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Local Finance Notice

Philip D. Murphy
 Governor

Lt. Governor Sheila Y. Oliver
 Commissioner

Melanie R. Walter
 Director

Contact Information

Director's Office

V. 609.292.6613
 F. 609.633.6243

Local Assistance Bureau

V. 609.292.6858
 F. 609.633.6243

Financial Regulation and Assistance

V. 609.292.4806
 F. 609.984.7388

Local Finance Board

V. 609.292.0479
 F. 609.633.6243

Administrative Services Unit

V. 609.292.6126
 F. 609.633.6243

Mail and Delivery

101 South Broad St.
 PO Box 803
 Trenton, New Jersey
 08625-0803

www.nj.gov/dca/divisions/dlgs

E-mail: dlgs@dca.nj.gov

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Recent Tax Collection and Tax Appeal Legislation

This Notice explains recently enacted legislation pertaining to property tax collection, tax appeal refunds, and the waiver of interest and lien enforcement for certain delinquent water and sewer utility payments during emergency circumstances.

Change in Interest Rate for Tax Appeal Refunds; Spreading Payment of Nonresidential Tax Appeal Refunds Exceeding \$100,000 Over Three Years

[P.L. 2019, c. 230](#) makes two major changes to laws pertaining to property tax appeal refunds by municipalities. First, in the event a taxpayer is successful in appealing an assessment, and the appeal was filed on or after August 9, 2019, the law amends the specified interest rate that a municipality must pay as part of a tax appeal refund under N.J.S.A. 54:3-27.2. Previously, the interest rate from the date of payment was five percent (5%) per annum. The interest rate is now the lesser of either:

- Five percent (5%) per annum; or
- One percentage point above the Federal Reserve prime rate as quoted by the Division of Taxation pursuant to N.J.S.A. 54:48-2.

The lesser of these two interest rates shall be assessed for each month or fraction thereof, compounded annually at the end of each year, from the date the tax was originally due or paid, whichever date is later, until the date of actual payment. Updated periodically by the Division of Taxation, [Technical Bulletin 21R](#) lists the prime rate to be used in a given year or fraction thereof. The [latest bulletin](#) lists the prime rate to be used for the period April 1, 2020 through December 31, 2020 as 3.25%, and also lists the prime rates for prior time periods. This means for a refund on a tax appeal originally filed June 1, 2020, where the property tax installment due on May 1, 2020 was paid on April 15, 2020, and the municipality paid the tax appeal refund on August 28, 2020, a municipality would apply an interest rate of 4.25% (3.25% + 1%) to the appeal refund instead of 5% for the amount of the refund over 119 days (May 1 through August 28).

Where the prime rate varies over the period during which a property tax appeal is pending, the municipality must apply the prime rates in effect while the appeal was pending. Take for example a scenario where a property tax appeal is filed in State Tax Court on September 20, 2019 and adjudicated on June 24, 2020 reducing the 2019 assessment from \$2,000,000.00 to \$1,600,000.00. The corresponding reduction in tax dollars totals \$14,280.00 which would be deducted from the November 1, 2019 quarter paid by the taxpayer on November 9, 2019. Because the prime rate for 2019 was 5.25%, 5% would be used for the amount of the refund accruing during the period of November 9, 2019 through December 31, 2019. The portion of the refund accruing between January 1, 2020 and March 31, 2020 would have a 5% interest rate applied because the prime rate for that period is 4.75% (4.75% +1% = 5.75%). As the prime rate for April 1, 2020 through December 31, 2020 is 3.25% (3.25% + 1% = 4.25%), 4.25% would be the interest rate applied to the refund during that period. In this example, the tax collector would be calculating interest from between August 9, 2020 (46 days after adjudication) and August 23, 2020 (the latest date by which the taxpayer must be paid his or her refund). The method of the refund interest calculation is delineated below:

11/9/2019 through 12/31/2019 = 52 days at 5%	\$14,280 x 5% divided by 360 x 52 = \$103.13
1/1/2020 through 3/31/2020 = 90 days at 5%	\$14,280 x 5% divided by 360 x 90 = \$178.50*
4/1/2020 through 8/9/2020 = 128 days at 4.25%	\$14,280 x 5% divided by 360 x 128 = \$215.79

Total refund = \$14,777.42

* Since the 5% remains unchanged one could also calculate using 11/9/19 to 3/31/20 = 142 days, leading to the same result.

