



Informational Guideline Release

Property Tax Bureau
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PAYMENT AGREEMENTS
AND
TAX RECEIVABLE ASSIGNMENTS

Chapter 295 of the Acts of 2004
(Amending G.L. Ch. 60 §§2C, 52, 62 and 63 and Adding G.L. Ch. 60 §62A)

This Informational Guideline Release informs local officials about legislation authorizing payment plans for properties in tax title and amending the law authorizing collectors and treasurers to make individual and bulk assignments of uncollected real and personal property taxes, and other receivables secured by municipal tax liens.

Topical Index Key:

Collection Procedures

Distribution:

Collectors
Treasurers
Accountants/ Auditors
Mayors/Selectmen
Finance Directors
City Solicitors/Town Counsels

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ATTACHMENTS

Report of Assignment of Tax Receivables

Instrument of Assignment of Tax Title (State Tax Form 431)

Supersedes IGR 97-201 in part

PAYMENT AGREEMENTS
AND
TAX RECEIVABLE ASSIGNMENTS

Chapter 295 of the Acts of 2004
(Amending G.L. Ch. 60 §§2C, 52, 62 and 63 and Adding G.L. Ch. 60 §62A)

SUMMARY:

These guidelines explain recent legislation that amends G.L. Ch. 60 §2C, which authorizes municipal collectors and treasurers to make bulk assignments of their delinquent property tax receivables to third parties. Chapter 295 §§1-5 of the Acts of 2004. In the case of real estate taxes, the assignment must include non-tax obligations, such as water and sewer charges, that have been added to the tax and are secured by the municipal tax lien. The amendments are generally intended to facilitate sales by giving municipalities more flexibility to package the receivables and select a purchaser.

The legislation also clarifies an older method of assigning individual tax titles available to treasurers under G.L. Ch. 60 §52. Chapter 295 §§6 and 7 of the Acts of 2004. Assignments of tax titles for multiple parcels may now be made in one sale. Assignees receive the same 16 percent interest rate the municipality would receive if it did not assign the account and taxpayers may not be required to pay an assignee more than they would have had to pay the municipality if the assignment had not been made.

Finally, the legislation adds a new provision, G.L. Ch. 60 §62A, which allows municipalities by ordinance or bylaw to authorize treasurers to enter into payment agreements with persons entitled to redeem parcels in tax title. Chapter 295 §8 of the Acts of 2004. The agreements could last for up to five years, and could authorize waivers of up to 50 percent of the accrued interest. Agreements and waivers must be offered uniformly to taxpayers in the categories determined by the bylaw or ordinance.

Section III of these guidelines supersedes the guidelines regarding bulk assignments found in Sections II - VII of Property Tax Bureau Informational Guideline Release No. 97-201, *Bulk Sales of Tax Receivables and Liens and Duration of Tax Liens* (May 1997). Section I of IGR 97-201 regarding duration of tax liens remains in effect.

GUIDELINES:

I. PAYMENT AGREEMENTS FOR TAX TITLE PROPERTIES

Municipalities may authorize payment agreements for categories of property in tax title for periods up to five years and may authorize waivers of interest up to 50 percent. G.L. Ch. 60 §62A.

A. Payment By-law/Ordinance

Municipalities must adopt a payment by-law or ordinance before any tax agreements may be made with taxpayers. The by-law or ordinance must specify the scope of the program, the details of which may vary for different categories of tax titles. The by-law or ordinance may not delegate any of those decisions to the treasurer or other board or officer. It must address, at a minimum, the following:

1. Eligible Tax Titles

The category or categories of tax titles eligible for payment plans must be defined. The categories may be defined in terms of the use of the property (for example, commercial property, residential property, or owner-occupied residential property), the amount of the tax title, the assessed valuation of the parcel, the length of time taxes and charges have been delinquent, or in any other reasonable manner.

2. Agreement Term

The term for which agreements may be offered must be stated. Agreements may be authorized for a maximum term of five years.

3. Interest Waiver

The percentage of treasurer's interest that may be waived must be stated. Municipalities may waive up to 50 percent of the interest that has accrued in the tax title account, **but only if the taxpayer pays off the delinquency according to the terms of the agreement.** No taxes or collection costs may be waived.

4. Initial Payment

The amount the taxpayer must pay upon execution of the agreement must be stated. Taxpayers must pay at least 25 percent of the amount needed to redeem at the inception of the agreement, *i.e.*, before any waiver that applies upon payment in compliance with the agreement.

B. Treasurer's Obligations

1. Agreement

The treasurer must offer a payment agreement to every owner of a property in tax title that is within the category of eligible properties under the terms of the bylaw or ordinance. The treasurer cannot refuse to enter into agreements with eligible taxpayers.

The agreement must be in writing and signed by the taxpayer(s) and treasurer. It must include the amount due upon execution and a schedule of remaining payments. It should also clearly state the consequences for failure to adhere to the agreement.

