

**REAL PROPERTY TAX DUTIES  
OF THE  
COUNTY CLERK'S OFFICE**

**PREPARED BY THE  
OFFICE OF PROPERTY VALUATION**

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Property Tax Calendar .....	1
Preparation of Property Tax Bills .....	4
Inclusion of Fire Fees on a County’s Property Tax Bill.....	5
Inclusion of 911 Fees on a County’s Property Tax Bill.....	5
Sales of Delinquent Real Property Tax Bills .....	6
Submission of Delinquent Tax Bill Lists .....	7
Establishment of a Tax Sale Date.....	7
Mailing of Delinquent Notices .....	8
Advertisement of Certificates of Delinquency .....	8
Registration Process for Third Party Purchasers with Revenue .....	9
Registration Process for Third Party Purchasers with Clerk’s Office .....	10
Priority Certificates of Delinquency.....	10
Current Year Certificates of Delinquency .....	11
Registration Fees.....	11
Refund of Registration Fees Paid to Participate at the Tax Sale .....	11
Review of Registration Information and Priority Lists of Certificates.....	12
Communication Between the County Clerk and County Attorney .....	12
Processing of Payments Received Prior to the Tax Sale .....	13
Process to Follow When a Taxpayer’s Check is Returned for Insufficient Funds .....	13
Cut off for Payments Prior to the Tax Sale .....	14
Procedures to Use for the Delinquent Property Tax Sale .....	14
Refunds to Third Party Purchasers .....	15
Refunds to Third Party Purchasers When a Certificate of Delinquency is Involved in Litigation .....	17
Payments Received Pursuant to a Foreclosure Action .....	18
Difficulty Locating a Third Party Purchaser .....	19
Recording Fees added to Certificates of Delinquency.....	19
Assignment of a Certificates of Delinquency .....	20
Payment Amounts at Various Stages of the Delinquent Tax Collection Process .....	20
Oil and Gas and Unmined Mineral Property Tax Bills.....	22
Additional Supplemental and Omitted Tax Bills.....	23
Additional Property Tax Bills .....	23
Supplemental Property Tax Bills .....	23
Supplemental Tax Bill Example .....	24
Omitted Property Tax Bills.....	24
Omitted Property Tax Bill Example .....	25
2015 Omitted Tax Bill .....	26
2016 Omitted Tax Bill .....	26
Transfer of Delinquent Supplemental and Omitted Tax Bills .....	27
Personal Property Tax Bills.....	27
Franchise Tax Bill Duties .....	27
Bills for Telecommunications Companies and Distilled Spirits.....	28
Instructions for Cities and Counties Taxing Local Deposits.....	28
Local Board of Assessment Appeal Duties .....	29
Penalty Waiver Guidelines .....	30
Appendix –	
• Frequently Asked Questions .....	32
• Partial Payment Calculation Examples .....	40
• Computation to Determine Advertising Costs .....	42
• Application of Proceeds from Master Commissioner’s Sale When All Certificates of Delinquency Cannot Be Paid in Full .....	43
• Penalty Waiver Guidelines	
• Department of Revenue Circular for Omitted Real Property Tax Bills	
• Forms Sent to the County Clerk to Compile Property Tax Rates from Each Local Taxing District	
• Various Real Property Tax Forms used by County Clerk Offices	
• Examples of Circuit Court Decisions on Certificate of Delinquency Enforcement Actions	
• Regulation Governing the Third Party Purchaser Registration Process with the County Clerk’s Office	
• Various Statutes Governing Real Property Tax Duties Performed by County Clerk Offices	

This manual has been prepared by the Office of Property Valuation to serve as a guide to each county clerk's office for their duties with respect to the office's real property tax functions. Various county clerks 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 real property tax issues.

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 clerk 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 clerk'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 1<sup>st</sup> 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. 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. A separate section of this manual provides additional details of the county clerk's responsibilities in this area.

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 clerk'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
First Recap to Office of Property Valuation	First Monday in April	
Public Inspection of Tax Roll/PVA Conferences	13 Days Beginning First Monday in May (6 days per week, including Saturday)	
Final Recap to Office of Property Valuation	No Later Than 6 Work Days After the Close of Inspection	
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.
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.**

## **PREPARATION OF PROPERTY TAX BILLS**

In accordance with KRS 133.220, the county clerk is the local official responsible for the preparation of the property tax bills each year. In most, if not all counties, the county clerk will contract with a vendor or the property valuation administrator to do the actual printing of the tax bills. However, the county clerk continues to be the local official who obtains the official property tax rates from each taxing district. The tax rate information needs to be provided in writing by the appropriate official of the taxing district to the clerk's office. The county clerk should then make sure that the rates have been entered correctly into the computer software program that is used to print the tax bills.

In the Appendix to this manual is a section that contains examples of the form, instructions and letter that will be sent to all taxing districts in your county by the Department of Revenue to obtain each district's property tax rates. These forms will be mailed out in July or August of each year when taxing districts are beginning the process of setting rates. While these forms are designed to assist the Department of Revenue with its Omitted Tangible Property Tax program, county clerks can also ask each local taxing district to submit a copy of the form to their office as well. This is a convenient way for the county clerk to obtain each district's tax rate in writing and will help the clerk ensure accurate property tax rate information is furnished to the vendor who prints the county tax bills.

Taxing districts are required by KRS 132.0225 to establish a final tax rate within 45 days of the Department of Revenue's certification of the county's property tax roll. If this deadline is not met, the compensating tax rate for that district is used for that year's property tax bills. A copy of this statute is included in the Appendix of this manual. Additionally, the letter and forms sent to the county clerk by the Office of Property Valuation that can be used to compile each taxing district's rate are shown in the Appendix.

After the tax bills have been prepared, a receipt (Revenue Form 62A385 Sheriff's Official Receipt) which details the total amount of taxes due to each district must be prepared. This is normally done through the computer software that is used to print the tax bills. The receipt should be compared to the tax roll certification totals that are sent to the county clerk's office by the Office of Property Valuation. Any large discrepancies need to be investigated. It is important to verify the accuracy of the receipt since the sheriff will be charged with collecting the amounts shown on the receipt. This receipt is signed by the sheriff and county clerk and entered into the fiscal court order book. Copies of the receipt are distributed according to the Office of Property Valuation's guidelines.

The county clerk must additionally prepare the County Clerk's Claim for Preparing Tax Bills (Revenue Form 62A363) to receive the state's portion of the reimbursement due to the clerk's office for printing the tax bills.

Copies of the Sheriff's Official Receipt and the County Clerk's Claim for Preparing Tax Bills can be found in the appendix of this manual and on the county clerk's website at [www.revenue.ky.gov/clerknetwork](http://www.revenue.ky.gov/clerknetwork).

## **Inclusion of Fire Fees on a County's Property Tax Bill**

KRS 75.450 allows a fiscal court to adopt an ordinance that would allow a fire department that collects subscriber fees to add those fees to the county's property tax bill. The subscriber fees shall be a separate line item on the property tax bill and the sheriff collects and distributes the fees in the same manner as the other taxes on the bill. Subscriber fees that are unpaid represent a lien on the real property and the charges will incur the same penalty as State and county property tax amounts.

These provisions can cause issues for property owners who are not used to receiving a property tax bill due to the application of a homestead exemption or if the assessment of their property does not generate a tax bill large enough to exceed the tax bill thresholds in place – typically any tax bill under \$10 is not prepared. As part of the implementation of this method of collecting fire department subscriber fees, an extensive public relations campaign should be undertaken to help ensure that all property owners understand what these fees represent, any options to reduce or eliminate the fees that may be available and that any delinquent fees are subject to being acquired by third party purchasers.

## **Inclusion of 911 Fees on a County's Property Tax Bill**

KRS 65.760 allows a city, county or urban-county government to levy any special tax, license or fee to fund 911 emergency services.<sup>1</sup> However, unlike the fire fees discussed in the previous section, 911 Service Fees do NOT constitute a lien upon real property. The fee is a personal obligation of the property owner and non-payment of the fee is a Class A Misdemeanor.

When adding a 911 fee to a county tax bill, the fee must be separately shown on the bill. The 911 fee is not subject to the 2% discount for early payment of the property tax bill, nor are the late payment penalty amounts added to it. Only the tax portion of a certificate of delinquency with a 911 fee on it would be offered for sale to any third party purchaser.

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<sup>1</sup> In a 2015 divided opinion, Kentucky Supreme Court upheld the addition of this type of fee to a county's property tax bill. See Greater Cincinnati/Northern Kentucky Apartment Association, Inc. v. Campbell County Fiscal Court, 479 S.W.3d 603, 608 (Ky. 2015), reh'g denied (Feb. 18, 2016).



## SALES OF DELINQUENT REAL PROPERTY TAX BILLS

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 15<sup>th</sup> – or the fifteenth day of the fourth month after the date the taxes were due under an alternative collection schedule. When the transfer of the delinquent tax bills is made, the sheriff and county clerk will need to complete a receipt – Revenue Form 62A358 – which documents the number of bills and the total amount of the delinquencies that the county clerk's office is receiving. This receipt needs to be completed and signed by both the sheriff and county clerk at the time the tax bills are transferred to the county clerk's office.

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 – Revenue Form 62A358-S – 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. The supplemental receipt shall be prepared within 30 days of the original tax bill transfer date and shall be filed by the county clerk in the clerk's order book.

Copies of both receipt forms are included in the Appendix to this manual and are available on the county clerk's network.

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.

Each of these duties will be discussed in detail in the following sections.

### **SUBMISSION OF DELINQUENT TAX BILL LISTS**

The county clerk is responsible for providing or arranging to provide a list of all certificates of delinquency received from the sheriff to the Department of Revenue. These lists are due to be submitted to the Department by May 15<sup>th</sup> and need to include the following information:

- The property owner's name;
- The property's address; and
- The parcel number or lot number if available.

