

RESOLUTION ARB2024-0001

Approval of Delinquent Tax Policies and Procedures

Whereas, County entities may adopt, amend, rescind, and administer rules on matters within their respective jurisdictions, as established by the County Charter, the County Code, or general law; and

Whereas, Section 205.09(A) of the Cuyahoga County Code establishes the Cuyahoga County Administrative Rules Board; and

Whereas, per Section 113.02(G) of the Cuyahoga County Code, the Administrative Rules Board is given approval authority over rules promulgated by County entities based on a determination of: (1) whether the requesting entity has the authority to adopt, amend, or rescind the rule and (2) whether the proposed rule conflicts with the County Code; and

Whereas, the Cuyahoga County Treasurer's Office administers Delinquent Tax Policies and Procedures;

NOW, THEREFORE, BE IT RESOLVED BY THE ADMINISTRATIVE RULES BOARD OF CUYAHOGA COUNTY, OHIO:

Section 1. The Delinquent Tax Policies and Procedures, as attached, is hereby enacted as part of the Cuyahoga County Administrative Code.

Section 2. The Resolution shall go into immediate effect and remain in full force and effect until rescinded by the Administrative Rules Board.

Section 3. It is found and determined that all formal actions of this Board concerning and relating to the passage of this Resolution were passed in an open meeting of this Board and that all deliberations of this Board that resulted in such formal actions were in meetings open to the public and in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

The foregoing resolution was duly adopted on March 21, 2024.



*Audrey Bucholtz
Clerk of the Board*



Cuyahoga County Treasurer's Office *Delinquent Tax Policies and Procedures*

Foreword.

The Treasurer's Office has a dual mandate in its obligation to maximize tax collections and its public policy interest in building a thriving community by helping residents remain in their homes and promoting strong main streets.

These policies and procedures for managing tax delinquencies are written with the aim of striking a balance between those dual mandates that is equitable, easy for taxpayers to understand, and consistent.

Delinquency Generally.

In Ohio, property taxes are "delinquent" if all or a portion of the required tax payment remains unpaid after each of the biennial collections established by the Treasurer's Office (typically in February and July respectively).¹ Taxes that remain unpaid at the end of each collection are assessed a 10% late penalty,² and additional interest charges are added to unpaid delinquencies in September and December thereafter.³ Penalties and interest appear on tax bills issued after they are incurred, along with the base amount of taxes owed and any relevant special assessments.

If a taxpayer continues to owe outstanding taxes after a full collection cycle,⁴ the taxpayer's outstanding debt is *certified* as delinquent by the Fiscal Office.⁵

During the third quarter of the year, an additional tax bill (also known as 3rd billing) will be sent to taxpayers who have a remaining unpaid balance that has not been previously published. Failure to pay unpaid taxes or enter into a tax payment contract by the date indicated on the bill will result in the first of two notice publications. Those who have not paid the unpaid balance or entered into a tax payment contract two weeks after the first publication will be published a second time, and the property will be eligible for foreclosure or tax lien certificate sale the following year.

All told, taxpayers who fail to make payment will be sent at least three notices of unpaid taxes via tax bill, and a notice letter for lien certificate sales (if applicable). Continued failure to make payment will result in the publication of a final notice in a newspaper of general circulation identifying the taxpayer and real property by name and location. This publication will lead to additional expense to the taxpayer.

If taxpayers fail to respond, the delinquency will be certified and the Treasurer may institute collection proceedings consistent with the provisions of this policy and the Ohio Revised Code.

¹ ORC 323.01.

² ORC 323.121(B).

³ *Id.*

⁴ A "full collection cycle" means the period from the end of the prior year's second half collection in July through the end of the succeeding year's collection in December. See ORC 323.25.

⁵ ORC 5721.03.

Tax Lien Certificate Sales.

The Treasurer's Office may, at the Treasurer's discretion, hold a tax lien sale for properties with certified delinquent taxes that have not made payment in full or established a delinquent tax payment contract.⁶ Taxpayers who have failed to make payments in accordance with existing contracts may also be subject to this sale.

The Treasurer will send a certified letter (presale notice) when a tax lien certificate sale is scheduled. The presale notice informs taxpayers that the delinquent taxes will be offered for sale as a tax lien 30 days from the date of the letter unless payment in full is received or a delinquent tax payment contract is established and maintained. Once the presale notice is sent, the Treasurer's Office will add an administrative fee to the amount due for payment on the parcel, and the parcel will be assigned a "Certificate Pending" or "Cert Pending" status.

