charges, more property owners pay when the charge is current. This results in a reduction in the delinquency rate, not merely the collection of the delinquent amounts.

Proceeding under the MCTLA is an option for collecting delinquent real estate taxes, even in those counties with a Tax Claim Bureau. The Tax Claim

Bureau operates under yet a third statutory collection scheme, the Real Estate Tax Sale Law. RETSL provides for fees and charges to be added to the claim, but the amounts are too small to have a deterrent effect and the extended time parameters for collection enable property owners to wait for two years prior to paying a claim, regardless of financial ability. In addition, RETSL provides for the Tax Claim Bureau to receive a commission of 5% of the claim, reducing the recovery to the taxing district. The advantage of using RETSL is that the taxing district avoids any involvement in collecting the claim. The disadvantages of RETSL are: the taxing district has no control over the collection process; the process does not differentiate between those who have the ability to pay and those who do not; it may take up to 18 months before collection and the property owner has the legal right to postpone any sale for a year upon payment of only 25% down; and the same core group of delinquents appears on the list year after year.

In our experience as collectors of municipal debt, we have determined that the easiest way for municipalities to avoid ballooning debt is to create internal procedures and train staff to follow them. It is important to follow up on a consistent basis. The timing can be based on the calendar (i.e., January 15 of every year) or upon the amount of the delinquency (i.e., \$500 or more). A municipality that pays attention to its delinquent accounts will be more successful in getting its delinquents to pay attention to their delinquencies.