It is also desirable to include the tax bill number. Each county's list will then be posted to the Department of Revenue's website by June 1<sup>st</sup> to provide a central access point for all interested parties.

To assist the clerks in meeting this requirement, the Department of Revenue has already contacted the various software vendors that provide the collection systems for the county clerks and arranged through them to obtain the delinquent lists in the appropriate electronic format. County clerk offices with in-house computer systems have also been contacted about this requirement.

This requirement is included in KRS 134.131 and a copy is included in the Appendix to this manual.

### **Establishment of a Tax Sale Date**

KRS 134.128 establishes that all tax sales shall be scheduled at least 90 days but not more than 135 days after the delinquent tax bills have been transferred from the sheriff's office to the county clerk's office. In a county with a normal collection schedule this means a tax sale can be scheduled any business day between July 14<sup>th</sup> and August 28<sup>th</sup>. However, county clerks who must sell delinquent oil and gas or unmined mineral tax bills have an additional 60 days to schedule their tax sale. This means the deadline for having a tax sale would be October 27<sup>th</sup> in those counties.

All tax sale date requests will be processed by the Office of Property Valuation on a "first come first served" basis. Every effort will be made to accommodate the sale date selected by the county clerk, but the tax sales will need to be spread out as evenly as possible throughout the tax sale period. For this reason, it may be necessary to change the initial sale date request submitted by the county clerk. A tax sale date may be requested by calling Luka Moore at 502-564-7230 or Tom Crawford at 502-564-7179. You may also request a sale date by emailing them at [luka.moore@ky.gov](mailto:luka.moore@ky.gov) or [tom.crawford@ky.gov](mailto:tom.crawford@ky.gov).

After a sale date for a county has been established, the county attorney should be informed so that this information can be included in the notices that must be sent to the

delinquent taxpayers. In addition, by working back from the sale date, the advertising deadlines imposed upon the county clerk will then be known.

### **Mailing of 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 by the county attorney is detailed in KRS 134.504. A copy of this statute is included in the Appendix of this manual. The county attorney is required to file in the county clerk's office a list of the names and addresses to which the 30 day notices were mailed along with a certificate attesting that the notices were mailed in accordance with the requirements of the statute.

All 30 day notices returned as undeliverable shall be submitted by the county attorney to the property valuation administrator so that the property valuation administrator can attempt to find a better address. The county attorney must file a list of the returned notices with the county clerk's office.

At least 20 days after mailing the 30-day notice but within 60 days of the delinquent tax bills being transferred to the county clerk's office, the county attorney is required to send a second notice – by regular mail – to delinquent taxpayers whose tax bills remain unpaid. The information that is required to be contained in this notice is similar to the 30-day notice; however, this notice will inform the delinquent taxpayer of the actual tax sale date as well as a statement that informs the delinquent taxpayer that the certificate of delinquency is subject to being purchased by a third party purchaser at the sale. This notice will also advise the delinquent taxpayer that a third party purchaser may impose substantial additional fees to the total amount due. The county attorney must file in the county clerk's office a list of the names and addresses to which a 60-day notice was mailed along with a certificate attesting that the notices were mailed in accordance with the requirements of the statute.

### **Advertisement of Certificates of Delinquency**

KRS 134.128 (5) requires the county clerk to advertise the certificates of delinquency scheduled to be sold at the tax sale at least 30 days but not more than 45 days before the scheduled date. The advertisement must be placed in the local newspaper with the largest paid circulation. The week before the individual certificates of delinquency are advertised a one-half page advertisement must be published. This advertisement must state that a list of the delinquent taxes is available for public inspection in accordance with KRS 424.330 during normal business hours at the business address of the county clerk and on an identified internet web site. The specific address for the county clerk's office, the hours of operation and the Uniform Resource Locator (URL) for the web site must be included in the advertisement. A sample one-half page advertisement is included in the Appendix of this manual. The delinquent tax bills must be listed on the internet web site at least 30 days prior to the tax sale date and updated on no less than a weekly basis.

The week after the half page advertisement appears, the listing of certificates of delinquency and - in a separate section - all personal property certificates of delinquency are published in the local newspaper. The information required to be included in the advertisement is the name of the property owner, the property address and the parcel

number or lot number if available. It is also helpful to include the tax bill number and the total amount due in the advertisement; however, it is not legally required. The notice shall also list the date, time and location of the tax sale. Keep in mind that a certificate of delinquency must be advertised in order to be sold.

The cost of placing the advertisements is paid by the county. The total cost of the advertisements is allocated to each certificate of delinquency in accordance with a formula developed by the Office of Property Valuation and will be paid by the person paying the certificate of delinquency. The formula is designed to take into account that a percentage of the certificates of delinquency will remain unpaid after the tax sale. The current advertising formula computations are shown in the Appendix to this manual.

The county clerk's office receives \$5.00 for each certificate of delinquency and personal property certificate of delinquency advertised. This fee is also added to the total amount due and is paid by the person paying the delinquent tax bill.

### **Registration Process for Third Party Purchasers with the Department of Revenue**

All third party purchasers who meet any of the following conditions must register with the Department of Revenue before being allowed to participate in a tax sale:

- Plans to buy more than 3 certificates of delinquency in any county;
- Plans to buy more than 5 certificates of delinquency statewide; or
- Plans to invest more than \$10,000 statewide in any calendar year.

If a third party purchaser has questions about the registration process at the state level, they can be referred to the Department of Revenue's website – [www.revenue.ky.gov/pages/index.aspx](http://www.revenue.ky.gov/pages/index.aspx). After selecting the "property tax" link, the third party purchaser will be able to obtain the most up to date information about the registration process as well as download an application form.

Once an application has been received and approved, a certificate of registration will be issued to the third party purchaser. These certificates will indicate the date the third party purchaser is eligible to begin purchasing certificates of delinquency in a particular year. A copy of the certificate issued by the Department of Revenue is required to be provided to the county clerk's office when a third party purchaser – who meets the purchase thresholds – registers at the local level.

The Department of Revenue will maintain a list of all approved third party purchasers on its website and on the county clerk's network. This list will also provide information about third party purchasers who are related to each other to help the county clerks prevent related parties from participating in their tax sale.

### **Registration Process for Third Party Purchasers at the County Clerk's Office**

All third party purchasers wishing to participate in a particular county's tax sale must complete a registration form and submit it along with all required fees and deposits to the county clerk's office by the advertised date. A sample registration form is included in the Appendix of this manual. Keep in mind that the purchase thresholds in effect for registration with the Department of Revenue do not apply when registering with the

county clerk. The following items need to be submitted to the county clerk's office within 10 days prior to the tax sale date:

- The registration form that contains the name and contact information for the third party purchaser;
- A copy of the registration certificate issued by the Department of Revenue (if necessary);
- The list of priority certificates of delinquency the purchaser intends to acquire (if any);
- The list of current year certificates of delinquency the purchaser intends to acquire (if any);
- The applicable registration fees; and
- All applicable deposit amounts.

### **Priority Certificates of Delinquency**

This list of priority certificates of delinquency is to be clearly marked as such and it needs to include the following information:

- The current year's tax bill number;
- The name on the tax bill;
- The amount due on the certificate of delinquency;
- The prior year certificate of delinquency's bill number;
- The prior year certificate of delinquency's tax year;
- The book and page number where the prior year certificate of delinquency is filed, if applicable;
- The account or parcel identification number if used by the county to identify specific properties; and
- Upon request of the county clerk, a copy of the prior year certificate of delinquency.

A deposit of 100% of the value of each priority certificate of delinquency is required from the third party purchaser. In accordance with KRS 134.126 (1)(b), the county clerk can specify the form of payment that will be accepted; however, the county clerk cannot require only cash as a method of payment.

### **Current Year Certificates of Delinquency**

The list of current year certificates of delinquency shall be prepared by the third party purchasers in an order and format as required by the county clerk and shall include the following information:

- The tax bill number;
- The taxpayer name;
- The amount due on each certificate of delinquency;
- The account or parcel identification number if the county uses that number to identify specific properties; and
- The following sworn statement: "I hereby certify that I am not participating in this sale in conjunction with any related person or related entity to obtain any advantage over other potential purchasers at the sale."

A deposit of 25% of the total value of the certificates of delinquency on these lists is required. Again, the county clerk can specify the form of payment that will be accepted; however, the county clerk cannot require only cash as a method of payment.

### **Registration Fees**

A registration fee up to a yearly maximum of \$250.00 must be paid by a third party purchaser no matter when a certificate of delinquency is acquired during the year. If a prior year certificate of delinquency is purchased before the current year's tax sale, a registration fee of \$10.00 needs to be added to the total due. For certificates of delinquency purchased at the tax sale, a fee of \$5.00 for each certificate included on the purchaser's priority list and \$10.00 for each certificate included on the purchaser's current year list must be paid at the time the lists are submitted. Whenever the \$250.00 maximum has been reached, no further registration fees can be charged until the next calendar year. Therefore, it is important for the county clerk to implement a method to track the amount of registration fees paid by a third party purchaser to both ensure the appropriate amount of fees – up to the \$250 maximum – is received and to avoid overcharging a third party purchaser. See page 14 of the manual for a discussion on third party purchases made after the current year's tax sale has been held.

### **Refund of Registration Fees Paid to Participate at the Tax Sale**

In some cases, a third party purchaser will wind up acquiring only a small number of certificates of delinquency at a tax sale and they will request a refund of a portion of the registration fee that was paid to the county clerk's office. County clerks are under no obligation to issue a refund of the registration fees. In accordance with the governing regulation, the registration fee charged is a function of the number of certificates included on the third party purchaser's list of priority and current delinquencies – not the number of certificates actually purchased at the tax sale. A copy of the regulation – 103 KAR 5:180 – is included in the Appendix of this manual.