A tax lien sale may follow this letter in the Fall. All remaining certified delinquent taxes after the sale receive a delinquent tax bill mailing. Taxpayers who fail to make a payment or set up a delinquent tax payment contract in response to this bill will have their names and properties published in the newspaper by the Fiscal Officer.

The delinquent taxes, penalties, interest, special assessments and administrative fees due on the parcel at the time of sale are paid in full by the tax lien certificate purchaser. The certificate purchase price excludes current year taxes, which remain the responsibility of the taxpayer. Taxpayers may be subject to the sale of additional lien certificates for any subsequent delinquencies.

The administrative fee must be collected in full along with the initial payment to establish a delinquent tax payment contract. A "One Stop Payment" form must be processed denoting the taxes and "Cert Pending" fee collected (see below). Payments must be submitted in the form of cash, money order or certified check. No electronic payments are accepted. Cash payments must be made in-person at the Treasurer's Office.

After the close of the second-half collection on a parcel with an outstanding tax lien certificate, all past due taxes are delinquent and not eligible for a delinquent tax payment contract. Until and unless the "Cert Sold" status is removed via release of the lien, delinquent tax payment contracts are not permitted.⁷

Foreclosures – Generally.

The Treasurer works with the Cuyahoga County Prosecutor to select and prioritize delinquent parcels for tax foreclosure.⁸

Cuyahoga County generally prioritizes tax foreclosure filings based on the total amount of the outstanding tax obligation, followed by the duration of the delinquency, among other criteria. The Treasurer and Prosecutor are required by the Ohio Revised Code to foreclose on all eligible delinquent parcels meeting the statutory requirements. The Treasurer and Prosecutor reserves the right to move a property up in priority based on public policy considerations or at the request of another political subdivision in the County, the Cuyahoga Land Bank or municipal land bank, nonprofit organizations engaging in community-oriented land use and housing work, or other interested parties.

⁶ ORC 5721.30 *et. seq.*

⁷ ORC 323.31(B).

⁸ The same is true for tax lien certificate sales *supra*.

Additional rules of procedure for foreclosures will vary based upon whether the parcel is occupied or vacant.

Foreclosures – Occupied Properties.

Where a property is occupied, the delinquent taxpayer may be afforded a final opportunity to make payment or establish a delinquent tax payment contract before foreclosure fees are incurred and the foreclosure process is initiated.⁹ If the taxpayer fails to redeem or establish a delinquent tax payment contract within 30 days of the date of the pre-filing letter, or misses payment on an established contract, foreclosure proceedings may begin.

Foreclosure proceedings will be commenced in the Court of Common Pleas when a property is occupied.

Foreclosures – Vacant Properties.

Where a property is vacant, the delinquent taxpayer may be afforded a final opportunity to make payment or establish a delinquent tax payment contract via letter from the Treasurer's Office.¹⁰ The taxpayer may be afforded the option of conveying the property directly to the Cuyahoga Land Bank or a municipal land bank utilizing a deed in lieu of foreclosure. If the taxpayer fails to complete any of these options within 30 days, or misses payment on an established contract, foreclosure proceedings may begin.

Foreclosure proceedings may be commenced in the Cuyahoga County Board of Revision where the property is vacant, impositions exceed the value set for tax purposes, and there is land bank interest in the property. Foreclosure proceedings on vacant properties will be commenced in the Court of Common Pleas when the value for tax purposes exceeds the impositions or there is no land bank interest.

Foreclosure Payment Contracts.

After a foreclosure action is filed, taxpayers may be eligible for one final contract. Failure to comply with the terms of the contract may result in an immediate decree of foreclosure and the scheduling of a Sheriff's sale to dispose of the property. Any person entitled to redeem who has not previously defaulted on a delinquent tax contract may be entitled to a delinquent tax contract.¹¹

“One Stop Payment” Forms.

The “One Stop Payment” form is used for processing payment on any parcel(s) associated with a tax foreclosure where additional costs related to the foreclosure are being collected along with the tax payment. The additional costs include, but are not limited to, court costs and filing fees, Sheriff costs, Prosecutor's title work fees, and where a tax lien sale has been scheduled but not completed.

Payments must be made in the form of cash, money order or certified check, and must include all accrued costs and the initial installment payment.

⁹ ORC 323.31; ORC 5721.25.

¹⁰ *Id.*

¹¹ ORC 5721.25.

A “Delinquent Tax Contract – Taxpayer Summary” addendum will be included with the delinquent tax payment contract for the taxpayer to read, initial and sign, and a copy will be provided for the taxpayer’s records.

