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REAL PROPERTY TAX DUTIES

OF THE

COUNTY ATTORNEY’S OFFICE

PREPARED BY THE

OFFICE OF PROPERTY VALUATION

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This manual has been prepared by the Department of Revenue to serve as a guide to each county attorney’s office for their duties with respect to the collection of certificates of delinquency and personal property certificates of delinquency. Various county attorneys have been consulted during the compilation of this manual. It is hoped that you will find this manual to be a valuable resource for all staff members who deal with the collection of delinquent property taxes.

One note of caution needs to be mentioned. Although the material in this manual has been reviewed extensively for accuracy, it does not supersede the statutes that govern the administration of real property taxation. Therefore, if a statute is found to contradict something contained in this manual, the statute needs to be followed.

THE KENTUCKY PROPERTY TAX CALENDAR

The Kentucky property tax calendar provides a general outline of the major statutory due dates for various parts of the property tax assessment and collection cycle. These dates have been established by the Legislature in an attempt to provide for continuity throughout the year across the State as well as to provide for the equitable and timely levy and collection of property taxes. Although the county attorney is not directly involved in the property tax assessment process and the sheriff is the initial collector of property taxes, it is important that personnel in the county attorney's office understand the requirements of the property tax calendar.

Overview of the Tax Calendar

The assessment date of both real and personal property is January 1 of each year. The official name on the property tax bill is the January 1st property owner; however, a tax bill can be sent "in care of" a new owner if the property transfers during the year. Real property owners can list their property with the property valuation administrator between January 1 and March 1, while tangible personal property must be listed between January 1 and May 15.

The preliminary real property assessment totals are scheduled to be submitted by the property valuation administrator to the Office of Property Valuation by the first Monday in April. These totals are evaluated to ensure they meet the fair cash value standards that have been established. If the totals are accepted, the next phase of the property tax calendar may begin. If the totals are rejected, the property valuation administrator will receive specific instructions regarding what must be done to be accepted.

The tax roll inspection period is scheduled to begin on the first Monday in May and continue for thirteen days. The tax roll must be open for six days per week – including Saturdays – and is scheduled to conclude on the third Monday in May. Alternate schedules may have to be used for the inspection period. For example, the inspection period does not have to begin on a Monday; however, the applicable statute does provide that the last day of the inspection period cannot be a Saturday, Sunday or legal holiday.

During the tax roll inspection period, property owners may file assessment appeals in the county clerk's office. The county clerk needs to ensure that the property owner has had a conference with the property valuation administrator and has listed his or her opinion of value for the property in question before accepting the appeal. Taxpayers who have had a conference with the property valuation administrator have until the close of business of the day following the last day of the inspection period to file an appeal.

Within three working days after the close of the inspection period, the county clerk's office is required to provide a summary of all appeals filed to the property valuation administrator. The property valuation administrator then has three more working days to make the necessary changes to the tax roll due to the appeal filings and submit a final summary of the real property assessments to the Office of Property Valuation.

The local board of assessment appeals convenes no earlier than twenty-five and not later than thirty-five calendar days following the conclusion of the tax roll inspection period. The county attorney may be involved in the local board hearings, especially when the appeal pertains to a property with a complicated assessment that will likely be appealed to the Kentucky Board of Tax Appeals. If no appeals have been filed, the board meets for only one day to review the assessments of property owned by the property valuation administrator and the deputies in the office. The board meets for no more than five days unless an extension has been granted by the Office of Property Valuation. The clerk or an authorized representative of the clerk's office serves as clerk of the local board of assessment appeals.

After the assessments of all property in a county have been finalized and certified by the Office of Property Valuation, local tax rates can be set and tax bills can be prepared and mailed. The property tax calendar provides for delivery of the tax bills to the sheriff by September 15 of each year; however, many counties wait until October 1 or November 1 to mail their tax bills. If tax bills are mailed by October 1, taxpayers have until November 1 to pay their bill with a 2% discount. The face amount of the tax bill is due from November 2 to December 31. In January, a 5% penalty is added to the total amount due and beginning February 1 the penalty increases to 21% of the tax due. On April 15, all unpaid tax bills are transferred from the sheriff's office to the county clerk's office as of the close of business. The county attorney is then responsible for sending out notices to the delinquent taxpayers while the county clerk processes and distributes payments received, advertises the delinquent tax bills and conducts a sale of the delinquencies to third party purchasers. A separate section of this manual will provide a detailed explanation of the county attorney's responsibilities in this area.

A diagram of the property tax calendar is shown on the following page.

KENTUCKY PROPERTY TAX CALENDAR

	REAL ESTATE	PERSONAL PROPERTY
Assessment Date	January 1	January 1
Listing Period	January 1 - March 1	January 1 - May 15
Public Inspection of Tax Roll/PVA Conferences	13 Days Beginning First Monday in May (6 days per week, including Saturday)	
Property Valuation Certification	Upon Completion of Action by Department of Revenue	Upon Completion of Action by Department of Revenue
Board of Assessment Appeals	5 Days Beginning 25 to 35 Days After Inspection	
Establishment of Local Property Tax Rates	Within 45 Days of the Department of Revenue's Certification of the County's Property Tax Roll	Within 45 Days of the Department of Revenue's Certification of the County's Property Tax Roll
Tax Bills Delivered to Sheriff	By September 15	By September 15
Pay With Discount	By November 1	By November 1
Pay Without Discount	November 2 - December 31	November 2 - December 31
Tax Bills Delinquent	January 1	January 1
Pay With 5 Percent Penalty	January 1 - January 31	January 1 - January 31
Pay With 10 Percent Penalty and 10 percent Sheriff's add-on fee	After January 31	After January 31
Transfer of Delinquent Tax Bills from the Sheriff to the County Clerk	April 15 – Sheriff Collects Tax Through the Close of Business	April 15 – Sheriff Collects Tax Through the Close of Business
First Mailing of Delinquent Notices by County Attorney	Within 30 Days of Delinquent Tax Bills Being Transferred to the County Clerk	Within 30 Days of Delinquent Tax Bills Being Transferred to the County Clerk
Second Mailing of Delinquent Notices by County Attorney	At Least 20 Days After Mailing the First Notice But Within 60 Days After the Delinquent Tax Bills Have Been Transferred to the County Clerk	At Least 20 Days After Mailing the First Notice But Within 60 Days After the Delinquent Tax Bills Have Been Transferred to the County Clerk
Provide Protected List of Certificates of Delinquency to County Clerk	At Least 10 Days But Not More Than 20 Days Prior to the Annual Tax Sale Date	Since Personal Property Tax Bills Are Not Sold, the Protected List Does Not Apply to These Bills
County Clerk's Sale of Certificates of Delinquency	July 14 through August 28*	
Sheriff's Settlement	By September 1	

***Counties with delinquent unmined mineral or oil and gas tax bills have an additional 60 day time period to schedule their tax sale.**

OVERVIEW OF SHERIFF'S PROPERTY TAX COLLECTION DUTIES

After a county's property tax assessments have been certified by the Office of Property Valuation, the tax rate setting process begins. Any issues with getting the tax rates set can affect the tax collection schedule and should be monitored by the sheriff. After a collection schedule has been developed, the dates adopted need to be submitted to the Office of Property Valuation for approval. Once all tax rates and collection dates have been finalized and approved, the tax bills can then be printed and they are delivered to the sheriff's office for mailing.

In addition to receiving the tax bills from the county clerk, the Sheriff's Official Receipt for Property Tax Bills shall also be prepared by the county clerk or their authorized vendor. This form summarizes the tax amounts due from both real and tangible personal property for the State and all local taxing districts in the county. This receipt must be signed and acknowledged by the sheriff before the county clerk and the form is then filed and recorded in the order book of the county judge executive. The original of the receipt form is forwarded to the Office of Property Valuation so that it can be reconciled with the Certification of Equalized Assessment that was issued earlier in the year. Additionally, since the receipt is the basis for charges of property taxes to the sheriff's office for the collection year, the sheriff also needs to be sure that the amounts on the receipt are correct.

Collections will continue in accordance with the schedule adopted until the close of business on April 15th – or three months and fifteen days from the date the taxes were due under an alternative collection schedule. On that date, all unpaid tax bills are transferred to the county clerk's office where they are then known as certificates of delinquency. The sheriff's 10% add on fee and the commission that the sheriff's office would have received had the tax bill been paid are both included in the total due on the certificate of delinquency.

When the transfer of the delinquent tax bills is made, the sheriff and county clerk will need to complete a receipt which documents the number of bills and the total amount of the delinquencies that the county clerk's office is receiving. Both the sheriff and county clerk need to sign this receipt form acknowledging the transfer.

An issue to keep in mind with the transfer of the delinquent tax bills is the handling of the payments that are postmarked timely but received after the transfer date. KRS 134.119 (3) (a) 2 requires that timely postmarked payments must be accepted and processed for the amount due immediately before the transfer date. Payments of this type can be processed as agreed upon by the sheriff and county clerk, but if there is no agreement in place between the two offices, the sheriff shall accept and process the payments. If the sheriff's office does process these payments, a supplemental receipt will need to be completed to update the total number of bills and the total delinquent amount that will be handled by the county clerk's office. As with the original receipt form, both the sheriff and county clerk will need to sign the supplemental receipt form to acknowledge the updated totals.

In addition to the regular property tax bills that are prepared, the sheriff's office is also responsible for the collection of various types of tax bills which address special situations. The different types of tax bills that may need to be prepared and collected are additional, supplemental and omitted property tax bills.

Additional property tax bills are prepared when a taxpayer does not receive a tax bill even though all information about the property was available in the property valuation administrator's office. Regardless of what phase the tax collection schedule for the regular bills is in, the additional bill must have a thirty day time period for each collection period (2% discount, face amount, 5% penalty and 10% penalty plus 10% sheriff's fee).

Supplemental property tax bills result from the property assessment appeals process. While an appeal is pending, KRS 133.120(9) entitles a taxpayer to pay property tax on his or her claim of value. When a final decision has been reached for the assessed value, if it is higher than the taxpayer's claim of value, a supplemental tax bill must be prepared. A supplemental tax bill may also have interest added to the total due if it is issued after the regular tax bills have entered the penalty phase of the collection schedule (typically starting in January).

Omitted real property tax bills are prepared when the property valuation administrator has determined that a parcel has been left off of the property tax roll. Omitted property taxes can be levied against a taxpayer for up to five years. The taxpayer must first be notified by the property valuation administrator of the omitted assessment and given an opportunity to appeal the assessed value. When the omitted assessment has been finalized, an omitted property tax bill must be prepared by the county clerk's office and delivered to the sheriff's office for collection.

An omitted property tax bill will consist of tax, penalty and interest. The applicable state and local tax rates must first be used to calculate the tax due for an omitted tax bill. If the property valuation administrator has determined that the omitted assessment was voluntarily listed by the taxpayer, the penalty to apply to the omitted tax bill will be 10% of the tax due. If it has been determined that the assessment was involuntarily listed by the property valuation administrator, the penalty will be 20% of the tax due. Finally, interest at the statutory tax interest rate must be added to the omitted bill. Since the tax interest rate usually fluctuates from year to year, it is likely that different interest rates will have to be used for an omitted bill that covers more than one year. A copy of the Department of Revenue Circular 62C112 which provides a detailed example of the interest computations for an omitted property tax bill is included in the Appendix of this manual.

DELINQUENT PROPERTY TAX COLLECTION PROCEDURES AVAILABLE TO THE SHERIFF

All regular unpaid tax bills are considered delinquent on January 1 following the assessment date and are subject to a 5% penalty during January. Beginning February 1st, all unpaid tax bills are subject to a 10% penalty and an additional 10% fee for the sheriff. Keep in mind that these dates are subject to change if the tax calendar has been delayed. Examples of the collection methods available to the sheriff are detailed in the following sections.

Mailing of Second Notice

Anytime after January 1, the sheriff will send out a second notice to delinquent taxpayers advising them of the delinquent amount now due. This notice should also inform the taxpayer that the delinquent tax bill will be subject to a significant increase in penalties, interest and fees and may be acquired by a third party purchaser if it is not paid in the sheriff's office by the close of business on April 15th. If a county's collection schedule has been delayed then the sheriff will use an alternate date in the notice as the deadline for paying the delinquent bills in the sheriff's office.

Distrain Procedures

If collection rates are less than 85% for real property tax bills at the expiration of the 5% penalty period, the Department of Revenue can require the sheriff to implement additional collection procedures. The first method for the sheriff to attempt would be to distrain personal property owned by the delinquent taxpayer. This action is authorized under KRS 134.119 (5) (a), which makes all personal property of a delinquent taxpayer subject to distraint. If this type of action is needed, it is recommended that the sheriff first distrain any bank account of the taxpayer found in the county. If no bank account can be located within the county a second approach is to distrain the wages or other compensation payable to the delinquent taxpayer. A "Final Notice Before Distraint" (Exhibit #1) and "Notice of Distraint" (Exhibit #2) are included in the Appendix.

Attachment Procedures

The sheriff also has the option of attaching funds owed to the delinquent taxpayer which are in the hands of a third party. This procedure is authorized by KRS 135.010. An attachment differs from distraint in that it is a statutory procedure to freeze assets held by a third party until a judiciary hearing leads to a court order requiring payment to the sheriff. An attachment proceeding would require the assistance of the county attorney. More details about this process are provided in the "Duties of the County Attorney" section that begins on Page 7.

OVERVIEW OF COUNTY CLERK'S DELINQUENT PROPERTY TAX COLLECTION DUTIES

The beginning of the county clerk's real property tax collection duties for each year's bills starts when the sheriff completes his collection efforts by transferring the delinquent tax bills to the county clerk as of the close of business on April 15th – or the fifteenth day of the fourth month after the date the taxes were due under an alternative collection schedule. The county clerk is the local official responsible for conducting the annual sale of certificates of delinquency to third party purchasers.

After the bills have been received in the county clerk's office there will be a period of at least 90 days before the county clerk will conduct the tax sale. During this time frame the following activities must occur:

A list of all certificates of delinquency received from the sheriff must be provided to the Department of Revenue within 30 days of receipt;

The county clerk and Office of Property Valuation must set a tax sale date;

The county attorney is required to mail a 30 day notice to the delinquent taxpayers and – if necessary – another notice within 60 days;

The county clerk will advertise the delinquent real property tax bills at least 30 days but not more than 45 days prior to the tax sale date in both the local newspaper and on a county sponsored website;

The county clerk will register third party purchasers who desire to participate in the delinquent tax sale;

The county attorney must provide to the county clerk a list of certificates of delinquency that are to be excluded from the tax sale at least 10 days but not more than 20 days prior to the sale date; and

The county clerk will process all payments made by delinquent taxpayers prior to the tax sale.

A “Real Property Tax Duties” manual has been developed for county clerks which discusses each of these duties in detail. A copy of this manual can be accessed and downloaded at www.revenue.ky.gov/clerknetwork. Additionally, there are a limited number of these manuals available from the Office of Property Valuation.

DUTIES OF THE COUNTY ATTORNEY WITH REGARD TO CERTIFICATES OF DELINQUENCY

Duties While Sheriff is Collecting Property Tax Bills

As noted in the previous section that provided an overview of the sheriff’s duties with regard to collecting property tax bills, the sheriff may collect by means of distraint without the services of the county attorney. However, if the sheriff elects to use the attachment procedure, the county attorney and circuit court become involved. The attachment proceeding is an administrative process which includes a provision for judicial oversight. Therefore, it is initiated by contacting the circuit judge’s office or court administrator for a hearing date. The sheriff then prepares a “Notice to Appear in _____ Circuit Court” (Exhibit 3) and delivers it to the person(s) owing funds to the delinquent taxpayer. Copies must be mailed to the delinquent taxpayer as well. The county attorney should attach copies of the served notices to the ex parte motion for a hearing - “Motion for Order to Set Hearing Date” (Exhibit 4) and submit it to the circuit court clerk’s office for docketing and hearing. An “Order Setting Hearing Date” (Exhibit #4) will then be issued by the court.

At the hearing, the judge can be provided copies of the “Opinion and Order Directing Payment” (Exhibit 5) for completion. Copies of the opinion and order are provided to all affected persons as authority for the transfer of funds to the sheriff.

These same procedures can be used by the county attorney at the expiration of the one year tolling period prior to filing a foreclosure action.

Duties After the Tax Bills Have Been Transferred to the County Clerk

After the delinquent tax bills have been transferred from the sheriff to the county clerk, the bills with real property assessments are then known as certificates of delinquency and bills with only tangible property assessments are known as personal property certificates of delinquency. In accordance with KRS 134.504 (1) the Department of Revenue is then responsible for the collection of these certificates of delinquency; however, the collection duties for these delinquencies must be offered to each county attorney. A county attorney who elects to perform the appropriate collection duties will then enter into a contract with the Department of Revenue on an annual basis. A copy of both the collection contract and KRS 134.504 is included in the Appendix of this manual.

Mailing of 30 Day Delinquent Notices

Within 30 days of the delinquent tax bills being transferred to the county clerk's office, the county attorney is required to mail a notice – by regular mail – to the delinquent taxpayer or to the in care of address if the property was sold during the tax year. The information that must be included in the notice is as follows:

The name, address and telephone number of a contact person in the county attorney's office.

That the certificate of delinquency is a lien of record against the property in question, the amount due is also a personal obligation of the taxpayer as of the January 1 assessment date and that the certificate of delinquency bears interest at an annual rate of 12% and will be subject to collection as provided by law.

The total amount due as of the date of the notice.

An advisory to the taxpayer that anytime after 90 days from the creation of the certificate of delinquency, the certificate may be acquired by a third party purchaser and substantial additional administrative costs and fees will be imposed and that collection actions may include foreclosure.

A notice that the taxpayer may qualify for a payment plan with the county attorney if the taxpayer meets the requirements established by the county attorney and if terms are agreed to prior to the date of the county clerk's tax sale.

