



Bulletin

2017-03B

TAXES IN LITIGATION

Supersedes Inconsistent Prior Written Statements

TO: Collectors and Accounting Officers

FROM: Kathleen Colleary, Chief, Bureau of Municipal Finance Law

DATE: April 2017

SUBJECT: Revised Procedure When Real Estate Tax Lien Continued

This *Bulletin* explains a change in the procedure for transferring to the taxes in litigation account outstanding taxes that are the subject of a recorded statement to continue the lien. This change was made by the Municipal Modernization Act, which took effect on November 7, 2016. [St. 2016, c. 218, § 168](#).

A. STATEMENT TO CONTINUE TAX LIEN

A lien arises on January 1 each year for real estate taxes assessed as of that date. [G.L. c. 60, § 37](#). The lien exists, at a minimum, during that calendar year and the next four calendar years and is secured by a tax taking made before the end of that period. For example, the earliest a lien that arises on January 1, 2017 for fiscal year 2018 real estate taxes expires is December 31, 2021.

The lien can be extended beyond its usual period where the tax collector believes a tax taking to secure the lien cannot be made before it would expire. The collector cannot make a valid tax taking if the taking would be prohibited by (1) state or federal law or (2) an injunction or proceeding in a federal or state court or (3) action of any administrative body. This lien extension procedure is used most often in bankruptcy cases. To extend the lien, the collector files a "Statement to Continue Lien" (State Tax Form 291) at the Registry of Deeds. [G.L. c. 60, § 37A](#). The outstanding taxes are then transferred to the taxes in litigation account pending the resolution of the bankruptcy or other proceeding. [G.L. c. 60, § 95](#). Within 6 months after being notified that the legal restriction against a tax taking has been removed, the collector must make the tax taking to secure the lien.

The Municipal Modernization Act eliminated the requirement that the Department of Revenue authorize the transfer of the outstanding taxes to the taxes in litigation account.

B. TRANSFER TO TAXES IN LITIGATION ACCOUNT

An accounting officer will now transfer outstanding taxes to the taxes in litigation account based on the recording of a statement to continue the lien. Department of Revenue authorization is no longer required. To have a transfer made, the tax collector need only provide the accounting officer with a copy of the recorded statement and the amount to be transferred. [G.L. c. 60, § 95](#). Upon receipt of this information, the accounting officer must make the transfer.

This procedure is now in effect.

Collectors and accounting officers with questions about the transfer of taxes to the taxes in litigation account should contact the Division's legal staff at 617-626-2400 or DLSLAW@dor.state.ma.us.