With respect to tax appeal refunds on non-residential properties, for appeals filed after August 9, 2019, municipalities are required to refund successful non-residential property tax appeals exceeding \$100,000 within three (3) years of the date of final judgment. The law applies to successful appeals before county boards of taxation and State Tax Court. After subtracting any amount of delinquent taxes, interest, and penalties, the refund must be made in substantially equal payment periods and substantially equal payment amounts over the three years. This does not preclude the Local Finance Board from approving the issuance of notes pursuant to N.J.S.A. 40A:4-89 when municipal obligations from tax appeals have contributed to prior year operating deficits. Please review [Local Finance Notice 2012-4](#) for details regarding options available through the Local Finance Board to further spread the cost of tax appeals.

All non-residential tax appeal refunds at or below \$100,000, and all residential tax appeal refunds, shall continue to be refunded within 60 days of the date of final judgment.

Both of the above-referenced changes made by P.L. 2019, c.230 are applicable to appeals filed after August 9, 2019.

DLGS Director Authorized to Establish an Extended Property Tax Grace Period During a Declared Emergency

During a Governor-declared state of emergency, Section 1 of [P.L. 2020 c. 34](#) permits the Director of the Division of Local Government Services to authorize municipalities to institute an extended property tax grace period pursuant to N.J.S.A. 54:4-67. This law applies only to property tax payments and not to other municipal charges.

The grace period cannot be extended beyond the first calendar day of the next calendar month immediately following the quarterly property tax installment due date, and only applies to the first \$10,000 due for the property tax quarter. A taxpayer cannot receive a grace period of greater than 10 days for the portion of any quarterly installment amount that exceeds \$10,000. The Director may incorporate additional conditions into an Order authorizing an extended property tax grace period. Municipalities are encouraged to consult with their tax collection software vendor to determine whether and how their software can be updated to implement an extended grace period authorized by the Director.

At this time, the Director has not authorized any grace period extension under this Act. The Division will make a separate announcement should the Director order such an extension.

Whenever a municipal governing body adopts a resolution instituting an authorized extended grace period, the municipality shall provide notice to all taxpayers either by (1) regular mail; or (2) by a telephonic system distributing automated phone messages, along with one of the following mechanisms: electronic mail (e.g. listserv), text messaging system, or any other digital platform used by the municipality to disseminate information to residents electronically. The municipality also shall post the notice on its Internet website; municipalities without websites shall submit the notice to the Division for posting on its website. The municipal clerk should forward to the Division any resolution adopting the extended grace period by not later than the third business day following the date of adoption.

Upon authorizing an extended property tax grace period during a declared emergency, the Director may also order an extension of the dates for municipal payment of taxes due to a county, school district, or any other taxing district. If these dates are extended, the Director shall require a municipality to pay up to the percentage of the total installment of taxes due by the original statutory date for full payment of the installment. In determining the percentage to be paid by the municipality by the original statutory installment due date, the Director shall consider the amount of property taxes collected by the municipality, the fiscal condition of the municipality, the fiscal condition of any taxing district subject to the Director's order of extension and any other budgetary, fiscal, or economic factors the Director finds appropriate to make the determination. The Director is required to consult with the Commissioner of Education when considering the fiscal condition of a school district.

