

103 KAR 5:220. Installment payment plan guidelines for third party purchasers of certificates of delinquency.

RELATES TO: KRS 134.125, 134.126, 134.128, 134.129, 134.452, 134.490(5)(h)

STATUTORY AUTHORITY: KRS 134.490(5)(h)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 134.490(5)(h) authorizes the Department of Revenue to promulgate Administrative Regulations to establish a process for an installment method of payment for the redemption of certificates of delinquency by a delinquent taxpayer. This administrative regulation establishes the process by which third party purchasers shall grant installment payments.

Section 1. Definitions. (1) "Base amount" means the amount paid by a third-party purchaser for a certificate of delinquency.

(2) "Certificate of delinquency" is defined by KRS 134.010(1).

(3) "Default" means:

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

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

(4) "Department" means the Department is defined by KRS 134.010(5).

(5) "Optional certificate" means a certificate of delinquency that is not a qualifying certificate.

(6) "Payment plan" means a monthly installment plan described in the payment plan document.

(7) "Payment plan document" means the agreement between the property owner and the third-party purchaser detailing the terms of a payment plan.

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

(9) "Processing fee" means a fee that may be imposed by a third-party purchaser for administering a payment plan, as provided in KRS 134.490(5)(c).

(10) "Property owner" means "taxpayer" as defined in KRS 134.010(14), or any other owners of real property on which an outstanding certificate of delinquency is held by a third-party purchaser.

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

(12) "Subject property" means the property against which the lien related to a certificate of delinquency is attached.

(13) "Third-party purchaser" is defined by KRS 134.010(16).

Section 2. Notice of Payment Plan Availability. (1) For purposes of this administrative regulation, the term "third-party purchaser" shall also include any assignee of a certificate of delinquency.

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

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

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

requests in an electronic format;

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

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

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

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

(3) Beginning with receipt of a request for a payment plan, and during the term of any payment plan, the third-party purchaser shall not undertake any enforcement remedies available under the law for the collection of the amount due on a certificate of delinquency. However, this provision shall not preclude a third-party purchaser from engaging in legal proceedings to protect its interest in property subject to its lien and to charge reasonable legal and administrative fees in accordance with KRS 134.452(3). If the request for a payment plan is rejected because it is not timely or one of the conditions listed in Section 7 of this administrative regulation applies, or if the property owner defaults, the third-party purchaser may pursue any legal remedies available to the third-party purchaser under the law for collection of the amount due.

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

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

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

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

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

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

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

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

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

(f) The amount of interest that will accrue over the term of the payment plan, assuming

payments are made according to the payment plan schedule;

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

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

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

(j) A statement that the taxpayer shall be in default for the failure to pay within fifteen (15) days of a payment due date, as provided in Section 1(3)(a) of this administrative regulation, which would allow the third party purchaser, at his discretion, to discontinue accepting payments in accordance with the plan and pursue any other legal remedy available to collect the debt;

(k) Acceptable methods of payment;

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

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

(n) A statement that the third party purchaser shall notify the taxpayer within seven (7) business days by certified mail if the certificate of delinquency related to the payment plan is assigned. The notification shall include the name, address, and telephone number of the assignee.

(4) The third-party purchaser may limit the method of payment accepted to those methods reasonably determined to ensure payment, except that a third-party purchaser shall accept certified checks, cashier's checks, and cash in payment. A third-party purchaser may, at the discretion of the third-party purchaser, also accept ACH transfers, wire transfers, credit card, personal check, or other means of payment.

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

(6) An assignee of a certificate of delinquency shall abide by the terms of a payment plan related to a certificate of delinquency.

Section 5. Calculation of the Monthly Amount Due and Crediting of Payments. (1) Interest shall be calculated during the term of the payment plan on the outstanding balance of the base amount as required by KRS 134.125.

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

(a) The base amount due;

(b) Interest:

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

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

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

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

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

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

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

(b) Second, to the interest due;

- (c) Third, to outstanding pre-litigation attorney fees and administrative fees imposed under KRS 134.452 and included as part of the payment plan document; and
- (d) Fourth, to reduce the base amount due.
- (5) If multiple certificates of delinquency are included under one payment plan document, the third-party purchaser shall apply payments based on the earliest date of attachment of the lien to the subject property.

Section 6. Default. (1) The third-party purchaser may charge a processing fee for the month in which the default occurs, but shall not charge a processing fee for any subsequent month.

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

- (a) First, to the payment of unpaid processing fees of the period prior to default, including the processing fee due in the month the default occurred;
- (b) Second, to outstanding interest due;
- (c) Third, to outstanding fees charged as set forth in KRS 134.452; and
- (d) Fourth, to reduce the base amount due.

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

- (1) The property owner has previously defaulted on a payment plan with that third-party purchaser; or
- (2) An agreed judgment, agreed order, or other court order is in place that addresses the payment of the underlying tax claim or claims covered by a certificate of delinquency.

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

(2) Any payment plan agreement between a third-party purchaser and a property owner in existence on the effective date of this administrative regulation shall remain in effect according to the terms of the existing agreement. A third-party purchaser shall not impose the processing fee authorized by KRS 134.490(5)(c) as part of an installment payment plan agreement relating to a certificate or certificates of delinquency purchased on or before June 1, 2012. (39 Ky.R. 916; 1461; 1653; eff. 3-8-2013.)