The county attorney is also responsible for filing a list of the names and addresses to which a 30 day notice was mailed in the county clerk's office. A certificate attesting that the notices were mailed in accordance with KRS 134.504 (4) must accompany the list.

Procedures for Notices Returned by the Post Office

The county attorney shall submit all 30 day notices returned as “undeliverable” by the post office to the property valuation administrator. A list of the returned notices is also required to be filed in the county clerk’s office and that list is then recorded in the county’s order book. The property valuation administrator then has 20 days to attempt to find an updated address for each returned notice. Upon receipt of new information from the property valuation administrator, the county attorney will then resend the 30 day notice.

At the same time the returned notices are submitted to the property valuation administrator, the county attorney shall also provide a list of all owners whose tax bills are delinquent. The property valuation administrator shall review the list in accordance with KRS 132.220(5) to ensure the properties on the list can be identified and located.

Second (60 Day) Notice Requirements

At least 20 days after mailing the first notices, but within 60 days of the establishment of a certificate of delinquency, the county attorney is required to send a second notice – by regular mail – to property owners who continue to have a delinquency. These notices should be sent utilizing any updated address information that may have been received since the first notice was mailed. If the 30 day notice was returned by the post office and the property valuation administrator was unable to find a better address, the county attorney shall address the 60 day notice to “Occupant” and mail the notice to the address of the property to which the certificate of delinquency applies. The information to include in these notices is as follows:

The name, address and telephone number of a contact person in the county attorney’s office.

The specific date of the county clerk’s tax sale along with a statement that the certificate of delinquency is subject to being purchased by a third party at the tax sale and significant additional fees will be imposed if that occurs and that collection actions may include foreclosure.

Notification that the taxpayer may qualify for a payment plan with the county attorney if the taxpayer meets the requirements established by the county attorney and if terms are agreed to prior to the tax sale.

The county attorney is required to file a list of the names and addresses to which a 60 day notice was mailed in the county clerk’s office along with a certificate attesting that the notices were mailed in accordance with KRS 134.504 (4)

Failure to Send the Required Notices

If the county attorney fails to send the statutory notices required, the validity of the certificate of delinquency is not affected. However, the county attorney will not receive any compensation related to any certificate of delinquency for which the notices were not sent. Additionally, the county attorney would be considered in violation of the collection contract that was entered into with the Department of Revenue. The Department would

then assume responsibility for the collection process and the collection fees that would have otherwise been paid to the county attorney's office shall be paid to the Department for deposit in a delinquent tax fund that has been established.

Protected List of Certificates of Delinquency

The county attorney is required to provide to the county clerk at least 10 days but not more than 20 days prior to the tax sale date a list of current year certificates of delinquency that are not eligible to be sold. This list will include certificates of delinquency that meet the following criteria:

Under a payment plan with the county attorney and taxpayer is current on all payments;

The certificate of delinquency is involved in litigation initiated by the county attorney or in which the county attorney responds or files an answer; or

Involved in bankruptcy litigation in which the county attorney has filed a claim.

A common example of litigation initiated by the county attorney would be when a foreclosure action is initiated against a previous year's certificate of delinquency that was not acquired by a third party purchaser. If the current year's tax bill for the same property is also not paid, the county attorney should place that certificate of delinquency on the protected list since the current year's delinquency can be included in the litigation that has been filed. Collection on the amount due will then be made through the lawsuit rather than selling the delinquency to a third party purchaser. If a county attorney fails to include a certificate of delinquency in this type of situation on the protected list and it is sold to a third party purchaser, this would represent a valid reason for the county clerk to issue a refund to the third party.

With regard to bankruptcy litigation, it is realized that there will be instances where a filing will have been made that affects a current year certificate of delinquency prior to the tax sale and the county attorney will not be aware of the filing – and no answer or claim will have been made – by the time the protected list is due to be delivered to the county clerk's office. When this occurs, the county clerks have been instructed that there is no obligation to issue a refund to a third party purchaser. The reasoning behind this decision is if a certificate of delinquency is discharged through a bankruptcy filing, the discharge only releases the owner of the property from being responsible for the liability. The delinquency continues to be attached to the real property in question. When the property is sold at a later date, the certificate of delinquency would still need to be paid as part of the real estate transaction. Therefore, a third party purchaser holding a certificate of delinquency that has been discharged by a bankruptcy filing can still recover their money when the property sells.

A third party purchaser concerned about a possible bankruptcy filing should be encouraged to do their own research before the county clerk's tax sale. A subscription service known as "PACER" can be utilized by third party purchasers to get up to date information about bankruptcy filings. Third party purchasers can be directed to the following website to obtain more information about this service:
www.pacer.psc.uscourts.gov.

Compensation of the County Attorney's Office

The county attorney is entitled to be paid 20% of the amount due each taxing unit as compensation for the duties performed in connection with the collection efforts made on certificates of delinquency and personal property certificates of delinquency. However, if payment in full is voluntarily made by the taxpayer within 5 business days of the county clerk's receipt of the delinquent tax bills from the sheriff, the county attorney's fee is waived.

In addition, for each notice mailed, \$1.00 is added to the amount due on a certificate of delinquency to offset the postage costs incurred by the county attorney. Upon payment of the certificate of delinquency this amount is distributed to the county attorney by the county clerk.

If a county attorney files a court action in an attempt to collect a certificate of delinquency, or files a cross claim, the county attorney shall be entitled to an additional 13% fee computed on the amount of the certificate of delinquency. The county attorney is also entitled to reimbursement for costs incurred due to the court action. Both of these fees are added to the total due on the certificate of delinquency. If this type of action is taken the county attorney should inform the county clerk so that all additional fees to which the county attorney is entitled will be added to the total due.

Installment Payment Plans Offered by the County Attorney

The county attorney must establish a system for accepting installment payments from a delinquent taxpayer. However, there are no set parameters that a county attorney must follow when developing an installment payment plan. Additionally, the county attorney's right to initiate court action or take other authorized collection methods is not waived by an installment payment agreement when the taxpayer fails to remit payments in accordance with the agreement.

When an installment payment plan is entered into with a delinquent taxpayer the county clerk needs to be notified so that their records can be updated. Likewise, if a taxpayer defaults on a payment plan, the county clerk needs to be informed so that the delinquency can again be made available for purchase by a third party.

Penalty Waiver Guidelines

The Office of Property Valuation has issued guidelines for the waiver of penalty, fees and – in one instance – interest that apply to delinquent property tax bills. These guidelines are included in the Appendix of this manual.

While the tax bills are the responsibility of the sheriff's office to collect, only the sheriff, or an authorized deputy, will be involved in making a penalty waiver decision. After the delinquent tax bills have been transferred to the county clerk's office, since the county attorney is then the local official charged with enforcing the collection of certificates of delinquency, the county attorney will be the primary evaluator of the waiver requests received. However, the county clerk and sheriff should be consulted before any final

decision is made since fees due to each office are included in the total due on a certificate of delinquency. Included with the guidelines is a form that can be used to document why a waiver was granted. This form includes a signature line for the county clerk, sheriff and county attorney to indicate their agreement with the waiver decision made.

If the local officials are unsure if a waiver should be granted for a particular situation, all documentation can be forwarded to the Office of Property Valuation. After all information has been reviewed, a letter will be sent to both the taxpayer and the local officials detailing the decision made.

Enforcement Collection Actions Available to the County Attorney

All certificates of delinquency that remain unpaid after the county clerk's tax sale remain subject to enforcement action by the county attorney. An action to collect a certificate of delinquency may be brought any time after one year from the date the taxes became delinquent and within eleven years from the initial delinquency date. For a 2012 certificate of delinquency with an initial delinquency date of January 1, 2013, no enforcement action can be taken until January 1, 2014 and any action must be brought prior to January 1, 2024.

When pursuing the various enforcement actions detailed in the following sections, keep in mind that KRS 134.504(11) allows the county attorney to request access to the Department of Revenue's tax collection databases. More details about the process to follow to obtain access to the Department's resources can be found on page 8 of the collection contract between the Department and county attorney.

Personal Actions Filed Against A Delinquent Taxpayer

Since a delinquent property tax bill is a personal debt of the responsible party as well as a lien against the real property, the County Attorney may choose to pursue a personal action against a delinquent taxpayer. This type of action is filed in the local district court for amounts in controversy not exceeding four thousand dollars (\$4,000), exclusive of interest and costs. If the amount in controversy exceeds four thousand dollars (\$4,000), exclusive of interest and costs, the action must be filed in the circuit court.

This action is initiated by preparing a "Complaint" (**Exhibit 9**) and a "Civil Summons" (**Exhibit 10**) in triplicate. One set of forms is mailed to the delinquent taxpayer, one set is filed with the appropriate court clerk, and the final set is retained by the county attorney. These forms are sent by certified mail to the delinquent taxpayer and the mailing cost should be added to the total amount due.

The delinquent taxpayer is given twenty (20) days to respond to the Complaint and Civil Summons. If no response is received, a "Motion and Notice for Default Judgment" and an affidavit (**Exhibits 11 and 12**) are prepared, filed with the appropriate court clerk and mailed to the delinquent property owner. These documents will usually generate a payment or response from the property owner.

If an action goes before the court, the introduction of the certificate of delinquency generally proves a prima facie case. A "Default Judgment" (**Exhibit 13**) will be issued against the delinquent taxpayers ordering them to pay the appropriate amount of taxes,

penalty, and interest. When the total amount due has been paid, an “Order of Dismissal” (**Exhibit 14**) can be used to dismiss the case.

Filing An Action Against the Real Property

An **action to foreclose on the tax lien** (certificate of delinquency) or an **action to execute on the judgment lien**, if a personal judgment has been previously obtained in order to satisfy the delinquent property taxes, are generally done if the other actions listed above fail to result in payment of the total liability. To initiate this action it will be necessary to do a limited title search on the parcels of property, perhaps fifteen (15) years, or so, in order to locate all liens on the property and any subsequent purchasers not shown on the certificates.

After this data is obtained, suit should be filed to enforce the appropriate lien, naming all interested parties as defendants in the “Complaint” (**Exhibit 15**) and a “Lis Pendens Notice” (**Exhibit 16**) filed on each piece of property when suit is brought.

When a suit is filed, some taxpayers will pay their delinquent taxes immediately. After the taxes, including court costs, are paid, a “Motion to Dismiss” and “Order of Dismissal” (**Exhibit 17**) is required to dismiss the case. Whenever an action is dismissed following payment of the tax claims, the Lis Pendens involved should be released with the “Release of Lis Pendens”. (**Exhibit 18**)

Although a large number of delinquent taxpayers will pay their taxes after suit is filed, there will be some against whom judgment for the sale of the property will have to be taken to collect the sums due.

If an action to collect a certificate of delinquency goes to trial, the County Attorney generally only needs to introduce the certificate of delinquency to prove a prima facie case. Delinquent taxpayers will generally have no defense to the action since failure to perform most procedural steps in exact accordance with the statutes does not constitute a valid defense. If the attorney for the defendant files an answer that is essentially a denial of the allegations of the complaint, then a motion for summary judgment and accompanying affidavit (**Exhibits 19, 20 and 21**) with a copy of the certificates of delinquency attached should suffice.

Sale of Real Property

When property is sold pursuant to a judgment of foreclosure enforcing the tax lien (certificate of delinquency) or the judgment lien, if a prior personal judgment is obtained against the taxpayer, the property must be appraised by two independent appraisers of the county approved by the local master commissioner (KRS 426.520). Additionally, a right of redemption exists for the delinquent taxpayer as authorized by KRS 426.530 if the property is sold for an amount that is less than two-thirds of its appraised value.

The owner of a certificate of delinquency must obtain a judgment and order of sale from the circuit court in the county where the land is located (**Exhibit 22**). The judgment should order the Master Commissioner to advertise the property and sell it at public auction. The public auction is generally held at the county courthouse.

All sales of real property must be advertised in a county newspaper once each week for three weeks. The advertisement must contain the time, place, and terms of the sale as well as a description of the property to be sold. Additionally, any tenant or other person in possession of the property other than the delinquent taxpayer, and any other owner of a certificate of delinquency against the same property, must be notified of the sale.

The owner of the land may redeem it at any time before the sale, but, has no right of redemption after the sale if a private individual becomes the purchaser of the land at the tax sale and the property brings at least two-thirds of the appraised value of the property.

If there is no purchaser at the foreclosure sale, the master commissioner deeds the property to the owner or owners of the certificate or certificates of delinquency, and they shall have a pro rata interest therein in accordance with the amount of their respective certificates.

If the holder of the certificate of delinquency is the taxing districts, the deed will go to the state, county, and local taxing districts. The Department of Revenue (or County Attorney) then sells the land and the Cabinet deeds the property to the purchaser. The **deed** should be sent to the Division of Collections, Legal Support Branch, P.O. Box 5222, Frankfort, Kentucky 40602, for review and obtaining the Secretary's signature. The delinquent taxpayer may redeem his property at any time before the Secretary of the Finance & Administration Cabinet gives a deed to the purchaser by paying the county clerk.

After the sale, the Master Commissioner must prepare a report of sale for circuit court approval. This requires the County Attorney to move the court for an order confirming the sale. **(Exhibits 23 and 24)** Any part of the sale price remaining after the amount of the tax lien, interest, penalties, fees, commissions, charges, costs, and attorney fees have been subtracted, is paid to other lower priority lien holders, if any, and any remainder is paid to the delinquent taxpayer.

Pursuant to KRS 426.260, the purchaser of the land after obtaining a conveyance may upon ten (10) days notice in writing to the delinquent, whose lands have been sold, enter a motion on the docket in the circuit court of the county where the land is situated for a judgment for the possession of the land.

Additional Certificate of Delinquency Tax Lien Considerations

The state and county have a lien on property upon which the taxes remain unpaid as of the delinquency date-typically January 1st. The lien will be in the amount of all unpaid taxes, penalties, interest, fees, commissions and any other expenses incurred in the process of collecting the amount due. A tax lien on real property for taxes due on that property takes precedence over all other liens on the specific property assessed for the tax, including a purchase money mortgage. Payment in full of the entire tax claim, whether represented by an unpaid bill or a certificate of delinquency, cancels the lien on the taxpayer's property and provides the authority for releasing any lien filed of record at the expense of the party paying the tax.

When the land is sold privately between the date it is assessed for taxes (ad valorem tax date – January 1) and the date it becomes delinquent, which is generally January 1 of the following year, it appears that a problem may occur. Since the tax lien does not arise automatically by operation of law until the following January 1, when the taxes become delinquent, it appears that the purchaser takes the land free of the tax lien. However, that is incorrect. KRS 134.420(2) provides:

[t]his lien shall not be defeated by gift, devise, sale, alienation, or any means except by sale to a bona fide purchaser, but no purchase of property made before final settlement for taxes for a particular assessment date has been made by the sheriff shall preclude the lien covering the taxes.

When the sheriff turns the delinquent tax bill over to the county clerk the clerk can immediately file liens on the property and thereby give constructive notice to all potential purchasers that the property secures the tax liability for taxes assessed against the property. This provision of KRS 134.420 provides for a lien on the property which is valid against the purchaser who bought the property while the taxes on it remained unpaid. The purchaser is charged with knowledge that the law dictates the taxes shall be paid by either the buyer or seller. The purchaser who relies on the seller's representation that sale year taxes were paid may have a cause of action against the seller, but has no defense against the tax liability secured by a lien on the property.

The property tax, penalties and interest shall be a personal debt of the person liable for the payment, from the time the tax becomes due until paid, notwithstanding the fact that they may have sold or parted with the property. A tax lien is valid for **eleven (11) years from the date the taxes become due**. An action to collect on a certificate of delinquency may be brought at any time after the passage of one year from the date the taxes become delinquencies through eleven years.

Federal Tax Liens

Federal tax liens are filed by the Internal Revenue Service whenever a demand has been made on a delinquent taxpayer and the tax remains unpaid. The lien priority of federal liens is a matter of federal law. Generally, federal liens are entitled to the priority granted by the date of their filing. Under 26 U.S.C. § 6323(b)(6) state ad valorem property tax liens are entitled to a super priority equivalent to the one they are granted under Kentucky law.

The most important thing to note about federal tax liens is if the United States is not made a party to the action; or, if the complaint does not set out the tax liens with sufficient particularity; or, if service is not made properly upon the United States, the federal tax lien will not be extinguished and will transfer with the property into the hands of the purchaser.

Paragraph 7 of the “Complaint” (**Exhibit 15**) sets out the lien with sufficient particularity for this purpose.

Service on the United States in suits to foreclose or quiet title is governed by 28 U.S.C. § 2410(b), which provides in relevant part:

In actions in the State courts service upon the United States shall be made by serving the process of the court with a copy of the complaint upon the United States attorney for the district in which the action is brought or upon an assistant United States attorney or clerical employee designated by the United States attorney in writing filed with the clerk of the court in which the action is brought and by sending copies of the process and complaint, by registered mail, or by certified mail, to the Attorney General of the United States at Washington, District of Columbia. In such actions the United States may appeal and answer, plead or demur within sixty days after such service or such further time as the court may allow.

Three copies must be served by mail upon the Attorney General. Additionally, the United States has certain other unique statutory rights pursuant to Section 2410 which should be reviewed by the county attorney or Department of Revenue before the action proceeds to trial.

Effect of Bankruptcy

The most important effect of the filing of bankruptcy by the person liable for the taxes is the **automatic stay** at 11 U.S.C. § 362, which operates to prohibit **any collection activity** against the debtor (and his land) from the date of the bankruptcy petition until the case is closed. Upon receiving notice that the petition has been filed, the sheriff, county attorney, and all other officers, shall immediately cease **all** collection activities.