### **Review of Registration Information and Priority Lists of Certificates**

The time period between the registration deadline and the tax sale date should be used to review the lists of priority certificates of delinquency submitted by third party purchasers. The county clerk needs to verify that the registrant actually has a priority right to purchase the listed certificate of delinquency. There will likely be instances where multiple third party purchasers include the same priority certificate of delinquency on their lists. Keep in mind that the purchaser holding the prior year claim for the most recent year is entitled to purchase the current year's certificate of delinquency for the same property. However, if the third party purchaser with the most recent year fails to include the current year certificate of delinquency on his or her list, the priority will transfer to the purchaser with the next most recent year who has included the certificate on his or her priority list.

The county clerk will also use this time period to ensure that each third party purchaser has properly registered with the Department of Revenue. Additionally, if the county clerk has any information that a third party purchaser may be attempting to subvert the fairness of the tax sale all relevant materials need to be forwarded to the county attorney and Department of Revenue for further review. This does not prevent the sale from going

forward and does not necessarily prohibit the third party purchaser in question from participating in the sale. The county clerk will receive specific guidance from the Department of Revenue should this issue arise.

### **Communication Between the County Clerk and County Attorney**

In accordance with KRS 134.504, the county attorney is required to inform delinquent taxpayers in both the 30 day and 60 day notices that they may qualify for an installment payment plan. If the county attorney and delinquent taxpayer agree to a payment plan, the certificate of delinquency in question is eligible to be removed from the tax sale as long as the taxpayer is meeting the requirements of the payment plan. The county attorney is required to provide to the county clerk a list of bills to exclude from the tax sale at least 10 days but not more than 20 days prior to the sale date. This list needs to include certificates of delinquency that are:

1. Under a payment plan with the county attorney on which the payments are current;
2. Involved in litigation initiated by the county attorney or in which the county attorney responds or files an answer;
3. Involved in bankruptcy litigation in which the county attorney has filed a claim or,
4. Included on a list of protected properties submitted to the county attorney by a vacant property review commission or an alternative government entity as provided in KRS 99.727.

The list prepared by the county attorney needs to provide sufficient detail for the county clerk to accurately identify which certificates of delinquency to exclude from the tax sale. If a taxpayer defaults on a payment plan prior to the tax sale, the county attorney needs to immediately inform the county clerk's office so that the certificate of delinquency can be added to the pool of bills available at the tax sale. The county clerk will determine if the amount paid is applied as a credit against the total due on the certificate of delinquency or if the amount paid is refunded to the taxpayer. If the amount paid is credited against the total due, the remaining balance will be the amount a third party purchaser will have to pay. If a refund is made, then the full amount of the certificate of delinquency will be offered for sale. See the response to question #8 in the "Frequently Asked Questions" section in the Appendix for more information concerning this issue.

### **Processing of Payments Received Prior to the Tax Sale**

Many certificates of delinquency will be paid in the county clerk's office by the taxpayers prior to the tax sale. KRS 134.127 authorizes the county clerk to accept payment from only the following persons/entities: the taxpayer, a person/entity paying on behalf of the taxpayer, any person having a legal or equitable estate, a tenant or lawful occupant of real property, a bailee or person in possession of any personal property; or a person having a mortgage on real property or a security interest in real or personal property. All penalties, sheriff fees and commissions, county clerk fees, county attorney fees, interest and lien recording and release fees need to be collected unless a waiver of all or part of the penalties and fees has been agreed to by the various local officials. Additionally, keep in mind that if the certificate of delinquency is paid within the first 5 business days after being transferred to the county clerk's office, the county attorney's fee is automatically

waived by statute. The county clerk is responsible for collecting the proper amount and distributing the amounts due each taxing district and local official by the 10<sup>th</sup> of the following month.

### **Process to Follow When a Taxpayer's Check is Returned for Insufficient Funds**

If a county clerk has made the decision to accept personal checks from taxpayers, there may be an instance where a check accepted as payment for the amount due on a certificate of delinquency is returned by the bank for insufficient funds. If this happens, the certificate of delinquency that was marked "paid" should **NOT** be reinstated as an unpaid delinquency. It could take quite a bit of time for a check to be returned to the county clerk's office by the bank. During this time the certificate of delinquency would be marked "paid" in the county clerk's office and there could have been a title search done or other review completed that relied upon the record that indicated that certificate of delinquency was paid and the lien represented by that certificate was released. For this reason, the county clerk needs to take the appropriate action to get this check paid. In some instances, the clerk may decide to contact the taxpayer directly to inform them their check was returned. In other cases, it may be necessary to have the county attorney file the necessary legal action against the taxpayer to get the amount due.

Keep in mind that although KRS 134.126 (1) (b) allows the county clerk to accept payment by any commercially acceptable means, the methods of payment can be limited to those that ensure the payment cannot be reversed or nullified due to insufficient funds. A copy of this statute is included in the Appendix of this manual.

### **Cut off for Payments Prior to the Tax Sale**

If a taxpayer's payment has not been received – either in person or via mail delivery – by the advertised start time of the tax sale, the certificate of delinquency is officially eligible to be acquired by a third party purchaser. Any payments tendered by a taxpayer after the tax sale has started cannot be accepted by the county clerk's office. If the certificate of delinquency is purchased by a third party, the taxpayer will have to make payment to that third party purchaser. If the taxpayer's certificate of delinquency was not purchased at the tax sale, the taxpayer can then remit the appropriate amount due to the county clerk's office.

## **PROCEDURES TO USE FOR THE DELINQUENT PROPERTY TAX SALE**

To begin the tax sale, the county clerk will first allocate the requested priority certificates of delinquency to the various purchasers who timely submitted a list. If this will be a lengthy process, the county clerk has the option of assigning the priority certificates of delinquency as soon as practicable after the tax sale.

The remaining certificates of delinquency will be sold in a predetermined lot size. The selection order by registered purchasers is determined by a random drawing on the day of the tax sale. Purchasers shall select lots to purchase in order based on the random drawing from the lowest to the highest number. Registered purchasers who are not present for the random drawing, but show up late, shall be placed at the bottom of the selection list.



The certificates of delinquency shall be sold in the following lot sizes:

In counties with 500 or fewer certificates of delinquency to be sold, the certificates may be sold in lots of up to 5;

In counties with more than 500 and less than 1,000 certificates of delinquency to be sold, the certificates may be sold in lots of up to 10;

In counties with at least 1,000 and not more than 2,500 certificates of delinquency to be sold, the certificates may be sold in lots of up to 25;

In counties with at least 2,500 and not more than 7,500 certificates of delinquency to be sold, the certificates may be sold in lots of up to 50; and

In counties with more than 7,500 certificates of delinquency to be sold, the certificates may be sold in lots of no more than 50 for the first 4 rounds. For all subsequent rounds, the certificates may be sold in lots not to exceed 2% of the total number of certificates of delinquency included in the pool for sale.

Notwithstanding the lot sizes established above, the county clerk will adjust the lot size to ensure that all purchasers receive an equal - or as near equal as possible - number of certificates in the last round. For example, if the lot size is 10 and there are 7 purchasers and at the beginning of the final round there are only 35 certificates remaining, the county clerk will adjust the lot size to 5 for the final round so that each purchaser will be allowed to participate in the final round.

Purchasers are eligible to select only those certificates of delinquency included on their list of current year certificates of delinquency that have previously been submitted to the county clerk.

A purchaser may withdraw from the tax sale at any time prior to the completion of the sale. If a purchaser acquires less than a full lot of certificates in three consecutive rounds, the purchaser shall be considered to have withdrawn from the sale after the third partial lot purchase. No other purchaser may take the place of the withdrawing purchaser.

The county clerk may impose a reasonable time limit for purchasers to make their selections during each round.

The county clerk shall apply the purchaser's deposit to the total amount due for the certificates of delinquency purchased. The third party purchaser shall pay any additional funds required in the manner determined by the county clerk by the payment deadline established. The total amount due shall include all county clerk's fees for the recording and assignment of each certificate of delinquency. Although some third party purchasers have offered to pay the lien release fee in advance, it is the Department of Revenue's recommendation that the release fee should be paid only when the taxpayer has paid the third party purchaser in full. Any deposit amount remaining after the sale shall be refunded to the third party purchaser within ten business days after completion of the tax sale.

After the tax sale has been completed, any remaining certificates of delinquency may be purchased at any time by any third party purchaser. However, all third party purchasers must continue to meet the registration requirements of KRS 134.129 and a registration fee of \$10.00 per bill purchased up to a limit of \$250.00 must be paid to the county clerk if the maximum fee was not reached due to purchases made earlier in the year either prior to or at the tax sale.

Any questions or controversies relating to the tax sale will be addressed by the county clerk.

### **REFUNDS TO THIRD PARTY PURCHASERS**

Refunds to third party purchasers are governed by KRS 134.551. When a certificate of delinquency held by a third party purchaser is unenforceable because:

- It is a duplicate certificate of delinquency;
- The tax liability represented by the certificate of delinquency was paid prior to the purchase of the certificate of delinquency;
- All or a portion of the certificate of delinquency is exonerated;
- The property to which the certificate of delinquency applies was not subject to taxes as a matter of law as certified by the property valuation administrator; or
- It should not have been sold since it met the requirements for inclusion on the list of protected certificates of delinquency provided by the county attorney in accordance with KRS 134.504 (10) (b);

the third party purchaser may apply to the county clerk for refund. The application for refund must include written proof that one of the situations listed above exists. Please refer to the following section for more details regarding refunds of certificates of delinquency that are involved in litigation and may or may not have been included on the protected list prepared by the county attorney.

Upon approval of the refund application, the county clerk is authorized to issue a refund of the amount paid by the third party purchaser. The refund does **NOT** include the lien filing fees and no interest or any additional fees are entitled to be recovered by the third party purchaser.

The amount refunded by the county clerk will be deducted from the amounts distributed to the various taxing districts and local officials on the next monthly collection report.

