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Donna Little
REGULATIONS COMPILER

1 FINANCE AND ADMINISTRATION CABINET

2 Department of Revenue

3 Office of Property Valuation

4 **(New Administrative Regulation)**

5 103 KAR 5:220. Installment Payment Plan Guidelines for Third Party Purchasers of Certificates

6 of Delinquency.

7 RELATES TO: KRS 134:490 (5) (h)

8 STATUTORY AUTHORITY: KRS 134:490 (5) (h)

9 NECESSITY, FUNCTION, AND CONFORMITY: KRS 134.490 authorizes the

10 Department of Revenue to promulgate Administrative Regulations to establish a process for an

11 installment method of payment for the redemption of certificates of delinquency by a delinquent

12 taxpayer. In compliance with this subsection, this new administrative regulation establishes a

13 process by which third party purchasers shall grant installment payments and establishes the fee

14 associated with this service.

15 Section 1. Definitions. (1) "Base amount" means the amount paid by a third-party

16 purchaser for a certificate of delinquency;

17 (2) "Certificate of delinquency" has the same meaning as in KRS 134.010;

18 (3) "Default" means:

19 (a) The failure to pay on or within fifteen (15) days of a payment due date under a

20 payment plan document; or

(b) Commencement of any legal action by a person other than the third-party purchaser affecting the title or requiring the sale of the subject property.

(4) “Department” means the Department of Revenue;

(5) “Optional certificate” means a certificate of delinquency that is not a qualifying certificate;

(6) “Payment plan” means a monthly installment plan described in the payment plan document;

(7) “Payment plan document” means the agreement between the property owner and the third–party purchaser detailing the terms of a payment plan;

(8) “Person” means any individual, corporation, business trust, estate, trust, partnership, limited liability entity, association, organization, joint venture, government, or any subdivision, agency or instrumentality thereof, or any other legal or commercial entity;

(9) “Processing fee” means a fee that may be imposed by a third-party purchaser for administering a payment plan. The processing fee shall not exceed eight (8) dollars per month during the term of the payment plan;

(10) “Property owner” means the “taxpayer” as defined in KRS 134.010, or any other owners of real property on which an outstanding certificate of delinquency is held by a third-party purchaser;

(11) “Qualifying certificate” means a certificate of delinquency purchased after June 1, 2012 by a third-party purchaser required to register with the department under KRS 134.129;

(12) “Subject property” means the property against which the lien related to a certificate of delinquency is attached; and

(13) “Third-party purchaser” means a “third-party purchaser” as defined KRS 134.010.

Third-party purchaser as used in this regulation also includes any assignee of a certificate of delinquency.

Section 2. Notice of Payment Plan Availability. (1) Any third-party purchaser who owns a qualifying certificate shall provide notice of the availability of a payment plan to the property owner as required by KRS 134.490(3)(d)5, unless the conditions established by Section 7 of this regulation apply. The notice shall include, at a minimum, the following information:

(a) A statement that a payment plan is available upon written request from the property owner;

(b) The mailing address and the physical address where a request may be delivered. An electronic address may also be provided at the option of the third-party purchaser to accept requests in an electronic format;

(c) The date the certificate of delinquency was purchased by the third-party purchaser as provided in KRS 134.128, or paid and assigned as provided in KRS 134.126(8); and

(d) A statement that the option to request a payment plan shall expire unless a written request for a payment plan is received by the third-party purchaser within twelve (12) months of the date the certificate of delinquency was purchased by the third-party purchaser.

Section 3. Submission and Review of Payment Plan Requests. (1) Any property owner with property subject to a qualifying certificate may submit a written request for a payment plan to the third-party purchaser holding the qualifying certificate within twelve (12) months of the date the certificate of delinquency was purchased by the third-party purchaser as provided in KRS 134.128; or paid and assigned as provided in KRS 134.126(8). The request shall be made in accordance with the process established by the third-party purchaser.

(2) Upon receipt of a payment plan request, the third-party purchaser shall review the

request, and if the request is timely and none of the conditions listed under Section 7 of this regulation apply, the third-party purchaser shall prepare and deliver payment plan documents to the property owner in accordance with the provisions of this regulation.