Note that § 362(b) creates an exception for the creation or perfection of a statutory lien for ad valorem property taxes that become due after the commencement of a case. Title 11 § 362 (b)(18) provides in relevant part:

The filing of a petition . . . **does not operate as a stay** –

under subsection (a) **of the creation or perfection of a statutory lien** for ad valorem property tax, or a special tax or special assessment on real property whether or not ad valorem, imposed by a governmental unit, **if such tax or assessment comes due after the date of the filing of the petition.**

(emphasis added.) This exception is limited to the creation or perfection of liens for ad valorem property tax or a special tax or assessment on real property. The exception does not permit enforcement of the lien free of the automatic stay. Thus, the county can create or perfect its lien for ad valorem property tax on property assessed January 1st of the year the debtor files bankruptcy, and also on a special tax or special assessment on real property whether or not ad valorem, if the tax is due after the date of the filing of the petition.

Once the debtor is discharged from bankruptcy, you may be able to proceed with collection activities since tax claims entitled to priority are exempted from bankruptcy discharges. The United States Supreme Court held in Dewsnup v. Timm, 502 U.S. 410, 418, 112 S.Ct. 773, 778, 116 L.Ed.2d 903 (1992) that under the Bankruptcy Act of 1898, a lien on real property passed through bankruptcy unaffected.

A property tax is entitled to priority status only if 1) it is assessed before the commencement of the bankruptcy case and 2) the last date on which the tax could be paid without penalty was less than one year before the start of the case.

Title 11 § 507 (a)(8) provides in relevant part:

(a) The following expenses and claims have priority in the following order:

* * *

(8) Eighth, allowed unsecured claims of governmental units, only to the extent that such claims are for --- . . .

* * *

(b) a property tax incurred before the commencement of the case and last payable without penalty after one year before the date of the filing of the petition;

Title 11 § 523 (a)(1)(A) provides in relevant part:

(a) A discharge . . . does not discharge an **individual debtor** from any debt ---

(1) for a tax or customs duty ---

(a) of the kind and for the periods specified in section 507(a)(3) or 507(a)(8) of this title, whether or not a claim for such tax was filed or allowed; (emphasis added.)

Property taxes assessed after the start of the case must be paid as accrued. As a general rule, the current year property taxes (year of filing) and the immediately preceding tax year will be exempted from discharge.

Effect of Fair Debt Collection Practices Act

The Fair Debt Collection Practices Act does not apply to officers or employees of any state if debt collection is part of their official duties. The term “debt collector” does not include “any officer or employee of the United States or any State to the extent that collecting or attempting to collect any debt is in the performance of his official duties.” The term “State” means “any State, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any political subdivision of any of the foregoing.”

THIRD PARTY PURCHASERS OF CERTIFICATES OF DELINQUENCY

Although statutes allowing the sale of delinquent real property tax bills have been in existence for decades, it has only been within the past 10 to 15 years that third party purchasers have started acquiring large numbers of certificates of delinquency in Kentucky. Legislation enacted in 2009, 2010 and 2012 has established the following requirements on third party purchasers:

A registration process at both the State and county levels that must be met before a third party is eligible to make any purchases;

Imposed limits on the pre-litigation fees and administrative costs that can be added to the amount due on a certificate of delinquency;

Requires a third party purchaser to maintain up to date contact information on file with the Department of Revenue and the appropriate county clerk's office(s);

Must send notices on an annual basis that contain statutorily specified information;

Must work with the local property valuation administrator to find updated address information for the delinquent taxpayer for all returned notices; and

An installment payment plan must be offered to a delinquent taxpayer upon receipt of a written request.

The statutes and regulations that govern these requirements for third party purchasers can be found in KRS 134.452, KRS 134.490, 103 KAR 5:180, 103 KAR 5:190 and 103 KAR 5:220. Copies of these statutes and regulations can be found in the Appendix of this manual.

A third party purchaser can ultimately force the sale of real property to satisfy the lien represented by a certificate of delinquency in the same manner that can be utilized by the county attorney for all delinquencies that are not purchased by a third party. When this occurs, there may be other delinquencies against the property that were not acquired by a third party. The county clerk should receive a distribution from the Master Commissioner from the proceeds of the sale to pay these delinquencies. If the amount received is insufficient to pay all of the delinquencies in full, county clerks have received guidance on how to distribute the funds received.

Refunds to third party purchasers are governed by KRS 134.551. These provisions will primarily involve the county clerk or property valuation administrator; however, you may be consulted if there is a question about whether or not a delinquency should have been included on the protected list. A copy of this statute is included in the Appendix of this manual.

MISCELLANEOUS PROPERTY TAX ISSUES

Listing of Real Property

It is the duty of all persons owning or having any interest in any real property taxable in this state to list or have listed the property with the PVA of the county where it is located between January 1 and March 1 of each year. Any taxpayer may list his property in person before the PVA or his deputy, or may file a property tax return by first class mail. Any real property correctly and completely described in the assessment record for the previous year, or purchased during the preceding year and the value stated in the deed pursuant to KRS 382.135, may be considered to be listed for the current year if no changes affecting the assessed value have been made to the property. If a written request is made by the PVA or Department of Revenue for a property tax return to verify existing information or to provide additional information for assessment purposes, the owner shall furnish the return. Any real property under assessed because the owner intentionally failed to provide information, or intentionally provided erroneous information, shall be subject to revaluation. The difference in value shall be assessed as omitted property under KRS 132.290. All persons in whose name property is properly assessed shall remain bound for the tax, even though they may have sold or parted with the property.

If the owner fails to list the property, the PVA shall nevertheless assess it. The PVA may swear witnesses in order to ascertain the person in whose name to list the property. The PVA, his employee, or employees of the Department of Revenue, may physically inspect and revalue land and buildings in the absence of the property owner or resident. The exterior dimensions of the buildings may be measured and photographs taken. However, except for buildings under construction or not yet occupied, an interior inspection of residential and farm buildings, and the nonpublic portions of commercial buildings shall not be conducted in the absence or without the permission of the owner or resident.

Real property shall be assessed in the name of the owner, if ascertainable by the PVA, otherwise in the name of the occupant, if ascertainable, and otherwise to “unknown owner.”

Exoneration of Assessment on Real Property

Real property tax roll entries for which tax bills have not been collected at the expiration of the one (1) year tolling period (KRS 134.546), and for which the PVA cannot physically locate and identify the real property, shall be deleted from the tax roll and the assessment shall be exonerated. The PVA shall keep a record of these exonerations, which shall be open under the Open Records Act (KRS 61.870 to 61.884). If at any time one of these entries is determined to represent a valid parcel of property, it shall be assessed as omitted property under KRS 132.290.

Any loss of ad valorem tax revenue suffered by a taxing district because of the exoneration of these uncollectible tax bills may be recovered through an adjustment in the tax rate for the following year.

Apportionment of Taxes on Real Property

When real property is owned by at least two (2) persons and has been assessed as one tract and one owner does not pay his share of the tax, any other owner may pay the share of the owner not paying. The owner paying shall have a tax lien on the delinquent taxpayer's portion of the property.

Whenever one certificate of delinquency exists on land which is divided both as to ownership and area into two or more tracts, any owner may make application to the county attorney and to the PVA for an apportionment of the assessment.

The PVA will apportion the amount of the encumbrance among the owners of each tract according to the value of each respective interest. Any owner of a tract for which a certificate of delinquency was apportioned may have the lien released by paying the county clerk his or her pro rata share of the certificate of delinquency as determined by the apportionment.

The apportionment process is governed by KRS 134.421. A copy of this statute is included in the Appendix of this manual.

APPENDIX

INDEX OF EXHIBITS

The sample documents contained in this Appendix have been prepared for use by the sheriffs and county attorneys. These documents are suggested formats and should be adapted for your use.

SHERIFF

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COUNTY ATTORNEY

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COMMONWEALTH OF KENTUCKY
_____ COUNTY SHERIFF

_____, Kentucky _____

TO: _____

DATE:

RE: Bill Number: Tax Year:
Class of Property: Amount Due:
Description of Property:

FINAL NOTICE BEFORE DISTRAINT

Kentucky Revised Statute 132.220 requires you to list your real and personal property for purposes of assessment and taxation. A notice of assessment was mailed to you and you had a right to contest that assessment. You have either waived your administrative remedies by failure to protest the assessment, or have exhausted all appeal rights provided by KRS 133.120. In either event, your assessment is final. You were mailed a copy of the tax bill and the due date of the taxes was published in _____, a newspaper of general circulation within the county.

Although notice and demand have been made for payment of your tax liability as shown above, our records indicate that the amount set out above has not been paid and is delinquent.

To avoid seizure action, full payment due must reach this office within ten (10) days from the date of this notice. A certified check, cashier's check, or money order should be made payable to the _____ County Sheriff and forwarded to this office.

If payment is not submitted within ten (10) days, without further notice to you, the sheriff will enforce collection as provided by KRS 134.119(5). Seizure will be made of all personal property or rights to property.

All your property, both real and personal, is subject to a lien which went into effect on _____, the date that the unpaid tax bill became delinquent. All real estate on which taxes are not paid will be advertised and the tax liens sold at the courthouse door.

If a recent payment has been submitted which is not reflected in the above balance, please contact the sheriff's office at the address shown above in order that your account may be credited.

Sheriff, _____ County

COMMONWEALTH OF KENTUCKY
_____ COUNTY SHERIFF

NOTICE OF DISTRAINT

TO:

RE: [name & address of taxpayer]

DATE:

You are notified that there is now due, owing, and unpaid to the Commonwealth of Kentucky, _____ County and other taxing districts, from the taxpayer whose name appears above, the sum of \$ _____, as set out more fully below:

Total Taxes*	\$ _____
10% Penalty	_____
Sheriff's Notice Fees	_____
Other Costs	_____
Total Amount Due	\$ _____

You are further notified that a notice has been mailed to the taxpayer pursuant to KRS 133.220(4) showing the amount and due date of the taxes and that the taxes were not timely paid; and, that a demand has been made upon the taxpayer for the above amount the taxpayer has neglected or refused to pay, and such amount is still due, owing and unpaid. Accordingly, you are further notified that all property, rights to property, monies, credits and bank deposits now in your possession and belonging to this taxpayer (or for which you are obligated) and all sums of money or other obligations owing from you to this taxpayer, or on which there is a lien, provided under KRS 134.420, are hereby distrained for satisfaction of the above tax plus all additions provided by law, and demand is hereby made upon you for the amount necessary to satisfy this tax liability or for such lesser sums as you may be indebted to this taxpayer, to be applied as payment on this tax liability. Checks or money orders should be made payable to the _____ County Sheriff.

Sheriff, _____ County

*See attached photocopy of tax bill for further breakdown of tax liability.

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of this notice of distraint by first-class mail upon the person named above to his/her last known address this _____ day of _____, 20__.

Sheriff, _____ County

COMMONWEALTH OF KENTUCKY
COUNTY OF _____

NOTICE TO APPEAR IN _____ CIRCUIT COURT

The taxes due by _____ [taxpayer and address] _____
amount to the sum of \$_____. To that extent, pursuant to KRS 135.010 and
135.020 (statutes on back), you are notified not to pay or deliver to him any money, property or
other thing of value that you now owe or may hereafter be indebted to him, and to appear before
the circuit court of _____ County, on the ____ day of _____, 20__, at
_____ a.m./p.m. to show cause why you should not be adjudged to pay these taxes.

This _____ day of _____, 20__.

Sheriff, _____ County

Taxes Due:
Year _____
Tax Bill # _____
Amount _____
Penalty _____
Total _____

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of this notice to appear by certified mail upon the taxpayer and by certified mail or hand-delivery upon the person named above to their last know addresses this _____ day of _____, 20__.

name

title

KRS 135.010 provides:

(1) If the sheriff or other person having any taxes or public dues in his hands for collection believes another person to be indebted in money, property or other thing of value to the person owing the taxes or public dues, and believes he cannot otherwise collect the taxes or public dues, he shall sign and deliver or cause to be delivered to the person owing the taxes or public dues and to the person owing him, anywhere he may be found, written notice in substance as follows:

Mr. A B: The taxes due by C D amount to the sum of \$_____. To that extent you are notified not to pay or deliver to him any money, property or other thing of value that you now owe or may hereafter be indebted to him, and to appear before the circuit court of _____ county, on the _____ day of _____, 19__, to show cause why you should not be adjudged to pay said taxes. This ___ day of _____, nineteen _____.

(2) All persons indebted to the person owing the taxes may be included in the same notice, though residing out of the county of the sheriff or collector. If necessary to the interest of the state, the court may cause other persons to be made parties to the proceedings.

KRS 135.020 provides:

(1) The notice referred to in KRS 135.010 shall operate to enjoin the person named in it from paying money, property or any other thing of value owing at the time of the service of the notice or accruing thereafter, in the amount mentioned in the notice, until the matter is heard by the circuit court. The proceedings shall be docketed in the name of the state. On the hearing by the court, the court may hear evidence, and the person named in the notice shall be compelled to disclose in open court all matters of account and indebtedness, whether of money, property or labor, owing at the date of the notice or incurred thereafter.

(2) The taxpayer may defend by showing that the property on which the tax claim is based has never been assessed, or that the property is not subject to taxation, or that the taxes have been paid, but it shall not be sufficient to show a defective assessment merely.

(3) The judgment shall provide for the payment of the taxes due, and shall direct the person named in the notice to pay or deliver to the sheriff or collector any money, property or other thing of value due the taxpayer at that time or at the time the notice was served, to the extent of the taxes and costs, or to the extent of his liability, including such liability as accrued after notice though paid or discharged. If it is property, the sheriff or collector shall sell it, after advertising by handbill posted at the courthouse door for ten (10) days. If the person named in the notice fails to attend or to make disclosure, the court shall render judgment against him for the full amount due from the taxpayer.

(4) The person owing taxes shall not be discharged from liability for them until they are fully paid, or the amount thereof is realized under the attachment proceedings.

COMMONWEALTH OF KENTUCKY

CIRCUIT COURT
CASE NO. _____

COMMONWEALTH OF KENTUCKY,
COUNTY OF _____,
BY AND ON RELATION OF

SECRETARY OF FINANCE AND
ADMINISTRATION CABINET

PETITIONER

MOTION FOR ORDER TO SET HEARING DATE

In the Matter of the Tax
Indebtedness of:

Comes the Petitioner, by and through counsel, and moves this Honorable Court to set this matter for a hearing on the _____ day of _____, 20__ at _____ a.m./p.m.

This hearing is necessary in order to collect and satisfy the delinquent tax, penalty and interest owed by this taxpayer. In support of this motion, the petitioner states as follows:

1. This Honorable Court has jurisdiction in this distraint proceeding to hold a hearing and determine matters of tax liability and indebtedness of third parties to delinquent taxpayers; and order payment of delinquent taxes from money or property held by third parties who are indebted to the delinquent taxpayers to the sheriff pursuant to KRS 135.020.
2. The above taxpayer is indebted to the Commonwealth of Kentucky, County of _____, and local taxing districts for delinquent property taxes.
3. Pursuant to KRS 135.010 the _____ County Sheriff has served the persons set out in the Notices to Appear, which are attached as Exhibits ____ through ____ and incorporated by reference.
4. Delivery of the Notices to Appear has enjoined the payment of money and property to the above-named taxpayer by the persons named in the notices, as provided in KRS 135.010 and KRS 135.020, until a hearing on the tax liability of the taxpayer can be held by this court.

5. The above taxes in the sums set out in the Notices to Appear, are final, due, and owing and though delinquent, remain unpaid.

6. The above-named taxpayer has been given notice that they are required to appear for a hearing at the time and date set out above by service of a true copy of the Notice to Appear by certified mail to their last known address.

County Attorney

COMMONWEALTH OF KENTUCKY

CIRCUIT COURT
CASE NO. _____

COMMONWEALTH OF KENTUCKY,
COUNTY OF _____,
BY AND ON RELATION OF

SECRETARY OF FINANCE AND
ADMINISTRATION CABINET

PETITIONER

ORDER SETTING HEARING DATE

In the Matter of the Tax
Indebtedness of:

The above-styled proceeding having come before the court by the filing of petitioners' motion to set a hearing date pursuant to KRS 135.020, and the court being sufficiently advised, it is hereby ORDERED that this matter is set for a hearing on the _____ day of _____, 20__ at _____ a.m./p.m.

Judge, _____ Circuit Court

COMMONWEALTH OF KENTUCKY

CIRCUIT COURT
CASE NO. _____

COMMONWEALTH OF KENTUCKY,
COUNTY OF _____,
BY AND ON RELATION OF

SECRETARY OF FINANCE AND
ADMINISTRATION CABINET

PETITIONER

OPINION AND ORDER DIRECTING PAYMENT

In the Matter of the Tax
Indebtedness of:

OPINION

The above-styled matter came before the Court by the filing of Petitioner's motion to set a hearing date. This distraint proceeding was authorized to be brought by KRS 135.010 and KRS 135.020, which set out a collection procedure involving notice to the taxpayer, a circuit court hearing at which the taxpayer may present any defenses to the collection which he might have, and an opportunity for the distrainted person in possession of funds or other property attached by the notice to present any claims he might have. This statutory proceeding has been held allowable as a constitutionally valid expedient necessary for the collection of delinquent taxes by the Kentucky Court of Appeals in Commonwealth Ex Rel Carpenter vs. Collins and May, Ky., 593 S.W.2d 887 (1980).

The above-named taxpayer was given notice and an opportunity to appear and defend.

The persons named in the Notices to Appear were all present [except for _____]

and _____] and were examined by the _____ County Attorney and compelled to disclose their indebtedness to those taxpayers alleged in the petition to be indebted to the Commonwealth, County and other taxing districts for delinquent property taxes.

The _____ County Sheriff has presented unpaid tax bills and real and/or personal property evidencing the tax delinquency of the taxpayer.

Based upon the above, the court finds that the taxes were due and delinquent and remain unpaid and that persons named in the order below are indebted to this delinquent taxpayer and have a statutory duty to pay over to the above-mentioned sheriff funds in their hands to the extent of the lesser of the delinquent tax liability shown in the tax bill or the amount of funds owed to the taxpayer.

ORDER DIRECTING PAYMENT

To collect and satisfy the delinquent tax, penalty, and interest it is hereby ORDERED that the following persons named in the Notices to Appear shall pay over to the Sheriff the following sums to pay the delinquent taxes of the taxpayer.

