

Towns can Retain Balance of Tax Sale Proceeds

A recent decision of the Vermont Supreme Court confirmed the authority of towns to retain the balance of tax sale proceeds for the duration of the one-year redemption period. *Ran-Mar, Inc., v. Town of Berlin*, 2006 VT 117.

The case concerns tax sales conducted by the Town of Berlin on seven properties owned by three related corporations: Ran-Mar, Inc., R & G Properties II, Inc. and R & G Properties III, Inc. (hereinafter referred to as “taxpayers”). Prior to the tax sale, the Town sent notices to the taxpayers informing them that they could avoid the sale by paying the delinquent taxes, interest owed and fees and costs incurred. When payment was not received, the Town went forward with the tax sale. Afterwards, taxpayers asked the Town to return all monies in excess of the delinquent taxes, costs and fees. The Town refused, informing the taxpayers it would hold the tax sale proceeds until culmination of the one-year statutory redemption period. Taxpayers brought suit in Washington County Superior Court seeking to have the tax sale invalidated on the basis that the Town exceeded its statutory authority by requiring interest and penalties to be paid to avoid the tax sale. Taxpayers also questioned the Town’s authority to retain the proceeds, arguing that doing so amounted to an unconstitutional taking. The Superior Court granted the Town’s motion for summary judgment, upholding the tax sale and affirming the Town’s authority to retain the proceeds.

On appeal to the Vermont Supreme Court, taxpayers argued the Town lacked the authority to collect interest on delinquent taxes because the statute authorizing tax sales makes no specific mention of interest. (“When the tax with costs and fees is not paid before the day of sale, the real property on which the taxes are due shall be sold to pay such taxes, costs and fees.” 32 V.S.A. § 5254(a)). Looking at the tax collection statutory scheme as a whole, the Court held that the Legislature intended interest to be included in the overall tax obligation collectible by tax sale because 32 V.S.A. § 5136 authorizes towns to collect interest on overdue taxes. To take the taxpayers’ position would mean that the Legislature granted towns the authority to assess interest on overdue taxes, but no mechanism by which to collect it, thereby rendering 32 V.S.A. § 5136 ineffectual. Taxpayers similarly questioned the Town’s authority to insist penalties be paid because there is no express mention of penalties in 32 V.S.A. § 5254(a). The Court concluded that this question came down to a matter of semantics as the Town’s use of the word “penalties” in its notice to the taxpayers was an obvious reference to the eight percent collector’s fee authorized by 32 V.S.A. §§ 1674, 5258. “The Town’s use of the term ‘penalties’ to refer to the collector’s fee does not invalidate the tax sale, nor does it prevent the Town from collecting the fee.”

The importance behind sending a notice of tax sale is to inform the taxpayer that the property is to be sold and the amount that must be paid to prevent the sale. In this regard, the notice was clear.

The Court also rejected taxpayers’ characterization of the Town’s retention of the tax sale proceeds as an unconstitutional taking. The inherent flaw in taxpayers’ argument was that there can be no taking if nothing was taken. The Town neither took property from the taxpayers nor deprived them of the economic use of their properties. Furthermore, Vermont law does not confer upon a taxpayer any right to the tax sale proceeds during the redemption period. It is only when the redemption period expires and title is conveyed that the transaction is completed and the proceeds are due. More to the point, the tax sale proceeds originated from the winning bidder at tax sale, not from the taxpayers. Therefore, since no money was actually taken from the taxpayer, there is no money for the Town to return.

This case is important to towns for several reasons. First, it removes some of the lingering uncertainty that has been hovering over the tax sale process by firmly cementing a town’s authority to collect interest by tax sale and dispelling the notion that fees by any other name (i.e. “penalties”) are not collectible. More importantly, this case finally answers the question of whether towns may hold onto the proceeds from a tax sale until the end of the redemption period. Equally as important is what the Court did not say. The Court did not say that a town could not give the excess proceeds to a taxpayer when it receives them, only that it did not have to do so. In fact, Justice Dooley points out in his consenting opinion that a town can, and often should, give these proceeds to taxpayers as they are held for their benefit. However, in making this suggestion, Justice Dooley forewarns, “the Town should not return the proceeds without the consent of the mortgagee....” Towns that release these monies before the passing of the redemption period would do well to heed this advice and obtain the consent of all mortgagees before doing so.

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