When a municipality adopts an authorized extended property tax grace period during a Governor-declared emergency, Section 11 of P.L. 2020, c.34 amends N.J.S.A. 54:4-76 to allow a county freeholder board to adopt a resolution waiving interest that a municipality is required to pay to the county on any unpaid property taxes due and owing to the county by the municipality. The waiver shall expire 30 days after the end of the municipality's extended property tax grace period.

Changes in Rate of Delinquent Interest

N.J.S.A. 54:4-67 allows municipal governing bodies to adopt a resolution setting the rate of interest to be charged for the nonpayment of taxes, assessments, or other municipal liens or charges on or before the date of delinquency, as well as establish the rate of interest to be charged for the end-of-year penalty. The rates cannot exceed 8% per annum on the first \$1,500.00 of the delinquency and 18% per annum on any amount exceeding \$1,500.00.

In addition to establishing the rate of delinquent interest for the remainder of the tax year, Section 10 of [P.L. 2020, c.34](#) amends N.J.S.A. 54:4-67(b) to give municipal governing bodies the option of establishing the rate of delinquent interest for one or more specifically designated time periods coinciding with one or more property tax quarters (i.e. January 1 to March 31; April 1 to June 30; July 1 to September 30; or October 1 to December 31). After adopting a resolution changing the rate of delinquent interest or the end-of-year penalty, the municipality must provide notice to all taxpayers, either with the tax bill or prior to the date that taxes are next due, stating:

- the new interest rate or rates to be charged
- the date the new interest rate or rates take effect; and
- if the new rate or rates of delinquent interest are not to be effective for the remainder of the tax year, the property tax quarters for which the change in rates shall apply (January 1 to March 31; April 1 to June 30; July 1 to September 30; or October 1 to December 31).

The notice may be separate from the tax bill. To satisfy the notice requirement, the municipality shall:

- post the notice on its municipal bulletin board and Internet website;
- publish the notice in the municipality's official newspaper;
- provide a notice to all taxpayers by either
 - regular mail; or
 - distributing automated phone messages, along with one of the following mechanisms: electronic mail (e.g. listserv), text messaging system, or any other digital platform used by the municipality to disseminate information to residents electronically.

A change in the rate of delinquent interest or the end-of-year penalty shall not take effect until the municipality provides the required notice.

Please be advised that the interest rate on delinquent taxes established for a set period under this statute becomes the fixed rate of interest for tax bills that became delinquent while that rate was in place. If the municipal governing body adopts a resolution applying a rate of delinquent interest to a specific property tax quarter, that rate of interest shall apply to property taxes and all other municipal charges becoming delinquent during that time period. A municipality would not be able to reduce its rate of interest on delinquent taxes before a tax bill is due, raise its rate back to the previous/higher rate of interest a few months later, and then retroactively charge the higher rate of interest on the bill that was past due.

For example, if a municipality's rate of delinquent interest is normally 8% on the first \$1,500 and 18% on any amount in excess of \$1,500, but the governing body adopts a resolution establishing the rate of delinquent interest at a flat 6% for the property tax quarter coinciding with the period of July 1 through September 30, then the 6% rate of delinquent interest would apply to a property tax installment or any other municipal charge that becomes delinquent during the period of July 1 through September 30. If the property tax installment or municipal charge that becomes delinquent during that quarter continues to be delinquent on October 1, the 6% rate of delinquent interest would still apply to those delinquencies even though the rate of delinquent interest reverted to 8%/18% as of October 1.

The Division reminds municipalities that reducing the rate of interest on delinquent taxes and municipal charges is a blunt instrument that reduces the incentive for taxpayers and ratepayers to make timely payment, thereby potentially compromising a municipality's cashflow and fiscal health. Lowering the interest rate to 0% would cause future delinquencies to be calculated without interest. Redemptions occurring in accordance with N.J.S.A. 54:5-59 and N.J.S.A. 54:5-60 during the application of a lower rate may also be affected. Moreover, there may be negative implications for tax sales. Unlike in the case of an Director-authorized extension of a property tax grace period during a declared emergency, when delinquent interest is reduced, no similar provision exists allowing delayed payment of property taxes to a county, school district or other special taxing district, or waiver of interest on late payment of property taxes to a county.

Before considering altering its delinquent rate of interest, a municipality should consult with its municipal attorney, auditor, and other municipal officials including the Certified Municipal Finance Officer and Certified Tax Collector. A municipality's tax collection software vendor should also be contacted to ensure that they are able to accommodate any proposed changes to how the delinquency rates are applied.

The Division also reminds municipalities that a governing body must identify a specific interest rate for delinquent payments and cannot set a formula range within which the delinquent interest rate may fluctuate. N.J.S.A. 54:4-67(a)(1) requires the governing body to "fix" the rate of interest when establishing an interest rate for delinquent payments. See *Commercial Casualty Inc. Co. v. State Board of Tax Appeals*, 119 N.J.L. 94, 96 (1937) "the adjective 'fixed,' ...imports certainty and definiteness both as to obligation and amount. It means a liability fully and precisely established on the assessment date." The governing body may only fix a different interest rate (not to exceed 18%) for the amount of any delinquency exceeding \$1,500, with the delinquent interest rate for amounts at or below \$1,500 fixed at a rate not to exceed 8%. Basing the delinquent interest rate on a floating metric such as the prime rate could cause the delinquent interest rate to exceed the statutory maximum. Further, a fluctuating rate of delinquent interest violates the above-referenced statutory requirement for taxpayer notice whenever the interest rate for delinquencies changes.

Waiver of Interest and Lien Enforcement for Certain Delinquent Water and Sewer Utility Payments during Emergency Circumstances

[P.L. 2020, c. 39](#), enacted on June 19, 2020, allows sewerage authorities, municipal utilities authorities, and, under certain circumstances, municipalities and counties, the discretion to delay enforcement measures on delinquent water and sewer payments when the Governor has declared a state of emergency or public health emergency. The declared emergency, including public health, a weather-related natural disaster (e.g. flood, hurricane, tornado), or other disaster, must impact the local unit or the system service area to trigger this provision.

For the duration of the declared emergency and up to 90 days afterwards, a sewerage authority or municipal utilities authority may, at its own discretion, adopt a resolution:

- instituting a grace period for past due water/sewer payments;
- electing to refrain from submitting a property for tax sale due to an unpaid balance, service charge, and interest that may be accruing on outstanding balances; and/or

- electing to refrain from discontinuing service to any property for failure to make payment on any amount owed.

Please note that any grace period instituted under this law does not need to last the maximum duration. An authority should be mindful of cash flow and the system's fiscal solvency when considering the appropriate length of a grace period during a declared emergency.

The existing 30-day grace period for past due payments connected to a sewerage treatment constructed under the Municipal and County Sewerage Act (N.J.S.A. 40A:26A-1 et seq.) or a water supply system constructed under the County and Municipal Water Supply Act (N.J.S.A. 40A:31-1 et seq.) may be extended in a similar fashion.

Municipalities that own and operate a combined water and sewer utility may also institute an extended grace period for late water/sewer payments, as described above, that extends beyond the 10-day grace period permitted under N.J.S.A. 54:4-67. However, a municipality with a standalone water or sewer utility is not similarly authorized and is limited to a maximum 10-day grace period for individual water or sewer utility payments.

Local units availing themselves of the discretionary authority provided by P.L. 2020, c. 39 shall act consistently amongst all properties or apply the relief to properties of the same use type or other appropriate category (e.g. residential units). The law reinforces the principle that water shutoffs are a discretionary, rather than mandatory, means of addressing non-payment regardless of the circumstances.

[N.J.A.C. 5:31-3.2](#) requires sewerage authorities and municipal utilities authorities to file a certification at least once a year, or more frequently if required by the municipal tax collector, to establish tax liens for all unpaid service charges due and owing at the time the certification is filed. If during a declared emergency an authority institutes an extended grace period or is refraining from referring delinquent user fees to the municipality for tax sale, the authority should communicate this to the tax collector and forward the subject resolution to the municipality.

Veteran's Property Tax Deduction and Continuing Care Retirement Communities

Honorably discharged veterans and their surviving spouse, civil union partner, or domestic partner who live in a qualifying continuing care retirement community and would otherwise be eligible for the annual \$250 veteran's property tax deduction can now receive the deduction. [P.L. 2019, c. 203](#) was the enabling legislation, and voters in the November 2019 general election approved a State Constitutional amendment authorizing the law to take effect.

For purposes of this law, a continuing care retirement community or "CCRC" is defined as:

A residential facility primarily for retired persons where lodging and nursing, medical or other health-related services at the same or another location are provided as continuing care to a resident of the facility pursuant to an agreement effective for the life of the resident and in consideration of the payment of an entrance fee with or without other periodic charges, which agreement requires the individual to bear a share of the property taxes that are assessed upon the continuing care retirement community, if a share is attributable to the unit that the resident occupies.

A qualified veteran or surviving partner who resides in a qualifying CCRC shall receive, the amount of the deduction to the extent of the share of taxes assessed against the portion of the CCRC's real property attributable to the individual's unit upon applying for the deduction and a determination that he or she is eligible. The total amount of veteran's property tax deductions attributable to qualifying veterans or surviving partners residing in the CCRC shall appear as a credit on the CCRC's tax bill. No later than 30 days after the CCRC receives the property tax bill on which the credit appears, the CCRC shall pass along the \$250 property tax deduction to each qualifying CCRC resident as a payment or as a credit toward any periodic charges the resident pays. Please note that residents of CCRCs exempt from property taxation shall not be eligible for the deduction.

The current version of the [Veteran's Property Tax Deduction Claim Form](#) is available on the Division of Taxation's [Property Tax Relief Programs website](#).

Please note that [P.L. 2019, c. 413](#), which would authorize veteran's property tax exemptions or deductions for honorably discharged veterans of the United States Armed Forces who did not serve in time of war or other emergency, will not take effect until the passage of a corresponding State Constitutional amendment.

Municipal Discretion to Include Shared Service Information on Tax Bill

[P.L. 2019, c.393](#) amends N.J.S.A. 54:4-65 to give municipalities the discretion to include a statement on the property tax bill listing the following shared services information:

- the number and type of shared services entered into by the municipality;
- dollar value of the savings to the municipality from each shared service; and
- the total amount of municipal savings resulting from those shared services.

The Director of the Division of Local Government Services is responsible for establishing the format of the optional shared services statement on the tax bill. At the outset, we emphasize that any municipality's property tax bill has finite space, and much of that space contains mandatory information. The optional shared services statement cannot displace information that must appear on the tax bill.

If a municipality elects to include a shared services statement on the tax bill, the statement must be in 10-point type on the back or front of the bill with the font locally determined. The municipality shall state the total number of shared services agreements it is a party to, including both the shared services it provides and receives, for which savings were realized in the prior budget year and list the cumulative savings realized. If there is room on the tax bill, the municipality may also individually list each shared service along with the amount saved in the prior budget year. Descriptions of the types of shared services should use as few words as possible while still providing the taxpayer with a reasonably informative description. Space permitting, the municipality may list the government entities that provide or is providing each shared service.

The following is an example of how a shared services tax bill statement should appear:

Shared Services Realized Savings (Prior Budget Year)

of Shared Services w. Realized Savings/Total Annual Savings: 4/\$350,000

Types of Shared Services/Annual Realized Savings:

Zoning Officer (Provided)/\$10,000

Construction Code Enforcement (Provided)/\$50,000

Public Works (Provided)/\$100,000

Public Safety Dispatching (Received)/\$190,000

Discretionary Property Tax Grace Period Extension During Federal Government Shutdown

During an extended federal government shutdown, [P.L. 2019, c. 491](#) authorizes municipalities to adopt an extended property tax grace period if a taxpayer, or the taxpayer's spouse/civil union partner/domestic partner, is either:

- An employee of a federal government agency who is furloughed because of a shutdown, and receives unemployment benefits during the shutdown or who works during a shutdown but is not paid because of the shutdown; or
- A contractor whose pay is received through a contract with a federal government agency but whose payment is delayed or diminished because of a shutdown, provided that the contractor receives unemployment benefits during the shutdown.

The law defines a federal government shutdown as any period in which there is more than a 24-hour lapse in appropriations for one or more federal government agencies as a result of a failure to enact a regular appropriations bill or continuing resolution due to an impasse between the President and the Congress, or between the two Houses of Congress.

In place of the up to 10-day property tax grace period authorized under N.J.S.A. 54:4-67, the municipality may adopt a resolution extending the grace period for qualifying individuals on or before the date upon which the next property tax installment payment is payable. However, in order for a municipality to extend the grace period, the federal shutdown shall have a duration of greater than 21 days, and either 1) must remain in effect as of the property tax installment due date; or 2) conclude less than 14 days prior to the property tax installment due date.

A qualifying taxpayer must provide the municipality with proof that the taxpayer's pay, or the pay of their spouse or partner, is derived from a federal government agency affected by the extended shutdown. In the case of a federal employee, that proof shall be demonstrated by a pay stub showing employment by a federal government agency that is affected by the shutdown. In the case of a contractor, the governing body resolution shall establish the criteria necessary to verify that the contractor's pay is received through a contract with a federal agency impacted by the shutdown. Recommended minimum proofs for federal contractors include their most recent IRS 1099 form, federal income tax return and State income tax return. Please note that employees of federal government contractors are not eligible for an extended grace period under the law.

Once the governing body adopts a resolution allowing qualifying taxpayers to receive an extended grace period due to a federal shutdown, the municipal clerk shall forward the resolution to the Division of Local Government Services no later than the third business day next following adoption. If the municipality is under State Supervision or is subject to a memorandum of

understanding or similar agreement with the Division as a condition of receiving supplemental State aid (e.g. Transitional Aid), the Director must approve the resolution before it can become effective.

Approved: Melanie R. Walter, Director

Document	Internet Address
P.L. 2019, c.230	https://www.njleg.state.nj.us/2018/Bills/PL19/230_.PDF
Div. of Taxation Prime Rate	https://www.state.nj.us/treasury/taxation/interest.shtml
Taxation TB21R 4-1-20 to 12-31-20 (and prior)	https://www.state.nj.us/treasury/taxation/pdf/pubs/tb/tb21r-04-2020.pdf
LFN 2012-4	https://www.nj.gov/dca/divisions/dlgs/lfns/12/2012-4.pdf
P.L. 2020, c.34	https://www.njleg.state.nj.us/2020/Bills/PL20/34_.PDF
P.L. 2020, c.39	https://www.njleg.state.nj.us/2020/Bills/A4500/4126_R1.PDF
N.J.A.C. 5:31-3.2	https://www.nj.gov/dca/divisions/dlgs/resources/rules_docs/5_31/njac_5313.pdf
P.L. 2019, c.203	https://www.njleg.state.nj.us/2018/Bills/PL19/203_.PDF
Veterans Property Tax Deduction Claim Form	https://www.state.nj.us/treasury/taxation/pdf/other_forms/lpt/vss.pdf
Div. of Taxation – Veterans Property Tax Deduction Info	https://www.state.nj.us/treasury/taxation/otherptr.shtml
P.L. 2019, c.413	https://www.njleg.state.nj.us/2018/Bills/PL19/413_.PDF
P.L. 2019, c.393	https://www.njleg.state.nj.us/2018/Bills/PL19/393_.PDF
P.L. 2019, c.491	https://www.njleg.state.nj.us/2018/Bills/PL19/491_.PDF