Persons Named in Notices

Amount Directed

Holding Money due taxpayer

to be paid to Sheriff

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

[Additionally, it is ORDERED that _____ and _____, persons named in the Notice to Appear, who failed to appear or to make required disclosure, shall pay to the sheriff the full amounts due from the taxpayer whose funds were attached by said Notices to Appear served upon them; the sums being \$_____ to be paid by _____ and \$_____ to be paid by _____ on behalf of the taxpayer.]

The taxpayer herein shall not be discharged from the liability for taxes owed until they are fully paid or the amount thereof is realized under the attachment proceedings.

This ____ day of _____, 20__.

Judge, _____ Circuit Court

COMMONWEALTH OF KENTUCKY
Office of
_____ COUNTY ATTORNEY
_____, Kentucky _____

NOTICE OF SALE OF TAX CLAIM

TO: _____

or current resident at that address

As a result of nonpayment of the _____ real estate tax bill for property located at _____, it became necessary for the Sheriff of _____ County, Kentucky, to transfer this tax claim to the county clerk. Since the property in question was assessed in the name set out above for the year of _____, it is my duty as County Attorney, pursuant to KRS 134.504 to advise you that this transfer by the sheriff resulted in a Certificate of Delinquency being issued against the property and said certificate has been filed as a lien of record in the _____ County Clerk's Office. This lien shall remain on the property until it is paid and cannot be defeated by gift, devise, sale or alienation of this property. The property may be redeemed at the times prescribed in KRS 134.126, 134.127, 134.128, 134.490, 134.504, 134.546 and 426.530

If you purchased the land from the person whose name appears above, you bought it subject to the lien and are liable for taxes.

This Certificate of Delinquency will continue to bear interest at the rate of 12 percent per annum until paid by you. Although I realize this nonpayment may merely be an oversight, you should realize this tax claim must be promptly paid or it will be necessary for my office to collect this delinquency as provided by law. In the event this collection becomes necessary, the lien shall include interest, all penalties, fees, commissions, charges and expenses incurred by the delinquency of its collection.

Therefore, I must advise you to promptly pay this tax claim by going to the Office of the County Clerk so that the lien can be removed from the clerk's records.

Sincerely,

County Attorney

COMMONWEALTH OF KENTUCKY
_____ COUNTY ATTORNEY

COMMONWEALTH OF KENTUCKY
BY AND ON RELATION OF

_____,
SECRETARY OF FINANCE AND
ADMINISTRATION CABINET

NOTICE OF INTENT TO ENFORCE LIEN

(or current resident at
that address)

RE: _____
Delinquent Tax Liability
19__ ____, 19__ ____,
20__ ____, 20__ ____,
Total Liability \$ _____
with interest through the end of _____,
20__.

PLEASE BE ADVISED that if the certificates of delinquency above noted, which constitute liens upon your property, are not paid to the _____ County Clerk, not later than the date set out above, by certified check or money order, then pursuant to KRS 134.546 the county attorney will foreclose on the liens on your property. This is the only notice that will be given prior to filing suit.

If you were not the owner of the property at the time the liability arose, but have since purchased it, then you bought the land subject to the tax liens on the property as provided for in KRS 134.420(1).

If payment is made before above deadline, you will save time and expense as well as avoid having your property foreclosed.

COMMONWEALTH OF KENTUCKY

COURT
CASE NO. _____

COMMONWEALTH OF KENTUCKY,

COUNTY,
BY AND ON RELATION OF

SECRETARY OF THE FINANCE AND
ADMINISTRATION CABINET

PLAINTIFF

COMPLAINT

JOHN DOE
JANE DOE
1400 Anystreet
Anytown, KY 4000

DEFENDANTS

* * *

Comes the Plaintiff, _____ County, Kentucky, on relation of the
Commonwealth of Kentucky, Secretary of the Finance and Administration Cabinet, by and
through counsel, and for its cause of action states that the defendants have failed and refused to
pay their 20____ real estate taxes in the amount of \$_____ on [#] parcels of property
located at [address] in _____ County, Kentucky.

WHEREFORE, Plaintiff prays that it recover from the Defendant delinquent taxes,
interest, and penalties through [month], 20__, in the amount of \$_____, and any other
relief to which it may appear properly entitled.

County Attorney

Attorney for Plaintiff

AOC-105 Doc. Code: CI
Rev. 5-03 09/23/2004 09:59 am
Page 1 of 1 Ver. 1.01
Commonwealth of Kentucky
Court of Justice www.kycourts.net
CR 4.02; CR Official Form 1



CIVIL SUMMONS

Case No. _____
Court Circuit District
County _____

PLAINTIFF

VS.

DEFENDANT

Service of Process Agent for Defendant:

THE COMMONWEALTH OF KENTUCKY
TO THE ABOVE-NAMED DEFENDANT(S):

You are hereby notified a legal action has been filed against you in this Court demanding relief as shown on the document delivered to you with this Summons. Unless a written defense is made by you or by an attorney on your behalf and filed in the Clerk's Office within 20 days following the day this paper is delivered to you, judgment by default may be taken against you for the relief demanded in the attached Complaint.

The name(s) and address(es) of the party or parties demanding relief against you are shown on the document delivered to you with this Summons.

Date: _____, 2____ Clerk
By: _____ D.C.

Proof of Service

This Summons was served by delivering a true copy and the Complaint (or other initiating document) to:

this ____ day of _____, 2____.

Served by: _____

Title

COMMONWEALTH OF KENTUCKY

COURT
CASE NO. _____

COMMONWEALTH OF KENTUCKY,

COUNTY,
BY AND ON RELATION OF

SECRETARY OF THE FINANCE AND
ADMINISTRATION CABINET

PLAINTIFF

NOTICE - MOTION FOR DEFAULT JUDGMENT

JOHN DOE
JANE DOE

DEFENDANTS

* * *

NOTICE

Please take Notice that the following Motion will be brought on for hearing before the

Circuit Court, _____ County Courthouse, _____, Kentucky, at the
hour of _____ a.m./p.m., or as soon thereafter as counsel may be heard, on the ____ day of
_____, 20____.

MOTION

Comes the Plaintiff, _____ County, Kentucky, on relation of the Commonwealth of
Kentucky, Secretary of the Finance and Administration Cabinet, by and through Counsel, and
moves the court for an order to enter a default judgment for the amount of Defendants' 19__
property taxes, plus penalties and interest at the rate of twelve percent (12%) per annum until
paid. Plaintiff's Affidavit in support of this Motion is attached.

County Attorney

Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice – Motion for Default Judgment, was served upon the Defendants, John Doe and Jane Doe, [address], Kentucky [zip code] by first-class mail this ____ day of _____, 20____.

_____ County Attorney

COMMONWEALTH OF KENTUCKY
_____ CIRCUIT COURT
CIVIL ACTION NO. _____

COMMONWEALTH OF KENTUCKY,
_____ COUNTY,
BY AND ON RELATION OF

_____,
SECRETARY OF FINANCE AND
ADMINISTRARTION CABINET

PLAINTIFF

V. **AFFIDAVIT FOR DEFAULT JUDGMENT**

JOHN DOE
JANE DOE

DEFENDANTS

* * *

Comes the Affiant, _____, after being duly sworn, and states as follows:

1. My name is _____, _____ County Attorney,
representing the Plaintiff in the above captioned action.

2. I have received no responsive pleadings since the defendants were served with
summons in this action, and more than twenty (20) days have elapsed since the service.

3. To the best of my knowledge and belief, the defendants are not members of any of
the armed forces of the United States.

Further the Affiant saith not.

County Attorney

STATE OF KENTUCKY
COUNTY OF _____

Subscribed and sworn to before me by _____ on this _____ day of
_____, 20____.

NOTARY PUBLIC, STATE AT LARGE

COMMONWEALTH OF KENTUCKY

CIRCUIT COURT
CIVIL ACTION NO. _____

COMMONWEALTH OF KENTUCKY

COUNTY,
BY AND ON RELATION OF

SECRETARY OF FINANCE AND
ADMINISTRATION CABINET

PLAINTIFF

V. **DEFAULT JUDGMENT**

JOHN DOE
JANE DOE

DEFENDANTS

* * *

This matter having come before the Court on
_____, 20___, and the Court being sufficiently advised,

IT IS HEREBY ORDERED that the Plaintiff is hereby granted a
Default Judgment against the Defendants in the amount of _____ dollars
(\$_____), with interest from the date of judgment at the rate of twelve percent (12%)
per annum until paid.

So ordered this _____ day of _____, 20__.

Judge, _____ Circuit Court

TENDERED BY:

County Attorney

COMMONWEALTH OF KENTUCKY
_____ CIRCUIT COURT
CIVIL ACTION NO. _____

COMMONWEALTH OF KENTUCKY,
_____ COUNTY,
BY AND ON RELATION OF

_____,
SECRETARY OF FINANCE AND
ADMINISTRATION CABINET

PLAINTIFF

V. **ORDER OF DISMISSAL**

JOHN DOE
JANE DOE

DEFENDANTS

* * *

Comes the Plaintiff, _____ County, Kentucky, on relation of the Commonwealth of Kentucky, Secretary of the Finance and Administration Cabinet, by counsel, and having advised the court that the above-styled action has been settled, and the court being sufficiently advised,

IT IS HEREBY ORDERED that the above-styled action be dismissed as settled, with prejudice.

This _____ day of _____, 20__.

Judge, _____ Circuit Court

TENDERED BY:

County Attorney

COMMONWEALTH OF KENTUCKY

CIRCUIT COURT
CIVIL ACTION NO. _____

COMMONWEALTH OF KENTUCKY,
COUNTY OF _____,
BY AND ON RELATION OF
_____,
SECRETARY OF FINANCE AND
ADMINISTRATION CABINET, AND

PLAINTIFFS

_____,
_____,
_____,
(list each taxing entity
shown on tax bills)

V. **COMPLAINT**

(tax bill owners of record
to include spouses, if any)

DEFENDANTS

(lienholders of record)

(subsequent purchasers, if
any)

* * *

Come now the plaintiffs, by counsel, and for their cause of action herein against the above-named defendants state as follows:

1. The plaintiffs are governmental bodies, with the power and authority to levy a tax and the owner defendants are indebted to plaintiffs for unpaid taxes on real estate, with interest and penalties thereon as set out below.

2. Pursuant to the assessment of January 1 of the years mentioned herein, ad valorem taxes were levied under the provisions of KRS 132.020 and 68.090 on real estate described in Exhibit A attached hereto and incorporated by reference as if fully set out herein and further described below by reference to the deed book and page number.

(Note: Use either option A, paragraphs 3, 4 & 5, or option B, paragraphs 4 & 5)

OPTION A

3. Pursuant to the provisions of KRS 134.504, the delinquent tax claims, which became certificates of delinquency when sold, were sold by the clerk at public auction and purchased for the plaintiffs.

4. Delinquent tax claims evidenced by Exhibit B attached hereto and incorporated by reference as if fully set out herein are unpaid and constitute a valid first and superior lien against the property mentioned above, to which reference is made for a more definite description in a certain deed of conveyance recorded in Deed Book _____, Page _____ in the _____ County Clerk's office; that being the description given in the attached Exhibit A.

5. Plaintiffs are entitled to recover the amounts shown on the copies of certificates of delinquency attached as Exhibit B, plus simple interest at the rate of 12% per year pursuant to KRS 134.125.

OPTION B

4. Pursuant to the provisions of KRS 134.504, the delinquent tax claims, which became certificates of delinquency when sold, were sold by the clerk at public auction and purchased for the plaintiffs for the years and in the amounts set out below:

YEAR TAX BILL AMOUNT WITH INTEREST COURT COSTS INCLUDING
TOTAL PENALTIES TO JUDGMENT PENALTY DUE

5. No portion of the taxes stated herein have been paid, and they are now all due and owing with interest and penalties as set forth above, plus simple interest at 12% per annum after the above date. Said tax claims constitute a valid first and superior lien on the property described herein, to which reference is made for a more definite description in a certain deed of conveyance, recorded in D.B. # _____, Page _____, _____ County Clerk's office; that being the description given in attached Exhibit A.

6. The following persons or institutions may be claiming an interest in the above mentioned real estate, and they are hereby called upon to plead herein asserting any claim or be forever barred:

NAME OF PARTY MORTGAGE ENCUMBRANCE OR DEED BOOK & PAGE NO.

(NOTE: If there is a federal tax lien, use paragraphs 7 & 8 set out at the end of the complaint.)

7. There are no other liens or claims against the property known to the plaintiffs, except those set forth above.

WHEREFORE, plaintiffs demand:

1. Judgment in the amount of \$_____, plus simple interest at the rate of 12% per annum, and all costs of this action;
2. That the liens of all parties set out in paragraph 6 above, if any, be barred if they fail to assert their interest;
3. That the plaintiff's lien be adjudged prior to and superior to all other liens.
4. That an Order issue directing the sale of said real estate, free of the title or claims of all parties to this action for the purpose of paying the taxes, interest, penalties, and costs found to be due;
5. That the proceeds of the sale be applied in accordance with the priority rights of the parties herein; and
6. Any and all other relief to which they may appear entitled.

_____ County Attorney

_____, Kentucky _____
Phone: () _____

(NOTE: Exhibit A is a photocopy of the deed showing a legal description of the property; Exhibit B consists of photocopies of all certificates of delinquency included in the suit.)

7. Defendant, Internal Revenue Service, Department of Treasury, United States of America, may have some interest in or claim to the above-described parcels by virtue of Federal Tax Liens filed by the District Director of Internal Revenue, Louisville, Kentucky against _____, DBA _____, _____, _____ Street, _____, Kentucky, Lien Serial No. _____, on the _____ day of _____, 19____, and of record in Encumbrance Book _____, Page _____, in the amount of \$_____; and Federal Tax Lien filed by the District Director of Internal Revenue, Louisville, Kentucky against _____, DBA _____, _____, _____ Street, _____, Kentucky, Lien Serial No. _____, on the _____ day of _____, 19____, and of record in Encumbrance Book _____, Page _____, in the amount of \$_____; each in the office of the County Clerk of _____ County, Kentucky. The defendant, Internal Revenue Service, Department of Treasury, United States of America, should be required to plead herein asserting any claim or lien it may have against said property or be forever barred.

8. There are no other liens or claims against the property known to the plaintiffs, except those set forth above.

(NOTE: See 28 U.S.C. § 2410 entitled Effect of Federal Tax Liens for special service requirements where the U.S. has a tax lien.)

COMMONWEALTH OF KENTUCKY

CIRCUIT COURT
CIVIL ACTION NO. _____

COMMONWEALTH OF KENTUCKY,
COUNTY OF _____,
BY AND ON RELATION OF
_____,
SECRETARY OF FINANCE AND
ADMINISTRATION CABINET,
ET AL

PLAINTIFFS

V. **LIS PENDENS NOTICE**

DEFENDANTS

* * * * *

TAKE NOTICE THAT the Commonwealth of Kentucky, et al, has filed its Complaint in the _____ Circuit Court, as numbered and styled above, and which action affects all the right, title, and interest of all the above-named defendants, or any other party claiming an interest herein or any prospective purchaser in and to the following described property shown on Exhibit A attached, to which reference is hereby made for a more particular description, and being that property recorded in D.B. # _____, Page _____, _____ County Clerk's office.

(NOTE: Exhibit A is a photocopy of the legal description of the property.)

COMMONWEALTH OF KENTUCKY

CIRCUIT COURT
CIVIL ACTION NO. _____

COMMONWEALTH OF KENTUCKY,
COUNTY OF _____,
BY AND ON RELATION OF
_____,
SECRETARY OF FINANCE AND
ADMINISTRATION CABINET,
ET AL

PLAINTIFFS

V. **ORDER OF DISMISSAL**

DEFENDANTS

* * * * *

Upon joint motion of the parties, and the court being sufficiently advised, it is hereby
ORDERED that the above-styled action be dismissed as settled at the cost of the defendant(s).

This ____ day of _____, 20__

Judge, _____ Circuit Court

HAVE SEEN AND AGREED TO, NOTICE OF ENTRY WAIVED

_____, County Attorney
Attorney for Plaintiff

(Attorney for) Defendant _____

(Attorney for) Defendant _____

Attorney for) Defendant _____

COMMONWEALTH OF KENTUCKY
_____ CIRCUIT COURT
CIVIL ACTION NO. _____

COMMONWEALTH OF KENTUCKY,
COUNTY OF _____,
BY AND ON RELATION OF
_____,
SECRETARY OF FINANCE AND
ADMINISTRATION CABINET,
ET AL

PLAINTIFFS

V. **RELEASE OF LIS PENDENS**

DEFENDANTS

* * * * *

The claim of the Plaintiffs having been satisfied for the property known as
_____ [address] _____, Kentucky, the Notice of Lis Pendens of record in
Encumbrance Book # _____ at page _____ in the _____ County Clerk's
office is hereby released.

Dated this _____ day of _____, 20____.

_____ County Attorney

_____, Kentucky _____

Phone: () _____

COMMONWEALTH OF KENTUCKY
_____ CIRCUIT COURT
CIVIL ACTION NO. _____

COMMONWEALTH OF KENTUCKY,
COUNTY OF _____,
BY AND ON RELATION OF
_____,
SECRETARY OF FINANCE AND
ADMINISTRATION CABINET,
ET AL

PLAINTIFFS

V. **NOTICE – MOTION FOR
SUMMARY JUDGMENT**

DEFENDANTS

* * * * *

NOTICE

Please take notice that the Motion set forth below will be brought on for hearing in
_____ Circuit Court, _____ County Courthouse, on the _____ day of
_____, 20__, at _____ a.m./p.m., or as soon thereafter as counsel may be heard.

MOTION

Come the Plaintiffs, pursuant to the provisions of CR 56 et. seq., and move the Court to
enter a Summary Judgment in their behalf in the above-styled action.