2. Foreclosure

The treasurer may not bring an action to foreclose a tax title subject to an agreement so long as (a) payments are being made in accordance with the schedule provided in the agreement and (2) no other charges constituting liens on the property become delinquent, *i.e.*, the taxpayer is current on subsequently assessed taxes and charges.

II. ASSIGNMENTS OF INDIVIDUAL TAX TITLES

Treasurers may assign particular tax titles in addition or as an alternative to bulk assignments. G.L. Ch. 60 §52.

A. Assignment Auction

The treasurer may assign a tax title on one or more parcels. The assignment is by auction to the highest bidder and must be for at least the amount the taxpayer would have to pay to redeem the parcel on the date of the auction.

B. Notice Requirements

1. Publication and Posting

At least 14 days before the auction, the treasurer must publish in a newspaper printed in the city or town, if any, otherwise in a newspaper published in the county, and post in at least 2 public places within the city or town, notice of the proposed assignment. It must be made in the same manner and include the same information as the notice a collector gives of a proposed tax taking under G.L. Ch. 60 §40.

2. Taxpayer Notice

At least 10 days before the auction, the treasurer must mail a notice of the intended assignment to the current owner of record at his last known address. Failure of the taxpayer to receive the notice will not affect the validity of the assignment.

C. Assignment Instrument

The winning bidder must make payment in full within two weeks of the auction. Payment in full means the amount of the winning bid, plus tax title interest accruing between the auction date and the date the instrument is executed.

Upon full payment, the treasurer must execute an "Instrument of Assignment of Tax Title" (State Tax Form 431) (Attached) for each parcel. The instrument must include the assignee's full legal name and address and the amount for which the property is assigned. The assignment amount equals the total of:

- Redemption Amount (the amount for which the property could be redeemed on the date of the auction, *i.e.*, the amount for which the property was taken by the collector, all amounts subsequently certified to the tax title account, plus accrued tax title interest to auction date).
- Post auction interest (Tax title interest accrued from auction date to the date instrument of assignment is executed).
- Premium, if any.

The instrument must be recorded within 60 days of execution. If recorded within that time, it is prima facie evidence of all facts essential to its validity.

D. Redemption

The assessed owner or other persons with an interest in the property may redeem by paying the assignee or treasurer the same amount they would have to pay to redeem if the tax title had not been assigned, *i.e.*, the amount for which the property was taken by the collector, all amounts subsequently certified to the tax title account, plus accrued tax title interest to the redemption date.

If payment is made to the treasurer, the person must pay the entire redemption amount, along with a \$10 handling fee, at once. Partial payments may only be accepted by the assignee. The treasurer then pays over the redemption amount to the assignee and retains the fee as general revenue of the municipality.

E. Proceeds

Proceeds from an assignment are treated in the same way as proceeds from a redemption. G.L. Ch. 60 §43. Amounts in the tax title account attributable to district taxes are paid over to the district; amounts attributable to fees and charges that were imposed by municipal departments operating as enterprise or special revenue funds are credited to the respective funds; collector's fees are paid over to the collector, unless there is a bylaw or ordinance making those fees municipal revenue; the balance is general fund revenue of the municipality.

F. Subsequent Taxes/Assignee Rights

Any extension of time to pay granted by the treasurer under Ch. 60 §62 will be binding upon an assignee. If a treasurer elects to assign tax titles subject to such extensions, the notice of the assignment auction should note the existence of the extension and copies of the extension agreement must be made available to prospective bidders at the auction. A treasurer may not assign tax titles subject to a payment agreement entered into under §62A.

If the owner of a parcel whose tax title is assigned fails to pay subsequently assessed taxes or other charges constituting a lien on the parcel, the collector may have to make a new taking. The assigned tax title will be subordinate to the tax title created by the new taking for subsequent taxes and charges. Unlike an assignee under §2C, an assignee under §52 has no automatic right to purchase the new tax title.

III. BULK SALES OF TAX RECEIVABLES AND LIENS

Collectors and treasurers may make a bulk assignment of their delinquent property tax receivables. G.L. Ch. 60 §2C. Collectors or treasurers of two or more municipalities may also make joint assignments of receivables. See Section III-G below. Before deciding to make an assignment and what categories of receivables to assign, collectors and treasurers should consult with other municipal officials including the mayor or selectmen, assessors, accounting officer and chief financial officer.

A. Receivables Eligible for Assignment

1. Assignment by a Collector

a. Real Estate

A collector's uncollected real estate taxes on parcels subject to a municipal tax title cannot be assigned. Instead, they must be certified to the tax title accounts before the treasurer makes any assignment.

A collector who has more than one fiscal year's real estate tax receivables outstanding on parcels not in tax title may assign older years' receivables without assigning the new receivables, but cannot assign newer receivables if the municipality will still have older real estate tax receivables outstanding. This means that current real estate tax receivables on parcels not in tax title can only be assigned together with all prior fiscal years' collector's receivables on the same parcels.

b. Personal Property

A collector may assign separately personal property tax receivables for different fiscal years without regard to what receivables the municipality will retain.