(3) Beginning with receipt of a request for a payment plan, and during the term of any payment plan, the third-party purchaser shall not assign the certificate of delinquency or undertake any enforcement remedies available under the law for the collection of the amount due on a certificate of delinquency. If the request for a payment plan is rejected because it is not timely or one of the conditions listed in Section 7 of this regulation applies, or if the property owner defaults, the third-party purchaser may pursue any legal remedies available to the third-party purchaser under the law for collection of the amount due.

(4) A third-party purchaser may accept a request for a payment plan that is not timely filed. A payment plan entered into under this subsection shall be governed by the provisions of this regulation.

Section 4. Payment Plan Requirements and Terms. (1) The payment plan shall provide for equal monthly installments, except the amount due in the final month may be adjusted to reconcile the total amount paid with the total amount due. The payment plan shall be offered for a minimum of twelve (12) months, unless the property owner requests a shorter term.

(2) The terms and conditions of the payment plan shall be established by a payment plan document, which shall be signed by the property owner and the third-party purchaser. The third-party purchaser shall provide a copy of the executed document to the property owner. The payment plan document shall be effective upon receipt by the third-party purchaser.

(3) The payment plan document shall include the following:

(a) A description of the subject property and the tax bill covered by the certificate of

delinquency;

(b) The base amount due at the time the payment plan document is executed;

(c) The total amount of pre-litigation attorney fees and administrative fees incurred and accrued as provided in KRS 134.452 and due at the time the payment plan document is executed;

(d) The amount of interest accrued at the time the payment plan document is executed, calculated as provided in KRS 134.452 and 134.125;

(e) The term of the payment plan and number of monthly payments;

(f) The amount of interest that will accrue over the term of the payment plan, assuming payments are made according to the payment plan schedule;

(g) The amount of the monthly processing fee imposed;

(h) The monthly payment amount due, as determined as provided in Section 5 of this regulation;

(i) The date the monthly payment amount is due;

(j) A statement that the payment plan will be considered in default and may be terminated if payment is not received within fifteen (15) business days of the due date;

(k) Acceptable methods of payment;

(l) The mailing address and delivery address where payments are to be made, if the payments are to be mailed; and

(m) Any other terms and conditions mutually agreed upon by the property owner and third-party purchaser.

(3) The third-party purchaser may limit the method of payment accepted to those methods reasonably determined to ensure payment, provided that a third-party purchaser shall accept certified checks, cashier's checks and cash in payment. A third-party purchaser may at

the discretion of the third-party purchaser, also accept ACH transfers, wire transfers, credit card, personal check, or other means of payment.

(4) The third-party purchaser shall not require more than one (1) payment per month.

Section 5. Calculation of the Monthly Amount Due and Crediting of Payments.

(1) Interest shall be calculated during the term of the payment plan on the outstanding balance of the base amount as required by KRS 134.125.

(2) To determine the monthly payment due, the third-party purchaser shall include the following to establish the total amount due, and shall then calculate a monthly payment, with any adjustment necessary for payments to equal the total amount due made in the last month of the payment plan:

(a) The base amount due;

(b) Interest:

1. Accrued prior to the effective date of the payment plan; and

2. Calculated on the declining balance of the base amount over the term of the payment plan as provided in subsection (1) of this section.

(c) Pre-litigation attorney fees and administrative fees imposed under KRS 134.452 accrued at the time the payment plan is agreed to; and

(d) The monthly processing fee amount multiplied by the number of months the payment plan will be in effect.

(3) Payments shall be credited by the third-party purchaser on the day the payment is received.

(4) Payment amounts received shall be credited as follows:

(a) First, to the monthly processing fee, which shall become due on the first day of each

calendar month;

(b) Second, to the interest due;

(c) Third, to outstanding pre-litigation attorney fees and administrative fees imposed under KRS 134.452 and included as part of the payment plan document; and

(d) Fourth, to reduce the base amount due.

(5) If multiple certificates of delinquency are included under one payment plan document, the third-party purchaser shall apply payments based on the earliest date of attachment of the lien to the subject property

Section 6. Default. (1) Upon default by a property owner under a payment plan document, the payment plan shall be terminated and the third-party purchaser shall provide written notice of the default and termination to the property owner within fifteen (15) business days.

(2) The third-party purchaser may charge a processing fee for the month in which the default occurs, but shall not charge a processing fee for any subsequent month.