Foreclosures – Parcels Ineligible for Payment Contracts.

A parcel in “Decree Journalized/Judgment” status is ineligible for a delinquent tax payment contract, and may be scheduled for the next available Sheriff’s sale. Payment in full, including delinquent tax and foreclosure costs, is required in order to redeem a parcel and remove it from a Sheriff’s sale.

Delinquent Tax Payment Contracts.

ORC 323.31 states “...a person who owns and occupies residential real property, manufactured or mobile home that does not have an outstanding tax lien certificate or judgment of foreclosure against it...shall have *at least* one opportunity to pay any delinquent or unpaid current taxes, or both, by entering into a written delinquent tax contract with the county treasurer in a form prescribed or approved by the tax commissioner.” (Emphasis added.) A person who is a vendee of such property under a purchase agreement or land contract and occupies the property is also entitled to at least one delinquent tax contract.¹²

All “other” property owners are not entitled to a delinquent tax contract under the ORC, but may be offered contracts at the discretion of the county treasurer.

Reinterpreting the “Five-Year Window.”

ORC 323.31(A)(4) provides that delinquent tax contracts, with one exception,¹³ shall not exceed a period of five years.

In the past, the Treasurer’s Policy interpreted this statutory language to mean that taxpayers had five years following the initial payment establishing any contract to complete all contracts. In the event of default on a contract, the office allowed subsequent contracts during the balance of the time remaining in the “five-year window.” Subsequent contracts were limited in duration to the balance of that five-year period.

The Ohio Revised Code limits the period of any *given* delinquent tax contract to five years (or 60 months), but that the total number of contracts or total period under which contracts may be offered remains at the discretion of the County Treasurer.¹⁴

The Treasurer’s Office will not limit delinquent tax payment contracts to an overall period of five years, but will base the availability of delinquent tax payment contracts on the criteria below.

Delinquent Tax Payment Contracts – Generally.

Property owners on a delinquent tax payment contract must remain current on their tax bills, while also making installment payments on delinquent taxes under the delinquent tax payment

¹² *Id.*

¹³ ORC 323.31(A)(4)(b) allows for a period of ten years for delinquent tax payment contracts for qualifying athletic complexes as defined in ORC 5709.57.

¹⁴ ORC 323.31(A).

contract. Failure to pay current property taxes by the due date will result in default on the contract.¹⁵

Late payment interest is deferred while a taxpayer remains on a delinquent tax payment contract and is forgiven upon the successful completion of the contract.

If a taxpayer defaults on the contract, deferred interest will be added to the outstanding delinquent balance.

Failure to remain current on taxes may result in the sale of tax lien certificates on the property and/or tax foreclosure.

Delinquent parcels covered by valid and current delinquent tax payment contracts will be excluded from statutory delinquent tax list publications.

Contracts may be satisfied by a payment in full at any time.

Delinquent Tax Payment Contracts – Monthly.

Delinquent tax payment contracts are generally offered in monthly installments.

For delinquencies less than or equal to twelve months, the “6/6” and “12/12” rule applies (meaning delinquencies of six months or less are offered six-month installment contracts, and delinquencies of more than six months but less than twelve months are offered twelve-month installment contracts).

Monthly installment contracts for delinquencies exceeding twelve months may be offered for up to 60 months.

Payment of monthly installment contracts via automatic debit from a checking or savings account is preferred. Monthly contracts may also be paid via cash, check or money order, with accompanying coupons, upon request.

To establish a delinquent tax payment contract taxpayers must make the first month’s installment payment, along with any costs that may have been incurred,¹⁶ at the time the contract is signed. The minimum monthly payment for owner-occupied residential properties is \$50/month. The minimum monthly payment for all other classes of property is \$100/month.

Owner-Occupied Residential Properties.

Under state law, all owners of agricultural or residential properties occupying those properties, or similarly situated vendees under a purchase agreement or land contract, shall have at least one opportunity to pay delinquent taxes via contract with the Treasurer’s Office. All subsequent opportunities for additional contracts are at the sole discretion of the Treasurer.¹⁷

Owners of residential properties occupying those properties may be eligible for up to three delinquent tax payment contracts, except where a tax foreclosure case has been filed.¹⁸

¹⁵ The EasyPay Program allows taxpayers to pay current taxes in monthly, biannual or annual installments. More information is available at <https://www.cuyahogacounty.gov/treasury/pay-your-taxes/easypay>.