2. Categories of Receivables

A collector or treasurer may assign receivables secured by liens or tax titles. A bundle of receivables to be assigned cannot include any parcels with respect to which the collector or treasurer has entered into a payment agreement with the taxpayer under G.L. Ch. 60 §2C(b). Assignments may otherwise bundle together receivables based upon categories of receivables that may be included or excluded from the bundle or receivables to be assigned by various categories, including:

- Parcel value (for example, land of low value).
- Ownership status, including:
 - Unknown owner.
- Owners' exemption eligibility under Ch. 59 §5 C1.17-17D (seniors, surviving spouses and minor children of deceased parent), 22-22E (veterans), 37-37A (blind persons), 41-41C (seniors), 42 (surviving spouses of police officers and firefighters killed in line of duty), 43 (minors of police officers and firefighters killed in line of duty).
- Owner occupancy.
- Delinquency age.
- Receivable value.
- Parcel characteristics (For example, single- or multi-family residential parcels).
- Square footage, for commercial or industrial property.

Failure to assign does not exempt a taxpayer from collection, including foreclosure.

B. Notice Requirements

1. Publication of Accounts

Before treasurers or collectors assign delinquent taxes, they must publish a list of those accounts that may be assigned. The list must be published in a newspaper printed in the city or town, if any, otherwise in a newspaper published in the county. The list must include the names of the assessed owners and, in the case of real estate taxes, the addresses of the parcels involved. The publication must precede the assignment by at least two months.

A collector intending to assign a given category of taxes should not make tax takings for any of the taxes to be assigned during the grace period between the publication of the list and the intended assignment, but must certify real estate taxes to existing tax title accounts.

2. Payment Plans

During the grace period between the publication of the list and the assignment of the taxes, taxpayers may enter into payment agreements with the treasurer or collector, depending upon whether the taxes are in tax title or not. If a taxpayer has made such a payment agreement, and is in compliance with its terms when

the other taxes in the same category are assigned, the taxpayer's delinquent tax may not be included in that assignment. If the taxpayer later fails to comply with the terms of the payment agreement, the balance of the delinquent tax may then be assigned, either in accordance with the terms of the assignment of the other taxes in the same category, or under a separate assignment agreement. Collectors and treasurers must offer equivalent payment plans to all taxpayers of the same category.

C. Assignment Amount; Discounts

1. Assignment by Sale or Auction

Tax receivables must be sold by public sale to the most responsible and responsive offeror taking into consideration the following evaluation criteria:

- The price proposed by the offeror.
- The offeror's qualifications and experience.
- The offeror's plan for communicating with the taxpayers.
- Whether the offeror has a regular place of business in the Commonwealth.
- Whether the offeror is in good standing with the Department of Revenue.
- The offerors' ability to supply timely information in conformity with Section III-D-10 below.

Treasurers and collectors must inform prospective bidders, by the issuance of bid specifications and amendments thereto, or otherwise, of the scope of the proposed sale, including the categories and fiscal years of tax receivables to be assigned, the number and dollar amount of receivables in each category or other group of accounts to be assigned, and the terms of the assignment agreement.

If interest may be discounted in the bids (see Section III-C-2 below), the information provided to prospective bidders must state the maximum percentage discount that will be considered responsive and must separately state the amount of interest due on each receivable. In the case of an assignment by a treasurer, if the discount may apply to collector's interest, that is, interest that had accrued before the creation of the tax title or before certifications of subsequent taxes to the tax title, then prospective bidders must be notified of the amount of such collector's interest due for each tax title.

2. Price

Because the actual amount of receivables to be assigned in a given category may change between the request for and the submission of bids, and because a prior assignee may have first refusal rights, the bids should be in the form of a percentage of the amount of the receivables to be assigned, which must be at least equal to 100 percent of the taxes and other charges, plus interest to the extent it is not discounted. The assignee must pay the offer price upon execution of the agreement, except that interest and charges accruing after the commitment, or, in the case of an assignment by a treasurer, after the taking or certification of taxes to the tax title account, may be paid out of the assignee's first collections of the respective receivables. Any premium (percentage greater than 100 percent) will apply to the amounts payable on the date of assignment, but not to subsequently collected interest that the assignee must pay over to the city or town.

a. Assignment by Collector

In the case of a collector, the amount payable upon execution of the instrument of assignment must at least equal the amount committed by the assessors, including all utility, betterment and other charges added to and committed as part of the tax; district taxes must be included in the assignment unless the district votes not to allow such assignments. If the request for bids or notice of sale or auction so provides, interest accrued on the receivables may be discounted up to a maximum of 50 percent of such interest. If a tax relating to a parcel of real estate is included in a published list of receivables to be assigned, any unapportioned betterments on the parcel should be apportioned before the assignment. Interest and charges that accrue after the commitment on each receivable that is assigned must be paid to the city or town from the first amounts collected by the assignee on account of that receivable.