As grounds for this Motion, the Plaintiffs state that there is no genuine issue as to any
material fact and that they are entitled to a judgment as a matter of law. In support of this
Motion, the Affidavit of the _____ County Clerk is attached.

WHEREFORE, Plaintiffs demand judgment of the Court on this matter.

_____ County Attorney

_____, Kentucky _____

Phone: () _____

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Notice – Motion for Summary Judgment and Affidavit was served upon the [attorney for the] Defendants, John Doe and Jane Doe, [address], Kentucky [zip code] by first-class mail this the _____ day of _____, 20____.

County Attorney

COMMONWEALTH OF KENTUCKY

CIRCUIT COURT
CIVIL ACTION NO. _____

COMMONWEALTH OF KENTUCKY,
COUNTY OF _____,
BY AND ON RELATION OF
_____,
SECRETARY OF FINANCE AND
ADMINISTRATION CABINET,
ET AL

PLAINTIFFS

V. **AFFIDAVIT IN SUPPORT OF MOTION**
FOR SUMMARY JUDGMENT

DEFENDANTS

* * * * *

The affiant, _____, states that (s)he is the (Deputy) County Clerk of
_____ County, Kentucky, and as such is authorized and required to receive and record
payments of amounts due on Certificates of Delinquency issued by the _____ County
Sheriff upon sale of the delinquent tax claims on real property.

The affiant further states that the attached Certificates of Delinquency are true copies of
records in the office of the _____ County Clerk and the same remain unpaid.

(Deputy) County Clerk

STATE OF KENTUCKY
COUNTY OF _____

Subscribed and sworn to before me by _____ on this _____ day of
_____, 20____.

NOTARY PUBLIC, STATE AT LARGE

My commission expires _____

COMMONWEALTH OF KENTUCKY
CIRCUIT COURT
CIVIL ACTION NO. _____

COMMONWEALTH OF KENTUCKY,
COUNTY OF _____,
BY AND ON RELATION OF
_____,
SECRETARY OF FINANCE AND
ADMINISTRATION CABINET,
ET AL

PLAINTIFFS

V.

ORDER

DEFENDANTS

* * * * *

Plaintiffs' Motion for Summary Judgment, filed in the Office of the Clerk,
_____ Circuit Court on the _____ day of _____, 20__ is hereby
assigned for hearing, in the Courtroom, _____ County Courthouse,
_____, _____, Kentucky, at _____ a.m./p.m. Local Time on the _____
day of _____, 20__.

Judge, _____ Circuit Court

The foregoing Order assigning
hearing thereon was served by
mail on all parties designated
below on this the _____ day
of _____, 20__.

Clerk, _____ Circuit Court

COMMONWEALTH OF KENTUCKY

CIRCUIT COURT
CIVIL ACTION NO. _____

COMMONWEALTH OF KENTUCKY,
COUNTY OF _____,
BY AND ON RELATION OF

_____,
SECRETARY OF FINANCE AND
ADMINISTRATION CABINET, AND

SCHOOL DISTRICT

DISTRICT

PLAINTIFFS

V. **SUMMARY JUDGMENT AND ORDER OF SALE**

DEFENDANTS

* * * * *

This cause came on for hearing on the Motion of plaintiffs for Summary Judgment pursuant to CR 56 et. seq. Based upon the entire record presented, the Court finds that there is no genuine issue as to any material fact and that plaintiffs are entitled to judgment as a matter of law;

IT IS THEREFORE ORDERED as follows:

(1) The plaintiffs shall have and recover of the defendants, _____ and _____, _____ dollars (\$_____), with interest thereon at the statutory rate until paid.

(2) The liens of the plaintiffs are a prior and superior lien on the property shown on Exhibit A attached hereto and incorporated by reference herein as if fully set out herein.

(3) To satisfy the liens of the plaintiffs they are entitled to an order directing the sale of the property.

(4) Questions as to the validity and priority of all other liens asserted are reserved for future determination herein.

(5) The above mentioned real property as described in Exhibit A attached hereto shall be sold to the highest and best bidder at public auction, free and clear of all encumbrances, by the master commissioner of this Court, and the proceeds of said sale shall be held by the said master commissioner pending further orders of this Court. All liens against said real estate shall from and after the date of sale be transferred to the proceeds of sale, in the same priority as to the property. Said sale shall be public, upon one (1) month's credit, with a 10% deposit in cash, and shall be made after advertisement in a newspaper of general circulation in _____ County, Kentucky at least once a week for three consecutive weeks next preceding the day of sale. The advertisement shall state the time, place and terms of the sale and describe the property to be sold. Pursuant to KRS 134.546(5) this property shall be appraised prior to its sale. Pursuant to KRS 426.530 there shall be a right of redemption. Said sale shall be made at a time and date to be selected by the master commissioner and shall be made at the door of the courthouse, _____, _____ County, Kentucky, or at such other place as the master commissioner shall select. If the purchaser shall elect to buy upon credit, the purchaser shall execute bond accordingly, payable to the master commissioner, bearing _____ percent (_____%) interest from date of sale with surety approved by the master commissioner and having the force and effect of a judgment and also secured by a first prior lien upon the property sold. However, the purchaser may pay cash at the sale if he so elects. This property shall be sold subject to the payment of all state, county, school and other taxes assessed against it under the assessment as of _____, 20____, which taxes shall be assumed and paid by the purchaser. Said sale shall be made subject to all easements, covenants and restrictions of record or otherwise and shall be sold

with the improvements thereon "as is." Possession of the property herein sold shall be given to the purchaser after the proper execution of the sale bond. The sale bond may be paid prior to the date of its maturity. If there is no purchaser at the auction, the master commissioner shall make a deed to the Commonwealth of Kentucky, County of _____ and (taxing districts) as owners of the certificates of delinquency, and they shall have a pro rata interest therein in accordance with the amount of their respective taxes shown on the certificates.

(6) The master commissioner shall, after making said sale, report the same to this Court for further actions and proceedings herein.

(7) From the proceeds of the sale the master commissioner shall pay the costs of this action, and then the master commissioner shall apply the remaining purchase money to the satisfaction of the judgment herein awarded to the plaintiffs. Any balance remaining in the hands of the master commissioner thereafter shall be held by the master commissioner subject to further orders of this Court. If the master commissioner makes a deed to the owners of the certificates of delinquency then the owners shall pay the costs of the action.

(8) Pursuant to CR 54.01 this is a final and appealable judgment. The clerk is directed to give notice of entry of this judgment and order to all parties.

This _____ day of _____, 20__.

Judge, _____ Circuit Court

NOTICE TO CLERK

Pursuant to the Rules of the _____ Circuit Court, you are hereby notified that notice of the entry of the foregoing Judgment and Order of Sale should be mailed to _____, _____, _____, Kentucky _____, and _____, _____, _____, Kentucky _____.

County Attorney

COMMONWEALTH OF KENTUCKY

CIRCUIT COURT
CIVIL ACTION NO. _____

COMMONWEALTH OF KENTUCKY,
COUNTY OF _____,
BY AND ON RELATION OF
_____,
SECRETARY OF FINANCE AND
ADMINISTRATION CABINET,
ET AL

PLAINTIFFS

V. **NOTICE – MOTION FOR ORDER CONFIRMING SALE**

_____, his wife, et al

DEFENDANTS

* * * * *

NOTICE

Please take notice that the Motion set forth below will be brought on for hearing at the next appointed Motion Hour of the _____ Circuit Court falling not less than five (5) days from the date of filing of this notice, such Motion Hour being at _____ a.m. on the _____ day of _____, 20__.

MOTION

Come the Plaintiffs, by counsel, and move the Court to approve and confirm the Master Commissioner's Report of Sale in the above-styled action and to order the Master Commissioner to convey the property by deed.

As grounds for this motion the Plaintiffs state that ten (10) days have elapsed and that there have been no exceptions filed to said Report of Sale.

County Attorney

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Notice – Motion for Order Confirming Sale was served upon _____, (Attorney for) the Defendant, _____, _____, Kentucky _____ by first-class mail this the _____ day of _____, 20__.

County Attorney

COMMONWEALTH OF KENTUCKY
_____ CIRCUIT COURT
CIVIL ACTION NO. _____

COMMONWEALTH OF KENTUCKY,
COUNTY OF _____,
BY AND ON RELATION OF
_____,
SECRETARY OF FINANCE AND
ADMINISTRATION CABINET,
ET AL

PLAINTIFFS

V. **ORDER CONFIRMING SALE**

_____, his wife, et al

DEFENDANTS

* * * * *

Upon motion of the Plaintiffs, it is ORDERED that the Master Commissioner's Report of Sale in the above-styled action, which was filed herein on the ____ day of _____, 20____, be and the same is hereby approved and confirmed, there having been no exceptions filed thereto.

IT IS FURTHER ORDERED that _____, Master Commissioner, be and he is hereby ordered and directed to make, execute and deliver a deed of conveyance to _____, its successors and assigns, to the property sold at the sale, which is more particularly described as follows:

(insert legal description of property)

Thereupon, came _____, Master Commissioner and produced in open Court and executed and acknowledged a deed of conveyance to the said _____, its successors and assigns, in accordance with the aforesaid description. The Court having examined the same, found the same to be correct and endorsed its approval upon said deed, which is now ordered to be transmitted to the proper office of record.

This _____ day of _____, 20____.

Judge, _____ Circuit Court

COMMONWEALTH OF KENTUCKY

CIRCUIT COURT
CIVIL ACTION NO. _____

COMMONWEALTH OF KENTUCKY,
COUNTY OF _____,
BY AND ON RELATION OF
_____,
SECRETARY OF FINANCE AND
ADMINISTRATION CABINET

PLAINTIFFS

V. **COMPLAINT**

DEFENDANTS

* * * * *

Come the Plaintiffs, Commonwealth of Kentucky and County of _____, by and on relation of the Secretary of the Finance and Administration Cabinet and for their cause herein state as follows:

1. That the defendants owe the Commonwealth of Kentucky, _____ County, _____ County School District, for personal property taxes, penalty and interest as follows:

___Tax year	Tax Bill No.
County Tax	\$
School Tax	\$
State Tax	\$
___% Penalty	\$
Total Tax and Penalty	\$
Plus Interest at 1% per month from _____ on \$ _____ until paid	

___Tax year	Tax Bill No
County Tax	\$
School Tax	\$
State Tax	\$

____% Penalty	\$
Total Tax and Penalty	\$
Plus Interest at 1% per month from	
_____ on \$_____	until paid

____Tax year	Tax Bill No.
--------------	--------------

County Tax	\$
School Tax	\$
State Tax	\$
____% Penalty	\$
Total Tax and Penalty	\$
Plus Interest at 1% per month from	
_____ on \$_____	until paid

____Tax year	Tax Bill No.
--------------	--------------

County Tax	\$
School Tax	\$
State Tax	\$
____% Penalty	\$
Total Tax and Penalty	\$
Plus Interest at 1% per month from	
_____ on \$_____	until paid

2. That under the provision of KRS 135.040(2) an attachment may issue at the commencement of this action on all property including choses in action or any other equitable estate of the defendant, and that the defendant is required to state under oath what property he has and to surrender sufficient of this property to satisfy Plaintiffs' claims.

WHEREFORE, Plaintiffs pray for a judgment in the amount of \$_____ plus additional interest at one percent (1%) per month from _____ until paid.

Plaintiffs further pray that an attachment be issued at the commencement of this action on all property including choses in action or on any other equitable estate of the defendant and that the defendant be required to state under oath what property he owns and to surrender sufficient of this property to satisfy Plaintiffs' claims.

Plaintiffs further pray for the costs of this action and for all other relief to which they may appear entitled.

County Attorney

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Complaint was served upon _____ by first-class mail this the ____ day of _____, 20__.

County Attorney

DEED

THIS DEED, made in the City of Frankfort, State of Kentucky, on the _____ day of _____, 20____, between _____, Secretary of the FINANCE AND ADMINISTRATION CABINET, 501 High Street, Frankfort, Kentucky 40601, for and on behalf of the state, county and local taxing districts, Grantors, and _____, of _____, Kentucky, _____ (Grantee).
(mailing address)

WITNESSETH:

WHEREAS, by virtue of Civil Action No. _____, filed in _____, County, Kentucky, the Master Commissioner in accordance with the authority provided under Section 134.546(5) of the Kentucky Revised Statutes, was ordered to sell real estate hereinafter described and,

WHEREAS, there was no purchaser at the public sale and the Master Commissioner deeded said property to the state, county and local taxing districts under Section 134.490(4) of the Kentucky Revised Statutes said deed being properly filed in Deed Book _____, Page _____ of the _____ County Clerk's Office on the _____ day of _____, 20____, and,

WHEREAS, the County Attorney, the designated agent of the Secretary of the Finance and Administration Cabinet, having first given written or printed notice of the proposed sale specifying the real estate to be sold and the time, place, manner, and the conditions of the sale thereof, and having caused the same notice to be published at least once each week for three (3) successive weeks, in the newspaper with the largest circulation in the county of _____ wherein said real estate is situated, and having caused such notice to be posted at the courthouse for at least (15) days preceding the sale, all in accordance the provisions of Section 134.510 of the Kentucky Revised Statutes, and,

WHEREAS, on the _____ day of _____, 20____, the Secretary of the Finance and Administration Cabinet, through his/her duly authorized agent, did, pursuant to the notice of sale, sell said real estate by auction or public sale at _____, Kentucky, to the Grantee for the sum of _____ (\$_____), being the highest bidder therefore and the sum being the highest bid for the real estate,

NOW THEREFORE, the Secretary of the Finance and Administration Cabinet, by virtue of Section 134.510 of the Kentucky Revised Statutes, and in consideration of _____ (\$ _____) to him/her or his/her delegates paid, the receipt of which is hereby acknowledged, does hereby remise, release, and forever quitclaim unto said Grantee, in accordance with Section 134.510 of the Kentucky Revised Statutes, all the right, title and interest which the county and local taxing districts have and the Commonwealth has pursuant to the Master Commissioner's deed in and to the following real estate:

All that part of said tract or tracts of land described as follows:

[description of real estate]

To Have and to Hold unto said Grantee, _____, its successor and assigns forever, the premises with all the privileges and appurtenances thereto belonging.

IN WITNESS WHEREOF, the Secretary of the Finance and Administration Cabinet has hereunto set his/her hand this the _____ day of _____, 20____.

, Secretary
Finance & Administration Cabinet

We, _____, Grantor(s) and
_____, Grantee(s), do hereby certify, pursuant to KRS Chapter 382,
that the above-stated consideration of \$_____, is the true, correct and full
consideration paid for the property herein conveyed. We further certify our understanding that
falsification of the stated consideration or sale price of the property is a Class D felony, subject
to one to five years imprisonment and fines up to \$10,000.

Signed: _____

Grantor(s)

Signed: _____

Grantee(s)

State of Kentucky)
)
County of Franklin)

Before me, a Notary Public in and for said County of Franklin, State of Kentucky, personally appeared _____, as Secretary of the Finance and Administrative Cabinet, who acknowledged that he/she did sign and deed for the purpose herein expressed.

In witness whereof, I have hereunto subscribed my name at Frankfort, Kentucky, this the ____ day of _____, 20__.

Notary Public, State at Large

State of Kentucky)
)
County of _____)

Before me, a Notary Public in and for said County of _____, State of _____, personally appeared _____, Grantee(s), who acknowledged that he/she did sign and deed for the purpose herein expressed.

In witness whereof, I have hereunto subscribed my name at _____, Kentucky, this the ____ day of _____, 20__.

Deed Prepared By:

COMMONWEALTH OF KENTUCKY
DEPARTMENT OF REVENUE
FRANKFORT, KY 40602

(Name)
(Name)
(Address)
(Address)

(Date) Notice #: (Notice #)
Due By: (Due By Chart)

Subject: Delinquent Property Tax
County: (County) Amount Due: (Due By Date)
Period: (Year)
Bill#: (Tax Bill #)
Property: (Property Description)

Dear Taxpayer:

The Department of Revenue has assumed the responsibility for collecting delinquent property taxes in (County) County. Therefore, in accordance with KRS 134.504, it is Revenue's duty to notify you that according to the collection records maintained at the local level a delinquent property tax bill exists in your name for the (Year) tax year. As of (Transfer Date) a "Certificate of Delinquency" lien has been placed on your property. This lien has been recorded at the (County) County Clerk's office.

This delinquency will bear interest at the rate of twelve percent (12%) per year until paid. If it becomes necessary to collect this delinquency as provided by law, the lien shall include all interest, penalties, fees and other charges that may be incurred by its collection. The amount due referenced above will increase if not paid by the date shown above due to accrual of additional interest.

Be advised that, pursuant to KRS 134.128, if this bill remains unpaid after (Sale Date - 1); this bill may be purchased by a third-party and will be subject to collection by the third-party purchaser as provided by KRS 134.128 and 134.490. The third party purchaser may impose substantial additional administrative costs and fees in addition to the amount due on the certificate of delinquency.

If you are unable to pay this bill in full by (90 days from transfer date); you may qualify for a payment plan if you meet the requirements established by the Department. If terms are agreed to prior to the date of the sale, this bill will not be eligible for purchase by a third party. You may contact the Department of Revenue at the number listed below to discuss this matter.

If you have sold the property represented by this tax bill, please contact the new owner so that an arrangement can be made to get this delinquency paid.

IMPORTANT NOTICE: Pursuant to KRS 131.560 and 44.030, any tax refund or other monies that may become due to you from the Commonwealth will be offset and applied to the above listed liability.

If any portion of your liability remains unpaid after 60 days from the date of this notice, the Department may submit your debt to the Treasury Offset Program (TOP). Once your debt is submitted to TOP for offset, the United States Department of Treasury may reduce or withhold any of your eligible federal tax refunds or vendor payments by the amount of your debt. These offset processes are authorized by 31 U.S.C. 3716, 26 U.S.C. 6402, KRS 44.065 and KRS 44.030

PLEASE MAKE YOUR CHECK PAYABLE TO THE KENTUCKY STATE TREASURER AND INCLUDE YOUR NOTICE NUMBER. Mail your payments to the Division of Collections, P.O. Box 491, Frankfort, Kentucky 40602.

