Supreme Court Provides Clarity to Tax Sale Process

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The Vermont Supreme Court recently provided some much-appreciated clarification to several lingering questions concerning the municipal delinquent property tax sale process in the case of Contos v. Town of Londonderry & Superchi.

When Does the One-Year Statute of Limitations Begin to Run?

Under state law, a taxpayer has one year from the time collection is sought to challenge any acts associated with the collection of the tax. 32 V.S.A. § 5294(opens in a new tab). But when exactly does that one-year statute of limitations begin? The plaintiff in this case argued that it shouldn't have run until they received actual notice of the tax sale. While the Court agreed that this would ordinarily be the case in most civil cases, there exists a specific statute, 32 V.S.A. § 5295(3),(opens in a new tab) which clarifies that the one-year period is to be measured "from the date of the levy thereon by the tax collector." Since the tax collector entered their levy on March 27, 2018, the plaintiff had until March 27, 2019 to file a lawsuit challenging the tax collector's acts, including the tax sale. They didn't file until November 2019, so the Court deemed their action time-barred.

Is There a Specific Timeframe for When Additional Notice Must be Sent?

Thirty-two V.S.A. § 5252(a)(3)(opens in a new tab) requires that notice of an impending tax sale be given to the delinquent taxpayer "by certified mail" requiring a return receipt directed to the last known address of the taxpayer of the date and place of such sale at least 10 days prior if the taxpayer is a resident of the town, and 20 days prior if the taxpayer is a nonresident of the town. If the certified mailing is returned unclaimed, it must be sent again by first-class mail or by personal service pursuant to

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Rule 4 of the Vermont Rules of Civil Procedure. The plaintiff in this case claimed that their due process rights were violated (i.e., they weren't afforded constitutionally adequate notice) because the second notice they received was sent by first-class mail nine days before the sale, instead of twenty. The Court ruled that the law only requires the first notice to be sent at least twenty days before the sale, not both. It also pointed out that the law doesn't actually specify a deadline by which the additional notice must be sent, only that if the initial notice is returned unclaimed, an additional attempt at notice must be made prior to the date of the sale. As the Court held in a prior case, and repeated in this one, though there is no specific deadline, the additional notice must be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of [an] action and afford them an opportunity to present their objections." Hogaboom v. Jenkins, 2024 VT 11, ¶ 15.

Does a Defect in Notice Invalidate a Tax Sale?

It depends. Municipalities should always strive to adhere as closely as they can to the tax sale notice requirements specified in the law, but not every defect will rise to the level of being, as the Court phrased it, "a defect of jurisdictional magnitude." For example, in the case of Turner v. Spera, the Court held that a town's failure to advertise its tax sale for the third consecutive week in a newspaper of general circulation did not violate due process when notice was posted publicly and also sent by registered and first-class mail to the taxpayer's last known address. Turner v. Spera, 140 Vt. 19 (1981). As the Court reminds us, due process does not demand actual notice, just "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of [an] action and afford them an opportunity to present their objections." Hogaboom v. Jenkins, 2014 VT 11, ¶ 15.

Here, the plaintiff claims that their due process rights were violated because, although the governing statute contemplates sending an additional notice after the

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initial one was returned unclaimed, theirs was actually sent beforehand. The Town, however, did this intentionally, anticipating that the initial notice would be returned unclaimed - as had happened with this taxpayer in the past. The Court said this was a reasonable step "that someone desirous of actually informing the property owner would take." Id. ¶ 17. In instances such as these (e.g., when a plaintiff claims notice is deficient in some regard) the Court will look to whether, when viewed as a whole, all the steps a municipality took substantially complied with due process. As the Court concluded, "(w)e have no trouble in concluding that the Town's actions here satisfied these requirements."

Archive of the Contos v. Town of Londonderry case.

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