¹⁶ “Costs that may have been incurred” include, but are not limited to, publication costs, court costs, and filing fees.

¹⁷ ORC 323.31(A)(1).

¹⁸ See the foreclosure section of this policy on p. 3-4.

Owner-occupants may be offered housing counseling with a verified partner¹⁹ of the Treasurer's Office as a condition of entry into a third contract. In such cases taxpayers must provide proof of completion of counseling to the Treasurer's Office at the time of signing.

New purchasers of properties carrying²⁰ delinquencies will be permitted to enter into delinquent tax payment contracts if they reside in the property and their acquisition of the property was the result of an arm's length transaction,²¹ or in limited cases quit-claim deed.²² In all such cases, proof of residency will be required prior to the execution of a delinquent tax payment contract. Proof of residency can include an affidavit verifying occupancy and/or a current gas or electric bill in the purchasers' name at the property address.

Other Residential, Commercial, Industrial and Vacant Properties.

While state law requires the Treasurer to offer at least one delinquent tax payment contract to owner-occupants and similarly situated vendees, all other contracts are at the sole discretion of the Treasurer.²³

All other classes of property may be eligible for up to three delinquent tax payment contracts, except where a tax foreclosure case has been filed.²⁴

Eligibility for delinquent tax payment contracts after default on an initial contract will be contingent upon the payment of a minimum of 10% down at the time of contracting on the remaining delinquent balance.

Property owners may be offered consumer credit counseling with a certified²⁵ counseling service as a condition of entry into a third contract. In such cases taxpayers must provide proof of completion of counseling to the Treasurer's Office at the time of signing.

Ineligible Properties.

Properties in active bankruptcy or with unexpired outstanding tax lien certificates sold under ORC 5721.32 or 5721.33 are ineligible for delinquent tax payment contracts on balances owed to the County Treasury.²⁶ Property owners are encouraged to inquire with tax lien certificate holders about payment arrangements in those circumstances.

Additional Terms and Conditions.

The property owner and/or a designated representative (i.e. an attorney or someone legally authorized to act on the property owner's behalf) may initiate a delinquent tax payment contract with proper identification (i.e. a driver's license or state ID card, bar admission card, U.S. passport, letters of authority from Probate Court, power of attorney, etc.).

¹⁹ "Verified partners" include Cleveland Housing Network, Community Housing Solutions, ESOP, the Home Repair Resource Center and Neighborhood Housing Services of Greater Cleveland.

²⁰ "Carrying" means the delinquency runs with the property. If the purchaser owes delinquent taxes, no payment plan will be available on new properties until such time as the purchaser's existing delinquency is resolved.

²¹ An "arm's length transaction" is one in which two or more unrelated and unaffiliated parties agree to do business, acting independently and in their self-interest. See Legal Information Institute, "Arm's Length." Last updated May 2022. Last accessed December 22, 2023. www.law.cornell.edu/wex/arm%27s_length.

²² Such determinations will be made on a case-by-case basis and in view of all relevant facts, and will be final.

²³ ORC 323.31(A)(2).

²⁴ See the foreclosure section of this policy on p. 3-4.

²⁵ Find a nonprofit credit counseling service at www.nfcc.org or by calling 800-388-2227.

²⁶ ORC 323.31(7)(B).

Land contract purchasers or vendees may initiate a delinquent tax payment contract by providing a copy of the land contract, purchase agreement or recorded conveyance instrument along with proof of residency (i.e. a gas or electric bill in the vendee's name) at the property address).²⁷

Where the record owner of the property is deceased, heirs claiming right of ownership must present probate documentation verifying their status before entering into a delinquent tax payment contract.

Optional Self-Pay Plan.

When a parcel is no longer eligible for a delinquent tax payment contract and paying the bill in full is not possible, taxpayers can make payments on a daily, weekly or monthly basis in an effort to pay the taxes in full.

These payments will not prevent a future tax lien sale or the commencement of a tax foreclosure, and interest charges will continue to accrue. Any self-payments do not prevent the property from being foreclosed upon and offered at a Sheriff's sale.

Conclusion.

The Treasurer's Office has an affirmative duty to pursue the collection of delinquent taxes – and an obligation to do so in a manner that respects the dignity of taxpayers and affords them the opportunity to retain possession of their property.

These policies are directed at that project – and questions regarding their implementation should be directed to the Treasurer's Office by phone at 216-443-7400 Option 1 or email at treascomment@cuyahogacounty.us.

Adopted: February 22, 2024

Last Revised: March 21, 2024

²⁷ ORC 323.31.