Sincerely,

Division of Collections
P.O. Box 491
501 High St. 8th Floor
Frankfort, KY 40602
Telephone: (502) 564-4921 ext. 5356

**CASEY COUNTY ATTORNEY'S OFFICE
LIBERTY, KENTUCKY 42539**

April 3, 2013

Re: Certificate of Delinquency Notice

According to the tax records in the Casey County Clerk's Office, you have failed to pay the following identified real estate tax bill for calendar year:

Bill #
Map #
Description:
Current Amount Due: \$

As a result of nonpayment, this office is required by Chapter 134 of the Kentucky Revised Statutes to notify you that a **Certificate of Delinquency** was issued on and that this **Certificate constitutes a lien of record against the above described real property. This lien will remain on your property until it is paid and the lien cannot be defeated by gift, devise, sale or alienation of the property.** Payment of the amount due is a personal obligation of the taxpayer on the assessment date (January 1 of the tax year) and this Certificate bears interest at the rate of 12% per annum until paid. Unless the amount due is paid, the unpaid taxes are subject to collection by the county attorney as provided by law.

If you meet the requirements established by our tax collection division and if the terms of the payment plan are agreed to prior to the date of sale of the Certificate of Delinquency, you may qualify for a payment plan with the county attorney. The name, address and telephone number of the contact person at the county attorney's office is Elsie, 628 Campbellsville Street, P.O. Box 190, Liberty, Kentucky 42539, (606) 787-7100.

At any time after ninety (90) days from the creation of the Certificate of Delinquency, this Certificate may be paid by a **third-party purchaser**, and, if so paid, this Certificate will be subject to collection by third-party purchasers who may impose **substantial additional administrative costs and fees** associated with the collection in addition to the amount due on this Certificate.

Only the Casey County Clerk can calculate the exact and current amount of taxes due and accept payment. **Do not send payment to this office.** Please make arrangements to pay your tax bill to the Casey County Clerk during regular business hours. This notice should be presented to the Clerk at the time you pay the taxes.

The Kentucky Department of Revenue is aggressively pursuing the collection of delinquent taxes and this office is required to take all legal action necessary to collect the delinquent taxes. **In order to prevent litigation, you should immediately contact the Casey County Clerk (606-787-6471) and pay these taxes, plus interest and penalties, in full.**

In the event the taxes have been paid prior to receiving this notification or in the event the taxes have not been paid as a result of an oversight, my apologies are extended for any embarrassment or inconvenience caused by this notification.

Thomas M. Weddle, Jr., Casey County Attorney

COMMONWEALTH OF KENTUCKY
DEPARTMENT OF REVENUE
FRANKFORT, KY 40602

(Name)
(Name)
(Address)
(Address)

(Date) Notice #: (Notice #)
Due By: (Due By Chart)

Subject: Delinquent Property Tax

County: (County) Amount Due: (Due By Date)
Period: (Year)

Bill#: (Tax Bill #)
Property: (Property Description)

Dear Taxpayer:

Although notice has been made for payment, according to Department records a delinquent property tax bill exists in your name for the (year) tax year. As of (Transfer Date) a "Certificate of Delinquency" lien has been placed on your property. This lien has been recorded at the (County) County Clerk's office.

This delinquency will bear interest at the rate of twelve percent (12%) per year until paid. If it becomes necessary to collect this delinquency as provided by law, the lien shall include all interest, penalties, fees and other charges that may be incurred by its collection.

After (Due By Date), the amount due referenced above will increase due to additional interest.

Be advised that, pursuant to KRS 134.128, if this bill remains unpaid after (Sale Date - 1); this bill may be purchased by a third-party and will be subject to collection by the third-party purchaser as provided by KRS 134.128 and 134.490. The third party purchaser may impose substantial additional administrative costs and fees in addition to the amount due on the certificate of delinquency.

If you are unable to pay this bill in full by (90 days from transfer date); you may qualify for a payment plan if you meet the requirements established by the Department. If terms are agreed to prior to the date of the sale, this bill will not be eligible for purchase by a third party. You may contact the Department of Revenue at the number listed below to discuss this matter.

If you have sold the property represented by this tax bill, please contact the new owner so that an arrangement can be made to get this delinquency paid.

IMPORTANT NOTICE: Pursuant to KRS 131.560 and 44.030, any tax refund or other monies that may become due to you from the Commonwealth will be offset and applied to the above listed liability.

If any portion of your liability remains unpaid after 60 days from the date of this notice, the Department may submit your debt to the Treasury Offset Program (TOP). Once your debt is submitted to TOP for offset, the United States Department of Treasury may reduce or withhold any of your eligible federal tax refunds or vendor payments by the amount of your debt. These offset processes are authorized by 31 U.S.C. 3716, 26 U.S.C. 6402, KRS 44.065 and KRS 44.030

PLEASE MAKE YOUR CHECK PAYABLE TO THE KENTUCKY STATE TREASURER AND INCLUDE YOUR NOTICE NUMBER. Mail your payments to the Division of Collections, P.O. Box 491, Frankfort, Kentucky 40602.

Sincerely,

Division of Collections
P.O. Box 491
501 High St. 8th Floor
Frankfort, KY 40602
Telephone: (502) 564-4921 ext. 5356

**CASEY COUNTY ATTORNEY'S OFFICE
LIBERTY, KENTUCKY 42539**

April 3, 2013

Re: Notice of Intent to Enforce Lien and
Certificate of Delinquency

According to the tax records in the Casey County Clerk's Office, you have failed to pay the following identified real estate tax bill for calendar year :

Bill #
Map #
Description:
Current Amount Due: \$

A Certificate of Delinquency was issued on and this Certificate constitutes a lien of record against the above described real property. This lien will remain on your property until it is paid and the lien cannot be defeated by gift, devise, sale or alienation of the property.

A sale of tax claims will be held by the Casey County Clerk on the date established by the Department of Revenue, Commonwealth of Kentucky. **Unless your tax bill is paid to the Casey County Clerk before , the Casey County Clerk will offer the Certificate of Delinquency for sale and it may be purchased by a third-party purchaser.** If the Certificate of Delinquency is purchased by a third- party purchaser, this Certificate will be subject to collection by third-party purchasers as provided by law, and the third-party purchasers will impose **significant additional collection fees.**

If you meet the requirements established by our tax collection division and if the terms of the payment plan are agreed to prior to the date of sale of the Certificate of Delinquency, you may qualify for a payment plan with the county attorney. The name, address and telephone number of the contact person at the county attorney's office is Elsie, 628 Campbellsville Street, P.O. Box 190, Liberty, Kentucky 42539, (606) 787-7100.

Unless you pay the Certificate of Delinquency before the sale date, your property may be subjected to a court ordered sale in a foreclosure action and you will bear the risk of incurring additional substantial expenses. **You may avoid these risks by paying your delinquent taxes prior to the sale date! You should immediately contact the Casey County Clerk (606-787-6471) and pay these taxes, plus interest and penalties, in full.**

Only the Casey County Clerk can calculate the exact and current amount of taxes due and accept payment. **Do not send payment to this office.** Please make arrangements to pay your tax bill to the Casey County Clerk during regular business hours prior to the sale date. This notice should be presented to the Casey County Clerk at the time you pay the taxes.

In the event the taxes have been paid prior to receiving this notification or in the event the taxes have not been paid as a result of an oversight, my apologies are extended for any embarrassment or inconvenience caused by this notification.

Thomas M. Weddle, Jr., Casey County Attorney

Case Number

CEFN0223

Docket Number

State: **Functional Area**

COMMONWEALTH OF KENTUCKY
DEPARTMENT OF REVENUE

TO: NAME 1
NAME 2
ADDRESS 1
ADDRESS 2
ADDRESS 3
CITY, STATE & ZIP

DATE

FINAL NOTICE BEFORE SEIZURE

Department records indicate that the amount of \$#114 has not been paid. To avoid seizure action, as provided in KRS 131.500 through 131.540, full payment of the amount due must reach this office by #088. Please make check payable to the Kentucky State Treasurer and forward with this notice.

SEIZURE MAY BE MADE OF ALL YOUR PROPERTY OR RIGHTS TO PROPERTY INCLUDING PROPERTY DISCLOSED TO THE DEPARTMENT THROUGH INFORMATION OBTAINED FROM THE INTERNAL REVENUE SERVICE PURSUANT TO 26 USC 6103(d). THIS INCLUDES, BUT IS NOT LIMITED TO, THE ATTACHMENT OF ANY FUNDS HELD BY A BANK ON YOUR BEHALF, ANY WAGES PAID TO YOU BY YOUR EMPLOYER, AND THE SEIZURE AND SALE OF ANY OF YOUR REAL ESTATE. If any tax liability that is the basis of this notice is INCOME or WITHHOLDING TAX and if the liability remains unpaid after 60 days from the date of this notice, any FEDERAL INCOME TAX REFUND to which you may be entitled may be offset. If you believe that all or a portion of your individual income tax liability is not past due or is not legally enforceable, you may, within 60 days from the date of this notice, present evidence to support your position. After reviewing your evidence, the Department will notify you of its decision before any offset action is taken.

If you have questions concerning this liability, please contact the Division of Collections at (502) 564-4921, Ext. No. 5354, or write 501 High Street, 8th Floor, P. O. Box 491, Frankfort Kentucky 40602.

Levy Section
Division of Collections
Department of Revenue

Attachment

COUNTY ATTORNEY COLLECTION CONTRACT

WITH THE

DEPARTMENT OF REVENUE

AND

QUARTERLY COLLECTION REPORT



STEVEN L. BESHEAR
Governor

FINANCE AND ADMINISTRATION CABINET
DEPARTMENT OF REVENUE

501 HIGH STREET
FRANKFORT, KENTUCKY 40601-2103
www.kentucky.gov

LORI HUDSON FLANERY
Secretary

THOMAS B. MILLER
Commissioner

Date: November 15, 2012

Re: 2013 County Attorney Contract and Quarterly Reports

To Whom It May Concern:

Attached you will find the 2013 Property Tax Contract for the collection of delinquent property taxes. Please print and sign two copies to be executed as counterparts and return both to be signed by the Division of Collections Director. A copy will be returned for your records. You will also find an Acknowledgment of Confidentiality attached which needs to be signed and returned. A copy will be returned to you with your contract. You must return the executed contract and Acknowledgment of Confidentiality no later than December 31, 2012. Failure to do so will result in DOR assuming collection responsibility.

As with prior years' contracts, you are required to file a quarterly report summarizing your collection activities. Enclosed, please find a copy of the quarterly report form. These reports are statutory and contractual obligations of your office, the Department of Revenue (DOR) uses the information provided on the forms to fully evaluate and monitor the collection of delinquent property tax and to insure that all citizens of our 120 counties are being treated uniformly.

If you have the ability, you may electronically sign both the 2013 County Attorney Property Tax Contract and the Acknowledgment of Confidentiality, and return both to Sharla.Whitt@ky.gov. After the contract is received by DOR, it will be electronically signed by the Division of Collections Director, and a copy will be emailed back to you.

If you have any questions about this contract, please do not hesitate to contact me.

For those who wish to mail the contracts and Acknowledgement of Confidentiality please mail to:

Rebecca Edmondson, Section Supervisor
Division of Collections
PO Box 5222
Frankfort, KY 40602

As always, we appreciate you cooperation and assistance.

Sincerely,

John Swain, Jr.
Kentucky Department of Revenue
Division of Collections
P.O. Box 5222
Frankfort, Kentucky 40602
Office: (502) 564-4921 Ext. 4478
Fax: (502) 564-7348

COUNTY ATTORNEY CONTRACT

This contract (Contract) is made and entered into by and between the DEPARTMENT OF REVENUE, COMMONWEALTH OF KENTUCKY, DIVISION OF COLLECTIONS, 501 High Street, Frankfort, Kentucky 40601-2103, (DOR), and _____, _____ County Attorney, _____ (mailing address), _____ (city), Kentucky, _____ (zip code), (County Attorney);

WITNESSETH:

WHEREAS, pursuant to KRS 134.504, the DOR is responsible for the collection of certificates of delinquency and delinquent personal property tax bills; and

WHEREAS, pursuant to KRS 134.504, the DOR and County Attorney desire to enter into a business relationship for the collection of certificates of delinquency and delinquent personal property tax bills in the County Attorney's county;

NOW, THEREFORE, in consideration of the premises and mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Term. Subject to termination under paragraph 7 of this Contract, the term of this Contract shall be a period of one year commencing on the date of this Contract, unless terminated.

2. Duties and Responsibilities of the County Attorney. In order to receive compensation under this Contract, the County Attorney shall perform the following:

A. Within thirty (30) days after the establishment of a certificate of delinquency, the County Attorney shall cause a notice of the purchase to be

mailed by regular mail to the owner of record on the assessment date at the address the records of the property valuation administrator (PVA). The notice shall:

1) Include the name, address and telephone number of a contact person in the County Attorney's office;

2) Advise the owner that the certificate of delinquency is a lien of record against the property on which the taxes are due, and bears interest at the rate of twelve percent (12%) per annum simple interest; and, if not paid, will be subject to collection by the County Attorney as provided by law;

3) Advise the owner that the amounts due are a personal obligation of the taxpayer on the assessment date;

4) Include the total amount due as of the date of the notice, and that collection actions may include foreclosure.

5) Advise that anytime after ninety (90) days from the creation of the certificate of delinquency, the certificate of delinquency may be paid by a third-party purchaser and, that if so paid, the certificate of delinquency will be subject to collection by the third-party purchaser as provided by law. The notice shall also advise that a third-party purchaser may impose substantial additional administrative costs and fees associated with collection in addition to the amount due on the certificate of delinquency. This statement shall not be included in notice sent to the owners of property subject to personal property certificates of delinquency.

6) Advise that the taxpayer may qualify for a payment plan with County Attorney if the taxpayer meets the requirements established by the County Attorney and if terms are agreed to prior to the date of the sale.

B. The County Attorney shall file in the office of the county clerk a list of the names and addresses to which the 30-day notice was mailed along with a certificate that the notice was mailed in accordance with KRS 134.504.

C. All notices returned as undeliverable shall be submitted to the PVA for correction of inadequate or erroneous addresses and, if property has been transferred, determination of the new owner and the current mailing address. If the PVA fails to return the notices with the corrected information after 20 days, the County Attorney shall follow up with the PVA and shall notify the Department. Upon receipt of the new information from the PVA, the County Attorney shall resend the notice required by paragraph A.

D. At least twenty (20) days after the mailing of the thirty (30) day notice, required by paragraph (a) of the contract, but within sixty (60) days of the establishment of a certificate of delinquency, the County Attorney shall send a second notice, by regular mail, to owners of record whose tax bills remain delinquent, or to the in-care-of address or corrected address, if such information has been received. The notice shall include, at a minimum, the following information:

1) The name, address and telephone number of a contact person in the County Attorney's office;

2) A statement that a sale of tax claims will be held by the county clerk on the date established by the department for the sale. The text of the statement shall include the actual sale date, as well as a statement noting that the certificate of delinquency may be paid by a third-party purchaser at the sale, and if the certificate of delinquency is paid by a third-party purchaser, it will be subject to collection by the third-party purchaser as provided by law, and that significant additional collection fees will be imposed by the third-party purchaser, and that collection actions may include foreclosure. This statement shall not be included in notices sent to owners of property subject to a personal property certificate of delinquency.

3) A statement that the taxpayer may qualify for a payment plan with County Attorney if the taxpayer meets the requirements established by the County Attorney and if terms are agreed to prior to the date of the sale.

E. The County Attorney shall file in the office of the county clerk a list of the names and addresses to which the 60-day notice was mailed along with a certificate that the notice was mailed in accordance with KRS 134.504.

F. The County Attorney shall deliver to the Property Valuation Administrator, a list of the owners whose tax bills remain delinquent at the time the notice required by paragraph D is sent as required by KRS 134.504 (4)(e).

G. If the notice required by paragraph A is returned as undeliverable and the PVA is not able to provide a corrected or updated address, the County Attorney shall

address the notice required by paragraph D to “Occupant” and shall mail the notice to the address of the property to which the certificate of delinquency applies.

H. Any time after the expiration of the one (1) year tolling period established by KRS 134.546, the county attorney may institute an action to collect the amount due on a certificate of delinquency owned by the taxing jurisdictions and in the possession of the county clerk. At least forty-five (45) days before instituting a legal action, the county attorney or department shall send, by regular mail, a notice of intent to initiate legal action to enforce the lien. The notice shall be sent to the owner of record of the property or to the in-care-of address or corrected address if either has been provided pursuant to this section.

I. Any action on behalf of the state, county, and taxing districts authorized by KRS 134.490 or 134.504 shall be filed on relation of the Secretary of the Finance and Administration Cabinet, Department of Revenue, and the petition shall be sent to the DOR upon request. The DOR may require revision in instances where it deems revision or amendment necessary. A copy of the judgment shall also be sent to the DOR. On the same day that suit is filed, the county clerk shall be given notice of its filing. Costs incident to the suit shall become a part of the tax claim and must be requested in the pleading.

J. Pursuant to KRS 134.549, after the state, county, and taxing districts obtain real property as authorized by KRS 134.490, the County Attorney is designated agent of the Commissioner of Revenue to advertise and sell at public sale any of the lands. The County Attorney will prepare a deed for execution by the Commissioner to convey the lands to the purchaser.

K. For all delinquent taxpayers with a certificate of delinquency at least one year old, the County Attorney shall pursue the required collection procedures within one (1) year; otherwise, this contract is subject to termination. These procedures include, but are not limited to, filing a personal action against the delinquent taxpayer in the local district or circuit court; filing an action against the real estate of the delinquent taxpayer in the local circuit court; and additional efforts such as phone calls and letters.