(3) In determining the outstanding amount due after a default, all payments received from the property owner and already credited as provided in Section 5 of this regulation shall remain as credited under Section 5 of this regulation. Any additional payments received after a default shall be applied as follows:

(a) First, to the payment of unpaid processing fees of the period prior to default, including the processing fee due in the month the default occurred;

(b) Second, to outstanding interest due;

(c) Third, to outstanding pre-litigation attorney fees and administrative fees imposed, as permitted under KRS 134.452 and included as part of the payment plan document; and

(d) Fourth, to reduce the base amount due.

Section 7. Conditions Under Which A Payment Plan Is Not Required. A third-party purchaser shall not be required to offer a payment plan to a property owner under the following circumstances:

(1) The property owner has previously defaulted on a payment plan with that third-party purchaser; or

(2) An agreed judgment, agreed order, or other court order is in place that addresses the payment of the underlying tax claim or claims covered by a certificate of delinquency.

Section 8. Optional Payment Plans. (1) A third-party purchaser who is not required to register with the department under KRS 134.129, or who holds optional certificates of delinquency may offer payment plans to property owners under the same terms, conditions, and requirements established by this regulation.

(2) Any payment plan agreement between a third-party purchaser and a property owner in existence on the effective date of this regulation shall remain in effect according to the terms of the existing agreement. The third-party purchaser shall not impose the processing fee authorized by this regulation.

APPROVED:

Thomas B. Miller, Commissioner
Department of Revenue
Finance and Administration Cabinet

8/31/12
Date

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 24th, 2012, from 10:00 a.m. to 12:00 p.m., in Room 383, Capitol Annex Building, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31st, 2012. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

Contact Person: DeVon Hankins, Policy Advisor, Office of General Counsel, Finance and Administration Cabinet, 392 Capitol Annex, Frankfort, Kentucky, 40601, (502) 564-6660 (telephone), (502) 564-9875 (fax).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Devon Hankins, Policy Advisor and Legislative Liaison, Office of General Counsel, Office of the Secretary, Finance and Administration Cabinet, 392 Capitol Annex, Frankfort, Kentucky, 40601, (502) 564-6660 (telephone), (502) 564-9875 (fax)

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation provides details about how a third party purchaser of certificates of delinquency will notify a delinquent taxpayer about the availability of an installment payment plan. It provides guidance on the terms and conditions of the installment payment plan and it specifies how payments are to be applied by the third party purchasers.

(b) The necessity of this administrative regulation: This regulation is needed to help ensure all third party purchasers of certificates of delinquency are consistent and equitable in the terms offered as part of the installment payment plans offered to delinquent taxpayers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 134.490(5) requires third party purchasers to offer an installment payment plan upon written request of a delinquent taxpayer. This regulation provides more details to the general requirements authorized by the statute.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It will help ensure that all payment plans offered by third party purchasers are fair and equitable to each delinquent taxpayer.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: Not applicable.

(b) The necessity of the amendment to this administrative regulation: Not applicable.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Third party purchasers of certificates of delinquency will be affected. For the 2012 calendar year, there are 115 third party purchasers registered with the Department of Revenue.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an

amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The third party purchasers will have to develop an installment payment plan agreement and they will likely need some reprogramming of existing collection software or a new software program that can accurately track the payments made by the taxpayer and calculate new balances as payments are made.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): It is not known what costs will have to be incurred by the third party purchasers.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): More certificates of delinquency will be paid without having to resort to costly foreclosure proceedings.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: Minimal costs will be incurred by the Department of Revenue.

(b) On a continuing basis: Minimal to none.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The minimal costs incurred can be absorbed in current budget appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: No new fees will be administered by the Department of Revenue to implement this regulation. Third party purchasers will be entitled to an administrative fee not to exceed $8.00 per month for each installment payment plan.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Third party purchasers are entitled to a monthly administrative fee not to exceed $8.00 per month for each installment payment plan.

(9) TIERING: Is tiering applied? (Explain why or why not): Tiering is not applied. Only third party purchasers as defined in KRS 134.010 shall be allowed to offer a payment plan under the terms established herein, and this regulation treats all third party purchasers the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation Number: 103 KAR 5:220
Contact Person: Devon Hankins
Phone number: (502) 564-5660

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Revenue within the Finance and Administration Cabinet.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 134.490 (5).

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? The costs associated with initially establishing this regulation will be minimal and will be absorbed into the department operating budget.

(d) How much will it cost to administer this program for subsequent years? Minimal to no costs.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):
Expenditures (+/-):
Other Explanation: