
Coates' Canons Blog: Property Tax Payment Plans

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A payment plan is a voluntary agreement between a taxpayer and a local government under which the local government promises not to pursue enforced collections against the taxpayer for delinquent taxes so long as the taxpayer pays a certain amount each month toward those taxes. Local governments have no obligation to offer payment plans to taxpayers. In fact, you won't find any mention of payment plans in the Machinery Act, that portion of the General Statutes that govern local property taxes. This lack of statutory guidance makes payment plans completely discretionary and very flexible.

Wait, you say. If the Machinery Act doesn't mention payment plans, what authorizes local governments to offer them? Lack of specific authorization for a local government action is usually a valid concern, but in this case I think we are fine because implied authority exists for payment plans.

Nothing in the Machinery Act requires local governments to take any enforcement actions at any specific time. Instead, the Machinery Act simply puts a starting date (the date of delinquency, usually January 6 of the fiscal year in which the taxes were levied) and an ending date (10 years from the original due date) for the initiation of enforced collections. Within those restrictions, a local government is free to determine if and when it will begin enforced collections. It can also choose to hold off on all collection efforts if the taxpayer agrees to certain terms, such as the payment of a specific dollar amount each month.

Here are my thoughts on other common questions about payment plans:

Should we offer payment plans?

This is a policy question, one that the tax collector should probably run by the manager and the governing board for guidance. If your office decides to offer payment plans, that fact should be made clear to all taxpayers (perhaps through a statement on tax bills or delinquency notices) so that every taxpayer has the same opportunity to benefit from a payment plan.

Tax offices that offer payment plans should develop policies about when and how they will be offered. Objective guidelines are key to minimizing criticism that the tax office played favorites by offering payment plans to some taxpayers and not to others. These guidelines might state that payment plans are only offered to taxpayers who have not violated similar plans in the past. Plans might be restricted to residential taxpayers rather than commercial taxpayers. Taxpayers might be required to stay current on new property taxes while the payment plan is in place for old taxes. Whatever the guidelines are, make them clear to taxpayers and be consistent in their application.

The arguments in favor of payment plans are that they demonstrate good faith and flexibility on behalf of the tax office while generating revenue that otherwise might not be received without lengthy or costly enforced collection efforts such as foreclosure actions. The argument against payment plans is that they may delay receipt of revenue that might otherwise be quickly and cheaply obtained through bank account attachments or wage garnishments. There is merit to both sides, but in my view the benefits of payment plans outweigh the costs. Most local governments seem to agree, as payment plans are very common across the state.

What information should we require from the taxpayer for a payment plan?

You want as much information as possible to increase the likelihood of a successful enforced collection effort if the taxpayer were to fail to make the requirement payments. This includes Social Security number, bank names and account numbers, and employer name and address. It might be worth confirming as much of this info as possible (checking the

SSN with Accrurint, calling the employer, etc.) before finalizing the agreement. If the taxpayer balks at providing this info, then the tax office should refuse to enter into a payment plan.

Any time you ask for a Social Security number from a taxpayer, you need to provide a written "statement of purpose." I recommend language similar to that used by the Department of Revenue on page 4 of form AV-9, the standard application for residential property tax relief.

How much should taxpayers pay per month? How many months should a payment plan run?

These questions are up to the discretion of the tax collector in consultation with the manager or the governing board. I think it is best practice to develop a standard length or maximum length for all plans.

The tax office should work with the taxpayer to determine how much the taxpayer can afford to pay each month. If that payment amount would require extending the plan beyond the tax office's maximum plan length, then the tax office might withdraw the offer to enter into payment plan. Keep in mind you'll need to add to the plan an extra month or two in order to account for the interest that will accrue during the life of the plan. (More on interest below.)

May a payment plan extend beyond the 10-year statute of limitations?

Possibly, but I advise against it. A statute of limitations is generally considered an "affirmative defense," meaning that it doesn't bar the local government from pursuing an enforced collection action more than 10 years after the tax's due date unless the taxpayer raises the 10-year limitation as a defense to that action. Presumably the taxpayer could waive the right to raising that defense as part of a payment plan agreement.

But that seems like an unnecessary risk to run. The better course of action is to assume that regardless of when a payment plan starts it should end prior to the 10-year limitation so that the local government can without a doubt rely on enforced collection remedies if the taxpayer fails to make the required monthly payments.

Should interest continue to accrue while a payment plan is in place?

Yes. The Machinery Act requires that interest accrue on all delinquent taxes. All payment plan agreements should inform the taxpayer that interest will continue to accrue during the life of the plan and that the payment agreement will not be completed unless and until all principal taxes and interest charges on those taxes are satisfied.

Interest means that the final payoff amount will be a moving target. The tax office will need to communicate with the taxpayer about the amount of the final payment after calculating the interest that accrued during the life of the plan. Remember that the partial payment made each month under a plan must be applied first to interest and then to principal. (G.S. 105-358(b)). This means the tax office must add an extra month or two to the plan to be sure to cover the interest that will accrue during its life. To avoid an unpleasant surprise for the taxpayer down the road, the extra month(s) should be added when the plan is originally created.

For example, assume I owe \$2,000 in delinquent taxes and \$85 interest as of April 8, 2016. (The interest represents 2% of \$1,000 for January and .75% of \$1,000 for February, March and April.) I agree to pay \$100 on the 15th of each month beginning in May. Ignoring interest, I could pay off this entire amount in 21 months. But it will take me at least an additional month due to the interest that will accrue during the life of the plan.

When I make my initial payment in May 2016, the \$100 should first be applied to the interest, which now totals \$100 (\$85 that had accrued as of April plus the \$15 that accrued on May 1). My principal delinquent taxes remain at \$2000. When I make my second payment in June it should first be applied to the interest that accrued on June 1, which totals \$15 (.0075 x \$2,000). The remaining payment is applied to my principal, reducing my debt to \$1,915. And so on, and so on, until I get my balance due to zero. I think it will take 22 months to completely satisfy the debt (but I admit I didn't do all of the math required to solve this particular puzzle). The important point is to make sure that the taxpayer knows up front that he'll be paying off more than just the initial delinquent tax amount over the life of the payment plan.



Of course, if the payment plan includes taxes that are not yet delinquent then interest should not accrue on those taxes until their delinquency date.

Are payment plans public records subject to disclosure?

Yes, but confidential information such as Social Security numbers, bank account numbers and drivers license numbers should be redacted (crossed out) before providing copies of plans to third parties in response to public record requests.

Links

- www.ncleg.net/enactedlegislation/statutes/html/bysection/chapter_105/gs_105-366.html
- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-378
- www.dornc.com/downloads/fillin/av9_2015.pdf
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