If the county clerk does not have sufficient funds to make the refund, the clerk may do one of the following:

- Retain the approved refund claim and make the refund as soon as sufficient funds are on hand; or

- Provide a signed letter to the person due the refund which includes the amount due from each taxing jurisdiction and fee office. The letter will also direct each taxing jurisdiction and fee office to pay the appropriate amount due to the third party purchaser.

When a refund is made to a third party purchaser, the county clerk shall issue and file a release of the lien on the property that was subject to the certificate of delinquency. A lien release form to use in this situation has been developed and a copy is included in the Appendix of this manual and is also available on the county clerk network. In addition to the release form, the county clerk shall also file the documentation supporting the issuance of a refund and a copy of the refund check or the letter authorizing the refund sent to the third party purchaser. The lien release and supporting documents are filed without a fee. The county clerk shall return the lien release document to the taxpayer and provide a copy to the third party purchaser.

On occasion, a refund of a certificate of delinquency that has been assigned by the original third party purchaser to another purchaser will need to be made. When this situation arises, it is the position of the Department of Revenue that the refund can be issued directly to the assignee. This is based upon language contained in KRS 134.490 (6) that allows "...any person to whom a third-party purchaser transfers or assigns a certificate of delinquency shall be considered a third-party purchaser under this chapter". A copy of the memorandum that was sent to all county clerks addressing this issue is included in the Appendix of this manual.

If a refund request made under KRS 134.551 is denied by the county clerk, the third party purchaser may appeal the decision to the Kentucky Claims Commission.

There is no two-year statute of limitation on refunds applied for under the provisions of KRS 134.551.

This statute also outlines the refund process when a certificate of delinquency is declared void by a court due to the irregularity of taxing officers. When a court ruling of this type has been made, the third party purchaser must apply for a refund within one year of the date of the judgment.

A copy of KRS 134.551 is included in the Appendix of this manual for your review.

### **REFUNDS TO THIRD PARTY PURCHASERS WHEN A CERTIFICATE OF DELINQUENCY IS INVOLVED IN LITIGATION**

KRS 134.504 (10)(b) details why a certificate of delinquency would be included on the "protected" list furnished to the county clerk by the county attorney and; therefore, the certificate would not be eligible to be sold to a third party. It is important to note that the statutory language is very specific with regard to the types of litigation that will qualify a certificate of delinquency for inclusion on the protected list. First, if a certificate of delinquency is involved in any type of litigation that has been initiated by the county attorney, then it should be included on the protected list and not sold by the county clerk. A common example of this situation would be when a county attorney initiates a foreclosure action 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 delinquency on the protected list since the current year's delinquency can be included in the litigation that has been filed and collection on the amount due can be made through the lawsuit rather than selling the bill

to a third party purchaser. If the 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 to make a refund to the third party.

Secondly, if a county attorney has responded to, filed an answer or – in the case of bankruptcy litigation – filed a claim to an action brought by another party, then a certificate of delinquency involved in the litigation needs to be included on the protected list. In some instances, even though a bankruptcy or other litigation may have been filed, the local officials will not have been made aware of the filing – and no answer or claim will have been made – by the time the protected list is due to be prepared by the county attorney. When this is the case, the county clerk is not obligated to issue a refund to the third party purchaser.

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.

Third party purchasers should be encouraged to do their own bankruptcy filing research before purchasing certificates of delinquency at a 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](http://www.pacer.psc.uscourts.gov).

Another issue involves foreclosure actions that have been initiated by a third party purchaser and there are other third party purchasers holding certificates of delinquency as well against the property in question. If an action of this type results in a third party purchaser only receiving a prorated amount for their certificate of delinquency, they are not entitled to a refund from your office for the difference between the amount they received through the foreclosure and the total amount claimed due. Since an action of this type would not have been initiated by the county attorney and there would not be any response or answers filed since the taxing districts would not be a party to the foreclosure action there would have been no reason for the county attorney to include the affected certificate of delinquency on the protected list.

Please do not hesitate to contact the Department of Revenue whenever you have a question about whether or not a third party purchaser is entitled to receive a refund.

### **PAYMENTS RECEIVED PURSUANT TO A FORECLOSURE ACTION**

In accordance with KRS 134.490 and KRS 134.546, third party purchasers can ultimately foreclose against a property owner to collect the amount due on a certificate of delinquency. This type of action is done through the local circuit court and requires the services of the Master Commissioner. Generally, the county clerk’s office is not involved in this process until the property has been sold and the proceeds are distributed by the Master Commissioner.

Since a third party purchaser does not have to acquire all of the certificates of delinquency against a property to begin a foreclosure action, the county clerk's office will receive an amount from the Master Commissioner to satisfy the certificates of delinquency that remain on file against the property in question. If the amount is sufficient to pay all of the certificates of delinquency in their entirety, the county clerk marks the certificates as paid in full and distributes the money to the various taxing districts and local officials in the normal manner.

In some instances, the proceeds from the sale of the property are not sufficient to pay all of the certificates of delinquency in full. When this occurs, the court order may detail how the money received is to be applied to the certificates of delinquency. If there are no instructions in the court order, the county clerk will start with the most recent certificate of delinquency and pay as many certificates in full as possible. Any certificates of delinquency not paid in full are still extinguished since they have gone through the judicial process of the Master Commissioner's sale. Therefore, they should be removed from the delinquency records in the same manner as a paid certificate of delinquency would be. An example of the process to follow when a Master Commissioner's sale does not generate enough money to pay all of the certificates of delinquency in full is included in the Appendix of this manual.

### **DIFFICULTY LOCATING A THIRD PARTY PURCHASER**

Despite all of the notice requirements now imposed upon third party purchasers, there will continue to be instances where a delinquent taxpayer cannot make contact with the third party who purchased his or her certificate of delinquency. KRS 134.127 (3) (e) 1 details the procedure to be followed when this situation occurs.

The delinquent taxpayer must first send a registered letter to the third party purchaser to the address reflected in the most recent notice received from the third party purchaser or – if no notice has been received – to the address shown in the records of the county clerk. If the letter is returned unclaimed or if the third party purchaser fails to respond in writing within 30 days, the taxpayer can present to the county clerk the certified mail receipt that indicates the letter was mailed to the correct address and the date it was mailed. If the letter was returned, then that document also needs to be presented to the county clerk. The delinquent taxpayer shall attest to the actions taken and an attestation form to use is included in the Appendix of this manual.

Upon acceptance of the documentation and attestation by the county clerk, the delinquent taxpayer may pay the full amount due as reflected in the records of the county clerk plus any applicable interest. The county clerk will then make the necessary lien release in accordance with KRS 134.127(3)(e)2. Revenue Form 62A377 has been developed to document the lien release when this situation occurs and is included in the Appendix of this manual.

The county clerk then deposits the amount paid in an escrow account and the name of the bank in which the money is deposited shall be noted on the certificate of delinquency. The county clerk deducts a \$20.00 fee for this service. The county clerk must hold these amounts in the escrow account for a period of three years. After this time period has elapsed, KRS 393.090 provides that the property is presumed to be abandoned and the funds escheat to the State Treasury.

A copy of the certificate of delinquency and the corresponding lien release is then mailed by regular mail to the third party purchaser to the address on record.

A copy of KRS 134.127 is included in the Appendix of this manual.

### **RECORDING FEES ADDED TO CERTIFICATES OF DELINQUENCY**

When a delinquent tax bill is transferred from the sheriff to the county clerk, the tax bill becomes a certificate of delinquency and a lien is filed on the property. A \$5.00 “Lien On” fee (KRS 64.012 (7)) and a \$5.00 “Lien Off” fee (KRS 64.012 (8)) are added to the total due. These fees are applied to every certificate of delinquency and personal property certificate of delinquency. These fees are unrelated to the filing fees associated with third party purchasers.

When certificates of delinquency are sold to third party purchasers, the county clerk’s office is required to collect an additional fee of \$27.00 for noting the assignment of a certificate of delinquency and recording and indexing the encumbrance. A \$1.00 fee is added for mailing the appropriate document to the third party purchaser. The fee to release the encumbrance of the certificate of delinquency when the third party purchaser has been paid is \$12.00, plus \$1.00 for postage. Although some third party purchasers have offered to pay the release fee in advance, it is the Department of Revenue’s recommendation that the release fee should be paid only when the taxpayer has paid the third party purchaser in full.

A copy of KRS 64.012 is included in the Appendix to this manual.

### **ASSIGNMENT OF A CERTIFICATE OF DELINQUENCY**

On occasion, a third party purchaser will assign a certificate of delinquency that has been acquired to another third party purchaser. This is allowable under KRS 134.126; however, the third party purchaser that is obtaining the lien in the assignment will need to meet the State registration requirements that are in place for all third party purchasers who participate in the tax sales. This means if the third party purchaser is obtaining – via an assignment – more than 3 certificates of delinquency in a county or more than 5 certificates of delinquency statewide or is spending more than \$10,000 then the third party must be registered with the Department of Revenue and eligible to purchase certificates of delinquency. Proof of registration and the effective date purchases can begin should be provided to the county clerk before any assignment is made. The county clerk shall charge the applicable fee established by KRS 64.012 (33) to note and record the assignment.

### **PAYMENT AMOUNTS AT VARIOUS STAGES OF THE DELINQUENT TAX COLLECTION PROCESS**

The following payment scenarios will illustrate the various amounts due at different phases during the collection process in the county clerk’s office. A tax bill with a face amount due of \$1,000 will have the following amounts added to it when it is transferred from the sheriff to the county clerk:

Face amount of the tax bill	\$1,000.00
10% penalty	100.00
Sheriff's add on fee	110.00
Sheriff's commission*	44.00
 Total of Certificate of Delinquency	 \$1,254.00

\*An assumed commission of 4% was applied to \$1,100 (\$1,000 + \$100) to arrive at \$44.00. The sheriff's actual commission rates need to be used to arrive at the amount to add to the total due.

Payment Example #1 - This delinquency was transferred to the county clerk's office on April 16, 2019. If it was paid on April 20, 2019, the following amount would be due:

Base amount of certificate of delinquency	\$1,254.00
Interest (\$1,254.00 x 1%)	12.54
County clerk commission (\$1,112.54 x 10%)*	111.25
Lien recording and release fee	10.00
 Total amount due on April 20, 2019	 \$1,387.79

\*The county clerk's fee is 10% of the sum of the tax + 10% penalty + interest. The county attorney's fee is waived since the certificate of delinquency was paid within 5 business days of the clerk's receipt of the delinquencies from the sheriff's office.

Payment Example #2 - If the certificate of delinquency is paid on April 26, 2019, the following amount would be due:

Base amount of certificate of delinquency	\$1,254.00
Interest (\$1,254 x 1%)	12.54
County clerk commission (\$1,112.54 x 10%)	111.25
County atty. commission (\$1,112.54 x 20%)	222.51
Postage due to county atty. for first notice	1.00
Lien recording and release fee	10.00
 Total amount due on April 26, 2019	 \$1,611.30

Payment Example #3 - If the certificate of delinquency is paid on May 31, 2019, the following amount would be due:

Base amount of certificate of delinquency	\$1,254.00
Interest (\$1,254 x 2%)	25.08
County clerk commission (\$1,125.08 x 10%)	112.51
County atty. commission (\$1,125.08 x 20%)	225.02
Postage due to county atty. for first notice	1.00
Lien recording and release fee	10.00
 Total amount due on May 31, 2019	 \$1,627.61

Payment Example #4 - Assuming the certificates of delinquency are advertised on June 14, 2019, if a certificate of delinquency is paid on June 27, 2019, prior to the county clerk's sale, the following amount would be due:

Base amount of certificate of delinquency	\$1,254.00
Interest (\$1,254 x 3%)	37.62
County clerk commission (\$1,137.62 x 10%)	113.76
County atty. commission (\$1,137.62 x 20%)	227.52
Postage due for first and second notices	2.00
County clerk's fee	5.00
Assumed advertising cost	10.00
Lien recording and release fee	10.00
Total amount due on June 27, 2019	\$1,659.90

Payment Example #5 - Assuming the sale of certificates of delinquency conducted by the county clerk is held on July 17, 2019 and this certificate of delinquency is paid by a third party purchaser; the following amount would be due:

Base amount of certificate of delinquency	\$1,254.00
Interest (\$1,254 x 4%)	50.16
County clerk commission (\$1,150.16 x 10%)	115.02
County atty. commission (\$1,150.15 x 20%)	230.03
Postage due for first and second notices	2.00
County clerk's fee	5.00
Assumed advertising cost	10.00
Original lien recording and release fee	10.00
Assignment, recording and indexing fee	28.00
Total amount due on July 17, 2019	\$1,704.21

## **OIL AND GAS AND UNMINED MINERAL PROPERTY TAX BILLS**

Oil and gas and unmined mineral property tax assessments are done centrally by the personnel within the Office of Property Valuation. Since this assessment work utilizes information that is obtained from a tax return filed by the property owner or other related interest, the schedule for sending tax bills to the sheriff's office for collection typically runs later than the schedule used for the "regular" county property tax bills. Collections usually begin December 1 for oil and gas assessments and unmined coal property tax bills are typically scheduled to be mailed out in February or March.

County clerks that have to sell delinquent oil and gas or unmined mineral tax bills now have until October 27<sup>th</sup> to schedule their tax sale – assuming the "regular" tax bills were received from the sheriff's office at the close of business on April 15<sup>th</sup>. This will allow the county clerk to have one tax sale for all delinquent tax bills.

If a delinquent tax bill(s) is received from the sheriff too late to be included in the scheduled tax sale, that bill(s) can be held over to the following year's tax sale. During that time, the county clerk can accept payment from the property owner, tenant in possession of the property or the mortgage holder. Remember that any delinquency held over must be advertised with the current year certificates of delinquency in order for them to be sold



The county attorney will have to send 30-day and – if necessary – 60-day notices for the delinquent oil and gas or unmined mineral tax bills; however, since these delinquencies are transferred to the county clerk’s office later than the “regular” tax bills, these notices will be on a delayed schedule.

## **ADDITIONAL, SUPPLEMENTAL AND OMITTED TAX BILLS**

In addition to the regular property tax bills that are prepared, the county clerk’s office is also responsible for the preparation of tax bills which address special situations. The different types of tax bills that may need to be prepared are additional, supplemental and omitted property tax bills. The following sections discuss what each of these bill types are and the procedures to follow when preparing them.

### **Additional 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 is in, a thirty-day time period must be offered for each collection period (2% discount, face amount, 5% penalty and 21% penalty).

Any delinquent additional tax bills that were issued by November 1 can continue to be transferred by the sheriff to the county clerk as of the close of business on April 15 since the full collection cycle will have been completed. In all other instances, a delinquent additional bill will be transferred by the sheriff at the close of business on the 15<sup>th</sup> day of the fourth month after the additional tax bill was due. When a delinquent additional bill is received by the county clerk, if there is at least 90 days before the current year’s tax sale, the delinquent additional bill can be included. If it is less than 90 days until the current year’s tax sale or if the tax sale for the current year has already been conducted, then the delinquent additional bill will be held over to next year’s tax sale.

### **Supplemental Property Tax Bills**

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). The following example will illustrate the proper way to prepare a supplemental tax bill.

### **Supplemental Tax Bill Example**

The property valuation administrator assessed Mr. Smith’s house and lot at \$150,000. Mr. Smith disagreed with the assessed value and, after having a conference with the property valuation administrator, he filed an appeal in the county clerk’s office. Mr. Smith listed a value of \$100,000 in his appeal petition. The local board of assessment

appeals upheld the property valuation administrator's value and Mr. Smith continued his appeal to the Kentucky Claims Commission (KCC). Prior to his hearing before the KCC, the regular county property tax bills were prepared and Mr. Smith's tax bill was based upon his \$100,000 claim of value. In February, the KCC heard Mr. Smith's appeal and it determined the property should be assessed at \$140,000. This decision was not appealed further by Mr. Smith and it became final on March 15<sup>th</sup>.

Based upon the above information, Mr. Smith must now receive a supplemental property tax bill based upon the \$40,000 assessment difference between his claim of value and the final determination made by the KCC. The appropriate state and local tax rates are applied to the \$40,000 assessed value to arrive at the proper amount of tax Mr. Smith must now pay. Additionally, interest at the statutory tax interest rate must be calculated and added to the tax amount. Assuming the tax bill was prepared on March 15<sup>th</sup> and a tax interest rate of 6%, the interest rate to apply to the tax due is 1.22%. This is calculated by using a daily interest factor of .01643836% (6%/365) and multiplying that factor by 74 days (January 1-March 15).

Supplemental property tax bills are due on the day they are prepared and are subject to a penalty of 21% if they are not paid within thirty days after they become due. Additionally, all delinquent penalties that apply to regular property tax bills will apply to unpaid supplemental tax bills.

### **Omitted Property Tax Bills**

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.

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. The following example will demonstrate how to properly calculate an omitted property tax bill.

### **Omitted Property Tax Bill Example**

In the spring of 2019, the property valuation administrator discovered a house that was completed in 2016 was not on the tax roll. This house was considered to be omitted beginning with the 2017 assessment year. An omitted assessment notice was prepared and sent to the taxpayer and an omitted assessment of \$150,000 was agreed upon. The property valuation administrator considers this omitted assessment to have been

involuntarily listed. On May 1, 2019, the county clerk prepared an omitted property tax bill in the following manner.

The property tax rates (expressed as cents per \$100 of assessed valuation) in effect for 2017 and 2018 were as follows:

	State	County	School	Total
2017	12.2	12.7	42.7	67.6
2018	12.2	12.6	42.6	67.4

The tax amount due for each year would be calculated in the following manner:

$$\begin{aligned} 2017 &- 150,000 \times 67.6 \text{ cents per } \$100 = \$1,014.00 \\ 2018 &- 150,000 \times 67.4 \text{ cents per } \$100 = \$1,011.00 \end{aligned}$$

Since the omitted assessment has been considered to be involuntarily listed, a 20% penalty will be applied against the total tax due for each year. This would result in a penalty of \$202.80 for the 2017 tax year (\$1,014.00 x 20%) and \$202.20 for the 2018 tax year (\$1,011.00 x 20%).

The final step is to calculate the interest due for each year. Interest on omitted real property tax bills runs from the time the bill would have been considered to be delinquent had it been issued in the normal manner to the date it is paid. In this example, it will be assumed that the regular tax bills were issued timely each year and would have been considered to be delinquent on the January 1 following their issue date. This would cause interest to begin on January 1, 2018 for the 2017 omitted bill and January 1, 2019 for the 2018 omitted bill. Since the omitted tax bills are being issued on May 1, 2019, interest should be calculated through May 31, 2019, to allow the taxpayer thirty days to pay the bill.

The tax interest rates applied to tax bills for the years in question are as follows:

$$\begin{aligned} 2018 &- 6\% \\ 2019 &- 7\% \end{aligned}$$

### **2017 Omitted Property Tax Bill**

Interest on the 2017 omitted tax bill will run from January 1, 2018 through May 31, 2019 and it is calculated as follows:

$$2018: 1,014 \times 6\% = \$60.84$$

$$2019: 1,014 \times 2.90\%* = \underline{\$29.41}$$

$$\text{Total Interest} \quad \$190.25$$

\*The tax interest rate for 2019 is 7%; therefore, the daily factor will be  $7\% \div 365 \text{ days} = .01917808\%$ . January 1-May 31, 2019 is 151 days. The interest rate for this time period is  $151 \times .01917808\% = 2.90\%$ .