b. Assignment by Treasurer

In the case of a treasurer, an assignment may be made at a discount of up to 50 percent of the amount of interest included in the tax title. The percent of the discount must be uniform for all the tax titles being assigned. A discount on interest in a tax title has a different impact on the value of a receivable depending on whether the discount applies to collector's or treasurer's interest. In a tax title, treasurer's interest is simple, not compounded. Collector's interest is part of the "principal" of such a receivable, that is, the amount payable on the date of assignment

and the amount upon which the accrual of additional (treasurer's) interest is calculated. Therefore, to the extent that collector's interest in a tax title account is discounted, the assignee pays less for the tax title than the principal or interest-earning amount of the tax title. A discount of treasurer's interest reduces the assignee's obligation to pay over to the municipality the first dollars collected after assignment on account of the receivable.

If a discount may be applicable to collector's interest, it is essential that prospective offerors know that in order to have a fair and efficient sale. It is also essential that the municipality be able to produce a listing of both types of interest for every parcel in tax title. The solicitation of bids for an assignment of treasurer's receivables (tax titles) must therefore specify not only the maximum discount percentage that may be accepted (up to 50 percent) but also whether the discount percentage can apply to collector's interest as well as treasurer's interest. If the discount can apply to collector's interest, the treasurer must furnish a listing of all tax titles included in the offering, with the total amount of interest broken down between collector's interest for the original sale or taking and for all subsequently certified taxes, and treasurer's interest. If the discount will apply only to treasurer's interest, the treasurer must furnish as part of the bid documentation a listing of each parcel in tax title with the sum of the amount for which the parcel was taken and all subsequently certified taxes, charges and interest, and the amount of accrued treasurer's interest for each tax title.

Even if discounts of collector's interest are permitted by the terms of the bid, any discount percentage must be applied first against accrued treasurer's interest; if the discount percentage requires a greater discount than the total treasurer's interest in a tax title, the remainder of the discount will be taken as a reduction of the collector's interest. After the successful bidder is determined, an updated listing of the receivables must be produced showing the amount due at that date, net of any discount on collector's interest, and the amount of accrued treasurer's interest due from post-sale collections, net of any discount on treasurer's interest.

The amount of the purchase price payable at the execution of the instrument of assignment shall be equal to the sum of the amount for which the property was taken and the amount of all taxes and other charges later certified to the tax title account, reduced by any discount of interest. Accrued tax title interest on each receivable assigned must be paid to the city or town from the first amounts collected by the assignee on account of that receivable.

EXAMPLE

A tax title has a redemption value on the date of assignment of \$6,000, with \$4,000 in taxes and charges, \$1,600 in collector's interest, and \$400 in treasurer's interest.

It is assigned as part of a package of receivables at a 25% discount that applies only to treasurer's interest. The sale price of that tax title would be \$5,900 with \$5,600 payable on the date of the assignment and \$300 payable from the first collections from that account.

If the discount also applied to collector's interest, then \$500 of interest (25% of \$2,000) would be discounted, all \$400 of the treasurer's interest and \$100 of collector's interest. The sale price would be \$5,500, all of which would be payable on the date of assignment.

Note that in both cases, the taxpayer would still have to pay \$6,000 in order to redeem the parcel, and that interest at 16% would continue to accrue on the balance of \$5,600.

D. Assignment Agreement Terms

1. Agreement Binding on Subsequent Transferees

The agreement must be binding upon any subsequent transferees of the assignee.

2. Required Information in Agreement

a. Agreement by Collector

An agreement by a collector to assign tax receivables must:

- Be in writing.
- Include the information contained in the assessors' commitment for each tax being assigned.
- State the remaining balance of the tax and other charges being assigned.
- State for each receivable the amount of interest and charges accrued that will be payable from the first amounts collected by the assignee.

b. Agreement by Treasurer

An agreement by a treasurer to assign tax receivables subject to tax titles must:

- Be in writing.
- Include the information contained in the collector's deed or instrument of taking for each tax being assigned, as well as the amount of all taxes and other charges subsequently certified to the tax title account.
- State the remaining balance of each tax title account being assigned.
- State for each receivable the amount of interest and charges accrued that will be payable from the first amounts collected by the assignee.

3. Charges to Taxpayers whose Taxes Are Assigned

An assignment agreement must prohibit the imposition by the assignee, his agents or transferees, of any fees or charges other than those that could have been added to the amount due by the collector or treasurer in accordance with the provisions of G.L. Ch. 60.