If a delinquent taxpayer has three or more bills against the same property, an action should be filed against the real estate. Unless otherwise agreed to by the DOR, the County Attorney will exhaust all attempts to obtain and execute on an in personam judgment before pursuing a foreclosure action. Prior to filing a foreclosure action, the County Attorney should determine if there are any potential buyers and if the sale will cover all costs involved. If there are no potential buyers or if the sale is not economically feasible, then a foreclosure action should not be filed.

L. If the County Attorney has a conflict of interest in a collection matter, the DOR should be advised. Upon review of the facts and determining the existence of a conflict, the DOR will perform the collection duties in that matter. Conflicts will be determined on a case by case basis. The collection fee that would have otherwise been paid to the County Attorney shall be paid to the DOR for deposit in the delinquent tax fund under KRS 134.552.

M. The County Attorney shall submit written progress reports on a quarterly basis, unless more frequent reports are requested by the DOR; otherwise, this contract is subject to termination under paragraph 7 of this contract. This report shall be on the form provided by the Department. The first quarter report begins with the month of January.

The report shall be returned to the Division of Collections within 45 days of the end of each quarter. The DOR may request additional information, if deemed necessary, to evaluate the collection efforts of the County Attorney.

N. If the County Attorney fails to perform the duties required by this Contract, the DOR shall assume responsibility for the collection process. The collection fee that would have otherwise been paid to the County Attorney shall be paid to the DOR for deposit in the delinquent tax fund under KRS 134.552.

O. Certificates of delinquency shall bear interest from the date of issuance until collected at the rate of twelve percent (12%) per annum simple interest. A fraction of a month is counted as an entire month. The add-on fees of the county clerk and County Attorney shall be included with the interest calculation.

P. The County Attorney may, at any time after assuming collection duties, enter into an agreement with the delinquent taxpayer to accept installment payments. The agreement shall not waive the County Attorney's right to initiate court action or other authorized collection activities if the taxpayer does not make payments according to the agreement.

Q. To improve collections, the County Attorney may waive penalties pursuant to KRS 131.030(3) and 131.175, and penalties and interest pursuant to KRS 131.081(6), if applicable, upon the showing of reasonable cause. Refer to *Guidance for the Waiver of Penalties and Interest on Real and Personal Property* issued by the Department of Revenue in November of 2009.

R. For each notice mailed pursuant to paragraphs A and D, one dollar (\$1) shall be added to the amount of the certificate of delinquency, to offset the cost of

mailing, and, upon collection, the county attorney or the department shall be paid such amounts as reimbursement for mailing costs. Failure of the county attorney or the department to mail the notices required in paragraphs A and D shall not affect the validity of the claim of the state, county, school district, and taxing district. However, the county attorney shall not receive any compensation, commission, or payment related to any certificate of delinquency for which the notices required by the paragraphs A and D of this section are not sent.

3. Duties and Responsibilities of the DOR. Under this Contract, the duties and responsibilities of the DOR are as follows:

A. Pursuant to KRS 134.504(11), the DOR may make its delinquent tax collection databases and other technical resources, including but not limited to income tax refund offsetting, available to the County Attorney upon request.

B. The DOR shall advise the County Attorney in all actions, and may send special assistance when the Commissioner deems assistance necessary or the County Attorney requests.

4. Evaluation of the County Attorney. DOR personnel will review the County Attorney's progress report and any additional documentation requested by the DOR to ensure that satisfactory collection efforts have been made as outlined in paragraph K of this contract.

5. Confidentiality. Pursuant to KRS 134.504, 131.190 and 131.081(15), the County Attorney seeking assistance shall enter into any agreements required by the DOR to protect taxpayer confidentiality, to ensure database integrity, or to address other concerns of the DOR.

KRS 131.081(15) and 131.190 are hereby incorporated in this Contract by reference as if fully set out herein and copies of these statutes are attached in Exhibit A. The County Attorney and his/her employees, who utilize DOR information, are subject to the confidentiality provisions of KRS 131.190 and 131.081(15), and shall execute a DOR Acknowledgment of Confidentiality form, attached as Exhibit A.

6. Compensation. Pursuant to KRS 134.504(7), the County Attorney, who enters into a Contract and performs his/her duties in respect to the certificates of delinquency and delinquent personal property tax bills, shall be entitled to an add-on fee which equals twenty percent (20%) of the tax, interest, and penalty amount due each taxing unit, whether the tax claim is voluntarily paid or is paid through sale or under court order. The fee shall be paid by the county clerk when making distribution, as provided in KRS 134.127. This fee shall be waived if the certificate of delinquency is paid by the taxpayer within five (5) days of the filing of the tax claim with the County Clerk.

If more than one (1) County Attorney renders necessary services in an effort to collect a tax claim, the attorney serving the last notice or rendering the last substantial service preceding collection shall be entitled to the fee.

When the County Attorney's office, in an effort to collect a certificate of delinquency or delinquent personal property tax bill, files a court action or files a cross-claim, an additional County Attorney's fee equal to thirteen percent (13%) of the amount of the certificate of delinquency and actual costs, including additional attorneys' fees incurred by the County Attorney necessary to prosecute any of the collection remedies available in KRS 134.504(7)(c) may be added to the certificate or the bill and shall become part of the tax claim. The additional

fee and the costs incident to litigation shall be added to the certificate of delinquency. Both the fee and the costs must be requested in the pleadings.

If the DOR sends assistance to a County Attorney who contracts to prosecute the suits or proceedings, the County Attorney shall be entitled to his full fee.

7. Termination. The County Attorney may terminate this contract upon sixty (60) days written notice (Notice) if prior to the County Clerk's sale. Thereafter, the County Attorney may terminate this contract upon thirty (30) days written notice (Notice). The DOR may terminate the Contract upon determination that the County Attorney has failed to perform the required collection duties in a reasonable and acceptable manner.

8. Notice. The Notice required by this Contract shall be deemed made on the day personally delivered or deposited in the US mail, postage prepaid, addressed to the other party at the address set forth below:

To the DOR:

Rebecca Edmondson, Section Supervisor
Department of Revenue
Division of Collections
501 High Street, 8th Floor
Frankfort, Kentucky 40601-2103

To the County Attorney:

9. Law. The interpretation and enforcement of this Contract shall be construed in accordance with the laws of the Commonwealth of Kentucky. In the event any legal action

becomes necessary to enforce or interpret the terms of this Contract, the parties to this Contract agree that such action will be brought in the Franklin Circuit Court, Frankfort, Kentucky, and the parties hereby submit to the jurisdiction of said court.

10. Severability. The invalidity or unenforceability of any provision of this Contract shall not affect the validity or enforceability of any other provision.

11. Amendments. Any amendments to this Contract will be effective only if in writing and signed by the DOR and the County Attorney.

12. Entire Contract. This Contract constitutes the entire Contract of the DOR and the County Attorney with respect to the subject matter hereof.

13. Headings. The headings used herein are for convenience only and do not limit the contents of this Contract.

14. No Waiver. No waiver of a breach of any provision of this Contract shall be construed to be a waiver of any breach of any other provision. No delay in acting with regard to any breach of any provision of this Contract shall be construed to be a waiver of such breach.

15. Effective Date. The effective date of this contract shall be the date the Director of the Division of Collections signs on behalf of the Department of Revenue.

IN WITNESS WHEREOF, the parties hereto have set their hands to this County Attorney Contract this the day and year set forth below.

(signature)

County Attorney

(date)

(signature)

Director
Division of Collections
Department of Revenue

(date)

Kentucky Department of Revenue
ACKNOWLEDGMENT OF CONFIDENTIALITY

The Kentucky Department of Revenue (KDOR) requires all employees, employees of other government agencies or institutions, any authorized persons or entities conducting research, any persons or entities contracted to provide services for KDOR, or any other person or entity permitted access to KDOR records and files, be aware of the confidential nature of state and federal taxpayer records and files. They must also be aware of the statutory provisions restricting use of taxpayer information and the penalties for failure to comply with those limitations.

The KDOR further requires that persons and entities permitted access to confidential state and/or taxpayer information acknowledge that they have read and understand the confidentiality provisions as provided in the Kentucky Revised Statutes (KRS) and the Internal Revenue Code (IRC).

1. STATE STATUTORY

RESTRICTIONS KRS 131.190

provides:

- (1) *No present or former commissioner or employee of the Department of Revenue, present or former member of a county board of assessment appeals, present or former property valuation administrator or employee, present or former secretary or employee of the Finance and Administration Cabinet, former secretary or employee of the Revenue Cabinet, or any other person, shall intentionally and without authorization inspect or divulge any information acquired by him of the affairs of any person, or information regarding the tax schedules, returns or reports required to be filed with the cabinet or other proper officer, or any information produced by a hearing or investigation, insofar as the information may have to do with the affairs of the person's business. This prohibition does not extend to information required in prosecutions for making false reports or returns of property for taxation, or any other infraction of the tax laws, nor does it extend to any matter properly entered upon any assessment record, or in any way made a matter of public record, nor does it preclude furnishing any taxpayer or his properly authorized agent with information respecting his own return. Further, this prohibition does not preclude the commissioner or any employee of the Department of Revenue from testifying in any court, or from introducing as evidence returns or reports filed with the cabinet, in an action for violation of state or federal tax laws or in any action challenging state or federal tax laws. The commissioner or the commissioner's designee may provide an owner of unmined coal, oil or gas reserves, and other mineral or energy resources assessed under KRS 132.820(1), or owners of surface land under which the unmined minerals lie, factual information about the owner's property derived from third-party returns filed for that owner's property, under the provisions of KRS 132.820(1), that is used to determine the owner's assessment. This information shall be provided to the owner on a confidential basis, and the owner shall be subject to the penalties provided in KRS 131.990(2). The third-party filer shall be given prior notice of any disclosure of information to the owner that was provided by the third-party filer.*

- (2) *The commissioner shall make available any information for official use only and on a confidential basis to the proper officer, agency, board or commission of this state, any Kentucky county, any Kentucky city, any other state, or the federal government, under reciprocal agreements whereby the cabinet shall receive similar or useful information in return.*
- (3) *Statistics of tax-paid gasoline gallonage reported monthly to the Department of Revenue under the gasoline excise tax law may be made public by the department.*
- (4) *Access to and inspection of information received from the Internal Revenue Service is for Department of Revenue use only, and is restricted to tax administration purposes. Notwithstanding the provisions of this section to the contrary, information received from the Internal Revenue Service shall not be made available to any other agency of state government, or any county, city, or other state, and shall not be inspected intentionally and without authorization by any present secretary or employee of the Finance and Administration Cabinet, commissioner or employee of the Department of Revenue, or any other person.*
- (5) *Statistics of crude oil as reported to the Department of Revenue under the crude oil excise tax requirements of KRS Chapter 137 and statistics of natural gas production as reported to the Revenue Cabinet under the natural resources severance tax requirements of KRS Chapter 143A may be made public by the department by release to the Environmental and Public Protection Cabinet, Department for Natural Resources.*
- (6) *Notwithstanding any provision of law to the contrary, beginning with mine-map submissions for the 1989 tax year, the department may make public or divulge only those portions of mine maps submitted by taxpayers to the department pursuant to KRS Chapter 132 for ad valorem tax purposes that depict the boundaries of mined-out parcel areas. These electronic maps shall not be relied upon to determine actual boundaries of mined-out parcel areas. Property boundaries contained in mine maps required under KRS Chapters 350 and 352 shall not be construed to constitute land surveying or boundary surveys as defined by KRS 322.010 and any administrative regulations promulgated thereto.*
- (7) *Notwithstanding any other provision of the Kentucky Revised Statutes, the department may divulge to the applicable school districts on a confidential basis any utility gross receipts license tax return information that is necessary to administer the provisions of KRS 160.613 to 160.617.*

KRS 131.081(15) provides in relevant part:

Taxpayers shall have the right to privacy with regard to the information provided on their Kentucky tax returns and reports, including any information or documents attached thereto. Except as provided by KRS 131.190, no information pertaining to such returns, reports, or the affairs of a person's business shall be divulged by the department to any person or be intentionally and without

authorization inspected by any present or former commissioner or employee of the Department of Revenue, member of a county board of assessment appeals, property valuation administrator or employee, or any other person.

KRS 131.990(2) provides:

(a) Any person who violates the intentional unauthorized inspection provisions of KRS 131.190(1) shall be fined not more than five hundred dollars (\$500) or imprisoned for not more than six (6) months, or both.

(b) Any person who violates the provisions of KRS 131.190(1) by divulging confidential taxpayer information shall be fined not more than one thousand dollars (\$1,000) or imprisoned for not more than one (1) year, or both.

(c) Any person who violates the intentional unauthorized inspection provisions of KRS 131.190(4) shall be fined not more than one thousand dollars (\$1,000) or imprisoned for not more than one (1) year, or both.

(d) Any person who violates the provisions of KRS 131.190(4) by divulging confidential taxpayer information shall be fined not more than five thousand dollars (\$5,000) or imprisoned for not more than five (5) years or both.

(e) Any present secretary or employee of the Finance and Administration Cabinet, commissioner or employee of the Department of Revenue, member of a county board of assessment appeals, property valuation administrator or employee, or any other person, who violates the provisions of KRS 131.190(1) or (4) may, in addition to the penalties imposed under this subsection, be disqualified and removed from office or employment.

2. FEDERAL STATUTORY RESTRICTIONS

The KDOR and Internal Revenue Service (IRS) require that all employees be aware that Federal tax information in the possession of KDOR is for the official use of authorized KDOR employees only, and may not be provided to employees of other government agencies or institutions, or any other person or entity who is not an authorized employee of KDOR. Contractor personnel may be permitted access to Federal tax information only upon prior approval of the contractor by the IRS.

Unauthorized Disclosure of Federal Information

Section 6103(a)(2) of the IRC provides in relevant part:

. . . no officer or employee of any State, . . . who has or had access to returns or return information under this section, . . . shall disclose any return or return information obtained by him in any manner in connection with his service as such an officer or an employee or otherwise or under the provisions of this section. For purposes of this subsection, the term "officer or employee" includes a former officer or employee.

Section 7213(a)(2) of the IRC provides in relevant part:

It shall be unlawful for any person . . . willfully to disclose to any person, except as authorized in this title, any return or return information . . . acquired by him or another person Any violation of this paragraph shall be a felony punishable by a fine in any amount not exceeding \$5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution.

Unauthorized Inspection of Federal Returns or Return Information – “The Taxpayer Browsing and Protection Act”

IRC Section 7213A(a)(2) provides in relevant part:

It shall be unlawful for any person . . . willfully to inspect, except as authorized in this title, any return or return information (non-computerized taxpayer records, including hard copies of returns -- as well as computerized information) acquired by such person or another person . . .

IRC Section 7213A(b)(1) provides:

Any violation of subsection (a) shall be punishable upon conviction by a fine in any amount not exceeding \$1,000, or imprisonment of not more than 1 year, or both, together with the costs of prosecution.

Civil Damages for Unauthorized Disclosure of Federal Returns and Return Information

IRC Section 7431(a)(2) provides in relevant part:

If any person . . . knowingly, or by reason of negligence, inspects or discloses any return or return information with respect to a taxpayer. . . , such taxpayer may bring a civil action for damages against such person in a district court of the United States.

I, _____, hereby acknowledge that
I have read the
above regarding the confidentiality of KDOR and IRS records and files, and that I
understand and will abide by those restrictions.

(Print Name) Organization Signature Date

WITNESS:

(Print Name) Organization Signature Date

COUNTY ATTORNEY PROPERTY TAX REPORT

County _____

Check Appropriate Quarter

_____ Jan. -	_____ July - Sept
_____ Mar.	
_____ Apr. -	_____ Oct. - Dec.
_____ June	

Current Year Collections

How many current year tax bills were received this quarter? _____

How many 30-day notices mailed this quarter? _____

How many 30-day notices were returned undeliverable this quarter? _____

How many 60-day notices mailed this quarter? _____

How many 60-day notices were returned undeliverable this quarter? _____

How many current year bills were paid in full this quarter? _____

Collection total for current year bills this quarter? \$ _____

How many tax bills were sold at the county clerk sale this quarter? _____

How many pay agreements were set up for current year bills this quarter? _____

Prior Year Collections

How many prior year bills were paid in full this quarter? _____

Collection total for prior year bills this quarter? \$ _____

How many pay agreements were set up for prior year bills this quarter? _____

How many letters of intent to initiate legal action were mailed this quarter? _____

Suits Filed

How many property tax suits were filed this quarter?

How many property tax suits were answered this quarter?

Signature _____

Date _____

PENALTY WAIVER GUIDELINES

Commonwealth of Kentucky
Finance and Administration Cabinet
Department of Revenue
Office of Property Valuation
501 High Street Post Office Box 1202
Frankfort KY 40602-1202

MEMORANDUM

To: Kentucky Sheriffs
Kentucky County Attorneys
Kentucky County Clerks
Kentucky Property Valuation Administrators

From: David L Gordon 
Executive Director, Office of Property Valuation

Date: 12 November 2009

RE: Guidance for the Waiver of Penalties and Interest on Real and Personal Property

** **

The Kentucky Department of Revenue (“Department”) has developed the following guidance to allow the county attorneys under contract with the Department, sheriffs, and county clerks, to provide for the waiver of penalties and, in one instance, interest at the local level as the agent for the Department. KRS 131.140(2) The county attorneys acting under contract with the Department, sheriffs, and county clerks are allowed to waive penalties and interest, when the waiver will facilitate the collection of the delinquent tax bill and further, to prevent any injustice to the taxpayer. In light of the fact that the local official will be more familiar with the taxpayer and his or her circumstance, each waiver of penalties and interest reviewed by the local official should be done on a case-by-case basis, with each taxpayer’s circumstance being reviewed independently.

KRS 133.220 requires the county clerk to prepare for the use of the sheriff or collector a correct tax bill for each taxpayer in the county whose property has been assessed and whose valuation is included in the certification provided in KRS 133.180. Unfortunately, errors can occur on a tax bill, some of which are beyond the control of the taxpayer, which can result in the failure of the taxpayer not receiving a notice of tax due.