The total amount due on the 2017 omitted real property tax bill will be:

Tax	\$1,014.00
Penalty	202.80
Interest	<u>90.25</u>
Total	\$1,307.05

### **2018 Omitted Property Tax Bill**

Interest on the 2018 omitted tax bill will run from January 1, 2019 through May 31, 2019 and it is calculated as follows:

$1,011.00 \times 2.90\% = 29.32$  (See the interest rate calculation explanation in the previous example for the 2.90% interest factor used.)

The total amount due on the 2018 omitted real property tax bill will be:

Tax	\$1,011.00
Penalty	202.20
Interest	<u>29.32</u>
Total	\$1,242.52

A circular which details the various tax interest rates and provides an example of how to compute omitted property tax bills is prepared by the Department of Revenue each December and distributed to all county clerk offices. A copy of the latest circular is included in the Appendix of this manual.

### **Transfer of Delinquent Supplemental and Omitted Tax Bills**

Supplemental and omitted tax bills are due the date they are prepared and the taxpayer has only 30 days to pay these types of bills without incurring further penalties. Therefore, a delinquent supplemental or omitted property tax bill is eligible to be transferred from the sheriff to the county clerk on the fifteenth day of the fourth month after the initial 30 day payment period has elapsed. When a delinquent supplemental or omitted bill is received by the county clerk, if there is at least 90 days before the current year's tax sale, these types of delinquencies can be included in the sale. If there are less than 90 days until the current year's tax sale or if the tax sale for the current year has already been conducted, then the delinquent supplemental or omitted tax bills will be held over to next year's tax sale.

## **PERSONAL PROPERTY TAX BILLS**

The county clerk's office will also receive payments on personal property certificates of delinquency. The interest and fees added to these delinquencies are the same as those added to delinquent real estate tax bills. Payments on these types of delinquencies can be included on the appropriate form that is used to report delinquent real property tax payments. Personal property certificates of delinquency are required to be included in the advertisement for certificates of delinquency; however, please keep in mind that these type of bills are not to be offered for sale at the county clerk's tax sale.

## **FRANCHISE TAX BILL DUTIES**

Franchise or public service companies are assessed in Frankfort by a Division within the Department of Revenue. Companies that typically fall into this category include airlines; railroads and utilities. Assessments for these companies can get quite complicated and they can be finalized at any time during the year. This means that the clerk's office will likely receive assessment certifications throughout the year.

When these certifications are received, a franchise property tax bill needs to be generated as soon as possible. Unlike the regular county tax bills, the State portion of franchise bills is prepared and billed directly from the Department of Revenue. Therefore, only local property taxes will appear on a franchise tax bill that is prepared by the clerk's office. The normal real and personal property tax rates for each local taxing district are applied to each assessment certification received and then the bill is delivered to the sheriff's office for mailing and collecting. When a franchise assessment certification is received, thirty days should be allowed for payment of the tax due. If payment is not made within the thirty-day time period, a 21% penalty and interest at the tax interest rate is added to the total due.

In some instances, it is necessary to amend a franchise assessment certification. When an amendment increases the original assessment, an additional bill for the difference in the assessed value needs to be prepared. The company will then have two bills to pay. When an amendment decreases the original assessment, if the first bill has been paid, a refund can be made to reduce the total amount paid to reflect the lower assessed value. If the original bill has not been paid, it should be adjusted to reflect the lower assessed value; however, all penalties and interest in effect will continue to apply to the adjusted bill.

Delinquent franchise property tax bills are transferred to the county clerk's office on the 15<sup>th</sup> day of the fourth month after the initial 30-day time period allowed for payment has expired. When this occurs, the delinquency will be filed in the clerk's office in the same manner as all other county tax bills and it is subject to enforcement collection actions by the county attorney. If there are at least 90 days before the current year's tax sale, these types of delinquencies can be included in the sale. If there are less than 90 days until the current year's tax sale or if the tax sale for the current year has already been conducted, then the delinquent franchise tax bills can be held over to next year's tax sale.

## **BILLS FOR TELECOMMUNICATIONS COMPANIES AND DISTILLED SPIRITS**

Tangible personal property owned by telecommunications companies and distilled spirits are also assessed centrally by personnel within the Department of Revenue. The assessment certifications will be received by the county clerk's office in the same manner as public service company assessments. However, the tax bills prepared for these assessment categories will follow the standard property tax collection schedule in place for the county's regular property tax bills. If these bills must be issued at a different time than the regular tax bills then thirty days must be allowed for the 2% discount, face amount, 5% penalty and 21% penalty collection periods.

Bills of these types that go delinquent can be transferred from the sheriff to the county clerk on the 15<sup>th</sup> day of the fourth month after the face amount collection period expires.

These delinquencies will be filed by the county clerk in the same manner as all other personal property certificates of delinquency and subject to enforcement collection actions by the county attorney. They are also subject to being advertised in the appropriate manner by the county clerk's office. However, they are not eligible to be included in a tax sale since they represent only personal property.

### **INSTRUCTIONS FOR CITIES AND COUNTIES TAXING LOCAL DEPOSITS**

Each bank with branches in Kentucky files with the Office of Property Valuation, Public Service Branch – by August 15<sup>th</sup> of each year – a consolidated return listing all of their deposits held in Kentucky as of the preceding June 30<sup>th</sup>. The Public Service Branch then issues a county certification to the County Judge Executive and a city certification to the City Clerk by October 1<sup>st</sup> of each year. These certifications will state the amount of the deposits within the jurisdiction and the amount of the tax due.

In accordance with KRS 136.375 each city and county and urban county government may tax deposits located within their jurisdiction; however, no other taxing district may levy a tax against bank deposits. The tax rate shall not exceed 25 thousandths of one percent (.025% or .00025) if imposed by counties or cities and 50 thousandths of one percent (.050% or .0005) if imposed by an urban county government.

A district that is newly enacting or changing a bank deposit tax must file a copy of their ordinance and a completed Certification of Tax Rate for Bank Deposits Franchise Tax (Revenue Form 62A862) with the Public Service Branch. These documents must be submitted prior to the October 1 certification date noted above.

The local taxing authority is responsible for issuing the bills to the financial institutions by December 1. All payments made by December 31 are allowed a 2% discount on the total due, while payments made in January must be for the face amount of the tax due. The county clerk may be responsible for preparing these types of tax bills for the county.

### **LOCAL BOARD OF ASSESSMENT APPEAL DUTIES**

In accordance with KRS 133.125, the clerk or a member of the clerk's staff is required to serve as the clerk of the local board of assessment appeals each year. This board is comprised of three property owners in the county who are knowledgeable about local real estate values. Property owners who believe their property's assessed value is too high can file an appeal of the assessment after meeting with the property valuation administrator. These appeals are filed in the county clerk's office any time before and no later than one workday following the close of the real property tax roll inspection period. Taxpayers may file an appeal in person or by sending a letter or other written petition to the office. A facsimile or electronic image of a written petition can be accepted by the clerk's office. The appeal must state the reason for the appeal, identify the property for which the appeal is being filed and the taxpayer's opinion of the property's value. The clerk prepares a summary of all appeals filed for the property valuation administrator within three working days after the close of the tax roll inspection period.

At the local board hearings, the county clerk, or an authorized deputy, serves as clerk of the board of assessment appeals. The minutes maintained by the clerk shall show the name of the property owner, description of the property, the property valuation administrator's assessment of the property and the change in assessment (if any) made by the board. Copies of the board minutes shall be filed with the property valuation administrator and the Department of Revenue within five days of the adjournment of the board.

The county clerk is required to notify the taxpayer of the local board's decision by certified mail within three working days from the date of the decision. The notice sent should also inform the taxpayer how to appeal to the Kentucky Claims Commission (KCC) if they are dissatisfied with the local board's decision and that any appeal must be filed with the KCC within thirty days of the local board's decision.

The county clerk must certify to the county judge executive the number of days the local board was in session. The clerk or authorized deputy and each board member are entitled to receive \$100 for each day served on the board. One half of the amount due is paid by the county and one half is paid by the State. A reimbursement claim form is provided by the Department of Revenue for the clerk's use to obtain the State's share of the Local Board's cost.

### **PENALTY WAIVER GUIDELINES**

In November of 2009, the Office of Property Valuation updated its 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 the county attorney is the local official charged with enforcing the collection of certificates of delinquency and the majority of waiver requests will be initiated by that office. However, the county attorney will likely consult with both the sheriff and county clerk 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, county attorney and sheriff 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.





## **APPENDIX**

## FREQUENTLY ASKED QUESTIONS

1. Does a third party purchaser need a certificate from the Department of Revenue to purchase prior year delinquencies?

If a third party purchaser plans to acquire more than 3 certificates of delinquency in any county, more than 5 certificates of delinquency statewide or invest more than \$10,000 a registration certificate is needed from the Department of Revenue. This is the case even if a third party purchaser is only interested in purchasing certificates of delinquency from a previous year.

2. The deadline for registering for the tax sale is 10 days prior to the tax sale date. Is the 10 days “calendar” days or “business” days?

The 10-day time period prior to the tax sale date can be computed as “calendar” days. However, in accordance with KRS 446.030 the date of the sale must be excluded from the computation of the 10 calendar day deadline. For example, if the tax sale date is August 12<sup>th</sup>, the deadline for third party purchasers to submit all registration documents, fees and deposits would be August 2<sup>nd</sup>.

3. A third party purchaser only wants to acquire certificates of delinquency on which he or she has a prior year claim. They do not want to participate in the actual tax sale of current year certificates of delinquency. Does this third party purchaser have to be present on the date of the tax sale?

It is the Department of Revenue’s position that a third party purchaser does not have to be present when they are only acquiring certificates of delinquency on which they have a priority claim.

Keep in mind that the third party purchaser would still have to register with the Department of Revenue if the purchase thresholds are met. Additionally, the registration deadline established by the county clerk would also need to be observed.

4. Unrelated third party purchasers want to use the same representative at the tax sale. Can this be allowed?

Yes. The representative needs to fully disclose who he or she is representing and this should be made public to all participants at the tax sale so that there is no confusion regarding why this representative is making multiple selections during each round of the tax sale.