4. Adjustments to Purchase Price and Repurchases of Assigned Receivables

- a. Agreements may provide for the repayment of the purchaser's actual costs incurred in connection with receivables that the municipality repurchases. If the agreement provides for such a repayment, it must set a separate dollar limit on the repayment, and that limit must be encumbered against the expense budget of the collector or treasurer making the agreement.
- b. Agreements must provide for the repurchase of, or adjustments to, tax receivables that:
 - (1) Do not conform to the terms of the sale. For purposes of this subsection, the terms of an assignment agreement are those provisions of the agreement identifying the receivables by amount, persons assessed, and, in the case of real estate receivables, the parcel subject to the lien. Those terms do not constitute representations about the receivables. See Section III-D-8 below. The following constitute non-conforming receivables:
 - (a) Invalid assessments that are not cured by a reassessment under G.L. Ch. 59 §77. An example of such an invalid assessment would be a real estate tax assessed against a governmental entity.
 - (b) Receivables for which the municipal lien has been lost through an error on the part of the municipality.
 - (2) Are less than the amount for which they were purchased. Such a shortfall occurs when:
 - (a) The amount of the commitment, or in the case of an assignment by the treasurer, the amount of the tax taking and later certifications, is misstated in the assignment agreement.
 - (b) Payments on account of the receivable are not properly credited to the account before the assignment.

- (c) An abatement of taxes secured by a tax title reduces collector's interest that made up part of the purchase price. In this case, only the abated tax could be charged against the overlay; collector's interest that had been included in the tax title account would have to be treated as an adjustment subject to the agreement's percentage limitation.
- c. Agreements may provide for the repurchase of receivables for a period of up to six months at the request of the municipality where an assigned receivable included in the sale was excludable under the definition of the category or categories to be assigned under Section III-A-2 above.

5. Substitutions Instead of Reimbursements

Instead of requiring payments on account of a receivable that does not conform with the terms of a sale or is less than the amount for which it was assigned, the assignment agreement may provide for the substitution of a similar receivable instead of a repurchase.

Because categories of receivables defined by the agreement must be assigned together after publication of a list and no representations may be made about those receivables, the only cases in which substitution is likely to be feasible is a case where a tax is invalid because of an assessment error that can be corrected by a reassessment under G.L. Ch. 59 §77.

6. Time and Dollar Limits on Adjustments and Repurchases

- a. Agreements must specify a time limit, which may not exceed three years, within which the municipality may be required to:
 - (1) Make payments of the purchaser's costs.
 - (2) Repurchase or make adjustments to receivables which do not conform to the terms of the sale, *i.e.*, those listed in Sections III-D-4-b above.

- b. Agreements must also specify the maximum net amount of repurchases of, and adjustments to, receivables that the municipality may be required to make. This maximum cannot exceed 10 percent of the purchase price. The amount of receivables repurchased at the election of the municipality under Section III-D-4-c above counts towards the maximum net amount of repurchases.
- c. This 10 percent maximum amount does not apply to:
 - (1) Amounts of receivables abated.
 - (2) Amounts by which the assignment price exceeds the amount of a receivable, *i.e.*, those listed in Section III-D-4-b-(2) above.
- d. The time limit does not apply to amounts abated.

7. Interest on Abated Receivables

a. Abatements

If any receivable is abated, the amount abated shall be paid to the purchaser. For abated property taxes, the purchaser shall also be paid interest at the rate set out in G.L. Ch. 59 §69, from the date of the purchase by the purchaser to the date of the repurchase by the municipality, provided the purchaser certifies that it has not yet been paid on account of the receivable.

b. Other Reimbursements

No interest accrues on a repurchase by the municipality of a receivable that is less than the amount for which it was assigned.

8. Representations Prohibited

An agreement must expressly state that no representations are made by the municipality about the receivables assigned. See Section III-D-4-b-(1) above.

9. Receivables Assigned for Less than Actual Value

- a. The agreement must provide that if a receivable has been assigned for less than its actual value, or discounted value if sold at a discount, the assignee must pay the difference between the assignment amount and the actual or discounted value of the receivable when notified of the correct amount. The difference must be increased by the percentage of any premium in the original bid.
- b. The collector or treasurer making the assignment shall give the assignee an amended instrument of assignment reflecting any such adjustments or repurchases. See Section III-E below for form of instrument of assignment generally.
- c. Such adjustments could occur when a payment is credited to the wrong account. Where both the account to which the payment was credited and the account to which it should have been credited have been assigned, there would be offsetting adjustments to the instrument of assignment.

10. Payments by Taxpayers; Municipal Lien Certificates; Redemption

- a. The assignment agreement must specify how the assignee or its agent will keep the municipal treasurer and collector informed about the collection status of the assigned receivables, and how the collector or treasurer will inform the assignee of and transfer to it any payments received on account of assigned receivables.
 - (1) The agreement must require the assignee to furnish the treasurer and collector with copies of any tax takings, instruments of redemption or petitions to foreclose filed by it, and notices of any transfers, reassignments or appointments of service agents by it.
 - (2) The agreement must require the treasurer and collector to furnish the assignee with copies of any lien certificates or instruments of redemption issued by the municipality.
 - (3) All assignment agreements must provide for reports of total collections to be made at least as often as quarterly to the municipal accounting officer, and to the collector or treasurer, and as of June 30 if it is not otherwise a reporting date.