KRS 131.175 allows for the waiver of penalties when it is shown that the failure to pay is due to “reasonable cause”. Though KRS 131.175 specifically does not allow for the waiver of interest, KRS 131.081(6) does allow for the waiver of interest when it is shown that the taxpayer has relied on written advice from the Department, which would include written advice from a local official. Waiver of penalties and interest should only be granted as a matter of settlement and for the purpose of facilitating the collection of

the tax, as allowed by KRS 131.030(3). Further, no authority is provided by the Kentucky General Assembly to reduce the amount of tax due, unless there is a clerical, mathematical or procedural error in an assessment or any duplication of an assessment and that error has been reviewed and approved by the Department. KRS 133.110.

The sheriff may waive the penalties and interest that have been added when the tax bill is payable to the sheriff's office whenever reasonable cause has been demonstrated. If a waiver of a penalty and interest on a property tax bill is granted after the tax bill is transferred to the county clerks' office, each of the local officials affected by the waiver of the penalties and interest must sign the form.

The Department encourages the local officials to communicate and participate with each other in the decision to waive any penalty and interest related to this memorandum

I. GUIDELINES FOR WAIVER OF PENALTY AND INTEREST

KRS 131.175 allows for the waiver of penalties when there is shown "reasonable cause". KRS 131.010(9) defines reasonable cause as an event, happening, circumstance entirely beyond the knowledge or control of a taxpayer who has exercised due care and prudence in the filing of a return or report or the payment of monies due the Department pursuant to law or administrative regulation.

The waiver of interest can only occur when the taxpayer has shown that he or she has relied on erroneous written advice from the Department, which includes erroneous written advice from a local official. KRS 131.081(6)

A taxpayer's demonstration of reasonable cause relieves the taxpayer of paying a penalty and interest because payment would be unfair to the taxpayer in light of the circumstances surrounding the nonpayment of tax. A review by the local official of the circumstance provided by the taxpayer should be done on a case-by-case basis, with each taxpayer's circumstance being reviewed independently.

103 KAR 1:040 enumerate the circumstances constituting reasonable cause, which are as follows:

1. The taxpayer has relied on erroneous written advice from the Department, which would include erroneous written advice from a local official;
2. Death or serious illness of a taxpayer or his or her immediate family at the time the tax bills were mailed or due;
3. Death or serious illness of the taxpayer's tax return preparer at the time the tax bills were mailed or due;
4. Unavoidable absence of the taxpayer when the tax bills were mailed or due;

5. Destruction or unavailability of taxpayer records due to a catastrophic event at the time the tax bills were mailed or due;
6. Inability to obtain records in custody of a third party. For example, taxpayer divorced and the tax bill was mailed to the person other than who received the property under the terms of the divorce decree;
7. Employee theft or defalcation of taxpayer's financial records;
8. Undue hardship which can include the loss of a job or an unexpected emergency at the time the tax bills were mailed or due;
9. Human error. For example, the taxpayer's name or address may be misspelled and the taxpayer does not receive the bill;
10. Erroneous written advice by tax advisor on which it was reasonable for the taxpayer to rely;
11. Reliance on substantial legal authority;
12. Ignorance of reporting requirements due to the lack of previous tax and penalty experience. For example, the taxpayer moved in our out of state but failed to update the address with the property valuation administrator's office. Another example is when a taxpayer purchases property after January 1 and the tax bill is sent to the January 1 owner. The new owner is unaware of the delinquency the sheriff sends a second notice or the county attorney contacts the taxpayer about the delinquent tax bill;
13. Miscellaneous. The taxpayer has submitted a written waiver of penalties and fees and it is decided that the statements of the taxpayer establishes reasonable cause for delay in filing of a return or paying a tax which clearly negates negligence on the part of the taxpayer.

II. DOCUMENTATION

The Department has developed a form for use by the local official which documents why a taxpayer should be granted a waiver of a penalty and interest. The circumstance for waiver of penalties or interest correspond with the ones listed in 103 KAR 1:040. The local official should simply check the box that applies and sign the form. If a waiver is granted for a miscellaneous reason, then please provide details in the section marked "other".

If a penalty and interest on a property tax bill is waived while the sheriff is the local official responsible for its collection, only the sheriff or an authorized deputy is required to sign the form. A copy of the signed form may be provided to the taxpayer if a copy is requested. The original, signed copy should remain on file with the sheriff's office. The Department will review these forms as part of the settlement

process to complete a collection cycle. These forms are also subject to inspection by the Auditor of Public Accounts.

If a waiver of a penalty and interest on a property tax bill is granted after the tax bill is transferred to the county clerks' office, each of the local officials affected by the waiver of the penalties and interest must sign the form. Again, a copy of the signed form may be provided to the taxpayer upon request. The original signed copy should remain on file in the County Clerk's office for review by the Department and the Auditor of Public Accounts.

III. CONCLUSION

The situations detailed in this memorandum describe the most common occurrences encountered. The local official should not hesitate to contact the Department for further consideration of any situation, listed or unlisted, in this memorandum. Please contact the Office of Property Valuation at (502) 564-8338 for further discussion.

**DEPARTMENT OF REVENUE CIRCULAR
FOR OMITTED REAL PROPERTY TAX BILLS**

**REVENUE CIRCULAR
62C112**

PROPERTY TAX

December 3, 2012

TO PROPERTY VALUATION ADMINISTRATORS,
COUNTY CLERKS AND SHERIFFS:

Duties in Taxing Omitted Real Property

This circular replaces Circular 62C112 dated November 18, 2011.

This circular sets out the responsibilities of each county official in the assessment, preparation of tax bills and the collection of omitted property taxes.

Any real property which has not been listed for taxation, for any year in which it is taxable, by the time the Board of Assessment Appeals completes its work for that year shall be deemed omitted property.

Responsibilities of Property Valuation Administrator

Real Property:

KRS 132.310 reads in part:

“(1) Any person who has failed to list for taxation any property omitted from assessment, except such as is subject to assessment by the Department of Revenue, may at any time list such property with the property valuation administrator. The property valuation administrator shall proceed to assess any omitted real property and shall within ten (10) days from the date the real property was listed notify the taxpayer of the amount of the assessment. The notice shall be given as provided in KRS 132.450(4). The Department of Revenue shall assess any omitted personal property and provide notice to the taxpayer in the manner provided in KRS 131.110.

“(2) The property valuation administrator may at any time list and assess any real property which may have been omitted from the regular assessment. Immediately upon listing and assessing omitted real property, the property valuation administrator shall notify the taxpayer of the amount of the assessment. The notice shall be given as provided in KRS 132.450(4).”

Tangible and Intangible Personal Property:

The property valuation administrator is *not* authorized to assess omitted tangible property (KRS 132.320). He must forward to the Office of Property Valuation a list of any omitted tangible property discovered by him or voluntarily listed by a taxpayer. The office will assess the property and bill the taxpayer direct. Omitted tangible assessments are *not* certified to the clerk by the property valuation administrator.

Responsibilities of the County Clerk

The county clerk is the only county official who can legally prepare a property tax bill and then only upon proper certification. Regular tax bills shall be prepared only after certification by the Office of Property Valuation or as directed by Order Correcting Erroneous Assessment, Revenue Form 62A366, signed by the property valuation administrator. Omitted real property tax bills may be prepared only on receipt of Listing of Omitted Property, Revenue Form 62A379, from the property valuation administrator. Tax bills following litigation shall be prepared on the basis of orders from the Kentucky Board of Tax Appeals or court orders from the circuit court or the Court of Appeals.

Additional property tax bills or supplemental bills directed to be prepared on the basis of orders from the Kentucky Board of Tax Appeals or court orders from the circuit court or the Court of Appeals shall be listed on the reverse side of Authorization for Preparing Additional/Supplemental Property Tax Bills, Revenue Form 62A367. The clerk shall complete the face of this receipt for the total of taxes due each taxing district and give the bills to the sheriff for collection after the sheriff signs the three copies of the receipt.

The form for listing omitted property provides space for indicating whether the property is voluntarily or involuntarily listed. The clerk shall add a 10 percent penalty if voluntarily listed or a 20 percent penalty for omission if the property has been involuntarily listed by the property valuation administrator. In addition to the penalty, the clerk shall add interest accruing from the date the tax would have become delinquent (if the property had been listed as required by law) to the date the tax bill is collected. Interest rates which are set for each year beginning January 1, are based on the prime interest rate for the preceding October. If the prime interest rate varies as much as one percentage point from the existing tax interest rate, then the tax interest rate is adjusted accordingly.

As authorized by legislation enacted in 2008, the interest rate that applies to omitted real property tax bills is two percentage points higher than the statutory tax interest rate.

The tax interest rate for 2009 (for assessments of property owned on January 1, 2008) is 5 percent. This means that the interest rate that will be applied to omitted 2008 property tax bills will be 7 percent (the tax interest rate plus 2 percent). The interest is figured as follows:

$$7\% \div 365 \text{ days} = .01917808\% \text{ per day}$$

The tax interest rate for 2010 and 2011 (for assessments of property owned on January 1, 2009 and January 1, 2010) is 3 percent. This means that the interest rate that will be applied to omitted 2009 and 2010 property tax bills will be 5 percent (the tax interest rate plus 2 percent). The interest is figured as follows:

$$5\% \div 365 \text{ days} = .01369863\% \text{ per day}$$

The tax interest rate for 2012 and 2013 (for assessments of property owned on January 1, 2011 and January 1, 2012) is 4 percent. This means that the interest rate that will be applied to omitted 2011 and 2012 property tax bills will be 6 percent (the tax interest rate plus 2 percent). The interest is figured as follows:

$$6\% \div 366 \text{ days} = .01639344\% \text{ per day for 2012}$$

$$6\% \div 365 \text{ days} = .01643836\% \text{ per day for 2013}$$

The following example will demonstrate how to calculate the state's portion of an omitted tax bill issued June 1, 2013. The interest will be calculated through June 30, 2013 in accordance with the legislative change made by the 2002 General Assembly on omitted tax bill procedures. Assume the assessment was omitted beginning with the 2008 tax year and the assessed value each year is \$10,000.

	Del. Date	State Tax Rate	Tax	Penalty	Interest*	Total
2008	2009	12.2	12.20	1.22	3.16	16.58
2009	2010	12.2	12.20	1.22	2.31	15.73
2010	2011	12.2	12.20	1.22	1.70	15.12
2011	2012	12.2	12.20	1.22	1.09	14.51
2012	2013	12.2	12.20	1.22	.36	13.78
TOTAL TAX BILLS			61.00 +	6.10 +	8.62 =	\$75.72

*Interest figured from the time the bill became delinquent as prescribed in KRS 132.290(4) as follows:

Interest Starts Jan. 1	Days		Interest Factor		Interest Percentage		Original Tax Amount		Total Interest
2008 Bill									
2009	365	x	.01917808%	=	7%	x	12.20	=	.85
2010	365	x	.01369863%	=	5%	x	12.20	=	.61
2011	365	x	.01369863%	=	5%	x	12.20	=	.61
2012	366	x	.01639344%	=	6%	x	12.20	=	.73
2013	181	x	.01643836%	=	2.98%	x	12.20	=	.36
									\$3.16
2009 Bill									
2010	365	x	.01369863%	=	5%	x	12.20	=	.61
2011	365	x	.01369863%	=	5%	x	12.20	=	.61
2012	366	x	.01639344%	=	6%	x	12.20	=	.73
2013	181	x	.01643836%	=	2.98%	x	12.20	=	.36
									\$2.31
2010 Bill									
2011	365	x	.01369863%	=	5%	x	12.20	=	.61
2012	366	x	.01639344%	=	6%	x	12.20	=	.73
2013	181	x	.01643836%	=	2.98%	x	12.20	=	.36
									\$1.70
2011 Bill									
2012	366	x	.01639344%	=	6%	x	12.20	=	\$.73
2013	181	x	.01643836%	=	2.98%	x	12.20	=	.36
									\$1.09
2012 Bill									
2013	181	x	.01643836%	=	2.98%	x	12.20	=	.36

From the information contained on the Listing of Omitted Property, Revenue Form 62A379, the clerk prepares a separate Omitted Real Estate Tax Bill, Revenue Form 62A301-S, for each year that the property was omitted. The clerk places the omitted tax bill number, the date issued and signature in the spaces provided at the bottom of the Listing of Omitted Property. **The Sheriff's Official Receipt for Omitted Property Tax Bills on the reverse side of the listing form is then prepared. The three copies of the receipt are presented to the sheriff with three copies of each omitted tax bill. The fourth copy, "Clerk's Copy," of the omitted bill remains in the book as a permanent record. If the sheriff accepts the omitted bills as prepared, he must acknowledge acceptance by signing the receipt. The clerk must acknowledge the sheriff's signature and complete the certification at the bottom of the receipt.**

The clerk then returns one copy of the Listing of Omitted Property with the completed receipt on the reverse side to the property valuation administrator, retains one copy for the permanent file and mails one copy to the Office of Property Valuation at the end of each month attached to the County Clerk's Monthly Report of Omitted Assessments, Revenue Form 62A364.

Responsibilities of Sheriff

Sheriffs must not accept any omitted tax bills which do not include penalty and interest computed according to law. The sheriff will be charged with all penalty and interest on his final settlement whether or not it was collected from the taxpayer.

The taxpayer has 30 days from the date of the bill to pay without additional penalty and interest. Any omitted tax bill not paid within this period is subject to additional interest based upon the tax amount, an additional 10 percent penalty on the tax, penalty and interest and an additional sheriff's fee of 10 percent based upon the tax and 10 percent penalties. A delinquent omitted tax bill must be transferred to the County Clerk's Office three months and fifteen days after the initial thirty day payment period.

The sheriff receives three copies of Omitted Real Estate Tax Bill, Revenue Form 62A301-S, from the county clerk. He immediately mails the third copy, "Taxpayer's Notice," to the taxpayer. The first copy, "Taxpayer's Receipt," of the receipted bill must be given to the taxpayer at the time the bill is paid. The second copy, "Sheriff's Copy," is retained for the permanent record of the sheriff. All collections of omitted real estate taxes must be reported monthly in the spaces provided on Sheriff's Monthly Report of Property Tax Collections, Revenue Form 62A394.

Office of Property Valuation
Department of Revenue

**VARIOUS STATUTES GOVERNING REAL
PROPERTY TAX DUTIES PERFORMED
BY COUNTY ATTORNEY OFFICES**

WEB LINKS TO KRS STATUTES

<http://www.lrc.ky.gov/KRS/132-00/220.PDF> - Assessment dates--Listing--Owner--Liability--Exemptions, listing, annual review.

<http://www.lrc.ky.gov/KRS/132-00/290.PDF> - Omitted property, what constitutes—Periods within which it may be assessed retroactively—Penalties and interest.

<http://www.lrc.ky.gov/KRS/133-00/120.PDF> - Appeal procedure.

<http://www.lrc.ky.gov/KRS/134-00/015.PDF> - Due dates--Person responsible for payment—Regular and alternative collection schedules--Discounts.

<http://www.lrc.ky.gov/KRS/134-00/119.PDF> - Sheriff is collector of taxes—Means of payment—Penalties—Sale of personal property—Compensation of sheriff.

<http://www.lrc.ky.gov/KRS/134-00/122.PDF> - Transfer of certificates of delinquency by sheriff to clerk.

<http://www.lrc.ky.gov/KRS/134-00/125.PDF> - Interest on certificates of delinquency.

<http://www.lrc.ky.gov/KRS/134-00/420.PDF> - Lien for taxes.

<http://www.lrc.ky.gov/KRS/134-00/421.PDF> - Apportionment of taxes on real property when one owner does not pay taxes due.

<http://www.lrc.ky.gov/KRS/134-00/452.PDF> - Third-party purchaser of certificate of delinquency—Fees—Collection limitations—Notice to proper owner—Legislative findings.

<http://www.lrc.ky.gov/KRS/134-00/490.PDF> - Actions by owner of certificate of delinquency to collect or foreclose certificate—Notice by third-party purchaser to taxpayer—Installment payment plans.

<http://www.lrc.ky.gov/KRS/134-00/504.PDF> - Department to collect or contract with county attorney for collection of certificates of delinquency.

<http://www.lrc.ky.gov/KRS/134-00/546.PDF> - Cause of action on certificates of delinquency—Sale and deed on foreclosure—No redemption—Additional rights if owner is a taxing unit.

<http://www.lrc.ky.gov/KRS/134-00/551.PDF> - Refund to purchaser of certificate of delinquency that is unenforceable or declared void—Reassessment of property.

<http://www.lrc.ky.gov/KRS/426-00/260.PDF> - Motion for possession by purchaser—notice--judgment.

<http://www.lrc.ky.gov/KRS/426-00/520.PDF> - Appraisal of real property before judicial sale.

<http://www.lrc.ky.gov/KRS/426-00/530.PDF> - Right of redemption--Manner of redeeming—Purchaser to receive writ of possession and deed.

<http://www.lrc.ky.gov/kar/103/005/180.htm> - Procedures for sale of certificates of delinquency by county clerks.

<http://www.lrc.ky.gov/kar/103/005/190.htm> - State registration requirements and application process for purchasing certificate of delinquency; fees; and definitions for related entities and related interests.

<http://www.lrc.ky.gov/kar/103/005/220reg.htm> - Installment payment guidelines for third party purchasers of certificates of delinquency.

CONTACT INFORMATION FOR GENERAL PROPERTY TAX ISSUES

Department of Revenue
Office of Property Valuation
P. O. Box 1202
Frankfort, KY 40602-1202

Telephone: (502) 564-7179 – Tom Crawford

Fax: 502-564-8368

CONTACT INFORMATION FOR BANKRUPTCY ISSUES

Department of Revenue
Office of Processing and Enforcement
501 High Street
Frankfort, KY 40601-2103

Telephone: (502) 564-4921 ext. 4440

Fax: (502) 564-7348

County Clerk Website:
www.revenue.ky.gov/clerknetwork