However, a county clerk also has the discretion to require each third party purchaser to have a representative present at the tax sale.

5. Can the cost of developing the website be included in the advertising expenses that are added to the certificates of delinquency on a pro rata basis?

The advertising costs that are used to come up with the pro rata amount to add to each certificate of delinquency need to be limited to the one-half page advertisement announcing the tax sale and the actual listing of the delinquent tax bills in the local newspaper.

6. Should certificates of delinquency under payment agreements be advertised?

It is the Department of Revenue's position that all certificates of delinquency and personal property certificates of delinquency are to be advertised. This would include a certificate of delinquency that is under a payment agreement at the time the tax sale advertisement is published. If a taxpayer defaults on his or her payment agreement prior to the tax sale, the certificate of delinquency can be included in the pool of delinquencies available for sale since it has been advertised. If the taxpayer remains current on the payment agreement as of the tax sale date, the certificate of delinquency can be removed from the tax sale. The advertisement of the certificates of delinquency needs to contain language that some certificates may be excluded from the tax sale under the provisions of KRS 134.504 (10) (b). The sample advertisement included in the "Forms" section of the Appendix includes this type of language.

7. Third party purchasers who are related parties both have priority claims against various current year certificates of delinquency. Can they both exercise their priority claims?

It is acceptable to have related third party purchasers exercise their priority claims against current year certificates of delinquency. What is not acceptable is to allow the related parties to both participate in the actual tax sale of current year certificates of delinquency.

8. If a taxpayer defaults on an installment payment plan, what is done with the money that was paid?

The county clerk will decide if the amount received by the county attorney will be credited against the total due or refunded to the taxpayer. Either way the certificate of delinquency will be included in the pool of bills available for purchase at the tax sale. If a credit is applied, the purchase price for the certificate of delinquency will be the amount that remains after applying the payments that were received. If a refund is made, the full amount of the certificate of delinquency will be the purchase price. County clerks will need to consider factors such as the capabilities of their office's collection software system, the amount paid and the percentage the amount paid is to the total amount due when making the decision on how to handle the partial payments. If it is decided that a refund will be made, the county clerk and county attorney need to work out which office will be responsible for issuing the refund.

9. My tax sale is over and now a third party purchaser is interested in purchasing some certificates of delinquency that remain on file in my office. Should a registration fee be charged?

A registration fee should be charged if the maximum fee of \$250.00 has not been reached due to purchases made earlier in the calendar year either prior to or at the tax sale. A \$10.00 registration fee per certificate of delinquency purchased needs to be charged until the maximum fee has been met.

10. Enforcement action has been taken against a certificate of delinquency and the property has been sold at a Master Commissioner's sale. The proceeds from the sale do not cover the other certificates of delinquency that were not purchased by a third party purchaser and remain on file in the county clerk's office. What is the proper procedure to follow?

KRS 134.420 (5) states that the property tax lien continues in force until the matter is judicially terminated. The Master Commissioner's sale would represent the judicial termination of the action to enforce the lien contemplated by this statute. Therefore, the lien represented by the certificate of delinquency is extinguished by the Master Commissioner's sale.

When the proceeds from the sale are insufficient to pay all of the certificates of delinquency in full, the county clerk will start with the most recent certificate of delinquency and pay as many certificates in full as possible. Please refer to the example shown in the Appendix of the process to follow when a master commissioner's sale does not generate enough money to pay all the certificates of delinquency.

11. When a certificate of delinquency that has been purchased by a third party is reassigned to another third party, what fee should be charged by the county clerk for recording the reassignment?

Opinion of the Attorney General (OAG) 12-002 reviewed this issue and concluded the proper fee to charge for a reassignment of a certificate of delinquency is \$12.00. This opinion went on to state if the length of the reassignment document exceeded three pages, then an additional \$3.00 for each page in excess of three can also be charged.

A copy of this Opinion follows.

## OAG 12-002

February 29, 2012

*Subject:* Fee of county clerk for third-party assignment of certificate of delinquency

*Requested by:* Bobbie Holsclaw  
Jefferson County Clerk

*Written by:* James M. Herrick  
Assistant Attorney General

*Syllabus:* The proper fee of the county clerk for recording a reassignment of a certificate of delinquency from a third-party purchaser to a subsequent purchaser is the general fee of \$12.00 provided in KRS 64.012(1)(a).

*Statutes construed:* KRS 64.012, KRS 134.126

*GAG's cited:* OAG 72-152, OAG 79-313, OAG 82-432, OAG 84-197, OAG 84-260

### *Opinion of the Attorney General*

KRS 134.010(1) defines a certificate of delinquency as "a tax claim on real property for taxes that [r]emains unpaid" three months and fifteen days after the due date and "[h]as been filed with the county clerk pursuant to KRS 134.122." Pursuant to KRS 134.128, the county clerk may sell certificates of delinquency to third-party purchasers, who may then assign the certificates to others under KRS 134.126(7). The clerk is to record the initial assignment to the third-party purchaser pursuant to KRS 134.126(5)(b). Subsequent assignments are to be recorded pursuant to KRS 134.126(7).

Jefferson County Clerk Bobbie Holsclaw has requested an opinion on the following question: "What is the proper fee for a county clerk to charge a [third] party buyer of a certificate of delinquency to assign that instrument to a subsequent purchaser?" There being no prior opinions or published cases on the issue, we begin with the plain language of the statutes. *Cf* OAG 79-313.

KRS 134.126(5)(b) states as follows:

If payment in full is made by a person other than the person primarily liable on the certificate, the person making the payment may request that the payment be treated as an assignment. Upon such request, the county clerk shall:

1. Note the assignment on the certificate of delinquency[;]
2. Record the encumbrance represented by the certificate of delinquency in the same manner as a notice of lis pendens; and
3. Include as part of the encumbrance recording the information required by KRS 134.490(3)(f) [*i.e.*, the name, address and telephone number of the third-party purchaser].

*For recording the assignment and encumbrance, the county clerk shall receive the fee provided in KRS 64.012.*

(Emphasis added.) KRS 64.012(33) specifically provides that the county clerk shall receive a fee of \$27.00 for "[n]oting the assignment of a certificate of delinquency and recording and indexing the encumbrance under KRS 134.126 or 134.127."

Meanwhile, KRS 134.126(6) states:

After the initial recording of an assignment of a certificate of delinquency ... as provided in subsection (5)(b) of this section, all subsequent actions relating to that certificate of delinquency ..., including assignments and releases shall be made in accordance with the general laws and procedures governing land records, except the additional information required by KRS 134.490(3)(f) shall be included. *The applicable fees established by KRS 64.012 shall apply.*

(Emphasis added.) KRS 64.012(1)(a), in pertinent part, provides the following fees for recording and indexing of a:

4. Deed of assignment;

.....  
12. Release of any recorded encumbrance other than state liens;

.....  
22. Recording with statutory authority for which no specific fee is set, except a military discharge; and

23. Filing with statutory authority for which no specific fee is set.

For all items in this subsection if the entire thereof does not exceed three (3) pages ..... \$12.00

And, for all items in this subsection exceeding three (3) pages, for each additional page ..... \$3.00

And, for all items in this subsection for each additional reference relating to same instrument ..... \$4.00

The question, therefore, is whether the subsequent reassignment of a certificate of delinquency from the initial third-party purchaser to a subsequent third-party purchaser entitles the county clerk to the \$27.00 fee provided in KRS 64.012(33), or only to the \$12.00 general fee provided in KRS 64.012(1)(a).

We start from the premise that the law should be construed so as to give effect to all parts of a statute whenever possible. *George v. Scent*, 346 S.W.2d 784, 789 (Ky. 1961). "All statutes are presumed to be enacted for the furtherance of a purpose on the part of the legislature and should be construed so as to accomplish that end rather than to render them nugatory." *Com. ex rel. Martin v. Tom Moore Distillery Co.*, 287 Ky. 125, 152 S.W.2d 962, 967 (1939).

If the language in KRS 134.126(6), stating that after an initial assignment "all subsequent actions relating to that certificate of delinquency[, including assignments[,]] shall be made in accordance with the general laws and procedures governing land records," is to be given any meaningful effect, we must recognize that a subsequent assignment is to be treated differently from an initial assignment. Under the "general law" embodied in KRS 64.012(1)(a), the clerk's fee for filing a subsequent assignment of a certificate of delinquency is \$12.00, with an additional \$3.00 for each page in excess of three.

There is no inequity in the law's allowing the county clerk a lesser fee for recording a subsequent assignment of a certificate of delinquency than for the initial assignment, since more duties are required of the clerk in the case of an initial assignment. When a certificate of delinquency is first sold to a third-party purchaser, the county clerk must receive and record the payment (KRS134.126(1)(a)); issue a receipt (KRS 134.126(2)); report to various public officials (KRS 134.126(3)) and allocate the portions of the payment due to each entity (KRS134.126(4)); note the payment on the certificate along with the purchaser's name and address (KRS 134.126(5)(a)); note the assignment on the certificate (KRS 134.126(5)(b)(1)); prepare and record the instrument (KRS 134.126(5)(b)(2)), including the name, address, and phone number of the purchaser (KRS 134.126(5)(b)(3)); and index the assignment (KRS 382.290(5)).

By contrast, for a subsequent assignment by the third-party purchaser under KRS 134.126(6) pursuant to "the general laws and procedures governing land records," the county clerk is only required to record the privately prepared instrument (KRS 382.110); note the assignment on the certificate of delinquency with the name, address, and phone number of the assignee (KRS 134.126(6)); and note the assignment in the filing system (KRS 382.290(5)). Accordingly, both the letter of the law and the realities of the transaction dictate that the \$12.00 fee provided in KRS 64.012(1)(a) should apply to a subsequent assignment from one third-party purchaser to another.