- b. The assignment agreement must provide that the municipal collector will be an agent of the assignee for the receipt of any payment on account of an assigned receivable that is made before the recording of any tax taking. The assignment agreement must also make the municipal treasurer an agent of the assignee (1) for the receipt of any payment made on account of an assigned receivable secured by a tax title, and (2) for issuing certificates of payment with respect to tax receivables on parcels of real estate in tax title in accordance with G.L. Ch. 60 §63. A treasurer may issue such a certificate only when the full amount necessary to redeem a parcel in tax title has been paid. A treasurer, before issuing a certificate of payment, must get a written statement of the balance due on each assigned receivable from the holder of the receivable.

- c. The municipal collector will still be required to issue lien certificates in accordance with G.L. Ch. 60 §23 for all outstanding charges - including assigned tax receivables - that are not secured by a tax title. Municipal lien certificates must list all outstanding real estate receivables that have been assigned before a taking or sale by the collector, including receivables for which the assignee has made a tax taking after the assignment. A collector, before issuing a municipal lien certificate, must get a written statement of the balance due on each assigned receivable from the holder of the receivable.

An agreement by a collector must require the assignee or its agent to provide within three days of a request by the collector all information in its possession needed to complete a municipal lien certificate under G.L. Ch. 60 §23 or other lien release form.

11. Recording Requirements

An agreement by a collector to assign real estate tax receivables must require the assignee, or its agents or transferees, to record at the registry of deeds a copy of the instrument of assignment together with a list of owners and parcels of recorded land that will be taken or sold. If taxes on registered land are assigned, a copy of the instrument of assignment must be registered, together with a list of such owners, parcels and certificate of title numbers. This recording or registration must be made on or before the date any tax takings or sales are recorded by the assignees, or its agents or transferees.

In the case of an assignment of receivables for real estate taxes by a treasurer, the agreement must require that the assignee record or register a copy of the instrument of assignment at the registry of deeds within 10 business days of the assignment. The identification of owners and parcels shall conform to the requirements of G.L. Ch. 60 §40, and in the case of an assignment by a treasurer, shall conform to the information contained in the respective instruments of taking or collector's deeds.

Assignment agreements must also require that any such recording or registration include the name and address of the person or persons who are authorized to receive payment and execute certificates of redemption on behalf of the assignee, and that if receivables subject to a tax title are transferred, the transferee must also record or register statements identifying the persons authorized to receive payment and execute certificates of redemption.

12. Right of First Refusal

- a. An assignment must specify how the purchaser can exercise a right to purchase subsequent years' receivables with respect to any parcels on which at the time of a later assignment there is still an unpaid balance of the assigned receivable outstanding. The right may be exercised at any time until the date of such later assignment, whether such assignment is contemplated under G.L. Ch. 60 §§2C or 52. If more than one fiscal year's worth of subsequent taxes are due with respect to a parcel, the assignee may not purchase later years' receivables without also purchasing the earlier intervening years' receivables.
- b. The collector or treasurer must notify every assignee that has such a right of first refusal of every proposed subsequent assignment at least two weeks before bids for the subsequent assignment are due.
- c. The notice shall include a list of parcels tentatively scheduled for inclusion in the subsequent assignment.
- d. Prospective bidders at the subsequent assignment to be made under §2C must be informed of the right of first refusal.

- e. Holders of the right of first refusal must furnish the treasurer or collector issuing bid specifications for the subsequent assignment auction a list of those parcels to which the right of first refusal still applies by reason of unpaid balances of the previously assigned taxes, and must offer to purchase a subsequent year's receivable for a parcel at least three days before the date of the scheduled assignment, at the full amount of principal and interest due.
- f. Whenever a right to purchase is not exercised before a subsequent assignment with respect to any parcel to which it applies, it shall be extinguished with respect to that parcel.

13. Statement of Residence and Place of Business

A holder of a tax title under a collector's deed (see G.L. Ch. 60 §§43-45) is required to file with the treasurer and in the registry of deeds a statement of his residence and place of business within the town, or, if not a resident, to appoint a resident agent authorized to release tax titles. G.L. Ch. 60 §47. These requirements will not apply to assignments under the new G.L. Ch. 60 §2C unless the assignment agreement expressly makes them applicable.

The notice requirements for individual assignments by a treasurer under G.L. Ch. 60 §52 will not apply to assignments under the new G.L. Ch. 60 §2C.

E. Assignment Instrument

The instrument of assignment must include a list containing the following information for each receivable, to the extent that the information is available:

- The amount of the receivable, separately stating the after-accrued interest and charges to be paid by the assignee upon collection.
- The fiscal year.
- The bill number.
- The assessed owners.
- The collector's billing address for the tax.
- For real estate, the parcel street address, the assessors' map and lot reference, and book and page reference or certificate of title number.

The instrument must state that it is an assignment of the receivables of the city or town and must give the name, address and telephone number of the assignee. The instrument of assignment must list the total purchase price, and be signed by the treasurer or collector making the assignment. See G.L. Ch. 60 §2C(g)(1). A copy of the instrument of assignment must be given to the city auditor, town accountant or other accounting officer of the municipality.

F. Revenue Recognition

1. Proceeds of Assignments of Current Receivables

For purposes of the statute, “current receivables” are not receivables of the current fiscal year; they are receivables no more than one year overdue. Current receivables are defined in G.L. Ch. 60 §2C as those that are assigned within a year of the last date on which the taxes could have been paid without incurring interest charges, which would normally be May 1.

Proceeds of assignments of current receivables will be credited to revenue in the fund in which the receivable is recorded; for example, water lien revenue collected as part of the proceeds would be credited to revenue in the water enterprise fund if the town accounts for its water operations in an enterprise fund. The amount of revenue recognized at the time of the sale will be equal to the proceeds received on the date of sale, net of any premium, less the amount required to be reserved for repurchases or adjustments. Where district taxes or other receivables are involved, the city or town will retain the amount reserved on behalf of the district.

The amount required to be reserved must be the sum of the amount stated in the instrument of assignment that the municipality may be required to repurchase plus an amount at least equal to 25 percent of the proceeds (not including any premium received) to provide for adjustments not subject to the limitation on repurchases. The Director of Accounts may require a larger reserve based upon concerns about the municipality’s accounting records, collection results or assessment practices. For example, a larger reserve may be required where there are major discrepancies between the collector’s or treasurer’s records of outstanding balances and the records of the accountant or auditor. The reserve will be recorded as Deferred Revenue-Bulk Sales of Property Taxes in each fund to which revenue is credited. Amounts required to be paid back to the assignee will be charged to this account in the appropriate fund. The balance remaining

will be recognized as revenue when the time limit set out in the agreement for such repurchases or adjustments has expired. To the extent that repurchases or adjustments in favor of an assignee exceed the amount of the deferred revenue account established with respect to an assignment agreement, the excess must be raised as a revenue deficit in the following fiscal year.

2. Proceeds of Assignments of Non-current Receivables

Non-current receivables are those that are assigned more than one year after the last date on which taxes could have been paid without incurring interest charges. The date would normally be May 1.

Proceeds of assignments of non-current receivables will be credited to revenue in the fund in which the receivable is recorded. Where district taxes or other receivables are involved, the city or town will hold the amount retained on behalf of the district. The amount of revenue recognized at the time of the sale will be equal to the amount of the proceeds received on the date of sale, net of any premium, less the amount required to be reserved for repurchases or adjustments.

All or a part of the general fund revenue recognized on the assignment of the tax receivables must be reserved as Bulk Sale Proceeds Reserve. If the most recent certified free cash was negative, an amount equal to that deficit must be transferred from the Bulk Sale Proceeds Reserve to revenue of the year in which the assignment takes place to reduce the deficit. Revenues recognized from the sale in excess of any free cash deficit must be credited to the Bulk Sale Proceeds Reserve to the extent they exceed 25 percent of the average certified free cash for the three most recent fiscal years. To the extent they do not exceed that three-year average, they must be transferred to revenue of the year in which the assignment takes place.

Half of the balance of the Bulk Sale Proceeds Reserve at the end of the fiscal year in which the assignment occurs must be recognized as revenue at the end of each of the succeeding two fiscal years. A municipality may appropriate directly from the Bulk Sale Proceeds Reserve only for purposes for which the municipality could borrow for five years or more. The portion of the revenue that must be reserved is determined by a community's free cash position as most recently certified by the Director of Accounts.

The amount required to be reserved for repurchases and adjustments must be equal to the amount stated in the instrument of assignment that the municipality may be required to repurchase plus an amount equal to 25 percent of the proceeds (not including any premium received) to provide for adjustments not subject to the limitation on repurchases. The Director of Accounts may require a larger reserve based upon concerns about the municipality's accounting records, collection results or assessment practices. For example, a larger reserve may be required where there are major discrepancies between the collector's or treasurer's records of outstanding balances and the records of the accountant or auditor. The reserve will be recorded as Deferred Revenue-Bulk Sales of Property Taxes in each fund to which revenue is credited. Amounts required to be paid back to the assignee will be charged to this account in the appropriate fund. The balance remaining will be recognized as revenue at the end of the fiscal year in which the time limit set out in the agreement for such repurchases or adjustments has expired.

3. Premium Received on Sale of Property Tax Receivables

Any premium received on the assignment of tax receivables will be credited to the general fund as an other financing source on the date received. The premium is the amount of proceeds received in excess of the taxes, charges and interest committed to the collector, or in the case of the treasurer the amount of the taxes and interest for which the land was taken and subsequent certifications to the tax title.

4. Income from Interest and Charges Received after the Date of Assignment

Amounts of interest and charges collected by assignee and paid over to collector or treasurer after assignment will be credited to revenue when received.