Finally, it is appropriate that in the interest of clarity we address the so-called "cluster technique," by which multiple certificates of delinquency are reassigned through a single instrument filed with the county clerk. The Attorney General last spoke to this issue in 1984 in the context of what was then the \$5.00 fee for recording mortgage assignments:

Unfortunately, KRS 64.012 does not speak in terms of a fee for each mortgage effectively assigned in one instrument. In other words, it does not address the cluster technique, which is apparently employed as an economy in language and documents. The fee schedule under KRS 64.012, as applies to an assignment of real estate mortgages, is stated in language that envisions one single document of assignment, regardless of the multiplicity of assignments within the one document.



As we said in OAG 82-432, ... if the General Assembly had intended to prohibit "clustering" in such assignments, it could have easily said so by statute. The history of KRS 64.012 reflects that the fee schedule for the county clerks is constructed around a specific fee for the filing of a particular document, i.e., the singular is used. Thus the fee schedule does not deal specifically with the multiple transaction-within-one- document concept. As we wrote in OAG 72-152, ... any inequity which may arise from this clustered document approach will have to be remedied by the General Assembly.

OAG 84-197. In OAG 84-260, this office clarified that in the case of such multiple assignments, the clerk should be entitled to an additional \$2.50 "for making marginal notations on each real estate mortgage affected."

The "cluster technique" was codified by subsequent revisions to KRS 64.012, as was the remedy for the potential fee inequities we had examined in OAG 84-197. Under the current version of the statute, the clerk's additional fee is \$4.00 "for each additional reference relating to [the] same instrument."

Therefore, it is our opinion that the county clerk is entitled to a \$12.00 fee for recording a subsequent reassignment of a certificate of delinquency by a third-party purchaser, with an additional \$3.00 for each page in excess of three. For an instrument containing subsequent reassignments of multiple certificates of delinquency, the clerk is entitled to \$12.00 for recording the instrument, with an additional \$3.00 for each page in excess of three and an additional \$4.00 for noting the reassignment on each affected certificate in excess of one.

Jack Conway  
Attorney General

James M. Herrick  
Assistant Attorney General

## PARTIAL PAYMENT CALCULATION EXAMPLE

With county attorneys now required to offer installment payment plans, county clerks will likely have to process partial payments on a more frequent basis. The following example will illustrate how to apply a partial payment to a certificate of delinquency.

Assume the following information:

Tax Amount	\$500.00
10% Delinquent Penalty	50.00
Sheriff's Add On Fee	55.00
Sheriff's Commission	<u>22.00</u>
Total of Certificate of Delinquency	\$627.00

The county clerk's office must then add interest and fees to the amount due when it is transferred from the sheriff's office to arrive at the grand total due. The first calculation the clerk must do is to compute the interest due. For the first month, the total due would be multiplied by .01 or 1% to determine the amount of interest due. In this example, interest through the end of April would be \$6.27 ( $\$627.00 \times .01$ ).

After figuring the interest to charge, you can then calculate the county attorney's 20% fee and your office's 10% fee. KRS 134.126 and KRS 134.504 require that these fees be calculated on the amount due each taxing unit. This means that these fees are calculated on the total of the tax, 10% penalty and interest. In this example, the amounts to use would be as follows: \$500.00 tax amount, \$50.00 penalty and \$6.27 in interest for a total of \$556.27. Using this amount as the basis for each fee, the county attorney's fee would be \$111.25 ( $\$556.27 \times 20\%$ ) and the county clerk's fee would be \$55.63 ( $\$556.27 \times 10\%$ ).

A summary of the total amounts to charge in this example is as follows:

Tax Amount	\$500.00
10% Penalty	50.00
Sheriff's Add On Fee	55.00
Sheriff's Commission	22.00
Interest	6.27
County Attorney Commission	111.25
County Clerk Commission	55.63
Postage Due County Attorney for First Notice	1.00
Lien Recording and Release Fee	<u>10.00</u>
	\$811.15

If a taxpayer, under an installment payment agreement made a \$200.00 partial payment on the total due, the following procedures need to be followed:

Total Due in First Month	\$811.15
Partial Payment in First Month	<u>&lt;200.00&gt;</u>
Amount Due at the End of First Month	\$611.15

Detail of amount due at the end of the first month:

Tax Amount	\$300.00 (\$500.00-\$200.00)
10% Penalty	50.00
Sheriff's Add On Fee	55.00
Sheriff's Commission	22.00
Interest	6.27
County Attorney Commission	111.25
County Clerk Commission	55.63
Postage Due County Attorney	1.00
Lien Recording and Release Fee	<u>10.00</u>
Total Due	\$611.15

Calculations for the second month:

Interest would be computed as follows:

Remaining Tax Amount	\$300.00
10% Penalty	50.00
Sheriff's Add On Fee	55.00
Sheriff's Commission	<u>22.00</u>
Amount upon which interest is computed in Month 2	\$427.00

\$427.00 x 1%=\$4.27 in interest for month 2. This is added to the original interest amount of \$6.27, which results in a total interest charge of \$10.54 for month 2. The County Attorney and County Clerk commissions are also adjusted to reflect the new interest amount. The total due for the second month is as follows:

Remaining Tax Amount	\$300.00
10% Penalty	50.00
Sheriff's Add On Fee	55.00
Sheriff's Commission	<u>22.00</u>
Amount upon which interest is computed in Month 2	\$427.00
Interest	10.54 (6.27+4.27)
County Attorney Commission	112.11 (500+50+10.54)x 20%
County Clerk Commission	56.05 (500+50+10.54)x 10%
Postage Due County Attorney	1.00
Lien Recording and Release Fee	<u>10.00</u>
Total Due for Second Month	\$616.70

This process would continue until the partial payments paid off the tax and penalty. At that time, payments would then be applied to the various interest and fee amounts until they are paid in full.

## **COMPUTATION TO DETERMINE ADVERTISING COSTS TO ADD TO CERTIFICATES OF DELINQUENCY**

The cost incurred for advertising the certificates of delinquency can be added to each certificate on a pro-rata basis. In accordance with KRS 134.128 (5)(c), a formula that takes into account that a percentage of the delinquent tax claims will remain unpaid shall be developed by the Department of Revenue for use by the county clerk in allocating the advertising costs among each certificate of delinquency. A statewide survey of county clerk's offices indicated that approximately 55% of the 2017 delinquent tax bills received from the sheriff remained unpaid in December of 2018. Therefore, the factor to apply to the advertising costs for the 2018 certificates of delinquency will be 55%. The formula to use is as follows:

Step 1 – Total Advertising Costs Incurred divided by the Number of Certificates of Delinquency.

Step 2 – The result in Step 1 is then multiplied by 1.55 to increase the amount by 55%.

Step 3 – The amount arrived at in Step 2 can then be rounded up to the next even dollar.

The following example will illustrate the use of the above formula. If it costs \$4,250 to advertise 650 certificates of delinquency, the advertising cost that can be added to each certificate is computed as follows:

Step 1 -  $\$4,250 / 650 = \$6.54$

Step 2 -  $\$6.54 \times 1.55 = \$10.14$

Step 3 - \$10.14 can then be rounded up to \$11.00

Therefore, \$11.00 would be the appropriate advertising fee to add to each certificate of delinquency in this example.

**APPLICATION OF PROCEEDS FROM MASTER COMMISSIONER’S SALE  
WHEN ALL CERTIFICATES OF DELINQUENCY CANNOT BE PAID IN FULL**

In this example, a third party purchaser acquired certificates of delinquency for 2016 and 2017; however, certificates of delinquency from 2014 and 2015 remain on file in the county clerk’s office. The third party purchaser elects to enforce his or her lien through a Master Commissioner’s sale. After expenses and payments to the third party purchaser, \$2,000 is received by the county clerk for the 2014 and 2015 certificates of delinquency in March of 2019. The total amount due for the 2015 certificate of delinquency is \$1,417.78. The total due on the 2014 certificate of delinquency is \$1,846.04. The following illustration will detail the process the county clerk’s office will use to properly account for the payment received.

The amount received is first applied to the most recent certificate of delinquency - 2015 in this example. Since the amount received exceeds the total due on this certificate of delinquency it can be paid in full in the normal manner.

After paying the 2015 certificate of delinquency in full a total of \$582.22 (\$2,000 - \$1,417.78) remains to be applied to the 2014 certificate of delinquency. The breakdown of the 2014 certificate of delinquency is as follows:

State	\$125.00
County	90.00
School	400.00
Library	75.00
Extension	50.00
Soil	35.00
Total Tax	\$775.00
10% Penalty	77.50
Sheriff’s Add-On Fee	85.25
Sheriff’s Commission	34.10
Interest	466.49*
County Attorney	263.80
County Clerk	131.90
Lien Fee	10.00
Postage	2.00
Total Due	\$1,846.04

\*Assumes the 2014 delinquent tax bill was transferred by the sheriff to the county clerk’s office in April of 2015. In this example the payment from the Master Commissioner was received in March of 2019. Therefore, 48 months’ worth of interest has been added to the total due.

The amount remaining to apply to the 2014 certificate of delinquency (\$582.22) represents 31.54% of the total amount (582.22 / 1,846.04). Therefore, each component of the 2014 certificate of delinquency needs to be multiplied by .3154.

	Original Amount	Factor	Prorated Amount
State	125.00	.3154	39.42
County	90.00	.3154	28.39
School	400.00	.3154	126.16
Library	75.00	.3154	23.65
Extension	50.00	.3154	15.77
Soil	35.00	.3154	11.04
Total Tax	775.00		244.43
10% Penalty	77.50	.3154	24.44
Sheriff's Add-on Fee	85.25	.3154	26.89
Sheriff's Commission	34.10	.3154	10.75
Interest	466.49	.3154	147.13
County Attorney	263.80	.3154	83.20
County Clerk	131.90	.3154	41.60
Lien Fee	10.00	.3154	3.15
Postage	2.00	.3154	.63
Total Due	1,846.04		582.22