5. Free Cash Updates

A municipality may petition the Director of Accounts between July 1 and March 31 for an update of its free cash certification for revenues recognized from the assignment or the expiration of the time limit on repurchases and adjustments.

G. Joint Assignments

Collectors or treasurers of two or more municipalities may make joint assignments of receivables. Collectors and treasurers intending to make such joint assignments must agree in advance how proposals will be evaluated, and whether any individual collector or treasurer can refuse to enter into an assignment agreement. Any joint assignment agreement must provide for separate limits for each participating municipality on adjustments to the purchase price and the amounts of receivables that the municipality may be required to repurchase in accordance with Section III-D-4 above. Any assignment agreement must also specify whether any discount or premium will be uniform for all the participating communities, or allocated separately to each community's receivables.

H. Reporting Requirements

A collector or treasurer who enters into an assignment agreement under G.L. Ch. 60 §2C must within 30 days of the date of the assignment file with the Bureau of Accounts a copy of the attached report.

**Bureau of Accounts
 Division of Local Services
 P.O. Box 9659
 Boston MA 02114-9568**

REPORT OF ASSIGNMENT OF TAX RECEIVABLES UNDER G.L. Ch. §2C
 (A separate form must be submitted for each assignment)

City / Town _____
 Date of Assignment: _____

By (Check one): Collector _____
 Treasurer _____

Description of Receivables* _____

	Amount of Assignment	Amount of Assignment	Amount of Assignment	
FY _____	\$ _____	\$ _____	\$ _____	(par value)
Premium/Discount	\$ _____	\$ _____	\$ _____	
Interest Due From Purchaser	\$ _____	\$ _____	\$ _____	
FY _____	\$ _____	\$ _____	\$ _____	(par value)
Premium/Discount	\$ _____	\$ _____	\$ _____	
Interest Due From Purchaser	\$ _____	\$ _____	\$ _____	
FY _____	\$ _____	\$ _____	\$ _____	(par value)
Premium/Discount	\$ _____	\$ _____	\$ _____	
Interest Due From Purchaser	\$ _____	\$ _____	\$ _____	
Tax Titles	\$ _____	\$ _____	\$ _____	(par value)
Premium/Discount	\$ _____	\$ _____	\$ _____	
Interest Due From Purchaser	\$ _____	\$ _____	\$ _____	
<u>TOTAL</u>	\$ _____	\$ _____	\$ _____	

*Attach description as needed.

Percentage Limit on Repurchases: _____% (See page/paragraph __ of the agreement)

Time Limit on Adjustments/Repurchases: _____ (See page/paragraph __ of the agreement)

Signed: _____

Collector/Treasurer

Date: _____

A COPY OF THE ASSIGNMENT AGREEMENT MUST BE ATTACHED TO THIS REPORT

This instrument must be filed for record or registration within 60 days from its date

State Tax Form 431
Revised 5/2004

COMMONWEALTH OF MASSACHUSETTS

G.L. Ch. 60 §52

Name of city or town
Office of the Treasurer

Instrument of Assignment of Tax Title

I, _____, treasurer of the (town/city) of _____, hereby assign to _____ of _____, the tax title securing the taxes
(Name of Assignee) (Number, Street, City or Town, and State)
and charges on the parcel described below, which tax title was created by an (instrument of taking/collector's deed) dated _____ and filed for record/registration on _____, _____ with the Registry of Deeds, Book _____, Page _____, Document No. _____, Certificate of Title No. _____.

This assignment is for the amount of the winning bid at an auction held on _____, _____, plus interest accruing since the date of the auction. The total is \$ _____, consisting of the principal amount of \$ _____, accrued interest to the date of the auction of \$ _____, accrued interest since the date of the auction of \$ _____ and premium of \$ _____, the receipt of which sums is hereby acknowledged. The principal amount and the accrued interest to the date of auction together represent the sum for which the property could have been redeemed on the auction date.

DESCRIPTION OF PROPERTY

(The description must agree with the description in the collector's deed or instrument of taking. For registered land, the certificate of title number must be given.)

On _____ notice of the intended assignment was sent to the owner(s) of record as follows:

(Owner's Name) (Mailing Address)

(Owner's Name) (Mailing Address)

(Owner's Name) (Mailing Address)

Notice was also given by publication in the _____ on _____, and was
(Name of Newspaper) (Publication Date)
posted at _____ and at _____ on _____.
(Place of Public Posting) (Place of Public Posting) (Posting Date)

An extension of time within which foreclosure proceedings may not be instituted was granted on _____, to _____. (If no extension granted, so state.) _____.

Executed as a sealed instrument on _____, _____

Treasurer

THE COMMONWEALTH OF MASSACHUSETTS

ss. _____ Date _____

On this ____ day of _____, _____, before me, the undersigned notary public, personally appeared _____, as Treasurer for the city/town of _____, proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding document in my presence, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

My commission expires _____

Notary Public